

# Third Use of the Law and “Valparaiso Theology” – A Book Review (Part I)

Colleagues,

November 6, 1930 was the day I was born. So I'm 73 today—well beyond the Biblical 3-score-and-10. And this past year's deaths of oh-so-many dear co-confessors—Bob Bertram, Curt Huber, Tim Lull, Marcie Childs, Jim MacCormick, Dick Jungkuntz, Walt Rast, Andy Weyermann—has been a memento-mori drumbeat for me. So for one more year, one more day—Thank you, Jesus! Couple days ago I got an early birthday present that gives me a day off from confecting today's Thursday posting. In fact, two Thursdays off. Since it's so long—and so good—I'm passing on to you only half of this gift today. Second half, d.v., you get next week.

Matthew Becker is my benefactor. His gift is a probing review of a book that seems to be getting good reviews these days. But it shouldn't. Not just because it names me as a villain (not true, of course!), but for a whole raft of other more solid and objective reasons. I think Matt's got it clearly in focus. So read on. But I need to alert you: this is heavy stuff. Yet it's heady stuff. And for some of you too, it's about us.

Matthew Becker is a 41-year old theology prof at the Lutheran Church – Missouri Synod's Concordia University in Portland, Oregon. Matt came “up through the system” for his education, as we Missouri “goldie oldies” say. He stepped outside that system for his doctorate at the University of Chicago. His Ph.D. dissertation, “The Self-giving God: Trinitarian Historicality and Kenosis in the Theology of Johann von Hofmann (1810-1877),”

is scheduled for publication by T&T Clark next year. [FYI: Von Hoffman was one of the grand masters of the Erlangen School of the Lutheran confessional-biblical renaissance in the 19th century.]

Besides his professorial chores Matt is active in LCMS church life—secretary of the synod’s Northwest District and co-editor of a book that analyzes the history of the LCMS in the Northwest. He is also into internet-theology as co-founder of “Daystar,” an email listserv of approximately 700 LCMS and ELCA clergy and laity. He and his wife, Detra, have a four-year-old son, Jacob.

Peace & Joy!  
Ed Schroeder

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*A Book Review by Matthew Becker*

***Law, Life, and the Living God:  
The Third Use of the Law in Modern American  
Lutheranism.***

***By Scott R. Murray.***

***St. Louis: Concordia Publishing House, 2002. 250  
pages.***

*This book began as a dissertation at New Orleans Baptist Seminary. The author, Scott R. Murray, is a 1983 graduate of Concordia Theological Seminary, Fort Wayne. He is currently an LCMS pastor in Houston.*

*The genesis of the work was sparked by Murray’s attempt “to rationalize for a primarily Southern Baptist audience the*

uniquely Lutheran ethic of Law and Gospel" (11). Murray also states that a second motivating factor was the draft statements on human sexuality that emerged from the ELCA in the 1990s. According to Murray, the main problem with these statements is their authors' rejection of "the third use of the Law." Murray maintains throughout his book that "[t]he rejection of the third use of the Law leads to antinomianism, which is detrimental to the church and her Gospel message" (15). Put slightly differently, "If there are no rules, how can the Christian know what does please God" (72)?

In Murray's lexicon, the so-called "first use" of the law is "for unbelievers for whom threats of punishment can coerce only to outward obedience" (13). The "second use" is "the distinctively theological use of the Law that lays bare human wickedness and makes clear the need for a Savior" (13-14). The "third use" "gives direction for the impulses of the Christian to do good works" (14) or, as he states later, "The third use is the description of how the Law functions under the Gospel" (56). This third use is "the use of the Law that applies to Christians after conversion" (13). Throughout his text Murray defines the "Law" as God's "objective and eternally valid legal code" (44 et passim).

How have Lutheran theologians in America understood the use of the law in the life of the Christian? Murray attempts to answer this question by dividing his analysis into three main sections which examine how American Lutheran theologians have understood the "third use of the law" in 1940-1960, 1961-1976, and 1977-1998.

For Murray the problem with American Lutheran theology after 1940 was its general rejection of the so-called "third use of the Law." In Murray's judgment the sustained critique of the "third use," for the sake of the Gospel and against all forms

of "legalism," has only led to the present quagmire about ethical norms (particularly sexual norms) in the life of the ELCA.

Even though the subtitle of Murray's book claims to be about "modern American Lutheranism," the book focuses primarily upon theologians affiliated with the LCMS after 1945. Murray argues that LCMS theologians lost their theological-ethical bearings after the 1948-49 Bad Boll Conference, when they came into positive contact with Lutheran theologians in Germany, such as Werner Elert, Helmut Thielicke, and others, many of whom were critical of a "third use" of the law. Murray is especially critical of theologians who taught at Valparaiso University and Concordia Seminary, St. Louis, between 1948 and the mid-1970s. The theologians he holds in high regard are those LCMS theologians who upheld a "third use of the law," over against "the Valparaiso theologians" and the Seminex systematicians, and who defended what he calls "old Missouri" doctrine. This perspective shapes Murray's entire presentation. Thus, unfortunately, Murray's perspective determines the selection of evidence to support what more and more appears to be a thesis-driven form of argumentation. Careful consideration of a theologian's total context, including, for example, analysis of the place and discussion of "law" in a theologian's entire oeuvre, is missing.

Despite his intention, Murray's study does not provide a good historical understanding of the development of the discussions about the so-called third use of the law within twentieth-century American Lutheran theology. One wishes that Murray would have followed an orderly pattern similar to that found in Jaroslav Pelikan's history of Lutheran doctrine (From Luther to Kierkegaard [St. Louis: CPH, 1950]), a book Murray criticizes. There is no sustained historical analysis that builds from one chapter to the next. Instead, we get Murray's all-too-brief

analyses, followed by even briefer conclusions, followed by additional all-too-brief analyses of individuals he had treated earlier. For example, in his section on 1940-1960, Murray moves from Karl Holl to Luther to Elert to Wilhelm Pauck to Richard Caemmerer to Aristotle to Melancthon to Pelikan to Kierkegaard to Forell to Elert (again) to Lazareth to Francis Pieper to the old Erlangen theologians to the Bad Boll Conferences to F. E. Mayer. Along the way Murray makes brief, sweeping generalizations about "the Valparaiso theologians" (David Scaer's label), the "old Missourians" (as found in *The Abiding Word* volumes), and a few theologians in other American Lutheran churches. In the same section he moves from "third use of the Law," to "legalism" to "Aristotelianism" to "Reason and Law" to "Existentialism" to "natural Law" to "Formula of Concord" and then back to "third use of the Law." In short, Murray's presentation lacks coherence.

In the next section, 1961-1976, Murray describes the flowering of the so-called "Valparaiso theology" and its impact on theological study at Concordia Seminary, St. Louis. Here Murray returns his reader (and in this sequence) to "the Valparaiso Theologians," Elert, the Erlangen School, Melancthon, Calvin, Elert (again), the Formula of Concord, Edward Schroeder, Walter Bartling, and then on to new paragraphs about John W. Montgomery, Paul Althaus, then the Missouri conflicts after 1969, back to Lazareth, back to Elert, and then on to William Hordern and Gerhard Forde, but then back to Missouri again in the figures of the Preus brothers, Henry Eggold, Scaer, Montgomery (again), and Kurt Marquart. Along the way Montgomery's label, "Gospel Reductionism," gets some attention, but Murray makes no reference to, let alone analysis of, Robert Bertram's important and influential essays, and Murray then repeats conclusions he has attempted to draw in the previous section. In the welter of mini statements, historical coherence

*is further lost.*

*In the third section, 1977-1998, the book presents additional critiques of theologians who were critical of a "third use." This section outlines the emergence of a straightforward "third use of the Law" as a special function in post-Seminex LCMS theologians and a few ELCA thinkers. After treating ground already covered (Lazareth and Forde), the chapter moves on to new figures, Walter Wagner, David Yeago, Walter Bouman, Ted Jungkuntz, Eugene Klug, but then back to Scaer for the final word.*

*The brief conclusion of the book merely reiterates the thesis, namely, that the woes of American Lutheran theology are to be largely attributed to all the theologians the book treats, save for the "old Missouriians," Scaer, Marquart, Yeago, and one or two other "younger theologians in the ELCA."*

*Would not Murray's study have provided greater historical insight into the issue of "third use" had he started with an analysis of the historical and normative sources and then moved to analyze his main object of criticism, namely, the critique of the "third use" by such theologians as Elert, Althaus, and those influenced by these Erlangen theologians? Thus Murray could have moved from Luther to Melanchthon (perhaps using Ebeling's essay on "third use" as conversation partner), then to the historical antecedents of FC VI and to FC VI itself [Ed's info note: Formula of Concord Art. 6, from the year 1577, titled "The Third Use of the Law," is the classic Lutheran statement on the issue. It sought to adjudicate the debate among Lutherans on this topic after Luther's death 31 years earlier. Thus Murray's critique of "Valparaiso Theology" is a contemporary debate about "just what FC VI really says."] (perhaps conversing with Elert, Ebeling, and others' studies of the historical and theological problems of FC VI), then to*

nineteenth-century conflicts (analyzing von Hofmann's criticism of *lex aeterna* and his appeal to Luther, which started the modern study of Luther, and then to T. Harnack's rebuttal), and finally to twentieth-century developments (first in Germany, for example, Holl, Elert, Althaus, and the debates with Barth, then to Scandinavian thinkers [totally ignored by Murray's book], and then to America). This last section on American developments could be analyzed by devoting attention to individual positions in rough chronological order and showing their dependence on German and Scandinavian scholars. Had the book been organized according to the above outline, it would have complemented Forde's important historical analysis of the debate within twentieth-century Lutheranism about the place of the law in the life of the Christian, *The Law-Gospel Debate* (Minneapolis: Augsburg, 1969).

As it is, Murray's study neglects several key thinkers and their influence upon American Lutheran understandings of the law. For example, though cited in the bibliography, Gerhard Ebeling's important essay, "On the Doctrine of the *Triplex Usus Legis* in the Theology of the Reformation," in *Word and Faith* (Philadelphia: Fortress, 1963), receives no attention. The Scandinavian theologians are likewise conspicuously absent from the discussion. Similarly strange is Murray's relegation of Bertram to an endnote (46), especially since many consider Bertram to have been the deepest and most influential thinker among the VU theologians on issues of "law and gospel." I suspect that Ed Schroeder, Robert Schultz, and David Truemper would agree. Some theologians get a paragraph or two, such as Marty and Schultz, but that is about it. (Marty's little gem, *Being Good and Doing Good* [Philadelphia: Fortress, 1984], is absent.) Other theologians who receive little or no attention from Murray include Frederick Knubel, Charles Jacobs, the Wauwatosans, J. Michael Reu, Warren Quanbeck, Joseph Sittler,

*George Lindbeck, Robert Jenson, Carl Braaten, Robert Benne, Gil Meilaender. (Murray does treat a few people who were otherwise unknown to this reviewer.)*

*Unfortunately, Murray's study also does not provide a good theological understanding of the discussion about "third use" of the law in twentieth-century American Lutheranism. One is struck, for example, by the book's lack of attention to the specific biblical and confessional texts utilized by the theologians Murray criticizes. These theologians based their doctrinal conclusions on careful examination of biblical and confessional texts, yet the book provides few clues as to which texts the theologians used as foundations for their respective positions.*

*The book's analysis of Elert's theology is especially disappointing. Following Scaer, the book concludes that Elert is an antinomian because he rejects a so-called "third use" of the law. On the other hand, again following Scaer's assessment of Elert and the Erlangen tradition as a whole, Murray labels Elert a "Lutheran-Barthian" (68). Murray then repeats Scaer's judgment that Elert and those influenced by him (Bertram, Schultz, Schroeder) essentially turned the gospel into law, since "the Gospel becomes the ethical regulating principle in the life of the Christian" (138).*

*Since Elert appears to be a primary target of the book's critique, one would think a careful, sustained analysis of "the law" in his main works would be in order; however, one will look in vain for such analysis in Murray's book. The author has instead relied on one little chapter by Elert and the judgment of another (Scaer).*

*Murray's citations from Elert thus come primarily from a translation of the seventh and last section of Elert's work,*



*Zwischen Gnade und Ungnade* (Munich: Evangelischer Presseverband für Bayern, 1948). This section was translated by Schroeder as *Law and Gospel* (Philadelphia: Fortress, 1967). On the basis of his reading of this booklet, Murray accuses Elert of “[setting] up a false alternative: Either the Law accuses or it is only didactic” (29). But this accusation itself creates a false alternative in Elert’s theology: For Elert the law does inform, but it does so under or within the two “uses.”

The first six sections of *Zwischen Gnade und Ungnade*, not to mention the pertinent sections on “law” in his main works listed above, clearly indicate that Elert is not an antinomian. On the other hand, he certainly is not a “Lutheran-Barthian”! Rather, Elert was a careful biblical theologian who appealed to such texts as 2 Cor. 3; Gal. 2:16; 3:5, 10, 13-19, 23-26; Rom. 3:20, 25; 4:15, 25; 5:16, 18-22; 6:14; 7:7ff.; 8:1-14; 10:4; 2 Thess. 1:8; 1 Tim. 1:9; 2 Tim. 1:7-10; 1 Jn. 2:2, 4:10; Heb. 9:28; and so on. An examination of Elert’s entire oeuvre discloses Elert’s profound understanding of the impact of God’s law on the life of the Christian. For Elert, the Christian life is a life lived under two realities, the law (“ethos under the law”) and the gospel (“ethos under the gospel”). It is not a question of one or the other; the Christian lives under both before God. Even in the booklet, *Law and Gospel*, one finds the following:

If the notion of a ‘third use of the law’ is understood in purely informatory terms, then we shall have to agree with the Scandinavian and Finnish theologians who have pronounced the doctrine of a third use incompatible with the Lutheran understanding of law and gospel. If we still wish to continue to use the concept in theology, it must be applied as it is in the Formula of Concord only for answering the question of the realm of the law’s validity, but not for indicating a special function of the law. The third use of the law then designates

*its significance for the regenerate in his earthly empirical existence, but not in some imagined earthly perfection which does not exist. In the earthly empirical life of the regenerate the law constantly exercises also the usus theologicus. It steadfastly convicts him of his sin (Elert, Law and Gospel, 42-43, emphasis original).*

*Elert thus did not “flatly [deny] that the concept of the third use of the law should be retained in Lutheran theology” (27), Murray’s contention to the contrary. Elert’s concern, it must be understood, was the influence of Calvin and Barth on Protestant understandings and articulations of the law that led in the direction of legalism. At the end of the day, Elert could live with FC VI, properly understood.*

*To be continued next Thursday.*