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The Third Use of the Law: Resolving the Tension

David P. Scaer

While preparing this essay, a pastor reminded me that I had spoken on this topic several times and that this title may have been anticipated in the paragraph heading, "Overcoming the Contradiction Between the Law and the Gospel," in a previous essay.¹ He also added that it was unlikely that I could say anything new. But situations change. One size does not fit all. Dogmatics has a way of slipping into reverse gear and reverting to historical theology so that each loses its distinctive character. Familiar things can and must be addressed differently. An often-reworked title by Paul Tillich, *How My Mind Has Changed*, is taken up as a manifesto for those who want to rid themselves of the past as quickly and as often as possible. In looking back at what Queen Elizabeth called her "salad days," I have come to see some things differently. In the 1970s the ordination of women and in the 2000s the ordination of homosexuals and same-sex marriages have kept the law and gospel distinction in the middle of the theological debate. These practices are allowed, it is argued, because the gospel frees one from moral and ethical restraints. So the inebriated farmer peasant who at one time falls into the predictability of legalism now falls into antinomianism's lack of restraint.

I. A One Sided Coin: Gospel Alone

Antinomianism is the belief that Christians are by faith free from all laws and moral or ethical standards. If certain biblical citations disallow women pastors, the gospel takes precedence, so it is argued. Consecration of a gay bishop in the Anglican Communion and proposals to legitimize the ordination of homosexuals and same-sex marriages in Evangelical Lutheran Church in America (ELCA) keep the issues alive.² Such

¹David P. Scaer, "The Law and the Gospel in Lutheran Theology," *Logia* 3 (1994): 27-24.

² This was also the issue with the faculty walkout from Concordia Seminary, Saint Louis in February 1974. Edward Schroeder who then was on the faculty writes the

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proposals are too radical for the LCMS, but the ordination of women continues to surface. Recently an emeritus pastor claimed that some pastors, whom he identified as confessional, are antinomian in not giving enough attention in their sermons to Christian sanctification which he described as crucifying the flesh, putting down the old man and putting on the new man. Without names or details, we can only respond to how he defines antinomianism. Crucifying the flesh and putting down the old man are never past tense, but they are the work of the law. Putting on the new man is the work of Christ (gospel) and is truly sanctification.³ We do not put on an abstract holiness or morality, but we put on Christ—his life, his works, his sacraments, his death, his absolution, his resurrection, ascension, and session at the Father's right hand. These things are ours by a baptism into his death and resurrection, and by faith we are sanctified. The things of Christ that are ours by faith have nothing to do with the law's threats. Guilt is prior to and necessary for faith and sanctification but has no place in faith and sanctification by which Christ lives in us. After coming to faith by the gospel, the Christian is revisited by the law and his sense of guilt will increase especially in light of Christ's holy life. The Spirit's *opus alienum* increases his sense of inadequacy and makes him more miserable as he copes with a sinful reality he cannot escape.

II. Prior Christological Realities

God's sovereignty is neither enhanced nor satisfied because of the sinner's suffering or death. He takes pleasure in the sinner's dilemma only in the sense that self-mortification prepares him for the gospel. Human misery does not make God happy. He is not impassive or detached from man's fallen condition. Quite to the contrary, whenever the sinner is brought to Christ, joy escapes its divine boundaries and echoes in the mouths of angels (Luke 15:7). Good works please God first because they come from him and are established in and done by Christ, who did them freely because of what God made him:

following: "The second heresy was on the so-called 'third use of God's law,' a constant hot potato among Lutherans ever since the 16th century. Our 'false teaching' on the law's 'third use' was that we opted for Elert's Gospel-grounded interpretation and not the one the LCMS had supposedly 'always' taught." *Sabbatheology Newsletter* (Thursday Theology #336 [November 18, 2004]).

³ Desperation worked by the law so that the believer loses the sense of God's presence belongs to sanctification. The cry of dereliction, "My God, my God, why hast thou forsaken me" (Matt 27:46; Mark 15:34) is eminently the cry of Christ, also of Adam, David and every believer. This sense of abandonment is a holy work of God, dare we say the holiest, because in that moment we have no choice but to flee to Christ alone who is our wisdom, our justification, our sanctification, and our redemption.

[God] is the source of your life in Christ Jesus, whom God made our wisdom, our righteousness [KJV: justification] and sanctification and redemption; therefore, as it is written, "Let him who boasts, boast of the Lord." (1 Cor 1:30-31)⁴

God is the source of our wisdom (the gospel of the crucified Christ), justification, sanctification, and redemption, because he placed these things in Christ. Only because they are found in and done by him can they be found in and accomplished by us through faith in him. Good works are done freely without compulsion by Christians just as they were done freely by Christ. Call this subjective sanctification, if you want. Just as the church, the *una sancta*, is the prior reality to every congregation, so Christ as our sanctification is a prior reality before we come to faith and do its works. "For we are his workmanship, created in Christ Jesus for good works, which God prepared beforehand, that we should walk in them" (Eph 2:10). Thoughts of moral or ethical self-appreciation, quantification, and admiration are annulled by the words, "Let him who boasts, boast of the Lord," a passage describing a scene of bodies decomposing into fertilizer (Jer 9:22-24).⁵ In a situation of human misery and depravity, God's glory is the only act in town. At the heart of the Lutheran Reformation is the confession that we of ourselves can do no good works. This applies as much to our justification by which we face God with confidence as it does to our sanctification by which we face the world. Our sanctification is not only patterned after Christ's works (moral theory of the atonement), but is already present in him in the same way wisdom (gospel), justification, and redemption are present. Only by faith can sanctification become a personal, existential reality for the Christian. Neither in Christ nor in us are these disconnected things, but, in the one moment of the cross, God has made him to be our wisdom, justification, sanctification, and redemption—they are what God made Christ, what Christ is and did, and what he does in us. He who hears God's wisdom and believes has redemption, justification, and sanctification.

Lutheran arguments with Rome were not about redemption—the doctrine that Christ made atonement for sin—but about justification;

⁴ In Greek: δικαιοσύνη τε καὶ ἁγιασμός καὶ ἀπολύτρωσις.

⁵ "Thus says the LORD: 'The dead bodies of men shall fall like dung upon the open field, like sheaves after the reaper, and none shall gather them.' Thus says the LORD: 'Let not the wise man glory in his wisdom, let not the mighty man glory in his might, let not the rich man glory in his riches; but let him who glories glory in this, that he understands and knows me, that I am the LORD who practice steadfast love, justice, and righteousness in the earth; for in these things I delight,' says the LORD."

however, by denying the sole agency of God in justification, Rome compromised its doctrine of redemption by depriving believers of its benefits. Grace becomes something in us instead of how he in Christ relates to the world. Justification is collapsed into sanctification and its objectivity is lost. A synergism inherent in sanctification seeped into justification, and these two doctrines became indistinguishable from the other. Yet Christ is as much our sanctification as he is our justification and redemption. Sanctification is God's work in us for others.⁶ "Let him who boasts, boast of the Lord" applies not only to the atonement but also to the gospel, that divine wisdom, justification, sanctification, and redemption. Just as there can be no subjective justification in faith without a prior justification in Christ (objective justification), so there are no good works that the Christian does that Christ has not already done. Christ is on both sides of the equation. He does the good works in us and he is their recipient.⁷

III. Lutheran and Reformed: Same Terms, Different Content

Both Lutherans and Reformed have a place for the law's accusatory function (second use) in preparing for the gospel⁸ and its directive function for the Christian life (third use), but each sees the relation of the law and the gospel differently. One Reformed theologian writes: "Reformed theology affirms a polarity but not an antithesis between the Law and the Gospel."⁹ The latter view characterizes the Lutheran position. The condemning law and the forgiving gospel have a simultaneous impact on the Christian, who for life remains as much a believer as he does an unbeliever. His condition is described as *simul iustus et peccator*.¹⁰ For the

⁶ See David P. Scaer, "Sanctification in Lutheran Theology," *Concordia Theological Quarterly* 49 (1985): 181-189; "Sanctification in the Lutheran Confessions," *Concordia Theological Quarterly* 53 (1989): 165-182.

⁷ Matt 25:44-46: "Then they also will answer, 'Lord, when did we see thee hungry or thirsty or a stranger or naked or sick or in prison, and did not minister to thee?' Then he will answer them, 'Truly, I say to you, as you did it not to one of the least of these, you did it not to me.'"

⁸ So Luther: "The foremost office or power of the law is that it reveals inherited sin and its fruits. It shows human beings into what utter depths their nature has fallen and how completely corrupt it is" (SA III,2,4). Robert Kolb and Timothy J. Wengert, eds., *The Book of Concord: The Confessions of the Evangelical Lutheran Church*, tr. Charles Arand, Eric Gritsch, Robert Kolb, William Russell, James Schaaf, Jane Strohl, Timothy J. Wengert (Minneapolis: Fortress Press, 2000), 312.

⁹ Donald G. Bloesch, "Law and Gospel in Reformed Perspective," *Grace Theological Journal*, 12 (Fall 1991): 181.

¹⁰ See Jan Rohls, *Reformed Confessions: Theology from Zurich to Barmen*, tr. John Hoffmeyer, Columbia Series in Reformed Theology (Louisville, KY: Westminster John

Reformed "the Law awakens the consciousness of the need of redemption,"¹¹ a problematic view for Lutherans for whom the law offers no hope and only more misery.

Differences also surface on the third use of the law.¹² In Reformed thought the law accuses the unbeliever (second use), brings him to Christ, and "is a rule of life for believers, reminding them of their duties and leading them in the way of life and salvation" (third use). Thus the law along with faith generates good works. The new man remains lazy and needs the law to remind him of his duty.¹³ Lutherans see legalism in this definition.¹⁴ Contrast the Reformed view with Luther, for whom faith

Knox Press, 1998), 193–197. In preparing for the gospel, Lutheran and Reformed theologies have called the law's accusatory function its pedagogical use. Francis Pieper notes that some Lutheran theologians spoke of four uses of the law, a distinction with which he had no difficulty: 1) *usus politicus* or *civilis*; 2) *usus elencticus* [accusatory]; 3) *usus paedagogicus*; 4) *usus didacticus seu normaticus*. In this scheme the second and third uses are customarily seen as carrying out the same function as a prerequisite for the gospel; *Christian Dogmatics*, 3 Vols. (St. Louis: Concordia Publishing House, 1951–1953), 3:238, n. 29. The Reformed see the second use of the law pointing to Christ and thus favor calling it the *usus paedagogicus*. The word *pedagogical* has its roots in Greek and refers to the servant or the slave who takes the child to school, but he is not the child's teacher. In Lutheran theology it is used of the accusatory function of the law in preparing for the gospel.

¹¹ Louis Berkhof, *Systematic Theology*, 9th reprint (Grand Rapids: William B. Eerdmans Publishing Co., 1965), 615.

¹² Michael S. Horton makes every attempt to make the Reformed position appear similar to the Lutheran one; however, his references to Beza's idea that the Spirit works through the law and that, after the gospel has brought about conversion, the law can provide directions suggests an entirely different world view. "Calvin and the Law-Gospel Hermeneutic," *Pro Ecclesia*, 6 (Winter 1997): 27–42.

¹³ John Calvin, *The Institutes of Christian Religion*, ed. tr. Tony Lane and Hillary Osborne (Grand Rapids: Baker Book House, 1987); *Institutes* 2.7.12. See also Walter C. Kaiser, Jr., "The Law as God's Gracious Guidance for the Promotion of Holiness," in *Five Views on Law and Gospel*, ed. Greg L. Bahnsen (Grand Rapids: Zondervan Publishing House, 1996), 175–199.

¹⁴ The Reformed are aware that their view is seen as legalism by Lutherans; see Henrikus Berkhof, *Christian Faith: An Introduction to the Study of the Faith*, tr. Sierd Woudstra (Grand Rapids: William B. Eerdmans Publishing Company, 1979), 454. Elert saw the third use of the law as an intrusion of Calvinism into Lutheranism. So Scott R. Murray: "Calvin's contention that the Law itself gives motivation for Christian holiness is absolutely irreconcilable with the Lutheran structure of Law and Gospel where the Gospel is the sole motivation for good works." *Law, Life, and the Living God: The Third Use of the Law in American Lutheranism* (St. Louis: Concordia Publishing House, 2002), 95.

. . . is also a very mighty, active, restless, busy thing, which at once renews a man, gives him a second birth, and introduces him to a new manner and way of life, so that it is impossible for him not to do good without ceasing. For as naturally as a tree bears fruit good works follow faith.¹⁵

For Lutherans the law is the standard of good works as suggested by the Latin phrase *usus didacticus seu normaticus* for the third use, but it does not motivate them.¹⁶ One influential Reformed theologian understands the Lutheran position that the law as regulation and condemnation serves only to keep believers as sinners in check (second use) and does not promote holiness. Another theologian claims that, for Lutherans, Christ and not the law is the norm of righteousness¹⁷ and so sees antinomianism lurking in Lutheran theology.¹⁸ For Lutherans the law fulfilled in and by Christ is normative for Christian life, and in this sense it is normative and can be fulfilled (third use). As sinners, Christians are threatened by the law to do works that may be good according to external standards, but from faith they also do works pleasing to God. They are the works of Christ spontaneously motivated by the Spirit flowing from faith (SD VI,17).¹⁹ Divine wrath as a motivation for good works for Lutherans confuses the law with the gospel. The law's prohibitions and threats belong in the

¹⁵ Martin Luther, *Luthers Werke: Kritische Gesamtausgabe*, Vol. 10, pt. III (Weimar: H. Böhlau, 1910), 285; WA 10.III:285.

¹⁶ SD VI,18. "[Believers] live and walk in the law of the Lord and yet do nothing because of the compulsion of the law."

¹⁷ Thus Louis Berkhof's critique: "It is not surprising that this third use of the Law occupies no important place in [the Lutheran] system. As a rule they treat of Law only in connection with the doctrine of human misery." *Systematic Theology*, 615. Richard A. Muller claims that the Lutheran position on the third use of the law was a reaction to work righteousness. "The Law, for Lutheranism, can never become the ultimate norm for Christian living but, instead, must always lead to Christ who alone is righteous." *Dictionary of Latin and Greek Theological Terms* (Grand Rapids: Baker Book House, 1985), 321. These observations contradict Luther's objections to Agricola's claim that the law had no function in the Christian life; see Pieper, *Christian Dogmatics*, 3 Vols., 3:227. The Formula of Concord is quite definite in saying that the law does function in the Christian life. "However, when people are born again through the Spirit of God and set free from the law (that is, liberated from its driving powers and driven by the Spirit of Christ), they live according to the unchanging will of God, as comprehended in the law, and do everything, insofar as they are born from a free and merry spirit" SD VI,17.

¹⁸ See e.g., Kaiser, "The Law as God's Gracious Guidance for the Promotion of Holiness," 185; and also his "Response to Douglas Moo," in *Five Views on Law and Gospel*, ed. Greg L. Bahnsen (Grand Rapids: Zondervan Publishing House, 1996), 399.

¹⁹ For a presentation of the Lutheran position see, Murray, *Law, Life, and the Living God*, 198.

second use and not the third, according to which the law is transformed by Christ so that it expresses God's original intentions to the world. Christians as unbelievers can never escape the law's prohibitions and threats (SD VI,23–24). Simultaneously and often with the same deeds, they live under the law and the gospel as enemies and friends of God. They live a Nestorian-like existence with two incompatible forces at war with no communication between saint and sinner: *simul iustus et peccator* (SD VI,7–9).²⁰ Ironically, one work can flow from two motivations. Calvin sees the Christian as a composite person who is not zealous to do good works and thus needs the law to prod. Conversely in Lutheran theology, the sinner is caught between two realities: the same God who rejects him accepts him in Christ. He believes but is never relieved from divine accusation. Conversion is a one-time occurrence but its experience of going from unfaith to faith is repeated each day. Daily the old man is drowned, and daily a new man comes forth. For the Reformed, conversion initiates a process of moral improvement advanced by both the law and the gospel and can be charted.²¹ In contrast, the Lutherans hold that the law as prohibition and condemnation provides neither a negative nor a positive motivation for the life that is specifically Christian. As sinner he remains subject to divine wrath (second use), but as a believer his works are not motivated by the law's threats but by faith (third use).²² Sanctification is

²⁰ In Luther's theology, saint and sinner are distinct realities within one person. For the Reformed these personal realities are blended so that Luther's distinction plays no role. Within the dimension of this Eutychian-like definition of human personality so the Christian as Christian is not distinct from his sinful nature, the law can be used to prod the believer. "[Calvin] acknowledged that the Law is also a tutor that leads one to Christ, but he was equally emphatic that the Law is also a divinely-given standard that keeps us in conformity with the will of God revealed in Christ." Bloesch, "Law and Gospel in Reformed Perspective," 180. According to this definition law and gospel are not as distinct in their functions as they are for Lutherans.

²¹ See Wayne Grudem, *Systematic Theology* (Grand Rapids: Zondervan Publishing House, 1994), 748–751. For a presentation of the Lutheran position and a critique of the view that sanctification involves verifiable progress, see Steven A. Hein, "Getting Clear on Sanctification," *Issues Etc. Journal*, vol. 3, no. 3:12–14, 17. Hein says that sanctification "is not a separate work of God from justification. Rather, both are simply different aspects of God's saving work through the same saving grace which is ours through faith" (16). The opposing view is that justification and sanctification are different works of God. Justification is accomplished by grace and then "we are sanctified by the grace of the Spirit's power that energizes a holy obedience to the precepts of the Law" (12). Greater levels of obedience to the law are then reached (12).

²² The Reformed view of the third use of law reinforces their concepts of the sovereignty of God. His glory is seen in the moral rectitude of his rational creatures. In Lutheran theology, however, God's glory is seen in believers who, when faced with the

characterized not so much as an absence of moral blemish (which is impossible),²³ but by the freedom to do good works that assist and help the neighbor. He begins again to live that life destined for him in paradise (the first use) and helps others as God in Christ did (third use). Good works are those God destined for him in creation and done by Christ. These are works done by faith. Sanctification is rooted in creation and redemption and displays both.

We return to the Reformed critique: "The Law, for Lutheranism, can never become the ultimate norm for Christian living but, instead, must always lead to Christ who is righteousness."²⁴ Guilty as charged! Law as accusation is not the norm for the Christian life; however, now fulfilled in Christ (gospel) the law does direct the Christian's conduct (third use). Without the law's threats, it is faith that performs good works, or better, Christ himself is doing these good things in believers. The third use has to do not with impossible possibility but with the reality that is present in Christ himself. Impossible imperatives become descriptive of what already exists in Christians and what they do. The third use is descriptive of what the Christian is doing in Christ, and what he will do. He exercises his mind on good things (see, e.g., Ps 1; 119).

Reformed theology rightly sees the third use of the law as the ultimate goal for the Christian in this world, but their definition includes self-conscious moral improvement. For Lutherans the law can also be seen as the goal of Christian life, but it must be defined as a completed law that is fulfilled in Christ without threat. Paradoxically, the Christian has no internal evidence or feeling that he is fulfilling the law. Rather than seeing himself progressing towards a greater autonomous holiness, he becomes increasingly aware that he stands *coram deo* as a sinner.²⁵ His experiences contradict what he is in God's eyes. As faith increases, so does the awareness of sin and the sense of unrighteousness. By looking at himself from the position of who he is in Christ, the believer becomes increasingly aware of his miserable condition. Thus, Melancthon can write: "if we had to believe that after our renewal we must become acceptable not by faith but on account of keeping of the law, our conscience would never find

law, constantly repent by turning away from their sins and being justified by faith in Christ.

²³ SD VI,7.

²⁴ Muller, *Dictionary of Latin and Greek Theological Terms*, 321.

²⁵ The Solid Declaration demonstrates this point with four references from St. Paul: Rom 7:18; 7:15; 7:23; and Gal 5:17 (SD VI,8). The quotation of the first will suffice: "For I know that nothing good dwells within me, that is in my flesh."

rest" (Ap IV,179). Christians hear the gospel and by faith are perfected in Christ and share his righteousness (third use), but within the reality of their own experience, they see themselves more and more as sinners condemned by the law (second use). We live and die as sinners (second use) pleading only for God's mercy in Christ (gospel). For the Reformed, God's majesty is seen in his electing some for salvation and leaving others under the law's curse.²⁶ In Lutheran theology the law as accusation (second use) belongs to God's pity for sinners because, without this, the gospel is without effect. The Lutheran doctrine of the third use of the law is then rooted in the article of justification and confirms the article on good works.²⁷

IV. *Lex Semper Accusat*: The Two-Edged Sword

Lutherans have been caught between legalism and antinomianism over the question of whether and why good works were necessary. This problem can be understood in relation to the phrase from the Apology that "the Law always accuses us (*semper accusat*), it always shows us that God is wrathful."²⁸ When the law's threats are inserted into the life of faith, the third use becomes indistinguishable from the second use, a view similar to the Reformed understanding that appears in some Evangelical causes (Billy Graham rallies, Promise Keepers, the Purpose Driven Life), independent Bible churches, and Evangelical-styled colleges. In the face of the moral breakdown in society and church, some Lutherans are attracted to these causes. Legalism's attraction rests in the satisfaction it gives by identifying which moral bases have been touched.

Opposite from legalism is the antinomian view that the law's accusations apply to the Christian only as sinner, *lex semper accusat*, and not to Christian life. Challenges to the third use of the law, or the use of this phrase, rest on this understanding. Things once prohibited by the law are now allowed by the gospel. This position was known as *gospel reductionism*, a phrase now rarely heard. Since some prohibitions are presently up for discussion in the ELCA, some of its congregations and clergy persons are evaluating their continued association with that

²⁶ This is evident in the first edition of the *Institutes* (1536), 1.1.1-2.8.3. Thus, also Jan Rohls writes: "... God wills to reveal divine glory in the election of some human beings and the rejection of others." *Reformed Confessions*, 151.

²⁷ "For we do not abolish the law, Paul says [Rom 3:31]. But we establish it, because when we receive the Holy Spirit by faith the fulfillment of the law necessarily follows, through which love, patience, chastity, and other fruits of the Spirit continually grow" (Ap XX,15).

²⁸ "*Lex semper accusat nos, semper ostendit irasci Deum*" (Ap IV,128).

denomination. Some are already on board Peter's ark; others are in the lifeboats.

Of the three uses of the law, the second is predominant in Lutheran thought because the law is in juxtaposition to the gospel. Law and gospel is Lutheran cliché. The origins of both legalism and antinomianism can be explained in relation to the second use of the law. Legalism merges the law with its prohibitions and threats (second use) into the third. For antinomianism, the second use exhausts the meaning of law for Christians as sinner, and concludes that it has no place in Christian life. In Lutheran theology, the first and second uses function negatively. In the first use, God through temporal threats maintains order. The threats of the second use are eternal and are directed by the revealed word to the conscience. Since Lutherans see the law in such negative terms, they may lose sight of any positive view of it.

In commenting on the governmental structure from Hammurabi up to nineteenth-century England, Percy Miller gives what appears to be a definition of a first use of the law from a non-theological stance. He notes that these systems "specify those actions which people should not perform and punishments to be imposed upon those among them." The law is "an instrument for restraint, for inhibition."²⁹ A recent essay argues that the first use deals with divinely implanted structures that are embedded in the creation before the fall, which now take form or reemerge for Christians in the third use.³⁰ Thus, the third use is more than a matter of removing the curse attached to the second use, which is inherent in a christological interpretation of the third use; it is also a return to or restatement of how things were before the fall. Things that should have been, but were not, now take form in the Christian life. God does not set arbitrary moral standards for good and evil, but good works are an extension of who or what he is, and they revive what is already inherent in creation and corrupted by sin. Defined in this way, the law does not stand in an antagonistic relationship with the gospel. This is not simply a return to paradise, that is, to what the law was then, but a republication of the law in Christ. In fulfilling the law in Christ, the church is really a new creation. Works done from faith (third use) correspond to works done according to the first use. This understanding is suggested by the Latin terms for the

²⁹ Perry Miller, *The Life of the Mind of America: From the Revolution to the Civil War* (New York: Harcourt, Brace, and World, Inc., 1965), 207.

³⁰ Piotr J. Malysz, "The Third Use of the Law in Light of Creation and the Fall," in *The Law in Holy Scripture*, ed. Charles A. Gieschen (St. Louis: Concordia Publishing House, 2004), 211-237.

first use (*usus politicus* or *usus civilis*), that is, they describe how people relate to one another because they are first related to God by law.

Lex semper accusat is absolute only in the world of sin, and its threatening horrors were accentuated by Christ coming to rescue sinners. It did not occupy this place of prominence in paradise nor will it in the resurrection. Christ's death had universal dimensions (1 John 1:2). In raising him from the dead, God found Jesus to be the righteous man and divine righteousness itself, and hence, the law can no longer accuse him.³¹ The *lex semper accusat* brought Christ to crucifixion, and by him death was destroyed. Its accusatory power for Christ and for those in Christ was removed by God raising him from the dead. The believer, because and in so far as (*quia et quatenus*) he is in Christ, is no longer accused by the law and is raised to a new life,³² but his experience does not let him escape.

The problem—and it is the real problem because he can never escape it—is that the Christian lives in two realities. In Christ he is righteous, but in his body he sees something else at work. It is almost as if he was never converted.³³ He trembles before the law and runs from it. If he believes he has fulfilled it, he comes face to face with its condemnations and is spiritually mutilated. His life is one of frustrated misery. Seeing complete failure, he awaits divine judgment. In the moment of moral deficiency, the moment of dereliction in which the prayer “My God, My God, why hast thou forsaken me?” is uttered, he flees to Christ and finds a completely different reality; Christ is as much his sanctification as he is his redemption and justification. Sanctification is a one-step back to Eden and another step beyond paradise to a holiness that was still a hope for our first parents. The dilemma of how our good works are inevitably God's and his alone was resolved by an anonymous writer:

Now may the God of peace who brought again from the dead our Lord Jesus, the great shepherd of the sheep, by the blood of the eternal covenant, *equip you with everything good that you may do his will, working in you that which is pleasing in his sight*, through Jesus Christ; to whom be glory for ever and ever. Amen. (Heb 13:12-13)

³¹ “For we know that Christ being raised from the dead will never die again; death no longer has dominion over him. He death he died he died to sin, once for all, but the life he lives he lives to God” (Rom 6:9-10).

³² “So you also must consider yourselves dead to sin and alive to God in Christ Jesus (Rom 6:11).

³³ “But I see in my members another law at war with the law of my mind and making me captive to the law of sin which dwells in my members” (Rom 7:23).

The passage is clear in attributing our good works to God, but it goes one step further in identifying the Holy Communion as the way in which God works good works in and through us. In some translations, the words "by the blood of the eternal covenant" refer to how God brought Jesus back from the dead, but these words are reminiscent of Matthew's institution of the Supper in which Jesus identifies the blood of the Eucharist as the blood of the covenant by which he offered an atonement to God. It is not that God works directly in us or simply through the Spirit, but he works in us through Jesus and specifically through his blood, his sacramental blood because it is first and always a sacrificial blood. This is the blood of the eternal covenant which equips us to do what is pleasing in his sight. The dilemma of the law and the gospel is capable of being theologically harmonized but not experientially. The Christian lives within the contradictory realities of having a God who has given him all things, which in attempting to reach eludes his grasp. This is the great Lutheran contradiction.

V. The Third Use of the Law in the Gospels

The third use considers man in that moment, which exists in faith rather than in real time, when he is without sin and sees the law not as demand but as fulfilled. When he stops to consider whether he has fulfilled the law, faith is lost. Since the word *law* is used in the phrase "third use of the law," this use can be understood as a negative factor in the Christian's life. As such, we may have a reason for removing it from theological discourse. The third use, however, presupposes the gospel and extends it into the life of the Christian. In fulfilling the law according to its third use, the Christian is doing what he believes. If we can agree that a Christology can be constructed out of the positive affirmations of the Ten Commandments, then some objections to the third use may be removed. Christ has suffered the law's penalties and has fulfilled its positive commands. He loves the neighbor more than himself. The Creed is embedded in the first three commandments. Idolatry, a form of unbelief, is replaced by a faith that fears, loves, and trusts in God above all things (SC I,1). Such faith proves itself by calling upon this God especially in times of distress (the Second Commandment) and hearing and believing God's word (the Third Commandment). In crying out from the cross, Christ did these things and gave us an example to follow. Luther's explanations of the Ten Commandments take us as sinners from the law's prohibitions to the

gospel's invitation, making us believers. From the posture of faith, the Christian proceeds to live (third use).³⁴

In his explanations Luther overcame the radical contradiction between the law and the gospel in the moment of the believer's faith without eradicating the contradiction between believer and unbeliever, the *simul iustus et peccator*.³⁵ Christians who can view themselves only as sinners accomplish the good things that only Christ can do. Luther's "we should fear, love, and trust in God above all things" matches his explanation of the introduction to the Lord's Prayer: "Here God would encourage us to believe that he is truly our Father" (SC III,2).³⁶ Christ transforms the law's prohibitions and threats into gospel.³⁷ The reformer was not playing fast and free with the commandments, since they begin with God's redemptive claim on Israel: "I am the Lord your God who brought you out of the land of Egypt, out of the land of bondage" (Exod 20:2).³⁸ Israel's craving for foreign gods may have put the weight of the commandment on preventing idolatry, but the other side of the coin was faith in God. Since God made Israel his people, he excluded other gods from their devotion. The

³⁴ Luther's explanation of the First Commandment in the Large Catechism is an exposition on faith and life. For example, "Learn from these words, then, how angry God is with those who rely on anything but Himself, and again, how kind and gracious He is to those who trust and believe Him alone with their whole heart" (LC I,32). "He makes no other demand of us than a hearty trust in Him for all blessings" (LC I,47). Most importantly for the third use of the law, "For, as I said before, where the heart is right with God and this commandment is kept, fulfillment of all the other will follow of its own accord" (LC I,48).

³⁵ Perfect renewal in this life is impossible, so the moment where faith exists without sin is as real as it is elusive. Christians "spontaneously, without any instruction, admonition, exhortation, or driving by the Law they would do what they are obligated to according to the will of God, just as the sun, the moon, and all the stars of heaven regularly run their courses according to the order which without any admonition, exhortation, compulsion, coercion, or necessity, and as the holy angels render God a completely spontaneous obedience" (SD VI,6). Thus, "[t]he law and the gospel did not express a chronological sequence by an existential awareness of God I which Lutheran found himself as saint and sinner at the same time;" Scaer, "The Law and the Gospel in Lutheran Theology," 28.

³⁶ Theodore G. Tappert, ed., *The Book of Concord: The Confessions of the Evangelical Lutheran Church*, tr. Jaroslav Pelikan, Robert H. Fischer, Arthur C. Piepkorn, Theodore G. Tappert (Philadelphia: Fortress Press, 1959), 346.

³⁷ "As I have often said, the trust and faith of the heart alone make both God and an idol. If your faith and trust are right, then your God is the true God" (LC I, 2).

³⁸ Some early editions of the Catechism kept the words "I am the Lord your God" at the introduction of the Decalogue. Tappert, *The Book of Concord*, 342, n. 2.

prohibition confirmed Israel's faith in the God of Abraham who delivered them.

In response to a scribe's question, Jesus defined the true religion as loving God and the neighbor (Matt 22:34-40; Mark 12:28-34).³⁹ Closely related to these passages is the pericope of the rich young man (Matt 19:16-22; Mark 10:17-31; Luke 18:18-30). Both episodes revolve around obtaining eternal life. These passages entered the Reformation debate in the Lutheran objections to their use by Roman Catholic opponents to introduce works into the article on justification (Ap IV,122-182). Later liberal theology virtually defined the entire religion of Jesus as doing good. As a reaction to these views, some Lutherans may have reacted to list commands to love God and the neighbor as the second use of law. This step may not be necessary. In a preliminary way it can be noted that Luther sees love as a dimension of faith (SC I,1). Works performed by Christians are done out of love and not according to the compulsion of the law (FC VI). *Simul iustus et peccator* describes not only the believer but also his works. More important is looking at the controverted passages themselves.

Jesus makes love both the content of the Old Testament and the key to its interpretation: "On these two commandments [loving God and the neighbor] depend all the Law and the prophets" (Matt 22:40). Since he fulfills the law and the prophets (Matt 5:17), these commandments are descriptive of his preaching and that of the apostles (1 Cor 13:13; Eph 1:4; 1 John 4). These commandments then are not peripheral but define Christianity. Both love of God and love of neighbor pertain to faith. In doing them, the third use of the law is fulfilled. This use is not an embarrassing appendage to the characteristic Lutheran definition of the law as divine accusation, but the glorious triumph of the law reaching its destined goal in the gospel.

The pericope of the rich young man elucidates this. He has heard the gospel, believed, and by his own admission renounced sin. Renunciation of sin (law), faith, and his determination to lead a moral life bring him to the edge of discipleship. In Mark 10:18 there is even the suggestion that he recognizes Jesus for who he really is. Faith and morality are not enough, but must be supplemented by his providing for the poor. Only then will he find treasure in heaven. This, however, the young man cannot do and goes away in sorrow. Providing for the neighbor (third use), which is the sign that he has understood who Jesus is and what he requires, proves to

³⁹ These references are not used in the Lutheran Confessions.

be more difficult than an external morality which refrains from overt evil (first use). The latter he has accomplished. In the Small Catechism, Luther touches upon this theme in saying that the Seventh Commandment requires that we financially advance our neighbor's lot (SC I,13). By helping the poor, the rich man would have done precisely that. Again, Luther, now in the Large Catechism: "We shall be richly rewarded for the help and kindness we show to our neighbor, as King Solomon teaches in Proverbs 19:17, 'He who is kind to the poor lends to the Lord, He will repay him for his deed'" (LC I,272). In loving the neighbor, one loves God. Love of the neighbor is the natural extension of faith, though it is not a reason for God justifying the sinner (Ap IV,152-154).

Though earlier confessions do not know the phrase *third use of the law* and there remain differences about its continued use in theology, the idea is included in the fundamental Lutheran belief that faith by itself necessarily produces good works. More significant than anything else is that Jesus identifies love of God as "the great commandment" (Matt 22:36-38). Love of the neighbor is not only next in importance, but "is like it" (v. 39). Together they comprise the law and the prophets.⁴⁰ Loving God and the neighbor are distinguished by love's objects and not by their emotional intensity. So 1 John 4:20-21: "We love, because he first loved us. If anyone says, 'I love God,' and hates his brother, he is a liar; for he who does not love his brother whom he has seen, cannot love God whom he has not seen. And this commandment we have from him, that he who loves God should love his brother also." When faith exists without loving the neighbor, it is only historical knowledge (Ap IV, 50-52). As trust, faith is immediately active in performing good works (third use).

At first glance a contradiction may exist between identifying the love of God and others as the content of the Scriptures (Matt 22:40) and asserting that Jesus is also (Matt 5:17; Acts 10:43). The Lutheran Confessions confirm this by recognizing the gospel as their chief content and only goal (SD XI,12). As long as the commands to love God and the neighbor are understood as unfulfilled Law (second use), the contradiction stands.

⁴⁰ In the New Testament, the Greek word for *hang* is κρέμαμαι; κρεμάννυμι is used of physical hanging. A millstone is hung around the neck (Matt 18:6). Jesus is hung from a cross (Luke 23:39; Gal 3:13). The intention here is that the loving God and the neighbor provide the structural support for the Scriptures. Love is prior to the Scriptures and provides them with both their form and content. See Johannes P. Louw and Eugene A. Nida eds., *Greek-English Lexicon of the New Testament Based on Semantic Domains*, Second Edition, Vol. I: Introduction and Domains (New York: United Bible Societies, 1989), 221.

Commands to love God and neighbor, however, are trinitarian in origin. Love is the fundamental unity by which the three persons of the Trinity are bound to each other (John 15:9-10, 12-13; 17:24) and thus the determinative factor in motivating creation, incarnation, redemption, and sanctification. God's love in sending the Son for our redemption originates in who he is (John 3:16). In loving God, we are only assuming the same attitude he shows with us. Commands to love him are not moral abstractions but invitations to believe in him as a God who is love. He can be approached in love rather than in fear of wrath. The imperative to love God creates that love. This the law cannot do (second use). Loving God is not a level higher than faith, but describes faith as trusting in God. Arminianism, Methodism, and the Holiness groups see love as a level that perfects faith and is beyond it.⁴¹ Understood in this way, love as something beyond faith informs what they think of sanctification. Love in this way is nothing else than law!⁴² This higher level of commitment is often called discipleship, a condition in which faith is said to be taken more seriously. This is a fiction of its own creation and only creates Pharisees.⁴³

The term *loving* describes the emotional intensity with which one believes and trusts in God and helps the neighbor. Love of God requires all your heart, soul, and mind (Matt 22:37). These are not parts of a person but different descriptions of the inward self. Faith is never partial but complete and total. The God who by his demand for love creates that love is not anonymous; he is the God who raises from the dead (Matt 22:23-28) and comes as the Son of David (Matt 22:41-46). Loving God is nothing else than trusting in the God who reveals himself in Jesus, whom the church confesses in the creed and approaches in the Lord's Prayer. In loving the

⁴¹ Love in Wesley's thought is sanctification, which is more important than faith: "... faith itself, even Christian faith, the faith of God's elect, the faith of the operation of God, still is only the handmaiden of love. As glorious and honorable as it is, it is not the end of the commandment. God hath given this honor to love alone." John Wesley, "The Law Established Through Faith," *The Nature of Holiness* (Minneapolis: Bethany House Publishers, 1988), 73-74, Sermon 36.

⁴² Donald W. Dayton argues that by making sanctification the central theme of theology, Wesley actually returns to Catholicism. Agreed! "Law and Gospel in Wesleyan Tradition," *Grace Theological Journal*, 12 (Fall 1991): 235.

⁴³ Wesley's much publicized conversion by reading Luther's *Commentary on the Romans* hides his dislike for the Reformer's opinion on reason and law. Wesley writes in his journal on 15 June 1741: "How does he (almost in the words of Tauler) decry reason, right or wrong, as an irreconcilable enemy to the Gospel of Christ . . . blasphemously does [Luther] speak of good works and the Law of God; constantly coupling the Law with sin, death, hell, or the Devil! teaching that Christ delivers us from all alike;" quoted in Dayton, "Law and Gospel in Wesleyan Tradition," 237.

neighbor, the believer places him on the same level of importance as himself. Love that esteems the other person higher than oneself can only be divine and, in its perfect form, exists first in the God who begets and sends the Son. By that love God makes man his neighbor and provides the source and pattern for our loving him and our neighbor. "Greater love has no man than this, that a man lay down his life for his friends" (John 15:13). Christians put themselves at risk for the neighbor and so they become reflections of Christ, "who for us men and our salvation came down from heaven . . ." and "was crucified for us under Pontius Pilate." Here is the heavenly Samaritan who risks his life for stricken pilgrims. What Jesus requires of us, he himself does (Luke 10:25-37).⁴⁴ The command that we should also do as he did is not law, but a description of what the Christian in Christ actually is and does. Or better, it is what Christ is doing in us. Strange as it might seem, Jesus is lived under the third use of the law – the third use in the flesh. In the words of St. Paul, Christ is our sanctification.

Jesus identified love of God and neighbor not only as the law's greatest commandments, but also as the ones into which the whole law is assumed. The law in all its functions determines relationships between men with God and with each other. By assuming the entire law into love, Jesus showed that the law, in its first and final form, has no negatives. Love as the content of the law (Scriptures) is not a matter of arbitrary divine choice

⁴⁴ Luke places the commands of loving God and the neighbor in the context of a lawyer asking Jesus about eternal life (10:29-37). When Jesus asks about the great commandments, the lawyer correctly responds: loving God and neighbor. Problematic for the lawyer is not the formulation of the faith in loving God and the neighbor, but the identification of the neighbor as the Good Samaritan. He is "the one who showed mercy on him." Jesus does not leave the conclusion up to the lawyer's good will, but requires similar behavior: "Go and do likewise." In a similar but not identical section in Matthew (22:34-40), Jesus identifies loving God and the neighbor as the chief commandments. Luke's pericope (10:29-37) resembles the one of the rich young man in all three synoptic gospels (Matt 19:16-22; Mark 10:17-22; Luke 18:18-23) because Jesus requires the interrogator to do something. The lawyer must show mercy to the stricken and the rich young man must give to the poor. A key in joining the pericopes of the lawyer of Luke 10:29-37 to the rich young man of Matthew 18:18-23 is what each must do. The lawyer must show mercy (Luke) and the rich young man must be perfect (Matthew). This follows the pattern of Matthew 5:48 where the command to be perfect corresponds to the command to be merciful in Luke 6:38. God's perfection is his mercy. This quality – perfection or mercy – is required for believers (third use of the law). All three qualities – mercy, love, and perfection – originate in God and are found in believers (third use of the law). Perfection in Matthew does not mean moral perfection, although the idea of course is included, but contentment and satisfaction. God is satisfied with the world through the atonement and exacts no punishment but does good. So Christians as children of God do the same (third use of the law).

but reflects what God really is. In requiring love of us, God only asks us to become like him.⁴⁵ God loves the neighbor whom we are commanded to love. "In this is love, not that we loved God, but he loved us and sent his Son to be the expiation for our sins. Beloved, if God so loves us, so we ought to love one another" (1 John 4:10-11).

V. Elert on Law and Gospel

In reaction to Karl Barth's placement of the law after the gospel, Werner Elert went on to deny the third use of the law.⁴⁶ In analyzing Barth's inversion, Gerhard Forde surveys the German response to both theologians.⁴⁷ Elert remained in Lutheran bonds for his criticism that Barth did not keep the law and the gospel distinct. In Helmut Gollwitz's opinion,

Elert starts from the false presupposition that wrath, judgment, and punishment have an eternal Law of retribution as their basis to have any validity. This would mean that God is wrathful because He is a God of Law, and if this is followed to its logical conclusion it would have to mean that Law of retribution is the fundamental standard by which man's relationship is regulated, and that it was given before and not after the fall as the original form of man's relationship between God and man was not one of love, therefore that the Gospel could not be the reestablishment of the original relationship.⁴⁸

⁴⁵ Louw and Nida note that while law (*νόμος*) carries the sanctions of society, commandment (*ἐντολή*) carries only the sanctions of the one issuing it. In submitting itself to God's command, Israel agrees to accept laws; *Greek-English Lexicon*, Vol. I, 425. The commands to love God and neighbor are over-arching principles. Laws can differ according to specific circumstances. In the section on terminology, it was discussed how the word *law* can be used of the Scriptures and even the gospel itself. There is good reason to conclude that command (*ἐντολή*) not be equated in every instance with commandments, that is, prohibitions and threats. In Matthew 28:20 where the verb is used, "teaching them to keep all things whatsoever I have commanded," the reference is to the teachings of Jesus in which the gospel predominates. In Matthew 5:19, with its warning about breaking "the least of these commandments," the reference seems to be not to the Ten Commandments but rather to the Old Testament Scriptures, which Jesus has come to fulfill (vv. 17-18).

⁴⁶ Werner Elert, *Law and Gospel*, Facet Books: Social Ethics Series, tr. Edward H. Schroeder (Philadelphia: Fortress Press, 1971), 38-43.

⁴⁷ Gerhard O. Forde, *The Law-Gospel Debate: An Interpretation of its Historical Development* (Minneapolis: Augsburg Publishing House, 1969).

⁴⁸ Helmut Gollwitz, "Zur Einheit von Gesetz und Evangelium," *Antwort* (Zürich: Evangelischer Verlag, 1956), 303, quoted in Forde, *The Law-Gospel Debate*, 152-153.

Gollwitz is right! In Lutheran theology the law's primary purpose is to reveal man's wretched condition (SA III,2,4), but the tension exists in man and not in God, whose nature is love. Making law, wrath, and vengeance part of God's essence before the fall contradicts his love, and also might make it difficult to distinguish Elert's position from Calvin's, where hate and love exist side by side in God. As we have said elsewhere, law and gospel can be read back into God in the same way.

VI. Gospel Over Law: A Resolution in Pieper

If there ever was a theologian of the gospel, it was Francis Pieper, who never tired of saying that the gospel is a word of God superior to the law.⁴⁹ This forced him to wrestle with how contradictory words could both claim to be God's word. The dilemma was a *crux theologorum*, a question which theologians are incapable of answering.⁵⁰ His argument is taken over from the one offered on election. This matter first appeared at the beginning of his first volume, thus it was not an incidental matter for him. He denied the claims of both the Calvinists, that the Gospel was not universally intended, and of the synergists, that man's response determined God's attitude.⁵¹ Eventually, the synergists have little use for God at all, since man's will has taken the place of God's.

Pieper opposed any attempt to set down a higher principle from which both law and gospel are derived.⁵² The Reformed and more recently Karl Barth have resolved the difference in favor of the law. Universalism resolves this in favor of the gospel. Though Pieper offers a disclaimer in looking for a higher principle, he does point to the gospel by describing it as a higher word of God. God is doing what he really wants to do in the gospel, while in the law he is doing only what he has to do. An answer is already present in the definition of law as *opus alienum*, God's foreign or strange work.⁵³ Condemnation and threat no longer belong to his essence. Gospel is never the *opus alienum*. This is basic to any doctrine of universal atonement and objective justification. Claiming that God still counts sin against the world denies both the atonement and justification. By Christ's atonement all mankind appears to God as righteous. This is the presupposition for the gospel, which the synergists do not recognize.⁵⁴

⁴⁹ Pieper, *Christian Dogmatics*, 3:232.

⁵⁰ Pieper, *Christian Dogmatics*, 3:249–250.

⁵¹ Pieper, *Christian Dogmatics*, 3:247–249.

⁵² Pieper, *Christian Dogmatics*, 3:249–250.

⁵³ Pieper, *Christian Dogmatics*, 3:235.

⁵⁴ Pieper, *Christian Dogmatics*, 3:248–249

The gospel informs man of something that has already happened and not something that is happening when the message is heard. In subjective justification "the Gospel, however, pronounces the unrighteous man righteous," but subjective justification has no life of its own; it makes objective justification personal, which is only a facet of the universal atonement.⁵⁵ Whoever denies objective justification reduces justification to the act of believing and does not believe in it at all. Logically, he denies the atonement and preaches that man is responsible for his sins. Such a person preaches salvation by the law, *opinio legis*.

Pieper recognizes that the discussion on the law and the gospel is really about justification. "The Christian doctrine of justification is virtually identical with the discrimination of the Law and the Gospel. Moreover, the elimination of the Law from the article of justification must be absolute."⁵⁶ The judgment of all unrighteousness has taken place in the cross. For the hearer, God's condemnation of the world comes to him in the law. From this Pieper consistently and logically makes the gospel God's important and final word.⁵⁷ In order to keep the gospel free of condemnation, a characteristic that belongs to the law, he sees unbelief as sin against the law.⁵⁸ This view is not without difficulty because it makes the law the last or eschatological word of God in the judgment. This means that for unbelievers God reinstates the law. This would nullify the atonement and deny objective justification; however, these are fixed realities with God. If they were not, Christ would lose his place of prominence as the all-in-all. The answer to this dilemma lies in seeing unbelief as not one sin among others, but the final sin (and in a sense the only sin) by which the unbeliever cuts himself off from salvation. Pieper makes this clear in his locus on "Eternal Election," especially the section "No Election of Wrath or Predestination to Damnation."⁵⁹ For example, "the unbelief of the obdurate Jews is not traced to a predestination to unbelief or damnation, but to their opposition to the earnest and efficacious gracious will of God in the Word . . ." ⁶⁰ Their sins, especially their external ones, serve on the last day as evidence of their unbelief, their rejection of God's gracious invitation in the gospel. God's final verdict on them only confirms the

⁵⁵ Pieper, *Christian Dogmatics*, 3:229

⁵⁶ Pieper, *Christian Dogmatics*, 3:244; emphasis mine.

⁵⁷ Pieper, *Christian Dogmatics*, 3:226.

⁵⁸ Pieper, *Christian Dogmatics*, 3:233-234.

⁵⁹ Pieper, *Christian Dogmatics*, 3:494-501.

⁶⁰ Pieper, *Christian Dogmatics*, 3:495.

path they have chosen for themselves. The world which does not believe is convicted by the Spirit because of this unbelief (John 16:9).⁶¹

⁶¹ Here Raymond E. Brown provides clarification. "The first element (vs. 9) in the Paraclete's forensic activity is to prove to the disciples that the world is guilty of sin—the basic sin which consists in refusing to believe in Jesus. . . . The Paraclete will focus on the expression of disbelief that culminated in putting Jesus to death, but those who are guilty are a much wider group than the participants in the historical trial of Jesus. Those participants are only the forebears of men in every generation who will be hostile to Jesus." *The Gospel according to John XIII-XXI*, The Anchor Bible 29A (Garden City, NY: Doubleday, 1964), 712. This is the greatest sadness, since they were included both in the atonement and the gospel's invitation.