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A cardinal's role in the end of a state's ban on contraception

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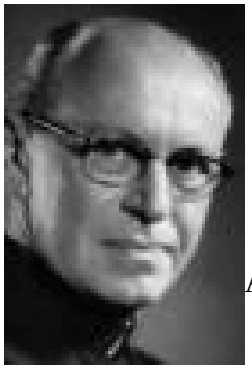
Cardinal Richard Cushing of Boston (AP/Bettman)n/Corbis)

Up until the middle of 1966, it was illegal to buy a condom in Massachusetts.

That year, the state became the last in the country to overturn a ban on the sale of contraceptives. And when it finally did, it was because of the support of a key Catholic leader, Boston?s powerful archbishop, Cardinal Richard Cushing.

As news of the U.S. bishops continuing to voice concerns over President Barack Obama?s mandate requiring coverage of contraceptive services in health care plans was making headlines, the details of that story, which was published in the *Boston College Magazine* by Seth Meehan [1], a Boston College doctoral student, in the spring of last year, seem to take on significance.

While the decades-old story certainly cannot be seen as a parallel to the one taking place today, it does seem to provide an interesting historical footnote about the relationship between church and state, and how at least one leader from a previous era saw the church?s role in public policy.



At the center of Meehan?s story is Cushing?s relationship with two local Catholic doctors, John Rock and Joseph Dorsey, and one global theologian, Jesuit Fr. John Courtney Murray.

Together, the doctors and the theologian convinced the cardinal that while Catholic teaching opposed contraception, Catholic leaders shouldn?t push for laws banning it.

Speaking in a phone interview, Meehan said that Cushing?s support of the repeal is even more interesting because of his previously staunch support for Massachusetts? birth control ban.

In fact, in 1948, the last time the ban had come up for possible repeal, Meehan writes that Cushing wanted to ?align state laws with those of God? and had publicly said contraception was ?anti-social and anti-patriotic, as well as absolutely immoral.?

The campaign that year worked. Massachusetts? voters rejected the repeal by 57 percent. So, why the change two decades later?

Part of the reason, Meehan told *NCR*, was Murray?s influence.

While Meehan said it?s not entirely clear how many times the cardinal and the theologian met, or what influence one had on the other, what is known is that when a state legislative panel asked Cushing to testify in 1965 on the possible repeal of the ban, Murray ghostwrote the cardinal?s remarks.

Reading the remarks on behalf of Cushing was the cardinal?s personal attorney. What the legislators heard was that Catholics could not ?forbid in civil law a practice that can be considered a matter of private morality.?

The significance of that event, Meehan said in the interview, is that ?when Cushing needs to give a statement, he uses Murray?s words, word for word.?

One scholar familiar with Murray?s works said that what was key in the theologian?s arguments on the birth control ban were his notion of the distinction between public and private issues of morality.

In that sense, Jesuit Fr. Gregory Kalscheur told *NCR*, ?Murray thought that it was important that there be a kind of consensus about an issue? before the law acted. Without such a consensus, ?it was more likely that the law wouldn?t be able to act well.?

In terms of the debate in Boston over the birth control ban, said Kalscheur, who is an associate professor at Boston College Law School, Murray thought the range of views on the subject meant that it ?wouldn?t be prudent for the law to act? to outlaw contraception.

Kalscheur was quick to say that the Boston story can?t be applied wholesale to today?s debate.

The key difference between the two discussions, he said, is that the debate in the ?60s involved a ?direct regulation of conduct? -- about whether church officials should take a stance on what freedom individuals should have to choose to use birth control in their personal lives.

?That?s really not what?s at stake here,? Kalscheur said. ?This is a question of to what extent is it appropriate to have some kind of accommodation when the church and others feel like this is requiring them to cooperate in an activity they consider to be wrongful.?

Yet some lessons from the 1960s are instructive today.

Cushing was in a unique position of political power and chose to use it, Meehan told *NCR*. He noted that an attempt to repeal the ban a year earlier had failed because state legislators were waiting for Cushing?s go-ahead.

As part of his research, Meehan spoke with Michael Dukakis, the former Massachusetts governor and one-time presidential candidate who is familiar with Boston?s political history. Meehan said that Dukakis put it simply: ?The cardinal was the most powerful man around. What he would have said was going to go. If he wanted to

kill that bill, he could have.?

After changes were made to the language of the repeal, Cushing gave his go-ahead, and it was signed into law May 10, 1966.

Key to the unique collaboration in Massachusetts, of course, was the timing of the repeal. Cushing?s support came two years before Pope Paul VI?s promulgation of *Humanae Vitae* and it was still unclear what position the official church would take on birth control amid the changes of the Second Vatican Council.

The timing, Meehan said, ?is just stunning.?

?I wonder, what if they had waited just a little bit longer,? he said. ?It was just this one little window in time that it just worked.?

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- Bishops should take their clear victory [5], an NCR Editorial

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