The need for the special fortnight for freedom rose from recent actions of the government which indicate that religious freedom may be in serious danger. Specifically, the Department of Health and Human Services issued a mandate requiring all employers who offer insurance to provide coverage for contraceptive and abortifacient products and services. The mandate contained no exemption for religious institutions such as universities, charities, and hospitals, which might find difficulty complying for reasons of faith and conscience.

This issue may appear to be a new one, but it is actually very old. The 18th century philosopher Jean-Jacques Rousseau wrote a number of influential books and essays. One of the most notable is The Social Contract. In that book, Rousseau has a chapter titled “On Civil Religion.” In the chapter, he observes that ancient cultures traditionally united theology and politics. Each religion was tied to the laws of its state. There could be no conversion other than through conquest. The only missionaries were soldiers. There was nothing to discuss. Force decided religious disputes. There are still quite a few nations that practice the same philosophy today.
Rousseau points to Jesus as the person who disrupted that age-old system. For a time, you had the Christians operating within the context of a pagan empire while simultaneously refusing to accept the emperor worship that held the whole system together. The empire was willing to tolerate a polytheistic festival of religions as long as all would submit to the overarching religion of Rome. The Christians refused. And they were persecuted, terribly persecuted (killed by wild animals, tortured, turned into flaming lanterns), until, improbably, everything changed. Some of the powerful were converted, such as Constantine, and Christians gained first protection and then establishment status. The empire of Rome eventually fell. But the Christian church carried on.

From Rousseau’s perspective, Christianity presents a serious problem because there will always be the difficulty of double power since the church will not simply yield to the state. Where there is conflict, the church will go where it believes God is leading it. Rousseau thought such a conflict should be impossible. The state must rule without question. He praised Hobbes for trying to put the two powers back together under the rule of Leviathan in which the state would control religion completely. What is needed, Rousseau wrote, is theocracy such that there is no pontiff other than the prince and no priests other than the magistrate. The only real sin in this new state Rousseau envisioned is intolerance. It is not enough to have theological intolerance and civil tolerance. Theological intolerance cannot be tolerated. Anyone who “dares to say outside the church there is no salvation ought to be expelled from the state . . .”

Rousseau, of course, was one of the great intellectual inspirations for the French Revolution. The French Revolution, so different from the nearly contemporaneous American one, followed Rousseau’s logic. The revolutionary leaders carried on a massive campaign against the Catholic church and tried to create a new national civil religion. The method of the secular, statist revolutions has been that if there is to be something like a religious power, it must be a power under the control of the state and its leaders. But like the old pagans, the new pagans have found that the followers
of Jesus Christ are not willing to accept the idea of the state as the supreme power. That resistance to the supremacy of the state has been and should always be one of the marks of the Christian church.

It seems to me that the mandate handed down (in an undemocratic, regulatory fashion) by the government’s department of Health and Human Services represents a return of Jean-Jacques Rousseau’s political thought in our time. In essence, the state and its rulers are saying that its conception of what is good for human beings is superior to the church’s view and it will be made mandatory (even for the church) regardless of the church’s objections. The offense is compounded because the state could simply opt to tax the people and provide the services on its own. Instead, it insists that religious institutions themselves pay for the contraceptive and abortifacient products and services it rejects. It is not enough that religious organizations have to accept it as passive taxpayers. Instead, they must be forced to directly fund the products and services as part of their employment contracts.

Whether its members realize it or not, the administration is working directly under Rousseau’s canopy. It would have been a simple thing to insert a provision into the mandate accommodating objections based on faith and conscience. Employees working for religious employers (especially Catholic ones who are the most affected) hardly represent a large portion of the labor force. But the accommodation has not been made in any meaningful sense. And one has the feeling that the accommodation has not been made because the other side is working from their own view of principle. They are saying, with Rousseau, that what they see as civil and theological intolerance cannot stand. The Catholic church finds itself at odds with the metaphysics of the United States government. Other churches will soon find themselves in similar circumstances if we do not curb the boldness of the government quickly. Though it is in a relatively low key way (low key as opposed to the French Revolution), the government is essentially saying that a particular view of the Catholic church will not be permitted to shape its organizational behavior, even though the church’s view does not threaten anyone with harm. Individuals who work for Catholic organizations
could easily work elsewhere. The church does not force anyone to sign a contract of employment.

I have frequently been surprised to find people who should know better supporting the administration and its mandate. What it often comes down to is one’s political sympathies. Those who prefer a larger government and believe government is the primary provider for the good of people tend to think the mandate is a just measure. But I have discovered that they are able to see the problem with the mandate when I change the fact situation to one with which they are more sympathetic. Let us imagine a Quaker college with a core conviction regarding pacifism. Let us further imagine that the government were to insist that such a college host an ROTC unit on campus. Given these facts, would you insist that the Quaker college must simply buckle under, ignore its core beliefs, and do what the government says? When I put it that way, I find that supporters of the mandate suddenly understand the problem with the situation the government is putting the church in. If the issue is pacifism rather than sex or reproduction, then the matter of conscientious and spiritual objection becomes more clear. We can be blind to important principles when our particular ox is not being gored.

Criticism of the HHS mandate is aimed at improving our understanding of religious liberty, but I would submit to you that maybe the issue is simply liberty, itself. I recently read an interview between Bart Stupak and Greta van Susteren. If you don’t recall, Congressman Stupak and a group of pro-life Democrats held up passage of the president’s health care bill because of their concerns about taxpayer money being spent for abortion and because of a desire to make sure that conscience would be protected. After the president signed an executive order aimed at alleviating their concerns, Stupak’s group provided the winning margin in the House. Stupak and his group of fellow Congressmen had attempted to protect religious liberty and rights of conscience in the massive piece of legislation, but all that is a faint memory now. What I am suggesting to you is that if we insist on continuing to expand the power we give to the government, then we should not be shocked
and dismayed when we see fundamental rights and freedoms, such as religious liberty, eroded. Where government power increases, freedom is diminished. The relationship is axiomatic. It means that we must be very careful and very sure of what we are doing when we seek to expand the power of the state. It sounds good to solve problems by simply having the government pass a law, but there are often unintended consequences. A laudable attempt at providing health care coverage for more Americans has ended up strengthening the hand of persons or organizations who lack respect for rights and freedoms we cherish.

I have discussed Rousseau’s point of view and how it connects directly to the state of mind that issues something like the HHS mandate heedless of the serious problems it creates for individuals and organizations with objections based on faith and conscience. Rousseau, meaning well, wrote a philosophy fit for totalitarians. He is remembered for lamenting that man is born free, but is found everywhere in chains. Less often do we hear another thought of his connected to freedom which is that if a citizen finds himself or herself in disagreement with the general will of the nation, then he or she must be forced to be free! Freedom for Rousseau means being in step with the general will. That is what the secular statists think they are doing to the Catholic church with the HHS mandate. They are forcing you to be free!

Thankfully, however, America is not a country that has tended to take its cues from Jean-Jacques Rousseau. Far more influential on our shores has been the thought of a man named John Locke. Like Rousseau, Locke reasoned about the nature of the social contract. But he did not conclude that we should end up forced to be free by following the general will. Instead, he said that we have government to make us more truly free, free in a sense that you and I can actually understand and support. In a state of nature, there is still a natural law of right and wrong that exists, but our ability to enforce it is in question. For example, if a seven foot barbarian steals your property and takes your home for his own, you may have the right on your side, but there is doubt as to whether the demands of justice will be satisfied. Locke says that we lose little by creating a state to
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protect us from violent or dishonest acts of others when we have a low probability of achieving the same result without a government. In other words, we gain freedom by empowering a state to punish criminal acts. Rather than being forced to be free, the government will use force to protect freedom.

Locke would not have approved of something like the HHS mandate, which impairs religious freedom. He said that we come out of the state of nature into a civil society with a government to gain what we could not secure in nature. The goal of government is to protect freedom, not to diminish it. The HHS mandate is an exercise of government that reduces freedom. Worse, it is the kind of government act that infringes on freedom of religion and conscience. These are the freedoms we would be least likely to bargain away because they mean the most. A government that infringes on these freedoms is one that is making us worse off rather than better off. It is a government that forces us to be at odds with the entity that is designed to protect us in the exercise of our freedom. It makes an enemy of us (and this is the important part) when we have done nothing that should make it see us as an enemy. The government has engineered a crisis in which churches are more and more likely to be caught between God and Caesar. This is the last thing a government should be doing to its people when they are committing no wrong.

The bottom line is that there are certain things that belong to the state and others that don’t. The state is an instrument, not some kind of grand end. It is a tool. It is temporary. It is designed to solve a simple problem, which is the problem of restraining evil. The state is designed to serve persons. We are not designed to serve the state. The great French Catholic scholar Jacques Maritain said it best: “The state is made for man, not man for the state.”

The United States, traditionally, has been one of the nations that most clearly understands the proper role of the government. We have welcomed the existence and development of many institutions of civil society performing tasks that need not belong to the state. But Rousseau saw a society with two powers of church and state as a liability, something that needed to be destroyed. And the French Revolution accordingly attempted to destroy it. What
Rousseau missed that Locke understood is that when government attempts to rule over too much of life, then there are too many areas in which disagreement can only be settled with the exercise of coercive power, including things such as civil penalties and imprisonment. We should only resort to those things when the stakes are very high. Why would we subject more things to that official (and ultimately punitive) sphere than we must?

Having strong institutions in the society other than the government actually improves the prospects for freedom. The family, the church, the private school, charitable organizations... all of these represent alternative allegiances for people. Alternative allegiances help limit the power of the state and to curb its ambitions. A totalitarian state prefers to have only two entities in society. The individual and the state. In that situation, the vision of the state will always be supreme.

When we protest that something like the HHS mandate might eventually have the effect of forcing the church to abandon its efforts in running schools, universities, hospitals, and social services, a pragmatic person might well rethink the whole project out of worry for the loss of all the good religious institutions do. But for people of a certain ideological stripe, when we say the HHS mandate could force the church out of various endeavors, they think silently to themselves, “Good.”

I am not saying these people are villains. They have a big vision for society based on government action. They believe it is for the best. They believe strongly enough in this vision to take an amazingly bold action against the church. But the experience of the 20th century should make us reluctant to agree to these large and ambitious plans. Karol Wojtyla, the man who became Pope John Paul II, lived his life in the service of a church forcibly repressed by first the Nazis and then the Soviets, both of whom carried out their programs in service of their plans for the good for humanity. As a younger man, he made a practice of taking young people out into the country for hiking and canoeing. He wanted to show them that even under totalitarians, one can and should carve out space for a life they do not control. He was teaching
them that the state is not the supreme reality. The supreme reality is the church seeking after the will of God. And that is why Peter and apostles told those who wished to imprison them that “We must obey God rather than men.”

If the church fails to stand up and be counted at this moment, then the HHS mandate will simply be the first of many more such rulings and regulations in the future. We need to protect religious freedom now. The church has never been intended to set its course to fit the prevailing winds of public opinion or the edicts of state. In his profound *Letter From Birmingham Jail*, Dr. Martin Luther King, Jr. wrote that the church must be a THERMOSTAT, not a thermometer. It does not simply reflect public opinion. It sets out to influence public opinion. It means to work a change in people. The church must maintain its freedom to speak and act in a distinctive fashion. When it makes deals with power in order to survive, it accumulates shame and infamy just as the “German Christianity” of the Third Reich did.

I have spent a good bit of time explaining why I think the HHS mandate is fundamentally misguided and violates the basic American understanding of government power. My hope is that if anyone needs convincing that perhaps I have made out a case for restricting government power and resisting the siren call that issues forth every so often telling us that the millennium will come when we have composed the perfect package of government rules and programs. My suggestion is that we all become a great deal more modest in terms of what we expect a government to do so that we can maintain our confidence in our freedoms. The big solutions usually disappoint us. And freedoms do not typically return once they have been surrendered to the state.

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