

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

Colleagues,

Here’s the final portion of Matt Becker’s review of “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. Part I was posted last week as ThTh 282. Peace & Joy!

Ed Schroeder

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*Murray’s book offers inaccurate assessments of others, too. For example, Luther did not use the expression “tertius usus legis,” and those who simply cite Luther’s explanations to the Ten Commandments as evidence that he did teach such a “third use” do not recognize the inescapable dialectic in the two uses that Luther stressed. (See especially Two Kinds of Righteousness [1519], Treatise on Good Works [1520], and the 1535 Commentary on Galatians). Luther’s study of Paul and Luther’s reflection on his own Christian existence led him to the conclusion that there are primarily two “uses” of the law, a political-social use and a theological use. (Luther did not always employ the word “use” to talk about the effects and workings of the law, though in the history of Christian doctrine he is the first to coin the expression, “uses of the law.”) For Luther, the first, social-political “use” is the means whereby God establishes civic justice for the good of his*

creation by means of compulsion, coercion, retribution, "civil righteousness." Such "civil righteousness" always ends up being sin and hypocrisy, however, since it makes people presumptuous and it is in conflict with the gospel that states that one is saved solely by faith in Christ apart from works of law. The second, proper, and theological use of the law is God's use of the law to demand perfect righteousness, to convict the world of its sin, to drive people to death and despair under the divine curse of retributive judgment, to drive people to a crucified Christ (Gal. 3:23-25; 1 Tim. 1:8-11). While Luther did use the expression "three-fold use of the law" (*triplex usus legis*), he did so in only one place, in his exposition of Gal. 3:23-29 in the 1522 *Weihnachtspostille* (WA 10/1.1.449ff). Both Elert and Ebeling argue convincingly that for Luther even this "third use" merely reverts to the first two uses for the Christian. (Murray's book lacks discussion of Forell's and Althaus's studies of Luther's ethics, both of which have had a significant impact on Lutheran attitudes toward freedom and legalism, nor does the book refer to Scandinavian thinkers, such as Gusatv Wingren, and their impact on American Lutheran thought.) With respect to Article VI in the Formula of Concord, the one divine law, which is identical in both uses, is never merely a legal moral code. It is always more dangerous than those who so easily speak of the law as an objective, neutral guide. While the law does have an informatory effect (is this not a function of the first use of the law?), an effect that under the gospel/Holy Spirit is not coercive but free, that free effect is always itself ideal because Christians are never perfectly free of sin, and therefore always live, even as believers, bound to the first two uses of the law. This is the main point of FC VI, which acknowledges that the law is never merely or purely a neutral, informative guide (as in some forms of Calvinist theology). It is always an accusatory, juridical power that finally puts one to death. (For Murray, the first

use of the law is primarily for “unbelievers” [13], but such a view minimizes that the law is also coercive for Christians, insofar as they remain in the “old Adam” unto death. This coercive power of the law leads always to the experiential reality that the law always accuses.) Furthermore, FC VI underscores St. Paul’s point that the law has not made things better for the Christian, but worse. The law has not given Christians a rule of life by which they can merely regulate their outward behavior. Rather, the law was added to human sin in order to increase the conflict and opposition between God and sinners. (See Rom. 7:7; Gal. 3:22; 1 Cor. 15:56; 1 Tim. 1:9).

According to Paul, the moment never arrives in the life of the Christian when the law has nothing more than an informatory significance. When we look to Christ, the law has absolutely no validity. On the other hand, when we look to ourselves, it is indeed valid, yet not in the sense that we only need to ask it what we ought to do, but rather that it constantly pronounces also upon Christians the verdict of God which makes sinners out of us. But this then also represents the constant anguish of our conscience, the temptation either to security or to despair, which we must relentlessly counteract by faith in the gracious promise of the gospel (Elert, *Law and Gospel*, 42).

Thus, “the law is always an accuser,” even for the Christian (Apology of the Augsburg Confession IV, 38, 58, 129, 227), and “therefore godly minds must be called back from the law to the promise...” (Apol. IV, 229). With respect to the history of Lutheran theology, the theological method of the most significant Erlangen theologian, Johannes von Hofmann (1810-1877), was not “driven by the idealistic philosophy of history brought to its apogee by G. W. F. Hegel” (124), as Murray’s book alleges, nor did von Hofmann “have difficulty

accounting for the place of the Law" in his theological system (125). Hofmann was a thorough biblical theologian, who wrote seventeen books of commentary on the New Testament, and thus he was not simply "intellectually indebted" to Hegel. Hofmann listened to St. Paul and St. John, who each spoke of Christ as "the end of the law" for faith (Rom. 10:4).

Similarly, the book's presentation about Forde suffers from inattention to all of Forde's pertinent texts. To be sure, Murray cites from Forde's important contribution to the Braaten and Jenson dogmatics text; however, he ignores Forde's explanations of the Ten Commandments in the text Forde co-wrote with James Nestingen, *Free to Be* (Minneapolis: Augsburg, 1975), and Murray's book overlooks Forde's important essays on quotas, antinomianism, and sexual ethics that appeared in the main Lutheran theological journals from the late 70s through the mid-90s. Attention to these would reveal that Forde is not the existentialist that the book presents him to be. For Forde, outside of faith the law is accusing, yet Forde does not deny the first use by which God orders and preserves a sustainable life in God's creation, as an existentialist probably would deny.

Part of the problem in Murray's book is its definition of "the law." For Murray, the law is "an objective and eternally valid moral Law of God" (44, 53, et passim; my emphasis). Is this Paul's view? Does Luther's 1535 Commentary on Galatians sustain this definition of the law? Or do the Lutheran Confessions, which stress the relational, existential, accusatory, and eschatological character and function of the law? Is the law ever an independent, objective, informatory guide which does not also simultaneously accuse? And how can the law be eternal if it has its creaturely origin in creation and its eschatological telos in Christ? How, if not eschatologically, does Murray understand Paul's statement that the law has its

end in Christ (Rom. 10:4; Gal. 3:23-26)? (Murray maintains that the "Gospel without the Law leads to moral laxity and the Law without the Gospel leads to despair" [13], but the law without the gospel also leads to pride/security, something the book minimizes.) Murray's book is especially critical of the theological hermeneutics of individuals who taught theology in the LCMS between 1950 and 1975. "Schroeder and the other [Valparaiso theologians] were not correct in arguing that Law and Gospel was a biblical hermeneutic in traditional Lutheran exegetical practice" (114). Later one reads, "[Walter] Bouman is correct in pointing out that the Bible may not provide a handbook-like program for the Christian life. However, Law and Gospel functions to shape Lutheran theology, not Lutheranism's approach to the Bible. The Bible norms Law and Gospel, not the opposite..." (182-183).

But is this hermeneutical perspective consistent with Apology IV, 1-8? "All Scripture should be divided into these two main topics: the law and the promises..." Melancthon clearly states, "For one has to distinguish the promises from the law in order to recognize the benefits of Christ" (Apol. IV 184)... "For the law and the promises need to be "÷rightly distinguished' [2 Tim. 2:15] with care. We must see what Scripture attributes to the law and what it attributes to the promises. For it praises and teaches good works in such a way as not to abolish the free promise and not to eliminate Christ" (Apol. IV 188). The Apology is critical of those who read the Scriptures "with an opinion of the law" and not "an opinion of the gospel" (cf. Apol. IV 204ff.). Furthermore, did not Luther make judgments about the content of biblical books on the basis of the proper distinction between law and gospel? (See WA 7.385.25ff; WA 39/1.47.3ff; WA 40/1.420.) Luther's judgments about the antilegomena texts of the Bible are well-known, as in his "prefaces" to the NT writings that he translated in 1522

(1546). Here, he did not hesitate to joke, "One of these days I'll use Jimmy [Ed: the book of James] to light the fire" (WA 6.10.33). On what basis could Luther write this about a book in Holy Scripture, if not on the distinction between law and gospel?

One also wonders why Murray treats "Law and Gospel" as a singular reality? "...Law and Gospel was..." "...Law and Gospel functions..." Are not the law and the gospel two contrasting words of God that require one to make proper distinctions? Such a seemingly minor point reveals that for Murray the law may not be all that distinct from the gospel and perhaps the two form a fundamental unity. But this is not Walther's view, based as it was on Luther's, based as it was on Paul's.

Likewise, one wonders why Murray restricts "the Gospel shape of the Christian life" to "the motivation for good works" (72). "In ethics a concrete word of God in both Law and Gospel must direct action" "the Gospel to motivate, the Law to inform" (60). But surely the gospel word of promise does more than simply "motivate" Christians in their behavior. "...Where there is forgiveness of sin, there are also life and salvation" (SC, "Sacrament of the Altar," 5-6). "If anyone is in Christ, there is a new creation: everything old has passed away; see, everything has become new" (2 Cor. 5:17). Murray says very little about the eschatological newness that the gospel creates for the person of faith. In faith Christ is the telos and finis of the law, but only in faith. In faith Jesus' disciples are called and empowered for a higher righteousness, the life of the kingdom. The gospel does indeed give the Christian life a cruciform shape, against which there is no law.

A main problem with Murray's approach to the law is the apparent fact that some of the works that get commended under "the law" are really no longer good and commendable. What often

gets commended under "third use" are matters that fall properly into the category of human traditions, customs, and practices. These matters are then commended as necessary or even necessary for salvation. What gets commended and the way in which such matters are commended seem to lose the promise of the gospel.

If "the law" is to inform the Christian about "the rules God wants Christians to follow," then why does Augsburg Confession Article XXVIII set aside the written apostolic commands to avoid eating blood and food that comes from strangled animals and the apostolic command to make sure that women have an "exousia" on their heads? For that matter, why did Jesus in the noncanonical pericope of John 7:53ff not enforce/keep the written law of God when he forgave the woman who was caught in adultery? The divine, written law clearly states such women are to be killed. Why does not Jesus follow the written Word of God at this point? Or why does Jesus in Mark 7 (according to Mark's own editorial comment) declare all foods clean that the written law clearly states are unclean? Or why does Jesus break the written law (=making himself unclean) by talking with a Samaritan woman (cf. Lev. 15:19ff)? Or by eating with sinners? Or touching lepers? Or loving Gentile enemies? On these occasions, Jesus hardly "kept" or "fulfilled" what the Jews understood to be the divinely-given, clearly-stated law of God.

Was Paul being obedient to the written law of God when he set aside for Gentiles Commandment 3 (=Commandment 4 in some lists) of the Decalogue, not to mention the divine law of circumcision? On what basis can Paul argue as he does in Gal. 3:25-26? Romans 4:14-15? On what basis was the writer of Ephesians able to assert what is stated in Eph. 2:15-16? [The Greek term here, "katargew," according to BDAG, means "to invalidate, to make powerless, to cause something to come to an end or to be no longer in existence, abolish, wipe out, set aside," Bauer, Danker, et al., A Greek-English Lexicon of the

*New Testament, 3rd ed. [Chicago: University of Chicago Press, 2000], 525.]*

*One can imagine how the Christian "Judaizers" could have asserted a "third use" of the law for Gentile Christians! They certainly would have appealed to Matt. 5:17-20 and they would have argued that the divinely-given written law corresponds to God's eternal will for human beings, that is, "necessary" to be pleasing to God. But Jesus, in Mark and John and Luke, breaks the law of Moses! Paul says Christ is the end of the law for faith. AC XXVIII sets aside even certain apostolic prohibitions and commandments. In his 1535 Commentary on Galatians, Luther opposes the law with a crucified Christ and faith. Contemporary Christians, even conservative ones, no longer understand and apply the New Testament's ethical exhortations to slaves and masters in the same way that eighteenth-century American Christians almost uniformly did.*

*A problem in our day is that some have set up their own legal construct of what constitutes "the eternal, unchanging order, according to which all human beings are obliged and bound to obey God," and just like the Judaizers in Paul's and Luther's days, these have some scriptural support for their construct. The construct is, however, a legal, coercive construct and not a properly grounded, promisory, evangelical construct. A problem with the so-called "third use" of the law is that just about everything can be defended by it. One need only hold out something to be God-willed and God-created for it to be vindicated forever.*

*It is truly astounding that Murray's book contends that doctrinal forms are forms of "the law." He speaks of "doctrinal norms" as "legal norms" (114), as he does, for example, of the 1973 LCMS document, "A Statement of Scriptural and Confessional Principles" (111, 133). Elsewhere in the book one reads,*



*"[Making judgments of doctrine] remains a task of the Law" (110). "If there is no third use of the Law with standards for Christian faith and practice, there could be no scrutiny of doctrine within the church or of the church practice that emanates from doctrine" (113). "Doctrinal and moral anarchy is the natural outcome of [the rejection of the third use of the Law]" (142). "[Yeago] has also shown that where the third use is taken seriously, there is a greater chance that the formation of doctrine will also be taken seriously. Where there is order, there will be both doctrinal and moral order" (182).*

*But one must wonder, is there not here a fundamental misunderstanding of the nature of Christian doctrine? Does doctrine properly belong under the category of "law?" If so, such a "legal" understanding of doctrine seems far removed from the non-coercive understanding of doctrine contained in the Augsburg Confession and its Apology. If doctrine is understood "legally," then according to Murray's own acknowledgement, doctrine is always coercive and accusatory and not the free confession of faith in response to God's gracious word of promise. Needless to say, the book's presentation of the nature of doctrine is quite different from that contained in Walther's first presidential address.*

*There are other elements in Murray's book that troubled this reviewer: Is it really accurate to speak of "the hegemony of Oliver Harms" or "the walkout" (101-102)? These are loaded, propagandistic expressions that do not properly belong in a book supposedly devoted to historical description. Those influenced by Elert (e.g., Schroeder) do not understand "doctrinal orthodoxy" to be "a positive evil to be avoided at almost any cost" (112). The book informs the reader, "In the discussion of the third use of the Law there has been a rapprochement between younger theologians of the ELCA and their LCMS counterparts" (167). Really? Who? When? Where? Murray's*

assertion is a sweeping generalization, based on essentially one example (ELCA theologian Yeago), and as such it does not account for younger LCMS and ELCA theologians (such as Mark Mattes and myself) who disagree with Murray's analysis. And why does Murray go after the sexual libertinism of the so-called "political left" in the ELCA without giving any attention to the economic legalism (e.g., liberation theology) of that same political left, nor any attention to the sexual/family legalism and economic libertinism (e.g., Reaganism) of the political right in the LCMS? Lutherans ought to oppose greed and lust and libertinism and legalism of every type.

The real problem with most discussions about "third use" is that the "third use" is given an equal and separate existence, and its function becomes as important as the first two "uses." In the process both the truly threatening and damning divine law and the saving and comforting divine promise in Christ are lost. The genius of the Lutheran Confessions is that, on the one hand, they relieve the law (in the law-gospel dialectic) from the notion that the law is an independent, objective moral code, and thus subordinate it to the first two uses, and that, on the other hand, they maintain (under the words of the living God) the law's accusatory function against the person who is *simul justus et peccator*. The law of the living God is something far more threatening, far more uncontrollable, far more existential and experiential than Murray's book acknowledges. In view of that word of God, only the gospel promise of a crucified and risen Christ, received in faith, will do.

To be sure, the issues of moral relativism in America and the need for moral clarity about difficult issues like homosexuality, bioethics, international conflict, and so on, ought to be of great concern to Christians. Murray is right to be concerned and one must acknowledge that his book does at

least return the reader to a perennial, important issue for Christians: how does one commend good works without losing the gospel promise? Indeed, a problem in the Christian Church today is that many believers justify all manner of sin as allowable within their "freedom in Christ" and their living by means of the Holy Spirit. I suspect that Murray's concerns about sexual ethics are shared by many Lutheran Christians.

Nonetheless, as Elert and Forde have argued so well, the answer to libertinism and antinomianism is not to argue for a "third use" of the law in the life of the Christian.

The proper response to libertinism is to preach the law (allowing God to use it how he will) in such a way that the gospel promise trumps that word of law (to use Bertram's metaphor) and creates and sustains faith that alone makes a life acceptable to God. In this way, too, the Christian life that lives by faith in the promise is properly and evangelically described, as several Lutheran theologians have done in a superior manner (e.g., Elert, Thielicke, Benne, Forde and Nestingen, Bonhoeffer).

While many will agree with Murray that the Lutheran heritage has much to contribute to discussions about the complex ethical and moral matters of today, one must ask if Murray's understanding of "the third use of the law" and the narrow focus about the debate about "third use" in American Lutheranism, an otherwise valid focus for historical theology, are the rubrics under which to bring together the truly urgent and challenging task of addressing the moral and ethical issues of our day from the distinctive law-gospel perspective. Is there not a better way?

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