The Holy See

VISIT TO THE BUNDESTAG

ADDRESS OF HIS HOLINESS BENEDICT XVI

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([Video](#))

The Listening Heart
Reflections on the Foundations of Law

Mr President of the Federal Republic,
Mr President of the Bundestag,
Madam Chancellor,
Madam President of the Bundesrat,
Ladies and Gentlemen Members of the House,

It is an honour and a joy for me to speak before this distinguished house, before the Parliament of my native Germany, that meets here as a democratically elected representation of the people, in order to work for the good of the Federal Republic of Germany. I should like to thank the President of the *Bundestag* both for his invitation to deliver this address and for the kind words of greeting and appreciation with which he has welcomed me. At this moment I turn to you, distinguished ladies and gentlemen, not least as your fellow-countryman who for all his life has been conscious of close links to his origins, and has followed the affairs of his native Germany with keen interest. But the invitation to give this address was extended to me as Pope, as the Bishop of Rome, who bears the highest responsibility for Catholic Christianity. In issuing this invitation you are

acknowledging the role that the Holy See plays as a partner within the community of peoples and states. Setting out from this international responsibility that I hold, I should like to propose to you some thoughts on the foundations of a free state of law.

Allow me to begin my reflections on the foundations of law [*Recht*] with a brief story from sacred Scripture. In the First Book of the Kings, it is recounted that God invited the young King Solomon, on his accession to the throne, to make a request. What will the young ruler ask for at this important moment? Success – wealth – long life – destruction of his enemies? He chooses none of these things. Instead, he asks for a listening heart so that he may govern God's people, and discern between good and evil (cf. *1 Kg* 3:9). Through this story, the Bible wants to tell us what should ultimately matter for a politician. His fundamental criterion and the motivation for his work as a politician must not be success, and certainly not material gain. Politics must be a striving for justice, and hence it has to establish the fundamental preconditions for peace. Naturally a politician will seek success, without which he would have no opportunity for effective political action at all. Yet success is subordinated to the criterion of justice, to the will to do what is right, and to the understanding of what is right. Success can also be seductive and thus can open up the path towards the falsification of what is right, towards the destruction of justice. "Without justice – what else is the State but a great band of robbers?", as Saint Augustine once said. We Germans know from our own experience that these words are no empty spectre. We have seen how power became divorced from right, how power opposed right and crushed it, so that the State became an instrument for destroying right – a highly organized band of robbers, capable of threatening the whole world and driving it to the edge of the abyss. To serve right and to fight against the dominion of wrong is and remains the fundamental task of the politician. At a moment in history when man has acquired previously inconceivable power, this task takes on a particular urgency. Man can destroy the world. He can manipulate himself. He can, so to speak, make human beings and he can deny them their humanity. How do we recognize what is right? How can we discern between good and evil, between what is truly right and what may appear right? Even now, Solomon's request remains the decisive issue facing politicians and politics today.

For most of the matters that need to be regulated by law, the support of the majority can serve as a sufficient criterion. Yet it is evident that for the fundamental issues of law, in which the dignity of man and of humanity is at stake, the majority principle is not enough: everyone in a position of responsibility must personally seek out the criteria to be followed when framing laws. In the third century, the great theologian Origen provided the following explanation for the resistance of Christians to certain legal systems: "Suppose that a man were living among the Scythians, whose laws are contrary to the divine law, and was compelled to live among them ... such a man for the sake of the true law, though illegal among the Scythians, would rightly form associations with like-minded people contrary to the laws of the Scythians."[1]

This conviction was what motivated resistance movements to act against the Nazi regime and other totalitarian regimes, thereby doing a great service to justice and to humanity as a whole. For

these people, it was indisputably evident that the law in force was actually unlawful. Yet when it comes to the decisions of a democratic politician, the question of what now corresponds to the law of truth, what is actually right and may be enacted as law, is less obvious. In terms of the underlying anthropological issues, what is right and may be given the force of law is in no way simply self-evident today. The question of how to recognize what is truly right and thus to serve justice when framing laws has never been simple, and today in view of the vast extent of our knowledge and our capacity, it has become still harder.

How do we recognize what is right? In history, systems of law have almost always been based on religion: decisions regarding what was to be lawful among men were taken with reference to the divinity. Unlike other great religions, Christianity has never proposed a revealed law to the State and to society, that is to say a juridical order derived from revelation. Instead, it has pointed to nature and reason as the true sources of law – and to the harmony of objective and subjective reason, which naturally presupposes that both spheres are rooted in the creative reason of God. Christian theologians thereby aligned themselves with a philosophical and juridical movement that began to take shape in the second century B.C. In the first half of that century, the social natural law developed by the Stoic philosophers came into contact with leading teachers of Roman Law.[2] Through this encounter, the juridical culture of the West was born, which was and is of key significance for the juridical culture of mankind. This pre-Christian marriage between law and philosophy opened up the path that led via the Christian Middle Ages and the juridical developments of the Age of Enlightenment all the way to the Declaration of Human Rights and to our German Basic Law of 1949, with which our nation committed itself to "inviolable and inalienable human rights as the foundation of every human community, and of peace and justice in the world".

For the development of law and for the development of humanity, it was highly significant that Christian theologians aligned themselves against the religious law associated with polytheism and on the side of philosophy, and that they acknowledged reason and nature in their interrelation as the universally valid source of law. This step had already been taken by Saint Paul in the Letter to the Romans, when he said: "When Gentiles who have not the Law [the Torah of Israel] do by nature what the law requires, they are a law to themselves ... they show that what the law requires is written on their hearts, while their conscience also bears witness ..." (*Rom* 2:14f.). Here we see the two fundamental concepts of nature and conscience, where conscience is nothing other than Solomon's listening heart, reason that is open to the language of being. If this seemed to offer a clear explanation of the foundations of legislation up to the time of the Enlightenment, up to the time of the Declaration on Human Rights after the Second World War and the framing of our Basic Law, there has been a dramatic shift in the situation in the last half-century. The idea of natural law is today viewed as a specifically Catholic doctrine, not worth bringing into the discussion in a non-Catholic environment, so that one feels almost ashamed even to mention the term. Let me outline briefly how this situation arose. Fundamentally it is because of the idea that an unbridgeable gulf exists between "is" and "ought". An "ought" can never follow from an "is", because the two are

situated on completely different planes. The reason for this is that in the meantime, the positivist understanding of nature has come to be almost universally accepted. If nature – in the words of Hans Kelsen – is viewed as "an aggregate of objective data linked together in terms of cause and effect", then indeed no ethical indication of any kind can be derived from it.[3] A positivist conception of nature as purely functional, as the natural sciences consider it to be, is incapable of producing any bridge to ethics and law, but once again yields only functional answers. The same also applies to reason, according to the positivist understanding that is widely held to be the only genuinely scientific one. Anything that is not verifiable or falsifiable, according to this understanding, does not belong to the realm of reason strictly understood. Hence ethics and religion must be assigned to the subjective field, and they remain extraneous to the realm of reason in the strict sense of the word. Where positivist reason dominates the field to the exclusion of all else – and that is broadly the case in our public mindset – then the classical sources of knowledge for ethics and law are excluded. This is a dramatic situation which affects everyone, and on which a public debate is necessary. Indeed, an essential goal of this address is to issue an urgent invitation to launch one.

The positivist approach to nature and reason, the positivist world view in general, is a most important dimension of human knowledge and capacity that we may in no way dispense with. But in and of itself it is not a sufficient culture corresponding to the full breadth of the human condition. Where positivist reason considers itself the only sufficient culture and banishes all other cultural realities to the status of subcultures, it diminishes man, indeed it threatens his humanity. I say this with Europe specifically in mind, where there are concerted efforts to recognize only positivism as a common culture and a common basis for law-making, reducing all the other insights and values of our culture to the level of subculture, with the result that Europe vis-à-vis other world cultures is left in a state of culturelessness and at the same time extremist and radical movements emerge to fill the vacuum. In its self-proclaimed exclusivity, the positivist reason which recognizes nothing beyond mere functionality resembles a concrete bunker with no windows, in which we ourselves provide lighting and atmospheric conditions, being no longer willing to obtain either from God's wide world. And yet we cannot hide from ourselves the fact that even in this artificial world, we are still covertly drawing upon God's raw materials, which we refashion into our own products. The windows must be flung open again, we must see the wide world, the sky and the earth once more and learn to make proper use of all this.

But how are we to do this? How do we find our way out into the wide world, into the big picture? How can reason rediscover its true greatness, without being sidetracked into irrationality? How can nature reassert itself in its true depth, with all its demands, with all its directives? I would like to recall one of the developments in recent political history, hoping that I will neither be misunderstood, nor provoke too many one-sided polemics. I would say that the emergence of the ecological movement in German politics since the 1970s, while it has not exactly flung open the windows, nevertheless was and continues to be a cry for fresh air which must not be ignored or pushed aside, just because too much of it is seen to be irrational. Young people had come to

realize that something is wrong in our relationship with nature, that matter is not just raw material for us to shape at will, but that the earth has a dignity of its own and that we must follow its directives. In saying this, I am clearly not promoting any particular political party – nothing could be further from my mind. If something is wrong in our relationship with reality, then we must all reflect seriously on the whole situation and we are all prompted to question the very foundations of our culture. Allow me to dwell a little longer on this point. The importance of ecology is no longer disputed. We must listen to the language of nature and we must answer accordingly. Yet I would like to underline a point that seems to me to be neglected, today as in the past: there is also an ecology of man. Man too has a nature that he must respect and that he cannot manipulate at will. Man is not merely self-creating freedom. Man does not create himself. He is intellect and will, but he is also nature, and his will is rightly ordered if he respects his nature, listens to it and accepts himself for who he is, as one who did not create himself. In this way, and in no other, is true human freedom fulfilled.

Let us come back to the fundamental concepts of nature and reason, from which we set out. The great proponent of legal positivism, Kelsen, at the age of 84 – in 1965 – abandoned the dualism of "is" and "ought". (I find it comforting that rational thought is evidently still possible at the age of 84!) Previously he had said that norms can only come from the will. Nature therefore could only contain norms, he adds, if a will had put them there. But this, he says, would presuppose a Creator God, whose will had entered into nature. "Any attempt to discuss the truth of this belief is utterly futile", he observed.[4] Is it really? – I find myself asking. Is it really pointless to wonder whether the objective reason that manifests itself in nature does not presuppose a creative reason, a *Creator Spiritus*?

At this point Europe's cultural heritage ought to come to our assistance. The conviction that there is a Creator God is what gave rise to the idea of human rights, the idea of the equality of all people before the law, the recognition of the inviolability of human dignity in every single person and the awareness of people's responsibility for their actions. Our cultural memory is shaped by these rational insights. To ignore it or dismiss it as a thing of the past would be to dismember our culture totally and to rob it of its completeness. The culture of Europe arose from the encounter between Jerusalem, Athens and Rome – from the encounter between Israel's monotheism, the philosophical reason of the Greeks and Roman law. This three-way encounter has shaped the inner identity of Europe. In the awareness of man's responsibility before God and in the acknowledgment of the inviolable dignity of every single human person, it has established criteria of law: it is these criteria that we are called to defend at this moment in our history.

As he assumed the mantle of office, the young King Solomon was invited to make a request. How would it be if we, the law-makers of today, were invited to make a request? What would we ask for? I think that, even today, there is ultimately nothing else we could wish for but a listening heart – the capacity to discern between good and evil, and thus to establish true law, to serve justice and peace. I thank you for your attention!

[1] *Contra Celsum*, Book 1, Chapter 1. Cf. A. Fürst, "Monotheismus und Monarchie. Zum Zusammenhang von Heil und Herrschaft in der Antike", *Theol.Phil.* 81 (2006), pp. 321-338, quoted on p. 336; cf. also J. Ratzinger, *Die Einheit der Nationen. Eine Vision der Kirchenväter* (Salzburg and Munich, 1971), p. 60.

[2] Cf. W. Waldstein, *Ins Herz geschrieben. Das Naturrecht als Fundament einer menschlichen Gesellschaft* (Augsburg, 2010), pp. 11ff., 31-61.

[3] Cf. Waldstein, op. cit., pp. 15-21.

[4] Cf. Waldstein, op. cit., p. 19.