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Miscellanea

"Ob man sich wider den Kaiser wehren moege"

Hugh Thomson Kerr says in his *Compend of Luther's Theology*: "Luther does on occasion make room for the right of rebellion." (See the review of the book in this issue of the *CONCORDIA THEOLOGICAL MONTHLY*.) Seeing that Luther unqualifiedly denounced rebellion as wicked ("No insurrection is ever right, no matter how good the cause"), we shall say that Luther never justified "rebellion." A different question is whether Luther granted the lawfully constituted authorities the right to resist, in certain situations, the Emperor, to resist him even with the force of arms. The answer is that Luther vindicated that right to them; yes, he even made it their duty. The question had to be answered when the Smalcald League was in process of formation in 1530 and 1531. Luther's position is set forth in Volume X, pages 570ff.: "Schrift an L. Spengler, ob man dem Kaiser widerstehen solle?", "Ratschlag D. Luthers, Melancthons und Bugenhagens, ob ein Fuerst seine Untertanen wider des Kaisers oder anderer Fuersten Verfolgung, um des Glaubens willen, mit Krieg schuetzen moege?"; Vol. XXII, pages 1454ff.: "Von der Gegen- und Notwehr. 1. Ob man sich wider den Kaiser wehren moege," and various other places. Luther's answer was: That is a matter for the jurists to decide. "Wir haben die ganze Sache an die Juristen zurueckverwiesen." (X:572.) "Ich will sie ins Recht und zu den Juristen weisen." (XVI:1630.) And when the jurists (the constitutional lawyers, as we would say) pointed out to Luther that the Holy Roman Empire of the German Nation was not an absolute monarchy, that certain rights were vested in the Electors, Princes, and Estates, that newly elected emperors had to take a solemn oath to respect these rights, and that in case the Emperor disregarded these constitutional provisions, he could be called to account and even deposed, Luther was compelled to answer the question whether the Princes had the right to resist the Emperor affirmatively. "Wir sind dem Kaiser durch bestimmte Gesetze unterworfen, und dagegen ist er auch durch gewisse Gesetze gegen uns gebunden. Die Gelehrten und Juristen billigen und lehren, dem Kaiser, so unrechte Gewalt uebet, zu widerstehen, denn sie sagen, dass die Rechte solches erlauben. . . . Also sollen die Churfuersten und andere Fuersten des Reichs dem Kaiser auch wehren, da er etwas Ungebuehrliches wider Gott und Rechte wollte vornehmen. . . . Der Kaiser ist kein Monarch noch Herr, der allein regieret, sondern die Churfuersten sind mit ihm in gleicher Gewalt und Verwaltung, dass er nicht Macht noch Recht hat, allein Gesetze und Ordnungen zu machen. . . . Der Kaiser regiert ueber freie Leute, ist nicht allein Herr, hat nicht unter ihm und in seiner voelligen Gewalt leibeigene Leute. . . . Der Kaiser ist Herr auf gewisse Pacta und Masse. So ist er dem Reich, Chur- und Fuersten geschworen. Unsere Fuersten sind dem Reich mit Eiden verpflichtet, dass sie ueber des Reichs Freiheit und Gerechtigkeit in politischen Dingen und Sachen treulich halten, und in denen ihm nichts entziehen und nehmen lassen, noch weichen wollen."

(X:1455—1463.) Luther hesitated a long time before he gave the affirmative answer. His sense of the sanctity of the secular government, of the duty to render obedience and honor to the constituted authorities, was so strong that he would have liked to give a negative answer. He would not be a party to anything that looked like rebellion. But since the constitution of the Empire made it the duty of the Princes and Estates to guard the rights of the nation against any infringement on the part of any man, be it the Pope or the Emperor, Luther could not refuse them this right. Here, too, his conscience was bound in God's Word. The Gospel, he said, does not abrogate the political laws of a country. And since the laws of the German Empire permitted certain lawfully constituted authorities to call the Emperor, under certain conditions, to account, the Word of God sanctioned the legal actions taken by these authorities. It will be seen that Luther, in his attitude toward the Smalcald League, did not deny his fundamental principle concerning the sanctity of the lawful authority. That Luther's attitude was not dictated by expediency, but by a conscientious appraisal of the whole situation is brought out in the statement of Sleidanus, as quoted in Walch's Introduction to Volume X on page 65: "Luther had always taught that no resistance may be offered the government, as his writings show. But when the jurists established that the laws permit resistance in certain cases and showed that the present situation was a case which the laws recognized as legal, Luther freely admitted that he had not known that the law of the Empire contained such a provision; and further, since the Gospel does not militate against, or abrogate, the political laws of a country, as he had always taught, and since in these alarming and perilous times many things might occur which would force us to take up arms, not only by right of the law but also for conscience' sake, he was constrained to grant the right of forming a defensive league, in case the Emperor himself or some other person in his name began the war."

"Defensive league"—that brings up another consideration, that of self-defense, *Von der Gegen- und Notwehr*. Luther stood for the right of self-protection. Kerr quotes, for instance, this passage: "Self-protection is a proper cause of war, and therefore all laws agree that self-defense shall go unpunished, and he who kills another in self-defense is innocent in everyone's eyes." (See St. L. Ed., X:515.) And Luther applied this to the situation created by the Imperial Recess of Augsburg, which instrument threatened the Protestant princes and countries with war. He declared: "Furthermore, if war should now come—which God may prevent!—I shall not decry that party which resists the murderous and bloodthirsty papists as being in rebellion, nor will I permit any man to raise such a charge. . . . It is nothing of the kind; it is permissible self-defense. It is a lawful act, as the jurists know. . . . For in such a case, where the murderers and butchers are out to kill and murder, it is truly not rebellion to practice self-defense and fight them." (XVI:1631.)

Did Luther on occasion make room for the right of rebellion? Luther would say: I never did that; "it is not rebellion to practice self-defense . . . man muss nicht alles aufruehrisch sein lassen, was die Bluthunde aufruehrisch schelten" (*loc. cit.*); but I do recognize the

right of the Estates to repel the encroachments of the Emperor and defend themselves against his murderous armies.

Let us quote a few authorities on this point. Julius Koestlin, in *The Theology of Luther* (translated by C. E. Hay), page 485f.: "Luther had at first stoutly denied the right of such resistance, even in case the Emperor should treat the Princes with manifest injustice; but he afterwards—and that just when, after the formation of the Smalcald League, the matter had assumed a very practical form—granted the existence of such a right. When he then heard the jurists deducing the propriety and legality of such resistance directly from the existing imperial laws themselves and from the very constitution of the Empire, he, too, acceded to the claim, casting the responsibility, however, upon those whose duty it is, by virtue of their special calling, to decide such legal questions. Together with the arguments thus adduced to justify resistance, appeal is also taken to the fact that the war which was then threatening the Princes of the Empire was being instigated, not really by the Emperor, but by the Pope. . . . To the question, whether the civil government was under obligation to protect its subjects even against the Emperor, the reply is there (in a deliverance of 1539) given: that the Gospel confirms also *natural* (and legal, positive) rights. Every father is, beyond doubt, under obligation to protect his wife and child against public murder by every means in his power; and there is no difference between a private murderer and the Emperor, if the latter *outside of his office* undertakes to exercise illegal power and, particularly, openly or notoriously illegal power—since open violence cancels all obligations between the subject and his ruler by the law of nature (*iure naturae*). Upon this theory it would be necessary to inquire, first of all, how far the sphere of official jurisdiction in any particular case extends. Whenever any ruler should then be found overstepping the limits of his authority with open violence, it would be the duty of every person, at least whose province it is to guard the interests of others, as for example, a father, to oppose such usurpation; and this would be but the exercise of a natural right."

A. L. Graebner, in *Dr. Martin Luther. Lebensbild des Reformators*, pages 450ff.: "December 22, 1530. . . . The jurists insisted that the Emperor as such did not at all possess absolute power and that, in case he went beyond his rights, the Estates had the right, according to the law recognized by the Emperor, to meet force with force. But before proceeding any further, it was decided to ask the theologians for an opinion. The matter had never been presented to them in this light. The opinion now given by Luther, Melancthon, and Jonas declared that they as theologians were incompetent to judge whether the law of the Empire on this point was what the jurists declared it to be and whether the present case was covered by these provisions; that they would have to leave the decision to the jurists and *that they could not, on Scriptural grounds, forbid the Princes to act according to that decision*. When certain men of Nuremberg were disturbed by this opinion, Luther wrote them: 'I have given my opinion; I gave my advice as a theologian. If the jurists can show that it is permissible according to their laws, I grant them the right to act according to their laws.' The jurists and

the Estates were to bear the responsibility." After quoting the statement concerning the right of self-defense (XVI:1631) and a number of related utterances, Dr. Graebner also quotes the advice Luther gave the subjects of papistic Princes in case they were commanded to take up arms against the Protestant countries: "I cannot honestly give any other advice than this: if the Emperor should muster an army and would want to make war against us in the interest of the Pope and against our doctrine—the papists are everywhere boasting proclaiming that such is his intention (I cannot bring myself to believe that of the Emperor) — in that case no man should lend his hand to such a work nor obey the Emperor; men should know that God strictly forbids them to obey the Emperor in such a matter; he who obeys him must know that he is disobeying God and will war away (*verkiegen*) his body and soul eternally." (XVI:1642.)

W. Elert, *Morphologie des Luthertums*, II, pages 345 ff.: "Luther hat sein Bedenken gefuehlsmaessig nie ganz ueberwinden koennen. Aber er konnte sich doch schliesslich dem Gewicht der Argumente nicht entziehen, mit denen von anderer Seite das Widerstandsrecht begruendet wurde. Die Anwendung des naturrechtlichen Notwehrbegriffes auf die Lage der Reichsstaende lehnte er zunaechst ab (1531). Spaeter hat er sie, offenbar unter dem Einfluss Melanchthons, gebilligt. (E. A., 54, 213. Letter to L. Spengler.) [St. L. Ed., X:570.] Das Gutachten der Wittenberger Theologen von 1536, das in melanchthonischen Gedankengaengen den Begriff der *notoria iniuria* entwickelt, unterzeichnet Luther mit den Worten: 'Ich M. L. will auch dazu tun mit Beten, auch (wo es sein soll) mit der Faust.' C. R., 3, 131. — Drews, *Disput.*, S. 568 (1539). Aber staerkere Eindruck machte auf ihn der Nachweis von juristischer Seite, dass der Kaiser durch Wahlkapitulation und Kroenungseid den Staenden gegenueber vertragsartige Bedingungen eingegangen sei und dass diesen die Pflicht daraus erwachse, die Innehaltung mit den ihnen zur Verfuegung stehenden Mitteln zu ueberwachen. . . . Selbst Brenz, der entschiedenste Gegner des bewaffneten Widerstandes, rechnete mit der Moeglichkeit, dass der Kaiser nach der Reichsverfassung durch die Kurfuersten, die ihn gewaehlt haetten, auch wieder abgesetzt werden koenne. Fuer Luther ergab sich daraus auch die Unrichtigkeit der 1528 geneusserten Auffassung, die Fuersten verhielten sich zum Kaiser wie die Untertanen zu den Fuersten. (W. A., 19, 652 f.) [See St. L. Ed., XXII:1455.] Ueberblickt man die lange Reihe der Aeusserungen Luthers zur Widerstandsfrage, die sich ueber mehr als zwei Jahrzehnte erstrecken (Sie sind am sorgfaeltigsten zusammengestellt und analysiert von Karl Mueller, *Luthers Aeusserungen ueber das Recht des bewaffneten Widerstandes gegen den Kaiser*), so enthalten sie in der Tat einen deutlichen Fortschritt in dieser Richtung. Zuerst: ueberhaupt kein Widerstand von wegen des Evangeliums. Spaeter: die Frage haben die Juristen zu entscheiden. Zuletzt: es ist eine Frage des Staatsrechts und der politischen Einsicht." — In this connection Elert makes a statement which corroborates Kerr's regarding the "radical difference between Luther and Calvin" on the question of *The Christian and the State*. "Die lutherischen Theologen sind nicht zur Fuehrung der Staatsgeschaefte berufen und im Gegensatz zu ihren calvinischen Kollegen gar nicht imstande, aus ihrer Theologie politische Ziele zu entwickeln oder zu bekaempfen. 'Lutherisch' ist immer nur eine theologiefreie Politik." TH. ENGELDER