

# WHY THE RIGHT REMEDY MATTERS

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It is not enough to have the right intention. Nor is it enough to choose the right side of a controversial issue. Having the right remedy matters.

Consider what happened over the summer in Fort Wayne, Indiana, regarding the play, "Corpus Christi." The Terrence McNally play is based on a Christ-like figure, Joshua, who is portrayed as having sex with the 12 apostles.

The lead story in the June edition of *Catalyst* was on the decision of Indiana University-Purdue University Fort Wayne (IPFW) to schedule a performance of the anti-Christian play, "Corpus Christi." As we have done since the play first opened in New York in 1998, we launched a protest. What we didn't do was threaten a lawsuit against the school.

Twenty-one legislators and 11 citizens sought to stop the play by filing suit against IPFW. They argued that if the establishment clause prohibits state sponsorship of religion, then it should be unconstitutional to allow public monies to attack religion (IPFW receives public funding).

This is an interesting argument. As a matter of fact, I have made a very similar argument dozens of times over the years on television. But with one big difference: my contention is that it is logically incoherent to make a moral case that allows for this kind of duplicity to continue. That is quite different from saying it is unconstitutional.

When this case was decided, the judge gave the plaintiffs short shrift. And so the university won. By the way, had the university lost, the other side would not have won: the wording of the brief was such that all religious clubs, including campus ministries, would have been banned. Indeed,

Bishop D'Arcy, the local Ordinary, may very well have been denied his weekly visits to the campus had the plaintiffs prevailed.

Five of the 11 citizens who joined the suit against IPFW are Catholic League members. They are entitled to know why I rejected their remedy while sharing their outrage over the play.

In the eight years that I have spent as president of the Catholic League, I have resolutely opposed legal remedies to defamatory attacks on the Catholic Church that have been made in the arts or in the media. I will concede that when specific individuals have been discriminated against on the basis of their religion, I am all for suing. But not when it comes to speech we find morally objectionable.

Here's why. First, I have a principled objection to censorship of political discourse; free speech is not an absolute, but that doesn't mean that it can be vetoed because some speech is injurious to one's sensibilities. Secondly, were the Catholic League to endorse censorship, we would immediately become the issue, thus allowing the offenders the opportunity to claim victim status; were that to happen, we would lose and they would win. Finally, attempts to censor are bound to fail in court anyway.

That is why I like to take our battle to the court of public opinion and avoid the courts. By putting the media spotlight on the offender and by coming out against censorship, we position ourselves just right. The offender, then, is forced to be on the defensive, which is exactly where he belongs.

No public institution is entitled to pick the pocket of the people without accountability. So if there is a racial, religious or ethnic incident on a campus that receives public monies, it is entirely within the purview of state legislators to ask tough questions when budgets are being considered. This

explains why we decided to alert the lawmakers in Indiana to "Corpus Christi."

As someone who taught for 20 years, 16 of which were spent teaching undergraduate and graduate students, I am very familiar with the extent to which faculty and administrators use their First Amendment protections to justify irresponsible speech. Do many of them hide behind the First Amendment? You bet they do. Are many of them hypocrites—the kind of people who would silence their critics? You bet. But at the end of the day they are still entitled to seek relief in the First Amendment.

It is for these reasons that I asked IPFW chancellor, Michael Wartell, if it would be acceptable for me to write, and for him to approve, a statement registering our moral objections to the play that would then be distributed to every theatergoer the night of the play. He quickly agreed. By taking this route, we got the word out about the offensive nature of the play (more people read our statement than attended the play) while still upholding the legal right to have it performed.

All this goes to show is that people can be on the same side yet differ with regards to the right remedy. Nothing new about this—family quarrels are inevitable. What I want is for the Catholic League to take the bigots to the mat, without being disqualified in the process.