

Religion – a Significant Factor in Law-Making and Law Enforcement Processes

Mykhailo S. Kelman*, Rostyslav M. Kelman

Lviv Polytechnic National University
79000, 12 Stepan Bandera Str., Lviv, Ukraine

Abstract. The relevance of this study is conditioned upon the fact that scientific papers have almost no attempts to theoretically develop the correlation between religion and law. Legal scholars ignore the forms of influence of religion on law-making and law enforcement activities. Available research in this area is often fragmentary. The purpose of this study was to prove the relationship between religion and law based on modern legal understanding of the main principles, to clarify the role of religion in the legal sphere. The philosophical and methodological framework of this study involved the principle of pluralism in the choice of methodological approaches, methods, and techniques because they form the foundation of the scientific and cognitive process, ensure unity and purposefulness in the study of common features of religion and law in the law-making and law enforcement procedure, such as ritualism, tradition, authority, and universality. It is argued that in modern society, religious values, albeit losing their former meaning of the "sacred image" of the world, and even if Christian principles do not have a direct impact on the legal system, still play a considerable role in legal life because European legal culture was created under the influence of Christianity, a Christian view of the world. Modern European legal systems operate in a social system that has absorbed Christian religious values. This study is aimed at further development of the general theory of law, expanding the knowledge about the correlation between religion and law in the system of social regulation, improvement of legislation. The results obtained can be used in the field of law-making and law enforcement, for the preparation of textbooks, manuals, for lawyers, philosophers, sociologists, and all those who are not indifferent to the development of legal awareness

Keywords: God, law, human, norm, society, reason, justice, law, politics, state

Introduction

An attempt is made to draw attention to the historical, legal, and socio-political discourse that has existed for several decades to clarify the essential grounds for the correlation between law and religion in the context of existing mutual influences, interdependencies, and interrelations between these social phenomena.

Noting that the purpose of her research "is to determine the influence of the religious factor on state-building processes", H. Yermakova, the author of the respective publication, quite rightly states: "Religious norms in many ways influence the behaviour of individuals, their inner convictions, and therefore, the system of principles and values, which determines their existence as a whole" [1, p. 19]. Emphasising the importance of the "religious dimension and view of the development of the state", the scientist limits themselves only to the need to guarantee religious rights".

Thematically and problematically, the article of H. Yermakova "echoes" the work of O. Lvova, presented in a solid collective monograph and covering the problems of implementing human and civil rights and freedoms in Ukraine, the general revision of which was carried out by well-known scientists, professors N. Onishchenko and O. Zaichuk. Analysing the fundamental interaction of law and religion, the author, among other things, emphasises several fundamentally

important points, namely the fact that in ancient prehistoric times religious beliefs gave rise to law, later religion was in close contact with jurisprudence, and had a beneficial effect on it. It is appropriate to state in general both the emergence and the stages of development, flourishing, rise, decline, and the general direction from the corresponding strict forms and procedures to more humane and soft ones, all this was inherent in that correlation [2, p. 313-320]. Consideration of this problem, as Yu. Payda notes, is associated with understanding many processes of not only domestic, but also world history, as well as the history of religion. This refers to a purely scientific interest, since in the context of methodological pluralisation of modern legal science, overcoming ideological monism and attracting the experience of foreign legal scientists, the task arises to review the key issues of the place of law in the system of social regulation. This is especially true for the influence of religion on the establishment and development of law, since the last Soviet science, which was based on Marxist philosophy and the sociology of religion, assigned the religion a conservative, negative role in the complex of normative regulation of society [3, p. 11].

In this context, one should also mention the article by N. Arabadji, which is small in volume but pretentious in title. It is difficult to even imagine how the author, despite the "conditions of transformation of state-religious relations"

Suggested Citation

Article's History: Received: 13.03.2022 Revised: 14.04.2022 Accepted: 15.05.2022

Kelman M.S., & Kelman R.M. (2022). Religion – a Significant Factor in Law-Making and Law Enforcement Processes. *Social and Legal Studios*, 5(2), 77-85.

*Corresponding author

(this refers to year 2021) and what is meant is a mystery), could solve the task set for himself – to cover “the influence of Christianity on the legal system of Ukraine” [4, p. 102].

In his study, M. Kelman notes that having given way to the so-called secular written law, religious norms in many countries continue to be applied on an equal basis with other social norms to regulate public relations and even resist legal norms formulated by the state [5, p. 108-109].

The purpose of this study was to attract the scientific interest of legal scholars to the problems of clarifying the influences on law-making and law enforcement processes, on the multidimensional interrelations and interdependencies of two prominent social phenomena (religion and law) in the context of the formation of modern foundations of legal understanding.

Therefore, there is now a need for a conceptual, based on modern methodology, interdisciplinary study of the mutual influence of religion and law in the legal genesis as specific factors of social-normative regulation in human society.

Religion is the Spiritual Cradle of Law

For many decades, there were beliefs in the vital sphere that the economic component is at the heart of everything, and most people against their will tried to consider the conflict of industrial forces and industrial relations, the interests of classes and their antagonistic struggle. It is difficult for a modern person living in conditions of secularised societies and a monopoly of materialistic views to imagine the existence of other social atmospheres, to perceive the obvious fact of the determining influences of religion on the establishment and development of law.

The examples of ancient culture convincingly show that religion is the spiritual cradle of law. For credibility, it is enough to ask a few simple questions and answer them impartially. Thus:

Who were the first lawyers? – Priests.

Where did the law originate? – In sanctuary temples.

From whom did the law get its generic name? “From the Supreme God of the Romans.

What does the sanction mean? – The sacred punishment of the gods.

Where do legal procedures come from? – From worship, from religious rites.

What is the most shameful crime? – Blasphemy.

What is a court oath essentially? – An oath to the deity.

What is the meaning of punishment? – A spiritual and moral purification [5, p. 108].

The principles and ethical categories formed in the bosom of faith, after a certain time, became in demand in public communities, or even in societies. Only those who did not want to admit it remained on the sidelines, and such, as the ancients noted, had a disappointing fate; to see in the basis of law a common one for all peoples is the highest religious principle. Not only the birth, but also the rise of law in antiquity, its decline and oblivion of institutions and state structure, as historically recorded, was intricately connected with the flourishing or crisis of religious polytheism. The destruction of ancient political and state-legal forms of life, the materialistic tradition is caused exclusively by the labour of slaves, which is why labour has become considered shameful for a free person [5, p. 109].

Here it is appropriate to note: firstly, it is not clear why it took hundreds of years for this to happen; secondly,

“shameful labour” is no longer an economic category, but an evaluative, psychological one; thirdly, the change of government, the structure of the state, positive legislation, and legal ideology invariably occurred under the same slave-owning mode of production. In this context, several circumstances should be pointed out, that, in Livy’s words, are “as old as they are well known”, which led to the fall of Rome. This refers to the moral degeneration, degradation of the patrician, whose hearts were taken over by idols of adored personas, material savings. The decline of the spiritual origins of human existence, God-given moral foundations ensured the triumph of destructive forces and the decline of ancient legal culture [5, p. 109].

Although Roman law formed in the ancient era was traditionally considered as the most perfect type of law, which was based on private property, this belief acquired axiomatic recognition in the epochs to follow. However, this shows at least that it was closely investigated by those who devoted themselves to law for more than a millennium. If one uses Descartes’ advice and considers the problem in a natural sense, then they can easily see ancient religion in the real foundations of Roman law, which to a certain extent guaranteed the generally recognised perfection. One can mention more than one legal system – Sumerians, Hindus, Egyptians, who built institutions of private property, and left Roman law far behind. However, the civilisational choice was for other systems, where the power of a new religion – Christianity – was established and gained power.

The original Italian philosopher Giambattista Vico, who studied the genealogy of legal concepts, directly connects law with natural phenomena. Thus, he derives the legal term “lex” (law) from the word “ilex” (holly, stone oak). Even before the advent of writing, “lex” corresponded to the assembly of citizens, i.e., the public parliament, since the presence of the people, i.e., the “assembly”, the agreed will and gave force to the contract, the will, was law. “Lex” was used to select letters and compose words and phrases from them (Legeze – to read) [2, p. 315].

The integrating influence of religion, its cementing influence on society, does not mean that everything freezes into a certain monolith. One way or another, the Roman Pantheon grew. Titus Livy indicated the existence of heavenly, earthly, underground gods [6, p. 18].

Established relations with the gods are good, but they were established not at the expense of relatives. For instance, a respectful father becomes a god to his sons. Every Roman citizen was immensely proud of the realisation of their indissoluble connection (religion in Latin – connection) with their family, kin, whose life was in continuous service to the state. There was a general belief that the dead influence the affairs of the living, avenge their disregard for established rules and customs. Therewith, a certain “sound” aspect, an echo, is obvious. The intensity of the dialogue, the prominent degree of tension that was inherent in the ancient language environment, did not decrease either in the conversations of living people, or in conversations with the gods, or with the souls of the dead, regardless of any external circumstances [6, p. 21].

It is worth mentioning another invention of the Ancients – the epitaph (translated from Greek – tombstone). The type of epitaph inherent in European culture was borrowed and developed in antiquity. In this way, not only the connection with the cult of the dead and care for posthumous glory,

as is usually thought, was recorded, but a visual-acoustic dialogue [6, p. 22]. Prolonged inertia, which considered only centred forces in the form of class antagonisms, does not answer the question of why Rome – the world's hope – surprised and delighted all peoples for more than a thousand years, despite the pressure of external and internal factors! This means that both real (and not far-fetched) and powerful centripetal forces were involved, which united society. These forces are religious (“relegire” means “to bind”). This refers to the unity of each believer with a higher being. At the same time, religion unites all believers among themselves.

Society was permeated by religious ties both horizontally and vertically (up to the Olympians, and down to the realm of Shadows). The social part was so firmly permeated by these connections that it successfully resisted external and internal disturbances. The cementing influence of religion was felt not only at the top, but also in particular, individual cases. In his monograph “Establishment and functioning of state institutions and Vatican law”, B.I. Gutiv emphasises the term “cult”, and this is no accident. It reflects the essential necessary practice of worship, the historical ancient religion of “cult” as an external expression of religious worship, the sacrament, as the existing and conscious side of deity worship. No matter how ironic people are about this phenomenon, it is impossible not to recognise that it hides a crucial process of cultural formation [7, p. 77].

The Russian Orthodox theologian Father Pavlo Florensky built the corresponding value series: “cult” – “culture” – “civilization”, emphasising the importance of religious worship as the foundation of culture, one of the manifestations of which is technical civilisation. It is apparent that a cult generates a culture, both material and spiritual. And in turn causes civilisation – not only in the sense of everyday, home comfort, but also, which is very influential in this case, the unwritten state-legal sphere of knowledge [3, p. 68].

Civilisation is such a stage of human development, when one's own social ties begin to dominate over natural ones, and when society begins to develop and function on its soil. The term “civilisation” (from the Latin *civilis* – public, social, state, civil) was introduced into the scientific dictionary by the French educator Honore Gabriel Mirabeau in 1756. By this definition, the French enlighteners meant a society based on the principles of reason and justice [8, p. 19]. Naturally, from the cult comes the significant *jus civile* – civil law, political rights, the entire legal culture, including legal practice and legal consciousness. A single faith and God, their common cult, an understandable language and customs prepared the ground for economy and trade, and not vice versa. The high image of religion also supported the impeccable state and social legal order and ensured victories in the wars of Rome. Regardless of the universal penetration into the everyday life and activities of the state, religion did not become, relatively speaking, a factor in totalitarian “tightening the nuts”.

The ancient religion, as it were, having worked up its resources, did not abuse people's trust, actively passed the baton on to future generations. Several factors contributed to this. For centuries of existence, there has not been a politically powerful caste of priests. The economic potential did not become significant, as churches were forbidden to donate and bequeath land. 276 pontiffs combined the development of theology and only a part (a small part) were engaged in law. Practical Romans believed that it was necessary to do business. The general opinion was expressed

by Fabius Quintilian: “Practice without theory is more valuable than theory without practice”. Behind all this, as we can see, a well-thought-out, well-coordinated dogma did not work out. Cicero, who was an augur himself, expressed great doubts about the existence of gods in his treatises “On the Nature of the Gods” and “On Divination”. This position of Cicero the Philosopher is denied by Cicero the Politician and Lawyer in the dialogue “On the Laws”, considering faith in the gods and all religious instructions of the ancestors mandatory. And this is quite demonstrative [4, p. 54].

The ethical virtues that the Romans deified in ancient times “passed away” to the world of people, to their social relations, to a considerable extent to legal communication. Ethics were dictated not by religion, but by law, regulations, the needs of serving the state, the needs of the entire people. The people, society, and state awarded the worthy with well-deserved honours, punished and branded with contempt those who forgot their duty, sinned, and broke the law. The priority of the social, public over the religious is stated by Varro: “At the end of the Republic, the weak generation of the “spear-bearing” Quirin – Romulus” [9, p. 234].

The people, therewith, remain loyal to the gods, but not to the official ones, but to the gods of the earth, crafts: Hercules, Sylvan, Feronia, and others. They were expected to intercede for life and reward after death. The belief in the immortality of the soul and its grave fate as a result of virtuous behaviour during life becomes common. Immediately before the advent of Christianity, against the background of the decline of the official cult, the attraction to the only almighty God, who has not been seen so far and who stands above the earthly rulers, but is closer to the “little man” – is no longer a member of some community, but acts individually as an attraction, as an example for human imitation and at the same time as God, who made a sacrifice for the salvation of people. This prepared a victory for Christianity.

Undoubtedly, radical ideologues, no matter how authoritative, cannot cross out religion in one fell swoop. Ironically, Marxism itself turned into a false theory and pseudocult (the crusade – demonstration of freedom, cathedrals – congresses, icons – portraits of leaders, the Red Corner – Lenin's room, etc.). The catechetical method without evidence and discussion became dominant: “Marx's teaching is all-powerful because it is correct”, “Matter is primary, consciousness is secondary”, “The Party is the mind, honour, and conscience of our era”, etc. At the end of the first section, the author of this paper notes that the specific features of religious life, which accompanied the historical life of people, determine all the moral searches of the individual associated with a certain type of culture, all the differences of the national nature, and even more so the principles, connections, relations, states, established by law. This was the gracious influence of religion on the genesis of “sounding jurisprudence” of nascent law in ancient Rome [10, p. 66].

Archetypes of Religion as a Way to Influence the Economy, Politics, Morality, and Law

Thus, the author tried to substantiate that religion not only gave the name to law, but also in the beginning supported its existence in every conceivable way. It received the name *jus* from Jupiter. The highest deity in the pantheon of the Romans was called right, sanctified by his authority, and predicted a long and glorious destiny. Respect for the right of the “child” of Jupiter comes from respect for the “father” [11, p. 115].

Religion had its own right as the command of heaven, the gods. Being an obvious right, law existed apart from human rights.

At first, law acted as a regulator of life relations in that sphere, which the gods left to the discretion of people. Subsequently, law acquires a complex understanding and is used in the sense of a system of religious norms about what the gods allow people to do, rather than the prescriptions of legal norms. In Cicero, one can also find the interpretation of law as a natural law, a higher convention. Notably, legally significant actions took place in solemn circumstances in front of the crowd. The religious cult inculcated and educated people to respect the law, respectful attitude towards it [12, p. 31-108].

Sacred law is an entire complex of legal principles and institutions related to Roman law. All this taught people to value law, strengthened legal culture, and raised legal awareness. Religion trained people not only to appropriate actions, but also to the place of performance of legal actions, which was to be consecrated – a temple, and not just some place devoid of holiness.

Religion, even the most primitive, performed a vital task – it united the scattered tribes, provided an opportunity to form a legal space, meet the prerequisites of a single market and economic sphere, and gave impetus to the development of national culture. Religion is the psychological and spiritual basis of procedures, actions, rules, and norms that regulate these sacred actions. Religion was understood as virtue in the performance of assigned duties, as conscience, even doubts, corresponding mental trepidation, i.e., inner work, moral struggle, which is inherent in humans. As noted by Prof. Yu. Oborotov, not relaxation, but the tension of the soul, moral efforts – without which one cannot engage in socially significant matters in the field of law, turn to the gods [10, p. 78].

Considering the influence of religion on the genesis and development of law, the religious cult fits clearly into the general topic of research. The entire ritual side of religion is an entirely oral procedure, it is linguistic communication. Without any irony, the authors of this study state that the ancient law was also a song. Then, being still oral, it followed the path of prosaism and formalisation. And oral creativity degenerated into parody, incantation, conjuration, into magic, which was punished as a crime already according to the Laws of the XII Tables [13, p. 317].

In antiquity, the slave-owning method of production, private ownership of its means, including the slave, remained unchanged, which was established by law, although the processes of its creation and improvement led to rapid changes. The connection between law and politics begins and expands.

Politics was also born in the era of antiquity and preceded law, but, despite the proximity, the internal rejection turned out to be stronger. The incompatibility of law and politics manifested itself in the destinies of people (Socrates, Cicero), states (Ancient polis). It is also obvious in theory [14, p. 208, 300].

Plato and Aristotle wrote about politics, but, despite much in common, law could not arise from politics. However, politics affects the law. It is already clear from the example of antiquity that the sphere of politics and political interests is much wider, it was established under the influence of several factors, goes beyond national borders, and becomes foreign policy. The sphere of law is narrower, law

itself establishes the limits of its activity, national law does not go beyond the territory of its state.

The goal of politics is state power, the establishment of relations of domination and subordination. The purpose of law is to regulate normal life relations. In politics, the end justifies the means, in politics there are agreements and intrigues, secrets, intrigues, and games. It has its own scenes, clans and leaders, symbols, its own dictionary and lexicon, which is not completely understandable for the uninitiated. Politics loves spectacle, advertising, pomp. Law allows only legal means, law is open, understandable to people, with clarity and unequivocal understanding, law is its principle, law deals with an individual case, a particular person. Politics points to political values, unattainable ideals, having neither opportunities, nor forces, nor means to implement them. It tries to achieve unimaginable goals that can never be achieved [15, p. 215-226].

Over time, the differences that characterised each of these social phenomena became increasingly clear. One of these differences was that politics is characterised by pluralism of ideologies, changes in party programmes, etc. The right exists in a single copy, it is unique and unrepeatable, one at a particular time and in a particular country. Even in the period of its formation, “oral law” made attempts to unify and unanimity. A political image, opinion, statement, and mood are important for politics. It interprets political priorities, mass participation, legitimacy. In law, from the very beginning, only actions are important, their compliance or non-compliance with legal norms, it reflects on legality.

For politics, general principles are important, not norms, i.e., general quantitative and qualitative guidelines that universally regulate political life. Law, on a level with principles, operates with specific and mandatory norms that regulate typical life situations, including those inherent in politics – norms of electoral law, norms of representation, etc. Organisations that are not registered by the state, illegal, and shadow structures that have a substantial influence on politics than the parties represented in the parliament can take part in political activity.

Law does not know and should not know anything illegal, anything unlawful. Various participants are involved in political relations: chiefs, leaders, managers, power holders, performers of various levels, party masses, dissidents, migrants, etc.

Democratic law: everyone is equal before the law – both the highest head of state and the average citizen. Political activity is fundamentally less formal, but also less guaranteed. The law is formalised much more, but to the same extent and more guaranteed. Instead, politics divides society, distinguishing in it parties, factions, elites, pressure groups, etc., as well as the political centre and periphery.

Again, law unites society, subjecting all its members to the same requirements because a single law applies throughout the entire territory of the state. Non-compliance with political norms requires (although not always) an undefined reaction of the party leadership (organisations, moral condemnation, etc.). In law, there is a clear reaction (sanction) to illegal behaviour, to violation of legal norms. The most difficult cases and stages of political activity are regulated by law, have a legal assessment, legal guarantees, etc. There are attempts to free the sphere of law from the influence of politics, party ideological programmes, and class positions. The law is the same for all parties [16, p. 21-51].

Entirely distinct factors and arguments paint a picture of the correlation between religion and law. The author of this paper repeatedly emphasises that ancient law – and this is the uniqueness of the situation – was influenced by the benevolent influences of both primitive pagan and Christian religions. The first gave it concrete legal material, the second strengthened it conceptually and spiritually, instead the “light of law” appeared as a reflection of the light of Christ. Thus, Christianity itself as a new religion, born during the heyday of the early Roman Empire more than two millennia ago: having endured incredibly difficult trials at the beginning of its establishment in the first three centuries, influenced the law with its religious-mystical, philosophical, and emotional-ethical visions. This interaction of this religion with the law acquired a particularly decisive influence after the epoch-making historical events of 313, when Emperor Constantine passed the so-called The “Edict of Milan”, according to which Christianity was legalised in the majority of the Roman Empire, and in 321, according to the decree of the same ruler, the Christian Church factually became (according to our modern concept) a legal entity, got the opportunity to own property and dispose of it. Thus, the church began to actively solve not only its own, but also a certain part of social problems legally, and this was done democratically, by holding special meetings of a wide representation of believers – Councils. The first such was the ecumenical one in 325 in Nicaea.

In the early Middle Ages (from 387 to 787), seven Ecumenical Councils were held, at each of which not only documents related primarily to internal church matters, dogmatics, and ritualism, but also acts that dealt with legal issues were developed and adopted [17, p. 34-35]. It was these acts that became the source base for the formation of canon law, which O. Voloshchenko quite justifiably considers a separate system of law [18, p. 52-56]. Thus, with this fact, there is another confirmation of the religious order in law-making processes. And this is a reason for further thinking.

Any evil, committed by free people out of necessity, is a parasite living on the body of good, and it needs to find justification for itself, to appear dressed in the clothes of good, and often – the greatest good. It is no accident that the most authoritative scientific thinkers of antiquity – Socrates, Plato, Aristotle – take ethical positions, studying power, politics, the state, and law from the standpoint of integrity. Both religion and law are aimed at correcting injustice and social evil. But the law focuses more on the external conditions of existence, dictated by various socio-political institutions, concerned with the intersection of the activity of a particular bearer of evil. Religion turns more to the middle, believing that without Christ, without his Truth, any moral search is meaningless. This is also the limitation of law, namely criminology, forensic science, criminal prosecution in the fight against crime, including its most dangerous forms – organised, international, economic, etc. because the fight is waged against particular carriers of evil, and not against evil as a phenomenon [19, p. 21-35].

The Christian religion is based on the fact that the destruction of evil (namely crime) is possible only by overcoming sin in one’s soul with love. Perhaps it is possible to achieve this in the earthly world, but religion accepts this Truth as an ideal. The ideal connects humanity with the Kingdom of Christ, and it is not of this world. The ideal is necessary because it indicates the purpose of human life, which

does not lie in a happy settlement in the material world. The benevolent role of the Christian religion is manifested in the fact that it leads legal science to a greater purpose, promotes growth, and the search for answers to “eternal” questions. The magistrate, the court, and the investigator establish the truth in a particular case. It is often relative. Religion calls to go further – to the truth of the Absolute. Law, juridical practice, civil law relations specify the answer to the great question of humanity: “What is truth?”, but at the same time they lower it to the level of earthly everyday life, deprive it of pride [13, p. 340-368].

Law deals with earthly, concrete truth, limited by questions traditional for a lawyer: “who?”, “what?”, “where?”, “when?”. Law tries to make sense of the purely human, mundane. It is forced to give distorted assessments, dealing with the unearthly, with the crucible of Truth, helps legal science to get rid of its chronic disease – legal relativism. In the case of a lack of need for the Truth, which can only be joined, the soul of a lawyer – “creator” can develop an active beginning of indifference to the Truth, which cannot be invented, created by the efforts of a creative personality. The demiurges of their own legal world could not help but feel proud of the legal material developed. But various principles, norms, legal institutions, entire spheres of legal regulation give rise to the multiplicity and oppositeness of the criteria of truth and the relativity of the truths themselves. This should be constantly thought about when contemplating the essential purpose of such universal social phenomena as law and religion [20, p. 1-8].

Without turning to God, without religion, without the spiritual energy that connects the human soul with the Absolute, there can be no real culture. Everyone is given their own charismatic gift. Creativity by its nature, by its spiritual essence, is a deeply religious act. The maker of law should be aware of this. Culture in its highest manifestations (literature and art, philosophy, theological thought, law) is intricately connected with religion; spirituality and culture are directly dependent on the degree of its religiosity. The bond of true humanity, the “umbilical cord of culture”, in the words of P. Florenskyi, grows from the seed of cult, i.e., from the liturgical and ritual essence of religion [21, p. 156]. This is precisely the spiritual leaven that stimulates legal creativity.

Spirituality is often confused with ethical positive qualities and the intensity of the emotional state. The concept of grace does not exist for such a limited intellectual consciousness, without Grace any talk about spirituality makes no sense. Sober and pragmatic jurists of antiquity, regardless of their status as priests, did not pretend to testify about the world of holiness, but they convincingly mastered a language capable of showing such testimony. Where law is idolised, God is forgotten. The law-making creates the illusion of belonging to the eternity of omnipotence, immortality, the maker in their own creation. Thus, freedom of creativity leads to rejection of the highest Truth [21, p. 158-159].

Ancient lawyers, legislators, those who set norms – each of them considered themselves not only the creator of their world, but also a servant of the Gods who fulfils what was sent from above. From the position of the highest Truth, humanity will not be able to find a new, “original” in any of the genuinely great lawyers. But the legal scientists cannot be confused by this since this “secondary” is such in relation to the Word of God. Roman law is considered the pinnacle of spiritual creativity of the legal elite. Official science gives

it a high rating, emphasising its technical and instrumental excellence. The authority of legal scientists was at a height unattainable compared to all past and even modern states of the world. During the period of the Roman Republic, the career of a lawyer opened the widest opportunities for ambitious people from all levels of society, and for people who did not belong to the senatorial class, it was generally the only possible way to the highest public positions. However, the opinion that Roman private law is “the most perfect type of law” should be understood in a limited way, in a certain sense valid only for the civil law sphere. It is perfect in the sphere of everyday life, in the sphere of mundane individual, selfish interests. In religion, another level is a sacred and spiritual understanding of being (life). Faith, relatively speaking, from the very beginning pulled the right to the top, set a high bar, did not let a person get stuck right away (at the same moment) [22, p. 90-97].

It would not be a mistake to believe that the law was born in the environment of prayer and ascetic understanding, and in the conditions of primitive religion. Lawyers are called creators, initiators of norm- and law-making. But there is also a religious understanding of the Maker. In the world created by creative imagination, it is easy for a lawyer to confuse concepts and realise themselves as a god. Evil begins where a person encloses themselves in their own pride, compares themselves to a deity, and the legislator acts without purifying themselves, does not seek to change the spiritual instruction. The creative gift is a great gift of God, with which a person is endowed according to the intent for the world. This gift of man, like many other benefits, tries to use for self-impersonation, self-aggrandisement, juxtaposition to the Maker. True human creativity can only be manifested in co-creation with God, in energy, the union of two manifestations of will – the Maker and his creation. Out of touch with the Maker, human creativity is hopeless, or even harmful for the world [23, p. 97-99].

There is a danger of becoming a single Maker or a closed caste: legalists cultivate the idea from which Christianity emerged in its time, which accepted the great idea of the Holy Trinity, which is given by the Gospel. The closed nature of creativity hides the danger of tyrannical self-assertion. Christianity realised this danger at once. The lawgiver, who succumbed to the temptation of self-limitation, behaves tyrannically towards his creations: self-asserted in general despotically towards the environment because he needs someone's broken will because it is doubly tempting to overcome the will with an objective regularity. Even primitive religion (mythology) provided a symbolic example of overcoming backward inertia, the heaviness of earthly life, called on a person to rise in spirit

Man was created in the image, in the likeness of God, called to become a guide of Divine actions, to unite the entire world with God. Both religion and law are united in asserting the need for a certain support, especially when the corresponding difficulties arise, trouble comes. People should feel a point of support over the abyss. People need to feel this immovable peace of the shrine over their sufferings and sorrows. This support can be the law [24, p. 122-126].

There are many points of connection, for example: in law – sanction, and in religion – fear of God, trembling before the gaze that sees everything from the height of heaven. But this is not an ordinary human fear, but a painful feeling of one's insignificant compliance with the requirements and

expectations of the Lord. It is not by chance that the Holy Scriptures state: “The fear of the Lord is the beginning of wisdom” [24, Proverbs 1:4]. Here is the prevention of illegal actions, and the best one.

The superhuman content of religion is understood as inviolable, since peace in the Christian tradition is a self-present property of the Creator's super-perfection, as well as the perfection of holiness. Law is inherently conservative, stable. It is “perfect” to the extent that it does not change over an extended period. Universal legislation considers all details and options that satisfy everyone. Religion helps law. Law is a norm of behaviour, everyday life, that which can fulfil, use, accomplish everything.

Religion protects its canon by pointing to an ideal. In religion, the ideal of holiness cannot be embodied in everyone at once, but it happens that a person appears – the bearer of the ideal of holiness, the beacon of Truth, its spiritual fire and helps the desperate to understand that not everything is lost. Common law guarantees us safety, salvation from attacks, all kinds of damage. Faith gives salvation in eternal life. Religions, like law, are characterised by massiveness, universality, and obvious social purposefulness. It does not proceed from a certain presumption that everyone will follow the instructions. Both are against separation and separation, the feeling of enmity between those who make up the national unity, fighting against the “hateful difference of the world.” The idea of the superiority of the common over the individual was a pillar of both religious and legal consciousness. Ancient human culture was aimed at nurturing and supporting the harmonious unity of the surrounding space with the inner space of the person [25, pp. 27-38]. In summary, the author of this paper recognises the undoubted existence of the similarity of the visual-acoustic form of religion and ancient law, their oral culture.

Conclusions

Religion and law are interconnected by the mutual influence of their elements: religious ideology and legal awareness, religious and secular courts, law-making and law-enforcing bodies, religious and legal norms. For instance, religion and the right to moral and ethical ideas, mutual regulation of social relations by legal and religious norms; direct mutual influence of heterogeneous elements of religious and legal systems.

In considering the nature of religion, a “broad” approach is used, which in legal research allows (a) evaluating the Ukrainian legal tradition in the Soviet period in a new way, which cannot be considered devoid of attempts to legitimise law thanks to religious means; (b) reconsidering the role of the religious factor in law-making and law-enforcement processes.

As normative regulators, law and religion arise because of the disintegration of original mononorms, are normative, mostly formalised, have a hierarchical system of sources, organisational and institutional formations, provided with responsibility for violations of their prescriptions (common features). Differences are observed in the spheres of regulation, ways of legitimising norms (heteronomy of law and autonomy of religion), in the structure of norms, linguistic features of sources, subject composition, degree of conflict between subjects, nature of responsibility and functional load.

The influence of religion (or its elements) on law, their interaction is manifested in the religious determination of law-making, the support of legal prescriptions and law

and order in general by religious means, the influence of the church on public-authority institutions, the contradictions that arise between the norms of law and religion. The mechanism for overcoming these contradictions should be based on the primacy of legal prescriptions, which is combined with the legislative creation of conditions for subjects to exercise their religious rights and the prevention of violence against the religious feelings and convictions of believers (while not violating the rights of other persons). The influence of the right to religion is quite limited and is manifested in the reduction of the authoritarianism of the religious worldview, the impossibility of absorption by different creeds of each other, in the regulation of the mechanism and forms of implementation, the limits of the exercise of religious rights, in the preservation and development of legal forms of activity by individual religions.

Forms of religious influence on law-making include (a) sanctioning of religious norms by the state (direct form); (b) promotion of the genesis of new legal norms or inhibition of this process; (c) determination of the evolutionary movement of the legal system as a whole and the development of legal science (mediated forms). The sanctioning of religious norms takes place in two vectors: the transfer into legal re-

ality of norms that directly regulate social relations, and the sanctioning of general principles, bases, and principles that unite separate norms into a single system. With the development of secularisation of law and politics, the amount of sanctioning of religious norms decreases, religious influence acquires mainly indirect forms.

A common element of the entire typology of legal systems are values and principles that are supported by all major religions and protected in most legal systems of the world (life, property, traditional marital relations, established social order, fair public procedures).

To improve the legal regulation of religious relations, it is proposed to introduce changes to the current legislation of Ukraine regarding granting the church the status of a legal entity, detailing the mechanisms for ensuring the exercise of freedom of conscience by military personnel, refugees; as well as ways to improve law-enforcement practices regarding the fulfilment of religious duties by believers (e.g., pilgrimages), ensuring non-interference of churches in political processes.

Therefore, a true real understanding, an understanding of the essence of law, spiritualised and nurtured by religious holiness, can be the general recognition in all legal systems of the countries of the world of the principle of the rule of law.

References

- [1] Yermakova, H.S. (2016). The religious factor and its influence on the consolidation of human rights and freedoms in the legal field of the European Union. *Scientific Bulletin of the International Humanities University. Series: Jurisprudence*, 22, 19-23.
- [2] Lvova, O.L. (2007). Functional interaction of law and religion in the aspect of realization of human rights and freedoms. In N.M. Onishchenko, O.V. Zaychuk (Eds.), *Problems of realization of human and civil rights and freedoms in Ukraine* (pp. 313-320). Kyiv: Yurydychna Dymka.
- [3] Payda, Yu.Yu. (2012). Role of law and religion in the improvement of the mechanism of realization of rights of a person. *Legal Bulletin "Air and Space Law"*, 1, 65-70.
- [4] Arabadji, N. (2021). The influence of Christianity on the legal system of Ukraine in the conditions of transformations of state-religious relations. *Public Law*, 2, 130-136. doi: 10.32782/2306-9082/2021-42-13.
- [5] Kelman, M.S., & Stratonov, V.M. (2020). *General theory of law*. Kherson: OLDI-PLUS.
- [6] Lutskiy, I.M. (2012). Implementation of moral, ethical and religious norms in the basic provisions of the Constitution of Ukraine. *Scientific and Information Bulletin of the Ivano-Frankivsk University of Law named after King Danylo Halytsky*, 6, 17-22.
- [7] Gutiv, B.I. (2021). *Formation and functioning of state institutions and the law of the Vatican*. Lviv: HALYCH-PRESS.
- [8] Vovk, D.O. (2008). *Law and religion* (Doctoral thesis, Yaroslav Mudryi National Law University, Kharkiv, Ukraine).
- [9] The Bible, or the Book of Scripture of the Old and New Testaments. (1993). Kyiv: Ukrainian Bible Society.
- [10] Oborotov, Yu.M. (2003). *Church law in the domestic legal tradition*. Odesa: Jurydychna literatura.
- [11] Golfner, J. (2002). *Cardinal. Christian social teaching*. Lviv: Svichado.
- [12] Fuller, L.L. (1999). *Anatomy of law*. Kyiv: Sfera.
- [13] Pavlenko, O. (2011). Civilization. In Yu. Levenets, Yu. Shapoval et al. (Eds.), *Political Encyclopedia* (p. 770). Kyiv: Parliamentary Publishing House.
- [14] Samokhvalov, V.V. (2000). Legality and justice in antiquity and the Middle Ages. *Constitutional State*, 11, 510-519.
- [15] Quintus Horace Flaccus. (1982). *Works*. Kyiv: Dnipro.
- [16] Turnover, I.G. (2021). Postmodernism and globalization: The religious aspect. In *Private law in the context of globalization: Theoretical and practical aspects* (pp. 22-26). Mykolaiv: Ilion.
- [17] Cicero, M.T. (2020). *About laws. About the state. About the nature of the gods*. Lviv: Apriori.
- [18] Voloshchenko, O.M. (2006). Canon law as a separate system of law. *Journal of Kyiv University of Law*, 2, 52-56.
- [19] Kolodny, A.M. (1999). *The phenomenon of religion*. Kyiv: Svit Znan.
- [20] Kelman, M., Nesprava, M., Tokarska, A., Vovk, V., & Skrypa, Ye. (2020). Ontology of good and evil in the understanding of the great Christian teachers and saints. *Journal of legal, ethical and regulatory issues*, 23(5). Retrieved from <https://www.abacademies.org/articles/ontology-of-good-and-evil-in-the-understanding-of-great-christian-teachers-and-saints-9668.html>.
- [21] Sunegin, S.O. (2017). Law, morality and religion as social regulators: Objective and subjective dimensions. *Constitutional State*, 28, 145-163.
- [22] Kelman, M., Kristinyak, M., Andrusiak, I., Panchenko, S., & Kelman, R. (2021). The influence of the ruling elite on political activity in the conditions of destructuring the essence of the philosophy of law. *WISDOM*, 1(1), 91-97. doi: 10.24234 / wisdom.v1i1.603.
- [23] Kalinin, Y.A., & Kharkovshchenko, E.A. (1994). *Religious studies*. Kyiv: Naukova dumka.
- [24] The Holy Scriptures. (2021). Lviv: Svichado.
- [25] Rechytsky, V.V. (2007). *Symbolic reality and law*. Lviv: VNLT-Classics.

Список використаних джерел

- [1] Єрмакова Г.С. Релігійний фактор і його вплив на закріплення прав і свобод людини в правовому полі Європейського Союзу. *Науковий вісник Міжнародного гуманітарного Університету. Серія: Юриспруденція*. 2016. № 22. С. 19–23.
- [2] Львова О.Л. Функціональна взаємодія права і релігії в аспекті реалізації прав і свобод людини. *Проблеми реалізації прав і свобод людини та громадянина в Україні*: монографія / за ред. Н.М. Оніщенко, О.В. Зайчука. Київ: Юридична думка, 2007. С. 313–320.
- [3] Пайда Ю.Ю. Роль права та релігії в удосконаленнях механізму реалізації прав людини. *Юридичний вісник «Повітряне і космічне право»*. 2012. № 1. С. 65–70.
- [4] Арабаджи Н. Вплив християнства на правову систему України в умовах трансформацій державно-релігійних відносин. *Публічне право*. 2021. № 2(42). С. 130–136. doi: 10.32782/2306-9082/2021-42-13.
- [5] Кельман М.С., Стратонов В.М. Загальна теорія права: підручник. Херсон: ОЛДІ-ПЛЮС, 2020. 742 с.
- [6] Луцький І.М. Втілення морально-етичних і релігійних норм у засадничих положеннях Конституції України. *Науково-інформаційний вісник Івано-Франківського університету права імені Короля Данила Галицького*. 2012. Вип. 6. С. 17–22.
- [7] Гутів Б.І. Становлення та функціонування державних інститутів і права Ватикану: монографія. Львів: ГАЛИЧ-ПРЕС, 2021. 540 с.
- [8] Вовк Д.О. Право і релігія: автореф. дис. ... канд. юрид. наук: 12.00.01 / Національна юридична академія України імені Ярослава Мудрого. Харків, 2008. 20 с.
- [9] Біблія, або Книга Святого Письма Старого й Нового Заповіту. Київ: Українське Біблійне Товариство, 1993. 296 с.
- [10] Оборотов Ю.М. Церковне право у вітчизняній правовій традиції. Одеса: Юридична література, 2003. 82 с.
- [11] Гольфнер Й. Кардинал. Християнське суспільне вчення. Львів: Свічадо, 2002. 304 с.
- [12] Фуллер Л.Л. Анатомія права: наук. вид. / пер. з англ. Н. Комарова. Київ: Сфера, 1999. 144 с.
- [13] Павленко О. Цивілізація. *Політична енциклопедія* / Редкол.: Ю. Левенець, Ю. Шаповал та ін. Київ: Парламентське видавництво, 2011. С. 770.
- [14] Самохвалов В.В. Законність і справедливість в епоху античності і середньовіччя. *Правова держава*. 2000. Вип. 11. С. 510–519.
- [15] Квінт Гораций Флакк. Твори / пер. з лат. А. Содомори. Київ: Дніпро, 1982. 254 с.
- [16] Оборотов І.Г. Постмодерн і глобалізація: релігійний аспект. *Приватне право в умовах глобалізації: теоретичні та практичні аспекти*: збірник наукових праць. Миколаїв: Іліон, 2021. С. 22–26.
- [17] Ціцерон М.Т. Про закони. Про державу. Про природу богів. Львів: Апіорі, 2020. 392 с.
- [18] Волощенко О.М. Канонічне право як окрема система права. *Часопис Київського університету права*. 2006. № 2. С. 52–56.
- [19] Колодний А.М. Феномен релігії. Київ: Світ знань, 1999. 52 с.
- [20] Ontology of good and evil in the understanding of great christian teachers and saints / M. Kelman et al. *Journal of Legal, Ethical and Regulatory Issues*. 2020. Vol. 23, No. 5. URL: <https://www.abacademies.org/articles/ontology-of-good-and-evil-in-the-understanding-of-great-christian-teachers-and-saints-9668.html>.
- [21] Сунегін С.О. Право, мораль і релігія як соціальні регулятори: об'єктивний та суб'єктивний виміри. *Правова держава*. 2017. Вип.28. 2017. С. 145–163.
- [22] The influence of the ruling elite on political activity in the conditions of deconstructing the essence of the philosophy of law / M. Kelman et al. *WISDOM*. 2021. Vol. 1, No. 1. P. 90–97. doi: 10.24234/wisdom.v1i1.603.
- [23] Калінін Ю.А., Харьковщенко Є.А. Релігієзнавство: підручник. Київ: Наукова думка, 1994. 168 с.
- [24] Святе письмо / пер. І. Хоменка. Львів: Свічадо, 2021. 1504 с.
- [25] Речицький В.В. Символічна реальність і право. Львів: ВНТЛ-Класика, 2007. 732 с.

Релігія – вагомий чинник правотворчого і правозастосовного процесів

Михайло Степанович Кельман, Ростислав Михайлович Кельман

Національний університет «Львівська політехніка»
79000, вул. Степана Бандери, 12, м. Львів, Україна

Анотація. Актуальність дослідження зумовлено тим, що в наукових працях майже немає спроб теоретичної розробки співвідношення релігії і права. Поза увагою вчених-правників залишаються форми впливу релігії на правотворчу і правозастосовну діяльність. Наявні дослідження в цій царині досить часто характеризуються фрагментарністю. Метою статті є встановлення на підставі сучасного праворозуміння основних засад співвідношення релігії і права, з'ясування ролі релігії саме в юридичній площині. Філософсько-методологічною основою роботи – використання принципу плюралізму у виборі методологічних підходів, методів та прийомів, бо саме вони становлять фундамент науково-пізнавального процесу, забезпечують єдність та цілеспрямованість під час дослідження спільних рис релігії і права у правотворчому та правозастосовному процесі, як-от: ритуальність, традиційність, авторитетність та універсальність. Стверджується, що в сучасному суспільстві релігійні цінності хоча і втрачають своє минуле значення «священного образу» світу, і навіть якщо християнські засади не мають прямого впливу на правову систему, вони все одно відіграють вагомий роль у правовому житті, тому що європейська правова культура створювалася під впливом християнства, християнського погляду на світ. Сучасні європейські правові системи функціонують у соціальній системі, яка увібрала християнські релігійні цінності. Дослідження спрямоване на подальший розвиток загальної теорії права, поглиблення знань про співвідношення релігії і права в системі суспільного регулювання, вдосконалення законодавства. Отримані результати можуть бути використані у сфері правотворення та правозастосування, для підготовки підручників, навчальних посібників, для правників, філософів, соціологів та всіх небайдужих до справи розвитку правосвідомості

Ключові слова: Бог, право, людина, норма, суспільство, розум, справедливість, закон, політика, держава