NATIONAL CATHOLIC REPORTER
Published on *National Catholic Reporter* (http://ncronline.org)

Panel disagrees on allowing conscience exemptions

Beth Griffin Catholic News Service | May. 5, 2009

Medical professionals at the National Press Club in Washington April 8 to opposie to the Obama administration's proposal to rescind federal conscience protection rules for medical professionals. (CNS photo)

NEW YORK -- Legislation in a democracy generally mirrors public consensus, but individuals who disagree with a law on moral grounds should be allowed to claim an exemption to it, according to panelists at a recent forum on "Matters of Conscience: When Moral Precepts Collide With Public Policy."

Four attorneys with often-divergent viewpoints engaged in a lively debate in front of an audience of 180 people at Jesuit-run Fordham University in New York. They disagreed on the extent to which conscience claims should be allowed to restrict access to lawful goods and services, including abortion, contraception and same-sex marriage.

Marc D. Stern, acting co-executive director of the American Jewish Congress, said there is a growing gap between the two ways our society determines morality: pure rationality and revealed truth.

"Between where reason leads you and whether revelation has any place in a setting is a huge gap and getting wider day by day," he said. "There is a clash between visions that emphasize personal liberties and visions that emphasize equalities."

Stern predicted that same-sex marriage will be "universal" in 10 years and said there should be broad conscience exemptions, particularly for individuals and small businesses.

For example, he said, a self-employed photographer should not be considered discriminatory if he chose not to photograph a legal same-sex wedding, but a newspaper should not be allowed to exclude same-sex weddings from its wedding coverage.

Nadine Stossen, professor of law at New York Law School and former president of the American Civil Liberties Union, said freedom of conscience may be limited only if the limitation is necessary to protect other basic rights such as health and safety.

With respect to abortion and contraception, she said sectarian institutions should not be required to provide

services contrary to their beliefs, but they must give candid notification of their policy and make referrals to alternate providers. She said they should also provide the service if there is no other provider, especially in the case of an emergency.

Stossen maintained that the panelists, while disagreeing on a number of points, all supported "giving infinitely more protection to freedom of belief than the Supreme Court has done in the last 18 years."

Douglas Kmiec, a professor of constitutional law at Pepperdine University in Malibu, Calif., and former law school dean at The Catholic University of America in Washington, said laws are based on "someone's concept of good", which is generally traceable to religious belief. Disputed concepts of good are reconciled in the United States by persuasion and the democratic process, he said.

The Catholic church is not necessarily guided by this process, because it claims that a democratic outcome can never trump the truth, he said, although truth claims are always disputed.

"The modern church has defined itself not in terms of the conversion of the heart, but in terms of its political victories," he said. This puts the church in an awkward position to ask for exemptions from generally applicable laws, he said.

Kmiec said there should be a presumption against giving institutional exemptions to laws, but a great sensitivity to granting individual exemptions.

Robert Vischer, associate professor at the University of St. Thomas Law School in Minneapolis, said that in cases "where values clash, the default position for a society that takes conscience seriously" should be to "resist temptation to use state power to close down the conversation," rather than "see which side can harness state power to its chosen value."

Vischer advocated letting competing interests live out their convictions in the marketplace. He cited pharmacies as an example. Rather than compel pharmacists to fill prescriptions they find objectionable or allow them to refuse to do so, the state could allow pharmacies to "craft their own particular conscience policies in response to the demands of their employees and customers."

Although access is a potential impediment to a market solution, Vischer said, "Access cannot be trotted out as the boogeyman every time you have a morally distinct organization that wants to stake out a claim that defies what the majority's norms are for that state."

He said the result of a market approach would likely be a more nuanced, contextual understanding of conscience and its role in public life.

The April 28 discussion was sponsored by the Fordham Center on Religion and Culture and was moderated by Russell Pearce, who holds the Bellet chair in legal ethics, morality and religion at Fordham University School of Law.

Source URL (retrieved on *02/14/2016 - 02:18*): http://ncronline.org/news/panel-disagrees-allowing-conscience-exemptions