

KEYNOTE ADDRESS

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I address you as a journalist, not as a lawyer or political philosopher. Therefore, I'm not going to offer a detailed analysis of John Paul's impact on jurisprudence, in part because any treatment I could give would be superficial by the standards of this audience, but more fundamentally because I believe any such impact is a peripheral aspect of his legacy. John Paul did not see himself primarily as a lawgiver, although the *Code of Canon Law* recognizes the Roman Pontiff in Canon 331 as possessing "supreme, full, immediate and universal ordinary power in the Church," and John Paul had many occasions to exercise that authority. Perhaps most significantly in legal terms, he oversaw a sweeping revision of the *Code* in 1983 intended to translate the teaching of the Second Vatican Council into the Church's judicial practice.

Yet John Paul's main concern was not legal theory but evangelization, and it is on that level that I believe his greatest significance resides. He did not carve out a new school of jurisprudence, but he did inspire a new self-confidence and sense of apostolic zeal, which deeply influenced the way Roman Catholics approach law, politics, and every other arena of human endeavor. He inspired Catholics to take seriously the public implications of their faith, offering a strong challenge to the modern "domestication" of religious belief. In the wake of John Paul's leadership, Catholics are much less likely to be intimidated by the secular condescension which insists that in mixed company believers must be "house-trained" never invoking embarrassing concepts such as objective truth and the supernatural.

In this regard, the two most important impulses associated with the John Paul papacy were a clear reassertion of Catholic identity after a period of experimentation and *aggiornamento*,

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and a new determination to express that identity in the secular realm—shaping culture, rather than being shaped by it.

On the international stage, John Paul drew out the legal and political consequences of Catholic doctrine with grit and savvy, making him the most “relevant” pope of the modern era. Indeed, one would have to go back to the twelfth and thirteenth centuries to find popes who had as much impact on the public affairs of their day, and their impact was limited to a handful of emerging monarchies in Western Europe. John Paul II, on the other hand, was a player on a truly global stage.

I could offer multiple proofs of that claim, the most obvious being the role John Paul played in the collapse of the Soviet system. But consider just for a moment the dramatic events which took place in Rome from 9:37 pm local time on April 2, when John Paul died, to April 8, the date of his funeral Mass. Aside from the massive outpouring of humanity, an estimated five to seven million people who washed through Rome in those days, and the saturation coverage in the global press, there was also a rather startling political and diplomatic dimension. More than seventy heads of state and government attended the funeral Mass, the largest such turnout ever for the funeral of a human being in the history of the planet. The Mass itself became the occasion for diplomatic breakthroughs. Israel’s President Moshe Katsav, for example, greeted President Bashar Assad of Syria and then-President Mohammad Khatami of Iran, the first time leaders from those nations had ever exchanged a handshake; speaking on CNN, Archbishop Wilton Gregory called it John Paul’s “first miracle.” In another fitting tribute, former Presidents George Bush and Bill Clinton used the flight over on Air Force One to work out their plans for relief to victims of the Asian Tsunami.

In death as in life, John Paul moved history. This was not a lawyer-pope, but he was a giant of a pope, and the law, like every other area of life, could not help but be touched by his influence. That relevance was a triumph, but it also generated difficult questions about how the Church can best express itself as an “expert in humanity,” as Paul VI put it, without overstepping its bounds in a democratic and secular political environment marked by contrasting values.

In my remarks today, I will consider five areas of law and politics where I think John Paul’s impact was felt the most

keenly. I will end by sketching three “open questions” with which I believe the Roman Catholic Church still has to come to terms. I should offer a note of thanks here to Fr. Robert Araujo and Professor Mary Ann Glendon, both of whom were kind enough to read a draft of this presentation and to offer helpful suggestions.

I. THE FALLACY OF LEGAL POSITIVISM

One valuable resource for exploring John Paul’s attitude towards the law is his series of annual addresses to the Union of Italian Catholic Jurists, a body founded in 1948 to promote a Christian voice in the jurisprudence of Italy’s post-war democratic state. This meeting, usually held in the Vatican in December, became the most important annual occasion for the Pope to speak on matters of law.

Over the course of a quarter-century, John Paul touched on a wide variety of issues in these sessions, but he circled around one concern above all: that human law ultimately cannot be divorced from natural law, or from God’s law, and that when a society attempts to do so, the human person and the common good are placed at risk. There are prudential judgments to be made in drafting civil law, which is always perfectible and must be adapted to contingent circumstances. Ultimately, however, valid law must rest upon moral principles derived from a vision of the meaning and purpose of human existence. Hence the purpose of law is not merely keeping order or promoting commerce, but fostering virtue. This is of course the Aristotelian and Thomistic understanding of law, revived by John Paul in the context of the agonies of twentieth century history and the teaching of the Second Vatican Council.

Inspired by this vision, John Paul inveighed time and again against legal positivism, the notion that law is whatever parliaments or courts say it is. In his 1992 address to the Italian jurists, John Paul said, “One should not confuse morality and law; but law . . . must be carried back to its genuine source, connecting it with those supreme principles without which, or against which, it would cease to be law.” In that regard, the Pope warned, lawmakers must resist the lure of a “paralyzing and often destructive relativism.”

This does not mean that John Paul crusaded in favor of a Catholic version of *shariah*. In concert with Aquinas, the Roman

Pontiffs have always recognized that it is not the function of civil law to mandate every virtue, or to prohibit every vice.¹ Yet John Paul insisted there are values which are so constitutive of the *benesse* of the human person, or the social order, that they lie beyond the reach of human legislation. The right to life is one such principle, so that abortion, euthanasia, and the artificial creation and destruction of embryos cannot be made into valid “law,” in the Pope’s eyes, simply by dint of a legislative act. The family is another such value, so that legislation which attempts to alter the fundamental character of marriage as necessarily connected to procreation and the raising of children, in the Pope’s view, likewise cannot be said to be “law” in the proper sense. To believe otherwise, John Paul held, is to regard law as nothing more than an exercise in power politics or social consensus. Ultimately, it is not *power* that is the basis of law, he said, but *truth*.

II. THE INTERSECTION BETWEEN FAITH AND PUBLIC POLICY

John Paul completed the 20th century metamorphosis of the papacy from a secular monarch ruling over the Papal States in central Italy, to something like the Prime Minister of the Human Conscience, the world’s most important moral authority in public debates. The muscularity of John Paul’s approach reflected his conviction that aroused consciences can shape the political character of a society more powerfully than force of arms. Shaping the public conscience, according to the Pope, is a function of culture, which is ultimately about “cult”—that is, the deepest beliefs and aspirations of a people. For John Paul, this was not a pipe-dream, but the real-world experience of his 1979 trip to Poland, which helped trigger the Revolution of 1989; his 1983 trip to Nicaragua, which hastened the demise of the Sandinista regime; and his 1987 trip to Chile, and its role in the peaceful end of Pinochet’s dictatorship.

John Paul’s example had enormous impact in mobilizing Catholic politicians and legislators around the world, inspiring them to pursue the moral and social vision of Catholicism in public affairs with renewed vigor. Lay Catholics became more

¹ Unlike some religious leaders, for example, popes have never demanded legal prohibitions against smoking, drinking, or gambling, and as a smoker, drinker, and gambler myself, I am certainly grateful for the latitude.

conscious of using their faith convictions as a “filter” for their political choices. John Paul, in other words, put the Catholic “vote” in play. In the United States, we have seen the result of this “Catholic Awakening” in a variety of ways.

Recent American elections, for example, have witnessed a growing symphony between Catholics and the Republican Party. George Bush captured fifty-three percent of the Catholic vote in 2004, and almost sixty percent among those who attend Mass at least once a week. Karl Rove, the president’s chief political advisor, recently described the platform of the Republican Party as a cross between free-market capitalism and the social doctrine of the Roman Catholic Church. Among Catholics of a more progressive bent, activism around issues such as the death penalty and war and peace also drew strength from John Paul’s thought.

Because both conservatives and liberals in American political terms struggled with different aspects of John Paul’s teaching, Catholics have been compelled to explore anew the distinction between when the papal magisterium proposes something as binding on the consciences of all Catholics, and when it’s expressing a prudential judgment on a matter about which different conclusions are permissible. While that distinction was important before John Paul II among theologians, in his papacy it became a matter of vital importance for any Catholic called upon to express an opinion on public policy questions. One place where John Paul II himself developed this distinction is his 1993 encyclical *Veritatis Splendor*.

The traditional “job description” for a bishop includes teaching, sanctifying, and governing, and John Paul’s example encouraged bishops to take a more vigorous and expansive view of their teaching responsibilities, especially with respect to public policy questions. Today, if an anti-death penalty, anti-abortion, or anti-global debt rally is held in a bishop’s diocese, there’s an expectation of his involvement and his advocacy, marking a sharp break from the spirit of discretion about secular affairs that characterized the Paul VI years. The media have become trained to expect political commentary from bishops in a way that would not have occurred to them before October 1978. In that sense, John Paul brought the explicit model of political leadership of the episcopacy in Eastern Europe, with its

somewhat softer distinction between Church and State, onto the global stage.

III. HUMAN RIGHTS

It was hardly obvious at the outset of the twentieth century that the Roman Pontiff would finish the century as the world's leading advocate of human rights. Indeed, across the nineteenth century, popes had denounced the vocabulary of "human rights" as profoundly alien to Catholic thought, reflecting the anti-clerical and anti-authoritarian spirit of the French Revolution. In 1832, for example, Pope Gregory XVI described as "false and absurd, or rather mad" the principle "that we must secure and guarantee to each one liberty of conscience; this is one of the most contagious of errors."

Yet beginning with Pius XII, the Catholic Church by and large reversed field. When the General Assembly of the United Nations took up the Universal Declaration of Human Rights in 1948, observers from the Holy See were present. The Holy See was the fifth nation to ratify the U.N. convention on the rights of the child, and was among the first to ratify the anti-land mine treaty that won 1997's Nobel Peace Prize. The Holy See sent a six-member delegation to 1998 negotiations for the creation of an International Criminal Court. John Paul capped this development by emerging as the most forceful voice for human rights on the international stage. The Pope stressed the centrality of human rights in his first, programmatic encyclical, *Redemptor Hominis*, in 1979. Twenty years later, in his 1999 message for the World Day of Peace, John Paul called respect for human rights "the secret of true peace"—a position that, as phrased, would have seemed almost inconceivable to popes just a century ago.

John Paul laid special stress on particular human rights: the right to life, to religious liberty, the right to participate, to self-fulfillment, and the right to peace. At the same time, he insisted that ultimately all human rights are interdependent; in a 1995 speech to the United Nations, he said, "You have taken the risk of freedom, why not now take the risk of solidarity and peace!" John Paul argued that it is the responsibility of the international legal system to ensure that these rights are more than words on paper, but represent enforceable claims backed up by international agreements, world courts, and, when necessary, by

the internationally sanctioned use of force. Because the Pope believed human rights are universal, he advocated the construction of an international political authority capable of defending the common good against the interests of particular actors, whether they be states, corporate entities, or terrorist networks. This aspiration toward a meaningful system of global governance remains perhaps the most intriguing, and largely unrealized, aspect of John Paul's legal and political legacy.

IV. THE DEATH PENALTY

For some, the Pope's legal and political influence has literally been a matter of life and death. During John Paul's January 1999 trip to St. Louis, his personal plea to Missouri's then-Governor Mel Carnahan saved the life of convicted murderer Darrell Mease, resulting in a change of sentence from death to life in prison. Mease, who today is in a Missouri prison serving a life sentence, is not alone. In 2005, Filipino President Gloria Arroyo revealed that her decision to impose a moratorium on capital punishment was due to John Paul's influence. As a result, no one has been executed in the Philippines since 2001.

For John Paul, the rejection of capital punishment was a test of a society's commitment to building a "culture of life" rooted in the tradition of Christian humanism. On this score, there was a clear hardening in John Paul's thinking over the years. In 1992, when the first edition of the *Catechism of the Catholic Church* was released, its language on capital punishment was largely conventional. By John Paul's 1995 encyclical *Evangelium Vitae*, the approach was more restrictive. The Pope urged governments to choose clemency over execution, permitting capital punishment in cases of "absolute necessity." He added that today those cases, however, "are very rare, if not practically non-existent." By 1997, when revisions to the *Catechism* were released, the anti-death penalty position had become still more categorical. The *Catechism* states that "bloodless means" of punishment should be used because they are "more in conformity with the dignity of the human person."

John Paul's anti-death penalty activism, over time, seems to have had an effect on American Catholic opinion. A Zogby International poll released in 2005 found support for capital punishment among U.S. Catholics had dropped below fifty percent, down from previous polls that showed as many as sixty-

eight percent in favor. Among other things, the result suggests that determined papal leadership, especially backed by a strong consensus among a country's bishops, can eventually produce realignments at the grassroots.

V. INTERNATIONAL LAW AND THE USE OF FORCE

On February 24, 2003, in the run-up to the U.S.-led invasion of Iraq, then-Archbishop Jean-Louis Tauran, the Vatican's foreign minister, speaking at a conference on peace at a Roman hospital, warned that the war of aggression would be a crime against peace." He said the conflict would be illegal if it were launched "by one or more states outside the framework of the United Nations No rule of international law authorizes one or more states to have unilateral recourse to the use of force for changing the regime or form of government of another state. . . . Only the Security Council could do so." Without international warrant, such a war would "violate the fundamental rules of international humanitarian law," Tauran said.

Note that Tauran was not offering a moral critique of the proposed conflict, which one would perhaps expect from religious authorities. His arguments are phrased in jurisprudential terms: "illegal," "rule of law," and "crime." In what became almost a mantra from Vatican officials, Tauran demanded that the world observe "the force of law instead of the law of force."

It was no accident that after the Iraq invasion, John Paul chose as his theme for the 2004 World Day of Peace, "International Law: A Path to Peace." In it, John Paul argued for respect of "universal principles which are prior to and superior to the internal law of States, and which take into account the unity and the common vocation of the human family." Most saw the text as a rejoinder to the perceived "unilateralism" of the American-led offensive. In essence, John Paul II embraced a new standard for the legitimate use of armed force in any context other than direct self-defense, which is the explicit legal sanction of international authority.

This is, to say the least, a controversial position, especially when that "international authority" is concretized in the United Nations. As many legal theorists observe, it is far from clear that the United Nations either meets the classic standard of a sovereign authority capable of exercising a monopoly upon the use of force, or that it has the practical capacity to do so

effectively. Since 1945, more than twenty million people have died in some 150 conflicts *not* authorized by the UN. One could make a case that, if there ever was a valid law requiring UN approval for the use of force, it has obviously fallen into desuetude. Whatever the unresolved questions, however, Pope John Paul II repeatedly appealed for respect of international law regarding armed conflict. The future development of this debate will be consequential, especially if papal and episcopal leadership begin to move opinion in the United States.

VI. OPEN QUESTIONS

Strong new impulses in the life of the Church often open as many questions as they close. In the case of politics and law, several difficult questions arising from John Paul's legacy remain to be addressed. Here I will identify three.

A. *Catholics and Public Life*

John Paul's emphasis on Catholic identity put pressure on Catholics in public life to be "coherent" about the relationship between the faith they profess and the policies they advocate. Nowhere was this clearer than in the 2004 elections in the United States, where a small number of American bishops announced they would not administer communion to Catholic politicians who support "pro-choice" policies. A majority of American bishops disagreed. Some believed the position unfairly asked a celebrant to judge the state of grace of a communicant, others that the Church should not politicize the Eucharist. In the end, the "McCarrick Commission" of the bishops' conference concluded that there is not a sufficient consensus to support a national policy.

The issue is unlikely to go away, and the Church may well face it again in the 2006 and 2008 elections. Privately, Catholic bishops have been holding "listening sessions" and meetings around the country to discuss how the Church will handle these issues the next time around, and whether or not the list of "non-negotiables" ought to be expanded to include something like the Schiavo case in Florida, or gay marriage. Moreover, there's no reason why the debate should be confined to politicians. What if an abortion case comes before the Supreme Court, and one or another of the five Catholic justices does not vote in favor of a

restrictive position? What about corporate executives who pursue policies at odds with Catholic social doctrine?

Ultimately, the question is how the Church can “enforce,” so to speak, the demands of Catholic identity. On the one hand, it’s fully legitimate to expect someone who calls him or herself “Catholic” to take the faith seriously in terms of public choices. At the same time, moral calculations in prudential circumstances are not the direct competence of Church authorities. It is a maddening dilemma: to one side lies the danger of clericalism, to the other assimilation of fecklessness. How to strike the right balance is perhaps the most pressing question facing the American church with regard to its engagement in public life.

B. Just War Versus Humanitarian Intervention

Under John Paul, there was a shift in the diplomatic language of the Holy See away from reliance upon the older Augustinian/Thomistic Just War tradition, which attempted to identify the conditions under which it was morally legitimate to start a war as part of the sovereign’s duty to defend proper order. The presumption was that sometimes war will be necessary to preserve that order. The Pope and his diplomatic corps have instead in recent years articulated a stance on “humanitarian intervention,” which presumes it is never morally legitimate to initiate conflict. One may intervene when violence has already broken out, but one may never strike first.

Some American Catholic thinkers, however, are pressing the Holy See to revisit the Just War tradition in light of the new threats posed by international terrorism, sometimes backed by rogue regimes whose existence, in effect, poses a “clear and present danger” to peace. In such a world, these realist thinkers argue, it will sometimes be necessary to start wars. Iraq is merely the most dramatic recent example of what is much more than an ad-hoc debate. One test of how deeply John Paul felt on the question is that he was willing to spend tremendous political capital opposing conduct he regarded as in violation of the spirit of humanitarian intervention, even at the cost of straining relations with a government in the United States for which he felt considerable sympathy. Part of the drama of the pontificate of Benedict XVI will be to see which way the discussion develops.

C. *Catholic Institutions Under Civil Law*

The Catholic Church understands itself to be at the service of the human family, and the most tangible expression of that spirit is the network of charitable and social service institutions run by the church schools, shelters, clinics, hospitals, counseling centers, and so on. That service, however, takes place in a pluralistic, secular culture governed by laws which do not always reflect the social and moral doctrine of Roman Catholicism. One perennial issue for Catholic institutions, therefore, is the extent to which they can adapt themselves to secular mores in order to serve the largest population possible, without losing their Catholic identity.

To take a recent example, on March 10, Catholic Charities in the Archdiocese of Boston announced that it would no longer provide adoption services under a contract with the Department of Social Services, since Massachusetts law prohibits discrimination according to sexual orientation in the placement of adopted children. A 2003 document from the Congregation for the Doctrine of the Faith titled *Considerations Regarding Proposals To Give Legal Recognition to Unions Between Homosexual Persons*, clearly states: "Allowing children to be adopted by persons living in such unions would actually mean doing violence to these children."

Catholic Charities in the Archdiocese of San Francisco may be forced into the same position, though some lawmakers in both Massachusetts and California have discussed introducing legislation that would provide religious social service providers with an exemption from contract requirements that contradict their beliefs. Some constitutional experts believe such an exemption is a necessary element of the religious freedom protected by the First Amendment.

The open question is to what extent the secular culture will be willing to bend to accommodate the deeply held moral beliefs of religious groups; and to what extent the Catholic Church, riding a strong wave of identity concerns, will feel the need to disentangle its institutions from partnerships with humanitarian groups or government agencies for fear of complicity in values at odds with church teaching.

CONCLUSION

Leading the Church these days, facing the twin pressures of identity concerns and the expectations of a pluralistic secular world, is, to say the least, challenging. I am sure that many days, our Church leaders must be reminded of what Bill Clinton once said about being President of the United States: "Running the country," he said, "is like running a cemetery. Everybody is under you, and nobody is listening."

Those of you in this room have a vital role to play in bringing the best of Catholic moral and social reflection together with the highest standards of Western legal thought. As you move forward, I would like to leave you with a personal *fervorino*. I would urge you to wrestle with these questions in a spirit of genuine ecclesial *communio*, which in practical terms means, don't just round up the usual suspects among the ideologically like-minded. The Church in the United States has been badly hobbled in attempts to respond to questions such as these, or anything else, by our deep ideological and tribal divisions. Catholic jurists and political theorists can set an example by fostering a conversation which is inclusive and respectful, but which also has teeth in insisting upon identifiably "Catholic" answers to our challenges. Looking over the speakers and topics for this conference, it's obvious that you are already animated by that spirit. I would encourage you to be as imaginative as possible about how that model might be more widely diffused. If you can do that, your impact, like that of John Paul II, will transcend the boundaries of law and politics, and become a point of light for all of us.