
Until recently, explicitly Christian voices in the realm of contemporary legal theory have been “nearly silent.”1 This work contributes to the ongoing project of breaking that silence by calling on American Catholic legal theorists to renew their “commitment to truth with a capital ‘T’” (9) and inviting the dominant secular legal culture to share that commitment. In one way or another, two central questions drive all of the essays collected in this rich set of reflections: What is the Truth about the human person, and to what extent does contemporary American law acknowledge and reflect that Truth?

For the twenty-one authors who have contributed to this volume, legal questions are ultimately anthropological questions. Because “every system of law reflects some basic assumptions about what it means to be fully human[,]” (24) any reflection on how to structure the interactions of persons in society justly through law will be deficient unless it is rooted in a proper understanding of the truth of the human person. The Declaration of Independence itself, as Michael Scaperlanda and Teresa Collett explain in their introduction, is founded upon a particular view of the human person, which is proclaimed to be self-evident: (i) all persons are created by God with an “unalienable and equal right to be free;” (ii) human “freedom is exercised in community;” and (iii) “freedom must be ordered by government and law[,]” (3) The founders, therefore, understood freedom to be connected to objective truths about the human person.

Today, however, this fundamental connection between freedom and truth is under attack. Throughout the book, the primary symbol of this attack is the “mystery passage” from the joint opinion in Planned Parenthood of Southeastern Pennsylvania v. Casey: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”2 The consequences

that flow from understanding the meaning of personhood to be simply a matter of autonomous choice, rather than an objective truth to be apprehended by human reason, are grave: “without objective truth, there are no universal criteria for forming a morally just society.” (6) As Michael Scaperlanda notes, “[d]ivorced from truth, freedom and liberty are rootless and precarious concepts,” and “power reigns supreme[.]” (297, 300)

If *Casey* is the villain in this story, John Paul II is the hero. The book’s foreword, by Chicago Archbishop, Francis Cardinal George, O.M.I., notes that the volume’s reflections are often rooted in the teaching of Pope John Paul II, who put radical questions to many current assumptions of current secular legal thought and practice and delineated the boundaries of authentic Catholic legal scholarship. (xi)

The book’s opening chapter, a primer on Catholic legal theory by Kevin P. Lee, draws on the writings of John Paul II to introduce the boundary concepts of a Catholic approach to law. Lee explains that a “genuinely Catholic approach to law” (24) has the following characteristics: It must recognize that law is not an “autonomous discipline, but . . . a humanistic activity” integrally related to all human attempts to explore the meaning of human existence. (24) It is committed to the human capacity to know the truth about what it is to be human through reason and revelation working together. Natural law views of jurisprudence and morality are normative, and freedom should not be understood simply as a choice maximizing absence of coercion. Instead, freedom cannot be understood properly apart from the truth of what the human person is called to become. These, Professor Lee explains, are “the boundaries of authentic Catholic legal scholarship.”(35)

The chapters that follow are organized into four parts. Part I, “The Nature of the Human Person,” (37) illustrates the complementary character of faith and reason by pairing a discussion of theological anthropology by Lorenzo Albacete with a philosophical anthropology developed by Benedict M. Ashley, O.P. Part II is entitled “The Person in Community.” The contribution by Avery Cardinal Dulles, S.J. draws out the implications of John Paul II’s insistence that freedom must be rooted in the truth: “To act freely against the truth is to erode freedom itself.” (72) In a section of his essay entitled “The Free Society,” (79) Cardinal Dulles calls on the “masterful work” of John Courtney Murray, S.J. to discuss the importance of the “public consensus” to the maintenance of freedom in society. (80) While the atmosphere of contemporary pluralism tends “to overlook the inviolable connection
between freedom and truth,” (81) Murray insisted that, “[a]t the basis of the American experiment in ordered liberty . . . there are truths.” (80) When the people at large fail to acknowledge those truths, the experiment in ordered liberty is undermined.

In this context, it would have been interesting for Cardinal Dulles to discuss Murray’s “principle of the free society”: “This principle affirms that man in society must be accorded as much freedom as possible, and that that freedom is not to be restricted unless and insofar as necessary.” 3 A version of this principle sums up a critical section of the argument for religious freedom articulated in Dignitatis Humanae, Vatican II’s Declaration on Religious Freedom: unless the requirements of public order require the use of legal coercion, “the usages of society are to be the usages of freedom in their full range. These require that the freedom of man be respected as far as possible, and curtailed only when and in so far as necessary.” 4 Cardinal Dulles briefly notes that, as a young bishop at Vatican II, Karol Wojtyla was critical of a draft of the declaration “because it did not sufficiently emphasize the connection between freedom and truth.” (69) It is, however, surprising that substantive engagement with the authoritative conciliar text of Dignitatis Humanae, which has much to teach us regarding the proper understanding of the constitutional order and the limits on the use of legal coercion that are a demand of human dignity, is absent from the essays in this collection.

Part III, “Catholicism in Dialogue with Political and Legal Theory,” (129) consists of two intriguing essays. The first, by Christopher Wolfe, argues that natural law theorists should see themselves as part of the ongoing dialogue of liberalism. (131-151) Properly understood, the main tenets of liberalism not just defensible, they are good. But we shouldn’t simply be liberals, because the social ecology of liberalism can misshape us as citizens, especially by so emphasizing freedom at the expense of truth that we can be tempted to move from tolerance of others to relativism about ideas of the good. Robert P. George’s essay argues that respect for the dignity that must be accorded the human person as a practically intelligent creature requires that human beings be “ruled in ways that accord them the respect they are due ‘as rational agents.’” (160) Commitment to governance according to the rule of law is, therefore, a central value in Catholic legal theory.

Part IV, “Catholic Perspectives on Substantive Areas of Law,” (162) brings diverse perspectives drawn from the resources of the Catholic intellectual tradition to bear on a wide range of particular areas of law: labor, contract, property, tort, criminal, family, immigration, and international human rights. The conclusion of Richard Garnett’s essay exploring the ethical questions raised by the phenomenon of death-row volunteers (i.e., defendants who choose not to challenge their death sentences) sums up one of the central insights to be drawn from this set of essays. While Catholic legal theory will “not provide definitive prescriptions or clear rules” for resolving every legal question our society confronts, the enterprise of Catholic legal theory does invite us to “a reorientation of the conversation around a Christian humanism, around a vision—a Catholic vision—of what we are and what we are for, and why it matters.” (274)

The final chapter in Part IV, Mary Ann Glendon’s essay exploring the dilemmas posed by the failure of the Universal Declaration of Human Rights to ground adequately its faith in human dignity as the foundation for human rights (317-332), ends by suggesting a question that Catholic legal theorists must continue to explore with care if their project is to bear fruit: What is the relationship between culture and law? Quoting Jacques Maritain’s reflections on the Universal Declaration, Glendon asserts that culture has priority over law: “Whether the music played on the Declaration’s . . . strings will be ‘in tune with, or harmful to, human dignity,’ . . . will depend primarily on the extent to which a ‘culture of human dignity develops.’” (331-332) Without denying the crucial pedagogical function that law is understood to play in Catholic legal theory, Glendon’s essay reminds us that law may be of limited usefulness in protecting human dignity if legal norms don’t find support in the surrounding culture. Thus, the more foundational task of cultural renewal necessarily must precede ambitious efforts to bring American law into closer alignment with the truth about the human person.

Reflecting this insight, Russell Shaw’s epilogue suggests that the Catholic legal theory project cannot be understood apart from the culture war. Shaw’s battle cry is “Back to the ghetto.” (338) While he concedes that the slogan is largely designed to get people’s attention, he also intends to point to “an important truth” (338): In the face of a dominant secular culture that has “no visible sympathy” for recovery of

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5. (Quoting Jacques Maritain, Introduction to Human Rights: Comments and Interpretations 16 (UNESCO ed., Wingate 1949)).
the natural law tradition (339), efforts to apply Catholic perspectives to concrete questions of American law will not succeed “until the Catholic subculture regains the critical mass to be a culture-forming agent in America.” (338)

Shaw recognizes that the ghetto of the past “was intellectually shallow as well as triumphalistic and defensive to the point of paranoia.” (338) This, he acknowledges, is not the subculture he means to promote. Instead, what is needed is “the sort of healthy community, possessing a strong and self-confident sense of its identity” that can serve as an “alternative environment or plausibility structure[]” (339) This “alternative environment” will be the base from which to launch the evangelization of culture (both of secular culture and of culturally assimilated Catholics) “that will include bringing Catholic perspectives to bear on the law.” (339)

A subculture with a strong sense of identity, confident in its commitment to objective truth with a capital “T,” and engaged in an intellectual project that stresses the need to articulate the boundaries of authentically Catholic legal scholarship, must also strive to maintain an attitude of humble openness to learning from those outside the boundaries. As James Gordley’s essay on contract law demonstrates, Aquinas and other natural law thinkers knew that they could learn from non-Christians, and non-Catholics like Grotius drew on principles articulated within the Catholic tradition. (203)

Moreover, the central truth the Catholic legal tradition can contribute to American law and culture ultimately may not be a distinctive set of philosophical principles. Instead, as Amelia Uelmen (drawing on the work of William Stuntz) suggests in her essay, “Toward a Trinitarian Theory of Products Liability,” (220-253) the attitude of love, respect, and openness to communion with others that followers of Jesus bring to their careful thinking about the law must be at the heart of a Catholic legal theory: “[T]he ‘core’ of Christianity’s distinctive contribution to legal theory is about ‘attitudes and relationships, not rules and standards.’” (239)

The Catholic legal scholars represented in this collection of essays model an attitude of thoughtful dialogue. The success of the project envisioned by the book, however, will depend on the ability of Catholic legal theorists to engage the wider culture by learning as well as teaching, always acknowledging the “constant call to humility” (273) that is demanded by the Truth that all persons are creatures possessing freedom, reason, and equal dignity.
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