

# Calvin's Concept of Natural and Roman Law

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Several studies have discussed either Calvin's concept of natural law or the relationship between law and ethics in his theology. Among those, we should like to single out Josef Bohatec's *Calvin und das Recht*, which dates from 1934 and is devoted to Calvin's concept of law in general and natural law in particular.<sup>1</sup> Bohatec sees Calvin's concept of natural law as an expression of God's absolute justice, which coexists and acts simultaneously with his will. This means that in the Reformer's eyes God is never arbitrary or tyrannical because he can never will the overthrow of his own justice.<sup>2</sup> This, according to Bohatec, is an adaptation of the Stoic notion of justice, eliminating all overtones of pantheism and of belief in man's capacity for self-improvement. Although Bohatec draws the reader's attention to the close link between natural law and ethical norms ("Sittengesetz") in Calvin's thought,<sup>3</sup> he does not really investigate the link between natural and Roman law. More to the point, he does not pose the question of the evolution of the Reformer's thought that in our view is crucial given his exposure to law in his youth. Other studies that we shall be referring to include Susan Schreiner's *The Theater of His Glory: Nature and Natural Order in*

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<sup>1</sup>Josef Bohatec, *Calvin und das Recht* (Feudingen in Westfalen: Buchdruckerei und Verlagsanstalt G. m. b. H., 1934). Hereafter cited as Bohatec, *Calvin*. See also Josef Bohatec, *Calvin und Budé* (Graz: Hermann Böhlau Nachfolger, 1950), 382-95.

<sup>2</sup>Bohatec, *Calvin*, 90-91: "Es geht bei Gott nicht Macht vor Recht. Er handelt nicht willkürlich und tyrannisch. Da man nicht annehmen kann, dass Gott entsprechend dem Sittengesetz handeln will, aber nicht handeln kann, weil er nichts gegen seinen Willen verfügt, so müssen wir in allen göttlichen Willensäußerungen und Taten, die uns unbegreiflich scheinen, eine uns unbekannte Gerechtigkeit voraussetzen und an diese glauben. Wir wollen eben darin unsere Ehre suchen, Gottes Recht als ein ureigenstes Recht gelten zu lassen. Dieses Recht ist aber ein gerechtes Recht, denn der göttliche Wille ist die Regel der höchsten Rechtlichkeit, begründet in der besten Vernunft und der höchsten Billigkeit." Bohatec, *ibid.*, n. 371, gives several references to Calvin's works in which the Reformer calls divine law *rectissimae aequitatis regula* (*Calv. Opp.* 49, 187) or speaks of it as "grounded in the supreme equity of justice" (*in optima tamen ratione summaque aequitate fundata est, Calv. Opp.* 9, 245).

<sup>3</sup>Bohatec, *Calvin*, 92: "Wird in dieser Hinsicht eine Uebereinstimmung zwischen dem Naturrecht und dem Sittengesetz festgestellt, so erfahren die Inhalte des ersteren durch das letztere Verdeutlichung, Vertiefung und Ausweitung."

*the Thought of John Calvin*<sup>4</sup> and Guenther Haas' *The Concept of Equity in Calvin's Ethics*.<sup>5</sup> Schreiner, whose main concern is Calvin's concept of nature, devotes one chapter to natural law where she notes quite rightly that the concept of one law of divine origin underlying all legislation was borrowed by the Romans from Greek and particularly from Stoic philosophy and eventually became commonplace in Roman legal theory and in Christian thought.<sup>6</sup> She also argues that "Calvin was not interested in natural law in and of itself and did not develop a theology of natural law but rather used the principle of natural law as an extension of his doctrine of providence."<sup>7</sup> Schreiner's worthwhile study does not deal with Calvin's commentary on Seneca and tends to downplay the importance of legal terminology in his thought as well as his view of natural law as guaranteeing the validity of civil legislation. Haas, for his part, draws our attention to four senses of the term *equity*<sup>8</sup> in Greek and Roman thought and notes that Calvin used the term in three of the four senses. In Calvin's work, according to Haas, the term can mean either natural law or justice as an interpretative principle of law or law tempered by mercy. According to Haas' thesis, Calvin sees equity as fundamental not only in civil law but also in the Bible with God's own love for the elect setting the pattern for human equity.

Our aim is not to overturn either Schreiner's or Haas' thesis but simply to try and answer, at least partly, the following questions: (1) How does Calvin's definition of natural law differ from the most important mediaeval definitions? (2) To what extent did Calvin adapt certain key concepts of Roman legal thought to incorporate them into his theology? This essay is therefore in two parts. After first sketching out the main mediaeval theories of *lex* or *ius naturae*,<sup>9</sup> we shall compare them to Calvin's view in order to point out its particularity. We shall then examine Calvin's commentary on Seneca's *De clementia*, which dates from 1532, to see whether he had sketched out certain key notions of his theory at that early stage and to determine whether he already postulated a strong

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<sup>4</sup>Susan Schreiner, *The Theater of His Glory: Nature and Natural Order in the Thought of John Calvin* (Durham, N. C.: The Labyrinth Press, 1991). Hereafter cited as Schreiner, *Theater*.

<sup>5</sup>Guenther Haas, *The Concept of Equity in Calvin's Ethics*, Editions Sciences religieuses, vol. 20 (Waterloo, Ont.: Wilfrid Laurier University Press, 1997). Hereafter cited as Haas, *Equity*. I am grateful to Christoph Strohm for drawing my attention to this work.

<sup>6</sup>Schreiner, *Theater*, 73-74.

<sup>7</sup>*Ibid.*, 94-95.

<sup>8</sup>Haas, *Equity*, 123: "The historical survey of the concept of equity demonstrates that there were four ways that equity was understood: (1) rectification of positive law where it is defective because of its generality (in Aristotle's *epieikeia*), (2) natural law (in Cicero, Seneca, and Roman law), (3) justice as the interpretative principle of law (in Roman law), and (4) the benign interpretation of law as tempered by mercy and clemency (in Justinian's code)."

<sup>9</sup>We shall not be touching on voluntarist doctrines of natural law as in our view these are too far removed from Calvin's own system to be useful here. A brief account of them is given by Schreiner, *Theater*, 76-77. See also the secondary literature cited here and pages 144-45.

link between natural and Roman law. We shall examine the relevant passages in the Seneca commentary and then compare them to passages that touch on the same issue in Calvin's later works. This will enable us to see to what extent the Reformer's thought evolved and how its accent shifted between his early years as lawyer and his later work as a fully fledged theologian.

### Chief Mediaeval Theories of Natural Law

The very first distinction in the *Decree of Gratian* is entitled *De iure naturae et constitutionis*.<sup>10</sup> Most of its definitions of natural law are drawn from Isidore of Seville. Unlike Calvin,<sup>11</sup> the *Decree* distinguishes between *ius* and *lex*, considering the latter to be a species of the former; in other words, a written prescription based on the more general norm (*ius*).<sup>12</sup> According to this definition, all natural law (*ius naturae*) stems from God and consists of basic ethical precepts set down subsequently in the form of *lex* in the Old and New Testaments.<sup>13</sup> Although the *Decree* then explains that *ius naturale* is common to all nations, it does not state in so many words that it extends to nations whose religions are not based on the Bible. Moreover, canon 7 of the first distinction of the *1a pars* puts a very wide definition on natural law's extending its realm beyond ethical norms to the natural order of things and making no real distinction between natural moral law and law of nature:

Natural law is common to all nations in that it obtains everywhere through natural instinct and not through any legislation, as, for example, the coupling of man and woman, procreation and upbringing of children, common possession of all things and one freedom for all, the right to acquire that which can be captured in the sky, on earth and in the sea, restitution of possessions or of money held in trust, responding to violence by force.<sup>14</sup>

The precepts of natural law as set down in the Old and New Testaments are not fixed once and for all according to Gratian, who cites the example of menstruating women once considered as unclean but subsequently admitted to

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<sup>10</sup>Aemilius Friedberg, ed., *Corpus iuris canonici: pars prior. Decretum Magistri Gratiani* (Graz: Akademische Druck- und Verlagsanstalt, 1959), 1a pars, dist. I.XV.1-34. Hereafter cited as Friedberg 1.

<sup>11</sup>See Bohatec, *Calvin*, 3-8.

<sup>12</sup>*Decretum*, 1a pars, dist. 1.C.2, Friedberg 1.1-2.

<sup>13</sup>*Decretum*, 1a pars, dist. 1, Gratianus: "Ius naturae est quod in Legge et Euangelio continetur quo quisque iubetur alii facere quod sibi vult fieri et prohibetur alii inferre quod sibi nolit fieri." Friedberg 1.1.

<sup>14</sup>*Decretum*, 1a pars, dist. 1.C.7, Friedberg 1.1: "Ius naturale est commune omnium nationum eo quod vbique instinctu naturae non constitutione aliqua habetur, vt viri et foeminae coniunctio, liberorum successio et educatio, communis omnium possessio et omnium vna libertas, acquisitio eorum quae coelo, terrae marique capiuntur, item depositae rei vel commendatae pecuniae restitutio, violentiae per vim repulsio."

church services and to communion.<sup>15</sup> While expressing the conviction that everything that God orders through natural law must be right and therefore has to be obeyed, the *Decree* does not make a point of grounding natural law in God's absolute justice or will.<sup>16</sup> More importantly, however, by stressing both the mutability of some precepts of natural law (which can be altered by way of ecclesiastical legislation) and the superiority of ecclesiastical over civil law, the *Decree* manages to establish an implicit link between precepts of natural law in the Bible and the church as their faithful interpreter.<sup>17</sup>

Calvin's concept of natural law is restricted to natural moral law and bears very little resemblance to the *Decree of Gratian*. As Bohatec pointed out,<sup>18</sup> the Reformer gives his fullest definition of it in his commentary on Romans 2:14-15 where he makes the point that obedience or disobedience of the Old Testament law is not a necessary and sufficient condition of salvation or damnation.<sup>19</sup> Adapting the Stoic concept of *prolepsis*<sup>20</sup> to Christian philosophical norms, he demonstrates that God implanted in the consciences of pagan nations an understanding of right and wrong and of justice and injustice, sufficient to remove any excuse for sin. Indeed, according to Calvin, this basic perception of justice and injustice is situated in the consciences (*conscientiae*) of all humans. Human conscience has a very particular status as it acts as mediator between man and God—enabling man to submit his wrongdoings to God's justice. It is thus a superior form of *scientia*, which obtains solely between man and that of which he acquires knowledge in the external world.<sup>21</sup> In contrast to the *Decree*, Calvin separates natural moral law from biblical precepts and makes it stand for innate knowledge of right and wrong. It is this innate knowledge that enables nations who do not know the Bible to have legal systems. Therefore by removing natural law in all its expressions from the purview of the church, Calvin automatically puts it in the purview of rulers and magistrates, in other words in chief *civil* legislators. Whereas Martin Bucer was happy to affirm in his commentary on Romans<sup>22</sup> that Roman or civil law was God-given while canon

<sup>15</sup>Lev. 12, 5. See *Decretum*, 1a pars, dist. 5: Gratianus. Friedberg 1.7.

<sup>16</sup>*Decretum*, 1a pars, dist. 7.C.II, Friedberg 1.13-14.

<sup>17</sup>*Decretum*, 1a pars, dist. 9.C.2, Friedberg 1.17; dist. 10. C.1, Friedberg 1.19.

<sup>18</sup>Bohatec, *Calvin und Budé*, 382-92.

<sup>19</sup>See John Calvin, *Commentarius in Epistolam Pauli ad Romanos*, ed. T. H. L. Parker and D. C. Parker. *Ioannis Calvinii Opera omnia denuo recognita*, Series 2, Vol. 13 (Geneva: Droz, 1999), ad loc., 44-47. Hereafter cited as: Calvin, *In Rom*.

<sup>20</sup>Bohatec, *Calvin*, 3-7. The concept also occurs frequently in Epicurean philosophy and particularly in the writings of Epicurus himself of whom Calvin certainly did not approve. He most likely found it in another author's work, e.g., Plutarch's *Moralia* 1041e or 1042a.

<sup>21</sup>Calvin, *Institutes*, 4.10.3, *Calv. Opp.*, 2, 869; *O. S.*, 5.165-66.

<sup>22</sup>See Irena Backus, "Bucer's view of Roman and Canon law in his exegetical writings and in his Patristic Florilegium," in *Proceedings of the symposium Bucer und das Recht*, ed. Christoph Strohm (Geneva: Droz, 2002), 83-99.

law was a purely human institution, Calvin never suggests that God gave civil law. What he does affirm is that it stems from the sole universal God-given law—natural law—in other words, “notions of justice and right, which the Greeks call *prolepseis*, naturally engendered in men’s minds.”<sup>23</sup> These notions mean that even nations that do not have the law of God can and do participate in divine legislation and demonstrate this by their system of civil legislation.

If we now turn to Aquinas’ definition of natural moral law<sup>24</sup>, which is also based on Romans 2:14-15, we note that it bears a more-than-superficial resemblance to Calvin’s as Aquinas, too, relies on the *glossa ordinaria* exegesis of the passage. Unlike Calvin, however, Aquinas makes an overt reference to the *glossa* comment on Romans 2:14-15: “Although they (pagan nations) do not have the Law written down, they nonetheless have natural law, which allows everyone to understand and have knowledge of good and bad.”<sup>25</sup>

The gloss and Aquinas thus make the same distinction as did Calvin between biblical and natural law. According to that distinction, natural law amounts to a basic knowledge of ethical norms and allows pagan nations to legislate. Unlike Calvin, Aquinas does not exclude natural instincts as described by Gratian from the realm of natural law,<sup>26</sup> but he distinguishes more carefully than Gratian does between natural law and law of nature. The other important difference, apart from the fact that neither Aquinas nor the *glossa* refer to the concept of *prolepsis*, is that Aquinas further defines natural moral law as *participation* of the law of God (*lex aeterna*) in every rational creature or the rational guidance of all creation.<sup>27</sup> From this eternal law all creatures derive an inclination to those actions and ends that are proper to their natures. The term *natural law* applies specifically to the way in which rational creatures participate in the eternal law of God. This is particularly important as it implies that to Aquinas the term *natural law* applies in its strict sense not to the natural tendencies and inclinations of man on which his reason reflects but to the precepts

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<sup>23</sup>See Calvin, *In Rom*, ad 2.14-15, 46: “Nulla enim gens vnquam sic ab humanitate abhorruit vt non se intra leges aliquas contineret. Quum igitur sponte ac sine monitore, gentes omnes ad leges sibi ferendas inclinatae sunt, constat absque dubio quasdam iustitiae ac rectitudinis conceptiones quas Graeci prolepseis vocant hominum animis esse naturaliter ingenitas. Habent ergo legem sine Lege.”

<sup>24</sup>S. Th., 1-2 q. 91 a 3.

<sup>25</sup>S. Th., 1-2 q. 91 a 3: “*Sed contra* est quod Rom 2, 14 super illud *Cum gentes* dicit Glossa: Etsi non habent legem scriptam, habent tamen legem naturalem qua quilibet intelligit et sibi conscius est quid sit bonum et quid sit malum.”

<sup>26</sup>S. Th., 1-2 q. 94 a 3.

<sup>27</sup>S. Th., 1-2 q. 91 a 3: “quasi lumen rationis naturalis quo discernimus quid sit bonum et malum, quod pertinet ad naturalem legem, nihil aliud est quam impressio diuini luminis in nobis. Vnde patet quod lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura.” See also Schreiner, *Theater*, 75-76.

that his reason enunciates as a result of this reflection.<sup>28</sup> This metaphysical definition of natural law, which allows human reason a certain amount of autonomy in the moral realm, is absent from Calvin's work. Needless to say, it implies that Aquinas cannot define conscience as simply the mediator between God and man. *Conscientia* in his system is the human act of applying moral principles to particular actions and is to be distinguished from *synderesis*, which is the habitual knowledge of primary moral principles.<sup>29</sup> As regards the transmission of natural law, Aquinas interprets Gratian's affirmation, "ius naturale est quod in Lege et Euangelio continetur," in the limited sense of "full expression of natural law" and not "sole expression of natural law."

Thus, despite similarities of terminology, Aquinas' and Calvin's concepts of natural law turn out not to have a great deal in common. Aquinas assigns to natural law an objective status of a set of precepts given by God that man can enunciate and apply to individual actions as a result of reflection. The fragmentary nature of Calvin's system compared to Aquinas', or indeed to any mediaeval system of natural law, has already been pointed out and need not detain us here.<sup>30</sup> However, it seems not unreasonable to argue that Calvin puts a particular emphasis on natural law and makes it into a standard placed in man's conscience by God. This standard means that man can do no other than reveal the moral content of his actions to God. Calvin's concept of conscience implies each man's dependence on God in a one-on-one relationship, which would have been inconceivable to Aquinas. The importance of conscience as the vehicle of natural law in Calvin's system seems to have escaped the notice of Schreiner and Haas.<sup>31</sup> Yet, it is no accident that conscience figures so largely in Calvin's commentary on Romans 2:14-15 and that he finds Cicero's concept of conscience as the sole gauge of morality preferable to Aquinas'.<sup>32</sup> Moreover, Calvin establishes an intrinsic link between natural and civil law in a way in which Aquinas does not. Naturally, Aquinas asserts that general indemonstrable principles of natural law can and do form the basis of other more particu-

<sup>28</sup>S. Th., 1-2 q. 94 a 1: "Dictum est enim supra (q. 90 a. 1 ad 2) quod lex naturalis est aliquid per rationem constitutum sicut etiam est propositio opus rationis." See also q. 90a 1 ad 2: "Et huius modi propositiones vniuersales rationis practicae ordinatae ad actiones habent rationem legis."

<sup>29</sup>S. Th., 1 q. 79 a 12-13.

<sup>30</sup>Schreiner, *Theater*, 77-79.

<sup>31</sup>*Ibid.*, 93. Schreiner acknowledges that the recognition by the conscience of natural law does, in Calvin's view, function to provide the restraint necessary for life in society, but she does not develop the idea. Haas makes no mention of conscience in his study. The importance of Calvin's concept of natural law for his statements about conscience had been noted in older studies, e.g., Günter Gloede, *Theologia naturalis bei Calvin* (Stuttgart: Kohlhammer, 1935).

<sup>32</sup>Calvin, *In Rom*, 47: "Non poterat fortius eos premere quam propriae conscientiae testimonio quae est instar mille testium. . . Vnde illae Ethnicorum voces: amplissimum theatrum esse bonam conscientiam; malam vero pessimum carnificem ac saeuus quibuslibet furis impios exagitare." (Cicero, *Tusc disp.* 2.26, 64; *De legibus*, 14.40).

lar principles that make up human law. However, he makes a distinction between principles of natural law that naturally lead to human laws (e.g., the general precept to do no wrong leads to the precept not to kill) and those that need to be applied in various ways depending on context, civilization, and so forth, such as the type of punishment to be administered for a certain type of crime.<sup>33</sup> Calvin's main concern, on the other hand, is to establish a direct link between pagan consciences—the seat of natural moral law—and the civil laws they produced.

Calvin is of course aware that the pagan thinkers' concept of conscience differs from Christian in one important respect. According to Aristotle, Cicero, Seneca, and others, the torments of a man's conscience are a natural and not a God-derived phenomenon, and remedy for them is to be sought in man's natural power to improve his self-knowledge and correct his bad habits.<sup>34</sup> This, however, has no particular bearing on his doctrine of natural law, as it is conscience as such that is of crucial importance to him and not any mistaken interpretations of it. Calvin's commentary on Romans 2:14-15 differs from those of his reformer contemporaries by its insistence on conscience as the seat of fundamental moral norms, also contained in the second table of the Decalogue, and by its emphasis on the link between natural and civil law.<sup>35</sup> This seems to have escaped the notice of T. H. L. Parker who dwells instead on Calvin's refusal to admit that obeying natural law could save at least some virtuous pagans. This attitude, according to Parker, contrasts with that of Melancthon and Bullinger.<sup>36</sup> Indeed, there is no denying the fact that Calvin curtly dismissed natural law as having any role in man's salvation. "The object of natural law is to render humans inexcusable," he states flatly in the *Institutes* of 1559 prior to defining it as "distinction between justice and injustice made by the conscience which is sufficiently discerning to remove all pretext of ignorance from men as

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<sup>33</sup>S. Th., 1-2 q. 95 a 2: "Deriuantur ergo quaedam a principiis communibus legis naturae per modum conclusionum, sicut hoc quod est non esse occidendum vt conclusio quaedam deriuari potest ab eo quod est nulli esse malum faciendum. Quaedam vero per modum determinationis: sicut lex naturae habet quod ille qui peccat puniatur; sed quod tali poena puniatur, hoc est quaedam determinatio legis naturae. Vtraque igitur inueniuntur in lege humana posita. Sed ea quae sunt primi modi, continentur lege humana non tanquam sint solum lege posita, sed habent etiam aliquid vigoris ex lege naturali. Sed ea quae sunt secundi modi ex sola lege humana vigorem habent."

<sup>34</sup>Calvin, *Institutes*, 2.2.3, *Calv. Opp.* 2.187; *O. S.*, 3.244: "Haec ergo philosophorum omnium sententiae summa est humani intellectus rationem rectae gubernationi sufficere; voluntatem illi subiectentem a sensu quidem ad mala sollicitari, sed vt liberam electionem habet, impediri nequaquam posse quin rationem ducem per omnia sequatur."

<sup>35</sup>Calvin, *In Rom*, ad 2, 15 47: "Praeterea nec ex eo colligendum est, hominibus inesse plenam Legis cognitionem, sed quaedam dumtaxat iustitiae semina esse indita ipsorum ingenio. Qualia sunt quod religiones instituunt omnes peraeque gentes, adulterium legibus plectunt, et furtum et homicidium; bonam fidem in commerciis ac contractibus commendant."

<sup>36</sup>T. H. L. Parker, *Commentaries on Romans 1532-42* (Edinburgh: T. & T. Clark, 1986), 137-41.

they are condemned by their own testimony.”<sup>37</sup> We should add here that Calvin’s concept of conscience as the seat of divinely given moral standards that causes man to reveal the moral content of his actions to God is infinitely richer than Melanchthon’s. Indeed according to Melanchthon, conscience is simply a mental capacity that enables man to apply the Decalogue to his actions and to condemn himself by his own testimony in case of a misapplication.<sup>38</sup> Melanchthon apparently makes no link between conscience and natural law, the very feature of Calvin’s system that enables him to view pagan legislative and moral thought as partly acceptable to Christians insofar as it issues from the same God-given natural law.

This is why, in Calvin’s view, natural law exists first and foremost to facilitate our management of things terrestrial (*res terrenae*) so that they conform to the precepts of the second table of the Law. He is quite explicit about this in *Institutes* 2.2.13 where he distinguishes between human understanding of things celestial and things terrestrial. He calls things terrestrial those matters that are nothing to do with God, his kingdom, true righteousness, or life in the hereafter but that concern only life on this earth and “do not exceed its limits.”<sup>39</sup> By contrast, things celestial include the recognition of God’s will and the ordering of one’s life in accordance with it.<sup>40</sup> Calvin arranges things terrestrial in a hierarchy with administration of the state (*politia*) occupying the most important position followed by household management (*oeconomia*), mechanical arts and liberal disciplines. Significantly, in a more detailed explanation of things terrestrial that follows, he does not mention the human’s natural instinct to reproduce, to bring up children, or to respond to violence with force but dwells at some length on the human’s sociable nature that instinctively inclines him to nurture and conserve society. Although he does not use the Greek concept of *prolepsis*, which played an important part in his exegesis of Romans 2:14-15, it is plain that that is what he means when he speaks in the *Institutes* of

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<sup>37</sup>Calvin, *Institutes*, 2.2.22, *Calv. Opp.*, 2.204; *O. S.*, 3.265: “Finis ergo legis naturalis est vt reddatur homo inexcusabilis. Nec male hoc modo definietur: quod sit conscientiae agnitio inter iustum et iniustum sufficienter discernentis ad tollendum hominibus ignorantiae pretextum, dum suo ipsorum testimonio redarguantur.”

<sup>38</sup>See “Philippi Melanchthonis Definitiones multarum appellationum quarum in ecclesia vsus est” (1552/53) in *Melanchthons Werke in Auswahl*, 2.1, ed. Hans Engelland (Gütersloh: G. Mohr, 1978), 30: “Conscientia est syllogismus practicus in quo maior propositio est Lex Dei seu verbum Dei. Minor vero et conclusio sunt applicatio approbans recte factum vel condemnans delictum.” (I should like to thank Asaph Ben Tov of the Hebrew University, Jerusalem, for drawing my attention to this passage.)

<sup>39</sup>Calvin, *Institutes*, 2.2.13, *Calv. Opp.*, 2.197; *O. S.*, 3.256: “Res terrenas voco quae ad Deum regnumque eius, ad veram iustitiam, ad futurae vitae beatitudinem non pertingunt, sed cum vita praesenti rationem relationemque habent et quodam modo intra eius fines continentur.”

<sup>40</sup>Calvin, *Institutes*, 2.2.13, *Calv. Opp.*, 2.197; *O. S.*, 3.256: “In secundo Dei ac diuinae voluntatis cognitio et vitae secundum eam formandae regula.”

“universal impressions of civic order and honesty which are present in all men’s minds.”<sup>41</sup> These universal impressions are what makes all nations and individuals agree on what laws should be. Calvin summarizes what he had already stated in his commentary on Romans 2:14-15 where he postulated that human conscience is the seat of justice and fairness (*aequitas*), enabling men to reach a consensus on the need for religion; punishment of adultery, theft, and homicide; and commendation of fair dealing and honesty.<sup>42</sup> In the *Institutes* 2.2.13, he merely states that although men do not agree on individual laws, they share a concept of justice (*aequitas*).<sup>43</sup> Having shown to his satisfaction that the “seed of political order is sewn in all men,”<sup>44</sup> Calvin then devotes the rest of the *Institutes* passage to discussing humans’ capacity to acquire liberal arts and mechanical disciplines.

The close link between natural law and political government is thus an important feature of Calvin’s doctrine and distinguishes his concept of natural law from that of Gratian and of Aquinas. It enables him to relativize the importance of the Bible in matters terrestrial and to include pagans, albeit only partly, in God’s plan. A clear instance of this is the detailed comparison he makes in *Institutes* 4.20.16 between Jewish and heathen laws in which he shows the basic underlying *aequitas* despite some accidental differences.<sup>45</sup> Calvin is of the opinion that natural law can, without recourse to the Bible, bring about legislations that are in accord with the second table of the Decalogue. In a God-ordered universe, God can reveal his will in *terrestrial* matters through a system of civil legislation just as effectively as through the Holy Writ.

### From Seneca Commentator to Theologian

We shall now examine Calvin’s commentary on Seneca’s *De clementia*, concentrating on those passages that surface in some way in his later writings.<sup>46</sup>

<sup>41</sup>Calvin, *Institutes*, 2.2.13, *Calv. Opp.*, 2.197; *O. S.*, 3.256-57: “De priori autem sic est fatendum: quoniam homo est animal natura sociale, naturali quoque instinctu ad fouendam conseruandamque societatem propendet, ideoque ciuilibus cuiusdam et honestatis et ordinis vniuersales impressiones inesse omnium hominum animis conspicimus.”

<sup>42</sup>For the statement in the commentary on Romans 2:14-15, see note 26 above. See Haas, *Equity*, 33-47 for the influence of the Aristotelian concept of *epiikeia* on the concept of *aequitas* in the sixteenth century.

<sup>43</sup>Calvin, *Institutes*, 2.2.13, *Calv. Opp.*, 2.197; *O. S.*, 3.257: “Siquidem de legum capitibus dum inter se disceptant homines, in quamdam aequitatis summam consentiunt.”

<sup>44</sup>Calvin, *Institutes*, 2.2.13, *Calv. Opp.*, 2.197; *O. S.*, 3.256-57: “Hinc ille perpetuus tam gentium omnium quam singulorum mortalium in leges consensus, quia insita sunt vniuersis absque magistro legislatore ipsarum semina.”

<sup>45</sup>Calvin, *Institutes*, 4.20.16, *Calv. Opp.*, 2.1106; *O. S.*, 5.487-88.

<sup>46</sup>We shall be referring throughout to *Calvin’s Commentary on Seneca’s De clementia*. With introduction, translation, and notes by Ford Lewis Battles and André Malan Hugo (Leiden: Brill, 1969). Cited hereafter as Calvin, *Sen.*

This should enable us not only to see whether his concept of natural and civil law underwent any development between 1532 and 1559 but also to assess the role that law and its methodology played in his theological system. The commentary as a whole is very much the work of a lawyer and contains the very minimum of scriptural references. Among ideas that were later to play a part in Calvin's theology we have selected: (1) the importance of *summum ius* and *aequitas*, (2) man as a social animal, (3) the triple use of the law, (4) relationships between head of household and its members, and (5) the respective functions of kings, tyrants, and magistrates.

### Summum Ius and Aequitas

The usual meaning of the term *aequitas* in Roman law was "justice" or "fairness."<sup>47</sup> Haas, as we saw, distinguished three senses of *aequitas* in Calvin's use of the term. I would prefer to say that the Reformer used the term in various senses, not always very clearly distinguished, ranging from "consensus" through "fairness," "justice," "consideration of extenuating circumstances," and so forth to "natural law." The term *aequitas* as used in the Seneca commentary, appears on the face of it not to have the same sense as in some of Calvin's later works where it signifies, as we saw, the basic agreement or consensus between Christian and non-Christian nations on the necessity of legislation. In the commentary on Seneca, Calvin, following Budé,<sup>48</sup> uses the terms *aequum* and *aequitas* in the sense of "epieikeia" or that which stops the law from being applied with full rigor. Calvin was not alone, and this sense of the word was widely accepted by students of Roman law in the sixteenth century who had read Budé, Alciati, or Zasius—so much so that its other meaning (justice) fell into disuse.<sup>49</sup> The concept of *summum ius* (application of the law in its full rigor) acquires its full sense only when *aequitas* is taken to mean *epieikeia*. The only ancient thinker to thus oppose the two concepts, as Budé, and Calvin after him, saw was Aristotle who, in *Nichomachean Ethics* (5.10), contrasted *epieikeia* and *dikaiousune*.<sup>50</sup> The opposition is not to be found in Seneca's work.

Calvin therefore imports the concept of *summum ius* into *De clementia* where he comments on Seneca's statement in book 1, chapter 2 that clemency can

<sup>47</sup>Used in the sense of justice (*iustitia* approximating to Greek *dikaiousune*) by Cicero, *Att.*, 16.16 (*summa bonitas et aequitas causae*) and in the sense of fairness (approximating to Greek *epieikeia*) by Cicero, *De or.*, 1.56.240 (*pro aequitate contra ius dicere*).

<sup>48</sup>See *De clementia* 1.18. Calvin, *Sen.*, 268-71. The passage of Budé Calvin refers to comes from *Annotations in Pandectas* I and reads: "Ius est (inquit Donatus Grammaticus) quod omnia recta et inflexibilia exigit; aequitas est quae de iure multum remittit. . . . Aristoteles libro quinto Ethicorum [cap. 10] de iustitia et iure copiose disputans duo haec tanquam differentia ponit, non tanquam genere diversa, ius et aequum bonumque, id est vt ipse appellat: *to kata ton nomon dikaion kai to epieikes*" (See Calvin, *Sen.*, 270-71, notes).

<sup>49</sup>See Haas, *Equity*, 36-39.

<sup>50</sup>*Eth.*, 5, 10. 1137<sup>a</sup> 31-34.

save the innocent from being unjustly condemned.<sup>51</sup> In his commentary, Calvin points out that the innocent will not be exempted from punishment if the law is applied with utmost rigor (*si ad summum iuris rigorem [poenam] exigas*). Calvin imports the concept of *summum ius* even more blatantly into *De clementia* 1.18 where Seneca states that when punishing a slave, we should be guided not by his capacity to withstand punishment but by the principle of right and good (*aequi bonique natura*), which enables us to judge how much punishment can be inflicted. In his commentary on this passage, Calvin, referring to Budé and Aristotle, asserts that Seneca opposes *aequitas* and *summum ius*, whereas Seneca seems simply to be saying that just punishment is preferable to pure vengeance.<sup>52</sup> Another passage where Seneca is made to say something he did not say occurs in *De clementia* 2.7. Commenting on the sentence, "It [clemency] judges not according to the precise legal form (*sub formula*) but in accordance with what is fair and good," Calvin paraphrases *sub formula* by *ad praescriptum summi iuris*<sup>53</sup> and cites Marcellus' definition of *aequitas* (*Dig. Iust.* 48.19.11), which, as it happens, is incompatible with clemency as defended by Seneca: "The sentencing judge ought to see to it that no sentence is either harder or more lenient than the cause itself demands. For *he ought not to affect a reputation for either severity or clemency* but with balanced judgment he ought to judge each case on its own terms."<sup>54</sup>

Calvin's desire to harmonize Seneca's concept of clemency with the Aristotelian notion of equity has led him in this instance to indirectly condemn the key concept of the treatise on which he is commenting.

Although Calvin used *aequitas* in a variety of senses, it seems that his interest in the opposition *summum ius-aequitas* remained undiminished throughout his life so much so that he applied it to God's justice in his theological works. This was pointed out already by Bohatec who did no more than note the verbal parallels without exploring the underlying epistemological framework.<sup>55</sup> For my part, I should like to argue that the *summum ius* and/or *aequitas* distinction plays a crucial role in Calvin's doctrine of divine justice. This can be illustrated by his sermons on *Deuteronomy* and by a certain number of passages in the *Institutes* where the Reformer follows the Aristotle-Budé usage in taking *summum ius* to mean "law applied to the letter" and *aequitas* to "application of law

<sup>51</sup>Calvin, *Sen.*, 66-67: "Deinde habet clementia in persona quoque innocentium locum quia interim fortuna pro culpa est."

<sup>52</sup>Calvin, *Sen.*, 267-71 and note 37 above.

<sup>53</sup>Calvin, *Sen.*, 378-79.

<sup>54</sup>Calvin, *Sen.*, 378: "Respiciendum est iudicanti ne quid aut durius aut remissius constituitur quam causa deposcit. Nec enim aut seueritatis aut clementiae gloria affectanda est, sed perpenso iudicio prout quaeque res expostulat statuendum est." Translation *ibid.*, 379. Amended here. My italics.

<sup>55</sup>Bohatec, *Calvin*, 40-42.

taking account of extenuating circumstances.” He thus defines God’s justice in sermon 19 on Deuteronomy 4 as God’s relinquishing his *summum ius* or his absolute rigor of judgment. If God wanted to apply his law in its full rigor, he argues, then there would be nothing to stop him, and human beings would have no option but to carry it out. However, God knows that humans are incapable of carrying out his law to the letter, and he therefore moderates it by remitting their sins freely.<sup>56</sup> The idea of God’s relinquishing his right to judge with utmost severity constitutes a leitmotif in Calvin’s works.<sup>57</sup> Expressed in these terms, the doctrine of divine justice points up (in Calvin’s view) the full absurdity of the Catholic teaching on good works that not only presupposes man’s capacity to live in accordance with the divine *summum ius* but also implicitly makes God out to be an inequitable lawgiver and judge.<sup>58</sup>

God is by definition exceptional, and Calvin does not demand that all earthly rulers and judges should transform themselves into kind father figures when delivering their sentences. However, he does think that earthly rulers are in God’s image and that they should therefore apply *aequitas* in civil matters just as God applies it in his work of salvation. In the section devoted to earthly government in the *Institutes* 4.20.9, Calvin states that civil rulers, regardless of whether they are pagan or Christian, are God’s vicars on earth and their justice must be the mirror image of his. Quoting the very same maxim of the Athenian statesman Solon that he had quoted several years previously in his commentary on *De clementia*<sup>59</sup>, Calvin harmonizes it with two passages from Jeremiah 21:12 and 22:3. Solon’s maxim states that public affairs consist of reward and punishment without which all public order would collapse. Calvin adds that equity cannot survive without encouragement while excesses of wickedness can only be kept in check by threat of repression. According to him, Jeremiah says the same thing when he calls upon kings and magistrates to administer justice (21:12) and to deal justly and fairly (22:3). He interprets “fair dealing” to mean protection, forgiveness, and liberation and “just dealing” to mean repression of violence, punishment of wicked deeds, and so forth.<sup>60</sup>

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<sup>56</sup>Calvin, *Sermon 19 sur le Deuteronomie, chapitre 4*: *Calv. Opp.*, 26.103: “Si Dieu vouloit seulement commander d’une façon précise, nous sommes tenus de faire ce qu’il nous dira, voire et quand il useroit de plus grande rigueur beacoup, si est-ce qu’encores ne pouvons-nous pas nous acquitter du devoir que nous avons envers luy. Or, il se demet de ceste autorite-là, comme s’il quittoit une partie de son droit et use d’un autre langage.”

<sup>57</sup>See for example *Institutes*, 2.8.4, *Calv. Opp.*, 2.209; *O. S.*, 3.346: “Iure igitur suo decedit quum praemium proponit nostris obsequiis, quae non vltro ceu indebita exhibentur.”

<sup>58</sup>Calvin, *Sermon 19 sur le Deuteronomie* (as in note 44 above), *Calv. Opp.*, 26.104: “Ainsi au lieu que les Papistes s’enyvrent de leurs imaginations diaboliques, de leurs œuvres méritoires et de choses semblables, cognoissons que nostre Seigneur après nous avoir convié avec douceur nous adioste une grace seconde: c’est que combien que nous ne sachions pas faire en tout et pour tout ce qu’il nous commande, qu’il nous supporte comme un pere ses enfants.”

<sup>59</sup>See Calvin, *Sen.*, 23.302-3. The quotation occurs in Cicero, *Ep. Brut.*, 1.15.3. It is very likely, however, that Calvin simply copied it from Budé, *Annotationes in Pandectas I* (Basel, 1557), 63B.

In the *Institutes* (4.20.6), which we referred to earlier, Calvin goes a step further and blends *aequitas* in the sense of “consensus” with *aequitas* in the sense of “*epieikeia*.” He thus establishes a link between the human *epieikeia* and the God-given consensus, which is synonymous with natural law. He argues that all law is founded in equity. Equity (*aequitas*) being thus in the nature of things, it must be the same for all, whatever the differences between particular legislations. It is obvious, he continues, that that part of the law of God, which is called moral, is nothing other than an awareness of natural law that has been inscribed in the minds of men by God himself. Thus human *aequitas* (or *epieikeia*) is founded via morality in natural law that stems directly from God.<sup>61</sup> Whatever one may think of the precision of Calvin’s terminology here or of the coherence of his argument, there is no doubt that he wants to establish an ontological connection between abiding by the human legislation and obeying natural law, thus making human legislation directly dependent on God. As well as being fundamental to God himself who does not apply his law in its full rigor to our transgressions, *aequitas* is essential to magistrates and rulers, God’s vicars on earth whose duty it is to deal both fairly and justly.

There is no denying that Calvin’s concepts of *summum ius* and *aequitas* underwent a transformation between his commentary on *De clementia* and the *Institutes*. A commonplace feature of later Roman law became incorporated into his doctrine of divine justice and its effects on human behavior. Indeed, Calvin’s idea of divine justice and the role that natural law and morality play in it can only be understood in terms of his legal knowledge and of his commentary on *De clementia*. The one curious feature of the Reformer’s later thought is the apparent contradiction between his confinement of natural law to the management of the human realm in *Institutes* 2.2.13 and his determination to establish a connection among human, natural, and divine law in his *Sermons on Deuteronomy* and in *Institutes* 4.20. The contradiction need not be more than apparent if we consider *Sermons on Deuteronomy* and *Institutes* 4.20 as a sequel to the argument developed in *Institutes* 2.2.13.

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<sup>60</sup>Calvin, *Institutes*, 4, 20. 9, *Calv. Opp.*, 2, 1099-1100; *O. S.*, 5, 481: “Siquidem id prorsus experimur quod dicebat Solon, praemio et poena res omnes publicas consistere, iis sublatis totam ciuitatum disciplinam collabi ac dissipari. Friget enim in multorum animis aequi iustique cura, nisi virtuti paratus sit suus honos, nec contineri sceleratorum hominum libido nisi seueritate ac poenarum animaduersione potest. Atque hae duae partes comprehensae sunt a Propheta dum reges aliosque praefectos iubet facere iudicium et iustitiam. Iustitia quidem est innocentes in fidem suscipere, complecti, tueri, vindicare, liberare. Iudicium autem impiorum audaciae obsistere, vim comprimere, delicta punire.”

<sup>61</sup>Calvin, *Institutes*, 4.20.16, *Calv. Opp.*, 2, 1106; *O. S.*, 5, 487-88: “Aequitas quia naturalis est, non nisi vna omnium esse potest, ideo et legibus omnibus pro negotii genere eadem proposita esse debet. Constitutiones quia circumstantias aliquas habent a quibus pro parte pendeant modo in eundem aequitatis scopum omnes pariter intendant, diuersas esse nihil obest. Iam quum Dei legem quam moralem vocamus, constet non aliud esse quam naturalis legis testimonium et eius conscientiae quae hominum animis a Deo insculpta est, tota huius de qua nunc loquimur aequitatis ratio in ipsa praescripta est.”

## Man as a Social Animal

A case of Seneca's thought that influenced both Calvin the lawyer and Calvin the theologian without undergoing any evolution or transformation is the Roman orator's statements on humans as social animals—a fundamental notion in all legal theory. Seneca refers to it briefly in *De clementia* 1.3 where he says that clemency is a particularly important virtue not only for those who, like himself, consider humans to be social animals but also for those who think that a human's ultimate goal is pleasure.<sup>62</sup> The young Calvin—who was obviously a careful reader of Seneca—cross-references this passage in his commentary with Seneca's statement in *De beneficiis* 7<sup>63</sup> prior to expounding the Stoic beliefs in the social nature of humans. He adds that in the *De clementia* passage, Seneca wishes to convince not only the Stoics (who really need no convincing) but also the Epicureans who in the face of his argument cannot logically deny that clemency is antithetical to the pursuit of individual pleasure. Calvin does not cite any Epicurean thinkers, limiting his references to passages from philosophers such as Plato, Aristotle, and Cicero—all of whom thought that humans are social animals.<sup>64</sup> Calvin in 1532 was obviously sufficiently interested in the Graeco-Roman concept of humans as social animals to make a comparative study of it. The same concept resurfaces in the *Institutes* 2.2.13—the passage we have already referred to—wherein Calvin relates natural law to the management of things terrestrial. Indeed, according to the Reformer, natural law can function thus only because “man is an animal which is by nature sociable, inclined by his natural instinct to nourish and conserve society.” Calvin does not explain how humans conceived in this way function in relation to God, and it is not his object to do so. He is simply concerned to stress that it is because of their sociability that humans have imprinted on their consciences the “general impressions of order and honesty.”<sup>65</sup> It is plain that Calvin has retained the Stoic notion of human sociability from his days as lawyer and Seneca commentator and that he does not feel he has to adapt it in any way for it to fit into his theological system, given that it is not patently contrary to Christian norms of human behavior.

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<sup>62</sup>Calvin, *Sen.*, 76-77: “Nullam vero ex omnibus virtutibus magis homini conuenire, cum sit nulla humanior, constet necesse est, non solum inter nos, qui hominem sociale animal communi bono genitum videri volumus, sed etiam inter illos qui hominem voluptati donant.”

<sup>63</sup>Seneca, *De beneficiis*, 7.1.7: “Si sociale animal et in commune genitus, mundum et vnam omnium domum spectat.”

<sup>64</sup>Calvin, *Sen.*, 82-85.

<sup>65</sup>Calvin, *Institutes*, 2.2.3, *Calv. Opp.*, 2.197; *O. S.*, 3.256: “Quoniam homo animal est natura sociale, naturali quoque instinctu ad fouendam conseruandamque eam societatem propendet, ideoque ciuilibus cuiusdam et honestatis et ordinis vniuersales impressiones inesse omnium hominum animis conspicimus.”

## The Triple Use of the Law

It would be rash, however, to see the commentary on *De clementia* as the seedbed of all of Calvin's theology. His doctrine of the triple use of the first table of the Decalogue, although structurally similar to Seneca's classification of human law in *De clementia*, cannot be said to bear more than a superficial resemblance to it. In *De clementia* 1.22, Seneca defines the three uses of the law as follows: (1) to reform the person undergoing punishment, (2) to make his punishment an example to others and stop them from committing the same crime, and (3) to allow the society to live in greater safety by removing wrongdoers from its midst.<sup>66</sup> In his lengthy commentary on this passage, Calvin is above all concerned to demonstrate the consensus of Greek and Latin thinkers on the matter. He points out that the Greeks call the first type of punishment "warning" and reproaches Plato for being the odd man out and mentioning only two uses of the law in *Gorgias*.<sup>67</sup> He then points out that the second type of punishment is called *paradeigma* in Greek and *exemplum* in Latin and cites various excerpts from Justinian, Claudius, and Cicero to illustrate its prevalence in ancient Greece and particularly in Rome.<sup>68</sup> Similarly, he refers to Ulpian to illustrate the third use.<sup>69</sup>

Ford Lewis Battles, the editor of Calvin's commentary on *De clementia*, saw a strong resemblance between this passage and Calvin's exposition of the triple use of the Law in *Institutes* 2.7.6-12.<sup>70</sup> However, although there is some superficial structural resemblance, there is no similarity between the content of the three uses of civil and Mosaic law. Calvin, as is well known, attributes the following three uses to the latter: in the first use, it makes us aware of our own unworthiness and reveals God's justice to us.<sup>71</sup> In the second use, it makes us improve our behavior through fear of punishment.<sup>72</sup> In the third use, it is specifically intended for the faithful as it helps them to improve in their knowledge of God's will and to order their lives accordingly.<sup>73</sup> If we compare these to the three uses of civil law, it becomes apparent that the civil law functions of *animaduversio*, *exemplum*, and protection of society bear no relation to the Mosaic Law's functions of revealing God's justice, coercing Christians into good behavior, and improving their knowledge of God. All that Calvin can be reason-

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<sup>66</sup>Calvin, *Sen.*, 300-303: "Aut vt eum quem punit emendet; aut vt poena eius caeteros meliores reddat; aut sublatis malis, securiores caeteri viuant."

<sup>67</sup>Plato, *Gorgias*, 81, 525B.

<sup>68</sup>*Cod. Just.*, 9.27.1; Claudius, *Dig. Just.*, 48.19.16.

<sup>69</sup>Ulpian, *Dig. Just.*, 1.18.13.1.

<sup>70</sup>See his comments in Calvin, *Sen.*, 302-5.

<sup>71</sup>Calvin, *Institutes*, 2.7.6-9, *Calv. Opp.*, 2.257-60; *O. S.*, 3.332-35.

<sup>72</sup>Calvin, *Institutes*, 2.7.10-11, *Calv. Opp.*, 2.260-61; *O. S.*, 3.335-37.

<sup>73</sup>Calvin, *Institutes*, 2.7.10-11, *Calv. Opp.*, 2.260-61; *O. S.*, 3.335-37.

ably said to have retained from the Seneca commentary is his insistence on number three.

However, there is a great deal more similarity between Seneca's doctrine of three uses of civil law and Calvin's doctrine of three uses of church discipline as outlined in the *Institutes* 4.12.5<sup>74</sup> where he argues that the first use of excommunication and correction is to stop the church from becoming a refuge for the *improbi et scelerati*, its second use is to prevent good Christians from being contaminated, and its third use is to reform the bad Christians themselves. The third use of church discipline corresponds exactly to the first use of civil law. Its second use corresponds to the third use of civil law and its first use corresponds loosely to the second use of civil law. Although the correspondence is not perfect, it does exist, and it is reasonable to suppose that Calvin had the civil-law model in mind when he developed his doctrine of church discipline.

### Relationships Between Head of Household and Its Members

Seneca's view of relationships in households was also to resurface later in Calvin's work in a somewhat modified form. Two passages in *De clementia* are particularly relevant here. In *De clementia* 1.5, Seneca argues that although clemency is especially rare and therefore admirable in an imperial household, it makes any house it enters a happy place.<sup>75</sup> In his commentary on the passage, Calvin seems to ignore his author's stress on the desirability of clemency in heads of state and concentrates on developing the subordinate idea of clemency as a recipe for the happiness of any household. He thus notes that clemency dwells even in poor huts and country cottages. It can be seen at work when fathers of families behave with moderation and kindness toward their households and their servants in particular. To support this contention, Calvin quotes a biblical passage (*who does not wish masters to be ill tempered, that is peevish and hard on servants*, 1 Peter 2:18)<sup>76</sup>—something he resorts to very rarely in the Seneca commentary—thus harmonizing pagan and Christian thought. The very same sentiment will resurface in *Institutes* 2.8.45-46 where the Reformer gives his exposition of the eighth commandment (*do not steal*) and defines theft as any means of obtaining anything that belongs to our neighbor by denying him due love and respect. Calvin stresses that this applies also to members of the same household: old people should protect the weakness of the young; the young should respect the old; parents should be kind to their children; servants should be willing to serve. Above all, he insists that masters should not be

<sup>74</sup>Calv. *Opp.*, 2.907-8; *O. S.*, 5.215-16.

<sup>75</sup>Calvin, *Sen.*, 106-9: "Clementia in quamcunque domum peruenerit, eam felicem tranquillamque praestabit. Sed in regia, quo rarior, eo mirabilior."

<sup>76</sup>Calvin, *Sen.*, 112-15.

peevish and harsh toward their servants but, instead, should acknowledge them as brothers and fellow servants in the service of the heavenly Lord.<sup>77</sup>

In this particular instance, it seems appropriate to say that ethical and legal notions in *De clementia* that were incidental to its main theme inspired Calvin to develop a particular view of relationships between servants and masters. This view was not totally absent from Seneca's text as our second passage shows. There (*De clementia* 1.18) Seneca states that it is praiseworthy for masters to use their authority over slaves with moderation.<sup>78</sup> In his commentary, Calvin cites two excerpts from Plato and one from Cicero's *De officiis* to support this view: "They prescribe wisely who enjoin us to put them [slaves] on the same footing as paid employees, making them do the work but giving them their due."<sup>79</sup>

This very quotation will reappear in Calvin's *Sermons on Job* (sermon 113) where he says: "We must treat our servants like paid employees, that is as people whom we hired and who are not in bondage to us."<sup>80</sup>

Calvin does not so much as advert to the fact that Cicero and Seneca are talking about slaves in the strict sense of the term and seems to have no problems in applying their precepts to servants. This is revealing of attitudes to servants in Calvin's time and not so much of gaps in his knowledge of Roman history. Although not strictly speaking a legal theme, the question of relationships in households was fundamental to the framework of society and was therefore likely to exercise a decisive influence on any legislation. As we have just shown, Calvin's ideas on this were a product of his study of Roman law.

## Kings, Tyrants, and Magistrates

Calvin's remarks on the role of kings, tyrants, and magistrates in his commentary on *De clementia* and in his later works also show both the extent and the limitations of the influence of Roman legal thought on his teaching. In *De clementia* 1.11, Seneca makes the point that tyrants are to be distinguished from kings because tyrants are cruel for pleasure, whereas kings are cruel only for a good reason and by necessity.<sup>81</sup> In an extended commentary on the passage, Calvin, relying on various classical authors, sketches out the etymological distinction between *tyrannos* and *basileus* as a preliminary to showing that Aristotle, Cicero, and other pagan thinkers took the term *tyrant* to apply to one who

<sup>77</sup>Calvin, *Institutes*, 2.8.46, *Calv. Opp.*, 2.299-300; *O. S.*, 3.385-86.

<sup>78</sup>Calvin, *Sen.*, 268-70.

<sup>79</sup>*Ibid.*: "Hi sunt serui quibus vt bene quidam praecipunt vt mercenariis, ad exigendas operas et iusta praestanda." (This is a slight paraphrase of *De off.*, 1.13.41 as Ford Lewis Battles points out, *ibid.*.)

<sup>80</sup>*Calv. Opp.*, 34.657: "Il faut que nous vions des serviteurs comme des mercenaires, c'est à dire comme des gens que nous aurions prins à louage et qui ne seroyent point suiets à nous."

<sup>81</sup>Calvin, *Sen.*, 192-93.

transgressed the true limits of kingship. He takes up the question again, only a few years later, in the first edition of the *Institutes* where he is obviously aware that if he maintains his earlier distinction, he will be leaving the way open for resistance to tyrants. Knowing full well that this would be tantamount to encouraging social disorder and denying that civil rulers are instruments of God, Calvin resolves the difficulty by adjusting pagan teaching to Christian ends. Shoring up his arguments by references to the Old Testament, he distinguishes, on the one hand, between Moses and Othniel—who freed their subjects from the tyranny of Pharaoh and Chusan—and, on the other hand, Medians and Persians—who freed their subjects from the tyranny of Babylon. The two categories have nothing in common, he insists. Moses and Othniel were legitimately called by God to use coercion against their rulers, just as kings in Calvin's own time used coercion against their governors (*satrapae*). The Medians and Persians, although they, too, were instruments of God, were not led by any motive other than cruelty. In Calvin's view, all rulers should take this as a warning that God can and does resort to cruelty and bloodshed in order to punish those who transgress the true limits of kingship. According to Calvin, the instruments of punishment are determined by God himself, and no individual subject can take it upon himself to overthrow even the bloodiest of tyrants seeing as "we have been commanded to do nothing other than obey and suffer."<sup>82</sup> However, using the examples of Sparta's *ephores*, Rome's tribunes of the people, and Athenian *demarchoi*, Calvin does admit that inferior magistrates can and must curb royal excesses *pro officio* because they have been given their position by God for that very purpose.<sup>83</sup>

Calvin obviously inherited his ideas on tyranny from Seneca and other pagan thinkers. To integrate them into his system, he had to first deal with the issue of punishment for tyrannous governments without subscribing to tyrannicide, which was common of ancient political philosophy.<sup>84</sup> Calvin resolved the problem to his own satisfaction, not by putting a more favorable interpretation on the word *tyrant* (which would have been possible etymologically but that would have put him at loggerheads with the entire classical tradition) but by making tyrants into instruments of God whose punishment God alone determined.

In a similar fashion, Seneca is seen to serve as a point of departure for Calvin's account of the Christian state in *Institutes* 4.20.14. In *De clementia* 1.22, Seneca asserts that the prince or any head of state should keep in view the three aims of punishment (reform of criminals, example to others, protection of society) when cases of wrongs done to his citizens are put before him.<sup>85</sup> In his com-

<sup>82</sup>Calvin, *Institutes*, 1536, cap. 6, *Calv. Opp.*, 1.247-48; *O. S.*, 1.278-79.

<sup>83</sup>Calvin, *Institutes*, 1536, cap. 6, *Calv. Opp.*, 1.248; *O. S.*, 1.279.

<sup>84</sup>See Aristotle, *Ath. pol.*, 16.10. IG 1<sup>2</sup> 10.

<sup>85</sup>Calvin, *Sen.*, 302-3.

ments on the passage, Calvin makes an allusion to Cicero's definition of magistrate or ruler as the living law who must not give in to his feelings but must do everything as the law prescribes.<sup>86</sup> This definition recurs in *Institutes* 4.20.14 but in a much more complex context.<sup>87</sup> In that section of the *Institutes*, Calvin criticizes those who deny that a state that ignores the civil government of Moses and bases its law on the pagan system is correctly governed.<sup>88</sup> He then explains that only the moral part of Mosaic Law pertains to Christians. This moral part can be summed up in one universal law, valid for all times and for all nations, which is the love of God and one's neighbor.<sup>89</sup> The moral part is the foundation of all order and equity and stands for what Calvin has elsewhere called natural law. Taking this as the principle of all legislation, he continues, God then decided that different nations and groups could decide on their own legislations. That Christians should follow civil law is axiomatic given what Paul says in Romans 13:4.<sup>90</sup>

Calvin says nothing that he did not say elsewhere, except perhaps to make even more explicit the link between the law of God, as transmitted by Moses, and natural law. What is significant about this passage is Calvin's absolutely fundamental belief in the importance of Roman civil law for a Christian state. The Christian magistrate, he implies, is thus the living law of God while remaining the living civil law.

## Conclusion

We have by no means exhausted the topic of Calvin and law. We have, however, tried to show that his doctrine of natural law (such as it was) differed from mediaeval theories as Calvin established a direct link among God, human conscience, and natural law. He also made the latter issue automatically in Roman law. His respect for Roman law seems to have been a crucial feature of his system, and he went to some lengths to show that *aequitas* and *summum ius* applied also to God's justice. However, in some cases, Calvin uses legal concepts loosely, and it would be overstating our case to say that all of his theology should be understood in the light of his legal training.

His other legal theories as outlined particularly in his commentary on Seneca underwent little fundamental change in the course of his career and were integrated into his doctrines to a varying extent. His concept of humans as social animals was, as we saw, decisive in his doctrine of the state and was

<sup>86</sup>Cicero, *Leg.*, 2.4.10-5. 11; *Rep.*, 3.22.33. See Calvin, *Sen.*, 302-3.

<sup>87</sup>Calvin, *Institutes*, 4.20.14, *Calv. Opp.*, 2.1104-5; *O. S.*, 5.486-87.

<sup>88</sup>Calvin, *Institutes*, 4.20.14, *Calv. Opp.*, 2.1104; *O. S.*, 5.486: "Sunt enim qui recte compositam esse rempublicam negent, quae neglectis Mose politicis, communibus gentium legibus regitur."

<sup>89</sup>Calvin, *Institutes*, 4.20.15, *Calv. Opp.*, 2.1105; *O. S.*, 5.487.

<sup>90</sup>Calvin, *Institutes*, 4.20.17, *Calv. Opp.*, 2.1107; *O. S.*, 5.489.

imported from pagan thought without any adjustment. His doctrine of relationships between master and servant was, on the other hand, inspired by Roman thinkers but could not be said to derive directly from them. Only a very superficial resemblance obtains between his definition of the triple use of civil law (which he took from Seneca) and his doctrine of the triple use of divine law for Christians, while a clearer correspondence can be established between the doctrine of the triple use of civil law and the triple use of church discipline. Finally, Calvin had to alter the pagan concept of tyranny to make it fit in with his notion of the Christian state.

Calvin's system is not completely watertight. The exact nature of the link among divine, natural, and civil law is sometimes difficult to see. Indeed, his view of the relationship between divine and natural law should be the object of further study, and the status of natural law in his theology remains unclear. However, to attach it to his doctrine of providence as Schreiner does or to consider it central to his thought as Gloede and others have done<sup>91</sup> is not to do it full justice. On another level, the question of the role of natural law in Calvin's thought is not really clarified by relating it to his concept of equity, which he uses, as we have shown, with great fluidity and in more senses than Haas has allowed. It is, however, legitimate to assert, on the strength of the evidence examined, that Calvin's belief in civil law as the expression of God's natural law in the widest sense of the term remained unchanged throughout his life. More importantly, his commentary on *De clementia* provides a key to much of his later work, particularly to his use and understanding of legal concepts.

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<sup>91</sup>See on this Schreiner, *Theater*, 78-79, 144-46.