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MSW v. ACLU

Michael Sean Winters | Jul. 14, 2010 Distinctly Catholic

A good night?s sleep has not made me any less upset at the ACLU for their decision to go after Catholic hospitals [1]that refuse to perform abortions and other procedures that we find morally objectionable. The ACLU is often the target of religious criticism, but there is a place for such a group to stand watch over the First Amendment. Of course, like all who are zealous, they run the risk of turning their devotion into a heresy, a truth ?run amok.? Will the Republic really come crashing down because there is a creche in front of City Hall? No. But, on the other hand, the ACLU has a distinguished record of caring about the rights of the accused at times when most of us were all too willing to look the other way.

I was especially surprised by the ACLU action because, just last year, they defended the right of the Archdiocese of Washington to claim a religious exemption from a new law that would require those who contract with the city to give marital benefits to same-sex partners. Here, the ACLU took a stance that was quite at odds with its politics: I am guessing 99 percent of the donors to the ACLU and 100 percent of the staff support same-sex marriage. But, whether or not there is a ?right to marry,? that right does not trump the First Amendment rights explicitly stated in the Constitution, including that which guarantees freedom of religion.

There is little doubt that the jurisprudence regarding the First Amendment?s religion clauses is a bit of a mess. What is clear is that the original intent and continuing justification for the First Amendment is that it protects the human conscience. A man or woman should be able to worship as they wish, say what they want, gather with others who share their views or their interests. There is, as the Court has ruled, a concept of privacy at the core of the First Amendment which corresponds roughly to what we in the Catholic tradition call conscience.

I can think of no understanding of human conscience that would justify the ACLU?s stance. They seek to coerce Catholics to do something our conscience forbids. I understand their concern that women should be able to procure a procedure, such as abortion, that is legal but does that woman?s right trump the relight to freedom of religion guaranteed by the First Amendment? If so, how? The right to an abortion was located by the Court?s as derivative from the notion of privacy at the core of the First Amendment. I think they were wrong on that, but, for the sake of argument, let us grant the point. But, a Catholic?s right to refuse to perform an abortion because it violates her conscience is not derived from a notion of privacy. Conscience is that notion of privacy, it is not derived from it.

There is a separate issue about the rights of Catholics who work in non-Catholic hospitals. I think it is wise for a secular hospital to make arrangements so that the Catholic employees must not perform duties that violate their conscience. But, if the job description requires the performance of any and all legal duties, and the Catholic employee signs that contract, they have less standing to assert their conscience rights than a Catholic employee at a Catholic hospital. Te ACLU stance would not only force individual Catholics to violate their conscience but would require an institution to violate its own identity to do so as well. I can see how the courts could ? I don?t think they should, but could ? rule that the reasonable expectation of a woman to get emergency contraception or an abortion at a public hospital trumps the religious concerns of individual employees. But, does someone go to a Catholic hospital with a reasonable expectation of receiving an abortion? I know the analogy is not exact,

but when a person goes to a doctor or a lawyer, they have an expectation of privacy but when they go to a bar and pour out their heart to any who will listen, there is no such expectation of privacy. A person going to a Catholic hospital to seek an abortion strikes me as little different from the person in the bar. Seek joy where joy may be found. No one else?s conscience should be violated because someone else has an unreasonable expectation.

Freedom of religion is not absolute. A cult cannot engage in ritual murder. The Mormons were required to set aside their practice of polygamy. But, the Church?s commitment to caring for the infirm and the destitute cannot be set aside, not as long as we read, as we read last Sunday, the story of the Good Samaritan in the Gospel of Luke. It is not just that the Samaritan acted kindly while the priest and the Levite did not act at all. The key word in that passage was ?approach.? It is not that the Samaritan saw something on the road the others did not see, it is that he discovered something in himself that the others did not discover in themselves, his conscience, and his openness to that conscience allowed the Samaritan to be open to the pity the situation required. The Samaritan discovered in his heart what the others could not, namely, that the reading from Deuteronomy that we also heard last Sunday was true: ?For this commandment which I command you this day is not too hard for you, neither is it far off?it is in your mouth and in your heart, so that you can do it.? We, as Christians, must tend to others because of the love we have received from the Other. A Catholic hospital is not an accessory to our worship, it is an extension of our worship, a form of the love of Christ.

Catholic hospitals are having a challenging enough time these days due to economic pressures. Fighting this law suit is the last thing they need. But, fight they will. Our Catholic hospitals are an integral part of the life of the Church and an integral part of the life of the nation. They may go through a rough patch, I do not doubt. The Catholic ministry to the inform and the aged will look different in fifty years from what it looks like today, but it will still be recognizable, provided we are not coerced into practices that violate not just our conscience but our very identity as Catholics.

One final point. Concern about not coercing the consciences of others is a liberal concern. John Locke ? remember him? ? he was not a Catholic. And, of course, his great defense of tolerance did not actually extend to Catholics. It would be good to remind the liberal leaders in Congress and the President that we expect them, not as friends of the Church but as liberals, to defend our rights to freedom of conscience, and not just because it was the good sisters who run Catholic hospitals who helped carry the health care reform legislation across the finish line, not the ACLU!

This is no alien, peculiarly Catholic concern. The irony is rich that, throughout much of the 18th and 19th centuries the Church opposed political systems built upon conscience rights, but there it is. Today, liberals and Catholics should stand shoulder-to-shoulder on this issue: Catholic hospitals should not have to perform any procedures that we find morally objectionable. Period.

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