Conscience and Its Enemies
Robert P. George

The following is the text of an address delivered by Professor George at the twentieth anniversary conference of the Society of Catholic Social Scientists in New York, October 2012. George identifies the intellectual roots of recent threats to conscience rights—especially for people of faith—in the American College of Obstetrics and Gynecology’s 2008 report that, he argues, makes ideological claims rather than using scientific evidence to support the denial of conscience rights to medical professionals in the areas of birth control and abortion. (This essay will be included in a forthcoming collection of George’s work to be published by ISI Books.)

INTRODUCTION

Over the past few years, we have become all too aware of the threats to conscience rights in various domains, especially those having to do with issues pertaining to the sanctity of human life and to sexual morality, marriage, and the family. These specific threats reflect and manifest attitudes and ideologies that are now deeply entrenched in the intellectual world and in the elite sector of the culture more generally. President Obama, Secretary of Health and Human Services Kathleen Sebelius, and many, many other federal and state officials are advancing and supporting policies trampling conscience rights, such as the notorious Department of Health and Human Services (“HHS”) contraception and abortion drug mandate, because they have deeply absorbed “me-generation” dogmas that make nonsense of the very idea of conscience rights.

Secretary Sebelius and her closest collaborators, especially the Planned Parenthood Federation of America, insist that opponents of the HHS mandate oppose both women’s health and science itself. There is rich irony here. Over the past two years, neither HHS nor the White House has responded substantively to the flood of evidence submitted by experts demonstrating the lack of scientific support for the medical or the demographic or the economic claims associated with the HHS mandate. This practice—refusing to grapple with the relevant evidence while using the mantle of “science” to silence or marginalize objectors—is commonly used by enemies of conscience. This paper will analyze an important precursor to cur-
rent incarnations of this practice: the 2008 report of the American College of Obstetricians and Gynecologists recommending denying meaningful conscience protection to medical professionals on the grounds of a non-scientific, ideologically dictated preference for widely available abortion.

PERSONAL OPINIONS AND IDEOLOGY, NOT SCIENCE: ACOG’S LIMITS OF CONSCIENTIOUS REFUSAL IN REPRODUCTIVE MEDICINE

On September 11, 2008, the President’s Council on Bioethics heard testimony by Anne Lyerly, M.D., chair of the Committee on Ethics of the American College of Obstetrics and Gynecology (ACOG). Dr. Lyerly appeared in connection with the Council’s review of her committee’s Opinion (No. 385) entitled “Limits of Conscientious Refusal in Reproductive Medicine.” That Opinion proposes that physicians in the field of women’s health be required as a matter of ethical duty to refer patients for abortions and sometimes even to perform abortions themselves.

I found the ACOG Ethics Committee’s opinion shocking and, indeed frightening, not only in its lack of regard—bordering on contempt, really—for the sincere claims of conscience of Catholic, Evangelical Protestant, Orthodox Jewish, and other pro-life physicians and health care workers, but also in its treatment of feticide—the deliberate destruction of a child in the womb—as if it were a matter of health care, rather than what it typically is, namely, a decision based upon non-medical considerations (such as whether a woman or her husband or boyfriend happens to want a child). On the understanding of medicine implicit in the report, the ends of medicine are fundamentally not about the preservation and restoration of health considered as an objective reality and human good, but rather concern satisfying the personal preferences or lifestyle desires of people who come to physicians requesting surgeries or other services, quite irrespective of whether these services are in any meaningful sense medically indicated.

Let’s say that a woman conceives a child and is unhappy about it. Is she sick? Does she need an abortion for the sake of her health? Not on any reasonable understanding or definition of health, even if we mean mental health. Pregnancy is not a disease. It is a natural process. In the normal case, a pregnant woman is not sick. Nor in the overwhelming majority of cases does pregnancy pose a threat to a woman’s health. This is clear enough, but to make it still clearer, let’s imagine that a woman who is initially unhappy to be pregnant changes her mind. On reflection, she’s content to be pregnant and happy to have a baby on the way. Did she suddenly shift from being sick and in need of “healthcare,” in the form of an abortion, to being well? Now let’s consider that a couple of months later,
she changes her mind again. It turns out, let us suppose, that the baby is a girl, and she really wants a boy. So she is once again unhappy about the pregnancy and she reverts to wanting an abortion. Did knowledge of the baby’s sex transform her from being a healthy pregnant woman to being sick? The question answers itself.

Now let us consider the ACOG Committee report. What jumped off the page at me when I first read it is that it is an exercise in moral philosophy—bad moral philosophy, but lay that aside for now—not medicine. It proposes a definition of conscience, something that cannot be supplied by science or medicine, then proposes to instruct its readers on, “...the limits of conscientious refusals, describing how claims of conscience should be weighed in the context of other values critical to the ethical provision of health care.”

Again, knowledge of these limits and values, as well as knowledge of what should count as the ethical provision of health care, are not and cannot possibly be the product of scientific inquiry for medicine as such. The proposed instruction offered by those responsible for the ACOG Committee report represents a philosophical and ethical opinion—their philosophical and ethical opinion.

The report goes on to “outline options for public policy,” and propose “recommendations that maximize accommodation of the individual’s religious and moral beliefs while avoiding imposition of these beliefs on others or interfering with the safe, timely, and financially feasible access to reproductive health care that all women deserve.” Yet again notice that every concept in play here—the putative balancing, the judgment as to what constitutes an “imposition” of personal beliefs on others, the view of what constitutes health care or reproductive health care, the judgment about what is deserved—is philosophical, not scientific or, strictly speaking, medical.

To the extent that they are “medical” judgments even loosely speaking, they reflect a concept of medicine informed, structured, and shaped by philosophical and ethical judgments—bad ones, by the way, such as the implicit judgment that pregnancy, when unwanted, is in effect a disease.

Those responsible for the report purport to be speaking as physicians and medical professionals. The special authority the report is supposed to have derives from their standing and expertise as physicians and medical professionals, yet at every point that matters, the judgments offered reflect their philosophical, ethical, and political judgments, not any expertise they have by virtue of their training and experience in science and medicine.

At the meeting of the President’s Council, the chairman, Dr. Edmund Pellegrino, asked me to offer a formal comment on Dr. Lyerly’s presentation of her committee’s report, and I was happy for the opportunity to call her and her colleagues out on their attempt to use their special authority as
physicians to force fellow physicians to practice medicine in accord with the contestable and contested philosophical, ethical, and political judgments of the members of the committee Dr. Lyerly chaired. And make no mistake about it: at every key point in the report, their judgments are contestable and contested. Indeed they are contested by the very people on whose consciences they seek to impose—the people whom they would, if their report were adopted and made binding, force into line with their philosophical and ethical judgments or drive out of their fields of medical practice. And they are contested, of course, by many others. And in each of these contests, a resolution one way or the other cannot be determined by scientific methods; rather the debate is philosophical, ethical, or political. And once this comes to light, what is evident is that the committee report represents a sheer power play on behalf of pro-abortion individuals who happen to have acquired power in their professional association. This is not about medicine. It is about ideology. It is about politics and political power.

Lay aside for the moment the question of whose philosophical and political judgments are right and whose are wrong. My point so far has only been that the report is laced with, and dependent upon, at every turn, philosophical and political judgments. I’ve not offered a critique of those judgments, although anyone who cares to do so can find plenty of criticisms of them in my work. But lay that aside for now, too.

The key thing to see is that the issues in dispute are philosophical and can only be resolved by philosophical reflection and debate. They cannot be resolved by science or methods of scientific inquiry. As I’ve observed, the committee report reflects and promotes a particular moral view and vision, and particular understandings of health and medicine, shaped in every contested dimension and in every dimension relevant to the report’s subject matter, by that moral view and vision. The report, in other words, in its driving assumptions, reasoning, and conclusions is not morally neutral. Its analysis and recommendations for action do not proceed from a basis of moral neutrality. It represents a partisan position among the family of possible positions debated or adopted by people of goodwill in the medical profession and in society generally. Indeed, for me, the partisanship of the report is its most striking feature.

Its greatest irony is the report’s stated worry about physicians’ allegedly imposing their beliefs on patients by, for example, declining to perform or refer for abortions—or at least declining to perform abortions or provide other services in emergency situations, and certainly to refer for these procedures. The assumption here, of course, is the philosophical one that abortion, even elective abortion, is “healthcare,” and that deliberately killing babies in their mother’s wombs is morally acceptable and even a woman’s right.
But lay *that* aside for now, too. The truth is that the physician who refuses to perform abortions or the pharmacist who declines to dispense abortifacient drugs coerces no one. He or she simply refuses to participate in the destruction of human life—the life of the child *in utero*. He is not “imposing” anything on anyone, just as a sports shop owner who refuses to stock hollow point “cop killer” bullets, even if he may legally sell them, is not imposing anything on anyone.

By contrast, those responsible for the report and its recommendations evidently *would use coercion* to force physicians and pharmacists who have the temerity to dissent from the philosophical and ethical views of those who happen to have acquired power in the American College of Obstetrics and Gynecology, either to get in line or to go out of business. If their advice were followed, if they had their way, their field of medical practice would be cleansed of pro-life physicians whose convictions required them to refrain from performing or referring for abortions. Faithful Catholics, Evangelicals and other Protestants, and many observant Jews and Muslims, would be excluded from or forced out of obstetrics and gynecology. The entire field would be composed of people who could be relied on either to agree with, or at a minimum go along with, the moral and political convictions of the report’s authors. So, in truth, *who in this debate is guilty of intolerance? Who is favoring coercion? Who is trampling on freedom? Who is imposing their values?* These questions, too, answer themselves.

It won’t do, in my opinion, to say that what is being proposed here for imposition on dissenters is not a morality, but merely good medical practice, for it is not science or medicine that is shaping the report’s understanding of what counts as good medical practice. It is, rather, a moral opinion doing the shaping. The opinion that abortion is good medicine is a philosophical, ethical, and political opinion; it is a judgment *brought to* medicine, not a judgment *derived from* it. It reflects a view that abortion is morally legitimate and no violation of the rights of the child who is killed, as well as the view that medicine is rightly concerned to facilitate people’s lifestyle choices even when they are neither sick nor in danger of being injured, and even when the “medical” procedure involves the taking of innocent human life.

Whether an elective abortion or, to take another example, an *in vitro* fertilization procedure, counts as health care, as opposed to a patient’s desired outcome or personal choice, cannot be established or resolved by the methods of science or by any morally or ethically neutral form of inquiry or reasoning. One’s view of the matter will reflect one’s moral and ethical convictions either way.
So the report’s constant use of the language of “health” and “reproductive health” in describing or referring to the key issues giving rise to conflicts of conscience is at best question-begging. No, that’s too kind. The report’s use of this language amounts to a form of rhetorical manipulation. The question at issue in abortion is not “reproductive health” or health of any kind, precisely because direct abortions are not procedures designed to make sick people healthy or to protect them against disease or injury. Again, pregnancy is not a disease. The goal of direct abortions is to cause the death of a child because a woman believes that her life will be better without the child’s existing than it would be with the child’s existing. In itself, a direct (or elective) abortion—deliberately bringing about the death of a child in utero—does nothing to advance maternal health (though sometimes the death of the child is an unavoidable side effect of a procedure, such as the removal of a cancerous womb, that is designed to combat a grave threat to the mother’s life or health). That’s why it is wrong to depict elective abortion as healthcare.

There is yet another irony worth noting. The report, in defending its proposal to compel physicians at least to refer for procedures that many physicians believe are immoral, unjust, and even homicidal, states that such referrals “need not be conceptualized as a repudiation or compromise of one’s own values, but instead can be seen as an acknowledgment of both the widespread and thoughtful disagreement among physicians and society at large and the moral sincerity of others with whom one disagrees.” Suddenly it’s the case that the underlying issues at stake, such as abortion, are matters of widespread and thoughtful disagreement. I myself agree with that. And it becomes clear from the report that we should show respect for the moral sincerity of those with whom we disagree. But it seems to me that it follows from these counsels that thoughtful and sincere people need not agree that abortion, for example, is morally innocent or acceptable, or that there is a “right” to abortion, or that the provisions of abortion is part of good health care or is health care at all, at least in the case of elective abortions.

But then what could possibly justify the exercise of coercion to compel thoughtful, morally sincere physicians who believe that abortion is a homicidal injustice, either to perform the procedure or make a referral for it, or else leave the practice of medicine? The report’s “my way or the highway” view of the thing is anything but an acknowledgement of the widespread and thoughtful disagreement among physicians and society at large and the moral sincerity of those with whom one disagrees. Indeed, it is a repudiation of it.
CONCLUSION: ABORTION AND CONSCIENCE—
THE OBAMA ADMINISTRATION ADOPTS
THE ACOG STRATEGY

Needless to say, the enemies of conscience in the American College of Obstetrics and Gynecology and elsewhere in the medical establishment now have powerful friends in the highest realms of government. It has become all too clear that these friends share the desire to eradicate conscience protection for pro-life physicians and other health care workers and pharmacists. The Obama administration has formally abrogated the conscience protection regulations promulgated by the Bush administration in 2008. These regulations were long overdue rules needed for the effective implementation and enforcement of conscience-protective federal laws that have been formally in place since the 1970s. They included definitions of key terms in the existing legislation (although the term “abortion” itself has not been formally defined, thus leaving open the question, for example, whether the administration of an abortifacient drug to prevent the implantation of the early embryo counts as an “abortion”). Still, the Bush regulations strengthened conscience protections for pro-life medical professionals and medical students in a variety of ways. For example, they very clearly prohibited any form of discrimination against practitioners and medical students who refused to undergo training for abortions, or to perform abortions, or to refer for abortions. Moreover, they proscribed discrimination in credentialing or licensing on grounds related to the refusal to be involved in the practice of abortion.

I suspect that the Obama administration’s goal in abrogating conscience-protection regulations is to establish a policy very much in line with the ACOG Ethics Committee’s proposed “ethics” rules on conscientious refusal in “reproductive” medicine. In addition, I think we can expect the Obama administration to permit professional associations and accrediting and certification bodies to discriminate against pro-life individuals and institutions. Of course, none of this is a surprise. President Obama’s fervent support for abortion is a matter of public record extending over his entire political career. To my knowledge, he has never supported a restriction on abortion or opposed an effort to expand its availability. He famously said that if one of his daughters “made a mistake,” he would not want to see her “punished” with a baby. He usually does not claim even to be “personally opposed” to abortion, as most so-called “pro-choice” politicians claim to be. He opposed legislation prohibiting partial-birth abortions (a procedure in which the infant is killed after he or she is partially delivered outside the mother’s body) and even fought against laws to protect children born alive after an unsuccessful attempt at abortion. As president, he has revoked the Mexico City Policy, which
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prohibited the government funding of organizations that perform or promote abortions overseas, and he has promised to fight over the long term for repeal of the Hyde Amendment, which forbids federal funding of abortions in the United States. During the 2008 presidential campaign, he promised to give priority to enacting the provisions of the so-called Freedom of Choice Act which would, in the words of the abortion lobby, overturn hundreds of state and federal anti-abortion laws, such as parental notification requirements for minors seeking abortions and informed consent laws requiring women contemplating abortions to be informed of the facts of fetal development and the physical and emotional risks of abortion. And, of course, President Obama has attempted to impose on religious employers as well as everybody else a requirement of providing health care coverage not only for contraceptives and sterilization, but also for abortion-inducing drugs such as ella.

And so it falls to us to resist, and to do so not only for the sake of defending the lives of our most vulnerable brothers and sisters—children in the womb—but also in defense of what James Madison called “the sacred rights of conscience.” Today, many of those who would sanction and support the taking of human life by abortion or in embryo-destructive research have also made themselves the enemies of conscience. We, who are the friends of life, must also be the friends of conscience. Indeed, we must be conscience’s best friends. For many of us, standing up for conscience means defending the principles of our faith. For all of us, standing up for conscience means defending principles on which our nation was founded.

Notes


2. President Obama made the remark at a Town Hall meeting in Johnstown, Pennsylvania, on March 29, 2008. So there can be no doubt that I am treating him completely fairly, I will provide the quotation in its full context:

   When it comes specifically to HIV/AIDS, the most important prevention is education, which should include—which should include abstinence education and teaching the children—teaching children, you know, that sex is not something casual. But it should also include—it should also include other, you know, information about contraception because, look, I’ve got two daughters. 9 years old and 6 years old. I am going to teach them first of all about values and morals. But if they make a mistake, I don’t want them punished with a baby, I don’t want them punished with an STD at the age of 16. You know, so it doesn’t make sense to not give them information. (http://blogs.cbn.com/thebrodyfile/archive/2008/03/31/obama-says-he-doesnt-want-his-daughters-punished-with-a.aspx)