

LAW, REASON, AND RELIGION

A Study of Selected Aspects of the Relationship Between Law
and Christian Theology

by

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CONTENTS

	Introduction: Method and Purpose	1
1	The Concept of Law	10
2	Law and Faith	22
3	Natural Law	40
4	Evidence and Belief	59
5	Legal Reasoning and Theological Discourse	76
	Conclusion	93

ABBREVIATIONS

A. C.	Appeal Cases (England)
A. D.	Appellate Division (South Africa)
C. L. J.	Cambridge Law Journal
L. Q. R.	Law Quarterly Review
N. E. B.	New English Bible
R. S. V.	Revised Standard Version
S. A. L. R.	South African Law Reports
S. J. T.	Scottish Journal of Theology

INTRODUCTION: METHOD AND PURPOSE

One cannot say what meaning the theologian ordinarily gives to 'law' as a secular term. No doubt he would claim to give it a 'plain, unambiguous meaning' such as 'a rule of conduct imposed by society and enforced by sanctions'. Perhaps this will do for ordinary purposes, but there are some who tend to import an emotive meaning into the term. They understand the term 'law' in a pejorative sense as being mechanical and coercive, requiring only literal obedience and therefore opposed to faith which is personal, free, and a response not of obedience but of love. It does not seem to occur to them that the average person freely accepts law as binding, or that sometimes there may be no sanction for not observing a rule of law, or that law is not static but dynamic, constantly changing.

It may be countered that lawyers too import an emotive element into the term 'law'. For example, they frequently couple the words 'law' and 'order', or 'law' and 'justice', and in this way commend law as a good thing which promotes stability and the smooth running of society. Glanville Williams remarks how 'international lawyers saw that the word "law" is not only a symbol for a reference; it also evokes a powerful emotional response. The word "law" stimulates in us the attitude of obedience to authoritative rules that we have come through our upbringing to associate with the idea of municipal law. Change the word for some other and the magic evaporated'.¹

Nevertheless it is important to recognise this emotive element, and for two reasons. First, it is at least possible that the pejorative sense is unjustified and that it therefore distorts the understanding of Christianity. Second, if two people take up different emotional attitudes in an argument then no amount of reasoning will prevail with either. C. L. Stevenson has made this point very clearly. 'If any ethical dispute is rooted in disagreement in belief, it may be settled by reasoning and enquiry..... But if any ethical dispute is not rooted in disagreement in belief, then no reasoned solution of any sort is possible'.² If we are

1 Philosophy, Politics and Society (ed. P. Laslett) p.143
2 Ethics and Language p.138

to endeavour to understand the conceptual meaning of law and perhaps to reach agreement, the emotive element, on both sides, must be reduced to a minimum for it is the source of much prejudice and confusion.

The theologian who understands the term 'law' in a pejorative sense is faced with a dilemma. When he reads his New Testament he finds such expressions as 'the law of Christ', 'the law of liberty', 'the royal law'; he also finds that Christ gave commands, and not only Christ but Paul and other writers. If these phrases are dismissed as metaphor he distorts the word of God, but if they are accepted he destroys the spontaneity and freedom of the Christian life. It is interesting to notice some of the techniques to which he resorts to escape from this dilemma.

A favourite technique is to widen the concept of law. One might, for example, turn to etymology. The biblical meaning of the term 'law', we might be told, is derived from the Hebrew word 'torah' which means 'indication' or 'instruction'. Or one might load the term 'law' with theological content. One might say, for example, that the law of Christ is not a command but an inspiration, not a matter of rules to be obeyed but of burdens to be borne, the burdens of others.³

We are sometimes told that Christianity gave an entirely new meaning to the term 'law'. Christ fulfilled the law, bringing out its true and full meaning. The law of Christ does not prescribe what we must do but what we must be; it is concerned not with outer conduct but with inner motive. It is a mistake, Manson tells us, 'to regard the ethical teaching of Jesus as a "New Law" in the sense of a reformed and simplified exposition of the Old... What Jesus offers in his ethical teaching is not a set of rules of conduct, but a number of illustrations of the way in which a transformed character will express itself in conduct'.⁴ Is it not possible that the ethical teaching of Jesus consists of both rules and illustrations, or that the rules are contained in or expressed under the form of illustrations?

In claiming that Christianity has given an entirely new meaning to a word the theologian lays himself open to the charge of manipulating symbols to suit his own purposes. Is Manson concerned to define the term 'law', or is his purpose

3 See, for example, The Clarendon Bible: Galatians P.131

4 T. W. Manson: The Teaching of Jesus p.331

rather to describe the change in the individual which conversion brings? It would be prudent to heed the warning of James Barr against the belief in the 'language-moulding power of Christianity'. In his view the belief 'commonly depends on a simple and thoughtless transference into the linguistic realm of what is theologically true'. We can indeed speak of an effect of Christianity on language but only if we bear in mind, inter alia, that 'the effect is produced not by the divine or revelatory character of the new religion, but by its existence as a social group with a certain technically.....recognised pre-existent tradition'.⁵

Many other techniques might suggest themselves to an inventive mind. One might say that the law of Christ has the form of law; it is a command and can be expressed in rules as Paul's letters show, but it does not have the content of law. Its content is love and truth. The controversy between Barth and Brunner has shown that the distinction between form and content is obscure and empty, a distinction without a difference. A drastic and despairing resolution of the dilemma would be to reject the term 'law' altogether. With Bultmann in mind, one might declare that law is a meaningless myth since it is objective whereas the essential category for interpreting Christianity is the subjective category of 'encounter'.

If we feel that our resources are running out we may turn to the philosopher for further suggestions. T. E. Jessop, for example, describes the relationship of the Christian to God in legal terms. He speaks of 'sovereignty', 'obedience', 'subjection', and 'the divine jurisdiction'. Yet, he maintains the Christianity is not a religion of law. 'Its Founder did not leave behind a corpus of regulations for the detailed government of either corporate or individual conduct, but instead, reaching down to a deeper level, made the harder requirement of an ever-developing conscience guided by the utterly general principle of "love" and assisted by grace. He believed that mankind had grown up enough to be promoted from the childish following of rigid rules to the intelligent and sensitive application of a principle'.⁶

5 The Semantics of Biblical Language pp.247ff

6 Social Ethics: Christian and Natural p.25

But this is precisely the activity of a lawyer in advising his client and of a judge in deciding a case. Though there are exceptions, we may say that in general a judicial decision formulates a principle and is itself based upon principles formulated in other cases. The judge looks for the ratio decidendi of the case before him and finds it in the material facts of the case together with the general principle applied in earlier cases.⁷

The theologian who understands the term 'law' in a pejorative sense may take refuge in the contention that the dispute concerning the meaning of the term in Christian belief is merely verbal. All definitions have an arbitrary element in them. The lawyer has one definition of law and the theologian another. 'All definitions are essentially ad hoc'.⁸ This is not due merely to lack of clarity or understanding; it is a feature of language in general. Words acquire different meanings in different contexts, and only in a strict technical sphere such as mathematics or formal logic can they have the same meaning for all who use them. As N. E. Christensen puts it, the link between sign and meaning is conventional and arbitrary; 'since clearly any arbitrary sound-and-letter complex intentionally might be produced together with an object, and since meanings are defined, in a sense, by the right productions of this kind they allow, we see how meanings must and can be borne by purely arbitrary complexes'.⁹

Jurists themselves are aware of this arbitrary element. H. E. King asserts that 'the nature of law is a question of classification on grounds of theoretical and practical convenience'.¹⁰ Kantorowicz insisted that the meaning of a term is relative to the particular science in which it is used, and one can ask only what in this particular science ought to be understood by this particular term. The answer has the character of a linguistic recommendation, a simple proposal, and every definition is a stipulative definition.¹¹

7 See Chapter 5 p.84 for further discussion.

8 Ogden and Richards, The Meaning of Meaning, p.111

9 On the Nature of Meanings p.28

10 Professor Hart's Jurisprudence, C.L.J. Nov.1963 p270 at p302

11 H. Kantorowicz, The Definition of Law, p.5ff (ed. A.H. Campbell)

This, remarked Kantorowicz, results in a 'conceptual pragmatism' where the value of a definition is its usefulness.

We may concede that there is no such thing as the concept of law. These arguments, however, do not contend that all definitions are entirely arbitrary, for if they were there would be little communication of thought, less reasoning, and no point in the theologian concerning himself with the juridical meaning of law. The arguments contend only that all definitions have an arbitrary element in them; but although they have a penumbral area of arbitrariness and uncertainty, they are nevertheless anchored in general consensus and have a large area of clear and definite usage. Concepts have a central area of clear and definite meaning; this meaning does remain constant and must do if concepts are to serve a useful purpose in thought and discourse. As M. R. Cohen remarks: 'Concepts are signs.... pointing to invariant relations, i.e. relations which remain identical despite the variations of the material in which they are embodied. Significant concepts, therefore, enable us to arrange in order and hold together diverse phenomena because of some real unity of process or relation which constitutes an element of identity between them'.¹² This is why stipulative definitions which depart from accepted usage must always be justified.

To suppose, therefore, that the dispute over the meaning of the term 'law' is merely verbal is to evade, perhaps even to fail to discern, the matter in issue. An analysis of the concept 'law' will help to clarify its meaning, for the two are closely related; it will also indicate the uses, applications, and limitations of the term. This is not an empty exercise in logic, for the meaning which we give to the term 'law' will affect our interpretation of Christian belief, our worship and prayer, and the expression of our faith in practical conduct. This is especially true of those whose theology lies within the Reformed tradition. As Gerhard Ebeling remarks, 'in the theology of the Reformers the problems all concentrate themselves so much on the concept of law that the whole of theology (in the sense of the essential structure of theology) stands or falls with it'.¹³

12 A Preface to Logic p.71

13 Word and Faith p.254

Let us now consider the question of method. How are we to elucidate the meaning of the term 'law' and the significance of legal argument? Hart reminds his readers of Bentham's warning that legal words demand a special method of elucidation. 'He said that we must never take these words alone, but consider whole sentences in which they play their characteristic role'.¹⁴ Hart therefore prefers to consider concepts rather than words and is reluctant to give definitions. Barr makes a similar point. 'The real communication of religious and theological patterns is by the larger word combinations and not by the lexical units or words.' 'The distinctiveness of Biblical thought and language has to be settled.... by the things the writers say, and not by the things they say them with'.¹⁵ These counsels warn us not to regard a word as having a single, atomic meaning which remains constant in any context. It would be unwise, however, to ignore definitions and meanings of single words. Concepts may be expressed by single words as well as by larger word combinations.

What Hart is doing is to recommend the method of linguistic analysis. Legal concepts are puzzling. It is not merely their place within a category that puzzles us, but their relation to fact and to legal rules. What puzzles us is how these concepts function within a legal system. A definition which merely abstracts legal terms such as 'right' and 'duty' from complete sentences cannot help us for it is only in complete sentences that the function of such terms can be understood. Only in complete sentences can we see how these terms are used to operate with legal rules.

Linguistic analysis attempts to clarify our concepts and beliefs. It draws attention to the many different ways in which words can be used and the varieties of meaning which they can have in different contexts. Misconceptions and confusion can result when these different uses and meanings are not carefully distinguished. Puzzlement arises when conflicting criteria and categories are applied to one concept or belief. The purpose of linguistic analysis is to avoid being misled by language, and to clarify ambiguous statements by sharpening the criteria we use to identify our

14 G. L. A. Hart, Definition and Theory in Jurisprudence, 1954 L.Q.R. pp.37ff

15 Op. cit. p.270

concepts and beliefs and the categories we use to give them expression. Ambiguous statements must be reformulated in such a way that false inferences are not drawn from them and spurious questions are not raised. Linguistic analysis is therefore not concerned with questions of fact or value but with logical problems of the use and meaning of words and concepts.

There are many methods by which linguistic analysis pursues its objects. One method is to consider the logical structure of a concept, comparing it with related and contrasting concepts. Another method is to clarify the criteria by which we identify a concept. A third method is to find a statement whose meaning is clear and which can serve as a model of the puzzling concept. This method has only a limited purpose when applied to Christian theology, for there we are carried forward into a mystery which cannot be fully penetrated or modelled. It may, therefore, be necessary to introduce qualifications which develop the model to meet the Christian situation.

A secular approach to the meaning of the term 'law' may seem a startling method of determining the Biblical meanings of words and ideas. Can we look to jurists and philosophers to elucidate religious ideas? Vidler remarks: 'The use of the word "law" in Christian theology is, or ought to be, primarily determined by its use in the Bible, and not by its use in philosophy, jurisprudence or natural science'.¹⁶ Something must therefore be said in defence of the secular approach.

It does not claim to exhaust the meaning of the term 'law' in the Bible or to confine theological discourse to legal or logical patterns of thought. There may well be spiritual aspects of meaning which neither jurisprudence nor philosophy can comprehend. A second point to bear in mind is that the Christians of New Testament times were by no means unfamiliar with secular law. They had to pay taxes to the Roman emperor. When Jesus said 'Render unto Caesar the things which are Caesar's' he was advising his disciples to submit to Roman law. Many of the early Christians, especially Paul, were acquainted at first hand with Roman criminal law and procedure. When Paul refers to Christians taking their disputes to pagan courts for settlement, he is

referring to secular law. These experiences must have coloured the meaning of the concept of law for the early Christians and therefore, at least to some extent, the meaning of law in the New Testament.¹⁷

Even if no distinction is made between religious and secular duties, even if the law is regarded as being wholly divine (as in the Old Testament) this does not necessarily exclude a secular approach. It may be possible to detect features of secular law even in divine law. David Daube cautiously remarks that perhaps 'a good deal of what is commonly described as the religious character of Biblical law was not from the beginning inherent in that law, but is due to the very special theological tendencies of the authors of the Bible.' He proceeds to illustrate at length 'how we may reconstruct ancient Hebrew law with the help of the sagas and annals preserved in the Bible', and also 'how legal ideas developed into religious ideas under the hands of priests and prophets'.¹⁸

We may remember also, for example, that the Fathers of Nicea were compelled against their will to use such secular terms as οὐσία and ὑπόστασις to define Christian doctrine. The doctrine of the two natures of Christ, and the assertions that the Son is of one substance with the Father and that there are three Persons in the Godhead import the Greek philosophical conceptions of nature, substance, and person. In the present day, Bultmann has used a secular approach, indeed an agnostic philosophy, in his attempt to restate the Gospel message. We may believe that Bultmann had only limited success, but in defending himself against the charge of allowing a secular philosophy to assert an undue influence he made a sound point. When the existentialists describe Being, he remarked, they are only giving a secularised, philosophical version of the New Testament view of human life. Similarly, it may be possible to give a secularised, philosophical version of the New Testament view of law, or at least to illuminate our understanding of the Christian faith by discussing selected aspects of secular law.

17 See A. N. Sherwin-White, Roman Society and Roman Law in the New Testament (The Sarum Lectures, 1960 - 1961)

18 Studies in Biblical Law, pp.2f

Let us conclude this introduction with a brief statement of the objects of this thesis. What is our purpose in discussing the jurisprudential concept of law and the nature of legal reasoning? Certainly not to give a thorough exposition of the structure of a legal system or the function of law, or to trace the historical development of the concept of law to indicate Hebrew or Christian origins or influence. Again, we do not wish to convert Christianity into a legal code or theology into a branch of jurisprudence. Our purpose may be stated concisely under four heads:-

- i) To show how State law and theology are inter-related;
- ii) To use State law as a model instance of the concept of law to clarify the use of that concept in Christian theology;
- iii) To attempt to remove a certain amount of puzzlement and prejudice surrounding the concept of law in the minds of some theologians.
- iv) To suggest some affinities between legal reasoning and theological discourse.

I THE CONCEPT OF LAW

Anyone who has ventured into the labyrinth of legal theory will know that the number of definitions of the term 'law' is legion. This variety is due in part to the element of arbitrariness which we have noticed, but it is also due to the fact that the question 'What is law?' hides a number of different questions which are not always distinguished. What is the function of law? Why do people obey the law? Why ought people to obey the law? What is the formal structure of a legal system? How is the word 'law' commonly used? A topic so diffuse and discursive as law must be approached with caution if we are to avoid confusion and irrelevance. We shall, therefore, begin our examination of the juridical concept of law by concentrating on one focal point, the 'essence' of law. What is the essential criterion by which we identify the concept of law?

At the most general level it may be said that the essential criterion is regularity or uniformity. A law expresses a constant relation, and this enables one to predict what will happen if the facts subsumed under the law should occur. This is patently true of the laws, say, of physics, and it is also true, though to a lesser extent, of the laws of a State. One of the aims of State law, (i.e. law in a modern, democratic State), is to achieve a measure of certainty and uniformity in the behaviour of its members. Thus, if A wishes to sell an article to B, he must make an offer specifying the thing to be sold and the purchase price. If C wishes to execute a will, there are certain formalities which he must observe.

There are, however, important differences between the laws of the sciences and the laws of a modern, democratic State. The main business of State law is to promote justice, order, and prosperity in society. It is concerned more with prescribing how people must behave than with predicting how they will behave. In contrast, it is important to the usefulness of scientific law that it should enable the scientist to make accurate predictions. Again, scientific law has important functions of describing and explaining which are of only secondary importance in State law. Another contrast is between the universality and immutability of scientific law, and the mutability and relativity of State law. State law varies from one State to another. Furthermore, State laws

often have a variable content and imprecise rules, standards, and concepts. Scientific laws have a greater fixity and stability: although they are subject to revision and re-formulation, one may say that they are valid always and everywhere.

If we are to find the essential criterion of State law, we must descend from this general level and seek the fundamental attribute, the specific feature, which makes State law what it is. Is this feature the imperative nature of law, or the sanction imposed when a rule of law is broken, or the obligatory force of legal rules, or is it the existence of specified rules? Each of these views has its supporters.

John Austin, an English jurist who lived from 1790 to 1859, maintained that the essential characteristic of law is its imperative nature. Law, he said, is based upon force, and every law is a form of command. 'If you express or intimate a wish that I shall do or forbear from some act, and if you will visit me with an evil in case I comply not with your wish, the expression or intimation of your wish is a command.... Being liable to evil from you if I comply not with a wish which you signify, I am bound or obliged by your command, or I lie under a duty to obey it.... A law, properly so called, is therefore a command which obliges a person or persons.'¹

There are few today who accept this view without modification. If law is a command, who is the commander? In a modern democratic society it is difficult to determine who is the sovereign who issues the commands. Is it the people, parliament, the ruling party, the party caucus, or the Prime Minister? Must law always be in the form of a command? Perhaps it is imperative not because it is in the form of a command but because it is enforced by sanctions.

Hans Kelsen, a German jurist (b. 1881) remarked that a command by itself may not bind us. 'The command of a bandit to deliver my cash is not binding, even if the bandit actually is able to enforce his will.'² Kelsen maintained that law is an 'external compulsive order' consisting of norms or rules which express the fact that somebody ought to act in a certain way.³ There can be no legal duty unless there is a sanction for its non-performance. A view closely related to this

1 J. Austin, Lectures on Jurisprudence, 12th impression abridged by Robert Campbell 1913, lecture 1 pp. 11-20

2 H. Kelsen, General Theory of Law and State, p. 31

3 Ibid. pp. 35, 110

theory insists that law must be defined in terms of the courts which enable the legal system to function. Law is not a static entity but a functioning system. B. E. King, for example, defines a legal system as 'a system of action centering on a court or system of courts....authorising reactions of such court or courts to human conduct, the regular practice and procedure of hearing disputes displayed by such court or courts, and their regular deference to symbolic guides to action proceeding from certain sources accepted as authoritative.'⁴

These variations on the imperative theory have been criticised. It has been pointed out that some laws are not imperative; so far from compelling one to act, they help one to achieve one's own free intentions. If you wish to marry, or to conclude a contract, or to make a will, the law provides certain formalities to facilitate your doing these things. You are not compelled to do any of them. Again, some laws are observed not from fear of punishment but in prospect of reward; e.g. the laws relating to the administration of an insolvent or deceased estate facilitate the realisation and distribution of the assets and thus hold a prospect of reward for creditors, heirs, and legatees.

The imperative theory, with its variations, overlooks the important part played by consent in any legal system. Customary law, international law, and constitutional law are largely dependent on consent. Even State law ceases to be effective when it is not recognised and accepted by the majority of members or by the most powerful class. Most of us do, in fact, simply accept the law as binding upon us. Sanctions are enforced only against a recalcitrant minority. King himself insists that liberty is the basis of society. The exercise of legal liberty yields satisfaction and provides the dynamic which makes society and its legal system function; 'society depends more on rewards, the mainspring of free action, than on sanctions.'⁵

Another German jurist, Hermann Kantorowicz (1877-1940), wished to include religious laws, primitive laws, and international law in his definition of law. The bases of sanction

4 Professor Hart's Jurisprudence, C.L.J. Nov. 1963 p. 276 at p. 292

5 The Concept of a Lawyer's Jurisprudence, C.L.J. vol. 11 No. 2 1952 p. 229 at p. 238

and command were too narrow for this purpose and he therefore fixed upon obligation as the essential criterion of law.⁶

A rule of law must be recognised as being obligatory. Professor Goodhart has a similar view. He defines law as 'any rule of human conduct which is recognised as being obligatory.'⁷ This is distinguished on the one hand from a purely voluntary obedience where a rule is followed for its own sake, and on the other hand from a command which is obeyed from fear. Rules of law are obeyed not for their own sake or from fear but because they are recognised as being valid.

Finally, there are some who maintain that the basic criterion of law is the rule. There can be no law without rules which state legal relationships and from which certain consequences are drawn. Law cannot be understood at all without the idea of a rule. Professor Hart distinguishes between primary and secondary rules.⁸ Primary rules impose duties by requiring or prohibiting certain actions. Secondary rules are of three kinds: i) rules of recognition which provide criteria for identifying and recognising primary rules; ii) rules of change which empower some individual to repeal or amend primary rules; iii) rules of adjudication which specify procedures for hearing and deciding cases.

What is a rule? This is the crucial question. There is a wide variety of views among legal writers. Kantorowicz insisted that a rule must be 'justiciable', but he did not make clear what he meant by this term. Goodhart has suggested that he meant that a rule must be 'sufficiently precise and defined to furnish a possible basis for decision.'⁹ In contrast, King regards a rule as a symbolic guide to action. 'Anything capable of symbolising a pattern of conduct may be so accepted — words written or spoken, the metaphysical or conceptual content of theories communicated by such words or writing, "types of conduct".... It is not so much, then, that rules are accepted, as that symbols of behaviour are accepted as guides to conduct or as rules.'¹⁰ In Hart's view

6 Op. cit.

7 A. L. Goodhart, English Law and the Moral Law, p. 19

8 H. L. A. Hart, The Concept of Law

9 Kantorowicz, op. cit. p. xxiv

10 C.L.J. Nov. 1963 p. 288

there is a social rule when the behaviour it governs is general (i.e. repeated as often as occasion demands), and when deviations are criticised and conformity is demanded, this criticism and demand being regarded as justified by the very fact of deviation. A social rule is subjected to critical reflection and is regarded as setting a standard to be taught and followed.¹¹

It is clear from this brief survey that 'law' has a complex structure. There are several criteria for identifying the concept. Whether we regard command, sanction, obligation, or the rule as the essential criterion, it would appear that each has some part to play.

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The juridical meaning of the term 'law' may become clearer if we take a broader perspective. Until now we have been concentrating on a narrow focal point of meaning, but let us consider three concepts closely related to the concept of law, viz. the concepts of validity, power, and justice.

Validity is concerned neither with the justness of a law (for a law may be unjust and yet valid)¹² nor with the due enactment of a law by the legislature (for a large body of law is not statutory, and even a statute may be invalid).¹³

Validity raises the question, What is the ultimate authority which gives law its binding force? The question had no difficulties for Austin. For him, the ultimate authority was the Sovereign, and a law was binding because it expressed the will of the Sovereign. Other jurists, however, have found the matter less simple.

Austin has been criticised for committing the naturalistic fallacy. The fallacy consists in deriving an imperative or evaluative statement from a descriptive statement. The fact that somebody commands something is, in itself, no reason why one ought to obey the command. It is an illegitimate inference to derive a must or an ought from an is. 'The reason for the

11 Op. cit. pp. 54ff

12 But see E. Bodenheimer, Jurisprudence, §53 where he considers the validity of unjust law. He suggests that there may be circumstances, e.g. under a tyranny, when the legality of a law may be questioned even if there is no written constitution. This is an exceptional situation which need not concern us here.

13 The High Court of Parliament Act, 1952, passed in South Africa, was declared invalid by the Appellate Division. The case is reported in 1952 S.A.L.R. 769. In English law there is no written constitution and the courts do not have power to set aside legislation as being unconstitutional.

validity of a norm is always a norm, not a fact.¹⁴ Thus, in Kelsen's view, it is a basic norm which constitutes the legal system and confers validity on the whole legal order. This basic norm is presupposed to be valid. We cannot ask what gives validity to the basic norm for it is a logically necessary postulate of the legal system, giving rise to other norms which can be arranged in a hierarchical order.

This account of validity is inadequate for a number of reasons. We may doubt the wisdom of its subservience to the naturalistic fallacy. Once X is accepted as the supreme authority, common sense suggests that he ought to be obeyed. This is true by definition; a supreme authority is one who is recognised as having authority to impose obligations. If I accept X as a supreme authority then I place myself under an obligation to obey him, and if I am under an obligation to obey him then I ought to obey him. Thus an evaluative conclusion can be derived from a descriptive premise stating that I accept X as a supreme authority.

Further criticism suggests itself if we consider Kelsen's basic norm. In most countries this would be the constitution, but what about countries which have no constitution? Some of the primitive tribes of Africa can hardly be said to have a constitution. We cannot point to the chief as the basic norm because he is not a norm but a personal authority. Even in countries which do have a constitution, what is the position if the constitution is overthrown? The laws surely do not cease to be valid in so far as they have not been repealed by the revolutionary group, but what gives them validity? Suppose the exiled government frames a new constitution. This cannot confer validity on acts which the rebels have declared illegal or render invalid acts which they have declared legal. The difficulty is increased if the rebel government enjoys not merely de facto power but de jure recognition in accordance with international law.

These criticisms point to a basic defect in Kelsen's account of validity. It pays no attention to actual social practice. People do not obey the law because they accept the constitution as a logically necessary postulate or an ultimate criterion whose validity cannot be questioned. Professor Goodhart speaks of a 'general law conviction' in society. People accept a rule of law as being valid because

14 Op. cit. pp. 110f

it has been established for a considerable length of time, or because there is an attitude of reverence towards it, or because they realise that it is necessary to the maintenance of civilised society. The most important ground of this general law conviction is a sense of moral obligation.' A rule of law is obeyed, for example, because it is felt to be intrinsically right and just, or because it is important to protect the interest of one's neighbour.¹⁵ Indeed, 'the moral sense is one of the dominant forces not only in establishing the efficiency of law, but also in its very existence.'¹⁶ The search for the ground of validity drives Goodhart to moral law, and the first concept of moral law, he declares, is the expression of the will of God.¹⁷ We may wonder, however, whether a law is rendered invalid merely because it is immoral.

A more thoroughly empirical ground of validity is posited by Professor Hart. 'To say that a given rule is valid is to recognise it as passing all the tests provided by the rule of recognition.'¹⁸ The rules of recognition specify the criteria of validity, but what are these criteria? They may take many forms, and will vary from one system to another. In a parliamentary democracy one criterion is due enactment by parliament, another is judicial decision given in a court of law, and yet another may be custom or common law. Where there are several criteria, one of them is accepted as supreme. The rule of recognition is purely a matter of fact, the actual practice of the courts, officials, and private persons.¹⁹

One may still ask what gives validity to the rule of recognition. Hart replies that the rule is ultimate. What he means is made clearer in an essay entitled 'Legal and Moral Obligation'.²⁰ There are two conditions necessary and sufficient to the establishment of validity: i) the existence of a complex social practice; ii) rules providing for the application of sanctions in the event of disobedience (although it is not necessary that every rule should have a sanction). The complex social practice is composed of three elements: a) obedience to an individual, X; b) general acceptance of X's words as setting a standard of behaviour deviations from

15 Op. cit. pp. 24-27

16 Ibid. p. 28

17 Ibid. p. 31

18 Op. cit. p. 100

19 Ibid. p. 107

20 Essays in Moral Philosophy, p. 82 (ed. A. I. Melden)

which must be criticised; c) reference to X's words as reasons for doing what X says and as justification for coercion applied to those who deviate from the standard.²¹ This is little more than a re-statement of what Hart understands by a 'rule', linked to both the sanction theories of Kelsen and King and to the obligation theories of Kantorowicz and Goodhart. We may still ask for an explanation of the existence of this complex social practice. This is a question that Hart appears to overlook, and which Goodhart attempts to answer.

Finally, let us consider Kantorowicz. He pointed to two grounds of ultimate validity: i) the command of some supreme authority; ii) the dictates of conscience. He classified rules into three classes. 1. Commands: 'rules which are recognised as binding, not on the grounds that their contents are right, but that they originate from the will of a recognised authority, a person whom it is a duty to obey.' 2. Precepts: 'rules which are recognised as binding, not on the ground that they originate from a recognised personal authority, but their contents are recognised by conscience as being of such value that it is our duty to act in accordance with them.' 3. Dogmas: rules which are recognised as binding 'because they are logically implied by other rules the validity of which has already been recognised.' A rule may belong to all three classes at the same time; 'the Ten Commandments for instance are recognised (by most of those who recognise them as rules for their conduct) as originating in the will of the Supreme Authority, as morally good, and as a body consistent in itself (or made to appear consistent by interpretation).'²²

The second concept which we are to consider is that of power. This concept is usually divided by jurists into two parts, public and private. For our purposes it is necessary to consider only public power. This is the coercive force of the State which makes the legal system effective; it operates through legislation, judicial decision, administrative action, fines, imprisonment, etc. If this power is unrestrained it will be arbitrary, but in a parliamentary system there is some check on it. The intricate rules of

21 Ibid. p. 90

22 Op. cit. pp. 30f

parliamentary procedure and debate exercise some control over the legislative process. For example, the stages of first and second reading, committee report, and third reading go far towards ensuring that legislation will not be rushed through without opportunity for consideration and criticism. Judicial decision is controlled by the process of legal reasoning which we shall consider in detail in chapter 5. The executive is subject to review by the courts if it exceeds its authority or acts in bad faith. All three aspects of public power are subject to constitutional safeguards and are also restrained by the Rule of Law which is based upon general principles of justice and natural law. This restraint on the exercise of power contains metaphysical presuppositions, a recognition of ends that transcend the existence of the State, and a respect for the freedom of man.

Finally, we are to consider the concept of justice. This is a large and complex topic. For our present purposes we are concerned only with the juristic notion of justice and not with any idealistic scheme. Our concern is with justice as it is actualised in a legal system.

F. E. Dowrick, in an interesting book, surveys 'the idea of justice which has motivated the English common lawyers in the twentieth century'.²³ He distinguishes seven senses of justice, but of these only three are relevant here since the other four are concerned with ideals. He begins with justice understood as meaning a regular process of adjudication before the established courts of the land. This is not a significant sense, and Dowrick concedes that few 'would go to the extreme of seriously maintaining that justice was done in modern England simply by regular trials in the Royal courts, irrespective of the way the trials were conducted or the doctrines which formed the bases of the judgments.'²⁴

This leads him to the second sense of justice as consisting in a fair trial governed by such familiar maxims as audi alteram partem. Again he concedes that this is generally acknowledged to be an inadequate understanding of legal justice. 'Adjudication should not only be fair', he comments, 'it should be made by judges or juries directing their judgment in accordance with some ascertainable general rules.'²⁵ In a third

23 Justice According to the English Common Lawyers, p. 1

24 Ibid. p. 28

25 Ibid. p. 44f

sense justice is understood by some lawyers as being simply conformity to the established law of the land. Austin, for example, took the law itself as the standard of legal justice. On this view no law could be unjust, and once again Dowrick concedes that the theory is inadequate.

It will help us to clarify the concept of legal justice if we distinguish it from general notions of what is morally good or bad. The concept of legal justice is wider than the concept of moral good. A law may be bad without being unjust; e.g. a law which levies income tax at a higher rate than is strictly necessary to ensure a healthy economy. On the other hand, a law may be good without being just; e.g. a law which restricts immigration to a particular class of persons. Again, the law may impose liability upon a person who is not morally blameworthy. Thus, if an employee, in the course of his duties, negligently causes injury to another, the employer is liable in damages although he may be morally innocent.

These examples point to a formal element in the concept of legal justice.²⁶ It is formal because it remains constant in varying circumstances and is relatively independent of notions of what is morally good or bad. This formal element directs us to treat persons who are in the same category in the same way. If immigration is restricted to skilled artisans, then all skilled artisans must be subject to the same immigration requirements. It would be unjust to admit some who have no immediate prospect of employment while insisting that others must have a firm contract before they can enter the country.

In addition to the formal element there is a second element, a varying criterion. This enables us to apply the formal element to different situations. Thus the criterion of a just wage will vary from one type of employment to another. What is a fair wage for an unskilled labourer may be unfair for a skilled artisan. The standard varies according to our classification of categories. The formal rule directs that all who fall within the same category must have the same minimum wage, but it does not indicate when a person falls within a particular category or how each category is to be treated. In legal justice the variable criterion is provided by a rule of law. A judge, in hearing a case, is supplied with a rule of law which defines the category and also indicates how persons who fall within it are

²⁶ The following account of legal justice owes much to Ch. Perelman's book, The Idea of Justice and the Problem of Argument.

to be treated.

We must not oversimplify the matter. The judge has a problem of classification. He must decide whether the facts of the case before him fall within the category laid down by the law. He may also be confronted with the difficulty of ascertaining the relevant rule of law, and when he has ascertained it he may find that it cannot be precisely formulated. A judge often has considerable latitude in interpreting the law and in imposing sentence. Yet the fact remains that the established rules of law form the basis of legal justice. 'Justice is fidelity to rule, obedience to system.'²⁷ It lacks emotion and spontaneity and is concerned only with strict measurement, calculation, and proportion. Reason, reflection, and impersonal detachment determine the quality of legal justice.

It is a grave mistake to condemn and reject the concept of legal justice. As we shall see in the next chapter, the Christian cannot escape from the formal principle. It is not a defect but an advantage. Since man is and remains a sinner, it is essential that justice administered by men to men should be largely objective and predominantly rational in character. It is also important that justice should be related to the condition and capacities of ordinary men. If it were determined according to an absolute ideal which all men were required to observe, there would be widespread disobedience and anarchy. It is not cynicism but common sense to adapt law and justice to the actual conditions of life. 'In the system of positive law, relative justice is superior to absolute justice because absolute justice would, from the outset, be no more than a fiction, a lie, and an outrage on life.'²⁸ If legal justice is not to remain abstract and ineffective there must be a compromise between the actual and the ideal, and the demands of positive law must express neither the maximum nor the minimum requirement but what is expedient and practical.

At the same time it must be acknowledged that the concept of legal justice has its limitations. Perelman remarks that 'positive law can never enter into conflict with formal justice, seeing that all it does is to establish the categories

²⁷ Perelman, *op. cit.* p. 41

²⁸ E. Bruner, *Justice and the Social Order*, p. 94

of which formal justice speaks, and without whose establishment the administration of justice is quite impossible.²⁹ The rule which establishes the category and directs how those who fall within it are to be treated may itself be unjust. Critics will remark that justice consists not in the correct application of a rule but in the correct application of a just rule. To such critics, says Perelman, we can only reply that there is an element of arbitrariness in justice. The fundamental value of a legal system cannot be subjected to any rational criterion. As we shall see, the theologian might give another answer.

The relevance of this jurisprudence to Christian theology must now be shown, and to this we turn in the next chapter. There we shall enquire what criteria of State law are to be found in the teaching of Scripture, to what extent man's relationship to God falls within the area of law, and how the concepts of validity, power, and justice are applied in the Christian situation. Our examination of the concept of law has indicated that reason occupies an important place. Freedom and not force is the basis of the legal system, and laws must therefore receive the rational assent of men to which they apply. Respect for this freedom leads to checks upon the arbitrary exercise of power and to procedures which encourage rational debate and criticism. Legal justice is an exercise in reason. In chapters 3, 4, and 5 we shall attempt to show the place of reason in religion, and the relationship between law and Christian theology.

29 Op. cit. p. 26

2 LAW AND FAITH

It has become hardened dogma in some quarters to oppose law and Gospel. The Christian, we are told, lives not by law but by love; his actions are not compelled but spontaneous. Legal categories are entirely inappropriate to expound the personal relationship between God and man. Pauline texts lie ready to hand for use as ammunition against any who dare to assert that law is an integral part of the Gospel. There is greater authority even than Paul, for was not Jesus himself opposed to rules and regulations, law and legalism? Our gratitude is due to the Reformers for freeing the Protestant Church from the last vestiges of works righteousness and empty formalism.

There is, however, a growing awareness in less conservative circles that this simple and absolute antithesis between law and Gospel is inadequate to the complexities of Christian life. The Truth is more adequately comprehended in terms of law-and-Gospel than in terms of law or Gospel. There can be no love without law, no Gospel which does not bring both judgment and guidance, no faith without obedience. Moreover the Bible itself employs legal categories to describe the relationship between God and man.

A favourite citation for expressing the absolute opposition between law and Gospel is John 1:17, 'for while the Law was given through Moses, grace and truth came through Jesus Christ.' The clear implication is that grace and truth were unknown to the Israelites, but this interpretation cannot be upheld. Truth, as ultimate reality, was known to the Israelites not as an abstract concept of thought but as a concrete principle of action. Truth was revealed to them in historical events and personal relationships, and particularly in the judgments of God and in his steadfast covenant love. Grace was united to this truth as the gracious approach of God to man to reveal and judge his sin and deliver him from its power.

One of the most important ideas in the Old Testament is that of the Covenant. The establishment of the covenant with Israel is an act of grace by God through which he enters into communion with his people. The terms and conditions of the covenant are determined by God alone; through it he confers

rights upon man and requires obedience from him. Yet the covenant is not imposed upon man but freely accepted by him. We may therefore speak of the covenant as a contract between God and man. Man is absolutely obliged to observe the terms of the covenant, and disobedience is punished by God. Closely related to the covenant is another juridical concept, viz. judgment. Jacques Ellul has drawn attention to this feature. 'The truly striking element in the covenant is the judgment. God judges and manifests his justice, and then he pardons and offers his covenant.'¹ The establishment of a covenant is always preceded by divine judgment condemning man for separating himself from God. Finally, a law is always given with and expressed in the covenant. 'To Adam God gives the law of childbirth, of the alienation between husband and wife, of hard labour, and of death.... To Noah, God gives the law of man's domination over creation, of the prohibition of murder The connection between covenant and law is constantly reaffirmed. "So Joshua made a covenant with the people that day, and made statutes and ordinances for them" (Joshua 24:25)'²

There are other legal strains in the Old Testament. The Decalogue is a code of rules; a law of sacrifice is provided as a means of making atonement to God and maintaining communion with him; emphasis is laid upon the sovereignty of God and the guilt of man. Clearly, the relationship of Israel to God is legal in character. The law was the supreme revelation of God, the conclusive demonstration that he is sovereign and that his commandments are to be obeyed without reserve.

What was Jesus' attitude to the legal element in Judaism? The evidence of the synoptic gospels establishes that he kept the whole Judaic law, both moral and ceremonial. So far was he from having any intention of annulling it that he enforced it with even greater rigour than the Scribes and Pharisees. His respect for the religious and ceremonial law is seen in his regular attendance at the Synagogue on the Sabbath, his celebration of the Passover and observance of the Jewish festivals,³ his meticulous observance of Jewish ceremony at the Last Supper.⁴ Lepers whom he healed were ordered to go

1 The Theological Foundation of Law, p. 51

2 Ibid. p. 54

3 Mk. 1:21, Lk. 4:16, 13:10; Lk. 2:4ff, Mk. 11:1ff

4 See Dom Gregory Dix, The Shape of the Liturgy, pp. 50ff

and show themselves to the priest in accordance with the requirements of the law.⁵ Jesus approved the tithing of mint and dill and cummin by the Pharisees.⁶ Even in dress he wore the prescribed fringes.⁷ Only when there was an unavoidable conflict of laws did he override the ceremonial and religious law in favour of the moral law, but his purpose was to observe τα βαρύτερα του νόμου.⁸ Similarly, when he rejected the oral tradition of the Scribes and Pharisees it was because they used it to evade the rigour of the law.⁹

The moral law was recognised both implicitly and explicitly by Jesus. Implicit recognition is given by his call to repentance,¹⁰ his forgiveness of sinners, and his obedience unto death by which he fulfilled the law and met the requirements for righteousness. Explicit recognition is given on many occasions. He cites the law to settle disputes.¹¹ When rejecting the oral tradition of the Scribes and Pharisees he explicitly accepts the validity of the Decalogue.¹² On the subject of divorce he was stricter even than the Pharisees.¹³ The whole Sermon on the Mount is a categorical demand for radical obedience. The principle of obedience is cardinal in the teaching of Jesus, and he developed it to its ultimate conclusion,¹⁴ setting up 'a standard of obedience to God every whit as rigorous as the most rigorous exposition of the Law.'¹⁵

This evidence justifies the conclusion that for Jesus the law of Judaism is a revelation of the will of God. Law is an essential element in man's relationship to God. Its principle

5 Lk. 5:14, 17:14

6 Matt. 23:23

7 Matt. 9:20, 14:36, Mk. 6:56, Lk. 8:44

8 Matt. 23:23

9 Matt. 15:1-20, Mk. 7:1-23 esp. vv. 11-13

10 Matt. 4:17, Mk. 1:15

11 Matt. 22:34-40, Mk. 12:28-34, Lk. 10:25-28

12 Mk. 7:9,10

13 Matt. 5:32, 19:9, Mk. 10:11,12, Lk. 16:18

14 E.g. Matt. 6:10, Mk. 8:34f, Lk. 17:10, 18:22

15 T. W. Manson, op. cit. p. 200

of obedience to God's sovereign will is eternally valid. Jesus strengthens and deepens the Judaic law so that a higher righteousness might be established, the righteousness of the Kingdom of God. He thus carries the law to its τέλος, its final goal. If it is objected that Jesus left no code of rules and created no legal system, we must agree. Brunner is right in remarking on the unsystematic nature of Jesus' teaching. But he is wrong in supposing that it is not legal in character, that it contains no rules of law, and that law precludes 'the sense of responsibility for decision'.¹⁶ All the essential elements of law are present in the teaching of Jesus. There are commands, sanctions (judgment and punishment), rules, and a sense of obligation among those who accept his teaching. To these must be added his recognition of the sovereignty of God and the absolute duty of obedience.

A reason frequently given for denying the legal character of Jesus' teaching is the insistence that it contains no rules. Brunner, for example, maintains that his teaching contains only 'God-given paradigms of love'.¹⁷ This objection cannot be sustained. All the criteria of a rule are present. Jesus' teaching is regarded as setting a standard to be taught and followed; the behaviour it governs is general (i.e. it can be repeated as often as occasion demands); deviations are criticised and conformity is demanded; and this criticism and demand are regarded as being justified by the very fact of deviation. Sometimes the rules are clearly stated,¹⁸ sometimes they are expressed in the form of symbolic guides to action (as in many parables). Often they have an open texture and express general principles which require a 'sense of responsibility for decision' (as in the Sermon on the Mount).

There is less mention of law in the gospel of John than in the synoptic gospels, yet there is a clear perception of the connection between law and Gospel (despite 1:17). The law and the prophets bear witness to Jesus,¹⁹ he himself admits the validity of the Judaic law.²⁰ He gives commandments to

¹⁶ The Divine Imperative, p. 136

¹⁷ Ibid. p. 135

¹⁸ E.g. Matt. 28:19, Mk. 8:34

¹⁹ 1:45, 5:39

²⁰ 8:17, 10:34ff, 12:34, 15:25

his disciples.²¹ As Gutbrod puts it: 'Genuine faith with regard to Moses and with regard to the law, genuine listening to this revelation, must lead to the acknowledgment of Jesus. So rejection of Jesus is at the same time rejection of the revelation of the law.'²²

Paul's antipathy towards the law, his theme of *χωρὶς νόμου*, is well-known. He rejects it because 'no man is ever justified by doing what the law demands, but only through faith in Christ Jesus.'²³ This position is unassailable and it is not our intention to challenge it. There is an aspect of Paul's teaching, however, that tends to be overlooked. Whatever its effects upon man and sin, Paul held that the law is spiritual, 'in itself holy', 'just and good'.²⁴ Ebeling remarks 'that Paul never sets *νόμος* and *εὐαγγέλιον* directly over against each other or applies them as a dialectical formula in the manner of the reformed usage familiar to us.'²⁵ He had no intention of overthrowing the law. 'On the contrary, we uphold the law.'²⁶

Paul uses *νόμος* predominantly as a proper name and not as a generic term. He uses it to refer to the Torah, or the Mosaic law, or the Old Testament revelation as a whole. Nevertheless his letters do employ a concept of law and obligation, and often his use of *νόμος* carries a general sense. He taught very clearly that law is necessary to impose order on the Christian community and to guide it in the practical activities of life. The law has just requirements which must be satisfied.²⁷ Thus he cites law from the Old Testament to establish and support moral principles,²⁸ and mentions commands of the Lord which must be obeyed.²⁹ He confesses that he himself is subject to law, 'not being without law toward God but under the law of Christ.'³⁰ Christianity imposes moral

21 13:34f, 14:15

22 H. Kleinknecht and W. Gutbrod, Law, p. 133

23 Gal. 2:16
(N.E.B.)

24 Rom. 7:12-14

25 Op. cit. p. 254

26 Rom. 3:31

27 Rom. 8:4, 13:8

28 Rom. 12:10, 13:8, 14:11; 1Cor. 6:16, 9:9, 14:21; 2Cor. 8:9,15

29 1Cor. 7:10, 14:37f; 2Thess. 3:6

30 1Cor. 9:21 (R.S.V.)

demands,³¹ and Paul has no compunction in issuing orders and exacting obedience, using words with an imperative and legal connotation.³² One of the dominant themes in the letter to the Romans is justification. But justification is a legal metaphor; "to justify" is a forensic term', writes C. K. Barrett, 'which does not mean "to make (ethically) righteous" but "to acquit"'.³³ Again, Paul speaks of God's just judgment³⁴ and refers to God as 'the all-just judge'.³⁵

It is fair to conclude on this evidence that Paul's religion of grace is not a lawless religion. As Cranfield remarks, so far from it being true that the question of man's relationship to God has been taken out of the area of law, 'Paul underlines again and again by his language the legal framework of Christ's action'.³⁶ The Christian is free, but free under law. Obedience is a fundamental part of Christian life; so much so that there can be no faith without obedience³⁷ and therefore no faith without law because obedience is a legal relation. The perfect obedience of Jesus is both a fulfilment of the law and a vindication of the righteousness of God. It is therefore through him that the righteousness of God is made available to all who have faith.

Turning to James, we find that he is in close agreement with Paul. He maintains that if a man is to be blessed he must keep a law, 'the law that makes us free'.³⁸ Like Paul, he cites the Decalogue and sums it up in the precept 'Love your neighbour as yourself'.³⁹ He refers to this precept as 'the sovereign law laid down in Scripture'. To him, God is the supreme Legislator and Judge whom all must obey.⁴⁰

To sum up, the evidence of Scripture discloses many of

31 E.g. Rom. 12:10-17; Gal. 5:19-21; 1Thess. 4:1-12, 5:14-18

32 E.g. δικαίωμα Rom. 1:32, 8:34; ἐντολή 1Tim. 6:14; 1Cor. 14:37; ἐπιταγή Rom. 16:26, 1Tim. 1:1, 1Cor. 7:25; παρεγγέλω 1Tim. 6:13, 1Thess. 4:11, 2Thess. 3:4, 1Tim. 4:11, 5:7

33 The Epistle to the Romans, p. 89

34 Rom. 2:5

35 2Tim. 4:8

36 C.E.B. Cranfield, St. Paul and the Law, S.J.T. vol. 17 No. 1 (March 1964) p. 43 at p. 52

37 E.g. Rom. 1:5, 6:17, 16:26; Gal. 5:7; 2Thess. 1:3

38 James 1:25 (N.E.B.)

39 James 2:8-11; c.f. Rom. 13:8f, Gal. 5:14

40 James 4:11; c.f. Rom. 14:4

the criteria for identifying the juridical concept of law in the relationship between God and man. The imperative element is found in the commands of Jesus, Paul, and others. It is found also in the sanctions of punishment and excommunication. Another criterion, that of obligation, is found throughout the Bible. The Christian recognises the law of God as being obligatory upon him, he recognises the need for authoritative rules to guide his conduct and set a standard to which he can aspire. Finally, the criterion of a rule is found in both the Old and the New Testaments.

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Even if it is granted, for the sake of argument, that the juridical concept of law has some part to play in the life of the Christian, many questions remain to be answered. Why is law necessary? What becomes of grace? How do we avoid the charge of legalism? What gives validity to this law? Is it binding upon all men or only upon Christians?

We shall begin our reply by giving a summary statement of the position we wish to hold.

1. Man is a sinner and remains such after his conversion.
2. His response to God is therefore not wholly spontaneous.
3. His relationship to God and to his fellow men must accordingly be governed by law.
4. This law is spiritual.
5. Grace is not excluded.

1. Man is a sinner and remains such after his conversion.

The Christian is simul iustus et simul peccator. It is a false idealisation of the Christian life to suppose that after conversion man can obey God's will completely, or that he can attain perfection and live without sinning. The Christian is never entirely free from the need for forgiveness, and is always conscious of his sin and separation from God. He knows that he is never more than an unworthy servant of God.⁴¹

2. Man's response to God is therefore not wholly spontaneous.

Only God's love for man, his $\lambda\gamma\acute{\iota}\eta\eta$, is wholly spontaneous. Man's love for God is weak and halting, blemished by mixed motives and worldly prudence. It is mixed with $\acute{\epsilon}\rho\omicron\varsigma$, the self-centred desire for spiritual wholeness, and therefore it is never disinterested and uncaused. This is frankly acknowledged by Jesus who time and again refers to the motive

41 Lk. 17:10 See G. Aulen, The Faith of the Christian Church, p.370

of reward.⁴² Yet man's response to God is not devoid of all spontaneity. At the highest and purest level God is worshipped for what he is in himself, and in moments of spiritual elevation man can reach this level. Even at lower levels man's response need not be reluctant or constrained.

3. Man's relationship to God and to his fellow men must accordingly be governed by law.

In so far as man is homo vetus, a sinner dominated by self interest and asserting his own independence, the law of God confronts him as a command and threatens judgment. As homo novus the law no longer confronts man as a bare command. He knows that he is not justified by keeping the law or condemned for failing to keep it, but is forgiven and accepted, saved by grace through faith. Yet he does not transcend the law but strives to fulfil it. The realisation of the unmerited love of God towards him changes the law from a bare command to a standard and a guide for the conduct of life.

4. This law is spiritual.

Luther understood very clearly the value of law in revealing our impotence and sinfulness and making us humbly receptive of the word of God. Law retains this value for the Christian after his conversion, a point which Luther failed to discern. Calvin saw more deeply into the nature of God's law as a spiritual gift. 'For though the law has other uses besides...the general meaning is, that it is the proper school for training the children of God.'⁴³ The juridical concept of law is a link between heaven and earth. Law is not, as Brunner asserts, 'only indirectly the will of God for us' so that 'we only have to obey it conditionally'.⁴⁴ On the contrary, it is a direct revelation of God's will for man. It is spiritual because it is derived from God. As a standard and guide it shows us how we should worship God and serve our fellow man. Its purpose in the life of the Christian may be said to be 'the fulfilment of righteousness, that man may form his life on the model of the divine purity. For therein God has so delineated his own character, that anyone exhibiting in action what is commanded, would in some measure exhibit a living image of God.'⁴⁵

42 E.g. Matt. 5:12, 6:1,4,6 10:41,42 Mk. 10:30

43 Institutes, I vi 4 See also II vi 12,13; II viii 1,5; I x 2

44 The Divine Imperative, p. 75

45 Calvin, op cit. II viii 51 See also II viii 6, I ix 3

3. Grace is not excluded.

We cannot know God's grace until we know his law. The law is a manifestation of the gracious approach of God to man to redeem him from sin and lead him in the way of truth. When this approach is not repulsed there is a further manifestation of grace as a gift of strength to do God's will and fulfil his law. This is no fictional or vicarious fulfilment of the law, but rather an infusion of Spiritual power enabling man to achieve his destiny.

Since the law is spiritual, the charge of legalism fails. The term 'legalism' is used as a derogatory epithet to indicate a heretical doctrine of justification by works and not by faith. In this sense legalism is an attempt to use the law to establish a claim before God, a claim to justification. But we have not suggested that man can win salvation by keeping the law, or that the law can be kept without the power and grace of God. Man is justified by faith alone, but there is no faith without observance of God's law. No man is justified because he has kept the law, but no man is justified unless he shows the seriousness and sincerity of his faith by accepting the validity of God's law for him, and every man is condemned who is without law towards God.

Another sense in which the term 'legalism' is used is to suggest an impersonal application of rules and a mechanical obedience constrained by a sense of duty. In the context of Christian faith this criticism ignores the part played by the love and justice of God, an aspect to which we shall give attention below. It also ignores the regenerative power of the Holy Spirit, and the motive of love which lies behind Christian activity.

When the charge of legalism is brought against teaching which stresses the importance of the law of God, an essential aspect of that law is being overlooked. It has a distinctively religious character. This character, which we outlined in our summary statement, requires us to qualify the model of State law. It is within the power of the average citizen to keep the State law, and when he does so he is justified or at least is not condemned. As a general rule, the State is not particularly concerned with his motives provided that they are not manifested in unlawful action. It is otherwise with the law of God. It is not within the power of the Christian himself to keep this law, and no matter what he does he cannot avoid condemnation. Moreover the law of God is vitally

concerned with inner motives, the thoughts and intentions of the heart.

We must now examine the notions of validity, power, and justice which we found to be closely related to the juridical concept of law.

Validity What gives the law of God its binding force, its validity? A number of answers might be given. With Goodhart in mind, we might say that the law is valid because it has been established for a considerable length of time, or because there is an attitude of reverence towards it, or because Christians realise that it is necessary to the maintenance of both material and spiritual values. With Hart in mind, we might say that the law of God is valid for Christians because of a complex social and religious practice existing among them. This practice consists of a) obedience to God as Sovereign, b) general acceptance of his will as setting a standard of behaviour deviations from which must be criticised, c) reference to the will of God and the words of Scripture as reasons for doing God's will, and as justification for disciplinary action against those who deviate from the standard.

Basically, however, the law is binding upon the Christian because it is the will of the Sovereign. As we saw in the last chapter, this does not commit the naturalistic fallacy. The linking of imperative and indicative is found throughout the Bible. The Decalogue, for example, is preceded by the declaration 'I am the Lord your God'. Jesus says 'I am the real vine' and indicates that for this reason his disciples ought to bear fruit, i.e. ought to obey his commands. Paul repeatedly lets an imperative follow upon an indicative. It is, after all, only common sense that if we accept the sovereignty of God then we ought to obey his commands.

There are, however, difficulties in this attempt to validate the law of God by reference to the will of God. The statement, 'My duty is what God commands' is analytic because God's command to me always is my duty. God's command is my duty, and my duty can never be what God forbids. It is a logical contradiction to assert that my duty can be other than what God commands. If, then, I say that the law of love is valid for me because God commands it, I utter a tautology: 'This is my duty because it is my duty.'

The implication of this criticism is that to validate the law of God by reference to the command of God is not to say anything significant. But this is to ignore the character of

the Legislator. As Calvin puts it, such critics 'do not consider the Lawgiver, by whose character that of the Law must also be determined'.⁴⁶ It also ignores the redemptive situation in which the law is given. The tautology is not without significance — for the Christian. To him the law comes not as a bare command but as a standard and guide expressing the loving will of God and his concern for the salvation of man. This is why imperative and indicative are so often linked in the Bible. The Christian does not give blind obedience to an inexorable demand, but a loving response, a willing surrender, a devoted obedience to God the Father who forgives, Christ who heals and saves, and the Holy Spirit who sanctifies, strengthens, and guides. The validity of God's law will always elude those who regard him with philosophical and impersonal detachment.

A further difficulty is raised by I. T. Ramsey.⁴⁷ The statements 'This is my duty' and 'This is God's will for me' are two different things. Though they refer to the same situation, they use different categories. One gives expression to a moral value and the other refers to a supernatural truth. For example, it is God's will that I should love my neighbour. This law of love may be expressed either in terms of moral duty or in terms of God's will; they are alternative descriptions of the same thing. Since they are alternative descriptions, neither can be used to validate the other. It is important to distinguish between moral values and spiritual truths, but the two are not necessarily mutually exclusive. Would it not be more helpful to regard the two descriptions not as alternative but as complimentary? As we have remarked, God's command to me always includes my duty, and I can have no moral duty which conflicts with the will of God.

Another difficulty is pointed out by A. J. Ayer. If law is validated by authority, it cannot embody an absolute value. 'There is....a logical inconsistency in maintaining....both that values are absolute and that they are validated by authority; and this inconsistency is not removed by supposing the authority to be divine.'⁴⁸ By definition an absolute value cannot be dependent on authority. This objection carries much weight and will be particularly satisfying to the atheistic mind. It appears to undermine the foundation of

46 Op. cit. II viii 6

47 Freedom and Immortality

48 Quoted by Ramsey, op. cit. p. 46

a distinctively Christian ethic. It rests, however, upon a misunderstanding of religious language and thinks of God in terms of what T. H. Miles calls 'simple, literal theism'.⁴⁹ Christian language about God is symbolic, not literal. Any statement about God, e.g. that he is a Judge or a Lawgiver, will be false if it is taken in a literal sense. Moreover to say that for the Christian the law is validated by God is not to say that absolute values are validated by God. Absolute values have their source in God; he is their ontological foundation. In other words, the values are not dependent upon the authority of God but have their being in God.

The will of God, then, is one ground of validity; but it cannot extend to those who do not believe in God and do not accept his authority. We cannot tell the atheist that he must love his neighbour because that is God's will for him. The duty to follow Christ or to preach the Gospel to all nations has no validity for the atheist. A command is valid only for those who accept the authority of the commander. If it extends to those who do not accept this authority it ceases to be a command and becomes compulsion. There is, therefore, a limitation upon the validity of the law of God, a voluntary limitation imposed out of respect for man's freedom. A distinction must be made between moral and religious duties, and we must frankly admit that religious duties have no validity for the atheist. The moral law of God, however, has universal validity.

The moral law of God is binding upon believer and unbeliever alike. It follows that there must be some other ground of validity than the will of God. Three additional sources of validity may be distinguished.

1) Man's reason confers universal validity upon the moral law. The faculty of reason is common to all men, and it is not irreverent to insist that the law of God, as received by man, must be subjected to the test of reason. A mechanical obedience to the divine will, or a love of the irrational and absurd for its own sake, is a degrading relationship to have towards God. It encourages formalism and a theology of concepts. No doubt the Christian cannot dispel all mystery and eradicate all irrationalism from his faith, but this does not exempt him from the task of making his faith as rational

as possible. 'I myself', wrote Paul, 'am subject to God's law as a rational being.'⁵⁰

2) A sense of moral obligation provides a second source of the universal validity of God's moral law. The idea of morality is common to all men, although it takes a number of different forms. There is no one who is without some sense of what is right and just. In every society there is a complex social practice reinforced by rules. Whatever the relationship between ethics and religion may be, it cannot be denied that the moral consciousness is an independent source conferring validity upon moral acts. Failure to acknowledge this has led Brunner to the startling conclusion that duty and goodness are mutually exclusive.⁵¹ His point appears to be that duty is done from a sense of obligation, while the good is done in willing obedience; duty is constrained but the good act is free. Surely a good act cannot be divorced from a consciousness of what is right and due, and if I perceive that an act which I can perform is right and due then I ought to do it. It is this very sense of obligation which confers validity upon the act and makes it binding upon the conscience.

3) A third source of the universal validity of God's moral law is man's essential relationship to himself. In his moral acts man does not merely obey an external law. There is an element of spontaneity in his behaviour. By acting morally man actualises his potentialities. The moral law is therefore an expression of man's essential relationship to himself. As Tillich puts it, 'the law given by God is man's essential nature, put against him as law'.⁵² Absolute moral values are not remote and impractical ideals. They are near to man, within his very nature. The moral law is neither tempered to the sinfulness of man nor elevated as a standard of perfection beyond the possibility of attainment; it expresses an absolute which can be actualised through a process of subjective and creative striving. The moral law of God has universal validity because it is relevant to the situation in which man finds himself and expresses an ideal which can and ought to be realised.

50 Rom. 7:25 (N.E.B.)

51 Op. cit. p. 74

52 Love, Power, and Justice p. 76

If, then, God's moral law is binding upon all men, surely by implication all men are capable of fulfilling it, and if man fulfills the law he is righteous before God. Have we not destroyed the Gospel? There is no need for the Incarnation and the Atonement. The fallacy here is to suppose that a law ceases to be valid if its provisions cannot be observed. Paul found it impossible to keep the whole law, but he did not conclude that it had no validity for him. He concluded instead that morality and religion are inextricably bound together, for only conversion to Christianity can produce that radical transformation of character and give access to the power of the Holy Spirit without which the divine law cannot be kept.

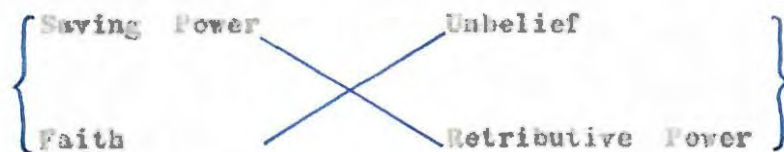
A further objection may suggest itself to the atheistic temperament. We have conceded that the validity of the moral law is not wholly and exclusively dependent upon the will of God. Why, then, bring God into the discussion? Man can be moral without God, and can even pass moral judgment upon what purports to be the will of God. What difference does it make whether we speak of the moral law or the moral law of God?

On the level of unbelief it is an unnecessary complication to refer to God. For the Christian, however, the belief that God is the Lawgiver affects his sense of values, his sense of duty, and his relationship to other people. The highest value is set upon the Kingdom of God and the spiritual truths which it upholds. In the service of this Kingdom and these truths, duty is not a prudential insurance of one's own welfare or a necessary requirement for the smooth functioning of society. It is a joyful obedience to the universal King. One's relationship to other people is not governed by personal need, or restricted by pride, or hardened by disinterest. Belief determines the attitude of the Christian to life in general, and provides a motive for action.

On the level of belief, moral precepts, values, and judgments point beyond themselves to a transcendent source. They express the righteousness and justice of God, though through the cloudy medium of human judgment. This suggests a second sense of the validity of God's commands, *viz.* the moral validity or rightness of the actions which he enjoins. For the Christian the moral law of God is valid not only because God is Sovereign but also because he is Just and True. His

commands are valid because they are just. God's command is the ground of the rightness of the action. This means that God's command is right irrespective of the circumstances or consequences. As a result, there may be what Kierkegaard called a 'teleological suspension of the ethical'.

Power The second concept which we found to be closely related to the juridical notion of law is that of power. We saw that public power is manifested as coercive force in terms of legislation, judicial decision, administrative action, fines, punishment, etc. It becomes arbitrary and destructive unless restrained. Let us now consider the concept of power in relation to Christianity. The power of God has a double aspect. There is 'the saving power of God....God's way of righting wrong', and there is 'the divine retribution revealed from heaven and falling upon all the godless wickedness of man'.⁵³ Each of these aspects reflects a legal relationship to man. God's retributive power is manifested in coercive force. His saving power, however, is not effective without a personal and positive response. The correlative of God's retributive power is unbelief, but the correlative of his saving power is faith. We can represent this relationship in diagrammatic form as follows.



The brackets indicate correlatives, and the straight lines indicate not opposites but contradictories. Opposites are mutually exclusive, but contradictories may exist together in dynamic tension.

Tillich's ontological analysis of Power (in Love, Power, and Justice) is deficient because it applies only to God's saving power. Only in God's saving power is there an ontological unity between love and power. Here love, striving to reunite the estranged, is the basis of power which conquers non-being. When love reunites the estranged, it too conquers non-being; hence the greater the reunion the greater the power. Love can do its work only if it is united with power and compulsion, for only then can love destroy what is against love. But when love destroys what is against love, there is neither reunion nor a conquest of non-being in that which is

⁵³ Rom. 1:17,18 (N.E.B.)

destroyed. God's retributive power does not reunite the estranged, and conquers non-being only by banishing it. Tillich ignores the reality of the divine wrath which is a terrifying and obsessive thought in Paul's letter to the Romans. The wrath of God is also the power of God, a power unto destruction.

Yet God's retributive power is not without restraint. We saw in the last chapter that public power in a parliamentary system is not unrestricted; there are, for example, constitutional safeguards and a balance of powers between the legislature, judiciary, and executive. Similarly, God's retributive power is subject to restraint, the restraint of his saving power and love. If we prefer, we might speak of a polar tension between the two aspects of power. It is this tension which is represented by the straight lines in the diagramme. Unlike State power, however, the power of God is not restrained because of its demonic potentiality. It is restrained because of the tension between the love and the justice of God, and to give effect to the salvation of man. Only when love and justice are united in polar tension are the true being and nature of power seen.

Justice This is the third of the three concepts related to law. There is a tendency in Christian theology to brand justice with the stigma of 'legalism' and to replace it with love. It is a mistake to suppose that love can be a substitute for justice, or that the Christian can or must escape from the formal principle that persons in the same category must be treated in the same way. There is, of course, a vast difference between justice under State law and justice under the law of God. Brunner is right to make this contrast, but he is wrong in supposing that legal justice is possible only in so far as actual inequality is disregarded. To illustrate his point, he tells the story of a cloakroom attendant who has to hand out coats and hats as quickly as possible to people waiting in queues.⁵⁴ If five parallel queues form up, legal justice requires the attendant to move from the first person in the first queue to the first person in the second queue and so on. The attendant must not serve all those standing in one queue before attending to the others.

54 Justice and the Social Order, p. 29f. Brunner's contrast is, in fact, between 'lawful justice and love' (p. 26), but the qualification 'lawful' suggests a contrast also between 'lawful justice' and some higher form of justice.

But suppose, says Brunner, that an old lady arrives who is too infirm to stand in a queue, or that someone is in a hurry to catch a train. Legal justice would ignore these inequalities and would continue to give equal treatment to everyone; true justice, however, requires unequal treatment and a violation of the formal principle.

Brunner does not take account of the variable criterion which is used to apply the formal principle. One cannot say in the abstract whether legal justice would ignore the inequalities in question. To isolate the formal principle from the variable criterion and then to criticise the distorted picture which results is hardly fair criticism. Moreover, Brunner does not appear to be aware that the formal principle is indispensable to the practice of justice. Justice cannot be done if the formal principle is violated.

Let us carry his illustration further. Suppose that there are five old ladies who cannot stand in a queue, and ten people who are rushing to catch a train. These people form two additional queues so that we have three categories of person and seven queues. It is not by breaking the formal principle but by enforcing it that justice is done. Those who are in the same category must be treated in the same way. If a chair is brought for one old lady, a chair must be brought for each old lady. If one train catcher is given priority, then all train catchers must be given the same priority. The formal principle is applied with a variable criterion which indicates both which persons fall within the same category and how persons in the same category are to be treated. If the formal principle is violated and the same treatment is not given to all who are in the same category, justice is not done. It is precisely because it is impersonal and objective that the formal principle helps to establish justice.

In legal justice both the categories and the way in which persons who fall within them are to be treated are established by State law. The rule which establishes them, however, may itself be unjust. A purer form of justice is achieved under natural law. Here the categories are supplied by reason and conform to the essential nature of man. Yet this justice falls short of perfection. It remains relative and contingent because man's nature and reason are perverted by sin. Only divine justice is perfect; here the categories and the treatment are established by God. 'When thy judgments are in the earth, the inhabitants of the world learn righteousness.'

declared the prophet Isaiah.⁵⁵ 'Tsedeq, with its kindred words', remarks N. H. Snaith, 'signifies that standard which God maintains in this world. It is the norm by which all must be judged. What this norm is, depends entirely upon the Nature of God.'⁵⁶ For the Christian, this norm is manifested in Jesus Christ. A true understanding of justice is possible only when the righteousness of God revealed in Jesus Christ is accepted by faith. The justice that God establishes is conditioned by love, mercy, and forgiveness. Divine justice is personal, creative, and redemptive. The categories and treatment established by God may, however, lead to a reversal of secular judgments, for 'many who are first will be last, and the last first'.⁵⁷

We have suggested that the concept of law has an important part to play in Christian theology. It is appropriate not only in describing the relationship between God and man but also in speaking of the power and justice of God. There are further applications of the concept in less religious and more secular spheres. If the moral law of God is universally valid, if it manifests the justice of God and can be judged by rational standards, and if it is an expression of man's sense of moral obligation and his striving towards his essential being, we cannot avoid a discussion of the topic of natural law.

55 26:9

56 The Distinctive Ideas of the Old Testament, p. 77

57 Matt. 19:30

3 NATURAL LAW

Legal positivism rejects any claim that law has a metaphysical basis. The word 'positive' in the phrase 'positive law' indicates that the law is objectively grounded and that jurisprudence is a pure, empirical science with no non-legal elements or idealist pretensions. It is simply the will of the Sovereign or the accepted practice of the people, an exercise of power. The obligation to obey follows wholly from objective facts. This view fails to discern that positivism is itself an ideal and that a legal system, in so far as it is concerned with the freedom of the individual and the reasonableness of man, and with guilt and justice, is based upon metaphysical presuppositions. It also denies the dignity and destiny of man. The Christian therefore affirms that the law is both practical and ideal, both physical and metaphysical, and that it is rooted in the spiritual nature and personality of man.

We have claimed that State law is a product not merely of will but also of reason. The search for the ground of its validity led us to moral law, and the moral law, we found, is a law of God binding upon all men. We conceded that if the moral law of God is to have universal validity, the ground of that validity must be something other than the will of God. It must be something which can be known apart from revelation. Man's reason, his sense of moral obligation, and his essential relationship to himself constitute three additional grounds of validity. Turning to justice, we found that legal justice is impersonal, objective, and open to criticism. It is not only the Christian who knows when to protest against an unjust law, for men generally have an idea of justice and a sense of what ought to be realised in law if there is not to be a violation of reason and the very nature of things.

It is appropriate, therefore, to examine the doctrine of natural law since it has many affinities with the points we have made. It is a topic which is replete with obscurities and confusions, and which lends itself readily to abuse. What is meant by the term 'law'? There is no written code, no enactment, no sanction, no concrete rule for specific situations. Natural law does not have its basis in custom or convention. The term 'natural' is similarly obscure. Is

'nature' opposed to convention and the institutions of society? Does it refer to the original impulses of man before he became civilised? Is the law 'natural' because it expresses what is in the heart of every man, that to which men generally give their consent? The phrase 'natural law' must also be distinguished from the 'law of nature' which is immutable and universal, operates automatically, and has no moral connotation. Yet if the law is more than a description of empirical fact, we may ask what makes it normative and prescriptive and how it is discovered.

These are some of the questions that may arise in the minds of those who approach the topic of natural law. The answers may emerge if we consider the history of natural law and the contemporary teaching of the Roman Catholic Church. The Greek philosopher Heraclitus had an incipient doctrine of natural law in his teaching that there is a divine logos, a universal reason, which holds the universe together in a hidden unity. The Sophists, in their radical criticisms of established law and institutions, judged by the standard of nature and laid the foundation of the doctrine of the natural rights of man. Socrates taught that virtue consists in knowledge, that there is a realm of ultimate values, and that men act immorally only through ignorance. A metaphysical basis for natural law was provided by Plato with his doctrine of perfect and eternal ideas. The idea that man's essential nature is reason was given prominence by Aristotle who taught that morality consists in living in accordance with reason. This idea was taken further by the Stoics who identified the logos of Heraclitus with 'world reason'. The Stoic ideal of living in accordance with nature is itself a development of Heraclitus' thought. They also taught that man's conduct must be governed by reason which is his essential nature. When man acts in accordance with his essential nature, he conforms to the law of the universe.

Christianity entered into and developed this classical heritage. Paul taught that the Gentiles carry out the precepts of the Mosaic law 'by the light of nature....for they display the effect of the law inscribed on their hearts'.¹ One of the early Church Fathers, John Chrysostom, declared: 'We use not only Scripture but also reason in arguing against the pagans.

¹ Rom. 2:14,15 (N.E.B.)

What is their argument? They say they have no law of conscience and that there is no law implanted by God in nature.² It was Aquinas, however, who gave the doctrine a systematic and coherent form, and we must consider his teaching in some detail.

He contended that reason is the rule and measure of human acts. Law, therefore, is bound by reason. Without reason there is not law but lawlessness.³ Moreover, the law must be directed to an end, and that end is not individual but common, the common good of all.⁴ Practical reason, as distinct from speculative reason, prescribes what must be done for the common good. There is a hierarchy of laws at the top of which is the eternal law. The universe is a community governed by God and subject to Divine law. 'And since the Divine Reason's conception of things is not subject to time but is eternal,this kind of law must be called eternal.'⁵

Next in the hierarchy comes natural law. Man, as a rational creature, shares in the Divine Reason and in virtue of this he has a natural inclination to his proper act and end: 'and this participation of the eternal law in the rational creature is called the natural law'.⁶ There is an affinity here with Stoic doctrine. Third in the hierarchy is human law which assists in giving natural law a specific content.

In what sense is the law 'natural'? Aquinas' teaching appears to give two answers. It is natural i) because it is found in human nature itself, in the inclination which draws us to our proper end, and ii) because it is disclosed to us not by revelation but by natural reason, 'for every act of reasoning is based on principles that are known naturally' [i.e. apart from revelation].⁷ Reason does not make deductions from experience or empirical fact to ascertain primary principles, but gains its knowledge from the essential nature of man as a free and rational being made in the image of God. It is difficult to see how Aquinas can escape from the charge

2 Quoted by H. A. Roosen, The Natural Law, p. 35

3 Summa Theologica, I-II Q. 90 art. 1

4 Ibid. Q. 90 art. 3

5 Ibid. Q. 91 art. 1

6 Ibid. Q. 91 art. 2

7 Ibid. Q. 91 art. 2 reply obj. 2 See also Q. 94 arts. 2,3

that he is asserting a tautology: 'reason is the essential nature of man as a rational being'. Similarly, the law is 'natural' because it is based on the essential nature of man. Neither statement gives us any further information about the term in question, and each achieves certainty only at the expense of circularity.

Aquinas is even less clear in describing the content of natural law. He begins by asserting that the first thing that falls under the apprehension of the natural reason is good which is directed to action. The first principle of natural law, therefore, is that good is to be done and evil avoided. 'All other precepts of the natural law are based upon this.'⁸ But he does not say what good is. When he descends to details and considers what acts are enjoined by natural law, Aquinas declares that practical reason is 'perverted by passion, or evil habit, or an evil disposition of nature'.⁹ Practical reason cannot, therefore, give unerring guidance. The primary principles of natural law, it is true, are written indelibly on the heart, but sin may obscure and pervert the natural law in particular actions and secondary precepts. Indeed, natural law may be blotted out from the human heart by evil persuasions or vicious customs and corrupt habits.¹⁰ The concrete actualisation of natural law must therefore be assisted by human law.

Perhaps we are being unfair to Aquinas. In so far as he is possessed of reason and free will, man acts with a purpose. Of all God's creatures, only man is endowed with reason, only man 'has a natural inclination to know the truth about God'.¹¹ Despite the Fall, man retains the capacity for apprehending rational values and knowing the principles of natural law. The essential nature of man is the measure of good, and the good act is therefore one which helps to realise this essential nature. In the application of the general principle to particular acts, allowance must be made for the circumstances. Since the circumstances vary, the primary principles must

8 Ibid. Q. 94 art. 2

9 Ibid. Q. 94 art. 4

10 Ibid. Q. 94 art. 6

11 Ibid. Q. 94 art. 2

necessarily be general. It is also important to notice that Aquinas does not set out the secondary principles in an inflexible code of detailed rules. Although the primary principles are unchangeable, the secondary principles are far from being immutable. They can change either by addition 'for the benefit of human life', or by subtraction 'so that what previously was according to the natural law, ceases to be so'.¹²

A modern exposition of the traditional Roman Catholic view is given by H. A. Rossum in his book The Natural Law. The basis of natural law, Rossum contends, is a knowledge of being, a knowledge of the essence of things. This is the ontological foundation of natural law. There is an essential unity of being and oughtness, of being and goodness. The good is what ought to be, and man strives to fulfil the potentiality of his being. 'The essence of a thing is the norm and the goal of its becoming.... But goodness is the final embodiment or realisation of the essence in existence.'¹³ All created being is in a state of becoming as it strives to realise its essence and so attain to fullness of being.

There is an order of reality which rises from purely potential being through the stages of created actual being to God who is the perfect being. The world is an order of creatures whose natures have been differentiated according to the wisdom of God. The establishment of natural law depends on the doctrine of man's nature. Since man possesses free will, the ontological order is, for man, a moral order. Man is a free and rational being and does not obey the natural law from necessity or compulsion. Being is perceived as oughtness, and practical reason directs man towards the realisation of his essence. Since man is also a rational being, he can understand that the natural law is expressed in the divinely established order of the world. Natural moral law is an aspect of the eternal law as it exists for free, rational beings. It may be defined as 'the light of reason inherent in us by nature, through which we perceive what we ought to do and avoid; or also: the knowledge communicated to us by the Creator through nature, that we must strictly observe in our conduct the order which corresponds to our nature'.¹⁴

12 Ibid. Q. 64 art. 5

13 Op. cit. p. 172

14 Ibid. p. 181f

Moral goodness does not consist in external conformity to God's will as an arbitrary decree. Oughtness is grounded in reality, in the nature of things, and at the same time it is related to God's essence. Natural moral law is not only what is but what ought to be, i.e. it is normative, a rational precept with obligatory force. 'The supreme principle of oughtness is simply this: Become your essential being.... Act in accordance with reason: bring your essential being to completion; fulfill the order of being which you confront as a free creature.'¹⁵ Man must follow the direction of his natural inclinations and, through the use of reason, become what he is.

Nothing has yet been said about the sanction behind natural law. As we have seen, sanction is an important element in the concept of law. No doctrine of natural law is adequate which does not take account of this element, difficult as it is to expound in this sphere. Roumen does not shirk the issue. Natural law has a positive, earthly sanction, he tells us, though it does not possess this immediately of itself. The sanction is provided by State law. This appears to be either an evasion of the issue, or an admission that natural law has no sanction and is therefore not properly a law. There is, however, an additional, indirect sanction which natural law possesses in its own right. 'Every people that disregards the laws of moral living is doomed to deterioration and to destruction.'¹⁶ This intrinsic sanction takes the form of 'psychological, moral, social, and often physical consequences of actions that are in themselves bad'.¹⁷ These consequences are inexorable, the inescapable penalties incurred for a breach of the natural law.

The natural law is neither a pure ideal nor a code of detailed rules rationally deduced from general principles. 'The truth....lies in the mean. It lies midway between the excess of deductive rationalism and the self-denying defect of a practicalness that is held prisoner by purely external facts.'¹⁸ Some principles are self-evident, such as those of the Decalogue. Others can be obtained only in the light of experience and upon a consideration of the circumstances. Development

15 Ibid. p. 178

16 Ibid. p. 253

17 Loc. cit.

18 Ibid. p. 216

in the doctrine of natural law is therefore possible. Some rules can be obtained by deductive reasoning. Thus, from the norm of truthfulness of speech we can deduce the rule that agreements must be kept. The further deductive reasoning moves from first principles and universal norms, the closer must be our consideration of all the circumstances. We must also take account of the passions and selfish appetites which distort our judgment and blot out our knowledge of the natural law.

Since natural law is neither a pure ideal eternally existing by itself nor a fixed and immutable code, it is a dynamic and not a static concept. It does not provide a rigid framework of formal principles empty of content, but includes material, content-filled norms. While the primary and most general principles are fixed and constant, the more remote conclusions are varied and adaptable. We may therefore speak of a natural law with a changing content, but a more adequate formula is 'natural law with changing and progressive application'.¹⁹ It is this that makes natural law truly dynamic, for it means that man must continually strive to advance to higher levels of moral attainment. Only the primary principles are certain. More remote conclusions may possess a moral certitude, 'i.e. certainty of a kind that will satisfy the mind of a prudent man'. This area 'includes all the basic and common duties of ordinary life, individual and social'. There is, finally, 'a peripheral area of considerable and elastic dimensions, an area of very remote conclusions consisting of involved, complex, and extremely contingent cases and relationships with which especially the human lawmaker has largely to deal'.²⁰

The essential being of man is not only the datum which lies behind all positive law and which constitutes the cognitive principle of natural law, it is also the basis of a doctrine of natural rights. The right to life and property, for example, is essential to the integrity of personal being. Personality is the basis of the right to a good name and the right to liberty. Such rights are 'given' with the nature of a person, and guarantee his personal dignity. Natural law does not, however, prescribe particular political systems, whether feudal, capitalist, or socialist, in which these rights

19 Ibid. p. 229

20 Ibid. p. 252

must be embodied.

Jacques Maritain takes up the question of the rights of man conferred by natural law. Man, he says, is called to a life and destiny superior to time. He is called to realise absolute and spiritual values in his personal life, and to develop the life of the spirit within him. Man possesses ends which correspond to his natural constitution, and he is endowed with intelligence to discover and pursue these ends. Natural law is nothing more than this. In particular, it is not a written law. 'It is written, they say, in the heart of man. True, but in the hidden depths, as hidden from us as our own heart. This metaphor itself has been responsible for a great deal of damage, causing natural law to be represented as a ready-made code rolled up within the conscience of each one of us, which each one of us has only to unroll, and of which all men should naturally have an equal knowledge.'²¹

Apart from prescribing duties, natural law recognises rights which are linked to the nature of man, rooted in his intelligible essence as a free being with a spiritual soul. Maritain gives a threefold classification of these rights. 1) Those which belong to the human person as such; e.g., the right to liberty, property, and health. 2) Those which belong to the civic person; e.g., the right to participate actively in political life, the right of association, and the right of free investigation and discussion. 3) Those which belong to the social person, particularly the working person; e.g., the right freely to choose one's work, the right to form trade-unions, and the right to a just wage.

Maritain also gives attention to the problem of our knowledge of natural law. It is not rational knowledge, but knowledge through inclination. It is not gained through concepts and conceptual judgments, but is a spontaneous knowledge gained 'by looking at and consulting what we are and the inner bent or propensities of our own being'.²² 'In this knowledge through union or inclination, connaturality or congeniality, the intellect is at play not alone, but together with affective inclinations and the dispositions of the will, and is guided and directed by them.'²³ Thus, natural law is

21 The Rights of Man, p. 35f (Geoffrey Bles: The Centenary Press) See also Man and State, ch. IV

22 The Range of Reason, p. 23

23 Ibid.

natural not only because it expresses the normal functioning of human nature, but also because it is known naturally and not through reasoning or conceptual knowledge. Natural law deals only with principles that are immediately known in an undemonstrable manner. For this reason, man cannot give a rational account of his fundamental moral beliefs.

This talk of 'connaturality' is obscure. Maritain has his own theory of epistemology. He appears to be suggesting that we can have knowledge which is independent of both reason and empirical fact, a knowledge that is natural and immediate. But on what grounds can this claim to knowledge be justified? Is it a self-guaranteeing cognitive experience that we have, an infallible state of mind? Surely knowledge is something more than a feeling of conviction. We may be convinced that something is true, and yet be wrong. Knowledge is a correlation between mind and reality. Perhaps Maritain wishes to claim certainty for the experience as such, the connatural awareness of natural law, just as we may be directly aware of having a headache. If so, is this anything more than simply having the experience? It is difficult to see how a subjective experience can lead to the apprehension of a principle of natural law as being true. We may be forgiven for suspecting that Maritain is, in effect, giving a stipulative definition of 'knowledge' and is using the term in a sense which departs from accepted usage.

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We shall begin an assessment of Protestant views on natural law with a brief review of the teaching of Jesus.²⁴ It may be thought that nothing could be more remote from a rationalist theory of values and ideals, but this contention cannot be upheld when it is considered against certain assumptions which are implicit in the teaching of our Lord. He appealed to a 'natural' moral discernment in men, to standards of righteousness, justice, and mercy recognised by men.²⁵ His distinction between good and evil men implies a fundamental moral law, and so does his rebuke and denunciation of Scribes, Pharisees, and others. Jesus placed reliance on the judgments of conscience, and sought to elicit a free and

24 What follows is largely a summary of an article by A. N. Wilder, Equivalents of Natural Law in the teaching of Jesus, printed in The Journal of Religion, vol. XLVI 1946 p. 125

25 E.g., Matt. 5:6, 7:23, 9:13, 10:41, 12:35, 13:49, 21:32, 25:31-46; Lk. 7:35, 10:29-37, 12:57, 13:27, 14:14, 15:7

rational assent to his teaching. He appealed to reason and common sense.²⁶ In all this, Jesus lays a responsibility upon man to perceive, understand, and freely respond. Surely we have here a foundation for a doctrine of natural law.

The Reformers were not antagonistic to the idea of natural law. Luther accepted the traditional doctrine of a lex naturalis written on men's hearts. Its content is love. Thus, if two parties to a dispute refuse to submit to the law of love, 'they are acting contrary to God and natural law.... For nature teaches us —as does love — that I should do as I would be done by'.²⁷ Luther often quotes Matt. 7:12 or Lk. 6:31 as paradigms of natural law. The Golden Rule laid down by Jesus is a precept of natural law. Again, Luther maintains that there is a unity of Mosaic, Gospel, and Natural law. 'The whole law handed down to us is, therefore, nothing else than this natural law, which everyone knows and on account of which no-one is without excuse.'²⁸ Commenting on Romans, chapter 13, Luther remarks that Paul 'comprehends all the commands of Moses under love, and the natural law teaches this love naturally'.²⁹ Natural law is an inseparable part of our existence. It acquires validity because it is tied to conscience and personal involvement. Thus, 'were it not naturally written in the heart, one would have to teach and preach the law for a long time before it became the concern of conscience. The heart must also find and feel the law in itself'.³⁰

Melancthon followed in Luther's footsteps. Rom. 2:15 gave him the basis for the following definition of natural law. 'A natural law is a common judgment to which all men alike assent, and therefore one which God has inscribed upon the soul of each man.'³¹ In another passage he defines natural law as 'a standard for judging morals that is implanted in us

26 E.g., Matt. 12:12 'Surely a man is worth far more than a sheep!'; or Mk. 3:23f 'How can Satan drive out Satan? If a kingdom is divided against itself, that kingdom cannot stand', (N.E.B.). See too Mk. 9:50, Matt. 7:1,2, Lk. 12:25f. Jesus' use of illustrations and analogies also relies on an appeal to reason.

27 Luther's Works, vol. 45 p. 127f

28 Lectures on Romans, (Library of Christian Classics, vol.XV p.46)

29 F. E. Cranz, An Essay on the Development of Luther's Thought on Justice, Law, and Society, p. 108

30 Luther's Works, vol. 40 p. 97

31 Ibid. vol. 45 p. 127 n. 117

by God'.³² In developing the idea of natural law, Melancthon related it to theology, ethics, politics, and State law. Professor J. T. McNeille remarks that 'through his attention to it and by reason of the weight of his influence he gave the doctrine [of natural law] a firm position in early Protestant ethics'.³³

Finally, Calvin commended natural law as setting a standard of conduct to be fulfilled not only by the Christian but by all men. He taught that man's nature and reason have not been so corrupted by the Fall as to be utterly worthless: 'there exist in all men's minds universal impressions of a certain civic fair dealing and order. Hence no man is to be found who does not understand that every sort of human organization must be regulated by laws, or who does not comprehend the principles of those laws'.³⁴ Commenting on Romans 2:14f he remarks: 'There is nothing more common than for a man to be sufficiently instructed in a right standard of conduct by natural law'.³⁵ Through natural law man has an innate power to judge between good and evil. Although the natural law is inward, being engraved upon the heart, it finds outward written expression in the Ten Commandments.³⁶ Lastly, Calvin states explicitly that the moral law of God is 'nothing else than a testimony of natural law'.³⁷

It would be an over simplification to suppose that the Reformers accepted the traditional doctrine uncritically. They gave it their own interpretation and adapted it to meet their teaching on justification and the corruption of the reason and will of man. They affirmed that man is justified by God alone, and that human reason is so impaired by sin that man's knowledge of natural law is defective. They tended to give their teaching a voluntarist bent: the good and the right are known not by consulting one's natural inclinations but by obedience to the revealed will of God. The primary function of natural law was generally regarded as being to convince man

32 Quoted by J. T. McNeille, Natural Law in the Teaching of the Reformers, Journal of Religion vol. XXVI 1946 p.173

33 Ibid. p. 172

34 Institutes, II ii 13

35 Ibid. II ii 22

36 Ibid. II viii 1

37 Ibid. IV xx 16

of sin. The Reformers gave more emphasis to conscience than to reason. Yet if natural law showed man that his acts were sinful, it must at the same time have given some indication of what was right.

In spite of these modifications, the Reformers did build upon the traditional doctrine. Many affinities with the views of Aquinas can be detected. They did not destroy the concept of natural law. On the contrary, they accepted the view that there is a law, divine in origin, which is known apart from revelation, and they did not question the validity of its principles in the social, political, and legal spheres. As professor McNeille puts it: 'There is no real discontinuity between the teaching of the Reformers and that of their predecessors with respect to natural law. Not one of the leaders of the Reformation assails the principle. Instead, with the possible exception of Zwingli, they all on occasion express a quite ungrudging respect for the moral law naturally implanted in the human heart and seek to inculcate this attitude in their readers.'³⁸

In the Church of England, Richard Hooker elaborated a comprehensive system of laws. Everything that exists, he taught, is subject to a law, even God himself. The system consists of two eternal laws. The first is 'that order which God before all ages hath set down with himself, for himself to do all things by'.³⁹ The second applies to all God's creation and is subdivided into a) natural law (governing non-human agents), b) celestial law (governing the angels), and c) human law (governing men). Human law is further subdivided into moral law, 'positive laws for them that live united in public society', and supernatural law 'which God himself hath from heaven revealed'.⁴⁰

Reason is that which distinguishes man from the beasts. It is 'the director of man's will by discovering in action what is good. For the laws of well-doing are the dictates of right reason'.⁴¹ God illumines every man with the light of reason, and so men can know truth from falsehood and good from evil 'by natural discourse' without any extraordinary

38 Op. cit. p. 168

39 The Laws of Ecclesiastical Polity, Book I ii 6

40 Ibid. I x 7; I xi 6

41 Ibid. I vii 4

revelation. Thus, 'the law of reason or human nature is that which men by discourse of natural reason have rightly found out themselves to be all for ever bound unto in their actions'.⁴² The main principles of natural reason are self-evident and axiomatic; e.g., the greater good is to be chosen before the lesser, God is to be worshipped, and parents are to be honoured. In short, reason is a universal law written in the hearts of men and given by God to men to make moral judgments. We may put this another way by saying that nature itself gives laws to men as men, and these are laws which can be known by the light of natural understanding.

Many Protestants are reluctant to enter into the classical and Christian heritage of natural law. One reason for this hesitation is the belief that man's reason has been totally corrupted by the Fall. Without the aid of revelation, it is held, man cannot know the moral good. Another reason may be found in the voluntarist emphasis of Protestant ethics. An action is held to be good not because it is in accordance with reason or an eternal principle, but because it is obedient to the will of God made known here and now. There can be no universal, immutable norms because God's will is made known only in concrete situations. Again, it is held that the concept of lex naturalis implies a deistic view of God, as though he wrote the principles of ethics upon the human heart at the creation and then withdrew. Some reject all doctrines of natural law on the ground that they deny the radical estrangement of man from God and attempt to find a common meeting point between Christian and non-Christian. Lastly, exponents of doctrines of natural law have been accused of attempting to escape from the relativities of history by creating an abstract, formal, and eternal ideal.

It is incumbent on those who reject natural law to show how legal positivism and political absolutism are to be checked. Jacques Ellul attempts to discharge this onus. 'Jesus Christ, through his incarnation, is the point at which the righteousness of God meets the justice of man.'⁴³ There can be no justice that is independent of Jesus Christ. The foundation, realisation, and qualification of human law are found in him. Justice is not a principle deduced from eternal

42 Ibid. 1 vii 8

43 The Theological Foundation of Law, p. 43

truths, but the active and dynamic will of God known by revelation hic et nunc. This justice is revealed in particular judgments. 'In these dealings of God with man any objective law as the measure of each individual situation is ruled out. What counts is the concrete situation where the will of God takes into consideration the rights of each individual and, by his intervention, restores these rights. Man does not possess these rights by nature....'⁴⁴

God's righteousness is made concrete in the covenant with man. Through the covenant, God grants rights to man and man acquires a juridical status before God. God assumes human law and judges by it, thus purging it and giving it validity. 'Because God appropriates this law, he makes of it much more than the sum total of juridical rules created by man. He establishes it as a sign of his own righteousness. Ultimately taken on by God himself, law is invested with extraordinary dignity.'⁴⁵ The purpose of human law is to enable man to enjoy all rights so that he can hear and respond to God. Law does not, therefore, merely express social, economic, and political realities but is normative for them and must, if necessary, censure them. Law makes life possible for man, and enables him to organise society so that God may preserve it and give effect to the covenant on earth.

Another who gives forceful expression to a concrete, individualistic ethic with a voluntarist emphasis is Bultmann. There is, he maintains, no ideal of man or of humanity to be realised, no formal goodness derived from rational ideas inherent in the mind of man. Jesus knows nothing of an idealistic ethic. His is an ethic of obedience, and he teaches that men are called to make a decision between good and evil, God's will and their own will. The demands of God 'arise quite simply from the crisis of decision in which man stands before God.... [and] this moment of decision contains all that is necessary for the decision, since in it the whole of life is at stake.'⁴⁶ Jesus gives no universally valid ethical precepts by which a man can order his life. He calls men to a radical obedience here and now. God speaks to man in every concrete situation, and every concrete situation

44 Ibid. p. 48

45 Ibid. p. 97

46 Jesus and the Word, p. 87

therefore becomes a crisis of decision.

'The liberation which Jesus brings does not consist in teaching man to recognise the good as the law of his own human nature, in preaching autonomy in the modern sense. The good is the will of God, not the self-realisation of humanity, not man's endowment. The divergence of Jesus from Judaism is in thinking out the idea of obedience radically to the end, not in setting it aside. His ethic also is strictly opposed to every humanistic ethic and value ethic; it is an ethic of obedience. He sees the meaning of human action not in the development toward an ideal of man which is founded on the human spirit; nor in the realisation of an ideal human society through human action. He has no so-called individual or social ethics; the concept of an ideal or end is foreign to him. The concepts of personality and its virtues and of humanity are also foreign to him; he sees only the individual man standing before the will of God. Conduct moreover is not significant because a value is achieved or realised through action; the action as such is obedience or disobedience; thus Jesus has no system of values.'⁴⁷

If we are to make a fair assessment of contemporary Protestant thought on natural law, we must consider the substance and not the form of what is said. Much of Ellul's opposition arises from a misunderstanding of the doctrine of natural law. He remarks that 'natural law, by its very nature, is immutable, absolute'.⁴⁸ He seems to assume that it consists only of abstract and unchanging principles of justice and does not take account of social reality. His criticism also carries the implication that natural law claims to make men just, whereas it claims only to show men what justice is. Much of his teaching is not inconsistent with a doctrine of natural law. For a start, he admits that natural law exists as a fact.⁴⁹ He goes on to mention institutions such as marriage, the state, and property. 'They assert themselves as concretely as the fact of man's having a body.'⁵⁰ They are creations of God, just as a tree is. Human rights

47 Ibid. p. 84

48 Op. cit. p. 24 A similar misunderstanding is shown by Gustaf Wingren in Theology in Conflict, p. 75f.

49 Op. cit. See his preliminary chapter and pages 70-74.

50 Ibid. p. 78

are granted to man 'as a necessity for life'.⁵¹ Man knows them 'through a genuine instinct for self-preservation'. There is even an admission that reason enables man 'to establish a certain criterion of justice, strictly relative and time-bound'.⁵² Finally, Ellul holds that human law depends on divine law and must fulfill its God-given mission or it ceases to be law.⁵³

Turning to Bultmann, it should be noticed that his teaching recognises that reason has an important part to play in man's decision. His ethical doctrine is not entirely voluntaristic. God is not to be obeyed simply because he is the Commander. We are told that 'man is trusted and expected to see for himself what God commands. God's requirements are intrinsically intelligible..... Radical obedience exists only when a man inwardly assents to what is required of him.'⁵⁴ Again, man does not lack insight into the possibilities and consequences of his conduct. His decision is not a gamble based on pure chance, but a calculation based on rational considerations.⁵⁵ His knowledge of what action to take is based on the immediate situation, but the decision is not unreasoned or irrational. Bultmann appears to be attacking only the idea that there is an eternal and immutable system of ethics by which man must guide his present actions. If, then, man's decision is not arbitrary, it cannot be separated from a value judgment which must necessarily accompany it and be expressed in it. Jesus may not have had a system of values, but he certainly had a sense of values. Lastly, Bultmann concedes that a legitimate motive of ethical action and obedience is man's desire to achieve his real being, 'that self which he not already is, but is to become'.⁵⁶

Similarly, if we look to the substance of Brunner's teaching we shall discover that for him natural law is not a dead ideology but a live option. His idea of the 'orders' of creation is parallel to teaching of natural law. He himself frankly admits this. 'These orders....are partly a kind of natural law.'⁵⁷ They are known by reason, and point to a

51 Ibid. p. 82

52 Ibid. p. 90

53 Ibid. pp. 127, 129

54 Op. cit. p. 77

55 Ibid. p. 83

56 Theology of the New Testament, vol. 1 p. 15

57 The Divine Imperative, p. 140

sensus communis moralis.⁵⁸ A feeling for what is humane and fair can be presupposed in every man. Referring to his book Justice and the Social Order, Brunner remarks that 'the Roman Catholic theologians recognised in it a conception parallel to their own tradition of "natural law" in a Christian, not in the rationalist modern sense.'⁵⁹

In chapter 2 we noticed that for Tillich the moral law is an expression of man's essential relationship to himself; 'the law given by God is man's essential nature, put against him as law'. There is an incipient doctrine of natural law in this remark. In Morality and Beyond he specifically affirms a doctrine of natural moral law. Every man, he says, has by nature a potential awareness of universally valid moral norms. Every man is aware 'of the gap between what he essentially is, and therefore ought to be, and what he actually is, a consciousness of estrangement from and contradiction of his essential being.'⁶⁰ Even if the moral law is revealed and not natural, it cannot contradict human nature which itself has been created by God. 'It can only be a restatement of the law that is embodied in man's essential nature'.⁶¹

This brief review of Protestant theology has indicated that there is a strong current flowing in the direction of natural law. This can be seen even in the teaching of Jesus, and it is particularly noticeable in the teaching of the Reformers. Our discussion has suggested that it is both necessary and possible to formulate a Protestant doctrine of natural law.

It is necessary for many reasons. A doctrine of natural law will help to make our talk about God concrete and practical, and will discourage an easy indulgence in spiritual generalities. If we are to have a rational concern for problems in the different spheres of life we must be prepared to engage in 'worldly' discourse and to consult men who are qualified by their secular training to give expert advice. In the legal sphere, a doctrine of natural law will help to hold justice and reason together, and to give universal validity and positive content to international law. In politics it will help to

58 Ibid. p. 232

59 The Theology of Emil Brunner, p. 14 (ed. C. W. Kegley)

60 Op. cit. p. 33

61 Ibid. p. 34

preserve a balance between impersonal authoritarianism and anarchic individualism. In economics, a doctrine of natural law is necessary if there is to be a just and wise exploitation of natural resources and a fair distribution of material benefits.

Among those who are aware of the need for a doctrine of natural law, we may quote professor D. V. Cowen. Writing on the ideal of government under law, with particular reference to the African context, he urges a return 'to the real natural law — the natural law of the Christian tradition, whose truths were only temporarily obscured'. He suggests 'that if guaranteed human rights are to mean anything worth while — indeed if they are to survive — the real natural law must continue to be their inspiration'.⁶² William Temple remarks: 'It is wholesome to go back to this conception of Natural Law because it holds together two aspects of truth which it is not easy to hold in combination — the ideal and the practical'.⁶³ A Congregational theologian, Nathaniel Micklem, remarks that the concept of natural law provides 'both the ethical foundation for the State and an ideal and limit for human legislation'.⁶⁴

It is easy to direct carping criticism against doctrines of natural law. There have been many abuses and corruptions of the idea. One may point to political revolutions where abuses of power, selfish individualism, and a disregard for the dignity and destiny of man have been justified in the name of natural law. Sceptics will draw attention to the many codes of natural rights that have been drawn up, each with a different content. Some claim that the universal and immutable principles of natural law are trite, trivial, and devoid of practical content. Others protest that these principles are static and create a legalistic ethic. Such criticism does less than justice to the idea, and does not make a fair assessment of its merits. Doctrines of natural^{law} express a conviction that more than human will operates in society, that man is created for an end that transcends the material world and strives towards fulfilment of his personal being. They attempt to preserve Christian values, and to provide a standard

62 The Foundations of Freedom, p. 220f

63 Christianity and the Social Order, p. 80

64 The Theology of Politics, p. 64

of judgment which is independent of human will and arbitrary choice. They attempt to give universal validity to ethical principles, and to provide a rational basis for social and political institutions. In short, doctrines of natural law draw attention to the moral, metaphysical, and theological foundations of society.

A Protestant doctrine of natural law is not only necessary, it is also possible. We have seen that there is much in Protestant thought which is not in conflict with a doctrine of natural law. A Protestant doctrine can help to establish a relationship between Christian faith and secular culture in which culture is neither rejected nor allowed to absorb the truths of the Gospel. It need not be static, unadaptable, and legalistic, nor need it deny the universal Lordship of Jesus Christ or the higher excellence of revealed truth. It is precisely through natural law that the Lordship of Christ is expressed and the redemptive purpose of God is made concrete and effective in the affairs of men. Since man's reason is clouded by sin and perverted by passion, the priority and paramountcy of revelation cannot be challenged. The Divine Law, revealed in the Bible, remains the norm for human action. The Christian derives the validity of natural law from the will and the word of God, but there are other sources of validity which bind the unbeliever. Yet the authority of natural law is not autonomous but is independent and derived, for God is supreme over all. Natural law also has its own ratio essendi, for it describes an ideal which is in harmony with the essential nature of man. Through it man gains freedom, spontaneity, and, ultimately, the salvation to which he is destined by God.

4 EVIDENCE AND BELIEF

We have found that some commonly held views on the relationship between law and Gospel should be revised. Applying the juridical concept of law to the Scriptures, we discovered sufficient elements in common to justify speaking of a law of God with universal validity in its moral aspect and particular validity for the Christian in its religious aspect. The Bible uses juridical ideas such as 'law', 'judgment', 'guilt', and 'justice'. The prophets were familiar with the ideas of the sovereignty of God and his jurisdiction over men and nations. Jesus himself strengthened the law of God and carried it to its τέλος. Even Paul's antipathy towards the Mosaic law has been misunderstood and misinterpreted. In the light of all this, it should not be surprising if legal reasoning is found to be peculiarly appropriate to theological discourse and the justification of religious belief.

The rational process by which legal claims or criminal indictments are disputed and determined has many affinities with theological discourse. It is not merely that law and theology both have an evidential basis, or that both are concerned with the concept of law; it is also the fact that both share a similar form of reasoning. The processes of legal argument and proof, therefore, provide a useful model of theological discourse. The use of this model will have the negative virtue of drawing our attention to aspects of theology which tend to be overlooked, but if we persevere in good faith we may find, mirabile dictu, that our thought is clarified and positive insights are gained. In this chapter we shall consider the relation of evidence to Christian belief, and in the next compare the structure of legal reasoning with that of theological discourse.

In using the term 'evidence', we must distinguish between a) what has to be proved, usually referred to as 'the fact in issue'; b) the fact or facts by which the fact in issue is proved; and c) the means by which a fact is proved or brought to the notice of the court. The means of proof include oral evidence (the statements of witnesses), examinations made by the court itself (e.g. the examination of a photograph or the inspection of the scene of an accident), and documentary evidence (letters, written contracts, etc.).

The court will not accept any evidence that is submitted to it, for: not all evidence is admissible. The rules governing admissibility hinge upon two factors: i) relevance, and ii) considerations of policy. i) The relevance of evidence is a matter of degree depending upon whether it makes the fact in issue probable or improbable. Evidence is relevant if it has 'any tendency in reason to prove any material matter'.¹ ii) Even if evidence is relevant, however, it may still be excluded. It is here that considerations of policy enter in. Evidence which is logically relevant may nevertheless be excluded if it tends to confuse the issues, or if it takes up a disproportionate amount of time, or if the inference to be drawn from it is too speculative, and for a number of other reasons which make its admission undesirable. Admissibility, therefore, may be said to be a function of two variables.

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There has been a marked trend in some theological quarters towards an evasion of the evidential. Some theologians, remarks I. M. Crombie, try to sidestep the factual basis of belief 'by denying that the Christian religion involves anything that may fairly be called factual beliefs about a transcendent being'.² Bultmann's disregard of history is well known. He approves the absence of evidence, and rejects objective categories for the interpretation of Christian belief. Alasdair MacIntyre insists that religious belief is independent of factual evidence.³ Another who minimises the role of evidence is T. R. Miles.⁴ In the face of views such as these, it has become necessary to consider again the relation of evidence to Christian faith.

For convenience and the sake of consistency we shall follow the classification given above, namely, 1) oral evidence, 2) things which we ourselves examine, and 3) documentary evidence. We shall confine ourselves at first to exposition, reserving critical comment until later.

1) Under the head of oral evidence we include not only the verbal testimony of witnesses, (oral evidence in the strict sense), but also the acts of Christians and the environment of

1 Model Code of Evidence of the American Law Institute,
Rule 1 (12) p. 72

2 The Possibility of Theological Statements, Faith and Logic, p.31

3 Metaphysical Beliefs, pp. 206ff

4 Religion and the Scientific Outlook, pp. 58ff, 171, 173

the Church. The character of a Christian, his concern for others, his sacrificial devotion to duty as a vocation from God, his patience, kindness, and goodness, and his faithfulness and trust under suffering — all these provide a powerful confirmation of Christian belief. John Baillie remarked on the importance for his faith of the witness borne by his parents.⁵ Similarly, the witness of the prophets in the Old Testament was evidence, often rejected, of their communion with the living and active God. They spoke from personal experience of God's presence and power.

The Church as a worshipping community provides evidence of the first importance. 'It cannot be too strongly stressed', writes Alan Richardson, 'that the Church's own life and witness are the true apology for the Christian faith.'⁶ The Church is a living expression of devotion and commitment, and as such it provides cogent evidence of Christian truth. It is here that faith is evoked and confirmed and the active presence of God is found. Commending the Thessalonians for their steadfastness and faith under persecution, Paul remarks: 'This is evidence of the righteous judgment of God'.⁷

2) Things which we ourselves examine provide a second means of establishing Christian belief. The word 'thing' is used here in a loose sense to include not only physical objects but all finite beings. We may, for example, point to the beauty and order of nature, or the wonderful complexity of organic life, as evidence for the existence of God. There are, however, more subtle arguments and we shall give some examples taken from contemporary theology.

'Can we', asks E. L. Mascall, 'starting from the existence of finite beings, validly affirm the existence of God?'⁸ He proceeds to set out his own unconventional theory of perception. What we perceive, he says, is not merely the existence of objective reality but also certain relations between existent beings. Perception includes more than sense awareness; it involves an activity of the mind. We can, therefore, validly affirm the existence of God starting from finite beings. We must come to know things as they really are; we must know

5 Our Knowledge of God, pp. 4f, 182

6 Christian Apologetics, p. 137

7 2Thess. 1:5 (R.S.V.)

8 Existence and Analogy, p. 66

the 'metaphysical or ontological relations between existent beings'.⁹ The mind must enter into the inner essence of finite beings and make them its own. It will then recognise not only their finitude but also that on which their finitude rests. The essence of finite beings is distinct from, and does not involve, their existence. Thus, by their very existence, finite beings declare the creative activity of God. By an act of the contemplative intellect we recognise 'both the real distinction of essence and existence in the finite existent and also its dependence upon the being in which essence and existence are identical'.¹⁰

In this way we pass from the finite to the infinite not by any process of logical inference but by a direct cognitive act. The essence of our perception is not sense-awareness 'but phenomena as an objectum quo through which it passes to the apprehension of the objectum quod which is the intelligible trans-sensible being'.¹¹ The intelligible object is neither a deduction from sensible phenomena nor a mental construction out of sensible phenomena, 'but something grasped through them'. It is a matter of putting ourselves in the right frame of mind, of taking a contemplative and reverent attitude to finite beings so that we can see them as they really are, as effects 'implying (or, better, manifesting) a transcendent cause'.¹² At the same time as the senses receive impressions from finite beings, the mind abstracts their intelligible content and penetrates to their inner essence.¹³ The mind then recognises that if God does not exist, the existence of the world is unintelligible.

John Baillie speaks of a 'mediated immediacy'. It is a travesty of our knowledge of God, he maintains, to suppose that it is merely inferential in nature.¹⁴ All peoples 'have such an awareness of the divine as is sufficient to awaken in them....a typically religious response'.¹⁵ All men have 'in some degree at least, been confronted with the reality of

9 He Who Is, p. 73f

10 Existence and Analogy, p. 79

11 Words and Images, p. 70f

12 Existence and Analogy, p. 89

13 He Who Is, p. 84

14 Op. cit. p. 226

15 Ibid. p. 6

God and disturbed by the challenge of His holy presence'.¹⁶ We may call this a general knowledge of God to distinguish it from the special knowledge given in the experience of Christian faith. The theme of the Christian's special experiential knowledge of God is developed by Baillie in his book The Sense of the Presence of God. 'The human spirit', he writes, '....develops certain subtler senses or sensitivities which go beyond the bodily senses.'¹⁷ Through these senses the Christian has a primary apprehension of the revelation of God.

The knowledge gained from both the general and the special apprehension is a mediated immediacy. That is to say, it is not mediated by any process of inference, yet it is not independent of sense perception. The divine presence is given to us 'in, with and under' the consciousness of things and knowledge of other persons. The world becomes a sacramental intimation of the presence of God. As a further explanation of this non-logical relationship between knowledge and sense data Baillie refers to the exposition of Mascal which we have already outlined.

A third view is presented by Austin Farrer. He maintains that since God is a unique existent, he cannot be demonstrated by a process of pure inference from finite beings. If he is to be known at all, he must be directly apprehended. We have a direct, rational apprehension of God. There is a scale of being through which God is progressively apprehended. This scale is within man himself, in his own voluntary and conscious acts. It is not a pure abstraction unrelated to experience, but is found applied in personal existence. Our own existence functions as imago Dei.

In every creature there is a distinction between the reality by which it represents an aspect of God, and the limitation which makes it other than God. We cannot overcome the limitation, but we can make the distinction. That is, within the finite we can make a purely notional distinction between limitation and that which is a positive representation of God. We can make this distinction because we have an inner dynamic pulsating through our voluntary activity. This enables us to contemplate not merely what is external but that

16 Ibid. p. 17

17 Op. cit. p. 52

the Old Testament prophets as witnesses in their own time. The record of their lives and deeds is evidence for us in our present day. Similarly, in the New Testament the words and deeds of Jesus are evidence of God. The apostles bear witness to Jesus as the Christ of our faith. The whole of ecclesiastical history attests the growth and expansion of the Church and the development of doctrine.

Historical evidence is inevitable bound up with categories of interpretation. It is this which gives rationality to life and to Christian belief. History gives human experience a meaningful form. As Carl Michalson has observed, our faith has the very structure of history for it is largely concerned with understanding and interpreting historical events. History 'is the structure of reality which supports our lives with meaning, events upon the basis of which one lives significantly'.²² If the historical evidence were other than it is, our belief would be different. If the Christian is to be intellectually honest, he must admit that if certain key evidence were conclusively shown to be false there would be little or no justification for some, or many, or even all of his beliefs. 'If Christ was not raised', wrote Paul, 'then our gospel is null and void, and so is your faith.'²³

The basic evidence for the Christian's knowledge of God is contained in the Scriptures. The authority of the Bible is paramount. Here is the primary source of both Christian belief and theological discourse. Neither direct apprehension nor inference from the world of finite beings can be separated from the revelation of Scripture because neither is an independent source of our knowledge of God. What we apprehend or infer is apprehended or inferred as knowledge of the Christian God only because of the testimony of Scripture. Revelation is logically prior to thought and experience, for these can give no knowledge of God apart from the revelation of his word, or, rather, such knowledge as they give is meagre and minimal. Mascal makes the following comment on his theory of intuition which we examined above: 'It is, we must observe, not God that is perceived, but the fact of his existence'.²⁴ Farrer writes: 'The knowledge of God to which

²² The Rationality of Faith, p. 58

²³ 1Cor. 15:14 (N.E.B.)

²⁴ He Who Is, p. 74f

rational theology leads us....is the knowledge of existent perfection conceived through the analogy of spirit, and the knowledge that this Being is the creator of all finite existence. But that is all'.²⁵

The revelation contained in the Bible, the living and active word of God, determines our attitudes, interprets our experiences, and tests the authenticity of our knowledge. In this way revelation acts as a function of two variables, viz. experience and thought. Just as in State law not all evidence is admissible, so too in theology evidence is excluded if it conflicts with the content of revelation. This is not the arbitrary exclusion of whatever is unfavourable, it is the insistence that the word of God is the norm of faith. It is not primarily man's reason or experience which determines his theology but revelation: reason and experience must be brought to the test of the norm as the governing standard.

Yet reason and experience have an important part to play. They are the media through which revelation is received. Revelation cannot be separated from the act of its reception. It is true that it is by an act of faith that the Christian accepts the evidence of the Bible as being true and supreme, and it is in faith that the evidence is interpreted and understood. But these are not blind and irrational acts. They are supported and confirmed by reason and experience. It is not purely from within the sphere of faith that the world acquires a sacred and sacramental character. Without the support and confirmation of reason and experience, the authority of the Bible would be seriously undermined and its impact upon us would be greatly diminished. Faith would degenerate to the level of superstition. It is because the message of the Bible makes sense of the world, because it penetrates to the secret places of the heart and answers to man's cry de profundis to God, that its authority is accepted as being divine and supreme. The Bible establishes communication between God and man.

The very idea of revelation has rational presuppositions. We cannot have the idea without believing that God exists and has disclosed himself to us. If revelation were wholly unrelated to reason, it would be an unintelligible and irrational absurdity. The acceptance of revelation requires

25 Op. cit. p. 299

the exercise of reason, because if it is to be expressed in words then reason must be employed to achieve as much clarity as possible. Revelation cannot be known in abstractu apart from an intelligent principle of interpretation. In all these ways, and many more, reason and experience participate in and become a part of revelation. Yet elements of paradox and mystery always remain, for the content and meaning of revelation cannot be exhausted. The Being of God remains shrouded in mystery and cannot be penetrated by or identified with the thought and experience of man.

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In a court of law, once the evidence has been led it must be weighed and a verdict must be given. The judge decides whether it is sufficient to establish the material facts either on a balance of probabilities (in a civil case) or beyond a reasonable doubt (in a criminal trial). Direct evidence, i.e. the personal testimony of a witness concerning what he has perceived with his own senses, is not necessarily more cogent than circumstantial evidence, i.e. evidence of facts from which a disputed fact can be inferred. It is true that direct evidence is subject to only one defect, the error of the witness, while circumstantial evidence is, in addition, subject to the defect of a mistaken inference. Yet both forms of evidence admit of varying degrees of cogency. Fingerprint evidence, for example, may be stronger proof of identity than the vague generalisations of a witness who saw a tall figure muffled in an overcoat and standing in a dark corner. Circumstantial evidence, although it involves a logical inference, may be sufficient to secure a criminal conviction. In Rex v Blom²⁶ Watermeyer J. A. laid down 'two cardinal rules of logic' which govern reasoning by inference in a criminal trial.

- '(1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
- (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.'

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In assessing the evidence upon which Christian belief is based, our first duty is to clarify what we mean by a 'fact'. It is clear from the accounts that we have considered that the Christian wishes to include more than merely empirical fact in his evidence. A fact is a referent of a belief, but not of any belief. It is the referent of a belief known to be true. It includes any aspect of reality. This definition is too wide for the empiricist who insists that a fact is an abstraction from an event and must be capable of being verified or falsified by actual or possible sense experience. The theist, however, refuses to be limited in this way. We cannot identify the activity of God with finite events. He is beyond space and time, finite and infinite. He is not an object about which we can gain ever increasing information through our own observation, or a hypothesis to be tested, but a mystery which eludes our full comprehension.

The empiricist identifies only one kind of fact, empirical fact. The theist identifies another, what might be called 'supernatural' or 'metaphysical' fact. There is no logical reason why the term 'fact' should be so closely tied to empirical events that it necessarily excludes the supernatural. Religious ^{sentences} may be no more than straightforward statements of empirical fact; e.g. 'Jesus was born at Bethlehem during the reign of Herod and died at Golgotha under Pontius Pilate.' They may, however, be more than this. They may have a supernatural reference. A factual assertion may, for the Christian, be more than an empirical statement.

The relation between empirical statements and religious sentences is exceedingly complex. R. M. Hare has done much to clarify the position. He makes two points: first, that the empirical element is not the only one in religious sentences, or even the most important one; second, even advanced religions require some empirical expectations of their adherents.²⁷ Facts, he says, are inescapably bound up with our own dispositions towards them. Kant taught us that our apprehension of facts cannot be separated from our mental perspective, our categories of thought, and therefore we must inevitably have principles of apprehension. Hare refers to this as the prescriptive element in statements of fact, and remarks that 'without principles of some sort we do not get any facts; there is no distinction between fact and illusion for a person

²⁷ Religion and Morals, (printed in Faith and Logic, ed. Basil Mitchell, p. 176 at p. 187)

who does not take up a certain attitude to the world.²⁸

Facts in themselves, what one might call 'bare facts', cannot be known. Whether you are an empiricist or an idealist, an atheist or a Christian, your beliefs partly determine the nature of the facts you perceive. In other words, there is an a priori element which accompanies and determines the form of every experience. It should not be surprising, therefore, if the Christian gives a special sense to 'ordinary' facts and sees them as bearers of supernatural truth. 'A religious person', remarks Hare, 'may make what is prima facie a statement of fact — perhaps even a statement of quite ordinary empirical fact like 'If I do but touch His garment I shall be made whole' — and yet perhaps he would not have made this statement at all unless it were bound up with all sorts of other beliefs, dispositions, attitudes, and so on. This is, to my mind, the chief reason why religious discourse has always baffled philosophers — and, I am inclined to add, long may it continue to baffle them if they think that to understand it is a merely philosophical problem.'²⁹ We must add, however, that what is perceived is not merely a mental construction. The principles of interpretation are produced by the mind in relation to the world, and they express an order which actually exists in the world.

We have said that a fact is an aspect of reality. This raises the question of the reality of God. How is God related to reality? To point to revelation is only to push the question back one stage. How do we know that revelation is real and not illusory? It is important to clarify what we mean by the 'reality' of God. In short, an ontology is indispensable and fundamental to theology.

Bearing in mind these preliminary remarks on the meaning of the term 'fact' in religious language, we may continue with our assessment of the evidence upon which Christian belief is based. In so far as the belief does not consist in an immediate knowledge of God, a direct and personal apprehension of God himself, it must be based upon circumstantial evidence. It therefore involves an inference, and it is important to consider whether the Christian can legitimately infer from the empirical to the meta-empirical or supernatural.

28 Ibid. p. 190

29 Ibid. p. 188

His acceptance of circumstantial evidence will be futile if propositions with a factual content cannot have a supernatural reference. Indeed, there can be no circumstantial evidence of God if the inference from the empirical to the meta-empirical is invalid. It is precisely the contention of the logical positivists that it is logically impossible to infer from the natural to the supernatural. It is not primarily the adequacy of the evidence, or the correctness of its interpretation, that is being questioned. What is questioned is the logical validity of passing from what is in the world to what transcends it.

Professor A. J. Ayer, one of the protagonists in the verification controversy, has made an important concession. He remarks that there is a non-empirical element in empirical knowledge itself. There is a gap between the evidence of the senses and the conclusion that physical objects exist. The sceptics contend that what we directly perceive are sense data and not physical objects. There is a gap between appearance and reality, and physical objects are only a construction of the mind. Ayer maintains that the gap can be bridged. As he puts it, 'when my present experiences are taken in conjunction with all my past experiences, then, it may plausibly be held, the evidence is sufficient; I am entitled to regard the existence of these and many other physical objects which I can now perceive as conclusively established'.³⁰

Surely, it might be said, the theologian may, in a similar way, include a non-empirical element in his knowledge of God. Surely when all the evidence is taken into consideration it may plausibly be held that it is sufficient to justify belief in God. Unfortunately, the statements 'Physical objects exist' and 'God exists' are not logically parallel. On Ayer's view, when the empirical evidence is translated into physical objects there is no remainder. But when the Christian translates the empirical evidence into God he wants to maintain, in addition, that God is more than the sum of this evidence, and that his existence is independent of the evidence.

Yet, although the Christian is not entitled to say that the existence of God is conclusively established by the circumstantial evidence, he is surely entitled to infer that

30 The Problem of Knowledge, (Pelican ed.), p. 125

the evidence points to the existence of a supernatural Being. He is entitled to claim a degree of probability for the conclusion that the evidence points to another dimension beyond the finite and empirical world. Consider the following two arguments:

1. If there is beauty and order in nature, there must be a conscious Intelligence Who designed it.
There is beauty and order in nature.
Therefore there is a conscious Intelligence.

2. If there is a God who redeems and inspires men, there must be men who have been redeemed and who worship God.
The Church is a community of redeemed and worshipful men.
Therefore God must exist.

It is possible to deny the major premise in the first argument. One may point to the savagery, cruelty, and ugliness in nature, or one may deny that beauty and order necessarily imply a Designer — the beauty and order may be accidental or mechanical. The second argument relies upon an affirmation of the consequent, viz. that there are men who have been redeemed and who worship God. Yet it is possible to deny the consequent. One may, for example, assert that these men worship only their own subjective ideals and speak of redemption because they find this a beneficial approach to life. Neither argument, therefore, can achieve more than a degree of probability, but they can claim to give knowledge which is less than conclusive. The degree of probability may be no more than a bare balance, or it may be such as to exclude every reasonable inference except that which points to God. The Christian is persuaded that at the very least they establish a prima facie case and so transfer the burden of proof to the unbeliever.

If our knowledge of God is less than conclusive, let us remember that doubt is an essential part of the structure of faith. We walk by faith and not by sight. Moreover, doubt is essential if we are to appreciate the strength and weakness of our beliefs and strive towards a rational expression of our faith. A faith that is absolutely certain at every point, that admits no need for thought and criticism, comes dangerously close to delusion and credulity. It may appear to be strong, but it hides confusion and harbours fear.

Faith is conative as well as cognitive, and truth must be searched out for God does not infuse it mechanically into blank and passive minds.

The views of Mascall, Baillie, and Farrer rely upon direct evidence, i.e. upon what we ourselves perceive or directly apprehend. They therefore escape the difficulties involved in drawing inferences. They, however, have difficulties of their own.

Mascall is, in effect, restating the cosmological argument for the existence of God, and his exposition is open to many of the stock objections to that argument. Thus, the exposition relies upon the assertion that every effect must have a cause. But if this is necessarily true, then the assertion is analytic and not synthetic. It cannot be falsified, and gives us no information about the world. If, for the sake of argument, we grant that the assertion is true, why must finite beings have a transcendent cause? Moreover the relation of cause and effect is ordinarily confined to events and things within the world. Hume pointed out that a cause is an observed constant conjunction between two events. For example, event B is observed always to follow event A and never to occur without being preceded by event A. Therefore B is said to be caused by A. But God is not an object or person that we can observe, or an event occurring wholly within our world. It is difficult to understand what can be meant by a non-empirical metaphysical cause.³¹

Perhaps we could point to the mind as an entity which is not in space but which is affected by physical objects which are in space and which produces effects upon such objects. But what is this entity called 'mind'? If the mind and physical objects are different substances with different kinds of existence (mental and physical), how can the mind acquire knowledge of the objects? If the mind is not in space, what do we mean by its 'existence', and how can it influence the body? These problems of Cartesian dualism arise from what Gilbert Ryle refers to as a 'category mistake'. The concept of mind 'represents the facts of mental life as if they belonged to one logical type or category...when they actually belong to another'.³² The reasoning may be described as

31 Other objections could be raised. See, for example, R. W. Hepburn, Christianity and Paradox, ch. IX.

32 The Concept of Mind, p. 16

follows: 'Because, as is true, a person's thinking, feeling and purposive doing cannot be described solely in the idioms of physics, chemistry and physiology, therefore they must be described in counterpart idioms. As the human body is a complex organised unity, so the human mind must be another complex organised unit, though one made of a different sort of stuff and with a different sort of structure'.³³

The main difficulty with Baillie's view is that it seems to be caught in the net of subjectivity. What entitles us to say that because we have a special experience, there is really something there? We cannot presuppose a special sensitivity and then argue that because we have this sense there must be something or someone to which it refers. Baillie distinguishes, on the one hand, between judgments expressed in propositions and giving knowledge of truths by description, and on the other, direct apprehensions of reality giving knowledge by acquaintance. Knowledge of truths may possess certainty, but knowledge of reality possesses certitude. Unfortunately, he tends to confuse the two concepts of certainty (a quality of propositions) and certitude (a quality of mind). While certainty is claimed for propositions, certitude is claimed for experiences and not for the apprehension that some statement is true. A proposition may be true or false, but reality must be truth itself, i.e. that which has no falseness in it. Baillie appears to be claiming that what we apprehend is not a proposition but reality itself. The Christian therefore has an inner certitude which consists not in a negative absence of doubt, or the judgment that a proposition about God is true, but in a positive apprehension of that which has no falseness in it. It is difficult to see how this certitude can be more than a subjective state of mind. Faith, he tells us, is primarily confidence in God rather than the uttering of judgments about him, and instead of claiming certainty for our thoughts about God we should content ourselves 'with claiming that certainty [sic] "pulsates through all our thinking"'.³⁴

If the efforts of contemporary theologians to bridge the gap between the empirical and the meta-empirical are not entirely convincing, their failure cannot rule out the possibility of the existence of God. Moreover, the atheist cannot, merely on a priori grounds, restrict experience to the

33 Ibid. p. 18

34. The Sense of the Presence of God, pp. 7-18

bodily senses. He cannot deny that it is at least possible that man has a natural faculty through which he gains an immediate apprehension of God. Ayer himself confesses that he has no wish to restrict experience to sense experience. 'I shouldn't at all mind counting what might be called introspectable experiences or feelings; mystical experiences, if you like.'³⁵ The mere presence of difficulties in describing the mode of our direct apprehension of God does not justify complete rejection of the possibility. If there is an immediate awareness of God, the Christian has a certitude which cannot be obtained by any process of inference.

Finally, we must not forget the priority and supremacy of Scripture as the evidential basis of belief. This revelational basis ensures that faith cannot be confuted by philosophy or destroyed by lack of direct apprehension. Whatever philosophy may say, we believe in the Incarnation. We believe this not only because the Bible declares that 'the Word became flesh and dwelt among us', but also because the Gospels exhibit the Word moving among men, and what we read and interpret commands our allegiance. It is not merely isolated statements in the Gospels but the total impact, the whole picture, that leads us, like Thomas, to cry 'My Lord and my God'.

A further consequence follows from our possession of Scriptural evidence. Our knowledge of God is far richer and fuller than it otherwise would be. Despite the limitations of reason and experience, we know, because it has been revealed to us, that 'God was in Christ reconciling the world to himself', and that we are justified 'by God's free grace alone'. As Mascall has put it, 'the things that the human reason [and, we may add, experience] can find out about God look very small and pale by the side of the tremendous truths that God has revealed about himself in Christ'.³⁶

To sum up, when the Christian is called to give evidence for his belief he must, under cross examination, be prepared to defend three basic positions. 1) He believes in God because of what he himself has seen of the divine love and grace in the lives of others. 2) He himself has a direct apprehension of God. 3) He accepts the revelation contained in the Scriptures. If the evidence on all three points is shown to

35 Readings in Religious Philosophy, ed. G. MacGregor and J. W. Robb, p. 346

36 He Who Is, p.24

be unworthy of credence then the Christian faith becomes irrational and absurd, and the verdict goes to the atheist. If, however, the evidence cannot be shaken on any material point, then it is the atheist who will be convicted and sentenced by the Judge of all the earth.

5 LEGAL REASONING AND THEOLOGICAL DISCOURSE

Once the facts have been proved in a court of law, legal reasoning proceeds from rules, concepts, definitions, and principles. In other words, it becomes a priori, an examination of ideas without any appeal to experience. No attempt will be made here to give a complete account of legal reasoning. Our purpose is to select certain features of the judicial process which may throw light on the problems of theological exposition and communication. Our discussion will be confined to South African and Anglo-American law which are closely related on this topic.

For the most part, reasoning in law is neither inductive nor deductive. These categories of formal logic are not of such importance or significance as to characterise legal reasoning as a whole, although legal argument may, at different stages, be either inductive or deductive. The merits of the opposing arguments of counsel, or the social consequences likely to result from a judgment, cannot be assessed by inductive or deductive processes. Formal logic is of little use to a judge who is confronted with an entirely new point of law, or who is trying to make a choice between conflicting classifications of fact or formulations of principle. The judgments of a court are not produced with the mechanical efficiency of a computer, as though one had merely to supply the facts in order to obtain the relevant legal rule. The correct interpretation of a statute, the wise exercise of a judicial discretion, a just verdict — these cannot be deduced by rigorous logic from self-evident truths.¹ The techniques of formal logic are too narrow and rigid for juristic thought.

Legal reasoning has a logic of a special kind. It does not start from self-evident truths and arrive by strict logic at a conclusion that is certain. It is a dialectical process of persuasion and decision, suggestion and instruction. The process leads to a gradual emergence of truth. Facts are not

1 In the nineteenth century and early part of the present century, there was a movement known as the jurisprudence of conceptions. Its aim was to create a legal system by deductive reasoning from concepts. This has been stigmatised as 'mechanical jurisprudence'. J. Stone, in his book The Province and Function of Law (p. 156), writes deprecatingly of 'fictional exegesis' which is unrelated to 'the dynamic of human relations which it is the province of law to regulate'.

used with a scientific objectivity. The lawyer has a different purpose from that of the scientist. The lawyer urges particular classifications of fact upon the judge. He emphasises those which favour his client, and interprets those which are unfavourable in such a way that they do not injure his client. On the basis of the facts he suggest what rule of law should be applied. This reasoning is supported by reference to legal decisions which have been given in the past in similar cases. His object is to convince and persuade. He hopes to lead the judge to a particular decision. The judge in turn weighs the evidence, classifies the facts and the law, and determines the rule of law to be applied. His object is to arrive at and justify a decision.

A distinctive logic such as this requires a special designation. The term 'rhetoric' appears to be particularly appropriate. In Plato's *Phaedrus*, Socrates insists that rhetoric must be based on the method of dialectic.² This method involves two procedures known as 'collection' and 'division'. In collection 'we bring a dispersed plurality under a single form, seeing it all together: the purpose being to define so-and-so, and thus to make plain whatever may be chosen as the topic for exposition.' Division is the reverse of this process. The single form is elaborated and developed in a scheme of divisions. Rhetoric is thus a means of ascertaining and developing a truth, and not a method of inductive or deductive proof. Aristotle refers to it as a 'means of persuasion', and defines it as 'the faculty of observing in any given case the available means of persuasion'.³ One of the basic methods, he remarks, is the use of example. To argue by example 'is neither like reasoning from part to whole, nor like reasoning from whole to part, but rather reasoning from part to part'.⁴ It should be noticed that rhetoric in this technical sense is dissociated from all connotations of emotional eloquence or insincere declamation.

It is our contention that the term 'rhetoric' is equally applicable as a description of theological reasoning. We shall examine four features of legal rhetoric and note the

2 *Phaedrus*, 265D (translated with introduction and commentary by R. Hackforth)

3 *Rhetoric*, 1355 b14 (*The Works of Aristotle*, ed. W.D. Ross)

4 *Analytica Priora*, 69a (*The Works of Aristotle*)

application of each to theological discourse. We hope to show that law and theology share a similar structure of reasoning, and that the term 'rhetoric' is as suitable a characterisation of theological discourse as it is of legal argument.

I a) In the well known case of Cape Town Municipality v Paine,⁵ Innes C. J. made the following remarks. 'It has been repeatedly laid down in this Court that accountability for unintentional injury depends upon culpa — the failure to observe that degree of care which a reasonable man would have observed. I use the term 'reasonable man' to denote the diligens paterfamilias of Roman law — the average prudent person.'⁶ This concern for reasonableness pervades legal thought. It is well illustrated in a recent case, Auto Protection Insurance Co. v Hammer and Strudwick.⁷ An insurance company refused to meet a claim under an insurance policy which it had issued. The ground of refusal was that the insured had failed to maintain the insured vehicle in an 'efficient condition' as required by clause 6 of the policy. In particular, the tyres had been allowed to become badly worn. The main reasons for the judgment against the company may be set out in the following order.

1. Clause 6 places a limitation upon the obligation to indemnify. Its provisions must therefore be restrictively interpreted.
2. The words 'in efficient condition' import a relative concept and do not have a precise meaning. The Oxford Dictionary is cited for the meaning of 'efficient', and then relevant cases dealing with the notion of efficiency are considered. 'In the absence of any governing standard or norm', remarked his lordship judge Ogilvie Thompson, 'the concept of maintaining a motor vehicle in "efficient condition" is not readily definable with precision and....the application of that concept to the motor vehicle's tyres is attended by practical difficulties.'
3. A reasonable meaning must be given to vague language. The obligation to maintain the motor vehicle in 'efficient condition' 'should, in relation to tyres,be construed as meaning no more than an obligation to take all reasonable steps to keep the vehicle's tyres in such a state as the ordinary reasonable man would consider adequate for the purpose of negotiating the hazards normally

5 1923 A.D. 207

6 At p. 216

7 1964 (1) S.A.L.R. 349 (A.D.)

8 At p. 355

encountered on the streets and highways'.⁹

One feature of legal rhetoric, then, is that it always attempts to be reasonable. We may note that this feature is shared by our ordinary common sense process of reasoning. In life, as in the law, we meet puzzles, paradoxes, and contradictions. Often it is not possible to discover one infallibly correct course of action. In these circumstances, we endeavour to act reasonably. We weigh the pros and cons and examine different possibilities. When we finally adopt a particular course of action we could, if pressed, give reasons for it. To act in this way is to act reasonably. 'The rationality of our opinions cannot be guaranteed once and for all. It is in the ever-renewed effort to get them accepted by what in each field we regard as the universality of reasonable men that truths are worked out, made specific and refined....'¹⁰

1 b) Surely Christian belief must share this concern for reasonableness. Our faith must, as far as possible, be made intelligible and convincing; it must be shown to be relevant to the problems that press upon us; it must make sense of the world and give coherence and significance to life. If Christian belief is to be rational, it must be shown to be 'worthy of a reasonable mind'.¹⁰ To oppose reason and revelation as though they were incompatible is to commit a triple error. It ignores the fact that God is a God of order and not of chaos; it overlooks the fact that he is a Father-God who delights in an intelligent response from his children; and it does not give due consideration to the part played by the mind in the reception of revelation.

It is not only in his thought and doctrine that the Christian must try to be reasonable, but also in his moral and religious acts. He must be prepared to justify his actions, to say why he acts in one way rather than in another. This means that he must always try to act in accordance with rational principles. It should not escape notice that this is in fact to act in a legal way, for it is characteristic of the activity of lawyers and judges. It is to allow one's actions to be governed by laws and principles. Yet it is not 'legalism' in either of the two bad senses which we considered in chapter 2.

⁹ At p. 355f

¹⁰ A. Farrer, op. cit. p. 9

There is no suggestion of justifying oneself before God. It is not necessary to draw up a code of rules, or to be mechanical and impersonal in one's relations to others. Freedom and spontaneity are not excluded, for such action requires an exercise of the will and the motive of love.

2 a) Another feature of legal rhetoric is its open texture. The principles, rules, standards, and concepts of law are often imprecise in meaning and undetermined in scope. This is not something which can be corrected by closer definition or stricter limitation. It is not a defect but part of the very structure of language. A general principle would cease to be general if every member of the class to which it referred could be listed, and the same may be said of general rules, standards, and concepts. The facts to which a general principle may have to be applied are infinite in number and variety. We cannot know the future or anticipate every eventuality that might arise. Often a rule must be applied to circumstances which were not foreseen when it was framed. Doubt, therefore, is an inevitable element in the structure of legal reasoning. There is always a margin of uncertainty, and knowledge is always incomplete.

The Auto Protection Insurance case illustrates the open texture of a legal standard. The court had to determine both the meaning and the scope of the phrase 'efficient condition' in relation to a motor vehicle. A more extensive illustration is found in the legal rule volenti non fit injuria. That to which a man consents cannot be considered an injury. A man cannot complain of an act to which he has given his assent.

At first sight, the rule seems clear enough. A man who is willing to be injured cannot recover damages in a court of law if he is injured. But how many people voluntarily consent to suffer an injury? Those who undergo an operation, those who play sport perhaps, certainly those who take part in a boxing match. There remains a large area of daily activity which is not covered by this interpretation of the rule.

Suppose someone tries to stop a runaway horse to prevent it from injuring others. He is injured and sues the owner of the horse. Can his claim to damages be defeated on the ground that he consented to be injured? Surely he did not consent to be injured. On the contrary, he probably hoped that he would not be injured. Yet everyone knows that it is

dangerous to try to stop a runaway horse, and it would be unjust to impose liability on the owner. The injured man knew that he was incurring the risk of injury. The interpretation of the rule is therefore widened. The claim to damages is disallowed on the ground that the injured man consented not to injury but to the risk of injury.

A further difficulty may now arise. What is meant by 'consent'? If a person is employed in a dangerous occupation he surely consents to the risk of injury arising out of his employment. But suppose that he is injured as a result of his employer's failure to take elementary safety precautions. Surely he does not consent to the risk of injury in these circumstances. What if the occupation is not normally dangerous, but has become so owing to the employer's negligence? For example, suppose that machinery has been allowed to fall into a dangerous state of disrepair. Clearly, the employer is liable. But suppose that the employee knows that the machinery has become dangerous, does not complain, and continues to use it. It would seem that he has consented to the risk of injury. But if he continued to use it without complaint only because he feared dismissal otherwise, can we still say that he voluntarily consented to the risk of injury? And so we might continue indefinitely. It is not possible to exhaust all the circumstances which might require a modification or extension of the rule.

2 b) Theological rhetoric too shares this open texture. Often it is not possible to give a precise meaning to theological ideas or to delimit the scope of ethical rules derived from the Bible. The concept of salvation provides an example. We may say that salvation means deliverance from sin. This statement bristles with difficulties. What is to be included under the concept of sin? Is it rebellion, ignorance, bondage? Is it deliberate wrongdoing or does it include apathetic indifference and helplessness? Is salvation a deliverance from evil or from guilt? Is it the acquisition of new life, the acceptance of orthodox doctrine, the committal of life to God? We cannot exhaust all the possible answers to these questions.

G. C. Stead takes the example of the suffering of Jesus and shows how it suggests further questions. 'Is God then

capable of suffering? Is there something more in Christ than "He" that suffered? Should we draw distinctions within the term "suffering" which might perhaps also apply to the saints?¹¹ Many other examples of open texture readily suggest themselves; e.g., faith, revelation, grace, reconciliation, justification, righteousness, forgiveness. None of these can be precisely defined and delimited. This is not a defect, but a necessary part of our knowledge of God. If the Being of God and his ways with men are exhaustively known he ceases to be the holy, omnipotent, and transcendent God of our faith. If all theological concepts could be precisely defined the truth would be distorted, the power of God would be limited, and the glory of the Gospel would pass away.

3 a) Legal rhetoric is open to contrary opinions and conflicting formulations of principle. A good illustration of this is the case of Herschel v Brube,¹² the leading South African case on liability for negligent statements. Five judges of the Appellate Division delivered five separate judgments, one allowing the appeal and four disallowing it. Each judgment was based upon different grounds. Legal rhetoric has an aversion for over simplification and superficial unities. It is hospitable to correlative and contradictory ideas. Every right has a duty, every act is in some sense an omission, every liberty is subject to restraint. In criminal trials the prosecutor attempts to prove the guilt of the accused while the defending lawyer attempts to prove his innocence. In civil actions counsel for the plaintiff urges the liability of the defendant while counsel for the defendant denies liability. Contrasting concepts may be applied to the same individual; thus, a seller has a right to receive payment of the purchase price and a duty to deliver the goods sold.

Professor Wisdom describes this process of legal reasoning as 'a matter of weighing the cumulative effects of one group of severally inconclusive items against the cumulative effect of another group of severally inconclusive items.... It is a presenting and representing of those features of the case which severally co-operate in favour of the conclusion....

11 How Theologians Reason, (printed in Faith and Logic)

12 1954 (3) S.A.L.R. 464 (A.D.)

The reasons are like the legs of a chair, not the links of a chain'.¹³ Hartshorne and Reese draw attention to the 'law of polarity'. 'According to this law, ultimate contraries are correlatives, mutually interdependent, so that nothing real can be described by the wholly one-sided assertion of simplicity, being, actuality, and the like, each in a "pure" form, devoid and independent of complexity, becoming, potentiality, and related contraries.'¹⁴ These remarks, taken from a context of theology, are particularly appropriate to legal rhetoric.

3 b) Theological rhetoric too is open to contrary opinions and conflicting formulations of principle. It is hospitable to correlative and contradictory ideas. Theological rhetoric too has an aversion for over simplification and superficial unities. For example, there are contrary poles such as law and love, finite and infinite, autonomy and heteronomy, reason and revelation, transcendence and immanence. In each pair, neither pole can retain its meaning without the other, and the synthesis and unity of both are found in God. As John Baillie has written, describing Kierkegaard's use of the term 'dialectical', 'our thought falsifies its object unless we allow it, as it were, to be defracted in two opposite directions at once'.¹⁵

Let us consider some illustrations. Law without love hardens into Phariseeism and impersonal manipulation of persons. Love without law softens into sentimentality. To oppose law and love is to create a false antithesis, for the two are not incompatible but complimentary. We noticed in chapter 2 that there are two contrary aspects of the power of God, and in chapter 4 that reason and revelation are inter-related. A further illustration is the heteronomy and autonomy of Christian belief. It is autonomous because it follows the structures of the human mind. 'Autonomy means the obedience of the individual to the law of reason.'¹⁶ Autonomous reason 'is obedience to its own essential structure, the law of reason which is the law of nature within mind and

13 J. Wisdom, Gods, (printed in Philosophy and Psychoanalysis p. 157

14 Philosophers speak of God, p. 2

15 The Sense of the Presence of God, p. 107

16 Systematic Theology, vol. 1 p. 93

reality, and which is divine law, rooted in the ground of being-itself'.¹⁷ Christian belief is also heteronomous, i.e. subject to a law external to the mind and the self, external to sense perception and rational thought. Truth is accepted on the authority of God's word, and therefore God's word becomes law to the believer.

This bi-polarity of theological rhetoric is evident in the whole history and development of theology. From the outset, there was a clash in Christianity between Jewish and Greek categories of thought, between the concrete and the abstract, the historical and the speculative. The law of polarity can be seen at work in the Christological controversies of the early Church Fathers. In the Middle Ages, the opposition between reason and revelation occupied the minds of philosophers and theologians. In the nineteenth century, pietistic and subjective romanticism was opposed by positivistic and objective rationalism. Finally, in our own day, the theologies of Barth, Brunner, Bultmann, and Tillich provide examples of contrast and opposition.

4 a) According to Aristotle, one of the basic methods of rhetoric, as we have seen, is the use of example. In law and theology too the use of example plays an important part.¹⁸ Let us see how it is applied in legal rhetoric. When he is trying to determine the relevant rule of law to apply to the facts of a case, a lawyer or judge looks for examples. He looks for past cases which resemble the case before him. In technical terminology, he looks for the rationes decidendi of past cases. It is a mistake to give an inflexible definition of the phrase 'ratio decidendi'. In a wide sense it is the whole course of reasoning by which a court arrives at and justifies its decision. In a narrow sense it is the rule of law upon which the judgment is based; that part of a judgment which possesses authority by virtue of which the judgment is binding upon a court of inferior jurisdiction.

There is no mechanical technique for identifying the ratio of a case. 'There may be as many ways of finding the ratio of a case as there are ways of finding a lost cat.'¹⁹

17 Loc. cit.

18 We are, of course, adapting the term 'rhetoric' for our own purposes, and do not claim that our use of the term is on all fours with its use in Greek philosophy.

19 A. W. B. Simpson, Oxford Essays in Jurisprudence, p. 159

Part of the difficulty is that no two cases are identical. There will always be features which are present in one and absent in the other. The difficulty is increased where there is more than one ground for a judgment, or where several judges, sitting together, deliver separate judgments. To find the ratio of a case, one must abstract the material facts and the reasons which were necessary for the decision. The greater the abstraction, the more general the ratio will be and the less useful. 'How do we know when to stop with our abstraction?' asks Glanville Williams. 'The answer is: primarily by reading what the judge says in his judgment, but partly also by our knowledge of the law in general and by our common sense and our feeling for what the law ought to be.'²⁰

Consider the following example. In Donoghue v Stevenson,²¹ a shopkeeper sold a bottle of ginger-beer to a customer. After drinking some of the ginger-beer, a decomposed snail was discovered in the bottle. The customer claimed to have contracted a serious illness as a result. The ratio of Donoghue's case is usually stated to be that part of the judgment which runs as follows:²²

'A manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care.'

In applying this ratio to other cases, we must look for certain qualities and relations. Suppose a court is confronted with a case where a person has been injured as the result of the presence of an irritating chemical in a pair of underpants which he has purchased.²³ Can the ratio of Donoghue's case be extended analogically to clothing as well as to drink? Can it be applied to food — even if the food is not manufactured? In the process of settling such questions as they arise in subsequent cases, qualities and relations are developed,

²⁰ Learning the Law, 5th ed. p. 98. See Preterita City Council v Levison 1949 (3) S.A.L.R. 395 at p. 317 for a clear summary.

²¹ 1932 A.C. 562

²² At p. 596

²³ Grant v Australian Knitting Mills 1936 A.C. 85

refined, and limited. Different aspects of the rule, which might otherwise have been thought to be remote from the original example (Donoghue's case), are seen to be relevant in the light of further examples (subsequent cases). These different aspects are seen to cohere in a single principle. As the process continues, new insights are gained and different aspects of the rule are integrated. Yet the development is not arbitrary. It is controlled by the decisions given in previous cases, and by the qualities and relations in the original example.

4 b) In the theological sphere, the use of example is found pre-eminently in the doctrine of analogy. Analogy is a resemblance of relations, either quantitative or qualitative, between two entities in comparison with each other or in comparison with a third entity. It involves neither inductive nor deductive reasoning, and conclusions derived from an analogy can never be more than tentative, establishing a degree of probability which falls short of the certainty required for knowledge. If more than this is achieved, our reasoning has ceased to be analogical and has become inductive, leading to knowledge by inference. In other words, analogy is the porch of theological dogma; it leads to knowledge, it provides the key which enables us to enter, understand, and know.

Because of the special logic of analogy, the similarities to which it points are weighed rather than correlated into an established system. There is no law connecting the similarities; they have no systematic or necessary relationship to one another. Apples and oranges are both round, for example, but there is no law connecting this similarity. Let us suppose that oranges have a further property, P. It cannot be inferred that because oranges are P, therefore apples also are P. This can be inferred only if there is some law connecting roundness and P. The use of analogy is similar to the use of examples. Qualities and relations are compared, but this does not, by itself, provide conclusive proof or give cognitive apprehension of truth.

As in law, so in theology, the use of example helps to develop, refine, and limit concepts and doctrines. Different aspects of truth which might have been thought to be remote from and unrelated to each other may, through the use of analogy, be seen to cohere in a single principle. Thus the analogy of the Fatherhood of God enables us to discern a

relationship between suffering and love, discipline and discipleship. 'For the Lord disciplines those whom he loves; He lays the rod on every son whom he acknowledges.'²⁴ Again, the truth contained in one doctrine may be seen to apply also to another, and so the two doctrines may be correlated. Thus, if we take the analogy of a victory over enemies we clarify the doctrine of the atonement. But we also clarify the doctrine of the ascension, for there too a victory was won, the demonic powers were overthrown, and Christ was made sovereign over all. In this way we come to see that the ascension is part of the atonement.

The development of concepts and doctrines in this way is not arbitrary. It is controlled by doctrine previously arrived at, and by qualities and relations in the analogies used. Just as the ratio of a court case determines what new facts fall within its ambit, so the analogy used in a theological doctrine determines what is relevant and in what directions the doctrine may be developed. Thus, the analogy of the Fatherhood of God excludes any doctrine that a child of God can have no trust and confidence in his heavenly Father. For what father 'will offer his son a stone when he asks for bread, or a snake when he asks for fish?'²⁵ The analogy of a victory over enemies excludes doctrines of dualism and fatalism. An analogy, therefore, has a binding effect upon theological discourse, just as the ratio of a court case is binding upon courts of inferior jurisdiction. It controls the direction of doctrinal development.

But how do we know where to find our analogies, or when to stop the process of relating similar qualities and relations? Every analogy can be taken too far and pressed to the point where it breaks down. The answer must be: primarily by the revelation of Scripture and the testimony of the Spirit leading to a creative understanding of our belief, but partly also by our knowledge of doctrine in general, by the use of reason, and by an intuitive striving for the way, the truth, and the life. It is important to stress the part played by our previous knowledge of doctrine in controlling the use of analogy. It is for this reason that different religions will

24 Heb. 12:6 (N.E.B.)

25 Matt. 7:9,10 (N.E.B.)

use different analogies. Even within Christianity we find that different analogies are employed by Roman Catholic and Protestant theologians, or the same analogy is developed in diverging directions.

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There is one more aspect of legal and theological reasoning which we must examine. We must consider the logic status of sentences in each sphere. This will indicate the complex nature of legal and religious concepts, and how they are used to give effect to law and theology. It will also help to clarify the distinctive nature of legal and theological reasoning, and in particular to avoid confusion with the techniques and concepts of the sciences.

The great merit of logical positivism is its convincing demonstration that religious sentences are not of the same logical type as statements of fact such as 'The car is in the garage'. Many religious sentences are not factually significant in an empirical sense of the term 'fact'. They do not give information about the world. Unlike scientific statements, they do not describe, explain, or predict. As we shall see, this is not true of all religious sentences, but it is true of a great many. The scientific model is therefore inappropriate as a characterisation of religious thought or theological discourse. We shall find that law is a far more appropriate and enlightening model.

To begin with legal sentences, let us consider the following examples.

1. 'I accept your offer to sell your car for R1,000.'
2. 'A owes R100 to B'
3. 'X stole the car.'

Unlike a scientific statement, the first sentence does not describe, predict, or explain. It is not a statement of fact, and can be neither true nor false. The sentence expresses the creation of a contract. It may be valid or invalid, void or voidable, but not true or false. The second sentence does not describe B's expectations, or explain why A is in debt, or predict what will happen to A if he does not pay B. The sentence ascribes liability to A. The third sentence is an imputation of guilt to X, not a description of his theft, or an explanation of how he was apprehended, or a prediction of what will happen to him if he is convicted.

Each of these sentences expresses an operation of the

legal system. We may draw conclusions of law from them, but not descriptions or explanations of empirical fact. It makes no sense to ask whether they can be experimentally verified, though in a court of law they would have to be legally proved. Their function is to give effect to the legal system by creating, modifying, or extinguishing rights and duties, and by imposing criminal liability. The sentences are based on norms which do not describe facts but prescribe duties, ascribe rights, and impose liabilities. Concepts such as 'contract', 'debt', and 'theft' cannot be understood merely by consulting a dictionary, but only by learning how they operate in a legal system.

Consider one more example. Suppose that we have a document containing the following sentence: 'A promises to pay R100 to B, on demand, for goods sold and delivered.' It would be logically inappropriate to ask: 'What is your empirical verification?' The note does not primarily describe an empirical fact as one might describe, say, the goods which have been sold or the way in which they were delivered. It acknowledges and accepts an obligation. This constitutes the document a promissory note, and as such it is negotiable, i.e. it may be transferred from one person to another. The language of the promissory note is performative. The person who signs it engages to pay R100 on demand to B or to any other person who has become the legal holder of the note. If the note were purely descriptive or explanatory of empirical fact, it could not perform its function as a negotiable instrument. The sentence can be neither true nor false, but a claim based on the document may be defeasible (e.g., if the promisor's signature has been forged or made without his authority). The sentence can be understood only as it functions in a legal system, acknowledging a debt and enabling a legal holder, a holder in due course, to claim payment from the promisor.

Let us now consider the logical status of religious sentences, and the functions of theological rhetoric. There are occasions when theology describes, explains, or predicts. It may describe the attributes of God, or explain the parting of the Red Sea at the Exodus or the persecution of the early Christians, or predict judgment and resurrection. There is another class of sentences, however,

whose functions are not primarily to describe, explain, or predict. They are not empirically informative, and do not refer to perceptible events. These sentences are beyond the range of the verification principle. Once the evidential basis of belief has been accepted, theological reasoning takes on a special form. Just as the functions of legal sentences can be understood only when we learn how they operate in a legal system, so the function of these religious sentences can be understood only when we see how they operate in religious belief.

The class of religious sentence which we are to consider constitutes the main bulk of theological discourse. Since their logical function is different from that of statements of fact, terms such as 'statement', 'assertion', and 'proposition' should not be applied to them. These terms suggest a relation between the statement and some fact or facts by which it is verified. It is preferable, therefore, to speak instead of 'sentences' or 'utterances'.

Let us now consider some examples. 'In the beginning God created the heavens and the earth. The earth was without form and void, and darkness was upon the face of the deep; and the Spirit of God was moving over the face of the waters.'²⁶ To regard these sentences primarily as description or explanation is to miss their rationality. They express a religious interpretation of the world, a belief in the primacy and omnipotence of God and a sense of cosmic order and purpose. It is therefore inappropriate to test their validity by the categories of the natural sciences.

'God shows his love for us in that while we were yet sinners Christ died for us. Since, therefore, we are now justified by his blood, much more shall we be saved by him from the wrath of God.'²⁷ These sentences do, of course, have a basis in empirical fact, but their function is to evoke an attitude and to elicit a response. This, at least, is their primary function. The language is both promissory and performatory. It is promissory because it guarantees to change the personal situation of any who respond. It is performatory because it creates the possibility of this response,

26 Gen. 1:1,2 (R.S.V.)

27 Rom. 5:8,9 (R.S.V.)

requires participation, and effects a change in the sympathetic hearer. As with the promissory note so here, these two aspects together confer negotiability. They enable the Christian faith and the blessings of the Gospel to be transferred from one person to another, and from God to man. Once this function is understood, it becomes inappropriate to ask for empirical verification. As the words of a promissory note are intended primarily to give effect to the legal system, so these words are intended primarily to give effect to the Gospel.

We saw that the lawyer uses argument to persuade, convince and lead to a decision. Similarly, the theologian may use language not to give a strict logical proof but to persuade, convince, and lead to a committal. Religious sentences are then used as a call to participation in the truth which they proclaim. Their rationality can be understood only through participation, for only then does human experience acquire a meaningful form and worship take on significance. The sentences are not statements of fact, and can be neither true nor false. If they were purely descriptive of empirical reality they could not perform their function.

There are many who have drawn attention to this function of religious language, namely, to lead to a committal. It is not always made clear, however, that more is involved than mere commitment. To give oneself to God is not a blind, irrational act or impulse. The logic of encounter and obedience is of the first importance in theological discourse, but just because it is so important we tend to ignore the logic of interpretation. Religious sentences give coherence and significance to life. They help us to understand the nature of the world. Thus, Crombie remarks that one of the grounds for telling parables such as those of creation, redemption, and judgment is that they deepen our understanding of the world. For example, the more we try to understand the world in the light of the image of God as Creator, the better our understanding becomes.²⁸ Ramsey hints at something more than mere commitment when he observes that commitment 'is based upon but goes beyond rational considerations'.²⁹

28 The Possibility of Theological Statements, Faith and Logic, p.81

29 Religious Language, p. 17

The special logic of religious sentences such as those which we have considered requires us to speak with caution of 'explanation'. Unlike the sciences, religious sentences do not explain what empirical reality is, or how it can be manipulated, or even why things are as they are. They use concepts which function not in a material and empirical world but in a spiritual world which transcends ordinary sense experience. They interpret spiritual truths to those who have the Spirit of God.

Thus, a sentence such as 'God is love' cannot be used as an explanation of the problem of evil, pain, and suffering, as though God lovingly tries his children with disease, famine, poverty, and disaster. When a man loses his wife and children in a motor accident, this is not God refining his character. The sentence 'God is love' does not assert a proposition. If it did it would be open to falsification, and there are many to whom it appears to be falsified by an amount of evil, pain, and suffering in the world which seems to be incompatible with the existence of a loving and omnipotent God.

But it is precisely in situations of suffering that the sentence becomes meaningful. The Christian does not shrug off tragedy with pious talk about the will of God. He feels its full impact. His faith is threatened. It is in such a situation that he feels a sense of contingency, a feeling of absolute dependence (as Schleiermacher put it), and becomes acutely conscious of a dimension transcending the finite world. It is in such a context that the sentence 'God is love' acquires meaning. The suffering love of God in Christ is known in the agony of personal experience, and the believing soul is drawn into fellowship with the living God.

There are other functions of religious sentences. They may be inspirational, revelational, worshipful. Religious language may be used for prayer, confession, repentance. We have taken only a few examples to show the complex nature of religious sentences. We have stressed that the logic of such sentences is incompatible with the logic of the natural sciences. Theology trespasses when it tries to give scientific descriptions or explanations of empirical facts. Religion is a separate and autonomous sphere of discourse. If you like, you may say that the word 'God' is a logical constant which determines the categories of religious thought.

It limits the range of theological discourse. The word is used only in religious sentences, and in no other context.

The demand to make plain the full meaning and logic of religious and theological sentences cannot be met. God is not a datum that we can inspect or about which we can gain ever increasing knowledge until we have mastered our subject. The being of God is a mystery that cannot be exhausted. The logic of religious and theological sentences will therefore always be elusive and elliptical. 'The problem about theological statements', writes I. M. Crombie, 'is simply that there is a sense in which we cannot know what they are about (a sense in which we cannot know God) nor what it is that they assert'.³⁰

Let us draw this chapter to a conclusion by summarising its main points. We have seen that there are close affinities between legal and theological reasoning. Both have a distinctive logic which is neither inductive nor deductive but rhetorical (in the technical sense of that word which we have explained). Truth does not unfold itself with the rigorous necessity of formal logic, but emerges from a loose interplay of opposing and conflicting thoughts. Both theology and law are related to the practical life of man, and both therefore attempt, as far as possible, to be reasonable and rational. Yet the content of their reasoning is not easily exhausted or confined, and often cannot be given a precise meaning or a determined scope. This is reflected in the polarity of their reasoning, its openness to contradictory and correlative ideas. The development of doctrines and concepts is not arbitrary, however, but is controlled by the use of examples. Finally, we have contended that the logic and language of religion can be understood only from within religion itself. It must, therefore, remain a stumbling block to those who make no commitment of their lives to God, and foolishness to the wise philosopher who has no spiritual discernment.

³⁰ Op. cit. p. 35

CONCLUSION

There have been two main emphases in this thesis. The first has been upon law. We have emphasized the need for a theological jurisprudence. There has been a marked tendency in Protestant theology to consider law only in relation to justification and not in relation to the practical life of the Christian. The result has been an impoverishment of the Gospel. Stress has been laid upon sin, guilt, and bondage, while other aspects of law have been neglected. Part of the glory of the Gospel is the discipline, direction, and dedication which it gives to life through acceptance of the sovereignty of God, obedience to his law, and participation in his Kingdom. The law of God is not merely negative and inhibiting. It has positive functions. It is a guide to action, a standards to be attained, and a command to be obeyed. Law is contained in and interprets the Gospel. The union of law, liberty, and love in polar relationship to each other is a paradox only to those who have allowed their theology to be channelled into wrong directions by false presuppositions.

The second main emphasis in this thesis has been on reason. If Christian belief and theology are not rational they are not worthy of acceptance. How many of us would believe if Christianity made only nonsense of life? A concern for rationality means in the first place a careful assessment of the evidence for belief, an honest examination of the strength and weakness of our talk about God. In the second place, it means a clarification of the nature of theological reasoning. It means, in the third place, a willingness to engage in secular, non-religious, or 'worldly' discourse. This is not to say that secular thought must be allowed to dominate religious belief, but only that the Christian, bringing his own insights with him, must approach the unbeliever and share with him the responsibility for shaping the world in which we live. He must be concerned to put his faith into action, to make it concrete and practical, and to do this he must relate it to secular knowledge.

We have attempted to make secular law a unifying theme and a practical model in this thesis. We began with the juridical concept of law, something which, at first sight,

seems to have little relevance to theology and religion. The investigation disclosed, however, that law and theology are related in several ways. Certain aspects of the juridical concept of law are prominent in the Bible. Only a false perspective or a wilful evasion could fail to discern commands, rules, obligations, and sanctions in almost every chapter. We conclude, therefore, that law has a continuing and important part to play in the relationship between God and man. There is no question of being justified by law or being compelled to act in a certain way, for the law of God must not and need not be separated from love, grace, and a respect for man's freedom.

Our attention was also drawn to certain metaphysical and theological presuppositions underlying the legal system of a modern democratic State. The search for validity tended to lead upwards to the moral law of God; restraint on the exercise of State power is a recognition of transcendent ends and the freedom, individuality, and personality of man; legal justice was seen to be limited and imperfect, requiring the justice of God to complete it. Each of these concepts of validity, power, and justice must be related to God if they are not to be misused and distorted.

A further relation between law and theology was found in their use of reason. The model of State law and legal reasoning has helped us to see that theology has a special logic to which we have given the name of 'rhetoric'. Failure to understand this logic must lead to puzzlement and confusion, and to frustration in our task of giving coherence and intelligibility to Christian belief. Our conclusion in this sphere is that theology does not provide neat and conclusive proofs. It cannot be confined within a rigid framework of concepts and definitions. It is a mistake to expect absolute clarity and certainty, for theology lives by dialogue and dialectic, and probes into a mystery which cannot wholly be dispelled.

There is one more conclusion to be derived from this study. If faith is to be strong, it must first be honest and then be rational; if it is to be practical, it must descend from the elevated level of spiritual generalities to the mundane tasks of the material world. A fugitive faith which hides from the light of reason and shelters from the cold blasts of criticism can be of little service to God. A dis-

obedient faith which does not acknowledge God's holy law and act upon Christ's command is a denial of the sovereignty of God, a disavowal of the Lordship of Christ, and a disregard of the direction of the Holy Spirit.

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