

Moral duty, natural rights and the Ciceronian impact on the political views of Luther and Calvin

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Opsomming

Cicero se standpunt dat alle mense aan een morele wet ondergeskik is, dat alle mense in 'n morele sin gelyk is en dat die menslike samelewing 'n gemeenskap is wat deur gemeenskaplike bande saamgebind word, beteken by implikasie dat alle mense in die staat as 'n korporatiewe entiteit verenig is en gelyk 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 burgersaamsnoer, het 'n belangrike impak op die politieke en regstandpunte van vroeë Reformatore soos Luther en Calvyn uitgeoefen. Luther en Calvyn is tot 'n groot mate deur Cicero se standpunte beïnvloed. Van die belangrikste gevolge daarvan was dat Luther en Calvyn standpunte oor die reg en die politieke lewe in die staat ingeneem het wat die reg vanuit bepaalde morele perspektiewe benader het en fundamentele regte in pligte begrond het. Hierdie opstel ondersoek enkele van die belangrike implikasies van Cicero se invloed op Luther en Calvyn in dié verband.

1. Introduction

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

and how the individual person can share in the common life of society. Attached to this central issue in Cicero's thought is also the question regarding the explanation of the notion that the individual person has a worth which other individuals have to respect. Linked to the former is the need for the formulation of norms 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.

Largely motivated by Cicero's discourse on the solidarity of human society bound together by a central moral commitment, generations of political thinkers after him applied his moral platform to develop theoretical perspectives on rights, justice and the fundamental duties essential for human intercourse in society. Cicero's moral commitment to social benevolence in particular served as the central catalyst for developing politico-legal views sensitive towards balancing rights and duties and for furthering the aims of justice through the demands of social benevolence as the basis of political society. From this basis – the moral bonds of the political body – legal 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 re-interpretation of the classical Ciceronian views on moral solidarity, the organic nature of political life and the duty-based nature of fundamental rights, provided 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 in the early modern epoch and its relevance for law and politics had a lasting effect on

the legal and political views of the Reformation. Together with Roman authors like Seneca, the early Church Fathers, and the later Medievalists, Cicero's thoughts on social benevolence and the organic nature of the state, provided some of the leading Reformers with a framework for developing political and legal doctrines within the broader context of God's providential government of the world.¹ In the theological and ethical works of Luther and Calvin, 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 (*ordinationes Dei*).² The classical Reformational view on God's general revelation to all people – including the Greek and Roman authors of antiquity – was expressed by Luther in his commentary on Psalm 101: God's grace was not only bestowed on the believers but also given to the heathen nations for their own edification.³ In his commentary on Psalm 101, Luther acknowledges the fact that God's graces were also bestowed upon non-Christians: "Therefore whoever wants to learn and become wise in secular government, let him read the heathen books and writings. ... I am convinced that God gave and preserved such

1 Schreiner, *The theatre of His glory*, 4-5.

2 Milner, *Calvin's Doctrine of the Church*, 190.

3 WA LI (2), 242ff.: "Gott is ein milder, reicher herr, Der wirfft gros Gold, Silber, Reichtum ... unter die Gottlosen ... Also wirfft er auch unter sie hohe vernunft, weisheit, sprachen, Redekunst, das seine lieben Christen lauter kinder, narren und bettler gegen sie anzusehen sind ... Und ist mein Gedancken, das Gott darumb gegeben und erhalten habe solche Heidnische buecher als der Poeten und Historien, Wie Homerum, Virgilium, Demosthenem, Ciceronem, Livium, Und hernach die alten feinen Juristen ... das die Heiden und Gottlosen auch haben solten ihre Propheten, Aposteln und Theologos oder Prediger zum weltlichen regiment ... Denn weil Gott den Heiden oder der vernunft hat wollen die zeitliche herrschaft geben, hat er ja auch muessen leute dazu geben, die es mit weisheit und mut, dazu geneigt und geschickt weren und erhielten ... wie wol alle Heiden gleich Heiden sind und alle gleich enschen und vernunfftig gewesen, Haben doch etliche muessen auch Wunderleute unter jhnen sein ... welchen es die andern nicht haben muegen gleich thun, ... Den gleich wie Gott jnn seinem heiligen volk nicht alle gleich Propheten oder gelert macht noch gleich hoch begabt, So hat er auch unter den Heiden die edle steine nicht so gemein gemacht wie die kiesling auff der Gassen .. Denn es ist noch keiner komen, Homero oder Alexandro gleich ... und so fort an bleibt auch unter den blinden Heiden solch wunder that Gottes, das nicht jhre weisheit, sondern lauter Gottesgabe ist, wo sie etwas sonderlichs gewest oder gethan haben."

heathen books as those of the poets and the histories, like Homer, Vergil, Demosthenes, Cicero, Livy, and afterwards the fine old jurists – as He has also given and preserved other temporal goods among the heathen and godless at all times ...”⁴

Particularly in the areas of law and politics Cicero’s thoughts in his *De officiis* and *De re publica* provided Luther and Calvin with a broad outline for formulating the core-principles of the political and legal theories of the early Reformation. For purposes of formulating theories on the solidarity supporting moral duties and rights in the political order, the Reformers utilized Cicero’s ideas of social benevolence and the organic structure of political society in particular. At the dawn of the Reformation, Cicero’s perspectives on these issues 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 law⁵ and rights maintaining the bonds of political society, and the harmonious arrangement of the powers of rulers and the liberties of the citizens had a lasting impact on Western political and legal theories.

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

2.1 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.⁶ Cicero was parti-

4 LW 13 (LP), Psalm 101:6.

5 The following abbreviations are used for Cicero’s works: *De finibus bonorum et malorum* (*Fin*), *De officiis* (*Off*), *De legibus* (*Leg*), *De re publica* (*Rep*), *De inventione* (*Inv*). To Cicero natural law has the qualities ascribed to it by the Stoics: eternal, rational, the supreme law, the true law, right reason and the foundation of justice. Cf. *Rep*, III, 33; *Leg*, I, 18, I, 33 and *Off*, I, 102-105. The law of nature, to Cicero, is heavenly and divine (*Leg*, II, 813). Cf. also Kroger, “The philosophical foundations of Roman Law, the Stoics, and the Roman theories of natural law”, *Wisconsin Law Review*, 2004, 934-935.

6 Epicurus based himself on Aristippus, the pupil of Socrates and founder of the School of Cyrene. Similar to Aristippus Epicurus held that pleasure is the only good, the fundamental condition for man’s well-being. He denied any absolute validity to justice and law, and preached abstention from the active duties of citizenship.

cularly critical about 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 offers, the denial of absolute standards of justice and the abstention from the active duties of citizenship.⁷

Cicero held the opposite view: all virtues and the moral worth which springs from them and inheres in them are intrinsically desirable.⁸ With the view to accomplish 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 other virtues. Justice is the highest virtue and is to be cultivated and maintained for its own sake.⁹ 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.¹⁰ 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.¹¹ The qualities of this union and the combination of virtues compassed in justice is 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.¹²

7 It is against Epicurus' hedonism that Cicero directed his criticisms.

8 *Fin V*, xxiii, 64. At *Fin V*, xxiii, 67 Cicero adds: "For only a brave and a wise man can preserve Justice. Therefore the qualities of this general union and combination of the virtues of which I am speaking belong also to the Moral Worth aforesaid; inasmuch as Moral Worth is either virtue itself or virtuous action; and life in harmony with these and in accordance with the virtues can be deemed right, moral, consistent, and in agreement with nature."

9 *Off II*, xii, 41. At *Off II*, xi, 40 Cicero observes that the importance of justice is so great, that not even those who live by wickedness and crime can get on without some small element of justice.

10 *Fin V*, xxii, 65.

11 *Fin V*, xxxiii, 66-69. At *Fin V*, xxiii, 67 Cicero describes the bonds binding the whole of the human race together in the following terms: "As then each virtue contains an element not merely self-regarding, which embraces other men and makes them its end, there results a state of feeling in which friends, brothers, kinsmen, connections, fellow citizens, and finally all human beings (since our belief is that all mankind are united in one society) are things desirable for their own sakes."

12 *Fin V*, xxiii, 66.

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.¹³ 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 emanate from man’s social nature,¹⁴ which is driven by the passion to be governed by rulers according to justice and law.¹⁵

2.2 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 they 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.¹⁶

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, their mutual inter-dependence for 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 by the loss of his fellow-human being, then those bonds of human society, which are most in accord with nature’s laws must necessarily be broken. By applying organic metaphors for describing the nature 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

13 *Off* I, xiii. Also note *Fin* V, xxiii, 67.

14 *Rep* I, xxv, 39: “The first cause of such an association (commonwealth) is not so much the weakness of the individual as a certain social spirit which nature has implanted in man.”

15 *Off* I, vi, 13: “... for the general good, rules according to justice and law.”

16 *Leg* II, 5: In this respect Cicero’s views on justice and society follow the Stoic notions of the *societas generis humani* maintained by justice.

are most in accordance with nature's laws, must of necessity be broken".¹⁷ For purposes of maintaining 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 should be repressed by the penalty of death, exile, imprisonment, or fine.¹⁸

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. 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 showing social benevolence towards all human beings.¹⁹

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 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 practice social benevolence are accountable only to the law of moral worth and to the supreme legislator in whom the moral law resides. Thirdly, the

17 *Off* III, v, 21-22. For injustice is fatal to social life and fellowship between man and man (*Off* III, v, 21).

18 *Off* III, 5, 23. Cicero uses an organic metaphor for explaining the inter-dependence of the whole human race: "Suppose, by way of comparison, that each one of our bodily members should conceive this idea and imagine that it could be strong and well if it should draw off to itself the health and strength of its neighbouring member, the whole body would necessarily be enfeebled and die."

19 Cf. e.g. *Off* I, xvi, 50: "But it seems we must trace back to their ultimate sources the principles of fellowship and society that nature has established among men."

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, because others have corresponding rights to the prohibitive duties emanating from the moral law. Fourthly, the duties persons have towards others have their origin in the moral law and not in the rights people have, and fifthly, duties precede rights and the law allows those who have rights to redress the harm done to them, and gives them a right to do so. The effects of the view that moral duties precede rights are 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 *charity*.²⁰

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

2.3.1 Moral duty and social benevolence

Cicero's political philosophy is mainly concerned with establishing the moral preconditions for achieving peace and harmony in the political life of the state. To this end Cicero introduces two important notions: Firstly, the idea of the consolidated social body functioning as an organic whole; secondly, the moral bonds provide 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 to Cicero's statements relating to law and politics there figures 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 which the governing body of the commonwealth should constantly return to 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. Peace is also required for the existence and protection of the populace "organised" on the basis of social benevolence.

20 Myburgh & Raath, 2012:298.

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 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 its moral basis 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 have 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. The base of the political association demands a foundation 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. It is on the basis of moral equality that state government can provide the concord and justice needed for maintaining peace and tranquillity in society.

Cicero's view 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 to promote the common good emanate from the natural inclination to love our fellow human beings, which inclination is also the foundation of rights.²¹

21 *Leg* I, xv: “Nam haec nascuntur ex eo, quia natura propensi sumus ad diligendos homines, quod fundamentum iuris est.”

The central idea underlying Cicero's perspectives on benevolence and right is that the rights human beings naturally have presuppose the existence of moral duty which is intrinsically connected to the moral uprightness of the bearers of such rights. The implications are the following: A has duties towards B in terms of the law of moral worth not to do B harm, which duties provide B with natural rights limited by the moral duties B have 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 equal demands of the moral law to act benevolently produce a form of moral equality of all persons, which acts of benevolence, says Cicero, is necessary if he is to love another no less than himself.²²

2.3.2 *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.²³ Elsewhere Cicero denotes justice as a state of mind which preserves the common good by acknowledging the dignity of all human beings; its conception proceeding from nature.²⁴ 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*).²⁵ On the other hand a person is not considered good and just when he/she refrains from wrongfulness to avoid harm, because in addition also the virtue of giving each his due should be practiced.²⁶

22 *Leg I*, xii, 34: "From this it is clear that, when a wise man shows toward another endowed with equal virtue the kind of benevolence which is so widely diffused among men, that will then have come to pass which, unbelievable as it seems to some, is after all the inevitable result – namely, that he loves himself no whit more than he loves another."

23 *Fin V*, xxiii, 65-66. At *Fin1 V*, xxiii, 65: "But in the whole moral sphere of which we are speaking there is nothing more glorious nor of wider range than the solidarity of mankind, that species of alliance and partnership of interests and that actual affection which exists between man and man."

24 *Inv II*, 53, 160.

25 Cf. *Off I*, viii, 26: "Declaravit id modo temeritas C. Caesaris, qui omnia iura divina et humana pervertit propter eum, quem sibi ipse opinionis errore finxerat, principatum."

26 "This sentiment, assigning each his own and maintaining with generosity and equity that human solidarity and alliance of which I speak, is termed Justice ..." Also cf. Myburgh & Raath, 2012:299.

The benevolence every person is under a duty to perform towards others 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 towards B, C and D on moral grounds, nothing is taken from them what 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.²⁷

Cicero’s view of society reflects a model 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.

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

3. *Martin Luther on the moral law of love*

Luther was particularly fond of quoting Cicero on moral and legal issues.²⁸ Largely due to the early modern upsurge in classical humanism at the German universities, including Wittenberg, where Luther and Melanchthon taught, key-elements of the Ciceronian moral philosophy on duties and rights were received by the German Reformers. Their emphasis on the moral law of benevolence as well as the fundamental duty of rulers to maintain peace in the commonwealth by the German Reformers run 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 –

27 Myburgh & Raath, 2012:299.

28 In Luther’s commentary on Psalm 101 references to Cicero’s works abound e.g.: *De imperio Gnaei Pompei* XIII, xxxviii; *De officiis* I, x, 33; I, xxiii, 81; *Oratore* I, vi, 22; II, xviii; *Pro Milone* IV, xi. For Luther’s positive evaluation of Cicero’s views on moral duty cf. Raath, “Human personhood and social benevolence – reformational reflections on the right to human dignity”, *Koers*, 4 and “Personhood, human nature and the foundations of fundamental rights in Martin Luther’s theology”, *Ned. Geref. Teologiese Tydskrif*, 176-186.

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: "For no phase of life, whether public or private, whether in business or in the home, whether one is working on what concerns oneself alone or in dealing with another, can be without its moral duty; on the discharge of such duties depends all that is morally right, and on their neglect all that is morally wrong in life".²⁹

From a Biblical 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 duties of love, transposed in a social context to the duty of benevolence towards one's neighbour, are stamped on the deeper structures of human beings in the form of moral precepts that have application in all spheres of human existence.³⁰ 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 and others like it, which is called the law of nature, are, according to Luther, the foundations of human laws and all good works.³¹ In his work *Whether Soldiers Too Can be Saved* (1526), Luther formulates the natural law of love as follows: "Christ teaches the natural law in Matthew 7[:12], 'Whatever you wish that men would do to you, do so to them'" and: "Why then, do they not do to others as they wish that others would do to them, and not treat others in a way they do not wish to be treated themselves? This is what Christ teaches in Matthew 7[:12] and the natural law teaches it too."³²

29 *Off* I, ii, 4. Also cf. Myburgh & Raath, 2012:299.

30 *WA* XXXIX, I, 454, 14: "Moses fuit tantum quasi interpres et illustrator legum scripturarum in mentibus omnium hominum, ubique terrarum sub sole sint." In *WA* L, 330, 35, Luther observes: "Wo gleich nimer mehr kein Mose komen, noch Abraham geboren were, hetten doch jnn allen menschen die Zehen gebot von anfang müssen regiern. Wie sie den gethan und noch thun."

31 *LW* 26: 53 (LGS, Galatians, 1) and *LW* 27 (LGS, Galatians 5:14). Cf. Raath, "Rights of love and the dynamics of social benevolence", *Acta Academica*, 98-100.

32 *LW* 46 110, 112. On Luther's views on natural law cf. Raath, "Providence, conscience of liberty and benevolence: the implications of Luther's and Calvin's views on natural law for fundamental rights", *In die Skriflig*, 418ff.

In his *Treatise on Civil Government* (1523), Luther formulates man's duties towards others in the public sphere as follows: "But he who loves his enemies and is perfect, leaves the law alone and does not use it to demand and eye for an eye ..." and "... love of neighbour is not concerned about its own; it considers not how great or humble but how profitable and needful the works are for neighbour or community".³³ 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, stamped on man's conscience in the form of duty-based entities and are enforceable within specific moral limits, to serve God and one's neighbour: "All men have a certain natural knowledge implanted in their minds (Rom. 2:14-15), by which they know naturally that one should do to others what he wants done to himself (Matt. 7:12). This principle and others like it, which we call the law of nature, is the foundation of human law and of all good works."³⁴ God's divine law is a statement of supreme truth, and it transcends human manipulation, knowledge of which is gained through the Holy Spirit.³⁵

Luther expresses the universal duty of benevolence in terms of the organic metaphor of the "limbs" of society – human beings are mutually dependent upon one another for furthering the common good, based on the law of *Suum quique*. The duty of love is the spirit of the law and the normative expression of the "Golden Rule": "Alles, was ihr wollt, dass euch die Leute tun sollen, das tut ihr ihnen auch!"³⁶

33 LW 24: 102.

34 LW 27 (LGS, Galatians 5:14). In his treatise on civil government Luther regards the duty of social benevolence as the basis of all law: "Die natur leret, wie die liebe thut, das ich thun soll, was ich mir wollt gethan haben"(WA XI, 279, 19), and "Also soll ... ymer die liebe unnd naturlich recht oben [schweben]. Denn wo du der liebe noch urteylest, wirstu gar leycht alle sachen scheyden und entrichten on alle recht bücher. Wo du aber der liebe unnd natur recht auss den augen thust, wirstu es nymmer so treffen, das es Gott gefalle ..." (WA XI, 279, 24).

35 Cf. LW 11: 507 (LP, Psalm 119)). Cf. WA XI, 279, 30: "Eyn recht gut urteyl das mus und kan nicht auss büchern geschprochen werden, sondern aussz freyem synn daher, als were keyn buch. Aber solch frey urteyl gibt die liebe und naturlich recht, des alle vernunft voll ist." At 280: 12 Luther states: "Eyn solch Urteyl is auss freyer vernunft uber aller buecher recht gesprungen so seyn, das es yederman billichen muss und bey sich selb findet ym hertzen geschrieben, das also recht sey." In his sermons on Matt. 57 (1530-1532) (WA XXXII, 353, 32), Luther formulates the duty to love one's neighbour as works of love: "... die ein jglicher gegen dem andern thun sol, aus der liebe."

Social benevolence binds the whole social organism together into a body composed of the individual limbs – a *membrum corporis*.³⁷ The individual members of the political body have the duty to serve one another – similar to the various organs in the human body supporting one another.³⁸ Not only does Luther describe the whole of humankind in terms of the organic metaphor of the body, but the various social spheres also represent organic entities.³⁹

For Luther the Decalogue (as the code of love) is the highest normative expression for regulating man's life on earth.⁴⁰ The moral law is the practical guide for determining right and wrong: "Ius naturale est principium practicum versans iuxta mores, prohibens mala et praecipiens bona".⁴¹ The ruler is the head of the social body and has to guide the various members of the social organism by applying and enforcing the law of love.⁴²

36 WA II, 120, 22: "Die natur und ihr gesetz spricht: was du wilt, das man dir thu, das thu du auch dem andern" and WA XVII, 2, 102, 8: "Niemand ist, der nicht fulet und bekennen müsse, das es recht und war sey, da das natürlich gesetz spricht: Was du dyr gethan und gelassen wilt haben, das thue und las auch eym andern, das liecht lebet und leucht ynn aller menschen vernunft, und wenn sie es wollten ansehen, was durfften sie der bucher lerer und yrgent eyns gesetzes? Da tragen sie eyn lebendig buch bey sich ym grund des hertzen, das wurde yhn alles reichlich gnug sagen, was sie thuen, lassen, urteylen, annehmen und verwerffen sollten." Also WA XXXII, 494ff., 495, 5: "Die rechte summa aller predigt" and WA Br X, 532, 10.

37 WA LVI, 175, 2: "Apostolus ... totum mundum velut unum totum corpus ante oculos suos constituit." Also cf. WA Br VI, 56: 12 for the citizen as *membrum corporis politici*: "... ein Christ, sondern als ein Bürger oder *membrum corporis politici* ..."; 15: "... dass ein Christ als ein Bürger oder *membrum corporis politici* müge das Schwert und weltlich Ampt führen ..." and 19: "... ob sie Recht haben, der Obrigkeit (desfalls) zu widerstehen, als *membra corporis politici* ..." At WA XXXIX, 2, 41, 1: "Sicut magistratus ipse resistit, cuius membrum est, ita praecipit tibi resistere virtute secunda tabulae, cui teneris obidere."

38 WA Br V: 615, 70: "[Die Juden] sind ... nicht von vunserm Corpore Ecclesiastico aut ciuili, Sed captiui." For man's duty to serve his fellowman cf. Luther's sermon of 28th October 1515, WA IV, 669, 10 and his letter of 15th May 1525 in WA Br III, 496, 9 and 497, 30; 498, 5.

39 WA LVI, 175, 2: "

40 For Luther's development of the Pauline-Augustinian tradition of natural law cf. Raath, "Writing 'new' decalogues: Martin Luther's development of the Pauline-Augustinian tradition of natural law", *Koers*, 425-454.

41 WA Ti IV, Nr. 3911, 5, 27.

42 Cf. letter of 15th may 1525 in WA Br III, 496, 9, 497, 30 and 498, 5. In WA Ti IV, Nr. 4342, 236, 10 Luther states: "Caesar est caput in politico regno et corpore, cuius corporis quilibet privatus homo est pars et membrum." The law of love is of universal application: "Die gemeynen naturlichen gesetze [gehen] durch alle lande und bleyben [im Gegensatz zu den] sonderlichen gesetzen und ordnungen [eines Landes, deren

To Luther the law of love is the regulating principle for maintaining order and justice in the social body.⁴³ Because of man's fall into sin the natural law of love is necessary for maintaining order in human society – not only for the times of Moses but for all social relationships at all times: “Die Zehen gebot [sind] nicht allein vor Mose, sondern auch vor Abraham uns allen Patriarchen ... über die gantze welt gegangen.”⁴⁴ The moral law of love is of universal application to all nations.⁴⁵ In a certain sense the precepts of love embodied in the Decalogue can be regarded as the *magna charta humanitatis* – the fundamental law for ordering human relationships in the social sphere.⁴⁶ In *Wider die himmlischen Propheten* (1525) Luther explains the role and function of the law of love in more detail: It is written in everyone's heart; the Bible mentions it in Romans 2:14, and states its content in the Golden Rule of Matthew 7:12. In Romans 13 Paul summarizes it “where he comprehends all the commands of Moses under love, and the natural law teaches this love naturally”.⁴⁷ Though Christians are bound only by the natural law the law of Moses remains of value since nowhere else is the law of nature so succinctly expressed.⁴⁸ Christians remain under the Ten Commandments because it is the expression of natural law. Because the Ten Commandments is an expression of the law of nature, both Christians and the heathen are subject to the divine commandments.⁴⁹ In his commentary on Galatians Luther states that these precepts of natural law are accessible through man's reason. Human reason is also important for applying these principles of love, for maintaining civil justice in the world, for natural

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- Dauer beschränkt ist]”(WA XVIII, 81, 12); “Die Zehen gebot [sind] nicht allein vor Mose, sondern auch vor Abraham und alle Patriarchen ... über die gantze welt gegangen” (WA I, 330, 33) and “Lex transit per omnia saecula” (WA II, 580, 18).
- 43 WA III, 369, 5 oor die “Sinn des Lebensordnungen, Liebesgemeinschaft zu sein.”
- 44 WA I, 330, 33).
- 45 WA XVIII, 307, 6. Cf. also WA XVIII, 80, 18: “Eynen Gott haben ist nicht Mose gesetz alleyne, sondern auch eyn natürlich gesetz.”
- 46 Particularly the precepts contained in the second table of the Decalogue: “Non habemus aliam quamdam tabulam secundam, propter quam licet contra istam priorem agere” (WA XXXIX, 2, 41, 34).
- 47 WA XVIII, 80, 18f.
- 48 WA XVIII, 81, 18f.
- 49 WA XVI, 528, 17.
- 50 WA XL, I, 292, 6f.

law and for maintaining order in the commonwealth.⁵⁰ Also for Christians the insights of Aristotle, Cicero and other non-Christian authors are of importance.⁵¹ However, this does not imply that every person has the rational ability to know and understand the contents of the natural law of love. Only those persons endowed with the special gift to access the precepts of the natural law of love, have the ability to understand and apply it.⁵²

When the precepts of the natural law of neighbourly love are disregarded, the love towards God is also undermined.⁵³ In a spiritual sense the divine law of love in the first commandment is a *lex spiritualis latens* – the external natural law of love.⁵⁴ In the second table of the moral law the principles of natural law also have the function of *usus spiritualis*.⁵⁵ The spiritual person detects in worldly law also a divine external order and maintains both elements of the spiritual law of love.⁵⁶

3.2 Calvin on moral duties preceding rights

Calvin did not hide his respect for Cicero: “But allow me to say this once and for all: our Seneca was second only to Cicero, a veritable pillar of Roman philosophy and literature ...”⁵⁷ Already in his commentary on

51 Cf. Luther's *Auslegung des 101 Psalms* (1534-1535), WA LI, 214, 35f.

52 These are the so-called “Wunderleute” (“miracle workers”) WA LI, 212, 14f.

53 WA VIII, 629, 23: “[Ratio naturalis] est ... crassum illud lumen naturae, quae tametsi lucem et opera dei non attingat per sese, ita ut in affirmative (quod alunt) fallax sit eius iudicium, in negativist amen est certum. Non enim capit ratio, quid sit dues, certissime tamen capit, quid non sit dues. Ita licet non videat, quid rectum et bonum sit coram deo (nempe fidem), scit tamen evidenter infidelitatem, homicidia, inobediatem esse mala ... Quod ergo huic rationi evidenter adversatur certum est deo multo magis adversary. Quomodo enim coelesti veritati non punabit, quod terrenae veritati pugnat?”

54 WA V, 198, 2: “In primo decalogi praecepto [comprehendantur] omnia sequential, Ita ut ... primum praeceptum metrum et mensura ... [sit] omnium aliorum” and at 227, 40: “Caput, vitam, regulam mandatorum.”

55 WA XL, 2, 64, 7.

56 WA XIX, 648, 25: “Wenn [Fürsten] nu gleich nicht Christen sind, sollen sie dennoch recht und wol thun nach eusserlicher ordnung Gotts, das wile er von yhn haben” and 630, 1: “[Nicht nur in der geistlichen, sondern auch in der leiblichen Gerechtigkeit] ist keine menschliche Ordnung odder gewalt drynnen, sondern etyel Göttlich ding.”

57 Calvin, *Commentary on Seneca's De clementia*, 7. In Calvin's *commentary on Genesis*, 139, he credits the heathen nations with a rich scientific heritage including law and politics: “Moreover, the liberal arts and sciences have descended to us from the heathen. We are, indeed, compelled to acknowledge that we have received astronomy, and the other parts of philosophy, medicines and the order of civil government from them.”

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.⁵⁸ A state is an assembly or gathering of human beings associated by law.⁵⁹ In the same work Calvin comments that Seneca's observations about the duty of rulers in the state – to ensure the safety of each and all – are taken from Plato's precept quoted in Cicero's *De officiis*⁶⁰ namely that those who preside over the state should care for the whole body thereof, lest while they are looking after a part, they forsake the rest. For those who care for the interests of a part of the citizens and neglect another part, "says Cicero, introduce into the state a dangerous element – dissention and party strife".⁶¹ Calvin also alludes to Cicero's observations in *Pro Cluentia* to the effect that as our bodies 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 state without law would be like the human body without mind – unable to employ the parts which are to it as sinews, blood, and limbs."⁶² The Ciceronian emphasis on the ideal of the solidarity of the state as a benevolent

58 And cut off from the body politic.

59 *Rep VI*, xiii, 13. Literally: "For nothing of all that is done on earth is more pleasing to that supreme God who rules the whole universe than the assemblies and gatherings of men associated in justice, which are called States." This definition is taken from Aristotle's *Politics* 3.1, 1274b1275a. If then not every society constitutes a state, but only that one which lives by upright morals and fair laws, those who do not obey the laws are not citizens, but are cut off from the body of the lawful state. In Calvin's commentary on Seneca's *De Clementia*, he refers to the following works of Cicero – mostly quoting him favourably: Cicero's Letters: *Epistolae ad familiares*, *Epistolae ad Atticum*, *Epistolae ad Quintum fratres*, *Epistolae ad Brutum*, Rhetorical Writings: *De invention (rhetorica)*, *De oratore*, *Orator (ad M Brutum)*, *Topica*, *De partitione oratoria*, *Brutus (de claris oratoribus)*, *Rhetorica ad Herenium*, Speeches: *Pro Publio quinctio*, *Pro Roscio Amerino*, *Divinatio in Q Caelium*, *In Verrem*, *Pro Cluentio*, *Pro Caio Rabiro Postumo*, *Pro Marcello*, *Pro Murena*, *Prp Flacco*, *Pro Pisone*, *Pro Sulla*, *Pro Dumo Sua*, *Pro Publio Sestio*, *Pro M Fontio*, *Pro Caelio*, *Pro Cornelio Balbo*, *Pro Plancio*, *Pro Milone*, *Pro Quinto Roscio Comoedo*, *Pro Ligario*, *De provinciis consularibus*, *Philippicae (orationes in M Antonium)*, *De lege agraria (contra Rullum)*, Philosophical Treatises: *De republica*, *De legibus*, *Paradoxa Stoicorum*, *De officiis*, *De finibus bonorum et malorum*, *De divination*, *de amacitia (Laelius de amacitia)*, *Academicorum libri*, *de re military*, *de natura deorum*. For Cicero's impact on Calvin's thought cf. Van Zyl, *Justice and equity in Cicero*, 220-222.

60 L, xxv, 85.

61 Calvin, *Commentary on Seneca's De clementia*, 55.

62 *Clu* LIII, 146. He adds: "The magistrates who administer the law, the jurors who interpret it – all of us in short obey the law to the end that we may be free." In his *Commentary on Seneca's De clementia*, 141, Calvin also alludes to Cicero's remark.

social entity emerges in Calvin's thoughts on rights in the consolidated Christian commonwealth. Parallel 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 in opposition to 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.⁶³ 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 maintain justice in the state.⁶⁴ To Calvin political government is essential to maintain social benevolence, peace and fairness.⁶⁵ Benevolence in society can only be secured if anarchy and chaos are curbed.⁶⁶

63 *Op* 2:305: "In lege nobis tantum praescribi iuris et aequitas inter homines observantiam."

64 Cf. Calvin *Op* 49:252ff.: "Qui vera caritate praeditus erit, numquam ei in mentem veniet frater laedere. Quid aliud total ex vetat quam ne proximo aliquam noxam inferemus .. quum magistratus pacis ac aequitatis sint praesides: qui suum cuique ius salvum esse cupit, et omnes ab iniuria tutos vivere, is ordinem magistratuum quantum in se erit tuebitur ... ac si dixisset: quum postulo ut principibus pareatis, non aliud require quam quod ex legge dilectionis debent praestare omnes fideles. Nam si bonis bene esse vultis ... debetis studere ut leges ut iudicia valeant, ut legume praesides populum habeant obsequentem ... ergo violat caritatem si quis ... inducit, quam statim consequitur rerum omnium perturbation ... Ita optime confirmat (sc. Paulus) quod precepit de obedientia magistratui deferenda, in quo posita est non minima pars caritatis." In *Op* 26:313ff. Calvin states: "S. Paul nous remaine à la charité, quand il expose ce commendement d'obeyr aux Magistrats. Car il monstere que si nous ne avons point ceste douceur en nous, de plier le col, quand nostre Seigneur nous met un ioug dessus, que nous n'avons nulle charité envers nos prochains: si nous appetons confusion et meslinge, et que les supérieurs n'ayent plus nulle reverence, il faudra que tout vienne en brigandage. Il vaudroit beaucoup mieux que chacun vesquist à part, et sans compagnie, que de voir une telle confusion."

65 Note Calvin's views at *Op* 27:556, 27:564 and 27:575. Similar views are expressed by Luther (*WA* 18:361): "Drum lieben herren, loset hie, rettet hie, helfft hie. Erbarmet euch der armen leute, Steche, schlage, würge hie, wer da kann, bleybstu drüber tod, wol dyr, seliglichen tod kanstu nymer mehr uberkomen, Denn du stirbst ynn [Rom. 13:5ff.] gehorsam goettlichs worts und befehls Ro. Am 13. und ym dienst der liebe, deynen nehisten zuretten aus der hellen und teuffels banden .." (Also cf. *WA* 18:389 and 18:393).

66 Where true neighbourly love is present, human beings will refrain from harming their neighbours. The state's duty to prevent chaos is of fundamental importance in this

To Calvin the aims of natural law are directed at the harmonious and peaceful co-existence of individuals, and for maintaining public honourableness.⁶⁷ The primary (or *proto*) right which could be extended and “broadened” 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.⁶⁸ 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.⁶⁹ 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.⁷⁰ Furthermore, the efforts of individuals to legitimately protect their rights should not be regarded as a transgression of the aims of natural law to promote fairness and love, because the protection of rights contributes towards maintaining order in the social body. Therefore, if the rights of individuals are injured, also 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 to promote benevolence and to ensure the general well-being of the social body.⁷¹

alvin’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,

regard: “Haec coacta expressaque iustitia est publicae hominum communitati, cuius hic tranquillitas consulitur, dum cavetur ne omnia permisceantur tumult, quod fieret si omnia omnibus licerent” (*Op*, 2:260).

67 *Op* 52:667. Calvin bases his views on 1 Timothy 2:2.

68 *Op* 28:214: “Dieu a voulu armer les magistrats pur maintenir le droit d’un chacun pour ne point souffrir que nul soit outrage en sa personne ou en ses biens.”

69 *Op* 2:1107: “ut eius manu ac praesidiis adversus flagitorium hominum et iniurias defensi quietam et securam vitam agamus.”

70 *Op* 2:1108. Calvin states :”perniciosi hominis conatus impedire, ne rei publicae noceat.” Also cf. Myburgh & Raath, 2012:300.71. *Op* 49:252ff.: “Quum postulo ut principibus pareatis, non aliud requiro quam quod ex lege dilectionis debent praestare omnes fideles. Nam si bonis bene esse vultis (quodquidem nolle esse tinhumanum) debetis studere ut leges et iudicia valeant, ut legum praesides populum habeant obsequentem, quorum beneficio tranquillitas omnibus constat. Ergo violat caritatem si quis ... quam statim consequitur rerum omnium perturbatio.” Cf. also Myburgh & Raath, 2012:301.

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

3.3 Justice, equality and the moral duties underlying natural rights

The order of benevolence demanded by the moral law, has to constantly 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.⁷² Because all human beings are created to 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.⁷³ Therefore, in spite of the natural equality among human beings, there are also distinctions between professions – similar to the distinctions between the limbs of the human body.⁷⁴ 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.⁷⁵ If the natural moral equality of human beings is absolutised and the individual differences among human beings are negated the result, to Calvin, will be chaos.⁷⁶

According to Calvin the tension between the moral equality of human beings on the one side and the subjective differences between individuals on the other, is overcome because both moral equality and physical inequality find their origin in God's will and his

72 *Op* 29:584; 2:1100.

73 *Op* 53:554.

74 *Op* 26:321; 34:658.

75 *Op* 2:199; 231.

76 *Op* 51:799ff.; 36:400.

providential government of the world.⁷⁷ Because all human beings are subject to the moral law of benevolence, both equality and inequality are closely aligned to the duties emanating from the moral law. Furthermore, the inequality between people does not uproot the interrelatedness of humankind as a whole, because all of them are subject to the governance of the political authorities they are subject to. On the other hand 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 it takes into account both the moral equality of human persons as well as their respective inequalities in wealth, abilities and responsibilities. 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 the differences between them.

Calvin's application of the Ciceronian perspectives on moral duty and the rights flowing therefrom, 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 often subjected to the whims and fancies of the majority. Furthermore, says Calvin, unchecked liberty introduces a turbulent element into society: *turba este turbulenta* – the state is divided into factions which could seriously destabilise the political order.⁷⁸

Calvin's views on the moral law, rights and the social solidarity of society, were formulated with a view to give a clear statement of the nature of the objective law, the nature of the power of political authorities and to provide for the subjective rights of individuals in

77 *Op* 26:321; 51:801 & 34:659.

78 *Op* 25:635; 35:150.

civil society. The subjective rights of individuals – whether it is the right to life, the right to property or the right to liberty – are limited by the moral duties of the bearers of such rights towards others, the accompanying rights others have as a consequence of the duties others 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 and 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 idea of political society grounded on social solidarity and based on the principle of the mutual inter-dependence of political rulers and subjects – both as individuals and as social entities - has the positive implication that the subjective rights of individuals in the state are not elevated above the rights 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.

4. Conclusions

Cicero's view that because all men are subject to one law and so are fellow-citizens, they must be in some sense equal, had vast implications for social life and the political ordering of society. Cicero's position that equality is a moral requirement rather than a fact, served as the ethical basis of equality undergirding the framework of his political views. The implication is that a state cannot exist permanently, or at least cannot exist in any but a cripple condition, unless it depends upon, and acknowledges, and gives effect to the consciousness of mutual obligations and the mutual recognition of rights that bind its citizens together. The immediate effect 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 to supply its members with the advantages of mutual aid and just government, is described by Cicero as follows: The commonwealth is the people's affair; and the

people is not every group of persons, associated in any manner, but is the coming together of a considerable number of persons who are united by a common agreement about law and rights and by the desire to participate in mutual advantages.

Cicero's views on the state as a corporate institution grounded on moral considerations, postulate a natural law paradigm for subjecting the positive law of the state to ethical considerations of a transcendent nature. It also broadens the people's involvement in the political life of the state. To Cicero the state exists as a corporate body, membership is possessed by all its citizens and it supplies 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 with the powers (and rights) to preserve itself. Secondly, the lawful exercise of political power by the people necessitates political offices 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.

Cicero's ideals of the state subject to law in particular, and its functioning as a corporate entity based on moral duties of mutual benevolence impacted strongly on the political and legal theories of later ages and soon 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 views on the participation of the individuals in the life of the state, 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 for Luther and Calvin to develop their theoretical perspective on rights, justice and the fundamental duties essential for human intercourse. Cicero's statements on the fundamental moral law inherent to human personhood and moral duty as the precondition for fundamental

rights, arguably served as the 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 were probably the most important legacies 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. Roman authors like Seneca and Cicero, together with the interpretations of their views, and those of the Church Fathers and the Medievalists, contributed towards the development of Reformational views on natural rights based on fundamental moral duties. It also provided them with the moral context for law and politics transcending the narrow enclaves of legalism, moral relativism and crude individualism.

Moral 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 and for the legal interaction in the state. The core-virtue for social well-being according to Cicero and the early Reformers 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. Social benevolence stands in opposition to the idea that moral choices are deemed to be private affairs and that the foundations of political society are aimed at supporting individual autonomy and self-seeking choices of its 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, 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 function as the core-virtue all of public and private life should reflect. 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 right.

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. 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 is the universalising of private virtue through benevolent responsiveness to others and for giving 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, projects a public image of benevolent solidarity sensitive towards the inter-dependence of individuals and social institutions. It transcends the notion of self-seeking individualism in the legal order; it projects the ideal of deflating individual autonomy and a commitment for universalising the social aims 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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