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The Legal Theory of John Calvin

GEORGE J GATGOUNIS II

Law was a fundamental consideration for the Reformers because it exposed one's need for salvation by grace through faith alone. More specifically, the magisterial branch of the Reformation viewed civil law as a means to reform society. Calvin agreed with his fellow Reformers that divine law functions as a spiritual teacher, restrainer of sin in society, and a guide to sanctification, yet emphasized the law's divine source, relation to the gospel, and prosecutorial role.

The Uses of the Law

The Reformation achieved consensus regarding the functions of the law of God, concluding that the first use of the law is tutelary. Regarding this function Calvin cites Romans 10:4 'For Christ is the end of the law'.¹ The law acts negatively to expose sin and positively to expose the solution, in the person and finished work of Christ. The second use of the law is its civil function. The law as written in the human heart, and confirmed by social convention, serves to restrain sin through civil and criminal codes. The third use of the law concerns the sanctification of the believer, since it guides the believer to obedience.

In Lutheran circles, the Formula of Concord in Article VI *Of the Third Use of the Law* confirms the unity of God's law: 'Both for penitent and impenitent, for regenerated and unregenerate people the law is and remains one and the same law, namely, the unchangeable will of God'.² Lutheran dogma includes a discussion of both the law and gospel:³ Melancthon

- 1 John Calvin *Calvin: Institutes of the Christian Religion* 2 vols ed John T McNeill and trans Ford Lewis Battles *Library of Christian Classics 20-21* (Philadelphia: Westminster Press 1960) (hereafter *Institutes*, book.chapter.section) (1559 edition) 1.6.2, 2.6.4, 2.7.2, 3.2.6; Merwyn Johnson 'Calvin's Handling of the Law' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988) p 44
- 2 Formula of Concord Article VI paragraph 6 quoted from *The Book of Concord* trans and ed Theodore G Tappert (Philadelphia: Fortress 1959) p 481
- 3 For a representative survey, see Philip Watson *Let God be God. An Interpretation of the Theology of Martin Luther* (London: Epworth 1947) pp 152ff; Paul Althaus *The Theology of Martin Luther* (Philadelphia: Fortress 1966) Ch 19; Eric W Gritsch and Robert W Janson *Lutheranism: The Theological Movement and Its Confessional Writings* (Philadelphia: Fortress 1976) pp 42ff; Helmut Thielicke *The Evangelical Faith* (Grand Rapids: Eerdmans 1982) vol 3 ch 11.

says 'such can come about through the divine word, through a consideration of the punishments on others, or through our own punishment'. The needs of humanity, he claims, include 'a divine testimony of what is right and of what sin is; so that through the punishment of sin in all men, the unconverted may be converted, and the converted be strengthened in the fear of God'.⁴ In the last edition of *Loci Communes* in 1555, Melancthon also affirmed the third use of the law: 'The law in this life is necessary that saints may know and have a testimony of the works which please God'.⁵

Calvin explains that in its third use the law has two functions. According to his view, Christians are in a relationship with God that depends on Christ's accomplishments and not works of law. The function of the law is to foster in Christians the urge to learn 'more thoroughly each day the nature of the Lord's will to which they aspire'.⁶ A Christian is the servant who 'already prepared with all earnestness of heart to commend himself to his master, must search out and observe his master's ways more carefully in order to conform and accommodate himself to them'.⁷ Johnson's work on Calvin says that to Calvin the law is 'an indicator of the character and activity of God'.⁸ The next function of the law (third category) is exhortation, for, as Calvin remarks, 'the law is to the flesh like a whip to an idle and balky ass, to arouse it to work'⁹ ready to castigate those who continue to sin. He believed in using the law in discouraging sin through warning of consequences and encouraging righteousness with the promise of reward.¹⁰

Even if it is possible to find people who accept the law and its demands in principle, there will still be circumstances in which they will fail to keep it and be condemned as sinners.¹¹ While Calvin and Luther agreed on the three uses of the law, Calvin regarded the third use of the law as a guide for believers as the 'principal use'.¹² In Calvin's view the civil magistrate had

- 4 Melancthon 'Christian Doctrine' *Loci Communes 1555* trans and ed Clyde L Manschrek (New York: OUP 1965) p 127
- 5 Merwyn Johnson 'Calvin's Handling of the Law' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988)
- 6 *Institutes* 2.7.12, 1.33
- 7 *Institutes* 2.7.12
- 8 Merwyn Johnson 'Calvin's Handling of the Law' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988) p 46
- 9 *Institutes* (1536 edition) 1.33, (1559 edition) 2.7.12
- 10 Merwyn Johnson 'Calvin's Handling of the Law' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988) p 47
- 11 *Institutes* 2.7.7; Merwyn Johnson 'Calvin's Handling of the Law' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988)
- 12 *Institutes* 2.7.12; I John Hesselink 'Law and Gospel or Gospel and Law?' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988) p 13

the authority to enforce both tables of the Ten Commandments – that is *pietas* and *aequitas*.¹³

The Source of Law

Luther and Melancthon see God as the source of law. William Maurer, in his excellent commentary on the Augsburg Confession, concludes that ‘In no way did either Luther or Melancthon see government as the source of property laws, nor could a Christian rest easy in settling all questions about property by referring to specific public laws’. In matters of buying and selling, both Luther and Melancthon believed that everyone ought to be able to follow the dictates of conscience.¹⁴ Regarding regulation, Luther argues for a decentralized government, allowing local market conditions according to geography and experts authorized to supervise and check transactions.¹⁵

Calvin on the other hand, sees the politics of civic life as morally derived from both biblical law and natural law. The authority of fathers over their wives and children,¹⁶ monogamy,¹⁷ duty of paternal care for families,¹⁸ breast-feeding,¹⁹ obligation of promises,²⁰ the need for more than one witness in the case of murder,²¹ the prohibition of incest,²² adultery²³ and slavery,²⁴ and respect for the old,²⁵ all derive from natural law as well as biblical law in Calvin’s thinking.²⁶

He sees that capital punishment is sanctioned by both biblical and natural law, and that adultery merits capital punishment:

The law of God commands adulterers to be stoned. Before this punishment was set down in written law, the adulterous woman was,

13 Harro Hopfl *The Christian Polity of John Calvin* (Cambridge: CUP 1982) p 172

14 Wilhelm Maurer trans H George Anderson *Historical Commentary on the Augsburg Confession* (Philadelphia: Fortress 1986) p156; cf *Luther’s Works* (St Louis Concordia Publishing House 1955) vol 49 p 54.

15 Martin Luther *D Martin Luthers Werke: Kritische Gesamtausgabe* (Gutersloh 1951) vol 16 554: 27-28; Jaroslav Pelikan and Helmut T Lehman edd *Luther’s Works* (St Louis: Concordia Publishing House 1955) vol 49 p 54; vol 45 pp 248-51

16 John Calvin *Commentaries* (Edinburgh: Calvin Translation Society 1843-59) 1 Cor 7:37; Eph 5:31; 1 Tim 2 and 5:8 (hereafter *Commentaries*)

17 *Commentaries* Gen 26:10; 38:24

18 *Commentaries* 1 Tim 5:8

19 *Commentaries* Gen 21:8 (primogeniture with some qualification); 27:11

20 *Commentaries* 1 Cor 9:1

21 John Calvin *Harmony of Moses* (Edinburgh: Calvin Translation Society 1843-59) III p 45 (hereafter *Harmony*)

22 *Commentaries* Gen 29:27; *Harmony* III p 20

23 *Commentaries* Gen 26:10; *Harmony* III p 77

24 *Harmony* III pp 18, 98

25 *Commentaries* Gen 12:15; Eph 6:1

26 Harro Hopfl *The Christian Polity of John Calvin* (Cambridge: CUP 1982) p 180

by the consent of all, committed to the flames. It is established that this was done by a divine instinct, under the direction and teaching of nature, so that the sanctity of marriage might be defended as by a strong guard. How much more vile and how much less excusable is our negligence nowadays, which cherishes adulteries by allowing them to go unpunished. Capital punishment, indeed, is considered too severe for the measure of the offence. Why then do we punish lighter faults with greater rigour? Truly the world was bewitched by Satan when it suffered a law implanted in all by nature to become obsolete.²⁷

(Calvin does not explain why he believes burning is a valid substitute for biblical stoning.)

When Calvin was asked by the Genevan consistory to contribute to the city's codification efforts, to its new laws and edicts, he turned to the Roman *Corpus Juris Civilis* for a model of contract law, property law and judicial procedure.²⁸ His use of this source signified his belief that natural law was a phenomenon discerned by all nations, irrespective of any pagan origins.²⁹ In the humanist tradition of the day, Calvin expanded his legal studies to include other writings at the suggestion of his friend Bude, who showed Calvin that a study of law and *bonae litterae* could complement each other.³⁰ Calvin's sense of law, then, was informed by an exposure to legal sources, good literature and the Bible.

The Relation of Law and the Gospel

The Distinction Between Law and Grace

Readers of Calvin often have interpretative problems regarding his use of the words 'law' and 'grace'. As I John Hesselink observes:

What is often overlooked by Lutheran scholars who write on this subject and who compare Luther and Calvin is that they are not always talking about the same thing when they use the expression 'law and gospel'. Neither of them uses the expression in a fixed way, so that depending on the situation or context 'law and gospel' can mean any one of a number of things.³¹

27 *Commentaries* Gen 38:24

28 Harro Hopfl *The Christian Polity of John Calvin* (Cambridge: CUP 1982) pp 6-7

29 G Baum, E Cunitz and E Reuss edd *Joannis Calvini Opera Quae Supersunt Omnia* (Brunswick and Berlin 1863-1900) 10 I pp 125-46

30 Harro Hopfl *The Christian Polity of John Calvin* (Cambridge: CUP 1982) p 7

31 I John Hesselink 'Law and Gospel or Gospel and Law?' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988) p 14

In the same vein, Hesselink recommends that readers look at the context before deciding what meaning attaches to the terms: 'One cannot make any judgments at all about Calvin's understanding of law and Gospel without recognizing the various meanings each of those terms connotes and the various qualifications made within those meanings'.³²

In their commentaries on Galatians, Calvin and Luther display no significant differences in respect of the distinction separating the law from the gospel.³³ Calvin makes a distinction between the law as a means of salvation and grace as the means of salvation, and he also contends there is an antithesis between the two forms.³⁴ In his commentary on Exodus 19:1, Calvin refers to νόμος (from Galatians 3:19), meaning one is separated from the promise of grace, and is considered in the light of the law's 'peculiar office, power, and end'.³⁵ In this context, Calvin refers to the law as 'bare' (*nuda*).³⁶

The Continuity of Law and Gospel

Calvin, Zwingly, Bucer, Melancthon and Bullinger agree that God's covenant with Abraham was the same as the New Covenant of the Gospels and Epistles.³⁷ The covenant with Abraham in the Old Testament and with believers in the New differed only in outward form. To Calvin, the covenants of the patriarchs were one with that of the New Testament; they differed only in externals – the *modus administrationis*.³⁸

The new mode of instruction (*nova docendi forma*) replaced ancient ceremonies, but the substance of doctrine (*doctrinae substantia*) was

- 32 I John Hesselink 'Law and Gospel or Gospel and Law?' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988) p 32
- 33 Hesselink p15; John Hesselink 'Luther and Calvin on Law and Gospel in Their Galatians Commentaries' *Reformed Review* 37/2 (Winter 1984); Andrew J Banstra 'Law and Gospel in Calvin and Paul' *Exploring the Heritage of John Calvin: Essays in Honor of John Bratt David E Holwerda* ed (Grand Rapids: Baker 1976)
- 34 *Institutes* 2.10.2
- 35 John Calvin *Harmony of the Last Four Books of Moses* (Grand Rapids: Eerdmans 1948-50) 2:314
- 36 I John Hesselink 'Law and Gospel or Gospel and Law?' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988) p 17; *Institutes* 2.7.2
- 37 Gottlob Schrenk *Gottesreich und Bund im alteren Protestantismus* (Darmstadt: Wissenschaftliche Buchgesellschaft 1967 [reprint 1923])
- 38 *Institutes* 2.10.2; 2.11.1. Consider Calvin's argument, more forceful in Latin: *Patrum omnium foedus adeo substantia et re ipsa nihil a nostro differt, ut unum prorsus atque idem sit. Administratio tamen variat. And further Eas omne sic esse dico, et ostensurum me profiteor, ut ad modum administrationis potius quam ad substantiam pertineant. Hac ratione nihil impediunt quominus eaedem maneant veteris ac novi testamenti promissiones, atque idem ipsorum promissionum fundamentum, Christus.*

unaltered.³⁹ In the former, the doctrine was handed down from the mountain top; in the latter, the Lord's mountain was heaven, the already triumphant church ascended in worship.⁴⁰ Although the doctrine of God is the 'same and always agrees with itself' (*sui perpetuo similis*), the doctrine itself came 'out of Zion' with new clothing (*vestis*).⁴¹ Law and grace are derived from God's decree (*hoc ex Dei ordinatione pendet*).⁴²

Calvin sees Moses as holding two titles (*munera*). He was steward of general doctrine (*generalis doctrina*), communicating God's message of both the law and the gospel everywhere (*in univsum*); as steward of general doctrine, Moses preached the gospel.⁴³ Moses also had a mandate (*mandatum*) to lead Israel, since Yahweh had commissioned him to instill obedience to the civil and judicial code given at Sinai.⁴⁴

The Prosecutorial Function of Law

Calvin's thinking is a reminder of Augustine's: 'If the Spirit of grace is absent, the law is present only to accuse and kill us'.⁴⁵ Calvin called the Ten Commandments the 'bare law', on behalf of which God demanded his due (*exigit quod sibi debetur*). But this law does not impart either the ability or desire to obey.⁴⁶ The Decalogue is 'bare' in the sense of explanation (cf Ex 21-23), motivation and the believer's desire and ability to conform.

Calvin distinguishes David's praise for the law from Paul's condemnation of those who attempt to earn salvation merely by being law abiding. When David praises God's law, as in Psalm 119, he means the law as a whole, which includes the promises of salvation.⁴⁷ As Calvin concludes, 'If Adam had remained upright (*si integer stetisset Adam*) the law would not have brought death upon us'.⁴⁸ Holy law is both 'perpetual and inseparable from its nature. The blessing which it offers to us is excluded by our depravity, so that only the curse remains'.⁴⁹ He further explains, 'God exhibited a remarkable proof of his goodness is promising

39 I John Hesselink 'Law and Gospel or Gospel and Law?' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988) p 18; *Commentaries* Is 2:3, cf Ex 19:1.

40 Cf Gal 4:26.

41 *Commentaries* Is 2:3; I John Hesselink 'Law and Gospel or Gospel and Law?' R V Schnucker *Calviniana: Ideas and Influence of Jean Calvin* (Kirksvilles Ms: Sixteenth Century Journal Publishers 1988) p 18

42 *Commentaries* 2 Cor 3:6

43 *Commentaries* Rom 10:5; Ex 19:1

44 *Commentaries* Ex 19:1; Rom 7:2

45 Augustine quoted in *Institutes* 2.7.7

46 *Commentaries* 2 Cor 3:7

47 Cf *Commentaries* Ps 19:7-8 with Acts 7:38 and 2 Cor 3:14-17.

48 *Institutes* 1.2.1

49 *Commentaries* Gal 3:10

life to all who kept his law – and this will always remain inviolate (*integrum*)'.⁵⁰

Of course, Calvin sees the 'bare law' as presenting an impossible challenge to the unregenerate; Jesus Christ alone was able to keep the law. Accordingly, the 'wickedness and condemnation of us all are sealed by the testimony of the law. Yet this is not done to cause us to fall down in despair, or completely discouraged, to rush headlong over the brink – provided we duly profit by the testimony of the law'.⁵¹ In Calvin's opinion, the law's accusatory character should not depress but illumine.

Conclusion

Unlike that of our modern era, Reformation legal theory is monadic – a universal God governs universally through a universal law. Modern Western pluralism views law as a governing entity separate and distinct from religious precepts. 'Secular' law stops where organized religion begins. With his fellow Reformers, Calvin did not view church and society as compartmentalized. Rather, one truth, one church, one society, one government and one law derived from God through the Bible and nature. Calvin's holistic worldview and the modern pluralistic approach have nothing in common.

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50 *Commentaries* Ezek 20:11

51 *Institutes* 2.7.8