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## Freedom of Conscience and the Welfare State



**W**ho says the welfare state respects freedom of conscience? Consider: In March the California Supreme Court ruled that employer-provided prescription-drug plans must cover birth-control products, even if contraception violates an employer's religious convictions.

The conscientious objector in the case is Catholic Charities of Sacramento. The non-profit organization, which is part of the Roman Catholic Church, argued that because Catholic doctrine condemns contraception, Catholic Charities qualifies for the exemption written into the law.

But the court saw it differently, ruling that the exemption applies only to churches, not to affiliated organizations. As the *New York Times* reported: "[T]he State Supreme Court ruled that the organization did not meet any of the criteria defining a religious employer under the law, which was passed in 1999. Under that definition, an employer must be primarily engaged in spreading religious values, employ mostly people who hold the religious beliefs of the organization, serve largely people with the same religious beliefs, and be a nonprofit religious organization as defined under the federal tax code."

The executive director of the California Catholic Conference, Ned Dolejsi, said the court does not grasp the relationship between Catholic Charities and the Church. As the *Times* quoted him: "Every Catholic

Charities is part of the Catholic diocese in the area where it is. Officially and formally, Catholic Charities of Sacramento is part of the Catholic Church in Sacramento, answerable to the local bishop and providing the services the church provides as a religious organization."

How comforting is it that legislatures formulate criteria for who qualifies as a religious employer, and courts decide who meets those criteria? Is Catholic Charities sufficiently part of the Catholic Church to qualify for exemption from an intrusive law? Some judges will let you know. Nineteen other states have similar mandates, and a challenge is underway in New York, brought by Catholic and Protestant plaintiffs.

This sort of thing is not supposed to happen in a free society. Yet it does, because state legislatures have become bazaars at which providers and users of medical services and products lobby to have those things incorporated by mandate into employer-provided medical plans. The politicians are happy to oblige. Besides birth control, state mandates include "treatment" for drug and alcohol use, infertility services, hair transplants and toupees, marriage and pastoral counseling, and Viagra. States have enacted more than a thousand such mandates nationwide.

The motives of the parties are easily discerned. The providers anticipate more business if people don't have to pay for their products and services out of pocket. The users prefer that someone other than them-

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selves foot the bill. Unrepresented in the lobbying frenzies are people who neither want the products and services nor want to pay for other people's use.

Insurance once meant the pooling of resources against financial ruin from possible but unlikely catastrophes. Today people expect medical insurance to cover volitional acts, such as taking birth-control pills, or events that are not diseases and often are volitional, such as pregnancy. In other words, insurance has become a way to have other people pay your bills. That's one reason the health-care system is such a mess. Insurance relieves us of the need to be cost-vigilant. The chief consideration is: "Does my insurance cover that?" If the answer is yes, there is no need to inquire further about necessity or price. This perverse system guarantees that demand will increase and prices for services will be bid higher than they would have been. This, in turn, makes medical insurance more expensive, discouraging more employers from offering it. (Special tax treatment rigs the system in favor of employer-based plans.)

## Insurance by Force

Coercion is the key. There is nothing to stop insurance companies from offering any coverage customers want. But if insurers wish to stay in business, premiums would have to reflect the cost of the services, including administrative overhead. People who don't want coverage for contraception or alcoholism programs or hair transplants would buy basic, and cheaper, policies. Anyone who wanted that coverage would have to pay for it.

Advocates of insurance mandates point out that the per capita cost is lower when it is spread among more people. That may be true, although the stimulated demand and price rise might wipe out the savings. But it is also true that when everyone is forced into the pool, some people's moral or religious convictions are violated. Hence, Catholics pay for contraception even if they have no intention of taking advantage of the mandate. Do we really want to run roughshod

over some people's consciences just so other people won't have to pay the full price for their choices?

Violation of conscience is nothing new in the welfare state. The U.S. Supreme Court has ruled that legislatures may pass laws against using a substance (such as peyote) even when it is part of religious observance. The courts have not been consistent, however. In 1972 the Supreme Court struck down a Wisconsin law that compelled parents to keep their children in school until age 16 even though the Amish conscientiously objected. Self-employed Amish are exempt from paying the Social Security payroll tax, but not so Amish who work for others. Moreover, Amish employers are compelled to withhold the tax for their employees, despite their conviction that Social Security violates their "take care of our own" ethic. By the same token, the Amish request for exemption from child-labor laws has not been honored.

Even the narrow exceptions make a larger point: The state does not take seriously an *individual's* moral objection to compulsory "benefits." Before an exemption is considered, the authorities have to be satisfied that the objection is rooted in established religious doctrine. An individual with "merely" personal philosophical convictions against compulsion, however well-grounded in reason, has no standing. How odd for a country founded on the principles of individualism.

None of this should be surprising. The point of the welfare state is to compel universal participation. If the state required payment from only those who wanted the benefits, it would be indistinguishable from a private organization. For the system to "work," everyone must take part—whether he wants to or not. But this means that conscience cannot intrude. Occasionally, the government will yield, but only in carefully defined cases that cannot be readily broadened into a full recognition of the individual's right to personal integrity.

In other words, freedom of conscience must always take a backseat to the ambitions of social engineers. □