

BOISI CENTER INTERVIEWS



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M. CATHLEEN KAVENY is the Darald and Juliet Libby Professor of Boston College, a position that includes appointments in the department of theology and law school. She spoke with Boisi Center associate director **Erik Owens** before participating in a panel on business, ethics and American healthcare reform.

OWENS: I think one way to approach the conversation about health care, especially with someone with your expertise in theology, is to ask: what are some of the principles that ought to guide our thinking as we approach the process of health care reform? What are the basics?

KAVENY: I think the basics for anybody working out of a Catholic tradition is the dignity of the human being as made in the image and likeness of God. A dignity that takes seriously human beings, not just as souls that are encased in bodies, but as embodied souls and as people living a mortal life who are vulnerable and can suffer.

If you think in terms of Christianity, you can see the seriousness with which our embodied life is taken and the importance of it even in the New Testament and in the very miracles that Jesus performed. His idea of holistic healing was signified by his healing of people with bodily ailments: the blind, the lame, the deaf, those with hemorrhages.

What we have to do when we think about health care reform is to situate the person as embodied at the heart of it and to branch out to see the person not just as isolated, but as living in a broader community. One of the reasons we need health care reform is because we need to collectively take responsibility for the

common good, which is the good of every individual, so that others can contribute.

And what's so wonderful about health care reform viewed holistically is that we're not just concerned with beating back every illness, but with taking responsibility for promoting the health of all populations so that they can contribute.



OWENS: How should we understand inequities in delivery of care as part of a conception of the common good and equal treatment of all?

KAVENY: I think it's important to look at it in two ways. The Catholic tradition doesn't see every kind of inequity as bad.

We're not about leveling everything. But at the same time, it says that a basic level of health care needs to be made available to everybody, no matter what their income status, what their gender, or what their own health status is.

So the key isn't leveling out each and every difference in health care. The key is making sure everybody has access to a basic package that is comprehensive – and good enough. *(laughter)*

OWENS: So shifting more concretely to the Affordable Care Act, which is widely known as Obamacare, what is there to like in the legislation so far?

KAVENY: I think there is a tremendous amount to like. I think there's a tremendous amount to like even from the perspective of Catholic social teaching. At least since 1963, the Catholic tradition of social thought has said that there is a right to health care as part of what it means to respect the individual in the context of the community.

I was poking around on the U.S. Catholic bishops' Website, and there was a document from about 20 years ago where they're looking at different kinds of health care reform and their underlying principles.

I think many of the principles are embodied in Obamacare. It is an attempt to

get universal access, an attempt to have a basic benefit package covered by all, an attempt to control costs so that health care doesn't eat up all the other benefits that we need to provide. Those things are very important.

Key features in Obamacare are the exclusion of pre-existing condition requirements, so there's no discrimination against the sick; an exclusion of lifetime limits on health care costs; so that people who are facing difficult health situations aren't made worse by being kicked out of health care; an elimination of gender distinctions, so you can't charge women more than men; a constraining of age ratings, so that it can only be a maximum of three to one, so you can't charge those who are older more than those who are younger by an exorbitant amount.

But there is some room for personal responsibility. What I think is interesting is that you can charge more for people who use tobacco by up to 1.5% of premiums. So there's a mixture of saying we have to take care of you no matter what, but also saying smoking cigarettes and other unhealthy lifestyle choices aren't really a good way to go.

OWENS: So what is not to like about the ACA from your perspective?

KAVENY: I think the ACA is a compromise. It's doing the best it can in the present situation. If this were Cathycare and I could impose everything, I'd like to move away from an employer-based plan of insurance and even from the idea of health care as insurance at all.

It's an accident of history and an accident of the tax code that we started getting employer-based health care. When wages were frozen after World War II, there was no other way of compensating employees, so they gave them health care insurance. It wasn't taxable to employees or to employers, so you could get a lot of coverage and a lot of bang for your buck.

But thinking about health care in the realm of insurance strikes me as deeply

odd from a human point of view. You may not know when a lightning bolt is going to strike your roof and set your house on fire. It could strike your roof or it could strike your neighbor's roof. And up until the mid-20th century, our understanding of health care was very much like that too. Who would get sick or why?

But now, with advances in genetics, our understanding of medical situations and our understanding of humanity, which is we're all going to get sick and

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die eventually, the question isn't trying to predict who isn't going to get sick and covering them. The question is all of us taking responsibility for the health care of all of us.

OWENS: Isn't insurance just a means of sharing costs over a large group of people? Is there something morally suspect about it that you're trying to dig into?

KAVENY: What I'm trying to get at with this is the difference between sharing a cost that's unexpected and the idea to avoid the cost in the first place.

One of the reasons we need all of these reforms is because insurers were operating like insurance systems, so they basically said, “Well, you're too high of a risk. We're not going to insure you.” If your model is insurance, then that makes sense. If your model is health care, then that's the wrong way to go. We're moving out of an insurer system, but we need to move out of an insurer mindset.

OWENS: I know that a big part of the mode here is the moving away from fee for service based on insurance reimbursement, etc. People frequently talk in the health care world about incentives and about properly placed incentives or misplaced incentives.

What sorts of incentives in the policy world can you imagine that might help the collective and help the society move toward greater appreciation of one another as people as you mentioned from your theological standpoint? Are there policy modes or are these incentives things that might fall outside of the policy world?

KAVENY: I think they can fall in policy world. And one of the things that is very interesting about the Affordable Care Act is the tremendous amount of concern and money it's placing towards programs of continuous quality improvement, measuring outcomes, and trying to bundle services so that people are taking responsibility for the whole person and not bits and pieces of the person.

To the extent you can have a nuanced quality assessment plan so that you grade a health care system or a provider on the basis of maintaining and improving the health of a whole population, that's important.

But you don't want to do it in a way that creates incentives to offload people who are particularly sick. And one of the things that we've seen in the patchwork of health care plans before this comprehensive reform is that insurers would try to cherry-pick. Insurers wanted to get the 26 year olds by offering the really good

membership and offload older people who are going to have more problems.

OWENS: The 50-year smoker.

KAVENY: Yeah, the 50-year-old smoker.

OWENS: Is there a Catholic perspective on the requirements to buy health care in the United States? The individual mandate was a pinch point in last year's Supreme Court decision. I'm wondering if there is a theological perspective on that as opposed to a policy perspective, because we know, from the insurance perspective, a larger pool is going to help distribute costs more, but there is a liberty argument that's been made. Is there a theological view on that?

KAVENY: Well, I think that Catholics have always viewed liberty as something that's situated within the context of a community and a view of the common good. I have never seen a catechism with the idea that I'm free to be me and just wander off without taking responsibility for my place in community and for managing my responsibility sensibly. I might have missed that one.

So the idea that you have an obligation to contribute to the common good by responsibly caring for yourself, your family and your responsibilities through the payment of taxes or premiums would be central to Catholic social thought.

OWENS: Speaking of individuals, one of the prime controversies in law and religion has been the so-called conscience argument in the Hobby Lobby case. Do institutions have conscience rights?

KAVENY: Well, I guess I would say yes and no—or yes, but. Any right in the Catholic tradition is always going to be conceived as a right that's situated in the context of other rights and has to take other concerns into account.

So the question of institutions having conscience rights in this particular case is looking at how you balance the right of an institution to express its beliefs with the rights of its employees, as individu-



als, to have basic benefits that have been determined more broadly by the whole community and do not stop at the door of their workplace.

So the real tension is between the religious freedom rights of institutions and the religious freedom rights of individuals to access what the people as a whole have said is a basic benefit package.

OWENS: So how are these distinctions made between the balance of rights of the organization and the rights of the people who work for that organization with regard to, say, the ownership or the management of institutions or the size of the enterprise?

KAVENY: I think that's what we're trying to sort out. The fundamental worry about giving employers conscience rights is that you end up having more religious freedom the more money you have. Then it's a capital-based system of religious freedom. And is that really what we want in this country?

What the government has tried to do is to say, "We're going to protect not-for-profit companies under certain circumstances. Churches and groups that maintain, control and employ mainly their own people are exempt from the requirement."

OWENS: You're speaking about the requirement to provide preventative services including contraception?

KAVENY: To provide preventative services balanced with allowing bigger organizations like Catholic hospitals or institutions of higher learning to object. They simply have to sign a paper saying they object, and then the third-party payer or the insurer will provide those services.

Now that strikes me as a pretty reasonable balance. They're not providing it, on the one hand, but their employees will have access to it through another set of means.

OWENS: We've seen this compromise before in states across the country with regard to Catholic institutions, right?

KAVENY: Well, actually we haven't seen a compromise necessarily at that level. The original plan exempted only the small, core group of Catholic institutions that employed and served mainly their own people, that method was litigated in New York and California and upheld. So there were state mandates to provide contraceptive benefits. Some had exemptions, but others—like New York and California—didn't have them.

So the original plan was not based on any nefarious plot of the Obama administra-

tion but was based on a framework that had been litigated and upheld by two of the most distinguished state courts.

OWENS: And what was the response of Catholic organizations in New York and California?

KAVENY: They paid. Some of us were a little bit dumbfounded at the brouhaha over this. I think one of the things that you do as an ethicist is step back and say, “Well, what is this really about?” I don’t believe that it’s about opposition to health care.

It’s really a sense that the broader culture is getting further and further out of step with Catholic values and that the contraception piece is just one that the church is trying to struggle with what its role is.

And it’s very hard for a Catholic framework, because Catholics have always seen their morality as basically applicable and

evident to all people of goodwill. That’s part of a so-called natural law tradition. But if it looks like that’s no longer the case on key issues, then what are you? Are you a minority religious tradition with special rules that only apply and are understood to you? At some point it seemed as if the bishops were kind of going in that direction when they invoked the kosher laws, for example, as an analogy to the situation on the contraception mandate.

OWENS: So last question, how have Catholics in America done in conveying these principles you’ve laid out and the complexities that we’ve been talking about today?

KAVENY: I think we can all do a better job of it. I suppose one of the things that worries me is that the great benefits of the Affordable Care Act and its great consonance with broad principles of social

justice can be eclipsed by the arguments about coverage of contraception.

I think we need to step back and see the forest and not just look at these individual trees. Not that they’re not important, but the tremendous benefits of health care reform, including for women facing crisis pregnancies and babies that are born in circumstances that may not be the best, I think, is something that needs to be highlighted as well as the controversies over specifics of reproductive rights coverage.

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