

## JOHN PAUL II AND THE LAW: SOME PRELIMINARY REFLECTIONS

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At the deepest levels of his self-understanding and sense of vocation, the late Pope John Paul II was a Christian disciple and a pastor of Christ's Church. Precisely as such—as a disciple, a priest, and a bishop—John Paul II exerted what many believe to be the greatest influence on world affairs of any pope since the high Middle Ages.

His pivotal role in the collapse of European communism is now widely acknowledged. In time, his influence in the democratic transitions in Latin America and East Asia will also be recognized (as will another less-heralded contribution, his refusal to give up on Africa at a moment when other world leaders seemed prepared to let that continent fall off the edge of history into the abyss). At two crucial moments in the late twentieth century—in 1979, during a particularly perilous period in the Cold War, and in 1995, as the West was taking a holiday from history while clandestine and malign forces gathered strength—John Paul II stood at the center of what much of the world thinks of as power, the great marble rostrum of the General Assembly of the United Nations, to defend the universality of human rights and the capacity of human reason to grasp the truth of things, including the moral and political truth of things.

By demonstrating that the Gospel without compromise is the true “liberation theology,” John Paul II illustrated the vision of the Second Vatican Council's *Pastoral Constitution on the Church in the Modern World*,<sup>1</sup> a document which he helped draft. The Council Fathers had proposed that the Church be a culture-forming Communion of Saints

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1. Second Vatican Council, *Gaudium et Spes* [*Pastoral Constitution on the Church in the Modern World*] ¶ 40 (1965), reprinted in THE SIXTEEN DOCUMENTS OF VATICAN II 513, 550–51 (Nat'l Catholic Welfare Conference trans., 1967).

that helps bend politics and economics in a more humane direction by speaking truth to power and by forming Christian men and women who can bring the leaven of the Gospel to the affairs of state. Yet his message had an edge. For in the wake of the communist crack-up and the seeming triumph of the democratic idea throughout the world, John Paul II also proved an acute and prescient analyst of the new threats to human freedom that would result from the misunderstanding of freedom as radical personal autonomy, which was (and is) widespread in democracies old and new alike.

It would be an exaggeration to suggest that the Magisterium during John Paul II's reign dealt in detail with the debates that now dominate the complex world of legal theory. Yet John Paul II did have important things to say about public life, politics, the nature of law, the limits of law, and the citizen's relationship to the law. Before noting here some of the key themes in John Paul II's teaching on law, however, it would be well to pause briefly and locate those themes in the broader context of the late Pope's thinking about the free and virtuous society.

History, which may well call the late Pope "John Paul the Great," may also remember Karol Wojtyla as the "Pope of Freedom." Yet the latter appellation, well-deserved as it is, is not quite sufficient, for in John Paul II's mind, freedom and virtue, freedom and truth, were always linked. Thus, the social ideal in John Paul II's view was not simply "the free society," but "the free and virtuous society."<sup>2</sup> Freedom, for John Paul II, could never be understood as a neutral faculty of choice, capable of attaching itself legitimately to any object. Freedom, properly conceived, is always freedom ordered to the truth.

Understood as such, true freedom—truly *human* freedom—is the capacity to choose freely, and as a matter of moral habit, the objective good: those things that make for genuine human flourishing. Freedom untethered to the truth about the human person can never be *freedom-ordered-to-goodness*; it can only be *freedom-as-autonomy*. And that kind of anarchic personal freedom can never be the secure foundation on which to build a free society. For when autonomous selves clash over disputed goods, and there is no

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2. Pope John Paul II, Address of Pope John Paul II to the President of the United States of America, H.E. George Walker Bush (July 23, 2001), [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2001/documents/hf\\_jp-ii\\_spe\\_20010723\\_president-bush\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/2001/documents/hf_jp-ii_spe_20010723_president-bush_en.html) ("A free and virtuous society, which America aspires to be, must reject practices that devalue and violate human life at any stage from conception until natural death.").

transcendent horizon of judgment by which to settle the argument over which option really does lead to true human flourishing, then one of two things happens: either someone's power is going to be imposed on someone else (a condition Pope Benedict XVI describes as "the dictatorship of relativism"<sup>3</sup>), or chaos ensues, followed by the imposition of authoritarian order. In either instance, the democratic project in history is the loser.

John Paul II's thinking about political life and law began where all of his thinking began: with an idea of the human person. Informed by biblical wisdom and honed intellectually by Wojtyla's extensive encounter with modern philosophical personalism, the human person, for John Paul II, is never to be understood as an autonomous actor characterized primarily by willfulness. Rather, every human being is a gift, a *person* (not an "individual") who must be a gift for others through the exercise of intelligence and free will, in order to fulfill his or her human destiny. Wojtyla's philosophical analysis of this "Law of the Gift," which is built into the human condition, was for Wojtyla-the-Christian-disciple confirmed and amplified by the biblical message of God's self-revelation, from Genesis through the New Testament.

In his most developed (if unfinished) philosophical work, *The Acting Person*,<sup>4</sup> Wojtyla analyzed four stances toward society that the human person could adopt. "Conformism" is inauthentic because it means an abandonment of responsibility and thus of freedom. "Non-involvement" is also inauthentic, for it bespeaks a kind of solipsism, a retreat into the self-constructed prison of autonomy. "Opposition" or "resistance" can, in certain circumstances, be an authentic expression of human sociability and responsibility, if it means defending the rights and freedom of others under systems of oppressive rule. Finally, there is "solidarity," in which persons deploy their freedom in order to serve the common good, while the community supports and sustains them as they grow into a genuine human maturity.<sup>5</sup>

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3. Cardinal Joseph Ratzinger, Homily of His Eminence Card. Joseph Ratzinger, Dean of the College of Cardinals (April 18, 2005), [http://www.vatican.va/gpII/documents/homily-proeligendo-pontifice\\_20050418\\_en.html](http://www.vatican.va/gpII/documents/homily-proeligendo-pontifice_20050418_en.html) (homily given at the Votive Mass for the election of a new pope).

4. CARDINAL KAROL WOJTYLA, *THE ACTING PERSON* (Andrzej Potocki trans., D. Reidel Publ'g Co. 1979) (1969).

5. *Id.* at 283–91.

John Paul II developed this personalist approach throughout the twenty-six-and-a-half years of his pontificate and applied it with particular rigor to the analysis of politics and law in his most important social encyclical, *Centesimus Annus*,<sup>6</sup> published in 1991. There, the Pope wrote of the tripartite free society in which democratic politics and free economics were nurtured by a vibrant culture of public morality, which is the key to all the rest. John Paul II proposed that there can be neither political nor economic freedom absent well-laid cultural foundations. The deepest of those cultural foundations includes a correct understanding of the human person and of freedom.<sup>7</sup>

Here, then, we begin to hone in on John Paul II's understanding of law. In the 1993 encyclical *Veritatis Splendor*,<sup>8</sup> John Paul II argued that man's obedience to the natural moral law, written into the human condition and onto the human heart, was not a negation of human freedom; rather, it is only in obedience to the moral truth about the human inscribed deep within us that we are truly liberated to live lives of genuine dignity.<sup>9</sup> The natural moral law, which John Paul II believed could be grasped by a disciplined philosophical reflection on human moral action, can thus be grasped by anyone of good will; and, in grasping the law written into nature and onto the human heart, we grasp something of God's providential guidance to the world (whether we understand ourselves to be doing that or not). For this natural moral law is an expression in creation and history of the divine and eternal law, which reflects God, Who is Truth itself, Goodness itself, and Freedom itself. The law built by God into creation (the natural moral law) and the law revealed at Sinai (the Ten Commandments) are both expressions of God as Reason itself, *Logos*. The moral law is not heteronomous, imposed on us from outside by a God who is pure Will; neither are we autonomous before the claims of a law that we can know, and indeed must know, by reflecting on the truths built into us. Rather, the moral law involves a kind of participatory theonomy, in which we come to know the moral truth of

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6. Pope John Paul II, *Centesimus Annus* [Encyclical Letter on the Hundredth Anniversary of Rerum Novarum] (1991).

7. *Id.* ¶¶ 46–52.

8. Pope John Paul II, *Veritatis Splendor* [Encyclical Letter Regarding Certain Fundamental Questions of the Church's Moral Teaching] (1993).

9. *Id.* ¶¶ 40–44.

things as they are by both natural reason and divine revelation, a process that is itself a reflection of the divine wisdom.

The laws we make, whether constitutional or statutory laws, ought to reflect these realities: they should reflect the truths about the human condition found in the natural moral law, which is itself a reflection of the eternal law (the Truth Who is God). This conception of law led John Paul II, in the 1995 encyclical *Evangelium Vitae*,<sup>10</sup> to issue some sharp challenges to the idea of “law” as it is often understood in Europe and America today. Here is the crucial passage in which John Paul II lays down his challenge:

It is therefore urgently necessary, for the future of society and the development of a sound democracy, to rediscover those essential and innate human and moral values which flow from the very truth of the human being and express and safeguard the dignity of the person: values which no individual, no majority and no State can ever create, modify or destroy, but must only acknowledge, respect and promote.

Consequently there is a need to recover the *basic elements of a vision of the relationship between civil law and moral law*, which are put forward by the Church, but which are also part of the patrimony of the great juridical traditions of humanity.

Certainly the *purpose of civil law* is different and more limited in scope than that of the moral law. But “in no sphere of life can the civil law take the place of conscience or dictate norms concerning things which are outside its competence,” which is that of ensuring the common good of people through the recognition and defense of their fundamental rights, and the promotion of peace and of public morality. The real purpose of civil law is to guarantee an ordered social coexistence in true justice, so that all may “lead a quiet and peaceable life, godly and respectful in every way.” Precisely for this reason, civil law must ensure that all members of society enjoy respect for certain fundamental rights which innately belong to the person, rights which every positive law must recognize and

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10. Pope John Paul II, *Evangelium Vitae* [Encyclical Letter on the Value and Inviolability of Human Life] (1995).

guarantee. First and fundamental among these is the inviolable right to life of every innocent human being.<sup>11</sup>

Thus, neither constitutional nor statutory law can justify practices that violate the inalienable right to life.<sup>12</sup> Indeed, such laws are non-binding<sup>13</sup> and ought to be resisted, even by civil disobedience.<sup>14</sup> Majority opinion cannot morally justify objectively unjust laws, especially when such laws abrogate the fundamental right to life. Thus, John Paul II makes a crucial, cautionary point: "Everyone's conscience rightly rejects those crimes against humanity of which our [twentieth] century has had such sad experience. But would these crimes cease to be crimes if, instead of being committed by unscrupulous tyrants, they were legitimated by popular consensus?"<sup>15</sup>

That all of this constitutes a serious intellectual and moral challenge to certain contemporary understandings of the nature and scope of law is obvious. But that, in itself, is a powerful example of John Paul II's public method, which is the method of freedom. As he put it in the 1990 encyclical *Redemptoris Missio*<sup>16</sup>: "The Church proposes; she imposes nothing."<sup>17</sup> Lacking power as the world understands "power," the Church can only propose; but the Church will propose, and propose, and propose again, confident that the truth will eventually win over the hearts and minds of men and women who, after all, have been created by Truth and for truth.

This, come to think of it, is a very good attitude toward politics and law (and the changing of the laws, when necessary) for citizens of a mature democracy to take. May this symposium contribute to that maturation, here in the United States and throughout the democratic world.

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11. *Id.* ¶ 71 (footnotes and citation omitted).

12. *Id.* ¶ 72.

13. *Id.* ¶¶ 72, 90.

14. *Id.* ¶ 73.

15. *Id.* ¶ 70.

16. Pope John Paul II, *Redemptoris Missio* [*Encyclical Letter on the Permanent Validity of the Church's Missionary Mandate*] (1990).

17. *Id.* ¶ 39 (emphasis omitted).