

PAUL'S LETTER TO THE ROMANS — INTRODUCTION

1. The invaders of England in the fifth century became Christians relatively quickly, so Christianity has to be an important part of our story. We can get some feel for Christianity's contribution to law and legal ideas by reading together Paul's letter to the Romans. It was written in the middle of the first century of our era, about twenty years after the death of Jesus. Paul was a Jew; he probably was associated with the pharisaical party; he certainly was learned in Jewish tradition, though in what way is controversial. He was not one of Jesus' followers during Jesus' life. He violently opposed the Jews who believed in Jesus, participating in efforts by more traditional Jews to suppress them. He tells us that he experienced a conversion (calling) on the road to Damascus. He became as ardent a follower of Jesus as he had earlier been an opponent of those who followed Jesus. He felt that he was called to a special mission to be an apostle of the Gentiles, to convert non-Jews to Christianity. He went on three missionary journeys, preaching and founding churches in Greece and Asia Minor. The New Testament (NT) book known as the Acts of the Apostles (Ac) contains an extensive account of his activities—more can be determined from his letters, also found in the NT, although there is some doubt whether all of these may properly be attributed to him in the historical sense.
2. The letter to the Romans was written in winter 57–58 at Corinth on Paul's third missionary journey. He went from there to Jerusalem where he was imprisoned by the civil authorities and taken to Rome; he probably was released in 63, the point at which point Acts ends. Traditionally he died a martyr's death in Rome in 67.
3. The letter to the Romans is perhaps the most theological of Paul's letters, certainly among the most polished. Its authorship is not seriously questioned. Its great theme is the relationship between Judaism and Christianity. Its immediate occasion may have been the problem of the mixed church in Rome and the tensions between Jewish and pagan Christians, but all we can sure of is that it is a letter of self-introduction.
4. The letter has been used for many purposes. It was a great text for Luther because of its emphasis on justification by faith and the free grant of God's grace. Perhaps less well known is the fact that many of the treatises on law written in the West in the Middle Ages and early modern periods are laced with references to the letter to the Romans; indeed, some may be said virtually to be commentaries on Romans.
5. This ought to strike you as odd. What Paul has to say about law in Romans is not altogether flattering, and one can hardly escape the initial impression that in the great religious dichotomies between grace and free will, faith and reason, faith and good works, Romans emphasizes grace and faith at the expense of free will, reason, and good works. Yet free will, reason and good works would seem to be the foundations of any legal system, certainly Western ones.
6. Let's look at the letter to the Romans for the limited purpose of highlighting some passages in it which suggest something about the contribution of Christianity to the Roman legal tradition and also about the use made of the letter to the Romans in the Middle Ages. The question is what does Paul mean by the law? What role does he assign to it? Before we get into the text, a note on language. The word that Paul uses

for ‘law’ is *nomos*, which is not only the general Greek word for law, but is also the word used to translate *torah*, the Mosaic law, in the Greek translation of the Hebrew Bible. The translation in the *Materials* capitalizes the word when the translators think that Paul is referring to the *torah*, and does not capitalize it when they think that he is not. This orthographic distinction is not, however, in the original. We can disagree, and Biblical scholars do disagree, over what Paul is referring to when he uses the word ‘law’ in different passages.

PAUL’S LETTER TO THE ROMANS — TEXT

1. The letter begins with the anger of God against both pagans and Jews. Why God is angry with the Jews is easy: They have the Law but they do not keep it, Rom. 2:21–2: “You preach against stealing, yet you steal; you forbid adultery, yet you commit adultery; you despise idols, yet you rob their temples.” Why God is angry against the pagans is a bit more complicated, Rom. 2:14–15: “Pagans who never heard of the Law but are led by reason to do what the Law commands, may not actually ‘possess’ the Law but they can be said to ‘be’ the Law. They can point to the substance of the Law engraved on their hearts—they can call a witness, that is, their own conscience—they have accusation and defense, that is, their own inner mental dialogue.”
2. The translators think that the ‘Law’ being referred to here is the Mosaic law, and that may be right. But the reference to those who are led by reason to do what the Law commands and those who have the substance of the Law engraved in their hearts certainly look like references to what both the Greek and Roman philosophers called ‘natural law’. Elsewhere (1:19) Paul suggests that God’s plan can be seen in creation and that certain sins are ‘unnatural’, homosexuality being among those mentioned (1:26), but also envy, murder, treachery, and rebelliousness to parents (1:29–30). Whether Paul is referring to natural law is a matter of debate among Biblical scholars today, but we can avoid that question. Our interest is in what people did with this text, and anyone who knew the Greek and Roman idea of natural law would have seen Paul as referring to it.
3. Now comes the first big move (3:21): “God’s justice that was made known through the Law and the Prophets has now been revealed outside the Law ... to everyone who believes in Jesus Christ. ... [3:31] do we mean that faith makes the Law pointless? Not at all: we are giving the Law its true value.”
4. (7:1): “Brothers, those of you who have studied law will know that laws affect a person only during his lifetime. A married woman, for instance, has legal obligations to her husband while he is alive, but all these obligations come to an end if the husband dies. ... That is why you, my brothers, who through the body of Christ are now dead to the Law, can now give yourself to another husband, to him who rose from the dead to make us productive for God. ... The reason [8:1] therefore why those who are in Christ Jesus are not condemned, it that the law of the spirit of life in Christ Jesus has set you free from the law of sin and death. God has done what the Law, because of our unspiritual nature was unable to do.” But what is now law? The

Church had already decided that circumcision and most of the rules of kashruth did not have to be followed by pagan Christians, but what is left?

5. (13:8–9): “Avoid getting into debt except the debt of mutual love. If you love your fellow men you have carried out your obligations. All the commandments ... are summed up in this single command: You must love your neighbor as yourself.” But what of the secular law?
6. (13:1–6): “You must obey the governing authorities. Since all government comes from God, the civil authorities were appointed by God, and so anyone who resists authority is rebelling against God’s decision The state is there to serve God for your benefit. If you break the law, however, you may well have fear; the bearing of the sword has its own significance. The authorities ... carry out God’s revenge by punishing wrongdoers. ... This is also the reason why you must pay taxes since all government officials are God’s officers” Most Christian churches today are decidedly uncomfortable with this statement. Not that many Christian churches urge people not to pay their taxes, but most Christian churches would back away from the implications of the statement that the civil authorities are appointed by God. Part of the story of how that came to happen will be part of our story.
7. Some bullet points derivable, for the most part, from the letter to the Romans beginning with chapter 13:
 - a. The descending theory of power—“all government comes from God”
 - b. The sword imagery—“the bearing of the sword has its own significance”
 - c. Winnow out the essential from the Mosaic law—“All the commandments ... are summed up in this single command: You must love your neighbor as yourself.”
 - d. The notion of natural law—“Pagans who never heard of the Law but are led by reason to do what the Law commands”
 - e. The importance of authority but also of freedom and equality—“the law of the spirit of life in Christ Jesus has set you free from the law of sin and death”; “There is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female; for all of you are one in Christ Jesus (Gal. 3:28, NRSV).”
 - f. The multiplicity of meanings of the word law, *nomos* in Greek. This will lead to the use of a different and more specific word, *kanon*, canon, when the church comes consciously to legislate. More of this later.

THE LEGACY OF THE ANCIENT WORLD — CHRISTIANITY

1. The importance of Christianity in English legal development.
 - a. The Germanic invaders of the Roman empire, including the Anglo-Saxons, became Christians
 - b. The church and its law, canon law, are important institutions in our story
 - c. *Ecclesia vivit lege romana* (‘the church lives by Roman law’), so wherever we find the church we find pieces of Roman law, even before Roman law became a topic of formal study.

2. Law and early Christianity

- a. The relative absence of what we think of as law in the NT. The Christian Church was founded in Jewish culture, and Jewish culture is one that had, and still has, an extraordinary penchant for law. Christianity quickly became associated with another culture, the Roman, that also had an extraordinary penchant for law. What is surprising, then, is not that the Christian Church early on chose legal forms in which to express itself, but that it did so relatively infrequently. There is some law in the NT, it's scattered but it is there. Perhaps the most notable in the Gospels are the sayings of Jesus about the Sabbath and about divorce. The author of Matthew's Gospel probably thought that a great deal of what he wrote was about law, notably the Sermon on the Mount (Mt 5–7). Today, however, we think of it as dealing with morality. How that fundamental division between law and morality took place cannot be fully part of our story, but we will have to deal with it. The letters of Paul have quite a bit of law in them referred to in passing. They have, however, relatively few specifically legal passages, particularly if we separate out those passages that define a code of behavior, normally in quite general terms “avoid fornication,” “avoid getting into debt except the debt of mutual love,” “wives be subject to your husbands,” “husbands love your wives,” etc. So the first point is that there's so much law in the background of Christianity that it's surprising that there isn't more of it in Christianity itself from the beginning.
- b. Possible explanations
 - i. Perhaps the cultural explanation for this relative lack of law is that the first major non-Jewish influence on Christian thought was Greek thought, and law was not the Greeks' long suit. The Greeks were great at philosophy and great at rhetoric, but they do not seem to have been particularly interested in the manipulation of middle-level generalizations that is so characteristic of great legal systems.
 - ii. Antinomianism, principled opposition to law, in early Christian writing. There is something that could be interpreted as antinomianism in the Gospels: “Woe unto you lawyers, because you load on men burdens that are unendurable, burdens that you yourselves do not move a finger to lift.” (Lk 11:43, cf. Mt 23:4.) The fact that the condemnation of lawyers is in both Mt and Lk indicates that it probably comes from a tradition that antedates the first destruction of Jerusalem in 70 A.D., but Mt and Lk were both redacted after this time and hence the emphasis on this point may come from a period when the Christians are increasingly defining themselves in opposition to the Jews. After the Bar Cocheba revolt of 135, anything that Christians say about law is influenced by what was going on at Jamnia, a state of mind, perhaps, as much as a place, where the rabbis gathered to preserve Judaism after the disastrous events of the previous two generations. These events were to lead to the redaction of the Mishna at the end of the 2d century, and ultimately to the Talmud in the fifth and sixth centuries.

- iii. But Paul's letter to the Romans shows us the tradition before these breaks, and the argument, as we have seen, is theological: salvation comes from faith in Christ Jesus, not from the law. According to the letter to the Romans, a Christian is not justified by the Mosaic law, a Christian is justified by faith. Because a Christian is justified by faith, he or she is in some sense freed from the Mosaic law. The Mosaic law is not only not a sufficient condition for justification; it is also not a necessary condition for justification. (Not every Scripture scholar or theologian would agree with that statement, but it seems to be what the text is saying.) Whether that means that in some fundamental sense Luther got it right as a matter of history is a much more difficult question. The fundamental thrust of Christianity, however, is not to the Mosaic law. The obvious question then is how much of the Mosaic law survives.
- c. One of the first answers that the church gave to that question is contained in what has come to be known as the council of Jerusalem (Ac 15:1-34; Gal 2:1-21). The contents of the council of Jerusalem are obscured in multiple accounts (probably two combined in Acts and Paul's own in the letter to the Galatians), but it seems that quite early on in the Church's history (50 A.D. if we're reading the temporal reference in Gal right), it was faced with two related but separate issues about gentile converts: do the guys have to be circumcised and do they all have to follow the Jewish dietary laws? The answer to the first question was no; the answer to the second question was a compromise by which the elaboration of the dietary rules was relaxed, though the rules about blood, apparently, were retained. My interest here is not the specific resolutions (the second was quickly abandoned), but rather the importance of having an authoritative body to resolve these questions. The very early church saw the need for something very close to what we would call legislation. This was almost certainly necessitated by the fact that taking some but not all of the Mosaic law meant that there had to be an authoritative body that decided which would be taken and what not.
- d. An authority would have to be found, at least, if the Church were not to splinter into multiple competing sects. So the question becomes why was that deemed undesirable? In a later age, this question will become consumed in secular politics. Unity is necessary in order to preserve the unity of secular authority, but that is hardly the explanation for the church of 50 A.D. I think the answer must lie someplace in the early church's understanding of communion, *koinonia*. This has been a mysterious concept in all periods of church history. Paul explains it with the image of the body of Christ, an equally old, perhaps older, concept is that of the new covenant, like that of Israel with the Lord. The notion is that Christians do not approach God only one-by-one, they also approach him as a group. In order for there to be group there has to be some authority to determine who is in and who is out.
- e. Having determined that there will be authority the question is in whom will it be vested and to this question the early church seems to have given a number of different answers. We may distinguish three concepts: first, a diversity of ministries, prophets, teachers, speakers in tongues are all mentioned in the

- sources; second, people who had a connection with Jesus, those who were sent, the apostles, and those whom the apostles commissioned, perhaps also in the case of Paul, those whom the risen Jesus was thought to have commissioned; finally, the elders, *presbyteroi*, the other group in the church of Jerusalem, who along with the apostles and especially Peter, took the decision on circumcision. A not much later age will see an equation between the apostles and the bishops who succeeded them, Peter and those who succeeded him as bishops of Rome, i.e., the pope, the *prebyteroi* and the priests, and the diverse ministers, the lesser clergy, deacons, exorcists, porters, lectors and acolytes. I am not saying that these divisions existed from the beginning; I am enough of a traditionalist to say that there is a continuity between these earlier forms of church order and the later ones.
- f. If these are the characteristics of the legal system of the early church, what about that of the early fourth century when the Church had become embroiled in the secular world? The acceptance by the Roman Empire of the Church as an official religion and finally as the official religion came in the fourth century. Acceptance by secular authority, particularly in a world that would have regarded the notion of separation of church and state as bizarre, automatically involved a number of things: It now became even more important to know who was in and who was out. The great Greek ecumenical councils, Nicea (325), Constantinople (381), Ephesus (431) and Chalcedon (451), and the struggle for orthodoxy involve a struggle for the loyalty of an empire. The conciliar form, however, or something that looks quite like it, is as old as the council of Jerusalem. Councils not only decide monumental theological issues like the definition of the consubstantiality of the Son with the Father, they also passed canons, rules necessary for administration, and administration became more complex as the official church now must speak with an official voice. The use of that word *kanon*, rather than *nomos*, is interesting. It's a curious word that means a rudder or a guide. The use of the word, I think, is not meant to suggest that a canon is any less binding than a law, a *nomos*. Rather, I think it is to suggest that that canons are not like Jewish law, the *torah*, the *nomos* of the Greek translation of the Hebrew Bible, by which, in some sense, the observant Jew believed that he was justified, nor the *nomos* of the Greeks, a word redolent of overarching philosophical ideas with decided associations with the secular authorities. As time went on the official church came to ape official administration. The decretal letters of the popes took on a vocabulary similar to the constitutions of the Roman emperors. When the Roman emperors abandoned Rome, the pope took on many of the functions of the Roman authority in Rome. Leo the Great, pope from 440–461, is the name most associated with this phenomenon, though it began earlier.
3. Why does Christianity not develop a genuinely religious legal system? Our search into the early history of canon law shows that it played a somewhat subsidiary role in the life of the church. We might ask if we are expecting too much to ask that law express the profoundest understandings of a religion of itself. But then we might note that three of the great world religions, Judaism, Islam, and Hinduism, have used law to express some of their of their profoundest insights, and no one can accuse these

religions of not having deeply spiritual, indeed mystical, dimensions. There will be a moment in our story, in the twelfth century, when the development of a genuinely religious legal system, or something quite close to that, will happen, but that will come later in this course, and more in MS 119 than in MS 117.