

THE CONVENTIONAL DIFFERENTIATION OF LAW AND GOSPEL AS "DEMAND AND GIFT"

As is well known, Luther declared the distinction between law and gospel to be the central task of Christian theology. Distinguishing between law and gospel was the "highest art in Christendom";¹ "all Scripture and the understanding of the whole of theology"² depended on this art. On the basis of this distinction, Luther and the other Reformers defined the relationship between church and society and, indeed, defined faith's contact with reality. The doctrine of law and gospel guided the Reformers, both in distinguishing God's reality from human reality and God's action from human action and in relating the divine and the human components to each other.

From the Reformation onward, a whole series of simple dichotomies and dualities developed to carry through the process of distinguishing and relating law and gospel. The most popular of these dichotomies is that between "demand" and "gift." "Das Gesetz ... nimpt und foddert von uns." The gospel, on the contrary, "ist ein lauter Geschenck, ... welchs uns nur den Sack heist her halten und uns lassen geben ..."³ The dualities of demand/gift, "Anspruch/Zuspruch," imperative/indicative, and the resultant structuring of the theology of law and gospel have enjoyed a history of powerful influence not only in the domain of the Protestant churches. To the present day they also influence forms of thought, above all in the many popular theologies that operate with the schemata of dialogical personalism. They also influence our forms of thought, however, even in connections that currently stand at the center of our attention: for example, in the debates over the relation between the religious system and the political system or in documents of ecumenical understanding, such as the recently published statement of the U.S. Lutheran-Roman Catholic Dialogue Group, "Justification by Faith."⁴ The distinction between the requiring God and the acting human under the law and between the giving God and the receiving or even passive human under the gospel certainly has exercised a great

1 Translation by John Hoffmeyer.

2 Compare Weimarer Ausgabe, ed. J. C. F. Knaake et al. (Weimar: Verlag Hermann Böhlaus Nachfolger, 1883-), 36:9.

3 Compare *ibid.*, 7:502.

4 For example, U.S. Lutheran-Catholic Dialogue Group, "Justification by Faith", *Origins* 13, no. 17 (1983): 278-304, esp. pt. 2.

influence. Yet, influential as these dualities have been, to the same extent the dichotomies of demand/gift and imperative/indicative have destroyed the actual persuasive power of the doctrine of law and gospel. It is not even comprehensible to wide circles how this doctrine could be declared the center of theological work. Many may regard it as the exercise of a dogmatic duty to emphasize the importance of this doctrine - a duty that belongs to the verbal facade in the statement of Protestant church leaders.

Above and beyond the general atrophy of understanding, however, this conventional doctrinal formulation has come under increasing scrutiny in several ways. Protestant Old Testament scholars in particular have for decades now emphasized with increasing insistence that to define at least the Old Testament law as "demand, imperative," or even as "requirement of works" is a distortion, if not completely misleading.⁵ Moreover, we are beginning to recognize that numerous persisting problems of ecumenical understanding - particularly in relation to church order, religious works, and sacramental theology - are to be traced back to an insufficient treatment of the relation between law and gospel. This is not even to mention the still unattained understanding in Christian-Jewish dialogue - at least in Europe - concerning the topic "law." The inability to communicate theologically on the topic "law" in particular has had a negative effect on the interdisciplinary discussions. Only in very simple moral-theoretical forms of thought can a satisfactory understanding be achieved. Finally, the conceptual powerlessness of conventional Protestant dogmatics has become apparent in an especially noticeable way in the face of today's great sociomoralistic movements in the churches. These movements, above all the theologies of liberation, are conceptually centered on one element of the Old Testament law: namely, on the *mercy code*, the turning to weaker fellow persons. How do these movements relate to the conventional distinction between law and gospel? Do they confuse law and gospel? Can the theologies they have developed even be grasped with the doctrine? We have as yet received no clear answers to such questions.

In my opinion, we cannot even adequately perceive these general problems of understanding -

5 I refer only to some representative studies: G. von Rad, *Theologie des Alten Testaments*, 4th ed., vol. 2, *Die Theologie der prophetischen Überlieferungen Israels* (Munich: Kaiser Verlag, 1965), esp. pp. 418, 432; W. Zimmerli, "Das Gesetz im Alten Testament," in *Gottes Offenbarung: Gesammelte Aufsätze zum Alten Testament*, 2d ed. (Munich: Kaiser Verlag, 1969), p. 249 ff., esp. p. 266; R. Smend and U. Lutz, *Gesetz* (Stuttgart and Berlin: Kohlhammer, 1981); H. Gese, "Das Gesetz," in *Zur biblischen Theologie: Alttestamentliche Vorträge* (Munich: Kaiser Verlag, 1977), p. 55 ff.; P. D. Hanson, "Commandments in Context: The Function of Torah in Early Israel," *Lutheran Theological Seminary Bulletin* 61 (1981): 14 ff., and "Gracious God, Responsive Community: Covenant and Decalogue," *Lutheran Theological Seminary Bulletin* 61 (1981): 24 ff.; D. Patrick, *Old Testament Law* (Atlanta: John Knox Press, 1985).

the inquiries of the Old Testament scholars, the difficulties in ecumenical understanding and in interdisciplinary discussions, and especially the challenges posed by movements within the church with regard to the doctrine of law and gospel - if we hold fast to the presentation of this doctrine through the dichotomies and dualities demand/gift, imperative/indicative, and so on. I would like to show that these dichotomies are in need of revision, as are the person-to-person schemata - requiring God-active human under the law, giving God-passive human under the gospel - that have determined at least conventional Protestant dogmatics. Beyond this I would like to show that this revision can lead to the development of a realistic typology of theological thought.

In the following section, I will take up the critique of Old Testament scholars on the definition of law as requirement or even as requirement of works and point to a superior alternative. This alternative will be the conception of "security of expectations," which I would like to explain. In a second, extensive section, I will closely examine very early Old Testament texts presenting theology of law in order to demonstrate how this securing of expectations functions realistically in the three elements of the law: the legal, cultic, and mercy codes. I will attempt to show, with regard to law as it is defined in the Old Testament, in what way and in the face of what conflicts religious thought becomes enmeshed in human life situations.

The goal of my reflections is to introduce a strong conception of law that will present the potential for dialogue both in our exegetical work and in recent development in society and in the social sciences. Only at this point will I speak in a third section about the powerlessness of the law and, in a fourth, about the gospel. Thus the distinction between law and gospel, so important to the Reformation, shall be drawn once again, this time on a new basis and with, I think, new acquisitions of knowledge.

The Law Objectifies Security of Expectations. It Thus Serves the Formation of Individual and Social Future.

If I am not mistaken, the security of expectations belongs among the uncustomary, indeed, foreign fundamental concepts. We still stand too deeply in the typically modern tradition in which common sense imagines itself caught in a continual transition out of a fixed past into an open future, out of determined actuality into underdetermined potentiality. To have suggested

a change on this point is one of the merits of Talcott Parsons. In *The Social System*, he concludes that every "actor develops a system of 'expectations' relative to the various objects of the situation." As soon as this system of expectations is developed to the point that it can "mediate communication ... we may speak of the beginnings of a 'culture'!"⁶

One can clearly show why Parson's pioneering directive has gone until now without further development. Influenced, no doubt, by his experiences in the area of psychology, Parsons analyzes the "complementarity of expectations" or the "most elementary form of culture" entirely in a *dialogical* schema, in the ego-alter-relationship. On the basis of the ego-alter-relationship, however, the more complicated phenomena of the communication and reproduction of expectations and, above all, the formation of mutual *security* of expectations do not come into view. Parsons and his students, in a typically modern individualistic and anthropocentric orientation, push forward only to a theory of roles.⁷ On the basis of biblically and theologically oriented observations on law, however, this initiative toward grasping the meaning of "culture of expectations" can be further developed. Yet this further development need not forgo the high potential for plausibility proper to the ego-alter-model.

In order to demonstrate this, I will begin with a type of legal formation that Old Testament research, following Albrecht Alt,⁸ has called "apodictic law" and to which the Decalogue, the Ten Commandments, belongs. I will first consider the so-called Shechemite Dodecalogue (Deut. 27:15-26), a sequence of twelve regulations that in each case begin with the formulation "Cursed be the one who does thus and so," and closes with the summons "And all the people shall say, 'Amen.'" What is going on in the cultic assembly in which the Levites call out, "Cursed be the one who does *x*, and in which the people answer each time with "Amen"?

6 T. Parsons, *The Social System* (New York: Free Press; London: Collier Macmillan, Ltd., 1951), p. 5, cf. pp. 38 ff., 69ff., 205 ff., T. Parsons and E. Shils, *Toward a General Theory of Action* (Cambridge, Mass.: Harvard University Press, 1951), pp. 11, 14-15, 19ff.

7 Compare Parsons and Shils, pp. 23 ff., 91 ff., but see also the more fruitful reflections on p. 20; cf. J. Galtung, "Expectations and Interaction Processes," *Inquiry* 2 (1959): 213 ff.; R. D. Laing, H. Phillipson, and A. R. Lee, *Interpersonal Perception: A Theory and a Method of Research* (London: Tavistock Publications; New York: Springer Publishing Co., 1966), pp. 3 ff., 9 ff.; V. Aubert, *Elements of Sociology* (New York: Charles Scribner's Sons, 1967), pp. 1, 18 ff.; M. Foschi, "On the Concept of 'Expectations,'" *Acta Sociologica* 15 (1972): esp. 126-27; and N. Luhmann, *Rechtssoziologie I* (Reinbek: Rowohlt Verlag, 1972), p. 31 ff; with attempts to go beyond this structure, see p. 80 ff., and for their limitations, see pp. 103-4. The other extreme of theories of expectations that avoid an individualistic, anthropological, and dialogistic narrowing but that also destroy anthropological structures is documented by the discussion in economics: see, e.g., B. Kantor, "Rational Expectations and Economic Thought," *Journal of Economic Literature* 17 (1979): 1422 ff.

8 A. Alt, "Die Ursprünge des israelitischen Rechts," in *Kleine Schriften zur Geschichte des Volkes Israel*, 4th ed. (Munich: Verlag C.H. Beck, 1968), 1:278 ff.

It is important to see that is not simply a question of the exclusion of an actual evildoer, known or unknown. It is also not primarily a question of the condemnation and exclusion of a potential evildoer from the community of the people. Rather, the cultic participants are above all committing themselves and each other by publicly placing themselves and each other under obligation. By this action they delimit and eliminate the unwanted evil. Thus they establish public security and a social future that can be expected. We now can see what Old Testament scholars are talking about when they say that the law is not an oppressive requirement but marks out and protects an area of and for life. The cultic participants *objectify life-promoting security of expectations*. Each gives and each receives security of expectations with regard to the execrable actions.

Such *plural* transferral and securing of expectations also make a strong imprint on our life today, on our view and shaping of reality. Such a plural communication of expectations distinguishes itself structurally from mere person-to-person communication. Above all, it reduces the insecurity that lies in person-to-person communication, that is endangered by double contingency precisely through the participation of "others." As in ancient Israel, the plural communication of expectations does not remain restricted to the cultic assembly, although the cultic assembly does indeed make for clear recognition of the basic process. The transferral of expectations is accelerated and condensed insofar as it enters into processes of education in the widest sense (e.g., the rearing of children in the extended family). These processes are, in comparison with their cultic counterpart, both more abstractly institutionalized *and* capable of being more strongly reconcretized. To avoid endangering or even dissolving the security of expectations in the plurality of individual, concrete contexts, techniques such as the use of the number ten, parallelism, and optimization of poetic form are used to make statements of law as stabilized, as impressive, and as irreducible as those that meet us in the Decalogue.⁹

The communication of security of expectations that occurs in law does not, however, accept arbitrary contents and does not consist in the exchange of the blind commitment of oneself: "I will always act as you do." Rather, the law differentiates three functional areas - namely, the legal, cultic, and mercy codes - and enters into important connections with the securing of

⁹ Compare also H. Cese's theory. "Der Dekalog als Ganzheit betrachtet," in *Vom Sinai zum Zion: Alttestamentliche Beiträge zur biblischen Theologie* (Munich: Kaiser Verlag, 1974), p. 63 ff.

expectations that occurs in the formation of history.

THE LAW IN EARLY PHASES OF THE BIBLICAL TRADITION:
A FUNCTIONAL CONNECTION OF SPECIFICATIONS THAT
CONCERN THE LEGAL, CULTIC, AND MERCY CODES

*The Specifications of the Law That Concern the Legal Code:
Typology of Conflicts and Security of Expectations*

The early collections of laws in the Old Testament essentially define the relationship between God and human persons through legal statutes. Those who have not given up hope of clearing up the obscure legal terminology in which the New Testament describes the Christ event, will note this state of affairs with interest.

First, to cast some light on the type of thought found in this legal formation, I will concentrate on the legal statutes found in what is presumably the oldest collection of law in the Old Testament, the so-called Book of the Covenant (Exod. 20:22-23:19). Most of the determinations in this legal text are specifications of, following Alt, the "casuistic law."¹⁰ They have, as is well known, the following structure: "If someone acts in such a way that so-and-so happens, then the performer of the act shall do or suffer the following." No doubt these conditionally formulated legal statutes emerged from the narration of a suit and its settlement.¹¹

One can imagine the following sequence. X had stolen a goat from Y. There was an uproar. Only after X had given Y a goat in return and a second goat for Y's trouble did the village calm down. Out of such stories, remembered with satisfaction by the entire community, casuistic legal statutes develop through a process of abstraction and objectification. Names, places, times, special circumstances, and given conditions are removed. The result is, for example, "Whoever steals a head of livestock shall give two in return as restitution."

10 Alt, p. 278 ff.; H. J. Boecker, *Recht und Gesetz im Alten Testament und im Alten Orient* (Neukirchen-Vluyn: Neukirchener Verlag, 1979), p. 166 ff.

11 Perhaps, more specifically, they emerged out of the report of a lawsuit; see also C. Locher, "Die Ehre einer Frau in Israel" (Diss., Philosophisch-Theologische Hochschule Sankt Georgen, Frankfurt am Main, 1984), with regard to Deut. 22:13-21.

This legal process of abstraction and objectification is extremely important. It is a strategy for the interruption of violence and violent retribution. Considered concretely and from an individual and subjective point of view, X - in his own opinion - very probably had good reasons for stealing the goat from Y. On the other hand, Y, in view of all the trouble caused him, may have thought more along the lines of five goats or a chopped-off hand as restitution. Here the legal formation intervenes, setting limits and establishing compensation.

The early legal formations of the Old Testament react to individual encroachments that endanger the security of expectations of others. The legal formation seeks to remove the conflict, to restore the state of affairs that existed before the conflict. Where this is not possible, it seeks to set limits to the conflict in a way that will provide for compensation. (This concern to keep conflict within bounds finds expression, e.g., in the oft misunderstood *lex talionis* [Exod. 21:23 ff.], "eye for eye, tooth for tooth": i.e., only one eye for one eye, only one tooth for one tooth, etc.)¹²

This regulation accomplishes still more, however. We thus come to the level of examination that is of primary interest to us. Inasmuch as concrete conflicts are comprehended under the law, their conclusion is foreseeable. We know how they will turn out. On the basis of the abstraction of the legal code, they can be treated as *past conflicts*. They become identified as something that has already been, whose solution is not only familiar, but as good as already completed. The casuistic legal statutes make possible the limiting for a conflict and its treatment as an affair that is past, in principle, taken care of. This is accomplished under the aspect of compensation, the restoration of a situation that has been changed through an individual encroachment to the detriment of another individual.

However, having the conflict in principle taken care of, securely expecting the solution, is only *one* aspect of security of expectations. This becomes clearly recognizable as soon as one imagines a radicalization of the movement of abstraction present in the formation of the law. Let us imagine a development that successively abstracts not only from persons, places, and so forth, but also from goats, bashed-in eyes, and all further imaginable particularities. One could imagine an apparently optimal pronouncement of justice reduced to one sentence that

12 Compare Boecker, pp. 152-53.

would provide for an obligation of compensation on the part of the party responsible in the event of damage. Yet such an abstraction would no longer be useful. It would efface the *typology* of legal cases, thus making the limiting of conflicts impossible and their solution unforeseeable. X might maintain that it was not a question of the goat that he stole, but rather of the nasty look that Y gave him. In view of this effrontery, magistrate Z could perhaps ask for the death penalty for X.

The concrete legal formation works against that possibility by virtue of the fact that it secures not only the *expectation of a general conflict solution* but also the *expectation of specific problems*, specific cases. The description by which a case is comprehended under the law stands very much under the pressure toward abstraction. The legal formation works against this pressure toward abstraction present within itself by continually reinserting cases in the actual contexts of experience and in the history formed from those contexts. The typology of conflicts description and specific solutions undergoes inspection in continually renewed orientation toward concrete experiences. Thus the pronouncement of justice is differentiated; justice is fostered. The orientation toward compensation is now applied to the typology of legal cases itself. One development is the reduction of compensations that were set comparatively too high, the development toward the *humanization of the legal code* (e.g., in the differentiation of murder and homicide).¹³ Another development is the raising of compensations that were set comparatively too low, the development toward the *functioning of the legal code as a deterrent* (in that, e.g., normal livestock theft is distinguished from livestock theft concealed by selling the animal.)¹⁴ These processes follow a logic that can be clearly reconstructed and that has previously received little attention. Yet what does God, what does religiosity have to do with this pattern of thought of the law?

The Specifications of the Law That Concern the Cultic Code:

The Constituting of History and the Meaning of Blessing

The most important large legal texts in the Old Testament are framed by cultic specifications.¹⁵ In the Book of the Covenant, these specifications concerning the cultic code

13 Compare Exod. 21:12:14.

14 Compare Exod. 21:37, 22:3.

15 Boecker, p. 124.

begin with the so-called prohibition of images (Exod. 20:22 ff.). This prohibition of images is not supposed to emphasize God's transcendence and hiddenness over idols made of gold and silver. Such has been the opinion of a religiosity that, through secularization and cultural pluralism, has fallen under pressure toward abstraction.

The goal of the prohibition of images is much more to protect the immanence and accessibility that *God* has chosen. God wills to enter into contact with human persons, and they shall enter into contact with God. Thus they shall erect places of worship, and thus God will establish a memorial to God's name at specific locations. Exodus 20:24 is of central importance: "You shall make me an altar of earth. ... In every place where I let my name be named I will come to you and bless you." From the command to Israel to build an altar out of *earth*, one has drawn the conclusion that here simple and modest cultic practices are to be opposed to Canaanite cultic luxury, and natural cultic forms to cultured ones.¹⁶ The supposition of a polemic of nature against culture, however, fashionable as it might be, is on the wrong path. Such a supposition is contradicted by the form of the encounter with God, bound as it is to the *reference to God's name* and to the *medium of remembrance*.

That is not to say that God encounters human persons in a region of mere thought, in a "pure" symbolism, in an ideal sphere. God's name meets human persons and its remembrance takes place at natural sites into which one enters physically. Only this double concentration (along with the timing of the cultic festivals, initially connected to the rhythm of harvest: cf. Exod. 23:14 ff.) establishes the conditions for the possibility of *history* and of *historical memory*.

To oversimplify, the process interweaves a level of abstraction - that of the naming of God's name - and a level of concretion - that of the place of worship. A conceptual and institutional level is thus attained on which conflicts can be overcome through the legal code: more exactly, through a communally cultivated legal code. The binding on spatially and temporally specific locations, on the one hand, and the concentration on the name of God and its remembrance, on the other, establish a field of tension. This tension excludes both the illusionary and the irrelevantly concrete. I mention only in passing that A. N. Whitehead has analyzed the constant expansion and restructuring of precisely this field of tension as the task of high religion.¹⁷

16 For example, see O. Eissfeld, *Einleitung in das Alte Testament*, 3d ed. (Tübingen: Mohr, 1064), p. 290.

17 A. N. Whitehead, *Religion in the Making* (New York: New American Library, 1960), esp. p. 31 ff., which

Systematically, it is exactly this tension in which the formation of history and the development of the legal code can and do result. Yet the cultic code does not just provide the boundary conditions for the culture of expectations. It also has to do with the securing of expectations. "In every place where I let my name be named I will come to you and bless you." We can now begin to cast some light on the phenomenon of "blessing," a phenomenon to which it is so striking difficult for our thought to find access. In the political and commercial language of our day, the blessing would be a measure that builds trust and promotes development. In the language of theology, the blessing is that process in which the good, the life promoting, is bestowed on the recipients by means of the word. That is by no means an illusionary affair. It forms not only individual and personal but also objective trust.¹⁸ In that the blessing is publicly given in worship, an objectification of life-promoting security of expectations results that is structurally similar to the communication of the legal community that we have already analyzed. We can further clarify this securing of expectations that occurs through God's blessing by examining more closely the statements of the law about God's explicit presence in the legal and mercy codes. We thus move closer to problems that are more familiar to us at present but that are also somewhat more demanding. We will be able, above all, to define more precisely the field of systematic tension that we have depicted only in rough outline with regard to concrete cases and abstract legal statutes and with regard to natural and symbolic concentrations in the cultic code.

God's Explicit Presence in the Legal Code:

The Phenomenon of the Outside Perspective

Contrary to the widespread persuasion of social scientists and legal historians, one cannot simply grasp the differentiation of religion and the legal code in a process that runs from unity to separation. On the one hand, the current religious consciousness will not be denied a part in forming an at least pre-judicial culture of expectations (and, to be sure, not only in questions of human rights!). On the other hand, the phenomenon in which the specifications concerning the legal code are differentiated from the law encounters us already in the Old

is still centered anthropologically.

¹⁸ This is recognized by K. Barth, *Ethik II*, ed. D. Braun, in *Gesamtausgabe*, vol. 2, *Akademische Werke*, 1928/29 (Zurich: Theologischer Verlag, 1978), p. 299, less clearly in *Kirchliche Dogmatik* (Munich: Christian Kaiser Verlag, 1932-67), 3, pt. 2:705-6.

Testament. Only a few of the early legal specifications make explicit reference to God; the later bodies of law in the Old Testament show a "differentiation of the legal code" in that they still thematize only boundary cases.¹⁹ Where, then, does God *explicitly* enter into a connection with the legal code, and where in it does God remain?

A problem cluster in the early legal texts, which is at first glance quite insignificant, provides important insight on this point. Exodus 22:7 ff. describes cases in which someone gives someone else "money or goods to hold in keeping." Then the entrusted goods are stolen from the one who was keeping them - or at least so he claims. No one can inspect the case. How shall one proceed judically? A clear legal statute that in *every* case required restitution from the one who was keeping the goods would be conceivable.²⁰ Such a statute would create a strong legal code with clear relations. The legal code would, however, endanger or destroy social virtues, namely, the readiness to hold something in trust for others. The alternative would be to completely renounce legal assistance for this case. This renunciation of legal regulation though, would break down the readiness to trust persons. The neighbour could bring himself into possession of the entrusted thing with the mere claim that "a thief, whom one saw, took your sheep, money, and so on away from me." If that is the case," everyone would think, "I can simply risk the theft in my own house."

In this situation, which reflects both the power of the legal code, bound up with undesirable consequences, and its powerlessness, the case is *brought before God by a public oath* (Exod. 22:8 ff.)²¹ The case thus becomes public and capable of being remembered. Social vigilance is awakened against the neighbor who has possibly broken trust. *Insecurity of expectations* is generated specifically with regard to this person. Yet the just neighbor, from whom an unknown thief has pilfered the entrusted goods, must also live at least temporarily in this sphere of mistrust. The alternative, though, would be a generally spreading mistrust. To prevent such mistrust, the just neighbor suffers vicariously, so to speak. She can, at least,

19 Note that, even in recent social-scientific investigations, countless remarks about the "archaic law" on the one hand and the "positivization of the law" on the other are in need of a revision in view of the Old Testament tradition. Compare, e.g., K. Eder, *Die Entstehung staatlich organisierter Gesellschaften* (Frankfurt am Main: Suhrkamp Verlag, 1980), p. 161 ff. On the connection between differentiation and positivization, cf. N. Luhmann, *Ausdifferenzierung des Rechts, Beiträge zur Rechtssoziologie und Rechtstheorie* (Frankfurt am Main: Suhrkamp Verlag, 1981), e.g., pp. 137-38.

20 N. Lohfink has pointed out to me that the Codex Hammurabi chooses this solution.

21 Compare F. Horn, *Gottes Recht, Gesammelte Studien zum Recht im Alten Testament*, ed. H.W. Wolff (Munich: Kaiser Verlag, 1961), p. 292 ff.; cf. Z.W. Falk, "Hebrew Legal Terms," *Journal of Semitic Studies* 5 (1960): 350 ff., with regard to the linguistically preserved consciousness of the strength of this solution.

know herself to be strengthened by the oath before God. God knows that she is just.

The second explicit thematization of God's presence in the legal sphere also serves to strengthen the individual person and his consciousness of right. Admittedly, the general public shall pronounce justice in the public sphere. However, one recognizes the dangers connected with this regulation (e.g. Exod. 23:11). One sees the danger that witnesses and judges might take their lead from the possibility of unjust majority or from the wishes of the richer and more powerful. Against the unjust or manipulated majority and public opinion, God strengthens the individual's consciousness of right. God announces that God stands on the side of those who are innocently oppressed, that *God* will *not* absolve the guilty and those hand down unjust sentences. That is, the pronouncement of a judgment does not become a pronouncement of justice merely by being public and by enjoying the support of the majority. Although the public - not the strongest, not the richest, not even a king²² - shall pronounce justice, God nevertheless strengthens the individual's consciousness of right against the public and fosters justice precisely in this tension. This explicit presence of God on behalf of the suffering righteous, the guiltless, the lowly, and the weak, which will confront us above all in the specifications of the law that concern the mercy code, is again today drawing particular theological interest, especially, of course in liberation and political theologies. It is a question of a phenomenon that is very informative for the understanding of religious thought and its cultural significance, and that, at the same time, is difficult to grasp with our conventional modes of thought.

God strengthens the just but suffering individual against the mistrustful and the unjust public. That does not mean that God strengthens the individual as such, the merely subjective and individual *feeling* of right, or even the individual who cuts herself off from the public sphere and tries just to cultivate her individuality and private identity. Rather, the individual who is strengthened by God's explicit presence wills to or shall participate in the life of the community, public life. This occurs on the level of shared, common, objectified memories and expectations. Precisely this participation does *not* succeed in the cases we are examining. This public does not provide this security of memories and expectations with regard to the individual on whom we have focused. It is, for example, mistrustful of her or unjust in her eyes. The public may even be unanimous in this injustice and false mistrust (for which, as the

22 Boecker (n. 10 above), p. 123.

lesser evil, the law even provides!). All may have conspired against the individual. In this situation God intervenes. Yet how does this happen - if it does not strengthen isolationism or elitism or the merely subjective feeling: "No, one understands me, but I am still in the right"?

So-called postmodern relativistic theories, particularly Whitehead's cosmology,²³ put us in a position to analyze and understand this phenomenon, which is also very important for unlocking the inner logic and truth to reality of the Christian faith. They allow us to comprehend God's perspective as described by the biblical tradition and to do so in the conflict between the private and public spheres.

As is well known, so-called postmodern theories treat reality as pluralistic: to be more precise, as polycontextual and multiperspectival. If one thinks with the help of these theories, one recognizes specifications of a more profound problematic in the collective mistrust and injustice that move God to stand on the side of the righteous sufferer. In question are problems that emerge with the objectification and communication of personal perspectives on the world. These are problems that, in more complicated processes of mediation, pose themselves in that field of systematic tension that we have already observed between the physically determined and concrete, on the one hand, and the abstractly developed objectification and communication, on the other. As much as systems of symbols can achieve, this objectification and communication of personal perspectives succeeds only selectively and reductively. We have grown accustomed to that fact. We thus say that no one sees with the eyes of another, that no one lives the life of another.

More problematic, though, than the always limited communication of *our* concrete perspectives on the environment and on the world is the communication of the perspectives of the environment and of the world on *us*. Our environment sees is in a *multiplicity* of

23 A. N. Whitehead, T. Parsons, and N. Luhmann offer the most important developments of these theories, but N. Goodmans (*Ways of Worldmaking* [Indianapolis: Hackett Publishing Co., 1978], H. Blumenberg (*Wirklichkeiten, in denen wir leben* [Ditzingen: Reclam Philipp, n.d.]), and R. Koselleck also work with this type of theory. For an introduction, see M. Welker, *Universalit*t Gottes und Relativit*t der Welt: Theologische Kosmologie im Dialog mit dem amerikanischen Prozeádenken nach Whitehead*, 2d ed. (Neukirchen-Vluyn: Neukirchener Verlag, 1985) esp. p. 35 ff. The characterization "postmodern," which was especially brought into currency by North American process theology, is helpful insofar as it points out the dissolution of simple ontological conceptions of the "unity of reality" and the dissolution of the individualistic and anthropocentric orientation in these theories. The characterization is problematic because it obscures relationships of this type of theory with theories of modernity such as Leibniz's philosophy or Schleiermacher's universal ethics (see M. Welker, "F. D. E. Schleiermacher: Universalisierung von Humanit*t," in *Grundprobleme der groáen Philosophen*, ed. J. Speck, Philosophie der Neuzeit 3 [G"ttingen: Vandenhoeck & Ruprecht, 1983], esp. p. 15 ff.). To avoid this effect, the characterization "relativistic theory" commends itself.

perspectives. Conventional theories disregard or underestimate this state of affairs. Such theories think of a so-called simple object of perception when they talk of "object" and "objectification." However, such an approach unfortunately does not grasp the objectifying perspectives of our environment on us. We (as concrete unity) are *pluralized* in being *objectified*. We can, at any rate, reconstruct in our concrete perspectives many of these objectifications: for example, by fitting ourselves into roles. Then we are - like it or not - at one with our environment. Security of memories and of expectations can rule. Yet these objectifications, and consensus,²⁴ do not exhaust us. We feel ourselves insufficiently comprehended in the objectifications, and above all we do not become fully objectified to ourselves. We cling - somewhat powerlessly - to the conviction that these perspectives on us still do not being our *truth* to expression. At this point, religion, in any case Christian religion, enters with its conviction that God takes this perspective of truth on us: that God knows us as we are in all adequate perspectives on us, including those that we cannot share, and that God brings these plural - and not only anthropological - perspectives on us to a unity that we do not attain in our concrete comprehension of the world. It is in this relation, not in primitive ordering of prior and posterior, or of superior and inferior, that the "creatureliness" is to be understood.

One can justifiably call this outside perspective of God on us transcendent if one at the same time insists that it is not a question of an empty, obscure, indeterminate Beyond. One can also understand why the conception of truth that the Christian religion developed always stood out as rather strange and numinous in a form of thought oriented on concretion and objectification. Moreover, one can understand why, at the same time, the conceptions of truth that operate *only* with certainty, objectivity, correspondence, coherence, and consensus also did not satisfy. They remain confined to the first two levels of experience.

The first of these is the level of the *personal perspective on the world*, a perspective fitted to individual concreteness. This perspective is accompanied by a dull, body-oriented consciousness of unity and constitutes the "ground" of subjective certainty. Although postmodern theories teach us to see that here our approach should be not merely anthropological but, rather, event relative, for the sake of simplicity I am selecting in this

24 See, e.g. the survey presentation of L.B. Puntel, *Wahrheitstheorien in der neuen Philosophie: Eine kritisch-systematische Darstellung* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1978); or the introduction in G. Skirbekk, *Wahrheitstheorien: Eine Auswahl aus den Diskussionen über Wahrheit im 20. Jahrhundert* (Frankfurt am Main: Suhrkamp Verlag, 1977), p. 8 ff.

context an anthropological system of reference.

The second level of experience to which extratheological conceptions of truth as a rule remain confined is the *level of mutual objectifications and of the formation of security of memories and expectations*. This level is of primary interest to us when we speak of law. However, we now see that the law as God's law, as explicitly thematizing God's presence, focuses on something more. It does not focus only on conflicts between the first and the second level: for example, the tension between individual consciousness of right and objectified, public injustice or the tension between the distrustful public and the righteous sufferer. The law that explicitly thematizes God's presence focuses on God's perspective as the third level. God knows the truth that is unattainable on the other two levels: the exhaustion of individual possibilities for concretion without renunciation of objectivity, or the objectification that is able to integrate the full range of possibilities of that which is concrete.

In the context that we have been treating so far, this means, first of all, that the righteous sufferer can know himself strengthened against the distrustful public. He can in certainty await being connected again to the general culture of memories and expectations: he can in certainty await the normalization of relations. For the person oppressed by the unjust public, the reality of God's perspective means that he does not need to retreat into a personal, private sense of justice. Rather, he can know himself challenged and strengthened by an objectifiable consciousness of right that the community is momentarily missing.

Yet how can we develop a still more determinate and pliable comprehension of God's taking sides in this way? The third and last group of specifications of the law points the way.

The Specifications of the Law that Concern the Mercy Code:

*The Formation of Complex and Rich Social Identity*²⁵

Like the legal code, this group of specifications also aims at compensation, at *reestablishment* of equalized life relations. Moreover, as in the cultic code and in boundary problems in the

25 In this context, I use only the sociopsychological concept of identity. For its development via S. Freud, W. James, G. H. Mead, and E. Erikson, see D. Henrich, "Identit*t - Begriffe, Probleme, Grenzen," in Identit*t, ed. O. Marquard and K. Stierle, Poetik und Hermeneutik 8 (Munich: Fink Verlag, 1979), p. 133 ff. Also see Henrich for philosophy's heightened demands for definiteness.

legal code, here as well the explicit presence of God is announced and promised. Unlike the legal code, this group of specifications focuses on a particular comportment: renunciation of rights or renunciation of the accretion of rights, of the expansion and solidifying of one's own legal position. It is a question of the behavior of the stronger person toward the weaker that leads to a solidifying of the legal position or even to a gain in rights of the weaker person: namely, the practice of mercy. In the mercy becomes thematic for the law, the Old Testament denies the widespread persuasion that "love for one's neighbor [is] instinctive, immediate, and not open to any discussion."²⁶ The law seeks to make mercy *routine*. It seeks to withdraw mercy from the merely arbitrary and accidental behavior, directed by the whims and passions of individuals; it seeks to withdraw mercy from the merely arbitrary and accidental behavior, directed by the whims and passions of individuals; it seeks to withdraw mercy from being bound to a particular situation. Mercy, too, shall become something that one can expect with security. Behavior vis-...-vis the acutely or chronically weaker person is brought under the pressure of expectations, as is familiar to us especially from liberation theologies.

Weaker persons are not in the process treated as passive or even as wards of society, recipients of aid and alms. Their active participation in the social, economic, and judicial processes of life is normatively presupposed and striven for. This participation is regarded at the same time as endangered and as in need of special protection. Here the law enters in: "You shall not exploit a stranger" (Exod. 23:9); "You shall not take advantage of widows and orphans" (Exod. 22:22). The specifications concerning the mercy code do not occur in the powerlessness of mere appeals. In the way that we have already observed, the so-called truth perspective of God comes to expression in them. In addition, they clearly show how this perspective of God is objectified and concretized in a way that determines human behavior. "You shall not take advantage of any widow or orphan. If you do take advantage of them, and they cry out to me, I will surely hear their cry of accusation. My wrath will be kindled, and I will kill you with the sword, so that your wives shall become widows and your children fatherless" (Exod. 22:22-24).

The law does not say merely: "God perceives the concrete situation of oppression and the lament and indictment resulting from it." Beyond that it says: "God holds life situations simultaneously present that you, in the concern over your own life and your posterity, at

26 Ch. Perelman, *Über die Gerechtigkeit* (München: Verlag C. H. Beck, 1967), p. 59.

present grasp either not at all or only vaguely. God brings, on the one hand, your current behavior vis-...-vis a weaker person, and, on the other hand, the future situations of your life that you can perceive only obscurely or not at all, into a context of compensation, even beyond the sphere of your natural life."

That which is being said here about the *future* in God's perspective can be shown at present with even greater persuasiveness with regard to the *past*. Here also a perspective is introduced that reaches beyond the concrete situation and the individual lifespan. I will illustrate and explain this process with regard to the famous "motive clause":²⁷ "You yourselves were strangers in the land of Egypt" - therefore you shall not take advantage of and oppress a stranger (Exod. 22:21, 23:9).

The attribution and identification "You were strangers in Egypt" is not self-evident. One can undermine it only too easily from the concrete perspective: "I myself was never in Egypt. Therefore the law of mercy, which is supposed to motivate me, does not convince me at all!" Amazingly, the mercy code draws its strength precisely from this tension.

First, Israel assumes this perspective on itself. It allows a history running from oppression to liberation to be attributed to it. Whatever individuals concretely and families and generations objectively have experienced and attributed to themselves as their history, all experiences and histories become centered on the attribution: "You were strangers in Egypt and are now addressed as those who have been liberated and led out. Your history bears the imprint of the transition from being strangers and oppressed to being at home and liberated."

A differentiated social identity with far-reaching consequences is thereby formed and accepted. Not only is a communal history established that is publicly known and familiar, on which people can base appeals to each other, of which people can remind each other, and which people can communally celebrate and take as an occasion for assemblies and reconciliation. The history thus established also conditions an identity that encompasses opposing situations and apparently irreconcilable perspectives. "You were strangers - now you are no longer strangers." Israel is thus trusted and required to hold copresent two conflicting

27 Compare B. Gemser, "The Importance of the Motive Clause in Old Testament Law," *Vetus Testamentum*, suppl. 1 (1953): 50 ff.; P.D. Hanson, "The Theological Significance of Contraction within the Book of the Covenant," in *Canon and Authority: Essays in Old Testament Religion and Theology*, ed. G. W. Coats and B. O. Long (Philadelphia: Fortress Press, 1977), pp. 117, 120 ff.

perspectives. "You can put yourselves in the shoes of the weak, and not just exteriorly and condescendingly. Rather, you *know* what it means to be a stranger. However, you do not thus become schizophrenic and disoriented, for you have gone through a process of liberation: you have left the oppression behind you; you can distinguish the development toward well-being and salvation from the development toward sorrow and disaster."

On the basis of this complex identity, the people and the individual are appealed to in view of the stranger living in Israel's midst. It is not said - unrealistically - "the stranger is like you." The statement is: "The stranger is as you ... were; the stranger is in the situation in which you *have been*. If you take advantage of and exploit the stranger, then you repeat, then you reproduce, the sufferings that have been overcome. You reverse the process of liberation that is imprinted on your individual and social life. You cannot, however, will this transition from salvation to sorrow, from freedom to slavery. In this transition not only the stranger would become foreign to you: your own history would become foreign to you as well, and your own sensitive and differentiated identity would be lost to you. You would lose not only your alter ego, the accepted remembrance of your own servitude; you would also lose your history, that which binds you to your fellow persons. If you ignore this history, you will very quickly fall into an illusory relation to reality. Your fellow persons will recognize themselves in the oppressed stranger and identify with her, but you they will isolate and proscribe.

The legal gains that you might attain by exploiting the stranger are incommensurable with the loss of that liberation experience and the complex social identity that rests upon it. If you take the risk of this loss, your identity will become without history, socially isolated, undifferentiated, insensitive, disintegrated, hardened. You will become foreign to yourself and to others in a disastrous way. By practicing mercy, however, you confirm and continue the process in which you became what you are: a free person."

THE MULTIPLE DISSOLUTION OF OBJECTIFIED SECURITY OF EXPECTATIONS: POWERLESSNESS OF AND POTENTIAL FOR MISUSE OF THE LAW

With regard to the motive clause in the specifications of the law that concern the mercy code, one can indeed clarify the formation of social identity through the assumption of that which

we have called "God's perspective." An identity that is conceived with opposing specifications and with a mediation having the character of process is capable of developing great complexity. Such an identity can attain very fine tuning between individually concrete and generally objective experiences. Yet as impressive as this formation of identity is, as impressive as its effect on the fulfillment of the law was, so is its capacity for achievement today limited.²⁸ We live in a time in which it is becoming apparent not only that the unity of history is a fiction,²⁹ but also that the formation of stable social identity by means of the experience of history is increasingly difficult and improbable.³⁰ This objection is on target. One must add only that the objection did not first appear in our pluralistic postmodernity but, in fact, in the biblical tradition. This tradition documents in a very informative way the collapse of the securing of expectations by means of law. From within *and* from without, individually *and* communally, the law's securing of expectations is dissolved; the capacity for misuse and the powerlessness of the law become apparent.

What is supposed to happen when violation of the law is socially acknowledged and assimilated, yet the *appearance* of order is still maintained, when the legal code is not

28 R. Bubner, *Geschichtsprozesse und Handlungsnormen: Untersuchungen zur praktischen Philosophie* (Frankfurt am Main: Suhrkamp Verlag, 1984), has recently tried to mediate between "norm and history" by developing a fluid generalized concept of maxims (esp. pp. 173 ff. and 223 ff.), in connection with which a concept of rationality of almost pneumatological dimensions is meant to avert relativism.

29 This is impressively shown by the career of the conception of "Universalgeschichte" and by the failure of other attempts to fuse "history" and conceptions of totality. Compare, e.g., W. Pannenberg in *Offenbarung als Geschichte*, ed. W. Pannenberg, *Kerygma und Dogma*, suppl. 1, (Göttingen, 1961); G. Ebeling, "Die Welt als Geschichte," in *Wort und Glaube*, 3d ed. (Tübingen: Mohr, 1967), 1:381 ff. The discussion between W. Pannenberg and R. Koselleck instructively documents the collage of monistic and monocentric conceptions of history: *Geschichte - Ereignis und Erzählung*, *Poetik und Hermeneutik*, 5, ed. R. Koselleck und W.-D. Stempel (Munich: Fink Verlag, 1973), pp. 21 ff., 307 ff., 478 ff., 560 ff. Compare Welker, *Universalität Gottes und Relativität der Welt*, p. 17. It is beyond question that the concept of "Universalgeschichte", if consciously introduced as a construct, as a fiction, could be quite meaningful (on the positive use of this concept, see D. Henrich in *Funktionen des Fiktiven*, *Poetik und Hermeneutik* 10 ed. D. Henrich and W. Iser [Munich: Fink Verlag, 1983], esp. pp. 9 ff., 511 ff.); e.g., to put scientific understanding of historical contexts of events under a pressure of coherence. The naive use of the concept, however, has become suspect today, not only politically, but also especially in the opposition of Third World theologies and feminist theology to the imperialistic self-presentation of the Euro-American contexts of events in the history of ideas, science, economy, and politics as "Universalgeschichte."

30 This dissolution of the simple concept of a totality of history is in full swing in the humanities. Compare R. Koselleck, *Vergangene Zukunft: Zur Semantik geschichtlicher Zeiten* (Frankfurt am Main: Suhrkamp Verlag, 1979), esp. the articles on p. 130 ff.; N. Luhmann, "Weltzeit und Systemgeschichte," in *Soziologische Aufklärung* 2, *Aufsätze zur Theorie der Gesellschaft* (Opladen: Westdeutscher Verlag, 1975) p. 103 ff.; for an exaggerated way concerning the consequences see H. Lübke, "Wieso es keine Theorie der Geschichte gibt," in *Theorie und Erzählung in der Geschichte*, *Theorie der Geschichte*, *Beiträge zur Historik* 3 (Munich: Deutscher Taschenbuch Verlag, 1979), pp. 65 ff., 79 ff.; but also from the perspective of an Old Testament scholar even before the development of the new theories, see H. Wildberger, "Jesajas Verständnis der Geschichte," *Vetus Testamentum*, suppl. 9 (1963), esp. the introduction, pp. 83-84; and the differentiation of perspectives on history in L. Gilkey, *Reaping the Whirlwind: A Christian Interpretation of History* (New York: Seabury Press, 1976), esp. p. 70 ff.

annulled but twisted? It is this situation to which the early prophetic writings react³¹ and that has many parallels in the preaching of Jesus. Or what shall one do when an occupying power establishes a more successful sociopolitical order? This not only detaches God's law politically, it also, through the tension-filled presence of two competing orders, dissolves every security of expectations. This is the situation to which Deuteronomy reacts with a problematic politicization of the law.³²

The danger and the misuse to which the law is exposed at the hands of the *individual* have been made even more manifest to us. By this I am thinking not so much of the danger, immediately apparent to us, of the subjective annulment of the security of expectations objectified by the law. I am thinking much more of the powerlessness of the law in the face of so-called works righteousness, whose problematic we can make much clearer on the basis of our investigations. The law must make much clearer on the basis of our investigations. The law must indeed be *kept*, to take up Paul's formulation, and it must be kept in its *entirety* in order to maintain the security of expectations. At the same time, however the concentration on works, and even priding oneself on specific works, destroys security of expectations. Works righteousness puts an end to expectation and suggests a fulfillment. Works righteousness displaces the law's processes of objectification by means of subjective concentrations.

The law's capacity for achievement enters into an absolutely precarious situation, however, in the face of the experience of individual death. Death seems to bring to an end not only security of expectations and participation in the objective securing of expectations. Death also seems to make of the entire enterprise of securing expectations an affair that is in principle empty and without consolation. Particularly in the Wisdom texts, broken and cynical attitudes emerge through which people sought to overcome this experience - attitudes that today are again very much alive.³³

In the face of this recognition of the openness to misuse and the powerlessness of the law, it may appear understandable that particular theological traditions identified law with its misuse

31 This can be shown with particular clarity in Amos.

32 Here Deuteronomy develops a contract-theoretical concept of covenant that is politically successful but highly problematic theologically. This concept is corrected within the Old Testament and replaced by a different concept of covenant. I analyze these and other dissolutions of the security of expectations of the law in pt. 1 of *Gottes Gesetz - Gottes Evangelium: Zur Neufassung reformatorischer Rechtfertigungslehre* (Neukirchen-Vluyn: Neukirchener Verlag, 1986).

33 See Wisdom Salomonis, chap. 2, and the sensationally successful book by P. Sloterdijk, *Kritik der zynischen Vernunft* (Frankfurt am Main: Suhrkamp Verlag, 1983), esp. p. 33 ff.

and degraded it in a sweepingly generalized fashion. At any rate, I cannot see that this approach or that it has given clear expression to the good news that that faith represents.

The gospel does not efface the structure and typology of theological thought centered on law. In this structure, rather, the gospel becomes clear and apparent in its truth to reality. The gospel unquestionably reacts to the experience of the law's powerlessness and openness to misuse: the experiences of individual and social sin, of self-righteousness, and of death. One can go so far as to say that the gospel answers the question about God's perspective and its objectification and concretion. It is this perspective that stands firm against these experiences of the powerlessness of the law. I think that one can explicate this answer in an understandable manner against the background of the structure and typology of theological thought centered on law.

SECURITY OF EXPECTATIONS AND COMMUNICATION OF FREEDOM: REFORMULATING THE THEOLOGY OF LAW AND GOSPEL

The strange process in the *center* of the gospel proclamation admits a realistic and reflective understanding with regard to the three levels of experience that we have named: the concrete perspective directed at the individual unit, the level of the objectification of experiences, and the level that we have termed the truth-perspective of God. The process in the center of the gospel proclamation does not thereby lose its strangeness, and it continues to prove itself time and again to be understandable only with difficulty. Nevertheless, it is brought onto the level of theological reflection. What is the matter in question?

It is a question of Christ's death and of the very strange process that Paul describes when he says that this death of Christ is supposed to imprint itself on us, that we are supposed to die with Christ. If we view this process on the level that has been opened systematically in terms of the theology of law, then we can understand the differentiated, liberating process of faith in the Crucified One. In the self-attribution of this death, our individual concreteness is brought to more complete and yet more abjective, reliably communicable knowledge. *Within* our natural individual perspective on the world, this is an impossible process, as we ourselves see. Beyond an empty self-reference, we cannot imagine an objectification of our complete

concreteness other than in its dissolution.³⁴ This death now meets us objectified and concretized when we gaze upon the Crucified, the identity who is present in a blatantly thinglike manner, the one who dies the death of a criminal, cut off from physical and social life. Here we experience objectively and concretely at the same time, God's outside perspective on us and our determinate transcendence. This transcendence, this experience of death, which can be firmly placed with regard to the Crucified, is, in spite of the attainment of this individual depth, in spite of the attainment of the region from which the relativization of the law proceed, no merely private affair. We properly consummate this experience in the celebration of the Sacrament. Indeed, this happens in such a way that *all* levels of experience - individual, physically present concreteness; objectified cooperative action; and the comprehensive perspective on redemption and new creation - are bound up in the celebration.

Faith brings to realization the situation of individual and transindividual experience of self in this death. This situation is the ground both of the experience and of the consummation of a richer individual and communal life. The imprint of the Crucified and Risen One on our identity in faith is by no means merely internalized. In my opinion, it belongs among the greatest mistakes of the Reformation to have described faith, because of a polemic against law, as a primarily interior and passive comportment.

In contrast, Paul, to whom the Reformers want to appeal, emphasizes throughout the objectivity and public character of faith: "Your faith in God has become known everywhere" (1 Thess. 1:8 ff.); "Your faith is proclaimed in all the world" (Rom. 1:8). Not simply a private relationship of the individual to God, but a communication of persons "before God", as Paul says, characterizes faith. That which is primarily communicated in this process is the *freedom* that is experienced in selfknowledge in Christ.

This process, too, is not evident to us because, although we are indeed conditioned to struggle our way to concrete, individual freedom and to optimize it, we comprehend objectified

34 The failure of the modern reflexive theory of self-consciousness and self-determination - which served as a basis for theologies such as Bultmann's and particularly Gogarten's - results from an inadequate apprehension of this problem. Compare D. Henrich, "Selbstbewusstsein: Kritische Einleitung in eine Theorie," in *Hermeneutik und Dialektik 1*, festschrift for Hans-Georg Gadamer, ed. R. Bubner, K. Cramer, and R. Wiehl (Tübingen: Mohr 1970), p. 274 ff.; D. Henrich, "Die Grundstruktur der modernen Philosophie," in *Subjektivität und Selbsterhaltung*, ed. H. Ebeling, *Beiträge zur Diagnose der Moderne* (Frankfurt am Main: Suhrkamp Verlag, 1976), esp. p. 114; and M. Welker, *Der Vorgang Autonomie, Philosophische Beiträge zur Einsicht in theologischer Rezeption und Kritik* (Neukirchen-Vluyn: Neukirchener Verlag, 1975), esp. p. 129 ff, and the closing section.

freedom only vaguely and with difficulty and do not at all understand how to communicate it. This becomes recognizable precisely where we come closest to communication of freedom: in showing mercy. This becomes recognizable as soon as we consider our difficulties in practicing mercy without dominating or shaming, without thinking and acting like condescending therapists. The difficulties in objectifying and communicating freedom become even more recognizable in the law to love one's enemy when we encounter the violent enemy who is stronger than we are. Who is already to the point of recognizing, in the one who strikes us on the right cheek, the neighbor in need of the communication of freedom?³⁵ Precisely this intercourse with the weak and the violently strong is at issue in faith.

We find a description of this communication of freedom - a description that is very important for the distinction between law and gospel - in Romans 14. The weak in faith - which normally include all of us - cannot live from the gospel alone, from the knowledge of the freedom won in Christ. They think that they need further regulations of their lives - in fact, ways of securing expectations. They think that they need the law, both for the conduct of their lives and for the worship of God. Now the communication of the freedom won in Christ does not consist in an abstract negation of the law, in an appeal to give up legalism. The communication of the freedom won in Christ consists in this: that without denying this freedom in Christ and by no means acting out of fear of one's neighbors,³⁶ one explicitly participates in their forms of life. Through the explicit participation in these forms of life the weaker in faith are taken seriously in their anxieties over security and order and are strengthened. At the same time, they discover that the participation in their forms of life occurs in the framework of both a more comprehensive experience of freedom and richer possibilities of life.

The bestowal of freedom for the purpose not of unsettling but of strengthening the neighbor takes place in love. Love in this bestowal of freedom in which the giver and the recipient of love are strengthened in equal measure and, at the same time, open new, richer possibilities of life to each other. It is in love that faith is effective. Admittedly, love has become particularly evident and impressive in person-to-person relationships: in the binding together and

35 Compare Matt. 5:38 ff.; on the political context, see H.D. Betz, *Studien zur Bergpredigt* (Tübingen: Mohr, 1985), p. 82.

36 Compare Galatians 2.

exchange of two spheres of experience and in their reciprocal solidification and expansion. Yet love is very much a force that transforms more complex social relationships as well. Against the background of the structure and typology of theological thought revealed by the theology of law, we will also be able to gain access to the possibility of the communication of faith in social, more strongly objectified contexts of expectation.

One of the theologically most exciting and important tasks from this vantage point would be to determine more precisely how this loving and liberating communication of faith is to be grasped with still greater differentiation in relation to that which we have termed the "truth perspective of God." We have already defined this perspective as that in which we are perceived not only concretely, not only objectively, but in our truth. We have also already reflected on the concretion and objectification of this perspective in Jesus Christ, on the process that we call "revelation." It would be important, however, to go beyond this point and to acquire means of thought and of language that would allow us to speak of the *unfolding* of this perspective. With that step we would gain access to the area of *pneumatology* - access for which Christian theology is still searching. A replacement for the expression "God's perspective," with which I am not yet satisfied, would also be conceivable. Yet in order not to forget that which has been attained on account of that which lies ahead, I would like in conclusion to consolidate some of the results of the reformulation of the doctrine of law and gospel.

Not only are we in a position to replace the caricature of law as "requirement of works" with conception of law that is exegetically better founded and at the same time more realistic and more plausible in contexts outside of theology. Beyond that, the strong conception of law as objectification of life-promoting security of expectations does not obscure the powerlessness of the law and its openness to misuse. To put the matter abstractly, neither is the law immune to the sinful misuse proceeding from the level of concretion, nor does the law reach the perspective of truth. These limitations of the law, of which the prophetic traditions are well aware, are faced by faith. Faith communicates the revealed freedom under the conditions of finitude and in the structures of law. By doing so it propagates truth under the conditions of finitude and insecurity. It thus works "justification" in the truth perspective of God. With regard to faith we are *justified*, that is, recognized as standing in a specific relation to God's truth.

No less important than these findings concerning content is the acquisition of a new structure and typology of theological thought. This typology, growing out of the reformulation of the doctrine of law and gospel, seems to me in many ways to be capable of achieving more than the currently dominant forms of theological thought. I regard these as forms that are currently dominant: *(a)* work with the old-European metaphysics, which sees the contribution of religion and theology in the propagation of a universal system of reference, whether this be used according to the model of a dynamic process ... la universal history or in a stratified manner (God as the "most perfect one" or as the "Center of meaning"); *(b)* theologies that work with schemata of dialogical personalism; *(c)* sociomoralistic movements that are centered on the mercy code of the law, especially the theologies of liberation.

The structure and typology of theological thought that emerge from the reformulation of the theology of law and gospel will be able, unlike work with the old-European metaphysics, to resolutely regard reality as intrinsically pluralistic or, more precisely, as polycontextually and multiperspectively coordinated. Unlike the dialogical forms, it will be able to develop more realistic means of laying hold of complex social phenomena.

Finally, with regard to the forms of thought of the sociomoralistic movements, their provenance in the theology of law will now not only admit of a more precise disclosure. They will also allow a more exact comprehension of the contexts of life in which faith became and becomes effective in a realistic way - contexts that are to be determined by both theology and the social sciences. Thus the reformulation of the doctrine of law and gospel could not only refer back to and illuminate the tradition, but it might also make possible a realistic theology appropriate to our day.