

Is Pregnancy a Disease? And Why Does That Matter

Dr. Daniel Brudney explains some doctors refuse to provide certain medical treatments to their patients because they have a conscientious objection to those treatments. However, should all objections to treatment be honored? Where are the limits between professional obligations and personal beliefs?



Featured Speaker:

Daniel Brudney, PhD

Daniel Brudney is Professor in the Department of Philosophy and the College; Associate Faculty in the Divinity School; Associate Faculty, MacLean Center for Clinical Medical Ethics. He writes and teaches in political philosophy, philosophy and literature, bioethics, and philosophy of religion. He is the author of *Marx's Attempt to Leave Philosophy* (Harvard, 1998).

Transcription:

Welcome to the Peds Ethics podcast, where we talk to leaders in pediatric bioethics about a hot topic or current controversy. Here's your host, John Lantos from the Children's Mercy Bioethics Center in Kansas City.

John Lantos, MD (Host): Hi everybody. This is John Lantos with the Pediatric Ethics Podcast coming to you from Children's Mercy Hospital and Children's Mercy Bioethics Center. We talk about interesting issues in pediatric bioethics, often with authors who have written complex controversial or interesting papers that we discuss in our Pediatric Bioethics Certificate Program. You can find out more about that on our website www.childrensmercy.org/cmbc (<http://www.childrensmercy.org/cmbc>). Today, we're thrilled to have Daniel Brudney who is a Professor of Philosophy at the University of Chicago. He's an expert in political philosophy as well as bioethics. And he has written a paper that we assign every year in our course and that every year generates controversy. It is called "Pregnancy Is Not A Disease" Conscientious Refusal and the Argument from Concepts. Dan, in this paper, you start out by talking about what you are not trying to do in the paper. Could you explain why that's important and tell us what you are trying to do?

Daniel Brudney, PhD (Guest): Much of the debate about whether healthcare professionals have a moral right to refuse to participate in some form of legal procedures such as abortion; seems to be focused on substantive beliefs about the morality or immorality of the procedure in question. And that can get us into a very deep and very deeply disputed water about whether any given procedure is a morally permissible procedure. There is a different argument that has been brought forward in the last decade or so that actually skirts that question and it's virtue as an argument is precisely in part that it skirts the question because it suggests that if it's a well-done argument; it, in principle ought to elicit perhaps even agreement from people whose substantive views about for instance, abortion, might be very different.

And so it's an interesting argument and potentially a powerful one and so, I thought I ought to take a look at it and see what kinds of claims it's making and how those work and whether they actually stand up to scrutiny.

Host: So, what is that argument and what are the claims?

Daniel: So, the argument starts with the thought that any domain has of inquiry or of practice has its own sort of internally determined structure. Meaning that there are some activities that belong say to a certain kind of practice, such as carpentry or plumbing and some that however worthy they might be; are not part of that activity for instance, if what's going wrong in your house is the electrical wire; the mere fact that the plumber is around doesn't mean that it makes sense for you to say well could you please fix it. It's not part of the plumber's expertise as a plumber and the plumber might appropriately say I'm here to fix the leak in your sink, not your bad wiring. If you want to call an electrician, here's someone I can recommend.

In that sense, a healthcare professional might say about a given procedure, this is how this argument goes; the procedure in question is actually not a medical procedure. And as such, as a medical professional; this isn't what I do and that's the sort of thing which in principle, somebody could say whether or not they approved of the procedure.

Host: So, the carpenter who refuses to fix your electrical problem is not making a conscientious refusal. Is that the point?

Daniel: Correct. What he is saying is so to speak, that just happens not to be my job. I'm here to do a certain class of activities that fall under the heading of my own skill set and anything outside of that is really not what I'm here to do and so it wouldn't be appropriate to get angry, to dock my pay or something like that if I refuse to do something which isn't part of my job description.

Host: So, if I understand where you are going with this, let me discuss an unusual request that some doctors have said they've gotten from a patient. Some patients say, "Doc, I have two legs, but I feel like my authentic self is as an amputee. Would you amputate one of my legs so that I will feel better?" and a doctor might say, "That's not my job?"

Daniel: So, a doctor might say that. Now the real question that I was in this paper trying to work through is that whenever you make a certain kind of a claim and in this area where healthcare professionals are saying that they ought to be permitted to refuse to participate in procedures of some kind and not to be sanctioned in any way for their refusal. This is a claim that says there's something that I have an entitlement to do or that someone ought to allow me to do. But anytime you make a claim of that kind; you have to redeem it by explaining the basis for the ought here and that can be cashed out in more than one way depending upon what it is you're saying.

So, one thing someone might say is that to participate in say the performance of an abortion; would go against my deepest moral or religious beliefs and as such, would require me to violate the integrity of my conscience or violate my religious beliefs so in some way it would violate the deepest values that my life is built upon and that that would count as a significant harm to me. And that's a very serious claim and that's one form that the claim to conscientious objection has taken. It's the most traditional form. But what's key to that is a pair of claims. One is the general claim that people have a moral entitlement, not to have to choose between their job or some form of employment punishment and violating their conscience. That's a general claim which then becomes a particular claim with a particular person in a particular job.

Then you get the very particular claim, namely, these are my beliefs about what is morally or religiously permitted. This is what I sincerely believe. In that case, if you accept the general claim, really the only issue is does this person sincerely have those beliefs? If they do, then it looks like they are entitled to the accommodations if you accept the general claim that people should not be forced to choose between their jobs and their moral and religious convictions. I should say parenthetically that one could go into great detail about whether that claim is one we should really accept but I don't want to go there for this paper. Rather I want to go to a very different kind of claim, and this is the claim that certain kinds of activities that are performed in medical settings actually don't fit within the description of what is medicine. That's why when people say pregnancy is not a disease, the argument goes I am a medical provider, my task as a medical provider is to forestall and or cure or treat diseases, pregnancy is not a disease; therefore it is not my task as a medical provider to treat in any manner or shape a pregnancy as a disease. This doesn't mean of course that an OB shouldn't help bring a fetus to term, but it means that to consider the pregnancy as some sort of bad thing akin to a disease and thus trying to think that it should be terminated; the argument goes but that's not what medical professionals do. They don't regard pregnancy that way. And therefore, if I'm a medical professional, so the argument goes; I should be exempted from having to participate in doing something that doesn't fall under what I believe is the appropriate scope of medicine. Just like the plumber, the carpenter who isn't an electrician.

Host: So, that's so much a traditional conscience claim as it's a claim about what is proper for the profession to do?

Daniel: Precisely. And because of that, the crucial issue is not so much whether or not the practitioner in question really believes it; but whether it's true. It is a general truth claim about the scope of medicine just as our plumber says I don't do wiring.

Host: So, in theory, every plumber would share that belief.

Daniel: The plumber is in effect claiming I understand the scope of my profession. Everybody who is a plumber understands that we do leaks, and other things connected with water and pipes, but we don't do wiring. That's a job for somebody else. And the analogous one claim would be anybody who truly understands what the concept of medicine is; will understand that it's not part of the scope of that concept to terminate a pregnancy.

Host: So, taking care of the health of a pregnant woman would, I would presume, fall under most people's definition of what is the proper scope of medicine. But doing an abortion and ending a pregnancy by tis argument would not be within the proper scope of medicine.

Daniel: Correct. That's how the argument goes. But what is to be stressed is that the assertion here is not so to speak a personal assertion. It's not whereas the claim it goes against my conscience or my religious beliefs to participate in abortion; it's a statement about me, about the person making that claim. And it might be a sincere and true one, it might be false. But it's – we know whether it's true or false by reference to whether that person sincerely believes it. Whereas a claim about the scope of medicine is a general truth claim about what medicine involves and therefore try to determine whether that claim is true is in effect a philosophical question about what the best understanding of the concept of medicine actually is. And what that means is that if you make this argument, if you say the reason

that I won't perform an abortion is because abortion is not in the scope of medicine; you really need to be prepared to defend the claim that abortion is not in the scope of medicine.

Because you are no more the only authority on these things than anybody else. You may be the best authority on what you actually hold as religious beliefs. You are probably in a better position to know that than anybody else, but no single individual is the sole person in charge of determining what isn't in the scope of any given concept, medicine included.

Host: So let me make sure I have this right. If I make a traditional conscience claim, I say, My own beliefs are that abortion is murder, therefore it would be a threat to my integrity to do that. You couldn't prove that I'm wrong. I'm the authority on my own integrity.

Daniel: Normally. If it's the case for instance that you've been convicted of a whole number of murders and don't seem to show any repentance; I'd be skeptical about your beliefs.

Host: You could question the sincerity of my conscientious beliefs.

Daniel: Correct, but that's what's at issue, is the sincerity of your assertions. Not whether they are making a claim about the world that is true.

Host: Whereas, if I'm making a claim about the profession, I need to have a more robust concept of what does or does not fall within the scope of medicine.

Daniel: You need to be able to defend your claim that something does or does not fall within the scope of medicine by reasons that don't refer to you, yourself. But that are the kind of general reasons that – in this case, it's a philosophical question, what is within the scope of the concept of medicine and you would have to offer reasons of that kind.

Host: So, just to be clear or to try to clear up what I think it is that pisses off our students when they read this paper. You are not arguing for or against the idea that pregnancy is or is not a disease.

Daniel: Correct. What I'm trying to understand is the kind of assertion that's being made and what kind of defense or challenge to that assertion would be appropriate.

Host: And so, if somebody says maybe a better title would have been "Ending Pregnancy is Not a Medical Treatment." Since that seems to be closer to what the focus really is rather than pregnancy itself.

Daniel: That is true. It is that the phrase is – I picked it because it was out there and one could find it but you're right, as a more accurate way of focusing on what the paper is talking about, what you're suggesting might have been better.

Host: And it seems that this distinction that you're trying to make has important implications for public policy. That is to the extent that I'm making a conscience claim, my individual conscience claim could and perhaps should be accommodated by the institution where I work. They could say here in this hospital, we believe that offering abortion is and does fall within the scope of medicine. We understand

that you, personally have some beliefs about it. We will accommodate your beliefs but collectively, we will define medicine to include that practice. On the other hand, if it doesn't belong within the scope of medicine; you could have whole hospitals saying I don't know we – that's carpentry. We're electricians. Here we just do the things that we believe fall within the proper scope of medicine and abortion is not one of them. And there would be no intra-institutional remedy.

Daniel: That is correct. Now in many institutions however, you do get an intra-institutional conflict. And that's part of the paper is devoted to asking how is that conflict most properly resolved? Because you might have a situation in which one physician has a certain belief about what falls within the scope of medicine, but that belief is not held by the institution or more narrowly, by the physician section chief or someone with an institutional authority. And the question then becomes, if the institution has its understanding of the scope of medicine; is the institution permitted to impose that understanding on those who work there? As you say, this is quite independent from whether or not the institution ought to grant accommodation on the basis of the conscientious belief that doing something would violate the person's religious beliefs and integrity and so forth. But it is about what kind of claim and who gets to decide it about the scope of medicine is appropriate in institutional context.

Host: So, with that in mind, let me move it away from pregnancy and abortion for a minute and think about aid in dying or physician assisted suicide. There are now states in the United States and countries that have legalized this practice. There are doctors and hospitals that say that falls outside the proper scope of medicine. And so a hospital may say we do not permit assisted suicide within our but a doctor practicing in that hospital may think it's appropriate to offer that to her patients. Could the institution impose their view and fire that doctor?

Daniel: My own view is that the answer is probably yes. That is, the general question is who gets to determine in a workplace what the activities that are proper within that workplace are. And just as a professor, a college professor has limited autonomy in determining what she can do, so, in the paper, I give the example of whether or not I would be able to stop giving grades to my students if I believed that education is inhibited by grades and therefore the very concept of a college education involves doing what is necessary to keep people focused on truth not grades. My dean might have a very different view and might require me to give grades in my classes and sanction me in some way if I fail to do so.

My own view is that I ought to be allowed to go to the dean and have a conversation with the dean and try to convince her that my understanding of education is better than hers; but at the end of the day, within the institution, she gets to determine the concept of education that reigns within the institution and I have to accept that in so far as what's at stake is trying to understand the best – give the best account of what education involves.

Host: Whereas, if you said I belong to a religion that finds grading people morally abhorrent, in fact, in the Torah, that's why Moses did not take a census because numbering people devalues them, it violates my personal integrity to grade people. You might have a different conversation with your dean?

Daniel: Yes, it would be a very different conversation. It would then get into some of the complexities about the appeal to integrity that we haven't talked about because the appeal to integrity presumably does not work if you're refusing to do something that's part of the core activity of an enterprise and we

could then try to understand whether grading is indeed a core activity of college education but yes, it would be a very different kind of a discussion.

Host: With, as you suggest, maybe some blurry boundaries about where limits to conscience claims lie because of the needs of an enterprise or institution. Go ahead, you were going to make an analogy but

Daniel: Well then, I was then going to bring it back to medicine and as I say, one of the sort of interesting features of this argument from concepts as I'm calling it is that it can have implications that are in our conventional categories either conservative or liberal. So, it does seem to me that in fact, if it's appropriate, for there to be hospitals that are religiously based; it might well be appropriate to say that well in a Catholic hospital, that institution's understanding of medicine is such that certain kinds of activities abortion, assisted suicide; don't fall within that institution's understanding of what medicine amounts to and therefore practitioners there would be doing something wrong if they performed abortions or assisted suicide and justified doing so on the grounds that that's what medicine involves. I don't think that they are entitled to determine the scope of medicine within an institution where they are a subordinate player alternatively the argument that medicine does not involve such activities as abortion or assisted suicide; would not be a good argument for a clinician to make in a hospital where they had thought these things through and decided that in their view the best account of medicine does include these activities.

Host: Well, I cannot wait to get this podcast up online and distributed to our students and see whether they all say ah, Professor Brudney's much more subtle and smarter than we thought. Now we understand the important distinctions he was trying to make or read more carefully in the future. If any of you listening would like to participate in the Bioethics Certificate Program go to our website www.childrensmercy.org/cmhc (<http://www.childrensmercy.org/cmhc>) Children's Mercy Bioethics Center and you can learn more about that. Professor Brudney, thank you so much for taking the time to talk about this fascinating and controversial paper.

Daniel: It's been a pleasure. Thank you for giving me the opportunity to think more about these matters.

Host: Dan Brudney Professor of Philosophy at the University of Chicago and this is the Pediatric Ethics Podcast from Children's Mercy Hospital.

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