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## LUTHER, LAW, AND SOCIAL COVENANTS

### Cooperative Self-Obligation in the Reconstruction of Lutheran Social Ethics

Stewart W. Herman

#### ABSTRACT

The author argues that Luther's two-kingdoms doctrine rests upon a limited conception of law: "criminal" law, to use the terminology of British legal philosopher H. L. A. Hart. In contrast, "contract" law is the potent means through which networks of political, economic, and social relations have been built up since Luther's day. Using the 1523 Leisnig experiment in social governance as an example, the author suggests that Lutheran ethicists need to pay more attention to "cooperative self-obligation" as the basic device through which social covenants are established and sustained. The essay concludes with four emphases that Lutheran ethicists might bring to such a rethinking of law as an ethical concept.

KEY WORDS: *Luther, two kingdoms, Leisnig, covenant, law, social ethics*

IN RECENT DECADES, THE ANCIENT BIBLICAL SYMBOL OF COVENANT has commanded growing attention among Christian ethicists. It powerfully conveys God's will that human creatures are to be bound together by promises and promise keeping across the broad spectrum of social relations—in sexual relations, in families, in politics, in the professions, and, indeed, in whatever relations are fulfilled by mutual fidelity and justice. Yet despite the attention that covenant has received in North American theological ethics generally, we Lutherans have not adopted this symbol as an overarching metaphor for social relations. This is surprising, because Lutherans are heir to a historical experience of social covenanting—the 1523 Leisnig experiment—that is every bit as significant as, say, John Winthrop's account of the fledgling Plymouth colony. Though suggestive of the importance the notion of covenant might play in Lutheran social thought, this episode in early Reformation history

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also reveals a lacuna in Martin Luther's social thought that remains in Lutheran ethics to this day, one that needs to be filled if we Lutherans are to develop a powerful and theologically unified vision of social relations.

In 1523, the village and parish of Leisnig in Saxony broke away from the monastery that for centuries had governed its ecclesiastical life. The villagers proposed to take control of their worship—and of the buildings and the income stream derived from the extensive landholdings of the monastery. To this end, they established and sustained for a few years what might be best termed a covenant with each other. Almost one hundred years before the Pilgrim and Puritan compacts, the villagers devised an "Ordinance for a Common Chest" in which they bound themselves to create a community governed by God's Word. They pledged to hear this Word weekly, to call their own pastors, to maintain the discipline of divine commandments among themselves, to assign the considerable revenues from ecclesiastical properties to a common chest and redistribute this income to the ill, the orphans, and other needy persons, and they agreed to tax themselves further to support the functions of the parish (*Luther's Works* [hereafter *LW*] 45:176–94).

Interestingly enough, their experiment did not fit at all neatly into the famous dualistic scheme of social governance that Luther articulated in the same year. In "Temporal Authority," Luther offered conscientious Christians two modes of social governance: the kingdom of the world, ruled by the "sword" of civil authorities for restraining wickedness, and the kingdom of God, ruled by Jesus, where believers, chastened by the condemnation of their sin by God's law, would simply endure the evils visited upon them (*LW* 45:89–92). The villagers did not incline toward the worldly kingdom by asking to be ruled by a central administration; they did not seek to maintain social order primarily through the coercive power of the state. As Luther himself noted in his preface to their Ordinance (*LW* 45:169, 173), the Leisnig experiment leaned more toward the Kingdom of God, in that the villagers sought to institutionalize a love incarnate in communal sharing and in generosity toward the vulnerable. Yet theirs was no exercise in the non-resistant love of Christ's Kingdom that Luther commended in "Temporal Authority." Their aim was to ensure the prudential as well as loving use of monastic wealth, so as to preserve their social order.

Luther apparently failed to notice the poor fit between his dualistic theory and the Leisnig experiment in self-governance. He gave the villagers' initiative his unstinting support, for he hoped that it might become the model for equitably redistributing the wealth and ecclesiastical privileges of the monasteries (*LW* 45:170–72). Indeed, Leisnig-like compacts for the orderly transfer of ecclesiastical privileges and prop-

erty were established in several cities in a remarkable movement of spontaneous social regeneration, as Carter Lindberg has shown.<sup>1</sup> Yet this covenantal vision never worked its way into Luther's social ethics. The basic prescription that informs Luther's thinking is what he asserted variously to princes, Anabaptists, and rebellious peasants during the early 1520s: that the law is a device for containing wickedness (*LW* 45:83–104, 258, 264). Lutheran praxis ever since has seen law primarily as a device of constraint, rather than a resource for empowerment, for building social covenants. Despite the best efforts of Lutheran ethicists to present the law as a creative and positive force in social relations (for a recent example, see Benne 1995, 82–85), there is no spirit of Leisnig in Lutheran praxis.

Why not? Kyle Pasewark has argued tellingly that Luther never let the egalitarian implications of his sacramental theory seep into his political theory (Pasewark 1997; 1993, 107–30, 221–28). Indeed, returning to Luther's eucharistic vision appears indispensable to reconstructing Lutheran social ethics; however, I am not going to pursue that here. In this essay I want to contribute to this reconstruction by developing a parallel "sociological" argument. In essence, Luther never embraced the idea of covenant as a model for social organization because he never gave much attention to the process by which mutual pledges become powerful bonds among social partners. I term this process "cooperative self-obligation," and I contend that it is central to building and sustaining covenantal relations. This device is essentially simple and, I would argue, ubiquitous, but it is hard to grasp within Luther's framework because it mixes and muddies the sharp distinction he drew between the two kingdoms of social governance. In the first part of this essay, I will argue that Luther was not likely to develop the idea of covenant as a normative metaphor for social governance because his thinking was constrained by an underdeveloped notion of law, which left him blind to the actual processes by which social relations are constructed and sustained. Second, I will sketch the significance of cooperative self-obligation as a device for constructing modern economic and political arrangements. Third, I will suggest that within Luther's thought there are useful resources for interpreting the contemporary social order in

<sup>1</sup> Lindberg 1993, chap. 3. The Leisnig experiment itself was not fully implemented for half a dozen years, due to a squabble between congregation and town council over taxes and income (*LW* 45: 166–67; Lindberg 1993, 127; Bornkamm 1983, 125–26). The dispute was resolved by a visitation committee deputized by the Elector Frederick. Despite this salutary outcome, it is more than a little ironic that Luther encouraged both covenantal initiatives by congregations and centralized control of those initiatives by civil authorities. This latent contradiction echoes the tension between law as an administrative device for constraint and law as an empowering device.

covenantal terms, even though Luther never integrated them into a compelling vision of a social covenant

## 1 Revising Luther's Concept of Law

Luther's social writings are laced with deep pessimism about the capacity of social actors to engage in unselfish action (see *LW* 45:91–92, for example), so it is tempting to blame his lack of covenantal thinking upon his image of human beings as curved back upon themselves in selfishness. The principal obstacle, however, lies elsewhere—in his incomplete conception of the law that prevails in the secular realm as a means of social governance. His conception of law allows no room for understanding how the selfishness he deprecates might be turned to good social use and even transformed.

The incompleteness in Luther's conception of law was signaled to me by a distinction drawn by British legal philosopher H. L. A. Hart. According to Hart, secular law is of two kinds, either constraining or constructive. What he calls "criminal" law operates as an "order backed by threat" (Hart 1961, 18–25). He writes, "The concept of general orders backed by threats given by one generally obeyed . . . plainly approximates closer to a penal statute enacted by the legislature of a modern state than to any other variety of law" (Hart 1961, 24). Criminal law defines socially intolerable behavior and is used to deter such behavior by threatening the deviating individual with punishment. This understanding of secular law surely encompasses the first and second uses of the law distinguished by Luther: law is a coercive power through which God contains the chaotic forces of selfish striving and crushes the useless search by confused consciences for a righteousness that can be conferred only through Christ. A third, Calvinist, use of the law sometimes has been ascribed to Luther: the law as tutor or guide for the faithful. This third use certainly expresses the standards to which the Leisnig villagers proposed to hold themselves accountable, but it does not capture the process of cooperative self-obligation by which the covenant became powerful among the villagers.

### 1.1 *Cooperative self-obligation*

Here the second kind of law described by Hart is of help. "Contract" law consists of rules that are essentially constructive in that they confer power upon individuals (Hart 1961, 27). They make possible some behavior that would not be possible in the absence of the permission and support provided by such a body of law. He writes:

Rules conferring private powers must, if they are to be understood, be looked at from the point of view of those who exercise them. They appear then as an additional element introduced by the law into social life over and above that of coercive control. This is so because possession of these legal powers makes of the private citizen, who, if there were no such rules, would be a mere duty-bearer, a private legislator. He is made competent to determine the course of the law within the sphere of his contracts, trusts, wills, and other structures of rights and duties which he is enabled to build. Why should rules which are used in this special way, and confer this huge and distinctive amenity, not be recognized as distinct from rules which impose duties, the incidence of which is indeed in part determined by the exercise of such powers? Such power-conferring rules are thought of, spoken of, and used in social life differently from rules which impose duties, and they are valued for different reasons. What other tests for difference in character could there be [Hart 1961, 40–41]?

Of course, contract law resembles criminal law in that it involves the use of coercion. Typically we think of contracts as devices for enforcing our wishes. Contracts provide potent leverage for bringing the full weight of legal authority down upon those who have violated agreements with us. For example, I might demand that the car dealership make good on the contractual warranty attached to my car. However, what Hart refers to is a prior power. Contract law enables me to establish a relationship with the dealer that empowers me to buy that car in the first place. How? Contract law permits me to obligate myself, to take on a monthly payment schedule, in order to induce the car dealer to part with that shiny new Taurus. Contract law confers power by allowing me to bind myself to do what others want, as a means of inducing them to bind themselves to do what I want (Hart 1961, 42–43, 192–93). Though the relations it fosters are of a strictly delimited kind, contract law is a potent means for building social relations because it is built around the device of cooperative self-obligation. It liberates us to cooperate with others by establishing a legal framework authorizing us to deploy the one power we always have at our disposal: the power to bind ourselves to future performances as a means of securing what we want from others. Cooperative self-obligation is a strategy for eliciting commitment by making commitments.

The device of cooperative self-obligation is crucial both to contract law and to the idea of social covenant. Covenantal theorists recommend that individuals and communities bind themselves to manifest particular values and virtues—peaceableness, justice, recognition of human worth, need-centered love, fidelity, and so forth—not simply because these values and virtues are faithful to biblical templates but also

because such commitments might be answered and reinforced by corresponding commitments by others in a reciprocal relationship that serves to create and sustain a covenantal social order. Social covenants are constructed and maintained by the gestures, often risky and bold, undertaken by some individuals or groups in order to draw others into relations of mutual commitment. These gestures include, but are not limited to, the agape that Reinhold Niebuhr held to be necessary for regenerating the social order (Niebuhr 1943, 68–76, 95–97). Joseph Allen names this process “entrustment,” arguing that covenantal relationships in marriage, the church, and the political community all involve a dialectic of parties entrusting themselves to others in order to elicit and sustain mutual commitments (Allen 1984, 32–37, 135–37, 260–62, 289–90).

### 1.2 *Leisnig and the limits of Luther's theory*

The writings about social order that Luther published at the time of the Leisnig experiment do exhibit a few hints of cooperative self-obligation. He counseled princes to stick to their proper work of secular governance, the aim of which was to promote the well-being of their subjects (*LW* 45:109–26). Presumably, he understood that such commitment would secure for them the willing obedience of their subjects—in marked contrast to the fealty forfeited, through rapacious and stupid behavior, by those lords against whom the peasants rebelled (*LW* 46:45–85). More than a decade later, in his 1539 lectures on Genesis, Luther explicitly commended cooperative self-obligation as a device for creating covenantal relationships. The occasion was provided by an astute initiative that Abraham took, as narrated in Genesis 21:27–32. Abraham had established a standard pact of mutual non-aggression with the powerful king Abimelech, but he wanted to draw Abimelech into a tighter covenant. Instead of presuming upon the existing agreement, he made a further gift, cleverly signaling that he wanted to go beyond custom in establishing his trustworthiness. Luther wrote:

Covenants and pacts are not works towards God—works that He needs. No, they have to do with temporal and human activities, in which the saints also participate. . . . If gifts are given for the purpose of removing suspicions, hatred, and discord, and in order to gain goodwill and peace, they are properly counted among good works [even if such gifts technically violate the law] [*LW* 4:84, 85]

Despite this later insight, Luther in the early 1520s apparently saw little power in cooperative self-obligation as a device for constructing social relations. At a theological level, of course, he saw with unmatched

clarity how relations between God and Christian believers are founded upon God's self-obligation: God's gracious initiative in Jesus Christ attracts the regenerate faithful into a righteous relation, while human initiatives add nothing. Nevertheless, at the level of social ethics, his dualistic scheme of social governance inadvertently cut the ground out from under a social covenant.

On the one hand, his conception of the outer kingdom of secular governance assumed that law operates through constraint, rather than by serving as a resource that individuals might use to forge social relationships of mutual commitment, as at Leisnig. Luther assumed that temporal authorities were to issue commands and define roles, and that individuals were to obey. On the other hand, his conception of the inner kingdom of spiritual governance made no reference to the device of cooperative self-obligation. To be sure, in “Temporal Authority” Luther heartily recommended that Christians obligate themselves. Christians were to serve their neighbors, even to the point of self-sacrificial forbearance—a teaching Luther intensified in his “Sermon on Good Works” a decade later (*LW* 45:94–104; 21:105–18, especially 108, 111). Presumably Luther measured the value of such service at least in part by its usefulness to the neighbor, but he did not commend using commitment to elicit commitment, in the way that covenantal relations are built up. He did not explain why, from the perspective of the community, such self-obligation would be good for the social order. The fact that Christians were to serve their neighbors carried no positive implications for the way in which they were to be governed by worldly authority. More problematic, he regarded the oppression and humiliation visited upon Christians as Christians to be good for their spiritual development.<sup>2</sup> To the extent that the inner kingdom functioned to produce good Christians in abstraction from the state of the social order ruled by law in its first use, Luther was commending a kind of self-obligation that would be personally expressive rather than socially instrumental.

To be sure, there are exceptions to this dualistic thinking, as when Luther recommended that Christians accept worldly loss on prudential

<sup>2</sup> Examples can be found in his 1520 “Treatise on Good Works” (*LW* 44: 77–78), as well as in his “Sermon on Good Works” a decade later (*LW* 21: 7–53 passim, especially 45). For a more detailed analysis of the worldly obedience and suffering Luther commended, see Pasewark 1993, 119–30. Pasewark helpfully argues that Luther construes political power as an “external” and negative force (embodying the “criminal” construal of law [1993, 126–27]) because he failed to invest his political theory with the more positive conception of power generated by his sacramental theory. Indeed, the Leisnig experiment may have had Luther's blessing because it was a congregational reform. As such, it may felicitously have engaged his sacramental understanding of social relations, rather than his political theory, which was oriented to the exercise of imperial and princely power.

grounds (LW 21:24–25) Such exceptions hardly fill the lacuna in Luther's thinking: the self-sacrificial love of Christians bears little, if any, intrinsic connection to the processes of social governance For example, in his 1530–32 commentary on Jesus' injunction to love one's enemies (Matthew 5:43–48), Luther offered only the jarring dichotomy between the good-hearted love that we as persons are to offer our enemies and the official work of judging, rebuking, and punishing evildoers (LW 21:122–24). Luther made no room for the idea that in the economic and political realms individuals might engage in self-obligating behavior as a means of drawing others into relations of mutual trust

A telling contrast is provided by the Leisnig agreement While the ordinance kindled Luther's hope for congregational reform, it simply did not fit his dichotomy of expressive self-obligation and coercive outer governance The villagers committed themselves to the particular provisions of their covenant not simply as deontological requirements for good individual character, but as a means of fostering right ecclesiastical, economic, and social relations within the community This instrumental bent is most evident in the offices and procedures that they devised for overseeing receipts and disbursements from their "common chest." The ordinance sets down conditions clearly intended to limit the use of power in service of Christian love to channels that the villagers would regard as legitimate In effect, the villagers bound themselves to a program of strict financial self-discipline and cautious almsgiving in order to present themselves as trustworthy stewards to each other and in order to preserve the confidence of the community that the properties and incomes were being administered properly In contrast, Luther recommended in his 1524 "Trade and Usury" that Christians handle property by letting themselves be robbed, giving to the needy, and lending without expecting return—in preference to buying and selling (LW 45:256–57, amplified in 273–310). In Leisnig, Christian love was put in service of communal peace and well-being, not personal self-immolation The ordinance implies, by its provisions, that the value of this love was to be judged by the orderly and exacting administration of communal wealth that it yielded As such, it had more in common with the covenants articulated by John Winthrop and the Puritans than with the social theory of Luther The Puritans understood covenants to be commitments that individuals and groups undertake for the instrumental purpose of "mutual confirmation," as Robin Lovin puts it, in responsible, morally autonomous behavior (Lovin 1980, 4–6, 11–12)

### 1.3 *Reasons for Luther's narrow view of law*

It is not difficult to discern reasons why Luther might have failed to see the potential of contract law and, more generally, cooperative self-

obligation as devices from God's right as well as left hand for creating social order First, Luther was hostile to the culture of commerce which provided such a powerful impetus to the development of contract law In "Trade and Usury," he fulminated at length against the corruption of merchants—and, by implication, against the impotence of contract law to contain their ingenious greed (LW 45:261–73). In his 1539 commentary on Genesis, Luther used Abraham's honest gift to Abimelech as another occasion for denouncing the egregious failure of contracts as devices of cooperative self-obligation "This artlessness of the ancients in making agreements is very delightful. It reminds us how much the morals of our unfeeling age have deteriorated—our age, in which no confidence in compacts, no written agreements, and no seals are adequate. All agreements are eluded by deceit and confused by violence" (LW 4:85).

Second, Luther also may have had theological reservations about the contractual idea of nailing down the future by means of present commitments At several points, he denounced the practice of *Zinskauf*, a form of contract that landowners used to secure income from their land while immunizing themselves against the risks undertaken by the renters who actually worked the soil (LW 45:236). Luther saw this device as an illegitimate means to evade not only usury laws but the contingency to which a sovereign God continually subjects creation (LW 45:299–305, especially 303). Indeed, the reason Luther endorsed non-resistant and self-sacrificial modes of property transfer (such as being robbed, giving money away, or lending without interest) is precisely that they did not "presum[e] upon the future" (LW 45:257)

Third, Luther's experience with monastic life may have rendered him suspicious of contractual thinking In his lengthy 1521 tract "On Monastic Vows," Luther attacked monks for obligating themselves (as a means of securing God's favor) with vows God did not want, while avoiding the vows God did want (LW 44:281–82, 291–94). Luther was keenly aware, perhaps because of his experience as an Augustinian canon, of how monks took on ostensibly heavy burdens in order to bind laypeople as well as God to recognize their righteousness (LW 44:262–68; see also 21:130–48) Perhaps the idea of cooperative self-obligation was so tarnished by such abuse that Luther could not commend it as a means for neighbors to knit bonds of mutual trust with each other Luther firmly commended the use of practical reason to adjudicate worldly affairs, but he did not see the meekness and forbearance enjoined by Matthew's Jesus as a resource for practical reason to use in constructing social relations.

Fourth, Luther may have regarded the theological idea of covenant itself as tarnished by the tenacity with which the Jews of his day clung to the covenant Abraham had entered into with God three millennia

earlier. In his 1539 lectures on Genesis, Luther attacked this Jewish claim, asserting that the "old" covenant was terminated with the destruction of the Temple and was superseded by baptism into the church (LW 3:104, 111, 115, 162-63; 4:25-27). In contrast, the federal tradition in Reformed theology asserted a continuity, if not identity, between the covenanting attested to in Genesis and the contemporary covenants of political community. Charles McCoy and Wayne Baker accent this theme in their recent history of federal theology: they present Heinrich Bullinger as the "fountainhead" of covenantal thought in the political realm because he affirmed that God's original covenant remains the normative foundation of contemporary political arrangements (McCoy and Baker 1991, 11-14, 101-38). In short, by rejecting the continuing reality of God's original covenant, Luther effectively cut himself off from the rich metaphor of social relations that has operated so powerfully in Western political development.

## 2. The Proliferating Use of Cooperative Self-Obligation

After Luther's time, the device of cooperative self-obligation became the primary engine of capitalist economic development. Even if the abuses Luther loathed still occur, today it is impossible to conceive how consumers, entrepreneurs, corporations, and the whole system of civil law might function if individuals were not allowed to obligate others by obligating themselves. Since Luther's day, the device of cooperative self-obligation has extended far beyond contract law and the marketplace. It soon became enshrined by Thomas Hobbes at the heart of liberal social-contract theory. According to Hobbes, the viability of the state rests upon the willingness of citizens to give up recourse to force (as a means of inducing others to do the same) and instead to consent to the coercive power vested in a single sovereign. The constitutions of contemporary democratic polities similarly generate legitimacy through engines of cooperative self-obligation. The consent of the governed hinges upon the willingness of leaders and decision makers to limit themselves to activities deemed legitimate. Surely the ongoing scandals of personal ethics in the U.S. Congress, to say nothing of the ongoing failure of self-regulation in business and industry, Hollywood, and the media, all testify to the indispensability of cooperative self-obligation as a means of social governance.

Of course, Luther could have anticipated neither the vast expansion of commercial contracting that propelled the emergence of the modern market nor the liberal state that enforces such agreements of cooperative self-obligation. He could not have anticipated the extent to which the idea of social and political covenanting would spread across north-

ern Europe and North America during the subsequent centuries.<sup>3</sup> This idea, incarnated in the institutions of democratic polity, has provided us with firm evidence that a vibrant political and social order is created and sustained less by the exercise of the kind of coercive criminal law Luther stressed and more by the willingness of individuals to obligate themselves as a means of inducing others to cooperate.

### 2.1 *Covenantal potentials throughout the social order*

Even if the device of cooperative self-obligation was stillborn in Luther's thought, it has a long history in the Western Judaeo-Christian tradition. It first entered theological reflection when the authors of the Pentateuch recognized in ancient Near Eastern treaties a template for expressing how God initiated and sustained covenantal relations with Israel. As a means of inducing and justifying a reciprocal fidelity, Hittite sovereigns had bound themselves to protect their vassals. These treaties, reworked and reinterpreted as the form of divine agreements with Israel, were used to present God's promises as an initiative to elicit the appropriate response of faith and action from the people. Luther affirmed this root idea, and now it needs to be extended into the sphere of human social relations.

For Lutheran ethicists, developing a vision of social covenant may mean returning to the primary biblical sources, extending the work of George Mendenhall and others, and rethinking the implication of God's covenant for social relations. Here I suspect that the basic theological work has been done and need not be recapitulated. The biblically rooted norms of covenantal relations have been spelled out richly by H. Richard Niebuhr in terms of unlimited commitment (Niebuhr 1954, 134), by Paul Ramsey in terms of God's righteous love and sovereignty (Ramsey 1950, 2-24, 367-88), by Douglas Sturm in terms of righteousness and justice (Sturm 1973, 346-51), and by Joseph Allen in terms of a steadfast, reconciling, need-centered love which assumes the equal, individual worth of all community members (Allen 1984, 6-74). There is little to add to these powerful normative visions derived from biblical theology. The work now needed is that of empirical observation aimed at discerning and evaluating how such covenantal love and steadfastness is put into effect. The descriptive task is to initiate a search for covenantal potentials across the enormous variety of social relations and interactions constructed through cooperative self-obligation.

This work involves sorting out current discussions with a critical eye. For example, the basic dynamic of covenanting needs to be disentangled

<sup>3</sup> For a concise sketch of this diffusion of covenantal polities, see Elazar 1980.

from the forms that covenanting takes. Contemporary covenantal theorists have argued that contracts and covenants differ markedly from one another. Allen points out that modern contracts enable two parties to expect and require stipulated performances from each other, while covenants—such as that of marriage—establish open-ended relationships of mutual shaping aimed at the well-being of all parties (Allen 1984, 17, 226–28). Covenants bind the two parties who have entrusted themselves to each other to accept their mutual vulnerability in an ongoing relationship, while contracts serve mainly to limit and contain the risk that parties to the agreement are willing to absorb (for a similar contrast, see Niebuhr 1954, 134–35).

Now to be sure, modern contracts are at best a truncated, cramped reflection of the idea of covenant. Yet they have a root similarity in that both are devices of cooperative self-obligation. The opportunities to bind oneself in covenantal commitment are manifold and are usefully measured along two closely related axes. First, in a society of instrumental and often transient relationships, the *forms* through which we bind ourselves to specific kinds of conduct range from the familiar vows and understandings of friendship and marriage to airtight provisions of legal contracts; from spontaneous gestures of polite neighbors toward strangers to the trained behaviors of professionals; from truculent standoffs between street gangs to non-aggression pacts between nations; from the delicate accords of committee deliberations to the brassy promises of entrepreneurs and marketers. These cultural forms evolve as individuals devise ever new resources, tools, and associations for negotiating their vulnerability to and dependence upon each other. Allen helpfully extends his idea of “special covenants” as a broad umbrella under which to include potentially the full range of human associations, however evanescent (Allen 1984, 41).

Second, the *degree of explicitness* involved ranges from tentative gestures of entrustment to formal self-obligation. The essential criterion of covenantal social relations is that individuals use the ordering structures of organized social life as resources or instruments for building rather than exploiting social relationships—particularly that their actions inspire the confidence of others that their dignity and interests will be respected. Only some observed patterns of cooperative self-obligation fit into publicly acknowledged and formally defined kinds of relationships. Not infrequently, individuals bind or commit themselves tacitly, in ways that are too nuanced, delicate, or risky to be articulated in explicit or formal terms. In intimate relations, we carefully probe for misunderstandings, distinguishing those that need to be raised for discussion from those that do not; we forbear to criticize small failings in children, colleagues, or antagonists who just have repented of larger

ones; and even at the international level, we envelop formal treaties in ambiguities and tradeoffs, relying upon mutual expectations which for diplomatic reasons cannot be reduced to print.

## 2.2 *Resources within Luther's ethics for a social covenant*

From such an inclusive perspective, there is much covenanting to be seen. The sheer variety of the forms and degrees of commitment through which we obligate ourselves in order to elicit what we want from others opens up an enormous terrain for Lutheran covenantal interpretation and evaluation. With a nominalist bias for empirical observation and a cross-centered bias for unsentimental realism in social analysis, Lutheran ethics might yield a pragmatic, agent-centered guide for constructing and sustaining covenants across the broad spectrum of social relations. In specific, there are four distinctive and exceedingly useful emphases that Lutheran ethicists might bring to continuing discussions about social covenanting.

First, Lutheran ethicists, with their nominalist roots, would want to attend to the conditions for the possibility of covenanting, through close observation of the day by day regulation of behavior. Already ethicists such as Knud Løgstrup and Trutz Rendtorff have chosen to begin with phenomenological accounts of trust in social bonds (Løgstrup 1956/1971) or the “givenness” and “giving” of life (Rendtorff 1986, 1989) and then move on to explain specific kinds of entrustment and responsibility. What is needed is more specific attention to the mechanism of cooperative self-obligation to explain the dynamics of righteousness operating in the civic as well as the personal sphere. If Lutheran ethicists here could resist the more legalistic tendencies of two-kingdoms thinking, they might look for ways in which the inner kingdom can take shape within the outer forms of relationship. They likely would stress the continuity rather than the differences between contracting and covenanting, arguing that wherever individuals are engaged in binding themselves to future performances, attitudes, or commitments, they effectively open up a channel for the confident faith-active-in-love that Luther commended.

The device of cooperative self-obligation provides Lutheran ethics an opening to introduce covenantal conceptions of how the neighbor is to be treated, but only when we observe the manifold ways in which the neighbor actually is treated. Ethicists who focus upon the essential mechanism—cooperative self-obligation—will find covenants operating in many surprising ways and places. The nature of the process by which social relations become covenantal may be of more interest than the formal mold in which those relations crystallize and are codified.

Second, ethicists imbued with the spirit of Luther would attend to the earthy, practical reasons why individuals and institutions construct these manifold covenants with each other. Covenants do not arise in a vacuum. Covenant building often begins with some form of attraction between the covenant partners, as with friendship or marriage, but it can also stem from a sense of vulnerability, incompleteness, inadequacy—the contingencies that drive individuals and communities to make pacts among themselves. For example, the Los Angeles riots brought African Americans, Koreans, and whites together, however fleetingly, around the common agenda of civic peace. Similarly, though with less of an atmosphere of crisis, the city of Moorhead, Minnesota, has undertaken to forestall urban decay by initiating a program aimed at inducing all adult residents to regard the raising of children as a collective responsibility.

Such a logic of vulnerability and covenanting is incipient in Luther but in need of extension. Luther in his unsentimental, cross-centered realism, masterfully evoked the vulnerability of his contemporaries variously to exploitation by merchants, to misrule by princes, to litigation by neighbors, to domination by clerics, to harassment by beggars, and to the other social plagues of the late mediaeval period. Biographer Heiko Oberman argues that Luther saw himself as caught in a contest between God and the devil, at virtually the end of historical time (Oberman 1989). For Luther, the radical contingency of life reflected God's sovereign will and control.

While this eschatological pressure has receded, Luther's claims about the contingency of life retain more cogency than the evolutionary perspective of modern bureaucratic rationality. Surely it is no accident that interest in communitarian ethics and public covenants has risen precisely when we feel the moral foundations of our communities to be threatened. Lutheran ethicists would emphasize that the occasions for building covenantal relations are brought to us, rather than being designed by intentional human choice (see, for example, *LW* 44:46–47; 21:175). Attending to these initiating conditions and our responding gestures as vital theological grist, Lutheran ethicists would emphasize that the vocation of believers lies in responding to divine governance with earthly minded initiatives, rather than in initiating heavenly minded ambitions so as to elicit divine responses. The vocation of obligating ourselves in order to elicit responses from others begins quite honorably with situations of vulnerability.

Third, a distinctively Lutheran approach to social covenanting would seek to distinguish authentic from inauthentic covenantal relations—authentic self-obligation from deceptive, manipulative self-obligation. Given Luther's basic theological anthropology, which represents human

beings as curved inward upon themselves in anxiety and self-centeredness, Lutheran ethicists likely would be preoccupied with the abuses to which the device of cooperative self-obligation can be put. Con artists cultivate the trust of their customers only to swindle them; politicians make promises only to forget them; spouses make vows of mutual love only to dominate or exploit each other. The list of ways in which individuals commit themselves deceitfully in order to manipulate others is endless. Much cultural wisdom has been accumulated as a resource to enable targeted victims to elude traps of etiquette, friendships of extraction, contracts of adhesion, and the multitude of other patterns in which the device of cooperative self-obligation becomes a tool of exploitation.

Discernment is needed, discernment of the sort recommended by Luther when he contrasted the upright Abraham to the manipulators of his day:

Of what evil can the king suspect Abraham when he gives him such generous gifts? He who is generous toward another person surely does not want to harm him. Therefore it is honorable to accept a gift from a pious man. For he gives with a pure heart, not in order to put you under obligation to him and not to win an unjust cause through you but in order to foster mutual goodwill in this manner. Thus a bridegroom gives gifts to the bride to show his love and to promote goodwill. Therefore to bestow and accept gifts in this manner—these are the greatest acts of kindness and very necessary for this life. But those who kindle discord in this way or corrupt a judge and pervert the courts misuse gifts. Therefore one should follow the rule which the proverb suggests: "Not all, not from all, and not always." For just as it is rude to refuse a friend's gift, so it is honorable not to accept gifts in an evil cause [*LW* 4:85–86].

Fourth, Lutheran ethicists would stress the positive role of active human will in explaining how social covenants come into existence and are sustained. The notion of an active will is perhaps foreign to modern explanations of human behavior, weaned as we have been from the psychology of Luther's day. Nevertheless, the idea of will, as a concept for linking human intention and action, is a vivid vehicle for conveying the idea that covenantal relations are initiated and sustained by the intentional efforts of individuals. It conveys the idea that relations of mutual trust have to be constructed—often in the face of apathy, suspicion, or hostility—by purposive risky actions and gestures. Achieving covenantal relations involves more than the deliberations of a calm, disembodied rationality or the pressures of social or instinctual drives. Following the lead opened up by Augustine, Luther, and Reinhold Niebuhr, Lutheran ethicists would insist that discerning the potential for building covenants is a matter primarily of spirit. A covenantal in-

terpretation of social relations becomes operationally powerful when human wills are engaged by faith to believe that God works through all contingencies toward sovereign divine ends. From such faith comes the confidence that energizes the will to take the risky road of obligating oneself in order to elicit responses of trust and commitment from others.

However, one theme in Luther's own logic of self-obligation needs to be reconsidered, if not jettisoned altogether, in a Lutheran covenantal theory. He advised the vulnerable individuals of his day to cope with aggression, oppression, and loss by exercising nonresistant forbearance, at least as far as their own interests were concerned. Here a Lutheran ethic needs to be admonished by voices from the margin. The pernicious consequences of the passivity Luther recommended as a response to aggression have been deplored by liberationists, African Americans, women, and the other groups who historically have been counseled to acquiesce in their own oppression. This questionable advice is not salvaged by his further counsel that Christians are permitted and even obliged to make full use of coercive law in defending the interests of their vulnerable neighbors (*LW* 45:95, 100).

From the perspective of the argument being made here, Luther's logic of self-binding is deficient in that he does not anchor his calls to self-sacrifice within a covenantal strategy. From a covenantal perspective, self-binding has value insofar as it conduces to building relations of mutual trust and regard. The sacrifices of self-interest that Luther recommends need to be located within a strategy aimed at transforming those who violate the covenant through exploitative or manipulative behavior. Here a Lutheran covenantal ethics might learn from, and extend, the "revolutionary subordination" commended by John Howard Yoder (*Yoder* 1972, chap. 9, especially 174, 181–82, 189–92) and by the representatives of other traditions that have honed the art of coping with oppression without engaging in counter-violence or oppression. As it stands, Luther's advice not to defend one's own interests appears personally expressive rather than socially instrumental, insofar as he views the consequent suffering principally as a means to become more attuned to God's grace in justification.

### 3 Conclusion

The idea of making promises, taking on obligations, and binding oneself as a means of eliciting responses from others is hardly the monopoly of Lutheran, or even Judaeo-Christian, theology. "Do not even the tax-collectors do the same?" asked Matthew's Jesus (*Matthew* 5:46b). The device was incorporated into the worship of the Roman goddess Fides, through whom slaves gained moral leverage over their masters (*Frey-*

burger 1986). Anthropologists such as Bronislaw Malinowski have studied the intricate patterns of exchange through which the Trobriand islanders and other nonwestern peoples obligated themselves individually as a means of sustaining their social order (Malinowski 1922/1984). Surely the pattern reaches back into cultures that flourished well before the ancient commercial formula *do ut des*. Some thirty-five years ago, the sociologist Alvin Gouldner went so far as to assert that it has universal expression in what he terms the "norm of reciprocity" (Gouldner 1960). As such, cooperative self-obligation is a counsel of prudence as well as of charity. In both forms, it belongs to a widely shared stock of human wisdom.

The device of cooperative self-obligation is so widely and firmly anchored in human behavior for the simple reason that the most obvious, accessible, and perhaps potent resource any of us possesses for gaining what we want from others is our capacity to bind ourselves to particular courses of action. Indeed, this device may be the most palatable alternative to the ugly shades of direct violence that too often stain social relations. It is far less offensive to draw others into a relationship by binding ourselves than it is to bind them by applying force. Mahatma Gandhi, Martin Luther King Jr., Dorothy Day, and the other giants of nonviolent social transformation developed a suffocating moral pressure against oppressors by binding themselves to nonviolent responses no matter what the provocation.

For ethics in the tradition of Augustine and Luther, this device of cooperative self-obligation gains theological value as it becomes a vehicle for self-giving love. As Reinhold Niebuhr remarked, the mutuality of social relations is not self-sustaining; the social order needs to be revitalized by the willingness of individuals to engage in gestures that invite a forbearing reciprocity from others (*Niebuhr* 1943, 81–84). To date, Lutheran ethics has had no adequate conceptual vehicle to explain how this revitalization happens. The doctrine of the two kingdoms has been an exceedingly crude model for understanding and explaining the complex intertwining of conflict and cooperation in social relations. In his haste to keep the chaos of unrestrained selfishness at bay, Luther failed to give serious attention to the basic mechanism by which cooperative behavior is made possible. The root problem with subsequent Lutheran ethics is that the workings of the two kingdoms have been insulated from each other because the law in its first use has been conceived mostly as a punitive instrument, rather than as an instrument for empowering individuals, groups, and associations to construct social relations.

From God's treaties with Israel to the friendships, marriages, political communities, and even business contracts of today, I suspect that

such cooperative self-obligation is the basic engine of all potential or actual covenantal relationships. To develop an ethics of social covenanting within a Lutheran theological frame, this basic mechanism in contract law and covenant thinking needs to be brought forward—not in the relationship between humans and God, where God's initiative through the cross remains the sole instrument by which reconciliation is achieved, but in the realm of social relations. When the Lutheran understanding of law in the worldly kingdom is expanded to include the device of cooperative self-obligation, a Lutheran conception of law finally can be seen as the channel through which the impulses of the inner kingdom become active in social governance.

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