The right to health *versus* conscientious objection in Argentina

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Abstract

The right to conscientious objection guarantees that individuals are not obliged to carry out actions that oppose their ethical or religious beliefs. In this article, we will analyze the arguments that mobilize the social players who appeal to that right in Argentina. We will compare two phenomena that limit the right and access to health and whose recurrence has increased since the early 2000s: the objection to the National Program of Responsible Sexual Health and Procreation and the National Plan of Compulsory Vaccination. The data analyzed come from three qualitative investigations, focused on the understanding of the views of the social players. We propose that conscientious objection cannot be reduced to a question of individual autonomy, but, on the contrary, it is a phenomenon in which individuals interact as parents, citizens, professionals, among other social roles.
Keywords: Sexual health. Reproductive health. Vaccination. Religion and medicine.

Resumen

Derecho a la salud *versus* objeción de conciencia en la Argentina

El derecho a la objeción de conciencia garantiza que los individuos no sean obligados a llevar a cabo acciones que se oponen a sus convicciones éticas o religiosas. En este artículo analizaremos los argumentos que movilizan los actores sociales que apelan a ese derecho en la Argentina. Compararemos dos fenómenos que limitan el derecho y el acceso a la salud y cuya recurrencia ha aumentado desde comienzos de los 2000: la objeción al Programa Nacional de Salud Sexual y Procreación Responsable y al Plan Nacional de Vacunación Obligatoria. Los datos analizados provienen de tres investigaciones cualitativas, focalizadas en la comprensión de los puntos de vista de los actores sociales. Planteamos que la objeción de conciencia no puede reducirse a una cuestión de autonomía individual, sino que, por el contrario, es un fenómeno en el que interactúan individuos en su carácter de padres/madres, ciudadanos, profesionales, entre otras identidades sociales.
Palabras clave: Salud sexual. Salud reproductiva. Vacunación. Religión y medicina.

Resumo

Direito à saúde *versus* objeção de consciência na Argentina

O direito à objeção de consciência garante que os indivíduos não sejam forçados a realizar ações que se oponham a suas convicções éticas ou religiosas. Este artigo analisa os argumentos mobilizados pelos atores sociais que apelam para esse direito na Argentina. Comparam-se dois fenômenos que limitam o acesso e o direito à saúde e cuja recorrência aumentou desde o início dos anos 2000: a objeção ao Programa Nacional de Saúde Sexual e Procriação Responsável e ao Plano Nacional de Vacinação Obrigatória. Os dados analisados são provenientes de três pesquisas qualitativas, focalizadas na compreensão dos pontos de vista dos atores sociais. Defende-se que a objeção de consciência não pode ser reduzida a uma questão de autonomia individual, mas que, pelo contrário, é um fenômeno no qual interatuam indivíduos nas funções de pais/mães, cidadãos e profissionais, entre outras identidades sociais.
Palavras-chave: Saúde sexual. Saúde reprodutiva. Vacinação. Religião e medicina.

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The appeal to conscientious objection implies making use of the right not to be forced to carry out actions that oppose certain ethical or religious convictions important to the individual who invokes it. In Argentina, this right is guaranteed by Articles 14 and 19 of the National Constitution which establish freedom of worship and freedom of conscience as long as a third party is not harmed [1]. Since the mid-1980s, the debate on conscientious objection began to pass through public opinion based on judicial cases in which Jehovah's Witnesses rejected medical treatments (especially transfusions) and military service for religious reasons [2].

In recent years, this issue has gained importance in the field of sexual and reproductive health because many health professionals have relied on conscientious objection when refusing to provide different services such as, among others, providing information on contraception, prescribing contraceptives and carrying out abortions in cases permitted by law [3]. It has also taken importance due to the objection of some people to the mandatory vaccination of their children [4,5]. On the other hand, the debate on this issue has increased as of the presentation of the religious freedom project in the Congress of the Argentinian Nation that is currently under discussion and in whose article 7 stipulates that everyone has the right to invoke a relevant religious duty or a substantial religious or moral conviction as a reason to refuse to comply with a legal obligation [6].

Academic work on conscientious objection in Latin America focuses mainly on the analysis of its legal dimension, its limits, its various regulatory aspects and jurisprudential analysis [7]. In addition, there is a bibliography that addresses conscientious objection to abortion from a bioethical perspective together with papers that examine the risks to health policy and, finally, there are conceptual studies from sociology and philosophy [7].

These studies have focused mainly on characterizing the social processes of Modernity (or multiple modernities), where individuals begin to consider themselves autonomous from other individuals or institutions (family, market, State, health system). This process of individuation allows subjects to claim the possibility of deciding about their own life outside of the impositions and social regulations.

In recent decades, different social scientists put the focus on the growing reference to the individual over the societal [8] by updating the debate between individuation and the maintenance of social ties [5]. These studies have realized that the process of individuation is far from being universal. The claims of autonomy appear as a tendency of certain sectors and social movements [9]: urban social groups, with high income and educational levels.

In this article, we will analyze the arguments used by individuals who appeal to conscientious objection in the light of two phenomena that occur in Argentina frequently since the early 2000s: the objection to the National Program of Sexual Health and Responsible Procreation and the objection to the National Plan of Compulsory Vaccination. It is interesting to analyze these two phenomena in a comparative perspective since, in the first one, the objection is carried out by health professionals and in the second one, by patients. Both groups object to public health programs, citing religious beliefs. We are interested in comparing the presence of this form of individuation and claiming autonomy in the field of health from the case of health professionals who object to public reproductive health policies and parents who adopt alternative medical practices to the biomedical system.

The methodological perspective adopted is that of qualitative, inductive, interpretive, naturalistic, multi-method and reflexive research [10], which is interested in the ways in which the social world is understood, interpreted, experienced and produced by social players. This perspective is based on flexible data generation methods and sensitive to the social context in which they are produced and is supported by methods of analysis and explanation that cover the understanding of complexity, detail, context and privileges depth over extension [11].

The data presented in this article come from three doctoral and postdoctoral investigations that used different collection techniques: in-depth interviews, participant observation and documentary analysis [12]. For this article, we take the data from the analysis of documentary sources (texts, statements and public communications, judicial decisions, press articles, blog posts and social networks, gray literature) and analyze it through the application of the comparative method of social sciences [13].

The structure of the text is organized as follows. First, we will present our analysis of conscientious objection and sexual and reproductive health and its regulatory framework. Then we will work on vaccines, their regulation, and objections, requests for unconstitutionality and requests for authorizations on alternative immunization plans. Our purpose is to contribute to the understanding of the individuation process that allows certain social sectors to claim the possibility of deciding about their own lives outside social regulations. In this case, both phenomena represent a challenge to public health, a situation that we will return to in the discussion of the results.

Before we begin, we believe it is necessary to emphasize that this article does not start from the assumption that these two situations can be treated from the bioethical point of view from the same right: the right to conscientious objection. Our article is not theoretical-conceptual, but empirical. We describe and analyze a situation that takes place in a recurring way in the contemporary reality of Argentina: the appeal to the State by different social groups to get recognition of the right to conscientious objection not to carry out health practices that are regulated by the same State and by international organizations. We are interested in highlighting the contradiction that emerges from this search for recognition. On the one hand, if it is about limiting women's reproductive health, it is regulated and recognized as a right of health professionals at the individual level (although not of health institutions since the State from the normative -declarative guarantees access to rights). On the other hand, if it deals with the rejection of vaccines, the State, through its rules and judicial decisions, does not contemplate conscientious objection as a right to recognize. At this point, it is prioritized to limit the decision of the parents to guarantee the best interests of the child and the common good of society (collective immunization for the prevention of death and illness).

Our interest is to understand the imaginary and beliefs of those who mobilize conscientious objection to argue their positions against different health practices. Although it is the duty of the State to guarantee access to sexual and reproductive health services and vaccination coverage (as indicated by current regulations and public policies), in the bureaucratic frameworks a mechanism is generated that, mainly through administrative resolutions or In judicial litigation, it allows certain persons to be constituted and claimed as objectors and in practice limit access to the health of other citizens. The main purpose of this article is the understanding of these processes.

The objection covered by the law and the sexual and reproductive health

Article 14 of the Argentinian National Constitution affirms that every inhabitant of the Nation enjoys – among others – the right to freely profess their cult. Article 19, meanwhile, adds:

The private actions of men which in no way offend the public order and morals, or harm a third party, are reserved only for God and are exempt from the authority of magistrates. No inhabitant of the Nation will be forced to do what the law does not mandate, nor deprived of what it does not prohibit [13].

In the statements of both articles, the right to conscientious objection is supported, which guarantees that no person will be forced to carry out actions that contravene their ethical or religious convictions. This right – which is remembered since it was appealed to those who requested exemptions from military service when it was mandatory – has recently extended to the field of sexual and reproductive health.

In 2003 the National Ministry of Health created the National Program of Sexual Health and Responsible Procreation, through National Law 25.673 [14], which reflects years of struggles of various sectors of society to promote the welfare of the population in Sexual and reproductive rights. The purpose of this program has been, since its inception, to promote equal rights, equity, justice and improve the structure of access opportunities in the field of sexual health.

National Law 25.673 recognizes that the Right to Health also includes Sexual Health and that it includes the possibility of developing a gratifying and coercive sexual life, as well as the possibility of preventing unwanted pregnancies. Within the law, article 10 also considers the case of conscientious objection: *Private institutions of a confessional nature that provide themselves or by third-party health services, may, based on their convictions, be exempted from compliance with the provisions of the Article 6, subsection b), of this law (prescribe and provide contraceptive methods)* [14]. The regulations clarify that health centers must guarantee the care and implementation of the Program and that the individual right to object to awareness of health professionals [15].

Together with the promotion of the law, appeals to the conscientious objection of numerous health

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professionals who saw their beliefs violated by being forced to comply with some of these clauses began to arise. This generated a social problem, since, in the area of sexual and reproductive health, unlike other appeals to conscientious objection, the objectors' request to refrain from performing certain actions directly affects the interests of third parties, as well as their Fundamental rights. Refusing to provide services or information related to sexual and reproductive health care put people's health, their physical integrity and, in many cases, their lives at risk.

An emblematic case in relation to conscientious objection is that of Ana María Acevedo, a 19-year-old boy with three children who was diagnosed with cancer while on her fourth pregnancy. He requested the termination of pregnancy to start treatment. The doctors of the provincial hospital where he was treated appealed to the conscientious objection to not perform the procedure and did not initiate chemotherapy to protect the life of the unborn. The woman passed away [16].

The situations of abortion requests and the refusal of professionals to carry out procedures in public hospitals are repeated throughout the country and have resulted in a ruling by the Supreme Court of Justice of the Nation [17] where the non-punishability of abortion is ratified in certain circumstances as indicated in the Constitution in its article 86 (danger of life for the mother and in cases of rape) [18]. Although there is a national regulatory framework concerning sexual and reproductive health (access to contraceptives, tubal ligation, and vasectomy, guides to care for non-punishable abortions) there are provinces that have not adhered to these regulations and conscientious objection is also regulated variously at the provincial level [2].

Arguments of objections regarding sexual and reproductive health

From the sanction of the National Program of Sexual Health and Procreation in Argentina and also since the sexual rights were raised in the United Nations as part of the agenda of the member countries, a series of initiatives and collective declarations of health professionals concerning conscientious objection emerged. These initiatives take place within a framework of unequal access to health between men and women from different social sectors [18] and in a generalized context of violence against women [19].

Various studies in the social sciences have analyzed the situation of abortion, highlighting the high mortality of women due to the performance of unsafe practices in hiding [4]. Likewise, it has been emphasized that abortion is a frequent and widespread practice in women of different social classes [20].

Social research indicates that religious beliefs have a preponderant role in discussions about sexual and reproductive rights [21]. Various studies point to religious groups and the Catholic Church in particular as actors opposed to the extension of sexual and reproductive rights [22,23]. They affirm that they have consolidated networks of religious activisms that object to sexual and reproductive health programs and that have the capacity to pressure in the political and judicial spheres [24].

Likewise, the general refusal of physicians to perform abortion procedures not punishable in the public health sector with their consequent judicialization of cases [25,26] has been highlighted, as indicated by a physician from a public hospital in the Province of Buenos Aires:

"In our hospital all obstetrics service is objector. This happened when the Ministry of Health took out the guide for the care of non-punishable abortions and although the Supreme Court ruling clarified in which cases the procedure has to be performed, they remain objectors. What happens is that the head of the service is very Catholic, he declared himself objector and well, all the members of his team too. The hospital had to set up a separate sexual health program with people from gynecology and social service" (H., Physician of a public hospital of the Buenos Aires province, interview, November 20, 2017).

These strategies of collective objection to the performance of non-punishable abortions were raised throughout the country after the ruling of the Supreme Court of the year 2012 [17]. For example, in the Province of Santa Fe there were complaints of a group of women to Obstetrics services in which all members declared themselves objectors and in contrast, there were public statements of support for these doctors to resist and continue to declare themselves objectors:

"We are conscientious objectors basically because we are in favor of life and not against it. The doctors of the Gynecology service of the Clemente Álvarez Hospital are not willing to perform abortive practices for a constitutional right that

is conscientious objection" (Head of Gynecology Service, Hospital HECA, January 31, 2012, cited in AICA on February 3, 2012).

Various associations of Catholic physicians generated publications, organized conferences, congresses and statements in the press [3]. Based on the doctrine of the Catholic Church, biomedical personnel found, in conscientious objection, a legitimate exercise of their rights:

The civil legislation of many states currently attributes, in the eyes of many, undue legitimacy to certain practices. He is unable to guarantee morality consistent with the natural requirements of the human person and with the "unwritten laws" recorded by the Creator in the human heart. All men of good will must strive, particularly through their professional activity and the exercise of their civil rights, to reform morally unacceptable positive laws and correct illicit practices. In addition, before these laws the "conscientious objection" must be presented and acknowledged. It should be added that the demand for passive resistance against the legitimization of practices contrary to life and the dignity of man begins to be imposed with keenness on the moral conscience of many, especially those of biomedical sciences [27].

The concerns of religious actors for interventions in human life since its inception, reproduction and death have increased from the advances of biosciences [3]. Beyond doctrinal issues, they express deep convictions when rejecting the laws of the National States that contradict their beliefs, as indicated by a representative of the International Federation of Catholic Physicians:

The objection is a paradoxical right. This is the last bulwark of the person to avoid doing something that deeply disgusts them. And this is fine. However, the deeply disgusting action will probably be carried out by others. One avoids it for oneself but cannot avoid it from taking place. The disgust is carried out [28].

In Argentina, the visibility of Catholic physicians and health professionals is greater than that of other religious groups given their impact on the biomedical, political and social field [3,29]. However, far from being a Catholic concern, conscientious objection also crosses minority religious groups [30-31]. Likewise, it also exceeds the case of sexual and reproductive health and includes other social practices, whether health-related, political, labor-related and/or cultural, within the framework of the exercise of religious freedom [30-32].

Although these social groups have been approached by specialized literature as part of a reactionary movement contrary to the extension of rights, we believe that the presence of these religious groups that claim autonomy from social or state regulations can be understood as part of the process of religious production of Modernity through which there is an increase in individuation [7] and communitarianism [33]. Individuals claim for themselves the right to self-determination and autonomy concerning state regulations, based on their religious beliefs, although in that process harm the rights of third parties.

Next, we will address this issue from another point of view, that of patients who object to the national vaccination plan due to religious and/or belief issues.

Vaccination in Argentinian legislation and conscientious objection

Argentinian legislation provides for a general regime for vaccination against preventable diseases through which the National State guarantees 20 free vaccines for the whole population [34]. The regulatory framework includes 21 resolutions of the Ministry of Health [35] through which vaccines were incorporated into the mandatory calendar, and a national law of 1983, sanctioned still during the military dictatorship, which regulated a mandatory vaccination regime.

The obligatory nature of vaccination is established by a set of applicable sanctions in case people refuse to get vaccinated, they range from fines to criminal and civil penalties. The law provides that there is no possibility to object to the vaccination regime since in case of refusal on the part of people it is carried out compulsorily as indicated in article 18 of Law 22,909 [36].

The obligatory nature of vaccination generated increases in population coverage and the eradication of some indigenous diseases [37]. According to the Pan American Health Organization (PAHO) [38] since 1983, the year in which the law was passed, the vaccination coverage, which was then around 70% increased by exceeding 90% in some of them such as the tuberculosis vaccine – Bacillus of Calmette and Guérin (BCG). According to the latest WHO data available for 2016, the

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immunization coverage of Argentina is BCG: 92%, Hepatitis B in newborns: 81%, Polio 3: 88%, DTP1: 88%, DTP3: 92%, HepB3 : 92%, rota-virus: 75%, PCV3: 82%, DTP4: 79%, SRP1: 90%, SRP2: 98%) [39]. Immunization against diseases through vaccination is considered by international organizations and Argentinian health authorities as an essential human right in guaranteeing access to the right to health and also, an obligation of citizens. It is considered as a right and an obligation since it is the responsibility of the families to guarantee the immunization of children. In this way, deaths and diseases are prevented, as evidenced by WHO scientific data regarding vaccines [40].

There is consensus in the literature in considering those who object or do not want to get vaccinated as belonging to high-income sectors, in economic terms, or to religious minorities [41]. However, pediatricians from public hospitals – to which patients from popular sectors attend – have alerted that vaccination coverage is far from adequate in epidemiological terms. Health professionals often explain this situation is due to the beliefs of parents, who are responsible for vaccinating their children: *unjustified fears of vaccination or erroneous beliefs of parents and health professionals due to cultural, religious, negative press news, or access to information on the internet, generate lost opportunities for vaccination* [42].

A study by Gentile and collaborators [42], in which the vaccination behavior of 1,591 children up to two years of age was analyzed, states that most parents receive information about vaccines in more than one place. The first is television, followed by some advertising and third directly from a pediatrician. These issues, pediatricians argue, cause lack of access to vaccination, especially in popular sectors.

Along these lines, Alazraqui and collaborators [43] point out that vaccination coverage in urban popular sectors is lower than in the rest of the population due to inequalities in access to health care. Thus, several authors have pointed out that the compulsivity of the vaccination established in the legislation is directed towards the urban upper-middle sectors that usually litigate against the State requesting for the unconstitutionality of article 18 of law 22,909 [41]. Next, we will analyze some positions of objectors to the mandatory national vaccination plan.

The arguments against vaccines: alternative immunization plans

According to Funes [4], some social actors argue that vaccinating children (or not) is an autonomous individual decision legitimized by the information that everyone has accessed and with which each mother or father feels comfortable according to their history and ideology. In recent years, the debate on non-vaccination that has been increasing since the development of forums, activities, litigation, bills, press articles led by members of anti-vaccine movements and exposed by dissemination has resurfaced in Argentina through social networks on the Internet.

However, as Brown [44] points out, these anti-vaccine movements can be traced from the start of vaccination campaigns. Beliefs about the damage they cause can also be traced from the experimental stages of vaccines that were applied without sufficient evidence and generated adverse effects [4]. In Argentina, although the debates have been expressed by forums and media in recent times, there is resistance to compulsory vaccination since Law 22,909 was passed.

The Argentinian Homeopathic Association, founded in 1933, has released statements positioning itself against vaccination since the mid-1980s through its physicians and professors. Who has had a public position in this regard is a pediatrician who has also started a website on free vaccination and has written papers indicating that, in his opinion, fans of vaccines that receive information manipulated by laboratories and therefore do not know the adverse effects of these predominate in health centers [45].

The debates have become wide especially since the unconstitutionality requests of Law 22,099 with judicial cases since the mid-2000s (accompanied by requests from sites such as online Change.org with more than fifteen thousand signatures) and the recent presentation of a project of law on informed consent in the application of vaccines [46].

Regarding the judicialization and requests for the unconstitutionality of mandatory vaccination, we can point to two cases as an example. The first is about an Ayurveda family. A couple from the city of Mar del Plata, craftsmen by trade, has their first child in home-delivery. After delivery, they go to the local hospital with the newborn and refuse to receive the vaccines. They claim Conscientious Objection by adhering to homeopathic and ayurvedic medicine.

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The case is prosecuted, a child advocate requested the vaccination of the newborn through hospitalization alleging that the parents denied the child his right to health. The intervening Family Court indicated that, after being informed about the risks of not vaccinating the child and continuing without wanting to vaccinate him, they should present an alternative health plan signed by a specialist in ayurvedic medicine.

This sentence is appealed and arrives at the Provincial Supreme Court that revoked the decision of the family court and instructing him to intimidate the family to comply with the mandatory vaccination regime within two days, if they did not do so they would proceed to compulsory vaccination. Only one of the judges voted in dissent arguing that the decision of the parents was rational and conscious and that it did not imply risks for the minor or alteration of public order [47]. This judge also pondered in his vote that the Bioethics Committee had verified the *genuine interest of parents to protect their children* [48] informed about knowledge of naturopathic medicine and ayurveda. He considered, based on the recommendation of a bioethicist, that his beliefs should be respected.

The judicial case continued until the Supreme Court of the Nation in 2012, which ruled similarly to the highest provincial court. This case was analyzed by Librandi [41] who considers that the refusal to vaccination appears in the judicial instances as a risk or danger to be dominated. The author affirms that either due to epidemiological or legal reasons, judicial actors justify the punitive intervention of the State.

The second case involves a mother requesting authorization for an alternative homeopathic immunization plan. A woman questions the compulsory vaccination of her children and presents an appeal to declare the unconstitutionality of article 18 of Law 22,909 (compulsory vaccination). The Superior Court of Justice of the Province of Jujuy rejected the request. For this, they questioned the woman's decision analyzing her personal characteristics and the type of care she gave to her children. Besides, they pointed out that the woman did not make the request together with the children's father and that health decisions about them should be taken together (the woman was separated) [49].

The psychosocial report requested by the magistrates indicated that the children had grown up in a potentially harmful environment for their physical and psychological integrity since they were not provided with minimal medical containment. This court also relied on a ruling by the Supreme Court of Justice of the Nation to reject the unconstitutionality of compulsory vaccination [49].

These positions of rejection to the obligatory vaccination can seem marginal and even atomized, however recently they arrived at the Congress of the Argentinian Nation through a bill of the official nationalist representative Paula Urroz. This indicated in its article 3 that *in public and private places where vaccines of any type are provided, an informative table should be displayed in a visible way that warns about contraindications for the application of vaccines* [46].

The public controversy was so great that the representative had to withdraw the project; It was weeks in which various medical associations publicly demonstrated against radio and TV programs interviewing epidemiologists, various accusations against the deputy of wanting to exercise an economic adjustment in health by "saving vaccines" [50]. The bill is interesting because in its foundations it recovers the arguments treated by Yahbes [45] concerning the adverse effects of vaccination and the consideration of vaccines as a treatment that all autonomous individuals can knowingly reject. In fact, Yahbes had a conference scheduled on July 4 at the National Congress on the adverse effects of the vaccination that was canceled by the deputy due to the debate that was generated in this regard [51].

There are numerous campaigns that gather the arguments in favor of vaccination as an individual choice justified by the lack of access to information on the statistics of epidemiological states prior to vaccination and on the incidence of other public health measures (such as access to drinking water) about the same diseases that fight vaccines. They also refer to the limited knowledge about the chemical components of vaccines and the use of discourses involving holistic alternative medicine (which indicates that the entry of diseases into the body artificially is dangerous) and of homeopathy. However, among the main arguments are those that claim freedom over one's own body and personal rights over it in order to justify the interference of the State as arbitrary [4].

It is necessary to understand that many of these objections to vaccines come in general from people who ascribe to current medicine and alternative therapies, such as homeopathy, Chinese medicine or Bach florals. These are characterized by a holistic conception of the person and the

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world that understands disease and cure as a product of the interaction between the physical body, emotions, the world and, in many cases, the transcendental through the flow of energy [52]. These disciplines constitute reinterpretations of traditional medicines of Eastern and Western origin spread within the framework of globalization and the New Age movement [53].

The growing process of complementarity between biomedical therapies and alternative therapies is linked both to intramundane objectives, such as the scope of a greater sense of well-being in everyday life or in traumatic situations such as terminal diseases, as to transcendental objectives, such as the search of overcoming karma [52]. It is in the latter case that therapists and users show continuity between the use of alternative therapies and a spiritual world-view of the person and reality. On the other hand, we must bear in mind that, in the field of health, the growth of the offer of alternative therapies and medicines is usually indicated by its defenders as an indicator of a crisis of knowledge and institutions linked to biomedicine.

For the purposes of this work, it is worth highlighting the centrality of the claim of individual autonomy in the face of modern institutions, such as biomedicine, which have therapists and alternative users. Although not all of them are advocates of non-vaccination, most of these tend to legitimize their practices based on the criteria of authenticity and individual preferences [5] appealing to the individual right to information and to a conception of the disease that involves interference of the emotional and even the transcendental to defend the possibility of developing autonomous personal transformation processes. The use of these arguments in the case of rejection of vaccination ultimately implies a questioning of the legitimacy of a social norm, based on the search for collective well-being, through opinions, preferences and individual world views.

Final considerations

Far from being closed, the debate on conscientious objection in relation to health issues is very valid. The moral and political debate about the freedom to act, or to refrain from acting, appealing to reasons related to conscience – especially when there are legal or professional obligations that would require otherwise – continues to reap defenders and detractors. In the field of health care, the problem lies in the tension between the right of the objector to freedom of conscience and the right of people to decent, quality and non-discriminatory health conditions. Those who are against the right to conscientious objection by professionals indicate that professional obligations exceed any value that conscience may have, while those who defend conscientious objection, arguing that this right should be protected (most by drawing the limit on decisions that endanger the physical or mental health of patients).

The two cases analyzed – the objectors concerning sexual and reproductive health issues and the objectors to compulsory vaccination – rely on the same right. However, it should be noted that these are different situations that must be analyzed separately. In the case of sexual and reproductive health (whether it is a non-punishable abortion or access to contraceptive methods), the problem shows an apparently irreconcilable tension between respecting the freedom of worship of health care providers or respecting the right of patients to health and life. Medical professionals have always given a special place to their values in the provision of health care: the medical paternalism that in many cases still guides the profession is proof of this [54]. The problem occurs when this appeal becomes an excuse for Avoid fulfilling a duty. In those cases, especially when it comes to professionals working in public establishments, conscientious objection only reinforces the inequality suffered by women and girls (many in poverty) who cannot access care of better quality and those who may have only a single health service nearby [55]. The difficulty or lack of access to sexual health services that most users in the country face are a particular reality in it would seem that which the right to exercise conscientious objection cannot extend without limit. In such cases, the conscientious objection would appear to protect certain rights (based on the beliefs of the objectors), at the cost of violating others (related to the health of girls and women), which are fundamental.

The case of vaccines is, in several respects, different. The objectors are not health professionals, but users/patients (in almost all cases, parents deciding for their minor children). This situation is particular and differs from the one previously analyzed. These differences could partly explain why the former are protected both by judges and by the institutions in which they work, while the latter are legally intimidated to fulfill their duty as citizens. On the other hand, there is the peculiarity that compulsory vaccination is a public health policy, a preventive health intervention that is not limited to the level of individual autonomy but is based on the protection of society as a whole. This particular situation calls for two additional issues, namely the right of parents to decide on the health of their children and if the State can interfere in that power if it is considered that the decision adopted is contrary to the interests of the children.

When analyzing the appeal to conscientious objection by different social groups in a comparative perspective, in the case of sexual and reproductive health and that of vaccines, we also observe a situation of structural inequality of the legitimacy of different beliefs in the Argentinian religious field. Recent studies show a growing diversity of beliefs among the Argentinian population [29] and there is consensus in the literature to consider that the greater religious diversity at the societal level in the Argentinian population has not brought an equal treatment to all cults at the State level, configuring a model of subsidiary secularity [56]. It has also been indicated that this growing diversity does not imply greater pluralism and that the intolerance towards some religious beliefs and practices has increased, establishing new social and governmental strategies for the regulation of religion. The cases analyzed allow us to detect that appeals to conscientious objection in matters of sexual and reproductive health based on Christian theologies, mainly Catholic, have greater tolerance at the state and societal level than those derived from other religious traditions, even though both put at risk issues related to health rights.

What is evident after the analysis of the cases presented, is that if you try to put a limit on conscientious objection – whether in order to protect the rights of users of health services or society as a whole from an epidemiological perspective – then we must appeal to different types of arguments. Conscientious objection cannot be thought of in isolation: it is about reaching agreements that contemplate respect for individual freedoms, the protection of the common interest and the defense of fundamental rights. In no case, however, can the appeal to it be legitimized as a resource to obstruct or limit rights.

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