

**The Essential Relationship of the Judeo-Christian Intellectual Tradition
to Ethics, Law, and Public Policy**

**Presentation at the Luncheon Meeting Sponsored by the
Journal of Law, Ethics & Public Policy
Notre Dame Law School
Notre Dame, Indiana**

November 3, 2022

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My dear brothers and sisters in Christ:

It is good to be with you for this gathering sponsored by the *Journal of Law, Ethics & Public Policy* here at Notre Dame Law School. I graduated with my MBA degree from Notre Dame's Mendoza College of Business in 2013 and it was a privilege for me to have taught here at Notre Dame Law School as an Adjunct Professor of Law from 2016 until last year, so I appreciate the invitation to return to the Notre Dame campus and speak with you today.

The topic of my presentation is, "The Essential Relationship of the Judeo-Christian intellectual tradition to Ethics, Law, and Public Policy." That is an intentional reordering of the elements the title of the *Journal of Law, Ethics & Public Policy*, because I would propose that ethical principles come first, with law and public policy flowing from them. I would also emphasize

that the relationship of the Judeo-Christian intellectual tradition with Ethics, Law, and Public Policy is essential because without that tradition, law and public policy become untethered from the Truth and devolve simply into a power struggle simply to impose one's will on others.

There are some who would argue that the Judeo-Christian intellectual tradition is obsolete, if not obnoxious to modern ethical thinking. They propose that law and public policy should flow from neutral principles of ethics, rather than on a value system rooted in religion. The problem is that there is no such thing as a value-neutral system of ethics. The reality is that a system of ethics based on secular principles is not value-neutral, since secular principles at times are in fact hostile to religious value.

One of the definitions for the word "religion" offered by the *Merriam-Webster Dictionary* is, "a cause, principle, or system of beliefs held to with ardor and faith."¹ Indeed, secular principles and beliefs may be held by atheists with as much ardor and faith as those held by adherents to a theological tradition, so much so that it is possible to say that there is such a thing as a secular religion that exists alongside theistic religions. Thus, in her article published in *First Things* entitled, "The Zealous Faith of Secularism:

How the Sexual Revolution Became a Dogma,” Mary Eberstadt, Senior Research Fellow at the Faith and Reason Institute, wrote:

According to the dominant paradigm shared by most people, religious and secular alike, the world is now divided into two camps: people of faith and people of no faith. But this either-or template is mistaken. Paganization as we now know it is driven by a new historical phenomenon: the development of a rival faith—a rival, secularist faith which sees Christianity as a competitor to be vanquished, rather than as an alternative set of beliefs to be tolerated in an open society. ...

The fact that two faiths now compete in the West also explains the vehemence aimed at public figures who are practicing Christians—in particular, practicing Catholics. In September 2017, at the confirmation hearing of judicial nominee Amy Coney Barrett, a Catholic, several senators remarked upon and denounced her faith. The most telling rhetorical moment may have been Sen. Dianne Feinstein’s declaration that “the dogma lives loudly within you” —an expostulation more fitted to an exorcist preparing for battle with Satan than to an American elected official charged with ascertaining the judicial fitness of a highly qualified candidate. Which is exactly the point.

In sum, secularist progressivism is less a political movement than a church, and the so-called culture war has not been conducted by people of religious faith and people of no

faith. It is instead a contest of competing faiths. One believes in the books of the Bible, and the other in the evolving, figurative book of orthodoxy about the sexual revolution.²

In popular culture today, the Catholic Church is often criticized for being overly obsessed with structure, doctrines, and rules. For example, when confronted with the hierarchy, the *Catechism of the Catholic Church*, and the *Code of Canon Law*, many people—especially non-Catholics—might see such realities as antithetical, or at least irrelevant—to a personal encounter with Jesus Christ and a life of discipleship. Some might argue that Jesus came to deliver us from the burdens of the law, and that the Church places those burdens back on people's shoulders.

Nowhere is this negative judgment towards the Church's teachings stronger than in regard to her moral teachings. The Church clearly stands athwart the popular culture on many moral issues, especially in the realm of sexual morality. Many people see the Church as obstinately clinging to outdated and arbitrary moral conventions, and in doing so, creating obstacles to the moral progress promised by the world.

There are of course many important ways in which the Church's moral vision differs from that of the culture. But a central difference is the understanding of the relationship between individual freedom and conscience on the one hand, and objective moral truth and the law on the other hand.

It is crucial that we have a clear and correct understanding of objective moral truth because of its essentially consequential relationship to the law. In the law courses that I have taught at Loyola University Chicago School of Law and Notre Dame Law School, I have often emphasized the maxim, *law follows theology*, that is, laws are not fabricated *ex nihilo*, out of nothing, but flow from our moral principles. Even for an atheist, law is not arbitrary, but flows from some firmly held value. In this sense, we say that law is downstream from culture, understanding that the word "culture" comes from the Latin *cultus*, which refers to the reverence or veneration we give to whomever or whatever we worship. People who do not worship the one true God tend to worship something else, whether it be power, money, sex, or the earth itself.

The Church understands individual freedom and conscience as essential to the moral life. However, freedom and conscience are necessarily

related to objective truth; in fact, they are *subordinate* to truth.³ People are not morally autonomous; morality is inherently relational and lived out within communities.⁴ Conscience is the voice of reason, and ultimately, the voice of God sounding within the heart of each person. The *Catechism of the Catholic Church* teaches that the “*morality of acts* is defined by the relationship of man’s freedom with the authentic good. This good is established, as the eternal law, by Divine Wisdom, which orders every being towards its end: this eternal law is known both by man’s natural reason (hence it is ‘natural law’), and – in an integral and perfect way – by God’s supernatural Revelation (hence it is called ‘divine law’).”⁵

By contrast, the culture tends to disregard the idea of objective moral truth as incompatible with individual freedom and moral fulfillment. Likewise, the law is often considered a necessary evil at best and a limitation on human freedom. In order for people to be truly free, their own consciences must reign supreme and be limited only by the free choices of other people. Conscience for them does not refer to some objective truth that exists *outside* the person, but is simply an expression of the autonomous individual. Many today think that conscience makes not only judgments, but decisions.

Broadly speaking, we could identify two possible extremes in moral thought:

1. First, there is a heteronomous extreme in which the moral law is regarded as totally external to the person (*hetero* meaning other and *nomos* meaning law – literally, “other-legislating”). The heteronomous extreme focuses entirely on the objective dimension of morality: laws, norms, rules, etc.
2. Second, there is an autonomous extreme in which the moral law is regarded as totally internal to each person (*auto* meaning self and *nomos* meaning law: literally, “self-legislating”). The autonomous extreme focuses entirely on the subjective dimension of morality: individual desires, values, freedom, conscience, etc.

Heteronomous extreme

We can find examples of the heteronomous extreme in certain strands of Christian fundamentalism and also in Islam. These groups tend to have a voluntaristic understanding of good and evil, which means that an action is good or evil only because God said so: period—end of discussion. What people personally desire or enjoy is totally irrelevant to morality. All that

matters is obedience and submission to God's will. God is all-powerful and judgment is coming, so you had better act right! There is a rationalistic element to this view. Moral goodness is measured against the unchanging and timely moral law. Little attention, if any, is given to the conscience and circumstances of each individual. The individual's task is simply to conform.

Autonomous extreme

With the autonomous extreme, the individual and his desires and feelings are the most decisive factors for morality. The moral goodness of a person and his actions are not to be judged by how they measure against some objective and timeless law, standard, or norm which exists outside of the person. Instead, his moral goodness consists only in authenticity, self-actualization, and self-fulfillment. The words of Polonius in Shakespeare's *Hamlet* capture this view well: "This above all: to thine own self be true." The modern-day equivalent of this would be the expression, "Live your truth."

Many people today, especially non-Catholics, might look at these two extremes and categorize the Catholic Church's moral teaching as the heteronomous extreme. They see the Church as harsh, judgmental, finger-wagging, and generally obsessed with rules and sin. More specifically, they

may see the Church as failing to give sufficient attention to the individual persons and their intentions, needs, and circumstances.

While none of us in the Church is perfect and we inevitably fail at times to witness well to the Church's teaching, this judgment is not accurate at all. In fact, I would propose that the Church's moral teaching fully and beautifully embraces both the objective and subjective dimensions of morality, that is, both the eternal moral law and the concrete individual with all the complexities of his situation. By embracing both of these essential aspects of morality, the Church has navigated a "middle way" that avoids both the heteronomous and autonomous extremes. The Church recognizes, on the one hand, that God's law is absolute and transcends our own reasoning. God is the ultimate Other. As we hear through the prophet Isaiah:

*My thoughts are not your thoughts,
neither are your ways my ways, says the LORD.
For as the heavens are higher than the earth,
so are my ways higher than your ways
and my thoughts than your thoughts (Is 55:8-9).*

At the same time, the Church also acknowledges the beautiful truth that God's law is not the forceful imposition of something alien to our nature.

As Moses said after giving the Israelites the Law: “This commandment which I command you this day is not too hard for you, neither is it far off. [...] the word is very near you; it is in your mouth and in your heart, so that you can do it” (Deut. 30:11-14).

Similarly, the Prophet Jeremiah said: “This is the covenant I will make with the house of Israel after those days – oracle of the LORD. I will place my law within them, and write it upon their hearts; I will be their God, and they shall be my people” (Jeremiah 31:33). Together with Romans 13:10 – “Love does no evil to the neighbor; hence, love is the fulfillment of the law” – this is the basis of my episcopal motto, *Lex cordis Caritas* (“The Law of the heart is Love”).

We can find an especially compelling foundation for this “middle way” in the preaching and ministry of Christ himself. Jesus gave challenging and unambiguous commandments that applied to everyone universally, and yet he always met people as they were and tailored his message to their particular needs. One scene, found in the Gospel of Luke, is particularly relevant for us gathered here. It is relevant because it involves Jesus, a lawyer, and the most important question of all.

I am referring to the question of a lawyer which prompts Jesus to tell the beautiful parable of the Good Samaritan (Luke 10:25-37). This is the scene:

And behold, a lawyer stood up to put [Jesus] to the test, saying, "Teacher, what shall I do to inherit eternal life?"

He said to him, "What is written in the law? What do you read there?"

And he answered, "You shall love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbor as yourself."

And he said to him, "You have answered right; do this, and you will live."

But he, desiring to justify himself, said to Jesus, "And who is my neighbor?"

Then follows the parable of the Good Samaritan, who proves himself to be the neighbor of the robbers' victim by showing him mercy and caring for him.

Notice that, in his response to the lawyer's question about how to inherit eternal life, Jesus did not give him some new or original answer that departed from the Commandments God had already given. He did not give an answer that applied only to the lawyer who asked the question. Rather, he directed the lawyer precisely to the law, to what he already knew: "What is written in the law? What do you read there?"

The lawyer's quick response might sound like some rote recitation of Scripture: "You shall love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbor as yourself."

This is actually an impressive synthesis of a few different passages. That the lawyer had this thoughtful answer ready at hand implies that he did not lack knowledge of the law, and in fact, that he had already given his own question much thought. But evidently, he did lack something. His follow-up question to Jesus, "And who is my neighbor?" reveals a deficiency in his heart. Luke even tells us that the man asked this because he desired "to justify himself."

He knew the correct answer. He knew how to live so as to inherit eternal life. But he was not yet ready to accept all the implications of God's commands. In the parable of the Good Samaritan, the priest and the Levite who pass by the beaten and stranded victim also know God's law very well. They know what they *should* do. But for whatever reason, they are unwilling or unable to act when the decisive moment comes. Their knowledge of right and wrong did not translate to moral action.

The question is, if they do not lack knowledge, then what do they lack? *Love*. “Love your neighbor as yourself.” The lawyer included this in his answer and Jesus himself offers it elsewhere as part of the greatest commandment.

Colloquially, the commandment, “Love your neighbor as yourself” is known as the Golden Rule. A common alternative version of it is: “Do unto others as you would have them do unto you.” After the love of God, which is the first and greatest commandment, the Church has always followed Christ in teaching “Love your neighbor as yourself” as the foundation for the moral life. In fact, beyond the Catholic Church and even beyond Christianity, the Golden Rule has been widely recognized for millennia as the loftiest principle of morality. It is seen as an imperative that calls us to go outside of ourselves and recognize that others are just as important and valuable as us.

Today, however, the Golden Rule has some competition: the so-called “Platinum Rule.” Authors in fields such as psychology, sociology, and philosophy, and healthcare have proposed this new moral principle. One contemporary social philosopher argued for the Platinum Rule in the following way:

The Golden Rule is not enough because we might end up treating people in a way that would suit ourselves but that could be wholly inappropriate from their perspective. We need to go beyond the Golden Rule and turn to what has become known as the Platinum Rule: “Do unto others as they would have you do unto them.”⁶

The author goes on to say,

The Platinum Rule presents us with a greater imaginative challenge than its Golden cousin, for it asks us to resist the temptation of projecting our own experiences and views onto others.⁷

Is this true? Is the Platinum Rule really an improvement over the Golden Rule? It is worth reflecting briefly on why many people today might think so. In order for the Platinum Rule to appear superior, one would have to accept several other moral propositions, at least implicitly. As I briefly explain these propositions, I think they will sound very familiar, given the popular culture’s moral sensibilities.

1. *The human good is subjective, not objective*

The Platinum Rule presupposes the autonomous extreme that I mentioned earlier, with its focus on what the individual wants and thinks. What is the problem with this? In the *Catechism of the Catholic Church*, following St. Thomas Aquinas and others, the Church defines love as “to will the good of another” (CCC 1766). But the good of another person means his *objective* good, which may or may not be what he himself regards as his good. People frequently want things that are not good for them. They are frequently confused about what is good for them. Every parent and teacher knows this very well. The difference between a child’s subjective good and what his parent knows to be his objective good is where we get the expression, “tough love.” Clearly, to truly desire someone’s authentic good and to work to bring it about requires more than doing unto others what *they* would have done unto them.

2. *Tolerance and affirmation are exalted above all*

This follows from the first point. Once one renounces the possibility of knowing the objective good of another person, all that remains is his subjective good, namely, his own desires, preferences, values, etc. As a

result, any attempt to convince someone that something he considers good is not really good for him becomes an imposition, a manipulation; thinking that you know what is best for someone else is condemned as paternalistic and condescending. This leads to a hyper-individualistic moral landscape in which tolerating other people and affirming them in their choices is the highest expression of "love." The old adage of St. Augustine, "Hate the sin, love the sinner," no longer makes sense, because without an objective good, who can determine what sin is and who sinners are?

3. *Empathy takes the place of charity*

Empathy has become something of a buzz word today. One of my young priests, Father Christopher Trummer, whom I had the privilege of ordaining last year, wrote his thesis for the Licentiate in Sacred Theology at the Pontifical University of the Holy Cross in Rome (a/k/a *Santa Croce*) on the topic, "*Your Neighbor As Yourself: The Relationship between Empathy and Morality.*"⁸ As I like to keep learning, I read it, and his scholarly reflections have provided much food for thought, which serve as the basis for these reflections that I am sharing with you this evening.

Father Trummer notes that many people, including many scholars, see the lack of empathy in the world as the cause of virtually all problems, and they propose the restoration of empathy as the solution, a kind of moral panacea. Empathy is generally defined as feeling or experiencing what other people feel or experience. It involves taking the perspective of another person. Empathy is undoubtedly an important psychological and social capacity that enriches our experiences and relationships. However, what does it mean when a society starts to treat empathy as the highest form of charity? Again, this implies that as human beings we cannot know what is objectively good for other people, what they need in order to be happier and flourish. It implies that the good of each person is so subjective and individualized that to love people in a way that challenges and encourages them to change is a wrongful imposition.

It may be helpful here to give some practical examples of these somewhat abstract principles. Certainly, the lack of empathy may have contributed to the evils of the Holocaust, mass homicides, and other egregious crimes, but the role of empathy is less apparent in assessing the morality of an intrinsic evil such as abortion. While opposition to abortion may indeed be based on the Golden Rule, i.e., "I would not want to have

been aborted, so I should treat an unborn baby the way I would want to have been treated,” but we would not call that “empathy” since an adult cannot truly empathize with a fetus.

In contrast, many heterosexual people empathize with people who have same-sex attraction, and since our culture considers it impossible to live without frequent sexual activity, the thinking seems to be that homosexual activity should be morally acceptable because the thought of continence and chaste living is just unimaginable to many, if not, most people these days. Catholic teaching on the immorality of sexual activity outside of marriage between a man and a woman is based on immutable objective norms rather than on subjective feelings of empathy. But that is a difficult argument to make in our contemporary culture where actions are commonly driven more by emotion than right reason.

The modern-day emphasis on the individual is not wholly misguided or damaging. It is true that each person has a unique story, perspective, and experience, and that we need to try to understand these subjective elements in order to reach them more effectively. There is not a “one-size-fits-all” solution when it comes to ministry and evangelization. However, we must also stand against the hyper-individualization that is rampant today, as well

as the autonomous extreme of morality that seeks to oppose the good of the individual person and God's loving design.

In one of the most cited lines of the Second Vatican Council, from *Gaudium et spes*, n. 22, the Church teaches that "only in the mystery of the incarnate Word does the mystery of man take on light," and that "Christ...fully reveals man to himself and makes his supreme calling clear" (GS 22).

Both the objective good of the person and his subjective good are fully revealed in Christ, the Perfect Man. As his disciples and those who uphold and defend the law – whether human or divine – we can have confidence that the same Gospel and way of discipleship that liberated, formed, and sanctified men and women for millennia remains the answer to the questions and desires of people today. We can trust that Jesus' Great Commandment to "love your neighbor as yourself" really is the path to moral excellence and happiness for others and ourselves.

After all, how *do* we want others to love us and treat us? We certainly hope that, like Christ, others will meet us where we are at, that they will empathize with our personal situation and circumstances. But we should also hope that, like Christ, they will love us enough to seek our true good,

our objective good, and not abandon us by substituting charity for mere tolerance and affirmation. As one popular expression of this says, we hope that others will “love us as we are, but love us too much to leave us that way.”

Since we desire to be loved this way, we can love our neighbor as ourselves and know that we are willing his ultimate good in every sense of the word. With the grace of the Holy Spirit, we can even live out Jesus’ otherwise impossible teaching: “Love one another as I have loved you.”

May God give us this grace. Amen.

¹ *Merriam-Webster Dictionary*, s.v. “religion,” accessed online November 1, 2022, at <https://www.merriam-webster.com/dictionary/religion>.

² Mary Eberstadt, “The Zealous Faith of Secularism: How the Sexual Revolution Became a Dogma,” *First Things*, January 2018, accessed online November 1, 2022, at <https://www.firstthings.com/article/2018/01/the-zealous-faith-of-secularism>.

³ “Certainly, in order to have a ‘good conscience’ (1 Tim 1:5), man must seek the truth and must make judgments in accordance with that same truth. ... Conscience is not an infallible judge; it can make mistakes. However, error of conscience can be the result of an invincible ignorance, an ignorance of which the subject is not aware and which he is unable to overcome by himself. ... In any event, it is always from the truth that the dignity of conscience derives. In the case of the correct conscience, it is a question of the objective truth received by man; in the case of the erroneous conscience, it is a question of what man, mistakenly, subjectively considers to be true. It is never acceptable to confuse a ‘subjective’ error about moral good with the ‘objective’ truth rationally proposed to man in virtue of his end, or to make the moral value of an act performed with a true and correct conscience equivalent to the moral value of an act performed by following the judgment of an erroneous conscience. It is possible that the evil done as the result of invincible ignorance or a non-culpable error of judgment may not be imputable to the agent; but even in this case it does not cease to be an evil, a disorder in relation to the truth about the good.” Pope St. John Paul II, *Veritatis Splendor*, August 6, 1993, nn. 62-63.

⁴ Bishop Thomas John Paprocki, “Doing as I Please or Pleasing as I Do: Constructive and Destructive Autonomy in Relation to Conscience, Freedom and Obligation,” public lecture given at the International Symposium on Privacy and Autonomy in Medical Law and Ethics, sponsored by the Anscombe Bioethics Centre at Blackfriars Hall in the University of Oxford on June 25, 2019; published in *Catholic World Report*, September 22, 2019; available online at <https://www.catholicworldreport.com/2019/09/22/doing-as-i-please-or-pleasing-as-i-do/>.

⁵ Pope St. John Paul II, *Veritatis Splendor*, August 6, 1993, n. 72.

⁶ Roman Krznaric, *Empathy* (Penguin Publishing Group, Kindle Edition, 2014), p. 58.

⁷ Krznaric, *Empathy*, p. 59.

⁸ Rev. Christopher Trummer, “Your Neighbor As Yourself: The Relationship between Empathy and Morality” (STL Thesis, Pontificia Universitas Sanctæ Crucis, Facultas Theologiæ, 2022).