

Conscience Rights (& Confusions)

Michael Sean Winters | Jan. 20, 2011 | Distinctly Catholic

Discussions of conscience rights for Catholic hospitals and health care workers invite as much confusion as any topic in contemporary political discourse, and that confusion is beginning to spill out into the wider culture. If you doubt those claims about the confusion or the spillage - check out the [front page of this morning's Washington Post](#) [1].

Here is a quote from Lois Uttley, whose organization seeks to prevent secular hospitals from merging with religious ones: "Physicians are being told they must refuse to provide certain services even when they believe their refusal would harm their patient and violate established medical standards of care." I call attention to two words in that sentence that seem to carry more weight than Ms. Uttley allows, "harm," and "established." Uttley might want you to overlook those two words, focusing instead on the supposedly inviolable doctor-patient relationship, because we all know that doctors never make mistakes, doctors are always ethical, and no one should get between a doctor and the patient, right? But, doctors and patients do not stand *sui generis*. Their decisions are influenced by the ambient culture, no? And, unless both doctor and patient are also philosophers, considering what constitutes "harm" and what is "established" involves people outside the specific doctor-patient relationship.

Ms. Uttley might wish to recall *Buck v. Bell*. In the scheme of things, that court case was not so long ago, 1927. It is sometimes forgotten that Bell was not the attorney general, but a medical doctor, superintendent of the public hospitals in Virginia, who sought to sterilize Carrie Buck, a mentally retarded woman. Writing for an 8-1 majority, Justice Oliver Wendell Holmes wrote: "It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes." Holmes's ruling went on to utter his famous conclusion: "Three generations of imbeciles are enough."

Holmes, of course, was writing before Josef Mengele gave eugenics a bad name. It is shocking or should be for liberals to realize how blind they were in their early support for eugenics. The founder of Planned Parenthood, Margaret Sanger, was proud of her neo-Malthusian positions and often advocated that the rationale for birth control was, in part, eugenic. She famously addressed a rally sponsored by the Ku Klux Klan, putting the "hood" into Planned Parenthood. But, while you can throw Sanger under the bus with no objection from me, how could such thinking have found a refuge in as fine a mind as that possessed by Justice Holmes? Certainly, an 8-1 decision is about as "established" as you can get and they decided that forcing Carrie Buck to be sterilized against her will did not constitute "harm," or better to say that the harm caused to her was less than the harm caused to society if she bore children. Would any of the anti-Church spokespeople quoted in this morning's Post story care to comment on *Buck v. Bell*?

It is shocking to me to make that SHOCKING that liberals in America today seem to have so forgotten their philosophic roots that they blithely go along with certain feminists and uber-secularists in denying Catholic institutions and health care workers our right to form our own consciences. The rights of conscience used to be a

liberal concern. Remember John Locke? Remember Roger Williams? Remember Thomas Jefferson? No one, least of all the government, can compel a person to act against their conscience.

Look at this sentence by the article's author and see if you can find the logical flaw. "For miscarriage in which the fetus is not expelled quickly, doctors often use drugs or surgical procedures to protect the woman from potentially fatal infections and bleeding. But if the fetus still has a heartbeat, some Catholic hospitals refuse to intervene. And the patient had to go to another hospital, sometimes hours away, or wait for the heart to stop. "The fact that this happens is simply outrageous and inexcusable," said Jill Morrison of the National Women's Law Center?" Catch the difficulty? If the "fetus still has a heartbeat," how is this a miscarriage? If the fetus has a heartbeat, the procedure being described is an abortion. Does someone affiliated with a law center really think the First Amendment is so negligible that it is fine to expect people who believe abortion is murder to perform one?

Which leads to the other shocker in this morning's piece: Why is the ACLU opposing the rights of Catholic hospitals to only perform procedures that we deem "unharmful," not what outside authorities "establish" is harmful. We believe an abortion harms two patients, the child who is killed and the mother who permits the killing. In fact, the harm to the mother, involving her eternal soul, is in our understanding of values, far greater than the harm to the innocent child. If the First Amendment explicitly bars religious establishment, surely we can all recognize that there is such a thing as a secular dogmatism that is seeking to establish itself, and nowhere more so than in issues of reproductive rights and health care.

Shame on the ACLU. Their failure to recognize the rights of Catholics to decline to perform procedures we find morally objectionable is a radical departure from their mission. What next? If a man sues Kentucky Fried Chicken because they do not sell burgers, and he wants a burger, will the ACLU file an amicus brief? I understand that if there was no intermingling of government funds in Catholic hospitals, the ACLU would probably take a different stance, but they surely see the danger of the road they are on: If a complex society requires admixtures of government and private funds to deliver health care, to deny Catholics our conscience rights in operating our own hospitals amounts to saying that Catholics' rights don't matter in a complex society. That can't be right.

The bishops are entirely right to insist on our rights as Catholics to build and run institutions that flow from and conform to our values. Bishops are also well advised to recognize that the good sisters are not the problem here and if they take the kind of heavy-handed measures we have seen in Phoenix, they will have a harder time making their case to the culture. A Catholic hospital is not just Catholic, it is also a hospital. The problem in Phoenix is not so much that the bishop got it right or wrong, but that the bishop seemed not to recognize any role for clinical judgment and expertise.

My friend and mentor Leon Wieseltier once wrote "There is not a chart in the world that explains the role of charts in the world." That is to say, doctors and clinicians and ACLU lawyers are not the only ones who get to ask or answer philosophic questions, questions that cannot be swept under a rug of medical language or simplistic, highly emotional appeals to tragic cases. Ethical questions are the stuff not of charts but of philosophy and we Catholics are as entitled to our philosophy as any one else. Those who, in this great, free country of ours, do not share our ethics are free to go elsewhere or to build their own hospitals. But, most of the quotes in this morning's Post evidence a strange and biased understanding of conscience rights and, unintentionally, a significant impoverishment of the liberal political imagination.

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