DRAWING THE LINE ON THE RELIGIOUS LINE-ITEM VETO: HOW *IMBONG V. OCHOA* FAILED TO ACCOMMODATE THE RIGHTS OF THIRD PARTIES WHEN HEALTHCARE PROVIDERS CONSCIENTIOUSLY OBJECT*

*Rachel B. Miranda***

> *"What these companies are arguing is that the sincerity of their beliefs should allow them a line-item veto over federal law. But government is not an á la carte system where you can pick and choose based on your beliefs."*
>
> —John Oliver[1]

INTRODUCTION

More often than not, what we say reveals more about the measure of our sight, rather than the measure of the thing itself.[2]

The April 8, 2014 *En Banc* decision of the Supreme Court in *Imbong v. Ochoa*[3] is heralded not only as a victory for advocates of reproductive health rights, but also as a triumph of secularism over religious fundamentalism. Penned by Justice Jose Mendoza, the decision silenced those who branded Republic Act No. 10354, the Reproductive Health and Responsible Parenthood

---

* *Cite as* Rachel B. Miranda, *Drawing the Line on the Religious Line-Item Veto: How* Imbong v. Ochoa *Failed to Accommodate the Rights of Third Parties When Healthcare Providers Conscientiously Object*, 89 PHIL. L.J. 498, (page cited) (2015). This paper won the Vicente V. Mendoza Prize for Best Review of Supreme Court Decisions (2015), University of the Philippines College of Law.

** J.D., Dean's Medal for Academic Excellence, University of the Philippines College of Law (2015); B.A. Journalism, *cum laude*, College of Mass Communication, University of the Philippines Diliman (2011).

The author would like to thank the following: Prof. Dante Gatmaytan for his mentorship and patience from this paper's proposal to its final editing; Cielo Marjorie Goño for being a willing sounding board and first reader; Dr. Angela Miranda, Ptr. Daniel Miranda, Michelle Miranda, and Dr. Sigfredo Solano for their guidance on issues in biomedical ethics; and Jose Plaza, Allan Chester Nadate, and Modesta Apesa Chungalao for their invaluable assistance and encouragement.

[1] Last Week Tonight, *Last Week Tonight with John Oliver: Hobby Lobby (HBO)*, YOUTUBE (June 30, 2014), http://youtu.be/zSQCH1qyIDo.

[2] From Michel de Montaigne, *On Books*, *in* ON SOLITUDE 21, 25 (M.A. Screech trans., Penguin Books 2009).

[3] G.R. No. 207563, 721 SCRA 146, Apr. 8, 2014 [hereinafter "*Imbong*"].

Act of 2013 (RH Law), as "morally wrong"[4] and a "'[form] of ideological colonization [...] out to destroy' the family."[5]

The decision promotes "reproductive health and [gives] impetus to sustainable human development," said Rep. Edcel Lagman, the RH Law's principal author.[6] As "[a] huge victory,"[7] the decision affirmed the RH Law as a "vital human rights measure"[8] that advocates claim will help the Philippines decrease maternal mortality in the country.[9]

But *Imbong*, far from "[upholding] the separation of church and state and [affirming] the supremacy of government in secular concerns like health and socio-economic development,"[10] gives an unprecedented free reign in favor of the free exercise of religion, without regard for the consequences of doing so. The Court found inadequate the State's interest in imposing obligations on healthcare providers who refuse to provide reproductive health services because of their religious or ethical beliefs. The *ponente* observed the Office of the Solicitor General's "silence and evasion"[11] when the said office attempted to submit a governmental interest compelling enough to "rationalize the curbing of a conscientious objector's right."[12]

What *Imbong* diminishes—and even outright ignores—is that the central conflict at the heart of the RH Law involves not only two actors, but three. The case is, in the Court's own words, "curiously silent" on the right of ordinary citizens to access healthcare services, and the exercise of their religious convictions. When it deigns to address these concerns, the Court only does so to tip the balance in favor of healthcare providers; only during life-threatening emergencies will duty prevail over conscience.

---

[4] Jhoanna Marie Buenaobra & Vicente Cabreza, *RH law supporters, opponents await SC ruling*, PHIL. DAILY INQUIRER, Apr. 8, 2014, *available at* http://newsinfo.inquirer.net/ 592578/rh-law-supporters-opponents-await-sc-ruling.

[5] Paterno Esmaquel II, *Confirmed: Pope 'much updated' on RH law*, RAPPLER, Jan. 31, 2015, *available at* http://www.rappler.com/specials/pope-francis-ph/82527-pope-francis-reproductive-health-law.

[6] Tetch Torres-Tupas, *SC: RH law constitutional*, PHIL. DAILY INQUIRER, Apr. 8, 2014, *available at* http://newsinfo.inquirer.net/592699/sc-waters-down-rh-law.

[7] Mark Meruenas, *SC says RH Law constitutional except for some provisions*, GMA NEWS, Apr. 8, 2014, *available at* http://www.gmanetwork.com/news/story/355961/news/nation/ sc-says-rh-law-constitutional-except-for-some-provisions.

[8] *Philippines MPs approve contraception law*, BBC NEWS, Dec. 17, 2012, *available at* http://www.bbc.com/news/world-asia-20752851.

[9] *Supreme Court okays reproductive health law*, PHILSTAR.COM, Apr 8, 2014, *available at* http://www.philstar.com/headlines/2014/04/08/1310353/update-supreme-court-okays-reproductive-health-law.

[10] Torres-Tupas, *supra* note 6.

[11] *Imbong*, 721 SCRA at 340.

[12] *Id.*

Imbong is symptomatic of an unintended consequence of the reasoning commonly used in Philippine religious freedom jurisprudence: the continuing invisibility of third parties whose rights are also affected by other persons' or groups' invocation of religious beliefs.

This paper seeks to critique the existing protections for third-party rights in religious liberty as demonstrated in *Imbong*. Part 1 deals with the current legal framework that upholds the exercise of conscience as an exception to ostensibly neutral obligations. *First*, it describes the general principles of religious liberty and the permissible limitations on its exercise as determined by the Supreme Court. *Second*, it examines conscientious objection as a protected right, and highlights selected areas of law where the right was invoked, then either granted or denied. *Third*, it discusses conscientious objection in the unique context of the medical profession.

The ruling in *Imbong* on the duty of healthcare providers to refer persons seeking reproductive healthcare services as a limitation on their statutory right to conscientiously object is addressed in Part 2. The duty of referral in the RH Law was unjustifiably characterized by the Court as a burden on religious exercise, despite the act of referral being a part and parcel of the standards of care in the medical profession. Far from endangering the conscience of the healthcare provider, the duty imposed by law is consistent with the ethical precepts that the rights of patients to information and protection from harm should be respected.

Finally, Part 3 argues that the *Imbong* Court's interpretation of the right to conscientious objection, while superficially consistent with precedent, fails to take into account that the accommodations granted in favor of healthcare providers directly third parties, namely patients and other persons seeking healthcare services. The entrenched view that only a compelling state interest will defeat an individual's right to religious liberty is improper or even dangerous when other people's rights are at stake. Conscientious objection and other forms of religious accommodations should only be granted insofar as they do not cause harm to others. The Court's view also endangers the ultimate protective purpose of the Free Exercise Clause in situations that require a careful adjudication of conflicting claims of conscience.

1. The legal recognition of conflicts between conscience and duty

A central tenet of the RH Law is the respect accorded to a person's religious beliefs and values when it comes to reproductive health and responsible parenthood—the individual beliefs of men, women, and families benefiting from the law; as well as healthcare providers whose actions the law guides. The respect for the latter is such that the RH law contains the following provision:

> Sec. 23. *Prohibited Acts.* – The following acts are prohibited:
> (a) Any health care service provider, whether public or private, who shall:
>
> * * *
>
> (3) Refuse to extend quality health care services and information on account of the person's marital status, gender, age, religious convictions, personal circumstances, or nature of work: *Provided,* That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected; however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible: *Provided,* That the person is not in an emergency condition or serious case as defined in Republic Act No. 8344, which penalizes the refusal of hospitals and medical clinics to administer appropriate initial medical treatment and support in emergency and serious cases;

During the 13 August 2013 oral arguments, Sen. Pia Cayetano, the RH Law's sponsor in the Senate, said, "We crafted this law knowing that many women will go to a healthcare provider not knowing what her options are.... It is two relationships [the provider and the patient] that are coming to play [sic] here and we need to protect the right of the patient to that information." Healthcare providers may be protected from prosecution should they refuse to provide reproductive healthcare services and information on the basis of their ethical or religious beliefs. But they must also refer persons seeking these services and information to other providers, in accordance with the right of

choice[13] when it comes to reproductive health. This obligation is more commonly known as the "duty to refer."

But this provision proved to be a lightning rod to anti-RH petitioners. They argued that the "duty to refer" clause violated the right to the free exercise of religion enshrined in Article III, Sec. 5 of the 1987 Constitution. They posited that the safe harbor granted by the RH Law for the religious beliefs and conscience of healthcare providers was insufficient, as the duty to refer still imposed an unacceptable burden on these beliefs. Even though multiple provisions in the RH Law emphasized respect for religious beliefs, the compromise crafted in Sec. 23(a)(3) between those beliefs and the effective mandate of the law still failed to adequately protect religious believers.

According to petitioners Dr. Reynaldo Echavez *et al.*, "Although [the provision] mentions that ethical or religious beliefs shall be respected, the requirement to immediately refer the matter to another healthcare service provider is still considered a compulsion of these practices on the healthcare service provider who objected."[14] The provision also "prohibits the free exercise of religion, in case their religion prohibits such kind of service as a practice."[15]

1.1. The Philippine framework on the free exercise of religion

Article III, Sec. 5 of the Constitution states:

> No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

---

[13] *See* Rep. Act No. 10354 (2012) § 3 ("*Guiding Principles for Implementation.* – This Act declares the following as guiding principles: (a) The right to make free and informed decisions, which is central to the exercise of any right, shall not be subjected to any form of coercion and must be fully guaranteed by the State, like the right itself [...] (h) The State shall respect individuals' preferences and choice of family planning methods that are in accordance with their religious convictions and cultural beliefs, taking into consideration the State's obligations under various human rights instruments.").

[14] Petition for Declaration of Unconstitutionality of R.A. 10354 with Prayer for Issuance of a Temporary Restraining Order, Status Quo Ante Order, and/or Writ of Preliminary Mandatory Injunction, Echavez v. Ochoa, G.R. No. 205478, at 6, *available at* http://www.scribd.com/doc/152345245/RH-Law-Petition-205478.

[15] *Id.*

The Establishment Clause and the Free Exercise Clause are the two guarantees of the right to religious liberty.[16] Consistent with the Constitutional policy of keeping the separation between church and state inviolable,[17] the Establishment Clause ensures "that the political process is insulated from religion and religion from politics."[18] Government should not take sides when it comes to religions.[19] Meanwhile, the Free Exercise Clause is a guarantee of voluntarism, or "the liberty of the religious conscience and prohibits any degree of compulsion or burden, whether direct or indirect, in the practice of one's religion."[20]

Jurisprudence established that the Free Exercise Clause protects two discrete but related concepts: belief and action.[21] A person's right to his beliefs, limited "only by one's imagination and thought,"[22] is entitled to absolute protection. This includes the right against compulsion "to reveal his thoughts or adherence to a religion or belief,"[23] consistent with the Constitutional prohibition against requiring religious tests for the exercise of civil or political rights.

Meanwhile, acts motivated by personal beliefs when "translated to external acts that affect the public welfare"[24] or the rights of others[25] may nevertheless be subject to limitations. The freedom of religious exercise is not automatically

---

[16] *Imbong*, 721 SCRA at 326.

[17] CONST. art. II, § 6.

[18] Pamil v. Teleron, G.R. No. L-34854, 86 SCRA 413, 503, Nov. 20, 1978 (Muñoz-Palma, *J., dissenting*).

[19] Aglipay v. Ruiz, G.R. No. L-45459, 64 Phil. 201, Mar. 13, 1937.

[20] Estrada v. Escritor, A.M. No. P-02-1651, 408 SCRA 1, 134, Aug. 4, 2003 [hereinafter "*Estrada (2003)*"].

[21] *Id. See also* Iglesia ni Cristo v. CA, G.R. No. 119673, 259 SCRA 529, 543, Jul. 26, 1996 (discussing this two-fold aspect of the "right to religious profession and worship"); Bowen v. Roy, 476 U.S. 693, 699 (1986) ("Our cases have long recognized that a distinction between the freedom of individual belief, which is absolute, and the freedom of individual conduct, which is not absolute."); Thio Li-Ann, *Courting Religion: The Judge Between Caesar and God in Asian Courts*, SING. J. LEGAL ETHICS 52, 53 (2009) ("Religious freedom is typically apprehended as having an internal dimension *(forum internum)* and an external one *(forum externum)*. The *forum internum* related to freedom of conscience and is absolute while the *forum externum* relates to the freedom to manifest religious practice which is qualified.").

[22] Gerona v. Secretary of Education, G.R. No. L-13954, 106 Phil 2, 9, Aug. 12, 1959 [hereinafter "*Gerona*"].

[23] United Nations Human Rights Committee, 'General Comment 22' on Article 18, U.N. Doc. HRI/GEN/1/Rev.1 ¶ 35 (1994).

[24] Ebralinag v. The Division Superintendent of Schools of Cebu, G.R. No. 95770, 219 SCRA 256, 270, Mar. 1, 1993 [hereinafter "*Ebralinag*"].

[25] *Imbong*, 721 SCRA at 323.

infringed when the State regulates "the manner by which [believers] [attempt] to translate [belief or choice of their religion] into action."[26]

The Court has had the opportunity to distinguish the permissible limits on religious exercise depending on the form of the external act, namely if the act is purely speech or conduct. Since religious speech intersects with the right to freedom of expression—another so-called "preferred"[27] right—its regulation triggers the strictest standards of judicial scrutiny. The State must show that there is a "clear and present danger"[28] or "grave and immediate danger"[29] before religious speech can be restricted.[30] But even religious speech may at times be subject to the same restrictions imposed on non-religious speech.[31]

When the act extends beyond speech and becomes conduct, the "'compelling state interest' test" or "strict scrutiny test"[32] determines whether or not an individual may invoke the Free Exercise Clause to carve out an exemption from a generally-applicable law, as laid down in the 2003 landmark decision of *Estrada v. Escritor*[33] and the subsequent resolution on the merits in 2006.[34] The *Estrada* cases involved an administrative complaint for immorality against Soledad Escritor, a court interpreter, who was living with a man not her husband, and with whom she had a son. Their living arrangement had been consistent with their religious beliefs as members of the religious sect Jehovah's Witness. In this case, the Supreme Court extensively discussed the history of the right to freedom of religion in both American and Philippine jurisprudence, and the *Estrada* cases are the source of the "benevolent neutrality" framework which guides the Philippine interpretation of the Free Exercise Clause today.

According to the *Estrada* Court, benevolent neutrality "recognizes that government must pursue its secular goals and interests but at the same time strives to uphold religious liberty to the greatest extent possible within flexible constitutional limits."[35] Accommodating religion will allow persons "to exercise

---

[26] German v. Barangan, G.R. No. L-68828, 135 SCRA 514, 525, Mar. 27, 1985.

[27] Phil. Blooming Mills Employment Org. v. Phil. Blooming Mills Co. Inc., G. R. No. L-31195, 51 SCRA 189, 202, Jun. 5, 1973.

[28] Iglesia ni Cristo v. CA, 259 SCRA at 544.

[29] Victoriano v. Elizalde Rope Workers Union, G.R. No. L-25246, 59 SCRA 54, 72, Sept. 12, 1974 [hereinafter "*Victoriano*"].

[30] *See Estrada (2003).*

[31] Soriano v. Laguardia, G.R. No. 164785, 587 SCRA 79, Apr. 29, 2009.

[32] White Light Corp. v. City of Manila, G.R. No. 122846, 576 SCRA 416, Jan. 20, 2009, *citing* Footnote 4, United States v. Carolene Products, 304 U.S. 144, 58 S.Ct. 778, 82 L.Ed. 1234 (1938).

[33] *Estrada (2003).*

[34] Estrada v. Escritor, A.M. No. P-02-1651, 492 SCRA 1, Jun. 22, 2006 [hereinafter "*Estrada (2006)*"].

[35] *Estrada (2003)*, 408 SCRA at 182.

their religion without hindrance,"[36] unless the State demonstrates that it has overcome the burden of the "compelling state interest test" to validly refuse a religious exemption from a "generally applicable government regulation."[37]

Two preliminary conditions need to be present for the "compelling state interest test" to apply: *first*, that "a law or government practice inhibits the free exercise of respondent's religious beliefs," and *second*, that there is "no doubt as to the sincerity and centrality of her faith to claim the exemption based on the [F]ree [E]xercise [C]lause."[38] Once these conditions are met, the burden shifts to the State to prove that the interest behind the law or regulation "is so compelling that it should override [the] respondent's plea of religious freedom [...] [and] that the means employed by the government in pursuing its interest is the least restrictive to respondent's religious exercise."[39] The State must prove that it has a "compelling state interest" or needs to prevent "a substantive evil, whether immediate or delayed" to regulate the conduct.[40] More than undertaking a "mere balancing of interest," the State bears the burden of showing the gravest abuses[41] of religious liberty that make regulation necessary.

But while the *Estrada* cases bestowed the compelling state interest test as the term of art to the Philippine bench, bar, and public, the legal recognition of conscience as a defense against the non-performance of a legal duty has existed for as long as governments have imposed legal duties on their religiously heterogeneous citizens.

1.2. The right of conscientious objection to legal duties

The right to conscientiously object against certain laws or regulations has been recognized as rooted in "morals and sound policy [that] require that the state should not violate the conscience of the individual,"[42] where conscience is "an individual's inward conviction of what is morally right and morally wrong."[43] As explained by Chief Justice Fernando:

---

[36] *Estrada (2006)*, 492 SCRA at 42.

[37] *Id.*, *citing* Michael McConnel, *Accommodation of Religion: An Update and a Response to the Critics*, 60 GEO. WASH. L. REV. 685, 688 n. 15 (1991-1992), *citing* McDaniel v. Paty, 435 U.S. 618, 639 (1978) (Brennan, *J.*, *concurring*).

[38] *Estrada (2006)*, 492 SCRA at 81.

[39] *Estrada (2003)*, 408 SCRA at 190.

[40] *Id.* at 170.

[41] *Id.*, *citing* Sherbert v. Verner, 374 U.S. 398 (1963).

[42] United States v. Seeger, 380 U.S. 163, 170 (1965).

[43] Russell Wolff, *Conscientious Objection: Time for Recognition as a Fundamental Human Right*, 6 ASILS INT'L L.J. 65, 67 (1982) (Citation omitted.)

> When one's belief collides with the power of the [S]tate, the latter is supreme within its sphere and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the state has always been maintained. The reservation of that supreme obligation, as a matter of principle, would unquestionably be made by many of our conscientious and law-abiding citizens.[44]

Another purpose of conscientious objection is to "protect religious believers from discrimination"[45] when their beliefs and practices, which may not conform to society's dominant rules of conduct, conflict with an ostensibly neutral law. Conscientious objection "promote[s] the general welfare by preventing discrimination against those members of religious sects"[46] whose beliefs may otherwise be considered bizarre by the majority.

The right to conscientious objection is considered closely related but not necessarily identical to the exercise of religious freedom.[47] Although the claim of conscientious objection traditionally requires proof that the objection is based upon some "religious training and belief,"[48] the United States Supreme Court has recognized non-religious claims of conscientious objection, so long as the claimants invoke "a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by God."[49]

However, the extent to which Philippine law and courts recognize the fine distinctions[50] between the right to conscience and right to religion is not entirely clear. All successful claims of conscientious objection in jurisprudence refer to the right to freedom of religion, particularly the relationship of "man to his Creator,"[51] although it has paid lip service to protecting the right to disbelieve.[52] Even when conscientious objection in statutes recognize a nonreligious reason for the refusal (as was the case in the RH Law, which also included ethical

---

[44] *Victoriano*, 59 SCRA at 87 (Fernando, *J., concurring*), *citing* United States v. Macintosh, 283 U.S. 605 (1931) (Hughes, *C.J., dissenting*).

[45] Kara Loewentheil, *When Free Exercise is a Burden: Protecting "Third Parties" in Religious Accommodation Law*, 62 DRAKE L. REV. 433, 453 (2014).

[46] *Victoriano*, 59 SCRA at 71.

[47] Wolff, *supra* note 43, at 68.

[48] Clay v. United States, 403 U.S. 698, 700 (1971).

[49] United States v. Seeger, 380 U.S. at 176.

[50] *See* Micah Schwartzmann, *What If Religion Is Not Special?*, 79 U. CHI. L. REV. 1351 (2012); Steven D. Smith, *What Does Religion Have to Do with Freedom of Conscience?* 76 U. COLO. L. REV. 910 (2005).

[51] *Ebralinag*, 219 SCRA at 270.

[52] *See* Florin T. Hilbay, *The Constitutional Status of Disbelief*, 84 PHIL. L.J. 579 (2010). Even when the Court mentions disbelievers, as it did in *Imbong*, it will ultimately revert to the notion that "our people generally believe in a deity, whatever they conceive Him to be." (*Imbong*, 721 SCRA at 324).

beliefs as a permissible reason to object to the law's obligations), the Court focuses on religion, and religion alone.

This lack of recognition of the right to conscientious objection independent of religious liberty may in the future be a source of conflict when the Establishment Clause[53] or equal protection rights are at play.

Prior to the Court's ruling in *Imbong*, the right to conscientious objection was most prominent in three areas where the State sought to impose legal duties in furtherance of national policies or principles: national defense, inculcation of patriotism, and labor relations.

1.2.1. Compulsory military service

Conscientious objection to military service "arise[s] mainly in States where there is an obligation to perform military duties, rather than in those States or societies where military service is voluntary."[54] Compulsory military service, or conscription, is a consequence of maintaining a standing army for national defense whenever voluntary entry into the service decreases.[55] The power of a State to conscript its citizens is also derived from the duty of each citizen to protect the State.[56] Because of the patriotic purpose of conscription, conscientious objectors have historically been a "persecuted minority."[57] During World War I, Americans exempted from the draft were still inducted into non-combatant service. If they refused to serve, they were sent to courts martial and sentenced to serve time in prison, where they were treated poorly.[58] Penal laws against criticizing the drafts were routinely upheld.[59]

A major aspect of the anti-war movement revolved around the right of persons to resist conscription.[60] During the drafting of the International Covenant on Civil and Political Rights (ICCPR), a proposal by the Philippine delegate Mauro Mendez to include in the provision on the right to freedom of religion the statement "Persons who conscientiously object to war as being

---

[53] *See* Rodney K. Smith, *Conscience, Coercion and the Establishment of Religion: The Beginning of an End to the Wandering of a Wayward Judiciary?* 43 CASE WESTERN RESERVE L. REV. 917 (1993).

[54] United Nations Office of the High Commissioner of Human Rights, Conscientious Objection to Military Service, HR/Pub/12/1 (2012), at 2.

[55] *Id., citing* RICHARD HOLMES (ED.), THE OXFORD COMPANION TO MILITARY HISTORY 3 (2002).

[56] Arver v. United States, 245 U.S. 366 (1918).

[57] PETER IRONS, THE COURAGE OF THEIR CONVICTIONS 156 (1990).

[58] *Id.* at 157.

[59] *See, e.g.,* Schenck v. United States, 248 U.S. 47 (1919) (on the First World War); United States v. O'Brien, 391 U.S. 367 (1968) (on the Vietnam War).

[60] Jeremy K. Kessler, *The Invention of a Human Right: Conscientious Objection at the United Nations, 1947-2011,* 44 COLUM. HUMAN RTS. L. REV. 753, 763 (2013).

contrary to their religion shall be exempt from military service"[61] was withdrawn following objections by the other drafters, who refused to recognize conscientious objection as a guaranteed right.[62]

But following the devastation of the two World Wars, armed conflicts fell out of fashion among the international community, as enshrined in the Charter of the United Nations.[63] While not formally recognizing conscientious objection as a right, many States began to legislate conscientious objection as an exemption to conscription, or scrapped compulsory military service altogether.[64] This culminated in 2007's *Yeo-Bum Yoon and Myung Jin-Choi v. Republic of Korea*,[65] where the United Nations Human Rights Committee, the independent treaty body tasked to interpret the provisions of the ICCPR, found that the right to freedom of religion included the right to conscientious objection. Compelling persons to use lethal force in conflict with their conscience or religious beliefs violates "[the] protection [...] against being forced to act against genuinely-held religious belief." South Korea's failure to provide alternatives to members of Jehovah's Witness instead of its two-year military service requirement thus violated the ICCPR.

Conscientious objection had also been used as a tool by anti-colonial activists in apartheid regimes that press local populations into military service.[66] The United Nations in 1978 recognized[67] that people have a right to refuse to serve in militaries or police forces that enforce apartheid. Governments and organizations have an obligation to assist conscientious objectors who fled countries such as South Africa because of their refusal.[68] Resistance to colonial conscription became a form of protest against illegitimate foreign and domestic policies of colonial regimes.[69]

---

[61] ÖZGÜR HEVAL ÇINAR, CONSCIENTIOUS OBJECTION TO MILITARY SERVICE IN INTERNATIONAL HUMAN RIGHTS LAW 53 (2013).

[62] MARC J. BOSSUYT, GUIDE TO THE "TRAVAUX PRÉPARATOIRES" OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 364 (1987).

[63] The Preamble of the Charter of the United Nations states, "We the Peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind [...]" U.N. Charter, preamble.

[64] United Nations Office of the High Commissioner of Human Rights, *supra* note 54, at 2.

[65] United Nations Human Rights Committee, CCPR/C/88/D/1321-1322/2004, Jan. 23, 2007.

[66] Kessler, *supra* note 60, at 771.

[67] Status of Persons Refusing Service in Military or Police Forces Used to Enforce Apartheid, U.N. G.A. Res. 33/165, U.N. GAOR, 33rd Sess., Supp. No. 45, U.N. Doc. A/33/45 (1978), at 154.

[68] Policies of Apartheid of the Government of South Africa, U.N. G.A. Res. 39/72 A-G, U.N. Doc. A/39/51 (13 December 1984), at 42.

[69] Kessler, *supra* note 60, at 771.

There has been no successful invocation of conscientious objection to compulsory military service in Philippine jurisprudence. In the case of *People v. Lagman*,[70] the Supreme Court upheld the convictions of two men who refused to register for military training as required by Commonwealth Act No. 1, or the National Defense Act. The Court grounded its ruling on the then-prevailing jurisprudence in the United States, where compulsory military service had been considered a "consequence of [the Government's] duty to defend the State and [...] reciprocal with its duty to defend the life, liberty, and property of the citizen."[71] It cited *Jacobson v. Massachusetts*,[72] an American case that upheld a compulsory vaccination law as a valid exercise of police power. The U.S. Supreme Court in *Jacobson* said, "[A] person and yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense."[73]

The Constitution today states that "all citizens may be required, under conditions provided by law, to render personal military or civil service"[74] Executing this provision, the 1991 Citizen Armed Forces of the Philippines Reservist Act[75] lists an exclusive enumeration of exemptions[76] from compulsory registration for military service, which does not include moral or religious objection to military service or war. It may be possible that due to the Constitutional mandate of civilian defense of the State, claims to conscientious objection to military service will not prosper even today. But *People v. Lagman* was decided during a time when it was unquestionable that religious beliefs were subordinate to the laws of the State. The paradigm has now shifted towards the opposite direction.[77]

---

[70] People v. Lagman, 66 Phil. 13 (1938).

[71] *Id.* at 15.

[72] 197 U.S. 11 (1905) [hereinafter "*Jacobson*"].

[73] People v. Lagman, 66 Phil. at 16.

[74] CONST. art. II, § 4.

[75] Rep. Act No. 7077 (1991).

[76] R.A. 7077, § 15 states: "Section 15. *Exemption from Compulsory Military Training.* – The following are exempted from military training: (1) Members of the clergy of any religious order or sect, except if they volunteer; (2) Those in the active service of the Armed Forces of the Philippines and police members of the Philippine National Police; (3) Superintendent and uniformed members of the National Penitentiary, corrective institutions, and insane asylums; and (4) Licensed air and maritime pilots, navigators and merchant marine officers."

[77] Another point to consider is that the accused in *Lagman* did not invoke their religious beliefs as their defense against conscription. Tranquilino Lagman claimed he had to support his father, "had no military leanings, and [did] not wish to kill or be killed." Primitivo de Sosa claimed he could not enter the military as he had to support his mother and minor brother.

1.2.2. Flag salutes

The clash between patriotism and individual liberty is evident in what are now known as the flag salute cases.

At the height of the civil-liberties litigation in the United States involving the Jehovah's Witnesses during the 1940s, U.S. Supreme Court Justice Harlan Stone once wrote to a friend, "The Jehovah's Witnesses ought to have an endowment in view of the aid which they give in solving problems of civil liberties."[78] One of the cases Justice Stone was alluding to involved the refusal of schoolchildren who were Jehovah's Witnesses to participate in daily salutes to the American flag.[79] Their refusal was grounded on the historical oppression of Jehovah's Witnesses under Nazi Germany,[80] as well as their interpretation of Biblical admonitions against false gods.[81] A U.S. Supreme Court decision in 1940[82] upholding these children's expulsion from school for refusing to salute the flag was reversed two years later in *West Virginia State Board of Education v. Barnette*,[83] but not without violent reprisals against Jehovah's Witnesses across the country in the interim.[84]

A similar series of events occurred in the Philippines. In 1955, Republic Act No. 1265 made daily flag ceremonies compulsory in public and private schools. Parents who were Jehovah's Witness asked the Secretary of Education to exempt their children "'from executing the formal pledge, singing [...] the national anthem, and reciting the patriotic pledge.'"[85] They were denied. Two cases arose from this law: *Gerona v. Secretary of Education*[86] and *Balbuna v. Secretary of Education*.[87] In both cases, the Supreme Court upheld the compulsory flag salutes.

The *Gerona* Court took note of the two U.S. flag salute cases, and sided with *Gobitis* as it was more "in keeping with the spirit of our Constitution and

---

[78] Tony Mauro, *Thank Jehovah's Witnesses for speech freedoms*, USA TODAY, May 30, 2000, *available at* http://www.adherents.com/largecom/jw_freedom.html (last visited May 28, 2015).

[79] IRONS, *supra* note 57, at 15.

[80] *Id.* at 16.

[81] MARITES DANGUILAN VITUG & CRISELDA YABES, OUR RIGHTS, OUR VICTORIES: LANDMARK CASES IN THE SUPREME COURT 44 (2011).

[82] Minersville School District v. Gobitis, 310 U.S. 586 (1940) [hereinafter "*Gobitis*"].

[83] 319 U.S. 624 (1943) [hereinafter "*West Barnette*"]. It must be noted, however, that in the flag salute cases, the students' objection was not a purely religious claim; the U.S. Supreme Court also decided the case on the basis of freedom of expression.

[84] IRONS, *supra* note 57, at 23.

[85] VITUG & YABES, *supra* note 81, at 45.

[86] G.R. No. 13954, 106 Phil. 2, Aug. 12, 1959 [hereinafter "*Gerona*"].

[87] Balbuna v. Secretary of Education, G.R. No. 14283, 110 Phil. 150, Nov. 29, 1960.

the governmental policy"[88] to promote nationalism and love for country through R.A. No. 1265. It distinguished *West Barnette* as the expulsion of the students in that case violated a law that required compulsory attendance in school of school-aged children. While there was a similar law in the Philippines, Republic Act No. 896, "said law contains so many exceptions and exemptions that it [could] be said that a child of school age is very seldom compelled to attend school."[89] Unlike the U.S., R.A. 896 did not impose any sanctions against children who did not attend school, or against their parents.

The Court also said that the practice of religion could be circumscribed by reasonable and non-discriminatory laws, under the theory that all citizens may be required to give up a portion of their own rights to benefit other people or the general welfare. An exemption in favor of the religious beliefs of the Jehovah's Witnesses would open the floodgates to other exemptions in order to prevent discriminatory treatment in favor of the Jehovah's Witnesses, thus weakening the thrust of R.A. 1265.

It took the Court almost 30 years to change its mind on compulsory flag salutes. Unlike *Gerona*, which emphasized the importance of instilling love for country and national unity, *Ebralinag* began with the principle that "religious freedom is a fundamental right entitled to the highest priority and the amplest protection among human rights."[90] Any restraint on the exercise of this freedom must be to prevent "a grave and present danger of a character both grave and imminent, of a serious evil to public safety, public morals, public health or any other legitimate public interest."[91] The *Ebralinag* Court observed that *Gerona*'s fear that exempting Jehovah's Witnesses would make flag salutes a "thing of the past"[92] had not actually taken place. In fact, removing children from school would actually deprive them of the schooling calculated to teach them the very values being promoted by the flag salute. As argued by the Witnesses' counsel Felino Ganal, "saluting the flag did not have a direct influence on the children's love for country."[93]

---

[88] *Gerona*, 106 Phil. at 19.

[89] *Id.*

[90] *Ebralinag*, *citing* German v. Barangan, 135 SCRA 514 (1986) (Enrique, *C.J.*, *separate opinion*).

[91] *Ebralinag*, *citing* German v. Barangan, 135 SCRA 514 (1986) (Teehankee, *J.*, *dissenting*).

[92] *Gerona*, 106 Phil. at 92.

[93] VITUG & YABES, *supra* note 81, at 51.

1.2.3. Workers' self-organization

Labor law—which at its heart emphasizes the power of collective action—is another source of conscientious objection jurisprudence.

Among the rights granted to labor under the Constitution is the right of workers to self-organize,[94] in order to recognize and balance the "inherent economic equality between labor and management."[95] In the furtherance of this purpose, the Labor Code provides that "[n]othing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except for those employees who are already members of another union at the time of the signing of the collective bargaining agreement."[96] These "closed shop" and "union shop" provisions are in accord with:

> [...] the policy of the State to promote unionism to enable the workers to negotiate with management on the same level and with more persuasiveness than if they were to individually and independently bargain for the improvement of their respective conditions. ... It is for this reason that the law has sanctioned stipulations for the union shop and the closed shop as a means of encouraging the workers to join and support the labor union of their own choice as their representative in the negotiation of their demands and the protection of their interests vis-à-vis the employer.[97]

The right of workers to self-organization also emanates from the Constitutional right to freedom of association.[98] Thus, employees should also be allowed to not exercise the right to self-organize, as the "[f]reedom to associate necessarily includes the freedom not to associate."[99] The Court has since recognized numerous exceptions to these union security clauses.[100]

In 1961, an amendment was introduced by Republic Act No. 3350 to the Industrial Peace Act, one of the predecessors of today's Labor Code. This amendment codified an exception to union security provisions on behalf of "members of any religious sects which prohibit affiliation of their members in

---

[94] CONST. art. 13, § 3.

[95] Jamer v. NLRC, G.R. No. 112630, 278 SCRA 632, 650, Sept. 5, 1997.

[96] LABOR CODE, art. 258, ¶ e.

[97] Liberty Flour Mills Employees v. Liberty Flour Mills, Inc., G.R. No. 58768, 180 SCRA 668, 679, Dec. 29, 1989.

[98] CONST. art. 3, § 8.

[99] Bank of the Phil. Islands v. BPI Employees Union-Davao Chapter Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010 (Carpio, *J., dissenting*).

[100] *Id.*

any such labor organization." The constitutionality of this amendment was challenged in 1974[101] when Benjamin Victoriano, a member of the religious sect Iglesia ni Cristo, was dismissed from Elizalde Rope Factory when he resigned from the employees' union despite a closed shop provision in the collective bargaining agreement.

The Court explained the purpose of the statutory exemption as protecting:

> [...] employees against the aggregate force of the collective bargaining agreement, and relieving certain citizens of a burden on their religious beliefs; and by eliminating to a certain extent economic insecurity due to unemployment, which is a serious menace to the health, morals, and welfare of the people of the State [...][102]

In the subsequent case of *Reyes v. Trajano*,[103] decided under the Labor Code (which did not retain R.A. No. 3350's amendment to the union security clause provision), the Court affirmed the accommodation granted in *Victoriano*. It ordered the "no union" votes cast by employees who were members of Iglesia ni Cristo be counted in a certification election, despite the ruling of the Bureau of Labor Relations that the religious beliefs of these employees had deprived other employees of their right to be represented within their bargaining unit. The right to self-organize must also respect situations wherein majority of the workers do not wish to organize for the purposes of collective bargaining, because otherwise, the minority would be permitted "to impose their will on the majority."[104]

1.3. Conscientious objection for healthcare providers

Conscience clauses are legislation that protects healthcare providers (such as physicians, nurses, midwives, and even pharmacists) from legal liability when they refuse to provide services on the basis of religion or ethics.[105] They are a relatively recent invention, having appeared in United States legislation starting the mid-1970s.[106] They can be traced to what may be the most controversial

---

[101] *See Victoriano*, 59 SCRA.

[102] *Id.* at 74.

[103] G.R. No. 84433, 209 SCRA 484, Jun. 2, 1992.

[104] *Id.* at 492.

[105] Jed Miller, Note, *The Unconscionability of Conscience Clauses: Pharmacists' Consciences and Women's Access to Contraception*, 16 HEALTH MATRIX 237, 241 (2006).

[106] Tom C. W. Lin, *Treating an Unhealthy Conscience: A Prescription for Medical Conscience Clauses*, 31 VERMONT L. REV. 105, 107 (2006); Mary K. Collins, *Conscience Clauses and Oral Contraceptives: Conscientious Objection or Calculated Obstruction?*, 15 ANNALS HEALTH L. 37, 47 (2006).

decision in the history of the U.S. Supreme Court[107]—a decision that prompted even the 1986 Constitutional Commission to include the sentence, "The State shall equally protect the life of the mother and the unborn from conception"[108] in the 1987 Constitution.[109]

For the first time, the U.S. Supreme Court in *Roe v. Wade*[110] recognized a constitutional right to have an abortion. *Roe* invalidated a Texas law criminalizing abortion after the U.S. Supreme Court weighed three justifications for the law—discouragement of illicit sexual conduct, mortality rates when women underwent abortion procedures, and protection of prenatal life—and found them all wanting. Having previously found that the Bill of Rights protected "zones of privacy" in fundamental personal rights, the U.S. Supreme Court said:

> The right to privacy, whether it be founded on the Fourteenth Amendment's concept of personal liberty [...] or in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.[111]

Despite recognizing the right to have an abortion, *Roe* restricted its exercise to the first trimester of pregnancy, citing concerns in "safeguarding health, in maintaining medical standard, and in protecting potential life."[112]

The decision raised fears that hospitals receiving federal funds might be compelled to provide access to abortion, even Catholic ones.[113] This prompted the U.S. Congress to enact the "Church Amendment" to make the receipt of public money not contingent on the provision of abortion or any other services contrary to the religious beliefs or moral convictions of the healthcare provider or its personnel.[114] Succeeding laws, such as the 1988 Danforth Amendment to

---

[107] Katherine A. James, *Conflicts of Conscience*, 45 WASHBURN L.J. 415, 417 (2006). *See also* JEFFREY TOOBIN, THE NINE (2007) ("There were two kinds of cases before the Supreme Court. There were abortion cases—and there were all the others. Abortion was (and remains) the central legal issue before the [U.S. Supreme Court]. It defined the judicial philosophies of the justices. It dominated the nomination and confirmation process. It nearly delineated the difference between the national Democratic and Republican parties.").

[108] CONST. art. 2, § 12.

[109] JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 77-78 (1996).

[110] 410 U.S. 113 (1973) [hereinafter "*Roe*"].

[111] *Id.* at 153.

[112] *Id.* at 154. This limitation has since been struck down in Planned Parenthood v. Casey, 505 U.S. 833 (1992).

[113] Robin Fretwell Wilson, *The Limits of Conscience: Moral Clashes over Deeply Divisive Healthcare Procedures*, 34 AM. J. L. & MED. 41, 47 (2008).

[114] *Id.* at 48.

the Civil Rights Restoration Act of 1987, expanded the scope of religious protection to include opt-outs from referrals for "abortion-related services."[115]

As medical advances continue to push the barriers of what may be done to and with the human body, so has the scope of conscience clauses expanded from its beginnings in reproductive health services. Conscience clauses are increasingly appearing to protect healthcare providers' beliefs when it comes to end-of-life care,[116] stem-cell research and other forms of genetic experimentation,[117] vaccinations,[118] psychiatric treatment,[119] or even "any unspecified health service to which a religious or moral objection may be raised".[120]

Because of their growing prevalence, conscientious objection in health care has become a topic of heated debate, both inside and outside the healthcare industry. Unlike the "traditional" forms of conscientious objection—military service, flag salutes, and, to a lesser extent, workers' self-organization[121]—the objector's refusal in this particular instance affects only herself. A healthcare provider who objects to providing certain health services does not withhold them from herself. What she or any objector does is refuse to provide these services to another, who may be a patient, or any other person seeking those services.[122]

---

[115] *Id.* at 50.

[116] Judith F. Daar, *A Clash at the Bedside: Patient Autonomy v. A Physician's Professional Conscience*, 44 HASTINGS L.J. 1241 (1992-1993).

[117] Lucas Mina, Note, *Stem Cell Based Treatments and Novel Considerations for Conscience Clause Legislation*, 8 IND. HEALTH L. REV. 471 (2010-2011).

[118] Daniel A. Salmon & Andrew W. Seigel, *Religious and Philosophical Exemptions from Vaccination Requirements and Lessons Learned from Conscientious Objectors from Conscription*, 116 PUBLIC HEALTH REPORTS 289 (2001).

[119] I. Glenn Cohen et al., *When Religious Freedom Clashes with Access to Care*, 371 N. ENGL. J. MED. 596, 598 (2014).

[120] Elizabeth B. Deutsch, *Expanding Conscience, Shrinking Care: The Crisis in Access to Reproductive Care and the Affordable Care Act's Nondiscrimination Mandate*, 124 YALE L.J. 2202 (2015).

[121] *Reyes v. Trajano* noted in passing that the effect of counting the "no union" ballots of employee-members of Iglesia ni Cristo may be that the particular bargaining unit won't have a union representing the employees, even those who don't share their religious beliefs in the matter of unionism. *See also* Malou Mangahas & Avigail M. Olarte, *A Most Powerful Union*, PHILIPPINE CENTER FOR INVESTIGATIVE JOURNALISM, Apr. 29-30, 2002, *available at* http://pcij.org/stories/2002/inc2.html. ("[Iglesia ni Cristo] [c]hurch members are also not allowed to join unions, making them ideal recruits for certain business establishments. 'The church itself is a union, a most powerful union,' said a senior INC member.").

[122] Nancy Berlinger, *Conscience Clauses, Health Care Providers, and Parents*, *in* FROM BIRTH TO DEATH AND BENCH TO CLINIC: THE HASTINGS CENTER BIOETHICS BRIEFING BOOK FOR JOURNALISTS, POLICYMAKERS, AND CAMPAIGNS (MARY CROWLEY, ed.) 35 (2008).

Some medical professionals and legal scholars decry the existence of conscientious objection to health care entirely. By entering the medical profession, healthcare providers are expected to provide health services solely on the basis of their being "legal, beneficial, desired by the patient, and part of a just healthcare system."[123] Since healthcare providers have "exclusive possession and exercise of skills that are crucial to the health of individuals,"[124] they could not "simply refuse to treat or care for a class of patients for any reason she devises, however arbitrary or trivial."[125] Objecting healthcare providers should not exercise a "moral veto"[126] over choices made by persons seeking health services.

Others favor these exemptions since people "should not be forced to help another engage in conduct the person believes is wrong or immoral."[127] Conscience clauses also encourage healthcare providers to practice medicine by removing the fear of liability due to their beliefs.[128] Healthcare providers should not be forced to choose between violating their personal beliefs and breaking laws.[129] Without the protections afforded by conscience clauses, healthcare providers may be subject to emotional and moral distress that may adversely affect the quality of patient care.[130]

These conflicting viewpoints have not yet been resolved to anybody's satisfaction. What is certain is that any accommodation in favor of religious beliefs and conscience should be balanced with other rights, such as timely and informed access to healthcare.[131] Legislators—and courts—should not play a zero-sum game,[132] whereby rights granted to one party necessarily mean rights

---

[123] Julian Savulescu, *Conscientious objection in medicine*, 332 BRIT. MED. J. 294, 295 (2006).

[124] Leslie Cannold, *Consequences for patients of health care professionals' conscientious actions: the ban on abortions in South Australia*, 20 J. MED. ETHICS 80, 81 (1994).

[125] *Id.*

[126] Joel Frader & Charles L. Bosk, *The Personal is Political, the Professional is Not: Conscientious Objection to Obtaining/Providing/Acting On Genetic Information*, 151C AM. J. MED. GENET. C. SEMIN. MED. GENET. 62 (2009).

[127] Nancy K. Kubasek, et al, *The Questionable Constitutionality of Conscientious Objection Clauses for Pharmacists*, 16 J. L. & POL'Y 225, 230 (2007-2008).

[128] Maya M. Noroha, *Removing Conscience from Medicine: Turning the Hippocratic Oath into a Hypocrite's Pledge*, 23 GEO. J. LEGAL ETHICS 733, 739 (2009-2010).

[129] Heather Rae Skeeles, *Patient Autonomy Versus Religious Freedom: Should State Legislatures Require Catholic Hospitals to Provide Emergency Contraception to Rape Victims?*, 60 WASH. & LEE L.REV. 1007, 1040 (2003).

[130] Douglas White and Baruch Brody, *Would Accommodating Some Conscientious Objection by Physicians Promote Quality in Medical Care?*, 305 J. AM. MED. ASS'N 1804 (2011).

[131] George Chudoba, *Conscience in America: The Slippery Slope of Mixing Morality with Medicine*, 36 SW. U. L. REV. 85, 104 (2007).

[132] Mark Campbell, *Conscientious Objection in Medicine: Various Myths*, 166 L. & JUST. – CHRISTIAN L. REV. 28, 30 (2011). A zero-sum game is one where "the winnings of one player are the losses of another, so that the algebraic sum of the payoffs to each player always equal zero."

should be taken away from another. Unfortunately, the *Imbong* Court played this game, and at the final tally, ordinary citizens were the ones who lost.

2. The unconscionable duty to refer in *Imbong*

While the Court in *Imbong* lauded the RH Law's respect for diversity of religious beliefs, it nevertheless struck down the duty to refer for violating the right to free exercise of religion.[133] Applying the strict scrutiny test, it found that the duty to refer burdened the right to religious freedom,[134] that the State interest was not sufficiently compelling,[135] and that there were other less restrictive means that Congress might have used to achieve the State interest.[136] Conscientious objectors were entitled to "an exemption from obligations under the RH Law,"[137] with life-threatening cases requiring the performance of emergency procedures being the sole exception.[138]

By its pronouncement, the Court ignores the special role of healthcare providers in society. They provide services essential to the public, which necessarily entails that they "serve the interest of [their] patient[s] with the greatest of solicitude, giving them always [their] best talent and skill."[139] Contrary to the Court's view, referral is a long-standing ethical practice consistent with the role and responsibilities of medical professionals.

Kathryn E. Kovacs, Hobby Lobby *and the Zero-Sum Game*, 92 WASH. U. L. REV. 255, 256 (2015), *citing* Winton E. Williams, *Resolving the Creditor's Dilemma: An Elementary Game-Theoretic Analysis of the Causes and Cures of Counterproductive Practices in the Collection of Consumer Debt*, 48 FLA. L. REV. 607, 632 (1996).

[133] *Imbong*, 721 SCRA at 334.

[134] *Id.* at 334-35. Curiously, despite its repeated invocation of the *Estrada* cases, the *Imbong* Court didn't apply the second of the two preliminary conditions preceding the application of the compelling state interest test. The determination of sincerity of the holder of religious beliefs has been deemed necessary for the Free Exercise Clause "to avoid the mere claim of religious beliefs to escape a mandatory regulation" (*Estrada* (2003)). Its purpose is to ensure that the purpose of exemption is truly based on the individual's personal convictions, and not out of "financial or otherwise self-interested motive" (Ben Adams & Cynthia Barmore, *Questioning Sincerity: The Role of Courts After Hobby Lobby*, 67 STAN. L. REV. ONLINE 59 (2014)).This is regardless of what the belief contains; testing sincerity should not amount to testing the correctness of beliefs, the latter of which is beyond judicial reach. Sincerity is a question of fact, and is highly context-dependent (*Id.*, at n. 10, 41, *citing* United States v. Seeger, 380 U.S. 163, 185 (1965)).

[135] *Imbong*, 721 SCRA at 340-41.

[136] *Id.* at 342.

[137] *Id.* at 335.

[138] *Id.* at 345.

[139] Carillo v. People, G.R. No. 86890, 229 SCRA 386, 396, Jan. 21, 1994.

2.1. The duty to refer is not an infringement on religious exercise.

Imbong construed conduct related to professional duty as a form of religious practice:

> With the constitutional guarantee of religious freedom follows the protection that should be afforded to individuals in communicating their beliefs to others as well as the protection for simply being silent. The Bill of Rights guarantees the liberty of the individual to utter what is in his mind and the liberty not to utter what is not in his mind. **While the RH Law seeks to provide freedom of choice through informed consent, freedom of choice guarantees the liberty of the religious conscience and prohibits any degree of compulsion or burden, whether direct or indirect, in the practice of one's religion.**[140]

The case of *Diocese of Bacolod v. Commission on Elections,*[141] involving the regulation of political speech of a corporation sole and its bishop, explained the dilemma of judging claims of religiously motivated conduct:

> The difficulty that often presents itself in these cases stems from the reality that every act can be motivated by moral, ethical, and religious considerations. In terms of their effect on the corporeal world, these acts range from belief, to expressions of these faiths, to religious ceremonies, and then to acts of a secular character that may, from the point of view of others who do not share the same faith or may not subscribe to any religion, may not have any religious bearing.[142]

A similar observation was made by Justice Padilla, who in *Ebralinag* wondered if religious exemptions could similarly be carved out if citizens refuse to pay taxes on the basis of their religious beliefs. He said the Court "may have created more problems than [it] ha[s] solved"[143] when it ruled in favor of exempting Jehovah's Witnesses.

---

[140] *Imbong,* 721 SCRA at 336 (Citations omitted; emphasis supplied.).

[141] G.R. No. 205728, 747 SCRA 1, Jan. 21, 2015.

[142] *Id.* at 120.

[143] *Ebralinag,* 219 SCRA (Padilla, *J., concurring*). United States courts have consistently held that not even religion or conscience may exempt persons from the payment of taxes. UNITED STATES INTERNAL REVENUE SERVICE, THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS 21 (2014). *See also* United States v. Lee, 455 U.S. 252 (1980) ("The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious beliefs."); Jenkins v. Commissioner, 483 F.3d 90 (2d Cir. 2007); Adams v. Commissioner, 170 F.3d 173 (3d Cir. 1999). To date, similar claims have not reached the Philippine Supreme Court.

In *Soriano v. Laguardia*,[144] the Court decided that the mere fact that the statements were made by a religious leader on a religious television program did not elevate them to the level of religious speech. The petitioner did not prove that his statements "express[ed] a particular religious belief [...] furthering his avowed evangelical mission."[145] Profanity did not a religious speech make.

Regardless of the beliefs of the particular healthcare provider, the practice of medicine—a secular profession[146]—has never been considered the practice of religion.[147] By taking the professional referral system out of the realm of secular medicine and placing it into the realm of religious exercise wholesale, the Court undermines both its own precedents and the Constitutional separation between church and state.

To bolster its finding of the unconstitutionality of the duty to refer, the Court said that obligating healthcare providers to even mention reproductive health services to patients also constituted a violation of the right of freedom of expression. Since speech was an external manifestation of internal thoughts and feelings, it followed that religious freedom was "necessarily intertwined with the right to free speech" and the corresponding "right to be silent."[148]

But the Court had in the past found no Constitutional infirmity in requiring doctors to disclose information to patients even though it may be against their will or judgment. The Generics Act, which required all medical practitioners to prescribe medications using their generic names, was upheld in *Del Rosario v. Bengzon*.[149] The Court recognized that the purpose of the law was to give patients "the right to choose between the brand name and its generic equivalent"[150] especially when the latter is cheaper than the former. The ultimate purpose of the law—to promote access to affordable medicines—trumped even the beliefs of some practitioners regarding the efficacy of generic medication.

---

[144] G.R. No. 164785, 587 SCRA 79, Apr. 29, 2009.

[145] *Id.* at 263.

[146] CENTER FOR REPRODUCTIVE RIGHTS, IMPOSING MISERY: THE IMPACT OF MANILA'S CONTRACEPTION BAN ON WOMEN AND FAMILIES 46 (2007), *citing* the 2004 CODE OF ETHICS OF THE MEDICAL PROFESSION OF THE PHILIPPINES ("[A] true physician does not base his practice on exclusive dogma or sectarian system for medicine is a liberal profession. It has no creed, no party, no master. Neither is it subject to any bond except that of truth.").

[147] *See* Catholic Charities of Sacramento, Inc. v. Superior Court of Sacramento, 32 Cal4th 527, 85 P.2d 67 (2004) (religious motivation to provide health services cannot exempt a Roman Catholic non-profit from a regulation that affects, without discrimination as to religious status, organizations that provide the same services).

[148] *Imbong*, 721 SCRA at 336.

[149] G.R. No. 88265, 180 SCRA 521, Dec. 21, 1989.

[150] *Id.* at 531.

The *Imbong* decision itself also acknowledges that patient access to reproductive health information is necessary. While ruling that minors need parental consent to access modern methods of family planning even if the minor is already a parent or has had a miscarriage, the Court granted an exception when it comes to access to information on those modern methods. "Considering that information to enable a person to make informed decisions is essential in the protection and maintenance of ones' [sic] health, access to such information with respect to reproductive health services must be allowed."[151]

By sanctioning silence, *Imbong* closes an avenue for dialogue between healthcare providers and persons seeking reproductive health services where they could "negotiate mutually acceptable accommodations that do not require either of the parties to violate their own convictions."[152]

2.2. The duty to refer is a component of medical ethics and professional duty.

Imbong describes the burden imposed by the duty to refer as an "immediate" one:

> Once the medical practitioner, against his will, refers a patient seeking information on modern reproductive health products, services procedures and methods, his conscience is immediately burdened as he has been compelled to perform an act against his beliefs.[153]

The duty to refer is then "a false compromise"[154] because objecting health care providers will become "complicit in the performance of an act they find morally repugnant or offensive."[155] However, this position of the Court is inconsistent, and even downright contradictory, to modern professional ethical standards in healthcare.

Standards of care may be determined from policies and conduct "observed by other members of the profession in good standing under similar circumstances bearing in mind the advanced state of the profession at the time of treatment or the present state of the medical science."[156] The purpose of

---

[151] *Imbong*, at 721 SCRA at 353.

[152] Farr Curlin et al., *Religion, Conscience, and Controversial Clinical Practice*, 356 N. ENGL. J. MED. 593 (2007).

[153] *Imbong*, 721 SCRA at 335.

[154] *Id.*

[155] *Id.*

[156] Cruz v. CA, 346 Phil. 872, 883 (1997).

standards of care is to ensure that patients are not treated in an arbitrary manner and fashion by their healthcare providers:

> Understanding the deference the state showed to the medical profession in formulating policy requires understanding of the nature of professional ethics and claims based upon them. Such claims did not depend on personal systems of belief. Rather, professional codes of ethics were collective; socially shared; a communal possession formed and reinforced by passing through a set of common educational rites, rituals and ordeals; and avowedly secular to meet the demands of a religiously diverse, pluralistic society.[157]

Autonomy, nonmaleficience, beneficience, and justice are four cardinal principles[158] in biomedical ethics that are influential[159] within the healthcare profession. These principles encourage a shift towards "an autonomy model"[160] in healthcare ethics that "[incorporated] a wider set of social concerns, particularly those focused on social justice."[161] These principles are derived from the Hippocratic Oath for doctors, the Florence Nightingale Pledge for nurses, as well as the specific codes of ethics prescribed for the profession.[162] Of these four principles, the ones most relevant to the evaluation of the duty to refer are autonomy and non-maleficience.

2.2.1. The duty to refer recognizes patient autonomy in medical choices.

The principle of autonomy emphasizes respect for a "person's capacities and perspectives, including his or her right to hold certain views, to make certain choices, and to take certain actions based on personal values and beliefs,"[163] including the positive obligation to disclose pertinent information to patients

---

[157] Joel Frader & Charles L. Bosk, *The Personal is Political, the Professional is Not: Conscientious Objection to Obtaining/Providing/Acting On Genetic Information*, 151C AM. J. MED. GENET. C. SEMIN. MED. GENET. 62 (2009).

[158] TOM BEAUCHAMP & JAMES CHILDRESS, PRINCIPLES OF BIOMEDICAL ETHICS 45-47, 89 (Oxford University Press 1997).

[159] Katie Page, *The four principles: Can they be measured and do they predict ethical decision making?*, 13 BIOMED CENTRAL MED. ETHICS 1 (2012)

[160] Tom Beauchamp, *The 'Four Principles' Approach to Health Care Ethics, in* PRINCIPLES OF HEALTH CARE ETHICS 3 (2007).

[161] TOM L. BEAUCHAMP, STANDING ON PRINCIPLES: COLLECTED ESSAYS 36 (Oxford University Press 2010).

[162] For example, The World Medical Association International Code of Medical Ethics, the Philippine Regulatory Commission Board of Medicine Code of Ethics, and the Philippine Medical Association Code of Ethics of the Medical Profession.

[163] BEAUCHAMP, *supra* note 161, at 37.

and recognize their refusal of medical interventions.[164] The refusal to respect the autonomy of patients is "based on the assumption that physicians know what is best for their patients and may therefore make decisions without informing their patients of all the facts, alternatives or risks."[165]

Respect for patient autonomy is a part of the medical standard of care in the Philippines. Filipino medical practitioners are bound[166] by the Code of Ethics formulated by the Philippine Regulatory Commission's Board of Medicine, which incorporates[167] the World Medical Association's ethical principle that physicians should "respect the rights and preferences of patients, colleagues, and other health professionals."[168] The Code of Ethics for Filipino Nurses, adopted by the Board of Nursing, likewise states that "[i]ndividual freedom to make rational and unconstrained decisions shall be respected"[169] and "[r]egistered nurses must respect the spiritual beliefs and practices of patients regarding diet and treatment."[170]

Conscience clauses exist to recognize a doctor (or nurse, or midwife, or pharmacist) as "an independent moral agent with the capacity and right to express his or her objections to patient choices, whether those objections derive from medical, moral, or ethical foundations."[171] But their objection should not amount to a denial of access by persons seeking choices in treatment.[172] The right to object "needs to be compatible with individuals being informed about and being able to acquire standard medical services and drugs."[173] Referral in appropriate situations is consistent with respect for patient autonomy.[174] The

---

[164] *Id.* ("The moral demand that we respect the autonomy of persons can be expressed as a *principle* of respect for autonomy that states both a negative obligation and a positive obligation. As a negative obligation, autonomous actions should not be subjected to controlling constraints of others. As a positive obligation, this principle requires respectful treatment in informational exchanges and in other actions that foster autonomous decision making.").

[165] Curlin, et al, *supra* note 152.

[166] Michelle Sabitsana, *Exploring the Option of Self-Regulation in Philippine Medical Negligence Cases*, 85 PHIL. L.J. 948, 953 (2011).

[167] PHILIPPINE REGULATORY COMMISSION (PRC) BOARD OF MEDICINE CODE OF ETHICS, art. 1, § 2.

[168] WORLD MEDICAL ASSOCIATION INTERNATIONAL CODE OF MEDICAL ETHICS, *available at* http://www.wma.net/en/30publications/10policies/c8/.

[169] PRC BOARD OF NURSING CODE OF ETHICS FOR REGISTERED NURSES, art. 2, § 4(2).

[170] *Id.* at art. 2, § 5(2).

[171] Daar, *supra* note 116, at 1245.

[172] B.M. Dickens & R.J. Cook, *The scope and limits of conscientious objection*, 71 INTL. J. GYNECOLOGY & OBSTETRICS 71, 72 (2000); Chrissy Guarisco, *Conscience and Its Consequences: Reconciling Practitioner and Patient Rights*, 18 ANNALS HEALTH L. ADVANCE DIRECTIVE 186, 188 (2009).

[173] Kent Greenawalt, *Objections in Conscience to Medical Procedures: Does Religion Make a Difference?*, 4 U. ILL. L. REV. 799, 823-824 (2006).

[174] Dickens & Cook, *supra* note 172, at 73.

conflict of interest between the healthcare provider's beliefs and the patient's interest can be resolved by disclosure of the provider's interest,[175] and a good-faith effort to "achieve appropriate referral."[176]

The system of referral among medical professionals is also enshrined in Philippine medicine. According to the Code of Ethics of the Philippine Medical Association, physicians should "exercise good faith and honesty in expressing opinion/s as to the diagnosis, prognosis, and treatment of a case under his/her care."[177] They should also seek the assistance of other specialists in cases involving "serious/difficult cases, or when the circumstances of the patient or the family so demand or justify."[178] Consultation with and referral to other practitioners are also standard practice in nursing[179] and midwifery.[180] This system minimizes asymmetry of information in healthcare provider-patient relations.[181]

Referral also serves the purpose of informing patients of their healthcare providers' moral convictions, when otherwise they do not have access to such information.[182] At the very least, the disclosure of beliefs alerts patients to the nature of these healthcare providers' refusal to provide reproductive healthcare and services:

> [P]roviders who object to undertake procedures associated with their specialty, particularly gynecologists-obstetricians, should disclose this to potential patients, and to administrators of facilities liable to engage their services. This saves patients the inconvenience and delay of requesting services that would be denied, saves the providers from receiving requests they find offensive, and allows hospitals, clinics, and comparable facilities to ensure an adequate complement of providers of patient services.[183]

---

[175] International Federation of Gynecology and Obstetrics (FIGO) Committee for the Ethical Aspects of Human Reproduction and Women's Health, *Ethical guidelines on conscientious objection*, 92 INTL. J. GYNECOLOGY & OBSTETRICS 333 (2006).

[176] FIGO Ethical Framework for Gynecologic and Obstetric Care, ¶ 4.

[177] CODE OF ETHICS OF THE PHILIPPINE MEDICAL ASSOCIATION, art. 2, § 5.

[178] *Id.* at art. 2, § 5; art. 4, §§ 2-3, 6.

[179] PRC BOARD OF NURSING CODE OF ETHICS FOR REGISTERED NURSES, art. 3, § 10.

[180] PRC BOARD OF MIDWIFERY CODE OF ETHICS, § 8 ("Accordingly, in a doubtful or difficult case, she should seek consultation or refer such case to a qualified obstetrician or physician.").

[181] Elizabeth Sepper, *Taking Conscience Seriously*, 98 VA. L. REV. 1501, 1573 (2012).

[182] Curlin et al., *supra* note 152.

[183] R.J. Cook, et. al., *Healthcare responsibilities and conscientious objection*, 104 INTL. J. GYNECOLOGY & OBSTETRICS 249, 251 (2009).

The Court's egregious mischaracterization is also evident in the legal support for its conclusion. *Imbong* cited the 2013 Scottish case of *Doogan and Wood v. NHS Greater Glasgow and Clyde Health Board,*[184] regarding which the Court said, "While the said case did not cover the act of referral, the applicable principle was the same—[midwives] could not be forced to assist abortions if it would be against their conscience or will."[185]

Yet this decision by the Inner House of the Court of Session that midwives cannot be required to participate even indirectly in abortion-related procedures was overturned by the United Kingdom Supreme Court in December 2014.[186] The UK's highest domestic court ruled that the participation in abortion services to which healthcare providers could conscientiously object only pertained to "actually performing the tasks involved in the course of the treatment."[187] Indirect participation, through support services before and after treatment such as referral, was excluded. The UK Supreme Court even upheld referral as part of the duties of objecting midwives:

> Whatever the outcome of the objector's stance, it is a feature of conscience clauses generally within the healthcare profession that the conscientious objector be under an obligation to refer the case to a professional who does not share that objection. This is a necessary corollary of the professional's duty of care towards the patient. Once she has assumed care of the patient, she needs a good reason for failing to provide that care. But when conscientious objection in the reason, another health care professional should be found who does not share that objection.[188]

Imbong's interpretation of referral in particular, and the medical profession as a whole, may mean that practitioners who are members of Jehovah's Witness may validly remain silent and not refer a patient who needs a blood transfusion to other practitioners. Scientologist mental health professionals may deprive their patients access to certain psychiatric treatments, not on the basis of the needs of these patients, but because they do not believe in modern psychiatry. "Pharmacists who believe AIDS is a punishment from God may [refuse] to fill a patient's prescription for AIDS medication."[189]

But healthcare access should not depend on the personal values of the medical professional alone. Patients should not be relegated to the role of

---

[184] CSIH 36 (2013).

[185] *Imbong,* 721 SCRA at 337.

[186] Greater Glasgow Health Board v. Doogan, UKSC 68 (2014).

[187] *Id.* at ¶¶ 37-38.

[188] *Id.* at ¶ 40.

[189] James, *supra* note 107, at 435.

"passive receptor[s]" [190] of medical information under the guise of "doctor knows best." Otherwise, the end result is the practice "of idiosyncratic, bigoted, discriminatory medicine."[191]

2.2.2. The duty to refer minimizes harm to patients caused by the healthcare provider's conscientious objection.

The *Imbong* Court also concludes that the lack of a duty to refer will not affect persons seeking RH services. "The health concerns of women may still be addressed by other practitioners who may perform reproductive health-related procedures with open willingness and motivation."[192] The danger to persons who seek reproductive health services is then neither immediate nor grave.

But when there is no disclosure of alternatives, the refusal may be tantamount to an arbitrary deprivation of care,[193] inconsistent with the biomedical ethics principle of non-maleficience. Based on the Hippocratic mandate of *primum non nocere* (do no harm), non-maleficience is the duty in medicine to prevent or minimize incidental, intended, or intrinsic harm or pain to patients.[194] This is based on the trust[195] reposed in the medical profession to "provide competent medical care with full professional skill in accordance with the current standards of care, compassion, independence and respect for human dignity."[196]

Apart from positive acts, providers may harm their patients through omissions.[197] When a healthcare provider fails to give patients the information they need to make informed choices, the provider is depriving them of the right to control their choice of treatment based on "their own needs and personal conscience."[198] This and other unjustifiable withholding of medical information may physically harm such patients who are deprived of choices that they may exercise with respect to their own bodies. They may be financially burdened by

---

[190] Andrea Asaro, *The Judicial Portrayal of the Physician in Abortion and Sterilization Decisions: The Use and Abuse of Medical Discretion*, 6 HARV. WOMEN'S L.J. 51, 60 (1983).

[191] Savulescu, *supra* note 123, at 297.

[192] *Imbong*, 721 SCRA at 342.

[193] Lidia Casas, *Invoking conscientious objection in reproductive health care: evolving issues in Peru, Mexico and Chile*, 17 REPRODUCTIVE HEALTH MATTERS 78 (2009).

[194] Peter Omonzejele, *Obligation of non-maleficence: moral dilemma in physician-patient relationship*, 4 J. MED. BIOMEDICAL RESEARCH 22, 23 (2007).

[195] Fred Rosner, *Judaism and Medicine: Jewish Medical Ethics*, *in* PRINCIPLES OF HEALTH CARE ETHICS 113 (2007).

[196] CODE OF ETHICS OF THE MEDICAL PROFESSION, art. 2, §. 1.

[197] Sepper, *supra* note 181, at 1537.

[198] Maxine M. Harrington, *The Ever-Expanding Health Care Conscience Clause: The Quest for Immunity in the Struggle Between Professional Duties and Moral Beliefs*, 34 FLA. ST. U. L. REV. 779, 811 (2007).

the time and cost of looking for the services they desire without their trusted provider's assistance. Emotional harm may be another consequence.[199] These inflicted harms, no matter how unintentional or well-meaning, may lead to a breach of trust which can subject the provider to professional and legal sanctions.[200]

The harm caused by a State-sanctioned refusal to provide persons access to reproductive healthcare services, directly or indirectly, is bserved in the implementation by the City of Manila of executive orders that promoted "natural family planning not just as a method but as a way of self-awareness in promoting the culture of life," while discouraging alternatives.

On April 22, 2015, the United Nations Committee on the Elimination of Discrimination against Women released its report[201] regarding Executive Order No. 003 ("Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declarations in Pursuit Thereof"), and Executive Order No. 030, which further stated that Manila would not disburse funds or finance any programs for artificial birth control. Non-governmental organizations alleged that these two executive orders violated the rights guaranteed by the Convention on the Elimination of Discrimination against Women, to which the Philippines is a signatory, and which key provisions were incorporated in Republic Act No. 9710, the Magna Carta for Women.

City officials inconsistently allowed or disallowed referrals under the executive orders. Some regarded all referrals as prohibited; others were more lenient. Health workers and institutions had to rely on their own interpretation of the executive orders. As a consequence, patients were subjected to

---

[199] Emotional harm as a result of refusal to give information is especially evident if the person seeking reproductive health services is a victim of sexual assault. "Refusals to provide medical information to a rape victim traumatize her yet again by substituting someone else's decision about what should happen to her body and bypassing her moral decision making authority completely in the same way that rape forces an outsider's decision on the woman's body without the involvement of her decision making capacity, making her feel powerless." Jill Morrisson & Micole Allekote, *Duty First: Towards Patient-Centered Care and Limitations on the Right to Refuse for Moral, Religious or Ethical Reasons*, 8 AVE MARIA L. REV. 141, 156 (2010-2011).

[200] Harrington, *supra* note 198, at 801. *See also* Raul C. Pangalangan, *Transplanted Constitutionalism*, 82 PHIL. L.J. 1, 8 (2008) (opining that extending the privilege of conscientious objection in House Bill No. 3773 (a precursor of the RH Law) to "health officers who refuse to even tell couples all the medically available options" would be a "deliberate breach of professional duty.").

[201] United Nations Committee on the Elimination of Discrimination against Women, Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/PHL/1, Apr. 22, 2015.

inconsistent referrals.[202] "The lack of clear policy guidance and the range of practices on information and referrals create[d] a situation wherein women [were] subject[ed] to the discretion of hospitals and individual providers and receive[d] different standards of care."[203]

The Committee found that because the E.O.s effectively silenced healthcare providers from proposing alternatives to natural family planning, "women's practical access to reproductive health services was therefore compromised by their lack of knowledge or awareness for informed decision-making.[204] In turn, this lack of access meant that the lives of health of these women were severely affected, as well as leading to the impairment of their other rights, such as educational and work opportunities.[205]

3. Accommodating third parties in claims of conscientious objection

The duty to refer has been envisioned by Congress as a way of balancing the right of individuals to access reproductive health services according to their needs and personal convictions, with the right of healthcare providers to exercise their conscience as a part of their work—all with a due regard for the fiduciary nature of their relationship, and the standard of care demanded by the profession. In doing so, Congress sought to extend to all persons, patient and physician alike, "the right to choose and make decisions for themselves in accordance with their religious convictions, ethics, cultural beliefs, and the demands of responsible parenthood."[206]

The RH Law acknowledges that some religious accommodations affect not only the State that seeks to promote a policy for the common good, but also persons prejudiced by the accommodations made in favor of the conscientious objector. Persons who are refused access to reproductive health services because of their healthcare provider's religious beliefs should be allowed to exercise their right to choose. So that this right of choice is not impaired, the law obligates the healthcare provider to provide such persons with some means to seek out alternative healthcare providers.

But *Imbong* patently ignores the relationship of the healthcare provider and the person seeking healthcare services in its interpretation of the Free Exercise

---

[202] CENTER FOR REPRODUCTIVE RIGHTS, *supra* note 146, at 33.

[203] *Id.* at 34.

[204] United Nations Committee on the Elimination of Discrimination against Women, *supra* note 201, at ¶ 38.

[205] *Id.* at ¶ 47.

[206] RH Law, § 2.

Clause. Essential to understanding why the Court adopted such an interpetation is its characterization of the parties who would be affected by the conscientious objector clause and the corresponding duty to refer:

> In cases of conflict between the religious beliefs and moral convictions of individuals, on one hand, and the interest of the State, on the other to provide access and information on reproductive health products, services, procedures and methods to enable the people to determine the timing, number and spacing of the birth of their children, the Court is of the strong view that the religious freedom of health providers, whether public or private, should be accorded primacy.[207]

In the eyes of the Court, the conflict exists only between an individual healthcare provider and the State. When the State attempts to burden the religious beliefs of individuals whose beliefs are incompatible with the State's reproductive health policies, religious liberty should prevail. In the same way that State interests in patriotism or labor empowerment yielded when they clashed with individual convictions, so should reproductive health goals not be forwarded if believers are forced to act against what their conscience dictate. Even an obligation consistent with the standards of care of the medical profession is too much of a burden which the State cannot impose.

While this perspective is consistent with prevailing precedent on conscientious objection claims, what the Court does not comprehend is that the RH Law is not the story of the schoolchildren forced to salute the flag against their will, or workers compelled to join unions or else lose their jobs. Schoolchildren who do not salute the flag do not disturb those who do. Exempting some persons from the union security clauses does not force non-objectors to join or leave unions.[208] The refusal to read the unexpurgated works of Dr. Jose Rizal[209] because of their heretical content will result in perhaps only a

---

[207] *Imbong*, 721 SCRA at 336.

[208] *But see* note 120 (on the Court's ruling in *Reyes v. Trajano*). *See also* REYNATO S. PUNO, EQUAL DIGNITY AND RESPECT: THE SUBSTANCE OF EQUAL PROTECTION AND SOCIAL JUSTICE 531 (2012) (noting that the *Victoriano* Court did not address that the two groups of interest in the case—labor and religious minorities—were both equally protected by the 1987 Constitution.).

[209] *See* Republic Act No. 1425, § 1 (permitting students to be exempted from reading the original texts of Noli Me Tangere and El Filibusterismo, works known for their criticism of the Roman Catholic Church during the Spanish colonial period). The "Rizal Law," passed in 1956, had been opposed by Roman Catholic educational institutions, some of which even threatened to close down if the then-bill would be enacted. *See* Ambeth Ocampo, "The fight over the Rizal Law," PHIL. DAILY INQUIRER, May 4, 2007, *available at* http://opinion.inquirer.net/inquireropinion/columns/view/20070504-63978/The_fight_ over_the_Rizal_Law.

The author would like to acknowledge Dean Raul Pangalangan, who pointed out this law and its conscientious objector provision during his June 29, 2015 presentation of the Philippines Country Report for the Human Rights Resource Center.

slightly inadequate understanding of Philippine history, but no other ill on others.

Yet when healthcare providers conscientiously object, they do not do so as mere private individuals, but as persons performing professional duties of vital public interest.[210] The refusal based on religion of an objecting healthcare provider does not limit only the State's implementation of its national policy on reproductive health and responsible parenthood. The refusal directly and immediately affects third parties, who might not by themselves object to the RH Law, but whose rights under it are affected by the provider's refusal. As the then-Senior State Solicitor Florin Hilbay observed, the RH Law is "not a free speech matter or a pure exercise matter. [It] [was] a regulation by the State of the relationship between medical doctors and their patients."[211]

Imbong's ruling on the duty to refer demonstrates that the Philippine religious liberty framework, specifically, the tools by which courts evaluate and grant accommodations, is inadequate when "religious accommodation cases govern not only the relationship between the state and the objector, but also a variety of conflicts and relationships between the religious objectors and other rights holders."[212] Accommodations should, and must, take into account the burden imposed on those who do not benefit from them.[213]

3.1. Harm to third parties as a limitation on the exercise of religious liberty

In accordance with the compelling state interest test, the *Imbong* Court notes that "[o]nly the prevention of an immediate and grave danger to the security and welfare of the community can justify the infringement of religious freedom."[214] Since there is "no immediate danger to the life or health of the individual"[215] denied referral by a conscientiously objecting healthcare provider, religious liberty must prevail.

The strict scrutiny test has been described as "a very blunt instrument"[216] It imposes a heavy burden on the State to defend its own interests in enacting

---

[210] Eva LaFollette & Hugh LaFollette, *Private conscience, public acts,* 33 J. MED. ETHICS 249, 253 (2007).

[211] *Imbong,* at 77, *citing* Transcript of Stenographic Notes, 27 August 2013, at 71-72.

[212] Loewentheil, *supra* note 45, at 437.

[213] Cutter v. Wilkinson, 544 U.S. 709 (2005), *citing* Estate of Thornton v. Caldor, Inc., 472 U.S. 703 (1985).

[214] *Imbong,* at 721 SCRA at 341.

[215] *Id.* at 342.

[216] Loewentheil, *supra* note 45, at 474.

and implementing its laws, and the State must show that said interests are to prevent a substantive evil.[217] "[F]or to do otherwise would allow the [S]tate to batter religion, especially the less powerful ones until they are destroyed."[218] But any accommodations made should not come at the cost of harm to others. Religious beliefs, no matter how genuine or sincere, should not be a reason warranting an exemption from State policies that seek to protect other citizens. Otherwise, beliefs would become "superior to the law of the land, and in effect permit every citizen to become a law unto himself."[219]

The United States has established that religious belief and speech are entitled to the highest levels of protection, but religiously motivated conduct is not always entitled to the same.[220] The U.S. Supreme Court has refused to read into the right of freedom of religion an unconditional license for persons to hurt others in the name of their beliefs. "Even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from injury."[221] The claim of religiously motivated conduct is not immunity against generally-applicable laws when the conduct "inflicts harm on others."[222] Two cases illustrate this.

Bob Jones University v. United States[223] involved two non-profit Christian schools which were denied tax exemptions by the Internal Revenue Service, because these schools implemented rules that prohibited interracial relationships, or refused to admit non-white students. Both schools based their rules on their interpretation of the Bible, and had argued that the denial of the tax exemptions infringed on their right to religious freedom. The U.S. Supreme Court upheld the denial, ruling that religious freedom must give way not only to implement national policies against racial discrimination, but also to preserve "the rights of individuals"[224] not to be subject to segregation. Tolerating these schools' discriminatory rules would undermine the gains that the U.S. had made in promoting racial equality across the nation.

In *Prince v. Massachusetts*,[225] a Jehovah's Witness named Sarah Prince was convicted of violating child labor laws when she had her nine-year-old ward distribute religious tracts on the streets. During trial, it was established that the

---

[217] *Estrada (2003)*, 408 SCRA 1.

[218] *Id.* at 171.

[219] Reynolds v. United States, 98 U.S. 145, 167 (1879).

[220] Staci D Lowell, *Striking a Balance: Finding a Place for Religious Conscience Clauses in Contraceptive Equity Legislation*, 52 CLEV. ST. L. REV. 441, 452-453 (2004-2005).

[221] Cantwell v. Connecticut, 310 U.S. 296, 306 (1940).

[222] Lowell, *supra* note 220, at 453.

[223] 461 U.S. 574 (1983).

[224] Prince v. Massachusetts, 321 U.S. 158, 593 (1944).

[225] *Id.*

ward had been told by Prince that her work was part of her religious duty to proselytize.[226] Prince defended herself by invoking both her and the child's right to freedom of religion. The U.S. Supreme Court affirmed her conviction.

"To make accommodation between [freedoms in the First Amendment] and an exercise of state authority is always delicate."[227] But even religious liberty may be restrained in order to protect children's welfare. Religious practice could not sanction exposing the community or the child to sickness or death.[228] It was conceded that Prince's ward had not been subjected to "some clear and present danger"[229] while she was distributing the pamphlets, since she was with her guardian at the time. However, the U.S. Supreme Court gave due consideration to pernicious effect of allowing Prince's act to continue unpunished:

> Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances to make martyrs of their children before they have reaches the age of full and legal discretion when they can make that choice for themselves.[230]

Respect for the rights and freedoms of others as a limitation on religious liberty is also found in international human rights instruments. Signed by the Philippines on 19 December 1966, ratified on 28 February 1986, and entered force on 23 January 1987, the ICCPR provides in Article 18 on the right to freedom of thought, conscience and religion:

> Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Further, Article 5 of the ICCPR provides:

> Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

---

[226] *Id.* at 163.
[227] *Id.* at 165.
[228] *Id.* at 167.
[229] Prince v. Massachusetts, 321 U.S. at 167.
[230] *Id.* at 170.

State Parties to the Covenant may then limit manifestations of religious beliefs based on "the need to protect the rights guaranteed under the Covenant."[231] The right to religious freedom should not be taken as an unbridled liberty to do acts that may harm other people, or impair the enjoyment of their rights.

The Philippines has recognized in statutes and in judicial decisions the potential abuse that may occur when a person exercises their guaranteed rights. Article 19 of the New Civil Code provides:

> Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

This has been considered as a "primordial limitation on all rights."[232]

> A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When the right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.[233]

The Court invoked Article 19 in *German v. Barangan* to declare that there was no violation of the Free Exercise Clause when the petitioners were denied access to St. Jude Chapel at J.P. Laurel Street in Manila.[234] The petitioners did not invoke their rights in good faith, as what they had actually intended to hold was an anti-government demonstration, instead of, as they claimed, an act of religious worship.

The 2015 labor case of *Leus v. St. Scholastica's College Westgrove*[235] exemplifies the protection accorded to a party when another invokes their beliefs in such a manner as to adversely affect the former, despite the Court not expressly invoking Article 19. Cheryll Santos Leus was dismissed from her position as an assistant in St. Scholastica's College Westgrove when she became pregnant without the benefit of marriage. St. Scholastica's College Westgrove, a Roman Catholic sectarian school, justified Leus' dismissal as "disgraceful and immoral conduct" under the 1992 Manual of Regulations for Private Schools and the

---

[231] United Nations Human Rights Committee, *supra* note 22, at ¶ 8.

[232] Globe Mackay Cable & Radio Corp. v. CA, G.R. No. 81262, 176 SCRA 778, 784, August 25, 1989.

[233] *Id.*

[234] German v. Barangan, 135 SCRA 514.

[235] G.R. No. 187226, 748 SCRA 378, Jan. 28, 2015 [hereinafter "*Leus*"].

Labor Code. It said that the school was upholding the teachings of the Roman Catholic Church when it dismissed her. If it failed to penalize her conduct, "[the school] would lose its credibility if it would maintain employees who do not live up to the values and teachings it inculcates to its students."[236] The Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals all ruled in favor of St. Scholastica's College Westgrove.

The Supreme Court ruled in the contrary, and declared Leus illegally dismissed. It first noted that private schools may validly dismiss its teaching and non-teaching personnel on the ground of disgraceful and immoral conduct. However, "public and secular morality should determine the prevailing norms of conduct, not religious morality."[237] The conduct, to be immoral or disgraceful, must be "detrimental to conditions upon which depend the existence and progress of human society."[238] The Court said:

> Admittedly, the petitioner is employed in an educational institution where the teachings and doctrines of the Catholic Church, including that on pre-marital sexual relations, is strictly upheld and taught to the students. That her indiscretion, which resulted in her pregnancy out of wedlock, is anathema to the doctrines of the Catholic Church. However, viewed against the prevailing norms of conduct, the petitioner's conduct cannot be considered as disgraceful or immoral; such conduct is not denounced by public and secular morality.[239]

The Court concluded that St. Scholastica's College Westgrove dismissed Leus, it did so without a just or valid cause. To protect an individual's rights, a private institution's interpretation of regulations, though consistent with its religious principles, was not upheld. The *Leus* decision shows that religious dogma should not be used to violate the rights of others.

It is notable that the Philippines still has no law codifying the protection of the rights of patients,[240] including the right to practice autonomy in medical decisions and be informed of matters that may affect their consent to proposed medical treatment or procedures. As such, the Supreme Court addressed patients' rights by applying the law on quasi-delicts to cases of medical negligence[241] or attaching criminal liability when the malpractice amounts to

---

[236] *Id.* at 389.

[237] *Id.* at 400.

[238] *Id.* at 402. (Emphasis omitted.)

[239] *Id.* at 405.

[240] Juan Miguel Leido, *Live and Let Die: Establishing the Legal Status of Advance Directives for Refusal of Life-Sustaining Medical Treatment, Their Enforceability, and Limitations*, 57 ATENEO L.J. 491, 499 (2012) ("Every Congress, since 1999 [Ninth Congress], has failed to act upon bills recognizing patients' rights.").

[241] Sabitsana, *supra* note 166, at 958.

criminal negligence.[242] Even without specific statutes, courts have stepped in to hold healthcare providers accountable to the standards of the profession to which they belong, and to their duties to their patients.

But *Imbong* is a step backward in the recognition of the rights of patients in healthcare decision-making. The Court has refused to see that patients are harmed when they are not adequately notified of their reproductive health choices.[243] It failed to ensure that the rights of patients, separate from the State's own interest, should be represented when the legislation is enacted on their behalf.[244] By failing to do so, *Imbong* imposes an unreasonably high standard—that of an immediate and grave danger—before patients can assert the need for medically-relevant information against their healthcare providers' religious objections.

3.2. Balancing claims of conflicting religious beliefs

The foundation of the Free Exercise Clause is the liberty of the individual. When a person holds certain religious beliefs, "that choice is so intimate, so personal, so unreviewable by any of the usual legal tests for truths or validity,"[245] that the State must, as much as possible, respect that individual's choice. These beliefs have been acknowledged as "the motives of certain rules, of human conduct and the justification of certain acts."[246] As such, believers should not be coerced or compelled into acting against the beliefs they hold.[247]

However, one's right to religious freedom "gives no one the right to insist that, in pursuit of their own interest, others must conform their conduct to his own religious necessities."[248] "[T]he goal of the Free Exercise Clause is served by allowing individuals to practice their right to religious exercise without being imposed upon and without imposing on others."[249] But by its rulings that failed to adequately balance conflicting religious rights, the *Imbong* Court may have, to echo Justice Padilla, created more problems than it is ready to deal with.

---

[242] Joseph Joemer C. Perez, et al., *Medical Malpractice Law in the Philippines: Present State and Future Directions*, 78 PHIL. L.J. 687, 698 (2004).

[243] *See* Part 2.2.2., *ante*, at 525.

[244] Jennifer Jorzack, *"Not Like You and Me": Hobby Lobby, the Fourteenth Amendment, and What the Further Expansion of Corporate Personhood Means for Individual Rights*, 80 BROOK. L. REV. 285, 318 (2014).

[245] Pangalangan, *supra* note 200, at 16.

[246] *Victoriano*, 59 SCRA at 79.

[247] *Ebralinag*, 219 SCRA (Cruz, *J., concurring*).

[248] Otten v. Baltimore & Ohio R. Co., 205 F.2d 58, 61 (CA2 1953).

[249] Kathryn S. Benedict, *When Might Does Not Create Religious Rights: For-Profit Corporations' Employees and the Contraceptive Coverage Mandate*, 26 COLUM. J. GENDER & L. 58, 109 (2013-2014).

3.2.1. Conflicts between healthcare providers and patients

Imbong forgets that the individuals with "religious beliefs and moral convictions" guaranteed by the Free Exercise Clause are not just the healthcare providers with religious objections to the government's reproductive health policies. These objectors do not have a monopoly on religious conscience.[250] Patients are people too, and their religious liberties also deserve respect.[251]

Instead of guaranteeing every individual's exercise of conscience when it comes to reproductive health, *Imbong* permits healthcare providers to impose their religious beliefs on their patients without consequence. A patient with religious beliefs that welcome modern reproductive health methods[252] will be unable to act in accordance with her religious beliefs when her objecting healthcare provider refuses to refer her to another provider willing and able to give the services she desires. The silence on the part of the provider may mean that the patient cannot, as the Court otherwise envisioned, go to another healthcare provider, precisely because she has not been given information as to where she can find another practitioner "with [the] open willingness and motivation"[253] to provide those services.

By giving preference to conscientiously objecting healthcare providers, *Imbong* has privileged these believers above other citizens.[254] The RH Law's guarantee that all persons should be able to make reproductive health choices according to their personal religious and moral convictions was weakened when the Court chose to uphold only the decisions that healthcare providers will make on behalf of their patients, regardless of whether they consent to these decisions or not.

---

[250] Dickens & Cook, *supra* note 172, at 72.

[251] Iglesia ni Cristo v. Gironella, A.M. No. 2440-CFI, 106 SCRA 1, July 25, 1981 ("Freedom of religion implies respect for every creed.").

[252] For example, The Filipino Catholic Voices for Reproductive Health; the Protestant Interfaith Partnership For the Promotion of Responsible Parenthood, Inc. (composed of the Philippine Council of Evangelical Churches, the Baptist Conference of the Philippines, the United Church of Christ in the Philippines, the Philippines for Jesus Movement, the Universal Pentecostal Church, and the United Methodist Church); and the Islamic Al-Mujadillah Development Foundation intervened in the RH Law litigation, filing a joint comment in support of the law.

[253] *Imbong*, 721 SCRA at 342.

[254] Loewentheil, *supra* note 45, at 454.

3.2.2. Conflicts between individuals and institutions

Another holding in *Imbong* may give rise to conflicts in conscientious objection claims. The RH Law required private health facilities to extend family planning services to their patients. Only non-maternity specialty hospitals and hospitals owned and operated by religious groups were not obligated to do the same. Instead, these two types of health institutions were required to refer persons seeking such care and services to another conveniently-accessible health facility.

> Sec. 7. *Access to Family Planning.* – All accredited public health facilities shall provide a full range of modern family planning methods, which shall also include medical consultations, supplies and necessary and reasonable procedures for poor and marginalized couples having infertility issued who desire to have children. *Provided,* That family planning services shall likewise be extended by private health facilities to paying patients with the option to grant free care and services to indigents, **except in cases of non-maternity specialty hospitals and hospitals owned and operated by a religious group, but they have the option to provide such full range of modern family planning methods: *Provided, further,* That these hospitals shall immediately refer the person seeking such care and services to another health facility which is conveniently accessible:** *Provided, finally,* That the person is not in an emergency situation or serious case as defined in Republic Act No. 8344. [Emphasis supplied.]

The law made no reference as to purpose of the exemptions granted to these two types of institutions. The exempted institutions did not even have to have reasons for not extending family planning services; their exemptions are, on the face of the law, neutral in character. But in its zeal to defend religious freedoms, *Imbong* however read into this provision the conscientious objector clause in Sec. 23(a)(3):

> Considering that Section 24 of the RH Law penalizes such institutions should they fail or refuse to comply with their duty to refer under Section 7 and Section 23(a)(3), the Court deems that it must be struck down for being violative of the freedom of religion.[255]

The Court's recognition of "institutional conscience"[256] creates the possibility of conflict between the religious beliefs of the individual healthcare provider and the religious beliefs of the institutions they work for. "Unless the

---

[255] *Imbong,* 721 SCRA at 337.

[256] Spencer L. Durland, *The Case Against Institutional Conscience,* Note, 86 NOTRE DAME L. REV. 1655 (2011).

institution hires and serves only people who share the beliefs of its owners, an accommodation will reverberate for those who patronize or work for the institution."[257]

No problems arise when, for example, a Roman Catholic hospital exclusively hires healthcare providers not only from the same religion, but also holding the same beliefs regarding reproductive health services.[258] But as the intervention made by Atty. Joan de Venecia, et. al. in *Imbong* explains, even within a religion, there may be disagreements as to the officially-sanctioned beliefs on a certain issue. "[T]he dramatic divergence of views regarding [reproductive health matters] even within the Catholic Church itself"[259] may mean that a Catholic hospital's interpretation of the "Catholic policy" on acceptable reproductive health services may not be the same interpretation of an individual Catholic healthcare provider.[260]

While courts should not adjudicate "ecclesiastical affair[s],"[261] such as those that deal with the "faith, practice, doctrine, form of worship, ecclesiastical law, custom and rule of a church,"[262] when an individual claims to be exercising a religious belief on the one hand, and the institution claims to be following a religious mandate on the other, to what extent should courts examine both to protect one claim over the other? *Imbong* has no guidance to offer.

And even if there is such a thing as a united religious stand on a certain government policy, should not the freedom of religion defend the individual conscience even from institutional coercion? Protecting institutional conscience means that for employees, "the primary point of conflict [will] not [be] within the law, but with the policies of entities with which they are associated."[263] A

---

[257] Louise Melling, *Religious Refusals to Public Accommodation Laws: Four Reasons to Say No*, 38 HARV. J. OF L. & GENDER, 177, 179 (2015).

[258] Benedict, *supra* note 249, at 77.

[259] Comment-In-Intervention of Joan A. De Venecia, Korina Ana T. Manibog and Jan Robert V. Beltejar in Imbong v. Ochoa, G.R. 204819, at 28.

[260] Ateneo de Manila University experienced a similar situation in 2012, when 159 of its faculty members publicly endorsed House Bill No. 4244 (The Responsible Parenthood, Reproductive Health and Population and Development Bill). *160 Ateneo professors endorse RH Bill*, INTERAKSYON.COM, Aug. 13, 2012, *available at* http://interaksyon.com/article/40249/ 160-ateneo-professors endorse-rh-bill. In response, university president Fr. Jose Villarin issued a statement saying that Ateneo did not support the House bill. There were also calls to investigate the teachers, and to officially reprimand them for "[defying] official Catholic church teaching." N.J. Viehland, *Philippine university's president disowns faculty's support for reproductive health bill*, NAT'L CATHOLIC REPORTER, Aug. 22, 2012, *available at* http://ncronline.org/blogs/ncr-today/philippines-universitys-president-disowns-facultys-support-reproductive-health-bill.

[261] United Church of Christ in the Phil., Inc. v. Bradford United Church of Christ, Inc., G.R. No. 171905, 674 SCRA 92, June 20, 2012.

[262] Fonacier v. CA, G.R. No. L-5917, 96 Phil. 417, 447, January 28, 1955.

[263] Sepper, *supra* note 181, at 1514.

person with strong religious convictions may as well be one who wishes to provide reproductive health services, as one who refuses to provide them.[264] A willing provider should be entitled to the same guarantee of religious liberty as a refusing provider:

> Employees do not believe in the same religious faith and different religions differ in their dogmas and canons. Religious beliefs, manifestations and practices, though they are found in all places, and in all times, take so many varied forms as to be almost beyond imagination. There are many views that comprise the broad spectrum of religious beliefs among the people. There are diverse manners in which beliefs, equally paramount in the lives of their possessors, may be articulated.[265]

Conflicts between institutions and individuals already made themselves known in Manila. Under the two executive orders on reproductive health, Manila healthcare workers had difficulties negotiating with institutional policies that conflict with their beliefs. They were unable to advise their patients on family planning methods consistent with the needs of those patients and their own convictions on reproductive health methods.[266] Their conscience as individuals were not entitled to respect and protection.

The recent experience of the United States in adjudicating the extent of institutional conscience may prove instructive. In 2014, the U.S. Supreme Court ruled that closely held for-profit corporations may invoke their religious beliefs to exempt themselves from laws of general application.[267]

The question in *Hobby Lobby* was whether or not the federal Religious Freedom Restoration Act (RFRA)[268] could be invoked by for-profit juridical entities. The federal RFRA provided, in part, that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability."[269] The RFRA was invoked in *Hobby Lobby*

---

[264] *Id.* at 1533.

[265] *Victoriano,* 59 SCRA at 78-79.

[266] CENTER FOR REPRODUCTIVE RIGHTS, *supra* note 146, at 41.

[267] Burwell v. Hobby Lobby Stores, Inc., 134 S.Ct. 2751 (2014) [hereinafter "*Hobby Lobby*"].

[268] The RFRA had been enacted in 1993 following the U.S. Supreme Court decision in *Employment Division v. Smith* (494 U.S. 872 (1990)), which held that neutral, generally applicable laws that incidentally burden the exercise of religion usually do not violate the Free Exercise Clause." *Id.* at 878-82. The RFRA reverts to the pre-*Smith* test "that considered whether a challenged government action that substantially burdened the exercise of religion was necessary to further a compelling state interest." Holt v. Hobbs, 135 S.Ct. 853 (2015) (slip op., at 2).

[269] 42 U.S.C. Sec. 2000bb-1(a).

by two family corporations, as a basis for exemption from the "contraception mandate"[270] of the Affordable Care Act.

The *Hobby Lobby* Court interpreted the word "person" to include for-profit juridical entities like Hobby Lobby Stores and Conestoga Wood Specialties Corporation, both closely held corporations controlled by single families that hold one religious belief (Christianity for the Green family with Hobby Lobby, and Mennonite Church, for Conestoga's Hahn family). After all, a corporation was only a group of persons:

> Congress provided protection for people like the Hahns and Greens by employing a familiar legal fiction: It included corporations within RFRA's definition of "persons." But it is important to keep in mind that the purpose of this fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve desired ends. An established body of law specifies the rights and obligations of the people (including shareholders, officers, and employees) who are associated with one way or another. When rights [...] are extended to corporations, the purpose is to protect the rights of these people.[271]

But the dissent criticized the majority's interpretation of religious liberty. According to Justice Ginsburg, *Hobby Lobby* unduly enlarges the scope of the Free Exercise Clause:

> No tradition, and no prior decision under RFRA, allows a religious-based exemption when the accommodation would be harmful to others—here, the very persons the contraceptive coverage requirement was designed to protect.[272]

To the dissent, *Hobby Lobby* paves the way for institutions to impose their religious beliefs on their employees, regardless of the personal beliefs of those employees.[273] While corporations may be free to exercise their beliefs in the manner they so decide, their choice should not be imposed on their employees who may believe otherwise.[274]

---

[270] The mandate "require[s] employers to provide health insurance for their employees, a part of which covers contraceptives. The decisions to use contraceptives are made independently by the employees, whose actions cannot logically be attributed to the employers." Alan Garfield, *The Contraception Mandate Debate: Achieving a Sensible Balance*, 114 COLUM. L. REV. SIDEBAR 1 (2014), *available at* http://columbialawreview.org/wp-content/uploads/2014/01/Garfield-114-Columbia-Law-Review-Sidebar-1.pdf.

[271] *Hobby Lobby* (slip op.), at 18.

[272] *Hobby Lobby* (slip op.), at 27 (Ginsburg, *J., dissenting*).

[273] *Id.* at 32.

[274] *Id.* at 32, *citing* United States v. Lee, 455 U.S. 252 (1982).

> Employers and employees may have fundamentally different perspectives on which medical interventions are acceptable, particularly when the employer's fundamental mission is not to advance specific religious beliefs and its employees are therefore unlikely to be drawn exclusively from its own religious group. The [U.S. Supreme Court]'s decision [in *Hobby Lobby*] allows the beliefs of employers of various sizes and corporate forms to trump the beliefs and needs of their employees [...][275]

By accommodating these corporations' religious beliefs, the U.S. Supreme Court in effect held their rights "more dearly than the rights of actual people, the employees of the corporations."[276] The decision raised concerns that religious accommodations granted to corporations may extend to other areas of law, such as corporate exemptions from statutes that prohibit discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons.[277] These accommodations, if granted, may have a greater impact over more people than those accommodations in favor of individuals.

Apart from *Imbong*, the Supreme Court has not yet had cause to squarely face the issue of balancing a corporate claim to religious liberty with an individual's.[278] The greater implications of granting institutions the status of conscientious objectors has not been squarely addressed in the decision. How can the courts determine an institution's religious beliefs? Its sincerity in holding those beliefs? Will the institution bear the burden of proving the supremacy of its religious exercise, or will it be borne by the individual? What happens if the religious rights of patients, practitioners, and institutions clash? The current state of our Free Exercise Clause jurisprudence, with its inflexible dualistic scheme of analysis, may not be ready to answer these questions.[279]

---

[275] Cohen, et al., *supra* note 119, at 598.

[276] Jorzack, *supra* note 244, at 285.

[277] Melling, *supra* note 257.

[278] Though *Leus* involved a corporation raising its religious beliefs as a defense, the Court did not address any freedom of religion issue in the case. Neither did the petitioner invoke a religious claim of her own that might have triggered a adjudication based on the Free Exercise Clause. *See* Bianca Danica Villarama, Note, *Unusual but not Immoral: Pregnancy Outside of Marriage and Employee Dismissal After* Leus v. Saint Scholastica's College Westgrove, 89 PHIL. L.J. 349, 363 (2015) ("Had SSCW alleged and proved that Leus's conduct was contrary to a central dogma of the Catholic faith and that there was no compelling state interest being protected (or that if there were, that the State was not using the least intrusive means), then a discussion might have been ensued regarding a sectarian institution's religious exemption.").

[279] Jorzack offers a suggestion: "[W]here the rights of a corporate person would be in direct conflict, yet of equal and balanced weight, with those of natural persons, such a tie should go to the natural persons, by view of the natural person's humanity." *Supra* note 244, at 316.

CONCLUSION

There are those who argue that healthcare providers should be given more leeway[280] in the exercise of their profession and their rights because of their limited number in the country. And it is true that there are not enough healthcare practitioners in the Philippines. As of 2004, for every 1,000 Filipinos, there are 1.14 doctors, around 4.43 nurses, and 1.7 midwives[281] to serve an ever-growing population. Migration has also reduced the number of available healthcare providers especially in the provinces.[282] In 2006, there were only 5694 obstetricians-gynecologists in the country, and nearly half (or 2748) of them were based in Metro Manila.[283]

And yet it is precisely this unhappy situation of healthcare access in the Philippines that should entitle patients to more protection under the law. Filipinos are already constrained in their healthcare choices; healthcare providers should be the first in line to assist patients in finding the care they need. The religious beliefs of healthcare providers should not be used as a shield to defeat the rights of other persons to make their own choices regarding their own bodies and to exercise their own beliefs.

Religion, for better or for worse, is here to stay. Its influence and its involvement in society and government will only continue to grow.[284] In a country where "differences in religion[s] do exist, and these differences are important and should not be ignored,"[285] the Free Exercise Clause is necessary to ensure that these differences, from the great schisms to the hairline splits, are equally—and equitably—respected.

But it should always be remembered that this right protects people, not beliefs. Religious freedom must be understood as a right for human beings, with all the diversity humanity represents.[286] Its liberties should not extend to taking

---

[280] *See* Sabitsana, *supra* note 166, at 971 ("Lastly, in a country like the Philippines, where there is a death of physicians and limited access to health care, it would be an unwise move to antagonize the medical providers.").

[281] Alberto G. Romualdez, et al., *The Philippines Health System Review*, 1 HEALTH SYSTEMS IN TRANSITION 1, 80 (2011).

[282] Candy Diez, *The Philippine Health Situation at a Glance, in* 7 PHIL. HUMAN RIGHTS INFORMATION CENTER: IN FOCUS 49 (2008).

[283] Romualdez et al, *supra* note 281, at 85.

[284] Paul Horowitz, *The* Hobby Lobby *Moment*, 128 HARV. L. REV. 154, 183 (2014); Krista M. Pikus, Case Comment, *Quasi-Rights for Quasi-Religious Organizations: A New Framework Resolving the Religious-Secular Dichotomy After* Burwell v. Hobby Lobby, 90 Notre Dame L. Rev. Online 16, 22 (2015).

[285] *Victoriano*, 59 SCRA at 79.

[286] Heiner Bielefeldt, Report of the United Nations Special Rapporteur on freedom of religion or belief, A/HRC/28/66, 29 Dec. 2014, ¶ 8.

liberties at the expense of other people. "For sure, we shall continue to subject any act pinching the space for the free exercise of religion to a heightened scrutiny but we shall not leave its rational exercise to the irrationality of man. For when religion divides and destroys, the State should not stand still."[287]

The Court in *Imbong* had the opportunity to take measure of the right to religious liberty when the rights of third parties are also hanging at the balance. Instead, the Court denied a fundamental guarantee against coercion and compulsion to those who need it the most. The Court fostered distrust in relations where the preservation of life demands complete fidelity. *Imbong* reveals, and revels in its own myopia. One can only hope that a corrective judicial lens may still be prescribed.

- o0o -

[287] Iglesia ni Cristo v. CA, 259 SCRA at 545.