
THE THEOLOGICAL FOUNDATION OF LAW

THE THEOLOGICAL FOUNDATION OF LAW

by

Jacques Ellul

TRANSLATED FROM THE FRENCH
BY
MARGUERITE WIESER

THE SEABURY PRESS • NEW YORK

FIRST SEABURY PAPERBACK EDITION PUBLISHED 1969

THIS BOOK WAS FIRST PUBLISHED IN FRENCH BY EDITIONS DELACHAUX & NIESTLE S.A., NEUCHATEL ET PARIS, IN 1946, UNDER THE TITLE "LE FONDEMENT THEOLOGIQUE DU DROIT." THE AMERICAN HARDCOVER EDITION WAS PUBLISHED BY DOUBLEDAY & COMPANY, NEW YORK, IN 1960.

The scripture quotations in this book are from the Revised Standard Version of the Bible, copyrighted 1946 and 1952 by the Division of Christian Education, National Council of Churches.

COPYRIGHT © 1960 BY NATIONAL STUDENT CHRISTIAN FEDERATION

PRINTED IN THE UNITED STATES OF AMERICA

Numbers in [brackets] indicate original page number of preceding material.

Contents

Introduction

Preliminary Chapter

NATURAL LAW CONSIDERED AS A FACT OF HISTORY

1. Natural Law in History
2. Theories of Natural Law
3. Of the Existence of Natural Law
4. The Negation of Natural Law

Chapter I

THE DIVINE LAW

1. Righteousness and Justice
2. Law
3. Covenant

Chapter II

NATURAL LAW AND DIVINE LAW

1. Natural Law, a Christian Doctrine?
2. Natural Law and Divine Law
3. Natural Law as an Event

Chapter III

DIVINE LAW AND HUMAN LAWS

1. The Elements of Human Law
2. Eschatology and Law
3. The Purpose of Law

Chapter IV

LAW, STATE, AND CHURCH

1. Law and the State
2. The Role of the Church in the Realm of Law

Conclusion

Introduction

It may be presumptuous to write once more on natural law, particularly if the attempt is made to re-examine the doctrine as a whole instead of resting content with only one aspect. The problem has been raised for about 2500 years; yet it has never really been solved. On the one hand, there has been an evident effort to account for the undeniable, living reality of a quite spontaneous sense of justice which is innate in human beings. On the other hand, an unbiased, let us say scientific, review of the facts reveals how futile it is to hope for agreement as to the foundation, the content, and the constraining force of this law attributed to nature. As soon as we go beyond generalities, it becomes impossible to maintain a firm position. The attitude of both partisans and opponents of natural law is unquestionably determined by a fundamental choice, a kind of a priori.

One who believes in spiritual values independent of man, such as Idea, Form, Existence, etc., is led to conceive of an ideal natural law which informs human law. Conversely, one who sticks to the scientific observation of facts and thinks [7] nothing is real unless it can be rationally comprehended, must reject natural law as unscien-

tific (which it is). The debate about natural law is, therefore, somewhat false, since it essentially refers to a preliminary argument between Idealism and Materialism, of which it is but a consequence. Hence it is vain to discuss the matter *within the limits of law*.

Whatever the actual state of affairs, it seems that the concept of natural law is now reappearing, after about a century and a half of partial eclipse. It is of no great use to recall at length that since the beginning of the nineteenth century two schools of thought have shared the favors of jurists, the historical school and the school of positive law. For the former, law is exclusively the product of public consciousness and of evolution. For the latter, law is no more than what is laid down in legislative texts; only this kind of clear consciousness of law really counts. Both schools radically reject the concept of natural law.¹

Even those jurists who try to reckon with the total reality of law, including its spiritual content, are apt to formulate their position as follows:²

1. Law is not primarily a ‘norm,’ but the result of a social situation;
2. Law is the order of a concrete community and not the product of coercion by some power;
3. Law is the product of a concrete spiritual situation, and neither the fruit of chance nor the eternal product of nature or of spirit.

1. *On the various schools of legal philosophy since the beginning of the 19th century, consult Roubier, Théorie générale du droit (1946).*

2. *For instance, Wolf, Christentum und Recht (1936).*

There is therefore no denying that the prevailing concept has been that of complete juridical relativism. In these circumstances the order of society and the established human rights are in no way protected against arbitrary power, and there is no reason why the discernment of right and wrong should not be given over to an all-powerful state charged with making its own criteria.³

This state of affairs as it is experienced in our day has prompted a revival of the theory of natural law. In the eyes of many, this theory alone seems capable of checking the disastrous consequences of Positivism. We shall explain later why we do not share this view. But from the very outset it is well to indicate the incredible difficulties this new natural law must face. They are, in my opinion, insurmountable. We notice, for instance, the historically decisive transition from the traditionally individualistic concept of private law to the social concept of public law. While private law had prevailed since the sixteenth century and was congruent with the concept of natural law, public law as it has come to the fore in all areas seems much less closely tied to this absolute law, since it is inherent not in man, but in the state.

The same may be said about the fact that law appears less and less as an abstract norm—if not valid for all times, then at least based on reason—and more and more as a historical phenomenon. It is the expression of a national community which is to a greater or lesser extent represented by the state. (This is not a matter of doctrine, but of the facts of the history of law in the nineteenth and twentieth centuries). Here again it is difficult to see how the concept of natural law could fit the situation. A last point needs to be made in this connection. The emergence of numerous and unprecedented domains of law poses a host of problems relating to natural law. It is

3. *This is, amazingly enough, the conclusion of the normative school. Determined to establish law as an absolute and geometrical science, it really ends up by justifying the state's role as arbiter (cf. mainly Kelsen, Allgemeine Staatslehre).*

hard to understand why natural law did not make [9] evident the existence of these domains before social conditions led to their discovery; further, we do not know what role to attribute to it in view of these radically new and autonomous phenomena. This is true for social legislation, labor legislation, the laws of liability, etc. Thus the problems raised by the modern juridical situation are far from being solved simply by a resurrection of natural law.

From the Christian point of view, whatever conception of natural law is set forth, it plays a particular role which is worth emphasizing. It is most often presented as necessitated by Christian doctrine, either as inherent in the nature of man, created by God, or as a part of the order of creation; as formulated in the revealed Law; as a product of that rational capacity which can develop natural theology; or finally as being inscribed in the heart or the conscience of man. The same idea could be formulated in many different ways. But behind all of them lies the constant concern on the part of the theologians which is, simply put, to find a common ground for encounter between Christians and non-Christians. This encounter may be intellectual, spiritual, or simply material. Thus it is said, "A doctrine of natural law is inevitable as a basis for co-operation between Christians and non-Christians".⁴ We uncover here the desire to be able to come to an understanding beyond the tragic separation created by revelation and grace.

Actually, the problem is easily understood once we start from the affirmation of at least a physical nature common to all men. This common nature is not modified by grace. Consequently, how can this nature be preserved without abandoning grace or the supernatural? What qualities are to be ascribed to this nature? The human heart can by no means easily reconcile itself to a radical sep-

4. *W. Horton*, *Natural Law and International Order*.

aration on account of grace, since the God who gives grace is also the God of love who loves all his creatures, who wants to save them all, and who calls them to love one [10] another. Natural law, then, becomes part of this tremendous effort at reconciliation beyond grace. It is just one aspect of this effort, along with natural theology and Gnosticism, natural morality, and the absolute value of reason. All are designed to permit man to escape from the radical necessity of receiving revelation in order to know what is goodness and what is truth.

Every “Christian” view of natural law is placed in this framework. Man must be allowed to know of himself what is a proper regulation of society. Christians and non-Christians must come to an understanding on the lines of sound social and political order, based on capacities common to all men. They must be able to work together on this foundation and build the best human society. In the process God is considered more and more an outside factor. In all the theories of natural law God appears more like a presupposition convenient for reasoning, like a hypothesis which is necessary as a point of departure, rather than as the living God, unique in three persons, at the same time creator, savior, and revealer. In all these theories God is regarded only as creator. The idea of an original identity in creation is relied upon to establish a unity between Christians and non-Christians, as if there had not been in the meantime the decisive intervention of God becoming man and radically changing all relationships.

Furthermore, creation is conceived of as initially proceeding from God. But the world is thereafter thought of as functioning by itself, as if God were not continually creator and as if the world did not owe its life to God at every moment.

These theological presuppositions, though rarely openly stated, are absolutely inadmissible. We cannot separate the persons of the Trinity any more than we can allow a mechanistic conception of

creation. It is therefore our task to know first of all what is in conformity with the divine revelation. Our inquiry will be based upon the fundamental and certain themes of this revelation. There can be no question of seeking attenuations or compromises because of observed facts. We shall certainly [11] not neglect these; yet they will be only observations of facts and will never become normative for us.

Moreover, if we remain determinedly “theocentric”⁵ in our interpretation of law, we must admit that we have to first know the meaning of human institutions, human justice, etc., *with reference to God*, and what place according to his revelation they occupy in God’s design. Only then may we probe their value for man and his conduct with respect to them. The latter can only be a consequence of the former. The relationship between God and worldly institutions must have precedence over the possible relationship between these institutions and man.⁶ This will be the first purpose of this study. Accordingly, it proceeds on a radically different basis from the one generally adopted by the Christians eager to work out a foundation of natural law.

However, this attitude in no way implies a belief in the existence of a Christian law.⁷ As there is for us no Christian state, [12] because the state has been ordered by God for tasks other than the propagation of faith, likewise law in our understanding cannot have a Christian content. Law, indeed, has been established for all, for those who believe and for those who don’t. Christians also belong

5. *This theocentric idea is essentially different from what may be called theocratic systems. The latter are relatively simple: human law is the direct expression of the will of God. “It has the gods as authors”, as Plato says. This idea is diametrically opposed to what God reveals to us. See the criticism of Del Vecchio, Leçons de philosophie du droit (p. 343).*

6. *Cf. Ehrenstrom, Rapport au Conseil Oecuménique.*

to an earthly nation, and are subject to this nation's law, which cannot be a Christian law. For what is Christian springs from faith in the person of Jesus Christ. It is impossible to impose the resulting consequences on those who do not share this faith. The desire to create a universally binding law on the basis of the law of God or even on the basis of the Gospel is undeniably heretical. Such an attempt presupposes the possibility, for non-Christians, of accepting the will of God or of living a Christian life. Our task, therefore, is not to determine what law with a Christian content is; rather, it is to find out what the lordship of Jesus Christ means for law (law as it exists), and what function God has assigned to law. We do well to remember that it is God who sends rain on the just and the unjust, who makes the sun rise on the evil and on the good. There can be no question whatever about transforming the content of the Gospel into natural law, even less into positive law. Law is secular and is part of a secular world. But this is a world where Jesus Christ is king.

Before we begin our study, we should like to make two comments which will help to clarify its objective.

1. We shall not attempt to shed light either on the mystery of the essence of natural law or its content. Nor shall we try to justify or to destroy it in favor of positive law. These have been precisely up to now the objectives of studies on natural law. As Protestant Christians, we are called upon to confront the fact of natural law with the teaching of the Scriptures, the rule of our faith. Such a confrontation is necessary because on the one hand all that exists, including

7. *Our inquiry has nothing to do with the question of the relationships between morality and law. This problem is badly conceived from a Christian point of view as long as the relationships between law and morality are examined with both being considered as independent from faith, as intrinsic values (cf. mainly Ripert, La règle morale dans les obligations civiles). According to God's revelation, the relationship between the two exists only in consequence of their reciprocal relationship with faith. This is the point where morality and law go separate ways, achieving personal meaning in the life of creation.*

law, lives under the lordship of Jesus Christ and because, on the other hand, this lordship is concrete. It is not a theory, but is embodied in determinate [33] facts which it would be wrong to neglect under the pretext that they are not orthodox.

2. We just spoke about fact. Natural law will be mainly considered as a datum in this study. Too often indeed natural law is defined as a doctrine, as an interpretation of legal facts, as a philosophy of law. And there exists beyond doubt a philosophy of natural law. Yet natural law is not *primarily* this philosophy. It is first of all a phenomenon which exists not as an idea, but as a concrete event in history. It is a fact which appears at a given moment in the history of law. As such, it cannot be disclaimed any more than the fact of religion or the fact of the state can be disclaimed. There is, later on, a theology leaning towards Gnosticism. There is, later on, a doctrine of the state, of sovereignty, of power. But religion and the state exist before they are explained or justified. The same holds true for natural law which emerges as a certain form of law before it becomes a concept of law. The concept being only a derivative, it is absolutely superfluous to discuss the theory without reference to the fact from which the theory originated.

THE THEOLOGICAL FOUNDATION OF LAW

Preliminary Chapter

Natural Law Considered as a Fact of History

1. NATURAL LAW IN HISTORY

Historical experience of law is limited to Western law. We do not know anything about the Aztec, Egyptian, Chaldean, Assyrian, or Hindu law *in the course of their evolution*. All we can grasp are certain moments in their development. We are just beginning to catch a glimpse of the evolution of Chinese law, but it is too early to draw conclusions from it. We are only familiar with the evolution of Greek, Roman, and Western law (Germany, England, Italy, France, Spain). It is from this rather limited realm of experience that we may reflect on natural law. The evolution of law as we know it may be divided into three phases.⁸ [17]

In its origin law is religious. This is confirmed by almost all sociological findings. Law is the expression of the will of a god; it is formulated by the priest; it is given religious sanction, it is accompanied by magic ritual. Reciprocally, religious precepts are presented in juridical garb. The relationship with the god is established by man in the form of a contract. The priest guarantees religion with the occult authority of law.

At a later stage law becomes increasingly secular. Religious and magic rule, on the one hand, and juridical and moral rule on the other, begin to be differentiated. Various influences contribute to this development. Above all, there is the emerging power of the state as distinct from the power of religion. At this point a second phase in the evolution of law begins, which might be called the stage of natural law. Law is established by custom or legislation, independently of the religious power, as if it were a spontaneous creation of society under the impact of economic, political, and moral factors. It is not dictated and created in one piece by the state. It is not imposed from outside. It springs directly from within society, from the common sentiment and the common will. These may not of necessity be consciously intended to result in a juridical creation, but they are certainly consciously experienced as habit and obedience. This law rests on the adherence of the people who brought it into existence. This adherence is won because the law is merely the expression of the conscience of these people and of the circumstances in which they live. There is no alter- [18] native to

8. *We refuse to admit the idea of a permanent evolution of law in the sense of progressive refinement. This idea still has many adherents among jurists (cf. Roubier, op. cit., who does not doubt it). According to this idea, evolution is progressive except for accidental setbacks. Hence the contemporary conception of justice is more valid than that of Plato or that prevailing in Roman law; our law is more just, better ordered, etc., than the Semitic law, etc. This idea does not correspond to reality. It betrays three prejudices. First, human history is the history of successive advances; second, justice is a creation of man; third, there is no law outside the Mediterranean world. History proves all this to be wrong. As to the regressive "accidents," it is difficult to interpret them as such when they last for three centuries, like the Barbarian invasions.*

adhering to this code, since it is confined to expressing the two basic elements of men's life in society.

The next step is the elaboration of this law into a theory of natural law. It is the acknowledgment of this phenomenon and its intellectual explanation. This is what happened in the fourth century B.C. in Greece, in the first century B.C. in Rome, in the sixteenth century in Italy, in the seventeenth century in France, in the eighteenth century in England and Germany. We always interpret this moment as representing the whole of natural law, because we are intellectual enough to think only of theory. Although easily identified as the high point for natural law, this moment is really its decline. It is indeed the moment when man ceases to be spontaneously "within the law." He places himself outside the law and examines it. Law becomes an object of speculation and interpretation. The philosopher then gives a rational account of what the law truly is. In order to do so he places himself outside the law, thus destroying the spontaneous relationship of man to law. It does not take long for this view to reach the jurist, who in turn tries to organize law in a rational way. So the third phase in the history of law is reached.

Law is about to become a creation of the state. Principles are pronounced, juridical hierarchies are determined, laws are co-ordinated, a juridical technique is worked out which is increasingly precise, increasingly rational, and increasingly removed from spontaneity. At this point the code hardens. It becomes a consecrated abstraction, always trailing behind social and political evolution, always in need of being brought up to date by arbitrary innovations, more or less adapted to the conditions of society. Law becomes the affair of jurists, receiving authority and sanction from the state.

We shall see later what consequences this development has from a legal and social point of view. Here we only point out that this situation coincides with the decadent phase in every society. It is

impossible to go backward and to recapture a new [19] spontaneity of law, as it were, “behind” such juridical technique. A wilted flower cannot blossom again. But the rosebush on which it grew can bring forth a new flower. Likewise society, when it is totally renewed and launches a new civilization, can produce a new body of law.

This evolution of law inevitably takes place whenever society is on the march. It may be stalled by an accident as seems to have been the case with the Aztecs. Or it may be accelerated as seems to have been the case with the Chaldean-Assyrian law which went through a very short phase of natural law and rapidly arrived at the phase of technical law. The duration of the three phases may greatly vary. The third stage was very short in Greek law, Greece having been engulfed by the Roman Empire; it was very long in Byzantine law which survived without any reason. Nevertheless, the above scheme seems to us accurately to account for actual legal development. It permits us to ascribe natural law to a phase in the evolution of law, and to define more precisely what are called theories of natural law.

2. THEORIES OF NATURAL LAW

We do not propose to take a complete inventory of the theories of natural law. We shall only give a summary indication of their main tendencies. This is of only limited importance. Any textbook on the introduction to the study of law or to the philosophy of law provides detailed descriptions of the various systems. Only what is useful for our purposes shall be related here.

A preliminary observation is in order. As we have said before, these theories are no arbitrary and purely rationalistic creations. Natural law is not a philosophical system designed to comprehend the absolute and depending for its effectiveness exclusively on the

means of knowledge; it is not valid for all times and perfectible merely by improving the means of knowl- [20] ledge. If this were so, the theories of natural law would have two characteristics. They would seek to know the Absolute Law, *in abstracto* and, like philosophy, they would represent a consistent and continuous, though varied, manifestation of the human mind. Such, however, is not the case.

As for the first characteristic, some theories have notoriously claimed to pin down the essence of law. But these are theories of philosophers and theologians. Their juridical importance is limited. We can admit a theory of law as valid only if it relates to actual legal processes.

The Stoics, for instance, had an abstract theory of law. But this had no effect whatever on Greek law, which had already reached the technical stage, and almost none on Roman law. The Stoic influence on Roman law has indeed been considerably exaggerated on the ground that it is clearly recognizable in Cicero. Yet Cicero, although a lawyer, proves by his writings that he was no jurist. True, the jurists did take over some terms from the Stoics. But they gave them new meaning. Their understanding of natural law, at any rate, is totally different from that of the philosophers.

Even more striking is the fate of the Thomist theory of natural law. Already the Augustinian theory had practically disappeared under the combined impact of the technicality of Roman law and the Germanic invasions. The Thomist theory was presented by a doctor of the Church in a society which accepted the authority of the Church as supreme arbiter. Yet this theory had no practical import at all. The evolution of law, jurisprudence, and the development of customs totally ignored it. A mathematical theory could not have had less juridical consequence. Only in the limited field of canonical law do we find some attempts at application.

The same holds true for Calvin's theory of natural law. Influential as was his theory of the state, his theory of natural law remained a dead letter. The reason again is that this is a philosophical theory which has nothing to do with law. It is [21] neither an explanation nor an interpretation of law, but an intellectual creation.

The theories of natural law that count do not claim to define absolute law. They are content with postulating a form of law judged to be more valid, or a juridical constant, or a more perfect way of expressing law. Their authors mainly tried to relate how they saw law being shaped, and to draw juridically valid consequences from this process. Only these theories of natural law have any significance.

This brings us to the second characteristic. The valid theories of natural law cannot appear at just any moment in history, dependent as they are upon the historical development of natural law. This is why during the twelve centuries of the history of Roman law there emerges no valid and effective theory of natural law except between the first century B.C. and the second century A.D., between Cicero and Papinian. Later jurists confined themselves to restating and sometimes confusing what already existed, without adding anything of juridical consequence. During the fifteen centuries of Western law the cogent theories of natural law are similarly localized. We have already referred to these historical localizations in the various countries. For instance, the French jurists of the nineteenth century and even of today are doubtless devotees of natural law. Yet their attitude may be described as a juridical "epiphenomenon," as a survival. They are oblivious to the present juridical situation.⁹ Their

9. *The main role of these jurists, certainly among the best, lies in their critique of legal positivism rather than in their contribution to natural law (cf. Gény, Science et technique en droit privé positif, vol. II).*

theories are no longer at the focal point of the juridical phenomenon.

We have tried to distinguish between philosophical and juridical theories of natural law. What are their principal aspects? From among the philosophical systems we shall distinguish two: the Stoic and the Scholastic. [22]

The natural law of the Stoics is essentially an ideal law. It is the norm serving as goal and model for positive law. Ideal law is immutable. It is divine reason embedded in nature, and not only in human nature. Inasmuch as human nature is part the cosmic nature, law also is universal. Since reason is one, human reason can directly apprehend and concretize this law. Positive law therefore depends upon human apprehension of natural law. Consequently, it can never be created by the state. It is a continuous creation by individuals. If all individuals were equally capable of grasping the natural law, the presence of the state would not at all be necessary to ratify it.

Far the Scholastics, natural law belongs to the nature of man. It is written in his heart and derives entirely from the principle that man must do good and shun evil. It is a kind of yardstick for discriminating between the just and the unjust in law as it exists. The just is what is in agreement with the law inscribed by God in the human heart. This is juridically expressed in two important maxims: *Suum cuique tribuere* and *neminem laedere*, which are the two aspects of justice. Thus justice itself is closely bound up with human nature. Man is capable of discovering by himself what is truly just and of applying it in the world, because he is not totally depraved and retains a spark of divine truth. This natural law in the heart of man is the reflection the divine law, inducing man spontaneously to accept common good as the goal of law, normally determined those who govern.

In our opinion, these two systems are typical. Notwithstanding their divergencies, they present a conception of natural law which serves as a norm for all philosophical or theological systems, in spite of apparent contradictions and differences in form. This natural law has two characteristics. *It is an ideal law* with a moral foundation. If natural law were wholly realized, we would live in the Golden Age. Positive law has no other function whatever than to reproduce this natural law as faithfully as possible. Thus, positive law need not be preoccupied with the contingencies of facts, with the economic or social situation, but must be increasingly permeated by natural law and aim to conform to it absolutely. For natural law, by its very nature, is immutable, absolute. Accordingly, the history of law is reduced to the history of successive attempts to translate this law, which is eternally the same, into concrete terms. Secondly, *natural law is a criterion of justice*. There is no distinction between divine justice and natural law. Human justice is what is in accordance with natural law, the latter exactly agreeing with divine justice. Natural law thus becomes a means of distinguishing between the just and the unjust.

This analysis highlights the enormous distance separating the philosophical from the juridical systems. We shall comment on it later. We must now examine, again summarily, the content of two juridical systems, that of Rome and that of the Enlightenment.¹⁰

The natural law of the Roman jurists is what is given in nature, whether it is the whole of animated nature or only human nature. The first of these views represents a late interpretation intended to distinguish the *ius naturae* from the *ius gentium*. Here natural law extends to all relationships common to men and to animals, i.e., sexual relationships and marriage, reproduction and the family, etc. Hence, natural law is the lowest common denominator which

10. *Senn*, De la justice et du droit.

makes possible the expression of social life. This very idea, although expanded and enriched, is found in the second Roman view. Here natural law is the innate property of all men. A certain number of institutions are necessary in order for society to exist. These institutions are identical because they are inherent in human nature.

In the last analysis, this inherentness and this identity of institutions constitute the foundation of law. For law may be [24] pressed in various ways; it may adopt different forms; it may be supplemented by temporary and secondary rules. Yet its true nature cannot be modified without serious disturbances. Positive law, then, is the most coherent expression of this natural law at a given moment. *Ius est ars aequi et boni*, i.e., the art of finding the most equitable and effective momentary application of a given notion common to all men. This application is made according to a precise and established mode of reasoning which the Roman jurists call *ratio* (which does not mean “reason”). This natural law includes institutions like the family and property, and rules such as the prohibition against stealing or killing. It is not justice itself. Justice appears as a sort of double relationship: on the one hand, relationship between natural law and the given circumstances in which it is to take form, and, on the other, relationship between the positive law and the action of a particular individual.

For the century of Enlightenment natural law is essentially in agreement with reason. Reason is no longer understood as a means of discovering natural law, as had been the case with Scholasticism, but as the very expression of this law. As a result, what is in accord with reason in the domain of law, indeed everything that accords with reason, constitutes natural law. Natural law is no abstract and ideal law; rather, it is a product of autonomous reason. Although the underlying principles may vary, they are unfailingly based on a natural attribute, reason, which is common to all men. What may be a touchstone for the various legal systems which are proposed is its more or less rational character, its greater or lesser share of non-

rational prejudice. This is what we already find with Vico in the seventeenth century in Italy. It is also found in France in the seventeenth century. After Grotius, it spreads all over Europe in the eighteenth century, with Hobbes, Rousseau, and others. The system culminates in the “rights of man.” It was not for nothing that the French Revolution inaugurated the cult of the goddess Reason. It is she who establishes the authority of the [25] state. Natural law and, with this, the whole juridical system, rests on reason alone. Whatever juridical consequences are drawn from it will be individualistic and equalitarian, since reason is the common property of mankind. But reason does not lead to an abstract justice. Justice is inseparably bound up with institutions. In regard to law, reason, and not justice, is the relevant philosophical principle.

Therefore this juridical type of natural law has two characteristics totally different from those advanced by the philosophers. First, it is not a moral ideal, but a *juridical fact*. It is not a Golden Age toward which men must strive, but a model of human law to which men must ceaselessly return. It is not an idea, but a reality. This is true even for the Enlightenment, in spite of its idealistic appearance.

Second, natural law is not a criterion of justice, but an *aggregation of institutions and rules* which can be named, described, and circumscribed. Here we are much closer to possible juridical application. We are within the realm of law and removed from an absolute law which nowhere exists in fact. In the juridical theories of natural law, diversified as they may be, there is common grounding in an existing reality. We shall now try to discuss this reality.

3. OF THE EXISTENCE OF NATURAL LAW

Natural law has come under heavy attack. It has been argued that natural law is nothing but a creation of the human mind. The

inconsistency of believing in, while not being able to define, a common principle has been pointed out. The endless diversity of the theories of natural law has been emphasized. In order to counter these criticisms, the theory of “natural law with a variable content” has been invented.¹¹ [26]

According to this theory, the content of natural law is not essential; it may vary. Yet there remain certain constants which may serve as a foundation for positive law at a given moment.

Sociologists have attempted to prove that there was no common rule whatsoever in the various primitive codes, no human nature, consequently, to which these might correspond. Philosophers have been insistent about the vagueness in the idea of nature. “Is the order of nature that of the laws of nature? Is it the order of primitive societies, supposedly conforming to the design of God the Creator, or the order of future societies called to usher in the Golden Age at the end of a progressive development? Or is it rather a question of the laws of human nature? But in this case who defines the essence of this nature in the confusion and the diversity of its aspirations and its possibilities? Is nature, for example, represented by instinct ... by reason... by conscience?”¹² Lastly, Reformed theologians wholly reject natural law. They point out that there is only a divine law, the law of God, and that there is no such thing as a law of nature.¹³ We shall examine this affirmation later.

11. *Charmont*, *La renaissance du droit naturel, and especially Stammler*, *Wirtschaft and Recht*, Leipzig 1896, of which it has been said that natural law is “an empty bottle decorated with a nice label.” Later this idea was replaced by a new one, “natural law with a progressive content”: *Renard*, *Le droit, l’ordre et la raison*, Paris 1929.

12. *Conord*, *Sociologie chrétienne*, p. 56.

13. *Visser’t Hooft*, *Droit naturel ou droit divin?* in *Correspondence*, January 1943, p. 81.

Despite all the criticisms which we know and acknowledge, three indisputable constants admittedly remain in this debate.

First, law exists. This is to say that at any time in his social life man is capable of creating a kind of a rule of the game according to which human relationships are established. This rule is accompanied by sanctions the manifestation of which exceeds the power of the individual. No society lives without this law; this law everywhere shows similar features, such as sanc- [27] tions, common voluntary obedience, the organic bond of law with the fundamental conditions of society, the organization of interpersonal and intergroup relations. Hence the objective and the means of law are identical at all times and in all places. This is already a fact worthy of attention. Man is capable not only of validly organizing the society in which he lives, but also of ascribing a value to it which he cannot find in himself. Incidentally, this is the religious character of law in primitive civilization, wherein man does not endow law with this quality: it is given. Finally, whatever the circumstances, man seemingly follows certain standards in this creation, since we perceive recurring similarities in law, which are otherwise inexplicable.

Second, the content of law is, in fact, fundamentally the same everywhere. Even when the identity of objective and means is not disputed, the identity of content had been generally rejected from the end of the nineteenth century until about 1930. However, it had been rejected by the *sociologists*, and not by the historians of law. Since 1930, by the way, sociologists have been much less emphatic. They have in fact succumbed to the “mania for the primitive,” very often supporting their affirmation of the essentially variable content of law by references to localized exceptions or phenomena of degeneration.

In reality, after the truly primitive phase which knows no law but the taboo and the chief’s order, as soon as society is organized and a religious law appears, we are confronted with a content which,

for all its originality, nevertheless tends to approximate a common type. This common type seems to be present when law becomes secularized, and we are at the threshold of the phase which we have called “the phase of natural law.”

There follows a veritable sifting. Exceptionable rules are gradually dropped. The content of law becomes more and more assimilable by any society. At this stage of development all societies tend to adopt certain regulations. These concern marriage (with the death penalty for adultery), paternal power, [28] slavery, property, murder and robbery, the contract and the pledge. Although these regulations are not technically identical, they all refer to the same institution, to the same legal reality. No sooner, therefore, does law in its proper sense emerge than it has a content which is *essentially* shared by all people. Neither imitation nor interpenetration of civilizations explains this phenomenon. Nor does arbitrary decision on the part of a government or interplay of economic conditions elucidate it. This fundamental unity of the content of law in all civilizations is undeniably a natural product of evolution. The further the civilizations evolve, the greater the possibilities for amalgamation.

When, for instance, law has become purely technical in several nations, the law which is technically most advanced will impose itself everywhere. This is what happened with Roman law. This is also what happened with the French Civil Code which spread to countries as dissimilar as Japan and Turkey. But in this purely technical law any criterion of law or of non-law may be adopted. The Nazi system declared that right is what served the interest of the German people. Communism declares that right is what serves the interest of the proletariat. This application of external criteria is possible only in the purely technical law. But this is one of the consequences of the negation of natural law, with which we shall deal later.

The third indisputable constant is that law is constituted neither as an arbitrary creation on the part of the state nor as an automatic result of social and economic conditions. If it were, the unity of method, of objective and, basically, of content, which we have observed, would be unthinkable, especially when we consider the radical differences in economic and social conditions. An interesting study on this subject was made in the second century after Jesus Christ, the *collatio legum Mosaicarum et Romanarum*. This study reveals the fundamental similarity between the Hebrew law of the fifth and fourth [29] centuries B.C. and the Roman law of the second century of our era. No social identity can explain this similarity.

The influence of economic and political conditions cannot be denied. Law evolves simultaneously with these conditions. We may even say that it is one of their products. But it is not a raw product; it is a refined product. The refining factor is man himself. It is he who discriminates between the rules that arise out of these historical conditions. It is he who even goes so far as to transform some of these conditions for the sake of the law. It is he who undertakes the spontaneous *construction* of a legal system. In these efforts, man is guided by principles which, at the outset, are neither explicit nor theoretical. He is guided by principles which are undoubtedly common to all men, apart from exceptions, as the law begins to be formed.¹⁴ These common principles alone are capable of explaining the above-mentioned similarities. Without a certain common concept of justice which recurs in all primitive systems of law, how can we account for such complex juridical phenomena as the contract and the pledge? These are directly founded upon the idea of a common social measure of subjective equivalence of payment. This idea might be interpreted as the primary component of the notion of justice. Here again we are confronted with an idea sociologists have

14. *On this formation of a juridical construct by man's sense of justice, see Roubier, op. cit., p. 153-184, who gives a remarkable analysis of it.*

seized upon without sufficient knowledge of either law or the history of law. Their categorical declarations, however, enjoy only a limited authority in our day and are constantly being called into question.

A purely doctrinal excursus would be needed in order to tie these three constants together. However insufficient as a foundation for a doctrine of natural law, they merit attention as the cornerstones of any theory of law. [30]

4. THE NEGATION OF NATURAL LAW

As already noted, at certain periods in the evolution of law we observe the rejection of natural law. At the present time we most certainly live in such a period. What are the consequences of this negation? Obviously, it is difficult to differentiate the consequences from the events accompanying this negation. In any case, what are the facts bound up with the rejection of natural law? As we have stated, negation may be explicit, as in our day, or implicit, as at the end of the Roman era.

1. The law ceases to be measured against a certain sentiment or idea of justice and becomes purely a combination of technical rules. There is no longer any normative factor in the law. Law becomes a mere skill, a mathematical game. Laws lose their relationship with justice and are made to fit immediate social expediency.¹⁵ The application of laws by the courts becomes a matter of simple and

15. This negation of natural law which corresponds to the technical phase of law seems to be the ideal for the normative school. This school is in basic agreement with the Utilitarian school in England and the Positivist school in France, yet is more extreme than both. These three conceptions of law, corresponding to a historical situation in the law, lead precisely to the consequences described in the text, in spite of their attempt to ascribe to law a universal and undisputed value.

logical deduction from increasingly inclusive rules. All eventualities are foreseen in this bulging system of regimentation, and the personal factor in the formation of law is gradually eliminated. The Romans were aware of this development and called it *summmum ius, summa iniuria*, i.e., when law becomes technical, reaches a high degree of perfection, and embraces all social circumstances, there is no room left for justice, and the very opposite of law, *in-ius*, takes over. This happens as soon as there is no longer a place for an [31] element to regulate juridical technique, a counterweight which we can call, for want of better terms, human and natural, to balance systematic technical proliferation. Without a regulating element, juridical technique, like any technique, becomes blind. It goes as far as it can. It goes as far as human reasoning can go. It is applied whenever any kind of useful purpose makes its application necessary. This technique is logical, yet not coordinated. It is systematic, yet blind. It is adequate for all material interests, yet inadequate for justice.

2. When natural law is rejected, juridical technique is at the disposal of whoever wishes to take advantage of it. This technical stage of law may last for a long time, thanks to a kind of social crystallization, as was the case in the Byzantine Empire. Conversely, it may be utilized by any kind of power in history. When this happens, a definite purpose is ascribed to this intrinsically neutral technique. The technique is manipulated according to new and arbitrary criteria, substituted for the ideas of justice and natural law. This is precisely what we noticed above in the case of Nazism and Communism. This development becomes possible because natural law has disappeared and a mere technique has taken the place of the idea of justice. Agglomeration of rules and regulations has no longer anything to do with law. It is meant to favor the power of the strong who, in turn, justifies his position by endowing the juridical system with new criteria of "law." This phenomenon, however, is manifest only as the last consequence of the increasing interference with law on the part of the state.

3. As long as natural law survives, interference on the part of the state with the law is limited. Law appears as a spontaneous product of society. The state is first of all the power which sanctions, in both senses of the word, the law. On the one hand, the state decides what is law and what is not from among the rules produced by society. On the other hand, it surrounds law with penalties and applies these sanctions. Should the state attempt to promulgate an unnecessary law or one contrary to [32] the common sentiment of justice, society most certainly would react negatively and repudiate the law. But with the disappearance of natural law, the state has a free hand. It is no longer restricted by limitations. Hence the state, alongside the jurists, will be one of the factors in the establishment of technical law. But while the jurists create merely a technique, the state creates law for its own profit. It enforces in the entire social realm the *raison d'état* as the one and only factor in the creation of law and as the one and only foundation of the value of law. No longer is the state judged in its actions by the law. The state is now the judge of law, having created it only according to its own will. One sure sign of the disappearance of natural law in social history is the recurrence of the question, "Is the Prince bound by the law?" Whenever this question is being debated, we may be sure that natural law has already been, or will be, rejected, and that the *raison d'état* will impose itself as final arbiter in the elaboration of law.

All this serves to show that insofar as law develops spontaneously, it has no conscious purpose, having no ideal outside itself which it must realize. Law emerges from the social and political situation. It is shaped according to a certain undeniable concept of justice, which determines law to a large extent. When this concept disappears, law seeks a purpose outside itself. It finds it either in the *raison d'état*, or in some other criterion of what is just, or even in a philosophical theory of natural law, which again is an external element.

4. A further consequence of the negation of natural law lies in the fact that law gradually ceases to be observed and respected. All that the average member of a primitive society knows about law is its religious character. The religious sentiment of this man is the foundation of law, for this sentiment is shared by all members. It is beyond debate. It confers authority on law. In a more advanced society where law has an existence of its own, all that the average member knows [33] about law is a certain sense of justice within him.¹⁶ This sense of justice is again more or less shared by all. It is beyond debate, and the authority of law is founded on it. This sense of justice serves as an instrument in the shaping of law out of particular social conditions and consequently is the motivation for man's adherence to the law thus constituted. Such law has an affinity with man as well as an authority which is explained by its very origin.

What happens when law becomes technical and the expression of the *raison d'état*? The man who preserves his sense of justice no longer identifies himself with a law of this sort. The affinity between man and law is gone, except for the fact that certain people take advantage of the law. Reason remains, but it transforms law into an object so that it strikes no truly responsive chord in man. The fact that the average human being is no longer either at home in the world of law nor deeply attached to it, has a most serious result. Man no longer sees why he should obey this law. Law is molded according to economic and political necessities and becomes absurd in relation to man. From now on, the authority of law rests solely on sanction. Sanction ceases to be an authentic reaction of the social body against a violator. It is reduced to a technical decision of the technical element itself, which is the state. Sanction

16. *By this statement we do not want in any way to prejudge the question of whether or not this sense of justice is "natural," inherent in nature, developed by education, present as a social prejudice, caused by the material conditions of life, etc. We simply note its existence. On the study of the sense of justice, see the works of Le Fur et E. Levy, Les fondements du droit, Paris 1039.*

is no longer effective, because the man in the street no longer acknowledges it as authentic. It is nothing but an externally imposed constraint to which men unwillingly submit. Significantly enough, whenever natural law weakens, the police system is reinforced and the penalty system is tightened. [34] This is, incidentally, to no avail, since the state cannot impose a law against the prevailing sense of justice. At best, it can create a new sense of justice by means of some mystique. But the result will never be a law accepted as justice. For the people themselves will establish a new law alongside the law of the state. The appearance of the black market in France during the last war is a good illustration of this. Sanction so drastically loses its vigor that the judges give up trying to apply it. The law ceases to be obeyed. Having valued only effectiveness, law becomes wholly ineffective. This is a lesson which is constantly ignored.

5. We close with an observation. At this stage in the evolution of law, an attempt is usually made artificially to revive natural law, with the hope of bringing law back to life. This was, among others, Justinian's endeavor. But man is doomed to fail in this attempt. Natural law cannot be revived by the intervention of the state. The relationship between man and law is broken and cannot be renewed by a philosophical or juridical theory. At best, a theory can elucidate the gravity of the problem, but in reality a point of no return is reached. The harmonious relationship between the individual and the state cannot be re-established from outside, for the attitude of man toward the law is no longer the same. What would be needed is a simultaneous transformation of the inner existence of man, conditioning his adherence to society, as well as of the outside, on the part of the state and of law. But this would spell the end of a whole phase of civilization.

This is just about where we stand today. For this reason it seems wholly illusory either to work for the construction of a new natural law which fails to satisfy both the common thinking of contemporary man and the modern concept of law, or to debate the necessity

or the existence of natural law as a theory. On the contrary, it is of highest importance to try to see clearly the significance of law within, and in relationship to, biblical revelation. For the birth of a new civilization can only originate [35] in the will of God. It is important to know what natural law, seen as an event, really means. Finally, it is important to envisage what juridical consequences may be drawn from these insights.

By way of conclusion we maintain that, in certain periods of the evolution of society, a system of law emerged which is produced by natural man seemingly without any other means but his intelligence. This law is consonant with three facts: 1) a certain sense of justice, which must be approximately the same for all men at a given moment since it gives rise to fundamentally similar institutions; 2) a certain equilibrium between juridical technique indispensable for refining the law, and the human and social environment, with the result that the law will be neither a spontaneous and irrational creation of the environment nor a purely rational, mathematical creation alien to this environment; 3) a certain necessity recognized by both the state, subordinate to the law, and by individuals, as a guarantee that law is effective and obeyed. These three elements are interrelated. Together they are the marks of what might be called natural law as an event in history. [36]

Chapter I

The Divine Law¹⁷

1. RIGHTEOUSNESS AND JUSTICE

Our contemporary understanding of law is foreign to the Bible. Law in the scriptures is never anything else but the expression of justice and righteousness.¹⁸ We must therefore begin by looking quickly at this idea of righteousness before we tackle the problem of law. The Hebrew language mainly uses two terms for righteousness. One stems from the root *sh-ph-t* and implies the idea of judging, or guiding, with all its derivatives: law, statute, customs and manners, external conduct, appearance. [Roughly the equivalent of the English word “jus- [37] tice” Tr.] It obviously designates justice in its human, external, and social aspect. The other stems from the root *s-d-q* and embraces the idea of righteousness and all its deriva-

17. *We adopt this term (le droit divin) from the study of W. A. Visser't Hooft, referred to earlier. In this chapter, we are much indebted to Mr. Visser't Hooft's study as well as the Suzanne de Diétrich's study "Le fondement biblique du Droit," in Le Séméur, May 1945, p. 40.*

18. *Translator's note: The French word justice is used for both divine and human justice. It has been translated here by "righteousness" when it refers to God, as the RSV texts do, and by "justice" when it refers to man.*

tives. These seem to go in opposite directions, with justice, equity, truth on the one side, and grace, innocence, righteousness on the other. These terms obviously designate justice in its divine aspect, that is, the righteousness of God which finds its supreme expression in mercy.

The distinction between these terms, however, is not as absolute as the two roots and the derivatives suggest. At times the two terms are used interchangeably. Of course it may be argued that this is merely an accident of language or casual usage and without importance. But there is at least one text, Deuteronomy 1:16-17, to which this argument cannot be applied: “Judge righteously between a man and his brother and the stranger that is with him. You shall not respect persons in judgment; you shall hear the small and the great alike; you shall not be afraid of the face of man, for the judgment is God’s.” This order is given to the judges, and it is relevant for all organized human justice, not only for the people of Israel, but also, as the text says, among foreigners. In “judge righteously” the term employed is *sedeq*. Judgment must therefore be rendered according to the measure of God’s justice. “For the judgment is God’s.” Here the term is *mishpat*. Hence God himself acts in the justice of the judges of the world. Here is deliberate use of both terms in close proximity, with the deliberate application of each to the other idea. This leads us to suggest that in similar texts this juxtaposition may indicate not so much an absence of precision as a theological insight. Despite the validity of these two different terms, it is inadmissible to affirm that there is a divine righteousness and a human justice separated one from the other, and forming two merely coexisting, yet independent entities. In reality, there is but one single righteousness. To the extent that human justice is patterned after divine righteousness, the one cannot be apprehended without the other. The link is not accidental. It has already been pointed out how important juridical concepts are for the understanding of God’s action,¹⁹ since God casts his action into the mold of human forms. And when God establishes such a link, it is

reciprocal. This is to say that when he chooses a juridical form for his action, he gives human justice and law their true meaning and form. We shall dwell on the consequences later.

We must now clarify the relationship between the righteousness of God and human justice. Without claiming to “analyze” the righteousness of God, a summary examination of the texts does allow us to reach these conclusions:

1. *The righteousness of God is an expression of God’s transcendence.* It demands on the one hand that every fault be punished and every man be rewarded according to his works. It therefore demands total reparation for the sum total of the sins of mankind throughout history. Yet, on the other hand, the righteousness of God is constantly bound up with mercy and forgiveness. In Psalm 33:5 righteousness and lovingkindness are parallel expressions, and in Psalm 76:8-9 God appears as a terrible judge, sentencing in order to save the poor. “The earth feared and was still, when God arose to establish judgment to save all the oppressed of the earth.” This affirmation is constantly made. When God judges, it is not for death, but for life, as is categorically stated in Ezekiel 33:11. This is neither accidental nor a partisan conception of righteousness, *against* the rich and *for* the poor, but truly righteousness bound up with mercy. To a certain extent, it is itself mercy, as hinted at in Psalm 33:5. “He loves righteousness and justice; the earth is full of the steadfast love of the Lord.” It is well known that in the strophes of the Psalms the ideas expressed in the two parallel parts of each strophe are intimately connected. The parallelism of justice and steadfast love is very significant. Such [39] examples could easily be multiplied. This is one of the marks of the righteousness of God. It was already implicit in the very word *sedeq*, meaning, as we have seen, both righteousness and mercy. It is, furthermore, explicit in the numerous myths which

19.*cf.* *Théo Preiss*, *Le Umoignage intérieur du Saint-Ésprit*.

allude to God's mode of action. Whenever God pronounces judgment, mercy is unfailingly present. Nevertheless, it remains strictly a judgment. Thus the judgment upon Adam preserves life on earth; the judgment upon Cain establishes God's protection of the sinner; the judgment upon Nineveh—in Jonah—is the call to repent. We do not even refer here to the judgment upon Jesus Christ.

2. *Before God's righteousness all human justice is unjust.* All that is not his righteousness is injustice. "And all our righteous deeds are like a polluted garment" (Isaiah 64:6). This is easily understood if we remember that in the scriptures only what is in accordance with the will of God is just. The just man is he who walks in the path which God has opened to him. There is no other concept of justice apart from this one.²⁰ Man by himself is incapable of knowing what justice is (Proverbs 2:9). (We shall come back to this.) Strictly speaking, everything that natural man does is unjust. This is precisely what makes for the depth of controversy in the Book of Job.

Nevertheless, God takes human justice into account, and not only that justice which consists in doing fully the will of God and which does not exist before him, the thrice Holy; but also that quite relative justice which consists of not doing wrong to the weak, not stealing, etc., and also in organizing a legal system, of rendering just judgments (Leviticus 19:15), in maintaining order and peace. All these works, without value before God's righteousness, are accepted and held to be valid by God. To reject all human justice on the ground that it is really unjust in the light of God's righteousness is really to go against the will of God. [40]

3. *The righteousness of God constantly stands as a sign of the judgment of the world at the end of time.* This is the most complete expression of God's righteousness, for God alone establishes righteousness, and

20. Schlemmer, *Etudes théologiques et religieuses*, January 1944

his justice is expressed in a judgment upon the whole earth (cf. II Peter, 3:15). This eschatological dimension is well known. Dwelling on it would be superfluous, were it not for the significant fact that, although that judgment is reserved for the end of time, all the texts that speak of it suggest that the *sedaqah* is *at the same time* God's rule over the nations *today*. Numerous texts might be quoted in support, such as Psalm 7:8, "The Lord judges the peoples; judge me, O Lord, according to my righteousness," or Psalm 9:7-8, "But the Lord sits enthroned forever, he has established his throne for judgment; and he judges the world with righteousness, he judges the peoples with equity." It is interesting to note that in the last text the verb "to judge" is *sh-ph-t*, which is precisely to judge according to that juridical justice which is also government. Lastly, along the same line of thought, it is noteworthy that "the judges" who are undeniably those who are to be the signs of the judgments of God, are called *shephatim*. Consequently this eschatological judgment of God is at the same time God's actual governing over the nations.

The different aspects of God's righteousness are contradictory. But can we stop there? Can we confine ourselves to an analysis of the clear textual evidence without proceeding to a synthesis? Actually, there is no possible human synthesis of these contradictions. God himself has given us his synthesis in Jesus Christ. Christ has become our righteousness (I Corinthians 1:30). There can be no question of an intellectual dialectic or of an arbitrary synthesis which could equally well be proposed in different terms. The synthesis holds because the person of Jesus Christ is righteousness. Jesus Christ is not only a sign, witness, element, and satisfaction of the righteousness of God. He is himself, totally, this righteousness. He is the one who has borne the sins of the people, thus fulfilling the [41] requirement that justice be paid for, and at the same time, he has made the mercy of God manifest. It is he who has exposed the fundamental injustice of mankind, in the trial before Pilate, for example. At the same time, he has authenticated human justice by submitting to it. We shall see later that, just as he provides the foun-

dation for civil authority by his victory over the powers of this world, so also he validates human law in its totality. In him the judgment on the whole world is pronounced. In him the eschatological condemnation and forgiveness are already present. At the same time, it is he for whom and through whom the world is both preserved and governed, because he is the Lord. Therefore, without resorting to further explanation, we are unquestionably confronted with the answer God himself has given to the question raised by the problem of justice. All the characteristics of God's righteousness are united and embodied in the life, the death, and the resurrection of Jesus Christ.

Jesus Christ has become the righteousness of God. There can be no justice whatsoever, even relative, outside Jesus Christ. This is clearly demonstrated by the fact that he who rejects Jesus Christ immediately condemns himself, because justice is no longer possible for him (John 3:18). He can indeed no longer invoke his just works, before God, since there is no justice outside of him who is righteousness. Works, whatever they may be, cannot be separated from the person of Jesus Christ. Conversely, he who believes is already justified by his believing, without being judged, for he who judges is also he who justifies (John 3: 18 and 5:24). This is another way to show that there can be no study of law outside Jesus Christ; there can't even be human law, however relative, if it is not founded in Jesus Christ. Apart from him, we shall end up with "non-law."

Jesus Christ as the righteousness of God exercises this justice. One could say that his whole life is this exercise, by virtue of an actual delegation, spoken of in Psalm 72:I-4, "Give the [42] king thy justice, O God, and thy righteousness to the royal son! May he judge thy people with righteousness, and the poor with justice! Let the mountains bear prosperity for the people, and the hills, in righteousness! May he defend the cause of the poor, of the people, give deliverance to the needy, and crush the oppressor!" This prophecy is nothing less than anticipation of Jesus' own words: "The Father

judges no one, but has given all judgment to the Son ... and has given him authority to execute judgment, because he is the Son of man ... I can do nothing of my own authority; as I hear, I judge; and my judgment is just, because I seek not my own will, but the will of him who sent me” (John 5:22-30).

We may single out two ideas in this passage. The first one is the definition, mentioned earlier, of the just as the one who does the will of the Father. This is why Jesus’ judgment is just; this righteousness is not only moral justice but also legal justice. From a new vantage point we confirm the truth that justice has no other executor than Jesus Christ himself.

Secondly, Christ has received the power of judging because he is the Son of man. This provides us with a new clue to the problem with which we are dealing. Without probing all the theological implications of this passage, we wish simply to emphasize the fact that Jesus Christ, man and God, has received from God the power to judge precisely because he is man and God. In him the eternal justice has become temporal justice. He who fulfills the divine justice takes upon himself human justice. Here we have a preliminary answer to the difficult question of the relation of the righteousness of God to human law. Jesus Christ, through his incarnation, is the point at which the righteousness of God meets the justice of man.

4. Is this idea of a meeting sufficient to express this phenomenon? In order to clarify this relationship, we must refer to a final characteristic of God’s righteousness. It is a *substitutive justice*. Neither distributive or retributive, as is all human justice, divine righteousness is substitutive. The just man who [43] has to stand the sins of the world takes the place of the hopeless sinner on whom the death sentence must be pronounced. He takes upon him these sins in his death and thus takes them away. He cannot be held within the bonds of death because he is without sin. This fundamental substitution of grace for nature, of the kingdom of God for

the kingdom of darkness, is actually introduced into history. It is present in hope and fulfilled at the end of time. The same concept of substitution applies to the problem of justice. Because Christ exercises judgment, the righteousness of God is substituted for human justice and becomes itself human justice, inasmuch as man before God is clothed in the righteousness of Jesus Christ. We will have to clarify later the meaning of this substitution. What is important at this point, in the discussion of the problem of justice, including legal justice, is the absolute centrality of the person of Jesus Christ. In him the different lines of thought converge:

*the foundation of human law resides in Him,
the realization of human law is accomplished by Him,
the qualification of human law is given by Him.*

This insight is bound to have a devastating effect upon our customary attitude toward the righteousness of God. If we do not categorically deny any connection between human justice and divine righteousness,²¹ we are prone to consider the righteousness of God as a kind of a higher court of appeal on which to pin our hope, an infallible justice when human organizations prove fallible. Under the pretext that it is God who effects justice, we use this as a last resort. In reality, when God effects justice, He encompasses all justice in his action. He takes up genuine humanity, as in the Incarnation. He does not pretend to be a higher judge of a lower injustice, but wills to be the advocate of any form of justice, what ever it may be, because his own righteousness is substitutive. In other words, there is no hierarchy progressing from human justice to divine right- [44] eousness. Either all justice is founded, realized, and qualified by the Son of God, or there is nothing. We could not appeal to anything, not even to the absolute righteousness of God!

21. *As is done by E. Brunner, Gerechtigkeit, p. 15 ff.*

Our discussion on the theological understanding of justice is not intended to be exhaustive. We have only indicated the guide lines which, in our opinion, are indispensable for our inquiry into natural law.

2. LAW

We have already insisted that the scriptures do not know of law in the proper sense of the term. There is indeed no mention made of the sort of law which exists in and of itself, or of an eternal and independent justice. Whether it be as a legal principle or a system, whether rational or mystical, law by itself, as an autonomous entity, does not exist in the Bible. There is no place in biblical revelation for a legal concept, an idea, or law governing all human laws and measuring all human law.

Law in the scriptures, even etymologically, [French *droit* English “right”] is that which conforms to or follows an already existing path. In fact, in the juridical sense, law is what conforms to justice,²² as we tried to define it in the preceding section. It is wholly inadequate to say that if law by itself doesn’t exist, justice, at least, does. How many theologians have, in one way or another, claimed that justice exists by itself, that it has a content of its own, or that it is an attribute of God. All this is erroneous from the biblical point of view. There is no [45] justice apart from God, as there is no measure of his will, nor any cause prior to him. There is no content of justice, because, as we shall see, justice is expressed in judgment.

²²As a result, justice from the human point of view is the main content and the intrinsic quality of law. We are, therefore, in formal opposition to these schools of pure law for which there is no required relationship between law and justice (for instance Durkheim). We are also opposed to those for whom justice is but a contingent content of law, security being the essential content (cf. Roubier, *op. cit.*, p. 269 f.).

There is no attribute of God, because God is righteousness. This really means that the measure of justice is the will of God. Justice is what is in accordance with the will of God. Law is what is prescribed with a view to this justice.

Let us beware of possible confusion. It is one thing to say, “Justice existing eternally by itself.” It is quite another to say, “The will of God is justice.” For the first affirmation is essentially static, and the Greek system understood it as such, whereas the second is dynamic. Eternal as God’s will is, it is nevertheless not immobile. The opposite is true. The scriptures reveal that we cannot know the will of God apart from God’s revelation, outside the act of God and consequently *hic et nunc*. The will of God in the manifestation of justice is therefore no rigid framework wherein we can arrange our concepts. Nor is it a kind of principle from which we can deduce a system. At all times it is action. This is wholly consistent with the biblical teaching about God’s righteousness, which is only found in the act of judgment. We cannot know either its essence or its form apart from the present and concrete act of God, which is judgment. In other words, where there is no judgment, there is no justice and only in judgment do we grasp justice.

It is God’s personal will which renders justice (Deuteronomy 1:17), and hence pronounces a judgment which is the full measure of this justice. Law, therefore, always appears as an act of God. We shall elaborate this when we discuss the concept of natural law.

Yet we must keep in mind that all we have just said is to be understood within the context of redemption. This is to say that God’s righteousness as manifest in judgment is always centered in the death of Jesus Christ. On the cross the judgment upon the world is definitively pronounced. On the cross the act of God is fully revealed. This judgment is truly the total [46] righteousness of God. We cannot, then, understand law without the cross of Christ at the center.

Why does God judge? In other words, why is Jesus Christ crucified? A catechism question! Because man sinned, thus separating himself from God and entering the realm of Satan, because he is irrevocably condemned to death. Because God in his love cannot bear man's predicament and re-establishes the relationship, wrenching man from Satan. "O death where is thy victory?"

The ultimate manifestation of God's justice reveals God's will to restore. This thought is extremely important for the understanding of justice. When God judges, He does so in order to restore what has been distorted, the relationship between God and man and among men themselves. By this we certainly don't infer that man is actually restored to Adam's status before God. He is so restored only in hope. Holy Communion is the guarantee of the certainty of this restoration. Likewise, the judgment pronounced by God *hic et nunc*, as we confront it in the Bible, is not the restoration of total justice on earth. Yet it is the guarantee that this justice is truly restored by God and rests with him alone. While, thanks to a long theological tradition, we see rather clearly what this restoration means in Jesus Christ, we have little understanding of what it means "in the realm of law," so to speak. In consulting the scriptures, we discover that there actually is no real difference. As in Jesus Christ we witness the restoration of man to his true situation as a creature, in the legal realm the judgment of God is exercised in order to restore man to what is his due, to his true situation as man and, consequently, as a creature. We shall see later what we are to understand by human rights. For the moment, we shall accept this notion and consider that when God judges man and exercises his justice, he judges *according to man's rights*.

"Judge me, O Lord, according to my righteousness." (Psalm 7:8). This Psalm does not speak exclusively of eternal justice, or of righteousness before God. It primarily proclaims justice [47] over against evil people or enemies. God appears constantly in scriptures as the protector of the rights of a man over against those who tram-

ple on these rights. By his judgment he reestablished a juridical situation disturbed by violence. This judgment of course, must be understood as a prophecy and sign of the judgment in Jesus Christ. God thus places himself on the human level. This is particularly striking in Psalm 50:16ff.: "But to the wicked God says: 'What right have you to recite my statutes, or take my covenant on your lips? For you hate discipline, and you cast my words behind you. If you see a thief, you are a friend of his; and you keep company with adulterers. You give your mouth free rein for evil, and your tongue frames deceit. You sit and speak against your brother.'" God renders justice by reckoning with the predicament of each one of his creatures. This is why judgment is so often mentioned. "Many seek the favor of a ruler, but from the Lord a man gets justice" (Proverbs 29:26). There is no abstract justice, applicable in general. The will of God speaks to the particular situation, and the rights of each individual are upheld.

The same concern is shown by Jesus when he says, "As I hear, I judge" (John 5:30), or in the frightening answer to the unfaithful servant in the parable of the talents. "I judge you according to your words, you wicked and slothful servant. You knew that I am a hard man, reaping where I did not sow and gathering where I did not winnow ..."

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, nor does he simply keep them, as if he could hold them up before God. We shall have to examine how man gets these rights. In the present context, where we are trying to define divine law, it must suffice to recall the steadfast truth: "My right is in the Lord" (Isaiah 49:4). Man has no other right but [48] that which is in the Lord and given by the Lord. This is the meaning of the recurring biblical admonition to give to

the unfortunate, the widow, the stranger, what is their due. These are the people who have true rights, precisely because they have no other rights than what they have in the Lord. The rich and the powerful are not unjust because they are rich or powerful. Yet they have no rights because they stake their rights on their riches or their power. God, therefore, does not interfere in their favor, because the rights forged by the rich and the powerful are no rights. Remember the many prophetic texts where God summons man to judgment, challenging him to plead his cause. The argument always runs this way: "Come and explain your rights. Come and show forth your idols, your power, your wisdom in your defense!" Man is doomed to failure in these efforts since he has placed himself in an anti-judicial situation, where he cannot explain his rights because he has no rights. This is precisely each man's predicament before God. This is the reason why, in fact, there is only one poor man in Israel, Jesus Christ himself. He alone has rights before God. From him alone men receive rights before God.

This understanding of justice radically destroys the ideas of objective law and of eternal justice. Law comes into being only by the judgments of God, and these are pronounced according to the rights of man. There is no secular law. Anything man builds up under the name of law is precisely non-law. It engenders the anti-judicial situation just mentioned. The problem then arises as to whether or not this negation of human law is final and we are compelled to stop and say: "The law of the earthly city is non-existent. Let us wait for the law of God." To say this is to deny the Incarnation. Biblical revelation itself urges us to go further. Before we do so, however, a remark is in order. Already what we have said so far has serious consequences for human law. For this whole juridical framework, chosen by God from among human achievements to make us understand his actions, is not the [49] essence, but only the form of God's action. The very fact that God chooses this form in order to express himself informs the whole juridical system. There is, on the one hand, God's choice of this form for mainly pedagogical

cal reasons. On the other hand, the juridical system is saturated with meaning by the very fact of its being chosen. We can no longer be oblivious of the fact that God has expressed his action in *this* way. Law can no longer be interpreted independently of this divine choice. Law must be such as to express God's action. In other words, the sequence, judgment-justice-law is normative because it is an analogy of the action of God.

3. COVENANT

What we have just said is incomplete. We need to consider the place of human law and the origin of human rights. The covenant offers us a clue to these problems.

What is the covenant? It is, first and foremost, an act of mercy. This is already suggested by the etymology of the word. *Berit*, covenant, is formed from the same root as *barah*, meaning to choose, to elect. The covenant is, above all, the act of God's choosing, or electing, a partner. Consequently, the covenant is an act of mercy, of free grace. God makes a covenant with whom he pleases, and when he pleases. Previous to his offer, God is not bound by anything. When he makes a covenant, he is compelled by nothing but his own will and his nature, which is love. The whole covenant bears the mark of this divine act. Although it is a contract, it is God's affair. It is he who determines its limits, its characteristics, its conditions, and its signs. Borrowing modern terminology, we could almost say that the covenant is a contract requiring adherence. It is a contract in which the terms are laid down by one party and require mere compliance by the other. All God demands of man is countersigning what he has decided. All the covenants [50] of which the Bible speaks are of this type. They are the covenants with Adam, with Noah, with

Abraham, with Moses. In these covenants God reveals himself. This self-disclosure is an indication of mercy and election. God reveals himself not as the almighty, transcendent, thrice holy God, but as the one who goes out to meet man and walks with him as Immanuel. This covenant shows us by its content who God reveals himself really to be.

At first sight, the covenant is a contract. But if we are content with this interpretation, our understanding of the covenant is totally insufficient. Certainly, a link is established between God and man by the exchange of contractual statements. Yet how much richer is the covenant when we take a second look at the biblical texts. The truly striking element in the covenant is the judgment. God judges and manifests his justice, and then he pardons and offers his covenant. This is true of Adam (Genesis 3). God judges him and, because of his disobedience, Adam is sentenced to death. Yet God pardons him and preserves his life, by laying down conditions. He creates the new situation, characterized by the double fact that Adam, by his sin, broke his relationship with God while God, by grace, maintains his relationship with Adam. So it is with Noah (Genesis 9). God judges the whole earth and condemns it. He sends the flood and brings about justice. Yet he pardons Noah and saves him from destruction. When he has safely brought Noah through judgment, he establishes his covenant with the whole human race, of which Noah is the representative. So it is with Abraham (Genesis 14 to 17). The very complex covenant which the Lord concludes with Abraham is marked by the divine judgment, passed simultaneously upon the people of Israel and upon its oppressors. The judgment is made known to Abraham, first, in the prophetic act he accomplishes by fighting against the kings, and, second, in his dream. “Know of a surety that your descendants will be sojourners in a land that is not theirs, and will be slaves there, and they will be oppressed for four hundred years; [51] but I will bring judgment on the nation which they serve” (Genesis 15:13-14). Only after these judgments does God reveal his covenant to Abraham. Lastly, it is

hardly necessary to recall the Mosaic covenant. It is preceded, in the first instance (Exodus 24) by a double judgment, judgment against the people Egypt, resulting in annihilation, and judgment against the people of Israel who grumbled in the desert and tried to revolt. This double judgment is very characteristic. God asserts himself against the world and against the chosen people at one and the same time. In the second instance (Exodus 34), the covenant is preceded by the terrible judgment against the people of Israel who had just made a golden calf.

In all these examples the covenant occurs after judgment. Why?

The judgment pronounced by God is always a condemnation of man who has separated himself from God. This condemnation is really a death sentence. To live as one who is sentenced to die is the normal situation of man separated from God. Here we meet the notion of grace, of pardon, contained in the covenant. God pardons this man who is sentenced to death. But his mercy is neither abstract nor unconditional. It is neither the mere fact of God preserving man's life, nor simply an act of goodness. It is the mercy by which God reveals himself as God, as a God who in his will is completely determined in favor of man. As the covenant with Adam shows, God always begins his covenant by restoring the broken relationship which was the result of man's action. He does so by proclaiming his will, a will which is not despotic and arbitrary, but operates in favor of man. This is why God chooses to speak of "my covenant". This seemingly contradictory combination of words expresses the fact that the covenant is really God's, yet is ordered by him not as an abstract and eternal decree to which man must submit, but as a contract.

This brings us back to the idea of restoration which we have come to consider as essential for the understanding of divine [52] law. In his covenant God restores the normal situation of man as a

creature, yet a free creature. This is exactly the complementary meaning of the words “my covenant”.

By his intervention God restores man to his true situation as creature. This becomes evident in the covenant as God preserves life and asserts his rule over man. The preservation of life is manifest in the very terms of the covenant. For Adam, God sets down the requirement of the perpetuation of life. “I will greatly multiply your pain in childbearing”, he says to Eve. No sooner has the covenant been made than “the man called his wife’s name Eve, because she was the mother of all living” (Genesis 3:20). Noah is ordered to “be fruitful and multiply and fill the earth” (Genesis 9:1). To Abraham comes the promise, “Behold, my covenant is with you, and you shall be the father of a multitude of nations” (Genesis 17:4). Moses is reminded that the people of Israel cannot live except by the covenant made with God, an affirmation which constantly recurs. At the same time, God claims as his own this man who lives by grace. Ezekiel formulates the most moving expression of this truth: “I spread my skirt over you, and covered your nakedness: yea, I plighted my troth to you and entered into a covenant with you, says the Lord God, *and you became mine*” (Ezekiel 16:8). In the covenant, therefore, man recovers his status as a creature, but as a free creature or, in other words, as a partner of God. This idea is contained in the very notion of the covenant as a contract. By choosing the covenant, God affirms that man is not merely an object, not a mechanized being deprived of independence. Rather, man is capable of making a contract with God; he is liberated by him, and, although a creature, lives face to face with God. God does not impose his conditions on man as on a slave. He deals with a free man to whom propositions are made which he is invited to accept. The idea of the covenant thus includes the idea of human dignity. The employment of the same expressions for covenants signed between men as for the covenant between God and man, is [53] proof of this. An example is the frequently used verbal expression “to make a covenant” or “to covenant.” The partners discuss and then covenant, exactly as it is

done in an agreement between equals. But here the two parties are not equal. God's covenant with man, as already mentioned, is in reality a contract of adherence. This is illustrated by two closely interrelated and rather fundamental facts. God lays down the conditions of his covenant. He makes adherence to it a matter of life or death. The covenant will be maintained if man fulfills the conditions set forth by God. Otherwise, the covenant is broken, and the result is pollution. "The earth lies polluted under its inhabitants; for they have transgressed the laws, violated the statutes, broken the everlasting covenant" (Isaiah 24:5). As a reminder of his creatureliness, man is tied to the covenant by the threat of death. God gives life and sets down his conditions. If man repudiates the covenant or breaks it, he must die.

Through judgment and pardon God freely poses his conditions, which impose themselves upon man. This is what takes place *in the covenant*, in election and grace; for man's acceptance is not the result of his own choice, but of God's election.

What are these conditions, and how are they revealed? They are the law of God. The relationship between the covenant and the law continues unchanged.

To Adam, God gives the law of childbirth, of the alienation between husband and wife, of hard labor, and of death (Genesis 3:16-19). To Noah, God gives the law of man's domination over creation, of the prohibition of murder, and doubtlessly also the prohibition of magic (Genesis 9:1-7). To Abraham, God gives the law of the separation of the chosen people from the rest of mankind, to be completed by the Mosaic legislation. 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), or "the covenant which he made with Abraham ... which he [54] confirmed to Jacob as a statute" (Psalms 105:9). What is the meaning of this relationship?

First of all, God establishes a law, *his* law over against man. The conditions laid down by God are the result of his judgment and the expression of his righteousness. As such, they correspond exactly to the idea of law as developed earlier. This law is the prerequisite for maintaining the situation which God has reestablished in his covenant. At this point man may gain a certain conception of the nature of law through revelation. But this law is not a principle for organizing society. It is a condition for life imposed on man. Man's situation is such that he cannot live as he pleases. He lives under certain physical, moral, or juridical necessities. He cannot live without eating. Nor can he live without reference to this law: "And the Lord commanded us to do all these statutes ... that he might preserve us alive" (Deuteronomy 6:24). "Justice, and only justice, you shall follow, that you may live" (Deuteronomy 16:20). After what we have said about the relationship between the covenant and life, these statutes are only normal. Yet they indicate that what is given here is not *the* law.

In addition, God grants man certain rights. Thanks to the covenant, man, who broke away from God, literally ceases to be an outlaw. This is also the consequence of his restored status. Man received from God a certain number of rights that are now his: the right to dominate creation, the right to be revenged if he is killed, and consequently, the right to take revenge, the right to kill for sustenance, to mention only those rights that are specifically listed. We may suppose that these rights are in reality much vaster, considering that law is so basic for man's existence that he is called to make a covenant with God. The notion of human rights depends on man's God-given status as party to a contract. To put it differently, God gives man certain rights, placing him in a juridical situation in order to make his covenant genuine.

Lastly, God ratifies the existence of human law. He does so [55] by appropriating human forms from within the juridical realm. Already the notion of the covenant is a human one. The idea of the

contract is accepted by God as the juridical form for making known his action. Likewise, the formalities of the covenant are borrowed from the then existing human laws, as, for instance, the sacrifice offered by Abraham where God passes between the animals cut in half (Genesis 15:17). Also, the tokens of the covenant correspond to juridical concepts in force at the time, such as the rainbow, standing as an existing bond between earth and heaven. The rainbow was a token for both parties to the covenant (Genesis 9:16), signifying their mutual pledge. We believe these are the implications of the notion of the covenant for law.

The above remains incomplete without an examination of the relationship between the covenant and Jesus Christ. All we have said about the covenant is real only in so far as Jesus Christ comes to fulfill the covenant, to enact a new and final covenant, giving meaning and value to *all* previous covenants. We could even say that all these covenants exist only as prophecies and symbols of the covenant in Jesus Christ. Yet Jesus Christ, while fulfilling the covenant, does not modify it. All we have said remains valid, but it is seen now in its true context and significance.

In the new covenant in Jesus Christ the judgment is pronounced inexorably and definitively. It is now manifest that man belongs to God, since God ransomed him with the blood of Jesus Christ. In this new covenant the restoration takes place. God shows forth his righteousness.

1. Human rights are established in this covenant. We have already observed that every covenant posits human rights. Here they receive their absolutely firm foundation. While Jesus Christ radically abolishes human justice and divests man of all his conquests, his powers and his rights, he also is the foundation of man's new rights. For he, Jesus Christ, acquires these [56] rights for man. In the new covenant Christ is not only the Victim in whose blood the covenant is concluded. He is also the one who concludes the

covenant with God in behalf of all men. He is the only man with whom God is well pleased. Through him God views all mankind. This is the miracle of substitution wherein Jesus Christ asserts human rights. From now on man can say that he is not without rights, for he can claim to belong to Jesus Christ. All can make this claim, since Christ died for all. Hence rights are not for Christians alone, with juridical nothingness being the lot of the rest. All are brothers of Christ, receiving in him their rights. The first of man's rights before God is his privilege of belonging to Christ. Because of Christ man is no longer at the mercy of events in history, nor of juridical despotisms. Because of Christ human rights are now established which no one may dispute, neither God who eternally founded them, nor men who cannot blot out the historic fact of Christ's death and resurrection. This event objectively establishes man's rights in the covenant.

2. Jesus Christ has taken upon himself all the sins of mankind and the totality of its life. No compartment of human life remains alien to Christ. Insofar as law is created by man and juridical rules are inherent in sin or even an expression of sin, Jesus Christ has taken them upon himself too. This is very clearly demonstrated when he submits to the jurisdiction and to the entire juridical system that condemns him. Seen in this perspective, there is a striking similarity between Christ's baptism and his condemnation. The Son of God undergoes baptism in order "to fulfill all righteousness" (Matthew 3:15). In fact, only because it is administered to him is baptism valid. Likewise, the Son of God voluntarily submits to the justice of men. The scriptures must be fulfilled (Matthew 26:54). They are fulfilled when law is brought to bear on Jesus Christ. "The Jews answered him, *We have a law*, and by that law he ought to die" (John 19:7). Thus Christ takes upon himself the injustice of this law, and he does so because, to a [57] certain extent, this law is an expression of the will of God. "You would have no power over me unless it had been given you from above" (John 19:11). He is willing to accept the verdict, though unjust, of him who represents the

law. He transforms this law into an instrument for the justification of man. By his submission he establishes human law, giving it at last a significance it never could have in itself.²³

Let us remember that this law is not the law of God, but one human law among others. Hence it does not become just in itself. It is accepted by God and appropriated in Jesus Christ.

The covenant, then, reveals the same characteristics as does the righteousness of God. This is not surprising since ultimately the covenant is but an expression of this righteousness. Why was it necessary to include it in our analysis? Could we not have been content with our remarks about God's righteousness? The concept of the covenant furthers our understanding in three directions.

1. It introduces a new element, man. Until now we could consider God's righteousness in his revelation, as he sees fit to disclose it to us, but apart from any organic relation to man. Man was merely an object. God's righteousness, so far wholly abstract, becomes concrete in the covenant. Man now appears as an element of law. He ceases to be a mere object. As a result of the covenant his existence receives its juridical quality. The covenant represents the encounter between God's righteousness and man.

2. The covenant confirms our contention that law is an act of God. The act of God which establishes law is precisely the covenant. We might say it is God's righteousness in motion. What seemingly had no relationship whatsoever with human law, like a rule established in heaven, like a purely mystical event, now is related to man's situation. The covenant is a kind [58] of a bridge between God's righteousness and the earth. It is one of the links between divine law and human law. At the same time in the covenant the

²³.cf. Karl Barth, *Rechtfertigung and Recht*.

nucleus of human law becomes concrete and visible. This in no way gives support to a theory of natural law since this law is strictly “supranatural.”

3. The covenant adds still another element. Law appears as mercy. If human law in various interpretations is based on the covenant as we have described it, it is not because of any intrinsic value of law, not because of any necessity, natural or other. The exclusive reason for it is God’s free choice, the fact of God’s mercy. Law is established because God pardons Adam, as he also pardons Noah. This is not a vague and sweeping statement which does not explain anything. We cannot affirm, “Law is mercy” *in abstracto*. We have seen how the covenant is mercy and how the gracious God pardons. This is as concrete as the pardon granted to one condemned to death. For him this word has real meaning. In this sense we must understand God’s mercy as containing law which is more than an agglomeration of human statutes, more than an abstract model having nothing to do with man, and more than a natural capacity which cannot convincingly command more respect than any other human invention. This leads us back to natural law.

Chapter II

Natural Law and Divine Law

1. NATURAL LAW, A CHRISTIAN DOCTRINE?

Christians have traditionally been considered partisans of natural law.²⁴ Did not Calvin himself defend it?²⁵ In fact, all the arguments based on biblical revelation and aimed at founding a natural law as identified with a just law are derived from three concepts: a concept of man, a concept of justice, and a concept of law.

1. *A concept of man.* It always includes the idea in one form or another that the Fall did not cause complete separation of man from God. For some, man retained a measure of free will. For others, he

24. *The scholastic concept of a "common good" goes back to a form of natural law. Also, Thomas Aquinas's distinction between the three laws, lex aeterna, lex naturalis, lex humana can only be understood if lex naturalis is the pivot of the system.*

25. *See for instance E. Brunner, op. cit., p. 43*

retained a certain sense of justice, or a certain capacity for knowing and doing good. This is not the place to [60] discuss the problem of the Fall, except to say that through the Fall, man totally broke away from God and thereby totally died. Even though God preserves man's life, this is no reason to believe that he thereby preserves any attribute of Adam. In our opinion, man is radically perverted by his sin. Hence we cannot admit the idea of the *imago Dei* being preserved in man as the foundation of natural law. The fact that man is created in God's image in no way implies that the *imago Dei* remains strong enough after the Fall to generate in man an understanding of justice and of law.²⁶ Calvin does not actually commit himself at this point when he maintains with reference to law that the *imago Dei* is destroyed. *Manet adhuc aliquid residuum*. This residue is not defined by Calvin. It might well be asked how it could be defined. If man as a creature knows what is just, why, then, can he not naturally do the good? And if he is capable of knowing and doing the good, why, then, Jesus Christ? Conversely, if the Fall is an act of man's will, and thereby man is made incapable of doing what he knows to be good, we destroy, from a juridical point of view, whatever we have supposedly gained. If man is not capable of implementing what is just, human law will never have any value at all. To identify natural law with the *imago Dei* means either to admit that man has not totally fallen, or to rob human law of all its value. There is no way out of this dilemma because justice is at stake and not an achievement of the *homo faber*. Some hope to avoid the issue by appealing to a widespread idea that, although man has no doubt totally fallen, after the Fall, God has written his law upon man's heart. Romans 2:14 is usually quoted in support of this thesis. We shall examine this text in time. Whatever its meaning, the text reads "by nature." This could be taken to mean that God's law, written upon man's heart, becomes natural law. It is meaningless to say that it is not natural law since it is the law of God.²⁷ Either this law is revealed and thus [61]

²⁶.Brunner, loc. cit.

not written upon the hearts of the Gentiles, or it has become natural, inasmuch as God has embedded it in nature. But if we maintain that God endows the Gentiles with a nature in which his law is embedded, we are up against all the truly devastating arguments²⁸ marshaled against natural law. What is even more serious, a theory of such a scope is being built practically upon one single text.

Furthermore, this theory has nothing to do either with Jesus Christ, the Lord of creation, or with redemption. We are faced, in other words, with a gnosis aimed at satisfying our intelligence and curiosity, but failing to be a necessary part of God's design, of his unique action, from beginning to end, for the salvation of the world. In so far as no necessary connection is claimed between this law and Jesus Christ, can we legitimately call it the law of God when in the scriptures the link between human law and divine law is so unmistakably emphasized in Jesus Christ? Even if we dwell exclusively on the external link, the law meant to expose man's impotence, we encounter great difficulties. On the one hand, this strictly negative role of the law has no bearing at all on the juridical enterprise. It is not a natural law. On the other hand, if this law is to fulfill its role, man must recognize it as God's law; but then it is a revealed law. For if this law is simply an outgrowth of his conscience, man has no reason whatever to acknowledge condemnation on the ground that he did not follow a part of his nature! Without further elaboration, we see what snarls we can get entangled in through this idea of a law written upon the heart of man.

2. The doctrine of natural law relies on a certain *concept of justice*. There exists an eternal justice, it is said, consisting of universally valid imperatives. It has its value in itself and is the [62] measure of any action.²⁹ This has at all times been man's temptation. What he

27. Quite recently, *W. Horton*, *Natural Law and International Order*.

28. *C.f. Conord*, *op. cit.*

knows by virtue of his reason to be just appears to him as justice itself. We are faced here not with divine justice, but truly with a creation of man designed to replace the justice of God. It imposes itself whenever human justice is made to coincide with God's justice. Man, incidentally, always attempts to judge God's action by this norm. He may express it emotionally by saying that God is not a just God when he makes man suffer, or he may express it rationally by raising the wrong problem. Either God is just but then he is not almighty, or God is almighty but then he is not just. All this stems from the attempt to conceive of justice in itself, coupled with the conviction that man is capable of knowing, *by nature*, this justice which exists *by nature*. As the foundation of natural law, it is held to be the measure and criterion of both the action of man and the action of God. This perennial temptation is answered by Ezekiel, "Yet your people say, 'The way of the Lord is not just'; when it is their own way that is not just ... Yet you say, 'The way of the Lord is not just.' O house of Israel, I will judge each of you according to his ways" (Ezekiel 33:17 and 20).

This attitude originates with a fundamental conviction of man. Justice is ultimately based on a common element inhering in all men and in creation, the rational element. The fact that creation can be partially known by reason, plus the fact that all men are to a greater or lesser extent endowed with reason, prompts the idea that all that is rational is universal. Since experience has shown the universality of the human concern for justice, this justice is linked to reason, the only natural gift universally present in man. Consequently, justice seems to be the result of value judgments and of principles ordered according to reason. This understanding, however, inevitably leads to the development which Feuerbach rightly denounced in the field of religion. An absolute is superimposed upon this human [63] structure. Man projects a subjective creation

29. *Werner*, Conseil oecuménique, 1943.

into objectivity. He transforms what he has observed as a relative value into an absolute. He projects into heaven what he has found on earth. What is more, he bows before this absolute, this objectivity, this celestial projection, and adores it. This is particularly true for natural law, as demonstrated by the Stoics and Thomas Aquinas. Natural law is nothing more than the transposition into heaven of relative and terrestrial justice. In other words, it is illusory to believe that our terrestrial law depends on natural law. Natural law is nothing but absolutized terrestrial law. This is of course what calls forth the condemnation pronounced by Ezekiel in the passage already quoted. Natural law is really nothing but a human way to which God's way can be neither compared nor assimilated. At this point an extremely serious problem arises for a Christian. How, then, can he admit the existence of natural law as opposed to God?

On the one hand, natural law, postulated as an independent value, has no inherent power. If it can be set up over against God, it is of no help to man, rather the contrary. If it is independent, it is necessarily opposed to God.

On the other hand, natural law is part of God's design. If this is maintained, we face a double hurdle. First, is natural law included in God's revelation? We shall examine this question later. Second, this natural law is originally created by God and, like man, it has an existence of its own, it has become natural. God has made it a part of nature, and as such it is an element of creation. This idea seems to us to betray a very serious error. Above all, it radically contradicts all that God has revealed about justice and law. Moreover, it is a fortuitous assumption concerning the content of creation. What God has created, he has also revealed. The content of creation, in as much as it concerns us, has been sufficiently made known to us by God. Nowhere in biblical revelation is there any mention made of this law. Nevertheless, it is maintained that it should be one of our chief concerns! Moreover, the idea springs from [64] an understanding of creation that does not seem, in our opinion, to corre-

respond to biblical revelation. According to this understanding creation is only the creation *ex nihilo* at the beginning. God originally created the universe with its laws and subsequently abandoned it to its own destiny. Here we approach the idea of the great watchmaker! As to law, God set up the principles or the values of justice which are to constitute natural law. I cannot believe that this is the real meaning of creation. God creates continually. The world is created by him ever anew. It survives only because God acts. The laws of creation are laws only because God applies them. He is a “God of order.” There exists no set principle as a natural source of life. God continually brings to life what, in itself, is but nothingness. There can, therefore, be no original juridical principle. Creation is not made once and for all. God alone is its principle and cause. As to justice, not even a rule of the game exists, since justice is nothing but conformity with the actual and eternal will of God. This is the meaning of the second text quoted from Ezekiel. Over against man’s reliance on justice, God declares his act to be the foundation of law. “I will judge each of you.” We are thrown back on the concept of divine law as opposed to that of natural law. A true understanding of creation can never admit the latter to be a germ of justice deposited by God. Nor can natural law be a perfect model to be imitated by human law. Neither of these two concepts agrees with God’s disclosure of his creative activity. They only correspond to the philosophers’ idea of creation. This “Christian” interpretation of natural law always appears as an adulteration of God’s word by discoveries of human reason. Revelation is coupled either with the Aristotelian concept, as in Thomas Aquinas and more recently in Brunner, or with the Stoic concept, as partly in Calvin and particularly in the Calvinists of the eighteenth century.

3. The “Christian” understanding of natural law presupposes a certain *concept of the law of God*. Basically, it is the affirmation that God has revealed the true law in the Old Testament. Hence we know both the foundation and the content of law and need only apply it.³⁰

This concept introduces a radical dichotomy between gospel and law. The dichotomy has been admitted very recently by a number of theologians.³¹ It can be variously expressed. Law may be interpreted literally or symbolically. It may be understood as God's revealed law given to the Church to pass on to the world. Or, it may be seen as the equivalent of what is found in the human heart, since God has made both the human heart and natural law.³² All these assumptions, it seems to us, are erroneous. They all somehow tend to define natural law in terms of the statutes first given by God to the people of Israel and then extended to the world through the death of Christ.

Admittedly these God-given statutes can teach us something about law and social problems. But in themselves they are neither law, nor a principle of law, nor the content of law. They are not law because they do not constitute a juridical system, but are part of revelation. They are not a principle of law because they are the actual expression of God's eternal will and as such an expression of God's righteousness. They are not the content of law because their content is necessarily contingent upon the time of their fixation and on the social and economic conditions in ancient Israel. These statutes belong, strictly speaking, to the concept of divine law. They enable us to define the meaning and the actuality of this law in history. They can-[66] not be understood except against the background of the idea of justice as we have tried to formulate it. These statutes, this Law of God, can neither be separated from the gospel, as if there were two different realms of God's activity, nor can they be

30. *This attitude is actually assumed by all theocratic jurists under the influence of Platonism*

31. *See, in particular, Ehrenström, Conseil oecuménique, 1943, who, in our opinion, fails clearly to define the separation he makes between gospel and law, thus almost distinguishing two reigns of Christ.*

32. *This was my position in 1936 (Foi chrétienne et université), article "Droit," which is, as I now believe, incorrect.*

viewed apart from the righteous action of God, or merely be assimilated to this righteous action. Why is this so? Simply because these have no value in themselves, as Jesus has affirmed (Matthew 5). They receive their meaning only when proclaimed by Jesus Christ, Redeemer *and* Lord of the world.

This Law of God, in itself, can never be considered as a law. It has no juridical value whatsoever if it is not the announcement of God's righteousness accomplished in Jesus Christ. The Law of God cannot provide the foundation of natural law any more than it can coincide with natural law. There is in reality no common measure between the two. On the contrary, if placed and understood in the context of divine law, this Law assumes considerable importance for solving specific juridical problems. We shall not discuss its application in this study of law in general and of the problem of natural law in particular. Such application in the juridical realm presupposes the solution of a number of problems pertaining to scriptural interpretation, such as the analogy of faith, the continuance of law through its fulfillment in Jesus Christ, the relationship between church and state in Israel, and the relationship between Israel and the world. These problems must be raised if this Law is to be made into a universal code or a model law, although they are customarily slurred over. They cannot be solved until this Law is given its rightful place, until it no longer is an abstract concept, considered on its own merits.

Previously we took issue with a certain interpretation of natural law which might be called catholic. Now we are taking issue with another interpretation which might be called protestant. For, whereas the former has assigned, we believe, an inaccurate place to reason, the latter has assigned an equally inaccurate place to revelation. [67]

2. NATURAL LAW AND DIVINE LAW

The above discussion disclosed a striking contradiction between natural law and what is revealed in scriptures regarding law and called divine law by us, for want of a better term. The doctrine of natural law as a Christian doctrine is thus ruled out at every point. Yet it may be in order to condense the contradictions by systematically summing up our arguments in order to define the issues more sharply. The principal contradictions appear to be the following:

1. Law is not a self-sufficient and independent reality, but only a part of human reality and of the universe considered in their relationship with God. Natural law, however, revolves around the idea of an independent law, considered on its own merits.

2. There is no law inherent in human nature, since God alone creates law. This law must be revealed law and cannot be natural law.

3. Law is not a product of human reason, but only of God's activity in the world. Reason is confined to organizing and ordering. It is neither a source nor standard for justice or for law.

4. Law is not static, but simply the actual expression of the eternal will of God. It is to be related not to principles, but to an act of God whose will is both actual and eternal.

5. The value of positive law is not derived from the existence of natural law, but from the fact that God ordains it as a means for his work, which is the salvation of mankind through the death and resurrection of Jesus Christ.

6. Man has no natural knowledge whatsoever of justice, for justice is nothing but compliance with the will of God. [68] This will is accomplished by redemption in Jesus Christ.

7. Justice is made known to man only in the revelation of the covenant. The covenant, and not an allegedly ideal or superior law, is the foundation of law.

8. The covenant does not give rise to juridical principles, but to an ethics of which law is but a part. This ethics is valid, in terms still to be elaborated, either for all human beings or for Christians only, as a consequence of their faith.

9. Hence law must be envisaged both in its dependence on God's creative work at the beginning and in its dependence on God's permanent work stretching from the beginning to the end of time. Whereas natural law is exclusively concerned with creation, divine law is rooted in the doctrine of creation and in eschatology.

10. Law is entirely Christocentric. For this reason we must reject the Thomist doctrine of natural law with its formal connection between *lex aeterna* and *lex naturalis*. *Lex aeterna* rules the world yet cannot be rationally known. It belongs to the realm of faith. *Lex naturalis* is that part of *lex aeterna* which is accessible to human reason, while for us the will of God expresses itself within and not outside a relationship. Furthermore, the relation between *lex aeterna* and *lex naturalis* is established without any necessary reference to the lordship of Christ.

11. The basis of objective law is man's subjective law which God himself acknowledges. The doctrines of natural law follow two different lines of thought. For some, natural law exists objectively, prior to any action or willing on the part of man. For others, the individual enjoys certain rights by virtue of his human nature.

12. Natural law does not provide any meeting ground for Christians and non-Christians. Although it claims to be a rational creation, it is subject to the divergencies and [69] fluctuations of reason in its concrete applications. The only meeting ground for men is

found outside themselves, in the everlasting compassion God shows to all of them. Divine law appears as one of the forms of this compassion.

This enumeration, although obviously not exhaustive, may serve our purpose to show the radical incompatibility between divine law and natural law.

3. NATURAL LAW AS AN EVENT

Thus far in this chapter we have dealt with natural law as a concept rather than as an event. We must now ask about the relationship between this event and divine law. However, another question needs to be answered first. Could not the *doctrine* of natural law be built on the *event* of natural law? In other words, when we honestly affirm the existence of this juridical fact, do we not then justify a certain form of natural law?

In reality, there is a world of difference between the two. When we admit natural law as a fact, we do not thereby affirm that it is good. It is not necessarily superior to law inherent in religion, or to the entirely secularized law, or to positive law. The phenomenon of natural law existing as a stage in the history of law cannot serve as a criterion for judging other forms of law. A certain period of Roman law or of French law cannot be the yardstick for measuring the excellence of all juridical systems of man's invention. To say that any type of law is natural is to say that it expresses a certain natural equilibrium, that it also fulfills certain natural needs, though temporal and temporary, of man or society. At the same time, this recognition of its natural character implies the further recognition that it cannot be normative. Indeed, if it is just, it [70] is certainly not because it might be in agreement with nature. In this confusion, the old belief in the excellence of nature, whether *natura naturans* or the

primitive state of man, crops up again. This belief is diametrically opposed to Christian teaching. The nature of man is evil because man, by nature, is sinful. What corresponds to his nature can therefore not be just. We simply fail to understand how it may be maintained that man, who is evil, is capable of creating something which is good; or that man, who is not just, is capable of creating a just law. Also, the rest of creation is drawn into the Fall. The consequences of sin are of cosmic proportions, as indicated in the eighth chapter of Romans. "For the creation waits with eager longing for the revealing of the sons of God; for the creation was subjected to futility, not of its own will but by the will of him who subjected it in hope." Nothing entitles us to say that law is just because it is natural, since nature is "subjected to futility," which is the very opposite of justice according to our summary of the biblical teachings about justice. Since nature is not good in itself, what corresponds to nature cannot be a norm for distinguishing just from unjust. This insight enables us to re-enforce the chasm between fact and norm. Hence the factual and historical existence of natural law as an event cannot conclusively be used to prove the existence of a natural law, just in itself. It can be used neither as the standard for all other juridical forms nor as an authoritative source of other codes.

What, then, is the situation of natural law as an event? We have acknowledged three characteristics (see Preliminary Chapter, section 3).

a. Natural law exists and has authority. Yet it is impossible to give the reason for this existence and this authority. This, we know, is precisely what differentiates it from purely technical law, since for the latter, authority is derived from the sanction which the state gives to the rule of law. We are compelled to admit that law has a grounding outside itself and that this [71] grounding is the source of its authority. If law is cut off from this grounding, it ceases, as we have noticed, to be truly binding and becomes only a set of rules.

b. Natural law has an essentially permanent content. Here again the phenomenon is wholly inexplicable by purely rational arguments. It is impossible to rely either on the unity of human nature or on the unity of reason, given the considerable variety of orientation existing in the history of civilization. For example, the civilization of the Semites is radically different from that of the Romans, yet the laws of these two nations are similar. Hence the existence of this common natural law presupposes an outside value for providing a fundamental unity.

c. Natural law is the product of social and economic conditions brought about by man. But how can man arrive at a justice so obviously beyond his own personal capabilities for justice? How can he organize the whole complexity of society's material needs according to this justice? Confronted with these two questions, we are forced to recognize the insufficiency of traditional explanations as well as the necessity of introducing a value transcending man.

Each of these points could be developed indefinitely. All the explanations of the school of positive law should be taken up and the vanity of rationalistic and materialistic solutions exposed. We have neither the space nor the desire to do so. We only wish to recall that these solutions always coincide with the periods of technical law, thus preceding the decline of law.

What is the true significance of this actually existing natural law in the light of what we have just said? It is the law which raises the real question of law.

Sacred law does not raise any problem precisely because it is religious. There is no problem of law. There is only the problem of man's religion.

Neither does technical law give rise to any problem, limited as it is to a material power. Technical law incessantly increases this power

at the expense of its own effectiveness. In the case of technical law, the rationalistic explanation is valid. And as a corollary it might be said that the materialistic explanation causes technical law. But it also unfailingly causes the bankruptcy of law.

Natural law appears as a period of juridical equilibrium. It raises the problem of law, inasmuch as it is inexplicable and contains an element of mystery, and also inasmuch as it is an effective law which manages to maintain an organic order in society. For us it is the human proof of a certain relationship between the righteousness of God, the divine law, and the laws governing human societies.

This is the real problem we are faced with. On the one hand, we witness the existence of a law created by man, and, on the other, we have seen what the divine law is. Yet we fail to perceive the link between the two except in a mystical vision. The Christian theories of natural law that could have provided this link were found futile and inaccurate. Hence the situation seems hopeless, since the divine law is exclusively God's and as such must be transcendent. Nevertheless, the phenomenon of natural law proves the existence of a relationship. It demonstrates that we cannot content ourselves with the dichotomy between divine and human law. If law were only sacred or only technical, we would be forced to be resigned to the dichotomy, thereby acknowledging that law is irrevocably separated from God, in opposition to the divine law, and ultimately an instrument of Satan. Although the existence of natural law implies neither an ideal nor a more just law, it forces us to recognize a certain intercourse with the divine law. This is of greatest importance for law in general. There can be no fundamental opposition between the event of natural law and other aspects of law. All are but phases of law. If in the event of natural law we recognize a relationship with the divine law, we are bound to relate law in its totality, with all its various aspects, to divine law. (It is a relationship which suggests itself from a rational point of view, because of the absence of any other possible [73] solution. But it is also a relation which natural man is incapable

of establishing by himself.) It is not possible to discriminate between “good” law and “bad” law according to an a priori criterion. We cannot separate the two by ourselves and in advance. If, therefore, we are certain of the connection binding one form of law to the righteousness of God, we must affirm that in reality the totality of law is brought into relationship. The other forms of law, as noted, are neutral in themselves. This is the true significance of the phenomenon of natural law. It immediately opens up the problem of this relationship. We will now turn to it. [74]

Chapter III

Divine Law and Human Laws

1. THE ELEMENTS OF HUMAN LAW

Law is always embodied in a system. Were we to take the experience of law as the point of departure for our analysis, we could be sure of reaching no result whatsoever. This is shown by several attempts to do so. Rather, in order to perceive the elements of law, we must begin with what God reveals to us in his creation and in his covenant.

The theologians who have tried to come to terms with the problem of law have, for the most part, been guilty of constantly and seriously confusing the issues. They have confused law and justice, judicial organization and justice, law and state, subjective law and objective law. The aim of the present analysis is to show, on the one hand, that there is no such confusion in the scriptures, and, on the other hand, to show that without distinguishing between these terms, it is impossible to solve the problem of the relationship between the law of God and human law. Moreover, we wish to

make it clear that in basing our analysis on the creation and the covenant, we do not thereby claim to grasp the total reality of law. We must not overlook [75] for a moment the fact that law is not static. We have seen that it is always an act of God. It is living, progressing, and aimed at a certain goal. Furthermore, history testifies to the constant evolution of law. Hence our analysis must reckon with this “growth” or “becoming” of law.

According to the scriptures, three elements are present in law. They are institutions, human rights, and justice. These three elements are also found in human law. However, if we envisage only human law, we cannot say that these are the only elements. What about juridical doctrine? What about man’s duties? What about the laws of society? These latter are not constitutive elements of law. In biblical revelation, institutions, human rights, and justice appear as exclusive and essential elements.

1. *Institutions*.³³ We usually call an institution a body of juridical rules oriented toward a common goal, constituting an enduring entity which is independent of man’s will, and imposing itself on man in certain circumstances. In spite of all research, in most cases it is not possible to determine the exact beginning in time and the rational origin of an institution. Marriage, for instance, is an institution. Yet it is impossible to know exactly how and for what reasons marriage made its appearance in history. In other words, we do not know why man went beyond the sexual act, whatever the sociologists and psychoanalysts may say. How was the simple fact of sexual

33. *The meaning of this term is obscure, all recent studies on the subject notwithstanding. But all jurists acknowledge that an institution is always a body with organic and objective existence. Hence it does not directly depend on man’s will. The jurist does not create the institution. Nor is the institution a direct outcome of circumstances. It undoubtedly strives to attain a certain goal which man cannot define in advance. The scientific study of the institution thus leads to the conclusion that man is incapable of founding it entirely by his own efforts.*

intercourse, which [76] does not even have a direct relationship to the birth to follow nine months later, transmuted into a social order, a juridical phenomenon? The difference is not one of comprehension, of emotion, of reason, of organization, or of quantity (the frequency which becomes habit, the custom which is deposited in law). It is one of quality. What is the connecting link between these two phenomena? As a matter of fact, we don't know. But regardless of how far back we go in history, we find the institution of marriage in one form or another. Whether it is endogamy or exogamy, polygamy or monogamy, polygamy or polyandry, we find, in any event, a stabilized union. It bears a social character and a juridical form. It is sanctioned, and cannot be explained merely by sexual union. It has been shown, for instance, that adultery is more severely penalized in polygamous societies. Only the theory of primitive promiscuity could possibly account for marriage as the stabilization of sexual union. But nobody has convincingly explained how primitive promiscuity could lead to the institution of marriage. Meyer's failure is obvious. The theory is really only a theory, and an increasingly doubtful one, for that matter.

What we affirmed about marriage is equally applicable to many other institutions, such as the state, the nation (originally the clan or tribe), property, or commerce. None of these can be explained on merely pragmatic grounds. In spite of all possible explanations, these institutions are mysterious in their origin, their necessity, their lasting character, and their universality. No theory has so far succeeded in providing a satisfactory account. The Bible affirms that some of the so-called institutions have been created by God.

A precise understanding of the term is essential. These institutions were not created in the abstract as is the case with natural law. Nor do they trace their origin to certain God-given "tendencies" in man. They were not created as conditions of normal life. In reality, they appear to be a quite fundamental part of creation. They are creations of God as are the trees or [77] the light, man or the angels.

The state and marriage, for instance, are organisms willed by God, ways of life which man is not free either to accept or to reject. They are wholly independent of man's will, assent, or conception. They assert themselves as concretely as the fact of man's having a body. To be sure, man can embellish or disfigure his body. He can make use of it or destroy it (but in doing so he destroys his life). Likewise, man can pervert these institutions. He can accept them or destroy them (but in so doing he also destroys his life). Nevertheless, man himself is not the creator of these institutions. It is not in his power to transform the sexual act into marriage. The creation of these institutions is marked by a decisive fact. "For in him [in Jesus Christ] all things were created, in heaven and on earth, visible and invisible, whether thrones or dominions or principalities or authorities" (Colossians 1:16). This creation in Jesus Christ is meant when we affirm that these institutions were created by God. It implies that our institutions have no value apart from the facts of incarnation and redemption, that they exist only for this and because of this reason, and that they are essential only in so far as they are part of the creative and redemptive work of Christ. They were created neither for the pleasure nor for the convenience of man, but for the fulfillment of the work of salvation.

These institutions are not merely the external, though necessary, conditions for the work of Christ. On the contrary, they are organically linked to Christ. God's choice of these institutions was not arbitrary. The possibility of their being different was not left open. Because of the lordship of Jesus Christ, His choice was necessary. It is not without reason that the union of Christ and his Church is compared to marriage, that God is called Father, that the Church is called a people, and that the state is an ἔξουσιχ. These illustrations ought to emphasize the fact that, by virtue of their creation, these institutions are not at man's disposal, nor are they accidental. Their necessary connection with the death and the lordship of Jesus Christ implies that their life is independent of all the misuse to which man may subject them. They are necessary, regardless of

man's desire to preserve them. In other words, even if man succeeded in surviving without the help of these institutions, they would not lose their validity.

We are dealing here with a whole set of institutions which defy explanation. Their origin is obscure. Their perversion brings about the decline of society. They are an element of law, yet basically they are a creation of God. Man may change their form, but their reality remains unchanged. This has nothing to do at all with any sort of natural law. Man is not called to discover these institutions, and to develop them. *They exist.* Man is only called to put them to use or to take them as models. *He lives by them.* He must only adjust them to the present situation.³⁴

2. *Human rights.* Human rights are laid down in the covenant and thereby made necessary. It is quite erroneous to think that the idea of human rights is of recent origin. What is recent is only the belief in the rights of the individual, which is not the same. Antiquity fully recognized human rights. "What, then, about slavery?" will no doubt be the objection. It should be kept in mind that the slave was first of all a prisoner of war. The normal treatment of a prisoner was execution. To be a prisoner is to be dead. To grant him life in the material sense does not change for a moment his death-situation. Later, with the introduction of the right to sell slaves the situation deteriorated and the concept of human rights became obscure. It only reappeared shortly afterwards in juridical or philosophical systems, as, for instance, in the Stoa. The act of denying to man any rights, incidentally, does not change in the least the objective fact that God recognizes man's rights in his covenant. [79] Proof of this conferring of rights on man is the legislation, in the

34. For a biblical study of these institutions, see my essay, "Communautés naturelles," in the collection *Vocations* No. 3, *Communauté*.

scriptures, where special rights are granted to individuals or groups. It is sometimes clearly underlined that these rights are both personal and willed by God. “You shall not violate any of these rights; you shall not show partiality; and you shall not take a bribe, for a bribe blinds the eyes of the wise and subverts the cause of the righteous. Justice, and only justice, you shall follow, that you may live and inherit the land which the Lord your God gives you” (Deuteronomy 16: 19-20). Not to violate human rights is the condition God makes for preserving man’s life. This is surely an indication of their being willed by God and of their manifest necessity.

Furthermore, the Bible teaches that these human rights are conferred upon man not as an individual, but as a creature of God, in the situation in which God has placed him. This is already evident in the covenant. Those with whom God concludes his covenant are more than themselves. They are representatives of a group. Noah represents humanity and Abraham the chosen people. The covenant is always made with a man among other men, linked to his fellow men, chosen yet not separated. Such a person is chosen to be the one, in the midst of others, who bears the grace of God. In this respect it may be said that we are confronted with a myth. But this myth of the covenant shows us that those endowed with rights are a part of humanity and do not stand over against humanity.

There is no dilemma involving the individual and society, since man is not seen apart from society. The opposite holds true too. Man cannot have any rights except as part of society, and society is stable only when man enjoys his rights. It is therefore man in relationship, closely tied to his family, his nation, his community of work, and his spiritual community, who has rights. These are not inherent in his bare existence, but only in his situation as a responsible human being. He is responsible not only for those who live with him, but also for his descendants. Man is embedded both in a horizontal community and [80] in the vertical community of forefathers and descendants. Only man in relationship, not man in

isolation, receives rights from God. For this reason, to cut man off from his environment, to make him an individual, is at the same time to rob him of his rights. Much as human law may vest him with all possible rights, these rights cannot command respect. This is the problem of human rights in the nineteenth century. For these rights can be disregarded either by a human law that withholds his God-given rights from him, or by imposing conditions on man which make the enjoyment of these rights impossible, even though they are recognized. There exists, therefore, a close relationship between man's situation in the world and human rights. These rights are not at all unprescriptible or inherent in his nature. Rather, they are granted to enable him to play the role and to occupy the place for which God has destined him.

But we must ask: "What are these human rights?" God does not provide any list. Human rights are not fixed. The biblical revelation does not contain a chart of human rights. This is easily understood when we remember our earlier discussion of natural law. God did not arrange in advance for a codification of these rights for future reference. The content of these human rights is essentially contingent and variable. It entirely depends on the historical situation in which man is placed. Not all societies have the same exigencies. Human mentality varies, as do economic and political concepts.

Hence the rights of the human person must vary too. Unlike the institutions, these rights do not present an essentially invariable "creation." They are not specified in advance. Yet we possess the means for determining them.

We are given two indications to this effect. First, these rights have been granted to man by God for a specific purpose. These rights are not only for man's own benefit. They exist in order that man may accomplish something. We shall see later that this idea is decisive for the conception of law. Second, these rights are acknowledged by man himself. While man is not [81] capable of objectively

recognizing law, or the rights of humanity, he is perfectly capable of claiming the rights which are his own, as a necessity for life. He knows them within his own personal situation, not through an objective instinct for justice, but through a genuine instinct for self-preservation. We need only to remind ourselves of the countless claims in the Psalms and in Job: "I shall affirm my right ..." or the Psalmist's consciousness of his rights in the face of his enemies.

This is why we must take seriously man's claims upon justice in the Bible even though they have certain demonic overtones. The poor and the weak, in particular, deserve a hearing, since they are those who have rights before God (see James 5:4, in addition to the many Old Testament passages). Whenever man makes a complaint, he expresses his rights more or less adequately and accurately. On the basis of such demands human rights can be recognized in human law.

It is no doubt dangerous to give such a place to man's claims. Nevertheless, Jesus Christ himself concedes this place. We shall not refer to the story of the Canaanite woman, but focus our attention on the parable of the wicked judge (Luke 18:2-8). The judge adjudicates on account of the woman's insistence. The widow knows that she has justice on her side. She claims justice before an arbitrary power bent on depriving her of her rights. It is important to note that the judge does not act mechanically, as do our contemporary courts, but seems to hold arbitrary power over her as the state or society holds power over man. He may give her what she is due. But he may also reject her. Moreover, he is an unjust judge. He does not fear God and has no regard for man. Consequently he has no reason whatever to let justice prevail. He believes neither in his judgment nor in law, having no criterion of good or evil. He is not a man from whom a just judgment, based on his knowledge of justice, might be expected. And yet he pronounces a just judgment on account of the insistence of the woman who, for her part, affirms her rights. Her affirmation prompts the sentence of the [82] judge.

Evidently the main thrust of the parable points elsewhere. “He told them a parable, to the effect that they ought always to pray and not lose heart.” But when Jesus tells this parable, it is an indication that there is no fundamental difference between this act and the plea for justice addressed to God. For according to the parable, the woman’s request is a plea for justice. It is an affirmation of human rights. This may seem shocking, until we read the explanation in the concluding words of the parable. “When the Son of man comes, will he find faith on earth?” (verse 8). The justice pleaded for by God’s chosen people, their claim to rights, is the only kind of justice available to them. It is the justice granted by Jesus Christ through faith. Their quest for rights is, in the form of prayer, the affirmation that Jesus Christ saves them; even more, it is their longing for his return. *Marantha* is the true expression of this longing.

As soon as we become aware of the relationship between law and the righteousness of God we see the bearing of this parable upon the juridical realm. This parable justifies the attitude of man who claims his rights.

There is still another conclusion to be drawn from this parable. A question must of necessity be raised. It is very well to claim! But who recognizes the rights of others? We cannot rely on the juridical virtue of men in general for this recognition. But Jesus himself gives us the answer to our question. It is not in the interest of virtue that the unjust judge renders justice. It is in his own interest, “or she will wear me out by her continual coming.” This must be related to Matthew 7:12, “So whatever you wish that men would do to you, do so to them.” Here virtue recedes before reciprocity. Man is called upon to acknowledge the rights of others, since he requests his own to be recognized. This very attitude of man towards others is a measure for his behavior. What man expects *for himself*, he is called upon to do for others. This is not the attitude of love. It is the attitude of law. Love will shatter this equivalence, this reciprocity, as is shown by the context of the parable in Luke [83] (6:31-36). The

behavior of the sinner, of the unbeliever, of natural man, is marked by reciprocity, inducing him to accept limits for his own rights. This is why this attitude, although juridically correct, is not the attitude of faith. "Sinners love those who love them ... Sinners lend to sinners expecting to receive in kind. But love your enemies ..." Here we are given to see what really incites a man to recognize the claims of others.

Once more, the fact that man makes such claims does not mean that he can justify his rights to himself. A peculiar text in Habakkuk (1:5-11) vividly portrays a people which found their rights on their own strength, consider themselves in possession of these rights, and in fact locate rights *within man*. The text refers to the Chaldeans, "that bitter and hasty nation ... their justice and dignity proceed from themselves..." This is man's pretention: to establish his rights on his own strength and to assure himself of them. What is his true situation? "They all come for violence; terror of them goes before them ... then they sweep by like the wind and go on, guilty men." The affirmation of one's rights actually becomes the justification for oppressing others, and the rights which man puts forward do not prevent him from being guilty.

What is the ultimate foundation for the rights of man? "Guilty men, whose own might is their god." This is precisely what we observe throughout history. Whenever man pretended that he could found his rights on his own strength and contain them within himself, his pretention was built upon violence. Any distinction between violence and justice breaks down. The strong man is right. This is the very opposite of what we have learned. It is the weak who receives his rights from God, which he may claim before God and before men. But at this point a necessary distinction must be made according to the criteria of the first characteristic of human rights, as indicated above: that these rights have been granted by God to man for a specific purpose.

3. The third element of law is *justice*. This doubtless presents the greatest difficulties, mainly because of its ambiguity and because of the lack of any obvious relationship with the righteousness of God. Traditional thinking insists on man's innate sense of justice and on his knowledge of good and evil, enabling him to apprehend what is just and to create a just law. Nevertheless, this belief is subject to serious question already on the ground of historical observation. It is almost impossible to determine the nature of justice from a human point of view. Pascal's thought³⁵ merely follows the thinking of St. Augustine in his *Confessions*.³⁶ Scepticism with reference to justice seems therefore to be as traditionally a Christian attitude as natural [85] law. Max Huber³⁷ recently observed: "Justice cannot be defined. Equality and the *suum cuique tribuere* ... are not material norms of justice, but only criteria. We know very well what is unjust because our predisposition tells us. But it is impossible to define justice. It is nevertheless significant that the idea of justice is continually held up as a criterion for law." This impossibility of grasping the nature of justice, the variability of its content, depending upon time and circumstances, and the fact that man can discover external,

35.[Translator's note: the remark refers to "This or that is truth on this side of the Pyrenees, falsehood on the other."] The following is even clearer than the classical text on the Pyrenees: "It is dangerous to tell people that the laws are not just, for they obey the laws only because they think they are just. For this reason people must be told to obey the laws because they are laws, just as they must obey the rulers not because they are just, but because they are rulers. If this is understood, any insurrection is forestalled. This is the true definition of justice." Pascal, *Pensées*, sect. V.

36.Even such [i.e. "silly men"] are they, who are fretted to hear something to have been lawful for righteous men formerly, which now is not; or that God, for certain temporal respects, commanded them one thing, and these another, obeying both the same righteousness: whereas they see, in one man, and one day, and one house, different things to be fit for different members, and a thing formerly lawful, after a certain time not so; in one corner permitted or commanded, but in another rightly forbidden and punished. Is justice therefore various or mutable? No, but the times, over which it presides, flow not evenly, because they are times." St. Augustine, *Confessions*, Bk. III, Ch. VII, #13 (Everyman edition, p. 41)

37.Max Huber, *Das Recht und der christliche Glaube*.

formal principles at best, must cause us to wonder. Yet these facts in themselves are not sufficient for rejecting the idea that man in himself has a sense of justice.³⁸ [86]

What does the Bible have to say in this regard? One categorical affirmation is recurring. Man has no knowledge whatsoever of justice, as he has none of goodness. We do not intend to enter the quandary about man's knowledge of good and evil. We only inject an observation concerning the problem of justice under discussion. Having seized the fruit of the tree of the knowledge of good and evil, man, it is said, knows good and evil. If he fails to do good it is by a mere deficiency of his will. Couched in these terms, we believe that the problem is badly posed. When man takes the fruit of the tree, he separates himself from God. Consequently his knowledge of good and evil is a knowledge in separation from God, in sin and in death. Man does not know the good except in sin. He does not know the good except as static and separated from the love of God. This is to say that he has not the slightest idea of what the good really is and that, separated from God as he is, he has not the slightest idea of justice, which is conformity with the will of God. Biblical

38. *In spite of recent studies an extraordinary confusion surrounds this notion of justice. One needs only to consult the book of Roubier. Besides the theories that betray a suspicion of justice and an attempt to separate law from justice, we find all the theories which comprise an attempt to define justice. It is the predilection of the masses, for Duguit; the sentiment of the individual, for Rousseau; a social belief, for Levy; a spiritual value, for LeFur. For others it is an intuition or an instinct. All these expressions are far from representing mere semantic differences. They each entail special juridical consequences (Roubier, op. cit., pp. 128-144). For Roubier, justice is the product of continuous progress, an elaborate concept refined by the technicians of law. It is a work of the jurists, designed to create a superior order in the world and to ensure the triumph of the most respectable interests. This is expressed in fixed rules ensuring the triumph of the just over injustice. These rules are universally valid and capable of being applied at all times and in all places. There exists, therefore, an ideal which the jurist improves and expresses, thanks to reason (Roubier, op. cit., pp. 170-184). In fact, this is only avoiding the difficulty. For in the name of which criterion is this order termed superior? Who determines which are the most respectable interests? We are left here in the obscure domain of external, formal principles.*

teaching affirms beyond question that natural man, man by himself, does not know what justice is.

Our thinking must proceed from Paul's affirmation in Romans 9:30-31. "What shall we say, then? The Gentiles who did not pursue righteousness have attained it, that is, righteousness through faith; but Israel who pursued the righteousness which is based on law did not succeed in fulfilling that law." Man is doomed to fail when he tries to create righteousness based on law, even if it is Israel. To say that this text only refers to justification is beside the point, since man is condemned in his attempt to obtain justification by introducing justice into his relationship with God and with his fellow men. The text underlines the impossibility of creating a righteousness based on law. The two elements are inextricably linked together. Justice has no dwelling place on earth, neither in the heart of man nor in nature. "Righteousness will look down from the sky" (Psalm 85:11). It is always a gift of God. It is grace. Where man is not guided by the will of God, disorder and injustice reign (Isaiah 24:5). [87]

When does man ever catch a glimpse of justice? When he is confronted with God's judgment. "For when thy judgments are in the earth, the inhabitants of the world learn righteousness. If favor is shown to the wicked, he does not learn righteousness" (Isaiah 26:9-10). Conversely, when justice manifests itself, it actually manifests a judgment of God. "They stood in awe of the king, because they perceived that the wisdom of God was in him, to render justice" (I Kings 3:28).

This delineation of the exclusive source of the knowledge of justice is not complete. For each time God judges, he also pardons. This is why we are constantly reminded of the fact that justice known by man in the judgment of God is grace. It is a gift. Only by his wisdom does God grant man the recognition of righteousness. To the prayer of Solomon (I Kings 3: I I) God replies, "Because ...

you have asked for yourself understanding to discern what is right, behold, I now do according to your word.” The gift of wisdom, of discernment, comes from God alone, and only by virtue of this wisdom and discernment is man capable of perceiving justice. Nowhere is this more clearly expressed than in the book of Proverbs (2:6-22), where wisdom itself speaks, and where justice depends upon wisdom. “For the Lord gives wisdom ... *then* you will understand righteousness and justice and equity, every good path ... so you will walk in the way of good men and keep to the path of the righteous.” This text shows us that we must not differentiate between knowing justice and doing it. Both the knowing and doing of justice proceed from this wisdom: you will understand and you will walk. In reality, one is not without the other. It is important to emphasize that in the text of Proverbs the Hebrew words used for justice and equity are *sedeq* and *mishpat*. They are precisely those terms which convey the two meanings of justice, divine and human, which we have discussed. Even human justice cannot really be understood and followed except by the wisdom of God. Even [88] when texts are quoted which affirm that the law of God is written into the heart of man, there is, in most cases, but a confirmation of what we just said. By grace God writes his law into the human heart, and grace here clearly means saving grace. This is most forcefully stated in the passage where Jeremiah declares that God will replace the Mosaic covenant by a new covenant in which the law shall be within men, and “they shall all know me ... says the Lord” (Jeremiah 31:31-34). Every time reference is made to this law within man’s heart, it is because God has chosen and shown mercy and because man has acknowledged that the God revealed in Jesus Christ is his God. This is the very opposite from a justice embedded within man’s nature.

One text deserves special attention, even though we cannot hope to overcome all its difficulties. It is the favored text for all partisans of the idea of natural law residing in the human heart. “When Gentiles who have not the law do by nature what the law requires,

they are a law to themselves, even though they do not have the law. They show that the work of the law is written on their hearts, while their conscience also bears witness and their conflicting thoughts accuse or perhaps excuse them” (Romans 2:14-15).

We should like to make several remarks in connection with this text, without trying to explicate it entirely: $\phi\upsilon\sigma\epsilon\iota$, meaning according to natural insight, according to nature, is obviously opposed to the law, $\tau\omicron\ \epsilon\rho\gamma\omicron\nu\ \tau\omicron\upsilon\ \nu\omicron\mu\omicron\nu$. It is the work, accomplished in compliance with the law, which is written upon their hearts.

This text in no way affirms that the law is written upon man’s heart, as it is wrongly asserted. Only the Gentiles’ action is at stake. The Gentile acts after having debated the course of action within his conscience and his thoughts. Through his action he may fulfill the will of God (although this is not necessarily the case as indicated by the text, “*When Gentiles ...*”). His action may be just. At the moment of acting, the [89] Gentile manifests that he is a law to himself, that he really did what the law requires, and that this came out of his heart, according to the word of Jesus, “For out of the abundance of the heart the mouth speaks” (Matthew 12:34). Our text never speaks of law in itself, only of the action in compliance with the law. This is all the Gentile is capable of accomplishing. He may at times act according to the will of God, without prior knowledge of, and confrontation with, this will as law. At a deeper level, whether we like it or not, we really stir up the problem of faith, since we are obligated to place the text within the total context of the first chapters of Romans. We find that there is no justification, with or without law, except by faith. If it is possible to arrive at the true attitude of faith without the law, we are led to a critique of the law of Moses. Such a critique would take us too far away from our present argument.

Our text emphasizes a notion of great importance for our discussion: the concept of action. Natural man is called by God to act,

and his action may happen to be just. Take Adam as an illustration. God does not give him any particular strength, any virtue, any power. He gives him the task of earning a living and of perpetuating life. This is *homo faber*. He simply receives the means of action: a certain intelligence, hands, and eyes. These are indispensable for maintaining and spreading life. Man is nothing more. This is even more evident with Cain. He and his descendants shall create all the arts and shall enjoy God's protection for this purpose. In the realm of law, of the organization of interpersonal and intergroup relations, man does not know what justice is. He only knows that he must act, organize, and judge. This makes up the *totality* of his situation.

Here as elsewhere, man is *homo faber*. He possesses reason, enabling him to establish a certain criterion of justice, strictly relative and time-bound. And he must judge according to this criterion. Furthermore, his reason enables him to work out an administrative or juridical technique, since there is a certain order to be maintained. But he may figure it out all wrongly, or [90] fail in his work. Likewise, what he calls "just" is not necessarily just, and what he calls "law" is not infallibly part of law. Therefore, what the scriptures call "just" does not at all correspond to the human sense of justice or to organizing reason. When man establishes law, he does not seek to reproduce a sovereign norm of justice. Rather, he tries to establish a viable organization. Judicial or administrative organizations, together with the rules guiding them, are set up to permit the preservation of life, and man adjusts himself to this fact. He seeks success, and this is really the measure of his creation of law. Man does not conform to an ideal, but strives for tangible results. He acts, and his action may or may not be just in God's sight. His endeavor serves the preservation of the world. By his rules of justice, man acts in order to preserve the world, as *homo faber*. This is one of the purposes assigned by God to law. It is a manifestation of God's patience.

It would, therefore, be legitimate to take as a criterion for *this* kind of justice the fact that a law or a juridical disposition is an integral part of God's patience. Hence a law which destroys society, provokes disorder and death, and precipitates disintegration, is an unjust law. But equally unjust is a law which maintains a formal order, but through oppression or rigidity makes the spiritual life of individuals or groups impossible. Such spiritual sterilization, brought about by laws, leads very rapidly to the decline of society. Moreover, a law is not just when it is not an integral part of God's patience. Such a law will prompt man and society to escape from the life-or-death dilemma. This must be the concern for any kind of law, because law can only be the expression of the attempt to assure the preservation of mankind. This is the only point of reference for defining what is humanly just. Is there any link between this purely pragmatic justice, worked out by man for convenience's sake, and the righteousness of God? At first sight, they have nothing in common. This is true as long as divine justice [91] is the point of departure. But let us not forget that divine justice, too, is action. It is constant. At the same time, it is a final destiny.

In his organizing efforts man is bound to reckon with elements outside his control. Since they are given factors, he does not at first even think of questioning their existence. When he does question them, he embarks on a deadly course for all society. Foremost among these outside elements are the institutions. Man does not recognize them by virtue of supranatural insights because of a sense of divine justice, or because of a keen grasp of the necessities of life. He recognizes them because they are created and exist, as he recognizes the existence of the sky and of water, or the existence of magic powers. As a result, he includes them when he makes laws, simply because he cannot do otherwise. He does no more than circumscribe these institutions. He gives them their actual form by working out a system of law.

Furthermore, man is also compelled to take human rights into account when shaping the law of a society. Were he to neglect their demands, law would no longer have any meaning. It could no longer be considered as law. Man, subject to law, demands the protection of his rights. Thereby he makes sure that his claim for justice is respected. This is why the actual point of departure for law in primitive societies is almost invariably a system of sanctions. The formulation of sanctions precedes, as a rule, the formulation of law. Hence, in law, the reliance is always on man's claim to his rights, the cogency of which is recognized by the group. Soon the conditions of this recognition are laid down. They are the conditions under which a sanction will be applied to secure compliance with a claim. These conditions make up the rules according to which the judge must judge.

In both instances man's role is a formal one. He gives a form to already existing human rights and to the institutions. This [92] form will be modified according to social and economic conditions. Man can go even further and deny to his fellow man what he deserves, or grant him what is not his due. He can also nullify institutions. He does all this in the attempt to formulate law, proceeding according to what he calls justice. But this justice is no more than a certain adjustment to convenient and pragmatic criteria, chosen by man for organizing the environment in which he lives. For this reason, it is impossible to ascribe a content to human justice. It would be wrong to believe that justice is conformity with institutions or with human rights. Justice has a quite different function. It must give actual form to these institutions and rights. It must formulate them in such a way as is consistent with social, economic, and technical circumstances. It must co-ordinate them so that the rights of each and everyone may be respected. This is the true *suum cuique tribuere*. These rights must be ordered in relation to the institutions. Yet we must not assume this justice to be invariable and eternal. It is but a practical criterion which can be determined in various ways.

We have no way of relating this organizing justice to the righteousness of God. This kind of justice provides no link between man's justice and God's righteousness. But God himself establishes this relationship, starting with his own righteousness and descending to the level of this organizing justice.

We have tried to define the elements of human law. They do not confer either meaning or value upon this law. Nevertheless, they are the necessary point of departure. But human law cannot be interpreted apart from the covenant and the parousia. Human law is placed between these two events. Our analysis, however, has also shown that the elaboration of human law does not proceed by deriving principles, but by discerning concrete situations, by judging historical facts, more or less justly, in the light of the righteousness of God. It defines human [93] relations with a view to human rights and God-given institutions. The phenomenon called "objective law" is therefore essentially relative. Yet it is *not only* relative because God endows it with dignity.

2. ESCHATOLOGY AND LAW

The notion of the covenant does not entirely explain the idea of justice. For the righteousness of God moves toward a destination, the judgment of the world and the second coming of Christ. Accordingly, law must not be seen exclusively in relation to the covenant, its origin and point of departure. Law's dependence upon the righteousness of God also leads us to consider it in its relationship to the last judgment, to eschatology which is its aim and conclusion. What we have said so far with a view to the covenant cannot be fully understood except in the light of this goal. We had to refer to it already as an element in defining law.

Strictly speaking, law is to be understood as existing *between* the covenant and the last judgment. It is an intermediary entity, covered by God's righteousness as it is present in the covenant and in the final judgment. It is incorrect to say that law as this intermediary and contingent entity exemplified by human justice will purely and simply disappear in the new creation. We shall not dwell on the text about the glory of nations being incorporated into the New Jerusalem (Revelation 21:24-26), or that other one about the persistence of human works through the last judgment (I Corinthians 3:13). We shall rather refer to the word of Jesus, "For with the judgment you pronounce you will be judged" (Matthew 7:2). Quite evidently this text has a well known "spiritual" meaning. It is certainly not indifferent to law and, for the sake of clarification, it must be correlated with two other texts. In the parable of the talents the nobleman appropriates the judgment pronounced [94] on him by the wicked servant. "*I will condemn you out of your own mouth, you wicked servant! You knew that I was a severe man...*" (Luke 19:22). Elsewhere we read, "All who have sinned without the law will also perish without the law, and all who have sinned under the law will be judged by the law ... When Gentiles who have not the law do by nature what the law requires, they are a law to themselves, even though they do not have the law" (Romans 2:12-14). All these texts show that God's righteousness is not the expression of an inflexible and invariable norm, but rather a statement of facts and an individual judgment. What is true for all of history is also true for the last judgment. The judge is not a law, but the living God in the presence of dead men. We have seen that God judges according to human law. This again is true here. In judging man, God does not adopt absolute justice, but the justice of the man before him. He judges him according to man's own criteria, according to his words, his rules of life or of law and his judgments. Likewise, man finds himself not primarily condemned by the absolute holiness of God, apparent only at the very moment of God's pardon when man lies prostrate, but by his own justice. This is the real meaning of the trials with men which God is willing to engage in. He stoops to the level of their own justice and

at the same time, as with Job, maintains his own righteousness. “I will question you, and you declare to me. Will you even put me in the wrong?” (Job 40:7-8) This is also part of the meaning of the crucifixion where man is condemned by his own judgment. He himself pronounced the death sentence upon the Son of God. *This* judgment, like no other, irrevocably and totally condemns man. No human value survives, for, in the last analysis, human justice itself is annihilated together with man, when God applies human justice.

Therefore the idea of God judging us according to our own criteria of judgment deserves our close attention. God appropriates and applies human law with all its pragmatism and [95] contingency. Herein lies the terrible gravity of human law. We cannot take it lightheartedly and abandon it to the whim of human passion. We know that, involved as we are with our families, our occupation, our nation, our superiors, we are measured by God according to the rules which govern the relations to the people surrounding us.

In order to prevent a misunderstanding, let us briefly interject here that these are evidently not the *only* criteria of God’s judgment; nor do they comprise the absolute measure of our sins. Nevertheless, they are *part* of God’s judgment. Hence the whole of human law, this tremendous invention by man in the course of history, including all the errors and aberrations, even injustices, is ultimately assumed by God. Jesus himself, when he submitted to the law of Pilate and to that of the Jews—to the law of the nations and to that of the chosen people—illustrates the significance of this fact. A dual meaning needs to be stressed here.

On the one hand, human law is bound up with human sin. It is an expression of sin, as in the case of the purely technical law ending up with *summa iniuria*. Nevertheless, it is assumed by God in the manner of man’s own sin, it is not differentiated from this sin, even though it is sin’s measure. We may even say that just because human law must express God’s righteousness and God’s covenant, it is the

measure of man's sin at the very moment when it deteriorates into a "non-law," when it is sin. For at this moment man attempts to justify his sin and to judge God's righteousness according to his own way. Looking back to the parable of the talents, we notice that the wicked servant uses his own conduct as a basis for judging his master. The law whereby he justifies himself is the very measure of his sin. But God, in assuming this law and judging by it, does not preserve it.

On the other hand this law, bound to the covenant from which it originated, is preserved by God in the heavenly [96] Jerusalem, like other works of man, among the glory and honor of nations. Here again it is assumed by God, for now it is a part of the lordship of Jesus Christ, who faithfully accomplished the mission for which God had destined him.

These are the two aspects of God's appropriation of human works as expressed in law. They are already present in God's attitude toward the Israelites' demand for a king (I Samuel 8). By their insistence they reject God himself as their king, and thus are wholly unfaithful and disobedient. Nonetheless, God accedes to their wish and sets down the law of the king. Thereby he takes upon himself this disobedience, but he also makes it the criterion for the condemnation of the people. This condemnation is strikingly apparent in Saul. With David's reign, however, the prefiguration of Christ's kingship, God reversed the situation. This time the Israelites, having rejected God in favor of a king, find themselves subject to the kingship of God, as God appropriates the kingship of David. He exalts it as the sign of the kingship eternally to be established in Jesus Christ. While Israel's act remains on the level of sin, it becomes an act of benediction and salvation.

The same may be said about law. God reverses the situation of human law at the very moment he makes it into an instrument for man's condemnation. 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. Now we can grasp the essential truth that law is not valid on account of its origin in, or its relationship to, the covenant. These could only disclose the injustice of human law as compared to divine law. They could only be the measure of its non-value. They invite us to disregard these human rules as representing nothing else but the tradition condemned by Isaiah and by Jesus. They appear to us as the expression of man's will as opposed to God's will. Law is valid [97] only because ultimately God takes charge of it. At the end of its history, God will authenticate this law and in some way incorporate it into the reign of his righteousness. At the end of time there will be no more distinction between *sedaqah* and the *mishpat*. The reign of the one and only righteousness which encompasses all justice is announced. The promise given to those who hunger and thirst after righteousness is an eschatological promise. It is futile to inquire to what kind of justice this promise refers. It is meant for all who have sought a justice, whether it be inner justice, social justice, or juridical justice. Any authentic justice will ultimately be integrated into God's righteousness from which it is inseparable, not because of its origin, but because of the grace God shed upon this justice. It becomes one with his righteousness on the day of judgment. We know this grace since it is none other than the grace fulfilling all righteousness in Jesus Christ.

In our discussion about authentic justice we have spoken of the double character of God's action with regard to law. This action represents God's judgment upon law. God discriminates between the two aspects of law. He separates within law what is the "honor and glory" of the nations from the rest, just as he tests all human works by fire. It is, therefore, not our whole law that is accepted by God. Nevertheless, our whole law receives its validity from the fact that one day God will appropriate it. Moreover, God alone is able to discriminate and to separate one aspect of law from the other. For us

both are united because we have no ultimate criterion of justice at our disposal which could transcend sin. We have no definite knowledge of what part of our law God will retain. We shall readily admit this ignorance in view of the fact that we are not even capable of knowing what part of our law and our present institutions history will retain. Being incapable of anticipating the judgment of history rendered by men, how could we be [98] expected to anticipate God's judgment? We are forever prevented from sitting in God's place. This limitation must determine our attitude toward law.

There remains the question of the relationship between the point of departure and the destination point, between the covenant and the final judgment. We are forced to conceive of this relationship as linear, because our intelligence is conditioned by time. In reality, the relationship is eternal and is already inherent in justice itself. God's final judgment is identical with the covenant. But while the judgment represents the final event in history as well as the opening of the new eon, the covenant is instituted by God in the course of history. It expresses itself in relative terms which cloak its meaning.

In the coming of the new age we find essentially the same elements involved as in the covenant: judgment, grace, the reestablishment of God's lordship in Christ. Only now it is a judgment which can no longer be misunderstood or rejected. It is grace which enlightens everything so that nothing remains hidden anymore. It is a radical, general, and universal reestablishment of lordship from which nobody can even pretend to escape. Consequently the last covenant, concluded in Christ, is revealed and fulfilled. The relationship between the covenants and the coming of the new age consists in the fact that the latter is the last covenant and the fulfillment of all the preceding ones. Their fulfillment in Jesus Christ makes them real for us today and valid in hope.

Without further developing this relationship we can see that the role of law is the human, partial, and contingent realization of a covenant which will be fulfilled only at the end of time. Whatever is at the origin of law, has its validity only in *this* fulfillment, and law itself is necessarily linked to this fulfillment because its origin is linked to the covenant.

Thus, law is firmly grounded in Jesus Christ. Its validity and its function are rigorously circumscribed. [99]

3. THE PURPOSE OF LAW

What should man's attitude be towards law? According to our earlier observations we must not attempt to discriminate between what is eternally valid and that which is ultimately rejected. The time for such discrimination has not yet come. This sifting will take place only in the last judgment. Therefore, we must accept the totality of law as it exists, because this law has been appointed by God for his service. Its totality is to be accepted not because it is just, but because God appropriates it. At the same time, however, we cannot hand ourselves over to it unqualifiedly. We cannot accept the juridical systems as being in conformity with justice when we know that they can be the contrary of law. Consequently, the actual law to which we are subject is under condemnation. As in the case of acceptance, we are dealing with the totality of law, this time calling it into question. No conformism is possible because we know that the totality of law will have to submit to final judgment. We appear to be caught between two contradictory positions. But in reality this is not so. On the one hand, we must avoid anarchism and the supremacy of violence over law. We must avoid the distortion of law by personal interests and the priority of person or class. On the other hand, we must become more and more rigorous with regard to law, in order that it may provide a more precise and contemporary pro-

jection of institutions and human rights within a certain framework of justice. Therefore, under no conditions can we accept as normative law as it exists or the situation created by this law.

The Christian is in a special situation because of this double attitude toward law. His role is to recognize the legitimate exigencies of natural man in regard to his rights and to incorporate them into law. But we must not submit to the pressure of force and of claims. He must be careful that law [100] does not become the pure product of force and that the just and genuine elements in man's claims do not become satanic. We must define this attitude more closely, particularly the Christian's motive as he acts in the juridical domain.

The eschatological perspective of law which we attempted to trace has led us to the assumption that this law is embodied in the human situation. Although it does not end with history, law is a part of history. But since it does not end there, it obeys a certain purpose, it has an orientation towards a goal. From the beginning its development is not left to chance. What is true on the level of the covenant and of the judgment is also true on the level of human history. On the human level, law has a purpose. This constitutes the second criterion by which the Christian should measure his action. He is to act not with a view to the realization of a model, or the approximation of an ideal, but with a view to the realization of an end and the fulfillment of a function for which law was ordained from its beginning. We must immediately warn against the idea that law could be a means to bring about the kingdom of God. We believe that the kingdom will come through God's action, revealed in the total transformation of the world. Law cannot even remotely either prepare or accelerate the arrival of the new age. Nevertheless, it has a role which is not negligible and which is determined by its eschatological importance. We shall examine the purpose of law under two aspects: the content of law and the significance of law.³⁹

a. *The Content of Law*

We cannot be satisfied simply to affirm that God gives us a law so that order and justice may rule. Nothing in biblical [101] revelation entitles us to this opinion. Those who have relied on so-called Christian principles in matters of law have shown by the divergency of their ideas that it is possible to rationalize anything as being based on law without regard to the written record of revelation.

We have found that God has assigned a goal to the systems of human law. He recognizes human rights so that man may covenant with him or, to put it differently, that he may be God's partner. This recognition is very specific. Man cannot be a partner of God when he is deprived of rights. They bring life, a life that makes possible man's response to God's word addressed to him in the covenant. Any claim to the contrary would be idealistic, and the Bible is not idealistic!

Here then is the first element of this orientation. Human law must be conceived of in such a way that man, who is subject to it, may enjoy all rights, because they are necessary for hearing and responding to the word of the covenant spoken by God. Should law place man into a situation which makes the proclamation of the covenant futile, it would nullify man's God-given rights, thereby nullifying itself. Law loses its true content at the moment it denies these rights which are its principal content. This does obviously not imply the recognition of abstract human rights, but of most concrete freedoms. These must safeguard man's life in its totality and not be confined to his inner life, as is the freedom of conscience. For the covenant is both a covenant of salvation, as with Abraham,

39. *The purpose of law in another sense is recognized by a large number of jurists. For them, it is expressed in the goal which law ought to achieve for social organization and also in the maintenance of equilibrium of interests.*

and a covenant of the preservation of life, as with Adam and Noah. The two kinds of covenants are realized in Jesus Christ and “from him and through him and to him are all things” (Romans 11:36). These three qualifying statements throw sufficient light on the true character of the covenant. Because of this covenant, law must not be deprived of this purpose. The covenant is not only a point of departure, but, to use legal language, a successively renewed unilateral contract. Its meaning is far from being limited to one historical situation. It has prolonged [102] repercussions, even unto the end of time. Hence the human rights, recognized in order to allow man to respond to God, refer not only to the situation in which man is addressed by the gospel. They refer primarily to the situation of man as he is called by God to live, and nothing more. In each covenant this is indicated by the repeated promise of life. To enter into a covenant with God implies, first, to be able to live, and second, to make a pledge to maintain life. The general idea of the preservation of the world has, to some extent rightly, been derived from this promise of life. Yet the covenant primarily concerns man. Consequently, to put man into a predicament such as to make life impossible is to run counter to the goal of law. Law must allow man to answer in the affirmative the question, “Do you want to live, and do you want to let live?” This possibility does not preclude his saying “no,” because sin propels him toward death. It only indicates that the social, economic, and political conditions of life, brought about by law, must prevent man from being cornered by death.

We have just said, “brought about by law.” This expression points to the partially independent character of law with regard to the economic and social order. Law is not simply an expression of these realities. It must be normative for them, and sometimes censure social and economic conditions, if these prove to be deadly for man. Because of its purpose, it takes precedence over economics.

Thus we already know the direction of our action, when we see how law drives man to despair, to rebellion, to the denial of life and

of survival because of the situation inflicted upon him. The consequences of human rights for law can easily be drawn. But these rights aim at the covenant designed to preserve the world. As previously stated, God sustains the world if man fulfills the conditions of the covenant. The world is, of course, preserved not by man's action, but by God's mercy. Man has done absolutely nothing to deserve this mercy, yet he is called to express it by fulfilling the conditions of the covenant. Law is [103] commissioned to make life possible for man and to organize society in such a way that God may maintain it. This is the corollary of what we noted earlier. Just as rights are granted to man for the sake of the covenant, the world is preserved with a view to the coming judgment. "By the same word [the word of creation and of the covenant] the heavens and earth that now exist have been stored up for fire, being kept until the day of judgment and destruction of ungodly men" (II Peter 3:7). This is the second criterion for law in its mission to preserve the world, and, again, it is in terms of purpose.

But what does this mean, "to keep until the day of judgment?" It certainly has nothing to do with the vision of a bloodthirsty God, keeping the world in suspense and suffering, in order to condemn it more severely. In reality, the judgment is pronounced by the Word preached in the midst of the world. The Word alone divides sharper than a two-edged sword (Hebrews 4:12), which is to say it judges. The world is preserved in order that the Word may be proclaimed and that salvation in Jesus Christ be announced. God gives the world a chance for as long as possible. All this is well known.

But let us consider the implication for law, commissioned to express the covenant on earth, and to organize the world with a view to its preservation until the last judgment. This purpose implies that law conceives of itself as relative and as being subject to the judgment. It is quite true that any decadence of law begins with the absolutizing of law. Law is established as an end in itself and attempts to assure the salvation of man and the close-knit organiza-

tion of society by its own means. The demonic temptation of law consists of a vision of society without a purpose, or of a purpose other than the judgment of God, realised *hic et nunc* in the preaching of the gospel. Again we must point out that when law organizes society exclusively for the sake of man's happiness, of production, of power and glory or of riches, and not for the sake of the judgment, it ceases to preserve the world. For God preserves [104] the world *only* for the last judgment. If law fails to fulfill its preserving mission, it causes trouble, anarchy, and death in society.

Furthermore, to affirm that law exists for the sake of the last judgment, proclaimed by the word, is to deny to it any moral or religious content. It is an instrument of organization and of judgment—we recall here its pragmatic character in relation to its purpose. It is not normative for the life of the soul and the spirit. Man is not asked to proceed according to the rules of the law when it comes to salvation. Law, therefore, is of necessity secular. It is designed only to provide the framework of the spiritual event of God's speaking, and not to translate God's word or to mummify it in legal formulas. This secularism of law implies, however, that the society organized by law must be open. It must be the environment wherein judgment may be passed both materially and spiritually. This is all we can require of law. We cannot ask it to lead to a knowledge of the word, nor to set up conditions favorable to its proclamation. We can only ask it to steer a course of maintaining the openness of society, and to allow for the possibility of development and change. When a legislator codifies society as a whole and then says, "Now Law has run its course," as Justinian and Napoleon did, he is not only naive, but the very antithesis of a true legislator. Likewise, when someone says, "I am creating the golden age, a world where man shall neither want nor require anything," he too is a falsifier, even though his legislation may be perfect, or just because it is perfect!

It is difficult to conceive of law without concurrently thinking of order in some form, be it public order, security, or the police. We all have a more or less well defined notion that law and order belong together. This is partially true, in so far as law creates order. In its crudest form order exists when the police occupy the street and repress revolts, or when the social structure does not change—an indication that order and maintaining [105] the status quo are synonymous! On a more advanced level, order exists when law successfully maintains a certain balance between man's needs, passions, and necessities, and the stability, security, and organization of society, or when law maintains a balance between the means of production and the modes of distribution. We thus think of law as creating order and as being invested with a certain power to make this order prevail. In this sense the Roman order or the bourgeois codification of Napoleon are but the expression of a certain political supremacy expressed through law. If order is nothing more, the Marxists are right. No idealism entitles us to the affirmation that this order is built on anything but the interests of the ruling class, bent on using law as a tool for petrifying advantageous social conditions called order. From a human standpoint, this is the only possible interpretation of the history of law. Order in itself, therefore, cannot be of value. Nor does law justify order. For law is invariably a tool of conservatism. We consider order as static, yet we do not dare to assert, without a bad conscience, that this order is the truth. As Mounier said, this is not genuine order, but “established disorder.”

In reality, order is not a creation of law. The opposite is true. Order exists and law formulates it. At this point caution against boundless confusion is imperative. What kind of order has been revealed to us by God? None other than the institutions created by God. We can neither seek an order in nature or in reason, nor set up order as the quality of law. The center of law is justice. It is equally impossible to fill the gaps of revelation by rational extrapolation or theological construction. God has created an order, and man has to live within the confines of this order if he is to live at all. Even

though not all the elements of this order are juridical, as for instance the laws of physics, they nevertheless are of the same nature before God. They all are created to serve man. In the juridical realm there are certain institutions, as described above, which are created by God. There is no other order. We cannot possibly put our [106] inventions on the same plane as the existing, God-given order. Between the institutions created by God and the other juridical forms, accidentally called institutions, there is the same difference as between laws and hypotheses in science.

What, then, are the marks of this order? First, it is fragmentary. The institutions created and revealed by God are not enough to set up a system of law. There remains a wide margin of invention and application in man's juridical enterprise. The institutions are signposts for the working out of a social order. Moreover, this order is "essential." God gives us neither juridical forms simply to be applied to a given society, nor a model to be approximated. Rather, he reveals to us the permanent elements of an order. These are part of *his own* order and not of *our own*. They strictly serve God's work, the salvation of man.

Obviously, in scriptures God discloses specific forms of these elements. It is important to discover the reality behind these forms which is, as we have been, Christocentric. This reality needs to be confirmed as a necessary factor in any legal order. Human law will not be true law until and unless it observes this order. In this respect it will be the task of human law to give actual form to God-given institutions and to fill the gaps between them. These gaps are evident in any given society. It is divinely ordained, for instance, that ownership is the mode of relationship between man and things, that this ownership has a Christocentric significance, and that it is a sign of grace, a part of man's inheritance. But absolutely nothing is said about the form of this ownership as exercised by a person, a family, or a collectivity, nor about the modalities it should assume in a given society for its representation or transmission. Nonetheless the fact

of ownership as a divine institution presupposes practical limitations for the extent, the permanency, and the exclusive character of ownership. In other words, if there is to be order, the form of this ownership will be conditioned by two considerations: the fact of being created by God, and the fact of a specific political, social, and economic environment. [107]

Finally, these institutions are organic to law. Law cannot fulfill its function if these institutions are bypassed, or if they are reduced to nothing by inadequate forms of expression. When such a development occurs, law actually establishes disorder. It no longer adheres to its purpose. It is placed in the position of either creating this order, of immobilizing it, or of confounding the juridical form with the order itself. Without God-given institutions, law lacks its primary ingredients. It can no longer be responsive to the needs of society.

This understanding of order implies a certain necessary stability in the organization of the world as willed by God. Yet at the same time, it excludes the stagnation of law. Law must constantly evolve in order to remain responsive to the needs of God's creatures.

This dual character of order is even more salient when we examine order with a view to its end. The divinely ordered institutions are a lasting element, situated between creation and the second coming. There was once an order of creation now entirely destroyed, as we have seen, leaving but death as the only possible result. The institutions were part of the order of creation as shown by their Christocentric nature. God spared Adam's life and granted him the necessities of life. This is different from the life and the order of creation before the Fall. Nevertheless, life rests upon creation and draws from it a value of which we are constantly reminded. The conditions of this life also partake of this value. The institutions belonging to the order which God upholds for man's survival are given as a sign of permanency. Just as they existed in

creation, they will be present in the heavenly Jerusalem. We can say this only in regard to the reality of which the institutions are a historical expression. For we do not know in what form they existed in creation, or will exist in the heavenly Jerusalem. If this is so, it is easily understood why order, which here on earth is based on these institutions, is both permanent and constantly changing. It is permanent because the institutions have the task of witnessing to this permanence. It is changing because they point to the parousia, to the moment when Christ's return will reveal the significance ascribed to them already by his incarnation and his death. Because of him they are more than mere material conditions of life.⁴⁰

A last problem remains. Human rights are constantly disregarded. Institutions are constantly distorted and falsified. Law is never self-sufficient, and sometimes it ushers in disorder. Human rights and institutions are necessarily subject to controversy. Its outcome is determined by a judgment. The term is not used here in its judicial sense. We do not intend to refer to a judgment handed down by a court. We refer to the judgment resulting from the controversy mentioned in Romans 2:14. Man determines the actual form of the institution. He upholds or rejects specific human rights. He also determines the degree of adherence to the present forms of law, as well as the right of any person to defend himself in such controversy. The judgment will chiefly be one of laying down a law and of reestablishing or establishing order. This is in no way the exercise of justice in itself, but it is the exercise of the pragmatic justice discussed earlier. This judgment appears as the God-given implementation of elements of law. It is the specific task of man, and he discharges it without knowing that this is a God-given func-

40. *As a result, this order is wholly different from what jurists call "security," understood by some to be the chief element of law. Those holding this view believe, for the most part, in the doctrine of the omnipotent state in law. Hence they consider security as achieved by the state. To this formal order we are opposing institutional order.*

tion. Yet he cannot escape discharging it since his very existence compels him to do so.

This implementation is a result of the fact that man is not isolated. God has kept him within certain social relationships. Man is as obedient to God in this purely utilitarian activity as he is when he goes about his work. He must work in order to [109] eat, and he must exercise this judgment in the process of establishing law in order to prevent the relations with his fellow men from being exclusively violent. Man exercises judgment on the basis of the situation brought about by God. He judges on the basis of the sign of Cain whereby God protected Cain by the threat of sevenfold vengeance against those plotting to kill him. Henceforth Cain and those involved with him will decide their mutual relationships in terms of this protection offered by God. Cain is given neither a right nor a free hand to do as he pleases. The divine protection is simply a basic fact in human relations, calling for a judgment on man's part.

It is an exact parallel to the covenant with Noah. Men are protected against each other by the clause of the covenant that "Whoever sheds the blood of man, by man shall his blood be shed." This is far from the notion of immanent justice which might be independent from man's will. It is also quite different from a justification of the death penalty, for it must obviously be seen in the same eschatological perspective as all other elements of law. What we find here is the human necessity of evaluating concrete situations brought about by interpersonal relationships, and to re-establish order when violation, even by immobility, has occurred.

This judgment has two characteristics. In the first place, it involves the man who renders it in the controversy over law, over society, and over order. An abstract or objective judgment is entirely ruled out. He who judges becomes himself involved. He ceases to be indifferent to the juridical situation of man. He takes sides for or against the institution, for or against human rights, even for or

against God. The judgment will always be rendered by a sinful creature. If man happens to be right, he thereby does not testify to his knowledge of God's righteousness or to his being saved. He only testifies to his participation in the work of preserving the world. This is really all sinful man can do. His judgment has no value for salvation. Yet it is not without value in the eyes of God, as illustrated again in [110] Romans 2: 14. We have already seen that man is compelled to render this judgment. This is why, in reality, there is no one who is not for or against God. For no one is exempt from judging interpersonal relationships.

This judgment is at the center of human law just as God's judgment is at the center of his righteousness. Every human being is actively involved in this judgment, since it expresses itself in a variety of ways, in customs, in court judgments, trade unions, revolution, the press, and in elections. Consequently, not only certain political or juridical forms, but man's attitude in the presence of God's righteousness is called into question.

In the second place, man's judgment is genuine judgment only if it is related to God's order and fulfills the task of building up law. This is to say that it cannot depend on personal interest, favors, or bias. Such judgments are all too easily made and only increase disorder at the expense of law. For such judgments deny certain human rights or invalidate some of the institutions. There are texts concerning the duties of the judges that warn against this temptation: "You shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbor" (Leviticus 19:15); "You shall not be partial in judgment" (Deuteronomy 1:17).

It is interesting that the second text is exclusively addressed to the judges, whereas the first is meant for the entire people of Israel. Likewise, "It is not good to be partial to a wicked man, or to deprive a righteous man of justice" (Proverbs 18:5). These texts mean, of course, that the judge ought to judge according to the law, without

favoritism. However, they cannot be understood in isolation, but must be placed in the total context of the biblical teaching about justice and law. Seen in this perspective, the decisive factor in the human predicament from a juridical point of view is neither the individual's power nor his misery, but his rights. They are his God-given rights, which cause man to act justly in certain specific juridical situations. Man's rights are the very opposite of what they seem to [111] be. We are led to this interpretation by Jesus himself. When he explained Deuteronomy 1:17 concerning the duties of the judges, he applied its meaning to himself. "Do not judge by appearances, but judge with right judgment" (John 7:24). This is exactly in line with the texts referring to Jesus's claim of his right as the Son of Man and summed up in his teaching about the sabbath. "The sabbath was made for man, not man for the sabbath; so that the Son of Man is lord even of the sabbath" (Mark 2:27-28). Man is thus called to acknowledge in his judgment a true order beyond the appearance of order. Only then will his judgment be true judgment.⁴¹

This judgment is of greatest importance not only because the actual form of law depends on it, but, above all, because it is the focus for the eschatological tension inherent in law. This tension is expressed in Jesus' words, "All who take the sword will perish by the sword." This saying is found in Matthew 26:52 and in Revelation 13:10. The latter occurrence is a guarantee of its eschatological implication. The texts complement each other.

41. *This is not the place to examine the means employed by man in formulating his pragmatic judgment. This is a task of law. We only note here the diversity of these means: use of reason, of experience, of sociological or historical findings, but also juridical technique. Juridical vocabulary and juridical categories are particularly adequate instruments. The formal principles of justice are equally to be counted among these instruments, as they define corrective justice, distinctive justice, and the common good. This is a clear indication of the place which these principles occupy. Far from providing an absolute concept of justice, they are but instruments to be used in a concrete situation in order to pronounce a judgment. Such a judgment contributes to the elaboration of a body of law.*

In the first instance, Jesus rejects intervention by the sword as a defense against his arrest. Why? “How then should the [112] scriptures be fulfilled that it must be so?” Here Jesus manifests himself as the fulfillment of the word, for the scriptures are not a dead Torah for him but the very will of God. As we have seen, justice consists of the fulfillment of this will. Jesus here condemns the use of the sword because it is a hindrance to justice. In saying this, Jesus gives an excellent example of a just judgment. It is absolutely just because it is Christ’s. The use of the sword is condemned because it runs counter to this absolutely just judgment.

The second instance (Revelation 13:10) refers to the Beast of the Sea, the power of absolute injustice. It blasphemes God and declares war on the saints. It has authority over the world and indulges unduly in the acceptance of its adoration. It commits injustice in every respect and uses the sword for it. The beast expresses no judgment but confines itself to using its power. It substitutes blasphemy for judgment, and the arbitrariness of its will dictates the use of the sword. The opposite of judgment is, in fact, the spirit of power, which the Beast of the Sea represents for the political and juridical realm.

However, the use of the sword in itself is not condemned, as we are reminded by Romans 13:4. The use is subject to eventual condemnation, “... will perish by the sword,” a threat which is said to call for the perseverance and the faith of the saints (Revelation 13:10). In other words, it is intimately linked to the firm hope in Jesus Christ, to his coming again, and to the restoration of all things. The use of the sword is under the shadow of his threat, which will become a reality only if the sword, according to our two texts, serves either the obstruction of justice or the spirit of power. Within this eschatological perspective, man’s judgment in the realm of law assumes its rightful value. His judgment is the reason why the use of the sword will not be condemned. Any use of it apart from man’s judgment runs counter to God’s will for the preservation of the

world and entails death as its inevitable result. The use of force in itself, apart from man's judgment, [113] results in the condemnation of death. It is law which, before God, permits the use of force. This is what makes for the preeminent value of law.

Moreover, man's judgment need not be just in the sense of God's righteousness in order to have this transforming effect on force. We know that the nature of this judgment is relative, contingent, and practical, and that it can be erroneous. But it is sufficient for it to be opposed to arbitrariness and to the spirit of power because, although unjust and even erroneous, it testifies to man's will to submit himself to a rule, to accept limits, and to consider himself not as the beginning and the end of law. This judgment is valid, in the final instance, because, together with human law in its totality, it will be appropriated by God at the end of time.⁴²

b. *The Meaning of Law*

The purpose of law is not exhausted by what we have said about its content. Law also carries a meaning. It exists *in order* to signify something.

The establishment of law, the fact of rendering judgment: [114] these are primarily signs received by man. A question is addressed to

42. *What we mean by the purpose of law is radically different from what is understood by jurists. For them it is a matter of knowing who will win out as the end of law—the individual or society. Here lies the “ultimate aim of the rules of law.” (Roubier, op. cit., p. 230; cf. pp. 184–242 for the concept of the purpose of law.) The conflict is said to be at the heart of all juridical problems. In fact, it describes a state of affairs relative to Western law since the eighteenth century. It is by no means the final aim of the rules of law. I prefer the idea of a transpersonal law (Gurvitch, *Le temps présent et l’idée du droit social*) which proposes the idea of civilization as the aim of law. This is an open concept, allowing for an evolution of law toward a purpose which is included neither in law itself nor in its objective. Here the transition into a transcendent end becomes possible, although it is not envisaged by the authors of this theory.*

him. It is the very question of justice. Whoever takes his juridical role seriously cannot avoid this question, and, at the same time, he cannot answer it. This impotence which man cannot cover up is already a testimony of man's situation before God. It is absolutely impossible for man to be satisfied with human answers, because law involves action on God's part which cannot be reduced. Furthermore, since the coming of Christ this warning is addressed to all judges: "Consider what you do, for you judge not for man but for the Lord; he is with you in giving judgment" (II Chronicles 19:6). This does not mean that every judgment is inspired by God. On the contrary, the responsibility rests entirely with man: "consider ...". But it means that God is present in every act of justice, in everything which concerns law. Therefore, no act of justice is exhausted by its value and its consequences within the juridical realm. It has a theological dimension. It provides a quite different center for law from that which is usually attributed to it, for now it is oriented towards God.

Law is designed constantly to remind man of his proper responsibility before God at the very moment he makes use of law. Man is responsible for justice because he gets God's power into the act. He is responsible as judge because he plays God's role. Man is responsible for judgment because he acts in behalf of God. He cannot truly fulfill this responsibility except through the wisdom and the spirit of God (I Kings 3:28), by referring to God's law which is superior to any other law (Deuteronomy 4:8). This law must be acknowledged as superior by all the nations of the earth (Ezra 7:25). But man still faces the question of justice. He can do no more than acknowledge it. Only the revelation in Jesus Christ provides an answer in the light of the fulfillment of God's righteousness. Nevertheless, the role of law is very important, for it reminds us that law can in no respect be a closed system, comprising its own [115] foundation, its own principles, and its own end. On the contrary, law must be open with respect to its origin as well as its goal.

Confined to these limits, it witnesses to God in the midst of human society.

Law signifies still more than the presence of God. Human law is also a prophecy of divine righteousness (Isaiah 56:1). Regardless of its imperfection, law exists in order to remind us of three essential aspects of God's righteousness.

First, we are told that this righteousness reigns. Whenever a just judgment is pronounced it is a sign to the world that absolute justice, the righteousness of God, is intervening in the world. This is parallel to healing, which constitutes a sign for the intervention of pardon in creation. Of course, it is only a sign for those who have eyes to see and ears to hear. It is not sufficient to convert nor to reveal the power of God. But it is a demonstration that man, who by himself is capable only of corruption and sin, is not left to himself. God guides him and grants him life. Even within history justice can sometimes express itself through human judgment. This is a sign that Jesus Christ has truly conquered the demonic powers. Every just law and every just judgment is an announcement of Christ's victory. But this victory is still hidden. It is manifested timidly and sporadically as, for example, by the fact of law. Some day it will be fully revealed. And law is a sign, too, for this last victory. We recall merely the importance of judgment in law and the fact that when the scriptures speak of the "last judgment" it means the end, the consummation of all judgments.

But the road leads not only in one direction. Not only do all human judgments find their consummation in the judgment of God, but the validity and the power of God's judgment are already reflected in the judgments of man. In other words, every judgment announces the coming, even the presence of this absolute judgment of God. Every sentence, every choice and every juridical discrimination is nothing else but an indicator of this [116] judgment which summons the whole of creation. Here lies the greatness of the role

performed by the human judge. When the magistrate pronounces judgment, he is a prophet. He prophesies the actual presence of God's righteousness and the coming of his judgment. This is a responsibility as well. For he often is a prophet in the sense of Caiaphas announcing the meaning of Christ's death.

In the third place, law announces that God's righteousness is objective. The biblical texts are numerous which recall the duties of the judge. Some of them we have already examined. These duties are very simple and their implications do not exceed the rules of ordinary justice. But they all focus our attention on the rights of man. Moreover, we must not forget that they are revealed by God and must be related to Jesus Christ. In fact, all these texts underscore the objectivity of the judge. This objectivity is much more important than might be indicated by the requirements of our codes, *because we are reminded of it by God*. It exists in order concretely to announce the objectivity of God's judgment. What do we mean by objectivity? That God will judge without compassion? Certainly not! But God, in judging man, considers neither the good nor the evil of man, but his rights. But where are man's rights to be found? Man has no rights by himself. He receives his rights from Jesus Christ, who has acquired for him both justice and rights. Man's rights before God are in Christ "Whom God made our wisdom, our righteousness and sanctification and redemption" (I Corinthians 1: 30). Objectivity in regard to God's righteousness means to look in this judgment to Jesus Christ and not to man. And whenever a judge takes seriously the rights of man and therefore judges objectively he announces the good news of the objectivity of God's judgment.

A number of biblical texts call for the consideration of a further function of law. "Execute justice in the morning, and deliver from the hand of the oppressor" (Jeremiah 21:12). [117] "Give justice to the weak and the fatherless; maintain the right of the afflicted and the destitute" (Psalm 82:3). "Render true judgments, show kindness

and mercy each to his brother, do not oppress the widow, the fatherless, the sojourner, or the poor; and let none of you devise evil against his brother in your hearts” (Zechariah 7:9-10). These texts show that human law serves to express the righteousness of God and that it acknowledges the rights of the poor in conformity with this righteousness. Justice is deliverance of the poor from oppression. It is the restoration of his situation as man. Justice, even when it is objective, is neither a rigorous mechanism nor a combination of juridical rules, nor a more or less perfect technique for order and regularity. Law cannot be separated from compassion. It is in itself part of God’s mercy and it is called to manifest this mercy. Protection of the weak and the well-being of the miserable are integral parts of law. Without them law makes no sense. They announce the salvation in Jesus Christ, the true righteousness.

But the necessary link between justice and compassion, shown in biblical revelation, has a further meaning in the juridical realm. It is an especially useful guideline for the judgment which man is constantly called upon to pronounce. It has already been said that this judgment is contrary to “appearance.” Here we find the corollary of this idea. Judgment must be inspired by compassion. The elaboration of laws cannot depend on a superficial assessment of facts, on their appearance, no more than on a combination of principles or of juridical rules. The proliferation of law, based on juridical principles or the constant application of law to accessory questions, secondary to the life of society, are manifestations of false judgments. But false judgment makes law ineffective. Judgment must be inspired by compassion. This does not mean that it must proceed in an anarchist fashion and on the spur of the moment. Nor must certain concrete criteria of justice be neglected. It means, least of all, that the guilty must be acquitted. This is [118] not the role of law. But it certainly means that people must be taken for what they are. They must be considered within their actual situation. It means not to forget that they are miserable, not to make a law which exploits the

weak and the unfortunate or simply forgets them by practically denying their existence, as does the Napoleonic Code!

The exercise of compassion in judgment means, further, that law must focus on the real problems which it is called on to deal with without minimizing their complexity and their seriousness. Here compassion means the search for a true and authentic answer to the questions raised in a given moment by human relations. An example of a false law is that which governed the relations between labor and management in the nineteenth century. Such a false law always entails another of its kind by way of reaction. Both attempt to deal with the same human relations, but neither has been willing to face the truth about them. Thus this quality of judgment calls law ever anew to address itself to the decisive questions rather than to details. In relation to these questions law provides an answer which does not avoid the problems. Compassion in the elaboration of law is one of the elements which guide man in any choice and judgment he has to make. Later we shall discuss the element of effectiveness or usefulness.

The vocation of law finally presupposes its universality. We cannot evade the question: “How can law be valid for all men when it is so directly dependent on divine law? How can it be acknowledged by those to whom God has not been revealed?”

Actually there are two sides to this question. Human law is a law applicable to men and known by them. In so far as it is largely constructed by man himself, no difficulty arises. We know how it is given meaning and authority. We know that it is valid in the eyes of God and is far more than a negligible human invention. This is clearly affirmed by Ezekiel when he condemns Jerusalem. “She has wickedly rebelled against my ordinances [119] more than the nations, and against my statutes more than the countries about her, by rejecting my ordinances and not walking in my ways. Therefore thus says the Lord God: Because you are more turbulent than the

nations that are round about you, and have not walked in my statutes or kept my ordinances, *and have not acted according to the ordinances of the nations that are round about you ... even I am against you and I will execute judgments in the midst of you in the sight of the nations*” (Ezekiel 5:6-8). Jerusalem is condemned here not only for her disobedience to the divine law, but also for its failure to follow the law of other nations. Although inferior to the law of God, this law is still valid, and Jerusalem ought to have submitted to it. This is particularly amazing when contrasted to all other texts where Jerusalem is ordered not to imitate the other nations. This prophecy of Ezekiel supports the validity of human law. At the same time it is a reminder of the universality of the divine law. It implies the actual subjection of the nations to the law of God. At this point we find the second aspect of our question. In reality the law of God applies to all nations because God is the judge of all nations.⁴³ God’s judgment validates human law and makes his own law universal, since his judgment is rendered on the basis of his law. All the nations are already judged on the basis of this law, for God’s judgment is already present. This is also evident in Isaiah’s oracle concerning Tyre (chapter 23) and Babylon (chapter 24) where he depicts the judgment as a shattering juridical disorder resulting from the nations’ disregard of the divine law. “And it shall be, as with the people, so with the priest; as with the slave, so with his master; as with the maid, so with her mistress; as with the buyer, so with the seller; as with the lender, so with the borrower; as with the creditor, so with the debtor ... The earth lies polluted under its inhabitants; for they have transgressed the laws, violated the [120] statutes, broken the everlasting covenant” (Isaiah 24:2-5). The Hebrew expressions used in this text suggest reference to the law of God in its relationship to the human law. This law is revealed already in Jesus Christ, and will be revealed absolutely and unrestrictedly when Christ will come again to judge the nations and establish the reign of his righteous-

43. Visser’t Hooft, *op. cit.*, p. 83.

ness. Then all the nations will recognize the law of God for what it is. It will no longer be necessary to work out a human law because this law will be both judged and assumed by God himself. [121]

Chapter IV

Law, State, and Church

1. LAW AND THE STATE

We come now to a question at least as old as the question of natural law. Is law superior to the state, or does the state dictate the law?⁴⁴ This question was debated at length by the scholastics. It was hidden in the subtle distinctions of Suarez in *De Legibus*. It caused the quarrel of jurists about Roman law. Today the problem seems to have found its solution in the omnipotence of the state, manipulating law as it pleases to the exclusion of any concept of justice.⁴⁵ Even Karl Barth almost seems to have justified this role of the state. He does so not [122] explicitly, but he makes the state appear as the very measure of justice and the promulgator of law.

Biblical teaching does not leave the slightest doubt on this point. The state is subordinated to law, and this in two ways. First, the state

44. Roubier, *op. cit.*, p. 42-62.

is not the creator of law. Law exists independently of the state. It is directly related to the righteousness of God. Human law is not at all a rational product, designed to fit man's purposes, and receiving its authority from the state. In order to be subject to the state, law would have to be purely a product of reason. This is indeed the modern understanding of law in relation to the state. The state must be based on reason. This will enable it to dictate any law whatever, since law is also dependent on reason. But if law flows from another source and obeys another rule, the state loses its power over it. Law does not receive anything from the state. On the contrary, it receives its authority from God, as does the state. Neither state nor law can claim superiority over each other.

Moreover, human law is the sign of God's righteousness, and the state is the sign (and not only the sign) of spiritual authorities. Again we note that there is no superiority of the state. The parallelism between state and law would merit further exploration. We must abstain from it, since this would involve a detailed study of the state.

The scriptures clearly teach the subordination of the state to law. The state is created *for the benefit of law*. Thus Solomon was king in order to govern according to justice and law (II Chronicles 9:8). The purpose of God in bringing Solomon to power was the reign of law and justice. The state, therefore, exists only because law exists. There are "authorities" because there is a righteousness of God. Paul states this very clearly in Romans 13:4. The ruler, the govern-

45. *This attitude is wholly justified by Kelsen, Allgemeine Staatslehre. Law is in the power of the state, whatever its basis for action and its goal may be. This is the very antithesis of revelation with regard to law! Interestingly enough, this is also the fascist interpretation. "The state as universal ethical will is the creator of law." (Mussolini, Encyclopedia Italiana, article "Fascismo".)*

ing authority, is the servant of God for man's good. Hence the state does not decide what is good or what is law, but the good and the law determine the action of the state. This is why prophets accuse the kings of Israel or the rulers of the nations of perverting law. These stand [123] condemned because they placed themselves above the law and in fact claimed either to dismiss or to judge law. Law, rather than the state determines what is good. The text of Romans 13:4, speaking of "good," unquestionably refers to obedience to a just law and not to a moral or spiritual good. It is the good which man can attain by obedience to the law. This attainment is not at all negligible, for man thereby participates in the preservation of the world. This view is confirmed by the following verses in Romans 13 dealing with obedience prompted not only by fear, but also by man's conscience. This obedience, however, is not primarily a submission to the ordinances of the state, but to law as the criterion of good in civic life. At any rate, the state has no business punishing moral evil and sin. The evil referred to in the text is disobedience to the law.

Consequently, law gives a reason for being and a purpose to the state. The latter is the servant, not the master, of law. But in what sense? What is the precise role of the state?

1. *The state expresses law.* The Bible does not consider this as a necessary function of the state. But it has assumed such proportion in our time that it cannot be bypassed. Today we act as if the state had created law. Even though this idea is rejected in theory, it is upheld in practice. However, while the state definitely has no function in creating law, it may have to express it. For instance, when the elements for a new law exist already, the state may be called upon to formulate the law. Two hypotheses are usually advanced.

According to one theory, the state only has the task of stating the facts. This would be the case, for instance, with law based on custom. The community has its juridical habits. The people gradually

constitute their own body of law. The state merely makes sure that these habits are really juridical and that the law is truly law. It does not significantly add to law. The state's activity might even be omitted if need be. This would mark the most complete separation between law and the state. [124]

According to the second theory, the state has a role of judgment. The individual or the collectivity find themselves incapable of exercising the judgments necessary for elaborating a juridical system. The task is passed on to another body, usually to the state. It consists in the expression of judgments in a double sense: judicial judgment, constituting law on the basis of typical cases with the state exercising the judicial function, and general juridical judgments which bring law within a system. These are made on the basis of the acknowledgement of human rights and of institutions. This legislative function cannot create law. It can only express these judgments.⁴⁶ It is therefore imperative to emphasize that this function of the state, considered as essential in our time, is in reality a contingent one in the biblical view of law and authority.

However, two functions of the state are indispensable for establishing the true relationship between the state and law. The state enforces and protects law.

2. *The state enforces law.* The state is invariably an executive power. It has received the sword, and we know how the use of this weapon is justified. The state is charged with making law effective, supporting law by force. Law simply cannot be conceived of without

46. *This conception approximates that of the jurists of the so-called school of free law, established chiefly by F. Geny (Methodes d'interpretation et sources en droit positif) and by Gurvitch. For these jurists law is the product of social forces and as such primarily customary or contractual. Once law exists, the state is called to give its "assent."*

enforcement by an outside authority. This is what distinguishes law from morality.

As long as law remains an implicit rule, a moral constraint, or a vindication of individual rights, it has not yet become genuine law. This happens only when the state enforces it. We have witnessed the development of entire juridical systems on the sole ground of a certain type of enforcement, as, for example, the Pretorian system of Roman law. Law and the state are, therefore, mutually dependent. The state exists only for the benefit of law, and law exists only when the state supports it by force.

Enforcement by the state should not be confounded with the authority of law, as is so often the case, particularly in our day. If law has authority over men, it is not because the state protects law by the sword. The authority of law is derived from its dependency on divine law, which makes law accepted as law by men. The sword punishes the transgression of what men acknowledge to be law. It cannot possibly compel men to acknowledge as law what they do not already acknowledge to be law. It cannot transform in man's consciousness an abusive law into a just law. It cannot bring about law from what was not law before or vest with authority that which had none. The sword has no other function than "to execute wrath on the wrongdoer" (Romans 13:4).

3. *The state as guardian of law.*⁴⁷ In this capacity, the state must first set its people an example in observing law and justice. Given its authority, injustice inflicted by the state is the gravest kind of injustice. It is worth recalling in this connection the prophets' admonition to the kings who violated the law, such as Nathan to David, or Elijah to Ahab. The power of the state is so great that the violation of law by the state means the annihilation of law. Law no longer

47. *S. de Diétrich*, op. cit., p. 51.

exists when the state imposes itself as the measure of law and confounds its own will with justice (cf. Ezekiel 28:2).

There is, however, a positive side to the state's function as the guardian of law. It must uphold law not only by the sword and enforcement, but by preserving cohesion in society. The state is charged with maintaining the life of human societies whatever they may be, and it must strive to achieve the best possible living conditions. Law is of highest importance at this [126] point. The state must protect the true character of law in order that law may fulfill its true role. More specifically, the state must be sensitive to the need for evolution within law and, at the same time, for preserving its fundamental tenets. In order to live up to this task the chief of state is given wisdom. The wisdom attributed to Solomon enables him to be a good guardian of law.

These considerations about the role of the state open up two new questions. One is the effectiveness of law, that is, of its enforcement. The other question is that of the importance of law within the nation, the guardian of law.

The effectiveness of law is, at present, a very burning problem. The nineteenth century insisted on the idea that law needed to be realistic in order to be effective. We find law to be entirely ineffective in contemporary society. Quite frequently idealists are heard to say that as long as law is just, its effectiveness is, after all, of little importance.

On the basis of all we have said so far, law must quite obviously be effective. It must bring about a certain order on earth. It must achieve recognition of certain human rights by all. It must command respect for a certain authority. If law fails to fulfill its God-given mission, it ceases to be law. It fails in its task when it is ineffective. When nation and law are divorced from one another, law does not count any more before God, although it may satisfy the require-

ments of juridical or philosophical justice, or the exigencies of the state. Before God, the effectiveness of law is one of the reasons for the existence of law. What would we think of a remedy which satisfies the requirements of all chemical or biological theories and is yet ineffective? Ineffective law would be in the same situation. This means that an ineffective law is certainly an unjust law in terms of justice as defined above. But we cannot reverse this statement, for an effective law is not necessarily a just law. Effectiveness and justice are not identical. There is [127] always the danger of the excessive power of the state. The state can attempt to substitute its own authority for the authority of law, and keep law alive by mere enforcement. Although law may survive for some time and continue to command respect by means of threat, we are confronted with an unjust law, regardless of its effectiveness. At any rate, the success of law in political or social matters cannot be advanced as proof of its justice. We have here only a negative criterion. Yet within these limits, it is very reliable.

How do we explain the importance of this effectiveness? Law can be ineffective for two reasons.

In the first place, law might tend to be the fixed and unilateral expression of certain basic facts of justice. This tendency is inherent in any system based upon natural law. Law is used either for the accomplishment of what is reasonable and natural, or for the approximation of the “unchanging principles of justice.” Such a juridical system does not reckon with the social reality. It is likely to impose itself from the outside, and to regiment society according to abstract ideas. This attempt, we have seen, is diametrically opposed to the concept of law centered in God’s righteousness as found in biblical revelation.

In the second place, law can be ineffective for quite opposite reasons. The main focus may be on social and economic conditions. Law is declared to be nothing more than the expression of this real-

ity. It must follow the evolution of these conditions including each and all of its tendencies. In spite of the realism of this view, this is in fact only another facet of the idea of natural law! Seen in this perspective, law ceases to be normative at all. It is confined to registering successive technological evolutions, renouncing any attempt at correcting or contradicting their possible injustice. The discovery that law cannot wholly cover up reality has led to the conclusion that law must be subservient to reality in order to be effective. But what good does a law do when it merely interprets social conditions with- [128] out giving them direction? The result would be a mass of incoherent and exceedingly variable rules, without any impact whatever on society. Such a law would be blind to the constitutive elements of law, institutions, and human rights. judgment would operate in a vacuum, having lost any point of reference. A law of this kind, too, ceases to be law.

This summary analysis shows how effectiveness can be one criterion of law. It helps us to understand the error of the realists. Their emphasis on the effectiveness of law suggests that any political course of action and other means may be used to make a law effective. But this is not so. Not all means are good. Because human law depends entirely on divine law, and literally does not exist apart from God's righteousness, it can be effective only when the normal relationship between divine law and human law is maintained and when the conception of human law allows for this relationship. This means that an unjust law before God is a law without authority. A law indifferent to human rights will be a useless law. A law disregarding institutions will be an incoherent law. Political power will always be able to constrain it for a time by force. Yet in the long run, this law will be found ineffective, and justice will be replaced by the pure and simple arbitrariness of the state, should the same political power continue to govern. If the same political power disintegrates under circumstances described, ineffective law will usher in anarchy.

Law is a guarantee of life, given to a nation. There can be no nation without law. According to God's revelation concerning the world of the nations, the world maintains itself only by law. "Righteousness exalts a nation, but sin is a reproach to any people" (Proverbs 14:34). It is the specific task of the state to keep the nation's life centered in justice. "By justice a king gives stability to the land ..." (Proverbs 29:4). Together with the land, the power of the state itself is given stability by law, "for the throne is established by righteousness" [129] (Proverbs 16:12). This righteousness is exercised through judgment. The particular role of the state receives special mention. "Take away the wicked from the presence of the king, and his throne will be established in righteousness" (Proverbs 25:5). The two belong together: the judgment pronounced by the state over the wicked is at the same time the establishment of the throne by righteousness, as expressed in such a judgment.

In its role as guardian of law, the state is therefore responsible for preserving the nation which can survive only by law. If the state vitiates law, the nation is sentenced to death. The state is charged with teaching righteousness to the people. "Hear, you heads of Jacob, and rulers of the house of Israel! Is it not for you to know justice?" (Micah 3:1). Such is the rulers' responsibility that the evil they do catches up with the whole nation. There exists a solidarity between the rulers, the state, and the people. "Therefore because of you Zion shall be plowed as a field; Jerusalem shall become a heap of ruins" (Micah 3:12).

One of the problems connected with this solidarity lies in the realm of law. The nation cannot live except by law. The state is the guardian of law. Therefore, when the state perverts law, the nation is caught up in injustice, and sentenced to death. This is the message of Micah's prophecy. "Hear this ... rulers of the house of Israel, who abhor justice and pervert all equity, who build Zion with blood and Jerusalem with wrong. Its heads give judgment for a bribe ... yet

they lean upon the Lord and say, `Is not the Lord in the midst of us?'" (Micah 3:9-10).

The first chapter of the book of Habakkuk takes up Micah's theme and announces the destruction of the land on account of rampant injustice. "So the law is slacked and justice never goes forth. For the wicked surround the righteous, so justice goes forth perverted" (Habakkuk 1:4). The message of the prophets is unanimous and coherent regarding the inseparability of the life of the nations from the existence of law or the exercise of justice. This implies not only a formal or political relationship. We are not presented here with a statement of facts, although [130] we are forever tempted to believe that an equitable law is the condition for a prosperous life of the nation and that, in the long run, violence does not pay. We are confronted not with a proverb about the nation's wisdom, but with a normative truth about the will of God: The lawless nation does not fall by itself. It falls because God condemns it. If God is not the judge of the nations, violence and realism are the best courses of political action. In the absence of divine law, human law has no reason to exist.

There is a corollary to the normative character of these prophecies. When a nation is sentenced to death on account of lawlessness, it is not because law has any intrinsic value or is in itself life-giving. It is because human law is an expression of divine law. A people devoid of human law violates divine justice, and a nation which neglects human justice breaks the covenant with God. The text of Isaiah has already been quoted, "They have transgressed the laws ... broken the everlasting covenant" (Isaiah 24:5). The texts of the Proverbs quoted above must accordingly be understood both within their immediate as well as in the wider biblical context. We must not understand them as an expression of political naturalism or, which is really the same, without robbing them of their Christological significance.

2. THE ROLE OF THE CHURCH IN THE REALM OF LAW

We do not intend to deal in this short outline with the problems of ecclesiastical or canonical law. We shall focus on the mission of the Church in the world, and, more specifically, in the world of law, since the Church lives within a nation and in the presence of a state for which it is, to a large extent, responsible before God.

First, we must recognize that the Church can claim rights [131] from the state. It can legitimately require the acknowledgement of these rights from the political power. The visible relationship between Church and state is mainly of a juridical nature. Given its role with regard to law, the state should make manifest this relationship. Yet it should do it in such a way as to take into consideration the rights of the Church which, like other rights, are determined by the origin and the purpose of the Church.

The Church must therefore be recognized as a legal body. We must not acquiesce in the state's ignorance of the Church. The juridical status of the Church is part of the law as constituted by the state. The Church is entitled to have its rights recognized as any other legal body.⁴⁸ We shall not attempt here to circumscribe the rights of the Church. One among them, however, has a direct bearing on our discussion. The Church is founded by the word and for the sake of the word. This is directly related to the "juridical" role of the Church. It must be granted the fundamental freedom to proclaim the word of God. God sends the Church into the world mainly for this purpose. The state becomes an unjust state from the very moment it denies the Church the possibility of proclaiming the gospel. This has been often said. But to proclaim the gospel is not only to proclaim the good news of the forgiveness of sin. It is

48. *Scholten*, *Das Recht und der christliche Glaube*.

also to proclaim all the concrete consequences of this good, news. It is to announce that Jesus Christ is Lord of creation, with all the implications this entails. Proclamation and faith are therefore not “private matters.” They are and they must be an action in which man’s entire life is involved. When the Church takes a stand on a political question or exercises judgment concerning law, it really preaches the gospel, provided its political position is not the expression of vested interests or of moralism.

The action of the Church in the realm of law is conditioned by this freedom of speech it may rightfully claim. Its role [132] here is essentially to make evident the existence of a justice other than juridical justice.

“The Church is called at one and the same time to *proclaim* and to *make* manifest this justice (the righteousness of Christ at work in us).

“1.) *The proclamation of divine righteousness. The Church knows that by his ascension to the right hand of God the Father, the risen Christ has been made Lord of all creation. He will come again to judge the world. This means that already now he is the judge not only of the Church who recognizes him, but of the world who does not know him.*

“2) *The manifestation of divine righteousness. The Church, the body of Christ, and the community of believers must be ruled by this justice and not by the standards of the world. These two observations of facts seem to lead to certain consequences.*

“a. *The Church cannot acknowledge an autonomous law which does not have its beginning and its end in God. It must preach God’s righteousness and remind legislators, magistrates, and chiefs of state of the sovereign rule of the Lord before whom they will have to account for the way in which they promulgated, applied, and upheld his law.*

“b. The Church knows that only the divine righteousness as revealed in Jesus Christ is effective and operative. It alone can render justice. All that human justice can do is to limit the evil inflicted by men on their fellow-men by coercive means. Yet this human justice reflects, or at least may reflect, some measure of the divine justice ... Thus the Church must enlighten those responsible for establishing and implementing law concerning man’s purpose for being on earth, as revealed by God in his word. God also reveals his will concerning interpersonal relationships and the social order. [133]

“c. Finally, the Church, inasmuch as it is an organized body of which Jesus Christ is the head, must manifest in its own life a law in accordance with the will of God as it is revealed to us in Jesus Christ ...”⁴⁹

This long quotation highlights the role of the Church as witness of God’s righteousness to the state. The Church, and the Church alone, knows the true value of human law, its origin and end, its relationship to the righteousness of God. It must impart this knowledge to the leaders of the nations and to their people. It must teach it not as a law, not as independent ethics, but as a proclamation of the gospel, because it is Christ who is King. It cannot separate the preaching of the cross from the prophecy of the parousia. Consequently the Church cannot give instruction on law without law being part of the witness, in word and in deed, of God’s righteousness accomplished in Jesus Christ.

The Church has, therefore, a mission toward the law of the earthly city which no one else can fulfill, since it alone can give to law its meaning and foundation. Once again, this is proof of the indissoluble union between man and revelation, between the world and the Church. They are not two different realms. Life is all of a piece and is marked by this interpenetration of Church and world.

⁴⁹S. de Dietrich, op. cit., p. 46 ff.

The prophetic ministry of the Church in matters of law, however, does not end here. The Church should normally be out front. It must alert the people. It must be their watchman (Ezekiel 33). (What an irony when we look at the condition of our Church!) This has very concrete repercussions in the world of law.

We have discussed the importance of the rights of the individual as an integral element of law. We have seen that these rights are primarily asserted in the form of a claim. Here is room for decisive action on the part of the Church. We are all [134] too much accustomed to a Church which “does” charity, and not accustomed to one which is charity. We are all too much used to a Church which talks, and not used to one which witnesses (a witness is a martyr!). We are used to a Church seeking comfort instead of “completing in the flesh what is lacking in Christ’s afflictions.” The Church, the body of Christ, suffers the same afflictions which Christ suffered for mankind (Colossians 1:24). We are used to a Church which has given up compassion (compassion means to suffer with somebody). We are used to a Church which, in the last analysis, is incapable of carrying responsibility in behalf of men.

In the realm of law the Church betrays its mission when it leaves it up to man to recognize his rights and to have them recognized. Man can deceive himself about his own desires. He might very well not recognize his true rights. He is infallible neither when he listens to reason nor when he pursues his own interests. We have insisted on the relationship between man’s rights and his misery. Precisely because the Church is commissioned to be a witness of Jesus Christ’s love for all men, because its ministry is to suffer with and for men, it is bound to know man’s true right. It will not be deceived, inasmuch as to it alone has been revealed the true nature of man, his true situation before God, and his true misery. Consequently, the Church is summoned in the course of human history to speak a discerning word to each concrete situation, “These are the rights of man, here and now. This is what man may demand.

This is what he needs to be protected from.” This discerning word is part of the Church’s proclamation. In pronouncing it, the Church addresses itself to society and to the state. It is the mouthpiece of man’s exigencies. Normally the Church should not leave it up to revolutionary movements to assert human rights. Rather, it should itself claim them before man is driven to despair. In the past, the Church had the courage to do it. But it has kept silent now for three centuries. If it is true to its mission, the Church appears as an inspiring [135] source of law, and as a force of ongoing evolution. If the Church fails, no one else can fulfill its task. Law, then, is left to the whim of all revolutions, of all incoherencies and influences of the moment.

In order to discharge its duty, the Church must incessantly watch the legal affairs of a society. Its positive stand on human rights requires judging the system in which the subjective rights of man must be expressed. Faced with a system of objective law, the Church is called to examine and to evaluate the foundation and the purpose of law according to the criteria which it alone possesses.

To be quite specific, the Church must first of all *affirm the limits of law*. Let it be said once more that it is not a question of setting these limits in *abstracto* and once for all. Only in concrete situations does the Church live out its faith. This is never done by working out an intellectual system, but always by a “test” (I Thessalonians 5:21). In the presence of a given objective law the Church will declare where the limits are that are not to be transgressed.

The Church must, moreover, *judge the legal system*. This will evidently be done in terms of the greater or lesser respect accorded by this system to human rights and to the divinely created institutions. The Church must, as a matter of course, remind jurists of the necessity of both rights and institutions, of their value and significance for law.

Finally, the Church must *rectify the law*, if necessary, and perhaps openly fight against it. It will then either uphold its own justice and its own law in opposition to the prevailing decadent or erroneous system, as it did in the fourth century of our era. Or it will join ranks with the forces of renewal of law at work in the potentially just judgments of the people.

Consciously living day by day from the justice of God, the Church thus finds itself thrown into the thick of the legal process and thereby into social conflict and political battles. [136]

The Church has one more responsibility. It must live with the fact that, in matters of law, “one must be subject, not only to avoid God’s wrath, but also for the sake of conscience” (Romans.13:5). In other words, the Church has a teaching responsibility towards the faithful. All we have said so far about the Church must really be understood by Christians gathered into the Church. When it comes to speaking up and taking a stand for human rights, it must be done by the entire Christian community, and not at all by some administrative body theoretically representing the Church. But in order to take up the challenge, Christians must receive instruction from the Church. just as it is necessary to teach them what the state is and why they must obey it, it is also necessary to enlighten them about the foundation and the purpose of law, and to develop in them a juridical consciousness. Only when Christians fully understand their role and their responsibility in society and in matters of law, and are keenly aware of the power at work in them through the Holy Spirit, will the Church be in a position to speak and to act as it is required to do. Every Christian must come to know why he ought to obey and why he ought to disobey, when he ought to insist and when he ought to give in, what he cannot overlook and what he must neglect. When the Church chooses to be faithful, God uses it for the sake of the world.

An important conclusion must be drawn from what we have just said. When the Church faithfully discharges its task in the realm of law, and when the state recognizes the Church's right to discharge it, we discover that law is no longer at the disposal of the state. No longer can the state pretend to be the creator of law, to be superior to law, and to arbitrate justice. The state truly becomes a servant. Not the servant of the Church (this was the error of the papacy in the Middle Ages), but the servant of God in matters of law. Because the state is no longer autonomous in deciding juridical questions, but has the Church [137] as a partner who explains God's revelation, law becomes really independent from both state and Church and finally from man himself. It ceases to be the direct or indirect outcome of some human activity and becomes the autonomous power intended by God. We already encountered the same idea when we identified law as a power parallel to the state. Our discussion of the Church's mission, therefore, leads us to affirm this parallelism again. This concept of law as an autonomous power enables us to perceive the error the proponents of natural law consistently commit. "Because law is autonomous, it must be natural," they claim. To escape this confusion, we only have to specify in what respect it is autonomous. It is autonomous in regard to any human force, and hence also to nature. It depends entirely on the righteousness of God. This dependence on divine righteousness must also be asserted over against the "natural" reaction which claims that law becomes corrupt and ceases to be law as soon as it is autonomous in relation to human power. [138]

Conclusion

We shall not draw any conclusion, as all we have written so far is but an introduction. We proposed to embark on a theological undertaking, proceeding to the very limits of the concrete and leaving all doors open there. This prevents us from drawing direct juridical consequences concerning either juridical principles or modern positive law. In no way did we intend to present a juridical system of an exclusively ideological nature. The real work can only be detailed work on the basis of the theological findings. It is spelled out in awakened consciousness, survey, and critical assessment of specific problems and existing laws.

Before this detailed juridical work can be done, another preliminary theological study, following up the present one, must be completed. It should deal with the problem of the content of divine law. This is the theological investigation of the rights accorded by God to the human person for fulfilling his God-given vocation, and an investigation of the institutions created by God for man. This investigation, however, should not be purely theological. It must proceed from God's revelation as it [139] has been recorded in time, and received and understood today by men who in turn live in

time. Thus we shall never penetrate the essence of the rights God accords to man or the essence of institutions. We shall never possess them entirely. We can grasp revelation only in one particular form and express it in one form for our own time. At this point, the theological enterprise cannot be separated from actual legal problems.

We have decided to stop at the limit of the useful, attempting only to determine a point of departure and to outline a method.

“Thus says the Lord: ‘Keep justice, and do righteousness, for soon my salvation will come, and my deliverance be revealed’” (Isaiah 56:1). This text of Isaiah, in fact, sums up all we have said. It serves as a warning for us. Because salvation will come, because Jesus Christ has come, it is imperative to work out a law and to obey it. Because Jesus Christ has fulfilled everything, therefore man is called to live in justice and righteousness. But because God still grants man time to live, because all that is said is said in the future tense (the tense which, in Hebrew, presupposes that the action is already begun), therefore man must make the most of this time of patience both to organize his life and to come to see his salvation wrought by the death, the resurrection and the ascension of Jesus Christ. And finally, because God has said “soon,” we must keep in mind that we live “at the end of time,” that we have urgent work to do, that the building up of law is part of it, and that this building up stands in direct relationship to the end of time. The righteousness of God which is to come must impart to us the urgency of building up the law which is ours.

“Schema (give heed) Israel! . . .” People of God, give ear! [140]