

Religious Liberty & Distinctions

Michael Sean Winters | Mar. 17, 2014 | Distinctly Catholic

Michael Peppard, a theologian at Fordham, had [an op-ed yesterday in the Washington Post](#) [1] on religious liberty. It is worth a read. Peppard does something far to few people on both sides of the various religious liberty debates undertake, he draws distinctions.

Peppard highlights the difference between a baker of wedding cakes and a wedding photographer, specifically, the degree to which each person would be involved in a ceremony to which they might have an ethical objection. I am not sure I would draw the line where he does in part because I have never understood the desire to photograph a wedding: Very few people not in attendance care to ever see the photos and those who did attend have their memories, which are always more emotionally accurate than a photograph. But, the key is that Peppard acknowledges there are distinctions to be drawn.

Those who have made themselves champions of religious liberty tend to see their struggle as all-encompassing, all-or-nothing, in short, as a culture war between the forces of religious civilization and the forces of secularization. Too many advocates of gay marriage or of women's access to free contraception tend to do no more than sniff at the possibility of someone having a religiously grounded objection to participating in something the advocates cherish. As Peppard notes, if liberty is to be preserved in this pluralistic society of ours, we can and should seek a balance.

This is especially important as the debate about religious liberty is about to shift from the HHS contraception mandate, which will be resolved in the courts, and the issue of gay rights which may have a couple more years of state-level politics before it, too, lands in the courts. In the case of the contraception mandate, the government could have quite easily achieved its objective of guaranteeing free contraception coverage without involving Catholic colleges or hospitals or charities. It could have taken its own money to fund the coverage, for example. Whether one thinks there is a compelling government interest in providing free contraception or not, there was a way to achieve that interest in a less burdensome way and, when we are talking about the government, we should expect them to try really hard not to burden the religious liberty of citizens.

In the case of gay rights, the immediate focus of the religious liberty fights is not so much what the government does but what private citizens do and the issue is not medical coverage but discrimination. If the government enforces an anti-discrimination law, I cannot think of an alternate mechanism that would not burden the conscience rights of others besides simple enforcement. The purpose of an anti-discrimination law is to guarantee that everyone is treated equally. We allow religious institutions exemptions from anti-discrimination laws in hiring and firing because religious institutions employ ministers and I think we can all agree that we do not want the government deciding who should be a minister at a church. But, in an area like public accommodation, and I would consider the wedding cake baker and the wedding photographer within that category, we should not permit discrimination.

The United States Conference of Catholic Bishops has a real dilemma facing them: They have chosen to make domestic religious liberty a matter of intense focus. We have had two "Fortnights for Freedom," testimony before Congress, countless essentially political campaigns launched from the pulpits and in church bulletins.

Very little effort has been made to even recognize the good faith of those who disagree with us. The whole effort has been, shall we say, very un-Francis. I am sure that our pope is concerned about religious liberty, especially in those parts of the globe where the threats are obvious and extreme. I am sure, too, that he believes the Church in the West, where the threats are less vital, should nonetheless resist any government encroachment into our institutional life. But, as the debate on religious liberty seems likely to shift to gay rights, I fear that our Church will make itself look like a paragon of intolerance in the coming months. Not that they asked, but I would recommend that the Fortnight for Freedom be permitted to drift quietly into the category of things tried and best not to try again, like new Coke and oyster sorbet.

We must resist, on Gospel grounds, the prospect of religious liberty becoming an anti-gay fight. I do not know what it is about homosexuality that makes people who believe what the Church teaches, that all sex outside the marriage covenant is sinful, somehow think it is okay to treat gay people like pariahs. This one discrete fact is known about a gay man or woman, they are gay, and ? Hell, I am not going to bake him a cake! I am not going to photograph her wedding! We had better not be forced to provide them health care benefits. Is it not enough to say: As Catholics, we believe marriage is a sacrament reserved to one man and one woman, without previous marriages, for one lifetime. Why must we also be expected to treat gay people as somehow beyond the pale? Does this not also strike the Christian conscience as wrong?

For those in culture war mode, complicatedness gets in the way. If the only issue that matters is religious liberty, then to hell with how our actions make gay people feel. And, if your only issue is gay rights, then to hell with the religious liberty concerns of others. I have noted before, and Peppard notes it also, that our First Amendment jurisprudence is a bit of a hash: It is constitutional for the government to pay for buses to bring children to a Catholic school, but not for a bus to drive Catholic school children on a field trip. It is constitutional for the state to provide textbooks in math to Catholic schools, but not maps or globes. The lines drawn may seem arbitrary, even silly. Those lines are a hallmark of civilization. They are far preferable, even in their seeming arbitrariness, to the neat and clear lines that would be drawn by the ideologues on either side. Judges, not propaganda ministers, are good custodians of our freedom precisely because they must wrestle with the facts of a case and not be overly concerned with the hobgoblin of little minds that is consistency.

The ideologue is a person who resists anything that upsets his or her carefully crafted, well defended, worldview. They detest the friction that exists between religious liberty and a particular political agenda, placing all the emphasis of right on the one or the other. For Catholics, who have been unhappily focused on ?Catholic identity? these past few decades, this detestation of friction is distorting and dangerous. In his little book ?Against Identity,? Leon Wieseltier wrote: ?Not: my identity, but: my identities. There is a greater truth in the plural. There is also a greater likelihood of decency. The multicultural individual is a figure of moral frictions. In such an individual the mocker, and the hater, and the killer, may hit a bump.?

We are Catholics. My best priest friend tells me I am a Catholic fanatic. And, in a certain way, my Catholicism informs everything in my life. But, I am also an American. I also live next door to the nicest lesbian couple in the world. I also do not understand the phenomenon of wedding pictures. I also like wedding cake. I try and appreciate traditions that are not my own and I appreciate my own tradition for more reasons than the fact that it is mine. Our Catholic identity, in a pluralistic culture, should not become a battering ram with which we hit others over the head. It should not be a spur to ideological purity. In our Church?s long history, we see, instead, countless saints who evidenced that moral friction that proved a bump for the mockers and haters and killers. I hope in the coming months, our bishops will resist turning our understandable and laudable concern for religious liberty into a kind of anti-gay campaign. We all deserve better.

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[1] http://www.washingtonpost.com/opinions/religious-conscience-vs-civil-rights-in-the-move-toward-gay-marriage/2014/03/14/ff6cabfc-aaf1-11e3-adbc-888c8010c799_story.html