

Conscience & Mandates

Michael Sean Winters | Jul. 21, 2011 | Distinctly Catholic

Yesterday, the Institute of Medicine released its suggestions for what procedures should be mandated for inclusion in private insurance plans under the health care reform law. Some of the proposals seem non-controversial enough: They recommend, for example, that a more sophisticated, and expensive, test for the virus HPV, which is linked to cervical cancer, be part of the mandated services. That is all to the good. But, the recommendations also tread on some highly contentious areas regarding contraception and, worse, abortifacients. Those suggestions go to the Department of Health and Human Services which will formulate the final rules governing mandated coverage. To be clear, the recommendations released yesterday are just that, recommendations.

I am no scientist nor a moral theologian, so I will focus on what is, to me, one of the most pressing aspects of these regulations, the need to protect conscience.

The rights of conscience are at the very heart of American history. Many of the early colonists came to these shores seeking refuge from religious persecution, although the Puritans did not extend those rights to others once they arrived and set up shop. Roger Williams, however, did establish a religious justification for the rights of conscience in his colony of Rhode Island. This impulse to deny the community the right to coerce the conscience of an individual was leavened in the eighteenth century by Enlightenment influences and the First Amendment stands as a central tribute to, and protection for, those rights. In the jurisprudence of the Supreme Court, the rights of conscience have been vindicated by a long line of First Amendment cases that have raised the bar very, very high against those who would seek to impose their will against the conscience of a citizen.

As Catholics, we locate our concern for conscience differently from the way Locke or the Puritans or the Supreme Court did, but not that differently. For us, the rights of conscience are rooted in our beliefs about human dignity. In Vatican II's Decree on Religious Liberty, a document that failed to resolve some of the deeper anthropological and theological issues surrounding conscience rights, the Church nonetheless affirmed its commitment to freedom of conscience, a milestone in the Church's history.

Earlier this year, when the administration released its new conscience regulations, I made the point then, and it remains relevant to this discussion: Liberals should be ashamed of themselves when they cease to defend the rights of conscience. Simply from a PR perspective, it makes sense for the USCCB to solicit the aid of non-Catholic groups that defend First Amendment rights. Not only will this show that our case is more than one of special pleading, it will show that our stand is principled in every regard. The right of a woman to procure an abortifacient does not trump the right of a female doctor to refuse to provide one. Liberals need to do their homework before they dismiss the Church's concerns.

A couple of other points come to mind. In a statement, HHS Secretary Kathleen Sebelius said the recommendations were "based on science and existing literature." Well, I suppose John Locke still counts as "existing literature." But, more to the point, science can only tell us so much and I am philosophically allergic to the kind of creeping scientism that believes that branch of human inquiry can solve all issues. It can't. The insidious, racist book "The Bell Curve" claimed to be scientifically based, but the conclusions of that book stand

condemned as inhumane nonetheless on philosophic grounds. As my mentor Leon Wieseltier said at the time, and which I have quoted before, "There is not a chart in the world than can explain the role of charts in the world."

Second, there are some conservative Catholics – George Weigel comes to mind – who have argued that the bishops' conference diminishes the "voice" of individual bishops. But, within hours of the release of the new recommendations from the Institute of Medicine, the USCCB had a statement critiquing them. The USCCB was able to respond quickly, forcefully and intelligently because it has staff that monitors these issues, just as local Catholic Conferences monitor such issues at the state level. Individual bishops could scarcely afford to keep full-time staff in Washington to monitor these matters. Richard Doerflinger does great and important work at the USCCB defending life, calling our attention to challenges facing the Church. I do not always agree with his conclusions but I am very glad to have him at the USCCB doing what he does.

Third, one of the political challenges for the Church in fighting these recommendations is that the number of pro-life Democrats serving in Congress shrunk drastically after last year's midterm elections in part because groups like the Susan B. Anthony List attacked them and helped fund their opponents. Yes, they had differences over the health care reform law. And, the SBA List has every right to make their position known and support whom they like. But, why did they not try to replace pro-choice Democrats with pro-life Republicans? By going after pro-life Democrats with whom they had relatively minor differences, they have greatly weakened the bargaining power of the pro-life movement within the counsels of the Democratic Party.

Finally, and following up on a theme I have been addressing of late, I wish the USCCB statement had acknowledged some of the good in the new recommendations. After all, there has long been a deficit in coverage for procedures that are unique to women, and redressing that imbalance is a good thing. I understand that we must all set priorities. I understand that there is something morally shocking about the fact that our political leaders spend so little time addressing the lack of health care for the poor and the immigrants. But, I worry that the Church too often appears as a scold in public debates, always defensive, always rejecting. It costs us nothing to praise what is good.

This will be a big issue in the weeks and months ahead. Already professor Stephen Schneck, director of the Institute for Policy Research & Catholic Studies at CUA, and a man who took a lot of heat for his support of Sebelius' nomination, put up a post last night on the public theology list-serve that read: "Plan B and similar should not be covered. The rationale for including such items in category intended for critical basic medical care is unpersuasive. Planned Parenthood and similar organization already provide contraception free to poor women. Moreover, on the face of it, the mandate seems to be at odds with the executive order that got some pro-life support for the health care bill. It's time for the administration to be clear about its respect for religious concerns about life issues. At the very least, religious and conscience exemptions need reaffirmation now." HHS would be well advised to listen to Schneck.

All of us have an obligation to inform ourselves about conscience rights. To that end, here are some of the more recent posts, including one by Schneck and another by Professor Robert Vischer of University of St. Thomas Law School in Minneapolis, that I ran here earlier this year.

[Professor Vischer on the new conscience regulations in February](#) [1].

[Professor Schneck on the new conscience regulations in February](#) [2]. (This was published by Catholics in Alliance for the Common Good and linked on my blog.)

[MSW on liberals doing their homework regarding conscience regulations](#) [3].

[MSW on efforts to prevent the awarding of a contract for a new hospital in the DC area to a Catholic hospital](#) [4]

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