Balancing Freedom of Conscience and Equitable Access

Recently, the Trump Administration created a Conscience and Religious Freedom Division in the US Department of Health and Human Services' (DHHS) Office for Civil Rights. DHHS then proposed a rule to shield those who work in health and social service sites receiving federal funds from consequences for refusing to provide certain medical treatments on the grounds of religious belief or conscience. This rule flags objections related to abortion, sterilization, medical aid in dying, advanced directives for end-of-life care, and, surprisingly, comprehensive approaches to HIV care, occupational health screening, vaccination, hearing screening, and suicide prevention for children. We believe that this new division and rule give a green light to those who invoke claims of conscience as a way to oppose social and political changes. Privileging these claims infringes on the conscience and rights of those holding different beliefs.

We are a group of scholars and activists from medicine, public health, ethics, law, theology, and the social sciences who believe that it is possible—and necessary—to honor individual integrity and moral beliefs without harming those with different beliefs and values. In the last 50 years, conscientious objection has been invoked in the United States by those resisting racially discriminatory laws and the Vietnam War; providing sanctuary to Central American refugees denied political asylum; and working to ensure equitable access to legal abortions, emergency contraception, end-of-life care, same-sex marriage licenses, and wedding cakes. We draw on those experiences and rights-based arguments to propose an alternative to the DHHS rule: a request for exemption from consequences of refusals to fulfill legal or professional duties should be accommodated only if it is not discriminatory and harms can be mitigated. We see this as complementary to Raifman and Galea's recent *AJPH* editorial,[1] because their emphasis is specific and focused, and our approach to conscientious objection applies across topic areas.

HARMS OF ACCOMMODATING REFUSALS TO DUTIES

The first harm of accommodating refusals to fulfill legal or professional duties is hindering an individual's ability to exercise a right to obtain a legal service or good.[2] Because, almost by definition, the service or good is socially contested, the person might be stigmatized for having sought something contested or for who he or she is. If health care is denied, the patient may suffer from lack of care or delayed care. Members of disenfranchised groups are most likely to experience harms, aggravating the effect on social equity.

Indeed, those who choose to become business owners must comply with tax requirements, as well as worker protection and antidiscrimination laws and policies. Government employees and elected officials must fulfill basic obligations of public service and adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or disability, and in some jurisdictions, gender identity and sexual orientation (on.doi.gov/2v8ukim).

Second, exempting professionals from duties may undermine trust and respect for the profession. As licensure conveys monopoly and power over provision of that service, with resulting social and economic benefits, the profession becomes a kind of public utility, with obligations to the public trust.[3] In exchange for being granted privileges such as self-governance by the state, certain professionals are expected to fulfill fiduciary duties—that is, to put the needs of patients or clients first, ahead of their own. In medicine, because the balance of knowledge favors the physician, and patients are vulnerable, patients must be able to trust that the physician will put their needs first and to ensure that they can exercise autonomy. Moreover, objection might increase the workload of those willing to provide services as they pick up the slack from those who refuse. Their range of practice may narrow beyond their liking, because providing care that others refuse causes them to spend a disproportionate share of their time doing so. Willing providers may themselves experience stigma, which could jeopardize professional advancement, put them at risk for experiencing public disapprobation, and even result in violence.[4]

The third harm of accommodating refusals is obstruction of bedrock social values. The state is responsible for advancing the social good by promoting public health measures and fundamental values such as pluralism and equity and requires citizens and residents to fulfill duties that contribute to these values.

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Examples include mandatory military service, compulsory education, and mandated compliance with measures to halt the spread of infectious disease. Those objecting must comply with alternative requirements to ensure that they do not undermine these social goods and shared values (e.g., alternative service for those refusing combat or California's exclusion from school for unvaccinated children).[5]

LIMITING HARMS OF ACCOMMODATING REFUSALS

Individuals have conscience; institutions cannot. Moreover, because some institutions receive many benefits from the state, they should be bound by reciprocal obligations. Institutions that serve a primary function other than religious practice are obligated to follow public rules—including food licensing, licensing for clinicians, sanitary standards, fulfillment of state education standards, and antidiscrimination law—and therefore are accountable to the public for ensuring access to expected goods and services. Institutions certainly should not cherry-pick categories of clients to whom they provide these goods and services. Institutional refusals based on religion constrain the behavior of staff and patients who do not share these religious beliefs, with consequences for health, equity, and dignity.

Another way to limit harms is by restricting the class of possible objectors to direct participants, whose claim must speak to the core of the service (e.g., providing abortion, not making the appointment). Otherwise, those who refuse to provide services extend their objection beyond personal participation and effectively seek to govern the conduct of others who do not share their religious or moral beliefs. By so doing, they subvert pluralism, the animating value underlying protection of individual conscience from the dictates of the majority.

The bar for assessing whether to accommodate objection in health care should be high, because fiduciary duty means that a clinician should never give higher priority to her or his own conscience than to the patient's needs. Some countries permit refusals only to the degree that it does not infringe the state's obligation to offer the service and mandate that the objector provide accurate information, timely referrals, and the contested care in urgent circumstances; American and international medical societies affirm these as clinicians' obligations. Distinct from that in the United States, the national health sectors in Norway and Portugal underscore the health care system's responsibility to ensure that care is available by paying for clinicians' or patients' travel to provide or receive abortions or by limiting the numbers of objector staff at a given site.[6]

HOW TO DRAW THE LINE

Conscientious objection raises the profound question of when and how to draw the line between support for individual belief and integrity and support for those with other beliefs who are entitled to goods, services, and protections. We are concerned that this central point has been obscured in recent decades, because the term "conscientious objection" has been increasingly invoked in response to hotly contested changes in social norms. Although the US Constitution and many international covenants protect freedom of belief and speech, they stipulate that their exercise may not compromise the rights of others.[7] Nontheocratic states are obligated to treat all citizens' beliefs equally and fairly and to negotiate the boundaries between rights in tension.

DHHS's proposed rule would dramatically tilt the balance toward those who object and simultaneously widen the universe of those affected. We urge that responses to requests for exemption from legal and social duties be based on the bedrock values of pluralism, equity, and nondiscrimination. AJPH

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W. Chavkin conceptualized the project. D. Abu-Odeh conducted most of the background research. W. Chavkin and D. Abu-Odeh co-wrote the first and final drafts of the editorial. C. Clune-Taylor, S. Dubow, M. Ferber, and I. H. Meyer contributed to research in their respective areas of expertise and made significant revisions to multiple drafts of the editorial.

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