

Institutional Conscience and Catholic Health Care

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ABSTRACT

Despite serious challenges to the identity of Catholic health institutions in the United States, both Church and society should continue to see them as privileged places of moral discernment. This discernment occurs in “institutional conscience,” namely, a dialogue among all those authorized to act on the institution’s behalf about institutional actions, for example, medical interventions. The institutional conscience of Catholic health institutions should be respected by society at large, leaving them free to practice Christian healing and to show the problems with certain practices that they eject, such as abortion, and to seek alternatives.

I WOULD LIKE TO CONSIDER the hopeful, as well as difficult situation of Catholic health institutions today. Although some health care practices present serious challenges to the Catholic identity of these institutions, we should see them as privileged places for moral discernment. The modern health care institution combines a wide range of gifts, specialized knowledge, technical abilities, and moral experience for healing of patients. Healthy institutions provide a structure for professionals to deliberate about actions they perform on the institution’s behalf. One can imagine a sort of daily dialogue among professionals leading to some shared understanding about how to care for patients. Although this institutional dialogue can bring conflict, the moral learning possible within a Catholic hospital faithful to Christ should not be ignored. In this essay I describe the institutional dialogue where this learning takes place as “institutional conscience” and offer it as a convenient way to understand both the rights of Catholic health institutions to practice medicine according to Catholic faith and morals and the duty of those institutions to heal patients using every legitimate means available.

WHY INSTITUTIONAL CONSCIENCE?

The idea of an “institutional conscience” is perhaps most easily seen today as the locus of institutional objection to abortion. The legal culture in the United States has tended to erode this possibility. For example in *Doe v. Bolton*, the preexisting statute required “that the [abortion] procedure be approved by the hospital staff ethics committee.” The *Doe* Court found that “the interposition of a hospital committee on abortion...is unduly restrictive of patient’s rights, which are already safeguarded by her personal physician.”¹ By eliminating institutional objection, *Doe* infringed upon the rights of conscience of every professional acting on behalf of Catholic hospitals. A hospital ethics committee at least provides a forum for professionals to debate and judge what goes on within their own institution. *Doe* makes this institutional judgment irrelevant for the crucial issue of abortion.

The “conscience clauses” enacted by state legislatures and the federal government in response to *Doe* tried to protect institutions as well as individuals.² At the federal level, the Church Amendment prevents public authorities from requiring a health care institution to provide facilities or personnel for sterilizations or abortions.³ And “The Protection of Conscience Project” website notes that all but four states provide some legal protection for conscientious objection.⁴ In their own ways, both the

¹ 410 U.S. 179 (1973)

² Among other journals, the *National Catholic Bioethics Quarterly* frequently publishes articles concerning conscientious objection in health care, now expanded to include a host of issues other than abortion. See for example Richard S. Myers, “On the Need for a Federal Conscience Clause,” *NCBQ* 1/1 (2001): 23-26; Maureen Kramlich, “Coercing Conscience: Mandating Abortion Coverage,” *NCBQ* 4/1 (2004): 29-40; Nikolas T Nikas, “Law and Public Policy to Protect Health Care Conscience,” *NCBQ* 4/1 (2004): 41-52.

³ Church Amendment to the Public Health Service Extension Act of 1973, Pub. L. No. 93-95, Tit. IV, § 401 (b), ©), 87 Stat. 95 (codified at 42 U.S.C. § 300a-7)

⁴ “The Protection of Conscience Project” tracks the issue worldwide at <http://www.consciencelaws.org/>. The four states offering no conscience protection

Supreme Court and the legislatures assume the existence of a moral judgment that can properly be called “institutional.”

Institutional conscience not only commands institutional objection, but also guides daily medicine. Catholic theological tradition teaches that conscience operates in the ordinary activities of daily life, not only in crisis situations.⁵ So the institutional conscience of a Catholic hospital is expressed whenever its personnel use their authority to heal on behalf of the institution. Institutional relationships that bring together a variety of healing gifts, medical knowledge, and moral experience might reveal more concretely how medical art and technology contribute to Christ’s healing of the sick from sin and suffering.

The *Ethical and Religious Directives for Catholic Health Care Services* [*Directives*] represent a concrete example of this relationship between experiential knowledge and moral tradition.⁶ The *Directives*, which provide authoritative guidance about how Catholic institutions approach the judgment of specific medical practices, have been revised through four editions in consultation with a variety of professions, theologians, and the magisterium of the Church. The *Directives* in turn shape institutional dialogue. With a positive view of the human person, the *Directives* define medical practices in moral, not merely functional, terms and draw boundaries for practices that oppose human dignity.⁷

In sum, the laws on abortion imply “institutional conscience,” with real people behind it. Moreover, the institutional conscience of Catholic

whatever are Alabama, Mississippi, New Hampshire and Vermont. See <http://www.consciencelaws.org/Conscience-Laws-USA/Conscience-Laws-USA-01a.html>.

⁵ See for example the encyclical of Pope John Paul II *Veritatis Splendor*, para. 54-64.

⁶ U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* 4th ed. (Washington, D.C.: U.S. Conference of Catholic Bishops, 2001).

⁷ For example, directive 45 defines “abortion” as never permitted, and directive 47 proposes an alternative procedure for certain crisis situations based on an application of the principle of double effect.

health institutions offers experiential knowledge about healing in Christ, with potential policy implications for some of society's most controversial procedures.

A DEFINITION OF INSTITUTIONAL CONSCIENCE

There are not only practical but also philosophical and theological difficulties with the idea of "institutional conscience." How can we mere mortals create a being with a conscience? How do people in different roles participate in the institutional conscience? Are the highest standards of judgment simply those of the institution? Most of these questions harken back to the debates about corporate responsibility that began in the 1960's and picked up speed through the '80's and 90's. Rather than revisit that debate, I will simply define "institutional conscience."

Institutional conscience is obviously not an individual conscience. The Vatican II document *Gaudium et Spes* defines individual conscience as a person's "most secret core and sanctuary...[where] he is alone with God" (§16). No boardroom discussion compares to this dialogue between God and each person. No group of people can create a conscience. So institutions have consciences only by *analogy* to individual conscience. Does this mean they are pure fiction, to be ignored in the public square or by health professionals themselves? It does not. An institutional conscience depends upon the consciences of those who act for the institution, especially its leaders. For this reason, to ignore the moral judgment of a pro-life institution is to ignore those who act for the institution. The collective judgment of several professionals capable of integrating medical knowledge with a saving moral tradition would be much stronger than a comparable individual judgment.

Institutional conscience is located within the *relationships* of those authorized to act for the institution. Consider that a Catholic hospital unites people for a specific mission, namely, health care in Christ, and sets terms for institutional moral judgment through, for example, the definition of roles and the setting of policy. The institution gives certain professionals authority to act on its behalf and holds them accountable for those actions. These relationships of authority and accountability inform

the consciences of professionals about actions that are as much institutional as personal. When a hospital asks its professionals to judge and act in terms of a common mission, one can begin to speak of an institutional conscience. “Institutional conscience” might then be defined as the relationship of consciences of those people who judge, or who responsibly preserve the judgment of an authority, about an action to be performed on behalf of the institution.

“INSTITUTIONAL CONSCIENCE” AND CATHOLIC TRADITION

One could speak of “institutional conscience” in relation to several major concepts from the Social Doctrine of the Church: interdependence, solidarity,⁸ social justice,⁹ subsidiarity, and participation to name a few. I will briefly explore two less well known concepts, “collective conscience” and the “subjectivity of society,” capable of illustrating how the consciences of Catholic institutions contribute to a culture of life.

Pope Pius X refers to “collective conscience” in the famous “Pascendi Dominici Gregis,” where he condemns the Modernist doctrine that the Church arises from the *conscientia collectiva* of the faithful.¹⁰ (The Pope does not condemn the idea of a collective conscience, only the

⁸ See for example *Sollicitudo Rei Socialis* 38 defining a form of social awareness called “interdependence, sensed as a *system determining* relationships in the contemporary world, in its economic, cultural, political and religious elements, and accepted as a *moral category*,” to which the proper response is the virtue of solidarity.

⁹ Kevin Wildes argues that the Catholic understanding of social justice requires institutional conscience because social justice is grounded in a social *order*, as well as the just distribution of social goods: “A crucial insight of the social justice tradition has been that justice involves concerns not only about how goods are distributed, but also with how a society is ordered and structured.” “Institutional Identity, Integrity and Conscience,” *Kennedy Institute of Ethics Journal* 7/4 (1993): 413-19 at 416.

¹⁰Pius X, “Pascendi Dominici Gregis,” *ASS* 40 (1907): 593-650; English translation in *The Popes Against Modern Errors*, ed. Anthony J. Mioni, Jr. (Rockford IL: Tan, 1999), 202; quotation at para. 23.

Modernist application of it to the Church.) Then in *Evangelium Vitae*, Pope John Paul II refers to the “collective conscience” of a democratic people, vulnerable to enshrining immoral yet seemingly desirable practices into civil law.¹¹ Finally, there is the document of the International Theological Commission on “Memory and Reconciliation: the Church and the Faults of the Past,” which urges an examination and purification of the Church’s “collective conscience.” This document describes how a collective discovery of truth on a social level changes social practices.¹² The work of certain social institutions, especially health institutions, favors the recognition of a society’s moral strengths and weaknesses and the development of cultural practices in response to them. Over time, doctors, nurses, and other professionals begin to see moral and social contexts for illness. Daily dialogue within these institutions yields written and spoken judgments about current medical practice, forming a corporate culture for healing the sick. When Catholic institutions place this dialogue in relation to the healing work of Christ, they access a tradition plumbing the depths of human dignity. Neither should we discount the role of grace in this work of moral judgment.

An institutional moral culture forms a foundation for what Pope John Paul II calls the “subjectivity of society.” In the encyclical *Centesimus Annus*, this term refers to the ethos by which self-governing associations, such as hospitals and universities, provide for the spiritual and material

¹¹ John Paul II, *Evangelium Vitae* 70.

¹² International Theological Commission, *Memory and Reconciliation: The Church and the Faults of the Past*: “Purifying memory means eliminating from personal and collective conscience all forms of resentment or violence left by the inheritance of the past, on the basis of a new and rigorous historical-theological judgement, which becomes the foundation for a renewed moral way of acting. This occurs whenever it becomes possible to attribute to past historical deeds a different quality, having a new and different effect on the present, in view of progress in reconciliation in truth, justice and charity among human beings and, in particular, between the Church and the different religious, cultural and civil communities with whom she is related.” Reprinted in *Origins* 29, no 39 (March 16, 2000): 625-44 at 638.

well-being of a free society.¹³ A society's health institutions play a large role in interpreting what it means for a society to heal its people. Health care institutions that interpret healing from a religious perspective seem particularly valuable here. This perspective favors the recognition that life in this world is not one's ultimate good and that medicine possesses limited power to heal the body. Moreover, Christian faith holds that true healing is ultimately healing from sin.¹⁴ So a Catholic institution looks for the spiritual effects of certain practices upon professionals, as well as patients. For example, what do practices like abortion, or the over- or under-use of legitimate drugs, such as morphine, say about healers and patients alike? Catholic institutions should be well situated to perceive the significance of such questions and, difficult as it is, provide responses.

INSTITUTIONAL CONSCIENCE AND INSTITUTIONAL TOLERANCE

The dialogue of institutional conscience can be difficult, confusing, and sometimes impossible, exposing conflict in operations and moral judgment. It is beneficial to think of these conflicts as conflicts within the institutional conscience, rather than simply as a conflict among individual consciences. Rather than irreconcilable differences resolved through moral retreat, one finds a conflict of conscience within one institutional body that seeks the truth of an identity given by Christ. Practically speaking, a Catholic hospital judges what medical interventions are both morally and physically capable of participating in Christ's reconciling each person—Catholic and non-Catholic alike—with God. Discovering such

¹³ John Paul II, *Centesimus Annus* 13: “[T]he social nature of man is not completely fulfilled in the State, but is realized in various intermediary groups, beginning with the family and including economic, social, political and cultural groups which stem from human nature itself and have their own autonomy, always with a view to the common good. This is what I have called the ‘subjectivity’ of society.” See also *Sollicitudo Rei Socialis* 15

¹⁴ Cf. John Paul II *Salvifici Doloris*, esp. para. 5 & 14-15. I do not mean by “healing from sin” that illness always results from personal sin, but that sickness and death enter the world through sin: original, personal, and social.

a judgment within a culture of pluralism demands that Catholic institutions listen to all voices in the light of faith, received from Christ through the Church. Managing this challenge has often been discussed in terms of identity and tolerance.

In an effort to speak about the moral identity of Catholic health institutions, two Catholic bioethicists have introduced the concept of “institutional conscience.” Daniel Sulmasy calls the institutional conscience a “commitment” to make moral judgments according to fundamental moral precepts and moral integrity.¹⁵ The idea is that the institution’s professionals share a common commitment to the mission of the institution and discover through dialogue how this commitment should translate into institutional action. Similarly Kevin Wildes ties institutional conscience to the mission statement of the institution, which defines the boundaries of tolerance regarding institutional action.¹⁶ Despite important differences, both authors recognize the fact of moral pluralism *within* Catholic institutions and a dialogue of consciences as the proper forum for moral judgment about institutional actions. A common theme emerges: Catholic health institutions deserve respect regarding their moral commitments and in turn owe tolerance of diverse views within institutional dialogue. I would argue that this tolerance does not mean a Catholic hospital’s accepting practices at odds with Catholic faith and morals. Advocates for such practices working within Catholic health institutions, in effect, challenge the institution to deliberate carefully and concretely about the truth of Christian healing guided by the Church’s moral tradition. At the same time, the institutional conscience of a

¹⁵Daniel Sulmasy, “Institutional Conscience and Moral Pluralism in Health Care,” *New Theology Review* 10/4 (1997): 5-21, at 11: “Conscience is a fundamental moral commitment on the part of a moral agent to moral integrity, involving a commitment to uphold fundamental moral precepts and moral identity and, based upon these fundamental moral commitments, to make use of reason, emotion, and will to arrive at proper moral judgments and to act on these judgments. Health care institutions seem fully capable of this.”

¹⁶Wildes, “Institutional Identity, Integrity and Conscience.”

Catholic hospital does require a pro-abortion doctor, for example, to accept a workplace that will not perform abortions and not to refer patients to abortion providers.

IMPLICATIONS FOR CATHOLIC HEALTH INSTITUTIONS

Society's respect for the conscience of Catholic health institutions offers them freedom, but demands a sort of sacrifice: the daily task of caring for the sick while acting in conformity with a Catholic understanding of human dignity, rooted in the truth of the human person revealed by Christ. If in our society what some people consider health care is not truly worthy of that name—sterilization, abortion, embryo destructive research, euthanasia—the daily practice of medicine in Catholic health institutions should make that clear. Doctors and nurses stand in a privileged position to deliberate about and understand the harm that these practices do to patients, as well as the underlying problems that cause patients to ask for them and health professionals to offer them. Over time, our institutions should be able to contribute data, analysis, and moral judgment demonstrating what concrete alternatives better serve patients. Catholic health institutions *will* be able to perform this service as they cultivate a structured dialogue among members of the institution and as professionals understand that they participate in that dialogue.

Adhering to an institutional policy never to kill innocent human life commits a group of professionals to addressing some very difficult social problems and to finding alternative solutions. Allowing some health institutions to practice medicine according to such a principle is a matter not only of freedom of conscience, but also of a society's moral ecology, for at least three reasons. First, such a policy calls into question compromise practices that directly kill innocent life, even for "proportionate" reason. The refusal of Catholic institutions to provide abortions, for example, implies that better alternatives exist and therefore that abortion is no "necessary evil" to be accepted for social peace. Second, such a policy better upholds human dignity even in the face of difficult situations. Catholic institutions must deal with the same tragic realities that practices such as abortion attempt to resolve. The accumulation of

Life and Learning XVI

medical and moral judgment from pro-life medical practice will demonstrate the physical and psychological harm that abortion does to women and the underlying personal problems that go unresolved after abortion. Finally, well developed alternatives demonstrate that society need not depend upon practices like abortion and euthanasia. In the presence of better alternatives, the choice to take innocent life shows its absurdity.

Finally some practical suggestions: develop existing holistic practices such as natural birthing and palliative care techniques; place a premium on continuity of care, promoting morally meaningful contact between patients and care givers; continue to integrate the *Directives* into institutional dialogue; educate all employees in Catholic bioethics and the institution's religious history, spirituality, and mission; found variations of the Jesuit Volunteer Corps to provide youth with health care experience and bioethics education; recruit Catholic health professionals to work in Catholic institutions; structure dialogue among Catholic health institutions, Catholic Charities, Catholic universities, and religious institutes to explore the moral and social context of healing the sick; appoint qualified priests, deacons or laypersons to integrate learning from various Catholic institutions within each diocese.¹⁷

CONCLUSION

In his 1995 encyclical *Evangelium Vitae* Pope John Paul II asked us to build a culture of life. Among the means for creating this culture he listed "a general mobilization of consciences."¹⁸ Social institutions are particularly capable of "mobilizing consciences" through structured moral deliberation towards a definable mission such as healing the sick. Thinking of Catholic health institutions in terms of institutional conscience, as well as Catholic identity, operational efficiency, and financial solvency is crucial to the formation of a culture of life.

¹⁷ See also Daniel P. Sulmasy, "Catholic Health Care: Not Dead Yet," *The National Catholic Bioethics Quarterly* 1/1 (2001): 41-50.

¹⁸ *Evangelium Vitae* 95.