

Q) What are protection of conscience laws?

A) Protection of conscience laws (PCL's) ensure that people cannot be forced to facilitate practices or procedures to which they object for reasons of conscience. These may include abortion, capital punishment, contraception, sterilization, artificial reproduction, euthanasia, assisted suicide, human experimentation, torture, etc. An adequate protection of conscience law should protect conscientious objectors from coercive hiring or employment practices, discrimination and other forms of punishment or pressure. It should also include protection from civil liability.

Q) What are "conscience clauses"?

A) Conscience clauses are likely to be less comprehensive than protection of conscience laws and afford varying degrees of protection for conscientious objectors. They may appear in statutes or in the policies of organizations or institutions.

Q) Why are protection of conscience laws and conscience clauses needed?

A) Protection of conscience laws and conscience clauses are needed because powerful interests are inclined to force health care workers and others to participate, directly or indirectly, in morally controversial procedures. Physicians, nurses, pharmacists and others have been denied employment, dismissed, or penalized because of objections to abortion, contraception or the morning-after pill. The same pressure is being applied to force conscientious objectors to participate in other morally contested services and procedures..

Q) What kinds of procedures are affected by protection of conscience laws?

A) That depends upon the wording of the law. A statute can be drafted broadly so that it can be applied to any kind of service or procedure. On the other hand, it can be written to include only a specific class of procedures (all those affecting life, for example). Finally, a law can also identify specific procedures to which it is to apply. The Project website includes examples of different kinds of legislative drafting.

Q) Why different approaches to legislation?

A) Sometimes a law is drafted to respond to a particular need or concern. For example: many American laws were drawn up in direct response to the legalization of abortion by a U.S. Supreme Court ruling about abortion. Hence, many of these laws concern only abortion.

Similarly, concerns with a certain class of procedures (cloning and in vitro fertilization, euthanasia and assisted suicide) may generate a law that has narrower application.

However, laws that are procedure-specific are not sufficiently flexible to keep pace with changes in medical technology and social attitudes. It is preferable to take a broad and principled approach that does not restrict protection to specific procedures or classes of services. On the other hand, the approach taken may be influenced by pragmatic judgement about the political support likely to be available for different kinds of legislation.

Q) Do protection of conscience laws make procedures like abortion or sterilization illegal?

A) No. PCLs prevent people from being forced to participate in medical procedures, but they do not make them illegal.

Q) But doesn't a protection of conscience

law mean that the procedures are wrong?

A) No. Many states permit conscientious objectors to refuse active military service, but such policies have never been understood to mean that military service is immoral. Similarly, a protection of conscience law need have no impact on the dominant moral outlook concerning procedures to which some people object.

Q) What if employers' conscientious judgement lead them to discriminate against applicants unwilling to participate in certain procedures? Will PCLs punish employers for following their consciences?

A) This kind of conflict can be prevented or resolved by identifying, in advance, the performance of certain procedures as a *bona fide* requirement of a position to be filled. PCLs can be drafted to allow for such eventualities; the Project's Model Statute illustrates one way of doing this.

Q) Our courts are already clogged. Won't PCLs cause more court cases?

A) They could result in some prosecutions at first. But they should prevent litigation and prosecution by discouraging coercive conduct. If problems arise, they are more likely to be settled without going to court if people can refer to a single law. And there should be fewer problems as time goes on and people learn their limits.

Q) Why has this become an issue now?

A) It has actually been an issue for many years. It was considered in the drafting of the abortion law in the United Kingdom in 1968, which includes a protection of conscience provision. However, in recent years the issue of freedom of conscience in health care has come increasingly

to the fore because of pressures from activists who make aggressive and exaggerated rights claims, and because of ethical problems generated by advancing medical technologies and the lobbies for euthanasia and assisted suicide.

Q) How do reproductive technologies, euthanasia and assisted suicide make this more important?

A) The reason usually advanced to justify coerced participation in sterilization, contraception, or abortion is that the health care worker's 'personal values' must give way to the choice made by the patient. The same reasoning is used to justify coerced participation in various kinds of reproductive technologies, in euthanasia and in assisted suicide

Q) Has someone actually suggested that objecting health care workers should have to participate in euthanasia and assisted suicide?

A) Yes. Following legalization of euthanasia and assisted suicide in Canada, three medical regulators have adopted policies demanding that physicians unwilling to kill their patients or help them commit suicide must help them to find a colleague willing to do so.

Q) But has anyone said that objecting physicians should be forced to personally provide euthanasia or assisted suicide?

A) Yes. That is now being proposed by prominent academics like Julian Savulescu and Udo Schuklenk, who argue that physicians have no right to refuse to do so. [Savulescu], Schuklenk U. (2016) Doctors Have no Right to Refuse Medical Assistance in Dying, Abortion or Contraception. Bioethics doi:10.1111/bioe.12288]

Q) Don't unions and professional associations protect their members already?

A) Unfortunately, their record in this respect indicates that they are unreliable. Moreover, many people are not members of unions or professional associations.

Q) Well, maybe there was nothing in their collective agreements about this. Couldn't unions bargain for a conscience clause?

A) Yes. But, in the first place, many workers are not protected by collective agreements. More important, freedom of conscience is not merely an employee benefit. It should be considered an employee right, protected by legislation, lest unions actually bargain it away in exchange for more vacation pay, for example, or higher overtime rates.

This pamphlet may be downloaded from the Project website and copied for distribution.

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[Revised 2018 Nov 15]



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