

ENGLISH SUMMARY

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LAW AND RELIGION

Jean CARBONNIER, <i>Religion, a Basis for Law?</i>	17
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Religion may create rules of law, either through the mediation of moral, or even directly ; it may also send back to the secular powers the burden of lawmaking. But law is still a spontaneous upspring of justice : in this matter, religion is often seen as bringing grace, hope, prophecy.

Armand ABÉCASSIS, <i>Law and religion in the Hebraic society</i>	23
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The relationship between Law and Religion lay on a vision of Man and Humanity. The notion of person was introduced by the Christian and Jew Bible, in replacement to the notion of individual. If the human being is a person, he is unique: every law, every religion is based on the responsibility towards this radical alterity of anyone, that we are to love because he is the image of infinity and able of a responsible interpretation.

Michel HUMBERT, <i>Law and Religion in Ancient Rome</i>	35
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Masters of religion and law, the Pontiffs stamped with a deep similarity the mechanisms of law and of the roman religious spirit. One of the most important consequences of this community of thought is the lack of any rivalling hegemonic claim between law and religion. Law and Religion, in Rome, made an harmonious division of the world between them, without conflicts or overlaps, thus showing an experiment of notable originality.

René Sève, *Christianism and Hellenism* 49

The author attempts to clarify the raising of the modern conception of human law, equality and liberty within the distance differentiating, during the first centuries of the christian area, Christianism from Hellenism.

Jean PASSICOS, *Approachs for an epistemology and for an hermeneutic of canonic law* 65

Canonic Law has its own characteristics which must be taken into account in order to understand it well : written law but not merely written, as varied as it is centralised, enclosed in a complex system of regulations, of spiritual nature and which effectivity is very depending on the circumstances. Its present renewal, in texts as well as in doctrine, stands as a testimony for its validity.

Jorge USCATESCU, *Law and Religion in the Roumanian experiment* 73

The author studies the genesis of traditional Roumanian law from its byzantine sources.

Roger ARNALDEZ, *Muslim Law in the Light of Koranic sciences* 83

Islam calls "Law" any revelation. In the legal meaning of the word, it concerns prescriptions of all orders, revealed through an Envoy (*Rasûl*) and, in this particular sense, the Koran essentially entails three laws: that of Moses, that of Jesus and that of Muhammad. The first two were "abrogated"; the Koranic law is the only one and it will last until the end of times.

But what is precisely this law, in the legal sense of the word, into which Muslims seem to look for the solution to every problem? In fact, the Koran contains only a very limited number of specifically legal verses. Lawyers (*fuquahâ'*) developed a whole right, by founding themselves on the resources of commentaries, on prophetic traditions, on certain reasoning methods, such as analogy. In fact, the specialists of the "principles of law" (*les usûliyyûn*) merely adapted to Islam the rules of law they borrowed to non-muslims systems (roman-byzantine, persian, or even rabbinic laws). To be convinced of this point, it is enough to compare the many titles of the questions dealt with by the works of the great lawyers, to the meager data given by the Koran and the tradition, regarding vocabulary as well as the core of the matter. Therefore, this very process of islamisation allowed the Muslim *fiqh* to constitute itself a past and nowadays, to develop. It seems it is to remain the only one really useful and effective. One may ask how the Islamists, wishing to refer only to Koranic and prophetic data, could legislate for a modern State and solve, by their sole use, without more or less concealed borrowings, all the very complex issues to which our societies are confronted today.

Horst FOLKERS, *Evil contained and arranged freedom in the juridical thoughts of Luther, Hegel and Schelling* 93

I. — Introduction. II. — Law and Charity in Luther's writing on authority. — A. The initial thesis of Luther. — B. Structure and content of the first part of the writing on authorities. — C. The main piece of the treaty and the mirror of the prince to be used by the Christian prince. III. — The consequences of Luther's juridical thought on modern State. — A. Luther's position concerning civil law. — B. Luther's juridical utopia. — C. Luther and the modern concept of the situation of man in society. IV. — How Schelling and Hegel received the lutherian doctrine into their legal thoughts. — A. The hegelian criticism of morality and the relationship he establishes between State and society, under the light of Luther's treaty on authority. — B. Schelling's lutherianism in his last doctrine on State.

Bernard BOURGEOIS, *Law, Religion and Human Rights* 111

The tension shown in 1789 between the assertion of human rights and the religious conscience of existence is strained by the opposition between, on the one hand, the protest style of a humane *declaration* of these rights which moreover is a political declaration, basis for an abstract, universalist legislation and, on the other hand, the preoccupation of religion for the concrete singularity of individuals waiting for their destiny like a divine grace.

Jean-François KERVÉGAN, *Carl Schmitt, a Theologian of Law?* 121

Is Carl Schmitt a "theologian of law"? This self-definition was used for a guideline to many recent interpretations. The author tries to show its limits, on the one hand by distinguishing between the realms of faith and theology, on the other by analysing the antagonism of theology and law in Schmittian works.

Father Bertrand de MARGERIE, *Edith Stein and the State* 129

The author studies here the thought of Blessed Edith Stein on the State, its nature, its mission, its origin, its value and its possible death and resurrection, as we have witnessed in the two cases of Germany and of Israel.

Claude TRESMONTANT, *About some Philosophical and Theological Misunderstandings* 141

I. — Today, the word religion means almost anything, as long as it is related to irrational, pre-logic, neurotic or psychotic thoughts. When the Hebrew monotheism is thumped together with it, it is a way to dishonour it.

II. — The existence of a transcendent, unique and creative God is not a point of belief or faith, in the current meaning of the word. It is a question of intelligence and knowing by reason.

III. — In an unfinished creation, some objective norms are required. These norms are not arbitrary, they do not come from outside by the whim of legislators. They are not *a priori*. They are not repressive. They can be distinguished in the objective experience. They are based on being.

Sergio COTTA, *Law and Religion between "clos" and "ouvert"* 147

The relationship between law and religion is analysed at three levels of analogy, using the Bergsonian criterion of "clos/ouvert". At the first level (factual), the "clos" establishes an analogy between national legal systems and sociological religious communities. At the second level (philosophical), both law as norm theoretically universal, and religion as dependent from a transcendent Principle of universal validity, belong to the "ouvert". The third level considers only the case of Christian religion in which the legal standard of justice is exceeded in love.

Jesús BALLESTEROS, *Taking care of Nature as a juridical and religious requirement. The presence of monotheism in the Declarations of Stockholm and Rio* 155

I. — Anthropology. A. Man as *humus*: depending on nature. Criticism of cartesianism. B. Man as thinking *humus*: requirement of accordance with creation. Criticism of deep ecology. II. — Ethics. A. Defence of human life: rejecting biological equalisation. B. Assisted development. Property as administration. C. Earth is unique: peace between men, preliminary to peace with nature.

Raymond GOY, *The European guarantee of the freedom of religion. Article 9 of the Convention of Rome* 163

Introduction. I. — The guarantee of the freedom of religion. 1. — Guaranteed cases; 2. — The lack of guarantee. II. — The content of the freedom of religion. 1. — The content of the guaranteed rights; 2. — The limits to the guaranteed rights.

Philippe MALAURIE, *Law, Sects and Religion* 211

I. — Sects and religion. II. — Good and evil sects. III. — Definition. IV. Sources of law. V. — Disputed questions. A. Liberty for sects. B. Adoption and child responsibility. C. Ability to receive gifts. VI. — Three conclusions.

- Roland DRAGO, *Secularism, neutrality, freedom?* 221
- The uncertain relationship between freedom and secularism. – A. The lack of adequacy between freedom and secularism. – B. The integration of religious institutions into the state legal system. II. — Neutrality, an active or passive form of secularism and freedom. – A. Reciprocal neutrality of State and Churches. – B. Neutrality and school.

- Jean-Marc TRIGEAUD, *Law and Religion : Final Remarks* 231
- When submitting the relation law/religion to a philosophical approach, the need for a meaning appears, as a “third term”, a factor of *unity* before the plurality of interpretations. This meaning indicates as well a demand for justice. And the compared analysis of the three monotheisms is an occasion to verify its own unity while respecting their variety of orientation.

TEXT

- François GÉNY, *Words of a Nonagenarian concerning the Universe and Human Destiny*..... 245

MISCELLANEOUS STUDIES

- Bruno OPPETIT, *Henri Motulsky and the Philosophy of Law* 251
- Henri Motulsky, author of a book focused on the study of the realisation' modes of law, exceeded the purely technical approach of legal methodology in a constant search for the ends of law. This led him to move on to the field of the philosophy of law and to look for a compromise between formalism and idealism.

- Dominique Terré-Fornacciari, *The Happiness of Tragic* 257
- In this article, Dominique Terré-Fornacciari analyses the process of Nicolas Grimaldi who, in his book *Le Désir et le Temps*, shows how much are consubstantially linked the huge, forever delusive expectancy, that we never cease to put into Time, and our enormous want for happiness and plenitude. This always recurring delusion and this fundamental wish for life made the greatest philosophies, and inspire Nicolas Grimaldi's Philosophy.

- Jean-François PERRIN, *The juridical practice of metaphysical notions* 267

The author intends to identify the *a priori* which conditions the reasoning of law practitioners. The only *a priori* element he seems to have come across during his research is this mental category he calls "free will", i. e. the intuitive feeling of the possibility that behaviour be determined by will. It is this condition that makes it possible to produce the injunctions that inhabit the effective juridical order. This presupposition allows the interplay of argumentation, in the field of social relationships. The system of the effectively applied norms is not necessarily coherent, nor logic. Reason wins over rationality. The search for a usable solution often avoids the stumbling blocks of logic evidence. The dialectic reason, superior to the logic reason, is the only tradition that signs the epistemological specificity of real-life law.

- Florence BURGAT, *Res nullius, the animal is object of appropriation* 279

The appropriation of animal is founded on the definition of man as a "rational animal", that is able of explicitly claiming his rights. This anthropocentrism must be questioned in its pretences and its legitimacy, in order to open the way to a solidarity between man and animal, forgotten by legal rationalism.

- Alain SÉRIAUX, *Contribution to the theory of law : how must the thomist concept of ordinatio be translated ?* 291

The thomist definition of law constitutes one of the most commonplace question of the legal-moral thought. But one of the words of this definition — *ordinatio* — was often very approximately translated into modern language, thereby implying a very fixist perception of law according to saint Thomasius. This short study tries to give its true meaning back to the concept of *ordinatio* and tends to reveal the extremely dynamic nature of the thomist law.

CRITICAL NOTE

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