LAW AND THEOLOGY: A COMPARATIVE ANALYSIS

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INTRODUCTION

Both law and theology are (by)products of human imagination. They materialise our inherent inclination to perceive the world's complexity in normative terms and reshape reality to our liking. Law and theology thus represent clear examples of specific shared knowledge gradually devised to facilitate behavioural and cognitive modifications in human conduct and, consequently, our self-awareness.

The imperative of collaboration at the very beginning of human existence, in relation to factors influencing our survival (e.g., space, climate, nutrients), has undoubtedly forced us to develop a distinctive set of social skills resulting in an intensified usage of signs and symbols (Fuentes 2020, 21). Tomasello argues that symbolic communication, as a rather complex social practice, could only be developed cumulatively, being transferred from one generation to another, based on a *ratchet effect* pattern, where its basic versions had been faithfully taught to offspring and eventually improved by succeeding generations. He finds that this process "requires not only creative invention but also, and just as importantly, a faithful social transmission that can work as a ratchet to prevent slippage backwards" (Tomasello 1999, 5).

This paper follows an assumption that it was these 'signs and symbols' that formed our earliest concepts of both shared cult and

collective order, promoting them into particular social mechanisms by which "*we* regulate *us*" (Serfontein 2021, 6). Human interpersonal relationships within various multilevel structures have been effectively carved from the very beginning of our social history to this very day, predominantly based on our concepts of divinity and justice.

OVERLAPPING FEATURES

There is a long history of relationship between law and theology (Grzenkowitz 2021, 84). An exemplary illustration of somewhat inherent ambiguities in this interdisciplinary connection is almost self-evident in an everlasting latent battle of supremacy between them, emerging from an attempt to secure dominance of one over the other. Even in times of modern secular states, we can find examples of constitutions, legislation, or court practice ensuring preferential treatment for a particular confession[1], as well as theological concepts based on the idea that "Law is the servant of the church."[2] Might it be that these futile power struggles resulted in a notion that both law and theology are "two of the currently least

1 While in this respect one usually calls to mind legal systems based on sharia, there are unequivocal illustrations of similar practice even in societies perceived as Western democratic. For example, according to the Constitution of Norway (Kongeriket Noregs grunnlov) the king has to belong to the Evangelical Lutheran religion (§ 4: Kongen skal alltid vedkjenne seg den evangelisk-lutherske religionen), meaning that the Norwegian sovereign doesn't enjoy the universal human right to change religion, as determined by § 18 of the Universal Declaration of Human Rights, Article 9 of the European Convention of Human Rights, or even § 16 of Constitution of Norway. Similar provision is found in Article 4 of the Swedish Act of Succession (a part of Swedish Constitution), stipulating that the king shall always profess the pure evangelical faith and that princes and princesses of the Royal House shall be brought up in that same faith and within the Realm. Any member of the Royal Family not professing this faith shall be excluded from all rights of succession.

2 Principle 2(1) of *The Principles of Canon Law Common to the Churches of the Anglican Communion* – https://www.anglicancommunion.org/media/124862/AC-Principles-of-Canon-Law.pdf (April 29, 2023).

popular and least esteemed disciplines and professions in Western societies" (Babie 2007, 297), as recently observed by Gordon Preece.

Historical connections

According to one school of thought, legal science can be described as 'secular theology'. In order to understand it properly, one has to analyse it in the light of theological presumptions upon which legal systems have been historically based, even though these ideas do not reflect modern society's paradigms. It is argued that "basic institutions, concepts, and values of Western legal systems have their sources in religious rituals, liturgies, and doctrines of the eleventh and twelfth centuries, reflecting new attitudes toward death, sin, punishment, forgiveness, and salvation, as well as new assumptions concerning the relationship of the divine to the human and of faith to reason" (Berman 1983, 165). The conclusion is that every so often, our laws make no sense because we are trying to analyse them indifferently to their original social context.

An illustrious example in this respect might be the English concept of equity. When faced with the shortcomings of common law courts[3] due to their rigidity, aggrieved subjects of the Crown started petitioning the king as an earthly representative of God's justice and Christian virtues. The king would then transfer these petitions to his Chancellor, also known as the 'Keeper of the King's conscience'. Initially, every Lord Chancellor had been a member of the high clergy until Sir Thomas More (1478–1535) became the first lawyer appointed to this high office.

As ministers of the Roman Catholic church, Chancellors at first did not apply procedural rules used in common law courts. Instead, they resorted to ecclesiastical canon law practice they knew and understood. Hence, equity had originally been shaped in a form

3 The Court of King's Bench, the Court of Common Pleas, and the Court of Exchequer.

that was distinguished from already established methods of court procedure. For example, the Lord Chancellor would personally interrogate the parties of the dispute in question, as well as enact his final decisions alone, without the intervention of a jury or upon implementing various procedural safeguards present in common law courts. As follows, equity became a style of justice based on the inquisitorial system, in contrast to the adversarial one, which is applicable by the common law judiciary (Sütő 2019, 184-185).

Initial procedural and conceptual attachments of equity to theological abstractions and Christian values inevitably resulted in legal remedies substantially different to those available within common law courts. Specific performance orders or injunctions, to name a few, are within the Anglo-American legal system even to this day understood as 'equitable remedies' and, as such, dependant on mechanisms by which equity is implemented, e.g., being discretionary in nature, or applied in accordance with equitable maxims (Sütő 2019, 192-193).

However, despite its historical background, present-day equity should not be misunderstood as a sole incarnation of Christian virtues or theological concepts. The Court of Chancery has gradually moved away from its original 'spontaneous' pursuit of justice, emerging into a complex body of fixed precedents structurally similar to common law. Medieval European civilisation did indeed base its social context on the Christian tradition. However, when faced with Church doctrine fallacies and ethical deficiencies of its dignitaries, Western societies have inevitably departed from this theocratic monopoly[4], progressing from 'an age of faith' to 'an age of reason' (Daghrir 2013, 54).

4 It might be argued, that within the process of secularization, European societies went through similar internal progression they had already experienced in times of Christianization. Though layers of rather subconscious social concepts inherited from pre-Christian period are inevitably to this day present in European societies, suggestion that we cannot clearly perceive the structure of our social fabric without

Supporters of the theory that Western legal tradition, or more precisely common law as such, is closely correlated with Christian theology further note that even the Constitution of the United States "was strongly influenced by the Christian faith of its authors" (Babie 2007, 298). There is no need to dispute that the Founding Fathers adopted a number of concepts formed by devoted Christians, such as John Locke (Wardle 2002, 297). However, with the Age of Enlightenment, the overall understanding of religion, as well as human interaction with the divine, has changed significantly within Western culture. Locke did not only believe that rationality (or the use of understanding) represents our moral duty, rewarding both in this life and the afterlife, thus capacitating us as humans to become as free as any intelligent being can, but as well as that God rewards those who engage in a rational search for the truth, because "God appreciates sincere intellectual endeavour" (Lucci 2021, 29).

John Locke, without any doubt, had a significant influence on Benjamin Franklin (MacIver 1938, 52) and was considered to be "an intellectual godparent of James Madison, the Father of the Constitution" (McDonald 1970, 326). Thomas Jefferson believed Locke to be one of the three greatest men of all time and was even denounced for copy-pasting significant portions of Locke's work into the Declaration of Independence (Doernberg 1985, 65). Acting upon ideas generated within the Age of Reason, the Founding Fathers embraced the concept of a secular state in recognition of an evident social necessity for genuine religious freedoms. Thomas Jefferson pointed out that "our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry" (Jefferson 1779).

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strong reference to the cultural context preceding the spread of Christianity would be a clear overstatement.

There are two provisions within the US Constitution[5] that mark a clear separation between the state and the Church. Article VI, in contrast to a long tradition of associating public office with a given religious affiliation[6], stipulates that no religious test shall ever be required as a qualification to any office or public trust under the United States. In addition, the First Amendment (1791) specifies that Congress shall make no law respecting an establishment of religion or prohibiting its free exercise. Jefferson noted that the intention of this Amendment was to build a wall of separation between Church and state, and prevent any mutual interference (Daghrir 2013, 55).

Undoubtedly, historical connections between law and theology can be described as virtually self-evident, while an interdisciplinary study of the two "might offer insight to one another" (Babie 2007, 299). However, a suggestion that the substance of modern European law lies predominantly in Christian thought, its symbolic or ritual practice, calls for further re-examination.

European legal structures are based on Roman law: it influenced not only our secular but also our ecclesiastical legislation (canon law). There are no real disputes among legal scholars that Roman law had a huge impact on legal systems attributed to mainland Europe (civil law). However, its connections with church law and common law are somewhat more questionable.

Sherman[7] suggests that Roman jurisprudence provided early Christian teachers with "language and modes of thought which were used to express the truths desired to be propagated" and that the early Christian leaders "drew on the storehouse of Roman law

5 The Constitution of the United States was written in 1787, ratified in 1788, and it's in operation since 1789.

6 A concept, as has already been pointed out, even today present in some of Western democracies (Norway, Sweden, Denmark).

7 Charles Phineas Sherman (1874–1962) was a professor of Roman law and canon law at Yale Law School, the College of William and Mary, and the Boston University School of Law.

for linguistic weapons and ethical doctrines" (Sherman 1917, 99). For example, he finds that the concept of Trinity (the Godhead), introduced by Tertullian[8], a lawyer by profession, had its roots in the Roman law concept of *personae* – an idea that an individual, though one unit, may simultaneously act on behalf of different personalities. Lactantius[9], also a former lawyer, in his major work *Institutiones Divinae*[10] tried to explain the mystic relationship between God and Christ based on Roman law liaison between paterfamilias and his son in power (Sherman 1917, 100).[11]

On the other hand, legal scholars have generally contested the idea of any substantial connection between Roman law and the laws of England. Dillon (1894, 22) asserts that "if one cast his eye over the map of the enlightened world, he will find, generically speaking, but two systems of law or jurisprudence – the one of England, the other of Rome." This perception rests on the reasoning that unlike codifications imitating *Corpus Iuris Civilis* and eventually forming the legal landscape of continental Europe, common law has been gradually developed by English judges who, to this day, meticulous-

8 Tertullian (c. 155 – c. 220) was an early Christian apologist, an author covering a considerable number of topics, within more than thirty volumes written in Latin.

9 Lactanius (c. 250 – c. 325) was an early author of Christian apologetics, an advisor of the emperor Constantine the Great.

10 The very title of this work, in itself, corresponds with some of the notable Roman legal texts, such as the *Institutes* of Gaius, or even *Institutiones*, one of the components of Emperor Justinian's *Corpus Iuris Civilis*.

11 In the same passage, Sherman gives an example that Christian ceremony of *baptism* or its *marriage service* were framed upon the Roman pattern of *stipulatio*, a sacred ceremony based on formular questions and answers creating legal bond (*vinculum iuris*) amidst its participants. An argument supporting such an assumption is identified in the mythological nature of *stipulation*: when declaring set verbal formulas to each other, participants of this much more religious than legal ritual were not proclaiming promises to each other, but to an appropriate deity. The party who would breach any of the sacred duties imposed by *stipulatio*, was not offending the promisee, but the deity itself (Sütő 2022, 163).

ly secure and implement the *stare decisis*[12] principle. For example, as early as within the twelfth-century *Granvill treatise*[13] Medieval English contract law is described as "purely Germanic", lacking any substantial Roman influence (Maitland and Pollock 1898, 207-208). One of the possible reasons for English reluctance to Roman law is attributed to the concern of its dignitaries that such practice may also introduce the Roman axiom that the prince is above the law[14], which was considered highly dangerous (Sütő 2019, 6).

Sherman (1914, 328) suggests that the Medieval English hostility towards foreign laws included not only reserves against Roman law, but canon law as well – described as an "ecclesiastical offshoot of Roman law". The arrogance of Catholic clergy led to an impression that both Roman and canon law were instruments devised for the enslavement of the English to popes and emperors. Nonetheless, Sherman finds that the influence of Roman law hasn't been minor in volume. According to his record, wills, successions, obligations, contracts, easements, liens, mortgages, adverse possession, corporations, judgments, evidence – all are examples of Roman law influence on the laws of England. Even the "dearly cherished principle and familiar, the palladium of English liberty" that "every man's house is his castle" was initially proclaimed in the era of the Roman Republic[15] when the barbarians in Britain or Germany had no houses worthy of the name (Sherman 1914, 329).

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12 The common law structure of precedents is based on the concept that a rule or principle set by a judge in an earlier case is binding for equal or subordinate courts in all succeeding cases having similar factual circumstances.

13 *Tractatus de legibus et consuetudinibus regni Angliae*, dated between 1187–1189, assumed to be written by Ranulf de Glanvill (c. 1112 – 1190) the Chief Justiciar of king Henry II, is considered to be the earliest systematic compilation of various aspects within Medieval English law.

14 *Princeps legibus solutus*.

15 Iustiniani Digesta (II, 4, 18): Plerique putaverunt nullum de domo sua in ius vocari licere, quia domus tutissimum cuique refugium atque receptaculum sit, eumque qui inde in ius vocaret vim inferre videri.

In conclusion, it's evident that both law and theology, being the primary conceptual structures of human civilisation, have played an essential role in standardising our shared spirituality (the cult) and community organisation (order). The characteristic of the two disciplines, as abstract and, to an extent, axiological in nature, resulted in various cross-references and inevitable reciprocal influences. Namely, as much as Christianity has shaped European law[16], likewise Christian theology, its beliefs and rituals[17] to this very day reveal diverse connections to various legal concepts. It is important to note that a number of European legal concepts were developed long before Christianity within polytheistic, Roman, even pagan societies, consequently influencing the Christian Church as well.

Corresponding axiological concepts

Law and theology pursue a number of identical social goals like freedom, morality, justice, peace, life, truth, etc. Though there are many values associated with both disciplines, this paper will try to offer a brief outline of possible connections between law and theology concerning only two: justice and morality. Instead of analysing whether two common virtues overlap on an abstract level (e.g., are they intrinsic or extrinsic in nature), the following interpretation is a somewhat simplified overview of the two concepts as they appear within law and theology, with a brief interpretation of a few similarities and differences.

Justice

At the beginning of his leading study on justice, Rawls (1972, 3) finds it to be "the first virtue of social institutions, as truth is of the systems of thought." Throughout human interactions, jus-

16 E.g., *laesio enormis* (Sütő 2022, 69-70), or as mentioned above: equity.

17 E.g., the Godhead (the Holy Trinity), the ceremony of baptism, marriage service (Sherman 1917, 99-100).

tice stands as the ultimate standard of fairness and equality and is a prototype of an ideal form of government. Aristotle points out that justice is perceived as the greatest of virtues, quoting from one of the lost Greek tragedies[18] that "neither evening nor morning star is so wonderful", thus "in justice is every virtue comprehended". Subsequently, he concludes: justice "is complete virtue in its fullest sense because it is the actual exercise of complete virtue" (Aristotle 1999, 73). More than half a millennium later, Saint Augustine raises the famous rhetorical question, "What are states without justice but robber-bands enlarged?"[19]

The connection between law and justice involves several aspects. The primary dilemma within this affiliation is whether justice simply corresponds with existing laws, that is, whatsoever that happens to be enacted by legislation automatically becomes *just* (legal positivism), or is it that even laws themselves are bound by higher principles of justice (natural law). Following this perplexity, Rawls (1972, 350-351) tries to determine if there is a duty to comply with laws that are unjust?[20] He finds that the injustice of a given law is not, in general, a sufficient reason for not adhering to it any more than the legal validity of legislation is a sufficient reason for going along with it. In his view, unjust laws are therefore binding, provided that they do not exceed certain socially recognised limits of injustice.

The need to discern between just and unjust laws along with the complexity of estimating the scope of their binding force based on the extent to which they tamper with the margins of injustice,

18 Euripides' *Melanippe*.

19 Remota itaque iustitia quid sunt regna nisi magna latrocinia? – Avgvstinvs, *De civitate dei contra pagano*, lib. IV, cap. 4; link: https://archive.org/details/decivitatedeilib01augu/mode/2up (May 2, 2023).

20 Similar questions have been often raised through history, from Thomas Aquinas in his *Summa Theologiae*, Henry David Thoreau in *Resistance to Civil Government*, to Martin Luther King Jr. in his open *Letter from Birmingham Jail*.

became exceptionally important following the Third Reich experience. Statutes like the Nuremberg Laws or the introductions of the People's Court (*Volksgerichtshof*), though being enacted in compliance with appropriate legal procedures (*legality*)[21], simultaneously typified absolute contrast to our general perception of justice (*legitimacy*)[22]. Faced with the horrors of WW2, the founders of the United Nations determined to establish an improved international system (one that could "save the succeeding generations from the scourge of war"[23]), deemed it essential to base this upgraded global structure on fundamental human rights – the rights deriving from the dignity and worth of every human being as such.[24]

Legal justice, or the justice of law, is never about an isolated individual – it is interpersonal by nature. For Hart (1994, 159), "the idea of justice is that individuals are entitled in respect of each other to a certain relative position of equality or inequality." What legal justice does, is maintain *balance* and *proportion*. The traditional formula used in that respect is to 'treat like cases alike', as well as to 'treat different cases differently in proportion to their difference'. In its attempt to maintain fairness and equality among people, justice has been recognised both as *distributive* and *compensatory*[25].

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21 The five-article-long Enabling Act of 1933 (Gesetz zur Behebung der Not von Volk und Reich), capacitating the German Cabinet to enact laws without the involvement of the Parliament (Reichstag), often referred to as the beginning of Nazi Germany, was based on Article 48 of the Weimar Constitution. Weimar Constitution (1919) was never officially cancelled by the Third Reich and it technically remained in effect until the end of WW2.

22 Analogous examples being laws and judicial decisions in favour of racial segregation in the United States, or the South African Apartheid.

23 Preamble to the 1945 *United Nations Charter* – https://www.un.org/en/about-us/un-charter/preamble (May 2, 2023).

24 Hence, the entire contemporary international human rights mechanism rests on the idea that each and every individual holds an inherent value: its human dignity.

25 This classification of justice into two major categories originated with Aristoteles. According to him, one kind is justice manifested in distribution of honours, money or other things that are to be divided among men, while the other plays a rectifying part

On an additional, somewhat 'down-to-earth' level, legal justice is evident in the *application* of laws. Magistrates, whose function is to administer law, must do so in a form that guarantees objectivity. Law is applied justly when it is impartially applied to "all those and only those who are alike in having done what the law forbids; no prejudice or interest has deflected the administrator from treating them equally" (Hart 1994, 160). This aspect of legal justice is quite vividly elaborated by Del Vecchio (1923, 448), who stated that "Whoever says justice, says subordination to a hierarchy of values; and nothing is more contrary to such a principle than the arbitrary removal of limits separating permissible from impermissible, virtuous from reprehensible. Nothing, therefore, more disturbs our feeling of justice than the mechanical reconciliation of these opposing terms: such as when we treat in the same way the diligent and the lazy, the valiant and the cowardly, the martyrs and the deserters."[26]

The application of justice, when manifested as the enforcement of laws, reveals dualism in nature: identical legal remedies are in a position to produce both positive and negative outcomes. This potential twofoldness of legal justice implementation resembles Marx's remark on duplicity in the social effects of production. Marx argued that within relations where wealth is produced, misery is also produced; within relations in which there is a development of the productive forces, simultaneously, there is a productive force of repression.[27] Comparable duplexity in the application of justice

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in both voluntary and involuntary transactions between individuals (Aristotle, Nicomachean Ethics 1999, 75).

26 Author's translation from the original: 'Chi dice giustizia, dice subordinazione ad una gerarchia di valori : e nulla è più contrario a un tale principio che l'arbitraria rimozione dei limiti che separano il lecito dall'illecito, il merito dal demerito. Nulla perciò più turba il nostro sentimento della giustizia, che il ragguaglio meccanico di questi termini opposti : come quando si trattano in pari guisa gli alacri e i pigri, i valorosi e i codardi, i martiri e i disertori.'

27 « De jour en jour, il devient donc plus clair que les rapports de production dans lesquels se meut la bourgeoisie n'ont pas un caractère un, un caractère simple, mais

is vividly described by Anatol France (1894, 81), who pointed out that the laws, in their majestic equality, forbid the rich and the poor alike to sleep under the bridges, beg in the streets, and steal bread.[28]

A striking example of duplicity in justice implementation within the theologian context is the experience of the South African apartheid.

The Christian concept of justice is greatly influenced by its doctrine of divine justification. According to the New Testament, the inherently sinful human nature is as such incapable of fulfilling the high standards of God's justice. Hence, human salvation is possible only through redemption – the compensatory death of God's son in lieu of the condemned humanity.

Dietrich Bonhoeffer, a German theologian well known as an anti-Nazi dissident[29], cautions that if exaggerating the gratuitous nature of redemption, Christianity may develop a concept of 'cheap grace'. According to his interpretation, cheap grace "means forgiveness of sins proclaimed as a general truth, the love of God taught as the Christian' conception' of God. An intellectual assent to that idea is held to be of itself sufficient to secure the remission of sins. [...] Cheap grace is grace without discipleship, grace without the cross, grace without Jesus Christ, living and incarnate." (Bonhoeffer 1979, 45, 47). For Volf (2001, 10), cheap grace "designates the readiness

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un caractère de duplicité; que dans les mêmes rapports dans lesquels se produit la richesse la misère se produit aussi; que dans les mêmes rapports dans lesquels il y a développement des forces productives, il y a une force productrice de répression; que ces rapports ne produisent la *richesse bourgeoise*, c'est-à-dire la richesse de la classe bourgeoise, qu'en anéantissant continuellement la richesse des membres intégrants de cette classe et en produisant un prolétariat toujours croissant. » (Marx 1847, 73).

28 « Ils y doivent travailler devant la majestueuse égalité des lois, qui interdit au riche comme au pauvre de coucher sous les ponts, de mendier dans les rues et de voler du pain. » (France 1894, 81).

29 Bonhoeffer was arrested on April 5, 1943, awaiting trial in Tegel Prison. On April 8, 1945 he was sentenced to death by a SS judge Otto Thorbeck in Flossenbürg concentration camp following a drumhead court-martial, within 'proceedings' lacking witnesses, records of proceedings or a defence.

to receive love from God with no sense of obligation toward one's neighbours."

For some authors, the problem of 'gratuitous redemption' has been apparent in the work of the Truth and Reconciliation Commission (TRC), a court-like panel designed as an appeasement mechanism within South African society after apartheid. Inspired by Christian goodwill, TRC invited witnesses who were identified as victims of gross human rights violations to give statements about their experiences, while perpetrators of violence could also give testimony and request amnesty from both civil and criminal prosecution.

Though affirming that Christianity is based on the realisation that God has taken concrete and costly steps towards humanity in order to reconcile all creation to Himself, Maluleke (2008, 684-685) argues that the notion of reconciliation can be and has been grossly misunderstood, misappropriated and softened, and that it appears to have been thoroughly abducted into the discourse of the ruling classes in South Africa during apartheid. According to his record, a more disagreeable concept in this respect has been attributed to the idea of *restitution*. Maluleke notes that a theological approach to restitution differs from its purely legal meaning as a provision of legal remedy to past wrongs. Then he uses a famous African anecdote as an illustration, by which when the white man came to Africa, the African had the land, and the white man had the Bible. The white man told the African, "Close your eyes and let us pray." At the end of the prayer, the white man had the land, and the African had the Bible. In plain English, Christianity in South Africa was used as means for advocating the unjust acquisition of land and a 'mercenary misuse of prayer'.

Actual problems in effectuating purely legal restitution in South Africa, according to Maluleke, may be mitigated by the theological understanding of the same concept. The divergence be-

tween *ideal* and *actual* forms one of the essential questions within theology. "[N]o discipline is more aware of the virtual impossibility of the restorative measures of mere mortals; no discipline fathoms these difficulties better than theology. If anything, theology should be even more sceptical of some of the platitudes not only about reconciliation and restitution but also about human development and nation-building that are part and parcel of the spirit of neo-liberalism." (Maluleke 2008, 685-686).

In his analysis of *Kairos Document*[30], Volf (2001, 11) finds that cheap reconciliation sets' justice' and 'peace' against each other as alternatives. "To pursue cheap reconciliation means to give up on the struggle for freedom, to renounce the pursuit of justice, to put up with oppression." Cheap reconciliation leads to a situation in which Christianity becomes a tool for betraying those suffering injustice and violence. For Volf (2001, 12), such theology is a betrayal of the Christian faith, whose elementary characteristic has to be the struggle against injustice.

It has been argued that the theology of the pro-apartheid Christian churches in South Africa is in many ways affiliated with Nietzsche's concept of master-slave morality (*Herren- und Sklavenmoral*). While slaves based their morality on values such as kindness or empathy, masters' morality is based on values like pride, wealth, or power. According to Nietzsche, the higher value rests in nobility's inclination toward superiority, meaning that if confronted with the wrongdoings of others, the nobles will simply disregard it and act as if nothing has happened.

"An inability to take seriously for any length of time their enemies, their disasters, their misdeeds—that is the sign of the full strong natures who possess a superfluity of moulding plastic force,

30 Kairos Document (1985) was issued by a group of South African theologians as a response to the official apartheid policy trying to find arguments for its course of action in Christianity, advocated by the pro-apartheid churches.

that heals completely and produces forgetfulness: a good example of this in the modern world is Mirabeau, who had no memory for any insults and meannesses which were practised on him, and who was only incapable of forgiving because he forgot. Such a man indeed shakes off with a shrug many a worm which would have buried itself in another; it is only in characters like these that we see the possibility (supposing, of course, that there is such a possibility in the world) of the real 'love of one's enemies'." (Nietzsche 1924, 20-21).

Volf (2001, 14) emphasises that in this passage, Nietzsche deliberately uses Mirabeau as an example because his virtue of not being able to forgive is a result of the fact that he had forgotten. Forgiveness is not a concept that could be regarded as virtuous by Nietzsche because it is strongly connected to justice. Forgiveness is more than simply overcoming anger and resentment.

Unequivocally, pro-apartheid Christian churches, misusing the New Testament concept of forgiveness, promoted social injustice based on a notion that 'the higher way' (the God-like thing to do) is to act as if injustice hasn't even occurred: to simply *forget it* as a Nietzschean equivalent of the scriptural *to forgive*.

Legal concept of justice implementation rests on the notion that laws in their universality can in isolated circumstances lead to results that are profoundly unjust and regrettable. The classic Roman law was known for its strictness and formality in this respect, as illustrated by the famous *dura lex*, *sed lex* maxim. However, a more subtle Greek philosophy offers a somewhat more sophisticated approach. For Aristotle (1999, 89), when law speaks universally, and a case arises which is not covered by the universal statement, then it is right where the legislator fails us and has erred by oversimplicity to correct the omission – to say what the legislator himself would have said had he been present, and would have put into his law, if he had known. This 'corrective' prerogative in relation to unjust laws is even to this day in the dominion of magistrates – jus-

tices who enforce laws are furnished with social trust that they are simultaneously administering justice.

The Christian understanding of justice implementation finds that fairness, equity, balance, or impartiality, though regarded as justice's primary elements, must be extended with fundamental Christian virtues, such as love, forgiveness, mercy, etc. For Jackson (1991, 424), levelling justice solely with fairness is, from the Christian viewpoint, impossible. Though Christians would agree not to force (or even to obligate) others to act on Christian principles, it does not mean that they themselves must act from principles they understand as unchristian. Reducing justice to fairness contradicts Christians' firm conviction that they are bound to promote their neighbours' interests further than any consent to principles of justice flowing from a social contract or mutual benefit. "It is not the hypothesis of contract but the reality of the Kingdom that grounds the treatment of believer and nonbeliever alike. Reasonable self-interest does not merely underdetermine Christian ethics, if given motivational priority, it is antithetical to Christianity's radical universal demand for self-sacrificial love." (Jackson 1991, 434).[31]

Persistent demand for infusing justice with virtues originating in divine mercy (cheap grace) or other axiological concepts present in parts of the Christian Church motivated some theologians who faced grave inhuman atrocities (e.g., Nazi regime, apartheid) to call for its reconsideration. The problem associated with overbur-

31 A striking example of the discrepancy between temporal and divine concepts of interpersonal justice is found in the Parable of the Workers in the Vineyard (Matthew 20:1-16). In contrast to human understanding of just distribution of daily wages among hired workers based on number of hours they were engaged, Jesus advocates that the same daily compensation (one denarius, or one penny – KJV) should be paid to all of them, irrespective whether they were hired in the morning, at the third hour, at the sixth hour, at the ninth hour, or even at the eleventh hour. Landowner's response to the dissatisfied workers that he was not doing them any harm since they were paid according to the initially agreed terms, ends with a rhetorical question, "Is thine eye evil, because I am good?" (vs. 15).

dening the human concept of justice with Christian doctrine is that it may be used as an argument affirming consequences that are extremely unjust and dehumanising. Dietrich Bonhoeffer and the authors of the *Kairos Document* found themselves face to face with brutalities that were, inter alia, being explained in terms of such transcendent justice.

Almost identical outcomes can be detected in societies where legal justice is being administered in connotation with totalitarian political ideologies (communism, fascism). Proclaimed social virtues of such societies infused in legal justice implementation mechanisms amount to similar outcomes in the Medieval Inquisition or the witch trials. In reality, the trial of Dietrich Bonhoeffer is essentially not very different from the trial of Giordano Bruno or the Salem witch trials since all of them are procedural attempts to uphold *the ideal* despite *the actual*, a concept that both theology and law ought to be sceptical about.

A shared factor in misusing the administration of justice by both disciplines is evident in advocating inappropriate scope of discretionary prerogatives[32] available to adjudicating authorities. When the enforcement of laws is based on arbitrary decisions of authorised officials, the final result inevitably leads to gross injustice.

Morality

Another common feature between law and theology is identified in the notion of *morality*. We can argue that in an attempt to define their preferred fashion of conduct, both disciplines at some point contrast their norms with an overall standard of morality. For Tomasello (2016, 129), the most important regulatory devices that shaped modern concepts of morality were law and organised religion.

32 "Is it not lawful for me to do what I will with mine own?" – The Gospel of Matthew 20:15 (KJV).

Though according to Max Weber, "law possesses its own rationality independent of morality" and "any fusion of law and morality threatens the rationality of law and thus the basis of the legitimacy of legal domination" (Habermas 1986, 219), certain legal scholars assume that there is a dual nature in law, and that as such it encompasses both a factual and an ideal dimension. While its factual aspect is usually considered to be set forth in positive law, the ideal scope of law is, by some authors, attributed to moral correctness (Alexy 2019, 42). Such an approach assumes the existence of *objective morality*, a proposition that there are moral standards immanent to human society in general, as opposed to *conventional morality* effectuated differently by various civilisations or communities (Koller 2020, 25).

Kant observed that while legality (*Gesetzmäßigkeit*) denotes acting in accordance with law, morality (*Sittlichkeit*) is an idea of duty arising from law simultaneously forming the substance of such action (Kant 1919, 21). For Hart (1994, 172), "compliance with both legal and moral obligations is regarded not as a matter of praise but as a minimum contribution to social life to be taken as a matter of course." A somewhat analogous interpretation is found in the notion that law fundamentally outlines the minimum of morality. In other words, essential moral norms, those crucial for a given society to withstand or endure, shall ultimately evolve into binding legal ones. As more straightforward, by becoming a part of a given legal system, such norms are then enforced by the state (Lukić 1992, 323).

Morality has traditionally been a topic of interest in two idealistic disciplines: theology and philosophy (ethics). Lukić (1966, 138) notes that these two disciplines do not examine morality based on causal explanation (perceived as an authentic scientific method), but by applying the normative approach. Namely, theology and ethics primarily focus on devising ideal moral norms instead of examining either morality's current status or factors affecting its devel-

opment in a given social context. However, he concludes that both disciplines, at some point, have had to analyse the given, existing morality in their attempt to scrutinise the indisputable dichotomy between morality's idealistic and factual forms.[33]

For Kitcher (2011, 207), authority over ethics cannot be proclaimed by religion, philosophy or any other discipline. Ethics is something that we have worked out together through communication. Post-foundationalist theology accepts a somewhat similar concept, affirming that morality was not bestowed on humanity by 'revelation'. For van Huyssteen, "our moral codes and ethical convictions of what is 'received' is itself an interpretative enterprise shaped experientially through our embeddedness in complex niches of communities and cultures" (2017, 3). In line with this understanding, religion cannot be perceived as a source of human morality, though through history, it has played an important role in defining our moral choices (Serfontein 2021, 6). Van Huyssteen concludes that theological acceptance of the fact that our moral awareness has been formed gradually should not be mistaken as an excuse for moral scepticism or relativism. "On the contrary, each and every one of our beliefs do indeed have a complex causal history, but it would be impossible to conclude from evolutionary, neurological capacities, and from historical, philosophical or broader cultural reasons behind the history of our beliefs and belief-systems, that all our beliefs are unjustified, including also our religious and moral convictions." (Huyssteen 2017, 10).

Traditional Christian theology links morality to Christology. As early as in the writings of the Apostolic fathers[34], unity with

33 Such analysis is performed in order to identify determinant social factors leading to manifested discrepancies between ideal and factual morality. Lukić finds that such analysis, inter alia, formed the inception of sociology of morality as a separate science (Lukić 1966, 138).

34 The term Apostolic fathers is used to describe a group of early Christian theologians who lived in the 1st and 2nd centuries AD. It is assumed that they have personally

Christ was considered to have an impact on every aspect of human life, including one's moral virtues. Ignatius of Antioch[35] taught that a personal relationship with Christ has a moral outcome manifested in qualities such as purity, temperance, or endurance, while union with the Church transpires discipleship reflecting the moral nature of Jesus Christ. Perfect fulfilment of Christian morality is belied to be manifested in martyrdom (Hartog 2019, 12-14).

As shown, law and theology have their respective associations with morality. Both disciplines pursue an identical objective, a shared attempt to coordinate interpersonal relations within a given community adept at securing commendable, as well as functional social life – the teleological common good. However, this common goal is being approached by the two disciplines from somewhat different angles. While law limits itself to the very minimum, the essential margin of morality tolerable by a given society to be enforced by its sovereign institutions, theology attempts to extend the overall assumptions of secular morality with virtues surpassing average social non-Christian standards of interpersonal conduct.

This 'difference in scope' attributed to morality by law and theology does not simultaneously influence the nature of such norms, as perceived by the two disciplines. In contrast to 'plain morality', paraphrasing Hart (1994, 198), both law and theology aim for "*voluntary* cooperation in a *coercive* system". Namely, while 'plain morality' suggests a set of autonomous norms (norms imposed internally by the agent of the action), law and theology try to devise *supra-moral* norms that are heteronomous in nature: norms calling for actions caused by an external dynamism.

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known some of the Twelve Disciples, or were heavily influenced by them.

35 Ἰγνάτιος Ἀντιοχείας (died c. 108/140 AD) also known as Ignatius Theophorus (Ἰγνάτιος ὁ Θεοφόρος) or "God-bearing", due to a legend that he was held by Christ as a baby. Ignatius served as a bishop of Antioch and by believed to die a death as martyr being thrown to the beasts in Rome. His remains were carried back to Antioch.

As already stated, law reshapes non-legal but socially essential moral standards into binding legal norms securing their effectuation through a Weberian state "monopoly of legitimate physical force in the execution of its orders" (Anter 2014, 11). Moral standards devised by theological concepts follow the same pattern, different only in scope and the source of the compelling force. While law imposes the bare minimum of morality, Christian theology demands moral standards higher than the socially recognised average secular. These higher sacred moral requirements are both designed and implemented by realities that are 'not from this world'.

An illustrious example in this respect is McKnight's analysis of the Sermon on the Mount, basing its ethics on a threefold taxonomy: (i) the ethics *from Above*, (ii) the ethics *from Beyond*, and (iii) the ethics *from Below*. Ethics from Above symbolises morality based on commandments (the Torah); ethics from Beyond is found in Christian eschatology (the Last Judgment); while ethics from Below represents morality rooted in Wisdom (Ridlehoover 2020, 270). The heteronomous 'drive' for implementing Christian moral standards based on this interpretation is to be found in God's law, the introduction of the Kingdom of heaven into human reality, and the adherence to how the Scriptures reveal morality – God's wisdom.

A theological approach to morality, both in its post-foundationalist and revelational form, evidently assumes the imperativeness of its norms based on the concept of obedience to the divine will, devising it into a heteronomous notion analogous to the legal concept by which a chosen set of moral standards have evolved into legal ones. In this respect, both disciplines envisage discrepancies between 'plain morality', i.e., moral standards based on an internal human moral compass, and 'supra-morality', or a set of rules that have evolved from 'plain morality'. Also, for both disciplines, this

'supra-morality' is designed and imposed by a given appropriate authority: the kingdoms of this world or the Kingdom above.

LITERARY (RHETORICAL) DISCIPLINES

Internal coherence

Law and theology have one distinct demarcation characteristic in relation to other humanistic disciplines. While anthropology, economics, linguistics, political sciences, or sociology (to name a few) can be perceived as branches of knowledge based on the scientific interpretation of extrinsic *social facts*, i.e., realities within a given society, law and theology methodically study their internal *concepts*, which in order to be effective have to be recognised by an 'in-house' authority. This *mandatory validation factor* of law and theology can be explained by the fact that their object, similarly to mathematics, is not necessarily an external phenomenon.

Parallels between mathematics and theology were identified as early as in schools of ancient Greek philosophers[36] such as Pythagoras, Plato, or Euclid (Bradley 2011, 6-9). Saint Augustine perceived numbers as ideas in the mind of God. These divine ideas are archetypes of singular species or every individual created by God. Hence, everything was created according to its proper model. Since everything was created by God, the models of things, or ideas, cannot subsist anywhere but in the mind of God (Gilson 1960, 80). Also, mathematical truths are eternal – they represent transcendent propositions independent of human minds as their certitude comes from the fact that they originate in God's thoughts. Augus-

36 Greek philosophy included numerology in its interpretations, subsequently dismissed as frivolous. However, numerological parallels between human and divine were to certain extent analysed by Christian Gnostics, Hebrew Cabbalists, even scientists like John Napier, or Isak Newton. Michael Stifel (1487–1567), a German Austinian monk who sided with Luther in Reformation, established correspondences between words and numbers (Bradley 2011, 11).

tine finds that in order for humans, as physical beings, to be able to access truths that are not physical, God has given us a 'mathematical sixth sense' by which basic truths of mathematics are apprehended (Bradley 2011, 9-10).

Works of famous mathematicians such as Copernicus, Kepler, Newton, Leibniz, Pascal, or George Berkeley influenced prominent figures within the Enlightenment period whose desire was for human affairs to be guided by rationality rather than faith, superstition, or revelation. Enlightenment thinkers[37] were inspired by a belief in the power of human reason to change society and liberate the individual from the restraints of custom or arbitrary authority." (Outram 1995, 3). Consequently, their prevailing religious affiliation became *deism*[38] where supernatural revelation has been replaced by a *natural* one, meaning that the processes of nature encompass all religious truths and ethical principles humans ought to live by, including everything needed for salvation (Bonoan 1992, 53). For deists, "God does not intervene with the operations of the natural world, but allows it to function according to laws of nature that God created." (Bradley 2011, 18). Hence, reason is the path to knowledge of God, not revelation or miracles.

Law and theology, to an extent, share certain common features with mathematics. Their resemblance rests on mathematics being a system "whose epistemological foundation is the coherence of the system itself, and thus a mathematical statement is valid if it contains no internal contradictions." (Samuel 2022, 15). In any of these disciplines, the physical universe is not always regarded as an appropriate criterion with respect to their theories. In mathematics, as well as in law and theology, it is not easy to say why the

37 In France – Voltaire, Diderot; in Great Britain – Hobbes, Hume; in the United States – Franklin, Jefferson, Paine.

38 Deism is a concept where religious belief is limited to the existence of God and the immortality of the soul, religious practices to moral behaviour, with the role of the Church to secure moral guides in lives of its believers.

physical universe should be the final arbiter of 'reality' (Puddefoot and Fernandez 2005, 1010).

Law and theology are disciplines with precisely defined internal structures. They have developed an internal hierarchy of premises, of which each and every one is valid only if it concords with the structure as a whole. In law, a county court judgment has to accord with the entire legal system in which it has been issued. This means that it should reflect 'law' as specified in existing judgments of superior courts (appellate, supreme court), applicable statutory instruments, legislation, constitutional framework, and to an extent, relevant rules, norms or standards of international law. Should a judgment contradict any of the components within a given structure known as jurisdiction, it can be annulled, declared void, and as such, removed from the legal system. In other words, that judgment is considered as if it had never been a part of 'law', regardless of the fact that it has been present in a given legal system for a given period. Ergo, a judgment's validity does not depend on its accord with physical reality or the society in which it was issued. Its validity rests solely on its compliance with the legal system as a coherent system to which it belongs.

Similar arguments can be raised with respect to theology and mathematics as well. As it happens, each of the three disciplines apparently allows the existence of one truth alone. "In mathematics, what is a truth for one person must be a truth for another." (Puddefoot and Fernandez 2005, 1011). As we have seen, a given 'truth' is verified if it displays conformity with the discipline as a whole. However, the power to authenticate whether truth is valid, that it observes the universal conformity test, rests on an internally formed authority[39], whose findings again are not limited to the 'realities' of the physical world or human society.

39 In law these could be superior, supreme or constitutional courts, parliaments, and in theology synods of bishops, ecumenical councils, etc.

Within a system of thoughts subjected only to an in-house' attestation committee', it is perfectly possible to establish countless internally consistent conceptions, even contrasting ones, with each and every one having the potential of becoming the (official) truth, based only on a 'majority vote'. Without a need for any of these concepts to reflect objective reality in any way, we have found ourselves in a legal situation where the death penalty is either legal or illegal or where one man is entitled to be married to only one or more women, in a somewhat similar fashion as in theological dilemmas whether the Lord's Day is either Saturday or Sunday, as well as whether a monotheistic deity has a form of only one or three simultaneous persons. As long as there is an internally coherent and logical system approved by a given authority, both jurists and theologians acknowledge such structures as accurate and authentic without any necessary reference to the 'outside world' or the realities of humanity. Similarly, the validity of a famous mathematical theorem that the angle sum of a triangle must be 180° depends whether calculations are being made with reference to Euclidian or non-Euclidian geometry (Gray 1979, 238).

The possibility to devise countless variations of 'consistent truths' within these disciplines, inter alia, originate from the inherent ambiguity of ideas they implement. The legal concept of the right to human dignity, the theological notion of salvation, or mathematical root-two decimal, are characterised by a common amphibological texture. This leeway of hermeneutical potential, shadowed by structural detachment from 'human reality', allows these disciplines to utilise various formative patterns and thus create self-sufficient internal 'dogmas'. An illustrious example of such disciplinary overlapping might be found in one of the best-known Can-

tor's[40] statements that his series of transfinite cardinal numbers are "steps to the throne of God" (Tapp 2014, 79).

In order to remedy the essentially cryptic nature of their 'truths', all three disciplines resort to fiction. Legal fictions were present as early as Roman times. A good example would be the *nasciturus* rule[41], stating that a baby in the mother's womb, if subsequently born alive, is regarded as already existing whenever that serves its advantage. Christian Eucharist is based on the idea that bread and wine, while being consecrated before consummation, outline spiritual equivalents of the body and the blood of Christ. The best-known fiction in mathematics is the concept of infinity. The value of fiction in each of these disciplines depends greatly on their usefulness. For Vaihinger (2005, 178), realistic fictions disappear once a desired goal has been reached. According to his example, if the judge uses the fiction of free will, it is only to formulate a sanction. The aim is to pronounce a sanction – the fiction that man (in this case, the criminal) is free of his actions is what enables the judge to achieve this result. Whether the man is free in reality is totally irrelevant.

Narrative structure

The internal coherence of law and theology is based on their narrative structure. Both disciplines can be defined as extensive sets of statements in their substance stories: law is a normative story about justice, and theology is a prophetic story about the divine. This characteristic makes them 'rhetorical' as one of their constant endeavours is to persuade. What law does is accumulate internal

40 Georg Cantor (1845–1918), German mathematician with a considerable influence on defining set theory, one of foundations of mathematics.

41 Iustiniani Digesta (I, 5, 7): Qvi in vtero est, perinde ac si in rebus hvmanis esset cvstoditvr, qvotiens de commodis ipsivs partvs qvaeritvr: qvamqvam alii anteqvam nascatvr neqvaqvam prosit.

arguments that a given set of norms, in their essence, enhances social justice, similar to theologians who constantly claim that the internal logic of their dogmas in itself forms sufficient validation of a given belief.

Thereupon, scholars of both disciplines follow Aristotle's advice: "Rhetoric is useful, first, because truth and justice are naturally stronger than their opposites; so that, when awards are not given duly, truth and justice must have been worsted by their own fault. [...] [O]ne should be able to persuade, just as to reason strictly, on both sides of a question; not with a view to using the twofold power—one must not be the advocate of evil—but in order, first, that we may know the whole state of the case; secondly, that, if anyone else argues dishonestly, we on our part may be able to refute him. Dialectic and Rhetoric, alone among all arts, draw indifferently an affirmative or a negative conclusion: both these arts alike are impartial." (Aristotle 1909, 4).

For Balkin (1996, 214), there is a deep connection between legal reasoning and rhetoric. The key to understanding this connection lies in realising how *topics* assist the reasoning process. Balkin argues that topics are heuristics. They don't just provide a roadmap, or starting point, for discussing problems and resolving difficulties; they are also a method of problem recognition and means of problem-solving. Finally, persuasion and analysis go hand in hand because when we try to justify a particular rule of law to another person, "we must find arguments that justify it, and to do this, we ourselves must analyse the situation and determine the most plausible arguments for and against the position that we are taking." (Balkin 1996, 215).

To a degree, this rather utilitarian approach to legal reasoning follows Holmes' famous claim that "The life of law has not been logic: it has been experience." (Holmes 2011, 5). Chestek (2013, 22) elaborates on the given statement and finds that for Holmes, law is

not simply about rules and logic that are applied neutrally to proven facts. In reality, law is a living system continuously adapting to its environment, ultimately changing society and human experience, and as such, it must adapt as those experiences change over time.

It is almost self-evident that "law endures in the language (speech) alone similarly to parasites that are able to exist only due to the survival of the host in which they have settled" (Sütő 2021, 22). In their analysis of whether law is narrative, Baron and Epstein (1997, 149) assert that focusing on narrative in law allows us to understand how meaning is made in the legal context, i.e., "how narrative conventions regulate the production of meaning in legal contexts". Using a traditional law review article as an example[42], they find that they almost always contain elements that are associated with narrative, that in them, authors resort to formal and rhetorical devices used in any 'storytelling', and finally that a law review article is not just a story about law, but also a story about the authors themselves (Baron and Epstein 1997, 151).

After defining its thesis, authors of law review articles start offering arguments for the point(s) being made. Regardless of whether given arguments are persuasive or not, they resort to the narrative mechanism of 'storytelling'. Further, these articles reflect levels of visibility authors chose to display, usually in correlation to the submission circumstances of the article in question, as well as the scale in which authors prefer to highlight discrepancies between their personal opinions and presented materials. This literary dispute with opposing interpretations is rhetorical in nature, similar to a Russian doll structure, where the largest doll is the narrative, the nugget doll represents the theory of neutral principles,

42 Baron and Epstein examine the narrative nature of law review article using as an example a well-known paper by Herbert Wechsler in *Harvard Law Review* (1959, Vol. 73, No. 1): "Toward Neutral Principles of Constitutional Law".

and the layers between epitomise the stories being used (Baron and Epstein 1997, 151-165).

An attempt to establish 'law' in any given situation is directly connected to establishing pertinent facts as accurately as possible.[43] Accordingly, for legal scholarships, it is as equally vital to discern the 'academic truth' in relation to a given legal concept, or as Herbert Wechsler puts it, "[T]he general purpose of the scholarship is simple: to tell the truth about what law is and should be." (Baron and Epstein 1997, 186-187). Both endeavours involve a clear narrative context, a sequencing development of an account to reach the set objective. Trachtenberg (2006, 4), elaborating on the Hempel tradition[44], finds that though being rejected by many scholars, the general idea "that explanation and prediction are cognate concepts—that to explain an event is to be able to predict, given some general principles and certain particular conditions, that that event would occur—translates into an important point of the method."

Elizabeth Anscombe cautions that narrative explanation leads to intentional explanation, or as she calls is, 'reason-giving' explanation. She finds that such an approach is the opposing model in relation to casual explanation, as it involves the researcher's means-ends reasoning. However, Currie disagrees with this notion, claiming that narrative explanations can be causal as well, pointing out that "there are plenty of explanations which have narrative features—even within history—that are not 'reason-giving' in Anscombe's sense" (Currie 2019, 53).

The connection between narrative explanation and theology is, to an extent, much more apparent. An obvious example in this respect is Jesus' parables, simple and catchy stories recorded in the Synoptic Gospels, conveying deeper meanings of his teachings. For

43 Da mihi factvm, dabo tibi ius.

44 A theory of historical explanation defined by Carl Hempel, published in his article "The Function of General Laws in History," *Journal of Philosophy* Vol. 39 Issue 2 (1942).

Hultgren (2002, 10), the parables of Jesus are thoroughly theological, though they do not get into an abstract discussion about God. Their common characteristic is depicting the divine in the sense of God's intimacy and familiarity by using simple metaphors: father, king, shepherd, the owner of a vineyard, or a woman who sweeps her house.

Wisse (2005, 237) argues that developments in theology in the second half of the 20th century led to a 'narrative turn', an idea that Christian theology's use of the Bible should focus on a narrative representation of the faith rather than on the development of a metaphysical system based on logical inferences of the revelation. Kuitert (1993, 286) argues, "We needn't read the Bible for morality: we read it for the story that bit by bit shows us the face of the God to whom we can say *You*."

Theology in itself can be defined as a creative process of discerning infinite truths emerging from 'revelation'. When based on narrative representations of faith, theology finds itself dealing with, inter alia, metaphors and plots (Ricœur's key feature of narrative) having an internal capacity to create new complex meanings in discourses since "metaphors are ways of portraying reality in concepts, images and symbols" (Olds 1992, 55). This 'added value' of narrative theology is in close connection with Ricœur's notion that "[t]he basic condition of creativity is the intrinsic polysemy of words that is the feature by which words in natural languages have more than one meaning" (Ricœur 1981, 11). Namely, within the narrative lies a semantic innovation emerging from inventing synthesis in a plot; the plot then brings the narrative close to metaphors (Dau 2014, 115).

One of the major concerns among theologians is the problem of reference in narrative. Wisse (2005, 238-239) offers two examples of defences to the referential nature of the narrative. The first is the dichotomy between reading Scripture as a literary text and reading the Bible as a report of historical events, addressed

by Henry Jansen. Though the historical context is necessary for a proper understanding of literary texts, it is not equally crucial to interpreting all genres of texts. Even within genres themselves (e.g., novels), the importance of the historical background is not always equally important: a historical novel bears a closer relation to the past than a purely fictional one, which may involve the invention of a fantasy world quite unconnected with reality. In connection to the referential nature of the gospels, Jansen argues that they present themselves as history writing, meaning that we cannot understand them apart from their historical context. The events are the subject matter they seek to convey (Jansen 1999, 28-30).

The second example is Francis Watson's reference to the ongoing discussions in historiography, where it is now widely accepted that historiography is neither merely a neutral description of the facts nor purely arbitrary fantasy. In its attempt to bring order to the data it describes, historiography is always basically a sequential narration taking the form of a literary structure. However, it is rather simplistic to declare that something is historiography purely because it is an objective description of the facts and something a literary work only because it is fiction. Watson links his arguments with Ricœur's analysis of the plot as the key feature of the narrative. Narratives, whether historiographical or not, are always plotted configurations of reality. They present a certain picture of the way the world is, but also a picture of the way the world should become (Watson 1997, 33-70).

In his's analysis of the relation between gospels and the truth, styled: beyond 'cheap inerrancy', Vanhoozer (1995, 99-100) points out differences in approach between Hans Frei and Carl Henry. While for Frei, the biblical narrative itself, and not its propositional paraphrase, is the truth-bearer, Henry argues that doctrines state the meaning of the narratives. In this respect, Frei claims that we only understand the doctrine by understanding the story. Van-

hoozer calls our attention to the fact that while focusing on biblical content, it is possible to overlook the significance of biblical literary *form*. From his perspective, it is just as big a mistake to treat all the Bible as narrative as it is to reduce it all to propositions. "Biblical narrative is a species of theodramatic history: history told with the confessional purpose of highlighting the divine word and the divine deed." (Vanhoozer 1995, 105).

As hermeneutics is founded on interpretation rather than explanation, the narrative structure of law and theology allows both disciplines to develop internal 'realities' that are not just ambiguous but purely fictional as well – concepts utterly detached from the actuality of the world in which they appear. Both disciplines seem to assert the reality of social facts that exist independently from humans themselves (the notion of natural justice or the Promised Land). In order to conserve such internal 'truths', law and theology resort to written text as ideal mediums for establishing *canons*.

The canonisation of selected literal outputs (the Holy Scripture, the Acts of Parliament) has proven itself to be a matchless tool in securing the Ratchet effect for transferring idealistic concepts from one generation to another, in line with Tomasello's (1999, 5) metaphor as to the evolution of culture. If notions *state* and *Church* are to be considered analogous with the term *society*, we could cite Foucault (1981, 52), who found that "in every society, the production of discourse is at once controlled, selected, organised, and redistributed by a certain number of procedures whose role is to ward off its powers and dangers, to gain mastery over its chance events, to evade its ponderous, formidable materiality."

Textual disciplines

Law and theology revolve around given *texts* to which they attribute certain qualities, essential virtues advancing them as genuinely distinct from any other written content or literary arrange-

ment. In both disciplines, the verification process of specific texts being elevated to the status of 'canonical' is bestowed upon internally designed appropriate authorities.

In modern societies, legal norms as elementary components within the textual structure earlier referred to as 'canons in law', in both civil and common law traditions, are defined in the course of interaction between particularly selected agents. In mainland Europe, this social dialogue is accomplished exclusively in national parliaments, amid its members, while in common law jurisdictions, norms that are qualified to be enforced by states can be defined by justices as well. Such judicial precedents are specified by senior judges who are in a position to formulate law after adversarial interaction has taken place between parties of a given dispute as a way of its organic development. In both legal families, it is vital that the process of formulating legal norms allows communication of concerns and opposing arguments either by the representatives of the electorate forming the parliamentary minority or acting justices disagreeing with the majority opinion (Sütő 2021, 16-18).

Rančić (2022, 18) points out that the concept of a 'canon' as a tangible form of chosen texts had been introduced within the Judaeo-Christian sacral tradition with the establishment of writings selected to form the collection of the Old and the New Testaments books. For Scholes (1998, 105) this theological adoption of the word 'canon' occurred when "the rise of the Roman Catholic Church as an institution required a Latin term that could distinguish the accepted or sacred writings from all others". In this respect, a christened version of *canon* emerges on an "idea of regarding literary texts as 'sacred objects'." (Benton 2000, 270). Consequently, all those attempting to subvert and eviscerate the canon are seen not as advancing a different conception of canonicity but as enemies advancing a heretical counter-canon (Aston 2017, 42).

Sanders (1992, 837) specifies that the term *canon* "has come to be used with reference to the corpus of scriptural writings considered authoritative and standard for defining and determining 'orthodox' religious beliefs and practices. Books not considered authoritative or standard are often called 'noncanonical' or 'extracanonical'. Generally speaking, the corpus of authoritative books is called the 'Bible,' although obviously, the Christian Bible (or canon) differs from that of Judaism."

Engaging with texts which are in themselves the very object of the discipline, is very different from how one engages with external phenomena. The latter is involved in a causal exercise where epistemological validity depends principally on the extent to which a scientific assertion, a theory or a model reflects the 'behaviour' of the external phenomenon that forms the object of the science. Attempts to analyse external phenomena are present in both physical and social sciences (Samuel 2022, 20).

Law and theology as purely 'textual disciplines' are compelled to define the way in which they correlate with the notion of factual reality. Mathieu (2014, 177) offers an interpretation based on differences between a map and a territory: a map is not the territory it outlines, just as words are not the real objects they describe. The question emerging from such comprehension is whether there exists a *true* law or a *true* theology? If using a legislative text as an illustration, the inevitable dilemma is whether *true* law occurs only in legislation, in judicial decisions based on legislation, in its dogmatic analysis offered by scholars, or in 'all of the above'? Eventually, Mathieu (2014, 235) observes that the repetition of the same description of law in the discourse of lawyers ends up in creating *the truth*.

Forray and Pimont (2017, 106) note that "law does not have a real existence outside the text." In relation to the map-territory analogy, it seems that Mathieu, Forray and Pimont agree that while

a geographical map tries to reflect the external object (the territory) as faithfully as it can, the discourse on law modifies the object itself: the 'map' becomes the 'territory' (Samuel 2022, 23). For example, the initial classification of Roman law determined that, in general, it deals either with persons, with things or with actions: Omne ius quod utimur, vel ad personas pertinet, vel ad res, vel ad actiones (Stanojević 1990, 45). However, though initially regulating evident realities like 'actual individuals' or 'tangible chattels', Roman law gradually developed *personas* and *res* that are purely fictional, e.g., legal persons (*universitas*) or intangible things (*res incorporales*).

If law and theology as textual disciplines create their own internal realities, substances detached from actual world in which they exist, then the object of their analysis is the reality they have created themselves. Using Mathieu's illustration, if law is to be regarded as a map to justice, or theology a map to the divine, then each of the two disciplines are 'a map of the map' – *mappa mappae* (Samuel 2022, 24). Purely textual disciplines are compelled to focus on hermeneutical examinations rather than casual ones, meaning that they cannot resort to experiments or testing as their source of information. Hence, the hermeneutical nature of both law and theology allows them to offer assumptions derived predominantly from interpretations and not so much from explanations (Samuel 2022, 14). Whereas interpretative statements are to be epistemologically verified exclusively by consensus within the interpretative community, both disciplines seem bound to the realm of hermeneutics, a position indicating that as such they are no longer in the realm of science (Soler 2000, 44-45).

For Samuel (2022, 19) in situations where the object of the discipline is a text, the schemes of intelligibility and the language employed belong to a disciplinary matrix shared by all participants within the discipline, even if there is a plurality of theories and approaches. In relation to law and theology, these shared lexical con-

cepts and ideas emerged long before their written records could be taken. Devised as oral precepts in pre-literal societies, initial concepts of law and theology had unquestionably picked up numerous variables similar to other folk epic narratives (e.g., fables, fairy tales, proverbs, folk songs). Transmitted from one generation to another, standards of shared cult and order presumably took the form of oral poetry, similar to non-literate personal meditative verses of contemporary Eskimo or Maori poets (Finnegan 2017, 3).

The oral transfer of narrative concerning law and theology was connected with their ritualistic implementation exercised in the form of locked phrases, even mantras whose verbal accuracy was believed to have a decisive influence on the validity of the act itself. A good example in this respect is Roman *stipulatio* – an oral agreement creating obligation based on the reciprocal exchange of ritual phrases. *Stipulatio* starts with a question, 'Do you promise?', using the appropriate Latin form of the verb spondere, and the obligatory answer, 'I promise! – *Spondeo*!'. Watson (1984, 4) confirms that if an agreement was not cast in the prescribed form, regardless of how serious the intention of the parties or how important the subject matter of the transaction had been, there was no contractual obligation and no right to any disappointed party to bring a contractual action.

Narrative discourse in law and theology had a clear utilitarian bearing. Its function was (or more precisely has always been) not principally to inform but rather to oblige: to impose a certain way of conduct on an individual or a group. In this way, improvements in narratives of both social rule and shared cult were focused on promoting effects given phrases or expressions carry with respect to the desired social outcomes. The crystallisation process of prescripts defined by both disciplines in the form of customs and rites finally emerged with the possibility of their written record. There-

upon, an immeasurable army of legal and sacred scribes produced numerous manuscripts and their hand-written copies.

The invention of the movable-type printing press in the 15th century had an enormous impact on humanity as a whole. The distribution of ideas and the mass spread of printed materials allowed the circulation of information like never before in our history. Nonetheless, the 'Gutenberg effect' in relation to law and theology has not been limited only to enhanced possibilities of disseminating 'fresh revelations' or promulgating 'new laws'. The canonical character of internally defined 'sacred writings' in both disciplines urged for a medium befitting for their solidification: enactment in formulations that are both fixed and final. Hence, as soon as *narratives* have been transformed into *scriptures*, law and theology were in a position to develop more coherent and more 'rational' interpretations of their dogmas, rules and prescripts.

A good example of the importance that printed matter plays for both disciplines is the 16th-century Reformation in Slovenia. A prominent figure in introducing the Lutheran faith into Slovenian lands was Primož Trubar, a former Roman Catholic priest who embraced Reformation. Today, he is respected not only as a distinguished religious leader but much more as the 'Father of Slovenian literature', since he was not only the author of the first book of all Slovenian literature but also the developer of its modern alphabet and consistent orthography (Cooper 1985, 45).

The first book Trubar published in 1550 or 1551 had a longer German title[45] and a short subtitle in Slovenian: *Anu kratku Poduuzhene skaterim vsaki zhlouik more vnebu pryt* – A Short Lesson by which Every Person Can Reach Heaven (Cooper 1985, 39). As a de-

45 *Catechismus in der Windischenn Sprach, sambt einer kürtzen Ausslegung in gesang weiss. Item die Litanai vnd ein Predig vom rechten Glauben, gestelt, durch Philopatridum Illiricum* – Catechism in Slovenian Language with Brief Explanations in Hymns. Also a Prayer and a Sermon on the True Faith, by a Patriot of Illyricum.

voted preacher, he wrote and translated into Slovenian many Protestant books, with the Crown of his work being the translation and printing of the New Testament in Slovenian in 1582 (Cooper 1985, 45). However, Trubar understood that the development of a young and still fragile Protestant church in Slovenia, faced with a deep-seated aversion to Catholic Habsburgs, necessitates a clear internal regulatory framework, one that would not only define in-house clerical relations but as well the communal life of the Church and its public schools. With this in mind, Trubar wrote the Church Order of 1565 (*Cerkovna ordninga*), as the first internal rulebook of Slovenian Lutheran Church, as well as the first legal document enacted in Slovenian.

Interestingly enough, the Habsburgs, though strongly disproving Reformation in their crown lands, were, to an extent tolerant with preachers of the new faith, allowing them to practice their beliefs in public, as well as to establish their own congregations. However, a manoeuvre that provoked their quite determined opposition was printing the 1565 Church Order and its attempted distribution in Slovenian lands. After being printed in Germany, 300 copies of the Church Order were dispatched to Ljubljana and 100 copies to Carinthia and Styria. When Charles II, the Archduke of Austria (1540-1590) had learned about the Slovenian Church Order, he immediately ordered Trubar's permanent exile from his lands, as well as confiscation of all of the available copies of his rulebook (Rupel 1960, 220). It could be argued that though being firmly against the new faith, the Archduke had been very much aware that he could not successfully barricade the spreading of the new faith across his crown lands and that the best thing he could do was to constrain its pulpits to previously defined areas. However, a development he could not possibly allow was an enactment of the internal normative structure of the young Slovenian Lutheran church. Namely, just this one normative document seemed sufficient enough to trans-

form a loose faith movement into a coherent structural religious organisation than all of its religious writings. Such advancement was not to be tolerable under any circumstances.

CONCLUSION

Developments in human understanding of the natural world have brought about demystification in many areas of our lives, generating significant changes in both law and theology, two of the – or perhaps *the* – oldest of social disciplines. Hopefully, the legal prosecution of Galileo Galilei[46], the exclusion of 'illegitimate children' from the inheritance, or prohibiting women from filing for divorce[47] are all things of the past (unfortunately, along with giving up your tram seat to an older person). Nonetheless, foregoing jurists and theologians still have much to say to their colleagues in the 21st century.

The previous remark seems quite important, considering that both law and theology occasionally appear to behave as if they have no history at all. Soviet jurists were well known for operating just as there was no Russian law prior to 1917, resembling some Protestant theologians who categorically even today want nothing to do with Roman Catholic doctrine, though the two are exceedingly identical.

This paper presented some aspects of historical interactions between law and theology, along with a few of their common features, like the pursuit of analogous axiological values as well as

46 Soviet and Russian poet Yevgeny Yevtushenko (1933–2017) perceptively cations the academic community that "There was a scientist, a peer of Galileo, who was no dummier than him – the peer knew as well that the Earth spinns; yet the peer had a family to feed."

Учёный, сверстник Галилея,
был Галилея не глупее.
Он знал, что вертится земля,
но у него была семья. – Е.А. Евтушенко: «Карьера»

47 However, controversies about prohibiting women the right to abortion are present even today.

their predominantly textual nature. In order to avoid unnecessary repetition or overemphasising features that are rather self-evident, the conclusion will highlight one common aspect of both law and theology that seems quite important in their dogmatic, but to a greater extent in their operational facet. The biggest danger behind self-sufficient realities based on contemplative validation of pre-defined narratives is the prospect of losing connection with the 'realities of this world', or even defining them as heretical or enemylike. Examples of such issues might be the question of abortion, capital punishment, euthanasia, same-sex marriages, polygamy, or even the wearing of a burqa. Interestingly enough, all of the suggested examples are well-known as controversies generating social debate based on legal-religious disputes. This paper argues that these questions are purely ideological in nature and that human society should avoid enforcing any of the alternative concepts keeping in mind that such practice could lead to gross inhumanity.

Situations in which invocations to effectuate state's 'monopoly of legitimate physical force' based on ideological considerations have never in the course of human history brought freedom, respect for human dignity, or elimination of discrimination. Should one take into account only the 20th-century experience, episodes like the Nurnberg laws, South African apartheid, Gandhi-led opposition to British colonial rule, or racial segregation in the United States are all vivid examples of 'Christianity taking legal action'.

Naturally, no one is allowed to impede church doctrine or deprive Christianity of its ideals. However, church doctrines should not enjoy legal enforcement by secular states only on the account that they represent Christian virtues. Should that be the case, present-day courts of law would not be very different from the Medieval Inquisition, Salem witch trials, Nazi People's Court, or any other 'people's court' in Stalin's Soviet Russia. I dare to argue that depriving women of their right to abortion is just a step away from

restricting their right to file for a divorce, to own real property, to vote in general elections, or finally to obtain university degrees. We should never forget that these limitations of the legal position of women in Europe were and, to an extent, still are examples of genuine Christianity.

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