

Religious liberty is not absolute

Heidi Schlumpf | Jun. 6, 2012 NCR Today

I took a break from blogging about the bishops' fight against the contraception mandate because the whole controversy was making me unhealthily discouraged, especially after so many liberal Catholics agreed with the bishops that this was about religious liberty, not contraception.

But the bishops sure haven't taken a break, putting the issue on the agenda for their June meeting next week and calling for a "Fortnight for Freedom" June 21-July 4.

From a communications perspective, this is pure genius, in that the bishops have now expanded their religious liberty concerns beyond the contraception mandate to include how the church is involved in service to immigrants and refugees as well as adoption services.

The bishops believe:

- Church-run organizations should not have to provide contraception, even indirectly, to their employees;
- The church should be able to minister to undocumented immigrants without threat of legal ramifications, such as those in the 2011 Alabama law;
- Church-affiliated adoption agencies should be able to refuse to place children with same-sex couples;
- And church organizations that minister to refugees should be able to refuse to provide contraceptive and/or abortion information to victims of human trafficking.

Any given Catholic may agree with one or more, but perhaps not all, of these cases, but to the bishops, they're all the same. In fact, more and more it seems they and their supporters believe religious liberty is absolute in every case--or at least any case that affects them.

It is not.

Just like other constitutional rights, such as free speech, the details matter--all kinds of free speech rights are limited. So are some religious liberty ones.

Now, I'm no constitutional scholar, but I know one: [Cathleen Kaveny](#) [1], professor of law and theology at the University of Notre Dame and a columnist for *Commonweal* magazine. In *Commonweal*'s recent series on the so-called "religious liberty" issue, she analyzes the above issues in detail--and it's the details that matter.

So to those who "regret" that the issue is contraception but say the government doesn't get to decide what counts as a religious organization, she (and I) say: It does matter what the issue is, and the government does get to make such decisions about religious organizations for this country's common good.

Writes Kaveny:

"Finally, the most striking aspect of the bishops' claims about religious liberty is the absolute nature of their assertions (they don't really make arguments). They give the reader virtually no hint that such questions must be assessed in a framework of competing rights and duties, particularly the duty to promote the common good."

Her [entire piece](#) [2] is well worth the read.

Another "Domer" also recognized that the common good sometimes trumps absolute religious liberty. In an online [opinion piece](#) [3] for *The New York Times*, philosophy professor Gary Gutting said the bishops' argument:

"It omits the rights of a third party: the government, which has a right (and duty) to set up rules for the common good of the nation. In some cases, this right takes precedence over the rights of conscience. The government has the right, for example, to force people to serve in wars they think are unjust or pay taxes to support activities like birth control that they think are immoral. Organized religions have, in our system, greater rights to conscientious exemption than individuals, but there is no absolute immunity that keeps a religion's claim of conscience from being trumped by the government's right to "provide for the general welfare."

It's nice to hear at least some Catholics talking about the common good instead of just what's good for some Catholic organizations.

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Links:

- [1] <http://law.nd.edu/people/faculty-and-administration/teaching-and-research-faculty/m-cathleen-kaveny/>
- [2] <http://commonwealmagazine.org/bishops-religious-liberty>
- [3] <http://opinionator.blogs.nytimes.com/2012/05/31/do-the-bishops-have-a-case-against-obama/>