

SYMPOSIUM:
CATHOLICS AND THE DEATH PENALTY:
LAWYERS, JURORS & JUDGES

FOREWORD

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When the doors of the Fordham University School of Law Institute on Religion, Law & Lawyer's Work opened in January 2001, we had some sense of the increasing interest in, and the need for reflection on, the questions that arise at the intersection of religious values and the practice of law. But I am not sure we could have predicted the dramatic rise in the increasingly public role of faith traditions and convictions.

Catholics and the Death Penalty opened against the backdrop of the heated 2004 presidential election, as Senator John Kerry was discovering just how much the landscape had changed for Catholics in public life. Just a few decades earlier, in a speech to the Greater Houston Ministerial Association, presidential candidate John F. Kennedy had forcefully declared: "I am not the Catholic candidate for President. I am the Democratic Party's candidate for President who happens also to be a Catholic."¹ Kennedy described an America where "the separation of church and state is absolute" and "where no public official either requests or accepts instructions on public policy from the Pope."² Responding to suspicions about how a Catholic president might face a crisis of conscience between allegiance to his country and allegiance to religious authority, he assured

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¹ Senator John F. Kennedy, Address before the Greater Houston Ministerial Association, (Sept. 12, 1960), available at <http://www.jfklibrary.org/j091260.htm>.

² *Id.*

citizens: “I believe in a President whose religious views are his own private affair,”³ and “I do not speak for my church on public matters—and the church does not speak for me.”⁴

In December 2003, when Senator John Kerry was asked about his vision of the relationship between church and state and religion and politics, Kennedy’s Houston speech seemed to him to be a solid point of reference. He stated:

I define it much as President Kennedy did in Houston in 1960, when he made it clear about the separation of church and state. Affairs of state are affairs of state, and they ought to be based on the discussion we have day to day about how we fund education or how big the military ought to be. And affairs of faith are affairs of faith. And they’re separated.⁵

Well into the summer of 2004, Kerry continued to draw a sharp distinction between his faith and his role as a public official. As he described in one interview, on one hand he opposed abortion: “I believe life does begin at conception.” But on the other hand, “I can’t take my Catholic belief, my article of faith, and legislate it on a Protestant or a Jew or an atheist. . . . We have separation of church and state in the United States of America.”⁶

By October 2004—too late, many later reflected—Kerry had realized that Kennedy’s 1960 Houston speech no longer seemed to be a viable point of reference for a presidential candidate to describe the relationship between one’s faith and one’s political commitments. In the weeks before the election, Kerry’s campaign tune changed dramatically. “My faith affects everything that I do, in truth,” Kerry declared during an October debate.⁷ Unlike the election of 1960, where voters sought assurance that a candidate’s faith was his own private affair, in the 2004 election, many voters in the most contested states sought the opposite: assurance that the candidate shared most of their values.⁸

³ *Id.*

⁴ *Id.*

⁵ Interview by The Interfaith Alliance with presidential candidate Senator John Kerry (Dec. 16, 2003), available at <http://www.interfaithalliance.org/site/pp.aspx?c=8dJIIWMCE&b=120907> (responding to questions about views on the separation of church and state).

⁶ Jonathan Finer, *Kerry Says He Believes Life Starts at Conception*, WASH. POST, July 5, 2004, at A06.

⁷ Jim VandeHei, *Faith Increasingly Part of Kerry's Campaign*, WASH. POST, Oct. 18, 2004, at A01.

⁸ *Id.*

Our series on *Catholics and the Death Penalty* also followed an extremely intense debate within the Catholic community about the internal discipline of Catholic politicians who publicly dissented from the Church's teachings on abortion.⁹ For many, the Spring 2004 disputes between U.S. bishops on whether such persons should be admitted to holy communion were a high water mark of political polarization within the Catholic Church.

It was precisely in the midst of these tensions that the Institute on Religion, Law & Lawyer's Work found its place and its voice. In our political climate today, questions about the interweaving of religious values and public roles can no longer be dismissed with a simple declaration on the "absolute" separation of church and state or that religious beliefs are one's "private affair." Both within the Catholic Church and in our society as a whole, many now realize that one's "private" beliefs will inevitably inform one's perspective and decision-making process in all aspects of public life and service. The heart of "religious lawyering" is to acknowledge how such beliefs inform one's perspective and to address openly the questions and difficulties that arise when religious values are brought to bear on one's work in the legal profession.¹⁰

With this aim, the Institute's Catholic Lawyer's Program brings together lawyers, judges, academics, and students to explore how Catholic faith, teaching, and traditions may challenge and enrich their approach to the practice or study of law and strengthen their commitment to work for the common good.¹¹ It does not shy away from the questions that arise when

⁹ See generally Gregory C. Sisk & Charles J. Reid, Jr., *Abortion, Bishops, Eucharist and Politicians: A Question of Communion*, 43 CATH. LAW. 255 (2004) (explaining the Catholic Church's teachings, traditions, and duties as relevant to abortion and the sanctity of human life); Amelia J. Uelmen, *The Spirituality of Communion: A Resource for Dialogue with Catholics in Public Life*, 43 CATH. LAW. 289 (2004) (exploring the "communion controversy" between religious leaders and pro-choice Catholic politicians set against the backdrop of the presidential election of 2004).

¹⁰ For a history of the "religious lawyering" movement and an overview of the approach of the Institute on Religion, Law & Lawyer's Work, see generally Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation*, 55 CASE W. RES. L. REV. 127 (2004); Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?*, 81 U. DET. MERCY L. REV. 921 (2004).

¹¹ Avery Cardinal Dulles, *Catholic Social Teaching and American Legal Practice*, 30 FORDHAM URB. L.J. 277 (2002) is the program's inaugural lecture, and it is published together with responses: John D. Feerick, *Response to Avery Cardinal*

these worlds are brought together, but seeks to develop resources to help navigate the tensions.

The Catholic Lawyer's Program is mindful that discussions will touch the nerve of deep divisions within the Catholic community on a host of moral issues, especially where prudential judgments may lead to a variety of applications and political conclusions. Thus, it aims not so much to foster debate, but rather to provide an open space for reflection. In this way, those who serve our community in a variety of roles and from a variety of perspectives can benefit from an open and sincere exchange.

In fact, in this series on *Catholics and the Death Penalty*, the reader may find, as participants remarked, that the differences among the speakers were less along the lines of agreement with, or opposition to, the death penalty as an appropriate punishment for the most serious of crimes. Perhaps the most interesting points of divergence and convergence emerged as speakers discussed their perspectives on the authority and weight that Church teachings should be given in the context of the prudential and professional judgments that capital cases require, and as they explored how to navigate the tensions which emerge between one's religious convictions and one's duty in various public roles.

We were extremely fortunate to have a stellar line-up of speakers to delve into the topic. The series opened in September 2004 with a panel discussion between Kings County District Attorney Charles Hynes and New York Capital Defender Kevin Doyle, both reflecting on the role of lawyers in capital cases. The transcript of their discussion is reported here.¹² In October 2004, Professor Gerald F. Uelman¹³ of the Santa Clara University

Dulles, 30 FORDHAM URB. L.J. 291 (2002); Jennifer M. Mone, *Catholic Social Teaching and American Legal Practice: A Practical Response*, 30 FORDHAM URB. L.J. 299 (2002). Other events have touched on topics of whether it is appropriate to bring religious values into corporate counseling; the dilemmas Catholic lawyers face when handling divorce cases; Catholic teaching on work-life balance; and the role of lawyers and the legal system in the clergy abuse cases. The 2005–2006 series, *For All the Saints*, explores how the lives of extraordinary Catholics may shed light on the ordinary practice of law. Portions of the series will be published in a future volume of the *Journal of Catholic Legal Studies*.

¹² See *Catholics and the Death Penalty Panel Discussion*, 44 J. CATH. LEGAL STUD. 297 (2005).

¹³ At a certain point in our planning, I said somewhat shyly that I know a criminal law professor who has been thinking, writing, and working on the problem of capital cases for years, whom I considered to be the perfect speaker to address the

School of Law led a discussion on the questions that arise for Catholic jurors in capital cases. This volume includes his essay on this topic.¹⁴ In March of 2005, we were extraordinarily grateful to host one of the most distinguished jurists of our time, the Honorable Guido Calabresi of the Second Circuit Court of Appeals. He greatly enriched our series with his reflections on how Catholic convictions and beliefs might inform the role of a judge in a capital case.¹⁵

Catholics and the Death Penalty owes much to fruitful collaboration with the Committee on Capital Punishment of the Association of the Bar of the City of New York, as evidenced by the thematic introduction of one of its members, Art Cody, Esq.¹⁶ Particular thanks also to William Buckley, Esq., for the original inspiration for this series, and for his tireless work on the content and publicity, and to the Guild of Catholic Lawyers of the Archdiocese of the New York, for its invaluable collaboration. Last, but certainly not least, particular thanks to the editors and staff of the *St. John's Law Review*, who are responsible for the publication of the *Journal of Catholic Legal Studies* and whose work to publish the series ensures that the fruits of our labors will be multiplied a hundred-fold and more.

topic of the role of Catholic jurors in capital cases. But I had to disclose my extreme bias: he is also my father. I believe his contribution to this volume illustrates that my bias is more than justified.

¹⁴ See Gerald F. Uelman, *Catholic Jurors and the Death Penalty*, 44 J. CATH. LEGAL STUD. 355 (2005).

¹⁵ See Judge Guido Calabresi, *Catholic Judges and the Death Penalty: A Conversation with the Honorable Guido Calabresi* (Mar. 2005) (transcript on file with the St. John's Law Review).

¹⁶ See Art C. Cody, *Introduction: The King's Good Servants: Catholics as Participants in Capital Litigation*, 44 J. CATH. LEGAL STUD. 283 (2005).