



## The Concept of the “Law” in the Lutheran Tradition

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One theme almost as characteristic of the Lutheran tradition as “justification by faith” is “law and gospel.” Indeed, the two themes are closely related. The Lutheran opposite of “justification by faith” is “justification by works of the law.” Both themes have come under criticism: justification because it is no longer relevant, law and gospel because it is not faithful to biblical exegesis. Both criticisms center on the concept of the law, and they could be traced back to Martin Luther’s own lifetime. The antinomian controversy, which began in 1527, challenged the application of the decalog to Christians<sup>1</sup> and led to the controversies about the third use of the law.<sup>2</sup> What is new about the criticisms in recent biblical scholarship is that the new understandings of Paul and the Sinaitic legislation have brought biblical exegesis into direct conflict with the Lutheran *Book of Concord*.

E. P. Sanders represents that New Testament scholarship which insists that the Lutheran understanding of law and gospel does not accurately reflect the thought of Paul.<sup>3</sup> According to Sanders, Paul does not proclaim God’s grace in Christ as deliverance from the plight of failing to achieve salvation through the works of the law. Rather, Paul begins with the conviction that in Jesus, the Christ, the eschatological salvation of God has occurred. What this means for Paul is that now Jesus has become the ground of salvation for both Jews and Gentiles. As a consequence faith in Christ has replaced and now excludes the law. To continue in the law is *now* sin because it is a rejection of God’s escha-

<sup>1</sup>See Franklin Sherman’s introduction to Luther’s treatise, “Against the Antinomians,” *Luther’s Works*, Vol. 47 (Philadelphia: Fortress, 1971) 101-106.

<sup>2</sup>The literature on this topic is enormous. The following works are helpful also for pointing to further literature: Wilfried Joest, *Gesetz und Freiheit* (Göttingen: Vandenhoeck & Ruprecht, 1961) 82-133; Gerhard Ebeling, “On the Doctrine of the *Triplex Usus Legis* in the Theology of the Reformation,” *Word and Faith* (Philadelphia: Fortress, 1963) 62-78; William Lazareth and Theodore Jungkuntz, “The Question of the ‘Third Use’ of the Law,” *Confession and Congregation* (Valparaiso: Valparaiso University, 1978) 48-59.

<sup>3</sup>E. P. Sanders, *Paul and Palestinian Judaism* (Philadelphia: Fortress, 1977) 474-511.

ological salvation in Christ. While Krister Stendahl did not have it available to him, the work of Sanders supports Stendahl’s contention that Paul’s opposition of Christ to the law cannot be compared historically to Luther’s quest for a gracious God.<sup>4</sup> My colleague, Ronald Hals, expresses the challenge on behalf of Old Testament scholars:

For Lutherans who accept the authority of both the Scriptures and the Confessions it certainly seems difficult to reconcile the biblical rejoicing in the law with the

characterization of the law in the Apology to the Augsburg Confession as that which always accuses.<sup>5</sup>

The challenge is evident, and it will not do simply to go looking for exegetes whose views are more compatible with the Lutheran confessions.

I propose to work out of a two-fold conviction. First, there are insights and concerns in the Lutheran theme of law and gospel which ought to be maintained. Second, there is a problem behind the exegetical criticisms which is rooted in the very origins of the Lutheran Reformation. I hope to show that the problem arises because the Lutheran tradition identified the term “law” with the decalog, and the problem is compounded, not resolved, by attempting to distinguish a variety of “uses” for the decalog. Unless we face this problem and achieve some terminological and conceptual clarity, the Lutheran insights will either be inadequately maintained or inappropriately discarded.

## I. THE LAW AS PROLEGOMENON

It is important to maintain the theme of law and gospel because some of the insights clustered around the term “law” in this theme are necessary to Lutheran theology for the task of theological prolegomenon. Prior to the Enlightenment, Lutheran scholastic orthodoxy used the concept of the natural knowledge of God to demonstrate God’s existence. The Bible, by way of contrast, was regarded as a supernatural source of supernatural revelation.<sup>6</sup> When this scheme was subjected to the critique of the Enlightenment, the consequence was that language about God became irrelevant to genuine knowledge, and the pathway was cleared for modern secularity.<sup>7</sup> But Luther’s theme of the law as the antithesis of the gospel had the potential of escaping the Kantian critique. Thus Lutheran theology would have in the category “law” a prolegomenon to the gospel which could make the transition from pre-modern to modern culture without giving up its essential proclamation. If “law” means whatever calls us into question before God, then we can see it functioning as prolegomenon in theologians

<sup>4</sup>Krister Stendahl, *Paul among Jews and Gentiles* (Philadelphia: Fortress, 1976) 79-96, 125-133.

<sup>5</sup>Ronald M. Hals, *Grace and Faith in the Old Testament* (Minneapolis: Augsburg, 1980) 67. See also Bernard W. Anderson, *Understanding the Old Testament* (Englewood Cliffs: Prentice-Hall, 1975) 85-97, and Gerhard von Rad, *Old Testament Theology* (2 vols.; New York: Harper & Row, 1962-65) 2.388-409.

<sup>6</sup>Heinrich Schmid, *Doctrinal Theology of the Evangelical Lutheran Church* (3rd ed.; Minneapolis: Augsburg, 1961) 15-38. Carl Heinz Ratschow, *Lutherische Dogmatik zwischen Reformation und Aufklärung* (2 vols.; Gütersloh: Mohn, 1964-66) 1.21-57; 2.18-58.

<sup>7</sup>Werner Elert, *The Structure of Lutheranism* (St. Louis: Concordia, 1962) 49-58, pointed out the disastrous consequences of such a coordination of natural and supernatural knowledge for both theology and apologetic.

as diverse as Theodosius Harnack (d. 1889),<sup>8</sup> Werner Elert (d. 1954),<sup>9</sup> and Paul Tillich (d. 1965),<sup>10</sup> as well as in the work of contemporary Lutheran theologians Gerhard Forde<sup>11</sup> and Robert Jenson.<sup>12</sup>

Karl Barth’s response to the critique of the Enlightenment and to the Liberal theology of the 19th Century was to reject the idea of prolegomenon altogether. If grace is revelation and revelation is grace, then the antithesis between law and gospel simply disappears. The revelation of God, whether law or gospel, is gracious.<sup>13</sup> Barth’s theological program seemed appropriate to

the concerns of biblical exegesis. Barth reversed “the formula which has come to be taken almost for granted among us” and stated that he would speak of “gospel and law.”<sup>14</sup> He carried this program out consistently in the *Church Dogmatics*, concluding each Christocentrically-shaped theological section with its appropriate ethic organized around some portion of the decalog.

Werner Elert insisted that in the process something of vital importance was lost. If we do not recognize the radical antithesis of the law and the gospel, we will not be able to identify the wrath of God nor experience the true consolation of the gospel.<sup>15</sup> Elert is unequivocal in understanding the term “law” to refer to the Sinaitic legislation with the decalog at its center, but he regards it as more than legislation. It is a vehicle for God’s judgment and punishment.<sup>16</sup> The price Elert pays for this radical view—that the law is decalog and that it always accuses—is that he must reject the so-called “third use” of the decalog, that is, its role as guide for the Christian ethic,<sup>17</sup> exactly the role assigned it by Barth.

The issue is more complex than was identified by the polemical positions of either Elert or Barth. By giving up theological prolegomenon, Barth lost something essential, namely the sense that theology was dealing with human reality and human experience. He did not penetrate to the depth of the human situation, and thus his presentation of the character of both God’s revelation and God’s salvation lacked corresponding depth.<sup>18</sup> Elert, on the other hand, did not actually develop his own theological prolegomenon on the basis of the decalog. He developed it on the basis of psychological and sociological analysis which confronts humanity with inescapable transcendent threat. It is effective, but it has no relationship to the Pentateuch.<sup>19</sup> Furthermore, despite his rejection

<sup>8</sup>Theodosius Harnack, *Luthers Theologie* (2 vols.; Munich: Kaiser, 1927) 1.69-96, 221-274.

<sup>9</sup>Werner Elert, *Der Christliche Glaube* (Hamburg: Furche, 1956) 59-109.

<sup>10</sup>Paul Tillich, *Systematic Theology* (3 vols.; Chicago: U. of Chicago, 1951-63) 2.44-86.

<sup>11</sup>Gerhard Forde, *Where God Meets Man* (Minneapolis: Augsburg, 1972) 7-17.

<sup>12</sup>Eric Gritsch and Robert Jenson, *Lutheranism* (Philadelphia: Fortress, 1976) 36-44.

<sup>13</sup>Herbert Hartwell, *The Theology of Karl Barth* (Philadelphia: Westminster, 1964) 41-95.

<sup>14</sup>Karl Barth, “Gospel and Law,” *Community, State, and Church* (Garden City: Doubleday, 1960) 71.

<sup>15</sup>Werner Elert, *Law and Gospel* (Philadelphia: Fortress, 1967) 25. See also Edward H. Schroeder, “The Relationship between Dogmatics and Ethics in the Thought of Elert, Barth and Troeltsch,” *Concordia Theological Monthly* 36 (1965) 744-771.

<sup>16</sup>W. Elert, *Law and Gospel*, 7-13.

<sup>17</sup>Ibid., 38-48. For the 19th century roots of this debate see Robert Schultz, *Gesetz und Evangelium* (Berlin: LVH, 1958) and Gerhard Forde, *The Law-Gospel Debate* (Minneapolis: Augsburg, 1969).

<sup>18</sup>Langdon Gilkey, *Naming the Whirlwind* (Indianapolis: Bobbs-Merrill, 1969) 78-106.

<sup>19</sup>W. Elert, *Der Christliche Glaube*, 59-109.

of a “third use” of the law, Elert uses the *paraenesis* (exhortation) of the New Testament in his ethics,<sup>20</sup> exactly the role the Sinaitic legislation had in the Israelite community, according to Old Testament scholarship. The strengths and weaknesses of both sides in this debate indicate two tasks: First, the historical task of understanding the Reformation legacy and what became of it in later Lutheran theology and piety; and second, the theological task of proposing a reform of that legacy.

## II. THE REFORMATION LEGACY

It is my contention that the unclarity with regard to the role and function of “law” is rooted in Luther himself and in the Lutheran Confessions. It is impossible in the brief compass of this essay to adduce all the relevant material from Luther.<sup>21</sup> I limit myself to a single document, a sermon from 1525 which Luther reworked for publication as a pamphlet in 1526. It is entitled, “How Christians should regard Moses,”<sup>22</sup> and it contains themes which appear later in Luther’s catechisms and in Melancthon’s Apology to the Augsburg Confession.

Luther begins with the assertion that only twice in human history has there been a public sermon directly “from heaven,” from God Himself, once at Mt. Sinai and once on Pentecost. Both were accompanied by “great splendor” and impressive power. “Now the first sermon, and doctrine, is the law of God. The second is the gospel.” Because they are “not the same,” it is important to know how to “differentiate between them.” “The law commands and requires our action.” The gospel reverses this and says, “This is what God has done for you.”

So, then, there are two kinds of doctrine and two kinds of works, those of God and those of men. Just as we and God are separated from one another, so also these two doctrines are widely separated from one another. For the gospel teaches exclusively what has been given us by God, and not—as in the case of the law—what we are to do and give to God. (162)

Why did God give this law to Moses? “He did this...because he wanted thereby to *compel, burden and press* the Jews.” There are two kingdoms, “the temporal, which governs with the sword, and the spiritual, which governs solely with grace and with the forgiveness of sins.” The Jews constitute a third kind of kingdom, “half spiritual and half temporal.” The law is the sword for the temporal half (164).

With this introduction Luther now identifies three aspects of Moses which we ought to note. First, Moses provides Jews a kind of *Sachsenspiegel*, a folk law which cannot be made binding for Christians (167). In that sense, “even the Ten Commandments do not pertain to us” (165). But we may use Moses as a source of good ideas, such as tithes instead of taxation, the jubilee year, and levirate marriage (167). The only Mosaic commands which apply to us are those which

<sup>20</sup>Werner Elert, *The Christian Ethos* (Philadelphia: Fortress, 1957) 240 ff.

<sup>21</sup>The best discussion in English remains Heinrich Bornkamm, *Luther and the Old Testament* (Philadelphia: Fortress, 1969), especially 120-179.

<sup>22</sup>*Luther’s Works*, Vol. 35 (Philadelphia: Fortress, 1960) 161-174. The subsequent numbers in parentheses refer to pages of this treatise.

are part of “natural law,” such as the prohibitions against adultery, murder, and theft, and the command to honor God (168). In attempting to keep these commands Jews and Gentiles alike fail (173). Second, the Pentateuch contains “promises of God which sustain faith” (169). Third, we are to “read Moses for the beautiful examples of faith, of love and of the cross” (173).

In this treatise we have all the elements of Luther’s understanding of law. The sinaitic revelation is law in contrast to gospel. Law and gospel correspond to the two kingdoms, temporal and spiritual. Most of the sinaitic legislation applies only to Jews as a kind of “folk law.” Insofar as it agrees with natural law it applies to all people. Natural law is “written in everyone’s heart.” It is a burden because it shows that Jews and Gentiles alike fail to keep the law. In this mix are

the points of departure for hermeneutics and exegesis of the Bible as well as for prolegomenon and ethics. Here are also the roots of the problem with the concept of law and the theme of law and gospel.

All these themes appear in the Large Catechism as Luther himself summarizes: the Creed is the gospel; the Ten Commandments are the law.

The Ten Commandments, moreover, are inscribed in the hearts of all men. No human wisdom can comprehend the Creed; it must be taught by the Holy Spirit alone. Therefore the Ten Commandments do not by themselves make us Christians, for God's wrath and displeasure still remain on us because we cannot fulfill his demands. But the Creed brings pure grace and makes us upright and pleasing to God. Through this knowledge we come to love and delight in all the commandments of God because we see that God gives himself completely to us...to help us keep the Ten Commandments.<sup>23</sup>

New here in comparison with the 1526 pamphlet is the concept of the "third use" of the law, although Luther does not use the term.<sup>24</sup> This set of themes accounts for the fact that Luther does three things with the decalog in the two catechisms. First, he re-arranges the order of materials, putting the decalog first, in contrast to the catechisms of the late middle ages.<sup>25</sup> The decalog is thus able to function as prolegomenon to the Creed (gospel) by uncovering sin. Second, the decalog is interpreted as an expression of natural law for the good ordering of the world. Third, the decalog is used to exhort and describe the life of believers, a kind of ethical manual for Christian folk.

All of this prepares the way for Philip Melancthon's extended statement on the law and promises in Article IV of the Apology to the Augsburg Confession.<sup>26</sup> Here, writes Melancthon, "the main doctrine of Christianity is in-

<sup>23</sup>"The Large Catechism," *The Book of Concord*, ed. Theodore G. Tappert (Philadelphia: Fortress, 1959) 419-420 (sections 67-69).

<sup>24</sup>Bornkamm's argument in *Luther and the Old Testament*, 165 ff., that the First Commandment as *command* is a unity of both law and gospel is unconvincing. Bornkamm's references demonstrate not the unity of law and gospel but rather the "third use" of the law.

<sup>25</sup>The earliest use of the decalog dates from a catechism by Edmund, Archbishop of Canterbury (d. 1246). A 1480 catechism places the decalog in a second grouping (how to live the life of faith) after Creed, Sacraments and Prayer (how one is to believe). H. W. Surkav, "Katechismus, Geschichtlich," *Die Religion in Geschichte und Gegenwart* (3rd ed.; 6 vols.; Tübingen: J. C. B. Mohr, 1957-62) 3.1182.

<sup>26</sup>The numbers in parentheses refer to page and paragraph numbers in the *Book of Concord*.

volved, that is, the consolation of pious consciences by means of the Gospel" (107,2). The key paragraph follows as a kind of programmatic statement:

All Scripture should be divided into these two chief doctrines, the law and the promises. In some places it presents the law. In others it presents the promise of Christ....By "law" in this discussion we mean the commandments of the Decalogue, wherever they appear in the Scriptures. (108,5-6)<sup>27</sup>

Like Luther, Melancthon understands the decalog to be identical with natural law (108,7-8). The civic righteousness produced by the law is good, though not saving (110,22-26). With regard to salvation, “the law is never satisfied” (109, 18). Since “the mind that is set on the flesh is hostile to God,” the flesh sins even when it performs outward good works (111,33). Because we are weak and fallen, we cannot keep the law perfectly (130,167-168). Hence “the law always accuses” (112,38; 125, 128; 130, 167). The law thus shows God’s wrath against sin and terrifies consciences (118,79). But through Christ we are regenerated “so that we can finally obey God’s Law” (113,45). We cannot keep the law unless we first receive the Holy Spirit (116,70), but good works and “the keeping of the law follows with the gift of the Holy Spirit” (132, 182). Here the decalog functions in all of the ways already evident in Luther.

It is neither possible nor necessary to trace here the controversies which led up to Articles V (Law and Gospel) and VI (The Third Function of the Law) in the Formula of Concord.<sup>28</sup> It is sufficient to observe that the final formulation of Article VI was ambiguous enough to fuel two different interpretations. On the one hand, the very title seems to argue a simple and straightforward teaching that the decalog has three uses: first, “to maintain external decency and discipline”; second, to bring about a knowledge of sin; and third, to teach the converted how “to learn from the law to live and walk in the law.”<sup>29</sup> On the other hand, those who opposed a “third use” for the law because they feared an attenuation of its accusing function quoted further statements from this article to show that the supposed “third use” was really only the first and second uses for the regenerate person insofar as he or she is still a sinner (567, 18 & 24). Article VI does say that “to reprove is the real function of the law” (566, 14), and the good works of the regenerate “are, strictly speaking, not works of the law but works and fruits of the Spirit” (566, 17).

Lutheran scholastic orthodoxy opted for the first interpretation of Article VI. Like Luther, the decalog is equated with the “law of nature,” the knowledge of which was weakened by the Fall into sin and which was therefore renewed at

<sup>27</sup>It is difficult to understand how Holsten Fagerberg can assert that the Lutheran Confessions “do not contain any general orientation for the interpretation of the Bible.” His claim that statements on law and gospel are to be restricted to the topic of faith and works goes against the evidence. *A New Look at the Lutheran Confessions* (St. Louis: Concordia, 1972) 63-64. For contrary views see Edward Schroeder, “Is There a Lutheran Hermeneutics?,” *The Lively Function of the Gospel* (St. Louis: Concordia, 1966) 81-97; Friedrich Brunstäd, *Theologie der lutherischen Bekenntnisschriften* (Gütersloh: Bertelsmann, 1951) 86; and Edmund Schlink, *Theology of the Lutheran Confessions* (Philadelphia: Fortress, 1961) 5-28.

<sup>28</sup>Robert Kolb, *Andreae and the Formula of Concord* (St. Louis: Concordia, 1977) 31-34.

<sup>29</sup>*The Book of Concord*, 563-564. The numbers in parentheses refer to page and paragraph numbers in the *Book of Concord*.

Sinai.<sup>30</sup> Heinrich Schmid quotes David Hollaz (d. 1713) to the effect that there are *four* uses of the law: political, elenchtical, pedagogical, and didactic; but the elenchtical and pedagogical are really different aspects of the second use, to make sin manifest and thus drive the sinner to Christ.<sup>31</sup> This scholastic understanding of the law and its uses dominated popular piety through the catechisms in use in the parishes.<sup>32</sup> The influence of Lundensian theology in American Lutheranism after World War II was no improvement. Anders Nygren identified the *nomos* motif with the Old Testament which was opposed and overcome by *agape*.<sup>33</sup>

### III. INADEQUACIES IN THE LEGACY

What we have with surprising consistency in Luther, the Lutheran Confessions, and the Lutheran theological tradition is the understanding that the content of the term “law” is the decalog and that the decalog is identical with a universal natural law. The decalog is then assigned various “uses”: as prescriptive for a social ethic; as a hermeneutical principle (together with the gospel); as supplying apologetic material for the natural knowledge of both God’s existence and God’s will; as prolegomenon to the gospel (by exposing and condemning sin); and as descriptive of the Christian life. Ronald Hals’ analysis is that Luther’s experience, that is, his existential terror because of his inability to believe himself justified, was applied in two directions: *backwards* as an interpretation of Paul’s break with the Torah and thus an interpretation of the decalog; and *outwards* as an “overly ambitious generalization” which would describe “how God works with each individual.”<sup>34</sup> One need not agree with Hals’ description of this generalization or with his judgment that “the role of God’s law assumed in this formulation is totally false”<sup>35</sup> to acknowledge with him that the Lutheran tradition has a serious problem. It is my contention that the problem originates in Luther and the Confessions. The nature of the problem is that the concept “law” is identified with the decalog and a variety of “uses” are then assigned to this single subject matter. I believe that the various tasks and experiences listed as “uses” of the law are all valid in themselves, but it is historically/exegetically inappropriate to assign them to the decalog, as the entire Lutheran tradition does.

The following seem to me to be the most critical problems which arise or have arisen when the many functions or “uses” of the law are assigned to the subject matter of the decalog.

1. There is a discrepancy between what historical/exegetical scholarship discloses to have been the function of the decalog in the life of Israel and some of the “uses” assigned to the decalog by the Lutheran tradition. The Torah, including the decalog, was not experienced by Israel as a burden or a terror to con-

<sup>30</sup>H. Schmid, *Doctrinal Theology*, 508-510.

<sup>31</sup>*Ibid.*, 515-516.

<sup>32</sup>*A Short Explanation of Dr. Martin Luther’s Small Catechism* (St. Louis: Concordia, 1943) 42-43, 84-86; J. A. Dell, *Senior Catechism* (Columbus: Lutheran Book Concern, 1939) 27-29, 69-78.

<sup>33</sup>Anders Nygren, *Agape and Eros* (London: SPCK, 1953) 254-257.

<sup>34</sup>R. Hals, *Grace and Faith*, 62.

<sup>35</sup>*Ibid.*, 63.

sciences. It was, rather, received and celebrated as a gift, as something in which one could delight (Psalms 1, 19, 119, etc.). The decalog does not need to be assigned a “third” use at all. Guidance was its *only* use. The challenge which this exegetical insight poses for the Lutheran tradition also means the opportunity to re-evaluate the role of the New Testament *paraenesis* for theology and the witness of the church.

2. To identify the law-experience with the decalog leads to an inadequate understanding of sin and our fallen condition. Our fallen condition neither results from nor is characterized by a breaking of commandments of the decalog. It is characterized by mis-directed trust, as other statements of the Lutheran Confessions indicate.<sup>36</sup> Such mis-directed trust discloses itself in the potential of everything—including morality at its best—being used for self-justification.

3. To identify the law-experience with the decalog leads to an inadequate apologetic and

prolegomenon. The task of prolegomenon is to identify what human experiences the Christian proclamation addresses, what experiential realities it expresses. Robert Jenson demonstrates how this can be done if the Christian gospel is that one is justified by God for Christ's sake through faith. The subject of justification, says Jenson, involves the meaning or meaninglessness of human existence.<sup>37</sup> He does prolegomenon without any reference to the decalog. Indeed, the attempt to use the decalog by equating it with natural law is not only questionable exegesis, but it also means involvement in unnecessary issues.

4. To identify the law-experience with the decalog leads to an inadequate proclamation of the gospel. Gustaf Aulén observed how law as decalog forms the framework for the Anselmian atonement doctrine characteristic of Lutheran scholastic orthodoxy.<sup>38</sup> The achievement of Gerhard Forde is that he has made significant use of the Reformation theme of law and gospel to present a persuasive statement of the gospel without using the framework of the decalog.<sup>39</sup> The most important reason why it is necessary to clarify the concept of the law by distinguishing it from the decalog is for the sake of the clarity of the gospel.

5. Finally, to identify the law-experience with the decalog leads to an inadequate use of the New Testament *paraenesis* for the ethic of the Christian community. The event of Jesus as the crucified Messiah confers on the Christian community new freedom to think about what it means to believe the promises of the gospel. That is the function of the New Testament *paraenesis*—including the Sermon on the Mount. Its purpose is not the sharpening of the supposed second use of the decalog or amplifying the supposed third use of the decalog.

#### IV. DISCERNING REFERENTS

The decalog is not the appropriate subject matter for the term “law” in the Lutheran theme of law and gospel. Karl Barth’s assertion that “the law is nothing

<sup>36</sup>Augsburg Confession, Article 11; Apology, Article IV, 33-35.

<sup>37</sup>E. Gritsch and R. Jenson, *Lutheranism*, 40-42.

<sup>38</sup>Gustaf Aulén, *Christus Victor* (London: SPCK, 1950) 100-109.

<sup>39</sup>Forde, *Where God Meets Man*, 18-44; *Justification by Faith* (Philadelphia: Fortress, 1982) 21-38; “Outside the Gate: Atonement as Actual Event,” *Dialog* 18 (1979) 247-254.

else than the necessary *form of the Gospel*, whose content is grace” could be acceptable if “law” meant only Torah or *paraenesis*.<sup>40</sup> But such an interpretation cannot do justice to other and valid concerns contained in the Lutheran concept of “law.” We must, it seems to me, identify the different subjects with different language. Paul Althaus proposed that we distinguish between “command” (*Gebot*) and “law” (*Gesetz*) on the grounds that God’s command was gracious before the Fall but became “law” after the Fall because of human sin.<sup>41</sup> It is commendable to recognize that different language is needed, but it is not evident that Althaus is using the different terms for different *subject matter*, and different subject matter—not different uses for the same subject matter—is the issue. It is, of course, possible for the same subject matter to function differently under different circumstances, and that is what gives the language about “uses” whatever validity it has.

But the point here is that the traditional “uses” are not about the same subject, the decalog, but about different referents. It is these referents which need to be identified and



distinguished with different language.

1. One referent is God's governance of the universe. Luther used the distinction between the law and gospel to identify two kingdoms, one temporal and the other spiritual.<sup>42</sup> The significance of this is that it affirms the value, goodness, and accountability of the world as distinguishable from that community called into being by the gospel. What it means that God governs the world or what his normative will for the world is cannot be determined by the subject matter of either Torah or New Testament *paraenesis*. The subject matter here is what has traditionally been called "natural law." Learnings in this area will be inter-disciplinary.

2. A second referent is the task of analyzing and uncovering the fallen character of human existence. This fallen existence is not explored at its deepest level unless it is exposed as sin, that is, as alienation from God, as under God's condemnation. Here the subject matter is the way humanity bears witness to its fallen character through what Luther called "misbelief, despair and other great shame and vice," and thus testifies to the threatening effect our finite freedom has upon us. Ernest Becker's published corpus is a commentary on that "law" which "always accuses," even though it has no relation to the Torah or the New Testament *paraenesis*.<sup>43</sup> "Law" here functions as a hermeneutical principle providing not an interpretation of the Bible but rather an interpretation of existence. It is that theological analysis which exposes and confronts existential dread.

3. A third referent is that body of reflection upon the way of life, the way of being in the world, which is appropriate for the community that trusts and proclaims Jesus as the crucified Messiah. If his resurrection is the grounding of

<sup>40</sup>K. Barth, "Gospel and Law," 80.

<sup>41</sup>Paul Althaus, *The Divine Command* (Philadelphia: Fortress, 1966) 1-47. Althaus' argument is summarized by W. Lazareth, "The Question of the 'Third Use' of the Law" (Note 2) 54-55. See G. Forde's critique in *The Law-Gospel Debate*, 227.

<sup>42</sup>*Luther's Works*, Vol. 35, 164. See also Heinrich Bornkamm, *Luther's Doctrine of the Two Kingdoms* (Philadelphia: Fortress, 1966).

<sup>43</sup>See especially Ernest Becker, *Angel in Armor* (New York: Macmillan, 1969) 1-98; *The Denial of Death* (New York: Free Press, 1973); and *Escape from Evil* (New York: Free Press, 1975).

the promised Kingdom of God, then the New Testament *paraenesis* is the way the church reflects on and lives out its faith in that promise. The subject matter here, the *paraenesis*, is the "Torah" of the Christian community, and it should be used and praised as is the Torah in Israel. There can be no talk here of a "third use" of the subject matter. Its *only* use is descriptive and encouraging exhortation.

This is not a very elegant proposal, but it may serve to open discussion on the problem the Lutheran tradition has with the concept of the "law." And it is intended to call attention to the different subject matters and the different tasks which the Lutheran tradition has assigned to the so-called "uses" of the decalog. Unless we pay attention to these differences, one or another of the tasks will be poorly done or not done at all—to the detriment of the church's faith and mission.