

# Law and morality in public discourse

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My theme tonight is the relationship of law and morality in public discourse. And since it's always a good idea to start at the beginning, I'll do that.

In the beginning, Genesis tells us, "the earth was without form and void; and darkness was upon the face of the deep" (Gen 1:2). Creation begins in chaos. On each day of creation, God brings new things into being. Then he orders them according to a plan. God makes things for a purpose. He creates the world out of love. As Aquinas teaches, God orders the universe as a whole, and that order reflects his glory.[1]

The world works better when it follows God's design. We see this in our own moral lives. God gives us the law and the beatitudes because they lead us to joy. Jesus shows us the plan God writes into human nature so that, by his help, we can flourish.[2] Too often we think of rules as things that keep us from being happy. But rules, understood as God's order, are good for us because they show us how to live in a way that shares in his glory. They lead us to embody what God intended human beings to be and do. This is one of the things Scripture means when it says Jesus came "so that we would have life, and have it abundantly" (Jn 10:10).

If creation has a moral order, then how should we think about our human laws?

Since we're made in the image of God, human beings can order their actions and communities just as God orders his creation. The German political philosopher Eric Voegelin taught that the law is "the substance of order in all realms of being . . . The law is something that is essentially inherent in society," but we give it practical force through the lawmaking process.[3] Law binds us together. It reflects our society's order, but it also secures that order. It shows who we are as a people, but it also forms us as a people. So if we want to thrive, we need to ensure that the laws we make – what we call "positive laws" – ground themselves in a right understanding of what it means to be human.

Some key points follow from this.

Here's the first point: The natural law should undergird our positive laws. Jacques Maritain, the French scholar of Aquinas who helped draft the U.N.'s Universal Declaration of Human Rights, noted that while lots of people can agree on what universal human rights are, they can't agree on the foundation of those rights. Maritain argued that only the natural law can adequately justify the rights of man.[4] And more than 50 years later, Benedict XVI said much the same thing in an address to the United Nations.

In his words to the General Assembly, Benedict stressed “that the rights recognized and expounded in the [Universal Declaration of Human Rights] apply to everyone by virtue of the common origin of the person, who remains the high-point of God’s creative design for the world and for history. They are based on the natural law inscribed on human hearts and present in different cultures and civilizations. Removing human rights from this context would mean restricting their range and yielding to a relativistic conception, according to which the meaning and interpretation of rights could vary, and their universality would be denied in the name of different cultural, political, social and even religious outlooks.”[5]

To put it another way, without the natural law, human rights have no teeth. In fact, so-called “human rights,” when they’re divorced from the natural law, become inhuman.

Here’s the second point: Our positive laws – by their application — teach us to live or not live in harmony with the natural law. They can lead us to freedom founded on truth. Or they can lead us away from it. Borrowing from Augustine and Aquinas, Maritain argues that human life has two final ends; two purposes that govern the decisions we make. One is earthly. The other is heavenly. One focuses on peace and justice in this world. The other focuses on eternal life with God. Earthly laws should lead us toward our earthly end, which should also ready us for our heavenly end.

The ultimate goal of our laws is to make us morally good. Our laws should help us accord with the design God has written into human nature.[6] Thus civil law, Maritain writes, “should always maintain a general orientation toward virtuous life, and make the common behavior tend, at each level, to the full accomplishment of moral law.”[7]

We often hear the claim that we shouldn’t press for laws that impose our morality on others. But no one really believes that kind of argument, because it makes no sense. In practice, all law involves imposing certain moral claims on other people. Persons who support permissive abortion or same-sex unions, for example, are very comfortable in coercing the public through the courts and lawmaking process. As Christians we should be equally comfortable — and even more zealous — in defending the human person and advancing human dignity through legislative and judicial means.

That said, the American Jesuit thinker John Courtney Murray rightly warned that if we try to give everything that’s morally good the force of the law, people will sooner or later start to think that whatever is legal is also moral. In other words, laws can’t solve all our moral problems. Rather, Murray concludes, laws should seek “to establish and maintain only that minimum of actualized morality that is necessary for the healthy functioning of the social order.”[8] Beyond this, a nation must look to other, non-legal institutions in civil society to maintain its moral standards.

That brings me to my third point: The law can’t teach effectively without the support of a surrounding moral culture, because law arises from that culture. As many thinkers, including St. John Paul II, have recognized, culture precedes politics and law.[9] Law embodies and advances a culture, especially its moral aspects. We Christians need to keep this in mind as we work for justice in our societies, despite the very negative climate of today’s culture wars. We should use political means as fruitfully as we can, without apologies. We should seek and employ political influence in our work on vital issues like marriage and family, abortion, immigration and euthanasia. And it’s right and just that we do so.

But, as Cardinal Avery Dulles once noted, culture wars can't be won by tactical battles, even on crucial issues such as these. Policy statements by bishops and advocacy by lay men and women have important value. But their words, said the cardinal, "must be backed up by a coherent social and political philosophy." [10]

In the long run, Dulles wrote, "if a consensus exists in favour of a healthy society, the implementation will almost take care of itself." [11] Again, Dulles never suggested that we should abandon the political arena. Nor do I – quite the opposite. But we need to remember that the battle for hearts and minds runs deeper than winning a particular issue at the polling booths. Conversion is more important, and much more far-reaching, than any particular legislative debate.

Now, it's easy to say that positive law should be grounded in natural law. And positive law does clearly reveal a lot about a culture. So, good cultures should logically have good laws and bad cultures should have bad ones – right? But real life is more complex. In Canada and the United States, we have a long legacy of many good man-made laws founded on principles of natural law. And they're often still in force. But these laws no longer enjoy the cultural consensus that made them. A new, unfriendly cultural consensus demands that they be redefined or dumped altogether.

It's helpful to know where this new consensus came from. So I want to mention very briefly two political philosophers: the French scholar Pierre Manent, and again, Eric Voegelin.

Manent argues that modern life – the "modern project" – grounds itself on the power of the human will to transform the world around us. [12] Obviously, humans have always known that they could change the world to some degree. But the ancients were more aware of their limits. They were also more modest in their ambitions. They held that we need to reconcile ourselves to an existing order of nature that, even if flawed, is still essentially good. And in recognizing nature's limits and the need to conform to its order, they found real freedom. Moderns see the world very differently. Modern life "frees" us from thinking that we need to conform to any natural order – or even from believing a natural order exists.

In Aristotle's time, men and women saw the natural purpose of marriage — its telos — and they tried to pursue it, however imperfectly. Moderns also look at marriage. They want marriage to be different. So they work to reshape it according to their will. [13] And since we've lost our understanding of an objective human nature and moral order, the desires of our will very quickly take on the mantle of "human rights" that others may not interfere with it. [14]

The reason so many moderns seek to change the order they find in the world is that they experience it as confining or unjust. Eric Voegelin notes that the more modern men and women seek to re-create the natural order, the more they need to remove God from its head. [15] In this resentment of the natural order and in the attempt to change it through the human will, Voegelin sees a new form of the Gnosticism that Christianity has fought from its birth. And yet the Gnostic effort at remaking reality will always fail because the order of being cannot, in fact, be changed: As Voegelin says, "The closure of the soul in modern Gnosticism can repress the truth of the soul, as well as the experiences that manifest themselves in philosophy and Christianity, but it cannot remove the soul and its transcendence from the structure of reality." [16]

This explains the bitterness of the voices that seek to discredit God in our own time. It also explains the savagery of the totalitarian regimes of the last century. God can be mocked, but in the end, his order can't actually be overturned.

Where does this leave us as Christians?

As in every other age, we're called to preach Jesus Christ to our fellow citizens. We need to learn for ourselves and be ready to teach others the truth about the human person, the objective foundation of morality in the natural law. We need to fight to keep our human laws obedient to that deeper law. And we need to remind people of the truths they've forgotten, the truths on which our society is founded.

As then-Cardinal Ratzinger once wrote, the moral convictions that undergird the United States — and, I would argue, Canada — “demand corresponding human attitudes, but these attitudes cannot flourish unless the historical basis of a culture and the ethical-religious insights that it preserves are taken seriously. A culture and a nation that cuts itself off from the great ethical and religious forces of its own history, commits suicide.”

He continues, “The cultivation of essential moral insights, preserving and protecting these as a common possession but without imposing them by force, seems to be one condition for the continued existence of freedom in the face of all [of today's] nihilisms and their totalitarian consequences. It is here that I see the public task of the Christian churches in today's world. It accords with the nature of the Church that [she] is separated from the state and that [her] faith may not be imposed by the state but is based on convictions that are freely arrived at.”

Ratzinger closes with a quotation from Origen: “Christ does not win victory over anyone who does not wish it. He conquers only by convincing, for he is the Word of God.”[17]

If the problems in our culture boil down to a kind of hubris, an unhealthy overemphasis on the power the human will, then the conversion of our wills and those of our neighbours must be part of our Christian witness. That conversion can take place especially through culture, and Christian discipleship is especially important for its influence on culture.

It's worth mentioning two examples of how this influence can play out, taken from European history.

In his book *The Unintended Reformation*, the historian Brad Gregory notes that “the failure of medieval Christendom derived ... from the pervasive, long-standing, and undeniable failure of so many Christians, including members of the clergy both high and low, to live by the Church's own prescriptions and exhortations based on [her] truth claims. ... It was at root a botching of moral execution, a failure to practice what was preached.”[18]

When Christians failed to live as disciples, a flood of political, cultural and religious changes followed. Gregory outlines those changes at great length. But for us it's enough to note that many of them were painful, and they led to a triumph of the sovereign will that Manent and Voegelin see as the central problem of our time.

Here's the second, and ultimately more hopeful, example.

At the end of his masterwork *After Virtue*, the philosopher Alasdair MacIntyre famously compares the circumstances of those persons today who have traditional beliefs about virtue, to men and women in the so-called “Dark Ages.” He argues that what mattered for them, and what matters for us now, is the construction of local forms of community within which civility and the intellectual and moral life can be sustained through the new dark ages which are already upon us. And if the tradition of the virtues was able to survive the horrors of the last dark ages, we are not entirely without grounds for hope. This time however the barbarians are not waiting beyond the frontiers; they have already been governing us for quite some time. And it is our lack of consciousness of this that constitutes part of our predicament. We are waiting not for a Godot, but for another — doubtless very different — St. Benedict.”[19]

**In other words, if I understand MacIntyre correctly, one of the ways we might begin to live more fruitfully in a world that seems so deeply conflicted is to create parishes, seminaries, clubs, colleges and families that are real schools of sanctification. These would be vital in building up society, changing the culture, and trying to build a renewed sense of Christian community.**

But, as Benedict XVI said in one of his many talks, the original St. Benedict and his monks never sought to build a civilization or preserve a culture. Rather, he said, “Their motivation was much more basic. Their goal was: *quaerere Deum* [to seek God]. Amid the confusion of the times, in which nothing seemed permanent, they wanted to do the essential — to make an effort to find what was perennially valid and lasting, life itself. They were searching for God. They wanted to go from the inessential to the essential, to the only truly important and reliable thing there is. ... What gave Europe’s culture its foundation — the search for God and the readiness to listen to him — remains today the basis of any genuine culture.”[20]

It’s in seeking Jesus Christ with all our hearts that culture is built and society is renewed. It’s in prayer, the sacraments, changing diapers, balancing budgets, preaching homilies, loving a spouse, forgiving and seeking forgiveness – all in the spirit of charity — that, brick by brick, we bring about the kingdom of God.

As Pope Benedict pointed out in *Jesus of Nazareth*, “The kingdom of God comes by way of a listening heart.”[21] That’s the most important thing we can pray for, a heart open to the word of God. When our hearts listen, and we hear the voice of the Good Shepherd, then God can begin to conform us to his likeness and will.

The Mass too has unique importance in our personal renewal and in the renewal of our culture. Father Richard John Neuhaus once wrote that the Eucharist is not only the “source and summit” of the Church’s life: “It is [also] a supremely political action in which the heavenly polis is made present in time. The eucharistic meal here and now anticipates, makes present, the New Jerusalem’s eternal Feast of the Lamb.”[22]

The Mass feeds us with the body and blood of Jesus Christ. But it also reminds us that we’re on pilgrimage to the heavenly city. We live in the earthly city with its earthly ends. But we’re ultimately fulfilled only by our final end: communion with God when we see him in the glory of eternal life.[23] Because we seek Jesus, we’ll never be fully at home in a world that rejected and killed him. The Letter to the Hebrews reminds us that “here we have no lasting city, but we seek the city that is to come” (Heb 13:14).

And yet, we can use the goods and the peace of the City of Man to help us pursue the goods and the peace of the City of God, as Augustine teaches.[24] Jesus has called us by name. He empowers us by his Spirit. Now he invites us to work with him for the redemption of that same world.

God bless you, and thanks.

[1] ST I.47.1c.

[2] See also *Gaudium et Spes*, 22.

[3] Eric Voegelin, “The Nature of the Law,” in *The Nature of the Law and Related Legal Writings (Collected Works of Eric Voegelin, Volume 27)* (Columbia, MI: University of Missouri Press, 1991), 24–25.

[4] Jacques Maritain, *Man and the State* (Washington, DC: Catholic University of America Press, 1951), 97.

[5] Pope Benedict XVI. Meeting with the Members of the General Assembly of the United Nations Organization. New York, April 18, 2008.

[http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2008/april/documents/hf\\_ben-xvi\\_spe\\_20080418\\_un-visit\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/april/documents/hf_ben-xvi_spe_20080418_un-visit_en.html), accessed June 30, 2014.

[6] See also Robert George’s *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Oxford University Press, 1995).

[7] Maritain, 171.

[8] John Courtney Murray, S.J., *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960), 166.

[9] See also George Weigel, “John Paul II and the Priority of Culture,” *First Things*, February 1998. <http://www.firstthings.com/article/1998/02/001-john-paul-ii-and-the-priority-of-culture>.

[10] Avery Cardinal Dulles, S.J., “Religion and the Transformation of Politics,” in *Church and Society: The Laurence J. McGinley Lectures 1988–2007* (New York: Fordham University Press, 2008), 119.

[11] Dulles, 123.

[12] Pierre Manent, *Metamorphoses of the City: On the Western Dynamic*, trans. Marc LePain (Cambridge: Harvard University Press, 2013), 3.

[13] “The principle of consent, set in motion by the will of the individual, penetrates and rearranges the relations that appeared up to then invariably inscribed in the eternal order of human nature and above all the relations between parents and children, and man and woman, or in the eternal order of the world, especially those which constitute religion” ((Pierre

Manent, *The City of Man*, trans. Marc A. LePain (Princeton: Princeton University Press, 2000), 161).

[14] “Thus severed from being, the notion of human rights by itself lacks ontological density. It will irresistibly conquer the political and moral realms since, available and unattached, it can easily be tied to the various experiences of man that all appear capable of being looked at in its terms. All the desires of nature, like all the commandments of the law, can, it seems, be looked at without violence or artifice in terms of human rights” (Manent, *The City of Man*, 139).

[15] Eric Voegelin, *Modernity without Restraint: The Political Religions, The New Science of Politics, and Science, Politics, and Gnosticism*, ed. Manfred Henningsen (Columbia, MI: University of Missouri Press, 2000), 278–279.

[16] Voegelin, *Modernity without Restraint*, 222. In the same volume he also writes: “Men can let the contents of the world grow to such an extent that the world and God disappear behind them, but they cannot annul the human condition itself. This remains alive in each individual soul; and when God is invisible behind the world, the contents of the world will become new gods; when the symbols of transcendent religiosity are banned, new symbols develop from the inner-worldly language of science to take their place” (60).

[17] Joseph Ratzinger, *Values in a Time of Upheaval* (New York: The Crossroad Publishing Company, 2006), 51–52.

[18] Brad S. Gregory, *The Unintended Reformation: How a Religious Revolution Secularized Society* (Cambridge, MA: Harvard University Press, 2012), 366. For a relevant review of Gregory’s book, see <http://www.thepublicdiscourse.com/2012/11/6902/>.

[19] Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1984), 263.

[20] Pope Benedict XVI. Meeting with Representatives from the World of Culture. Collège des Bernardins, Paris, September 12, 2008. [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2008/september/documents/hf\\_ben-xvi\\_spe\\_20080912\\_parigi-cultura\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/september/documents/hf_ben-xvi_spe_20080912_parigi-cultura_en.html), accessed July 1, 2014.

[21] Joseph Ratzinger, *Jesus of Nazareth: From the Baptism in the Jordan to the Transfiguration*, trans. Adrian J. Walker (New York: Doubleday, 2007), 146. Ratzinger also identifies three patristic ways of understanding the phrase “the kingdom of God.” First, Origen called Jesus the *autobasileia*; that is, the kingdom of God is Jesus himself. It’s a person, not a place or a state. Second, other authors say that man’s interiority is the place of the kingdom. God reigns in us and therefore his kingdom is within us. Third, the Fathers speak about how God’s kingdom and the Church are brought into closer or farther proximity. Ratzinger focuses on the first one especially: Jesus is the location of God’s action among us, the seed that must fall into the ground and die in order to bear life, the pearl of great price. (49–50, 61)

[22] Richard John Neuhaus, *American Babylon: Notes of a Christian Exile* (New York: Basic Books, 2009), 14.

[23] As Eric Voegelin observes, since Christianity posits that human nature finds its fulfillment only in the final end of the beatific vision, not on earth or by human means, Christian life in this world is shaped by sanctification: moving toward the goal of that vision, which is our ultimate perfection. Unlike the Gnostics, Christians do not think such perfection can be achieved by their own efforts or in this world (*Modernity without Restraint*, 298).

[24] “But it is our interest that it enjoy this peace meanwhile in this life; for as long as the two cities are commingled, we also enjoy the peace of Babylon. For from Babylon the people of God is so freed that it meanwhile sojourns in its company. And therefore the apostle also admonished the Church to pray for kings and those in authority, assigning as the reason, that we may live a quiet and tranquil life in all godliness and love. And the prophet Jeremiah, when predicting the captivity that was to befall the ancient people of God, and giving them the divine command to go obediently to Babylonia, and thus serve their God, counselled them also to pray for Babylonia, saying, In the peace thereof shall you have peace, Jeremiah 29:7 — the temporal peace which the good and the wicked together enjoy” (Augustine, *City of God*, trans. Henry Bettenson (London: Penguin, 2003), 892).