

“make justice your aim (Is. 1:17)”—

law review banquet remarks of reverend paul b. r. hartmann

There is a tradition at the Law School in which the Editor-in-Chief of the Law Review invites an individual—a practicing lawyer, a judge, a professor, or someone else altogether—to deliver remarks at the Law Review’s end-of-the-year dinner. This past spring, Editor-in-Chief Katherine Mongoven Longley invited the Very Reverend Paul B. R. Hartmann of the Archdiocese of Milwaukee, a canon lawyer, to speak. Father Hartmann’s speech, delivered at the Wisconsin Club on April 1, 2005, was entitled “Make justice your aim (Is. 1:17).”



Oliver Wendell Holmes once referred to the law as a mirror which reflects the triumphs, tragedies, struggles, and routines of daily life. These, literally speaking, are the categories of our lived experiences. These, practically speaking, are the categories of our relationships. Whether as cause, as support, or as mere context, there are no triumphs, no tragedies, no struggles, nor mundane routines in our lives that occur in isolation from others (even if only indirectly).

There is a remarkable text in the documents of the Second Vatican Council about the truth of our identity as human beings. This text is found in *Gaudium et Spes*, the Pastoral Constitution on the Church in the Modern World. It states that “we are witnesses of the birth of a new humanism, one in which man is defined first of all by his responsibility toward his brothers and sisters and toward history.” This is a truth about how we must live our lives. It is a truth about what the tradition of Catholic social teaching has called solidarity—the fact that we are related to one another.

No field of science, nor any true art, endures without a keen study of the individual person amidst the persons around them, in some sort of relationship with them. Can we not all agree that the role of positive human law is to protect the dignity of the person—every man, woman, and child—in the midst of, and in relationship to, the rights and demands of others? In the largest sense, human law must endeavor for the protection of the human race and the promotion of those conditions of life that permit human beings to live and to flourish. Otherwise, there will be no triumphs, tragedies, struggles, or routines to even consider.

I have already referred to the tremendous tradition that we have in our Catholic social teaching. A review of Catholic social teaching, as it applies to the law, would be an obvious framework within which to address and challenge this auspicious group. But I, like you perhaps, generally try to avoid the obvious or simple path in life.

What, then, can I offer to you, the community that produces and benefits from the *Marquette Law Review*? I contend that to the same extent that we can, and must, understand great jurists like Oliver Wendell Holmes through the lens of our Catholic social teaching, you can approach your futures in law through the lens of your own Catholic faith. Even if you are not Catholic, in light of having studied the American tradition of law in a Catholic law school, all of you should be equipped to view the world in a unique way; to act in the world in an inspired way; to live in the world in a hopeful way.

Hearken back, if you will, to something that I hope each of you learned on your first day of law school: the definition of law as put forth by the Angelic Doctor, St. Thomas Aquinas:

Law is (1) an *ordinance of reason* (2) from the *leader* of (3) the *community* (4) *promulgated* (5) for the sake of the *common good*.

I contend for you tonight that, as Catholics, not only should we be rightfully proud of the fact that it was a great Catholic thinker, a specifically Catholic thinker, who developed this definition of law, but we should also realize that the Catholic worldview, and the Catholic intellectual and academic traditions, give us unique insight into each of the elements of this definitive notion of law.

Law is an ordinance of reason.

Please do not allow yourselves to merely accept this element of Thomas's definition as entirely self-evident. There is more at work in our interpretation of this passage than seeking laws and statutes that reflect grammatical intelligibility and internal cohesion. Some 180 years before there was anything that could even be called a tradition of Christian intellectualism, the Old Testament author Sirach, also known as Ecclesiasticus, wrote: "Happy the man who meditates on wisdom and reasons intelligently."

Thread this together with where we are today, 22 millennia later. In his encyclical *Fides et Ratio*, Pope John Paul, himself a profound philosopher and theologian, wrote: "Faith and reason are like two wings on which the human spirit rises to the contemplation of truth; and God has placed in the human heart a desire to know the truth—in a word, to know himself—so that, by knowing and loving God, men and women may also come to the fullness of truth about themselves." Even the most ardent secularist among legal theoreticians must accept the logic created here . . . the truth will set you free! The complete fulfillment of the self is itself truth. Thus, truth is itself freedom. But the secularist will stumble in giving definition, universal definition, to truth.

What has been uncovered for us is an implicit philosophy. Once our human reason successfully observes and formulates universal principles of being and correctly draws from them some conclusions that are coherent, both logically and ethically, then it may be called right reason or, as the ancients called it, *orthós logos*, *recta ratio*.

The experiences of the twentieth century should effectively confirm for us the fact that any system of living, any structure of government, not based on truth radically violates freedom, and that real freedom requires society to live according to truth. The Iron Curtain, the Berlin Wall, apartheid—all ultimately collapsed under the weight of people seeking to live out the truths of the inalienable dignity of the human person.

When we evaluate a given law, statute, or ordinance to determine its validity, right reason thus tells us the same thing that faith tells us (for the two are very much integrated with one another); reason seeks truth, and truth is something beyond us. Beyond any precedent, beyond any court's decision, and beyond any passing fancy.

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Law comes from a leader.

Some commentators will be sure to insert into this passage an adjective such as “competent” or “legitimate.” This is meant to give “leader” a meaning that is somewhat more legalistic than, say, a Pauline charisma. It is generally accepted that St. Thomas held that a good state, whether ruled by one, or a few, or many, should contain an essential element of democracy, to the extent that the popular will or, more precisely, the common good will be enshrined in the official personality of the leadership. This should not be construed to mean that the Pauline notion of leader is discarded. Rather, there are multiple elements in leadership that exist in balance and in tension.

We, with the benefit of our Catholic tradition, bring even more to this notion of leader than mere office. Use as a guide how we define the role of bishops in our communities. Catholics look to their episcopal leadership to simultaneously fulfill three *munera*, or responsibilities: to teach, to sanctify, and to govern. There might be a tendency among some to isolate each of these into separate realms of functionality, thus leaving me only with a bishop’s governing role as the interpretive lens. But the three *munera* cannot be separated, any more than the simultaneous roles of spouse, parent, and provider can be separated one from another.

The governing aspect of leadership is easy to comprehend. When I teach canon law, and I introduce the notion of law to my students, I do so by synthesizing two clichés: (1) “Your right to swing your arm stops at the tip of my nose,” and (2) “Wherever two or more are gathered, there is Christ.” With apologies to my colleagues in scriptural theology, I set forth the fundamental need for law in our world by asserting this: “Wherever two or more are gathered, there is law.” Implicitly, or explicitly, there are rules of conduct that we are expected first to learn, and then to follow.

The teaching aspect of the leadership is also easy to appreciate, even though it is sometimes the cause of some debate. Whether it is in teaching the facts of the laws themselves, or, more importantly, in expecting that the laws, whether in their logic or their coercive reality, will affect behaviors, the leader and the laws themselves teach. It is impossible to contemplate

a law that governs, but does not teach. It is equally impossible to contemplate a law that seeks to teach, but is not at the same time intended to offer something in the way of governance. This is even true for those often frivolous legislative or executive declarations of recognition and commendation. They are done for a multitude of reasons (some of which we may disagree with).

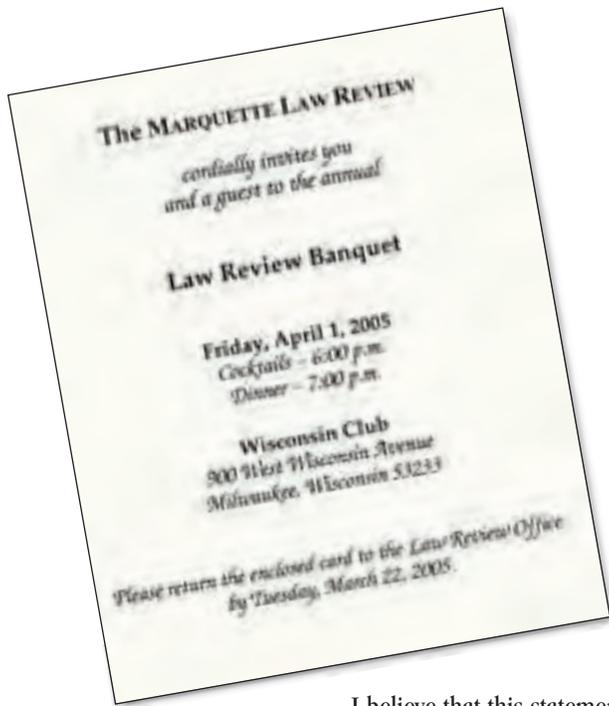
To broach the sanctifying aspect of leadership might cause consternation among some. But rest assured, I do not see in secular leadership, or in law, the function of making anyone more holy (that can be a fringe benefit of a just and free society); rather, I call your attention to that definition of “sanctify” that says “to free from sin.” Under the banner of freeing another from any encumbrance to his ultimate fulfillment, we are brought back to the freedom-in-truth premise that I spoke of earlier. With the benefit of a Catholic worldview, we should strive for leaders who not only govern, but also teach in a classic sense, and who offer themselves into both of those responsibilities because they also hope to work for freedom, for truth, for all.

Law is given to a community.

The first category of Catholic social teaching that I touched upon earlier was solidarity. I just want to briefly consider how Catholic thought informs our reading of this element of St. Thomas’s definition. When good moral theology offers a proper notion of solidarity, it always teaches, at the same time, a proper notion of subsidiarity.

The nineteenth-century French economist and politician, Frederic Bastiat, wrote an interesting little tract entitled *The Law*. In it, he offers this definition, “What is law? It is the collective organization of the individual right to lawful defense.” A more eloquent rendition of the “your arm and my nose” cliché. On this notion of community, Bastiat offers a rather pointed distinction:

We repudiate the artificial unity that does nothing more than deprive persons of individual responsibility. We do not repudiate the natural unity of mankind under Providence.



I believe that this statement raises two very good points for us. First, community constitutively includes responsibility. This will be addressed shortly. Second, natural unity, or, by extension, natural communities, precede artificial communities. Therefore, it should be contended that natural communities enjoy a preferential option in the law. Obviously, the most basic natural community is the family. Catholic systematic theology would contend that the Church, as the Body of Christ, is also a natural community, as opposed to an artificial one. But I realize that the notion of the Church as a voluntary organization is so entrenched in American thought and jurisprudence that I do not press it as a lens of our pragmatic Catholic worldview.

If it is an end of law to protect, and uplift, the human race (which is the widest collection of communities possible), then community is both the end, and the means, to good law. With the eyes of Catholic teaching aiding you, you will then look at the legal world with priorities far better developed than just protecting and promoting the artificial communities.

Law is promulgated.

There is really nothing uniquely Catholic about promulgation's being necessary for a valid law. The secularist and the moralist can both reject, as patently unfair, secret laws. The former rejects secret laws because, in the long run, they violate

the logic that laws serve to teach, to prevent, to coerce, etc. The Catholic adds to this realization that individual human dignity, community solidarity, and hopefulness of covenant among persons are undermined by secret law, or law that is beyond the understanding of the populace.

Law is for the common good.

We have already seen how each of the categories reviewed informs each of the others. Furthermore, each of the categories offers a unique possibility, if not responsibility, to interpret it in light of Catholic social teaching, and Catholic theological tradition. When considering the notion of the "common good," both trends are brought to an apex. Common good affects our notion of reason and truth; common good informs our notions of leadership and community; and common good gives context to the need for promulgation. In whatever role you take in your legal careers, offering conclusions about what "the common good" is will often be necessary, and it will be the circumstance when you might be most obviously Catholic.

The Angelic Doctor wrote that "it is evident that the proper effect of law is to lead its subjects to their proper virtue; and since virtue is 'that which makes its subject good,' it follows that the proper effect of law is to make those to whom it is given good."

If there is anything that the last quarter century of leadership by Pope John Paul II has sought to impress upon us, it is that no aspect of Catholic life, no evaluation with a Catholic worldview, can undervalue a proper Christian anthropology, a proper Christian personalism. In 1988, the Holy Father wrote to all of the Christian faithful:

The dignity of the person is the most precious possession of an individual. As a result, the value of one person transcends all the material world The dignity of the person constitutes the foundation of the equality of all people among themselves The dignity of the person is the indestructible property of every human being. The force of this affirmation is based on the uniqueness and irrepeatability of every person.

I believe that each of you who have the benefit of an education at a Catholic law school, or the responsibility of teaching at a Catholic law school, must be guided by this anthropology. Just as the natural community precedes the artificial community, the person—the person—precedes the community. Since the person cannot exist in isolation, by properly understanding this anthropology we avoid the two extremes of misconceived notions of common good. It is neither mere populism nor tyranny of the majority, nor is it radical, atomistic individualism.

The common good is every person, in the midst of his or her community, protected and lifted up to fulfillment as a person.

In conclusion

In a recent essay, the Reverend Richard John Neuhaus wrote that “the greatest contribution to American public life is for Catholic Americans to live the Catholic faith thoroughly, authentically, radically.” It has been said that a Catholic lawyer, or a lawyer who has had the benefit of a Catholic legal formation, does not compartmentalize this Catholic consciousness—a consciousness formed by the Ten Commandments, the scriptures, and the traditions of the Church.

Let me look inward for a moment. I concede that all of the aforementioned can seem like a very onerous burden on the practicing attorney. It begs the question, can lawyers be saints? Please allow me to encourage you. According to popular mythology, there is a contradiction here. People love telling

lawyer jokes and commonly place the lawyer’s eternal home, well . . . Yet the early Church, at least, knew many lawyer-saints. Cyprian, Ambrose, Jerome, Benedict, Thomas à Becket, and many others were all lawyers before they became clerics, monks, preachers, and saints.

Many more recent saints as well had a legal background—for example, Thomas More, Charles Borromeo, Peter Canisius, Francis de Sales, Alphonsus Ligouri, and Frederick Ozanam.

Some saints left the practice of law only unwillingly: St. Turibius was a law professor at Salamanca University when he was named Archbishop of Lima. Despite pleading that he wasn’t even a priest, that he was a layman who wanted

nothing more than to remain a professor of law, he was ordained and shipped off to Peru. His

previous profession proved handy, however, as he became an outstanding advocate of the rights of the indigenous peoples against the enslaving conquistadores.

Others practiced law until their deaths and found there a way to holiness. Luigi Beltrame Quattrochi, who died in 1951, was a lawyer and one half of the first married couple to be beatified together—only four years ago.

All in all—and here’s the surprising thing given the image in the popular culture—lawyers seem to be disproportionately represented amongst the ranks of the beatified and canonized saints, surpassed only by professed religious. Perhaps they are good at arguing their own case before the Divine Judge. •

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