

BGD-13 - 13 bis

Joseph Famerée, Pierre Gisel, Hervé Legrand (Eds.)

Évangile, moralité et lois civiles  
Gospel, Morality, and Civil Law

# CHRISTIANITY AND HISTORY

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# Évangile, moralité et lois civiles Gospel, Morality, and Civil Law

Proceedings of the Colloquia  
at Bologna (2012) and Klingenthal (2014)  
Académie internationale des sciences religieuses

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Illustration de la couverture:

Kim Davis, fonctionnaire du Kentucky (États-Unis), a invoqué la liberté religieuse pour refuser de délivrer des licences de mariage à des couples de même sexe. Elle est célébrée ici, le 8 septembre 2015, à sa sortie de prison, lors d'un meeting organisé par un représentant de la Droite chrétienne, le pasteur baptiste et candidat aux primaires républicaines, Mike Huckabee ([www.abc.net.au](http://www.abc.net.au)).

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## ABSTRACTS<sup>1</sup>

SVEND ANDERSEN, *Martin Luther and the Two-Kingdoms Doctrine.*

The author focuses on the theme of the Two-Kingdoms (*Zwei Reiche Lehre*), which is both central and controversial (the controversy having been stirred up afresh in the face of the reality of Nazism). This doctrine differs from the simple medieval opposition between the Spiritual and the Temporal in that it envisages two distinct *orders* (*Regiment*) rather than two geographical spaces (*Reich*). One order refers to the Gospel (God's justification) and the other to God's creation and the providence of God that sustains it. They are two heterogeneous orders but they intersect in the same space within the world. Moreover, even if the Gospel doesn't imply a fully political perspective, it nevertheless leads on to a practice, based on a fundamental reciprocity, whereby the other is recognized. The project is developed on the basis of a review of the *Wirkungsgeschichte* of the Two-Kingdoms Doctrine and ends by sketching what Rawls' theory of political liberalism might offer as an equivalent.

MAURICE BORRMANS, *Ethics, Divine Law and Civil Laws in Islamic Countries.*

Ethics in Islam is essentially based on the Quran (its moral teaching and its legal verses) and the Sunnah (the sayings and deeds of Muhammad contained therein which have exemplary value) within the framework of the customs of the Arabs of that time (the seventh century). It has all been synthesized in the *sharī'a* or Divine law which embraces creed, worship, human transactions and socio-political power. Islamic law (*fiqh*) has specified its principles and applications through a variety of schools of canonists, both Sunni and Shiite. This explains the extremely standoffish reception that Islamic states have made to the Universal Declaration of Human Rights (1948), which was considered to be of Judeo-Christian inspiration, even though their civil laws took western models, whilst they retained their

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<sup>1</sup> Pierre Gisel remercie Nicholas Sagovsky de son aide pour la mise au point des versions anglaises de ces abstracts.



religious requirements in terms of family and punitive rights. Hence the current conflicts of interpretation and application, whilst the *sharī'a* is still considered to be perfect and so immutable.

MAURICE BORRMANS, *Sharī'a and Civil Law in Cohabitation : Tensions or Conflicts ?*

Mohamed Haddad (*Le réformisme musulman : une histoire critique*, 2013), Hamadi Redissi (*La tragédie de l'islam moderne*, 2011) and Yadh Ben Achour (*La deuxième Fâtiha. L'Islam et la pensée des droits de l'homme*, 2011), are used to demonstrate the omnipresence of *sharī'a* in Muslim consciousness and Islamic public opinion. Hence the importance of the debate about its application in the current socio-political context of Muslim countries after the so-called « Arab Spring » (2011), especially in the case of Egypt and Tunisia. The question then arises : Which *sharī'a* for which Muslims ? A « hard » *sharī'a* (based on Quranic law) or a « soft » *sharī'a* (based on lifestyle) ? Analysis of the recent Egyptian and Tunisian constitutions (2014) shows that in stating the necessary distinctions required by the civil State (*Dawla Madaniyya*) there is little or no claim to *sharī'a*, while in Mecca people continue to exalt its merits and excellence.

LOUIS-LÉON CHRISTIANS, *Religious Normes and Human Rights Case Law in Europe*.

The status of religious norms in the jurisprudence of the European Court of Human Rights appears to differ, depending upon whether the religious norm concerns speech alone or practical implementation. On the one hand, speech promoting « religious expansion » will be treated with a high degree of protection only if it constitutes a (non abusive) *religious* proselytizing, but it will be resisted in any specific context of *political* domination. Between these two extremes, the status of language which contains « moral dissonance » remains a stunning example of legal uncertainty. When it is a matter of demanding the right to implement a religious rule, European jurisprudence fixes its level of protection according to the centrality and necessity of this norm to the practice of the religion. In relation to the protection of collective autonomy, individual autonomy continues to be given primacy, although the development of defence rights challenges the parties to be more explicit about religious content, even though the judge cannot personally become involved in these arguments.

PIERRE GISEL, *Christianity at the Horizon of Civil Society. Differences, Tensions and Type of Articulation between the Gospel, Morality and Civil Law.*

The Gospel (here meaning, religious authority), morality and civil law represent three orders of reality and of differential regulation, whose principles and purposes are heterogeneous. It is therefore necessary to consider what is specifically involved in each case and how they may be engaged in a differentiated practice, without any unifying synthesis, and without any relation of dependence. This contribution sketches this for each of the orders in view and suggests with respect to the relation of one to the other, not integration but compatibility, and even a type of cross-reference that is indirect but necessary. Behind this reflexion lies a Christianity that is constitutively thought of as at the horizon of the world, as well as a God that is fundamentally displaced from it.

PIERRE GISEL, *Introduction. How is Religious Authority Articulated in the Common Laws of Human Life ?*

This introduction to the second part of the volume focuses on the challenges and temptations of the contemporary world. It considers first the phenomena of religious radicalism in Islam and Christianity. It then enquires about the ways in which Christianity accommodates itself to today's secular society, with its ambiguities and its presuppositions, which are not always recognized. The motif of « natural law », its relevance and its modes of appearance, is also examined. This introduction finishes by reflecting on the status attributed to the Gospel when it takes the form of religious authority: is it a new law or something other than law ?

PHILIPPE GONZALEZ, *The Manhattan Declaration, or "the Ecumenism of the Trenches". Conservative Catholics and Evangelicals in the American Christian Right.*

In 1994, Richard Neuhaus and Charles Colson launched an official ecumenical dialogue, *Evangelicals and Catholics Together*. This « ecumenism of the trenches » aims to mobilize believers around a conservative moral agenda and to gather them around the Christian Right. This contribution focuses on one of the most recent initiatives of this « ecumenism », the Manhattan Declaration, drafted in 2009. This declaration calls for « civil disobedience » against the American government in the name of « natural law », for the Obama administration would imperil « religious liberty » with the mandate for contraception in the Affordable Care Act (Obamacare), and its sympathy for the enactment of same-sex marriage by the various States of the USA.

STUART GEORGE HALL, *Gospel, Morality and Civil Law in the Codex Theodosianus.*

After an outline of the textual basis, there is an explanation of the legal, political and religious motives for the generation of the Theodosian Code. Law is grounded in the divine appointment of the Emperors. The relation of this to ecclesiastical law, especially episcopal jurisdiction, is also discussed. A series of topics in illustration of moral issues is then considered: marriage and divorce, homosexuality, infanticide, theatre, capital punishment, slavery, torture. There is a brief conclusion relating the historical findings to contemporary issues.

STUART GEORGE HALL, *Gospel, Morality and Civil Law in the Anglican Crisis.*

The difficulties facing the Anglican Communion at the time of writing are described, with some indication of where contemporary information may be further acquired. At the Reformation the King was declared supreme, but after 1661 Parliament in practice has directed the Monarch. In the 19<sup>th</sup> century, the ancient Convocations were reconvened for governing Church law, followed by the enactment of lay participation and Synodical Government. The Provinces of the Anglican Communion are independent, but seek to work together. Its unity is currently threatened by schisms, especially about the ordination of women and homosexual practice.

FREDERICK LAURITZEN, *Symphonia in the Byzantine Empire. An Ecclesiastical Problem.*

*Symphonia* is a well-known concept referring to the collaboration between Church and State in Byzantium, but it is a relatively rare term in byzantine texts. The secular authority was considered responsible for human activity and therefore had a say in the practical administration of the Church. Moreover, the patriarch took important decisions together with the council over which he presided (the permanent synod). The emperor issued decrees without consultation in virtue of his role as living law. This asymmetry was normal in the Byzantine Empire and demonstrates how collaboration on equal terms was an ideal for the Church, but not the State.

FREDERICK LAURITZEN, « *The Constantinian Moment* » for the Individual and Society.

The unification of Gospel, Morality and Civil law is characteristic of the Byzantine Empire first established by the Emperor Constantine in the fourth century. His choice of combining law and morality continued to define the Byzantine Empire and left an indelible trace in Christianity. Such a choice also provoked

a lively debate on the relation between law and norm throughout the existence of the empire. Moreover, it established the practice of double punishment : retribution for a sin during one's lifetime, defined by laws and canons, and in the afterlife by divine judgement. For the Byzantines, both ecclesiastical norm and civil law derived from God and therefore natural law has a limited space and interest for society. Some of these historical explanations indicate ideas addressed by the Ecumenical Patriarch at the Holy Sepulchre in May 2014.

HERVÉ LEGRAND, *Introduction. The Interrelation between the Proclamation of the Gospel, Morality and Civil Law in the Post-Constantinian Era.*

Due to multiculturalism and religious pluralism, western States now see themselves as religiously neutral. The EU's refusal to acknowledge the Christian heritage of Europe is symptomatic of this situation, in which normative Christian moral discourse addressed to legislative bodies is barely received and can even hinder the proclamation of the Gospel. The interplay between the Gospel, morality and civil law, a legacy from the Constantinian era, must be thought through afresh. We must grant due recognition to the distinctiveness of each of the three fields, as well as to the interrelationships that may develop between them.

VASILIOS N. MAKRIDES, *Morality, Civil Law and Religion in Contemporary Greece. The Asymmetric Accommodationism of the Orthodox Church.*

This paper looks at the case of Greece, a predominantly Orthodox Christian country and member-State of the European Union, and more specifically at the relations between Orthodoxy, morality, and civil law. Greece underwent significant changes during recent decades in an attempt to some extent to secularize society. This development included new, secularizing State legislation, which sometimes led to strong tensions and conflicts between Church and State. However, the Church was forced in the end to accept the new situation and, vis-à-vis these changes, forged a particular strategy which can aptly be termed « asymmetric accommodationism ». This signifies, on the one hand, that the Church chooses to accommodate itself to the new situation out of different considerations. This accommodation process, on the other hand, is never complete, because in theory and in principle the Church cannot fully accept the legitimacy of the new, secularly influenced legislation. The above asymmetry reflects the broader problems that the Orthodox world as a whole still has with the secular order brought about by West European modernity. It is about a very broad domain in which the differences between Orthodox and Western Christianity also become conspicuous.

JEAN-MICHEL MALDAMÉ, *The « Natural Law » in the Era of Genetics.*

This article is written in an epistemological style. It acknowledges scientific method and notes the new era in the study of life that came about with genetics (the status of the random, teleological norms and the relevance of the concept of genetic programming). If the « natural law » of the catholic theologians should not be confused with a law of nature understood according to scientific criteria, the new vision of life changes the reference of the identity of « human nature ». The author invites us to consider its plasticity and celebrates human freedom and human responsibility.

JEAN-MICHEL MALDAMÉ, *The Relevance and Range of Natural Law in the Catholic Church.*

This study invites us to revisit the basis of Catholic recourse to natural law. It shows that many philosophies are present in ecclesiastical discourse, which is not as homogeneous as it might seem at first glance. Within the opening-out created by this pluralism, the article emphasises the Christian novelty expressed by Paul (universality) and John (wisdom). The author then shows that, in the light of the Life Sciences, it is legitimate to open another way of viewing nature. Nature is dynamic and its plasticity (illustrated by the debate on « gender theory ») opens onto the order of grace.

ROMANO PENNA, *Gospel, Law and State, according to Saint Paul.*

The historical Jesus was not a politician and his *logion* (saying) about the tribute to give to Caesar goes beyond a merely political perspective. Paul, too, did not engage in political activity, but he reflected on it in an original way. The text of Romans 13, 1-7, although it does not mention the Roman emperor and refers only in a general way to the authorities, offers, however, some important principles on the topic. Above all, it implies that teaching on politics does not belong to the centre of the *euaggélion* but is nevertheless one of its corollaries (i.e. Jesus is *kyrios* over any power). The intention of the Apostle is to encourage his readers. His purpose is to specify that Christians must be docile before authority, must pay their taxes, and, above all, must cultivate a spirit of *agape* in society.

GIUSEPPE RUGGIERI, *Gospel, Morality and Civil Law. Paradigm Changes and New Challenges.*

The Gospel does not offer a foundation for the ethics and for the different laws made by human societies in their history. Ethics – as an expression of the « di-

vine » in every person, and thus a constitutive dimension of the human condition – is the « home » of the Gospel, which views the ethical progress of humanity magnanimously, without, however, resolving human disputes (cf. Lk 12, 13ff.). In this sense, the Gospel establishes neither ethics and its subsequent laws, nor does it condemn them. On the contrary, it shares in the common path of men and women, which, these days, means the rediscovery of the dignity of the one who is different, so as to show an Other who can embrace all diversity.

NICHOLAS SAGOVSKY, *Are Human Rights Universal ? Human Rights and the Values of Traditional Societies.*

In this paper it is argued that secular human rights are in principle universal, but in practice they are not. The duties that pertain in many traditional cultures to the treatment of strangers – hospitality and the meeting of need eg for food, drink and shelter – are explored, taking as an example the obligation of hospitality in Hindu law codes. Though Hindu society is divided into four classes (« castes »), these duties are in principle unconditional. Paradoxically, the « universal » human rights of refugees (especially the right to claim asylum) are politicised and circumscribed because in practice they rely on the infirm determination of nation states to defend them ; on the other hand, the duties of hospitality and protection of the stranger that are observed in traditional societies are unconditional and non-politicised. For the fullest practice of justice we need an observance both of (secular) human rights and (religiously mediated) duties towards the stranger.

JEAN-MARIE VAN CANGH, *The position of Jesus and Matthew before the Jewish Law.*

The position of Jesus is seen here in relation to the Law of Moses, examining where it deviates and where, in contrast, it maintains continuity. The first case-study examines in detail the issues of marriage and divorce (with an additional look at the Qumran texts) and the prohibition of oaths. The second case-study focuses more on the habitual attitude of Jesus. Also to be examined are the question of the Sabbath, which is relativized under the pressure of the urgency of the Kingdom, and questions of purity, which are clearly sidelined, as well as the commandment of love. In general, the observance of Jewish dietary laws is not totally by-passed in favor of another dietary regime: we are dealing, rather, with the establishing of a distinctive perspective and a series of significant differences. Besides the position of Jesus, the position of Matthew is also examined. He teaches not so much the abolition of the Law, but its « fulfillment ».

JEAN ZUMSTEIN, *The Relation of the Gospel to the Law and to Civil Law in the New Testament : What is Non-Negotiable ?*

In this paper, the author attempts to express the relationship of the gospel to Jewish Law and to civil law from a threefold point of view. First, he considers the preaching and practice of Jesus by showing how the central announcement of the imminent coming of the Kingdom of God leads to a reassessment of the Law and of social codifications. Then, turning to Paul and focusing on the center of his message – the theology of the cross – he describes how this hermeneutical choice implies a reframing of the role of the Law and of the validity of civil law. Finally, addressing the Johannine literature whose starting point is in the theology of the Incarnation, the author shows how this perspective also leads to a new appreciation of the role of the Law.