

The Prince-Bishop in *Augustana* XXVIII
A Paper for the Academy of Bishops
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Article XXVIII of the Augsburg Confession has a lot to say about bishops and the many ways in which bishops do great harm to the church. The latter two-thirds of the article focuses upon matters that are strictly intra-ecclesiastical. The first part of the article compactly presents broader concerns, and it is here that we find critique that might be relevant to questions of civic engagement. I am not referring to the civic engagement of Christians as citizens; *Augustana* XVI would be the principal article for that discussion (and, to augment and exposit, one might well throw in the Catechisms and numerous non-Confessional writings by Luther). I am referring to the civic engagement of the ecclesiastical institution and that of ecclesiastics as agents of the ecclesiastical institution. So, anything I say from this point on makes that distinction, *i.e.*, the distinction between the Christian as citizen and the Christian as ecclesiastical agent.

Melanchthon levels two explicit charges against the bishops: 1) they confuse the power of the keys and the power of the sword; and 2) they claim civil authority *de jure divino*. Melanchthon also makes two implicit charges: 1) they can be negligent in the discharge of civil oversight because of incompetency; and 2) they can be negligent in the discharge of ecclesiastical oversight because they are distracted by civil oversight.

Melanchthon begins *Augustana* XXVIII,

Many and various things have been written in former times concerning the power of bishops. Some have improperly mixed the power of bishops with the secular sword, and such careless mixture has caused many extensive wars, uprisings, and rebellions. For the bishops, under the guise of power given to them by Christ, have not only introduced new forms of worship and burdened consciences with reserved cases and with forcible use of the ban, but they also took it upon themselves to set up and depose emperors and kings according to

their pleasure. Such outrage has long since been condemned by learned and devout people in Christendom (AC 28:1-3).¹

As is often the case in the Augsburg Confession, pains are taken to locate the Wittenberg Movement within the constellation of faithful Catholic thought. The charges leveled against the bishops are not new, and, with one introductory paragraph, Melanchthon telegraphs his punches.

We should note his use of rhetoric, remembering that Melanchthon's primary training is as a classicist and that he is an expert Ciceronian. It would be easy to focus upon the obviously ecclesiastical issues, *i.e.*, novel worship forms, reserved cases, and violent excommunication. These are outrageous enough, but it is even more outrageous that the bishops have crossed the line with respect to the civil estate in relationship to the ecclesiastical estate.

Most of us immediately jump to Two Kingdoms, but that would be a mistake. Two Kingdoms is about how God governs. When it comes to the ordering of human life and activity, Three Estates is the model in play. Granted, in this article, Melanchthon ignores the economic estate (*i.e.*, the household and industry) but the other two, the ecclesiastical estate and the political estate, are in full play. Three Estates is not a Lutheran invention. It predates the Reformation movement. In fact, Melanchthon, in his *Commentary on the Nichomachean Ethics*, finds an analog in Aristotle.²

Each of the estates has its own works, ends, powers, and associated offices. The bishops hold office in the ecclesiastical estate. In that office, the bishops exercise the *potestas*

¹All citations of the Augsburg Confession in English translation are from the Kolb-Wengert ed. translation of the German text unless noted otherwise.

²Philip Melanchthon, "Commentary on the Nicomachean Ethics, Bk. 1 (1546)" in *A Melanchthon Reader*, Ralph Keen, trans., in American University Studies, Series VII, Theology and Religion, Vol. 41 (New York: Peter Lang, 1988), 186.

episcoporum (the power of the bishops). As bishops are agents of the church, the *potestas episcoporum* is the *postestas ecclesiasticae* (the power of the church) which is the *postestas clavium* (the power of the keys).³ Remembering that the power of the keys is the power to remit and retain sins, it comprehends the totality of Word and Sacrament. Thus, Melanchthon states that the power of the bishops is “the power of God’s mandate to preach the gospel, to forgive and retain sins, and to administer the sacraments” (AC 28:5).

This, then, is the power proper to the office of the bishop, and it is a derivation of the power of the church. This power is given to the church by God so that the work proper to the ecclesiastical estate, the giving of “not bodily but eternal things and benefits...such as eternal righteousness, the Holy Spirit, and eternal life,” (AC 28:8) might be accomplished. Melanchthon further asserts, “This same power of the keys (or of the bishops) is used and exercised only by teaching and preaching God’s Word and by administering the sacraments to many persons or to individuals, depending upon one’s calling” (AC 28:8). A little later in this article, Melanchthon adds that “it is the office of the bishop...to judge doctrine and reject doctrine that is contrary to the gospel”(AC 28:21). There you have the power of the bishops which is exercised for the sake of the ends of the ecclesiastical estate, ends which are, in this article’s language, “spiritual.”

For Melanchthon, the ends of the political estate are secular not spiritual. The political estate does not have as its end holiness, the forgiveness of sins, or eternal life. Melanchthon

³I should probably make a methodological note here. The quotation from the Augsburg Confession I read earlier is the Kolb-Wengert translation of the German text. I have just introduced a Latin terms from the Latin text of the Augsburg Confession. The Latin is not identical to the German. There are reasons for that, and there are reasons why some argue for the priority of one text over the other. The *Triglotta*’s introduction argues that they are equally authoritative. I tend to think of the Latin text as a commentary on the German text, and, quite frankly, for the development of Lutheran dogmatics, the Latin text is the usual source mined by the Lutheran Scholastics for terminology. In time, those terms become technical terms, appearing in Latin even in German and English writings. If you really like this sort of thing, I will talk about it for bourbon...or you can buy me bourbon not to talk about it.

writes, “For secular authority deals with matters altogether different from the gospel. Secular power does not protect the soul but, using the sword and physical penalties, it protects the body and goods against external violence”(AC 28:11). We also see here that the instruments are different from those employed by the ecclesiastical estate. Just as Melanchthon, the consummate rhetorician, employs *potestas clavium* as a synecdoche for all those works comprehended in the power of the bishops, he speaks of all those works comprehended in the power of the magistrates as the *potestas gladii* (the power of the sword).

To be clear, it was not deemed to be inherently problematic that someone like Albrecht, Archbishop of Mainz, was both a bishop and the Margrave of Brandenburg or that the Pope was also the secular lord of the Papal States. One person can fulfil two different offices, each office in its own estate. The problem lies in the commixing or confusing the powers of those respective offices by employing the power of the sword to deal with ecclesiastical matters and the power of the keys to deal with political matters. Margrave Albrecht can impose corporal punishment upon a criminal; Bishop Albrecht cannot. Bishop Albrecht can excommunicate a sinner; Margrave Albrecht cannot. To take this further: Margrave Albrecht cannot, technically, impose corporal punishment on a person as sinner, and Bishop Albrecht cannot excommunicate a person as criminal, because not only does Albrecht hold two different offices in two different estates but our hypothetical malefactor may be one person who, in relationship to the political estate is a criminal and in relationship to the ecclesiastical estate is a sinner.

The alignment of office, power, and estate is the cornerstone of Melanchthon’s critique:

That is why one should not mix or confuse the two authorities, the spiritual and the secular. For spiritual power has its command to preach the gospel and to administer the sacraments. It should not invade an alien office. It should not set up

and depose kings. It should not annul or disrupt secular law and obedience to political authority. It should not make or prescribe laws for the secular power concerning secular affairs (AC 28:12-13).

When the bishops forget this, they dishonor not only the office of the magistrates but also their own office.⁴

I'd like to take a moment to dig into something implicit in this discussion of the estates. We have heard the term "gospel" in connection with the power of the keys. "Gospel," here, should be taken in its broad or wide sense (*late dicta*), meaning that it refers to both the Gospel in its narrow sense (*propria/stricte dicta*)⁵ and the Law. This should be obvious as one cannot talk about the retention of sin in the power of the keys without talking about the Law. Indeed, one cannot really talk about the forgiveness of sin if there is no law to disclose sin.

Within the public ministry of the Word, which is the power of the bishops, this Law is not just any law. It is Law in its second use, and the second use of the Law has spiritual ends. What it most definitely is not is the Law in its first use. The first use of the Law has secular ends. As such, the first use of the Law is the use associated with and proper to the political estate and the power of the sword. As such the proclamation of the Law for ends associated with the first use is, for the bishops, an alien work. It would likewise be an alien work for the magistrates to proclaim the Law for ends associated with the second use.

Melanchthon makes these distinctions in his 1521 *Loci Communes*. Also in the *Loci*

⁴*Cf.*, AC 28:18.

⁵"Gospel," *propria/stricte dicta*, is the message of the forgiveness of sins through Christ. I think it reasonable to argue, based upon Luther's lectures on 1 Corinthians 15, that the term also includes the message of resurrection in Christ. This distinction between the *propria/stricte dicta* and the *late dicta* is both important and challenging. Luther and other theologians employ the term in both senses, requiring the reader to discern from context which sense is being employed at the moment. Confusion of Law and Gospel is not infrequently rooted in the mistaken confusion of the *late dicta* for the *propria/stricte dicta*.

Communes, he distinguishes between moral and civil laws, identifying civil laws as matters of prudence. In fact, when it comes to the political estate and civil society in general, it is not Revealed Law but Natural Law that is engaged through reason to frame civil laws. That such civil laws are not the province of the ecclesiastical estate is made clear in his 1532 *Summary of Ethics*' answer to the question, "How do philosophy and gospel differ?"

First of all it important to know here that law is a very different thing from gospel. For the law of God teaches what sorts of things we must do and what works stand out before God and man, but the gospel teaches us to please God freely on account of Christ; it is neither law nor does it add condition to the law whereby God is propitiated by us. Philosophy is neither gospel nor any part of it, but it is part of the divine law. For it is the law of nature itself divinely written in men's minds, which is truly the law of God concerning those virtues which reason understands and which are necessary for civil life.⁶

So, not only the offices, powers, and ends of the estates align but there is also an alignment of the very sources that inform and even an alignment of the disciplines proper to each, moral philosophy being the discipline studied by the magistrate and theology being the discipline studied by the bishop. We tend to think of theology as all embracing, but Melanchthon, at this point in his career, has a much narrower application of the term, as seen in his *Loci Communes* (1521) in which the direct application of the term, "theology," is to matters principally related to soteriology and only meta-theologically in relationship to secular matters.

To close out this discussion of the confusing of powers, I want to reiterate that Melanchthon's employment of the three estates is not a dialectic of convenience concocted as a nostrum for a transient malady. When the distinctions are not remembered the twin terrors of theocracy and ceasaropapsim are all too ready to exploit the lapse.

⁶Melachthon, "Summary of Ethics" in *A Melanchthon Reader*, 203-204.

The second explicit critique of the bishops probably will seem even more esoteric than what we have just explored. The bishops claimed that they possessed secular authority *de jure divino* (by divine right). Immediately, our minds go to the “divine right of kings” and assume that the bishops’ *de jure divino* claim makes perfect sense within the historic context. First off, there was a very active debate in the time leading up to the Reformation over *quo jure* (by what right) as it relates to all civil authority. There were many who argued that kings were kings by divine right. There were also many, influenced by the recovery of classical scholarship, who argued that those who govern do so by the consent of the governed, a particular *de jure humano* (by human right) claim. We church folk often suffer from ecclesiastical tunnel vision with respect to the Reformation, missing just how lively the non-religious scholarship was at the time. Melancthon is intimately aware of these debates. We think of him as Luther’s theological sidekick, forgetting that he was a brilliant classicist and a recognized leader in humanist studies. Melancthon, as a student of and contributor to these debates in political philosophy, leaned in the direction of the “consent of the governed” into the late 1520s. The Peasants’ War would challenge his thinking, and, in the years that follow, he attempts various intellectual reconciliations.⁷

All that, however, is a little bit of a red herring because the bishops were not claiming that they were secular authorities by divine right on the basis of the secular office itself. They claimed that they were secular authorities by divine right because they were bishops. In other words, they claimed that the right by which they exercised political powers was derivative of their ecclesiastical office. So, not only are they confusing the powers, they are essentially

⁷Mads Langballe Jensen, *A Humanist in Reformation Politics: Philipp Melancthon on Political Philosophy and Natural Law* (Leiden: Brill, 2020), 75-81. Ultimately, Melancthon rooted his basis for government upon Natural Law.

confusing the offices. This is why Melanchthon states that they act “under the guise of power given to them by Christ (*im Schein ihrer Gewalt, die ihnen von Christo gegeben*)” (AC 28:2).

Melanchthon responds to their claim,

However, where the bishops possess secular authority and the sword, they possess them not as bishops by divine right but by human, imperial right, given by the Roman emperors and kings for the secular administration of their lands. That has nothing at all to do with the office of the gospel (AC 28:19).

This might all seem a pedantic concern, but consider: “*Quo jure?*” depending upon how it is answered, changes the way people perceive power and its exercise, and, by people, I mean both the governed and the governors. The bishops’ claim to divine right with respect to their secular office carried with it demands for obedience and a claimed scope of action that exceeded what Melanchthon thought was legitimate while also producing abuses that he denounced in less than irenic terms.

Now, to the implicit charges. A perhaps unfortunate consequence of the bishops’ conviction that they were secular authorities by divine right was the conviction that they were actually competent to the task. I have discussed how the political estate depends, according to Melanchthon, upon moral philosophy as its guiding discipline. I’ve also shown that Melanchthon distinguished between theology and moral philosophy. In his 1535 commentary on Aristotle’s *Politics*, he delivers this scathing critique:

And you see the folly. Would not everybody ridicule a theologian who wanted to practice medicine, as he would practice an art he did not know. Likewise the preachers are rightly ridiculed who want to govern states even though they have no expertise in statecraft.⁸

⁸ “*Ac videte quae sit stultitia. Si quis theologus velit medicinam exercere nonne hunc omnes irrident, quae artem quam non didicisset profiteretur. Ita iure iridentur conscionatores, qui volunt civitatis gubernare, cum nunquam in Republica versari sint.*” Philip Melanchthon, *Commentarii in Primum, Secundum, Tertium & Quintum Ethicorum*

(continued...)

Now, it is entirely possible that a given bishop may be competent to engage in statecraft, but there is no guarantee, and certainly no guarantee by virtue of ecclesiastical office. It would depend upon training in the coordinate discipline. Sticking with Melanchthon's example, a particular theologian may be competent to practice medicine, but this would be a result of training. Albert Schweitzer, for example, had degrees in both theology and medicine. Even though he was a theologian, I would have let him perform surgery on me. I'm not sure that I would let Kurt Kusserow perform surgery on me though I happily sit at his feet in Bible study. Robert George, a noted legal scholar, in addition to his J.D. and D.Phil., holds an S.T.M. I had the privilege of asking him the degree to which the fall impairs the human's ability to rightly discern the Natural Law when framing constitutional law, and his response was thoroughly and expertly theological. I have two pastors on my rather small roster who are lawyers. I assume that they are competent to address legal matters, but I assume this on the basis of their legal training and licensure not on the basis of their Lutheran seminary education and ordination. They have told me when I ask them certain legal questions that the particular question is outside their expertise. It is not that being a theologian makes one incapable of statecraft. It is simply not sufficient.

When a secular authority, who happens to be a bishop, is not a student of moral philosophy, that secular authority, to Melanchthon's way of thinking, will likely be negligent in the office by virtue of incompetency, *i.e.*, the bishop will govern poorly.

The second implied charge relates to negligence in ecclesiastical duties. Putting it

⁸(...continued)
Philippi Melanchthonis. Eiusdem in Aristotelis aliquot libros Politicos Commentaria (Straßburg: Johann Albrecht, 1535), fol.[o6v]f, quoted Mads Langballe Jensen *A Humanist in Reformation Politics: Philipp Melanchthon on Political Philosophy and Natural Law* (Leiden: Brill, 2020), pp. 62-63.

succinctly, too many of the bishops were so consumed with matters of the political estate that they neglected matters of the ecclesiastical estate.

My exegesis of this article is informed by five works by Melancthon, one theological, the *Loci Communes*, and four that we might think of today as works in political philosophy, his *Oratio de Legibus*, *Commentary on the Nicomachean Ethics*, *Summary of Ethics*, and *Commentary on Aristotles' Politics*. These non-theological works are relatively contemporary with the penning of the Augsburg Confession. Two predate the presentation of the Augsburg Confession and the other two were in drafting in the same year as the presentation of the Augsburg Confession. They provide a valuable glimpse into the workings of Melancthon's mind and the basis for his critique of the bishops. More than that, they were the content of Melancthon's lectures in the classics curriculum at Wittenberg University. The pastors and theologians graduating from Wittenberg after 1530 didn't just learn the words of Article XXVIII. They were also getting the political theory behind it in their classical studies.

Now, I have some questions for you, but, before I go there, let me ask whether there is anything that you would like clarified at this point.

{Allow time for questions}

Allow me to be so bold as to suggest that the 21st century is not as far removed from the 16th as we might think. While there are no prince-bishops in the united states (though, I think we can argue that there are in England), we do have those who are ordained ministers of the Gospel and, at the same time, elected legislators; I even have one who is a pastor and a county

magistrate. That would be enough to chew on, but I want to suggest that, in the ecclesiastical estate, I am a bishop, and, in the political estate, I am a citizen, whose enfranchisement makes me a participant in and a sharer in the secular authority, albeit more than a little constrained. Given the four charges made by Melanchthon against the bishops, how would we answer these questions?

As bishops, do we confuse the power of the keys and the power of the sword when we, from the office of bishop, address matters of the political estate with distinctly political instruments?

As bishops, do we, in proclaiming law with secular ends, engage in an alien work and promote civil righteousness, instead of engaging in a proper work with spiritual ends promoting the righteousness of faith?

As bishops, do we claim that we are political actors *de jure divino*, in other words, that the right by which we take political action is derivative of our episcopal office?

Are we, in fact, competent to matters of the political estate?

Are we neglectful of matters of the ecclesiastical estate?

Do we think Melanchthon simply got it wrong or that the world is so different today that Article XXVIII is moot (and we should rescind our subscription to the first part of this article)?

{Discussion}