

Lutheran Theology and Contract Law in Early Modern Germany

SUMMARY KEYWORDS

contract, goods, book, theologians, lutheran, people, seventh commandment, charity, luther, interest, salvation, legal, jurist, case, christian, acts, ministers, paolo, loan, property

SPEAKERS

Natália da Silva Perez, Paolo Astorri

Natália da Silva Perez 00:25

Hi, my name is Natália da Silva Perez, and you are listening to the Privacy Studies Podcast. Today I am speaking with my colleague Paolo Astorri, a legal historian and postdoctoral researcher at the Center for Privacy Studies. Hi, Paolo, thank you so much for being here with us.

Paolo Astorri 00:44

Thank you so much. So it's a pleasure for me to be here and participating in this fantastic podcast. Thank you so much.

Natália da Silva Perez 00:50

We will discuss his book, Lutheran Theology and Contract Law in Early Modern Germany, which just won the RefoRC Book Award. 2020. Congratulations, Paolo,

Paolo Astorri 01:01

Thank you so much.

Natália da Silva Perez 01:04

Your book surveys the contributions that reformers like Martin Luther, Philip Melancton, among others, had on the development of contract law. Could you give us an overview of your book.

Paolo Astorri 01:15

During my PhD, I first worked on cases of conscience with three books, manual manuals of morals, theology, and so on and so on. So books that were created for morality in a theological perspective, I first worked at the on the Catholic side. And then I start the Protestant side, especially the Lutheran side with Martin Luther and Philip malenko. And I say, basically, their general teachings, their general theological perspective, and then their teachings about morality. And then from the itchiness of morality, I go to the teachings about contract law and financial issues, property law, and so on. The book starts with Lutheran lanthanum, and then goes throughout the early modern period. So we have not only Lutheran Lankan, but also many other orders. And the reason is simple. I saw that was lacking

somehow, it's a study that connects the works of Lutheran Langdon with the works of their followers, the works of Lutheran Melancon shouldn't be read alone isolated, but they should be right in the context the interpretation that was given to this Texan

Natália da Silva Perez 02:20

That is part of the development of contract law. So the reception of these works also influenced legal theory?

Paolo Astorri 02:29

Basically, you on this IP knows David curry trails. pahlawan hindson Martin Chemnitz, yuan Gerhardt, your Meyer, you understand Raya, and many other theologians read and interpreted neuter and Melancon. And their interpretation was, of course, adopted for general issues, but also on financial issues and contract law issues, because they somehow updated the works of Lutron Lambton, some are also changing them many times, there was a connection between the academic world and practice daily life world,

Natália da Silva Perez 03:06

I would like you to expand a little bit about the discussion on the seventh commandment and the influence on the legal understanding of private property and contracts. Can you tell us a little bit about that?

Paolo Astorri 03:17

The second commandment You shall not steal, is crucial for everything about finance. So we are talking about economics and the transfer of goods, that Asian property is essential. For two aspects. The first aspect is basically that the anabaptist were the Baptists were a Protestant faction, they were criticizing the possession of goods. So they said that according to the Bible, according to the Scriptures, the Christians cannot have goods, property of goods, everything has to be in common among Christians. And they quoted several biblical passages like the passage where priests Christ extended the merchants from the temple, which was also used in the medieval discussion. And also other passages like when the disciples of Christ have everything in common and we find this in the Acts of the Apostles. And the other passages where basically if you want to crisis, the disciples if you want to gain eternal life, go and sell whatever you have. This just to give you an example, the other side of the discussion was the theory of the scholastics and basically the monks more than the Scholastic the demands that the abandoning property abzu to gain eternal life through a way of purification, and this was a monastic EDL. So on the one side, there was a concrete claim of the anabaptist. And Langton says that their opinions were a fanatic and some issues just to tell Which was the hours the dispute. On the other end, Luther was complaining against the monks because the monastic idea of abandoned abandoning proper properties was according to him against the gospel. When they said that was against the gospel, they were mainly referring they were referring to several biblical passages. But the verse The first point was, especially for Milan was the seventh commandment, the seventh commandment is decree an ordinance for follow for from from London is a command. And this command is that Christians can have goods. They are not obliged, but somehow it's a divine institution property is, is an institution of God. So it's something good is something that is absolutely not wrong. And the Christians have to be aware that God wishes that they can have goods, and then they can

keep these goods. On the other end, the Seventh Commandment does not only Institute private property and say, okay, you can have goods you don't have, you're not obliged to share them. You can have private properties. But also the Seventh Commandment says that you have to comply with certain rules, what does it mean? It means that you don't have to, first of all, you don't have to defraud your neighbor. So you have to acquire goods in a lawful way, you cannot steal that goods, and still was intended in a different way of what we might think if we think about theft. Today, we always think about something very clear like a theft in house, stealing a car or whatever. But here the point was also about a contractual frauds. At the time, the price of goods was fixed, it was the market price. And if there was a violation of this market price, the parties had to return the goods to the original seller, the Seventh Commandment forbade selling a good at a price that is not good at not at the just price. And the Seventh Commandment forbade all these types of frauds. It also commanded the commutative, justice and equality, commutative justice, as of course, not a Christian, not entirely a biblical concept is a concept by Aristotle, which was reinterpreted by Lankton, especially not by Luther, by Langston in a theological way. What does it mean, in exchange of goods, there must be equality so that none of the party gets more than what he had before. So the two parties have to get the same benefits, there must be equality in this exchange. This was interpreted in a theological way in the sense that it's an act of charity. What does it mean that is unethical of charity, it means that I look at my neighbor, and I perform this equality to benefit him out of charity. To explain this, I have to come back to another to another concept, the dynamic between faith and charity, the entire Lutheran reformation is based on the idea that man is justified by faith so men obtains faith by God is God that gives faith to man and this faith includes salvation. In a Catholic origin. salvation was something that needed a route of purification from since I made the scene, I had to pay a price for the sin that I made. So I had to do payments little by little penance, after penance, I will grant my salvation salvation was a result of acts of penances by the Christian because of the medieval idea that God is just in God's justice means that if you make a scene you have to pay for the sin. So salvation was something that you have to get by a road of Penance and purification, in order and instead claiming that salvation is granted freely by God, there is no need of penances in order to get salvation. Salvation is not dependent from penance, but derives from God's grace. So once the Christians have got this salvation by fate, they aren't demanded by by Christ by God to perform the act of charity, this act of charity are not meant for granting salvation, but just for make acts that are present to God. And for the sake of the neighbor, not for the sake of the Christian because by doing these acts, it doesn't get get anything. Salvation is really guaranteed. It's not that he does these acts of charity in order to get something from God, salvation. Salvation is already something that the Christian has because of fate. So these dynamics, faith and charity are together in the seven commandment, in the sense that the Christian is called to abide flowers, it's called to, to perform acts of equality as as charity towards the neighbor, because of their salvation already received. So as a gratitude for disinflationary received, God gave me salvation. As a gratitude for this salvation, I performed the act of charity. And so I can respect the neighbor and comply with the rules of seventh command. And this is the basic structure of the contractual law developed by the Lutherans. And there is a little, little thing that they want to have, that the seven commandment was also about acts of liberality. So exchanges of goods by Christians, but also charity in the sense of giving without receiving in anything in exchange, like, enhance giving, basically. And so this commandment was also about that this aspect is also important. When we talk about business contracts,

You also recently wrote a blog post that deals with the relationship between the efforts to reform the morality of private businesses and you also touched on the topic of charity, with the example which I found very curious and interesting about this 5% contract... the different people who had access to this contract, the difference between the rich and the poor... could you explain to us a little bit what is this 5% contract and why they were different access to it?

Paolo Astorri 11:46

The 5% contract was basically a sale where I buy the rights to receive a certain income from your land, so I give you the money, and then you have to give him back every year, the 5% of the sum that I gave to you, there was this interest prohibition, which means that loans at interest were forbidden. Why, in the middle age, the pope interpreted the passage of Luke 635 lending, hoping for nothing in return in the sense that if you land, you have to opt for nothing in return. So every loan must be for free. You cannot charge interest in alone. So what happened, the Scholastic's can only send an intelligence, they figure out a solution, a few out contacted what's called Kansas. And this contract was basically classified as a sale as it was a sale, it was not alone. But it was very similar, because so let's say you have the length, I have the money, I come to you, I give you the money, you cannot give me an interest, but I I buy something from you. So it is a sale, it is not alone. What I buy, I buy, let's say, the products of your land. So every year you have to pay me, let's say part of the province of your land. At the beginning, it was just the fruits of the land, then it became money. In the end, this is an interest, but it wasn't called an interest. It wasn't called an annuity, an annual income from land, this annual income in Germany was the terminal to be maximum of 5%. So, there is an interest of 5% basically, every year till I can repay the loan, or in certain cases, this possibility was not even included. So the rent was per title. This 5% contract was very common, but was also suspected to be illegal or serious because of the fact that was in need a loan. It was called the sale but he was a loan.

Natália da Silva Perez 13:51

Because it was a subterfuge not to be perceived as a loan.

Paolo Astorri 13:56

Precisely, it was a subterfuge, that is the right word, and it was originally a creation of the canonists, but it was also discussed by the Lutherans. But the approach is somehow different, because the neutrons divided the people in three categories, the people who are poor, the people who are poor, and can work and the people who are rich. So the people who are completely poor, can only receive receive arms. So towards the people, a Christian should only give outs, there is no way to give a loan to someone who cannot repay you. But there are some people they said that can work. So they don't have money. Now they need money, but they can work they can be employed somewhere and they can return the loan. So towards these people, a Christian should give a loan because these people can work and can return. Of course, the obligation is not only for the lender, but also for the borrower, the borrower has to return the sum. So On this point that theologians were very shocked, because we might think, okay, I give someone 50 years, and I don't know this person, but just because I'm a Christian, and I owe that they will give me back the money. But then he doesn't, then what I do, there were serious moral obligations, and also legal obligations towards the poor, who can work and where the rich people towards this rich people, the Christians can charge this annuity, they even call it the beginning interest, they call it annuity, but they can charge it, because these people are rich, and so they can return the

money plus the interest. So there is a distinction that every Christian has to make while deciding whether entering into this contract or not entering into this 5% contract. And this depends on the type of people that we are dealing with. And the idea that vices is, if we are charging the interest to someone who cannot repay, then we are basically damaging our neighbor. So we have to select the people towards which we can charge interest. If adapter cannot repay the debt, the Christian creditor should remit the depth or should avoid the charging of interest. Of course, not in every case, only if there is an external circumstance, which couldn't be predicted before, like fluid or like fire or whatever. So something that couldn't be expected before, like an epidemic. Let's say, in this case, because of charity, the creditor should remit that.

Natália da Silva Perez 16:36

Now let's go to the jurists to the legal part of your book a little bit. Tell us the story about the Hague ginsburg contract

Paolo Astorri 16:45

problem was a conflict between conscious and the legislation of the Emperor. There was an imperial law that said that this 5% contract was lawful. But there were in Regensburg, five ministers, ecclesiastical ministers in Regensburg, were saying that this 5% contract was a serious violating the Bible, but mainly the passage I mentioned before, look, 635 lending, hoping for nothing in return. And this five ministers, of course, received the attention by many people. And so the people started to be troubled because they told Okay, we are doing something wrong. We are doing something against the law, and then we are singing. And also this minister started to refuse to give the Holy Communion to the people performer this contracts is 5% contracts. On the other end, there was a law and the apparent law that said this, this contracts this assumption, elements of this country were allowed were lawful. So there was a conflict between the preaching of this ministers were saying, look, this 5% contract is against the Word of God. If you do it, you're sinning. On the other hand, there was the Imperial legislation who said, No, we can use this contract. So what happened in Regensburg yohannes Andrea Andre was one of the most important theologians of the Lutheran orthodoxy in the second half of 16th century. And this theologian came to Reagan's book, in order to discuss the thesis of this, of this five ministers. After our discussion, basically, the five ministers were expanded by the constant man of Regensburg. So they were condemned, condemned, and they had to flee away. But they anyway, polisher the book where the pamphlet, where they insisted that the decision of the councilmen and the thesis of Andrea were wrong, and they were saying the truth in front of God. And that basically, this contract was a violation of of usury law and regulation of the Divine Law. issue was, was discussed then the consistorial of Regensburg and the consistorial sent the question to the geology, legal Faculty of tuebingen. This was something very common in Germany, they hacked into sending was a procedure where the acts of dispute were sent to a panel of jurist at the faculty to be disgusted. And this jurist at the power to the side the issue so it was not only not simply a consultation, and not simply, yeah, consultation, but was was a decision of the of the case that the juries juries could do. So on the one hand, we have the sermons of Andrea, where Andrea somehow preacher, the people in Reagan's mood and told the people of dragon's blood Look, this minister are saying something false, we have to behave according to the Word of God. And the word of God says that this contract is lawful. On the other end, we have the choice afterwards, I'd say the same thing, basically on what Andrea said, from the legal viewpoint. So there is a collaboration between theologians interests.

one small thing I want to mention here is that in this dispute, we see how other words were completely changed, overturn

Natália da Silva Perez 20:34

The practical needs of businesses sort of beget this new interpretation, or this reinterpretation of Luther's work, I guess.

Paolo Astorri 20:44

Just the... probably the pressure of economics for the legalization of this financial instrument was so important there was there was so much pressure that andrae really transforming the words of Luther. So Luther said, only special categories of people like the widows who didn't have other means to live can practice this contract. Andrea started to say that no, Luther didn't mean to refer only to these people, but to all the people who are in need, so not only widows, but all the people who needed money, who could be also a merchant with money, so needed alone. So not only disadvantaged people.

Natália da Silva Perez 21:19

So you interpret this as sort of a distortion of the intention that Luther had when he wrote that?

Paolo Astorri 21:28

Yes, I think so it was a distortion because Luther was very, very much against usury, and very much against this. This contract at the beginning, he wrote different treatises on your story. At the beginning and early 20s of the 16th century, he really condemned this contract, the second moment was adopting a different position, which were a little bit more open, using this expression, interest out of need for specific categories of people. But it was really a moderate open. I think that you didn't want to open this to everybody, it was very careful here. We tried to from an exception for specific people, we have the general rule 100 transformed exception into the general rule. And he was very good in doing this. It's a very much interesting interpretation. Sophisticated, it's interesting, because you see out notice words were distorted. There was also a case in rudl start in another city of Germany. And it was also a difficult case where they were asking over 12 opinions to theologians around Germany. And the word theologians we said exactly the opposite opinion. So that basically this this contract was illegal was serious. And others who said that it had to be discussed at the each situation separately. So every case was different. But we're also theologians were you have or have this contract. So against this contract, so there was a debate.

Natália da Silva Perez 23:07

This is really a fascinating book. Thank you so much for for sharing some ideas with us. I am now curious about what comes next. What are the projects that you're involved in at the Center for privacy studies? You are involved in the cases of the of Helmstedt and Dresden? Can you tell us a little bit about what you're doing now?

Paolo Astorri 23:24

Sure, thanks. In Hempstead I am working on I'm continuing to working on some of the jurists and theologians I knew before I also use it in my books like 100 can and cannot have nice and also on

others, and then inside trying somehow to examine other aspects of their thinking here was mostly my book mostly about business property, and this type of issues. Now I'm trying to see something else. Like for instance, I'm trying to work with a colleague of mine certain on an article and 100 con which tries to somehow see that theological and the legal part and the public and private life of Imran Khan. Also, I'm trying to, to see the opinions of Heinrich and Canon or niacin, others, theologians and jurist on the issue of the power of the church in specific specific cases, and if this powers could, could be seen as invading the private sphere or not invading the private spheres on the Dresden case and working on marriage, and then trying to see the legislation of the new legislation of marriage marriage by Morris and also Saxony and the legal team debate and theological debate behind this legislation. I'm especially interested in the issues about serious secret marriages. And basically the novelties of the Lutheran legislation in electoral Prince was of Saxony and Moritz and Saxony basically. This is it for now.

Natália da Silva Perez 25:26

So we have something to look forward to. Thank you so much, Paolo. It has been such a pleasure talking to you about your book and about your work. How can people get in touch with you?

Paolo Astorri 25:35

They can find me on the website of the Center for Privacy Studies. They can send me an email I always read this, I'm very happy. Otherwise, you can find me on Twitter @AstorriPaolo.

Natália da Silva Perez 25:45

Thank you so much Paolo. Paolo Astorri is the author of Lutheran Theology and Contract Law in Early Modern Germany - 1520-1720. The Privacy Studies Podcast is produced by me, Natália da Silva Perez, with the support of the Center for Privacy Studies at the University of Copenhagen, and the Danish National Research Foundation. The theme music is Pyramid Folk by Septahelix. This podcast is released under a Creative Commons license: Attribution Noncommercial sharealike. Thank you so much for listening.