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Notre Dame's swing at Obama is, unfortunately, deserved

by Douglas W. Kmiec



President Barack Obama speaks in Texas in 2011. (CNS/Reuters/Jim Young)

COMMENTARY

Four years ago, Notre Dame fought to award President Barack Obama an honorary degree.

This week, the Fighting Irish have effectively sued their honorary graduate in federal court.

When he arrived beneath the Golden Dome, the president had just finished a campaign inspiring hope for the "change we need" in which he swept the Catholic vote by unprecedented percentages in key electoral states. Within months of the Irish honoring him, Obama adroitly helped steady a nation that for all practical purposes had been economically defrauded by sharp bank and securities practice.

Obama complimented Notre Dame's chief executive, Holy Cross Fr. John Jenkins, for "doing an outstanding job as president of his fine institution, and for his continued and courageous commitment to

honest, thoughtful dialogue." As laudatory as that compliment was, it was the least the new president could have said to a priest who in the months leading up to that day and every day since has borne criticism from virtually every American Catholic bishop and suffered a vicious anti-Notre Dame campaign aimed at scaring away donors.

The pro-abortion, even pro-infanticide, label tossed at Obama throughout the 2008 campaign was both unfair and contestable. The president is pro-decision-making by pregnant women, but he is not at all shy of saying how he hopes the decision would be made. Here is what the president said to the Domers:

"Maybe we won't agree on abortion, but we can still agree that this is a heart-wrenching decision for any woman to make, with both moral and spiritual dimensions.

So let's work together to reduce the number of women seeking abortions by reducing unintended pregnancies, and making adoption more available, and providing care and support for women who do carry their child to term. Let's honor the conscience of those who disagree with abortion, and draft a sensible conscience clause, and make sure that all of our health care policies are grounded in clear ethics and sound science, as well as respect for the equality of women."

It was a fine speech, though not as good as Jenkins' introduction. Jenkins rejoiced in the president's triumph over racial hatred, his personal commitment to the needs of the poor, and his deep skepticism toward war. Jenkins said:

"President Obama has come to Notre Dame, though he knows well that we are fully supportive of church teaching on the sanctity of human life, and we oppose his policies on abortion and embryonic stem cell research. Others might have avoided this venue for that reason. But President Obama is not someone who stops talking to those who differ with him."

The president has not stopped talking, but is he listening? Instead of an administration fully reflective of Obama's personal commitment to religious liberty, there is an episodic presidential aloofness that permits the best and worst treatment of this sensitive subject.

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That is not an acceptable way to govern or to conduct dialogue. Notre Dame extended herself in the midst of profound and costly controversy; she thought, and the president more or less confirmed, that the commencement represented a first, not a last, conversation on the protection of human life.

The hard work of dialogue has not occurred. Now, to be sure, the president has done many useful, important, even noble things -- holding together the corporate front office is useful to avert greater worldwide instability; winding down aspects of past military blunders is important to our hope to salvage some concept of budget sanity and a forward ethic that shuns gunboat diplomacy; and piecing together a health care extension to more than 30 million uninsured is downright noble. Many of the president's most gratifying faith-based projects, such as reducing child hunger, strengthening fatherhood practice and deploying humanitarian assistance more effectively, are not well known, but they have necessitated little new money and have truly been godsend to those affected. Joshua DuBois deserves much credit, as do Samantha Power, Mara and John Kelly, Mark Linton, Mike Wear, Alexia Kelley and numerous others across the 13 federal Cabinet agencies. The complexities of abortion, contraceptive mandates and evolved thinking of same-sex marriage should not leave these truly good works unnoticed.

However, the president suffers a greater lack of trust among Catholic voters if there is a perception, or reality, that when pushed by his farthest left political constituencies, he too readily forfeits his belief that "secularists are wrong when they ask believers to leave their religion at the door before entering into the public square."

Unwittingly, perhaps, the president has allowed his appointees to drift into the secular lane and stay there. Advised of the church's opposition to the contraceptive mandate and invited by the very faith leaders who helped him secure election that the religious exemption he was approving turns the Gospel of Matthew inside-out, his voice calling for dialogue and common ground was not to be heard. Only when the bishops demonstrated that the narrowness of his exemption substantially burdens the doctrinal posture of the church and entangles itself with the very definition of religion was there some inkling of presidential realization that the HHS policy was the antithesis of Christian faith and its mandate for a ministry of service.

The noise of opposition could not be hidden from the president any longer, and the president reacted by shifting the obligation of the mandate away from employers to insurers. A good start, followed by nothing -- no follow-through, and in particular, with respect to his honorary alma mater, no help whatsoever, since religious entities that self-insure, like Notre Dame, would still be coerced to abandon its religious teaching.

Will the decision in *Notre Dame University v. Kathleen Sebelius* reveal where the Catholic vote will line up? In terms of the specific legal issue, no, but being on the wrong side of Our Lady could well obscure what the president needs to convey: The Obama understanding of social justice is preferable to the continuing delusion of "trickle down." An honest assessment of Supreme Court precedent also vindicates the president's articulated concern that there is something constitutionally troubling about justices committed to judicial restraint flirting with the invention of new limitations on Congress' core powers. It has been settled for more than 60 years that Congress can regulate individual decision-making that undercuts the commercial viability of the entire health system by selfishly imposing significant costs that could have been reasonably anticipated. Why it takes the Supreme Court three days of argument and months of writing to retell the story of ant and the grasshopper is its own curiosity.

Jenkins introduced the president at Notre Dame with a quotation from the Fathers of the Second Vatican Council and their pastoral constitution *Gaudium et Spes*: "Respect and love ought to be extended also to those who think or act differently than we do in social, political and even religious matters. In fact, the more deeply we come to understand their ways of thinking through such courtesy and love, the more easily will we be able to enter into dialogue with them."

For now, I remain convinced Obama takes this seriously. Unfortunately, too many working for him do not. The law of the land and the law of love are on the side of Notre Dame.

Go Irish!

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