

Evangelium Vitae Award Address
Carl A. Anderson
University of Notre Dame Center for Ethics and Culture
April 26, 2015

Thank you very much for this award and the opportunity to be with you this evening. It is an occasion for me to take inspiration from what you have done to advance that great cause which St. John Paul II exemplified so beautifully in his encyclical, *Evangelium Vitae*.

On this occasion I cannot help but think of my good friend, devoted law professor and tireless advocate for life, the late Charles E. Rice. I understand that there is a monetary prize that accompanies this award and I have asked that it be contributed directly to the Charles E. Rice Fellowship Fund so that it may continue to serve this university that he loved so much.

The University of Notre Dame has been a place where six presidents of the United States, many governors and senators have spoken—and now you are willing to listen to a Supreme Knight.

As Gov. Adlai Stevenson used to say, it is now my job to speak and your job to listen; if you finish before I do please feel free to leave.

I would like to offer some reflections concerning the challenges we face at the intersection of ethics and culture in working to see that our nation embraces a culture of life.

The last President of the United States to speak on this campus told the graduating class of 2009 that in a time of increasing diversity, especially “diversity of thought, diversity of culture, and diversity of belief” it was incumbent upon us to “find a way to live together as one human family.”¹

He specifically addressed the issue of abortion and said that we must work together to “discover at least the possibility of common ground.” One of the ways we could do that he said was to “honor the conscience of those who disagree with abortion, and draft a sensible conscience clause.” That is something, he promised, “we can do.”

Six years later, that goal has still not been achieved.

And the history of the Department of Health and Human Services contraceptive mandate makes clear why this is so.

¹ Barack Obama, Commencement Address at University of Notre Dame, May 17, 2009.

Since it was announced in August 2011, the mandate has undergone 7 phases—all of them related to its failure to protect conscience.

The original language provided only a very narrow exemption for religious organizations, so narrow in fact, that our nation's bishops observed, "Jesus and the early Christian Church would not qualify."

Six months later, the Administration delayed enforcement through a temporary safe harbor for religious non-profit organizations. Then shortly before the 2012 presidential election, the Administration expanded this "safe harbor" to include more non-profits.

In February 2013, the Administration proposed another change: it removed the provision that exempted only those charities that serve only their own religious members.

Thus it took eighteen months to modify the provision that had been objected to by nearly every church and religious organization in the country.

At the Knights of Columbus, our objection remained because the fundamental problem remained: those who object to paying for abortion-inducing drugs, contraceptives, and sterilization were still required to pay for them either directly or indirectly. And they were still required to initiate coverage for them.

Last July the Administration announced final regulations that extended the safe harbor for an additional 6 months while exempting religious non-profits as long as they "self-certify" that they meet the exemption criteria.

But after losing the Supreme Court cases of *Hobby Lobby*, *Little Sisters of the Poor*, and *Wheaton College*, the Administration stated it would again revise the mandate.

And last August, the Administration announced its new rule: organizations eligible for exemption may notify HHS of their objection to the mandate and the government will then arrange with their insurer to provide coverage at no cost to the organization.

Thus, after nearly four years of controversy the Administration's goal will be achieved: contraceptives and abortifacients will be provided by religious employers notwithstanding their objection. But now the coverage will be provided by means of a subterfuge—services will be provided at "no cost" by government decree.

The Administration insists that "no-cost" coverage is possible because preventing births is less expensive than providing childbirth and infant care.

The National Right to Life Committee objected to the Administration's plan because in the future the same rationalization could mandate "no cost" coverage of abortion.

Now the State of California has done just that: mandated that private employer's health plans include abortion coverage while denying conscience clause protection to religious organizations.

Whether this Administration or a future one will follow California's lead on the abortion mandate cannot be predicted.

As Oliver Wendell Holmes once observed, the life of the law is not logic.

But the direction of the Administration's logic is clear.

The history of the HHS mandate shows an administration grudgingly walking back its proposal only by the smallest steps and only when ultimately forced to do so by judicial action.

And in the end, not really walking it back at all.

By and large, Catholic organizations have treated the HHS mandate as they would most other regulations: they commented formally during the rule-making process, they met with Administration officials in the hopes of reaching a compromise and finally they brought legal actions in federal court.

All during this time the Administration has been stubbornly intransigent.

Amazingly, even discussions between the president and bishops, cardinals and the Vatican Secretary of State have apparently made no discernable difference.

There is a lesson to be learned here about the future of Catholic institutions in America.

Their Catholic identity is now linked with the Affordable Care Act. It is the context in which the HHS mandate exists today and how it will be applied in the future.

During a time when the search for common ground and consensus received heighten rhetoric in Washington, the Act itself has become an example of the way in which Washington is becoming *less* democratic and *less* capable of consensus.

The Act passed Congress on a schedule that denied legislators a realistic opportunity to read its provisions—and many of them admitted to being ignorant of them.

The bill's sponsors denied that the legislation was an exercise of the taxing power of Congress. But when its constitutionality was challenged, the Administration defended the law before the Supreme Court precisely on the grounds that it was an exercise of the taxing authority of Congress.

Mandated contraceptive services for religious entities were not an issue during consideration of the Affordable Care Act.

Had they been, the bill would never have passed Congress.

Admittedly, free market delivery of health care has been less than perfect. But whatever its problems, it did one thing very well.

It provided something absolutely necessary to the sustainability of Catholic health care institutions: it provided freedom. Free markets provided an environment where pluralism and diversity allowed Catholic institutions to define and maintain their identity.

Absent Supreme Court intervention, the Affordable Care Act signals that those days of freedom—whether economic or religious—are over.

Some Catholics have considered this question primarily from the standpoint of whether complying with the mandate constitutes an impermissible material cooperation with evil. But Catholic identity involves considerably more than that.

St. Thomas More presents the issue when in Robert Bolt's play, *A Man for All Seasons* he says this about his refusal to take the oath mandated by the Act of Supremacy: "When a man takes an oath, he's holding his own self in his own hands like water, and if he opens his fingers then, he needn't hope to find himself again."

Catholic institutions in America today face something similar—and no less devastating to the soul of Catholicism.

The message of the HHS mandate is clear: Catholic institutions remain free to fashion their own identity as long as that identity conforms to the dictates of government.

In the future we may still choose to speak of Catholic institutions as being "counter-cultural." But in what ways do we think this will remain true? And for how long?

One of the important aspects of "American Exceptionalism" is that in America, religion is expected, at times, to be "counter-cultural." But that only really matters when religion can be counter-cultural when it counts.

The mutual respect President Obama promised during his commencement address at this University can now be understood through the HHS mandate. As he said on that occasion: "no matter how much we may want to fudge it ... the fact is that at some level, the views of the two camps are irreconcilable." Perhaps that is all the more reason why the president, at that time, called for a "sensible" conscience clause to "honor the conscience" of those who disagree.

In preparing these remarks I found myself reflecting on a book by Henry Kissinger — *A World Restored*.² It was Dr. Kissinger’s study of the Congress of Vienna and the diplomacy that followed the Napoleonic Wars.

Kissinger analyzed what drove Napoleon for almost 20 years to embroil Europe in wars that cost millions of lives. He concluded that Napoleon was in search of legitimacy. As long as there was one kingdom or one country free of his rule, Napoleon considered his legitimacy threatened.

Kissinger put it this way: “the distinguishing feature of a revolutionary power is not that it feels threatened ... *but that nothing can reassure it*. Only absolute security—the neutralization of the opponent—is considered a sufficient guarantee, and thus the desire of one power for absolute security means absolute insecurity for all the others.” (2)

I will presume to add to Kissinger’s hypothesis. It applies as well to the proponents of slavery in the 1850s. Like Napoleon, they too needed constant reinforcement of their legitimacy. That is why they ultimately concluded, along with Chief Justice Taney, that slavery could not be banned anywhere in the Union.

It seems to me that this is helpful in understanding our own situation today.

There is a tyrannical impulse within the pro-choice movement to mandate conformity by everyone in America—whether it’s through the HHS mandate, State exchanges under the Affordable Care Act offering only providers that include abortion services or the D.C. City Council repealing conscience clause protection for religious organizations regarding abortion.

Again, if we listen to Kissinger, “it is the essence of revolutionary power that it possesses the courage of its convictions, that it is willing, indeed eager, to push its principles to their ultimate conclusion.”

What drives that impulse to a large extent is a deep-seated sense of illegitimacy.

That is why whenever there’s a vacancy on the Supreme Court, the pro-choice lobby insists that *Roe v. Wade* is settled law.

But *Roe v. Wade* will never be settled law because *Roe v. Wade* is founded upon a lie — and the lie is that we do not know a living human being is at stake.

In America, constitutional law decisions that are founded upon a lie are, in the long run, simply unsustainable.

² Henry Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-1822* (New York: Mariner Books, 1973), pp. 2-3.

That is the lesson to be learned from the Supreme Court's shameful decision in the "separate but equal" segregation case of *Plessy v. Ferguson*.

Such will be the lesson one day of *Roe v. Wade*.

The Supreme Court may have created a new right in what Justice Byron White called "an exercise of raw judicial power." But judicial power has not convinced America that what the judges did was *right*.

Our Knights of Columbus-Marist polling this year shows that 84 percent of Americans would limit abortion to the first three months of pregnancy. Almost 6 in 10 would limit it to cases of rape or incest or to save the life of the mother, and that *includes the majority of those who describe themselves as "pro-choice."*

Eighty-four percent say our laws can protect both the life of the mother and the life of the child.

Almost two-thirds say our abortion rate is too high.

And 60 percent say abortion is morally wrong.

And the youngest voting Americans hold these same opinions at about the same rate as older Americans. The Supreme Court has not convinced them either.

And so, we have reason for hope.

In spite of media bias and judicial intransigence, the American people have nonetheless reached a sort of consensus on abortion.

As I suggested several years ago in my book, *Beyond a House Divided*, there is common ground on abortion and we should seek ways to build upon it.

But today we face a new challenge.

With enactment of the Affordable Care Act, government now controls America's health care--approximately one-six of the U. S. economy.

Are we entering a time of such government control of the economy that the historical role of what Michael Novak called "mediating structures" to influence society will be less and less possible?³

Have we reached a new tipping point?

³ Michael Novak (ed.), *Democracy and Mediating Structures* (Washington, D.C.: American Enterprise Institute, 1980).

Does the expanding power of government to tax and regulate pose a new threat to the sustainability of our religious institutions?

Last month, an article in *Foreign Affairs* magazine entitled, “Dark Days for Civil Society” quotes the president of the International Center for Not-for-Profit Law that “since 2012, more than ninety laws constraining the freedom of association or assembly have been proposed or enacted” around the world.⁴

“The shrinking space for civil society,” the article says, “is a global problem.”

Obviously, this problem is most acute in societies with emerging democracies. But it would be naïve to assume that this is not also a problem in established democracies.

It would be more accurate to describe the situation this way: “dark days for civil society” in emerging democracies and “shrinking space for civil society” in established democracies.

A November report by Europe’s Organization for Economic Cooperation and Development suggests just how fast the space is shrinking. It finds that social spending among European nations remains at record levels: an average of 22 percent of gross domestic product.

France leads Europe with 32 percent. In comparison, the United States spends 19 percent.

But Robert Samuelson, writing in the *Washington Post*, observes that this is not the most accurate way to view the situation.⁵ He states that when the benefits provided by private companies are included—benefits, which are often subsidized and regulated by government—the figure in the United States moves from 19 to 30 percent.

Thus, the potential for government control of the U. S. economy through HHS mandate-style regulation goes far beyond what we may have imagined just a few years ago.

In Europe, Catholic institutions have found it difficult to resist the steady pressure of socialist governments during the past four decades as they dismantled the legal structures protecting the sanctity of life, marriage and the family.

Again, Kissinger’s analysis is helpful in understanding this “revolutionary” dynamic and why responses to it have been inadequate.

He writes: “The defenders of the status quo ... begin by treating the revolutionary power as if its (demands) were merely tactical; as if it really accepted the existing

⁴ Sarah Mendelson, “Dark Days for Civil Society,” *Foreign Affairs*, Mar. 11, 2015.

⁵ Robert Samuelson, “Our Giant Welfare State,” *Washington Post*, Nov. 25, 2014.

legitimacy ... (and can) be assuaged by limited concessions. Those who warn against the danger in time are considered alarmists; those who counsel adaptation to circumstance are considered balanced and sane, for they have all the good 'reasons' on their side."

The inevitable failure of the balanced, tactical approach results, Kissinger observes, from its "inability to come to grips with a policy of unlimited objectives."

And so has been the recent history of family law in Europe.

It would be unrealistic to think that this "revolutionary" pressure has had no effect on the catastrophic collapse of Christianity on that continent during our lifetime—a collapse that necessitated repeated calls by St. John Paul II for a new evangelization.

He realized that the problem we face is more than political. It is ideological. And therefore an adequate response must be more than tactical.

In the United States and Europe—in fact, throughout the declining West—persons of faith confront an ideology based on a false concept of personhood.

Because this ideology does not understand the human person, it understands neither men nor women. It makes all of them—all of us—isolated beings, disconnected, living for ourselves.

It purports to take us back to the Garden of Eden. In reality, it leaves each of us stranded in our own Sahara of the spirit.

This has led to a perverse form of personal freedom, which in turn has led to perverse forms of liberation—one in particular is the liberation of men from the responsibilities of fatherhood.

There is a reason why most public opinion polls over the years have shown greater support for abortion among men than among women.

So now our country faces the emergence of a "new normal," children without a father in the house.

What does this have to do with the HHS mandate? Everything.

The mandate rests upon the myth that women's social and economic equality depends upon universal availability of contraception, sterilization, and abortion—imposed, if necessary, by government.

That myth is foundational to a political ideology that has been ascendant for sometime in Europe and more recently in various degrees throughout the United States.

But that myth also provides something more: the justification—the cover, if you prefer—for all the afflictions consequent upon the sexual revolution.

In this light, the HHS mandate is not necessary to protect women’s rights.

It is necessary to further secure the emancipation of men from the responsibilities of fatherhood. It does this by maintaining a socio-cultural status quo in which the deck is stacked against both women and children. It is rooted in an ideology divorced from the real needs of American women and alien to the realities of America’s children.

Historically, the first principles of any ideology are non-negotiable.

That is why the HHS mandate cannot be compromised.

Napoleon could not accept a multi-polar Europe.

And the White House is not likely to back off its mandate.

So we must ask ourselves: How is it possible to preserve the liberty of our *institutions* when the authentic freedom of *individuals* is so badly misunderstood?

Of course, we hope that the Supreme Court will uphold our free exercise of religion with regard to the HHS mandate. Religious institutions cannot be allowed to become either the political or the policy servants of the state.

But even if successful, litigation is only part of the answer,

The observation of Yale Law Professor Stephen Carter on this point is important. He writes, in *The Culture of Disbelief*:

“At times the Supreme Court has been the great protector of the autonomy of religions as faith communities.... But American society should not depend on its courts as the sole or even the most important protectors of religious autonomy. Judicial authority extends to the bounds of, but not beyond, the Constitution. The nation’s need for autonomous religions stands outside of that document; it is a need that flows from the nature ... of popular democracy as a form of governance. To try to make the religions, in their internal organization, conform to the state’s vision of a properly ordered society is not simply a corruption of the constitutional tradition of religious freedom; it is also an assault on the autonomy of religions as bulwarks against state authority.”⁶

And so, how are we to engage this issue as Professor Carter suggests, that is, beyond the bounds of the Constitution?

⁶ Stephen Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York: Basic Books, 1993), pp. 38-39.

This brings us to the mission of the Center for Ethics and Culture and its belief that “the truth the Church affirms about the human person is the foundation for freedom, justice, human dignity, and the common good.”

If we take this as our starting point, then the recent address of Pope Francis to the European Parliament should be our road map because it does not bother with tactical suggestions.⁷ Instead, he gives us something more fundamental and enduring.

In his address, the Holy Father asserts that “at the heart” of the “political project” that is Europe is the “confidence” that men and women are “persons endowed with *transcendent dignity*.” And that this dignity requires government to recognize that each of us “possesses inalienable rights.”

The pope then says that, “To speak of *transcendent human dignity* thus means appealing to human nature, to our innate capacity to distinguish good from evil, to that ‘compass’ deep within our hearts, which God has impressed upon all creation. Above all,” he continued, “its means regarding human beings not as absolutes, but as *beings in relation*.”

And toward the end of his address he calls upon Europe to appreciate its “religious roots” and that these roots are still capable of “fruitfulness.”

With these principles, Pope Francis has pointed out a constellation—a North Star, if you will—to guide our future path.

In going forward let us remember the wisdom of the Second Vatican Council that “authentic freedom is an exceptional sign of the divine image within man.”⁸

Early in these remarks I quoted the last president to have spoken on this campus.

Permit me to close by quoting the first president to have done so.

In 1935, Franklin Delano Roosevelt said, “There can be no true national life ... unless there be the specific acknowledgment of ... the rights of man. Supreme among those rights we ... hold to be ... freedom of religious worship.”⁹

He then observed, “George Mason in the Virginia Declaration of Rights, voiced what has become one of the deepest convictions of the American people: Religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed

⁷ Pope Francis, Address to the European Parliament, Nov. 25, 2014.

⁸ Vatican Council II, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, (1965), no. 17.

⁹ Franklin D. Roosevelt, Address on Receiving an Honorary Degree from Notre Dame University, Dec. 9, 1935.

only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion according to the dictates of conscience.”

The founders of our nation, those who pledged their lives and their sacred honor to the cause of liberty in Philadelphia—whether Deist or Catholic, Baptist or Anglican—all would have agreed with us that “freedom is an exceptional sign of the divine image within man.”

If there is at the core of the American understanding of freedom a principle that can neither be negotiated nor compromised away it is this recognition that freedom is a reflection of the divine image in every human being.

The time has come for bold action: it is time for Catholics to take up a new evangelization of American freedom. And this year—on the 50th anniversary of the Second Vatican Council’s Declaration on Religious Freedom, *Dignitatis Humanae*—is a good time to begin.

In doing this, we will affirm what is fundamental to the American character.

Pope Francis, in his apostolic exhortation, *Evangelium Gaudium*, calls for a new missionary spirit among Catholics. The great Catholic institutions of our country were built by men and women filled with a great missionary spirit. They seized an opportunity offered by our nation’s commitment to the free exercise of religion—an opportunity offered nowhere else on earth.

And with that opportunity they constructed an unprecedented network of institutions to help provide for the health, education and welfare of millions—Catholics and non-Catholics alike—for whom government did not provide an answer.

But these institutions were not intended to simply fill a gap left by the limitation of government. They were not, as Pope Francis has reminded us, merely NGOs.

Their mission was greater. These institutions opened a window on the transcendent dignity of each human being and especially those whose dignity government neglected.

And these institutions offered something that government cannot offer—the promise of the Gospel of Life, of *Evangelium Vitae*.

This was not a promise spoken about only on Sunday mornings. It was a promise lived out in the hard realities of the day-to-day life of the poor and suffering.

You and I are called not only to sustain these institutions; we are called to sustain this promise.

We must preserve the free exercise of religion, which allows us not only to make this promise but also to keep it. The autonomy of our religious institutions is not *extrinsic* to the missionary nature of Christianity rather it is essential to it.

We must be missionaries of the Gospel of Life.

Today this means we must also be missionaries of authentic freedom.

Thank you again very much.