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“Administration of Justice & Social Doctrine of the Church”

Remarks to Faculty Members
by
Judge Diarmuid F. O’Scainnlain
United States Circuit Judge for the Ninth Circuit
and
Chairman - Judicial Council of the International Association of Law Schools

Colloquium and Lunch
Wednesday, August 21, 2024
1:00 – 2:30 p.m.
Facultad de Derecho
Pontificia Universidad Catolica de Chile
Santiago, Chile

Estimados Profesores y Miembras de la Facultad de Derecho: Buenes Tardes.
Soy Juez Diarmuid O'Scannlain de la Tribunal de Apelaciones de los Estados Unidos para el Circuito Noveno. Soy Tambien Presidente del Consejo Judicial de la Asociación Internacional de Escuelas de Derecho. Es un gran placer conocerles ustedes hoy. Muchas gracias al Decano Bocksang y a todo el profesorado de la Facultad.

Now, before I make any more translation mistakes, please permit me to continue in my native tongue. My remarks today are my own and do not necessarily reflect the views of my federal judicial colleagues or the United States Court of Appeals for the Ninth Circuit.

I join you today in my capacity as Chairman of the Judicial Council of the International Association of Law Schools, of which your own Dean will become Global President next year. It is a great honor for me to be invited by Dean Bocksang to be with you this week. The Association is primarily represented by its Law School Deans, but some years ago it created a Judicial Council to bring the Judiciaries and the Law Schools closer together.

In due course, the Association adopted the "Judicial Standards of a Legal Education" at the recommendation of the Judicial Council. As Chairman of the Council, which currently consists of judges from twelve different countries, including Chile, my purpose is to encourage discussions about what we judges need from law schools *and* how judges can, in turn, support the law schools. More specifically for our topic today, what is the role of the law school's curriculum in the administration of justice - and how can we assist the schools in this task? And more specifically for this Catholic Law School, what role does the social doctrine of the Church play in the administration of justice and the role of judges?

The Association's judicial standards provide that a legal education should include opportunities for a student to develop the skill of "*knowledge, sensitivity, and application of moral and ethical values inherent in the Rule of Law.*" Accordingly, law schools should emphasize that the Rule of Law, however imperfect it may be, is founded upon the value of individual dignity and the broader ethical goal of the creation of peaceful societies.

In an address to the Catholic University of America in 2008, Pope Benedict XVI essentially echoed this standard by emphasizing the moral value of the Rule of

Law. Pope Benedict noted that by integrating faith and education, Catholic teaching contributes to a country's "fundamental aspiration to develop a society truly worthy of the human person's dignity." The Pope emphasized that the Church and her academic institutions "help shed light on the foundation of human morality and ethics." When addressing the United Nations several years ago, Pope Benedict pointed out that Natural Law underlies the *Universal Declaration of Human Rights*. He explained, "that the rights recognized in the *Universal Declaration* apply to *everyone* by virtue of the common origin of the person, and "these rights are inscribed by God on human hearts and are present in different cultures and civilizations." Without the essential moral categories of right and wrong, a culture disintegrates into one where each person demands to be the bearer of his or her own subjective truth. Such an amoral society simply cannot fully respect individual human worth and dignity.

Pope Francis also emphasized the critical role of Catholic education in today's world. Speaking to the participants at an education conference in Rome, he stressed that a Catholic education importantly "gives a soul to the world" by teaching the intellectual and moral developments that are deeply rooted in Catholic values. He pointed out that educators must be true witnesses to the Gospel, demonstrating Catholic principles not only in their curriculum, but also in their interactions and missions with the broader community.

But what are the Catholic principles that apply specifically to our understanding of the law? And, importantly, how do Catholic principles apply to the role of lawyers and judges? Should a judge's Catholic faith influence how a judge interprets a law or decides a case?

I believe it is instructive to look to our Catholic forebears when we discuss the nature of law and the role of judges. I suggest that a Catholic theological perspective teaches us that Catholic judges can be *both* true to their Catholic faith *and* true to the Rule of Law in a pluralistic democracy.

In his *Summa Theologica*, written in the 13th century, Saint Thomas Aquinas included a Treatise on Law that continues to be relevant today. Aquinas provides an instructive framework on the nature of laws. Aquinas stated that law is "a rational ordering of things that promote the common good." According to Aquinas, natural law guides individuals in making moral decisions aligned with the common good. Human laws are the laws created by human beings to govern society. Human laws

ideally should be informed by natural law and aimed at promoting the common good. Together, two categories of law illustrate Aquinas's view of law that helps guide human behavior towards the good, rather than toward chaos and evil.

As a judge and a practicing Catholic, I have often considered how these laws interact. My role, first and foremost, is to interpret and to apply human laws that the people have duly enacted. However, a judge's role is limited. While Aquinas emphasizes the *importance* of moral law, he also acknowledges the *necessity* of human law as a means of governance. This distinction is crucial; a judge must operate within the bounds of the law, ensuring that his personal beliefs do not cloud his judgment. A judge's task is to uphold the law impartially, even if it diverges from one's personal convictions. And while it is certainly true that Aquinas was writing for a time and a place much different from our own, Aquinas's thoughts on the law are striking in their current relevance.

Aquinas saw a need for human law in the very nature of society itself. Indeed, as Aquinas stated: "It is of the essence of a nation that the mutual relations of the citizens be ordered by just laws." Scholars agree that this passage illustrates that the Rule of Law is at the heart of Aquinas's understanding of law and of society. The Rule of Law likewise shapes Aquinas's understanding of the role of the Judge. Later in Aquinas's *Summa*, when discussing virtues, Aquinas poses a debate about how a judge should interpret a statute, or what we might now call "textualism." Aquinas's discussion is not much different from the today's discussion about the role of a judge when applying laws passed by a legislature. Aquinas stated: "In these earthly laws," he says, "though lawmakers judge about them when lawmakers are *making* them, when once they are established and passed, the judges may *judge no longer of them*, but according *to them*."

Aquinas also states that laws must be just to be binding. If a judge believes that a law fails to uphold justice, he or she may advocate for change through nonjudicial channels, rather than through judicial activism. This balance between fidelity to the law and the moral imperative of justice is a delicate dance, requiring wisdom and humility.

Another prominent Doctor of the Church is the very patron of lawyers, Saint Thomas More. Thomas More, as the King's Chancellor, expressed his commitment to the Rule of Law when he stated that, "Were it my father stood on the one side, and the devil on the other, his cause being good, the devil should have right."

Thomas More was explaining that, in the eyes of the *Law*, the devil's cause being "right" meant only that the devil's cause had the Rule of Law on its side. Moral duty for St. Thomas More required him to *separate*, in his duties as judge, his knowledge of the law from his personal view of morality.

With this Catholic understanding of the law in mind, I am not persuaded that judges possess the very mind of God. The notion of the Rule of Law, rather than a Rule of Judges, is limiting and non-threatening. One of the founders of my country, Alexander Hamilton, described the judiciary as the "least dangerous" branch of our three branches of government. If we have the rule of law, rather than the rule of judges, then the particular faith of the judge should not matter much.

Therefore, I believe that the primary role of the judge is to uphold the Rule of Law, *even when* the particular law at issue does not seem, in the eyes of a judge to be wise, or even just. Certainly, the rule of lenity is properly applied in criminal cases when the law at issue is ambiguous. In the Christian tradition, God's mercy toward sinners does not remove the category of a sin. Similarly, while there is allowance in our system for the exercise of judicial discretion, it is not the judge's prerogative to second-guess the lawgiver to bring about the judge's own personal vision of justice or to exercise the judge's personal understanding of compassion. And I am not free, as an appellate judge, to import my personal views about how the law ought to be, in the name of sympathy or compassion.

Of course, a judge who is a practicing Catholic will be familiar with the principles of Catholic thought and, where appropriate, may have such principles in mind in the interpretation of text.

There are many areas of law, as we all know, that fall short of a perfect vision of justice within the Catholic tradition. Let us assume for the sake of argument that a Catholic feels passionately about the rights of the unborn or of immigrants, and that our nation's laws are unjust to both. There are many commendable jobs a person might pursue to vindicate those positions. But I respectfully suggest that the job of judge is not high on the list. A person wanting the sort of role that can improve the justice of our laws ought to be running for office, writing essays for publication, or working in some other sort of advocacy role. Becoming a judge means agreeing to enforce the laws as they are, not as one would have them be.

In his first encyclical, *Deus Caritas Est*, Pope Benedict XVI wrote of the Church that “She has to play her part through rational argument, and she has to reawaken the spiritual energy without which justice, which always demands sacrifice, cannot prevail and prosper,” but he continued that “[a] just society must be the achievement of politics, not of the Church.”

In our political systems, substantive improvements to the social order are brought about by legislators, not judges. The fact that the constitution is ordered toward justice, does not mean that the judges have the power to “do good and avoid evil” as our own consciences would dictate.

I hope to have shown today how a traditional understanding of the law within Catholic thought can shape a jurisprudence that is consistent with a pluralistic democracy and the role of the judge within it. A faithful judge, informed by Catholic doctrine, has a limited yet vital role in the administration of justice. All judges, whether faithless or full of faith, are called to uphold the Rule of Law, while also being ever mindful of the law’s moral underpinnings. In so doing, judges fulfill a critical role in the promotion of a just society and the promotion of the common good.

Yet, even as the role of judges is limited, a judge who is a practicing Catholic can draw strength and guidance through prayer and inspiration from the Gospels and the social doctrine of the Church, while also remaining committed to the objective application of the law. Our Catholic faith, through the grace of God, provides us with a true moral compass, compassion, and integrity in our important role in the administration of justice.

Muchas Gracias.