The Divine Law and the Modern Project

Mark Shiffman

In his most recently translated book, Rémi Brague displays his usual captivating breadth of erudition—from Egyptian papyrology and Icelandic ecclesiastical history, to the thought of Leo Strauss and Hans Urs von Balthasar, to The Code of the Woosters and Tintin in America. His scholarly style might well be described as refractory, to suggest both its kaleidoscopic character and its penchant for puncturing intellectual orthodoxies; or, using his own words, his perspective might be described as a “wag view of history.” That tag would suit the present work particularly well, since one of its aims is to call into question the timeworn linear story of the “inevitable withdrawal of the sacred,” to suggest that we “consider the inverse movement, from the profane to the sacred, as well.”

The Law of God is Brague’s second magisterial work of intellectual history. The first, The Wisdom of the World (2003), investigated the history of cosmology (or more precisely, to use Brague’s neologism, cosmonomy) in the West. The two books form the prongs of a single endeavor, which is no less than “making the project underlying modernity more visible.” The modern project is above all the attempt to realize human autonomy ever more completely, which requires breaking the two principal bonds of heteronomy at the heart of the various forms of the medieval synthesis: the divine law and the normative indications of man’s place in the cosmos. With an uncommon degree of common sense, Brague observes that “if we are to understand modern attacks on divine law (and, by that same token, the essence of the modern project), we need to have a clear grasp of the medieval definition of divine law.” By examining the diverse streams flowing into the medieval inheritance (classical, Biblical, and ancient Near Eastern more broadly), Brague clarifies the principal decisions and tensions within these various syntheses (Jewish, Christian, Islamic) so as to bring into higher relief both what the modern project rejects and “what is dubious in the modern project itself.”

Brague contends at the outset that, for the purpose of understanding the notion of divine law, it is inadequate to restrict ourselves to the “theological-political problem.” He identifies the broader and more adequate horizon as the “theio-practical”: “theio” because the passage

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from the classical divine (to theion) to the Biblical God (ho theos) is “a highly revolutionary event not to be turned into something banal”; “practical” because the field of divine law comprises the whole genus of the practical, which, besides politics, includes also ethics and economics. So long as “the theo–practical problem remains unresolved, any statement of the theo–political problem remains unbalanced and resolved in a wobbly manner.”

An initial discussion of Egyptian and Mesopotamian conceptions of the relationship between law and divinity serves to highlight what is shared and unusual in the Greek and Biblical traditions. In the ancient river civilizations, it is the ruler who is linked directly to divinity; the law is divine in a derivative sense, as issuing through his agency. For Greece and Israel, divine law issues directly from divinity, and can thus serve as an independent measure of the ruler’s legitimacy. This triangular analysis (law, ruler, divinity) also places into perspective the modern alternative, in which law and ruling authority seek legitimation independently of divinity.

In their respective understandings of what the divine is, however, Greece and Israel part ways. For the Greeks, “[t]he divinity of the laws signifies the permanence of their manifestness. . . In this perspective, the divine is in no way hidden, hence has no need to be revealed.” It is rather the law of things, “the nature of what is,” that requires revealing, but through the exercise of human reason. Thus, Plato’s Laws, which uncharacteristically entertains the notion of a god as lawgiver, ends up affirming the divinity of good laws inasmuch as they take inspiration from nature, the divine art.

Israel, on the other hand, recognizes the divinity of law in its issuing from the Creator. Thus, while superficially similar to other Near Eastern civilizations in associating the anointed king with divinity, Israel acknowledges God alone as legitimate ruler; His law is above the king, and by giving it to Israel he constitutes the people, rather than the king, as the subject of history and the embodiment of wisdom. Brague sees certain seeds of democracy here, perhaps even radical democracy: Israel is distinctive for its scriptural texts critiquing kingship, as such, as a usurpation of God in his relationship to his people through law; but this critique of one species implicates the whole genus of the state. The law outlasts both the people’s political existence and their sojourn in the land, defining the people ultimately by religion alone.

At this point, Brague offers a fascinating analysis of the significance of Deuteronomy’s recapitulation of the law on the eve of entry into the Promised Land, comparing it to criteria of purity posted at temple doors: the laws to be observed must be stated and accepted before entry into sacred space. “The aim of the commandments,” he observes, “is not to impose obedience, but to provide an entry into divine mores. Entry into the land of God is also, by that token, entering into the intimacy of the One who lives there.” Thus the aim of the laws is “not to reduce men to . . . slaves of God.” On the contrary, before the Decalogue we are reminded that God is the liberator: “The law liberates, and at the same time it teaches.” Brague thus complicates the opposition of Judaism and Islam together as religions of law to Christianity as a religion of doctrines. Judaism and Christianity share in one spirit of liturgy, which is a spirit of communion and liberty, and both generate challenges for overweening claims to political legitimacy.

Islam, on the other hand, presents an image of God as supreme commanding
power, imposing law through bare revelation. A central tradition in Islam teaches that, “contrary to the Christian view of it, the goal of creation is not the entry of a creature into the divine life by adoption. Its goal is the submission of creatures to God.” Brague presents the Muslim philosophers who drew inspiration from Greece (Farabi, Avicenna, Averroes) as fundamentally at odds with Islam in attempting to found judgment of the law on reason’s apprehension of nature. The ideal of Islam is the earthly reign of a revealed law that pre-exists the state, rather than codifying the fulfillment of the state’s natural potentials: “the idea of natural law has no place in Islam.” Thus, “contrary to a legend tenacious in the West,” Islam exhibits a separation between the political and the religious—not, like Christianity, on principle, but from an inability to achieve its own principle: Islam has religious legitimation of political power to offer in abundance, but it has no clearly designated beneficiary of this legitimation.

The Qur’an, which existed before creation, speaks directly to man, bypassing nature. Thus, parting ways from the standard academic narrative, Brague presents Ghazali not as the fundamentalist scourge of the “liberal” rationalism of the philosophers, but as the summit of Muslim legal theory and practice. Ghazali unites legalism and mysticism, arguing that reason partially discerns the advantages of the commandments, but that their ultimate end is man’s beatitude in encountering God. This good remains hidden in the commandments, but reveals itself as immanent in them to the one who, through the practice of obedience, attunes his heart to the “slight indications for which the reasoning of reason is too narrow.” Obedience to the Qur’an is both anthropology and theology, man’s attunement to the logos that existed with God before the creation; the Qur’an was made Arabic to draw men to itself.

These accounts help us to apprehend generically the “medieval definition of divine law.” Brague observes: “What since the start of modern times has been called ‘religion’ was perceived in the Middle Ages as an apparatus established by God within human history to serve as the framework for his encounter with humankind, which was to permit humans to accomplish what the divine design expected of them [. . . ]. The translation of these ‘laws’ in history produced what is usually referred to as the Middle Ages.” It is within the terms of this description that we must understand the sense in which Christianity also constitutes a law while not consisting of a code of commandments and prohibitions. This effort is all the more important for Brague’s task of making modernity visible, in that it was the Christian embodiment of divine law that modern thinkers ranged themselves against, and this engagement has only been obfuscated by the still-prevalent reduction of Christianity to a “morality.” Brague contends provocatively that the writings of the New Testament “contain nothing ‘political’ and, in the final analysis, hardly any ‘morality’ either. In compensation, they contain the seeds of a transformation of the entire domain of the practical.”

Only once does Jesus give a new commandment: to love one another. What is new is neither the content (Leviticus 19.18) nor the singling it out for emphasis (as Rabbi Hillel had already done), but Jesus’ “reference to a specific history, when he immediately follows ‘love one another’ with ‘as I have loved you.’” The commandment is placed within a new “context of practice within the action that God deploys in favor of mankind.” The original law of the Sinai covenant,
understood in the context of liberating exodus and entry into communion in the land, recrystallizes around God’s new self-revelation in the person of Jesus, the new liberating exodus of the Passion and death on the cross and the new communion of Eucharistic liturgy.

The first axial figure in the Christian reconception of law is Paul, who claims that “Christ is the end (telos) of the law.” “He does not speak of an abrogation of the law, to be replaced by another and more perfect law. That concept is Islamic rather than Christian.” In the Qur’an, knowledge of right action without the revealed commandments is impossible, such that this revelation necessarily supersedes anything else. For Paul, all men have a basic law written on their hearts by nature; the revealed law not only guides aright but also intensifies awareness of our failure to follow its demands. Pagans have conscience to convict them; to the extent that a pagan satisfies conscience’s demands, he is a “law unto himself.” This is the embryonic appearance in Christianity of the notion of autonomy, here understood as the conformity of created natures to the rule of their being that constitutes them as what they are. As Creator, “God does indeed appear as the origin of the Law, but not as a lawgiver, strictly speaking.” Paul’s “law of Christ” signifies “less a collection of commandments and prohibitions than a different regime of salvation,” which Brague describes as “an entire program of liberation—which is an infinite task.”

Paul’s reconception of law is not a systematic, coherent theory, so much as “an entire set of effects produced by a new fact of colossal importance that, like a powerful magnetic field, reshapes everything that approaches it.” Working out that theory in a decisive way was left to Brague’s other axial figure, Thomas Aquinas. Certain indispensable developments were already to hand for Thomas. The canon law tradition, following in the wake of Augustine, had already attempted to draw a boundary around its own concern with salvation in contradistinction to the state’s concern with secular justice. (Contrary to the standard narrative, it was the church that envisioned the secular state, resisting kings and emperors who wanted to add coronation to the list of sacraments.) Jurists had also enunciated clearly that what is the right (ius) for every being is its “doing what is in conformity with its nature.” They also concurred with mystics like Bernard and Bonaventure that God “lives by the very laws by which He governs the world”—laws reflecting His very nature, not just His will.

Thomas offers an account of law that orders all these ideas into a coherent system. Two principle features are of paramount importance for Brague’s purposes. First, Thomas introduces eternal law (by which God governs the creation) as a category distinct from natural law, indeed as a “condition of possibility” for all the other forms of law, thus placing them within the context of divine providence as related but particular modes. “Divine law” thus refers both to eternal law that founds the whole regime of divine governance and to the revealed law through which man is brought most perfectly to God.

Second, in the case of man, God “delegates his providence” in the form of prudence. Here Brague elucidates a crucial difference between Aquinas and Maimonides, who represents the peak of Jewish reflection on law. For Maimonides, the sign of the law’s divinity is that it both directly directs non-philosophers to their bodily good in the city, by practical guidelines and salutary opinions, and at the same time provides indications guiding philos-
ophers to fulfill their rational nature in contemplation of the nature of things. Maimonides follows the Muslim Aristotelians in making nature the measure of law and impersonal union with pure intellect its highest aim. For Thomas, since we participate intellectually in divine providence also by the perfection of our own prudence, the personal nature of man is not severed from his intellectual destiny. In the form of prudence, providence “pertains to individuals within the diversity of circumstances in which they must act, the complexity of which they themselves are able to grasp.” Brague observes: “It is not a question of teaching man what he must do, but rather of putting into his hands the instruments that permit him to do it.” Hence the divine law does not provide guidelines for ordering the city; it is not in the business of “humbling proud reason” but, to the contrary, of liberating reason and permitting it to be itself.

In Brague’s fine formulation, the aim of divine law as understood in Christianity is “to construct a mechanism capable of freeing freedom itself.” The mechanism proceeds by three coordinated modes. Natural law, accessible to man as man, provides basic guidelines for conduct; human law, taking counsel from natural law, provides authoritative norms in specific historical communities; the divine law enters human history as an economy of salvation offered to man as a means of attaining his further perfection by liberating will and rational judgment from sin. This last, “divine law” in the specific sense, is not imposed but rather proposed as something we enter into by way of love, in which we seek perfect adherence to God, such that law ceases to be external to us: “the difference between the law and the person subject to the law is not intended to be definitive. It is abolished in the long run.”

It is precisely the unraveling of this threefold mechanism that gives modern law its characteristic features. Before modernity

law [i.e. human law] bathed in counsel [i.e. natural law and revealed law] as in a nourishing environment. Counsel preceded the law that was based upon it, but it also surpassed the law by adding a further stage to it. On the one hand, law was what had to be observed in order to assure the full deployment of a nature that, by that fact, realized what counsel wanted. On the other hand, counsel, in the form of evangelical advice, led to reaching beyond the minimal demands stated in the law and to striving for perfection.

In modernity, natural law is replaced by “interest” without orientation toward the good; law as it applies to man becomes pure command seeking a legitimating principle; the beauty of saintly perfection, the terminus of man’s pursuit of his good, is replaced by the ascetic sublimity of disinterested altruism. In the realm of nature, we now have “laws” imposed on creatures and absolutely obeyed, reflecting a shift from wisdom to power as the primary characteristic of the divine; the “constant relations that exist between observable phenomena” are laws of nature, now in the plural, ultimately implying “the disappearance of the idea of global order.” Man, alienated as a moral agent from nature, is stuck with autonomy, the law he imposes upon himself.

Brague’s best summing up of what has become visible and questionable about modernity is the following passage:

Our societies, with their agenda of
law with no divine component, are in fact made possible, in the final analysis, by the Christian experience of a divine without law. Even atheism as “unbelief” supposes the primacy of faith in the definition of the religious. It is possible that the theologico-political problem is a serious problem in appearance only. All it does is to cash in, on the level of the species (politics), on a separation that had been acquired some time ago on the level of the genus (practice). The supposed combatants for the “secularization” of institutions fly to the aid of a victory that was assured centuries ago, and which is, what is more, the victory of Christianity itself in its most official form, that of the church, establishing the borderline that separates it from the secular domain. . . . Whether human action can unfold freely, with no reference to the divine, rather than losing its way in suicidal dialectics, remains to be seen.

In the end, Brague’s profoundly analytic histories of the crystallizations and fracturings of the two pre-modern heteronomies leave us with many questions. Above all, once we have gained greater clarity about what is dubious in the modern project, where is it possible or necessary for us to stand in relation to the alternatives it rejected? Are the two heteronomies recoverable for us, and if so, in what way and to what extent? Are they essentially related or separable from one another? Does our position at the far end of modernity shape distinct conditions for the possibility of such a recovery, or does it require us to orient ourselves in a fundamentally new way toward the cosmos, law, and divinity? It is to be hoped that the projected synthetic finale of the trilogy, if it does not answer these questions, will at least sharpen their contours.