

## **AN AFTERTHOUGHT**

### **Strategies for Life**

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**July 15, 2012**

Since first writing about the value of life and the preeminent role of conscience in determining what exactly one ought to do when the life of the unborn is in jeopardy, a more recent crisis of conscience plagues both the Catholic world and the secular world in the US, especially the political interaction on both sides. The crisis took shape over the mandate of the Health and Human Services administration, which advised the Catholic community that the new federal health care legislation would require employers to provide health insurance to employees which included provisions for contraception, sterilization and potential abortion-inducing drugs. As an exception to this ruling, it would allow religious institutions which are committed to an exclusively religious mission, ( for example, a parish, a monastery, a religious grammar school ), to not provide the questionable coverage if it violates religious convictions. However, religious institutions whose mission extends to many nonreligious activities and which employ persons with a wide diversity of moral convictions,( for example, in a Catholic College an athletic coach, grounds keepers, professors of chemistry, biology, mathematics, etc.) would be required to provide health insurance which covered activities which were contrary to the moral teachings of the particular religion but in accord with the religious and moral convictions and obligations of the employees.

The US Conference of Catholic Bishops objected to this differentiation on the grounds that the federal government had no business determining that some Catholic institutions are more religious before the law or more Catholic than others. They considered this intrusion a violation of the Church's constitutional right to religious liberty. After the initial proposal, the administration offered a compromise, so that for institutions where the objectionable health insurance was required, the cost for the insurance would be born by a third party (the insurance company). Thus it was believed that the religious convictions of the institution would not be compromised by any direct involvement or what is called "formal cooperation" in the immoral activity of others. The administration's attempted reconciliation has been rejected by at least forty-three Catholic organizations, including thirteen dioceses and several Catholic universities, which brought law suits to overturn the regulations on the grounds that they are an unconstitutional violation of religious liberty. There has been no official acknowledgement that what the law required could be seen as in complete accord with traditional Catholic thinking about permissible material cooperation in evil.

Fortunately, Father John Jenkins, president of Notre Dame University, in his public statement explaining the need for legal action, introduced into the discussion the central relevance of the "the consciences of all." He acknowledged that, "Many of our faculty, staff and students - both Catholic and non-Catholic - have made conscientious decisions to use contraceptives. As we assert the right to follow our conscience, we respect their right to follow theirs. And we believe that, if the government wishes to provide such

services, means are available that do not compel religious organizations to serve as its agents.” Unfortunately Fr. Jenkins does not return to the claim of those employees of the university who are acting with perfect moral integrity when they follow their honest consciences in the use of artificial contraceptives and other means to protect their health and well being. When the federal health insurance law requires that employers who do provide health insurance provide coverage for those health needs which the employees are entitled to under the law, it is not true that the government is compelling “religious organizations to serve as its agents.”

Incidentally, it would be very helpful if the USCCB could agree on one definition of conscience and stick to it. Or, if there are disagreements on what the word means, as there have always been, then admit to those differences publicly, and tell the world what sense the bishops make of it. It does not lead to much understanding to claim that your conscience has been violated when you cannot come to acknowledge that the other consciences can have the same binding force before God and before reasonable humans. And, once again it is well to distinguish conscience, even when limited by ignorance, misinformation, fear and other impediments, from the arbitrary preferences, wishes and desires of those who do not give any time or attention to serious moral deliberations.

Under the most recent compromise the government does not compel religious organizations to actually give or actually pay for unacceptable health benefits. According to the traditional teaching of the Church, reiterated through centuries of theological and philosophical reasoning and by the Second Vatican Council as interpreted by Joseph Ratzinger, one is obligated before God to follow his or her conscience even when in error and when it might be contrary to Catholic teaching. ( See pages 4-5 of Strategies for Life.) In a democracy, government has an obligation to respect and protect, the sacredness of the individual conscience of every citizen , without attempting to determine who is religiously more correct or more orthodox. By a subtle irony, it is the Church, which is attempting to use the federal government as its agent in forcing employees of Catholic institutions to surrender their rights to be treated as all other citizens under the terms of the law.

Father Jenkins fails to recognize that in so doing the government is not trying to “impose its values on the university when those values conflict with our religious teachings.” The Catholic Church freely chooses to participate in an evolving democracy, so it ought to accept freely the constraints which respect for others places upon it. The Notre Dame statement avoids several questions; How is it against Catholic teaching, that everyone should follow his or her conscience or that it is immoral to assist others in following their honest consciences? What ever happened to the common sense distinction between formal and material cooperation and why is this useful distinction generally ignored in the public discussion? Are Catholic authorities afraid to admit publicly that the present compromise over the health insurance provisions does not involve Catholic institutions in formal cooperation with evil at all, not even in remote material cooperation. Providing health insurance that may be used for “immoral “ purposes is no more cooperation in evil than paying a salary that might be used the same way. Health insurance is one portion of compensation. It is difficult to imagine a Catholic university requiring fully qualified

faculty members to accept a lower compensation than their colleagues because they insist upon following their consciences. And what is the evil to be avoided at all costs if the virtuous action of following one's honest conscience is an essential moral reality in the picture?

Herein lies the contradiction, which plagues the Catholic Church's current public posture. On the one hand the public statements avoid any clear admission that individual conscience is the "ultimate tribunal", although this is clearly part of its ancient and present belief. On the other hand it fails to demonstrate that it truly understands and respects the moral obligations of those who differ from her teaching. Either conscience, even when in error, binds before God or it does not, and, if it does bind, what other obligations do others have ?

Father Jenkins shares the fear of many of the bishops that the government's "unconstitutional" intrusion into the sacredness of religious teaching will have the result that " these religious organizations become mere tools for the exercise of government power, morally subservient to the state, and not free from its infringements." This obvious exaggeration discredits his argument and leads to the suspicion that the Church is merely defending its turf or attempting to save face because it has failed to teach its own moral conclusions more effectively, even to its own adherents. It is a contrived argument that the present US administration is dictating a single change in what the Catholic Church professes or how it goes about its business in the public forum. The government simply attempts to defend the rights of all involved, including the employees of Church organizations where religious obedience or orthodoxy is not a condition of employment. The government's insistence that others have rights and religious obligations of conscience hardly infringes on any Catholic doctrine that I ever heard of nor does it make churches " tools for the exercise of government power." Alas, would the Church want to exist in a society, which did not respect and protect the moral convictions of all its citizens?

Furthermore, when Church institutions entered the market place of ideas, of medical and other services, of academic life and credentialing, and of financial commitments, they did so freely, knowing exactly that they could not ignore or violate the rights of others of different religious and moral convictions who have an equal right before the law of God and man to be in the same market place. It is no violation of the Catholic free choice to engage in the secular world to then hold them to respect the rights and moral convictions of those who are also legitimately engaged in the same secular activities. Misleading indeed is the bishops' plea that " All these Americans make their contribution to our common life, and they do not need the permission of the government to do so. Restrictions on religious liberty are an attack on civil society and the American genius for voluntary associations." Why do not the bishops admit that others engaged in the same civil society, as both providers of services and as clients, have an equally valid claim to freedom of moral judgment, and that government has an obligation to protect and advance the rights of all participants. As more intelligent readers penetrate the strange posture of the protesting bishops, the bishops credibility diminishes.

I mention Fr. Jenkins' statement, not to be overly critical of him personally, but because of its candid admission that, in the standoff between the Catholic institutions and the US government, the consciences of all participants need to be acknowledged. I have not seen any other statement from any other Catholic authority, which goes so far as to even admit the relevance of individual consciences to the doctrinal and policy questions. It is sad that his observation has been left hanging in mid air, as if it were not worth noticing. And, indeed, the silence of Church officials says more than they may have intended, namely, that the Church authorities are not sure they know how to deal with individual consciences, which are just as sacred before the judgment of God as are the moral pronouncements of the ecclesiastical authorities. The right and obligation of every citizen to follow his or her best moral judgment is not derived from government decrees, constitutions or laws nor is it the exclusive property of the Catholic Church, conceded by the Church to its faithful followers. It is the foundation of any form of moral accountability and of the legitimacy of any form of government, secular or religious.

There are not two moral universes, one for those who are correct about everything ( the only one that counts ? ) and the other made up by those who do not fully realize what they are doing and are therefore merely tolerated but never listened to seriously). Again, Catholic authorities, by ignoring or misrepresenting the equal sacredness of all of the honest consciences in the one moral universe, stumble over their own feet by running in the wrong direction. Not all consciences, which differ from Church teaching, are depraved, morally degenerate, irrational and vicious. The battle that needs to be won is that of helping honest people grasp as much of the truth as they can handle. By treating them as an enemy to be vanquished, the opportunity to help spread the light is diminished or eliminated.

The weight of this silence is obvious in the USCCB statement, Our first, Most Cherished Liberty, where it quotes Pope Benedict XVI's address to the American bishops, which was issued before the administration offered a compromise on funding the arguable health insurance policy. The Pope said, "Many of you have pointed out that concerted efforts have been made to deny the right of conscientious objection on the part of Catholic individuals and institutions with regard to cooperation in intrinsically evil practices. Others have spoken to me of a worrying tendency to reduce religious freedom to mere freedom of worship without guarantees of respect for freedom of conscience." The pope calls for the engagement of the laity "to counter a reductive secularism which would delegitimize the Church's participation in public debate about the issues which are determining the future of American society." These remarks obviously reflect what the Pope had been told by those who take a particularly narrow view of the situation.

Here was the challenging opportunity for at least some of the bishops to acknowledge to the Catholic and non-Catholic communities, that the latest administrative compromise which allows a third party to pay for the objectionable health insurance removes implication of formal, malicious or immoral cooperation in some "intrinsically evil practices." In the light of his commentary on Vatican II, the Pope certainly does not mean that it is an "intrinsically evil practice" for anyone to follow his or her conscience even when in error or in opposition to Church teaching. What, then does the Pope mean?

Is the physical thing, the contraceptive, the medical procedure or the drug an intrinsic moral evil, divorced from human intentions, motives and understanding? Does he mean that the definition of the moral act separate from the honest and morally compelling deliberations of the one acting, is “intrinsically evil? Someone in authority might explain that the health insurance controversy is about the rights and obligations of citizens to act in accord with their honest moral convictions, which does not implicate a Catholic institution in modifying its own convictions at all. Many honest observers of the controversy are left with the conclusion that it is Catholic doctrine that no person could honestly conclude that artificial contraception, sterilization and certain forms of therapeutic abortion are morally justified. But that is not a teaching of the Church.

Much legitimate confusion exists in both Catholic and non-Catholic circles about the possible reconciliation of the demands of conscience and the demands of moral doctrine. And this confusion leads to the conclusion that it was a conscious decision in the USCCB to avoid the essential point of the equal claims of freedom of conscience, lest it weaken the bishops’ argument against the administration’s mandate. When teachers hold back on the part of the truth which they cannot or do not want to handle, many individuals within and outside the Church lose confidence. The suspicion that the USCCB is avoiding or hiding something critical to the public discussion certainly does not help advance the cause of religious freedom for the Church or its critics. As in the scandal of child abuse by the clergy, the leadership of the Church risks further erosion of its credibility by appearing to be devious, secretive and interested only in its own prerogatives.

Many dioceses and Catholic institutions, which have refrained from filing suit appear to be aware of the danger in not giving adequate attention to all the parts of the puzzle before making public proclamations. Particularly noteworthy is the absence thus far of any open forum for discussion of divergent views such as I have expressed here. The Fortnight for Freedom program concentrates exclusively on promoting one complaint and exaggerates the danger to religious freedom by avoiding any fair discussion of a wider view of religious freedom. The Pope has asked for the engagement of “well-informed Catholic laity “to protect the Church’s fundamental freedoms. By not inviting intelligent enquiry and open dialogue, the Church actually limits further the effectiveness of the Gospel of Life. The rights and moral imperatives of all individual consciences (both correct and erroneous) are as important a part of the moral universe into which the Church freely enters as is the Church itself, composed of individual consciences (both correct and incorrect, honest and no so honest).

Finally, nothing that I have written has denied or misrepresented any teaching of the Catholic Church. This essay is a plea for a more critical examination of the strategies that ought to be used, in cooperation with those who share only a portion of the moral truth, to advance the Church’s mission. For the sake of balance it would be beneficial to return to the Epistle to the Galatians and Thomas Aquinas’ commentary on that powerful bit of history. Enlightened criticism is as much a part of the life of the Church as is docile submission.