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JUDGE JOHN T. NOONAN, JR.: AN INTRODUCTION

WILLIAM CARDINAL LEVADA*

THE John F. Scarpa Conference on Law, Politics, and Culture has taken for today's subject the writings of Judge John T. Noonan, Jr., who continues to serve as a senior judge for the Ninth Circuit on the United States Court of Appeals. He has written widely on jurisprudence, legal history and ethics, and church law. He has paid special attention to questions where law and morals converge. As a Catholic jurist, he has throughout his career been known as a firm and consistent opponent of legalized abortion, for which I express today my personal gratitude, and on behalf of our Church community and so many of his fellow Americans. Noonan has developed a life-long interest—as his many books and articles attest—in the history of the Church's moral doctrines. This Conference has been tasked in particular to look at his broad contributions, with a special emphasis on the “thread that unites all of [Noonan's] work—the development of doctrine.”¹

I am very pleased to have this opportunity to provide a brief introduction to John Noonan to begin our Conference. I had become acquainted with some of John's books during my own theological studies, and I was very pleased to have many opportunities, especially during my years as Archbishop of San Francisco, to share meals and conversations with John and his wife Mary Lee, either at their home in Berkeley or on my side of the Bay. With you, I regret that his health did not permit him to come to Philadelphia to be with us today.

Kevin Starr, prolific historian of the State of California and its distinguished citizens, introduced a piece on John Noonan some years ago with these words:

Philosopher, theologian, historian, and poet, Noonan has been, first and foremost, a scholar of the law. . . . [T]he law, so seemingly complete in itself as a system of thought and expression, is an essential branch of general literature. A science, however inexact, the law is a humanistic pursuit as well, and no one in the past four decades has pursued the law with such humanistic fervor—a humanism enlivened by religion—as John Noonan.²

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1. See Press Release, The Eighth-Annual John F. Scarpa Conference on Law, Politics, and Culture: Exploring and Celebrating the Legacy of The Honorable John T. Noonan, Jr., VILLANOVA UNIV. SCH. OF LAW (Oct. 24, 2013), <http://www1.villanova.edu/villanova/law/newsroom/pressreleases/2013/1024.html>.

2. Kevin Starr, *Judge John T. Noonan, Jr.: A Brief Biography*, 11 J.L. & RELIGION 151, 151 (1995).

John Noonan grew up in Boston, with his brother Jim and his sister Marie. His lawyer father is fondly remembered for his love of Shakespeare and literature in general, and in such an environment John developed early on his life-long love of faith, politics, and literature. Throughout his life, John has been known to entertain guests by inviting them to join in reciting plays, which he or they would select. He and Mary Lee have long enjoyed the custom of John reading to her from his latest literary discovery while dinner was being prepared! In his latest book, *Shakespeare's Spiritual Sonnets*, John fulfills a life-long fascination, showing in these sonnets the testimony of Shakespeare's Catholic faith shining through in a time of profound religious and political change.

Always a precocious student, John entered Harvard University as an undergraduate in the middle of his senior year of high school. By studying both during normal semesters and also summers, he graduated *summa cum laude* at the age of nineteen with a major in English literature, whose study he continued in a post-graduate year in England at St. John's College, Cambridge.

In an autobiographical section of his 1998 book *The Lustre of Our Country: The American Experience of Religious Freedom*, he says his studies abroad "confirmed what I already felt in my bones, that Catholicism was the largest intellectual force in my life, yet I knew so little about it."³ John decided to enroll in the Catholic University of America in Catholic studies and canon law, receiving there his M.A. and Ph.D. John then returned to Harvard Law School, where he received his LL.B. in 1954.

John began his legal career in his father's firm in Boston. In 1960, he was invited by Fr. Ted Hesburgh to join the faculty of the University of Notre Dame Law School. In 1967, John and Mary Lee began their married life in California, their home ever since, where John became Professor of Law at the University of California, Berkeley. UC Berkeley had acquired a vast canon law library, and John was the perfect fit. In 1985, President Reagan appointed him judge in the United States Court of Appeals for the Ninth Circuit.

As a professor, Noonan has had many occasions to reflect on the judge's role in society. He calls "judging" a unique function: "It is not very much like farming, banking, woodworking, or football. It is not much closer to the legal activities which have schooled the lawyer who becomes a judge, not much like counseling clients, trying a case, or even teaching law."⁴ In his view, "[j]udging, being unique, has unique responsibilities."⁵ He has even dared to compare the role of judge to God, the Supreme

3. JOHN T. NOONAN, JR., *THE LUSTRE OF OUR COUNTRY: THE AMERICAN EXPERIENCE OF RELIGIOUS FREEDOM* 25 (1998) [hereinafter *THE LUSTRE OF OUR COUNTRY*].

4. John T. Noonan, Jr. & Kenneth I. Winston, *Preface* to *THE RESPONSIBLE JUDGE: READINGS IN JUDICIAL ETHICS*, at xiv (John T. Noonan, Jr. & Kenneth I. Winston eds., 1993).

5. *Id.*

Judge. According to Noonan, “[o]nly at this very high level did it seem possible to attain the incorruptibility, the unchangeability, and the impartiality that human beings believed that judges should have.”⁶

Today we honor Judge Noonan, among his other accomplishments, for the high ethical standard he has set for himself throughout his long career. Such standards are one of the principal reasons why the judiciary of the United States enjoys prestige and respect worldwide.

In his 2005 book *A Church That Can and Cannot Change: The Development of Catholic Moral Teaching*, Noonan sought to pull together results of the research and insights he had gained in exploring the history of several of the Church’s moral teachings, going back to apostolic times: on usury and bribery, on abortion and contraception, on marriage and annulment, and on religious freedom. On the last question, for example, he states, “John Courtney Murray, whose teaching on religious freedom was now vindicated, commented as the [Second Vatican] [C]ouncil ended its third session, ‘Development of doctrine is *the* issue underlying all the issues at the council.’ The promulgation of [the Decree] *Dignitatis [humanae] personae* was a triumph of development.”⁷ In an earlier comment, he had acknowledged personally, “I grew up in a church that formally denied free exercise and live now in the same church that has come to champion it.”⁸

For students of theology, since the nineteenth century, the idea of the development of doctrine is no longer a novelty. In our courses on Christology and on Trinity at the Gregorian University in Rome, for example, Jesuit Fr. Bernard Lonergan spent the first half of each course examining the history of the developments that led to the defined doctrines contained in the Nicene Creed and in the decrees of the Council of Chalcedon in the fourth and fifth centuries. In dogmatic theology, the place of positive, historical theology was taken for granted. But in my undergraduate courses in moral theology in those years just before the Second Vatican Council, there was no corresponding historical approach in the teaching of moral theology.

I say this to emphasize the originality of the contribution John Noonan has made in his studies. He has not written works of moral theology as such; instead, he has raised the questions about how and why some moral teachings do develop, for example, the development of teaching on religious freedom, or on slavery, which for Noonan is the “prime case” in the development of moral doctrine. Of course, anyone could pose the questions about how and why. What is distinctive in Noonan’s work is the vast research that illustrates the often complex, sometimes surprising path that development has taken, making each case unique and defying any attempt to provide a “guide” to the development of doctrine.

6. *Id.*

7. JOHN T. NOONAN, JR., *A CHURCH THAT CAN AND CANNOT CHANGE: THE DEVELOPMENT OF CATHOLIC MORAL TEACHING* 157 (2005).

8. *THE LUSTRE OF OUR COUNTRY*, *supra* note 3, at 3.

Although Blessed John Henry Newman is not (yet) a doctor of the Church, nor a “canonized” saint, he still is recognized as the intellectual “patron saint” of the development of doctrine. It hardly seems a coincidence, then, to find in the first chapter of *A Church That Can and Cannot Change* a juxtaposition of Newman and Pope John Paul II on the question of whether slavery can be called intrinsically evil. Noonan’s ultimate “rule of faith” in discerning true development is summed up in the words of St. Paul’s Letter to the Philippians: “That your love abound more and more in knowledge and insight of every kind to help you determine what is best”⁹ In such a “rule,” we can see how Noonan’s focus on the Church’s teaching of morals in every age highlights her new ways of presenting the great commandment of love taught by Jesus, pointing faithful Christians to the human dignity of every person, as well as to the common good of humanity.

Ian Ker, Newman’s biographer, calls the last of Newman’s Oxford Sermons his most brilliant; it contains the seed that he will develop further in his classic of theological literature *The Development of Christian Doctrine*. In this 1843 sermon, Ker writes:

Taking as his text ‘Mary kept all these things, and pondered them in her heart’, Newman points to the Virgin Mary as ‘our pattern of Faith, both in the reception and in the study of Divine Truth. She does not think it enough to accept, she dwells upon it . . . not enough to assent, she develops it.’¹⁰

I don’t suppose that finding the “rule” for the development of doctrine in Philippians *and* in Luke 2:51 would be a problem either for Newman or for Noonan.

9. *Philippians* 1:9–10.

10. IAN KER, JOHN HENRY NEWMAN: A BIOGRAPHY 266 (1988) (alteration in original).