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Law

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Abstract

This brief article surveys the interaction of law and religion from biblical times until today.

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Christianity was born into the intensely legal worlds of rabbinic Judaism and imperial Rome. The early church largely rejected the Jewish law in favor of Christ's teachings and in emulation of his example of flouting rabbinic rules of purity, diet, divorce, Sabbath observance, and more. "Christ is the end of the law" (Rom. 10:4), St. Paul wrote; "the written code kills, but the Spirit gives life" (2 Cor. 3:6). Christ freed his followers to live by the moral law written in the hearts and consciences of all men (Rom. 2:14), rewritten in the Decalogue and other biblical moral injunctions, and distilled in the commandment "to love God and to love your neighbor as yourself" (Matt. 22:19-30; Lev. 19:18; Rom. 13:8-10). The New Testament provides ample illustrations of proper Christian living that continue to guide believers to this day and provide the starting points for Christian ethics, catechesis, and ecclesiastical discipline.

Early Christianity was more ambiguous in its treatment of Roman law and authority. Christ had, after all, enjoined his followers to "render to Caesar the things that are Caesar's" (Matt. 22:21). St. Paul and St. Peter had both called Christians in good conscience to "be subject to the governing authorities," paying them taxes, tributes, honor, and obedience (Rom. 13:1-7; 1 Pet. 2:13-17). But early Christians soon found they could not accept the Roman imperial cult nor readily partake of the pagan rituals attached to Roman commerce, litigation, festivals, or military service. The early churches thus organized themselves into separate communities, eventually governed by their own internal laws and ecclesiastical government. Early church constitutions, such as the *Didaché* (c. 100) and *Didascalia Apostolorum* (c. 250), set forth internal rules for church offices, clerical life, ecclesiastical discipline, charity, education, family, property, and other relations among the faithful. Early Christian leaders also urged their Roman rulers to reform their laws of slavery, education, concubinage, infanticide, and more. Such legal independence and reformist agitation eventually condemned Christians to intermittent waves of brutal persecution.

The Christian conversion of Emperor Constantine in 312 and the legal establishment of Trinitarian Christianity in 380 eventually allowed the church to imbue the Roman law with a number of its basic teachings. Particularly the great synthetic texts of Roman law, the *Theodosian Code* (438) and Justinian's *Corpus Iuris Civilis* (529-534), were heavily sprinkled with Christian teachings on the Trinity, the sacraments, liturgy, holy days, Sabbath Day observance, sexual ethics, charity, education, and much else. This legal establishment of Christianity contributed greatly to its precocious expansion throughout the Empire and to its canonical preservation for later centuries. The legal establishment of Christianity, however, also subordinated the church to imperial rule. 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 pattern of "caesaropapism" persisted throughout much of the Germanic period in the Catholic West and throughout the Byzantine Empire of the Orthodox East.

Beginning in 1075, the Catholic clergy, led by Pope Gregory VII, threw off their civil rulers and established the Catholic Church as an autonomous legal and political corporation within Western Christendom. The church now 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 in part on its authority over the seven sacraments, in part on the papal power of the keys bequeathed by Christ to St. Peter (Matt. 16:18-19).

The medieval church developed an elaborate body of canon law to support these jurisdictional claims. Thousands of legal teachings from the first millennium were collated and synthesized in the famous *Decretum Gratiani* (c. 1140). Four more books of papal and conciliar legislation were later added to form the massive *Corpus Iuris Canonici* (c. 1586). A sophisticated canonical jurisprudence emerged in the new universities, directed to many aspects of public, private, procedural, and penal law. A vast hierarchy of church courts and officials administered the canon law in accordance with sophisticated new rules of procedure and evidence. A vast network of ecclesiastical officials presided over the church's executive and administrative functions. 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.

The sixteenth-century Protestant Reformation rejected the Catholic canon law as an intrusion on Christian freedom and a usurpation of state authority. To most Protestant reformers, the Catholic canon law obstructed the individual's relationship with God and obscured biblical norms for right living. The clergy's legal rule in a united Christendom further obstructed the church's divine mission of preaching the Word, administering the sacraments, and caring for the poor and needy. While they insisted that the church must have internal rules of order to govern itself and that its leaders must prophesy against injustice and tyranny, most Protestants regarded law to be the province more of the state than the church.

These new Protestant teachings permanently broke the international rule of the medieval church and the canon law, splintering Western Christendom into competing nations and regions, each with its own religious and political rulers. The Reformation also triggered a massive shift of power and property from the church to the state. The early modern state now claimed jurisdiction over numerous subjects previously governed by the church -- 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 local established churches, in emulation of the earlier laws of Christian Rome and in expression of the new theories of absolute monarchy.

These massive shifts in legal power and property from church to state did not suddenly deprive Western law of its dependence upon religion. Catholic canon law still governed the Catholic church in France, Spain, Portugal, and Italy, and their many colonies, and the clergy's moral pronouncements continued to shape the state law of these Catholic lands until the French Revolution. Protestant teachings on marriage and divorce, public education and social welfare, democracy and rule of law, constitutionalism and natural rights all came to direct and dramatic expression in state law, and provided some of the driving forces for early modern democratic revolutions in Europe and North America.

While many of these traditional Christian legal ideas and institutions were gradually eclipsed by the various secular political regimes born of the Enlightenment, Western law still today retains important connections with Christianity and other religions. Law and religion remain conceptually related. 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 and teaching their subject matters. Law and religion are institutionally related, through the multiple relationships between political and religious officials and through their common commitment to protect the religious freedom of all.

Even today, the laws of the secular state retain strong moral and religious dimensions. These dimensions are reflected not only in the many substantive doctrines of public, private, procedural and penal law that were developed in earlier Christian eras. They are also reflected in the characteristic forms of contemporary Western legal systems. Every legitimate legal system has what Lon L. Fuller called an "inner morality," a set of attributes that bespeak its justice and fairness. Like divine laws, human laws are generally applicable, publicly proclaimed, uniform, stable, understandable, non-retroactive, and consistently enforced. Every legitimate legal system also 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. Like religion, law has tradition -- a continuity of language, practice, and institutions, a theory of precedent and preservation. Like religion, law has liturgy and ritual -- the ceremonial procedures, decorum, and words of the legislature, the courtroom, and

the legal document aimed to reflect and dramatize deep social feelings about the value and validity of the law.

Even today, Christianity and other religions maintain 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, dignity, atonement, restitution, responsibility, obligation, and others pervade the theological doctrines of countless religious traditions, not least Christianity. Legal structures and processes, including Catholic and Orthodox canon law and Protestant forms of ecclesiastical discipline, continue to organize and govern religious communities and their distinctive beliefs and rituals, mores and morals. All these religious belief, values, and practices the modern Western state still protects, respects, and reflects in part in its law.

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