

PRESENTATION ON RELIGIOUS LIBERTY – PART II
IN DEFENSE OF FAITH: CHALLENGES IN AMERICA TODAY

July, 2012

In April of 2005, at the beginning of the conclave that would elect him as Pope, Cardinal Ratzinger warned against “a dictatorship of relativism that does not recognize anything as definitive.” He was speaking about a situation, increasingly common in the West, in which societies not only support the culture of death and decadence, but even try to force it on people of faith. Thus, for example, in Canada and Sweden, ministers have been prosecuted for speaking out in defense of traditional marriage; and in Britain, neither the Church nor anyone of traditional morals can any longer arrange adoptions because the government prohibits favoring adoptions by a man and a woman. It would be pleasing to think that, in this country and this state renowned for religious liberties, such a dictatorship of relativism is a distant threat. For, as I outlined in the talk last week, this country has a proud history of upholding the liberty both of every faith and each person of faith to believe, teach and live out their principles. Pope Benedict spoke of this great tradition in a conference with the American bishops on January 19 of this year, when he said, “In America, [the] consensus, as enshrined in your nation’s founding documents, was grounded in a worldview shaped, not only by faith, but also by a commitment to ethical principles deriving from nature and nature’s God.”

But then he went on to warn, “Today, that consensus has eroded significantly in the face of powerful new cultural currents, which are not only directly opposed to core moral teachings of the Judeo-Christian tradition, but are also increasingly hostile to Christianity as such. It is imperative that the entire Catholic Church in the United States comes to realize the grave threats to the Church’s public moral witness in the cultural and political spheres. . . . Of particular concern are efforts being made to limit the most cherished of American freedoms, the freedom of religion.” The most prominent of these attacks has occurred recently with the US Department of Health and Human Services mandating that artificial contraception, sterilization, and drugs that can cause abortions be included in all health insurance policies, that is by all insurers and all employers who provide insurance, as all employers with over 50 employees will be required to do. This mandate is the latest and most comprehensive attack on religious liberty, but it comes in the wake

of a long line of attacks on freedom of religion in this nation that have increased in the last 20 years. In this talk, I will seek to outline some of these threats, which call for a strong and decisive response on the part of all people of faith and anyone who cares about liberty. There is not time to go over every issue, and so I will focus on: (1) the HHS mandate and related mandates to provide contraception, test tube babies and even abortifacients; (2) the attempt to force all people and groups to accept false marriages; and (3) the attempt to force religious organizations to accept members and even leaders that would undermine their own values.

We can begin with the contraception and abortion mandate. The issue involves at least two fronts: (1) the requirement from some governments that medical professionals provide contraception and often other drugs and procedures that violate not only ethics, but ethic historically held among people of faith and all decent people; and (2) the requirement that insurance companies and employers pay for contraception, sterilization, and abortion inducing drugs. Regarding the first point, some states including Illinois and Washington State have mandated that all pharmacists and pharmacies sell such things as contraception and even abortifacient pills. On a related point, a doctor in California was disciplined because he would not help with in vitro fertilization, even though his partner performed the services anyway. Artificial contraception is not real medicine, for it does not heal the body or preserve health. Rather, contraceptive drugs suppresses natural fertility, commonly by making a woman's body act like she is pregnant; and thus such drugs make the body *malfunction* for the sake of convenience, as for example, taking steroids for muscle building, or smoking for the sake of suppressing hunger does. Furthermore, many contraceptives such as the so-called "morning after pill" often allow conception and then prevent the unborn child from receiving nutrition. Even the regular contraception pill can do so in certain cases. And in vitro fertilization makes produces human beings like products, rather than the result of acts of love. Worse yet this process of manufacturing human beings usually produces several unborn children only one or two of whom are generally brought to term, the rest being killed as "spares." Such procedures are not medicine, but a perversion of it.

But even for people who support providing them, they should recognize the rights of those who disagree. The fact that a few people will not provide them does not prevent anyone from buying them from another provider. After all, does the

fact that a department store refuses to sell guns mean that the buyers' Second Amendment right to own guns is being infringed? Or, to take another issue, health food stores or vegetarian markets refuse to sell certain foods because of a principles stand against them. Are such stores denying their customers the right to eat meat or other foods? If a store sell beverages, but does not care to sell red wine (which *can* actually improve one's health), is it denying people the ability to drink red wine? If a bookstore chooses not to sell books it finds offensive or just poor quality, would it be considered to have violated people's right to buy those books? In every other case, no one would mandate that businesses sell products that they do not wish to sell. Governments only impose such mandates in the field of medicine when the employer or business is upholding traditional morals.

The irony of the situation was noted by federal Judge Ronald Leighton, who was considering the constitutionality of the Washington contraception mandate as applied to pharmacists who disagree with it. That state has a list of drugs that it requires pharmacists to sell unless the administration gives an exception; and that list includes contraceptive drugs. As the judge noted, the state was perfectly willing to make exceptions to its mandate that pharmacists sell these drugs on the grounds that there was not enough demand for them, and thus that stocking the drugs would be unprofitable. Unprofitability, or the desire for money, was considered by the state to be a perfectly good motive. But moral objections to contraception or abortifacients were deemed irrelevant. Evidently, the worship of money is an acceptable motive for not selling certain drugs; the worship of Christ or even the honor of the family is not. The judge held, rightly, that the state was plainly discriminating against people of faith and thus that they had to make an exception to their rules for us. Unfortunately, the federal court of appeals covering Washington State may well go in the other direction.

This issue of contraception mandates brings us to the most recent issue, that of the federal mandate to cover contraception in insurance and thus by employers. The issue, sadly, is not new. Up to 28 states have mandated that artificial contraception be included as a part of insurance coverage, evidently on the grounds that fertility or children are diseases to be prevented or cured. Such regulations are problematic enough, for they now make a requirement what almost all Christians up to 80 years ago considered to be an unnatural interference in the human body. And, in addition to Catholics, many Orthodox Christians, some Protestants and

Orthodox Jews, who maintain this historic prohibition, many Protestants and others today consider contraception to be used excessively, even if they do not believe it to be outrightly wrong.

In the case of the state regulations, as wrong as they are, there are several factors that reduced their impact. First, 19 of these states allow a conscience exception of one sort or another. Second, all but 2 of these states only require contraception if and to the degree that other prescription drugs are covered; thus, an employer or insurer could simply not cover any prescription drugs, or have a deductible that would be high enough that artificial contraception would be paid by the individual. And only one of the states requires sterilization as a part of coverage. None of them requires the abortifacient drug called “ella,” which is required by the federal mandate. Furthermore, under a federal law called ERISA, which governs employment benefits, state laws cannot regulate “self-insured” benefit plans, that is, plans where the employer pays for the medical costs, rather than having an outside insurance company do so. The substantial majority of large employers, and most middle sized ones, including most churches and religious groups, use such self-insurance. As a result, the state mandates do not apply to them. Finally, until now employers did not have to provide health care insurance at all, and thus were not required to provide for artificial contraception.

It remains the case that the state mandates for artificial contraception are unjust and unsupportable even for the erroneous goal of providing more access to contraception. If people want artificial contraception, they are certainly able to get it in stores everywhere; they simply have to pay for it as people have to pay for other things they have the right to. After all, there is a constitutional right to own guns, but no one requires homeowners’ insurance policies to pay for them. There is a constitutional right to own books and computers, but we do not require employers or schools to buy them for their employees or students. The fact that an employer chooses not to pay for this so-called service of artificial contraception, sterilization, or abortifacients does not deny people access to these things any more than the fact that employers or insurers do not pay for these other things denies people’s rights to them. And such others things can actually be helpful to human nature.

But at least in the case of the state mandate, employers did have the ability to avoid them in one way or another, although insurers did not. But the recent HHS regulations would change all that. What happened was the following. Under the 2010 Health Care Act, the Department of Health and Human Services received the authority to require all health insurance policies to cover “preventative services” without any deductibles or co-payments. The Department would determine what services were covered under this mandate. In what should have been a surprise to no one, in 2011, HHS included artificial contraception and sterilization as a part of this mandate. But it not only said that insurance companies must cover some form of family planning (and the Catholic Church is fully supportive of natural family planning), but went further to insist that all insurers and all employers providing insurance must pay for all forms of contraception and sterilization that are approved by the FDA, as well as counseling to provide such so-called services. Included in what is called contraception is the drug ella, which can either prevent conception or prevent a conceived child from coming to term, effectively aborting the child. Such things do not cure or preserve the body as real medicine does, but rather make it malfunction, and in the case of ella, can even kill an unborn child. They do make the body function as the user wants, but then again so do tobacco and steroids that build up muscles; and we do not consider that medicine. Obviously, not only does the Catholic Church, but most people of any traditional faith would object to such a broad payment for such things, as well as counseling for them.

As flawed as the HHS regulation was, mandating damage to the human body and even abortifacents as a part of health insurance, the effect could have been mitigated by a conscience exception. The Obama Administration had promised now Cardinal Timothy Dolan, the Archbishop of New York and President of the United States Conference on Catholic Bishops, that there would be a broad exemption for religious and other organizations for ethical grounds. However, when the regulation came out, the exemption covered only institutions who employ and serve primarily their own members and whose primary purpose is the advancement of their faith. Thus, while the parishes themselves and presumably their schools would be exempt from the mandate, (and probably but not clearly diocesan run high schools), all universities, charitable organizations, religious media and cultural organizations and even schools that are not run directly by a

parish or diocese would be required to cover contraception, sterilization, and abortion-inducing pills,. The only alternative is to cancel health insurance for their employees altogether and thus not only leave employees without insurance, but also be fined heavily by the government. And of course the mandate would likewise apply to all businesses and nonprofit organizations as well, such as prolife pregnancy centers and religious bookstores, regardless of the views of the owner.

In the face of outrage at this mandate and extraordinarily narrow conscience exemption, the Administration proposed what it called an accommodation for other nonprofits (but not for businesses.) It promised that sometime in the future regulations would clarify that the employer would not have to provide for the artificial contraception, sterilization or abortifacients himself, but that the insurance company providing the coverage would. This so-called accommodation is an accounting gimmick and a joke. First, if employer is self-insured, the arrangement is utterly superficial, for the employer is the insurance provider. Even in the case of employers who purchase insurance from another company, such insurance companies do not provide services for free. They would obviously include the cost of contraception, abortifacients and sterilization into their coverage; and thus the employer would be paying for these things all the same.

The Administration tries to justify these regulations on the ground that they are needed to make contraception, and in addition, sterilization and abortifacients, available to everyone. But such things are easily available now. There are very cheap versions of contraception available over the counter; even if one does postulate a right to use contraception, what this mandate does is require all insurers and employers to pay for any form the recipient chooses, even the most expensive form or one that can induce abortions. No other insurance mandates of any type insist that even the most expensive type of service be paid for. In addition, because not only Catholic employers, but any employer who does not believe in abortifacients or sterilization would likely cancel insurance for their employees altogether, the mandate would not expand even access to contraception at all. Instead, because such employers would cancel insurance altogether, the employees would have to buy their own insurance, which would be much more expensive than simply buying the mandated “services.” Furthermore, almost all insurance provided by sources other than employers and universities cover contraception;

devout people must search for one that does not. For people who are purchasing insurance on their own, as they will have to do if the employer cancels it, this mandate denies them totally the option of buying insurance that does not cover contraception, sterilization and abortifacients, even if that is what they would prefer. It is thus clear that this mandate is not for the benefit of employees or other buying insurance. The purpose is rather to force all people to buy insurance that covers these so called services, and to place at a severe disadvantage employers of faith or morals who disagree.

Even more ridiculous is the claim that not covering artificial contraception is somehow discrimination against women. Even before the HHS mandate, the Obama Administration had tried to use that argument to force Belmont Abbey College in North Carolina to cover artificial contraception. Do these people not realize that men find the availability of artificial contraception quite convenient? For it allows them to enjoy relations with women without any consequences. And in fact it is common sense knowledge that men try to persuade women to have sexual relations before marriage much more often than the reverse.

Furthermore, a notable absence proves conclusively that the Administration is not really interested in increasing options for women. In particular the mandate *does not cover natural family planning*. If the Administration had wanted to increase access to options regarding family planning by means of mandated insurance coverage, it would have surely included natural family planning. After all these classes cost over \$200 and would be more expensive if the teachers and others involved were actually paid the teachers a market wage. To keep the cost down the organizations that provide these classes usually rely heavily on volunteers and people who are paid only minimal stipends. That reliance significantly reduces the availability of such classes; and thus they are vastly less available or even known that contraceptive pills, which are easily obtained in most grocery stores. If insurance covered natural family planning classes, they would be more affordable and accessible. And thus, if the Administration really wanted to make family planning options more available through insurance, it would surely have included natural family planning classes in the insurance mandate. The fact that it did not demonstrates conclusively that their motive is not to increase health coverage, but an attack upon all institutions and employers who uphold any sort of traditional teachings on the human body.

We next turn to another issue, that of marriage. Proponents of homosexual marriage like to present themselves as defenders of liberty. But in fact, no one is preventing a homosexual or any other couple from going before a minister of some religion that supports their cause and having a marriage ceremony for them. Such a thing may have once been a crime, but Supreme Court rulings have voided such laws. See, e.g., Lawrence v. Texas (US Supreme Court 2003.) What the so-called gay rights activists want is not only government benefits for homosexual couples, but also to force private entities to recognize such couples and participate in their impurity.

Thus, for example, in Massachusetts and Washington, DC, laws have forbidden Catholic Charities and any other groups that believe in traditional morals from arranging adoptions. They have done so by mandating that all adoption agencies arrange for homosexual as well as normal adoptions. There was even in this state a proposal to do so from the Virginia Social Services Administration, a proposal that was fortunately overruled after outrage from the people of faith and opposition by Governor McDonnell. However, Congressman Pete Stark (D-CA) has introduced legislation in Congress that would make this prohibition law for the entire country. Such laws clearly prevent anyone who believes in traditional marriage from being involved in the adoption business without violating his conscience. And by closing down such agencies, they give children who need adoptive parents fewer people to help them. For example, Catholic Charities is well known for its dedication in placing children in adoptive homes; and these laws, by forcing Catholic Charities out of the market, may well result in situations where children have no one to adopt them. In addition, such mandates also violate the rights of mothers and fathers who make the difficult decision to put their children up for adoption. For, in Massachusetts and Washington, and possibly soon everywhere, parents who are placing children up for adoption will no longer have the ability to make this very deep decision in union with people whose values agree their own. Instead, they must turn to those whose values contradict them, and who may well place their children in so-called families that they do not agree with. But that is fine by those who propose this dictatorship of relativism, for opposition to traditional moral laws must trump the rights of parents, the good of children and religious liberty.

On a related front, some governments refuse to deal with anyone, Catholic or otherwise, unless they adhere abandon principals of marriage. Thus, for example, when Washington, D.C. adopted homosexual marriage, the city said that it would not contract with anyone whose employment benefits did not cover homosexual partners. That would of course include Catholic Charities, along with most religious organizations, who have been very effective in providing services for the poor at low cost and with very dedicated volunteers. Catholic Charities of Washington evaded the issue by dropping spousal benefits for new employees altogether, a policy which obviously puts it at a competitive disadvantage. The law did not expand health care coverage for anyone, but rather cause a situation in which spouses of Catholic Charities employees and presumably those of other religious organizations with city contracts are denied insurance. But the Washington city government considered that to be progress. For its purpose was never to expand health care; the idea is ever to impose burdens on people of faith.

Even more tyrannical are increasing uses of so-called anti-discrimination laws and regulations to force businesses to support decadent marriages. Thus, for example, in 2010, a photographer in New Mexico named Elaine Hugenein was successfully sued because he would not take photographs for a lesbian “commitment ceremony.” In 2008, a Methodist affiliated campsite named Ocean Grove lost its tax exempt status because it would not host a lesbian marriage reception. Likewise, in New York an Orthodox medical school called Yeshiva University was required to provide same sex “couples” with housing. In the past several states tried to force Boy Scout of America to accept homosexuals and atheists as adult leaders despite the fact that their foundational principles mandate traditional morals and reverence for God. Fortunately, the Supreme Court in a narrow 5-4 decision upheld the Boy Scouts’ First Amendment right, as a private organization, to decide their membership. See US Supreme Court, *Boy Scouts of America v. Dale* (2000.) But still such cities as Philadelphia and Berkeley, California have refused to allow the Scouts to use public facilities, as every other group can, because of this policy. In California and Ohio students have even been suspended for wearing T-shirts supporting traditional views on marriage; and astonishingly, the 9th Circuit federal appeals court, which covers California, saw no problem with it.

In all of these and similar cases, governments not only ignore but consider to be completely unworthy of even tolerance all traditional views of marriage, views held by every religion in the history of the world. For marriage brings together the special complementarity of masculinity and femininity, as by analogy music brings together harmony and melody, poetry brings together rhyme and meter, and art brings together primary and pastel colors. This complementarity of male and female, which in turn ensures that children have a mother and father, is at the foundation of not only Christian, but all historical concepts of marriage, even those of pagans. If there is not something unique about this complementarity of masculinity and femininity, if marriage does not have this combination at its essence, why should it receive any special status that relationships such as brothers and sisters, friendships, next door neighbors, or even business or similar partnerships do not receive? The dictatorship of relativism would not only eliminate this distinction from the standpoint of government, but also force other people to do the same.

The issue regarding the Boy Scouts brings up a third front in the attack on religious groups and all institutions representing traditional morality, namely, the attempt by the government to mandate what sort of leaders they can have, and in fact to force them to have leaders who disagree with their tenants. Not only do attacks on the Boy Scouts continue, but similar attacks on religious groups have spread to universities. A few years ago, Hastings Law School of the University of California started requiring all groups on campus to accept practicing homosexuals, which obviously the Christian Legal Society could not do, and so it was forced off campus. The requirements, oddly deemed constitutional by a 5-4 vote on the Supreme Court, see *Christian Legal Society v. Martinez* (2010) has been followed by other universities. This year, Villanova University went even further and mandated that all student groups, including religious ones, accept not only as members but also as officers people of any faith. Thus, a Jewish group could be required to accept a Christian, a Hindu or an atheist as its president. And any religious groups would be required to accept people who completely disagree with its tenants to run it. Could anyone imagine requiring a vegetarian group to accept meat eaters as officers, or a political organization to accept as leaders people who oppose their positions? Would anyone require an environmental group to

accept one who is openly contemptuous of recycling? Yet such a requirement is being imposed on people of faith at these so called institutions of learning.

The Administration recently went so far as to argue that the federal government can use employment laws to mandate that religious organizations hire as ministers those whom the government thinks are right. The case arose when a Lutheran school called Hosanna Tabor hired a teacher who among other things taught religion and led prayers. There was an employment dispute; and the teacher argued that the employer was required by federal law to rehire her after her disability. The preliminary issue was whether she was a minister, for it has been understood that the churches can hire whom they want to as ministers and that the usual anti-discriminations laws do not apply. Otherwise, the government would be dictating to a religion whom they could have as ministers. The Catholic and Orthodox Churches have a male priesthood, as some Protestants have only male ministers, and Orthodox Jews only male rabbis. Most religions have some sort of age requirements and certainly behavior requirements for clerics. Without a ministerial exemption to employment laws, the government could tell a religion what sort of minister it must take, and penalize or even suppress a religion for not doing so. Both sides in the case, and all the courts, agreed with that proposition. The issue was whether the teacher was a minister for this purpose. The employee argued that she was not a minister, and thus was under the federal law, and the school argued that she was a minister and thus not covered by that law. The issue was understandably debated, but the Supreme Court upheld unanimously that she did fit under the definition of a minister, partially because she has listed that as her status for tax purposes.

The odd thing was that the Administration, through its Solicitor General, argued that the ministerial exemption *should not exist at all*, that the government does have the right to tell religions whom they could hire as ministers. The Supreme Court rightfully rejected that proposition unanimously, saying that it was a remarkable departure from what had always been understood as freedom of religion in America. But the fact that the Administration would argue that point, and the likes of the New York Times would support this position, demonstrates a willingness again to interfere in the internal workings of the churches.

Time does not permit comments on other threats to religious liberty in this nation, such as: the refusal to make public facilities available to nonprofit organizations also available to religious groups; attempts to forbid religious groups from giving charitable assistance to illegal immigrants and their children; or the refusal to cooperate with the Church regarding social services because of her prolife stance, as the Administration recently did when it ceased cooperating with Catholic agencies to stop human trafficking because the church will not refer women to abortionists. Overall, the challenges to the liberty, not only of the Church but of all religions and prolife and pro-family organizations, have been increasing. One may reasonably ask why the government and many educational establishments wish to interfere in the ability of religious groups and other people of faith to govern their own affairs. It is not as though the likes of contraception and in vitro fertilization would be unavailable because faithful employers do not cover them; they are widely available. The desire of religious groups to uphold their beliefs regarding marriage, and the refusal of people of faith to take part in decadent marriage does not prevent any couples from getting services from other providers, whether ministers, reception halls or photographers. In a free market economy, such services are easily available. The existence of religious, prolife and pro-family groups on college campuses, whose leaders must adhere to their tenants, imposes no burden on others. Why then is there such opposition to prolife, pro-family and religious groups?

The reason is the very witness of those who hold to traditional morals, like the witness of John the Baptist before Herod, the witness of the early Christians before the pagan temples of Rome, and the witness of St. Thomas More before Henry VIII, is itself convincing and thus convicting. The powers of the world now, like the powers of pagan Rome, intuitively know that the truth is a threat to their way of life, for if the truth is told, the pagan gods of the world will be overthrown, whether the Greek and Roman gods of old, or the gods of greed and death and decadence, in the entertainment, political and educational world today. They wish, like the beast in the Book of Revelation to have all people trade in their name and no other. See Rev. 13:17. As Jesus says, this is the verdict, “The light has come into the world, and men loved darkness rather than light because their deeds were evil. For everyone who does evil hates the light.” John 3:19-20.

It is a strange sort of compliment that they know the power of the Church, and thus the power of truth; that is why they want so much to suppress it. Of course, the truth from God cannot be suppressed, any more now than in ancient Rome, or under the persecution throughout the ages. But the powers of the world will ever try. History is strewn with the corpses of powers that have raged against the kingdom of God. As the prologue of the Gospel according to John declares, "The light shines on in the darkness, and the darkness cannot overcome it." John 1:5. The forces of darkness prefer to work through deceit and mediocrity among the faithful. It is precisely when, as with the first Christians long ago, that the faith shines forth with greater grace and glory, that they are forced into open combat, a combat that can only result in the victory of the Lamb of God.

"Fallen, fallen is Babylon," says the angel in the Book of Revelation. See Rev. 14:8. The Babylons of this world will ever fall, and the threat they present now is a call to that heroic faith that has ever shone on. Even now, the very threats to the Church and to all people of faith have united Christians, as well as traditional Jews and people of other faiths, as perhaps nothing else would. We may see, precisely in the united front presented against these threats to life, to family, to faith and to freedom, the opening for that unity among the faithful that Jesus prayed for at the Last Supper. See John 17. God is working among His faithful here and now, and calls us through these challenges to be even greater disciples. The world is warring against the faith, and in that struggle, the faithful are called to that heroic joy that Jesus spoke of when He said, "Blessed are those who are persecuted for the sake of righteousness, for theirs is the kingdom of heaven. Blessed are you when men insult you and persecute you and speak all sorts of evil against you because of Me, for so men persecuted the prophets who were before you." Matthew 5:10-12. The age of heroism, the age of prophesy did not end long ago. The spirit of prophesy, the call to heroic joy lives here and now, and we ourselves are called to be nothing less that heroes and prophets in our world and our nation, witnessing to and thus receiving the kingdom of heaven, the crown of the blessed, and the joy of living forever in the truth and love of God.