

Issues of conscience, without hyperbole

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The Department of Health and Human Services' recent refusal to expand the federal definition of religious employers who can be exempted from offering contraceptive and sterilization coverage in their employee health insurance plans has stirred strong reactions. Some critics have evoked images of bygone American anti-Catholicism and claimed that the White House is at war with the church and has engaged in a historic assault on Catholicism.

The reality hardly matches the claims. A narrow exception exists for religious organizations that teach that contraception or voluntary sterilization is sinful, but only if they employ primarily or exclusively members of their own faith, exist primarily for the inculcation of religious values and provide their services primarily to members of their own faith.

The exception does not extend to religiously run institutions such as schools, hospitals, and charitable and social service agencies that serve a broader public or have less exclusive employment policies, although the Catholic church considers the institutions and agencies it sponsors in these areas an integral part of its religious mission.

While no decision in a presidential election year is made without a political calculus, there is reason to believe the decision-making in this case was a bit more complex than "Let's stick it to the Catholics and make our liberal, sectarian, pro-choice base happy." First, it would have been relatively easy simply to announce a continuation of a form of exemption that already existed. Second, as one of our columnists pointed out on our website, what options exist for the pro-choice constituency? Newt Gingrich? Mitt Romney? As a political reality, the decision to give religious organizations a year to determine how to accommodate the decision was potentially more problematic politically than an extension of the status quo.

At the same time, it is clear that President Barack Obama has either seriously underestimated Catholic reaction across the board or decided he could play loose with the trust of Catholics who went out of their way to support him personally and his health care plan. Some of those, including Daughter of Charity Sr. Carol Keehan, head of the Catholic Health Association, risked a great deal to support health care reform and had pleaded with the administration to extend the conscience exceptions.

History shows the state can be generous in accommodating individual conscience. In the draft that occurred just prior to World War II and continued through that conflict, for instance, members of historic peace churches and later individuals outside those denominations who claimed conscientious objection to military service were allowed to perform alternative service.

In this case, however, the exception would be to institutions in which it is not unusual that Catholics are in the minority both in terms of employees and clients served.

Two questions arise: How far can religious exemptions extend for an institution when they affect the general public? And how isolated from sin can those same institutions remain when the money they pay insurance companies is financing procedures, at other institutions, that some Catholics might find objectionable?

It is not difficult to find empirical evidence here and abroad that strongly suggests that Catholics -- individuals and the institution -- are not defined by national policies on supplying contraceptives. The church coexists without a great deal of anxiety in other countries where national health plans make contraceptives available to all. In this country, more than half the states require religious employers to cover prescription contraceptives if they cover other prescription drugs. Some of the Catholic institutions that would be affected by the recent ruling already cover contraceptives, and it is also notable that contraceptives are regularly prescribed for non-contraceptive purposes.

While the argument can be made that the important point here is not about contraception but about conscience and a church's right to be free from government influence, the clash of rights in this case is not so neatly defined by those outside and inside the church. It is abundantly clear, at least in the United States, that Catholics themselves do not feel conscience-bound by the church's teaching prohibiting the use of contraceptives. The teaching has been consistently rejected inside the church for more than 50 years.

Is it, then, properly the government's obligation to enforce a teaching for a religious group when its own leaders have failed to persuade the group of its importance? Whose convictions would be upheld by such a mandate? Still, some would correctly say, that's an internal Catholic squabble and the Catholic community should be permitted its quirks -- including a deep difference of opinion between faithful and leadership -- without interference from the state.

Keehan, who was disappointed at the "missed opportunity" and "stunned" by the "vitriol" on both sides of this debate, said the decision "indicates the need for an effective national conversation on the appropriate conscience protections in our pluralistic country, which has always respected the role of religions."

Keehan understands both sides of this debate, and she begins whatever discussion might occur in the next year absent the hyperbole that boils so close to the surface.

It is worth taking the year to investigate how this matter is handled in those states that require religious institutions to cover contraception. One model that a number of commentators have advanced is Hawaii, where religious organizations can refuse to cover contraceptives but must notify employees of the restriction, tell them where they can obtain such services and where employees can purchase separate riders to provide coverage for contraceptives.

Institutions change, the standing of bishops and other religious leaders is not what it once was, the demands of pluralism and the possibilities of medical science push through what once were comfortably kept boundaries. It is futile to wish for a simpler time. The challenge on both sides is to figure out, given the increasing complexities, how the church can continue to act with integrity, and how the state can provide for the greatest good, freed itself from the strictures of individual religions while simultaneously freeing religion as far as possible to act without interference from the state.

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