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LUTHER AND THE JUSTIFIABILITY OF RESISTANCE TO LEGITIMATE AUTHORITY

By Cynthia Grant Shoenberger

The works of Martin Luther and of other early Protestant writers are often completely neglected by students and scholars of political thought in this country. If his period is considered at all, Luther is generally dealt with cursorily, as a stepping-stone to Calvin and the Huguenots, essential to political and intellectual history but not very interesting in his own right. The impression frequently given is that Luther was a latter-day Augustine in his views of secular authority, endorsing its legitimacy for the Christian and counselling strict obedience to the powers-that-be.

One reason for this conclusion, which I contend is a mistaken one, is that the writings translated, collected, and anthologized for academic use are those which Luther wrote during the early years of his clash with the Roman church and the associated notion of a universal Christendom represented by the Holy Roman Empire. Reading, for example, the 1523 work, *Temporal Authority,* the student finds that Luther was concerned to "provide a sound basis for the civil law and sword, so no one will doubt that it is in the world by God's will and ordinance."[1] The image of the political system which pervaded the work was of a hierarchical order of authorities established by God. Power flowed downwards, and those in inferior positions were obligated to obey those set above them in the hierarchy. The implications for the possibility of resistance in Germany were clear: although the use of force might be permissible against an equal or inferior authority, a prince could never justly wage war against his overlord, the emperor.[2] It went without saying that a private subject might never actively resist the authorities set over him, but Luther nonetheless allowed for the possibility of refusal to obey in cases when the prince trespassed upon the jurisdiction belonging of right only to God. Under such circumstances the Christian's two duties, to God and to his prince, might come into conflict; and the proper response to such a dilemma was that which Saint Augustine had prescribed—passive resistance, that is, to disobey but submit to whatever punishment might be assigned for disobedience.[3]

[1] Luther, *Temporal Authority: To What Extent it Should be Obeyed* (1523), in *Luther's Works* (hereafter *Works*) (55 vols.; St. Louis and Philadelphia, 1955-75), XLV, 85.

[2] *Ibid.,* 124-25.

[3] *Ibid.,* 112.

What is often forgotten about *Temporal Authority* is that it was written out of Luther's concern about the excessive interference of the Catholic Church in secular affairs, during a period when he had not yet abandoned hope that the Emperor Charles V might support him in that concern. Like so many of Luther's writings, it was directed toward a particular situation; it was not intended to provide a definitive theory of political obligation. Moreover, the mistaken impression that Luther never condoned any form of active resistance is strengthened in the minds of political theorists by knowledge of his response to the outbreak of the Peasants War, when despite his original sympathy with their demands Luther issued a series of vituperous pamphlets[4] encouraging the German princes to put down the rebellious peasants with all necessary means. The excessively bloody results, as well as the intemperate language used by Luther, entrenched the notion of him as an indiscriminate supporter of the government in power, however brutal.

This fundamentally erroneous conclusion can be corrected only by tracing the evolution of Luther's thought on the subject of resistance beyond the early 1520s, through the period when the Protestant League of Schmalkalden was founded, and during the years of intense, though intermittent, hostilities preceding the 1547 - 51 war between the Emperor Charles V and the evangelical cities and states. Luther himself died in 1546, before the outbreak of full-scale armed strife; but during the years when he felt his church to be imminently threatened, his opinion on active resistance to the Emperor underwent radical change. Since he was not a writer of elaborate theoretical *Summae,* the development of his thought on this issue can only be understood through examination of his correspondence, public debates, and private conversations, or *Tischreden,* as recorded by students who frequently dined in the Luther household. These materials are not easily accessible to the English reader, since they have by and large not been translated from the original archaic German and/or Latin, and are rarely included in the anthologies used by American students of political thought.[5]

Luther's Early Position on Resistance

Before turning to those later writings, it is very important to understand the situation Luther faced after his dramatic break with the Roman church in 1517. He was entirely dependent upon the protection

[4] For example, *Admonition to Peace: A Reply to the Twelve Articles of the Peasants in Swabia* (1525), in *Works,* XLVI, 17-43; *Against the Robbing and Murdering Hordes of Peasants* (1525), in *Works,* XLVI, 49-55; and *An Open Letter on the Harsh Book against the Peasants* (1525), in *Works,* XLVI, 63-85.

[5] Although never included in the anthologies in common use, some of these materials are not inaccessible to the English reader who is a serious student of Luther, for a number are included in the American edition of Luther's *Works.*

of the evangelical princes, and it was only through the intervention of the Elector Frederick of Saxony, who arranged for Luther to be kidnapped and placed under protective custody after his condemnation at the 1521 Diet of Worms, that he escaped capture and perhaps death by the forces of Emperor Charles V and Pope Leo X. Thus, despite the revolutionary individualistic overtones of his theology, with its proclamation of the priesthood of all believers, the validity of the individual conscience, and the church as a community of all the faithful, Luther did not wish to lose the support of the Protestant princes by arousing fears of a general popular rebellion. He urged that the Reform be carried out in an orderly fashion by the established authorities and warned against overzealous measures by the population at large, such as iconoclasm and the interruption of Masses.[6] The use of violence in the service of Reform, he thought, resulted more frequently in harm than benefit and could succeed only in discrediting the Lutherans.[7] Thus both political and pragmatic considerations led Luther at this time to oppose disruption of the established order.

Such considerations were supported both by Luther's ethical convictions and by factors of temperament. He was shocked and frightened by the disorders he witnessed during his brief secret visit from Wartburg Castle to Wittenberg in 1521, as well as by the anarchic conditions he observed en route in Thuringia.[8] The deep distrust of spontaneous popular activity evidenced in his letters from this period and in his pamphlets about the Peasants War was deepened by an extreme personal fear of disorder.

Luther had, as well, a strong tendency toward pacifism. The use of force, he thought, more often than not resulted in worse situations than those it was intended to remedy. From his examination of history he concluded that revolutions were rare that resulted in governments better than those overthrown and that no government could remain stable if its rulers were exposed to such dangers as tyrannicide.[9] He thought accordingly that resistance was both fruitless and highly risky.

Moreover, Luther remained obsessed by a theological concern which was based on his somewhat Augustinian, determinist view of history. History being in God's hands, He would take care of His own;

[6] For example, *Letter to the Princes of Saxony Concerning the Rebellious Spirit* (1524), in *Works,* XL, 49-59; *Against the Heavenly Prophets in the Matter of Images and Sacraments* (1525), Pt. I, in *Works,* XL, 75-143; and Letters to the City Council of Danzig (May 5, 1525), in *D. Martin Luthers Werke: Briefwechsel,* hereafter *W. A.* (Weimar Aufgabe) *Briefe,* (Weimar, 1930-48), III, 483-86.

[7] *A Sincere Admonition by Martin Luther to all Christians to Guard against Insurrection and Rebellion* (1522), in *Works,* XLV, 53-74.

[8] Ernest Schwiebert, *Luther and his Times* (St. Louis, 1950), 540.

[9] *Whether Soldiers, Too, Can Be Saved* (1526), *Works,* XLVI, 105-107, 112.

and any display of self-help might be interpreted as a declaration of lack of faith in Providence. In other words, Luther was convinced that any Christian who believed in such measures as tyrannicide, deposition, and armed rebellion betrayed a fundamental lack of faith in God, who would Himself punish tyrants, alone, presumably by manipulating the diseases and natural disasters at his command, or through the use of human agents, such as foreign rulers. Even the tyrant's own subjects might serve as God's instruments, but Luther believed that they would be condemned for so doing.[10] Thus no Christian concerned for his own soul would involve himself in resistance of any sort.

In sum, then, Luther seems during this early period of his public life to have consistently opposed resistance, on several grounds. His concern at this time was, first of all, with strengthening the state, the instrument upon which he relied for reform of the church, against the secular power of the papacy. And the impression he received from the civil disturbances of this era confirmed his belief that a strong state was necessary to restrain the evil nature of man. If the masses were really as sinful and ignorant as they appeared to be, they were clearly incapable of governing themselves. Moreover, if anarchic violence was just below the surface of civil society, the proclamation of any right of resistance, however limited, would be very dangerous. Thus Luther invariably denied the justifiability of resistance. On the other hand, he never insisted upon unconditional obedience; and many of the theoretical distinctions he espoused were to prove suggestive when a Lutheran theory of resistance was developed. His delineation of spheres of secular and spiritual authority, for example, provided a basis for ascertaining when resistance was to be undertaken. In addition, although Luther emphatically ruled out the possibility of resistance by private individuals, the position of the magistrate involved the possibility of conflict. On the one hand, the German princes and lower magistrates were inferior in status to the Emperor; on the other, they as rulers had been charged by God with the protection of their subjects. Their intermediate position in the governmental hierarchy could thus place them in a moral quandary if the Emperor decided to attack their Protestant subjects. While Luther at this time decided that their obligation to the Emperor must take priority, other Lutherans concluded the opposite.[11]

[10] *Ibid.*, 109-110.

[11] I am greatly indebted to Richard Roy Benert, whose personal assistance and scholarship, "Inferior Magistrates in Sixteenth-Century Political and Legal Thought" (unpublished Ph.D. dissertation, Department of History, University of Minnesota, 1964), directed my attention to many critical sources on the development of legal and theological arguments for resistance, as well as their acceptance by Melanchthon and, eventually, by Luther himself.

Luther's Reluctant "Conversion"

From the early 1520s on, Luther was subjected to a great deal of pressure on the question of resistance. In 1523 the Elector Frederick of Saxony asked for his opinion as to "whether a prince might by war protect his subjects from persecution by the Emperor or other princes on account of their faith." Luther did not give him much encouragement, replying that the Elector should act only if his opponent were a prince of equal rank.[12] The other theologians from whom opinions were sought at the same time, however, dissented somewhat from Luther's position; and these chinks in the Wittenberg front widened as the political situation grew worse. For example, Johannes Bugenhagen, a theologian close to Luther, answered in 1523 that a prince was required to protect his subjects against injustice from whatever source, just as he would protect them against robbery or murder. As servants of the law, possessors of the sword, and protectors of their people, the princes thus had the right to resist the Emperor.[13] By 1529 Bugenhagen had organized his thoughts on this subject into a lengthy treatise which he presented to the Elector, thus confirming the fact that there was considerable support among the theological faculty for resistance; the arguments in it were built around two fundamentally Lutheran concepts, the notion of spheres of secular and spiritual authority and the duty of the prince or magistrate to protect his subjects.[14]

This increasing theological support, as well as the political situation, encouraged Saxony to participate in the negotiations over the formation of a defensive military alliance among the various Protestant cities and states. The politician most actively involved in this alliance project was Philip of Hesse, who carried on an active correspondence with the various evangelical princes and city councils in an attempt to gain their adherence to such a league. A series of war scares—the 1528 rumor that a Catholic league was preparing to attack Protestant strongholds, the withdrawal by the Emperor in 1529 of all past concessions to the Lutherans, and the failure of the 1530 Diet of Augsburg to resolve the continuing dispute—seemed to underline the extreme urgency behind Philip's efforts.

[12] Luther, *Gutachten* (for Elector Frederick of Saxony, shortly before Feb. 8, 1523), in Heinz Scheible (ed.), *Das Widerstandsrecht als Problem der deutschen Protestanten, 1523-1546,* Vol. X of *Texte zur Kirchen-und Theologiegeschichte,* ed. Gerhard Ruhbach (Gütersloh, 1969), 17.

[13] Bugenhagen, in Scheible, 18.

[14] Bugenhagen, "Bedencken auff die Frage: ob man das Evangelium, wider den Keyser, mit dem Schwerdt schützen möge?" (to Elector John of Saxony, 1529), in Friedrich Hortleder, *Handlungen und Ausschreiben . . . Von Rechtmässigkeit, Anfang, Fort- und endlichen Ausgang des Teutschen Kriegs Keyser Karls dess funfften* (2nd ed.; Gotha, 1645), II, 63-65.

Thus the anxiety of the Saxon Elector (in 1525 John had succeeded Frederick in that post) increased, and Luther's blessing was sought once again. But he still refused to approve participation in a league against the Emperor. The Protestant princes, Luther thought, would be justified in protecting their subjects against attack by equal-ranking princes, so long as they did not attack them pre-emptively. Such action would not qualify as resistance to higher authority. The problem, of course, was that the Catholic princes claimed that they were acting upon the Emperor's command; and thus resistance to them had to be equated with resistance to the Emperor. Luther questioned this identification of the two authorities. The Catholic princes' plan, he charged, had been formulated without the Emperor's knowledge. Moreover, if they were claiming authority under the 1521 Edict of Worms, any such mandate was invalid, since it had been passed by a minority of the Estates and the right of appeal to the Emperor remained.[15]

Luther's arguments were somewhat specious, but they allowed him to avoid coming to terms with the issue of resistance. The Edict of Worms had indeed been passed by a minority of the Estates, but only because many of the Protestant princes had voluntarily absented themselves; and the result of an appeal to the Emperor seemed a foregone conclusion. Thus, although his contention allowed him to offer an affirmative answer to the specific question whether the Protestants might resist an attack by Catholic princes, it was clear that the real matter at issue, resistance to the Emperor, did not have his approval. This was the message conveyed to the Saxon Elector; and, in large part because of Luther's equivocal attitude on the question of resistance, the proposed alliance was not concluded at that time.

But while Luther refused his support, the jurists in the employ of the Elector were beginning to marshal legal arguments in support of resistance. In response to Philip of Hesse's continuing pleas, a great debate, carried on through formal communiqués and opinions, began among the lawyers and theologians attached to the courts and councils of the Protestant areas still in doubt over the justifiability of resistance to the Emperor; and out of this debate constitutional arguments for resistance began to be elaborated.[16] These arguments, based upon a notion of the Empire as a limited monarchy, were an additional weapon

[15] To Gregory Brück, Chancellor of Electoral Saxony (March 28, 1528), *W. A. Briefe,* IV, 421-24.

[16] Hans Baron, in "Religion and Politics in the German Imperial Cities during the Reformation," *English Historical Review,* 12(1937), 406-413, describes the intense debate carried on in 1529 among representatives of the imperial cities which were evangelical and the Protestant princes, notably Philip of Hesse. Documents from this controversy are available in Scheible and in Hans von Schubert, *Bekenntnisbildung und Religionspolitik: 1529/30 (1524-1534)* (Gotha, 1910).

for Philip of Hesse in his attempt to gain allies. He wrote, for example, to the Margrave of Brandenburg-Ansbach (who ultimately did not adhere to the Schmalkaldic League) that the relationship between the Emperor and the inferior magistrates, a category used to include both the princes and city governments who held Electoral status under the terms of the 1356 Golden Bull and those who did not, was a conditional one. If the Emperor departed from his duty to abide by the terms of his election and to act according to standards of justice in dealing with the princes and cities, then the fundamental reason for which he had been elected, the maintenance of the laws, would vanish, and with it his authority. The obligation of the inferior magistrates to protect their subjects would remain, nonetheless; and they were bound to exercise it against a tyrannical Emperor, just as they would against the violent attack of the Turks.[17]

Philip later elaborated upon these constitutional and legal arguments in a direct appeal to Luther himself. The nature of the German Empire was such, Philip said, that the Emperor was not only limited by fundamental laws but also obligated to share this authority with the German princes. These princes had a unique status *vis à vis* the Emperor, one unparalleled in Scripture; their position had been described by one of the Schmalkaldic propagandists as collectively superior to that of the Emperor, since they had the right to elect him.[18] In any case, Philip argued, Charles V violated the agreement upon which his authority rested when he proceeded against any prince with force, when he failed to give a fair hearing to the Protestants' case, and when he acted with only the approval of a minority of the Estates in a matter which was clearly one for settlement by a Council.[19]

As late as March 1530, however, Luther remained in agreement with the theologians and jurists who opposed resistance to the Emperor. Unless he were formally deposed by the Electors, he thought, the princes remained bound to obey him. They need not, indeed must not, cooperate with his designs; but actively to resist him in defense of their Protestant subjects was strictly forbidden.[20] Thus Luther maintained his formal opposition to resistance throughout most of 1530; but, on the evidence of an anonymous opinion written at Wittenberg in the same year, many of his associates had already begun to accept constitutional

[17] Letter from Philip of Hesse to Margrave George of Brandenburg-Ansbach (Dec. 21, 1529), in Scheible, 44-46.

[18] "Ein Theologischer Rathschlag von Nürnberg: Dass nicht alle, sondern nur die ordentliche Gewalt von Gott. Unnd dass derowegen die Untere Obrigkeit im Reich wol befugt, wider die unordentliche Gewalt dess Obern in GlaubensSachen, ihre Underthanen zu schützen," in Hortleder, II, 84-85.

[19] Philip of Hesse to Luther (Oct. 21, 1530), *W. A. Briefe,* V, 653-54.

[20] To Elector John of Saxony (Mar. 6, 1530), *W. A. Briefe,* V, 258-61.

arguments for resistance. Their conclusions seemed similar to those of Philip of Hesse. If the princes under German law were, as they described them, "pillars of the Empire," co-rulers with its head, and shared his responsibility to look after the welfare of the whole, then they were merely acting as executors of the German constitution in protecting their subjects against him, and not in their own interest.[21]

The pressures upon Luther culminated in the calling of a public disputation at Torgau in October and November 1530. The Elector John intended thereby to force the Wittenberg theologians into an open confrontation with the Saxon jurists and thus to obtain a definitive resolution of his ethical and legal dilemma. The legal experts presented their position first, insisting that the Emperor was elected upon specific conditions and was to rule in conjunction with the Estates. If he violated the laws of the Empire, as he had done by proceeding against the Protestants when their appeal to a Council was still pending, all their obligations to him were erased.[22] Relying heavily upon Roman and canon law, the lawyers asserted that the princes and estates might resist the Emperor in situations similar to those in which a private individual could lawfully disobey a judge and resist the execution of his sentence: when he made a ruling on a matter not within his jurisdiction; when he passed a sentence involving clear and irreparable injustice; and when the procedures for appeal were not respected. Analogously, the Emperor had attempted to execute his judgment in matters of religion, which did not fall within his jurisdiction; his decision was, in the Protestants' judgment, clearly wrong and involved irreparable damage in the possible loss of souls; and procedural law had been violated when the Emperor continued to execute his judgment while the appeals were still pending.[23]

These arguments were very similar to those which have been described above and which Luther had already rejected, yet at Torgau they seem at last to have gained his acquiescence. In the name of all the Wittenberg theologians, Luther presented a brief opinion admitting that, although they had always preached nonresistance in the past, the theologians had not realized that the constitution of the Empire in fact provided for resistance under certain circumstances: "For when we previously taught, positively never to resist the established authority, we did not know that such a right was granted by the laws of that very authority, which we have at all times diligently instructed people to obey."[24] Thus the pastors with this brief declaration essentially passed the question of resistance to the jurists.

[21] "Ein Theologisches Bedencken," in Hortleder, II, 68.

[22] *Gutachten der Kursächsischen Juristen* (shortly before Oct. 26, 1530), in Scheible, 63-66.

[23] Ibid.

[24] "Erklärung Luthers, Jonas', Melanchthons, Spalatins und anderer Theologen und protokollarische Aufzeichnung über die weitern Voten der Theologen und Juristen" (Oct. 26-28, 1530), in Scheible, 67. Translation mine.

It is important to note that in voicing this new position Luther based his stand solely upon the cautious, tightly circumscribed grounds of constitutional law. Arguments based on natural law, more open and generalizable, he specifically rejected, although the jurists had marshalled them in support of their own opinion. In a letter to Lazarus Spengler in February 1531, Luther described how the jurists at Torgau had tried to get the theologians to agree to base resistance upon the principles that it was permitted to repel force with force (*vim vi repellere licet*) and that active resistance was permitted in cases of notorious injury, both arguments ultimately based on the natural right of self-defense. Luther had refused to agree. The right to resist, he repeated, stemmed from the fact that the Emperor's own laws, which all must observe, required resistance in certain circumstances:

> Render unto the Emperor, what is the Emperor's. And it is the Emperor's right, that he must be resisted in matters of notorious injustice. . . . All that the Emperor has established, that is, the law of the Emperor, is to be observed. But that law determines, that one must resist him in such a case.[25]

There are also indications in this and other letters from the same period that Luther had been extremely reluctant to embrace a pro-resistance position and that he continued to be so. In the letter to Spengler, as in one to Wenceslaus Link in January and to "a citizen of Nürnberg" in March, he made references to his old opinions on resistance, implying that he still considered passivity to be the better course.[26] Yet in each of these letters he also repeated what he had said to Spengler, that the law of the Empire seemed to allow resistance. The decision on whether any particular individual would undertake such a course, however, he left to the individual's own conscience, guided by the expert opinions of the lawyers. He himself would not offer counsel in one direction or the other. Thus he clearly did not regard his Torgau opinion as a call to arms, which could never provide an effective substitute for trust in God.

A similar attitude pervaded the "exhortation" which Luther finally produced in response to Philip of Hesse's request. The *Warnung an seine lieben Deutschen* was not, however, quite what Philip had in mind. In it Luther specifically disclaimed the intent to summon anyone to resistance, although he said that he did not condemn the kind of defensive war which he thought imminent.[27] He directed his words not to the Protestants but to their potential opponents instead. It was the duty

[25] Luther to Lazarus Spengler (Feb. 15, 1531), *W. A. Briefe,* VI, 37. Translation mine.

[26] Luther to Wenceslaus Link (Jan. 15, 1531), *W. A. Briefe,* VI, 16-17, 56-57.

[27] *W. A.,* XXX, iii, 278, 282-83. Luther's *Warning* has also been translated in the American edition of his *Works;* and the editors briefly discuss Luther's changing attitude toward resistance and the political context in which this evolution was taking place (*Works,* XLVII, 5-9).

of all German Christians, he thought, to disobey the Emperor, who was acting "not only against God and divine law, but also against his own imperial laws, oaths, duty, seals, and letters" by, for example, seeking to condemn the Protestants without giving their case a fair hearing.[28] Private citizens should therefore refuse both to obey their Emperor and to participate in the war on his side. However, only those who had public authority to do so, and that seemed in the light of the jurists' arguments to include the princes, should actively oppose the Emperor.[29] Luther himself did not recommend any particular course of action, except to pray for aid and to hope for peace; but the impact of the *Warnung* was publicly to confirm his support, however cautious, for the Protestant princes' undertaking.

Luther's Torgau "conversion" has been a source of considerable controversy among German scholars familiar with this period.[30] Some have asserted that Luther's conclusion was virtually extorted from him by the Saxon Chancellor—an astonishing belief about a man who had stood up to Pope and Emperor with legendary courage. It is my opinion that Luther's change of heart was genuine, if somewhat grudging. He had indeed always preached obedience to the civil law, and primarily because he thought it embodied God's own will. Thus when his hierarchical image of the Empire collided with the jurists' contention that it was in fact an elective arrangement among rulers who were in many respects equal, he was compelled to acknowledge a constitutionally-based right to resist. The Christian, he believed, must follow the rules relevant to the sphere of activity in which he was engaged; and in this case it was not Luther but the jurists who were experts on those regulations. Different rules might apply in the Kingdom of God; but the Christian was not to be condemned when he did not follow them all here, even though he might thereby incur some sin. Sin, however, was an inevitable part of the human condition.

In any case, the Lutheran politicians assumed from Torgau on that they had Luther's blessing. The withdrawal of his opposition removed the last obstacle to Saxon participation in Philip of Hesse's league, and it was concluded on February 27, 1531. This marked a significant turning point. The league, over which so much debate had been spent, was

[28] *W. A.*, XXX, iii, 291 284 ff. Translation mine. [29] *Ibid.*, 299-30.

[30] For example, Karl Müller, *Luthers Ausserungen über das Recht der bewaffneten Widerstands gegen den Kaiser,* in *Sitzungsberichte der königlichen bayerischen Akademie der Wissenschaften.* phil.-hist. Klasse VIII (Munich, 1915), 43-45, 52 ff. and Pierre Mesnard, *L'Essor de la Philosophie Politique au XVIe Siècle* (Paris, 1936), 228, both of whom feel that this opinion contradicts Luther's whole philosophy and that he had merely given in to the princes. For the opposing view, see Fritz Kern, "Luther und das Widerstandsrecht," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung,* 6(1916), 336.

now a fact. Luther was far too loyal to the groups involved to challenge it, once in existence. In a treatise of the next year, he implored both sides to keep the peace; yet if he were to counsel the Lutherans not to arm themselves under the circumstances, he felt, it would be equivalent to serving as a Catholic propagandist. He would be sanctioning the vast advantage of the already heavily-armed imperial forces and submitting his flock to the slaughter. The Protestants, he concluded, were merely defending themselves against those who would shed innocent blood; and the sin was upon the conscience of the Catholic forces.[31]

Luther's Increasing Conviction during the 1530s and 1540s

The best argument that Luther's "conversion" was indeed genuine is to be found in his correspondence and table talk of the years following the confrontation at Torgau. During this period, he remained convinced by the argument that resistance by the princes to the Emperor was constitutionally permissible; and his understanding of the imperial structure became more sophisticated. Throughout the decade Luther repeatedly emphasized the limited and conditional nature of the Emperor's power in Germany, describing the government as "bürgerlich," one which, in contrast to an absolute monarchy, was circumscribed by legal relationships.[32] The Emperor's power was strictly and specifically bounded by the obligations he had undertaken at his coronation: "He is sternly commanded and bound by his duties, yes, he has promised, vowed and sworn with his own oath, to administer justly the police, laws, rights, and orders of the Empire. . . ."[33]

By 1539 Luther's constitutional conception had become clearer and more elaborate. The Emperor's obligations, he thought, included not only the duty to uphold certain laws and procedures, but to share his authority with the other princes as well. In a February 1539 letter to a pastor in Cotbus giving advice about how to preach on the subject of resistance, he wrote that "the Emperor is not a monarch and cannot depose the electoral princes nor alter the form of the Empire."[34] Hence, in Luther's opinion, the Emperor shared his power in many important respects with the German princes, making the Empire more an aristocracy than the monarchy Charles envisaged. This conception was in fact the subject of discussion at Luther's table the day before he wrote the letter just mentioned, and he very explicitly distinguished the position

[31] *Wider den Meuchler zu Dresden* (1531), *W.A.*, XXX, iii, 456-57, 461.

[32] *D. Martin Luthers Werke: Tischreden* (hereafter *W.A. Tischreden*) II, 407 (Aug.-Dec., 1531).

[33] *W. A. Tischreden,* I, 327 (first half of the 1530s). Translation mine.

[34] Luther an Joh. Ludicke, Prediger in Kottbus (Feb. 8, 1539), *W. A. Briefe,* VIII, 367. Translation mine.

of the Hapsburg Emperor in Germany from that of a king in other nations:

> Secondly, the Emperor is not a monarch in Germany as the kings of France and England are monarchs in their realms, but seven electors are at the same time members of the political body with the Emperor and are members of the Emperor; upon them also the care of the Empire is imposed, though not in the first instance. Thus the seven are equal in power with the Emperor, although not equal in dignity.[35]

The power of the electors, then, was equal to that of the Emperor, a situation Luther viewed as analogous to that of the rector of a university, who governed it in conjunction with his colleagues. The co-rulers served to moderate the Emperor; and they—and the other princes—might under certain circumstances resist him.[36] In fact, whenever the Emperor acted flagrantly in contempt of the law, it became justified to resist him as a tyrant: "Thus when he violates these same laws and acts in contradiction of them, then we could justly resist him, as a tyrant, who exercises power and acts in opposition to his duty."[37] This was the situation which Luther thought existed in Germany at that time, since the Emperor had ignored the appeal which was the constitutional right of the Protestant princes and had proceeded against them with force. A very likely source of Luther's newly developing image of the German Empire was his close associate Philip Melanchthon. As early as 1530, while characterizing different types of kingdoms in his *Commentary on the Third Book of Aristotle's Politics,* Melanchthon described the imperial Electors in a way parallel to Luther's own later description:

> There is, therefore, another kind of kingdom, a supreme rule, but one qualified by an established law. Certain nations have supplemented their kings with guardians, who have the right of reproving the kings. Just as the Lacedaemonians added ephors . . . in Germany there are electors, in France there are certain princes of the *parlement,* who act as if they were the ephors of the kings.[38]

The historical implications of the ephor argument were clear, and it seems highly likely that Melanchthon, always more the scholar, tutored Luther in them.

In the early 1530s, moreover, Melanchthon also accepted natural law arguments for resistance, endorsing the right of self-defense in cases of "atrocious injury" and upholding the identity of natural and divine

[35] *W. A. Tischreden,* IV, 236-37 (Feb. 7, 1539). Translation mine.

[36] *Ibid.,* 237.

[37] *W. A. Tischreden,* II, 407 (Aug.-Dec., 1531), Translation mine.

[38] Melanchthon, *Philippi Melanthonis Opera quae supersunt omnia,* ed. Karl Bretschneider and Heinrich E. Bindseil (28 vols:I-XXVIII of *Corpus Reformatorum* [hereafter CR]; Halle, 1834-1860), XVI, 440. Translation mine.

law.[39] Melanchthon was thus readier than Luther at this time to embrace a natural law basis for resistance, and he emphasized it from then on far more than positive or constitutional law. His *Prolegomena to Cicero's Offices,* written in 1530, contained Melanchthon's clearest statement of both the natural law argument and the doctrine of resistance by inferior magistrates:

> Animals resist violence out of a natural instinct, for the instinct of self-preservation has been instilled by God in every nature; in man, however, two things lead to the resistance of unjust violence . . . [one is] the instinct for one's own preservation, the other thing is the notion, which teaches . . . that the human race is so established as to preserve equality.
>
> It is therefore a true saying, [that] nature permits the repelling of force with force, but natural knowledge teaches that this is to be understood in a special way: [namely, that] it is permitted to repel unjust force with authorized force, clearly by the office of the magistrate, when it is possible to use his aid, or by one's own hand, in the absence of a magistrate. . . .[40]

Such a formulation prefigured a strand of thought which was to enter Lutheran discussion with increasing frequency during the 1530s and 1540s and which was destined to become central to the evolving theory of resistance. If, indeed, all creatures had a divinely-instilled instinct of self-preservation, an impulse to defend themselves which was an ineradicable part of their natures, then, almost by definition, resistance under conditions of self-defense could not but be justified. There might still be room to clarify the conditions under which it should take place; but resistance itself was nonetheless a natural right, in the most fundamental and, in fact, extremely modern sense of that term.

Natural law arguments—the concepts of "atrocious injury," of self-defense, and of the prince's duty to protect his subjects—had thus become crucial to Melanchthon's justification of resistance before Luther was willing to acknowledge any of them. Yet by the late 1530s many of these elements made their way into his thought as well. At first he began to support the idea, which he had specifically rejected in 1530, that the territorial princes were obligated to resist the Emperor in defense of their subjects' souls, bodies, and possessions. In the Wittenberg theologians' third formal opinion, which Luther signed though he was not the author, the conclusion is drawn that "every prince is obligated therefore primarily to protect and to maintain the Christians and the true external service of God against all unjust power; as also

[39] Melanchthon to Heinrich von Einsiedel (1532), in Johann Erhard Kapp, *Kleine Nachlese einiger, grössten Theils noch ungedruckter und sonderlich zur Erläuterung der Reformations-Geschichte nützlicher Urkunden* (Leipzig, 1727), 204.

[40] *Prolegomena in Officia Ciceronis, CR,* XVI, 573. Translation mine.

otherwise a prince is obligated in worldly things, to protect a virtuous subject against unjust force."[41] The authors specifically included in this category resistance against the Emperor himself, even when he was acting with the proper authority, and implied that such action would be justified to protect subjects against both spiritual and worldly oppression. Indeed, when the theologians reiterated this view in 1538, they made explicit that this was the case:

> It is our duty to watch over and defend [our subjects], if someone, the magistrate or other, undertake to compel them to accept idolatry and the forbidden divine service. Likewise, if someone should undertake to exercise unjust power against their subjects.[42]

What is most interesting about this 1538 opinion is that the right to resist in defense of certain values was openly related to natural law. The theologians drew a parallel between the right of a prince to defend his subjects and the right and duty under natural law to protect one's wife and children:

> Every father is obliged, according to his ability, to protect his wife and children against outright murder, and there is no difference between a private murderer and the Emperor when he undertakes [to exercise] unjust force outside of his office, and especially, open or notorious unjust force. For open violence annuls all duty between subjects and superiors according to natural law.[43]

The jurists' argument based on the concept of notorious injury had thus been accepted; natural law was no longer shunned; and—what is more astonishing—resistance by a private individual seems to have been contemplated.

Some Luther scholars make much of the fact that he was not the principal author of these later Wittenberg opinions, taking this as evidence that Luther never really abandoned his initial antipathy to resistance.[44] It is quite true that Melanchthon was the most probable author of the Wittenberg proclamations of the 1530s, since they correspond so closely to his own position and to the specific formulations he had given it. Yet it is significant, at the least, that Luther was willing to add his name to the list of signatures; and owing to his prominence it always

[41] Luther, Jonas, Bugenhagen, Amsdorf, Cruciger, Melanchthon, *Gutachten*, for Elector John Frederick of Saxony (Dec. 6, 1536), in Scheible, 89-90. Translation mine.

[42] Luther, Jonas, Bucer, Melanchthon, *Gutachten*, for Elector John Frederick of Saxony and Landgrave Philip of Hesse (Nov. 13-14, 1538), in Scheible, 93. Translation mine.

[43] *Ibid.* Translation mine.

[44] Scholars of this opinion include Müller, *op. cit.*, 68, and Herman Doerries, "Luther und das Widerstandsrecht," *Wort and Stunde*, III (Göttingen, 1970), 240.

appeared first among the subscribers. For a man of great integrity, who insisted upon conviction over compromise, this willingness, in my mind, signified an underlying agreement.

More important, one can trace the evolution of a similar view in the accounts of Luther's table talk from the early 1530s. The question whether one might defend oneself against a robber or murderer was discussed repeatedly, and Luther's answer was always in the affirmative.[45] The reason was that, in the absence of a magistrate, the individual had the right to protect himself or others against the use of force; in fact, the individual was obliged to do so, since in such a case he represented the public authority and must uphold the political order on its behalf.[46] This view found its way into a public disputation in 1539:

> For just as the magistrate, of whom you are a member, himself resists injustice, thus he commands and orders you also to resist unjust force. . . . For you know that the magistrate has commanded and ordered [you] to resist murderers, and to protect his citizens and subjects.[47]

The analogy drawn was to the right to resist the Emperor when he acted like a common robber or murderer, thereby losing the special authority he had over his subjects.[48] This parallel was articulated by identifying it with some kind of collective self-defense:

> If, however, I caught someone, who was not exactly a tyrant, with my wife or daughter, so would I want to kill him. Likewise if he took by force from this one his wife, from another his daughter, from a third his field and goods, and the citizens and subjects came together, and could no longer tolerate or endure his violence and tyranny; so could they kill him just as they would another murderer or robber on the street.[49]

Thus many individuals who had been wronged in similar ways might organize to exercise together the right of defense which they all possessed individually, and rid themselves of the tyrannical magistrate.

Working in this way from a double analogy—the parallel rght of individuals and magistrates to protect "their own[50]" and the similarity between a robber-murderer and the tyrannical Emperor—Luther concluded with a definite hint that resistance might be offered by individuals in the last resort. The individual, unlike his magistrate, could only resist in defense of himself or of those in his care, and not on behalf of his faith,[51] but the two might well become assimilated in the case of a religious war:

[45] For example, *W. A. Tischreden,* II, 224-25 (Sept. 20-Oct. 21, 1532).
[46] *Ibid.,* II, 406 (Aug.-Dec., 1531); IV, 237 (Feb. 7, 1539).
[47] Luther, "Etliche Schluss-reden," Hortleder, II, 98. Translation mine.
[48] *W. A. Tischreden,* I, 326-27 (first half of the 1530s).
[49] *Ibid.,* I, 558-59 (first half of the 1530s). Translation mine.
[50] *Ibid.,* III, 631-32 (Apr. 3, 1538); IV, 308-310 (Mar. 21, 1539).
[51] *Ibid.,* II, 224-25 (Sept. 20-Oct. 21, 1532); II, 406 (Aug.-Dec., 1531).

This is not a theological matter but a legal one. If the emperor undertakes war he will be a tyrant and will oppose our ministry and religion and then he will also oppose our civil and domestic life. Here there is no question whether it's permissible to fight for one's faith. On the contrary, it's necessary to fight for one's children and family.[52]

By the end of the 1530s, a situation under which such resistance might be permitted, or even required, seemed to have arrived. After nearly a decade of relative peace following the war scare of 1530, the atmosphere again became highly charged. Charles V appeared ready to attack the Lutherans by 1539; and the Protestants, under the leadership of Philip of Hesse, were determined to resist forcibly. Luther's personal outlook became increasingly apocalyptic. He no longer saw the conflict as one between two levels of government but as a battle in the last great clash between Christ's representatives on earth and the devil. The Pope was Antichrist and the Emperor his agent; and as such he could justly be resisted:

Thus as it is just now to fight against the Turk in order to defend oneself, how much more is it now right to fight against the Pope, who is much worse than the Turks. . . . Thus we shall judge the Emperor in this case not to be the Emperor, but a soldier and mercenary of the Pope.[53]

It may seem that Luther was hereby attempting again to avoid the generalized question of resistance, and in a sense he was. If the times were extreme—the final days, perhaps—then such a defense of resistance could hardly be applied to more ordinary circumstances. In continuing to depict the Emperor as a mere instrument of the Pope, moreover, rather than as an independent political actor, Luther can be interpreted as merely reasserting the necessity to resist the intervention of the Roman hierarchy in temporal affairs. As the Emperor's independent personality was thus submerged in his role as an agent of the Pope, Luther began to conclude that anyone, private persons included, could resist him without awaiting any formal judgment or condemnation.[54] This contention clearly went far beyond anything that Luther had been willing to accept up to that time.

Under crisis conditions, Philip of Hesse and the Elector of Saxony arranged yet another public disputation on the right to resist the Emperor; it was held in April and May 1539, with Luther participating. The most important new distinction to emerge from this debate was Luther's concept of the "Beerwolf," who, in contrast to a mere tyrant, not only broke the law but also overturned the entire moral order upon which

[52] *Ibid.*, III, 631-32 (Apr. 3, 1538). Translation mine.

[53] Luther an Joh. Ludicke, Prediger in Kottbus (Feb. 8, 1539), *W. A. Briefe*, VIII, 367. Translation mine.

[54] "Etliche Schluss-reden," Hortleder, II, 97-98.

it was based. All the subjects of such a ruler, and not just the inferior magistrates, had the right to resist and even to kill him and all his supporters.[55] The point, of course, was that Luther thought the Emperor and the Pope were just such apocalyptic tyrants, and that the present situation justified all efforts to resist them.

To conclude then: having started from a position of complete opposition to resistance of any kind, Luther came eventually to embrace a notion of resistance based on constitutional and positive law and finally even on natural law. He did tend to describe each of the contingencies in which he justified resistance as a strategic exception to an underlying belief in non-resistance, either as a violation of the unique structure of the German Empire or as applicable by definition only to a very special and extreme case. Luther's reluctance and great caution on this issue were evident; and he was always torn between a perfectionist ethic and the necessity of acting in a world in which the existence of his church was endangered by the intentions of the Emperor, the Pope, and Catholic princes. Lack of faith in the use of force intensified his caution. Certainly forcible resistance was meant to be a last resort and even then to be exercised in a carefully circumscribed manner; but it is significant that each time his church was in peril during the 1530s and 1540s, Luther did on one or another ground allow the possibility of resistance.

Moreover, Luther's pronouncements upon this issue were interpreted by Protestants in the years after his death as evidence that the initiator of the Reform had sanctioned resistance. In 1546, for example, his 1530 *Warnung an seine lieben Deutschen* was republished with a preface by Melanchthon; and it and the tract *Wider den Meuchler zu Dresden* were cited by the Lutherans who led the city of Magdeburg's famous year-long defiance of the Emperor in 1550.[56] In addition, his 1539 letter to Lubeck of Cotbus and the "Etliche Schlüss-Reden" (the relevant theses from the 1539 disputation) were both updated and republished as publicity for the Schmalkaldic League in 1547.[57]

Even more important, the writings of Luther and his associates, such as Bugenhagen, Melanchthon, the pastors at Magdeburg, the Protestant jurists and princes, had an influence far beyond the narrow issues of the Schmalkaldic War, as they were read by and influenced Protestants in France, Holland, and the British Isles.[58] Luther, it is true, for political

[55] *W.A.*, XXXIX, ii, 41-42.

[56] *Bekenntnis Unterricht und Vermanung der Pfarrhern und Prediger der Christlichen Kirchen zu Magdeburgk* (Magdeburg, Apr. 13, 1550), Pt. II.

[57] Oscar Waldeck, "Die Publizistik des Schmalkaldischen Krieges I," *Archiv für Reformationsgeschichte*, 7(1909-1910), 40-42.

[58] For example, Irmgard Höss, "Zur Genesis der Widerstandslehre Bezas," *Archiv für Reformationsgeschichte*, 54(1963), 198-214; Robert M. Kingdon, "The Political Resistance of the Calvinists in France and the Low Countries," *Church History*, 27(Sept., 1958), 220-33.

as well as temperamental reasons, shied away from the democratic implications of many resistance theories, upholding the right of the princes to resist the Emperor but denying a similar right to the princes' subjects. The constitutional framework of the German Empire, in which the princes were concerned with asserting their autonomy *vis à vis* the cross-national political structure of the Middle Ages, made this limited argument possible; but in France such a legal situation did not exist. Huguenot writers—Francis Hotman, Theodore Beza, and the author of the *Vindiciae Contra Tyrannos*—were interested rather in establishing the right of "popular" representatives, such as the Estates or *parlements,* to control succession to the French throne and to approve new legislation and taxation.[59] Thus the element of popular sovereignty, which had been present in inchoate medieval notions of resistance, was reintroduced by the French writers, with their theories of an elective and limited monarchy based upon an original contract and depending upon the continuing approval of such popular representatives. Yet when they turned to the question of resistance, the Huguenots drew very heavily upon legal and theoretical justifications which had already been elaborated by the Lutherans.

It is true that the Lutherans themselves had drawn upon the medieval formulations sketched out by Roman and canon lawyers, as well as upon scholastic sources. The German Protestants, however, then elaborated these notions and applied them to the situation of a Protestant minority being oppressed by a Catholic superior. Thus they provided arguments on behalf of resistance in a form especially relevant to the predicament of the Calvinists, who then recombined them with the medieval tradition in a particularly revolutionary fashion.

This analysis of the evolution of the modern theory of resistance assigns to the Lutherans, therefore, a pivotal role, which has not usually been recognized. At the very least, it is clear that Luther himself was *not* unalterably opposed to the notion that legitimate yet oppressive political authority might be resisted. Hence Lutherans do *not* share a heritage of submissiveness to the powers-that-be. On the contrary, in an important sense the early modern theory of resistance underwent significant development on German soil; and, despite the fact that many of his own notions were derived from the arguments of others, a key figure in the development of resistance theory, owing to his vast moral influence, was Martin Luther.

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[59] Francis Hotman, *Francogallia* (1573), trans. J. H. M. Salmon (Cambridge University, 1972); Theodore Beza, *Concerning the Rights of Rulers over their subjects and the Duties of Subjects towards their Rulers* (1574), trans. J. L. Gonin and edited by A. H. Murray (Capetown, 1956); *A Defence of Liberty against Tyrants,* a translation of the *Vindiciae contra Tyrannos* (1579) with an introduction by Harold J. Laski (Gloucester, Mass., 1963).