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# American Bishops and Religious Freedom: Legacy and Limits

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## **Abstract**

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## **Keywords**

Roman Catholic bishops, religious freedom, Affordable Care Act, Vatican II

## **Disciplines**

American Politics | Catholic Studies | Politics and Social Change | Sociology | Sociology of Religion

Article

# American Bishops and Religious Freedom: Legacy and Limits

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**Abstract:** This paper explores continuity and change in the American Catholic hierarchy's promotion of and later reliance on religious freedom. With an analysis spanning more than 50 years, it first traces the pressures for reform that created the Declaration more than 50 years ago, demonstrating that American bishops were crucial actors in the Declaration's existence and passage, and that this was the case because of the strong legitimacy pressures they were under as Roman Catholic leaders in a predominantly Protestant country. The paper then turns to a summary of how the Birth Control Mandate of the Affordable Care Act once again created pressures for legitimacy for the American Catholic hierarchy, pressures which were again articulated in terms of critiques of hypocrisy. It demonstrates that although the specific critique changed, accusations of hypocrisy remain central in discussions of the Catholic Church's stance on the Birth Control Mandate in the Affordable Care Act.

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**1962:** I do not think there is a single direct thing the Council can do that will have more *immediate* effect in bettering Catholic-Protestant relations than a forthright and unambiguous statement favoring full religious liberty for all ... the Catholic Church is not fully trusted on this point. Whether rightly or wrongly, non-Catholics ... are fearful that the church may still espouse a position of intolerance, persecution and penalty for the exercise of a faith not Roman Catholic.

(Robert MacAfee Brown, Protestant Observer at the Council, after the First Session of the Second Vatican Council) [1]

**2012:** We can't just lie down and die and let religious freedom go.

(Sister Mary Ann Walsh, a spokeswoman for the United States Conference of Catholic Bishops) [2]

The Declaration on Religious Freedom that came from the Second Vatican Council was an unprecedented statement from the Roman Catholic Church that the best form of government is one which allows people to worship as they please. Radically changing the Church's relationship to the world, the Declaration was central to bettering relations with Protestants at the time of the Second Vatican Council (1962–1965), who at the time asserted that the Roman Catholic Church's insistence on state support in majority Catholic countries but religious freedom when it was in the minority was hypocritical.

Fast forward 50 years, to the creation of the Affordable Care Act and media turmoil surrounding what the American Catholic Hierarchy see as one issue—religious freedom, and what much of the rest of the country sees as another, much more important, issue—a woman's right to use contraception.

In these debates, we can see the remaining effects of the Declaration—especially among political elites—in terms of the legitimacy it continues to grant to the Roman Catholic Church and its leaders.

We can also see, however, that this same legitimacy was deeply compromised, again by accusations of hypocrisy. This time, the criticism was that the Bishops, as religious leaders who were men—celibate men—were out of touch with their constituents, no longer reflecting the views of their flock, and were forcing undue burdens on both their members and now, because of the Affordable Care Act, anyone who worked for them. The accusation of hypocrisy centered around whether it was hypocritical for the Roman Catholic Church to not provide something for its workers because it violated Roman Catholic beliefs, even when those workers were not necessarily Roman Catholic. Some critics went further, and pointed out that since Vatican II, the Church has emphasized the importance of freedom of conscience and the fact that the vast majority of practicing Catholics today use birth control, and consider themselves to still be in good standing with the Church, and thus exactly whether this was about “religious freedom” and whose freedom, was questionable.

American Catholic bishops stood their ground, however, and insisted that the real hypocrisy would have occurred if they were to pay for something that was against their religious beliefs—a view largely met with acceptance in the court of public opinion in relation to the issue of abortion, but rejected in relation to contraception. In the end, the Obama administration made serious compromises and allowed exemptions for religious organizations.

This paper explores the continuity and change regarding the American Catholic hierarchy’s promotion of and later reliance on the Declaration of Religious Freedom. With an analysis spanning more than 50 years, it draws on data from a number of sources. For analysis of the pressures that resulted in the Declaration at the Second Vatican Council, it examines what the American bishops said, both publicly and privately and in print just prior to and during the Council.<sup>1</sup> For analysis of contemporary times, this paper draws on content analysis of every article written in the *New York Times*, and the two major American Catholic magazines; *America* and *Commonweal* on the Birth Control Mandate for the Affordable Care Act, between 2011 and 4 July 2016 (ending with the reports of the bishops’ most recent action known as the “Fortnight of Freedom”).

This paper is structured as follows: it first traces the pressures for reform that created the Declaration more than 50 years ago, demonstrating that American bishops were crucial actors in the Declaration’s existence and passage, and that this was the case because of the strong legitimacy pressures they were under as Roman Catholic leaders in a predominantly Protestant country. The paper then turns to a summary of how the Birth Control Mandate of the Affordable Care Act once again created pressures for legitimacy for the American Catholic hierarchy, pressures which were again articulated in terms of critiques of hypocrisy. It demonstrates that although the specific critique changed, accusations of hypocrisy remain central in discussions of the Catholic Church’s stance on the Birth Control Mandate in the Affordable Care Act.

## 1. A Brief History of the Declaration of Religious Freedom

Many sociologists, historians and theologians have referred to Religious Freedom as one of, if not the, most important and radical reforms of the Second Vatican Council. José Casanova, who studied the effects of the declaration, notes:

From a world-historical perspective, the Declaration on Religious Freedom, *Dignitatis Humanae*, is perhaps the most consequential and the most radical departure from tradition. It establishes the very conditions of possibility for a modern type of Catholic public religion. Without this declaration every other document would have been for all practical purposes meaningless ([3], p. 72).

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<sup>1</sup> Please see Wilde, *Vatican II* for information on methods.

In *Vatican II* [4], I demonstrated that Religious Freedom was a concern to Catholic theologians living in (mostly) majority Protestant countries, and that American members of the hierarchy and theologians were particularly concerned, and central to the debates.

## 2. Legitimacy Pressures Lead to the Declaration

Leaders of the ecumenical movement continually lamented (and called hypocritical) the Roman Catholic Church's tendency to promote religious "liberty when she is in the minority and suppresses it when she is in the majority" ([5], p. 606). Ironically, these critiques were both lodged and heard in places far away from the alleged abuses, all of which occurred in majority Catholic countries like Spain and others in Latin America, and not in the US, Germany and France where the ecumenical movement was flourishing.

Protestants had long been wary of the RCC's perspective on Church-state relations because of the commonly held belief that the Vatican wanted to control national and even global politics, and would attempt to do so if it was at all possible, even in countries with a formal separation of Church and state. These beliefs were brought into high relief in the 1928 American Presidential election, in which Al Smith, the United States' first Roman Catholic presidential candidate lost in a landslide to Herbert Hoover after a campaign during which Smith was subjected to rampant anti-Catholic prejudice [6].

Though he lost by a landslide, Smith's candidacy seems to have worried Protestant Church-state watch dogs. Publications of books and articles that specifically addressed the Roman Catholic Church's stance on Church-state relations continually increased following Smith's campaign, achieving great visibility by 1949, with the publication of Paul Blanshard's, *American Freedom and Catholic Power*.

The majority of the publications critical of the RCC's stance on religious liberty at this time justified their critiques by focusing on "a series of discriminatory actions taken . . . against Protestant groups in Spain and Italy" ([7], p. 644).<sup>2</sup> Spain in particular was notorious for "persecuting the Protestant Churches in its territory" ([9], p. 523; [10], p. 17), and was often accused of abuse and intolerance by leaders of the ecumenical movement ([11], p. 58).<sup>3</sup> For example, an article in the very first issue of *The Ecumenical Review* criticized the bishop of Barcelona's 1948 pastoral letter which emphasized that "the Catholic religion is the religion of the state" and that "public manifestations" of non-Catholic places of worship "are forbidden" ([13], pp. 95–96). An article in *Liberty* magazine catalogued the religious repression Spanish Protestants experienced in detail:

In Spain, Protestants are forbidden to (1) identify their churches by any outward sign; (2) advertise their services either by press or radio; (3) circulate Bibles or portions of the Bible without Roman Catholic notes; (4) distribute tracts and other evangelical literature on the streets; (5) have private schools to educate their own children; (6) teach in public schools; (7) be officers in the armed forces; (8) operate their own hospitals; (9) establish old folks' or orphans' homes; (10) broadcast the gospel over Spanish radio stations; (11) rent public halls for "special gatherings"; and (12) operate public evangelistic bookstores ([14], p. 4).

A number of other majority Catholic countries, particularly those in Latin America ([15], p. 415) were also often criticized for intolerance toward Protestants ([16], p. 374, [17]). The criticisms varied from complaints about various privileges being granted informally to the Roman Catholic Church, despite formal and legal religious freedom, in countries such as Guatemala ([18], p. 33), to serious violence, with reports of 116 Protestants killed and 66 churches burned in Colombia by 1961 ([19], p. 12).

Though always a prominent focus of Protestant concern about the RCC, Protestant critiques of the Church's stance on Religious Freedom ramped up in both frequency and severity after Pope John XXIII announced that there would be a council, most likely because it suddenly seemed much more

<sup>2</sup> Also see [8].

<sup>3</sup> These reports continued well into the Council. For example, see [12].

likely they might actually have some effect on the policies of the Church. Between 1948, when it first began publication, and October of 1958, at which point John announced that there would be a Council, *The Ecumenical Review* published six articles or commentaries that focused on the RCC's stance on abuses of religious liberty, about one-third of the total articles on the Roman Catholic Church. In the next three years, between 1959 and 1962, the years of Council preparations, it published thirteen. Seven of these articles appeared in the same issue in 1961, which focused solely on religious liberty [20]. In total, the articles that focused on religious freedom constituted more than 50% of the articles which dealt with the Roman Catholic Church in any way in *The Ecumenical Review* during the years of Council preparations, and 100% of the articles in 1961, the year prior to the Council's start.

By 1960, it was clear that Religious Freedom had arisen as the central concern for Protestant members of the ecumenical movement. In that year, the executive secretary of the Lutheran World Federation issued a formal statement that urged that "all [Protestants] who have occasion to express opinions of the non-Roman churches" about the forthcoming meeting of the Catholic bishops, which is to be known as the Second Vatican Council, should underline the importance of the matter of religious freedom ([18], p. 33).

As the number and proportion of articles written on the topic increased, their critiques and suggestions for remedying them became more forceful. For example, one prominent Protestant commentator catalogued acts of religious discrimination as well as the papal pronouncements he saw as indicative of and promoting religious intolerance in October of 1959, one year after John's announcement stating:

The Rome Catholic Church seems to have always acted, in practice, against the principles of religious liberty. The Inquisition, the historical fact of "Sacral Christendom", the bloody persecution of heresy, the confabulation of Church and State to oppress non-Catholic citizens, all seem to point toward an intolerant attitude which should necessarily correspond to an intolerant doctrine ([21], pp. 23–24).

This intolerance was often called hypocritical. For example, the same author wrote in another article:

There is a common interpretation of the Roman Catholic attitude towards Religious Liberty which can be summed up as follows . . . where Roman Catholics are in the minority, they ask for religious freedom. On the contrary, where they are in the majority, they oppose the external freedom of other religious beliefs ([21], p. 405).<sup>4</sup>

### 2.1. Roman Catholic Reactions: Worried about Legitimacy

Roman Catholic theologians in many countries began responding to these critiques well before the Council began, and their responses indicate that they took them very, very seriously. The most innovative theologians on the issue were French, as one Protestant noted with approval, "French Roman Catholic theologians are, of course, leading in this movement 'pro libertate'" ([16], p. 409).<sup>5</sup> Alongside the French were theologians from a variety of countries, especially those from Germany and the United States. By 1961, an article in *The Ecumenical Review* catalogued the "voluminous" "Roman Catholic literature . . . of such quality" on religious freedom with approval ([21], pp. 408–9).<sup>6</sup>

All of these progressive Catholic theologians had two things in common. First, as one French theologian put it quite clearly, they wanted the Church to officially support the principle of religious freedom without conditions:

<sup>4</sup> Emphasis original.

<sup>5</sup> Emphasis original.

<sup>6</sup> See Footnote 2 on pages 408–409 of [16].

Can the state approve the principle of religious freedom in the civil sphere, or does Catholic doctrine compel it . . . to grant the Catholic Church a position of privilege? The only answer which is fully keeping with the free nature of faith is the promulgation of religious freedom, not as a lesser evil, to be borne out of unwilling tolerance, or as a relative good as long as we are living [as minorities], but as a principle, permanently and finally established ([21], p. 409).<sup>78</sup>

Secondly, these progressive Catholic theologians were clear that their interest in Roman Catholic support for religious freedom was about salvaging the Church's tarnished legitimacy. As an American theologian put it:

The harm caused by adopting two different norms for action . . . [when one is in the majority versus minority] is due not so much to the fact that the inferior legal status of Protestant groups in a Catholic country may lead to discrimination against Catholic minorities in Protestant countries. The real trouble is that it affects the whole Church, which appears to the rest of the world to be insincere and unjust and loses respect, interest and the power to convince ([21], p. 418).<sup>9</sup>

A reason why these legitimacy critiques struck such a chord at the time was because of the concurrent growth of communism and the cold war, and, in 1960 the election of the first Catholic American president, John F. Kennedy ([10], p. 477).

## 2.2. Protestants Offer Encouragement

Protestants responded to progressive Catholic theologians with approval and encouragement, even as they were not sparing the Church from harsh criticisms. For example, one American Protestant wrote:

It is important to realize that a very able and earnest attempt is being made by Roman Catholic scholars in this country, with much support from Catholics in Western Europe, to change the principles as well as the practice of the Church in this matter . . . American Protestants should realize that the Roman Catholic Church is not a vast international machine designed to overturn their liberties if this were to become politically possible, and that they have many allies in the Catholic Church who share their belief in religious liberty in principle ([21], p. 408).<sup>10</sup>

An article cataloguing Roman Catholic progress on religious liberty closed quite positively:

There is evidence enough of the fact that: (a) Many Roman Catholic theologians, in many countries, defend a new theory in favour of complete religious liberty in principle, which is quite different and even opposite to the old doctrine . . . (b) This theory has in no way been condemned but, on the contrary, is supported by very important members of the Roman Catholic Hierarchy; and (c) This theory is not a tactical variant of the old doctrine for reasons of opportunism, but another radical and irreducible doctrinal position which is very sincerely and fiercely fighting the old one ([21], p. 421).

This Protestant author's assessment of Roman Catholic doctrinal changes on religious freedom was perhaps a bit optimistic, and definitely premature. In fact, French and American theologians were criticized ([17], pp. 28–30), and even openly censored by the Vatican. Just four years before John

<sup>7</sup> Quotation: Father Augustin Léonard.

<sup>8</sup> Emphasis original.

<sup>9</sup> Quotation: Albert Hartman.

<sup>10</sup> Quotation: John Bennett.

called the Council, the Vatican determined four propositions “considered to represent” the views of the American Jesuit theologian, John Courtney Murray, to be erroneous. Though Murray wrote a long reply to the indictment, his Jesuit superiors advised him to “cease writing on the subject” ([7], p. 648). Murray did as he was told, and did not write or teach on the subject until the Council, when he would become an important figure in relation to the declaration.

Thus, though Catholic theologians were responding with quite progressive statements on the issues in some circles, responses which were to the liking of Protestants, by the time of the Council, it was clear to everyone, as it was to this Protestant writing in *The Ecumenical Review* that, “Only a statement by the Vatican Council” could truly clarify “the position of the Roman Catholic Church” on religious liberty ([22], p. 459).

### 2.3. *The Council and Religious Liberty*

Ultimately, the friends of Religious Liberty were successful. They succeeded in changing Church doctrine and writing one of the most important reforms to come from the Council. The fight for the Declaration took the entire four sessions of the Council, and many maneuvers which I detail elsewhere in my book *Vatican II*. What is important to note about these debates is, (1) the centrality of American bishops and theologians (despite the efforts of many to downplay their importance); and (2) the clear connection between their efforts and the critiques of hypocrisy lodged at them by Protestants.

For example, American Bishop Ernest Primeau, wrote the following as the Council began:

... my own personal opinion is that we should drop the whole question unless we enunciate fundamental principles. The thinking American non-Catholic does not care to know what the American Catholic thinks or what the Spanish Catholic thinks. He wants to know what is the basic doctrine of the Roman Catholic Church on the relations between the State and the Church [23].

Similarly, American Archbishop Karl Alter told the assembly that the Church should come out with a statement in favor of religious freedom because:

Among many Catholics as well as non-Catholics there still exists doubts as to whether the Catholic Church recognizes full religious freedom to worship God . . . for Catholics only or also for others. It is fitting to dispel these doubts, that Christian unity, according to the mind of Our Lord Jesus Christ, may be promoted and that both truly fraternal charity and good relations may increase, day by day, among Catholics and non-Catholics ([24], p. 636).

In the end, of course, the Declaration became a reality, one that Protestants heralded. As one Protestant observer of the Council wrote,

The passing of the “Declaration on Religious Liberty” marked one of the most significant milestones, not only of the Council, but of the whole history of the Church . . . it was finally passed by an overwhelming majority, to the great joy of all Christians and men of good will throughout the world. It also caused great rejoicing among the Observers, and in the Secretariat for Promoting Christian Unity, who were responsible for piloting the document through the long process which preceded its promulgation ([25], p. 5).

Without a doubt, the Declaration helped the Roman Catholic Church intervene in matters of the state, world politics and other issues in ways that it would not have been able to prior. However, it is also clear that the same doubts about the Church’s sincerity and intervention into politics remained over the next fifty years. Nowhere were these concerns as visible as they were with issues connected to contraception and abortion—something which become all too apparent nearly 50 years after the declaration’s passage—with President Obama’s Birth Control Mandate of the Affordable Care Act.



### 3. Religious Freedom and the Affordable Care Act

Although Roman Catholic suppression of birth control has been an issue in the United States for more than a century (see Wilde *Vatican II* [4] and [26]), the issue became one directly related to religious freedom for the Roman Catholic Church because of the passage of the Birth Control Mandate of the Affordable Care Act. Although the RCC had officially endorsed the Affordable Care Act for some time, within weeks of its passage, it became clear that the Birth Control Mandate was going to be extremely problematic for the RCC.

Within a few months the issue had gained national prominence, with articles in the *New York Times* appearing almost daily at some points, and with more than 50 appearing in the following year. Three themes are detectable in these articles: (1) It was immediately clear that the American Catholic leaders felt that they were on solid moral ground. Although mentions of the actual Declaration of Religious Liberty were rare, the American Catholic hierarchy continually pointed out that they had a right to religious freedom and expected it to be granted to their institution; (2) However, American Catholic leaders seem to have been taken by surprise by the fact that what they saw as clearly not hypocritical—they supported religious freedom and thus expected it—was not interpreted by others in the same light. The issue of government support for birth control was not just a matter of religious freedom—it was also a matter of women’s rights; (3) In fact, the Church would be called hypocritical for infringing on the religious freedoms of its employees for NOT supporting the mandate, something the authors of the Declaration of Religious Freedom probably could not have foreseen.

### 4. Assertions of Religious Freedom: The American Catholic Hierarchy and Conservatives

Almost immediately, the American Catholic hierarchy, the United States Conference of Catholic Bishops, rejected the mandate and asserted that it was a violation of their right to religious freedom.

One of the most strongly worded reactions came from Bishop David A. Zubik of Pittsburgh, in a column titled “To Hell with You,” in the Catholic magazine *America*. He wrote:

Sebelius and the Obama administration have said ‘To hell with you’ to the Catholic faithful of the United States . . . To hell with your religious beliefs. To hell with your religious liberty. To hell with your freedom of conscience. We’ll give you a year, they are saying, and then you have to knuckle under [27].

As Sister Mary Ann Walsh, a spokeswoman for the United States Conference of Catholic Bishops, who was quoted at the beginning of this article, indicated, for many, the issue was simple: “We can’t just lie down and die and let religious freedom go” [2].

Conservatives, eager to critique Obama and his health care plan, leapt to the defense of the hierarchy.

One article in the *Times* reported that “Rick Santorum described the health care policy as ‘a direct assault on the First Amendment, not only a direct assault on freedom of religion, by forcing people specifically to do things that are against their religious teachings’” on Fox News. (Mr. Santorum also accused Mr. Obama of having argued that the Catholic Church should be forced to ordain women, which of course is not true) [28]. The same article also reported:

In a floor speech, House Speaker John Boehner called the contraception rule an “unambiguous attack on religious freedom” and said the federal government was “violating a First Amendment right that has stood for more than two centuries.” Mr. Boehner also floated the idea that he would take legislative action. Mitch McConnell, the minority leader in the Senate, noted that he and other Republican senators had already put forward bills to override the rule [28].

Less than a month later, in early March, Senator Mike Johanns, Republican of Nebraska, stated that “The president is trampling on religious freedom” [29]. At a Faith and Freedom Forum in Pewaukee,

Wisconsin at the end of March, three days before the Wisconsin primary, Mitt Romney asserted, “Religious freedom is under attack, again under Obamacare” [30].

## 5. The Court of Public Opinion

Strongly worded assertions of the problem like those quoted above did not resonate with the public. As the *New York Times* reported:

The issue has become a political litmus test, with Catholic bishops and religious conservatives saying that their religious freedom is being threatened by President Obama’s policies. But when asked what the debate is about, only 40% of Catholics polled said “religious freedom,” while 50% said “women’s health and their rights”—an indication that Mr. Obama’s framing of the issue is holding sway even among many Catholics. [31]

This framing was also picked up by and supported by the Catholic press. In early February, the editors of *Commonweal* wrote:

Whether the bishops like it or not, the mandate is not only a religious-freedom issue; it is also a women’s issue. If the church cannot demonstrate that it understands the unique health needs and concerns of those most directly affected by the HHS ruling, it will lose the larger cultural and political argument while further alienating many within its own house [32].

However, the issue was not framed as simply about a fight between religious freedom and women’s rights. Many articles emphasized that not being guaranteed the right to have birth control covered by their health insurance was a threat to the religious freedom of employees of the Church. For example, one author wrote that “The bishops’ claim that their religious freedom is threatened [by the requirement to fully-fund contraception under the Affordable Care Act] is bogus. The threat is to the religious freedom of their employees and to the conscientious freedom of the diverse public they serve in their tax-supported institutions” [33].

Likewise, as Sarah Lipton-Lubet, Policy Counsel for the American Civil Liberties Union asserted,

Real religious freedom gives everyone the right to make personal decisions—including whether and when to use birth control—based on our own beliefs, not those of our bosses [34].

American Catholic magazines were among the staunchest critics of the American bishops. The editors of *America* wrote the following two statements, the first in early March, and the second in July of 2012:

By stretching the religious liberty strategy to cover the fine points of health care coverage, the campaign devalues the coinage of religious liberty [35].

The mistake of the religious liberty campaign has been to personalize the problem, assigning singular blame to President Obama. It has also inflated the controversy by trying to make a variety of different local, state and national problems appear to be a vast conspiracy. Its hyperbolic rhetoric, while it charges up “true believers”, hardens the hearts of adversaries and alarms people in the middle [36].

A large part of the controversy stemmed from the fact that since *Humanae Vitae*, the vast majority of practicing Catholics have used “artificial means” (meaning any barrier or hormonal method) of birth control—making it the single-most rejected piece of Roman Catholic doctrine in the modern era—a point that many activists within the Church did not hesitate to emphasize. For example, Sarah Morello, Executive Vice President Catholics for Choice said, “It’s time that the United States bishops stopped their charade of religious-freedom claims and followed their leader, whose diocese has been

providing contraceptive coverage to its employees for years” [37]. If Morello does not serve as an entirely neutral example of Roman Catholic opinion on the matter, a later article in *Commonweal*, a liberal—leaning American Catholic periodical, put it thus:

The debate over the HHS contraception mandate has reminded us yet again that very few Catholics follow the church’s teaching on contraception . . . Unfortunately, partly because of the fracas over the HHS contraception mandate, many Americans imagine that contraception is one of the defining issues of Catholicism. In truth, the church is not so much defined by the issue as polarized by it . . . a large majority of practicing Catholics either reject or ignore the teaching [38].

As *America* reported, the court of public opinion was against the bishops, even when that opinion was asked only of practicing Catholics:

A recent survey by the Public Religion Research Institute reports that 57% of Catholics overall do not believe that the right to religious liberty is being threatened in the United States today. Catholics overall also believe, with most Americans, that most employers should be required to provide employees with health care plans that cover contraception at no cost [39].

When public opinion is examined in a broader way, it becomes readily apparent that the Church’s stance was far from popular. From the Hobby Lobby decision in 2014, which allowed even for-profit corporations to be exempt from the mandate, until SCOTUS’ refusal to rule on the Zubik case regarding the Little Sisters of the Poor, in May of 2016, both the popular press, and even the American Catholic press, reported less and less on the issue. A good measure of this is the *New York Times*’ failure to even mention the American Bishop’s annual campaigns on the Fourth of July, which they called the Fortnight of Freedom, in both 2015 and 2016. The only article to mention it in *Commonweal* referred to the recent debates over religious liberty as “unhinged, and details how even the most faithful Catholics have grown “weary of the divisiveness,” and criticizes “Catholic leaders” for spending “years and millions of dollars in legal fees fighting for more religious exemptions in contraception coverage requirements under the Affordable Care Act” [40].

### *The Power of Legitimacy*

Religious freedom became an issue at the Council because of the serious legitimacy critiques their Protestant colleagues leveled about Church doctrine at the time. As their organizational fields became more structured with the growth of the ecumenical movement, and the networks between Protestants and Catholics became denser, Catholics in Germany, the Netherlands, France, Belgium, and the US began to both hear these critiques more often, and to respond to them. They ultimately fought throughout the entire course of the Council to change Church doctrine. Catholic leaders from these countries wanted to ensure that the Church did not “appear to the rest of the world to be insincere and unjust,” and thereby lose “respect, interest and the power to convince” as an American theologian wrote prior to the start of the Council [21]. They were convinced that whatever the Church would lose “in external power, it will gain in moral force” by coming out in favor of religious liberty ([21], p. 419).<sup>11</sup>

Recall both Protestants’ and Catholics’ continued insistence that the declaration had to be *genuine*, that the Church had to make a declaration on the basis of belief, not expediency. As a German Catholic theologian wrote before the Council, the Church would be carrying “on a useless struggle if its acts of tolerance were merely concessions made against its will and liable at any moment to be revoked” ([21], p. 419).<sup>12,13</sup> For legitimacy concerns to be addressed effectively, the Church had to

<sup>11</sup> Quotation: Max Pribilla.

<sup>12</sup> Quotation: Max Pribilla.

<sup>13</sup> Emphasis mine.

accept the most basic principles of religious freedom, and not merely support it because of certain circumstances or current political situations.

Therein lay one of the major problems with the use of the doctrine 50 years later—the American Catholic hierarchy’s rejection of the Birth Control Mandate smacked of politics—and the support they received from the right only made that smack louder. Whether or not access to free birth control was a matter of religious freedom for employees covered under the Roman Catholic Church’s health care plan—many people saw the matter as being about one right versus another. Ultimately, the Church won the battle—Obama made serious concessions for religious groups, concessions which were upheld by the Supreme Court, but in doing so, it may have lost serious legitimacy.

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