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## John Calvin

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### Abstract

*French-born Protestant Reformer, John Calvin, led a sweeping reformation of law, politics, and society in sixteenth-century Geneva. Building on classical and earlier Christian sources, Calvin developed an innovative and integrative theory of rights and liberties, church and state, authority and power, natural law and positive law. Particular striking was his use of the Decalogue as a source and summary of natural law, and as a template for spiritual and civil laws and rights in a Christian republic. Also novel was his theory of the uses of natural and positive law to cultivate a baseline civil morality and an aspirational spiritual morality for each member of the community. Calvin and his followers believed in law, as a deterrent against sin, an inducement to grace, and a teacher of Christian virtue. They also believed in liberty, structuring their churches and states alike to minimize the sins of their rulers and to maximize the liberties of their subjects. Calvin distilled his legal teachings into sundry public, private, penal, and procedural laws for Geneva, and he broadcast them widely among other French and other European jurists, theologians, and political leaders of his day. His work helped shape Western legal thought and practice until the modern Enlightenment, and several of his basic teachings about law, politics, and society still live on today both in secular legal thought and in modern Protestant churches.*

**Keywords:** John Calvin; Geneva; natural law; natural rights; uses of law; church and state; Christian republic

### Biographical Introduction

For all of his fame as a theologian and religious reformer of Geneva, John Calvin (1509–1564) was also a major Christian jurist.<sup>1</sup> He studied law in Bourges,

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This chapter is drawn in part from John Witte Jr., *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007), ch. 1 [hereafter RR], and John Witte Jr. and Robert M. Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva*, 2 vols. (Grand Rapids, MI: Eerdmans, 2005, 2019) [hereafter SMF 1 and 2].

Orléans, and Paris and was steeped in legal humanism. He named his standard introduction to theology, the *Institutes of the Christian Religion* (1536), after the standard introduction to law, the *Institutes of Justinian*. His first major reforms in Geneva were new constitutional laws for church and state—the 1541 Ecclesiastical Ordinances, the 1542 Edict of the Lieutenant, and the 1543 Ordinances on Offices and Officers. He drafted some sixty ordinances thereafter on marriage, children, social welfare, public morality, education, and other topics. He left fragments of new laws on property, inheritance, and commerce, many of which were integrated into the lengthy 1568 Civil Edict of Geneva. He left fuller outlines of major new ordinances on civil and criminal procedure. He left some fifty formal legal opinions (*consilia*) on specific legal questions, and more than three hundred letters with leading jurists, judges, and lawyers discussing legal topics.<sup>2</sup> He sat as a judge in most of the 300 to 550 cases per year that came before the Consistory of Geneva in the 1540s and 1550s, offering some lengthy opinions in cases raising complex legal issues.<sup>3</sup> He was a frequent legal and political adviser to the Genevan city council and other town councils. And Calvin dealt with many intricate legal issues in his theological writings and commentaries on the Torah and other biblical texts on law. Although he left no separate treatises on law, he showed full command of biblical and Talmudic law, Roman law and civilian jurisprudence, early church constitutions and medieval canon law, local urban and feudal laws, and classical and Christian natural-law theories.

While Calvin is best known for his work in Geneva, he was a lifelong Frenchman. He was born in 1509 in Noyon, France, into a devout, minor aristocratic Catholic family. His father, Gerard, served as a canon lawyer and secretary to the local bishop and cathedral chapter. Around 1521, Gerard sent young Calvin to a *collège* in Paris, where he followed a typical humanist curriculum. He then studied law at the Universities of Bourges and Orléans, working with such legal masters as Andreas Alciatus and Pierre L'Estoile. Calvin took his licentiate in law and then returned to Paris for further legal studies, now with the noted linguist and legal humanist Guillaume Budé. In 1531, Calvin's father died — as an excommunicant from the church, owing to an earlier dispute with the bishop. Calvin and his family tried in vain to have Gerard buried in a consecrated cemetery, precipitating an angry clash with local religious authorities that alienated Calvin from Catholicism. Sometime in the following year or two,

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<sup>1</sup> Josef Bohatec, *Calvin und das Recht* (Graz: H. Böhlau, 1934); Basil Hall, "John Calvin, the Jurisconsults, and the *Ius Civile*," in *Studies in Church History*, ed. G. J. Cumming (Leiden: Brill, 1966), 202–16.

<sup>2</sup> Most of these laws are collected in Emile Rivoire and Victor van Berchem, eds., *Les sources du droit du canton de Genève*, 4 vols. (Aarau: H. R. Sauerländer, 1927–1935) [hereafter SD] and in *Ioannis Calvini opera quae supersunt omnia*, ed. G. Baum, et al., 59 vols. (Brunswick: Schwetschke, 1863–1900), vol. 10/1 [hereafter CO].

<sup>3</sup> Robert M. Kingdon, ed., *Registres du Consistoire de Genève au Temps de Calvin*, 21 vols. (Geneva: Droz, 1996–).

Calvin “suddenly converted” to Protestantism.<sup>4</sup> In 1533, he and his friend Nicholas Cop, the rector of the University of Paris, had to flee Paris for expressing new Protestant sympathies.

Calvin remained an exile from France for the rest of his life. After intermittent stays in Basel, Geneva, and Strasbourg in the 1530s, he settled in Geneva in 1541 until his death in 1564. Even in exile, however, Calvin remained consummately French. He kept a prim French home, wardrobe, and diet. He preached and wrote in a simple and elegant French style. He helped prepare a French edition of the Bible and drafted several French catechisms and liturgies. He helped found the Geneva Academy, with principal instruction in French. Most of the seventy-plus volumes in his *œuvres* are in French, and they helped make Geneva one of the three biggest centers of the day for publications in French.<sup>5</sup> Two of Calvin’s closest coworkers in Geneva were French-trained jurists, Theodore Beza and Germain Colladon, and he collaborated with several other French jurists — including Hugo Donnellus, François Hotman, Charles Dumoulin, and Jacques Cujas, all of whom appear in this volume. Calvin also corresponded regularly with French aristocratic men and women who sought his counsel, and he welcomed many hundreds of French refugees into Geneva as religious tensions between and among Catholics and Protestants escalated.

Calvin led a top-to-bottom reformation of church, state, and society in Geneva, creating a model Protestant city emulated in hundreds of Calvinist towns in Europe, the British Isles, North America, and Southern Africa.<sup>6</sup> Alongside his ample legal and political reform work, Calvin was a busy pastor — preaching almost every Sunday and several days during the week, and performing hundreds of weddings, baptisms, and other pastoral calls. He was a prolific biblical commentator, leaving commentaries or lectures on almost every book of the Bible. He was a formidable polemicist, engaging in sharp and protracted debates with several Catholics, Libertines, Antitrinitarians, Antinomians, and Anabaptists. He also engaged in harsh polemics against detractors like Michael Servetus and Sebastian Castellio, and notoriously supported the Genevan authorities in their execution of Servetus.

This chapter samples Calvin’s work on rights and liberties and on church and state. For Calvin, the church and state, separately and together, had the responsibility of protecting and promoting the law and liberty of a Godly Christian republic built on divine and natural law.

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<sup>4</sup> CO 31:22ff. See biographies: William J. Bouwsma, *John Calvin: A Sixteenth-Century Portrait* (New York/Oxford: Oxford University Press, 1988); Bernard Cottret, *Calvin: A Biography*, trans. M. Wallace McDonald (Grand Rapids, MI: Eerdmans, 2000).

<sup>5</sup> CO has 59 vols.; others books are listed in W. de Greef, *The Writings of John Calvin*, trans. Lyle D. Bierma (Grand Rapids, MI: Baker Books, 1993).

<sup>6</sup> Philip Benedict, *Christ’s Church Purely Reformed: A Social History of Calvinism* (New Haven, CT: Yale University Press, 2002); John T. McNeill, *The History and Character of Calvinism* (New York: Oxford University Press, 1979).

## Liberties and Rights

**Liberties.** Calvin opened his 1536 *Institutes of the Christian Religion* with a loud, Luther-like call for liberty. The book's lengthy dedication to King Francis I of France was, in reality, a cleverly drafted lawyer's brief on behalf of Protestants who were being persecuted by church and state authorities alike. Immediately after his glowing tribute to this "most mighty, illustrious and glorious" king, Calvin launched into his legal argument. He cleverly singled out those abuses of Protestants that defied widely recognized rights and freedoms of his day, particularly criminal procedural rights. Calvin protested the widespread and unchecked instances of "perjury," "lying slanders," "wicked accusations," and the "fury of evil men" that conspired to incite "public hatred" and "open violence" against believers. He argued that "the case" of the Protestants had "been handled with no order of law and with violent heat rather than judicial gravity." He railed against various forms of false imprisonment and abuses of prisoners: "Some of us are shackled with irons, some beaten with rods, some led about as laughing stocks, some proscribed, some most savagely tortured, some forced to flee." He protested the many procedural inequities: Protestants were "fraudulently and undeservedly charged with treason and villainy." They were convicted for capital offenses, "without confession or sure testimony." "Bloody sentences are meted out against this doctrine without a hearing." He objected to the bias of judges and the partiality of judicial proceedings: "Those who sit in judgment ... pronounce as sentences the prejudices which they have brought from home." He lamented the intrusions on the church's freedoms of assembly and speech: "The poor little church has either been wasted with cruel slaughter or banished into exile, or so overwhelmed by threats and fears that it dare not even open its mouth." All these offenses stood diametrically opposed to basic political freedoms recognized at the time both in the Holy Roman Empire and in France. "A very great question is at stake," Calvin declared to King Francis: "how God's glory may be kept safe on earth, how God's truth may retain its place of honor, how Christ's kingdom may be kept in good repair among us."<sup>7</sup>

Later on, in this same title, Calvin called for the freedom not just of Protestants, but of all peaceable believers, including Catholics, Jews, and Muslims. He denounced the forced baptisms, inquisitions, crusades, and other forms of religious persecution practiced by the medieval church and state:

We ought to strive by whatever means we can, whether by exhortation and teaching or by mercy and gentleness, or by our own prayers to God, that they may turn to a more virtuous life and may return to the society and unity of the church. And not only are excommunicants to be so treated, but also Turks and Saracens, and other enemies of religion. Far be it

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<sup>7</sup> John Calvin, *Institutes of the Christian Religion*, trans. Ford Lewis Battles, rev. ed. (Grand Rapids, MI: Eerdmans, 1986), dedicatory epistle [hereafter *Institutes* (1536)].

from us to approve those methods by which many until now have tried to force them to our faith, when they forbid them the use of fire and water and the common elements, when they deny them to all offices of humanity, when they pursue them with sword and arms.<sup>8</sup>

Over the next twenty-five years, Calvin continued to build his case for freedom. His touchstone was the Bible, especially those many New Testament passages on freedom: “For freedom Christ has set us free”; “You were called to freedom”; “Where the Spirit of the Lord is, there is freedom”; “For the law of the Spirit of life in Christ Jesus has set [you] free from the law of sin and death”; “You will know the truth, and the truth will make you free”; “You will be free indeed”; “You all have been given ‘the law of liberty’ in Christ, ‘the glorious liberty of the children of God.’”<sup>9</sup> Calvin left scores of pages of sermons and commentaries on these passages. “There is nothing more desirable than liberty,” he wrote. Liberty is “an inestimable good,” “a singular benefit and treasure that cannot be prized enough,” something worth “more than half of life.” “How great a benefit liberty is, when God has bestowed it on someone.” Calvin emphasized the importance of political suffrage and the franchise in the political community. The “right to vote,” he once said, is the “best way to preserve liberty.” “Let those whom God has given liberty and the franchise use it.” “The reason why tyrannies have come into the world, why people everywhere have lost their liberty ... is that people who had elections abused the privilege.” “There is no kind of government more salutary than one in which liberty is properly exercised with becoming moderation and properly constituted on a durable basis.”<sup>10</sup>

**Rights.** Drawing on his legal training, Calvin also discussed the subjective rights (*iura, droits*) of individuals alongside their liberties (*libertates, libertés*). Sometimes he used general phrases like “the common rights of mankind” (*iura commune hominum*), the “natural rights” (*iura naturali*) of persons, the “rights of a common nature” (*communis naturae iura*), and “the equal rights and liberties” (*pari iura et libertates*) of all.<sup>11</sup> Usually he referenced more specific subjective rights. He spoke, for example, about the “rights of Christian liberty,” the “rights of citizenship” in the kingdom of God, the “right of adoption” that Christians enjoy as new sons and daughters of God and brothers and sisters in Christ. He referenced the right “to inhabit,” “to dwell in,” and “to claim the territory” that Yahweh gave to the chosen people of Israel. He mentioned “Paul’s rights of

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<sup>8</sup> *Ibid.*, 2.28.

<sup>9</sup> Galatians 5:1,13; 2 Corinthians 3:17; Romans 8:2; John 8:32, 36; James 2:12; Romans 8:21 (RSV).

<sup>10</sup> John Calvin, *Institutes of the Christian Religion*, ed. John T. McNeill, trans. Ford Lewis Battles (Philadelphia: Westminster Press, 1960), 3.19.1–8, 14 [hereafter *Institutes* (1559)]; *Serm.*, Gen. 39:11; *Serm.*, 1 Sam. 8, 17; *Comm.*, Harm. Law Deut. 15:1–11; 17:14–18; 24:7; *Serm.*, Deut. 16:18–19; 18:14–18.

<sup>11</sup> *Comm.*, Gen. 4:13; *Comm.*, Harm. Law Num. 3:5–10, 18–22; Deut. 5:19; *Comm.*, Ps. 7:6–8; *Lect.*, Jer. 22:1–3; 22:13–14; *Lect.*, Ezek. 8:17; *Comm.*, 1 Cor. 7:37.

Roman citizenship.” He spoke frequently, as a student of Roman law would, about property rights: the right to land and other property, “the right to enjoy and use what one possesses,” the right “to recover” and “to have restored” lost or stolen property; the right to compensation for work; the right to sell, bequeath, and inherit property, particularly in accordance with the “natural rights of primogeniture.” He spoke of the right to bury one’s parents and other relatives. He also spoke frequently of the marital rights of husband and wife, and the “sacred,” “natural,” and “common” rights of parents over their children—in particular, the right and authority of a father to “name his child,” “to raise the child,” and to set the child up in marriage. He spoke in passing about the “sacred right of hospitality” of the sojourner, the “right of asylum” or of sanctuary for those in flight, the “right of redemption” for slaves, and the natural rights and “just rights” of the poor, needy, orphans, and widows.<sup>12</sup>

Subjective rights talk became increasingly common in Calvin’s Geneva—and even more so in the next century, as Calvinists faced repression and genocide that were killing them by the tens of thousands and forcing others to rise up to vindicate their fundamental rights. It is telling that, by 1650, Calvinists on both sides of the Atlantic had defined, defended, and died for every one of the rights that would appear a century and a half later in the United States Bill of Rights of 1791 as well as most of the rights set out in the 1789 French Declaration of Rights of Man and Citizen.<sup>13</sup>

**Natural Law Foundations.** But Calvinist rights talk was always coupled with duties talk. The whole point of having rights and liberties, Calvin insisted, was to enable a person to discharge the duties and responsibilities of the faith. “We obtain liberty in order that we may more promptly and more readily obey God in all things” spiritual and temporal, he wrote.<sup>14</sup> Freedoms and commandments, rights and duties remained together in Calvin’s formulation, balancing and bolstering each other. Subjective rights claims were grounded in an objective right order.

Calvin spent a great deal of time defining this right order. Sometimes he described it as a natural order, an order of nature, or an order of creation. Sometimes he used more anthropological language: our human conscience, the inner voice, our natural inclination or sense of right and wrong. More often, he described this order as a divine, spiritual, moral, or natural law. What this untidy gaggle of terms basically described was the set of norms that undergird and legitimize the positive laws of human authorities. God has written this natural law on the hearts and consciences of all persons, rewritten it in the pages of scripture, and summarized it in the Decalogue.

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<sup>12</sup> Sources in *RR*, 57–58.

<sup>13</sup> *Ibid.*, chaps. 2–5.

<sup>14</sup> *Comm.*, 1 Peter 2:16; *Institutes* (1559), 3.17.1–2; 3.19.14–16; 4.10.5.

Calvin often used the Decalogue as a crisp summary of the natural law, as well as a template of the natural rights and duties of each person. The First Table of the Decalogue, he said, prescribes natural duties that each person owes to God: the duty to honor God and God's name, to observe the Sabbath day of rest and holy worship, to avoid false gods and false swearing. The Second Table prescribes natural duties that each person owes to others: to honor one's parents and other authorities, not to kill, not to commit adultery, not to steal, not to bear false witness, not to covet. Each person's natural duties toward God in the First Table can be recast as that person's natural rights of religion: the right to honor God and God's name, the right to rest and worship on one's Sabbath, the right to be free from false gods and false oaths. Such religious rights are "inherent human rights," said Calvin, "part of our human nature," which church, state, and neighbor alike must respect. Such religious rights and duties are also extensions of God's divine rights: the "eternal right of God himself, to be properly worshipped and glorified," as Calvin put it. Each person's natural duties toward a neighbor in the Second Table, in turn, can be cast as a neighbor's natural rights to have those duties discharged. One person's duties not to kill, to commit adultery, to steal, to bear false witness, or to covet thus give rise to another person's rights to life, property, fidelity, reputation, and domestic privacy. Calvin outlined these themes in his many writings on the Decalogue. His followers, beginning with his Genevan successor, Theodore Beza, and Cambridge don Christopher Goodman, spun out elaborate Decalogue-based theories of "inherent" or "fundamental" rights.<sup>15</sup>

### The "Uses" of Law

Beyond grounding each person's natural rights and liberties, the natural law, according to Calvin, had other uses in human lives and communities. The natural law may not be a pathway to salvation, Calvin argued, echoing the Protestant doctrine of justification by faith alone and not by works. But the natural law — and the positive laws built on its foundations — still remains "useful" in this earthly life. Combining earlier classical and Christian insights, Calvin distinguished "three uses of the law."<sup>16</sup>

First, the law has a *civil use*—to restrain the sinfulness of every person in the community, even those who have not been justified by faith in God's grace. "The law is like a halter to check the raging and otherwise limitlessly ranging lusts of the flesh.... Hindered by fright or shame, sinners dare neither execute what they have conceived in their minds, nor openly breathe forth the rage of their lust." The law thus imposes upon them what Calvin variously called a "forced," "public," or "civil" righteousness. Although their consciences are "untouched by any care for what is just and right," the very threat of punishment compels sinners to obey the basic duties of the natural law—to fear God, to rest on the Sabbath, to avoid blasphemy, idolatry, and profanity, to obey authorities, to

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<sup>15</sup> Sources in *RR*, 121–41.

<sup>16</sup> *Institutes* (1536), 1.33.

respect their neighbor's person, property, and domestic relationships, to remain sexually virtuous, to speak truthfully of themselves and their neighbors. God coerces sinful persons to adopt such civil righteousness in order to preserve a measure of order and liberty in the sin-ridden earthly kingdom. "Unless there is some restraint, the condition of wild beasts would be better and more desirable than ours." "Liberty would always bring ruin with it, if it were not bridled by the moderation" born of the natural and positive law, Calvin argued.<sup>17</sup>

Second, the law has a *theological use*—to condemn all persons in their consciences and to compel them to seek God's liberating grace. By setting forth a model of perfect righteousness, the law "warns, informs, convicts, and lastly condemns every man of his own unrighteousness." The law thereby punctures his vanity, diminishes his pride, and drives him to despair. Such despair, Calvin believed, is a necessary precondition for the sinner to seek God's help and to have faith in God's grace. "It is as if someone's face were all marked up so that everybody who saw him might laugh at him. Yet he himself is completely unaware of his condition. But if they bring him a mirror, he will be ashamed of himself, and will hide and wash himself when he sees how filthy he is." The law is that mirror. It drives persons to repent of their sin and seek the cleansing "spiritual liberty" available to them through faith in God's grace—the liberty of conscience from the condemnation of the moral law.<sup>18</sup>

Third, the law has an *educational use*—to teach believers, those who have accepted God's grace, the means and measures of sanctification. Even the most devout saints, though free from the condemnation of the law, still need to follow the commandments "to learn more thoroughly ... the Lord's will [and] to be aroused to obedience." The law teaches them not only the civil righteousness required of all persons, but also the spiritual righteousness that is becoming of sanctified Christians. As a teacher, the law not only coerces them against violence and violation but also cultivates in them charity and love. It not only punishes harmful acts of murder, theft, and adultery but also prohibits evil thoughts of hatred, covetousness, and lust. Such habits of spiritual righteousness are to pervade all aspects of the life of the believer—spiritual and temporal, ecclesiastical and political, private and public. Calvin stressed that redeemed Christians must take their faith and conscience directly into public life as "ambassadors and stewards of the treasure of salvation," whose exemplary lives not only glorify God but also induce others to seek God's grace.<sup>19</sup>

This formula of three uses of the law provided Calvin and his followers with another sturdy template to discuss the purposes of different types of law in different types of organized communities. For example, the deterrent, retributive,

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<sup>17</sup> *Institutes* (1559), 2.7.10; *Lect.*, Jer. 30:9.

<sup>18</sup> *Institutes* (1559), 2.7.6–9; 3.19.3–6; *Comm.*, Gal. 5:13; *Comm.*, Gal. 3:19; *Serm.*, Deut. 5:23–27.

<sup>19</sup> *Serm.*, Deut. 5:4–7, 22; *Institutes* (1559), 2.7.12; 2.8.6; 2.8.51; 3.3.9; 3.6.1; 3.17.5–6; *Comm.*, 1 Peter 1:14.

and rehabilitative purposes of criminal law and punishment matched closely the civil, theological, and educational uses of the law. Later Calvinists built intricate theories of criminal law and procedure on this basic tripartite formula.<sup>20</sup> Similarly, in discharging their authority, parents, teachers, masters, and employers had to balance the goals of restriction, instruction, and inspiration of their children, wards, and servants. Later Calvinists would build an elaborate industry of family laws, household manuals, and educational handbooks on this same three-uses formula.<sup>21</sup>

### **State and Church in a Godly Republic**

Calvin also based his theory of church and state in part on the three uses of the law. The church and the state are separate legal entities, he argued. Each institution has its own forms of organization and order, its own norms of discipline and rule. Each must issue positive human laws on the basis of God's natural law and in protection of the people's natural rights and liberties. Each must play a distinct role in enforcing godly government and discipline in the community, and in fostering the uses of God's law. The state must focus on the civil use of the law — using coercive measures as needed to achieve a basic level of civil righteousness or public morality. The church must cater to all three uses of the law — using spiritual, noncoercive means alone to achieve not only civil but also spiritual righteousness or private morality.

**The Law and Structure of the State.** Calvin described political rulers and laws in largely general and homiletic terms. God has appointed political rulers to be his vice-regents, vicars, and ministers in the earthly kingdom, he wrote. They are vested with God's authority and majesty. They are called to an office that is "not only holy and lawful before God, but also the most sacred and by far the most honorable of all callings in the whole life of mortal men." They are commanded to embrace and exemplify clemency, integrity, honesty, mercy, humanity, humility, continence, and other godly virtues.<sup>22</sup>

Political rulers must govern the earthly kingdom by written positive laws, not by personal fiat, Calvin insisted. These modern state laws must encompass the biblical principles of love of God and neighbor, including those set out in the Decalogue. But the modern magistrate must not embrace and enforce biblical laws per se, for those laws were the specific positive laws of the ancient Jewish people and the apostolic church, and are not binding, and sometimes not even relevant, for our day. Instead, "equity alone must be the goal and rule and limit of all laws," a term that Calvin used both in the classic Aristotelian sense of

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<sup>20</sup> John Witte Jr., *God's Joust, God's Justice: Law and Religion in the Western Tradition* (Grand Rapids, MI: Eerdmans, 2006), 263–94.

<sup>21</sup> Samples in SMF 1 and 2; discussion in John Witte Jr., *Church State, and Family: Reconciling Traditional Teachings and Modern Liberties* (Cambridge: Cambridge University Press, 2019), ch. 4.

<sup>22</sup> *Institutes* (1536), 6.33–35; 6.39.

correcting defects in individual rules if they work injustice in a particular case, and in his own sense of adjusting each legal system to the changing circumstances and needs of the local community. Through such written, equitable laws, political rulers must promote peace and order in the earthly kingdom, punish crime and civil wrongdoing, protect persons in their lives and properties, and “ensure that men may carry on blameless intercourse among themselves” in the spirit of civil righteousness.<sup>23</sup>

The structure of the state must be constitutionally self-limiting, Calvin wrote, so that “rulers are checkmated by their own officers” and offices. Such inherent political restraints rarely exist in a monarchy, Calvin believed, for monarchs too often lack self-discipline and self-control, and too often betray little appetite for justice, prudence, and Christian virtue. Thus, “it is safer and more tolerable that government be in the hands of a number of persons who help each other,” such as prevails in an aristocracy, or even better in “a [mixed] system comprised of aristocracy, tempered by democracy.” What Calvin had in mind was rule by the best characters, by the spiritual and moral elite, who were elected to their offices by the people. Mere division of political authority, however, was an insufficient safeguard against political abuse or tyranny. Calvin thus encouraged all magistrates to govern through local officials and agents, to adhere to precedent and written rules, to divide their power among various self-checking branches and officials, to stand periodically for elections, to hold regular popular meetings in order to give account of themselves, and to give air to popular concerns.<sup>24</sup> Later Calvinist jurists, beginning with Johannes Althusius in his *Politics* (1603), wove these early insights into a strong argument for written constitutions that protected “the ultimate rule of laws (*leges*) and rights (*iura*) in human society.”<sup>25</sup>

The purpose of the state, Calvin argued, is to help God achieve the civil use of the law—to cultivate civil restraint and civil righteousness in all persons, if necessary through coercion. Calvin described this function in various ways. Magistrates are “ordained protectors and vindicators of public innocence, modesty, decency, and tranquility; their sole endeavor should be to provide for the common safety and peace of all.” Magistrates have as their appointed end “to adjust our life to the society of men, to form our social behavior to civil righteousness, to reconcile us one with another, and to promote general peace and tranquility.”<sup>26</sup>

But Calvin called for further safeguards against political abuse and overreaching. First, he argued, magistrates were not to trespass or abridge the God-given rights and liberties of their subjects. To the contrary, said Calvin, “God

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<sup>23</sup> *Ibid.*, 1.33; 6.36–37; 6.48–49; *Institutes* (1559), 4.20.

<sup>24</sup> *Serm.*, 2 Sam. 1–4; *Serm.*, Job 10:16–17; 19:26–29; 34:138; *Serm.*, Deut. 17:16–20; 18:14–18; *Institutes* (1559), 4.20.9–11, 31; *Comm.*, Rom. 13:1–10.

<sup>25</sup> *Politica Johannes Althusius*, trans. F.S. Carney (Indianapolis: Liberty Fund, 1995), XVIII.94–95.

<sup>26</sup> *Institutes* (1559), 4.20.2, 9.

empowered the magistrate to protect the rights of everyone” and called the magistrate to “pass uniform and consistent laws” to ensure that “no one suffered violations of his persons or property.” Second, magistrates were to build on, but not violate, the laws of God, including notably the Decalogue. If magistrates violated any of the Ten Commandments, or presumed to define religious doctrine, liturgy, worship, or other aspects of spiritual life, their laws were null and void. “Earthly princes lay aside all their power when they rise up against God,” Calvin wrote. “We ought rather to spit on their heads than to obey them when they are so restive and wish to rob God of his rights.” “When princes forbid the service and worship of God, when they command their subjects to pollute themselves with idolatry and want them to consent to and participate in all the abominations that are contrary to the service of God, they are not worthy to be regarded as princes or have to any authority attributed to them.” For a Christian, in good conscience, “to resist tyrannical edicts and commandments which forbid us to give due honor to Christ and due worship to God” is not to be “rebellious against kings, for they be not so exalted, that they may go about like giants to pull God out of his seat and throne.”<sup>27</sup>

But Calvin was no political revolutionary, even against manifest tyranny. He knew enough about the insurrection and rioting triggered by some Protestant radicals of his day and had read enough of classical history to know about the dangers of simply unleashing the crowd against tyrants. Given his penchant for orderliness and moderation, he wanted no part of this. He encouraged individual victims of political abuse and tyranny to disobey the law peaceably, if they could, or to flee to another land if they had to. And he called for a more structured collective response to a tyrant that depended on the lower magistrates to judge the case, to negotiate a better way if possible, and to organize the people’s revolt if necessary. During the next 250 years, Calvin’s followers greatly expanded on these early statements, developing robust theories of rights, resistance, revolution, and regicide that helped drive the democratic revolutions in the Netherlands, Scotland, England, America, and even Jacobin France.<sup>28</sup>

**The Law and Structure of the Church.** While the state held the coercive power of the sword, the church held the spiritual power of the Word, Calvin continued. And while the state used coercion to achieve the civil use of the law, the church used persuasion and inspiration to help achieve all three uses of the law.<sup>29</sup>

The church must have a distinct and independent ecclesiastical polity, Calvin asserted. Its powers and duties must be divided among self-checking

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<sup>27</sup> Sources and discussion in *RR*, 48–55, 114–17.

<sup>28</sup> *Ibid.* See Michael Walzer, *The Revolution of the Saints: A Study in the Origins of Radical Politics* (Cambridge, MA: Harvard University Press, 1965); John W. Sap, *Paving the Way for Revolution: Calvinism and the Struggle for a Democratic Constitutional State* (Amsterdam: VU Press, 2001); Dale K. van Kley, *The French Idea of Freedom: The Old Regime and the Declaration of Rights of 1789* (Stanford, CA: Stanford University Press, 1996).

<sup>29</sup> *Institutes* (1559), 4.1.1–17; *Serm.*, Deut. 5:22.

church offices and officers. Ministers were to preach the Word and administer the sacraments. Doctors of the church were to catechize the young and to educate the parishioners. Elders were to maintain discipline and order and adjudicate disputes. Deacons were to control church finances and coordinate the church's care for the poor and needy. Each of these church officials was to be elected to office by communicant members of the congregation. Each was subject to the limitation of his own office and to the supervision and discipline of fellow church officers. Each was to participate in periodic congregational meetings that allowed church members to assess these officials' performance and to debate matters of doctrine and discipline. Each congregation was, at heart, a democratic institution, later Calvinists insisted, with built-in checks and balances on spiritual power, and each was loosely "confederated" with others (from the Latin term *foedus* for covenant) in regional synods and councils.<sup>30</sup>

Collectively, church officials held three forms of legal power (*potestas*), said Calvin. First, the church held *doctrinal power*, the "authority to lay down articles of faith, and the authority to explain them." This authority included the power of the church to set forth its own confessions, creeds, catechisms, and other authoritative distillations of the Christian faith, and to expound them freely from the pulpit and the lectern. Second, the church held *legislative power*, the power to promulgate for itself "a well-ordered constitution" that ensured "proper order and organization" in daily church life and "proper decency" and "becoming dignity" in the church's worship, liturgy, and ritual. "When churches are deprived of ... the laws that conduce to these things," said Calvin, "their very sinews disintegrate, and they are wholly deformed and scattered." Third, and "most importantly," said Calvin, the church held *jurisdictional power*, the power to enforce laws that helped maintain discipline and inspire piety among its members.<sup>31</sup>

The church's jurisdictional power was "wholly spiritual" in character, Calvin insisted. Its disciplinary rules had to be "founded upon God's authority, drawn from scripture, and, therefore, wholly divine." Its sanctions were limited to admonition, instruction, and, in severe cases, the ban and excommunication—with civil and criminal penalties left for the magistrate to consider and deliver. Its administration had to be "moderate and mild," and left "not to the decision of one man but to a lawful assembly"—ideally a consistory, with proper procedures and proper deference to the rule of law.<sup>32</sup>

The Genevan Consistory was a unique institution, first created by Calvin in his Ecclesiastical Ordinances of 1541. It was a hybrid of church-state authority, comprising two-dozen men who sat on two benches. On one bench sat all the ordained pastors of the city, headed by Calvin as their moderator. On the other sat twelve elected lay commissioners drawn from the city government. Initially,

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<sup>30</sup> *Institutes* (1559), 4.3; CO 10/1.15–30.

<sup>31</sup> *Institutes* (1559), 4.1.5; 4.8.1; 4.10.27–38; 4.11.1; CO, 8.1–84.

<sup>32</sup> *Institutes* (1559), 4.10.5, 30; 4.11.1–6; 4.12.1–4, 8–11; CO, 10/1.207–8, 210–11.

Calvin conceived of the Consistory's jurisdiction in rather modest terms, simply as a way of purging the church of manifest sin and sinners and of policing the purity of the Eucharist.<sup>33</sup> By the end of his life, however, he had given it far more sweeping jurisdiction.

The matters and cases which come most commonly before the consistories are cases of idolatry and other kinds of superstition, disrespect towards God, heresy, defiance of father and mother, or of the magistrate, sedition, mutiny, assault, adultery, fornication, larceny, avarice, abduction, rape, fraud, perjury, false witness, tavern-going, gambling, disorderly feasting, gambling, and other scandalous vices: and because the magistrate usually does not favor such gatherings, the consistory will use the ordinary reprimands, namely, brotherly admonition, as sharp and as vehement as the case demands, suspension from the Lord's Supper, deprivation of the Lord's Supper for a stated period of time; and persistent offenders will be publicly named, so that people will know who they are.<sup>34</sup>

Studies of Genevan life during Calvin's tenure show that the Genevan Consistory played an increasingly active role in the maintenance of spiritual and moral discipline for all Genevans. The Consistory worked hand-in-hand with the Genevan city council and served, effectively, as a grand jury, mediation center, and preliminary hearings court that created a factual record. In most cases that did not involve serious crimes, the Consistory would first call parties to their higher spiritual duties, backing its recommendations with (threats of) spiritual discipline in hopes that the parties would repent, reconcile, and return to the spiritual fold. If such spiritual counsel failed, the parties were referred to the Council to compel them, using civil and criminal sanctions, to honor at least their basic civil duties.<sup>35</sup>

Among most later Calvinists, the Genevan-style consistory was transformed into an elected body of pastors, elders, deacons, and teachers who governed each local church congregation, but often played a less structured political and legal role in the broader Christian commonwealth. Yet local clergy still had a strong role in advising magistrates on the positive law of the local community, and local churches and their consistories also generally enjoyed autonomy in administering their own doctrine, liturgy, charity, polity, and property

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<sup>33</sup> CO 10/1:15–30.

<sup>34</sup> SD, vol. 3, no. 992.

<sup>35</sup> Samples in SMF 1 and 2; analysis in Bohatec, *Calvin und Recht*, 94–131; Josef Bohatec, *Calvins Lehre von Staat und Kirche* (Breslau: M. & H. Marcus, 1937).

and in administering spiritual discipline over their members without interference from the state courts.

**Separation of Church and State.** Outside of the hybrid structure of the Consistory, however, Calvin insisted on a basic separation of church and state. “There is a great difference and unlikeness between the ecclesiastical and civil power” of the church and state, said Calvin. “A distinction should always be observed between these two clearly distinct areas of responsibility, the civil and the ecclesiastical.” The church has no authority to punish crime, to remedy civil wrongs, to collect taxes, to make war, or to meddle in the internal affairs of the state. The state, in turn, has no authority to preach the Word, to administer the sacraments, to enforce spiritual discipline, to collect tithes, to interfere with church property, to appoint or remove clergy, to obstruct bans or excommunications, or to meddle in the internal affairs of a congregation. When church officials operate as members of civil society, they must submit to the civil and criminal law of the state; they cannot claim civil immunities, tax exemptions, or privileges of forum. When state officials operate as members of the church, they must submit to the constitution and discipline of the church: they cannot insist on political prerogatives or sovereign immunities. To permit any such interference or immunity between church and state, said Calvin, would “unwisely mingle these two [institutions] which have a completely different nature.”<sup>36</sup>

Calvin’s principle of separation of church and state bore little resemblance, however, to later American understandings of “a high and impregnable” wall between church and state, as the United States Supreme Court put it in 1947, let alone the modern French understanding of *laïcité*. Calvin ultimately did not contemplate a secular society with a plurality of absolutely separated religious and political officials within it. Nor did he contemplate a neutral state that shows no preference among competing concepts of the spiritual and moral good. For Calvin, each community, like Geneva, was to be a unitary Christian society, a miniature *corpus Christianum* under God’s sovereignty and law. Within this unitary society, the church and the state had to stand as coordinate powers. Both were ordained by God to help achieve a godly order and discipline in the community. Such conjoined responsibilities inevitably require church and state, clergy and magistracy to aid and accommodate each other on a variety of levels. These institutions and officials, said Calvin, “are not contraries, like water and fire, but things conjoined.” “The spiritual polity, though distinct from the civil polity, does not hinder or threaten it but rather greatly helps and furthers it.” In turn, “the civil government has as its appointed end ... to cherish and protect the outward worship of God, to defend sound doctrine of piety and the position of the church ... and a public manifestation of religion.”<sup>37</sup>

**Law in a Godly Republic.** To achieve this ideal of a godly republic, or miniature *corpus Christianum*, within each city, Calvin and his colleagues

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<sup>36</sup> *Institutes* (1559), 3.19.15; 4.11.3–16; 4.20.1–4; CO 10/1, 15–30, 215–17, 223–24.

<sup>37</sup> *Serm.*, 1 Sam. 11:6–10; *Institutes* (1559), 4.11.1; 4.20.2–3.

depended on sweeping new laws that reflected the wisdom of the *ius commune* but also embodied the new Protestant theology. New Calvinist *family* laws, for example, rejected traditional teachings of the marital sacrament and clerical celibacy and encouraged clergy and laity alike to marry. Treating marriage as a community covenant that should be freely available to all, these new family laws sharply reduced the impediments to marry but insisted on mutual, parental, and communal consent to the marriage and public liturgical celebration. They also strengthened the rights of wives and children within the household, introduced fault-based divorce, and insisted on the right of remarriage after divorce and death. And they placed a new premium on public and private sexual morality, with church and state cooperating closely in policing and punishing fornication of all sorts. New Calvinist *education* laws made primary education and catechesis mandatory and accessible for boys and girls alike in an effort to ensure that each person was literate enough to read the Bible and understand the sermons, and experienced enough to discover their talents and discern their distinctive Christian vocation in any walk of life.<sup>38</sup> New Calvinist *social welfare* laws rejected the spiritual value of mendicant poverty and monastic living, as well as the centrality of the church and its institutions in tending to the poor and needy. Instead, these laws instituted local, lay-run welfare systems administered by the local magistrate. These community funds at first comprised the church's monastic properties and endowments that had been confiscated during the early Reformation. They were eventually supplemented by local taxes and private donations. In these legal reforms, and in the reforms of many other areas of public, private, penal, and procedural law, Calvin and his fellow lawyers and theologians in Geneva were intensely active.<sup>39</sup>

Calvin's attention to both theology and law would become a trademark of early modern Calvinism. Theologians and jurists together formed the leadership of many later Calvinist communities. For every new Calvinist catechism, there were sundry Calvinist ordinances; for every fresh confession of faith, a new charter of rights or written constitution. Early modern Calvinists believed in law — as a deterrent against sin, an inducement to grace, a teacher of Christian virtue. Early modern Calvinists also believed in liberty — structuring their churches and states alike to minimize the sins of their rulers and to maximize the liberties of their subjects.

### Recommended Readings

Bohatec, Josef. *Calvin und das Recht*. Graz: H. Böhlau, 1934.

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<sup>38</sup> SMF 1 and 2; Robert M. Kingdon, *Adultery and Divorce in Calvin's Geneva* (Cambridge, MA: Harvard University Press, 1995); Cornelia Seeger, *Nullité de mariage divorce et séparation de corps à Genève, au temps de Calvin: Fondements doctrinaux, loi et jurisprudence* (Lausanne: Société d'histoire de la Suisse romande, 1989).

<sup>39</sup> SMF 2; Jeannine E. Olson, *Calvin and Social Welfare* (London: Associated University Presses, 1988).

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