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Abstract: Whether one endorses or dismisses the biblical consistency of the tripartite division of the law, this long held tradition has been interconnected with the public/private distinction in both secular and Christian streams of thought. The historical evidence indicates that the tripartite division of the law has been constructed in such a manner as to reflect or perhaps even presuppose the public/private distinction. Consequently, the histories of the tripartite division of the law and the public/private distinction are intertwined. Furthermore, the evidence in this study suggests several aspects of research into the tripartite division which may need to be expanded or in some cases perhaps reconsidered. Since the tripartite division has been a long and widely held construction in the Christian tradition and it implies the public/private distinction, then despite the current trend to dismiss the distinction, evangelicals have good cause to retain this heuristic and hermeneutic device that is necessary for biblical interpretation and unavoidable in ethical reflection.

Key words: theology, Reformed theology, ethics, applied ethics, tripartite division of the law, public/private distinction, contemporary issues, hermeneutics

In the present time in church history, magisterial works treating the history of doctrine itself (Harnack, History of Dogma) and individual doctrines (McGrath, Iustitia Dei) have been produced to the great benefit of the church.¹ Such works treating the histories of various doctrines are invaluable not only as contributions to historical theology, but also for a systematic understanding of why evangelicals believe what they do now and in some cases pointing to what they should or should not believe are Scriptural teachings. While some major doctrines have been treated with a panoramic historic overview, others such as sanctification and the tripartite division of the law have been largely neglected. With regard to the tripartite division of the law, Ross’s From the Finger of God (2010) currently stands as the definitive contemporary work on the tripartite division in terms of its scope and

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comprehensiveness. Ross’s concern is “to investigate the biblical and theological grounds for the threefold division” in order to defend the doctrine “as an a posteriori framework derived from the patterns that Scripture as a whole establishes” rather than an a priori “impersonal, self-constructed framework” that is imposed on the Bible. The historical section of his larger study supports this agenda by arguing that the history “reflects its [the tripartite division’s] status as the ‘orthodox position.’” Ross carefully qualifies that the historic section of his biblically and theologically focused study is “not an exhaustive account,” but his brief and excellent overview is possibly the most complete history of the tripartite division to date. Furthermore, Ross helpfully suggests three directions for future research into the tripartite division: (1) detailed investigation of individual church Fathers and expansion of the doctrinal development from (2) the Fathers to Aquinas and (3) from Aquinas to the Westminster Confession.

This article loosely follows Ross’s second suggestion by modestly expanding his history of the tripartite division in the time period from the late centuries BC to the Reformation, including Ross himself. There are four reasons for making this expansion modest and selecting this particular time period. First and in addition to the space constraints of an article, this work continues my past investigation of the relationship between the tripartite division and the public/private distinction, which makes the figures presented selective. Second and with respect to the time period, for the relationship of the tripartite division and the public/private distinction, it is more helpful to begin earlier than Ross has suggested and to end in the Reformation, but also to include Ross. Third, this period is important for investigating the origin of the tripartite division and for supporting the argument for the continued use of the public/private distinction. Furthermore, rather than rigidly focusing on a particular period, this slice of history suggests four non-Christian streams of thought (Greek philosophical, Roman legal, Gnostic, and Jewish theological) that have some relation to the Christian construction of the tripartite division. Finally, and in contrast to a purely historical study of the tripartite division alone, these first three considerations and particularly the focus on streams of thought create a study that points to areas in which research regarding the tripartite division may need to be expanded or perhaps in some cases reconsidered.

The thesis of this article is that the histories of the tripartite division of the law and the public/private distinction are intertwined. As a result of the historical conjunction of these two biblical hermeneutic tools, the long and widely held tradition of the tripartite division of the law has set not only a conceptual precedent for but also a sometimes-unconscious presupposition of the public/private distinction in the evangelical mind. This thesis is defended in five parts. First, the terms tripar-

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3 Ross, *Finger of God*, 18, 351.
4 Ibid., 352 (emphasis added).
5 Ibid., 32.
6 Ibid., 352.
The tripartite division and public/private distinction are briefly introduced and defined. Second, some of the primary biblical evidence for these ideas is presented. Third, a historical overview of the tripartite division from the late centuries BC to the Reformation is presented. Fourth and fifth, the historical overview is divided into various non-Christian and Christian streams of thought for presentation and analysis.

I. BRIEF INTRODUCTION AND DEFINITION OF TERMS

The tripartite division of the law as historically constructed and interpreted by its proponents has been understood in a manner that implies, reflects, or perhaps even presupposes the idea of the public/private distinction. Although defined with some variation, the tripartite division of the law may be understood as a view of the biblical law: (1) as unified, but with distinct and overlapping civil, ceremonial, and moral aspects and (2) in which the ceremonial law was fulfilled in Christ, the civil law expired with the state of national Israel, and only the moral aspect continues to be in force for believers. In recent scholarship, the tripartite division of the law has primarily been discussed in debates about the nature of law (some in relation to the law itself and others with respect to New Perspective on Paul), the doctrine of sanctification, the field of ethics, and the relationship between the OT and the NT with respect to eschatology (traditional Reformed versus dispensational and more recently progressive covenentalism versus progressive dispensationalism).

While the tripartite division is most likely associated with the Reformed tradition in the minds of American evangelicals through its expression in The Heidelberg Catechism, The Belgic Confession, The Canons of Dort, and perhaps most notably The Westminster Confession, historically broad sectors of the Christian tradition such as Eastern Orthodox, Roman Catholic, and Anglican have also held to the tripartite division of the law rather than the historically recent dispensationalist view of the law as a monolithic indivisible whole. Even though dispensationalists may theologically reject the tripartite division, they should also be able to appreciate the historic argument along with other evangelicals that the long-held tradition or systematic

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construction of the tripartite division has set a historic precedent or perhaps shaped a sometimes-unconscious presupposition in Christian thought by implying a public/private distinction.

The public/private distinction is “one of the ‘great dichotomies’” (Bobbio) of western civilization that has been used as a heuristic tool in social, political, public policy, and ethical debates for centuries by both secular and Christian sources.10 While the distinction itself has been variously defined throughout time and in diverse fields of study so that its definition is controversial, the public/private distinction may be thought of as two spheres of social relation, the public and private, which stand in opposition to each other. In order have a more concrete understanding of what is meant by the distinction, it may be helpful to note that some define the private as “the individual” in contrast to the public as “the government.”11 One important aspect of the dichotomy as a heuristic tool in applied ethical problem solving is the principle that moral obligations sometimes differ between the public and the private spheres, and this difference often emerges in discussions involving the so-called “right to privacy” in abortion, bioethics, euthanasia, homosexuality, the nature of marriage, pacifism, capital punishment, and other issues. The distinction has long been an indispensable heuristic tool for evangelicals because of its basis in Scripture, its use as a biblical hermeneutic principle, and its nature as an inescapable instrument for shaping ethical discussion. However, recently the distinction has moved from being a tool for framing contentious debates to being the target of criticism. Therefore, it is not only profitable to consider a more detailed history of the tripartite division of the law for historical and theological considerations alone, but also in connection with the way the division has been constructed so as to reinforce the idea of the public/private distinction in the evangelical ethical consciousness.

II. PRIMARY BIBLICAL EVIDENCE

In order to understand why large portions of the tradition have held that Scripture teaches a tripartite division of the law and why the public/private distinction has long been a part of Christian tradition, this section presents some of the basic biblical evidence to which proponents appeal for each of these concepts. Despite objections from dispensationalists to the following evidence or interpretations of it, and certain passages which favor their view of a monolithic law that was abrogated and replaced, the following evidence is some of the strongest for the tripartite division of the law.


11 Weintraub, “Public/Private Distinction,” 7, 35.
There are perhaps five primary evidences for the tripartite division. First, some laws seem to neatly fit into the three categories of moral (e.g. prohibitions against murder, lying, and stealing, Exod 12:13, 15–16), civil (e.g. laws of property restitution, Exod 22:12–14), and ceremonial (e.g. statutes regarding becoming ceremonially unclean by touching unclean things, Lev 5:2). Second, in Deut 5:22, the fact that God “added nothing more” (ņew) to the Ten Commandments supports the idea that the Ten are somehow distinct from the rest of the statutes that follow and allows for the interpretation that the Ten are distinct in terms of being everlasting and moral in contrast to those that follow.12 Third, in Matt 5:17, the plain statement that Jesus came “not to abolish the law, but rather to fulfill it”—instead of Jesus having “abolished the law by fulfilling” it, as some dispensationalists maintain—is one of the strongest statements in favor of the tripartite understanding of the enduring nature of the law.13 Fourth, in Matt 23:23–23, the contrast between “the weightier matters of the law” (τὰ βαρύτερα τοῦ νόμου) that consist of moral issues such as justice in the second part of the verse with implied “lighter” matters of the ceremonial law of giving a tenth of spices in the first half indicates a distinction between moral and ceremonial laws.14 Fifth, in Col 2:14, what was “blotted out” (ἐξαλείψας) is understood as being the ceremonial law from the “therefore” (οὖν) (Col 2:16), list of ceremonies (Col 2:16), and explicit statement that these ceremonies foreshadow the reality in Christ (Col 2:17).15 On this understanding, Col 2:14–17 indicates that only the ceremonial law has been abrogated and so allows for the continuation of the moral law. There are certainly other evidences and also objections not included here, which others may find to be more compelling, but these five points seem to be some of the strongest and most frequently cited and debated biblical evidence in favor of the interpretation of the tripartite division of the law.

While the public/private distinction is often a mere suggestion or implication of terms or practices in most of the OT and NT, the primary evidence for it occurs in the harmonization of the apparent contradiction between Matt 5:38–42 and Rom 12:19 with Rom 13:4. In Matt 5:38–42 and the parallel drawing on the teaching of Jesus in Rom 12:19, the principle of non-retaliation stands in an apparent contradiction to the explicit statement in Rom 13:4 that the “ruler” (ἄρχοντες) from Rom 13:3 is to “take revenge” (ἐκδικοῦσιν) on behalf of citizens.16 The apparent contradiction is particularly emphasized through the language in Romans by which revenge rather than justice is prohibited among members of the Roman church by the par-

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15 Ross, *Finger of God*, 279–86; BDAG, s.v. “ἐξαλείψω.”
ticiple, “taking revenge” (ἐκδίκουντες) [ἐκδίκεω] (Rom 12:19), but said to be the proper behavior of rulers on behalf of their subjects by use of the cognate adjective, “avenger/revenger” (ἔκδικος) [ἔκδίκω]. While some may harmonize the apparent contradiction between the non-retaliation principle (Matt 5:38–42; Rom 12:19) with the ruler’s role of exacting judicial vengeance (Rom 13:4) in other ways, many contemporary commentators have followed Augustine, Aquinas, and Calvin by appealing to the public/private distinction.

III. HISTORICAL OVERVIEW

With regard to the history of the tripartite division, there have been various proposals for origins of the construction of the tripartite division and associated debate about whether various historical figures had a twofold, threefold, or other division. With respect to the controversy of origin, Ross concludes that “no one individual is its author.” Drawing on Ross and others, the following table selectively summarizes some of the history of the tripartite division in the period under consideration by indicating potential proponents of or possible contributors to the development of the concept, the stream of thought to which they belong, and a significant scholar(s) who either proposed the historical figure as an originator or discussed that figure’s importance in relation to the division.

17 On the cognate nature of the terms see Zodhiates, CWSDNT, s.v. “ἐκδίκεω.”
19 Ross, Finger of God, 19–21, 26–27.
20 Ibid., 352.
### Table 2: Select History of the Tripartite Division

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### IV. NON-CHRISTIAN STREAMS

Even if one wants to insist with Ross that the tripartite division of the law has its ultimate origin in the biblical text, there is no denying that the idea of a tripartite and other similar types of divisions of law existed in non-Christian streams of thought prior to and contemporary with Christian biblical interpreters. Upon making this realization, one must wonder whether the Bible influenced these streams, these currents influenced biblical interpreters, they were independent developments, or there was some mutual interaction of ideas that ultimately have various levels of consistency with the Bible. While on the one hand, it is likely impossible to demonstrate historical “influence,” on the other hand, ideas typically do not exist in a vacuum and similarities in thought often point to some kind of dependence or interaction even if scholars cannot precisely establish the nature of the relationship. As Table 2 indicates, there are at least four post-biblical (OT) non-Christian streams of thought regarding the tripartite division: Greek philosophical, Roman legal, Gnostic, and Jewish theological.

1. **Greek philosophical tradition.** In premodernity, the tripartite division and the public/private distinction have their roots at least as far back as the writings of Aristotle (384–322 BC). Although in the *Politics*, Aristotle records the real estate and legal tripartite divisions of Hippodamus, son of Euryphon of Miletus, the former involving the sacred, public, and private lands (τὴν μὲν ἱερὰν τὴν δὲ δημοσίαν τὴν
δ' ἰδίων ἰδίων), in his Rhetoric, Aristotle himself affirms a bipartite division of “two kinds of laws” (τε νόμους δύο), into the “particular” or private (ἰδιόν) and “common” or public (κοινόν), where the particular laws are those belonging to a specific community and the common law is “according to nature” (κατὰ φύσιν) or the natural law. 22 The two types of law relate to actions affecting both “the whole community” (τὸ κοινόν) and “one individual of the community” (ἕνα τῶν κοινωνούντων). 23 Furthermore, in his Economics, Aristotle has a famous fourfold division involving the public/private distinction, “Economics and politics are different not only to the degree as the household and the city. … There are four kinds of economy, … royal, Satrapic, political, and private.” 24 While Aristotle’s influence on the Greek and Roman legal traditions is debated, these three features that appear in Aristotle’s thought—the natural law, divisions between classes of laws, and the public/private distinction—reappear in later Roman law, which has a tripartite division involving a public/private distinction. 25

2. Roman legal tradition. In the Roman legal tradition, there is a tripartite division of law that contains a public/private distinction and which some claim is a source for the Christian theological construction of the tripartite division of law. Cicero (106–43 BC) is one of the earliest sources in the Roman legal tradition whom Russell claims “implies a tripartite division in which public, private, and sacred are each distinct.” 26 In his Republic, through L. Furius Philus, Cicero claims, “but justice teaches … do not touch the sacred, public, [or that] of another.” 27 Cicero predates the earliest sources of the tripartite division in the Christian theological tradition, Justin Martyr (AD 100–165) and Irenaeus (AD 130–200), and so his thought could lie behind these later authors whether by direct acquaintance with his work, the works of intermediaries, or popular thought. In this vein, Andresen, Barnard, and Kaye find Cicero’s thought to be one of the sources behind some of Justin’s ideas, particularly in his Second Apology (2 Apol. 8, 13) and the introduction to...

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24 All translations by the author unless otherwise noted. “ἡ ὁικονομικὴ καὶ πολιτικὴ διαφέρει οὐ μόνον τοσοῦτον δὴν οἰκία καὶ πόλις … ὁικονομικὰ δέ εἰσιν τέσσαρες … βασιλικὴ σατραπικὴ πολιτικὴ ἰδιωτικὴ.” Aristotle Oec. 1.1.1343a.1–4; 2.1.1345b.10–14 (AO 10:343, 349). Although this citation is from Aristotle’s economics and argues for a differentiation between politics and economics, Aristotle viewed economics and politics as closely related to ethics. Aristotle argued for three types of science—contemplative, productive, and practical—and he classified economics, politics, and ethics all as types of practical inquiry. Therefore, his economic classifications are distinct from, yet bear some relation to and have a possible influence on later legal and/or ethical divisions (Fred D. Miller Jr., “Aristotle: Ethics and Politics,” in The Blackwell Guide to Ancient Philosophy [ed. Christopher Shields; Blackwell Philosophy Guides; Malden, MA: Blackwell, 2003], 185).
26 Russell, Politics of Public Space, 29.
Similarly, despite Grant stressing that “Irenaeus had never read either Vincent or Cicero” and Briggman claiming that we cannot know the sources behind Irenaeus, Grant himself, Jorgensen, and Schoedel find such parallels between Irenaeus and Cicero that Bingham can speak of “Irenaeus, informed by Cicero.”

Therefore, since Justin and Irenaeus were to some extent and by some means influenced by Cicero, then their theological conceptions of the tripartite division of the law may have been shaped in part by the Roman legal tradition.

Next in the succession of the Roman legal tradition is Ulpian (AD 170–223), who not only makes an explicit connection between the tripartite division of the law and the public/private distinction but is also thought to be a source for the Christian construction. Ulpian’s expression of the tripartite division is preserved in Justinian’s Digest:

This study has two positions, public and private. Public law is that concerning the things of the Roman state, private that concerning the advantage of the individual: that is namely something to the advantage of the public, something to the private. Public law consists of things in accordance with the sacred, priests, and magistrate. Private law is tripartite: and is indeed assembled from precepts of the natural, nations, or civil.

This citation indicates that for Ulpian, the tripartite aspect of the law has to do with the private sphere, but the three elements have considerable overlap and as Ulpian defines them, the ins gentium and ins civilibus seem to have some overlap with the public. However, there are two important points for this study raised by Ulpian’s construction. First, the three features that appear in Aristotle—the natural law, divisions between classes of laws, and the public/private distinction—have reappeared in Ulpian’s thought on the law. Second, not only does Ulpian relate the tripartite division to the public/private distinction, but Aquinas (AD 1225–1274)

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30 “Huius studii duae sunt positiones, publicum et priuatum. publicum ius est quod ad statum rei Romanae spectat, priuatum quod ad singulorum utilitatem: sunt enim quaedam publice utilia, quaedam priuatum. publicum ius in sacris, in sacerdotibus, in magistratibus constitit. priuatum ius tripartitum est: collectum etenim est ex naturalibus praeceptis aut gentium aut civilibus.” Ulpian, Dig. 1.1.2–4.
shows familiarity with Ulpian by citing him in his “Treatise on Justice.” Additionally, Aquinas explicitly cites Isidore (AD 560–636) in his “Treatise on Law” and particularly in the section on the tripartite division. Isidore, the bishop of Seville, has his own tripartite division with Aristotle’s three features and Brehaut claims that Isidore relied on Uplian for his construction. Therefore, Reed rightly claims that Ulpian and Isidore are sources for Aquinas’s tripartite division.

The tripartite division in Roman law was not the isolated invention of two individuals, Cicero and Ulpian, but was a widespread understanding that was likely part of the popular culture such that it could have influenced Christian interpreters of the time. The mere presence of the division in Justinian’s Digest (AD 533), which became part of the “the authoritative and ordered statement of Roman law” is evidence of the broad recognition and acceptance of the concept in the Roman legal tradition. Furthermore, Crowe holds that Hermogenian’s (AD 245–311) comments in the Digest also reflect a tripartite division. Finally, Phillipson claims that Ausonius (AD 310–395) is part of a broad tradition of “juriconsultants, historians, and other writers, including poets, [who] frequently emphasize a tripartite division of law into public, private, and sacred.” And as Ausonius is reflective of the tradition, then that tradition related the tripartite division of the law to the public/private distinction as Ausonius did: “Law is threefold … sacred, private, and that which is everywhere common to the nations.” Since Table 2 indicates this Roman legal tradition that was part of the popular mindset existed prior to and at the time in which the Christian theological construction of the tripartite division of the law was developed, then it is certainly possible that this popular and widespread Roman legal tradition of relating the public/private distinction to the tripartite division of the law had some influence on the Christian understanding. Haddad rightly objects to the idea of historical-conceptual dependence merely on the basis of chronological priority; however, the preceding argument has marshalled Haddad’s required “specific evidence” by citing both primary sources and the opinions of experts respectively from Justin, Irenaeus, and Roman legal studies who have ar-

31 Aquinas, ST II–II.57.3 arg. 1.
32 Ibid., ST I–II.98.1 arg. 2; I–II.100.2 arg. 3; I–II.100.7 arg. 2; I–II.101.2 arg. 1; I–II.101.3 arg. 2.
33 “Ius autem naturale [est], aut civile, aut gentium” [“Law is either natural, or civil, or of the nation”]. Isidore Etym. 5.4.1; Ernest Brehaut, An Encyclopedist of the Dark Ages (ed. The Faculty of Political Science of Columbia University; Studies in History, Economics and Public Law 120; New York: Columbia University, 1912), 165.
34 Reed, International Law, 103.
36 Hermogenian, Dig. 1.1.5; Michael Bertram Crowe, The Changing Profile of the Natural Law (The Hague: Martinus Nijhoff, 1977), 44–45.
37 Phillipson, International Law, 70.
38 “Ius triplex … Sacrum, priuatum et populi commune quod usquam est.” Ausonius, Opsc. 16, Edyl. 11. The three features that appear in Aristotle—the natural law, divisions between classes of laws, and the public/private distinction—have also reappeared in Ausonius’s thought as they did in Ulpian’s conception of the law.
gued for both parallels between the primary sources of the historical figures in question and a widespread popular tradition.39

Opponents of the division will likely and quickly jump to the objection that evidence of the division in the Roman law indicates that Christians borrowed the framework from an extrabiblical or a priori source and imposed it on Scripture.40 However, there are at least two other possibilities. The first possibility is likely implausible in the minds of many, but still a theoretical possibility that deserves mention. Although thought by “the modern reader to be ludicrous” (Droge), could Justin’s “loan theory” (Haddad) that the Greeks were dependent on the OT, which is attested to by other ancient sources as varied as Hecataeus to Josephus, have some truth to it even if through general cultural contact rather than familiarity with specific documents?41 Second and more plausibly, just as Tertullian borrowed the term “Trinity” from the Roman law to describe something that actually exists in Scripture, so the same thing may have been done with the tripartite division. Regardless, the point of this article is neither to defend nor discredit the biblical origin of the tripartite division, but rather to demonstrate that the long held Christian tradition of the tripartite division consists of or is related to and so provides support for the public/private distinction. Since the Roman legal tradition of the tripartite division existed prior to and was contemporary with Christian constructions, at least some Christian thinkers were familiar with specific aspects of the Roman tradition, and since the Roman tripartite division contains a public/private distinction, then it seems likely that the Roman legal tradition of a tripartite division of the law had some influence on Christian thought, including the inclusion of the public/private distinction.

3. Gnostic tradition. Chronologically following the Roman legal tradition, the Gnostic tradition may contain a tripartite division of the law. Räisänen claims that Ptolemy’s (AD 136–180 fl.) Letter to Flora “was the first to make explicit critical distinctions within the OT law itself.”42 Ross argues that the division of law in Ptolemy “carries the same outward form,” but has too many differences with the Chris-

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41 Arthur J. Droge, Homer or Moses? Early Christian Interpretations of the History of Culture (ed. Hans Dieter Betz, Gehard Ebeling, and Manfred Metzger; HUT 26; Tübingen: Mohr, 1989), 63; Haddad, Justin Martyr’s Arguments, 115–16. See also Kaye, Justin Martyr, 3:38; C. C. Martindale, St. Justin the Martyr (Catholic Thought and Thinkers; New York: P. J. Kennedy & Sons, 1921), 107. In addition to modern skepticism of the “loan theory,” Osborn has pointed out ancient criticism: “Celsus’ writings reverse the basic direction to show that Christianity is dependent on the wisdom of the philosophers, from which it is an inferior derivative.” Eric Francis Osborn, Justin Martyr (BHT 47; ed. Gehard Ebeling; Tübingen: J. C. B. Mohr, 1973), 168.

42 Räisänen, “Law as a Theme,” 276.
Christian version so that it is “a mistake to see Ptolemy as the source,” but rather “he was reworking ‘the orthodox position.’” \(^{43}\) Ptolemy argued the following:

And so it can be granted that the actual law of god is subdivided into three parts. The first subdivision is the part that was fulfilled by the savior: for “you shall not kill,” “you shall not commit adultery,” “you shall not swear falsely” … The second subdivision is the part that was completely abolished. For the commandment of “an eye for an eye and a tooth for a tooth,” which is interwoven with injustice and itself involves an act of injustice, was abolished by the savior with injunctions to the contrary. (Flor. 33.6.1–2) \(^{44}\)

And the third subdivision of god’s law is the symbolic part, which is after the image of the superior, spiritual realm: I mean, what is ordained about offerings, circumcision, the Sabbath, fasting, Passover, the Feast of Unleavened Bread, and the like. Now, once the truth had been manifested, the referent of all these ordinances was changed. (Flor. 33.5.8–9) \(^{45}\)

Ptolemy’s division consists of a moral law involving the Ten Commandments that is fulfilled by Christ, a judicial law that was abolished, and a ceremonial law that was changed. Consequently, Ross may not give enough credit to the similarities between Ptolemy’s Gnostic version and the Christian tradition. However, given the chronological position of Ptolemy in Table 2, Ross’s judgment is almost certainly correct, that Ptolemy more likely reworked the preexisting Christian tradition rather than contributed to it. Just as Yamauchi has argued that past efforts to make Gnosticism earlier historically are flawed methodologically, so also recent efforts by those such as the Kroegers, Mickelsen, Pagels, and others are polemically motivated rather than consistent with the facts. \(^{46}\) Consequently, it is not in accord with the evidence to claim that Gnosticism was chronologically prior to and so contributed to the Christian tradition. The significance of Ptolemy is that if other non-Christian groups such as the Gnostics, who were considered heretics by the Church Fathers, were reworking the tripartite division of the law, then the division must have been an established and well-known doctrine very early in the history of Christian interpretation and systematic construction.

4. **Jewish theological tradition.** In the Jewish theological tradition, there is merely a primitive distinction between moral, civil, and ceremonial duties or spheres of life or thought rather than a completely formed tripartite division of the law. Philo (20 BC–AD 50) and Josephus (AD 37–100), who are respectively remembered by his-

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45 Ibid., 312.
tory as being a philosopher and a historian, are included in this section on “Jewish theological thought,” because they are prominent Jewish thinkers who touch on religious subjects. While not a prominent theme in his thought, Philo was familiar with an elementary distinction between moral, civil, and ceremonial duties or spheres of life or thought, “for if some men do all things for the sake of themselves alone, … or the preservation of good morals, or with a view to the due performance of any public or private duty, or of a proper celebration of sacred rites.”

Significantly and similarly to the Roman legal tradition, Philo’s rudimentary division between spheres of life or thought is related to an explicit public/private distinction, “with a view to the due performance of any public or private duty.” Furthermore, Philo distinguishes between two tables of the Ten Commandments with the first table of “the most important, in which are commanded the things regarding the Holy One” being more important than the second dealing with “the rightousness toward man.”

Philo’s division appears to correspond to the ceremonial and moral laws and perhaps it does. However, Philo explicitly explains his philosophical reasons for the division, which do not include different legal spheres, but rather the distinct philosophical categories of “the nature of the immortal and the mortal.” Similarly, Josephus distinguishes between two tables of the Ten Commandments, possibly implying a distinction by the nature of the understood content of the two sections, but he does not give any explanation for the division or its nature.

Consequently, Philo and Josephus at best point to a primitive contrast between different types of laws and Philo perpetuates the tradition of associating such a contrast with the public/private distinction.

In the pseudepigraphal works of 2 Baruch (AD 100) and 4 Ezra (AD 120), there is no explicit tripartite division and there does not seem to be an overt contrast between different types of law. However, there is some suggestion of Ross’s innate or self-evident understanding of moral law that stands as the foundation for the distinctiveness of the Ten Commandments as moral law in contrast to the ceremonial and civil laws. Ross argues that one of “several factors” that “point to its [the Ten Commandments] distinctiveness” is they “express morals that the Pentateuch indicates were ‘self-understood’ from the beginning.”

For example, in the time of Abraham before Moses gave the law, 2 Bar 57:2 speaks of an “unwritten law,” which 2 Bar 59:2 understands as “eternal law” and similarly 4 Ezra 3:22 claims “the Law indeed was in the heart of the people,” and 4 Ezra 7:72–74 depicts all “the inhabitants of the world” as “receiving precepts” and “having obtained the

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Consequently, the pseudepigrapha contain some incipient ideas leading to or evidence for the tripartite division of the law.

The situation in the Mishnah (AD 200), Jerusalem Talmud (AD 400), and Babylonian Talmud (AD 600) is the same as that in Philo and Josephus with only an elementary distinction between moral, civil, and ceremonial duties or spheres of life or thought rather than a completely formed tripartite division of the law. In considering these three documents, it is important to recognize that listing them by their standard dates of final compilation causes them to appear late in the history, but they represent material that originated as early as just prior to AD 70 and so could have had an influence on much earlier authors such as Justin Martyr (AD 100–165).

In support of an early origin for the tripartite division of the law, Kaiser and Ross appeal to the studies of Dalman and Montefiore for the claim expressed by Montefiore that “the Rabbis, we may say, were familiar with the distinction between ceremonial and moral commands” through “the distinction between ‘light’ and ‘heavy’ commands,” where “the ‘heavy’ commands are usually the moral commands.” Perhaps one of the clearest and most cited examples is from m. Pirke Abot 2:1 B, “Ah, be careful in a light commandment, as in a heavy commandment.” However, there are also places that might be construed as containing contrasts between moral and ceremonial laws (b. Shabb. 3:6; m. Shebu. 3:6 D–E), moral and civil laws (b. B. Qam. 10:7, I.1.G–H), and civil and ceremonial laws (y. Qidd. 1:7, II.10.D–E). Therefore, while the Rabbinic literature does not contain a tripartite division of the law, it does contain the necessary contrasts between the various species of laws from which such a division would need to be constructed.

V. CHRISTIAN STREAMS

1. Justin Martyr’s construction. Stylianopoulos argues that Justin Martyr (AD 100–165) is the first Christian writer to present an implicit tripartite division of the

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55 Dalman, Jesus-Jeshua, 64–65; Kaiser, Old Testament Ethics, 45–46; Montefiore, Rabbinic Literature, 316–17; Ross, Finger of God, 18–19.

56 “זוהי ידיעת כלל מקראות משורר.” m. Pirke Abot 2:1 B; see also m. Pirke Abot 4:2 A; b. Hag. 14A; y. Qidd. 61B.
Stylianopoulos claims that in Dialogue 44, one will “find a tripartite division of the law” by which “Justin divides the law and, in some way, all of Scripture into the following parts: (1) ethics; (2) prophecy; and (3) historical dispensation.” Justin claims, “For no one, not one, has anything to receive, except those in the mind resembling the faith of Abraham, and knowing all mysteries, now I say that some commands indeed are unto piety and being instruction for righteous action, but some commands and acts similarly were spoken of rather unto the mystery of Christ, or because of the hardness of heart of your people.” According to Stylianopoulos, the “commands unto piety and righteous acts” is the ethical, the “commands and acts unto the mystery of Christ” is the prophetic, and the “those [commands given] because of the hardness of heart of the people” is the historical dispensation. These categories correspond to the contemporary divisions of moral, ceremonial, and civil law. For Justin, the moral law is universal and eternally binding (Dial. 45, 93) but not associated “exclusively with the Decalogue,” and the ceremonial (Dial. 23, 40, 43, 92) and civil laws (Dial. 45, 113) are temporary. Whatever outside influences may have guided Justin toward a tripartite interpretation of biblical law, Justin did not pick up on the strong association of the division with the public/private distinction in his undisputed works. Although scholars debate whether On the Sole Government of God is an authentic work by Justin, if one allows it as evidence of his thought, then the first chapter indicates that Justin was familiar with the public/private distinction through the mention of “public and private rites.” There is possibly some subtle association of the private with the moral law in Justin’s undisputed works through his use of the language of the individual, “each one” (ἕκαστος), when he discusses the moral law (Dial. 45) and some subtle association of the public with the ceremonial law through his use of corporate language, “each race of mankind” (πᾶν γένος ἀνθρώπων) (Dial. 23), and “the hardness of your people’s heart” (σκληροκάρδιον τοῦ λαοῦ ὑμῶν) (Dial. 43). The potentially incipient public/private distinction in the explicitly nascent tripartite division of Justin becomes more pronounced in later Christian writers.

2. Aquinas’s construction. In connection with his explanation of the relation between the testaments, and in some sense popularizing for later Bible interpreters, Aquinas is properly credited with systematizing rather than originating the preexisting and established tradition of the tripartite division of the law or understanding

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57 Stylianopoulos, Justin Martyr, 51–53.
58 Ibid., 55.
59 “Οὐδεὶς γὰρ οὐδὲν ἐκαίνων οὐδαμόθεν λαβεῖν ἐχει πλὴν οἱ τῇ γνώμῃ ἐξομοιωθέντες τῇ πίστει τοῦ Ἁβραάμ, καὶ ἐπιγνόντες τὰ μυστήρια πάντα- λέγω δὲ ὅτι τίς μὲν ἐντολή εἰς θεοσέβειαν καὶ δικαιοπραξίαν διετέτακτο, τίς δὲ ἐντολή καὶ πρᾶξις ὁμοίως εἴρητο ἢ εἰς μυστήριον τοῦ Χριστοῦ, ἢ διὰ τὸ σκληροκάρδιον τοῦ λαοῦ ὑμῶν.” Justin, Dial. 44.
60 “τίς μὲν ἐντολή εἰς θεοσέβειαν καὶ δικαιοπραξίαν διετέτακτο” (ethical), “τίς δὲ ἐντολή καὶ πρᾶξις ὁμοίως εἴρητο ἢ εἰς μυστήριον τοῦ Χριστοῦ” (prophetic), and “ὅτι διὰ τὸ σκληροκάρδιον τοῦ λαοῦ ὑμῶν” (historic dispensation). Stylianopoulos, Justin Martyr, 56, 59, 61.
61 For a similar judgment, see Ross, Finger of God, 29.
62 Stylianopoulos, Justin Martyr, 57–59.
63 Justin, Justin on the Sole Government of God 1 (ANF 1:290).
the law as having moral, civil, and ceremonial aspects. Aquinas succinctly states the tripartite division, “From all of which it is evident, that all of the precepts of the law are contained under the moral, ceremonial, and judicial.” In contemporary thinking, the tripartite division is likely viewed such that the moral and ceremonial laws correspond to the private, while the civil laws correspond to the public sphere. However, Aquinas’s understanding of the relation of the types of law in the tripartite division follows from his view that there are four general types of law, “thereupon it is that this law ought to be called eternal … besides the natural law and the human law, it was necessary to direct human life to have a divine law.” For Aquinas, the moral law of the tripartite division is equated to the natural law and the natural law is discerned by the reason of individuals and is at the same time the basis for human law, so the moral law/natural law has both a private and a public aspect. Since Aquinas argues that both the ceremonial and civil laws are derived from the moral law, then by implication both the ceremonial and civil laws have a private and a public aspect. Aquinas explicitly details a private aspect of exchange of property and a public aspect of punishment of evildoers in the civil law of the tripartite division. In his exposition of the ceremonial law, Aquinas perhaps only implies that sacrifices are public, while the preparation of worshippers for worship is private. Therefore, for Aquinas, there is a public and private part to the moral and civil laws and possibly also to the ceremonial laws.

3. Melanchthon’s construction. Melanchthon’s understanding of the correspondence of the types of law in the tripartite division to the public and private spheres meets and is probably part of the historical basis for contemporary expectations. Melanchthon seems to only partly follow Aquinas in arguing for three rather than four general types of law, “these types: the divine law, the natural law, (and) the human law.” Melanchthon departs from Aquinas in that rather than using the natural law to find a private and public part within each of the types of law that compose the tripartite division as Aquinas does, Melanchthon correlates the moral

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66 “inde est, quod hujusmodi legem oportet dicere aeternam” and “quod praeter legem naturalem, et legem humanam, necessarium fuit ad directionem humanae vitae habere legem divinam.” Aquinas, *ST* I–II.91.4 co.; I–II.91.1 ad. 1 (OOII 7:153, 156).


69 Aquinas, *ST* II–II.105.2 co. (OOII 9:265).


law to the individual or private sphere and the civil law to the public sphere when he claims, “not only were laws put forward according to the morals of individuals, but also public and ceremonial laws were added. Therefore, there are three parts of the whole Mosaic law: moral, ceremonial, and public or judicial laws.”

Consequently, in different but complementary ways, both Aquinas’s and Melanchthon’s constructions of the tripartite division of the law found in the biblical text support the idea of the public/private distinction.

4. Ross’s construction. The main reasons for the addition of Ross’s conception of the tripartite division of the law to the time period of this study are not only the definitive nature of his work but also his seemingly unconscious connection of the tripartite division to the public/private distinction in his systematic construction. Ross’s relation of the tripartite division to the public/private distinction comes primarily in regard to one of his arguments for the distinctiveness of the Decalogue as eternally and universally binding moral law. Ross argues for “features uncovered in the Pentateuch” that “support the traditional view that the Ten Commandments were a distinctive part of the law” and that “the Decalogue has a unique canonical function” such that “the Ten Words function as the ‘constitution’ upon which ‘all else is but commentary’” and “as a summary statement of the laws that follow it.” Consequently, they “were not only the basis upon which God judged Israel, but also the standard by which he would always measure all men everywhere” and are “universally binding moral law.”

One of the “features” to which Ross appeals as evidence of the distinctiveness of the Decalogue is Albrecht Alt’s well-known distinction between casuistic and apodictic law in the OT. In his now-famous work, Ursprünge des israelitischen Rechts (1934), Alt used source-form historical criticism to argue for a distinction between OT laws, which he called casuistic and apodictic and that he based on two criteria: source and form. These two species of law differed in source in that casuistic laws were “adopted by Israel” from the Canaanites after settling in the land and apodictic laws “came down from the occasion when the covenant was made in the time of Moses.” According to Fensham, Alt identified three aspects of the apodictic form that distinguished it from the casuistic style: “the ‘Thou shalt not’ type with the 2nd person singular and a negative command, the participial type, and the curse formulas.” In contrast, “the casuistic laws are stated in the ‘if’ style, with the transgression placed in the protasis and the penalty in the apodosis.”

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73 Ibid., 92, 105–6 (emphasis added).
74 Ibid., 106, 267, 351–52 (emphasis added).
75 Ibid., 88.
76 Ibid., 92, 105–6 (emphasis added).
77 Ibid., 106, 267, 351–52 (emphasis added).
argues that although Phillips discredited Alt’s distinction based on source, the distinction based on form goes back at least to Philo. Ross concludes “that several factors point to its [the Decalogue’s] distinctiveness … unlike the ‘foundation-scroll,’ the rest of the law was not in an exclusively apodictic form or addressed to the individual throughout.”

Ross’s understanding of the tripartite division through his stress on the distinctiveness of the Decalogue as moral law in contrast to the ceremonial and civil laws seems to imply or even presuppose the public/private distinction. By emphasizing that the moral law in the Decalogue is addressed to individuals through Alt’s apodictic form, Ross’s interpretation seems to strongly associate the moral law with the private sphere. Ross does view the Decalogue as a summary of “self-understood” natural law that is known publicly to all but highlights its application to the individual or the private sphere not only through Alt’s apodictic form but also by stressing that the Ten Commandments are the standard by which individuals will be judged. Since for Ross, the ceremonial and civil laws are but a “commentary” on the moral law in the Decalogue, his view of the tripartite division seems to place the ceremonial and civil laws in the public sphere as an interpretation of how the private moral law of the Decalogue applies to the public sphere. Consequently, Ross’s analysis of the tripartite division is consistent with the tradition before him in that the moral law implies or is associated with the private sphere and the civil and perhaps ceremonial law implies or is associated with the public sphere. Ross’s construction indicates that the tradition of the tripartite division has created an often-unconscious presupposition of a public/private distinction in the evangelical mind.

Therefore, the widely held theological construction of the tripartite division has been intertwined with the public/private distinction throughout its long history. Consequently, this systematic construction that has at times assumed and at others merely reflected the public/private distinction has served to indirectly promote the presupposition of the dichotomy throughout history.

VI. CONCLUSION

The historical evidence presented indicates that the tripartite division of the law has been constructed in such a manner as to reflect or perhaps even presuppose the public/private distinction. Consequently, the histories of the tripartite division of the law and the public/private distinction are intertwined. Since the tripartite division has been a long and widely held construction in the Christian tradition and implies the public/private distinction, then despite the current trend to dismiss the distinction, evangelicals have good cause to retain this heuristic and

81 Ross, Finger of God, 105.
82 Ibid., 54–55, 318, 323–35, 331–33.
hermeneutic device that is necessary for biblical interpretation and unavoidable in ethical reflection.

Furthermore, the evidence in this study suggests several aspects of research into the tripartite division which may need to be expanded or in some cases perhaps reconsidered. First, since there is an acknowledged strong interaction between Justin and the Greeks, then the potential Greek contribution to the Christian tripartite division generally and specifically toward Justin’s concept of a tripartite division of the law deserves further exploration. Second, since Aquinas displays a strong dependence upon the Roman law tradition with regard to his conception of the tripartite division, then it will likely prove fruitful to more deeply investigate the connection between the Roman law tradition and the theological construction of the tripartite division. Third, although contemporary critical research has quickly dismissed ancient claims that the Greek philosophers were in some way dependent upon or perhaps merely influenced by Judaism or the OT, perhaps the Jewish influence on the Greeks should be reconsidered with a particular view as to how the OT and Jewish concept of law impacted Greek thought. Such a reconsideration is particularly important in view of the potential Greek and Roman influences on the tripartite division. If the line of thought concerning law and the idea of a tripartite division of the law runs from the OT and/or Judaism through the Greeks to the Romans and ultimately to the Church Fathers, then the Reformed claim that the tripartite division originates in the OT gains new credibility from a historical perspective. Otherwise, the most that might be claimed is that like in the case of the Trinity, the Fathers borrowed a concept from the Roman law tradition to describe something that they saw in Scripture.

Whether one endorses or dismisses the biblical consistency of the tripartite division of the law, this long-held tradition has been interconnected with the public/private distinction in both secular and Christian streams of thought. This long history has created an often-unconscious presupposition of the public/private distinction in the evangelical mind. Despite the current trend to dismiss the distinction, the inextricable and invaluable use of the dichotomy in ethical reflection and hermeneutic practice demand that it be retained as an evangelical heuristic tool.