

Church and State and Social Services

Posted At : August 16, 2011 11:20 AM | Posted By : Seth Chalmer

Related Categories: belief, democracy, J-Vault, children, civil liberties, law, ethics, family, adoption, history, religion, religion and state, social services, government



Controversy continues to unfold regarding the US Department of Health and Human Service's announcement that new guidelines **will require employers who offer health coverage to cover a number of women's health services**, including contraception -- with religious exemptions. **Some argue** that the exemption denies vital services to women who work for religious employers, while **others maintain** that the exemption does not go far enough.

As long as private religious groups have been involved in the provision of services, whether as agencies (directly) or as employers (indirectly, as in the current controversy), questions of freedom, regulation, accomodation and coercion have appeared difficult to resolve, with religious freedom and full provision of services to individuals locked in seemingly insoluble conflict. This week's J-Vault pick, written by a distinguished New York family court judge, explores some of these questions as they relate to adoption.

This week, from the J-Vault: *State, Religion and Child Welfare* (1956)

The Hon. **Justine Wise Polier** was born into a prominent Jewish family, the daughter of the celebrated Rabbi Stephen Wise. She made her own name, however, when Fiorello LaGuardia appointed her to a family court judgeship, making her the youngest municipal justice in the country, and the first woman in New York State to hold a judicial post above magistrate.

In her address to the 1956 Annual Meeting of the National Conference of Jewish Communal Service (later published in the **Journal of Jewish Communal Service**) Judge Polier argued that the state frequently intruded into private religious affairs, and frequently neglected vital needs of clients for religious purposes. Ironically, she explained, these abuses originate in a desire that the state precisely not engage in religious coercion:

There was the deep concern that the state, through its representatives, should not misuse the power to provide care for children outside their own homes in order to change their religion or engage in proselytizing. There was also the strong feeling on the part of many religious groups that they should provide for the needy children of their own faith.

The problem, said Judge Polier, was that such religious matching was being placed *above* equality and type of care being provided:

The state has a basic responsibility to see that every child who needs placement outside his own home shall receive the type of care which the child needs. It may under the laws of many states delegate its responsibility for providing such care to voluntary agencies, sectarian or non-sectarian. It does not have the right, in my opinion, to turn a child over to any kind of care, so long as the child is placed with an agency of its own faith, or to keep a child in cold storage till a sectarian agency has a vacancy...

...Over and over again, we find that though the social study may clearly indicate that a baby needs a foster or adoptive home, if none is available within his own religious group, rather than refer him to an agency of another faith or a non-sectarian agency, such an infant or child will be kept for weeks, months, and even years, in a hospital or shelter. We find that even when a diagnostic study shows the need of psychotherapy and individual care, if none is available within his sectarian group, the child is frequently sent off to a custodial institution in violation of all we know as to his needs...

...There are other areas where the question of the role of religion in child care must be examined. While there is little question that religion can be a significant moral and ethical force in the life of a child, it would certainly seem contrary to the American principle of religious freedom to impose and demand religious adherence and observance of children or parents without at least the consent of the parents. Yet, in recent years, in more and more children's courts, we find judges, as representatives of the state, requiring the performance of religious obligations as a condition of probation. We hear the rationale that if a child is found neglected or delinquent the parent has failed, and the judge has a right to require religious training as part of a program of rehabilitation...

...In New York City we have also been faced by the development of a policy by the Presiding Justice of the Domestic Relations Court that raises yet another question concerning religion and child care. He has decided that probation officers shall be appointed on the basis of a religious quota roughly following the religious affiliation of the children brought before the Court. This means that although the Jewish population of New York City is slightly under 30 per cent, since the percentage of delinquent and neglected Jewish children brought before the Court is roughly 5 per cent, he has decided that only 5 per cent of the probation officers may be Jewish. As a result, even though a qualified Jewish young man or woman has passed his Civil Service Examination, he will be passed over in favor of a less qualified non-Jew...

The Judge did not argue for ignoring religion in adoption:

To the extent that children can be placed in homes of the same faith, as that of their parents, this should be done, except in those cases where the parent or parents freely choose to have their children placed in a home of another faith. Americans have the right to choose and to change their faiths and those of their children. That a parent decides to surrender his or her child for adoption does not abrogate this right or transfer it to any other

person, official, institution or the State.

However:

When no adoptive home of the child's faith is available for a child, it is the duty of the State and indeed of voluntary agencies to see that, in the interests of the child's welfare, he shall be placed in the best adoptive home available. No person, no religious institution, no public department, and no State has the right to say to a defenseless child, "You have no home. But because of your race or religion, you shall stay in an institution until you are 16 or 17 and then be turned out into a world in which you have no one to whom you belong." This is happening today in too many areas. It is our duty to see that such injuries to children shall not continue.

Download the full publication.

