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Garnett on San Diego: MSW Responds

Michael Sean Winters | Jun. 10, 2013 Distinctly Catholic

My friend Rick Garnett had a thoughtful reply to my article on Friday, which he posted here at Mirror of Justice [1].

Garnett makes the point that he has not relied on the ?cooperation with evil? argument in advocating against the HHS mandate. He writes:

I have described the nature of the burden that the HHS mandate imposes on Catholic institutions in terms of integrity, mission, witness, and character, and not in terms of "cooperation with evil," because I think it is important to remember that "religious freedom" involves more than a guarantee that the political authorities will not require us to sin. The mandate burdens the religious freedom of, say, the University of Notre Dame, in a way that violates federal law, even if the University can and does end up complying with it. (I think that Michael and I agree on this point.)

First, actually Rick and I no longer agree about the burden on religious freedom because I find the accommodations the administration has offered to institutions like Notre Dame ? again, with the proviso that the administration adequately addresses the situation of self-employed institutions ? sufficient. It is clear to me that the administration has guaranteed that our Catholic institutions are not, in fact, facilitating or funding the coverage of something the Church teaches is morally illicit. That said, we probably do agree that Notre Dame and other Catholic institutions probably have a decent shot at a court victory because of the Religious Freedom Restoration Act requirement that government find the least burdensome means of achieving a compelling government interest and there were policy alternatives available that would have been less burdensome.

Second, if complying with the mandate is not some form of cooperation with evil, then why wouldn?t we comply? To be churlish? If the mere provision of insurance, by a third party, is enough to challenge our Catholic identity, well, then I think we are being a bit excessive in protecting that identity. And, as I have argued before, I wish to keep a bright red line around conscience protections for those who choose not to perform or facilitate an abortion. Demanding a conscience exemption for contraception ? actually not for contraception, but for buying insurance that might cover contraception ? diminishes the conscience protection brand.

Third, I agree with Garnett that the real issue underlying the moral and legal issues is the ?integrity, mission, witness and character? of our Catholic institutions in a society that does not always share our beliefs or moral precepts. And this is not only because I am something of a stiff-necked Catholic, although I am, it is because I fear the homogeneity of our culture as much as anything else. Government mandates can have a leveling effect that invites homogeneity and the government should be reluctant to deploy mandates against private institutions, especially religious institutions, if it truly values diversity. This is not a trump, of course. I do not think religious institutions should be able to discriminate against people on account of race, and in our lifetime, some religiously motivated people did claim such an exemption. Nor, apart from ministerial positions, do I support conscience exemptions on other more contentious grounds such as sexual orientation: If the gay teacher is doing

his or her job, what they do on their own time is their business. But, as a general rule, yes, religious institutions should be given wide latitude in the implantation of government mandates, and certainly more latitude, say, private employers that are not engaged in religious work.

I mention this last point because one of the things the USCCB keeps insisting on is a wide conscience exemption for such private employers. Critics of the Church?s position have argued that the religious liberty interests of, say, a non-Catholic who attends Notre Dame would be violated if the university got an exemption or accommodation from the mandate. I do not buy this argument: If compliance with the mandate is so important to a prospective student or employee, there are other fine non-Catholic institutions to which they should apply. I also think that organizations like the Knights of Columbus or Our Sunday Visitor are clearly religious in nature and should be extended some sort of accommodation, similar to that available to Notre Dame. But, I do believe a firm that makes or sells products that are non-religious, should be made to comply. There, I do not see that the religious liberty of the employer trumps the religious liberty of the employee.

The most troubling part of Garnett?s commentary is his last paragraph in which he raises the specter of ?secularization.? I do not believe that our religious institutions are somehow made secular by complying with this mandate. Notre Dame will still have chaplains in every residence hall, a ton of Masses every week, the Grotto. I do believe, and regret, that the freedom of the Church has more or less vanished from Anglo-Saxon law and that since the Reformation, the State has set the boundaries within which religions operate more or less as they see fit. That is an old story however and the question is ? why now get all hot and bothered by it?

Here we get to the central point of my article last Friday. Here, too, the fault lies as much with the administration as with the bishops. Let?s review the history. After the mandate was announced, then-Archbishop Dolan met with the President and was assured that the mandate would be fixed. The meeting happened just before the bishops? annual meeting in Baltimore. Dolan said publicly that he was greatly reassured by the president?s comments ? and then got tons of grief from some of his brother bishops who said he had been rolled. Two months later, the President called Dolan to say, essentially, sorry but we are not changing anything. It was now an election year and the President chose not to offend women?s groups who consistently declined to find a solution to the problem. I cannot read Cardinal Dolan?s mind, but I am thinking he was understandably upset by this turn of events. So, the first penalty flag gets thrown at the feet of the administration.

That said, many bishops had spoken about the President in ways that were not only distasteful but profoundly unchristian. When the President went to Notre Dame to give the commencement address in 2009, some of them went ballistic. He can be forgiven for concluding that he could walk on water and they would not be satisfied. Here, the President misjudged. I think Dolan was not looking for a fight and Dolan could have pacified the body of bishops, at least most of them. But, let?s be honest here: There are some bishops who have an undeniable hatred for the President. Some of them also have availed themselves of a rather fanciful understanding of the American founding to justify their stance. Setting aside the fact that the imposition of hands does not bring with it any promise of historiographic infallibility, the American founding was a complicated thing and it was reduced in some pulpits to a bumper sticker. Note to all: When you here someone speak of the Founders as a singular noun, as in ?The Founders decreed?,? be suspicious. The Founders disagreed on many, many things which is why, despite their repeated worries about factionalism and party spirit, they immediately descended into parties within a decade of the Constitution?s ratification. So, a penalty flag gets laid at the feet of some of the more histrionic Obama-hating bishops too.

It remains my hope that this week in San Diego the ?sanity caucus? will step up and be heard. The ad hoc Committee on Religious Liberty, none of whose members were elected by the body of bishops, has been running amok, led by their chairman, Baltimore Archbishop William Lori. The concern for religious liberty is a real concern, but it needs to be handled by bishops with a sense of perspective and judgment, not by the zelanti.

The same goes for the USCCB?s handling of issues related to gay rights and traditional marriage: Why has the USCCB so far failed to draft a proposal for an Employment Non-Discrimination Act with which the Church could comply? Because that crowd does not want a solution, it wants a culture war.

We are not at war in this culture. In America, we still fight with arguments and ballots not with bullets. There are groups which are hostile to the Church, such as NARAL, and some of these groups have a disproportionate influence over the Democratic Party just as there are other groups, like the Tea Party, that are hostile to immigration reform and which exercise a disproportionate influence over the Republican Party. In politics, the Church has no friends, only transient allies depending on the issue. ?Put not your trust in princes?,? warned the psalmist, which remains sound advice. This week, in San Diego, the bishops are well advised to find a way to tone down the rhetoric, consult with the ministries that are actually going to be affected by the mandate ? and with their lawyers ? and find a way to climb off the limb they are on. The issue of religious liberty is too important, and too transcendent, to be entrusted to zealots. It is time for sanity to return.

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[1] http://mirrorofjustice.blogs.com/mirrorofjustice/2013/06/cooperation-with-evil-and-setting-the-terms-of-engagement.html