

Moral duty, natural rights and the Ciceronian impact on the political and legal views of the Early Reformation

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Opsomming

Cicero se standpunte dat alle mense aan een morele wet onderhewig is, dat alle mense in 'n morele sin gelyk is en dat die menslike samelewing 'n morele gemeenskap is wat deur morele bande saamgebind word, beteken by implikasie dat alle mense in die staat as 'n korporatiewe entiteit verenig is en gelyklik aan die reg deel het. Voorts impliseer dit dat die eise van sosiale welwillendheid op alle burgers in die staat van toepassing is. Veral Cicero se opvattinge oor sosiale welwillendheid en die morele bande wat die hele burgers tot 'n morele eenheid saamsnoer, het 'n belangrike impak op die politieke en regstandpunte van die vroeë Reformatore uitgeoefen. Luther, Melancthon en Calvyn is tot 'n groot mate deur Cicero se standpunte beïnvloed. Van die belangrikste gevolge daarvan was dat die vroeë Reformatore standpunte oor die reg en die politieke lewe in die staat ingeneem het wat die reg vanuit bepaalde morele perspektiewe benader het en die gronde van fundamentele regte in morele pligte begrond het. Hierdie artikel ondersoek enkele van die belangrike implikasies van Cicero se invloed op die vroeë Reformatore in dié verband.

1. Introduction

Cicero's view that because all men are subject to one law and so are fellow citizens, thus making them in some sense equal, had vast

implications for social life and the political ordering of society. Particularly Cicero's position that equality is a moral requirement rather than a fact, served as the ethical axiom of equality undergirding the framework of his political views to the effect that a state cannot exist permanently, or at least cannot exist in any but a crippled condition, unless it depends upon, acknowledges, and gives effect to the consciousness of mutual obligations and the mutual recognition of rights that bind its citizens together. The immediate implication of Cicero's commitment to the ethical foundation of equality is that the state is a moral community, a group of persons who in common possess the state and its law. The other side of the coin is that unless the state is a community for ethical purposes and unless it is held together by moral ties, it is not a state in the true sense of the word. The measure to which the state has the nature of a corporate body, existing to supply its members with the advantages of mutual aid and just government, is described by Cicero as follows: "Well, then, a commonwealth is the property of a people. But a people is not any collection of human beings brought together in any sort of way, but an assemblage of people in large numbers associated in an agreement with respect to justice and a partnership for the common good" (*De re publica*, I, 25, 39).

The politico-moral impact of Cicero's views on the state as a corporate institution based on moral considerations had the immediate effect of postulating a natural law paradigm for subjecting the positive law of the state to ethical considerations of a transcendent nature and broadening the people's involvement in the political life of the state. To Cicero the state exists as a corporate body, with membership possessed by all of its citizens and supplying the individual members with the advantages of mutual aid and just government. This implies firstly that because the state and its law is the common property of the people, its authority arises from the collective will of the people in terms of which they act as a self-governing organization which has the powers (and rights) to preserve itself. Secondly, the lawful exercise of political power by the people necessitates political offices functioning subject to law. Thirdly, the state as a corporate body is subject to divine and natural law which transcends the human will and which demands that the authority proceeding from the people should be exercised by warrant of law.

In particular Cicero's ideals of the state subject to law and functioning as a corporate entity based on moral duties of mutual benevolence,

impacted strongly on the political and legal theories of later ages. These ideals gained the status of political and legal commonplaces in the medieval epoch and the early modern period. In many respects Cicero's political and moral views were admirably suited to the development of political views related to the Biblical convictions that all human beings have equal moral value, that God is no respecter of persons, that positive law is not the highest manifestation of justice and that higher rules of right are applicable to the political affairs of human beings.

Cicero's close association of the participation of individuals in the life of the state with the rights and duties presupposed in the sharing of the common life, and his strong emphasis on the inter-dependence of all human beings in the divine order, provided a platform to the Reformers of the early modern epoch to develop their theoretical perspective on rights, justice and the fundamental duties essential for human intercourse in society. Cicero's statements on the fundamental moral law inherent to human personhood and moral duty as the precondition for fundamental rights, served as focal points for developing politico-legal views sensitive towards balancing rights and duties in furthering the aims of justice within a broader communitarian framework. These statements were arguably the most manifest legacy of Stoic moral thought in the political and legal teachings of the Reformers.

The resurgence of Stoic moral philosophy and its relevance to law and politics in the early modern epoch had an enduring effect on the legal and political theories of the Reformation. The views of Roman authors such as Seneca and Cicero, together with the interpretations of their views, and the views of the Church fathers and the Medievalists, contributed towards the development of Reformational views on natural rights based on fundamental moral duties and stating the moral context of law and politics transcending the narrow enclaves of legalism, moral relativism and crude individualism.

2. The fundamental moral law and justice in Cicero's political philosophy

2.1 Moral duty social benevolence

Cicero's political philosophy is mainly concerned with establishing the moral preconditions for achieving peace and harmony in the po-

litical life of the state. To this end Cicero introduces two important notions: firstly, the idea of the consolidated social body bound together as an organic whole, and, secondly, explaining the moral bonds providing the common basis for the legal and political life of the citizens in the commonwealth. To Cicero benevolent solidarity provides the platform for the agreement of the multitudes associated by law (*iuris consensus*) and by common expediency (*utilitas*). Implicit in Cicero's statements relating to law and politics is the idea that no state can be established through agreements to maintain law and justice unless there is a firm commitment to peace. In a certain sense the need for peace is the cause (*causa*) which gives birth to the state. It is this founding cause to which the governing body of the commonwealth should constantly return in its management of the affairs of the state. The ideal of peace in the state can only be accomplished by the collective will and commitment to preserve social benevolence in social life. Whereas the *civitas* denotes the collective organisation of the body politic in a unity of men associated by law, the *res publica* is the functioning body of the state as well as the requirement for the existence and protection of the organised populace on the basis of social benevolence.

Cicero's application of the terms *civitas* and *res publica* have the following implications: the binding together of the various components of the state into a *civitas* is a necessary precondition for establishing peace in society; the body of the state is composed of various components of the populace whose safety and liberty have to be protected as a whole (*cuncta* or *tota civitas*) as opposed to its constituent parts. For the proper functioning of the state, Cicero commits the state to its foundational moral basis – a thoroughly organised *populous* is not only dependent upon the communal interests of its members but also upon the moral basis of its existence and on a universal sense of justice. Furthermore, the bonds of the "association of the state" (*rei publicae societas*) can only hold fast where the moral bonds of benevolence and justice prevail. The binding together of the body politic on the foundations of benevolence and justice produce a number of important implications: stable forms of government can only be formed in the absence of greed; harmony in the state is obtainable when all the people have the same interest, since discord arises from conflicting interests; and political association demands a basis of equality in

terms of which all the citizens can be regarded as equals. In a certain sense the third implication is the most important – the basis of human equality, peaceful co-existence and natural rights is located in the principle of moral worth. All human beings are regarded as having equal moral worth and it is on this basis of equality that state government can maintain the concord and justice needed for maintaining peace and tranquillity in society.

Cicero's observations to the effect that justice and all other virtues are to be sought and cultured for their own sake because of the inherent obligating nature of these virtues, have to be understood in the light of his statements concerning the inherent obligating nature of moral worth as the end of all virtuous actions. All virtues reflect a moral commitment towards others in terms of which all personal egoism, self-love and personal gain are excluded. The opposite of self-love and egoism is the moral posture of benevolence and service towards other human beings. The moral duty to serve others and promote the common good emanates from the natural inclination to love our fellow human beings, which inclination is also the foundation of rights (*De legibus*, 1, 15).

The central idea contained in Cicero's perspectives on benevolence and right is that the rights human beings naturally have, presuppose the existence of moral duty and are intrinsically connected to the moral uprightness of the bearers of such rights. The basic idea is the following: A has a duty towards B in terms of the law of moral worth not to do B harm. This duty provides B with a natural right, limited by the moral duty that B has towards A, C, D and all other human beings in terms of the moral law. The duty to show benevolence towards others in society applies equally to everybody. The demand of the moral law to act benevolently produces a form of moral equality of all persons, which act of benevolence, says Cicero, "is necessary if he is to love another no less than himself" (*De legibus*, I, 12).

2.2 Social benevolence and rights

Cicero's views on the fundamental moral order underlying natural rights have far-reaching implications for establishing the moral and legal relationships of persons in society: firstly, the benevolence human persons should reflect towards others should proceed ac-

According to the order presupposed by the principle of moral worth. Secondly, although human beings should practice benevolence towards others, other persons do not have a right *per se* to claim it as their own, because those who have the duty to practise benevolence are accountable only to the law of moral worth and to the supreme legislator in whom the moral law resides. Thirdly, the equal duty of benevolence towards all persons in society also demands that others are not to be harmed or to be despoiled of what belongs to them – others have corresponding rights to the prohibitive duties emanating from the moral law. Fourthly, the duties towards others not to do them harm, have their origin in the moral law prohibiting such harm, and not in the rights (or perceived rights) persons may have. Fifthly, the law allows those who have rights to redress the harm done to them, and gives them a right to do so. The effect of the view that moral duties precede rights is twofold: the duties towards human beings in whom there are corresponding rights are duties of justice, whilst other moral duties have the nature only of duties of *charity*.

2.3 Social benevolence and justice in Cicero's moral thought

The protective nature and role of justice have their roots in the moral disposition which urges that each should be granted his own, and “which munificently and fairly protects this community of the human alliance” (*De finibus bonorum et malorum*, V, 23, 65-66). Elsewhere Cicero denotes justice as a state of mind which preserves the common good by recognising the dignity of all human beings, its conception proceeding from nature (*De inventione*, II, 53, 160). Selfishness (the opposite of benevolence) is wrongful and unjust when it is accompanied by a disregard of “divine and human laws” (*jura divina et humana*) (cf. *De officiis*, I, 8, 25-26). On the other hand, a person is not considered good and just when he/she refrains from wrongfulness to avoid harm (*De finibus*, I, 18, 57), because, in addition, the virtue of giving each his due should also be practised (*De finibus*, V, 23, 65).

The benevolence towards others that every person is duty-bound to perform, has both moral and legal content. Because every person (or subject) is a “master” (or “owner”) of his benevolence, he/she is only accountable to the law and the supreme legislator in whom the law resides. Although people may rightly object to A's hatred to-

wards B, C and D on moral grounds, nothing is taken from them that is in fact truly theirs; A's benevolence is not the property of B, C or D, nor does A "belong" to B, C and D. Having a right implies that if A damages what belongs to B, C or D, he injures the persons B, C and D and violate their rights. Although both moral and legal duties emanate from the moral law of benevolence, only the duty not to cause harm to others is the basis (or ground) of natural rights.

Cicero's view of society entails a blueprint of inter-dependent individuals under the rule of justice obligated to one another by the moral law demanding social benevolence as the basis for political life and legal interaction in the commonwealth.

2.4 Social duty and human intercourse in society

2.4.1 Morals, justice and rights

A fundamental issue in Cicero's political and legal philosophy is the question as to how the participation in the life of the state can be reconciled with the duties and rights of individuals and social bodies in society, and how the individual person can share the common life in the commonwealth. Attached to this central issue in Cicero's thought are two matters: firstly, regarding the explanation of the idea that the individual person has a worth which other individuals have to respect, and secondly, regarding the formulation of rules of morality, justice and reasonableness which are binding upon all human beings, not because they are laid down by positive law or because a penalty follows their violation, but because they are intrinsically right and deserving of respect. Cicero's response to these issues provided a political and jurisprudential context for developing perspectives on morals, justice and rights giving effect to the strong emphasis on the inter-dependence of all human beings in the divine order.

Motivated largely by Cicero's discourse on the solidarity of human beings bound together by a central moral commitment, later generations of political thinkers used the moral platform provided by Cicero to develop theoretical perspectives on rights, justice and the fundamental duties essential for human intercourse in society. These theoretical perspectives were developed along the lines of Cicero's moral commitment to benevolence as the central driving catalyst for politico-legal views sensitive towards balancing rights and duties, and

towards furthering the aims of justice through the moral demands of social benevolence as the basis of political society. From this moral basis providing the moral bonds of the political body, moral and political philosophers applied various metaphors to explain the communitarian nature of moral duties and the natural rights emanating therefrom in civil society. The early Reformational thinkers in particular applied Cicero's theories of social benevolence and the social solidarity required for maintaining justice in society, in developing jurisprudential and political theories within a distinct Biblical framework.

The reinterpretation of the classical Ciceronian views on social solidarity, the organic nature of political life and the duty-based nature of fundamental rights, reflected a theoretical context for developing Biblical views sensitive towards balancing duties and rights, and natural law and justice, transcending the narrow enclaves of legalism, moral relativism and the crude individualism which marked liberal views in later epochs of political and legal thought.

The resurgence of Stoic moral philosophy and its relevance to law and politics in the early modern epoch had a lasting effect on the legal and political views of the early Reformation. Together with Roman authors like Seneca, the early Church Fathers and the later Medievalists, Cicero's thoughts on the social benevolence and the organic nature of the state provided some of the leading Reformers with a framework for developing communitarian political and juristic doctrines within the broader context of God's providential government of the world (Schreiner, 2001:4-5). In the theological and ethical works of the early Reformers, many political ideas of the Stoics were interpreted and reinterpreted from the perspective of what Milner calls the "absolute correlation between the Spirit and the Word and the contingent correlation of the Spirit and the diverse manifestations of the Word"; manifestations in the form of the ordinances of God (*ordinations Dei*) (Schreiner, 2001:3).

Particularly in the areas of law and politics, Cicero's thoughts in his *De officiis* and *De re publica* provided the Reformers with a broad outline in formulating the core principles of the political theories of the early Reformation. For purposes of formulating his theories on the social solidarity supporting moral duties and rights in the political order, the Reformers utilised Cicero's ideas of social benevolence and the organic structure of political society in particular. At the dawn of the Early Reformation, Cicero's perspectives on these is-

sues had already become “commonplaces” of the medieval and early modern approaches to moral duties, rights and the organic solidarity of political society. In particular the Ciceronian views on the fundamental role of the moral law for the rights of human persons, justice as the most fundamental pre-condition for the well-being of the political community, natural law and rights maintaining the bonds of political society, and the harmonious arrangement of the powers of rulers and the liberties of the citizens assured a lasting Ciceronian impact on Western political and legal theories.

2.4.2 *Fundamental moral law and justice in Cicero’s political philosophy*

Moral worth, justice and the solidarity of political life

In his work *De finibus bonorum et malorum*, Cicero opposed the hedonism and utilitarianism of Epicurus’ ethics. Cicero was particularly critical of Epicurus’ view that pleasure is the only good and the sole constituent of man’s social well-being with the direct implications that the right thing to do is to enjoy each pleasure of the moment as it is offered, that there are no absolute standards of justice and that there should be no active duties of citizenship.

Cicero maintained the opposite view: that all virtues and the moral worth that emanates from them and inheres in them are intrinsically desirable (*De finibus*, V, xxii-xxiii). Regarding the virtuous action demanded by the principle of moral worth, Cicero regards justice as the leading virtue, and in a wide sense inclusive of the rest. Justice is the highest virtue and is to be cultivated and maintained for its own sake (*De officiis*, I, 12). Justice preserves the solidarity of mankind, “a species of alliance and partnership of interests as well as the actual affection which exists between man and man, embracing the whole of the human race” (*De officiis*, V, 23, 66). Justice reflects the distinct sentiment of assigning each his own and aims at maintaining with generosity and equity the human solidarity and alliance of the whole human race and all its social bonds (*De officiis*, V, 33, 66). The qualities of this union and the combination of virtues compassed in justice are closely aligned to the principle of moral worth, inasmuch as moral worth is either virtue itself or virtuous action. Furthermore, life in harmony with the qualities of the union of mankind, and life in accordance with the virtues can be deemed right, moral, consistent, and in agreement with nature.

Although justice shares with other virtues the lack of “I-ness” or “self-ness”, embracing other persons and making them its end, it is theoretically distinguishable from the other virtues by the fact that even the humblest be given their due (*De officiis*, I, xiii). In his later works, *De re publica* and *De legibus*, Cicero maintains and develops his views on justice as a virtue binding together and reflecting benevolence towards others. The bonds uniting humankind result from man’s social nature (*De re publica*, I, 25), which is driven by the passion to be governed by rulers according to justice and law (*De officiis*, I, 4).

Justice and the organic nature of political society

Whereas just agreements bind people together, injustice separates, destroys and leads to abuse of power. Rulers who formulate wicked and unjust statutes for their people, break their promises and agreements, and produce spurious law, because justice inheres in every definition of the term “law”. Wicked and unjust (pestilential) statutes no more deserve to be called laws than the rules a band of robbers might pass in their assembly (*De legibus*, II, 5).¹

A distinct organic conception of human society in terms of which the various components of society are likened to the limbs of the human body and their mutual inter-dependence upon each to perform its proper function, and the role of virtue in maintaining the social bonds of human intercourse, run parallel to Cicero’s views on natural law and the natural justice emanating therefrom. Injustice is fatal to social life and the fellowship between people. If a person gains some personal benefit as a result of a loss suffered by his fellow-human being, then those bonds of human society which are most in accord with nature’s laws must necessarily be broken (*De officiis*, II, 5). By applying the organic metaphor of human society, Cicero regards injustice as fatal to social life and fellowship between individuals: “For if we are so disposed that each, to gain some personal profit, will defraud or injure his neighbour, then those bonds of human society, which are most in accordance with nature’s laws, must of necessity be broken” (*De officiis*, III, 5). For purposes of main-

1 In this respect Cicero’s views on justice and society follow the Stoic notions of the *societas generis humani* maintained by justice.

taining human society and to prevent the bonds of union between citizens being impaired, laws are enacted. Any attempt to destroy the bonds of human society is repressed by the penalty of death, exile, imprisonment, or fine (*De officiis*, III, 5).

The ideal structure within which the bonds of law, justice and benevolence can be maintained, finds its culmination in the principle of the organic unity of human society. Like the limbs of the individual person make up an organic whole, the individuals in society form the social body, the health of which is determined by justice in social relationships. In a fundamental sense, the health of the social body is dependent upon the well-being of each individual limb. Therefore, the chief end of all human beings should be to make the interest of each individual and that of the whole political society identical. Viewed from the angle of the duties all persons have towards preserving the social bonds of human society, the most fundamental duty of the individual in society is that of manifesting social benevolence towards all human beings.

Cicero's views on the fundamental moral order underlying justice and the natural rights of the individuals in the state have far-reaching implications for establishing the moral and legal relationships of persons in society. Firstly, the benevolence human persons should reflect towards others should proceed according to the order presupposed by the principle of moral worth. Secondly, although human beings should practise benevolence towards others, other persons do not have a right *per se* to claim it as their own, because those who have the duty to practise social benevolence are accountable only to the law of moral worth and to the supreme legislator in whom the moral law resides. Thirdly, the equal duty of benevolence towards all persons in society also demands that others not be harmed or despoiled of what belongs to them, because these others have corresponding rights to the prohibitive duties emanating from the moral law.

3. The transmission of Cicero's views on social benevolence and the moral law of worth to the early Reformation

3.1 *The German Reformers and classical humanism at Wittenberg*

Largely due to the early modern upsurge in classical humanism at the German universities, including that of Wittenberg where Luther

and Melanchthon taught, key elements of the Ciceronian moral philosophy on duties and rights were receipted by the German Reformers. The emphasis by the German Reformers on the moral law of benevolence and the fundamental duty of rulers to maintain peace in the commonwealth runs parallel to the Ciceronian view that the whole of human life is subject to moral duties, that no aspect of human life whether in private or public can be without the accompanying moral duties, that on the discharge of such duties depends all that is morally right, and on their neglect all that is morally wrong (*De officiis*, 1, 2, 4).

From an evangelical perspective Luther interprets the fundamental social duty of benevolence to entail that man lives subject to a twofold duty: love towards God and towards one's neighbour. These two duties form the basis of man's moral commitments in social life. The duty of love, transposed in a social context to the duty of benevolence towards one's neighbour, is stamped on the deeper structures of human beings in the form of moral precepts that have application in all spheres of human existence. In his reflections on Galatians 5:14, Luther expresses the duty-based nature of the moral law in terms of a natural knowledge that is implanted in the minds of all human beings, by which they know naturally that one should do unto others what one wants done unto oneself. This principle, which is called the law of nature, and others like it, are, according to Luther, the foundations of human laws and all good works (*LW*, 26:53 (LGS, Galatians, 1)). Duty-based rights are needed for man to fulfil his calling and duty towards God and to live in peace with his fellow-humans. Natural rights, therefore, are divine rights because they are sanctioned by God and stamped on man's conscience in the form of duty-based entities. They are enforceable within specific moral limits, to serve God and one's neighbour. God's divine law is a statement of supreme truth, and it transcends human manipulation, knowledge of which is gained through the Holy Spirit (cf. *LW*, 11:507 (LP Psalm 119)).

Melanchthon's commitment to Cicero's dialectical and political works gave his Reformational works on political ethics a distinct Ciceronian flavour. Although Melanchthon subscribed largely to Cicero's moral views he did not in all respects follow Cicero's heavy reliance on natural philosophy, particularly in the area of natural law. However, even in his criticism of Cicero, he reflects a sensitive ap-

preciation of Cicero's views. In his *Loci Communes*, Melanchthon remarks on Cicero's views regarding the source of natural law precepts that Cicero in his work *On Laws* had imitated Plato by deriving the standard for laws from the nature of man (*De legibus*, I, 5, 15 ff.). Melanchthon adds that he does not condemn this, but considers it done with "more cleverness than precision" (*Loci communes*, 50). He also adds that many godless things have crept into Cicero's disputation, and "this usually happens when we follow the methods and shortcuts of our reason rather than what is prescribed in Holy Scripture"; the knowledge of the laws of nature have been impressed on our minds by God, "I mean that the knowledge of these laws consists of certain so-called 'concrete attitudes' (*habitus concretus*); this knowledge is not the product of our own mental powers, but has been implanted in us by God" (*Loci communes*, 50).

3.2 Calvin on moral duties preceding rights

In his commentary on Seneca's *De Clementia*, Calvin responds positively to Cicero's classic statement originating with Aristotle that those who do not share in the life of the community are not citizens. A state is an assembly or gathering of human beings associated by law (*De republica*, VI, 13, 13). Calvin also alludes to Cicero's observations in *Pro cluentia* (53, 146) to the effect that as the body cannot function without the mind, so also a state without law cannot use its parts, "which is analogous to sinews and blood and members". The typical Ciceronian emphasis on the solidarity of the state as a social entity emerges in Calvin's thoughts on the idea of rights in the consolidated Christian commonwealth. Similar to Cicero's focus on the universal human society, the *societas generis* (*societas hominum*), an organic unity encompassing the whole of humanity, Calvin applies the moral aims of human fellowship to the political society of the state. From the fundamental perspective of the state as an organic and moral entity, Calvin maintains that the state has a duty to protect the interests of individuals subject to the second table of the Decalogue.

Calvin's theoretical perspectives on moral duties and the rights flowing from such duties are largely contained in his arguments with the Anabaptists' negative views on the state and law. Central to Calvin's arguments is the basic idea that it is in the interest of love that law and its accompanying order is maintained (cf. Bohatec,

1934:41). Where true love is present, human beings will not consider harming their fellow human beings; they would rather strive towards protecting every person's rights and maintaining justice in the state (cf. *Op.*, 49:252 ff.) To Calvin political authority is essential to maintain social benevolence and political government should maintain peace and fairness. Benevolence in society can only be secured when anarchy and chaos are curbed (*Op.*, 49:252 ff.).

In Calvin's view the aims of natural law are directed at the harmonious and peaceful co-existence of individuals, where public honourableness is maintained (*Op.*, 52:667). The primary (or *proto*) right which could be extended and "broadened" so to speak, is that of personal liberty. God awarded civil governments the power of the sword in order to protect the rights and liberties of each person and to ensure the free enjoyment thereof (*Op.*, 28:214). To secure this basic right, laws and authorities are needed. Through the legal protection of the rights to liberty, these rights in effect become subjective public rights. Calvin adds that through the wielding of legal power, state authorities should aim at ensuring liberty and peace to all (*Op.*, 2:1107). Because the interests of the individual and those of society are one, it also means that through the protection of individual rights, the rights of the whole social body (*bonum publicum*) are protected (*Op.*, 2:1108). Furthermore, the efforts of individuals to protect their rights should not be regarded as a transgression of the natural law aims of fairness and love, because the protection of rights contributes towards maintaining order in the social body. Therefore, if the rights of individuals are injured, then the ground of law is jeopardised, anarchy promoted, the peace disturbed and benevolence compromised. Individuals should therefore feel themselves free to seek their rights in order that benevolence be promoted and the general well-being of the social body ensured (*Op.*, 49:252 ff.).

Calvin's ideal of the well-being of the body politic as a social entity is attainable when the ideals of the individuals and the state conflate, which is only possible when the benevolent order binding together the individuals and the rulers accomplishes its aims. In Calvin's works it appears, in an objective sense, as if the benevolent public good has an even higher status than the law, because without the moral good of benevolent well-being, no legal system can maintain order.

3.3 Equality, justice and the moral duties underlying natural rights

The order of benevolence demanded by the moral law has constantly to aim at promoting justice through the just divisions of punishments and awards, because if the law is applied without due regard for the moral (or natural) equality of all human beings in terms of the law of moral worth, injustice ensues and the political order is destroyed (*Op.*, 29:584; 2:1100). Because all human beings are created in the image of God, they are all morally equal brothers and sisters in the family of mankind, endowed with equal moral value and personhood. However, this brotherliness does not in any way extinguish the social distinctions between families and societies, the individual differences among human beings or even the boundaries between private and public law entities (*Op.*, 53:554). Therefore, in spite of the natural equality among human beings, there are also distinctions between professions similar to the distinctions between the limbs of which the human body is composed (*Op.*, 26:321; 34:658). Also the undisputed moral equality of all people before God does not imply that all people are necessarily equal or that they are equally efficient regarding performance or productivity (*Op.*, 2:199; 231). If the natural moral equality of human beings is absolutised and the individual differences among human beings negated the result, in Calvin's view, will be chaos (*Op.*, 51:799 ff.; 36:400).

The tension between the moral equality of human beings and the subjective differences between individuals, according to Calvin, is overcome because both moral equality and physical inequality find their origin in God's will and his providential government of the world (*Op.*, 26:321; 51:801 & 34:659). Because all human beings are subject to the moral law of benevolence, both equality and inequality are closely related to the duties emanating from the moral law. Furthermore, the inequality between people does not uproot the inter-relatedness of humankind as a whole, because all of them are subject to the governance of their political authorities. At the same time, political rulers should not abuse their power because the rights and duties of all human beings carry equal weight and flow from the principle of the moral worth of human persons. For purposes of accomplishing the aims of justice, Calvin regards the Aristotelian forms of particular justice adequate because they take into account both the moral equality of human persons and their respective

inequalities in wealth, abilities and responsibilities. Approached from the angle of the social solidarity of human society, inequalities are to be regarded as benefits for the well-being of mankind rather than stumbling blocks to be overcome in the quest for establishing strict equality between human beings irrespective of their respective subjective differences.

Calvin's application of the Ciceronian perspectives on moral duty and the rights flowing from these, differ in a number of respects from those of the classical liberal views. Firstly, Calvin does not subscribe to the view that individual persons are autonomous entities protected by law in order to further their subjective aims of liberty. Secondly, Calvin also opposes the radical cries for liberty, because unrestrained freedom leads to sensuality and often steers the public opinion in directions where the view of the majority prevails and minority interests are subjected to the whims and fancies of the majority. Furthermore, says Calvin, unchecked liberty introduces a turbulent element into society: *turba este turbulent* – the state is divided into factions which could seriously destabilise the political order (*Op.*, 25:635; 35:150).

Calvin's views on the moral law, rights and the social solidarity of society were produced with a view to giving a clear statement of the nature of the objective law, the nature of the power of political authorities and providing for the respective areas of subjective rights of individuals in civil society. The nature of the subjective rights of individuals – whether these are the rights to life, to property or to liberty – is limited by the moral duties of the bearers of such rights towards others, the accompanying rights others have as a consequence of the duties people have towards them, and the right of the political authorities to ensure the welfare of society. The state, for example, is competent to limit the rights of subjects with its tax laws, or to place limits on the right to life by the duty to perform military service, which in effect means that the individual does not have absolute rights in the commonwealth. Furthermore, Calvin's application of the notion of political society reflecting social solidarity based on the principle of the mutual inter-dependence of political rulers and subjects, as well as individuals and social entities *inter se*, has the positive implication that the subjective rights of individuals in the state are not elevated above the right of state authorities; much rather the mutual rights and duties of subjects and of

political government are integrated into a trans-subjective synthesis of duties and rights in political society (Bohatec, 1934:81²).

4. Conclusion

Social solidarity and social cohesion are important building blocks for establishing a society sensitive to both the individual rights to sustain liberty in society and to the communitarian values required for building a political order committed to fundamental values for informing the spheres of legal interaction in the state. The core virtue at which Cicero and the early Reformers aim is that of social benevolence. By introducing social benevolence as the moral catalyst for organising social life, political theorists like Cicero and the early Reformers gave expression to their desire to provide a community-oriented theory of social and individual life opposed to the isolationist views of political individualism. In terms of such isolationist views, moral choices are deemed to be private affairs and the foundations of society are aimed at supporting individual autonomy and self-seeking choices of the individual members. The alternative to isolationist liberalism, in the political and legal thought of Cicero and the early Reformers, is the integration of communal morality embracing a normative conception of law which is grounded in the common good and the establishment of a duty-oriented culture of moral commitment permeating the whole of social life. To Cicero and the early Reformers, benevolent communitarianism has the potential and capacity to be established as the core virtue that should be reflected by all of public and private life. Translated into law, social benevolence embraces a normative conception of law in terms of which the individual is accountable to communal standards of duty and rights.

The Ciceronian-Reformational paradigm of duty-based rights and the common good driven by social benevolence has its origin in the efforts to state legitimate aims of civic virtue and for universalising benevolent communitarianism in the political and legal domains. As

2 “Es stehen also nicht die subjektiven Rechte über dem Obrigkeitsrecht, der Staat verfügt aber auch nicht absolut über die Rechte der Einzelnen. Vielmehr sind die Rechte und Pflichten beider in einen übersubjektiven Zusammenhang der Rechtsordnung eingefügt.”

such social benevolence aims at tempering the liberal rejection of a public conception of the good as well as the annexation by the state of the public good. An important side-effect of the early Reformational emphasis on public benevolence was the universalising of private virtue through benevolent responsiveness to others and the giving of expression to a common normative understanding of the common good. The notion of duty-based rights supported by the dynamics of social commitment to benevolent political interaction projected a public image of benevolent solidarity sensitive towards the inter-dependence of individuals and social institutions in the legal order transcending the notion of self-seeking individualism; it projected the ideal of deflating individual autonomy and commitment to universalising the social ideals and nature of society in the quest for giving each his/her due and attaining the ideal of the common good.

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