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## RELIGIONS AND LAW

Religion is too complex a human phenomenon to be defined as religious experience or faith. It embraces the whole human existence, interior and exterior, individual and social. Besides the individual factors of personal experience, faith, commitment to intellectual search into matters of faith, and openness to personal growth in knowledge and understanding of faith; religions also include social variables like credal assent and personal commitment to the communitarian faith, participation in congregational activities, personal ties within the congregation, and especially the ordering of one's individual and social life according to the principles of the particular religion.<sup>1</sup> This implies, on the part of the religion concerned, a right and responsibility to provide explicit and specific regulations to organize effectively these different social variables into a closely knit and intimately co-operating community of believers. This means the lawmaking function of religion. But the nature and function of the laws in different religious traditions depended to a great extent on the way in which the different variables were perceived by each tradition. Besides, since historically religions preceded the organization of peoples into states, the religious ideals of law provided the patterns also for the civil society.

### The Dilemmas of Religion and Law

But the sociological organization implied by law creates several paradoxes and dilemmas for religion itself. First of all there is the tendency towards total society that any legal system entails, and which is self-defeating for religion, the primary aim of which is to liberate man and make him authentically himself. Law tends to regulate every aspect of man's behaviour to bring him in complete conformity with the society. Religion, on the other hand, has a functional orientation, since it gives answers to questions that arise at the point of ultimacy, at those points in human experience that go beyond the everyday attitude towards life with its immediate needs, norms and goals. As Durkheim

1. Morton B. King, "Measuring the Religious Variable: Nine Proposed Dimensions," *The Social Meanings of Religion*, ed. William M. Newman (Chicago: Rand McNally, 1974), pp. 39-61.

and Otto pointed out, man experienced the "sacred" or "holy" as an irreducible category of existence completely other than the ordinary prosaic world, though these exceptional experiences from which religion arises are crucially important. When religion which arises, as it were out of the unusual experience of unusual people is translated into institutional structures for ordinary people, elaborated and standardized, it contains within itself a certain antinomy and contradiction between two radically heterogeneous elements: ultimacy and concrete social institutions, the sacred and the profane. Hence the dilemmas for religious law have always been: (1) how to keep intact the singleminded religious motivation of the charismatic leader and the movement initiated by him uncontaminated by the social concerns for prestige and power and general public acceptance that become dominant at a later stage; (2) how to objectify and stabilize the authentic religious experience in public cult without making the symbolic and ritual elements divorced from the subjective experience of the participants; (3) how to prevent the true religious leadership from degenerating into the routinization of bureaucratic structures that keep expanding and becoming more and more impersonal as new situations and problems arise; (4) how to apply the religious insight to the small and prosaic events of ordinary life as lived by ordinary people, without betraying the insight itself by sticking on to the letter instead of redefining the insight in diverse particular contexts; and (5) how to maintain the genuine freedom of religious conversion and the spontaneity of response to the religious message in faith without replacing it with the easier procedure of coercion by social pressure generated by institutionalization. Though social organization and discipline created by the rule of law can strengthen the position of religion in society, it can also weaken the religious spirit itself in its followers providing scope for formalism, cynicism and even hypocrisy.<sup>2</sup>

But these problems stressed by sociologists of religion are only paradoxes and not real contradictions. In fact, religion deals with the whole man; not merely his private life, but also and especially his communitarian and social existence. Religion deals with man as man, (and that is) the total social reality of man. Hence traditional religions were oriented in two directions: At the same time as they were struggling to attain a greater and deeper experience of the Ultimate Meaning and Reality intuited by exceptional people at exceptional moments, they also endeavoured to bring down that experience to the social and political existence of man through laws and social organization.

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2. Thomas F. O'Dea, "Five Dilemmas in the Institutionalization of Religion," *Ibid.*, pp. 271-86,

### Religious Patterns of Law

According as each religion viewed the central meaning of religion, the role of society in it and its role in the shaping of society, its outlook on law also assumed a specific character. On the one hand, the outlook of each religious tradition was to a great extent conditioned by its socio-cultural background. On the other hand, the religious insight, which is by its very nature unique, endeavoured to re-shape and correctly orient the socio-cultural situation. Hence the legal systems of the world originating from different religious traditions and conditioned by their socio-cultural contexts fall into a few basic patterns.

#### (i) *Law as Eternal Immutable Dharma (Hinduism)*

One of the basic patterns of law is to present it as "a body of ascertainties and declarations of an eternal and immutable moral code."<sup>3</sup> This is typified in the Hindu concept of *Dharma*: *Dharma* or law is an explicitation and application of *ṛta* or cosmic harmony to the actual social order of men. As Robert Lingat notes, the originality of the Hindu Law is that "it does not derive from written sources properly so called"; Sanskrit does not have a term corresponding to the English "law" or French "droit", "signifying a group of rules which govern men actually and imperatively in a given locality and period of time", nor do the Hindus take as their starting point "that element which has served in the West as a foundation, namely, the coercive element which characterizes a legal rule and distinguishes it from other rules which also control human activity."<sup>4</sup> *Brihadaranyaka Upanishad* explains that the Supreme Reality, Brahman, came out of its isolation by creating the four classes of men, and since that did not work in harmony, created *Dharma* or Law as the point of harmony, so that even the weak men, who were not able to exert any coercion, "could prevail through it against the powerful, even against the king."<sup>5</sup> This law is called *Dharma* on account of its all embracing character, "because it holds together and the people are supported by *dharma*."<sup>6</sup> The Hindus did not attempt to formulate specific rules for the external conduct of people or to constrain them to a mode of action through sanctions. For them laws were part of the right conduct they were to observe by

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3. Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven: Yale, 1922; 10th print, 1969), p. 27.
  4. Robert Lingat, *The Classical Law of India*, trans. J. Duncan M. Derret (New Delhi: Thomson Press, 1973) "Author's Preface" xii,
  5. *Brihadaranyaka Upanishad*, I, iv, 14.
  6. *Mahabharata* XII, 9, 14,

reason of their condition in life. For them violation of law was *anṛta*, untruth, *vrijina*, crookedness or sinful action, or *dvaya*, duplicity; and the task of law was to discern *ṛta* from *anṛta*, right from wrong, harmony from disharmony. As Lingat remarks, this sense of law "is related to a very ancient conception which the Hindus shared with the Iranians, according to which the world is not the product of a fortuitous concourse of elements, but is ruled by certain norms and sustained by an order necessary to its preservation." Even the gods were only the guardians of law and not its makers.<sup>7</sup>

This special emphasis on law as eternal and immutable harmony is easily understandable in a people formed out of different races, the pre-Aryan inhabitants of the Indian sub-continent and the Aryan conquerors, the well-established agriculturists of the fertile Indo-Gangetic plain and the food-gatherers of the jungles who slowly settled down on the land alongside of the others. Hence, though at first law is taken in its internal meaning as signifying "the obligation binding on every man who desires that his actions should bear fruit, to submit himself to the laws which govern the universe", later these obligations are conceived in the context of the stratified society according to one's status in it (*varna* or caste) and the stage of life (*asrama*).<sup>8</sup> The foundations and sanctions of the law are religious and social at the same time. The individual who obeys its precepts performs a duty which is as much social as religious.

#### (ii) *Buddhist Conception of Dharma: Law as Tradition*

Buddhism, which came to the scene as a challenge to the rigid social structure of Brahmanical Hinduism, gave a new legal meaning to Dharma. Siddhartha Gautama Buddha, who counselled a practical middle path between Hindu absolutism and the spiritual nihilism of the materialists, established his communities in the urban centres like Benares, Vaisali, Sravasti and Rajagṛha, and gave precise instructions for the conduct of life. As Tre-vor Ling correctly notes, "Buddhism is essentially a *theory of existence*. . . And it is more than a theory of *human* existence only, since the whole of life, human and non-human, comes within the range of its scrutiny and analysis. . . It discountenances and discourages the concept of the individual, and regards the boundaries between one so-called 'individual' and others as artificial. . . There is, in the early formulation of Buddhist teaching, a sense of necessary loyalty to that which transcends immediate personal gain or satisfac-

7. *l.c.*, p. 3.

8. Lingat, *l.c.*, p. 4.

tion, to values which lie beyond the interests of human individuals or the interests of the contemporary societies and political organizations of India in the sixth century B.C.”<sup>9</sup>

Emperor Asoka made the Buddhist Dharma the law of the country, and as he himself states in his rock edicts, he achieved the advancement of *dharma* “through two means, legislation and persuasion,” and of these, persuasion has been, according to him, the more effective. What he emphasizes in Buddha’s teachings is “exhortation of all the citizens of the state to moral effort, and the implementing of measures designed to improve the quality of public life.”<sup>10</sup> But the authority for inculcating these teachings was Buddha himself, who received the illumination under the bodhi tree. Thus the accent in Buddhist moral law shifted to the faithful transmission of Buddha’s teachings to posterity, and several councils debated his authentic teaching, and Buddhism itself split into several groups on account of disagreements on the authenticity of certain texts and teachings. As Buddhaghosa says in his *Samantapasādhika*, the most important task in the transmission of Buddha’s dharma was to indicate carefully “by whom it was said, when and for what reason, held by whom, and where it was established.”<sup>11</sup> There is no place for metaphysical inquiry. What is handed down is the Enlightened One’s teaching; the eightfold path is the medicine he has prescribed for the ills of humanity. The unity of the Buddhist law is in its scope: “Whatever the Exalted One has said either as instruction to devas, men, nagas, yakshas and other beings or on reflection, has but one sentiment and that is emancipation.”<sup>12</sup>

### (iii) Law as Divine Precepts: Hebrew View

The most personalistic view of law is provided by the Hebrew religion. Wandering through the desert as a nomadic clan, the Hebrews encounter God as the wholly Other, the conqueror of His enemies, one who establishes His will both in heaven and on earth. The law of Sinai is the sequel to a faith in such a God initiated by the faith of Abraham as a sort of covenant between a wandering people and its protective Deity. The Decalogue can be understood only in the context of the people’s liberation from its slavery in Egypt: Yahweh has gratuitously freed them from the yoke of Egypt and made them *His* people.

9. Tre-vor Ling., *The Buddha* (Pelican Bks, 1976), pp. 146-48.

10. *Ibid.*, pp. 192-94.

11. N. A. Jayawickrama, *The Inception of the Discipline and the Vinaya Nidana* (London: Luzac & Co., 1962), pp. 2-3.

12. *Ibid.*, p. 14.

But the people must prove their loyalty and fidelity through their long wandering through the desert and all its insecurity and unpredictability. Hence the Law is no mere ethical code; at its deepest level it makes sense only as an exercise of faith in the transcendent and unique God who rules them as their one monarch. Hence even when the specific rules and regulations are borrowed from their neighbouring nations, they have, all the same, to be prefaced with: "Thus says the Lord!" On the other hand, as indicated in some books of the Bible like those of Job and Ecclesiasticus, the court-style of the Babylonian monarchs in dealing with the problems of their realm is attributed to Yahweh's rule over the universe. All matters of legislation and legal adjudication, criminal as well as civil, were brought "before the Lord" and were done by the Lord, often meaning the priests or judges who acted in God's name.<sup>13</sup>

The role of visible rulers in such a theocratic conception of government is that of interpreters and administrators. Moses is the first of the prophets.<sup>14</sup> This also indicates the close link between the law of Sinai and faith: events have to be reread and reinterpreted by the prophets in order to wean the people from their pagan sentiments. They have to be constantly reminded about the requirements of the covenant, and to be warned against the illusory security provided by the pagan religions. But once this regime of faith is lost sight of, Mosaic law will degenerate into juridical prescriptions, and the scribes will replace the prophets. When the Jews lived scattered in the non-Jewish countries they took a negative attitude to the laws of those countries, considered them inferior to the Law given to Moses, and submitted to them only on account of necessity. But within the Jewish community itself the apparent contradictions between the divine law and questions of actuality were resolved by recourse to what was known as *Halakha*, the probable opinion one could follow, either because it is the opinion of the majority, or supported by a weighty authority, or weighty reasoning, or because it was propounded last, or was practically acted upon, or, again, because it is the stricter of two interpretations. Thus the divine law is supposed to be composed of two disparate components: the written law revealed through God's prophet, and the oral law developed by duly authorized agents.<sup>15</sup>

13. *Leviticus* 24, 12-13; 17-22; *Num*, 15, 32-34; 36, 1-9; 27, 1-8; *Exod.* 21, 6; 22, 7-8.

14. *Exodus*, 18, 15-16, 19-22.

15. Haim H. Cohn, *Jewish Law in Ancient and Modern Israel*, Ktav Publ., 1971, pp. 22-30.

(iv) *Shari'ah and the Islamic Social Structure*

Another legal pattern that seems to come right out of the socio-cultural context of a religious tradition is the Islamic *shari'ah*. Muhammad came forward as a prophet to organize and lead the tribes of Arabia and in giving them the law revealed to him by Angel Gabriel, he built up a social structure on the base which appealed to the deepest instincts of the Arab society, a society in which the individual counted for little by himself, but only through the family or tribe to which he belonged. Islam preserved the social order in all its essentials, but "for the blood tie, which was the political and social foundation of the Arab tribe, it substituted the community of faith."<sup>16</sup> Out of the anonymity of collective life in the tribe, the individual was liberated into a spiritual kinship of faith, the "people" (*ummah*) of Muhammad superseding the tribal community founded upon kinship. In the place of the tribal chief, in this community of brethren in faith as in ancient Israel, is God himself.<sup>17</sup> "Obey God and His Prophet", was the sum and substance of all the innovation accomplished by Muhammad. There is no mediator between Allah and the believer, nor after the Prophet who transmitted to humanity the final word of Allah another prophet or interpreter of Allah's will. Law is nothing but the will of Allah, the rule according to which Allah will try his people. The Quran is not a lawbook nor Muhammad a lawgiver. It is only an eloquent appeal to obey the law of God,<sup>18</sup> and it makes explicit mention of the Book *Al-Kitab* kept hidden in heaven,<sup>19</sup> and this book was revealed to the Prophet in Arabic so that he might understand it.<sup>20</sup>

But with this spiritual orientation Islamic law preserves the socio-cultural framework of the Arabic tribes. For survival in the desert country against all odds, the basic requirements were uniformity and strict discipline. Appealing to the irrevocable will of Allah, the Islamic law established a rigid and immutable system embodying norms and values of an absolute and eternal validity, and it provided in the divinely ordained *shari'ah* a standard of uniformity for the many different peoples and cultures that were brought within its fold. Hence, there is

16. David M. Santillana, "Law and Society" in *The Legacy of Islam*, ed. Sir Thomas Arnold and Alfred Guillaume (London: Oxford Univ. Press, 1931), pp. 284-310.

17. *Ibid.*, p. 287.

18. Versey-Fitzgerald, "Nature and Sources of the Shari'ah", *Law in the Middle East II* (Washington D.C., 1955), p. 87.

19. *Quran*, Surah 56, 78-80; 95, 22.

20. *Ibid.*, 12, 1-2; 13, 37; 20, 113; 26, 192-95; 41, 2-3; 44, 58.

no idea of law itself as evolving in history closely tied with the evolution of society and culture. M. Jamil Hanifi says: "Floating above the Muslim society as a disembodied soul, freed from the currents and changing cultural conditions through time, it (the Law) represented the eternally valid ideal toward which a society must aspire."<sup>21</sup> But the fact is that this concern for stability against the vicissitudes of socio-political and cultural currents was itself conditioned by the socio-cultural situation of the Arabic people at the time of Muhammad, hemmed in and threatened as they were by the Persian Abyssinian and Byzantine kingdoms.

Within the framework of the tribal culture Islam permitted the greatest liberty. Quranic law styles itself a law of liberty, a reversion to the primitive faith of the Patriarchs, Noah and Abraham. Suppressing the restrictions and rituals of the Mosaic law and the penitential practices introduced by Christians, Islam returned to the basic wisdom of human life and reduced matters of faith and practice to a few fundamental and easily intelligible items. It was considered the universal *Shari'ah* toward which God was guiding humanity through various preliminary stages.<sup>22</sup> Besides, this one basic Quranic law is interpreted differently in different Muslim countries according to the different concepts of *fiqh* or Islamic jurisprudence, and various schools of law: "Although the completed and uncorrupted guidance is now permanently available in the revelation of the Qur'an, man's evolutionary understanding of the Divine way continues as before, to widen, deepen and heighten with developments in man and in the physical and human environment."<sup>23</sup>

(v) *Law as Deification of Wisdom: Greek Pattern*

Over against the Hebrew and Islamic patterns of conceiving law as expressions of the eternal and immutable will of God, stands the Greek saying that a decree of wisemen is an invention of the gods. For the Greeks the ideal of law was to discover what was for the common good. As the Athenian declares in Plato's *Laws*, the lawgiver "need only tax his invention to discover what conviction would be most beneficial to a city, and then contrive all manner of devices to ensure that the whole of such a community shall treat the topic in one single and

21. M. Jamil Hanifi, *Islam and the Transformation of Culture* (New York: Asia Publ., 1974), p. 42.

22. Kemal A. Faruki, *Islamic Jurisprudence* (Karachi: Pakistan Publ. House, 1962), pp. 5-11.

23. *Ibid.*, p. 13.



self-same lifelong tone, alike in song, in story and in discourse."<sup>24</sup> The function of education is the drawing and leading of children to the rule "pronounced by the voice of law, and approved as truly right by the concordant experience of the best and oldest men."<sup>25</sup> The one principal virtue required in the statesmanlike legislator, the one virtue which brings all the rest in its train, "is judgement, intelligence and right conviction attended by appropriate passionate desire."<sup>26</sup> Such sound judgement will show "that unqualified and absolute freedom from all authority is a far worse thing than submission to a magistrate with limited powers." Similarly, Athenian wisdom emphasized that conscience has a sovereignty that disposes man to willing subjection to the laws.<sup>27</sup>

It is the superiority of Wisdom of which laws are embodiments that persuaded Plato to ascribe the laws for their authorship to the Olympian gods: Oxen are not set to manage oxen, nor goats to manage goats; men, their betters in kind act as their masters. So Chronos, in his divine kindness set over men the superior race of spirits "to provide us with peace and mercy, sound law and unscanted justice, and endowed the families of mankind with internal concord and happiness."<sup>28</sup> Laws of Crete are ascribed to Zeus, of Lacedemon to Apollo. Mino the legislator of Crete was posthumously deified as the son of Zeus.<sup>29</sup> Even Draco, whose laws, according to Aristotle, were significant only for the severity of the punishments, was deified as serpent god. Solon pretended to have been inspired by the Delphic oracles, and Lycurgus the Spartan lawgiver, according to Plutarch, tried to immortalize his laws through Delphic ratification. But the underlying idea in all this apotheosis of lawgivers was that the lawmaking wisdom of rulers should be guided by the supreme divine wisdom, which is actually discovered in the common wisdom of men: "The true statesman is one who is able to discern the right opinion concerning what is good, just and profitable arising in the souls of men, and to forge by the wondrous inspiration of the kingly art the bond of true conviction uniting the hearts of young folk".<sup>30</sup> Only in the philosophical context of Greece, constantly in search of wisdom, could such a concept of law thrive.

24. Plato, *Works*, 664 a.

25. *Ibid.*, 659 d.

26. *Ibid.*, 688 b. cf. *Statesman* 297 a-b.

27. *Ibid.*, 698 b-c.

28. *Ibid.*, 713 c-e.

29. *Laws*, I, 1, 624 a.

30. *Statesman*, 309 c-d.

## (vi) Roman Law: "The Consent of All"

The Romans had a practical and down to earth approach to legal prescriptions. As Boaz Cohen notes, "the Romans were the only people of antiquity who disentangled completely their civil law from all their religious precepts in historical times."<sup>31</sup> They confined the divine inspiration of the law to ritual prescriptions. As far as the changeable rules regulating intercourse between individuals in society were concerned, law was conceived as a philosophically discovered system of principles, expressing the nature of things, to which man ought to conform his conduct. This was in addition to the concepts of law as the command of the Roman people, and as the recorded tradition of the ancients. Romans reconciled these different ideas by explaining that the traditions and the actual will of the people merely declared what was in the nature of things as philosophically clarified.<sup>32</sup>

Roman genius for efficient administration became evident in jurisprudence too. It was the need for unification and simplification of legal prescriptions that led to the drawing up of the Roman code of laws, known as the XII Tables of 450 B.C., and the Institutes of Gaius of 160 A.D., which latter was the text-book on Roman Law for students in ancient times. Rome was built upon the idea of a 'republic' and hence both law and custom rested finally on the consent of all, expressed with regard to the former and tacit in the case of the latter. As the famous text of Julian stated,<sup>33</sup> facts may be as good an indication of the popular will as the votes of an assembly. But the Emperor was the symbol of the unity of the people, and what he commanded was the law.<sup>34</sup> The Roman emperors also tried to deify themselves, and they were referred to in the laws as "immortal" and their acts of legislation and codification as "consecration" by their most sacred names, and offence to the emperor was treated as sacrilege, punishable with death. But the law itself was treated as the practical norms for administration, and the distinction was between *fas*, the divine law or ethical precepts and *jus*, the human law properly so called. The Justinian code recognized the divine law as *jus naturale*, common to the whole human race and hence attributed to God the Creator and distinguished it from the positive law, made to govern the conduct of people which can be regu-

31. Boaz Cohen, *Jewish and Roman Law, A Comparative Study* (New York : The Jewish Theol. Sem. of America; 1966), p. 28.

32. Roscoe Pound, *l.c.*, pp. 26-27.

33. *Digest*, 1.3.32.

34. "*Quodcumque igitur imperator statuit... legem esse constant*" (Ulpian. D. 1.4.1), "*magistratum legem esse loquentem*" (Cicero *De Leg.* 3, 2).

larly changed by subsequent legislation or by the common usage of the people (*tacito consensu populi*).<sup>35</sup>

(vii) *Christian Law: Law of the People of God*

The unique and central fact of Christian religious experience was the death and resurrection of Jesus Christ, and that was also the basis of Christian ethic. Through his victory over death Christ was able to pour out his Spirit over men in order to form them into a new human community, the true People of God. Christ did not claim to be a law-giver, but rather the one who came to fulfil the Law of Moses. In that capacity he broke up the racial and geographical restrictions of the Mosaic Law and declared Love to be the basic law that should unite all men into one family, the Church. In this view of the Church, as People called to freedom and fellowship, the vision of justice provided by the Roman Law had a great fascination for Christians. St. Paul summarised all Christian sanctity in justice, the justice by which God made men just, and the justice by which men kept the law of God. The Roman name *ius* was derived from justice, and the famous Roman jurist, Ulpian, calls human legislators and jurists the priests of justice.

Law organized and regulated the life and activities of the People of God, and hence it arose from the very structure of the Church. So Christianity inculcated in its followers a deep respect for all law, both divine and human. It also emphasized that all authority came from God and the divine will was the source of all law. St. Paul himself stresses the point in his Epistle to the Romans: "Since all government comes from God, the civil authorities were appointed by God, and so any one who resists authority is rebelling against God's decision. . . The state is there to serve God for your benefit. If you break the law, however, you may well fear."<sup>36</sup> The *Ecloga*, the code enacted by the Christian emperors Leo and Constantine, in the introduction claims that God as "the master and maker of all things" had in His good pleasure delivered to them the sovereignty over their peoples so that they might establish peace, order and justice, and so they intended to clarify and amend the laws enacted by the former emperors.<sup>37</sup>

St. Thomas Aquinas, who tried to synthesize the Greek idea of rule by reason and the Roman idea of authority in the conception of law, defines law as "a reasonable direction of beings towards the com-

35. *Institutiones*, I, 2, 11.

36. *Rom.*, 13, 1-4.

37. Freshfield Trs. (Cambridge, 1926), pp. 66-70.

mon good, promulgated by the one who is charged with the community."<sup>38</sup> It is the social nature of man that makes human laws necessary,<sup>39</sup> but since "man is not competent to judge of interior movements that are hidden" and yet since interior acts also are needed for the perfection of virtue, divine law also became necessary.<sup>40</sup> But "all laws in so far as they participate in right reason flow from the eternal law,"<sup>41</sup> and he goes on to say: "Human law has the quality of law in so far as it is according to right reason. In so far as it deviates from reason, it is called an unjust law."<sup>42</sup>

### Relation between Religions and Law

From what we have seen about the different conceptions of law in the different religious traditions it can be easily seen that the relation between religions and law is rather ambiguous and ambivalent. This is also an indication of the polarity and tension between organized religion and the civil society in different traditions. But the following points may be noted by way of conclusion without claiming to pass any judgment on them.

1. First of all, in all traditions, except perhaps the Roman, religion sets the pattern for law not only for the internal organization of the religious community and the spiritual guidance of its members, but also for their political organization. State laws in order to be effective should not only be accompanied by external coercion, but also must have obligating power on the consciences of people. Only religion that deals with the ultimate concerns of man and the total meaning of his life can provide the obligating reasons for the laws enacted by the State. Hence the civil society cannot ignore or contradict authentic religious faith of its members in enacting laws. In fact, religious values even in their external and social expression have an authority and value that exceeds the structures of the State.

2. The decisive influence exerted by religion in each tradition in shaping the particular perspective on law is undeniable. In deciding the genius of a tradition its religious culture should be taken into serious consideration. Hinduism which focusses its religious experience on Brahman, the ultimate ground and principle of harmony of the uni-

38. *Summa Theol.*, 1a 2Ac q 90, a 4, c.

39. *Ibid.*, q 72, a 4.

40. *Ibid.*, 91, 4.

41. *Ibid.*, 93, 3 c.

42. *Ibid.*, ad 2m.

verse, thinks of law as the application of the same cosmic *rita* to the affairs of man. Hebrew religious tradition centred in the experience of the Creator and Lord of the universe takes law as His command, and Islam thinks of *Shari'ah* as the translation into human language of God's eternal decrees. Greek religious experience found its focus in the contemplation of the One supreme Good, and for it law is the rational realization of the same Good in the world and in human society.

Only Rome kept its laws separate from religion and conceived them as the expression of the will of the people, embodied in and symbolized by the emperor. Christianity which focussed its religious experience in the Church—the new humanity constituted by the resurrection of Christ—found in the structure of the Roman Law an image of itself, a legal system adapted to express the law of Christ and of God.

These different patterns express the same basic ideas for the rational organization of human life. Hence they are complementary and not mutually exclusive. Still, in borrowing details from each other, and especially in attempting radical revisions and modifications each tradition has to be conscious of its authentic roots and positive values.

3. Religions have to bear a good deal of the responsibility for the conflict that has existed between the religious set up and the political organization in each tradition. Religion, once it had defined the shape of law for society, itself got into the framework of the law and tried to dominate it or to set up a system parallel to that of the State, often appealing to divine authority for doing so. The Brahmins who defined the Hindu *dharma* and the details of its application to human life, also constituted themselves as its guardians. They claimed for themselves the office of ministers of the king and of judges and they pronounced terrible curses on monarchs who refused to abide by their directives. The relation between the priest and the king was compared/ likened to that between husband and wife in the family: the husband has authority, but the wife is in charge of administration of the household; the priest has divine authority, but the king has power and administration. Constant conflict between these two branches of authority was endemic to the Hindu system. In Buddhism, great rulers like Asoka were to a great extent controlled by the religious ideas, though these had a softening effect on their treatment of their subjects. Priesthood and administration in Judaism, though often held by one and the same person, were also often sources of tension and conflict in the people,

The most typical example of this conflict between priesthood and kingship is Christianity, which maintained a sort of political structure parallel to that of the state down the centuries. The early Church for the first three centuries was mostly local and charismatic in character with very little influence in political affairs. The basic problems for it was how to form the people coming from different cultural, religious and racial backgrounds into one community, what role to ascribe to the charismatic community of the local Church to the hierarchical authority deriving from the Apostles, and how to conduct the public worship.<sup>43</sup> But with the Peace of the Church in 312 and the Edict of Milan granting the Church full freedom, it gained a new status in society and a completely new relationship with the State. From the end of the fourth century in the East and the beginning of the fifth century in the West, Bishops' Councils and Synods came to assume the style and power of the Roman senate, and with the definitive victory of the Nicean party at Constantinople in 381 the decrees of councils like that of Nicea came to command a sort of mystical reverence.

Church authority then gradually moved from a predominantly local and charismatically functional modality to a predominantly regional, universal and juridical expression. In theology there was shift from the Oriental and Semitic conception of the Spirit of God as animating all the members of the Church horizontally to a Greek pneumatology with a vertical orientation, thus removing the Spirit from the ground plane of Christian life reserving it almost exclusively for ecclesiastical authority.<sup>44</sup> In the XIII century Pope Innocent III propounded the theory of the two swords in the government of the people, one wielded by the State and the other, the superior one, held by the Church; and some of the Popes did not hesitate to use that sword on recalcitrant rulers who refused to abide by their directives. Later, Cardinal Bellarmine with his theology of the Church as a perfect society parallel to the State, confirmed the political structure of the Church in the West. That is more or less the ecclesiology on which the Code of Canon Law is mostly based. The amount of conflict and tension created in the minds of conscientious Christians by their dual membership in two perfect societies, the Church and the State with conflicting interests, ideologies and legal systems, can only be imagined.

43. David Stanley S.J., "Discerning the Permanent and Transitory: The Experience of the Apostolic Church," *Law for Liberty, The Role of Law in the Church Today* (Baltimore: Helicon, 1967), pp. 19-27.

44. Hamilton Hess, "The Early Expression of Ecclesiastical Authority and Its Development," *Ibid.*, pp. 28-37.

**Conclusion**

On the whole, the role and influence of religion in the understanding and enforcement of human law can never be minimized. In every tradition religion has emphasized the social nature of man and his need for organized collaboration with his fellowmen. It has defined and explained the nature and scope of human laws, and encouraged law-abiding behaviour and orderly life in society, thus reducing to a minimum the need for external coercion. But, when religion sets itself up as a political system parallel to and in conflict with the State it becomes a real obstacle to the peace of mind and truly religious life of the people. In today's world in which the ordinary citizens take an active and responsible role both in their civic and religious life, the dominant role played by a religious or ecclesiastical authority can only be an obstacle to real freedom. Rather than being a source of guidance and service to the people, the religious authority that insists on playing a political role enters into a sterile and frustrating struggle for the irrational loyalty and blind allegiance of its followers. The statement of Lord Acton, "All power corrupts; absolute power absolutely corrupts" was not made about any temporal dictator, but about the ruthless use of ecclesiastical authority.