

Pluralism and Institutional Conscience

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There has been considerable discussion recently about revoking institutions' ability to claim conscientious objector protections when refusing to offer certain services.¹ I will argue that religious institutions should be able to express their identities through restricting some of the services they provide, so long as these services are not part of the core mission of medicine. While this is a concept that is somewhat difficult to delineate, especially at the margins, it can be said that something is within the core mission of medicine if it is an uncontroversial category that also has historical continuity with the tradition of medicine.² Relief of pain and suffering and treatment of the chronically ill and dying are excellent examples of things that would fall in this category. However, the core mission of medicine probably does not include cosmetic surgeries, abortion, physician assisted suicide and the like.

The "core mission of medicine" is a consensus term in that there is agreement across competing philosophies of medicine about what constitutes the heart of medicine. As such, it is both inclusive and exclusive, that is, an understanding of the core of medicine that can both support and exclude claims for conscientious objection depending on whether what is being claimed falls within the consensus of the greater community of medicine.

Presently, conscientious objector status for institutions is probably the most efficient way for the state to recognize these expressions of religious identity. Societies are composed of a multitude of individuals. These individuals approach life with a diversity of viewpoints, and this renders societies varied. This variety produces moral pluralism when the diversity of viewpoints cannot be contained within a single conception of the good life, broadly construed.³ In other words, different people espouse divergent conceptions of how to interpret, rank, and mediate between the differing goods that compose the "good life" and these often conflict with each other. When a single society is composed of many such people and communities pursuing divergent con-

ceptions of the good life, we call it a pluralistic society. In order to maintain social cohesion in a pluralist society, those espousing differing conceptions of the good life must respect each other at some level. I will, paraphrasing John Gray,⁴ call this the project of pluralism: the attempt of different cultures to live together peacefully without rejecting their differences.

Pluralism is well entrenched in the American ethos. We are an immigrant nation, founded on the principles of the Enlightenment, and we have two centuries of lived experience as an increasingly pluralistic nation.⁵ We embrace our pluralism. But to leave it here would be to oversimplify for two reasons. First, pluralism is frequently painful and difficult. For this reason, pluralism was not always valued in the American experience, dating all the way back to colonial times.⁶ Second, pluralism, at least as we think of it today, is necessarily closely related to tolerance. However, descriptively speaking, a pluralist society is not necessarily a tolerant one; tolerant societies embrace pluralism, intolerant ones reject it, even if they are descriptively pluralistic.⁷

The distinction between descriptive and normative pluralism can help illuminate the relationship of tolerance to pluralism. Descriptive pluralism is an admission that society is pluralistic. It does not involve a normative judgment about whether or not pluralism is good.⁸ The United States is descriptively pluralistic, and has been, to greater or lesser degree, since its inception. It is part of our history. Normative pluralism, on the other hand, involves a judgment that pluralism is good.⁹

There are at least two reasons to accept normative pluralism. It can be valued for its own sake, or as a necessary condition for making authentic choices about what the good life entails and how to live it. On this latter view, people who believe that there are ultimately relatively few ways to live a truly good life, as many deeply committed religious people believe, can still accept normative pluralism. Such acceptance would come from a

moral commitment to free choice: the truly good life can only be lived if it is freely chosen (in other words, making the wrong choice has to be a real possibility in order for the rejection of this possibility to be meaningful). Dictating or otherwise coercing this choice would negate the value of a freely chosen commitment to the true good life. A society that embraces normative pluralism preserves the possibility of making this most important of choices (about seeking and living the good life) authentically.

Normative pluralism requires fostering different, often competing viewpoints within a single society. This fostering aspect of normative pluralism can be achieved by letting individuals express themselves in all aspects of life, including through private religious institutions such as church communities, and through quasi-public religious institutions such as private hospitals. One such kind of religious expression is through policies adopted in line with the religious teachings of the group that runs the hospital.

The goal of diversity embedded in the concept of normative pluralism is undermined when medicine is granted a state-sponsored monopoly, presumably for otherwise good reasons such as safety and general quality assurance. It diminishes the scope of views likely to be represented in medicine. This is problematic for a liberal democracy that espouses the doctrine of state value-neutrality.¹⁰ One way to try to ameliorate this problem without abandoning the state-sponsored monopoly is to explicitly encourage moral pluralism within the state-sponsored monopoly. Religiously affiliated hospitals and other care facilities represent an excellent way to encourage such moral pluralism.

Far from forbidding religiously affiliated hospitals from setting policies in line with their religious commitments, the state should encourage it as part of encouraging greater moral pluralism within medicine, so long as the policies are not themselves fundamentally opposed to the core principles of medicine (as expressed through medicine's long tradition), and as defended in a coherent philosophy of medicine. This should not be problematic as most religious teachings that inform policy decisions do not include any commitments that would fall under this exemption.¹¹ Catholic, Baptist, Jewish

and other religious hospitals should continue to set policies that they think best represent their commitments to their own moral traditions and to medicine as a whole, and the state should not interfere with this unless such policies subvert the core commitments of medicine.

Perhaps one of the legitimate roles of the state in supporting the medical monopoly would be to ensure that the core principles and goals of medicine are not being systematically undermined. If this is the case, then should the state accuse a private religious hospital of actually subverting the longstanding goals of medicine, the hospital would need to defend its policy in terms of a coherent philosophy of medicine which adequately respects both medicine's tradition and continuing evolution. In other words, it would not be enough for a private religious hospital to assert that its policies are consistent with religious doctrine; it must also be consistent with the way medicine is practiced and conceptualized in the larger community of medicine. Appeal to a coherent philosophy of medicine would also enable a private religious hospital to engage in dialogue with those who are not part of their religious tradition or of any religious tradition.

Part of encouraging moral pluralism in medicine through religious hospitals and other religious care facilities (such as nursing homes, etc.) would be for the state to offer incentives for other religious (or non-religious) institutions to open care facilities.¹² Encouraging all comers would help ensure that the state is not privileging the relatively few religious institutions that already run hospitals. Having a robust religious diversity within medicine is a better way to address religious pluralism than attempting to enforce a system-wide agnostic secularism of sorts. As Kevin Hasson put it, "We don't deal with diversity by pretending we're all male, or all white, or all Irish. There's no reason to deal with diversity by pretending we're all agnostic either."¹³ So, if we are committed to taking pluralism seriously and not trying to paper over our differences, we should be open to religious expression.

Religious expressions in public aspects of life are often spoken of in terms of conscience. Conscience is often said to be the most salient motivating factor behind some actions in medicine (and in other areas) that are

perceived to be in need of a defense. This is true of individuals, and it is also true of some institutions, particularly institutions involved in areas of life that routinely interact with deep moral questions. Medicine is clearly one such area of life. Briefly, conscience can be understood as our faculty for making moral judgments together with a commitment to acting on them.¹⁴

Action is intimately related to the concept of conscience. It is thus not useful to conceptualize conscience simply as moral sentiment. Conscience is moral judgment embedded in lived experience. Our forbears understood this; the desire to have the freedom to exercise their consciences as they saw fit proved a pivotal impetus in the settling of the “new world.”

Our commitment to conscience is a substantial part of our history as Americans. This commitment predates our history of pluralism. It lies at the very core of our founding. Our legends and myths surrounding the genesis of the American colonies and later the nation are steeped in the idea of respect for conscience. And it is fair to say that respect for conscience remains one of the bedrock values of the U.S. today.¹⁵ As with pluralism, our record in dealing with respect for conscience is spotty at times. In early colonial times, the different colonies were loath to respect minority religious expression;¹⁶ conscientious objection to war has a storied past in America’s armed services;¹⁷ and the conscience-driven flag-saluting cases¹⁸ serve as examples of the difficulty we have had in addressing how both to respect individual conscience and to live an integrated and enriching community life. These tensions are a natural part of the project of pluralism and the fact that we have continued to struggle with these issues indicates that we have not abandoned the project. We care about conscience, or it would not be a live issue.

Though it may seem unrelated, America’s identity as a capitalist liberal democracy is important here. Capitalism, or more accurately a free market, promotes tolerance. Our acceptance of free markets has helped us to progress in our acceptance of others (this observation of the “tolerizing” influence of market capitalism goes back at least to Voltaire and his praise of the (then new) London exchange).¹⁹ Our relative comfort with free markets puts us in an excellent place to continue to embrace otherness in pursuit of the many ways we live

the good life in our country. We have a basic foundation from which to continue. One way to introduce markets into medicine is to promote, through tolerance, many different moral views in medicine. Allowing institutions to assert claims of conscience is one way to respect and encourage moral diversity in modern health care.

Greater moral diversity in health care may come at the expense of some uniformity. Some argue that medicine must be uniform²⁰ and that part of uniformity is expecting largely the same treatments to be offered everywhere. Uniformity is monistic, and though there are good reasons for wanting a fair degree of uniformity in some things in medicine, it is better to be exposed to a variety of moral commitments, and to be able to choose between them. Pluralism and respect for conscience, together with a commitment to Western medicine result in a system with different approaches to medicine, as to life. Sometimes encounters that highlight these differences will be painful, but it would be far more painful to ignore diversity in favor of an enforced secularism in medicine requiring all moral communities to accept the morally most permissive position. The same range of services can be offered to the community with a diversity of entities offering disparate philosophies of medicine, though not every service would be offered at every location.

In general, conscientious objection for institutions helps to achieve greater diversity, and thus more options to choose from. Let’s encourage more moral communities to enter the broader community of medicine and improve our options in choosing moral environments, not punish the ones that are already there by forcing all of medicine to look exactly the same.

NOTES

1. Dickens and Cook, *The Scope and Limits of Conscientious Objection*.
2. For a more specific discussion pertaining to medicine’s universal core values and inherent goals, see Callahan, *The Goals of Medicine: Setting New Priorities* 1-54, also Pellegrino, *The Goals and Ends of Medicine: How Are They to Be Defined?* 55-68 in Hanson, Mark J., and Callahan, Daniel. 1999. *The Goals of Medicine: The Forgotten Issue in Health Care Reform*. Washington, D.C.: Georgetown University Press.
3. This is similar to the term value pluralism, but value pluralism usually denotes a claim about the underlying moral structure of the universe. Cf. Galston, *Value Pluralism and Liberal Political*

- Theory. I am not making such a claim. I am using the separate term moral pluralism to denote the existence of different cultures or communities of thought that rank values differently than each other. Cf. Engelhardt, *The Foundations of Bioethics* 7, 9.
4. Gray, *Enlightenment's Wake: Politics and Culture At The Close of the Modern Age* 180.
 5. Nussbaum, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* 5.
 6. Hasson, *The Right to Be Wrong: Ending the Culture War Over Religion in America* 9-28.
 7. When Locke argues for tolerance it is through a limit to the justifiable use of force to coerce others. See Locke, *A Letter Concerning Toleration*. A corollary of this is the rise of pluralism, which Locke regards as unavoidable, but not necessarily a good thing in and of itself. On one reading, Locke thinks there are relatively few ways to live the good life, but that free choice is necessary for this life to be authentically lived. See Khushf, *Intolerant Tolerance* 164. The point here is that pluralism does not necessarily entail tolerance.
 8. Flathman, *Pluralism and Liberal Democracy* 1-2.
 9. This term is sometimes used a little differently than this in philosophical literature where it is used in contrast to "foundational pluralism." I am using the term to contrast purely descriptive accounts of pluralism. In this usage, there is a normative judgment of how things ought to be, viz. that there ought to be a plurality of competing value systems. My use of the term normative pluralism would encompass foundational pluralists. Cf. Kekes, *The Morality of Pluralism* 13-14.
 10. Kekes, *The Morality of Pluralism* 208; Rawls, *Political Liberalism* 190-191.
 11. While it is certainly true that in the United States there are religious groups with practices that would fall under this type of exemption, these religious institutions do not, to my knowledge, run mainstream hospitals, so it is a moot point until they do. It is not problematic as long as they offer a separate service other than mainstream medicine and identify it as such.
 12. The foundation for doing this has already been laid, for instance by giving tax-exempt status to not-for-profit hospitals.
 13. This quote is from an online discussion archived at: <http://www.kofc.org/chat/findChatInfo.action?broadcastChatId=1003>. This sentiment is also expressed in his book *The Right to Be Wrong: Ending the Culture War Over Religion in America*.
 14. Brock, *Conscientious Refusal by Physicians and Pharmacists: Who Is Obligated To Do What, And Why?* 188 also Cf.. Sulmasy, *What Is Conscience and Why Is Respect For It So Important?*
 15. Nussbaum, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* 362. It is not just an American value; it is one of the foundational values of liberal political theories. See Rawls, *Political Liberalism* 61.
 16. Hasson, *The Right To Be Wrong: Ending the Culture War Over Religion in America* 9-28, 45-67.
 17. Schlissel, *Conscience in America: A Documentary History of Conscientious Objection in America 1757-1967*; Brock, *Liberty and Conscience: A Documentary History of the Experiences of Conscientious Objectors in America Through the Civil War*.
 18. *Minersville School District vs. Gobitis* 310 U.S. 586 (1940) and *West Virginia Board of Education vs. Barnette* 319 U.S. 624 (1943).

19. Voltaire, *Letters on England* 43-44.
20. LaFollette and LaFollette, *Private Conscience, Public Acts*; Savulescu, *Conscientious Objection in Medicine*.

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