

## **Faith, Politics, and the Parable of the Kosher Deli: Explorations of Narrative in a Congressional Hearing**

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### **Abstract**

This paper takes a discourse analytic approach in exploring how a short narrative, delivered in the testimony of a panel-witness during a 2011 US congressional hearing investigating potential violations of religious liberty in the Patient Protection and Affordable Care Act (commonly known as “Obamacare”), shapes and reflects the larger political conflict over the legislation. Exploring the so-called “parable of the kosher deli” from a structuralist, functionalist, and post-structuralist perspective reveals several key elements of how narratives can function in such a context. The choice of genre not only facilitates communication via a culturally familiar structure, but also positions the communicator reflexively, and in strategic fashion. This choice also provides an efficient means for glossing over the adversary’s most significant concerns: because parables are abstractions meant to reflect back on real situations, one can choose which elements to incorporate, and which to ignore about those situations in one’s interpretation.

Additionally, I observe how the parable is an effective means for positioning an opposing side (Davies and Harré, 1990), as the narrative takes aim at not only the government, positioned as an illegitimate disciplinarian, and an inappropriate judge, but also at advocates of the legislation generally, characterized as “off-topic” or else blind to the most important issue. Finally, from a post-structuralist perspective, I note that the narrative, reflecting the general stance of the majority members of committee overseeing the hearing, construes the opposing side as a “generalized other” (Benhabib, 1992), ignoring the role of individual experience, needs, motivations, and desires in the attempt to make a case for broader exemptions to the proposed legislation. Such a move short-circuited any possibility of “elaboration” (Cobb, 2006) in which both sides might have worked toward a mutually agreeable narrative which contained both of the moral perspectives presented.

### **Key Words**

narrative, politics, religion, conflict, healthcare, positioning

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## **Introduction**

The present essay focuses on a short, fictitious narrative, told in the context of a U.S. congressional hearing investigating potential violations of religious liberty with respect to then-recently proposed healthcare legislation. I ask the question: how does this narrative, a “modern parable” told by a Catholic bishop who was a witness at the hearing, shape and reflect the conflict between religious institutions and the government? Part One details the background of the legislation in question. Part Two includes a review of some of the pertinent literature to understanding the methods of analysis, with a more nuanced version of the original question at the end. After a brief biographical sketch of the narrator in question, Part Three presents the text of his testimony. In Part Four an analysis of the narrative in context is provided, followed by a concluding section.

### **Part One: Background**

#### *The HHS Mandate*

In January, 2012, the Department of Health and Human Services (HHS) issued a mandate under the auspices of the Patient Protection and Affordable Care Act (PPACA) requiring new health-insurance plans to cover preventive services, including all FDA-approved forms of contraception (Sibelius Press Release, 2012), among which are numbered certain drugs which function as abortifacients. The mandate was met with vehement opposition on the part of conservative and religious groups and politicians, arguing that the mandate violates principles of religious liberty. While the HHS Mandate included an exemption for religious organizations, the legislation’s opponents argued that the exemption was far too narrow. The language of the mandate extended only to the category of religious employers, organizations whose purpose is the “inculcation of religious values”, who primarily employ and serve individuals of a particular faith (Whelan, 2012). Thus, institutions such as Catholic hospitals, schools, and universities, as well as private businesses run by religious individuals, fell outside the proposed exemption, institutions which are nonetheless considered to be “central to the church’s witness” by their members (Alavaré et. al, 2012; also see Lori, 2012).

In response to strong objections to the HHS Mandate, the Obama administration offered an accommodation in February 2012 according to which the affected institutions would not be required to provide, subsidize or advertise the objectionable services to employees, but rather the insurance providers would foot the bill and alert beneficiaries to the

covered benefits directly. In such an arrangement, the argument ran, the religious employer was removed from the problematic relationship of providing a service it found immoral. However, with few exceptions (see Lewis, 2012), the accommodation was rejected as a meaningless legerdemain of accounting, and no less a threat to religious liberty as the original proposal.

A flurry of briefs and legal opinions (e.g. Gedicks 2012; Lewis 2012; Whelan, 2012) have been written both for and against the mandate (and the accommodation), and the reader is directed to the bibliography for more detailed analyses of the legal debate. Numerous lawsuits were filed against the federal government starting in the winter of 2012 (Becket Fund, 2012), culminating most recently in the landmark Supreme Court case, *Burwell vs. Hobby Lobby, Inc.*, decided in June of 2014. The court ruled against the government, in favor of a private corporation, Hobby Lobby craft stores, in its bid for exemption from the HHS Mandate, a decision which many (e.g. Snead, 2014) see as a harbinger of favorable decisions for religious non-profits in similar legal conflicts.

## **Part Two: Method and Literature Review**

The text under analysis comes from the published proceedings of the House Committee of Oversight and Government Reform (COGR) hearing on February 16, 2012 where one particular scene of the larger ethical (and legal) debate transpired. The narrative examined in this paper—the self-described “parable of the kosher deli”, read in the prepared testimony of the Archbishop of Baltimore, William Lori—is viewed from structuralist, functionalist, and post-structuralist perspectives, each described below. I adopt a blended approach to analysis because it enables a more comprehensive picture to emerge of how Lori’s parable shapes and reflects the conflict between religious institutions and the government. A preliminary word is in order, then, on how this type of mixed methodology may be justified before moving on to the particulars of each view.

As Mishler (1995) has noted, narrative research addresses a broad range questions which reflect the multifaceted nature of the object of inquiry: “What *is* a narrative? Does it have a distinctive structure? Are there different genres? When are stories told and for what purposes? Who has the right to tell them? What are their effects—cultural, psychological, social?” (1995, p. 88, original emphasis). Structure, type, purpose, authorial legitimacy, social consequences—all of these features (and many more) of narrative may interest the researcher depending upon the nature of his or her question. And indeed, as Mishler points out, examining these different features *in combination*, via the different approaches

developed to study them, is what best serves our growing understanding of narrative. I adhere to such a view in the present analysis, rejecting the notion that there is “one singular or best way to define and study narrative” (Mishler, 1995, p.117).

Accepting a plurality of approaches, however, does not mean anything goes: hermeneutic inquiry stands or falls by the logical rigor and plausibility of its accounts. One consequence of this is that we should expect different levels of analysis to interact—or fit together—in certain coherent ways. Mishler’s own (1995) typology of narrative research underscores this preoccupation, as reflected in his three-part classification of narrative studies: those concerned with 1) reference and temporal order; 2) textual coherence and structure; and 3) narrative functions. How does this tri-partite division hint at a concern for underlying unity? Mishler’s narrative typology, he explains, is actually rooted in Halliday’s (1973) linguistic theory of the three functional requirements for language as communication: reference, textualization, and function. Importantly, a linguistic theory that privileges one without the others produces an incomplete picture, as Mishler implies in his description of language:

...[reference, textualization, and function] are simultaneously and necessarily present in any stretch of meaningful discourse. That is, we cannot speak to and with each other unless we are talking about something in ways that fit cultural understandings of how to speak coherently, and what we say has inevitable and inescapable effects.” (1995, p.117)

One might reasonably add that we cannot *account for* the way we speak to and with each other unless we can explain the reference, the culturally appropriate modes of textualization, and the effects (or function) of our utterances.

Similarly, discussions of narratives which examine different elements (see list above) in isolation inevitably result in an impoverishment of our overall understanding of these stories in context. This study, then, attempts to address the two related challenges of narrative inquiry to which I have alluded so far: first, that narratives are multifaceted phenomena requiring explanation at different levels; and second, that our accounts of these different levels should “fit together” somehow, providing a coherent view of the narrative in question. While not adopting Mishler’s specific categories of narrative inquiry, I do attempt to take up his charge of pursuing more inclusive strategies in this analysis by employing a variety of views of story – structuralist, functionalist, and post-structuralist – and showing how each account may complement the other.

*Defining the Terms*

By structuralist, I refer to the analytic tradition that examines a whole narrative through the operation of its parts. In narrative analysis, Labov and Waletzky (1967) and Labov (1997) are representative of this tradition: these authors have revealed that narratives have formal structural properties which recur and serve different purposes in the overall construction of the story. I will occasionally make use of the narrative units identified in Labov and Waletzky's (1967) and Labov's (1997) work, though keeping in mind that the contexts of the narratives in our case and theirs are significantly different. Indeed, Labov (1997) urges a caution that applies directly to the present case, given the political ends of the narrative under analysis. Speaking of the type of narratives he has investigated, Labov recalls that they appear only in sociolinguistic interviews and furthermore:

[t]hey exhibit a generality that is not to be expected from narratives that subserve an argumentative point in a highly interactive and competitive conversation. Such narratives are often highly fragmented and may require a different approach. (1997, p. 396-397)

Though not occurring in a "highly interactive" moment of the conversation at the congressional hearing, the parable of the kosher deli nonetheless meets two of the other criteria differentiating it from Labov's type of narrative: its purpose is argumentative, and it exhibits a substantial degree of fragmentation, being interspersed with various arguments and explanations.

Another reason that our structuralist treatment of the narrative in question will make minimal reference to the Labovian framework is that we are presently interested in more holistic understanding of the narrative's content. As Elliott (2005) points out, while "it is clear that the structural model of narrative form described by Labov and Waletzky can be useful in analysis in short sections of interviews in which narratives occur...it is arguably of less utility when examining an interview more holistically" (p. 46). Because this study is concerned with such global interpretation (though not in an interview context), the structuralist perspective that offers the most insight is found in typological, genre based analyses. Such studies (e.g. Hardy, 2008) show how narrators, sometimes wittingly, sometimes not, adapt a culturally shared framework to structure experience in such a way to facilitate its communication through patterns of narrative and imagery which reflect familiar schemata (familiar for a particular audience). From the researcher's perspective, this enables

him or her to “attempt to discern how the narrator wishes the events and experiences that are being recounted to be interpreted” (Elliott, 2005, p.47).

Functionalist approaches to narrative, on the other hand, seek to understand processes in stories that accomplish some specific goal in a given context. The analysis presented here draws from positioning theory (Davies and Harré, 1990; Harré and Langenhove, 1991; Harré and Slocum, 2003). Positioning theory takes account of interlocutors’ shifting, emerging identities in terms of subject *positions*, which are intersubjectively constructed, momentary instantiations of speakers’ moral identities in conversation. These comprise “both a conceptual repertoire and a location for persons within the structure of rights and duties for those who use that repertoire” (Davies & Harré, 1990, p. 35). The attribution of these subject positions—which in positioning theory *is* the “specific goal” referred above—can be interactive (the “Other” positions you) or reflexive (you position yourself). Davies and Harré argue that “every conversation is a discussion of a topic and the telling of, whether explicitly or implicitly, one or more personal stories...” (p. 37); positions can be identified by examining these narrative fragments. Further, argue Harré and Slocum (2003), the use of positioning theory may lead to “an understanding of the way conflicts are expressed and perhaps toward some hypotheses about how that understanding could be exploited in terms of the resolution of these conflicts” (p. 101). For example, Cobb’s (2006) exploration of the use of irony as means to positive turning points in negotiation builds on the insights of positioning theory, where irony allows for the construction of positive positions of the other and the strategic de-legitimization of one’s self (c.f. Cobb 2006, p.169). For reasons of space, the current study is restricted to the descriptive phase of the conflict.

Finally, this analysis will explore the ways in which a post-structuralist lens sheds light on the parable of the kosher deli. While avoiding any specific methodology, post-structuralism takes a critical perspective toward narrative (and any kind of text) examining how and where power relations are formed in given contexts. Congressional hearings themselves, which are controlled by a majority party whose chairman presides over the event, dictating to some extent who may testify, who may question, and even who may interrupt, would make a fascinating subject of post-structuralist research. However, even the COGR’s idiosyncratic pattern of turn-taking, turn allocation, and majority-minority party interaction is largely beyond the scope of this study (with one exception, the question of witnesses, which will be addressed below).

In terms of the narrative content under investigation, though, a key consideration from a critical perspective is how the “Other” is constructed (or erased and ignored). This is a

highly pertinent concern for the conflict surrounding the HHS Mandate, as each side contributes to what Benhabib (1992) calls “generalizing” the Other – depicting the Other abstractly, without reference to his or her particularity – in singularly unhelpful ways. The focus here will be limited to the way the parable of the kosher deli accomplishes this, though generalizing certainly occurs on both sides of this debate. I also take into account the process (or lack thereof) of *elaboration* (Cobb, 2006) in which the parable takes part. Elaboration might be called the “applied” side of other-construction: how does one *respond* to the other and his/her positions? That response (elaboration) may be an initial acceptance, rejection, or modification of the other’s positions, and may prove either constructive or destructive; essentially the term refers to the “next step” taken in the construction a conflict narrative.

In light of the foregoing discussion, it is possible to nuance the Introduction’s original question into three different lines of inquiry, each of which narrows (advantageously, it is hoped) the analysis according to the different narrative perspectives described. First, how does Lori’s statement, by adopting the genre of the parable, condition our understanding of the global import of his message? Second, what positioning maneuvers does Lori’s parable employ, and to what end? Can they be evaluated as constructive or destructive? Third, how does Lori’s parable construct the “Other”, and what implications does this construction entail? How is Lori’s place as an invited witness understood in the context of the power dynamics surrounding this particular hearing, where other witnesses were not recognized? How does Lori’s parable elaborate the position of the Other, if at all?

### **Part Three: The Parable of the Kosher Deli**

Two main reasons motivate the choice of this brief (five minute) excerpt, found in the prepared statement of William Lori, archbishop of the archdiocese of Baltimore. First, out of the entire dialogue which occurred in the COGR hearing on February 16, 2012, this segment most neatly fits the prototypical model of narrative of the type found in Hinchman and Hinchman (1997, cited in Elliott, 2005, p. 3): “Narratives (stories) in the human sciences should be defined provisionally as discourses with a clear sequential order that connect events in a meaningful way for a definite audience and thus offer insights about the world and/or people’s experiences of it.” Second, the parable exhibits features of what Cobb (2006) defines as a “conflict narrative”, which she describes as a:

...story that contains specific features: first (and perhaps foremost to the parties involved), the narrative provides legitimacy for Self, while de-legitimizing the Other. Additionally, it is often the case that the character roles are simplified, both in number

and in nature. It advances a plot line that has a linear, causal structure with the initial conditions residing in the bad intentions, bad actions, or bad traits of the Other. It is often the case that the plot is simplified; at times it has no future, at times no past. Finally, it provides an evaluative schema based on binary and polarized moral values, and it is often the case that the moral themes are deeply resonant with a cultural value system, which makes it seem natural to privilege their centrality. (Cobb, 2006, p. 160-161)

Thinking of the parable of the kosher deli as a conflict narrative helps in our attempt to make sense of how Lori's statement operates in the context of the COGR hearing, a highly contested space.

A word on Archbishop William Lori is in order before examining his prepared testimony. Archbishop of the Archdiocese of Baltimore, Lori had chaired the Ad Hoc Committee for Religious Liberty under the aegis of the United States Conference of Catholic Bishops (USCCB) since September 2011. As one of the lead representatives of the American Catholic Church on issues of religious liberty, it is thus unsurprising that he was the first witness to be heard on that Thursday morning, February 16, 2012. His testimony appears below in its entirety<sup>1</sup>:

1           Bishop LORI: Thank you very much, Mr. Chairman, distinguished members of the  
2 committee, for the opportunity to testify today. For my testimony today, I would like to tell a  
3 story. Let's call it the parable of the kosher deli. Once upon a time, a new law was proposed  
4 so that any business that serves food must serve pork. There is a narrow exception for kosher  
5 catering halls attached to synagogues since they serve mostly members of that synagog[sic],  
6 but kosher delicatessens are still subject to the mandate.  
7           The Orthodox Jewish community, whose members run kosher delis and many other  
8 restaurants and groceries besides, expresses its outrage at the new government mandate, and  
9 they are joined by others who have no problem with eating pork, not just the many Jews who  
10 eat pork, but people of all faiths, because these others recognize the threat to the principle of  
11 religious liberty. They recognize as well the practical impact of the damage to that principle.  
12 They know that if the mandate stands, they might be the next ones to be forced under the  
13 threat of government sanction to violate their most deeply held beliefs, especially their  
14 unpopular beliefs.  
15           Meanwhile, those who support the mandate respond, "But pork is good for you."  
16 Other supporters add, "So many Jews eat pork, and those who don't should just get with the  
17 times." Still others say, "Those orthodox are just trying to impose their beliefs on everyone  
18 else."  
19           But in our hypothetical, those arguments fail in the public debate, because people  
20 widely recognize the following points. First, although people may reasonably debate whether  
21 pork is good for you, that is not the question posed by the nationwide pork mandate. Instead,  
22 the mandate generates this question; whether people who believe, even if they believe in  
23 error, that pork is not good for you should be forced by government to serve pork within their  
24 very own institutions. In a Nation committed to religious liberty and diversity, the answer, of  
25 course, is no.



26 Second, the fact that some Jews eat pork is simply irrelevant. The fact remains that  
27 some Jews do not, and they do not do so out of their most deeply held religious convictions.  
28 Does the fact that large majorities in society, even large majorities within protesting religious  
29 communities, the fact that they reject a particular religious belief, does that make it  
30 permissible for the government to weigh in on one side of the dispute? Does it allow  
31 government to punish that minority belief with coercive power? In a Nation committed to  
32 religious liberty and diversity, the answer, of course, is no.

33 Third, the charge that the Orthodox Jews are imposing their beliefs on others has it  
34 exactly backward. Again, the question generated by government mandate is whether the  
35 government will impose its belief that eating pork is good on objecting Orthodox Jews.

36 Meanwhile, there is no imposition on the freedom of those who want to eat pork; that  
37 is, they are subject to no government interference at all in their choice to eat pork, and pork is  
38 ubiquitous and cheap and available at the overwhelming majority of restaurants and grocers.  
39 Indeed, some pork producers and retailers, even the government itself, are so eager to  
40 promote the eating of pork that they sometimes give it a way for free.

41 In this context, the question is this: Can a customer come to a kosher deli, demand to  
42 be served a ham sandwich, and, if refused, bring down severe government sanction on the  
43 deli? In a Nation committed to religious liberty and diversity, the answer is no. So in our  
44 hypothetical story, because the hypothetical nation is committed to religious liberty and  
45 diversity, these arguments carry the day.

46 Now, in response, those proposing the new law claim to hear and understand the  
47 concerns of kosher deli owners and offer them a new accommodation. You are free to call  
48 yourself a kosher deli. You are free not to place ham sandwiches on your menu. You are free  
49 not to be the person to prepare the sandwich and hand it over the counter to the customer. But  
50 we will force your meat supplier to set up a kiosk on your premises and offer, prepare and  
51 serve ham sandwiches to all your customers free of charge, and when you get your monthly  
52 bill from your meat supplier, it will include the cost of any of the free ham sandwiches your  
53 customers may have accepted, and you will be required to pay the bill.

54 Now, some who supported the deli owners initially began to celebrate the fact that  
55 ham sandwiches didn't need to be on the menu and didn't need to be prepared or served by  
56 the deli itself. But on closer examination, they noticed three troubling things. First, all kosher  
57 delis will still be forced to pay for the ham sandwiches; second, many of the kosher delis'  
58 meat suppliers themselves are forbidden in conscience from offering, preparing or serving  
59 pork to anyone; and, third, there are many kosher delis that are their own meat supplier, so the  
60 mandate to prepare, offer and serve ham sandwiches still falls on them.

61 Well, the story has a happy ending. The government recognized that it is absurd for  
62 someone to come into a kosher deli and demand a ham sandwich, that it is beyond absurd for  
63 that private demand to be backed up with the coercive power of the State, and downright  
64 surreal to apply this coercive power, when the government can get the same sandwich  
65 cheaply or even free just a few doors down.

66 The question before the U.S. Government right now is whether the story of our own  
67 church institutions that serve the public and that are threatened by the HHS mandate will end  
68 happily, too. Will our Nation continue to be——

69  
70 Chairman ISSA: Bishop Lori, could you wrap up? I will ask for 15 additional seconds.

71  
72 Bishop LORI: Thank you. Will our Nation continue to be one committed to religious liberty  
73 and diversity? We urge in the strongest possible terms that the answer must be yes. We urge  
74 you in the strongest possible terms to answer in the same way. Thank you for your attention.

## Part Four: Analysis

### *A Structuralist Perspective*

I begin from a structuralist perspective with an eye toward the typological or genre-based examination of Lori's statement. Again, I am asking how Lori's testimony, by adopting a certain genre, conditions our understanding of the global theme of his message. In this instance, we do not need to intuit the genre (as many authors studying narrative have needed to), but rather are told from the outset that the statement takes the form of a parable.

I will consider the implications of this genre selection momentarily, but let us consider the broad contours of Lori's message as a first step. Lori's metaphor linking the HHS Mandate's effect on the Church to the "Pork Mandate's" effect on the Orthodox Jewish community is fairly straightforward: the Jewish community is legally compelled to provide a service which it finds morally objectionable, the serving of pork (lines 3-4). The affected Orthodox community, as well as unaffected members of other religious traditions, band together to decry what they consider an assault on religious liberty (lines 7-9). The government issues an accommodation (lines 46-47) removing the Jewish community from direct participation, but still requiring their institutions to be the venues (and financial support) for the eating of pork. A few in the Orthodox community initially welcome the change (lines 54-55) but eventually see through its inconsequential protection of their conscience as a kosher community. Of course, in this parable the government rescinds its legislation (lines 61-65), a step which Lori encourages the present members of Congress to do at the end of his testimony (lines 66-67).

From a Labovian (Labov & Waletzky, 1967) perspective, the parable actually contains very few narrative clauses—those which maintain strict temporal sequence, driving the story forward. In fact, the six which were mentioned above exhaust the list, suggesting that "parable" is perhaps only a very loose characterization of the kind of discourse Lori is employing. For a five minute parable to contain only six narrative clauses certainly seems like a deviation from the genre: a quick glance through the New Testament yields a strikingly different proportion (e.g., the "Parable of the Sower" in Mark 4:3-8 contains 16 narrative clauses in eight sentences!). Additionally, the bulk of Lori's testimony involves explicit explanation. While the New Testament does record Jesus thoroughly explaining one parable – again, the Parable of the Sower – the overwhelming majority of his parables are offered without further elaboration. In contrast, lines 19-45 provide a good example of Lori interpreting his own parable and drawing out the implications for his audience, something he will continue for several more paragraphs before returning to the "story". The discrepancy

between the canonical parables and Lori's is explained easily enough: whereas the New Testament depicts Christ's choice to teach in parables as a kind of spiritual litmus test whereby those who had "ears to hear" his message could penetrate the metaphoric meanings concealed within, Lori seeks maximal clarity and comprehension among the congressional representatives.

Lori thus layers pedagogic discourse upon pedagogic discourse: the parable, already recognized as an instrument of teaching, is fragmented by his lengthy interpretations (lines 19-45, 54-65) to make the lesson clearer. Lori's commentary on his story serves to reinforce expectations evoked by the original choice of genre: the use of a parable implies that there is a hidden moral dimension in the matter at hand, one which eludes propositional argument, and which can only be revealed by a competent storyteller who grasps the principle. The panel at the hearing that morning, it should be noted, was composed exclusively of clergy and theologians, and so there is a sense in which Lori's testimony fit with the kind of "moral wisdom" that majority members of the COGR Committee seemed concerned to present in their choice of panel witnesses.

But another aspect of the parabolic genre, perhaps the most important, remains to be discussed. The etymology of the word is instructive here: "parable" is the combination of two Greek words meaning "throw beside" or "juxtaposition".<sup>2</sup> That is, as with metaphor and allegory, parables purport to explain the ethical/moral truth of one situation by conjuring up an entirely different one and letting analogies be drawn. In this way it requires abstracting away from the phenomenon one is actually intending to explain, in all of its particularity. Thus, one important consequence of Lori's adopting the parable is that it allows, indeed forces him to avoid dealing with some aspects of contraceptive coverage in order to attend to other features of the HHS mandate (its being an imposition, etc.). The main feature of the HHS mandate which gets lost in the parable is the benefits (medical and otherwise) related to contraceptive coverage which are claimed by the proponents of the legislation. Lori *does* mention this side of the debate in line 13, but characterizes it as a secondary issue having centralized the "imposition".

A mandate requiring pork to be served, while providing many analogous points to the HHS mandate, obscures the significant stakes which many of the (real) mandate's proponents see in the legislation's succeeding, while keeping transparent the stakes of those who oppose it. In so doing, it reduces the complexity of the story line, a hallmark of conflict narrative (Cobb 2006), and paints mandate advocates in the awkward, and slightly absurd image of kosher deli patrons who insist on eating ham sandwiches. I do not mean by this to imply that

Lori himself denies, or refuses to recognize the great importance that contraceptive medicines have in many women's lives (indeed, he refers to this later in the hearing). My purpose has been to understand his narrative better, and what we discover is that his choice of the parabolic genre permits him to selectively attend to those aspects of the argument (not just story) over the HHS Mandate which he finds important, while downplaying others.

### *A Functionalist Perspective*

I now turn to a functionalist perspective, specifically making use of positioning theory (e.g., Davies and Harré, 1990), to determine by what processes Lori's narrative accomplishes the work of opposing the HHS mandate. As mentioned in the preceding section, the mere framing of his testimony as a parable evokes a pedagogical, moral discourse, and could be called Lori's initial positioning move: positioning himself reflexively as one who, on behalf of a religious community, is competent to impart a certain moral message which the wider public, not to mention the mandate's advocates, need to hear. As Harré and Slocum (2003) put it:

People in life do not have an infinite reservoir of possible actions from which to choose. What people are permitted or licensed to do on any occasion is drawn from surprisingly narrow repertoires of categories and subcategories of actions. Among these are actions that, in those circumstances, people are taken or take themselves to have to have the right or duty to perform. (p. 105)

By using the five minutes allotted him before a congressional hearing to tell a parable, Lori understands it to be within his "cluster of rights and duties" (*ibid*) to frame his argument against the HHS mandate in the pastoral genre of parable. As a bishop in the Catholic church, Lori's social and professional standing would clearly entitle him to such a discursive act in the context of sermons, and other types of messages designed and organized for the purpose of moral edification; but here, the extension of this calling to a decidedly "mixed crowd" positions the latter as metaphorical parishioners/disciples requiring enlightenment which the figurative language of a priestly interpreter can provide. Now this may or may not be true; the point, as highlighted in the previous section, is that the use of a *parable* implies that there is a hidden moral dimension in the matter at hand, which eludes propositional argument, and which can only be revealed by a competent storyteller who grasps the principle. Lori thus positions himself as this morally competent interpreter, evoking obvious intertextualities with the lessons of great thinkers and religious leaders (e.g., Socrates, and especially Jesus).<sup>3</sup> The

audience, by analogy, becomes the crowd which has hitherto “missed the point” of the mandate’s threat to religious liberty.

From there, the actual content of the parable of the kosher deli contains several further positioning moves which contribute to its goal of resisting the HHS mandate. First of all, in lines 7-12, Lori suggests that his cause, like that of the Orthodox Jewish community, enjoys broad ecumenical support: the mandate is portrayed as a general burden to all religious communities, not the peculiar concern of a fringe group. This move reinforces the notion that these religious communities’ *right* to apply principles of their faith in practice, “especially their unpopular beliefs” (line 12), is a legitimate one: if a diversity of religious traditions come to the defense of a single faith attempting to apply its (idiosyncratic, and somewhat unpopular) belief in practice, this demonstrates a general consensus on the inherent good in upholding the freedom of conscience across traditions.

The next positioning maneuver is critical, and representative of the general argument brought against the HHS mandate by its opponents at the hearing, and in the wider opposition, almost without exception. In line 13, Lori articulates the central counterargument to the moral principle – “Defending religious liberty is an inherent good” – behind his parable: “But pork is good for you.” Indeed this idea, that contraceptive coverage is a good in and of itself, forms the crux of the supporting argument for the mandate, as later testimony will show. To this challenge Lori replies:

...although people may reasonably debate whether pork is good for you, that is not the question posed by the nationwide pork mandate. Instead, the mandate generates this question; whether people who believe, even if they believe in error, that pork is not good for you should be forced by government to serve pork within their very own institutions. In a Nation committed to religious liberty and diversity, the answer, of course, is no. (lines 17-21)

Thus, Lori contests the scope of the debate, depicting those who are concerned with the status of contraception as occupied with a side-issue. Whatever one’s opinion of contraception, when it is relegated to the status of secondary concern, one loses the right to weigh in on the “main issue” of religious liberty — at least, to weigh in using arguments or stories of how contraception is beneficial or not.

One effect of such positioning is immediately apparent in the COGR hearing. Recall that opponents of the HHS Mandate present at the COGR hearing all essentially subscribe to the argument laid out in the parable of the kosher deli: namely, that people who are arguing

for/against the merits of pork are not discussing the real question at hand. The consequences of positioning situate advocates as “off-topic” because of their focus on contraception itself, instead of the matter of religious liberty, and have perhaps significant consequences in this case. In effect, Lori’s positioning move in his parable echoes a procedural move taken by the chair of the COGR to prevent a potential witness, Sandra Fluke, a third-year law student at Georgetown University, from testifying. Fluke, an advocate of the mandate and past president of the Georgetown’s chapter of Law Students for Reproductive Justice, was rejected on the grounds that she did not “have the appropriate credentials” (COGR Transcript, p.35<sup>4</sup>), specifically her lack of expertise on matters related to religious liberty.

Another telling episode of positioning occurs when Lori anticipates arguments against the push for broader exemptions to the HHS mandate on the ground that many Catholics do, in fact, approve of birth control. Lori suggests this argument in the parable (line 16, which “admits” that many Jews eat pork) does not “allow government to punish [the] minority belief with coercive power” (line 31), rejecting a right that the government might arrogate to itself in light of popular opinion moving against the religious establishment. Lori’s positioning of the government as an illegitimate disciplinarian is matched by his positioning them as an inappropriate judge. Building off the hypothetical that many in the religious community might contradict official doctrine, he asks “Does the fact that large majorities in society, even large majorities within protesting religious communities... reject a particular religious belief, does that make it permissible for the government to weigh in on one side of the dispute?” (lines 28-30). The government is not qualified to decide what is essentially an internal argument in the religious body by imposing a law that favors one side. On both of these accounts, Lori is joined by several other witnesses in positioning religious institutions as the rightful recipient of state protection when faced with limited support, from without or within.

Lori’s parable further positions supporters for the HHS mandate as already enjoying a privileged, well established network that distributes contraceptive coverage on a large scale, which is thus widely available to anyone who desires it:

...there is no imposition on the freedom of those who want to eat pork; that is, they are subject to no government interference at all in their choice to eat pork, and pork is ubiquitous and cheap and available at the overwhelming majority of restaurants and grocers. Indeed, some pork producers and retailers, even the government itself, are so eager to promote the eating of pork that they sometimes give it a way for free. (lines 36-40)

More succinctly we could say that Lori positions the cause (and, by extension, proponents) of contraceptive dissemination as “protected and successful”. Ascribing such a position to the government, and supporters of the HHS Mandate more broadly, reinforces one of the legal arguments against the legislation. While space precludes a more thorough explanation of the legal features of this case (see Gedicks, 2012; Lewis, 2012; or Whelan, 2012), one that resonates with this positioning move is the stipulation that the government must have a “compelling interest” in burdening religious institutions with a conscience-compromising law<sup>5</sup> (Whelan, 2012: 2181). Lori’s positioning of the government as already highly successful in disseminating contraception, undermines the argument that there is a pressing need, a compelling interest, to force religious institutions into providing these services against their will when it would only produce marginal increase in coverage.

Up until now, in our discussion of positioning, I have proceeded on the premise that Lori et. al’s positioning maneuvers derive from what Harré and van Langenhove (1991) call “first-order positioning”. “First-order positioning” is distinguished from “second-order positioning” in the following way:

First order positioning refers to the way persons locate themselves and others within an essentially moral space by using several categories and story lines...second order positioning occurs [when] the first order positioning is questioned and has to be negotiated. (1991, p. 396)

I would now like to suggest that it is not actually clear who has positioned whom first, and who is responding with second-order positioning. Obviously, in terms of the chronological order of the hearing, the majority has had the “first word”, and so calling their positioning of mandate advocates “second-order positioning” in light of the above definition may be questioned.

However, it was arguably the drafting, and then the issuing of the HHS mandate, which ignored the previously articulated concerns of religious bodies (see, for example, the UCCB letter from August 31, 2011) that intensified the debate in the first place. This constitutes an example of what Cobb (2006, p. 165) calls “imperviousness”, that is, “a strong and potentially lethal response to proposed positions [i.e., religious bodies’ concerns about contraception], disqualifying the Other not at the level of the content of the proposal, but at the level of having the legitimacy to have a proposal in the first place.” While not articulated verbally, then, the act of ignoring *is* an act of positioning, of calling another’s position invalid; and is perhaps the true first-order positioning in this conflict.

While the discussion of first-order vs. second order positioning may never produce a clear answer of who positioned whom first, it amounts to much more than a pedantic description of a “He said-she said” phenomenon. What is at stake, really, as Harré and van Langenhove (1991) point out, is that we see that the opposing positions *do not agree on the basic moral footing claimed by the other*, which is normally taken for granted in the course of daily interaction. Ultimately the wrangling (and there is some serious wrangling) in the COGR over *what the debate is about*, with minority committee members decrying the absence of women on the panel and majority committee members defending the panel as experts of religious liberty, implies not that the two sides were confused about why they came to Room 2154 of the Rayburn Office building on that Thursday morning. Rather, it shows that the two sides claim fundamentally different starting points, different moral foundations in presenting their cases.

### *A Post-Structuralist Perspective*

In this section I seek to tie together a few concepts that have been developed in the foregoing discussion. Notably, I would like to suggest that much of the functionalist treatment of positioning can be usefully recast in terms of power relations and the attempt to legitimize self and delegitimize the Other – a process which extends perhaps as far back as the choice of genre which was examined in the context of structuralism. Additionally, the irreconcilable moral footings evoked in the last section may here be seen as forming part of the struggle for legitimacy inherent to conflict narratives. Cobb (2006) addresses this component of conflict narratives, noting that they are often the site of a struggle over establishing who is in the right. The stakes, of course, are high in such a contest, as legitimacy constitutes a “discursive condition on which the privilege of access to resources depends” (p. 163). In this case, of course, the desideratum is either resources or exemption from a legal obligation depending on which side one considers, but the principle remains: legitimacy is the gate by which one must pass to reach a satisfactory outcome when there are dueling narratives. As our exploration of positioning theory made clear, two options exist for a side to build legitimacy: to claim it for one’s self (in so many words or positional moves), or to deny it to the other. In this section I focus primarily on the latter, the process of narrating the Other, adopting Benhabib’s (1992) distinction of the “generalized” vs. the “concrete” Other as our point of departure.

Benhabib faults modern moral theory, from Hobbes through John Rawls, for what she calls a “substitutionalist universalism” wherein the experiences of a certain group of people



(i.e., white men) come to be taken as “paradigmatic” of the human condition. That is, systems of normative justice (e.g., social contract theory) are built on a lopsided foundation that obscures the experience of other groups, notably women. Benhabib’s proposed “interactive universalism” on the other hand, “acknowledges the plurality of modes of being human, and differences among humans, without endorsing all these pluralities as morally and politically valid” (1992, p. 153). In this paradigm, true moral empathy is only attainable with a more nuanced view of the Other – the difference between what Benhabib calls the generalized vs. the concrete Other (the concrete being the more nuanced of the two visions of “Other”). In conceiving someone as a generalized Other, Benhabib explains:

[w]e assume that the other, like ourselves, is a being who has concrete needs, desires, and affects, but that what constitutes his or her moral dignity is not what differentiates us from each other, but rather what we, as speaking and acting rational agents, have in common...The norms of our interaction are primarily public and institutional ones. If I have a right to X, then you have the duty not to hinder me from enjoying X and conversely....The moral categories that accompany such interactions are those of right, obligation, and entitlement, and the corresponding moral feelings are those of respect, duty, worthiness, and dignity. (1992, p. 159)

One detects an echo of the terms used to describe the various positioning maneuvers of the last section. Indeed, from Benhabib’s perspective, Lori’s positioning of HHS Mandate advocates – especially the government – as overstepping its duty, infringing on rights, and in an inextricably public/institutional context, falls squarely into the master narrative of substitutionalist universalism. The conversation about justice in this case employs the Rawlsian “veil of ignorance” as a basic principle in its formulation of reciprocity, equality, and fairness. As Rawls explains, in order to decide what is fair, “The decider is to initially decide from a point of view that ignores his identity (veil of ignorance) under the assumption that decisions are governed by maximizing values from a viewpoint of rational egoism in considering each party’s interest” (Rawls, cited in Benhabib 1992, p. 160). But what implications does this step carry for how the decider has constructed the Other? Precisely, “the other as different from the self disappears” because he or she is conceived of through “total abstraction from his or her identity” (161).

The alternative to approaching moral theory in these terms is, as Benhabib explains, to adopt a “concrete” view of the Other. This obligates us to take account of individuals as just that: unique, individual selves with idiosyncratic needs, motivations, and desires. In

relating to a concrete Other, one abides by norms of “*equity and complementary reciprocity*” (Benhabib, 1992, p.159) according to which each individual may expect to be recognized as a unique being, with particular wants, talents, and abilities. One very practical implication of such a moral view is that this “otherness” cannot be known when the other is not heard, that is, without some degree of engagement. In the context of conflict narratives, Cobb (2006) identifies this engagement, this willingness to hear the Other, as the process of “elaboration” (p. 164-166).<sup>6</sup> She notes that the process of “opening” a conflict narrative:

Involves the construction of positive positions for the Self and the Other, owning participation in the unfolding events – past, present, and future – and participating in the elaboration of a moral framework that ‘contains’ the discourse positions of both parties...The result is a narrative that is collectively elaborated and generates interactional patterns that contribute to relational development. (2006, p. 166)

In terms of relational development, the picture is obviously complex in the case of the opposing sides in the HHS Mandate conflict. Does the relational work need to happen between religious institutions and government? Between religious institutions and special interest groups that support the legislation? Between religious bodies and the average person who feels that no exemption should be made to the mandate for religious employers? Perhaps the answer is some combination of all of these. However, if the microcosm of the COGR hearing is any indication, the view of the generalized Other remains the norm – on both sides – and little attempt at elaboration is observed.

As previously explained, Sandra Fluke was prevented from testifying before COGR members on the grounds that she lacked credentials to speak about the topic of the day, religious liberty. I have drawn a connection between bishop Lori’s positioning as “off-topic” those who argue for the pork mandate on the basis of pork’s inherent benefits (i.e., those who argue for the contraceptive mandate on the basis of contraception’s inherent benefits) and the fact that the chairman of the COGR, Rep. Issa, decided to block Fluke’s testimony. Building on this foundation, in terms of Benhabib and Cobb’s post-structuralist frameworks, one may further analyze the actions of these men – one a discursive act within a conflict narrative, the other an embodied, procedural act – in terms of their “Other orientation”. From Benhabib’s perspective, both of these actors succeed, one quite literally, in causing the “Other” to disappear. For Issa, this is the logical consequence of his seeing her not in her individuality as a particular woman, with particular needs, motivations, and desires (which, Fluke’s particularity notwithstanding, are representative of a larger population), but rather as a person

like any other person, whose general rights, duties and entitlements must be balanced alongside those of every other person. From Cobb's perspective, such a view of the generalized other prevents an opportunity for *elaboration*, which, critically, allows for a new, "better-formed" story that contains "the (discourse) positions of both parties" (2006, p.166). However, while this was an unfortunate result at the COGR hearing, it was perhaps inevitable given the nature of congressional hearings generally, which are, in every sense of the word, selective.

### **Conclusion**

This essay has attempted to answer the question of how a short narrative, delivered in the testimony of a panel-witness in a congressional hearing, shapes and reflects a political conflict on a larger scale. Exploring the parable of the kosher deli from a structuralist, functionalist, and post-structuralist perspective has revealed several key elements of how narratives can function in such a context. The choice of genre has been shown not only to facilitate communication via a culturally familiar structure, but also to reflexively position both the communicator and his audience. Also, the narrator's choice of the parabolic genre provided an efficient means for glossing over his adversary's most significant concerns: because parables are necessarily abstractions that are meant to reflect back on real situations, one can choose which elements to incorporate, and which to ignore about those situations in one's interpretation.

Additionally, we observed that narrative functions as an effective means for positioning an opposing side, as Bishop Lori's parable took aim at not only the government – positioned as an illegitimate disciplinarian and an inappropriate judge, but also at advocates of the HHS Mandate generally – characterized as "off-topic" or else blind to the most important issue. Part of this positioning, no doubt, was wrapped up in the choice of the genre of the parable, in addition to being the product of the parable's story.

Perhaps the most unfortunate effect of the parabolic genre, though, lay in its erasure of all salient characteristics of the supposed Other. Lori's narrative, in connection with the general stance of the majority members of COGR, viewed the opposing side as a generalized Other, ignoring the role of individual experience, needs, motivations, and desires in the attempt to make a case for broader exemptions to the HHS Mandate. Such a move short-circuited any possibility of elaboration in which both sides might have worked toward a mutually agreeable narrative which contained both of the moral perspectives presented.

Instead, these different narratives echoed past each other for the duration of the hearing, a dynamic that seems to have continued ever since. Indeed, much of the foregoing analysis could easily be applied to the rhetoric of the mandate's proponents. The testimony Fluke offered in her hearing, one week after the one discussed here, contained a series of narratives which, predictably (from the perspective of a conflict narrative analyst), painted a nuanced portrait of the particular trials encountered by women suffering from a lack of contraceptive coverage while gesturing only in the most abstract (generalized) terms toward the experience of religious objectors to the legislation.

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**Footnotes:**

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<sup>1</sup> Running slightly over his time at the end, Lori is interrupted by the chair of the COGR, Darrell Issa (R-Cal.) before being allowed to finish. The proceedings of the COGR hearing, transcribed in their entirety, may be found online at website of the U.S. Government Printing Office (see “COGR transcript” in the Bibliography).

<sup>2</sup> Etymology found in (“Parable”, Etymonline Website, 2012). The word “parable” meant the same thing in ancient Greek (*parabole*) as it does in modern English; I am simply drawing attention to the component lexical items for the purposes of illustrating *how* parables work.

<sup>3</sup> At the same time, I do not want to over-dramatize this point. Lori’s parable has a light-hearted aspect to it, bordering on the ridiculous and mock-heroic: not only is it an obvious anachronism, and a “mismatching” of faith traditions, but also it is spoken by a Gentile, who, as it turns out, was sitting three seats away from an Orthodox Jewish rabbi (another witness on the panel). Thus, Lori has chosen to speak from outside his own faith tradition, where his legitimacy as interpreter would be least open to question.

<sup>4</sup> This is simplifying the matter somewhat, as the minority (democrats) had not submitted Fluke’s candidature to the Committee in the agreed upon time-frame, even after being prompted repeatedly by the majority for their witnesses, as the transcript shows (p. 34-36). While I believe I have accurately represented Issa’s rationale, it should be noted that he ordered a link to Fluke’s previous press-conference appearance dealing with the mandate be entered into the record.

<sup>5</sup> This language comes from the 1993 Religious Freedom Restoration Act. As Whelan (2012, p. 2181) explains, “RFRA provides that the federal government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person: “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”

<sup>6</sup> Actually, elaboration involves an acceptance, rejection, or modification of the position (voice) of the Other, and as such may be constructive or destructive (Cobb, 2006:165). I am focusing here on the constructive aspects of the process.