COMMENTARY

No Strings Attached: How Catholic Institutions Prospered at the Expense of the Administrative State and Patient Autonomy

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Abstract: Catholic hospitals and health systems have proliferated and succeeded in American healthcare; they now operate four of the largest health systems and serve nearly one in six hospital patients. Like other religious entities that Wuest and Last write about in this issue, in their article Church Against State, they have benefited by and supported the long reach of conservative efforts to undermine the administrative state.

> I did talk with [my doctor] again and he referred me to another physician 'cause he can't do it while working where he's at, because they're affiliated with that hospital and with that — Their whole group… they don't do any sterilizations, period. So he referred me over to a couple of other doctors, and I just haven't — Right now that is just on hold.
>
> — *"Angela," a Christian and Black mother of four children, including a newborn*

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Angela (a pseudonym) was interviewed for a study about patient and provider experiences with reproductive care in Catholic hospitals.[1] She was ultimately denied the post-partum procedure she sought because her doctor's practice was available only to patients at her local Catholic hospital, which refused to provide sterilizations, like most such hospitals where the U.S. Conference of Catholic Bishops' policies govern care. Having a referral to access care elsewhere is of little help to new parents like Angela, who often struggle to schedule, undergo, and recover from the surgical procedure while caring for newborns and other children. In fact, about half of patients denied post-partum sterilization procedures become pregnant again within a year.[2]

Angela's experience at a Catholic hospital is not uncommon, and it also exemplifies more intimately what Wuest and Last's article in this issue of *The Journal of Law, Medicine & Ethics*, *Church Against State,* refers to as the long reach of conservative efforts to undermine the administrative state.[3] Catholic hospitals care for about one in six hospital patients, and four of the 10 largest health systems in the US are Catholic.[4] The US Bishops' policies — or *directives* — for care within Catholic hospitals prohibit contraception (including male and female sterilization), all abortion, and a host of other related, and often medically-necessary, reproductive services.[5] Even more troubling is that patients do not typically choose to receive care governed by the Bishops, and are often unaware of their hospitals' religious restrictions.[6]

The authors of *Church Against State* argue that laws allowing religious authorities to infringe on individual autonomy, through health care policy for example, are part of a much larger, long-game, political proj-

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ect championed by right-wing strategists to erode civil protections. These strategists' anti-administrative state agenda, which seeks to limit the regulatory authority of executive branch agencies, draws together both religious and commercial interests. Their aim is to weaken the government's ability to ensure civil liberties, equity, and fairness through policy, chipping away at the hard-won gains of the late 20th century under the guise of protecting the "sincerely held beliefs" of business owners and health care providers.

Catholic health systems have a complex relationship to this anti-administrative state agenda because they are caught between opposing impulses: the US Catholic Bishops want freedom from government control over what services they offer or who they employ in their institutions while also requiring public funding and public grants to finance their continued growth. While Catholic hospitals were among the first institutions to serve the health needs of low-income people in the US, they also aligned themselves with the American Medical Association repeatedly in the 20th century to oppose universal health care, which likely would have benefited the very low-income people that Catholic hospitals claim to serve.[7] Moreover, early opposition to universal health care from Catholic leadership had religious dimensions nestled within a broader opposition to so-called "big government." Catholic health care leaders argued that the government could not adequately attend to patients' spiritual needs at the end of life or other major life transitions, and thus government employees were not qualified providers of health care.

Still, to grow at the same pace as their competitors in the health care sector, they needed public dollars and long-term tax exemptions. Thus, Catholic healthcare leaders supported the development of massive public grants for which they would be eligible, such as those provided by the Hill-Burton Act of 1946, which allowed them to build large medical facilities with few strings attached.[8] Their goals were further advanced in 1965 with passage of the Medicare and Medicaid Act, which permitted Catholic hospitals to bill the government for their services, while continuing to restrict the reproductive care offered to patients. The burdens that these laws placed on women's abilities to access necessary medical care were compounded when Congress began enacting legislation with "consciousness clauses" or "religious exemptions," including the Church, Hyde, and Weldon Amendments. Enacted in 1973, the Church Amendment allows hospitals and individuals receiving federal funds to opt out of providing abortion or sterilization procedures if doing so is contrary to their religious or moral beliefs.[9] The Hyde Amendment bars the funding of abortion services through Medicare, Medicaid, Indian Health Service, and the Children's Health Insurance Program. Hyde Amendment-like restrictions have been adopted by many other programs that receive federal funds, including the federal prisons, Peace Corps, Federal Employee Health Benefit Programs, military's TRICARE program, and Affordable Care Act insurance plans purchased by women who receive federal income-based subsidies.[10] Finally, the Weldon Amendment, which has been included in Department of Health and Human Services (HHS) spending bills since 2005, prohibits HHS from funding federal agencies and programs or state and local governments that "subjects to discrimination" any health care worker, medical center, or health insurance plan that "does not provide, pay for, provide coverage of, or refer for abortions."[11]

Opposition to government-provided health care maintained the niche that Catholic and other nonprofit hospitals filled in the health care system. Although the Catholic Church lost wealth and influence due to multiple recent scandals, its health systems remain strong and have preserved a seat at the broader health policy table. Indeed, the US Bishops have effectively wielded their influence to oppose not only the Affordable Care Act's coverage of abortion

While the US Bishops may govern care based upon their sincerely held beliefs about sex and sexuality, it is a tremendous flaw of our health care system that they have been able to operationalize those beliefs on a massive scale; their pathway paved by those working to strengthen the autonomy of giant corporate actors and to weaken the administrative state's few means to protect individuals subject to them.

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and contraceptive services, but also the availability of bathrooms and services for transgender persons.

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Note

The authors have no conflicts of interest to disclose.

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