A New Assault on Conscience

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SEVERAL DECADES AGO when the campaign to legalize abortion became a national crusade, the architects of legalized abortion argued that this campaign was ultimately a defense of personal conscience. According to their rhetoric the purpose of this campaign was to guarantee the freedom of women to decide whether to bear a child or not. "Choice" became the slogan of preference. The reality of the campaign, of course, never matched the libertarian rhetoric. The paladins of legalized abortion stoutly refused any restrictions on abortion, such as waiting periods and mandatory counseling on the facts of abortion, that could make the choice one of informed consent. Taxpayers quickly discovered that they would not be accorded the choice to determine whether to finance abortions or not. In recent years the coercive nature of pro-abortion politics has become dramatically more pronounced. A new slogan, that of "access," has replaced the tattered placards of "choice." A fresh set of political initiatives is forcing private communities, especially religious ones, to use their resources and facilities to advance the practice of abortion. Not only does this new wave of political coercion mark an ominous extension of the culture of death into American society; it also represents a fundamental assault upon the rights of conscience, especially the rights of free exercise of religion by religious minorities.

In illustrating this new assault on conscience I will refer primarily to new laws attacking the right of Catholic institutions to maintain their integrity in opposing abortion and in respecting the right to life of every human being from conception until natural death.

Three laws recently passed by the California State Legislature and signed into law by Governor Gray Davis illustrate the nature of this new coercion. The laws concern contraceptive coverage, emergency care to victims of sexual assault, and abortion training in medical schools.

The law on contraceptive coverage mandates that all employers in California who provide health care coverage for their employees must

provide coverage for contraceptive pills and devices. Included among the mandated services are the progesterone pill, the "morning-after" hormonal pill, and the intra-uterine device–all of which may act as early abortifacients under certain circumstances. The California law (like many similar statutes) does contain a religious exemption, but this exemption is extremely narrow. For the purpose of the law "religious organizations" only encompass those groups whose primary work is worship, preaching, and proselytizing and whose constituency is limited to members of their own faith. A Catholic parish might qualify for this exemption, but a Catholic college, hospital, or social welfare agency would not.

Currently challenging this law before the California Supreme Court, Catholic Charities of Sacramento has argued that the law forces such Catholic agencies to face an unconscionable choice: to subsidize acts that it considers homicidal through its insurance payments or to abandon the provision of health care insurance for its employees.[i] More basic is its challenge to the constitutionality of this law. The law violates the right of religious communities to follow their own ethical convictions in the practice of health care. It favors some religious groups (those that favor contraception and abortion) over others (those that oppose contraception and abortion). Even more dangerously, it redefines religion in an extremely narrow way. "Religious community" now refers only to the preaching and catechetical work of a religious group. The broader types of educational, health-care, and social ministries of religious communities suddenly find themselves bereft of legal protection. Against their deepest and most ancient convictions such ministries will now be forced by the state to facilitate and legitimize abortion by the provision of early abortifacients to their employees.

The second California law orders health-care facilities to provide "emergency contraception" to victims of sexual assault. In other words, hospital staff are to provide access to the "morning after" pill in order to prevent pregnancy from occurring in a woman who claims to have been recently raped. The problem here is that this pill can act as an early abortifacient.[ii] A hormonal composition containing estrogens and/or progestogens, the "morning after" pill can act either by preventing ovulation or by preventing implantation in the uterine wall. When it

operates in the latter way, the pill serves to expel a human embryo in the blastocyst stage of development (fifth to sixth day after conception).

Under the terms of such legislation, a Catholic hospital would be forced either to cooperate in a possibly abortifacient procedure or to risk serious legal penalties, up to and including the revocation of its license. Such laws effectively veil the nature of the procedure being mandated by claiming that an abortifacient intervention is actually contraceptive. The arbitrary redefining of the onset of pregnancy as implantation rather than conception further masks the nature of this coercive mandate that violates the convictions of those who are determined to respect the right to life from the moment of conception.

In fact, Catholic health-care institutions are not in complete accord on the ethics of using the "morning after pill" in the treatment of victims of felonious sexual intercourse. Employing the principle of double effect, some Catholic ethicists argue that the use of such pills or similar treatments could be justified as a means of warding off possible negative effects of such criminal intercourse, such as the onset of pregnancy or of certain diseases, even if there is a minute risk of expelling a microscopic conceptus before implantation. Such seems to be the reasoning of the New York Catholic Conference when it announced that it would not oppose a recent New York State law mandating certain treatments for victims of sexual assault because the law was narrowly crafted to situate the mandated treatment within the immediate aftermath of the alleged crime.[iii] The looser versions of such laws, however, have a serious potential for the first time to turn early abortion into a legal requirement rather than a tolerated practice. The use of understandable sympathy for victims of rape and incest as the medium to make abortifacient treatments mandatory eerily echoes the use of the rare cases of rape and incest to chip away at state laws banning abortion in the early 1960s.

The third California law concerns abortion training in medical school.[iv] It mandates that all schools that train obstetricians and gynecologists must provide training in abortion techniques. It does provide an exemption for schools and individuals opposed to abortion to opt out of this requirement. However, it requires institutions who opt out to refer students willing to undergo this training to other institutions who

will provide this controversial education. In other words, a Catholic medical school may legally refuse to provide such education, but it will be forced to refer students not opposed to abortion to institutions who will train them in the techniques of abortion. Such forced and massive material cooperation in abortion–a cooperation that may involve the provision of students actually to perform abortions as part of their residencies–represents a grave assault on the right of a religious institution to refuse to facilitate the practice of abortion.

To say the obvious, these new assaults on conscience in the effort of the state to force private institutions to cooperate in abortion are not random. Such initiatives as the aforecited coercive California statutes rest on a new ideology that is fueling the partisans of abortion. The old slogan of "choice" has been replaced by the new slogan of "access." The Planned Parenthood Federation of America in its publicly stated "Goals for the Year 2025" declares "access to reproductive and sexual health care for all" as its second highest priority. It defines the nature of this access:

> We anticipate the steady expansion of services to meet these needs [for reproductive health services], extend our reach to others who want our services, and better serve youth and culturally diverse populations. In addition, we will increase advocacy to ensure that those not served by a Planned Parenthood center still receive the reproductive and sexual health care they need and deserve.... We will push the edge for universal access to birth control. And this must done in a way that maintains access for the poor and the young.[v]

Obviously this pushing of the edge cannot tolerate the refusal of private institutions to provide or to fund contraceptives or abortifacients. To tolerate such zones of conscientious dissent is to delay the dream of "universal access" to the practices grouped under the euphemism of "reproductive health." As International Planned Parenthood's criticism of "conscience clauses" in international covenants demonstrates, the campaign to provide universal access to abortion must attack the right of individuals as well as of communities to refuse to cooperate in this lethal practice.

The new drive for universal access to contraception and abortion

indicates the coercive turn that the culture of death has taken in contemporary society. First tolerated as an evil, then mandated as a state entitlement, abortion now presents itself as a mandatory good to be provided by all health-care institutions and workers without reservation. But the dangers represented by this new wave of coercive abortion-related laws are not confined to the further denigration of the right to life of the innocent. They involve grave dangers for the practice of the free exercise of religion in all domains, not only in the area of early-life issues.

First, such laws as the coercive California statutes risk the subordination of the religious to the civil community. It is the state that has arrogated to itself the power to dictate to religious communities the nature of its contracts with employees, the type of treatment to be given to crime victims, and the content of the curriculum of its schools. The invasions of the freedom of religious communities in these cases might appear minimal and marginal, but the logic behind such interventions is far from insubstantial. One of the more positive traits of American culture until recently has been its successful resistance to the temptation of Caesaropapism, the subordination of the religious to the political. But the legal fruits of the campaign for "access" have been the attempted coercion of religious communities to fund and facilitate practices that they consider homicidal. Such a subordination of the conscience of religious communities to the alleged health-care interests of the state has few precedents in American society. The California statutes are possibly a preview of a far more systematic subordination of the religious to the political in the decades to come.

Second, the coercive "access" laws manifest a new contempt for the sincerely held convictions of religious minorities. The guarantees of the federal and state constitutions to "the free exercise of religion" have usually been interpreted broadly by legislatures and by the courts. It is surely one of the merits of American society that the respect for conscience of religious minorities has led us to countenance conscientious objection to participating in war, to reciting the Pledge of Allegiance, to undergoing medical procedures against the will of a competent adult, to choosing a private rather than a public school for the

education of our children, and to refusing to violate the seal of confession even when a capital crime is confessed. Under the rubric of universal access, the new compulsory laws on contraceptive coverage, rape treatment, and abortion training set aside this tradition of respect for minority religious conviction under the claim of greater state interests. When this interest includes nothing less than the veiled destruction of the innocent, the violation of conscience becomes all the more glaring.

Third, the new coercive abortion-related statutes represent a dangerous narrowing of the right to free exercise of religion.[vi] Nothing is more disturbing in this new wave of statutes than the deceptive "religious exemptions" that are included in the contraceptive coverage legislation. As in the case of the California law, these statutes severely limit the nature of a religious community. Only communities that confine themselves to the service of their own religionists through worship, religious education, and counseling can qualify for the exemption. As critics such as Catholic Charities of Sacramento have argued, such narrow exemptions constitute religious discrimination because they penalize religious communities such as the Catholic Church that have chosen to exercise their ministry outside the parish grid through education, health-care, and social welfare agencies. The state is imposing a pietistic over a social-actionist model of religion and, in so doing, is shielding one type of religion from state interference while subjecting another to it.

There is a clear logic in this practice of narrow religious exemptions. It is a logic well-known to the repressive liberal republics that issued from the Enlightenment. In this model religious freedom is preserved but only as the freedom to worship and to conduct catechesis among the members of a particular denomination. It is the sectarian freedom of the sanctuary and the sacristy. This model, however, denies the freedom of religious communities to conduct broad-based schools, hospitals, or social agencies open to the general public. In so doing the state forecloses the possibility of a prophetic religion, engaged in the critique of the state and of majority opinion. The state also destroys the possibility of a rival in the public square. Education, health care, and social welfare will remain under the unique and rigorous control of the state. In the

penumbra of the narrow religious exemptions the state is offering religious communities a deal: if we will confine ourselves to the pious edification of our assemblies within our own walls, our consciences will be spared, at least for the moment. But for those of us summoned by God to heal the sick, to instruct the ignorant, to console the bereaved, and to challenge Caesar, the price for this retreat cannot in conscience be paid.

NOTES

i. See Carol Hogan, California Catholic Conference, "Catholic Charities v. Superior Court: Why is all this important?" www.cacatholic.org/relfreeimport.html. For an argument by the Catholic bishops of New York protesting a similar New York law, see Catholic Bishops of New York, "Statement on New Law Mandating Contraceptive Coverage in Group Health Plans," *Origins* 32/31 (2003) 505-07.

ii. For an ecclesiastical discussion of the moral problems represented by the "morning after" pill, see Pontifical Academy for Life, "Statement on the so-called 'morning-after' Pill" www.vatican.va/roman_curi.../rc_pa_acdlife_doc_20001031_pillola-giorno-dopo_en.htm.

iii. See New York State Catholic Conference, "Statement on 'Emergency Contraception Legislation," www.nyscatholicconference.org/new/2003/ nr030619.htm. For a critique of the Conference's position and the moral casuistry underlying it, see Lifesite, "New York Catholic Conference Endorses Abortifacients at Catholic Hospitals," www.lifesite.net/Idn/2003/jul/03071102.html.

iv. See "California Senate Passes Bill Requiring Medical Schools to Teach Abortion Procedures to Ob/Gyn Residents," *Kaiser Daily Reproductive Health Report*, 8/13/02, www.ppacca.org/news/read.asp?ID=190.

v. Planned Parenthood Federation of America, "Planned Parenthood Vision for 2005," www.plannedparenthood.org/vision2025/goal_02.html.

vi. For a discussion of the need for broad protection of conscience interests in religious health care institutions, see Michael Place, "Conscience Clauses and

Catholic health Care," *Origins* 33/14 (2003) 227-29.