

УДК 323.396

**Mykhaylo Kelman**

Lviv Polytechnic National University,  
doctor of Law, professor,  
professor of the department of legal theory and constitutionalism  
Educational and Scientific Institute of Law,  
Psychology and Innovative Education

**Tetyana Sivulya**

King Danylo University,  
First-year postgraduate student Institution of higher education,  
Ivano-Frankivsk

## RELIGION AND LAW: MUTUAL INFLUENCE AND INTERCONNECTION

### Section one

<http://doi.org/10.23939/law2022.33.057>

© *Kelman M., Sivulya T., 2022*

**The article is devoted to the recognition of the impossibility of the disappearance of the phenomenon of religiosity in society and the obvious facts of the influence of religion on the processes of formation and development of law.**

**An analysis of many historical sources convincingly states that religion itself is in fact a spiritual cradle right. It is substantiated that three things are necessary for initiating legal communication: knowledge of law (intellectual element), activity (volitional element), and – without a doubt – consciousness (spiritual element). After all, only the spiritual identifies the first two.**

**Only the spiritual component fills with “legal light”, content, purpose, spirit of law, legal connection, guarantees them from transformation at best into a formal scheme, at worst – into criminal chaos, and law itself is not law.**

**Key words: God, faith, religion, law, society, reason, justice.**

**Problem statement.** Historical development confirms humanity's constant desire for a picture of the world proposed by religion as a model of worldview and a normative regulator based on absolute transcendental values. The experience of implementing atheistic social projects also indicates that the forcible displacement of the religious component from social consciousness or the system of normative regulation leads either to the destruction of such projects. Particularly state-legal ones, of which the short history of the “world's first atheist state” Albania is a notable example. Since there is an excessive relativization of social institutions and, consequently, a significant reduction in their functional potential. Additionally, the sphere of traditional religiosity is being increasingly filled with religious equivalents-secular ideologies. These ideologies are characterized by several socio-psychological traits that are characteristic of classical beliefs. For example, faith-based worldviews, objects of worship, normative components, cult elements, quasi-sacred texts, and organizational formations are closely tied to the state-legal and other social institutions. These religious equivalents may be divided into two groups. At the same

time, the influence of such religious analogs on the law is almost identical to the impact of a classical belief: they can form the attitude toward lawful (unlawful) behavior, determine the development of specific legal institutions, legal science etc. For example, one can remember how communist ideologemes about the publicity of all public affairs, the dictatorship of the proletariat, the state of the soviets, “religion as opium for the people” influenced the denial in the Soviet legal science of the concepts of the division of law. The division includes private and public, the separation of powers, the rule of law, and a factor in the inhibition of the development of institutions of private property, freedom of conscience, etc.

**Analysis of recent research and publications.** Considering these issues represents purely scientific interest because in the conditions of methodological pluralization of modern jurisprudence, overcoming ideological monism, and drawing the experience of foreign jurists, there is a challenge to revise the fundamental questions of the position of law in the system of social regulation. This particularly relates to the influence of religion on the formation and development of law. That is because the legal Soviet science, which was based on Marxist philosophy and sociology of religion, assigned a predominantly conservative, negative role in the complex normative regulation of society. It should also be mentioned that despite a certain “renaissance” of religious studies, which is observed in the modern legal literature, there are almost no attempts to theoretically develop the ratio of religion and law in scientific publications. However, the existing research in this area is often characterized by fragmentation. At the monographic level, they are mainly addressed to the problems of freedom of conscience and the legal status of religious organizations, or they consider the impact on the law of the provisions of a particular doctrine. Almost without the attention of legal scholars are the forms of influence of religion on law formation. The nature of religious law is not sufficiently studied, and the religious factor in the scientific searches of comparativists is covered primarily within the framework of traditional or religious legal systems. It should be supplemented by the fact that the sacred character of some works, and sometimes – the controversial nature of their starting points (for example, theses about the rightness or wrongness of the dogmas of this or that confession in the context of state-legal development) also do not contribute to solving the issues of interaction between religion and law precisely in the legal field. Thus, currently, there is a requirement for a conceptual, based on modern methodology, study of the mutual influence of religion and law in the process of legal genesis and functioning of the legal system.

**The objective of the article.** To consider the peculiarities of religious influence on the processes of formation and development of law and to establish and analyze the forms of such impact.

**A statement of the basic material.** For many decades we have been convinced that the economic element lies at the heart of anything, and most people have attempted, against their will, to consider in this the conflict of productive forces and industrial relations, class interests and their antagonistic struggle. It is complicated for a modern person living under conditions of secularized society and the monopoly of materialistic views to imagine the existence of other social atmospheres, to perceive in general the obvious fact of determining influences of religion on the processes of formation and development of law.

Analysis of many historical sources provides a convincing assertion that it is indeed religion that is the spiritual cradle of law. In order to be convincing, it is sufficient to ask a number of ordinary questions and answer them dispassionately. Hence:

Who were the first lawyers? – Priests.

Where did law originate? – In temples – sanctuaries.

From whom did law receive its generic name? – From the supreme God of the Romans.

What does sanction mean? – Sacred punishment of the gods.

Where does legal procedure originate from? – From cults, from religious ceremonies.

What is the most shameful crime? – Blasphemy.

What is essentially a judicial oath? – An oath to a deity.

What is the meaning of punishment? – Spiritual and moral refinement.

The same dialogue can be continued. In general, what is essential for the initiation of legal communication? Three elements: knowledge of the law (the intellectual element), activity (the volitional element), and – no doubt – consciousness (the spiritual aspect). After all, only the spiritual identifies the first two. Only the spiritual part confers “legal light”, content, goals, spirit of the law, legal connection, guarantees them from becoming, in the best case, a formal scheme, in the worst case, criminal-legal chaos, and the law itself is not law [1, c. 108].

The principles and ethical categories established in the womb of faith became, over time, required in social communities or even in communities of society. Only those who did not wish to recognize this remained on the margins, and those, by the way, as the ancients noted, had the inconsolable fate of finding the highest religious principle shared by all peoples as the basis of law. The birth and the rise of law in antiquity, its decline, and oblivion, and the deterioration of social structures, legal institutions, and state structure, as historically recorded, were closely linked to the flowering or crisis of religious polytheism. The destruction of antique political and state-legal forms of life the materialistic tradition is due exclusively to enslaved people's labor. The struggle became considered shameful for a free person. It is appropriate to observe this: first, it is not clear why it required hundreds of years; second, “shameful labor” is no more an economic category, but an evaluative, psychological one; third, changes in government, the structure of the country, the positive legislation, the legal ideology constantly occurred under the same slave-holding method of production.

In this context, one should point out several circumstances which, as Livius expressed it, “as old as they are well known”, led to the decline of Rome. It is about the moral degeneration, the decay of the patriciate, whose hearts were captured by the idols of adored persons and material accumulation. The decline of the spiritual roots of human existence's God-given moral foundations ensured the triumph of destructive forces and the collapse of antique legal culture [2, c. 196].

Although Roman law, which developed during the antiquity era, was traditionally regarded as the perfect type of law. It was based on private property, a belief that has become axiomatic, as evidenced by over a thousand years of study by those who have devoted themselves to jurisprudence. Nevertheless, suppose one adopts Descartes' advice and views the problem in the natural sense. In that case, one can readily perceive in the fundamental foundations of Roman law an ancient religion which to a certain extent guaranteed the perfection universally acknowledged. More than one legal system can be mentioned-the Sumerians, the Hindus, the Egyptians-who built the institutions of private property and left Roman law far behind. Why? To answer this, it is appropriate to examine the ancient sources in detail.

However, we must admit that the theory of creationism is widespread in today's world. This emphasizes that post-Flood, humanity had primarily lost its historical memory and departed from God's commandments, although the social conscience of the time characterized human beings as an integral part of nature.

The original Italian philosopher Giambattista Vico, who investigated the genealogy of legal concepts, directly relates it to natural phenomena. For example, he traces the legal term “lex” (law) from the word “ilex” (holly, mantel oak). Even before the advent of writing, “lex” corresponded to an assembly of citizens, that is a public parliament. Since the presence of the people, that is, the “assembly”, the coordinated will and granting the force of a contract, a testament was the law. First of all, from “-Lex” proceeded the selection of letters and the composition of words and phrases from them (Legeze – to read) [3, c. 87].

The integrating influence of religion's cementing impact on society does not mean that everything is frozen in a particular monolith. No, processes are occurring. The Roman pantheon was growing in one way or another [4, p. 236].

Already Titus Livius points to the existence of the gods of heaven, earth, underground (Liv, I, 32, 6–14). In addition, the Gods are divided into major and minor. The higher ones, such as Jupiter, Diana, Mercury, can act in all three mediums.

Although relatively separate, the world of the Gods, the people of the living and the dead interacted quite clearly. People did not begin any activity without learning the attitudes of the Gods. From here derives the sophisticated art of the augurs, who guessed the will of the Gods by the flight and behavior of birds, the stroke of lightning, thunder, particularly the color of the livers of sacrificial animals.

In this, one finds a constant attempt to interpret the unusual and understand whether it is a sign of dissatisfaction with the Gods, what caused it, and how to redeem it. This is illustrated by Cicero's dialogue "De Natura Deorum".

An established relationship with the Gods is a positive thing, but it was not installed to the detriment of relatives. For example, a respected father becomes a God to his sons. Every Roman citizen felt a special pride in the awareness of his inseparable bond (religion in Latin means "connection") with his family, his clan, whose life was in continuous public service.

The general belief prevailed that the dead influenced the affairs of the living, avenging neglect of the established rules and customs (Oxi d. I. us. I, II, 563). A particular "sound" aspect is evident. The intensity of the dialogue, the high degree of tension peculiar to the antique language, did not diminish in the conversations of living people, neither in the speeches with the Gods nor with the souls of the dead, irrespective of any external circumstance.

Another invention of the ancients is worth mentioning – the epitaph (translated from Greek as a tombstone). The type of epitaph, common to European culture, was accepted and formed in antiquity [Concise Literary Encyclopedia, T. 8, p. 920]. Therefore, the connection with the cult of the dead and the concern for posthumous glory was secured, as it is usually thought, but rather an otoacoustic dialogue.

Prolonged inertia that considered only centripetal forces in the form of class antagonisms does not answer the question of why Rome, the hope of the world despite the pressure of external and internal factors, surprised and delighted all peoples for more than a thousand years! Hence, there were also real (rather than contrived) and powerful centripetal forces that actually united society. It is the religious forces that "relegire" means "to bind". It refers to the unity of each believer with a supreme being. At the same time, religion connects all believers to each other.

Society was permeated by religious connections both horizontally and vertically (upward to the Olympians and downward to the realm of shadows).

The social component was firmly imbued with these connections, successfully resisting external and internal disturbances. The cementing influence of religion was felt not only at the top but also in specific, individual cases.

In many sources of that period, one finds the term "cult", which appears to be no coincidence. It reflects the essential required practice of worship, the ancient historical religion of "cult" as the outward expression of religious worship, the sacrament, the present and conscious side of the worship of the deity. If only we do not treat this phenomenon ironically, it cannot be denied that behind it lies the great importance of the cultural formation process.

Russian Orthodox theologian Father Pavel Florensky has constructed an appropriate series of values: "cult"–"culture"–"civilization" emphasizing the significance of the religious cult as the foundation of culture, one manifestation of which is the technical civilization.

Understandably, the cult generates culture, both material and spiritual. However, it entails civilization not only in the sense of domestic household comfort but also highly influential, in this case, the oral state-legal field of knowledge.

Civilization is that stage of human development when humanity's own social relations begin to dominate over natural ones, and when society starts to develop and function on its own soil.

The notion of civilization (from Latin *civilis* – public, public, state, civilian) was introduced into the scientific dictionary by the French educator Honoré Gabriel Mirabeau in 1756. Under this definition the French philosophers meant a society based on the principles of reason and justice [5].

It is natural that from the cult proceeds the significant *jus civile* – civil law, political rights, the whole legal culture, including the practice of law and legal consciousness.

Understandably, a single faith and a God, their common cult, intelligible to all languages and customs, prepared the foundation for economics and commerce, not the other way around. The high image of religion also maintained an impeccable state social legal order and ensured victories in Rome's wars. Despite its universal penetration into the everyday life and activities of the state, religion did not become, conventionally speaking, a factor in the totalizing “tightening the screws”.

Ancient religion had accumulated its resource, had not overused people's trust, and was actively passing the torch to future generations. A number of factors contributed to this. Over the centuries of its existence there was no politically powerful caste of priests. The economic potential did not become significant because the temples were forbidden to donate and bequeath land. It is true that 276 pontiffs combined the elaboration of theology and only a part (a small one) was engaged in jurisprudence. Pragmatic Romans in general believed that one should be engaged in practice. The general opinion was expressed by Fabius Quintilian: “Practice without theory is more valuable than theory without practice”.

As can be seen, there was no well-thought-out, coherent dogma for all that. The great doubts about the existence of the gods are expressed in his treatises *On the “Nature of the Gods”* and *“On Divination”* by Cicero, who personally was an augur.

Cicero, the philosopher, is denied this position of Cicero, the politician and jurist in his dialogue *“On the Laws”*, considering faith in the Gods and all the religious precepts of the ancestors as obligatory, is sufficiently indicative.

The ethical virtues that the Romans adored in antiquity “went” into the world of the people, in their social relations, mainly in legal communication. Ethics were determined not by religion, the law, the needs of service to the state, the requirements of the whole people.

The people, community and state rewarded the worthy with deserved honors and punished and stigmatized those who forgot their duty, sinned, and transgressed the law with contempt.

The priority of the social and public over the religious is constated by Varron: “At the end of the Republic the weak generation is “spearheaded” by Quirinus – Romulus” [6, p. 300].

Meanwhile, the people retained allegiance to the Gods, not the official ones, but the Gods of the land and crafts: Hercules, Silvanus, Feronia, and others. They were expected to patronize them for life and reward them after death.

The belief in the immortality of the soul and its funerary destiny resulting from virtuous behavior during life becomes general.

Immediately before the advent of Christianity, against the decline of the official cult, there was growing gravitation toward a single omnipotent. God, no one saw, stands above the earthly rulers but closer to the “little man,” – no longer, however, a member of any community but acting individually. God sacrificed himself for the salvation of people, which prepared Christianity's victory.

Undoubtedly, however authoritative they may be, radical ideologues cannot destroy religion in one fell swoop. Ironically, Marxism has become a pseudo-theory and pseudo-cult (the crusade as a demonstration of freedom, cathedrals as congresses, banners as portraits of leaders, the red corner as the Leninist room, etc.). The catechetical methodology, without evidence or discussion, became dominant: “Mark's doctrine, omnipotent because it is correct”, “Matter is primary, consciousness is secondary”, “The Party is the mind, honor and conscience of our era” etc.

In conclusion of the first part of this article, it should be noted that the peculiarities of religious life, which accompanied the historical life of people, determine all the moral quest of the individual, associated with a particular type of culture, all the differences of national character and even more the principles, relationships, states, secured by the law. Such was the beneficial influence of religion on the genesis of the “sound jurisprudence” of the incipient law in ancient Rome.

A generally affirming conviction is expressed by a line from Horace's “Odes”: – “What do laws without (good) customs mean – what do (good) customs without belief mean?!!” [III 24, 35–36]. “The obvious does not need proof”, said the jurists of antiquity [7].

**Conclusion.** 1. The correlation between religion and law in the conditions of a modern democratic state is characterized by specific features. The majority of religious and organizational-functional norms that regulate intra-church activity are neutral concerning law because they regulate social relations that do not belong to the sphere of legal principles. However, a specific part of religious norms has as their object the same social relations that belong not only to the intra-church area. For example, these are relations arising during the creation of religious associations between adherents, regulated by the executive bodies of the state and not by servants of worship. This also manifests itself in various spheres of public activity, as some confessional organizations attempt in their operations outside the scope of satisfying the religious demands of citizens. In such cases, the pattern typical for correlating legal norms with the social standards of previous formations that continue to operate in society (customs, moral and religious norms) applies. If the latter does not contradict the legal prescriptions, the law does not interfere with their functioning.

2. Only the spiritual component provides the “legal light”, the content, the goals, the law's spirit, the legal connection, guarantees them from transforming into a formal scheme at best, into criminal-legal chaos at worst, and the law itself is not law. Principles and ethical categories developed in the womb of faith have, over time, become relevant in public communities or even in societies.

3. Though developed during antiquity, Roman law has traditionally been regarded as the perfect type of law based on private property. This belief has gained axiomatic recognition, as evidenced by more than a thousand years of research on it by those who have devoted themselves to jurisprudence. However, suppose one follows Descartes' advice and views the problem in the natural sense. In that case, one can readily perceive an ancient religion in the essential foundations of Roman law, which to a certain extent guaranteed the perfection recognized by everyone.

4. An extended period of inertia, which only considered centripetal forces in the form of class antagonisms, does not answer the question of why Rome, the hope of the world despite the pressure of external and internal factors, surprised and delighted all peoples for more than a thousand years! Thus, there were also real (rather than contrived) and powerful centripetal forces that actually united society. The religious powers of “relegire” mean “to bind”. It refers to the unity of each believer with a supreme being. At the same time, religion connects all of the believers to each other.

5. Immediately before the advent of Christianity, against the background of the decline of the official cult, there was growing gravitation toward a single omnipotent. However, while God, who was not seen and stood above the earthly rulers, but closer to the “little man” – already, however, not a member of any community, but acting individually as gravitation, for example, for the imitation of a person and simultaneously as God, who had sacrificed himself for the salvation of men. This prepared the victory for Christianity.

#### REFERENCES

1. Kelman M. S. *Zahalna teoriia prava* [General theory of law] : pidruch. / M. S. Kelman, V. M. Stratonov. Vyd. 6-te, dop. Kherson : OLDI-PLIuS, 2020. 742 p.
2. Avhustyn Avrelyi. *O Hrade Bozhem* [About the City of God] Avrelyi Avhustyn // *Antolohyia myrovoi pravovoi mysli* : v 5 t. / ruk. nauch. proekta H. Yu. Semyhyna. M. : Mysl, 1999. T. II : Evropa : V–XVII vv. P. 193–199.
3. Avhustyn Blazhennyi. *Tvorenyia* [Creations] / Avhustyn Blazhennyi / sost. S. Y. Eremeevna : v 4 t. SPb. : Aleteiia; K. : UTsYMM-Press, 2000. T. 1. 742 p.
4. Akvynskiy Foma. *Summa teolohyi* [Summa theology] / Akvynskiy Foma : v 4 ch. : per. s lat. S. Eremeeva, A. Yudyna. K. : Nyka-tsentr, SPb.: Aleteia, 2006. Ch. 1. 560 p.
5. Pavlenko O. *Tsyvilizatsiia* [Political Encyclopedia] // *Politychna entsyklopediia / redkol.:* Yu. Levenets (holova), Yu. Shapoval (zast. holovy) ta in. K. : Parlamentske vydavnytstvo, 2011. P. 770.
6. *Mify ta folklore* [Myths and folklore] // *Mechkovska N. B. Mova ta relihii. Lektsii z filolohii ta istorii relihii.* M.: Vydavnychiy dim: Ahentstvo “Fair”, 1998. 352 p; *Mify narodiv svitu: U 2 T. M., 1987–1988. T. 2. P. 300.*
7. Sodomora A. (pereklad), 1982 *Dzherelo* [Horace]: Horatsii. Tvory. K.: Dnipro, 1982. E-Text: Biblioteka “Nova Doba”; Redahuvannia: Aeries (ae-lib.by.ru), 2004.

*Дата надходження: 10.01.2022 р.*

**Михайло Кельман**

Національний університет “Львівська політехніка”,  
Навчально-науковий інститут права, психології та інноваційної освіти,  
д-р юрид. наук, проф. кафедри теорії права та конституціоналізму

**Тетяна Сивуля**

Університет Короля Данила,  
аспірантка першого курсу  
м. Івано-Франківськ

## **РЕЛІГІЯ І ПРАВО: ВЗАЄМОВПЛИВ І ВЗАЄМОЗВ'ЯЗОК**

### **Частина перша**

Стаття присвячена визнанням неможливості зникнення феномену релігійності у суспільстві та очевидним фактам впливу релігії на процеси становлення й розвитку права. Аналіз багатьох історичних джерел дає переконливо твердити, що саме релігія є насправді духовною колискою права.

Обгунтовано, що для ініціювання правового спілкування необхідні три речі: знання права (інтелектуальний елемент), діяльність (вольовий елемент), і – поза сумнівом – свідомість (духовний елемент). Зрештою, тільки духовне ідентифікує два перші.

Тільки духовна складова наповнює “юридичним світлом”, змістом, метою, духом закону, правовим зв'язком, гарантує їх від перетворення у кращому випадку на формальну схему, у гіршому – на кримінально правовий хаос, а саме право – не право.

**Ключові слова:** Бог, віра, релігія, право, суспільство, розум, справедливість, закон.