

# The Freedom to Bear Witness - Fall Academic Convocation Address Ave Maria University

## **Introduction: The Distinctiveness of Catholic Institutions**

Let me begin with a word of thanks to you, President Towey, for your kind invitation to address the fall academic convocation here at Ave Maria University. My warmest greetings to the members of the University administration and faculty and most especially to the students of Ave Maria University. I'm delighted to have the opportunity to reflect on the question of the freedom the Church's institutions of education and charity to bear witness to the faith upon which they were founded.

Ave Maria University is a case in point. In addition to paying tribute to its idyllic setting in sunny Southwestern Florida, the mission statement of Ave Maria University says this: "Founded in fidelity to Christ and His Church, in response to the call of Vatican II for greater lay witness in contemporary society, Ave Maria University exists to further teaching, research, and learning at the undergraduate & graduate levels in the abiding tradition of Catholic thought..." Note that the university sees itself as *bearing witness to Christ and to the Church* in the context of higher education and its essential functions. Far from seeing the Church's faith in Christ as a constraint, this University is rooted in the conviction that Christ, the key to human history, unlocks and expands the human capacity for unity, truth, goodness, and beauty.

Something similar can be said of other Catholic institutions. Many were founded by saints. To be sure, they saw human need and accepted the duty to create a better society. But they were first and foremost believers seeking true holiness. The driving force behind the institutions they founded was Christ and his love for us. They sought to bear witness to his love by serving the needs of the poor. This is why in 1808, on Paca Street in Baltimore, St. Elizabeth Ann Seton opened the first Catholic school in the United States and why the First Provincial Council of Baltimore in 1829 decreed that Catholic schools should be erected wherever possible. Or why was it

that St. Jeanne Jugan's sisters, the Little Sisters of the Poor, opened homes for the aged-poor throughout the United States or that dioceses across this nation established Catholic charities?

Catholic schools, hospitals, and social service agencies were begun by men and women of faith, very often by religious sisters, to witness to the faith by serving those in need. Without using the word "evangelize", they in fact were evangelizing, not by preaching a sermon but by bringing the Gospel to bear on real human needs. And to this day Catholic institutions bear witness to a vision of human life and dignity that flows from faith in Christ and membership in His Church, ...a faith in the One who, "in revealing the Father and His love, fully reveals us to ourselves and brings to light our most high calling" (GS, no. 22).

### **Background and History**

In the 19th century there were many debates and controversies about the place of the Church in American society. Particularly acute was the question of how much "at home" the Catholic Church could be in a society where religious pluralism was both tolerated and encouraged. The Church and her institutions also faced the headwinds of nativism and prejudice. Nonetheless, those institutions flourished in the United States, as the 19th century gave way to the 20th.

Our institutions were supported by a growing number of U.S. Catholics. Their contributions not only built churches and parochial schools but also helped to build and support charities, orphanages, hospitals, and colleges. It was simply understood by Catholic communities everywhere that these were legitimate and important things for the Church to be engaged in, both because so many Catholic immigrants were streaming into the United States, and also because these institutions extended the work of Christ, especially his work of healing and teaching. Today the impact of Catholic institutions and ministries of service remains enormous.

One reason why these institutions flourished was the freedom they enjoyed. Throughout our nation's history, religious institutions had a free hand in determining how they would be organized and operated. For example, in spite of efforts to outlaw Catholic schools or in spite of initiatives such as the Blaine Amendment(s) which forbade governmental aid to church-run schools, especially

Catholic schools, our schools were free to organize themselves as they saw fit. And even with the advent of modern educational standards, Catholic schools enjoyed a large measure of autonomy, including higher education.

In recent times, more and more federal and state standards for education, healthcare, and social services have been established. Without surrendering their identity and mission, Catholic institutions complied with and often exceeded such standards. These church institutions also maintained their identity and autonomy even as they became more involved with government programs, such as Social Security, Medicare and Medicaid, as well as government contracts and cooperative agreements. Likewise they maintained the freedom of their convictions in the development of modern-day employee benefits packages such as pension funds and healthcare insurance plans, even though such programs were (and are) subject to governmental oversight.

So long as society maintained a spirit of tolerance for the role of religion and at least a loose consensus on the dignity of human life as well as the importance of traditional marriage and family life, there were relatively few problems. In the last half of the 20th century, however, that consensus would gradually crumble. Sadly, over these past decades, many Catholics accepted new societal attitudes regarding abortion, homosexuality, and marriage, beginning with the widespread rejection of *Humanae Vitae* in 1968. While young people are increasingly rejecting abortion on demand, many reject the church's teachings on sexuality and marriage and some studies suggest that things will be worse before they are better. It is to be questioned whether our pastoral resources are adequate to meet current and future challenges.

All this was a long time in coming and it unfolded gradually, by fits and starts. But before the cultural changes of last decades of the 20th century became apparent, the legal tectonic plates had begun to shift, especially after World War II. One harbinger of change was *Everson vs. Board of Education* in 1947, a landmark Supreme Court decision which ruled that the 1st Amendment non-establishment clause applied not only to the federal government but also to the states. The immediate issue was the use of state funds to reimburse parents in New Jersey for the cost of their children's taking public transportation to private religious schools.

All nine Supreme Court Justices, both the majority and minority, opined that the Constitution mandates a complete separation between government and religion. Many scholars say that this decision paved the way for later decisions that contributed to a less hospitable judicial and legislative environment for religious institutions.

These cultural and legal shifts emerged in dramatic form with the *Roe vs. Wade*, the Supreme Court decision in 1973 that legalized abortion nationwide. Yet, even then, there remained enough of a consensus about the value of religion and its institutions that a series of protections were put in place, enabling churches and church institutions to continue their ministries while remaining true to their teachings, internally and externally. Consider, for example, the 1973 Church Amendment, federal legislation that gave broad conscience protection to religious and conscientious healthcare providers with moral objections to abortion and sterilization. It became a model for conscience protection at the federal level, such as the Hyde-Weldon amendments.

In the meantime, in 1990, came the Supreme Court decision, *Employment Division of Oregon vs. Smith* which lowered the bar for governmental intervention in the internal affairs of a religion. It held that the government does not have to show a “compelling interest” in enforcing neutral and generally applicable laws that interfere with religious practices. If these religious groups want redress, they should seek it from the legislature. Otherwise the High Court feared these religious organizations would become ‘a law unto themselves’ and would claim every conceivable type of exemption, from compulsory military service, to paying taxes, to discriminating against others.

Realizing that the *Smith* decision created an imbalance, the Congress, with broad bipartisan support, passed the Religious Freedom Restoration Act (R.F.R.A.) signed into law by President Clinton in 1993. Many individual states enacted similar measures, though today enacting such statutes runs into stiff opposition. Echoing the worst implications of *Smith*, opponents now characterize federal and state R.F.R.A.’s as “a license to discriminate”, because they *might* protect churches and conscientious individuals from having to support, directly or indirectly, same sex marriage... And, R.F.R.A.’s, important as they are, can be defeated or repealed.

Stepping back, we note that even with state R.F.R.A.'s, some state legislatures were emboldened to enact or at least enable state contraceptive mandates upon which the federal H.H.S. mandate is modeled. City and town councils began to pass non-discrimination ordinances many without any religious freedom protections, and they continue to do so. It is now all-too-apparent that religious freedom is threatened when it is largely at the mercy of lawmakers and bureaucratic rule-makers.

### **The Current Situation**

Until recently, specific federal conscience laws and the federal R.F.R.A. provided broad conscience and religious freedom protections nationwide. The H.H.S. mandate, then, represents a turning point, a crossing of the Rubicon. Many believe it is a major shift in federal policy, from which there will be no turning back in the foreseeable future. Not only is it a definitive departure from the protections until now afforded to churches, church institutions, and conscientious employers, it also involves the government in classifying church institutions and in deciding which are fully religious and which are less so. Houses of worship are exempt from the H.H.S. mandate to provide contraception, abortifacients, sterilization, and reproductive counseling (C.A.S.C. "benefits") in their employee health care plans, while religious institutions that serve common good are given an "accommodation". This means that the very act of registering with the government our moral objections to providing proscribed C.A.S.C. "services" in our employee healthcare plans triggers and enables the provision of those very things, using our health plans and employer relationship as the vehicle.

Here the government is capitalizing on the unpopularity of the Church's teachings on contraception, abortifacients, sterilization, and reproductive counseling (C.A.S.C.). Sometimes even opponents to the H.H.S. mandate will say "It's not about contraception" - but here I would urge great caution. The Church's teaching on human life at its origins may be widely unpopular and certainly our people have not been adequately formed to accept this teaching. Nonetheless, these teachings are true, life-giving, part and parcel of the Gospel of Life and *the fact remains we will never defend our freedom unless we are willing to defend our teaching*. Further, the contraceptive mandate is likely a wedge issue toward a larger agenda of imposing an abortion mandate on all healthcare plans. As some predicted when the Supreme Court handed down the *Smith* decision, unpopular churches and church teachings

would be disadvantaged.

Clearly our institutions of education and service have entered a more challenging environment for bearing witness to Christ and his teaching. This environment has deteriorated due to factors *within* the Church, including: lessened church attendance, scandals and divisions within the Church, and diminished knowledge & acceptance of church teachings, especially moral teachings. But that environment has also been made difficult by factors *external to* the Church, including: the societal loss of consensus on moral values, the view that religion as a cultural force is spent, and laws, rules, and court decisions that reflect those changed attitudes.

### **The Nature of Christian Witness**

Christianity was born into a hostile environment from which it did not shrink. Rather, led by the Apostles, the Church bore witness to Christ, the living Word of God, and through Christ and in the Holy Spirit worshipped “in spirit and in truth”. Evangelization, instruction, and the prayerful encounter with Christ in the Eucharist led to the witness of charity, loving one’s neighbor in need as Christ would love him. This witness to Christ’s love was made even to the point of shedding blood.

St. John Paul II includes in his encyclical on the moral life, *Veritatis Splendor*, a reflection on the witness of martyrs to moral truth. “This witness makes an extraordinarily valuable contribution to warding off, in civil society and within ecclesial communities themselves, a headlong plunge into the most dangerous crisis which can afflict man: the confusion between good and evil, which makes it impossible to build up & to preserve the moral order of individuals & communities” (VS, no. 93). He also warns that moral relativism threatens freedom (*ibid*, no. 101) and teaches that evangelization always includes the proclamation of moral truth (*ibid*, no. 106). Let me observe here that we don’t usually have to bear witness to *popular* teachings but rather to a Savior whose teachings demand of us conversion of life, and this is certainly the case with the Church’s teachings on sexuality and marriage! St. John Paul II also made clear that the Church’s witness to moral truth guides her charitable activity and her work to create a just society. In his exhortation on *The Church in Europe*, he coined the term, “a charity that evangelizes” (*Ecclesia in Europa*, no. 33).

Yet the witness offered by the Church from its earliest times was not confined to acts of kindness done by individual Christians. Pope Benedict, in his Encyclical, *Deus Caritas Est* explains that from the very beginning, the Church's charities were organized, i.e., corporate, and they were a constitutive part of the Church's life (cf. DCE, no. 20). Evidence of this exists in the Acts of the Apostles, in the writings of St. Justin Martyr, in the martyrdom of the deacon St. Lawrence, in the 4th century *diakonia* of the Church in Egypt, and in the writings of Pope St. Gregory the Great. Pope Benedict XVI tells how, in the 4th century, Julian the Apostate, who succeeded Constantine and sought to restore the old pagan order, despised Christianity, except for one feature – its organized charities – and he planned to make this a feature of his neo-pagan religion (*ibid*, nos. 22-24). These organized services addressed true human needs yet were also spiritual – a manifestation of God's love through a 'well-ordered love of neighbor' (*ibid*).

In his *Motu Proprio* entitled, "On the Service of Charity," Pope Benedict applied his teaching in *Deus Caritas Est* to the organized charitable activity of the Church, such as Catholic charities. Reminding us that proclamation of the Word, worship, and charitable service are essential and inseparable components of the Church's life, he called for the Church's charities to bear witness to the spirit of the Gospel and adjured them "to follow Catholic principles in their activity" and "not [to] accept commitments which could in any way affect the observance of those principles" (§ 4). The Pope's directives presume our institutions have a religious & moral personality, described in the *Code of Canon Law* by the term "juridical person" (CIC, II, 96-123).

In his message to the Knights of Columbus last August, Pope Francis urged the Knights to resist the tendency to relegate religion "to the inner sanctum of personal life, without influence on societal or national life, without concern for the soundness of national institutions, without a right to offer an opinion on events affecting society" (cf. EG, no. 183). And in the same vein, Pope Francis more than once has taught that the Church's charities should not be mere "non-governmental organizations" but should retain the spirit of the Gospel and bear explicit witness to Christ's love.

Retaining the spirit of the Gospel means more than distancing our institutions of

service and education from moral evil. It means more than merely refraining from giving the kind of bad example that undermines people's faith or encourages them to engage in wrongdoing. Rather, keeping the spirit of the Gospel means that Catholic institutions are to bear witness in love to the full truth about the human person by providing social, charitable, and educational services in a manner that fully reflects the God-given dignity of the human person. During the debates at Vatican II on the text of the *Declaration on Religious Liberty*, the future John Paul II famously said, "there is no freedom without truth." If we believe the Church's teachings on sexuality and marriage are authentic manifestations of true human dignity, then defending these teachings will be linked to our defense of religious freedom.

The witness of our institutions extends not only to the works performed, but as Pope Benedict points out in his *Motu Proprio*, to the profile of the people who deliver such goods and services. For such organizations to be Catholic, there must be a critical mass of employees who are practicing, believing, Catholics abiding by the teaching of the Church; those who are not Catholic must respect the Church's teaching and the moral truths, values, and virtues that flow from that teaching. Further, in an era when transparency is rightfully a by-word, the witness of our institutions penetrates to how these institutions operate. Just as an individual is a flawed witness to Christ if he or she has failed to accept the Gospel, even in some very private way, so too the evangelical witness of our institutions is flawed, even blunted if they make compromises with evil or introduce into their culture a word contrary to the Gospel of Life and Family. How heartbreaking that an underage daughter of an employee of Catholic charities would receive abortion counseling through his health insurance plan even if indirectly. The witness of a charity that evangelizes is indeed more than external programming, good and necessary those programs and services may be, but goes to the very faith-core of the institution that provides those services: to its leadership, employees, and the integrity with which its business is conducted.

### **The Real World and the Principles of Cooperation**

At this point, someone might well tell me to "get real". After all, while the Church's institutions are called to bear witness to Christ, they must do so in the "real world" where daily we bump up against evil and have to find a way deal with it. My interlocutor might well say to me, "You're a conscientious Catholic, aren't you? Yet you pay taxes knowing full well that your tax dollars support things contrary to the



Church's teaching." And it's true: everyday people face difficult moral dilemmas. Consider the dilemma of a conscientious nurse who is asked to prepare an operating theatre where abortions are done or a pharmacist who is required to fill a prescription for an abortion-inducing drug.

Because people daily face these and other such problems, the Church has developed what are called the Principles of Cooperation. They are very helpful for arriving at sound moral decisions in a complicated world where we can become accomplices in moral evil, wittingly or unwittingly, willingly or unwillingly. Without discussing these principles in detail, let me cite the broad distinction they make between formal and material cooperation. When we formally cooperate with evil, we willingly share in the malice of the act itself (the flawed moral nature of the act itself and the end toward which it is directed) as well as in the principal agent's perverse frame of mind. For example, a boyfriend formally cooperates in his girlfriend's procuring an abortion if he urges her to get an abortion and drives her to the clinic. If leaders of Catholic a particular Catholic institution agree with the government that the universal provision of C.A.S.C. "services" is a good thing, and work with the government to ensure the Catholic institution is obliged to do so, then we are in the realm of formal cooperation. By contrast, when we materially cooperate, we do not freely or willingly share in the badness of the act itself (its flawed moral nature and end) or in the principal agent's evil intent, even if, in some way, we help perform the act. If those who lead our institutions reject as moral evils the C.A.S.C. "services", and do not want to provide for them, even indirectly, in their health insurance plans and this as a matter of deeply held religious and moral conviction, then we are in the realm material cooperation. So, for them, the H.H.S. mandate would likely entail material, not formal cooperation.

Now there are degrees of material cooperation, the two main types being proximate (which is generally considered immoral) and remote (which may or may not be morally permissible). These types of cooperation have to do with how much moral "distance" there is between the secondary agent & the evil action and intentions of the principal agent. Let us grant, only for the sake of argument, that the H.H.S. mandate is a matter of remote material cooperation - Would that then then solve the problem for us? Not really, because three essential points must be added: First, remote material cooperation is *not* automatically morally permissible; second, in

cooperating materially, one may never perform an intrinsically evil act, and third, one may never give scandal, *the diametric opposite of bearing witness*.

It's on this last point I'd like to focus in offering a few concluding thoughts on the application of the Principles of Cooperation to the H.H.S. mandate and similar challenges. As noted earlier, authentic religious freedom includes not only freedom to worship but also the freedom to serve the common good, and in the process, the freedom to bear witness to Christ through serving others. Such witness is heroically borne in times of persecution, as we now see in Iraq, Syria, Egypt, the Sudan & other places where many are being martyred. Yet, even in the complexities of pluralistic, democratic societies, the witness to be given often requires prudential judgments on how to cooperate in serving the common good without entangling our institutions in evil such that their witness to Christ is blunted. Thus, before we decide we can live with any form of cooperation, however remote, in the provision of so-called "services" that are against the Church's teaching, let ask ourselves what *really* are we doing. In other words, let's step back from the trees so that we might see the forest. If we were go along with the H.H.S. mandate, even in its present form, we may well be doing the following five things:

First, we'd be agreeing to a bureaucratic governmental decision to classify our institutions, peeling off service from worship in a way that violates the inseparable unity of Word, Worship, and Charity (DCE, no. 20). If we acquiesce to this insistence of the government on this point we will face a future where are (a) houses of worship and (b) almost every other church institution will be treated as an N.G.O., that is, an essentially private sector agent of government policy. We must not be complicit in letting the federal baseline drop, in going along with the loss of strong federal protections, lest the freedom of these institutions to bear witness be extinguished. Second, if we agree to the accommodation, we'd be acting in the face of a substantial risk that our insurance premiums are ultimately paying for C.A.S.C. services in our church employee benefit plans. To those who say that the funds involved are so small as to be morally negligible, I would point to the importance of socially responsible investing. The impact of a church's investment dollars on a multi-billion dollar company is negligible - but the witness given by such conscientious investing is invaluable. Third, it might be said that we should drop our objections to the mandate because it is likely a case of remote material cooperation,

not formal cooperation. How remote such cooperation may be is a matter for debate but let me just observe in passing that there would be *no religious liberty* issue if the mandate and its accommodation were a matter of formal cooperation. If we were formally cooperating, we'd be in agreement with the government's action and intent and we'd be taking steps ourselves to implement them; that is, the government would not be coercing us *against* our will, but instead would be mandating a course of action *in concert* with our will. Formal cooperation with the mandate is indeed a serious *moral* issue. But we have a *religious liberty* issue precisely because the mandate is likely a case of *material* cooperation: we regard the C.A.S.C. "benefits" as immoral; we have a church-state conflict precisely because we are *unwilling* to become accomplices in the government's determined efforts to provide them universally. Thus we are scrambling to find a way out of any form of cooperation whatsoever – and we are looking to restore the freedom and autonomy conscientious employers and church institutions previously enjoyed. Fourth, the H.H.S. mandate is clearly taking us down the proverbial slippery slope. During the Supreme Court hearing on *Hobby Lobby*, Justice Kennedy asked Solicitor General Verrilli whether or not the H.H.S. mandate could be extended to cover abortions. Verrilli could not show why that could not happen but he promised it wouldn't. Frankly, my friends, we can't bank on such a promise nor should we have to. Our freedom to bear witness to the dignity and sanctity of life should be guaranteed not by the promises of government officials but by the Bill of Rights! Fifth and finally, all this shows how our going along with the H.H.S. mandate, even with its current accommodation, diminishes the Christian witness of our institutions and puts us at odds with the martyrs 'whose blood is the seed of the Church.' It also shows the importance of Ave Maria and other institutions like it in forming a new generation of Catholic leadership that is spiritually and intellectually equipped to take up the dual challenge of the New Evangelization: that of giving authentic Christian witness in an increasingly hostile society while re-thinking critical legal and social issues, such as religious liberty, from an authentically Christian perspective.

Thank you for listening! God bless you and keep you always in His love!