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Law & the Gospel of Life
Fordham Law School Institute on
Religion, Law, & Lawyers' Work
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Feast of St. Francis de Sales

Renata, thank you!

Father McShane and brother priests; Faculty and students of this distinguished university and School of Law;

Members of the Institute on Religion, Law, and Lawyers' Work; Friends one and all:

I sure appreciate the invitation and welcome. Any opportunity to visit Fordham is an occasion I relish; to do so and address this impressive group on such a noble topic as Law and the Gospel of Life is an honor indeed.

Know, please, that I do so hardly as a scholar, professor, or jurist, but as a pastor. Thus will my remarks be somewhat succinct and simple. Thanks for your patience.

The title assigned me -- Law and the Gospel of Life -- obviously has in mind the masterful encyclical of Blessed John Paul II, *Evangelium Vitae*, the Gospel of Life, written seventeen years ago.

Blessed John Paul II directs his teaching, not just to Catholics; not just to Christians or people of faith; but "to all people of good will."

This is rather important. True enough, his teaching is expressed in terms of religious belief and teaching, but his fundamental thesis -- that human life is sacred, and thus merits dignity, respect, and protection by law -- is rooted in natural law, a source of ingrained principles accessible to all, not just religious folks.

Natural Law is a concept of objective truth, known by anyone with the power of reason -- a truth not relativized by the special interest of religious preference, class, gender or individual bias. "We hold these truths to be self-evident."

It is a question of endowments that are intrinsic to us by the very fact of being human. And thus the rights appropriate to us are "inalienable." They cannot be taken away by any state or power or law or choice of individuals.

And what specifically cannot be taken away? Our life, our liberty. No human institution or individual has given us these rights. They have been given by us by God.

This is what Frederick Douglass knew. This is what Gandhi knew. This is what Martin Luther King knew.

As King wrote in his famous Letter from a Birmingham Jail, “How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law.” And then he refers to a famous philosopher, from whom he learned that “an unjust law is a human law that is not rooted in eternal law and natural law. Any law that degrades human personality is unjust.”

The philosopher cited by Dr. King was St. Thomas Aquinas.

Since good law is classically seen as a protector of culture’s most noble values from culture’s basest urges, it will not surprise this audience that John Paul spends a chunk of time looking at contemporary culture. While no one could accuse this Polish Pope of being a pessimist, he does still realistically note a variety of threats to the sacredness of human life in today’s culture: for instance, abortion, infanticide, eugenics, misuse of artificial reproductive technologies, contraception, euthanasia . . . and an even broader range of dangers to human life in poverty, an unjust distribution of economic resources, war, the arms trade, drugs, and human trafficking. No “single issue” politician is Karol Wojtyla!

For John Paul II, “ideas have consequences.” The litany of threats to the Gospel of Life just mentioned are but consequences of faulty and toxic cultural ideas, a web he calls famously the Culture of Death. This he defines as a culture that denies the basic solidarity inherent in the human person, obsessed instead with efficiency and convenience.

In rather stinging language, the Pope speaks of “a war of the powerful against the weak.” Listen: “A person who, because of illness, handicap, or, just by existing, threatens the wellbeing or lifestyle of . . . the more favoured tends to be looked upon as an enemy to be resisted or eliminated. In this way a kind of ‘conspiracy against life’ is unleashed.”

Such a Culture of Death can only thrive, of course, in a world in which God has been excluded, and in which everyone can evade the responsibility of solidarity by claiming to define his or her own morality. Freedom is seen as the only absolute value.

Can sustained human rights, girded by law, survive in such a culture? The pragmatic, utilitarian world view depends upon sand to construct a system of laws protecting human rights, particularly that of life itself, since everything is constantly being re-negotiated, based on drifting dunes of utility, convenience, privacy, and self-interest.

Scholars and students of the law will not be surprised that the Holy Father would see things in this way. It is a bedrock feature of modern political and legal theory that only neutral, utilitarian principles can provide a basis for public policy discussions and law, and that appeals to transcendent values -- such as religion -- cannot legitimately be presented. Participants in public discourse are expected to set aside their religious convictions and other “non-public reasons,”

and instead seek only to persuade their fellow citizens by secular arguments. Some legal theorists go so far as to say that issues pertaining to the ultimate value and importance of human life should not even be discussed, that the state has no business proposing answers to such questions, and that citizens should not attempt to impose a particular view of justice unless it is based on “shared forms of reasoning.”

Of course, as the Holy Father points out clearly in the Gospel of Life, when arguments that appeal to objective truth are excluded from the debate over the laws that will govern us, we are caught in a trap of ethical relativism, and the dignity of persons and their right to life is subjected to majority vote. The danger inherent in this situation is that “democracy, contradicting its own principles, effectively moves towards a form of totalitarianism,” and risks being transformed into a “tyrant state.”

Blessed John Paul is much more interested in proposing a positive, hopeful Culture of Life than wringing his hands over the Culture of Death.

The Gospel of Life proposes an alternative vision of law and culture, one that provides an antidote to the pragmatic nihilism that produces a Culture of Death. It seeks to recapture the essential relationship between the civil law and the moral law, and to foster a culture in which all human life is valued and authentic human development is possible.

The fundamental premise is that the human person must be at the center of all legal systems and culture, and that human life is inviolable, an end in itself, not a means to an end. There is an old Latin saying, “Law is established for the benefit of mankind.”

This insight is at the heart of Pope John Paul’s call for “a general mobilization of consciences and a united ethical effort to activate a great campaign in support of life.” It is also necessary to reestablish the relationship between the civil law and the moral law.

Despite the view that we should leave our religious arguments aside when we enter into these kinds of discussions, the Gospel of Life calls us specifically to offer a clear, faith-based view of humanity as a basis for human law. As Christians, we propose that truth can only be known and freedom truly exercised by recognizing that they are a gift from God. By bringing God back into the discussion, the

Gospel of Life offers a way to establish human law and human rights on a firm foundation. It offers a way to exercise true freedom, not based on a utilitarian calculus of self-interest, but on the innate dignity of every human person from the moment of conception as a gift from God.

But it is an important proposition of the Gospel of Life that the dignity of the human person and respect for inviolable human rights are not just based on divine revelation, but on “an objective moral law which, as the ‘natural law’ written in the human heart, is the obligatory point of reference for civil law itself.”

These truths flow from an understanding of the human person. They are norms that “no individual, no majority and no State can ever create, modify or destroy, but must only acknowledge, respect and promote.” An understanding of this natural law allows us to engage “all people of good will” in a “shared form of reasoning” that is the patrimony of Western civilization dating back to the Greeks and Romans.

A reliance on the natural law, and human rights, will enable us to move the culture, and thus our laws, in the direction of authentic respect for human life. It will be a gradual, incremental process, as the ongoing conversion of culture leads to a transformation of law, and vice versa. It will require compromise, and acceptance of intermediary steps. In this respect, Pope John Paul’s discussion of imperfect laws that seek to limit or minimize threats to life, and the moral responsibility of legislators to oppose all unjust laws, is pertinent and very challenging. The proper respect for individual and institutional conscience is also an important part of this process -- it is a natural human right to decline to participate in matters that are morally objectionable, and society has an obligation to protect that right.

The Gospel of Life flows from natural law, yes, but, for us as believers, it flows as well from Revelation, from the Bible, from the wisdom of the Church, and goes something like this: God made me in His own image; I am God’s work of art; He calls me by name;

He knows me better than I know myself; He loves me so powerfully, personally, and passionately that He wants me to spend eternity with Him; I am worth the precious blood of His only-begotten Son; I come from Him and am destined to return to Him for all eternity; His intention is that human life be protected from conception to natural death; every human life demands respect; and a culture can only survive that has as its law the stewardship of human life. There’s the positive expression of this Gospel of Life.

Can we now spend a moment looking more closely at the ideologies that chisel away at the Culture of Life, forces that seem to be ascendant in culture and normative in making laws?

The trinity of culprits is usually enumerated as pragmatism, utilitarianism, and consumerism, all really first cousins.

Pragmatism of course means that the only value is whether something works or not, if it is efficient and helps us achieve a goal.

Utilitarianism means that the only value is whether or not something or someone is useful to me, serves my purposes.

Consumerism posits value only in something’s ability to satisfy, fill a need, or satisfy an urge.

This utilitarian and consumerist culture of death is the product of deeply-rooted social, philosophical and ethical tendencies that find their expression in our laws, and in our attitudes towards others. There is a loss of a sense of truth, and objective moral norms -- rules of conduct that apply always, to everyone, everywhere -- and an “eclipse of a sense of God and of man.”

But in the utilitarian view that dominates our age, the principle that human life is an end in itself, not a means to an end, is always subject to a calculation that would justify harm to another, if we deem it to produce enough of a benefit to ourselves. Every human life is thus vulnerable to being on the losing side of the utilitarian's cost/benefit analysis.

In the pragmatist's world, inter-personal and international relations inevitably become a question of power and domination, instead of dignity and justice, and we risk going back to Thomas Hobbes' state of nature, the "war of all against all."

It is John Paul II's hunch that culture's most glaring shortcoming is the preference for "having" and "doing" rather than "being."

Pragmatism, utilitarianism, and consumerism are fancy vocabulary words for the passionate drive for "having" and "doing."

Life is basically about "being," and law's most noble purpose is to safeguard the "being" of life from the rawest preferences for "having" and "doing."

Take, for example, the fact of the "being" of the baby in the womb. That "being," that life, trumps the values of usefulness, efficiency, convenience, privacy, or satisfaction of one's needs. A culture of life with supportive laws guarantees this.

A baby is useless and impractical from a raw, pragmatic, utilitarian, or consumerist view.

So, "baby" is becoming a nasty word. Moms and dads with more than two children below the age of five report regular stares of disdain and "tsk-tsks" from enlightened folks who look as if they're about ready to produce a flyer for vasectomies, tubal ligation, abortion, or chemical contraceptives.

What is prohibited by law and grave punishment in China -- only one baby,

reluctantly, per couple who insist on this quaint practice -- is being enforced by a culture and society in Western Europe -- where the most popular name for male babies is now Mohammed, since nominally Christian couples have maybe one child -- and in our own beloved country, cultures which can at times view babies as a commodity, an accessory, at best, or an inconvenience and burden at worst.

Babies are now postponed by chemicals and latex, until the couple might decide they'd enjoy one, and then are irritated when they can't, driving them to laboratories where perhaps technology can make up for what only nature does perfectly.

Couples now, we're told, prefer pets. If a baby, maybe one from a catalogue. If pregnancy occurs, and the "baby" is not to their liking, especially if sick or less than perfect, we must stop it and maybe try again.

Because, basically, some in the culture of death view babies now as a commodity, an accessory. We have babies, if at all, to satisfy our desires, not to sacrifice for theirs; to fulfill our needs, not to invite us to spend the rest of our lives fulfilling their needs; to reward us, not because we want to give to them.

To this culture of death the Church boldly and joyfully promotes the culture of life.

We recognize that we humans are at our best when we give ourselves away in selfless love, and live no longer for ourselves, but for another. This is what Pope John Paul the Great calls the law of the gift.

And nothing obeys the law of the gift more than a baby; nothing changes a life more than a baby; nothing transforms from selfishness to selflessness more than a baby; nothing calls us from narcissistic self-absorption in a universe of one to a world of solidarity more than a baby.

And nothing threatens a culture of civility, a civilization of love, a society of virtue and justice, nothing trespasses the law of the gift more, than a culture of death bolstered by laws which threaten rather than protect the unborn baby.

“Being” vs. “having and doing;”

“Solidarity” vs. “consumerism” and excessive privacy;

“The Law of the Gift” vs. “the Law of survival,” the capitulation to selfishness.

This is the choice, the dialectic, the tension presented by Pope John Paul II.

His successor, the current successor of St. Peter, Pope Benedict XVI, has added some wattage to the radiance of the Gospel of Life.

Pope Benedict, has repeatedly warned about the threat of a “dictatorship of relativism.” He has also viewed the developments in the law very carefully, and has warned of the same tendencies that Pope John Paul has seen. In an important speech to the German Parliament just last Fall, Pope Benedict warned of a purely positivist system of law that gives expression exclusively to the will of the law-maker -- the human law-maker, not the divine one. Such a system views the world in functional terms, and thus fails to recognize that one cannot derive ethical norms from a purely pragmatic scientific approach. This system denies that mere observation of how things are cannot tell us how things should be, and how people should behave from a moral perspective -- in other words, it denies that one can derive an “ought” from an “is.”

The positivist attempt to create law without any recourse to the transcendent fails to recognize the full breadth of human nature, and in fact both “diminishes man” and “threatens his humanity.” To emphasize his point, Pope Benedict used an image that must have been chilling to an audience sitting in power in a Berlin that has been re-built in the aftermath of a devastating and dehumanizing war:

“The positivist reason which recognizes nothing beyond mere functionality resembles a concrete bunker with no windows, in which we ourselves provide lighting and atmospheric conditions, being no longer willing to obtain either from God’s wide world.”

These are strong words, indeed, but as Blaise Pascal once noted, “The first moral obligation is to think clearly.” In a culture where the lives of unborn children and the vulnerable elderly are constantly at risk due to majority votes of judicial tribunals or legislatures, it is difficult to come to any other conclusion.

As Pope Benedict XVI recently remarked during his apostolic visit to his homeland, this is the transition from the “is” to the “ought” upon which our moral decisions and actions are grounded, or, as he remarks, from the “indicative to the imperative.”

If we are “divinized,” reflections of God, created in His image and likeness -- there’s the is -- then we ought to treat ourselves and others only with respect, love, honor, and care.

If the pre-born baby in the womb, from the earliest moments of his or her conception, is a human person -- an is that comes, not from the Catechism but from the biology textbook used by any sophomore in high school -- then that baby’s life ought to be cherished and protected by law.

If an immigrant from Mexico is a child of God, worth the price of the life of God’s only begotten son, then we ought to render him or her honor, a welcome and protection from law, not a roar of hate, clenched fists and gritted teeth in response to the latest campaign slogan from a candidate appealing to the nativistic side of our nature.

If even a man on death row has a soul, is a human person, an is that cannot be erased even by beastly crimes he may have committed, then we ought not to strap him to a gurney and inject him with poison.

From the [something missing in the original text] is to the ought. . . . The moral journey. From the indicative to the imperative.

As he is wont to do, Pope Benedict recently, gave another fresh twist to this approach to morality. Again in Germany, before the parliament, the Holy Father spoke about the need to reverence both the external environment of creation, and the internal ecology of the creature.

Thank God, the pontiff remarked, we creatures have learned, albeit the hard way, that the environment of our earth has a built-in balance, a fragile structure and equilibrium. Creation has an order about it, a delicate stasis that should never be tampered with or polluted by creatures.

The “Green Pope” -- as Benedict has been called -- went on to remind us as well that, just as there is an integrity in creation that must be safeguarded, and a “law of nature” that is evident to us who are tempted to abuse it, so is there an order, a balance, a coherence innate in creatures, in the human person, that is protected by a natural law which must be heeded.

Listen to his words:

The importance of ecology is no longer disputed. We must listen to the language of nature and must answer accordingly. Yet, I would like to underline a point that seems to me to be neglected

. . . There is also an ecology in man! Man, too, has a nature that he must respect and that he cannot manipulate at will. Man is not merely self-creating freedom. Man does not create himself . . . His will is rightly ordered if he respects his nature, listens to it, and accepts himself for who he is . . .

By the way, talk about news. This kind of talk from Pope Benedict is attracting nods of agreement from people usually at odds with him. As renowned journalist John Allen comments:

In effect, the pope's speech was a lesson in what Jeremy Rifkin has called "the new biopolitics," in which erstwhile enemies are suddenly on the same side.

In a growing number of biotech debates, including embryo patenting, genetic engineering and animal/human hybrids, the Catholic church and the pro-life movement find themselves allied with elements of the secular left, including environmentalists, feminists and anti-corporate activists. Their points of departure are obviously different, but they arrive at the same place. On the other side is a constellation of pro-business conservatives, the medical and scientific establishment, and libertarians opposed to any form of government regulation.

To some extent, those shifting sands remain hard to see because older bio-debates such as abortion and gay marriage still loom large. As the 21st century rolls on, however, the battle lines of the culture wars may be increasingly redefined, and the pope's speech offered proof of the point.

How law serves the Culture of Life prompts, I now conclude, an examination of conscience:

Will law protect the "being" of human life from the hegemony of raw insistence on "having" and "doing"?

Does positive law presuppose and flow from, or contradict, the ingrained natural law?

Is law tethered to objective truth, or is it ruled by a "dictatorship of relativism"?

Is genuine freedom the ability to do what we ought, or the license to do whatever we want?

Does solidarity trump privacy?

Are basic human rights preserved or hindered when law says "no" to certain demands of pragmatism, utilitarianism, and consumerism that compromise the value of human life?

Is the "right to life" above, or subordinate to, the rights of privacy, convenience, and personal satisfaction?

Should laws be tailored to suit changing wants, demands, or recently discovered “rights,” or should wants, demands, and novel rights be tempered by law to uphold the sacredness of life, the common good, and the objective moral law?

As Pope Benedict reminded the German Parliament:

The conviction that there is a Creator God is what gave rise to the idea of human rights, the idea of the equality of all people before the law, the recognition of the inviolability of human dignity in every single person and the awareness of people’s responsibility for their actions.

By appealing to the necessary link between freedom and truth and by stressing our relationship with the God who has endowed us with both, the Gospel of Life offers us a pathway to building not just good laws, but a free and virtuous culture as well.

I sure appreciate your interest and patient attention.

Archbishop Timothy Michael Dolan, PhD
Archbishop of New York