THE AUTHORITY TO INTERPRET, THE PURPOSE OF UNIVERSITIES, AND THE GIVING OF AWARDS, HONORS, OR PLATFORMS BY CATHOLIC UNIVERSITIES: SOME THOUGHTS ON *CATHOLICS IN POLITICAL LIFE*

MICHAEL BAUR[†]

With its June 2004 statement *Catholics in Political Life*,[1] the United States Conference of Catholic Bishops opened an important and far-reaching discussion about how Catholic individuals ought to comport themselves in political life, and—indirectly—about how Catholic institutions—including Catholic law schools—ought to decide whether or not to give awards, honors, or platforms to those whose views about key moral and political issues may differ from the views expressed in the teachings of the Catholic Church.[2] On the basis of a simple and straightforward reading of the 2004 statement, it might appear that the bishops wanted to say that no Catholic institution—and thus no Catholic law school—should give awards, honors, or platforms to those who endorse or promote views that differ from the fundamental moral teachings of the Church.[3] An important part of the statement plainly declares: "The 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 would suggest

[†] Michael Baur holds a Ph.D. in philosophy from the University of Toronto, and a J.D. from Harvard Law School. He is Associate Professor of Philosophy, Adjunct Professor of Law, and Director of the Natural Law Colloquium at Fordham University.

[1] UNITED STATES. CONFERENCE OF CATHOLIC BISHOPS, *Catholics in Political Life* (2004), http://old.usccb.org/bishops/catholicsinpoliticallife.shtml. Throughout the rest of this Article, the bishops' 2004 statement *Catholics in Political Life* shall be referred to simply as "the bishops' statement."

[2] *Id.*

[3] *Id.*

support for their actions."[4] A few moments of reflection will reveal, however, that the issue here is somewhat more complicated than what one might infer from a simple and straightforward reading of the statement. The aim of the present paper is not to settle the question of whether and how a Catholic law school ought to give awards, honors, or platforms to certain individuals or groups. Instead, the aim is to begin articulating some of the underlying conceptual issues that perhaps ought to be addressed *in preparation* for answering the further question of whether and how a Catholic law school ought to give awards, honors, or platforms to certain individuals or groups.

I. THE AUTHORITY TO INTERPRET WORDS IN CHURCH DOCUMENTS

The bishops' statement forthrightly raises worries about the giving of awards, honors, or platforms to "those who act in defiance of our fundamental moral principles."[5] It is worth noting that the verb "to defy," in its ordinary Anglo-American usage, does not mean the same thing as the verb "to differ."[6] It is possible, after all, for an individual to endorse or promote views that *differ* from what the bishops identify as "our fundamental moral principles," without acting *in defiance* of those fundamental moral principles or *in defiance* of the bishops themselves. To illustrate: the fundamental moral principles that guide my living and decisionmaking may differ—indeed, may differ drastically—from the fundamental moral principles that guide your living and decisionmaking; but it does not follow from this that my endorsing and promoting of certain fundamental moral principles must amount to any kind of defiance of you or your fundamental moral principles. After all, I may know absolutely nothing about you or about the fundamental moral principles that you endorse; thus, I may be entirely ignorant about the fact that my own "fundamental moral principles" differ from your "fundamental moral principles." But in that case, my endorsing of certain moral principles does not amount to an act of

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[4] *Id.*

[5] *Id.*

[6] To defy is "to challenge, to combat" or "to confront with assured power of resistance." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 327 (11th ed. 2008). To differ is "to be unlike or distinct in nature, form or characteristics" or "to be of unlike or opposite opinion." *Id.* at 348.

"defiance" of you or your moral principles. In other words, "defiance"—as the term is used in ordinary Anglo-American linguistic practice—depends not only on the existence of a *difference* in the beliefs or principles that are endorsed by different individuals or groups; it depends—at a minimum—on the fact that the defiant party *knows* of this difference.

Thus in its ordinary usage, the term "defiance" denotes an *informed* or *knowing* assertion of some difference between oneself as defying and another party as defied. More precisely: in order to be "defiant" in the ordinary sense of the term, the defiant party must know (1) something about his or her own actions or commitments; (2) something about the actions or commitments of the party being defied; and (3) that there is a meaningful difference between these two. But even this *informed* or *knowing* assertion of difference is not enough to qualify as "defiance" in the ordinary sense of the word; in order for there to be "defiance" in the ordinary sense, it must also be the case that there is some general rule or expectation that—in most instances—would lead the would-be defiant party to acquiesce in, or defer to, the party being defied. "Defiance," in its ordinary usage, denotes not only the *knowing* assertion of difference by the defiant party, but also the knowing assertion of difference precisely in a context where a lack of difference or a lack of divergence—that is, where a kind of deference—is normally to be expected.[7] To illustrate: It might be the case that the actions and commitments of devout Hindus in India differ from the actions and commitments that some other party—say, an American beef-producing company—would regard as desirable. The American beef-producing company may devoutly wish to increase its sales by convincing Hindus to give up their beliefs and begin eating cow meat. The company's marketing efforts might even be bound up with the most altruistic of intentions; these efforts might be guided by the genuine conviction that a beef-rich diet is healthier for individuals and for the planet than is a diet altogether devoid of

[7] It is for this reason that we speak colloquially about the "gravity-defying" properties of gyroscopes or the death-defying feats of motorcycle daredevils. To defy gravity is to behave in a way that diverges from the way that bodies with mass normally—or for the most part—behave when gravitational forces are present; to defy death is to behave in a way that diverges from the way that living things normally—or for the most part—behave when lethal forces are present. Perhaps fittingly, motorcycle daredevils often succeed at defying death precisely to the extent that they also succeed at defying gravity.

beef. Now even if the devout Indian Hindus continue to resist the company's marketing efforts and continue to do so with complete knowledge about what they are doing, it does not follow that they are "defying" the beef-producing company. While they are resisting the beef company's efforts, their resistance does not amount to an act of "defiance," as the term is ordinarily used, because the resistance does not take place in a context where there is in operation some norm dictating in favor of deference or acquiescence by the Indian Hindus. By contrast, there would be "defiance" if an employee within the marketing department of the beef-producing company were to resist the company's efforts to send him to India in order to increase beef sales.

There are, then, three basic elements implied by the notion of "defiance" as the term is ordinary used—not just *difference* and a *knowing difference* but also a *knowing difference in a context where there is in operation some norm dictating in favor of deference or acquiescence*. Now the bishops' letter seems to suggest that when it comes to the activities and initiatives of Catholic universities, there is indeed in operation a norm that dictates in favor of deference or acquiescence, and indeed deference or acquiescence to the American Catholic bishops themselves. But what precisely is the nature and ground of this norm? Since the deference at issue is deference owed to the American Catholic bishops, it appears that the norm is binding precisely on those who are subject to the authority of the American Catholic bishops. Now there are many ways in which one might understand the authority of the American Catholic bishops. For example, one might understand it as the bishops' teaching authority, or their administrative authority, or their canonical authority. But regardless of the many possible ways in which one might understand this authority, is remains the case that one can "defy" the bishops in the ordinary sense of "defy," only if one is subject in some way to the authority of the bishops—which is to say, only if one is subject in some way to the operative norm which dictates in favor of deference to or acquiescence in the bishops' wishes or directives.

Now it is on the basis of considerations such as these that the University of Notre Dame President John Jenkins argued, in a letter to the Board of Trustees of the University of Notre Dame, that Notre Dame's decision in 2009 to honor President Barack Obama—by giving him an honorary doctor of laws degree and

inviting him to give the university's commencement address—was perfectly consistent with both the spirit and the letter of the bishops' statement.[8] As Fr. Jenkins writes in his letter to the trustees, "by definition, only Catholics who implicitly recognize the authority of Church teaching can act in 'defiance' of it."[9] As our preceding reflections have shown, Fr. Jenkins is indeed quite right to hold that it is impossible for a person to be "defiant" in the ordinary sense of the term, if that person is not bound by some norm dictating in favor of his or her being deferential to or acquiescent in the wishes or directives of the party being defied. And so in accordance with our ordinary linguistic practice, Fr. Jenkins is right to hold that non-Catholics cannot be "defiant" in relation to the authority of the American Catholic bishops as such, whether the teaching authority or some other authority. But notice the rather strange implication that would follow from this: the implication is that the bishops' statement has nothing whatsoever to say about the prospect of a Catholic institution's giving of awards, honors, or platforms to non-Catholics. And if the statement has nothing whatsoever to say about the prospect of a Catholic institution's giving of awards, honors, or platforms to non-Catholics, then—*a fortiori*—it has nothing whatsoever to say about the prospect of a Catholic institution's giving of awards, honors, or platforms to, say, the President of the Society for the Annihilation of the Catholic Church. But with their statement, did the bishops really intend to refrain from saying anything whatsoever about such a prospect?

It seems unlikely that the bishops intended to refrain from saying anything whatsoever about the prospect of a Catholic institution's giving of awards, honors, or platforms to non-Catholics. And yet the bishops' use of the word "defiance" suggests that they were talking only about the giving of awards, honors, or platforms to Catholics. How should this puzzle be resolved? Bishop John D'Arcy, whose diocese of Fort Wayne-South Bend includes the University of Notre Dame, has argued that any doubts surrounding the rightful interpretation of statements from the United States Conference of Catholic Bishops are to be resolved by the local bishop in whose diocese

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[8] *See* Margaret Fosmoe, *Is ND Catholic Enough? Obama Visit Prompts Examination of Identity*, SOUTH BEND TRIB., May 10, 2009, at A1, *available at* http://www.freerepublic.com/focus/f-news/2248105/posts.

[9] *Id.*

the interpretation is to be made and applied.[10] Bishop D'Arcy justifies his argument by reference to—among other things—the Code of Canon Law, which provides that: (1) "[a] diocesan bishop in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority";[11] and (2) "[i]t is for the diocesan bishop to govern the particular church entrusted to him with legislative, executive, and judicial power according to the norm of law."[12]

It seems to follow, then, that Bishop D'Arcy is correct to hold that the proper interpretation of the meaning of the words in the bishops' statement, insofar as the statement pertains to persons and activities falling under his jurisdiction as bishop of the diocese of Fort Wayne-South Bend, is to be determined by Bishop D'Arcy himself; provided, of course, that Bishop D'Arcy's interpretation is not contradicted or overturned by some applicable higher authority, such as the United States Conference of Catholic Bishops or the Vatican itself. Therefore, if Bishop D'Arcy declares that the bishops' statement is to be interpreted as applying to the prospect of a Catholic institution's giving awards, honors, or platforms to non-Catholics as well as Catholics, then that declaration, unless contradicted or overturned by a higher Church authority, is the correct one for the diocese of Fort Wayne-South Bend. It remains true, as Fr. Jenkins points out, that the term "defiance" in its ordinary usage implies that only American Catholics can act defiantly with respect to the American Catholic bishops. But the fundamental question here is not the question of what the word "defiance" means in its ordinary usage. The fundamental question at issue is rather the question of what the word "defiance" means in the bishops' statement, as that statement is to be interpreted and applied within the diocese of Fort Wayne-South Bend. As the Code of Canon Law suggests, the meaning of a word within Church documents, such as the bishops' statement, is to be

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[10] *Bishop D'Arcy: Obama Invite Caused 'Terrible Breach' Between Notre Dame and the Church*, CATHOLIC NEWS AGENCY (Apr. 23, 2009), http://www.catholicnewsagency.com/news/bishop_darcy_obama_invite_caused_terrible_breach_between_notre_dame_and_the_church/.

[11] CODEX IURIS CANONICI c.381, § 1 (Canon Law Society of America trans., 1983) (1983).

[12] *See id.* c.391, § 1.

settled by the local bishop when doubts arise about the word's meaning;[13] for it is the local bishop who holds legislative, executive, and judicial power within his own diocese.[14] Thus, if the bishop of the diocese of Fort Wayne-South Bend declares that the word "defiance," as contained in the bishops' statement, pertains to both Catholics and non-Catholics, then that declaration is the correct one and ought to be followed by anyone seeking to understand the bishops' statement as it applies within the diocese of Fort Wayne-South Bend. The point here is that—according to the Code of Canon Law and other relevant provisions—Bishop D'Arcy's own judgment about the matter at hand, unless contradicted or overturned by some relevant higher authority, is itself the rule or measure for determining what is true and correct about the matter at hand. It is for this reason that Bishop D'Arcy's judgment about the matter at hand cannot be wrong, unless contradicted or overturned by some relevant higher authority.[15]

Significantly, Bishop D'Arcy's interpretation is the correct interpretation, but not because it corresponds to some true and correct glossary of word meanings as inscribed in the usage of ordinary American English speakers; rather, Bishop D'Arcy's interpretation is the correct interpretation because what is at issue is the interpretation of the meanings of words within a statement issued by the American Catholic bishops, and the relevant governing document, the Code of Canon Law, declares that the local bishop has the authority to determine the meanings of words in Church documents, when doubts arise

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[13] *See supra* notes 10–12 and accompanying text.

[14] *See* CODEX IURIS CANONICI, *supra* note 11.

[15] St. Thomas Aquinas makes a similar point when he observes that "a craftsman could not err in cutting wood if his own hand were the rule for cutting." *See* THOMAS AQUINAS, ON EVIL, Q.1, art. 3, reply to objection 9 (John A. Oesterle & Jean T. Oesterle trans., University of Notre Dame Press 1995). Ludwig Wittgenstein makes the same point, though a bit differently, when he notes that "[t]here is *one* thing of which one can say neither that it is one metre long, nor that it is not one metre long, and that is the standard metre in Paris." LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS: THE GERMAN TEXT WITH A REVISED ENGLISH TRANSLATION 21 (G.E.M. Anscombe trans., Blackwell Publishing 2001). The reason for this is not that the standard metre in Paris is extensionless; the reason, rather, is that the standard metre in Paris is the rule or measure—or standard or criterion—for determining what counts as a metre and thus for determining whether an extended thing *does or does not* measure up to being a metre. Thus the standard metre in Paris *can neither succeed nor fail* at measuring up to one metre; it is the very measure for what counts as a metre in the first place. *See id.*

about their meanings—unless, of course, the local bishop's determination is preempted, contradicted, or overturned by a higher court of appeal, which in this case might be the United States Conference of Catholic Bishops or even the Vatican. It is worth emphasizing here that Bishop D'Arcy's interpretation is not necessarily the correct interpretation of the bishops' statement as the statement applies or has meaning in contexts outside of the diocese of Fort Wayne-South Bend. By the same token, Bishop D'Arcy's interpretation of non-Church documents—for example, his interpretation of the United States Constitution—is not necessarily the correct interpretation, even as such documents might apply or have meaning within the diocese of Fort Wayne-South Bend. It is worth emphasizing here that Bishop D'Arcy's interpretation of the bishops' statement is the correct interpretation of the bishops' statement, not only (1) because Bishop D'Arcy's interpretation is limited to persons and activities falling under his authority as bishop of the diocese of Fort Wayne-South Bend, but also (2) because Bishop D'Arcy is the one who has been given due authority by the Church itself—for example, insofar as the Church expresses itself in the Code of Canon Law—to determine the definitive and binding meaning of Church documents, such as the bishops' statement, in cases when doubts about their meaning arise within the diocese of Fort Wayne-South Bend. However, as previously suggested, an interpretation given by Bishop D'Arcy is not a definitive and binding interpretation if it is contradicted or overturned by a higher authority, such as the United States Conference of Catholic Bishops or the Vatican itself.

II. WHY BISHOPS MAY HAVE UNIQUE AUTHORITY TO RENDER JUDGMENT ABOUT SOME THINGS, BUT NOT ABOUT OTHERS

Within the diocese of Fort Wayne-South Bend, the word "defiance" in the bishops' statement pertains both to Catholics and to non-Catholics, and so the correct reading of the bishops' statement as it pertains to the diocese of Fort Wayne-South Bend, is the following: "The Catholic community and Catholic institutions should not honor those (whether Catholic or non-Catholic) who act in defiance of our fundamental moral principles. They should not be given awards, honors or platforms

which would suggest support for their actions."[16] But even though Bishop D'Arcy may be right about the meaning of the words within the bishops' statement—and again, as it pertains to persons and activities falling within the scope of his authority as bishop of Fort Wayne-South Bend—it does not follow that Bishop D'Arcy is necessarily right in his particular judgments about who should or should not be honored by particular Catholic institutions, even those, such as the University of Notre Dame, within his own diocese of Fort Wayne-South Bend. But why is this so? The reason is that Bishop D'Arcy—although he has the authority within the diocese of Fort Wayne-South Bend to determine the definitive and binding meanings of words contained within Church documents such as the bishops' statement—does not have such authority, either within the diocese of Fort Wayne-South Bend or outside of it, to determine whether or not it is choiceworthy for a particular university, even a Catholic university within the diocese of Fort Wayne-South Bend, to give awards, honors, or platforms to certain individuals or groups. And the reason why Bishop D'Arcy lacks this additional kind of authority is that he, as bishop of Fort Wayne-South Bend, is not uniquely situated or authorized to determine the answers to two further questions. These two further questions are: (1) the question of what it means for a university to fulfill its purpose as a university in general and as a Catholic university in particular, whether within the diocese of Fort Wayne-South Bend or outside of it; and (2) the question of whether particular acts of giving awards, honors, or platforms to certain individuals or groups, even if done by Catholic universities within the diocese of Fort Wayne-South Bend, do or do not "suggest support" for the actions of such individuals or groups.

Let us examine further why this is so. Certain individuals within the Church may rightly possess the authority to render definitive and decisive interpretations of the meanings of words within governing documents, if this authority to interpret has been established by the same legislative source which has in the first place established the institutional entities to be governed by such governing documents. Thus, local bishops rightly possess the authority to render definitive and decisive interpretations of

[16] *Catholics in Political Life*, *supra* note 1.

the meanings of words within the bishops' statement as it pertains to their individual dioceses, since this authority to interpret has been given to them by the same legislative source which has in the first place established the institutional entities that they govern as bishops, namely, their local dioceses. This common legislative source is none other than the universal Catholic Church insofar as it establishes internal institutional structures for itself through canon law and other provisions, and through the creation and filling of offices in accordance with canon law.[17] It is through the legislative activity of the universal Catholic Church and its officers that the United States Conference of Catholic Bishops is specifically constituted in the way that it is and is authorized to issue the governing statements that it issues; and it is also through the legislative activity of the universal Catholic Church and its officers—and specifically through canon law and further relevant provisions—that local bishops have the authority to render definitive and decisive interpretations of the meanings of words within the bishops' statement as it pertains to their own dioceses, provided, of course, that such interpretations are not contradicted or overturned by some higher authority within the Church.[18]

Now while American Catholic bishops have the authority to render definitive and decisive interpretations of the meanings of words within the bishops' statement as it pertains to their own dioceses, they are not uniquely authorized or situated to determine (1) what it means for a university to fulfill its purpose as a university in general and as a Catholic university in particular, or (2) whether particular acts of giving awards, honors, or platforms to certain individuals or groups do or do not "suggest support" for the actions of such individuals or groups. The reason is that (1) the legislative source through which the bishops have their authority as bishops is not the same as the legislative source through which universities, and even Catholic universities, have their existence and meaning; and (2) the legislative source through which the bishops have their authority as bishops is not the same as the legislative source through which human words and gestures—including those involved in the giving awards, honors, and platforms to others—have their

[17] *See* CODEX IURIS CANONICI, *supra* note 11.
[18] *Id.* c.391, §§ 1–2.

existence and meaning. Accordingly, it falls outside the scope of the legislative authority of the American Catholic bishops to determine what a university is or ought to be in general, or what a Catholic university is or ought to be in particular, unless, of course, the specific Catholic university in question happens to have its existence on account of the legislative activity of the Catholic Church or officers of the Catholic Church such as bishops; such would be the case, for example, if the Catholic university in question happened to be established and governed through the legislative activity of the Holy See, as is the case with The Catholic University of America in Washington, D.C.; the Pontifical College Josephinum in Columbus, Ohio; St. Mary's Seminary and University in Baltimore, Maryland; the Pontifical University of St. Thomas Aquinas—"the Angelicum"—in Rome; the Pontifical Gregorian University in Rome; and the Pontifical Lateran University in Rome.[19] Stated differently: Universities, except papally-chartered ones, do not have as their proper and formal cause the legislative activity of the Catholic Church or its officers. Because of this, the Catholic Church and its officers are not uniquely situated or authorized to determine what it means for a university, even a university that calls itself "Catholic," to fulfill its purpose as a university.

Consider the following analogy: the Parker Brothers Company—as maker of the game of *Monopoly*—is uniquely situated and authorized to determine what one must do to play the game of *Monopoly*. But the Parker Brothers Company is not uniquely situated or authorized to determine what one must do to solve a murder mystery, even though the Parker Brothers

[19] *University Facts*, THE CATHOLIC UNIVERSITY OF AMERICA, http://www.cua.edu/about-cua/university-facts.cfm (last visited Apr. 7, 2011) (explaining that Catholic University was founded by the U.S. Bishops); *Josephinum History*, PONTIFICAL COLLEGE JOSEPHINIUM, http://www.pcj.edu/aboutus/history.html (last visited Apr. 7, 2011) (explaining that Josephinum is placed under the protection of the Holy See); ST. MARY'S SEMINARY & UNIVERSITY, http://www.stmarys.edu/sot/sot_welcome.htm (last visited Apr. 7, 2011) (explaining that St. Mary's awards degrees by authority of the Holy See); PONTIFICAL UNIVERSITY OF ST. THOMAS AQUINAS, http://www.angelicum.org (last visited Apr. 7, 2011) (explaining that pontifical universities are chartered by the Vatican); *Presentation of the University*, PONTIFICAL GREGORIAN UNIVERSITY, http://www.unigre.it/Univ/index_en.php (last visited Apr. 7, 2011) (explaining that the university is entrusted by the Holy See); *Who We Are*, PONTIFICA UNIVERSITÁ LATERANENSE, http://www.pul.it/?page_id=166&lang=en (last visited Apr. 7, 2011) (explaining that Pope John XXXIII declared the school a pontifical university).

Company is also the maker of another game—*Clue*—whose object is to solve hypothetical murder mysteries. While the Parker Brothers Company may be uniquely situated and authorized to determine the rules and procedures for solving some hypothetical murder mysteries—namely, those within the game of *Clue*—and while these rules and procedures may be informative and relevant for the solving of other hypothetical murder mysteries, it does not follow that these rules and procedures are fully governing or uniquely authoritative for the solving of other hypothetical murder mysteries. In a similar vein, we may say that while the Catholic Church and its officers may be uniquely situated and authorized to establish the guidelines for what a papally-chartered university must do in order to fulfill its purpose as such, and while these guidelines may be informative and relevant for determining what other Catholic, non-papally-chartered universities must do in order to fulfill their purposes, it does not follow that these guidelines are fully governing or uniquely authoritative for determining what other Catholic, non-papally-chartered universities must do in order to fulfill their purposes. In short, specific guidelines established by the Catholic Church or its officers for the governance of papally-chartered universities do not have the status of "law" for universities which are Catholic but not papally chartered. Guidelines that do have the status of "law" for such Catholic, non-papally-chartered universities are to be found in the specific charter of the university in question, in the university's constitution and by-laws, and in local, state, and federal statues insofar as these relate to specific elements pertinent to the governance or conduct of the university in question.

For reasons similar to those outlined above, it also falls outside the scope of the legislative authority of the bishops to determine the meanings of human words in their ordinary usage or the meanings of human gestures in their ordinary usage, including gestures such as the giving of awards, honors, or platforms to certain individuals or groups. For just as there are many universities, including Catholic ones, that do not owe their existence specifically to the legislative activity of the Catholic Church or its officers, so too there are many human words and gestures which, unlike the meanings of words contained in

bishops' statements, have meanings apart from the meanings given to them through the legislative, or any other, activity of the Catholic Church or its officers.

III. THE PURPOSE OF UNIVERSITIES: SOME LESSONS FROM CARDINAL NEWMAN

The Catholic Church and its officers are not uniquely authorized or situated to determine what the proper goal or purpose of a university—even a Catholic university—is, except, of course, in the case of those Catholic universities that have been established and are governed through the legislative activity of the Catholic Church or some office or officer within the Catholic Church. Accordingly, the determination of the proper goal or purpose of a university, whether Catholic not, is not simply a matter of legislative *fiat* by Church officers but rather a matter of reasoning about the nature of the university as such, and the nature and goals of particular universities that may have unique histories, traditions, missions, and values. This sort of reasoning—about the nature of the university as such, and about the specific characteristics of particular universities that may have unique aims and orientations—can in principle be made accessible and transparent to all human beings insofar as they are rational. Indeed, such a rational and non-authoritarian approach to discerning the meaning and purpose of universities is precisely the approach recommended by the Blessed John Henry Cardinal Newman, in his now-famous reflections on the idea of a university. As Newman suggests in the introductory portion of his thoughts on the university, the proper determination of what a university is as such—whether the particular university in question be considered "Catholic" or not—should depend on an appeal to reason as such, and not on an appeal to authority, whether Church authority or any other kind.[20] Newman writes:

> Observe then, Gentlemen, I have no intention, in any thing I shall say, of bringing into the argument [on the idea of a

[20] *See* JOHN HENRY NEWMAN, THE IDEA OF A UNIVERSITY 18 (Frank M. Turner ed., 1996).

> university] the authority of the Church, or any authority at all; but I shall consider the question simply on the grounds of human reason and human wisdom.[21]

When one reasons about the essential aim or purpose of a university as such, Newman argues, one will come to the conclusion that the university exists primarily as an intellectual and pedagogical institution and not as a religious or moral one. At the very beginning of *The Idea of a University*, Newman provides advance notice regarding this general conclusion that he has drawn about the nature and purpose of the university:

> The view taken of a University in these Discourses is the following—That it is a place of *teaching* universal *knowledge*. This implies that its object is, on the one hand, intellectual, not moral; and, on the other, that it is the diffusion and extension of knowledge rather than the advancement. If its object were scientific and philosophical discovery, I do not see why a University should have students; if religious training, I do not see how it can be the seat of literature and science.[22]

Furthermore, Newman contends, the range of what is to be taught within a university is universal; university teaching, properly understood, encompasses all branches of intellectual knowledge. To restrict the range of university teaching to some disciplines alone, or to certain areas of knowledge, is to fail to live up to the very idea of a university. It follows from this, so Newman argues, that if anything can be known about God, then the intellectual study of God or a "Supreme Being"—that is, theology—should also be part of the teaching function of a university:

> A University, I should lay down, by its very name professes to teach universal knowledge: Theology is surely a branch of knowledge: how then is it possible for it to profess all branches of knowledge, and yet to exclude from the subjects of its teaching one which, to say the least, is as important and as large as any of them? I do not see that either premiss of this argument is open to exception.[23]

With these observations, Newman is making a point that might seem rather counter-intuitive to modern thinkers. After all, modern thinkers frequently regard it as obvious that Catholic

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[21] *Id.*
[22] *Id.* at 3.
[23] *Id.* at 25.

universities are distinguished from secular universities by the fact that the teaching that is done at Catholic universities is more limited or restricted in scope than the teaching that is done at secular universities. Following Newman's observations, we might well protest and assert that precisely the opposite is the case. More specifically, we might assert that thoroughly secular universities are more restricted in what they teach than Catholic universities are, or should be, since thoroughly secular universities deliberately exclude from their curricula any teaching about God or about a "Supreme Being." Newman is careful to remind his readers that (1) teaching about God or about a "Supreme Being" is to be sharply distinguished from teaching that aims at cultivating religious or devotional sentiments in students;[24] and (2) what people in a secular age might mean by a "Supreme Being" is not necessarily the same as what Catholics or other Christians might mean by that term.[25] But Newman's larger point should be sufficiently clear: Universities such as Catholic ones that include some teaching about God or about a "Supreme Being" are, in principle, less restricted in their pedagogical aims than are universities, such as thoroughly secular ones, that deliberately exclude from their curricula certain fields or regions of intellectual discourse. To this extent, Newman suggests, Catholic universities may well do a better job of living up to what a university is, properly speaking. "As to the range of University teaching," Newman writes, "certainly the very name of University is inconsistent with restrictions of any kind."[26] Newman argues that universities should allow intellectual discourse about God or a "Supreme Being" in their curricula. It follows—so argues Newman—that universities should allow intellectual discourse about God or a "Supreme Being" in their curricula.

According to Cardinal Newman, the teaching that takes place at universities should not be restricted to "edifying books" or "Christian literature." Anticipating the thoughts of those who might object to the teaching of "immoral" or "sinful" literature at universities, Newman writes:

> Some one will say to me perhaps, "Our youth shall not be corrupted. We will dispense with all general or national

[24] *See id.* at 30–31.
[25] *See id.* at 36.
[26] *Id.* at 25.

> Literature whatever, if it be so exceptionable; we will have a Christian Literature of our own, as pure, as true, as the Jewish." You cannot have it: —I do not say you cannot form a select literature for the young, nay, even for the middle or lower classes; this is another matter altogether: I am speaking of university education, which implies an extended range of reading, which has to deal with standard works of genius, or what are called the *classics* of a language: and I say, from the nature of the case, if literature is to be made a study of human nature, you cannot have a Christian literature. It is a contradiction in terms to attempt a sinless literature of a sinful man.[27]

Newman goes further and reminds his readers that the mission of a university is to be clearly distinguished from the mission of a convent or a seminary. To the extent that the university properly aims to prepare students for the world, Newman posits, it must aid students in learning about "the ways and principles and maxims" of the world, even if these "ways and principles and maxims" are ultimately not worthy of being endorsed for moral or religious reasons.

> For why do we educate, except to prepare for the world? Why do we cultivate the intellect of the many beyond the first elements of knowledge, except for this world? Will it be much matter in the world to come whether our bodily health or our intellectual strength was more or less, except of course as this world is in all its circumstances a trial for the next? If then a University is a direct preparation for this world, let it be what it professes. It is not a Convent, it is not a Seminary; it is a place to fit men of the world for the world. We cannot possibly keep them from plunging into the world, with all its ways and principles and maxims, when their time comes; but we can prepare them against what is inevitable; and it is not the way to learn to swim in troubled waters, never to have gone into them.[28]

In a passage from his *Apologia Pro Vita Sua*, Newman makes a further observation that sheds important light on his understanding of learning and education, both within the university and outside of it. For Newman, the airing and discussion of ideas—even controversial ones—must be allowed to take place free of interference from Church authorities. Such is

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[27] *Id.* at 158.
[28] *Id.* at 160.

not only indispensable for the discernment of truth, including theological truth, but has—as a matter of fact—been the normal and common mode of proceeding throughout Church history. It is worthwhile to quote the relevant passage in full:

> There was never a time when the intellect of the educated class was more active, or rather more restless, than in the middle ages. And then again all through Church history from the first, how slow is authority in interfering! Perhaps a local teacher, or a doctor in some local school, hazards a proposition, and a controversy ensues. It smoulders or burns in one place, no one interposing; Rome simply lets it alone. Then it comes before a Bishop; or some priest, or some professor in some other seat of learning takes it up; and then there is a second stage of it. Then it comes before a University, and it may be condemned by the theological faculty. So the controversy proceeds year after year, and Rome is still silent. An appeal perhaps is next made to a seat of authority inferior to Rome; and then at last after a long while it comes before the supreme power. Meanwhile, the question has been ventilated and turned over and over again, and viewed on every side of it, and authority is called upon to pronounce a decision, which has already been arrived at by reason. But even then, perhaps the supreme authority hesitates to do so, and nothing is determined on the point for years: or so generally and vaguely, that the whole controversy has to be gone through again, before it is ultimately determined. It is manifest how a mode of proceeding, such as this, tends not only to the liberty, but to the courage, of the individual theologian or controversialist. Many a man has ideas, which he hopes are true, and useful for his day, but he is not confident about them, and wishes to have them discussed. He is willing, or rather would be thankful, to give them up, if they can be proved to be erroneous or dangerous, and by means of controversy he obtains his end. He is answered, and he yields; or on the contrary he finds that he is considered safe. He would not dare do this, if he knew an authority, which was supreme and final, was watching every word he said, and made signs of assent or dissent to each sentence, as he uttered it. Then indeed he would be fighting, as the Persian soldiers, under the lash, and the freedom of his intellect might truly be said to be beaten out of him.[29]

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[29] JOHN HENRY CARDINAL NEWMAN, APOLOGIA PRO VITA SUA AND SIX SERMONS 341–42 (Frank M. Turner ed., 2008).

IV. THE GIVING OF AWARDS, HONORS, OR PLATFORMS BY CATHOLIC UNIVERSITIES, AND THE RELEVANCE OF DOUBLE EFFECT

Let us recall that the bishops' statement does not speak against giving any and all honors to those, whether Catholic or non-Catholic, who act in defiance of the bishops' fundamental moral principles; the statement speaks, rather, against giving awards, honors, or platforms to such persons, whether Catholic or non-Catholic, "which would suggest support for their actions."[30] Thus we might now ask: (1) when does giving such awards, honors, or platforms run the risk of suggesting support for the actions of "defiant" individuals or groups?; and (2) if there is any doubt about the matter, who is entitled or authorized to decide whether giving awards, honors, or platforms to a particular "defiant" party suggests support for that party's actions?

Here, it is important to observe that the decision of a particular Catholic university or Catholic law school to give awards, honors, or platforms might be motivated by a number of differing concerns. Awards, honors, or platforms might be given to air and discuss contested topics, which, as Newman states, is essential to the discernment of truth; to open up new channels for political dialogue; to provide venues for the pursuit of neglected questions or neglected truths; to call attention to pressing social, political, or religious needs; to enhance the public recognition or stature of the university itself; or even to gain favor with people or groups that control large amounts of power or financial resources.

All of these concerns seem to have been operative in the decision by the University of Notre Dame to honor President Obama at the university's commencement exercises in 2009. Just as there may be a number of potential advantages to a university's decision to give awards, honors, or platforms to particular individuals or groups, there may also be a number of potential disadvantages bound up with such a decision. For example, giving awards, honors, or platforms to a particular individual might be financially costly for the university—for example, if an unusually high speaker's fee or unusually high transportation costs must be paid—and it might cause

[30] *Catholics in Political Life*, *supra* note 1.

embarrassment to the university—for example, if the individual is perceived, no matter how fairly or unfairly, to be immoral, corrupt, or unworthy of the recognition being given to him or her by the university. Another potential disadvantage bound up with giving awards, honors, or platforms to particular individuals or groups is the way in which the public at large may interpret the very act of giving the award, honor, or platform itself. As the bishops' statement points out, when a Catholic institution gives public recognition to certain individuals by giving awards, honors, or platforms, there is a risk that the viewing public might wrongly perceive such public recognition as an expression of the Catholic institution's agreement with, or at a minimum, indifference to, certain beliefs or policies that the individual happens to endorse or support.

How should a "Catholic" university or a "Catholic" law school comport itself in light of these worries and considerations? The proper aim of those who are authorized to direct and to care for any particular institution, such as a university or law school, Catholic or non-Catholic, is to do what is best for the institution and what best allows it to fulfill its proper purpose. So, all things being equal, if giving some award, honor, or platform to a particular individual or group is going to benefit the institution and enable it to fulfill its proper purpose, then the institution might be well advised to give the award, honor, or platform. Conversely, all things being equal, if giving some award, honor, or platform to a particular individual or group is going to harm the institution or impede it from fulfilling its proper purpose, then those in charge might be well advised to refrain from giving the award, honor, or platform. In the real world, however, it is never the case that all things are entirely equal; thus, the pursuit of some good may be inevitably bound up with incurring some harms, as when the decision to invite a very famous public speaker might be bound up with especially high financial or reputational costs for the institution. Conversely, the avoidance of some harms may be inevitably bound up with incurring other harms. For example, the decision to refrain from inviting a very influential but controversial politician might end up harming the institution's ability to win favors from the state's legislature. In short, our real world is full of instances in which we cannot pursue the good that we ought to pursue, without at the same time running the risk of incurring certain evils that we ought to

avoid. Conversely, it is full of instances in which we cannot avoid the evils we ought to avoid, without at the same time running the risk of incurring still further evils.

St. Thomas Aquinas famously recognized the moral difficulties that arise when our pursuit of good is bound up with causing evil. Thus, as Aquinas observed, it is possible for one act to have two different effects. For example, the act of self-preservation may have two different effects: the saving of one's life, which is the directly intended effect, and the slaying of an aggressor, which is an indirect or unintended effect.[31] On Aquinas's account—which has come to be known as "the doctrine of double effect"—an act which has self-preservation as its direct and intended object is not necessarily an illicit act, even if the successful achievement of its object is inseparable from the causing of some evil.[32] The act of saving one's own life, however, may become illicit, and thus not morally permissible, if the act—as Aquinas says—is "out of proportion" to its proper end.[33] The act would be "out of proportion" if, for example, the individual were to use excessive force in the otherwise legitimate act of self-defense—for example, if the individual were to use lethal force in order to preserve his or her life, when lesser, non-lethal force would have been sufficient to achieve the same result of self-preservation.[34]

A person may be morally justified in pursuing the intended good, even if securing the intended good cannot be achieved without the foreseen but unintended causing of some harm or evil. One is not justified, however, in securing the intended good by incurring the cost of the unintended evil or harm if there is no proper proportionality between the goodness of the intended good and the badness of the unintended evil or harm.

Oncologists are often faced with this type of balancing test. Oncologists often and justifiably restore their patients to health—an intended good—by means of chemotherapy which at the same time and unavoidably causes in these patients nausea and physical weakness—unintended evils. The chemotherapy treatments are justified, however, insofar as there is a proper

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[31] THOMAS AQUINAS, *SUMMA THEOLOGICA*, pt. II–II, Q.64, art. 7, at 1471 (Fathers of the English Dominican Province trans., 1947).

[32] *Id.*

[33] *Id.*

[34] *Id.*

proportionality between the goodness of preserving human life—the directly intended good—and the relatively minor and short-lived discomforts—unintended, though foreseen, evils—caused by the treatment. By contrast, the chemotherapy treatments would not be justified if there were no such proper proportionality. For example, if saving a life through chemotherapy caused not only short-lived discomfort in the patient being saved but also greater harms, such as death, to several others, then there would be no proper proportionality between the intended good and the unintended evils brought about by the action. In such a case, the evil of certain effects—the death of several others, even though not directly intended—would outweigh the good of the directly intended good—the saving of one life—and the evil would thereby turn the otherwise licit act—of saving a life—into an illicit one.

It is important to emphasize that the doctrine of double effect does not tell us that an action is justified just so long as its good effects are intended and its evil or harmful effects are unintended. If this were the substance of the doctrine, then the doctrine would absurdly imply that a pest exterminator would be justified in administering poison that killed both rats and children, provided only that the killing of the rats was intended and the killing of children was unintended. Contrary to popular misunderstandings, the doctrine of double effect is not a doctrine about which sorts of acts are automatically justified. Rather, it is a doctrine about which sorts of acts are not automatically unjustified.[35] More specifically, it is a doctrine which tells us that not all acts that produce evil or harmful consequences are automatically unjustified; an act which produces evil or harmful consequences may be justified, provided (1) that the evil or harmful consequences are not intended, and (2) that there is a proper proportionality between the good consequences that are intended and the evil or harmful consequences that are unintended.[36]

The doctrine of double effect is not limited to extreme cases, like killing in self-defense; it is also relevant in the most common and mundane of human choices, including even the choice to read a law journal article—including the present one—rather than doing something else. This can be illustrated easily enough.

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[35] *See id.*
[36] *See id.*

Because human beings do not have an unlimited amount of time in their lives, it is impossible for an individual human being to pursue the intended good of reading a law journal article without also refraining from pursuing other kinds of good, such as the good of using the same time to read about physics or to get one's grocery shopping done. As Aquinas points out, the foregoing of a fitting good is, relatively speaking, a kind of loss or a kind of evil. Nevertheless, an act which incidentally causes some loss or evil, while aiming at the securing of some good, may be a justified act provided (1) that the loss or the evil is not in itself intended, and (2) that there is a proper proportionality between the good which is intended—reading a law journal article—and the evil or loss which is unintended—the foregoing of a fitting good, such as the good of getting one's grocery shopping done. On the other hand, an act which secures some good but at the cost of some terrible evil or the loss of an exceedingly precious good—for example, human life itself—may be an unjustified act. Thus, a person may be justified if he or she chooses to spend a fixed duration of time reading a law journal article rather than using that same fixed duration of time to get his or her grocery shopping done. But we would say that a person is unjustified—indeed, morally obtuse—if he or she chooses to spend a fixed duration of time reading a law journal article when he or she could have used that same fixed duration of time to save the life of someone who at that very moment happened to be nearby and choking on a piece of hard candy.

It should be clear from the foregoing analysis that the doctrine of double effect does not prescribe any sort of formula or algorithm for determining which sorts of acts are justified and which sorts are unjustified. Rather, it is a doctrine that tells us that some acts, even if they produce evil or harmful consequences, are not automatically unjustified acts. According to the doctrine of double effect, judgments about the justifiability of certain actions will depend, crucially, on judgments about the presence or absence of a "proper proportionality" between the intended goods and the unintended harms or evils which arise from the actions in question. Accordingly, making moral judgments in accordance with the doctrine of double effect does not allow us to dispense with—but in fact requires—making difficult prudential judgments about the relative importance of pursuing certain goods and avoiding certain evils in our

complicated, messy world. As we have already seen, officers of the Church, including bishops, are not uniquely situated or authorized (1) to determine what it means for a university to fulfill its purpose as a university in general and as a Catholic university in particular, unless the university is a papally-chartered one, or (2) to determine whether particular acts of giving awards, honors, or platforms to certain individuals or groups do or do not "suggest support" for the actions of such individuals or groups. It is also the case that officers of the Church, including bishops, are not uniquely situated or authorized (3) to make prudential judgments about the "proper proportionality" that may or may not exist between intended goods and unintended evils or harms that may arise when a Catholic university or law school decides to give awards, honors, and platforms to certain individuals or groups.

Whenever a Catholic university or law school considers giving some award, honor, or platform to a particular individual or group, a prudential judgment will eventually have to be made about the relative importance of the good that might be secured through such an act of giving and the harms or risks that might have to be tolerated as a result of such an act. In light of a good or a benefit that might be especially compelling for a particular university or law school—for example, the good of recognizing the humanitarian work of a particular alumnus/a, or the good of instigating intellectual discussion about an especially pressing national or local issue—a decision might legitimately be made to tolerate certain risks that would otherwise not be tolerated—for example, the risk of losing the support of certain alumni/ae, or the risk of incurring criticism from local Church officers. But as we have already seen, officers of the Church do not—except in the case of papally-chartered institutions—normally have the final say or the final authority to determine the relative importance of goods to be pursued and evils to be avoided when Catholic universities or law schools consider giving awards, honors, or platforms. This is not to say that officers of the Church should have no say in the matter at all. Indeed, the good of hearing and respecting the input of relevant Church officers, including bishops, should be one of the more compelling goods to be considered when a Catholic institution contemplates giving awards, honors, or platforms to certain individuals or groups. Except in the case of papally-chartered institutions, a final

determination regarding the relative importance of certain intended goods and certain unintended evils—all considered in light of the institution's particular history, traditions, values, and concerns—is a matter to be decided not directly by Church officers as such, but by those who have been duly charged with caring for the good of the institution and guiding it to fulfill its proper purpose.