

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

POPE BENEDICT XVI'S LEGAL THOUGHT

Throughout Pope Emeritus Benedict XVI's pontificate he spoke to a range of political, civil, academic, and other cultural authorities. The speeches he delivered in these contexts reveal a striking sensitivity to the fundamental problems of law, justice, and democracy. His contribution goes well beyond the community of Catholic believers, since he didn't rely on moral or doctrinal arguments, but on what all humans have in common: reason.

This book takes on Benedict XVI's pivotal question "How do we recognize what is right?" in contemporary democratic and pluralistic constitutional contexts, and discusses five speeches in which the Pope Emeritus reflected most explicitly on this issue along with the commentary from a number of distinguished legal scholars from different cultural and religious backgrounds. It responds to Benedict's invitations to re-open a public conversation on the limits of positivist reason; to leave the windowless "bunker" in which positivism has confined human reason; and to reach out for a wider understanding of human possibilities, in the name of the "whole breadth of reason." Although the topics of each address vary, they nevertheless are grounded on a series of core ideas, which Benedict sketches, unpacks, and develops in an organic and coherent way to formulate a "public teaching" on the topic of justice and law.

Marta Cartabia, full professor of constitutional law, is currently a member of the Italian Constitutional Court. She has taught in a number of Italian and foreign universities.

Andrea Simoncini is full professor of constitutional law at the University of Florence, Italy. In 2009 he was Fulbright Distinguished Lecturer at Notre Dame University where he was also a visiting professor at the Law School.

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

LAW AND CHRISTIANITY

Series Editor:

John Witte, Jr., *Emory University*

Editorial Board:

Nigel Biggar, *University of Oxford*

Marta Cartabia, *Italian Constitutional Court / University of Milan*

Sarah Coakley, *University of Cambridge*

Norman Doe, *Cardiff University*

Brian Ferme, *Marcianum, Venice*

Richard W. Garnett, *University of Notre Dame*

Robert P. George, *Princeton University*

Mary Ann Glendon, *Harvard University*

Kent Greenawalt, *Columbia University*

Robin Griffith-Jones, *the Temple, the Inns of Court*

R.H. Helmholz, *University of Chicago*

Mark Hill, *the Inns of Court / Cardiff University*

Wolfgang Huber, *Bishop Emeritus, United Protestant Church of Germany /
Universities of Heidelberg, Berlin, and Stellenbosch*

Michael W. McConnell, *Stanford University*

John McGuckin, *Columbia University*

Mark A. Noll, *University of Notre Dame*

Michael Welker, *University of Heidelberg*

The Law and Christianity series publishes cutting-edge work on Catholic, Protestant, and Orthodox Christian contributions to public, private, penal, and procedural law and legal theory. The series aims to promote deep Christian reflection by leading scholars on the fundamentals of law and politics, to build further ecumenical legal understanding across Christian denominations, and to link and amplify the diverse and sometimes isolated Christian legal voices and visions at work in the academy. Works collected by the series include groundbreaking monographs, historical and thematic anthologies, and translations by leading scholars around the globe.

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

Pope Benedict XVI's Legal Thought

A DIALOGUE ON THE FOUNDATION OF LAW

Edited by

Marta Cartabia

Constitutional Court of Italy

Andrea Simoncini

University of Florence



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

32 Avenue of the Americas, New York, NY 10013-2473, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107090200

© Cambridge University Press 2015

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2015

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Pope Benedict XVI's legal thought : a dialogue on the foundation of law / edited by Marta Cartabia, Andrea Simoncini.

pages cm

ISBN 978-1-107-09020-0 (Hardback)

1. Benedict XVI, Pope, 1927–Political and social views. 2. Law–Philosophy 3. Catholic Church–Doctrines. 4. Canon law. 5. Christian sociology–Catholic Church I. Cartabia, Marta, editor. II. Simoncini, Andrea (Law professor) editor.

K230.B463P67 2015

340'.115–dc23 2014042926

ISBN 978-1-107-09020-0 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

*English translations from foreign languages were
provided by Mariangela Crema.*

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

CONTENTS

Foreword
by Giorgio Napolitano page xi

1 A Journey with Benedict XVI through the Spirit of
Constitutionalism
Marta Cartabia and Andrea Simoncini 1

PART I Law, Reason, and Religion 31

2 Reality and Transcendence: More Than a Religious Issue
Armin von Bogdandy and Sergio Dellavalle 33

3 Human Dignity Without God? Reflections on Some
Relevant Speeches of Benedict XVI
Rafael Domingo 46

4 The Windows of Benedict XVI: Reason, Revelation,
and Law
Wael Farouq 57

5 The Secular State, Democracy, and Natural Law:
Benedict XVI's Address to the Bundestag from the
Perspective of Legal Ethics and Democracy Theory
Martin Rhonheimer 79

6 From Regensburg to Berlin – Holiness and Reason:
A Reflection on Pope Benedict XVI's Public Lectures
J.H.H. Weiler 93

x	Contents
7	“To serve right and to fight wrong”: Why Religion, Human Rights, and Human Dignity Need Each Other <i>John Witte, Jr.</i> 106
	PART II Fundamental Rights and Freedom of Religion 123
8	Faith and Reason in the Regensburg Address <i>Giuliano Amato</i> 125
9	Religious Freedom in the Political Speeches of Pope Benedict XVI <i>Mary Ann Glendon</i> 137
10	Freedom of Religion: The Contribution of Benedict XVI to a Universal Guarantee from a European Perspective <i>Christoph Grabenwarter</i> 150
11	Benedict’s Legacy: Human Rights, Human Dignity, and the Possibility of Dialogue <i>Christopher McCrudden</i> 165
	PART III Democracy in a Society of “Others” 185
12	Concerning the Doctrine of Democracy in Benedict XVI <i>Massimo Luciani</i> 187
13	Acting Contrary to Reason Is Contrary to God’s Nature <i>Andrés Ollero</i> 205
14	A Listening Heart: Where Democracy Begins <i>Andrea Pin</i> 213
	<i>Contributors</i> 227
	<i>Index</i> 229

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

FOREWORD

During the pivotal years of his papacy, Benedict XVI offered a body of legal–political thought characterized by such a breadth and wealth of sources that it both merits and inspires highly qualified study, reflection, and discussion of the kind collected here at the behest of Marta Cartabia and Andrea Simoncini.

I am delighted with this project, and pleased to draw on it in order to understand better and clarify – for myself, first of all – the unique relationship I had with the Holy Father Benedict XVI as President of the Republic of Italy.

Our relationship was unique in the intensity and naturalness, harmony and trust, which characterized it from the start, perhaps in some ways surprising even ourselves. I would say that this reflected a personal affinity, including particularly a shared preference for quiet, free, and respectful dialogue, as well as a generational affinity. The latter was manifest, above all, in our common background: both of us have lived out our lives in the historical context of the twentieth century, with its magnificent and terrible intertwining of light and shadow, which our two countries experienced more than all the others, in both dramatic and traumatic terms until the middle of the last century. This experience motivates our shared personal identification with the project of a new Europe, united at last in freedom and peace.

In one of his most recent speeches, delivered at the Bundestag of Berlin in December 2011, Benedict masterfully diagnosed the precondition for this achievement as the “culture of Europe,” that culture born of “the encounter between Jerusalem, Athens and Rome.” In the same speech I found the most explicit reference to

Cambridge University Press

978-1-107-09020-0 - Pope Benedict XVI's Legal Thought: A Dialogue on the Foundation of Law

Edited by Marta Cartabia and Andrea Simoncini

Frontmatter

[More information](#)

the legal and political development that culminated in the German Fundamental Law and in contemporary democratic constitutions of other Western European countries, Italy's among them.

This implicit identification of both of us with the foundations of a form of politics that is illuminated by history and supported by reason formed the backdrop of the ongoing dialogue that Benedict XVI and I carried forward in a spirit of active collaboration, without any rifts, as Heads of the State of Italy and of the Catholic Church.

And there is no doubt that another factor played a role in making richer and more consistent both our relationship and that of the two institutions we represented – “independent and sovereign” and “each within its own sphere” as the Italian Constitution prescribes. This other factor is the characteristic practice, long-established in Italy, of non-exclusion of the religious element from the public sphere, “the conviction” – at the contrary – “that the social and public dimension of the religious fact must be objectively recognized.” I uttered these words before the Italian Parliament when I took the oath of office as President on May 15, 2006. This conviction enabled and continues to enable me to contribute to the dialogue between religious believers and non-believers, to represent them together as citizens, and to strive always to bring them closer to unity.

Giorgio Napolitano