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Commonweal Symposium Part II

Michael Sean Winters | Jun. 8, 2012 Distinctly Catholic

Today, let?s continue looking at the Commonweal symposium on religious liberty.
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M. Cathleen Kaveny puts her finger on one of the central difficulties in the USCCB?s document on religious liberty, namely, do the bishops want to preserve their own rights to run their organizations as they see fit or do they want to demand that everyone in the country abide by our Catholic rules. Of course, the two concerns are not mutually exclusive. Obviously as Catholics, we believe in the common good, and that all of us, Catholic and non-Catholic, should participate in articulating and achieving the common good. We also believe, at least in America we have long believed, that part of the common good of the nation is a government that does not interfere excessively in the rights of religious and other social groups.

Kaveny is right to point out that in the case of the HHS mandates, and in some of the other threats to religious liberty the bishops cite, the law is a great deal murkier than the USCCB document suggests. There is not absolute First Amendment right, not to the free exercise of religion nor to free speech nor to assembly. But, Kaveny slightly overstates the warrant provided by Vatican II?s Decree on Religious Liberty to the idea that the exercise of religious liberty must be seen within the context of the common good. The drafters of Dignitatis Humanae considered introducing the norm of the common good and declined to do so, instead opting for the narrower concept of ?public order? as justifying restrictions on religious liberty. (I am not sure they were right, by the way, but according to John Courtney Murray, the options were considered and the Council went with the narrower definition of ?due limits.?) Of course, it is good to remember that most of the bishops at Vatican II had seen ideas of the common good become, wrongly, intertwined with notions of national good and of the good of the race in their formative years, the consequences of which were disastrous.

One of the other essayists at Commonweal, Michael Moreland, whose contribution we looked at yesterday, has also taken issue [2]with Kaveny?s emphasis on the importance of the Supreme Court decision in U.S. v. Lee. Moreland thinks that case is less on point than Kaveny suggests. While the significance of U.S. v. Lee for the contraception mandate is allowable, it does not in anyway diminish the central point Kaveny makes: The USCCB?s ?Our First, Most Cherished Freedom? is a document prone to overstatement, the way legal briefs are often prone to overstatement, but the bishops must ask themselves whether they really wish to associate themselves, and publish in their name, a document that exhibits less balance and nuance than it should.

Douglas Laycock, one of the nation?s foremost religious liberty scholars and litigants, could never be accused of winking at encroachments on religious freedom. But, he also questions the USCCB?s document sense of balance and proportion. He writes:

> The statement refers to a 2009 bill in Connecticut to require lay control of Catholic parishes ? a bill that drew widespread condemnation and was withdrawn within days of the first public notice. Including an isolated bill that was defeated three years ago inaccurately suggests that all the good examples have been listed. The dispute over Catholic administration of government programs for victims of human trafficking is a hard case, too complex to explore here, but it is presented in the bishops? statement as though it were

easy.

I hope the bishops will consider Laycock?s essay carefully. He is not someone look to restrict the role or the rights of religious organizations in the public square. He is not an apologist for the Obama administration. So, when he says the bishops are over-reaching, they really have to think about finding ways to pull their arms back. Laycock seconds Kaveny on the need for the bishops to decide where their religious liberty concerns end and where the public morality concerns start. ?The difference between exemption and repeal is the difference between seeking religious liberty for Catholic institutions and seeking to impose Catholic moral teaching on the nation,? Laycock writes. ?The bishops can argue for either or both, but conflating the two fatally undermines the argument for religious liberty.? Laycock does not take a position on whether or not the mandate should be repealed, but he is right to point out that by insisting on repeal, as opposed to insisting on robust conscience exemptions, the bishops will have a harder time making the case that their agenda is not a partisan one.

I have already called attention to Mark Silk?s essay. He turns to some of the historical citations in the USCCB document to point out a certain tendency, not to say tendentiousness, in the text. For example, while the bishops correctly cite the famous speech by Cardinal Gibbons defending American ideas about religious liberty when he took possession of his titular church, Santa Maria in Trastevere, Silks also points out what the bishops neglect: ten years later the Holy See condemned ?Americanism? and forced generations of American Catholics to squirm whenever the subject of church-state relations was raised.

Silk also points out that not all the concern about the USCCB?s stance has come from the left: He begins by pointing to Professor David Schindler?s masterful editorial in Communio which, to paraphrase, argues that some of the language adopted by the USCCB in their current fight is actually feeding the beast of a liberalism with which Catholicism cannot reconcile itself. This is vital: Some of the exalted language regarding religious liberty is not only feeding the beast of a radical individualism that has come to mean something very different by ?conscience? from what we Catholics mean, such excessive language also distorts the bishops from their mission. This was seen, for example, in Archbishop Lori?s homily at his installation Mass in Baltimore, when he chose to preach about the founding fathers of the U.S. At Mass, Catholic sermons should consider a different set of founding fathers: Mark, Matthew, Luke and John and the last time I checked, they were not present in Philadelphia drafting the U.S. Constitution.

I hope intellectually curious Catholics will read the different essays at Commonweal on this topic. I especially hope the bishops will read them before they gather in Atlanta next week. The issue of religious liberty is too important to allow it to be hijacked by GOP fellow travelers who have a partisan agenda. I do not believe the bishops have a partisan agenda, but I do worry that too many of them have accepted a political and legal narrative that leads inescapably to certain partisan conclusions. That is not the bishops fault, but the bishops should do everything they can to articulate their legitimate concerns in ways that make it harder, not easier, for others to misuse their documents.

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