

Luther's Understanding of Law: Lex Charitatis, the Law of Love

Colleagues,

For Reformation day weekend, a treat (no tricks). Law professor Marie Failinger reviews Reformation-scholar Gottfried Krodel's just-published (finally!) English translation of Johannes Heckel's classic study of Luther and the law. Originally published in 1953, Heckel's book was "hot stuff" when I arrived for graduate study at the theological faculty at the University of Hamburg, Germany, in 1955.

Both Failinger and Krodel, major voices in their respective worlds of work, were blessings in my life a few years later—she as student, he as colleague—when my wife Marie and I got back home from Germany [We had gotten there on HER Fullbright scholarship!] and I began teaching at Valparaiso University.

Heckel's book is heavy stuff, so perk up. Gottfried's fine translation and Marie's deft hand will take you through the forest and you won't get lost. But you may have to back-track once or twice to stay on the trail.

Peace and joy!

Ed Schroeder

LUTHER AND THE TWO KINGDOMS: ONE LAWYER'S VIEW
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Luther's views about law have been easy to misunderstand, especially for modern lawyers and others interested in law, who are accustomed to starting with John Austin's definition of law as "the command of the sovereign. . . accepted due to fear of sanction." The continuing debate over the relationship between law and morality resulting from the claims of Austin and other legal positivists has gotten into deep difficulty in an increasingly morally pluralistic world. More recently, Western lawyers, particularly those from the monotheistic traditions, have been re-exploring natural law as a way to recover the relationship between law and morality. As just examples, one might look at J. Budziszewski's *WRITTEN ON THE HEART: THE CASE FOR NATURAL LAW* (Intervarsity Press, 1997) (A Christian appraisal); David Novak's *NATURAL LAW IN JUDAISM* (Cambridge University Press, 1998); or Anver Emon's recently published *ISLAMIC NATURAL LAW THEORIES* (Oxford University Press, 2010).

Johannes Heckel, a law professor at the University of Munich and member of the Bayerische Akademie der Wissenschaften, whose jurisprudential research on Luther spanned forty years until his death in 1963, understood these struggles and attempted to correct what he saw as grave misinterpretations of Luther's place in this debate. His major work, *LEX CHARITATIS: A JURISTIC DISQUISITION ON LAW IN THE THEOLOGY OF MARTIN LUTHER* (Eerdmans, 2010) (xxiii, 566 pp.) [Amazon \$26.60], has been finally translated into English by Gottfried Krodel with the collaboration of Henning Falkenstein and Jack Hiller (all three Valparaiso University professors) with the help of Prof. Heckel's son, Martin. In 132 pages of text, plus five separately written appendices on the right of resistance to the empire, the spiritual governance of the secular authority, the two kingdoms doctrine, and ecclesiastical law, Heckel covers Luther's

development of his doctrine of divine and human law, the two kingdoms, and the Christian's role in the politia (society), marriage, and the church. [There are also 273 (sic!) pp. of footnotes! (es)]

Heckel sets out to disprove what he views as distorted understandings of Luther's view of law that were formulated in reaction to the growth of positivist ecclesiastical law in the church. On one hand, Heckel rejects the reaction of jurist Rudolph Sohm who argued that "law is hostile to the kingdom of God, a kingdom of freedom and love; law [only] resides in the world. . . [and] the church is the manifestation of God's kingdom on earth and, therefore, has nothing in common with the law." (7) In Heckel's view, that solution pleased evangelical theologians who saw no place for a discussion of law in faith, or a discussion of faith in law; or, indeed, saw spiritual law as contrary to faith, an intrusion into the kingdom of God.

Similarly, Heckel rejected the conclusions of historical theology (mentioning Max Weber and Ernst Troeltsch as two major intellectuals who followed them) about Luther's views on natural law. The traditionalists, according to Heckel, wrongly read Luther as simply adopting a "patristic-medieval" concept of natural law, communicated by God to human reason, albeit adjusted to humans' sinful condition after the Fall. The idealists such as Karl Holl also incorrectly saw Luther as the "great innovator" in rejecting natural law for love as a moral norm. Heckel's main attack is on the notion that for Luther, all law is secular, including ecclesiastical law.

The chief structural claim of Heckel's work is that Luther conceived of law in four categories: divine natural law, divine positive law, human natural law and human positive law. However, as much as these forms of law are distinct and separate, they do not work in isolation from each other. God's will, impenetrable

as it is, creates righteousness, that is, law. There is no such thing (as in Enlightenment natural law theory or in other religious traditions) as law that is valid apart from the will of God; God can break the secular natural law, even exempting “heroes” from the secular natural law in order to lead the believer to salvation.

In this understanding, however, Luther uses law in a very different way from our modern Austin-shaped imagination: rather than conceiving of divine law as a set of God’s oral commands that in this life we should engage in or refrain from certain conduct “or else,” the exercise of divine governance employs means that are exclusively spiritual, the Word and the Spirit, and directed only to believing hearts. Thus, for Luther, God’s commandments are radically spiritual; “God does not command anything external.” (45) Divine law’s only objective is to create “a God-formed will,” to form a heart “seized by God’s spirit,” and the very definition of divine natural law is uncoerced, joyful love that both binds the whole person in complete surrender to God and also assures him or her of God’s love.

Divine natural law is universal not in the sense of commanding the same conduct of all persons; but because it emanates from the Creator of law, it addresses all of humankind “in the status of the incorrupt nature,” it grasps the human being in his or her totality, it lasts eternally, and it is exhaustive of, and the model for, all law valid before God. (48) Law is “legislated” as the divine will in the form of the Word of God that penetrates the human will that is “resting” or “being drowned” in the will of God. (49) While the divine law demands a work from the Christian, paradoxically, that work is love for the Creator that only God can make possible, not the person. (50)

Complementary to divine natural law is divine positive law, which God instituted after creation to order the communal life of persons in relationship to God through the institutions of marriage and the church. However, these orders are not divine law unless they are used spiritually, i.e., to transform the will into one characterized by perfect love for God and others.

Notably, Luther rejected the idea that the Golden Rule was an expression of the divine natural law, first because it demanded particular work toward others rather than the surrender of the heart; and second, because it is framed by reference to the self rather than the will of God-the Rule commands us to do to others WHAT WE WOULD HAVE THEM DO UNTO US. (51)

For Luther, such secular natural law, that is, the law relevant to the kingdom of this world such as is characterized by the Golden Rule, is dangerous. To be sure, the secular natural law is the work of God in the world and a "precious jewel," reflecting human solidarity, the membership of each in the human community, and the mutual responsibility of all to serve each other (save "the inevitable minimum of love for the self") for the common good.

Yet, human sin inevitably corrupts the secular natural law. That is so first because the human awareness of true love for God and the neighbor becomes "weak, dim and crude" as a result of sin. (55) Second, human beings elevate their own righteousness under this law to the supreme position; they believe that their rational interpretation of the divine law constitutes a true search for God, and become arrogantly confident of their ability to "re-think God's thoughts." (56)

Secular positive law, the fourth category, including the Decalogue, carries out the moral power of the secular natural law. With God's presence, it can execute "divine punishment in

the kingdom of the divine wrath," serve as a tool of God's mercy, and exist as "a mask of the divine governance over the world" so long as it does not overflow its jurisdiction.

This very different way of understanding law leads to what might be considered shocking conclusions to the modern mind. For example, in Luther's view, the Decalogue should be viewed as human law, as "Moses' codification" of the natural law, made weaker by its mediators (Moses and the angels) so the people could bear it. The Decalogue, as a product of fear and not freedom, is neither life-giving nor clear; it is binding only insofar as it expresses natural law, and it can be supplemented by other rules emanating from the natural law.

Indeed, for true Christians, the sovereignty of the Ten Commandments is abolished in favor of a life in which obedience to law does not generate righteousness, but rather righteousness in Christ makes it possible to obey the spiritual law. Or, Martin Luther King Jr. notwithstanding, we moderns might be skeptical of Luther's argument that we should primarily oppose tyrannical government with active spiritual resistance in prayer. Or we might look askance at his view that marriage is at once a divine work that safeguards morality and a spiritual perversion within the jurisdiction of secular authorities in the fallen world, which led him to conclude that though lifelong monogamy was the "model for a well-organized commonwealth," the natural law permitted human authorities to grant dispensations from that model in cases of need, especially for "weak Christians." (74, 76)

While Heckel's text does not necessarily simplify the complexity of Luther's thinking about the four types of law, as a non-theologian I found helpful its attempt to structure the relationship between these types and uses of law in Luther's thinking in this summary form, and to place Luther's views in

contrast to those of his medieval counterparts about the relationship between natural and revealed law and human secular law. In addition, Heckel's description of Luther's views on a number of modern contested legal issues, such as the right to rebel against unjust authority and the moral propriety of divorce or polygamy, will test the modern reader's assumptions.

Of course, the Lutheran witness tells us that we should also expect shocking and even ironic contrasts in comparing the work and the lives of significant intellectuals like Heckel, whose work has been considered ground-breaking. I could not close this review without remarking on one such irony: Heckel describes Luther's view of the right of the Christian to oppose, with arms, the work of the tyrannus universalis, the grand or world tyrant, who goes beyond craving power over land and people, beyond "egotistically transgressing the institutional or the substantive secular natural law in individual instances." Rather, the grand tyrant refuses to acknowledge any natural law that God gave to man, instead claiming sovereignty for his "own kingdom, which he strives to extend over body and soul," placing "himself outside of all law connected with God, and above it." The grand tyrant is an outlaw before God whose sentence should be immediately executed by God's people, who should also fight his assistants "as one fights robbers or foreign enemies" because public law has simply ended. (113) That page must have been difficult for Heckel to write, accused as he now is of lending his work to the intellectual case for anti-Semitism that helped to justify the holocaust perpetrated by Adolph Hitler, the grand tyrant himself.