

# Revisiting the third use of the law

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## Introduction

It is a pleasure to have this opportunity to help inaugurate the academic year by giving the opening lecture. The title of my lecture is, 'Revisiting the third use of the law.' The lecture will unfold in a number of steps, which will include, roughly in this order, explaining what the topic is, why I have chosen it, why it matters, some biblical and theological reflections on the topic, and a conclusion.<sup>1</sup> What is the third use of the law, and why is there controversy over it?

We may begin by reminding ourselves what the third use of the law is and why there has been a controversy over it. The three uses of the law for Lutherans are defined classically in Article VI of the Formula of Concord in this way:

The law of God is used (1) to maintain external discipline and respectability against dissolute, disobedient people and (2) to bring such people to a recognition of their sins. (3) It is also used when those who have been born anew through God's Spirit, converted to the Lord, and had the veil of Moses removed from them live and walk in the law. (Formula of Concord, SD, 6.1)<sup>2</sup>

The first of these uses—to maintain discipline—has sometimes been called the civil or political use (God uses his law to restrain human sin, even, perhaps especially among non-believers), and the second has been called the theological or spiritual use (God uses the law to convict people of their sins to prepare them for forgiveness through Christ). The third use of the law has sometimes been called the didactic use: through the law God teaches those who have been justified and reborn how they are to live as Christians.

For many Christians, what Lutherans have called the third use of the law seems rather self-evident. How is the Christian to live? Obviously, the Christian is to conduct himself or herself according to the law of God as given in Scripture. In fact, Calvin regarded what Lutherans call the third use of the law to be the principal use of the law: the law of God reaches its *proper end* when it is fulfilled by persons in the Spirit.<sup>3</sup> By contrast Lutherans have understood the second use of the law to be the principle use<sup>4</sup>—God convicts humans through the law on the way to being justified by faith—whereas the third use of the law has lived a contested existence. That is why what many Reformed and evangelical Christians take to be rather self-evident—the Christian is to conduct himself or herself according to the written law of God—has been more problematic among Lutherans.

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<sup>1</sup> The present paper is a slightly edited and expanded version of my opening lecture for the 2015 academic year at Australian Lutheran College (23 February, 2015).

<sup>2</sup> The Solid Declaration of the Formula of Concord will be cited hereafter as SD.

<sup>3</sup> John Calvin, *Institutes of the Christian Religion*, 2.7.12.

<sup>4</sup> On the second use as the principle use, see references in Gerhard Ebeling, 'Zur Lehre vom triplex usus legis in der reformatorischen Theologie,' *Wort und Glaube* (3rd ed.; Tübingen: J.C.B. Mohr [Paul Siebeck], 1967), 50–68, here 60 n. 42. English: 'On the Doctrine of the *Triplex Usus Legis* in the Theology of the Reformation,' *Word and Faith* (ed. J.W. Leitch; London: SCM Press, 1963), 62–78, here 71 n. 2. Cited henceforth according to the English translation as 'Doctrine.'

Why has there been controversy over the third use of the law? Let us read on in the Formula of Concord, which explains the reason for the controversy:

A dispute arose among a few [Lutheran] theologians over this third and final use of the law. The one party taught and held that the reborn do not learn from the law new obedience or the good works in which they are to walk. They also argued that this teaching is not to be presented from the standpoint of the law because the reborn have been liberated by the Son of God, having become temples of the Spirit, and thus are free. Just as the sun completes its normal course without needing any force to drive it, the reborn do spontaneously what God demands of them through the prompting and impulse of the Holy Spirit. (SD, 6.2)

In short, the one party of Lutheran theologians argued that law and Spirit are basically antithetical to each other. To be led internally by the Spirit is precisely to be free from the need of an external law. If the Spirit of God dwells in me, I will spontaneously—one might say, almost automatically—do the will of God without consulting the written law of God. But

[a]gainst this, the other party taught that although those who believe in Christ are truly motivated by the Spirit of God and do the will of God according to their inward person from a free spirit, nevertheless the Holy Spirit uses the written law on them to teach them, so that through it believers in Christ learn to serve God not according to their own ideas but according to his written law and Word, which is a certain rule and guiding principle for directing the godly life and behavior according to the eternal and unchanging will of God. (SD, 6.3)

In short, this other party of Lutheran theologians argued that law and Spirit are not antithetical to each other. Rather the Spirit, precisely because it is *God's* Spirit, uses *God's* Word, *God's* written law, to teach Christians how they are to live, even though they are internally freed from every need of an external law. The Formula goes on to affirm a third use of the law in this sense: Christians are internally free from law, but they are still guided by the law.

## Reasons for addressing the topic

We shall return to this controversy later, but for the moment I want to say a few words about why I am speaking on this topic. What leads a New Testament lecturer to venture into somewhat foreign territory (academically speaking), taking up and presuming to comment on a topic from the Lutheran Confessions that has long been disputed? I suggest three reasons.

First, much of what I am presenting here is a condensation of a longer paper that I have written on this topic, so I have spent considerable time studying, thinking, and writing on the topic. A year ago theologians from the Lutheran Church-Missouri Synod and the North American Lutheran Church agreed to co-sponsor a volume of essays on law and gospel. Even though I am not a member of either of those church bodies, I was invited to offer a contribution. After thinking for a while about what I might offer, as a New Testament scholar I alighted on the topic of revisiting the third use of the law from a biblical perspective. So the material is fresh in my mind.<sup>5</sup>

Secondly, I have been personally interested in the topic for some time. Part of my interest is that I have often been puzzled when Lutherans have been so quick to reject a third use of the law. After all, an affirmation of a third use of the law is in the Lutheran Confessions. A benefit of undertaking this study, however, has been that I have come to understand more deeply why some Lutherans object to a third use of the law, and I will discuss some of those objections in a moment.

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<sup>5</sup> The tentative title of my longer paper is, 'The problem of freedom today and the third use of the law: biblical and theological considerations.' Some passages in this presentation are taken directly from that paper.

Finally, my third reason for pursuing this topic. I think that it is worthwhile revisiting the topic from a *biblical* perspective. Here, as a student of the Bible, is where I hope to have something new or worthwhile to say on the topic. Scripture is, after all, for Lutherans the norm that norms other norms, including the Confessions, and so it is always worthwhile to go back to Scripture and to contemplate anew the issues that our Confessions present to us.

## Objections to the third use of the law

So why has the third use of the law faced considerable objection in Lutheranism? I cannot undertake a full discussion of all of the relevant points here, but I will highlight three main issues.

A first, major reason that some Lutherans have objected to a third use of the law is perhaps the most obvious objection. That is, to have a third use of the law seems to give the law, rather than the gospel, the last word over our lives. We cannot allow the law to stand where only the gospel must stand. There is a fear that reintroducing the law after the gospel (re)introduces justification by works and so undermines justification by faith. Now, one can agree that if the third use of the law (re)introduces justification by works after the gospel, it must be rejected. But is that what the third use of the law actually does, when it is understood correctly? I do not think so. Later I will propose an understanding of the third use of the law that I think meets this objection.

A second reason has to do with the question whether a third use of the law is faithful to Luther, that is, whether Luther himself taught a third use of the law. The debate on this point has gone back and forth. Before the renewal of historical Luther studies in the twentieth century, it was generally thought that the orthodox Lutheran view of three uses of the law was in harmony with Luther's own view.<sup>6</sup> However, as scholars began to study Luther on his own terms, apart from the tradition of Lutheran orthodoxy, opinion shifted heavily to the view that Luther himself did not teach a third use of the law, but that the idea entered Lutheranism via Melancthon. Indeed, Melancthon was the first in the Lutheran camp actually to use the term 'third use [or function] of the law' in the sense that we find it in the Formula of Concord.<sup>7</sup> A third use of the law, in the way that this has been traditionally understood, does appear once in Luther's works, in his second disputation against the antinomians of 1538,<sup>8</sup> but Werner Elert showed that this was most likely a Melancthonian interpolation in the manuscripts.<sup>9</sup> The *locus classicus* for Luther's view on the uses of the law is the 1531/1535 lectures on Galatians, where he speaks explicitly of two uses of the law, the civil/political use and the theological/spiritual use of the law.<sup>10</sup> That applies as well to the Smalcald Articles.<sup>11</sup>

The question was reopened in an important book by Wilfried Joest, first published in 1951, on the third use of the law in Luther and New Testament *parenesis*.<sup>12</sup> Joest argues that, although Luther

<sup>6</sup> Lauri Haikola, *Usus Legis* (Helsinki: Luther-Agricola-Gesellschaft, 1981), 8.

<sup>7</sup> The terms *tertium officium legis* and *tertius usus* appear in the *Loci* of 1535, while *triplex usus legis* appears later. The idea, however, can be traced back to the 1520s (Ebeling, 'Doctrine,' 65–69). According to Timothy Wengert, Melancthon first speaks explicitly in terms of three uses of the law in the *Scholia* of 1534. On the origins of the third use of the law in Melancthon, see Wengert's *Law and gospel: Philip Melancthon's debate with John Agricola of Eisleben over poenitentia* (Grand Rapids: Baker, 1997), 177–210, esp. 195, 196.

<sup>8</sup> WA 39/1.485.

<sup>9</sup> See Werner Elert, 'Eine theologische Fälschung zur Lehre vom tertius usus legis,' *Zeitschrift für Religions- und Geistesgeschichte* 1 (1948): 168–70; idem, *Law and gospel* (tr. Edward H. Schroeder; Philadelphia: Fortress Press, 1967), 38–40. See further Ebeling, 'Doctrine,' 62 n. 2. In a 1522 postil Luther spoke of a threefold use of the law (WA 10/1.1.456–58=LW 76:7–9). But the context is how the law is fulfilled by different groups of people, and Luther says explicitly of the third group that they fulfil the law *without* the law (without being coerced by the law), which is *not* the third use of the law as Melancthon and the Formula understand it. In any case, this 'three-fold use of the law' comes in a context where Luther identifies only two uses of the law (WA 10/1.1.454, 455=LW 76:6). See also Ebeling, 'Doctrine,' 62–65.

<sup>10</sup> LW 26:274–75, 308–09 (=WA 40/1.429–30, 479–80). One finds two uses of the law as early as the postil of 1522 cited in note 9. Cf. Wengert, *Law and gospel*, 191. See also the second disputation against the antinomians (WA 39/1.441, 460, 461).

<sup>11</sup> SA III/2.1–5.

<sup>12</sup> Wilfried Joest, *Gesetz und Freiheit: Das Problem des tertius usus legis bei Luther und die neutestamentliche Parainese* (Göttingen: Vandenhoeck & Ruprecht, 1951).

never explicitly taught a third use of the law, there is a certain opening to the idea in Luther's writings. In more recent decades a number of persons have argued, with some cogency, that Luther's catechisms and sermons imply a third use of the law.<sup>13</sup> I cannot speak as an expert in this area, but my impression is that it is difficult to establish an unequivocal basis for a third use of the law in Luther. It does seem that Melancthon is the main inspiration for the idea. There is, to be sure, a certain opening to the idea in Luther's works, and the catechisms can be taken to imply a third use of the law, if not explicitly teaching one. But Luther's very frequent language about the coercive nature of law, about the law as an ally of sin, death, and the wrath of God, and about the freedom of the Christian in the Spirit make a straightforward adoption of the idea of a third use of the law in Luther difficult. Even if we cannot unequivocally appeal to Luther, however, the primary question for us must not be whether the teaching is faithful to Luther, but whether it is faithful to Scripture. We will return to that question.

A final reason to object to a third use of the law is the question, as odd as it might sound, whether Article VI of the Formula of Concord actually teaches a third use of the law; for some scholars have raised the question, with some cogency, whether what the Formula calls a third use of the law really is a *third* use of the law, or whether it is not really just another form of the first and/or second uses of the law, as applied to Christians. The issues here are rather complex, but I will try to summarise the problem succinctly.

A basic problem that arises from Article VI is the question of *why* the law is to be preached to Christians. The question at the time that the article was written was not *whether* the law should be preached to Christians, but *why*. After the so-called first antinomian controversy the main parties agreed that it was necessary to retain the law in the church to convict believers, insofar as they remain *sinner*s, and to bring them to repentance and to drive them to Christ. To review this point quickly, one usually speaks of two antinomian controversies, which are dealt with in Articles V and VI of the Formula of Concord respectively. The first antinomian controversy was basically over the question whether the preaching of the law was necessary to bring about repentance, or whether the gospel alone was sufficient to bring about repentance. Some argued that preaching Christ's death is already enough to bring about repentance; when I hear that Christ had to die for my sins, that already will bring me to repentance, even without the law. But others argued—and their view prevailed in the Formula (Article V)—that although it is true that preaching Christ's death can bring a person to repentance, still the law must be preached so that we do not confuse the functions of law and gospel in the strict sense. So the question about the third use of the law—and here we come to the second antinomian controversy—was not whether the law is to be preached to Christians. That had already been decided affirmatively: The law must be preached to Christians insofar as they remain sinners, to convict them of sin. Rather the question in Article VI is whether the law is to be preached to Christians insofar as they are justified and *reborn*. That is, it is the question whether Christians, in respect to their being reborn, need the guidance of the law to live God-pleasing lives, or whether they do so spontaneously, in the power of the Spirit, without need for the law. Here, as we saw, the two parties disagreed.

Article VI of the Formula walks a fine line, trying to do justice to the concerns of both parties. The result is a compromise statement that raises as many questions as it answers. If one tries to summarise the article's settlement of the question, one can say that, on the one hand, Christians have been *internally* renewed through the Spirit and so delight in the law and spontaneously fulfil the requirements of the law, without, however, being *coerced* through the law; but, on the other hand, because Christians remain 'flesh' and at least to some degree sinners for the whole of their

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<sup>13</sup> Scott R. Murray, *Law, life, and the living God: the third use of the law in modern American Lutheranism* (Saint Louis: Concordia, 2002), 176,177,199. See already Paul Althaus, *The theology of Martin Luther* (tr. R.C. Schulz; Philadelphia: Fortress, 1966), 272,273; further Holsten Fagerberg, *A new look at the Lutheran Confessions (1529–1537)* (tr. G.J. Lund; St. Louis: Concordia Publishing House, 1972), 82–87; Bernhard Lohse, *Martin Luther's theology: its historical and systematic development* (tr. Roy A. Harrisville; Minneapolis: Fortress Press, 1999), 183,184,275,276.

lives, they require both the conviction and the coercion of the law for the duration of life on earth. But that raises the question: is this really a *third* use of the law? In other words, if Christians need the law to convict and coerce them as sinners—here we really have the first and second uses of the law as applied to Christians—but insofar as they are reborn they do not actually need the law, then is there really a third use of the law?<sup>14</sup> It is easy to see why some scholars have denied that Article VI actually teaches a third use of the law different from the first and second uses.

So Article VI is a compromise statement trying to reconcile the views of two opposing parties. Like many compromise statements, it does not settle every question without some remainder of ambiguity. But it is precisely the ambiguities that invite us to look anew at the problems that the article raises with the hope that we might make some progress in them.

## The sixteenth century controversies

To get a better handle on these problems, it is helpful to look more closely at the controversies in the sixteenth century that led up to the composition of Article VI. The pre-history of Article VI is quite complex, but I would like to zero in on just one point of controversy. A major point of controversy was over what some Lutherans regarded as the antithesis between law and freedom. That controversy had its roots in the writings of St. Paul and Luther. One could cite Pauline passages that speak of the Christian's freedom from the law and that seem to place law and freedom in the Spirit in antithesis to each other (e.g., Rom. 6:14; 7:6; Gal. 5:18). One could also cite texts from Luther, such as when Luther says that, when one becomes a 'new man' ('a new person') in Christ there is no place for the law. Christ alone must rule over the 'new man' without the law. It is only the 'old man' who still needs the law.<sup>15</sup>

We must also note that the Lutheran pastors and theologians who debated these issues used words in different ways, which made agreement difficult. For example, one party understood 'law' in the sense of a coercive and accusing entity, from which the justified are freed in Christ. Others understood law in the sense of God's eternal, unchanging will, which all persons, Christian or not, are obligated at all times to fulfil. For this latter group, fulfilling the law does not imply coercion if one does it from a willing spirit. Or again, in the area of theological anthropology one party could argue that the justified are so united with Christ and his Spirit that Christ or the Spirit becomes the actual ethical subject of action in the Christian, leaving no room or need for the guidance of the law. The justified need the coercion of the law only to the degree that they remain sinners. Some even argued that the justified become 'one person' with Christ in such a way as to rise above the law, just as Christ is Lord over the law. Another party argued that even united to Christ, the justified remain responsible, ethical subjects (that is, the justified person is not replaced by Christ or the Spirit as ethical subject), and because the law is God's eternal, unchanging will, a person will always have some relationship to the law. Furthermore, the Spirit himself can and does use the law to instruct Christians. The notion that a Christian could become lord over God's law approaches blasphemy.<sup>16</sup>

From these strongly opposing views, and the attempts to reconcile them, one can understand why Article VI as a compromise statement does not come out without certain ambiguities.

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<sup>14</sup> One may also note that the article says that even the renewal of the 'inner person' is not complete; the old Adam continues to hang onto all the powers of the justified (6.6–8,18,19,23,24). That casts doubt on the statement that the 'inner person' does not need the coercion of the law. Moreover, the Formula declares that believers require the law so that they do not 'establish their own service to God on the basis of their own choice, without God's Word or command,' under the 'appearance of God's Spirit' (6.20). This statement, perhaps, comes closest to what we normally think of as the third use of the law. However, the statement implies that possession of the Spirit of God is *not* sufficient to live a God-pleasing life and thus stands in some tension with the earlier declaration that the reborn do the will of God spontaneously through the power of the Spirit without the coercion of the law (6.17,23).

<sup>15</sup> E.g., WA 17/1.122,123; LW 26:137,138. Later followers of Luther take up this idea. See, e.g., Matthias Richter, *Gesetz und Heil: eine Untersuchung zur Vorgeschichte und zum Verlauf des sogenannten zweiten antinomistischen Streits* (Göttingen: Vandenhoeck & Ruprecht, 1996), 182,232,264,266,267.

<sup>16</sup> Richter, *ibid.*, passim.

## Law and freedom in the state and in the church

I wish now to focus on this one area of controversy, the supposed opposition between law and freedom, because I believe that many of the challenges that we face today in both church and society are due to a false conception of the relationship between freedom and law. And I believe that returning to the biblical witness can be a great help as we think about those challenges and how to meet them. Popular opinion often regards law and freedom as polar opposites to each other: the more law, the less freedom; and to guarantee freedom, we must limit law. This notion of opposition between law and freedom is strongly represented in the Lutheran tradition as well. On a superficial level the opposition seems plausible enough. I suggest, however, that the more one reflects on the matter, the less convincing this way of looking at things becomes. Let me give two examples to illustrate the point, the first from the secular, political realm, and the second from the Lutheran realm.

Political thinkers have observed a certain irony in the relationship between law and freedom in modern democratic societies. On the one hand we witness the continual expansion of personal freedoms. At the same time, however, we witness the passage and enforcement of coercive laws to ensure those freedoms. To give just one example: In the last generation we have witnessed the remarkable expansion in Western countries of the right (or freedom) of elective abortion. As that freedom has grown, however, we also witness the passage of coercive laws intended to guarantee that freedom. In the United States of America, for example, the right (freedom) to abortion has come to be regarded as so sacrosanct that the (original) 2010 federal Patient Protection and Affordable Care Act contained provisions mandating that employers provide their employees coverage for contraception in their health plans, including forms of contraception that induce early abortions, even against the conscience or religious convictions of the employers.

Now my point is not that the appearance of every new personal freedom, and every new law established to guarantee that freedom, is wrong or bad in principle. Some are presumably good. But to think through the question of which freedoms and which coercive laws to guarantee those freedoms are good and which are bad, and how we know the difference, would take us beyond the limits of this lecture. Rather I want to make a more fundamental point, namely, that the common conceit that freedom is best guaranteed by the absence of law is too simple. Is there something about law that makes it fundamental to human life and indeed fundamental to human freedom, as is demonstrated by the phenomenon in modern political liberalism that, no matter how much one tries to establish freedom by removing law, it seems that in the end law always returns in some way as necessary for the preservation of freedom? It seems that to guarantee one freedom, we usually end up having to deny some other freedom. So perhaps the question is not so much *whether* we as humans need law to ensure freedom, but rather *whose* law, and *what kind* of freedom.

That question applies just as much to the church as it does to political culture. To illustrate the point, I take a second example, this one from within the Lutheran world. It is the statement entitled, 'Human sexuality: gift and trust,' which was passed at the 2009 Churchwide Assembly of the Evangelical Lutheran Church in America, the church body out of which I have recently come. This is a so-called social statement, which claims to present to the wider society the ELCA's teaching on human sexuality.<sup>17</sup> The statement's opening paragraphs frame the discussion of human sexuality with the double commandment of love of God and love of neighbour. All matters of right and wrong in sexuality are to be decided on whether or how they reflect love of God and loving service to the neighbour. The statement goes on to affirm that 'freedom [is] the basis for Christian life and ethics.'<sup>18</sup>

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<sup>17</sup> From the ELCA website: "'Human sexuality: gift and trust' expresses the ELCA teaching on human sexuality.' [www.elca.org/Faith/Faith-and-Society/Social-Statements/Human-Sexuality](http://www.elca.org/Faith/Faith-and-Society/Social-Statements/Human-Sexuality) (accessed February 9, 2015). See further [www.elca.org/en/Faith/Faith-and-Society/Social-Statements](http://www.elca.org/en/Faith/Faith-and-Society/Social-Statements) (accessed February 9, 2015): '[ELCA] Social statements also set policy for the ELCA and guide its advocacy and work as a publically engaged church.'

<sup>18</sup> 'Human Sexuality,' 3.

The statement upholds only two uses of the law. In a footnote the statement gives a nod to the third use of the law, but it defines the third use of the law as the ‘civil use of the law by the repentant and reborn who keep the law with a willing spirit.’<sup>19</sup> In other words, it follows the view that the third use of the law is really just the first use of the law, as applied to Christians. That means practically a reduction to a common-denominator ethics in which the law that applies to Christians is the same law that applies to all people, Christian or not. In the area of sexuality there is no specific, divine law that applies to Christians that would differ from other persons. The main purpose of the law is to maintain justice and peace in a sinful world and to ‘protect [people] from harm’ within ‘[temporal] social structures’ that God can and does ‘reshape ... for human protection and good.’ The document prefers the term ‘social structures’ rather than ‘orders of creation,’ because the latter suggests ‘unchanging social arrangements,’ while the former indicates that our ‘social structures’ for sexuality can be shaped and reshaped by ‘God’s ongoing creative activity.’<sup>20</sup> Accordingly the statement is unable to affirm unequivocally the existence of lasting structures for sexuality ordained by God, such as marriage defined as the life-long union of one man and one woman, and it especially refuses to cite Scriptural passages prohibitive of homosexual conduct. So the statement sits very loosely towards any notion of law as giving a specific, ordered shape to Christian life.

But lest we think that we all then live in the direct freedom of the Spirit and that we are freed from any and all imperatives, the statement is not shy about mandating all kinds of things that the church ‘will,’ ‘should,’ and even ‘must’ do. Already on page two, the document states that our central ‘calling’ with regard to human sexuality is ‘to be trustworthy in our human sexuality and to build social institutions and practices where trust and trustworthy relationships can thrive.’<sup>21</sup> Later we learn that this task includes ‘creat[ing] social structures and practices that support’ trusting and ‘life-giving’ sexual relationships for all people.<sup>22</sup> Note that while earlier the statement had spoken about social structures being shaped and reshaped by *God*, now the language has shifted to *our* creating new social structures. Accordingly the church ‘*must* contribute to the development of responsible economic and social policies and practices that shape the expression of sexuality within social life.’<sup>23</sup> Specifically this work ‘*requires* shaping legal, commercial, technological, and civic structures for the common good.’<sup>24</sup>

Note the irony: After freeing its people from God’s law regarding sexuality and calling for new social structures to guarantee new freedoms, the ELCA is happy to impose upon its people new imperatives of its own invention to guarantee the new-found freedoms. So even in the church, when divine law that has explicit Scriptural warrant is thrown out, the result is not a gospel utopia in which everyone lives in the direct freedom of the Spirit. The result, rather, is that the church must invent new laws to fill the vacuum left by abolishing God’s law, in order to guarantee the ever expanding freedom of the people of God, including, we now learn, the freedom to transcend the limits on human sexuality ordained by God in Scripture. There is another irony here: At the time of the Reformation it was precisely this that the Lutherans protested: the Roman Catholic Church was binding consciences with its own, human-made traditions, ‘teaching as doctrines the precepts of men’, as Jesus says against the scribes and Pharisees (Matt. 15:9), while it ignored God’s clear, explicit commands in Scripture. The ELCA, it seems, is now doing the same.

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<sup>19</sup> Ibid., 39 n. 9.

<sup>20</sup> Ibid., 6,7 and n. 11.

<sup>21</sup> See further p. 13: ‘The development of social trust *must* be a central concern for Christians who seek the good of the neighbor in the pursuit of justice and the common good. This church *must* be a leader in refocusing attention on practices and attitudes that build social trust’ (emphasis added). And p. 24: ‘Since social trust is directly related to social justice, this church *must* call for justice in matters relating to families and sexuality’ (emphasis added).

<sup>22</sup> Ibid., 10. See further p. 24: ‘This church *must* work toward greater understanding of sexual orientation and gender identity. It *must* seek that which is positive and life-giving while protecting from all that is harmful and destructive’ (emphasis added).

<sup>23</sup> Ibid., 13 (emphasis added).

<sup>24</sup> Ibid. (emphasis added).

## Freedom and law in biblical perspective

At this point I would like to turn to reflections on some biblical texts. I will bring these biblical texts to bear vis-à-vis the common notion that freedom and law stand in opposition to each other: the less law, the more freedom, and vice versa. The common assumption is that law is the primary hindrance to human freedom, because law essentially restrains us. I would like to argue that viewed biblically, divine law is not the enemy of human freedom but actually constitutes the proper form of human freedom. To develop this point, I will turn to two biblical texts, the first being the story of Adam and Eve in Genesis 2 and 3, and the second, Paul's discussion of law, freedom and sin in Romans 7 and 8.

We begin with God's commandment to Adam in Gen. 2:16,17: 'You may certainly eat of every tree in the garden. But of the tree of the knowledge of good and evil you shall not eat, for in the day that you eat of it you shall die.' This commandment actually consists of two elements, a positive 'commandment' (a permission) and a negative commandment (a prohibition). Included in the positive commandment, 'you may certainly eat of every tree in the garden', is, of course, permission to eat of the tree of life (2:9).<sup>25</sup> The commandment makes known to Adam that to have *lasting* life entails being in relationship with God who is the source of life (cf. 3:22). God does not offer Adam mere animal life, but he offers him the possibility of eternal life, which is grounded in his relationship to God. The commandment is not coercive; it is simply an invitation to Adam, an offer to accept the life that God has to give, and to order his life towards God.

Besides offering life, God's commandment opens up for Adam a realm of freedom ('you may certainly eat of every tree in the garden [except for one!]'). Adam was created, of course, with a kind of natural freedom, that is, the freedom to decide over his worldly affairs ('to till and to keep' the garden; 2:15). But the freedom opened up by the first, permissive commandment, which includes the offer of unending life with God, is an offer of what I would call *authentic* freedom: that is freedom defined as living in unbroken relationship with God, open to eternal life with him. It is not autonomy or doing whatever one wishes, but freedom that is grounded in a relationship to God. It is freedom shaped by listening to God and obeying him. Such obedience is not coercion, but a willing submission to the shape of life that God has given to Adam as a human, as a creature of God.

Adam differs from the animals around him in that he has been given a particular kind of freedom, the capability of self-transcendence. God speaks to Adam, and Adam hears, which means that Adam is able to know the ground of his being (God). Adam has a conscience (3:7). He is able to rise above and rule his world (1:28). Such self-transcendent freedom is a gift. The danger of such freedom, however, is that Adam can believe that his self-transcendence reaches to the heights of heaven. He can attempt to make himself God. Hence the negative commandment, which places limits on Adam's freedom.

The negative half of the commandment reads: 'But of the tree of the knowledge of good and evil you shall not eat, for in the day that you eat of it you shall die.' According to Genesis 3:5,22, knowledge of good and evil is God's province. So if Adam seeks to replace God with himself as the ultimate arbiter of good and evil, as the ultimate judge of right and wrong, he will transgress the limits of his God-given freedom.<sup>26</sup> To transgress that limit brings death, because it destroys the proper form of Adam's life, and because he will fall out of the relationship with God that was the source of his life. So the negative commandment is given not to abolish, but rather to protect Adam's freedom. Once again,

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<sup>25</sup> Strictly speaking, the positive 'commandment' is not a commandment at all (Hebrew imperative); it is an emphatic verbal form (infinitive absolute plus imperfect), connoting permission. However, this permission is included in God's 'command'. Elsewhere the infinitive absolute plus imperfect can virtually function as an imperative (e.g., Deut. 6:17). For simplicity we shall refer to this positive permission as a commandment. The negative commandment is the standard form of the Hebrew negative command (*lō' + imperfect*). It is the verbal form that appears in the prohibitions in the Ten Commandments.

<sup>26</sup> On the tree of knowledge as a symbol for human, moral autonomy without reference to divine wisdom and the divine, revealed will, see Gordon J. Wenham, *Genesis 1–15* (Waco: Word Books, 1987), 63,64. By contrast, the tree of life alludes, among other things, to divine wisdom (cf. Prov. 3:18). Wisdom, and hence life, is to be found with God.



the commandment is not coercive. Rather, it puts proper limits on Adam's freedom, shaping his freedom in a way that is suitable for his existence as a creature, rather than creator. These are limits to which Adam, still in communion with God, can willingly submit.

Thus obedience to God's commandment, in its positive and its negative aspects, becomes both the source and the proper form of Adam's authentic freedom, the structure of a freedom that is open to eternal life with God. By giving Adam the positive commandment, God makes known to Adam that authentic freedom is not autonomy, but a freedom that is grounded in his relationship with God and open to eternal life with him. By giving the negative commandment, God makes known to Adam that his freedom has a limit. The limit is for Adam's own good, because it is appropriate to Adam's status as creature of God. From these reflections we learn that divine law is in the first instance *a structure for the exercise of authentic freedom open to life with God*. Law and freedom are not opposed to each other. Rather law is the structure for the exercise of true freedom.

Adam's fall is the tragedy of his freedom. Precisely because it was God's *commandment* that opened up authentic freedom and life, it was also the commandment that, if transgressed, could close down authentic freedom and life. An abused freedom could turn on itself and become 'unfreedom'. And that is what happens. The serpent tempts Eve and lies to her (and Adam): 'you [plural] will not die.' Rather, 'you will be like God, knowing good and evil.' Eve and (through her) Adam believe the lie. They exercise their freedom, but they exercise it wrongly.<sup>27</sup> Ironically, in the very exercise of a presumed 'freedom to choose' whether to accept the God-given limit to their freedom or to transcend it by seeking to become the arbiters of good and evil, they are overcome by evil. And they are trapped.

In their abuse of freedom Adam and Eve attempt to replace God as the arbiters of right and wrong. In a sense they do become like God, because they can now claim to possess a divine-like freedom of deciding good and evil, right and wrong, without reference to God. But in becoming like God, they have really become anti-gods, no longer receiving their God-likeness as a gift (Gen. 1:26,27) that enables them to live in relationship to God, but grasping (cf. Phil. 2:6) after a man-made God-likeness that is inappropriate for them.<sup>28</sup> They have lost their true freedom, the freedom that consisted in living according to the shape of life that God had given them. As anti-gods, Adam and Eve are no longer fit for life with God. They are put out of the garden and must die, possibly forever (3:23,24). The expulsion from the garden and the separation from the tree of life indicate that, after Adam and Eve's fall, humans no longer live in eternal-life-sustaining communion with God.<sup>29</sup> Adam does not die a physical death immediately, which indicates that the death that he must die 'on the day' of his disobedience (2:17) is a spiritual death, a death that consists in separation from God. Adam's offspring are born outside of the garden (4:1), which means that humanity—that is, we ourselves—inherit a situation in which our freedom is corrupted, our relationship to God is corrupted, and, unless God restores that relationship, we also must die out of communion with God.

There is much more that could be said about the story of Adam and Eve, and about Old Testament understandings of law, but we must move now to some reflections on Paul. We look at Paul because he is the biblical author who has the most to say about law and freedom, and because he is the one to whom most people appeal when they want to set law and freedom in opposition to each other.

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<sup>27</sup> Genesis 3:22 suggests that Adam and Eve chose to eat of the tree of knowledge *rather* than the tree of life! They chose autonomy rather than communion with God.

<sup>28</sup> Note the intimate connection between Genesis 3:5 and 3:22,23: God does not deny that Adam and Eve, by eating of the tree of knowledge, have, in a sense, become 'like God.' That the serpent said truly. The serpent's lie was that eating from the tree would not lead to death. Adam takes it into his own hands to become 'like God,' an ultimate arbiter of good and evil. But his being 'like God' is actually being an anti-god. The result is that he chooses no longer to live with and for God. Cf. Ezek. 28:1–19: The Prince (King) of Tyre presumed to become his own god, with a corrupted wisdom, with the result that he was no longer fit to live in the presence of God.

<sup>29</sup> The Eden story contains temple imagery, which indicates that expulsion from the garden is expulsion from the life-giving presence of God. See Wenham, *Genesis 1–15*, 62,86.

Paul's classic exposition of the topics of law, freedom and sin appears in Romans 7 and 8. We will content ourselves with commenting on just a few verses.

I begin with Romans 7:7–12. Let us look first at the context of these verses. Previous to these verses Paul has said some very harsh things about the law of Moses. In Romans 6:14 Paul states that 'sin will have no dominion over you, since you are not under law but under grace,' implying that to be under the law is to be in a situation in which sin dominates a person. In 7:5, referring to the old life of those who had been under the law of Moses, Paul states that 'our sinful passions, aroused by the law, were at work in our members to bear fruit for death.' These kinds of statements raise the troubling question whether the law of Moses itself is the cause of the human predicament, entrapment under the power of sin. Such a possibility Paul cannot allow! So in 7:7–12 Paul defends the law of Moses against the charge that it is the cause of human sin:

What then should we say? That the law is sin? By no means! Yet, if it had not been for the law, I would not have known sin. I would not have known what it is to covet if the law had not said, 'You shall not covet.' But sin, seizing an opportunity in the commandment, produced in me all kinds of covetousness. Apart from the law sin lies dead. I was once alive apart from the law, but when the commandment came, sin revived and I died, and the very commandment that promised life proved to be death to me. For sin, seizing an opportunity in the commandment, deceived me and through it killed me. So the law is holy, and the commandment is holy and just and good.

This is admittedly a dense and difficult passage, one of the most difficult in all of Paul's letters. Here I simply wish to highlight the implications of this passage for our topic. It seems likely that Paul alludes to the story of Adam and Eve here. In any case, the parallels are striking. Paul says that the law is holy and just and good, and that it is given for life. Recall that God's commandment to Adam was also intended to preserve life. Again Paul says that the power of sin takes advantage of the law given by God to effect covetousness in a person and so to bring about death. We recall that the serpent used God's good commandment to corrupt Adam and Eve's freedom. The serpent tempted Adam and Eve to 'covet' what was not for them, the knowledge of good and evil, and so to transcend the limits of their freedom. The result was that they lost their freedom. They fell out of communion with God and fell under the power of Sin. So Paul's analysis would suggest that law is not the primary enemy of human freedom; rather the perverse power of Sin is the primary enemy of human freedom. Sin is what traps us and denies us our true freedom.

Paul goes on in Romans 7 to say that all humans are trapped in this situation of Sin. Under the power of Sin that rules in the world, we stand in opposition to God, out of communion with God. That is a situation from which the law cannot free us, a situation in which rather the law only condemns us to death as sinners. But, as Paul says in Romans 8, Sin's power over the human has been broken in the death and resurrection of the Son of God. Christ frees us from Sin's hold, and by reconciling us to the Father, he opens up for us again communion with God and the possibility of eternal life with him. In other words, the authentic freedom and lasting life with God that were once offered to Adam but were lost under the power of Sin become possibilities for us once again, however imperfectly in this fallen world.

The question then arises, with reference to our topic: Is this freedom of the Christian adequately described as freedom in the Spirit without any reference to divine law? It is true, of course, that Paul says in a number of places that those who are in Christ are free from the law (Rom. 6:14; 7:1–6; 1 Cor. 9:20; Gal. 2:19; cf. 5:18). One must remember, however, that in those places Paul is thinking about the Mosaic law in particular, not law in the more general sense of a normative structure for the exercise of freedom. Paul clearly thinks that the freedom of the Christian must be shaped. He is not afraid to use the words 'law' (*nomos*) or 'commandments' (*entolai*) in various contexts to speak of a principle or rule (or rules) that should shape Christian freedom, such as the Ten Commandments and what Paul calls the 'law of Christ' (Rom. 13:9; 1 Cor. 7:19; 9:21; Gal. 6:2). He can even speak of

the ‘law of the Spirit’ (Rom. 8:2). This phrase may seem strange to those who have grown accustomed to thinking of law and Spirit as in opposition to each other. One must recall however, that the Spirit given to believers is the Spirit of the new covenant (2 Cor. 3:6), and it is precisely obedience to God’s *law* (in the Spirit) that is promised in the new covenant (Jer. 31:33; cf. Ezek. 36:27). From a number of places in Paul’s letters we can see that this new ‘law’ or ‘rule’ of the Spirit has a particular structure to it: putting to death the deeds of the flesh and producing the fruits of the Spirit (Gal. 5:16–24; cf. Rom. 8:13); honouring God with the body, particularly in abstaining from sexual immorality (1 Cor. 6:19–20; 1 Thess. 4:3–8); general moral purity (1 Cor. 6:9–11); and living in the gentleness, humility, and unselfishness of Christ (1 Cor. 4:21; Gal. 5:25 – 6:2; Phil. 2:1–11). In Romans 6 Paul speaks of a pattern of teaching (*typos didachēs*) that has been handed on to the Roman Christians as a matter of apostolic tradition (*paradosis*) (6:17). This pattern of teaching entails turning away from impurity and lawlessness (*anomia*) and towards righteousness leading to sanctification (6:19).

It would take us too far afield to discuss in detail what Paul means by such terms as a pattern of teaching, the law of Christ, and the relationship between Paul’s ethical teaching and the law of Moses. Instead, to conclude our discussion of Paul I would simply say that for him there is a place in the Christian life for law (*nomos*) in the broad sense of the term, when we understand law in terms of a *normative structure for shaping Christian freedom*. This normative structure for shaping freedom is not, of course, identical with the law of Moses, but it does stand in continuity with the law of Moses as this is revised through Christ and the Holy Spirit.

The true enemy of authentic human freedom, then—freedom understood in the Adamic sense of life in communion with God, oriented towards God, and open to eternal life with him—is not law as such, but this perverse reality called Sin. Sin sets the human against God and thus out of communion with God. It closes down that authentic freedom which consists in a trusting and obedient relationship to God. It causes the human to transcend the proper limits of freedom that God has established for humanity’s own good.

## Conclusion

We began by noting some problems surrounding the third use of the law, both in debates leading up to the writing of the Formula of Concord, and even within the Formula itself. With Lutheranism’s emphasis on the first and especially the second uses of the law, there has been a tendency to think of the law primarily in negative terms, as a coercive and accusing entity. There has also been a tendency to set freedom and law in opposition to each other. And there is a fear that a third use of the law reintroduces works-righteousness after justification.

I suggest that when we revisit the question, and re-examine it in light of Scripture, many of the obstacles to affirming a third use of the law disappear. When we reflect biblically on the relationship between freedom and law, we can see that the real enemy of human freedom is not divine law but the power of Sin. We can understand divine law for the Christian believer not as the opposite of freedom, but as the proper form by which true freedom is to be shaped. As such it is also not a means to self-justification before God. Thus I would argue that we can and should uphold a doctrine of the third use of the law, although we may want or even need to do so today in terms somewhat different from (but, it could be argued, more biblically defensible than) the terms used by the authors of the Formula. As we witness today in the Western world the breakdown of many structures of existence previously considered normative, only to be replaced by new laws of human invention, the third use of the law can be a wholesome witness to the essential goodness of God’s law as the proper form of our freedom.