Toward a Lutheran "Delight in the Law of the Lord": Church and State in the Context of Civil Society

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Toward a Lutheran "Delight in the Law of the Lord": Church and State in the Context of Civil Society

Gary M. Simpson

Blessed are those who do not follow the advice of the wicked, or take the path that sinners tread, or sit in the seat of scoffers; but their delight is in the law of the Lord, and on that law they meditate day and night.

—Psalm 1:1-2

God has endowed the Evangelical Lutheran Church in America (ELCA) and its predecessor bodies with a half-century of trustworthy theological reflection on our topic. This chapter builds on that endowment. The ELCA Constitution attempts to encapsulate this heritage in its "Statement of Purpose." Among the many ways to participate in the triune God’s mission, the ELCA commits itself to "[w]ork with civil authorities in areas of mutual endeavor, maintaining institutional separation of church and state in a relation of functional interaction." This formulation provides the imaginative horizon for my investigation.

At the beginning of the third millennium, Lutherans in the United States can harvest their heritage in order to face newer challenges, like the emerging shifts in the nation-state and the renewed appreciation for the public sphere of civil society. In the first section, "Our Originating Confessions," I outline the contours of Lutheran confessional reflections on the neuralgic theme of God and political authority as one contribution toward a Lutheran "delight in the law of the Lord." These confessional contours appear succinctly in Article 16 of the Augsburg Confession. The vehicle that effectively hands these confessional convictions on from generation to generation is
Church and State in the Context of Civil Society

Martin Luther's Small Catechism and Large Catechism. Here are the bases for a Lutheran predilection toward critical participation in political authority. In "Luther's Critical Theology of Political Authority, Accountability, and Resistance," I investigate more fully the development of Luther's own critical theological reflection on political authority. Along with certain well-known aspects of Luther's thought, I highlight the question of political resistance. Lutherans as well as others have often minimized or even ignored political resistance in Luther, thereby diminishing a Lutheran "delight in the law of the Lord." This fuller account of Luther's reflections can still generate a fruitful imagination for the contemporary relationship of church and state. In the third section, "The Nascent Heritage of Lutheran Resistance Today," I explore the rise of Lutheran resistance theory as one factor in the growth of Western political thinking and institutional structure. In "The State, Civil Society, and Congregations as Public Companions," I (1) describe briefly how civil society emerges in Western civilization and contributes to more democratic forms of the state; (2) suggest how civil society "delights in the law of the Lord" and, thus, critically participates in the triune God's ongoing work of creating the world through political authority; and (3) propose how the church and particularly congregations of the church might imagine themselves as civil society companions and, in this way, can engage God's creative activity.

Our Originating Confessions

The Augsburg Confession

Article 16 of the Augsburg Confession (hereafter abbreviated as CA XVI, from the Latin Confessio Augustana) and the Fourth Commandment of Luther's Small Catechism and Large Catechism stand as the classic Lutheran confessional sources for subsequent Lutheran theological reflection on the nature of political authority in relation to divine agency exercised as law. The simple, basic question that CA XVI addresses is whether Christians can occupy political offices of various sorts, or even make use of any civil laws whatsoever, without such activity being per se ungodly and sinful. This question arose because some forms of Anabaptist theological reflection, virulently anti-papist, and claiming Luther's theology as their inspiration, considered such political-civil participation to be by its very nature totally under satanic rule. For such Anabaptists, political authority and divine agency are incompatible and, indeed, antithetical agencies. Jesus' injunction in the Sermon on the Mount means, according to these Anabaptists, that God works only through those who do not use the sword in order to resist evil. This theological conviction forbids any Christian in political authority from bearing the sword. The confessors at Augsburg distinguished themselves from that kind of theology.
In CA XVI, the Augsburg confessors also distinguished themselves from the medieval Christian monasticism then dominant. This monasticism insisted that progress toward Christian moral perfection happens most fully in a life lived outside of the more ordinary, everyday modes of marriage, family, and civil-political communities. CA XVI, by distinguishing itself from the theology and practice of medieval monastic perfection, with its proximity to “works righteousness,” shows how close its spirit is to the Augsburg Confession’s fundamental testimony of justification by faith alone. CA XVI employs a five-fold strategy in order to reform catholic Christianity in the field of political authority.

The confessors’ assertion that Christians can “licitly” and “without sin” hold political offices, participate in political affairs, and use civil laws rests on their primary truth claim that such offices and activities “were created and instituted by God” (the German text of CA XVI). The Latin text of CA XVI produces an even brisker tone by denoting these civil-political activities as themselves “good works of God” (Latin: bona opera Dei). As I explore in more depth below, Romans 13, along with other texts, presents the biblical reason for the confessors’ claim. This claim supplies the participationist predilection to our confessional heritage precisely because God, as an active agent, joins in the work of political authority. Later I expand on this participationist heritage, most prominently by retrieving its “critical” dynamic. Rightfully, we can describe our heritage as “critical participationist.”

In some highly secularized arenas today, speech that is rooted in any claim whatsoever about the conjunction of divine agency and political life appears quite outlandish. This does not happen only in the academy. Ordinary Christian congregations hesitate to correlate civil affairs and divine action, in order to guard against particular political decisions as unequivocally and unquestionably identifying God’s will. But total silence amounts to mere agnosticism, if not atheism. When people break the silence, they regularly do so in one of three ways. In the first way—often denoted as “liberal”—the relationship between civil-political affairs and God’s action remains under the influence of generic deism. In this scenario divine agency remains confined to the original creation of the institution of government in a far distant past. Since that time, way back when, the activity of God in political affairs seems to be on a perpetual sabbatical. According to this deistic confinement of divine agency, all ongoing, present-day political agency remains always and only human agency. At most the deity perhaps affects the intentions, motivations, abstract principles, or general vision of human agents through specifically “religious” means. In the second—“theocratic”—way, people imagine that God operates primarily or even exclusively by way of explicit, “born again” Christian agents. Political affairs as good works of God depend on the election and participation of a critical mass of Christians in control of such affairs. This theocratic view can undergird a spectrum of agendas ranging from the “right” to the “left,” and its
roots in the United States go back to one type of Calvinist Puritan. In the third
case—often denoted as “fundamentalist”—people recognize that God acts in
civil-political realities principally in the contemporary legal encoding of par-
ticular and precise biblical injunctions, which are themselves inerrant and
immutable. Sometimes the second and third ways intertwine.ª CA XVI sup-
plies a theological imagination different not only from Anabaptist sectarian­
ism, monastic perfectionism, and modern secularism in its atheistic extremities but also from the three popular contemporary proposals. The fruitfulness of CA XVI's claim regarding civil-political affairs depends on the constellation of four additional aspects of its theological strategy.

The second strategy in CA XVI is to group political-governmental affairs
alongside other types of activity less strictly understood as governmental­
political, like buying and selling, owning property, being married, or raising
children. In this way the confessors recognize that these diverse activities and
institutions share the common feature that they are all *bona opera Dei*. It is sig­
nificant that the proclamation of the gospel, the administration of the sacra­
ments, and the office of the keys are not activities grouped among CA XVI's
*bona opera Dei*, though certainly the gospel and sacraments are “good works of
God.” The point of this deliberate omission is that the gospel and sacraments
are “redemptive” works of God.ª By bundling the *bona opera Dei* of governing,
buying and selling, and marrying, the confessors intentionally claim that
these activities embody in an exemplary way God’s continuing “creational”
agency in and for the temporal world and its flourishing. To norm these rela­tionships and activities by the civil use of God’s law is, quite emphatically, to
delight in the law of the Lord for creational purposes. More vividly still, Article 16 of the Apology of the Augsburg Confession bundles political-governmental affairs together with medicine and architecture, food and drink, even “air,” as God’s ongoing creational activity. All these affairs are “God’s good
creatures and divine ordinances” [*bonae creaturae Dei et ordinationes divinae*] comparable in this sense to the change of seasons as creational “divine ordi­
nances” (BC 232.6).¹⁰ I return to this theme in section two in examining
Luther’s critical theology of political authority.

Another, latent implication of this second strategy now emerges. The activ­
ities, institutions, and orders¹¹ other than political-governmental affairs also
possess a distinct integrity. Each has its own integrity because each embodies
God’s ongoing creational activity of temporal earthly life. Stated negatively,
and perhaps more provocatively, the confessors do not make the integrity of
these other orders of God’s creational agency necessarily dependent on a
hierarchical subjection of them under the more narrowly defined sphere of
political affairs and governmental agency. On the other hand, CA XVI does not
offer an explicit theological warrant prohibiting such a hierarchical arrange­
ment. This otherwise significant issue simply was not a question during the Diet
of Augsburg in 1530. Historically, Lutherans have rightfully highlighted the
“creational” significance of this second strategy in distinction from redemption and sanctification. However, Lutherans have not usually focused vigorously on the more latent “integrity” implication. At certain times and places, some Lutherans have so neglected the distinct “integrity” of the nongovernmental, nonpolitical orders that they have wrongly claimed a confessional rationale for political absolutism. The constructive significance of this “integrity” implication will surface in sections two and three below in relation to political accountability and resistance in Luther and his theological heirs, and in section four in relation to the emergence and character of “civil society” and its significance for political accountability. By highlighting the concept of integrity, we place political authority within a constellation of integrity of God’s active civil use of the law for continually creating a thriving world. In this way the constellation as a whole and each integral part renders delight in the law of the Lord.

As its third theological strategy, CA XVI prominently displays the so-called “Peter’s clause”—clausula Petri—Acts 5:29: “But if a command of the political authority cannot be followed without sin, one must obey God rather than any human beings (Acts 5 [:29])” (BC50.7). In this way, the confessors boldly reintroduce the reality of sin and evil within the arena of governmental rule, having already clarified that sin and evil do not constitute the essence of the political. On the contrary, sin and evil represent the antithesis to civil-political agency since political agency is rooted in the activity of God. As infiltrating, alien agents, sin and evil take up residence in a domicile constituted properly by God’s creational agency and, indeed, become the true resident aliens. With the clausula Petri, the confessors acknowledge creational realities as contested terrain. The clausula Petri embodies the biblical warrant for the critical dynamic within our participationist heritage. This warrant also propels us to investigate critical competencies and criteria as we will in Luther’s critical theology of political authority.

CA XVI’s fourth strategy is to testify that the triune God initiates two ways to contest for the contested creation. The confessors most often employ the biblical notions of “law” and “gospel” (or “promise”) as fundamental categories that encapsulate two distinguishable modes of divine agency whereby the triune God rules the world. The meaning and validity of these two terms as theological categories remain, of course, a lively interpretive conversation far beyond the scope of our brief inquiry. Nevertheless, the ELCA formulation of “institutional separation of church and state in a relationship of functional interaction” remains a valid implication and outgrowth—though not at all an equivalence!—of the Augsburg Confession’s hermeneutical distinction of law and gospel as that hermeneutic takes linguistic form in CA XVI. There exists a unique, constitutional integrity of political authority and “state” grounded in God’s law and a unique, constitutional integrity of the church grounded in the proclamation of the gospel and the administration
of the sacraments according to the gospel. The distinction between law and gospel, however, can in no way be reduced to the constitutional integrity of state and church. The constitutional integrity of political authority and "state" in God's law means that "[t]he Gospel does not overthrow [Latin: 'undermine'] secular government, public order, and marriage" (BC 49-50.5), as some sectarian Anabaptists had claimed. "Neither does the gospel introduce new laws for the civic realm" (BC 231.3), whether such laws be the particular judicial laws of Moses as Andreas Carlstadt and others had asserted or the so-called "evangelical counsels of perfection" of Jesus' Sermon on the Mount, as the dominant medieval monastics had argued. The church's unique integrity means that, through the Holy Spirit's public media of word and sacrament, a congregated people is constituted with a righteousness in Christ—"alien righteousness"—appropriate for eternal salvation, which issues in the Spirit's fruit of love and good works through a plurality of vocations of life. What the law uniquely constitutes is a righteousness normatively appropriate for temporal civil existence along the entire breadth of creational orders and institutions. Such constitutional integrity of both creational orders and the church remains the inspiration for the ELCA's "institutional separation" formulation.

By means of the basic hermeneutical distinction of law and promise, the confessors testify that the gospel in its proper relation to the law and creational realities "requires [Apology 16 has 'approves'] that all these [civil authority, the state, and marriage] be kept [Latin: 'requires their preservation'] as true orders of God" (BC 38.5). The confessors do not use words like "requires," "intends," and "approves" in the sense that the gospel adds additional legal binding. That would contradict the very reason why the confessors articulate the gospel as God's unconditional promise in Christ Jesus. God's law embodies sufficient binding authority just because it is God's. Rather, "requires," "intends," and "approves" are employed because these are grammatically emphatic words, particularly in Latin. Properly interpreted, the confessors are noting that the gospel fiercely acknowledges as appropriate, true, and binding what God's law already requires and approves, namely, that political authority, the state, marriage, and so on, be kept and cultivated as true orders of God's creative agency rather than institutions of Satan's agency. It is precisely at this point, at the gospel's emphatic acknowledgment of the triune God's wide creational agency, including political rule, that the ELCA's formulation of "functional interaction" finds its initial justification as a Christian, evangelical predilection rather than as a sinful or demonic deviation from evangelical identity and integrity. The Lutheran practice of testifying to this biblical imagination is itself an ongoing "delight in the law of the Lord."

The final aspect of CA XVI's theological strategy now emerges. These civil-political bona opera Dei are suitable, eminently suitable, as Christian vocational
terrain. The confessors eagerly acknowledge all God's creational orders and any corresponding station in life as locations and agencies in which the triune God calls Christians in each one's own unique particularity and individuality—"according to each person's calling" (BC 50.5)—to love publicly and privately the neighbor with genuine good works. This is the justification for the confessors' strenuous critique of medieval monastic perfectionism. No wonder that contemporary philosopher Charles Taylor extols the confessors' theological reflections on Christian vocation as a "new radical reevaluation of ordinary life." This fresh retrieval of public love instituted in Christian vocation stands among the most prominent Lutheran contributions to the general "delight in the law of the Lord" since the sixteenth century.

This culmination of CA XVI's theological strategy in the doctrine of vocation permits us to view CA XXIII and XXVII as well as Articles VI and XX as companion articles of 16. In light of these companion articles, the confessors' doctrine of Christian vocation means not only that creational terrain is sacred terrain and thus the location for true love, both public and private, but also that, in the gospel, God in Christ through the Spirit both constitutes our eternal righteousness in faith alone and quickens our temporal righteousness, our time-bound loving of the created world. It is with the confessors' doctrine and practice of Christian vocation that the highly dynamic and dialectical interface between the triune God's Word of law and gospel, God's two basic modes of divine agency, surfaces most energetically.

Another aspect of CA XVI's vocational strategy merits notice. Only after locating Christian vocation within the triune God's creational orders as the ordinary apex of love does CA XVI take up the twin notions of subjection to political authority and obedience to its commands and laws. That is, such subjection and obedience are a derivative subset of public love and not the other way around. The fullest range of love, a manifold of good works, has an integrity of its own, because the broad range of loving good works issues first of all from God's own creating, preserving, and governing activities. Like God's own legislative-governing agency, political rule, and thus obedience, always and only rightly serves a more encompassing, primordial purpose, that is, God's gifting of temporal life.

_Luther's Catechisms_

Luther builds into the very structure of his catechisms the hermeneutical distinction between law and gospel that we saw embodied in CA XVI. That is, he begins his catechisms with the Ten Commandments as a brief epitome of the law and follows them with the Apostles' Creed as the story of the persons of the triune God of both law and gospel. For our purposes the Fourth Commandment is crucial, because here Luther locates political authority. None of the Ten Commandments explicitly thematizes political authority. Luther, of
course, knows this. Still, because he is addressing sixteenth-century children and lay adults with little theological wisdom, he employs the Ten Commandments as a ready, theological shorthand to survey the whole compass of everyday temporal life as it relates to God’s law.

In Luther’s mind the sweep of the Fourth Commandment comes closest to the lived reality of political authority. The forms of political authority in Luther’s day—at least as perceived from the popular, nonjurist point of view that Luther adopts in the catechisms—seem to reflect the hierarchical nature of parental authority, “this [parental] sort of inequality” (BC 405.141). Luther claims, therefore: “For all other authority is derived and developed out of the authority of parents” (BC 384.141). This notion, of course, colors his 1520s understanding of the character and shape of political authority. In this sense he is, during the 1520s, quite conventional and conservative with regard to the hierarchical nature of political authority. This 1520s viewpoint, then, is one of the notable factors for why Luther places political authority within the orbit of the Fourth Commandment.

Now we can specify a second, less obvious but in fact more noteworthy reason for placing political authority within the field of the Fourth Commandment. Luther sees a special theological weightiness in the Fourth Commandment’s demand of “honor.” The Fourth Commandment is not first of all about children’s “obedience” to their parents, especially in Luther’s treatment in the Large Catechism. Obedience certainly has its place. However, the Fourth Commandment is principally about the “estate,” the institution and office, of “parenthood.” In the demand of “honor,” Luther recognizes that God creates an office of parenthood possessing a “special position of honor” (BC 400.105). Parenthood resides “above all estates.” That is, parenthood exists “next to” God. Honor, as Luther notes, is the subject matter of the first table of the Decalogue dealing with the relationship of humanity with God. In this way the Fourth Commandment’s “honor demand” directs our attention toward a divine “majesty concealed within” parenthood. Parenthood functions preeminently, therefore, as God’s “mask” through which God’s ongoing creating of the social world takes place.29 This is why, in Luther’s words, we can consider parenthood “the most precious treasure on earth” (BC 401.109). People in the office of parenthood serve as “God’s representatives ... however lowly, poor, feeble, and eccentric they may be” (BC 379.108). The “honor demand” is the Fourth Commandment’s way to identify parenthood as the first office through which God continually creates human society. Further, the “honor demand” testifies to God’s general “agential immanence”—to say it in a clumsy way—in social time and space. Finally, the “honor demand” also bears witness to God’s dependable and sustaining faithfulness to the office of parenthood and thus contributes to a durable “delight in the law of the Lord.”
Already in his exposition of the First Commandment, Luther notes a crucial characteristic of the true God's creational agency. God ordinarily works in the world to create temporal, social life and to continue to create, preserve, and govern that life not immediately—that is, not without sociohistorical and natural media—but rather mediately. God's preferred mode of working is to employ ordinary, everyday, concrete, social and natural means in order to "lavish . . . richly" God's creational treasury and banquet upon all creation (BC 388.15).

Although much that is good comes to us from human beings, nevertheless, anything received according to his command and ordinance in fact comes from God. Our parents and all authorities—as well as everyone who is a neighbor—have received the command to do us all kinds of good. So we receive our blessings not from them, but from God through them. Creatures are only the hands, channels, and means through which God bestows all blessings. For example, he gives to the mother breasts and milk for her infant or gives grain and all sorts of fruits from the earth for sustenance—things that no creature could produce by itself. No one, therefore, should presume to take or give anything unless God has commanded it. This forces us to recognize God's gifts and give him thanks, as this commandment requires. Therefore, we should not spurn even this way of receiving such things through God's creatures, nor are we through arrogance to seek other methods and ways than those God has commanded. For that would not be receiving them from God, but seeking them from ourselves. (BC 389.26-27)

In the Fourth Commandment's "honor demand" Luther discerns the Decalogue's way to recognize, elevate, and extend "this way of receiving through God's creatures." This applies to parenthood, to neighborhood, and to political authority, indeed, to all God's creational orders, institutions, and offices. The triune God employs these with the precise purpose that temporal life might thrive, and, therefore, rewards the honoring of "this way of receiving through God's creatures" with such thriving. Note the joy that Luther cites.

Here you have the fruit and the reward, that whoever keeps this commandment will enjoy good days, happiness, and prosperity. On the other hand, the penalty for those who disobey it is that they will die earlier and will not be happy in life. For, in the Scriptures, to have a long life means not merely to grow old but to have everything that belongs to life—for example, health, spouse and children, sustenance, peace, good government, etc., without which this life cannot be enjoyed nor will it long endure. (BC 404-5.5.134)

While "honor" means first of all discerning "the majesty concealed within," it also means supporting and caring quite materially for these offices and for those serving in these offices. Because these orders, institutions, and offices
are not easily expendable, they embody a considerable enduring quality about them. With reference to parenthood, for instance, Luther observes that if we did not have biological parents, then we would have to petition God for some sort of surrogate, even if of “wood” or “stone” (BC 403.125). Granted that important benefits emerge from the durability of these orders, institutions, and offices of God’s creational agency, we must also inquire into Luther’s reflections about the accountability and reformability of them and even about the possibility of quite revolutionary change. I take up this line of inquiry below.

Luther’s theological discernment of the “majesty concealed within” parenthood leads, then, to an ethical corollary. Because parenthood is the triune God’s own office, those who fill the office do so always with reference to “God, who holds you accountable for it” (BC 409.169). People ought never to exercise this divine office merely in whatever way they wish. Knavery and tyranny clearly contradict God’s concurring creational agency. The parental office—and political authority by extension—is not principally about “homage” for parents or about conveniently putting children “to work like cows or donkeys,” or about the “pleasure,” “whim,” or “amusement” of parents (BC 409.167–70). Rather, the parental office must “devote serious attention” toward the children and household servants, toward “what they learn or how they live” along three dimensions: material, civil, and spiritual (BC 388.171-175). This all pertains equally to the office of political authority, for the civil dimension needs “good, capable citizens” (BC 389.175).21 I will now explore more deeply Luther’s critical theological reflections on the character of the office of political authority. In doing so, I attend to show how in Luther’s developing reflection the triune God holds political officeholders and, indeed, the office itself, accountable.

Luther’s Critical Theology of Political Authority, Accountability, and Resistance

Like CA XVI, Luther’s theology of political authority stands as a critical alternative both to the medieval heritage of papal political theology with its correlate of monastic perfectionism and to the emerging sectarian proposal of some Anabaptists. I will investigate (1) three basic themes of Luther’s critical theology of political authority and (2) the development of Luther’s thought on the question of resistance to the emperor. The three basic themes are (a) the divine constitution and agency of political authority and the specific question of the sword, (b) a critical “limit” and criterion of political authority, and (c) the conundrum of the accountability of political authority.
The Basics of Luther’s Critical Theology of Temporal Authority

Constitution, Agency, and the “Sword”

Luther’s critical theology of political authority emerges over the full course of his life. Many, though not all, of its basic features are already in place in his 1523 well-known treatise “Temporal Authority: To What Extent It Should Be Obeyed.” Often interpreters of Luther, however, portray his account of law and political authority too reductionistically, taking account only of Luther’s Augustinian accent on political authority as a remedy and dike against sin (remedium peccati). They tend to interpret this 1523 treatise too abstractly, as if the 1523 context for his theological reflection about law and political authority did not exist. They succumbed to this temptation because Luther does indeed employ his comprehensive, remarkably enduring, and fruitful distinction between the triune God’s two ways of ruling the world—often referred to as Luther’s two-kingdoms teaching. Nevertheless, readers will gain better insights into Luther’s understanding of political authority as well as the fruitfulness of his two-kingdoms teaching if they enter the “situated” door through which Luther invites them. 22

Luther prefaces his treatise with a letter addressed to his soon-to-be prince, John the Steadfast. John had inquired of Luther whether he could exercise the full range of powers of the princely office with a good Christian conscience now that he had become an ardent defender of the evangelical cause. John was concerned about the power of “the sword,” that particular, coercive power of last resort belonging in an exceptional way to political authority. “Temporal Authority” is Luther’s theological reply to this situated request. 23

Some Anabaptist sectarians were perturbing John with certain Bible passages from Jesus’ Sermon on the Mount, like “do not resist an evildoer”; from Paul’s Epistle to the Romans, like “never avenge yourselves ... vengeance is mine, I will repay, says the Lord”; and from Peter’s epistle, like “do not repay evil for evil.” These texts, claimed the sectarians, preclude without exception any true Christian, including those Christians occupying the office of prince, from bearing “the sword” (LW45:81; also LW45:87).

Luther must also deal with the normative medieval interpretation of passages like those from the Sermon on the Mount. According to that interpretation, a prince could bear “the sword” and remain a Christian in good conscience because these Sermon on the Mount passages were Jesus’ “counsels” spoken only to those who were specially dedicated to “Christian perfection,” a perfection that could be pursued only within the “religious vocation” of the monastery or sacerdotal priesthood. Accordingly, princes need not be held accountable to such high “counsels of perfection” since they, being lay Christians, remained “common” Christians. Luther will have nothing of such scholastic interpretive “wantonness and caprice.” Among Christians there exists no external “class” distinction between perfect and common based on
status markers like “outwardly male or female, prince or peasant, monk or layman” (LW45:88). Here, Luther’s doctrine of vocation comes into play. Passages like those from the Sermon on the Mount “apply to everyone alike” (LW 45:88). Part one of “Temporal Authority” represents Luther's critical theological reflection on the power of the sword of political authority in relation to the Christian life.

A second historical factor situates Luther’s reflections. In Luther’s earlier 1520 treatise, “To the Christian Nobility of the German Nation,” he had appealed to the Christian nobility as lay people of the church to take the reform of the church into their own hands since the bishops had not. Luther noted that the political authority of rulers was not delegated to them hierarchically from the church and its bishops, as the dominant heritage of papal political theology often held. His provocative assessment of political authority left many wondering whether, by so emancipating political authority from the church, he had ascribed unlimited, totalitarian powers to political authority. Could princes, with legitimate authority, command as God’s will “whatever they please”? And correspondingly, are the princes' subjects “bound to obey their rulers in everything” as they would be so bound to obey God’s will (LW 45:83)? Luther addresses this situated question in part two of “Temporal Authority.” In “the main part of this treatise,” he stakes out the extent and limits of political authority and its power of the sword, which he considers (LW 45:104). In this way the treatise's subtitle remains significant: “To What Extent It Should Be Obeyed!” In part three Luther offers his own practical advice concerning the use of the prince’s office in a Christian manner. Luther’s remarks here bear the stamp of a layperson’s political imagination, as he himself acknowledges, though, even here, we might meet some surprises.

Luther initiates his inquiry in part one by citing Rom. 13:1-2 and 1 Pet. 2:13-14. These texts clearly authenticate the constitution of political authority’s obligation of “the sword” as “a godly estate” (LW45:87) and thereby testify that God’s agency accompanies “the law of this temporal sword” (LW 45:86). Luther argues that Gen. 4:14-15 and Gen. 9:6 strengthen the first two texts by emphasizing that the law of the political sword has “existed from the beginning of the world,” of course after the Fall. God has found ways to inscribe this law into human community from the beginning of time, even though, Luther notes, communities have also found ways to have this divine work of the sword “not carried out.” Exodus 21:14 and 21:23-25—the famous lex talionis—certify that Moses “confirmed” this inscribed-from-the-beginning law of the political sword. Matthew 26:52 and Luke 3:14 attest that Jesus and John the Baptist both “confirm” this inscribed-from-the-beginning law. Luther’s conclusion: “Hence, it is certain and clear enough that it is God’s will that the temporal sword and law be used for the punishment of the wicked and the protection of the upright” (LW45:87). First Peter 2:14 (LW45:86) and Rom. 13:3 (LW45:91) warrant preventing wickedness and promoting upright-
ness as the twofold criterion of God’s constituting will regarding the full range of political authority including its power of "the sword."

Luther perceives that God could and has employed a variety of possible forms of government for the purpose of preventing and punishing wickedness and protecting and promoting uprightness. He does not, in this treatise or anywhere, compare and contrast the possible forms of government with the aim of assessing which form might better conform to and thus participate in God’s will and constitution of political authority against wickedness and for uprightness. However, as I clarify below, a totalitarianism over the religious conscience lies outside the definitional bounds of divinely constituted political authority. Political authority stands among the orders, institutions, and offices of the triune God’s creative work of bestowing and contesting for temporal life. This means that God wills to place the everyday temporal needs of subjects or citizens as the particular burden of every possible form and office of political authority.

Luther argues that God constitutes the full horizon of the first use of the law in general, and political authority with its coercive sword in the situated case before him, because of the circumstances of humanity. Humanity is composed of both righteous Christians and the unrighteous. Righteous Christians hear and trust the voice of Christ and, thus, the Holy Spirit of Christ himself works through their agency, directing it for the doing of right and bearing of wrong. By the Spirit, therefore, righteous Christians “do of their own accord much more than all laws and teachings can demand, just as Paul says in 1 Tim. 1:9, “The law is not laid down for the just but for the lawless” (LW45:89). Throughout Luther’s career, 1 Timothy 1 is a hermeneutically significant text. Accordingly, God constitutes the law not with such righteous Christians in view. Of course, Luther always keenly recognizes that many baptized Christians are so in name only and thus waste the Holy Spirit’s agency for lives of vocationally loving their neighbors. “Christians are few and far between (as the saying is)” (LW45:91). Luther numbers such false Christians among the unrighteous. The unrighteous, readily in the majority by Luther’s calculus, live without the Spirit of Christ as the core agent of their lives and, thus, “need the law to instruct, constrain, and compel them to do good” (LW 45:89). Indeed, these are key reasons why God constitutes the law in its first, political or civil, use. God institutes this first use of the law in order both to generate and to preserve a basic floor of justice (see below) as well as to promote and nurture the continued flourishing of temporal, creational life.

At times, Luther summarizes this broadly construed understanding of the law’s civil use, especially when he is situationally focusing on political authority with its coercive element of “the sword,” as the placing of the “sinful and wicked” “under restraint so they dare not willfully implement their wickedness in actual deeds” (LW 45:90). Nevertheless, summaries like this do not imply
that he maintains only a restraining conceptualization of the full horizon of the law's civil use or of political authority. We are reminded again of Luther's symbol of the "bread loaf" with its more socially generative connotations. That interpreters misconstrue him on this point is detrimental to the ongoing, lively use of his heritage of interpretation on this important matter. Still, make no mistake about it, Luther does strenuously highlight the restraining element of "the sword" within the total panorama of the triune God's civil use of the law because, quite frankly, there exist "few true believers and still fewer who live a Christian life" (LW45:90). He remains a wide-eyed realist about sin and evil. Equally he remains a wide-eyed realist about the triune God's creative resolve to contest against sin and evil for the sake of creation! "For this reason God has provided them [the unrighteous] a different government beyond the Christian estate and kingdom of God. He has subjected them to the sword so that, even though they would like to, they are unable to practice their wickedness, and if they do practice it they cannot do so without fear or with success and impunity" (LW45:90).

Luther's realism about sin and evil leads him to reflect on possible relationships of power wherein the "wolves, lions, [and] eagles"—the hoarders and inhibitors of God's temporal, creative banquet—would simply "devour" (LW 45:91, 92) the "sheep"—the most vulnerable among us and all of us in our vulnerabilities. If such a lax situation, devoid of boundaries, would persist, temporal life and flourishing would eventually be "reduced to chaos" (LW 45:91). Because God is always mindful of oppressive and violent wickedness, argues Luther, the triune God constitutes two modes of governing the world, each with its own integrity with regard to divine purpose and power: "the spiritual, by which the Holy Spirit produces Christians and righteous people under Christ; and the temporal, which restrains the un-Christian and wicked so that—no thanks to them—they are obliged to keep still and to maintain an outward peace" (LW45:91).

Luther's view of the integrity that political authority has, because of its constituting origin and ongoing basis in God's creation and law, critically distinguishes his theological reflection from the then dominant papal theology of political authority. Furthermore, given the divinely constituted integrity of both governments, "it is out of the question" that Christians should attempt to govern the whole world or even a single country by the kind of non-coercive, free and freeing spiritual governance of the gospel (LW45:91, 93, 107–8). For this reason he recognizes a special Christian vocation to "carefully distinguish between these two governments. Both must be permitted to remain; the one to produce righteousness, the other to bring about external peace and prevent evil deeds. Neither one is sufficient in the world without the other" (LW45:92).

Readied with this "both" kingdoms hermeneutic, Luther turns to the significance of Jesus' Sermon on the Mount injunctions. Christians are to have
no recourse to the law or to political authority’s sword in two types of circumstances: “among themselves” \((LW45:92, 94)\) and “by and for themselves” \((LW45:94)\). First, within the Christian community, we are not to seek recourse in the law or political authority’s coercive sword. Second, Christians have no need for political authority’s sword if what is at stake is only their own well-being \((LW45:95)\). The second circumstance flows from another basic distinction in Luther’s construal of the relationship of Christians to the sword as well as to the full horizon of political authority: the distinction between the self and the neighbor or the other.

Since a true Christian lives and labors on earth not for himself alone but for his neighbor, he does by the very nature of his spirit even what he himself has no need of, but is needful and useful to his neighbor. Because the sword is most beneficial and necessary for the whole world in order to preserve peace, punish sin, and restrain the wicked, the Christian submits most willingly to the rule of the sword, pays his taxes, honors those in authority, serves, helps, and does all he can to assist governing authority, that it may continue to function and be held in honor and fear. Although he has no need of these things for himself—to him they are not essential—nevertheless, he concerns himself about what is serviceable and of benefit to others, as Paul teaches in Ephesians 5. \((LW45:94)\)

Luther argues that these three sets of distinctions—between the triune God’s two kingdoms, between within and without the Christian community, and between self and neighbor—bring “into harmony” the two sets of biblical texts that on the surface might appear contradictory. On the one hand, as Christians we do not with the sword resist evil either among ourselves or for our own survival or gain. On the other hand, as Christians we are authorized and, indeed, are “under obligation to serve and assist the sword by whatever means [we] can, with body, goods, honor, and soul” in order to resist evil when oppressors afflict our neighbors. “For it [the sword] is something which you do not need, but which is very beneficial and essential for the whole world and for your neighbor” and, indeed, “[t]he world cannot and dare not dispense with it” \((LW45:95)\). By so serving and assisting even the sword, argues Luther, “in what concerns the person or property of others, you govern yourself according to love and tolerate no injustice toward your neighbor” \((LW45:96)\).

Christians participate in the whole panoply of the civil use of the law as well as more narrowly in political authority, including its coercive and restraining sword, because these exist as God’s own “work and creation” \((LW45:99)\). They exist as God’s masks for creating and sustaining the temporal life of the world \((LW45:96–100)\). Because the triune God is the one who constitutes political authority as one crucial component of the civil use of the law, therefore God’s very own continuing creational agency resides effectively in and through political authority.\(^9\) By serving and assisting the sword, Christians participate in
God's creative agency. Luther often articulates this sense of ardent participation by commending "obedience" to temporal authority. Participatory "obedience" appropriately exists within God's overall constitution of political authority to be "for the neighbors' good." This constitution extends the great variety of offices that "arrest, prosecute, execute, and destroy the wicked and [that] protect, acquit, defend, and save the good" (LW 45:103). Finally, because political authority exists to serve the neighbors' good, Christians can even "use their office like anybody else would his trade, as a means of livelihood" (LW 45:103). With these basics, Luther set in motion a Christian participationist predilection in political authority. I turn now to his contention for the critical dynamics within this heritage, rooted in a specific limit and a crucial criterion.

A Limit and a Criterion of Justice

In part two of "Temporal Authority" Luther takes up the question of a "limit" of political authority. The limit that he examines is divinely circumscribed and therefore is indispensable. As divinely constituted, does political authority extend into the area of eternal life and salvation, of "the soul" (LW 45:105)? Does the triune God institute political authority in such a way that the authorities may "coerce the people with their laws and commandments into believing this or that"? Note, on the one hand, that in this treatise Luther does not inquire in any kind of disciplined manner whether there might be other kinds of limitations regarding political authority, limits that represent the distinctive marks of different forms of government. Such questions become the hallmarks of classic political liberalism during the modern era. On the other hand, he is addressing a situation with some similarity to what we today have come to call "religious liberty."

Luther argues that the triune God constitutes political authority with "no power over souls" because "in matters which concern the salvation of souls nothing but God's word shall be taught and accepted" (LW 45:106). Furthermore, God does not endow political authority as such with competencies for God's word (LW 45:106-7). Matthew 16:18 and John 10:27 are decisive in this regard. Appropriate competencies are crucial. For example, a court of law must have competencies concerning arenas about which it renders judgment. "But the thoughts and inclinations of the soul can be known to no one but God. Therefore, it is futile and impossible to command or compel anyone by force to believe this or that. The matter must be approached in a different way. Force will not accomplish it" (LW 45:107). Because political authority does not possess competencies regarding "souls," it is counterproductive to employ the divinely endowed competencies that it does possess, among which is "the sword," in reference to belief in God. "For faith is a free act, to which no one can be forced. Indeed, it is a work of God in the spirit, not something which outward authority should compel or create. Hence arises the common saying, found also in Augustine, 'No one can or ought to be forced to believe'" (LW
God institutes political authority with competencies, including “the sword,” delimited to the Second Table of the Decalogue, the “outward compliance of the mouth and the hand,” but not with competencies and thus not with authority regarding the conscience, which has its moorings in the First Commandment. He argues for this limit on political authority by expositing the words of Paul (Rom. 13:3, 7), Peter (1 Pet. 2:13), Jesus (Matt. 22:21), David (Ps. 115:16), and Moses (Gen. 1:26) and finds this biblical consensus poignantly consummated in the clausula Petri (Acts 5:29) (LW 45:110–11).

The most that political authority could accomplish, even if it would utilize contrary to God’s will the law’s full resources, would be “only [to] compel weak consciences to lie, to disavow, and to utter what is not in their hearts” (LW 45:108). But, compelling consciences to lie is “even worse” than allowing them to remain in the error of unbelief (LW 45:109). He notes therefore that the clausula Petri, by sanctioning a limit on obedience to political authority, also sanctions a limit on political authority itself. Christians should not obey the political authorities when these authorities trespass on “faith.” “For I tell you, if you fail to withstand him, if you give in to him and let him take away your faith and your books, you have truly denied God” (LW 45:112). In other places Luther invokes the clausula Petri when a governing authority orders subjects clearly to contradict the second table of the Decalogue. Still, justifiably disobeying a specific order does not imply a justification for the total disobedience of political authority. Violation of the bounds of temporal authority at one point, even a crucial one, does not necessarily abrogate the totality of political authority that a government can still exercise.

Luther then takes up the objection of those who say that political rulers are not so much compelling faith as they are “simply seeing to it externally that no one deceives the people by false doctrine” (LW 45:114). He does not concede any competencies to political authority on this issue as Calvin would later on. Rather, Luther extends his argument regarding the constitutional incompatibility of force and faith to pertain to force and heresy. “Heresy can never be restrained by force. One will have to tackle the problem in some other way, for heresy must be opposed and dealt with otherwise than with the sword. Here God’s word must do the fighting” (LW 45:114). From the point of view of texts like 2 Cor. 10:4-5 and Isa. 11:4, contesting heresy remains a prerogative of the argumentative persuasiveness of God’s word. Furthermore, notes Luther, the triune God entrusts these persuasive competencies of God’s word especially to the office of bishop, not prince.

For Luther the utmost criterion for the exercise of political authority is justice. When considering the contents of justice, he regularly turns to the Second Table of the Decalogue as a ready, everyday template of moral matters. Even as he finds the Second Table of the Decalogue to be an enduring template of moral matters, he also finds these issues discussed and explicated frequently
throughout Scripture, and often far beyond the precise construal the Decalogue itself gives. Furthermore, both the Decalogue and the Scripture’s discussions and elaborations of the Decalogue’s template of moral justice are instances of particular, contextually connected, natural law reasoning. That is, Luther argues—most often on the basis of Scripture itself—that the natural law of justice precedes and, therefore, grounds both the Decalogue as recorded in Scripture and the scriptural explications of the Decalogue’s template of topics. For this reason he regularly appeals to the natural law of justice, often as inscribed in the Decalogue or the Golden Rule or the second great commandment, as the crucial criterion for the functioning, positive law of a political region. For instance, in the closing section of “Temporal Authority,” he points out, though without detailed analysis, the intrinsic connections between justice, natural law, the Golden Rule, and the injunction to love your neighbor as yourself. Finally, he discusses the role that prudence and untrammeled practical reason have in the discernment and administration of justice and law.

In Luther’s “Commentary on Psalm 82” (1530), which reads like an essay on the virtuous prince, he notes that second only to the princely vocation to secure the free opportunity for the church to teach God’s word is the princely vocation “to help the poor, the orphans, and the widows to justice and to further their cause” (LW13:53). Hear the rhapsody in his words:

In a word, after the Gospel or the ministry, there is on earth no better jewel, no greater treasure, nor richer alms, no fairer endowment, no finer possession than a ruler who makes and preserves just laws. Such men are rightly called gods [by the psalmist]. These are the virtues, the profit, the fruits, and the good works that God has appointed to this rank in life. It is not for nothing that He has called them gods; and it is not His will that it shall be a lazy, empty, idle estate, in which men seek only honor, power, luxury, selfish profit, and self-will. He would have them full of great, innumerable, unspeakable good works, so that they may be partakers of His divine majesty and help Him to do divine and superhuman works. (LW 13:53ff.)

The third of his three chief, princely virtues is “peacemaking.” A more extensive discussion of his thinking on these issues lies beyond the scope of this inquiry.

The Conundrum of Accountability
Luther harbors no illusions about the willingness of political rulers to remain within the divinely constituted bounds of political authority regarding “faith.” They often desire and “actually think they can do—and order their subjects to do—whatever they please” (LW45:83; also LW13:43). Luther argues that God remains “a Judge over all” political rulers when they exceed the constituted circumference of their authority in matters of faith. While “faith” remains
beyond the boundary of political authority, basic "justice," as we have seen, remains a divinely willed criterion for the functioning of political authority. Consequently, God also holds political governance accountable for ruling according to justice. Divine accountability applies to violations of both the circumference and the criterion of political authority.

In "Temporal Authority" Luther notes that God is pouring out divine "contempt" on those rulers of his day who violate the "faith" limit of temporal authority. Here Luther invokes Ps. 107:40. Furthermore he points to "the common man" as the instrument of God's displeasure (LW45:116). That common people are "learning to think" impresses him mightily. He depicts the type of thinking that they are acquiring as moral reflection about the public world of political rule. These newly acquired capacities of common people involve public moral reflection about "wantonness," that is, about the excesses that signal the difference between vice and virtue. Beyond this, however, these new capacities involve discerning "tyranny," quite specifically a politically oriented moral capacity. "Men will not, men cannot, men refuse to endure your tyranny and wantonness much longer. Dear princes and lords be wise and guide yourselves accordingly. God will no longer tolerate it. The world is no longer what it once was, when you hunted and drove the people like game" (LW45:116). Still, to be sure, in the 1520s and into the 1530s, Luther never counseled rebellion either by the princes toward the emperor or by the masses toward the princes. "Nevertheless it is not His will to allow the rabble to raise their fist against the rulers or to seize the sword, as if to punish and judge the rulers. No, they must leave that alone! It is not God's will, and He has not committed this to them" (LW13:45).

When in 1530 Luther inquires, "Where, then, is God?" in reference to the divine accountability of political authority, he argues that God establishes the "office" of "a preacher by whom God rebukes" political rulers. They are to exercise this "very wide admonitory power" of the preaching office "uprightly and honestly," "openly and boldly" (LW13:49). This admonitory duty of the preaching office is "not seditious," but is "on the contrary a praiseworthy, noble, and rare virtue, and a particularly great service to God" (LW13:50). By publishing a treatise like "Temporal Authority," Luther is himself self-consciously exercising this admonitory power of divine accountability.

Luther perceives that on a world-historical scope the triune God on occasion employs other means for exercising divine accountability. These he calls "God's extraordinary leaders" (LW13:154-75). Sometimes these "extraordinary leaders" are themselves political rulers; often they are not. They have a special star before God and are not so much trained or made as "created" and taught directly by God. They possess a special endowment of "natural law and natural reason." God raises up "such jewels, when, where, and to whom He pleases" "not only among His own people but also among the godless and the heathen; and not only in the ranks of the nobility but also among the middle classes, farmers, and laborers."
Luther sometimes identifies external enemies, who themselves do not necessarily practice a politics of justice, as a type of political accountability of last resort. The aggressive Turkish army under Suleiman the Magnificent was a contemporary instance. Because the Holy Roman Empire, including the German people, practiced injustice and persecuted the gospel, “the Turk ... is God’s rod and the devil’s servant [Isa. 10:5]; there is no doubt about that” (LW 46:170; also LW 31:92). This seems to be a political equivalent to what Luther often observes: “God will, as is usual in these situations, use one rascal to punish the other” (LW 46:32, 41; also BC 398.245). Luther identifies these four ways in particular—the common people who are learning to think, the admonitory obligation of the office of preaching, extraordinary leaders, and external political enemies—by which God holds political authority accountable, thereby actualizing a critical dynamic within God’s continuing creational agency of temporal, social life. There is therefore initial reason to perceive “the functional interaction” of church and state in Luther’s thinking along the lines of a critical participationist predilection.

The social world of Luther’s day was changing, most significantly, in that the common people’s “regard” for political authority mattered—something of which he himself took note (LW 45:116). Such “regard,” as we will see in section four below, would eventually become the crucial dynamic in the matter of political accountability and, in fact, would come to matter so focally and forcefully that the basic form of political authority would itself become quite new—a novus ordo seclorum, as the great seal of the United States of America puts it. Certainly this eventuality lay well beyond Luther’s own political imagination.

The Question of Armed Resistance

One remarkable step toward this coming new form of political accountability and authority took place during a controversy that began within Luther’s lifetime and continued in the years shortly following his death in 1546. This controversy centered on the question of the right and duty of armed resistance to the emperor. After the Edict of Worms in 1521, the Lutheran reformers continually faced the possibility that Emperor Charles V would intervene militarily to put a stop to the Reformation. Was it right for princes and imperial cities to form a military league to resist the emperor in defense of the gospel? Of course, there always existed different dimensions to the question: Was it politically wise? Was it legally constitutional? Was it morally and theologically right? Luther reflected on all three dimensions, although I will concentrate on the latter. Shortly after Luther’s death, military intervention did in fact occur with the Schmalkald War of 1546.

Luther’s thinking developed and his mind changed “slowly but radically,” in three stages. The period of 1515–1530 we might call “nonviolent, publicly rhetorical resistance.” Typical is the following:
A prince should not go to war against his overlord-king, emperor, or other liege lord—but let him who takes, take. For the governing authority must not be resisted by force, but only by confession of the truth. If it is influenced by this, well and good; if not, you are excused, you suffer wrong for God’s sake. If, however, the antagonist is your equal, your inferior, or of a foreign government, you should first offer him justice and peace, as Moses taught the children of Israel. If he refuses, then—mindful of what is best for you—defend yourself against force by force, as Moses so well describes it in Deuteronomy 20 [:10-12]. But in doing this you must not consider your personal interests and how you may remain lord, but those of your subjects to whom you owe help and protection, that such action may proceed in love. (LW45:124-25; author’s emphasis)

During this period Luther would evenhandedly apply this principle—inferiors ought not wage war against their superiors—to princes, cities, and peasants.

After the failure of the Diet of Augsburg of 1530 to recognize confessional unity and thereby promote political unity within the empire, Luther’s thinking shifted, though ever so slightly. The shift appears in the “Torgau Declaration” of October 1530, penned by Luther and joined in by Melanchthon and others. As he always had in the past, Luther again firmly rejected any armed resistance to the emperor on the basis of the natural law right of self-defense. Now, however, he was convinced by Gregory Brück and other Saxon jurists that the “governing authority’s law itself grants” the right of armed resistance under certain circumstances. This law should be obeyed if the extreme circumstances warranted in the law—atrocity injury [atrox iniuria] or notorious injury [notoria iniuria]—come about. With the “Torgau Declaration” the practical issue of armed resistance became for Reformation theologians more a matter of constitutional, positive law than of theological-moral reflection. We could refer to this stage of reflection as “constitutionally delimited armed resistance.”

A clear break in the collective reflection of the Wittenberg theologians appears on December 6, 1536. Elector John Frederick had asked Luther and the Wittenberg theologians to give him an official opinion, first, about how the Protestants should respond to the summons by Pope Paul III for a general church council, and, second, given the possibility of an accompanying political crisis, about whether armed resistance was justifiable. They begin their theological reflections, penned by Melanchthon and joined in “unanimously” by Luther and others, in their familiar way, by confessing that the gospel is a spiritual teaching that does not dictate laws regarding temporal government but rather confirms just laws and values them highly. But then the Wittenberg theologians immediately follow up their familiar beginning with an innovative conclusion: “Therefore it follows that the Gospel permits all natural and equitable protection and defense that is authorized by natural laws or else by tem-
In the "Torgau Declaration" they had recognized the possibility of armed resistance on the basis of positive law. Now they acknowledge the validity of a natural law justification for armed resistance—*vim vi repellere licet*—which the "Torgau Declaration" had rejected. While Luther endorsed the natural law argument for armed resistance several times during these years, he never explicitly made use of this argument in his own writings. Rather, he developed his own argument for resisting the emperor by claiming that the emperor was a "soldier of the pope" [*miles papae*] and that the pope was an agent of the devil who must always be resisted. By the end of Luther's life, a Lutheran consensus existed regarding armed resistance to the emperor rooted in the combination of a constitutionally delimited justification together with a natural law theory of resistance.

Our inquiry points to the nuanced development of a Lutheran theory of armed resistance attained by the end of Luther's life. This inquiry stands at odds with a popular strand of interpretation of Luther's thinking gathered together "authoritatively" by Ernst Troeltsch and popularized in the United States, again "authoritatively," by Reinhold Niebuhr and William Shirer. This one-sided, reductive trajectory of interpretation disregards the significance of Luther's development of thought regarding resistance and instead portrays Luther's thinking as essentially completed in the 1520s. Furthermore, this interpretive trajectory implies that Luther's theological thinking on political authority invariably steered subsequent Lutherans in an unbroken line to "unconditional obedience towards the authorities which have come into being in the course of the historical process," to the "glorification of power," to political "absolutism," to "Machiavelli," to an "anti-democratic" spirit in which "the business of government is to maintain order by repression," and to every Nazi "ferocious believer in absolute obedience to political authority."

Thankfully, many North American Lutheran interpreters of Luther have worked to overturn this influential Troeltschian-Niebuhrian trajectory and have thereby indulged in a Lutheran "delight in the law of the Lord."

The Nascent Heritage of Lutheran Resistance Today

The continuing development of Lutheran resistance theory made an important contribution to the emergence of democratic political thought and practice in the West. Shortly after Luther's death, nascent Lutheran resistance theory found a home and flourished among a group of Augsburg Confession loyalists in the city of Magdeburg. In 1550 nine Lutheran pastors issued their "Confession, Instruction, and Admonition of the Pastors and Preachers of the Christian Church at Magdeburg" (The Magdeburg Confession) as their
confessional response to the Augsburg Interim of 1548. Part one, "Confession," deals with crucial doctrinal issues like sin, justification, and good works that had been severely compromised in the Augsburg Interim.

In part two, "Instruction," these Magdeburg confessors take up the question of armed resistance to the emperor. Quite deliberately they summarize what Lutheran resistance theory had already established in various documents and writings. Following Luther, they begin by affirming the divine constitution of political authority and thereby the general duty under ordinary circumstances to obey such authority. They eventually raise the question of what happens when those who have an authority higher than city magistrates seek to destroy true Christian doctrine within the province of a city.

The argument of the Magdeburg confessors regarding "the duty of lesser magistrates to resist," as their notion has come to be called, proceeds on the basis of Rom. 13:3. The triune God constitutes political authority to be a terror to evil not to good. Rulers who habitually are a terror to the good, however, violate the norm within the divine constitution of political authority and thereby collaborate with the devil. Such rulers persistently and systematically erode the public recognition of and regard for God's institution of political authority. This damages the honor and worship due to God for the gift of political authority. How does God exercise divine accountability under such circumstances?

At this point the Magdeburg confessors initiate an innovative line of inquiry. "[W]henever a superior magistrate persecutes his subjects, then, by the law of nature, by divine law and by the true religion and worship of God, the inferior magistrate ought by God's mandate to resist him." Here the Magdeburg Lutherans, based on a penetrating interpretation of Matt. 22:21, focus on the integrity before God of each jurisdictional level of political authority. For instance, because the office of a city magistrate possesses a direct—rather than a hierarchically mediated—integrity and accountability before God for the welfare of a city and its subjects, when a ruler higher than the city magistrate persecutes the city's subjects, the lesser city magistrate has by virtue of office the duty before God to hold the higher authority accountable and, if persuasive means fail, to resist the persecution perpetrated by that higher authority. The subsequent history of political theory and practice in the West bears out the significance of this original and innovative line of argument by the Magdeburg Lutherans.

The Magdeburg confessors distinguish four gradations of persecution, injustice, and injury and the corresponding modes of justifiable resistance. The least offensive injustice is one rooted in a ruler's human weakness that causes some injustice in small matters. The appropriate response to grade one injury is admonition and, if unresolved, bearing the injustice. A second level of offense comes when a superior uses armed violence on an inferior magistrate contrary to a positive law. Such grade two injury permits resistance, but
vindication is usually better left directly in the hands of God, especially if the offense is only toward the magistrate. Third grade injustice occurs when a superior ruler causes a lesser magistrate to sin violently against one's own subjects—for instance, when Pharaoh ordered the Egyptian midwives to kill all newborn Hebrews. The lesser magistrate's obligation regarding a grade three offense is to disobey or even resist as long as other worse calamities would not be probable. The Magdeburg confessors regard rulers who commit grade two or three offenses as tyrants.

The most egregious persecution, injustice, and injury occur with the deliberate and systematic undermining of "the highest and most essential law." Such grade four offenses—for instance, establishing a law that abolishes marriage or that makes incest legal—systematically and severely injure not only persons but the very integrity of another fundamental order, institution, or office of God's ongoing creational agency. Lesser magistrates are obligated to resist with armed force if necessary. "Thus a pious inferior magistrate can and ought to protect and uphold as best he can, both himself and those over whom he has been placed, against such unjust force [by the higher authority], in order to protect the true doctrine and worship of God, body and life, property and honor."

Importantly, the Magdeburg confessors recognize that grade four offenses systematically cloak the honor due God and subvert the very worship of God, thereby precipitating blasphemy, paganism, unfaith, and atheism among the general population of a political jurisdiction. According to the biblical imagination, such circumstances disclose the very wrath of God.

Lutheran resistance theory put forth in the 1550 Magdeburg Confession found its way already in 1554 into the widely influential thinking of Theodore Beza, who would become Calvin's successor in Geneva and a source of Huguenot political theory in France. Eventually Beza would make the Magdeburg Lutherans' insight regarding the resistance duty of lesser magistrates one key for his Right of Magistrates of 1574. In the 1560s John Knox would also take the Magdeburg Confession as the point of departure for his doctrine of the lesser magistrate and then expand that in a populist direction. For Knox, as previously for Luther and Beza, the basic question is the relation between ruler and ruled. Rulers exist to serve the ruled, not the ruled to serve the rulers. The populist expansion of the doctrine of lesser magistrates would explode on the Western world in Huguenot political theory after the Bartholomew's Day Massacre of 1572. In this populist expansion the ruled would no longer be merely the subjects of the ruler; they would become citizens. At the core of such citizenship lies the critical, reflective "regard" that citizens train on the exercise of political rule. Correspondingly, citizenship fixes the attentiveness of political officeholders precisely on the critical "regard" that citizens direct toward the exercise of political authority accountable to criteria of justice and law. In this way the integrity of citizenship would become a prominent component of political authority itself. This conceptual
transformation from subjects to citizens was accompanied by a social transformation of immense proportions, eventually giving rise to the nascent ethos of deliberative democracy. In the concluding section, I explore how a Lutheran critical participationist predilection might transpire within the particular contexts of contemporary life.

The State, Civil Society, and Congregations as Public Companions

The Emergence of Civil Society as "Order of Creation"

I begin by exploring how we might theologically discern the emergence of "civil society" in the West, and perhaps globally as well, as a new form of the orders of creation brought about by the triune God's continual activity of creating a thriving world. The transformation of the nature of the relationship between ruler and ruled and the subsequent emergence of an innovative ethos of citizenship became tied up in the West with a transformation in the very form, structure, and procedure of that "public space" that had bound ruler and ruled together for centuries. Despite numerous sociological and historical differences in the structure and ethos of the "public spheres" of medieval Europe, of the Renaissance, of the Reformation, and of the absolutist monarchies of the seventeenth and eighteenth centuries, one common feature still united these eras: "representative publicness." We can describe the structural transformation of public space in the West as a movement from a "representative" form of the public sphere to a "civil society" form of the public sphere.

In the various European public spheres structured according to "representative publicness," representation does not refer to an assembly of delegates who represent the wider population. Rather, "representation" refers to the ethos and capacity of the few, elite people of status—those who inherit, embody, and cultivate some sort of higher power or excellence or dignity or courtly virtue or "manner"—to present themselves in public. That is, they display themselves with their "highness"—whether riches, authority, culture, manner, education, or birth—before the ordinary people in order to accentuate the great gulf in status between themselves and the common people. As commoners recognize, through various modes of acclamation and applause, the honor due to such grandeur, they also recognize and acknowledge the shame that accompanies their own low status. Such representative publicness remains the normative template overlaying a host of events such as coronations, balls, high holy days, jousts, hunts, and festivals.

The weakening of representative publicness began as the forms of display became more and more enclosed within the royal courtyard and thus perpet-
ually off limits to commoners. Emergent forms of capitalism added to the progressive enclosure of representative publicness. The capitalist traffic in goods set off the "unique explosive power" of the press that heralded these new goods. Soon the nation-states of the seventeenth and eighteenth centuries began employing the press in order to promulgate new ordinances targeted both toward private economic enterprises and toward the consuming choices of private households. In this way the press was systematically made to serve the interests of the nation-state. An unintended consequence of great import also happened, however. Through the press the nation-state administrations addressed a new audience of people and thereby called into existence a new public, the "bourgeois" class. Over time this new class became "the real carrier of the public" and began to see itself as a public other than the public of the nation-state. This "other" public is the "emerging public sphere of civil society." The emergence of this new "bourgeois" public sphere was accompanied by a plurality of other parallel and competing public spheres. These emerged in various social and historical settings and with different and unique dynamics, which remain well beyond the bounds of our considerations here. It is important to bear in mind that this great plurality of public spheres is a structural phenomenon different from "the state" or from "the economy" or from "the family" and private friendship. It is this great plurality of public spheres that has now come to be known as "civil society." That is, civil society is that great plurality of different kinds of associations, affiliations, movements, and institutions for the prevention and promotion of this, that, and the other thing. It is precisely such prevention and promotion that leads this teeming plurality in the direction of moral formation and critical moral reflection. Generally speaking, civil society is a public arena highly charged with moral and ethical sensibilities, commitments, and undertakings. The emergence and growth of a flourishing moral sphere of civil society will contribute in a remarkable way to the development of more democratic forms of political authority. With a flourishing civil society, which is in no way automatic, citizens commonly imagine their citizenship spanning the overlapping spaces of civil society and the political state. Indeed, it is this constellation of factors that contributes most significantly, though not exclusively, to the formation of constitutional states of deliberative democracy.

At the time of the Reformation, the Lutheran confessors recognized "church," "state," and "family" (with "work" emerging as a distinguishable fourth) as the three great "orders of creation" or estates through which God continually acts to create, preserve, and govern the social world. Can we in our era discern a new creational order of the triune God arising with the historical emergence in the Western world of "civil society"? Spurred on by Luther's theological reflections regarding the exercise of political accountability through the preaching office and extraordinary heroes, can we in our own era think—and act—imaginatively and reconstructively about the relationship of
civil society with political accountability and authority? Finally, how might such an emerging creational order also be globally salutary? Such imagining and acting surely counts as “delight in the law of the Lord” in our day.

In our own era the godly task and vocation of political accountability occurs most effectively in and through the public sphere of civil society in its overlapping configurations with democratically constituted states. Rather than political accountability being circumscribed solely by the office of preaching or merely by individual extraordinary heroes, now the whole public sphere of civil society exercises political accountability together with democratically constituted states. Indeed, have we not since 1989 come more fully to recognize civil society’s rather heroic office, so to speak, on behalf of constitutional states of deliberative democracy? Of course, much more specificity is needed than I can provide here.61

By identifying “civil society” as a creational order with its own integrity, we can begin to think imaginatively beyond the constraints imposed whenever our theme is reduced simply to “church and state.” The ELCA’s formulation of “institutional separation” and “functional interaction” remains a significant step beyond theocracy or quietism or the separationism of a “wall” between church and state. Still, the samples of “functional interaction” in the ELCA constitution fail to be cognizant of “civil society” and thus thematize the political accountability function of “church” as inevitably only a straightforward, one on one, “interaction” with the “state.” That is, we incur an imaginative liability when we accede too readily to the metaphor of “the intersection of church and state.”62 Such an “intersection of church and state” even gets inscribed visually by that well-known poster of the city street sign at the corner of “church” and “state” streets, which adorns the walls of seemingly every mainline denomination’s church in society division, including the ELCA’s.63 By identifying the political accountability task of civil society—though civil society cannot in any way be reduced to only this single moral task—we can imagine civil society as a broad sluice whereby the “church” joins together with a host of agents with moral interests and capacities responsible for political accountability. The appropriate poster—if it is to be of a street intersection—would have to feature something more like a traffic circle. I return to this question below (“The Vocation of Congregations”).

The Public Use of Communicative Reason as “Delight in the Law of the Lord”

The Lutheran confessors recognized that human reason was among the triune God’s great good gifts for the purpose—among others—of discerning God’s justice and of the making and amending of God-pleasing law and political government, even as that same faculty of reason is tainted by sin and the temptations of the old evil foe. I now explore the emergence of public rea-
soning as an additional significant feature facilitating a public "delight in the
law of the Lord."8 The emergence of civil society brought along with it a
"momentous shift" toward the development of "public reason."

Prior to the late eighteenth century, critical public reasoning concerning
the political coordination of society made its way into the press by first passing
through burgeoning gathering places, like coffee houses in Britain, salons in
France, and table societies in Germany. These gathering places, in conjunc-
tion with the press, became the nurseries both for "civil society" and for "pub-
lic reason."

The bourgeois public sphere may be conceived above all as the sphere of
private people come together as a public; they soon claimed the public
sphere, [traditionally] regulated from above, against the authorities
themselves, to engage them in debate over the general rules governing
relations in the basically privatized but publicly relevant sphere of com-
modity exchange and social labor. The medium of this political con-
frontation was peculiar and without historical precedent: people's public
use of their reason.9

Can churches in our day and place nurture a theological imagination in a
distinctive direction? Can we discern in the public use of moral reasoning
within the sphere of civil society, particularly in its quest for political account-
ability within a constitutional state of deliberative democracy, a contemporary
vocation to "delight in the law of the Lord"?20 Pursuing this prospect in an ade-
quate manner means developing a communicative model of civil society.21 A
communicative civil society welcomes and indeed accentuates questions of
moral truth that have practical import for everyday life. The hallmark of the
communicative shape of civil society is that claims to practical moral truth
must be redeemed critically through participatory practices and public com-
unicative reasoning. This communicative shape eschews elitist moral display
and purist moral trumping that often accompany the pursuit of moral truth.
Instead, participatory procedures and practices of public communicative rea-
son empower traditions and institutions that are affected by a moral claim to
have a say in the formulation, stipulation, and adoption of moral norms.
Boldly stated, communicative civil society "comes into existence whenever
and wherever all affected by general social and political norms of action
engage in a practical discourse, evaluating their validity."72 In this way the com-
municative mode of public reasoning and civil society does not succumb to
the extremes either of totalizing and colonizing moralism or moral neutrality
and relativism.23 A communicative civil society also does not subscribe to
overly rigid boundaries between public and private but rather allows for over-
lapping terrains of public and private life.21

A communicative civil society recognizes that a plurality of differing cul-
tural traditions harbors moral wisdom. On the one hand, a communicative
civil society extols the capacity for creative moral possibilities embodied within the practices of public, communicative reason. On the other hand, it also focuses on the systematic distortions that accompany the self-interested monologue of any single moral tradition. In this way the communicative connotivity of civil society concurs, though at an evident distance, with an insight that we met in Luther's critical theology. With his two-fold reason, Luther highlighted both God's resolve to incorporate the natural law's moral wisdom within the creational orders of global everyday life and the morally distorting determination brought by human sin and demonic wickedness. Might a Lutheran confessional, critical participationist predilection in our time and place imagine "delight in the law of the Lord" as the public use of reason within a communicative civil society flexed toward the moral mooring of political authority?

I have investigated the theological development of a Lutheran critical participationist heritage of "church and state" and have positioned that heritage within an emerging and, hopefully, ascending communicative civil society context. I conclude by offering an apt metaphor to the congregations of the church—congregations as civil society companions— for the real life of congregations desiring a public vocation of "delight in the law of the Lord."

The Vocation of Congregations as Civil Society Companions

Vocations are the places and ways that anyone and everyone, knowingly or not, participate in the triune God's ongoing creative work to bring, nurture, and sustain temporal life in the world. In trusting the gospel of Jesus Christ, we acknowledge these places and ways as the triune God's creative work on behalf of our neighbors, and we recognize ourselves as this God's creative companions in this work. Like individuals, congregations have a variety of vocations in which to bring God's ongoing creative agency to bear on the life of our neighbors and our neighborhoods. Today the building up of the moral milieus that make life in our public and political communities possible commends itself as just such a calling. Civil society is the location for this vocation of public moral companion, and communicative moral practice is the best model for nurturing the contemporary moral milieu and for the political accountability that political authority needs and is called for by a constitutional state of deliberative democracy.

Congregations participate in the moral life of the community in at least two ways at once, one more internal and the other more external. Internally, congregations have often assisted families in the task of the moral formation of its members, in particular of the young, and this will continue as a prime moral vocation of congregations. As they engage in this vocation of moral formation, congregations sometimes fall prey to the temptation to view themselves as private Christian enclaves, alienated, isolated, and protected
from the truth claims of other moral traditions. In our ever more pluralistic public environment, however, innumerable traditions make claims on congregations that bid congregations to offer justification, in the sense of public moral reasoning and ethical grounding, for the truth character of the moral formation imparted in congregational life. In this way, among other even more important ways, congregations exist as a meeting place of private and public life.

As the meeting of private and public life, congregations respond with integrity to their more external public moral vocation as civil society companions. Today an increasing number and variety of the associations, affiliations, movements, and institutions of civil society need public moral companions who will encounter with them the moral meanings latent in the problems of contemporary life. This is a risky vocation, because Christian congregations do not have a corner on the moral wisdom needed in many conflicted situations. As civil society companions congregations become encumbered communities, shouldering the moral predicaments of the other institutions of civil society and bearing the citizenship that accompanies constitutional states of deliberative democracy. Beyond that, Christian congregations can expect to grow in moral wisdom due to their companionship within civil society. Such dynamics contribute positively to civil society's vocation of keeping the constitutional state of deliberative democracy politically accountable. Christian congregations, however, are no stranger to an encumbered life, to a life of the cross of the triune God.

Herein lies the redemptive moment characterizing every vocation when encumbered companionship puts a congregation's enclosed centrality to death. As civil society companions, congregations have the best opportunity to answer God's call to an ethos of deliberative democratic citizenship and in this way, among others, to participate in the triune God's creative agency of political authority in our era. Lutheran congregations in North America have frequently nurtured a lively ethos as civil society companions and have regularly done so by drawing from those ecclesial practices that have roots deep in Christian conciliar traditions.

Finally, certain marks characterize the congregational vocation of civil society companion. As civil society companions, congregations acknowledge a conviction that they participate in the triune God's ongoing creative activity in and for the temporal world. In a communicative civil society congregational companions exhibit a compassionate commitment to other institutions and their moral predicaments. The commitment of civil society companions always yields a critical and self-critical, and thus fully communicative, procedure and practice of moral engagement and public reason. Finally, as civil society companions, congregations participate with other institutions of communicative civil society to create and strengthen the moral fabrics that fashion a life-giving and life-accountable contemporary society and political state.
The emergent reality of civil society as an encompassing milieu, or traffic circle, for the creational vocations of both “church” and “state,” coupled with our “companionship” metaphor and its marks, can prompt further creative thinking. For instance, is the ELCA’s “institutional separation and functional interaction” formulation terminologically apt. Among many possible expressions might be “constitutional integrity and creative, critical companionship.” The term “integrity” evokes the intent of a distinct identity sought after by “institutional separation” but without the separationist baggage that invariably comes within the United States context of a “wall of separation.” The qualifier “constitutional” denotes that the integrity being ratified resides at the elemental level of incorporating precepts. The advantage of “companionship” over “interaction” lies in its proficiency as a metaphor and, thus, in its potential to shape the imaginative outlook of actually existing congregations. Perhaps denominational constitutions are not intended to serve such a purpose; still, that is what is most often needed. “Creative” imparts a theological fitness to our formulation that “functional” just does not possess. “Critical” is the qualifier that best gets at the ethical and criteriological orientation of our heritage’s critical participationist predilection.

Blessed are those whose delight is in the law of the Lord!