

Luther and the Opposition to Roman Law in Germany

By Gottfried G. Krodel

*To Miriam Usher Chrisman in
gratitude for her friendship*

Eight years after he had published his »Luther's house of learning«,¹ Gerald Strauss published his »Law, resistance, and the state«.² With this book the author presents a second major explanation of the emergence of the early modern territorial state in Germany, and an analysis of the nature and functioning of that state; this is what he accomplishes, notwithstanding his modest statement that his »chief object has been to give as full and circumstantial an accounting of opposition to Roman law in early modern Germany as I could« (ix). »Introduction of, and opposition to, Roman law« are for Strauss the reasons for writing a history of 16th century German society from the viewpoint not just of the opposition to Roman law but the opposition to all for which he can make Roman law stand.

The book creates the impression that there was a conspiracy between rulers and jurists³ to dismantle the traditional German court system and the law by

1 Gerald STRAUSS: *Luther's house of learning: indoctrination of the young in the German Reformation*. Baltimore, Md.; LO 1978. For reviews, see *LuJ* 50 (1983), 225 (361). See also Gerald STRAUSS: *Reformation and pedagogy: educational thought and practice in the Lutheran Reformation*. In: *The pursuit of holiness in late Medieval and Renaissance religion/ ed. by Charles Trinkaus and Heiko A. Oberman*. Leiden 1974, 272-293; Lewis W. SPITZ: *Further lines of inquiry for the study of »Reformation and pedagogy«*. In: *ibid.*, 294-306.

2 Gerald STRAUSS: *Law, resistance, and the state: the opposition to Roman law in Reformation Germany*. Princeton, NJ 1986. For reviews, see *SCJ* 18 (1987), 429f; *ChH* 65 (1987), 399-401.

3 Strauss speaks of the »imagination« of the rulers and of their »plans for a »well-ordered police state« (150), or of their »objectives« to be met (151), or of their »dynamic strategy ... to absorb remaining enclaves of feudal independence« (140). Or: »Good policy, order, and uniformity ... served [»the ruling circles«] as operational targets« (97). Or: »Concentration [of the legal system and of power] was the strategy at the summits of political power« (96). On the one hand, there were »princely strategists«, on the other hand, there was »the intended victim of the would-be sovereign prince ... the late feudal society« (243). Rulers and jurists might have had »sinister reasons« when they demanded that those who submitted grievances be specific (by giving names and specify offenses), a demand which »must have inhibited effective identifica-

which it functioned, strip people of the social classes below the rulers of their time-sanctioned laws, courts, and customs, and mold them into obedient subjects. The reader sees a society deeply divided into two groups: On the one side was the »in-group«, made up of »the privileged, those favored by the law« (210), the territorial rulers or city magistrates, the bureaucrats, the jurists, i.e., the oppressors. On the other side was the »out-group«, »the people«, all those who were oppressed, or felt oppressed, by the oppressors.⁴ In »Luther's house of learning« the culprit was Lutheran catechetics. Now the culprit is Roman law and the jurists: they replace the old system with the bureaucratic police state of the ruler.

But there also was strong opposition to Roman law and the rulers and their henchmen. There was a wide-spread hatred of the legal profession and its activities, even though those who hated the lawyers and opposed Roman law, willy-nilly, made use of them when necessary. Further, this opposition was sometimes manifested in violence, sometimes in utopian, sometimes in realistic programs for restructuring society. The normal manifestation of this opposition was the publicly voiced grievance and the parliamentary dialogue (*quid pro quo* negotiations; protests by the Estates). By the end of the 16th century this opposition had been worn down – this defeat is never really explained – Roman law had won out; the new state had become a reality.⁵

tion of abuses of authority« (256). Jurists had a »rational« goal toward which« they labored, namely, »a ruthless levelling program directed against all the »irrational«, »outmoded« features of their familiar social landscape« (164). See 136-164. 258. 288.

Reading this book and remembering some of those bumbling rulers who desperately tried to keep the wolf of state bankruptcy away from the door (e.g., Casimir and Georg of Brandenburg-Ansbach), or of some of the men in the civil or judicial administration (e.g., Lazarus Spengler, Georg Vogler, Johann von Schwarzenberg, Gregor Brück), one cannot help but wonder whether Strauss does not occasionally get a bit carried away.

4 Strauss speaks of those who were »disadvantaged« (191), or of »the common man« (128f). He also identifies the Estates as »the heart of resistance« to Roman law (240-296). Strauss never gives clear socio-economic, or even legal, profiles of the people with whom he deals, nor does he consider the provenance of the grievances with which he works. Rather, in broad strokes he paints a picture of two groups, the conservatives and the innovators, those who were against Roman law because they felt victimized by it, and those who were for Roman law because they supposedly profited from it.

5 Strauss underscores that the new state was not yet the state of Absolutism, and that there was a difference between the political reality and the ambitions of the rulers (150); yet, it was a police state. See also 72. 97. 151. 283f.

The Protestant Reformation aggravated the situation. Theologically, the Reformation moved from an anti-law position, by which it raised the hopes of the »out-group« and thus guaranteed its early success, to a pro-law position by which it guaranteed its establishment and future. Institutionally, the Reformation, regardless whether a ruler supported or opposed it, provided the emerging police state with opportunities to control the church; thus the state could extend its control over the totality of people's lives by regulating even their faith and religious practice. And so the Reformation, particularly Melancthon, provided »the ideological force of religious sanction« to »processes long underway in European politics« (224).⁶

As far as I can see, Strauss does not use the outcome of the Peasant's War as an explanation for the *final* defeat of the opposition to Roman law. If I understand him correctly, then he sees in the defeat of the peasants an instance of retreat, a falling back of the opposition which stood in the way of the »forward march of the dominant state« (271). He creates the impression that Roman law, those jurists and rulers, simply won, and the opposition simply faded away. Whatever he does say that could be considered an explanation of this defeat is too thin to accomplish this; see, e.g., 158. 249. 265 f. 291.

There is, of course, always the church which is to explain this defeat: »[The rulers'] plans for a well-ordered police state envisaged a politically passive role for their hard-working, disciplined, and submissive subjects. In close coordination with the leaders of the reorganized Reformation and Counter-Reformation churches, they labored diligently to centralize politics and concentrate initiative and control. [Strauss footnotes this sentence with a reference to his »Luther's house of learning«.] And in a purely formal way they succeeded« (150f). Once »political resistance in any form [was] defamed by calling it a sin against God«, and »Christian freedom« came to be defined as a condition exclusively spiritual in its rightful expression« (as if the man who made the term »Christian freedom« popular ever had any other definition of it so that it could be defined in this way!) it was all over for the opposition (283). One wonders how Strauss would explain this defeat of the opposition to Roman law and all for which he makes Roman law stand if there never had been a Lutheran Reformation. Is the reader to assume that without the Reformation this opposition would have won?

- 6 The reader will have to decide whether Strauss has an anti-Protestant, or anti-Luther, bias. Yet the fact that he qualifies his chapter »Law and Religion« with »The Reformation«, and then only examines the theology of the Lutheran Reformation for its stand on matters of law, makes one wonder. Throughout the book, Strauss works heavily with materials drawn from the history of Bavaria which, as is known, strongly embraced Roman Catholicism. For a balanced picture of the impact of theology on the situation it would seem necessary that he have examined also the theology of the Roman Catholic reformation for its stand on matters of law. As it is now, the book gives the clear impression that only the Lutheran Reformation had anything at all to say about Roman law, the jurists, and the rulers. Further, recent scholarship (Peter Blickle, Günter Vogler) has established the affinity which existed between Zwingli's

In the following I shall deal with some features in the image of Luther which Strauss develops (I), and with the way in which he works with a particular passage in Luther's Preface to the translation of the Old Testament (II).

I The Image of Luther: General Observations

1 Presupposition and Assumption

Much of what Strauss says about Luther is based on an ideological presupposition and on an assumption regarding the people of early 16th century Germany.

1.1 Presupposition

Strauss disagrees with the »contention that religion is always the primary arena of experience«. In fact, »it seems to« him »that, then as now, mundane life is what matters« (210f, n. 56).

On the one hand, this position makes clear that for Strauss the religious dimension in man's self-understanding does not exist; what does not matter, does not existentially exist (though, of course, it may be around somewhere or somehow). Strauss does not produce any evidence that would establish the validity of his position regarding »then«, i.e., regarding the people of 16th century Germany, whatever reality is to stand behind this term. He is entitled to his personal conviction regarding what matters to him. But when he uses this conviction as a key for understanding and portraying the people of 16th century Germany, he no longer writes history but rather ideology in a historical context.

On the other hand, this position is ambivalent enough that Strauss can talk about the people of 16th century Germany as if that religious dimension did exist after all. These people did have »real religious and worldly needs« (208);

thought and the revolutionaries. In passing, Strauss mentions the »pronounced Zwinglian sympathies« of Michael Gaismair (128); as far as I see, he quotes ca. two lines from Zwingli (54, 197), he uses ca. twenty-four pages to deal with Luther!

Whatever the situation is, the present volume is one more contribution to what appears to be an agenda on the author's part, namely, to demonstrate that in the long run the Lutheran Reformation was a failure and a disaster for Germany society; see also the author's programmatic article of sorts: Success and failure in the German Reformation. Past and Present 67 (Kendal 1974) May, 30-63; for a critique of this article, see Wolfgang REINHARD: Warum hatte Luther Erfolg? In: Fragen an Luther = Vortragsreihe der Universität Augsburg zum Luther-Jahr 1983/ hrsg. von Wolfgang Reinhard. M 1983, 30f and 30, n. 74.

Strauss never tells the reader what these religious needs were, though he deals at great length with their worldly needs. Or, he tells the reader that these people experienced an »exhilaration« about being elected by God to be his people (210). Or, »the religious side of [the] consciousness« of these people was »more highly developed, and much more pervasive, than the political side« (199). Or, »what people wanted to hear above all other things was how the gospel related to their real world, ...« (197). One wonders how Strauss arrived at these statements. As far as I see, he never comes to terms with what appears to be an inconsistency in his evaluation of the role religion played in the lives of the people with whom he deals. Apparently when necessary, he grants that the religious dimension did exist – it only was not always »the primary arena of experience«.

1.2 *Assumption*

Strauss assumes that the people of 16th century Germany were »unprepared to accept the distinctions drawn in [Luther's] theology between their religious and their social selves« (208); they lived in an »age« which had a »penchant ... for merging and confounding the [spiritual and secular realms]« (211). Therefore »Luther's early adherents found in ›law‹ a convenient bridge on which to cross from the spiritual to the worldly realm« (208).⁷

7 As far as I see, at no time does Strauss identify these early adherents. Strauss says very little concrete about these people. But he makes clear beyond a doubt that these early followers were members of the »out-group«, people who were dissatisfied with existing laws and hated those who enforced them (see further, below, II). They supported Luther because they liked what he said about law (192. 208. 210). Consequently, Luther's position on law and lawyers »won ... [him] the massive acclaim that lifted his movement off the ground« (210). *Quod demonstrandum est* – through evidence. Strauss works here with a myth: once Luther had become a public figure, there was this »massive« (210) public support for him because people were dissatisfied (only?) with existing legislation (208) – or in a wider sense, with existing social conditions – and initially the Lutheran Reformation »promised« the people a »release from intrusive laws« (239). Among historians of society this myth in many variations has become as popular as at one time was the myth that Luther's early support was exclusively governed by spiritual considerations. It seems to me that one of the primary tasks of Reformation scholarship will be to deal with Luther's early success and popularity. What was the actual dimension of this early popular support for Luther? Who were these early supporters? Why did these people support Luther? Bernd Moeller has made a first step in dealing with this problem by examining the popularity of the books which Luther published between 1517 and 1519/20; his carefully drawn conclusions are more helpful for understanding Luther's position in society and the initial Reformation than Strauss's conjectures and broad generalizations without evidence.

Strauss makes too much out of this »penchant«. The »tendency to link and fuse« the two realms (211) was not a specific feature of the early 16th century (as one has to assume when reading Strauss).⁸ More important: how does Strauss propose to substantiate that those people, whoever they were, were unprepared for accepting a distinction between their social and religious selves? As far as I see, he presents no evidence whatsoever that would give any value to his assumption.⁹ It has to be kept in mind, then, that from the very outset Strauss's approach to the people, with whom he deals in connection with Luther, is determined by his own conviction regarding the importance of religion, and by an assumption which hangs in the air regarding the ability of the people of 16th century Germany.

If this assumption about these people is to be valid, how does Strauss intend to explain the dynamics of late Medieval piety?¹⁰ That piety cannot be understood unless one affirms that what primarily mattered to those people was the religious dimension of their existence. This affirmation does not suggest that the mundane did not matter. But to deny the importance of the religious dimension of the human existence the way Strauss does is an ideological approach to the people of 15th and 16th century Germany. Until such time that he presents specific evidence, one may maintain, on the basis of all that is known about the

See Bernd MOELLER: *Das Berühmtwerden Luthers*. *Zeitschrift für historische Forschung* 15 (1988), 65-92 $\triangleq$ in: *Die dänische Reformation vor ihrem internationalen Hintergrund = The Danish Reformation against its international background/* ed. by Leif Grane und Kay Hørby. GÖ 1990, 187-210. In general, see also Reinhard: *Op. cit.*

8 The materials which the author presents on pages 192-197 do not establish this tendency as a specific feature of the early 16th century because they are not placed into any historical context.

9 See, e.g., 208. 210f. The materials cited from secondary works (211, n. 58) deal with the »penchant« to merge the two realms and not with the people's inability to differentiate between one's social and one's spiritual self.

10 From the overwhelming scholarship on this topic one need cite only Bernd MOELLER: *Frömmigkeit in Deutschland um 1500*. ARG 56 (1965), 5-31; and Gunter ZIMMERMANN: *Spätmittelalterliche Frömmigkeit in Deutschland: eine sozialgeschichtliche Nachbetrachtung*. *Zeitschrift für historische Forschung* 13 (1986), 65-81. See also H. C. Erik MIDELFORT: *Toward a social history of ideas in the German Reformation*. In: *Pietas et societas: new trends in Reformation social history = Essays in memory of Harold J. Grimm/* ed. by Kyle C. Sessions and Philip N. Bebb. Kirksville, Mo. 1985, 11-21; Natalie Zemon DAVIS: *From »popular religion« to religious cultures*. In: *Reformation Europe: a guide to research/* ed. by Steven Ozment. StL 1982, 321-341.

people of late Medieval Germany, that religion dominated their existence.¹¹ If, indeed, religion should not have mattered to these people, as Strauss suggests, why should they then at all even have been interested in making any differentiation between their social and religious selves? Why should they have experienced an »exhilaration« about their election? Why should they have had a tendency to fuse the two realms? Their practice of piety, regardless how thoroughly or sincerely done, and their workaday lives forced them to come to terms with both their religious and their social selves. They did not need a bridge in order to cross from the social to the religious realm, from the secular to the spiritual; they had this bridge, not in law, as Strauss argues (208), but in their living within the church, within their piety. If Strauss wishes to suggest that that piety, that living within the church, has something to do with law, then he has to deal with late Medieval theology and piety. He does not do this.

2 *The Point of Departure*

In a systematic analysis of anyone's thought, one must begin with the presuppositions, be they hermeneutics or others. Strauss ignores this principle in his analysis of Luther's thought. For him »*the starting point for all [of] Luther's thoughts about law* is the partition of the world into two realms, ...« (202, emphasis mine). Thus the significance of the law-gospel dialectic which shapes Luther's thought is ignored, and from the very beginning a subtopic, the two kingdom theory,¹² sets the agenda for all that Strauss has Luther say about law. Inasmuch as that theory is the application of Luther's theology to ethics, particularly social ethics, Strauss approaches Luther's theology from social ethics and not from the theological presuppositions, and those in piety, which govern Luther's thinking. He does this even though he assures the reader that »Luther's pronouncements on law and related matters did not evolve from

11 See already Adolf VON HARNACK: *Lehrbuch der Dogmengeschichte*. Vol. 3. 4th, rev. ed. Tü 1910 – repr. DA 1964 –, 451f.

12 In the present discussion it is unimportant whether one sees in Luther's position on the two kingdoms a theory, a doctrine, a »Denkfigur«, or an »Ortsbestimmung«; see now Andreas PAWLAS: *Zwei Reiche-Lehre und Lehre von der Königsherrschaft Christi in der neueren theologiegeschichtlichen Diskussion*. Lu 59 (1988), 89-105, esp. 91. Important is that Luther's position is »eine Konsequenz der reformatorischen Sicht von Gott, Mensch und Welt« (so Pawlas, *ibid.*, emphasis mine), or a means »das Verständnis des Christen zur Welt gesamt-theologisch zu bedenken« (so Ebeling, *ibid.*).

serious reflection on, or deep concern with, the management of temporal affairs.¹³ Quite the opposite: his legal views *always proceeded from theology*, ...» (201, emphasis mine). Yet Strauss never penetrates Luther's theology; in fact, the way he works with Luther's theology suggests that he is not much interested in it. As will become clear, he is interested in the impact which Luther supposedly had on society. Therefore it is most of the time impossible to separate Luther from this supposed impact.

3 The Image

3.1 Luther on Law

Strauss argues that Luther's position on law and related matters was »highly complex and tinged with ambivalence« (223); »as was usual with [Luther], his message was far from unambiguous to readers and hearers not qualified to go to the systematic core of his thought« (199). Strauss assures the reader that he is not out »to convict Luther of inconsistency, or to demonstrate lack of clarity or forthrightness in [Luther's] writing and preaching« (199; see, however, also 201. 212 f). Nevertheless, according to the author, Luther sent out »mixed signals« on matters of law (223), and there was a »double standard intrinsic to Luther's religious thought« (214), a fact which, in turn, shaped Luther's position on matters of law. This adds up to an anti-law and a pro-law Luther.

It is true that »Luther on law« is not a topic which can be easily handled; Johannes Heckel's book has made that clear.¹⁴ But whether that position is as ambivalent as Strauss suggests will have to be decided by the reader who is

13 If one thinks, e.g., of Luther's concern for his university, then one must question the validity of this statement. Further, what Strauss says here about Luther does not at all correspond with Luther's occasional statements about what a »rechtschaffen selig mensch« and a »geschickt prediger« is supposed to do; see, e.g., WA 32, 318, 37 - 319, 20. Finally, it seems to me that Strauss's statement contradicts much of what he says about Luther on the following pages. There he uses quite some energy arguing that Luther was a social agitator of sorts who, on the basis of his great rhetorical skill, was able to manipulate people. See further, below, II. If Luther, supposedly, had no concern for temporal affairs, then why would he bother to agitate the people?

14 Johannes HECKEL: *Lex charitatis: eine juristische Untersuchung über das Recht in der Theologie Martin Luthers*. M 1953; 2nd, rev. ed. DA 1973. For review, see Franz Lau: LuJ 25 (1958), 193-195. See also Paul ALTHAUS: *Luthers Lehre von den beiden Reichen im Feuer der Kritik*. LuJ 24 (1957), 40-68.

familiar with Luther's writings on the subject. In any case, Heckel presents a different picture. Although Strauss cites Heckel's opinion (e.g., 202, n. 28; 214, n. 81; see also 228, n. 159), he does not discuss it, nor does he deal with Heckel's documentation. And finally, even for Strauss those signals which Luther sent out on law and related matters are not quite as mixed as one might assume at first glance. He presents little material that deals with Luther's pro-law position. The bulk of his argumentation drawn from Luther is designed to demonstrate Luther's anti-law position; it is from this position that he views Luther's significance for society (210. 214. 223 f). And when it comes to »Luther's view of lawyers« there is »no ambiguity« at all; »he disliked them«, and »in this he remained constant throughout his career« (215).¹⁵

3.2 *Luther on Roman Law*

Strauss emphasizes a change in Luther's position on Roman law or written law: at one time, Luther opposed Roman law or written law, later he affirmed it.¹⁶ Strauss works here with the image of the young and the old Luther. He deduces his position from two statements, one in the address »To the Christian nobility of the German nation«, and the other one in »A sermon on keeping children in school«. He also assures the reader that such contradictory statements »could be multiplied ... at will« (199-201).

Long ago Heckel has pointed out this shift in Luther's attitude toward Roman law and explained it.¹⁷ Therefore Strauss should not make so much of this change unless he has something new to say, which he does not.

Further, in clauses which Strauss ignores but which are a part of the passage in the address »To the Christian nobility ...«, Luther points out that in comparison with Canon law, secular law is »viel besser, kunstlicher, redlicher«, though it also has become a »wildnisz« and »viel zuviel«. He also states that it seems to him that the »landrecht und land sitten« are to be preferred to the Imperial law.¹⁸

15 From the ca. twenty-four pages on which Strauss deals with Luther, he uses ca. eight for dealing with Luther and the lawyers. Of course, Luther had nothing good to say about, or to, the members of the legal profession!

16 Whether it is permissible simply to equate (all) written law, with Roman law, the way Strauss does, is a matter for historians of law to decide.

17 Heckel: *Op. cit.* 2nd ed., 123 f.

18 WA 6, 459, 30-32. 36-38. It is commonly accepted that the term »kaiserlich Recht«, which can be found in the 1495 constitution of the Reichskammergericht (QUELLEN ZUM VERFASSUNGSOR-

He does not say that the Imperial law is to be »sharply curtailed«, as Strauss argues (200), though he does say that Imperial law is to be used only whenever necessary.¹⁹ Luther says, however, nothing that supports Strauss's conclusion: »Far from making people peaceful, agreeable, and productive, *laws* actually contribute to their baseness. Society, Luther suggests, will be much better off without them« (200, emphasis mine). Luther does say:

»... wolt got, das, wie ein yglich land seine eygen art und gaben hat, alsoz auch mit eygenenn kurtzen *rechten* geregirt wurden, wie sie geregirt sein gewesen ehe solch recht sein erfunden, und noch on sie viel land regirt werden! Die weytleufftigen und fern gesuchten recht sein nur *beschwerung der leut*, und mehr *hyndernisz den forderung der sachen*.«²⁰

This was said by the »young« Luther. And the »old« Luther affirmatively quotes the saying: »Das Recht ist allzeit ein from man, Der Richter ist offft ein Schalck.«²¹ Obviously, in the passage from the address »To the Christian nobility ...« Luther is critical of the secular, Imperial-Roman law of his day. But in his conclusion Strauss reads into this passage something which is not there. He certainly ignores whatever positive quality and function Luther assigns to that law, minimal though such might be. In sum: If one wishes to make out of shifts and changes as much as Strauss does, then one has to deliver precise textual analyses of Luther's writings in a biographical arrangement and has to establish a clear point at which such a change took place. Strauss does not do this. He prefers roaming over Luther's works as a whole and picking out individual statements. And he prefers to talk in generalities rather than in exact terms: »by then« [i. e., 1538], Luther had changed his mind (201; see also 212 f).

3.3 *Luther and his Audience*

Eike Wolgast has argued that Luther did not address noblemen, Bürger, or peasants as people who existed in specific social structures; rather, Luther addressed individuals as Christians and sinners.²² Luther himself defined the

GANISMUS DES HEILIGEN RÖMISCHEN REICHES DEUTSCHER NATION 1495-1815/ hrsg. von Hanns Hubert Hofmann. DA 1976, 10, 15-22 [§ 24]), refers to Roman law. One has to be careful, however, not to press the content of this term. See also Strauss's note 38 on page 69.

¹⁹ WA 6, 459, 37 f.

²⁰ WA 6, 459, 38 - 460, 3, emphases mine.

²¹ WA 51, 558, 16 f. 34 f (1541).

²² Eike WOLGAST: Luthers Beziehungen zu den Bürgern. In: Leben und Werk Martin Luthers von 1526 bis 1546: Festgabe zu seinem 500. Geburtstag/ ed. by Helmar Junghans. Vol. 1. B, GÖ 1983 - 2nd ed. B 1985 -, 601-612, esp. 612.

person who in the presence of God is lost, and the God who justifies that person, as the subject matter of theology.²³ And Harry G. Haile has convincingly demonstrated that for Luther »the whole purpose of theology was to comfort the troubled in heart«.²⁴ In light of these materials, particularly Wolgast's results, one may not portray Luther as someone who addressed people in a particular legal situation, sent out »mixed signals« on matters of law, »could not possibly have fortified people's respect for law and persuaded them to assent and submit to it«, and »must have exacerbated the already intense distaste for law and lawyers« (223).

Contrary to the impression which Strauss creates, *law* was for Luther a theological matter, and regarding law, Luther was not a social agitator, as Strauss suggests.²⁵ Luther was a theological professor and, above all, a preacher and pastor. Therefore he was concerned with theological and spiritual matters and not with social, legal ones. This does not mean that Luther enclosed himself in an ivy tower, or did not reflect on the management of temporal affairs. But he spoke about these temporal affairs as a pastor and theologian and not as a social scientist, or worse, a social agitator. Strauss is not totally wrong when he states that Luther's »legal views *always* proceeded from theology« (201, emphasis mine).²⁶ The problem is that Strauss does not penetrate this theology. What were Luther's »spiritual signposts«, which Strauss mentions as being »vastly different« from the »points of reference« of Luther's audience (223)? The reader finds much about these reference points but little about the signposts. It seems to me that even a historian of society must first come to terms with Luther himself before he may speculate about how the people might, or worse, must

23 WA 40 II, 327, 11 - 328, 5, Hs text.

24 Harry G. HAILE: Luther: an experiment in biography. NY 1980, 303 f.

25 I am not suggesting that Luther never agitated society – I am familiar, e.g., with Luther's »Wider den falsch genannten geistlichen Stand des Papsts und der Bischöfe« (WA 10 II, 105-158), or his comments in his edition of the »Epitoma responsionis ad M. Lutherum« of Silvester Prierias (WA 6, 328-348, esp. 347, 2 - 348, 16). Luther dealt here not with social issues (those pertaining to Roman law), but with theological ones, and he spoke as an apocalyptic fire-and-brimstone preacher of sorts. Therefore he was direct and blunt and did not engage in the kind of subterfuge which, according to Strauss, (for details, see below II), he used in order to rally the people to his cause. – In general, see also Wolfgang WEBER: Bemerkungen zu Luthers praktischem Beitrag bei der Ausbreitung und Durchsetzung seiner Lehre. ZKG 97 (1986), 309-333.

26 Certainly the passage from the address »To the Christian nobility ...« which Strauss discusses (see above, 3.2) has little to do with Luther's theology; one could produce similar materials.

have reacted to Luther. Unless one has grasped what it means for Luther to understand oneself as a sinner, and as a believer, and to be *simul iustus et peccator*, one has not understood him.

Throughout the book one finds no effort to understand Luther on these three topics. In fact, Strauss appears to have no feeling at all for what it means to understand oneself as a sinner.²⁷ How could he since he is convinced that it is the mundane what matters (210, n. 56)? To read Luther with a secular understanding of man means to misread him. To approach Luther's audience as a whole and affirm that it was the mundane life what mattered to each person – and thus deny even the possibility that for some in that audience it was religion what mattered – means to force that audience as a whole into an ideological straightjacket. And finally: to argue that Luther's audience was unprepared to accept Luther's distinction between their social and their religious selves, that that audience used law as a bridge for crossing from the spiritual to the secular realm, and therefore understood Luther's theological position on law (ambivalent as it supposedly was) in a socio-political way, namely, as a »denunciation of law« (208), and then on top of it see in this supposed reception the purpose of Luther's message and the reason for Luther's success,²⁸ is a construct which hangs in the air.

I am not suggesting that every person who read or heard Luther grasped the depth of the Reformer's understanding of man as a sinner and saint. Unless Strauss produces evidence to the contrary, however, and not his personal conviction, or his conjectures about Luther's audience, one may maintain that in that audience there were some, or many, or very many people who were still deeply grounded in the Christian faith. Therefore they clearly understood their religious selves as different from their social selves and heard Luther address them as sinners and not as people of a specific social class who suffered from the oppression of Roman law, or were dissatisfied »with existing legislation« (208). Of course, there were also others who heard Luther say what they wanted to hear him say – but that was not the result of those »mixed signals« (223) which

27 As far as I see, nowhere does Strauss discuss Luther's concept of sin, of man as a sinner, and of the believer as being *simul iustus et peccator*. What he presents about the topic »sin« (e.g., 39. 151. 203f. 210), in no way does justice to the biblical understanding of sin or to Luther's position.

28 For details, see below, II.

supposedly Luther sent out. The image which Strauss develops of Luther's theology and of its supposed impact on society as a whole demands that one assume that Luther was a social agitator, that his position on matters of law was confusing, and that that amorphous entity called »people«, about which Strauss makes conjectures which are not based on any evidence, understood Luther as someone who violently opposed Roman law and all for which Strauss makes Roman law stand.

Strauss confronts the reader with a Luther who was a social agitator and who sent out »mixed signals« on law and related matters (223). On the one hand, Luther opposed Roman law, the jurists, and the bureaucrats. Even more, through his »rousing words«, his »emotive« and on purpose »extravagant« and »provocative« language (199f. 208) he conjured up in the minds of the people an antinomian position because for him grace was more important than law (223). Thus he »raised« the »expectations« of the oppressed and guaranteed his initial success. On the other hand, Luther »dashed« the hopes of those who opposed Roman law and expected a reformation (214. 223. 239).²⁹ Luther did this by providing a theological rationale for the necessity of law and for obedience to law, and by supporting law and order (though throughout his life he remained hostile to the jurists). One need not pursue Strauss's arguments for this pro-law Luther image; that image is well-known, and Strauss does not spend much energy on developing it anyhow.

In the following I shall examine how Strauss works with a passage in Luther's (1523 [?]/1545) Preface to the German translation of the Old Testament. Thus it will become clear how Strauss arrives at his construct.

29 Consequently there was a »loss of fervor [for Luther?], shown by many groups [??] in society when they witnessed the Reformation's later turn to a posture of law and order« (211). Or: The outcome of the Lutheran Reformation »was a far cry from what had been [its] promise to its first followers« (239, emphasis mine). Just as Strauss works with a myth about Luther's early followers (see above, n. 7), so he perpetuates here the myth that at a particular moment (Luther's position in the Peasants' War?) the popularity of the Reformation came to an end. Yet he ignores the article by Franz LAU: Der Bauernkrieg und das angebliche Ende der lutherischen Reformation als spontaner Volksbewegung. LuJ 26 (1959), 109-134, who has tried to demolish this myth. Regardless how one evaluates Lau's contribution to the issue, one may not procede as if it does not exist. See now also Gunter ZIMMERMANN: Die Einführung des landesherrlichen Kirchenregiments. ARG 76 (1985), 146-168.

On the one hand, the image which Strauss presents is the run-of-mill image developed by the majority of historians of society. On the other hand, there are certain features in Strauss's

II The Image of Luther: the Social Agitator

1 Strauss's Position

In developing an image of Luther, Strauss works heavily with Luther's use of G2, 17 in the Preface to the German translation of the Old Testament. He writes³⁰ (207 f):

»Distrust, suspicion, fear of human instincts were the motives underpinning *all* political and social legislation in Luther's day. [Quod demonstrandum est.] Laws threw up restraining walls, leaving as little space as possible for people's natural inclinations to assert themselves. They were petty, repetitious, admitted no distinction between public duties and private concerns, and treated every deviation as a major infraction. Luther's *pointed description* of Moses as an Amtmann (Amptmann der sünde, ... WA DB 8, 20-21) could not have been lost on a public to which the ubiquitous officials bearing that title were – as we saw in earlier chapters – feared and resented intruders pressing peremptory demands. *Nor was it accidental that Luther chose this charged political word* as the German translation of Paul's minister (Galatians 2:17). The Mosaic code – harsh, insistent, hectoring – *was the universal paradigm of political legislation*. [Quod demonstrandum est.] Its fearsome characteristics were shared by all forms of law. Laws confine men and confront them with their weakness. They are a constant irritant. *Luther's emotive terminology may have served to intensify common suspicions*. On the other hand, *he could count on the assent of his contemporaries* to his theology of law, and *he must have powerfully reinforced prevalent attitudes* when he concluded that »where there is law, there is loathing« (WA TR V, No. 5391).« [All emphases mine.]

Strauss summarizes his next paragraph (208): »Support for the evangelical cause grew in large part out of the period's general dissatisfaction with existing

argumentation which point into the direction of a new image and need further exploration, e.g., the »antinomian strain and bracingly libertarian allure« (210) which the people supposedly *could* and did derive from Luther's position on law, or Luther's interpretation of Christ as an emancipator from the law (209). Clear is that Strauss replaces the traditional image of Luther (the revolutionaries misunderstood Luther) with a new one: Luther fueled the fires of revolution, and did so on purpose.

In this connection the suggestion made by Thomas Brady and Erik Midelfort merits further consideration. They wrote: »It was *Luther*, not the revolutionaries of 1525, who *misunderstood*. ... He blithely exploited every possible item of grievance in his early reform tracts, *possible without even knowing with what social dynamite he played*.« Peter BLICKLE: *The revolution of 1525: the German Peasants' War from a new perspective* (Die Revolution von 1525 (engl.)/ ed. by Thomas A. Brady and H. C. Erik Midelfort. Baltimore, Md. 1985, xxii (Introduction), emphases mine.

³⁰ In the following quotation, the author's footnotes are given in parentheses, my comments in brackets.

legislation. *Luther rallied his followers* [emphasis mine] by holding out the prospect that the fall of the old order would bring new and better laws. « Strauss finally writes (210): »The triumph of the New over the Old Testament was in this [psychological, sociological] context understood in concrete terms as the victory of the emancipator [Jesus Christ] over the Amtmann.« Christ is the emancipator from the law, however, not only in »this context«, i.e., in the minds of the people who rallied around Luther, being attracted to him by his position on law which, supposedly, they understood in such a way that Christ turned into the emancipator from the laws of the bureaucrats. Christ is this emancipator also according to Luther himself, as Strauss interprets him; on page 209, Strauss, summarizing Luther's »doctrine« of law as set forth in the »Temporal authority: to what extent it should be obeyed«, argues that Christ's work results for Christ's people in a »state of emancipation« from the law.³¹

2 Comments

1. Strauss constructs here an image out of what he considers to be facts and their necessary consequences: People hated the existing laws and the »Amtmänner« who enforced them. Luther was no dummkopf, he knew of this situation. Therefore, when he discussed Moses and his law, he selected the word »Amtmann« as a description or title for Moses. He knew exactly that with this word he could stimulate in people's minds a process in which the »Amtmann« Moses and his law would be identified with those hated »Amtmänner« and the laws which they enforced. Thus Luther's negative statements about »Moses« – i.e., about law, presumably a theological entity, though Strauss does not say this – were automatically transferred to those hated bureaucrats and their laws, obviously a socio-political entity. Conversely, the society-wide hatred for those bureaucrats and the laws which they enforced automatically predisposed the people for loving the emancipator from law, i.e., Christ and the gospel, or, and this would be the same, for supporting Luther, who supposedly proclaimed this emancipator Christ. Consequently, by using the word »Amtmann«, Luther »could count on the assent of his contemporaries to his theology of law«. »Emancipator vs. Amtmann« was, then, the battle cry with which »Luther rallied his followers«, »holding out [to them] the prospect that the fall of the old

31 Theologically seen, it would be necessary to investigate Strauss's presentation of what Luther supposedly says about Christ's work in relationship to law.

order [i. e., the order of Moses and of the Old Testament, *and* of the bureaucrats and of Roman law] would bring in new and better laws [Strauss does not say what laws]« (208).

Strauss avoids making matter-of-fact statements; the meaning of Luther's word *could not have been lost on the public*; the word *may have intensified common suspicions*; Luther *must have powerfully reinforced* prevalent negative attitudes toward law. But in any case, by using this word, Luther »could count« on the public's support of his position on law. In an »emotive terminology« Luther contrasted the »Amtmann« Moses and the emancipator Christ and his message, namely, that true Christians »are freed from the grasp of the law« (208). Thus the emancipator Christ frees from the »Amtmann« Moses and his law, who in the minds of the people has become the hated local »Amtmann« and the laws which he enforced. Therefore in presenting the gospel message, Luther raised hopes for the deliverance from law. And people, incapable as they were of differentiating between their social and religious selves, and merging the spiritual and secular realms,³² understood what Luther proclaimed »as a denunciation of law« (208) and as a possibility for victory (210), not over Moses but over the »Amtmann« and the laws which he enforced.

Strauss is careful when he says that »*there can be little doubt* that Luther's initial appeal ... was heard as a denunciation of law« (208, emphasis mine). But then over this possibility he constructs the reality: »*Luther rallied his followers* by holding out the prospect that the fall of the old order would bring new and better laws« (208, emphasis mine). Thus emerges an image of Luther the successfully conniving agitator who, on the basis of his insight into people's minds and his great rhetorical skill, was able to manipulate the people with his message, take advantage of their feelings regarding laws and bureaucrats, and thus assure his success.³³

2. Strauss uses here the communication model. The sender sends out a message encoded in language which has a double structure: a superstructure – what the words say – and a substructure – what the words designate for those who will hear or read them in their particular locations. The receiver, in his or her socially, legally, culturally determined location, decodes the message according to the designation which the words have in that location. A skillful

³² See above, I.1.2.

³³ See also above, n. 29.

sender, determined to manipulate the receiver,³⁴ will encode his message in such a way that the substructure of the message and the location of the receiver mesh. It is, of course, fascinating to see this model applied to Luther. Had he not argued that in translating the Bible into German one has to watch the common man's »mouth« and hear how he or she speaks, and then shape one's translation accordingly? Or had he supposedly not admonished his students to accomodate their preaching to their audiences?³⁵ In the present context it is unimportant that that same Luther supposedly also said: »When I go into the pulpit, I do not look at the people, but I think that I have only Klötze in front of me, and simply tell the word of my God.«³⁶ But it is important that this model leaves two problems unsolved. One is what Luther, the sender, supposedly did *intentionally*, namely, use the socially, politically charged word »Amtmann«; the other is how the people, the receivers, *must* have decoded Luther's message, i. e., must have reacted to Luther.

3 Critique

A preliminary observation: in my opinion Strauss overdraws the significance of the Table Talk which he quotes.³⁷ Luther tells of two incidents which are to illustrate R 4, 15 and the difference between the *operatio legis* and the *operatio gratiae*; he closes by saying: »Wo lex ist, da ist vnlust; wo gratia ist, da ist lust [to do something].« May one draw from this that anyone of those present around the table felt »*powerfully* reinforced« in his (or perhaps even her) attitude toward law, whatever that attitude might have been? They heard some good stories with some »theological wisdom« sprinkled in; and since one incident dealt with one of the lecturers of the university (who might even have been present), everyone probably had a good laugh.

3.1 Luther's Use of »Amtmann«

In the Vulgate, the phrase, »ἁμαρτίας διάκονος« (G 2, 17),³⁸ is translated as »peccati minister«. From the dictionaries it can be demonstrated that the word

34 See also below, n. 51.

35 WA 30 II, 637, 16-22; WA TR 4, 447, 11-15 (4719).

36 WA TR 4, 447, 23-25 (4719).

37 WA TR 5, 123, 4 (5391); see above, the last sentence of the quoted text.

38 For this difficult passage, see Wolfgang BEYER: διάκονος. In: Kittel's Theological dictionary of the New Testament/ transl. by G. W. Bromiley. Vol. 2. Grand Rapids, Mich. 1964, 88 f.

family of »minister« expresses the idea of the religious, domestic, civil, judicial, or military service. Long before Luther had to translate »minister« into German was this word a socially and politically charged word, and its meaning was fixed in terms of service in a precisely determined position (*ministerium*, *officium*).

In the Preface, Luther connects this phrase from G 2, 17 with Moses and translates it as »*Amtmann der Sünde*«. He combines this phrase with other Bible passages in an effort to demonstrate that in God's presence no one can be saved through the works of the law. According to Strauss, Luther uses »*Amtmann*« as translation for *minister* intentionally, and Strauss speculates on the reason and consequence of this intention. At this point, Strauss does not again tell³⁹ the reader that Luther not only calls Moses an »*Amtmann der Sünde*«, but in the same breath (coordinated with »*vnd sein Ampt*«) designates the office of Moses as ein »*ampt des Tods*«. And then Luther discusses that such a »*Sündeamt*« and »*Todamt*« has an absolutely necessary function in the process of salvation.⁴⁰ Luther's use of the phrase from G 2, 17, and his use of »*Amtmann*« have to be seen in the context of the dialectic of law and gospel; Strauss wholly ignores this context.

If the reader is to accept Strauss's view of Luther's supposed intention, Strauss would have had to show that people, at least some of them, actually had read this text. One may assume that at least some people did this. Yet it is certain that even though there was a German Bible – or rather, this Preface to it – on the market, this did not automatically mean that all people could afford to buy it, actually bought it, could read it, and actually read it. Consequently there is a limit to the numbers of those »contemporaries« on whose reading of this passage and, therefore, on whose »assent« Luther could count. To some, this observation may be Beckmessarian. Nevertheless in light of the certainty with which Strauss presents his view and makes it society-wide valid, one has to point out that the situation is not as simple, certain, and universal as one might assume on the basis of the author's presentation.

Further, Strauss would have had to demonstrate that the people not only »feared and resented [as] intruders pressing preemptory demands« those »ubiquitous officials bearing« the title »*Amtmann*«, but that they considered those who were bearing that title actually to be executioners. For this is what Luther

³⁹ He had quoted the following on page 204.

⁴⁰ WA DB 8, 21, 16 - 25, 19.

supposedly tries to get across to his readers, if one takes Luther's phrase as a whole and not just one word, as Strauss does. If the people were to have made associations between Luther's text and daily realities, then the whole phrase is involved in such an association – the word which triggers the association and the phrase which supplies the content to the word. This is important because the one who executes the office of death is the *minister sanguinis*. This is the technical term for the executioner; Luther applies it to Moses when he calls him the one who executes the »Amt des Todes«. Moses is not just a bureaucrat, but an executioner. Strauss creates the impression that Luther borrows only this one word, »Amtmann«, from the language of the civil or judicial administration. But this is not at all the case (as Werner Elert has demonstrated),⁴¹ just as Luther heavily borrows from many other areas of daily living. At this point, Strauss is, then, confronted with Luther the writer. While he makes much out of Luther's rhetorical skill, he never deals with Luther's rhetoric, or Luther's understanding of language, or of the writer's task. It is a foregone conclusion for Strauss that Luther used this word, »Amtmann«, because he knew he could influence people in such a way that they would support his position on law. For Strauss, Luther's audience was capable of understanding what Luther said *only* in a socio-political way.⁴² Since Luther knew this he took full advantage of this situation. Consequently he told the people something because he knew that they would understand it in a way which would guarantee that the people would agree with him, even though that way was contrary to what he really wanted to say. This view⁴³ does not do justice to Luther's understanding of language and the tasks of the writer or orator.

Finally, Strauss would have had to demonstrate that Luther *on purpose* translated »minister« with the socially and politically »charged ... word« »Amtmann«. In this connection, Strauss would have to suggest a translation for »minister« which would be free from any social or political overtones. That, of course, is possible only if one demonstrates that »minister« itself does not have

41 Werner ELERT: Deutschrechtliche Züge in Luthers Rechtfertigungslehre. In: Ein Lehrer der Kirche: kirchlich-theologische Aufsätze und Vorträge von Werner Elert/ ed. by Max Keller-Hüschemenger. B 1967, 23-31.

42 See above, I.1.2 and 3.3.

43 It seems to be shaped by the »philosophy« of some people in the advertising business, or by some of those who write political propaganda: »tell the people what they want to hear and they will buy what I want them buy«, or »vote for me«. See also below, n. 51.

such overtones. Strauss is correct when he states that it was not »accidental that Luther chose this charged political word [»Amtmann«] as the German translation of Paul's minister«. He is wrong, however, when he argues that Luther did this because »he could count on the assent of his contemporaries to his theology of law«, i. e., because Luther had a hidden agenda.

Luther's use of »Amtmann« is dictated by the tradition, or the dictionary, and by Luther's usage of the phrase in G 2, 17, nothing else.

In the present context technical details (the developments in vowels and consonants which finally resulted in »Amt« and »Amtmann«, the emergence of a word family, matters of grammar) may be glossed over, and the following has to suffice. »Amt« and »Amtmann« are some of the oldest words of the German language. As early as in pre-Christian days, the Germanic people apparently adopted »Amtmann« from the Celtic language (amb[i]aktos, for which Latin sources use ambactus). The word can be found in the major Germanic languages, and was used to express the idea of someone who serves in a fixed position, regardless of what we would call rank. In Germanic days that service seems to have had only a secular dimension; after the Christianization the churchly dimension was added. By way of the Germanic languages the word entered the German language and played a significant role in old high and middle high German and, therefore, in the societies in which both languages were spoken. Both the Germanic and Medieval German »ancestors« and derivatives of »Amt« and »Amtmann« were used for translating »διάκονος« »minister«, »ministerium«, and »officium«, and this from the earliest days on down to the second half of the 15th century. In the Bible of the Goths, the »διάκονος« of G 2, 17 is translated as »andbahts« (servant, officer). And in the first high German Bible, published in 1466 by Johann Mentel in Strasbourg, the phrase in G 2, 17 is translated as »ambechter der sünden«. ⁴⁴ In the high German Bibles published between ca. 1473 (by Jodocus Pflanzmann) and 1518 (by Sylvan Otmar), and in the low German Bibles published in 1478 in Cologne, and in 1494 in Lübeck, the »minister« or »διάκονος« of G 2, 17 is translated as »diener (dener or dyener) der sü[n]den«.

Were one to press the situation, one could argue that Luther only adjusts the spelling of the phrase as it can be found in the Mentel Bible; that this argument

44 In Medieval German, »minister« is sometimes also translated as »hantraicher«, »diener«, »dinstknecht«, or »dinstman«.

would raise the problem of Luther's relationship to the pre-Luther German Bibles need not concern us in the present context. But it is clear that Luther stands in an old tradition when he translated »peccati minister« as »Amtmann der Sünde«; and in this tradition Paul's »διάκονος« or the Vulgate's »minister«, had been translated with a socially or politically charged word – it could not have been otherwise. Luther stands in this tradition, and there is no reason for Luther to abandon it,⁴⁵ because his usage of the original phrase in G 2, 17 also dictates his use of the word »Amtmann«. And that usage has been fixed at least since 1516 (i.e., quite some time before Luther supposedly tries to rally the public around his cause by using this phrase and translating it the way he does). Strauss ignores this usage (just as he ignores Luther's theory of »Amt« and »Stand«). Therefore he misses the point of Luther's translation of »minister« as »Amtmann«. Strauss contrasts Moses, the »Amtmann der Sünde«, to Christ, the emancipator from the law. Luther contrasts the minister or »Amtmann der Sünde«, called Moses, who has the ministratio or ministerium or »Amt« of sin and death – the minister sanguinis – to the minister called Christ, who has the ministratio or ministerium of justice and life, or the »Amt der Gnade«.⁴⁶ For Luther, Christ, too, is a minister, someone who has a ministerium or officium, an »Amt«. Therefore »Amtmann«, the title of those hated people who were around, applies not only to Moses, but also to Christ; it matters little that Luther does not use »Amtmann« as title for Christ – he uses »Amt« as the term for the office which Christ holds.

In light of Luther's usage of the phrase in G 2, 17, the hatred for those »Amtmänner« which supposedly is to predispose the people to accept Luther's message about Christ (in a process of association which is to be triggered by Luther's use of »Amtmann« for Moses) would also have to extend to the »Amtmann« Christ. Thus Luther would accomplish exactly the opposite of what he, according to Strauss, supposedly sets out to do when he applies »Amtmann« to Moses. In any case, in applying the phrase of G 2, 17 to Moses, and translating »minister« as »Amtmann«, the weight of Luther's usage does not rest on the title »Amtmann«, but on what the »Amtmann«, or minister, does. I.e., it rests on the qualifications of the title; and Luther derives these qualifications from the dialectic of law and gospel. In his interpretations of

45 For »Amtmann« etc. in the tradition and in Luther, see Excursus I.

46 WA DB 8, 25, 25; see also Excursus II.

Luther's use of »Amtmann«, Strauss shifts the weight of Luther's usage of this phrase from that which for Luther is the center (the specific ministerium of Moses and of Christ) to what for Luther is marginal (the title »Amtmann«). Consequently, he makes Luther's Christ into the emancipator from the law, while Luther sees in Christ the minister gratiae, or the one who executes the »Amt der Gnade«. ⁴⁷

In sum: Luther did not choose »Amtmann« because it was a socially and politically charged word; he did not choose this word because he knew that by using it he would be able to trigger in people's minds a process of association which, in turn, would lead them to affirm his position (since, obviously, his readers had to grasp the socio-political meaning of this word!). Luther chose this word because it was used in the tradition, because it was philologically adequate for the task at hand, and because it said exactly what he wanted to say. The philological situation and the theological context in which Luther used the word prohibits one from suggesting that Luther had a hidden agenda when he used »Amtmann« as translation for »minister«. If Luther ever had a hidden agenda of using the socio-political content of »Amtmann«, then on other occasions the supposedly intended association would have worked the other way around; then the people would have identified the »Amtmann« with God's servant on earth, and his »Amt« with a service to God. In such a case, the association would have produced support for law and order and a pro-law Luther would emerge. For in his book against the peasants, e.g., Luther called a ruler an »Amtmann« of God and a servant of God's wrath, to whom was entrusted the sword to punish the evil ones.⁴⁸ I assume that Strauss would try to defuse this argument by proposing that this passage manifests Luther's switch on matters of law. But to make such an argument valid he would have to demonstrate that prior to this time Luther spoke differently about rulers. And further, the purpose of my argument is not to deny any supposed switch on Luther's part, but to challenge the intentional use by Luther of *one* socio-political content of this word, which must have triggered the one reaction postulated by Strauss.⁴⁹

47 For Luther on G 2, 7 (minister peccati), see Excursus II.

48 WA 18, 360, 1-11. See also below, n. 49.

49 Sometimes Luther uses »Amtmann«, »Amtmänner«, »Amtleute« to describe the evangelical bishop or pastor, the deacon or head of the Common Chest, even the Apostles (»Amtmann« of God, of Christ, of all the believers, of, or in, or for, the gospel and the sacraments); and in some cases he does this already before he uses »Amtmann« in the Preface, supposedly to execute his

3.2 *Luther's Audience*

To return to the communication model: the sender did not on purpose encode his message in such a way that he could manipulate his audience. This result says nothing about the receivers of Luther's message. That audience remains an anonymous entity, even though Strauss tells the reader the following: These people were »unprepared to accept the distinctions drawn in [Luther's] theology between their religious and their social selves«; they were »dissatisfied with existing laws«; they hoped for deliverance from oppressive laws; they »feared and resented« the »Amtmänner« who enforced the laws of the day; their »awareness had been sharpened by decades of reform agitation« (207f. 223, 239). One may assume that this audience was made up of all those who, though they were »not qualified to go to the systematic core of [Luther's] thought« (199), nevertheless were enthusiastic about what Luther said about law.⁵⁰ They were dissatisfied with the legal system and hated those who enforced it; Luther, in turn, blasted the lawyers, opposed law, and extolled grace; hence Luther's success.⁵¹ And one has to assume that these people actually had read *this* passage. And on that assumption rests the whole construct.

In order to accept the author's description of Luther's audience, he has to produce some evidence and not assumption, conjecture, and generalization. Further, in order to accept this description, one would also have to accept that

hidden agenda. E.g., WA 6, 408, 18-21 (1520); 7, 631, 26-32; 633, 8-15. 16-18; 634, 23-25 (1521); 10 I 2, 123, 3-5 (1521/22); 12, 309, 1-3; 317, 1-7; 387, 1-6; 692, 16; 694, 6-9 (1522/23); 17 II, 41, 14-19 (1525). According to Strauss's argumentation, Luther, in using »Amtmann«, etc., in these passages, would (want to) accomplish that his audience – who was attuned to the socio-political overtones of these words and therefore associated them with their hatred for the »Amtmänner« of the day – would hate the evangelical preachers, and thus the gospel! – For the references in this note, I am indebted to Professor Heinz Bluhm and his »Index verborum Lutheri« (see LuJ 51 [1984], 96-98).

⁵⁰ See also above, n. 7.

⁵¹ Strauss's position be seen against the background of the work of Peter WORSLEY: The trumpet shall sound: a study of »Cargo« cults in Melanesia. 2nd, rev. ed. NY 1968, though, of course, Strauss's topic has nothing to do with that of Worsley. Worsley has argued that the content of the message of any leader, who hopes to gain a following, has to be shaped by the expectations of the audience which he addresses, and that the success of a leader is determined by the degree in which he articulates and constructively deals with the hopes and dreams of his audience; see esp. ix-xxvi. According to Strauss, the »young Luther« does precisely this with his anti-law message, but then comes the great shift which caused the disappointment; see also above, n. 29.

the people, whenever they heard the word »Amtmann«, *automatically* were filled with resentment, fear, and hatred for all the »Amtmänner« who were then around; even more, if one wishes to do justice to Luther's supposed intention, then these people not only were to hate these »Amtmänner«, but actually consider them to be executioners. Quod demonstrandum est. By the law of averages there »must« have been (to use the author's way of arguing) some people who did not hate all »Amtmänner«; who were not dissatisfied with all the existing laws; who were capable of differentiating between their social and religious selves; and who were capable of coming to terms with the systematic core of Luther's thought.

In sum: No one is in a position to know how »the people« decoded Luther's message (i.e., how everyone who actually had read this passage understood Luther's word »Amtmann«,) unless one has some clear evidence – which Strauss does not produce. It is, of course, fascinating to speculate about this audience, as he does. On the basis of the way in which the revolutionaries among Luther's audience used Luther's position on Christian freedom, the process of association, which Strauss postulates, *might* have taken place – provided, of course, that Strauss, somehow would document that the revolutionaries actually read this passage; he does not do this. His certainty about all those »contemporaries« of Luther on whose support the Reformer supposedly could count by using »Amtmann«, e.i., the society-wide applicability of Strauss's argument, is wishful thinking. It is without any basis whatsoever when he states: »*These can be little doubt that Luther's initial appeal – the appeal that gained him the attention of millions whose awareness had been sharpened by decades of reform agitation – was heard as a denunciation of law*« (208, emphases mine). If, e.g., Gregor Brück, Lazarus Spengler, or Johann von Schwarzenberg, who were among those millions whom Strauss mentions, could read this sentence, »there can be no doubt« that they would whirl in their graves. Does Strauss wish to suggest that they, on the basis of their location, decoded Luther's message in another way, namely, a pro-law, pro-establishment way? If he does, he makes clear that Luther's message can be and has been decoded in other ways than he postulates that it must have been decoded; it need not be pursued what this would do to the image of the situation which he develops.

Strauss's image of Luther the communicator as social agitator is exclusively determined by the revolutionary element in society; he creates the impression

that only the revolutionaries supported Luther. And further, this image has no basis in philology. A detailed analysis of Strauss's presentation of Luther's position on law and on the work of Christ in connection with law could demonstrate that this image also has no basis in Luther's theology.

III Summary

The way in which Strauss works with this passage and the Luther image based on it raises problems. In terms of textual interpretation, Strauss ignores details. In terms of approach, he reads Luther backwards, i. e., from the viewpoint of the impact which Luther must have had on society. Strauss seems to be guided by the principle that a text can have a history of its own in which its meaning can turn out to be even contrary to the intentions of the author.⁵² The problem is how Strauss establishes that history. That history – Luther's supposed impact on his audience, or how Luther's audience as a whole supposedly understood Luther – is the result of generalizations and speculations, brilliant in some instances, but without evidence nevertheless. Some features in the image which Strauss presents clearly show that they are the result of the author's ideological presupposition that it was »mundane life« that mattered to the people of early 16th century Germany, and not religion; others clearly show that they are the result of the author's assumption that the people of early 16th century Germany were incapable of differentiating between their social and spiritual selves, an assumption for which he produces no evidence whatsoever

52 For details, see, Roland BARTHES: The death of the author. In: Roland Barthes: Image – music – text. NY 1977, 142-148 (for an evaluation of Barthes' position, see Edgar V. MCKNIGHT: Meaning in texts: the historical shaping of a narrative hermeneutics. Phil 1978, 151-155; Jost HERMAND: Synthetisches Interpretieren: zur Methodik der Literaturwissenschaft. 5th ed. M 1977, 164-170); Dominick LACAPRA: Rethinking intellectual history and reading texts. In: Modern European intellectual history/ reappraisals and new perspectives/ ed. by Dominick LaCapra and Steven L. Kaplan. Ithaca, N. Y. 1982, 47-85. In general, see Eric D. HIRSCH: The validity of interpretation. New Haven, Conn. 1967; TEXTHERMENEUTIK, AKTUALITÄT, GESCHICHTE, KRITIK/ ed. by Ulrich Nassen. PB 1979.

which might give any value to it. The reader will have to decide the validity of the way in which Strauss works with this passage, and of the image which he develops.⁵³

53 After the manuscript had been completed, I became acquainted with Udo WOLTER: *Amt und Officium in mittelalterlichen Quellen vom 13. bis 15. Jahrhundert: eine begriffsgeschichtliche Untersuchung*. ZSRG 74 (1988), 246-280. Drawing on a wealth of material from Canon and secular law, and from theological and other literature, the author provides a broader basis on which the position presented above, in II.3.1-2 could rest. It is noteworthy that he presents material according to which »Handwerks- und Zunftgenossen« were designated as »Amtleute« (270). One would have to pursue the impact of this observation on the way in which, according to Strauss, »Handwerker«, who certainly have to be counted among Strauss's »out-group«, supposedly had to feel about Luther's use of the word »Amtmann« for Moses, and about Luther himself.

Excursus I: Amptmann, Minister and Amt in the Tradition and in Luther

For »Amptmann«, etc., see the appropriate entries in DEUTSCHES WÖRTERBUCH/ founded by Jacob and Wilhelm Grimm. Vol. 1. L 1854, 280-282 (Amt, Amptmann); TRÜBNERS DEUTSCHES WÖRTERBUCH. Vol. 1/ ed. by Alfred Götze. B 1934, 73 (Amt); Friedrich KLUGE: Etymologisches Wörterbuch der deutschen Sprache. 20th ed. B 1967, 20 (Amt); FRÜHNEUHOCHDEUTSCHES WÖRTERBUCH/ ed. by Robert R. Anderson, Ulrich Goebel, Oskar Reichmann. Vol. 1. B; NY 1989, 913 (ambächten, ambächter, ambächtung). 948-953 (amptmann).

For »minister« in Medieval Latin, see the appropriate entries in the GLOSSARIUM MEDIAE ET INFIMAE LATINITATIS/ founded by Charles du Fresne Sieur du Cange; last ed. by Léopold Favre. Vol. 5. Niort 1885 – repr. Graz 1954 –, 394f (minister); Eduard BRINCKMEIER: Glossarium diplomaticum. Vol. 2. Gotha 1863 – repr. Aalen 1961 –, 296-299 (minister, ministeriales, ministerium); [Jan] [Frederik] NIERMEYER: Mediae Latinitatis lexicon minus/ finished by C. van de Kieft. Leiden 1976 – repr. 1984 –, 683-690 (minister, ministeriales, ministerium, ministrare).

See further, Wilhelm STREITBERG: Gotisch-griechisch-deutsches Wörterbuch. HD 1910 – repr. of the 2nd ed. [1928], 1965 (this is part II of Streitberg's edition of DIE GOTISCHE BIBEL. HD 1908 – repr. of the 2nd ed. [1919], 1965); Wilhelm BRAUNE: Gotische Grammatik mit Lesestücken und Wörterverzeichnis. 17th ed. by Ernst A. Ebbinghaus. Tü 1966, 66 (§ 95, Anm. 1: andbakti) – an English expanded version of the 4th ed. has been published by Gerhard Balg; 2nd ed. Milwaukee, Wis. 1895; Elisabeth KARG-GASTERSTÄDT; Theodor FRINGS: Althochdeutsches Wörterbuch. Vol. 1. B 1968, 313-323 (ambaht, etc.); Matthias LEXER: Mittelhochdeutsches Taschenwörterbuch. 34th ed. L 1974, 4 b (ambahte, ambahten, am-

man). 363 c (ambet); Laurentius DIEFENBACH: Glossarium Latino-Germanicum mediae et infimae aetatis. F 1857 – repr. DA 1968 –, 362 a (Minister).

For the pre-Luther German Bibles, see Wilhelm KURRELMAYER: Die erste deutsche Bibel. Vols. 1 and 2. Tü 1904, 1905. The Mentel Bible, the 1478 Cologne and the 1494 Lübeck Bible are available in the Newberry Library in Chicago. For Luther and the pre-Luther German Bibles, see also Heinz BLUHM: Martin Luther and the Pre-Lutheran Low German Bibles. The modern language review 62 (1967), 642-653.

For the use of »Amt«, etc., by Luther, and of »ambechter« in the Mentel Bible, see also Philipp DIETZ: Wörterbuch zu Dr. Martin Luthers deutschen Schriften. Vol. 1. L 1870 – repr. Hildesheim 1961 und 1973 –, 66-68 (Amt, Amtleute, Amptmann).

The following translations further illustrate the tradition. The English texts are cited according to the NEW ENGLISH BIBLE; italics in the English texts designate the key word. Roman numbers designate the following texts I: Greek text and Vulgate; II: Gothic Bible; III: Mentel Bible; IV: High German Bibles published after the Mentel and Eggestein Bibles as a group with an occasional exception (ca. 1473-1518); V: Low German Bibles; VI: Luther's September Testament; VII: Final version of the Luther Bible (1545):

Mc 14,65: »And the High Priest's *men* set upon him with blows.« I: ὑπηρέται, ministri; II: andbahtos; III: ambechter; IV: diener; V: dener, dyener; VI: knechte; VII: Knechte. R 12,7: »The gift of *administration* [must be exercised] in administration. I: διακονία, ministerium; II: not available in Streitberg's text; III: ambechtung; IV: dienst, dienung; V: dyenst, denst; VI: ampt, VII: Ampt. In II, L 1,23 (»When his period of *duty* was completed ...«) is translated as

»andbahti« (I: λειτουργία, officium; VI: ampt; VII: Ampt), R 13,6 (»The authorities are in God's service ...«) as »andbahts« (I: λειτουργοί, ministri; VI: Gottis diener; VII: Gottes Diener), and Mc 9,35 (»He must make himself ... [a] servant of all«) as »andbahts« (I: διάκονος, minister; VI: knecht; VII: Knecht). Materials such as these could be multiplied.

One has to ask why in the September Testament Luther did not translate the phrase in G 2, 17 as »Amtmann der Sünde«. He translated it as: »so hetten wyr von Christo nicht mehr denn sunde« (WA DB 7, 178). Luther replaced this very free translation with the more appropriate one, »Sündendiener«. We find this new text for the first time in the 1527 edition, and Luther retained it to the final version he supervised; WA DB 7, 179. Apparently when Luther worked on the September Testament, he felt that the difficult to understand original (see also above, n. 38), in which ἁμαρτίας διάκονος (peccati minister) is said of Christ, needed such a free translation. Whatever the situation was, Luther felt it necessary to add a lengthy marginal gloss in which he developed the theological meaning of this phrase, without actually paraphrasing the text. With slight changes, he retained this gloss throughout all the editions he supervised.

Finally, I am not arguing that, in light of the tradition, Luther's »Amtmann der Sünde« was the only possible phrasing. In the Preface, Luther could have written: »[St. Paul calls Moses] einen Dienstknecht der Sünde und seine Kechtschaft eine Knechtschaft des Todes« (See also above, n. 44). This different phrasing, how-

ever, would not have eliminated the socio-political overtones of the original word (minister) to be translated, though it would have focused not on the top of the social ladder, the »Amtmann«, but on the bottom, the servant or serf. Thus the process of association which, if one applies Strauss's argumentation, Luther supposedly would have wanted to trigger with this different phrasing would no longer be »Moses = Amtmann«, but »Moses = servant, serf, gemeiner Mann«. The result of this process still would be the same. Now the »emancipator« Christ would not free the people from those hated bureaucrats and their laws; he would free the people from all servanthood, i. e., from all that is the opposite of those things for which the »Amtmann« stands. Strauss seems to ignore that the original word, »minister«, is a socially, politically charged word which expresses service in a fixed position. A good translator, therefore, may not use a word which does not somehow do justice to this meaning. (See also Luther's translation of the Vulgate's »princeps carceris« as »Amptman vber das Gefengnis« [Gn 39,21], »custos carceris« as »Kerckermeister« [Act 16,23. 27], and of the various titles of the officers appointed by Moses in Dt 1,15, for which Luther uses »Heubter« and »Amptleute«; WA DB 6,483; 8,159. 557. 559.) At one point, Luther paraphrases the »minister« of G 2, 17 with »prediger« vel »largitor« (see below, excursus II). While this paraphrase might, perhaps, have eliminated the political overtones of »minister«, it certainly did not eliminate the social overtones.

Excursus II: Luther on »minister peccati« (G 2, 17)

As early as in his First Lecture on Galatians (1516/17), Luther applies the phrase from G 2, 17 to Moses and contrasts the ministry of Moses to that of Christ: »... Moses, qui fuit minister peccati, quia peccatum per legem ministravit i.e. notum fecit. Christus autem fuit minister gratie [in the gloss he describes Christ with the title »minister iustitiae«], ut tolleretur peccatum, quod Moyses attulerat per legem, et gratiam daret, quam Moyses requirebat« (WA 57 II, 71, 10-13; 18, 18 – scholion and gloss on 2, 17, student's notes). Of course, one does not know what word Luther would have used for »minister« had he delivered this lecture in German; one also does not know how the student, who wrote down what he heard Luther say, understood »minister«. But in any case, as early as 1516 one finds this usage of the phrase and its meaning.

In the 1519 »Commentary on Galatians«, Luther makes Paul contrast Moses to Christ. Luther refers to 2 K 3, 7 and R 7, 9-13, and identifies »ministerium legis« as »ministratio mortis et peccati«; WA 2, 493, 38 - 494, 2. He continues: »Ideo Mosen ministrum legis [Paul] intelligit ministrum peccati et mortis, ... Cui opponit Christum ministrum iustitiae [see the gloss of 1516], qui hoc implevit, quod Moses per legem exegit.« At this point Luther cites J 1, 17 (perhaps remembering that in the scholion of 1516 he has described Christ as minister gratiae); 494, 3-9.

If it is permissible to press the situation, then one could consider these passages in the lecture and the commentary on Galatians the Latin version which in the Preface Luther recasts in German. In the Preface, Moses is an »Amtmann« (or »minister«) der »Sünde« and his »Amt« (or »ministerium«) is a »Amt des Todes«. Luther again refers to 2 K 3, 7. And then he contrasts the »Amtmann« Moses and his »Amt der Sünde

und des Todes« to Christ and his »Amt der Gnade«, so that Christ is the minister gratiae (»Amtmann der Gnade«), as Luther had described him in his First Lecture on Galatians (scholion to 2, 17); and in this connection Luther once more refers to 2 K 3, 7. See WA DB 8, 21, 14 - 27, 2; also WA 20, 244, 26 - 253, 18: German text.

When in his 1531 Lecture on Galatians and in the 1535 commentary based on it, Luther deals with G 2, 17 (WA 40 I, 247, 1 - 261, 29), he repeats some of these ideas. Again he discusses and contrasts the two ministeria or officia and their ministri; e.g. 250, 10-24; 256, 17 (reference to 2 K 3, 7) - 261, 29, see also 510, 16 - 512, 26 (on G 3, 21). And to make sure that the students get a clear picture of the difference between (what he has called in his First Lecture on Galatians and the 1519 commentary) the ministerium and the minister peccati et mortis and the ministerium and minister gratiae, he throws into his presentation that the phrase in G 2, 17, peccati minister, in its application to Christ »ist ein wenig vndeutsch«, and explains »minister« as »prediger vel largitor«. (Perhaps one may consider largitor to be an echo of the translation of this phrase in the Septemv Testament; see above, excursus I.) He mentions 2 K 3, »ubi [Paul] tractat diligenter ministerium vitae, mortis; literae, spiritus; gratiae, legis«. Then he develops in what way, according to Paul, Moses is a minister (i.e., according to the explanation of this term which Luther had just given, a prediger vel largitor) legis and has the »ministerium legis quod est peccati, mortis, irae ministerium«.

And finally, he elaborates on the term »minister peccati«. He apparently did all this so quickly that the otherwise exact Georg Röer, in taking down what he heard Luther say, by mistake made Luther quote 2 K 4, could not note two

chapter references to Romans – he added one between the lines – and had to use many abbreviations; see 40 I, 256, 3 - 257, 3, Hs text.

It is clear, then, that, when working with the phrase »peccati minister«, Luther is concerned with the ministerium or officium of the two »largitores«, »prediger«, »ministri«, »Amtmänner« – Christ and Moses. Contrary to Strauss, the titles which Luther assigns to Moses or Christ in their respective ministries are unimportant. Strauss reads something into Luther's usage of »minister / Amtmann« which is not there.

For Christ's munus, officium, or ministerium, and for the »work« necessary to fulfill this officium, see also WA 57 III, 128, 7 - 130, 11; 133, 9 - 134, 11; 14, 5f (scholion and gloss on H 2, 14, student's notes); 10 I 2, 26, 10 - 27, 29; 152, 23 - 154, 22; 39 I, 534, 12 - 539, 2 (both versions); 40 I, 297, 7 - 298, 18; 40 II, 517, 1 - 518, 10. In these passages Luther applies to Christ titles such as »dominus«, »rex«, »victor«, »König«, »Priester«. One wonders how Strauss would have shaped his argument had he worked with these titles for Christ rather than with »emancipator«, the title suggested in his argumentation.