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Birth Control and Religions
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It is a misnomer to say "women use birth control." Women and men use birth control. Pregnancy can only happen with the involvement of men and, so any steps taken to prevent pregnancy benefit both men and women. Sexual intimacy constitutes a key ingredient of marriage, and the ability to engage in it regularly benefits both partners.

Given the current state of medical practice, the burden and cost of long-term birth control usually falls on women, both financially and medically. Couples who choose to use birth control, as well as their existing families, profit in numerous ways from women shoulderin this burden.

From this perspective, it is a benefit to women especially, but also to men, that birth control is included in the new medical insurance guidelines issued in August 2011. The guidelines identify coverage for basic medical procedures and drugs. This, at least, lifts the financial burden.

Unfortunately, the universal applicability of last August's guidelines impinged upon religious belief and practice. Although the guidelines did not require churches and other central religious institutions to provide this benefit in their insurance, they did require religiously sponsored institutions, such as hospitals and orphanages, to do so.

When the Catholic Church and other religious organizations protested, a compromise plan was put forward that allows religious institutions to avoid directly supporting birth control in the insurance, but provides that benefit to employees who desire it. Like many compromises, the new plan satisfies neither side. In this election year, access to contraception has now become a matter of political debate.

Accusations have been made that the contraception requirement violates First Amendment rights to freedom of religion. Others argue that lack of such a requirement violates the insured woman's Fifth Amendment rights to due process under the law.

The heat generated by these charges hides a more constitutionally significant problem. In previous First Amendment cases, a religious organization or individual is nearly always pitted against an outside entity. In this situation, the rights of a religious organization are pitted against the rights of religious individuals, even those of its own members.

To streamline the discussion, let's take the simplified scenario of a hospital owned and operated by the Catholic Church, where all its employees belong to the Catholic Church. Catholic doctrine deems birth control a sin (punishable by exclusion from communion). Since all the employees belong to the Church, one might think that it would be fine for the hospital to exclude birth control from its health plan.

But it turns out that Catholic parishioners do not agree with or even follow this doctrine. A recent survey indicates that 98 percent of Catholic women who have been sexually active have used birth control. That also means that approximately 98 percent of men married to these women have used birth control. While it is unclear from the survey what percentage of the entire Catholic laity that equals, Catholics are the only large religious group in the United States where the majority of members think that birth control should be included in health benefits.

If this disagreement went to court, it would turn out that the judge would be required to decide between a religious institution and the majority of its members. The court would be put in the position of either enforcing religious doctrine on recalcitrant members or declaring the freedom of religious people from having their rights violated by their own religion.

As the legal principles of the separation of church and state have been developed in our country, a key criterion is that the government should not become entangled in matters of religion. Having to decide between a religion's leaders and its followers certainly constitutes undue government entanglement. I can only say that we live interesting times.