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THE LAW OF BENEDICT

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Pope Benedict XVI often ventured into venues historically hostile to the Judeo-Christian tradition. A new collection of essays discusses many of these speeches, probing the relationship of reason to religion, the West, and natural law.

When describing the development of his theological interests in a short book of [memoirs](#) first published in 1997, Cardinal Joseph Ratzinger underscored what he regarded as the arid state of the scholasticism he encountered during his seminary studies in post-war Germany. This makes it somewhat ironic that, during his pontificate, Benedict XVI found himself delivering a series of tightly argued addresses, all of which emphasized the West's need to return to right reason in the fullest sense of that word. These speeches and their implications for law and democracy are explored in a collection of essays entitled [Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law](#), edited by Marta Cartabia and Andrea Simoncini.

The flight from right reason, so apparent in Western culture and Christian life since the 1960s, has long worried many Jewish and Christian scholars. The 1993 encyclical [Veritatis Splendor](#), for instance, can only be fully understood against the background of efforts by some moral theologians—many of whom, such as the late Josef Fuchs SJ, were not coincidentally from the German-speaking world—to maintain the language of natural law while infusing it with consequentialist and proportionalist argumentation to legitimize positions clearly contrary to longstanding Christian teaching concerning exceptionless [moral absolutes](#).

Perhaps one of the most innovative aspects of Pope Benedict's efforts to restore reason to its proper place in the West and religious intellectual life more generally was his willingness to go, as another pope often says, to "the peripheries" to make his case. Put another way, to the extent that what some people call "the Benedict Option" involves Christians disengaging from a thoroughly secularized public square and declining to present arguments based on public reason, the sixteenth Pope Benedict was not inclined to embrace this approach.



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Consider some of the places where these speeches were delivered: [Westminster Hall](#) (the site not only of Thomas More's show trial but also the place where Millian utilitarianism is regularly invoked by parliamentarians to rationalize some of the world's most permissive bioethical legislation); [the German Bundestag](#) (where the pope illustrated the limitations of Hans Kelsen's positivism that has been so influential in the German world); a gathering of representatives of France's secular (and traditionally anti-clerical) cultural establishment in a former monastery in [Paris](#); and the [United Nations](#), where Benedict gently reminded the assembled applauding delegates that the idea of human rights didn't begin with modern international institutions but rather with medieval and early modern scholastic thought.

Reintegrating Reason and Religion

As noted by one contributor to this collection of essays, Mary Ann Glendon, it's not clear that the clapping UN delegates "really grasped the full implication of [Pope Benedict's] words." That's not surprising in a West that is now accustomed to thinking of religion as the realm of sentimentality (if not irrationality) and strongly felt feelings, and in which some Jews and Christians have embraced precisely such understandings of religious belief.

The contribution of these essays to showing how Benedict's speeches provided pathways for faith and reason to restore coherence to the foundations of Western law and democratic systems is best described as uneven. Among the stronger papers are those of Glendon, the legal scholar J.H.H. Weiler, and the moral theologian Martin Rhonheimer. Each of these authors grapples directly and cogently with Benedict's arguments concerning how religion and full-bodied conceptions of reason must necessarily shape each other, and in the process of doing so, help infuse greater rationality into our legal systems and democratic institutions.

Along with John Witte, these authors stress that by "religion" Benedict typically has in mind specific traditions of thought and practice, especially the manner in which orthodox Christianity integrated Jewish Biblical wisdom, Greek reason, and Roman law. This argument is similar to that [unfolded](#) by the secular German philosopher Jürgen Habermas throughout the 2000s: that to disconnect the West from this specific religious tradition is to uproot Western legal and democratic practices from their primary source of nourishment. While stressing (correctly) that Benedict has never held knee-jerk anti-Enlightenment positions (a perennial [temptation](#) that seems in recent years to have gathered steam among many conservative Christians in Europe and America), these authors underline the pope's attention to religion as the core of culture.



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The logic is remorseless: If you change the “cult,” then, for better or worse, you change the *culture*; if you change the culture, then, for better or worse, you change everything else—including the foundations of law and politics. Hence, to the extent that significant segments of Judaism and Christianity have abandoned orthodox belief and morphed into pale facsimiles of secular humanism, they actually contribute to the growing dysfunctionality that marks contemporary Western legal and political thought and institutions.

At the same time, these authors stress that Benedict’s speeches are directed to restoring reason to its proper place *in* religious thought. This is crucial if religion isn’t to degenerate into either fundamentalism or sentimental humanitarianism—both of which disdain reason. The same addresses are also about correcting the commonplace assumption that reason and the public square have little to do with religion and vice versa. Rhonheimer and Weiler’s papers are especially good at elaborating on these significant points.

Limitations of a Design

That, however, doesn’t mean that these authors shy away from highlighting what they regard as ambiguities in Benedict’s addresses. For understandable reasons, it’s rare for relatively short speeches (as opposed to academic papers) to enter into definitional details. The price, however, can be a degree of confusion. Rhonheimer points out, for instance, that words such as “law of nature,” “human nature,” “nature,” “natural law,” and “reason” are used interchangeably throughout these addresses. But as Rhonheimer then observes:

The natural law . . . is not simply a law that ‘nature’ reveals to us in some unambiguous way. Instead, it is always and only an ‘ordering of *reason*’ (*rationalis ordinatio*) . . . In order for natural law to lead to a concrete normativity, it cannot be simply read from the Book of Nature; “nature” as such is not yet a moral or legal norm. What is needed is rather recourse to nature *through the argumentative reason*.

This may be one potential problem with the use of terms such as “moral ecology” or “human ecology” by John Paul II, Benedict XVI, and, more recently, Pope Francis. One reason why Benedict and Francis invoke such terminology is to highlight the contradiction of environmentalists getting all worked up about the degradation of the natural environment while invariably adopting nonchalant attitudes toward, or happily acquiescing in, the intentional damaging of goods as central to human flourishing as human life and marriage. The downside of such a strategy is that it risks inadvertently misleading people about what natural law is and isn’t at a time when the very



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concept is either unknown or badly understood, even by many members of those religious faiths that have always taken natural law seriously.

Herein lies perhaps the greatest weakness of this collection of essays: the dearth of reflection on *how* Benedict's addresses understand (1) natural law itself, (2) the place of natural law vis-à-vis religion, and (3) how natural law shapes the foundations of positive law and democratic proceduralism. Rhonheimer alone substantially engages these questions. Apart from illustrating how Benedict's use of particular expressions does not always encourage clarity on these matters, Rhonheimer discourses at length about the ways in which natural law can, and cannot, help prevent positive law and democratic majorities from degenerating into tyrannical exercises of power.

The failure to engage these issues may owe something to the fact that some authors of these essays don't articulate entirely accurate understandings themselves of what natural law is. In the context of discussing what he describes as Benedict's naturalistic view of human rights, for instance, Christopher McCrudden argues:

Naturalistic approaches may be either metaphysical or non-metaphysical. Taking the example of human dignity, some argue that the concept of dignity depends on a metaphysical understanding of the human in relation to a deity. But there are also nonmetaphysical understandings of human dignity that are nevertheless naturalistic, where the dignity of the person is seen to derive from an understanding of what it means to be human, based on our observations of human experience. Proponents of natural law theories of human rights argue that such theories are of this type.

Precisely which natural-law proponents Professor McCrudden has in mind isn't specified. But it suffices to say that the central tradition of natural law *doesn't* understand itself as naturalistic, let alone as derived from reflection on human experience. In the first place, natural law is based on and proceeds from the principles of practical reasonableness. While natural law reasoning isn't inattentive to human experience, it doesn't regard experience as being in any way decisive for moral decision-making, let alone a primary basis for identifying human rights.

Natural Law and *Logos*

The other significant shortcoming of some of these essays concerns Benedict's invocation of the idea of God as *Logos* in several of the speeches covered in this book, most notably the



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addresses in [Regensburg](#) and Paris. Though several authors discuss the meaning of *Logos* for faith, none of them really addresses the significance of God's nature as Divine Reason (discussed at length, as the Jesuit theologian Cardinal Jean Daniélou [observed](#) decades ago, *before* Christianity's advent by Hellenized Jews such as Philo of Alexandria) for Western legal orders.

The idea of *Logos* surely has significance for increasing our understanding of God as Law-Giver, as well as deepening comprehension of the relationship between divine law, natural law, and positive law. To be sure, Benedict's remarks about *Logos* were primarily directed at clarifying God's nature and subtly illustrating that some religions embody broader conceptions of reason than other faiths (not to mention secular humanism). Nevertheless, the lack of attention to the implications of Benedict's emphasis upon God-as-*Logos* for law in this collection leaves a gap that others will have to fill.

Benedict XVI's willingness to travel to places symbolically very distant from orthodox Christianity in order to engage minds trapped in the intellectual dungeons of positivist reason and/or sentimentalism may well end up being the most prominent of his substantial contributions to the Christian church and Western culture. As some of these essays illustrate, the questions posed by Benedict are not going away. Nor are they necessarily confined to the West. After all, reason itself transcends cultural differences and geographical distance.

To this extent, the modern Areopagus into which Benedict repeatedly entered during his pontificate was truly universal.

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