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## Law and Legal Theory

John Witte, Jr.

### Abstract

*This Article provides a brief analysis of the main shifts in Western law and legal theory in four watershed periods: (1) the Christianization of Rome and Romanization of Christianity in the fourth and fifth centuries; (2) the Papal Revolution of the twelfth and thirteenth centuries; (3) the Protestant Reformation of the sixteenth century; and (4) the Enlightenment of the eighteenth and nineteenth centuries. It shows how major shifts in dominant religious ideas transformed the legal ideas and institutions of their day. It concludes that, although recent secular movements have removed traditional forms of religious influence on Western law, contemporary Western law still retains important connections with Christian and other religious ideas and institutions.*

**Keywords:** Law; Concepts of Law; Law and Religion; Greece; Rome; Papal Revolution; Protestant Reformation; Enlightenment; Legal Ritual; Legal Dimensions of Religion; Religious Dimensions of Law

The term law does not admit of easy or universal definition. Viewed in its broadest social terms, law consists of all norms that govern human conduct (moral commandments, state statutes, church canons, family rules, commercial habits, communal customs, and others) and all actions taken to formulate and respond to those norms. Viewed in narrower political terms, law consists of the social enterprise by which certain norms are formulated by legitimate political authorities and actualized by persons legitimately subject to political authorities. The process of legal formulation involves legislating, adjudicating, administering, and other conduct by legal officials. The process of legal actualization involves obeying, negotiating, litigating, and other conduct by legal subjects.

Most Western nations today are dedicated to the rule of law and have constitutions that define the powers and provinces of political authorities and the rights and duties of citizens and subjects. Most nations make formal distinctions among the executive,

legislative, and judicial powers of government and functions of law. Most distinguish among bodies of criminal law, public law (constitutional and administrative law), and private law (contracts, torts, property, inheritance, and others). Most have sophisticated rules and procedures to facilitate the legal transactions and interactions of their citizens and subjects and to resolve disputes among citizens and between citizens and the government. Most recognize multiple sources of law—constitutions, treaties, statutes, regulations, judicial precedents, customary practices, and more. Of increasing importance to many nations today are public international laws (on diplomacy, warfare, humanitarian aid, human rights, and environmental protection) and private international laws (on global economics, trade, communications, and dispute resolution).

Many of the legal ideas and institutions that prevail among Western nations today are parts and products of a long and venerable Western legal tradition. This legal tradition was born out of the ancient civilizations of Israel, Greece, and Rome, was nurtured for nearly two millennia by Christianity, and for more than two centuries by the Enlightenment. The Western legal tradition has embraced enduring postulates about justice and mercy, rule and equity, nature and custom, principle and precept. It has featured recurrent ideas about authority and power, rights and liberties, individuals and associations, public and private. It has developed distinctive methods of legislation and adjudication, of negotiation and litigation, of legal rhetoric and interpretation, of juridical science and systematics.

The precise shape and balance of the Western legal tradition at any period has been determined, in part, by the Western religious tradition. When the dominant ideas, officials, symbols, and methods of the Western religious tradition have changed, the shape and balance of the Western legal tradition have often changed as well.

Four major shifts in the Western religious tradition have triggered the most massive transformations of the Western legal tradition: (1) the Christianization of the Roman Empire in the fourth through sixth centuries; (2) the Papal Revolution of the late eleventh to thirteenth centuries; (3) the Protestant Reformation of the sixteenth century; and (4) the Enlightenment movements of the eighteenth and nineteenth centuries. The Western legal tradition was hardly static between these four watershed periods. But these were the four watershed periods, the civilizational moments and movements that permanently redirected the Western legal tradition.

**Pre- and Post-Christian Rome.** The first watershed period came with the Christian conversion of the Roman emperor and empire in the fourth through sixth centuries. Prior to that time, Roman law reigned supreme throughout much of the West. Roman law defined the status of persons and associations and the legal actions and procedures available to them. It proscribed delicts (torts) and crimes. It protected the public property and welfare of the Roman state. It regulated private property, commerce, slavery, inheritance, and the household.

Roman law also established the imperial cult. Rome was to be revered as the eternal city, ordained by the gods and celebrated in its altars and basilicas. The Roman emperor was to be worshipped as a god and king in the rituals of the imperial court and in the festivals of the public square. The Roman law itself was viewed as the embodiment of an immutable divine law, appropriated and applied through the sacred legal science of imperial pontiffs and jurists.

A refined legal theory emerged after the first century B.C., built in part on Greek prototypes. Cicero, Seneca, and other Roman philosophers cast in legal terms Aristotle's topical methods of reasoning, rhetoric, and interpretation as well as his concepts of natural, distributive, and commutative justice. Gaius, Ulpian, and other Roman jurists drew what would become classic Western distinctions among: (1) civil law (ius civile), the statutes and procedures of a particular community to be applied strictly or with equity; (2) common law (ius gentium), the principles and customs common to several communities and often the basis for treaties; and (3) natural law (ius naturale), the immutable principles of right reason, which are supreme in authority and divinity and must prevail in cases of conflict with civil or common laws.

The early Christian Church stood largely opposed to this Roman legal system, as had the Jewish communities in which the Church was born. Christians could not accept the imperial cult nor readily partake of the pagan rituals required for participation in commerce, the military, litigation, and other public forums and activities. The early Church thus organized itself into separate communities, largely withdrawn from official Roman society. Early church constitutions, such as the Didaché (c. 120) and Didascalia Apostolorum (c. 250), set forth internal rules for church organization and offices, clerical life, ecclesiastical discipline, charity, education, family, and property relations. Early Christian leaders, building on the injunctions of Christ and St. Paul, generally taught obedience to the political authorities up to the limits of Christian conscience. The clergy also urged upon their Roman rulers political and legal reforms consonant with Christian teachings. Such legal independence and legal advocacy by the Church brought forth firm imperial edicts from the mid-first century onward, condemning Christians to intermittent waves of brutal persecution.

The Christian conversion of Emperor Constantine in 312 and the formal establishment by law of Trinitarian Christianity as the official religion of the Roman Empire in 380 ultimately fused these Roman and Christian laws and beliefs. The Roman Empire was now understood as the universal body of Christ on earth, embracing all persons and all things. The Roman emperor was viewed as both pope and king, who reigned supreme in spiritual and temporal matters. The Roman law was viewed as the pristine instrument of natural law and Christian morality.

This new syncretism of Roman and Christian beliefs allowed the Christian Church to imbue the Roman law with a number of its basic teachings, and to have those enforced throughout much of the Empire—notably and most brutally against such heretics as Arians, Apollonarians, and Manicheans. Particularly in the great synthetic texts of Roman law, the Codex Theodosianus (438) and the Corpus Iuris Civilis (529), Christian teachings on the Trinity, the sacraments, liturgy, holy days, Sabbath Day observance, sexual ethics, charity, education, and much else were copiously defined and regulated. This firm legal establishment of Trinitarian Christianity contributed enormously both to its precocious expansion throughout the West and to its canonical preservation for later centuries.

This new syncretism of Roman and Christian beliefs, however, also subordinated the church to imperial rule. Christianity was now, in effect, the new imperial cult of Rome, presided over by the Roman emperor. The Christian clergy were, in effect, the new pontiffs of the Christian imperial cult, hierarchically organized and ultimately subordinate to imperial authority. The Church's property was, in effect, the new public property of the

empire, subject both to its protection and to its control. Thus Roman emperors and other political rulers convoked many of the Church councils and major synods; appointed, disciplined, and removed the higher clergy; administered many of the Church's parishes, monasteries, and charities; and legally controlled the acquisition, maintenance, and disposition of Church property.

This "caesaropapist" pattern of substantive influence but procedural subordination of church to state, and of the Christian religion to law, was largely accepted in the Orthodox churches of the Byzantine Empire and its successor polities. Following the political theology of John Chrysostom, Gregory of Nyssa, and others, Eastern Orthodox clerics readily merged Christian and secular law and life, leaving legal and political matters primarily to the emperor or magistrate as vicar of Christ and devoting themselves primarily to Christian liturgy and teaching. This caesaropapist pattern sometimes met with more resistance in the West as strong clerics, such as Popes Gelasius I and Gregory the Great, insisted on a sharper separation of spiritual and secular law and authority. But with the rise of the great Germanic kings in the eighth and ninth centuries, notably Charlemagne of France and Alfred the Great of England, the Western Church, too, was subjected to firm political rule and control. This pattern was often exacerbated by the growing practice in the West of placing church properties under feudal tenure and thus placing their clerical occupants under the control of local feudal lords.

**Papal Revolution.** The second watershed period of the Western legal tradition came with the Papal Revolution or Gregorian Reform of the late eleventh through thirteenth centuries. Beginning in 1075, the Catholic clergy, led by Pope Gregory VII, threw off their civil rulers and established the Church as an autonomous legal and political corporation within Western Christendom. The Church now claimed new jurisdiction—literally the power "to speak the law" (*jus dicere*) for the West. The Church claimed personal jurisdiction over clerics, pilgrims, students, the poor, heretics, Jews, and Muslims. It claimed subject matter jurisdiction over doctrine and liturgy; ecclesiastical property, polity, and patronage; sex, marriage and family life; education, charity, and inheritance; oral promises, oaths, and various contracts; and all manner of moral, ideological, and sexual crimes. The Church predicated these jurisdictional claims on its traditional authority over the Christian sacraments. It also predicated these claims on the papal power of the keys, bequeathed by Christ to St. Peter (Luke 22:38; Matthew 16:18-19)--a key of knowledge to discern God's Word and will and a key of power to implement and enforce that Word and will throughout Christendom.

The Church developed an elaborate pan-Western system of church laws, called canon laws, to support these jurisdictional claims. Thousands of legal and ethical teachings drawn from the apostolic constitutions, patristic writings, and Christianized Roman law were collated and synthesized in the famous *Decretum Gratiani* (c. 1140), the anchor text of medieval canon law. The *Decretum* was then heavily supplemented by papal and conciliar legislation and juridical glosses and commentaries, which were later integrated in the five-volume *Corpus Iuris Canonici*. A vast hierarchy of church courts and officials administered this canon law in accordance with sophisticated new rules of procedure and evidence. A network of ecclesiastical officials presided over the Church's executive and administrative functions. The medieval Church registered its citizens through baptism. It taxed them through tithes. It conscripted them through the crusades.

It educated them through the church schools. It nurtured them through the cloisters and monasteries. The medieval Church was, in F.W. Maitland's famous phrase, the first true state in the West, the medieval canon law the first international law since the eclipse of the classical Roman law half a millennium before.

This complex new legal system of the Church attracted sophisticated new legal and political theories. The most original formulations came from such medieval jurists as Hostiensis, Gandinus, Bartolus, and Baldus and such medieval theologians as Anselm, Abelard, Hugh of St. Victor, and Thomas Aquinas. These writers reclassified the sources and forms of law, ultimately distinguishing: (1) the eternal law of the creation order; (2) the natural laws of the Bible, reason, and conscience; (3) the positive canon laws of the Church; (4) the positive civil laws of the state; (5) the common laws of all nations and peoples; and (6) the customary laws of local communities. They developed enduring rules for the resolution of conflicts among these types of laws, and contests of jurisdiction among their authors. They developed refined concepts of legislation, adjudication, and executive administration, and core constitutional concepts of sovereignty, election, and representation. They developed a good deal of the Western theory and law of chartered corporations, private associations, foundations, and trusts.

The medieval canon law developed sophisticated theories and forms of individual and corporate rights (iura, the plural of ius). The canon law defined the rights of the clergy to their liturgical offices and ecclesiastical benefices, their exemptions from civil taxes and duties, their immunities from civil prosecution and compulsory testimony. It defined the rights of ecclesiastical organizations like parishes, monasteries, charities, and guilds to form and dissolve, to accept and reject members, to establish order and discipline, to acquire, use, and alienate property. It defined the rights of church councils and synods to participate in the election and discipline of bishops, abbots, and other clergy. It defined the rights of the laity to worship, evangelize, maintain religious symbols, participate in the sacraments, travel on religious pilgrimages, and educate their children. It defined the rights of the poor, widows, and needy to seek solace, succor, and sanctuary within the church. To be sure, such rights were not unguided by duties, nor were they available to all parties. Only the Catholic faithful--and notoriously not Jews, Muslims, or heretics--had full rights protection, and their rights were to be exercised with appropriate ecclesiastical and sacramental constraints. But the basic medieval rights formulations of exemptions, immunities, privileges, and benefits, and the rights of religious worship, travel, speech, and education have persisted, with ever-greater inclusivity, to this day.

The medieval canon law also developed a sophisticated theory of canonical equity. The jurists referred to the canon law variously as "the mother of exceptions," "the epitome of the law of love," and "the mother of justice." As the mother of exceptions, canon law was flexible, reasonable, and fair, capable either of bending the rigor of a rule in an individual case through dispensations and injunctions, or punctiliously insisting on the letter of an agreement through orders of specific performance or reformation of documents. As the epitome of love, canon law afforded special care for the disadvantaged--widows, orphans, the poor, the handicapped, abused wives, neglected children, maltreated servants, and the like. It provided them with standing to press claims in Church courts, competence to testify against their superiors without their permission, methods to gain succor and shelter from abuse and want, opportunities to pursue pious

and protected careers in the cloister. As the mother of justice, canon law provided a method whereby the individual believer could reconcile himself or herself at once to God and to neighbor. Church courts treated both the legality and the morality of the conflicts before them. Their remedies enabled litigants to become righteous and just not only in their relationships with opposing parties and the rest of the community, but also in their relationship to God. This was a critical reason for the enormous popularity and success of the Church courts in much of medieval Christendom.

**Protestant Reformation.** The third watershed period in the Western legal tradition came with the transformation of canon law and civil law, and of church and state, in the Protestant Reformation. The Protestant Reformation was inaugurated by Martin Luther of Wittenberg in his famous posting of the Ninety-Five Theses in 1517 and his burning of the canon law and confessional books in 1520. The Reformation, however, was the culmination of more than two centuries of dissent within the Church against some of its sacramental theology, liturgical practice, canon law, and ecclesiastical administration. The Reformation ultimately erupted in various quarters of Western Europe in the early sixteenth century, settling into Lutheran, Calvinist, Anglican, and Free Church branches.

The early Protestant reformers--Luther, John Calvin, Menno Simons, Thomas Cranmer, and others--taught that salvation comes through faith in the Gospel, not by works of law. Each individual stands directly before God, seeks God's gracious forgiveness of sin, and conducts life in accordance with the Bible and Christian conscience. To the reformers, the Catholic canon law obstructed the individual's relationship with God and obscured simple biblical norms for right living. The early Protestant reformers further taught that the church is at heart a community of saints, not a corporation of politics. Its cardinal signs and callings are to preach the Word, to administer the sacraments, to catechize the young, to care for the needy. To the reformers, the Catholic clergy's legal rule in Christendom obstructed the church's divine mission and usurped the state's role as God's vice-regent. To be sure, the church must have internal rules of order to govern its own polity, teaching, and discipline. The church must critique legal injustice and combat political illegitimacy. But, according to classic Protestant lore, law is primarily the province of the state not of the church, of the magistrate not of the minister.

These new Protestant teachings helped to transform Western law in the sixteenth and seventeenth centuries. The Protestant Reformation permanently broke the international rule of the Catholic Church and the canon law, splintering Western Christendom into competing nations and regions, each with its own religious and political rulers. The Protestant reformation also triggered a massive shift of power and property from the church to the state. State rulers now assumed jurisdiction over numerous subjects previously governed by the church and its canon law--marriage and family life, property and testamentary matters, charity and poor relief, contracts and oaths, moral and ideological crimes. Particularly in Lutheran and Anglican polities, the state also came to exercise considerable control over the clergy, polity, and property of the church, in part in self-conscious emulation of the laws and practices of Christianized Rome.

These massive shifts in legal power and property from cleric to magistrate, from church to state, did not suddenly deprive Western law of its dependence upon religion. Catholic canon law remained an ineradicable part of the common law of the West, in

Catholic and Protestant polities alike. It was readily used both by church officials to govern their internal religious affairs and by civil authorities to govern matters of state. Moreover, in the Catholic polities of France, Spain, Portugal, and Italy, and their many Latin American and African colonies, the legal and moral pronouncements of the Catholic episcopacy still often had a strong influence on the content of the state law, and Catholicism was the de facto if not de jure established and protected religion of many of these communities until the twentieth century.

In Protestant polities of early modern Europe and their North American colonies, many new Protestant theological views came to direct and dramatic legal expression. For example, Protestant theologians replaced the traditional sacramental understanding of marriage with a new idea of the marital household as a "social estate" or "covenantal association" of the earthly kingdom. On that basis, Protestant jurists developed a new state law of marriage, featuring requirements of parental consent, state registration, church consecration, and peer presence for valid marital formation as well as absolute divorce on grounds of adultery, desertion, and other faults, with subsequent rights to remarry at least for the innocent party. Protestant theologians replaced the traditional understanding of education as a teaching office of the church with a new understanding of the public school as a "civic seminary" for all persons to prepare for their peculiar vocations. On that basis, Protestant magistrates replaced clerics as the chief rulers of education, state law replaced church law as the principal law of education, and the general callings of all Christians replaced the special calling of the clergy as the raison d'être of education. Protestant theologians introduced a new theology of the "three uses" of the moral law set out in the Bible, particularly the Ten Commandments. On that basis, Protestant jurists developed arresting new theories of natural law and equity; introduced sweeping changes in civil laws of social welfare and moral discipline; and developed an integrated theory of the retributive, deterrent, and rehabilitative functions of criminal law and ecclesiastical discipline.

Moreover, the signature Reformation teaching that a person is at once sinner and saint (simul justus et peccatur) became a firm anthropological foundation for later Western theories of democracy and human rights. On the one hand, Protestants argued, every person is created in the image of God and justified by faith in God. Every person is called to a distinct vocation, which stands equal in dignity and sanctity to all others. Every person is a prophet, priest and king, and responsible to exhort, to minister, and to rule in the community. Every person thus stands equal before God and before his or her neighbor. Every person is vested with a natural liberty to live, to believe, to love and serve God and neighbor. Every person is entitled to the vernacular Scripture, to education, to work in a vocation.

On the other hand, Protestants argued, every person is sinful and prone to evil and egoism. Every person needs the restraint of the law to deter him from evil, and to drive him to repentance. Every person needs the association of others to exhort, minister, and rule her with law and with love. Every person, therefore, is inherently a communal creature. Every person belongs to a family, a church, a political community.

These social institutions of family, church, and state, later Protestants argued, are divine in origin and human in organization. They are created by God and governed by godly ordinances. They stand equal before God and are called to discharge distinctive

godly functions in the community. The family is called to rear and nurture children, to educate and discipline them, to exemplify love and cooperation. The church is called to preach the word, administer the sacraments, educate the young, aid the needy. The state is called to protect order, punish crime, promote community. Though divine in origin, these institutions are formed through human covenants. Such covenants confirm the divine functions, the created offices, of these institutions. Such covenants also organize these offices so that they are protected from the sinful excesses of officials who occupy them. Family, church, and state are thus organized as public institutions, accessible and accountable to each other and to their members. Calvinists especially stressed that the church is to be organized as a democratic congregational polity, with a separation of ecclesiastical powers among pastors, elders, and deacons, election of officers to limited tenures of office, and ready participation of the congregation in the life and leadership of the church.

By the later sixteenth century, Protestant groups began to recast these theological doctrines into democratic norms and forms. Protestant doctrines of the person and society were cast into democratic social forms. Since all persons stand equal before God, they must stand equal before God's political agents in the state. Since God has vested all persons with natural liberties of life and belief, the state must ensure them of similar civil liberties. Since God has called all persons to be prophets, priests, and kings, the state must protect their constitutional freedoms to speak, to preach, and to rule in the community. Since God has created persons as social creatures, the state must promote and protect a plurality of social institutions, particularly the church and the family.

Protestant doctrines of sin, in turn, were cast into democratic political forms. The political office must be protected against the sinfulness of the political official. Political power, like ecclesiastical power, must be distributed among self-checking executive, legislative, and judicial branches. Officials must be elected to limited terms of office. Laws must be clearly codified, and discretion closely guarded. If officials abuse their office, they must be disobeyed. If they persist in their abuse, they must be removed, even if by revolutionary force and regicide. These Protestant teachings were among the driving ideological forces behind the revolts of the French Huguenots, Dutch Pietists, and Scottish Presbyterians against their monarchical oppressors in the later sixteenth and seventeenth centuries. They were critical weapons in the arsenal of the revolutionaries in England and America, and important sources of inspiration and instruction during the great age of democratic construction in later eighteenth and nineteenth century North America and Western Europe.

**Enlightenment.** The fourth watershed period in the Western legal tradition came with the eighteenth and nineteenth-century Enlightenment. The Enlightenment was no single, unified movement, but a series of diverse ideological movements in various academic disciplines and social circles of Western Europe and North America. Enlightenment philosophers, such as David Hume, Jean Jacques Rousseau, and Thomas Jefferson, offered a new secular theology of individualism, rationalism, and nationalism to supplement if not supplant traditional Christian beliefs. The individual was no longer viewed primarily as a sinner seeking salvation in the life hereafter. To Enlightenment exponents, every individual was created equal in virtue and dignity, vested with inherent rights of life, liberty, and property, and capable of choosing his own means and measure

of happiness. Reason was no longer the handmaiden of revelation, rational disputation no longer subordinate to homiletic declaration. The rational process, conducted privately by each person, and collectively in the open marketplace of ideas, was considered a sufficient source of private morality and public law. The nation-state was no longer identified with a national church or a divinely blessed covenant people. The nation-state was to be glorified in its own right. Its constitutions and laws were sacred texts reflecting the morals and mores of the collective national culture. Its officials were secular priests, representing the sovereignty and will of the people.

Such sentiments were revolutionary in their time and were among the driving forces of the national revolutions in America and France and a principal catalyst for the reformation of many Western legal systems. They inspired sweeping changes in late eighteenth- and nineteenth century law--new constitutional provisions for limited government and ample civil liberties, new injunctions to separate church and state, new criminal procedures and methods of criminal punishment, new commercial, contractual, and other laws of the private marketplace, new laws of private property and inheritance, shifts toward a fault-based law of delicts and torts, the ultimate expulsion of slavery in America, and the gradual removal of discrimination based on race, religion, culture, and gender. Many Western nations also developed elaborate new codes of public law and private law, transformed the curricula of their faculties of law, and radically reconfigured their legal professions.

The secular theology of the Enlightenment penetrated Western legal philosophy. Spurred on by Hugo Grotius' famous phrase that "natural law can exist even without the existence of God," jurists offered a range of secular legal philosophies--often abstracted from earlier Christian and Graeco-Roman teachings. Writers from John Locke to Thomas Paine, postulated a mythical state of nature that antedated and integrated human laws and natural rights. Nationalist myths were grafted onto this paradigm to unify and sanctify national legal traditions: Italian jurists appealed to their utopic Roman heritage; English jurists to their ancient constitution and Anglo-Saxon roots; French jurists to their Salic law; German jurists to their ancient constitutional liberties.

As these secular myths dissipated under the hot lights of early modern philosophical skepticism, a triumvirate of new legal philosophies came to prominence in the later eighteenth and nineteenth centuries. Legal positivists, such as Jeremy Bentham and John Austin, contended that the ultimate source of law lies in the will of the legislature and its ultimate sanction in political force. Natural law theorists, most notably Immanuel Kant, sought the ultimate source of law in pure reason and conscience and its ultimate sanction in moral suasion. Historical jurists, such as Friedrich Karl von Savigny and Otto von Gierke, contended that the ultimate source of law is the custom and character of the Volk, and its ultimate sanction is communal condemnation. These juxtaposed positivist, naturalist, and historicist legal philosophies have persisted in legal academies to this day, now heavily supplemented by an array of realist, socialist, feminist, and other schools of legal thought and with a growing number of interdisciplinary approaches that study law in interaction with the methods and texts of theology, economics, science, literature, psychology, sociology, and anthropology.

The secular theology of the Enlightenment also transformed and secularized modern legal institutions. The cardinal secular beliefs of the Enlightenment have come to

prominent legal expression in the twentieth century--individualism in constitutional doctrines of privacy; rationalism in the doctrines of freedom of speech, press, and assembly; nationalism in the totalitarian laws and politics of democracy, fascism, and socialism. In socialist politics, ambitious interpretation of the Enlightenment doctrine of separation of church and state led to campaigns to eradicate theistic religion altogether, a policy often manifest in the brutal martyrdom of the faithful and massive confiscations of religious property. In democratic politics, ambitious interpretation of the same separation of church and state doctrine has served to privatize theistic religion and to drive many religious communities from active participation in the legal and political process.

**Law and Religion Today.** Though these recent secular movements have removed traditional forms of religious influence on Western law, contemporary Western law still retains important connections with Christian and other religious ideas and institutions.

Even today, law and religion continue to cross-over and cross fertilize each other in a variety of ways. Law and religion are conceptually related. They both draw upon prevailing concepts of the nature of being and order, the person and community, knowledge and truth. They both embrace closely analogous doctrines of sin and crime, covenant and contract, righteousness and justice that invariably bleed together in the mind of the legislator, judge, and juror. Law and religion are methodologically related. They share overlapping hermeneutical methods of interpreting authoritative texts, casuistic methods of converting principles to precepts, systematic methods of organizing their subject matters, pedagogical methods of transmitting the science and substance of their craft to students. Law and religion are institutionally related, through the multiple relationships between political and religious officials and the multiple institutions in which these officials serve.

Even today, the laws of the secular state retain strong moral and religious dimensions. These dimensions are reflected not only in the substantive doctrines of private and public law that are derived from earlier Christian theology and canon law. They are also reflected in the characteristic forms of contemporary legal systems. Every legitimate legal system has what Lon L. Fuller calls an "inner morality," a set of attributes that bespeak its justice and fairness. Its rules are generally applicable, publicly proclaimed and known, uniform, stable, understandable, non-retroactive, and consistently enforced. Every legitimate legal system has what Harold J. Berman calls an "inner sanctity," a set of attributes that command the obedience, respect, and fear of both political authorities and their subjects. Like religion, law has authority --written or spoken sources, texts or oracles, which are considered to be decisive or obligatory in themselves. Law has tradition--a continuity of language, practice, and institutions. Law has liturgy and ritual--the ceremonial procedures and words of the legislature, the courtroom, and the legal document that reflect and dramatize deep social feelings about the value and validity of the law.

Even today, religion maintains a legal dimension, an inner structure of legality, which gives religious lives and religious communities their coherence, order, and social form. Legal habits of the heart structure the inner spiritual life and discipline of religious believers, from the reclusive hermit to the aggressive zealot. Legal ideas of justice, order, atonement, restitution, responsibility, obligation, and others pervade the theological

doctrines of countless religious traditions. Legal structures and processes--the Christian canon law, the Jewish Halacha, the Muslim Shari'a--continue to organize and govern religious communities and their distinctive beliefs and rituals, mores and morals.

The interaction of law and religion has, in recent years, attracted a considerable body of historical and theoretical scholarship. These interdisciplinary studies will be of vital importance to us as we continue the struggle to understand the concepts and commandments of law, justice, and order, and as we prepare Western law and Western culture for the emergence of a common law of all humanity in the new millennium.

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