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The frith stool at Beverley Minster in the U.K. dates back to Saxon times. Anyone wanting to claim sanctuary from the law would sit in the chair. Photo courtesy of Jeremy Fletcher, former Vicar of Beverley Minster.

Law, Policy, and the Sanctuary Campus

By John McKay

I do not know whether President Donald Trump is familiar with the “frith stool,” a chair found in some pre-Norman churches in England upon which those seeking sanctuary were required to sit in order to establish a claim to protection.

I consider it unlikely that Mr. Trump knows the history of church sanctuary or that in medieval times this protection sometimes extended beyond the churches to larger areas marked by “sanctuary crosses,” some of which might still be seen in parts of England. Or that the concept of protection from pursuing government agents or soldiers existed in the biblical times of ancient Israel, in Greek temples, under controlled aspects of Roman law, and in Christian churches for centuries.

He will certainly know, or will so be advised by his lawyers, that no legal right of sanctuary exists today in the United States and cannot be used as a defense to violating federal

criminal laws, including the charge of “illegally harboring an alien.” Whether our Christian values and Ignatian principles of care for persons compels us to another direction is the subject of this essay.

This conflict between our long ecclesiastical tradition of sanctuary and relevant law and policy in the United States lies at the heart of the current threat to undocumented persons, including students in our Jesuit universities. Reconciling the long history of church sanctuary with the risk of loss of federal funding, student loan eligibility, or criminal prosecution will prove difficult and may challenge our commitment to Ignatian ideals. Indeed the very core of our Catholic Jesuit tradition of education seems threatened by the specter of armed federal agents entering our universities and arresting students who are under our care.

Should Jesuit universities join others who have declared themselves a “sanctuary campus” and challenged the government by declaring their non-cooperation with immigration authorities and support for undocumented students?

No Current Law Prevents a Declaration of “Sanctuary Campus” for Jesuit Universities

Federal law or policy defines neither the term “sanctuary city” nor “sanctuary campus.” However, a university should proceed with due caution in examining its moral obligation to support all of its students, especially those who are undocumented, from unwarranted searches or seizures by the government.

It is important to note that the law treats private institutions, including religious colleges and universities, differently than state and local governments. For the most part, private institutions and their leadership enjoy constitutional protections, including free speech and the Fourth Amendment right to remain free in the absence of an arrest warrant based upon probable cause. Private universities should ignore the debate and threats made by the Trump administration against so-called “sanctuary cities” – this does not apply to them.

Current policy of U.S. Immigration and Customs

Enforcement (I.C.E.) in a memorandum dated October 24, 2011, designates all schools, including colleges and universities, as “sensitive locations.” Also included are “churches, synagogues, mosques or other institutions of worship.” Planned enforcement actions in these locations are discouraged and require senior-level approvals unless a situation involves imminent risk of death, violence, harm to national security, or terrorism. This guidance remains in effect today.

Entry upon the property of a private university requires the permission of the university, and in general this applies equally to law enforcement, including immigration officials. Consequently, neither the university nor any of its employees are required to assist I.C.E. agents or other immigration or law enforcement officials *in the absence of a court-ordered warrant*. For those wishing to protect all students while they are on campus, federal immigration agents should politely be told to leave the campus if their purpose is to seek information about or access to undocumented students. If a warrant signed by a judge has been lawfully obtained, then failure to cooperate could subject university employees to criminal prosecution. Some may determine that the government action itself is immoral and unjust and might determine that non-violent opposition is justified. In either case, training and deep reflection are clearly called for in the event of stepped-up federal enforcement of immigration laws that many believe to be unjust and if applied to undocumented students would have a disastrous impact on university communities.

Some argue that the mere declaration of a “sanctuary campus” might result in loss of federal grant funds and student loans and in other sanctions. While this essay does not purport to give legal advice – that is the role of university counsel – real threats to federal funds based upon a declaration are remote at best. Undocumented students are not eligible for Pell Grants; even if the federal government had the authority to cut grant funding it would appear this avenue is unavailable. Absent new legislation, and without very creative language in administrative or executive orders, private universities receiving direct or indirect federal funding would not face serious financial risk.



The Jesuits of Loyola University Chicago (particularly the younger ones!) showed off their musical and basketball prowess in anticipation of an important fundraising event to support a scholarship fund for undocumented students seeking to study at one of Loyola's campuses in the Chicagoland area. Their efforts are tied to the "Jesuit Jam," a yearly collaboration with the university basketball teams to highlight the school's Jesuit mission, encourage support of Loyola's teams, and support causes important to the campus community. https://youtu.be/GC_nKexdp-8

Our Call to Serve the Poor, the Immigrant, the Sanctuary-Seeker

Our faith tradition calls us to "love the stranger, for you were once strangers in Egypt" (Deut 10:19) and exclaims, "I was a stranger and you made me welcome" (Matt 25:37). Pope Francis, in direct response to the Syrian refugee crisis and President Trump's purported travel ban order, reminded us that the need for "the peaceful integration of persons of various cultures is, in some way, a reflection of its catholicity, since unity, which does not nullify ethnic and cultural diversity, constitutes a part of the life of the Church." He has urged Catholics worldwide to help instill a "ray of hope...in the eyes and hearts of refugees and those who have been forcibly displaced."

These powerful calls, together with our Ignatian

pledge of *cura personalis*, or care for the whole person, makes the issue of sanctuary on our campuses one that touches our Jesuit identity. While a university declaring itself a sanctuary confers no legal protection, I would argue that Jesuit universities must join the approximately 30 universities that have made such declarations. Our students, especially those who are undocumented, live in fear of President Trump and his pledge to end protections for college students. His campaign rhetoric of stepped-up enforcement against the millions of undocumented persons living, working, and raising families in this country, makes this threat all too real for them.

Declaring a Jesuit university a "sanctuary campus" makes explicit our connection to the long history

"If our church is not marked by caring for the poor, the oppressed, the hungry, we are guilty of heresy."

- St. Ignatius of Loyola

of religious protection from unjust arrest or government harassment. Fear of government scrutiny, loss of funding, or the approbation of government officials should never be more important than caring for our students and opposing injustice against them. Therefore, Jesuit universities should be among the first to explicitly declare for them what it means to be a campus of sanctuary for its undocumented students.

Toward a Declaration of ‘Sanctuary Campus’ and the Actions It Requires

A number of Jesuit universities and institutions have issued statements in response to actions taken by the Trump administration, and many list actions they will take to protect students. These statements appropriately emphasize the desire of the university to operate within the strict confines of the law. Yet, none declare themselves to be a “sanctuary campus.” Because the term is undefined in law and policy, Jesuit universities and institutions should take care to define it carefully. This should be done in a way that does not give governmental agencies an argument that the declaration in any way establishes cause to believe a crime has been or will be committed.

Jesuit universities should explicitly declare themselves sanctuaries for their students, and should (1) define sanctuary in the religious context in which it was born, (2) declare that the university will comply only with lawful orders signed by appropriate judicial authorities directed against its undocumented students, (3) detail the affirmative services and resources available to students, including those who are undocumented, (4) engage in training for university employees, faculty, and staff to understand both the limitations and lawful authority of governmental immigration and law enforcement officials, and (5) refuse voluntary cooperation with immigration officials seeking information or access to its undocumented students in the absence of a court order.

In these challenging days, Jesuit communities are called upon to renew their commitment to the values of the Gospel, to Catholic social teachings, and to the core of our Ignatian spirituality. Declaring our campuses to be sanctuaries for our students in the face of threatened mass deportations is among the least of our duties, but will send a powerful message of support when is most needed.

John McKay is Professor from Practice at Seattle University School of Law and a former United States Attorney.

Heidi Barker, a member of the National Seminar on Jesuit Higher Education, has put together a collection of websites from the AJCU and from some of the Jesuit schools addressing the issue of issue of protecting their students.

From the AJCU:

<http://www.ajcunet.edu/press-releases-blog/2016/11/30/statement-of-ajcu-presidents-november-2016>

<http://www.ajcunet.edu/press-releases-blog/2017/1/30/statements-from-jesuit-college-and-university-presidents-on-executive-order>

From Regis University:

<http://www.regis.edu/News-Events-Media/News/2017/January/Presidents-Statement.aspx>

Three short statements that seem to completely avoid any legal entanglement:

<http://www.scranton.edu/news/articles/2017/01/Refugee-statement-ban-Quinn.shtml>

<https://ww2.rockhurst.edu/news/01-30-2017/statement-rockhurst-university-president-rev-thomas-b-curran-sj-us-immigration>

<http://www.lemoyne.edu/News/News-Article/ArticleId/104>

This one is written by several leaders on campus at Marquette:

<https://today.marquette.edu/2017/01/a-message-from-leadership-to-the-marquette-community/>

And, this, from the University of San Francisco, is very detailed:

http://register.usfca.edu/controls/email_marketing/admin/email_marketing_email_viewer.aspx?sid=1307&eiid=16624&seiid=11410&usearchive=1&puid=83992b4f-3524-4187-b542-dceb0b448f86