

SUPERNATURAL AND THE LAW

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1. Man, and his access to supernatural

Believers assume that humanity could access to invisible since his appearance on earth: a primary Revelation must have accompanied the Creation in order, for the man, to know how to behave.

Anthropologists, on the other hand, believe that the first man is the *homo habilis* who, deprived of both Broca's and Wernicke's cerebral areas, had a larynx and pharynx that did not permit him to produce those sounds that constitute our current phonetic system.

Theology, on its part, does not tell us who the first man was: theologians do not need to ask for clarifications to anthropologists, which define the *homo* as utensil manufacturer. Man as described by theologians might have had a more recent appearance than the man in zoological terms, and his story may begin when men started to communicate through an advanced phonetic system, or even when man initiated to use complex logic-and-conceptual categories (this is a topic that was not addressed even by Teilhard de Chardin).

It is however undoubted that, starting from a specific moment, man showed signals of access to a world that was hidden to his senses. I will not deal, on this occasion, with the issue of the deceptive access that occurs during dreams, when the living and the dead appear to us and when it is possible for those events, that we fear or desire the most – and which we never witnessed when awake – to happen.

For 300.000 years, men have taken care of their dead. Is that a sign? Most importantly, men have performed visual arts for 35.000 years at least: from 35.000 to 10.000 B.C. *Cro-Magnons* disseminated in Europe – in particular, France and Spain – parietal paintings of exceptional importance and beauty (Lascaux Caves, Pech Merle, Niaux, Trois Frères, Mas d'Azil, Altamira, etc.) and significant sculptures. Important paintings and graffiti may be also found in the Sahara desert, and elsewhere.

Cro-Magnons decorated the inside of deep, dark caves: they wanted their paintings to be distant from profanes' sight, since the perception of the image would have deprived the operas of their mystical significance. Many scholars (in particular, André Leroi Gourhan) analysed and reconstructed the symbolic and supernatural worth of those paintings, that played a pivotal role in art as well as in the early studies on human knowledge, e.g. the research that have been conducted on the figure of bovines as symbol to characterize females and on equines' images for males.

Among the various studies, it may be valuable to concentrate on a particular formulation, according to which the transition to an acquainted and prolific attention to the supernatural might originate in the early Upper Palaeolithic, when stone tools where diversified according to the

1. See Short Biography on Page 18.

different local and cultural realities, languages began to differentiate and, especially, when first figurative arts appeared. The period could be approximately 50.000 (or even 100.000) B.C., and the protagonist would be the *homo sapiens*.

With the advent of figurative art – and its mystical purposes – supernatural becomes present and ingrained in the existence of men: drawings can create images pursuant to the artist's desires, and the author will be able to influence the faith and characteristics of his artwork. The mystical power of a figure may operate to invoke an increase of the game or to propitiate hunts. It is not possible, though, for anyone in the community to access the invisible: this task is demanded to a "specialist" – whether it is called sorcerer, soothsayer or shaman – gifted of special powers. These personalities can invoke blessings and protections on their populace and are able to practice those activities that have a connection with the esoteric knowledge, such as medicine, architecture, botany, astronomy, and even law.

The ability to overlap what is symbolic or sought and what is real through rituals allows witches – who are still widespread in certain regions of Italy - to cast anathemas and afflictions over their victims by executing ritual acts on depictions of their targets: curse's specialists oppose to mystical healers, the feared and depraved black art faces white magic.

Present days, magic is practised in broad daylight in Africa, and several experts report that African law has never had laical basis: its nature may be divine (e.g. *sharī'a*) or sacred. Such an opinion was ultimately – and unanimously – exposed during the Convention on *Sacralité, pouvoir et droit en Afrique*, held on 1980 by the Paris Laboratoire d'anthropologie juridique.

The mystical origin of law implies as a consequence that it will be perfectly normal in Africa to avail of magical rituals in order to find the culprit of a crime or to choose who will govern the country. Magic, however, remains present also in other continents, although in implicit forms: in many areas spiritual systems have been replaced by religions, which constitute the "erudite form" of supernatural. Nevertheless the relevance of horoscopes, predictions, appeals to visionaries talismans and magical aids is constantly growing also in Europe and U.S.A., due to the media.

Even if we observe the normal life of the Western man – whether believer or non-believer – it will be possible to find, in his behaviour, traces of that past when his ancestors believed in the power of the supernatural: men wish "good day" or "good luck", and this usage would be incomprehensible if we do not hypothesize some kind of power of those words to convey the event. Those who worship saints usually lay some flowers near their depiction, in order to emphasize the physical proximity of flowers and imagine as well as the resemblance between the saint and his portrait: these elements constitute the two hinges of the magical process.

It can also happen, for a magic ritual, to be adopted in religious contexts, like the ring of bells (obtained from the impact of metal against metal), the use of ceremonial clothes and the celebration of Winter and Summer Solstices.

Since fertility rituals are the most ancient ones – they are relevant for shepherds as well as for hunters –, they occur both in the religious ceremony of the blessing of herds and crops and in the laical carnival masquerades: masquerades were originally meant to create an identification between men in costume and animals they represented, as it also occurs in Sardinia with the *Mamutones* and in Bulgaria with the *Kukeri* ritual. Also the Islamists adopt suggestions and rituals of mystical extraction, even if they modulate and adapt them according to Islam.

Literature on sacredness is immense, and in order to comprehend its legitimacy it could be convenient to read the work of Lucien Lévy-Bruhl; we also dispose of a consistent and scattered literature on the survival, in the modern world, of sacral and supernatural pre-religious conceptions; and part of this literature is dedicated to the so-called “*folklore*” (among the works dedicated to the southern France’s rural world a good narrative reading is the chapter VI, *La Masco*, of Frédéric Mistral’s novel, *Mireio*).

Starting from a certain date, supernatural took the aspect of religion in many relevant fields: the causal inference between beneficial rituals and positive effects as well as shaman’s charming attitude are overcome by a supernatural world of invisible People with intellect, will and immense powers, who are willing to accept human’s requests.

Both magic and religion furnish to man ways of knowing the real world, proceedings to punish or honour human conducts and protections before carrying out certain acts: as a result, they will interfere with legal practices.

Legal scholars study Canon and ecclesiastical law: the first one is present whereas those who share a faith or a cult gather and organise their community – since every form of organization founds law – the second one appears when a State has a confront with these organizations. However, the legal organization of a religious community and the laws that regulate the relationship between State and believes are not the only hypothesis of connection between law and supernatural, since supernatural may intertwine law in any field: it may legitimate a role, impose or suggest the content of a disposition, offer reasons to conform to laws, indicate which behaviours are right and which are wrong.

2. *Supernatural and compliance*

Law would not exist if individuals were not willing to comply with it. There is a branch of anthropology that is dedicated to the study of how this compliance is born and has developed over time. The acquiescence to rules is one of the extra-judicial roots of law, and it depends on many factors: in particular, it is possible for it to be connected to the supernatural.

During Upper Palaeolithic shamans could access to supernatural knowledge: as a consequence, they knew what individual or collective conducts could lead to combine success, prosperity and benefits for the community. Through this knowledge, shamans could influence the population and even govern it, but they prefer to avoid direct responsibilities: their forecasting and predictions are unravelled from any chain of command.

The advent of agriculture and pastoralism multiplies the tasks that are demanded to supernatural: mystical knowledge must reveal the best time to sow and grant the health of flocks and humans. Communities have grown and become larger; people are now aware of their common interests and shamans, who previously assisted individuals, must serve the whole community. They must dialogue with both individuals and assemblies, and their judgements qualify individual and collective behaviours; they might introduce new rules and, in the imminence of a battle, they might even suggest the designation of a leader.

We can now move on and examine what happened during the bronze age and, in particular, the events that characterise Mesopotamian and Egyptian empires (and, later, Chinese, Indian, Mexican and Peruvian empires): the division of labour has become a common practice that has led to a diversification

of the interests among the different social classes: only an armed force is now capable of compose individual motivations, and only a force even greater than armies can grant order as respect of the community toward the leaders.

Then, something happens: something so great that it will influence the fate of both culture and law. An authority is born; this authority belongs to the emperor, and is realized through copious institutionalized functionaries. As a consequence arise constitutional law, administrative law, public criminal law and a procedural law for imperial courts.

Authority would be powerless without imposing armed forces that are only loyal to the emperor, and armed forces would be, in their turn, powerless if social classes were reluctant to spontaneously obey orders. In must be noted, anyhow, that even armed forces are not always able to grant a pacific designation of the emperor's role: when empires spread from Mesopotamia and Persia over Alexandrian countries and, then, to Rome, the lack of a bond between social classes, armies and emperor led each time to the seizure of power by the stronger military leader of the moment.

Therefore, in Mesopotamia, Egypt, India, and then in Persia, what could have created the compliance of social classes towards armies, and subsequently, the devotion of the armies towards a leader? And, further more, what may have granted the peaceful and orderly designation of the sovereign? In such a meshed society shamans, magicians, soothsayers and sorcerers could have lowered themselves to the role of support for private citizens; they wisely decided, though, to gather in castes and demanded a role worthy of a society where the need of their knowledge and mystical remedies was still strong.

And so, supernatural became religion: theology takes over the myth, and ministers work for a common goal by becoming a corporation of sages that can coordinate different knowledge and mystical arts so as to turn into an harmonic whole, that can be divided but is never conflicting. Ministers study any sacral discipline: divine, mathematics, engineering, politics, law, medicine, agriculture and even sowing: they want for their erudition to remain unknown for common people so that nobody is able to contest their ever-increasing knowledge. By their erudition, ministers are able to bend the will of the community, legitimize the authority and force the population to accept it. The basis of the society becomes stable because a man of intellect meets a suitable man of power, and they begin to collaborate.

The shaman, once become a priest, is unconditionally trusted and the confidence of the community in him is limitless. People ask him to identify who, as leader of the community, may lure beneficent supernatural forces. The shaman will invest the laical leader with mystical capacities and will consecrate him as emissary of an invisible Power. Obedience is a duty, and obeying means benefiting from the wealth diffused by the sovereign.

Those who studied the great empires have examined this issue in depth. Historians of religion do not approve Carl Schmitt's theory that theology is the fundament of each political theory, choice or doctrine: Jan Assmann opposes that the concepts as sovereignty, authority, justice, power, guilt and law are primarily political constructs, and can later become theological categories or principles. Whose who want to take a cautious stance will suggest that he legitimated a self-created political power through the edification of a *corpus* of truths (that we will examine up ahead). However, concrete solutions in each empire are non-uniform.

In Egypt the pharaoh is the personification of the sun God Horus: he has a divine nature, but is subordinated to the will of the gods; the pharaoh is the emissary of *Ka* (the Creator) to bring the *Maat*,

the order ruled by religion over laws and cults. In the opinion of scholars, if the state declines the *Maat* disappears, and then memory, language and knowledge perish; nature ceases to produce food, abuses prevail and fathers and sons kill each other. Social order certainly need a support, and during the Middle Kingdom of Egypt the answer to this weakness is the State, where in the New Kingdom it will be the religion. During the regency of the XXI dynasty in the end of the New Kingdom, a god become direct sovereign of the community, and his priest is the king as (subordinated) co-regent of the god. This idea got completely lost during the Ptolemaic era.

In Mesopotamia, things are different: the actions of the sovereign are assessable and he may fail; the judgment is, obviously, up to the representatives of the supernatural.

In China it is possible to find a similar solution, but the evaluation belongs to the caste of Confucians scholars instead of clergy. Confucians know invisible truths and occupy the head roles of the society. Still remaining in Asia, it is possible to think to the *Tenno*, or to the *Dalai Lama*.

A sacral legitimacy strengthens the authority and encumbers greatly on the enemies of the sovereign: in Egypt political opponents are treated as enemies of God itself, something that obviously – says Assmann – permits brutalities against adversaries.

From the reign of Cyrus, the rule over Mesopotamia belongs to Persians and their Hellenist heirs; such a conception of government is transmitted to the “three Romes” (Rome, Constantinople, Moscow) and then to the Western Germanic countries.

Starting from Charlemagne and until French Revolution, monarchs of Europe were legitimated by Christianity; Henry the IV had to deal with the connection between his position and the papal supremacy: emperors and kings were always crowned by men of God and as men of God. Even today, Queen Elisabeth II rules over Great Britain under the blessing of God, even if the supernatural legitimacy is a mere ornament.

What does not need a legitimacy is, instead, the common law, since it is legitimated by facts: Justinian I originally said that the Digest was a corpus of consuetudinary rules, without any formal legitimacy; during the Middle Age, though, this factual basis was lost, and the Digest became a theoretical opera. It was, once again, necessary to look for a supernatural foundation: Dante Alighieri is well convinced of the mandate to legislate given by God to Justinian I.

The sacral legitimation of power and law is perfectly normal outside the Western world, as it happens in eastern Asia, Islam and Africa.

In Islam, the *sharī‘a* is the key to any sacral aspect of law, and law justifies authority. The interpretation of those rules, that regulate the choice of Islamic spiritual leader, is uncertain, and still a leadership may be legitimated only through Islam’s dogma. Such an issue is too well known to permit a satisfactory treatise in this context, since the bibliography on the topic coincides with the studies on Islamic law.

African law’s sources of legitimacy may be obscure to Western legal scholars, as they take into account the benefits that great invisible forces confer to those groups who can understand their bents. In those societies the leader is depositary and human custodian of the life force that animates the whole world: he multiplies crops and herds, increases the fertility of women. Those who are blessed by the favour of these forces can attract their influxes and, if they are leader of a community, all good effects will be spread on the community. Many studies on African history illustrate that many times even a rebel,

when favoured by the invisible forces of nature, will win in a clash against the leader that has been legitimized by the community and, if this rebel is appointed as new leader, will attract great benefits on the society.

In Congo, first missionaries surprisingly reported that, during the celebration of major political events, some sovereigns were proud to affirm that their power was legitimated by nothing but military victory. Songhai kings after Sonni Ali referred themselves with the name of *Askia* (From *A si kyi a*, that means “it will not”), derived from the shout of contestation addressed to their progenitor Mohamed Ture on the occasion of his ascension to the throne in lack of a formal legitimation. Traditional law in many African communities, however, disposed that the heir of a king would be chosen by a war among his sons in order to choose which one would be the most deign sovereign. This was a common practice, as shown by the studies of Edward Evan Evans-Pritchard on the Azande tribe (between Sudan and Congo) and of William Randles on the reign of Monomotapa and the reign of Congo. Max Gluckman reports that the Shilluk tribe, in Suda, used to conduct a symbolic fight in order to assign the role of leader, and the losers were condemned to death.

In such a situation, it was statistically predictable that in Africa – at least in the very first period of independence (1960-1990) – the political leadership would have been obtained through a *coup d'état*. Nevertheless, subordination to leadership does not exhaust the topic of the compliance to law: people who conduct their lives according to law must also respect the private property of other, keep their word, not attack the other and not damage their goods.

Magic ritual can found property: if a shaman reveals to the community that trees will avenge against those who tear off their fruits, he will also be able to entrust the legitimate proprietor of a tree with the formula that will prevent the plant's revenge. This is how a property right is created.

If a community recognise the mystical and terrible effects of the perjury, then oaths can be used to enact promises. Literature on this topic is consistent, and the main contribution is due to Walter Burkert.

Magic and religion have a great power to hold back men from committing offences if the mystical sanction looms over those who commit crimes.

3. *Supernatural, and advice to legislator*

Law changes unrelentingly and it absorbs new contents from social instances, claims of determinate social groups, thoughts of legal scholars and intellectuals. These are showcases for juridical model – *ius condendum* – held by a religious or, at least transcendental reflection.

There are many examples of the modelling processes inspired by supernatural in family relationships, procedures in the treatment of men's body, mind and life: debates on anti-abortion, death penalty, euthanasia, new kind of families, eu-genetic or (in general) genetic operations.

In those situations, where the law is result of a Revelation, the idea coming from a model can overtake criticisms about its legitimacy: in Islam the *sharī'a* is a revealed law, and its validity is *in re ipsa*. If the state authority refuses, though, to recognise a supernatural legitimation, it is however possible to regulate marriages, filiation and inheritances according to rules of law deduced from *sharī'a*.

4. The knowledge of facts and reasons

Is he guilty or innocent? Has, or has not he received a loan? Can we say if supernatural is too distant from these concrete situations? Law must verify facts and develop remedies to operate properly, and supernatural is an incredibly useful instrument in doing it: when a shaman connects to supernatural powers he receives the desired indication and, subsequently, the right rule to adopt.

It is necessary to choose the proper technique and the person against which it is necessary to proceed: magic mirrors, emetic potions, lifelike statues can perfectly perform such tasks. Magic allows people to verify a fact, and in the Pharaonic Egypt it was possible to request oracular evidences based on the indications of the statue of a god. A common method in Christian culture was the ordeal – especially the duel –, which was kept as valid legal evidence up to 500 years after the Christianisation of the Germans, and then for another 1000 years was an instrument for the extra-judicial asseveration of rightness.

The supernatural is still an important instrument for the verification of right and wrong outside from Europe, and especially in Africa.

Africans tried to “europeanise” their law during the two decades after independence (1960-1980), but the attempt was abandoned in favour of the old customary courts: Governments had, in fact, become aware that many people kept on going to customary courts (under the European government as well as in independence). Those courts were used to practice the ascertainment of facts through magic rituals (see, for studies on the topic, Anne Retel-Laurentin and Reinhold Rau).

5. The society of believers

A community of believers may be organized according to human law as well as to rules derived from supernatural. Such a community may also believe to be the only legitimate community, and to be consequently entitled to subject other groups to his rules: this is a social model that resembles – although non-implemented – the Islamic beliefs.

In this context stands out the topic of canon law in the Catholic Church; other Christian confessions have their own laws too, but it would seem that in those cases law is deemed less important either as social framework (Orthodox Christians) or as clerical basis (evangelical confessions).

6. Secular law in respect to the community of believers and to the cults

The more religious beliefs influence a society, the more the believers of a community will feel entitled to regulate their lives and the life of the other members of the community according to religion. In a Muslim ideal society there is no place for a secular law that regulates Muslims’ behaviours and their cult. However, if a community has a laical organization, it will have the possibility of choosing if applying on the believers the state law or creating a dedicated law.

Secular tyrannical communities (e.g. communist societies) had to regulate cults and believers: these societies repudiated freedom of religion, but were too afraid of insurrections to completely deny it; they decided therefore to meticulously, rigorously and vexatiously govern them with a final regulation that resulted somehow tolerant.

Recently, the traditional setting of ecclesiastical law has been criticized, in particular, by Sergio Ferlito. First of all, it has been observed that ecclesiastical law speak only to those groups, cults and values that are uniform with the tradition of the country where ecclesiastical law operates: if a catholic state enacts an ecclesiastical legislation, its contents and guarantees will be addressed to community of priests, ceremonies and catechism regarding Catholic God. Getting a closer look, it has been observed that faith is – for believers – a real cultural marker: it influences not only the relation between a believer and the supernatural, but also how believers relate with the concrete world (how they dress, what they eat) and their relationship with themselves and the others.

It may happen that faith attests certain truths and precepts, and then that believers introduce beliefs, behaviours and rituals that are not directly derived from religion, but are somehow connected with it. It would be therefore desirable that freedoms of worship were the starting point of a legal pluralism that could value the plurality of social and cultural patterns connected to credence. In this way, religion becomes a privileged marker of any culture. This is perfectly normal: if behaviour finds its fundament in a religious precept, it will be blessed with the inviolability granted by a superior Truth.

The consequences of this phenomenon are absolutely fascinating, and so are future potential developments: laical men might as well demand an equal inviolability for rights that have been theorized by an admittedly wise community and, in perspective, any individual may request tutelage for those freedoms that are expression of his *Weltanschauung*. In other words: if the law of a tolerant community recognises to believers – may them be religious, laical or individualists – the opportunity to lawfully operate according to precepts, freedoms and rituals that are deduced by their cult, in addition to subjection to state law, consequences will be appreciated in two directions.

- a) The tolerant community might consider its idiosyncrasies infringed in presence of ideas like the submission of women to men, the duty of levirate, free polygamy or ritual cannibalism. The concession of these or other freedoms – e.g. reducing people in slavery (the descendants of Ham) and kill determinate humans (as the romans' *ius vitae et necis*, or in the pre-Columbian rituals) – to individuals of the social group according to their personal beliefs might be deemed by the members of the community a violation of the founding principles of their society.
- b) On the other hand, it would be impossible for jurists to interpret the conceptual asset of a religious freedom that can refuse pure secular political powers and, consequently, might as well refuse his subordination to state authority.

7. *Supernatural, and the category of juridical*

Ancient Romans left for posterity a concept of *ius* that has been widely used over time. Some scholars tried to connect juridical and statehood, and they consequently posed new issues; some others included in the operational area of *ius* the so-called Natural law, and this has raised new problems.

Nevertheless, it seems that we can be generally content with this category of *ius*, that assumes the name of law, *diritto*, *droit*, *Recht*, *pravo*, etc., according to the legal operator's language.

Romans constituted *ius* starting from many apparently different phenomena: *fas*, *lex* and *ritus*. *Ius* contains also Canon law, without distinguishing on its divine or human derivation; *ius* includes even the so-called "unjust law": we normally refer to the rules posed by Ulpian as *iura*, although they profess and sponsor slavery. Though, the *ius* category is not universal: it does not exist in many ancient and modern societies, as well as in classic East Asian cultures (Chinese and homologous communities). In the study of the latter, scholars focused only on the authoritative law – the *fa* – and neglected the analysis of the laws created by non-authoritative apparatus (especially consuetudinary law).

Evaluations regarding Islam are slightly different. Legal scholars normally overlap the terms "sharī'a" and "Islamic law" but not all the *sharī'a*, and not only *sharī'a*, is included in our current idea of law. *Sharī'a* is the revealed law, but Islam also permits the application of customary rules on Muslims and the application of non-Islamic laws to infidels: all these laws can not be included into the *sharī'a*. Islam demands that the orthodox Islamic authorities develops a *siyasa*, that is a set of rules appropriate to protect and maintain the public order in the society moving from political evaluations but without contradicting *sharī'a*. The fundamentals of *siyasa* are the same of the *ius*, and Muslims undoubtedly distinguish *siyasa* from *sharī'a*; if we analyse the Islamic judiciary system, we will also see that *qādi* (judges who are expert in matters of religion) are the only organs competent to apply *sharī'a*, but they are not necessarily in charge of applying *siyasa* or customary laws. Western jurists, however, do not pay particular attention to this difference.

8. *The multiplicity of supernatural*

Until now we have been mentioning the "supernatural" as a unique, indistinct category, and, frequently, trying to differentiate is superfluous, since different forms of supernatural – religious or magical – can equally legitimate an authority or a law.

It is, however, necessary to verify if the various kind of supernatural are completely equivalent. We may begin from examining those forms of sacredness that express themselves through unalterable rules and consequently operate on the sources of law, while other sacral influences impose individual behaviours that are detached from laws (e.g. taboos are general and permanent prohibitions whereas a dreamlike vision can establish a power or a duty to be exercised in a single act). In order to linger in the concrete, it may be useful to limit our analysis to the multitude of religious experiences that refer to one or more Gods, and verify if they are all homogenous in their way of relating to law; in doing this we should primarily move from what a believer may ask to God, and what God can offer to believers, so as to distinguish and gather different religions.

There is a first group of religious traditions in which God grants temporal benefits (posterity, wealth, victory over enemies) to his followers, who in turn reciprocate with valuable goods (animals and offers) in accordance with a contract; this is what happens, in short, in ancient Hebraism, in the Ancient Greek and in the Roman Capitoline religion (in Latin, the term *fides* expresses both the conditions of the debtor and the devotee, and the perish of the *fides* extinguish the bond between man and God. The

devotee, on his side, *credit* – i.e. is the creditor of – God, his invisible Counterpart, who will always fulfil his duties.

The second group of religions reward their followers with knowledge, eternal wellness and salvation; believers must, yet, earn these gifts through an appropriate conduct, and their religious path may imply metamorphosis and transubstantiations during the long path towards the salvation. Whose to embrace these religions must, frequently, adhere to an articulate dogmatic apparatus. First of all it is possible to number, among these cults, Ancient Egyptian religion.

Despite taking various facets in its thousand years long history, in Egyptian religion what prevails is always the promise of salvation from benevolent gods (Thot, Osiris, Ra) by means of a fully structured and clearly described tribunal of dead. In the same group of “religions of salvations” it is also possible to consider Mesopotamian religion starting from Sumerians, the Jewish Genesis and the Greco-Roman Mysteries (that are more ancient than the Olympic religions).

Jewish community opened its mind to these conceptions after slavery: during their captivity they had frequent contacts with Persian doctrines, and that influenced their opinion on monotheism, angelology, demonology, faith in the eternity of the soul and resurrection.

Deportees found the guide of the prophets: Isaia, Michea and Asuf referred that God disowned sacrifices, feasts, collective rituals in favour of respect for the principles of justice, compassion, humility, kindness. Also Christian culture belongs to this group, while Islam seems quite distant from this kind of cult.

Other aggregation of believers ask religion to reveal the rules to be followed in the various circumstances of life, or to unveil the reasons and principles that should guide the devotees in their everyday decisions, without complaining about potential temporal or eternal blessings they may receive.

At this point, it is necessary to understand if the needing of believers, the answers that religion may furnish and a more or less complex dogmatic influences the relationship between religion itself and law: the conceptual path we have taken so far does not seem to conduct to any valuable outcome, and consequently it could be more useful to analyse distinctions based on more contingent aspects.

Religions that contemplate a revealed set of rules must definitely interface with law, but it would be misleading to think that they flourish in situations created by a *synallagma*.

Also those religions that need a well structured and respected religious centre to operate properly – because of the relation between God and men, or for contingent groundings – must somehow relate to law: from this point of view, even Christian confessions are different among each other.

The last issues that we tried to examine probably denoted a wait for answers, which we are not currently able to formulate.

Supernatural has interested, instructed and consoled men in multiple and diverse ways, and when the various forms of supernatural confronted with law, they did not speak always the same language; we must figure out if a given form of the supernatural – and, in particular, religiousness – is more or less inclined to adapt law to its canons.

9. Supernatural, and the nature of law

Theology glorifies God Almighty, omnipotent even towards His enemies, capable of seeing in everything on the Earth what He desired for His own glory and, in particular, capable of seeing in men their nature of creatures in the image and resemblance of the Creator. Such a conception of theology can be harmoniously combined with a law of particular nature.

In this context, law – as long as it is created in compliance with God's signals – will be interpreted as an entirety of virtuous rules; infringements are shameful for those who live according to ethic principles, and sentences actualize the benign bond between men and laws.

Although, this theological arrangement may be different if we assume that the main ethical Personality is opposed by a Rival with demiurgic capacities comparable (even if inferior) to the ones of the Creator.

As a consequence it will be necessary to evaluate which law coexists better with this metaphysic antinomy. Studies on religion lack (as far as I know) in the analysis of the role law had in the Zoroastrianism, Manichaeism and in all those cults that present the Christian conception of antinomian powers: from Gnosticism to Nestorianism, from Paulicianism to Bogomilism and Catharism.

If we assume that God conceived only the souls, while an evil demiurge has created all that is material – in particular our physical bodies –; if procreation determines the imprisonment of the soul within a mortal body; if human power and institutions satisfy only the body, and not the spirit; then authority and secular power might be legitimately demonized, and so can be individual rights, since they are devices of egoism used to conquer material benefits (while the duties and the consequent chagrin of the spirit might be seen as an encouragement to virtue).

Between these extremes, it is possible to consider intermediate positions. Men are created by the Almighty and victorious God in His image, but the Opponent of God tries to corrupt men and, often, succeeds.

Men, as imperfect beings, are attracted both by good and evil, and their actions can be inspired by God or by human weakness: law takes on, according to this vision, the role of an evil that is necessary to preserve society from self-destruction.

It is possible, instead, to be in presence of imperfect rules: law could be perfect in the abstract, but become unfair and unbalanced because human fallibility is a natural limit to the clairvoyance, sense of justice and discernment of legislators.

Metaphysic antinomy needs dogmatic definitions and lucid positions, and then embeds both them in religions where mystical truths are clearly formulated and identified.

We could find, however a sensitivity that is – similar to the antinomian vision (even if poorly defined in its profile and, consequently, vague) – dense and capable of penetrating deeply into men's moods also in cultures that are distant from Zoroastrianism. This happens in every markedly ascetic culture, for every pessimistic conception of humanity, and for every pessimistic conception of the role of law in the society: authority may be fatally seen as oppressive, general and abstract rules can be interpreted as formalistic and exposed to the slyness of those who can take advantage of its quibbles; law may be seen as an egoistic and indifferent structure.

Consequently, policemen, executioners, soldiers and taxmen will be considered the expression of a system that distinguish people who undeservedly prevail and people who are unjustly oppressed (our

thoughts instantly turn to Tolstoy): it should be noted that a well-known theologian, even if respectful of the secular authorities, underlined: «rechter Jurist, böser Christ» (a good jurist is a bad Christian).

Philosophers, psychologists, artists historians of religion might, as well as the anthropologists, are interested in these topics.

History passes on the fortunes of men who declared to exclude or admit determinate conclusions basing their reasoning on argumentations: this is the right technique to ascertain the true and false, and those men were the Sophists (even though they used to talk about “demonstrable” and “indemonstrable”). The beginning of the differentiation between true and false is more remote than the Sophistic philosophy, since the doctrine aimed to the research of the truth is tightly bound to the supernatural.

Experts of the supernatural are deemed eminent by their communities and are believed when they talk about the ethereal world, considering that they are the only ones who can access it. Once society became more complex, the need of severe and unnatural rules (tax levies, subordination, forced labour) appeared; the social authority enacted them, and it needed the armies to support them: in that time a majestic and coordinated priestly caste arose to sponsor the imperial power. Their duty was talking to the community, and convincing them to support authority appealing to the truths they discovered through the invisible world.

In other terms: a coordinated order of adept of the supernatural replaces the incoherent magic traditions of single sorcerers, magicians and witches; these new ministers begin to forge a knowledge – the interpretation of supernatural – that nowadays concerns everything studied in the universities.

This act poses, for the first time, the problem of distinguishing what is true and what is false. Somehow, men always had an inner perception of “true” and “non-true” (e.g. a hunter says that a wild boar is near because he heard its rustle, while another hunter with better sight denies it and says that the boar is far), but the truth emerging from empirical experience is not institutionalized. With the advent of the castes the truth becomes permanent (what is true is always true), socially relevant (if you sow in the sand, nothing will grow) and transcendence towards man due to its relation to the sacral. When the community becomes empire, then, truth is institutionalized: it is finally possible to distinguish True from false, believers from sceptics. In such a context, men face for the first time the challenge of creating a *corpus* of durable and coherent truths in order to explain the functioning of the world: beside the truth it is systematized the concept of error and there men that have the (sublime and terrible) power to decide what is the truth and what determines an error.

The heritage of truth grows, and supernatural donates to men endless gifts: mathematics, architecture, medicine and veterinary science, botany, astronomy, as well metallurgy and chemistry make continuous progresses. On these solid basis lay the foundations of a science of the divine, of the soul and death, of ethic.

Truth must be protected from profanation. Since part of the truth is necessarily exoteric, common men must be excluded from it; another part of the truth instead, is kept hidden because its enunciation determines mockeries from those, who are not capable of intending it (that is what happens to the firsts who affirmed that Earth is round).

But truth must also be protected from discussions that could only ingenerate doubts and incredulity. Arcane verities are transmitted from elder to younger within the caste of priests; the truth is immutable, and those who want to access it must have an adequate repertory of knowledge, which exists

outside, and before men's world; Plato somehow grasped this concept when he enounced his theory – that was partly derived from Eastern cultures – of the ideas that pre-exist to men and that are accessible through the analysis of the pursuit of truth.

If some aspects of the truth must be hidden from the general public, on the other hand there is a part of the truth that should, instead, motivate the whole conduct of the community and be consequently spread as widely as possible. According to the already mentioned Jan Assmann, the distinction between true and false arises in with the birth of monotheisms: God is the truth, while other idols are just falsehood; actually, examples we formulated in the course of this work (Egypt, India and ancient Rome) permit to extend this distinction also outside the area of monotheism.

Verity must be bond to precise and determined words, even if they may appear, sometimes, obscure and vague: truth is equal to itself, and its formulation must always be equal to itself.

Scriptures represent the greatest guarantee of the stability of the truth: even if a verity is originally verbally transmitted, it crystallizes with the putting in writing, and the community can concentrate on the analysis of (sacred) scriptures. Nevertheless, the institutionalization of truth denies freedom of thought, and writing is the main resource of institutionalized verity. Anthropologists (in particular Claude Lévi-Strauss), understandably warn about the risk that writing could lead to men's exploitation rather than to illumination.

Up to almost six thousand years ago, men lived in a (contented?) state of ignorance, and 5.500 years ago they began to experience the exoterism, and their acceptance of the truth was substantially uncritical. Two and a-half millennia ago, something changed: the vast knowledge accumulated by empires during the Bronze Age was originally arcane and hardly transmittable but, over thousands of years, it could not remain segregated.

New verities arrive from India and Egypt to Hellas, and they influence wise men (e.g. Pythagoras and Plato). In Hellas these men are relatively free to conjecture, diffuse and teach their idea (we should not draw improper generalizations from what happened to Socrates), and the Hellenes can consequently evaluate this knowledge critically and elaborate it according to their logic. From that moment, for 2.500 years, knowledge protected by an authority and knowledge resting on the critical reasoning coexisted: the development of the first typology is related to the remembrance of great hopes but stakes, martyrs and genocides too (what happened to Galileo is the most known example), while the progress of the second type of knowledge passes not only through the same high hopes, but also through failed attempts, asinine teachings, unjustly denied rewards and, fortunately, progresses that changed the life of humanity on this planet.

The institutional assets of Middle East imperial sovereignty spread: Alexander the Great and then Romans subject Greece and Rome to their empires, which did not have – in that moment – a bureaucracy monopolized by ministers. However, an empire is still a regime, and under regimes there is no space for a genuine pursuit of the truth. Pliny the Elder gave a pessimistic picture of the situation in the empire: when there was not a unique central govern, local communities were compelled to progress and development of knowledge by hardships, and competition among populations led to profusion of efforts.

And then? The knowledge shielded by authority and the knowledge guaranteed only by logic and experimentation still coexist and, in Western culture, the ascendancy of revealed truths is confined in the

comprehension of supernatural and to ethics except for sporadic contaminations in political affairs by means of suggestions to legislators.

A sad episode, however, deserves to be recalled.

There has been an historical period in which the influence of supernatural revelations on politics had become marginal. At that time, new human alliances arose: they were not very different from the traditional community of believers; they choose their own truth and proclaimed it. Their personal faith made them active. Those people acquired political power, started to control the members of their community and suppressed the ways of thinking that were not conforming to their verity. These communities assumed the form of a single-party state, and their actions caused almost ten millions of deaths: it was just during the last century, from 1917 to 1989.

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Biography

Rodolfo Sacco is considered a master of comparative law. He was born in Piedmont, Italy in 1923. He followed his father's footsteps and attended law school at University of Turin. Growing up in fascist Italy, he became a part of the resistance movement and is well known in veterans' circles for his war efforts. After graduating law school and passing the bar, Sacco studied with economist Luigi Einaudi (who later became President of the Italian Republic), and in 1947 published his first work on legal interpretation. He chose an academic legal career focusing on civil law. In 1961, he taught both civil and comparative law at Pavia University, and he became Dean of the Faculty. In 1971 he went back to his Alma Mater, serving as Chair of Civil Law, and later retiring in 1999 becoming an Emeritus Professor. Sacco "created" comparative law in Italy. His former students carry on his teachings and are currently appointed professors throughout the country, with a focus in comparative law. His scholarly output on the subject is extensive, although mostly written in Italian. He continues to publish works to this day. (Riles, Annelise, *Rethinking the Masters of Comparative Law*. Portland: Hart Publishing, 2001).

