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Book Review

Lutheran Theology and Secular Law: The Work of the Modern State

ICLARS Series on Law and Religion

Edited by Marie A. Failing and Ronald W. Duty

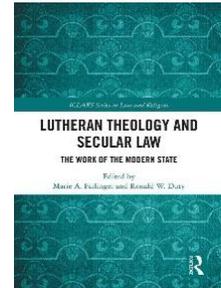
New York: Routledge, 2018

This volume addresses foundational issues such as the relationship between law and gospel and the intersections of the civil and spiritual realms, while also looking at how Lutheran theology addresses civil legal challenges today. It evokes anger at injustice and both frustration and thankfulness for the way Luther and Melancthon addressed civil authority and matters, and sobering reminders of the misuse of law and gospel in a multitude of matters in the civil realm.

Part One, “Our Secular Age,” explores the law’s contribution to the secularization of politics in Luther’s age. Stefan Heuser traces how Luther was instrumental in the “impulses” for the secularization of 16th century political power. Yet today we are experiencing the de-secularization of political power, with political institutions unable to adequately address international challenges such as migration (p. 5).

Part Two re-examines Lutheran theology and legal philosophy. Carl Henric Grenholm compares legal positivism and natural law, noticing their differences, especially with regard to the legal validity and moral basis of law. Both are present in Lutheran social ethics, but even with the inclusion of a doctrine of creation, natural law, reason and the two regimes theories of Luther, they are inadequate if not informed by the gospel. Paul Hinlicky addresses Antinomianism—the “Lutheran” heresy, arguing that Lutherans get too caught up in proclaiming a sugar coated, false gospel which denies the need for justification. He proposes that the church develop a “culture of conscience” so that the right use of the law and a right understanding of the gospel can inform our engagement in the community.

Part Three explores the relationship between the individual and the state. Michael Kessler explores the proper distinction between the individual and the state, and between the church and state, in view of vocation. Keeping a distinction between the various spheres of life in which people live and move and have their being is crucial to defining various vocational roles. In an intriguing chapter, Michael Trice looks at Luther and Machiavelli as reformers who reimagined the intersections of private piety and public virtue, and who recognized that “secular law is an instrument of divine capacity in the world and a secular means of achieving the gospel dictum of loving the neighbour” (57). Craig Nesson follows up on this, looking at Luther’s two kingdoms as two strategies God for political advocacy. He argues for a neighbour politics (p. 71) while exploring the two uses of the law, righteousness, reason, the will, and works, and how they need to work in caring for the marginalized neighbour. H. David Bauer’s chapter on toleration closes this section by arguing that “societies that grants religious exemptions evince deeper respect for the individual than societies that do not” (p. 75). Within this framework he looks at the question of conscientious exemptions in the two court cases that dealt with decorating wedding cases and providing flowers for same-sex wedding. At stake here are not just religious freedoms but civil recognition of the rights of conscience, especially in a pluralistic society.



Part Four explores International law and human rights. Ted Peters explores liberation, the law and a proleptic dignity, and Kelly Denton Borhaug looks at the U.S. war culture and the status of the “unlawful alien combatant (pp. 103-104).” Peters concludes that liberation is the conferral of dignity upon people, and is in process even while not yet realized, while Denton Borhaug explores the sobering practice of labelling people, contrary to the Geneva Conventions as “unlawful alien combatants,” thus allowing the state to treat such people outside the norms of civility and recognized human rights. Denton Borhaug insists this is a great violation of human rights, and that relevant church statements do not adequately address the “alien combatant” categories that were introduced post 9/11.

In Part Five, the focus turns to Domestic legal issues. After a fascinating exploration by Mary Jane Haemig of how reformation-era preachers addressed the seventh commandment, often chastising rulers, nobility, clerics, and even peasants in the process, Ronald Duty explores the Doctrine of Discovery in American Indian law. In Canada, with the recent Truth and Reconciliation Report addressing the abuses of the residential schools and systemic injustices against indigenous peoples, this is a very timely article. Duty explores the five versions of the Doctrine of Discovery in the USA, noting the complexities and the self-serving components of this doctrine as it unfolded. Mary Streufert then addresses the way law courts deal with rape charges, based on a “gendered binary” that gives a hierarchical preference to the male rather than the victimized. With the rise of the *#MeToo* movement of the last few years, this chapter presents a challenging, sobering, reality that is all too prevalent. This section concludes with a chapter on family law by Marie Failing and Patrick Kiefert. They argue that status and contract models of marriage are inadequate, suggesting that a Reformation model would provide a “reality therapy,” based on human freedom and responsibility.

The final part of the book deals with the relationship between the medical and legal professions and the concept of neighbour-love. Deanna Thompson gives an insightful look at informed consent and cancer trials, noting that the interplay between the two is not clear, based on its failure to take into account the relationship dimensions of the doctors and dependent patients. Finally, Bradley Wendel explores the dilemma of lawyers defending people they may know to be guilty, while conscious of the imperfections of the legal institutions. Remembering that God works in two realms is a helpful to those whose vocations are at the intersection of these two worlds.

While not always an easy book to read, due to some detailed, nuanced arguments, as well as the small font size, this book provides an important contribution to Lutheran studies. Some chapters are more immediately gripping because of the current social contexts and issues confronted, while the foundational articles explore the intricacies and nuances of Lutheran theology and secular law. This is a must read for seminarians and all concerned with law and justice issues as core to the Lutheran faith.

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