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God's Commandments and their Political Presence: Notes of a Tradition on the 'Ground' of Ethics

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Abstract

The paper describes the biblical understanding of God's commanded law in its indispensable political form, i.e. the law of God's people. This is distinct from a confinement of God's commandments to a moral code independent from that political context as it is present as the 'political worship' of God's people. This worship has to be seen as the ground for ethics. From here follow consequences for human laws and legislation concerning human life forms. That disposition of theological ethics has been elaborated in a particular form by the Lutheran-Reformed tradition especially in its concepts of God's twofold regiment and the estates.

Keywords

conditio humana, ethical judgment, ground of ethics, human law, Lutheran-Reformed Tradition of Ethics, political worship, ten commandments, tradition

Ethics in Traditions

I did wonder, when formulating my thoughts for this paper, on what is a very fundamental and in a sense eternal issue, whether readers might expect my contribution to offer more than comments from a viewpoint offered by a tradition, at least as such a tradition might draw attention to some new aspects of the topic. In any case, my contribution must refer to a tradition if it is not to get lost in some history or historical reconstruction, in some byway of a theory or dispositional stance, which are not situated in a context of living, and so which may be present to living actors through a tradition.

The tradition from which I take my orientation is the Lutheran-Reformed tradition, because this tradition has developed a rich ethics of 'law' and 'right', which is not only a central topic of ethics, but also one in which the most fundamental theological issues

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converge. On this account it is reasonable for talk about 'Western' traditions to be primarily concerned with a specific tradition in its particular logic. Taking this tradition-focused approach provides the opportunity for dialogue to develop between different traditions in which members of each tradition can consider how they might meet one another or how their traditions may converge and therefore serve, at least in some elements, as a common tradition.

Setting the matter up in these terms sets us firmly in the midst of political ethics if we understand tradition as the medium of living together, crystallised and explicitly articulated according to the needs and conditions of a sustainable coexistence. On this point Oliver O'Donovan has commented:

Communications are sustained by tradition, and tradition is a continuity of practices, learned, repeated, and developed. In specialist communities these practices revolve around skills and around the knowledge that supports skills.

But what kind of practice forms the tradition of a whole society, the matrix within which many specialist communities cohere within a given place? Supremely, the practice of recounting. History sustains the identity of societies, not only the history of the distant past, but that of the immediate past, too.¹

What tradition is capable of taking up this perspective to be 'the tradition of a whole society'? Will the answer to this question remain open, or is it possible to discover a tradition, perhaps to recall the 'Christian political tradition' and to find a contemporary approach to it? Such an approach would overcome the problem Hannah Arendt's diagnosed as that of a lost tradition, namely, that tradition of political thinking which has been the only one so far to serve as the tradition for a whole society in its political form.² This tradition has been 'usurped' by a Western history with terrible consequences. Therefore, as Hannah Arendt argues, 'human dignity needs a new guarantee which can be found only in a new political principle, in a new law'.³ We are well served to heed this reminder. Such an opening suggests an investigation of whether various traditions have also different concepts of tradition and practices necessary to maintain it.

When we look for the 'ground' of ethics, such an approach presupposes that 'ground' is understood in terms of a social reality that already exists, which is the constitutive medium of a way of life, in which we experience our human existence in its full meaning, its telos. This is to render ethics to the task of understanding and exploring this existing reality as it is communicated and determined by a tradition. 'Understanding'⁴ means to be

- 1 Oliver O'Donovan, *The Ways of Judgment: The Bampton Lectures, 2003* (Grand Rapids, MI: Eerdmans, 2005), pp. 69–70.
- 2 Hannah Arendt, 'Tradition and the Modern Age', in Arendt, *Between Past and Future: Eight Exercises in Political Thought* (New York: Penguin Books, 1977), pp. 17–40.
- 3 Hannah Arendt, *The Origins of Totalitarianism* (Orlando, FL: Harcourt, 1968), p. ix.
- 4 Hannah Arendt, 'Understanding and Politics', in H. Arendt, *Essays in Understanding 1930–1954* (ed. Jerome Kohn; New York: Harcourt, Brace & Co., 1994), pp. 307–327.

able to follow the rationale of a tradition, which we may also call its grammar⁵ insofar as a tradition is given in a language and like a language. This is true even more obviously for a theological tradition, which is a tradition of reading the word of God, living with it and in it. Understanding, furthermore, occurs within our (articulated) practices. Tradition, then, may be understood as the crystallised and intelligibly articulated forms of those practices. To follow its articulations means to follow its grammar, which is equivalent to its rationale, its logos. This is the logos within the word, as it is the logos within the logos.

Understanding includes the practice of judgment. 'Judgment' when rendered in Greek as 'krinein' (κρίνειν), means to 'distinguish', to discover 'distinctions', 'criteria', and to follow them, i.e. to come by understanding in a 'critical' way. We will see the sense in which this includes a political structure, 'tays of judgment' which theological ethics must disclose.⁶ This, in summary form, is the intellectual practice I have presupposed in undertaking the theological task before us—a practice of critical understanding, judging according to the distinctions that must be discovered within that word of God and which cut across in a critical manner other distinctions and judgments we have to this point taken for granted.

This approach of a critical hermeneutic belongs to those theological traditions that maintain that the paradigmatic practice of theology is to understand and explore the word of God as it becomes present to His people in their worship, and from there to all human beings through the testimony of the congregation. Theology is the study the 'grammar' of that word. To follow the grammar of that word also implies to give 'reasons' for it, i.e. to communicate it to everybody in particular articulations—as 1 Pet. 3:15 makes clear: 'But sanctify the Lord God in your hearts, and always be ready to give a defence (ἀπολογία) to everyone who asks you for a reason (λόγον) for the hope that is in you, with meekness and fear'.⁷ Various elements must be distinguished within a complex ethical task understood in this way, so that we may display the context of living as it is given with the word of God in its biblical tradition, and in so doing to get at the distinctions which foster critical understanding.

These considerations yield my primary questions for the topic at hand: What intellectual practice do we follow when we deal with a subject like 'Divine law/Divine command' and inquire into the 'ground' of ethics? From what perspective ought we to discuss the 'ground of ethics'? With what, precisely, is such inquiry concerned?

The concern indicated by that theme was present within theological traditions with their readings of the biblical tradition at those points where the context and nurturing ground of our human living was at stake. When such fundamental questions have arisen, the task of ethics has been to bring into view the essential environment within which—as apprehended by critical understanding—human beings may discover the grammar of their living. To talk about the 'ground' in this way, and with it corresponding practices,

5 See e.g. Hans G. Ulrich, 'On the Grammar of Lutheran Ethics', in K.L. Bloomquist (ed.), *Lutheran Ethics at the Intersections of God's One World* (Geneva: LWF, 2005), pp. 27–48. See also George A. Lindbeck, *The Nature of Doctrine: Religion and Theology in a Postliberal Age* (Philadelphia, PA: Westminster Press, 1984).

6 O'Donovan, *The Ways of Judgment*, p. xiii.

7 See again Oliver O'Donovan for the apologetic task in his *The Ways of Judgment*.

namely that of critical understanding, differs, of course, from other practices and approaches that might be possible, with the different opening questions they yield; for example the question of searching for a 'foundation' for ethics put perhaps in terms of a quest for some 'external', given ground, beyond the context that may have crystallised in a living tradition.

In relation to the Lutheran and Reformed traditions—in their congruence—we are of course already in a manifold dialogue with its further elaborations,⁸ especially that practice of critical understanding as we find it in the work of Karl Barth, Ernst Wolf, Joachim Iwand, Dietrich Bonhoeffer or George Lindbeck and many others within the English speaking world, who have helped to mark out the path of that tradition.

*Law for the People—Understanding the *conditio humana* in its Political Form*

One basic and central insight within the biblical tradition as it has been maintained by the Lutheran-Reformed tradition and recalled in exegetical work⁹ concerns the relation of God's 'law' to His 'people'. 'Law', as articulated in the commandments, was recognised as the law for God's *people*, the commandments being addressed to this *people*.

The terminology used here presupposes a particular relation of 'law' (Gesetz) and 'commandment' (Gebot) (as elaborated e.g. in Barth's *Ethics*¹⁰): God's 'law' becomes present to his people by his commandments. The commandments, the articulated, granted law, stand as the context of the togetherness of God and his people. These commandments signify the '*sphere of living*'¹¹ for God's people. The commandments are the medium of God's covenant¹² with his people as it is carried out in the story of God with his people in all its dimensions. This people testifies that the context God has granted in the covenant is actually the gifted context of living for all human beings, and so bears what we may call (understood in very specific terms) the *conditio humana*, i.e. the given condition to be and to remain human in the basic sense of its political form. Thus the universal *conditio humana* is embodied in a particular story; this story is entrusted to humans and *institutionalised* for humanity.

This is to use the term 'institution' within the grammar of the theological tradition I have already indicated. 'Institution' means the proactive establishment of a sphere of interaction and living. There has been some discussion of whether a distinction should be drawn between 'order', 'mandate' (Bonhoeffer) and the 'institution' (Wolf) that points to that specific 'ground' of living. I will use the term 'institution' to signify the explicitly marked place of living within God's governance and government insofar as this expresses God's promise to His people and is embedded within the story of God's interaction with

8 Wolfgang Lienemann, *Gerechtigkeit* (Göttingen: Vandenhoeck & Ruprecht, 1995), presents a decided ecumenical recount, also with regard to current developments.

9 See especially Gerhard von Rad, *Old Testament Theology* (New York: Harper, 1962–65). Von Rad's exegesis has to be seen throughout as a commentary to the Lutheran-Barthian tradition.

10 Karl Barth, *Ethics* (New York: Seabury Press, 1981).

11 Von Rad, *Old Testament Theology*, pp. 194–95.

12 See David Novak, *Covenantal Rights: A Study in Jewish Political Theory* (Princeton, NJ: Princeton University Press, 2000).

His people. This establishment of a context of living is given in that particular commanded and taught 'law', which is the Greek translation of 'Torah' (Ps. 19:8). The complex story of that linguistic interplay¹³ again may point to the understanding of 'law' as the reliable context of living and of living together articulated in God's commandments.

This context of living was (as Luther notes in his reading of Genesis) already established with Adam and Eve in the Garden of Eden. Commanded law is not established because of the fall. After the fall 'law' changes insofar as it becomes two-sided: there is now also a law from 'outside', not in the sense of a moral code arising from another agency, but there is rather a further, additionally given and required context of living: within the explicitly institutionalised political status of that living together with God, the '*politia*'. A 'state' in its various meanings is of course a quite specific realisation of that political status and has to be critically displayed on the basis of the grammar of that *politia*. On the other hand, there is another explicit institutionalised political existence of the people of God in a worshipping community, the 'ecclesia', also founded already in the Garden of Eden. This ecclesia is, according to that reading, the true *politia* as it is hoped for, as it is yet to come.¹⁴

We might also follow other theological elaborations of an approach to the disposition of the given 'law' as, for example, in Karl Barth's descriptions of three spheres or phases in that story—the Trinitarian dimensions of ethics¹⁵: the commanded law to God's creatures, to His people within His covenant, and to His children. In each of the three phases the commanded law is the medium of those relations which, because of this medium, are instituted as a context for political togetherness. 'Law' therefore does not have to be seen beyond or outside that political context as e.g. a 'moral' law or 'morally' grounded law. The commanded law is given within and with this specific political reality, mediated by its practices, procedures, relations and institutions.¹⁶ All laws must be articulated and pronounced, which allows explicit communication, appeal, interpretation, exploration, learning, teaching and judging.¹⁷ Such practices constitute in a reliable form the political context for those living together. All practices are grounded in and related to a given law. There is no place for a legislator beyond this institution.

This political appearance of the commanded law opposes a range of other groundings of ethics, not least, for example, the idea of a 'moral man' who should have internalised moral rules given by someone else and so has been rendered reliable and calculable (as Nietzsche has described him in his critique of Christian morality). The commanded law does not aim to produce reliable human beings in general, but is concerned with the loyalty, reliability and commitment of God to his people. The commanded law communicates

13 Frank Austermann, *Von der Tora zum Nomos. Untersuchungen zur Übersetzungsweise und Interpretation im Septuaginta-Psalter* (Göttingen: Vandenhoeck & Ruprecht, 2003).

14 See, for that issue in Luther's theology, Bernd Wannenwetsch, 'Luther's Moral Theology', in D.K. McKim (ed.), *The Cambridge Companion to Martin Luther* (Cambridge: Cambridge University Press, 2003), pp. 120–35.

15 See particularly Nigel Biggar, *The Hastening that Waits: Karl Barth's Ethics* (Oxford: Clarendon, 1995).

16 See also the distinction between 'law' and 'morality' as it appears in modern theories.

17 See Patrick Miller's article in this issue.

God's loyalty and keeps His people loyal to Him on the ground of His loyalty. The concern here is that they remain together, and the way in which they remain together, not only in the face of the many threats and uncertainties that face His people, but because this law determines the only sphere of living granted by God's good governance and government. These emphases are articulated in the *First Commandment*, which our tradition has recognised as the key to that understanding of the 'ground' theological ethics has to display.¹⁸

According to the Lutheran tradition, in its reading of the biblical tradition, law was seen as related to God. This relation was not understood in terms of God's authority legitimising human 'laws' by relating them to a 'divine law' from which these human laws had to be deduced, but as the articulated genuine medium and part of God's reliable government, governance and salvation for all human beings. Human laws have to be explored within this critical hermeneutic by following the grammar of this granted context of living. There is no obliging law or binding medium independent of God's government, governance and salvation. His people encounter God's will in the way it has already been determined to be. God's will is therefore not arbitrary; it is articulated in the commandments. This is also the point made in Luther's insistence on the 'bondage of human will'. God's people are embedded in God's will; they have to probe it and to follow it according to the given commandments; they are not in a position to encounter this will from outside that context and they are not in a position to make a decision for or against it. They already exist within a political worship and service, a realm in which God's will is already guiding and ruling. This 'political worship'¹⁹ then becomes explicitly experienced and practiced where people gather to listen to God's word. We may find this disposition described by Paul in Rom. 12:1–2:

I appeal to you therefore, brethren, by the mercies of God, to present your bodies as a living sacrifice, holy and acceptable to God, which is your spiritual worship. Do not be conformed to this world but be transformed by the renewal of your mind (νοῦς), that you may prove (δοκιμάζειν) what is the will of God, what is good and acceptable and perfect.

The main theological concern therefore, which arises from the experience of God's mercies, concerns how God's people are to *remain* in God's 'mercies', i.e. in His good government, governance and salvation, how they remain in that way God's people. To so remain is not given with (or even by) a 'church' as a political entity, but has to be practised continuously in the congregation of those who participate in that 'political worship' which is listening to God's word and gathering in the community of their present Lord, and so experiencing, suffering God's governance, government and salvation.

Along with that worship they will experience the 'transformation' of their life form (μεταμορφωσθε) through the renewal of their minds. The *ecclesia* in its political worship is ordered toward this transformation, just as the practices of the *politia* aim to provide what is needed for the human condition in its political form.

18 See Martin Luther, *Treatise on Good Works* (1520).

19 See for this topic: Bernd Wannenwetsch, *Political Worship: Ethics for Christian Citizens* (Oxford: Oxford University Press, 2004).

Following Paul's theological elaboration of this issue, and according to Reformation theology, the ground of that togetherness with God in this political worship was taken to be God's 'justice'. God's justice was seen as attested in God's loyalty and commitment to his people.²⁰ To participate in that justice means to become justified, that is, brought back into God's justice, brought back into the sphere of God's commitment. Justification, then, implies the 'transformation' of people's 'life-form' on the basis of or within the 'renewal' of the minds, i.e. the 'intellectus', the way of understanding. Experience within this political worship is the *new 'ground'* for 'probing' God's will. The transformation of the 'life-form' by justification means to become freed from any selfishness and therefore freed for a political existence, freed to be a *citizen*. This freeing is mediated by that renewal of the 'mind' which means (in this reading of the tradition) to be freed for the awareness of the needs of the other—as Luther writes in his 'Freedom of a Christian'. To become transformed by justification appears in that 'trust', in that 'faith' in God's work, which is the political form of God's people. In this sense 'faith' becomes the focus in this ethical-political tradition.

In his Large Catechism, Luther explains the first commandment of the Decalogue in its insistence on the exclusive trust of God's people in His governance and government. The First Commandment demarcates the only sphere of living which is upheld by the government of the God who has called his people to live with him. This is the promise of God's law.²¹ Martin Luther puts it this way in his Large Catechism:

You can easily understand the nature and scope of this [first] commandment. It requires that man's whole heart and confidence be placed in God alone, and in no one else. To have God, you see, does not mean to lay hands upon him, or put him into a purse, or shut him up in a chest. We lay hold of him when our heart embraces him and clings to him. To cling to him with all our heart is nothing else than to entrust ourselves to him completely.²²

...

Although much that is good comes to us from men, we receive it all from God through his command and ordinance.²³

To trust in God's governance and government is the only right worship; it is a genuine political worship. This is in opposition to any attempt to hold the 'world' together by one's own power. This would lead into imperialism. The First Commandment, which includes all other commandments, refuses any 'false worship' that suggests another ground of living and living together, that would occupy people with obligations based on other grounds. 'Heart' does not mean 'inner feelings' etc. 'Heart' signifies the 'inner man', as Luther calls

20 See von Rad, *Old Testament Theology*, pp. 370–72.

21 See also Martin Luther, *Treatise on Good Works* (1520).

22 Martin Luther, *The Large Catechism* (1529), in T.G. Tappert (ed.), *The Book of Concord: The Confessions of the Evangelical Lutheran Church* (Philadelphia, PA: Fortress Press, 2000), nn. 13–14.

23 Martin Luther, *The Large Catechism* (1529), n. 26.

it; the 'inner man' signifies human existence insofar as it is completely entrusted to God. This entrusting is a political practice within political worship (Rom. 12:1).

The basic concern here is with this political worship, and within it the practice of the *paracletic* sermon (παράκλησις) that recalls God's work. In this worship the 'Freedom of a Christian' is rooted and situated. God's will is articulated in God's word and situated in this worship, and this includes liberation from all laws that arise outside of that worship rather than within the grammar of God's word, and which are therefore not critically understood within the grammar of His word.

Because God's governance and government provide the only sphere of living as it is articulated in the First Commandment, the commanded law has to be seen in its relation to general habits, rules and customs of living—the 'ethos'—also articulated in the human laws of a political community. These laws in the political community do not have to be 'founded' on some additional foundation, perhaps on a *conditio humana moralis*. Laws have to be *found* by the critical hermeneutic of the *conditio humana* in its genuine political form as it is preserved in the commanded law and attested by God's people.

Political ἔθος—*Political* ἡθος. The context of living may be genuinely signified with the Greek notion of ἔθος. This might even have been an illuminating translation of 'torah'. As far the terminology is concerned, there is a significant distinction between two meanings of 'ethos', both being equivalent to 'torah'. On the one side is that political ἔθος, which binds everyone within the political community. This ἔθος is about the political form of the *conditio humana*. In distinction to this ἔθος, we have on the other side that worship of God's people, their context of living: this may be conceived with the Greek concept ἡθος. ἡθος signifies the context to which people belong, in which they are at home. It signifies the unfolded life form as it is granted and continually reshaped in that sphere of living determined by the commandments. There is therefore no need to be 'at home' within the political community.

Ethics has to display both, the ἔθος and the ἡθος.²⁴ This terminology to some extent parallels the distinction between 'moralisch' and 'ethisch' in German. Likewise, the distinction between ἔθος and ἡθος to some extent also parallels the distinction between 'law' (Gesetz) and 'commandment' (Gebot). Law, then, signifies what binds people together with, of course, the government and the procedures of legislation, along with what is mediated by practices of understanding. Commandment binds in the first instance the people who participate in that political worship as their life-form, a life-form that also entails a political contour.

God's Twofold Kingdom

These descriptions place us in the midst of the theological recognition of God's 'two kingdoms'²⁵ and of the 'estates'²⁶ as Luther described them. The two kingdoms (and the estates) signify God's government, governance and salvation in its differentiated

24 See Brian Brock, *Singing the Ethos of God: On the Place of Scripture in Christian Ethics* (Grand Rapids, MI: Eerdmans, 2007).

25 See, for an explication, Wannenwetsch, 'Luther's Moral Theology'.

26 See, for that element, Brian Brock, 'Why the Estates?', *Studies in Christian Ethics* 20.1 (2007), pp. 179–202.

coherence, i.e. God's justice as it becomes present in the world, for all human beings. Here God's rule appears within the story of Jesus Christ as His government addressed to all human beings. This grammar becomes freshly apparent with the story of Jesus Christ. All human beings will be brought back into God's justice. This is how God rules the 'inner man' (as Luther has called this side of the *conditio humana*). The 'inner man' signifies the *conditio humana* as it is embedded in God's justice and as it is realised when God's people participate in God's justifying work.

The concern and promise concerns all human beings; it is concerned with the 'world' in its loss of God's good government to serve other powers. Here we need to name the form of government that constitutes the 'world' within and for God's government and justice. This 'world' is (according to the Lutheran grammar) not a 'secularised' world in distinction to still religiously dominated areas and institutions. This 'world' is not a secularised world which God has left on its own; it is rather the preservation and constitution of a 'world' in its particular God-related 'worldliness',²⁷ which is not in danger of surrender to any other powers, nor any religious powers. This God-related worldliness must therefore be 'institutionalised'; to be in this respect equivalent (not analogous) to God's people and its political worship, because only then is it prepared to receive its witness and to remain within God's kingdom.

The central concern of this theological tradition is for the loss, the inability of the 'world's' appointment by God to provide a context of living for human beings according to the *political* shape of the *conditio humana*. This central concern pertains to what humans can bear, what can host and preserve their provision, and who can preserve that provision. What or who can in this realm preserve the *conditio humana* according to God's will? This question cannot be answered by an affirmation of a 'human nature' or a 'political animal', or to any other asserted 'reality'. Such affirmations of a supposed reality cannot provide the 'ground' for political living together. The 'ground' is rather explicitly established with that political worship and—according to it—with the 'institution' of the *politia* in its coexistence with the *ecclesia* in its political worship. God's law, therefore, is not a 'divine law' to which human beings may appeal, but is embodied in these institutions and articulated in the commanded law for his people. They attest it to the world, which is prepared to receive this witness because of these institutions. The content of this communication is the *conditio humana* in its political form, which is a life of trust in God's good governance and government.

The concern is how human beings *remain* within the given 'ground' of their living. Corresponding to this concern there is on the one hand the *paraclesis* of God's people (Rom. 12:1) and the continuing listening of God's people to that word. It has to be declared and pronounced to God's people. This pronouncement is different to any simple affirmation of what is 'good' in which people are tempted to trust. In turn, this word is attested by God's people to the world, which is prepared to receive it because of these institutions, which have their rationale. This institutionalised rationale must be recognised by everyone, not at least stimulated by the witness of God's people, and also not least within the medium of a critical (apologetic) hermeneutic, which has to be seen as a political practice as well.

27 See for this concept Dietrich Bonhoeffer.

Human Law

Here is the point where ‘*human law*’ comes (according to our tradition) into play. This has been one main direction in which the ethical task has been elaborated. Here ethics is concerned with probing God’s judgment and government as it is institutionally present in the *politia*, and therefore with specific representations of the grammar of God’s government for any political community.

Political worship in its equivalence to the *politia* preserves the essence of what any human law is about; it preserves its *telos*, keeping it explicitly present to judgment and legislation. It is concerned with keeping human beings within God’s good governance, government and salvation. It is concerned with that political reality represented by the institutions according to God’s government. It is therefore concerned with the political setting of all human life (its *ἔθoς*). Human law crystallises in specific *content*, which becomes apparent as particular distinctions are deployed to circumscribe the contours that given actors perceive of the *conditio humana politica*.

Human Law—Bodily Life and the Common Good

The decisive critical question in relation to human lawmaking, then, is, how do specific laws provide and protect this *conditio humana politica*, that is, living according to the First Commandment? What we discover is that the concern here is with the ‘outer man’ (as Martin Luther called it), that is, human beings in their *bodily* constitution, which must be provided with goods which only God can grant—as the First Commandment affirms. No one should be prevented from receiving the goods granted by God, nor should anyone prevent his neighbour from receiving them. Bodily life, the ‘outer man’, is that status in which human beings are politically and socially present.²⁸

A man is abundantly and sufficiently justified by faith inwardly, in his spirit, and so has all that he needs, except insofar as this faith and these riches must grow from day to day even to the future life; yet he remains in this mortal life on earth. In this life he must control his own body and have dealings with men. Here the works begin.²⁹

A man does not live for himself alone in his mortal body to work for it alone, but he lives also for all men on earth; rather, he lives only for others and not for himself. To this end he brings his body into subjection that he may the more sincerely and freely serve others.³⁰

Good works are oriented by the needs of my neighbour in his bodily life. Good works are done on the ground of trust in God’s governance and government, and so within the

28 See Martin Luther, *Freedom of a Christian* (1520). See also Dietrich Bonhoeffer, *Creation and Fall: A Theological Exposition of Genesis 1–3* (Minneapolis, MN: Augsburg Fortress, 1998), p. 79.

29 Martin Luther, ‘The Freedom of a Christian’ (1520), in J.J. Pelikan, H.C. Oswald and H.T. Lehmann (eds.), *Luther’s Works*, vol. 31: *Career of the Reformer I* (Philadelphia, PA: Fortress Press, 1999), p. 358.

30 Luther, ‘The Freedom of a Christian’, p. 364.

fulfilling of the First Commandment, that is, within the awareness of God's abundance granted to all human beings. Such good works correspond to human laws and vice versa (see Rom. 13). Human law provides for human bodily life within these parameters. From here arises also the task for Christian citizens to contradict political trajectories that do not comply with its duty. The status of bodily life within God's governance and government corresponds to and coexists with the status of justification, as the *politia* coexists with the *ecclesia* in its political worship. My neighbour must not lose his status, that is, in his existence he must not be dependent on me, on my willingness or moral attention, but should be the recipient of good works according to the needs of his bodily life. Such good works constitute 'the right of the neighbour'. His bodily life must not be deprived of this context of rights as they are articulated in laws for any citizen. Appealing to human law means to stand up for these rights of the neighbour in his status as a citizen.³¹ This constitutes the grammar of legislation, and so a critical hermeneutic of any given law. Correspondingly, 'the right of the neighbour',³² according to the Lutheran tradition, was taken to be the focus of a political-social ethics devoted to exposing this political reality.

'Natural Law'

This, then, is the explicit performance of the 'natural law'.³³ The quest for a universal meaning or rationale of the commandments as it has ruled the development of Christian ethics as universally valid,³⁴ and which has been carried out within the language of 'natural law', has found a particular solution in our tradition. We may say that our tradition has substituted this political performance for the sake of the other as it is borne by the 'institutions'³⁵ (or 'estates') for the universal quest pursued under the heading of 'natural law'. I also understand this to differ from the concept of 'orders of creation' found at this point in other Lutheran ethics.³⁶ 'Institutions' signify a reality equivalent to the commandments. This version of the natural law is integrated with the theology of the Word of God and connects it genuinely with the Lutheran tradition.³⁷ Within this account, the 'state' is characterised (by Karl Barth) as 'the order, sanctified by the

31 Hannah Arendt, 'The Perplexities of the Rights of Man', in *The Origins of Totalitarianism* (1951) (New York: Harcourt, 1968), pp. 290–302.

32 Erik Wolf, *Recht des Nächsten. ein rechtstheologischer Entwurf* (2 vols.; Frankfurt am Main: Klostermann, 1958).

33 See, for an enlightening discussion with respect to Karl Barth's *Ethics*, Nigel Biggar, 'Karl Barth and Germain Grisez on the Human Good: An Ecumenical Rapprochement', in N. Biggar and R. Black (eds.), *The Revival of Natural Law* (Aldershot: Ashgate, 2001), pp. 164–83.

34 The history of this development describes Markus N.A. Bockmuehl, *Jewish Law in Gentile Churches: Halakhah and the Beginning of Christian Public Ethics* (Grand Rapids, MI: Baker Academic, 2003), see the conclusion p. 173.

35 This is Ernst Wolf's concept.

36 See Dietrich Bonhoeffer's critique in his *Ethics*.

37 See, for further discussions, David Novak, 'Karl Barth on Divine Command: A Jewish Response', in D. Novak, *Talking with Christians: Musings of a Jewish Theologian* (Grand Rapids, MI: Eerdmans, 2005), pp. 127–45.

actual presence of the Word and Spirit of God, in which, by the grace of God, the rules are set up and upheld for common life'.³⁸

The very content of the natural law—essentially concerned with bodily life—is present in its binding nature in practices following the rationale of these institutions. The 'right of the neighbour' has to be continuously awakened by God's commanded law and witnessed by explicit works. In this sense we may talk about the politics of the 'good works, which God prepared beforehand that we should walk in them' (Eph. 2:10). Within these good works the Christian citizen cooperates with God as the Christian's heart is governed by God ('created in Christ Jesus for good works', Eph. 2:10).

Within that kind of a political performance mediated by good works, we may theologologically conceive the 'common good'³⁹ recalling Romans 13. The 'common good', then, is given with the *conditio humana*, as it is present in that bodily life in its political shape. The concern for the common good finds its corresponding practice in a critical hermeneutic of laws, following distinctions which belong to the grammar of God's commanded law and signify the *conditio humana*. This grammar remains present in the world through the witness of God's people.

Critical Hermeneutic—Related to the conditio humana

This practice of a critical hermeneutic is always challenged in many areas of legislation and judgment, at the present time not least, and crucially, within the area called 'bio-ethics' or 'medical ethics'. The critical questions here are: How do human beings remain God's people within the techniques of medical care, how do they remain God's people within their own techniques of life-management, how do they remain the people who God provides with all the goods they receive according to His will (Rom. 12:2)? These concerns have been treated in other familiar veins of ethical discussion: issues of social justice and welfare, and not least the area of labour legislation. How do people remain safe from exploitation, how do people get what their work yields not least because God's cooperates with it to make it fruitful (Ps. 127)?

From here we may understand anew what 'justice' means within the field of juridical judgment and legislation and how this human justice does have its ground in that appointment for the right of the neighbour as it characterises the Lutheran tradition. We must again emphasise that this appointment to the right of my neighbour is not located or rooted just anywhere, but in that 'political worship', in which people experience 'justice' by 'justification' and become freed of any work for their own sakes and 'interests'. They have experienced that divine justice and the practices that accord with it. Here we find the living 'ground' of human laws and justice. This includes the development of a welfare state which is concerned to establish social justice,⁴⁰ but the establishment of which

38 Barth, *Ethics*, pp. 518–19. See, for further discussion, also Stanley Hauerwas, *With the Grain of the Universe: The Church's Witness and Natural Theology* (Grand Rapids, MI: Baker, 2001), pp. 141–47.

39 See, for that issue, O'Donovan, *The Ways of Judgment*.

40 Philip Manow, *Religion und Sozialstaat. Die konfessionellen Grundlagen europäischer Wohlfahrtsstaatsregime* (Frankfurt am Main: Campus-Verlag, 2008), describes the development in Europe.

does not render explicit attestation and engagement for the right of the neighbour superfluous. On the contrary, the welfare state has continuously to regenerate and correct its grammar on that ground. What is decisive is how laws preventing social injustice correspond to good works and coexist necessarily with good works, which not only compensate that injustice but also keep the grammar, the ethical meaning of the welfare state, alive.⁴¹ We may say that the *ἔθος* of social justice is always induced by the *ἥθος* of a political worship. This issue again is related to the reading of the First Commandment and human bodily life in its political dimension.

Other Concerns and Practices: Legalism—Antinomianism

A search for concerns that might guide reflections on ‘Divine law/Divine command’ might have directed us immediately to a widely debated analysis of modernity as it is related to Reformation theology and has also crystallised around the concern for the decline of the tradition of political ethics⁴² and the various phenomena of the governance of human beings in its fluid relation to political government. In his *Genealogy of Morality*, Nietzsche levied strong criticisms against the governance of human beings in their conscience and bodily conditions through the medium of moral rules representing the powerful will and a will for powerful governance. Therefore there is—according to Nietzsche—a need for a genealogical critical enlightenment of this latent development.

This insight remains acute, if as a subtext, in its influential treatments in Michel Foucault’s work. This is worth mentioning here because his work assumes an interpretation of the Reformation. He finds within the Reformation movement a decisive step into a critique of moral or pastoral governance. In his essay, ‘What is Critique?’,⁴³ he describes the demand for a new kind of ‘enlightenment’, beyond the ‘enlightenment’ of critical practices as they have materialised in knowledge and its powers. This new enlightenment must uncover the network of elements, elements of critique that include elements of knowledge and power, that generate a hidden network capturing human life in constitutive aspects. His motto is: ‘I don’t want to be ruled that way’—that is, by such a form of governance. How is it, though, that a new kind of government or governance could become apparent as a replacement—by what practice, beyond the simple destructive description? In any case, the Reformation and its traditions are not properly understood as confined to the critique of pastoral governance by the Church. It originates from its discovery of the political worship in which God’s justice was recognised and then critically attested. This cannot end up in a new ‘governing’ *habitus*, such as a new Christian morality, perhaps a different kind of liberalism or antinomianism. Paradoxically, it is precisely such reinstatements of new governing habits that are discussed as ‘bio-politics’, ‘health-politics’, ‘gender-politics’ etc. Such discourses induce new ways of governance-politics and a corresponding set of legislative

41 See, for this topic, Stefan Heuser, *Instrumente des Guten* (Erlangen: Habilitationsschrift, 2009).

42 Arendt, ‘Tradition and the Modern Age’.

43 Michel Foucault, ‘What is Critique?’, in J. Schmidt (ed.), *What is Enlightenment?: Eighteenth-Century Answers and Twentieth-Century Questions* (Berkeley, CA: University of California Press, 1996), pp. 382–98.

procedures which are connected more or less directly with the given configurations of power that exist and which serve their efficiency.

This is only to schematically indicate that there are further concerns and intellectual practices dominating public discussions and procedures of legislation which may be included in our critical reflections. At any rate, we must critically discuss the concerns that rule the given public agenda and how these may at least be changed in this way, so that public discussion will be open for a different practice of 'understanding' and judging. This critique may well not be possible at a general level but (in its actual occurrence) in connection with that focus on the political rationale of bodily life, as it is theologically reflected upon.

Acute Conflicts and its Agenda

One main area of conflict occurs where legislation or governmental activity affects what is called 'forms of life' (German: 'Lebensformen'), which means beyond a specific philosophical or theological understanding the ways of living, i.e. family life, 'reproduction' (as it is called), education, health care, relations of generations, 'expression of religion'. According to this general view (whose origin itself demands discussion) almost every area within the conduct of our human life may be touched or even governed by governmental activities and legislation.

This is *de facto* the scene where our subject 'Divine law/Divine command' will become acute, as many would argue—of course in various articulations and explanations (e.g. with regard of its origin). There are numerous examples of conflicts, and it is in such a historical context that the topic 'Divine law/Divine command—human law' comes onto the public agenda, and also onto the agendas of the churches. Significantly, however, the public debate is confined within recurrent patterns and distinctions that transform the issue into seemingly evident and politically acceptable alternatives like 'religiously bound habits' against a 'liberal pluralistic society' which should respect religious habits while allowing only religiously neutral legislative activities.

This complex issue cannot be discussed here, but I bring it up in order to see how it is related to our theme, how the question of the *conditio humana* in its political contour is present within it. We must note from the outset that, in fact, the publicly articulated concern in this discussion—we have to underline this—is not any concern with the 'human condition'. The *conditio humana* does not appear on this agenda, except when wrapped into other topics like the question of 'values' as the fundamental context of understanding and political action. There are several elements on the agenda which may appear controversial for various reasons, but which in any case affect the distinctions through which the substance of the *conditio humana* is set out, along with its political rationale. Yet these distinctions—in our public discussions—receive no critical attention. The ideology of neutral legislation is banned from touching 'life-forms', e.g. forms of human 'reproduction', as it is technically called. There is no articulated concern that just these life-forms and their elements—family life, health practices, 'reproduction'—may affect our 'human condition', our common good, as it appears in our political institutions and practices.

Life-forms and its Political Rationale

These two terms, 'life-forms' and the 'common good', seem to be separable. Legislation obviously refuses to be seen to be responsible for that political condition, the political existence of human beings.

One example, presented by Jürgen Habermas in his speech on 'The future of human nature',⁴⁴ (which has drawn considerable attention in the German discussion), significantly illustrates what may be at stake here and what kind of intellectual practice corresponds to different types of concerns. His concern is with the loss of a common sense of the *conditio humana* as mediated by rational reflection, which has to understand the political contours of the *conditio humana*. Such rational reflection must be open for any possible political insight, not least to 'religious' insights, which may be essential for understanding the political *conditio humana*. Habermas's general admonition is:

Only if the secular side, too, remains sensitive to the force of articulation inherent in religious languages will the search for reasons that aim at universal acceptability not lead to an unfair exclusion of religions from the public sphere, nor sever secular society from important resources of meaning. In any event, the boundaries between secular and religious reasons are fluid.⁴⁵

Habermas argues against the idea of cloning human beings, because as a reproductive technique it would destroy the apparent fact of an equal origin of human beings, the indispensable—transcendental—presupposition for their equal political status. Otherwise there would be different categories of human beings, due to their different origin. One category would be limited to human beings dependent on somebody else's anonymous decision. The equality of human beings is a rationale given within the fundamental distinction between God and man, and only this latter distinction, which establishes a counterpart to human beings, preserves the duty to maintain human beings as of only one kind. Here we find on the level of a rational insight into a given distinction, an insight into the grammar of a 'religious' language, a common good in terms of the *conditio humana politica*, which has to be seen in terms of its 'ground'.

The ground for ethical understanding is given with a language. In this language is preserved an insight into what is essential for the *conditio humana*. It serves as the transcendental presupposition of the equality of human beings. Of course there is the question then of why the equality of human being is bound to the empirical fact of that equal way of origin for all human beings. Here we see in what sense our human bodily life in its determined contours bears the *conditio humana*.

This example (and there are many more and even more urgent ones) suggests that the reason we must listen to articulated traditions is because they preserve a grammar that is fundamental for the political and for its rationale. An intelligible rationale as the fundament of articulated traditions must be presupposed, and which therefore offers this rationale to be understood even if it does not originate in a *priori* rational construction. It is given and entrusted to that people who live the creaturely life of people appointed by God. In this sense we are talking about a life-form in terms of the political life-form

44 Jürgen Habermas, *The Future of Human Nature* (Cambridge: Polity, 2003).

45 Habermas, *The Future of Human Nature*, p. 109.

of this people. There is no way of getting valuable insights, languages, and so forth, by appealing perhaps to mental habits or a naturally given sensitiveness (conscience), because the very content of that rationale is bound to the life-form of that people. This people bears that rationale and has to attest it. This is not a theological defence of 'human nature' simply in terms of its givenness by God. Rather it is the discovery and attestation of the political existence that appears in a specific worship. It is the attestation of that sphere of living circumscribed by God's commanded law. This praxis and its ἥθος preserve the ἔθος, the needed morality and its rationale for the political sphere.

On the 'Ground' of Ethics

The context for living that ethics has to display is articulated in God's commandments. This is not a higher 'context of legitimisation'; it is rather a different context of discovery, in fact the only context of discovery of that which determines and defines our human existence and what God's people are called to attest, to explore in their living and to communicate by their critical understanding.

The elaboration of the topic of 'justification' within Luther's work and within the mainline Reformation and its further tradition orbits around this political existence. This was also the focus of the rediscovery of the Reformation in the twentieth century. Karl Barth has articulated it in his essay on 'Church and State' (German: 'Rechtfertigung und Recht').⁴⁶ 'Justification' happens when people find themselves transformed within God's justice, that is, by God's practice of justice and judgment. This is the focus of a political existence, which is not ruled or governed by any other 'power'. Within this grammar there is no 'divine law' positioned anywhere, but only the 'Law' given within God's government, justice and judgment.

Ruled by the Spirit—'Law of the Spirit'

It is in this way that we must—according to this tradition—read Paul's reflections on law in the direction of a rediscovery of the political existence of human beings, when he writes paracletically: 'But if you are led by the Spirit, you are not under the law' (Gal. 5:18). Luther's translation emphasises the political meaning when he writes: 'If you are *ruled*, governed by the Spirit'. This is not at all—as Bernd Wannenwetsch notes in his insightful description⁴⁷—a way of 'spiritualising' the political existence, because 'spirit' signifies God's whole political activity and work as it is addressed and communicated to his people. And again there is no opposition between 'law' and 'spirit' here, but an explication of the 'law of the spirit' (Rom. 8:2).

Therefore the 'fruit' of that 'being ruled by the spirit' consists in those habits or 'virtues' which characterise human existence in its political form: 'But the fruit of the Spirit is love, joy, peace, longsuffering, kindness, goodness, faithfulness' (Gal. 5:22). These 'virtues', as they have been called, are the form within which the people of God live together, related to other people. Love, joy, peace etc. are not about a moral status distinct or separated from the political status. It is significant that this status receives its contour, its shape, through a 'law'. The 'law of the Spirit' does not at all lead into an antinomian attitude; it is, quite the contrary, the ground for a political existence determined to live

46 Karl Barth, *Church and State* (London: Student Christian Movement Press, 1939).

47 Bernd Wannenwetsch, 'Ruled by the Spirit', *Studies in Christian Ethics* 20.1 (2007), pp. 257–72.

within the rights of the neighbour. Any 'spiritualising' interpretation leads right back into new demands for norms and laws which aim to control that 'spirit'. Here Luther fought on several frontlines, against both legalism and antinomianism.

This perspective gives us fresh ears for Jesus in the 'Sermon on the Mount':

You have heard that it was said to the men of old, 'You shall not kill; and whoever kills shall be liable to judgment'. But I say to you that every one who is angry with his brother shall be liable to judgment; whoever insults his brother shall be liable to the council, and whoever says, 'You fool!' shall be liable to the hell of fire. So if you are offering your gift at the altar, and there remember that your brother has something against you, leave your gift there before the altar and go; first be reconciled to your brother, and then come and offer your gift (Matt. 5:21–24).

The grammar of the commandment 'You shall not kill' reaches deeply into political existence, which is threatened by any practice or attitude that is unaware of the neighbour in his status within God's governance and government. To call the neighbour a 'fool' is to deprive him of his *conditio humana*, not because he has lost respect and acknowledgment, but because these actions towards the other threaten the political form of their togetherness, i.e. practices of coexistence within God's justice and judgment. This coexistence has to be not only accepted (perhaps as the force of law), but it has to be maintained explicitly by good works, in order to protect the neighbour in his *conditio humana*. Martin Luther indicates that explicit practice in his interpretation of this commandment in his Small Catechism:

"You shall not kill." What does this mean? Answer: We should fear and love God, and so we should not endanger our neighbour's life, nor cause him any harm, but help and befriend him in every necessity of life.' 'We should fear and love God'—which is repeated as the context for all commandments—indicates that all actions are embedded in God's governance and government, according to the First Commandment. This practice towards the neighbour bears the political form of citizenship in its relation to the common good. Legislation within the sphere of that commandment, then, has to prevent any destruction of that practice.

This example may illustrate the hermeneutic of God's law which has its grammar articulated in the First Commandment. Its central interest is that human beings do not disregard God's granted context of living, the gospel within the commanded law, and that they help the neighbour to remain in it. This granted context of living entails the abundance of God's governance and government for all human beings as it is confirmed and enacted in His work of justification through Jesus Christ. The summary of this grammar we find in Jesus' message: 'Do not suppose that I have come to abolish the Law and the prophets, I did not come to abolish, but to complete.' 'Complete' translates the Greek 'πληρῶσαι', and this points to the abundance (πλήρωμα) of God's granted law. This primary institution bears any human government and legislation. From this starting point we must engage in a political ethics through a critical hermeneutic, which follows substantial criteria given with the *conditio humana* granted and realised in God's justifying work. This is the ground of ethics according to a tradition that reminds us of the theological grammar of critical practice.