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Philosophy and Theology: Insurance Coverage for Elective Abortion

Christopher Kaczor

Loyola Marymount University, Christopher.Kaczor@lmu.edu

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PHILOSOPHY AND THEOLOGY

As widely reported, the Loyola Marymount University faculty, staff, and alumni fiercely debated whether LMU should cover elective abortion in its insurance for employees.¹ The situation at LMU has led to other Catholic universities also reconsidering their policies. For example, Rev. Michael Engh, SJ, excluded abortion insurance coverage at Santa Clara University, where he serves as president. This reflection considers the ethics of Catholic institutions choosing (where choice is possible) to cover elective abortion in insurance, using the situation at LMU as a test case.

The LMU Board of Trustees decided the following: “We believe that the right to life and dignity for every human being is a fundamental part of Catholic beliefs (all other rights flow from this primary right to life and dignity), and that this vision needs to be evidenced in LMU’s policies and procedures. Thus, the board decided that LMU’s principal insurance plans in 2014 will not provide coverage for elective abortions.”² However, the LMU board also added that “a Third Party Administrator (TPA)-managed plan will be available. The TPA will be selected very shortly in order to facilitate an alternative. The TPA-managed plan will cover elective abortions, for which an employee will pay a slightly higher premium.”³

Faculty and staff in favor of including abortion as part of the standard insurance argued that respect for the consciences of others in the diverse LMU community means that LMU should include elective abortion in its insurance coverage.

¹ Ian Lovett, “Abortion Vote Exposes Rift at a Catholic University,” *New York Times*, October 6, 2013, http://www.nytimes.com/2013/10/07/us/abortion-vote-exposes-rift-at-catholic-university.html?_r=0.

² “Trustee Decision to Provide Abortion Coverage—October 7, 2013,” *Renew LMU*, October 8, 2013, <http://renewlmu.com/2013/10/08/trustee-decision-to-provide-abortion-coverage-october-7-2013/>.

³ Ibid.

However, respect for the conscientious judgment of others does not require acting to facilitate people making choices that accord with these judgments. Respect for conscience involves refraining from manipulating, coercing, or otherwise attempting to force people to change their beliefs, but it does not involve cooperating, facilitating, or aiding others in carrying out actions based on their beliefs. Respect for conscience does not mean facilitating the choices of those with whom we disagree in conscience.

Employees in favor of including abortion coverage as part of the primary insurance also argue that many non-Catholics and dissenting Catholics work at LMU, so the university should not force these employees to adhere to Catholic teaching and “chill” their free speech on the abortion issue.

However, all LMU employees enjoy freedom of religion, and therefore no LMU employee is forced to adhere to Catholic beliefs or practices. LMU employees can and do advocate for abortion rights as was evident in the 189 some faculty and staff who signed a petition to the board urging the inclusion of abortion in insurance. In addition to not forcing employees to accept Catholic teaching, LMU also does nothing whatsoever to prevent faculty or staff from choosing elective abortion. Individuals working at LMU can choose (and may have chosen) to get abortions. Abortion is a legal right in the United States, but this legal right does not create legal or moral duties for others to pay for or otherwise facilitate abortion. In a similar way, a person’s right to free speech is not violated if the university refuses to make that person a commencement speaker, pay for his or her books to be published, or let them address the incoming first year students.

Unfortunately, the board’s decision includes making available insurance coverage for elective abortion through a third party. This is morally problematic. Arranging for a third party to carry out an injustice for you does nothing to change your ethical responsibility for that injustice. Indeed, arranging for a third party to carry out an act of injustice is itself an act of injustice.

The board took a strong stand in the first part of their decision. In the second part of their decision, this strong stand was undermined. They decided to make available a third party to facilitate what they themselves view as an injustice against the dignity of the human person. What the board gave with their right hand they took away with their left. LMU’s decision reminds me of a quotation from the late Roger Ebert: “I consider myself Catholic, lock, stock and barrel, with this technical loophole: I cannot believe in God.”⁴ We consider abortion abhorrent, yet we have decided to facilitate it via a third party.

In a recent article, Dr. Roberto Dell’Oro, director of the Bioethics Institute at Loyola Marymount, offered a defense of LMU’s recent abortion insurance decision.⁵

⁴ Roger Ebert, “How I Am a Roman Catholic,” *Roger Ebert’s Journal*, March 1, 2013, <http://www.rogerebert.com/rogers-journal/how-i-am-a-roman-catholic>.

⁵ Roberto Dell’Oro, “Only One Message: LMU Remains Catholic,” *Tidings*, October 30, 2013, <http://www.angelusnews.com/voices/op-ed/only-one-message-lmu-remains-catholic/>.

He correctly notes that “first, on strict Catholic grounds, one can never justify the choice of ‘elective abortion.’ The direct cooperation, therefore, of a Catholic university with its employees/students thus choosing is unacceptable. To tolerate the free choice of individuals is, of course, one thing; another is for a Catholic University to provide the conditions for that choice to successfully take place.” I would add that it is not simply a matter of “strict Catholic grounds” but also a matter of fundamental justice that persons of goodwill, regardless of faith, can understand and accept. Innocent human beings, both prenatally and postnatally, deserve our respect and care. I also agree with Dell’Oro that, illicit and unjust, “Proximate cooperation would take place were the University to offer coverage for ‘elective abortion’ through its health care carriers” and that remote material cooperation in wrongdoing is sometimes permissible.

However, our agreement is not yet complete. Dell’Oro writes, “The University has chosen to eliminate coverage for abortion and to allow a third party administrator (TPA)- managed plan to establish arrangements for abortion coverage *without* using LMU dollars to pay for this additional coverage.” This statement is not as accurate as it could be. “To allow” suggests that LMU is a passive, noninvolved spectator of someone else providing abortion coverage. In fact, LMU itself is arranging, facilitating, and making available the TPA providing elective abortion coverage. LMU dollars, LMU time, and LMU efforts were used in order to arrange, facilitate, and make available the TPA coverage—a coverage that was chosen precisely *because* it includes elective abortion. Given these facts, Dell’Oro is mistaken that this arrangement “provides the University with sufficient ‘distance’ from the choice of elective abortion.” Unfortunately, such arrangements do not make a moral difference. LMU’s providing the TPA is like someone saying, “Since I think abortion is intentional killing, I won’t drive you to the abortion clinic, but I’ll arrange for my brother to drive you to the clinic if you pay him a few bucks.” This arrangement does not create clean hands. In neither case is the cooperation “remote.”

Dell’Oro holds that “LMU’s solution stands between two extremes: the dogmatic imposition of values on personal conscience and decision making, on the one hand; the identification, without further qualification, of freedom of conscience and freedom of choice, on the other.” This way of characterizing the issue is problematic. The decision not to cover elective abortion in insurance in no way imposes values on conscience and decision making. In the past few years, in which LMU covered elective abortions, this did not coerce, manipulate, or otherwise attempt to force people to change their conscientious beliefs about abortion. LMU’s current policy does not coerce, manipulate, or impose values on people’s consciences. And if LMU had chosen not to provide a TPA (as Engh did at Santa Clara University), again no one’s conscience would have been coerced. Just as we can respect the conscientious political beliefs of others but also not cooperate in facilitating their support of their political party, so too we can respect people who claim the label “pro-choice” and not facilitate their choice to abort. In all three possibilities, LMU employees have every legal right to get abortions and conscientiously hold any view about abortion.

In portraying LMU’s position as an intermediary between two opposing extreme views, the implicit premise is that virtue lies in the mean. But the

virtuous mean is not, as Aristotle pointed out, the same as the arithmetic mean. The arithmetic mean between facilitating one hundred unjust actions and freely choosing when possible to facilitate no unjust actions is facilitating fifty unjust actions. But the virtuous mean is to freely choose, when possible, to facilitate no unjust actions.⁶

Dell’Oro writes, “Consistency suggests that the ethos of pluralism, of respect for diversity of moral and religious sensibilities, of openness and dialogue, so clearly treasured by our University, cannot be abruptly bracketed in matters of health care decisions, including matters of reproductive choice. Respect for conscience demands that whatever policy LMU adopts, it sees it as an articulation, rather than a suspension, of that very ethos.” Respect for conscience is a two-way street. If pro-choice employees at LMU ask that the university respect their consciences and not force them to act against their consciences, then these same employees should show respect for the conscience of those who oppose abortion and do not wish to cooperate with it. It is actually pro-choice employees who are seeking to impose their values on others by forcing them to cooperate in actions which pro-life people believe are unjust.

Finally, Dell’Oro writes, “The commitment to a position that enhances both the life of the unborn and the health of women warrants, in my opinion, the policy adopted by LMU: the exclusion of direct coverage for elective abortion by the University, with the provision of a TPA for those who want to maintain open for themselves the space of free choice.” I strongly object to the assertion that elective abortion enhances women’s health. By definition, elective abortion is optional, and is not therefore necessary for the life or health of the mother. Indeed, in many cases, abortion itself seriously damages the physical and psychological health of women. As the Jesuit statement “Standing for the Unborn” put it, “To be pro-life is to be pro-woman. Because we support women, we oppose abortion.”⁷ Finally, “free choice” is not at issue, third party subsidized choices are.

Another defense of offering a TPA appeals to the principle of double effect or double effect reasoning. The action itself of providing insurance that covers abortion is not intrinsically evil as means, nor is providing such insurance evil as an end. Abortion itself, if it happens, is merely a foreseen but not intended effect of the action of providing insurance, an action that has two effects—one bad (facilitating abortion) and one good (facilitating genuine health care). Indeed, one could imagine that someone does not know that the TPA covers abortion. If simply given the choice between providing a TPA which will please some employees and not providing a TPA which will displease some employees, one could imagine an employer choosing the option that pleases the employees, not even being aware that an aspect of this choice is abortion coverage. Double effect reasoning would seem to cover this case.

⁶ Aristotle, *Nicomachean Ethics*, bk. 2, ch. 6.

⁷ Office of Social and International Ministries of the Jesuit Conference, *Standing for the Unborn: A Statement of the Society of Jesus in the United States on Abortion*, March 25, 2003, <http://www.jesuit.org/jesuits/wp-content/uploads/standing-for-the-unborn.pdf>.

The (possible) bad side effect is that someone is enabled to get an abortion. The good effect is that it provides something desired by employees. So, since the evil is not intended, the action would be justified by double effect reasoning.

I am skeptical that double effect reasoning justifies the decision at hand. In this case, the TPA was chosen precisely *because* it covered abortion, not out of ignorance. The evil effect is intended. Obviously, making a TPA available that did not cover abortion, or even one whose coverage of abortion was unknown, would not bring about the desired effect of appeasing faculty and staff wanting abortion coverage. So, it would seem that the first principle of double effect reasoning is violated. The act of choosing some package deal *precisely in order* to facilitate an intrinsically evil act is itself intrinsically evil. Such a case is not merely material cooperation with evil, but in virtue of choosing precisely the package because it includes the evil, it is formal cooperation in evil, which is always wrong.

Even if the evil of abortion were merely a side effect, it is still not clear that providing such coverage is justified by double effect reasoning. The fourth condition of double effect reasoning is that there is a proportionate or commensurate reason for allowing the evil effect. In order to determine whether it is reasonable to allow an evil effect in order to secure the good effect, it is important to consider the gravity of the evil effect and the good effect. Imagine a pregnant woman taking aspirin to relieve a minor headache. She knows that taking the aspirin will cause her child to have Reye's syndrome and therefore be permanently and seriously disabled. Double effect reasoning does not justify her choice, even though the bad effect is not intended by her. The reason is that the evil of the child having Reye's syndrome is so much more serious than the evil of suffering a minor headache. Similarly, the evil of choosing abortion and the evil of an innocent child losing his or her life are very serious evils. The good of appeasing faculty and staff who feel aggravated that the Catholic university does not cover abortion is not commensurate with the evil of abortion.

Furthermore, another factor to be considered in coming to a conclusion about whether a proportionate reason is present is whether alternative ways of securing the good in question are available. Let us say in the case of the headache just described that instead of taking aspirin, the woman took acetaminophen. Both would eliminate the headache. If alternatives exist for securing the good which do not bring about the bad side effect, these alternatives should be chosen rather than the alternative that does bring about the bad side effect. In this case, were there any other ways of helping employees understand that LMU values them as employees and cares about diversity in the faculty and staff? It seems there are multiple ways, such as having administrators give speeches affirming rights to free speech and freedom of belief, explaining how the policy does not take away anyone's legal rights to abortion, and providing extra funding for addressing the concerns of aggrieved parties on campus.

Another defense of LMU's action points out that the prior insurance benefit provided abortion as part of the overall package of health care. This was morally permissible since the cooperation in the wrongdoing of someone choosing abortion would be remote since it is removed in time, space, and by human choice from the actual decision to choose abortion. The new TPA insurance is even more remote,

since now the extra coverage is not paid for by the university and an employee must explicitly opt into the plan. In both cases, the remote material justification for the evil is justified by the goods of providing just compensation for employees in terms of health insurance.

The trouble with this defense of TPAs in this situation is that once abortion can be excluded from coverage, abortion no longer becomes part of a “package deal” and an ethically different situation exists. It is one thing to drive a bus that just happens to go past an abortion clinic, even if you know some people will ride the bus to get an abortion. It is quite another to choose to drive a bus precisely because it goes past an abortion clinic so that those who ride the bus to get an abortion will have someone to give them a ride. When abortion was just one part of the package deal, as it was until fairly recently, the choice of providing health insurance (that as part of the package also included abortion) can be justified as remote material cooperation. By contrast, the choice to set up a TPA precisely with the intention that the TPA cover elective abortion is no longer remote cooperation, since it is no longer simply a “package deal.” In setting up the TPA in this situation, elective abortion coverage is not regrettably tolerated as part of the package of providing health insurance. Rather, the choice of the TPA is motivated precisely by the *inclusion* of elective abortion. Indeed, a TPA that did not include elective abortion coverage would not have been chosen. So the new policy does not virtually eliminate but rather increases the cooperation with evil in comparison to the older plan.

Another argument in favor of providing insurance for abortion is that the lowest paid employees—those who are in most “need” of abortion—would be most adversely affected by removing abortion coverage. Justice demands that those who are the least well-off be especially taken into account.

But those who are least well-off and most vulnerable are not the lowest paid employees but rather the prenatal human beings who may lose their lives. Further, this argument presupposes that getting an abortion is actually beneficial. But if abortion is unjust, it cannot be truly beneficial to the one who gets the abortion. Indeed, making it more difficult for others to do an unjust thing is not itself an injustice done to them, but rather a service to them.

What about just providing insurance that does not cover elective abortion at all? Some would say this option is not possible given the moral commitments of the university to respect all its members (including those who desire elective abortion). However, as Pope John Paul II noted in *Evangelium vitae*, in a pluralistic society, sometimes legislators must take a gradualist approach in protecting human life that does not accomplish all that might be hoped for, as a step toward more perfect protection of human beings prior to birth.

The passage in question from *Evangelium vitae* reads, “when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well-known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a

legitimate and proper attempt to limit its evil aspects.”⁸ For example, a pro-life legislator may vote for a law banning abortion in all cases but rape, incest, and the life of the mother, if not voting for this law would mean that a more permissive law would pass. We should not, in other words, forgo legally protecting some prenatal human beings, if protecting all prenatal human beings is politically impossible.

The case of providing insurance is different from this one. It is indeed possible (as the case of Santa Clara University, Thomas Aquinas College, and many other Catholic institutions show) not to provide insurance for elective abortion at all. It is also far from clear that LMU is similar to an elected official whose absolute personal opposition to abortion is well-known.

CHRISTOPHER KACZOR

⁸ John Paul II, *Evangelium vitae* (March 25, 1995), n. 73.