

discipline without religion, and jurisprudence is shaped most by religious doctrine." According to Witte, "These sentiments were the watchwords of sixteenth-century Lutheran jurisprudence. For the early Evangelical jurists, law and Gospel, justice and mercy, rule and equity, discipline and love, order and faith, structure and spirit, all properly belonged in the governance of the earthly kingdom" (175).

Witte examines the social transformation in lands that adopted the Lutheran reformation and applied its basic theological teachings to the reform of the temporal sphere. A core Lutheran theological conviction states that the Church has no sword, no temporal jurisdiction, except in the highly restricted sense of its organizational self-governance in regard to doctrine, liturgy, and ecclesiastical orders. Witte traces that position beginning with Melancthon's Luther-endorsed Visitation Articles through many new "reformation laws" modeled after Bugenhagen's Church Order. The early Lutherans cited ancient canon law as a sound source for the institutional church's self-regulation. Canon law provided continuing relevance for matters such as marriage that were now transferred to the oversight of the civil magistrate.

Innovation occurred as Lutheran teaching offered theological legitimacy to secular power for specific reforms in civil law, political theory, and judicial practice. The Ten Commandments provided the divinely clarified teaching of the natural law inscribed by God in creation and for this reason replaced the sacramental system as an overarching moral framework for the organization of civil law. In political theory, the papacy's claim to hold the two keys was replaced by the new doctrine of the Protestant magistrate, who not only held the sword as God's "lofty viceroy" on earth, but was to represent God's paternal care for his children in works of public welfare (the community chest and public education particularly). In judicial practice, the rule of law was strengthened, not subverted, by the further development of the theory of equity, which encouraged both new scholarly research in law and a definite judicial activism. Equity—the rational capacity to put oneself in the place of another, the Golden Rule—provided a rule for applying rules.

While the results of this turn from Gospel to law were not wholly unambiguous, Witte's detailed case goes a long way toward reframing Troeltsch's judgment that the Lutheran reformation was "not the font of modernity," but only offered "new solutions to medieval problems" (23–26, *passim*). Witte sees the origins of modern republicanism in a student of Melancthon's, Johannes Eisermann (1485–1558), whose 1533 tract *On the Common Good*, later expanded and retitled *On the Good Ordering of a Commonwealth*, was "the first detailed social contract theory of the Christian commonwealth to emerge in Evangelical Germany" (153).

Witte thus presents the first of many debates about the "state of nature" that occupied Protestant political theorists in coming years. In Eisermann's view, "the state of nature began as a perfect realm of Paradise. . . ." (143). "In the perfect state of nature in Paradise, human life had been lovely and long. In the sinful state of nature after the Fall, human life had become 'brutish' and 'short' (*ferus et brevis*). Despite the fall into sin, however, God has allowed all people to retain a glimmer of those 'inborn sparks' of honesty, virtue, and community with which they were created: an innate knowledge of a natural law of love of God, neighbor, and self, and a natural sense of equity by which these laws must be applied. . . ." (144). Throughout history, Eisermann argued, "A commitment to the rule of law was the most essential provision of all these early social covenants" (145). Witte explains that Eisermann drew three conclusions for the construction of the new Christian republic: (1) "Christians have no monopoly on the understanding of natural law and natural reason"; (2) "there is no single foreordained or natural system of society, politics, and law. . ."; and (3) "there is no single person—far less a single dynasty—in a commonwealth that should naturally rule" (146).

must be left to the reader.

Law and Protestantism: The Legal Teachings of the Lutheran Reformation.

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John Witte Jr. concludes this superb study with a prophecy: "Heaven will exalt due process, and each will always receive what's due. Hell will exalt pure caprice, and no one will ever know what's coming" (303). Witte's prophecy is drawn from "a 1531 oration" by Philip Melancthon at the University of Wittenberg that declared: "It is impossible to uphold civil

The new legitimacy accorded to temporal power generated progressive political thought and reform. Witte assigns that new legitimacy to Luther's two kingdoms doctrine, which he characterizes as a horizontalizing of the vertically imagined traditional notion of a "great chain of being." God is not to be depicted remotely at the pinnacle (and for that matter "located" there at a safe distance), whose governance is then mediated by natural hierarchies of descending links in the great chain—some of which function as vicars of the absent deity. Luther's God is at once the Creator of all that is and for that very reason is immediately and omnipotently present to all levels of being in the various "masks" he adopts. The two kingdoms are not two similar magnitudes of heavenly and earthly things aligned in a vertical series, but the kingship of God the Creator manifests its rule in earthly masks of three coeval estates established at the creation: the domestic economy, the church, and the state. Before God these three estates are equal just as they are autonomous in relation to each other. Each has its own specific mandate, which collaborates with the others for earthly and heavenly welfare. In this view, secular power is not chiefly the state, nor is it chiefly characterized by possession of the sword. All three estates comprise the secular kingdom and mutually limit each other. Witte uses this theological scheme to describe legal reforms affecting not only the church, but also public morality, marriage, education, and poor relief.

A dark side resides in this fusion of state paternalism with a monopoly on the means of coercion. The ancient commonwealths were, according to Melanchthon and Eisermann, "incomplete. They can speak only to a 'civil goodness,' not to a 'spiritual goodness'" (147). Melanchthon regarded the Christian magistrate as "the 'custodian' of both tables of the Decalogue, 'a voice of the Ten Commandments' within the earthly kingdom . . . magistrates must pass laws against idolatry, blasphemy, and violations of the Sabbath—offense that the First Table prohibits on its face. Magistrates are also, however, to pass laws to 'establish pure doctrine' and right liturgy, 'to prohibit all wrong doctrine,' 'to punish the obstinate,' and to root out the heathen and the heterodox" ([citing CR 22:617–18] 131). Witte rightly notes that "Melanchthon's move toward the establishment of religion by positive law was a marked departure from Luther's original teaching. . . ." (131). The *cuius regio, eius religio* principle of the Interim, and at length "the Peace of Westphalia (1648), rested ultimately on Melanchthon's theory that the magistrate's positive law was to use the First Table of the Decalogue to establish for his people proper Christian doctrine, liturgy, and spiritual morality" (132).

Witte is aware of the problem his scholarship uncovers here. On the positive side, he can conclude that "a good deal of our modern Western law of marriage, education, and social welfare, for example, still bears the unmistakable marks of Lutheran Reformation theology" (295). But on the negative side, he notes that ever since the Reformation "Germany and other Protestant nations have been locked in a bitter legal struggle to eradicate state establishments of religion and to guarantee religious freedom for all. . . ." In the end, he tips his assessment toward "an instinct for egalitarianism" rooted in the Reformation view of the equal value of all persons before God as "the Lutheran gene in the theological genetic code of Protestantism" (303), an emphasis which links rights and duties, Gospel and law in the Christian republic.

