

On Secular Governance: Lutheran Perspectives on Contemporary Legal Issues

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In a comprehensive volume on Lutheran perspectives on religion and law today, we meet contributions by 17 authors, all Lutherans, 4 lawyers and 13 theologians. This collection of articles has a special value since the Lutheran voice has, by and large, been relatively silent in the international reflection on religious aspects of legal issues. The introduction notes that the ‘Lutheran witness has been almost single-mindedly focused on one key message, bound in Luther’s explanation to the Second Article of the Apostles’ Creed’ (p 2). This is certainly true to a large extent, although it would have been interesting to see a greater reference to the Scandinavian Lutheran scene, where, after the Second World War, a theology of creation has developed rather different perspectives.²

The breadth of the book is impressive, giving the reader an ethical analysis of fields from the different worlds of racism, climate change, child protection, human trafficking, immigration, the Rwandan genocide and unjust peace in Nigeria, as well as analysis of the Lutheran doctrines of the two kingdoms and law and gospel. There is also an extensive description of the relation between State and Church in Denmark. Danish scholars offer a picture of a prince–church structure rooted in the sixteenth century. The king has nowadays been replaced by the secular parliament as the highest authority of the Church. Nevertheless, the Lutheran Church in Denmark, the so-called ‘Danish People’s Church’, has not obtained its own constitution.

John R Stumme contributes a balanced article on the controversial issue of religious freedom in society. The Lutheran concept of the two kingdoms helps him to argue for a solution where the State is allowed to be the State, and the Church is free to be the Church, ‘each true to its own God-ordained functions’ (p 59). In today’s society it is more and more important to develop an understanding of the freedom of the Church to be the Church and in that freedom to be allowed to critically evaluate the situation in society.

‘The rules may be color-blind, but people are not’ (p 60). These words by Patricia J Williams introduce the interesting article by Richard J Perry Jr dealing with African Americans and their attempts to legally prohibit racism. The examples of white racism taken from American society are outrageous and shocking. With Martin Luther King’s distinction between just and unjust

2 See, for instance, N H Gregersen, B Kristensson Uggla and T Wyller, *Reformation Theology for a Post-Secular Age: Løgstrup, Prenter, Wingren, and the future of Scandinavian creation theology* (Göttingen, 2017).

law, Perry manages to give a challenging message. It would have been becoming to mention briefly the anti-Semitism in Martin Luther's later writings. In 1984 the Lutheran World Federation (LWF) in its General Assembly in Budapest clearly dissociated itself from this thinking. As Perry distinctly demonstrates, it is quite possible for a Lutheran theologian to argue sharply from a position that racism is a denial of Christian faith.

The well-known Lutheran expression *finitum capax infiniti* ('the finite can bear the infinite') gives a liberating foundation for the article by Mary Gaebler. In the Lutheran tradition this phrase has been used to separate itself from the Reformed, where the teaching could be described in opposite words: 'the finite cannot bear the infinite'. Luther's own position begins with a 'both/and', not the 'either/or'. This is true in Luther's Eucharistic theology of Christ's real presence in the bread and the wine, but it has equal impact for Christian involvement in society.

God is present in human activity where human beings are called to be God's co-workers, 'masks' of God. Property law in the US offers a view of individual benefits against the common good. For a Christian and Lutheran understanding this is not acceptable. From the very beginning, human beings in creation have been intertwined with and interdependent on the whole creation, nature with humankind. When this connection is not upheld there will inevitably be consequences in the environmental field. For Gaebler the emphasis by Luther on the individual good deeply interwoven with the good of the whole community helps her to argue against the greed that Luther had himself attacked in 1520.

It is also worth mentioning from Gaebler's very interesting contribution that, according to Luther, the Ten Commandments are authorised 'not by the Bible, but by *the creation itself*' (p 94, emphasis in original). This view has often been forgotten in the Lutheran tradition but it opens a liberating perspective on the link between human nature and God's creation. 'Moses agrees exactly with nature' – these are Luther's words and Gaebler rightly quotes them (p 94). Human beings follow the divine law to some extent but Christians have the knowledge, through revelation, that this very law is the law of God. The first commandment, that human beings worship God alone, plays a fundamental role in Luther's teaching. The dangerous temptation to worship false gods affects everybody and leads – when human beings worship idols – to a distorted view of reality. Only faith in God can liberate and open a life of responsibility, including responsibility for environmental challenges.

Kirsi Stjerna writes on the severe questions of human trafficking of children, to a large extent children aged 5 to 15. It is a question of exploitation, hard to understand and hard to accept as a fact. It is nowadays looked upon as a criminal act but as late as 2010 the State of Ohio did not accept trafficking as a crime. Today it is self evident that these crimes should be prohibited and judged. Luther sees every new-born child as a gift from God. And he emphasises that

concrete responsibilities such as providing the basic needs of food, shelter and education are essential. Stjerna also raises the crucial questions of ‘altering cultural perceptions of what it means to be a woman and a man, and what healthy sexuality entails’ (p 159).

In Wanda Deifelt’s chapter, again mainly on human trafficking, there is an excellent summary of Luther’s political view, his two kingdoms theory. Here it is clearly said that both the secular and the religious kingdoms are under God’s domain. This has unfortunately often been forgotten, not least in the Lutheran tradition. Precisely this question has caused theological disaster, especially during the Second World War. Distinguished German Lutheran theologians, such as Paul Althaus, asserted the independence of the secular kingdom. In those days this position made it possible for some theologians to accept the Hitler doctrine and bow their heads to National Socialism.

It is a strength of this volume that even representatives from the Lutheran Missouri Synod were asked to contribute. Leopoldo A Sánchez M belongs to that tradition. He has written a sympathetic article on the Lutheran perspective on immigration rules. Here we meet four Lutheran themes which address the present US immigration system politically. Sánchez mentions love of neighbour (including the stranger), obedience to the law, God’s work in the two kingdoms and the doctrine of vocation. He argues that these four viewpoints should give a moral compass for assessing US immigration law, and suggests that Lutherans with different starting points on immigration law could be united in these fundamental viewpoints. From a historical point of view it is not easy to agree with the author. In fact Lutheran theologians, well aware of the Lutheran tradition and doctrines, have gone very different ways. This attempt, however admirable it may be, has little credibility in the light of history. In order to unite different Lutheran theological perspectives it needs much more of an effort than this sympathetic but slightly naïve contribution offers.

The volume ends with a contribution bearing the demanding title ‘How should modern Lutherans try to shape secular law?’, written by Robert Benne. The article starts with a historical perspective depicting the views of Ernst Troeltsch and the two Niebuhr brothers. In both cases the outcome is negative. Lutheranism has failed to penetrate the legal questions and present creative solutions. Instead, Lutherans have traditionally been mainly quietistic.

The author continues an interpretation of the contemporary situation with a number of accusations against the Evangelical Lutheran Church in America (not even mentioned in the index of names and subjects), with a view that this main Lutheran church in the US has been misusing its authority in speaking too often on political and social questions, often against the opinion of the author. It is obvious from the text that the author belongs to a more conservative school, based in the tiny North American Lutheran Church (a non-LWF church, but mentioned in the index), created in 2010. The author openly appreciates the

actions taken by the Missouri Synod. His own political views are described exhaustively, all with a tendency to look back to a better time. This is clear not least the case in the passage on marriage and natural family. Even a minor knowledge of the history of marriage and family will give a more complicated result, addressing all the outrages and excesses accepted by society and unfortunately even by the Church, and noting the number of different relations within traditional marriage. Benne's essay does not convince on these issues.

This critical evaluation should not hinder an appreciation of the splendid description of Lutheran doctrine of the two realms. Here it is clearly said that the earthly realm is 'not autonomous, neither ontologically nor epistemologically' (p 335). God is Lord in history. This is a beneficial statement, with political implications.

Finally I want to discuss the first article of the volume, the chapter on '*Nomos* and narrative in civil law and theological ethics' by the professor of law W Bradley Wendel. This essay turns out to be an interesting and substantial contribution on hermeneutics, providing some necessary and essential knowledge on interpreting biblical texts. The first crucial question reads: if the Bible is the norm for our interpretation, how do we escape from the fact that the Bible also has to be interpreted? (p 14). Here the author gives a modulated picture with various aspects. He continuously compares the theological commission with the legal work of interpreting the given secular law. No standpoint exists from which it is possible to evaluate what is true and what is false in a neutral way. Every interpretation is in one way or another influenced by the interpreter's values. Wendel underlines, furthermore, the dialectical process between the text and the interpreter. But there is no original meaning of the text accessible today.

Originalism is no alternative. The author draws a comparison with the legal world. Even here we find that judges are human beings with values and human feelings. Ultimately, the main question will be how to minimize the influence of the subjectivity of interpreters. Every interpretation is, according to my understanding, influenced by human values. In other words it is intellectually impossible to cleanse the facts from all values. The task for the interpreter is not to find the original meaning of the text but to mediate the meaning of the text in the present world as closely as possible to the matter itself. Every interpreter should as far as possible give an account of his or her own values. Such honesty will facilitate understanding and make it possible for other interpreters to reflect and discuss the given interpretation and to find a position for themselves.

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