

The **BOISI CENTER** *for*

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Symposium on Religion and Politics

**RELIGIOUS DIVERSITY AND THE
COMMON GOOD**

“The Common Good”

Reading Packet 6

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Symposium on Religion and Politics

RELIGIOUS DIVERSITY AND THE COMMON GOOD

“The Common Good”

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A Balancing Act

Catholic teaching on the church's rights—and the rights of all

BY DAVID HOLLENBACH AND THOMAS A. SHANNON

Although the presidential election is 10 months away, some rhetorical fires are already raging. Key issues, as identified by some candidates and by the U.S. Catholic bishops, include abortion, gay marriage and contraception. Rightly or wrongly, many people think no political compromise is possible on these matters. And in this year's electoral politics, religious freedom is being invoked in ways that have political implications.

Catholic teaching on religious freedom provides a carefully nuanced framework for considering these debates. One element of the tradition requires respect for the church's right to play an active role in public life. The Catholic understanding of religious freedom stands in sharp contrast to secularizing approaches to public life and privatistic interpretations of the place of religion. The contrast is particularly evident in the way the U.S. bishops have linked their opposition to same-sex relationships and gay marriage to their exercise of religious freedom. They state that the human rights of all persons must be protected, but that this "should be done without sacrificing the bedrock of society that is marriage and the family and without violating the religious liberty of persons and institutions." This linkage echoes controversies about whether Catholic institutions can be legally required to provide family health care benefits for the partners of employees in same-sex relationships, provide adoption services to gay couples or fund insurance plans that cover contraception.

Civil Law and Moral Values

Argument about the role of the U.S. bishops in public life

DAVID HOLLENBACH, S.J., holds the University Chair in Human Rights and International Justice at Boston College. **THOMAS A. SHANNON** is professor emeritus of religion and social ethics in the department of humanities and arts at Worcester Polytechnic Institute in Massachusetts. Some of the arguments here are developed from an essay by David Hollenbach published in the January 2012 inaugural issue of the new *Journal of Moral Theology*.

reached high intensity during the debate over the Affordable Health Care Act enacted in 2010. Though the bishops have been long-time supporters of affordable, universal health care insurance for all Americans, they opposed the health



PHOTO: CNS/MIKE CRUPI, CATHOLIC COURIER

care bill because they concluded that the bill could allow tax dollars to fund abortions. Yet this position was not a matter of moral principle; it was a prudential judgment about consequences they thought might follow were the legislation passed. Whether the bishops were right in their judgment on this complex public policy has been questioned.

Unquestionably, the bishops' opposition to the Affordable Health Care bill was an exercise of their right to religious freedom. But how does their exercise of religious freedom relate to their other moral concerns, such as the right of all persons to adequate health care? When religious freedom is exercised to advocate legislative policy to enforce certain moral standards, like opposition to abortion or same-sex marriage, the role of civil law in the enforcement of moral norms comes to the fore. When and how is civil legislation an appropriate means for the promotion of the moral norms taught by the church's magisterium?

These questions, present in the current electoral debates, join two distinct but overlapping issues—moral pluralism among the U.S. population and an increasing politicization of religious issues. In Robert Putnam and David Campbell's book *American Grace: How Religion Divides and Unites Us*, two findings are significant. First, largely because post-baby-boomer generations are alienated from Catholic and evangelical leaders' positions on gay rights and abortion, younger Americans have become increasingly secularized. The percentage of young people who say they have "no religion" increased from 5 percent in the 1970s, '80s and '90s to 25 percent today.

Second, there is a notable correlation between being actively engaged in a religious community and supporting the Republican Party; there is a similar link between not being active in any religious community and supporting the Democratic Party. The so-called "God-gap" in American political alignment revolves primarily around the issues of abortion and homosexual relationships. Those who are pro-life and pro-traditional marriage are likely to be believers and Republicans, while those who are pro-choice and pro-gay rights are increasingly secular and Democratic. Abortion and homosexuality overshadow a range of other public issues of moral importance: avoidance of war, discontinuation of the death penalty, promotion of economic justice through jobs and just wages, provision of affordable health care, overcoming racial and gender discrimination, alleviation of global poverty and the promotion of human rights.

Mary Jo Bane, of Harvard University's Kennedy School of Government, has argued that polarization in politics is making it increasingly difficult for Americans to agree on or to achieve common purposes in national life. Since the Catholic moral tradition sees the promotion of the common good as the principal purpose of law and politics, one can ask whether polarization ought not to be raising serious concerns among Catholics.

Neither the unity of society nor the concerns of those who are religiously active should override all other values as the church determines its pastoral agenda. But some moral questions may have such importance that pursuing them justifies pastoral actions that lead to social conflict and the departure of some people from active involvement in the church. Still, if religio-political polarization threatens efforts to work for the common good and occasions a sharp decline in active participation in the religious community by the younger generation, then careful consideration is called

for about how church leaders approach public policies on abortion, contraception and same-sex relationships.

A Modest Approach

Catholic moral tradition has long stressed that civil law should be founded on moral values. But it also stresses that civil law need not seek to abolish all immoral activities in society. For one thing, such a goal is impossible to attain. Since it is very unlikely that a majority of people in a particular society will be fully virtuous, civil law should not try to coerce people to move dramatically beyond the level of virtue they have already attained. Such efforts would likely produce resistance, bringing civil law into disrepute and leading to an outcome that may be worse than pursuing

more modest moral goals.

Following this approach, John Courtney Murray, S.J., observed that efforts to promote virtue in sexual matters through civil coercion are particularly unlikely to succeed. In the mid-1960s Father Murray drew on Thomas Aquinas to argue that preventing the use of contraception by civil legislation would likely be unsuccessful. Similarly, Father Murray appealed to Aquinas to argue that the goal of civil law is to promote public morality, which is limited to achieving the common good of the population. Father Murray acknowledged that whether contraception was a matter of public or private morality could be disputed, but he argued that the case for holding it to be a matter of private morality was "sufficiently conclusive." He argued that the church should not try to keep laws on the books preventing the sale of contraceptives.

Father Murray further noted that using civil law to prohibit the sale of contraceptives was inappropriate, because many people rejected the argument that contraception was immoral, and others, including some religious leaders, held that it could be morally required as a means to responsible parenthood. Although Father Murray did not accept this argument, he argued against seeking to translate the Catholic moral objection to contraception into a civil ban because of the diversity of positions in society. Though the church could teach its members that birth control—among other issues—is morally unacceptable, the moral role of civil law is limited. The church should not ask the state to do what it has not been able to convince its own members to do.

This affirmation of both the reality of pluralism and the moral importance of the religious beliefs of others is directly relevant to our contemporary debates over how a society

How should society frame civil laws on matters about which there is considerable moral and religious disagreement?

should frame civil laws on matters about which there is considerable moral and religious disagreement. Should the government use civil legislation and coercive regulation to prevent abortion and same-sex relationships? Or on these matters should the church and other moral educators, like the family, seek to develop the virtue in people that will lead them to do what is right without their being compelled by threat of police action?

Avoiding Confrontation

Regarding the recent requirement from the U.S. Department of Health and Human Services that health insurance must now cover contraception, this policy is a lamentable failure by the administration to take the religious and moral concerns of Catholic leadership as seriously as they should. Still, this failure ought not lead to a church/state confrontation. We would suggest that since the H.H.S. policy mandates insurance coverage of contraception and not its use, Catholic institutions could rightly regard provision of health insurance in line with H.H.S. regulations as a form of “remote or indirect material cooperation” with the contraceptive action the church officially regards as immoral. The harm to the common good of not providing full health insurance to employees at Catholic institutions or of separating these institutions from formal con-

nection with the church could be disproportionate. One need not see the recent H.H.S. ruling as drawing “a line in the sand” or as a direct threat to Catholic religious freedom, as Cardinal Timothy Dolan, president of the U.S. Conference of Catholic Bishops, has argued. Following standard principles of the Catholic moral tradition, some compromise between church and state on this matter can be sought.

The Second Vatican Council’s “Declaration on Religious Freedom” stated that the way government should respond to matters on which there is moral or religious disagreement should be based on a presupposition in favor of freedom. Freedom “is to be respected as far as possible, and curtailed only when and in so far as necessary.” Father Murray added that this means freedom should be limited only so far as necessary to preserve society’s very existence.

Both Father Murray and the council specify when such threats exist and thus when religious freedom can be limited and when it cannot. The criteria are the standards of “public order.” Public order includes three elements: justice, which secures the rights of all citizens; public peace, which itself is grounded in justice; and those standards of public morality on which consensus exists in society. Public order is a moral concept—the minimal level of morality that protects the most basic prerequisites of social life. These pre-

ON THE WEB

From the archives, John Courtney Murray, S.J., writes on religious liberty.
americamagazine.org/pages

requisites include protection of the levels of justice and peace required for a civil society to exist at all. When such requirements of public order are endangered, the use of the coercive power of the state is justified, even to limit religious freedom.

Drawing on Father Murray's analysis, we can conclude that the question to be addressed regarding same-sex relationships, abortion and contraception in the United States today is whether permissive stances toward each threaten social life, and whether the justice and public peace that sustain social life require that each be prohibited by law. Clearly, some religious leaders (including bishops) believe that abortion and same-sex relationships do threaten social life. They hold that civil recognition of same-sex partnerships threatens the family bonds that hold society together, and that abortion is the unjustified taking of innocent human life. The bishops argue that the standards of justice and public morality can be invoked to support the use of coercive governmental power to limit same-sex partnerships and prevent abortion.

A significant number of U.S. citizens do not agree with the bishops; some who disagree do so on religious grounds. One could argue that those who disagree with the bishops are simply in error when they hold that homosexual partnerships based on mutual love and commitment can be

morally justifiable, or when they conclude that in some tragic circumstances abortion might, with regrets, be justified. It is appropriate here to recall Vatican II's rejection of the earlier Catholic position that error has no rights.

To suggest that the government is not the appropriate agent for pursuing the advancement of moral values on homosexuality, abortion or contraception is not an argument that these actions are either morally insignificant or acceptable. It is simply not the role of the government to compel people to hold right beliefs on all moral matters. Similarly, with the moral disagreement and pluralism in the United States today on committed same-sex relationships and on abortions in situations of grave distress, it is not the role of government to resolve these disagreements through legislation. The use of coercive law in these areas is likely to be ineffective and to impede the attainment of the common good. Since the common good is the overriding standard of both social morality and civil law in the Catholic tradition, action that threatens the common good should be taken only when the justification for the action is entirely clear.

The approach to religious freedom presented here will enable the church to contribute to the common good, remain faithful to its own true identity and respect all its fellow citizens. **A**

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HOBBY LOBBY AND THE SUPREME COURT: A CALL TO PRAYER

March 23, 2014

22 Comments

Blog

Russell D. Moore

Russell D. Moore is president of the Ethics and Religious Liberty Commission of the Southern Baptist Convention, the moral and public policy agency of the nation's largest Protestant denomination.

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This week, the Supreme Court of the United States will hear the most important religious liberty case in a generation, and it's **time for us to pray**. The cases are Hobby Lobby Stores and Conestoga Wood specialties versus the United States government's mandate that employers provide insurance for contraception, sterilization, and abortion-inducing drugs. Behind that is the larger question of what it means for the Constitution to guarantee the free exercise of religion.



And behind that is the even larger question of soul freedom for all.

We need to pray because this case isn't about politics or culture wars. This case will set the tone for the next hundred years of church/state jurisprudence in this country. This case will tell us whether we've bartered away a birthright paid for with our forebears' blood.

Richard John Neuhaus rightly argued years ago that it's a mistake to see the two clauses of the First Amendment's religious liberty guarantee—no establishment of a religion by the state and no restriction on free exercise of religion—as too sharply divided. They



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are two sides of the same coin. A government that sets up a religion is restricting free exercise, and a government that restricts free exercise is setting up some alternative church. He's exactly right, and that's what's happening here.

As a Baptist Christian, I can say that we've seen this before. My Baptist forebears objected to the state licensing preachers to preach. This was, the government said, simply a matter of paperwork. The state license, though, was about more than a fee and a piece of paper. It was about a government that had overstepped its authority. My Baptist ancestors objected to paying taxes to support the Congregationalist established churches of New England.

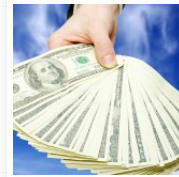
Isaac Backus, a courageous preacher, was told that this was "only a contending about paying a little money." Backus responded with fire, "It is absolutely a point of conscience with me; for I cannot give in the certificates they require without implicitly acknowledging that power in man which I believe belongs to God."

That's exactly what's at stake here. The government is telling the Hobby Lobby owners, the Green family, that their free exercise rights aren't relevant because they run a corporation. They're telling these Anabaptist woodworkers and the Catholic Little Sisters of the Poor and ministries of all sorts all over the country that what's at stake is just the signing of some papers, the payment



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of some money.

Our government has treated free exercise of religion as though it were a tattered house standing in the way of a government construction of a railroad; there to be bought off or plowed out of the way, in the name of progress.

The government wants us to sing from their hymn book, "Onward, Sexual Revolutionaries," but we can't do that. We love and respect our leaders, but when they set themselves up as overlords of the conscience, we must respectfully dissent.

We cannot accept the theology lesson the government has sought to teach us, that religion is simply a matter of what happens during the scheduled times of our services, and is left there in the foyer during the rest of the week.

Our religious convictions aren't reduced to simply the opinions we hide in our hearts, or sing in our hymns. Our religious convictions inform the way we live.

We support freedom of conscience not only for ourselves, but also for all. One of the reasons we oppose this sort of incursion into free exercise is that we want neither to be oppressed nor to oppress others. We do not ask the government to bless our doctrinal convictions, or

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WHY I AM A BAPTIST



to impose them on others. We simply ask the government not to set itself up as lord of our consciences.

Many Americans will disagree with us heartily about the things we believe. But even Americans of no religious faith at all have an interest in the protection of these liberties. Do we really want the sort of civil society in which the consciences of the people are so easily swept aside by government action?

If the federal government can force organizations and businesses to pave over their own consciences, to choose between being believers and being citizens, what will stop the government from imposing its will on anyone's conscience next?

As Christians, soul liberty is about more than political principle for us. We believe, as our Lord commands, that we should render unto Caesar that which belongs to Caesar. The conscience does not bear the image of Caesar, and cannot be swept into the federal treasury by government fiat.

So let's pray that the Court listens to the case being made. Let's pray for the justices. Let's pray for the attorneys. Let's pray, as the Apostle Paul commands us, for "all who are in high positions, that we may live a peaceful and quiet life, godly and dignified in every way"

(1 Tim. 2:2).

Let's pray that our court system would, like Jefferson and Madison in the founding era, recognize that religious liberty and freedom of conscience aren't government bailouts but inalienable rights granted by the Creator himself. This isn't just about Hobby Lobby. It isn't just about the HHS mandate. It's about whether the government is "under God" or all-encompassing. Our politicians, on their best days, might aspire to Mount Rushmore, but they don't reign from Mount Zion.

Let's pray to the One who does.

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Cheryl Braswell March 24, 2014

Thanks so much, Dr. Moore, for helping