ST. JOHN'S UNIVERSITY

Globalization, law, the person

Lectio Magistralis by Antonio Fazio, Governor of the Bank of Italy,
on the occasion of the conferment *ad honorem* of the title of
Doctor of Laws

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I. It is a great distinction to receive the honorary degree in law that this prestigious university has wished to confer on me today.

Ever since its foundation in 1870, St. John's University has played an educational role guided, as we read in its mission statement, by the principles of respect for the person and personal dignity and by responsible individual action. Observing the tradition of its founders, the Vincentian Fathers, your university has set itself the objective of analyzing the causes of poverty and social injustices and encouraging the study of possible solutions.

On this occasion my contribution can, I believe, be to consider briefly the effects on the societies and legal systems of both developed and emerging countries of the complex of phenomena — of historical import — known as globalization.

In the last few decades the revolution in information technology, the extraordinary development of communications and the drastic fall in the related costs have brought an enormous expansion in the worldwide exchange of goods, services and capital.

This has given powerful impetus to economic development. Trade in goods creates wealth. The possibility for capital to move everywhere around the world facilitates the allocation of savings and material resources according to criteria of economic efficiency; it provides the emerging countries with opportunities for development.

Information, ideas and cultures circulate along with, and indeed prior to, material goods and capital. We live in a world in which every society's welfare and working are increasingly interdependent with the welfare and working of many others, even in the farthest reaches of the globe.

However, the acceleration in trade and the great economic and social transformations have brought new problems and new risks to the fore.

With the increase in wealth, distributive inequalities have been aggravated. Some countries have not shared in the benefits of expanding trade. International crises ultimately damage the weakest countries. The imbalances in power between rich and poor countries are worsened by protectionist policies.

The accentuation of disparities between economies causes migration. Masses of men and women abandon the socially and economically poorer systems in search of better living conditions for themselves and their families.

The oneness of the human condition is more clearly perceived today than in the past. Intellectuals, economists, political leaders, clergymen are all pondering the effects of globalization, its advantages and its risks, and possible remedies.

The ability of market forces to produce harmonious growth of the world economy has come under serious reconsideration.

The issue of how to govern the fruits of globalization, to avoid the attendant risks and counter the adverse effects, must be faced.

Economic development, the reduction of poverty, better social balance and decent living conditions for the inhabitants of the world's most backward countries are objectives that are intimately bound up with the prospects for an easing of international tensions and the consolidation of peace.

II. The political, economic and social changes under way call for a discussion of the need for a universal ethical code to preside over the government of globalization. There are problems regarding the democratic legitimation of the institutions for international cooperation; there is a perceived need for rules for a new category of goods, *global public goods*. A new reflection on the fundamental principles of international law must be initiated.

Historically, the birth of international law as a separate branch distinct from other legal systems is connected with the rise of modern states, which began to form and interact in sixteenth-century Europe, creating the first component of today's international community.

The discovery of America – an event of revolutionary import for the economy, society and culture – posed new problems for policy, for jurisprudence, and even for anthropology.

The need to make the political and economic relations that were forming between states more stable and predictable led the scholars of the day to theorize a higher legal order, distinct from the individual national systems. The Italian thinker Alberico Gentili was the first to make a clear conceptual distinction between international society, *societas gentium*, and national society, *civitas*.

The atypical nature of international law was immediately apparent in view of its differences compared with domestic legal systems, which were more rigorous thanks to the clear discernment of the supreme source of power. Identifying the foundation for constituting such a system was a difficult problem indeed. The very idea of a legal system that would have to be imposed, even by coercion, on sovereign and independent entities was seen as self-contradictory.

The doctrine of natural law disclosed a way out of this dilemma. It held that there were supreme principles that applied even where national law provided otherwise. The key frame of reference, the touchstone, of natural law doctrine was and remains the *Summa Theologica* of Thomas Aquinas and its subsequent development by the Scholastics.

Those principles were translated into concrete norms by drawing on Roman civil law, *jus gentium*; in fact, for a time the two branches of law, civil law and international law, were designated by the same term.

The problem arose of defining the independence of international law both with respect to natural law and with respect to civil law. This was dealt with by Grotius, who, in his *De jure belli ac pacis*, identified mutual agreement between states as the foundation for the rules of international law. The purpose was to safeguard the entire community, not the interests of the single components.

Drawing upon his social nature and his reason, man as a “political animal” develops a compact for organized peaceful coexistence, which must be extended from the individual state to relations between states, with the recognition of principles of universal law as the fundamental premise for justice and peace.

From Grotius’s dualistic conception based on the ideas of natural law and of consensus, there subsequently developed the conflicting doctrines of natural law and positive law.

A different form of natural law doctrine descends from Hobbes: man’s natural condition is one of isolation and never-ending struggle. The only way out is to trust in the organization of the state. Hobbes argued forcefully that between nations there is only natural law, in his own peculiar conception of it.

In the debates of the eighteenth and nineteenth centuries, the doctrines of natural and positive law were sometimes couched in extreme terms. There were those who considered the sovereign to be “God’s appointed agent”, subject to His eternal laws; others held that the only true source of juridical norms was the state and accordingly demoted international law to a lower rank.

One of the scholars who asserted a sort of supremacy of international law over national law was Kelsen. He denied that states had any ontological reality, the preserve of individuals, and considered that international law, like national law, was a mere set of norms forming part of a broader legal order based on a *Grundnorm*, the source of every rank in the hierarchy of law.

Kelsen’s theory arose in opposition to positive law doctrine. Yet it failed to distance itself from that doctrine in the method by which it identified the *Grundnorm*, excluding from the field of inquiry values, ethical principles and all systems transcending mere experience. Kelsen’s concept of *Grundnorm* exerted a powerful influence on the subsequent development of international legal theory.

In that same period, there arose in Italy another doctrine based on the concept of a fundamental norm, known as *Teoria dommatica*. It was opposed by *Teoria realistica*, or the theory of *effettività*, which considered law as a set of commands issued by the social structure from which the law itself emanates. On this premise, international norms represented the translation into legal precepts of the imposition of

international society upon state structures. As was evident even to its proponents, this doctrine ultimately legitimated the law of the strongest country or group of countries and ordained international law's total indifference if not, in some cases, hostility to the claims of reason or morality.

This body of thought has been called into question by the problems posed by globalization.

While some of the events of the twentieth century, such as the end of colonialism and the formation of new states, led to an extension of international law beyond its original Eurocentric confines, other developments, above all the global revolution, may undermine the principle of national sovereignty and the concept of an international community composed of fully independent states.

In the last century, beginning from the philosophy of values and from ethical-social Christianity, there again arose a cultural current inspired by the doctrine of natural law.

The principles underlying the Charter of the United Nations and the Universal Declaration of Human Rights place the individual human being at the centre of both the national and the international order.

This is the proper context within which to frame the recent reflections on the role of international organizations and, more generally, on the outlook for a new world order.

One leading contemporary thinker, Ronald Dworkin, has revived and revalued the principles of natural law, contributing to the discussion on such topical issues as bioethics.

Other scholars, such as Robert Dahl and Ralf Dahrendorf, have emphasized the danger that in a globalized world an elite of rich nations may impose their will on all the others, to the detriment of democracy. Both have concluded that the creation of a world democracy based on the classical principle of citizens' direct participation in public life is not feasible. Dahl has called for a "polyarchy" consisting of multiple centres of government and broad democratic participation. Dahrendorf stresses the need for a

“common law”, which must be sought in the constitution of bodies and procedures for the enactment and application of international norms.

III. In the crisis of the nation-state the challenges of today are to define a new kind of state and promote new international rules. Especially in Europe, states are beginning to find themselves caught between the pressure exercised from above by supranational arrangements and from below by the growth in local self-government. It is a crucial phase; it requires an effort of elaboration and proposition similar in some respects to that which accompanied the birth of modern states.

Globalization must not accentuate inequalities or exploitation; it must be governed, dominated by man.

If we do not wish the law of might to prevail, it is necessary to re-establish the basic elements of natural law, to build a system of human rights that, fully strengthened and reaffirmed by individual states, will become part of the foundation of the new order.

It will be necessary for a reshaped international system to rest on the principles and values that guarantee personal dignity, freedom of choice and the right to work and, more generally, the principles of peaceful coexistence, peace, non-interference, the fight against terrorism and opposition to illegal conduct by states and governments.

It is a question of translating these principles into international agreements.

The keystone remains the punishability of acts that violate the underlying principles and the rules that follow from them. The role of jurisdictions that can be foreseen and introduced is fundamental. A re-elaboration is also necessary for the institutes of private international law.

Albeit in an enormously different context from that of the world divided into blocs, we must rediscover the spirit that gave rise to the United Nations, which is essential if cooperative relationships among states are to be made to evolve towards stable and efficient forms. It is necessary to strengthen the role of the international

organizations as regards their representativeness and their tasks. An important step forward is to broaden the membership of the International Criminal Court; this cannot provide on a lasting basis for special regimes or exemptions, which are justifiable only in cases of absolute necessity.

In the absence of a world government, cooperation among countries is the most effective means of increasing the occasions for comparison, discussion and the formulation of guidelines that individual states will apply internally and in their international relations.

Europe also needs to give democratic legitimation to its institutions by drawing on popular sovereignty. A European constitution will inevitably have to be built on the continent's Christian roots, which underlie its society and progress and, in view of their universal value, are the basis for the whole of western civilization.

Market forces are not capable, on their own, of bringing about an efficient allocation of resources at the world level. The market needs to be regulated for it to work in the interest of man, of the collectivity. Man, on the other hand, is not only "*oeconomicus*"; above all he is not just an individual.

As a "political animal", man feels the need to socialize, communicate and enter into relationships. Adam Smith sees the wealth of nations grow in a social context, bonded by *sympathy*, governed by firm ethical principles. Turning back to Thomas Aquinas, man does not only pursue his individual good, but, owing to his ontologically relational character, seeks the good of the context, the environment, the society of which he is part.

In my latest "Concluding Remarks", I stressed that finding an answer to today's problems called not only for a strengthening of international cooperation but also for the participation of the major countries in informal groups. What is needed is a clear and convinced convergence on some primary interests, such as resources, climate, international public order, on interests, in other words, that can be considered *global public goods*.

In the economic field, in 1999 the Group of Twenty was created to discuss issues relating to economic development and the governance of global finance. The Bretton Woods institutions, set up in a historical period in which the world was divided

into spheres of influence, in today's changed context are called upon to perform surveillance of individual economies, to provide and guide investment credit, and to contribute to the adoption of adequate financial stability rules.

Rapid growth, powered by the most highly industrialized economies, is a fundamental condition for a strengthening of the weakest countries, those most vulnerable to the repercussions of unfavourable cyclical developments. At the same time it is necessary to overcome the protectionist barriers that, in the case of agricultural products, seriously harm the poor countries.

The reduction of inequalities is the social question of the beginning of the new century. The systematic fight against poverty is a value in itself; it also becomes the means for seeking conditions of security and peaceful relations among peoples.

It is necessary to ensure systems of trade and financial liberalization able to attenuate the distributive distortions, allow the poorest countries, through external debt reduction, to set in motion a process of growth. There is a need for investment in education, *inter alia* to support the spread of the information technology that can give decisive impetus to overcoming backwardness.

Further efforts in international fora are required, such as those made recently at Doha to remove tariff barriers and at Monterrey to mobilize development aid and render it effective.

IV. The scopes of the different types of law risk becoming confused and blurred; national law and international law, public law and private law integrate each other, but also overlap. The market extends beyond the borders of countries and the systems of state rules, influencing the relations between nations and peoples; it is reflected in the world of work, generating positive productive impulses but also situations of marginalization and areas of unprotected labour. There can be extreme forms of commoditization, going beyond the limits of respect for the person.

New theoretical outpourings cast doubt on the fundamental aspects of life; the looming threat of genetic manipulation coupled with the use of new technologies of procreation calls for efforts to find a new balance between what is scientifically possible and what is permissible. In the whole field of bioethics there still appears to be uncertainty with regard to rules of compatibility that should emerge through maturation and debate and take root in the common conscience. It is necessary to redefine and strengthen the right to life and to a life of acceptable quality, not least in the face of the risks due to environmental degradation. It is necessary to distinguish between scientific research, which must be unrestricted, and its practical applications, which must conform with rigorous and, above all, ethical principles.

The law, based on universal ethicalness, is the way to confront phenomena that could lead the world towards new forms of barbarity. Cooperation among states and among peoples must serve primarily to defend life and its dignity.

When the Pope calls for efforts to globalize solidarity, we must also imagine a major cultural commitment, a far-reaching reconversion of our way of thinking that would also embrace the law and legal orders.

Inviolable rights, the priority of the person with respect to the state appear not only in individual freedoms but also in recognition of the principle of solidarity. The state protects society to the extent that it guarantees the full development of the human person.

One authentic natural right is the right to work, whose application is necessary for the realization of the person; it integrates his dignity. Looking more closely at Europe, at Italy, it needs to be reformulated to preserve the substance of important conquests. The forms of protection must be re-elaborated, a system of solidaristic rights and duties promoted, by eliminating the obstacles to finding work and renewing the economy, so as to avoid exclusion and marginalization and foster the inclusion of young people.

It does not mean relying exclusively on the market’s reasons; on the contrary, it means having the ability to govern transformations bearing always in mind man and the upholding of his dignity.

The effectiveness of common rules, founded on respect for human dignity and solidarity, the development of virtuous circles of expansion and progress depend on the effort and will of each country, especially the most advanced, political commitment and social conscience. Persons have rights that precede decisions made by the state. *Persona comparatur ad comunitatem sicut pars ad totum*.

The renewal of national legal systems and the revision of public and private international law are interrelated objectives. It is the task of scholars, scientific organizations, representative international bodies to make a start on the drawing up of projects in these spheres. An interdisciplinary vision of law, ethics and economics is essential.

Like the Catholic Church, the first globalized community ever, the gathering here of students of different nationalities to receive their master's degrees is a tangible sign of a global reality. These young men and women, I am sure, are endowed with a spirit of solidarity, aspire to build a better world and wish to take up the challenge of life. Together with so many others, those with us today are our hope. They too are entrusted with the task of contributing, through the role they will play in society, to ensuring that the law and its rules are always the reflection of high ethical principles, of natural, universal prescriptions.