15. Catholic Health Care and Reproductive Justice: Whose Conscience Has Priority When Conscience Claims Collide?

Emily Reimer-Barry

Do Catholic hospitals in the US facilitate or inhibit reproductive justice for pregnant patients?[1] It is a complex question that requires an examination of the Catholic health care system and its policies, the place of Catholic health care in the framework of all US health care, competing claims about social justice, and competing claims of conscience. Catholic teachings on conscience are clear and straightforward: a person is obliged to form and follow their conscience. But our communities are ill-equipped to navigate the confusion and conflict that emerges when conscience claims compete or when one's conscience obliges an action that violates a duty one holds as part of one's employment responsibility. Navigating professional roles and responsibilities is also part of how one lives out one's moral values. Theologians in the Catholic tradition have expanded our understanding of conscience by careful attention to the formation of the agent and the process of discernment.[2] These developments are important as we consider how Catholic health care institutions can better foster reproductive justice for patients who seek care in alignment with their own conscientious discernment. Given this volume's focus on reproductive justice, I limit my focus in this chapter to conscientious discernment regarding reproductive health. But conscience claims are not limited to cases of reproductive health care in medicine. Properly understood,

[1] Special thanks to virtual table members who provided valuable feedback and corrections during the workshop for this essay. I am also grateful for the research support of the Steber Professorship, University of San Diego.

[2] See Kathryn Lilla Cox, "Reproductive Injustice as Social Sin: Mapping Sin Discourse into Debates about Fertility Decisions," 90–121, in this volume.

conscience claims should impact many more aspects of patient care. While these debates are relevant to a broad range of moral questions encountered in medicine today—issues such as care for uninsured patients, rationing of resources, the public health crisis of gun violence, pharmaceutical interventions in adolescent mental health, gender-affirming care for transgender persons, prescribing of PrEP therapy for HIV prevention among sexually active patients, and dispensing of opioid medications during an ongoing opioid epidemic—I cannot do justice to the multi-dimensional questions these issues pose.[3] If my focus on communal discernment and the prioritizing of patient needs is compelling for cases involving reproductive health care, it is worth probing whether it would also be applicable in other kinds of medical discernments.

In *Amoris Laetitia*, Pope Francis explained that pastors are called to "form consciences," not to "replace them" (no. 37). Francis has also asserted the right of Catholic health care professionals to conscientious objection, including the right to refuse to perform abortions at the request of pregnant patients.[4] What happens when a patient's conscience is in conflict with the provider's conscience? How are these competing claims to be negotiated? Is not a conscientious refusal on the part of a health care provider a "replacement" of the patient's own conscientious conclusion?[5]

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[3] Nor will I be able to attend to competing religious liberty claims, such as when a Jewish physician seeks to provide care to a Hindu patient in a Catholic hospital.

[4] Francis, "Address of His Holiness Pope Francis to the Participants in the Congress Promoted by the Italian Society of Hospital Pharmacy and Pharmaceutical Services of Health Authorities," October 14, 2021, www.vatican.va/content/francesco/en/speeches/2021/october/documents/20211014-farmaceutica-ospedaliera.html.

[5] The physician's role as gatekeeper is one that I cannot analyze in full within the scope of this argument. It is relevant not only in cases of reproductive health, which is the focus of this paper, but also cases in which the physician refuses care in other situations such as refusing to provide breast enlargement surgery for teenagers, refusals to dispense opioid drugs, refusal to prescribe non-standard pharmaceuticals such as Ivermectin to treat Covid-19, or turning away of indigent patients or patients on Medicare/Medicaid. Francis admits that it is a "very delicate issue, which requires both great competence and great rectitude." Francis, "Address of His Holiness Pope Francis to the Participants in the Congress Promoted by the Italian Society of Hospital Pharmacy

This essay examines the ways in which competing conscience claims have been negotiated and some of the ongoing problems with the current situation. I argue that the United States Conference of Catholic Bishops unfairly restricts reproductive health care on the basis of their interpretations of Catholic doctrine, including Church teachings on conscience and religious liberty. Competing goods in Catholic health care are commonplace, and current strategies for resolving these issues exacerbate reproductive injustice for patients. Drawing on the work of philosopher Carolyn McLeod, this essay forwards the argument that when genuine conflict is present, the patient seeking a medicine or intervention consistent with the standard of care should have their needs prioritized; in such cases, attention must also be given to the moral injury and lack of integration experienced by some health care providers.

Catholic Health Care in the US

Catholic health care systems in the United States profess a deep and abiding commitment to justice. In Catholic teachings, "Society ensures social justice by providing the conditions that allow associations and individuals to obtain their due" (*Catechism*, no. 1943). The *Ethical and Religious Directives for Catholic Health Care Services* is in its sixth edition and governs the delivery of care in institutionally based Catholic health care services.[6] The *Ethical and Religious Directives for Catholic Health Care Services* explain that foundational commitments include promotion of human dignity, care for the poor and uninsured, and contribution to the common good.[7] The Catholic Health Association explains that "Catholic health care carries out the healing ministry of Jesus in a complex

and Pharmaceutical Services of Health Authorities," October 14, 2021, www.vatican.va/content/francesco/en/speeches/2021/october/documents/20211014-farmaceutica-ospedaliera.html.

[6] United States Conference of Catholic Bishops (USCCB), *Ethical and Religious Directives for Catholic Health Care Services*, 2018, 4. www.usccb.org/about/doctrine/ethical-and-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf.

[7] USCCB, *Ethical and Religious Directives for Catholic Health Care Services*, 8.

environment—a fragmented health care system, millions of Americans uninsured or underinsured, enormous competition, challenges in reimbursement, proliferating technologies, and numerous biomedical and scientific advances."[8] In alignment with the principles of Catholic social teachings, Catholic hospitals are mission-driven institutions that seek to create more healthy and just communities through the provision of medical care and the administration of rehabilitation and nursing home facilities.[9]

In the United States, Catholic health systems control 16.6 percent (one in six) of the hospital beds in the country and, in some states, more than twenty percent of the hospital beds.[10] According to the Catholic Health Association, every day more than one in seven patients are cared for in a Catholic hospital. 498,580 full-time employees and 208,283 part-time workers are employed in Catholic hospitals.[11] In forty-six regions, the only regional hospital is a Catholic hospital. At a time when rural hospitals are closing at unprecedented levels, many pregnant people find themselves in

[8] Catholic Health Association of the United States, "Ethics Overview," 2023, www.chausa.org/ethics/overview.

[9] This is not to say that Catholic institutions always live up to their mission. My thanks to Kate Ward for pointing this out in our virtual table workshop. In practice Catholic health care administrators must make difficult decisions about how to prioritize care. A recent example of failures to live up to their stated mission can be found in the report of the National Nurses United, which demonstrated that Ascension Health, one of the largest Catholic health care providers in the US, was accelerating a trend of closing labor and delivery units. See Aleja Hertzler-McCain, "Catholic Bishops Silent as Ascension Hospital System Shrinks Maternity Care," *Religion News Service*, April 8, 2024, religionnews.com/2024/04/08/catholic-bishops-silent-as-ascension-hospital-system-shrinks-maternity-care/.

[10] Emily Reimer-Barry, *Reproductive Justice and the Catholic Church* (Lanham, MD: Sheed & Ward, 2024), 62–65. See also Hayley Penan and Amy Chen, "The Ethical & Religious Directives: What the 2018 Update Means for Catholic Hospital Mergers," National Health Law Program, January 2, 2019, 2.

[11] Catholic Health Association of the United States, "U.S. Catholic Health Care," 2024, www.chausa.org/about/about/facts-statistics.

"health care deserts."[12] The hospital system in the US is still facing challenges with staffing and workplace burnout in the wake of the Covid-19 pandemic.[13]

Catholic hospitals must conform to the *Ethical and Religious Directives for Catholic Health Care Services* promulgated by the United States Conference of Catholic Bishops.[14] In alignment with authoritative

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[12] More than 150 rural hospitals closed between 2005 and 2019, and another 19 shut down in 2020. See Dennis Thompson, "Hundreds of Hospitals Could Close Across Rural America," *U.S. News and World Report*, January 16, 2023, www.usnews.com/news/health-news/articles/2023-01-16/hundreds-of-hospitals-could-close-across-rural-america#:~:text=More%20than%20150%20rural%20hospitals,received%20while%20the%20pandemic%20raged.
More than 600 rural hospitals—nearly 30 percent of rural hospitals nationwide—are at risk of closing in the near future, according to the Center for Healthcare Quality and Payment Reform. See Marcus Robertson, "631 Hospitals at Risk of Closure, State by State," Becker's Healthcare Report, January 3, 2023, www.beckershospitalreview.com/finance/631-hospitals-at-risk-of-closure-state-by-state.html?utm_medium=email&utm_content=newsletter. The Catholic Health Association argues that Catholic health systems have kept rural hospitals open and care available for those who would not otherwise have it. See CHA, "Rural Health Care Policy Brief," 2024, www.chausa.org/advocacy/policy-briefs/rural-health-care. Some journalists argue, however, that the footprint of Catholic health care places women's comprehensive health care decisions in jeopardy. Regarding a hospital acquisition in New Mexico, see Nina Martin, "Blue State Barriers and the Messy Map of Abortion Access," *Reveal*, March 9, 2024, revealnews.org/podcast/blue-state-barriers-and-the-messy-map-of-abortion-access/?fbclid=IwAR1HDlPxeWZ5yiSyK0lZVG5TmtFg4HmVZiAUkSe5WvXkMjwfLauS5wxDvFc.

[13] Hailey Mensik, "Staffing Overtakes Financial Challenges as Top Concern," *Health Care Dive*, February 7, 2022, www.healthcaredive.com/news/staffing-shortages-top-concern-for-hospital-CEOs-COVID/618402/. According to US News and World Report, 46 percent of health care workers reported experiencing burnout in 2022, up from 32 percent in 2018. See Brianna Navarre, "How Hospitals and Health Systems are Battling Burnout in Health Care," *US News and World Report*, November 16, 2023, www.usnews.com/news/live-events/articles/2023-11-16/how-hospitals-and-health-systems-are-battling-burnout-in-health-care#:~:text=By%20Brianna%20Navarre-,Nov.,2023%2C%20at%2011%3A37%20a.m.&text=Burnout%20reportedly%20costs%20the%20U.S.,up%20from%2032%25%20in%202018.

[14] United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, no. 4, www.usccb.org/about/doctrine/ethical-and-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf.

magisterial teachings, these directives forbid direct contraception, direct sterilization, direct abortion, and some infertility treatments including in vitro fertilization. They can also limit the treatment options patients have to prevent pregnancy as a result of sexual assault.[15] In cases of complex pregnancy complications for pregnant people with wanted pregnancies, the *Ethical and Religious Directives* explain that a way forward is always sought that achieves good outcomes for both mother and prenate. The bishops write: "The Church's defense of life encompasses the unborn and the care of women and their children during and after pregnancy."[16] However, journalists and scholars have documented accounts of pregnant people being turned away from care by Catholic hospitals even when facing serious complications, causing unnecessary delays in their care.[17] This is all the more troubling given that it is actually quite common for a woman's only health care choice to be a Catholic hospital. For some patients, conscientious refusals lead to life-or-death scenarios.[18]

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[15] United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, directive 36.

[16] United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, no. 16. The document cites Pope John Paul II, "Address of October 29, 1983, to the 35th General Assembly of the World Medical Association," *Acta Apostolicae Sedis* 76 (1984): 390.

[17] Judy Stone, "Healthcare Denied at 550 Hospitals Because of Catholic Doctrine," *Forbes*, May 7, 2016, www.forbes.com/sites/judystone/2016/05/07/health-care-denied-at-550-hospitals-because-of-catholic-doctrine/?sh=7f125c5c5ad9. See also Michael Hiltsiz, "Here's another case of a Catholic hospital interfering with patient care," *Los Angeles Times*, January 11, 2016, www.latimes.com/business/hiltzik/la-fi-mh-catholic-hospital-interfering-with-medical-care-20160108-column.html; Claudia Buck and Sammy Caiola, "Transgender patient sues Dignity Health for discrimination over hysterectomy denial," *Sacramento Bee*, April 20, 2017. See Nelson's analysis of *Means vs. USCCB*, a case argued by the ACLU, in Lawrence J. Nelson, "Disputes over Previability Pregnancy Termination," in *Conscience & Catholic Health Care: From Clinical Contexts to Government Mandates*, ed. David E. DeCosse and Thomas A. Nairn, OFM (Maryknoll, NY: Orbis, 2017), 131.

[18] Dr. Savita Halappanavar died from sepsis after her request for an abortion was denied in Galway, Ireland. See "Woman Dies After Abortion Request Refused at Galway Hospital," BBC News, November 14, 2012, www.bbc.com/news/uk-northern-ireland-20321741. The death of Valentina Milluzzo was also a result of infection after miscarriage in Italy. See BBC

Catholic bishops do not train in medical school as part of their path to the priesthood and the episcopacy. But they have an enormous platform in shaping public opinion about health care policies. Canon law gives the local ordinary significant authority over his diocese, and when his diocese includes a Catholic hospital, it is the local ordinary who has the final word about the scope of care in that hospital.[19] Collectively, bishops also hire lawyers and lobbyists to shape public policies[20] and speak in the public square about moral and medical issues, including via social media. Recent examples include leaders such as Cardinal Burke and Archbishop Cordileone refusing publicly to be vaccinated for Covid-19.[21] Bishop Strickland of Tyler, Texas, also refused to be vaccinated[22] and even discouraged parents from having their children vaccinated for Covid-19, in contradiction to recommendations from the Centers for Disease Control and Prevention, Pope Francis, the Pontifical Academy of Life,

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News, "Italy Abortion Row as Woman Dies After Hospital Miscarriage," October 20, 2016, www.bbc.com/news/world-europe-37713211. Regarding a life-or-death discernment in a Catholic hospital in the US, see M. Therese Lysaught, "Moral Analysis of Procedure at Phoenix Hospital," *Origins* 40, no. 33 (2011): 537–549; Bishop Thomas J. Olmsted determined that the procedure constituted a direct abortion. National Catholic Bioethics Center, "Commentary on the Phoenix Hospital Situation," *Origins* 40, no. 33 (2011): 549–551. McBride's excommunication was later lifted, and she was reinstated in her position. See Union of Catholic Asian News, "Excommunication Lifted," www.ucanews.com/news/excommunication-lifted-on-nun-who-approved-an-abortion/38039#.

[19] For a critique, see Todd A. Salzman and Michael G. Lawler, *Pope Francis and the Transformation of Health Care Ethics* (Washington, DC: Georgetown University Press, 2021), 158–160.

[20] For more, see the USCCB Government Relations website www.usccb.org/offices/government-relations.

[21] Brian Fraga, "Archbishop Cordileone Reveals He's Not Vaccinated for COVID-19, Drawing Sharp Criticism," *National Catholic Reporter*, December 3, 2021, www.ncronline.org/news/coronavirus/archbishop-cordileone-reveals-hes-not-vaccinated-covid-19-drawing-sharp-criticism.

[22] "Bishop of Tyler" on social media: twitter.com/Bishopoftyler/status/1384115228409884678?s=20&t=TC6ErLsuJOd1usN8euu3bQ. In 2023, Pope Francis relieved Bishop Strickland of the pastoral governance of Tyler, Texas. See Nicole Winfield, "Pope Francis Removes a Leading US Conservative Critic," *AP News*, November 11, 2023, apnews.com/article/pope-tyler-bishop-strickland-removed-0f9f0be7d5938b36d6e7ead8c33e5150.

and other bishops.[23] One of the curious aspects of the *Ethical and Religious Directives* is the way that they assume that bishops have competency to adjudicate difficult medical cases and that they alone speak for the Catholic Church.

Conscience Claims in Conflict?

As noted in the introduction to this volume, reproductive justice is a holistic framework that seeks to transform unjust social structures so that people can flourish in healthy sexual relationships and so that parents have all they need to care for their children. The human rights framework of reproductive justice advocates for the right to have a child, the right to not have a child, and the right to parent children in safe and healthy conditions.[24] Forward Together (formerly Asian Communities for Reproductive Justice), while not using the term "conscience," nevertheless explains how a reproductive justice framework centers the moral decision of the woman: "Reproductive Justice is achieved when women, girls, and individuals have the social, economic, and political power and resources to make healthy decisions about our bodies, sexuality and reproduction for ourselves, our families and our communities."[25] This focus on the "healthy decisions" of the woman demonstrates an implicit understanding of conscience by advocating that women should be able to make health care decisions for themselves.

Unsurprisingly, tensions arise between this vision of women's decision-making and restrictions imposed by the policies of Catholic hospitals. The

[23] Jack Jenkins, "Firebrand Texas Bishop Strickland Tests Limits of Conservative Catholic Dissent," *National Catholic Reporter*, February 1, 2022, www.ncronline.org/news/people/firebrand-texas-bishop-strickland-tests-limits-conservative-catholic-dissent.

[24] Loretta J. Ross and Rickie Solinger, *Reproductive Justice: An Introduction* (Oakland: University of California Press, 2017), 9.

[25] Forward Together, *A New Vision for Reproductive Justice*, 2005, forwardtogether.org/tools/a-new-vision/. See also INCITE! Women of Color Against Violence, *Color of Violence: The INCITE! Anthology* (Durham, NC: Duke University Press, 2006).

claim that women should be able to make the decision to procure a tubal ligation (sterilization) or an abortion is not supported by the *Ethical and Religious Directives*. In official magisterial teachings, abortion is not considered legitimate health care; abortion is described as unjustified killing of the innocent (*Dignitas Infinita*, no. 47).[26] Catholic leaders advocate for laws that protect unborn life and refuse to acknowledge how these laws can sometimes lead to the coercion of pregnant patients.[27] It is worth noting that there is not universal consensus among Catholics that prohibiting legal abortion is the right course of action to promote social justice.[28]

Can we bridge these tensions between the defense of women's agency in reproductive justice and the defense of unborn life in Catholic hospital policies? Not easily. Certainly, there are important opportunities for coalitions that work on shared issues of concern, of which there are many. But Catholic hospitals need to continue to reflect on how policies in place today can foster reproductive injustice instead of reproductive justice. The bishops draw upon Church teachings regarding the sanctity of life and religious freedom to justify the policies in place, but patients and employees are beginning to raise more questions about whether it is appropriate for religious leaders to wield their power in this way, by constraining the medical choices for patients in Catholic facilities and for employees of Catholic institutions (regardless of the employees' religious commitments).[29]

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[26] See also Brian M. Kane, "Ethics-What is Abortion?" *Health Progress: Journal of the Catholic Health Association of the United States*, Winter 2023, www.chausa.org/publications/health-progress/article/winter-2023/ethics---what-is-abortion.

[27] Kathleen Bonnette explains: "Laws prohibiting abortion may violate a woman's bodily integrity and, thus, be seen as intrinsically evil." She demonstrates that, on both "sides" of the abortion debate, Catholics can have principled stances in which they seek to resist an intrinsic evil. See Kathleen Bonnette, "Holding the Tensions: Female Bodily Integrity as an Intrinsic Good," *Journal of Moral Theology* 12, no. 1 (2023): 113–117, 114. doi.org/10.55476/001c.66245.

[28] For example, Catholics for Choice is a non-profit advocacy group of pro-choice Catholics. Their website can be found at www.catholicsforchoice.org/.

[29] Salzman and Lawler, *Pope Francis and the Transformation of Health Care Ethics*, 192.

Reproductive Injustice: Remembering Victims of Forced Sterilizations and Testimonies of Dangerous Pregnancies

Black feminist scholar of law and sociology Dorothy Roberts recounts in chilling details the ways that racism influenced policies related to sterilization and incarceration; for example, Black men were sterilized while incarcerated in Indiana as part of the state's attempt "to render every male sterile" during their incarceration in 1902. Over the course of ten years, Dr. Harry C. Sharp performed 456 vasectomies on inmates in Indiana.[30] During the civil rights movement, Fannie Lou Hamer raised awareness about operations known as "Mississippi appendectomies"—sterilizations performed on Black women without their knowledge or consent, sometimes postpartum and sometimes when they sought care for another medical issue such as uterine tumors.[31] White physicians justified their actions on the basis of their "obligations to society." As one physician said, "The welfare mess cries out for solutions, one of which is fertility control."[32] In one case in 1973, the Southern Poverty Law Center found than "an estimated 100,000 to 150,000 poor women had been sterilized annually under federally funded programs. Half of the patients were Black."[33] While White middle-class women increasingly sought sterilization as part of their own reproductive decision-making, Black, Puerto Rican, and Indigenous women were being pressured to accept sterilization if they gave birth to children outside of wedlock. Roberts comments: "It is amazing how effective governments—especially our own—are at making sterilization and contraceptives available to women of color, despite their inability to reach these women with prenatal care, drug

[30] Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Vintage, 2017), 66.
[31] Roberts, *Killing the Black Body*, 90.
[32] Roberts, *Killing the Black Body*, 92.
[33] Roberts, *Killing the Black Body*, 93.

treatment, and other health services."[34] Harriet A. Washington's carefully documented book *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present* uncovers not just sterilization abuses but patterns of White physicians engaging in unjust and nonconsensual medical experimentation on Black patients, as well as the ways in which policies about diseases that disproportionately impact communities of color (tuberculosis, HIV) have gone from being "protective to punitive."[35]

On the one hand, in light of the history of forced sterilizations against women of color in US history, Catholic hospitals' rejection of contraception and sterilization may seem to create safe spaces for female patients to seek care, knowing that patients will not be pressured to violate Catholic teachings. In this case, structural policies at Catholic hospitals may be said to promote patient freedom for those whose values align with the *Ethical and Religious Directives.* This view is incomplete. First, it shows institutional respect only for the consciences that align with the hospital policies, restricting patient care for others. Secondly, it exudes a paternalism—"Father knows best"—attitude that actually undercuts the patient's important discernment process.[36] Additionally, Catholic hospitals are not free from the racism and paternalism that shaped the attitudes and behaviors of the physicians who engaged in such egregious coercion against patients in the last century.[37] While important initiatives to address systemic racism in Catholic health care are underway,[38] scholars

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[34] Roberts, *Killing the Black Body*, 94–95.

[35] Harriet A. Washington, *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present* (New York: Anchor, 2006), 332.

[36] See Eric Marcelo O. Genilo, SJ, "Risking Women's Lives, Denying Women's Experiences: CEF Statements on Sterilization in Catholic Hospitals," in this volume.

[37] Lauren Freeman and Health Stewart, "Microaggressions in Clinical Medicine," *Kennedy Institute of Ethics Journal* 28, no. 4 (2018): 411–449. See also Michael Jaycox, "Black Lives Matter and Catholic Whiteness: A Tale of Two Performances," *Horizons* 44, no. 2 (2017): 306–341, doi.org/10.1017/hor.2017.121.

[38] Kathy Curran and Dennis Gonzales, "Health Equity—Catholic Health Care Systems Confront Racism through 'We are Called,'" *Health Progress*, Spring 2022,

note that Catholic hospitals function in a society in which many institutions are governed by the internal codes of Whiteness.[39] In addition, the sexism of the Catholic tradition has shaped the way that Catholic hospitals—even those run by orders of women religious—have been forced to yield to the demands of bishops. It is appropriate for readers today to react with horror and shame at the testimonies of women's forced sterilizations. Coerced sterilizations are clear violations of the norms of justice and patient autonomy and have no place in health care today, Catholic or otherwise. But what about those cases in which patients seek sterilization, in conscience? Could Catholic rejection of their requests also be considered a violation of reproductive justice?

In the tumultuous years after the Second Vatican Council, women religious in the US discerned in community how best to update their own understandings of their roles in society and in Church, and some communities changed their habits of dress, living arrangements, and primary ministries as a result of these discernments.[40] An important area of concern that women religious faced was whether and how they could "participate in the evolution of Church teaching."[41] Sixty-seven hospitals in the US at that time were run by the Sisters of Mercy, in fifty-seven dioceses, in thirty-one states, with more than twenty-eight thousand beds

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www.chausa.org/publications/health-progress/article/spring-2022/health-equity---catholic-health-care-systems-confront-racism-through-we-are-called.

[39] Traci C. West, *Disruptive Christian Ethics: When Racism and Women's Lives Matter* (Louisville: Westminster John Knox, 2006), 112–140

[40] Anne E. Patrick, SNJM, "Framework for Love: Toward a Renewed Understanding of Christian Vocation," in *A Just and True Love: Feminism at the Frontiers of Theological Ethics: Essays in Honor of Margaret A. Farley*, ed. Maura A. Ryan and Brian F. Linnane, SJ (Notre Dame: University of Notre Dame Press, 2007), 303–337; Sandra M. Schneiders, IHM, *Buying the Field: Catholic Religious Life in Mission to the World* (New York: Paulist, 2013), 647.

[41] Christine Schenk, CSJ, *To Speak the Truth in Love: A Biography of Theresa Kane, RSM* (Maryknoll, NY: Orbis, 2019), 109. On Catholic health care systems run by the Ursuline sisters see Cory D. Mitchell and M. Therese Lysaught, "Equally Strange Fruit: Catholic Health Care and the Appropriation of Racial Segregation," *Journal of Moral Theology* 8, no. 1 (2019): 36–62.

in acute, long-term, and psychiatric facilities, and the sisters in leadership sought to align the hospital policies with best practices in medicine.[42] When the Sisters of Mercy conducted a thorough investigation into the morality of tubal ligation in the late 1970's, they explained: "We believe that tubal ligation, in certain circumstances is an appropriate procedure and a necessary component of holistic health care and that failure to provide this service in these circumstances may cause harm to persons."[43] Particular cases under discussion included the following:

> Mrs. A—28 years old with four children; suffers from thrombophlebitis, which has been complicated by a pulmonary embolism
> Mrs. B—39 years old with eight living children; has had two spontaneous miscarriages; suffers from rheumatic heart disease with mitral stenosis. Further pregnancies would accelerate her medical condition.
> Mrs. F—42 years old, with three children; suffered for many years with severe bronchiectasis [permanent inflammation of bronchial tubes] with increasing difficulty each succeeding pregnancy; continual progression of pulmonary illness.[44]

Women religious, with experience in hospital administration, explained that tubal ligation was a pastoral issue insofar as it was a "medical problem, an ethical issue, and a women's question."[45] In 1983, after many attempts to dialogue with members of the Vatican and with bishops in the US, the sisters were forced to comply with Vatican directives and were forbidden from allowing tubal ligations in any hospital owned or operated by the

[42] Schenk, *To Speak the Truth in Love*, 142.
[43] "Statement of the General Administrative Team Relative to Hospital Policy on Tubal Ligation: A Response to the Recommendations of the Church/Institute Committee," Mercy Heritage Center Archives, Belmont, NC. Cited by Schenk, *To Speak the Truth in Love*, 147.
[44] Schenk, *To Speak the Truth in Love*, 145.
[45] Schenk, *To Speak the Truth in Love*, 144.

Sisters of Mercy of the Union.[46] Sister of Mercy Theresa Kane explained in 1984 that "a serious obstacle to women serving in all ministries within the Church is the structural prohibition of ordination."[47] In her own experiences of leadership among the Sisters of Mercy, including their administration of Catholic hospitals, Sister Theresa found that the exclusion of women from ordination "in practical terms prohibits women from functioning as fully participating members in decision-making roles." In effect, the institutional conscience of the Vatican was imposed on the Sisters of Mercy, with direct impact on the provision of care for patients, and in some cases in violation of the patient's own conscience. These experiences are also experiences of reproductive coercion and reproductive injustice.[48]

Moral Conscience in Church Teaching

When analyzing issues of competing goods in patient care at Catholic hospitals, an important framework in the Catholic moral tradition is the teaching that one is obliged to follow one's conscience.[49] According to the Second Vatican Council: "Conscience is the most intimate center and sanctuary of a person, in which he or she is alone with God, whose voice

[46] Schenk, *To Speak the Truth in Love,* 203. Margaret A. Farley, RSM, offered an analysis of the tubal ligation crisis to colleagues in 1982. Farley, "Power and Powerlessness: A Case in Point," *Proceedings of the Catholic Theological Society of America* 37 (1982): 116–117. Farley explained that the Mercy sisters' "desire to draw concerned persons into dialogue on the issue [of tubal ligations]" led to an "ultimatum" from the Vatican. See also Anne E. Patrick, *Liberating Conscience* (New York: Continuum, 1996), 41–48.

[47] Theresa Kane, RSM, "Pastoral on Women," 1984, in Schenk, *To Speak the Truth in Love*, 207.

[48] See also Eric Marcelo O. Genilo, SJ, "Risking Women's Lives, Denying Women's Experiences: CDF Statements on Sterilization in Catholic Hospitals," 334–357.

[49] See John Paul II, *Veritatis Splendor*, no. 60.

echoes within them. In a marvelous manner conscience makes known that law which is fulfilled by love of God and of neighbor."[50]

Religious liberty claims broaden this feature of Catholic doctrine, insisting not only that one is obliged to follow one's conscience but that the state must respect the right of religious people to practice their faith. Catholic bishops have interpreted this to mean that Catholic hospitals should be able to practice medicine in conformity to magisterial teachings, without the state's interference. According to John Paul II, religious liberty is "the right to live in the truth of one's faith and in conformity with one's transcendent dignity as a person" (*Centesimus Annus*, no. 47).[51] Drawing on *Dignitatis Humanae*, the *Catechism of the Catholic Church* claims that "nobody may be forced to act against his [sic] convictions, nor is anyone to be restrained from acting in accordance with his [sic] conscience in religious matters in private or in public, alone or in association with others, within due limits" (no. 2106).[52] The United States Conference of Catholic Bishops has invoked religious liberty in a number of key debates that some characterize as "culture war" issues: their opposition to same sex marriage,[53] opposition to the passage of the Equal Rights Amendment,[54] and opposition to legal abortion.[55]

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[50] See *Gaudium et Spes*, 16. In the same section, the Council fathers explain that an erroneous conscience does not lose its dignity, despite a caution that conscience can grow "sightless as a result of habitual sin."

[51] John Paul II described religious liberty as the "source and synthesis" of human rights.

[52] Quoting *Dignitatis Humanae*, no. 2. As noted previously, Pope Francis has also spoken in support of the rights of medical personnel to invoke their conscience to refuse to provide particular therapies and to refuse participation in particular procedures including abortion.

[53] USCCB, "Marriage and Religious Liberty," www.usccb.org/issues-and-action/marriage-and-family/marriage/promotion-and-defense-of-marriage/upload/Handout-Religious-liberty-FAQs-2.pdf.

[54] USCCB, "The Equal Rights Amendment, with Robert Vega," 2023, www.usccb.org/resources/equal-rights-amendment-robert-vega.

[55] USCCB Secretariat of Pro-Life Activities, "Conscience Protection on Abortion: No Threat to Life," 2018, www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Protection-on-Abortion-No-Threat-to-Life-CTformats.pdf.

Theologians on Conscience

Catholic theologians have analyzed and developed Church teachings on conscience in order to integrate relevant scholarship on human cognition, social sin, and spirituality. Feminist scholars in particular have demonstrated the impoverished understanding of conscience that presents conscience as a decision that must conform to authoritative teachings of the magisterium.[56] There are three dimensions of conscience: capacity, process, and judgment.[57] Conscience is the capacity of a moral agent to know the good. In this sense, conscience attends to value and is able to recognize competing values in a given situation when relevant. Conscience is also a moral science, a process of discovering specific goods and naming actions as right or wrong. Conscience can also be described in a third way as a judgment for action in particular circumstances. Feminist theologian Kathryn Lilla Cox explains that conscience is multi-dimensional, pulling together "our cognitive, affective, bodily, and spiritual dimensions."[58] This way of thinking about conscience as multi-dimensional and integrative is deeply connected to scriptural accounts of the human agent responding to God's invitation to love, as well as the practices of Christians throughout Christian tradition, including the wisdom of religious communities asking how God's will is disclosed in the everyday realities of one's life. "Following one's conscience," Cox explains, "requires focus on what God is bringing forth, where new life is arising, what is being cleansed or washed away—in short, discerning and responding to where God is acting in our lives."[59] Cox expands on this analysis in her contribution for this volume, in which

[56] Anne. E. Patrick describes this position as "ecclesiastical fundamentalism" in Patrick, *Liberating Conscience*, 31. See also Elizabeth Sweeny Block, "Conscience," in *T&T Clark Handbook of Christian Ethics*, ed. Tobias Winwright (London: Bloomsbury, 2020).

[57] Timothy O'Connell, *Principles for a Catholic Morality, Revised Edition* (New York: HarperOne, 1990), 109–113.

[58] Kathryn Lilla Cox, *Water Shaping Stone: Faith, Relationships, and Conscience Formation* (Collegeville: Liturgical, 2015), x, 80–81.

[59] Cox, *Water Shaping Stone*, x.

she explains that sin prevents us from discerning the good.[60] Conscience, in other words, is not a perfect cognitive instrument but is shaped also by one's social location and experiences of both finitude and sinfulness.[61]

Another aspect worthy of attention is the development of a person's moral conscience throughout their lifetime. Moralists in the Catholic tradition have noted that in childhood and adolescence, the moral conscience is in an early stage of development. A growth ethic values the increasing capacity of the moral agent over time, seeing that the teenager, young adult, and more mature adult develop over time in their capacity to understand and apply the good in particular situations. In early stages of moral development, following the commands of a moral authority can be good and healthy, but over time, a moral agent should come to the awareness themselves of what their own conscience commands. Moral maturity means the ability to make decisions for oneself, attuned to wisdom from relevant authorities and to the complexity of the task at hand. This is not a simplistic process but rather an awareness of the need to discern, within particular contexts, the right course of action. Moral theologian and Spiritan priest Rev. Richard M. Gula has explained that if we only do something because an authority figure tells us to do it, we are not making a mature decision.[62] We misunderstand conscience if we think it requires Catholics simply to "obey the Church" instead of making informed decisions as a result of their own prayerful discernment.

Gula explains that moral conscience is "me coming to a decision." The moral conscience is how we determine how to live out our deeply-held values in our own particular life circumstances. As the moral agent discerns, she may ask herself reflective and open-ended questions such as: "What kind of person am I becoming? What would a good person do in

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[60] Kathryn Lilla Cox, "Reproductive Justice as Social Sin: Mapping Sin Discourse into Debates about Fertility Decisions."

[61] See also Elisabeth Vasko, *Beyond Apathy: Theology for Bystanders* (Minneapolis: Fortress, 2015), 54; and James F. Keenan, SJ, "Conscience" in *The Moral Life: Eight Lectures* (Washington, DC: Georgetown University Press, 2024), 55–74, 58.

[62] Richard M. Gula, *Reason Informed by Faith* (Mahwah, NJ: Paulist, 1989), 124.

this situation? Which course of action is the most loving act?" These questions are related to the moral agent's self-discovery and attention to virtue over time, with the everyday constraints that are an inevitable aspect of human finitude.[63]

Moral agents also must look at the big picture, the pattern of our lives.[64] Individual actions are interpreted within the larger pattern or direction of our lives. We reflect on our values, what is at stake in the decision, we bring this discernment to prayer, and we ask others for help. But at the end of the day, it must be our own decision. Jesuit theologian James Bretzke describes the "spiral" of conscience formation as: formation, information gathering, discernment, decision, action, reflection, reconsideration, and potential reform.[65] Bretzke's spiral is a reminder that conscience formation is not a strictly linear process. It involves ever deepening, growth in authenticity over time. Decisions impact each other over the course of a lifetime.[66]

Church Teaching and Conscience Formation

Conscience is formed in community. Cox argues: "For better or worse, human beings help shape each other."[67] Increasingly, Catholic theologians are concerned with how sexism, ableism, transphobia, colonialism, White supremacy, ethnocentrism, and economic inequality malform Christian consciences and prevent human agents from recognizing the good.[68] Cox

[63] Cristina L. H. Traina, *Finitude, Feminism, and Flourishing: On Being Mortal, Like Everyone Else* (Mahwah, NJ: Paulist, 2024).
[64] See Patrick, *Liberating Conscience*, 190–191.
[65] James T. Bretzke, SJ, *A Morally Complex World: Engaging Contemporary Moral Theology* (Minneapolis: Liturgical, 2004), 138–144.
[66] See also Anthony Marinelli, *Conscience and Catholic Faith: Love and Fidelity* (New York: Paulist, 1991), 29.
[67] Cox, *Water Shaping Stone*, 86.
[68] See also Elizabeth Sweeny Block, "Why Is This Magazine Called Conscience?" *Conscience* 44, no. 2 (2023): 16–20.

elaborates: "Communities of influence include family, friends, coworkers, and our ethnic communities. Specific religious influences include Scripture, the triune God, Church, and religious communities. Laws, media, role models, expert authorities, and culture are other sources that shape and form moral agents."[69] *Conscience formation* is the process by which a moral agent's conscience is formed; this process does not merely impose an external authority requiring obedience.[70] Cox explains that ecclesial participation shapes the moral agent's conscience in key ways. The Church is the "shaper of moral character" in various ways through liturgy, prayer, and community organizing.[71] The Church is also the "bearer of the moral tradition," not only in the sense of authoritative Church teachings but also in the context of school systems, catechetical programs, monastic communities, and other facets of Christian moral formation. The Church is also a "community of moral deliberation," modeling what it means to discern the presence of God in our everyday lives and shaping an ecclesial response to structural injustices through legislative lobbying efforts and mass media.[72] All of these are important to keep in mind because they serve as reminders that the Church forms believers not only through magisterial teaching but also through communal practices and faith formation over the course of one's life. Anne E. Patrick explains that "the Church does not supply the perfect answer to all our moral questions, but it gives us a community where faithful moral reasoning can go on, always with attention to the values Jesus cherished and with confidence in his continued presence in our midst."[73]

Within any discernment, it is important to understand not only what the Church teaches, but why. But Church teachings do not "dictate" to

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[69] Cox, *Water Shaping Stone*, 86.

[70] Lisa Fullam, "Abortion in the Catholic Conscience," *Conscience*, August 8, 2023, www.catholicsforchoice.org/resource-library/abortion-in-the-catholic-conscience/.

[71] Cox, *Water Shaping Stone*, 88.

[72] Cox, *Water Shaping Stone*, 88–89.

[73] Patrick, *Liberating Conscience*, 38.

conscience. Rather, Church teachings are supposed to guide and inform.[74] In *Amoris Laetitia*, Francis emphasized the importance of discernment within the specifics of each situation and admitted the importance of "differentiated pastoral care according to various social and cultural contexts" (no. 248). A key aspect of conscience is that it is subjective, contextual, and self-directing. *My* conscience directs *my* behavior. My conscience does not *impose* behavior on other moral agents, who must make *their own* discernment in conscience about their behavior. But this is precisely the challenge moral agents experience today in health care settings. Our human community is based on multi-dimensional cooperation. Can we move forward in such a way that my conscience is also concerned with and attentive to the conscience of another? If my professional role requires responsibility for the care of another, how should my conscience direct my behavior in a way that respects that person's own conscience claim?

The United States Conference of Catholic Bishops has forwarded legal arguments in the past decade asserting a novel approach to conscience in the tradition. I distinguish within these arguments between the conscience of the institution; the conscience of the medical provider (nurse/doctor); and the conscience of the patient. I am concerned that the bishops' approach is problematic because it departs from the traditional teaching mandating respect for another's conscience and seeks instead an approach that demands coercion and conformity.

Conscience of the Institution

When the bishops of the Catholic Church submit *amici curiae* to attempt to persuade the Supreme Court, they claim to speak for the collective members of the Catholic Church and draw upon Church teachings in

[74] Marinelli, *Conscience and Catholic Faith,* 65–81.

doing so.[75] A recent case provides an example. The bishops' lawyers explain that a New York regulation requiring employee healthcare plans to cover abortion violates the religious autonomy of the Catholic Church. "Dragooning religious organizations into becoming complicit in abortion is no mere health-and-safety regulation: it is an intolerable invasion of religious autonomy."[76] The bishops claim that as an institution the Catholic Church should not be forced to require their employee healthcare plans to cover abortion. This is an institutional conscience claim, advocating for a novel understanding of a collective conscience that is not found in authoritative Catholic teachings on conscience.

The USCCB's amicus brief in the *Obergefell v. Hodges* case (2015) is an example of the legal reasoning employed by the bishops when they seek to conflate Church teaching, moral law, and civil law. There, they write:

> If this Court were to declare Church teaching to be mere bigotry, then the conflict between constitutional rights to act on such religious beliefs—i.e., the rights to free exercise, speech, and association—versus a newly created constitutional right of two people of the same sex to civil marriage will never cease.[77]

The bishops' lawyers thus argue that they have the right—in conscience—to discriminate on the basis of sexual orientation. They go on: "Religiously-affiliated nonprofit organizations have had to cease providing adoption and foster care services for vulnerable children because of the

[75] For a list of these amici, see "Amicus Briefs," www.usccb.org/offices/general-counsel/amicus-briefs. The bishops write about their role in forming consciences in USCCB, *Forming Consciences for Faithful Citizenship (2023)*, www.usccb.org/issues-and-action/faithful-citizenship/upload/forming-consciences-for-faithful-citizenship.pdf.

[76] USCCB, Amicus Brief, *Roman Catholic Diocese of Albany v. New York State Department of Financial Services* (2021), 3, www.usccb.org/resources/20-1501acTheChurchOfJesusChristOfLatter-DaySaints.pdf.

[77] USCCB, Amicus Brief, *Obergefell v. Hodges* (2015), 24, www.usccb.org/sites/default/files/about/general-counsel/amicus-briefs/upload/Obergefell-v-Hodges.pdf.

redefinition of marriage."[78] The amicus cites *Roe*, claiming that the 1973 decision "led to decades of litigation in which the claimed abortion right is pitted against other constitutional rights (e.g., paternal rights, parental rights involving minors, and conscience rights)." They predict a similar outcome—"a panoply of Church-state litigation for decades to come"—if the Court were to endorse legal same sex marriage.[79]

In claiming that the institutional Church has a conscience, the USCCB's legal team does not rely on evidence gathered from surveys of Catholics, nor do they provide any sociological data that would indicate a majority of Catholics support the USCCB's interpretation. Instead, they argue that as bishops they speak for the Church in the public square. They write: "The Catholic Church's teaching on marriage is deeply embedded in its understanding of God and the human person," ignoring available evidence of same sex marriages among Catholics and of overwhelming Catholic lay support for such civil rights in the LGBTQIA+ community. In the Fulton case, the bishops' lawyers explained that "providing foster care represents a core religious exercise for Catholics."[80] The bishops sought legal protection for refusing to place foster children with same-sex couples. Similarly, with regard to abortion regulations, they cite Church teachings on the dignity of unborn life and the immorality of abortion, not evidence that a majority of Catholics in the US oppose legal access to abortion (such data does not exist).[81]

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[78] USCCB, Amicus Brief, *Obergefell v. Hodges* (2015), 24. They cite Catholic Charities of Boston. Another recent case involved Catholic Social Services of Philadelphia. See USCCB, Amicus Brief, *Fulton v. Philadelphia* (2020), www.usccb.org/about/general-counsel/amicus-briefs/upload/2020-06%20Ful_v_CoPA_SupCrt_AmicusBrf_FINAL.pdf.

[79] USCCB, Amicus Brief, *Obergefell* (2015), 23.

[80] USCCB, Amicus brief, *Fulton (*2020), 27. www.usccb.org/about/general-counsel/amicus-briefs/upload/2020-06%20Ful_v_CoPA_SupCrt_AmicusBrf_FINAL.pdf.

[81] USCCB, Amicus Brief, *Dobbs v. Jackson Women's Health* (2021), www.usccb.org/about/general-counsel/amicus-briefs/upload/Dobbs.final_.pdf. Gregory A. Smith, "Like Americans Overall, Catholics Vary in Their Abortion Views," Pew Research Center, May 23, 2022, www.pewresearch.org/short-reads/2022/05/23/like-americans-overall-catholics-vary-in-their-abortion-views-with-regular-mass-attenders-most-opposed/.

The USCCB consists of 274 men, most of whom are white, and all of whom are beyond middle age. They are hardly representative of the lived experiences and political convictions of the US Catholic Church, which in fact contains diverse racial, linguistic, cultural, and ethnic communities, as well as viewpoint diversity.[82] Moreover, the institutional Church is a powerful social entity. This fact becomes more relevant when we consider what is at stake when consciences conflict in Catholic hospitals.

Conscience of the Medical Provider

Health care professionals—whether they are physicians, physician assistants, nurses, pharmacists, or other professionals dispensing medical care—also make important conscience claims. Health care professionals are in professional roles with professional duties. They also work within particular health care systems that impose institutional policies and other kinds of constraints, including the rules imposed by insurance companies, the limitations of equipment and diagnostic capabilities, and the everyday challenges of team-based provision of care. Medical providers receive training that empowers them within the professional setting to diagnose a patient and determine an appropriate course of action based on the specifics of the case. The medical provider has power, including power over the patient, but this power is not absolute; it is relational and contingent. A medical provider's power may be limited because of their status within the hierarchy of their particular team; likewise, the medical provider's power may be constrained by their economic dependence on their paycheck to pay their family's bills or fears of possible prosecution, incarceration, and loss of medical license if they fail to uphold medical and legal standards. The worldview (and conscience) of the medical provider is shaped by myriad social forces including their faith, race, class, ethnic group, language, gender, geographical context, and other patterns of

[82] See Mary Jo McConahay, *Playing God: American Catholic Bishops and the Far Right* (Brooklyn, NY: Melville House, 2023), ix–xi.

socialization. Medical providers have diverse viewpoints; not all providers agree on specific positions or stances taken by the Catholic hierarchy, nor do they always share the moral perspectives of their patients. Medical providers, whether Catholic or not, who work in Catholic health care institutions, are nevertheless expected to conform to the judgment of the local ordinary in his interpretation of the *Ethical and Religious Directives*. The medical provider could face job loss if they fail to do so. This is the case even though theologians such as Anne E. Patrick have argued that "giving diligent attention to official teaching is expected of Catholics, but this does not mean abdicating their own judgment and responsibility."[83]

Catholic teachings assert that health care providers are called to form and follow their conscience; policies of Catholic hospitals expect that the conscience of the provider will conform to the local ordinary's interpretation of the *Ethical and Religious Directives*. Scholars who study moral injury among health care workers explain that moral injury can occur "when someone engages in, fails to prevent, or witnesses acts that conflict with their values or beliefs."[84] Feelings resulting from morally injurious experiences can include guilt, remorse, shame, distress, withdrawal, and self-blame.[85] Moral injury can result from many different kinds of professional encounters, including cases of conscientious provision of care and conscientious refusal of care. In such cases, the

[83] Patrick, *Liberating Conscience*, 39. Lori Freedman explains that physicians have developed practices to serve their patients within Catholic hospitals through what she calls "workarounds," but that this "highly idiosyncratic approach to delivering care almost guarantees unequal access." Lori Freedman, *Bishops and Bodies: Reproductive Care in American Hospitals* (New Brunswick, NJ: Rutgers University Press, 2023), 111.

[84] Patricia Watson, Sonya B. Norman, Shira Maguen, and Jessica Hamblen, "Moral Injury in Health Care Workers," U.S. Department of Veterans Affairs, www.ptsd.va.gov/professional/treat/cooccurring/moral_injury_hcw.asp.

[85] Patricia Watson, Sonya B. Norman, Shira Maguen, and Jessica Hamblen, "Moral Injury in Health Care Workers," U.S. Department of Veterans Affairs, www.ptsd.va.gov/professional/treat/cooccurring/moral_injury_hcw.asp. See also Marcus Mescher, "Toward a Taxonomy of Moral Injury: Confronting the Harm Caused by Clergy Sexual Abuse," *Journal of the Society of Christian Ethics* 23, no. 2 (2023): 75–91.

physician, nurse, or pharmacist may feel that their beliefs and moral compass have been disrupted, and they might feel a sense of powerlessness or helplessness. Whether the action involved dispensing of (or refusal of) medications, participating in (or refusing) a procedure such as a dilation and curettage, tubal ligation, or a vasectomy, the health care provider may feel profound spiritual anguish and alienation.

Conscience of the Patient

The patient, too, is expected to form and follow their conscience. The patient's conscience, like the provider's, is formed within specific contexts and shaped by their identities and positionality. The patient's responsibilities within health care systems are typically explained in the context of honestly providing their correct and complete medical history; asking questions if they do not understand a treatment plan; treating others with respect; paying for their care; and following the policies of the institution where they seek care.[86]

Of particular importance in our moral analysis here is the fact that the patient is, in comparison to the institution and the provider, the most vulnerable. The patient has sought care for a particular medical issue and is in need of assistance. In some extreme cases, the patient's own life is at risk.[87] Patients experience limitations in their choices about medical care as

[86] Examples abound across health care institutions, but one example of "Patient Responsibilities" can be found here: UNC Health, "Patient Rights and Responsibilities," www.nashunchealthcare.org/patients-visitors/patient-rights-and-responsibilities/#:~:text=Patients%20are%20responsible%20for%20keeping,they%20refuse%20the%20planned%20treatment.

[87] A patient in Oklahoma was asked to "wait in her car" until her situation became so life-threatening that the hospital could treat her molar pregnancy without fear of violating the abortion ban currently in place there. Selena Simmons-Duffin, "In Oklahoma, A Woman Was Told To Wait until She's 'Crashing' for Abortion Care," April 25, 2023, www.npr.org/sections/health-shots/2023/04/25/1171851775/oklahoma-woman-abortion-ban-study-shows-confusion-at-hospitals. See also Christian De Vos, "No One Could Say," April 25, 2023, phr.org/our-work/resources/oklahoma-abortion-rights/; Michele Heisler, Tamya Cox-

well. The patient may freely choose to seek care in a Catholic hospital, but it may also be the case that the patient seeks care at the Catholic hospital out of duress. They are there because that is where the ambulance was routed, or that is the only hospital in the region, or that is the only hospital covered by an employer's insurance.

When patients experience breach of trust by symbolic actors with an institution, this betrayal can wound their relationship with ecclesial institutions and lead to spiritual distress.[88] Similarly, when a patient seeks reproductive health care and that health care is denied because of the institution's or health care provider's conscience claim, the patient can experience shame, confusion, a limited sense of moral agency, and self-doubt as to the veracity of their own conscience's claim. A patient might feel powerlessness or helplessness because the person they trusted to provide unbiased care cannot fulfill their request.

Conscientious Refusals and the Practice of Medicine

In *Conscience and Reproductive Health Care*, philosopher Carolyn McLeod explains the impact of legal conscientious refusals by health care providers on patients and, more broadly, on the field of medicine. McLeod's argument is not focused primarily on Catholic hospital systems. Instead, most of her examples are drawn from public sector hospitals where providers have legal discretion regarding whether and how to treat patients, resulting in the widespread use of conscience to deny patients' requests for contraception and abortion. McLeod's argument is relevant for Catholic hospitals as well in that she recognizes the moral complexity of reproductive health care decisions and articulates norms that seek to resolve the claims of the major stakeholders. McLeod recognizes the reality of conflicts between patients and providers and seeks to develop an

Touré, and Risa Kaufman, "US Abortion Bans Violate Patients' Right to Information and to Health," *The Lancet* 401, no. 10387 (2023): doi.org/10.1016/S0140-6736(23)00808-5.

[88] Mescher, "Toward a Taxonomy," 88–91.

argument that avoids the erosion of trust in the health care profession that can happen when providers remain unwilling to provide medical care that is part of the standard of care.[89]

McLeod argues that "conscientious objectors in health care have a moral obligation to prioritize the health care interests of their patients and the public over their own conscience, and that regulations on conscientious refusals should reflect this fact."[90] A key claim in McLeod's argument is that health care providers have a *fiduciary* responsibility; as gatekeepers to health care, they have great responsibility.[91] Fiduciaries, according to McLeod, possess power that is discretionary, in the form of authority rather than mere influence or control, and over the significant practical interests of the beneficiary.[92] Beneficiaries (in this case, the patients) are vulnerable to the abuse or misuse of fiduciary power; the primary fiduciary duty, says McLeod, is one of fidelity to one's beneficiary.[93] Physicians regularly respect patient autonomy but can and should simultaneously make discretionary judgments about how to present factual diagnostic data to the patient, about how to present the patient's options clearly and fairly so that the patient can make an

[89] Defining standard of care is perhaps the most contested claim in this essay. Philosopher Carolyn McLeod differs from the USCCB on this important point. The USCCB does not consider elective abortion to be part of the standard of care. McLeod, on the other hand, argues that if a procedure or medication is "legally required or permitted and deemed by the objector's health professional association to be central to good health care," then it should be called part of the "standard services." Thus, McLeod empowers medical licensing bodies and similar professional organizations in determining what counts as "standard." Carolyn McLeod, *Conscience in Reproductive Health Care: Prioritizing Patient Interests* (Oxford, UK: Oxford University Press, 2020), 3-5.

[90] McLeod, *Conscience in Reproductive Health Care*, 1. McLeod believes the "interests of patients in receiving standard services should be prioritized over the conscience of health care professionals," 178.

[91] McLeod, *Conscience in Reproductive Health Care,* 8.

[92] McLeod, *Conscience in Reproductive Health Care*, 121–122.

[93] McLeod, *Conscience in Reproductive Health Care*, 122–123.

informed decision, and about how to carry out the patient's informed decision.[94]

McLeod notes that in the field of obstetrics and gynecology, contraception, sterilization, and abortion are among those services that are considered part of the standard of care; when patients request these services and are refused care (either because of the hospital's policies or the provider's conscience claim), the patient is not merely inconvenienced but *harmed*.[95] McLeod notes that patients who ask for an abortion are usually in a vulnerable position; they have already decided that they need this procedure in order to safeguard other values, which may include their physical and/or mental health, their education, the wellbeing of dependents they already care for, or financial security.[96] According to McLeod, providers who refuse care harm patients by threatening the patient's moral identity, sense of security, and reproductive autonomy.[97]

In the wake of the *Dobbs v. Jackson Women's Health Organization* ruling by the Supreme Court of the United States—a ruling celebrated by US bishops and by leaders of the pro-life movement—fourteen states have enacted a total abortion ban and twenty-seven states have abortion bans based on gestational duration.[98] Conscientious refusals are increasingly impacting patient care not only in Catholic hospitals but in secular ones as well. Dr. Leah Torres, an OB-GYN at the West Alabama Women's Center in Tuscaloosa, Alabama, recently recounted a case in which a thirteen-year-old survivor of sexual assault sought an abortion, but a local hospital

[94] McLeod, *Conscience in Reproductive Health Care,* 131.

[95] McLeod, *Conscience in Reproductive Health Care,* 43–64.

[96] McLeod, *Conscience in Reproductive Health Care,* 74. See also Diana Greene Foster, *The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having—or Being Denied—and Abortion* (New York: Scribner, 2020), 21–23.

[97] McLeod, *Conscience in Reproductive Health Care,* 43–64.

[98] Supreme Court of the United States, *Dobbs v. Jackson Women's Health*, 2022, www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf. Guttmacher Institute, "State Bans on Abortion," April 12, 2024, www.guttmacher.org/state-policy/explore/state-policies-abortion-bans.

would not accept the patient for a dilation and curettage procedure even though Dr. Torres believed that carrying the pregnancy would cause harm to the thirteen-year-old patient.[99] Dr. Torres sought more information:

> I call the head of the department for an explanation. "We don't have the staff for it," he claims. I press on. "You don't have the staff for a standard D&C?" He clarifies that they don't have enough staff because no one is willing to assist on the procedure. He assures me, however, that he and his staff are "very compassionate," despite the fact that they are now forcing this 13-year-old to be re-traumatized.[100]

Dr. Torres does not share the head of department's conclusion that their staff is "very compassionate." Instead, she sees the harm that results for the thirteen-year-old patient. In this case, as in many others in the post-*Dobbs* context, conscientious refusals can have long and lasting damage for patients. From a reproductive justice stance, the patient has clearly been harmed by gender-based violence and that harm is compounded by the inability of the patient to protect her own health.[101]

A Way Forward: Communal Discernment in Complex Cases

Carolyn McLeod argues that we can *value* conscience without *requiring* that we permit conscientious refusals by physicians in health care

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[99] Dr. Leah Torres, "Why Alabama? Providing Abortions in a State that Outlawed Them," *Conscience*, March 10, 2023, www.catholicsforchoice.org/resource-library/why-alabama-providing-abortions-in-a-state-that-outlawed-them/. Alabama's abortion law does not permit exceptions in cases of rape but does permit abortion to save the health of the mother.

[100] Torres, "Why Alabama? Providing Abortions in a State that Outlawed Them."

[101] See also the case of Keisha as reported by Loretta J. Ross in "Conceptualizing Reproductive Justice Theory: A Manifesto for Activism," in *Radical Reproductive Justice: Foundations, Theory, Practice, Critique,* ed. Loretta J. Ross, Lynn Roberts, Erika Derkas, Whitney Peoples and Pamela Bridgewater Toure (New York, Feminist Press, 2017), 170–232, 170, 174–175.

settings.[102] *How* we value conscience matters. Conscience should not be used to coerce vulnerable others. Similarly, feminist theologians in the Catholic moral tradition have argued that our understanding of conscience need not focus exclusively on the "judging faculty," but instead should attend to the *process of the discernment* of the moral agent in community. In order to achieve a culture of care that values conscience, we need to adopt both the practice of communal discernment and preferential option for the vulnerable patient who seeks medical care within the spectrum of the standard of care according to professional medical licensing. In the patient-provider relationship, we must attend to power differentials and the probable result of harm to the patient who is denied reproductive care. Catholic health care institutions should respond to patients' needs and must use the process of discernment to name competing goods and negotiate a way forward in specific contexts that seeks to achieve patient needs most equitably.

Communal discernment requires honest accompaniment, listening to all parties, analysis of all possible options, and genuine cooperation. Tensions and conflicts are inevitable and yet can be negotiated respectfully with attention to justice. Justice for the Catholic hierarchy in this case should mean that authoritative Church teachings are clearly communicated to all relevant parties so that they can inform the conscientious deliberations of all actors. But these teachings should not be imposed unilaterally as if they alone have claims to conscience. The Church must move away from ecclesiastical fundamentalism and toward a method of respectful dialogue and communal discernment. The medical provider's claim to conscience is also of value but does not hold absolute power. For a medical provider to obstruct a patient's access to standard care is morally repugnant and unfair. However, it does not follow that the medical provider must in every situation provide care that they find morally objectionable. Referrals are often a valuable solution that minimizes the provider's cooperation and prevents moral injury to the

[102] McLeod, *Conscience in Reproductive Health Care*, 41.

provider, while also assisting the patient to access care.[103] In those cases in which the patient cannot be referred elsewhere, the provider can and should provide the medical care that the patient needs. In such cases as providers who provide contraception, sterilization, or abortion, we must also attend to the moral injury endured by the provider who sacrifices their moral integration in order to further the patient's conscience. When a genuine conflict is present, the patient's interests should be prioritized, not the institution's or the provider's interests. The moral injury that results for the health care provider is a disvalue that the moral community should name and lament. However, this disvalue can be tolerated in order to prioritize the higher good of the patient's medical needs.[104]

Conclusion

Protracted legal battles and the bishops' participation in the culture wars undermine the building up of a cohesive social fabric attentive to the common good of society.[105] Womanist theologians working in the health care arena suggest a response inclusive of consciousness-raising, awareness, and prevention efforts; these too are important in addressing unplanned pregnancy in its social manifestations.[106] Investment in prevention is necessary but not sufficient when we consider how women of color are treated within Catholic hospitals and how in some cases their discernments in conscience are blocked by other more powerful agents. The late Dr. Shawnee Daniels-Sykes advocated for the training of "lay

[103] Referrals can also delay care, which can lead to unnecessary anxiety and even suffering for the patient. Referral is not always a just resolution for every party.

[104] On lament in cases of moral tragedy, see Kate Jackson-Meyer, *Tragic Dilemmas in Christian Ethics* (Washington, DC: Georgetown University Press, 2022).

[105] In *Fratelli Tutti*, Francis reminds readers that the goal of politics in the common good.

[106] Elizabeth A. Williams, "Talking God and Talking Cancer: Why Womanist Ethics Matters for Breast Cancer Prevention and Control among Black Women," *The Rising Global Cancer Pandemic: Health, Ethics, and Social Justice* JMT CTEWC Book Series 2 (Eugene, OR: Pickwick, 2002), 82–97, doi.org/10.55476/001c.38700.

health advocates who are attentive, intelligent, rational, and responsible about the emergency in black health."[107] We need a new approach to reproductive health care that privileges communal discernment, the patient's conscience, the medical team's role in accompaniment, and proportionate reason as a valuable tool to weigh values and disvalues in a complex discernment. The role of Catholic bishops in this process includes a fair description of Church teachings for multiple constituencies in order to form consciences. But bishops should not dictate to the consciences of providers and patients. The entire ecclesial community bears responsibility for building up the common good, and one part of that work requires building trust between medical providers and patients, responsive to patients' real needs. To be of service to patients will require some sacrifices of Catholic providers of last resort, for which lament will sometimes be necessary. It is this author's hope that the suffering thus endured by health care providers will lead to shared vulnerabilities and opportunities for solidarity between health care providers and their patients. When providers demonstrate compassion by suffering with their patients, they model what it truly means to practice Christian servant leadership today.

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[107] Shawnee M. Daniels-Sykes, "Code Black: A Black Catholic Liberation Bioethics," *Journal of the Black Catholic Theological Symposium,* ed. Cyprian Davis, OSB, Kimberly Flint-Hamilton, and Cecilia Moore 3 (2009): 29–61. See also *Catholic Bioethics and Social Justice: The Praxis of US Health Care in a Globalized World,* ed. M. Therese Lysaught and Michael McCarthy (Collegeville: Liturgical, 2018).

2024) and *Catholic Theology of Marriage in the Era of HIV and AIDS: Marriage for Life* (Lexington, 2015).