

## The Doctrine of Active Resistance in the Sixteenth Century

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Resistance to established authority, whether civil or ecclesiastical, and the struggle between church and state marks every path from Pope Gregory VII (Hildebrand) and his encounter with the German Emperor to John Knox's famous interview with Mary, Queen of Scots. Over the five centuries from Becket's quarrel to Knox's protest one can see that resistance to monarchy is an integral part of European history. As one enters the fourteenth century one sees a Dante Alighieri in Florence and Marsilius from Padua circumscribing political authority.

Sixteenth century theologians faced political decisions as both Protestant and Catholic explored the limits of obedience to secular and religious authorities. St. Paul's admonition to the Roman congregation stated in the famous thirteenth chapter of the Epistle to the Romans that every soul should be obedient to the existing powers 'for conscience sake'. This article will explore the late medieval sources and the sixteenth century context of Continental Reformation theologians' response to that agony of conscience. In the mid-1980s, historians such as Quentin Skinner of Cambridge revised the assumption that Luther's theology somehow prevented resistance to the state.<sup>1)</sup>

<sup>1)</sup> Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge, 1978), 2 vols.

## 1. The Background to the Doctrine of Active Resistance in Late Medieval Thoughts

Throughout the Middle Ages church and state were two coordinate powers, that the two biblical swords of Luke 22:38 were 'potestates distinctae', that 'sacerdotium' and 'imperium' were two independent spheres instituted by God Himself. This doctrine therefore claimed for the temporal power an inherent authority not derived from ecclesiastical canons.<sup>2)</sup> Church and state were distinct societies, the former being concerned with man's supernatural well-being and his attainment of his last end, the latter with man's temporal well-being. Each of them, church and state, is a 'perfect' society, namely, a self-sufficing society, possessing in itself all the means required for attaining its end. But it is obvious that in practice a harmony of two powers is inherently unstable, and the disputes between Papacy and Empire, church and state, loom large on the stage of medieval history.<sup>3)</sup> To make the matter more complicated, the Emperor claimed he was by divine and human law possessed of the 'imperium mundi', by virtue whereof all peoples and kings of the earth were subject to him. Had he jurisdictional powers and authority over the kings of the various kingdoms constituting the Holy Roman Empire, or were the heads of the kingdoms equal in their legal and political status to that of the Emperor? When Clement V issued his famous bull (decretal) *Pastoralis cura*, he succinctly gave formal expression to a current of political thought which political thinkers had entertained for some time. With this bull the political supremacy of the Holy Roman Empire over kingdoms was formally repudiated by the curia.<sup>4)</sup> This significant legislative work affirmed principles of due process and the limits of an Emperor's power by repudiating the claim of the Emperor Henry VII to universal jurisdiction.

In Italy, the major ally of the Italian cities had been the Papacy throughout their struggle against the Empire. However, there was a danger inherent in this alliance as the cities soon discovered at their own expense. The Popes aspired to rule the 'Regnum Italicum' themselves. Innocent III has fended off inroads by secular princes and come to be regarded as the most important exponent of the canonist theory of papal supremacy in temporal affairs. And finally, Boniface VIII reiterated the same doctrines in his Bull of 1302, *Unam Sanctam*. Admitting that in Christian society there were two swords, spiritual and temporal, he immediately went on to insist that one sword should necessarily be below the other, and thus that the temporal should be subordinate to the spiritual power.<sup>5)</sup> Faced by this aggressive papal propaganda, a number of Italian cities began to fight back. The city of Padua was one of them and began a major dispute with the local churches in 1266 over their refusal to pay taxes, and in 1282 virtually deprived the Paduan clergy of the

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<sup>2)</sup> Otto Gierke, *Political Theories of the Middle Age* (Boston, 1958), p. 16.

<sup>3)</sup> Frederick Copleston, *A History of Philosophy* (New York, 1962- ), vol. 3, part 1, pp. 180-1.

<sup>4)</sup> Walter Ullmann, 'The Development of the Medieval Idea of Sovereignty', *The English Historical Review*, vol. 250 (Jan. 1949), p. 1. (hereafter abbreviated *EHR*)

<sup>5)</sup> Skinner, *The Foundations*, vol. 1, pp. 12-5.

protection of the law.<sup>6</sup>And a little later it was Dante Alighieri and Marsilius of Padua who stood up for the anti-papal campaign. There are dramatic parallels between the experiences of these two men, but even more striking is the sharp divergence of their thought.<sup>7</sup>

We find in Dante a mounting resentment against the disastrous role of the Church in politics, a resentment underlined by Boniface VIII's intervention in Florentine affairs. According to Dante, the Papacy took from Constantine that which was not her own, invading the civil sphere at every turn. This anti-papal note is best illustrated in his *De Monarchia* (c. 1313). Dante here argued that government has only one function: to maintain peace so that mankind can most fully develop itself. This function can best be carried out if government is unified. The most unified form of government is monarchy, and the best monarchy is a world monarchy. The Roman Empire exercised such authority, and its authority had now passed to the Holy Roman Emperors.<sup>8</sup> Humanity comes nearest to achieving its goal when it most resembles God. God is absolute unity. Therefore the human race is most God-like when it is most one, and it follows that when it is subject to one prince it most resembles God. Dante thus began with an ideal framework of universal order and worked back to institutions and political practices. It is on this basis that Dante develops his 'erastian' notion.

The papalists saw the universal order in terms of one organic hierarchy of powers crowned by the papal 'plenitudo potestatis', whereas Dante and other anti-papalists sought to diversify the order. Dante himself went so far as almost to create a dualism of orders. He conceives of two beatitudes toward which mankind strives. For the proper fulfillment of the earthly beatitude, the political ruler must not be subordinated in any way to the Pope. On the other hand, Dante also has another final end, i.e., the goal of mankind on the supernatural plane. Michael Wilks saw something of Thomistic influences in Dante to explain the almost contradictory nature of some parts of the *Monarchia*. Wilks states,

In spite of his emphasis upon the autonomy of human reason, Dante is forced to acknowledge that there are occasions when reason is not enough, and true justice is discernible only by recourse [*sic*] to faith.... The most striking evidence of a change of attitude appears in the last chapter of the *Monarchia*, where Dante, having just accepted the complete separation and self-sufficiency of the realms of reason and faith, of Emperor and Pope, suddenly adds that it is not in the last resort true to say that the Emperor is completely free from subjection to the Pope.... he goes on to acknowledge that the temporal end of life is, after all, ordered towards the spiritual, and thereby

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<sup>6</sup> Ibid., p. 15.

<sup>7</sup> For the comparative study of these two men, see Marjorie Reeves, 'Marsiglio of Padua and Dante Alighieri', *Trends in Medieval Political Thought* (Oxford, 1965), ed. Beryl Smalley.

<sup>8</sup> Donald J. Wilcox, *In Search of God and Self: Renaissance and Reformation Thought* (Boston, 1975), p. 48.

reaches the conclusion that the Emperor must observe that reverence to the Pope which is owed to a father by his eldest son.<sup>9)</sup>

Dante's whole case for the independence of the secular ruler collapses since the beatitude which belongs to the eternal order must govern the temporal which is ultimately subsumed into it. The fact that deduction from first principles was used throughout Dante's work resulted in a complete breakdown of his dualism.<sup>10)</sup> Thus the Empire of the Monarchia might be the vision of an idealist, as Walter Ullmann concludes.<sup>11)</sup> But Dante's view represents one of the growing expressions of erastianism in the late middle age.

More logically satisfactory answers to these problems were given by Marsilius of Padua who made a radical break with the traditional thinking in terms of ideal orders and ultimate goals to which Dante was heavily indebted. Marsilius starts his argument from the opposite end of Dante: the natural desires of men. He finds the origins of the state not in the need to realise a perfected end, but in the necessity of modifying and controlling a natural desire for the sufficient life in the very interest of achieving that sufficient life.<sup>12)</sup> Marsilius here gives the highest authority to the government since it alone has the necessary means to prevent descent into anarchy. But here it must be noted how small a part the Holy Roman Empire and the Ghibelline theory play in the Marsilian system. Although he starts from the same point as Dante, peace for mankind, Marsilius dismisses the concept of a universal monarchy as not germane to his subject matter, the exclusive governing powers of the state.<sup>13)</sup> Whereas Dante's aspiration to achieve the possible intellect led him straight forward to the single monarch as the only means to this end, Marsilius' spread of varying civic values without distinction of grade is the basis of his republicanism.<sup>14)</sup>

Marsilius reached this conclusion by rational procedures alone in complete independence of faith and of the theological tradition founded upon faith. In *Defensor Pacis* (*The Defender of Peace*) published in 1324, Marsilius in the first discourse discusses the origins and nature of temporal political authority, omitting consideration of eternal life and divine

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<sup>9)</sup> Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge, 1963), pp. 144-5.

<sup>10)</sup> Quentin Skinner's view is quite different in this regard as he seems to insist that Dante maintained his dualism throughout. According to Skinner, Dante believed in 'duo ultima', two final goals for man. One is salvation in the life to come, to be attained through membership to the Church. The other is happiness in our present life, to be attained under the guidance of the Empire, which is treated as a power both equal to and independent of the Church. This leads Skinner to conclude that Dante opened the door to imperial intervention. Skinner states, 'While it allowed them to deny the right of the Pope to interfere in their affairs, it did so at the expense of branding them once again as vassals of the Holy Roman Empire. It was obvious that what they needed most of all was a form of political argument capable of vindicating their liberty against the Church without involving them in ceding it to anyone else.' Skinner, *Foundations*, vol. 1, p. 18.

<sup>11)</sup> Ullmann, 'Development', p. 33.

<sup>12)</sup> Reeves, 'Marsiglio of Padua', p. 94.

<sup>13)</sup> C.W. Previt -Orton, 'Marsiglio of Padua: Doctrines', *EHR*, vol. 149 (Jan. 1923), p. 9.

<sup>14)</sup> Reeves, 'Marsiglio of Padua', pp. 95-6.

causation and depending heavily upon Aristotle. He thus tried to establish the central doctrines of a political philosophy in complete disregard of the supernatural order.<sup>15)</sup> Here the meaning of peace is explained in an entirely secular and external sense, namely, simply as smooth inter-relations. This had a direct bearing on Marsilius' treatment of law. Human law must be a coercive command which affects outward acts. Precisely because the essential basis of human law is not reason but coercive command, Marsilius defines the law of the state as the command of the whole body of citizens. Thus Marsilius introduces his concept of the whole people as the legislator. The state must rest, not on a higher law, but on the positive will of a human agency and Marsilius postulates that this must be the people.<sup>16)</sup> Alan Gewirth describes the same idea in a somewhat different way:

Marsilius' entire politics is pervaded by this natural necessity of desire, will, election, consent. (He does not distinguish among these terms.) It is this determinism which is the basis of his insistence upon the inevitable justice of the people's will, and which thus gives to his doctrine of popular sovereignty a dogmatic fixity unparalleled in antecedent political thought.<sup>17)</sup>

Building on Aristotle's politics, Marsilius claims:

The legislator, or the primary and proper efficient cause of the law, is the people or the whole body of citizens, or the weightier part thereof, through its election or will expressed by words in the general assembly of the citizens....<sup>18)</sup>

Marsilius envisaged a clear separation between the executive and the legislative powers. But the idea of the ruler as the executor of the will of the people means that he is 'lex animata' only in the sense that he activates the general principles of government authorised by the legislator. Marsilius articulated a theory of law, which departed from the dominant rationalism of classical and medieval legal theory and derived the coercive force of the law from the will of the legislator.<sup>19)</sup> In other words, the ruler's authority is ultimately derived from a grant of the community.

This is an elaboration of the 'lex regia' concept. The 'lex regia' of the *Digest* of Justinian was interpreted to mean that the Emperor's authority ultimately derived from a grant of the community. Although Marsilius took Aristotle rather than the Roman law as the

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<sup>15)</sup> Marsilius of Padua, *The Defender of Peace* (New York, 1956), trans. with an intro. by Alan Gewirth, vol. 1, p. 43.

<sup>16)</sup> Reeves, 'Marsiglio of Padua', pp. 96-7.

<sup>17)</sup> Marsilius of Padua, *The Defender of Peace*, intro. by Gewirth, 1:57.

<sup>18)</sup> *Ibid.*, 2:45 (*Defensor Pacis*, 1.12.3).

<sup>19)</sup> Paul E. Sigmund, Jr., 'The Influence of Marsilius of Padua on XVth-Century Conciliarism', *Journal of the History of Ideas*, vol. 23, no. 3 (Jul.-Sep., 1962), p. 393.

starting point for his political discussion, it is important to note the resemblance between Aristotelian formula and the Roman law. So with Wilks we can surmise that the basis of Marsilian theory of government was only an elaboration of the 'lex regia' idea.<sup>20)</sup>

However, as Julian Franklin states, the idea of the continuing supremacy of the people is a somewhat exceptional position among the civilians and the Aristotelians. The more standard view was that of Thomas Aquinas, for whom ultimate authority is somewhat shared by the king and the community. Franklin also claims that even among the more radical theorists like Marsilius, the central theme is on the jurisdictional conflict between state and church, rather than on the constitutional organization of the Empire or the territorial kingdoms. So the focal point of *Defensor Pacis* is to show that the ruler, as agent of the laity, may intervene to discipline the clergy.<sup>21)</sup>

The whole argument for the church/state controversy in discourse one is designed as a foundation on which to build the argument of discourse two concerning the position of the church. The second discourse refutes claims made on behalf of the earthly power of priests and, especially, the Pope, and proposes that the church should be governed by a general council of its members.<sup>22)</sup> Skinner takes Marsilius' main aim in the first discourse as that of analysing seeking to vindicate the form of popular sovereignty embodied in such Italian city republics as his native Padua. In the second discourse, Skinner says, Marsilius seeks to defend the liberty of the city republics against the encroachments of the church.<sup>23)</sup> It is a fundamental Marsilian argument that the Church, with its immunities and extra-territorial jurisdictions, constitutes the chief impediment to tranquility in the state.

For the Roman bishops have gradually seized one jurisdiction after another, especially when the imperial seat was vacant; so that now they finally say that they have total coercive temporal jurisdiction over the Roman ruler. Most recently and most obviously, the present bishop has written that he has supreme jurisdiction over the ruler of the Romans, both in the Italian and the German provinces, and also over all the lesser rulers, communities, groups, and individuals of the aforesaid provinces, of whatever dignity and condition they may be, and over all their fiefs and other temporalities.... This wrong opinion of certain Roman bishops, and also perhaps their perverted desire for rulership, which they assert is owed to them because of the plenitude of power given to them, as they say, by Christ — this is that singular cause which we have said produces the intranquility or discord of the city or state.<sup>24)</sup>

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<sup>20)</sup> Wilks, *The Problem of Sovereignty*, pp. 185-6; Julian H. Franklin, *Constitutionalism and Resistance in the Sixteenth Century* (New York, 1969), p. 12.

<sup>21)</sup> *Ibid.*, p. 13.

<sup>22)</sup> Marsiglio of Padua, *Writings on the Empire: Defensor minor and De translatione Imperii* (Cambridge, 1993), ed. by Cary J. Nederman, p. xi.

<sup>23)</sup> Skinner, *Foundations*, 1: 52-3.

<sup>24)</sup> Marsilius of Padua, *The Defender of Peace*, intro. by Gewirth, 2: 95 (*Defensor Pacis*, 1.19.11-2).

Marsilius proceeds to inquire if those powers of ecclesiastics are really divinely ordained and not theirs by usurpation. He decides that Christ claimed no temporal jurisdiction when He was in this world but subjected Himself to the civil power, and that the apostles followed Him in this. So he judges that the attempts by the Roman bishops and their accomplices to secure their hold over Northern Italy can be dismissed as nothing more than a series of usurpations and seizures of jurisdictions which properly belong exclusively to the secular authorities. The vital contribution Marsilius is thus able to make to the ideology of the city republics is to vindicate their total 'de iure' independence from the church, and so to stigmatise the Papacy's efforts to dominate and control their affairs as an unjust despotism.<sup>25)</sup>

However, Marsilius was not totally content with rejecting ecclesiastical interference in temporal sphere; he went on to subordinate the church to the state in all matters. All clerical immunities must be eliminated, since they destroy the unity of the state through an unordered plurality of government. His position was not that of one protesting against the encroachments of the church on the sphere of the state while admitting the church as a 'perfect society', autonomous in spiritual affairs. On the contrary, his position was 'erastian': here on earth the church can claim no rights, no property, no jurisdiction save those which the state sees fit to lend it. Arising from a reconsideration of Aristotelian doctrines, *Defensor Pacis* ended as a prophetic forerunner of the Protestant 'erastianism' of the sixteenth century.<sup>26)</sup>

If the final goal of *Defensor Pacis* is to subordinate the church to the state, how do we explain a seeming discrepancy between the first and second discourses? Discourse one seems to make it plain that Marsilius can only conceive of the unity of the state in terms of a republic in which the whole people can be the legislator. But in discourse two, the ruler so frequently mentioned in opposition to the Pope is the Emperor. Did Marsilius swing from support for republicanism in discourse one towards absolutism in discourse two? Harry S. Stout asks the same question:

Where the first Discourse focused on checking the ruler's authority and defining the efficient cause of his authority, the second Discourse emphasized the absolute power of the ruler over all other parts of the state.<sup>27)</sup>

Marjorie Reeves sees the two discourses not out of harmony with each other. Marsilius believes that the general council, to which he gives universal legislative powers in religious matters, rests on the popular authority of all the separate human legislators. Because it

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<sup>25)</sup> Skinner, *Foundations*, 1:21-2.

<sup>26)</sup> A.G. Dickens, *The English Reformation* ((New York, 1964), p. 84.

<sup>27)</sup> Harry S. Stout, 'Marsilius of Padua and the Henrician Reformation', *Church History*, 43 (1974), p. 314.

derives from all the peoples, the general council becomes the faithful human legislator with universal coercive powers.<sup>28)</sup> Is this a kind of secularisation of the general council? By considering the state primarily in terms of political functions, *Defensor Pacis* shifted theories of church and state away from a Gelasian dualism to a monistic theory of the state in which the government was the supreme authority. Ideally in a Christian state, the 'universitas civium' would correspond to the 'universitas fidelium'. In this state, the authority in the church would be identical with the authority in the state.<sup>29)</sup> If this is the case, there is no such a thing as a secularisation of the general council in the Marsilian system which is close to a kind of monistic system.

From another dimension, it may be possible to say that Marsilius' political theory could be viewed, in part, as a plea to the church to get on with the business it was called to do.<sup>30)</sup> This, as well as other Marsilian claims, seems to prefigure the later Lutheran claims. The dismissal of the legal and jurisdictional powers of the church were taken over with equal enthusiasm in the course of the sixteenth century by the legist supporters of absolutism and by the Lutheran exponents of the theory that the true church consists of nothing more than a 'congregatio fidelium'.<sup>31)</sup> As said above, Marsilius depicted a single society in which all executive power was secular; a state but also a church. On the other hand, for the conciliarists, the spheres of secular and ecclesiastical jurisdiction must be treated as wholly distinct from each other.

One of those who developed the theory of conciliarism was Jean Gerson, French churchman and chancellor of the University of Paris. He contended that all political societies must by definition be perfect. There are two main classes of political society, one of which is normally called ecclesiastical, the other secular. A 'communitas perfecta' is thus defined as an independent, autonomous corporation, possessing the fullest authority to regulate its own affairs without external interference. The church's plenitude of power (*plenitudo potestatis*) extends no further than the wielding of this spiritual sword. The conciliarists try to place limit on the plenary powers claimed by ruling monarchs, whether of secular governments or of the church. They wanted to curb the jurisdictional power of the Papacy, i.e. Pope's prerogative in the secular sphere.<sup>32)</sup> Marsilius's defence of the supremacy of the council was well known to the conciliarists. Although the condemnation placed against Marsilius by the church and his claim for the supremacy of the laity in establishing church law made his doctrines suspect to the orthodox churchmen who

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<sup>28)</sup> Reeves, 'Marsiglio of Padua', p. 103.

<sup>29)</sup> Stout, 'Marsilius of Padua', p. 318.

<sup>30)</sup> *Ibid.*, p. 317.

<sup>31)</sup> Skinner, *Foundations*, 2:351.

<sup>32)</sup> When the term *plenitudo potestatis* made its first appearance in papal documents, it was used to describe the delegated power of papal legates rather than the power of the Pope himself. William D. McCready, 'Papal *Plenitudo Potestatis* and the Source of Temporal Authority in Late Medieval Papal Hierocratic Theory', *Speculum*, vol. 48, no. 4 (Oct. 1973), p. 654.

comprised the conciliar movement, some conciliar theorists used Marsilian arguments.<sup>33)</sup>

In Gerson's theory, developed in *De Unitate Ecclesiae* and *De Potestate Ecclesiae*, there is no monistic tendency as was the case for Marsilius'. In spite of this difference between Marsilius and Gerson, however, there exists a basic agreement in their insistence on community authority. The main point of *Defensor Pacis* was to show that the ruler, as agent of the laity, may intervene to discipline the clergy. At the same time Marsilius asserts that the ruler, as agent of the laity, should be elected and that the ruler may be deposed for tyranny. The republican view of Marsilius, based on his claim for people's sovereignty, leads to active resistance against tyranny in some cases. And Gerson claims that no ruler can be greater in power than the community over which he rules. He concludes that any ruler worthy of the name must always rule for the good of the republic and according to the law.<sup>34)</sup>

William of Ockham's idea is quite similar to Gerson's. He also maintains a clear distinction between the spiritual and temporal powers. The Pope and the Emperor must each be careful not to overstep their rights in interfering in the domains of the other. Thus Ockham's ideas on the relations of church and state becomes manifest if we regard the whole of society as forming two different institutions at different times.<sup>35)</sup> Ockham's ideas on church government heralded the conciliar movement. He protested against the tendency of certain Popes to arrogate to themselves the position and rights of universal temporal monarchs. The means which Ockham suggested for limiting papal power was the establishment of a general council. He regarded political power as deriving from God through the people, either immediately, in the event of the people directly choosing a sovereign, or mediately, if the people have agreed to some other way of transmitting political authority. Therefore if the monarch, for example, betrays his trust and abuses his authority, the community can assert its freedom by deposing him. There can be a resistance to tyranny that can be justified and is not to be accounted sedition.<sup>36)</sup> In short, Ockham opposed papal claims over the Empire, but at the same time his assertions of independence for secular government went hand-in-hand with a severely limited conception of the lay ruler's rights and functions.<sup>37)</sup>

Ockham's basic idea was soon reiterated in the Golden Bull which Charles IV promulgated in 1356 as a new constitution for the Empire. The influence of the Golden Bull

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<sup>33)</sup> Sigmund, Jr., 'The Influence of Marsilius of Padua', vol. 23, no. 3, pp. 392-3.

<sup>34)</sup> Skinner, *Foundations*, 2:115-7.

<sup>35)</sup> James Sullivan, 'Marsiglio of Padua and William of Ockham', *American Historical Review*, vol. 2, no. 3 (April, 1897), pp. 422-3.

<sup>36)</sup> Frederick Copleston, *A History of Philosophy*, vol. 3, part 1, pp. 129-32. Even so, Ockham advocated a more moderate position towards the Pope than Marsilius did. In fact, after Holy Roman Emperor Ludwig IV's return to Germany from Italy in 1329 Ockham was more popular at the court than Marsilius. Marsilius' intransigence made him a liability in the context of delicate diplomacy with the papal authority. Marsiglio of Padua, *Writings on the Empire*, p. xvi.

<sup>37)</sup> Arthur Stephen McGrade, *The Political Thought of William of Ockham* (Cambridge, 1974), Cambridge Studies in Medieval Life and Thought, third series vol. 7, pp. 209-10.

in the Reformation politics of Germany is clearly seen. For instance, a Hessian memorandum, which came out around 1530, specifically cites the provisions of the Golden Bull to support its arguments about the relational function of the Emperor. The Emperor is an elected ruler who at his election agreed to specific conditions and policies; the territorial rulers, on the other hand, are hereditary and not bound by any election agreements.<sup>38)</sup> Thus the Empire is really more of an aristocracy than an absolute monarchy, the electors being co-rulers with the Emperor, with their responsibility including the duty to correct and/or depose him under certain circumstances.<sup>39)</sup>

One potentially subversive opinion which a considerable number of civil lawyers endorsed was the claim that the concept of 'merum Imperium', perhaps the key concept in Roman public law, ought to be interpreted in a constitutional sense. The term 'merum Imperium' was used in Justinian's Code to describe the highest forms of public power, in particular the power to command armies and to make laws.<sup>40)</sup> The Justinian's Code appeared to assign this form of authority to the Emperor alone, but a number of commentators argued that the same range of jurisdiction, including the right of the sword, could also be exercised by inferior magistrates.

## **2. The Lutheran Theory of Active Resistance and the *Magdeburg Bekenntnis***

The discussion over the influence of the Golden Bull in the German Reformation politics based upon the role of the electors, could not be used to justify resistance by authorities who did not belong to the electoral college under the terms of the Golden Bull. For example, since their constitutional position was quite different from that of the territorial states, the imperial cities took a much different course in the German Reformation politics.<sup>41)</sup> The German imperial cities in contrast to the territorial princes were sustained by the unity of the Empire and the belief in a strong 'imperium'. They were directly responsible to the Emperor and their economic and political interests dictated a close allegiance to him.<sup>42)</sup> Only by calling to mind this special place taken by the old imperial cities in Germany's heart, and the imperial patriotism of its citizens, is it possible to understand why, at the decisive moment, cities like Nuremberg were firmer than either Saxony or Luther himself in refraining from any kind of active alliance policy and in maintaining fidelity to the

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<sup>38)</sup> Hans J. Hillerbrand, *Landgrave Philipp of Hesse* (St. Louis, 1967), p. 27.

<sup>39)</sup> Cynthia Grant Shoenberger, 'The Development of the Lutheran Theory of Resistance: 1523-1530', *Sixteenth Century Journal*, vol. 8, no. 1 (April, 1977), p. 67.

<sup>40)</sup> Myron P. Gilmore, *Argument from Roman Law in Political Thought, 1200-1600* (Cambridge, Mass., 1941), p. 21.

<sup>41)</sup> Shoenberger, 'The Development of the Lutheran Theory of Resistance', pp. 67-8.

<sup>42)</sup> *Ibid.*, p. 68. The imperial registers drawn up at the Diet of Worms in 1521 list a total of eighty-five cities under the title of 'Free and Imperial cities' (Frei- und Reichsstätt). At that time some sixty-five of these cities could be considered directly subject to the Empire. Bernd Moeller, *Imperial Cities and the Reformation* (Philadelphia: 1972), p. 41.

traditional forms of Emperor and Empire.<sup>43)</sup>

When cities like Strasbourg entered into the alliance discussions, some new theory was clearly required to justify resistance on their part. Such a theory emerged from the notion of the inferior magistrates. They could not resort to the German constitution as was the case for the territorial states, although from the Lutheran point of view cities had a constitutional right for political action against the Emperor. In fact, while attempting to formulate a theory of resistance by inferior authorities partly as a reaction to the radicalism of the German peasants, Lutherans also appealed to the German constitution, which according to them allowed political action against the Emperor by the 'estates' —the electors, princes and cities —but which forbade rebellion by ordinary subjects.<sup>44)</sup> Electors and princes were responsible for the imperial constitution and therefore authorised to defend it, if necessary by offering armed resistance to the Emperor. And for the leaders of these cities such as Martin Bucer of Strasbourg, there was a reason why he had to develop the notion of inferior magistrates. Bucer in his *Explication* of St. Matthew's Gospel repudiated any suggestion that even a private person may lawfully repel with force a prince or magistrate. This led him, both in his *Explication* and in his later *Commentaries on the Book of Judges*, to mount a direct attack on the private law theory of resistance. In other words, Bucer tried carefully to avoid any confusion between the office of private individuals and the office of public powers. Therefore, it is never lawful for private persons to repel any force with force. Only those who have been granted the sword by the ordination of God himself can resort to force.<sup>45)</sup> Thus a major problem facing the reformers in Germany, as well as other parts of Europe, was to restrict armed defence against the Emperor to inferior authorities, removing it from private persons who had a natural right to defend themselves against injury.

Cargill Thompson divides Luther's development of resistance theory into three stages. The first division is the period before 1530, when Luther opposed resistance to the Emperor under all circumstances. Secondly, there is a period after the declaration of Torgau in October 1530, when he conceded with extreme reluctance that there might be a valid legal right of resistance, although as a theologian he refused to pronounce on the question which he insisted was a matter for the lawyers to decide. Finally, there is a period at the end of his life, in the late 1530s, when he reversed many of his earlier views and emerged as an outspoken advocate of resistance to the Emperor on theological as well as on legal grounds.<sup>46)</sup>

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<sup>43)</sup> Hans Baron, 'Religion and Politics in the German Imperial Cities during the Reformation', *EHR*, 52 (1937), 405.

<sup>44)</sup> On the theory of inferior magistrates, see Richard Roy Benert, 'Inferior Magistrates in Sixteenth-Century Political and Legal Thought', Ph.D. dissertation, University of Minnesota, 1967.

<sup>45)</sup> Skinner, *Foundations*, p. 200-1.

<sup>46)</sup> W.D.J. Cargill Thompson, 'Luther and the Right of Resistance to the Emperor', *Church Society and Politics* (Oxford, 1975), ed. Derek Baker, Studies in Church History vol. 12, p. 162.

Luther's original position is expressed in the letter he wrote to Frederick the Wise on March 5, 1522 when he decided to leave Wartburg where under the imperial ban he was concealed by Frederick and returned to Wittenberg without the elector's permission. Here Luther expresses his basic idea that he is ready to suffer arrest and the elector should not intervene to protect him. The princes of the Empire have no right to resist the Emperor, however just their cause. In relation to the Emperor the princes are mere subjects. The next year, Luther published the treatise *Temporal Authority: To What Extent It Should Be Obeyed*. Luther here separated church and state, and defined the sphere of each. Luther admits that Christians have both the right and the duty to hold office under the state, even to the extent of serving as executioner if the need arises. On the other hand, Luther forbids Christians to bear the temporal sword:

You ask whether a Christian too may bear the temporal sword and punish the wicked, since Christ's words, 'Do not resist evil', are so clear and definite that the sophists have had to make of them a 'counsel'. Answer: You have now heard two propositions. One is that the sword can have no place among Christians; therefore, you cannot bear it among Christians or hold it over them, for they do not need it....<sup>47)</sup>

Luther's position in 1523 is that as a Christian and fulfilling his religious duties, he should not bear the sword. His strong moral conviction forbids anyone from defending the gospel by force, even though Luther later broadens magisterial responsibility and appreciated its constructive role in religious life.<sup>48)</sup> Luther's position is that the government, whether good or bad, has absolute authority over secular matters.<sup>49)</sup>

After showing the limits of temporal authority, Luther in the treatise *On Temporal Authority* turns to another question of how a prince should use this authority. This argument, Luther claims, is for the sake of those very few who would also like very much to be Christian princes and lords, and who desire to enter into the life in heaven.<sup>50)</sup> Here Luther claims categorically that for princes to resist their superiors is always wrong, even

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<sup>47)</sup> Martin Luther, *Temporal Authority: To What Extent It Should Be Obeyed* in *Luther's Works* (Philadelphia, 1962), ed. Walther I. Brandt, trans. J.J. Schindel, vol. 45, p. 95.

<sup>48)</sup> However, Luther carefully qualified government participation in the affairs of the church as the duty of a 'Christian brother' and not the expression of a right intrinsic to the magisterial office itself. Luther thus maintained, like Reformed Protestants, a basic separation of church and state within the unity of religion and society. Steven E. Ozment, *The Reformation in the Cities* (New Haven & London, 1975), p. 137.

<sup>49)</sup> Irmgard Hösz describes Luther's thought as follows: 'Luther hat immer wieder nachdrücklich betont, dass die Gehorsamspflicht des Untertanen auch gegenüber einer ungerechten und bösen Obrigkeit gelte solange sie – und hier liegt die Grenze – über leibliche Dinge gebietet. So heisst es zum Beispiel in einer Predigt aus dem Jahre 1524: "Gleichviel, die Obrigkeit sei gut oder böse, so sollen wir ihr unterworfen sein, wenn anders sie über leibliche Dinge gebietet".' Irmgard Hösz, 'Zur Genesis der Widerstandslehre Bezas', *Archiv für Reformationsgeschichte*, 54 (1963), 205. (hereafter abbreviated *ARG*)

<sup>50)</sup> Luther, *Temporal Authority* in *Luther's Works*, 45:118.

though he applies a different criterion if the princes' opponent is their equal or inferior to them or a foreign ruler:

To act here as a Christian, I say, 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].<sup>51)</sup>

Although the threat of direct intervention by the imperial authorities gradually receded and it remained a relatively remote contingency until after the diet of Speyer of 1529, the Protestants had to face the continued possibility of an attack by the Catholic princes and this danger became increasingly acute after 1525. In consequence, during the second half of the 1520s the question of the right to resistance to the Emperor, although it could not be ignored completely, tended to be subordinated to the question of whether, and under what conditions, it was lawful for the Protestant estates to engage in a defensive alliance against the Catholic princes. Insofar as Luther discussed the question of resistance to the Emperor between 1525 and 1529 it was largely in the context of the debate over the formation of a Protestant League. Luther's position on this issue was to deny categorically the lawfulness of establishing such a league directed against the Emperor, even though he was prepared to allow that a general defensive league might be permissible, provided that no attempt was made to specify its objectives.<sup>52)</sup>

From 1528 relations between the Catholic and Protestant estates became increasingly strained, at first largely because of the aggressive policies of Philip of Hesse, later because of the renewed threat of imperial intervention after the Diet of Speyer of 1529. One such example of Philip's aggressiveness can be seen in the so-called 'Pack affair'. Early in 1528 the Saxon vice-Chancellor Otto von Pack confided to Philip the existence of a secret Catholic treaty concluded at Breslau in May 1527 for the purpose of waging war against the adherents of the new faith, primarily Saxony.<sup>53)</sup> Philip welcomed Pack's revelation because it was in line with his constant theory that one must always anticipate danger from the opposition. At once Philip undertook enormous political activities: preparing for war, gathering the elector of Saxony to his side,, making alliance with France, with

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<sup>51)</sup> Ibid. (*Luther's Works*, 45:125)

<sup>52)</sup> Thompson, 'Luther and the Right of Resistance', pp. 171-2.

<sup>53)</sup> Hillerbrand, *Landgrave Philipp of Hesse*, p.21.

Frederick's rival Zapolya, and with Denmark.<sup>54)</sup> But in the last moment it turned out that the 'Breslau treaty' was a forgery and existed only in the agile mind of Pack.

This political manoeuvre of the Hessian Landgrave endangered the progress of the Reformation which had received an impetus from the first Diet of Speyer in 1526, which ended in a compromise so far as the cause of the Reformation was concerned.<sup>55)</sup> In his first brief on the Pack affair on March 28, 1528, Luther rejected the idea of a surprise attack, urging the elector to abandon the plan of striking first, and suggested that the elector seek to untangle the situation through negotiations.<sup>56)</sup> Even though Luther had no hesitation in recommending that the elector might defend himself with a good conscience if he were attacked by the Catholic princes, since as an elector of the Empire he has no overlord except only his Imperial Majesty himself. But Luther warned the elector in the strongest terms that he must on no account take part in a preventive war against the Catholics.<sup>57)</sup>

So as a result of the Pack Affair, the adherents of the new faith were less favourably placed at the second Imperial Diet of Speyer (15 March – 22 April 1529) than at the Diet of 1526. This time the Catholics, even though the struggles against the French and against the Turks were still continuing, took a rigorous line. On the other hand, the Protestants held firmly to the decisions of 1526 and on April 19 1529 lodged their celebrated 'Protestation'.<sup>58)</sup> The decision of the Catholics to annul the recess of the 1526 Diet of Speyer, coupled with the announcement that Charles V was planning to return to Germany before the next Diet, provoked a new crisis for the Protestants and it made the question of a Protestant league a matter of urgency. Philip of Hesse was anxious to establish as comprehensive an alliance as possible against the Hapsburg. Thus came a secret treaty of mutual defence in Speyer on 22 April 1529 to which Saxony, Hesse, Strasbourg and Ulm agreed.<sup>59)</sup> While Luther approved of the Protestation, he strongly disapproved of any alliance in its defence. Such a league would only beget a counter-league and might easily lead to a conflict which they would otherwise rather avoid.<sup>60)</sup>

Philip, on the other hand, outlined the theory of the Imperial constitution in the two letters of December 1529 addressed to the elector of Saxony and the Margrave of Brandenburg-Ansbach. Philip began his letter to the Margrave by conceding that the powers that be are ordained of God, but then modified this assumption. He first of all held that St. Paul meant to include all territorial sovereigns, so that his doctrine must apply to all jurisdictional powers within a given kingdom or Empire.<sup>61)</sup> In other words, Philip tried to circumvent the possible application of Romans 13 to the situation at hand by pointing

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<sup>54)</sup> Joseph Lortz, *The Reformation in Germany* (London, 1968), trans. Ronald Walls, vol. 2, p. 50.

<sup>55)</sup> Franz Lau & Ernst Bizer, *A History of the Reformation in Germany to 1555* (London, 1969), p. 77.

<sup>56)</sup> *Luther's Works*, ed. Trans. Gottfried G Krodel, 49: 191note.

<sup>57)</sup> Thompson, 'Luther and the Right of Resistance to the Emperor', p. 174.

<sup>58)</sup> Lau and Bizer, *A History of the Reformation in Germany to 1555*, pp. 77-8.

<sup>59)</sup> *Ibid.*, pp. 78-9.

<sup>60)</sup> James Mackinnon, *Luther and the Reformation* (London, 1925-30) 4 vols. 3:303-4.

<sup>61)</sup> Skinner, *Foundations*, 2:195-6.

out that the territorial sovereigns were the governmental authorities of which Paul spoke in this chapter, and that the Emperor was only 'primus inter pares' on the basis of a treaty with the sovereigns.<sup>62)</sup> Luther opined that the Emperor was the lord and governmental superior of these sovereigns. Until October 1530, Luther's position remained unchanged from his earlier one from 1522: he remained convinced that resistance to the lawful Emperor was absolutely prohibited by the Scripture and he refused to allow any exceptions to this rule.

Wittenberg theologian Johannes Bugenhagen had tentatively suggested, in a letter which he sent to the elector of Saxony in September 1529, that the elector might lawfully defend his people if they were unjustly attacked by the Emperor. The Emperor's authority, Bugenhagen declared, was legitimate only within a limited sphere. If he attempted to act in matters which rightfully fell within God's sphere instead, i.e., in matters of religion, the Emperor was to be not only disobeyed but also actively resisted by the princes. Bugenhagen's notion, however, was quite different from late medieval doctrines that the German electors shared with the Emperor a responsibility for the Empire, because he derived the princes' continuing responsibility not from any unique constitutional position but from their divine vocation.<sup>63)</sup>

The significance of Bugenhagen's opinion lies in the fact that Luther had begun to wobble in a similar direction as early as August 1530 when he wrote to Gregory Brück that should the Emperor act contrary to God's law and to the Imperial law, it is the theologians' task to differentiate between those actions undertaken by the Emperor himself and those undertaken by tyrants usurping the Emperor's authority.<sup>64)</sup> The 1530 Diet of Augsburg changed the political situation of Germany quite dramatically. Having started with overtures for a peaceful settlement, it ended with every possible pressure being brought to bear upon the Lutherans to compromise their stand in religion. Johann Eck, a German defender of Catholicism, freely predicted war, if the Protestants rejected the 'Confutatio Pontifica' in which many of the abuses to which the Protestants so strenuously objected were defended as good.<sup>65)</sup>

The seriousness of the threat of Imperial intervention removed any lingering doubts from the Saxon elector on the question of resistance to the Emperor, and he detached himself from Luther's and Melancthon's demand for an attitude of patient obedience, and took over from Landgrave Philip of Hesse the belief in the duty of princes to protect their subjects by an alliance of faith and by arms, against compulsion by violence in matters of religion.<sup>66)</sup> It was not only the Saxon elector who wavered, but Georg Spalatin also changed his conservative stance and claimed the right of resistance on the basis of conscience.

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<sup>62)</sup> *Luther's Works*, 49:254.

<sup>63)</sup> Schoenberger, 'The Development of the Lutheran Theory of Resistance', pp. 65-6.

<sup>64)</sup> *Luther's Works*, 49:394-5, 397-8.

<sup>65)</sup> Clyde Leonard Manschreck, *Melancthon: The Quiet Reformer* (New York, 1958), pp. 199-200.

<sup>66)</sup> Baron, 'Religion and Politics in the German Imperial Cities', p. 419.

Spalatin did not use the legal argument.<sup>67)</sup> In spite of Landgrave's efforts for the unity of all Protestant fronts, Luther, on the other hand, adamantly insisted that the unity should not be sought at the expense of theological purity in the Lutheran line, especially on the issue of the sacrament. This, along with the presence of such cities as Nuremberg and Ansbach which refused to take part in any alliance against the Emperor, was an obvious negative factor for the establishment of the Protestant league.

When the elector summoned Luther together with Melanchthon and Justus Jonas to Torgau, they were presented with a paper drawn up by Gregory Brück and several Saxon jurists, in which a case was made out for resistance on the basis of arguments drawn from Roman and Canon law. It was the private law theory. If the Emperor were to attack the Protestants for the sake of religion, he would be guilty of 'notoria iniuria', since he could be acting in a matter in which he had no powers of jurisdiction. Luther also received a letter from the Landgrave in which he advanced a number of reasons why resistance might be considered lawful. In particular, Philip argued that the constitutional position of the German princes was quite different from that of the magistrates of the Roman Empire in the time of the apostles. The imperial electors were not appointed officials of the Emperor but were hereditary rulers who possessed rights that the Emperor, who was himself not hereditary but elected, was bound to observe.<sup>68)</sup> Thus at Torgau Luther and his colleagues found themselves confronted with two distinct theories allowing resistance to the Emperor. The Torgau conference was a meeting primarily between the Wittenberg theologians, led by Luther, and the Electoral Saxon councillors, led by Brück.

At the end of the Torgau meeting, without formally retracting their belief in the principle that resistance to superiors was forbidden by the Scripture, Luther and other Wittenberg theologians were persuaded to withdraw their opposition to the arguments for lawful resistance. Luther wrote in the name of his colleagues supporting armed resistance to the Emperor, provided that the circumstances were as the legal experts had analysed them:

A piece of paper has been presented to us from which we see what the Doctors of Law are concluding regarding the question: In what situations may one resist the governing authority? If, then, [this issue] has been settled by these Doctors of Law or experts in this way, and [since] we certainly are in those situations in which (as [the legal experts] demonstrate) one may resist the governing authority, and [since] we have always taught that as long as the gospel does not go contrary to secular law one is to let secular law be effective, valid, and competent [in those matters which it is able to handle], we therefore are unable to oppose [anyone with arguments taken from] Scripture, if in this instance it is necessary to fight back, even if the emperor himself [attacks us], or whoever else

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<sup>67)</sup> Irmgard Hös, 'Georg Spalatin auf dem Reichstag zu Augsburg 1530 und seine Stellungnahme zur Frage der Widerstandsrechts', *ARG*, 44 (1953), 83.

<sup>68)</sup> Thompson, 'Luther and the Right of Resistance to the Emperor', pp. 183-4.

may do so in his name.... That until now we have taught absolutely not to resist the governing authority was due to the fact that we did not know that the governing authority's law itself grants [the right of armed resistance]; we have, of course, always diligently taught that [this law] must be obeyed.<sup>69)</sup>

However, we should not exaggerate the nature of the change in the Luther's view on the theory of non-resistance. Wittenberg theologians must have been alarmed by the radical implications of Brück's willingness to make use of private-law arguments. By resting his case on the proposition that a ruler who exceeds the bounds of his office automatically reduces himself to the status of a felonious private citizen, Brück had in effect sought to vindicate the lawfulness of political resistance on the grounds that it is always legitimate for an individual to repel unjust force.<sup>70)</sup> At Torgau, Luther did not offer a detailed description of the private-law theory but simply conceded that there is a possibility that positive law might permit resistance in certain circumstances, in which case he declared that he would not oppose it on scriptural grounds. The development of the theory of resistance by the Lutherans throughout the rest of the 1530s proved that the Torgau conference was not just a temporary aberration of Lutheran thought in a time of crisis. The conclusion Lutherans reached was that since the imperial law permitted the Emperor to be resisted in case of notorious injustice, they could not oppose resistance even though with much reluctance.<sup>71)</sup>

From the mid-1530s, however, there is a marked change in the attitude of the Wittenberg theologians. The first clear signs of this change are to be found in an official opinion (Gutachten), dated December 6, 1536 signed by Luther, Jonas, Bugenhagen, Crucigar, Melancthon and Amsdorf, which represents a radical break not only with their earlier views but also with the position they had taken up at Torgau. They now have no difficulty in concluding that it was the duty of every prince to defend his Christian subjects and true religion not only against attacks by princes of equal rank or by private persons but also against the Emperor. How far the ideas of Luther and his colleagues had changed since 1530 is shown by the fact that they now unhesitatingly accepted the legal argument, which the Saxon jurists had put forward at Torgau, but which at that time theologians had

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<sup>69)</sup> *Luther's Works*, 49:431-3.

<sup>70)</sup> Skinner, *Foundations*, 2:200

<sup>71)</sup> Luther in his letter of February 15, 1531 to Lazarus Spengler, Nuremberg's chancellor, clarified this view: 'And so the matter rested on this syllogism: Whatever the Emperor or the Imperial Law has ordained has to be observed; the law, however, ordains resisting the Emperor in such a case; therefore one has to resist [the Emperor], etc.' *Luther's Works*, 50: 11-2. Richard Klann interprets that Luther always taught the major premise that secular authority is to be obeyed in political matters, but never the minor premise, because he does not know whether it is true. Consequently the theologians referred the matter back to the jurists for further evidence, which they so far had failed to produce. Klann states, 'Luther is convinced that such a constitutional provision must be accepted, but how it is to be applied is a question which is beyond his competence as a theologian.' H. Richard Klann, 'Luther on War and Revolution, *Concordia Theological Monthly*, 25 (1954), pp. 360-1.

regarded as unproven.<sup>72)</sup> In his letter of February 8, 1539 to Johann Ludicke, the Protestant preacher at Cottbus, Luther expands on his theory of resistance.<sup>73)</sup> First of all, Luther develops the concept of the Emperor as ‘miles papae’ (a mere hireling of the Pope). If the Emperor were to attack the Protestants, he would not be acting on his own account, but simply as the agent of the Pope, and therefore might lawfully be resisted. Secondly, Luther in his letter refers to Old Testament precedents for the support of the resistance theory. Considering the place of the Old Testament in Luther’s thought, drawing examples rather freely for this important issue would indicate the fact that he emerged as an outspoken champion of resistance to the Emperor. Finally, Luther now adopts the constitutional argument that Philip of Hesse had put forward in 1529 and 1530, but which at that time he had declined to accept, that the Empire was not an absolute monarchy and that the princes of Germany possessed the right to resist the Emperor if he failed to observe the laws and customs of the Empire.<sup>74)</sup> The Hessians claimed that the Emperor could be resisted on constitutional grounds: the constitution of the Holy Roman Empire had not made the Emperor an absolute monarchy. His powers were limited by the seven prince-electors and by the lesser princes and cities who are represented in the Reichstag.<sup>75)</sup>

As a matter of fact, the main argument in favour of forcible resistance which the Lutherans chose to revive was the constitutional theory allowing for opposition by inferior (lesser) magistrates. The constitutional theory of resistance originally stated by the Hessian jurists was restated by Martin Bucer, Andreas Osiander and other Lutheran writers soon after. Osiander, for example, argued that the powers described by St. Paul as ordained of God must be taken to include not just superior rulers but inferior magistrates as well.<sup>76)</sup> Although much of the development of this theory was a contribution by Bucer, who presented it first in his *Explications of the Four Gospels*, and later in his *Commentaries on the Book of Judges*, the most celebrated example of the use of the constitutional theory can be found in the *Magdeburg Bekenntnis*, which will be discussed later. On the other hand, Luther went beyond his February 1539 discussion of active resistance. In the Zirkulardisputation of May 9, 1539 on Matthew 19:21, Luther used the concept of the Emperor as ‘miles papae’ with a new significance since it was coupled with Luther’s eschatological conception of the Pope as the beast of the Book of Daniel. By combining the concept of ‘miles papae’ with his doctrine of the Pope as the monster of the Book of Daniel, Luther turned what had originally been a purely legalistic argument into an apocalyptic call to arms. Luther reiterated his belief that the Pope was not a tyrant in

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<sup>72)</sup> Thompson, ‘Luther and the Right to Resistance’, 190-2; H. Scheible, *Das Widerstandsrecht als Problem der deutschen Protestanten, 1523-46* (Gütersloh, 1969), pp.89-92. See also *Corpus Reformatorum* 3, no. 1458, cols. 126-31.

<sup>73)</sup> *D. Martin Luthers Werke* (Weimar, 1883- ), Br. 8, no. 3297. (hereafter abbreviated WA)

<sup>74)</sup> Thompson, ‘Luther and the Right of Resistance’, 194-5.

<sup>75)</sup> Hans J. Hillerbrand, ed., *The Oxford Encyclopedia of the Reformation* (Oxford, 1996), vol. 3, p. 423-4.

<sup>76)</sup> Skinner, *Foundations*, pp. 204-7.

the conventional sense of the term, but a monster, a minister of the devil who is possessed by the devil. So equally are those who seek to defend the Pope, including the Emperor. It was out of a fusion of two sets of ideas that there evolved the standard Protestant theory of resistance of the mid-sixteenth century, namely, the doctrine that the inferior magistrates had not only the right but the duty to resist the supreme magistrate in defence of true religion. These two arguments are: (1) The Christian magistrate has a duty to uphold true religion, and (2) the constitutional argument that the princes of the Empire are not mere private persons.<sup>77)</sup> And it was again the *Magdeburg Bekenntnis* in which this idea of resistance was most clearly delineated.

Another example of Luther's radical view is seen in his attack against Duke Henry II of Braunschweig/Wolfenbüttel in his 1541 work entitled *Against Hanswurst (Wider Hans Worst)*. When the princes of the Smalcald League arranged to meet in Braunschweig in the spring of 1538, Henry refused to grant Philip of Hesse and Elector John Frederick of Saxony safe conduct to ride through his territory. Nevertheless, the Protestant party went through, and they were fired upon. Philip of Hesse retaliated by seizing one of Duke Henry II's secretaries and confiscating letters containing plans of action against the Smalcald League. He published these plans to expose Henry as a traitor to the Protestant cause. Henry replied to it, seeing a chance to avenge himself publicly. The elector and Luther joined the dispute. When Henry referred to Elector John Frederick as 'one whom Martin Luther has called his dear and reverent hanswurst', Luther applied the term 'Hanswurst' not to the elector but to Henry, and thereby produced one of his most violent attacks upon the opponents of his cause.<sup>78)</sup> Luther states with regard to obedience in this work:

For God has prohibited the emperor and, indeed, all angels and creatures from teaching any word other than his in his heavenly kingdom, that is, in the church, as Paul declares like a thunderclap in Galatians 1 [:8], 'If an angel from heaven should preach to you a gospel contrary to that which we preached to you, let him be accursed.' Now we have related above several of the countless pieces of new and different doctrine (that is, as St. Paul calls it here, anathema, 'cursing, damnation, execration') of which your new papal whore and devil's church is full. Therefore neither the emperor nor any other creature can compel us to such accursed obedience. Indeed, he ought, with us, to keep himself from it, if he does not want to be cursed and dashed to the depths of hell by St. Paul's thunderbolt.<sup>79)</sup>

The main obstacle the council of the city of Magdeburg faced in carrying out the reform

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<sup>77)</sup> Thompson, 'Luther and the Right of Resistance', pp. 195-200; WA 39, 2, pp. 39-44.

<sup>78)</sup> *Luther's Works*, 41:181-2. 'Hanswurst' refers to a German carnival figure. He was a stock character in comedies of Luther's time.

<sup>79)</sup> *Ibid.*, p. 226.

was that the Imperial Diet (Reichstag) decision at Worms in 1521 clearly forbade religious change. A break from Catholic Archbishop Albert and the old Church meant a significant politico-economic setback for the city. Under the circumstances, the initiative to force change upon Magdeburg was led by evangelical preachers, while the city government decided to settle for a policy of delay. There was no such a thing as 'Ratsreformation', a reform movement spearheaded by the city government, in Magdeburg.<sup>80)</sup> Magdeburg's situation was similar to the one Nuremberg faced in the sense that both possessed far-flung commercial networks that would suffer if relations with the Empire ceased. Magdeburgers desired to be loyal both to Lutheran ideas and to the Empire. But their dualistic position became untenable and they were forced to choose. Unlike Nuremberg, Magdeburg chose the Protestant alliance at the sacrifice of her commercial network. However, the defeat of the Schmalkaldic League of Protestant Princes under Elector of Saxony at Mühlberg on April 24, 1547 broke the military backing of the League and put Charles V in his most favourable position since the start of the religious wars. It was a smashing victory for the Catholics.

At the Augsburg Interim of May 1548, the general principle was to secure agreement in essential matters and let the government dictate in nonessentials ('adiaphora'), a decidedly Roman Catholic tone. The Wittenberg theologians, led by Melanchthon, objected particularly to the doctrine of justification given in the Interim. They questioned the statement that 'love is righteousness' and that faith is 'only a preparation' for justification. In order to make the Augsburg Interim less disagreeable, at an assembly of the estates at Torgau in October 1548 the theologians were presented with a draft document which summarised the principal points of Evangelical doctrine and made a list of all the concessions which might possibly be granted. This draft was then worked over at Alt-Zella (present-day Nossen, 80 km southeast of Leipzig) in November and it became the outline of the Leipzig Interim (the Great Interim) to be adopted by the estates of the Electorate of Saxony in December.<sup>81)</sup>

Melanchthon accepted the 'adiaphora' contained in the Leipzig Interim. On the other hand, the Magdeburg ministers were furious with Melanchthon and the majority of Protestant 'traitors' who adopted the policy of accepting the 'adiaphora'. Melanchthon regarded nonessentials such as ceremonies as if they were static. Thus he could keep the teaching of justification by faith but allowed many papal rites, while the Magdeburgers such as Matthias Flacius thought ceremonies were directly and dynamically connected with doctrines. In other words, whereas Melanchthon's distinction between the 'regimen spirituale' and the 'regimen corporale' resulted in his concluding that outward ceremonies

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<sup>80)</sup> The best description of the reform movement in Magdeburg leading up to the publication of *Magdeburg Bekenntnis* is Dwaine Charles Brandt, "The City of Magdeburg Before and After the Reformation: A Study in the Process of Historical Change" (Ph.D. dissertation, University of Washington, 1975) p. 206.

<sup>81)</sup> Lau and Bizer, *A History of the Reformation in Germany to 1555*, p. 216.

belonged to the domain of the princes, the Magdeburgers insisted that they were an aspect of the Church's inner life and outside the competence of the secular power.<sup>82)</sup> Flacius concluded that the Interim forced by the adversaries could not be tolerated and that the Wittenbergers had been used by the 'Aithophels' (court politicians) to bring Christians into trouble. The Wittenbergers, on the other hand, resented the Magdeburgers' arrogance, dogmatism and a lack of tolerance to alternate views in assuming that they alone represented the Lutheran cause, and gave them the mocking label 'Gnesio (genuine)-Lutherans'. The Gnesio-Lutherans did not know the language of compromise, for they were totally committed to a mission: to maintain the light of the Gospel uncovered for them by Luther in as pure a form as humanly possible.<sup>83)</sup> This dispute could be understood in terms of geographical demarcation. The battle was staged by Luther's friends and students in the two political units of Upper Saxony — ducal Saxony and electoral Saxony —, and in the cities of Lower Saxony. And the battle was fought between disciples of Melanchthon, the so-called Philippists, with their centres at the theological faculties of Wittenberg and Leipzig, and the Gnesio-Lutherans, headquartered in Magdeburg and Jena.<sup>84)</sup>

In the Magdeburg publications there were no ambiguities. The most celebrated of these publications was the *Magdeburg Bekenntnis*, namely, *Bekenntnis Unterricht und Vermanung der Pfarrherrn und Prediger der Christlichen Kirchen zu Magdeburg* (*The Confession and Apology of the Pastors and Other Ministers of the Church at Magdeburg*) of 1550. This confession explicitly justifies armed resistance by lesser magistrates against higher authority, when the latter violates natural law or threatens to destroy evangelical doctrine. The primary source of the authors of the *Bekenntnis* is Luther and they hold the reformer in great reverence. In fact, the *Bekenntnis* identifies its sources as a public disputation of Luther, which Irmgard Hösz says was the 'Zirkulardisputation über das Recht des Widerstands gegen den Kaiser' of May 9, 1539, as well as 'Widerden Meuchler zu Dresden' and the 'Warnung an seine Lieben Deutschen'.<sup>85)</sup> To the minds of the Magdeburgers the issue at stake was religious rather than political, since the authors of the *Bekenntnis* claimed that a large portion of the blame for the circumstances facing true Christians in Magdeburg should be laid at the doorstep of the Leipzig Interim which gave them the false concept of 'adiaphora'.<sup>86)</sup>

The influence of the *Bekenntnis* was felt not only on the Continent but also in the British

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<sup>82)</sup> Manschreck, *Melanchthon*, p. 289; Oliver K. Olson, 'Theology of Revolution: Magdeburg, 1550-1551', *Sixteenth Century Journal*, vol. 3, no. 1 (April, 1972), p. 74.

<sup>83)</sup> Henry W. Reimann, 'Matthias Flacius Illyricus: A Biographical Sketch', *Concordia Theological Monthly*, 35 (1964), p. 73.

<sup>84)</sup> Robert Kolb, 'Dynamics of Party Conflict in the Saxon Late Reformation: Gnesio-Lutherans vs. Philippists', *The Journal of Modern History*, vol. 49, no. 3 (Sept., 1977), p. D1290.

<sup>85)</sup> Olson, 'Theology of Revolution', p. 72 (See also Hösz, 'Zur Genesis der Widerstandslehre Bezas', p. 212 note).

<sup>86)</sup> Johannes Herrmann, 'Armenibibel als "Schmähgemälde" im Schmalkaldischen Krieg', *Luther Jahrbuch*, 32 (1965), p. 72.

Isles. In a debate with Lethington before the Scottish Assembly in 1564, John Knox referred to the ministers of Magdeburg to buttress his case, ‘that to resist a tyrant, is not to resist God, nor yet his ordinance.’<sup>87)</sup> The Magdeburgers insisted on the powers of local governments to establish the true form of Christian religious worship and at the same time challenged the Emperor’s attempt to impose uniformity throughout the land. The *Magdeburg Bekenntnis* led to kindle another series of Protestant struggles against the Catholics, which resulted in the signing of the Peace of Augsburg (1555). With its policy of *cuius regio, eius religio*, the treaty provided Lutherans for the first time with official status within the Holy Roman Empire.

### 3. The Development of the Calvinist Theory of Active Resistance

Research on French Protestant resistance theory has gone through a remarkable change. The older view is that in the sixteenth century practice preceded theory in the development of French Protestant theory on the right of resistance. In this view, the turning point was the St. Bartholomew’s Day massacre of 1572. It was after this incident that the French Protestants began in earnest formally to justify their case and to write down their political philosophy.<sup>88)</sup> The three most famous Calvinist polemical works after this crucial date are Francis Hotman’s *Francogallia* (1573), Theodore Beza’s *Du Droit des Magistrats* (1574) and the anonymous *Vindiciae contra Tyrannos* (1579).<sup>89)</sup> Evidence modifying the older ‘trauma thesis’ has been presented by John T. McNeill and Robert Kingdon in their respective studies of the political ideas of Calvin and Beza. McNeill, for example, found the seeds of a fully developed theory of political resistance in Calvin’s writings. Kingdon demonstrates that Beza as early as 1554 held that duly constituted inferior magistrates had the authority to lead popular uprisings against established authority in the name of ‘true religion’. Its source is Beza’s *De Haereticis a civili Magistratu Puniendis*.<sup>90)</sup>

Calvin believes that God ordains, institutes, defends, preserves or, if he sees it necessary, overthrows those in power. This divinely given authority does Calvin even assert for the tyrannical rulers. He does this in comments on such crucial passages as 1 Timothy 2:2 and 1 Peter 2:18. Calvin also expresses the same idea of obedience in his *Institutes of the Christian Religion*:

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<sup>87)</sup> William Croft Dickinson, ed., *John Knox’s History of the Reformation in Scotland* (New York, 1950), vol. 2, pp. 129-30. See also Esther Hildebrandt, ‘The Magdeburg Bekenntnis as a possible link between German and English Resistance in the Sixteenth Century’, *ARG*, 71 (1980), pp. 227-53.

<sup>88)</sup> Robert D. Linder, ‘Pierre Viret and the Sixteenth-Century French Protestant Revolutionary Tradition’, *The Journal of Modern History*, vol. 38, no. 2 (June 1966), p. 127; John William Allen, *History of Political Thought in the Sixteenth Century* (London, 1928), pp. 307-8.

<sup>89)</sup> English titles of *Du Droit des Magistrats* and *Vindiciae contra Tyrannos* are respectively *The Right of Magistrates* and *The Defence of Liberty Against Tyrants*.

<sup>90)</sup> Linder, ‘Pierre Viret’, p. 128; John T. McNeill, ‘The Democratic Element in Calvin’s Thought’, *Church History*, 18 (1949), pp. 153-71; Robert M. Kingdon, ‘The First Expression of Theodore Beza’s Political Ideas’, *ARG*, 46 (1955), pp. 88-100.

We are not only subject to the authority of princes who perform their office toward us uprightly and faithfully as they ought, but also to the authority of all who, by whatever means, have got control of affairs, even though they perform not a whit of the prince's office.... In a very wicked man utterly unworthy of all honor, provided he has the public power in his hands, that noble and divine power resides which the Lord has by this Word given to the ministers of his justice and judgment. Accordingly, he should be held in the same reverence and esteem by his subjects, in so far as public obedience is concerned,...<sup>91)</sup>

Calvin also says the obedience which men owe their rulers is one that is rendered for God's sake.

The first duty of subjects toward their magistrates is to think most honorably of their office, which they recognize as a jurisdiction bestowed by God, and on that account to esteem and reverence them as ministers and representatives of God.<sup>92)</sup>

The fact that Calvin calls upon obedience to both good and evil rulers, to both legitimate and tyrannical rulers, does not indicate that he encourages absolutism of those in power. Calvin's principle is that the sovereignty of God, and thus the king's authority, is only derivative, hence relative and limited by God to whom all princes are ultimately accountable.

Accordingly Calvin seems to favour a government where councils and rulers worked harmoniously together, each checking and restraining as well as aiding the other, for the common good of all. Even though Calvin does seem to be advocating absolute and unconditional submission to authority, this would be true only in a pure monarchy since the king alone possesses a public vocation in such a situation. However, not only did Calvin consider a pure monarchy undesirable, he was quite certain that no such form of government existed in Europe. Consequently, the discussion of rights, duties and obligations under a monarchy was academic and irrelevant. The governments of Europe were mixed governments and they provided certain constitutional means of resistance.<sup>93)</sup> Although in the *Institutes* Calvin considers the matter of what constitutes the best form of government to be a rather unimportant question since what he is concerned about is the recognition that God is the primary source of all governments regardless of its form, Calvin seems to prefer a mixed form of government, i.e., a mixture of aristocracy and democracy.<sup>94)</sup>

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<sup>91)</sup> John Calvin, *Institutes of the Christian Religion* (Philadelphia, 1960), ed. John T. McNeill, trans. Ford Lewis Battles, 2 vols. (Bk. IV, Ch. 20, sec. 25)

<sup>92)</sup> *Ibid.*, IV, 20, 22.

<sup>93)</sup> Winthrop S. Hudson, 'Democratic Freedom and Religious Faith in the Reformed Tradition', *Church History*, 15 (1946), pp. 186-7.

<sup>94)</sup> Calvin, *Institutes*, IV, 20, 8.

The form of government for Calvin depends strictly on circumstances such as the religious situation found in a given state. And the sympathy or antipathy on the part of Calvin for different forms of government is often dictated more by the religious ends that he is pursuing than by motives of a strictly political order.<sup>95)</sup> Calvin's sharp dislike of kingship is shown, for example, in his *Sermons on Job* which contains lists of the offenses characteristic of the behaviour of kings. Calvin's *Sermons on Deuteronomy*, in which he makes it clear that he would prefer to have rulers elected by their subjects, also denounces royal wickedness. In his *Commentary on Daniel* Calvin writes:

Earthly princes lay aside all their power when they rise up against God, and are unworthy of being reckoned in the number of mankind. We ought rather utterly to defy than to obey them whenever they are so restive and wish to spoil God of this right, and, as it were, to seize upon his throne and draw him down from heaven.<sup>96)</sup>

Calvin's convictions as to what constitutes the most desirable form of government underwent progressive change during the years. In the first edition of *Institutes*, written before his arrival in Geneva, aristocracy had his preference. After seven years experience in the Swiss city, aristocracy mollified by democracy becomes his choice. In the 1559 edition of the *Institutes*, he stresses the fact that it is safer and more tolerable for the government to be in the hands of many, that they may afford each other mutual assistance and admonition, and that if any one appropriate to himself more than is right, the many may act as censors and masters to restrain his ambition.<sup>97)</sup> By aristocracy Calvin means the rule of those best qualified, not of a hereditary order. Heredity of the throne hinders divine selection of the ruler and is therefore inferior to any form of elective government. Ideally the aristocratic magistrate is one elected to his office. According to Josef Bohatec, Calvin believes in the typical Aristotelian fashion that the best democracies and aristocracies are not immensely different in essence and practice. The city-state Geneva, which Calvin had in mind as his theoretical example, exhibits a good mixture of a democratic appearance and a heavy predominance of aristocratic parts.<sup>98)</sup>

For Calvin the principle of order is divine. Hence Calvin forbids the individual to resist oppression. No private citizen has the right or the duty to resist, to seek or to overthrow the ruler. But in the state that is not an absolute monarchy there will always be, alongside the

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<sup>95)</sup> Marc-Edouard Chenevière, 'Calvin Not Interested in Forms of Government', *Calvin and Calvinism* (Lexington, Mass, 1970), ed. Robert M. Kingdon and Robert D. Linder, p. 11.

<sup>96)</sup> John Calvin, *Commentaries on the Prophet Daniel* (Grand Rapids, 1948), trans. Thomas Myers, 2 vols., 1:382.

<sup>97)</sup> Hudson, 'Democratic Freedom', p. 190. For a parallel statement of Calvin's mature view, see his *Commentary on Micah*, 5:5.

<sup>98)</sup> Josef Bohatec, 'Calvin Preferred Either Aristocracy or a Mixture of Aristocracy and Democracy', *Calvin and Calvinism*, p. 28; Josef Bohatec, *Calvins Lehre von Staat und Kirche* (Breslau, 1937), pp. 124-8, 158-64.

chief ruler, his ministers of state, his nobles of royal blood and his parliament. Calvin therefore makes an exception and declares it the duty of certain bodies to withstand the ruler when his government becomes insupportable.<sup>99)</sup> Calvin writes:

For, if the correction of unbridled despotism is the Lord's to avenge, let us not at once think that it is entrusted to us, to whom no command has been given except to obey and suffer. I am speaking all the while of private individuals. For if there are now any magistrates of the people, appointed to restrain the willfulness of kings (as in ancient times the ephors were set against the Spartan kings, or the tribunes of the people against the Roman consuls, or the demarchs against the senate of the Athenians; and perhaps, as things now are, such power as the three estates exercise in every realm when they hold their chief assemblies), I am so far from forbidding them to withstand, in accordance with their duty, the fierce licentiousness of kings, that if they wink at kings who violently fall upon and assault the lowly common folk, I declare that their dissimulation involves nefarious perfidy, because they dishonestly betray the freedom of the people, of which they know that they have been appointed protectors by God's ordinance.<sup>100)</sup>

If the magistrates such as the Spartan ephors have been constitutionally appointed to protect the people from the unbridled license of kings, it would be an atrocious breach of faith for them to fail in this. Calvin suggests that the three estates in modern kingdoms may render this service. In general, European parliaments, meetings of estates, diets and conventions, and of notables had in Calvin's time an acknowledged place in government, even though in France the kings had triumphed and had not called a meeting of the estates in Calvin's lifetime.<sup>101)</sup>

According to Quentin Skinner, Calvin never alludes to the concept of inferior magistrates in this (or any other) discussion about political resistance, while the vocabulary he uses in this passage makes it clear that, even though he thinks of ephoral magistrates as ordained of God, he also thinks of them as elected by and responsible to the people.<sup>102)</sup> Calvin opens his discussion by referring to them not as 'inferior' but as 'popular' magistrates (*populares magistratus*) and proceeds to emphasise that they are appointed, and not ordained, in order to diminish the power of kings. Calvin thus seems to suggest that the power to resist

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<sup>99)</sup> T.H.L. Parker, *John Calvin: A Biography* (Philadelphia, 1975), p. 147.

<sup>100)</sup> Calvin, *Institutes*, IV, 20,31.

<sup>101)</sup> John T. McNeill, *The History and Character of Calvinism* (New York, 1973 reprint), p. 224.

<sup>102)</sup> It is generally believed, however, that the idea of ephors in Sparta derives its origin from a nonreligious source. In fact, most resistance theory of this period was developed by lay people, often by lawyers, using arguments derived from nonreligious sources. They included appeals to ancient Greek ideas and institutions. One favourite was the ephors in ancient Sparta, charged with checking and controlling the chief executive. Hillerbrand, ed., *The Oxford Encyclopedia of the Reformation*, vol. 3, p. 423.

tyrannical rulers may well be lawfully vested in a number of magistrates who are elected by the people, serve as their representatives, and remain responsible to those who have elected them.<sup>103)</sup> Skinner denies that Calvin's analysis exhibits an almost literal conformity with Bucer's theory of inferior magistrates. The view of Bucerian influence on Calvin was propounded by Hans Baron and has enjoyed the support of many scholars. Michael Walzer, for example, states:

And so he inserted in the *Institutes* a careful justification of resistance by the 'lesser magistrates' of the feudal world. They and they alone might defend true religion against heretical kings. Calvin's views did not differ from those both Luther and Bucer had expressed many years earlier, though his statement probably benefited from his superior powers of equivocation.<sup>104)</sup>

At the end of the 1520s, Bucer took up the problem of resistance in his *Commentary on St. Matthew*. He did not depart from Luther's view that the Christian has to regard existing law and conditions as willed by God. But as the actual outcome of history, Bucer says, is the existence of 'magistratus inferiores' everywhere, of self-governing city authorities as well as of territorial princes, the demand of religion to preserve the order established by God implies the careful conservation of this political variety. As Bucer expresses it in his *Lectures on the Book of Judges*, wherever absolute power is given to a prince, there the glory and the dominion of God is injured. There ought to be room for divine selection of those whom God will place at the helm of the state. Elective monarchy, and not a hereditary kingdom, is the constitution favoured by religion. According to Baron, the direct successor to Bucer's whole mode of thought is Calvin.<sup>105)</sup> Baron states:

It was his (Calvin's) task to translate the German constitutional conceptions of Butzer into the legal language of the western European countries. In western Europe the backbone of resistance to the rising wave of absolutism was not local self-government of city-states and territorial princes, but the participation of the estates in the central government, if only on a few traditional occasions. In Calvin's *Institutio Christiana* the place of Butzer's 'magistratus inferiores', that is, the leaders of local self-administration, is therefore taken by the 'magistratus populares', the ephors of the people, the estates general.<sup>106)</sup>

Thus Baron concludes that the preceding experience of Bucer in the Strassburg city-state

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<sup>103)</sup> Skinner, *Foundations*, pp. 232-3.

<sup>104)</sup> Michael Walzer, *The Revolution of the Saints* (London, 1966), p.59.

<sup>105)</sup> Hans Baron, 'Calvinist Republicanism and Its Historical Roots', *Church History*, 8 (1939), pp. 35-8.

<sup>106)</sup> *Ibid.*, p. 38.

played no less a part in Calvin's thought. On the other hand, Skinner stresses the difference of the ideas between these two Reformers. While the inferior magistrates discussed by Bucer and his followers are said to derive their authority from powers ordained of God, the popular magistrates discussed by Calvin are regarded not simply as ordained powers, but also as elected officials with a direct responsibility to those electing them.<sup>107</sup> Bucer pointed to the fact that in Romans 13, St. Paul had spoken not of the 'power' ('authority') but of the 'powers' ('authorities') that be. The obvious conclusion Bucer reached was that God had ordained, as a general rule, systems of multiple authorities.

Calvin translated the German constitutional conceptions of Bucer into the legal language of the western European countries. In Calvin's thinking, the idea of the ephors of the people, the estates general, seems to occupy the central place. The whole question Skinner raised is related to what Calvin meant by ephors of the people or the estates. Baron seems to understand that Calvin defined these concepts very loosely, probably following the sixteenth century usage. According to our present understanding, the 'estates' refer to a social order, and the three estates are the clergy, the nobility, and the commoners, but in the sixteenth century the term seems to have been used with much flexibility. Calvin seems to have understood by the term 'estates' not only people but also the high councillors, probably including the chief of the council of the king according to the laws of France. Whatever the situation might have been in ancient Europe, whether ephors or tribunes were elected or not, Calvin did not claim that the estates were to be annually elected officials. Calvin believed that the magistrates should have a general popular support but not necessarily be elected by the people. He only envisaged that magistrates should serve as people's representatives and remain responsible to them. Magistrates of the people, whom Calvin mentions in the ephor passage, do not automatically mean popularly elected magistrates as was understood by Skinner. Just as Calvin failed to distinguish clearly between aristocracy and democracy, he did not seem to draw a sharp line between inferior and popular magistrates. Fighting against the tyrannical king, it did not matter in Calvin's eyes whether the leadership was taken by inferior magistrates or by popular magistrates.

In the sixteenth century, the opposition movements spread nationwide and included classes, or elements of classes, ranging from princes of the blood to unemployed artisans. These opposition movements might act through a parliament or assembly of estates, or they could become openly revolutionary.<sup>108</sup> Calvin's apparent ambiguity as to who would moderate, and if necessary oppose, the power of the kings is a reflection of this sixteenth century scene. The situation in sixteenth-century Europe was different from ancient Europe, and it is difficult to draw a direct parallel between the ephors of the Spartan people and the estates of the sixteenth century. Calvin probably knew this since he never

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<sup>107</sup> Skinner, *Foundations*, pp. 233-4.

<sup>108</sup> H.G. Koenigsberger, 'The Organization of Revolutionary parties in France and the Netherlands during the Sixteenth Century', *The Journal of Modern History*, vol. 27 (Dec. 1955), p. 336.

explicitly asserted that there were any assemblies possessing ephoral powers in any existing kingdoms of Europe. As European political life unfolded before him, Calvin seems to have broadened his view as to who should be included among the estates. The consequence is that by the term 'estates' Calvin included both people and the high councillors. In spite of his assumption that magistrates in Calvin's 'ephor' passage means inferior magistrates, Robert Kingdon also correctly observes this broader interpretation by Calvin regarding the question who would moderate or resist kings. Kingdon states, "The inferior magistrates might be representatives of the Kingdom meeting in the Estates General, with powers similar to the Ephors of ancient Sparta — so Calvin. They might be princes of the royal blood, like the Bourbons in France — so Calvin again."<sup>109</sup>

One may argue that the above-quoted ephor passage had already appeared in Calvin's *Institutes* of 1536, thus seemingly conflicting with Winthrop Hudson's argument that in the first edition of *Institutes* aristocracy had his preference. However, if Calvin was flexible enough in his use of the term 'estates', meaning both people and high councilors, he could use the term 'estates' while favouring aristocracy over democracy. Calvin in all likelihood defined the term 'estates' a little differently in his several editions of the *Institutes*, even though he did not specify their meanings. A good example of Calvin's 'aristocratic bent' can be found in his testimony at the conspiracy of Amboise in 1560. A conspiracy was brewing in the mind of a reckless young nobleman named Seigneur de La Renaudie. He wanted to organise a surprise attack on the French court, seize the person of the young king Francis II, arrest the Guise regents, Duke of Guise and his brother Cardinal of Lorraine, and place France under Bourbon guidance. It was the plot of Huguenots and the house of Bourbon to usurp the power of the Guise. La Renaudie discussed the plan with Louis I de Bourbon, prince de Condé, who agreed to become a 'silent chief', though he would take no active part in the plot itself. Calvin strongly opposed the conspiracy. He seems to have developed an immediate aversion to La Renaudie, and in addition he considered the whole plot poorly planned and least likely to succeed. Calvin admitted having had interviews with La Renaudie and Antoine de la Roche-Chandieu, who was another of the noble plotters. But Calvin insisted that he had expressed his firmest opposition to both of them. Chandieu appeared before the tribunal to confirm Calvin's testimony.<sup>110</sup> The most significant part of Calvin's testimony is his statement that he had told the conspirators he would not oppose to such an enterprise if it were led by the man 'who ought to be chief of the council of the king according to the laws of France', namely, by Antoine de Bourbon, King of Navarre, the

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<sup>109</sup> Robert M. Kingdon, 'The Political Resistance of the Calvinists in France and the Low Country', *Church History*, vol. 27, no. 3 (Sept. 1958), p. 227.

<sup>110</sup> Robert M. Kingdon, *Geneva and the Coming of the Wars of Religion in France, 1555-1563* (Geneva, 1956), pp. 68-9. Calvin's opposition to the conspiracy reflects his political considerations. The tendency to caution was evident among the Calvinists because of their precarious position. Calvinist leaders were extremely careful not to give the impression that their religious doctrine was politically subversive.

first prince of the blood. Calvinist jurists had been arguing that the Guise regency was illegal, and that the only legal regency possible would be a council presided over by the man most closely related to the king, Antoine de Bourbon. Thus, by implication, Calvin supported the scheme if it had been openly led by Prince of Condé, the younger brother of Antoine de Bourbon.<sup>111)</sup>

If we find the popular element in Calvin's thought, it is not because the place of Bucer's 'magistratus inferiores' was taken by the 'magistratus populares' of Calvin, as Baron asserts, but because Calvin attached himself to the similar legal and political tradition to which François Hotman belonged. It was Hotman who further developed a humanist investigation of French constitutional antiquities. In his *Francogallia* published in 1573, the characteristics of the ancient constitution are presented as a standard against which subsequent change must be measured and evaluated. One principle of France's constitutional inheritance is that the king is nothing more than a magistrate for life and is constantly subject to removal by the people for violation of the duties of his office. Hotman's proof for this is that the French monarchy was originally elective.<sup>112)</sup> In *Francogallia* Hotman constructed his theory of resistance on the French constitutional history, stating that from the outset royal power in France had been dependent on a council of elite advisers, a predecessor to the present Estates-General.<sup>113)</sup> By referring to legal and historical argument, Hotman (and Calvin) tried to ease consciences that might otherwise have been disturbed.<sup>114)</sup> Thus despite Calvin's implication in his ephor passage that resistance was feasible only in states where assemblies of estates existed, and his failure to touch upon in that passage the resistance of 'magistratus inferiores', it is clear that Calvin favoured limited monarchy and that he ended up accepting that lesser magistrates have the power to resist.

On the other hand, Theodore Beza, Calvin's successor at Geneva, delivers his argument differently from Calvin. Beza takes into account the role and obligation of the lower magistrates.<sup>115)</sup> As Beza did not attain this from Bucer, one must look to other sources of his thinking on the subject of political resistance. Crucial to all of this is Beza's plain statement that duly constituted inferior magistrates had the authority to lead popular uprisings against established authority in the name of true religion. According to Julian Franklin, Beza consulted personally with Hotman, who was at Geneva in the spring of 1573, when Beza's treatise *Right of Magistrates* was composed. Therefore, Beza's treatise can be considered as a systematic transformation of Hotman's reflections on the ancient

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<sup>111)</sup> Ibid.

<sup>112)</sup> Franklin, *Constitutionalism and Resistance*, p. 20. Hotman was one of the principal instigators of the Amboise conspiracy and later moved to Geneva where he published his *Francogallia*.

<sup>113)</sup> Hillerbrand, ed., *The Oxford Encyclopedia of the Reformation*, p.424.

<sup>114)</sup> Walzer, *The Revolution of the Saints*, p. 79.

<sup>115)</sup> Eugene Linse, 'Beza and Melancthon on Political Obligation', *Concordia Theological Monthly*, vol. 41 (1970), p. 34.

constitution by setting forth a general constitutionalist doctrine of the state.<sup>116)</sup> On the other hand, Robert Kingdon traces the sources of Beza's resistance theory to 1554. While admitting the possibility of influences by Calvin's *Institutes* and Bucer, Kingdon concludes that by taking Magdeburg as his example Beza sanctions resistance against an intolerant Catholic government, when it is led by constituted inferior governmental authorities.<sup>117)</sup> Kingdon demonstrates that Beza had expressed this idea in crude and embryonic form as early as 1554 in his *De Haereticis a civili Magistratu Puniendis* (*The Punishment of Heretics by the Civil Magistrate*). In this earlier work Beza states that, even though these inferior agencies of government cannot act until such other expedients as prayer have already been tried, the inferior magistrate must, as much as possible, with prudence and moderation, yet constantly and wisely, maintain pure religion in the area under his authority. Then Beza cites the example of Magdeburg:

A signal example of this has been shown in our times by Magdeburg, that city on the Elbe.... When then several princes abuse their office, whoever still feels it necessary to refuse to use the Christian Magistrates offered by God against external violence whether of the unfaithful or of heretics, I charge, deprives the Church of God of a most useful, and (as often as it pleases the Lord) necessary defense.<sup>118)</sup>

The action of Magdeburg in defying the Interim without princely support would indicate that 'unter Obrigkeit' could apply to the elected governments of independent cities. Beza thus applies this doctrine of inferior magistrates to cities, and thereby adds an important element to developing democratic theory. A number of years before the St. Bartholomew's Day massacre, Beza like Calvin, set forth an elementary theory of political resistance.<sup>119)</sup> Thus when the supreme magistrates failed in the duty of the maintenance of the 'true' religion, and worse, tried to wipe it out, the inferior magistrates were allowed to resist their superiors with force if necessary. The Pauline injunction in Romans 13:1 of obedience to the 'powers that be (which) are ordained of God' continues in most Calvinist theories, but is held to apply only to private individuals, not to inferior magistrates. It may be that running through these resistance theories is one thread, whose origin can be traced back to the example of the city of Magdeburg.

Following the views presented by Franklin and Kingdon, we may reach the conclusion

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<sup>116)</sup> Franklin, *Constitutionalism and Resistance*, p. 30.

<sup>117)</sup> Kingdon, 'The First Expression', p. 93.

<sup>118)</sup> Beza, *De Haereticis* (Geneva, 1554), p.133. Quoted in Kingdon, 'The First Expression', p. 92.

<sup>119)</sup> Ibid., p.94. The same idea is also reiterated by Hösz: 'Diesen Grundsatz — Widerstand ist erlaubt, ja gefordert, wenn seitens der Regierung unbillige Forderungen erhoben werden, durch die der wahre Glaube Behinderung erfährt, wobei zu bewaffnetem Widerstand diejenigen aufgerufen sind, die selbst Verantwortung für ihre eigenen Untertanen tragen — hat Beza 1554 erstmals formuliert, das heisst fast zwei Jahrzehnte vor der Bartholomäusnacht und acht Jahre vor dem Ausbruch des Religionskrieges in Frankreich.' Hösz, 'Zur Genesis der Widerstandslehre Bezas', p. 201.

that Beza's theory of resistance propounded in the 1570s is somewhat different from that of the 1550s. Beza was following the example of Magdeburg to support his theory of resistance by inferior magistrates in the 1550s, while in the 1570s Beza turns to an ancient constitutional or legal tradition whose approach is scholastic in nature as was the case for Hotman or even Calvin in Franklin's view. But it is probably a mistake to draw too sharp a line between Beza's 1554 view on political resistance and that of the 1570s.

In fact, Beza's view is more consistent. Throughout his various works Beza makes an attempt to systematise the argument for the right to resistance, showing the implications which religious doctrine, ethics and constitutional law held for the theory.<sup>120)</sup> Although Beza utilised various kinds of arguments, the idea of inferior magistrates is always present throughout his works. In order to justify his argument, Beza in *De Haereticis* referred to the *Magdeburg Bekenntnis*, which is a kind of a constitutional argument, while he used another type of constitutional argument, i.e. ancient constitution, in his *Du Droit des Magistrats*. So in Beza's discussion, clarification by historical examples plays an important role. In spite of some scholarly efforts to play down the historical argument, Beza, like Hotman and probably Calvin, seems to be interested in arguing from historical examples, although as to the relationship between these reformers, Schelven, for instance, denies the similarity between Hotman's argument and Beza's:

Hotman's argument is purely historical. He shows that the action of France's 'tyrannus exercitio' made a breach in every respect with the constitutional tradition of the country. For Beza the argument from history has little weight. Occasionally he tried to bolster up his argument by appeal to history, but the reference is never anything more than original.<sup>121)</sup>

Again in spite of his claim that Hotman and Beza could have agreed between themselves to compose *Francogallia* and *Du Droit des Magistrats* as a twin attack upon the corruption of the royal court in France, Ralph E. Giesey also sees a fundamental difference between the two in approach. According to Giesey, while Hotman tries to show by historical example that the fundamental law of France with respect to the authority of the council to control the monarchy was being violated, Beza attempts to demonstrate by politico-philosophical argument that resistance to tyranny might be undertaken through the authority of lesser magistrates.<sup>122)</sup>

Edward A. Gosselin, on the other hand, traces Beza's historical argument to the Old Testament time, focusing his discussion on David:

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<sup>120)</sup> A.A. van Schelven, 'Beza's De Iure Magistratum in Subditos', *ARG*, vol. 45 (1954), p. 73.

<sup>121)</sup> *Ibid.*

<sup>122)</sup> Ralph E. Giesey, 'When and Why Hotman Wrote the *Francogallia*', *Bibliothèque d'Humanisme et Renaissance*, vol. 29 (1967), pp. 582-3. See also Giesey's *Rulership in France, 15th-17th Centuries* (Aldershot, Hamps. & Burlington, Vt. ; 2004)

Through the historical parallelism which Beza perceived between the condition of his remnant church in France and David's in ancient Israel, he was able to accommodate David to Huguenot political theory. The Huguenots and David fulfilled their duty to act as checks on the manifest tyranny of an odious monarchy.<sup>123)</sup>

Here Gosselin seems to suggest that Beza departed from his original support for the theory of resistance by inferior magistrates in favour of people's resistance. Thus, Gosselin believes, Beza's historical argument which had been closely related with his support for the concept of inferior magistrates breaks down by late 1578 or early 1579, when Beza composed the commentaries on the Psalms. Gosselin concludes:

Thus did Beza's David play a magisterial role in justifying the Huguenot revolt in France. He showed that the French wars of religion were the cyclical repetition of the timeless struggle of the remnant Church against godless kings and priests; and his words countenanced the overthrow of the Valois and the accession of the House of Bourbon. It was vital that this latter justification be found, for Beza's use of David as a historical example of his political theory and as a historical predecessor of the Huguenot leadership removed the need to appeal to the Estates (which Beza had still thought necessary in the *Droit*). Of equal importance, this justification necessitated the discovery of Davidic authority for the establishment of a new dynasty.<sup>124)</sup>

Gosselin's suggestion seems to be that Beza used theological arguments by the end of the 1570s instead of a historical argument of radical constitutionalism that favoured resistance by inferior magistrates. Gosselin also asserts that Beza's silence on the estates and his statements on election by the 'son of Israel-gens de bien' can be seen as a calculated reaction to the Catholic League domination (led by the Guise family) of the estate-general at Blois in 1576.<sup>125)</sup>

Gosselin's thesis is interesting but Beza probably did not change his basic position, namely, resistance by inferior magistrates, even in the late 1570s. First of all, already in *Du Droit des Magistrats* Beza does not seem to believe that the appeal to the estates was necessary under the present circumstances. As was the case for Calvin, Beza also did not believe that resistance to the tyrannical king by the power of the estates was practical, even though he probably thought at least theoretically that the estates and other similar bodies are ideal to protect the rights of the sovereignty and to hold the sovereign to his duty, and even, if need be, to constrain and punish him.<sup>126)</sup> The estates are sometimes unable to be convened, and

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<sup>123)</sup> Edward A. Gosselin, 'David in Tempore Belli: Beza's David in the Service of the Huguenots', *Sixteenth Century Journal*, vol. 7, no. 2 (Oct. 1976), p. 50.

<sup>124)</sup> *Ibid.*, pp. 37-9, 53-4.

<sup>125)</sup> *Ibid.*, p. 50 note.

<sup>126)</sup> Beza, *Right of Magistrates*. (See Franklin, *Constitutionalism and Resistance*, pp. 112-3).

on other occasions they are unable to be freely convened. It is also true that Beza was afraid of the Guise dominion of the estate-general. So Beza relies on inferior magistrates as a provisional and transitional means to offer resistance to tyrannical kings, leaving the establishment of the ephoral authorities as a future possibility.

I say, therefore, that they (lesser magistrates) are obliged, if reduced to that necessity, and by force of arms where that is possible, to offer resistance to flagrant tyranny, and to safeguard those within their care, until such time as the Estates, or whoever holds the legislative power of the kingdom or the empire, may by common deliberation make further and appropriate provision for the public welfare.<sup>127)</sup>

Beza was led to believe that inferior magistrates in the current situation should be charged with constraining tyrannical kings. As Linse describes, inferior magistrates have the right to take 'stopgap' action.<sup>128)</sup>

Secondly, different from Gosselin's suggestion, Beza probably maintained his basic attachment to the theory of inferior magistrates. As indicated above, Gosselin asserts that Beza's use of David as a historical example of his political theory and as a historical predecessor to the Huguenot leadership removed the need to appeal to the estates. However, Huguenot leadership, as Gosselin himself admits, is a body of inferior magistrates including such figures as Antoine de Navarre and Admiral Coligny.<sup>129)</sup>

These facts indicate that Beza was consistent throughout in stating the significant role played by inferior magistrates. Included in *De Haereticis* is a passage which asserts the right and duty of inferior magistrates to resist superior authorities in order to preserve the true (i.e., Calvinist) faith. This can also be applied to the city-states in Switzerland, and most large cities of France and Germany, where the problem was acute and serious due to their duty of allegiance owed to the king or to the Emperor. If a superior jurisdiction demands the city magistrates to abandon policies they believe to be divinely inspired, Beza claims that the inferior magistrates, including the city authorities, must maintain pure religion in the area under their authority. In this connection, Beza refers to the example of Magdeburg. This leads us to conclude that Beza in this 1554 treatise was in favour of resistance to a government led by already constituted inferior agencies of government, which included the city authorities like Magdeburg.<sup>130)</sup>

Beza describes two types of tyranny and tells how the subjects react to each case. The first is that of the usurpation of a power, from within or from without, taking power without a legal title. The second is the case of the ruler who abuses his authority, although his title is

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<sup>127)</sup> Ibid.

<sup>128)</sup> Linse, 'Beza and Melanchthon', p. 31.

<sup>129)</sup> Gosselin, 'Beza's David', p. 42.

<sup>130)</sup> Kingdon, 'The First Expression', pp. 91-2.

otherwise legitimate. The first of these types may be opposed by anyone at all, if necessary, since there is no obligation to him whatsoever.<sup>131)</sup> In justifying resistance to the second class of tyrants, Beza's position is more complicated:

A man who invades against others who are in no way subject to him may rightfully be stopped by force of arms, and by anyone, no matter what his station, since there is no obligation whatsoever towards him. But a ruler who has been avowed by his people may abuse his dominion and still retain his authority over private subjects because the obligation to obey him was publicly contracted by common consent and cannot be withdrawn and nullified at the pleasure of a private individual.<sup>132)</sup>

Beza holds that the people are like a corporate association whose liabilities to other parties or assets due from others are discharged or received collectively. On this analogy from medieval Roman law, the consent to authority, which was given by the people jointly and collectively, cannot be broken by a private individual but only by some public process. Therefore, Beza concludes that it is illicit for any private subject to use force against a tyrant whose dominion was freely ratified beforehand by the people. His position is that one must proceed against the tyrant not by private means but by constituted public power. This power is the authority of the lower magistrates, which includes all officials, military or civil, feudal or appointive, national or local, who exercise coercive power.<sup>133)</sup>

One can conclude that the theory of lesser magistrates was pronounced prior to the Smalcald War in conversations between the Wittenberg theologians and the Saxon jurists and was passed on by Beza to the monarchomachs, when these radical Huguenot theorists were looking for the theoretical justification of tyrannicide after the St. Bartholomew massacre. And the city of Magdeburg and its confession are thought to be the transmitter of the theory from Wittenberg to Geneva.<sup>134)</sup> Beza cited the Magdeburg example in his polemic against Sebastian Castellio in a passage which was the first public statement of his resistance theory. Beza quoted the same example in his 1574 pamphlet, *De jure magistratuum*, after the St. Bartholomew's massacre. This pamphlet, presented to French Huguenots, provided them with the justification for their continued resistance against the tyrannical overlord.<sup>135)</sup>

[本稿は、平成 21 年度専修大学研究助成 (個別研究)「16 世紀ジュネーヴの政治思想と抵抗権」による助成の成果の一部である。]

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<sup>131)</sup> Franklin, *Constitutionalism and Resistance*, p. 34.

<sup>132)</sup> Beza, *Right of Magistrates*. See Franklin, *Constitutionalism and Resistance*, p. 109.

<sup>133)</sup> *Ibid.*, pp. 35-6.

<sup>134)</sup> Olson, 'Theology of Revolution', p. 56.

<sup>135)</sup> Kingdon, 'The Political Resistance', pp. 227-8.

## 社会科学研究所 定例研究会 報告要旨

2011年1月15日(土) 定例研究会報告

テーマ： 「ジュール・ヴェルヌ『十五少年』の翻訳の系譜」

報告者： 三枝壽勝(東京外国語大学名誉教授)

テーマ： 「韓国におけるフランス」

報告者： 巖基珠(ネットワーク情報学部教授)

時間： 13時～16時

場所： サテライトキャンパスBスタ

参加者： 7名

共催： 社会科学研究所特別研究助成共同研究「フランスと東アジア諸地域における近現代学芸の共同主観性に関する研究」(鈴木健郎グループ)

報告内容概略：

三枝氏の報告は、ジュール・ヴェルヌ『十五少年』がフランス語から英語に翻訳され、その英語版から各国語に翻訳されたプロセスを辿りながら、各本のもとづいた版を探索し、翻訳を通じてどのような変容があったかを分析した。フランス語・英語・日本語・中国語・韓国語を駆使して小説の変容を比較分析してゆく手法は圧巻であった。また「翻訳」という文化的営みが「創作」とどう違うのか、言語の翻訳がじつは社会・文化的な価値観や要求を反映せざるをえない、といった問題に対する深い洞察がおこなわれた。

巖氏の報告は、韓国の開国期から植民地時代までにフランス人によっておこなわれた朝鮮書の蒐集についてまとめたものである。なかでも Maurice Courant (1865-1935) *Bibliographie coréennne* の内容をまず検討した。つぎに韓国にフランス文学がどのように移入されたか、その社会的な動向を調査した。それは多くの場合、日本におけるフランス文学の受容を承けている事実が、具体的な事例とともに認識された。フランスによる朝鮮文化の研究は、中国に対する調査の動向と並行しているようである。Maurice Courant についてみても、彼が College de France で教鞭を執るのは、著名な中国学者であった Edouard Chavannes の代わりであった。今回の報告で、朝鮮とフランスの関わりについての本共同研究は、基礎的でありながら従来あまり知られていなかった諸事実を認識することができた。

記：専修大学経済学部教授・土屋昌明

2011年2月24日(木) 定例研究会報告

テーマ： 中国における経済成長・都市発展戦略の転換と社会生活の変容

報告者： 李国慶／徐向東／南裕子／沈潔

時間： 15:30～18:00

場所： サテライトキャンパス・スタジオA

参加者数：21名(学外報告者／社研所員／社研参与／学内外院生／一般市民)

報告内容概略：

今回の定例研究会は、近刊『中国社会の現状Ⅲ(社研叢書13)』<sup>(注1)</sup>の執筆者揃っての合評会(座談会方式)となった。まず、本書の執筆の体制と経緯について、これは社研特別研究「中国大都市の構造改編と生活変容Ⅰ～Ⅲ」(2006-2008年度)の成果であるが、これと並行・前後して発足していた中国研究(町田グループ「中国主要都市の経済構造の分析」、柴田グループ「中国都市社会の変容に関する研究」とも有機的に連携して執筆されてきた経緯が示された(詳細は、同書「まえがき」「むすびにかえて」参照)。

次いで、当日出席の同書執筆者から、各章のサマリーが紹介された。まず、中国社会の構造上の大きな変容に関して、李国慶(経済転換期における都市化ロジック)、大矢根淳(北京旧市街地再開発)、福島義和(上海旧市街地再開発)、南裕子(中国農村の人口流動とコミュニティの変容)、次いで、生活各領域に見られる変容に関して、嶋根克己(急速な大衆化段階に突入した中国の高等教育)、柴田弘捷(中国の階層変動・ホワイトカラーの台頭)、徐向東(中国中間層の消費行動)、沈潔(中国の高齢者の諸格差問題)が紹介された。

休憩を挟んで本日の4人の報告者が、同書執筆以降の各領域の状況の変化、調査の進捗状況を報告し、フロアを交えての討論に移った。沿岸開発から西部開発を経て中原経済圏開発への展開について現状が紹介されながらそれに対する質疑が行われ、特に戸籍制度に関わる社会的問題の経緯と現状、今後の展開について活発に議論がたたかわされた。

なお、今回の定例研究会はサテライトキャンパスで開催されたことで一般公開となっており、一般市民の参加もあったことを付記しておく。

注1) 柴田弘捷・大矢根淳編著、2011、『中国社会の現状Ⅲ(社研叢書13)』、専大出版局

記：専修大学人間科学部・大矢根淳

2011年2月26日(土) 定例研究会報告

テーマ： 雇用保障と労働組合の役割—『雇用保障の経済分析』の検討—

報告者： 白井邦彦(青山学院大学経済学部教授)

司会： 兵頭淳史(本学経済学部准教授)

時間： 14:00-17:30

場所： 専修大学神田校舎7号館764教室

参加者数：15名

共催： 関東社会労働問題研究会

報告内容概略：

日本の民間大企業労組は、従業員にとって雇用維持が最も必要となる赤字期・不況期にかえって人員整理を促進している。労使の情報共有、労使協議制等による発言・経営参加も人員整理をスムーズに行う手段と化している。民間大企業労組はその意味で経営と協力的ないし一体といえる存在であり、経営労組一体となって従業員に敵対するという労使関係像が描かれよう。そうであれば労働組合が生産性向上効果をもつのも当然である。日本の雇用保障制度の保護水準が高くないことを考えれば、この間の新卒採用抑制・非正規雇用の増加等の原因を雇用保護制度や労働組合による雇用保障に求めることの誤りは明確である。

記：専修大学経済学部・兵頭淳史

2011年2月26日(土) 定例研究会報告

テーマ： 「自治体行政の現状と課題—新潟県新発田市の事例—」

報告者： 藤田雅善(新潟県新発田市職員)

時間： 14:00-17:00

場所： 専修大学神田校舎7号館7階772教室

参加者数：13名

報告内容概略：

今回の報告では、「平成の大合併」後の自治体行政の現状と課題を、新潟県新発田市の事例をあげて、実際に現場で働く市職員の視点から検討した。その際、合併後に行なわれた市長選挙、合併にともなって変化した行政サービスに対する市民の反応などを紹介し、また、市職員たちへのインタビューをもとに、旧市職員と旧町村職員からみた行政組織への合併の影響を報告した。

2005年5月、新発田市、紫雲寺町、加治川村が合併し、新新発田市となった。合併後の市長選挙後、JR新発田駅の橋上化計画は変更され、新市長によって「バリアフリー」化を優先することが決まった。合併後の地方交付税の増加によって、学校施設の改修が可能になったなどの例がある一方で、合併の実施を決定する要因であった少子高齢化、地域経済の冷え込みなどは改善されていない。老朽化が進む市庁舎の改修、旧県立病院跡地の活用、行政サービスの改変など、対応できていない課題も多い。

とくに、職員の職場環境の変化については、職員一人に対する業務の責任と権限の増大、新たな業務の追加、また、旧新発田市職員と旧紫雲寺町および旧加治川村職員との間での業務に対する認識の差を埋める作業、以前から存在する人事異動ローテーションの弊害など、業務改善が大きく求められる状況にある。

そのような中でも、月岡観光協会の自立や旧紫雲寺町の産業祭りの復活など、ボランティア市民による活動を刺激したといえる。また、行政組織内での業務効率化を行なう「静かな改善」の取り組みも始まっている。

フロアからは、そもそも「業務の効率化」を促進する制度ではない行政組織の中での、業務改善に対する職員の見解、合併にともなう市議会の変革、合併後の行政を主導する首長の方向性、人事異動ローテーションが実施される目的と合併後の業務の効率化との間の摩擦について、多くの質問がなされ、また活発な議論が交わされた。

記：専修大学大学院法学研究科任期制助手・末次俊之

## 執筆者紹介

ほりえ ひろふみ  
堀江 洋文 本学経済学部教授

### 〈編集後記〉

ここ数年、ほぼ毎年のように堀江所員は本月報に論考を寄せている。本号は16世紀の宗教改革でのルター派とカルヴァン派の「抵抗」の論理の異同についてである。ルネサンスと並ぶ、中世からの人間の解放の道筋としての宗教改革にとって、現存の権力との対峙は避けられないものであった。国家と宗教、あるいは「聖」と「俗」との関係は現在に至る大きなテーマである。「プロテスタント」とは、現存の「国家と宗教」の関係の両者に対する「抗議」なのか、それともそうではないのかは理解に苦しむところである。天上の支配者と地上の支配者との関係、そして地上の支配者に対する「抵抗」の論理について宗教はどのような役割を持っているのだろうか。

同じく16世紀の日本では、天下布武を掲げた織田信長による比叡山延暦寺の焼き討ち、そしてその後本能寺の変があったことが思い起こされる。

(T.F.)

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