LINDA GREENHOUSE, "Doesn't Eat, Doesn't Pray and Doesn't Love, *NY Times*, November 27, 2013

The question of whether for-profit companies can claim a religious identity, one that exempts them from obeying a generally applicable law, is fully worthy of the attention the Supreme Court is about to give it. But to the extent that much of the commentary about the challenges to the Affordable Care Act's contraception-coverage insurance mandate frames the issue as a debate about the rights of corporations – as a next step beyond Citizens United's expansion of corporate free speech – I think it misses the point. What really makes these cases so rich, and the reason the court's intervention will dramatically raise the temperature of the current term, lies elsewhere.

The religious-based challenges that have flooded the federal courts from coast to coast – more than 70 of them, of which the Supreme Court agreed on Tuesday to hear two – aren't about the day-in, day-out stuff of jurisprudence under the First Amendment's Free Exercise Clause: Sabbath observance, employment rights, tax exemptions. They are about sex.

As such, the cases open a new front in an old war. I don't mean the overblown "war on religion" that some Catholic leaders have accused the Obama administration of waging. Nor do I mean the "war on women" that was such an effective charge last year against a bevy of egregiously foot-in-mouth Republican politicians.

I mean that this is the culture war redux – a war not on religion or on women but on modernity. All culture wars are that, of course: the old culture in a goal-line stance against a new way of organizing society, a new culture struggling to be born. Usually, that's pretty obvious. This time, somehow, it seems less so, maybe because the battle is being fought in the complex language of law, namely a 20-year-old law called the Religious Freedom Restoration Act.

This tendentiously named statute, aimed at overturning a 1990 Supreme Court decision that cast a skeptical eye on claims to religious exemptions from ordinary laws, provides that the government "shall not substantially burden a person's exercise of religion" unless the burden serves a "compelling" government interest and is the "least restrictive means" of doing so.

What's a substantial burden? What governmental interest is sufficiently compelling? And with particular respect to the two new Supreme Court cases, is a for-profit corporation a "person" that can engage in religious exercise? The lower courts are divided, making it all but inevitable that the Supreme Court would step in. (One of the cases, Sebelius v. Hobby Lobby Stores Inc., raises only the statutory questions. The other, Conestoga Wood Specialties v. Sebelius, presents the First Amendment issue as well; the company's Mennonite owners, who employ nearly 1,000 people in their cabinet-making business, argued unsuccessfully in the lower court that the contraceptive coverage mandate violates both their own and their corporation's right to the free exercise of religion.)

It's of course a total coincidence that the Supreme Court granted these cases on the same day that The Times published a special section on the changing American family. But Natalie Angier's fascinating statistical and narrative portraits of the contemporary American household – declining birth rates; even more sharply declining marriage rates; 41 percent of babies born to unmarried parents, a fourfold increase since 1970 – offer some context for the sense of dislocation and alienation that, as much as anything else, seems to be driving the resistance to making contraception coverage, without a co-pay, a required part of employer-provided health insurance.

The religiously committed owners of the companies whose cases the court will decide – Hobby Lobby employs 13,000 people in its 500-store chain – say they object not to all birth control but only to the methods they believe act after fertilization to prevent a fertilized egg from implanting and continuing to develop. This belief is incorrect, as a brief filed by a coalition of leading medical authorities demonstrates; although there was once some confusion on this point, the disputed hormonal methods are now understood to prevent fertilization from occurring in the first place. European medical authorities recently reached the same conclusion and have changed the label on an emergency contraception pill to say it "cannot stop a fertilized egg from attaching to the womb."

There is something deeper going on in these cases than a dispute over the line that separates a contraceptive from an "abortifacient." What drives the anger about this regulation is that, as the opponents see it, the government is putting its thumb on the scale in favor of birth control, of sex without consequences. In a revealing article published earlier this year in the Villanova Law Review, Helen Alvaré, a law professor and longtime adviser to the National Conference of Catholic Bishops, describes the contraception mandate as the culmination of what she calls the "contraceptive project."

Professor Alvaré writes: "The churches opposing the mandate hold, and teach women and men to maintain, an understanding of the sacredness of sexual intercourse, and its intrinsic connection with the procreating of new, vulnerable human life." The government policy of covering contraception, she says, would have the effect in law of characterizing these teachings "as violations of women's freedom and equality."

As Professor Alvaré surely knows, nearly all Catholic women use birth control at some time during their reproductive lives and they have abortions at the same rate as other American women. And her article acknowledges a recent and widely reported study that found that the abortion rate dropped by as much as two-thirds among women in St. Louis, most of them poor, who volunteered for a two-year project in which they received free birth control; the women were able to choose the highly reliable long-lasting contraceptives that are priced out of reach for many women who will now be able to receive them under the Affordable Care Act.

To the extent that the "contraceptive project" changes anything on the American reproductive landscape, it will be to reduce the rate of unintended pregnancy and abortion. The objection, then, has to be not to the mandate's actual impact but to its expressive nature, its implicit endorsement of a value system that says it's perfectly O.K. to have sex without the goal of making a baby. While most Americans surely share this view, given the personal choices they make in their own lives, many nonetheless find it uncomfortable to acknowledge.

From the Obama administration's point of view, of course, the contraception mandate is about health care. The policy was based on a report by the Institute of Medicine that listed contraception as one of the "preventive services," along with immunizations and cholesterol and diabetes screening, among dozens of other services, that a comprehensive health insurance policy should provide.

The administration has framed this aspect of the Affordable Care Act as the implementation of evidence-based medicine, which of course it is and should be. But there's a missing piece. One of the failures of the Affordable Care Act saga, it seems to me, has been the president's unwillingness or inability to present universal health care as a moral issue, a moral right in a civilized society. Thus the administration meets the moral claims of its opponents in technocratic mode, one hand tied behind its back.

There's a powerful argument to be made, both in policy and law, that an employer of any faith or no faith who chooses to enter the secular marketplace can't pick and choose which rules to follow. As some of the federal judges who have rejected the religious claims in these cases have pointed out, no employer would have the right to tell employees that they can't use their wages to obtain contraceptives, abortions or any other legal product or service. By paying employees as the law requires, neither a corporation nor its owner is endorsing the employees' choice of what to spend their money on – no more than a local government endorses a parent's choice to use a taxpayer-funded voucher for religious-school tuition. The Supreme Court for decades has embraced the notion that an intervening private choice of this sort, even when a government program is clearly designed to channel public money to religious institutions, avoids what would otherwise be a violation of the First Amendment's Establishment Clause.

So now, once again, the court will have the last word. A ruling against the contraception mandate won't kill the Affordable Care Act – much as some justices might fervently desire that result. If the court grants the exemption the companies seek, its decision will most likely come packaged as an exercise in statutory interpretation. Only the old culture warrior, Antonin Scalia, can be counted on to acknowledge the deeper issues in play. But those issues will be there nonetheless, and that's what makes these cases so compelling.