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The unconscionable consequences of conscience exemptions

Jamie Manson | Jan. 25, 2012 Grace on the Margins

Of all of the reactions that I've read to the Department of Health and Human Service's refusal to change the rules on contraception coverage [1], I've noticed that few commentators have referred to the formal name of the government mandate the bishops are fighting.

The provision is called the Affordable Care Act. This new law is intended to ensure the just treatment of women and couples who cannot afford adequate medical treatment when it comes to contraceptives and who want to raise families in a safe, responsible manner.

This act is a promising attempt to prevent unwanted pregnancies and offers perhaps the most ethical and realistic approach to reducing the abortion rate.

The bishops' reaction was characterized by increasingly typical cries of victimization and hysteria. This self-pity only further diminishes the seriousness with which U.S. Catholics take the hierarchy. The sad truth is, if the numbers of Catholics leaving the church are any indication, most Catholics in the United States probably see the hierarchy more as victimizers than victimized.

Some have labeled this decision as President Barack Obama's attack on Catholics, echoing the inflammatory, paranoid spin bishops are putting on any government decision that doesn't go their way lately. This decision is not an attack on Catholics, but rather a groundbreaking move to protect women and to guarantee them greater access to adequate, affordable health care.

The decision demonstrates that protecting women's health, safety and freedom is part of the common good. In this way, it reflects a key element of Catholic social justice teaching: promotion of the common good and protection of individual freedom.

Although the hierarchy has historically argued otherwise, the conscience of an individual Catholic laywoman or layman is not *ipso facto* inferior to the conscience of any bishop. As David DeCosse argued so articulately in *NCR* earlier this week [2], the model of conscience used by most bishops "emphasizes obedience, law, and hierarchical authority and thus departs from the Catholic tradition's close linkage of conscience, practical reason, and freedom."

The decision affirms the Catholic principle of the "primacy of conscience." According to the *Catechism*, "A human being must always obey the certain judgment of his [sic] conscience" (No. 1790). Informing the conscience is a "life long task" (No. 1784) and "To this purpose, man [sic] strives to interpret the data of experience and the signs of the times assisted by the virtue of prudence, by the advice of competent people, and by the help of the Holy Spirit and his [sic] gifts" (No. 1788).

Lay Catholics will be permitted to exert their practical reason and freedom of conscience to choose, in an informed way, the medical practices and treatments that are healthiest for them and their families.

The hierarchy claims that this decision will force Catholics to either obey the law or violate their consciences. But whose consciences will be violated? According to the Guttmacher Institute, 98 percent of sexually active Catholic women (and, by association, their male partners) have used some form of contraception.

Perhaps Obama has learned, as many Catholic laypeople have, that the definition of the Catholic church encompasses far more people than the hierarchy. The church includes laypeople, theologians and ethicists who have, with good reason, rejected this doctrine. The majority of the church has refused to receive this teaching. Perhaps Obama saw, as many of us do, the bishops' actions as an attempt to legislate beliefs that they cannot get their own people to obey.

In making this decision, the president represented the needs of the people and protected the civil rights of women and workers. This includes not only Catholic women and men, but also the many non-Catholics who are employed by organizations affiliated with the Catholic church. These workers will no longer be subjugated to a church teaching that, compared with other religious tradition, is rather extreme. Even conservative evangelicals do not object to the use of contraception within marriage.

Once women are allowed access to oral contraceptives, the hierarchy will be able to honor an overlooked provision in the church's teaching. According to the Guttmacher Institute, only 42% of women take the pill exclusively for pregnancy prevention. That is nearly one of every two prescriptions. According to Humanae Vitae, women can take the pill for medical purposes. For decades, the church has prevented these women from receiving essential medical treatment and has therefore acted contrary to its own doctrine.

When an employee obtains a prescription for the pill, the hierarchy does not know whether the purpose is medical or contraceptive. They assume, of course, that the pill is used for contraception. By allowing the hierarchy this exemption, the government would have allowed the church to continue to make decisions about their employees' private, sexual lives.

If the bishops had been allowed that power, then they should have had exerted equal power in refusing to pay for prescriptions for Viagara, Cialis and other sexual performance drugs for men. They should have demanded the right to know how men would use these drugs. Are they using the drugs with their wives? Girlfriends? Mistresses? Would the church ever intrude on heterosexual men and their personal sexual lives in this way?

Perhaps the most important accomplishment achieved through this decision is the government's refusal to create a precedent for religious organizations to get a pass from obeying civil rights laws. A few decades ago, individuals and organizations whose religious beliefs opposed desegregation wanted to be exempt from the Civil Rights Act. We can all look back in gratitude that the government refused their request.

If the bishops had gotten their way, it would have opened up a Pandora's box in which any religious group could claim exemptions from obeying a multitude of laws on religious grounds. I have little doubt that part of what propelled this fight was the bishops' desire to set a precedent on which they could base their refusal to provide benefits to employees in same-sex marriages and civil unions.

The fact is, Catholic hospitals, universities and social service agencies take in millions of dollars in federal and state grants every year. They should be accountable to the same civil rights laws given to other agencies that receive the same funding.

Some Catholic leaders have argued that, in order to meet the "narrow" exemption requirement, hospitals, schools, universities and social service agencies that do not want to comply with this new law will be forced to seriously reduce the number of people they employ and serve.

If this should happen, it might be one of the worst cases of the church's honoring one teaching at the expense of dozens of others.

For more than a century, Catholic social justice teaching has argued for the rights of workers, especially the right to adequate medical benefits. More than a dozen church documents teach the preferential option for the poor, workplace justice, the protection of women's rights, the primacy of the person and the common good.

There is only one teaching on contraception. It is a teaching that disregards the findings of the Majority Report of the Pontifical Commission on Birth Control. It is a teaching that has also been rejected by the *sensus fidelium*.

Nevertheless, as leaders of Catholic institutions spend the next year adjusting to this new law, Catholic organizations will still contemplate turning away the sick, the poor, the orphan and others in need because they do not want to obey the civil rights laws set by the government that funds them. They are entertaining the possibility of violating dozens of social justice teachings in order to keep a hard line on a rule that almost no one accepts or follows.

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