IUS AND *DERECTUM*: THE REVOLUTION BROUGHT BY CHRISTIANITY IN ROMAN LAW AND ITS LEGACY IN THE LAW'S METHOD

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Abstract

Roman law was the product of a realistic construction that did not start from generalizations but used an art to build the verdict by induction. It was the authority of the legal expert that was the basis of the legitimacy of his ability to create law, by demarcating the boundary between what was lawful and what was unlawful. This inductive methodology was not consistent with the religious tradition revealed by Judaism and Christianity, since following a path is related to the commandment in their sacred scriptures for the regulation of conducts. In the Judeo-Christian tradition, therefore, the methodology of law is a deduction. From these different methodologies, one can understand the conceptual shift from *ius* to *derectum (directum)*. This methodological change was followed by a hermeneutical revolution, the spread in the Christianized Roman Empire of the Pauline dichotomy of 'letter and spirit', which produced "fruits" that are still felt today.

Keywords

Concept of Law. Christianity. Method. *Ius. Derectum. Directum.* Spirit of the Law.

Summary

1. Introduction. 2. Initial considerations on Roman law. 3. Prolegomena and schematic division of Roman law. 4. *Ius*: its meaning in the Romanized horizon. 5. *Fas* and *ius*: the deification of the symbols of law. 6. The *derectum* and its methodological meaning of rupture. 7. Legality, letter, and spirit: the contributions of theology to overcoming form in the hermeneutic of law. Conclusion. References

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1. INTRODUCTION

The Christianization of the Roman Empire had a profound impact on law. It should be noted that Judaism, a religion tolerated by the empire, which enjoyed certain concessions, such as exemption from sacrificing to the emperor, to give just one example, did not have this impact. In the first century, at the dawn of the empire's evangelization, Christianity was still identified with Judaism, which is why the privileges granted to Jews were extended to Christians. However, this situation began to change after the destruction of the Temple of Jerusalem in response to the Jewish revolt against the Roman Empire around the year 70. After Rome's military intervention, the remaining Judaism survived in a different form. The various branches, such as the Sadducees and Essenes, among others, were supplanted by the Pharisaic branch. In this context, following that military intervention, Judaism assimilated Pharisaic as the only form of expression of that people and that faith. It is in this context that the separation between Jews and Christians spread throughout the empire, with the latter coming to be considered an illicit religion.

When Christianity spread throughout the Roman Empire, despite its persecution as an illicit act of worship, it simultaneously evangelized and encountered a concept of justice and law that was substantially incompatible with the faith it preached. This was not only because the law had a sacred foundation in the Roman Empire, but also because the Romans used induction, starting from the case to construct a good and fair solution. In the Judeo-Christian tradition, however, law was a path to be followed, and therefore a deduction. For this reason, the act (*lex*), which for almost a millennium was regarded in Rome as a scheme of interpretation – *lex* and *jus* were not synonymous concepts – was not an institution of mandatory application since the law was constructed in the face of the authority and prudent discretion of the praetor. With the Christianization of the empire, a new methodology came to characterize the law, which allowed the act to become its main source. But Christianity went beyond promoting the act as the main source of law. The spread of Christianity through communities

and Pauline letters altered the legal hermeneutics since the act was an instrument that transcended form. It was the dichotomy between "the letter of the act and the spirit" that drove the great revolution in legal science, which, it should be noted, occurred due to the Christianization of the Roman Empire.

2. INITIAL CONSIDERATIONS ON ROMAN LAW.

Roman law tends to be seen as a cohesive system because its current permanence came about through two well-defined lenses, namely: first, the compilation produced in the sixth century in the Byzantine East, determined by Justinian. Secondly, the methodology used in the founding of the first universities in the West, since their inception in the 11th century, namely the *trivium and* its successive developments. In universities, the Digest was studied, and commentaries were produced on Justinian's compilation. This annotated Digest reached its peak with the consolidation and production by Accursius – called Accursius' Gloss – in the period following the founding of Western universities (14th century).

The Digest according to Accursio's Gloss was the subject of generalizations produced by pandects in the eighteenth and nineteenth centuries, used as conceptual archetypes indicative of the demarcation of the sphere of legality in law and taken as the model for conflict resolution offered by legal science.

In this cohesive view, Roman law would be characterized by its secularization, which would be achieved through the autonomy of religious norms (*fas*) in relation to legal norms (*ius*). In effect, this separation would be a distinguishing feature between Roman law and all other laws of antiquity, since, in all other organizations of power, religion was a conditioning factor in the resolution of conflicts.

However, the presentation of Roman law through these filters is not sustainable. Initially, it should be noted that the compilation of Roman law

from the 6th century, known since modern times as *Corpus Juris Civilis*, was promulgated by the Byzantine emperor Justinian through the constitution *Deo Auctore*, also containing the production of law from the emperor himself.

The Justinian compilation consisted of four parts, namely: (i) the most extensive was called the Digest, consisting of the opinions issued by jurisconsults to settle conflicts, which were collected predominantly during the period referred to by Romanists as the classical ' ', from Cicero to Emperor Alexander Severus; (ii) the compilation also included the Institutes, which was a book for teaching law; (iii) the Code, which brought together the revised rules issued by the emperors, called constitutions (*constitutio)*; and (iv) the new constitutions authored by Justinian, included in a book called Novella (*novellae constitutiones)*. Thus, at the time of the promulgation of Justinian's compilation, the Novels were the law of the time, that is, its contemporary law. In this last book, one provision is particularly important in revealing that there was no separation, as there is today, between canon law, with its inseparable religious vein, and Roman law. The secularization pointed out, therefore, at the time of the compilation in the sixth century, did not exist.

Novella CXVI gave the canons (rules) of the ecumenical councils of the Catholic Church the force of imperial law, making them mandatory rules throughout the Roman Empire, since the law now classified as canon law was part of the political activity of the imperial system. It should also be noted that the ecumenical councils were not presided over by the bishop of Rome (now called the Pope), but by the Roman emperor, who held the office and title of *pontifex maximus (*which is now the title of the Pope).

Consequently, when we overcome the simplification that is commonly presented today for the study of Roman law, not only is the artificiality of its secular nature revealed, but also the artificiality of the separation between Roman law and canon law until the century of the drafting and

promulgation of the Roman *corpus juris*. At that time, there were no institutions belonging to either law (*in utroque juris)*. It should be noted that this expression originated in the late Middle Ages and was created in Western universities, mainly to refer to the specialization in Roman and canon law. It was in the late Middle Ages that these systems were already seen as distinct bodies of knowledge, which, with time and the flourishing of the Modern Age, would come to have autonomous faculties (faculties of canon law and faculties of law) and differentiated normative bodies, namely *corpus juris canonici (*name given in 1501) and *corpus juris civilis* (name given in 1583).

3. PROLEGOMENA AND SCHEMATIC DIVISION OF ROMAN LAW

Roman law was not a static and closed normative system[3] . Taking the founding of universities in the West as a temporal landmark, it was studied with different objectives[4] , which often overshadowed its mutability to

[3] On this subject, Bernal's summary is worth mentioning: "Roman law was not a closed system of legal norms that remained static in time and space; on the contrary, this law changed and adapted to the needs of the Roman people throughout the various periods they went through throughout their history. Therefore, Roman law cannot be classified as a hermetic and immutable system; it would be more correct to speak of several Roman laws that succeeded one another in that space-time coordinate." BERNAL GÓMEZ 2010, 57.

[4] Since their foundation, universities have been dedicated to studying Roman law, but with different objectives and different degrees of importance. The period of the Glossators (1100-1250), which laid the foundations for university education in the West, used Roman law for rhetoric classes, without concern for legal activity throughout the Roman Empire, but only for the Digest, seen as a means for teaching argumentation, grammar, and philosophy. These three liberal arts made up the *trivium.* In the later period (1250-1400), commentators used concepts extracted from the Digest to resolve legal problems but did not turn to the study of the long period of Roman legal production, concentrating instead on the Digest. Throughout history, Roman legal knowledge has

adapt to transformations, especially those of a religious and political-social nature. Suffice it to mention the complete reconfiguration of marriage (*ius conubi)*, which, in the Justinian period, came to require the free agreement of wills to produce legal effects, in opposition to the legal requirements of the non-Christian period.

The historical extension of Roman law was extraordinary. If we take the compilation of Justinian as the final milestone, it would have lasted approximately thirteen centuries, but if we consider the fall of the Eastern Roman Empire, with the capture of Constantinople by the Ottoman Turks, as the final milestone, it would have lasted approximately twenty-three centuries, that is, two thousand three hundred years. Romanists have constructed substantial arguments to support the first of these positions. Thus, Roman law is divided into four periods, namely: the first begins with the founding of Rome and lasts until the Law of the Twelve Tables (753 BC to 450 BC); the second lasts from the Law of the Twelve Tables to the consulate of Cicero (63 BC); the third period begins with the consulate of Cicero and ends with Emperor Alexander Severus in the year 250; the fourth and final period lasts from Severus to the compilation of Justinian[55], the first part of which (Code) was promulgated by the emperor in 529 and later replaced in 534; the most important component of the compilation (Digest) was promulgated in 533, followed

undergone a process of advances and setbacks, which can be seen in D'ors' summary: "Roman law has had, as is well known, a singularly long history, with alternating periods of relevance and oblivion, prestige and disrepute. As Goethe said - a well-known simile, which I have recalled on other occasions - Roman law can be compared to the journey of a duck, which occasionally dives into the water, only to reappear with renewed vitality. Thus, when we hear today of certain attitudes adverse to Roman law, which advocate its elimination from the law degree – as Nazism attempted to do not long ago, even making this proposal point 19 of its programmed – we can remain calm and hope that the animosity will, as on other occasions, be temporary." D'ORS 1979, 35.

[5] Division of Roman law into historical periods proposed by: HUGO 1810, 24-26

by the third part (Institutes) at the end of the same year; the last part of the compilation (*Novellae*) was carried out from 535 onwards.

It should be noted that the Law of the Twelve Tables was a watershed moment. It inaugurated the public record of Roman law and mitigated the secrecy surrounding its production. From then on, Roman law was subject to scrutiny and, through the remaining fragments, perpetuated for successive generations. In this context:

> "Roman municipal law is called *ius civile*. Its first major representation came with the Twelve Tables legislation (from the year (...) 450 BC), which also marked the beginning of the historically attested development of Roman law, which, expanding continuously, later ended in the *Corpus juris civilis*."[6]

It was the shortest period, lasting approximately three centuries, from Cicero to Severus, that produced the response of the prudent, that is, the opinion of the jurisconsults. It should be noted that, after Emperor Hadrian (year 117), the response of the prudent had the force of imperial law, thus creating a concrete solution that mirrored the law in the name of the emperor himself. This was the golden age of Roman law.

4. *IUS*: ITS MEANING IN THE ROMANIZED HORIZON

The proof that, for the Roman people, *Ius* was a constitutive element of the substance of that culture is that references to it are found in the oldest records of the Latin language. In fact, in 1880, the oldest Latin inscriptions were discovered on three integrated terracotta vases, namely

[6] SOHM 1889, 2

the *Duenos Vase,* which probably dates from the 6th century BC, equaling in antiquity the black marble inscription in the Roman Forum, known as *lapis niger*.[7]

In fact, these two archaeological finds contain the oldest form of referring to law, namely *Youes*[8] , which means *Quod Iovis iubet* (What Jupiter commands). In Rome, the structure of law is based on power relations with an inseparable foundation of religious legitimacy. The most archaic name for the most important god of Rome was *Iovis;* in this context, the later name.

Iupiter indicates who generates the Law, literally who is its father. In this panorama, the root of *Iupiter* is formed by *Iou* + *pater*, indicating the divine origin of *Ius*. It should also be noted that the word *iubet* represents an imperative, meaning to command, which means that the substance of Law, which becomes the distinguishing mark of Roman citizenship, is embodied in an imperative command based on the religion of *the Cives*. A citizen is someone who belongs to the city of Rome and to both its religion and its law. In this context, law is an element of exclusion and segregation: only Roman citizens belong to *the Ius*.

The origin of law in Rome stems from an order of powers that manifested themselves in acts of force (*vis*), which were formally ritualized and divided into two classes: (i) acts of seizure of things (*vindicatio*) and (ii) acts on persons (*manus iniectio*).[9]

The law exists because in Rome there is official permission for the use of violence (*vis*): the law is a system that will separate lawful violence

[7] Inscription discovered in 1899 under a black stone in the Roman Forum. On this subject, see: BEARD 2016, .95 *et seq*.
[8] On this subject, see the excellent summary by CRUZ 1986, 38.
[9] DOR'S 2008, 51.

from unlawful violence, which only citizens could invoke and promote[10] . The law, in this respect, reflects a striking feature of Roman culture, namely the relationships of hierarchy and submission. The substance of these hierarchical and submissive relationships lies in the creation of a wide range of behavioral obligations, from family to property obligations. All of these are governed by law, which will lead to the recognition of a mandatory service in favor of a recipient, who could resort to violence to demand it.

It is in this context that we can understand Ulpian's complex statement that "those who devote themselves to the study of law must first know where the word (name) law comes from"[11] .

The meaning of law in Roman religion and culture is intertwined with the power of the **word**[12] , as it is legally seen sometimes as a

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[10] See D'ors' definition: *"ius* se dijo propriamente del acto de fuerza que realiza formalmente una persona, y que la sociedad, mediante sus jueces, reconoce como aiustado a las conveniencias (*ius est)*." DOR' S 2008, 47-48.

[11] "*Iuri operam daturum prius nostro oportet, unde nomen juris descendat*", D.1,1,1. IUSTINIANI 2005, 77.

[12] "In the most ancient Roman society, law was essentially linked to the world of words. What could be done, the *fas*, was only accessible to those who were able to ask and listen to a divine source. The *fas* indicated the approval of a specific behavior; archaic law was not constituted as a catalogue of general rules: it was created on a case-by-case basis and required constant conversation between gods and men. Many centuries later, echoes of this primal friendship still resonate in the words of the jurist Ulpian in the Digest: *iurisprudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia* (D. 1, 1, 10,2). To try to understand this foundational predilection for the specific case and the immense power of the word in the most archaic Rome, it may be helpful to recall the proximity between legal and medical techniques in primitive societies. In these societies, illness is a sign that must be deciphered. Physical illness is the consequence of a moral transgression. The specialist directs his attention to the patient's past behavior to discover which taboo has been violated, and he usually does so through a double dialogue with the patient and, above all, with the powers of the afterlife. Thus, the activity of healing takes place in a sphere like the legal one; the expiation of moral evil is equivalent to the

performative sign, sometimes as a sacrament. That is why there was a differentiation that, in modern times, has been completely removed: on the one hand, there was jurisdiction, on the other, the judiciary.

Jurisdiction (*Ius dicere*) was the exclusive activity of the jurist – the Roman citizen who exercised the praetorian magistracy – who literally spoke the law (*Iuris dictio*), exercising an art through the proclamation of the good and just decision: *Ius est ars boni et aequi*[13] . In this definition, which is found in the opening part of the Digest, the notion of art is equivalent to *the* Greek *téchne*, which means a procedure of realization. Thus, law presupposes a technique for realizing the good, relating it to equity. D'ors points out:

> "It is true that when Celsus said that law is an *ars boni et aequi*, the term *aequum*, equality or equity, does not specify much, at first glance, the *bonum*. But the specific concept of law seems to contain something hidden in *ars;* because *ars*, *téchne* in Greek, means technique of realization; law thus supposes a technique of realizing the good"[14] .

Art, which translates into a procedure of realization, will suppose a truly creative activity to be developed by the jurist, who, knowing the case in question abstractly, will start from the equality between the parties to construct a good solution to the controversy, stating the law that will regulate that case.

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recovery of physical well-being and social peace endangered by the deviation of one of its members. RIBAS ALBA 1996, 343.

[13] Law is the art of what is good or just. D, 1,1,1. IUSTINIANI 2005, 77.

[14] D' ORS, 306.

The parties have equal power to have their rights recognized, and this is where equity comes from, that is, it is recognized that they are on the same level; this is what can be inferred (with reference to the meaning) from Sílvia Alves' translation of Justinian's institutions: "Justice is the constant and determined will to give everyone **their** rights"[15] .

It should be noted that the word *dicere* means to speak solemnly[16] , as opposed to colloquial speech: law is a science consisting of solemn declarations, which is why the praetor speaks the law, revealing equity and the best solution to the dispute, though, it should be emphasized, the power of words.

The specific magistracy of law was created from the *Liciniae Sextae,* of 367 BC, with the exercise of *jurisdictio* reserved for the praetor (*praetor*), a position exclusive to patricians and defined as the "junior colleague" of the consuls. In effect:

> "with the patrician-plebeian agreement sanctioned by the *Liciniae Sextae* Laws, according to which one of the consular posts became accessible to plebeians, the consulate appears definitively consolidated. By tradition, as compensation for the admission of plebeians to a position in the supreme magistracy, a new magistrate was created, the *praetor*, in the position of *minor colleague* of the consuls, which was

[15] ALVES 2016, 18. (Emphasis added). Note that the current translation of the institutes is less precise, based on the literal meaning of the words, that is: *justice is the firm and permanent will to give each person what is theirs.*

[16] This characteristic of law is highlighted by D' ORS 1964, 598.

> reserved for patricians and to which *iuridictio* was attributed"[17] .

On the other hand, there was the judiciary (*Iu dicare*), which was exercised by any citizen not versed in law, charged with the execution of the decision. He was the judge (*Iudex)* who exercised a less noble activity, since it was not up to the judge to "speak the law," but only to verify whether the facts were proven and whether they fit within the sentence handed down by the praetor. As Kunkel points out:

> "the judge did not have to decide on the merits of the plaintiff's claim according to the principles of *ius civile*, nor according to the *bona fides* model; the only thing he had to examine was whether the factual assumptions of the conviction indicated in the formula (hence *formulae in factum conceptae*) were met"[18] .

What the Romans understood as private law does not fit today's definition. The Latin word *privus* indicates the citizen taken as an individualized being, thus private law dealt with the possibility of the lawful use of violence to regulate the interests of the citizen, taken as a private individual sacramentally detached from the community. It is in this sense that Ulpian's definition is understood: "private is that which deals with singular utility"[19] . Private law, in this context, is constituted through the following tripartite division: Natural Law, the Law of Nations, and the Law of Roman citizens *(Ius civile)* [20]

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[17] BOTTCHER, Carlos Alexandre 2012, 12.

[18] KUNKEL 2012, 106.

[19] *Privatum quod ad singulorum utilitatem pertinet. D*, 1,1,2. IUSTINIANI. *Iustiniani augusti digesta seu pandectae. T*.1. Milan: Guiffrè. 2005. P.77.

[20] *Privatum ius tripertitum est: collectum etenim ex naturalibus praeceptis, aut gentium, aut civilibus". D*.1,1,2. (Private law is tripartite: its precepts come from natural law, from the law of

5. *FAS* AND *IUS*: THE DEIFICATION OF THE SYMBOLS OF LAW

Etymologically, the noun *fas* come from the verb *fari*, which means to speak. The word was seen as a sacred sign in Roman religion and culture because it was mediated by the priests who transmitted the law spoken by the gods. Unlike law, which was considered private, since it affected the interests of individual citizens, *fas* were intended to regulate relations between men and gods, which is why the Roman calendar was based on it. Furthermore, the verbal formulas that the priests constructed in regulating divine law were in principle secret – legal science being a science of mysteries – and only became known outside that oligarchic sphere in 304 BC, through the work of *the ius flavianum.*[21]

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nations, (and) from civil law) IUSTINIANI. *Iustiniani augusti digesta seu pandectae. T.*1. Milan: Guiffrè. 2005. P.77.

[21] On this subject, see Agudo: "From the 5th century to the 3rd century BC, various milestones occurred that gradually brought an end to the legal monopoly of the Pontifical College. The starting point for the process of secularization of law in the civitas began with the publication of the Law of the Twelve Tables in the mid-5th century BC; however, this did not immediately change its pre-eminent position, according to the words of Pomponius: 'et fere populus annis prope centum hac consuetudine usus est'. It is natural, then, leaving aside the fact that the law did not contain the forms drawn up by the pontiffs, that secular knowledge was not yet at a sufficient level to be able to interpret and apply the decemviral provisions continuously and regularly. Another fundamental milestone would be the publication by Cnaeus Flavius of the so-called "ius civile Flavianum", consisting of a judicial calendar and a set of procedural formulas, composed by Appius Claudius to put an end to the exclusive patrimony of pontifical secrecy. This action, celebrated by the people, made Gnaeus Flavius, despite his humble status, a curule aedile in 304 BC. For his part, Appius Claudius published a short treatise entitled 'De usurpationibus', which should be identified with the 'ius Flavianum'. This event marks the beginning of the opening up of pontifical jurisprudence in a slow,

However, the purpose of *fas* can only be understood if we consider that, in Rome, religion and the gods were part of the political organization itself, being considered part of the republic itself. This explains the definition of public law in the Digest, which states: "Public law consists of sacred things, priests and magistrates"[22] .

Because the religious sphere was an integral part of the Roman Republic – as well as of the political forms of social organization that preceded it – *fas* had a significant reach in any form of manifestation of power relations, with many institutions of *ius* amalgamating with it. That said, the dividing line between *ius and fas* was not clear, many issues were common to both, and in many cases, *ius* had to be subordinated to *fas*[23] .

Furthermore, some legal institutions combined both forms of law: take the example of marriage, where it is stated that the institution is a sharing of divine law and human law, that is, of *fas* and *ius.* [24]

It should be noted that *fas* also regulated conflicts. Citizens could use both *fas* and *ius* interchangeably to settle disputes, since *legis actio sacramento* made it possible to direct an *actio* to the pontiffs, resulting in the *sacramentum* being directed to the ecclesiastical financial fund in the event of defeat; It should be clarified that the sacrament was the core of the action, represented by a sum of money. However, beyond the Christianization of the empire, a

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gradual manner, without revolutionary changes. From this point of view, the importance of the action of Appius Claudius and his scribe Cnaeus Flavius lies in having collected the complex oral formulas in writing, which increased the certainty of the law to an extent not seen since the Twelve Tables, thus opening the way for interpretatio to future generations of jurists. AGUDO RUIZ 2010, 9.

[22] *Publicum ius in sacris, in sacerdotibus, in magistratibus consistit.* D. 1,1,1,2. IUSTINIANI 2005, 77.

[23] JHERING 2005, 198.

[24] *Nuptiae sunt conjunctio maris et feminae, consortium omnis vitae, divini et humani juris communicatio (*Marriage is the union of man and woman, a lifelong partnership, sharing divine and human rights) D. 23, 2, 1. IUSTINIANI 2005, 353.

pragmatic issue weighed in favor of the prevalence of actions linked to *ius,* carried out by the praetor: the *Silia and Calpurnia* laws introduced a type of action that made it possible not to anticipate expenses: the *legis actio per condicionem.* By choosing the action of *ius* for the regulation of conflicts, citizens would not have to bear the costs of the law before the start of the action in favor of *the aerarium,* unlike what happened if the College of Pontiffs was provoked.

It should be noted that, in the Roman mindset, religion had a reciprocity like that of legal obligations, which is why formality was a common element of *ius* and *facere;* and both produced effects through the formulas proclaimed, constituting the law itself ([25]). It should also be noted that *ius civile and ius pontificum* existed side by side for quite some time[26] and the process of secularization was quite slow[27]. The priests, who decided according to the law spoken by the deity, demanded advance payment for the promotion of regulatory actions in conflicts; in the case of *ius,* payment could be made after the decision and charged to the party who lost the case.

The three most important priestly colleges of Roman law were the College of Pontiffs, the College of Augurs, and the College of Fetials. Among them, it was the College of Pontiffs that was at the forefront of Roman legal science; as Jhering notes, we can say that:

> "the pontiffs were jurists in the true sense of the word, with a rigorously logical method that defined, distinguished and extracted legal axioms and principles: a task that later jurists found already outlined and accomplished. (...) the pontiffs had their own theory and method; that is, a jurisprudence that, not being within

[25] DOR'S 2008, 49.
[26] JHERING 2005, 199.
[27] SANTOS JUSTO 2011, 28.

> the reach of the masses, may appear as a secret doctrine. This exclusivity was beneficial to the development of law because, by isolating it from all action by the masses, it could place it in the sphere of pure theory and arrive at the rigorous logic that gave Roman law its firmness and solidity. Only a rigorous corporation such as that of the pontiffs could endow the jurisprudence born within it with such authority."[28]

This college was presided over by *the pontifex maximus*, a title awarded during the imperial period by the Roman emperor and, later, with the reconfiguration of Roman law by the universal Christian church – the Catholic Church – by the Bishop of Rome. The College of Pontiffs, therefore, was the Roman authority that arbitrated between the divine and the human. It was responsible for establishing the procedural formulas used by the praetorian magistrates who administered *justice*. They were the public interpreters of the law during a long historical period, determining the meaning and scope of the legal customs of the Roman people, that is, the *mores maiores consuetudo.*

Other notable functions included drafting the calendar that regulated the daily life of Roman citizens; regulating public and private worship; and recording the most important events of the Roman 'state'. The pontiffs were, in effect, the patriarchs of Roman jurisprudence:

> " The beginnings of Roman jurisprudence lie with the pontiffs, who were expert advisers in the court of the king, then the consul, then the praetor. Their legal science was linked to their knowledge of religion and astronomy. They knew sacred law and the calendar, they knew on which

[28] JHERING 2005, 198-199

> days it was permissible to bring legal action (*dies fasti*) and on which days it was not (*dies nefasti*)".[29]

The College of Pontiffs decided on the declaration of war and the celebration of peace, they exercised the priesthood in the name of Jupiter, father of law and chief god of Rome. The College of Pontiffs also constructed legal formulas for the celebration of treaties with other peoples, including, above all, the treaties of war and peace. The College of Augurs operated within the borders of Roman territory (*limes)*. In this context, contact with the gods was made through their rites and signs (*sacra and signa)*. Their power was very significant; they could even prevent the death penalty. Nothing significant was done in Rome without consulting their omens. They identified the *fas* through *interpretatio (*evisceration): interpretation was the sacred procedure of removing the entrails of animals (evisceration) and offering the product of their burning to the gods. Until 300 BC, only patrician patriarchs could demand actions from the college, after which date this power was conferred on the plebeians.

Note that it is not only the ability to operate the lawful violence of *fas*, through the *interpretatio* of its priests, that reveals its importance to law. In fact, as can be seen in the title of the first book of the Justinian compilation, the meaning of the definition of law is related to the definition of justice, namely: *De iustititia et iure*[30] . This reveals a great deal to us, because in Roman culture, justice is a deity, representing, therefore, a communicative manifestation of the sensible world with the superhuman dimension controlling the sensible world, officially part of Roman culture.

There is, therefore, a direct communication between *ius* and faith in the gods. This will generate in it the absorption of the verbal formulas of *fas*, causing jurists to exercise a true priesthood, focused on the resolution

[29] SOHM 1889, 5
[30] IUSTINIANI 2005, 77.

of a conflict motivated by the interest of a citizen, considered in his individuality. This priestly characteristic is even expressed explicitly in the Digest:

> "For the merit that they call us priests: we cultivate justice and profess the knowledge of what is good and equitable, separating the just from the wicked, discerning the just from the unjust, making good not through fear of punishment, but rather through the exhortation of rewards, aspiring, if I am not mistaken, to true philosophy, not apparent philosophy."[31]

The religious symbol of justice, that is, the goddess *Iustitia,* was represented by signs that reveal the interrelationship between *ius* and *fas*. Indeed, with the Hellenisation of Roman culture, the myth of Greek theodicy penetrated the Roman world. In this sense, it is necessary to affirm the Greco-Roman tension between material force and intellectual power: if it is true that the Romans dominated the Greek people by military force, it is also true that the Greek people transformed and reconquered their conquerors through the power of knowledge. In this vein, there is an obvious parallel between the three Greek legal deities, namely Zeus, Themis, and Dike, and the three Roman legal deities, Jupiter, Dione and Iustitia[32] .

In Hesiod's Theogony, Zeus is presented as the organizer of the Kosmos. In the beginning was Chaos, and it was Zeus's activity that

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[31] *"Cuius merito quis nos sacerdotes appellet: iustitiam namque colimus et boni et aequi notitiam profitemur, separating the just from the unjust, discerning the lawful from the unlawful, desiring to do good not only through fear of punishment but also through the exhortation of rewards, practising true philosophy, unless I am mistaken, and not a simulated one."* D, 1, 1,1. IUSTINIANI 2005, 77.
[32] CRUZ 1984, 28 *et seq.*

brought about its harmonious transformation. Therefore, in this Theogony, Zeus is the author of the law that organizes the universe itself. Before Hesiod, however, in Homer's Odyssey, every mention of law is linked to the goddess of universal justice: Themis. The administration of justice, however, differs from its immutable principles, according to Greek myth. Universal justice, represented by Themis, is one of the founding forces of the Cosmos, but its nature is that of an ordering principle; in turn, the resolution of a concrete conflict, that is, the administration of justice with the solution of the dispute through a sentence, was an attribute of another goddess: Dike. She was represented by a woman with wide-open eyes, holding a two-pan balance in one hand and a sword in the other.

However, while there is a relative symbolic correspondence between the myths of Zeus and Jupiter, as well as between the myths of Themis and Dione, there is no such correspondence between the Greek myth of Dike and the Roman myth of *Iustitia*. This is because the Roman goddess was represented by a woman with closed eyes, holding a two-pan balance with both hands and, consequently, carrying no sword.

The symbol of *Iustitia* corresponds to the Roman form of administration of law. The most important sense for the administration of Roman justice is hearing. The goddess was represented with blindfolded eyes because she performed her 'divine duty' when she heard. Thus, he listened to the sacred formulas that performed the *ius,* she listened in theory to the case and then pronounced the law (*iuris dicere)*. The sword, representative of force, was unnecessary, since jurisdiction, the task of the law and the jurist, was different from the judiciary, as seen previously. The judge was not a priest and magistrate – only the praetor was – but rather a citizen not versed in law. Only in the last phase of Roman law, identified as the decline of *Iuris dictio,* is the judge seen as an official of the empire, breaking with the bipartite tradition of Roman procedure after a thousand years of experience had been built up.

6. THE *DERECTUM* AND ITS METHODOLOGICAL SENSE OF RUPTURE.

The word *ius* is usually translated as law, but the latter term comes from another word. However, they express the same idea and, therefore, their synonymy coincides, despite coming from different etymologies. In fact:

> "the word *direito* (*direito, derecho*, as well as the word in various Romance languages) translates *ius*, but does not come from *ius*; it comes from the term *directum*, or rather, *derectum*; and *ius* and *derectum* appear to us as t ly different words."[33]

The nominative *derectum* does not exist in Roman texts as an equivalent of *ius*. Its records are found only in the fourth century AD – that is, long after the end of the golden age of that law, which is associated with the accession of Alexander Severus to the imperial throne in the third century – as an equivalent of *ius* in the Romance languages, but these words never coexisted in Roman Latin, nor was a single author from antiquity, or even from the Middle Ages with a minimum degree of knowledge of the Latin language, found to use the word *directum (*or *derectum)* in place of ius[34] .

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[33] CRUZ 1984, 17.

[34] On this subject, see Garcia Gallo's lesson: "The noun directum, for its part, must have appeared in the post-classical era, as its Romance derivatives suggest. *Ius and directum* are etymologically distinct words, between which there is no relationship whatsoever. And yet, there must have been some connection, albeit of a different nature, when both appear everywhere as synonyms: *ius* in Latin and derecho and its equivalents in the Romance languages, although never coexisting in the same language. No classical author, nor even a medieval writer of average culture, ever wrote *directum* in Latin instead of *ius*. Only in medieval documents in which some cleric or jurist with little knowledge of the language of Latium endeavoured to write in it does *directum or* any other barbaric form with a Latin

It should be noted that the nominative *derectum* was used in medieval vulgar Latin, but not by the Romans to designate law; after its vulgar use, scholarly Latin used the word *directum* to designate the science of law. In scholastic philosophy, in this context, a differentiation is used: *ius* for what is just; *directum* for what is right[35]

As *ius* is characteristic of Roman citizenship, it is necessary to clarify the reason for this conceptual change, especially since Roman law recognises the sacred nature of the word and the symbolic power of *dicere*.

Firstly, we must bear in mind that the period of change from *ius* to *derectum* coincided with the Christianization of the Roman Empire. The methodology of *ius* was inductive; the Romans started from cases and sought a good and just solution to resolve the dispute, avoiding generalizations[36]. The phase of *Iuris dictio – and* consultation with jurists – seeks the ideal resolution of a specific controversy, based on the feeling of a fair solution in that case and, therefore, a good one. Hence, the word sentence comes from the participle of the verb *sentire* because the law is spoken – after being felt in accordance with the mastery of this art – through those who know what is just: the jurist. Thus, in Roman methodology, the law depends on the art of the jurist, who knows the

guise appear. Conversely, no one who wrote in Romance ever tried to write *juro or* to adapt the word *ius* to the vernacular. GARCIA GALO 1960, 8.

35 "Although we often speak of Roman law, the inhabitants of Latium did not use the word *directum or derectum,* but throughout all the historical periods of their legal evolution they always spoke of *ius,* which Aquinas also does *obiter dicta.* "The difference between ius and 'law' can be established as follows: by 'law' we mean what is right; by *ius,* what is just." DI PIETRO 1999, 94.

36 "(...) Roman jurists avoid generalizations and, as far as possible, definitions. Their method is intensely casuistic. They proceed from case to case, being more anxious to establish a good working set of rules, even at the risk of some logical incoherence that may sooner or later create a difficulty, than to set up anything like a logical system." BUCKLAND & McNAIR 1936, 11.

controversial case and has the authority to render the decision, creating the law.

In turn, the Judeo-Christian tradition does not start from the inductive methodology of law, but rather from its inverse, namely, the deductive methodology. Controversies in the biblical Pentateuch must be resolved according to a generalizing abstract conceptual standard, which has its legitimacy in the theological experience of the Jewish people: it was God who gave the ten tablets of the law to Moses on Mount Sinai, and this law – which has a divine foundation – should serve as a parameter for the resolution of controversies. The theophany that was linked in the book of Exodus to the Word of God who pronounced His law is an indication of its transcendence. The sacred book recounts impressive manifestations of nature, indicative of the power of God and, consequently, of the power of His law:

> "All the people, seeing the thunder and lightning, the sound of the trumpet and the smoking mountain, were afraid and kept their distance. They said to Moses, 'You speak to us, and we will listen; do not let God speak to us, lest we die.'" (Ex 20:18-20)[37]

The Mosaic law is a path to be followed to lead man to belonging to the divinity, which is why it has precepts of otherness and interiority. The former are directed towards regulating behavior towards one's fellow man: thou shalt not kill (Ex 20:13); thou shalt not commit adultery (Ex 20:14); thou shalt not steal (Ex 20:15); thou shalt not bear false witness (Ex 20:16) are examples of expected behavior in relation to another human being. The latter concern the spheres of conscience and intellect: not

[37] *Jerusalem Bible*. 2017, 131.

having faith in other gods (Ex 20:3-4); keeping the Sabbath holy (Ex 20:8) are examples of internal commandments.

It is also found in the Holy Book that the law is imbued with the characteristics of perfection, correctness, and justice, as explained in the Book of Psalms:

> "Blessed are those who are upright in their ways, who walk according to the law of Yahweh!" (Ps 118:1)[38]

And again:

> "You have laid down your precepts, to be observed strictly. May my ways be steadfast, that I may observe your statutes" (Ps 118:4-5)[39] .

In the Gospel of Matthew, Jesus Christ warns his listeners that he did not come to abolish the law, but to bring it to fulfilment:

> "Do not think that I have come to abolish the Law or the Prophets. I have not come to abolish them but to fulfil them, for truly I say to you, until heaven and earth pass away, not one letter, not one stroke of a letter, will pass from the Law until all is accomplished. Therefore, whoever breaks one of these least commandments and teaches others to do the same will be called least in the kingdom of heaven. But whoever practices and teaches them will be called great in the kingdom of heaven. (Matthew 5:17-19)[40] .

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[38] *Jerusalem Bible* 2017, 989.
[39] *Jerusalem Bible*. 2017, 989.
[40] *Jerusalem Bible* 2017. 1711.

In this way, the Christianization of the empire produced a methodological paradox that needed to be resolved. As D'ors tells us:

> "The word 'directum' (from which 'derecho', 'dret', 'direito', 'diritto', 'droit', etc.) does not come from the Roman legal tradition, but rather from late Roman vernacular language, inspired by Judeo-Christian thought: it reflects the moralizing idea that righteous conduct is that which follows the straight path".[41]

In fact, the generalizing law of divine foundation is **absolutely straight**, just as God is absolute; *Derectum* means absolutely straight (*de-rectum*), just like the law in that tradition.

That said, in the Judeo-Christian tradition, the law is seen as a path, or, more precisely, it is seen as the straight path. In this sense, the book of Psalms explains the link between following the law as a path of righteousness, which leads to the fullness of happiness. In this sense:

> "In your commandments are my delights: I love them. I lift my hands to your commandments, which I love, and meditate on your statutes" (Ps 118:47-48).[42]

7. LEGALITY, LETTER, AND SPIRIT: THE CONTRIBUTIONS OF THEOLOGY TO OVERCOMING FORM IN THE HERMENEUTICS OF LAW.

[41] DOR'S 2008, 47.

[42] *Jerusalem Bible* 2017, 991.

The law, which has become the main source of law, has pre-established rules of conduct, true paths to be followed. In this regard, it is essential to note that the general provisions of the law are expressed through language. It is therefore crucial for the law to extract from legal linguistic signs the rules of conduct to be applied to regulate specific cases. In fact, this is one of the most arduous tasks, and Christianity has long been aware of it. According to Christianity, the dichotomy between the letter and the Spirit (*gramma-Pneuma)* is a key problem for the application of the law. It is these questions that reveal the meaning and scope of the norm, which is provided for in the law.

Let us therefore examine the development of Christian theological thought on the subject and analyze it in the light of law.

The Pauline antithesis *gramma-Pneuma* contains a series of typical oppositions: Christ and the Law, the hope of the Gospel and the Mosaic tradition, the logic of the Law and the dynamism of faith. The coherence of the argument has its source in the dynamism (*dynameis:* Rom 1:16) of the Gospel of God, manifested in Jesus, the Christ (born according to the flesh of the lineage of David, established according to the Holy Spirit" (Rom 1:3-4). However, how can we hold together, on the one hand, the Scriptures as the foundation of both Revelation and belief, and on the other hand, the condemnation of the mortal danger of the letter? Should *gramma* be translated as written text[43] in its literal sense, as opposed to its true meaning (spiritual sense)?

Now, if on the one hand we must not "demonize" the scriptural dimension in favor of "spiritualization", on the other hand, there is no reason to diminish the complex tension between the letter and the Spirit in Paul's text. Indeed, what is at stake in Paul's argument is not precisely to place the subject between a certainty founded on the Law, which has the appearance of good, and a confidence proper to faith? In any case, the *letter* is not identified with the Holy Scriptures or with the Law as such, but with

[43] This is the proposal of CHEVALLIER 1966, 90-91.

their deformation: in fact, both are composed of letter and Spirit. In Paul's conception, there is no Spirit that does not take the form of a body, that is not expressed by a text[44] . Consequently, the question is less one of simple *rhetorical opposition* than of a *fundamental paradox* between what leads to life and what leads to death. In other words, the letter without the Spirit is dead, comparable to a text without reading and interpretation: a spirit without scripture in a story, that is not constantly passing through the determinations of the flesh and the letter to enliven them, nor is it Christian[45] .

The opposition between the letter and the Spirit appears in three different texts (Romans 2:29; 7:6; and 2 Corinthians 3:6 – but their context is not unrelated[46] . In the first, the antithesis between the letter and the Spirit is a question addressed to all who bear the name of Jews but do not honor their covenant with God: they are Jews "in name only" because they make the law and circumcision merely external signs of belonging to a race and a religion, but without any existential meaning for their deep identity and real life, *for what makes* Jews *live* as children of the Promise and the Covenant[47] . In other words, the sign of circumcision in the flesh and extrinsic obedience to the Law, when not accompanied by fidelity to God (Deut 6:5: *with all your heart and with all your being)*, run a great risk of losing their real dynamism and symbolic meaning. And with that, they run the risk of becoming signs of their opposite, that is, signs of contradiction and counter-witness. In fact, Paul could have relied on the Scriptures to criticize the Jews "in name": they have uncircumcised ears (Jer 6:10) or uncircumcised hearts (Jer 9:24-25), while the true sign of fidelity to God is the circumcision of the heart (Deut

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44 CARREZ 1986, 87.
45 BEAUCHAMP 1982, 135.
46 CARREZ 1986, 86.
47 The question is not only posed in terms of disobedience to an external law, but also in terms of identity itself, "what makes" (v. 29) and "what does not make" (v. 28) a Jew: not only in name (v. 13) before others, but before God himself (v. 29).

10:16)[48] . But the apostle is content with an allusion to Isa 52:5: "The Name of God is blasphemed among the Gentiles *because of you* (2:24)[49] .

On the other hand, those who are not Jews[50] , observing the precepts of the Law[51] , fulfil it and become "circumcised in heart" (2:26). Paul goes even further, stating how a circumcised person thus becomes a cause of judgement for the children of the Promise: "And he who, though physically uncircumcised, keeps the Law, will judge you who, with the letter of the law and circumcision, transgress the Law" (2:27). Circumcision of the flesh is placed in correspondence with a purely external relationship to the Law, symbolized by the letter; in the same way, circumcision of the heart corresponds to the work of the Spirit who dwells in the letter of the Law, the Scriptures and man. "Circumcision of the heart is a matter of the Spirit and not of the letter" (Rom 2:29): this is the criterion for discerning a topography of belief. The place, however, is not only "internalized", but unified, brought back to the center of life and of humanity. The heart of

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[48] GRELOT 2001, 43.

[49] The text of the prophet quoted by the apostle implies an interpretation: in fact, in Isaiah 52:5 there is a certain "repentance" on the part of God ("now, here, what do I gather?") after the memory of divine liberating actions: but it is not the inversion found in the letter to the Romans, according to which the uncircumcised are counted as circumcised and are even the cause of the judgement of the children of Zion. It is written in Isaiah 52:1: "Arise, arise, clothe yourself with strength, O Zion, clothe yourself with your garments of splendor, Jerusalem, city of holiness, for the uncircumcised, the unclean, will no longer be able to return to you."

[50] This does not refer to Jews who have become Christians, but to non-Jews.

[51] This is not about the Mosaic law, nor even about another law, civil or criminal: "When pagans, without having the law, naturally do what the law commands, they themselves take the place of the law, they who have no law" (Romans 2:14). This context leads us to think of a *law of the heart* and the *golden rule,* the latter in place of the summary and fulfilment of the Law and the Prophets. However, Paul's concern here is not so much to describe a *form* of law but, above all, to argue against the negligence of his people in relation to the Law, given as a way and as a Promise. Certainly, he will later show the impotence of the law to justify man, in addition to the disobedience of the Jews; but not without also recognizing the role of the Law in the consciousness of sin (Rom 7).

man is the place of a new Scripture in which the Spirit of God inscribes itself (Rom 5:5; 8:9) and leaves its traces (Rom 8:16); it is this re-reading of the traces of the Spirit in the flesh that we call 'theographic[52] '.

There are, however, *other* features. In the second text of the Epistle to the Romans, the letter and the Spirit appear as key terms of two systems of operation, following an eschatological shift that clearly opposes two regimes: "But now, dead to what held you captive, you have been released from the Law, so that we serve under the *regime of the Spirit,* and no longer *under the outdated regime of the* letter" (Rom 7:6). The criterion of discernment becomes even clearer: it is freedom itself that is at stake. Freedom, however, is faced with the dilemma of a double "I", and from this inner conflict arises the realization of two "laws"[53] . The division is within the self: there is a "self" that wants and a "self" that realizes it cannot do what it wants (vv. 14-20). But this subjective split is also expressed in an "objectivity" in the form of a double law: the *law of sin* and the *law of God (*vv. 21-25). This duplicated "I" does not consist solely of an existential conflict between two different wills but indicates the existence of two contradictory dynamics or two operating structures. These two regimes thus manifest the fundamental opposition of human experience, according to Paul's testimony[54] . Only Christ, fulfilling the human in all humanity, can overcome this antinomy, radically assuming it in his *unique act* of total self-giving, of his whole life as a gift from the Father. And by his Spirit, through faith, the apostle can also proclaim: "The Spirit who gives life in Jesus Christ has freed me from the law of sin and death" (Rom 8:2). He proclaims this as Good News to all, in the freedom of faith: the gospel is "the saving power of God for everyone who believes" (Rom 1:16).

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[52] VAZQUEZ 2001. The author creates this neologism, in the context of a spiritual experience, to speak of the interpretation of the traces that God leaves in a person's life.
[53] GRELOT 2001, 96-98.
[54] In Tillich, is not the idea of radical ambiguity rooted in this Pauline tension? In any case, the ambiguity that man cannot escape on his own is manifested here in all its radicality.

But is there not a distance between the apostle's experience and that of us Christians? Or are the narratives of biblical experiences *normative* for all Christians, of all times, in the sense that they provide the *rules for discerning* the true faith (orthodoxy)? In fact, it is precisely from the perspective of *hermeneutical principle* that the third Pauline text (2 Cor 3) deals with the *gramma-Pneuma* antithesis*:* it thus presents the dynamics of a just letter-Spirit relationship, both as a fundamental rule of discernment and as its radical *application* in the order of the gift given to believers, in all freedom. The letter-Spirit dynamic thus constitutes the foundation of the "ministry of freedom" sealed with the new covenant: "For the Lord is the Spirit, and where the Spirit of the Lord is, there is freedom" (v. 17).

First, there is an exceptional exchange of *communication* between Paul and the community of Corinth: based not on letters (*epistolè*) of recommendation (v. 1) written by one party or the other, but on communication centered on mutual trust, woven by the "reading" of *Christ's letter (*v. 3) written in the hearts of both (v. 2: "in *our* hearts"). Moreover, this letter of the heart is not "confidential", enclosed in a circle of readers: it is an open letter, capable of being "*known* and *read* by all men" (2 Cor 3:2)[55] . Because there is an inner transformation ("on the heart") that is nevertheless legible on each person's face: "All of us who with unveiled faces reflect the Lord's glory are being transformed into his image with ever-increasing glory, which comes from the Lord, who is the Spirit" (v. 18). In other words: communication takes place in the heart (subjective world), among Christians (intersubjective world) and, at the same time, is open to all to be recognized by all men (objective world).

[55] In fact, the context is that of "reading": "Until that day, when *the* Old Testament is *read*..." (v. 14); "every time they *read* Moses" (v. 15). Compare with P. Ricoeur, *Du texte à l'action* (pp. 188-211). The author deals with action from the paradigm of the text, whose conditions of "legibility": fixation, autonomation of action, importance surpass relevance to the initial situation and finally the action is directed at an infinity of "readers".

Secondly, Paul deciphers the enigma of a "writing of the heart": it is a text written "not with ink, but by the Spirit of the living God, not on tablets of stone, but on tablets of flesh, your hearts" (v. 3). The sign of circumcision becomes "writing" on the hearts, and the circumcision of the hearts is a writing of the Spirit. On the traces of this writing that makes it possible to "read" the action of the Spirit, there is a hermeneutical work that truly involves a discernment of spirits. This reading involves a "theographic," in which the interpretation of the Holy Spirit's writing in the flesh of our history is not according to the letter (*gramma)*, but according to the *Spirit.*

Thirdly, Paul does not place the foundation of the "ministry of the heart" in the personal capacity of ministers, but in God himself, according to the "ministry of his Spirit" (see v. 8). Now, the Spirit instituted the ministers of a New Covenant, whose novelty is only expressed by a series of comparisons (vv. 7-9) to manifest how much it stands out from *the incomparable* (v. 10). This "excess," however, expresses not so much the abolition of the first Covenant, but the exceptional abundance of the new one, as a movement of God's grace in its un d excess: "how much more" (vv. 8-9; 11; 18). Paradoxically, there is a confirmation of the first Covenant and, at the same time, its excessive overcoming by the second. In this movement of excess, the community of the new Covenant becomes, itself, a "writing" of the Spirit (v. 3), insofar as it turns to the Lord (v. 16) and allows itself to be continually transfigured according to his image (v. 18). In fact, both Covenants are inscribed in the dialectic of the letter and the Spirit; there is therefore a double reading possible, both Old and New Testaments: one in the letter (*gramma)*, the other in the Spirit.

These three texts, outlining the characteristics of Paul's letter-Spirit dialectic, thus offer an understanding of the paradox of the Christian faith. There is a *soteriological* axis suggested by Romans 2:27-29: a visible sign in the flesh does not make circumcision; it is only the circumcision of the heart that is praised by God and leads man to his fulfilment. The *historical* axis is suggested by Romans 7:6: the eschatological turn ("now...") reveals in broad daylight the dynamics of two historical regimes. The *hermeneutical* axis is

found in 2 Corinthians 3: the rule of interpretation put into practice reveals an "excess" that manifest, at the same time, a continuity (from one Covenant to another) and an excess of the incomparable order; not only has the veil been "removed," but the face and the person are transfigured. This threefold view is essential for understanding the *gramma-Pneuma* dialectic, but theological interpretations have not always articulated it. The exegeses of the Pauline antithesis by Origen, Augustine, and Luther can give us an idea of the theological posterity of this dialectic, as well as express the theological implications and challenges for the Christian faith, according to different emphases[56] .

Origen was the first to interpret the dialectic of the letter and the Spirit not as an explanation of a difference between the Old and New Testaments, but specifically as a *hermeneutical rule* for reading the Scriptures as a whole. Furthermore, in his hermeneutical act that "reconnects" the Scriptures, he broadens the rule of interpretation: on the one hand, the *gramma-Pneuma* dynamic encompasses the entirety of the Holy Scriptures; on the other hand, the rule of interpretation of the biblical Scriptures also serves to decipher the enigma of Man and Creation. With this, Origen shifts the question of scriptural hermeneutics to a general hermeneutics of the human being, at the risk of associating the Gospel message with his worldview, marked by the context of the biblical writers.

In Augustine[57] , there are two different understandings in the interpretation of the verse 2 Cor 3:6: "The letter kills, but the Spirit gives life." First, he understood the text as a hermeneutical principle that applied to the *literal* and *spiritual* interpretation of Scripture: Christ did not come to abolish the Old Testament, but only to remove its "veil" and thus unveil its mysteries. But Augustine will arrive at another interpretation after

[56] C. Théobald, in his course "Le statut herméneutique de la foi chrétienne" draws attention to these aspects highlighted respectively by the three texts, and analyses the positions of Origen, Augustine and Luther. Cf. THÉOBALD 1990, 111-132.
[57] BOCHET 1992, 341-370.

comparative readings of the Epistle to the Romans. Confronted above all with Paul's seemingly paradoxical statements in chapter 7 of the Epistle to the Romans, he notes the *soteriological* scope of the *littera-Spiritus* antithesis: the Law is the "letter only for those who have not learned to read and cannot fulfil it," thus becoming a cause of death; the Spirit, on the contrary, gives life in Jesus Christ, who "freed me from the law of sin" (Rom 8:2). Thus, "the *soteriological* interpretation considers the relationship between the letter and the spirit in terms of the fulfilment of the Law by grace"[58] . In fact, this second perspective is predominant in Augustine's work, although he unquestionably maintains a double exegesis[59] .

Incidentally, the *soteriological* emphasis of Paul's text, valued by Augustine, will be perceived, and radicalized by Luther, who will not only distinguish between the *soteriological and hermeneutical* aspects, but will dissociate them from each other, thus radically modifying hermeneutics itself. From then on, the rule of interpretation derived from the letter-Spirit dialectic could no longer associate the Christian act of believing with a particular worldview. Furthermore, between the two aspects, there is an eschatological shift (Romans 7:6), which establishes the distinction between "two regimes": the *historical* aspect manifests the threshold of a liberation from the letter and the entry into the time of the Spirit. This split will strongly mark the Lutheran reading.

This can be rephrased, by way of synthesis, using two "expressions" from Michel de Certeau: Origen's interpretation of the letter-Spirit dialectic is inscribed in a perspective of continuity, and therefore of "creative fidelity," while Augustine's exegesis, and above all Luther's, are more in line with a perspective of discontinuity, and therefore of an "establishing rupture"[60] . Now, the two paths lead to two distinct experiences of faith, but they equally imply a dynamic of meaning production. On the one hand, the

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[58] BOCHET 1992, 367-368.
[59] BOCHET 1992, 366-369.
[60] CERTEAU 1970, 128–136.

emphasis is on continuity: the *Spirit enlivens,* transfigures, is creative and inventive. On the other hand, the emphasis is on discontinuity: the *letter* is a trace of rupture between the past and the present, and a sign of separation between the referent and the meaning, between the text and the action. The relationship between *the letter and the Spirit* therefore remains vital for discerning the place and non-place of a Christian experience: between the Holy Scriptures and the writing of the heart, there is a work of interpretation and production of meaning. The reader's world is not in continuity with that of the Bible, just as the various readers belong to culturally different worlds: they read the Holy Scriptures while at the same time rereading their lives according to the writing of the Spirit in their hearts. The two readings are not confused, but neither are they separate. The text is a mediator of an unfolding of itself. Experience itself is a mediator of meaning, through its act of production in someone's life. Thus, only a "theographic" can read in filigree the letter that we are to one another. The issue then is less a conflict of interpretation than a conflict of communication. In both cases, only a reading in the Spirit reveals itself to be Christian: passing through *the letter,* certainly, but overcoming its "vetustity" to arrive at a full unfolding of its deepest meaning.

God leaves traces in history, in the Holy Scriptures and in the "writing on hearts". However, these "places" are only given as an open path and a way to trace between "creative fidelity" and/or "instructive rupture". Because no righteousness of speech, practices or ties to the institution produce faith. In the biblical Scriptures themselves, the source of faith, a "strange dialectic" is present: "Those who imagine themselves to be inscribed in true fidelity find themselves challenged and must hear anew from the other, often from the stranger (the one who remains outside the covenant), the restored novelty of the Word that had been given to them and by which they thought they lived"[61] . The letter-Spirit dialectic does not

[61] GISEL 1990, 13-14.

concern only the biblical Scriptures, but all "scripture" that is inscribed in the history of those who call themselves "followers of the way[62] ".

In this vein, overcoming literalism and embracing the "Spirit of the Law" has become the great mission of the hermeneutist, both in theology and in law. The legacy drawn from Christianity is a deductive methodological path, currently derived from the legal principle of legality, to enable the resolution of legal disputes. As stated, the paradigm of law is based on the Judeo-Christian tradition, and the lessons derived from the meaning that goes hand in hand with literalism ensure that the pursuit of good and justice (*boni et aequi)*, pursued since the dawn of legal science, always present, renewed thanks to theological influence, through the search for the substance of the law, which leads to the overcoming of an exclusive and exclusionary interpretation of its form.

CONCLUSION

The classical method of Roman law is inductive. It starts from the case to arrive at the solution; consequently, the procedure for the realization of law is a true construction, based on the authority of the one who can discern the just from the unjust and thus demarcate the boundary between lawful violence and unlawful violence: the jurist.

Law is thus seen as an art in its Greek sense: *téchne*, which makes it concrete; it arises from a real and controversial situation that demands a solution. The latter, in turn, will be felt by the jurist, who will create the proper resolution of the dispute, using solemnly declared words and formulas that communicate to the law its transcendent and sacramental character. In Rome, law is inseparable from faith in the gods, and the idea of secularization that positivism, especially that of the nineteenth century, tried to associate with it is easily deconstructed. A simple reading of the

[62] Designation given to Christians: Acts 9:2; 16:17; 18:25ff.

Digest is enough to verify the association of the jurist's activity with the exercise of a priesthood, as well as to understand that law is declared to be both a divine and human science.

Far beyond this simple procedure, a deeper examination of the overlap between *fas* and *ius* reveals that the foundation of the legitimacy of judicial activity is authority (*auctoritas*): authority based on knowledge obtained through Roman culture, which has an inseparable religious element, since faith and worship of the gods were an inseparable part of it.

With the Christianization of the Roman Empire, *ius* became a paradox, incompatible even with the commandments of the monotheistic Jewish tradition, which were brought to fulfilment – according to the Christian faith – with the Trinitarian revelation. In this context, the jurist would not create law, but would rightly follow the path of the law. The method of the Judeo-Christian tradition is deductive, starting from a generalization to resolve the case, which is why the nature of the law is to measure the case, adjusting it to the correct solution that comes from it. Thus, with the dissolution of the Roman Empire in Europe, the Romance languages moved away from the word *ius* and began to use the word *directum* (*derectum*), not because of a philological necessity, but because of a methodological affirmation, namely, the affirmation of the deductive method of law to replace the incompatible inductive method that guided ancient Roman law.

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