Ironically, universal access to health care may have suffered its worst defeat because of the Supreme Court’s recent favorable decision. The implementation of the Affordable Care Act, with its conscience-busting mandates against religiously affiliated hospitals, charities, and educational institutions, will now proceed unopposed. The federal government will now grow in size and power. The private sector, which holds in its arms our many charitable institutions, will grow smaller and weaker. Catholic institutions, for the first time in our nation’s history, will be subjected to a secular agenda that seeks to advance public access to contraception, sterilization, and abortion. Those who favor the philosophy of libertinism will now have the use of our institutions in that effort. New avenues of interference will be established. Meanwhile, the media will continue to present the Church as an obstacle to moral and social progress.

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True to form, the media has so far completely overlooked one of the most pernicious aspects of the law. On the verge of the law’s passage, President Obama signed an executive order guaranteeing that no government funds would go to fund abortion. This was the price that Rep. Bart Stupak and other pro-life Democrats asked Obama to pay before they gave up their votes.\(^1\) To keep that promise, the president did something far worse than the government funding of abortion.

The Obama administration passed the task on to the American taxpayer. As the Bioethics Defense Fund, headed by Nikolas T. Nikas and Dorinda C. Bordlee, has shown in an amicus brief to the Supreme Court, the Affordable Care Act obliges citizens “to pay out of their own pockets a separate premium that must be placed by their insurer into an allocation account designated solely to fund other people’s elective abortions.”\(^2\) This presents a serious challenge to people of conscience, one of equal magnitude to that posed by the HHS anti-conscience mandate. Every person who adopts one of these plans will be implicated in immoral cooperation.

Should we continue to hope for a universal system of health care that respects religious liberty and the rights of conscience, despite what can only be described as a disastrous first experience, or have recent events proved that this hope, though appealing as an abstract ideal, is in fact a practical impossibility? For the moment, we must certainly continue to fight against the use of the law to compel us to conform to a secular agenda, but we must also realize that universal health care, by its very nature, will require the strong intervention of the federal government. That intervention may prove to be too dangerous a threat to the rights of religious liberty and conscience. We may have reached the point where our hope for universal care must be tempered in favor of preserving the integrity of our own ministries.

### A Series of Unacceptable Events

The use of the Affordable Care Act to attack the conscience rights of religious believers has been particularly unsettling for Catholics. So many of us were supporters of universal access to health care. Equally distressing was the apparent willingness of so many of our fellow citizens to trample on the right of religious liberty for the sake of something as trivial as free contraceptives. Is it really possible that they could fail to see which of these was more important to the nation?

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Religious liberty is supposed to be protected under the First Amendment, but the Affordable Care Act put that fundamental right into the scales with free contraception and found religious liberty wanting. As everyone knows, contraceptive drugs are universally available, and they are not expensive. They also do not form any real part of a physician’s art, if medicine is the cure or alleviation of disease. They are simply a means of suppressing a healthy biological function. Their use is essentially a “lifestyle” choice.

The need for insurance coverage for contraception and sterilization was supposedly justified by scientific research showing, for example, that unintended pregnancies result in reduced likelihood of breast-feeding and increased risk of physical violence, but as Austin and Andrea Hughes have shown, the cited studies suffer from methodological flaws, fail to draw true causal connections, and were heavily influenced by data from the Guttmacher Institute, an organization that strongly favors access to contraception, sterilization, and abortion.

So for the sake of an item in a secular social agenda, the executive branch of government launched an attack on religious liberty that targets, in particular, the Catholic Church. Surprisingly, the attack has received, if not the outright support, at least the willing assent of many American Catholics themselves. These include some Catholic intellectuals who previously prided themselves on being public leaders in the Church, among them prominent Jesuits who were unable to take the true measure of what is at stake.

The right to freedom of conscience cannot be secondary to any other aim; it is a right given to us by God in nature and protected under our Constitution. Yet in the contraception mandate we see this freedom subordinated to the agenda of a political party. Those who do not think that the issue warrants a serious reaction by the Catholic Church fail to appreciate the importance of the following question: if we allow political power to be used to force religious believers to violate conscience on the use of contraception, sterilization, and abortifacient drugs, are we not also giving our assent to the trampling of religious liberty on any pretext whatsoever?

The First Amendment’s memorable opening phrase reads, “Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof.” Despite this clear constitutional barrier, Congress has passed a law infringing on our nation’s many religious establishments. The Affordable Care Act gives the federal government the power to define what constitutes a religious organization. We have discovered, to our amazement, that many Catholic institutions do not measure up to the government’s artificial standard.

Kathleen Sebelius, Secretary of Health and Human Services, has defined a religious organization as one that primarily hires and ministers to the members of its own faith. These centers of worship, she decided, are not obliged to violate conscience. But a second group of faith-based organizations has not been deemed sufficiently

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3 Of course, these drugs also have legitimate medical uses for which they should be prescribed as needed.

religious to merit an exemption—a group that includes Catholic hospitals, charitable organizations, religious orders, and universities. These, Sebelius has told her fellow Catholics, are obliged to put the government mandate ahead of their faith. They must provide insurance coverage for drugs and procedures that the Church has deemed immoral in view of the integrity and dignity of the human body.

Under our Constitution, Congress has no authority to define what a religion is or to distinguish between types of religious organizations. Neither can it transmit to the executive branch the power to decide which religious bodies merit exemptions from law. No religiously affiliated institution may be penalized for failing to measure up to a definition of religion contrived by the federal government. That is a clear implication of the First Amendment. The wisdom of this prohibition, insisted on at the time of our founding, has been amply illustrated by the unrealistic and self-serving definition of religion set forth by the current administration.

The government has defined “religion” as a narrow, isolated, and self-interested entity. Everyone knows that this definition is false. There is probably some religion in the world devoted to the creed of selfishness, but if it exists, you can be sure that its members do not care for each other. What the Affordable Care Act has given us is a political definition of religion, one designed to further the agenda of a particular party—and this is exactly the type of legislative abuse that is forbidden under our Constitution.

Christianity, the dominant faith in America, is a religion devoted to evangelization and good works; it is wholly other-directed. We Christians have our own mandate, given to us by Jesus Christ, to go out into the world to help the poor, visit the imprisoned, educate the ignorant, and care for the sick. Whether those we help are Christians or not is irrelevant to the Christian mandate. As many have pointed out, the ministry of Jesus Christ himself would not have qualified for an exemption under the definition of religion advanced by the current administration.

What are we as Christians to do when the mandate given to us by Christ stands in contradiction to the mandate given to us by the reigning political power? The U.S. bishops have no doubt about the proper response. Given the choice between Christ and Caesar, they have chosen against the temporal order and in favor of the eternal. Sadly, not all Catholics have come to the same conclusion. Some have abandoned their posts, even as they continue to claim that they are the true intellectual leaders of the Church.

Forgetting John Courtney Murray

In their important statement of principle, “Our First, Most Cherished Liberty,” the U.S. bishops have reaffirmed the role that American Catholics traditionally played in this nation as advocates for religious liberty. They point out that “the landmark

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5 Robert Smedley, “Checkmate of the Catholic Church: We Must Resist the Anti-Conscience Mandate,” Ethics & Medics 37.6 (June 2012): 1–2.

teaching of the Second Vatican Council on religious liberty was influenced by the American experience. It is among the proudest boasts of the Church on these shores. We have been staunch defenders of religious liberty in the past. We have a solemn duty to discharge that duty today.”

The bishops are referring here to *Dignitatis humanae*, promulgated by Pope Paul VI on December 7, 1965. This defense of religious liberty was issued by the Second Vatican Council under the strong influence of Rev. John Courtney Murray, SJ, one of the great minds of the twentieth century. Murray understood that the American founders and framers of the Constitution had produced a unique solution to the perennial political question of how to preserve the autonomy of a nation’s religious institutions without compromising the ability of both church and state to contribute to the common good.

Although church–state separation was enormously controversial during the pontificate of Leo XIII, and although Murray himself suffered for its defense (including a period of enforced silence), he was right to think that the serial association of the Catholic Church with various political arrangements on the European continent had proved uniformly unhealthy. Put simply, whenever a governing political establishment loses sight of the good of its people and becomes oppressive, the Church is tainted by its association with corrupt political power.

The United States of America chose to separate church and state. These two great powers, each necessary for the common good, must cooperate on common goals, but they cannot be linked. To link them is to disable both. Each must be free to stand separate from the other as needed, and they must be equally free to forge cooperative arrangements.

The mandates of the Affordable Care Act are particular instances of the general truth that political power is dangerous to religious belief. The U.S. bishops in particular have suffered the worst kind of political whiplash as their support for universal health care was turned into a tool of political oppression and used against them. Why did those who have given so much in support of universal health care find themselves betrayed? Murray would have understood. He would have described this as a violation of the original agreement that was forged at the founding between the American people and their government.

The American framers, Murray writes, created a constitutional understanding under which religious liberty would be protected against the rigid demands of a secular ideology. As he put it,

> This civil unity … must not hinder the various religious communities in American society in the maintenance of their own distinct identities. Similarly, the public consensus, on which civil unity is ultimately based, must permit to the different communities the full integrity of their own religious convictions. The one civil society contains within its own unity the communities

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7 Ibid.

that are divided among themselves; but it does not seek to reduce to its own unity the differences that divide them. In a word, the pluralism remains as real as the unity. Neither may undertake to destroy the other. Each subsists in its own order. And the two orders, the religious and the civil, remain distinct, however much they are, and need to be, related. All this, I take it, is integral to the meaning attached in America to the doctrine of religious freedom and to its instrumental companion-doctrine called (not felicitously) separation of church and state.⁹

The words uttered by Murray were revolutionary at the time, but the Church has fully incorporated them into her message today. Consider a passage from Pope Benedict XVI’s recent encyclical Deus caritas est:

Fundamental to Christianity is the distinction between what belongs to Caesar and what belongs to God, in other words, the distinction between Church and State or, as the Second Vatican Council puts it, the autonomy of the temporal sphere. The State may not impose religion, yet it must guarantee religious freedom and harmony between the followers of different religions. For her part, the Church, as the social expression of Christian faith, has a proper independence and is structured on the basis of her faith as a community which the State must recognize. The two spheres are distinct, yet always interrelated.¹⁰

The phrase “separation of church and state” (found not in the Constitution but in Thomas Jefferson’s private correspondence¹¹) has always appeared too stark and final to some. There are those, of course, who would have us believe that “separation” justifies hostility toward religious believers, which is false. The words are meant to ensure protection for both powers against encroachments by the other. If the Church is to enjoy this freedom from political interference, it must also agree not to impose its doctrines on the state.

Concerning contraception coverage, therefore, the key question is who is imposing on whom? Is the church forcing its teachings onto society at large? Or is the state forcing the church to violate its own moral tenets? Some think that if you offer a public service, such as health care, you must be prepared to abandon your moral convictions when the public enters your doors. This is a secular understanding of religion that defines faith as a private affair that has no proper standing in public life. We are expected to shed our faith when we leave the four walls of the church.

Surprisingly, this view is shared by the editors of America magazine, the flagship publication of the Jesuit order, who have apparently forgotten the Jesuits’ once strong leadership in this area. They assert wrongly that “the religious liberty campaign [of the bishops] seems to have abandoned a moral distinction that undergirded the conference’s public advocacy in past decades: the contrast between authoritative

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¹⁰ Benedict XVI, Deus caritas est (December 25, 2005), n. 28a.
teaching on matters of principle and debatable applications of principle to public policy. The natural law tradition assigned application to the prudent judgment of public officials.”

Are the bishops trespassing, as America magazine claims, on the political order? Surely the opposite is the case. The bishops can see that “authoritative teachings on matter of principle” have indeed become implicated in the public policy decisions of the current administration. As Murray said, our civic unity “must permit to the different communities the full integrity of their own religious convictions.” Civil society in America “does not seek to reduce to its own unity” the differences found among its religious organizations.

The America editors further argue that the bishops’ campaign risks “ignoring two fundamental principles of Catholic political theology.” The first is that “official Catholic rights theory proposes that people should be willing to adjust their rights claims to one another.” The second is that the entire “campaign devalues the coinage of religious liberty.” What a remarkable departure this editorial is from the Jesuit thinking that once inspired what many believe to be the most innovative document of the Second Vatican Council.

Which authoritative Catholic authors have ever said that we should adjust our rights claims to one another? Rights are inalienable; they are given by God. The America editors do not name these authors or their works, expecting their readers instead to simply accept their idea of the relativism of rights as if it were common knowledge. I know of no one in the natural law tradition, Catholic or otherwise, who argues that rights are adjustable. None.

This faulty reasoning is followed by the extraordinary comment that “the latest phase of the [bishops’] campaign . . . seems intended to bar health care funding for contraception.” We are asked to believe that when the administration demanded that private Catholic organizations offer, without charge, contraception, sterilization, and abortifacient drugs, the bishops’ refusal was a trespass on the political order of the state. Are the editors aware that individual taxpayers will now be required to provide direct funding for abortion?

The bishops were not calling for the banning of contraception; they were acting to protect a right that Americans have always enjoyed, not as Catholics but as citizens of the United States—the right of every American not to be coerced into acting against conscience. As James Madison said at the time of the founding, “The religion . . . of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its

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13 Murray, We Hold These Truths, 45.
14 “Policy, Not Liberty,” 5.
15 Ibid.
nature an unalienable right.” What we are fighting for is the right of every citizen to live by his own religious convictions. Every other American, and certainly every other Catholic, should join us in this effort.

**Is Universal Health Care Politically Feasible?**

The U.S. bishops take up the fight of John Courtney Murray when they assert in “Our First, Most Cherished Liberty” that “restrictions on religious liberty are an attack on civil society and the American genius for voluntary associations.” The response to any such attack, they say, must be forthright:

> It is a sobering thing to contemplate our government enacting an unjust law. An unjust law cannot be obeyed. In the face of an unjust law, an accommodation is not to be sought, especially by resorting to equivocal words and deceptive practices. If we face today the prospect of unjust laws, then Catholics in America, in solidarity with our fellow citizens, must have the courage not to obey them. No American desires this. No Catholic welcomes it. But if it should fall upon us, we must discharge it as a duty of citizenship and an obligation of faith.¹⁷

Whether a man or a woman wants to be sterilized is nobody’s business when the decision remains private, between a patient and his or her doctor. But as soon as such procedures are made part of a package of universal health care “services,” mandated by the government and paid for by every citizen, they move from private concerns to public policy and beyond that to infringements of principle. Those who object to such procedures on ethical grounds find themselves compelled to pay directly for what they find morally offensive.¹⁸

As is abundantly clear, the Democratic Party favors not only universal health care but also free access to contraception, sterilization, and abortion. The Republican Party, which champions the life issues shared by the Church, favors private market mechanisms over universal health care. Any realistic hope of joining these two contradictory political tendencies seems highly unlikely indeed. Given the current disposition of our two political parties, either we will have a national system of health care that advances a libertine ideology or we will have a more limited private health insurance system that respects the rights of conscience.

Which do we prefer? That is the question of the day. Do we want the government to provide health care to all its citizens on the condition that contraception, sterilization, and abortion are made universally available, not only at taxpayer’s expense but through insurance plans that directly obligate religious believers to fund these drugs and procedures? Or will we abandon the ideal of universal health care


¹⁷ USCCB, “Our First, Most Cherished Liberty.”

¹⁸ This is different from the use of tax money for the various purposes of government, which inevitably include some uses that are questionable if not outright immoral. The Affordable Care Act mandated that insurance companies, funded by religious believers, pay for contraception, sterilization, and abortifacient drugs. To use the terminology of cooperation theory, there was no “distance” between the funding and the immoral act.
and resign ourselves to the more modest role of caring for the health care needs of the poor out of our own more limited resources?

Those who favor a government-run system must realize that, even in the best of circumstances, the health care they would like to see implemented will remain in effect for only as long as their chosen political leaders remain in office. As soon as members of the opposing party take their place, the particulars guaranteed under the previous administration will be vulnerable to change. In other words, government-run health care is politicized health care. Every new election will be a national debate about what universal health care will cover and who will be made to pay for it.

What is particularly noteworthy about our recent experience is how the current administration could have accommodated the needs of religious organizations quite easily by simply excluding health care plans offered by Catholic and other religious institutions from mandatory payment for contraception, sterilization, and abortifacient drugs. This would still have left individuals with conscience objections out in the cold, forced to buy coverage for immoral drugs and procedures, but the main political obstacle would have been removed. Instead, the administration chose to remain doggedly committed to an overtly political ideology that is offensive to religious believers.

This tells us much. When religion is entangled in a political agenda, even easy solutions will be rejected in favor of furthering partisan objectives. As soon as government trespasses on the right of church-based services to offer assistance according to their own best lights, religious believers will be subjected to manipulation. Our faith and moral convictions come to be little more than talking points, to be lauded or mocked depending on whether they happen advance or hinder a particular agenda.

Our founders and the framers of our Constitution understood the dangers of church–state union. They separated church and state not only to prevent the establishment of a national religion, but also to ensure that the practice of religion would remain unencumbered by political calculations. The ideal of a separation may still be an object of suspicion to some, but it is at the root of that original agreement between the American people and their government. Recent events should convince even the most ardent supporters of universal health care of the very obvious advantages of preserving the wall of separation.

**The Wisdom of the Founders and Framers**

We should never assume that government can be trusted to respect the religious convictions of its citizens. We need not go back into history for examples of the dangers of infringements on the rights of conscience and religious liberty; the Affordable Care Act has shown that the problem remains ever present. As Americans and as Catholics, we would do well to reflect again on the wisdom of those who assured us that under our system of government the federal Congress would never have the power to define what constitutes a religious establishment.

As Thomas Jefferson warned us in his 1786 Virginia bill for religious liberty, whenever “legislators and rulers, civil as well as ecclesiastical . . . have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others,
[they have] established and maintained false religions over the greatest part of the world and through all time.”¹⁹ The administration’s claim that religious organizations minister solely to their own members is a perfect example of what Jefferson would call a “false religion.”

Given the polarity of our political parties, and the fact that some in government will persistently and relentlessly use the cause of universal health care to advance a social agenda that is at odds with the moral teachings of the Catholic Church, there would seem to be no safe way forward for the foreseeable future. The party most allied with the bishops’ call for universal health care is also the party most committed to an agenda that openly rejects the life-affirming teachings of the Catholic Church.

Universal health care has been attempted, and its success has proved to be its failure. Passage of the Affordable Care Act led immediately to direct threats to the integrity of faith and the rights of conscience. Passage of the act also led to the undermining of one of our nation’s most treasured founding convictions. We have seen a breach in the “wall of separation” that brought with it a serious threat to religious liberty, not only that of the Catholic Church but that of all religious believers.

The time has come for us to ask ourselves again what Jesus meant when He told his followers to “go out and heal the sick.” Did He mean that Christians should go to their local political leaders and ask them to use the power of the state to provide health care to all? Or did He mean something far simpler: that we should provide the needy with whatever we can from our own resources, through the independent work of our own communities and faith-based organizations?

Everyone agrees that trying to divine political insights from the Scriptures is nearly impossible, but recent political events provide us with more direct guidance. They suggest that it might be wiser for us to return to a more limited set of hopes. Without government support we will do far less good work, but we will do it more securely, in keeping with the tenets of our faith and in obedience to the one overarching Power that truly matters.