

Old Testament Law, Pastoral Counseling, and Community Engagement in Lutheran Perspective

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Abstract: The paper explores Martin Luther's stance on Old Testament law, specifically his dismissal of the Mosaic law's binding nature for Christians. It argues that Luther's reliance on natural law as an inherent instinct for grasping the order of creation raises challenges due to the inherent ambiguity and fallen nature of human understanding. The analysis delves into biblical, philosophical, and historical perspectives on natural law, underscoring the intricacies surrounding its practical application. Additionally, the article criticizes Luther's supersessionist theology, which posits the replacement of Mosaic law by Christ, asserting that it lacks exegetical rigor. The significance of comparative studies in comprehending Mosaic Law is demonstrated by drawing insights from ancient Near Eastern legal traditions. This approach presents a model that views Mosaic law as normative covenantal instruction adaptable to real-life situations. Building on these insights, the paper recommends considering Richard Averbeck's and Nicolai Winther-Nielsen's approaches to Mosaic law and its application in contemporary Christian life.

Keywords: Mosaic law, Old Testament law, Luther, antinomism, natural law, positive law, folk law, *Sachsenspiegel*, supersessionism, replacement theology, law and gospel, Biblical ethics, New Covenant, ethical guidance, pastoral counselling, community engagement

Luther and Old Testament Law

Luther was in many respects an Old Testament scholar. He used the Old Testament as a character-building mirror of all life¹ and held it so dear and important that more than twenty percent of the Weimar edition of Luther's writings (excluding correspondence) are introductions to and interpretations of the Old Testament. To this should be added his many sermons on Old Testament passages, his prominent treatment of the Decalogue in the small and large catechisms, and his more systematic treatises on Old Testament issues. Nevertheless, one of the more conspicuous aspects of Luther's interpretation of the Old Testament is no doubt his radical and sharp rejection of the Mosaic law as binding for Christians.² The argument for Luther's rejection is based on his distinction between natural and positive law, his understanding of Old and New Testaments as law and gospel, and his supersessionist view on Israel. We shall return to the latter elements in due course, but focus first on Luther's appeal to natural law.

¹ "The Old Testament is a mirror in which we see the glory of God, and in which we are taught to know God, to fear Him, and to love Him" (LW 11, 143). LW translations are from the American English edition Luther's Works published by Concordia Publishing House, St. Louis, Missouri (vols. 1–30 and 56–79), Muhlenberg [Fortress] Press, Philadelphia, Pennsylvania (vols. 31–55).

² As will become clear in the course of this article.

Natural Law

Luther never wrote a treatise as such on natural law, and his understanding of natural law and his interactions with the scholastic tradition in his day must be gleaned from references to Melanchton and more or less accidental comments in various writings. Luther had great esteem for Melanchton's *Loci Communes*, in which three basic principles of natural law were listed, namely to love God, to avoid harming one's neighbour, and to share property for the sake of the common good. Luther, in *The Bondage of Will*, describes *Loci Communes* as "an unanswerable little book which in my judgment deserves not only to be immortalized but even canonized," and his praise in a Table Talk on *How One Can Become a Good Theologian* (1542–1543) of both *Loci Communes* and *Commentary on the Epistle of Romans* must have encompassed also Melanchton's teaching on natural law:

If anybody wishes to become a theologian, he has a great advantage, first of all, in having the Bible. This is now so clear that he can read it without any trouble. Afterward he should read Philip's *Loci Communes*... If he wishes, he can read, in addition, Melanchthon's *Romans* and my *Galatians* and *Deuteronomy*. These will give him the art of speaking and a copious vocabulary. "There's no book under the sun in which the whole of theology is so compactly presented as in the *Loci Communes*... No better book has been written after the Holy Scriptures than Philip's. He expresses himself more concisely than I do when he argues and instructs. I'm garrulous and more rhetorical. (LW 54, 439–440).

The existence of a natural, moral law grounded in creation is also basic, however, to Luther's own ethics. Just as was the case in the scholastic tradition of his day, Luther referred to Paul's teaching in Rom 2:15 as fundamental to his understanding of natural law. Paul's argument that God has written his law on the hearts of all men, a fact to which man's conscience bears witness, is taken up by Luther in *Lectures on Romans* (1515–1516) and equated with the Golden Rule and the Rule of Love: Natural law "is impressed upon all, Jews as well as Gentiles; and all are therefore bound to obey it. In this sense our Lord says in Matt. 7:12: 'All things therefore whatsoever you would that men should do to you, do you also unto them; for this is the law and the prophets.' The whole law handed down to us is, therefore, nothing else than this natural law which everyone knows and on account of which no one is without excuse" (Luther 1961, 46). Or, as explained in the treatise *Temporal Authority* from 1523: "Nature teaches, as does love, that I should do as I would have done to me" (WA 11, 279:19).³

In the First and Second Disputation Against the Antinomians from 1537–38 he argues that

The [natural] Law is written in the depth of the heart; it cannot be removed, as one can see quite well in the psalms of lamentation where the dear saints cannot bear the wrath of God; this cannot be anything else but the feeling of the law's sermon in the conscience. And the devil, too, knows very well that it is impossible to remove the law from the heart; St. Paul attests in *Romans 2* that the pagans who have not received the law through Moses,

³ English translations of quotes from the Weimarer Ausgabe (WA) are taken from Bornkamm if nothing else is specified. The format for references to the WA is [volume]. [part of volume], [page in (part of) volume]: [line(s) on page].

and thus have no law, still are a law to themselves. They have to admit that it is the work of the law written in their hearts. (WA 50, 471:23)

It [i.e., natural law] is inscribed and engraved in the hearts of all men from the foundation of the world. (WA 39.1, 478:17; 454:4; cf. WA 50, 331:24)

Luther argues, in other words, that God established in creation and sustains as part of his *creatio continua* his law in all men as a moral accuser vis-à-vis God and as a moral compass for social and political life. In line with the scholastic tradition, he also distinguishes between natural law and positive law. Simpson helpfully describes the distinction in the following manner: “As life’s most basic moral wisdom, natural law pertains to all nations at all times and in all places. Positive law, on the other hand, while it should be rooted in the moral wisdom of natural law, is always formulated by humans and is always quite particularly situated in the concrete contexts of time and place. In this sense positive law is both time-bound and timely” (Simpson 2010, 421). We shall return to Luther’s understanding of positive law and first focus on his adaption of the natural law tradition of his time which, according to Pearson (2010, 4), had the following characteristics:

- There exists a moral law, objective in character, universal in scope and application, absolute in its authority.
- This moral law is grounded in God's gracious act of creation, is revealed in the natural order of things, and reflects the divine goodness of God.
- This moral law may be expressed as a set of precepts that frame and guide all moral deliberation and action for human beings.
- These precepts of the moral law are known to human beings through the exercise of natural reason, specifically through the instrument of conscience.
- The natural law serves as the necessary and sufficient basis and standard for all human law, including all positive civil and international law.⁴

For Luther, knowledge of natural law comes from man’s innate conscience and is, in Bornkamm’s words, “absolutely on the side of biological life” and “a positively human possession” (Bornkamm 1969, 129; referring to Hertrich 1938, 105). For the same reason, according to Luther, “the [natural] law cannot be abrogated in the universe” (WA 39.1, 455:5; 456:18). Luther also subscribed to the pairing of natural law and natural reason mentioned in the fourth characteristic above. “At present people are beginning to praise natural law and natural reason as the source from which all written law has come and issued. This is true, of course, and the praise is well placed” (LW 13, 160). Natural reason and – by extension – the ability to live by natural law is man’s badge of nobility, which distinguishes him from the animals. Luther argues that good decisions must be pronounced “by love and by natural law with which all reason is filled” (Tappert 1967, 348), and, in *The Disputation Concerning Man*, even calls reason “a kind of god” in man’s administration of the dominion given to him in creation:

⁴ See also Beckwith 2019, 155.

And it is certainly true that reason is the most important and the highest in rank among all things [earthly] and, in comparison with other things of this life, the best and something divine. It is the inventor and mentor of all the arts, medicines, laws, and of whatever wisdom, power, virtue, and glory men possess in this life. By virtue of this fact, it ought to be named the essential difference by which man is distinguished from the animals and other things. Holy Scripture also makes it lord over the earth, birds, fish, and cattle, saying, ‘Have dominion’ [Gen 1:28]. That is, that it is a sun and a kind of god appointed to administer these things in this life. (LW 34, 137 nos. 4–8)

In addition to teaching men consideration for one another as it is formulated in the Golden Rule, Luther, in *How Christians Should Regard Moses* (1525) adds a second characteristic trait of natural law in that it teaches all men the duty of worshiping God: “Nature provides that one should call upon God; the pagans attest to this, too. For there has never been a pagan who did not call upon his idols” (LW 35, 168).

As far as adaption is concerned, Luther made several important deviations from the scholastic tradition. Whereas the scholastic tradition understood the natural law as a divinely established and humanly discernible moral standard for individual human flourishing of which the Golden Rule was a summary expression, Luther argued that it was the Golden Rule or the rule of love that was primary and that the natural law was secondary. Luther understood natural law, Pearson explains, “as a set of innate instincts that operate merely as a useful instrument for directing our attention toward appropriate actions that serve the neighbour” (Pearson 2010, 15). In the treatise *Temporal Authority* (1523) Luther writes:

For nature teaches the same as love: I ought to do what I would have done unto me. And therefore I may not rob another, however good my claim, since I myself do not want to be robbed. What I would wish in such a case is that the other person should relinquish his right; and therefore I ought also to relinquish mine. And this is how ill-gotten gains should be treated, whether they were come by secretly or openly, so that love and natural law will always prevail. For when you judge in accordance with love, you will distinguish and decide all things easily, without law-books. But if you remove the law of love and nature, you will never hit on what is pleasing to God, even if you had swallowed all the law-books and the lawyers. On the contrary, the more you think about [what you learn from them], the more insane you become. Good judgment is not to be found in books, but from free good sense, as if there were no books. But it is love and natural law, with which all reason is filled, that confer such good judgment. From the books come oppressive and uncertain judgments. (WA 11,279: 19; quoted from Tappert 1967, 128)

Commenting on Luther’s use of natural law in a sermon from 1525, Pearson (2010, 19; 26) explains that

Luther lectures his congregation in this sermon on the folly of legislating our response to the neighbor, whether by the natural law or any other system of moral rules. As he describes it, the law is purely negative in its function: it cannot tell us (because of our sin) what is the good that we should do, but can only work to prevent us from doing evil...

There is a natural law, but the practical reality is that, because the created order has been made so dysfunctional by sin, this natural law is useless to human beings as they seek to understand how to live rightly and serve the neighbor... It does not go too far to suggest that Luther thinks of ethics as fundamentally local and circumstantial. What is universal in ethics are the ‘natural instincts’ of human persons. But the rendering of those instincts into a series of practical judgments applied to specific situations in order to realize the goods embedded in those instincts is something for Luther that can only take place on the ground, in the midst of the immediate context where the opportunities for right action actually present themselves.

What is left of natural law after the Fall, nevertheless, is an inclination or a natural instinct in all men for being responsible towards a god and seeking out goods in human communities like prosperity, peace, justice, order, etc. These instinctive “promptings” express themselves as practical and pragmatic considerations on how to achieve these goods, and because it is instrumental in that it serves to protect all humanity from the ultimate consequences of the Fall, moral claims made on the basis of this instinct are no truer or binding for a Christian than for a Turk or Jew.

We have already noticed that Luther makes the Golden Rule or the Rule of Love primary vis-à-vis the natural law, but that a Christian, nonetheless, needs both “the law of love and nature” to do what is pleasing to God. The absence of an extensive written natural law is not a problem, however, since natural law, in Luther’s thought, is an instinct, not, as we shall see, an epistemic faculty with rational capacity to ascertain reliable knowledge of what the natural law stipulates. The Golden Rule or Rule of Love is fundamental in that it redirects a Christian to Christ. “Whoever knows for sure,” Luther writes in *Lectures on Galatians* (1535), “that Christ is his righteousness not only cheerfully and gladly works in his calling but also submits himself for the sake of love to the magistrates” (LW 26, 12). In other words, and to rephrase the Golden Rule or Rule of Love: since a Christian wants to be subject to the love of Christ, a Christian also wants to make others subjects of such love. All a Christian need is, therefore, to follow the Spirit of Christ with the aid of nature’s instinct and the general directions in the natural law elements of special revelation. In the *Treatise on Good Works* (1520), Luther argues with Paul that “Where the Spirit of Christ is, there is all free,” and that such an evangelical freedom prompts good works (LW 44, 26–27). But for love to be more than a thought, it needs to be practiced. And, as Brock explains, “as love learns wisdom in marriage, and the apprentice learns judgment through training with the master, this wisdom is a skill of attentiveness to God’s word learned and practiced within a community. This is ethics as attentive and spontaneous action, activated by divine prompting and human need, and distinguishable from the project of developing formal norms within which all proper behaviour is described” (Brock 2007, 191).

Contributing to the distinction between natural law as general human ethics and Christian theology, is another deviation from the scholastic tradition. Luther treats conscience, not as an epistemic faculty with rational capacity to ascertain reliable knowledge of what the natural law stipulates, but in relational terms. Knowledge of natural law comes, not from reason, but from instinct. “With all the reformers,” Avis writes, “he rejected the Pelagian tendencies in scholastic theories of natural law which would make it an autonomous mediatory element between God and the world, and an assertion of the

dignity of human nature” (Avis 1975, 155). For the same reason Luther makes an important relational distinction between the usefulness of natural law *coram mundo*, i.e., for political and vocational purposes on the one hand, and as a standard and judge of the conscience *coram Deo* on the other. As far as social and political interactions are concerned, instinctive knowledge of natural law is sufficient to guide both individuals and authorities in the pragmatic, moral and legal decisions of their daily life, and, accordingly, also to assure man of a clean conscience in social and political relations. This distinction is clear especially in Luther’s writings on violence and upheavals against the authorities. In the treatise *Admonition to Peace* (1525), Luther emphasizes that, though natural law should be obeyed by everyone, it makes no one a Christian:

Now you cannot deny that your rebellion actually involves you in such a way that you make yourselves your own judges and avenge yourselves. You are quite unwilling to suffer any wrong. That is contrary not only to Christian law and the gospel, but also to natural law and all equity.

Now in all this I have been speaking of the common, divine, and natural law which even the heathen, Turks, and Jews have to keep if there is to be any peace or order in the world. Even though you were to keep this whole law, you would do no better and no more than the heathen and the Turks do. For no one is a Christian merely because he does not undertake to function as his own judge and avenger but leaves this to the authorities and the rulers. You would eventually have to do this whether you wanted to or not. (WA 18, 304:5; 307:5; quoted from LW 46, 25–26; 27).

As far as man’s relationship with God is concerned good conscience depends entirely on the evangelical freedom which is created by special revelation in Scripture only. Pearson explains:

When conscience is properly formed, by scripture and the promptings of the Holy Spirit, for instance, is it rightly related to God and enjoys an evangelical freedom; when it is not properly formed, the relationship of one’s conscience to God is rendered uncertain, and thus we have all the references to the ‘terrors of conscience’ so prevalent in the Lutheran confessional writings. Those ‘terrors’ are not the product of faulty knowledge, but of a bondage to the fear that our relationship with God is broken (cf. Pearson 2010, 6).

Pearson argues that, because Luther affirms natural law as man’s ethical standard *coram mundo*, he nevertheless insists that it is an unsuitable topic for theology in that theology is exclusively about man’s relationship *coram Deo*. In *Lectures on Psalm 51* (1532) Luther writes: “Knowledge of God and man is divine wisdom, and in the real sense theological. It is such knowledge of God and man as is related to the justifying God and to sinful man, so that in the real sense the subject of theology is guilty and lost man and the justifying and redeeming God. What is inquired into apart from this question and subject is error and vanity in theology” (WA 40.II, 327:11; quoted from Pearson 2010, 7).

Summing up the discussion, Pearson (2010, 27) argues that

Luther understands natural law not as a Christian teaching, but as an observation of human nature in general. It is apparent that, since the Fall, human reason is disordered, and cannot be relied on for identifying those goods that lead to human flourishing. Instead,

Luther holds that we must rely on our natural instincts for this purpose. But this is something that all persons have done, in every time and place, and continue to do, even now in the Christian era. The Jew, the Turk, and the heathen employ the same tactics of ethical deliberation, the same resources of the natural law, that Christians do. In this sense, there appears to be no such thing as a “Christian ethics” for Luther. There is just ethics, a human activity fueled by natural desires, satisfied by practical arrangements, enforced by political structures, producing at its best the conditions under which each one may serve the neighbor and live in peace. But if there is no such thing as a distinctively “Christian ethics” for Luther, then ethics itself cannot be eligible for theological treatment. Theology and ethics for Luther live in two different worlds.

Pearson probably goes too far in claiming that, for Luther, there is no such thing as Christian ethics, and that he only promoted situational ethics. Luther considered Moses essential as an “interpreter and illustrator of the biblical commandments in the minds of all men” (WA 39.1, 454:3, 15) precisely because man’s depravity had obscured the natural law instinct. Without the biblical confirmation of what had been obscured by the fall, i.e. the natural law given in creation to all men, there would be no *Christian* ethics, only a dim, unreliable light. More on that below.

Another deviation from the scholastic tradition in Luther’s understanding of natural law and conscience is also evident in his focus on the natural law for the common good. The purpose of following nature’s inclination, is not, as was the case in the scholastic tradition, solely for the individual’s realization of his own good. In *Admonition to Peace* (1525) Luther argues that the rebellion of the peasants in Swabia to whom the treatise is addressed “is contrary not only to Christian law and the Gospel, but also to natural law and all equity. Now, all this has been said concerning the common, divine and natural law which even heathen, Turks, and Jews have to keep, if there is to be any peace or order in the world” (LW 46, 27). Pearson finds nowhere in Luther’s writings applications of natural law for the individual’s personal life. “Natural law and equity,” Pearson explains, “have value for Luther primarily in order to accomplish a number of specific social purposes, such as maintaining public peace and order, so that justice may be secure. For Luther, these are not, strictly speaking, theological matters” (Pearson 2010, 11). And conscience, again, is not regarded as a metaphysical and secure source of knowledge of natural law, but as a relational, moral compass vis-à-vis man’s social and political life. Pearson’s qualifier “primarily” is appropriate, however, since there seems to be a reciprocity in Luther’s thinking about the purpose of the individual’s and the common good. Explaining why the parts of the commandment referring to the “Sabbath” and the “land, which the Lord your God gives you” only apply to the Jews, Luther, in *Against the Sabbatarians* (1538), argues that “we”, i.e., the Gentiles, “have to take this in a general sense, that God would give happiness and well-being to anyone in his own country who honors father and mother. We also observe that countries and governments, yes, also families and estates, decline or survive so remarkably according to their obedience or disobedience; and it has never happened otherwise than that he fares badly and dies an evil death who dishonors father and mother” (LW 47, 95). Here it is clear that the individual’s following natural law is for the benefit of the common good as well as for his or her own.

Positive Law

As far as the distinction between natural law and positive law is concerned, Luther makes the distinction explicitly in a Table Talk: “Natural law is a practical first principle in the sphere of morality; it forbids evil and commends good. Positive law is a decision that takes circumstances into account and conforms with natural law on credible grounds. The basis of natural law is God who has created this light, but the basis of positive law is civil authority” (LW 54, 293). Based on this conventional distinction, Luther argues that the Mosaic law is a blend of natural law, and the positive folk law of the “Jews”. In the *Second Disputation Against the Antinomians* (1538) Luther avers that, though Mosaic law contains natural law, e.g. in the Decalogue, natural law both predates and is more fundamental than the Mosaic folk law in that “the Decalogue belongs to the whole world; it is inscribed and engraved in the hearts of all men from the foundation of the world” (WA 39, 478:17; 454:4; cf. WA 50, 331:24).

Since natural law is so fundamental it is no surprise that it is also reflected in Old Testament law and commanded by Moses. The core of the Ten Commandments, as already quoted, “belongs to the whole world” (WA 50, 331:24; 39, 487:17; 454:4). But precisely because of its universal rootedness in creation we should obey it, not because it was commanded by Moses, but because it reflects the enduring, universal will of the Creator. Luther, in *How Christians Should Regard Moses* (1525), writes that, “Thus I keep the commandments which Moses has given, not because Moses commanded it, but because they have been implanted in me by nature, and Moses agrees exactly with nature” (WA 16, 373:14). And again, in *Against the Heavenly Prophets* (1525): “Now where the law of Moses and natural laws are one and the same, the law remains and is not abrogated externally, except spiritually through faith, which is nothing else than fulfilling the law” (LW 40, 97). We shall return to the internal, spiritual abrogation shortly, but as far as the external, enduring and universal validity of the natural law is concerned, Moses is, in Bornkamm’s words, “only one more accidental voice; in reality, we all stand directly, together with all the world, before another master” (Bornkamm 1969, 125).

That Moses is an “accidental” voice does not mean, however, that it is an unimportant voice, since “God had to impress it [i.e., natural law] on humanity again through Moses, since it had largely been forgotten” (Bornkamm 1969, 127). Since natural law in man’s conscience has been so obscured by the devil that he does not follow naturally the Golden Rule or Rule of Love, he must be enlightened by both external commandments and the enforcement thereof by political authority. In his *Fastenpostille* (1525) Luther states: “Evil lust and love obscure such light and blind a human being so that he does not look at such a book in his heart and does not obey such a clear command of reason; that is why one must drive him back and force him, with external commandments, books, sword and force, and remind him of his own natural light and hold his own heart up for him to see” (WA 17.2, 102:19). Though Moses was no author of natural law, he was nevertheless, according to Luther in the *Second Disputation Against the Antinomians* (1538), “the interpreter and illustrator of the biblical commandments in the minds of all men” (WA 39.1, 454:3, 15). Since Moses’ interpretation and illustration of natural law is only accidental, Christians should reformulate natural law. Moses’ version is still valid, but since Christ has come as a visible example of true humanity and fulfillment of natural law, we should seek to reformulate it with the help of Christ and the apostles in the New Testament.

We shall make new Decalogues, just as Paul does in all the epistles, and as Peter does; but above all, as Christ does in the gospel. And these Decalogues are clearer than the Decalogue of Moses, just as the countenance of Christ is brighter than the countenance of Moses. For if the pagans in their corrupt natures were able to know God and be a law unto themselves, Romans 2, how much more is Paul, or the true Christian, full of the Spirit, able to institute a certain Decalogue and judge most correctly about all things. (LW 34, 112–13)

Whereas Luther maintained that Moses was an “illustrator” of natural law, it came to play – especially in later Lutheran tradition – an insignificant role. Apart from the prominence given to the Decalogue in the catechisms, examples of natural law in the Old Testament were only relevant insofar as they were repeated and confirmed in the New Testament. And precisely because they were, there was no need to go back to “Moses” and read them there. Franz Pieper, a prominent exponent of Luther’s thought in later Lutheran tradition, argues accordingly, that “[o]nly that is divine Law for all men which is taught in Holy Writ as binding on all. Not even the Ten Commandments in the form in which they were given to the Jews (Exodus 20) are binding on all men, but only the Ten Commandments as set down in the New Testament” (Pieper 1950, 1:532). For the same reason the Decalogue, according to Bornkamm, “receives its convincing and overpowering force not from itself, but from our conscience – even today” (Bornkamm 1969, 128). Christians, precisely because they are in Christ and Christ is formed in them (Gal 4:19), now have the freedom, in Arand’s words, “to go back into the Old Testament to find that which continues to apply to them” guided by “natural law or the law of creation” (Arand 2011, 221). Luther treats natural law, Pearson (2010, 23) argues,

as a manifestation of human affective states implanted in us by creation, to which Mosaic law must conform if the latter is to be authoritative in the Christian life. The Mosaic law has no religious sanction of its own for Christians. But both natural law and Mosaic law are subordinated to the teachings of Christ, which are the normative standards for the Christian. It is possible to argue that in Luther, natural and Mosaic law are rudimentary forms of moral guidance, being derived from the mundane realms of nature and human history, and lack the supernatural authority of Christ’s own words.

In sharp contrast to natural law, Luther describes the other laws as folk law and characterizes them as “positive law”. These positive laws were, for the same reason and with Bornkamm’s anachronistic term, tied more to “Judaism” than to Moses: “Mosaic law was that much more tied to Judaism since it was, as Luther recognized with noteworthy historical keenness, only in its smallest part a creation of Moses, it was, rather, an ancient Jewish folk law, which Moses took, wrote down and codified for the most part from ancient tradition already in use among the people” (Bornkamm 1969, 124). What was specific to the ancient Israelites and later Jews should be compared, in Luther’s thought, to other specific, secular, and historically contextualized laws of other peoples in the world. As an example, Luther, in *Against the Heavenly Prophets* (1525), specifically mentions the *Sachsenspiegel*, one of the most important law books during the Roman Empire and still the positive legal code of medieval Saxony:

We read however in Moses (Exod. 18) that he appointed chiefs, magistrates, and temporal authority before he gave the law, and in many places he teaches: One is to try, judge, and punish in all cases with justice, witnesses, and in an orderly way. (LW 40, 89)

Moses' legislation about images and the sabbath, and what else goes beyond the natural law, since it is not supported by the natural law, is free, null and void, and is specifically given to the Jewish people alone. It is as when an emperor or a king makes special laws and ordinances in his territory, as the *Sachsenspiegel* in Saxony, and yet common natural laws such as to honor parents, not to kill, not to commit adultery, to serve God, etc., prevail and remain in all lands. Therefore one is to let Moses be the *Sachsenspiegel* of the Jews and not to confuse us gentiles with it, just as the *Sachsenspiegel* is not observed in France, though the natural law there is in agreement with it. (LW 40, 98)

The distinction between natural and positive law was no minor issue for Luther. When, in the 1520ies, a growing number of people began to argue in relation to the Mosaic law that if God has commanded it, it should be obeyed, he devoted a series of seventy-seven sermons on the book of Exodus to address the issue. The twenty-ninth sermon, titled *How Christians Should Regard Moses* (1525), became so popular that Luther's editors soon after placed it at the beginning of a collection of Luther's sermons on Genesis. "Rightly," Gary Simpson opines, "they made it the interpretive key to the entire collection" (Simpson 2010, 420). One of the points made by Luther in the sermon is that in order to decide which laws are binding universally, it is crucial to determine to whom it was commanded: "It is all God's word. But let God's word be what it may, I must pay attention and know to whom God's word is addressed... One must deal cleanly with the Scriptures. From the beginning the word has come to us in various ways. It is not enough simply to look and see whether God has said it; rather we must look and see to whom it has been spoken, whether it fits us. That makes all the difference between night and day... You must keep your eye on the word that applies to you, that is spoken to you" (Luther 1960a, 170; cf. 1899). What was not part of natural law was spoken to the "Jews" only, and this Mosaic law "does not bind the pagans, but only the Jews" (LW 35, 165). The laws are so situated in ancient Israelite society and later Judaism, that they should be ignored, according to Luther, by his contemporary Christians. In the treatise *On Marriage Matters* (1530), he writes:

One must deal prudently with the laws of Moses, for his rule in marriage matters is of a completely different character than ours... Moses' laws cannot be valid simply and completely in all respects with us. We have to take into consideration the character and ways of our land when we want to make or apply laws and rules, because our rules and laws are based on the character of our land and its ways and not on those of the land of Moses, just as Moses' laws are based on the ways and character of his people and not those of ours. (LW 46, 291)

In the treatise *Against the Sabbatarians* (1538), Luther acknowledged the uniqueness of the Mosaic law's context, but emphasized, again, that only the universal Ten Commandments were binding as natural law:

Moses did precede all other legislators, however, in revealing in his history the genesis of all creatures and the coming of death into the whole world through Adam's fall or sin.

And later when he wants to set up a special law and nation apart from all others, as he has been commanded to do, he first introduces God himself; he is the universal God of all the nations, who gives the universal Ten Commandments – which prior to this had been implanted at creation in the hearts of all men – to this particular people orally as well. In his day Moses fitted them nicely into his laws in a more orderly and excellent manner than could have been done by anyone else. Circumcision and the law of Moses, however, were not implanted in men’s hearts; they were first imposed by Abraham and Moses on their people. (LW 47, 90)

The division between natural and positive law is especially clear in Luther’s dissection of the text in Exodus 20 where he adamantly rejects the first דְבָר (“word”) in verse 2 and the fourth דְבָר (“word”) on the Sabbath in verses 8–11 as not belonging to the universal natural law and considers it part of the Lord’s temporary and local address to ancient Israel. It was spoken to the “Jews”, and is part of their positive law only. Or, as Luther puts it in his characteristic vulgar language: “For if I were to approach God and say, ‘O Lord God, who brought me out of Egypt, out of the exile,’ etc., I would be like a sow entering a synagogue, for God never performed such a work for me. God would punish me as a liar; I would be making an imaginary god out of him. Yet I must recite and keep all the other words of the first commandment. I may also say, ‘You are my God, the God and also the Creator of us all, who, to be sure, led the children of Israel out of Egypt, but not me; however, you did lead me out of my Egypt and my exile’” (LW 47, 90). This does not mean, however, that nothing in the “Jews” positive law is applicable in other contexts. Precisely because it is positive law, its intention is to “forbid evil and commend good” and may serve as an inspiration for both individuals, legislators and authorities at other times and in other societies to the same end. But Luther is adamant that it is in no way binding anymore, only optional. As positive law, “I dismiss,” Luther argues in *How Christians Should Regard Moses* (1525), “the commandments given to the people of Israel. They are dead and gone, except insofar as I gladly and willingly accept something from Moses, as if I said, ‘This is how Moses ruled, and it seems fine to me, so I will follow him in this or that particular’” (LW 35, 166). Or as Bornkamm explains it with a quote from the treatise *Against the Heavenly Prophets*: “By that which does not apply to us Luther meant the Mosaic folk law, including those items he considered right and worthy of being copied... As highly as Luther valued these and other points of Israelite law, particularly its social codes, protection of the poor, etc., and as much as he would have liked to see them instituted, it was still not demanded by God but rather left to choice, ‘just as when one nation follows examples from laws of other nations, as the Romans took the Twelve Tables from the Greeks’” (LW 40, 98; Bornkamm 1969, 123). Whereas the Christian should seek to align his or her life with natural law as exemplified in parts of the Mosaic law and clarified by Jesus and the apostles, the positive law of the “Jews” should serve as an inspiration only.

There is a certain tension, however, in Luther’s approach to the Mosaic law since he sometimes appeals to the judicial part of the law as binding. In his *Commentary on Psalm 82* (1530) he argues that heretics deserve the same death penalty as commanded in Lev 24:16 (LW 13, 61), and he also refers to judicial parts of the Mosaic law in his harsh view on the treatment of witches. In a Table Talk from 1538, Luther argues about “witches who spoil milk, eggs, and butter in farm yards” that “I should have no compassion on these witches; I would burn all of them. We read in the old law, that the

priests threw the first stone at such malefactors ... Does not witchcraft, then, merit death, which is a revolt of the creature against the Creator, a denial to God of the authority it accords to the demon?" (DLXXVII; Hazlitt 1872; cf. Lea 2017, 422–23). The tension is resolved, Avis argues, when these judicial laws are seen as explications or applications of natural law: "Taken in the context of Luther's other remarks, this may, however, be read as an invocation of natural law as embodied in the Mosaic code. Dealing with usury, for example, Luther in two consecutive points says, 'Charging for a loan is contrary to natural law', by which he means the golden rule, and, 'It is against the Old and New Law, which commands, 'You shall love your neighbour as yourself'" (Avis 1975, 155–56). Tension or not, the appeal to judicial laws well illustrates Luther's difficulty in distinguishing between natural law and folk laws and how to describe, instinctively, natural law.

Law and Gospel

The second crucial aspect of Luther's approach to Old Testament law is his distinction between the Old and New Testament as equivalent of that between law and gospel, i.e., the fundamental pattern of obligation and promise found by Luther in the Bible. Luther does, as we shall see, make a differentiation between the Old and New Testament *books*, but his definition of "testament" is primarily theological or covenantal in that the old testament is everything in the Old and New Testament which is "law", and the new testament encompasses all gospel content in both the Old and New Testament. Luther, in *Gospel on the Thirds Sunday in Advent* (1540), writes that:

There is no book in the Bible that does not contain both. God has placed them side by side in every way – law and promise. For he teaches through the law what there is to do, through the promise whence it should be taken. But the New Testament is primarily called gospel above other books because it was written after the advent of Christ, who fulfilled God's promise and through oral preaching publicly disseminated that promise which was before hidden in the Scripture. (WA 10.1.2, 159:7)

Since Luther refers to the Old and New Testament both as books and covenants, it is sometimes confusing in what sense he is making the reference, hence the present article's differentiation between "testament" with a minor "t" as referring to the theological, covenantal sense, and "Testament" with a capital "T" as a designation of the two parts of the Christian Bible. The distinction means for Luther that Moses represents both the old and new testament, i.e., law and gospel, and that "Moses" is found in both the Old and New Testament! Moses, on the one hand, is a man of law. As a representative of both "Jewish" folk law (for the "Jews") and universal natural law (for all), Moses describes what God requires from us. However, we cannot meet the standard contained in these requirements, which exposes us as sinners in our own conscience and before God. In this capacity Moses, Luther argues in *Lectures on Psalm 45* (1532), is an officer of death (2 Cor 3:6–7), a "prison warden, slaveholder, executioner, and torturer," executing his rule of law as "an oppressive slavery" (LW 12, 205–206).

At the same time Moses is a man of the gospel – for two reasons. First, Moses, as an "officer of death," prepares man for the hearing of the gospel and thus serves an indispensable purpose in God's work: "This office of sin and death is good and very necessary," Luther argues in his *Prefaces to the Old Testament* (LW 35, 242). And, in *Lectures on Psalm 90* (1535): "You have heard Moses perform

his essential office, that is, to terrify sinners and, though in an obscure way, to indicate redemption. He does this to humble the proud and to console the humble” (LW 13, 79). Though it represents God’s *opus alienum* (“alien work”), it is nevertheless a crucial prerequisite for God’s *opus proprium* (“essential work”), i.e., the communication of the gospel. In Bornkamm’s words: “the disciplinarian of the law is indispensable to us until the end of our lives for the radical self-realization, the knowledge of our aversion and impotence to do good, which is the condition for the fruitful hearing of the gospel” (Bornkamm 1969, 147). The law was given, as Luther argues in his *Prefaces to the Old Testament* (1523), “so that sins might become numerous and be heaped up beyond measure. The purpose is to burden the conscience so that obdurate blindness would have to recognize itself and feel its own impotence and nothingness in the achieving of the good. Thus it would be compelled and forced by the law to seek something more than the law and its ability, namely, God’s grace promised in the Christ who was to come” (LW 35, 244). The “business” of law and gospel is not the same, Luther argues in *Treatise on the Last Words of David* (1543), “for Moses preaches about sins and thereby kills; Christ preaches about grace and thereby creates life.” Nevertheless, they should be held together, for “grace can do nothing if sin has not first been revealed and recognized through law. The Lord himself says, Matthew 11, that he preaches the gospel to the poor and to the lost sheep of Israel, that is, those who feel lost because of the law” (LW 15, 331). Second, Moses, according to Luther, was well aware of the limitation in his office of death; he was conscious of the deeper meaning of the law of secretly pointing to Christ, and in this regard even describes Moses “a Christian”:

But we have Moses, whose unconstrained word, whose natural way of speaking, is in such hearty and good accord with the New Testament. And even if he must rule the obstinate evil people of his time in the Old Testament, he nevertheless also strongly prophesies Jesus Christ our Lord... I believe and know for certain that I and all Christians have Moses on our side and that he is a true Christian, indeed, a teacher of Christians... In his heart, faith and confession, he embraced Christ the Son of God and joined himself unto Him. (LW 15, 335)

How much law and gospel belong together, they also stand in sharpest opposition. By pointing “secretly” or “obscurely” to Christ, the law in a certain sense destroys itself. It exposes its own shortcoming as a means of achieving righteousness before God and leaves man with only one hope, namely Christ. The office of Moses, Bornkamm explains, “has a secret Christocentric meaning. It means that by driving man to the end of all his own possibilities, Moses’ office proves to him the impossibility of reaching God in this way and thus abrogates itself” (Bornkamm 1969, 148). Or as Luther has it in *Prefaces to the Old Testament* (1523): “See, this is what it means that sin brings death upon us and kills us. This is what it means for the law to stir up sin and set it before our eyes, driving all our presumption into despondency, trembling and despair” (LW 35, 243). The law kills and comes to an “end”, as it were, and Christ is precisely this “end of the law” (Rom 10:4). Only Christ fulfilled the law, and the sinner’s only hope is, accordingly, that God justifies the unjust based on Christ’s righteousness. Man cannot achieve righteousness before God any other way than through faith in Christ and His work. This is man’s only hope and when man is tempted to believe otherwise, “Moses” has to be dismissed in the harshest manner possible. “If someone is thus being tempted or involved with others thus under stress, then he should beat Moses to death and throw many stones at him” (WA TR

2, 75:25). In another Table Talk, Luther states: “When I debate the law with Satan, he wins. That is why I want to help in the stoning of Moses; otherwise, he will remain with despairing and broken men rather than with the faithful and trembling consciences” (WA TR 2, 583:8). The strongest example, Bornkamm notes, is from a Table Talk where Luther dramatizes his entry to the gates of heaven in the Last Judgment. Luther argues that if Moses should try to accuse him before God, “then I shall repulse him in the name of the devil and say, ‘Here stands Christ,’” and “Moses will look at me and say, ‘You have understood and judged me correctly,’ and he will be in my favor” (LW 54, 128).

It is important at this point to emphasize that for Luther, Christ is “the end of the law” only as far as justification is concerned, and that it is in this respect the law stands in the sharpest opposition to the gospel. In the *Second Disputation Against the Antinomians* (1538) Luther argues that “as far as heaven is removed from earth, so far must the law be removed from justification. And nothing is to be taught, said, and considered in the matter of justification, unless it is exhibited solely in the word of grace in Christ” (WA 39.1, 348:5). This does not mean, Luther continues, that for the Christian the (natural) law has been annulled by Christ: “Hence, however, it does not follow that the law is to be abolished and removed from the assemblies of the church” (WA 39.1, 348:5). Since Christ is the end of the law, it is not the law that teaches us to live by the Golden Rule or Rule of Love, but Christ. But because a Christian is *simul iustus et peccator*, “at the same time righteous and sinner,” he or she needs the law every day as an aid or explicator to make operative Christ’s love. In the *Second Disputation Against the Antinomians* Luther explains that, though Christ “even ended the Decalogue for those who believe,” i.e. as far as justification is concerned, “it is nevertheless not abrogated in us, because it is not yet completed in us. But when we have been resurrected from the dead, even the Decalogue will be abrogated in us” (WA 39.1, 453:22–23). Luther is, precisely as the title of the treatise suggests, no antinomian! Commenting on the assertion that Luther’s focus on the rule of love and call to “make new Decalogues” furthers an autonomous morality and situation ethics, Bayer maintains that, for Luther, “love” is a qualified criterion, not a stepping stone for the radical extreme of situation ethics: “God’s self-presentation, together with the First Commandment and the respondent faith, remain the basis boundary, and criterion of any fulfillment of the commandment to love in concrete social form. They pervade everything, as the Small Catechism impresses upon us with its constant repetition: ‘We should so fear and love God, that...’ It is this ‘theonomy’ in which Luther’s ‘autonomous’ ethics of freedom remains grounded” (Bayer 1998, 135–36). Although Luther regards ethics as a general human activity guided by universal natural law, he also acknowledges the importance of Christ’s love for the believer’s life *coram mundo*. Commenting on the “indissoluble bond between discipleship ethos and the table of duties ethos” in Luther’s thought, Bayer (1998, 149) argues that

The two terms do not address different substantial ethical fields but refer to different dimensions of one and the same thing. “Discipleship” here means the intensity and radicalism with which the commandment to love is fulfilled. The “table of duties” directs our attention to forms of existence which fulfill basic needs and the applications of which are in a constant process of renewal; the material content of these concerns Christians and non-Christians alike.

Another important point in Luther's concept of law and gospel – and of his understanding of Moses as a representative of both – is the fundamental simultaneousness and unity of these two aspects of God's work. Bornkamm (1969, 149; 165), with reference to Luther's *On the Last Words of David* quoted above, explains:

One sees Moses and the Old Testament with Luther's eyes only if one views both together. On the one hand there is the code of the Jews, with the folk law and the officer of death through the natural law of conscience; on the other there is a "main fountainhead, source, father, and master of all prophets" and "a good Christian" ... Moses, the father of Jewish customs and man of the law, and Moses, the Christian and prophet of Christ, are deadly enemies in one and the same figure... The whole Bible, in both testaments or covenants, contains the totality of God in both its aspects.

The simultaneousness and unity of law and gospel is, furthermore, not only a characteristic of God's historical dealings with ancient Israel, but the essence of all God's work then and now. In the treatise *Against the Roman Papacy, an Institution of the Devil* (1545), Luther compares Peter's confession "You are the Christ, the Son of the Living God" (Matt 16:16)⁵ with Eve's "confession" in Gen 4:1, "I have gotten a man with the help of the LORD." Eve, according to Luther, must have understood Cain to be the promised seed in Gen 3:15 (WA 54, 247–248). Luther thus understood the Old Testament believers' experience as an experience of Christ. This, Wilch (1983, 17)⁶ explains, made the whole Bible "immediately relevant":

Through identifying Israel's faith with that of Christians, Luther early began to lay the groundwork for his later dialectic of *simul iustus et peccator*: the believing Israelites "were at the same time upright and still in shadows ... So also are we now... With them as with us, faith alone makes upright (*sola fides rectificat*)." With the whole story of God's people becoming immediately relevant for Luther, Preus concludes: "The Bible became not so much the telling of a story with beginning, middle and end, as the depiction of a perpetual situation of men and women struggling with life. Before God, all believers stand equally near to salvation, because it always comes in the same way – through the Word of promise when it is believed."

In other words, while the application of law and gospel in a sinner's life certainly describes the *ordo salutis* and the more punctual "conversion", it is also applicable in the abovementioned "perpetual situation" in which men and women seek righteousness *coram Deo*. It describes the process a sinner must go through every day as long as he or she lives.

The Temporariness of Mosaic Law

For reasons given above, it would be wrong to paint a one-sidedly negative picture of Luther's view on Moses, and much more could be said on Luther's appreciation of the clear Messianic prophecies,

⁵ All Bible Translations are from ESV.

⁶ Cf. Preus 1969, 191: "In Luther's thinking about what the Bible's message is, one can detect indications that *lex*, as well as *doctrina*, can be harmonized with the notion that all Scripture is *testimonia* and *promissio*... Law is a testimony whose function is to 'drive to Christ.'"

allusions, and typologies in the Mosaic texts. There is an asymmetry, however, between Moses “the man of law” and Moses the “Christian” in Luther’s thought. Bornkamm explains: “In the Old Testament the laws and in the New Testament the promises are confined ‘in heaps,’ and, on the other hand, God’s act of salvation is promised in the Old Testament but certified as fulfilled in the New Testament” (Bornkamm 1969, 86). As for proportion, Moses played such a significant role as the officer of sin and death, that the law or “old testament” dominates the Old Testament. This is particularly clear in Luther’s *Lectures on Psalm 90* (1535), where he describes Moses as “at his most Mosaic” and as performing his “essential office” as a lawgiver:

In this psalm our Moses treats death in a very different way. He proceeds, to begin with, to magnify to the greatest possible degree the meaning of death and all other miseries of this life. Here he is, in keeping with his calling, a lawgiver, Moses at his most Mosaic [*Mosissimus Moses*], that is, a stern minister of death, God’s wrath, and sin. He therefore performs the ministry of the law in a magnificent manner, he depicts death in the most repulsive colors and thus demonstrates that God’s wrath is the cause of our death. Yes, he shows that even before we die physically, we have been put to death and are overwhelmed with dreadful miseries. And here a new rhetoric is used, when he calls death “God’s wrath.” In his own manner and reasoning he thus adds the efficient and final cause of death and of all miseries of this life. He reminds us that God is a God of wrath. He says, “Who realizes the power of your wrath?” [Ps. 90:11] The fact that we die is the result of God’s indescribable wrath against sin... So Moses treats death as a lawgiver who addresses himself to hardened and insensitive sinners... Therefore Psalm 90 is an exceedingly precious psalm. In it we hear Moses perform his essential office of terrifying sinners and directing attention to divine redemption, albeit in an obscure way. He does this to humble the proud and to console those who have been humbled. (LW 13, 77–78; 79)

Though Moses also preached the gospel and pointed to Christ, his essential role, according to Luther, was nonetheless to be a lawgiver and serve the preparational purpose of the law.

As far as salvation history is concerned, Luther also speaks of the Mosaic law as temporary. In his *First and Second Disputation Against the Antinomians* (1537–1538), Luther argues that, since the ceremonial laws pointed to Christ, they were abrogated when Christ came. “The ceremonial part [of the Mosaic law] is already abrogated. For these ceremonies were given to last until the time of Christ” (WA 39.1, 374:5). And because Christ fulfilled the whole law, the Mosaic law – both as natural and positive law – is abrogated as a whole: “Christ fulfilled the whole law. For he himself is the end of the law, not only of ceremonial and judicial law, but also of the Decalogue itself... If this argument about Mosaic law is understood, then all this is true. For Christ ended the Mosaic law because it was temporal” (WA 39.1, 453:9, 22–23). Luther, in *Prefaces* (1523) even goes as far as to say that, though we should still keep the Ten Commandments, they have ceased “in the sense that Moses’ office in them ceases” (LW 35, 244). It is important to clarify, however, in which sense Luther understood all aspects of the Mosaic law to be abrogated by Christ. Considering the above, it is clear that the part of the Mosaic law which reflected universal, natural law, was abrogated only as far as justification is

concerned. It is still valid as an ethical compass. As far as the folk law is concerned, i.e., the “ceremonial and judicial law,” Luther saw it as definitively terminated by the coming of Christ. The primary reason for abrogating the Mosaic law comes, according to Luther in *Lectures on Psalm 45* (1532), out of consideration for “the conscience of faith”:

The Mosaic law was abrogated because of the conscience of faith. If the conscience were not violated by the opinion of justice, it would be good to have something external. But since in this section we are dealing with what is said about Christ our head, it is not only human tradition, which is to be abrogated here, but universal law, even divine law itself; and Christ is to be retained in the purest faith. If law does not stop troubling faith – before I tolerate that I’d rather annul the law bodily. But if it grumbles too much, and if the flesh is seduced by the law and the righteousness of works is erected, then He disperses the Jews throughout the world and devastates Jerusalem. (LW 12, 275)

The historical termination of the Mosaic law and the time limited election of the Jews is no minor thing in Luther’s understanding of the gospel.

“The fate of Judaism,” Bornkamm explains, “is the indissoluble counterpart to the cross itself, to the spiritual overcoming of the law, and is therefore the externally visible factor of this unique turning point in the history of mankind. It is not just a consequence of it or a symbol for it; rather, it is, to speak with Luther, its ‘effective sign,’ in which the external event and the meaning of salvation are just as inseparably locked together as Word and sign in the sacrament... That is why the lawgiver Moses is not the harmless proclaimer of an outdated concept of God. Rather, he is the deadly enemy of Christ; and he will remain so until the end of time, since the natural law, preached by him with particular clarity, also remains” (Bornkamm 1969, 144).

The reason for God’s election of the “Jews” and the giving of the Mosaic law was, according to Luther in his *Lectures on Isaiah 53* (1544), salvation-historically temporary in that it should discipline the people to be guardians of and witnesses to the promise until the time of Christ: “God, therefore, gave the law and these ceremonies of the Levites to maintain the ministry of the Word and to have a discipline whereby you are maintained through such discipline, and whereby you learn the Word of God; also, to have a specific people that has the promise of God, and is its guardian and witness until the time of Christ. You were given the exercise of discipline, but you do not please the Father through this discipline” (WA 40.III, 706:37). But precisely because Christ had come, this period in salvation history ended, and Luther, in *Against the Sabbatarians* (1538), took the fact that the Jews had been without country and temple since the destruction of Jerusalem in the year 70 CE as a visible sign of this termination:

How can it be explained [as the Jews explain] that the law is to remain unto eternity, since it has now been destroyed for one thousand and five hundred years, with its priesthood, temple, principality, and worship? I certainly think this means the end of the law! For they cannot maintain Moses’ anointment or law outside the country and Jerusalem; this they cannot deny, and this they know very well. And God would not have permitted the setting aside of these laws for such a long time if he had wanted them to be kept for ever and ever, unto eternity. (WA 50, 323:20; cf. 313:12)

Though Luther appreciated Moses as “a Christian” and surely found the gospel in his writings, he was clearly a supersessionist in seeing the church as replacing the “Jews” as God’s elected people.

The Order of Creation

Before we delve into a critique and “product development” of Luther’s approach to Mosaic law, we need to broaden our analysis. Luther’s concept of natural law is grounded, as we have seen, in creation: “It is inscribed and engraved in the hearts of all men from the foundation of the world” (WA 39.1, 478:17; 454:4; cf. WA 50, 331:24). As Aulen explains: “The *lex naturae*, which Luther likes to designate as the norm for the worldly kingdom, is almost an expression of the divine will to create, but this in turn is no other will than the one that made itself known in revelation, and the demand that this will poses, is to its quality determined by love” (Aulen 1941, 193). For the same reason, and important for our discussion on gender and sexuality ethics, Luther’s grounding of natural law in creation is much more than a heuristic device for identifying parts of the Mosaic law as mere repetition or clarification of what man already knows by nature. Luther also finds natural law reflected in the fundamental *Schöpfungsordnungen* in Genesis 1–2. As Braaten (2007, 6) explains:

Luther and subsequent Lutheranism continued to affirm the substance of the natural law in terms of the doctrine of the orders of creation, linking it to a more biblical and theological conceptuality. This doctrine maintains that Christians along with all other human beings exist in a framework of universal structures that are there prior to and apart from biblical revelation and the church. God has placed all human beings in particular structures of existence, such as ethnicity, race, sexuality, family, work, and governance. The law of God and his commandments are revealed through these common forms of human existence and function apart from the gospel and faith in Christ.

In his exposition on Gen 2:16 from 1535 Luther thus speaks of two fundamental *Stände* or forms of life “ordered” by God in creation, namely the household and the church. To these he adds a third postlapsarian station, namely the government. Luther states:

Here we have the establishment of the church before there was any government of the home and of the state; for Eve was not yet created. Moreover, the church is established without walls and without any pomp, in a very spacious and very delightful place. After the church has been established, the household government is also set up, when Eve is added to Adam as his companion. Thus the temple is earlier than the home, and it is also better this way. Moreover, there was no government of the state before sin, for there was no need of it. Civil government is a remedy required by our corrupted nature. (LW 1, 103–4)

Luther’s ethics on gender and sexuality is for the same reason not based on a fuzzy or unqualified concept of natural law, but firmly rooted in creation theology. The command on adultery, e.g., is part of natural law and therefore ethically authoritative, not because it is in the Bible, but because it is based on the order of creation. In his exposition of the command in the *Large Catechism* (1529), Luther writes on marriage that “He [i.e., God] has instituted it before all others, and therefore created man and woman separately (as is evident), not for lewdness, but that they should [legitimately] live

together, be fruitful, beget children, and nourish and train them to the honor of God” (quoted from Luther 2023). Similarly, in *The Estate of Marriage* from 1522, he comments on Gen 1:27 that “God divided mankind into two classes, namely, male and female, or as a he and a she. This was so pleasing to him that he himself called it a good creation [Gen. 1:31]. Therefore, each one of us must have the kind of body God has created for us. I cannot make myself a woman, nor can you make yourself a man; we do not have that power.” Regarding the purpose, Luther writes, “that man and woman should and must come together in order to multiply. Now this [ordinance] is just as inflexible as the first, and no more to be despised and made fun of than the other, since God gives it his blessing and does something over and above the act of creation... For it is not a matter of free choice or decision but a natural and necessary thing, that whatever is a man must have a woman and whatever is a woman must have a man” (LW 45, 17–18). As far as sexual orientation is concerned, Luther argues in a letter to Wolfgang Rüttenbusch in March 1527: “Our bodies are in great part the flesh of women, for by them we were conceived, developed, borne, suckled, and nourished. And it is quite impossible to keep entirely apart from them. This is in accord with the Word of God. He has caused it to be so and wishes it so.” And, again, on the purpose, that “this is the Word of God, through whose power procreative seed is planted in man's body and a natural, ardent desire for woman is kindled and kept alive. This cannot be restrained either by vows or laws” (Luther 2003, 273). Luther, in *Lectures on Genesis*, also identifies the sin of the Sodomites as homosexuality and comments on Gen 19:4–5 that they “departed from the natural passion and longing of the male for the female, which was implanted into nature by God, and desired what is altogether contrary to nature. Whence comes this perversity? Undoubtedly from Satan, who, after people have once turned away from the fear of God, so powerfully suppresses nature that he blots out the natural desire and stirs up a desire that is contrary to nature” (LW 3, 255). Though Luther never comments on Lev 20:13, his grounding of his view on gender and sexual orientation in the order of creation demonstrates the flaw in the argument made recently that Luther understands the prohibition, not as a prohibition against homosexuality as such, but against pederasty. Luther, in his 1534 translation rendered the Hebrew text as “Du sollst nicht beim Knaben liegen wie beim Weibe; denn es ist ein Greuel,” i.e., “You shall not lie with a youth (or boy) as with a woman/wife; for it is an abomination.” In the 2022 documentary *1946: The Mistranslation that Shifted Culture*, the Christian Conservative LGBTQIA+ activist Kathy Baldock, and Ed Oxford, an LGBTQIA+ theologian, argue that Luther’s translation supports the idea that our concept of homosexuality is unknown to the biblical writers (1946themovie 2023; cf. Glass 2022). Such a view cannot be sustained – at least as far as Luther is concerned – since Luther, due to his view on the order of creation, clearly would have understood a “Knabenlieger” to be a transgressor of “the natural passion and longing of the male for the female, which was implanted into nature by God,” which not only rendered what we call pederasty but also all other forms of homosexuality “contrary to nature.” For the same reason Luther would have seen the Mosaic law in Lev 20:13 as part not only of the Jews’ positive folk law, but also as a reflection of universal natural law.

Critique

Assessing Luther’s approach to Mosaic law, my quibble is neither with Luther’s harmatology nor his distinction between law and gospel – including the important *coram* distinctions. As far as man’s relationship *coram Deo* is concerned, Christ is the “end of the law” in the most radical and absolute

sense. All aspects of law – Mosaic or otherwise – are abrogated with regard to justification. Also, regarding the *coram mundo* relationships, biblical ethics must be radically Christological. Since Christ has come as a visible example of true humanity, his love and example must serve as the point of departure for how to live a Christian life. I also subscribe to the doctrine of the two kingdoms and his understanding of the orders of creation. On two points, however, I find Luther’s approach to the Mosaic law problematic and unsustainable, namely the way he uses natural law and replacement theology to make the Mosaic law redundant.

Natural Law Revisited

Luther is quite right, of course, that Rom 2:14 points to the existence of a natural law, which is inscribed in the hearts of all humanity, accessible via unaided reason, and prompting “Gentiles, who do not have the law, by nature [φύσει], [to] do what the law requires.” The term φύσις “nature”, is used with the same meaning in 1 Cor 11:14, “Does not nature [φύσις] itself teach you that if a man wears long hair it is a disgrace for him,”⁷ and in 4 Macc 6:13 of a mother’s “innate [φύσις] parental love.” In the gospel of Matthew people knew instinctively that it was bad parenting to give one’s child a stone rather than a loaf of bread when Jesus asked his rhetorical question (Matt 7:9). In the Old Testament several texts presuppose knowledge of a moral law outside special revelation. Cain knew it was wrong to murder his brother (Gen 4:1–16) just as David showed awareness of his wrongdoing against Uriah when Nathan pricked David’s conscience by telling the story of the rich man taking the poor man’s only ewe lamb (2 Sam 12:1–13). Abraham appealed to natural justice when praying for the righteous in Sodom (Gen 18:23–24), and human experience, according to Ecclesiastes, points to a higher purpose: “He [God] has put eternity into man’s heart” (3:11). In addition, Old Testament wisdom literature at large may also testify to its existence, since much of the moral advice, not least in the Book of Proverbs, is paralleled in – if in some instances not borrowed from – earlier Mesopotamian and Egyptian wisdom tradition, where it is linked to the concepts of cosmic order in Mesopotamia (Sumerian ME, Akkadian *parṣū*) and Egypt (*ma’at*).

Furthermore, Paul’s expression *παρὰ φύσιν* (“contrary to nature”) had clear predecessors in the Greek tradition. Sophocles (5th century BCE) argued in *Antigone* that a “mere mortal” cannot transgress “the unwritten and unfailing statutes of heaven. For their life is not of to-day or yesterday, but from all time, and no man knows when they were first put forth” (Sophocles 1891, 445–47). Aristotle (4th century BCE) wrote in *Rhetoric* (with reference to Sophocles) that “there are two kinds of laws, particular and general. By particular laws I mean those established by each people in reference to themselves, which again are divided into written and unwritten; by general laws I mean those based upon nature. In fact, there is a general idea of just and unjust in accordance with nature, as all men in a manner divine, even if there is neither communication nor agreement between them” (Aristotle 1926, 1.13.2). In *Politics*, as Haines explains, Aristotle locates and equates these general laws in and with reason: “Aristotle looks past the distinction between communities and individuals when he says the same account of virtue applies to the life of an individual and to the life of and constitution of a city,

⁷ It has to be noted, though, that what is taught by nature according to Paul is not necessarily that men should not wear long hair but that men, at any time and in any culture, should show respect for binary gender – also through their hairdo.

and when he argues that the rule of law is the rule of reason” (Haines 2006, 76). Closer to Paul’s time, Stoics also referred to natural law. A prominent example is the Roman scholar Cicero (106–43 BCE):

It is indeed a true law, a right reason conforming to nature, diffused overall, constant, everlasting, which calls to duty by commanding, and deters from fraud by forbidding, which, however, neither commands or forbids the righteous in vain, nor moves the wicked by commanding or forbidding. It is not right to abrogate this law, nor to derogate from it. Nor can it be annulled entirely, and it cannot be rendered different from now on, but all nations and at all times will contain one law, eternal and unchangeable, and one will be common as the teacher and commander of all, the god, the inventor, the debater, the expounder of this law; to whom he who does not comply will himself flee, and having spurned the nature of man, will suffer the greatest punishments for this very reason, even if he has escaped the other punishments which are supposed. (De re publica 3.33; translated from Cicero 1889, 344)

Therefore, of the many species, there is no animal except man that has any knowledge of God, and among men themselves there is no race, neither so tame nor so wild, which does not, even if it does not know what kind of god it is fitting to have, nevertheless knows how to have a god... For there is one right by which the society of men is bound, and which the law establishes as one, which law is the right method of commanding and forbidding. He who does not know this is unjust, whether it is written anywhere or nowhere. (De legibus 1.24, 42; translated from Cicero, n.d.)

Farther away, both culturally and temporally, Confucius (6th century BCE) wrote that “What you do not like done to yourself, do not do to others” (Analects, 15.23; cf. 12.2; Confucius and Waley 2005). From modern times, the United States’ *Declaration of Independence* (1776) was based on the “laws of nature and of nature’s God” and “inalienable rights” that were “self-evident” truths “endowed by the Creator” (‘Declaration of Independence: A Transcription’ 2023). Even closer to our time, the rationale behind the Nuremberg International Military Tribunal (1946) should also be found in natural law. MacPherson (2020, 15) mentions that whereas the defendants tried to hide behind the *nullum crimen* principal, according to which “there is no crime without a law, there is no penalty without a law”), they were judged and sentenced nonetheless:

This defense failed because the Tribunal recognized laws common to all humanity, which need not be written in advance for people to be expected to know them or be held accountable to them. The *nullum crimen* principle ... protects individuals against an arbitrary state; it does not license violations of the natural law. Hence, Nazi war crimes were criminal acts even if not previously outlawed; such actions were not lawful, even if commanded from behind a façade of state authority. As one of the defense lawyers from Nuremberg later admitted, “formal legality” could not justify what rightfully is called a crime against humanity.

As should be clear from the above, I have no quibbles with the concept of natural law itself, and biblical ethics must, therefore, take into consideration what Paul teaches about φύσις (“nature”). For

the same reason I agree with the criticism directed by Braaten against the “Barthian branch” of modern Protestantism. The reason for Barth’s rejection of natural law is lapsarian pessimism, and it is fundamental to dialectical theology in general that man’s ability to know the order of creation has been so disrupted by the fall that ethics can be derived from divine revelation in Christ and special revelation only. Ethics, in other words, is fundamentally theological and Christological. Braaten (1992, I) states:⁸

Barth never provided a systematic treatment of natural law, but throughout his various stages of development he battled against every appeal to natural theology or natural law. As he said, theological ethics that bases itself on the Word of God alone “will not, then, make the disastrous, traitorous use of ‘natural’ theology, which is the only use that can be made of it.” He saw natural law as the self-assertion of autonomous humanity and natural religion, and, for this reason, he felt he had to speak an irreconcilable “no” to every attempt to derive ethical norms either from the orders of creation, as Lutherans did, or from nature, as Catholics did.

Luther, on the other hand, argues that man still has an instinct for the order of creation, which can be “prompted” by the Spirit of Christ. More Lutheran branches of modern Protestantism maintain, therefore, that natural law as an instinct “still functions a goad to the pursuit of approximate justice in an imperfect world” (Braaten 1992, II). Criticizing Barthian rejection of natural law, Braaten argues for a reinterpretation of natural law within the basic principles of evangelical theology that considers the doctrine of sin, the distinction between law and gospel, the *solus*, the distinction between the two realms or kingdoms, and the correlation between the two realms and the two states of existing in the world as *simul justus et peccator*, “at the same time righteous and sinner.” On this basis it is, Braaten avers, possible to find “an anthropological foundation for asserting a common core of justice and law to which all people in principle have access through reason and conscience, even if the particulars of that common ground are provisional, relative, and always ambiguous under the conditions of our finite human existence” (Braaten 1992, III).

Luther argues, as we have seen, that man’s knowledge of natural law comes, not from conscience as an epistemic faculty with rational capacity to ascertain precise and reliable information on the precepts of the natural law, but as an inclination to or instinct for doing what is good and right; an instinct or inclination, nonetheless, which can be more or less “obscured by the Devil” and blurred due to the ongoing consequences of the Fall. For the same reason it is highly problematic, however, when Luther appeals to natural law as a standard outside the Bible as an a priori criterion for distinguishing between natural and positive law elements in Mosaic law. Since knowledge of natural law is instinctive in a depraved and epistemologically uncertain sense only, it approximates circular reasoning to appeal to such a universal law and find affirmation of it in the New Testament. This hermeneutical hazard is acknowledged by MacPherson, who admits that a solution to “how natural law can escape the twin pitfalls of sociological relativism and moral subjectivism” was never stated explicitly by Luther (or Melancton), but it “may be inferred by analogy from Luther’s advice on how to translate the Scriptures. A reliable translator must certainly know the biblical languages but, more importantly, also

⁸ Cf. MacPherson 2020, 14.

have faith in Christ; only then can he be trusted to render the proper sense of the Greek and Hebrew scriptures. So also with respect to ‘translating’ the law within the human heart: sanctification brings clarity to the interpreter’s task” (MacPherson 2020, 16). This is in full agreement with Luther’s argument that the “instinct” can be “prompted” by the Spirit of Christ, and we find, for the same reason, no distinction between instinct and conscience in Luther’s thought. MacPherson proceeds to demonstrate how, in the early Lutheran tradition, the dialectic between “instinct” and “prompting” was developed. One example given is Johann Oldendorp (1543–1567), who maintains that “neither the natural law nor the conscience that bears witness of it was reliable,” since “after the Fall, merely ‘an *igniculum*, a spark, of human reason has been retained”” (MacPherson 2020, 17). The strength of natural law comes, therefore, not from man’s will, but from the word of God. The *igniculum*, in other words, has to be *ignited* by special revelation in order for human conscience to be a reliable and trustworthy moral compass. As MacPherson (2020, 17) puts it:⁹

[T]he conscience must be formed according to Holy Scripture if it is to be reliable. Thus, one finds in Oldendorp the Lutheran paradox of natural law: on the one hand, it is the *lex in hominibus*, the law present within every man; on the other hand, its presence is pure only to the extent that the conscience has been sanctified by the Word of God and prayer. Because God is its author, Oldendorp could claim that “conscience is an infallible guide”; because man is its possessor, conscience is apt to stray unless one’s heart be subordinated to Holy Scripture... As with the conscience, so also with the laws of the nations – individuals may err, but faith in the Scriptures leads to a sanctification of the heart and mind so that one may discern between God’s objective moral order, written in the heart and manifest among the nations, and distortions of it. Stated otherwise, sin blurs the divine imprint of natural law within Adam’s children, but the Holy Spirit remolds it within believers’ hearts, even as God providentially preserves at least a dim spark of moral insight among the heathen.

Neither MacPerson, Oldendorp, nor Luther avoid, however, the danger of circular reasoning, since an alternative formulation of their position would be that we only find a secure and reliable expression of natural law in special revelation. This is not to deny that there *is* a spark to be ignited – Paul, after all, clearly testifies to this – but to emphasize the necessity of special revelation, including the “natural” parts of Mosaic law, for prompting a reliable understanding of natural law. We noted above that Luther’s ethics on gender and sexuality was based not on a fuzzy or unqualified concept of natural law, but on special revelation in Genesis 1–2. A consistent application of at least some of Luther’s explanations of natural law would mean that Genesis 1–2 only repeated what could be known universally from natural law independently of special revelation. Luther’s ethics depends so much, however, on special revelation that it is unlikely that he would have been able to draw the same conclusions independently of special revelation.

An even more serious problem, however, is the appeal to the distinction in the jurisprudence of his (and our) day between natural and positive law itself. The distinction is helpful in many ways, of course, since it describes the difference between natural laws as assertions of the invariable order of

⁹ Cf. Ehrett 2020, 23–24.

the universe and the inherent rights of all humans conferred by God through nature and reason, and positive laws as time-bound rules of conduct conferred, not by divine authority, but pragmatically and practically by human authorities for the government of an ordered society. It is beyond question, of course, that both types of laws – as defined by such legal theory – can be found in the Mosaic law. In contrast with the biblically founded emic distinction between law and gospel, the distinction between natural and positive law is an extra-biblical etic distinction, derived from general jurisprudence. The distinction is not found in Mosaic law, and using the distinction as the only way of describing and distinguishing between the Mosaic laws fails to take into account the sui generis character of ancient Israel's "positive laws" as reflecting, however imperfectly, the restoration of creation – both in its vertical and horizontal dimensions, i.e., *coram Deo* and *coram mundo*. However correct it may be according to jurisprudence to distinguish between natural and positive law in Mosaic law, even the positive laws, as we shall argue below, are a revealed example of how "the anticipatory presence of the kingdom of God [is] at work throughout the created order, even under the conditions of sin and estrangement," and Luther's radical separation of ethics from theology cannot, therefore, be sustained. To this we shall now turn, but notice, first, how Luther's "dispensational" view on the "Jews" works in tandem with his use of contemporary legal theory in seeing the folk law elements in the Mosaic law as fulfilled, replaced, and superseded by Christ and the church.

Supersessionism

Luther's replacement theology is based, as we have seen, on his understanding of the temporariness of the Mosaic folk law, his salvation-historical view of the termination of the "office of Moses", and his understanding of the fall of Jerusalem in the year 70 CE as God's historically visible confirmation of that termination. Though Luther understands the termination of the "office of Moses" in light of his distinction between law and gospel and sees it as God's way of emphasizing Christ as "the end of the law", it is by no means a necessary part of the distinction between law and gospel in that the same view on law and gospel can be maintained with a different approach to the relationship between Israel and the Church. Arguing for an organic and non-supersessionist relationship is both exegetically complex and disputed, of course, but suffice it to say that the most natural exposition of Rom 11:11–24 is that the Church as a wild olive shoot has been grafted into a living stump, namely Israel, and that there seems to be a tension between the abovementioned supersessionist arguments and Luther's exegesis of this key passage on Israel in the New Testament. Commenting on Luther's exposition of Paul's foretelling of "all" Israel's salvation in Rom 11:25–26, Bornkamm argues that "from his reasoning one can see how impossible Luther considered a future conversion of the whole people of Israel to be. He emphatically resisted the undoubtedly natural interpretation of the Pauline passage to avoid contradicting the apostle" (Bornkamm 1969, 79). Luther's biblical arguments are, in the present writer's opinion, weak in that they fail to take into consideration this and other passages pointing to

the organic relationship between Israel and the Church, as well as the approach to the Mosaic law by Jesus and the apostles – to which we now turn.



Figures 1 and 2: Mosaic from the apse of the Basilica di San Vitale in Ravenna (6th century), figuring, in the upper left and right corners, the two cities, Jerusalem and Bethlehem, which came conventionally to represent the Jewish and Gentile churches (Bethlehem was associated with the Gentile church because of the visit of the Gentile magi in Bethlehem at the time of Jesus' birth). Illustrating the organic connection between the two churches, an olive tree is placed next to each city with the Gentile church as the "wild olive shoot" grafted onto the Jewish "olive tree" (Rom 11:17).

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A Luther-ish Approach to Mosaic Law

Without denying the existence and universal knowledge of natural law, the organic connection between Israel and the Church and the essential continuity between the covenants of the Old Testament and the New Covenant as anticipated in the Old and fulfilled in the New Testament, calls for a more culturally informed approach to Old Testament law than Luther's distinction between natural and positive law allows.

The relevance of comparative studies is obvious, since the Mosaic law has often been read in the light of or *compared* to modern legal statutory norms. Joshua Berman notes, e.g., that "[t]he early critics of the Pentateuch seemed to have taken no notice of what later scholars would identify as incompatible inconsistencies within biblical law... They lived and wrote before there was a common conception of statutory law. The Germany of the eighteenth and early nineteenth centuries that was home to Eichhorn, de Wette, and Ewald was a common-law culture... It was only in the mid-nineteenth century that intellectual currents began to change, and radically so" (Berman 2017, 117). As far as the laws' cultural rootedness is concerned, Nicolai Winther-Nielsen (2018, 20–21) summarizes current research:¹⁰

Comparative studies of the use of legal collections from the Near East have created a new synthesis, as it is now clear that the laws were never used in the courts but instead served

¹⁰ All translations mine.

as exercise texts for training judges. Near Eastern legal collections functioned as descriptive treatises and compilations of legal rules and customary law derived from traditional practice. In difficult cases, judges could consult them as guidance on existing practices that embodied the law. It is highly likely that the oral tradition culture, which dominated ancient Israel, treated the laws in Exodus 21–22 as "self-executing laws," that is, a self-regulating system characterized by the oral culture.

Referring to the research of Michael Lefevre, Winther-Nielsen (2018, 21) argues that

it is only in Hellenistic Judaism and under the influence of Ptolemy II's court reforms that the collections of the Books of Moses assume a completely new function as a binding constitutional law, a code of law. Therefore, it is not during the time of Ezra and Nehemiah, but under later Hellenistic influence, that the law acquires its new legalistic status because it is no longer sufficient to regard "the law book as an ideal, but not itself as 'the law.'" According to this new research synthesis, it is therefore Hellenistic legalism and not the original Mosaic guidance that is challenged in the New Testament.

Such a contextually and culturally rooted understanding of the law book as guidance in the light of an ideal makes all the difference in the world. If, e.g., the exhortation in Lev 18:5, "You shall therefore keep my statutes and my rules; if a person does them, he shall live by them: I am the LORD," is understood in legalistic terms, it would be only natural to understand Paul's rejection of legalism in the New Testament as a rejection of the Mosaic law *as such*. However, understood as an expression of an ideal with respect for the *context* it becomes clear, as Winther-Nielsen (2018, 59) argues, that

when it is said about Israel that they must *ḥay bāhem* "live by them," this living according to God's ordinances and laws should be understood as a contrast to Canaanite religion, not as a reward for good deeds. Up until now, the Books of Moses have used the verb *ḥāyāh* "live" in contexts of preserving life in contrast to death: Girls are to survive (Ex 1:19;22), Israel will not survive contact with the mountain (19:13), you must not let a sorceress live (22:17), Moses cannot survive seeing God (33:20), and subsequently it is stated that the impoverished shall survive among you (Lev 25:35–36). Both contextually and linguistically, living by God's guidance means avoiding losing life by breaking away from God's guidance. In other words, it's a guidance that warns against Canaanite ways of living and sexual transgressions, which could lead to God's punishment with the threat of being wiped out in the same manner as the Canaanites.

In addition, Thomas Schreiner agrees with Lefevre and Winther-Nielsen by pointing to Jewish traditions that understood the exhortation in Lev 18:5 as promising *eternal* life to those who kept the law, not, as was the case in its original context, life in the *land* to those who had already been "saved" and given "eternal life". Targum Onkelos and Pseudo-Jonathan (quoted from Longenecker 1990, 120), respectively, thus render Lev 18:5 as

And you shall keep my statues and my judgments, which if a man do [*sic*] he shall live by them an everlasting life.

And you shall keep my statutes, and the order of my judgments, which if a man do he shall live in them, in the life of eternity, and his position shall be with the just.

Schreiner (2010, 61) backs up his point by referring to the same “eternal” understanding of Lev 18:5 in later Jewish tradition:¹¹

In a thorough study of Leviticus 18:5 in the Old Testament and Second Temple Judaism, Preston Sprinkle shows that in some texts the verse is interpreted as requiring obedience for eternal life (cf.; CD III, 15–16; 4Q266 11, I–II, 12; *Pss. Sol.* 14:1–5; cf. also 4Q504; Philo, *Prelim. Studies* 86–87). Simon Gathercole also argues that an eschatological reading of Leviticus 18:5 is evident both in the New Testament and in Second Temple Judaism. He rightly remarks, “There is an ‘eternalization’ of the life that, in its original context in Leviticus, would have been understood in terms of lengthened life and prosperity of one’s descendants and the nation as a whole.”

Averbeck, in a similar manner, writes that ancient Near Eastern law collections did not serve statutory purposes: “They are *descriptive* of legal practice as it occurred in the courts, not *prescriptive* for that practice. The law collections, therefore, are reflective of ‘common’ or ‘customary’ law. The practice of ‘statutory’ law in which lawyers and judges consult written codes for making decisions in court does not seem to have existed in the ancient Near East” (Averbeck 2022, 87). Introducing various models for explaining the relationship between the cuneiform and biblical law collections, Averbeck points to the diffusion model as the most likely: “The *diffusion* model proposes that the biblical law codes draw partly from the oral legal tradition and partly from the written cuneiform tradition that had spread throughout the ancient Near East. This created a common legal tradition reflected also in the Israelite law collections since the ancient Israelites were ancient Near Eastern people too” (Averbeck 2022, 87–88; cf. Barmash 2018). As for the law in the Pentateuch, Averbeck argues that the Ten Commandments are the primary principles of law for ancient Israel and that all other law collections in the Pentateuch are examples of how these principles should be unpacked in *real* life. He writes (Averbeck 2022, 89–90):

The Mosaic law displays its core *ideals* in the Ten Commandments, but it was not *idealistic*. It was realistic for application to the life of ancient Israel in its real-world cultural context. In fact, in many instances, to read it well depends on a wider understanding of the political-sociological, familial, psychological, and economic realities of the world in which they lived, most of which are evident within the Bible itself... The Lord intended that the Mosaic law serve as the foundation for such judicial wisdom in ancient Israel. The written law could not and did not intend to deal with every possible situation people faced, but it could provide ideals and precedents to guide the decisions of the judicial officers, whether they were local city elders (Deut 16:18–20), Levitical priestly judges (Deut 17:8–13), or kings (Deut 17:18–10).

This understanding is also the rationale behind another aspect of Mosaic law that has often been overlooked, namely that there is a progressive growth of the Mosaic law, not only in the addition of

¹¹ Cf. Sprinkle 2008, 1–130; Gathercole 2004, 126–145.

new laws but also in the revision of *existing* laws. Berman, in the eighth chapter of his *Inconsistencies in the Torah*, shows how legislations from different law collections in the Pentateuch are combined in later biblical texts, and that this combination means that the author or editor may not have understood them as mutually exclusive (Berman 2017; cf. Barmash 2020, 231–250). Averbeck notes that “[t]he placing of Exodus 18 before this [i.e., the giving of the Ten Commandments], even though the event took place later, is strategic in a literary and judicial way. It suggests that the law began to grow case by case almost immediately after they arrived at Sinai, as the people brought cases to Moses for him to gain resolution directly from the Lord” (Averbeck 2022, 99). Averbeck, furthermore, notes that the three parallel law collections in Exodus through Deuteronomy, i.e., the Book of the Covenant (Exodus 21–23), the holiness regulations (Leviticus 17–27), and the Deuteronomic regulations (Deuteronomy 12–26), demonstrate that changing circumstances, namely the construction of the tabernacle, required revision of the altar regulations in Exod 20:24–26 as is evident in Lev 17:1–12 (Averbeck 2022, 100–101). The best way to characterize these laws, therefore, is to use the term frequently attested in the biblical text itself, namely תּוֹרָה *tôrāh* in its essential meaning “teaching, guidance”. Bergland (2020, 111), in a similar manner, proposes “a model for how to best account for the dual phenomena of pointillistic exact correspondence of lexemes, phrases, and concepts coupled with a certain fluidity and creativity in legal reuse in Torah” by suggesting

that seeing Torah as normative covenantal instruction and being reused from memory might better account for this dual phenomenon than source-critical solutions or traditional harmonizations. That we find legal dissimilarity and variation between the different legal corpora of Torah seems to be where we need to take our departure when reflecting on this dual phenomenon. While both critical and traditional scholarship tend to insist on a concept of literary coherence, either in the Pentateuch as a whole or subdocuments or fragments such as J, E, P, and D, the proposed model here rather suggests that we should expect a certain legal dissimilitude and variation, even revision, given Torah as covenantal instruction and memorized reuse.

This modified perspective on Mosaic Law may be illustrated by an interesting evolution within jurisprudence.¹² In his influential essay “Nomos and Narrative” from 1983, the late legal scholar Robert Cover contended that instead of regarding law solely as a system of rules imposed by a sovereign, it is more apt to conceptualize law as a normative universe, a “nomos”, wherein “we constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void” (Cover 1983, 4). According to Julen Etxabe, Cover’s initial proposition represents a significant departure from traditional perspectives on law – not as a mere collection of institutional rules and principles, not as a series of policies and mechanisms for social control, but rather as a narrative prism through which we perceive and filter the realms of right and wrong, valid and void, good and bad. According to Julen Etxabe (2010, 116), Cover’s initial proposition represents a significant departure from traditional perspectives on law – not as a mere collection of institutional rules and principles, not only as a series of policies and mechanisms for social control, but rather also as a narrative prism through which we

¹² The following is to a large extent a paraphrase of different sections from the essay “Encoding and Decoding Culture” (Kofoed 2020, 243–44).

perceive and filter the realms of right and wrong, valid and void, good and bad. From this standpoint, law is most accurately characterized not as a rigid system but rather as an exceptionally rich and adaptable set of resources for all aspects of the normative life of individuals and communities. Cover (1983, 4–5) contends that neither law nor legal institutions can be comprehended in isolation from the narrative in which they are immersed:

For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live. In this normative world, law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse – to be supplied with history and destiny, beginning and end, explanation and purpose. And every narrative is insistent in its demand for its prescriptive point, its moral. History and literature cannot escape their location in a normative universe, nor can prescription, even when embodied in a legal text, escape its origin and its end in experience, in the narratives that are the trajectories plotted upon material reality by our imaginations.

Impact

Cover's essay was of landmark importance as it pioneered a new field of research, offering a fresh perspective on the interplay between law and narrative. In Old Testament research it is evident in, e.g., Mary Douglas' *Leviticus as Literature* (Douglas 1999), and Assnat Bartor's *Reading Law as Narrative* (Bartor 2010). Bartor (2012, 298) explains:

It seems that the fundamental approach which guided the authors of the narrative laws is the very same approach that is common and agreed upon until today. Narrative is a mode of thought, a cognitive tool that allows us to attribute significance to actions and events, and therefore serves as a foremost means for the recognition of the world, humankind, and human reality. The authors made use of the medium of narrative, understanding that the story is efficacious for the understanding of moral rules and principles, and that narrativity serves as a means of argumentation and persuasion.

Averbeck, in a similar manner, has demonstrated that regarding Pentateuchal slave laws, the Law, given at Sinai, begins and ends with the native Hebrew indentured servant and the release law in light of the Lord's liberation from slavery in Egypt. The liberation from slavery in Egypt is mentioned as the entire premise for the Law in the first of the Ten Commandments (Exod 20:2), and the non-cultic regulations in the Book of the Covenant commence with provisions on indentured servitude and release (Exod 21:2–11). Similarly, the Law given at Sinai concludes with the same subject (Lev 25:39–43 and 47–55), again emphasizing the liberation from slavery in Egypt as the entire premise for the Law (Lev 25:38, 42–43, 55). This is the fundamental historical fact and theological rationale underlying the entire covenant and the law embedded therein. God had set His people free, so He is their God, and they are His people (Lev 25:55–26:1) (Averbeck 2016, 169–70).

God's free and unforced creation of Israel through liberation from slavery is itself embedded in the larger narrative of God's universal creation and redemption of humanity. In Deuteronomy 4, God

leading Israel “out of the iron furnace, out of Egypt” (4:20) is described as God’s greatest act “since the day God created man on the earth” (4:32), and there are numerous references to the creation account in the introduction to the narrative of covenant formation in Exodus 19–24. The rationale for observing the Sabbath in Exod 20:8–11 is provided with a reference to God’s rest on the seventh day in the creation account (Gen 2:1–3), and the parallel between the rest after the creation of heaven and earth and the creation of Israel is evident from the rationale for observing the Sabbath day in Deut 5:15.

This culturally embedded interpretation of Mosaic law further challenges Luther’s dismissal of Jewish folk law as a corollary of the *Sachsenspiegel* in his time and age. By juxtaposing Mosaic law with culturally relevant legal codes, it revives the “positive law” elements of Mosaic law that had been overlooked and reintegrates them with the “absolute law” components, presenting them as a unified and inseparable entity. The utilization of these concepts and the comparison with the *Sachsenspiegel* is fundamentally flawed and goes against the grain, as we will explore further below, of the text itself.

As far as the *emic* approach is concerned, Richard Averbeck has recently proposed that “the whole law was and still is good and profitable for the Christian and applies to the life of the Christian today in a new covenant way,” and that “[we] need to think in terms of the *level* or the *kind* of application of the Old Testament Mosaic law, not the *limit* or *extent* of application” (Averbeck 2022, 21). The biblical-theological reasons given for the proposal are three principles extracted from the biblical text:

1. The law is good: “[T]he Old Testament law was then and still today is not only ‘good’ but also useful for the Christian (2 Tim 3:15–17). It applies to the life of the Christian today in a new covenant ‘written on the heart’ sense, and it is the Holy Spirit who writes it there,” according to Jer 31:31–34, Ezek 36:25–27, and the combination of both in 2 Cor 3:3–8 (Averbeck 2022, 15).
2. The law is weak: “There are certain things no law can do, not even God’s law. The law has never had the power to change a human heart. Only the Holy Spirit can do that” (Averbeck 2022, 17). “The Law has always been and still is good, holy, and even spiritual, but it is also weak because it cannot take control of my ‘flesh.’ The Holy Spirit can! The power for the Christian life comes from the Holy Spirit, who himself enables us to live according to the principles and patterns in the Law, which he inspired (Rom 8:5–8). The Holy Spirit is on both ends of the process: he inspired the writing of it in the first place, and he is dwelling and working within us to bring it to bear in New Covenant ways” (Averbeck 2020, 295).
3. The law is one unified whole: “We should not be dividing it into ‘kinds of law’ – for example, moral, civil, and ceremonial – and deciding what applies or does not apply to us based on that. If it is true that the whole Law and Prophets hang on the two greatest commandments, then every element of the law supports or works out the implications of those two commandments in some way. Therefore, we need to understand and work out the details and implications of the fact that it is the whole, unified Mosaic law that is to be ‘written on the heart’ of the new covenant believer, not just one aspect of it or another, or some combination thereof” (Averbeck 2022, 17).

Crucial to Averbeck’s proposal is that “It is crucial to maintain a firm commitment to the truth and importance of all three theses, recognizing that they collectively represent fundamental principles

about the law that are rooted in both the Old and New Testaments. Moreover, these principles continue to have practical relevance and significance in the church and Christian life today. In other words, no part of the law is limited or irrelevant for the Christian. From a Lutheran viewpoint, Averbeck's proposal, interestingly, rejects systematic, covenant-theological approaches that sees "all of God's relations with human beings in terms of the perspective of covenant" as too monolithic and simplistic (Averbeck 2022, 36; quoting from Poythress 2001, 31), and argues that covenant is an important metaphor, but not the only way God's interactions with humans is described. It is important because "God used an available cultural institution as a metaphorical analogy that the people would have understood in that day. Then and now it lends a certain quality to his revelation of the way he does relationship with his people, fallen and corrupt though we all are" (Averbeck 2022, 40). Covenant can, Averbeck argues with reference to an article by John Stek, become an "overladed" systematic-theological concept. Averbeck has certain reservations regarding Stek's points about the nature of covenants, but agrees with the overall critique summarized in his concluding paragraph (Stek 1994, 40):

[C]ovenants do not belong to the fundamentals of the God-creature relationship. Covenant did not found the creation (Spykman). Covenant is not the goal of creation (van Egmond and van der Kooi). Covenant does not bridge the ontic distance between God and his image-bearing creature (L. Berkhof et al). Covenants served rather to offer assurances, bolster faith, and reinforce commitments. In a world not invaded by sin, there would be no need for adding oaths to commitments, no need for "covenants" – no more than in such a world would oaths be necessary to establish the truth of one's "yes" or "no" (see Matt. 5:34–37; Jas. 5:12; cf., Heb. 6:16). Biblical covenants were ad hoc emergency measures occasioned by and ministering to human weaknesses – until the kingdom of God has fully come.

Vis-à-vis classical Lutheran approaches that typically distinguishes between the conditional, Mosaic, and the unconditional Abrahamic, Davidic, and New Covenants, Averbeck, just as interestingly, demonstrates how all the four redemptive covenants contain both permanent promises and ongoing obligations: "God built elements of both promise (yielding peace in the relationship) and obligation (yielding purpose in the relationship) into the very organic nature of his redemptive covenant program. Neither of these elements makes good covenant sense without the other" (Averbeck 2022, 57). What is interesting is that Averbeck neither dismisses the importance of Reformed emphasis on covenant-theology as such nor the Lutheran ditto on the distinction between conditional and unconditional promises, but regards them as "too monolithic and simplistic" as systematic, comprehensive descriptions of God's interactions with his people. Averbeck's principle on the weakness of the law fully agrees with the Lutheran view on the futility of "Moses' office" in making man righteous *coram Deo*, but insists that this weakness or futility, if over-emphasized, tends to dismiss the other aspect of the law, namely its goodness and usefulness as guidance for Christian life. The promises and obligations of the covenants are bifurcated in that law in man's stance *coram Deo* prepares the heart for the reception of grace and that these two, law and gospel, must be clearly distinguished. At the same time, they exist in a symbiotic relationship, since, receiving God's grace in Christ, it is precisely the law that the Holy Spirit writes on the believer's heart.

Critique

From a Lutheran perspective, what is absent in Averbeck's principles is an integration into the model of the Holy Spirit's application of the law to "mortify the flesh" as not only the beginning of the Holy Spirit's writing of the law on the believer's heart, but the very *source* of new life in the everyday process of dying and living with Christ (Romans 6). In Reformed theology, justification and sanctification are seen as distinct benefits. "Though one cannot be justified and not sanctified, nor be sanctified without justification preceding," Jordan Cooper explains the Reformed position, "there is no causal relationship between the two aspects of Christian existence. Justification is not the result of sanctification, nor is sanctification the result of justification. They are both simultaneous benefits of the reality of covenantal union with Christ. Justification is a monergistic act, wherein God imputes the sinner righteous through the merit of Christ through faith; sanctification is a work of cooperation between the regenerate man and God's renewing grace" (Cooper 2015, 175). Once justification is achieved, believers embark on a journey where they gradually cultivate authentic holiness, progressively resembling Christ. "As are the other elements of soteriology," Cooper remarks, "sanctification is placed within a personal *ordo salutis*. Sanctification is a link on the so-called golden chain of salvation following justification and regeneration, yet preceding glorification. It is a result of election. The [Westminster] Confession attributes the work of sanctifying grace primarily to the operation of the Holy Spirit, though connected to the death and resurrection of Christ" (Cooper 2015, 181). As formulated in the Westminster Confession (WCF XIII.1):

They who are effectually called and regenerated, having a new heart and a new spirit created in them, are further sanctified, really and personally, through the virtue of Christ's death and resurrection, by his Word and Spirit dwelling in them; the dominion of the whole body of sin is destroyed, and the several lusts thereof are more and more weakened and mortified; and they more and more quickened and strengthened in all saving graces, to the practice of true holiness, without which no man shall see the Lord.

For Lutheran theology, Cooper argues, "sanctification and justification have an intimate connection which cannot be severed. Sanctification is the effect of justification. It is not a separate benefit of union with Christ but is the declarative reality of righteousness (in justification) becoming an effective intrinsic reality. Sanctification is thus the 'working out' of justification" (Cooper 2015, 175). Though there is full agreement between the two branches of reformation that justification is by faith alone, that it is a result of the imputation of Christ's alien righteousness, and that salvation therefore is monergistic, "for Luther, justification is not limited to a bare legal declaration ... In both the biblical and Lutheran approach to the doctrine of justification, both legal and effective dimensions are confessed, and justification is something which is continually effective and pertinent, being the basis for Christian life and worship" (Cooper 2015, 179).

Referring to Rom 8:5–8 Averbeck is right, of course, that "the power for the Christian life comes from the Holy Spirit, who himself enables us to live according to the principles and patterns in the Law, which he inspired" (Averbeck 2022, 295). A helpful clarification would be, however, to underscore that the potent action of the Holy Spirit does not involve enforcing the law upon the *flesh*, as stated in Rom 8:7: "for it does not submit to God's law; indeed, it cannot." The reason why believers

no longer “live in sin,” according to Paul, is that their “old self” or “flesh” has been crucified with Christ and is just as dead as Christ was: “Do you not know that all of us who have been baptized into Christ Jesus were baptized into his death?” (Rom 6:3). And the baptism that Paul speaks of is not a one-time event but involves *living* in one’s baptism. Paul makes it clear in Romans 7 that the flesh continues to live and reign in his body, and therefore, he needs to “die with Christ” *all* the time, on a *daily* basis. See Rom 7:18–24:

For I know that nothing good dwells in me, that is, in my flesh. For I have the desire to do what is right, but not the ability to carry it out. For I do not do the good I want, but the evil I do not want is what I keep on doing. Now if I do what I do not want, it is no longer I who do it, but sin that dwells within me. So I find it to be a law that when I want to do right, evil lies close at hand. For I delight in the law of God, in my inner being, but I see in my members another law waging war against the law of my mind and making me captive to the law of sin that dwells in my members. Wretched man that I am! Who will deliver me from this body of death?

But just as Christ’s death is inseparable from his resurrection, so is the believer’s. Justification, in more dogmatic language, is inextricably linked to “newness of life”, that is, sanctification. See Rom 6:4–8:

We were buried therefore with him by baptism into death, in order that, just as Christ was raised from the dead by the glory of the Father, we too might walk in newness of life. For if we have been united with him in a death like his, we shall certainly be united with him in a resurrection like his. We know that our old self was crucified with him in order that the body of sin might be brought to nothing, so that we would no longer be enslaved to sin. For one who has died has been set free from sin. Now if we have died with Christ, we believe that we will also live with him.

This is why Paul continues his elegy in Rom 7:25 by clinging to Christ: “Thanks be to God through Jesus Christ our Lord!” And Paul has just explained why: “Likewise, my brothers, you also have died to the law through the body of Christ, so that you may belong to another, to him who has been raised from the dead, in order that we may bear fruit for God” (7:4). Being baptized and *living* the daily baptismal life both means that the flesh, which cannot submit to God’s law and for the same reason is subject to his wrath, has been crucified by Christ’s death, *and* that the believer is raised from the baptismal water and “united with him in a resurrection like his.” A union which, *coram Deo*, entails a “great exchange”. Through faith in Christ, believers exchange God’s wrath against their unrighteousness with his pleasure in Christ’s righteousness. A transaction that is both legally valid and efficacious, rendering justification an ongoing and relevant reality. It is not just a change of *legal* status *coram Deo* from unrighteous to righteous, however, but also the effective creation of a “new self”. You were taught, Paul explains, “to put off your old self, which belongs to your former manner of life and is corrupt through deceitful desires, and to be renewed in the spirit of your minds, and to put on the new self, created after the likeness of God in true righteousness and holiness (Eph 4:21–24). That justification *leads* to and is the *basis* for sanctification is precisely what Paul emphasizes, when, in 1 Cor 1:30 and 2 Cor 5:17–19, he states:

[Y]ou are in Christ Jesus, who became to us wisdom from God, righteousness and sanctification and redemption.

Therefore, if anyone is in Christ, he is a new creation. The old has passed away; behold, the new has come. All this is from God, who through Christ reconciled us to himself and gave us the ministry of reconciliation; that is, in Christ God was reconciling the world to himself, not counting their trespasses against them, and entrusting to us the message of reconciliation.

This “baptismal life” is evident also in the Old Testament, where the Mosaic law continues to work in tandem with “the gospel” even after God’s (monergistic) deliverance (Exodus 1–15) and creation of Israel (Exodus 19). A clear example of this is the interweaving of law and narrative in Ex 22:21–24: “You shall not wrong a sojourner or oppress him, for you were sojourners in the land of Egypt. You shall not mistreat any widow or fatherless child. If you do mistreat them, and they cry out to me, I will surely hear their cry, and my wrath will burn, and I will kill you with the sword, and your wives shall become widows and your children fatherless.” Israel, like Paul, also realized that “the flesh” continued to reign in her “body” *after* the “baptism in the cloud and in the sea” (1 Cor 10:1–2), and that they needed to return, again and again, to the “Sea of Reeds” to “mortify the flesh” and be recreated as God’s people. This is even clearer from Exod 23:9, where Israel is commanded “not to oppress a sojourner” with the explanation that “[y]ou know the heart of a sojourner, for you were sojourners in the land of Egypt.” To “know the heart of a sojourner,” Israel needs to revisit their own cry for help (Exod 3:23–25) and God’s deliverance and creation of a new people out of Egyptian slaves (Exod 19:4–6). It is precisely this interweaving of narrative and law, justification and sanctification, Bartor explains in terms of literary criticism, when she states that the authors used the medium of narrative to help people understand moral rules and principles. They understood that storytelling is effective for this purpose, and that narrativity serves as a means of argumentation and persuasion (Bartor 2012, 298).

Applying this to Averbeck’s model, it clarifies that the power of the Holy Spirit in creating new life is inextricably *linked to* and *exerted through* baptismal life, i.e., the daily dying of the flesh and creation of the new self through rising with Christ. This is how the Holy Spirit changes the human heart. Without the continuous dying of the old self and creation of the new, not even the Holy Spirit would be able to make us “live according to the principles and patterns in the Law.” This is because we would still be living “according to the flesh,” in which “nothing good dwells” and, as a result, we would be incapable of submitting to God’s law (Rom 7:18; 8:4).

The approach to the Holy Spirit’s work, described as “Lutheran”, is not incompatible with Averbeck’s model. It should be seen as an attempt to clarify that sanctification is intricately connected to justification in the believer’s daily baptismal life, rather than a temporally sequential phase following justification. The advantage of Averbeck’s model vis-à-vis Lutheran theology, however, is its insistence that “it is the whole, unified Mosaic law that is to be ‘written on the heart’ of the new covenant believer, not just one aspect of it or another, or some combination thereof” (Averbeck 2022, 17).

When applying the law based on the three principles mentioned above, Averbeck prefers an approach that focuses on the explicit covenants in the Bible, rather than on any specific form of systematic

theology. (Averbeck 2022, 36). The same procedure is proposed for reading the five basic units of law in the Torah, where Averbeck finds the same relationship between promise and obligation as in the covenants. He states (Averbeck 2022, 106–107):

[F]rom the beginning God gave the law to ancient Israel based on his covenant grace to them in having already delivered them from their slavery in Egypt. He did not command them to keep the law *in order for* him to deliver them, but *in response to* the fact that he had already delivered them. The sequence is essential for understanding how God works his relationship with us fallen sinful people. It corresponds to the gospel in the New Testament. His call to us to live faithfully in Christ follows salvation by faith alone in Jesus Christ alone; it doesn't come before it. This is a core principle running through the entire Bible. It is in the very nature of the way God works his covenant grace in us, and through us.

This is, of course, not new, but still important as a backdrop for understanding the rationale behind Mosaic law. Just as the Mosaic covenant is a *redemptive* covenant, the Mosaic law collections are set in a *redemptive* frame. This is not sufficient reason, of course, to argue for the laws' continuing importance for Christians, since it could be argued – as Luther does – that most of the laws are positive folk law and therefore not binding for us. Again, Averbeck points to principles extracted from the actual law collections, namely the importance of God's creational design and personal presence. Many of the regulations “are patterned on the way God designed the world to begin with, and his determination that his people should live according to his patterns and the distinctions between his created categories. It taught and illustrated its ways in all categories of life and nature so that the creation design would become integral to the way they lived in ancient Israel” (Averbeck 2022, 159). For the same reason, virtually all regulations are apodictic. “They are basic principles of life. Living according to them makes us decent people and enables us to contribute to the tendency toward prosperity that God built into his creation design” (Averbeck 2022, 160). Especially interesting for our study, Averbeck spells this embedding in the creational order out in relation to sexual identity. “Same-sex intercourse is incongruous since one of God's main purposes in his design for human sexuality was reproduction (Gen 1:27–28)... In my view, same-sex attraction is part of our corrupt condition due to the fall into sin in Genesis 3” (Averbeck 2022, 161). The judicial regulations are more casuistic, since “[c]asuistic statements of law are particularly suited to the judicial management of God's design in the world of humanity. Apodictic regulations lay out the design. Casuistic regulations manage the design in light of the fact that both humanity and our conditions within the world have become corrupt” (Averbeck 2022, 162). As for the significance of God's personal presence for the ethos of his people, it is particularly expressed in the Holiness Code: “The holiness code is how the kind of laws we find in the book of the covenant look when seen from the perspective of community holiness rather than legal principles and processes. The holiness code was the Lord's way of applying the law from the perspective of his personal presence as the Lord their God who dwelt in their midst in the tabernacle” (Averbeck 2022, 168). God's presence is exemplary, and repeatedly requirements regarding offerings, sacrifices, holiness, and purity are reasoned with the holiness formula “be holy, because I am holy.” But again, the regulations for holiness are embedded in a redemptive framework. In Lev 11:45, e.g., God's exemplary presence is connected to his redemptive presence: “For I am the LORD

who brought you up out of the land of Egypt to be your God. You shall therefore be holy, for I am holy.” From this follows that these laws are not just ancient Israel’s positive law, but general principles of life rooted in God’s creational design, examples of managements of the design in a fallen world, and of what God’s personal presence requires from his people.

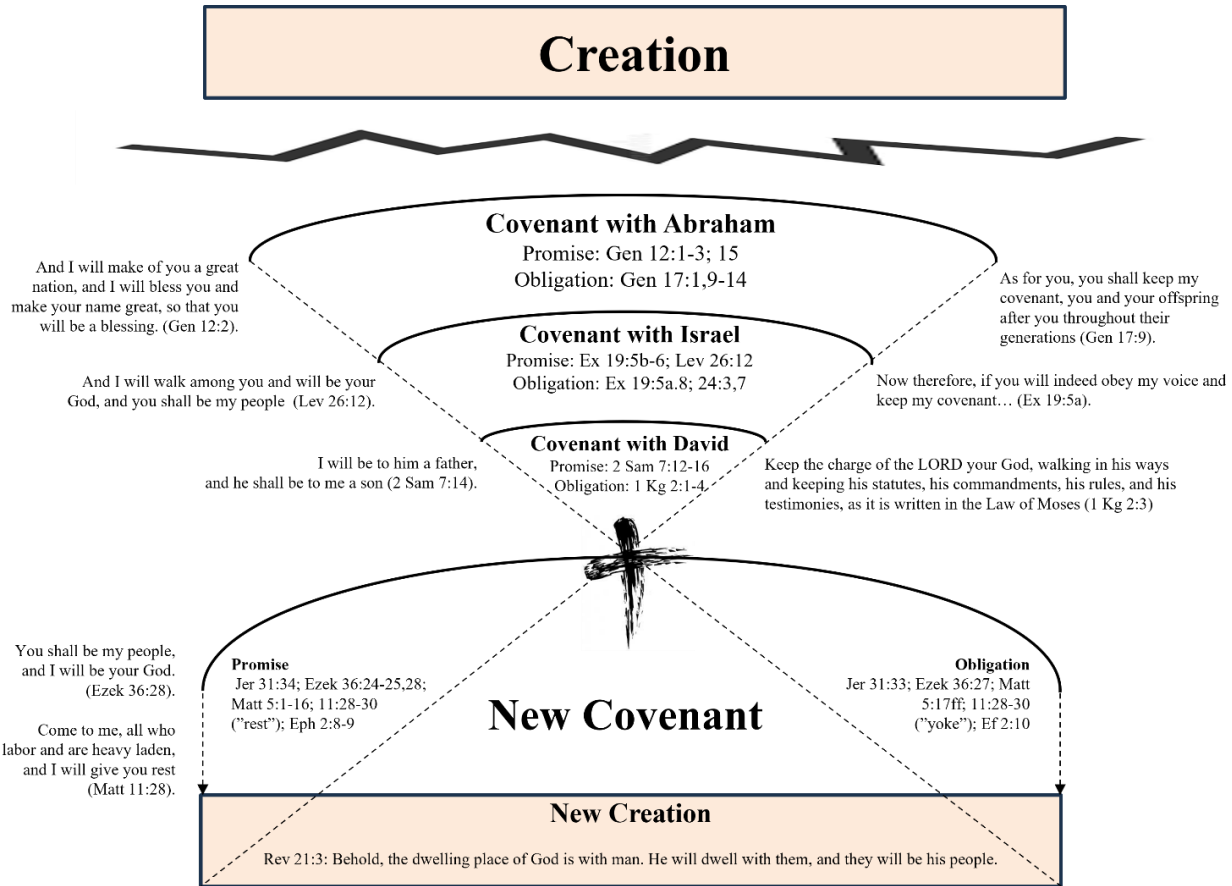


Figure 3: The redemptive covenant structure in the Bible adapted from Averbek (Averbek 2022, 58).

The New Covenant Context

A final step, however, in arguing for the laws’ continuing importance, needs to be taken, since it is obvious in the New Testament that not all requirements pertain to Christians *literally*, and that the laws must be understood christocentrically. This is particularly clear in Matthew, where Christ states: “Do not think that I have come to abolish the Law or the Prophets; I have not come to abolish them but to fulfill them. For truly, I say to you, until heaven and earth pass away, not an iota, not a dot, will pass from the Law until all is accomplished. Therefore, whoever relaxes one of the least of these commandments and teaches others to do the same will be called least in the kingdom of heaven, but whoever does them and teaches them will be called great in the kingdom of heaven” (Matt 5:17–19). Since the verb *fulfill* is active, Averbek remarks, “[t]his suggests that *fulfill* here means that Jesus will teach and live it fully, so the people see and learn what it looks like to teach and live the law the way God intended... Therefore, the law as understood, lived, and taught by Jesus remains valid even

today since heaven and earth have not disappeared and everything is not yet accomplished” (Averbeck 2020, 234). But precisely because it is *Christ* who teaches us the law, it is his exemplary presence, mediated by the Holy Spirit, that teaches us how to respect and live out the general principles of life rooted in God’s creational design in a fallen world, and what God’s personal presence requires from his people. Jewish food regulations were originally given to keep Israel separate from Gentile peoples around them to make them a “light to the nations,” and the purity laws functioned as their protocols for entering Yahweh’s presence and addressing him. Though Jesus indeed took the food laws and purity regulations seriously and, e.g., kept the sabbath, he clarified their original intent, subjected observance to the redemptive-historical purpose of the regulations in question, and transposed them to a new level. In Mark 7 Jesus clarifies that certain food was prohibited or *taboo*, to use a concept from the field of anthropology, not because of an inherent impurity, but due to its significance. Meyer-Rochow defines a food taboo as “the deliberate avoidance of a specific food item for reasons other than simple dislike from food preferences” (Meyer-Rochow 2009, 2). Thus, the key to understand the rationale behind the taboo according to this anthropological definition is the “deliberation”, i.e., the *reason* why it is avoided and the *significance* of its avoidance. This is a helpful definition, since it is precisely this “deliberation” Jesus points to by clarifying that “there is nothing outside a person that by going into him can defile him, but the things that come out of a person are what defile him... Do you not see that whatever goes into a person from outside cannot defile him, since it enters not his heart but his stomach, and is expelled? (Thus he declared all foods clean)... What comes out of a person is what defiles him. For from within, out of the heart of man, come evil thoughts, sexual immorality, theft, murder, adultery, coveting, wickedness, deceit, sensuality, envy, slander, pride, foolishness. All these evil things come from within, and they defile a person” (Mark 7:15, 18–20). For the same reason there is no necessary connection between the “deliberation” and the prohibited foods, and as food regulations separating Israel from the Gentiles became redemptive-historically counter-productive when the Abrahamic blessing of “all families on earth” (Gen 12:3) had come through Christ, the connection between the “deliberation” and the prohibited foods had to be severed. The need for this disconnection is only hinted at in Mark 7 by Jesus, but the parenthesis inserted by Mark, “thus he declared all foods clean,” reflects, Averbeck notes, “the concern in the early church to break down the divide between Jewish and Gentile believers caused by the Jewish food laws ... These laws came to have the effect of dividing the church and disrupting its unity once it came to include both Jewish and Gentile believers... This is why these particular holiness and purity laws needed to be set aside in the New Testament lest they have the effect of upholding ‘the barrier, the dividing wall of hostility’ between Jews and Gentiles in the church (Eph 2:14; cf. Acts 10:9–16; Gal 2:11–14)” (Averbeck 2022, 246; 221). This does not mean, however, that the New Testament abandons the “deliberation” to make God’s people distinct and keep them apart from the corrupting influence of “the world”, but the repetition in 1 Pet 2:9 of the call in Exod 19:5–6 to be “a chosen race, a royal priesthood, a holy nation, a people for his own possession, that you may proclaim the excellencies of him who called you out of darkness into his marvelous light” is no longer connected to any particular food taboos, but given under the general principle stated by Paul, namely that “all things are lawful, but not all things are helpful. All things are lawful, but not all things build up” (1 Cor 10:23). The intent to be distinct may still be expressed through food taboos (as practiced by some

Messianic Jews) but may just as well (and usually more meaningfully) be practiced through other means. Averbeck mentions another important point as far as the “disconnection” between “deliberation” and “prohibition” is concerned, namely that already in the Old Testament do we find examples on the arbitrary or non-necessary relationship between internal intent and external ways of showing the intent. That God never intended purity and holiness regulations to create divisions between the people of God can be seen, Averbeck notes, in that the Israelites’ laws changed in tandem with new circumstances: “In the wilderness, since they were traveling as a camp surrounding the tabernacle, if they wanted to eat meat, they were to sacrifice their animals only at the doorway of the tabernacle (Lev 17:1–29). Later, after they conquered and occupied the land, they could kill animals and eat meat anywhere in the land as long as they did not eat the blood (Deut 12:15–25)” (Averbeck 2022, 247). As far as transposition is concerned, the *physical* requirements of the purity laws correspond to the *physical* presence of the Lord in the tabernacle, and since God is present with his people in a different way in the church, the content or rationale behind these laws has to be applied differently as well. Averbeck puts it this way: “Since God was visibly physically present, the people needed to be physically ritually pure in his presence. In the New Testament church, the focus shifts to God’s presence with his people in a different way, by the indwelling of the Holy Spirit... The concern for purity shifts to the spiritual level since that is the level of the presence” (Averbeck 2022, 221–22). Or, as Peter Leithart puts it, “Once we make that transposition, we see that Israel’s purity rules are still instructive. Someone defiled by murder, adultery, and slander spreads defilement, much as a menstruous woman communicated defilement under the law. Jesus wants us to react with revulsion to murder, slander, adultery, and lust, like a Pharisee around a person who had a flow of blood or skin disease. If you’re defiled by what comes from your heart, you *do* need cleansing – not by washing your hands, but with confession and the blood of Jesus” (Leithart 2020). This is *not* because there was no concern for the spiritual dimension in the Old Testament, but a consequence of the special role ancient Israel played as a *physically visible* model people embodying (ideally) the image of God, as an illustrator of God’s characteristic interaction with his people through law and gospel through actual *physical* history, and as a guardian of and witness to God’s revelation, i.e., the *physical written* promises until the time of Christ. Many more examples could be given on how, e.g., tabernacle and Levitical regulations should be transposed along the same lines, and how the inclusion of Gentiles in the people of God has replaced Israel’s theocracy with “the two kingdoms”; but the examples given suffice to illustrate that the entire Old Testament law is valid in the New Testament. The question is not which laws to apply, but how the New Testament teaches us to transpose the laws in the light of Christ’s presence through the Holy Spirit.

Luther would have agreed, to put it anachronistically, with many of Averbeck’s proposals. They both acknowledge the weakness and goodness of the law and agree on the important *coram* distinctions. They are aware of the importance of the difference between theocratic Israel and the Church as consisting of peoples of many nations for the application of the laws. Luther speaks of the “two kingdoms”, and Averbeck, though not using the concept itself, argues in similar manner that “[t]he justice called for in the Old Testament law cannot be implemented in the same way in the church. For this we depend, accept, and even pray for the authority of the government under which we live (Rom 13:1–7). Our concern in this regard is only that they allow the church to function as the kingdom of

God within their political and administrative realm (Rom 13:8–14)” (Averbeck 2022, 312). Luther finds natural law reflected in many of the apodictic laws that Averbeck describes as “basic principles of life” and even “laws of nature” (Averbeck 2022, 160). But this is where the waters of the hermetic sea begin to part. Whereas Averbeck understands these basic principles as part of special revelation and extracts them from the biblical text only, Luther seems to regard them as reflections – or even mere repetitions – of a natural law, that exists prior to and independent of special revelation. As Braaten points out, Luther seems to propose that “Christians along with all other human beings exist in a framework of universal structures that are there prior to and apart from biblical revelation and the church,” and that “[t]he law of God and his commandments are revealed through these common forms of human existence and function apart from the gospel and faith in Christ” (Braaten 2007, 6). There is, as we have seen, a tension (and problem) in Luther’s thinking on this point, and without denying the existence of natural law and a universal knowledge thereof, it seems better to understand these laws as part of a special revelation that perhaps clarifies what could be known more generally from universal natural law, but nonetheless adds something new which was *not* available through natural law. Even more problematic is Luther’s etic use of the distinction between natural and positive law to clarify what it means that Christ is the end of the law *coram mundo*. For reasons already given, it is much more preferable to see both the apodictic and casuistic laws, i.e., the whole law of the Old Testament, embedded in a redemptive-historical and creation-theological framework that made the entire Old Testament law valid in New Testament perspective with Christ’s presence through the Holy Spirit as the key to understand how to transpose the laws in a New Covenant setting. Such a product development of a Lutheran approach to the “Law of Moses” is certainly not without challenges, as it must also consider the difference between the theocracy in the old covenant and the new covenant’s distinction between the two realms of church and state. Nevertheless, it opens up a more comprehensive and positive use of “all Scripture ... for training in righteousness, that the man of God may be complete, equipped for every good work” (2 Tim 3:16; cf. Rom 15:4).

Essential, Ethical, and Existential Guidance

Before we conclude, it is pertinent to introduce and interact with the model suggested by Winther-Nielsen for understanding how Mosaic law itself differentiates between the different tiers of spheres in the ethical vision of Mosaic guidance: Essential (creation, salvation, faith), ethical (love of neighbour, compassion), and existential (legal, social-economical). Based on the inspiration from Peter W. Gosnell especially, Winther-Nielsen has developed a model that is based on the understanding in current research of how ancient Near Eastern laws functioned in their contemporary context and on how the laws are embedded in the foundation stories of the Books of Moses. “In this model, the community between God and His people and the individual is created through the grand narrative of creation, judgment, and salvation. This relationship is established by grace, expressed in holiness, and affirmed in love. The divine grace, holiness, and love of the grand narrative then function in the laws of the Books of Moses as motivation for an obedience that concretely motivates care for the weak in love for the neighbor, but the ethics are also inspired by the Creator’s desire to maintain the good order in the world of creation” (Winther-Nielsen 2018, 23; cf. Gosnell 2014). Winther-Nielsen’s own contribution is to develop this model of “divine guidance on three different tiers,” where [t]he

first tier is the essential relationship with God, which He establishes in creation, judgment, and salvation, often solemnly affirmed in various forms of covenant ceremonies, and which is intended to lead to obedience in faith” (Winther-Nielsen 2018, 25). The first tier, the foundational narrative, is represented by the main narrative thread in the Pentateuch and characterized by its emphasis on God’s salvation-historical dealings with Israel and their celebration thereof in the cult. As ethical guidance it emphasizes Israel’s obedience as a *response* to God’s grace (Gen 15:6), and holiness, on this tier, is primarily understood as theological and ritual, that is, holiness *coram Deo*. The second tier focus on the personal morality in terms of love for the neighbor and individual ethics intending to produce righteousness *coram Mundo*. The second tier focuses on concrete, practical, and spiritual formation in the family, and on the patriarchs and Israel as a royal priesthood serving God in purity and holiness. The third tier focuses on the existential conditions in contemporary society by “regulating legislation in society in a way that protects fellow human beings so that they can live a righteous life” (Winther-Nielsen 2018, 25). Winther-Nielsen further demonstrates how “justice is fundamentally grounded in an ethics that derives socio-economic guidance from the grand narrative.” When new historical contexts entail, “the grand narrative’s demands for obedience are maintained” and law and ethics are updated and reformulated to address a new situation (Winther-Nielsen 2018, 43; 47; my translation). Transposing the three-tier model to the New Testament, Winther-Nielsen argues that “Paul does away with salvation by the law, without excluding that it may well be a guide for the saved as in Gal 5:13–15,” and that “Paul is not engaged in an antinomian rejection of the books of Moses, but instead offers a prophetic foundation in the Old Testament, which includes both a prediction of Christ and a proclamation of God’s will for the liberated people. Therefore, if Eph 2:15 is read in the light of its context, it does not exclude that the books of Moses can be used as a guide for believers who, to keep Paul’s terminology, are under construction as a temple of God by the Spirit (2:21–22)” (Winther-Nielsen 2018, 62). “In my own three-tiered model,” Winther-Nielsen continues, “I maintain judgment, salvation, and obedience as the basic righteousness. However, it also makes room for derived ethical guidance in the justice of life in relation to fellow human beings, and it is related to the admonitions in the epistolary literature on this point. Its strength is that it makes room for the books of Moses to ‘provide an essential foundation to developing a basic moral sense of direction.’ Gosnell calls it a moral compass, but we could also call it landmarks or milestones for the good life” (Winther-Nielsen 2018, 62–63). The guidance of the Books of Moses, according to Winther-Nielsen, is upheld in toto as consistent with the guidance found in the New Testament, since “the books of Moses can also today provide guidance on how the foundational narrative can be maintained in obedience, while at the same time the ethics and law of the books of Moses are applied in new contexts” (Winther-Nielsen 2018, 63).

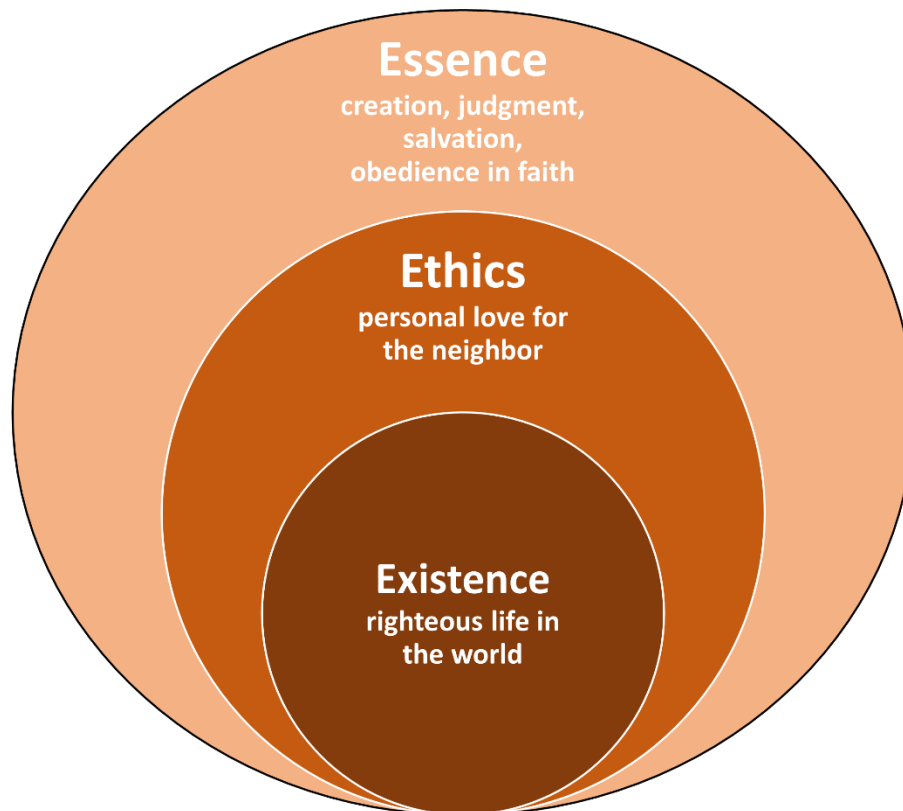


Figure 4: Nicolai Winther-Nielsen's model.

Winther-Nielsen's model addresses several questions that arise when life is to be lived between ideal and reality and has several strengths. First and foremost, it "follows the books of Moses' own distinction between Yahweh's Torah being revealed to the desert generation from Abraham and up to the end of Numbers, and Moses' Torah being formulated for the next generation in Deuteronomy," and this approach, Winther-Nielsen continues, "provides the contemporary reader with a historically rooted interpretation key, where Moses can also today provide guidance on how the foundational narrative can be maintained in obedience, while at the same time applying the ethics and law of the books of Moses in new contexts" (Winther-Nielsen 2018, 63).

Secondly, by distinguishing between the three tiers of Mosaic guidance as they appear in the Pentateuch, it enables the reader to determine which Mosaic laws and principles should be maintained also in their application because they are reasoned or justified by the foundational narrative, and which laws and principles should be maintained only in principle and applied to new contexts. There are, of course, other hermeneutical ways to come to the same conclusion, but this is Winther-Nielsen's hermeneutical rationale, e.g. for rejecting the claim that if we do not maintain the death penalty (which belongs to the third tier), we should also not enforce other commandments (which belong to the second tier) in the same context.

Thirdly, Winther-Nielsen is aware of the challenges on the third tier in applying ethical guidance to modern contexts and acknowledges that there is an obvious discontinuity between the theocracy of the Books of Moses and contemporary societal legislation within the framework of the New Testament's distinction between the two realms of church and state. He nevertheless provides a number of

examples on how the patriarchs' and Israel's very different responses to their changing existential conditions may inspire the believer to choose different models for societal involvement.

Critique

Winther-Nielsen acknowledges the constraints of his article regarding Mosaic guidance within a Christian framework and points out that he must restrict his exploration "from the full scope of the issue." (Winther-Nielsen 2018, 58). Without removing anything from an otherwise very helpful model, attention must be given to several shortcomings or points that need further work. Firstly, the model provides little help in distinguishing between absolute and guiding applications of core principles. This is illustrated well by the example given by Winther-Nielsen on the admonition in Lev 25:37–38: "You shall not lend him your money at interest, nor give him your food for profit. I am the LORD your God, who brought you out of the land of Egypt to give you the land of Canaan, and to be your God." Applying his three-tier model, Winther-Nielsen (2018, 25) fleshes out how the guidance looks like on each tier:

Interest rates belong to judicial ethics which depends on the social structure in different social models and eras (tier 3), and the ban could usefully inspire god-fearing legislators and economists today. The very requirement to pay special attention to a fallen countryman defines a social ethic that the godly must live by as a concretization of charity (tier 2), and it can always guide godly people in similar situations. The most comprehensive guidance lies in the fact that the claim is made absolute by being grounded in the fundamental revelation of God's historical work in the deliverance of Israel from Egypt (tier 1), and this understanding of the mission of God's people can inspire the church today.

I have no quibble with how Winther-Nielsen extracts guidance for "god-fearing legislators and economists today" on the third tier and "godly people at all times" on the second tier. But what exactly is made "absolute" by referring to "the fundamental revelation of God's historical work" on the first tier? The implications on the third and second tiers? Or the obligation to reflect the ethos displayed by God in his "historical work" on the first tier? It must of course be admitted that Winther-Nielsen, in the same sentence, notes that "this understanding ... can inspire the church today," and that Winther-Nielsen hardly understands the application on the third tier to be absolute. But again, where do we draw the line what is absolute and inspiring? Or put differently, how do we determine whether only the core principle derived from God's historical work on the first tier or also the concrete implications on the second and third tiers are timeless and absolute? The problem can be illustrated well by turning to sexual ethics. Winther-Nielsen discusses the patriarchs' "violations" of the prohibitions against marrying one's father's sister (Amram in Exod 6:20 contra Lev 18:12–14), sexual relationship with a half-sister (Abram's marriage with Sarai contra Lev 18:9, 11; 20:17; Deut 27:22) and taking the wife's sister as a second wife (Jacob marrying Lea and Rachel in Gen 29:16–30 contra Lev 18:18). Winther-Nielsen comments on this discrepancy that "in the three-tier model, it would not be a problem to draw inspiration for an ethical reflection on caring for women's sexual integrity based on these texts and address the breakdown of sexual morality through preaching and teaching." I have no objections against how the model explains the different applications of "sexual morality" on the second and third tiers, but again, what exactly is "sexual morality"? And if the application of it is time-bound

and flexible, does it also apply to the prohibition of practiced homosexuality? And if not, why? One could point to the fact that there is no flexibility attested in this prohibition, but the argument is weak, since the examples of applications are not exhaustive, and it could therefore be argued that it is coincidental that there are no examples of flexibility in relation to sexual orientation. On this point Winther-Nielsen's model could be improved by emphasizing the foundational character of God's creational order, especially for issues related to gender identity and sexuality, but also regarding, e.g., slavery. It is probable that Winther-Nielsen includes God's creation in the "foundational narrative on God's works," but it needs to be made much more explicit, if concepts like "sexual morality" and references to "absolute" principles are not to become empty of content and subject to subjective interpretation.

A second suggestion for improvement has to do with the discontinuity of the theocracy in the New Testament. While all three tiers operate within the same theocratic framework in ancient Israel, the church – understood as God's people of all tribes and languages – in the New Testament is the place where the foundational narrative serves as a basis for teaching and instruction on "how personal morality unfolds in righteous living and genuine love for one's neighbor," and where, based on such principles, church discipline is exercised concerning individuals who live inconsistently with the principles that can be derived from the foundational narrative. In this task, the church's leadership in its "spiritual realm" has only the power of the word and wields solely "the sword of the Spirit". When it comes to the third tier, that is, the civil or "secular realm" of law and governance, the church – understood both collectively and as individuals – contributes on an equal footing with everyone else to influence legislation in a way that serves to protect fellow human beings and promote a righteous life. The question of how the church makes such a contribution is naturally inseparable from the derivation of guidance from the foundational narrative, which takes place in the church on the first and second tiers, but it will typically appear differently on the second and third tiers, as it is generally easier to derive and enforce guidance that is closer to the ideal in the church than in society. When it comes to discussing engagement on the third tier, that is, societal involvement and efforts to influence legislation, it is beyond the scope of the purpose of the perspective in this work, and therefore we will focus on ethical guidance on the second tier in the following. The potential for improvement in Winther-Nielsen's model lies in clarifying on which tier the church's role as instructor in and guardian of the "absolutes" should be placed. One possibility would be to place it on tier 2, but this means that tier 2 no longer is confined to personal morality in terms of love for the neighbor and individual ethics intending to produce righteousness *coram mundo* with the family as the primary setting for concrete, practical, and spiritual formation – unless, of course, "family" is redefined to also encompass the spiritual family. But focus is clearly on instruction and guidance on this tier, not sanction. Alternatively, it could be placed on the first tier, since one of the characteristics of this tier, according to Winther-Nielsen, is the communal emphasis on Israel as God's children who obeys him in response to the imputed righteousness through his grace (Winther-Nielsen 2018, 24). A natural correlation would be that the community, Israel in the Old Testament and the church in the New, also had the obligation to draw the consequences when such an obedience was *not* practiced, but that the conse-

quences and the means of effecting them in a New Testament non-theocratic setting would be different on tier 1 and 3. The best solution is probably to place the defensive guarding and sanctioning obligations of the church on tier 1 and the more positive instruction on tier 2.

Conclusion

The fact that there is no “Leviticus” in the New Testament is both obvious and challenging! It is obvious because ethical guidance in the church and society should be distinguished, but it is also challenging – or perhaps even frustrating – because there is no direct reuse of the guidance given to ancient Israel. When it comes to deriving ethical guidance from these ideals in the New Testament and the modern contexts, the complexity of the task is not only due to the distinction between the spiritual and secular domains, but also the complexity found in the examples of guidance found in both the Old and New Testament.

Firstly, there are texts that show that while the ideal or “absolute” is maintained, there are variations in the specific guidance regarding what an ideal means in each context. For instance, when it comes to the prohibition in Deut 22:5 against cross-dressing, it is most likely directed at the fluid gender identity that characterized the worship of Ishtar and its Canaanite counterpart in ancient Israel during the monarchy. The absence of explicit references to cross-dressing in the New Testament does not mean that the binary understanding of gender, which cross-dressing violates, has been abandoned. Instead, it suggests that the specific form of cross-dressing addressed in Deut 22:5 was apparently not a concern in the contexts discussed in the New Testament. However, we do find the ideal applied to other types of “boundary-crossing behavior”. When Paul speaks in 1 Tim 2:9–10 about women adorning themselves modestly and not with elaborate hairstyles, gold, pearls, or expensive clothing, but rather with good deeds that befit women professing godliness, the implicit argument is that if there is something befitting for women, there is also something befitting for men. Women who engage in the behaviors that Paul advises them against are crossing boundaries within the context of the binary gender understanding depicted in the foundational narrative. The same applies to 1 Cor 11:13–15, where Paul, in response to his own rhetorical question about whether it is proper for a woman to pray with her head uncovered, gives the following answer: “Does not nature itself teach you that for a man to wear long hair is disgraceful, but for a woman to have long hair is her glory? For her hair is given to her for a covering.” Here, too, the rationale behind Paul's exhortation is that the boundary between the two genders should be respected, and in the Corinthian context it meant that men did not let their hair grow long while women did. Although there are interpreters who understand φύσις (“nature”) as an expression of a divine order, it is more plausible to understand it here as an expression of a cultural convention, that is, what is “naturally” appropriate due to custom and usage. After all, women's hair does not grow faster than men's! Alternatively, “nature”, in the same manner as in Romans 1, refers to the binary gender as part of the created order without understanding men's short and women's long hair as *timeless* and *necessary* implications. In any case, however, the ideal from the foundational narrative is upheld while the guidance is applied to new culturally conditioned contexts. In this type of guidance for the church (on the second tier), the derivation should be understood as a direct but nonetheless flexible application of the ideal (on the first tier).

Furthermore, there are also examples of casuistic guidance that confront reality with the aim of directing towards the ideal but where the guidance reflects the ideal to a lesser or weakened extent. This applies, for instance, to texts that either narratively or juridically address or mention polygamy without idealizing it (e.g., narrative texts about Abraham's, Jacob's, David's, and Solomon's polygamy and the levirate law in Deut 25:5–6); or to New Testament texts that regulate slavery without idealizing it – for instance, 1 Cor 7:20–24; Col 3:22–25; 4:1; Eph 6:5–9; Titus 2:9–10. In these texts, there is no outright rejection of polygamy or slavery. However, when the guidance is understood in the light of the foundational narrative, it becomes clear that it is guidance that, based on a culture where polygamy and slavery were common, seeks to move the culture towards the ideal. The polygamy of Abraham, Jacob, David, and Solomon is described in a way that leaves no doubt that it is not ideal. For instance, Sarah ends up sending Hagar away (Genesis 16), Jacob must endure the jealousy between Rachel and Leah (e.g., Gen 29:34), David experiences his greatest crisis because of Batsheba (2 Samuel 11–12), and Solomon is criticized for his harem because “his wives had turned his heart away to other gods” (1 Kgs 11:4). In all these cases, the reader is invited to limit or abolish polygamy. The same applies to slavery in the New Testament. Although Paul, on the one hand, regulates slavery in his letter to the Christians in Colossae without prohibiting it (Col 3:22–25), he concludes with a countercultural exhortation to slaveholders: “Masters, treat your slaves justly and fairly, knowing that you also have a Master in heaven.” The same is true in Eph 6:5–9, where the ideal is emphasized, namely that slaveholders do not have a privileged relationship with God because all people are created equal. Similarly, Paul writes to the Christian slaveholder Philemon that he should receive his slave Onesimus “no longer as a slave, but more than a slave, as a beloved brother. Especially to me, but how much more to you, both in the flesh and in the Lord!” (Phlm 16). When these instructions on the second tier are seen in light of the foundational narrative on the first tier, it becomes clear that man was not created to have multiple wives, that no human being was created to be owned by another human being, and that these instructions encourage small steps towards the ideal. As Lenski expresses it in his commentary on Eph 6:5: “Christ and the apostles did not denounce slavery and call for its immediate abolition. Christianity followed a deeper, more thorough method, it undermined slavery with the spirit of Christianity by destroying it from within” (Lenski 1937, 652). Or as Douglas Moo puts it in a more recent commentary on Phlm 16: Although Onesimus will technically remain and continue to be Philemon's slave, Paul's point is that “your [i.e., Philemon's] relationship with Onesimus will no longer be dictated by your legal relationship (master-slave) but by your spiritual relationship (brothers)” (Moo 2008, 422). This implies such a thorough transformation of power dynamics that the consequence is – in Miroslav Volf's words – that “slavery has been abolished even if its outer institutional shell remains as an oppressive reality” (Volf 2011, 92).

The discussion about the Bible's relationship to slavery is, of course, more complicated than that, as “slavery” in the ancient Near East and in antiquity encompasses a range of practices, from the “transatlantic” type that we associate with the exploitation of slaves from Africa by colonial powers to labor conditions that resemble what we would today label as “debt slavery” or even the looser concept of “wage slavery” (see Nicolai Winther-Nielsen's remarks in Wejse 2022). Therefore, it is not given that the ideal necessitates the abolition of all forms of “slavery”, but rather that the relevance of the foundational narrative for deriving a work ethic primarily concerns the fundamental theological

equality inherent in creation, which should characterize both parties in the employment relationship and undoubtedly disqualifies several forms of slavery, but not necessarily all forms at all times and places.

Certainly, there is much more work to be undertaken if Old Testament law is to be transferred into a New Covenant context. While the examples given earlier provide only an initial representation of what a Luther-*ish*, rather than Luther-*an*, application of Old Testament law in the church's ethical guidance and pastoral counselling might involve, it is hoped that they have laid the groundwork for additional exploration. The aim is to preserve the enduring relevance of Old Testament law, allowing it to continue guiding both the church and individual believers in accordance with the life principles that God has chosen to bless.

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