

FLEXIBLE INTERPRETATIONS OF “THE POWERS THAT BE” FROM CONSTANTINE TO MANDELA AND BEYOND

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INTRODUCTION

The phrase “the powers that be” has long been part of English idiom.¹ William Tyndale, the English biblical scholar and Protestant reformer,² apparently introduced this phrase into the English language with his translation of the first sentence of the second verse of the thirteenth chapter of St. Paul the Apostle’s epistle to the Romans: “The powers that be are ordeyned off God.”³ The phrase was incorporated without change into the King James Bible,⁴ arguably the most influential literary work in the history of the English language,⁵ and from there it, like many other biblical phrases, became idiomatic in English.⁶

While “the powers that be” is arguably the most famous phrase from this passage of Paul’s most famous epistle,⁷ the entire passage, consisting

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¹ See, e.g., J. MICHAEL RICHARDSON & J. DOUGLAS RABB, *THE EXISTENTIAL JOSS WHEDON: EVIL AND HUMAN FREEDOM IN BUFFY THE VAMPIRE SLAYER, ANGEL, FIREFLY AND SERENITY* (2006) (using “the powers that be” throughout to refer to those in authority); cf. David Crystal, *How Are the Mighty Fallen?*, *HIST. TODAY*, Jan. 2011, at 42–43 (explaining how many biblical phrases have become a part of the English lexicon).

² See David Daniell, *Introduction* to *TYNDALE’S NEW TESTAMENT* vii–viii, xv–xvi (1989).

³ *Romans* 13:2 (Tyndale).

⁴ Compare *Romans* 13:1 (Tyndale) (“The powers that be, are ordeyned off God”), with *Romans* 13:1 (King James) (“the powers that be are ordained of God”). See also Daniell, *supra* note 2, at vii (“Much of the New Testament in the 1611 Authorized Version (King James Version) came directly from Tyndale . . .”).

⁵ MELVYN BRAGG, *THE BOOK OF BOOKS* 5–6 (2011).

⁶ See Crystal, *supra* note 1, at 42–43.

⁷ See generally William L. Pettingill, *Foreword* to WENDELL P. LOVELESS, *PLAIN TALKS ON ROMANS* 9 (1946) (commenting on the importance of Paul’s letter to Rome).

of the first seven verses of chapter thirteen, has been highly influential in the course of law and politics in the West for roughly 1,800 years:⁸

1 Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. 2 Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. 3 For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: 4 For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to *execute* wrath upon him that doeth evil. 5 Wherefore *ye* must needs be subject, not only for wrath, but also for conscience sake. 6 For for this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing. 7 Render therefore to all their dues: tribute to whom tribute *is due*; custom to whom custom; fear to whom fear; honour to whom honour.⁹

Scholars have suggested that *Romans* 13:1–7 is “the most influential part of the New Testament on the level of world history.”¹⁰ The influence of this New Testament passage has been not only deep, but also broad, having “a remarkably wide sphere of influence, including fields of law, political philosophy, public administration, education, politics and many others.”¹¹ With regard to political philosophy, *Romans* 13:1–7 has been called “[t]he biblical *locus classicus* on the authority of civil government”¹² and “the most famous, and most disputed, discussion of political authority in the New Testament.”¹³ The passage has been cited and discussed in scores of published opinions by American courts,¹⁴ law review articles,¹⁵

⁸ Ernest Bammel, *Romans 13*, in *JESUS AND THE POLITICS OF HIS DAY* 365, 365 (Ernest Bammel & C.F.D. Moule eds., 1984).

⁹ *Romans* 13:1–7 (King James).

¹⁰ Bammel, *supra* note 8, at 365.

¹¹ B.C. Lategan, *Reception: Theory and Practice in Reading Romans 13*, in *TEXT AND INTERPRETATION: NEW APPROACHES IN THE CRITICISM OF THE NEW TESTAMENT* 145, 153 (P.J. Hartin & J.H. Petzer eds., 1991).

¹² Craig A. Stern, *Crime, Moral Luck, and the Sermon on the Mount*, 48 *CATH. U. L. REV.* 801, 819 (1999).

¹³ OLIVER O'DONOVAN, *THE DESIRE OF NATIONS: REDISCOVERING THE ROOTS OF POLITICAL THEOLOGY* 147 (1996).

¹⁴ See, e.g., *Fields v. Brown*, 503 F.3d 755, 793, 798 (9th Cir. 2007); *Sandoval v. Calderon* 241 F.3d 765, 775, 778–79 (9th Cir. 2001); *In re People v. Harlan*, 109 P.3d 616, 622, 627, 631, 635–36 (Colo. 2005); *Brand v. State*, 828 S.W.2d 824, 826 (Tex. App. 1992).

¹⁵ See, e.g., Louis W. Hensler III, *Misguided Christian Attempts to Serve God Using the Fear of Man*, 17 *REGENT U. L. REV.* 31, 49 (2004); Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 *HARV. L. REV.* 1409, 1465 (1990).

and in an essay by a sitting Associate Justice of the United States Supreme Court.¹⁶

The kernel of Paul's teaching in the passage, at least on the surface, appears to be that his readers must submit to "the powers that be" because they are ordained by God. Even opponents of this straightforward interpretation must confess that "Paul seems to declare that all political authority is ordained by God and should not be resisted."¹⁷ Not surprisingly, however, Christians down through the centuries often have disagreed with the actions of the government of the time.¹⁸ When that happens, *Romans* 13:1–7 has led Christians to struggle with the following question: How can Paul's teaching here about the role of rulers as "servants of God" be squared with the practical experience that rulers sometimes are and/or do evil?¹⁹ How can an evil ruler be God's ordained "minister" or servant? Indeed, the question must have been present from the very inception of Paul's teaching, as noted by Theology Professor Clinton Morrison: "To the critical reader the question arises: How could Paul, when confronted with the actual situation in which the early Church found itself with regard to the State, express such an affirmative opinion concerning the governing authorities with such unshaken conviction and unconditional certitude?"²⁰ The Church's attempts to answer that question in varying historical contexts have taken a long and winding road. "The difficulty in interpreting *Romans* 13:1–7 is demonstrated by positions taken by Christians throughout the centuries, ranging from complete surrender to critical submission to the ruling authorities."²¹ Indeed, the range of Christian interpretations is even broader, also encompassing interpretations that demand revolution against ruling authorities.²²

¹⁶ See, e.g., Antonin Scalia, *God's Justice and Ours*, *FIRST THINGS*, May 2002, at 17 as reprinted in *RELIGION IN LEGAL THOUGHT AND PRACTICE* 437, 437–38 (Howard Lesnick ed., 2010).

¹⁷ David M. Smolin & Kar Yong Lim, *Living as Christians Under Civil Law: The New Testament Letters, Law, and Politics*, in *LAW AND THE BIBLE* 208, 215 (Robert F. Cochran Jr. & David VanDrunen eds., 2013).

¹⁸ Indeed, "disagreed" may be an understatement. Jesus, Paul, and many early Christians were killed, frequently gruesomely, by the powers that be. See generally *infra* notes 77–106 and accompanying text.

¹⁹ See *infra* note 113 and accompanying text.

²⁰ CLINTON D. MORRISON, *STUDIES IN BIBLICAL THEOLOGY: THE POWERS THAT BE* 11 (1960); see also Joel A. Nichols & James W. McCarty III, *When the State is Evil: Biblical Civil (Dis)Obedience in South Africa*, 85 *ST. JOHN'S L. REV.* 593, 602 (2011) [hereinafter Nichols & McCarty, *When the State is Evil*] (characterizing *Romans* 13 as "a difficult passage, for it does not seem to contain caveats for Christians living under unjust or evil rulers but, on its face, appears to be a clear statement of obedience and submission.").

²¹ Smolin & Lim, *supra* note 17, at 215.

²² E.g., *id.* at 214 (noting that Calvin argued for political revolution under certain circumstances).

The primary goal for this paper is to canvass significant interpretations of *Romans* 13:1–7 within historical context. A secondary goal is to show that interpretation of *Romans* 13 has been heavily influenced by historical context, including then-existing political agendas. But this subject is not merely of historical interest. A tertiary hope (I dare not label it a “goal”) is that this paper might spur some re-examination of the historical and ongoing use of *Romans* 13 as a weapon to be deployed in some political fight, and whether such use is appropriate.

This look at *Romans* 13 is organized in this way. First, the passage is introduced. Second, significant discussions of *Romans* 13 are surveyed up through the time of Samuel Rutherford. Third, the role of *Romans* 13 is discussed in three significant political conflicts: the American Revolution, Nazi Germany, and Apartheid South Africa. After that, some contemporary Christian views of *Romans* 13 are discussed. I conclude with a few personal observations and opinions.

I. INTRODUCTION TO *ROMANS* 13

“There can be few documents, if any, which have had more study concentrated on them than the Epistle to the Romans.”²³ The literary work frequently referred to as the “book” of *Romans* purports on its face to be an epistle, or letter²⁴ written by Paul the Apostle.²⁵ Unlike some other New Testament books traditionally attributed to Paul, Pauline authorship of the letter to the Romans is generally accepted even by most contemporary critical scholars.²⁶ In the letter, Paul is writing to Christians in Rome,²⁷ people whom he has not yet met,²⁸ which may explain his “exceptionally long self-introduction.”²⁹ As part of this self-introduction at the outset of

²³ INTERNATIONAL CRITICAL COMMENTARY, ROMANS 1–8, at 30 (J.A. Emerton & C.E.B. Cranfield eds., 1975).

²⁴ See JAN BOTHA, SUBJECT TO WHOSE AUTHORITY? 78 (1994).

²⁵ See *Romans* 1:1–8 (King James).

²⁶ See ANCIENT CHRISTIAN COMMENTARY ON SCRIPTURE, VI ROMANS at xvii (Gerald Bray & Thomas C. Oden eds., 1998) [hereinafter ANCIENT CHRISTIAN COMMENTARY]; see also ALBERT BARNES, BARNES' NOTES ON THE NEW TESTAMENT 539 (Ingram Cobbin ed., 1st Am. reprinted ed. 1962); JOSEPH A. FITZMYER, THE ANCHOR BIBLE: ROMANS 40 (1993); INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 2; JOHN T. NOONAN, JR., THE BELIEVER AND THE POWERS THAT ARE 8 (1987). While Pauline authorship of *Romans* is generally accepted, some question Pauline authorship of the first part of chapter 13, especially in the light of the tension between its command to submit to powers and the first century church's experience of persecution at the hands of those powers. See SAMUEL A. PAUL, THE UBUNTU GOD 59–63 (2009).

²⁷ *Romans* 1:7 (King James).

²⁸ See *Romans* 1:13 (King James).

²⁹ BOTHA, *supra* note 24, at 103.

the letter, Paul identifies his own apostolic authority.³⁰ Paul likely wrote this epistle in "the mid or the late fifties,"³¹ before his final arrest in Jerusalem and eventual trial before Caesar in Rome.³² Nero was in power at the time.³³

What we now know as the thirteenth chapter of Paul's letter to the Romans falls within the main body of the letter.³⁴ The first eleven chapters of the letter (after the opening material in chapter one) are dedicated to theology.³⁵ Beginning with chapter twelve, Paul's letter begins a more practical *paraenetic*³⁶ section.³⁷ In the very first verse of this practical section, Paul begins by exhorting his readers, in light of God's great mercy to them (as spelled out in the first eleven chapters), to present their whole selves back to God's service as "a living sacrifice."³⁸ Paul goes on in this first practical chapter to spell out in some detail what it means to serve God as a living sacrifice.³⁹ For example, exerting his apostolic authority, Paul prohibits his readers from returning "evil for evil."⁴⁰ To the contrary, Paul commands them to prepare to behave before others in a winsome way.⁴¹ Similarly, Paul commanded his readers to "live peaceably with all."⁴² Then Paul returned to the theme of responding to evil, again prohibiting his readers from taking their own vengeance when wronged, commanding them instead to leave vengeance to God.⁴³ It is in this context that Paul, three verses later, launched into the now famous passage in *Romans* 13:1–7.

While *Romans* 13:1–7 fits quite well in the broader context of Paul's letter, it also is "a distinct rhetorical unit" in that "it displays a discernible

³⁰ See *Romans* 1:1 (King James); BOTHA, *supra* note 24, at 79.

³¹ FITZMYER, *supra* note 26, at 87; see also NOONAN, *supra* note 26, at 8.

³² See ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at xvii; BARNES, *supra* note 26, at 539–40.

³³ NOONAN, *supra* note 26, at 8.

³⁴ BOTHA, *supra* note 24, at 81.

³⁵ See FITZMYER, *supra* note 26, at 96.

³⁶ "Paraenesis" is moral exhortation. See BOTHA, *supra* note 24, at 86 n.10.

³⁷ Paul D. Feinberg, *The Christian and Civil Authorities*, 10 MASTER'S SEMINARY J. 87, 89 (1999) ("Romans 13:1–7 is a part of a paraenesis."); see BARNES, *supra* note 26, at 639 (explaining that *Romans* 12 begins a practical section of the letter, in which Paul exhorts individuals to live holy lives); FITZMYER, *supra* note 26, at 637 ("*Romans* 12–15 forms a catechetical unit, a paraenetic development of the consequences of justification.").

³⁸ *Romans* 12:1 (King James); BARNES, *supra* note 26, at 639–40.

³⁹ *Romans* 12:6–10 (King James); BARNES, *supra* note 26, at 639–40.

⁴⁰ *Romans* 12:17 (King James).

⁴¹ *Romans* 12:17 (King James); BARNES, *supra* note 26, at 647.

⁴² *Romans* 12:18 (King James); BARNES, *supra* note 26, at 647.

⁴³ *Romans* 12:19 (King James).

beginning and end, connected by some demonstrative argumentation.”⁴⁴ The passage does not mention the “state” as such,⁴⁵ but nevertheless frequently is characterized as a passage about politics or the state. For example, it has been called the chapter that treats “most fully . . . the nature and end of civil government [as] any one in the new-testament,”⁴⁶ “the most important [passage] ever written for the history of political thought,”⁴⁷ “the famous ‘church-state’ text,”⁴⁸ and “the longest passage in the New Testament about the civil state.”⁴⁹ Noteworthy for its absence is any suggestion that the Christian community should have their own political ambitions. Quite to the contrary, “Paul does his utmost to combat all political inclinations among the Christians.”⁵⁰

Paul begins the passage by declaring to his readers a broad obligation to submit: “Let every soul be subject unto the higher powers”; the Greek word translated in the King James Bible as “be subject unto” is *hypotassomai*, “a hierarchical term.”⁵¹ It is important to note that the word is not synonymous with “obey.” “The Greek language has good words to denote obedience, in the sense of completely bending one’s will and one’s actions to the desires of another. What Paul calls for, however, is subordination.”⁵² The word chosen by Paul generally does not mean “obedience”: “[F]orms of *hypotassomai* are found 21 times in the LXX, [the early Greek translation of the Hebrew Old Testament] and only once is the word used to connote the idea of obedience. Furthermore, it occurs thirty times in the New Testament, but the idea of obedience is not dominant.”⁵³ The difference can be practically quite significant:

The conscientious objector who refuses to do what his government asks him to do, but still remains under the sovereignty of that

⁴⁴ BOTHA, *supra* note 24, at 186; *see also* Bammel, *supra* note 8, at 366.

⁴⁵ *See* FITZMYER, *supra* note 26, at 662.

⁴⁶ Isaac Backus, *An Appeal to the Public for Religious Liberty* (1773), reprinted in 1 POLITICAL SERMONS OF THE AMERICAN FOUNDING ERA: 1730–1805, at 327, 336 (Ellis Sandoz ed., 2d ed. 1998).

⁴⁷ J.W. ALLEN, A HISTORY OF POLITICAL THOUGHT IN THE SIXTEENTH CENTURY 132 (Methuen & Co. Ltd. 1977) (1928).

⁴⁸ BOTHA, *supra* note 24, at 1.

⁴⁹ Nichols & McCarty, *When the State is Evil*, *supra* note 20, at 602; *see also* RANDALL A. TERRY, THE SWORD: THE BLESSINGS OF RIGHTEOUS GOVERNMENT AND THE OVERTHROW OF TYRANTS 12–13 (1995) (characterizing *Romans* 13 as “the most often referenced passage on civil government in America today”).

⁵⁰ Bammel, *supra* note 8, at 374.

⁵¹ PAUL, *supra* note 26, at 72.

⁵² JOHN H. YODER, THE POLITICS OF JESUS 212 (1972) [hereinafter YODER, POLITICS OF JESUS]; *see also* PAUL, *supra* note 26, at 72.

⁵³ PAUL, *supra* note 26, at 72; *see also* Edward P. Antonio, *The Politics of Proselytization in Southern Africa*, 14 EMORY INT’L L. REV. 491, 495 (2000).

government and accepts the penalties which it imposes, or the Christian who refuses to worship Caesar but still permits Caesar to put him to death, is being subordinate even though he is not obeying.⁵⁴

Paul commands this submission to *exousiae*, translated in the King James Bible as "powers."⁵⁵ The term *exousiae* is "remarkably open" and "unmarked," i.e., the reader could interpret the term "in a wide variety of ways."⁵⁶ But the obligation to submit to *exousiae* is a broader concept than the idea of submission to government, which is merely one form of *exousiae*.⁵⁷ "Traditional commentators consistently note the sweep of Paul's admonitions"⁵⁸ to submit found in this passage.⁵⁹

⁵⁴ YODER, POLITICS OF JESUS, *supra* note 52, at 212.

⁵⁵ *Romans* 13:1 (King James) ("Let every soul be subject unto the higher powers."). Most modern English translations translate *exousia* as "authorities" instead of "powers." See *infra* notes 326–27 and accompanying text; see also NOONAN, *supra* note 26, at 8 ("Paul refers to the government as the 'exousia,' 'the powers,' not 'the authorities' or 'the state,' as some translations put it.").

⁵⁶ See Lategan, *supra* note 11, at 158.

⁵⁷ See LYNN BUZZARD & PAULA CAMPBELL, HOLY DISOBEDIENCE: WHEN CHRISTIANS MUST RESIST THE STATE 156 (1984).

⁵⁸ *Id.*

⁵⁹ Some have gone so far as to suggest that the "*exousia*" to which Paul commands submission do not refer to civil rulers at all, but rather to church rulers. See PAUL, *supra* note 26, at 79. Perhaps the first to come up with this idea was the founding prophet of the Mormon church, Joseph Smith, who claimed direct inspiration from God to edit *Romans* 13 by inserting the words "in the church" into the clause "for there is no power but of God" between the words "power" and "God." See *Joseph Smith Translation*, LDS.ORG, <https://www.lds.org/scriptures/gs/joseph-smith-translation-jst> (last visited Nov. 13, 2014) (noting Joseph Smith's claimed inspiration). Compare *Joseph Smith Translation of the Bible*, OLIVELEAF, available at <http://www.lafeuilledolivier.com/TraductionJosephSmith/JST.pdf> (last visited Nov. 13, 2014) ("For there is no power *in the church* but of God . . .") (emphasis added), with *Romans* 13:1 (King James) ("For there is no power but of God . . ."). Thus Joseph Smith changed "Paul's teaching regarding the Saints' submission to secular political power" to "submission to the authorities of the Church." A comparable approach was taken by another tightly-knit religious group in the early twentieth century, the Jehovah's Witnesses. See NOONAN, *supra* note 26, at 233. In 1916, Joseph Franklin Rutherford, a lawyer, became president of the "corporation that held title to all church property." *Id.* At this time, Jehovah's Witnesses were persecuted and imprisoned for promoting their separationist and pacifist views. See *id.* Until 1929, "the Witnesses had accepted the conventional view that Paul, in *Romans* 13:1, commanding obedience to the 'powers,' had meant the civil authorities." *Id.* at 234; see also M. JAMES PENTON, APOCALYPSE DELAYED: THE STORY OF JEHOVAH'S WITNESSES 139 (1985). But in 1929, Rutherford "took a new doctrinal stance as outlined in the issues of 1 and 15 June of *The Watch Tower* . . ." PENTON, *supra* at 139. There he redefined the phrase "higher powers" in *Romans* 13:1 to mean Jehovah and Jesus. See *The Higher Powers: Part 1*, 50 WATCH TOWER 163, 163 (1929), available at <http://www.youblisher.com/p/98413-Watchtower-year-1929/>; *The Higher Powers: Part 2*, 50 WATCH TOWER 179, 179 (1929), available at <http://www.youblisher.com/p/98413-Watchtower-year-1929/>. "The governments of the world were therefore classified as having no basis in divine authority and were to be seen as demonic." PENTON, *supra* at 139.

Paul provides a theological rationale for his declared obligation to submit: “The powers that be are ordained of God.” But what does this mean? And how can Paul’s declaration that the powers are ordained by God be squared with human experience with evil powers? And the tension between reader experience and the text of *Romans* 13 is not limited to the clause “the powers that be are ordained of God.”⁶⁰ The words of *Romans* 13 that most stretch the reader’s credulity based upon bitter experience with at least some evil rulers are those of the third verse: “For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? [D]o that which is good, and thou shalt have praise of the same.”⁶¹ “Notwithstanding the apparent clarity of the text, many attempts have been made to soften, modify, or otherwise limit the scope of its requirements.”⁶²

One possible interpretation of what Paul meant when he wrote that “the powers that be are ordained of God” is that “God is sovereign, and this [sovereignty] seemingly extends to the placement of particular governing authorities over their subjects.”⁶³ In this process, God sovereignly superintends so that the ruling of even evil rulers ends up redounding to good in some ultimate sense: “Paul means that consciously or unconsciously, willingly or unwillingly, in one way or another, the power will praise the good work and punish the evil.”⁶⁴ Some variation on this idea that God uses even bad rulers as His “servants” for good has been a common historical response to the apparent difficulty with Paul’s teaching in *Romans* 13.⁶⁵ The well-known and scholarly respected twentieth-century Christian pacifist theologian John Howard Yoder labeled this sort of interpretation of *Romans* 13—the idea that “whatever state now exists in any given time and place is the state which God desires to exist then and there”—as *positivistic*⁶⁶ interpretation.

But this *positivistic* view of Paul’s teaching in *Romans* 13, perhaps the facially most obvious take on the text, is not the only Christian interpretation of what Paul meant by “the powers that be are ordained of God”; another common approach goes in the opposite direction. Some have tried to resolve the tension between Paul’s teaching and practical experience by reading verse three as Paul’s normative teaching

⁶⁰ Nichols & McCarty, *When the State is Evil*, *supra* note 20, at 602.

⁶¹ *Id.*; *Romans* 13:3 (King James).

⁶² BUZZARD & CAMPBELL, *supra* note 57, at 157.

⁶³ Nichols & McCarty, *When the State is Evil*, *supra* note 20, at 602.

⁶⁴ INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 665.

⁶⁵ JOHN HOWARD YODER, *THE CHRISTIAN WITNESS TO THE STATE 74–75* (1964) [hereinafter YODER, *CHRISTIAN WITNESS*].

⁶⁶ *Id.* at 74; *see also* BUZZARD & CAMPBELL, *supra* note 57, at 143; YODER, *POLITICS OF JESUS*, *supra* note 52, at 5, 6.

concerning what rulers ought to do rather than as a description of what rulers in fact do,⁶⁷ although the context pushes against this reading.⁶⁸ Paul is addressing believers in general, not a group of rulers.⁶⁹ Moreover, his rhetorical question and his own answer show that Paul is trying to assure those who might be afraid of rulers, not trying to make rulers do right: "Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same . . ."⁷⁰

Some, perhaps recognizing that *Romans* 13 is addressed to the ruled, not to rulers, treat it as setting out the conditions under which the believing subject is obligated by conscience to submit.⁷¹ *Romans* 13 serves as a sort of yardstick against which the legitimacy of rulers can be measured.⁷² Yoder identified this *legitimistic* interpretation of *Romans* 13—the passage includes "certain basic outlines of the prescriptions which God has divinely established for the state to fulfill."⁷³ The "state" that fails to fulfill those God-ordained functions is no state, and no submission is owed to that state.⁷⁴

A whirlwind review of historical interpretations of *Romans* 13 will reveal instances of most of these approaches.

II. FLEXIBLE HISTORICAL INTERPRETATIONS OF *ROMANS* 13

Throughout the history of the Christian West, *Romans* 13 has been interpreted in a variety of ways, and a survey of that interpretive history makes one thing abundantly clear—any particular interpretation of *Romans* 13 is impacted heavily by the interpreter's historical circumstances.

A. *The Context of Paul's Writing: "the Powers That Be" Persecute the Church Pre-312 A.D.*

"*Romans* 13 was written about pagan government."⁷⁵ The government shortly after the writing of *Romans* 13 was not merely pagan, it was actively hostile to Christianity.⁷⁶ Therefore, the first historical

⁶⁷ Smolin & Lim, *supra* note 17, at 216.

⁶⁸ See *infra* Part II.A.

⁶⁹ See *infra* notes 88–94 and accompanying text.

⁷⁰ *Romans* 13:3 (King James).

⁷¹ YODER, CHRISTIAN WITNESS, *supra* note 65, at 75.

⁷² See *id.* at 76–77.

⁷³ YODER, CHRISTIAN WITNESS, *supra* note 65, at 74. Yoder also sometimes called the *legitimistic* approach the *normative* approach. See YODER, POLITICS OF JESUS, *supra* note 52, at 201.

⁷⁴ YODER, POLITICS OF JESUS, *supra* note 52, at 201.

⁷⁵ *Id.* at 195.

⁷⁶ See BUZZARD & CAMPBELL, *supra* note 57, at 119–20.

circumstance for the interpretation of *Romans* 13 by the church was an atmosphere of state hostility toward Christianity. “[F]rom its inception,”⁷⁷ Christianity generated conflict “with the Roman government and Roman culture.”⁷⁸ From the time that Paul wrote his epistle to the Romans until the conversion of Constantine to Christianity in 312 (and subsequent legalization of Christianity in 313), Christians were, for the most part, officially persecuted by the Roman Empire.⁷⁹ “Martyrdom set the tone for the church for decades as Christianity spread in spite of vigorous official attempts to stamp [it] out”⁸⁰ While Jesus himself had been apolitical,⁸¹ he was, nevertheless, put to death by the governing political and religious authorities of the time and place.⁸² The apostle Paul, who also eventually became a martyr, “is in fact writing under a dictatorship with largely corrupt and capricious representatives, not to speak of the petty despotism of departments and officials.”⁸³ In this historical context, Paul taught the fledgling Christian church to submit to rulers. This relationship of antipathy by the state over the church made for an awkward context for Paul’s teaching of submission to human rulers.⁸⁴ How can Paul characterize, as he did, evil rulers as God’s “ministers,” and why should Christians submit to such rulers? While these questions originated in the context of first century hostility of the state against the church, they have persisted down through the ages.⁸⁵

⁷⁷ MORRISON, *supra* note 20, at 11.

⁷⁸ BUZZARD & CAMPBELL, *supra* note 57, at 119.

⁷⁹ See David M. Smolin, *The City of God Meets Anabaptist Monasticism: Reflections on the Twenty-Fifth Anniversary of Wisconsin v. Yoder*, 25 CAP. U. L. REV. 841, 842 (1996) [hereinafter Smolin, *City of God*]; NOONAN, *supra* note 26, at 11; BUZZARD & CAMPBELL, *supra* note 57, at 119–20.

⁸⁰ DOUG BANDOW, BEYOND GOOD INTENTIONS: A BIBLICAL VIEW OF POLITICS 123 (1988); see CHARLES VILLA-VICENCIO, BETWEEN CHRIST AND CAESAR 3 (1986).

⁸¹ David Smolin summed up well Jesus’ approach to politics: “It would be difficult to devise . . . a more decided and determined apoliticism.” David M. Smolin, *Church, State, and International Human Rights: A Theological Appraisal*, 73 NOTRE DAME L. REV. 1515, 1519 (1998). “Having rejected the role of military and political leader of a nationalist Israelite restoration, Jesus in effect leaves no political instructions, mission, or goals behind him.” *Id.* at 1526–27.

⁸² See *Mark* 15:1–37 (King James).

⁸³ ERNST KÄSEMANN, COMMENTARY ON ROMANS 356 (Geoffrey W. Bromiley ed. & trans., 1980).

⁸⁴ See *id.* at 355–56.

⁸⁵ See Smolin & Lim, *supra* note 17, at 219; see also MORRISON, *supra* note 20, at 11; ORIGEN: COMMENTARY ON THE EPISTLE TO THE ROMANS, BOOKS 6–10, at 223 (Thomas P. Scheck trans., The Catholic Univ. of Am. Press 2002).

It is worth noting here that Paul's teaching concerning submission to hostile powers is not entirely unique to the ruler-ruled relationship.⁸⁶ He taught Christians to submit to hostile powers generally, but the ruler-ruled relationship does seem to stand apart from the others that Paul addressed.⁸⁷ Paul's writings address several other institutions of human authority in the first-century Greco-Roman world, husband and wife,⁸⁸ master and servant,⁸⁹ parent and child.⁹⁰ In each of these instances, Paul addresses both sides of the relationship. Paul addressed his teaching to Christian masters, slaves, husbands, wives, parents, and children.⁹¹ What is unique about Paul's instruction in *Romans* 13 regarding the relationship between ruler and ruled is that, unlike Paul's other teachings concerning relationships of power, in which he addresses both sides of the power relationship, the position of ruler fulfills no rhetorical role in *Romans* 13:1–7.⁹² While first century rulers might have had an interest in Paul's writing, the ruler could not respond to the purpose of Paul's writing.⁹³ Paul addresses only the ruled, not the ruler.⁹⁴ That Paul would not address his teaching to first century rulers is not surprising—the relationship between church and state at that time was very much an us versus them relationship.⁹⁵ It probably never occurred to the earliest Christians "that Caesar could become a Christian."⁹⁶

⁸⁶ See *Ephesians* 6:5–9 (King James) (commanding servants to be obedient to their masters); Bernardo Cho, *Subverting Slavery: Philemon, Onesimus, and Paul's Gospel of Reconciliation*, 86 *EVANGELICAL Q.* 99, 102, 104 (2014) (noting the generally hostile conditions of slavery in the first century).

⁸⁷ See *infra* notes 88–92 and accompanying text.

⁸⁸ *Ephesians* 5:21–33 (King James); see also *I Corinthians* 7:3–4 (King James).

⁸⁹ *Ephesians* 6:5–9 (King James).

⁹⁰ *Ephesians* 6:1–4 (King James).

⁹¹ See *supra* notes 88–90 and accompanying text.

⁹² Compare *supra* notes 88–90 and accompanying text (Paul addresses both husband and wife; master and servant; as well as parent and child), with BOTHA, *supra* note 24, at 163 (calling the authorities in *Romans* 13:1–7 "[i]nterested parties" without a rhetorical role).

⁹³ See BOTHA, *supra* note 24, at 163 (stating Paul's purpose is to set up an operational base for future missionary activities and arguing in favor of submission to the state since constant conflict with the authorities would hamper missionary activity).

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ See VILLA-VICENCIO, *supra* note 80, at 4. In *Defensive Arms Vindicated*, an essay published anonymously in 1783 likely in New York, the writer opines that Paul did not write to rulers because, as non-Christians, they would not have understood their duties. See *Defensive Arms Vindicated* (1783), reprinted in 1 *POLITICAL SERMONS OF THE AMERICAN FOUNDING ERA, 1730–1805*, at 711, 722–23 (Ellis Sandoz ed., 2d ed. 1998). The author opined further that if there had been a tyrannical Christian ruler at the time, Paul would not have enjoined submission to such a ruler. *Id.* at 723.

This condition of state hostility toward the church persisted, more or less, until the fourth century.⁹⁷ An illustration of the church's awareness of this relationship of hostility comes from Irenaeus, bishop of Lyons in the late second century, who raised the subject of political rule under the heading of "Satanology."⁹⁸ To say the least, the state was not seen as friendly to the church, and it was not.⁹⁹ Not surprisingly, then, early interpretations of *Romans* 13 tended to focus on how to deal with hostile "powers that be" with no thought given to influencing such powers:

Though they believed they were obligated to honor the governing authorities, the early Christians did not believe in participating in political affairs. And their attitude naturally flowed from their circumstances—they expected no change in their status as a persecuted minority and looked for their rescue to come from Christ's early return, not a conversion of the emperor.¹⁰⁰

Nevertheless, some early church leaders accepted the idea that even though rulers tended to be hostile to the church, those particular hostile rulers had been personally selected by God himself. In his major work railing against gnostic dualism, Irenaeus quoted *Romans* 13 to show God's direct control over the selection of human rulers.¹⁰¹ Irenaeus disputed the idea, apparently expounded by some at the time, that when Paul referred to God's "ordaining" the "powers that be," Paul was speaking of God's control over "angelical powers" or of "invisible rulers."¹⁰² Irenaeus resolved the tension between the character of the rulers that Christians knew and the role for rulers that Paul proclaimed (ministers of God) in another way. According to Irenaeus, God imposed the fear of the sword wielded by these human rulers to bring to mankind "some degree of justice" and "mutual forbearance through dread of the sword."¹⁰³ In this limited way, human rulers are "God's ministers."¹⁰⁴ But Irenaeus taught that all human rulers, not only the good ones, perform the role of God's minister.¹⁰⁵ Accordingly, God appoints kings

suited to those who are at the time placed under their government.
Some of these rulers are given for the correction and the benefit of their

⁹⁷ See *infra* notes 127–31 and accompanying text.

⁹⁸ FROM IRENAEUS TO GROTIUS: A SOURCEBOOK IN CHRISTIAN POLITICAL THOUGHT 15 (Oliver O'Donovan & Joan Lockwood O'Donovan eds., 1999) [hereinafter IRENAEUS TO GROTIUS].

⁹⁹ See Smolin & Lim, *supra* note 17, at 219.

¹⁰⁰ BANDOW, *supra* note 80, at 123.

¹⁰¹ Irenaeus of Lyons, from *Against Heresies*, Book 5, in IRENAEUS TO GROTIUS, *supra* note 98, at 16.

¹⁰² *Id.*

¹⁰³ *Id.* at 17.

¹⁰⁴ *Id.*

¹⁰⁵ See *id.*

subjects, and for the preservation of justice; but others for the purposes of fear and punishment and rebuke; others, as the subjects deserve it, are for mockery, insolence and pride; while the just judgment of God . . . passes equally upon all.¹⁰⁶

Thus, all people receive from God rulers suited to their needs. Good people may get good rulers who make them better. Bad people may receive bad rulers as a punishment. But all rulers, good and bad, are God's ministers for good.

Perhaps a different *Romans* 13 interpretation is perceptible in the writings of Origen (c. 185–c. 254) a few decades after Irenaeus articulated his view.¹⁰⁷ Origen was one of the third century's intellectual leaders of the Eastern Church¹⁰⁸ who helped launch what eventually became the common practice of writing systematic commentaries on New Testament texts.¹⁰⁹ As part of his voluminous written output, Origen penned in Greek what is considered "[t]he earliest extant commentary" on St. Paul's epistle to the Romans.¹¹⁰ Unfortunately, it is hard to be confident that we have Origen's view because it has come down to us through a late fourth century ten-volume Latin translation and abridgement by the Roman theologian, Tyrannius Rufinus (c. 345–c. 410).¹¹¹

Origen's extant commentary on *Romans* 13 begins in Book 9, chapter 25, where Origen places *Romans* 13 in context: "[T]he Apostle is laying down precepts for believers and he wants us to preserve rest and peace in this present life, so far as it depends on us."¹¹² Origen then addresses in more detail a question that had been discussed briefly by Irenaeus: "What then? Is even that authority that persecutes God's servants, attacks the

¹⁰⁶ *Id.*

¹⁰⁷ See IRENAEUS TO GROTIUS, *supra* note 98, at 15, 39.

¹⁰⁸ *Id.* at 39.

¹⁰⁹ See PAUL JOHNSON, A HISTORY OF CHRISTIANITY 58–59 (1976).

¹¹⁰ INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 32; ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at xxii. This characterization of Origen's work as the earliest extant commentary on *Romans* 13:1–7 excludes St. Peter's first epistle, which appears to exegete *Romans* 13. Compare *Romans* 13:1–7 (King James) ("Let every soul be subject unto the higher powers."), with *1 Peter* 2:13–19 (King James) ("Submit yourselves to every ordinance of man . . ."). This is probably because *1 Peter*, like *Romans*, has long been considered part of the canon of Scripture, so that Peter's commentary on Paul is thought of as Scripture's commentary on itself. It is possible that *1 Peter* is the first commentary on *Romans* 13:1–7.

¹¹¹ For our purposes this may be significant because it means that it will be impossible to be certain whether any particular gloss is that of the pre-Constantinian Origen or the post-Constantinian Rufinus. As it turns out, surviving Greek fragments of Origen's text have tended to vindicate the later Latin translation by Rufinus. See INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 32.

¹¹² ORIGEN, *supra* note 85, at 222.

faith, and subverts religion, from God?”¹¹³ Origen responds to this rhetorical question by drawing a perhaps imperfect analogy between rulers as given as a gift from God and sight as a gift from God.¹¹⁴ Origen’s text reasons that even though vision is a gift from God, people have the power to use the gift of sight for good or for evil.¹¹⁵ So God has given human rulers for good purposes even though they may be put to a bad use.¹¹⁶ Nevertheless, according to Origen, worldly judges are God’s ministers because they punish many of “the crimes that God wants to be punished.”¹¹⁷ This far, Origen is consonant with Irenaeus.

But perhaps a shift is perceptible in response to a related tension that Origen notes in *Romans* 13. Paul had written that if the reader will “do that which is good,” the reader will receive praise.¹¹⁸ But, Origen observes, “there is no custom for [secular authorities] to praise highly those who do not sin.”¹¹⁹ Thus, Origen’s experience flies in the face of what Paul seems to be saying. Origen’s solution to the tension that he perceives between his interpretation of Paul’s text and Origen’s own personal experience is to spiritualize Paul’s meaning—perhaps Paul means that those who obey human law will receive praise from God “on the day of judgment.”¹²⁰ In summary, Christian teaching for the first few centuries of church history fairly consistently saw Paul’s teaching in *Romans* 13 as a Christian obligation that applied to all rulers, good and bad. They tended to resolve the seeming tension between this teaching and their experience by appealing, as Paul had, to God’s sovereignty, which extends to the ability to turn the bad efforts of evil rulers to good for God’s people.

¹¹³ *Id.* at 223.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ I call the analogy imperfect because Origen is distinguishing between good and bad rulers, but he does not distinguish between good and bad eyesight. If he had explained how even bad eyesight is a gift from God (as Irenaeus explained with regard to bad rulers), then the analogy would have better fit his point. As it is, Origen’s reader is left to wonder how even a bad ruler might be a gift from God for good from the perspective of those oppressed by the ruler. Irenaeus explained this, but Origen does not. To the contrary, Origen says that “Paul troubles” him by saying that “the secular authority and the worldly judgment” are the “minister[s] of God.” *Id.* at 224.

¹¹⁷ *Id.* at 225. More than a century later, Chrysostom expressed a similar idea when he wrote concerning the ruler from God’s perspective: “I give you advice about responsible behavior, and he [the ruler] supports that advice through laws. I urge that it is wrong to cheat and steal, and he holds assizes to deal with just those activities.” John Chrysostom, *The Twenty-Fourth Homily on Romans*, in IRENAEUS TO GROTIUS, *supra* note 98, at 94.

¹¹⁸ *Romans* 13:3 (King James).

¹¹⁹ ORIGEN, *supra* note 85, at 225.

¹²⁰ *Id.*

B. The "Conversion" of Constantine: The Church Becomes "the Powers That Be"

"The year 313 has rightly been taken to mark a turning-point in European history."¹²¹ The accession and "conversion"¹²² of Constantine drastically transformed the relationship between the Christian Church and the Roman state.¹²³ As has already been noted, "[d]uring the first three centuries the tendency of events had been, on the whole, to accentuate the elements of opposition between the Church and the world."¹²⁴ Not surprisingly, then, Paul's epistle to the Romans in particular (and the Old and New Testaments of the Christian Bible in general) was and were addressed to the ruled, not to rulers: "most of scripture is written for people who are not in charge, who are fleeing, who are standing before magistrates, who are slaves in Egypt or about to be hauled into Babylon."¹²⁵

Fewer than 100 years before the "conversion" of Constantine, "Tertullian had pronounced the notion of a Christian Caesar to be a contradiction in terms."¹²⁶ So it is difficult to imagine the Church's sense of reversal of fortune when what had theretofore seemed an inherent contradiction appeared, and the Christian Church suddenly faced "a new phenomenon: an empire whose head was actively pro-Christian."¹²⁷ "For the church the transformation was miraculous: persecution stopped and patronage began almost overnight."¹²⁸ "Imperial power was suddenly seen to be on God's side, whereas before it was seen to be demonic—and therefore to be despised and rejected by Christians."¹²⁹ "[T]he end of imperial hostility toward the church caused believers to abandon the Tertullian policy of noncooperation with the state."¹³⁰ After Constantine's conversion, the church's political power grew.¹³¹ No longer was the state

¹²¹ CHARLES NORRIS COCHRANE, *CHRISTIANITY AND CLASSICAL CULTURE* 195 (2003).

¹²² Although there is plenty of academic debate on the nature of Constantine's "conversion," it has been argued with some persuasive force that it is more accurate "to speak of [Constantine's] development in terms of the 'exchange of divine patronage'" than in terms of his "conversion." ALISTAIR KEE, *CONSTANTINE VERSUS CHRIST: THE TRIUMPH OF IDEOLOGY* 13 (1982).

¹²³ See *infra* notes 126–32 and accompanying text.

¹²⁴ COCHRANE, *supra* note 121, at 195.

¹²⁵ BUZZARD & CAMPBELL, *supra* note 57, at 153–54.

¹²⁶ COCHRANE, *supra* note 121, at 234.

¹²⁷ NOONAN, *supra* note 26, at 11.

¹²⁸ See KEE, *supra* note 122, at 39.

¹²⁹ VILLA-VICENCIO, *supra* note 80, at 6.

¹³⁰ BANDOW, *supra* note 80, at 124.

¹³¹ See David M. Smolin, *A House Divided? Anabaptist and Lutheran Perspectives on the Sword*, 47 J. LEGAL EDUC. 28, 29 (1997) [hereinafter Smolin, *A House Divided*].

automatically seen by Christians as a likely source of persecution; quite to the contrary, it now was possible to imagine a ruler self-consciously seeking to use his position of civil power to serve the Christian God. “The distinction between church and state increasingly blurred as the Christian clergy received official support and Constantine ruled on theological disputes”¹³²

While this new perspective was initiated under Constantine, it reached new heights in the late 4th century under Theodosius, who “proclaimed Christianity the official religion of the Empire.”¹³³ The state and the emperor now were seen by Christians as “sacred.”¹³⁴ The emperor’s acts also were seen as sacred: “Law observance was . . . prescribed as a divine admonition, ignorance or neglect of which was treated as sacrilege.”¹³⁵ This drastic reversal of political fortune created a difficulty for Christians—“trying to reconcile this [political] power with the earthly life and death of Jesus and the corollary experience of the early church.”¹³⁶ The context had shifted radically. What relevance, if any, did the old teachings of Jesus and the apostles, including Paul, have in this new state of affairs?

This shift in perspective presented a new possibility for the interpretation of *Romans* 13. Now, for the first time, *Romans* 13 might be applied to rulers as well as to ruled.¹³⁷ From the perspective of the ruler, this new possibility held both offensive and defensive potential.¹³⁸ On the one hand, *Romans* 13 now could be (and frequently would be throughout subsequent history) quoted by the political authorities themselves when their own actions were questioned.¹³⁹ On the other hand, *Romans* 13 might also be wielded by the ruled as a measuring stick for the actions of Christian rulers.¹⁴⁰ Both of these approaches to the passage would become commonplace with little or no regard to whether the original context of Paul’s teaching ought to impact its interpretation now that conditions on the ground had changed drastically.

An early written example of this new perspective toward Paul’s teaching might be discernible in the writings of Ambrose of Milan, one of

¹³² BANDOW, *supra* note 80, at 124.

¹³³ Smolin, *City of God*, *supra* note 79, at 849.

¹³⁴ COCHRANE, *supra* note 121, at 354.

¹³⁵ *Id.*

¹³⁶ Smolin, *City of God*, *supra* note 79, at 842.

¹³⁷ *See infra* notes 141–42 and accompanying text.

¹³⁸ *See infra* notes 333–35 and accompanying text.

¹³⁹ *See infra* note 333–34 and accompanying text.

¹⁴⁰ *See infra* notes 335–38 and accompanying text.

the “Eight Great Doctors of the Undivided Church.”¹⁴¹ While St. Paul himself notably directed no instruction to the ruler, Ambrose did. In his letter to Studius, apparently a Christian layman and judge, Ambrose cited *Romans* 13:4 for the proposition that the civil magistrate has “the apostle’s authority.”¹⁴² Such instruction to a magistrate would have been unimaginable at an earlier time.

C. The Middle Ages Begin: The Church over “the Powers That Be”

The substantial foundation for church-state relations throughout the middle ages was laid in the writings of the Church Fathers after the Constantinian revolution. It did not take long for the church to forget the state’s originally antagonistic relationship toward the first followers of Jesus. The aforementioned commentary by Origen¹⁴³ is the only extant thorough, pre-Constantinian commentary on the entire epistle to the Romans, and even that has come down to us through a post-Constantinian translation and abridgement. The next complete commentary on *Romans* was written by an unknown scholar later dubbed “Ambrosiaster,” apparently a contemporary of Ambrose.¹⁴⁴ Ambrosiaster, whose “knowledge of Greek was rudimentary”¹⁴⁵ wrote in Latin,¹⁴⁶ and his commentary is “[t]he earliest Latin commentary on Romans which has come down to us.”¹⁴⁷ The commentary of Ambrosiaster evidences no familiarity with Origen’s earlier commentary.¹⁴⁸

In this first post-Constantinian commentary on *Romans*, the impact of the Church’s changed context can already been seen in the re-

¹⁴¹ The pope has conferred this title on Ambrose, Augustine, Jerome, and Gregory I in the West and on Chrysostom, Basil the Great, Gregory of Nazianzus, and Athanasius of Alexandria in the East. See Louis W. Hensler III, *What’s Sic Utere for the Goose: The Public Nature of the Right to Use and Enjoy Property Suggests a Utilitarian Approach to Nuisance Cases*, 37 N. KY. L. REV. 31, 36 n.21 (2010).

¹⁴² Ambrose of Milan, Letter 50, in IRENAEUS TO GROTIUS, *supra* note 98, at 83.

¹⁴³ See *supra* notes 108–20 and accompanying text.

¹⁴⁴ Erasmus first discovered that the commentary was not written by Ambrose and invented the name “Ambrosiaster,” which has stuck to the commentary ever since. See ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at 380; INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 35 n.1. Since it was not discovered until almost a millennium after the fact that Ambrosiaster was not Ambrose, all that we know for certain about the identity of Ambrosiaster is that he was “a well-educated Roman writing during the pontificate of Pope Damasus I (366–84).” Gerald Bray, *Ambrosiaster*, reprinted in *READING ROMANS THROUGH THE CENTURIES* 21 (Jeffrey P. Greenman & Timothy Larsen eds., 2005).

¹⁴⁵ ANCIENT CHRISTIAN TEXTS: COMMENTARIES ON ROMANS AND 1–2 CORINTHIANS, AMBROSIASTER, at *xvi* (Gerald L. Bray & Thomas C. Oden eds., Gerald L. Bray trans., Downers Grove: InterVarsity Press, 2009) [hereinafter ANCIENT CHRISTIAN TEXTS].

¹⁴⁶ See ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at *xxiii*.

¹⁴⁷ INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 34.

¹⁴⁸ See ANCIENT CHRISTIAN TEXTS, *supra* note 145, at *xxi*.

interpretation of *Romans* 13. Ambrosiaster saw Paul's injunction to obedience to human law as a sort of stepping stone toward righteousness: "The earthly law is a kind of tutor, who helps little children along so that they can tackle a stronger degree of righteousness."¹⁴⁹ This view would have been unthinkable in the context of Church/state hostility in which Paul wrote.¹⁵⁰ Ambrosiaster further read Paul as teaching that "the ministers of the earthly law have God's permission to act, so that no one should despise it as a merely human construction."¹⁵¹ While this idea that earthly rulers have God's "permission" might be within the boundaries of pre-Constantinian thought, it is a step removed from the previously dominant idea that a sovereign God uses even the bad deeds of evil rulers to accomplish His good purposes.¹⁵² But Ambrosiaster went even further: "In effect, Paul sees the divine law as being delegated to human authorities."¹⁵³ Ambrosiaster's significant shift from "God sovereignly uses even bad rulers to do good" to "God delegates the divine law to human authorities" was part of a larger work that became quite influential. "[B]y the end of the fourth century Ambrosiaster's commentary had become a standard work of Latin biblical study . . ."¹⁵⁴

John Chrysostom (c. 347–407), another contemporary of Ambrose but from the East¹⁵⁵, prepared thirty-two Greek sermons "that compose a verse-by-verse exposition of *Romans*."¹⁵⁶ *Romans* 13 is the focus of Chrysostom's *Twenty-Fourth Homily on Romans*.¹⁵⁷ Chrysostom equated the submission that Paul required of subjects to their rulers with the subjection that Paul's other epistles required of household servants to masters.¹⁵⁸ Chrysostom saw the obligation of true submission toward rulers as going beyond mere obedience.¹⁵⁹ Chrysostom continued to struggle with the question that had plagued the church in the pre-Constantinian era—how can an evil ruler be called "God's minister"?¹⁶⁰

¹⁴⁹ ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at 313.

¹⁵⁰ See *supra* notes 75–85 and accompanying text.

¹⁵¹ ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at 313.

¹⁵² Compare *id.* (asserting ministers of earthly law act with God's permission), with ORIGEN, *supra* note 85, at 225 (asserting God wills the punishment of crime through worldly judges).

¹⁵³ ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at 313.

¹⁵⁴ See ANCIENT CHRISTIAN TEXTS, *supra* note 145, at *xvi*.

¹⁵⁵ See THE COLUMBIA ENCYCLOPEDIA, *John Chrysostom, Saint*, 1419 (Barbara A. Chernow & George A. Vallasi eds., 5th ed. 1993).

¹⁵⁶ ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at *xxiv*.

¹⁵⁷ Chrysostom, *supra* note 117, at 92.

¹⁵⁸ See ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at 313.

¹⁵⁹ See *id.*

¹⁶⁰ Chrysostom, *supra* note 117, at 92.

Chrysostom's solution to this difficulty has become one of the most widely-adopted by Christians seeking to avoid the apparent sweep of Paul's teaching in *Romans* 13.¹⁶¹ Chrysostom did not agree with Irenaeus that God appoints all rulers—rather, Chrysostom taught that Paul was talking about God's ordaining the institution of government, not appointing particular rulers.¹⁶² Thus, according to Chrysostom, while the institution of government is "ordained" by God, individual rulers may not be so ordained.¹⁶³ Under this interpretation, Paul is commanding merely respect for the office of the ruler, not necessarily submission to the particular ruler's commands.

Chrysostom buttressed his interpretation by pointing out the openness of the terminology used by Paul in *Romans* 13—the text says "there is no authority except from God," not "there is no ruler except from God."¹⁶⁴ Chrysostom thought the word used by Paul *exousia* was more likely to refer to the institution of government than to individual rulers.¹⁶⁵ But Chrysostom's interpretation seems doubtful because he fails to take account of Paul's next sentence. As Chrysostom notes, Paul writes that "there is no authority [*exousia* (singular)] except from God."¹⁶⁶ Chrysostom fails to account for Paul's next clause: "the powers [*exousiai* (plural)] that be are ordained of God."¹⁶⁷ Even if the clause quoted by Chrysostom could be interpreted to apply to the concept of government generally, and not to individual rulers, that interpretation is difficult to maintain through the next phrase, which speaks of the powers using the plural, thus suggesting that Paul has multiple individual powers in mind, and not merely one concept of institutional power.

Chrysostom's interpretation may have been foreshadowed in Origen's idea that evil human rulers are God's good gift put to a bad use.¹⁶⁸ Origen's idea moves toward abstracting from particular rulers, who may be evil, to the general concept of rulers, which is good.¹⁶⁹ And just as Origen used the analogy of eyesight as a gift, even though the eyesight might sometimes be bad, Chrysostom uses an analogy to illustrate his reasoning.¹⁷⁰ God instituted marriage, just as He instituted government.¹⁷¹ But that does

¹⁶¹ See *id.* at 90.

¹⁶² See ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at 313.

¹⁶³ Chrysostom, *supra* note 117, at 92, 94.

¹⁶⁴ *Id.* at 92.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Romans* 13:1 (King James).

¹⁶⁸ See *supra* notes 113–17 and accompanying text.

¹⁶⁹ See ORIGEN, *supra* note 85, at 223.

¹⁷⁰ See *id.*; Chrysostom, *supra* note 117, at 92.

¹⁷¹ Chrysostom, *supra* note 117, at 92–93.

not mean that God personally puts each married couple together: “For we see many badly mismatched couples joined in lawful matrimony, and we would never attribute this state of things to God.”¹⁷² Chrysostom capped the analogy by noting that Jesus himself had taught that God made males and females so that they could be joined in a “one flesh” relationship.¹⁷³ Consistent with Irenaeus’ earlier thought, Chrysostom does explicitly note that the ruler can be God’s unwitting servant: “[G]overnment fulfills God’s law. Without being conscious of doing so, perhaps, but what of that?”¹⁷⁴ If a particular government can fulfill God’s law without being conscious of doing so, it is not clear why Chrysostom did not accept Irenaeus’ idea that God appoints all rulers, good and bad, to (perhaps unwittingly) accomplish His good purposes?

Saint Augustine (354–430), elected Bishop of Hippo in Africa in 395, quickly became the intellectual leader of the western church.¹⁷⁵ By Augustine’s time, the original gap between the Church and the political “powers that be,” which resulted in Paul’s addressing *Romans* 13 exclusively to subjects and not to government, was gone: “government was deeply involved with religion” and “Christians were deeply involved with the government.”¹⁷⁶ Augustine’s *Propositions from the Epistle to the Romans* “is basically a reworked transcript of answers given in discussion with fellow clergymen who were having difficulty understanding Paul.”¹⁷⁷ These propositions probably were written in the mid-390s, when

¹⁷² *Id.* at 93.

¹⁷³ *Id.* (quoting *Matthew* 19:4f). Chrysostom’s analogy may not fit very well with the teaching of Jesus recorded in the 19th chapter of the St. Matthew’s gospel, the biblical passage that Chrysostom cites. There Jesus was responding to a question from Jewish leaders concerning a dispute over acceptable grounds for divorce. See *Matthew* 19:6–9 (King James). The law of Moses provides that a man who divorces his wife “because he hath found some uncleanness in her” must “write her a bill of divorcement.” *Deuteronomy* 24:1–4 (King James). The Mishnah, a book of legal rules compiled by Jewish authorities in second-century Palestine, records divergent views over what would be allowable grounds for divorce under this standard of “because he hath found some uncleanness in her.” *Gittin* 9:10; see also JUDITH ROMNEY WEGNER, CHATTEL OR PERSON? THE STATUS OF WOMEN IN THE MISHNAH 46 (1988). Jesus’ answer, according to the gospel accounts, was that only fornication was an appropriate ground of divorce. Jesus’ stated reason for this answer was that a married couple “are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.” *Matthew* 19:6 (King James). So, if God ordained the institution of government, just as He ordained the institution of marriage, as Chrysostom argued, and if Jesus is right that a man may not freely divorce his wife, because God has joined the man and woman together, Chrysostom’s analogy would logically suggest that God has put each ruler and each subject together in a relationship to which the subjects must submit.

¹⁷⁴ Chrysostom, *supra* note 117, at 94.

¹⁷⁵ See NOONAN, *supra* note 26, at 12; INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 35.

¹⁷⁶ See NOONAN, *supra* note 26, at 12.

¹⁷⁷ See PAULA FREDRIKSEN LANDES, AUGUSTINE ON ROMANS, at ix (1982).

Augustine's career was not yet fully mature.¹⁷⁸ There Augustine noted the same tension in Paul's teaching that that had been noted by Christian writers before him.¹⁷⁹ Augustine observed that Paul's teaching that the Christian's doing good would lead to praise "can provoke some people, because they know that Christians have often suffered persecution at the hands of these authorities."¹⁸⁰ But Augustine felt no need to explain away the near universal experience of authorities doing evil, for "Augustine saw the state as a necessary evil."¹⁸¹ Augustine did seek to dispel the perceived provocation of those who know that Christians had been persecuted by authorities by pointing out that Paul never promised that the human authority would praise the one who does good.¹⁸² Rather, Paul commanded, "do what is good and you will have praise of him."¹⁸³ Augustine imagined that such praise may be obtained "either when you win it by your allegiance to God, or when you earn the crown of martyrdom by persecution."¹⁸⁴ Thus, the Christian who does good obtains praise, not from the ruler, but from God.¹⁸⁵ This way of resolving the apparent tension between Paul's teaching and human experience resembles that in Origen's earlier commentary on *Romans*.¹⁸⁶ In the same way, Augustine explains how an evil ruler can, consistent with *Romans* 13:4, be a servant for the Christian's good.¹⁸⁷

But despite his connections with earlier strands of Christian thought, Augustine's ministry was firmly planted in post-Constantinian soil.¹⁸⁸ The difference in perspective wrought by the conversion of Constantine is perhaps seen most clearly in Augustine's letter to Boniface, governor of

¹⁷⁸ See ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at xxv; INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 35.

¹⁷⁹ See ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at xxv.

¹⁸⁰ Augustine, *Propositions from the Epistles to the Romans*, reprinted in AUGUSTINE ON ROMANS, *supra* note 177, at 3, 43 [hereinafter Augustine, *Propositions*].

¹⁸¹ BUZZARD & CAMPBELL, *supra* note 57, at 123. Similarly, Ernst Käsemann suggests that Paul hopes at most for an orderly alternative to anarchy, not justice, from the powers that be. See KÄSEMANN, *supra* note 83, at 356.

¹⁸² See Augustine, *Propositions*, *supra* note 180, at 43.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at 315.

¹⁸⁶ See *supra* note 116 and accompanying text.

¹⁸⁷ See Augustine, *Propositions*, *supra* note 180, at 43; see also ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at 315. David Smolin has insightfully noted that because Augustine was converted to Christianity through the study of pagan philosophy, he was in an especially good position to understand "that God could bring good . . . out of that which fails to accord proper worship to God. That which is evil, from an absolute perspective, nonetheless under God's providential care is made to serve the good." See Smolin, *City of God*, *supra* note 79, at 850.

¹⁸⁸ See NOONAN, *supra* note 26, at 19.

Africa. The letter, titled *The Correction of the Donatists*, embraces the use of force to drive the “heretical” Donatists back to what had become the orthodox Church.¹⁸⁹ The Donatists whom Augustine was persecuting apparently complained that the Christian authorities who were persecuting them should follow the example of the Apostles, who “did not seek [laws against impieties] from the kings of the earth.”¹⁹⁰ Augustine’s response was direct: “Then there was no emperor who had believed in Christ, no emperor who would serve Him by passing laws in favor of religion and against impiety”¹⁹¹ Of course, earlier emperors had passed laws in favor of religion and against impiety, but Christians, including Jesus and Paul themselves, had been at the receiving, not at the giving, end of that earlier persecution.¹⁹² Augustine defended physical persecution by citing the positive examples of the “[m]any” cases of “bad slaves” who were “called back to the Lord by the lash of temporal scourges.”¹⁹³ By “embracing in principle the use of coercion against schismatics and heretics, [Augustine] lays a general foundation for religious persecution,”¹⁹⁴ making him, in essence, “the first theorist of the Inquisition.”¹⁹⁵

Pelagius (c. 354–c. 420), “the first known British commentator on Romans,”¹⁹⁶ is best known as a heretic, and we have his commentary on *Romans* largely because it was thought for centuries to be the work of Jerome.¹⁹⁷ Pelagius opined that secular rulers receive their authority from God even though not all such rulers will be just.¹⁹⁸ Like Augustine and Origen, Pelagius acknowledged that authorities might unjustly kill those who do good, but the good nevertheless “have no reason to fear” because the martyr will “come into glory.”¹⁹⁹

Theodoret was “bishop of Cyrus from 423 for over thirty-five years,”²⁰⁰ and his Pauline Commentary has been dated to the 440s.²⁰¹ In his

¹⁸⁹ *Id.*

¹⁹⁰ Augustine of Hippo, *The Correction of the Donatists (Letter 185)*, reprinted in NOONAN, *supra* note 26, at 19 [hereinafter Augustine, *Correction of the Donatists*].

¹⁹¹ *Id.*

¹⁹² *E.g.*, *Matthew* 27:1–31 (King James); *Acts* 16:16–27 (King James).

¹⁹³ Augustine, *Correction of the Donatists*, *supra* note 190, at 20.

¹⁹⁴ NOONAN, *supra* note 26, at 19.

¹⁹⁵ Smolin, *City of God*, *supra* note 79, at 862.

¹⁹⁶ INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 36.

¹⁹⁷ *See* ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at xxiv.

¹⁹⁸ *See id.* at 314.

¹⁹⁹ *Id.* at 315.

²⁰⁰ ROBERT CHARLES HILL, THEODORET OF CYRUS, COMMENTARY ON THE LETTERS OF ST. PAUL, VOL. ONE 1 (Robert Charles Hill trans., 2001).

²⁰¹ *See id.* at 2.

commentary on *Romans* 13, Theodoret's position on the connection between God and bad human rulers is somewhat unclear. At first he seems to side with Chrysostom, Theodoret's "predecessor in the School of Antioch."²⁰² A few decades before Theodoret wrote his Pauline commentary, Chrysostom had taught in more detail what Theodoret espouses in his commentary, that God appoints the power of rulers in general, but not the particular rulers themselves.²⁰³ Some of Theodoret's commentary seems to agree with Chrysostom, at least to the extent that although God ordains the concept of rule, He does not appoint particular wicked authorities: "the divine apostle made ruling and being ruled dependent on the providence of God, not the appointment of this one or that: the authority of unjust people is not by God's mandate—only the provision for government."²⁰⁴ But then Theodoret takes a page out of Irenaeus' book, teaching that "in his wish to correct the fallen," God "even allows them to be ruled by wicked rulers."²⁰⁵ Theodoret finally returns to Chrysostom's argument: "For it is not the wickedness of individual rulers which comes from God but the establishment of the ruling power itself."²⁰⁶

Advice to the Christian ruler also came from Sedulius Scottus between 855 and 859, when he wrote *On Christian Rulers* "to instruct Lothar II, Emperor Lothar I's son and king of Lotharingia, in his royal duties."²⁰⁷ Notably gone is the idea of all rulers as God's servants, including the bad ruler serving God's purpose of punishment: "[H]e is a faithful and proper servant who has done with sincere devotion whatever his lord and master has commanded to him."²⁰⁸ Indeed, Sedulius held up Constantine himself as an example of service to God as a ruler.²⁰⁹

The *Glossa Ordinaria* was "the standard biblical commentary of the later medieval and early modern periods."²¹⁰ Its "glosses are taken from the church fathers . . . up through Bede . . . and then edited and brought into their final form by scholars in France during the first half of the twelfth century."²¹¹ The commentary in the *Glossa* adopted Irenaeus' position that both good and evil authorities were ordained by God:

²⁰² *Id.* at 2.

²⁰³ See *supra* notes 155–74 and accompanying text.

²⁰⁴ HILL, *supra* note 200, at 122.

²⁰⁵ *Id.*

²⁰⁶ ANCIENT CHRISTIAN COMMENTARY, *supra* note 26, at 314.

²⁰⁷ IRENAEUS TO GROTIUS, *supra* note 98, at 221.

²⁰⁸ Sedulius Scottus, *On Christian Rulers*, in IRENAEUS TO GROTIUS, *supra* note 98, at 222.

²⁰⁹ *Id.*

²¹⁰ THE *GLOSSA ORDINARIA* ON ROMANS at ix (Michael Scott Woodward ed. & trans., Kalamazoo: Medieval Institute Publications, 2011).

²¹¹ *Id.*

“Concerning a good authority, it is clear that God has appointed it. It can be seen that he has also reasonably appointed evil authority, since the good are themselves purified by it and the evil condemned, while the authority itself sinks lower.”²¹² All “power” comes from God, including the wicked ruler’s power to harm: “The power of harming is given to wicked and unworthy rulers so that the patience of the good may be proved and the iniquity of the evil may be punished.”²¹³ Even an evil ruler “does not harm the good person but purifies him.”²¹⁴ The commentary clearly recognizes that rulers do not always praise good and punish evil, but notes that those who do good always will be praised or benefitted, even by evil rulers: “*you will have praise from it—even if it is an evil authority, since you have occasion for a greater crown.*”²¹⁵

The influence of Thomas Aquinas (c. 1225–1274) cannot be overstated.²¹⁶ For much of Christianity, Aquinas is essentially authoritative.²¹⁷ Pope Clement VIII declared Aquinas’ works to be without error,²¹⁸ and so the Roman Catholic Church has generally regarded them.²¹⁹ Aquinas provides contextual commentary on Paul’s teaching, orienting Paul’s teaching in *Romans* 13 within the context of Paul’s broader teaching concerning practical Christian living.²²⁰ Aquinas apparently understood Paul to be requiring submission to all higher powers, good and bad: “he says indefinitely *higher powers* so that we may subject ourselves to them by reason of the sublimity of their office, even if they are wicked.”²²¹ Aquinas makes this universal obligation of submission abundantly clear in his comments on verse three, in which Paul states that “rulers are not a terror to good works, but to the evil.”²²² Aquinas comments that “[t]his can also refer to evil rulers, who are not a terror to good conduct, but to bad. For even though they sometimes unjustly persecute those who do good, the latter have no reason to fear; because if they endure it patiently, it turns out for their good”²²³

²¹² *Id.* at 192.

²¹³ *Id.* at 192–93.

²¹⁴ *Id.* at 194.

²¹⁵ *Id.*

²¹⁶ See NOONAN, *supra* note 26, at 37.

²¹⁷ *Id.*

²¹⁸ *See id.*

²¹⁹ *See id.*

²²⁰ Thomas Aquinas, *Lectures on the Letter to the Romans*, 503–04 (Jeremy Holmes et al. eds., Fabian Larcher trans.) available at <http://www.scribd.com/doc/211315740/Aquinas-on-Romans>.

²²¹ *Id.* at 505.

²²² *Romans* 13:3 (King James).

²²³ Aquinas, *supra* note 220, at 509.

Similarly, Aquinas explains that Paul's encouragement to "do that which is good, and thou shalt have praise of the same"²²⁴ applies also to "evil rulers, whose unjust persecution ends in praise for those who endure it patiently."²²⁵ Further, echoing the earlier line of teaching beginning with Irenaeus and citing the Old Testament example of Assyria sent to punish Israel, Aquinas argues that "even wicked rulers are God's ministers for inflicting punishments according to God's plan; although this is not their intention."²²⁶

The Christian Church's occasional affinity for the power of the sword perhaps reached its pinnacle at the opening of the fourteenth century when Pope Boniface VIII issued in 1302 *Unam Sanctam*, his extreme assertion of Church authority in general and papal authority in particular.²²⁷ Boniface asserted that "kings and knights" wield the "temporal sword," but they do so "for the Church" and "at the will and sufferance of the priest."²²⁸ In support of this proposition that the temporal authority must be subject to the spiritual authority of the Church, Boniface quoted *Romans* 13:1 ("There is no power but of God, and the powers that are of God are ordained.")²²⁹ Thus the completion of the Constantinian revolution! Paul taught the early Christian to submit to a hostile emperor, and a little more than a millennium later, the very same words of Paul were used to support the idea that the emperor must submit to the Church.

D. Seeds of Separation of Church and State Sown in the Reformation

1. Martin Luther

Romans 13:1–7 was "central to Luther and other reformers."²³⁰ Because of the intervening "conversion" of Constantine and the consequent political triumph of Christianity in the West, Martin Luther taught and wrote in a political context quite foreign to that into which the Apostle Paul taught and wrote *Romans* 13.²³¹ Whereas Paul was

²²⁴ *Romans* 13:3 (King James).

²²⁵ Aquinas, *supra* note 220, at 510.

²²⁶ *Id.* at 511.

²²⁷ M. GOSSELIN, THE POWER OF THE POPE DURING THE MIDDLE AGES 233 (Matthew Kelly trans., 1853); see Letter from Pope Boniface VIII, *Unam Sanctam*, reprinted in SELECT HISTORICAL DOCUMENTS OF THE MIDDLE AGES 435, 435–36 (Ernest F. Henderson trans., 1892).

²²⁸ Boniface, *supra* note 227, at 436.

²²⁹ *Id.*

²³⁰ Glen Bowman, *Elizabethan Catholics and Romans 13: A Chapter in the History of Political Polemic*, 47 J. CHURCH & ST. 531, 531 (2005).

²³¹ Compare *supra* notes 30–32, 75–85 and accompanying text, with *infra* note 233 and accompanying text.

persecuted by both religious and secular authorities of his day, and ultimately put to death by the latter, the principal threat to Luther was from purely religious authorities, and he owed his very life to the protection provided by secular authorities.²³² Nevertheless, Luther read *Romans* 13, at least as of 1515–1516, as dictating the same Christian response to “higher powers” outside the church that Paul had commanded in almost fifteen hundred years earlier.²³³ Luther clearly concluded that Paul’s teaching concerning submission to rulers applied, not only to good rulers, but also to “evil and unbelieving rulers.”²³⁴ As discussed above, some taught that *Romans* 13 could be used as a yardstick, not only for the conduct of the believing ruled, but also for the ruler by interpreting Paul’s phrase “the powers that are are ordained by God” to mean that “the powers that are of God are ordered.”²³⁵ Luther definitively rejected such reinterpretation. Luther’s conclusion from Paul’s teaching in *Romans* 13:1 was that “whatever powers exist and flourish, exist and flourish because God has ordered them.”²³⁶

In 1523, Luther published his most thorough written work on the secular state, and he started the substantive part of that work by citing *Romans* 13 as one of two biblical bases “for the civil law and sword.”²³⁷ Just as Boniface VIII had cited *Romans* 13:1 in support of papal authority over temporal rulers, Luther cited the same verse as rejecting the idea that worldly rulers must be subject to the pope: “St. Paul says to all Christians, ‘Let every soul (I take that to mean the pope’s soul also) be subject to the temporal authority; for it does not bear the sword in vain, but serves God by punishing the wicked and benefiting the good.’”²³⁸

This survey of the teachings of Martin Luther on *Romans* 13 is a good place to revisit the distinction, introduced by Chrysostom, between the abstract concept of government and the more concrete specific individual governors. Word choice becomes important here. Modern English translations of *Romans* 13 translate the original Greek *exousia* into the

²³² See LUTHER AND CALVIN ON SECULAR AUTHORITY, at vii (Harro Höpfl ed. & trans., Cambridge University Press 1991) [hereinafter ON SECULAR AUTHORITY].

²³³ LUTHER: LECTURES ON ROMANS 358 n.1 (Wilhelm Pauk ed. & trans., The Westminster Press 1961) (“Here the apostle instructs the people of Christ how they should conduct themselves toward the higher powers that are without.”); see ON SECULAR AUTHORITY, *supra* note 232 and accompanying text.

²³⁴ *Id.*

²³⁵ *Id.* at 358 n.2.

²³⁶ *Id.* at 359 n.2.

²³⁷ Martin Luther, *Temporal Authority: To What Extent it Should Be Obeyed*, reprinted in IRENAEUS TO GROTIUS, *supra* note 98, at 585.

²³⁸ Martin Luther, *To the Christian Nobility of the German Nation Concerning the Reform of the Christian Estate* (1520), reprinted in LUTHER: SELECTED POLITICAL WRITINGS 37, 43 (J.M. Porter ed., 1974) [hereinafter POLITICAL WRITINGS].

rather abstract English word "authority." Older English translations used the somewhat more concrete word "power." It is worth noting here that the Vulgate, Luther's "Bible" before he translated the Bible into German, translated *exousia* as *potestas* [power] instead of *auctoritas* [authority].²³⁹ Luther's translation came down firmly on the side of the more concrete rather than the more conceptual term. "The principal organizing idea in Luther's political thought is *Oberkeit*."²⁴⁰ *Oberkeit* does not connote an abstract concept as the word "authority" does.²⁴¹ *Oberkeit* "cannot fail to call to mind the *persons* who are in authority, 'superiors' And this property of the term sits well with the character of Luther's thought, for he tends to personalize political authority."²⁴² This word choice facilitates Luther's acceptance of the idea that God chooses individual rulers.

Luther moved readily from the abstract *Oberkeit* to the personal *die Oberen* ('superiors'), signifying persons of superior political status. This translation of *Oberkeit* as 'authority' is far from felicitous. It not only implies a distinction between 'authority' and 'power' which Luther precisely did *not* make. It also suggests an abstract quality to Luther's thought which it lacks: when speaking of *Oberkeit* he thought in terms of persons (and more often than not one person, a prince or lord), equipped with power. He alternated freely between 'authority' (*Oberkeit*) and 'those in authority' (*die Oberen*).²⁴³

"[F]or Luther, the natural socio-political state of man is Hobbesian, and the only solution is the government with its sword and law"²⁴⁴ Therefore, Luther's teaching on government focuses on restraint of mankind's depredations of his fellows:

And so God has ordained the two governments, the spiritual which fashions true Christians and just persons through the Holy Spirit under Christ, and the secular government which holds the unchristian and wicked in check and forces them to keep the peace outwardly and be still, like it or not.²⁴⁵

In interpreting *Romans* 13, Luther focused on the Christian's obligation to submit to government force, not on the need to cooperate with some abstract concept of orderly government:

²³⁹ See ON SECULAR AUTHORITY, *supra* note 232, at *xiv*.

²⁴⁰ *Id.*

²⁴¹ See *id.*

²⁴² *Id.*

²⁴³ *Id.* at *xxxii* (citations omitted).

²⁴⁴ POLITICAL WRITINGS, *supra* note 238, at 8.

²⁴⁵ Martin Luther, *On Secular Authority: How Far Does the Obedience Owed to It Extend?*, reprinted in ON SECULAR AUTHORITY, *supra* note 232, at 1, 10–11 [hereinafter Luther, *How Far Does Obedience Extend?*] (alteration in original); see also Martin Luther, *Temporal Authority: To What Extent it Should be Obeyed*, reprinted in POLITICAL WRITINGS, *supra* note 238, at 55–56.

The crucial term here is *Gewalt*, which, according to the Grimms' *Deutsches Wörterbuch*, means any or all of: power, strength, might, efficacy . . . empire, rule, dominion, mastery, sway, jurisdiction, government, protection . . . *potestas, facultas, imperium, dictio, arbitrium, ius* . . . *potentia, vis, violentia, iniuria, indignitas*. Its most prominent meaning, however, is force, power or might. . . . *Gewalt* can mean—and often in the text does mean—mere coercion, force, or violence.²⁴⁶

The mere existence of the power, not its “legitimacy,” was the crucial fact for Luther:

For what is crucial, given Luther's Augustinian cast of thought, is not that power should be exercised legitimately and by duly authorized officeholders (*potestates*), but that someone should use force (*Gewalt*) to prevent the ungodly from tearing each other to pieces, even if those who use such force are no better than those against whom they use it. God's will and purposes are served whether rulers act from benevolent or wicked motives. ‘Frogs need storks.’ Nor was the distinction (of which Luther was of course perfectly well aware) between an office and its occupant of any consequence: it is enough for Christians to know that power itself is of divine ordinance, and provided rulers do not use their power to ‘hurl souls into hell’, one person will do as well as another for a ruler. Calvin took much the same view. Thus Luther's original (1522) translation of the crucial scriptural passage Romans 13.1–3—much of Protestant political thought may be read, and indeed presented itself, as a commentary on this text—was: ‘Let everyone be subject to the *Oberkeit* and power (*Gewalt*), for there is no power (*Gewalt*) but from God. But the power (*Gewalt*) which is in every place [this seems to mean: whatever *Gewalt* is to be found anywhere] . . .’ The 1544 version, however, reads: ‘Let every person be subject to the *Oberkeit*, which has power (*Gewalt*) over him. For there is no *Oberkeit* but from God. But wherever there is *Oberkeit* . . .’ The version Luther offered in *On Secular Authority* is almost identical to the 1522 text. Thus it seems that there was a distinction for Luther between *Gewalt* and *Oberkeit*; although he could use them interchangeably, the latter had more of a connotation of legitimacy, the former of force. In 1523 the distinction was a matter of indifference to him, but it was force and coercion he was concerned to stress.²⁴⁷

Thus, for Luther, the point of Paul's teaching in *Romans* 13 was that God had given the power of coercion, or force, to rulers, and Christians must submit to that power, not that God had given good government and that Christians ought to submit to the government as long as it is good.²⁴⁸

The crucial point is that *Gewalt* erodes the distinction between ‘power’ and ‘authority’. [sic] This is hardly surprising, given Luther's 1523 view

²⁴⁶ ON SECULAR AUTHORITY, *supra* note 232, at xv (first three alterations in original).

²⁴⁷ *Id.* at xv–xvi.

²⁴⁸ *See id.* at xxxvii.

of the proper function of government as repressive and punitive; repressing and punishing can be done as well by those whose power is illegitimate as by those with legitimate power.²⁴⁹

In the second part of *On Secular Authority*, Luther interpreted *Romans* 13 to limit secular authority: "Paul is speaking of superiors and power. But . . . no one has power over the soul except God. St. Paul cannot be speaking of obedience where there is no power . . ." ²⁵⁰ Luther buttresses his argument by again citing *Romans* 13 for a list of those "powers" that do belong to the secular ruler:

And he [Paul] makes clear that this is what he means when he lays down a limit to both power and obedience: 'Give to each what is due to him, tax where tax is due, customs duties where customs duties are due, honour where honour, fear where fear.' In other words, secular obedience and power extend only to taxes, duties, honour, fear, outward things.²⁵¹

2. The Anabaptists

Luther's understanding of the proper relationship between the church and the sword, as taught by Paul in *Romans* 13, may have been developed in part through his conflict with more radical elements of the reformation movement.²⁵² "All of Luther's political thought was refined in the crucible of historical events, but no one event tested his thought to the extent of the Peasants' War of 1524–25."²⁵³ The most radical elements of the reformation, collectively known as the Anabaptists, fall into two camps.²⁵⁴ Both would radically change the existing order between church and state, but in starkly different ways.²⁵⁵ The left wing of the Reformation would sweep away the Constantinian influence on the church's view of its relationship with the state: "With believers' baptism, nonresistance, and the rejection of the oaths binding Christians politically to Christendom, the Anabaptists sought to establish a faithful church

²⁴⁹ *Id.*

²⁵⁰ Luther, *How Far Does Obedience Extend?*, *supra* note 245, at 28.

²⁵¹ *Id.* (quoting *Romans* 13:7).

²⁵² See POLITICAL WRITINGS, *supra* note 238, at 11–12.

²⁵³ *Id.* at 11.

²⁵⁴ That is: resistant and non-resistant. See J. S. HARTZLER & DANIEL KAUFFMAN, MENNONITE CHURCH HISTORY 69–71 (1905) (explaining that of the three Anabaptist views on the interaction between church and state, only one sect believed in violent millenarianism); Robert Friedmann, *Conception of the Anabaptists*, 9 CHURCH HIST., 341, 343–45 (1940) (explaining that while Thomas Müntzer, Heinrich Boehmer, and a few others led violent millenarian groups, the other sects of Anabaptists were peaceful, if not pacifists).

²⁵⁵ Compare *infra* notes 256–57 and accompanying text, with *infra* notes 258–59 and accompanying text.

separated from Christendom.”²⁵⁶ Luther’s interpretation of *Romans* 13 is not inconsistent with this non-resistant wing of the Anabaptist movement.²⁵⁷

By contrast, Luther came into direct conflict with the violent strain of the Anabaptists.²⁵⁸ One of the leaders of this violent movement was Thomas Müntzer, who applied *Romans* 13 “into a kind of revolutionary manifesto by maintaining that the governments are instituted to execute the will of God and, conversely, if they fail to do so, those who do the will of God are bound to take the sword into their own hands.”²⁵⁹ Yoder suggests that this nascent form of resistance theology was rooted in the teachings of Huldrych Zwingli,²⁶⁰ but because Zwingli and the radical Anabaptists were contemporaries, it may be impossible to prove who came upon the idea first.²⁶¹ Müntzer aimed his violent attacks both at the state and at the then-established church.²⁶² Müntzer and his followers destroyed the Mallerbach chapel near Allstedt in the spring of 1524, and Müntzer followed up that summer with his *Sermon to the Princes*, in which he turned Luther’s interpretation of *Romans* 13 on its head: “Saint Paul . . . says that the sword of rulers is given for the punishment of evildoers and to protect the pious.”²⁶³ This is the first step in Müntzer’s radical interpretation of *Romans* 13—the passage is a command to the powers that be themselves, not merely to those who are to submit to the powers that be.²⁶⁴ Luther “saw the sense of the passage as an injunction for Christians to be obedient to secular authority since it is ordained by God,” but Müntzer “uses the passage to enjoin positive action by rulers to promote a Christian society.”²⁶⁵ Thus, the approach of the radical Anabaptists fit well with the post-Constantinian ideas of Chrysostom and his followers, that *Romans* 13 could be put to a use that Paul could not have imagined—as an injunction to temporal rulers.²⁶⁶

²⁵⁶ Smolin, *A House Divided*, *supra* note 131, at 30; *see also* VILLA-VICENCIO, *supra* note 80, at 62 (“[T]he question never seriously arose whether a sixteenth-century Anabaptist could be a magistrate—it was as impossible an option to contemplate as it would have been for a Christian in the pre-Constantinian church.”).

²⁵⁷ *See* Smolin, *A House Divided*, *supra* note 131, at 29.

²⁵⁸ *See* Thomas Müntzer, *A Highly Provoked Defense*, reprinted in *THE RADICAL REFORMATION* 74, 74–75 (Michael G. Baylor ed. & trans, Cambridge University Press, 1991).

²⁵⁹ Bammel, *supra* note 8, at 365.

²⁶⁰ *See* YODER, *POLITICS OF JESUS*, *supra* note 52, at 201.

²⁶¹ *See id.*

²⁶² *See* Smolin, *City of God*, *supra* note 79, at 867.

²⁶³ Thomas Müntzer, *Sermon to the Princes*, in *THE RADICAL REFORMATION*, *supra* note 258, at 11, 28, 29 n.19 (citing *Romans* 13:1–4).

²⁶⁴ *See id.* at n.18.

²⁶⁵ *Id.*

²⁶⁶ *See supra* notes 164–68 and accompanying text.

The second move in Müntzer's radical interpretation was to "democratize" the definition of "the powers that be." In his *A Highly Provoked Defense*, addressed directly to Luther, Müntzer responded to Luther's charge of rebellion by arguing that "the entire community has the power of the sword."²⁶⁷ Therefore, when the community rises up in violent opposition to ungodly rulers, it is the community that is "the power that is" executing God's wrath.²⁶⁸ Luther, by contrast, citing *Romans* 13, famously proclaimed "If you chop over your head, the chips fall into your eyes."²⁶⁹ In other words, when the subject fights with his overlord, he disobeys *Romans* 13.

Luther's position is similar to the pre-Constantinian position taken by Irenaeus and to that ultimately taken by the moderate Anabaptist leader, Balthasar Hubmaier.²⁷⁰ Although a few Anabaptists, like Müntzer, embraced the use of the sword, and many quietist Anabaptists, such as Menno Simons, rejected any Christian use of coercive force, particularly the sword²⁷¹, Hubmaier, in his 1527 essay on the sword, sought to convince his fellow Anabaptists, who had embraced extreme pacifism and almost completely withdrawn from society, that it was spiritually permissible for a Christian to participate in government, including participating in the use of force.²⁷² In discussing *Romans* 13, Hubmaier analogized human rulers to natural forces controlled by a sovereign God:

Now, God always punishes the wicked, sometimes with hail, rain, and sickness, and sometimes through special people, who have been ordained and elected for this. Therefore Paul calls the authorities handmaidens of God. For what God can do himself he often prefers to do through his creatures as his tools.²⁷³

In this essay, Hubmaier discusses sixteen passages of Scripture relevant to the participation of the believing Christian in civil government, and he saves *Romans* 13 for last proclaiming, "This passage alone, dear brothers, is sufficient to sanction the authorities against all the gates of hell."²⁷⁴ Like Luther, Hubmaier rejected any sort of violent rebellion against the powers that be—even against wicked rulers—because even wicked rulers are God's servants:

²⁶⁷ Müntzer, *supra* note 258, at 80.

²⁶⁸ *See id.*

²⁶⁹ Martin Luther, *Whether Soldiers, Too, Can be Saved*, reprinted in *POLITICAL WRITINGS*, *supra* note 238, at 107.

²⁷⁰ *See* Balthasar Hubmaier, *On the Sword*, reprinted in *THE RADICAL REFORMATION*, *supra* note 258, at 181, 181 n.1.

²⁷¹ *See* Smolin, *City of God*, *supra* note 79, at 870–71.

²⁷² *See* Hubmaier, *supra* note 270, at 181 n.1.

²⁷³ *Id.* at 187.

²⁷⁴ *Id.* at 183–206.

But if an authority is childish or foolish, indeed even unfit to rule, it is always good to get rid of him and accept another ruler. . . . But if that removal cannot be undertaken legally and peacefully, without great harm and rebellion, then unfit rulers should be tolerated because God has given them to us in his wrath and wants to plague us thus, as being worthy of no better rulers, because of our sins.²⁷⁵

3. John Calvin

John Calvin, who first published his commentary on Paul's epistle to the Romans in 1540²⁷⁶, took a more optimistic view of temporal government than Luther. Calvin saw as the context of chapter thirteen Paul's refuting the perception that "the kingdom of Christ cannot be sufficiently advanced, unless all earthly powers (or authorities) be suppressed."²⁷⁷ Calvin tended to see ordained government as more of an unqualified blessing. Government "powers are of God, not as the pestilence, hunger, war and such like punishments of sin, are said to be of him; but because he hath appointed them for the lawful and right administration of the world."²⁷⁸ Calvin distinguished between good government, which is the ordinance of God, and bad government: "tyrannies and unjust dominations, inasmuch as they are full of deformity, are not of the ordinary government."²⁷⁹ Calvin noted that first century princes disliked "piety" and persecuted "religion."²⁸⁰ That such bad governments existed both when Paul wrote and at all other times before and since, Calvin did not doubt: "[I]f an evil prince be the scourge of the Lord to punish the sins of the people, let us remember it cometh to pass through our fault that the excellent blessing of God is made a curse unto us."²⁸¹ In thus seeing bad government as God's blessing that man has put to bad use rather than as God's punishment of man's evil, Calvin tended to align his view a little more closely with those of Origen and Chrysostom and their followers.²⁸² Calvin reads Paul's teaching as going beyond merely commanding Christian citizens to submit—Calvin thought Paul also was writing to rulers about how they ought to view their own role.²⁸³ Calvin saw Paul as commanding magistrates to use the sword to

²⁷⁵ *Id.*

²⁷⁶ See INTERNATIONAL CRITICAL COMMENTARY, *supra* note 23, at 38.

²⁷⁷ JOHN CALVIN, COMMENTARY UPON THE EPISTLE OF SAINT PAUL TO THE ROMANS 364 (Henry Beveridge ed., The Calvin Translation Society, 1844).

²⁷⁸ *Id.* at 365.

²⁷⁹ *Id.*

²⁸⁰ See *id.* at 364.

²⁸¹ *Id.* at 366.

²⁸² See ORIGEN, *supra* note 85, at 223.

²⁸³ See CALVIN, *supra* note 277, at 367–69.

punish evil men.²⁸⁴ Thus, there emerged from the Protestant Reformation two strains of thought concerning "the powers that be." Luther and the more moderate/pacifist wings of the Anabaptists tended to focus on the Christian's obligation to submit to all rulers, good and bad, as instruments sovereignly ordained by God.²⁸⁵ Calvin and the more radical Anabaptists tended to see *Romans* 13 as teaching further that rulers are to be self-conscious instruments of God.²⁸⁶ But the leading reformers taught submission, where possible, even to evil rulers.²⁸⁷

4. The Magdeburg Confession

The Magdeburg Confession of 1550 was written by the leaders of a small Saxon city in response to the Holy Roman Emperor's order to "adopt a new imperial law on religion called the Augsburg Interim."²⁸⁸ While the Confession has been called "a major distillation of the most advanced Lutheran resistance theories of the day,"²⁸⁹ it actually follows more closely Calvin's approach to avoid the apparently broad sweep of submission that Paul commanded.²⁹⁰ The Confession took the position that Paul was requiring submission only to those authorities who are "ministers" or "servants" of God.²⁹¹ Governments that persecute the good are not God's "ministers," are not "ordained of God," and, therefore, do not fall under the obligation of submission taught in *Romans* 13.²⁹² The idea here is that in describing powers as "ministers of God," Paul was delimiting the obligation of submission.²⁹³ As long as the power acts as God's minister, then the power is owed an obligation of submission.²⁹⁴ But when the power exceeds its authority by acting contrary to God's will, then the power loses its delegated authority and with it the obligation of submission.²⁹⁵ This interpretation empowers the believer to evaluate the quality of a particular government and decide whether it is worthy of submission.

²⁸⁴ *Id.* at 367.

²⁸⁵ See LUTHER: LECTURES ON ROMANS, *supra* note 233, at 358.

²⁸⁶ See CALVIN, *supra* note 277, at 367–69.

²⁸⁷ See, e.g., *supra* Part II.D.

²⁸⁸ JOHN WITTE, JR., THE REFORMATION OF RIGHTS: LAW, RELIGION, AND HUMAN RIGHTS IN EARLY MODERN CALVINISM 106 (2007).

²⁸⁹ *Id.*

²⁹⁰ See *id.* at 106–07.

²⁹¹ See *id.* at 108–09.

²⁹² This response, that the role of the human minister as God's servant can be used to limit those powers that are ordained by God and to whom submission is owed by believers has become a common one. Lategan labeled this position "the evaluative move." *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

5. Theodore Beza

In 1548, Theodore Beza, “after a nearly fatal illness, . . . experienced a profound religious conversion and became a follower of Calvin. By the early 1560’s he had become one of Calvin’s closest associates . . .”²⁹⁶ When Calvin died in 1564, Beza “was named to succeed Calvin as Moderator of the Company of Pastors at Geneva and thus became the leader of the Calvinist movement on the Continent.”²⁹⁷ In 1573, while still leading the Huguenots, Beza wrote “the first major statement of Huguenot resistance doctrine,” *Right of Magistrates*.²⁹⁸ Beza had previously approved the Magdeburg Confession, which laid the groundwork for an interpretation of *Romans* 13 that permitted Christian resistance to evil rulers.²⁹⁹ Beza admitted that the tyrant “is most often an evil or scourge sent by God for the chastisement of nations.”³⁰⁰ Yet, he accepted the right of the “oppressed” to use “remedies in addition to repentance and prayers.”³⁰¹ Beza did not, however, extend to the private citizen the right of resistance of a tyrannical sovereign—that right was reserved for lower magistrates.³⁰²

E. Samuel Rutherford and the Popularization of Resistance Theology

For Christians (with the possible exception of some Anabaptists) from shortly after Constantine until the mid-seventeenth century, *Romans* 13:1–7 generally “served as a sort of capsule constitution to guide the Christian statesman (who should punish evil and reward good) and the Christian citizen (who should conscientiously obey).”³⁰³ In *Lex Rex*, Samuel Rutherford called that orthodoxy into question by solidifying the theretofore nascent resistance theology.³⁰⁴ “Rutherford, a Presbyterian, was one of the Scottish commissioners at the Westminster Assembly in London (1643–1647) and later became Rector at St. Andrews University in Scotland.”³⁰⁵ Rutherford repeatedly used *Romans* 13 to support the Christian’s right to resist a tyrant. For example, he cited *Romans* 13:4 for the proposition that the subject’s obligation to submit to “all power of the

²⁹⁶ CONSTITUTIONALISM AND RESISTANCE IN THE SIXTEENTH CENTURY 98 (Julian H. Franklin ed. & trans., 1969).

²⁹⁷ *Id.*

²⁹⁸ *See id.* at 30.

²⁹⁹ *Id.* at 32.

³⁰⁰ *Id.* at 104.

³⁰¹ *Id.* at 105.

³⁰² *See id.* at 106–07.

³⁰³ YODER, POLITICS OF JESUS, *supra* note 52, at 193.

³⁰⁴ SAMUEL RUTHERFORD, LEX REX 141 (Robert Ogle and Oliver & Boyd 1843).

³⁰⁵ FRANCIS A. SCHAEFFER, A CHRISTIAN MANIFESTO 99 (1982).

law" is contingent on the authority's fulfilling its obligation "to command and rule justly and religiously for the good of the subjects, and is only set over the people on these conditions, and not absolutely, cannot tie the people to subjection without resistance, when the power is abused to the destruction of laws, religion, and the subjects."³⁰⁶ Rutherford's approach is consonant with that taken in the Magdeburg Confession. Also, like Chrysostom, Rutherford grounded his understanding of the distinction between the person of the king and the office of the ruler on *Romans* 13.³⁰⁷ Rutherford affirmed that Paul was writing of the office, not the particular person.³⁰⁸ By thus bringing Chrysostom and the Magdeburg Confession fully together, Rutherford made it possible for the follower of Paul to resist a tyrannical ruler while obeying Paul's command to submit to the office.³⁰⁹ Thus, Rutherford concluded that *Romans* 13 commands "subjection to the power and office of the magistrate *in abstracto*."³¹⁰ According to Rutherford's reading, Paul's text would not require subjection "to the abused and tyrannical power of the king."³¹¹

To spell out Rutherford's logic in greater detail, he believed that Paul commanded subjection to "higher powers."³¹² "But no powers commanding things unlawful, and killing the innocent people of God, can be . . . higher powers . . ."³¹³ When tyrants command the unlawful and kill the innocent, they do so "not by virtue of any office."³¹⁴ Thus, rulers "commanding unjust things and killing the innocent" are not the "powers ordained of God" of which Paul writes in *Romans* 13.³¹⁵ The office is ordained of God, but such personal tyrannies are not.³¹⁶ Alluding to *Romans* 13, Rutherford asserted that the reason the office of ruler is not to be resisted is that such office "is not a terror to good works."³¹⁷ Rutherford thus infers that the personal ruler who is a terror to good works "may be resisted; and that in these we are not to be subject, but only we are to be subject to his power and royal authority, *in abstracto*, in so far as, according to his office, he is not a terror

³⁰⁶ RUTHERFORD, *supra* note 304, at 141.

³⁰⁷ *Id.* at 143.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.* at 144.

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.* Thus, Rutherford read some qualitative content into the word "higher."

³¹⁴ *Id.*

³¹⁵ *Id.* Apparently when Paul wrote "there is no power but of God," he meant to imply that there is no "higher power" but of God.

³¹⁶ See SCHAEFFER, *supra* note 305, at 101 (discussing Rutherford's *Lex Rex*).

³¹⁷ RUTHERFORD, *supra* note 304, at 145.

to good works.”³¹⁸ Continuing to allude to the language of *Romans* 13, Rutherford argued that “[t]he lawful ruler is the minister of God . . . for good to the commonwealth; and to resist . . . is to resist the Lord his master.”³¹⁹ “But the man who is king, commanding unjust things . . . is not the minister of God . . . ; therefore the man may be resisted, by this text, when the office and power cannot be resisted.”³²⁰ Rutherford repeatedly emphasizes Chrysostom’s distinction between the abstract “office” and the concrete “officer”: “Paul . . . forbiddeth us to resist the power, *in abstracto*; therefore, it must be the man, *in concreto*, that we must resist.”³²¹ Rutherford forcefully rejected the interpretation that whatever “powers that be” are therefore “ordained of God” and therefore owed submission: “nor dream we that the naked accident of royal authority is to be feared and honoured as the Lord’s anointed.”³²² Rutherford addressed the example of the specific power that was in place at the time of Paul’s writing, the Roman emperor Nero, and argued consistent with all else Rutherford had said that Nero, the bloodthirsty “persecutor of Christians,” was owed no subjection.³²³

A significant shift in the interpretation of *Romans* 13 among English-speaking scholars can be discerned at about the turn of the twentieth century. With the publication of *The Twentieth-Century New Testament*, the familiar phraseology of *Romans* 13 that had been quite consistent in English translations for five hundred years underwent a significant change, and this change helped to solidify the interpretation of *Romans* 13 expounded most forcefully by Samuel Rutherford.³²⁴ The Greek word *exousiais* had been consistently translated “powers” as in “the powers that be are ordained of God.”³²⁵ But with the dawning of the new century, English translators began to translate *exousiais* as “authorities.”³²⁶ The producers of this shift tended not to be “language or textual experts,” but rather “ministers and laypersons” who were focusing on “ease of

³¹⁸ *Id.*

³¹⁹ *Id.* Clearly, Rutherford did not accept existing rulers as given by God, but only those who do God’s work.

³²⁰ *Id.*

³²¹ *Id.* (citing *Romans* 13). The subject must submit to the office of the ruler while resisting the tyrant who holds that office.

³²² *Id.* at 147.

³²³ *Id.* at 148.

³²⁴ RUTHERFORD, *supra* note 304, at 145. Compare *Romans* 13:1 (The Twentieth-Century New Testament) (“For no Authority exists except by the will of God, and the existing Authorities have been appointed by God.”), with *Romans* 13:1 (King James Version) (“For there is no power but of God: the powers that be are ordained of God.”).

³²⁵ See *supra* notes 55–59 and accompanying text.

³²⁶ See, e.g., *Romans* 13:1 (The Twentieth-Century New Testament).

reading.”³²⁷ This shift in translations facilitated a particular approach to *Romans* 13.³²⁸ Describing civil magistrates as among the “powers” to which believers should submit carries a sense of something that is, without regard to its legitimacy.³²⁹ Ernst Kasemann made this point forcefully:

Paul is not . . . reflecting on the process by which those powers that be of which he speaks . . . came into existence. For him the man who has asserted himself politically has a God-bestowed function and authority simply as the possessor of power *de facto*. This is why I translate the Greek word *exousia* and its derivatives by power [German *Gewalt*], powers, holders of power: I want to include tyranny and despotism, which in any event reigned supreme over wide stretches of the Roman Empire.³³⁰

Switching the language used by Paul to refer to political officials from “powers” to “authorities” fits better with the idea that such “authority” might be either legitimate or illegitimate. Power, by contrast, either is or is not.

III. MODERN CHURCH CONFLICTS WITH “THE POWERS THAT BE”

A. *The American Revolution*

The republic that we know as the United States of America was born in revolution.³³¹ So to the extent that the people of the American colonies were Christian, which they dominantly were,³³² St. Paul’s teaching that “every soul” must be “subject to the higher powers” and that “the powers that be are ordained of God” would seem to be particularly poignant for the American revolutionaries. Professor John Kang finds the roots of the American Revolution in an earlier dispute over the divine right of kings between England’s King James I and Sir Robert Filmer on one side and English philosophers Locke and Sidney on the other.³³³ The dispute turned on opposite interpretations of *Romans* 13. “Filmer and King James had commended Paul’s epistle as divine benediction for absolute rule by even

³²⁷ J. Drew Conley, *English Versions Since 1880*, in *FROM THE MIND OF GOD TO THE MIND OF MAN: A LAYMAN’S GUIDE TO HOW WE GOT OUR BIBLE*, at 196–97 (James B. Williams ed., 1999).

³²⁸ See *infra* notes 329–30 and accompanying text.

³²⁹ ERNST KÄSEMANN, *NEW TESTAMENT QUESTIONS OF TODAY* 201 (W.J. Montague, trans., SCM Press 2d ed. 1969).

³³⁰ *Id.* at 201–02.

³³¹ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

³³² *Religion and the Founding of the American Republic*, LIBRARY OF CONGRESS, <http://www.loc.gov/exhibits/religion/rel02.html> (last visited Nov. 13, 2014).

³³³ John M. Kang, *Appeal to Heaven: On the Religious Origins of the Constitutional Right of Revolution*, 18 WM. & MARY BILL RTS. J. 281, 300 (2009).

'monsters' like Nero."³³⁴ On the other side, "Sidney urged the reader to focus on Paul's injunction that the king should work for the public good as a 'minister of God.'"³³⁵ Kang saw American clergy as adopting Sidney's interpretation less than a century later.³³⁶ Kang cited, among others, Jonathan Mayhew, Charles Chauncy, an anonymous pamphleteer, Abraham Williams, and Benjamin Colman.³³⁷ Buzzard and Campbell likewise observed that "[t]he New England clergy generally taught that as long as the king enforced God's commands, he was owed obedience and assistance. If, however, he violated God's commands, the people had the authority to resist him."³³⁸

My own review of colonial era sermons confirms the conclusions of Kang, Buzzard, and Campbell that colonial clergy tended to interpret *Romans* 13 as permitting revolution against an unjust monarch. I hope that a few examples will illustrate the typical interpretation of colonial clergy. The great-grandson of John Cotton, Elisha Williams graduated from Harvard in 1711 and took the pastorate of a Congregational church in Wethersfield, Connecticut "before becoming Yale University rector, a position he held until 1739."³³⁹ He also served in the Connecticut General Assembly and on the Connecticut Supreme Court.³⁴⁰ In response to the Great Awakening revivalists, a 1742 Connecticut statute "prohibited ministers from preaching outside their own parishes" without an express invitation from "resident ministers."³⁴¹ Williams responded with his "most famous work," *The Essential Rights and Liberties of Protestants* (1744).³⁴² Although this work was not universally well-received at the time,³⁴³ its discussion of *Romans* 13 nevertheless provides a prominent contemporary interpretation of the time.³⁴⁴ Williams' approach to the passage from Paul's letter is evident from his description of it as "[a] text often wrecked and tortured by such wits as were disposed to serve the designs of arbitrary power, of erecting a civil tyranny over a free people."³⁴⁵ Williams

³³⁴ *Id.* at 311.

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.* at 311–16.

³³⁸ BUZZARD & CAMPBELL, *supra* note 57, at 58.

³³⁹ 1 POLITICAL SERMONS OF THE AMERICAN FOUNDING ERA: 1730–1805, *supra* note 46, at 52.

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *See id.*

³⁴⁴ *Id.* at 54.

³⁴⁵ Elisha Williams, *The Essential Rights and Liberties of Protestants* (1744), reprinted in 1 POLITICAL SERMONS OF THE AMERICAN FOUNDING ERA, *supra* note 46, at 79.

thought a proper understanding of *Romans* 13 required an appreciation of the distinction "between the powers which are, and the powers which are not."³⁴⁶ Subjection is owed only to the powers that be.³⁴⁷ "On the other hand—the powers that are not, are not . . . the powers that are of GOD, not his ordinance, and so no subjection to them [is] required in this text."³⁴⁸ Legal powers are "the powers that be" and "arbitrary" powers are the powers which are not.³⁴⁹ As a then contemporary example, Williams noted that "civil authority relates to the civil interests," not to "religious establishments," and a civil authority that tries to make any religious establishment is a power that is not, and no subjection is owed to such illegitimate power.³⁵⁰ Williams thus would permit the follower of Paul's teaching to sit in judgment on the legitimacy of the conduct of the civil magistrate, both within the existing legal order and as a matter of whether a particular political authority has been delegated from God, in deciding whether the magistrate is owed subjection. The obligation of submission is not general, perhaps with only exceptions in circumstances when the civil ruler would require disobedience to an even higher Power (a principle Williams describes as "invented for the support of tyranny").³⁵¹ Rather, the obligation of submission is limited in the first place to that area of jurisdiction delegated to the civil magistrate from God, and that jurisdictional grant includes only laws directed at the public good.³⁵²

The Harvard-educated Congregational clergyman in Massachusetts, Samuel West, was very influential throughout New England at the time of the American Revolution.³⁵³ In 1776, West preached an Election Day sermon "before the Council and House of Representatives on the anniversary of the members' having been elected" titled *On the Right to Rebel Against Governors*.³⁵⁴ In the sermon, West discussed *Romans* 13:1–6, which he described as the "great sheet-anchor and main support" of "the favorers of arbitrary government."³⁵⁵ To avoid what West labeled "the

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.* at 80; See Backus, *supra* note 46, at 336 ("[T]he crimes which fall within the magistrate's jurisdiction to punish, are only such as work ill to our neighbor . . .").

³⁵¹ See Williams, *supra* note 345, at 81–82.

³⁵² *Id.* at 80, 82–83.

³⁵³ 1 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA: 1760–1805, at 410 (Charles S. Hyneman & Donald S. Lutz eds., 1983).

³⁵⁴ *Id.*

³⁵⁵ Samuel West, *On the Right to Rebel Against Governors*, reprinted in 1 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA: 1760–1805, *supra* note 353, at 424.

doctrine of unlimited passive obedience,³⁵⁶ he employed what will by now be a familiar interpretation of Paul's letter. He assumed that Paul was teaching that the "magistracy" rather than that particular "magistrates" are ordained by God.³⁵⁷ Once he determined that magistrates are ordained of God only in the sense that the institution of magistracy is necessary "for the preservation and safety of mankind," then he succinctly concluded that "resistance must be criminal only so far forth as they . . . act up to the end of their institution, and ceases being criminal when they cease being the ministers of God."³⁵⁸ Thus, West took *Romans* 13, not as a declaration that the "powers that be," be they good or ill, were put there by God and therefore are owed submission, but rather as a measuring stick to determine which powers are "ordained of God" and therefore due submission.

West found textual support for his approach in Paul's description of rulers as "not a terror to good works, but to the evil."³⁵⁹ This text turns out to be the linchpin of West's interpretation. How could Paul say that a tyrant is not a terror to good works when experience proves the contrary?³⁶⁰ Thus, only good rulers are the sort of rulers that Paul was discussing and to whom submission is owed, not evil rulers.³⁶¹ Good rulers are ordained by God, but wicked rulers are ordained by Satan.³⁶²

To his credit, West did not entirely ignore the context in which Paul had written his letter: "I know it is said that the magistrates were, at the time when the apostle wrote, heathens, and that Nero, that monster of tyranny, was then Emperor of Rome"³⁶³ After suggesting that Paul may have written toward the beginning of Nero's reign, when the emperor might have been characterized as a "minister of God for good," West maintained that, to the extent that Nero was a tyrant, the plain meaning of Paul's text is that Nero was not ordained by God and therefore not due submission.³⁶⁴ Perhaps, West suggested, Paul was satirizing Nero so as to suggest that no submission was due the tyrant.³⁶⁵ West further noted that Paul did not name individual rulers and speculated that, even if Nero and many other "powers" at the time of Paul's writing were tyrannical, surely there must have been some who were "ordained of God" and therefore due

³⁵⁶ *Id.* at 425.

³⁵⁷ *Id.* at 425–26.

³⁵⁸ *Id.* at 426.

³⁵⁹ *Id.* at 426.

³⁶⁰ *Id.* at 430.

³⁶¹ *Id.* at 431.

³⁶² *Id.* at 427.

³⁶³ *Id.* at 428.

³⁶⁴ *Id.* at 429.

³⁶⁵ *Id.*

submission.³⁶⁶ Although West articulated these seemingly strained arguments, his preferred solution of the difficulty was to interpret Paul to be writing of the submission owed to the institution of the magistracy rather than to particular magistrates, good or evil.³⁶⁷ West would interpret "the powers that be are ordained of God" to mean "the authority of the magistrates that are now . . . is ordained of the Deity."³⁶⁸ Thus interpreted, *Romans* 13 is not so much a command to submit to human powers, but rather a liberation from oppressive government.³⁶⁹

West's sermon was not an isolated interpretation of *Romans* 13. To take just one more example, a similar approach to Paul's letter was exhibited six years later in another election sermon by a Congregational minister in Boston, this time by Zabdiel Adams, first cousin to President John Adams.³⁷⁰ Like Samuel West, Adams interpreted Paul's phrase "the powers that be are ordained of God," not to mean that particular "rulers are elevated to their places by the immediate agency of heaven,"³⁷¹ but rather that government in general "is of divine appointment."³⁷² Thus, the ministers of Colonial America were able to reconcile the teaching of the Apostle Paul in *Romans* 13 with the American Revolution.

This attitude of colonial America toward *Romans* 13 persisted after the successful American Revolution. An essay titled *Defensive Arms Vindicated* (1783), an edited reprinting of a chapter of the same title from a volume written a century earlier by Alexander Shields, is addressed to "my dear brother soldiers."³⁷³ Shields was a prominent "Scottish Covenanter, Presbyterian Minister, and author."³⁷⁴ With regard to *Romans* 13, the writer of *Defensive Arms Vindicated* marshals several arguments to respond to the idea that Paul was commanding submission even to tyrants like Nero.³⁷⁵ For one, Paul was commanding submission not to all rulers, but only to those "lawful rulers" who were "ordained of

³⁶⁶ *Id.*

³⁶⁷ *Id.* at 429–30.

³⁶⁸ *Id.* at 430.

³⁶⁹ *See id.* at 431 ("[S]ubjects are to be allowed to do everything that is in itself just and right, and are only to be restrained from being guilty of wrong actions.")

³⁷⁰ 1 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA, 1760–1805, *supra* note 353, at 539.

³⁷¹ Zabdiel Adams, *An Election Sermon, reprinted in* 1 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA, 1760–1805, *supra* note 353, at 539, 542.

³⁷² *Id.* at 543.

³⁷³ *See* 1 POLITICAL SERMONS OF THE AMERICAN FOUNDING ERA, 1730–1805, *supra* note 96, at 712.

³⁷⁴ *Id.* at 714.

³⁷⁵ *Defensive Arms Vindicated*, *supra* note 96, at 722.

God, terrors to evil works, ministers of God for good.”³⁷⁶ Thus, the descriptions of rulers in *Romans* 13 was used to qualify the obligation of submission taught by Paul. Moreover, Paul wrote of “powers” in the plural, which suggests that he was not referring to Nero specifically, in which case he would have used the singular.³⁷⁷ Further, Paul does not name Nero, who may not have been in power when Paul wrote or may not yet have become a tyrant.³⁷⁸ The writer expanded on his first point later in the essay: “The tyrant’s power and government in breaking charters, overturning laws, subverting religion, oppressing subjects, is not of God, therefore it may be resisted. This is clear, because that is only the reason why he is not to be resisted, because the ordinance of God is not to be resisted.”³⁷⁹ Thus, it is not whatever powers happen to be that are ordained of God, but only those powers that “punish evildoers and praise those that do well.”

But, as William Stringfellow concluded after citing several such colonial sermons, trying to cabin *Romans* 13’s obligation of submission by the lawfulness or legitimacy of the power in place is fraught with uncertainty: “We find one historic regime which can be and which was, in fact, simultaneously deemed legitimate and lawful, and illegitimate but lawful, and legitimate but unlawful, and illegitimate and unlawful, according to which faction in which country to which the regime pertains beholds it.”³⁸⁰

B. The Third Reich

Nazism called into question “the centrality and adequacy of *Romans* 13:1–7 as the foundation of a Christian doctrine of the state.”³⁸¹ Nazi Germany produced a conflict between proponents of the two views that John Howard Yoder later labeled the *positivistic* and *legitimistic* interpretations of *Romans* 13.³⁸² Some cited *Romans* 13’s traditional interpretation “to support absolute obedience to the Third Reich.”³⁸³ “[T]he positivistic position was represented during World War II by the so-called German Christians”³⁸⁴ Their position was simple. Paul taught that “the powers that be” are ordained of God—therefore, the Nazi regime is

³⁷⁶ *Id.* at 723.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.* at 735–36.

³⁸⁰ WILLIAM STRINGFELLOW, CONSCIENCE & OBEDIENCE: THE POLITICS OF ROMANS 13 AND REVELATION 13 IN LIGHT OF THE SECOND COMING 43 (1977).

³⁸¹ YODER, POLITICS OF JESUS, *supra* note 52, at 193.

³⁸² YODER, CHRISTIAN WITNESS, *supra* note 65.

³⁸³ Feinberg, *supra* note 37, at 88.

³⁸⁴ YODER, CHRISTIAN WITNESS, *supra* note 65.

God's government for Germany at that time and is owed submission by every Christian.³⁸⁵ To appreciate the understanding of *Romans* 13 within Germany at the time of the Third Reich requires a consideration of Karl Barth's famous commentary on *The Epistle to the Romans*.³⁸⁶ Barth (1886–1968) was "described by Pope Pius XII as the most important theologian since Aquinas."³⁸⁷

Yoder's later division of understandings of *Romans* 13 into the *positivistic* view and the *legitimistic* view bear some resemblance to Barth's approach, in which he saw Paul as rejecting both revolution against and legitimation of the powers that be.³⁸⁸ Somewhat confusingly, Barth's "revolutionary" approach corresponds with Yoder's *legitimistic* approach, and Barth's "legitimism" corresponds with Yoder's *positivistic* approach.³⁸⁹ According to Barth, the revolutionary would use *Romans* 13 to measure the existing powers that be, find them wanting, determine that they are owed no submission, and overthrow them, if possible.³⁹⁰ One interested in *legitimism* would take "the powers that be" as the embodiment of God's order.³⁹¹ According to Barth, Paul teaches in *Romans* 13 that both views are to be rejected.³⁹² Paul teaches submission to the existing order without legitimizing it: "[T]here can be no more devastating undermining of the existing order than the recognition of it which is here recommended [by Paul], a recognition rid of all illusion [of legitimacy] and devoid of all the joy of triumph."³⁹³ Barth taught that crucial to an understanding of *Romans* 13 is the understanding of the submission that Paul demands in the first verse as an abnegation of human judgment in favor of God's judgment alone.³⁹⁴ The submission demanded by Paul is not to "the powers that be," as such, but to the God that ordains "the powers that be."³⁹⁵

Barth's theology heavily influenced that of the Lutheran pastor, Dietrich Bonhoeffer (1906–1945) whose "name is almost synonymous with

³⁸⁵ *Id.*

³⁸⁶ See KARL BARTH, *THE EPISTLE TO THE ROMANS* 481 (Edwyn C. Hoskyns trans., Oxford University Press 6th ed. 1968).

³⁸⁷ Kenneth K. Ching, *Would Jesus Kill Hitler?: Bonhoeffer, Church, and State*, 11 *GEO. J. LAW & PUB. POL.* 529, 533 (2013).

³⁸⁸ BARTH, *supra* note 386, at 483.

³⁸⁹ See *id.* at 481; see also YODER, *CHRISTIAN WITNESS*, *supra* note 65.

³⁹⁰ BARTH, *supra* note 386, at 482.

³⁹¹ *Id.* at 484.

³⁹² *Id.* at 483–84.

³⁹³ *Id.* at 483.

³⁹⁴ *Id.* at 484.

³⁹⁵ *Id.*

the church struggle in the Third Reich.”³⁹⁶ Bonhoeffer “lived in Germany during the rise of Nazism,” and “died at the end of World War II, executed by the Nazis for his antiwar activities.”³⁹⁷ Nevertheless, Bonhoeffer’s writings are, perhaps surprisingly, quite positivistic, to use Yoder’s term for classifying interpretations of *Romans* 13.³⁹⁸

In the “State and Church” section of his book *Ethics*, Bonhoeffer included a subsection on “The Divine Character of Government”:³⁹⁹ “Government is given to us not as . . . a task to be fulfilled but as a reality and as something which [] is”⁴⁰⁰ The task of government, to Bonhoeffer, was quite limited: “[W]hether or not government is aware of its own true basis, its task consists in maintaining by the power of the sword an outward justice in which life is preserved and is thus held open for Christ.”⁴⁰¹ All governments, without exception, fulfill this task:

The mission of government to serve Christ is at the same time its inescapable destiny. Government serves Christ no matter whether it is conscious or unconscious of this mission or even whether it is true or untrue to it. If it is unwilling to fulfill this mission, then, through the suffering of the congregation, it renders service to the witness of the name of Christ. . . . It cannot in either case evade its task of serving Christ. It serves Him by its very existence.⁴⁰²

Therefore, “the demand for obedience” to government “is unconditional and qualitatively total.”⁴⁰³ “The Christian is neither obliged nor able to examine the rightfulness of the demand of government in each particular case. His duty of obedience is binding on him until government directly compels him to offend against the divine commandment”⁴⁰⁴ And while Bonhoeffer did make room for particular instances of disobedience when the government would compel offense to God, he nevertheless insisted that the Christian so required to disobey the State must not “generalize from this offense . . . to conclude that this government now possesses no claim to obedience in some of its other demands, or even in all its demands.”⁴⁰⁵

³⁹⁶ See VILLA-VICENCIO, *supra* note 80, at 92.

³⁹⁷ Ching, *supra* note 387, at 547.

³⁹⁸ See LARRY L. RASMUSSEN, DIETRICH BONHOEFFER: REALITY AND RESISTANCE 48 (2005) (“Law is therefore a strongly binding limit in Bonhoeffer’s thought . . .”).

³⁹⁹ DIETRICH BONHOEFFER, *ETHICS* 303 (Eberhard Bethge ed., Neville Horton Smith trans., SCM Press 1955).

⁴⁰⁰ *Id.* at 303 (citing *Romans* 13:1).

⁴⁰¹ *Id.* at 306.

⁴⁰² *Id.*

⁴⁰³ *Id.* at 307.

⁴⁰⁴ Dietrich Bonhoeffer, *State and Church*, in CHARLES VILLA-VICENCIO, BETWEEN CHRIST AND CAESAR, *supra* note 80, at 106, 109.

⁴⁰⁵ *Id.*

This view of the role of government is consistent with Bonhoeffer's earlier comprehensive discussion of *Romans* 13, which appears in chapter thirty of his book, *The Cost of Discipleship*.⁴⁰⁶ That chapter addressed Christian discipleship in the "Visible Community,"⁴⁰⁷ and includes Bonhoeffer's verse-by-verse commentary on *Romans* 13:1–7.⁴⁰⁸ There Bonhoeffer "expounds *Romans* 13 in a way that matches any 'two-kingdoms' call for submission to the governing powers."⁴⁰⁹ Bonhoeffer saw in Paul's command to submit to the higher powers a call to the sort of humble Christian service exemplified by Jesus himself.⁴¹⁰ Bonhoeffer noted again (as Luther, Bonhoeffer himself, and others also already had) that Paul's command was "addressed to the Christians, not to the powers."⁴¹¹ Bonhoeffer understood Paul's command to demand submission to whatever powers "exist," be they good or bad, both sorts of powers God will use to work for the good of Christians.⁴¹² But Bonhoeffer also saw that *Romans* 13's failure to address any command to "the powers that be" cuts the other way as well: "No State is entitled to read into St. Paul's words a justification of its own existence."⁴¹³ Thus, in his Barthian interpretation of *Romans* 13, Bonhoeffer rejects the common conception that the passage is a tract on Christian government:

St. Paul certainly does not speak to the Christians in this way because the governments of this world are so good, but because the Church must obey the will of God, whether the State be bad or good. He has no intention to instruct the Christian community about the task and responsibility of government. His entire concern is with the responsibility of the Christian community towards the State.⁴¹⁴

So Bonhoeffer saw the State as ordained by God in a limited way, much as Luther did⁴¹⁵—it is a (sometimes passive or even resistant) tool that God uses to accomplish His purposes on earth.

This view of the state is confirmed in Bonhoeffer's understanding of Paul's assurance that "rulers are not a terror to good works, but to the evil." In Bonhoeffer's view, Paul noted that the Christian need not fear the State, not because the State is the self-conscious "minister of God," but

⁴⁰⁶ See DIETRICH BONHOEFFER, *THE COST OF DISCIPLESHIP* 223, 235–38 (R.H. Fuller trans., SCM Press 6th ed. 1959) [hereinafter BONHOEFFER, *COST OF DISCIPLESHIP*].

⁴⁰⁷ *Id.* at 223–38.

⁴⁰⁸ *Id.* at 235–38.

⁴⁰⁹ RASMUSSEN, *supra* note 398, at 49.

⁴¹⁰ BONHOEFFER, *COST OF DISCIPLESHIP*, *supra* note 406, at 235.

⁴¹¹ *Id.*; see *supra* text accompanying notes 240–51.

⁴¹² *Id.*

⁴¹³ *Id.* at 236.

⁴¹⁴ *Id.* at 236–37.

⁴¹⁵ Ching, *supra* note 387, at 549.

because God sovereignly controls the State, even in its mistakes, to accomplish His divine purposes.⁴¹⁶ This is so even if the State punishes the one who does well—in that case, such punishment is the humble calling of the follower of Jesus, who likewise was punished for doing good.⁴¹⁷ Interestingly, Bonhoeffer reaffirmed this relatively early interpretation *in toto* even while later preparing his own defense for hearings while he was in Tegel Military Prison.⁴¹⁸

Bonhoeffer's (and Barth's) understanding that the State serves as God's minister even when it acts "un-Christianly" or "anti-Christianly" helps to resolve some of the perceived tensions within Bonhoeffer's theology of the State. To illustrate the interplay of Bonhoeffer's interpretation of *Romans* 13 with his view of the role of the State, consider Professor Kenneth Ching's recent discussion whether Bonhoeffer saw the State as "redemptive."⁴¹⁹ Ching noted: "There are tensions here."⁴²⁰ Ching posed the rhetorical question: "But how can we distinguish government actions that are Christian from those that are neutral?"⁴²¹ The Barth/Bonhoeffer interpretation of *Romans* 13 shows such questions to be somewhat beside the point. There is no theology for the State in *Romans* 13, and if not there, then where?⁴²² The *Romans* 13 question is not whether government actions are "Christian" or "neutral." Government actions are. "The powers that be" are. The follower of Jesus and Paul must submit. Submission does not necessarily mean obedience. Obedience to Christ may mean disobedience to the State. Even so, even in disobedience, the follower of Jesus and Paul submits to the State by quietly accepting the punishment due for the necessary disobedience. This interpretation of *Romans* 13 might be characterized as a theology of the State, but it is not a theology *for* the State.

C. Apartheid South Africa

As had been the case in Nazi Germany, some Christians in South Africa cited *Romans* 13 in support of the apartheid regime.⁴²³ *Romans* 13

⁴¹⁶ BONHOEFFER, *COST OF DISCIPLESHIP*, *supra* note 406, at 237.

⁴¹⁷ *Id.* at 237–38.

⁴¹⁸ RASMUSSEN, *supra* note 398, at 49 n.92.

⁴¹⁹ *See* Ching, *supra* note 387, at 558–59.

⁴²⁰ *Id.* at 559.

⁴²¹ *Id.* I hasten to acknowledge that Ching was not addressing (at least not directly) the precise issue that I am addressing. Ching was discussing what type of state action a Christian should favor. I am addressing the irrelevance of *Romans* 13 (from Bonhoeffer's perspective) to that question. Because we are addressing different questions, what I have written should not be read as a criticism of Ching's work on a separate question.

⁴²² *See id.* at 560–61 ("Bonhoeffer did not expressly answer such questions . . .").

⁴²³ Feinberg, *supra* note 37, at 88.

was "an important text to support the Afrikaners' view of covenantal destiny as a mandate to rule South Africa unswervingly and faithfully."⁴²⁴ In particular, "the Dutch Reformed Church used Romans 13 to support its apartheid ideology."⁴²⁵ Apartheid officials from the President of South Africa to individual members of the South African Security Police cited *Romans* 13 in support of the apartheid regime.⁴²⁶ "Afrikaner theologians, pastors, and politicians alike all emphasized Paul's admonition in Romans 13 that everyone must submit to the governing authorities as the central Scripture concerning Christian relations to the state."⁴²⁷ This application of *Romans* 13 is not hard to understand: "the apartheid state was ordained by God and must be obeyed by all living in South Africa."⁴²⁸

But many Christians in South Africa resisted this application of *Romans* 13,⁴²⁹ and in 1974, the government in South Africa appointed a commission to investigate several resistant church organizations.⁴³⁰ One such organization, the Christian Institute of South Africa, had been founded by the former Dutch Reformed pastor turned anti-apartheid activist, Beyers Naudé.⁴³¹ Some Christian leaders refused to testify, which "led to a series of court cases."⁴³² One significant statement in this regard was "signed by Theo Kotzé (director of the Cape Town region of the Christian Institute), Roelf Meyer (editor of the Christian Institute's official journal *Pro Veritate*), and Beyers Naudé."⁴³³ This statement "reminded" its readers "that the Government does not have authority and power just because it is the Government as such, but because it is 'God's servant.'"⁴³⁴ Thus, "[a]uthority is only legitimate when it does not act contrary to God's will."⁴³⁵ "This interpretive move enabled Naudé to turn the conversation away from the individual and onto the government,"⁴³⁶ a questionable move in light of the fact that *Romans* 13 was addressed to

⁴²⁴ See PAUL, *supra* note 26, at 58.

⁴²⁵ *Id.* at 75.

⁴²⁶ *Id.*

⁴²⁷ Nichols & McCarty, *When the State is Evil*, *supra* note 20, at 609 (footnote omitted).

⁴²⁸ Joel A. Nichols and James W. McCarty III, *Civil Law and Civil Disobedience: The Early Church and the Law*, in *LAW AND THE BIBLE*, *supra* note 17, at 183, 198 [hereinafter Nichols & McCarty, *Civil Law and Civil Disobedience*].

⁴²⁹ *Id.* at 199.

⁴³⁰ See VILLA-VICENCIO, *supra* note 80, at 201.

⁴³¹ Nichols & McCarty, *Civil Law and Civil Disobedience*, *supra* note 428, at 201–02.

⁴³² See VILLA-VICENCIO, *supra* note 80, at 201.

⁴³³ *Id.*

⁴³⁴ *Divine or Civil Obedience, 1973*, in *BETWEEN CHRIST AND CAESAR*, *supra* note 80, at 217, 219.

⁴³⁵ *Id.*

⁴³⁶ Nichols & McCarty, *Civil Law and Civil Disobedience*, *supra* note 428, at 202–03.

the individual believer, not to the government.⁴³⁷ This interpretation would suggest that not all governments are ordained of God, but only good governments. However, Naudé's statement then goes on to argue that "[t]he words in Romans 13: 'The Government is ordained by God' and 'they are servants (ministers) of God' do not refer to a peculiar commission or dignity of the Government but to what it in fact is, whether it accepts Romans 13 or not."⁴³⁸ This suggests that all governments, good and bad, are "ordained" by God and His "servants." Perhaps any tension between these two positions can be resolved through the position that God does not delegate authority to governments but rather uses them as tools to accomplish divine purposes.⁴³⁹ But what implications would this position have for the Christian's obligation of submission? The drafters of the statement had an opinion on the subject: "If a Government violates the Gospel, it loses its authority to be obeyed in its office as ruler."⁴⁴⁰ The drafters of the statement cited "[t]he Calvinist John Knox" and Calvin himself in support of this right of resistance.⁴⁴¹

Likewise, when the South African Minister of Justice warned the South African Council of Churches national conference against its advocacy of civil disobedience, Allan Boesak, president of the WARC, responded with a letter dated August 24, 1979.⁴⁴² There Boesak argued that "the first verse of Romans 13" was "often taken as a blank legitimization of state interference."⁴⁴³ But Boesak used Paul's description of the powers that be as "a servant of God, 'for your good'" to limit the legitimate exercise of government power: "[A] government wields authority for as long as there is evidence that it is accepting responsibility for the law and for justice."⁴⁴⁴ Likewise, an "ecumenical working group" of the South African Council of Churches wrote in 1985 a document titled "A Theological Rationale and a Call to Prayer for the End to Unjust Rule."⁴⁴⁵ That document seeks to square Christian resistance in South Africa with historical Christian traditions.⁴⁴⁶ Perhaps ironically, the drafters of the

⁴³⁷ See *supra* text accompanying notes 92–95.

⁴³⁸ *Divine or Civil Obedience, 1973*, *supra* note 434, at 219.

⁴³⁹ See *supra* text accompanying notes 413–16.

⁴⁴⁰ *Divine or Civil Obedience, 1973*, *supra* note 434, at 219.

⁴⁴¹ *Id.* at 219–20.

⁴⁴² VILLA-VICENCIO, *supra* note 80, at 203, 235.

⁴⁴³ Allan Boesak, *Letter to the South African Minister of Justice*, in *BETWEEN CHRIST AND CAESAR*, *supra* note 80, at 235, 238.

⁴⁴⁴ *Id.*

⁴⁴⁵ VILLA-VICENCIO, *supra* note 80, at 203, 247.

⁴⁴⁶ See *id.* at 203.

document found little support from Luther and Calvin⁴⁴⁷, but a great deal more support from Popes John XXIII and Paul VI.⁴⁴⁸

The Kairos Document is "a biblical and theological comment on the political crisis in South Africa"⁴⁴⁹ written by "an anonymous group of South African theologians."⁴⁵⁰ The drafters of the document recognized that "[i]n the life and death conflict between different social forces that has come to a head in South Africa today, there are Christians . . . on both sides of the conflict—and some who are trying to sit on the fence!"⁴⁵¹ The drafters of the document recognized in this fact a challenge to the authority of Scripture: "Does it show that the Bible can be used for any purpose at all?"⁴⁵² It is clear that the drafters of *the Kairos Document* thought the answer to this rhetorical question was "no" and that their interpretation of Scripture is the only correct interpretation.⁴⁵³ The drafters of the document attributed the division within the South African church to three differing theologies, which they labeled "'State Theology,' 'Church Theology' and 'Prophetic Theology.'"⁴⁵⁴ The drafters of *the Kairos Document* embraced the third of these "theologies," and criticized the other two.⁴⁵⁵

They equated what they called "State Theology" with the South African apartheid State.⁴⁵⁶ "State Theology" justifies apartheid "by misusing theological concepts and biblical texts for its own political purposes."⁴⁵⁷ The prime example given was "the use of Romans 13:1–7 to give an absolute and 'divine' authority to the State."⁴⁵⁸ *The Kairos Document* begins the consideration of *Romans* 13:1–7 by noting that "[t]he misuse of this famous text is not confined to the present government in South Africa. Throughout the history of Christianity totalitarian regimes have tried to legitimise an attitude of blind obedience and absolute servility towards the state by quoting this text."⁴⁵⁹ The irony of this statement in light of the context in which Paul wrote *Romans*—during or

⁴⁴⁷ See *supra* Part II.D for a discussion of the relevant views of Luther and Calvin.

⁴⁴⁸ See VILLA-VICENCIO, *supra* note 80, at 249; see also *infra* notes 476–81 and accompanying text.

⁴⁴⁹ See VILLA-VICENCIO, *supra* note 80, at 204.

⁴⁵⁰ Nichols & McCarty, *Civil Law and Civil Disobedience*, *supra* note 428, at 199.

⁴⁵¹ *The Kairos Document*, in BETWEEN CHRIST AND CAESAR, *supra* note 80, at 251, 251.

⁴⁵² *Id.*

⁴⁵³ See *id.* at 253.

⁴⁵⁴ *Id.* at 252.

⁴⁵⁵ *Id.* at 252, 261.

⁴⁵⁶ *Id.* at 252.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

shortly before totalitarian Roman regimes that certainly would not cite Paul to legitimize themselves⁴⁶⁰—seems to escape the drafters of the document.

Nevertheless, the drafters of *the Kairos Document* seek to take Paul's teaching seriously while avoiding obedience to the apartheid regime. *The Kairos Document* identifies as the interpretive flaw of "State Theology" the assumption "that in this text Paul is presenting us with the absolute and definitive Christian doctrine about the State, in other words an absolute and universal principle that is equally valid for all times and in all circumstances."⁴⁶¹ Since this assumption is attributed to "State Theology" without citing a particular example, it is hard to judge whether Afrikaner Christians defended apartheid based on such an interpretation, but it is worth noting here that the strongest "quietist" responses to *Romans* 13:1–7 (such as that pursued by the Anabaptists during the reformation) emphasized the fact that *Romans* 13 is not addressed to the state at all, which seems at odds with the idea that *Romans* 13 provides the "definitive Christian doctrine about the State."⁴⁶² The Kairos writers suggest that Paul's command to submit to the powers that be in *Romans* 13 must be limited to its historical context, which the *Kairos* writers saw as Paul's combating antinomian heresy within the church at Rome.⁴⁶³ Thus, Paul was merely establishing that some human power must exist to whom submission is owed.⁴⁶⁴ Paul was not addressing whether such submission is owed if the power becomes oppressive.⁴⁶⁵

The drafters of *the Kairos Document* also take direct aim at the idea that "the powers that be," even the evil ones, are God's tool for accomplishing His will.⁴⁶⁶ While the *Kairos* writers acknowledge that God allows oppressors "to rule for a while," they insist that such rule "was not God's will."⁴⁶⁷ The exegetical strategy pursued here is the now familiar approach of reading Paul's call to obedience to the State as limited to good governments: "'The State is there to serve God for your benefit,' says Paul. That is the kind of State he is speaking of. That is the kind of State that must be obeyed."⁴⁶⁸ And the converse also is true: "Inasmuch as a government does not fulfill its mission, and even does the exact opposite

⁴⁶⁰ See *supra* Part II.A.

⁴⁶¹ *The Kairos Document*, *supra* note 451, at 252–53.

⁴⁶² *Id.* at 252; see also *supra* text accompanying notes 270–75.

⁴⁶³ *Id.* at 253.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

⁴⁶⁸ KAIROS THEOLOGIANS, *THE MOMENT OF TRUTH: THE KAIROS DOCUMENTS* 51 (Gary S. D. Leonard ed., 2010).

by punishing what is right and rewarding what is wrong, it cannot be viewed as blessed and ordained by God."⁴⁶⁹

The same sort of argument was made by Anglican Archbishop Desmond Tutu, the most prominent Christian leader of the anti-apartheid movement.⁴⁷⁰ "After the establishment of a democratic government, President Nelson Mandela appointed him as chair of the South African Truth and Reconciliation Commission (TRC)."⁴⁷¹ In an April 8, 1988 letter to South African President P.W. Botha, Tutu declared "We accept wholeheartedly St. Paul's teaching in Romans 13—that we should submit ourselves to earthly rulers."⁴⁷² Noting that "governments" and "their apologists" cite "Romans 13, with glee," Tutu alludes to Paul's language suggesting that the ruler is to be God's "servant to do the subjects good," instilling "fear only in those who do wrong, holding no terror for those who do right."⁴⁷³ Tutu then declared the following "corollary" to those propositions that he read in Paul: "you must not submit yourself to a ruler who subverts your good."⁴⁷⁴

It is noteworthy that upon the recent passing of the beloved national hero of South Africa, Nelson Mandela, the Baptist Union of Southern Africa, which had taken the position that no *Romans* 13 submission was owed to the apartheid regime, released this statement:

The Apostle Paul wrote in Romans 13:4 concerning the responsibility which political leaders should exercise: "for he is God's servant for your good." Mr[.] Mandela did so in an exceptional way. He set an example to South Africa, and indeed to the world, of responsible leadership that is committed to service and not to personal power or gain. He devoted his life to South Africa and all its peoples.⁴⁷⁵

Thus, Nelson Mandela was truly "a power that be" in South Africa—he satisfied the perceived requirements of *Romans* 13 and was due submission per Paul's teaching. Apartheid was not.

IV. CONTEMPORARY CHRISTIAN REFLECTIONS ON "THE POWERS THAT BE"

Before turning to contemporary evangelical Christian (largely Protestant) views of *Romans* 13, it is important to note contemporary Catholic doctrine as articulated in Vatican II. In April of 1963, Pope John

⁴⁶⁹ Nichols & McCarty, *Civil Law and Civil Disobedience*, *supra* note 428, at 201.

⁴⁷⁰ *Id.* at 203.

⁴⁷¹ *Id.*

⁴⁷² DESMOND TUTU, *THE RAINBOW PEOPLE OF GOD: THE MAKING OF A PEACEFUL REVOLUTION* 152 (1994).

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

⁴⁷⁵ Press Release, Baptist Union of Southern Africa, Statement on the Death of Nelson Rolihlahla Mandela (Dec. 10, 2013) (on file with Regent University Law Review).

XXIII published his encyclical, *Pacem in Terris*.⁴⁷⁶ John first grounded the origin of the state's authority in *Romans* 13⁴⁷⁷ and then immediately followed up with a quotation of the leading forerunner of the legitimistic interpretation on *Romans* 13, John Chrysostom.⁴⁷⁸ John XXIII's initial emphasis was that God is the author of government as necessary to human society,⁴⁷⁹ but he quickly turned again to the legitimistic principle: "[R]epresentatives of the State have no power to bind men in conscience, unless their own authority is tied to God's authority, and is a participation in it."⁴⁸⁰ And again, "laws and decrees passed in contravention of the moral order, and hence of the divine will, can have no binding force in conscience."⁴⁸¹

While contemporary evangelical Christian voices do not sing in perfect harmony on the question of the Christian's obligation to submit to government as taught by Paul in *Romans* 13,⁴⁸² I believe that one view has started to dominate—the approach apparently embraced by Vatican II—the interpretation that John Howard Yoder has called the *legitimistic* interpretation of *Romans* 13, that the obligation of Christian submission is contingent on "the powers that be" performing the role of praising good and punishing evil.⁴⁸³ This is the interpretation followed by the American revolutionaries and the opponents of apartheid in South Africa.⁴⁸⁴

A good place to start in surveying contemporary Protestant views of *Romans* 13 is John Howard Yoder. Yoder first rejects the perception that *Romans* 13 is "a kind of charter or constitution for the political realm."⁴⁸⁵ Yoder therefore also rejected both what he called the positivistic and legitimistic (normative) interpretations as assuming too much about the significance of Paul's teaching in *Romans* 13.⁴⁸⁶ According to Yoder, there is "good reason to doubt whether the intention of Paul in this passage was at all to provide this sort of metaphysic or ontology of the state. . . . The state is not instituted, i.e., established, but rather accepted in its empirical reality, as something that God can overrule toward His ends."⁴⁸⁷ Thus,

⁴⁷⁶ See VILLA-VICENCIO, *supra* note 80, at 113.

⁴⁷⁷ Pope John XXIII, *Pacem in Terris*, in BETWEEN CHRIST AND CAESAR, *supra* note 80, at 112, 117.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.* at 118.

⁴⁸¹ *Id.*

⁴⁸² See *supra* note 21 and accompanying text.

⁴⁸³ See *infra* note 491 and accompanying text.

⁴⁸⁴ See *supra* notes 359–62, 463–69, 472–74 and accompanying text.

⁴⁸⁵ YODER, POLITICS OF JESUS, *supra* note 52, at 197.

⁴⁸⁶ *Id.* at 201–02.

⁴⁸⁷ YODER, CHRISTIAN WITNESS, *supra* note 65, at 75.

carefully reading *Romans* 13 in context, Yoder argues that Paul's text in *Romans* 13 neither approves nor condemns government in general or particular governments.⁴⁸⁸ Yoder argues that God "orders" to His purposes but does not "ordain" or "institute" governments.⁴⁸⁹

Yoder accepts the positivistic view that all governments are permitted and used by God, but rejects the idea that God therefore approves those governments.⁴⁹⁰ On the other hand, Yoder accepts the legitimistic (normative) idea that *Romans* 13 provides a measuring stick for government performance, but rejects the idea that the Christian is authorized to rebel against any government that does not measure up:

[T]here are criteria whereby the functioning of government can be measured. According to the totality of the passage, we cannot measure whether we should revolt against the government, as if certain governments could fall short on the status of government, and therefore need to be revolted against. Nor can we measure by this yardstick whether a government has been permitted by God, because all government has been permitted by God. All the powers that be are subject to the ordering of God, and Christians are to be subject to them all. But we can judge and measure the extent to which a government is accomplishing its ministry, by asking namely whether it persistently (*present* participle) attends to the rewarding of good and evil according to their merits⁴⁹¹

This interpretation would place the follower of Paul ever submitting and yet ever at odds with the state:

No state can be so low on the scale of relative justice that the duty of the Christian is no longer to be subject; no state can rise so high on that scale that Christians are not called to some sort of suffering because of their refusal to agree with its self-glorification and the resultant injustices.⁴⁹²

An interesting twist on Yoder's view was recently taken by David M. Smolin and Kar Yong Lim.⁴⁹³ Consistent with Yoder's view, Smolin and Lim also take the view that "what Paul advocated in *Romans* 13:1–7 was not an elaborate set of principles or a theory of political power or his theology of the state."⁴⁹⁴ However, instead of seeing a limit on what Paul had to say about the nature of the state, as Yoder did, Smolin and Lim see a limit on the audience to whom Paul was commanding submission to the state. Smolin and Lim see Paul's command as addressed "to a minority

⁴⁸⁸ YODER, *POLITICS OF JESUS*, *supra* note 52, at 200.

⁴⁸⁹ *Id.* at 203.

⁴⁹⁰ *Id.* at 204.

⁴⁹¹ YODER, *POLITICS OF JESUS*, *supra* note 52, at 208.

⁴⁹² YODER, *CHRISTIAN WITNESS*, *supra* note 65, at 77.

⁴⁹³ See Smolin & Lim, *supra* note 17, at 216.

⁴⁹⁴ *Id.*

group who lived under the reality of a Roman hegemony and power that was unjust and oppressive. It was this vulnerable group of Christians that Paul addressed.”⁴⁹⁵

Perhaps the leading voice in the late twentieth century evangelical protestant push toward the legitimistic interpretation of *Romans* 13 was Francis Schaeffer.⁴⁹⁶ Francis August Schaeffer IV was born in Germantown, Pennsylvania in 1912 to parents of German ancestry.⁴⁹⁷ Growing up, Schaeffer was considered a hard-working and conscientious child and, unbeknownst to him, on an intelligence test scored the second-highest score recorded in twenty years.⁴⁹⁸ In 1931, Schaeffer began pre-ministerial studies at Hampden-Sydney College.⁴⁹⁹ After graduating Magna Cum Laude, Schaeffer enrolled in Westminster Theological Seminary in Philadelphia.⁵⁰⁰ He then transferred and graduated from Faith Theological Seminary and would later go back there to teach.⁵⁰¹ Schaeffer’s best-known work probably is his book, *A Christian Manifesto*, which was dedicated “most of all” to Samuel Rutherford.⁵⁰² In interpreting *Romans* 13, Francis Schaeffer argued forcefully that the Christians’ obligation to obey “the powers that be” is contingent on those powers’ fulfilling their proper God-given role:

God has ordained the state as a *delegated* authority; it is not autonomous. The state is to be an agent of justice, to restrain evil by punishing the wrongdoer, and to protect the good in society. When it does the reverse, *it has no proper authority*. It is then a usurped authority and as such it becomes lawless and is tyranny.⁵⁰³

The limits on the Christian’s obligation to submit to the state found a receptive audience in American evangelical Christianity.⁵⁰⁴ “Jerry Falwell’s Old Time Gospel Hour alone has distributed 62,000 copies” of Schaeffer’s book.⁵⁰⁵

⁴⁹⁵ *Id.*

⁴⁹⁶ Michael S. Hamilton, *The Dissatisfaction of Francis Schaeffer*, CHRISTIANITY TODAY, Mar. 3, 1997 at 22, 22.

⁴⁹⁷ COLIN DURIEZ, FRANCIS SCHAEFFER: AN AUTHENTIC LIFE 15–17 (2008).

⁴⁹⁸ *Id.* at 18.

⁴⁹⁹ *Id.* at 25.

⁵⁰⁰ *Id.* at 32.

⁵⁰¹ *Id.* at 42–45, 121.

⁵⁰² SCHAEFFER, *supra* note 305, at 5.

⁵⁰³ *Id.* at 91.

⁵⁰⁴ See BUZZARD & CAMPBELL, *supra* note 57, at 2, 9 (identifying a growing number of conservative evangelicals willing to engage in civil disobedience).

⁵⁰⁵ *Id.* at 10. More than a few evangelical Christian writers have followed Schaeffer’s lead. See, e.g., BANDOW, *supra* note 80, at 237–38 n.3 (arguing that rulers who do not act for the good of the ruled “are flouting the purpose for which their kingdoms were created, calling in question a Christian’s duty to obey”).

Not all evangelical Christians have been so quick to justify civil disobedience by Christians. The well-known and influential contemporary Christian pastor and media personality, John MacArthur, has written on *Romans* 13:1 "that the apostle, under the inspiration of the Holy Spirit, gives this command without qualification or condition. We are to obey every civil authority, no matter how immoral, cruel, ungodly, or incompetent he or she might be."⁵⁰⁶ A view similar to MacArthur's had been described a few decades earlier by the Mennonite theologian, John Howard Yoder: "One of the most widely cited writers on the subject of the Christian's relation to the State . . ."⁵⁰⁷ Yoder explicitly rejects the common interpretation of *Romans* 13 that permits Christians to stand in judgment of the legitimacy of a particular state (a view that Yoder attributes to Karl Barth *vis-à-vis* Hitler⁵⁰⁸) before deciding whether to submit to that state: "It is just this conclusion that . . . Paul opposes in *Romans* 13. It is the powers that *be* to which we ought to be subjected under God for the sake of conscience."⁵⁰⁹

Professor Michael J. DeBoer, a graduate of and former law teacher at Liberty University (founded by the Reverend Jerry Falwell), observes that "Paul seems to have assumed that civil rulers know (at least in significant part) God's moral law, the moral order of things, and that this moral law informs them as they perform their functions and make their judgments."⁵¹⁰ Thus, DeBoer rejects the idea that Paul saw civil rulers as doing God's bidding whether they know it or not, even when they think they are doing the opposite.⁵¹¹ The Liberty University Law Review also recently published another article by a recent Liberty Law graduate taking the position that *Romans* 13 provides a job description for the civil magistrate.⁵¹² After noting that Paul uses the Greek word *diakonos* meaning "an attendant, i.e., (gen.) a waiter (at table or in other menial duties)," Benjamin Walton argues that "the civil magistrate is God's servant, and as such, he is to be attentive to and attendant upon the needs

⁵⁰⁶ JOHN F. MACARTHUR, JR., WHY GOVERNMENT CAN'T SAVE YOU 21 (2000); see *John MacArthur's Biography*, GRACE TO YOU, <http://www.gty.org/connect/biography> (last visited Nov. 13, 2014) (describing MacArthur's background and influence).

⁵⁰⁷ BUZZARD & CAMPBELL, *supra* note 57, at 143.

⁵⁰⁸ YODER, CHRISTIAN WITNESS, *supra* note 65, at 43 n.8.

⁵⁰⁹ *Id.* at 43.

⁵¹⁰ Michael J. DeBoer, *Seek a Right View of the Bible—A Biblical and Theological Response to Herbert W. Titus and Some Lessons for Christian Law Students*, 2 LIBERTY U. L. REV. 339, 384 (2008).

⁵¹¹ *See id.*

⁵¹² Benjamin S. Walton, *The Authoritativeness and Usefulness of the Principles of God's Old Covenant Law for the New Covenant Church and State*, 5 LIBERTY U. L. REV. 419 (2011).

of his Lord. . . . His specific job description is punishing those who do evil and praising those who do well.”⁵¹³ Walton is not troubled by the Christian doctrine of the Fall: “Since Jesus came to redeem and restore all of the created order, He came to redeem and restore the institutions of both the Church and the state.”⁵¹⁴

In his book, *Redeeming Law*, outspokenly Christian law professor Michael Schutt takes a very sanguine view, from an explicitly Christian perspective, of the civil magistracy.⁵¹⁵ Schutt cites *Romans* 13 for the proposition that God appoints the civil ruler as His instrument for the punishment of evil doers and for the praise of doers of good.⁵¹⁶ And these civil rulers are to be no mere passive instruments. Schutt’s version of the *Romans* 13 civil magistrate is that she is God’s vicegerent or “agent,” not merely God’s servant or instrument.⁵¹⁷ If *Romans* 13 were read as not addressing how the ruler should view her own role (since the ruler end of the ruler-ruled relationship is not directly addressed by Paul),⁵¹⁸ then *Romans* 13 simply teaches that magistrates are God’s instruments, not His agents. But Schutt’s vision of these human instruments in God’s service is one of human rulers consciously trying to accomplish divine purposes on earth.⁵¹⁹ For Schutt, when St. Paul the Apostle speaks of human rulers as God’s “servants,” this implies agency—the human ruler consciously acts for God.⁵²⁰ The civil ruler exercises “delegated

⁵¹³ *Id.* at 447.

⁵¹⁴ *Id.* at 460.

⁵¹⁵ JEFFREY A. BRAUCH, *A HIGHER LAW: READINGS ON THE INFLUENCE OF CHRISTIAN THOUGHT IN ANGLO-AMERICAN LAW* 419–20 (2d ed. 2008).

⁵¹⁶ MICHAEL P. SCHUTT, *REDEEMING LAW: CHRISTIAN CALLING AND THE LEGAL PROFESSION* 202 (2007).

⁵¹⁷ *See id.* at 202.

⁵¹⁸ *See supra* text accompanying notes 86–96.

⁵¹⁹ *See* SCHUTT, *supra* note 516, at 51 (“The particular way we are to live out the offices . . . is determined by discernment of obligations germane to the particular post under the circumstances at hand.”).

⁵²⁰ *See id.* at 202 (“[T]he civil ruler is appointed by God as an agent—a servant—of God to do us good.”). Schutt’s interpretation of “servant” or “minister” may be problematic. The word translated “servant” in *Romans* 13 is used at least sixteen times in the New Testament, overwhelmingly in reference to menial servants or slaves, and never for one who exercises discretionary authority in service of another. Jesus Christ is recorded as using the word, twice each in the Gospels *Matthew* and *Mark*. *See Matthew* 20:26, 23:11; *Mark* 9:35, 10:43 (describing the proper attitudes of His followers—they should be “servants,” not masters). Christ also uses the word to describe one who follows the precise command of the king. *Matthew* 22:13. Twice in the account of changing water into wine the word is used to describe those who were commanded to draw water. *John* 2:5, 9. The other uses are by St. Paul the Apostle, twice here in *Romans* 13:4. In *Romans* 15:8 Paul exhorts his readers to accept one another just as Christ became the “servant” of the uncircumcision. In *Romans* 16:1, Phoebe was identified as a “servant of the church which is at Cenchrea.” In *I Corinthians* 3:5 Paul emphasizes that he and Apollos are nothing, mere “servants.” In *II*

authority . . . to punish wrongdoers . . . and to praise those who do right."⁵²¹ The civil magistrate, as God's agent, discerns God's will and uses human power to try to bring the Divine will about.⁵²² As such, the civil magistrate is obligated to pursue the "human" reflections, attempts, and parts of the eternal law according to principles or patterns that can be seen (albeit dimly) in the divine law (the Bible).⁵²³

Schutt's sanguine view of the civil magistrate leads to a similarly sanguine view of the nature of human law. To Schutt, the state is not "inherently untrustworthy in its role as minister of justice."⁵²⁴ Human law is not merely instrumental and secular.⁵²⁵ Schutt teaches that human law is not purely secular since it is (or should be) patterned on divine law and in fact relies on it.⁵²⁶ If only mankind would bring to bear Schutt's biblical worldview on our attempts to apply law, we would see that there is

Corinthians 3:6 Paul opines that Christians are adequate only as "servants" of Christ. In *II Corinthians* 6:4 Paul exhorts the Corinthians to endure afflictions as "servants" of God. Paul uses the word twice in *II Corinthians* 11, once to describe the "servants" of Satan, *II Corinthians* 11:15, and once to describe his own "service" for Christ in suffering beatings, afflictions, etc. *II Corinthians* 11:23. It is hard to square these other uses of the word "servant" with Schutt's vision.

⁵²¹ SCHUTT, *supra* note 516, at 202.

⁵²² *See id.* at 202 (suggesting the magistrate accomplishes this by meting out punishment for wrongdoers and rewarding the righteous).

⁵²³ *See id.* at 30–31.

⁵²⁴ *See id.* at 201–02.

⁵²⁵ *See id.* at 33. Here I must disagree with my beloved colleague Michael Schutt. My view is that human law, like other human institutions, such as war and private property, is "secular" or "temporal" in the sense that it has a limited purpose—that it does not exist for its own sake. When the purpose is fulfilled, it no longer need exist and might eventually cease. Temporal institutions are instruments of their purposes. One who understands the purpose of the institution has some insight into the proper nature of the institution. Not everything is secular. Some things exist for their own sake. For example, perhaps music is a human institution that, in my opinion, is not instrumental. I believe that art and music are as eternal as humans are since they would exist even in an ideal, sinless human society. Human war would not. Private property, in my opinion, would not. *See* Louis W. Hensler III, *What's Sic Utere for the Goose: The Public Nature of the Right to Use and Enjoy Property Suggests a Utilitarian Approach to Nuisance Cases*, 37 N. KY. L. REV. 31, 35–47 (2010) (outlining the evolution of the view of private property in the West from roots in instrumental toleration). Human music exists for its own sake. I believe that it is impossible to be fully human without music. Music is necessary to human flourishing, even under idemal conditions. For me, the question is whether law is the same way. I think not. I think that music is something that humans do because we are humans. I think that law is something that humans do because we are fallen, sinful, and prone to self-destruction—we would be killing each other without law. It is easy to imagine music with no end other than itself. I do not even know what it would mean to ask whether human music "works." But I certainly can critique human law on whether it works. To me, all of this points to the instrumental nature of human law. Schutt strongly disagrees with this view of human law as temporal and instrumental.

⁵²⁶ *See* SCHUTT, *supra* note 516, at 31–32.

something about human law that makes it more than a tool for manipulation of those under law's authority.⁵²⁷ Schutt's interpretation of *Romans* 13 supports his relatively aggressive view of the role of the civil magistrate in enforcing natural law.

David M. Smolin and Kar Yong Lim have recently published a similar view of *Romans* 13. They begin by limiting Paul's seemingly universal command of submission to powers in verses one and two to the precise context into which Paul wrote.⁵²⁸ Smolin and Lim then interpret the following verses as setting out "how godly ruling authorities should act."⁵²⁹ This creates some tension since it seeks to limit Paul's opening command to the precise historical context while treating Paul's description of the ruling powers to whom submission is owed as transcending historical context. Smolin and Lim accomplish this by converting Paul's indicative description of the power as "the minister of God, a revenger to execute wrath upon him that doeth evil"⁵³⁰ into the imperative: "They are to punish those who do wrong and commend those who do right."⁵³¹ Forging their limitation on Paul's command of submission to their conversion of Paul's description of powers as a prescription directed to all rulers yields a limited obligation to submit to good rulers: "what Paul seems to be advocating here is willing submission with the clearly implied assumption that this submission is only appropriate to a power that deserves such obedience, a power that rules justly."⁵³² Smolin and Lim believe that Paul's readers would have recognized that "the powers that be" of their day (Caesar) does not live up to God's standard for ruling powers set out in *Romans* 13.⁵³³ Ironically, then, Paul's directions for good government in *Romans* 13:3–4 nullify the command of submission with which Paul starts in *Romans* 13:1. The apparent internal tension in the Smolin/Lim view of *Romans* 13 extends to their discussion of verse seven. Paul exhorts Roman Christians to pay the taxes due, even if those taxes are seen as "excessive and unjust."⁵³⁴ But when it comes to rendering respect and honor to the

⁵²⁷ Schutt sees his view of the relationship between human law and natural law as based on the natural law thinking of St. Thomas Aquinas. See SCHUTT, *supra* note 516, at 28. I have elsewhere suggested that it is possible to take a fairly instrumental reading of Aquinas. See Louis W. Hensler III, *A Modest Reading of St. Thomas Aquinas on the Connection Between Natural Law and Human Law*, 43 CREIGHTON L. REV. 153, 167–73 (2009); see also *supra* note 525 (discussing how human law could be instrumental).

⁵²⁸ Smolin & Lim, *supra* note 17, at 215–16.

⁵²⁹ *Id.*

⁵³⁰ *Romans* 13:4 (King James).

⁵³¹ Smolin & Lim, *supra* note 17, at 216.

⁵³² *Id.*

⁵³³ See *id.* at 216–17.

⁵³⁴ *Id.* at 217.

powers, the obligation is more strictly construed—only those who earn honor and respect by “honor[ing] their divinely appointed role” are “due” such respect.⁵³⁵ Thus, while Paul’s teaching in *Romans* 13 appears on the surface to be non-resistant to “the powers that be,” it is actually “subversive” to those unjust powers.⁵³⁶

Professor Smolin tries to take what he calls “a properly minimalist reading of Romans 13:1–7,”⁵³⁷ but trying to keep the idea that rulers are to serve as God’s self-conscious agents for the punishment of evil and the praise of good while cabining that role in a way that would be acceptable to the contemporary West has proven to be extremely difficult at best. The only limit on such authority, once recognized, appears to be what Professor Smolin calls “prudence”: “The church has long understood that there are many evils that in prudence do not come within the jurisdiction of the civil magistrate and many goods that the state is powerless to establish or even further.”⁵³⁸ How to exercise this “prudence” certainly is not spelled out in *Romans* 13. If the civil magistrate is to self-consciously punish evil and praise good, there is no logical limit to that jurisdiction.⁵³⁹ It is possible for people informed by biblical principles to suggest standards for the jurisdiction of the civil magistrate—I have tried my hand at that task.⁵⁴⁰ Professor Smolin likewise has previously tried to divine principles for dividing between moral law that the civil magistrate is authorized by God to enforce and that part that the magistrate is not authorized to enforce.⁵⁴¹ But such attempts frequently emerge from practical human reason and then sometimes are read back onto *Romans* 13. Those are not interpretations that emerge from the text of *Romans* 13. They are not true readings of *Romans* 13, minimalist or otherwise.

CONCLUSION

The observant reader probably has discovered hints as to my own interpretation of *Romans* 13. I tend to think that Paul’s statement in this paraenetic section of *Romans* is primarily about the believer’s life in light of the sovereignty of God. Paul undoubtedly understood that there would be a tendency to rebel against or at least bristle at hostile government

⁵³⁵ *Id.* at 218.

⁵³⁶ *Id.*

⁵³⁷ *Id.* at 223.

⁵³⁸ *Id.*

⁵³⁹ See Elizabeth Mensch, *Christianity and the Roots of Liberalism*, in *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* 54, 66 (Michael W. McConnell et al. eds., 2001) (discussing Augustine’s and Luther’s views that the polity is “only a necessary . . . dike against chaos” and that there is “no conceptual basis for legal limits to a ruler’s power”).

⁵⁴⁰ See Hensler, *A Modest Reading of St. Thomas Aquinas*, *supra* note 527, at 173–74.

⁵⁴¹ See David M. Smolin, *The Enforcement of Natural Law by the State: A Response to Professor Calhoun*, 16 U. DAYTON L. REV. 381, 397–402 (1991).

forces, and I think Paul was asserting that all things ultimately are under God's control. "The powers that be are ordained of God." Therefore, it is safe for the believer to accept those powers as a given and to submit to them. To resist would be to resist what God in His sovereign plan has permitted. While hostile rulers might naturally engender fear, the believer who does good need not fear, for the ruler's hostility always will be filtered through God's sovereign control. God will see that the believer who does good receives praise, either now or hereafter.

While Paul describes how God commonly uses human rulers as His servants for wrath, and *Romans* 13:1–7 commands submission to those "the powers that be," Paul says nothing to the powers that be. Thus, Paul's indicative description of how God uses human powers is not an imperative norm for the rulers themselves. I see the approach of many Christians from the Middle Ages forward, who have used *Romans* 13 either to justify or to condemn particular governing regimes (a practice that continues to this very day) to be almost entirely beside Paul's point. In this, I think my view is consonant with that of the non-resistant Anabaptists and with the Lutherans, particularly including Dietrich Bonhoeffer.