**Religious Liberty and Catholicism in America**

**Question: If one assumes that the Catholic Church is wrong about women, abortion, marriage, and contraceptives, then why should the state permit the Church to provide social services?**

Two-part Answer:

1: The Catholic Church claims that social services are a necessary part of its faith as stated in the encyclical *Deus Caritas Est.*

2: The First Amendment of the *Constitution of the United States* guarantees the free exercise of religion by stating that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

**Objection: The State cannot cooperate in the Church’s social programs without violating the Establishment Clause of the First Amendment: *“Congress shall make no law respecting an establishment of religion.”***

Response: Cooperating with a religion is not the same as establishing it. A religion is established by a state when that religion is a pre-requisite for participating in government, e.g., by voting or by holding public office.

* + The Establishment Clause was included in the Bill of Rights because during

the colonial period, membership in a particular faith was typically required in

order to hold office, to preach---or even to be present in the colony. For instance,

in 1656 the Congregationalists of Massachusetts Bay Colony proscribed the

presence of Quakers. Many of these were women. Most notable was Mary Dyer.

She was hanged on June 1st, 1660 in Boston for returning to Massachusetts after

being banished.

* The colonial establishment of churches often led to discrimination against Catholics. For instance, even though Maryland was established by the Catholic Lord Baltimore for the “free exercise of religion,” under the influence of Anglicans, Catholics were forbidden from holding public office or voting. While in Pennsylvania, Catholics were forbidden to have visible churches.

Thus as long as a church does not require membership in order to receive services approved by the government, the Establishment clause does not bar the Church’s social programs as permitted by the right to religious free exercise.

**Objection: The right to religious free exercise is not a right to harm women by depriving them of the right given them in *Planned Parenthood v Casey* to define their own existence through the use of abortion and contraceptives---and presumably through the use of *in vitro* fertilization technologies.** In the words of the United States Supreme Court:

* “It is conventional constitutional doctrine that where reasonable people disagree the government can adopt one position or the other.  That theorem, however, assumes a state of affairs in which the choice does not intrude upon a **protected liberty**. Thus, while some people might disagree about whether or not the flag should be saluted, or disagree about the proposition that it may not be defiled, *we have ruled* that a State may not compel or enforce one view or the other. *Our* law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.  *Our* cases recognize "the right of the *individual*, married or single, to **be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child**." These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the **heart of liberty** is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life**.** Beliefs about these matters could not define the attributes of **personhood** were they formed under compulsion of the State*.”* (emphases mine)

First Response: The inability of a church to provide social services contrary to its faith does not preclude the ability of individuals to go elsewhere.

Second Response: The Court is being inconsistent is claiming that decisions “relating to marriage, procreation, contraception, family relationships, child rearing, and education “ are “personal” and are to be “free from . . . governmental intrusion,” while making its own perspective mandatory for participating in social services.

Third Response: In its haste to affirm its claim that the meaning of existence, the universe, and human life can be settled by personal preferences, the Court conflates the nature of free choice with legal rights and liberties. Only those choices that are not treasonable nor violent, for instance, can be sanctioned with civic liberty.

Fourth Response: Avoiding a lesser harm by committing a greater one is irrational. To intentionally kill an innocent human being is a greater harm than any involved in child bearing and rearing. So, just as men are not unduly harmed by having child support obligations, women would not be unduly harmed if killing their own unborn offspring would be legally proscribed.

Fifth Response: The Court’s definition of the heart of liberty precludes objective criteria for differentiating between liberties that deserve legal protection and those that are so capriciously vicious as to deserve legal prohibition. *Casey* thus attacks the objectivity that makes the truth about rights self-evident to the American people as we declared in the *Declaration of Independence: “*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.”

Sixth Response: Catholics believe in the natural law as put by Blessed John Paul II: “there are indeed universal human rights, rooted in the nature of the person, rights which reflect the objective and inviolable demands of a universal moral law” (*UN Address* 1995 #3, *Pope in America,* 11)

Thus, since Catholics believe in the natural law as expounded in the *Declaration of Independence,* permitting Catholics the free exercise of their religion would not be harmful to women.

**Objection: Neither the Supreme Court nor any other body of government are bound by the *Declaration of Independence*, but only by the *U.S. Constitution.* And since the Constitution does not define the basis of rights, the U.S. Supreme Court can legitimately define the “heart of rights” as consisting in individual preferences and consider Catholic beliefs to the contrary to be harmful to society.**

First Response: Even if Catholic beliefs were harmful to society, the First Amendment protects them by stating: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Second Response: The basis of American rights was identified in the *Declaration of Independence* and the U.S. Supreme Court is constitutionally bound by that identification because *U.S. Constitution* necessarily presupposes the *Declaration of Independence--* for two reasons.

* First, there are two amendments in the Bill of Rights that tacitly deny that the *Constitution* is the source of rights, namely, the 9th and the 10th amendments. The 9th Amendment states: “The enumeration in the *Constitution*, of certain rights, shall not be construe to deny or disparage others retained by the people.” The 10th Amendment states: “The powers not delegated to the United States by the *Constitution*, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
* Second, as Abraham Lincoln argued, the preamble of the *Constitution* states that the *Constitution* is to perfect the union already in place: “We the people of the United States, in Order to form a more perfect Union . . . and secure the Blessings of Liberty to ourselves and our Posterity do ordain and establish this *Constitution* for the United States of America.” Lincoln argued that it was the unanimous signing of the *Declaration of Independence* that created the American union of states and created a people.
  + We celebrate the 4th of July---the date that *Declaration of Independence* was approved---as our nation’s birthday.

Third Response: The *Declaration of Independence* bases rights on two self-evident truths of natural law, namely, human equality and the God-given inalienable rights of life, liberty, and pursuit of happiness. The *Declaration* also argued “that to secure these rights, Governments are instituted . . . deriving their just powers from the consent of the governed.” To break with the *Declaration* is thus to break faith with the American people.

Thus, since the *U.S.* Constitution necessarily presupposes the *Declaration of Independence* and its grounding of rights in natural law, the Supreme Court erred in identifying the basis of liberty with individual preferences. And since Catholics believe in the natural law, it would be a mistake to argue that Catholic beliefs are harmful to society.

**Objection: The past has no right to strangle the present and the future. The present U.S. Supreme Court is not bound to past constructions of the law and is free to interpret the law as it sees fit.**

First Response: The American system of government is one of checks and balances between the three branches of government: the judiciary, the legislative, and the executive. The judiciary is not then a legislative body creating law but that branch of government that corrects those who break the law and determines whether particular laws conform to the standards of justice embedded in the *Constitution* as well as in statutory laws and case law. The need for such judicial judgments arises from the impossibility of legislators to anticipate all possible implications of various laws, to alleviate the harms unjustly imposed upon the few by an otherwise just law, and to be immune from the pressures of re-election. Judicial judgments are thus necessitated by the *Constitutional* need for checks and balances. To act without regard for the *Constitution* would thus be to destroy the judiciary’s *raison d’etre*.

Second Response: At the time of the American Revolution as well as now, if the State is to avoid a plethora of conflicting rights, the State must base human rights on objective features of human nature or on its own coercive powers. The State’s alternatives are Jefferson and the *Declaration’s* natural law or Hume and the *Leviathan*. In the first case, the heart of liberty is the pursuit of virtuous happiness and the common good; in the second, the heart of liberty is whatever the State decides, even though this is tyrannical. In neither case is the heart of liberty the individual preferences identified in *Casey*; because that way leads to an anarchy so destructive of the state that the state can be preserved only by adopting Hobbes’s solution and letting the state define human rights. The Supreme Court’s *Casey* decision thus offers a definition of rights that pressures Americans to choose whether to continue to base their rights on the natural law and the objective requirements of life, liberty, and happiness as put forth by the *Declaration of Independence* and presupposed by the *Constitution,* or to base their rights on whatever the Court decides.

**Objection: There are no objective standards to rights of life, liberty, and happiness; the natural law is indeterminate; it says whatever one wants it to say.**

First Response: If the natural law is indeterminate, human happiness can be attained in any way that one desires. But such is not the case. Those who do not heed nature’s laws do not flourish but are miserable. For instance, natural law requires love to be self-giving and other-regarding; it forbids manipulating and using human beings for one’s own gratification. In particular, natural law argues that sexual pleasure does not suffice to bond human beings together in love. If this natural law of love were not true, then sex would cure loneliness, only the impotent would divorce, and none would suffer the pangs of betrayal and disillusionment on discovering that one’s lover cared not for oneself but only for one’s pleasuring abilities.

Second Response: The inalienable rights to life, liberty and the pursuit of happiness are objective rights that are interdependent on each other: happiness, for instance, is the fullness and completion of life that is attainable only when liberty honors the objective requirements of life that are otherwise known as the moral requirements for living. In other words, liberty is not liberty when it is not moral but only caprice and viciousness.

Thus, there can be neither personal nor communal happiness apart from heeding the objective requirements of morality as found, for instance, in the *Declaration’s* natural law.

Third Response: The *Declaration* subordinates government to a people’s free consent that their naturally inalienable rights be secured by government. This, in effect, is an agreement that natural law be the basis of government and that respect for each other’s equality and natural rights be the basis of civil society. This leaves individuals free to define themselves however they wish within the parameters of liberty’s natural law.

**Objection: Not all Americans believe in God nor agree with the natural law espoused by *Declaration of Independence;* and so, it should be discarded as the basis for American rights.**

First Response: Discarding the *Declaration*’s natural law eliminates the objectivity of rights and leaves us no alternative to identifying rights with whatever the State declares.

Second Response: Natural law’s claim of objectivity gives opponents the strongest possible basis for changing laws without collapsing into riots and warfare, namely the possibility of proving that current laws are based on erroneous assumptions. Natural law’s treatment of disagreements as *de jure* resolvable once the facts are known makes toleration of one’s opponents a civic virtue.

Third Response: Although most Americans derive their morality from their religion, it is not the case that these are contrary to that espoused by the *Declaration*. The interpersonal equality proclaimed by the *Declaration* and defended by the Civil War as well as by giving women the right to vote obligates interpersonal respect. This obligation can be found in all religions, albeit in some form of the Golden Rule. Consequently, *the Declaration’s* natural law provides an excellent foundation for a pluralistic society.

Fourth Response: Even atheists and agnostics want to be happy and can recognize that human beings are beings with a nature that not only establishes human equality and the obligation of respecting one’s equals and their inalienable rights, but also establishes that not all paths lead to happiness. Frustrating human nature leads to misery. That fact suffices to join all of good will in civil society, even if not all agree that nature is created by God.

Fifth Response: The *Declaration* should be discarded as the basis of American rights only if it lacks wisdom. But it does not as shown by its influence on the French Revolution, the Universal Declaration of Human Rights, the Geneva Conventions, the Genocide Conventions, and the International Covenants of Human Rights.

Sixth Response: The number of supporters for natural law does not alter its sanctions: broken hearts, failed marriages, children living apart from their mother or their father, child abuse, poverty, desperate inner cities, and so forth. The reproductive engine of society is broken and cannot be fixed by retreating further into the illusion that human flourishing lacks objective requirements. The signers of the *Declaration of Independence* were under no such illusion. It is thus time for the United States Supreme Court to open its eyes, reverse *Casey*, and allow Catholics the free exercise of their religion.

**Argument Summary:**

**Catholics and their social service institutions ought not be barred from government contracts: the government can support their social service institutions without establishing Catholicism as the state’s religion; their faith demands that they offer social services and the free exercise clause precludes discriminating against their social services; their faith is compatible with the natural law expounded by the *Declaration of Independence* and presupposed by the *U.S. Constitution*; and, the compatibility of religious beliefs with the *Constitution* and Supreme Court rulings is not a requirement for Constitutional protection.**

**Catholicism and Religious Liberty**

**The First Amendment of the *Constitution of the United States*:**

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The *Declaration of Independence:*

**IN CONGRESS, July 4, 1776.**

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

**Catholic View of Rights and Natural Law**

Blessed John Paul II: “there are indeed universal human rights, rooted in the nature of the person, rights which reflect the objective and inviolable demands of a universal moral law. . . . There is a moral logic which is built into human life and which makes possible dialogue between individuals and peoples. If we want a century of violent coercion to be succeeded by a century of persuasion, we must find a way to discuss the human future intelligibly. The universal moral law written on the human heart is precisely that kind of ‘grammar’ which is needed if the world is to engage this discussion of its future. . . . [I]t is one thing to affirm a legitimate pluralism of ‘forms of freedom,’ and another to deny any universality or intelligibility to the nature of man or to the human experience. The latter makes the international politics of persuasion extremely difficult, if not impossible” (*UN Address* 1995 #3, *Pope in America,* 11).

“Freedom is not simply the absence of tyranny or oppression. Nor is freedom a license to do whatever we like. Freedom has an inner ‘logic’ which distinguishes it and ennobles it: freedom is ordered to the truth and is fulfilled in man’s quest for truth and in man’s living in the truth. Detached from the truth about the human person, freedom deteriorates into license in the lives of individuals, and in the political life, it becomes the caprice of the most powerful and arrogance of power. Far from being a limitation upon freedom or a threat to it, reference to the truth about the human person---a truth universally knowable through the moral law written on the hearts of all---is, in fact, the guarantor of freedom’s future.” (*UN Address* 1995 #3, *Pope in America,* 18-19).