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Law and Religion: An Imaginary Conversation with a Medieval Jurist

James Gordley†

Like ourselves, people in the medieval world took law seriously. They had great law schools, such as the one in Bologna, where professors expounded the Roman law of Justinian's *Corpus iuris civilis*. They regarded the rule of law as a model for the social order. They explained their political disputes in terms of constitutional questions and their personal quarrels in terms of rights violated. Without this heritage the modern world would be inconceivably different.

They, however, lived in an Age of Faith while we live in a secular society. Surely, one would think, they must have thought about law quite differently than we do. It would be illuminating to travel back in time and speak with a medieval jurist.

I have tried to imagine what that experience would be like. What follows is a report of a conversation between a modern student of law and legal history and a fourteenth-century Bolognese law professor. My rule in constructing it was to allow my medieval jurist to stray as little as possible from opinions actually expressed by prominent men of his age. His views on law reflect those of Bartolus and Baldus who wrote in his own century. His views on theology reflect those of Thomas Aquinas who wrote in the century before and with whose works Bartolus, Baldus, and other fourteenth-century jurists were familiar.

* * * *

"I am a traveler from a distant country," I began, "pursuing a study that we call history. It will help my study if I can ask you some questions."

"That is odd," he said. "I have not done the sort of deeds that historians write about."

"Do not worry about that," I said. "History as studied in my country is very different from history as it is written either in your land or by ancient authors. One might almost say it is a completely different study."

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"I am at your service," he said, "for as long as you wish. What questions would you like to ask?"

"I would like to ask" I said, "about the relationship between law and religion."

"Perhaps," he said, "you would do better to ask one learned in theology. I am a Doctor of Law, and the least of the Doctors. If you wish it, however, I will answer as best I can. Religion, as I understand it, is the virtue by which we are ordered to God who made the universe and governs it. Through this virtue we perform such acts as worship and sacrifice. Law is a rule of reason laid down for our good by whoever has care of us, and thus law is found preeminently in the law by which God governs us. You ask me how they are related?" He paused a moment. "I am not a theologian," he continued, "but perhaps it pertains to law to command acts of religion, for it pertains to law to command what is just, and it is just that we give God what we owe Him, not as though we could repay Him what we owe, but in the sense that it is just for anyone to give what he can to one from whom he has received a benefit. I can also see two ways in which, in an extended sense, the observance of law might pertain to religion. First, . . ."

"Excuse me for interrupting," I said, "but this is not at all what I was asking about. I am not in pursuit of scholastic definitions. I want to know how your religion has affected your study of law."

"I am surprised at your concern with me," he said. "I am also surprised that this history allows you to study how one thing affects another without first asking what these things really are."

"Do not let that trouble you," I said. "Just tell me how you believe your religion influences your legal studies."

"Well," he said, "I suppose I am more religious than some of the Doctors, less religious than others. How does that affect my work? I don't know. Perhaps God is pleased and He helps me, although if that is what you are asking about, I am surprised you ask about religion, through which we give God what we owe, rather than about prayer, by which we ask for His help."

"I seem to have difficulty," I said, "putting the question I want to ask. Let us forget the word 'religion.' It must mean something different in your language. I want to ask about the effect on your work of that which concerns you deeply, calls into question the status of your existence, and raises ultimate questions about life and death."

"It sounds like you are talking about the plague," he said. "You want to know how the Black Death affects my work?"

"No," I protested. "I am talking about God."

"Oh," he said. "Why didn't you say so?"

"Well, now I have," I said. "You believe in God. How does that affect what you write?"

"Again, I am not sure I understand you. If there were no God, there would be no creation and no laws to govern it, and consequently I would neither be, nor write, nor have anything to write about."

"But suppose," I said, "that you did not believe in God. Surely you would write about law differently?"

"That," he said, "would depend on what I believed instead. This history, as you call it, must be a strange study indeed to inquire what someone would do if he did not believe what he does in fact believe without telling him what he is supposed to suppose he believes instead."

"I will withdraw the question," I said. "Perhaps we will make more progress if I ask you some simpler questions. To begin with, you believe in God, is that right?"

"This," he said, "reminds me of the liturgy at an Easter vigil. I do believe in God, and if it helps your inquiry, I can also tell you that I renounce Satan and all his works, that I believe in Christ Who redeemed us, in the Holy Spirit Who sanctifies us, in the Holy Catholic Church, the forgiveness of sins, the resurrection of the dead, and the life everlasting."

"The questions I was going to ask," I said, "are whether you believe that God has a law, that we sin when we violate that law, and that we need to be forgiven for our sins."

"Yes," he said.

"Now," I continued, "suppose a man were to take another's property, or to do him a wrong, or to break a promise to him. Would those actions violate what you believe to be God's law?"

"Certainly," he said.

"And are these not the very matters on which you lecture your students at the university and on which you write, the subjects that in my country we call property, torts, crimes, and contracts?"

"That is what I teach."

"Then you believe," I continued, "that what you teach about these subjects in some way expresses the law of God, and that to violate this law would be sinful?"

"Although the matter is a bit more complicated than that, what you say is basically true," he answered.

"Then, I would imagine that your belief that the rules you teach are in some way God's law must have a great influence on what rules you teach. Perhaps the only way to find out will be to discuss the subjects we have just mentioned. I would like to talk about contracts and torts since these are the subjects I know best myself."

"Have you studied law, then, as well as this history?" he asked.

"Rather more than I have studied history," I replied.

"That is good," he said. "Let us talk about law."

"Assuming I knew nothing of the contract law of your land," I said, "what would you tell me first?"

"I would tell you what I tell my first year students, and what Gaius said in his *Institutes*. There are four kinds of contracts: those binding on consent such as sale and lease; those binding on delivery of an object, such as gratuitous loans and bailments; those binding on completion of a certain written formality; and those binding upon completion of a formality called *stipulatio* which in our time is performed when the parties appear before a notary who writes down what they say. That is what I would tell them first, and later I would discuss the rules of the different contracts that belong to each of these classes."

"And suppose I knew nothing of the tort law of your land, what would you tell me first?" I inquired.

"Again, what I tell my first year students: that except for cases where there is liability without fault, torts are of four kinds, as Gaius said. A person is liable for theft, for theft with violence, for damage done wrongfully, and for insult. Later, I would discuss the rules of liability that govern each of these types of tort."

"And," I asked, "in discussing tort or contract, how would you establish what these rules are?"

"If there were a Roman text on point, I would cite it; if there were several texts, none of them clear, I would cite them all and resolve the difficulty as best I could."

"And do you believe that these texts, many of which, after all, were written by pagan Romans, were revealed by God?"

"I do not," he said, "and in my land anyone saying such a thing would be severely punished. But we said we would talk law," he continued. "May I ask you the same questions about the law of your own country? What do your Doctors teach your students about contract law?"

"Generally speaking," I said, "we teach them that contracts are made by making promises or expressing consent. Then we deal with such topics as mistake, fraud, duress, and offer and acceptance which have to do with whether both parties have consented. Next, we teach them that the law will only enforce certain contracts, and we have some complicated and confusing rules as to which contracts will be enforced, perhaps as complicated as the Roman rules you have just mentioned. We then discuss excuses for failing to perform a contract, such as impossibility, change of circumstances, and unconscionability or unfairness. Then we discuss remedies."

“And,” he asked, “what do you teach about torts?”

“We used to talk much about distinctions we have inherited between different kinds of torts, such as assault, battery, and so forth, perhaps the way you discuss the four kinds of torts you just mentioned. The more modern tendency is to discuss three major grounds for liability: intentional conduct, negligent conduct, and conduct that for special reasons gives rise to liability without fault. Then we discuss various protected interests, such as one’s interest in one’s body, in one’s property, in one’s reputation, and so forth.”

“Shall I tell you what amuses me?” he said. “You talk like a theologian.”

“How can that be?” I protested. “In my land we have very few theologians, and even they do not talk like theologians.”

“But you are talking just the way our theologians talk,” he answered. “We Doctors of Law will discuss all of the topics you speak of. But we will not discuss them as you do. Of course we know that all contracts are made by consent. One Roman text says as much. But we do not begin by discussing what consent is, what the human intellect is, what the will is or how mistake affects the intellect. No. I discuss mistake when I get to the law of sales, where the principal texts on mistake are to be found, although doubtless they apply to other contracts as well. And even then I do not discuss with my students what the intellect is, what the will is. I discuss what happens when bronze is sold for gold or vinegar for wine, and what happens when parties sell the field of Cornelius thinking it is the field of Sempromius, and so on. These problems are in my texts as are the answers. It is the same with the other topics you mention. The theologians discuss how duress affects the will. I discuss the Roman *actio metus causa*. They discuss how fraud violates justice. I discuss the Roman *actio de dolo*. The theologians discuss what is the obligation of a promise. I discuss what if a house burned down, unknown to both parties, before it was sold, or what if a man sells his crop in the ear and hail destroys it. The theologians say an unfair contract violates commutative justice and cannot be enforced. I explain that in a sale or similar contract a person who has lost by more than half the just price can have a remedy, and I can cite my Roman text. And shall I tell you about torts?”

“Go on,” I said.

“The theologians speak as you do. They speak of the vices of intellect and will through which one can harm another: the wrong intention, the imprudence in acting. Then they speak of what harm to another would be: harm to life, health, property, honor, tranquility, and so on. I am a humble Doctor of Law. I am content to explain careless or imprudent conduct from my texts. If a man is on a tree cutting branches and

drops one without looking or calling out, he is liable; if he looks and calls out, he is not. I am content to explain the tort of damage done wrongfully or the tort of insult without first talking about what a man ought to possess as his own and why he ought to possess it. Please understand me," he added, "I am not criticizing the theologians."

"It sounded as if you were," I said.

"There is only one truth," he said, "and when the theologians speak on these matters, I do not say they are wrong. Indeed, we learn from them. I could give you as many examples as you choose. In contracts, the theologians say that one cannot consent unless he understands the nature or essence or substance of his act; we give the same interpretation to a reference to 'substance' in one Roman text. They say that commutative justice requires equality; we say that equity or equality must be preserved in contracts. Here again, although we may have learned from the theologians, we can find that conclusion in our texts. The theologians say, in torts, that he who is imprudent must compensate, and surely we do not dispute them. Perhaps that is what our texts mean when they speak of *culpa*. The truth is one. Only, we teach the civil law. We do not ask what the intellect is, what the will is, or what commutative justice is as they do and you do."

"But we do not," I said, "and so you are certainly wrong when you say our jurists talk like your theologians. There isn't a law professor I know who would dare to present a theory of the human intellect or will and use it to ground legal doctrines such as fraud, mistake, or duress or the distinction between intentional torts and negligence. There are precious few professors who have much to say about justice, commutative or otherwise. I don't know what these questions have to do with theology, but I will say they are not ones that the jurists in my land usually present to their students."

"To take one small example," he said, "may I ask you how you discuss the mistakes which you say hinder consent?"

"We discuss the case of a cow, a prize breeding cow, presumed to be sterile but actually pregnant at the moment she was sold."

"Perhaps," he said, "it is like our case of bronze sold for gold. But you do not discuss, as our theologians do, what the intellect is, what the will is, and what a choice is?"

"Hardly at all," I answered.

"Then," he said, "you are not the theologians I took you for. But a theologian would find it curious that you first say contract requires consent, you then say there can be no consent where there is mistake, and you then discuss mistake without telling your students what consent is. Well, perhaps you discuss problems in the same order as the theologians, but you, like we, are content to look to your legal texts to solve them."

"The jurists of my land," I said, "do not generally present their conclusions as following from any worked-out theory of the intellect or will or justice. They proceed, as you seem to do, by trying to understand and reconcile legal authorities. Nevertheless, if they had any confidence in a theory about the human mind or human choice or justice, I think they would use it. They might not scrap their own method of trying to reconcile legal texts, but I believe they would use such a theory."

"As I have said," he interjected, "we sometimes use the theory of our theologians, sometimes perhaps too much. Baldus will tell you, of all things, what the four Aristotelian causes of a contract are."

"The point I am making," I said, "is that while the jurists of my land have not worked out a theory of intellect or will or justice or matters of that sort, nevertheless, I believe they would use one if they had. But they would still not consider themselves theologians. Tell me, what do your theologians say about the intellect and will?"

"A great deal," he answered.

"In general," I persisted.

"I told you I am not a theologian," he said, "but I will tell you they say something like this. Man is a rational animal. The other animals pursue their ends because they feel desire for what they see that is good for them. The lion sees the deer, he chases it and eats it. Man does not just see and feel desire. He can know what things are and know why they are good for him. This is intellect or reason. He can choose things because they are good for him, not because of desire. This is will."

"What," I said, "does that have to do with, for example, the problem of mistake in contract formation?"

"If you do not know what you are doing, then you cannot have chosen what you are doing, for the will can choose only what the intellect understands. Now what a thing is, or what an action is, the theologians call the substance or essence of the thing or action. Thus, one does not choose when he makes an error in the substance or essence of what he does."

"I'm not sure," I said, "that the jurists of my land would find that very helpful unless more could be said about when a certain error is an error in substance."

"Yes," he said, "well, our theologians have much to say about that, much of it quite complicated. I teach as you do. I talk about the bronze for gold and you talk about your sterile cow. But it is not that I quarrel with the theologians."

"What about duress," I said.

"As I told you," he replied, "we jurists talk about the *actio metus causa*. The theologian says that if someone moves your hand by force,

for example, to sign a contract or to hit someone, then there is no choice, for though you may know what is happening you do not will it. But if someone puts a knife to your throat and tells you what to do, then you make a choice. You understand that you must either sign or die, and you choose to sign. But, of course, you are not held to the contract for the threat was unjust."

"You were also saying," I said, "that according to your theologians, a contract must not only be made without mistake, duress, and the like. The terms of the contract must be just, I take it. What do they mean by just?"

"It is just, they say, to give a man what belongs to him. Some things simply belong to a man, like his arms and legs. Others belong to him because of what they call distributive justice: each one should receive his due share of wealth or honor or whatever the society has to distribute. Commutative justice preserves for each what belongs to him. So if I sell something to you at a high price that is worth a low price, wealth is taken from you and given to me, and I must give back the difference."

"And how do you tell what something is worth?" I asked.

"Here," he said, "the theologians and lawyers agree. We look at the price for such an object at the time and place it was sold."

"And why do you think that the price for which things sell on a certain day is just?" I asked.

"As far as I am concerned, if a person buys that day at the same price as others do, he has no complaint. He paid what the thing was worth that day. If it is worth less the next day, then that is his affair. It is an accident, as if he bought a house and it burned down the next day. But if you wish a better explanation of this matter, perhaps you must look elsewhere. I would be more pleased if you asked me, a Doctor of Law, what the law is. As we read our Roman text, the law is that if the price at which one sells or buys differs by half from the price at which such goods were sold or bought on that day in that place, one has a remedy."

"To pursue, once more, what you call theology," I said, "I take it that in tort law, your theologians' account of what would constitute harm to another is based on these same ideas of justice."

"Yes," he said. "The theologians have a list: what belongs to a man are his life, body, property, honor, tranquility, and so forth. They have reasons why this is so. To interfere with these things is to wrong a man, and one must pay compensation."

"And I suspect," I continued, "that when the theologians agree with you jurists that there is a difference between intentional torts and negli-

gent torts—imprudent acts as you just put it—this is based on some theory they have about the intellect and the will?”

“Yes,” he said, “one may understand and will the evil result, and that is an intentional wrong, or one may understand and will a good result, but still misjudge the means because one is lacking in the virtue of prudence by which one suitably chooses the means to attain an end. In both cases one must compensate.”

“Let me put it to you,” I said, “that nearly all the opinions of your theologians come out of Aristotle, whose works, as it happens, are read occasionally in my land. Not all of it was said by Aristotle, and the emphasis also seems different, because Aristotle was concerned primarily about virtues while your theologians seem intent on applying what he said to law. But everything you have just said does strike me as an attempt to apply Aristotle’s ideas to law.”

“Of course I would agree,” he said. “Why does that surprise you?”

“It surprises me,” I said, “because Aristotle was a Greek pagan, whatever his merits as a philosopher. Earlier I asked you what law you teach, and you quoted me the laws of pagan Romans. Now I ask what your theologians teach about law, and you tell me about the ideas of pagan Greeks. Moreover, the ideas you have just mentioned do not concern God but the human intellect, human will, and human justice. At the beginning of our conversation, however, you told me that God has a law, that if we violate it we sin, and that if we sin we need His forgiveness. And yet I am sure if I ask you whether God spoke to Aristotle, you will tell me that He did not, any more than He spoke to the Roman jurists. Indeed, you will regard the suggestion as rather horrible.”

“I think I know what is puzzling you,” he said.

“And what is that?” I asked him.

“You are not distinguishing, as our theologians do, between two different senses in which we can speak of the law of God. First, by God’s law we may mean the law by which He governs His creation, however we come to know it, whether it is the natural law we discover through use of our reason, or the law we are given by human authority, or the law that God reveals to us through sacred scripture. Second, by God’s law, we might mean only that law He reveals to us in sacred scripture.”

“What does He reveal in sacred scripture?” I asked.

“He reveals certain precepts that do not belong to natural law for we could never discover them through reason: for example, that we must be baptized, and that we must confess our sins. He also tells us in scripture that we must obey certain basic precepts of natural law: for example, that we must act toward others as we wish them to act toward us, and that we must not murder or steal or commit adultery or covet what is our neighbor’s. We could discover those precepts by reason. But to reason

without error is not easy, as we see by the endless disputations of the scholars. And sometimes we err even in obvious matters when we are led astray by our desires, like the Queen our poet Dante speaks of who thought she could legalize lust. So there is a need for God to speak to us even as to these matters."

"But," I asked him, "would this law of nature exist and would it be binding even if God had not revealed any of its precepts?"

"Yes," he said, "as Saint Paul tells us, the pagans have this law written on their hearts, and so they have something to call as a witness for them when they come to judgment. Thus it should not surprise you that we who are Christians learn much from pagan Greeks and pagan Romans."

"And what do you mean by a natural law?" I asked him.

"If you are familiar with Aristotle perhaps you do not need to ask me," he said. "But I would answer this way. Everything that is, must have a nature. It must be a certain sort of thing such as a bird or a man. It cannot be anything and everything. Moreover, every thing that is, has an end which it seeks and which is good for it. The bird flies and seeks worms and a mate; the man eats and mates and also learns and lives in society and ultimately comes to know God which is his last end. The nature of a thing depends on its end, the end of a thing depends on its nature, and to understand the one is to understand the other. The bird, the creature with wings, must have as its end to fly; man, the creature of reason and will, must have the end of a man. The natural law is simply this: the rules a thing of a given nature must follow to attain its end. Birds must follow rules when they fly, and in this sense, they have a law; but, because they are creatures without intellect, they do not understand the rules they follow. Man has a law proper to attaining his end; but, since he has intellect and will, he reaches his end by understanding this law and choosing to follow it."

"That sounds to me much like Aristotle," I said, "despite a subtle change of emphasis. And I can even see the link between what you are telling me about the nature of man and what you told me a moment ago your theologians were saying about law. Man is a creature of intellect and will; therefore, in order to choose an action, he must know what he is doing, or as you put it, the essence of what he is doing. Man reaches his ends by living in society: therefore distributive justice which gives him what he needs to reach these ends; therefore commutative justice which preserves what he has been given; therefore a law of torts that protects him against those who either choose to take what belongs to him or do so through imprudence; therefore a law of contracts that allows him to obtain what he needs to pursue his ends without diminishing his

own wealth or that of others, as might happen if there were duress or fraud or an unjust price."

"*Nicomachean Ethics, Book V,*" he said, "with some ideas from the earlier books. I see you know rather more of moral theology than you have led me to suspect."

"Do you believe a man is saved," I asked, "by following these teachings of Aristotle?"

"No," he replied, "man must know more and do more to be saved, and that is why he must be governed not only by the law of nature but by much more besides that is found in scripture. Moreover, even to behave justly, as man without scripture can understand justice, he needs the help of grace. And when he sins he needs forgiveness."

"And what of a man," I said, "who does not know Aristotle? Is he condemned?"

"He knows that he should not murder, he should not steal. Sometimes, of course, it is hard to know what is murder, or what is another man's property. Then it is good that the teachings of the learned should be passed on to him through instruction and through laws promulgated by human authorities, who themselves have consulted learned men. Perhaps if he were a really good man he would see without such instruction or law that he could kill to protect his life but he could not kill in a tournament or duel, and that to take an unjust price is really a form of stealing. I, at least, believe a good peasant, however ignorant, would not kill a man over an insult, even if that man has a chance to defend himself, and he would not gouge another peasant over the price of a horse. Perhaps I am merely saying what one of our great theologians said, that a truly good man would not need the rule. In any event, we are not all truly good men, and even if we were, I still suspect we would often need the guidance of the wise. But if we lack guidance, if our peasant for example, truly does not know what to do, and acts wrongly, then, as I have said, since he does not know, he does not choose, and God would not condemn him."

"I am anxious," I said, "to come back to the rules of Roman law that you teach to your students. Are they part of this law of nature?"

"Some of them," he said, "although do not ask me to draw the precise boundary. As I have said, the theologians talk about mistake, fraud, and duress. We talk about bronze for gold, we talk about the *actio de dolo* and the *actio metus causa*. Doubtless we are simply applying what they say is the law of nature even though we do not ask what the intellect is or what the will is. In this way, we put the natural law into rules that you do not have to be a theologian to understand."

"But when I asked you," I said, "what you would first teach to your law students about contracts, you told me about contracts binding by

consent, contracts binding by delivery, contracts binding by a formality. Are those distinctions part of the law of nature?"

"The jurists agree," he said, "that the contracts binding because of a formality, as when the parties come before a notary, are not the law of nature. They are simply institutions of human law prescribed, for example, to prevent such evils as fraud or excessive litigation, or the enforcement of rash promises. As to the distinction between contracts such as sale, which are binding on consent, and contracts such as gratuitous loans, which are binding only on delivery, there is some dispute. Bartolus seems to have thought this distinction is natural, though he was a great jurist. Nevertheless, the reason he gave is so strange I can scarcely credit it. I side with his pupil Baldus who said that all these distinctions as to when a contract should be enforced are from human authority. Similarly with another matter you mentioned. Sometimes by our law a man is liable even without fault, as, for example, when he hangs a sign over a street and it falls on someone, even when he took care that it should not fall. Is that the law of nature? I do not know. Even Baldus had no more to say to explain this rule than that the streets ought to be safe. Perhaps then it is a merely human rule based on convenience."

"Well then," I said, "if you admit that many human laws are based on convenience, I would like to know how you distinguish them from natural laws. To speak, for a minute, like one of your schoolmen, and to apply what you told me a minute ago, it seems that nothing could be 'convenient' except if it helps man to achieve this end you say he has, and it seems that nothing could be known to be convenient save by what you call reason. Since you have defined natural law as what reason indicates is fitting for man's end, therefore," I said—savoring the word "therefore,"—"these things, too, must be matters of natural law, even if they are promulgated by human authority."

"I suspect you anticipate my answer," he said, "since you seem to know more of theology than you let on. Some things follow from the nature of man himself. He is a creature of intellect and will. Therefore, because of his very nature, his choices are only choices when he understands what he does. To reach his ends, man must live in society. Therefore, because of man's nature, there must be distributive justice, which gives him what he needs for these ends, and commutative justice, which preserves what he has been given. But the way a man is to reach his ends is not the same for all men. Sometimes, each man must find the way that is right for himself since not all men are the same. Sometimes human authority must decide on a rule since a society may need a common rule and yet not get this rule from nature, for not all human societies are the same. Moreover, even if all human societies see the same evil, there may

still be many ways to prevent it, and someone must choose which way it is to be prevented. So there must be human authority to choose. Take this matter of which contracts the courts shall enforce. Didn't you tell me earlier that the rules your society has on this matter are intricate?"

"Yes," I said.

"I am not saying," he said, "that your rules are better or worse than ours. But are they not perhaps aimed at the same evils: fraud, excessive litigation, and the dangers of rash promises?"

"Quite possibly," I said.

"So then," he said, "evils are evils but there may be many ways to prevent them. Someone must choose. These rules come from human authority and not from nature which is the same everywhere."

"And if I disobeyed this human authority," I asked, "would I commit a sin for which God would judge me?"

"Of course you would commit a sin provided the human authority was not commanding something unjust. One thing I find odd about this conversation, if you don't mind my saying so, is that you often seem to be asking me about the obvious. I am not always certain that I succeed in explaining the obvious, for that is often a difficult thing to do. But you ask not as though you wanted a clearer statement, in which case you might ask a theologian, but as though you did not know. Take this matter. Surely the people in your country know that the laws made by human authority should be obeyed unless they are unjust. Why then do you ask me these questions? Do the people in your country imagine they can disobey laws they ought to obey without sinning, or do they imagine God pays no attention to them and does not care whether they sin or not?"

I sidestepped the question. "You can tell me about your sacred laws and your natural laws and your human laws, but in my land there is a law that many people believe no one can violate. It is not that he will be punished if he violates it; he has not even that freedom. He simply cannot violate it, and I will call it the historical law. This law says that you, who live in what one might call an Age of Faith and believe in God, Christ, sin, forgiveness, and whatever else, cannot possibly interpret Roman law like a Roman or Greek ideas like a Greek. You must interpret them differently. That is what the law of history says you must do, and I am trying to find out how you interpret them differently, and so far I am getting nowhere."

"Of course we interpret them differently," he said. "Our theologians draw conclusions from Aristotle that he himself might have drawn but did not. I myself say things the Romans did not say although I hope they would have said them had they faced the problem I pose and looked at their texts."

"That is not what I mean," I said. "Looking at the same problem, on the same evidence, from the same sources, you must come to conclusions different than a Roman or Greek would reach. That is what our historical law says."

"That is a rather silly law," he said, "and I would advise you to change it, for how could a man arrive at truth if the truth were to change if he were Greek, if he were Roman or, for that matter, if he were Christian. We Christians know some things because we are taught them specially by revelation. We know other things because we stand on the shoulders of the Roman and the Greek; we read what they say and we have the opportunity to think more. But you cannot seriously be telling me that when our theologians ask what the nature of man is, what intellect is, or what will is, they are obliged to differ from the Greeks because they are Christians. You cannot be saying that when I ask what the *actio metus causa* is I am obliged to differ from the Romans. To say I am obliged to differ from the Romans is to say I cannot do what I try very hard to do, which is to see what the Romans prescribed when they instituted that action. And to say our theologians must differ from the Greeks about the nature of man is to say nonsense. If there is a nature of man, why shouldn't the Greeks have known the truth about it, and why shouldn't we also know the truth? Grace perfects nature but does not destroy it."

"I would have thought," I said, "that a Christian such as yourself would claim rather more for Christianity. Even if he were ignorant of my historical law, I would have thought he would claim . . . I am not sure what he would claim but perhaps something like this: there are Christian values, as a Christian you believe in them, they are the right values for people to live by, and so you read them into the law."

"I haven't the slightest idea what you mean by a value. All I can tell you is that the law is known to Jews and Romans and Greeks though other things are also known to Christians."

That was the end of our interview so far as I wish to report it. When I left him I was puzzled. Suppose this man really did write about law like a Roman, think about human nature like a Greek, and worship like a first-century Christian in defiance of whatever historical laws may be. That, at any rate, is what he said he was doing. What then would be the influence of religion on law? And yet, if ever religion influenced law in the West, it should have been in his Age of Faith.

The answer, when it occurred to me, was clear. The man I talked to believed in a God Whose grace perfects nature but does not destroy it. Just because his theologians believed in this relation between created nature and divine grace, they could puzzle over what man's nature is and expect to find answers through the use of natural reason. Just because he

himself believed it is man's nature to make laws and to obey them, he could puzzle over how to interpret the laws the Romans had made. I can imagine theologies that would have made it all impossible or meaningless. But that was not his theology. He believed in a God Who made nature, Who made man, Who left man to follow rules and to make rules in accordance with his nature. His theology was such that in the service of God, and to avoid sin, one should learn what one could about human nature from the best authorities, who happened to be Greek, and about how man could wisely regulate his social life from the best authorities, who happened to be Roman.

What needs to be explained, I decided, is not how the traditions of Greek philosophy and Roman law could flourish under his theology. What needs to be explained is how law has survived in the theological climate of the twentieth century. As an undergraduate, I studied twentieth-century theology from professors of psychology, economics, philosophy, political theory, and history. The psychologists talked either about sex and repression or about conditioning. The economists talked about utility by which they seemed to mean doing what one likes. Most of the philosophers talked about logic and language but not about ethics. Those who talked about ethics claimed it could not be grounded in logic. Political theorists talked about freedom, without explaining what one should be free to do, and consequently without explaining very persuasively where one person's freedom should leave off and another's begin. The historians sometimes talked as though some law prevented any two people living at different times from thinking the same thoughts about anything.

Law school was quite different. I was taught to analyze human behavior in terms of choice and responsibility, not repression and conditioning. I was taught to think about human relations in terms of justice, not utility. I was taught to be logical about problems of justice. I learned that there were different kinds of human freedom with different limits, and that not all of them had an equal value. I was even asked to perform such ahistorical tasks as interpreting the United States Constitution. Curiously enough, however, the professors who taught me law so well seemed, for the most part, to believe in the theologies of the psychologists, the economists, the philosophers, the political theorists, and the historians. It is harder to explain why law flourishes in our age, under the shadow of these beliefs, than how law once flourished in the Age of Faith with its theology of grace and nature.

Two explanations have occurred to me. One is that it is indeed man's nature to govern himself by law, and this nature will stubbornly assert itself even when it is denied.

The second explanation is grace.

