



## **Most Reverend Raymond J. Boland**

**Bishop Emeritus**

**Diocese Kansas City ~ St. Joseph**

### **Red Mass Homily**

St. Matthew's Cathedral, Washington, DC

Sunday, October 3, 1999

Deuteronomy 4:1-2, 58

1 Peter 2: 13-17

Luke 20:20-26

I am grateful to Cardinal Hickey for his gracious invitation to give the homily at this 47th annual RED MASS. Another legal year, the last of this century, is about to begin and conscious of our fallibilities we gather in prayer to beg God's Spirit to give us understanding, courage, forbearance and, above all else, wisdom. I am also grateful to the John Carroll Society for sponsoring this annual event once again. John Carroll, the first Roman Catholic Bishop of the Republic, played a significant part in defining the role of the church in an infant nation where religion would have freedom but not state sponsorship. John's brother, Daniel, signed the Constitution which gave political and legal shape to what is now the United States.

Because of a certain anniversary which occurs this year, I would like to think that a fuller acceptance of the dignity of the human person may lead to a more productive understanding of the relationship between church and state in this country and elsewhere. It augurs well for our individual freedoms but it is also a delicate balance which may be in jeopardy.

This year marks the 350th Anniversary of the Toleration Act of 1649, a significant development for its time which boldly reaffirmed the right of religious and political freedom in the Maryland colony. Many of you are familiar with the monument at St. Mary's City, the first capital of the future state, which symbolically depicts a man with uplifted countenance emerging from the confining stone from which he is sculpted. At his feet three words are carved, FREEDOM OF CONSCIENCE.

The Edict of Toleration provided, "No person shall from henceforth be in any ways troubled ..... for or in respect of his or her religion nor in the free exercise thereof within this Province nor any way be compelled to the belief or exercise of any other against his will." (Their Rights and Liberties, Thomas O'Brien Hanley, S.J. p. 115)

When Jesus enunciated his oft-quoted judgment, "Give to Caesar what is Caesar's, but give to God what is God's." (Luke 20:25) Luke tells us that his response "completely disconcerted" his audience "and reduced them to silence." (Luke 20:26) Over the centuries we have not remained silent but we have continued to remain perplexed. Couched in terms of black and white the principle is one for the ages but its complexity intensifies as its application uncovers a multiplicity of details. All people of faith are citizens and most citizens are people of faith. Avowed atheists may not believe in God or any god, as Bishop Fulton Sheen used to quip, "they have no invisible means of support," but it can be argued that their secularized or humanistic self-sufficiency constitutes a belief system of some sort. The predicament is obvious. The church-

goer pays taxes. A devout Christian can be passionately patriotic. Among our citizens are Jews, Muslims, Hindus, Buddhists and adherents of many other religions, all of whom wish to practice their faith in freedom and many of whom honor forebears who came to this country precisely for that reason. According to reputable opinion polls the vast majority of Americans believe in God, pray with some frequency and articulate their sincerely-held beliefs by following rituals and disciplines promoted by their respective churches. These same people are also participants in the political process. They vote, they seek political office, they express their opinions, they establish forums to give wider circulation to their political philosophies. There is absolutely no way they can prevent the influence of their religious beliefs from coloring their public attitudes and forming their political convictions. Indeed, churches as a whole, convinced that they have much which is positive to contribute to the public debate, expect their members to bring their cultural and religious values to the various arenas where ideas are being generated and laws being honed. The church, no less than the state, seeks to meet the challenges of a society where sociological and technological change seems to be constantly outpacing our human capacity to keep it within the bounds of comprehension not to mention control.

There is another dimension to this reality which is even more important because it comes closer to the cutting edge. Many citizens, whether they be religious or not, only participate in the public debate in a limited way. But we are concerned with the other end of the spectrum - the lawyers, the judges, the legislators who devote their lives to enacting and interpreting laws and who will naturally do so within the context of their own inherited and acquired religious convictions. When they enter statehouses and courtrooms they cannot leave their consciences along with their coats in the cloakroom. Not all matters are charged with ethical or moral overtones but those which are of most concern to our populace - rights and liberties, life and death, war and peace, affluence and poverty, personal freedom and the common good - are so interlaced with cultural, religious, scientific and legal implications that wisdom in all its personifications is called for.

Is it possible to hope that, as we enter a new millennium, church and state in our land, and even the international world, may all subscribe to a synthesis of basic principles which guarantee freedom for all while equally protecting the rights of believers and unbelievers? Have we been moving in that direction? Surely such an outcome is desirable. Church and state have a lot in common in their mutual search for justice, in promoting respect for all just laws, in their concern for the common good and this, of necessity, includes such important areas as education, health care and social services.

It is difficult to assess what influence Maryland's Edict of Toleration had on the framers of the Constitution. The Establishment Clause and, later on, the Free Exercise Clause have achieved a hallowed place in our national psyche even though many modern scholars detect inconsistencies in their application and some straying from their authors' intention in their interpretation. History certainly indicates that Congress adopted the two religion clauses as protection for religion, not protection from religion. English teachers constantly warn their students that analogies and metaphors should not be pushed too far. Thomas Jefferson's famous "Wall of Separation" metaphor may have suffered this over extension, something certainly not supported by a complete examination of his legal philosophy nor of the Constitution itself. The phrase has become a mantra. How high the wall? How impenetrable? Nobody denies the need for separation but such does not exclude cooperation. This vital area of constitutional law has experienced many twists and turns in its two centuries of history and more cases are winding their way upwards from lower courts. Maybe we need the equivalent of what manufacturers call R and D, Research and Development, to discover where we've been and to propose new ways

of legally facilitating those who work with Caesar and walk with God. Instead of tanks and guns and land mines, maybe we have a great opportunity to offer the world a legal system which guarantees elementary human rights and yes, religious rights, and as a result, the potential for peace, justice and economic growth. We may even get to the stage when the words of Deuteronomy will be applied to us, "this great nation is truly a wise and intelligent people." (Deut. 4:6). In the last century the Church has made extraordinary strides in its own understanding of pluralism, religious freedom and political liberty. It was not easy because theocracies dominated the scene in the western world for so many centuries. The demise of the Holy Roman Empire and the disappearance of the Papal States gave the Church both an opportunity and a challenge to speak to the world with moral authority unfettered and unprotected by armies, navies or nuclear weapons.

The high point of this new attitude was enshrined in one of the shortest documents of the Second Vatican Council, that world-wide meeting of Catholic Bishops in Rome in the mid-sixties. The document, known as *Dignitatis Humanae*, the Declaration on Religious Liberty, was promulgated by Pope Paul VI in December, 1965 after five drafts and two years of vigorous debate. Called by the Pope "one of the major texts of the Council" it began with the felicitous observation, "contemporary man is becoming increasingly conscious of the dignity of the human person" (*Dignitatis Humanae*, 1). It is no secret that one of the most influential framers of this document was the American Jesuit, John Courtney Murray, who brought with him to the Vatican a deep understanding and a genuine admiration for the guarantees established by the United States Constitution and Bill of Rights. It may have been indirect but there is no doubt that the American experience, dating back to the Toleration Act of 1649, found a responsive echo in St. Peter's Basilica.

If there was any question about this new initiative it was resoundingly dispelled by our new Pope, John Paul II, in 1979 during the very first year of his pontificate. Here was a man whose only fellow seminarian was snatched in the night and executed by the Gestapo precisely because he was a Catholic seminarian. Here was a priest and bishop who later prevailed over the disabilities imposed upon him and his flock by an atheistic Communist regime.

In his papal letter *Redemptor Hominis*, John Paul II would recall and reaffirm that Vatican Council document and again declare that the right to religious freedom together with the right to freedom of conscience is not only a theological concept but is one also "reached from the point of view of natural law, that is to say, from the purely human position, on the basis of the premises given by man's own experience, his reason and his sense of human dignity." (*Redemptor Hominis*, 17)

For over 20 years, on every continent, again and again the Holy Father has stressed that the human dignity of each individual is the basis for all law.

Within the last year, in his New Year's message, addressing people of good will everywhere the Pope reiterated his conviction that "when the promotion of the dignity of the human person is the guiding principle and when the search for the common good is the overriding commitment" (*World Day of Peace Message*, 1999, 1) the right to life, to religious freedom, of citizens to participate in the life of their community, the right of ethnic groups and national minorities to exist along with those rights to self-fulfilment covering educational, economic and peace issues become possible.

The Universal Declaration of Human Rights, intimately associated with the United Nations

Charter, affirms the innate dignity of all members of the human family along with the equality and inalienability of their rights. Even though these ideals are being blatantly ignored in many places across the globe, here in this land we must not ignore the unique opportunity we have to solidify the principle enunciated and developed by our leaders of both church and state that "human rights stem from the inherent dignity and worth of the human person." (Cf. In particular the Vienna Declaration, 1993 Preamble 2).

Crafting principles is easy in comparison to applying them to the extraordinary complexities of modern life. Mistakes have been made in the past. On the part of the Church there have been excesses of evangelistic zeal: in the halls of justice nobody seems proud of the Dred Scott decision. We live in an imperfect world and we are not all pious God-fearing and timid law-abiding clones.

There will always be tension between church and state. This tension, in many ways, creates a safety valve. It is, after all, when this tension disappears that we should worry. In the enactment and administration of civil laws, people of faith do not expect privileges but they do expect fairness. George Orwell in his classic, *Animal Farm* coined the phrase that "all animals are created equal but some are more equal than others." Is there a danger that the devotees of secularism are "more equal" than those who are proud of the faith they profess? Do secular symbols enjoy more protection than religious symbols? In every age there are some who would like to have religion disappear. As religion has proven itself remarkably durable, the next line of attack is the attempt to trivialize it into insignificance. It seems incredible but now and again there are those who maintain that believers have no right to engage in the public debate.

"To accept the separation of the church from the state did not mean accepting a passive or marginal status for the Church in society". (Responsibilities and Temptations of Power: A Catholic View. J. Byran Hehir, Georgetown University.)

The church by definition has a theological foundation but it is also a voluntary association within our society with much to say about social policies. It should be accorded the same rights in the public debate as associations which profess no theological leanings.

Even Pope John Paul II expressed his apprehension on this matter when he accepted the credentials of one of the esteemed John Carroll Society members, Lindy Boggs, as the United States Ambassador to the Holy See, a year ago. On that occasion he declared, " It would truly be a sad thing if the religious and moral convictions upon which the American experiment was founded could now somehow be considered a danger to free society, such that those who would bring these convictions to bear upon your nation's public life would be denied a voice in debating and resolving issues of public policy. The original separation of church and state in the United States was certainly not an effort to ban all religious conviction from the public sphere, a kind of banishment of God from civil society. Indeed, the vast majority of Americans, regardless of their religious persuasion, are convinced that religious conviction and religiously informed moral argument have a vital role in public life."

Religion will endure. Christianity, for one, has its own inner guarantees revolving around the presence of God's Spirit and the promises of Christ. They are doomed to disappointment who constantly predict that the unfolding discoveries of the many scientific disciplines will make religion obsolete or, at best, the hollow consolation of the feeble-minded. On the contrary, the more we reveal the mysteries of the universe in which we live, and decipher the minutiae of

human existence, the more we come face to face with the creativity of God. We can partially answer the "hows" and the "whens" and the "whats" but at the end of the day, there is still the "why"?

My accent always betrays my origins and on July 12, 1965 I became an American citizen in the court house of Upper Marlboro, Maryland, which, coincidentally, is the town where John Carroll was born. I willingly promised to uphold the laws of the United States and I acquired the freedom and, indeed, the expectation to be part of the process which monitors, implements and sometimes modifies those laws. During these past thirty something years of my citizenship I have observed the Constitution endure some severe pressures and, by and large, I agree with the national consensus that "the system works". There is no substitute for the rule of law.

Across the impressive facade of the Supreme Court Building are the words EQUAL JUSTICE UNDER LAW. If I were the architect I would have been tempted to add two further words, FOR ALL. Criminals should fear the law: good people whose means are meager should not be intimidated by either the law itself or the wealth of those who can retain a bevy of high-profile lawyers. Claims are sometimes made that those on the lowest rungs of the economic ladder rarely have access to adequate legal representation. It is for this reason that I wish to commend those legal firms and individual lawyers who, through various pro bono networks, seek to alleviate this shortcoming. They bring a nobility to their profession which is beyond value and it is often the only antidote to the popular cynicism which is foisted upon lawyers in general.

As we usher in a new millennium, and as the world shrinks around us, we have much to learn from each other. The Church and the state must protect the freedom and the integrity of one another within their respective spheres of competence, and where there is overlapping, the dialogue must be marked by, as one scholar suggested, (J. Bryan Hehir) technical competency, civil intelligibility and political courtesy. In this way the 350 year old vision of the Toleration Act of 1649 will endure.

### **Side Column that went with the above homily**

Bishop Boland offered the homily at the 47th annual Red Mass for Supreme Court Justices, judges from federal and local courts, attorneys, academicians and government officials on Sunday, October 3, 1999, at the Cathedral of St. Matthew, Washington, DC.

The tradition of the Red Mass dates back many centuries to Rome, Paris and London. The name comes from the color of the vestments worn by the celebrants and the color of fire, a symbol of the Holy Spirit. Scheduled the Sunday before the United States Supreme Court convenes each October, the Mass invokes God's blessings and guidance on the important work of administering justice.