

**DRAFT**

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**An Evangelical Commonwealth:  
Johannes Eisermann on Law and the Common Good**

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In *Beyond Charity*, Carter Lindberg argues cogently that the Lutheran Reformation brought fundamental change not only to German theology and church life, but also to German law and political life. "The common stereotype," he writes, "is that the Reformers separated public and private morality and were indifferent to the ethical import of social structures and institutions." But the reality of sixteenth-century Germany was that "[t]he Reformers, impelled by their theology, developed new legislative measures" of all sorts, and an impressive theological jurisprudence in support of the same.<sup>2</sup>

As Professor Lindberg and others have shown, the sixteenth-century Lutheran reformers transformed the theology, law, and culture of church and state, education and civic learning, marriage and family life, charity and social welfare of Germany. They worked alongside legal humanists to effectuate dramatic reforms of the German private laws of primogeniture and inheritance, foundations and trusts. They helped to catalyze several changes in German legal science--resystematizing doctrines of public law, private law, and criminal law, and introducing new styles of legal pedagogy and legal rhetoric, new theories of equity and judicial reasoning, new syntheses of civil law, canon law, and customary law. And the reformers helped to reform German public law--participating actively in the reorganization of German civil courts, in the formulation of new rules of civil procedure, evidence, and appeal, and in the promulgation of new codes and statutes on criminal law, public morality, and public policy.

These reforms of sixteenth-century German law, politics, and society were not the work of Martin Luther alone, though he

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<sup>2</sup> Carter Lindberg, *Beyond Charity: Reformation Initiatives for the Poor* (Minneapolis, 1993), 161-163 and back cover description.

had a hand in a good number of them. These reforms were also the work of Lutheran theologians such as Philip Melancthon, Johannes Bugenhagen, Martin Bucer, Johannes Brenz, Justus Jonas, Andreas Osiander, Lazarus Spengler, and Johannes Oecolampadius-- who, by 1570, had collectively drafted new reformation ordinances for more than 60 German cities, duchies, and territories, and published more than 100 major tracts on law, politics, and society.<sup>3</sup> These reforms were also the work of a whole coterie of distinguished German jurists who worked under the direct inspiration of Lutheran theology and theologians-- Johann Apel, Joachim von Beust, Johannes Eisermann, Nicolaus Hemming, Melchior Kling, Konrad Lagus, Johann Oldendorp, Jerome Schürpf, Johannes Schneidewin, among several others.<sup>4</sup>

While the reforming efforts of Luther's theological allies are still quite well known today, those of his juridical allies have been almost forgotten.<sup>5</sup> Rightly so, it would seem; after all, Luther's most famous legal pronouncements were that "jurists are bad Christians," and that "every jurist is an enemy of Christ."<sup>6</sup> But, despite such scornful rebuke, Luther eventually made his grudging peace with many jurists who converted to the Lutheran cause. The reality was that Luther needed the jurists to support his reformation. It was one thing to deconstruct the institutional framework of medieval law, politics, and society with a sharp and skillfully wielded theological sword. It was quite another thing to try to reconstruct a new institutional framework of Evangelical law, politics, and society with only this theological sword in hand. Luther learned this lesson the hard way in witnessing the bloody Peasants' Revolt in Germany in 1525, and the growing numbers of radical egalitarian and antinomian experiments engineered out of his doctrines of the priesthood of all believers and justification by faith alone. By the later 1520s, he came to realize that law was not just a necessary evil, it was an essential blessing for life in the earthly kingdom.<sup>7</sup> Equally

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<sup>3</sup> See the collections in Amelius L. Richter, ed., Die evangelischen Kirchenordnungen des sechszehnten Jahrhunderts, repr. ed. (Nieuwkoop, 1967), 2 vols. [hereafter Richter] and Emil Sehling, ed., Die evangelischen Kirchenordnungen des 16. Jahrhunderts (Leipzig, 1902-1913), vols. 1-5, continued under the same title (Tübingen, 1955- ), vols. 6-16.

<sup>4</sup> The best overview remains Roderich von Stintzing, Geschichte der deutschen Rechtswissenschaft, Erste Abteilung (Munich/Leipzig, 1880).

<sup>5</sup> For a classic treatment, see K. Köhler, Luther und die Juristen: Zur Frage nach dem gegenseitigen Verhältnis des Rechtes und der Sittlichkeit (Gotha, 1873).

<sup>6</sup> D. Martin Luthers Werke: Tischreden (Weimar, 1912- ), vol. 3, No. 2809b; see also ibid., vol. 6, No. 7029-7030 and vol. 3, No. 2837, 3027.

<sup>7</sup> As Luther put it in 1529: "Law and worldly government are a great gift of God to mankind. Worldly dominion is an image, a shadow, and a figure of the

essential was a corps of well-trained jurists, eager and able to given institutional and legal form to the best theological teachings of the Reformation.

This essay, dedicated to Professor Lindberg in admiration and appreciation, introduces one such Lutheran jurist, Johannes Eisermann (ca. 1485-1558).<sup>8</sup> Eisermann, a former student of Philip Melanchthon, was the founding law professor of the new Evangelical University of Marburg and counselor to one of the strongest Lutheran princes of the day, Landgrave Philip of Hesse. He took the new Evangelical theology to heart, and sought to translate it into new legal terms, both statutory and theoretical. Particularly important was his work on the origin, nature, and purpose of a Christian commonwealth, first published in 1533. This was one of the very first detailed statements of Evangelical legal and political theory, and it anticipated many of the more famous political formulations of Protestant writers in the later sixteenth and seventeenth centuries.

### Biography

Johannes Eisermann was born and raised near Marburg, an important legal and commercial city in the territory of Hesse and in the Archbishopric of Mainz. He studied theology and medicine at the University of Wittenberg taking degrees in both subjects in 1514. In 1518, he began to read Plato, Aristotle, Cicero, and other classical authors under the tutelage of Philip Melanchthon, who was himself newly appointed to the Wittenberg faculty. Eisermann also gave his own lectures at the University of Wittenberg on the natural philosophy and biology of Pliny, Quintilian, and other classical authors. In this same period, Eisermann embarked on a course of self-instruction in law, which he continued intermittently until finally receiving his doctor iuris in 1532. He served briefly as rector of the University of Wittenberg in 1521 and 1522, but then returned to his homeland of Hesse, settling in Marburg, where the Reformation was also breaking out.

In 1523, Eisermann was appointed to serve on the Marburg city council. The following year, he became one of the lay

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dominion of Christ.... [T]hus one could indeed call a pious jurist ... in the earthly kingdom, the prophet, priest, angel, savior of the emperor." WA 30/2: 554.

<sup>8</sup> Also known as Joannes Ferrarius Montanus, Joannes Hesus Montanus, and Johannes Hesse. Eisermann is not to be confused with Johannes Hesse of Breslau, a sturdy reformer with whom Luther corresponded. See Jaroslav Pelikan and Helmut T. Lehmann, eds., Luther's Works (Philadelphia, PA, 1955-1968), 48:143, 166; 49:122, 175, 196-199, 216, 343 [hereafter LW]. See details in Allgemeine Deutsche Biographie (s.v. "Ferrarius, Johannes").

judges (Schöffen) of the Marburg high court (Hofgericht).<sup>9</sup> These legal appointments came just as the territorial prince, Landgrave Philip of Hesse, was moving toward formal adoption of the Reformation. Eisermann worked with Melanchthon and others to craft Philip's lengthy reformation ordinance of 1526, which became a model law for other territories and cities that adopted the Reformation.<sup>10</sup> Eisermann also helped to draft and enforce new civil laws for Marburg and Hesse on the administration and visitation of Evangelical churches, poor relief, and education, as well as a set of increasingly firm acts against the Anabaptists.<sup>11</sup> He helped Philip to draft his own last will and testament, a matter of state rendered doubly delicate by Philip's infamous bigamy.<sup>12</sup> Eisermann also helped to resolve some of the legal questions surrounding the dissolution of the monasteries in Marburg and the conversion of their properties into new Evangelical charities and schools--not least the University of Marburg that Philip proudly established as a new Evangelical center of learning in 1527.<sup>13</sup>

Later that same year of 1527, Philip appointed Eisermann as the first Professor of Civil Law at the University of Marburg, a post that he retained until shortly before his death in 1558. He also served periodically as rector and later as vice-chancellor of the University, and as legal counsel to Philip and as judge of the Marburg high court (Hofgericht).<sup>14</sup> But Eisermann made his main mark as a distinguished teacher and scholar of law. He wrote several substantial tracts and commentaries on classical Roman law and feudal law, a stout handbook on domestic law, inheritance law, property law, and civil procedure, and two later tracts on the nature and procedure of adjudication.<sup>15</sup>

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<sup>9</sup> Walter Sohm, et al., Urkundliche Quellen zur hessischen Reformationsgeschichte, 4 vols. (Marburg, 1957), 3:416.

<sup>10</sup> Amelius L. Richter, ed., Die evangelischen Kirchenordnungen des sechszehnten Jahrhunderts, repr. ed. (Nieuwkoop, 1967), 1:56-69.

<sup>11</sup> See Sohm, Urkundliche Quellen, 1:95, 109, 144-149; 2:25-26, 78-79, 197-201, 413; 3:10-11, 136-139, 143-146; 4:98, 130-136, 211-214.

<sup>12</sup> Ibid., 2:242-244, 3:14-15. On Philip's bigamy, see Hasting Eells, The Attitude of Martin Bucer Toward the Bigamy of Philip of Hesse (New Haven, CT, 1924); and more generally, Hans J. Hillerbrand, Landgrave Philip of Hesse (New York, 1967). I have found no evidence that Eisermann counseled Philip on the question of his bigamy.

<sup>13</sup> See, e.g., Johannes Eisermann, Was ... Philips Landtgraue zue Hessen ... als ain Cristlicherfürst mit den Closterpersonen, pfarrherren, un abgötischen bildnissen, in seiner gnaden fürstenthumbe, auss Gottlicher geschriffte fürgenomemen hat (Augsburg, 1528). See also Richter, 1:68 (cap. xxix).

<sup>14</sup> Sohm, Urkundlichen Quellen, 2:32, 68.

<sup>15</sup> See, e.g., Johann Monatus Ferrarius, Adnotationes in IIII. Institutionen Iustiniani (Marburg, 1532); id., Commentarius, omnibus q̄i in iure foro(que) iudicario versantur (Marburg, 1542; Frankfurt am Main, 1600); id., Ad titulum Pandectarum de regulis iuris commentarius (Louvain, 1537, 1546); id.,

Eisermann's most original and enduring contribution to Lutheran legal and political theory came in his tract On the Common Good, later expanded and retitled On the Good Ordering of a Commonwealth.<sup>16</sup> This book was first published in German in 1533 and in several editions and languages thereafter. It was a popular text in Evangelical circles throughout the sixteenth century. In this tract, Eisermann repeated much of the new Evangelical theology of the day. He taught total depravity and justification by faith alone. He drew familiar distinctions between the two kingdoms, two types of governments, two forms of righteousness and goodness. He endorsed strongly the reformers' favorite doctrines of the priesthood of all believers and the calling of all Christians to a Godly vocation. He embraced the natural primacy of the domestic, ecclesiastical, and political estates, and their complementary roles in teaching and enforcing the norms of natural law, particularly the Ten Commandments and the Golden Rule.<sup>17</sup> All these teachings were still very much in flux when Eisermann began writing his tract in the late 1520s. His distillation of them was itself influential in helping to systematize Evangelical theology in Marburg and beyond.

Eisermann's main concern in this tract, however, was how to construct a theory of the common good out of a theology of total depravity. If persons in the earthly kingdom are truly and utterly sinful and selfish by nature, how can they possibly be directed to doing any good for others or for the commonwealth altogether? If the earthly kingdom is truly the fallen realm of the Devil, how is it that we now live in relatively decent German polities? Part of Eisermann's answer to these questions was the same as that of Luther and Melanchthon: God has allowed the natural law to continue to guide sinful persons in the earthly kingdom. Through its civil and theological uses, the law coerces all persons into a lower civil righteousness and induces some persons to a higher spiritual righteousness. Part of Eisermann's answer, however, was his own innovative theory of the origin, nature, and purpose of a Christian commonwealth.

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Progymnasmata forensia sive processus iudiciarii recepti libri V (Marburg, ca. 1542, 1556), revised as id., Processus iudiciarii, ad mores nostros accommodati (Hamburg, 1608); id., Collectanea in usus feudorum, in Tractatus universi iuris (Frankfurt am Main, 1554), vol. 10/2; id., Tractatus de iudiciorem prae exercitamentis (Frankfurt am Main, 1554, 1600).

<sup>16</sup> Id., Von dem gemeinen Nutze (Marburg, 1533), reprinted and revised as id., De republica bene instituenda parānesis (Basel, 1556) [hereafter Eisermann]. The quotations that follow are adapted, in part, from an early English edition, A Woorke of J. Ferrarius Monatus touchynge a Good Orderynge of a Common Weale (London, 1559) (STC 10831). Because the pagination of both the 1533 German and 1556 Latin editions at my disposal are badly corrupted, I have cited to the book and chapter headings in the 1556 edition.

<sup>17</sup> Eisermann, I.1-4, II.1-2, III.2, IV.1, 4, VI.7, VIII.1, IX.2, 5.

Eisermann developed something of a Lutheran social contract theory. He adopted this theory in part from classical Greek and Roman authors. He also adapted it in part from St. Paul's image of the "body of Christ with its many members." This was a rich biological metaphor that Eisermann (a former student of medicine) translated into his theory of a Christian body politic.<sup>18</sup>

### **From Nature to Society**

In Eisermann's view, the state of nature began as the perfect realm of Paradise. Adam and Eve were created in the image of God. They were the apex of creation, God's final and greatest creative act. They alone were given the power of reason and speech. They alone were given lordship "over all living things," and called to dress and keep the garden. They were by their natures, "civil and communal." They lived in perfect communion with God and perfect community with each other. They were created "to obey laws, to help each other, to use their goods without causing harm to others, to desire the just and the good, to favor honesty, and more."<sup>19</sup>

Through Satan's evil wiles, however, Adam and Eve fell into sin, and all humanity vicariously fell with them. After the Fall, all persons lost their perfect communion with God. They lost their lordship over creation. They lost their natural community with each other. In this fallen state of nature, persons were "greedy," "foul," and debased," "so lost and corrupt" that they were "inclined only to that which is forbidden and evil." "Questions began to arise about estates and dominions of things." "What is mine and what is thine began to breed disquietude," violence, and bloodshed. Rovers and robbers ravaged the properties and persons of others, setting off endless cycles of revenge and reprisal in subsequent generations. In the perfect state of nature in Paradise, human life had been lovely and long. In the sinful state of nature after the Fall, human life had become "brutish" (ferus) and "short" (brevis).<sup>20</sup>

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<sup>18</sup> See, e.g., Romans 12:4, I Corinthians 12:12. On classical and medieval sources of social contract theory, see Otto von Guericke, The Development of Political Theory, trans. Bernard Freyd (New York, 1966), 91-142; J.W. Gough, The Social Contract (Oxford, 1963).

<sup>19</sup> Eisermann, I.1, 2.

<sup>20</sup> Ibid., I.2-3; III.7.

Despite the fall into sin, however, God has allowed all persons to retain a glimmer of those "inborn sparks" of honesty, virtue, and community with which they were created--an innate knowledge of a natural law of love of God, neighbor, and self, and a natural sense of equity by which these laws must be applied. These natural sparks of knowledge were "not entirely quenched" by sin, Eisermann insisted, following his teacher Philip Melanchthon.<sup>21</sup> They were "preserved in human reason." They could be quickly extinguished and forgotten through depraved and debased living. But they could also be ignited to give greater light if they were subject to "careful study."<sup>22</sup>

Throughout history, Eisermann argued, "God has always lifted up wise men" who have undertaken such "careful study" of these "inborn sparks" of natural law. Led by these wise men, the Greeks, Romans, and other ancient peoples have all seen that "man is by nature sociable and aspires to society and community of life, in order to curb vice and to embrace virtue, to help others, and to find a way to help himself and his community." Accordingly, each of these ancient peoples has formed "a covenant of human society (foedus humanae societatis) wherein men are trained by a discipline of laws and manners to do things for others and to live well."<sup>23</sup>

A commitment to the rule of law was the most essential provision of all these early social covenants. Indeed, said Eisermann, without law there could be no commonwealth.<sup>24</sup> Law was essential to curbing the depraved instincts of natural persons and driving them to greater orderliness, goodness, and even happiness. Eisermann cited various ancient Greek and Roman writers to the effect that "the good of citizens, the safety of cities, and the quietness and happiness of man's life is much advanced by the establishment of laws. Their virtue is to command, to control, to bid, and to forbid. For it the law only which commands things that must be done, and not done. Thus the law is the ruler and leader of a civil life." In order to accomplish these objectives, the law must be written, clear, accessible, binding on both rulers and subjects, and enforced swiftly, surely, and equitably when trespassed.<sup>25</sup>

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<sup>21</sup> For Melanchthon's theory of "inborn elements of knowledge" (notitiae nobiscum nascentes), see esp. G. Bretschneider, ed., Corpus Reformatorum (Brunswick, 1864), 11:918-921; 13:150, 642-647; 20:695ff., 748ff.; 21:117, 398-400, 712; and Dialectices Philippi Melanchthonis (Louvain, 1534), bks. II-III.

<sup>22</sup> Eisermann, II.1; III.7; IV.2. CR 16:228.

<sup>23</sup> Ibid., I.3-5.

<sup>24</sup> Ibid., I.3.

<sup>25</sup> Ibid., III.7, 8; IX.2.

Certain types of laws have proved essential to realizing this commitment to the rule of law, Eisermann argued. Every ancient civilization has adopted laws to protect the peace and order of the commonwealth, and to define the office and activities of its rulers. Their laws generally protect lives and properties. They encourage charity and care for the other. They frown on usury, price gouging, and fraud. They provide for the sojourner, the needy, and the immigrant. They insist that words be honest, that promises be honored, that contracts be kept. They require that wrongs be righted, whether by criminal punishment or by civil redress. They mandate some form of common religious worship. And these ancient civilizations all require "the study of law," not just for students of the legal profession, but for all citizens, so that each generation may be committed anew to the rule of law and to the perpetuation of the social covenant. These are common provisions of the law of all nations (ius gentium), Eisermann argued with copious citations and illustrations. They reflect in part the cardinal commandments of the law of nature (ius naturale), preserved in those "inborn sparks" of human reason.<sup>26</sup>

Though they were united in their commitment to the rule of law, however, the first commonwealths were diverse in form and governance. They ranged from extended households, to villages, to towns, to nations, to whole empires. Some were monarchies, some oligarchies, some democracies, most some mixture of the same. Periodically, these societies fell apart by internal decay, by external conquest, by tyranny and riot, by plague or devastation, and the people returned to a more inchoate state of nature. But aversion to the depravity of this state of nature and appetite for the law and order of a society has always driven peoples to form new social covenants--learning something, in each instance, from the failure of prior commonwealths.<sup>27</sup>

There is ample instruction in this story of the birth and growth of the commonwealth tradition, Eisermann insisted. One lesson is that we Christians today can and must learn from the experiences of prior civilizations. A modern Christian theorist would do especially well to absorb the social, legal, and political instruction of the advanced civilizations of Greece and Rome, both before and after the coming of Christ. Following humanist conventions of his day, Eisermann took this maxim to heart--peppering his tract with all manner of spicy references to Plato, Aristotle, Cicero, Seneca, and various Roman jurists and legal texts. He mixed these classical sources freely with citations to the Bible, the Church Fathers, and various medieval

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<sup>26</sup> Ibid., I.4; see also VI.1-7, VII.1-8, IX.1, 3.

<sup>27</sup> Ibid., I.3; III.3, 7.

Christian jurists and theologians. Christians have no monopoly on the understanding of natural law and natural reason, Eisermann believed, and a modern Evangelical jurist would be foolish to ignore the wisdom of these advanced classical traditions.

A second lesson of this history is that there is no single foreordained or natural system of society, politics, and law. Every people chooses its own social form, its own political structure, and its own system of law based on a "combination of nature, custom, and reason." Nature teaches the basic norms of love of God, neighbor, and self. Custom teaches the local circumstances in which those norms must be applied. Reason translates the general principles of natural law to the specific precepts that apply to local circumstances and concerns. "One shoe is not meant for every foot," Eisermann wrote. It takes ample "political wisdom, experience, and foresight" to strike the right balance among the teachings of nature, custom, and reason.<sup>28</sup>

A third lesson of this history is that there is no single person--far less no single dynasty--in a commonwealth that naturally should rule. "A prince is every man, and every man is a prince," Eisermann wrote, citing classical sources. The choice of leadership in a commonwealth should turn upon a person's virtue and wisdom, not upon his connections or bloodline.<sup>29</sup> Eisermann did not develop this point into a more general theory of popular sovereignty, as later Protestant theorists would do.<sup>30</sup> But he did advert several times to the importance of periodic elections of officials as a means to ensure rule by the best rather than by the best connected.<sup>31</sup>

### **An Evangelical Commonwealth.**

That said, Eisermann went on at great length to describe what he considered to be the best form and function of an overtly Christian commonwealth for his time and place in Marburg and Hesse, and perhaps for other German polities that had accepted Lutheranism. Any Christian commonwealth should build on the lessons of classical commonwealths. But these latter commonwealths are by definition, incomplete. They can speak only to a "civil goodness," not to a "spiritual goodness," an "outward conformity" not an inward renewal of their citizens.

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<sup>28</sup> Ibid., III.3, 7; VIII.1; IX.2.

<sup>29</sup> Ibid., II.2.

<sup>30</sup> On these later theories, see Gierke, Development of Political Theory, 143-240.

<sup>31</sup> Eisermann, III.8; VIII.1.

They can celebrate only the goods of the mind and the body, not the goods of the soul and the heart. For none of these classical civilizations had the full biblical revelation of the heavenly kingdom on which the earthly kingdom must be partly modeled. None of them had knowledge of "Christ, the fountain and source of all justice, the founder and governor" of any Christian commonwealth. Thus the architects of a Christian commonwealth must learn the first rules to live by "not out of the philosophers' writings, but out of the Word of truth," out of the teachings of the Bible.<sup>32</sup>

Each Christian commonwealth, Eisermann wrote, must be a reflection of the body of Christ on earth.<sup>33</sup> The best image of this comes from St. Paul: "For as in one body, we have many members and all the members do not have the same function, so we though many are one body in Christ, and individually members one of another. Having gifts that differ according to the grace given to us, let us use them: if prophecy, in proportion to our faith; if service in our serving; he who teaches, in his teaching; he who exhorts, in his exhortation; he who contributes, in his liberality; he who gives aid, with zeal; he who does acts of mercy, with cheerfulness."<sup>34</sup> Historically, St. Paul's metaphor was used to describe everything from the local congregation to the whole of Western Christendom.<sup>35</sup> Eisermann used this metaphor of Christ's body to describe the form and function, the anatomy and physiology, of the Christian body politic.

**The Person.** The core unit of the Christian commonwealth is the person, Eisermann argued, underscoring St. Paul's phrase "individually members one of another." Each person is created in the image of God. Each is required to be a priest to all peers. Each is called to a Christian vocation. "[E]very man counts with his own office." "[E]veryone does works that glorify God the creator and redeemer," and that render "special service for the commonwealth." Every person who directs "all his doings to his vocation, with a mind lightened inward, is a profitable citizen."<sup>36</sup>

This was a particularly robust application of Luther's teaching of the priesthood of all believers and the natural equality of all Christian vocations. Eisermann took this as an

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<sup>32</sup> Ibid., I.1, 4, 5; VI.7; IX.4.

<sup>33</sup> Ibid., IV.1.

<sup>34</sup> Romans 12:4-8; see also I Corinthians 12:12. See Eisermann, I.4; IV.1.

<sup>35</sup> See Ernst H. Kantorowicz, The King's Two Bodies: A Study in Medieval Political Theology (Princeton, 1957), 194ff.; O'Donovan, Desire of the Nations, 158ff.

<sup>36</sup> Eisermann, I.4.

essential feature of a Christian commonwealth. He devoted nearly a quarter of his tract to outlining the core Christian duties of teachers, preachers, almsmen, shipmen, huntsmen, artisans, farmers, merchants, craftsmen, blacksmiths, mechanics, soldiers, husbands, wives, children, masters, servants, and many more. He argued further that each person must have fair access to education and a vocation, a just wage for his or her labor, fair markets in which to ply a trade, and a minimum level of subsistence and maintenance even in the harshest economic times. If all these vocations are properly "formed and reformed," he wrote, "the society will be united together and the honor of the commonwealth observed."<sup>37</sup>

Eisermann drew lessons of industry, privacy, and charity from this basic teaching about the Christian vocation and the priesthood of believers.

First, in a Christian commonwealth, industry must be prized and idleness outlawed. All persons must be active in those vocations to which God has called them. Those who are idle "trouble the common good and the discipline of the commonwealth."<sup>38</sup> Most idlers are simply lazy, and must be pressed to greater diligence in their own vocation or put to corporal labor if they have none. Those blessed with time for leisure must be pressed to greater study and greater charity. Those who are idle because of sickness, age, or chronic infirmities must be cared for.<sup>39</sup>

Second, in a Christian commonwealth, privacy must be prized and officiousness barred. Persons should be active in the vocations to which God has called them. But they should not seek to overreach beyond their vocation into the private affairs of their neighbors. "Let not the shoemaker meddle above the latches of his shoes, or adventure to question that with which he has nothing to do," Eisermann wrote. Everyone should know his or her own station and vocation in the commonwealth. It is good to be industrious and equip and enhance oneself so much as possible, but not at the cost of one's neighbors. "Everyone should continue to do his duty in peace with others--not intermeddling with others but being content with his own vocation."<sup>40</sup> This was a duty-based argument for privacy. It was the duty of each citizen to mind his or her own vocation, thereby ensuring the neighbor's privacy.

Eisermann also pressed a rights-based theory of privacy in arguing that each person should have his or her own private

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<sup>37</sup> Ibid., III.5-6; V.1-8.

<sup>38</sup> Ibid., I.5.

<sup>39</sup> Ibid., I.5; IV.1; VI.4.

<sup>40</sup> Ibid., I.5.

property. To be sure, Eisermann argued, Christ and his disciples held property in common, and this has been emulated by some monasteries and communes over the centuries. But to extend these examples of community property beyond these intimate societies is "absurd," Eisermann argued, good property lawyer that he was. "Private dominion in things" is essential to the survival and flourishing of a commonwealth, whether Christian or non-Christian. Without a concept of private property, persons will return to the sinful habits of the state of nature, perennially fighting over material things. "Without certainty of his interest, no one would set plough to the ground," for fear of losing the fruits of his labor. Without assurance of protection, no one would dare start a family or a vocation. Private property is thus an essential part of every covenant of society. "It is most convenient that that every man know his own, that title or ownership of things be distinguished, and that no property hang in uncertainty." A clear understanding and protection of private property will make persons more diligent in the care and cultivation of what they have. It will also protect them against temptation. "Man's nature is easily corrupted, and will not stand still in one state. Every man will be led after his own fantasy" to take and to want more and more. Protection of private property sets a barrier to such depraved instincts--as is underscored in the Decalogue's Commandments "Thou shalt not steal" and "Thou shalt not covet."<sup>41</sup>

Third, in a Christian commonwealth, charity must be prized and churlishness scorned. "Even though men are of private estate, they are not excused from helping others," Eisermann argued. This is the plain instruction not only of nature but especially of Scripture. We must "exhort delightfully in hospitality, rendering to none evil for evil, for we are commanded to feed [even] our enemies if they are hungry, to give them drink if they are thirsty, and thereby heap burning coals on their head and thus provoke them to do likewise."<sup>42</sup> In giving charity, a "man is a veritable god to his fellowman."<sup>43</sup>

Though saints and sinners alike deserve charity, a person of modest means must be discriminating in dispensing it. One's own family and dependents deserve closest care. Beyond that, only the worthy poor should be served--orphans, widows, the aged, the sick. The unworthy poor--the lazy beggar, the itinerant mendicant, the loitering vagabond--must work for his alms or be banished if he refuses.<sup>44</sup> Eisermann's insights were

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<sup>41</sup> Ibid., VI.6, 7.

<sup>42</sup> Ibid., IV.1; see also II.1.

<sup>43</sup> Ibid., I.1.

<sup>44</sup> Ibid., VII.5-7.

part of a whole industry of new Evangelical reflections on poverty and charity that Professor Lindberg has happily opened to English readers.

**The Legal Profession.** While every person and every vocation "counted" in a Christian commonwealth, there were some natural divisions and hierarchies that gave priority to some persons and to some professions. Each human body has vital parts and lesser parts, Eisermann reasoned, and the Christian body politic is much the same. Eisermann described various social and political hierarchies of the Christian commonwealth without systematizing them too closely. He repeated the conventional Lutheran lore of the three natural orders of state, church, and family, led by the prince, preacher, and paterfamilias and their respective assistants and charges. He described three classes (Stände) of citizens: the high estate of princes and preachers; the middle estate of counselors and nobles; and the lower estate of commoners. He endorsed enthusiastically the three classic professions of theology, law, and medicine (in all of which he had been trained), and their respective roles in caring for the spirit, the mind, and the body of individuals and of the commonwealth as a whole.<sup>45</sup> While Eisermann's penchant for tripartite sociological categories was somewhat unusual, much of this part of his argument was commonplace and parochial.<sup>46</sup>

Eisermann did, however, argue much more forcefully than other early Evangelicals that a learned legal profession was essential to a Christian commonwealth. By the legal profession, he meant collectively the prince and other magistrates, the judges, counselors, notaries and other officers of the state retinue (the Obrigkeit), and the law professors and practicing lawyers. The general Christian calling of this whole legal profession was two-fold: first, to reform the commonwealth by law to be a better approximation of the heavenly kingdom; and, second, to reform each individual in his or her preparation for heavenly citizenship. In a Christian commonwealth, Eisermann wrote: "God's laws must be joined with man's laws. The Ten Commandments must be kept. Idolatry and false worshipping must be rooted out. God's Word must be everywhere preached, in churches instituted for Godly purposes. Moral discipline must be heeded. Schools must be diligently attended so that youth are trained in good learning, knowledge of languages, for the understanding of God's Word, for the ruling and governing of the

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<sup>45</sup> Ibid., II.1-6; III.8; IV.1-6.

<sup>46</sup> This tripartite accent was common in classical Roman law texts that Eisermann knew well. See Henry Goudy, Trichotomy in Roman Law (Oxford, 1910).

commonwealth, and especially for setting forth God's glory." Persons must be cajoled, counseled, and if necessary coerced to "live justly in the world and keep the community among men, formed both by God's laws and man's law." By so doing, all citizens will be "prepared for a better life in heaven," and be "conveyed from these visible things to the invisible."<sup>47</sup>

The role of the prince and other high magistrates in all this was essential, and Eisermann described it at great length. Much like Luther and Melanchthon, he referred to the prince as "the vicar of Christ," "the father of the community," "the pastor of the people", "a veritable god on earth"--descriptions which Eisermann's patron, Landgrave Philip of Hesse, could only have appreciated (if not expected). The prince was to be a paragon of Christian virtue in his own life and a teacher of Christian virtue in his political office. He was to give light and life to those "sparkles of equity" within him and those injunctions to piety within the Bible. The prince was to be free from guile and graft, resistant to flattery, bribery, and currying of favor. He was to exemplify all the great virtues of clemency, wisdom, sobriety, frugality, and much more. Eisermann went on for several dozen pages describing and illustrating from the lives of sundry Christian emperors, kings, and princes what qualities and activities become a Christian prince or magistrate.<sup>48</sup>

The foremost activity of the Christian prince was to promulgate and to live under Christian laws. At minimum, these laws had to be consonant with those provisions of the law of nature and law of nations that we have already seen. More fully conceived, these laws were to express the letter and the spirit of the Ten Commandments and other biblical expressions of the law of God. For Eisermann, this meant the law of the prince must coerce citizens to a "civil goodness," and also cultivate in them a "spiritual goodness." The prince was not only to protect citizens from each other, he was to care for them as if they were his own children. Eisermann contemplated a very active Christian magistrate at the core of a very active Christian welfare state: "It is the duty of the magistrate to restore the decayed, to gather the dispersed, to recover the lost, to reform the disordered, to punish the evil, to enlarge the common good, to relieve the poor, to defend the orphan and the widow, to promote virtue, to administer justice, to keep the law, to demonstrate that he is the father of the country, to hold the people's commitment to him as if they were his own children, to embrace godliness faithfully and with his whole

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<sup>47</sup> Eisermann, I.4; IX.2, 5.

<sup>48</sup> Ibid., II.1-3; III.1, 4, 7.

heart, to perform all that is profitable or necessary among the people, according to his duty, no less than if God himself were present."<sup>49</sup>

While the prince was to put the law on the books, his retinue or Obrigkeit was to put the law into action. Eisermann called the prince's Obrigkeit "the living law" of a Christian commonwealth. "The law is dead if it is not executed," he wrote, and it can be deadly if it not executed in accordance with Christian justice and equity. Eisermann placed special emphasis on the role of the learned judge to apply the law. "General laws are a preface to good governance," he wrote, but these laws will mean little unless they are equitably applied in particular cases. It is the great calling of the judge to "fetch equity and justice out of the bowels of the law." As such, the judge has "laid upon his shoulders the very charge of God, which he cannot escape, but of which he must give a sure accounting on the great day of the Lord," the Day of Final Judgment.<sup>50</sup>

Equally essential to the execution of the law was a corps of learned jurists and lawyers. Contrary to Luther's sentiments that "jurists are bad Christians," Eisermann considered the law to be a "sacred vocation," and jurists to be veritable "oracles for the city." When properly trained and restrained, lawyers teach all citizens the true meaning of law, equity, and justice. They draft contracts, deeds, wills, and other essential documents that allow for the orderly transmission of property, the peaceful conduct of business, the licit association of groups, the proper discharge of one's duties to one's neighbors. They bring lawsuits to ensure an orderly restitution and retribution without the violence and chaos of the feud. They give opinions and counsel to resolve hard questions. They represent the indigent, the immigrant, the orphan and the widow. "God has not for naught so plentifully poured his grace upon them," Eisermann wrote of jurists, "but done so in order that they should serve mankind faithfully and fearfully, profit the same, and direct all the dispensation and ministry of the law and charge taken upon them to the profit of their neighbor and the glory of almighty God. Those who do this may well be called an expounder of right and laws, and be made a governor over commonwealths."

Eisermann was fully aware that the legal profession, even in the best of times, often defied these Christian ideals. Some princes were tyrants, thieves, and thugs. Some judges succumbed to bribery, prejudice, and abuse of process. Jurists and

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<sup>49</sup> Ibid., II.3; III.1, 4, 7; VII.6; VIII.1.

<sup>50</sup> Ibid., II.4; III.2; IV.5; IX.2.

lawyers often "cared nothing about being true executioners of equity and justice, but only wanted to make a mark for their own advantage ... to fill their pouches and to work their wiles, with vain talk." "It is an easy thing to stain this holy discipline" of law, Eisermann concluded. And thus many think that "the best commonwealth is that with the fewest lawyers." But the reality is that the commonwealth needs the legal profession--the prince, the judge, and the jurist alike. The solution to the corruption of this profession lies not in its gradual eradication but in its constant reformation.<sup>51</sup> What that should entail, however, Eisermann had little to say beyond platitudes.

Eisermann's 1533 tract On the Common Good was the first detailed social contract theory of the Christian commonwealth to emerge in Evangelical Germany. It was by no means the last. By the mid-sixteenth century, such Christian commonwealth theory had become increasingly commonplace and copious in Evangelical Germany and in many other Protestant polities. Martin Bucer, for example, the distinguished Strasbourg reformer, put the matter famously in his 1550 tract, De Regno Christi. Before composing this tract, which he dedicated to King Edward VI of England, Bucer had served as another advisor to Eisermann's patron, Landgrave Philip of Hesse. Whether in that context, Bucer had encountered Eisermann's 1533 tract is not clear. But Bucer certainly tracked a good bit of Eisermann's argument. Like Eisermann, Bucer saw close analogies between the heavenly kingdom and the earthly kingdom. Christ rules in both--directly in the heavenly kingdom, indirectly through the magistrates in the earthly kingdom. As Christ's representative, the magistrate is to establish proper Christian doctrine and worship, to support churches, families, and schools, to support each person in his or her vocation, and to punish those who violate the common good or offend the law of God. Bucer then put forth a whole series of laws of reform that would help Christian magistrates to reach this end: Children must be educated and catechized in Evangelical Christianity. The Sabbath Day must be kept holy. The church must be made holier. Its ministries must be reformed. Its properties must be regulated and restricted. Marriage and divorce laws must be reformed. Poor relief must be enhanced. The idle and the able must be put to work. Honest vocations must be supported. Honest magistrates must be appointed. Fair trials must be guaranteed. Fit punishments must be assigned. Public sumptuousness, gambling, drunkenness, and prostitution must be punished. By all these means, Bucer concluded, God's Word will be enhanced, God's elect will be

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<sup>51</sup> Ibid., IV.4-5.

preserved, and God's children will "live well and happily both here and in the time to come."<sup>52</sup> Bucer's was but one of a whole series of mid-sixteenth century works on Christian commonwealth theory that would come to impressive application over the next century both on the Continent and in England.<sup>53</sup>

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<sup>52</sup> Reprinted in Martini Bucer Opera Latina (Paris, 1955), vol. 15, partly translated in Wilhelm Pauck, ed., Melanchthon and Bucer (Philadelphia, 1969), 174-394, at 225.

<sup>53</sup> For continental developments, see Gierke, Political Theory, passim; for English developments, see sources in my From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition (Louisville, KY, 1997), 165ff.