

MODERATE RELIGIOUS LIBERTY  
IN THE THEOLOGY OF JOHN CALVIN

by JOHN WITTE, JR.<sup>1</sup>

"[T]here 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."

John Calvin, *Institutes of the Christian Religion* (1543)<sup>2</sup>

John Calvin, the Protestant reformer of Geneva, is a controversial candidate for the honor roll of religious liberty in the West. He is at once valorized and villainized both for his theology and for his politics of religious liberty, particularly his participation in the execution of Michael Servetus. Calvin's champions can be found in many quarters. John Adams urged: "Let not Geneva be forgotten or despised. Religious liberty owes it much respect, Servetus notwithstanding."<sup>3</sup> Jean Jacques Rousseau, for all his anti-religious sentiment, had only praise for his compatriot: "Those who consider Calvin only as a theologian fail to

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2. *Instituto christianae religionis. Ioanne Calvino autore, 20.7*, in *Ioannis Calvini opera quae supersunt omnia*, ed. B. Blum, et al. (1543; reprint, New York: Johnson Reprint Co., 1964), vol. 1, col. 1105 [hereafter Calvin's opera cited as "CO"].

3. John Adams, "Discourses on Davilia, XIX," in *The Works of John Adams, Second President of the United States, with a Life of the Author, Notes, and Illustrations* (Boston: Little, Brown & Co., 1850-56), 6:313n.

recognize the breadth of his genius. The editing of our wise laws, in which he had a large share, does him as much credit as his *Institutes*. . . . [S]o long as the love of country and liberty is not extinct among us, the memory of this great man will be held in reverence."<sup>4</sup> Charles Bourgeaud judged Calvin's Geneva to be "the first stronghold" of religious and political liberty in modern times.<sup>5</sup> Walter Köhler described Calvin as the "pioneer of the freedom of conscience and human rights" that were finally constitutionalized after the French Revolution.<sup>6</sup> Abraham Kuyper declared that "[e]very competent historian will without exception confirm the words of [American historian George] Bancroft: 'The fanatic for Calvinism was a fanatic for liberty; and, in the moral warfare for freedom, his creed was his most faithful counsellor and his never-failing support'."<sup>7</sup>

Many competent historians, however, have categorically denied such assertions. Ernst Troeltsch described Calvin as "notoriously rigid" and his "personal view as undemocratic and authoritarian as possible."<sup>8</sup> George Sabine believed that Calvinism "lacked all leaning towards liberalism, constitutionalism, or representative principles [and] . . . was, in general, illiberal, oppressive, and reactionary."<sup>9</sup> Stefan Zweig charged Calvin with "fanatical dogmatism" and with "slaughtering freedom of conscience under the Reformation."<sup>10</sup> Roland Bainton declared that "the Reformation at the outset brought no gain for religious liberty. Rather the reverse,"<sup>11</sup> particularly under Calvin, "the arch-inquisitor of Protestant-

4. *Du contrat social*, bk. 2, chap. 7n., in Jean Jacques Rousseau, *The Social Contract and the Discourse on the Origin of Inequality*, ed. Lester G. Crocker (1762; reprint, New York: Washington Square Press, 1967), 44n.

5. Quoted by John T. McNeill, *The History and Character of Calvinism* (Oxford: Oxford University Press, 1954), 196.

6. Walter Köhler, "Book Review," *Theologische Jahrbuch* 24 (1904): 579.

7. Abraham Kuyper, *Lectures on Calvinism* (1931; reprint, Grand Rapids: Eerdmans, 1981), 78, quoting George Bancroft, *History of the United States of America*, 15th ed. (Boston: Little, Brown & Co., 1853), 1:319.

8. Ernst Troeltsch, *The Social Teaching of the Churches*, 2d impr., trans. O. Wyon (London: G. Allen and Unwin, 1949), 2:628.

9. Quoted by Robert M. Kingdon and Robert D. Linder, eds., *Calvin and Calvinism: Sources of Democracy?* (Lexington, Mass.: Heath, 1970), xiii.

10. Stefan Zweig, *Strijd rond een brandstapel. Castellio tegen Calvijn* (Amsterdam: Wein H. Reichner, 1936), 6.

11. Roland H. Bainton, "The Struggle for Religious Liberty," *Church History* 10 (1941): 96.

ism" and "dictator of Geneva."<sup>12</sup> "If Calvin ever wrote anything in favor of religious liberty," said Bainton, "it was a typographical error."<sup>13</sup>

Both these judgments depend on too tendentious a reading of Calvin's writings and too ready a conflation of his views with those of his followers. On questions of religious liberty, Calvin must be read as a theologian and pastor, not as a political theorist and jurist. To be sure, as a youth in France, he had studied law and the political classics under such masters as Guillaume Budé, Pierre L'Estoile, and Andreas Alciati, and this early training is reflected in the style and substance of some of his early works, particularly his 1532 Commentaries on Seneca's *De Clementia*.<sup>14</sup> And, to be sure, during his work as pastor and member of the consistory court in Geneva from 1541 till his death in 1564, Calvin frequently addressed legal and political questions — both in Geneva and in many other places in Europe.<sup>15</sup> But Calvin wrote no summa on political theory, no systematic work on religious liberty, no civil code on church-state relations, no letter on religious toleration. His writings were principally theological in character, addressed to the cardinal Christian topics of God and man, sin and salvation, law and Gospel. His discussions of

12. Roland H. Bainton, *The Travail of Religious Liberty* (London: Lutterworth Press, 1953), 53. See critical discussion in James K. Cameron, "Scottish Calvinism and the Principle of Intolerance," in *Reformatio Perennis: Essays on Calvin and the Reformation in Honor of Ford Lewis Battles*, ed. B. A. Gerrish (Pittsburg: Pickwick Press, 1981), 113.

13. Roland H. Bainton, *Concerning Heretics . . . An Anonymous Work Attributed to Sebastian Castellio* (New York: Octagon Books, 1935), 74.

14. *L'annei Senecae . . . Ioannis Calvini Nouiodunaei comentarijs illustrati*, reprinted and translated as *Calvin's Commentary on Seneca's De Clementia*, trans. Ford Lewis Battles and A. M. Hugo (1532; reprint, Leiden: Brill, 1969). On the legal and humanist character of the tract, see the translators' notes, *ibid.*, 72\*-99\*, 134\*-40\*, which stress Calvin's preoccupation, *inter alia*, with questions of equity, the purposes of the law, the problems of parricide, and the structures and limits of political authority. "Calvin's chief legal source" for his commentary is the *Corpus Juris Civilis*, which he cites eighty-six times, *ibid.*, 140\*. On Calvin's legal and humanist training in France, see Gisbert Beyerhaus, *Studien zur Staatsanschauung Calvins mit besonderer Berücksichtigung seines Souveränitätsbegriffs* (1910; reprint, Aalen: Darmstadt Scientia Verlag, 1973), 26-47; Josef Bohatec, *Budé und Calvin: Studien zur Gedankenwelt des französischen Frühhumanismus* (Graz: H. B. Ohlaus Nachf., 1950), 127-48; Quirinius Breen, *John Calvin: A Study in French Humanism* (Grand Rapids: Eerdmans, 1931), 40-66, 86-99.

15. See Jean-François Bergier and Robert M. Kingdon, eds., *Registres de la Compagnie des Pasteurs de Genève au temps de Calvin*, 2 vols. (Geneva: Droz, 1962-64), in *The Register of the Company of Pastors of Geneva in the Time of Calvin*, trans. and ed. Philip E. Hughes (Grand Rapids: Eerdmans, 1966), and with a summary of Calvin's activities in CO, 21:189-818. See also the collection in Jules Bonnet, ed., *Letters of John Calvin*, 4 vols. (1855-58; reprint, New York: Burt Franklin, 1972) [hereafter, Calvin, *Letters*].

religious liberty were left scattered widely throughout the multiple editions of his *Institutes of the Christian Religion* as well as his biblical commentaries, published sermons, and theological consilia.<sup>16</sup>

It is easy to select from these scattered sentiments quotations to support both positive and negative impressions of Calvin's views of religious liberty. Calvin often wrote with a strong rhetorical flourish, and in unguarded moments or on particularly heated subjects, he partook readily of the bombast and hyperbole that typified sixteenth-century humanist literature.<sup>17</sup> Calvin's champions can find many strong statements in his writings on separation of church and state, liberty of conscience, free exercise of religion, and religious toleration, and make Calvin out to be the father of modern religious liberty and political democracy. Calvin's critics can assemble an equally high pile of quotations on religious bigotry, chauvinism, prejudice, repression, and officiousness, that make Calvin out to be a rigid and unbending theocrat.

Neither of these interpretations does justice to Calvin. Viewed as a whole and in sixteenth-century theological terms, Calvin's scattered sentiments on religious liberty fall into two distinct phases. In his early writings of the 1530s, Calvin focused on the spiritual liberty of the individual believer vis-à-vis God's spiritual law and his political liberty vis-à-vis the magistrate's civil law. His principal concern was to distinguish these two forms of religious liberty from each other, and to define the appropriate limitations that the church and the state could impose on them. As his thinking matured after 1540, and he confronted the brute realities of Genevan ecclesiastical and political life, Calvin modified his position considerably. His focus was less on the liberty of the individual, and more on the respective jurisdictions and duties of the church and the state. By the time he had finished dividing up the respective callings and claims of these two jurisdictions, Calvin had created ample room for corporate religious liberty, but less room for individual religious liberty, particularly for one so stridently heretical and dangerous to the church as Michael Servetus.

A perennial theme in both phases of Calvin's discussion is that, whatever its form, religious liberty must always be exercised with

16. The best collection is in CO. See also P. Barth and W. Niesel (hrsg.), *Joannis Calvinii opera selecta*, 5 vols. (München: Chr. Kaiser Verlag, 1926-36); *Supplementa Calvinia* (Neukirchen: Kreis Moers Neukirchener Verlag der Buchhandlung, 1961), with translations in *Calvin's Commentaries*, 47 vols. (Edinburgh: Oliver and Boyd, 1843-59).

17. See discussion and sources in Quirinius Breen, "John Calvin and the Rhetorical Tradition," *Church History* 26 (1957): 14; A. Veerman, *De Stijl van Calvin in de Institutio Christianae Religionis* (Utrecht: Kemink, 1943); Bohatec, *Budé und Calvin*, 257-63.

becoming *moderation*.<sup>18</sup> Liberty and law, freedom and order, toleration and discipline are created and constituted together, Calvin believed, and must constantly balance each other to achieve the ideal of a "moderate religious liberty." The following sections take up, in turn, Calvin's early formulations and later formulations on religious liberty. The conclusion reflects on the profound significance of Calvin's views on the evolution of the Western political tradition of religious liberty.

## I. EARLY FORMULATIONS ON RELIGIOUS LIBERTY

As a young Protestant neophyte, Calvin naturally came under the influence of the first generation of Protestant leaders. In the years immediately following his conversion in circa 1532, Calvin read several writings of Martin Luther, Philip Melancthon, Martin Bucer, Heinrich Bullinger, Ulrich Zwingli, Johannes Oecolampadius, and other Protestants, together with a number of Protestant catechisms, confessions, and church laws.<sup>19</sup> His early writings on religious liberty — most notably his long discussion in the 1536 edition of the *Institutes*<sup>20</sup> — reflect a particular affinity for Lutheran lore.

### A. TWO KINGDOMS

Like his Lutheran brethren, Calvin sought to formulate a theory of religious liberty that would avoid the extremes of both radical Anabaptist liberalism and radical Catholic legalism. He sought to counter the claims of certain Anabaptists that Christian believers are set free from all law and authority.<sup>21</sup> He sought to counter the claims of certain

18. "Moderation" (*moderatio*) is, for Calvin, a cardinal virtue that he first celebrated in his 1532 *Commentary on Seneca's De Clementia*, and that recurs repeatedly as an ideal throughout his writings. See, e.g., his commentary on bk. 1, chap. 2.

19. See his correspondence with fellow Protestants in Calvin, *Letters*, vol. 1. On Calvin's early religious development, and relationships to earlier Protestant Reformers, see A. Ganoczy, *La jeune Calvin. Genèse et évolution de la vocation réformatrice* (Wiesbaden: F. Steiner, 1966); Hans Baron, "Calvinist Republicanism and Its Historical Roots," *Church History* 8 (1939): 30-42; Harro Höpfl, *The Christian Polity of John Calvin* (New York: Cambridge University Press, 1982), 219-26.

20. *Ioannis Calvini Institutio Religionis Christianae* (Basel, 1536), reprinted in CO, 1:1-251, translated as John Calvin, *Institution of the Christian Religion*, trans. Ford Lewis Battles (Atlanta: John Knox Press, 1975). I have generally followed Battles' translation, and his divisions of the text, though I have occasionally provided my own translations.

21. See generally Willem Balke, *Calvin and the Anabaptist Radicals*, trans. William Heynen (Grand Rapids: Eerdmans, 1981).

Catholics that Christian believers can be free only through submission to law and authority.<sup>22</sup> Nowadays, Calvin wrote, "as soon as the term 'Christian liberty' is mentioned, either passions boil or wild tumults rise. . . . On the pretext of this freedom, some men shake off all obedience toward God and break into unbridled license, while others disdain it, thinking such freedom cancels all moderation, order, and choice of things. . . . [T]hese wanton spirits, who otherwise most wickedly corrupt the best things, must be opposed in time."<sup>23</sup>

Calvin sought to reconcile this dialectic of liberalism and legalism through use of the Lutheran theory of the two kingdoms. According to Lutheran lore, God has ordained two kingdoms or realms in which humanity is destined to live, the earthly or political kingdom and the heavenly or spiritual kingdom. The earthly kingdom is the realm of creation, of natural and civic life, where a person operates primarily by reason, law, and passion. The heavenly kingdom is the realm of redemption, of spiritual and eternal life, where a person operates primarily by faith, hope, and charity. These two kingdoms embrace parallel temporal and spiritual forms of justice and morality, truth and knowledge, order and law, but they remain separate and distinct. The earthly kingdom is fallen and distorted by sin. The heavenly kingdom is saved, and renewed by grace — and foreshadows the perfect kingdom of Christ to come. A Christian is a citizen of both kingdoms at once, and invariably comes under the structures and strictures of each.<sup>24</sup>

Calvin recited this two-kingdoms theory several times in his writings of the 1530s, each time with a breeziness that reflects comfortable acceptance of the doctrine.<sup>25</sup> "[T]here is a twofold government in man," Calvin wrote in summary of his position:

22. See, e.g., *Institutes* (1536), 6.14, where, describing the Catholic magisterium, Calvin writes: "These Solons even fancy that their constitutions are laws of freedom, a gentle yoke, a light burden." See generally Josef Bohatec, *Calvins Lehre von Staat und Kirche* (1937; reprint, Aalen, Scientia Verlag, 1968), 581-633.

23. *Institutes* (1536), 6.1. See also *ibid.*, 1.30, 6.35.

24. For discussion and sources, see Harold J. Berman and John Witte Jr., "The Transformation of Western Legal Philosophy in Lutheran Germany," *Southern California Law Review* 62 (1989): 1573, 1585-95.

25. See, e.g., *Institutes* (1536), 6.13, 14, 35. Calvin used multiple terms to describe these two kingdoms: the heavenly kingdom, the Kingdom of Christ, the spiritual kingdom, the spiritual jurisdiction versus the earthly kingdom, the kingdom of this world, the political kingdom, the civil realm, the temporal jurisdiction. In his later writings, Calvin also described these two kingdoms in more traditional Catholic terms as the inner forum and outer forum, which is a much narrower anthropological conception. See, e.g., *Institutes*

one aspect is spiritual, whereby the conscience is instructed in piety and in reverencing God; the second is political, whereby man is educated for the duties of humanity and civil life that must be maintained among men. These are usually called the "spiritual" and the "temporal" jurisdictions (not improper terms) by which is meant that the former sort of government pertains to the life of the soul, while the latter has to do with the concerns of the present life — not only with food and clothing but with laying down laws whereby a man may live his life among other men honorably and temperately. For the former resides in the mind within, while the latter regulates only outward behavior. The one we may call the spiritual kingdom, the other the political kingdom. . . . There are in man, so to speak, two worlds, over which different kings and different laws have authority.<sup>26</sup>

In a few passages in this early period, Calvin seemed to equate the heavenly kingdom with the church and the earthly kingdom with the state. He states flatly, for example, that "the church is Christ's kingdom"<sup>27</sup> and that the earthly kingdom is "the political order of laws and lawgivers."<sup>28</sup> But such passages must read in context. Calvin's early two-kingdoms theory was not simply a political theory of institutions, but a theological framework designed to distinguish the realms not only of church and state but also of soul and body, spirit and flesh, inner life and outer life, conscience and reason, redemption and creation.

Calvin's early views on religious liberty were part of this theological framework. Calvin distinguished: (1) the "spiritual liberty" or "liberty of conscience" of the believer in the heavenly kingdom; and (2) the "political liberty" or "civil freedom" of the believer in the earthly kingdom. Such terms were commonplace in Catholic and Protestant circles of the day, but Calvin cast them in a distinctive mold. He insisted that these two forms of liberty, like other features of the two kingdoms, are completely separate. He also insisted that these two forms of freedom are perpetually limited by and counterposed to the prevailing laws and orders of the two kingdoms. For Calvin, freedom and order, liberty and law always belong together.

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(1559), 3.19.15. For the significance of this narrowing of the two kingdoms for Calvin's understanding of religious liberty, see below notes 75 and 114 and accompanying texts.

26. *Ibid.*, 6.13.

27. *Ibid.*, 6.20.

28. *Ibid.*, 6.14.

### B. SPIRITUAL LIBERTY

In the heavenly kingdom, spiritual law and spiritual liberty stand counterposed. God has ordained a "spiritual law" or "law of conscience" to govern citizens of the heavenly kingdom. This law teaches "those things that God either requires of us or forbids us to do, both toward [ourselves] and towards others."<sup>29</sup> Its provisions are written on the heart and conscience of each person, rewritten in the pages of Scripture, and summarized in the Ten Commandments.<sup>30</sup> Obedience of this spiritual law leads to eternal blessings and beatitude in the life hereafter. Disobedience leads to eternal curses and condemnation. Since the fall into sin, Calvin argued, no person has been capable of perfectly obeying this law. The scourge of original sin infects all persons, even the most devout saints. By itself, therefore, the spiritual law becomes "a great accuser, condemning us in our conscience, cursing us to eternal damnation."<sup>31</sup>

Through his grace, God liberates the conscience from such curses and condemnation; he bestows "spiritual liberty" on believers, on citizens of the heavenly kingdom. This liberty has two dimensions. On the one hand, by accepting God's grace in faith, believers are freed from the requirement to earn their salvation by perfect obedience of the law. Faith and grace provide them with an alternative pathway to blessing and beatitude. Believers are made righteous and just despite their inability to obey the law.<sup>32</sup> On the other hand, believers are freed to live by the law, without fear of its condemnation. Although God has cancelled the condemnation of the law, he has not cancelled its commandments. The law remains in place "as an exhortation to believers" to lead a Godly life. It is "not something to bind their consciences with a curse," but it is a means for them "to learn more thoroughly each day what the Lord's will is like."<sup>33</sup> With the sting of the law removed, believers have the liberty of conscience to follow its commandments, albeit imperfectly.<sup>34</sup>

Liberty of conscience stands counterposed not only to God's spiritual law, but also to the Catholic Church's canon law. Like other early

29. *Ibid.*, 1.24. See also *ibid.*, 1.4, 1.7, 6.47, 6.49.

30. *Ibid.*, 1.4, 7-23.

31. *Ibid.*, 1.4, 1.33.

32. *Ibid.*, 6.2.

33. *Ibid.*, 1.33, 6.3.

34. *Ibid.* See also *ibid.*, 1.30.

Protestants, Calvin had little faith in the vast system of canon law rules and structures by which the Church had come to govern spiritual life and much of temporal life.<sup>35</sup> He issued a bitter broadside against the arguments from Scripture, tradition, and the sacraments that the Church had adduced to support its canon law system.<sup>36</sup> “[T]he power to frame laws was both unknown to the apostles, and many times denied the ministers of the church by God’s Word,” he argued.<sup>37</sup> And, again, “it is not a church which, passing the bounds of God’s Word, wantons and disports itself to frame new laws and dream up new things” for spiritual life.<sup>38</sup>

The church must respect the God-given liberty of conscience of Christian believers. To be sure, said Calvin quoting Saint Paul, “all things [must] be done decently and in order.”<sup>39</sup> Certain rules and structures “are necessary for internal discipline [and] the maintenance of peace, honesty, and good order in the assembly of Christians.”<sup>40</sup> But the church has no authority to impose laws “upon consciences in those matters in which they have been freed by Christ,” in the so-called adiaphora — “the outward things of themselves ‘indifferent’” to salvation.<sup>41</sup> Though Calvin did not spell them out systematically, such matters included habits of food, drink, dress, holy days, confessions, pilgrimages, marital relations, and the like, which the Catholic Church traditionally governed in copious detail, backed by threats of spiritual sanction and discipline.<sup>42</sup> Canon laws that govern such matters, Calvin regarded as illegitimate “human traditions” that improperly “establish another service of God than that which he demands [in his spiritual law], thus tending to destroy Christian liberty.”<sup>43</sup> Such canon laws “tyrannize,” “ensnare,” confuse,” and “destroy the repose” of conscience by all

35. See generally James A. Brundage, *Medieval Canon Law* (London and New York: Longman, 1995).

36. See *Institutes* (1536), dedicatory epistle, and 6.14-32.

37. *Ibid.*, 6.17.

38. *Ibid.*, 6.20.

39. *Ibid.*, 6.32 (quoting 1 Cor. 14:40).

40. Geneva Catechism, item 17, “Human Traditions,” in *Reformed Confessions of the Sixteenth Century*, ed Arthur C. Cochrane (1536; reprint, Philadelphia: Westminster Press, 1966), 117ff.; *Institutes* (1536), 6.32.

41. *Institutes*, 6.14.

42. *Ibid.*; Geneva Catechism (1536), item 17.

43. *Ibid.*

manner of “traps and superstitions.” In essential matters of faith and spiritual conduct, of course, Christians are bound to comply with God’s spiritual law. But in discretionary matters of spiritual living (the *adiaphora*), Christian consciences “must be held in no bondage, and bound by no bounds.”<sup>44</sup> Christians might voluntarily bind themselves in such discretionary matters, especially to protect the frail consciences of other believers.<sup>45</sup> But such restraint is neither necessary nor subject to the church’s regulations.

The church must also respect the liberty of conscience of nonbelievers — Jews, Turks, Muslims, heretics, and others. Church leaders may certainly bar such “enemies of religion” from the communion; parishioners may likewise spurn such persons from their civic circles. But no church member may subject religious outsiders to forced baptisms, persecutions, inquisitions, crusades, and other forms of religious coercion practiced in the past. Christians must instead practice “clemency and moderation” in their treatment of religious outsiders, “lest we soon descend from [religious] discipline to butchery.”<sup>46</sup> As Calvin put it in his 1536 *Institutes*:

[W]e 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 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>47</sup>

44. *Institutes* (1536), 6.4.

45. *Ibid.*, 6.8-6.13.

46. *Institutes* (1539), in OS, vol. 5, 221-22.

47. *Institutes* (1536), 2.28. In subsequent editions of the *Institutes*, Calvin dropped the last two sentences of this text — thereby neither extending such “clemency” to “Turks and Saracens” nor condemning outright the traditional forms of religious coercion. See *Institutes* (1559), 4.12.10; but cf. this same text to the 1560 French edition of the *Institutes*, which restores the language of the 1536 text quoted above. Calvin’s critic Sebastian Castellio highlighted this textual shift in his condemnation of Calvin’s participation in the execution of Michael Servetus, arguing that Calvin had effectively betrayed his own premises. See *De haereticis an sint persequendi* (1553; fasc. ed. Geneva, 1954), 108 and discussion *infra* notes 140-56; R. White, “Castellio against Calvin: The Turk in the Toleration Controversy of the Sixteenth Century,” *Bibliothèque d’humanisme et Renaissance* 46 (1984): 573; J. Pannier, “Calvin et les Turcs,” *Revue Historique* 180 (1937): 268; Jack H. Robinson, *Calvin and the Jews* (New York: Peter Lang, 1992).

Through such benign means, religious outsiders might eventually be inspired to embrace the life, law, and liberty of the Christian faith.

Calvin's early views on liberty of conscience thus differed markedly both from the rationalist formulations of a Thomas Aquinas and the voluntarist formulations of a Marsilius of Padua. Calvin did not have in mind the freedom of the person to respond either to the dictates of reason or to the impulses of the will.<sup>48</sup> And he certainly did not have in mind the Enlightenment conception of liberty of conscience, defined by James Madison as the liberty to choose "the duty that we owe to our Creator, and the manner of discharging it."<sup>49</sup> Calvin cast this classic concept in much narrower theological terms. Liberty of conscience is "in all its parts, a spiritual thing," he wrote, a liberty to obey the commandments of God with a free conscience. God defines the duties of man through his commandments. Man has the liberty to choose to obey them. The "whole force" of liberty of conscience, "consists in quieting frightened consciences before God whether they are disturbed or troubled over forgiveness of sins; or anxious whether unfinished works, corrupted by the faults of the flesh, are pleasing to God; or tormented about the use of things indifferent."<sup>50</sup>

### C. POLITICAL LIBERTY

While God has ordained spiritual liberty to balance the spiritual law of the heavenly kingdom, he has ordained political liberty to balance the political law of the earthly kingdom. These twin forms of spiritual and political liberty and law cannot be conflated, Calvin insisted. "[C]ertain men, when they hear that the Gospel promises liberty . . . think they cannot benefit by their liberty so long as they see any power set up over them. . . . But whoever knows how to distinguish between body and soul, between this present fleeting life and that future eternal life, will without difficulty know that Christ's spiritual kingdom and

48. For earlier rationalist and voluntarist formulations, see Brian Tierney, "Religious Rights: An Historical Perspective," in *Religious Human Rights in Global Perspective: Religious Perspectives*, ed. John Witte Jr. and Johan D. van der Vyver (The Hague: Martinus Nijhoff Publishers, 1996), 17-45.

49. James Madison, "To the Honorable the General Assembly of the Commonwealth of Virginia A Memorial and Remonstrance against Religious Assessments" (1785), para. 1, in *Madison Papers*, ed. William T. Hutchinson and William M. E. Rachael (Chicago: University of Chicago Press, 1962), 8:298, with discussion in John Witte Jr., "The Essential Rights and Liberties of Religion in the American Constitutional Experiment," *Notre Dame Law Review* 71 (1996): 371, 388-402.

50. *Institutes* (1536), 6.5.

the civil jurisdiction are things completely distinct."<sup>51</sup> "Spiritual liberty can perfectly well exist along with political bondage."<sup>52</sup> Spiritual bondage can perfectly well exist along with political liberty.

Calvin described the political rulers and laws of the earthly kingdom in largely general and homiletic terms in this early period. God has appointed political rulers to be his "vice-regents," "vicars," and "ministers" in the earthly kingdom. Indeed, says Calvin citing biblical verses, "those who serve as magistrates are called 'gods'."<sup>53</sup> 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."<sup>54</sup> They are commanded to embrace and exemplify clemency, integrity, honesty, mercy, humanity, humility, grace, innocence, continence, and a host of other Godly virtues.<sup>55</sup>

Political rulers must govern the earthly kingdom by written political laws, not by personal fiat. Their laws must encompass the biblical principles of love of God and neighbor, but they must not embrace biblical laws per se.<sup>56</sup> Instead, "equity alone must be the goal and rule and limit of all laws"<sup>57</sup> — a term that Calvin used both in the classic Aristotelian sense of 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 of the community.<sup>58</sup>

51. *Ibid.*, 6.35.

52. *Ibid.*

53. *Ibid.*, 6.38-40. See also Geneva Catechism (1536), item 21 "Magistrates."

54. *Institutes* (1536), 6.39.

55. *Ibid.*; Geneva Catechism (1536), item 21 "Magistrates" and the lengthy discussion in *Calvin's Commentary on Seneca's De Clementia*. See generally McNeill, "John Calvin on Civil Government," 30ff.; Höpfl, *The Christian Polity of John Calvin*, 43-55.

56. *Institutes* (1536), 6.48.

57. *Ibid.*, 6.48-6.49.

58. On the classic Aristotelian view of equity as a corrective in the individual case, see Aristotle, *Ethics*, bk. 1, chap. 5; id., *The Art of Rhetoric*, bk. 1, chap. 12. See also *Calvin's Commentary on Seneca's De Clementia*, bk. 1, chap. 18 (Latin text, 111; Battles and Hugo trans., 371) and discussion in Beyerhaus, *Studien zur Staatsanschauung Calvins*, 5-8. On Calvin's view of equity as the adjustment of general norms of love to the legal system of particular communities, see *Institutes* (1536), 6.49. where Calvin writes: "every nation is left free to make such laws as it foresees to be profitable for itself. Yet these must be in conformity to that perpetual rule of love, so that they indeed vary in form but have the very same purpose. . . . What I have said will become plain if in all laws we examine (as we should) these two things: the constitution of the law, and the equity on which its

Through such written, equitable laws, political rulers must serve to promote peace and order in the earthly kingdom, to punish crime and civil wrongdoing, to protect persons in their lives and properties, "to ensure that men may carry on blameless intercourse among themselves" in the spirit of "civil righteousness."<sup>59</sup> Such laws must also, Calvin said in a pregnant but undelivered aside, "prevent idolatry, sacrilege against God's name, blasphemies against his truth, and other public offenses against religion." But he hastened to add that he did not wish to "commit to civil government the duty of rightly establishing religion, which I put . . . beyond human decision."<sup>60</sup> The political law, said Calvin in summary of his position, serves only to ensure "that a public manifestation of religion may exist among Christians, and that humanity may be maintained among men."<sup>61</sup>

These God-given duties and limits define not only the political office but also the political liberty of Christian believers in the earthly kingdom.<sup>62</sup> Political liberty and political authority "are constituted together," said Calvin.<sup>63</sup> The political liberty of believers is not a subjective right. It does not exist in the abstract; it is a function of the political office. When political officials respect the duties and limits of their office, believers enjoy ample political liberty to give "public manifestation of their faith," or in modern language, to have free exercise of their religion. When political officials betray their office, however, through negligence, injustice, overreaching, or outright tyranny, the political liberty of the believer is abridged or even destroyed.<sup>64</sup>

Calvin insisted that "private individuals" have a Godly duty to obey

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constitution itself rests. Equity, because it is natural, cannot but be the same for all and therefore, this same purpose ought to apply to all laws, whatever their object. Constitutions have attendant circumstances upon which they in part depend. It therefore does not matter that they are different, provided all equally press toward the same goal of equity."

59. *Institutes* (1536), 6.36-37. See also *ibid.*, 1.33, where Calvin describes the "civil use of the law."

60. *Institutes* (1536), 6.37.

61. *Ibid.*, 6.37.

62. See esp. Josef Bohatec, *Calvin und das Recht*, 2. Ausgabe (Aalen: Scientia Verlag, 1991), 81-82; *id.*, *Calvins Lehre von Staat und Kirche mits besonderer Berücksichtigung des Organismusedankens*, 2. Ausgabe (Aalen: Scientia Verlag, 1968), 109-16.

63. Bohatec, *Calvins Lehre von Staat und Kirche*, 109.

64. *Ibid.*, 6.54.

tyrannical political officials up to the limits of Christian conscience.<sup>65</sup> But this duty of obedience does not preclude believers from petitioning officials to repent of their abuse, to return to their duties, and thus to restore the political freedom of religious believers. Calvin, in fact, opened his 1536 edition of the *Institutes* with precisely such a petition to King Francis of France, on behalf of the persecuted Protestants within his regime.<sup>66</sup> In his dedicatory epistle to Francis, he stated that, as a believer, he was compelled to “defend the church against [political] furies,” to “embrace the common cause of all believers.”<sup>67</sup> Against “overbearing tyranny,” Calvin later put it, a Christian must “venture boldly to groan for freedom.”<sup>68</sup>

Calvin set forth no declaration of religious liberty in his dedicatory epistle; such an act would have been suicide given the political climate of the day. Instead, he cleverly singled out those abuses of Protestants that defied widely recognized rights and freedoms, particularly criminal procedural rights. Calvin protested the widespread and unchecked instances of “perjury,” “lying slanders” “wicked accusations,” and the

65. *Ibid.*, 6:55-56. Calvin did allow for “magistrates, appointed by the people to restrain the willfulness of kings” — a text that became a *locus classicus* for later Calvinist theories of resistance, revolution, and regicide. See generally Julian H. Franklin, *Constitutionalism and Resistance in the Sixteenth Century* (New York: Columbia University Press, 1969); Michael Walzer, *The Revolution of the Saints: A Study in the Origins of Radical Politics* (Cambridge: Harvard University Press, 1965); Ernst Wolf, “Das Problem des Widerstandsrechts bei Calvin,” in *Widerstandsrecht*, ed. Arthur Kaufmann & Leonhard E. Backmann (Darmstadt: Wissenschaftliche Buchgesellschaft, 1972), 152-69.

66. According to some interpreters, this may also have been one of his goals in drafting his *Commentary on Seneca's De Clementia*. See Gilbert Beyerhaus, *Calvins Staatsanschauung im Senekakommentar von 1532* (Berlin: Trowitzsch, 1910), 29 (calling the tract a “Tendenzschrift” addressed to the pressing problems of persecution and political abuse in Calvin’s day); Emile Doumergue, *Jean Calvin. Les hommes et les choses de son temps* (Lausanne: G. Bridel, 1899-1927), 1:211-22 (arguing that Calvin’s commentary was a protest against religious persecution, an appeal for royal clemency and restraint, and, as such, “a magnificent manifesto on liberty” for persecuted Protestants). But cf. criticisms in Breen, *John Calvin: A Study in French Humanism*, 80-85. Whatever Calvin’s actual intent in 1532, he certainly adopted much of the same style of argumentation for political liberty of Christians in his dedicatory letter in the 1536 *Institutes*. Moreover, many of the passages in his *Commentary on Seneca's De Clementia* counselling political magistrates to respect their offices and thereby to protect the liberty of their political subjects have close parallels in various editions of Calvin’s *Institutes*. See the convenient table in *Calvin's Commentary on Seneca's De Clementia*, appendix 4, 393-95.

67. [Dedicatory Epistle] to the Most Mighty and Most Illustrious Monarch Francis, Most Christian King of the French, His Esteemed Prince and Lord, in *Institutes* (1536).

68. Letter to Melanchthon (June 28, 1545), Calvin, *Letters*, 1:467.

"fury of evil men" that conspired to incite "public hatred" and "open violence" against believers. He protested that "the case" of the evangelicals "has been handled with no order of law and with violent heat rather than judicial gravity." He protested 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 are "fraudulently and undeservedly charged with treason and villainy." They are convicted for capital offenses, "without confession or sure testimony." "[B]loody sentences are meted out against this doctrine without a hearing." He protested the bias of judges and partiality of the proceedings. "Those who sit in judgment . . . pronounce as sentences the prejudices which they have brought from home." He protested 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 Empire and in France.<sup>69</sup> "[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>70</sup>

Calvin sought no absolute political liberty for religious believers. He was fully aware of fraudulent and excessive religious exercises. He urged his fellow believers to "to keep within its own limits all that liberty which is promised and offered to us in Christ."<sup>71</sup> He likewise urged Francis and other political officials to root out the impious impostor: "[I]f any persons raise a tumult under the pretext of the gospel, . . . if any depict the license of their own vices as the liberty of God's grace, there are laws and legal penalties by which they may be severely restrained according to their deserts. Only let not the gospel of God be blasphemed," nor those who adhere to it be defamed.<sup>72</sup>

69. For good general treatments, see John H. Langbein, *Prosecuting Crime in the Renaissance: England, Germany, France* (Cambridge: Harvard University Press, 1974); Adhemar Esmein, *A History of Continental Criminal Procedure with Special Reference to France*, repr. ed. (South Hackensack, N.J.: Rothman Reprints, 1968).

70. *Institutes* (1536), dedicatory epistle.

71. *Ibid.*, 6.35.

72. *Ibid.*, dedicatory epistle.

Calvin's early formulations on religious liberty revealed a bold and brilliant young mind at work. Calvin had mastered the intricacies of the Lutheran two-kingdoms theory, and converted it to his own use. He had charted a course between the radical antinomianism and radical legalism of his day. He had crafted a theory that balanced freedom and order, liberty and law both within the church and within the state. He had provided a lean and learned apologia for religious liberty that would inspire fellow evangelicals for generations, indeed centuries, to come. This was no small achievement for a man newly converted to the evangelical cause and still in his early twenties.

Calvin's early formulations on religious liberty did betray considerable casuistry, however. Calvin may have reconciled the dialectic of law and liberty, of legalism and antinomianism in his early writings. But to reconcile one dialectic he introduced many others. He drew clear and easy lines between the heavenly and earthly kingdoms, the spiritual and the political life, the coercion and counsel of the law, the essential and indifferent matters of faith, the pious and impious canons of the church, the equitable and inequitable statutes of the state, the governance of the "manifestation" but not of the "manner" of religion, the duty to obey versus the right to petition the magistrate, among many other dualities. To be sure, such line-drawing followed the prevailing humanist methodology used by the leading theologians and jurists of the time.<sup>73</sup> And Calvin was convinced that his "readers, assisted by the very clarity of the arrangement, will better understand" the subject.<sup>74</sup> But such line-drawing did little to produce the authoritative synthesis on religious liberty to which Calvin aspired. Why should Calvin's line-drawing be any more authoritative than a millennium of line-drawing by the Catholic Church? How should the pious believer, cleric, or magis-

73. See generally, Neal W. Gilbert, *Renaissance Concepts of Method* (New York: Columbia University Press, 1960). For an important Lutheran antecedent to this method, see *Dialectices Philippi Melancthonis Libri IIII* (Lugduni, 1534) and id., *Erotemata Dialectices*, in *Philippi Melancthonis opera quae supersunt omnia*, ed. G. C. Bretschneider (1547; reprint, Halle: C. A. Schwetschke et filium, 1846), 20:511. For legal antecedents, see discussion in Roderich von Stintzing, *Geschichte der deutschen Rechtswissenschaft* (München/Leipzig: R. Oldenbourg, 1880), 88ff., 241ff. Calvin's contemporary Peter Ramus (1515-1572), whom fellow Calvinists lionized, had developed this line-drawing methodology to such a level of refinement that much of human knowledge was being pressed into an endless series of binary opposites. See generally, Walter J. Ong, *Ramus, Method and the Decay of Dialogue* (Cambridge: Harvard University Press, 1958); W. S. Howell, *Logic and Rhetoric in England* (Princeton: Princeton University Press, 1956); J. J. ver Donk, *Petrus Ramus en de Wiskunde* (Assen: Van Gorcum, 1966).

74. *Institutes* (1536), 6.38.

trate, untutored in humanist dialectics, parse and police these fine distinctions in their private and professional lives? Calvin did not say.

Calvin's early formulations on religious liberty were not only casuistic, they were also incomplete. Catholic and Protestant writers of the day viewed religious liberty in both individual and institutional terms. Calvin focused principally on the individual and his spiritual liberty vis-à-vis the church and political liberty vis-à-vis the state. He had relatively little to say about the relationships per se of church and state, clergy and magistracy, prelate and prince. Calvin's treatment of church-state relations was derivative of his theory of individual religious liberty in this early period. He seemed content to shorten the legal arm of the church and to lengthen the legal arm of the state. He also seemed content to assign the church to the heavenly kingdom and the state to the earthly kingdom, and to assume that the ontological distinctions between these two kingdoms would provide ample direction and division for ecclesiastical and political officials.

## II. LATER FORMULATIONS

Calvin's later formulations on religious liberty had the opposite tendency. As his thinking matured and he took up his pastoral and advisory duties in Geneva, Calvin began to think in more integrated and more institutional terms. He blurred the lines between the earthly kingdom and heavenly kingdom, between spiritual and political life, law, and liberty. He also focused more closely and concretely on the institutional responsibilities and relationships of church and state. Whereas the religious liberty of the individual had been a principal concern of Calvin's in the 1530s, religious liberty of the church took priority and precedence thereafter — to the point where the individual's religious freedom would have to yield to the church's in the event of conflict. This new priority was no more clearly demonstrated than in Calvin's actions in the infamous case of Michael Servetus.

It must be emphasized that in his later writings Calvin faithfully repeated his early formulations on religious liberty for the individual. He continued to insist on the cardinal distinction between the "spiritual kingdom" and the "political kingdom."<sup>75</sup> He continued to insist on the

75. *Institutes* (1559), 3.19.15; 4.20.1. But note that Calvin now tended to view the two-kingdoms theory simply as an expression of the traditional Catholic concept of the inner forum (governed by penitential rules) versus external forum (governed by canon-law rules). See above note 25. For Catholic antecedents, see Winfried Trusen, "Forum *internum* und gelehrtes Recht im Spätmittelalter," *Zeitschrift der Savigny-Stiftung (Kan. Ab.)* 57 (1971): 83.

spiritual liberty of believers from the coercion of the spiritual law and from superstitious human traditions and indeed bolstered his earlier arguments with ample new biblical support.<sup>76</sup> He continued to insist on the political liberty of the believer vis-à-vis the political official and civil law. In fact, he peppered his later sermons and commentaries with general endorsements of political liberty for believers and nonbelievers alike. "There is nothing more desirable than liberty."<sup>77</sup> Liberty is "an inestimable good,"<sup>78</sup> "a singular benefit and treasure that cannot be prized enough,"<sup>79</sup> something that is worth "more than half of life."<sup>80</sup> "How great a benefit liberty is, when God has bestowed it on someone."<sup>81</sup> 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."<sup>82</sup> "Let those whom God has given liberty and the franchise use it."<sup>83</sup> "[T]he reason why tyrannies have come into the world, why people everywhere have lost their liberty . . . is that people who had elections abused the privilege."<sup>84</sup> "I freely admit," Calvin wrote in summary of his position, "that 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>85</sup> Many such passages occur in Calvin's later writings, both formal and informal.<sup>86</sup> Calvin never lost his appetite for the spiritual and political liberty of the individual.

Calvin, however, wove these familiar refrains on individual liberty into robust new orchestrations on law and order. He still insisted that liberty and law, freedom and order belong together. But the law and order side of the equation took prominence in his later writings as he

76. *Institutes* (1559), 3.19.1-8, 14.

77. Sermon. Genesis 39:1, CO, 23:502.

78. Sermon. 1 Sam. 8, CO, 29:544; Sermon. 1 Sam. 17, CO, 30:185.

79. Comm. Deut. 17:14-18, CO, 27:459.

80. Comm. Deut. 24:7, CO, 24:628.

81. Sermon. 1 Sam. 8, CO, 29:555.

82. Comm. Deut. 15 (*Harmony of the Last Four Books of Moses*), CO, 24:697.

83. Sermon. Deut. 18:14-18, CO, 27:458-60.

84. Sermon. Deut. 16:18-19, CO, 27: 410-11.

85. *Institutes* (1543), 20.7.

86. See additional such passages in Höpfl, *The Christian Polity of John Calvin*, 156-60; John T. McNeill, "The Democratic Element in Calvin's Thought," *Church History* 18 (1949): 153.

struggled to define the functions and interrelationships of moral, political, and ecclesiastical laws and structures within both the heavenly and the earthly kingdoms. By the time of his 1559 *Institutes*, Calvin had in effect superimposed on the Lutheran two-kingdoms theory his own variant of the Catholic two-swords theory. He had assigned the church a legal role in the governance of the earthly kingdom, and the state a moral role in the governance of the heavenly kingdom. At the same time, he had rendered obedience to church officials and law both a spiritual and a civic duty, and obedience to political officials and law both a civic and spiritual duty. Such new sentiments left his familiar views on individual religious liberty both scattered and somewhat indeterminate.

The following sections gather and systematize Calvin's scattered discussions of religious liberty vis-à-vis (1) the moral law; (2) the positive laws of the state; and (3) the positive laws of the church.

#### A. LIBERTY AND MORAL LAW

At the foundation of Calvin's later formulations was a newly expanded theory of the moral law, which God in his sovereignty uses to govern both the heavenly and earthly kingdoms.<sup>87</sup> Calvin described the "moral law" much as he had described the "spiritual law" before — as moral commandments, engraved on the conscience, repeated in the Scripture, and summarized in the Decalogue.<sup>88</sup> He used widely varying (and sometimes confusing) terminology to describe this moral law — "the voice of nature," the "engraven law," "the law of nature," "the natural law," the "inner mind," the "rule of equity," the "natural sense," "the sense of divine judgment," "the testimony of the heart," the "inner voice," among other terms.<sup>89</sup> Calvin never developed a systematic tax-

87. On the importance of the sovereignty of God in Calvin's later writings, see *Institutes* (1559), bk. 1 and discussion in Bohatec, *Budé und Calvin*, 306-45; Beyerhaus, *Studien zur Staatsanschauung Calvins*, 48-107.

88. *Institutes* (1559), 2.7.1, 8.1; 4.20.15.

89. Among many other references, see *Institutes* (1559), 2.2.22, 7.3-4, 10, 8.1-2; 3.19.15-16; 4.20.3, 15, 16; *Comm. Rom.* 2:14-15; *Sermons on Deuteronomy* 19:14-15, CO, 34:503ff.; *Comm. Harmony of the Last Four Books of Moses*, CO, 24:209-260; *Sermons on the Ten Commandments* [Deut. 4:44-6:4], in CO, 26:236-432, translated as *John Calvin's Sermons on the Ten Commandments*, trans. and ed. Benjamin W. Farley (Grand Rapids: Baker, 1980). See discussion in Erik Wolf, "Theologie und Sozialordnung bei Calvin," in *Rechtstheologische Studien*, ed. Erik Wolf (Frankfurt am Main: Vittorio Klostermann, 1972), 3, 12-15; I. John Hesselink, *Calvin's Concept of the Law* (Allison Park, Pa.: Pickwick Publishers, 1992), 18-24, 51-85; Höpfl, *The Christian Polity of John Calvin*, 179-80; Jürgen Baur, *Gott, Recht und*

onomy of these terms or a comprehensive natural law theory akin to that of fellow reformers like Philipp Melanchthon, Johann Oldendorp, or Richard Hooker.<sup>90</sup> Calvin generally used these terms synonymously to describe the norms created and communicated by God for the governance of humanity, for the right ordering of individual and social lives. He considered the commandments of the Decalogue to be the fullest expression of the moral law,<sup>91</sup> but he grounded many other human customs and habits in this moral law as well.<sup>92</sup>

God makes "three uses of the moral law" in governing humanity, said Calvin — invoking the classic Protestant doctrine of the "uses of the law," which he had mentioned in passing in his earlier writings.<sup>93</sup>

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*weltliches Regiment im Werke Calvins* (Bonn: H. Bouvier, 1965), 26-75; Bohatec, *Calvin und das Recht*, 1-93; John T. McNeill, "Natural Law and the Teaching of the Reformers," *Journal of Religion* 26 (1946): 168.

90. On Melanchthon's and Oldendorp's formulations, see discussion and literature in Berman and Witte, "The Transformation of Western Legal Philosophy in the Lutheran Reformation," 1611-35, 1638-42. On Richard Hooker's formulations, see *Laws of Ecclesiastical Polity*, bk. 1, in *The Folger Library Edition of the Works of Richard Hooker*, vol. 1, ed. W. Speed Hill (1856; reprint, Cambridge, Mass.: Belknap Press, 1977), and discussion in A. P. d'Entrevés, *The Medieval Contribution to Political Thought: Marsilius of Padua and Richard Hooker* (Oxford: Oxford University Press, 1939). For a comparison of Hooker's and Calvin's views, see August Lang, "The Reformation and Natural Law," in *Calvin and the Reformation* (London: Lutterworth Press, 1909), 56-98; P. D. L. Avis, "Richard Hooker and John Calvin," *Journal of Ecclesiastical History* 32 (1981): 19-28.

91. See especially his commentary on the Decalogue in *Institutes* (1559), 2.8; *Harmony of the Last Four Books of Moses*, CO 24:262-724; and *Sermons on the Ten Commandments*, CO, 26:236-432.

92. These included the headship of the husband to the wife and children (Comm. 1 Cor. 7:37; Eph. 5:31; 1 Tim. 2), the sanctity of monogamy (Comm. Gen. 26.10; 38:24), the duty to take care of the family (Comm. 1 Tim. 5:8), breast-feeding (Comm. Gen. 21:8), primogeniture (Comm. Gen. 27:11), the obligation to keep promises (Comm. 1 Cor. 9:1), the laws of impediments in marriage (*Harmony of the Last Four Books of Moses*), the need for witnesses in capital murder cases (*Ibid.*), the need for class distinctions in society (*Ibid.*), natural law prohibitions against incest (Comm. Gen. 29:27), murder (*Harmony of the Last Four Books of Moses*), adultery (Comm. Genesis 26:10), and slavery (Comm. Genesis 12:15; Comm. Eph. 6:1). See discussion and notes in Höpfl, *The Christian Polity of John Calvin*, 180.

93. For discussion of this doctrine, see John Witte Jr. and Thomas C. Arthur, "The Three Uses of the Law: A Protestant Source of the Purposes of Criminal Punishment?" *Journal of Law and Religion* 10 (1994): 433 and sources cited therein. For antecedents in Calvin's earlier writings, see *Institutes* (1536), 1.33; *Calvin's Commentaries on Seneca's De Clementia*, bk. 1, 2.2 (Latin text, 24-25, Battles and Hugo trans., 73-77); bk. 1, 22.1 (Latin text, 124-26, Battles and Hugo trans., 301-7). The latter text suggests that Calvin derived

First, God uses the moral law *theologically* — to condemn all persons in their consciences and to compel them to seek his liberating grace. Here Calvin expanded on his earlier discussion of the dialect between spiritual law and spiritual liberty. By setting forth a model of perfect righteousness, the moral law “warns, informs, convicts, and lastly condemns every man of his own unrighteousness.”<sup>94</sup> The moral 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. “[I]t 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.”<sup>95</sup> The moral law is that mirror. It drives persons to seek the cleansing “spiritual liberty” that is available to them through faith in God’s grace — the liberty of conscience from the condemnation of the moral law.<sup>96</sup>

Second, God uses the moral law *civilly* — to restrain the sinfulness of nonbelievers, those who have not accepted his grace. “[T]he law is like a halter,” Calvin wrote, “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.”<sup>97</sup> The moral law imposes

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his theology of the uses of the moral law not only from his biblical and theological studies but also from his earlier legal and political studies. In this 1532 work, Calvin endorsed classic Greek and Roman doctrines of the purposes, aims, or uses of criminal law and punishment. Both Plato and Seneca had defined these as “retribution,” “deterrence,” and “rehabilitation,” which correspond roughly to Calvin’s understanding of the “theological,” “civil,” and “educational,” uses of the moral law. See Plato *Laws*, 9.6 862 E, 11.11 932 C; Plato *Gorgias*, 81, 525B and *Calvin’s Commentary on Seneca’s De Clementia*, 75, 305. See Seneca, *De Clementia*, bk. 1, 22.1, with *Calvin’s Commentary on Seneca’s De Clementia*, 301-7. See also the translator’s notes in *ibid.*, 137\*. For the later elaboration of this analogy between the theological doctrine of the uses of the moral law and the purposes of the criminal law see Witte and Arthur, “The Three Uses of the Law.”

94. *Institutes* (1559), 2.7.6.

95. *Comm. Galatians* 3:19, CO, 5:535. See also *Institutes* (1559), 2.7.8. Calvin also liked to use the image of the sinner as a debtor incapable of discharging his debt. See, e.g., *Sermon on Deut. 5:23-27*, CO, 26:396.

96. *Institutes* (1559), 2.7.8-9; 3.19.3-6; *Harmony of the Last Four Books of Moses*, CO, 24:725; *Comm. Gal. 5:13*, CO, 50:250.

97. *Institutes* (1559), 2.7.10.

upon them a “constrained and forced righteousness”<sup>98</sup> or a “civil righteousness.”<sup>99</sup> Though their consciences are “untouched by any care for what is just and right,” the very threat of divine punishment compels sinners to obey the basic duties of the moral law — to fear God, to rest on the Sabbath, to avoid blasphemy, idolatry, and profanity, to obey authorities, to respect their neighbor’s person, property, and relationships, to remain sexually continent, to speak truthfully of themselves and their neighbors.<sup>100</sup>

God coerces sinful consciences 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,” Calvin wrote.<sup>101</sup> Persons need the God-given constraints of conscience in order to survive in “a public community.”<sup>102</sup> “Liberty would always bring ruin with it, if it were not bridled by the moderation” born of the moral law.<sup>103</sup> And again: “We can be truly and genuinely happy not only when liberty is granted to us, but also when God prescribes a certain rule and arranges for a certain public order among us so that there may be no confusion.”<sup>104</sup>

Third, God uses the moral law *educationally* — to teach believers, those who have accepted his grace, the means and measures of sanctification, of spiritual development. “We are not our own,” says Calvin, quoting Saint Paul. “[T]he faithful are not given liberty to do whatever seems good to them and that each one follow his own appetite.”<sup>105</sup> Even the most devout saints, though free from the condemnation of the moral law, still need to follow the commandments “to learn more thoroughly . . . the Lord’s will [and] to be aroused to obedience.”<sup>106</sup>

98. *Ibid.*

99. *Ibid.*, 4.20.3.

100. *Ibid.*, 2.8.6-10; *Harmony of the Last Four Books of Moses*, CO, 24:725ff.; *Sermons on the Ten Commandments*, CO, 26: 236ff.

101. *Comm. Jer.* 30:9, CO, 38: 617. See also Hesselink, *Calvin’s Concept of the Law*, 249-51.

102. *Institutes* (1559), 2.7.10.

103. *Comm. Jer.* 30:9, CO, 38: 617.

104. *Ibid.*

105. *Sermon on Deut. 5:4-7*, in CO, 26:247 and *John Calvin’s Sermons on the Ten Commandments*, 63. For the implications of this sentiment for Calvin’s doctrine of the “free will” of Christians, see the excellent discussion in Bohatec, *Budé und Calvin*, 351-72.

106. *Institutes* (1559), 2.7.12.

The law teaches them not only the "civil righteousness" that is common to 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 fornication but also prohibits evil thoughts of hatred, covetousness, and lust.<sup>107</sup> Such habits of "spiritual righteousness" are not to be exercised in the heavenly kingdom alone. They are to imbue all aspects of the life of the believer — spiritual and temporal, ecclesiastical and political, private and public. Calvin stressed that Christians must take their faith and conscience directly into the political, public, and external life of the earthly kingdom, "as ambassadors and stewards of the treasure of salvation, of the covenant of God, . . . of the secrets of God."<sup>108</sup> By so doing, they not only allow God's glory and image to shine in the earthly kingdom, but they also induce its sinful citizens to seek God's grace.<sup>109</sup>

Calvin's expanded theory of the uses of the moral law of human conscience laid important groundwork for the expansion of political liberty and civil rights. In his earlier writings, Calvin had argued that God imposes various duties on the political office, and that these duties also "constitute" the political liberties of their subjects in the earthly kingdom. When political officials respect the God-given duties of their office, the political liberties of their subjects are amply protected. Now, Calvin argued that God imposes various duties not just on political officials but on *all* persons in the earthly kingdom. These include the moral duties, set out in the Decalogue, to respect the person, property, reputation, and relationships of their neighbors. When members of the earthly kingdom respect these God-given duties of communal living, the civil freedoms of their neighbors are amply protected. It was only a short step from this theory of political and civil duties to a theory of subjective civil rights and political freedoms. A person's duty to his neighbor could be easily cast as the neighbor's right to have that duty discharged. A political official's duty to rule citizens justly could be easily cast as the citizen's freedom from unjust rule. Calvin did not take this step into the realm of subjective rights. But his immediate followers, building directly on Calvin's theology, took this step quite easily, calling

107. *Ibid.*, 2.8.6.

108. Sermon on Deut. 5:22, CO, 26:384 and *John Calvin's Sermons on the Ten Commandments*, 251.

109. *Institutes* (1559), 2.8.51; 3.3.9, 6.1, 17.5, 6.1; Comm. 1 Peter 1:14, CO, 55:221

for a full panoply of civil rights and political liberties, at least for Christians.<sup>110</sup>

Calvin's expanded theory of the moral law also laid the groundwork for the expansion of spiritual liberty. Earlier, Calvin had been largely content to view the dialectic of spiritual law and spiritual liberty as a matter of the heavenly kingdom alone. As a consequence, he insisted that liberty of conscience was "a wholly spiritual thing" and could not be construed as a political freedom. Now, with his new emphasis on the omniscience of God's sovereignty, Calvin drew the spiritual dialectic of law and liberty into the earthly kingdom as well. God's moral law governs both the heavenly and the earthly kingdoms. Christians are given liberty of conscience to follow this moral law as citizens of both kingdoms. As Calvin put it: "We obtain liberty in order that we may more promptly and more readily obey God in all things," spiritual and temporal.<sup>111</sup> These premises could lead easily to the conclusion that liberty of conscience must be an absolute guarantee in both the heavenly and earthly kingdoms, at least for Christians. Calvin dithered on this point — in part constrained by his own strong rhetoric against the antinomianism of the Anabaptists and for the exclusively spiritual character of Christian liberty.<sup>112</sup> His followers, particularly the Dutch Pietists and English Puritans of the seventeenth century, drew this conclusion quite easily.<sup>113</sup>

110. See generally, David Little, "Reformed Faith and Religious Liberty," in *Major Themes in the Reformed Tradition*, ed. Donald R. McKim, (Grand Rapids: Eerdmans, 1992), 196, 200-206; Winthrop S. Hudson, "Democratic Freedom and Religious Faith in the Reformed Tradition," *Church History* 15 (1946): 193; Heinz Schilling, "Calvinismus und Freiheitrechte," *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden* 198 (1987): 403; John Witte Jr., ed., *Christianity and Democracy in Global Context* (Boulder, Colo.: Westview Press, 1993), 4-7. For earlier studies, see the compilation in Hermann Vahle, "Calvinismus und Demokratie im Spiegel der Forschung," *Archiv für Reformationsgeschichte* 66 (1975): 183. The doctrine of subjective rights, of course, was not invented by later Calvinists; it was formulated at canon law already in the twelfth and thirteenth centuries, if not before. See Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought, 1150-1650* (Cambridge: Cambridge University Press, 1982); Kenneth Pennington, *The Prince and the Law: 1200-1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993); Charles J. Reid Jr., "Rights in Thirteenth Century Canon Law: An Historical Investigation" (Ph.D. diss., Cornell, 1994).

111. Comm. on 1 Peter 2:16, CO, 55:206. See also *Institutes* (1559), 3.17.1-2 and discussion in Hesselink, *Calvin's Concept of the Law*, 259-60.

112. Compare *Institutes* (1559), 3.19.14-16 with *ibid.*, 4.10.5.

113. See sources cited *supra* note 106. See further discussion in O. J. DeJong, "Union and Religion," *The Low Countries History Yearbook* (1981): 29-49.; Karl Schwarz, "Der Begriff Exercitium Religionis Privatum," *Zeitschrift der Savigny-Stiftung (Kanonisches Abteilung)* 105 (1988): 495-518.

## B. LIBERTY AND THE LAWS OF THE STATE

In his later writings, Calvin expanded the place and purpose not only of moral law but also of positive law in the two kingdoms. Earlier, Calvin had recognized as positive law only the "political law" of the state, whose authority is rooted in the moral law and whose jurisdiction is strictly limited to the earthly kingdom. Now, Calvin recognized as positive law both the political law of the state and the ecclesiastical law of the church. Both the state and the church are legal entities, Calvin argued. Each institution has its own forms of organization and order, and its own norms of discipline and rule. Each is called to play a distinct role in the enforcement of Godly government in the community. Each provides "external means or aids through which God invites us into communion with Christ, and keeps us there."<sup>114</sup> Each institution participates in the elaboration of Godly moral law and the enforcement of its inherent "uses." Each helps to define, and to delimit, the province of religious liberty.

God has vested in the state "the temporal power of the sword," said Calvin. As before, Calvin insisted that the magistrate is the vice-regent of God; that he must rule with written positive laws rooted in tradition and morality and guided by equity and justice; that citizens must obey him and his law up to the limits of Christian conscience.<sup>115</sup> But now Calvin offered some refinements both to the structure and to the purpose of political government and law. These refinements, though they did not yield a comprehensive political theory, were pregnant with political implications, which later Protestants helped to deliver.

The *structure* of political governments must be "self-limiting," Calvin said, so that "rulers are check-mated by their own officers" and offices.<sup>116</sup> Such inherent political restraints rarely exist in a monarchy, Calvin

114. *Institutes* (1559), subtitle of bk. 4. ("*de externis mediis vel adminiculuis quibus deus in Christi societatem nos invitatur et in ea retinet*"). It was only in this final edition of the *Institutes* that Calvin clearly defined church and state, together, "as external means" of grace, thereby effectively eclipsing the two-kingdoms theory. See also above notes 25 and 75. In the 1536 edition, he had treated in one chapter the topics of "Christian Liberty," "Ecclesiastical Power," and "Political Administration," with strong emphasis on the organic connections among the topics. See *Institutes* (1536), chap. 6. In subsequent editions of his *Institutes*, he had broken up these three topics into separate chapters — taking up "Christian Freedom" in the context of soteriology, "Ecclesiastical Power" in the context of the sacraments, "Political Administration" in the context of the Christian life. See the 1539, 1543, 1545, 1550, 1553, and 1554 editions in CO, 1:252-1151.

115. See generally, *Institutes* (1559), 4.20.

116. Sermon 2 Sam. (1562), in *Supplementa Calvinia*, 1:55.

believed, for monarchs too often lack self-discipline and self-control, and betray too little appetite for justice, prudence, and Christian virtue.<sup>117</sup> "If one could uncover the hearts of monarchs," Calvin wrote late in his life, "he would hardly find one in a hundred who does not likewise despise everything divine."<sup>118</sup> Thus, "it is safer and more tolerable that government be in the hands of a number of persons who help each other,"<sup>119</sup> such as prevails in an aristocracy, or even better in "a [mixed] system comprised of aristocracy, tempered by democracy."<sup>120</sup> What Calvin had in mind was rule by the "best characters," by the spiritual and moral elite, who were elected to their offices.<sup>121</sup> Mere division of political authority, however, was an insufficient safeguard against political tyranny. Calvin thus encouraged all magistrates to govern through local agencies, 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>122</sup> Though Calvin never synthesized these various "democratic elements" of political theory,<sup>123</sup> his followers in the Netherlands, England, and New England wove them into a comprehensive theory of political democracy.<sup>124</sup>

117. See, e.g., Serm. Job 10:16-17 and Job 19:26-29, CO, 33:503, 34:138; Serm. Deut. 17:16-20, CO, 27:479. See the numerous excerpts from other writings collected in Beyerhaus, *Studien zur Staatsanschauung Calvins*, 109-15.

118. Lectures on Daniel (1561), quoted in McNeill, "The Democratic Element," 159.

119. Serm. Deut. 18:14-18, CO, 28:459-60.

120. *Institutes* (1543), chap. 17; *Institutes* (1559), 4.20.8.

121. McNeill, "The Democratic Element," 162.

122. See, e.g., *Institutes* (1559), 4.20.10-11, 31; Comm. Rom. 13:1-10, CO, 49:248-251 and discussion in Bohatec, *Calvins Lehre von Staat und Kirche*, 116-64; 619-33; Höpfl, *The Christian Polity of John Calvin*, 160-66; John T. McNeill, "John Calvin on Civil Government," in *Calvinism and the Political Order*, ed. George L. Hunt (Philadelphia: Westminster Press, 1965), 23-29; M. E. Chenevière, *La pensée politique de Calvin* (1937; reprint, Geneva: Slatkine Reprints, 1970), 181ff.

123. See McNeill, "The Democratic Element" and Robert M. Kingdon, "Calvinism and Democracy," in *The Heritage of John Calvin*, ed. John H. Bratt (Grand Rapids: Eerdmans, 1973), 177.

124. See discussion and sources in Harold J. Berman, "Law and Belief in Three Revolutions," *Valparaiso Law Review* 18 (1984): 569, 594-98; Witte, ed., *Christianity and Democracy in Global Context*, 5-7; id., "How to Govern a City on a Hill: The Early Puritan Contribution to American Constitutionalism," *Emory Law Journal* 39 (1990): 41-64; id., "The Plight of Canon Law in the Early Dutch Republic," in *Canon Law in Protestant Lands*, ed. R. H. Helmholz (Berlin: Duncker & Humblot, 1992), 135, 144-47.

The *purpose* of political government and law is, in essence, to help God achieve the civil use of the moral law — to cultivate civil restraint and civil righteousness in all persons, if necessary through the coercive power of the sword. 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.”<sup>125</sup> 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>126</sup> Calvin made clear that such magisterial cultivation of the civil use of the law was inherently limited. “It is true that when magistrates create laws, their manner is different from God’s. But then their purpose has to do only with the way we govern ourselves with respect to the external civil order to the end that no one might be violated and each might have his rights [protected] and have peace and concord among men. That is their intention when they create laws. And why? [Because] they are mortal men; they cannot reform inner and hidden affections. That belongs to God.”<sup>127</sup>

The best means for the magistrate to help cultivate the civil use of the moral law, said Calvin, is through direct enforcement of the provisions and principles of the Decalogue. The magistrate is the “custodian of both tables” of the Decalogue, said Calvin.<sup>128</sup> He is responsible to govern both the relationships between persons and God, based on the First Table of the Decalogue, and the multiple relationships among persons, based on the Second Table. Thus the magistrate is to promulgate laws against Sabbath-breaking, blasphemy, heresy, “idolatry, sacrilege against God’s name, against his truth, and other public offenses against religion” that violate the principles of the First Table.<sup>129</sup> He is “to defend the worship of God, and to execute vengeance upon those who profanely despise it, and on those who endeavor . . . to adulterate

125. *Institutes* (1559), 4.20.9.

126. *Ibid.*, 4.20.2.

127. *Serm. Deut. 5:17*, CO, 26:321.

128. *Institutes*, 4.20.9. See also *ibid.*, 2.8.11-12; *Harmony of the Four Books of Moses*, CO, 24: 721-24. For a comparison of Calvin’s division of the Commandments between these tables, and that of other Christian and Jewish writers, see Bo Reicke, *Die Zehn Worte in Geschichte und Gegenwart* (Tübingen: J. B. Mohr, 1973), 9-42.

129. *Institutes* (1559), 4.20.3

the true doctrine by their errors."<sup>130</sup> The magistrate is also to promulgate laws against homicide, theft, perjury, adultery, inchoate crimes, and other immorality that violate the principles of the Second Table.<sup>131</sup> By so doing, the magistrate coerces all persons, regardless of their faith, to respect and maintain the "civil righteousness" or "public morality" dictated by God's moral law.

Calvin was convinced that, through this exercise of Godly moral authority, the state magistrate enhances the ambit of religious liberty. By teaching each person the rudiments of Christian morality, even if by force, the magistrate enables those who later accept Christ to be "partially broken in, . . . not utterly untutored and uninitiated in Christian discipline" and discipleship.<sup>132</sup> By upholding minimal standards of Christian morality, the magistrate protects the "public manifestation of religion" and provides a public and peaceful space for Christianity and the church to flourish.<sup>133</sup> By purging the community of overt heretics, idolaters, and blasphemers, the magistrate protects the Godly character of the community and the sanctity of the Church and its members. Individual Christians and the church as a whole thus enjoy greater freedom to exercise the Christian faith.

Calvin did not enhance the magistrate's civil jurisdiction over religious and moral matters without establishing safeguards. First, citizens were to resist and even rise up against magistrates who prescribed religious and moral duties that directly contravened the Bible, particularly the First Table of the Decalogue. "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."<sup>134</sup> Second, magistrates were not "to

130. Serm. Daniel 4:1-3, CO, 40:647-51. See discussion in Paul Woolley, "Calvin and Toleration," in *The Heritage of John Calvin*, ed. John H. Bratt (Grand Rapids: Eerdmans, 1973), 137.

131. *Institutes* (1559), 4.20.3; see also *ibid.*, 2.8 and *Harmony of the Four Books of Moses*, CO, 24:262-724 for a detailed interpretation of the Decalogue as well as the summary in *Instruction et confession de foy*, reprinted as John Calvin, *Instruction in Faith*, trans. Paul T. Fuhrmann (1537; reprint, Philadelphia: Westminster Press, 1949).

132. *Institutes* (1559), 2.8.10.

133. *Ibid.*, 4.20.3.

134. Comm. Dan. 6:22, CO, 41:25. Calvin saw this sentiment as consistent with his frequent counsels to obey authorities and to bear oppression. Later in the same passage, he wrote: "[W]e must obey our princes who are set over us. Even though they torture us bodily and use tyranny and cruelty toward us, it is necessary to bear all this, as St. Paul says. But when they rise against God they must be put down, and held of no more account

make laws . . . concerning religion and the worship of God."<sup>135</sup> They were only to enforce God's law on religion and worship, especially as it was set forth in the First Table of the Decalogue. This principle stood in marked contrast to both Lutheran and Anglican Protestants, who at the time vested in the magistrate the power to promulgate all manner of civil laws respecting religious worship, liturgies, prayers, and other cultic activities. Calvin countenanced no such establishment regime. Third, magistrates were not to enforce God's laws *indiscriminately*. "We must not always reckon as contentious the man who does not acquiesce in our decisions, or who ventures to contradict us," said Calvin.<sup>136</sup> "We must exercise moderation; so as not instantly to declare every man to be a 'heretic' who does not agree with our opinion. There are some matters on which Christians may differ from each other, without being divided into sects."<sup>137</sup> Fourth, magistrates were not to enforce God's laws *inequitably*. Instead, they must seek to adjust their punishments to the capacities of each subject and the dangers of that person's crime. "All teachers have . . . a rule here which they are to follow . . . modestly and kindly to accommodate themselves to the capacities of the ignorant and the unlearned."<sup>138</sup> "This is what he [Isaiah] means by the metaphor of the bruised reed, that he does not wish to break off and altogether crush these who are half-broken, but, on the contrary, to lift up and support them, so as to maintain and strengthen all that is good in them. We must neither crush the minds of the weak by excessive severity, nor encourage by our smooth language anything that is evil. But those who boldly and obstinately resist . . . must be broken and crushed."<sup>139</sup>

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than worn-out shoes. . . . 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. And why? Because there is only one foundation of all the power of princes — that God has set them in their places. When they wish to tear God from his throne, can they be respected?" Ibid. See also Comm. Deut. 5:16, CO, 26:309: "While we are commanded to be obedient to our superiors, the exception still remains that this must not detract from any of those prerogatives which belong to God, which have already been treated in the first table [of the Decalogue]. For we know that the service by which God is worshipped must precede everything else."

135. *Institutes* (1559), 4.20.3 (emphasis added).

136. Serm. 1 Cor. 11:6, CO, 49:722. See also Woolley, "Calvin and Toleration," 144-53.

137. Comm. Titus 3:10, CO, 52:434-35.

138. Comm. Rom. 1:14, CO, 49:18-19.

139. Comm. Isa. 42:3, CO, 37:60-62.

The one person whom Calvin helped the magistrate to “crush” was Michael Servetus — unleashing what has been called “one of the most famous controversies of modern times about religious freedom.”<sup>140</sup> The facts are not contested. Servetus, an accomplished Spanish scientist and theologian, was best known in his day for two unrelated acts — the discovery of the circulation of blood in the lungs, and the publication of a 1531 tract, *Concerning the Errors of the Trinity*.<sup>141</sup> The latter act was the more controversial, for in his tract Servetus charged the Church with all manner of distortion and confusion in developing its doctrine of God as Father, Son, and Holy Spirit. The book was widely condemned, in Catholic and Protestant circles alike. When Servetus sent a copy to the bishop of Saragossa, the bishop referred him to the Inquisition, which ordered him to appear. Servetus disappeared, surfacing again in 1545, when he sent Calvin a letter posing several queries about the Trinity. Calvin answered his queries and sent him a copy of the *Institutes* in an effort to persuade him of his errors. Servetus promptly returned the volume to Calvin, having annotated numerous corrections and insulting comments in the margins.<sup>142</sup> Calvin broke off the correspondence, confiding ominously to a friend in 1546, that if Servetus “takes it upon himself to come hither [to Geneva], . . . I shall never permit him to depart alive.”<sup>143</sup> In 1553, Servetus published a *Restitutio* of his volume on the Trinity, which, again, was swiftly condemned by Protestants and Catholics. This time Servetus was arrested by Catholic authorities, and brought before the Inquisition. Calvin, among others, furnished the inquisitorial court with documentary evidence of Servetus’ heresy and blasphemy, including the copy of his *Institutes* that Servetus had annotated. He also urged pastors and book dealers in Geneva and abroad to burn this

140. Josef Lecler, *Toleration and the Reformation* (London: Longmans, 1960), 1:325. Among numerous writings on Servetus and his fate, see Roland H. Bainton, *Hunted Heretic: The Life and Death of Michael Servetus* (Boston: Beacon Press, 1953); Bainton, *The Travail of Religious Liberty*, 72-94; Richard Nürnberger, “Calvin und Servet: Eine Begegnung zwischen reformatorischem Glauben und modernem Unglauben im 16. Jahrhundert,” *Archiv für Reformationsgeschichte* 49 (1958): 196; Jerome Friedman, *Michael Servetus. A Case Study in Total Heresy* (Geneva: Droz, 1978); McNeill, *The History and Character of Calvinism*, 226ff.; Andrew Pettegree, “Michael Servetus and the Limits of Tolerance,” *History Today* 40 (1990): 41.

141. For other documents, see Roland H. Bainton, “Documenta Servetiana,” *Archiv für Reformationsgeschichte* 44 (1953): 223; *Ibid.*, 45:99.

142. See collection in CO, 8:645-720.

143. Letter to Farel (February 13, 1546), in Calvin, *Letters*, 2:31, 33.

*Restitutio*.<sup>144</sup> Servetus managed to escape from his inquisitors. During his flight, Servetus traveled through Geneva — one, but certainly not the only convenient stopping point along his way. On Sunday morning, he attended worship services at a church where Calvin was preaching. He was pointed out to Calvin, who had him arrested by the Geneva magistracy. Servetus was indicted before the Geneva council for “horrible, shocking, scandalous, and infectious” heresy, in violation of prevailing local law as well as the law of Justinian. Calvin served as his first accuser and testified among several others against him. Servetus, unrepresented by counsel in the case, answered his accusers, both openly in court, and through annotations of the record compiled against him. He was ordered to recant and repent. He refused and was sentenced to death by slow fire at the stake. Calvin supported Servetus’ plea for a more merciful means of execution. The magistrate refused, burning Servetus at the stake on October 27, 1553.<sup>145</sup>

Executions for heresy were hardly a novelty in the mid-sixteenth century, let alone in the centuries before. In the same decade of Servetus’ death, Queen Mary of England executed some 273 Protestants who resisted her return to Catholicism.<sup>146</sup> The following decade, the Duke of Alva, executed some 20,000 Dutch Protestants in an (ultimately futile) attempt to quiet the ferment for reformation in the Netherlands.<sup>147</sup> But executions for heresy were not known in Protestant Geneva, which in Calvin’s day had become something of a haven for Protestant nonconformists from throughout Europe.<sup>148</sup> Of the 139 felons known to have been executed in Geneva between 1542 and 1564, Servetus was ap-

144. Letter to Pastors of the Church of Frankfort (August 27, 1553), in Calvin, *Letters*, 2:422 Letter to Sulzer (September 8, 1553); *Ibid.*, 2:427;

145. For the proceedings, see CO, 8:721-832 and *Registres de la Compagnie des Pasteurs de Genève au temps de Calvin 1553-1564*, vol. 2, with translated excerpts from the annotated record in *The Register of the Company of Pastors of Geneva in the Time of Calvin*, 223-84.

146. Lecler, *Toleration and the Reformation*, 2:351-52.

147. M. Dierickx, “Die lijst der veroordeelden door de Raad van Beroerten,” *Revue Belge de Philologie et d’Histoire* 60 (1962): 415.

148. See William C. Innes, *Social Concern in Calvin’s Geneva* (Allison Park, Pa.: Pickwick Publications, 1983), 205-19 (on religious refugees in Geneva).

149. Höpfl, *The Christian Polity of John Calvin*, 136. See also E. W. Monter, *Studies in Genevan Government (1536-1605)* (Geneva: Droz, 1967), 152-55; *id.*, “Crime and Punishment in Calvin’s Geneva, 1562,” *Archiv für Reformationsgeschichte* 64 (1973): 281; Innes, *Social Concern in Calvin’s Geneva*, 169n.

parently the only one executed for heresy.<sup>149</sup> It was difficult to justify such executions using the strict biblical logic on which Calvin generally insisted. Banishment and other noncapital punishment of heretics could be grounded easily in Scripture; execution could not be.<sup>150</sup>

Calvin's critics, most notably Sebastian Castellio,<sup>151</sup> saw Servetus' execution as the inevitable consequence of Calvin's improper enhancement of the state's power over "the public manifestation of religion." How is the magistrate to distinguish between God's law for religion, which he must enforce, and man's law for religion, which he may not? How is the magistrate to decide whether a doctrinal teaching is blasphemous, idolatrous, or heretical? How is the magistrate to be protected against undue influence by a theologian and pastor as formidable as Calvin? What purpose does civil discipline of such a person serve? "I hate heretics, too," Castellio wrote, "as well as blasphemers, idolaters, and other apostates. But . . . I see two great dangers. And the first is that he be held for a heretic who is not a heretic. This happened in former times, for Christ and his disciples were put to death as heretics, and there is grave reason to fear a recurrence of this in this century. . . . Great care must be exercised to distinguish those who are really seditious from Christians. Outwardly they do the same thing and are adjudged guilty of the same crimes by those who do not understand. Christ was crucified among thieves. The other danger is that he who is really a heretic be punished more severely or in a manner other than that required by Christian discipline."<sup>152</sup> Castellio condemned with particular vehemence Calvin's endorsement of Servetus' execution for espousing heretical doctrine.

150. See Höpfl, *The Christian Polity of John Calvin*, 172ff., 201ff., who shows that in his defense of the execution of Servetus, Calvin had to resort exclusively to a rather tenuous natural-law argument, rather than his usual method of grounding his arguments in Scripture (sometimes supplementing them with natural-law arguments).

151. Among numerous materials on Castellio, see, e.g., Roland H. Bainton, "Sebastian Castellio, Champion of Religious Liberty" in *Studies on the Reformation* (Boston: Beacon Press, 1963), 139-81; U. Plath, "Calvin und Castellio und die Frage der Religionsfreiheit," in *Calvinus Ecclesiae Genevensis Custos*, ed. Wilhelm H. Neuser (Frankfurt am Main: Peter Lang, 1982), 191-95; Jean Runzo, "Sebastian Castellio's Scepticism and Religious Toleration," in *Tradition as Openness to the Future: Essays in Honor of Willis W. Fisher*, ed. Fred O. Francis and Raymond P. Wallace (Lanham, Md.: University Press of America, 1984), 71-88; Werner Kaegi, *Castellio und die Anfänge der Toleranz* (Basel: Helbing & Lichtenhahn, 1953).

152. Sebastian Castellio, *Concerning Heretics* (1554), ed. Roland H. Bainton (New York: Columbia University Press, 1935), 126 (quoting from "Dedication by Martin Bellius to Duke Christoph of Württemberg").

"[T]o kill a man is not to defend a doctrine, it is to kill a man. . . . Religious doctrine is not the affair of the magistrate, but of the doctor. What has the sword to do with doctrine?"<sup>153</sup>

Calvin found little convincing in such criticisms, and in his later years — as his critics multiplied and insurrection in Geneva mounted<sup>154</sup> — he defended his views with evermore bitter vitriol. It is here where Calvin's critics can find his most intemperate statements against religious liberty, and where Calvin casts a dark shadow on his otherwise carefully nuanced treatment of religious liberty. Calvin's interpretation of a passage about stoning false prophets illustrates his new bombast:

This law at first appears to be too severe. For merely having spoken should one be so punished? But if anybody slanders a mortal man he is punished and shall we permit a blasphemer of the living God to go unscathed? If a prince is injured, death appears to be insufficient for vengeance. And now when God, the sovereign emperor, is reviled by a word, is nothing to be done? God's glory and our salvation are so conjoined that a traitor to God is also an enemy of the human race and worse than a murderer because he brings poor souls to perdition. Some object that since the offense consists only in words, there is no need for such severity. But we muzzle dogs, and shall we leave men free to open their mouths as they please? Those who object are like dogs and swine. They murmur that they will go to America where nobody will bother them. God makes plain that the false prophet is to be stoned without mercy. We are to crush beneath our heel all affections of nature when his honor is involved. The father should not spare the child, nor the brother his sister, nor the brother his brother, nor the husband his own wife or the friend who is dearer to him than life. No human relationship is more than animal unless it be grounded in God.<sup>155</sup>

Similar vitriol courses through Calvin's 1554 manifesto *Defense of the*

153. Quoted by Roland H. Bainton, *Sebastian Castellio: Champion of Religious Liberty* (New York: Columbia University Press, 1951), 75.

154. See, e.g., entries in the *The Register of the Company of Pastors*, 295-304. An October 4, 1554 "Letter from the Pastors of Geneva to their Colleagues in Berne," for example, complained that "wild and defamatory accusations" against Calvin had caused a "disgraceful and disorderly . . . disturbance, which is advancing everywhere in this region. . . . The fact is that nearly all the weak are tottering, the godly are dreadfully tormented, profane despisers scoff and in public shamelessly spew forth whatever they like against godly doctrine" (6.302). See also Letter to Farel (May 25, 1554), in Calvin, *Letters*, 3:39, and Letter to Farel (May 15, 1555), *ibid.*, 3:181.

155. Quoted by Bainton, *The Travail of Religious Liberty*, 68-69.

*Orthodox Christian Faith . . . Against the Manifold Errors of Michael Servetus.*<sup>156</sup> These later utterances catch Calvin in a very dark and defensive mood and can be used to cast him and his views on religious liberty in a very dark and sinister profile.

### C. LIBERTY AND THE LAWS OF THE CHURCH

While God has vested in the state the coercive power of the sword, Calvin argued, He has vested in the church the spiritual power of the Word. God calls the members of the church to be his priests and prophets — to preach the Gospel, to administer the sacraments, to teach the young, to gather the saints, to care for the needy, to communicate God's Word and will throughout the world.<sup>157</sup> The church is to be a beacon of light and truth, a bastion of ministry and mission. Just as pious Christians must take their faith into the world to reflect God's image and glory, so the church must take its ministry into the world to project God's message and majesty for all persons to behold.<sup>158</sup>

God has established his church with a distinct and independent polity, Calvin argued. The church's responsibilities must be divided among multiple offices and officers. Ministers are to preach the word and administer the sacraments. Doctors are to catechize the young and to educate the parishioners. Elders are to maintain discipline and order and adjudicate disputes. Deacons are to control the finances of the church and to coordinate the church's care of the poor and needy.<sup>159</sup> Each of these church officials, Calvin believed, is to be elected to his position by church members. Each is subject to the limitation of his own office and the supervision of his fellow officers. Each is to participate in periodic congregational meetings that allow members to assess their performance and to debate matters of doctrine and discipline. This form

156. CO, 8:453-644.

157. *Ibid.*, 4.1.1-11.

158. *Institutes* (1559), 4.1.7-17; Serm. Deut. 5:22, CO, 26:384 and *John Calvin's Sermons on the Ten Commandments*, 251-52.

159. *Ibid.*, 4.3; "Les ordonnances ecclesiastiques de l'Eglise de Geneve," in Amelius L. Richter, *Die evangelischen Kirchenordnungen des sechszehnten Jahrhunderts* (1541; reprint, Nieuwkoop: B. De Graaf, 1967), 1:342. See discussion of this ecclesiastical polity in action in Höpfl, *The Christian Polity of John Calvin*, 90-127; Robert M. Kingdon, "Calvin and the Government of Geneva," in *Calvinus Ecclesiae Genevensis Custos*, ed. Wilhelm H. Neuser (Frankfurt am Main: Peter Lang, 1984), 49; Elsie A. McKee, *Diakonia in the Classical Reformed Tradition and Today* (Grand Rapids: Eerdmans, 1989), 15-18, 61-82.

of ecclesiastical polity, whose inner workings Calvin discussed in copious detail, was often described by later Calvinists as an "ecclesiastical democracy."<sup>160</sup>

God has vested in this church polity three forms of legal power (*potestas*).<sup>161</sup> First, the church holds *doctrinal power*, the "authority to lay down articles of faith, and the authority to explain them."<sup>162</sup> Included herein is the authority 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.<sup>163</sup> Second, the church holds *legislative power*, the authority to promulgate for itself "a well-ordered constitution" that ensures (1) "proper order and organization," "safety and security" in the church's administration of its affairs; and (2) "proper decency" and "becoming dignity" in the church's worship, liturgy, and ritual.<sup>164</sup> "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. Paul's injunction that 'all things must be done decently and in good order' can be met only if order itself and decorum are established through the addition of observances that form a bond of union."<sup>165</sup> Third, and "most importantly," said Calvin, the church has *jurisdiction*, the authority to maintain discipline and to prevent scandal among its members.<sup>166</sup>

The church's jurisdiction, which is rooted in the power of the keys,<sup>167</sup> must remain "wholly spiritual" in character, Calvin insisted.<sup>168</sup> Its disciplinary rules must be "founded upon God's authority, drawn from Scripture, and, therefore, wholly divine."<sup>169</sup> Its sanctions must be

160. See, e.g., Cambridge Synod and Platform (1648), chap. 8, in *The Creeds and Platforms of Congregationalism*, ed. Williston Walker (New York: W. W. Norton, 1960), 217-18.

161. For a careful parsing on the meaning of this term, see Höpfl, *The Christian Polity of John Calvin*, 113-14.

162. *Institutes* (1559), 4.8.1.

163. *Ibid.*, 4.1.5, 3.4.

164. *Ibid.*, 4.10.27-28.

165. *Ibid.*, 4.10.27.

166. *Ibid.*, 4.11.1. See also Calvin's elaboration in *De Scandalis*, in CO, 8:1-84, with English translation John Calvin, *Concerning Scandals*, trans. John W. Fraser (Grand Rapids: Eerdmans, 1978).

167. *Institutes* (1559), 4.11.1-2, 5-6; 12.1.

168. *Ibid.*, 4.10.5.

169. *Ibid.*, 4.10.30.

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 must always be “moderate and mild,”<sup>170</sup> and left “not to the decision of one man but to a lawful assembly” — ideally a consistory court, with proper procedures and proper deference to the rule of law.<sup>171</sup>

In his writings in the 1540s, Calvin conceived this ecclesiastical jurisdiction in modest terms, simply as a way of purging the church of manifest sin and sinners and of policing the purity of the Lord’s Supper or Eucharist.<sup>172</sup> By the end of his life, however, these disciplinary codes resurrected a good deal of the traditional Catholic canon law and restored to the church consistory courts a good deal of the traditional authority that Calvin and other early Protestants had so hotly criticized three decades before. For example, in a 1560 amendment to the ecclesiastical ordinances, which Calvin endorsed, we read:

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 favour 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

170. *Ibid.*, 4.11.3; 12.1-4, 8-11. See also Calvin’s consilia, in CO, 10:207-8, 210-11 (urging the consistory “to keep to its own boundaries and limits” and that “excessive strictness should be kept within bounds”); *Les ordonnances ecclesiastiques* (1541), in Richter, *Die evangelischen kirchenordnungen*, 342 (urging that discipline “should be done with such moderation, and with no force that someone might be injured; or even these corrections are simply remedies to return sinners to the Lord”).

171. *Institutes* (1559), 4.11.5.

172. See, e.g., “*Les ordonnances ecclesiastiques*” (1541), which lists “the persons whom the elders ought to admonish” — “those who dogmatize against received doctrine,” “anyone who is negligent in church attendance in [a] way that evinces contempt of the communion of the faithful,” secret sinners who are to be privately admonished, and notorious sinners who are to be censured, if necessary excommunicated, and turned over to the civil authorities. The ordinances state that such limitations are imposed so that “the ministers have no civil jurisdiction, nor use anything but the spiritual sword of the Word of God, as Paul commands them; nor is the Consistory to derogate from the [Genevan City] Council or ordinary justice; the civil power is to remain unimpaired.” Richter, *Die evangelischen Kirchenordnungen*, 350-352.

time; and persistent offenders will be publicly named, so that people will know who they are.<sup>173</sup>

This was no idle directive. Studies of Genevan life during Calvin's tenure and beyond show that a central consistory court played an increasingly active role in the maintenance of spiritual and moral discipline for all Genevan subjects, not just members of local congregations. The consistory court was made an agent of the Genevan Small Council and served, effectively, as both grand jury and preliminary trial court.<sup>174</sup> It participated in the enforcement of laws governing not only blasphemy, heresy, sacrilege, and other spiritual lapses but also marriage, divorce, and child care, charity and poor relief, education, among other civil causes and concerns.<sup>175</sup>

While the state's law and punishment help God to achieve the *civil use* of the moral law, the church's law and discipline help God to achieve *all three uses* of his moral law. By maintaining a pure Godly doctrine and law, the church upholds the theological use of the law to induce sinners to behold their depravity and to seek God's grace. By maintaining structural order and decorum, the church upholds the civil use of the law to deter sinful conduct and to preserve a measure of public righteousness and liberty among its members. By maintaining spiritual discipline, the church upholds the educational use of the law to teach the saints the meaning and measure of sanctification and spiritual righteousness.

Moreover, the church's enforcement of spiritual discipline achieves within ecclesiastical society the same goals of retribution, deterrence, and rehabilitation that the state's criminal law achieves within civil society.<sup>176</sup>

173. See E. Arnaud, ed., *Documents protestants inédits de XVI<sup>e</sup> siècle* (Paris, 1872), 72ff., with English translation in *Calvinism in Europe 1540-1610: A Collection of Documents*, ed. Alastair Duke, et al. (Manchester: Manchester University Press, 1992), 48.

174. See especially Bohatec, *Calvin und das Recht*, 94-131.

175. See *The Register of the Company of Pastors of Geneva*, with closer studies in Walter Köhler, *Zürcher Ehegericht und Genfer Consistorium* (Leipzig: M. Heinsius Nachfolger, 1942), 2:540-645; Cornelia Seeger, *Nullité de mariage divorce et separation de corps a Genève au temps de Calvin: Fondements doctrinaux, loi et jurisprudence* (Lausanne: Société de l'histoire de la suisse romande, 1989); Robert A. Kingdon, *Adultery and Divorce in Calvin's Geneva* (Cambridge: Harvard University Press, 1995).

176. See *Institutes* (1559), 4.11.1: "[T]he whole jurisdiction of the church pertains to the discipline of morals. . . . For as no city or township can function without magistrate and polity, so the church of God . . . needs a spiritual polity. This is, however, quite distinct from the civil polity, yet does not hinder or threaten it but rather greatly helps and furthers it. Therefore, this power of jurisdiction will be nothing, in short, but an order framed for the preservation of the spiritual polity."

Through its spiritual discipline, the church exacts retribution against the sinner, so that God's honor, law, and sacraments can be preserved. It deters both the sinner and others in the church from violations of God's Word and will. It corrects and rehabilitates the sinner and brings him back into community with his fellow believers.<sup>177</sup> Calvin saw no difficulty in imposing upon Christian believers both civil and ecclesiastical discipline and would hear nothing of a double jeopardy defense. Multiple forms and purposes of discipline are inherent in God's moral law, and punishment by the state cannot not preclude discipline by the church, or vice versa.<sup>178</sup>

Calvin's radical expansion of the law and authority of the visible church in his later writings and actions served at once to contract and to expand the province of religious liberty. On the one hand, Calvin contracted the exercise of the individual's spiritual liberty within the church. To be sure, Calvin repeated verbatim his early panegyrics about liberty of conscience from the condemnation of the moral law and from superstitious human traditions.<sup>179</sup> He repeated his condemnations of the "innumerable human traditions of the Romanists — so many nets to ensnare miserable souls . . . and to bind the conscience which Christ has set free."<sup>180</sup> But what Calvin gave with one hand, he took with the other. Though Christians might have ample liberty of conscience, they certainly do not have much freedom of exercise as members of the church. They must "freely" bind themselves to obey the church's "well-ordered constitution" and comprehensive code of spiritual discipline. They must "gladly" submit to the mandated forms and habits of worship, ritual, and liturgy so that the church's decorum, discipline, and dignity will not be compromised.<sup>181</sup> They must "voluntarily" restrict their spiritual freedom even in discretionary matters of spiritual living so that weaker members of the church will not be offended and misled.

177. *Ibid.*, 4.11.3-5; 12.

178. See, e.g., *ibid.*, 4.11.3 (illustrating how a drunk or a fornicator would need to be subject to both laws and punishments). For numerous examples of cooperation between civil and ecclesiastical authorities in the disciplining of Genevan citizens, see sources cited in note 175.

179. *Institutes* (1559), 3.19.1-16.

180. *Ibid.*, 4.10.1-2.

181. *Ibid.*, 4.10.27-31. See, e.g., the strained logic of *ibid.*, 4.10.31: "Now it is the duty of Christian people to keep the [church] ordinances that have been established according to this rule with a free conscience, indeed, without superstition, yet with a pious and ready inclination to obey; not to despise them, not to pass over them in careless negligence. We must be far from openly violating them through pride and obstinacy."

Within the church, individual religious liberty and discretion must give way to corporate religious order and organization. Those who could not submit to the church's strictures were, of course, free to leave the church — a local application of the "right of emigration" provided in the 1555 Religious Peace of Augsburg.<sup>182</sup> But in a small community such as Geneva, lack of communicant status within one local congregation often led to various civil deprivations — the cancellation of professional licenses, the loss of business clients, the suspension of voting rights, the denial of standing to press civil suits — as well as many unofficial forms of social shunning.<sup>183</sup> "What sort of freedom of conscience could there be with such caution and excessive attention to detail?" Calvin once asked himself rhetorically.<sup>184</sup> Not much, thought his critics, despite Calvin's lengthy ratiocinations to the contrary.

While Calvin contracted individual religious liberty, he expanded considerably institutional religious liberty. Indeed, Calvin argued strongly for a measure of ecclesiastical autonomy and a basic separation of the institutions and offices of church and state. "There is a great difference and unlikeness between the ecclesiastical and civil power" of the church and state, said Calvin.<sup>185</sup> "A distinction should always be observed between these two clearly distinct areas of responsibility, the civil and the ecclesiastical."<sup>186</sup> 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 the excommunications or bans, or to meddle in the internal affairs of the church.<sup>187</sup> When church

182. Reprinted in Sidney Z. Ehler and John B. Morrall, eds., *Church and State Through the Centuries: A Collection of Historic Documents with Commentaries* (Newman, Md.: Burnes & Oates, 1954), 164.

183. Walter Köhler, *Zürcher Ehegericht und Genfer Konsistorium*, 2:504ff.

184. *Institutes* (1559), 4.10.31.

185. *Ibid.*, 4.11.3. See also *ibid.*, 4.20.1-2. Cf. also *ibid.*, 3.19.15, where Calvin urges that "political kingdom" and "spiritual kingdom" "must always be considered separately; while one is being examined, the other we must call away and turn aside the mind from thinking about the other." In the next paragraph, Calvin seems to equate these two kingdoms with "civil government" and "church laws."

186. *Consilium*, CO, 10:223.

187. See *Les ordonnances ecclesiastiques* (1541); *Institutes* (1559), 4.11.3-16; 20.2-4; *Consilia*, CO, 10:215-17, 223-24. For a good summary, see McNeill, "John Calvin on Civil

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.<sup>188</sup> When state officials operate as members of the church, they must submit to the constitution and discipline of the church: They cannot insist on royal prerogatives or sovereign immunities.<sup>189</sup> 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>190</sup>

Calvin's principle of separation of church and state bore little resemblance, however, to the modern American understandings of "a high and impregnable wall between church and state."<sup>191</sup> Despite his early flirtations with radical political implications of the two-kingdoms theory, Calvin ultimately did not contemplate a "secular society" with a plurality of absolutely separated religious and political officials within them. Nor did he contemplate a neutral state, which showed no preference among competing concepts of the spiritual and moral good. For Calvin, each community is a unitary Christian society, a *corpus Christianum* under God's sovereignty and law.<sup>192</sup> Within this unitary society, the church and the state stand as coordinate powers. Both are ordained by God to help achieve a godly order and discipline in the community, a successful realization of all three uses of the moral law. Such conjoined responsibilities inevitably required 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."<sup>193</sup> "[T]he spiritual polity, though distinct from the civil polity does not hinder or threaten it but rather greatly helps and furthers it."<sup>194</sup>

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Government," 41ff. For a detailed account, see Bohatec, *Calvins Lehre von Staat und Kirche*, 611-13. Calvin was, in fact, banished from Geneva from 1538-41 for his objections, *inter alia*, to magisterial involvement in the appointment and regulation of clergy.

188. *Institutes* (1559), 4.11.6-16.

189. *Ibid.*, 4.11.4.; 20.1.

190. *Ibid.*

191. *Everson v. Bd. of Education*, 330 U.S. 1, 16 (1947). On the derivation of this metaphor, see Mark D. Howe, *The Garden and the Wilderness* (Cambridge: Harvard University Press, 1965).

192. Herbert Butterfield, "Toleration in Early Modern Times," *Journal of the History of Ideas* 38 (1977): 573, 576.

193. Sermon. 1 Sam. 11:6-10, CO, 29:659.

194. *Institutes* (1559), 4.11.1.

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>195</sup>

Calvin's principles were as much reminiscent of medieval forms of church-state relations as prescient of modern forms. To be sure, Calvin anticipated many of the modern concepts of separation, accommodation, and cooperation of church and state that later would come to dominate Western constitutionalism. But Calvin also appropriated many of the cardinal insights of both the two-powers theory of Pope Gelasius and the two-swords theory of the Papal Revolution.<sup>196</sup> Like his medieval predecessors, Calvin saw that to maintain its "liberty," the church had to organize itself into its own legal and political entity, and to preserve for itself its own jurisdiction and responsibility. It had to wield its own "sword," its own "power." Calvin differed from his medieval predecessors, however, in insisting upon a more democratic form of ecclesiastical and civil polity, a more limited ecclesiastical jurisdiction, and an equality of church and state before God.

### III. CONCLUSIONS

In his haunting book on the *Origins of Totalitarian Democracy*, J. L. Talmon described the eighteenth-century French Revolution as the harbinger of modern forms of both liberal democracy and totalitarian fascism.<sup>197</sup> The political ideas of the French Revolution, said Talmon, were sufficiently "protean" and "provocative" to guide both these contemporary political movements along paths that the *philosophes* could never have anticipated. A Lincoln and a Marx, a Roosevelt and a Mussolini could all take inspiration from the core teachings of the French Revolution.

An analogous claim might be made about the sixteenth-century Calvinist Revolution that first broke out in Geneva, and eventually swept over the Netherlands, Scotland, parts of France, England, Switzerland, Germany, Eastern Europe, and America. Calvin's political ideas, too,

195. *Ibid.*, 4.20.2-3.

196. See generally Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983); Brian Tierney, *The Crisis of Church and State: 1050-1300* (Englewood Cliffs, N.J.: Prentice-Hall, 1964).

197. J. L. Talmon, *The Origins of Totalitarian Democracy* (London: Secker & Warburg, 1955).

were sufficiently protean and provocative to inspire a wide range of both totalitarian and democratic tendencies.

It is easy to expose the totalitarian and belligerent tendencies of many leading Calvinists — John Knox, Oliver Cromwell, John Winthrop, John Cotton, Samuel Rutherford, Cotton Mather, to name a few. It is easy to extend beyond Servetus the list of martyrs who were reviled, banished, or executed by Calvinists — Caspar Coolhaas, Jacobus Arminius, Hugo Grotius, Roger Williams, Anne Hutchinson, John Wise, to name a few. It is easy to find Calvinist sermons and pamphlets, on both sides of the Atlantic, earnestly defending all manner of monarchy, slavery, chauvinism, racism, warfare, torture, limited suffrage, religious establishment, apartheid, persecution, and many other forms of *pathos*. It is easy to weigh the political and legal contributions of the Calvinist tradition against contemporary standards of liberty and to find them wanting. Calvin's writings and actions have provided a seedbed out of which has grown a whole wilderness of tangled political thorns that have strangled the growth of religious and political liberty in many quarters.

Calvin's writings, however, also made profound and lasting contributions to the Western legal and political tradition of religious liberty. The Protestant Reformation inaugurated by Martin Luther in 1517 was, at its core, a fight for religious liberty — liberty of the individual conscience from intrusive canon laws and clerical controls, liberty of political officials from ecclesiastical power and privilege, liberty of the local clergy from central papal rule and oppressive princely controls. Calvin helped to further this cause of liberty, not only in Geneva but in many other quarters of Western Europe as well. His theory of the Christian conscience provided the cornerstone for the constitutional protections of liberty of conscience and free exercise of religion advocated by later Protestants in France, Holland, England, Scotland, and America. His theory of moral laws and duties inspired a whole range of natural law and natural rights theories, directed, among other things, to the protection of religious liberty. His theory of a congregationalist church polity broke the power of synodical and episcopal centralization, and eventually was used to support concepts of confessional pluralism. His theory of a coequal and cooperative clergy and magistracy provided a strong foundation for later constitutional protections of both separationism and accommodationism. His theory of the moral responsibilities of both church and state to the community lies at the heart of modern theories of social pluralism and civic republicanism.

Calvin's most original and lasting contribution to the Western tradi-

tion of religious liberty lay in his restructuring of the liberty and order of the church. Calvin was able to find a way between both the Erastian tendencies of Lutherans and Anglicans that subordinated the church to the state, and the ascetic tendencies of Anabaptists and radicals that withdrew the church from the state and society. He did so by combining ingeniously within his ecclesiology the principles of the rule of law, democracy, and liberty and giving the church a moral responsibility within the entire community.<sup>198</sup>

Calvin urged respect for the *rule of law* within the church. He devised laws that defined the church's doctrines and disciplinary standards, the rights and duties of their officers and parishioners, the procedures for legislation and adjudication. The church was thereby protected from the intrusions of state law and the sinful vicissitudes of their members. Church officials were limited in their discretion. Parishioners understood their spiritual duties. When new rules were issued, they were discussed, promulgated, and well-known. Issues that were ripe for review were resolved by church tribunals. Parties that had cases to be heard exhausted their remedies at church law. Disgruntled individuals and families that departed from the church left their private pews and personal properties behind them. Dissenting congregations that seceded from the fold left their properties in the hands of the corporate body. To be sure, this principle of the rule of law within the reformed church was an ideal that too often was breached, even in Calvin's day. Yet this principle helped to guarantee order, organization, and orthodoxy within the church.

Second, Calvin urged respect for the *democratic process* within the church. Pastors, elders, teachers, and deacons were to be elected to their offices by the congregation. Congregations periodically held collective meetings to assess the performance of their church officers, to discuss new initiatives within their bodies, to debate controversies that had arisen. Delegates to church councils were to be elected by their peers. Council meetings were to be open to the public and to give standing to parishioners to press their claims. Implicit in this democratic process was a willingness to entertain changes in doctrine, liturgy, and polity, to accommodate new visions and insights, to spurn ideas and institutions whose utility and veracity were no longer tenable.<sup>199</sup> To be sure,

198. See further discussion in John Witte Jr., "The Catholic Origins and Calvinist Orientation of Dutch Reformed Church Law," *Calvin Theological Journal* 28 (1993): 328, 349-51.

199. See, e.g., *Consilium* CO, 10:220 (urging "constant reform and renewal," but warning against "rash changes and constant innovations").

this principle did not always insulate the church from a belligerent dogmatism, even in Calvin's day. Yet this principle helped to guarantee constant reflection, renewal, and reform within the church.

Third, Calvin urged respect for *liberty* within the church. Christian believers were to be free to enter and leave the church, free to partake of the church without fear of bodily coercion and persecution, free to assemble, worship, pray, and partake of the sacraments without fear of political reprisal, free to elect their ministers, elders, deacons, and teachers, free to debate and deliberate matters of faith and discipline, free to pursue discretionary matters of faith, the adiaphora, without undue laws and structures. To be sure, this principle, too, was an ideal, that even Calvin compromised, particularly in his actions toward Servetus and in his undue empowerment of the consistory courts in his later years. Yet this principle helped to guarantee constant action, adherence, and agitation for reform by individual members of the church.

It was Calvin's genius to integrate these three cardinal principles of ecclesiology. Democratic processes prevented the rule-of-law principle from promoting an ossified and outmoded orthodoxy. The rule of law prevented the democratic principle from promoting a faith swayed by fleeting fashions and public opinions. Individual liberty kept both corporate rule and democratic principles from tyrannizing ecclesiastical minorities. Together, these principles allowed the church to strike a unique perpetual balance between law and liberty, structure and spirit, order and innovation, dogma and adiaphora. This delicate ecclesiastical machinery did not inoculate Calvinist churches against dissent and schism. Calvinist churches, like all others, have known schism, intolerance, and abuse. But this ecclesiastical machinery did help to render the pluriform Calvinist church remarkably resilient over three centuries and in numerous countries and cultures.

This integrated theory of the church had obvious implications for the theory of the state. Calvin hinted broadly in his writings that a similar combination of rule of law, democratic process, and individual liberty might serve the state equally well. Such a combination, he believed, would provide the best protection for the liberty of the church and its individual members. What Calvin adumbrated, his followers elaborated. In the course of the next two centuries, European and American Calvinists wove Calvin's core insights into the nature of corporate rule into a robust constitutional theory of republican government, which rested on the pillars of rule of law, democratic processes, and individual liberty.

John Calvin was certainly not the father of modern religious liberty, as some of his more exuberant champions have claimed. Yet, through his writings and example, Calvin provided an indispensable impetus to the realization and integration of individual and corporate religious liberty. No honor roll of religious liberty in the West can properly omit him.