



Law and the Danger of Freedom

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THE LUTHERAN THEOLOGY OF THE LAW REJECTS SPECULATION IN ORDER TO remain with Scripture and empirical observation. It deals with humans as sinners, whether of the church or non-church kind. “This knowledge of sin, moreover, is not some sort of speculation or an idea which the mind thinks up for itself. It is a true feeling, a true experience, and a very serious struggle of the heart.”¹ What “was” or “might be” if sinners ever fulfilled the law is pure speculation. From Adam and Eve onward, righteousness according to the law has proved a pipe dream. Hoping that the next person just may make this truth obsolete is fruitless, since Christ (the Righteous One who was “born of woman, born under the law”) came to die on account of sin’s using that law to protect itself. Therefore, just as Abraham was saved by faith in the promise, righteousness before God comes apart from the law.

Theologians should do exactly what Genesis, Psalms, Paul, and the rest of Scripture do, that is, tell the dismal truth about humans with their various forms and uses of the law: when God looked down upon his creatures he was sorry that he had made them; no one is righteous, not one; all people are liars; all have fallen short of the glory of God. Trusting in the law as a way of righteousness just doesn’t work, even for the best among us. True, few have been willing to say this. Even if all in history have misused the law, someone tries to speak of the saints, those blessed few of memory, who came close. Or we imagine old Adam and Eve who had one

¹Martin Luther, *Psalm 51*, in *Luther’s Works*, ed. Jaroslav Pelikan, Hilton C. Oswald, Helmut T. Lehmann, 55 vols. (Philadelphia and St. Louis: Fortress and Concordia, 1955-1986) 12:310-311 (hereafter *LW*).

Proposing a “third use of the law”—a law for Christians after faith—arises from a fear of freedom. It is finally a christological problem, since Christ put an end to the law not only in himself but also in us.

moment of bliss in which they lived obediently according to some speculative original use of the law. Some even muse that all in all God won't seriously demand we be perfect as God is perfect, but just better than our neighbors.

But that isn't theology, it is a fiction. “[A] lawyer,” Luther continues, “speaks of man as an owner and master of property, and a physician speaks of man as healthy or sick. But a theologian discusses man as a sinner. In theology, this is the essence of man. The theologian is concerned that man become aware of this nature of his, corrupted by sins.” A theologian's job is to be practical on this matter. The main tool for this is the law, which makes the sin great (Rom 5:20) so we see sin for what it is, not what could be the case, “if only” or “as if.” Luther goes on: “When this happens, despair follows, casting him into hell. In the face of the righteous God, what shall a man do who knows that his whole nature has been crushed by sin and that there is nothing left on which he can rely, but that his righteousness has been reduced to exactly nothing?” Nothing? Not even a spark or potential for growth? Nothing.

There is no original or subsequent righteousness that is established through the law except in our own speculative imaginations. There is no superadded grace that somehow failed to overcome bad choices of will in the garden of Eden. Humans have, are, and will always be sinning as long as this world continues; nevertheless, Christ has become our righteousness apart from the law. Who would have the courage to say the “nothing,” without Christ?

When the mind has felt this much, the other part of this knowledge should follow. This is not a matter of speculation either, but completely of practice and feeling....Here the dejected mind cheers up, and on the basis of this teaching of grace it joyfully declares: “Though I am a sinner in myself, I am not a sinner in Christ, who has been made Righteousness for us” (1 Cor. 1:30).²

Speculation about the possibility and necessity of law, however, does keep arising, especially by proposing a “third” or “church” use of the law for Christians “after” faith. Thus the question keeps being asked: Is the law still valid for the Christian?

I. FEAR OF FREEDOM

When it comes to questions of the “third use” of the law, it is worth remembering the famous case of the pious fraud in Luther's *Second Disputation against the Antinomians* (1538). Luther scholars and church historians commonly held that Luther joined the throng advocating the *usus triplex legis* (threefold function of the law) on the basis of this quotation: “Why should the law be taught? The law is to be taught for the sake of discipline...that by this pedagogy men might come to Christ....Secondly, the law is to be taught in order to expose sin....Thirdly, that law is to be retained so that the saints may know which works God requires.”³

²Ibid.

³D. Martin Luthers Werke: Kritische Gesamtausgabe, 60 vols. to date (Weimar: Hermann Böhlau Nachfolger, 1883-) 39/1:485 (hereafter WA).

Werner Elert discovered that this was a blatant forgery, “copied almost verbatim from an edition of Melanchthon’s *Loci* dating from the second period of the *Loci*.⁴ Why would someone specifically add a third use, and while he was at it, turn the first use into a pedagogical one? The goal was to keep freedom from being abused, to keep the church from imploding, or to make sure that “the Christian” did not ignore all the exhortations found in Scripture. In other words, I take it that someone resorted to forgery in order to protect the church from antinomianism. But the fear of freedom is no way to deal with antinomians. Nor is the “third use” any way to move beyond the distinction of law and gospel that has entered our world—and even our own selves—by the new promise: “For when we were still weak, even then Christ died for the ungodly” (Rom 5:6). Christ is the second Adam just so that no speculative “third” Adam is needed.

Why is it that good religious people find freedom such a problem? Why is it that freedom looks so good from a distance, but up close, when someone is really free, it appears dangerous to life itself? So it was with Jesus, who announced:

Do not think that I have come to abolish the law or the prophets; I have come not to abolish but to fulfill. For truly I tell 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 does them and teaches them will be called great in the kingdom of heaven. For I tell you, unless your righteousness exceeds that of the scribes and Pharisees, you will never enter the kingdom of heaven. (Matt 5:17-20)

But one cannot take this obvious command and judgment and ignore Jesus Christ. Ignoring Jesus Christ is simply to treat Jesus as a new Moses. That is why Jesus is not suggesting here that the law simply requires a greater effort than that which the scribes and Pharisees were able to muster. It is a matter of *whose* righteousness does in fact exceed all others (even the best, regarding the law) and in whom heaven and earth will pass away, giving birth to his new kingdom of forgiven sinners. When Jesus Christ arrived, the “until” had arrived, the time had come for the great commandment of the law to be done and over.

Naturally, when Jesus had finished “saying these things, the crowds were astounded at his teaching, for he taught them as one having authority, and not as their scribes” (Matt 7:28-29). Being astounded did not last long. Anger then set in because Jesus was clearly seen as setting his own words, and finally his own self, as the law’s actual fulfillment. The time when earth and heaven would pass away and the law would be no more had arrived. Luke drew the conclusion: “The law and the prophets were in effect until John came; since then the good news of the kingdom of God is proclaimed, and everyone tries to enter it by force. But it is easier for heaven and earth to pass away, than for one stroke of the letter in the law to be dropped” (Luke 16:16-17).

⁴Werner Elert, *Law and Gospel*, trans. Edward H. Schroeder (Philadelphia: Fortress, 1967) 39.

The anger finally turned on the one who came to do the law by acting freely beyond it in love: “Did not Moses give you the law? Yet none of you keeps the law. Why are you looking for an opportunity to kill me? The crowd answered, “You have a demon! Who is trying to kill you?” (John 7:19-20). But Jesus prophesied truly; those who heard him started to take him as the law’s enemy, not its fulfiller. Since Christ consistently acted beyond the law in love, that is, freely, he came to be seen as the law’s enemy. The free Christ had to be put to death in order to save the law.

II. WHERE IS THE NEW CREATURE?

It is this temptation in the law, to put faith in the works of that law rather than in the promises which have their yes in Christ, that finally draws God’s good law into league with sin, the devil, and death. Defending it as having a role in our righteousness before God comes to be an argument by sinners against Christ himself. In whatever way it may be dressed up in some third package, the law as righteousness before God becomes an argument for staying with the old life of sin against Christ’s new time and his freedom.

Since no one can will his or her own death, one cannot finally desire the end of the law in Christ, who in his own person is the sole fulfiller of the law. The refinement on the practice of avoiding death in the church has been to agree that Christ saves, but salvation must then be shaped, formed, filled, disciplined, enlightened, taught, continued, sanctified, or otherwise kept by the law, lest believing yields no good works and be proved a dead faith. The conclusion is that law must have more time on life’s stage than Christ allowed. But such speculation simply rejects God’s distinction of old and new in favor of a theory of a creature who remains under the law’s requirement for righteousness.

Today the question is raised in this way: Doesn’t the church need discipline along with the authority to enforce it? Doesn’t the church need law for Christians lest they misuse their freedom? The question of a third use of law for Christians is a *practical* problem that is met with a *speculative* theology. How does one deal with the problem of being in time where faith is attacked and freedom lost? Don’t the free also need a disciplinarian? The problem was stated succinctly once by Erasmus who kept hearing in Luther’s writings about a new time, a new creation, a life made up not of quiddities, but of hope. Erasmus finally burst out: “Where is the new creature?”⁵ That question is the source of the theory of a third use of law. Out of fear that the new creature is not really present, faith in Christ alone is displaced by Christ *and* obedience to law. But if that were true, then the two key passages of the New Testament for Christians regarding the law and Christ would be denied: Rom 10:4 and Rom 3:31. Christ alone is the end of the law in its double sense, and at the same time he is the law’s establishment in the old world as a reality, not a speculation.

⁵Desiderius Erasmus, *On the Freedom of the Will*, in *Luther and Erasmus: Free Will and Salvation*, trans. and ed. E. Gordon Rupp (Philadelphia: Westminster, 1969) 76.

Luther responded to Erasmus, “As to your fear that many who are inclined to wickedness will abuse this freedom, this should be reckoned as...part of that *temporal leprosy* which has to be endured and that evil which has to be borne. Such people should not be considered so important that in order to prevent their abusing it the Word of God must be taken away.”⁶ How to deal with antinomians? Love them, but don’t try to fashion a new theology for them. On this point, faith yields nothing so that love can yield all. If our spirit flags on that score, then at the very least we should be just as “practical” and despairing about the notion of a new use of the law succeeding where grace failed. But this freedom in Christ takes some willingness to live in the leper colony in order to accomplish sending out the words that end sin and make new life.

III. THE PROBLEM OF BEING IN TIME

The end of the law, and so the impossibility of any resurrected usage of the law for Christians, is tied directly to the basic distinction between old and new established by Christ’s death and resurrection. Yet, this raises the question about the way we think of Christians and church in time, since as long as the old world and our old sinful selves remain, Christians and church lie deeply hidden under the sign of their opposite. Robert Jenson once wrote about a talk with Joseph Cardinal Ratzinger in which he made a suggestion about the poles of ecumenical difference in the west:

Between Catholicism and Protestantism what is finally at issue is *being in time*. Catholicism sees that self-identical historical being means *institution*. And it sees that institutions of the gospel must share the gospel’s mystery and cannot be mere human arrangements; as the latter, they would be frivolous. Protestantism sees that historical being means *freedom*. And it sees that the freedom of the gospel is God’s own freedom, which humans cannot administer; our attempt to administer such freedom would be sin. What we are not in a position to do, is to see both truths at once.⁷

Christians at the very least want to speak about freedom. Yet, this way of putting the problem is really an old matter that tries to pit freedom and institution against each other unless joined by a higher synthesis (like a new theory of continuous time, which I take Jenson to be proposing). Then law and authority in church institutions exercised *on behalf of* the gospel are viewed as the only way that the gospel can in fact continue when antinomians arise.

Among Lutherans this attempt has been going on at least since the *Visitation Articles* of 1527.⁸ What we see now in congregations is the same thing that the first Lutherans saw when they went calling: misused freedom, antinomianism, or even

⁶Martin Luther, *The Bondage of the Will* (1525), in LW 33:54-55, emphasis added.

⁷Robert W. Jenson, *Unbaptized God: The Basic Flaw in Ecumenical Theology* (Minneapolis: Fortress, 1992) 107.

⁸WA 26:175-240. A discussion of the *Visitation Articles* and their context can be found in Timothy J. Wengert, *Law and Gospel: Philip Melanchthon’s Debate with John Agricola of Eisleben over Poenitentia* (Grand Rapids, MI: Baker, 1997).

pre-nomianism. Our hope seems swallowed up by the ravages of time. Perhaps there is no free Christ in whom the law ends after all! Perhaps *sola scriptura* was a nice idea, but isn't working. The church seems sunk in privatized affairs and has lost a public voice that can shape behavior. Do we not need a way of making doctrine binding again?

But when one looks away from Christ in faith and looks at one's old self, or when we hear the "facts" about disobedience and antinomianism in churches, then Erasmus' plea sounds again: "Where is the new creature?" Where is the unity of the church? The speculative solution uses the law as a guide for the church and its repentant souls, a kind of joint project or *ius ecclesiasticum* between God and sinners. Luther had an apt image for such users of the law according to a "third position," he called them "Absalomites":

For as Absalom remained hanging by his head, in an oak tree, suspended between heaven and earth (2 Sam 18,9), so this class hangs between heaven and earth. Shut up by the Law, they do not touch the earth....On the other hand, since the Law, powerless to improve their nature, only irritates and provokes it, making them enemies to the Law, they are not godly and so do not reach heaven.⁹

The problem with the third-users, then, is the rejection of the truth of Christ's presence in faith itself as the actual existence of the new creature that is not in the "old time" but in the "new time." Hanging midway between sinners and God, one is tempted to replace hope in Christ by a theory of "being in time" that puts the church and its struggling Christians where hope in Christ alone belongs. Our gospel is not so much for *being in time*, but *a new time for being*.

IV. THE BAD CONSCIENCE

The speculative use of the law by the church is a product of fear that defends sinners from the gospel. It is not able to deal with the law as anything other than something that "helps" when used by the right authorities, or perhaps as something we should be pleased with, if only we could see the whole sweep of God's coming-to-be in history. This use of the law may temporarily give us what Emmanuel Levinas once called a "good conscience." But what it doesn't know, and has no way of dealing with, is the underlying issue of the law from which we cannot extricate ourselves. It cannot help with the fear of freedom.

For this we must know what Levinas calls the "bad conscience," which finally shows that *ontology or being in time* is not the final issue but rather eschatology or *new time for being*. The human issue is not "to be or not to be," as if human death were merely the death of an animal. We have to deal with the fear of God that *interrupts* being in time and holds before us the "possibility of dreading injustice more than death." But humans have this not just as a *potentially* bad conscience, it is given as a bad conscience:

⁹*Sermons of Martin Luther*, ed. and trans. John Nicholas Lenker (reprint, Grand Rapids, MI: 1983) 277.

To have to respond for one's right to be, not by reference to the abstraction of some anonymous law, of some juridical entity, but in the fear for another. Was not my "in the world" or my "place in the sun," and my home a usurpation of places that belong to the other man, already oppressed by me or hungry? This is a fear for all that my existing—despite its intentional and conscious innocence—can accomplish of violence and murder.¹⁰

Here we come upon the real issue of the law for sinners: *it demands freedom, and yet it cannot give it.* It puts our neighbor before us to love, and yet there it finds the bad conscience, as Levinas says, "Even before language. Even before we can respond." But then, when we supposedly *can* respond to a word, we find ourselves already judged: "Does what we call the word of God not come to me in the demand that summons and calls for me?" It comes "in order to designate me the unique and the elected, in the face of the other, as if without possible evasion."¹¹ How does the fear of injustice give over to the greater passivity of the gospel, which is always more than necessary, a guffaw of freedom, where the other is finally not the source of bad conscience but the one in whom my love has place, room, opportunity? If I did nothing special to get the bad conscience, can I do anything to get rid of it? "Everything is in the hands of God, save the fear of God, states Rav Hanina, cited in an antique page of the Talmud (Tractate Berakhot 33B)." But Levinas objects to this in his honest little essay, for then "the fear of God would be man's affair."¹² Even the fear of God must finally be in God's hands.

But if everything is in the hands of God, including the fear of God, then the real reason for the third use of the law is precisely the attempt to escape the bad conscience rather than to die of it. A third use becomes specifically, and for pragmatic reasons, not God's own use. It becomes the church's or a Christian's use. Then it is liable to the temptation in the law to take *it*, not *Christ*, as our righteousness before God. Freedom is not freedom from institution, as is often implied, or freedom of the individual from community or creation. The newness of the creature, the being in time of the creature by faith, is none other than freedom from the law and for love.

V. THE CHRISTIAN

One can't even refer to one's self as "the Christian" unless this eschatological distinction of old creatures and new creature is identified. To assert that the law is still valid for the Christian is to forget that there is an eschatological limit that has been set even in order to say "the Christian." We may talk a great line about how the law comes before the gospel, that before a resurrection there must be a death, that the new has come and so the old is come to an end, and so forth. Then in the

¹⁰Emmanuel Levinas, "The Bad Conscience and the Inexorable," in *Of God Who Comes to Mind*, trans. Bettina Bergo (Stanford, CA: Stanford University Press, 1998) 175.

¹¹Ibid., 176.

¹²Ibid., 177.

very next breath we say, “Now that that is decided, don’t we have to talk about the discipline and necessity of the law for *Christians*?” Immediately, we begin looking to our old self and calling it by the name “Christian,” as if that is now who “I” am. But, of course, here lies a great temptation to misapply theological language and preaching. The “person,” the “me,” the “Christian” to which I refer is identified by the old and new, death and life. One can’t ignore it and say, “Now that that is decided, what can we say about this somewhat altered person I call by the name ‘Christian?’” What is missing is *Christ* from this old carcass we drag around and introduce to everyone as “the Christian.” When that happens the law has once again become an object of faith rather than Christ.

VI. TEMPORAL LEPROSY AND THE HOLY SPIRIT

The speculation of a third use of the law is finally a christological problem, since Christ put an end to the law not only in himself but also in us. Where is the new creature? She is there, of course, not according to ontology, the science of old being, but in faith itself that makes a new being. In her conscience Christ sits so that there is no room for the law. Giving a crutch to the dying Adam or Eve might look like love and compassion, and it might look like helpful discipline for the fledgling Christian, but it is none other than opposition to the Father and Holy Spirit. It is their will that Christ alone be our righteousness—apart from divine law. What if the gospel of freedom in Christ were preached and people, or the church itself, became anti-nomian, pre-nomian, or hyper-nomian? That would mean putting up with the *temporal leprosy*, but the solution is not a new law.

What we have in the discussion of “third use” is a battle over practicalities and solutions. One says the gospel doesn’t work, because it leads to antinomian freedom; the other that law has had plenty of time (before or after the fall, before or “after” faith), and yet the bad conscience remains. Since Scripture and experience are so clear about the result of human use of the law, why not try the gospel of Jesus Christ? It never gets much airtime before the next church disciplinarian grabs hold and warns us about shapeless freedom. Luther replied to Erasmus about this very fear: “Who, you say, will take pains to correct his life? I answer: No man will and no man can, for God cares nothing for your correctors without the Spirit, since they are hypocrites. But the elect and the godly will be corrected by the Holy Spirit, while the rest perish uncorrected.”¹³

Everything is in the hands of God. How can that be good news? Well, if it brings us Christ, if it makes us free to do the works of the law *without* the law, it is good news to my neighbor and myself. Finally, it is not a matter of whether we can trust the church always to be at least adequate to the gospel, it is a matter of which institutions the Holy Spirit uses for correcting us. Does the office of law kill so the Spirit can use the office of gospel to make alive by baptism, Lord’s Supper, and hu-

¹³LW 33: 60-61.

man preachers? Or do we rely on speculations about how the church can endure through time only if it can establish discipline? As for me, I'll take freedom in Christ even if it means a life in the leper colony where God's word actually needs to be heard. 

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