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WHOM SHOULD A CATHOLIC LAW SCHOOL HONOR? IF CONFUSION IS THE CONCERN, CONTEXT MATTERS

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If a Catholic can vote for a pro-choice candidate when proportionate reasons justify that decision, can a Catholic law school honor a pro-choice public figure if there are proportionate reasons to do so? In other words, should the law school's inquiry focus simply on whether the honoree defies Church teaching on any matter of grave moral importance, or should the law school also consider the message communicated by the honoree in light of the broader context in which it would be extended? This short Essay suggests that a contextual approach is more consistent with the U.S. Bishops' instruction on this matter and avoids some of the collateral harm arising from a bright-line prohibition on honoring anyone who defies even a single aspect of Church teaching.

In what has become an annual rite of spring, the selection of commencement speakers serves as a convenient focal point for broader debates about the institutional identity and fidelity of Catholic colleges and universities. Although the debates' occurrence may have become perfectly predictable, the tenor and direction of the debates have displayed widely varying capacities to spur a renewed sense of mission on campus. The most readily discernible legacies of these episodes are as likely to be ad hominem attacks and divisive rhetoric as they are to include the reframing of institutional priorities and commitments. The United States Conference of Catholic Bishops ("USCCB") has provided a guideline for the commencement decisions, but its seeming simplicity renders it susceptible to being applied in a way that ignores context and closes off conversation. The bishops, in *Catholics in Political Life*, cautioned that "[t]he

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Catholic community and Catholic institutions should not honor those who act in defiance of our fundamental moral principles. They should not be given awards, honors or platforms which suggest support for their actions.”¹

The first sentence, applied without the second sentence, creates tension with the guidance offered elsewhere by the bishops about Catholics’ participation in public life. If the sole criterion for whether a person may be honored by a Catholic institution is whether she has acted “in defiance of our fundamental moral principles,” then the disqualification turns simply on whether the person takes a position that conflicts with any such principle. This stringent standard makes sense if the guideline’s objective is to ensure that honorees are in full agreement with the Church. It is not apparent, though, why that would or should be the objective.

John Paul II explained that “each Catholic University makes an important contribution to the Church’s work of evangelization” as a “living institutional witness to Christ and his message,” and thus “all the basic academic activities of a Catholic University are connected with and in harmony with the evangelizing mission of the Church.”² If the concern underlying the bishops’ guideline centers on the evangelizing capacity of Catholic institutions, then the guideline’s objective would be to avoid the confusion that can compromise that capacity. Note that this confusion is not about the Church’s authority but about moral truth. This is why Father John Jenkins, Notre Dame’s President, was misguided when he argued, in defense of his invitation to President Obama to serve as commencement speaker, that “[b]ecause the title of the document is ‘Catholics in Political Life,’ we understood this to refer to honoring Catholics whose actions are not in accord with our moral principles,”³ and that “only Catholics who implicitly recognize the authority of

¹ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Catholics in Political Life* (2004) (emphasis omitted), available at <http://www.usccb.org/bishops/catholicsinpoliticallife.shtml>.

² JOHN PAUL II, APOSTOLIC CONSTITUTION *EX CORDE ECCLESIAE* ¶ 49 (1990) (emphasis omitted), available at http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_15081990_ex-corde-ecclesiae_en.html.

³ Joseph Bottum, *And the War Came*, FIRST THINGS: MONTHLY J. RELIGION & PUB. LIFE, June/July 2009, at 63, 65.

Church teaching can act in ‘defiance’ of it.”⁴ The Church’s teaching aims at all persons of good will, not just Catholics. The truths proclaimed therein are binding not by virtue of some ecclesiastical jurisdiction but because they are true. The fact that an honoree is not Catholic may reduce the level of scandal caused by the defiance but does not preclude the possibility that disagreement with Church teaching constitutes defiance.

But should defiance on a particular issue necessarily preclude honoring a person? After all, the Church trusts the individual voter to make a prudent assessment of context in casting a vote for a candidate who defies Church teaching, even on a matter as fundamental as abortion rights. As part of the process that resulted in the *Catholics in Political Life* statement, for example, Cardinal Theodore McCarrick offered the reminder that “when a Catholic does not share a candidate’s stand in favor of abortion and/or euthanasia, but votes for that candidate for other reasons,” it is permissible if the reasons “are proportionate.”⁵ Similarly, in their 2007 statement, *Forming Consciences for Faithful Citizenship*, the bishops reminded Catholics that “a voter should not use a candidate’s opposition to an intrinsic evil to justify indifference or inattentiveness to other important moral issues involving human life and dignity,”⁶ and that “[t]here may be times when a Catholic who rejects a candidate’s unacceptable position may decide to vote for that candidate for other morally grave reasons.”⁷

This “proportionate reasoning” analysis is an awkward fit at the institutional level, though. Cardinal Ratzinger explained, in the context of individual voters, that

[a] Catholic would be guilty of formal cooperation in evil, and so unworthy to present himself for Holy Communion, if he were to deliberately vote for a candidate precisely because of the candidate’s permissive stand on abortion and/or euthanasia.

⁴ Margaret Fosmoe, *Is ND Catholic Enough?*, SOUTH BEND TRIB., May 10, 2009, at A1.

⁵ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Interim Reflections Task Force on Catholic Bishops and Catholic Politicians* (2004), available at <http://www.usccb.org/bishops/intreflections.shtml>.

⁶ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Forming Consciences for Faithful Citizenship* 11 (2007) [hereinafter *Forming Consciences*], available at <http://www.usccb.org/faithfulcitizenship/FCStatement.pdf>.

⁷ *Id.*

When a Catholic does not share a candidate's stand in favour of abortion and/or euthanasia, but votes for that candidate for other reasons, it is considered remote material cooperation, which can be permitted in the presence of proportionate reasons.⁸

The hard part, of course, is figuring out what constitutes a proportionate reason that would justify voting for a pro-choice candidate. Some bishops do not believe such reasons exist,⁹ but others appear open to the possibility.¹⁰ In the end, this question must be answered by the voter herself. As the bishops of Virginia explained, a person is obligated to "seek the 'mind of Christ' " in her voting judgments, but ultimately, the assessment of proportionality "is a matter for the individual conscience."¹¹

At the institutional level, it is not as simple as trusting the voter's intent. Voting is a moral obligation for individual Catholics;¹² honoring public figures is not a moral obligation for Catholic institutions. If a Catholic law school chooses to bestow an honor, the bishops are understandably concerned about muddled institutional messages. Because of the public nature of the institutional honor, there is a real potential for harm stemming from confusion caused by even a well-intentioned decision to extend an honor. The sin of scandal refers to "an attitude or behavior which leads another to do evil"¹³ and

⁸ Memorandum from Cardinal Ratzinger to Cardinal McCarrick, *Worthiness To Receive Holy Communion* (July 2004), available at <http://www.priestsforlife.org/magisterium/bishops/04-07ratzingerommunion.htm>.

⁹ See, e.g., ARCHBISHOP JOSEPH F. NAUMANN & BISHOP ROBERT W. FINN, JOINT PASTORAL LETTER, *OUR MORAL RESPONSIBILITY AS CATHOLIC CITIZENS* (Sept. 12, 2008), available at http://www.diocese-kcsj.org/_docs/JointPastoral-Moral-Cons-09-08.pdf ("[W]e cannot conceive of such a proportionate reason [to justify voting for a pro-choice candidate].").

¹⁰ See, e.g., Greg Kalscheur, S.J., *Catholics in Public Life: Judges, Legislators, and Voters*, 46 J. CATH. LEGAL STUD. 211, 236 (2007) ("[I]f a Catholic voted for a candidate despite his or her pro-choice stance, it would not necessarily be sinful.") (alteration in original) (quoting then-Archbishop Levada) (internal quotation marks omitted).

¹¹ Bishop Paul Loverde & Bishop Francis DiLorenzo, *The Voter's Responsibility*, 35 ORIGINS 370, 371 (2005) (quoted in Gregory A. Kalscheur, *Catholics in Public Life: Judges, Legislators, and Voters*, 46 J. CATH. LEGAL STUD. 211, 236–37 (2007)).

¹² CATECHISM OF THE CATHOLIC CHURCH ¶ 2240 (2d ed. 1997) ("Submission to authority and co-responsibility for the common good make it morally obligatory . . . to exercise the right to vote . . .").

¹³ *Id.* ¶ 2284.

typically “operates by giving a bad example.”¹⁴ If a Catholic law school honors an abortion rights advocate, there is a danger of scandal—in that students and other observers will be led to conclude that, if the school is willing to honor that person, abortion must not be a grave moral evil, or at least that opposition to legalized abortion is not of pressing importance. As Bishop John D’Arcy asked during the controversy over Notre Dame’s decision to honor President Obama:

In its decision to give its highest honor to a president who has repeatedly opposed even the smallest legal protection of the child in the womb, did Notre Dame surrender the responsibility that Pope Benedict believes Catholic universities have to give public witness to the truths revealed by God and taught by the Church?¹⁵

It is not obvious why every honor extended to a person who favors abortion rights would amount to a surrendering of this public witness. Unless we are willing to conclude that a Catholic law school’s failure to treat the honoree’s views on abortion as dispositive is categorically equivalent to such a surrender, there are many instances where the honor is unlikely to amount to “scandal” because the honoree is overwhelmingly associated with work through which the Gospel is proclaimed.

If avoiding confusion in the law school’s public witness is the objective, then the second sentence of the guideline is key: the honor should not “suggest support for [the honoree’s] actions” that are in defiance of Church teaching. The second sentence can and should be interpreted to permit an honor in the presence of proportionate reasons, tailored to the risk of scandal that accompanies the public nature of institutional honors. A Catholic law school should never honor a person *because* of their actions that defy the Church’s teaching. A Catholic law school may honor a person *despite* their actions that defy the Church’s teaching but only if the circumstances are such that the honor is unlikely to cause observers to question the school’s commitment to the truth of the Church’s teaching. In other words, if confusion is the concern, context matters.

¹⁴ Edward A. Hartnett, *Catholic Judges and Cooperation in Sin*, 4 U. ST. THOMAS L.J. 221, 237 (2006).

¹⁵ John M. D’Arcy, *The Church and the University*, AMERICA, Aug. 31–Sept. 7, 2009, at 13, 14.

Simplistic, single-issue approaches to institutional identity can spawn their own confusion. When an unmistakably Catholic college is forbidden from honoring a public figure who has unmistakably contributed to the common good, but who disagrees with Church teaching on a single issue, there is a danger of confusion to Catholics and non-Catholics alike regarding the expansive range of the moral issues of concern to the Church. If a tireless advocate against the death penalty, such as Sister Helen Prejean, is disqualified from serving as a commencement speaker because she has made questionable statements regarding the legal treatment of abortion,¹⁶ there is a real danger that the public will conclude that the Church's focus is so narrow that it excludes acknowledgement of productive, counter-cultural work in other areas.

In *Forming Consciences for Faithful Citizenship*, the bishops cautioned that “[t]wo temptations in public life can distort the Church's defense of human life and dignity.”¹⁷ The first “is a moral equivalence that makes no ethical distinctions between different kinds of issues involving human life and dignity.”¹⁸ We must remember that the “direct and intentional destruction of innocent human life from the moment of conception until natural death is always wrong and is not just one issue among many.”¹⁹ The second temptation, though,

is the misuse of these necessary moral distinctions as a way of dismissing or ignoring other serious threats to human life and dignity. Racism and other unjust discrimination, the use of the death penalty, resorting to unjust war, the use of torture, war crimes, the failure to respond to those who are suffering from hunger or a lack of health care, or an unjust immigration policy are all serious moral issues that challenge our consciences and require us to act. These are not optional concerns which can be dismissed.²⁰

¹⁶ See, e.g., Pamela Schaeffer, *Harrisburg Bishop Bows out of Anti-Death Penalty Event Featuring Sr. Helen Prejean*, NAT'L CATH. REP., Feb. 28, 1997, at 3 (reporting on an interview in which Sr. Prejean had commented that she regards abortion as “much more complex than a mere choice” and that “to answer the abortion question so that women don't have them, we really have to look seriously at the whole thing of birth control, family planning and not having unwanted pregnancies”).

¹⁷ *Forming Consciences*, supra note 6, at 9.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

If the overarching concern is maintaining the distinctive Catholic witness of Catholic institutions and if that distinctive witness must not ignore the panoply of “serious moral issues that challenge our consciences and require us to act,” then the implementation of the bishops’ guideline requires a more nuanced and intensive account than identifying a single-issue conflict between the honoree and Church teaching. We must ask whether the honor suggests, under the circumstances, support for the honoree’s defiant actions.

If the permissible honoree inquiry excludes a proportionate reasons analysis, we lose the opportunity to draw distinctions among the vast number of potential honorees who do not abide by all of the Church’s moral teachings. Would a Catholic law school’s decision to honor pro-choice President Carter in 1977 pose a different risk of confusion than honoring pro-choice President Obama in 2009? Should honoring either President be treated as equivalent to honoring someone like Frances Kissling, who is known only for her defiance of Church teaching on abortion? What about timing? Would honoring pro-choice President Carter pose a different level of concern than honoring—still pro-choice—former President Carter, now known widely for his post-Presidency work promoting affordable housing? Is Notre Dame’s decision to honor President Obama in the months after several of his most controversial sanctity-of-life decisions more problematic than if the honor was delayed for a year or two?²¹

Further, the failure to consider context also precludes distinctions among the honoring institutions. If we are concerned with confusion, the message communicated by the honor can only be understood in light of the school’s overarching witness to the truth of the Church’s teaching. Take, for example, the decision by Xavier University in New Orleans to invite Donna Brazile, the first African American to lead a national presidential campaign, to speak at commencement. Would any

²¹ See Rick Garnett, *More on Commencement Speakers/Response to Rob*, MIRROR OF JUSTICE (Mar. 23, 2009, 7:13 PM), <http://mirrorofjustice.blogs.com/mirrorofjustice/2009/03/more-on-commencement-speakers-response-to-rob.html> (“I am not ruling out the possibility that Notre Dame could invite President Obama to speak at graduation. . . . But now? There is no way to avoid the impression, given the recent stem-cell and abortion-related decisions, that Notre Dame is un-bothered by these deeply unjust actions.”).

reasonable observer believe that Xavier—the only historically Black Catholic university in the Western Hemisphere—invited Brazile to speak because she is pro-choice? Would an observer associate the honor in any significant way with Brazile’s views on the legalization of abortion?²² Or would the honor be viewed as keeping with the university founder’s call to “her church and her nation to be true to the gospel and to the Bill of Rights”?²³

More fundamentally, though, the institutional context matters, not just as a descriptive reality, but as a normative claim, because in the long run, identity flourishes more through proactive witness than through omission. If a university aims to be true to the bishops’ objective, the university needs to carry out its responsibility as a public witness. It should not be as simple as maintaining a “do not honor” list; that can be a relatively costless exercise, and while it might avoid confusing the school’s message, it does not substitute for the message itself. Notre Dame, for example, has made strong institutional commitments to pro-life causes over the years,²⁴ and those commitments directly shape the perception of the honors the university extends.

A contextual approach is far from straightforward, to be sure. Our evaluation of the weight afforded to an honoree’s witness notwithstanding the issue on which she defies Church teaching is likely to turn, to some extent, on the weight we afford to that issue itself. For many Catholics, no amount of good facilitated by the work of an anti-death penalty crusader or advocate for the poor can outweigh the harm of their pro-choice views. Nor, under this view, could an institution’s robust Catholic identity on other issues mitigate the scandal occasioned by honoring such a person. Other Catholics may use a contextual approach to focus on the Church teachings that best comport with their own political and ideological preferences, allowing them to downplay the importance of teachings that do not easily

²² See Bruce Nolan & John Pope, *Hughes Snubs Xavier Graduation Ceremony; University Honors Woman, Supporter of Abortion Rights*, TIMES-PICAYUNE (New Orleans), Apr. 24, 2009, at 1.

²³ *Xavier University Mission*, www.xula.edu/mission/fullstory.php (last visited Mar. 28, 2011).

²⁴ See, e.g., *Fund to Protect Human Life*, NOTRE DAME CTR. FOR ETHICS AND CULTURE, <https://sites.google.com/a/nd.edu/the-notre-dame-center-for-ethics-and-culture/fund-to-protect-human-life> (last visited Mar. 28, 2011).

fit with their own priorities. In other words, does a contextual approach simply bring “cafeteria Catholicism” to the law school’s selection of a commencement speaker?

Admittedly, evaluations of context will be subjective, but some subjectivity on the question of scandal is unavoidable. Including context holds promise for the honoree inquiry because it expects institutional actors to consider Catholic witness—that of both the honored individual and the honoring institution—as a whole. Under a single-issue approach, Catholic institutions are placed in a position of either (1) unnecessarily curtailing their capacity to honor lives that contribute to the common good, thereby risking a different sort of scandal by portraying the culture-transforming scope of Church teaching in misleadingly narrow terms or (2) ignoring the guideline as an impractical and onerous imposition, which creates its own scandal by openly rejecting the bishops’ teaching authority. A contextual approach expands the options.

There is nothing wrong with viewing the honoring of a pro-choice figure as a *prima facie* case of scandal, but the ultimate conclusion must demonstrate more than a single identifiable conflict between Church teaching and the honoree’s position. Critics of the honor should, in keeping with the bishops’ guideline, explain why the honor compromises the institution’s witness under the circumstances. By the same token, the institution should be prepared to explain why the honoree’s life and work merit recognition, and why the point of conflict with Church teaching does not compromise the institutional witness. Grounding the objection in the particular factual circumstances—the lived witness of the honoree, the demonstrated commitments of the institution, and the status of the disputed teaching in the surrounding culture—can serve as an invitation to deeper conversation and an impetus to identity-enhancing action.

In the debates surrounding commencement speakers, there is a temptation to wield the first sentence of the bishops’ guideline like a hammer, pounding any institution that honors a person who holds views that depart from Church teaching. The Cardinal Newman Society exemplifies this approach, regularly

compiling a list of offending institutions.²⁵ In 2009, the Society challenged Saint Vincent College's selection of Senator Robert Casey as commencement speaker because, though Casey is widely hailed as one of the few pro-life elected officials in the Democratic Party, he "has stated his support of federal funding for contraceptives," "supported the legalization of homosexual civil unions," and endorsed Barack Obama for President.²⁶ Utilized in these terms, the guideline functions as a conversation stopper. The second sentence of the guideline brings context into the inquiry. Especially when the inquiry includes not just the overarching work and public perception of the honoree but also the overarching identity and commitments of the institution, the bishops' guideline can spark a productive conversation about what it means to be an institutional witness to truth in a culture that appears increasingly committed to truth as a subjective construct of the individual.

²⁵ See, e.g., *In Aftermath of Notre Dame Controversy, Catholic College Commencement Scandals Decline in 2010*, CARDINAL NEWMAN SOC'Y, <http://www.cardinalnewmansociety.org/CardinalNewmanSociety/tabid/36/ctl/Details/mid/435/ItemID/824/Default.aspx> (last updated June 21, 2010).

²⁶ *Saint Vincent '09 Commencement Speaker Is Bob Casey Jr.*, CARDINAL NEWMAN SOC'Y (Dec. 2, 2008), <http://www.cardinalnewmansociety.org/CampusSpeakerMonitoring/tabid/64/ctl/Details/mid/463/ItemID/321/Default.aspx>.