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C. Scott Pryor

Campbell University School of Law, pryors@campbell.edu

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GOD'S BRIDLE: JOHN CALVIN'S APPLICATION OF NATURAL LAW

C. Scott Pryor*

INTRODUCTION

Natural law has made a comeback in legal philosophy.¹ The revival of natural law thinking in the legal academy began about thirty years ago and has managed to gain a seat at the table in current jurisprudential discussions. Defining natural law, Brian Bix declares that it “claims that there are fundamental and evaluative connections between the universe, human nature, and morality.”² These connections need not have a Christian or even a theistic foundation. A belief in moral realism, that is, the propositions that “(1) there is an objective reality, (2) human beings can know something about it, and (3) there are some things that everyone can, and some things that everyone ought to, do in response to what they know,”³ ties together theistic and non-theistic versions of natural law. Yet many prominent contemporary natural law theorists—J. Budziszewski,⁴ John Finnis,⁵ Robert George,⁶ and Russell Hittinger⁷—are Roman Catholic. Despite the fact that

* Professor of Law, Regent University School of Law. J.D. 1980, University of Wisconsin Law School; M.A. 1997, Reformed Theological Seminary. I wish to thank Allen Smith for his editorial assistance and Glenn Hoshauer for his research assistance and suggestion for the title. Byron Curtis and David VanDrunen provided valuable comments and suggestions on the substance of this piece. I also wish to thank Michael Schutt and the Institute for Christian Legal Studies for providing the opportunity for my initial presentation of the material which has become this article.

1. See J. Stanley McQuade & Richard T. Bowser, *Marketing Natural Law: An Over-Debated and Undersold Product*, 27 Campbell L. Rev. 187, 188 (2005) [hereinafter McQuade & Bower, *Marketing Natural Law*] (“There has been a considerable resurgence of interest in Natural Law theory among lawyers in general . . .”).

2. Brian Bix, *On the Dividing Line Between Natural Law Theory and Legal Positivism*, 75 Notre Dame L. Rev. 1613, 1614 (2000).

3. Thomas C. Folsom, *The Restatement of the Obvious: Or, What's Right Got To Do With It? Reflections on a Business Ethic for Our Times*, 16 Regent U. L. Rev. 301, 315 (2004).

4. J. Budziszewski, *Written on the Heart: The Case for Natural Law* (InterVarsity Press 1997) [hereinafter Budziszewski, *Written on the Heart*].

5. John Finnis, *Natural Law and Natural Rights* (Oxford U. Press 1980).

6. Robert P. George, *In Defense of Natural Law* (Oxford U. Press 1999).

7. Russell Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World* (ISI Books 2003) [hereinafter Hittinger, *The First Grace*].

Finnis and George develop their natural law arguments without reference to any metaphysical states of affairs or transcendent truth claims, natural law continues to be associated with Thomas Aquinas and the subsequent scholastic tradition. Thus, even standards that Finnis and George derive from the internal rationality of law strike some as disguised theology.⁸

Relatively few legal scholars have adopted an explicit natural law approach. It seems that most legal academics find unattractive an approach that asserts that moral truths can be derived from the nature of the universe or abstract "human nature."⁹ And evaluation of legal standards in terms of a putative divine order is certainly out of bounds.¹⁰ Lack of enthusiasm from those committed to a full-blown, narrowly understood positivism is not surprising. After all, if moral realism is rejected out of hand and law is presumed to be only convention, there is little room for natural law, whether transcendent or imminent. Inclusive positivists like H.L.A. Hart admit that natural law exists, but only because some participants in the legal system believe in natural law, and any descriptive theory of law must take the participants' views into account.¹¹ Nonetheless, even Hart's evaluation of law remains descriptive; there is no source of evaluation of the law outside of the participants themselves. Questions of law's normativity, that is, how the law measures up against a meta-legal standard, are outside the scope of the positivist's project. Consequentialists who evaluate positive law from the standpoint of its efficiency are natural law thinkers of a sort but are rarely identified as such. Perhaps the difference between immanentistic natural law theorists like Finnis and consequentialists like Richard Posner is that the former evaluate "natural" from the ends or goals of human life in general and the latter from the purportedly empirical standard of the individual human being as a wealth-maximizing animal.¹²

8. See e.g. Peter M. Cicchino, *Reason and the Rule of Law: Should Bare Assertions of "Public Morality" Qualify as Legitimate Government Interests for the Purposes of Equal Protection Review?*, 87 Geo. L.J. 139, 157, 162, 164 (1998) (classifying the natural law jurisprudence of John Finnis as "theology" and "essentially the same [] as that made by the Roman Catholic Church").

9. See e.g. Alf Ross, *Validity and Conflict Between Legal Positivism and Natural Law*, in *Normativity and Norms: Critical Perspectives on Kelsenian Themes* 147 (Stanley L. Paulson & Bonnie Paules eds., Oxford U. Press 1998).

10. See Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* 9 (BasicBooks 1993) ("[O]ur public culture more and more prefers religion as something without political significance, less an independent moral force than a quietly irrelevant moralizer, never heard, rarely seen.").

11. See generally H.L.A. Hart, *The Concept of Law* (2d ed., Oxford U. Press 1994).

12. See e.g. Richard A. Posner, *Economic Analysis of Law* 3-4 (5th ed., Aspen L. & Bus.

The positivist's reluctance to measure the law against any external standard and the consequentialist's reduction of that standard to efficiency are not universally shared by advocates or courts. Almost everyone wants to evaluate the law from some more fundamental perspective or a prior premise.¹³ The currently unresolved and frequently unarticulated question is by what prior premises the law should be judged.¹⁴

The failure of most explicitly Protestant legal academics to follow the natural law trails articulated by Catholic thinkers or to develop a distinctively Protestant approach is puzzling.¹⁵ Assuming that their Protestant theological convictions are deeply held, there might be several reasons why this is the case. One might be satisfaction with one of natural law's competing philosophies, particularly consequentialism. Consequentialism in the form of law and economics appeals to many, including those who believe that values apart from wealth maximization are important.¹⁶ After all, focusing on the efficiency of legal rules works well to explain and critique legal rules in many fields of private law.¹⁷

Another reason why this may be the case is the negative or at least skeptical attitude of some leading Protestant theologians and their epigones toward natural law.¹⁸ Catholic legal thinkers can appropriate

1998) ("The task of economics . . . is to explore the implications of assuming that man is a rational maximizer of his ends in life, his satisfactions—what we shall call his 'self-interest.'"); Richard A. Posner, *Legal Reasoning from the Top Down and the Bottom Up: The Question of Unenumerated Constitutional Rights*, 59 U. Chi. L. Rev. 433 (1992) (rejecting policy ("top down") arguments in constitutional interpretation because they are indeterminate).

13. See e.g. Hittinger, *The First Grace*, *supra* n. 7, at xvi ("Yves Simon has usefully proposed that the theories and ideologies of natural law seek to discover or assert the 'prior premises' of human law.").

14. A number of sets of such premises have been deployed in the Western world. Citing the Supreme Court's decision in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), Hittinger describes the currently reigning paradigm—maximal individual autonomy: "the Casey Court folds the positive law into the principle of a natural right. The absence of legislative power [e.g., to regulate abortion] is established by *the right of the individual to be self-norming.*" Hittinger, *The First Grace*, *supra* n. 7, at xxxii (emphasis added). Yet, individual autonomy is not and certainly has not been the only premise of legal evaluation. Natural law in one form or another has a far longer pedigree in the West as the source of law's prior premises.

15. Harold Berman is one of the few exceptions to the general rule that Protestant legal academics fail to make significant use of the concept of natural law. See e.g. Harold J. Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Harv. U. Press 2003).

16. See e.g. Stephen M. Bainbridge, *Law and Economics: An Apologia*, in *Christian Perspectives On Legal Thought* 208, 212 (Yale U. Press 2001) ("To be clear, I am not arguing that a godly society promotes wealth maximization at all costs.").

17. *Id.* at 223 ("[A] Christian legal scholar may rely on both positive and normative economic analysis with confidence that it is both a powerful analytic tool and one that is consistent with his or her walk with God.").

18. See e.g. Karl Barth, *No!*, in *Natural Theology* 65 (Peter Fraenkel trans., The Centenary

the analytical tools of a long tradition of sophisticated theological analysis of natural law, with or without attribution. In contrast, some Protestant theologians, particularly twentieth-century thinkers in the Reformed tradition, have eschewed the concept of natural law.¹⁹ For whatever reasons, Protestant legal scholars have tended to remain apart from any revival of natural law thinking.²⁰

In light of the reluctance of the wider Christian community to work from the natural law tradition, several writers have attempted to recast natural law in way that would have broader appeal across the range of Christian traditions. J. Budziszewski, then an Episcopalian, wrote *Written On the Heart* in 1997 in which he surveys the natural law tradition with special attention to the views of those outside the Catholic tradition.²¹ The Catholic Russell Hittinger wrote *The First Grace* in 2003 and, while he works from within a distinctively Catholic perspective on natural law, Hittinger took pains to relate natural law to the distinctives of Protestant thought.²² Despite the efforts of Budziszewski and Hittinger, questions remain whether there is a fundamental division between natural law and Protestant theological sensibilities. Is natural law a concept like the Trinitarian nature of God that Catholics and Protestants share, or is it like the doctrine of

Press 1946) [hereinafter Barth, *No!*]; August Lang, *The Reformation and Natural Law*, in *Calvin and the Reformation: Four Studies* 56 (William Park Armstrong ed., Fleming H. Revell Co. 1909).

19. See e.g. Karl Barth, *Church Dogmatics* IV.1 140 (T & T Clark 1932):

Sin is man's denial of himself in the face of the grace of His Creator. It is not directed against a so-called law of nature. There is no law of nature which is both recognizable as such and yet also has divine character and authority. There is no law and commandment of God inherent in the creatureliness of man as such, or written and revealed in the stars as a law of the cosmos

See also Jacques Ellul, *The Theological Foundation of Law* 8 (Seabury Press 1960) (“[T]he incredible difficulties this new natural law must face . . . are, in my opinion, insurmountable.”). Other Protestant theologians have largely ignored the topic of natural law. See e.g. Charles Hodge, *Systematic Theology* (Scribner's 1871); Louis Berkhof, *Systematic Theology* (W.B. Eerdmans Pub 1938); Thomas C. Oden, *Systematic Theology* (Harper & Row 1989); Wayne Grudem, *Systematic Theology: An Introduction to Biblical Doctrine* (Zondervan Publ. House 1994).

20. Samuel W. Calhoun, *Grounding Normative Assertions: Arthur Leff's Still Irrefutable, But Incomplete, "Sez Who?" Critique*, 20 *J.L. & Religion* 31 (2004-05); William J. Stuntz, *Book Review: Christian Legal Theory*, 116 *Harv. L. Rev.* 1707 (2003) (reviewing *Christian Perspectives on Legal Thought*).

21. Budziszewski, *Written on the Heart*, *supra* n. 4, at 95-133 (John Locke), 207-212 (John Calvin & Martin Luther).

22. See e.g. Hittinger, *The First Grace*, *supra* n. 7, at xli-xliii (connecting Pope John Paul II's teaching about “participated theonomy” in his 1993 encyclical *Veritatis Splendor* with the Dutch Reformed doctrine of “sphere sovereignty” articulated by Abraham Kuyper in his *Lectures on Calvinism* delivered at Princeton in 1898).

justification by faith alone which continues to divide them?²³ And even if Catholics and Protestants can share the concept of natural law, can they consistently deploy it while being in harmony with their respective traditions?

Answers to both questions can be found in the writings of the theological grandfather of Reformed theology, John Calvin.²⁴ Calvin's magnum opus, the *Institutes of the Christian Religion*,²⁵ contains a number of positive references to natural law, the law of nature, or the like.²⁶ In his commentaries, Calvin makes even more use of natural law.²⁷ In addition to these express statements, Calvin presupposed the validity of natural law in his discussion of the state. However, even assuming that Calvin's imprimatur of natural law carries some weight with Protestant legal scholars,²⁸ the question of whether Calvin's use of

23. Despite the substantial efforts by the Worldwide Lutheran Federation and the Roman Catholic Church culminating in *The Joint Declaration on the Doctrine of Justification* in 1999, the competing understandings of justification have not been resolved. See Ted M. Dorman, *The Joint Declaration on the Doctrine of Justification: Retrospect and Prospects*, 44 *J. Evangelical Theol. Socy.* 421 (2001).

24. The choice of John Calvin (1509-64) as opposed to, say, Martin Luther, is not arbitrary. The theological and cultural influence of Calvin far exceeded that of any other reformer. See e.g. Philip Benedict, *Christ's Churches Purely Reformed: A Social History of Calvinism* xv (Yale U. Press 2002) ("Although Martin Luther towered over the initial decades of the Reformation, Calvinism superseded Lutheranism within a generation as the most dynamic and widely established form of European Protestantism.")

25. John Calvin, *Institutes of the Christian Religion* (John T. McNeill ed., Ford Lewis Battles trans., Westminster Press 1960) (1559) [hereinafter Calvin, *Institutes*].

26. See e.g. Calvin, *Institutes* supra n. 25, at I.xvi.3 ("law of nature"), II.ii.22, II.viii.1, IV.xx.16 ("natural law"). See also Susan E. Schreiner, *The Theater of His Glory: Nature and Natural Order in the Thought of John Calvin* 77 (Labyrinth Press 1991) [hereinafter Schreiner, *Theater of His Glory*]:

In comparison with the medieval tradition, Calvin's discussions of natural law seem imprecise and unsystematic Nonetheless, he took over the traditional terminology and referred (sometimes interchangeably) to the "ius aequum," "lex naturae," "lex naturalis," and "ius gentium." . . . Often Calvin referred simply to "common sense," the "dictates of nature," or simply "nature." . . . [T]hroughout his writings, Calvin emphasized the efficacy of such natural insight. Two of Calvin's most extensive statements regarding natural law are his comments on Romans 2:14-15 and the *Institutes* II.8.1

27. See *infra* text accompanying nn. 126 & 140. See also I. John Hesselink, *Calvin's Concept of the Law* 52 (Pickwick Publications 1992) [hereinafter Hesselink, *Calvin's Concept of Law*] (citing references to natural law in Calvin's commentaries); Arthur C. Cochrane, *Natural Law in Calvin*, in *Church-State Relations in Ecumenical Perspective* 176, 181 (Elwyn A. Smith ed., Duquesne U. Press 1966) [hereinafter Cochrane, *Church-State Relations*]

Calvin's writings, especially his commentaries on the Pentateuch and his sermons on the Book of Deuteronomy and the Book of Job, are so full of references to *ius naturae*, *lex naturae*, *ordo naturae*, *sensus naturae*, *communis sensus*, to conscience, reason and experience, that the subject [of natural law] cannot be brusquely dismissed.

28. Drawing on Calvin's works, I have concluded that he had a positive view of natural law. See *infra* text accompanying nn. 124-142. This conclusion has been contested. See e.g. Karl Barth, *No!*, supra n. 18. In addition to Calvin himself, my position finds support among a number

the term natural law in the sixteenth century is consistent with the articulations of either Budziszewski or Hittinger today must be answered.²⁹ To set the stage for this analysis, I will compare the natural law analyses of Budziszewski and Hittinger. Then I will consider the place, foundations, and utility of the natural law in Calvin's thought. I will conclude by discussing whether the common moral realism of Budziszewski and Hittinger and those who agree with Calvin is a sufficient platform for joint Catholic and Protestant natural law reasoning.

BUDZISZEWSKI AND HITTINGER: DIFFERING EMPHASES WITHIN A COMMON TRADITION

We will begin with Hittinger because, standing within the Roman Catholic Church, we initially suppose his discussion of natural law as more problematic from a Protestant perspective. Hittinger sets as his initial task the reintegration of natural law into moral theology, admitting that "the idea of natural law in the Catholic tradition has only recently, and as an aberration, been developed as a concept completely detached from theology."³⁰ How, one might ask, could anything in the Catholic tradition, particularly something as historically significant as natural law, become "detached from theology?" Over the course of his first chapter, Hittinger argues that over the past fifty years, Catholic moral theologians have succumbed to the reconfiguration of natural law in various Enlightenment state of nature scenarios. Rather than continuing to understand natural law to be founded in God's providence, many contemporary Catholics now take natural law as an autonomous imposition by humanity on the order of their social existence:

[t]he natural law becomes "temporal," the temporal becomes "secular," and the secular becomes the sphere in which human agents enjoy immunity from any laws other than those they impose

of well-regarded contemporary scholars. See e.g. Richard A. Muller, *The Unaccommodated Calvin: Studies in the Foundation of a Theological Tradition* (Oxford U. Press 2000); Susan E. Schreiner, *Calvin's Use of Natural Law*, in *A Preserving Grace: Protestants, Catholics, and Natural Law* 51 (Michael Cromartie ed., W.B. Eerdmans Publ. Co. 1997).

29. As Alessandro d'Entrèves noted:

There can be no greater delusion than to believe that the history of these notions [of natural law] may be written by simply drawing up a list, as careful and complete as possible, of all the references to them which can be found in political writers. The formal continuity of certain expression is not the decisive factor: the same notion may have had very different meanings and have served entirely different purposes.

A.P. d'Entrèves, *Natural Law: An Introduction to Legal Philosophy* 9-10 (Hutchinson's U. Lib. 1951) [hereinafter d'Entrèves, *Natural Law*].

30. Hittinger, *The First Grace*, *supra* n. 7, at 3.

upon themselves.³¹

Natural law is no longer “law” but a source of “immunities against the order of law.”³²

Hittinger addresses himself to the restoration of the providential foundation of natural law by distilling it into three orders: “order in nature, order in the human mind, and order in the divine mind.”³³ While this set of prior premises of natural law can be viewed through the lens of each individual perspective, Hittinger’s fundamental perspective on natural law is as order in the divine mind, i.e., as an “ordinance of a divine lawgiver.”³⁴ Natural law is grounded in the mind of God and only subsequently impressed on created reality and the human mind. Natural law was not only part of the original creation order, it “continues as an expression of divine providence.”³⁵ Following Pope John Paul II, Hittinger downplays the traditional *locus classicus* of natural law, *Romans 2:14-15*, in order to emphasize the divine origin of natural law over its human reception.³⁶ Appearing with the creation, and thus before God’s work of redemption, natural law qualifies as “the first grace.”³⁷ Hittinger largely avoids discussion of potentially contentious topics such as the *telos* or goal of human life, the list of natural and supernatural virtues, the nature of being in general, how the human intellect participates in the divine, and the teaching authority of the Catholic magisterium.

While hewing closely to classical Thomistic reasoning and conclusions, Hittinger presents them in a way to allay Protestant concerns that to accept the possibility of natural law moral reasoning would be disloyal to their own traditions.³⁸ In short, Hittinger works to

31. *Id.* at 14-15. We will see that grounded natural law in providence will be an important point of contact between the understandings of Hittinger and Calvin. See *infra* text accompanying nn. 104-123.

32. Hittinger, *The First Grace*, *supra* n. 7, at 14.

33. *Id.* at xvi.

34. *Id.* at 4 (noting that natural law can be described from the perspectives of order in nature (natural law as the external-empirical) and order in the human mind (natural law as the internal-subjective)). See *infra* n. 90 for Calvin’s agreement with the priority of order in the divine mind.

35. Hittinger, *The First Grace*, *supra* n. 7, at 5.

36. *Id.* at 40:

The encyclical [*Veritatis Splendor*] gives only passing attention to the well-known proof text in *Romans 2:14* (“The gentiles who had not the law, did naturally things of the law”); but repeated reference is made to the second chapter of *Genesis* . . . Rather than making the issue of natural law rest principally on what people know (or do) independent of the divine positive law, the passage in *Genesis* raises the more basic theological issue of how to characterize divine governance prior to *Torah* . . .

37. The title of Hittinger’s book is taken from the so-called Second Council of Arles (c. 473) in which natural law is for the first time so described. *Id.* at xi.

38. While Hittinger castigates Protestants who too quickly deny the efficacy of natural law

reconnect natural law to orthodox Christian theology of creation and providence.³⁹ Hittinger defends and applies the use of natural law in connection with several contentious issues including the relationship of natural law to adjudication and legislation, assisted suicide, and the place of religion in the public square.

Budziszewski is not a lawyer and *Written on the Heart* is written for a popular audience. Given his Protestant orientation it is not surprising that Budziszewski gives significant attention to an exegetical foundation for natural law.⁴⁰ In contrast to Hittinger, Budziszewski first emphasizes the cognitive aspect of natural law: How can those who have never heard the Christian account of creation or the moral law explicated in Scripture know it? His answer relies on the Christian understanding of general revelation.⁴¹ And of the various forms of general revelation,⁴² Budziszewski chooses to focus on the human conscience, the law “written on the heart.”⁴³ Budziszewski revealed his Protestant sensibilities by next noting the epistemic effects of sin and downplaying the utility of this internally inscribed law:

Rather than accepting God as our god, we want to be gods to ourselves (Genesis 3:1-6). To do this we “hold down” . . . the truth—we pretend to ourselves that we do not know what we really do know Persistence in such pretense darkens or perverts

due to an overemphasis on an “epistemology of sin,” he agrees that the overemphasis on the orders of nature and the human mind by secularists and some contemporary Catholic writers is “contrary to the gospel.” *Id.* at 33-34.

39. Hittinger devotes a full chapter to grounding natural law as the ordinance of a divine lawgiver, not the autonomous imposition of the human mind on a uninterpreted natural order. *Id.* at 39-62.

40. Budziszewski, *Written on the Heart*, *supra* n. 4, at 179-186 (concluding with the remark that “[o]ur analysis must be anchored in God’s Word.”). Subsequent to writing *Written on the Heart*, Budziszewski was received into the Roman Catholic Church. See Ignatius Insight, *Objections, Obstacles, Acceptance: Interview with J. Budziszewski*, http://www.ignatiusinsight.com/features2005/jbudziszewski_int1_feb05.asp (Feb. 2005) (originally printed in 14 *Cath. World Rpt.* 50 (Jan. 2005)).

41. Budziszewski, *Written on the Heart*, *supra* n. 4, at 180 (“In contrast to special revelation, provided by God to the community of faith, this may be called *general* revelation because it is provided by God to all mankind.”) (emphasis in original).

42. Budziszewski acknowledges five forms of general revelation: “(1) the testimony of creation . . . ; (2) the fact that we are made in the image of God . . . ; (3) the facts of our physical and emotional design . . . ; (4) the law of conscience . . . ; (5) the order of causality.” *Id.* at 180-181.

43. *Id.* at 181. Budziszewski’s emphasis on the conscience corresponds most closely to Hittinger’s category of order in the human mind. Budziszewski also identifies categories of natural revelation that correspond to the category of order in nature. While he doesn’t identify a category like order in the divine mind, there can be little doubt that Budziszewski believes such to be the case.

such natural knowledge as God has given us.⁴⁴

Budziszewski goes on to assert that acknowledgment of the natural law is an act of faith.⁴⁵ Human beings can't not know the natural law but they can suppress it and refuse to acknowledge its existence.

Of what use is natural law for Budziszewski? How can appeals to natural law function when many suppress their knowledge of it? Budziszewski replies that "[t]he main use of general revelation, including the natural law, is apologetics: giving a reason for the hope that lies within us."⁴⁶ Giving a reason to whom? Certainly those who suppress their knowledge of natural law, which Budziszewski clarifies by noting that among the purposes of apologetics is its moral use: "to leaven the civil law we share with our nonbelieving neighbors."⁴⁷ Budziszewski believes that the commonly known but regularly unacknowledged law written on the heart provides a point of contact regardless of the mixed faith commitments in a modern secular polity. Natural law in the political realm is thus primarily a tool for crafting a civil order in which those who know God's revealed will can express it in ways that can gain a hearing in the public square.⁴⁸

CALVIN AND NATURAL LAW

Hittinger and Budziszewski provide modern Protestant legal thinkers with differing perspectives on natural law. In turn, their perspectives raise several questions about natural law. Where is the foundation of natural law? Is it first in the divine order or in the orders of creation, whether nature or the human mind? And how should we understand the effects of sin on the order of the mind be understood? Is natural law, regardless of the order on which it is grounded, an independent basis on which to frame a civil polity or is it a tool by which the specially revealed order can be made more understandable to a post-Christian world?

44. *Id.* at 182.

45. *Id.* at 183 ("[I]t is a far cry from knowing something to acknowledging it, and the human race has been in the condition psychologists call 'denial' ever since the Fall. Acknowledging what we really know is now an act of faith.").

46. *Id.* at 184.

47. *Id.*

48. *Id.* at 183-184:

There is a natural law, and it can be known and philosophically analyzed. But that which is beside the Scripture can be vindicated only with the help of Scripture; that which is revealed before the gospel can be secured against evasion only in the light of the gospel. The doctrine of natural law is best grounded not in the study of nature independent of God's Word but in the Word of God itself.

John Calvin may seem to be an inappropriate resource for considering the answers to these questions. Because Calvin wrote in a premodern time before the turn to epistemology in philosophy and in an age when the verities of the Christian religion were nearly universally accepted, one could easily conclude that Calvin's work would provide little light on currently contested issues. But a canvass of his writings will prove useful, particularly to Protestants who see little value in natural law. Before addressing Calvin's positions on the source and utility of natural law I will briefly situate him in the history of natural law thinking.

A. Calvin's Place in the Natural Law Tradition

Calvin's use of natural law did not represent a radical shift from the recent past.⁴⁹ While differing in some respects from the natural law analysis of Thomas Aquinas, the origins of Calvin's views are in many respects consistent with the theological developments of two hundred years earlier.⁵⁰ However, Calvin's view of several matters differed substantially from subsequent post-Thomistic writers. The late medieval trends toward nominalism and voluntarism did not figure into Calvin's theological analysis. Instead, we can observe connections with parallel Renaissance intellectual trends as well as consistency with Thomistic natural law thinking.

John Calvin was born in 1509,⁵¹ nearly three hundred years after Thomas Aquinas (1225-74), whose *Summa Theologica* represented the culmination of scholastic theological expression.⁵² Thomas's works were characterized by the logical organization of Biblical doctrine, drawn largely from Augustine as mediated through Peter Lombard, in terms of Aristotelian principles.⁵³ Aquinas believed that the

49. See Paul Helm, *John Calvin's Ideas* 2 (Oxford U. Press 2004) [hereinafter Helm, *Calvin's Ideas*] (“[R]esearch into the medieval tradition, particularly into the world of late medieval Augustinianism, . . . shows it to be much more multiform than previously thought and to contain strands congenial to the incipient Reform movement . . .”).

50. See generally *id.* at 1-2 (repudiating Calvin as the rejecter of Catholic medieval traditions).

51. See Kenneth Scott Latourette, *A History of Christianity: Reformation to the Present* vol. 2, 751 (Hendrickson Publishers 1999) (originally published 1953).

52. See d'Entrèves, *Natural Law*, *supra* n. 29, at 39 (“Although Thomist philosophy was at first bitterly opposed by contemporary schools of thought, it finally won the battle. It has remained ever since the most authoritative expression of what may well be called the Catholic view of life.”).

53. See I.C. Brady, *Scholasticism*, in 12 *New Catholic Encyclopedia* 757, 761 (Bernard L. Marthaler et al. eds., Thomson/Gale 2003) (“For Thomas Aquinas, the basic problem was to discover how as a Christian scholar he could order anew the whole structure of Christian wisdom in such a way that pagan [Aristotelian] philosophy would be made tributary to the Christian

deliverances of reason and divine revelation were consistent.⁵⁴ But at least two characteristics of Aquinas's thought would later stand in tension with Calvin's positions.⁵⁵ First, Thomas stated that the relationship between the human and the divine was one of participation. Nothing in Calvin's writings suggested that he shared Thomas's belief⁵⁶ in a metaphysical continuity or chain of being from God through man to all of creation. Second, Thomas specified human participation in the divine in terms of the faculty of reason.⁵⁷ Participation in reason provided the epistemic counterpart to metaphysical participation in being and Calvin made no more use of the former than the latter. Following Renaissance trends, Calvin rejected the Aristotelian philosophy which underlay both metaphysical and epistemic participation in favor of a simpler Biblical form of analysis that avoided most philosophical speculation.⁵⁸ Notwithstanding differences in their modes of analysis, Calvin and Thomas reached substantially similar conclusions with respect to the dependence of natural law on God.⁵⁹

faith.”).

54. See Thomas Aquinas, *On the Truth of the Catholic Faith: Summa Contra Gentiles* 1.7 (Anton C. Pegis trans., Image Books 1955) (1259-64):

The natural dictates of reason must certainly be quite true: it is impossible to think of their being otherwise. Nor again is it permissible to believe that the tenets of faith are false, being so evidently confirmed by God. Since therefore falsehood alone is contrary to truth, it is impossible for the truth of faith to be contrary to principles known by natural reason.

See also William C. Placher, *A History of Christian Theology: An Introduction* 153 (The Westminster Press 1983) [hereinafter Placher, *A History of Christian Theology*] (“If Thomas distinguished between truths known through reason and those known through revelation, he did not think that reason and revelation can ever contradict each other, since both come from God. . . . Revelation . . . does not contradict revelation but adds to it.”).

55. See generally R.S. Clark, *Calvin on the Lex Naturalis*, 1998 *Stulos Theol. J.* 1, 3-4.

56. See e.g. Thomas Aquinas, *Summa Theologica* Ia.3.5, Ia.5.1, Ia.5.2 (Fathers of the English Dominican Province trans., Christian Classics 1948) (1273) [hereinafter Aquinas, S.7].

57. *Id.* at Ia.91.1-2. See also J.A. Weisheipl, *Thomism*, in 14 *New Catholic Encyclopedia* 40, 42 (Bernard L. Marthaler et al. eds., 2d ed., Thomson/Gale 2003) (“The unique substantial form of man is his rational soul. . . .”); Heiko Oberman, *The Harvest of Medieval Theology: Gabriel Biel and Late Medieval Nominalism* 90 (W.B. Eerdmans Pubg. Co. 1967) [hereinafter Oberman, *Medieval Harvest*]:

In view of the “intellectualism” of Thomas Aquinas, it is not surprising that for him God’s will is only a partner in the operation of the intellect in establishing the hierarchy of eternal law, natural law and positive law. In his eyes it would be blasphemous to assert that justice would ultimately depend on the will of God, as this would imply that his will would not operate according to the order of wisdom.

58. See *infra* text accompanying n. 84.

59. See Allen Verhey, *Natural Law in Aquinas and Calvin*, in *God and the Good* 80, 84 (Clifton Orlebeke & Lewis Smedes eds., W.B. Eerdmans 1975) (“Both Thomas and Calvin see the natural law as dependent on a reality of meaning and value built into the world by God’s purposeful creating and sustaining power. . . . [F]or both the wisdom of God establishes the purposes of God. They are not merely a matter of arbitrary will.”).

In the century after Aquinas's death, the tide of medieval philosophy turned toward nominalism, terminism, and voluntarism. With William of Ockham (c. 1278-1347), nominalism broke the connection of intellectual participation between human beings and God. Thomas's epistemology had presumed that human knowing was grounded in rational participation in the divine "real" idea.⁶⁰ Thus, Thomistic realism maintained that human ideas ultimately derived from matters in heaven. Everything earthly was analogous to a divine idea. Nominalism denied realism and limited itself to the perspectives that Hittinger describes as order in the human mind. Logic, the tool of reason, was no longer the means of identifying the analogy between the objects of perception and the mind of God. Instead, logic was primarily concerned with relationships between the language or terms of perception and the human mind (thus, terminism).⁶¹ Epistemic realism was weakened and with it weakened the concept of participation as the justification for truth claims. Of course, truth claims could still be made; but they were reduced to the content of the faith (revelation) and what Kant would later call analytic statements. The retreat of realistic metaphysics and participation epistemology also led to the waning of medieval intellectualism. Without reason as the point of contact between God and humanity, Ockham and his followers turned to the will of God as the only basis for truth (thus, voluntarism). Voluntarism emphasized the independence of God's will from any cause, including his being, nature, or knowledge. The nominalists did not deny that there was a natural law; however, the natural law bound as *law* only because God's will imposed it on a created humanity.⁶² The intrinsic correlation of the orders of the divine mind, nature, and the human mind was severed.

Nominalism (the *via moderna*)⁶³ would have composed a substantial part of Calvin's philosophical education while he was a

60. See Aquinas, S.T., *supra* n. 56, 2a.91.1 (citing *Proverbs* 8:23 for the eternity of divine law).

61. See T.H.L. Parker, *John Calvin: A Biography* 11 (Westminster Press 1975) [hereinafter Parker, *Biography*] ("Terminist logic was . . . concerned with the analysis of language, or rather, with the analysis of the relationship between language about objects, the mental conception of the object, and the object itself.").

62. See John Kilcullen, *Natural Law and Will in Ockham*, in *A Translation of William of Ockham's Work of Ninety Days* vol. 2, 851 (John Kilcullen & John Scott trans., Edwin Mellen Press 2001).

63. See David VanDrunen, *The Context of Natural Law: John Calvin's Doctrine of the Two Kingdoms*, 46 *J. Church & St.* 503, 506, 508-509 (2004) [hereinafter VanDrunen, *Context of Natural Law*] ("The traditional division of late medieval theology into two distinct and competing schools, the realist, intellectualist *via antiqua* and the nominalist, voluntarist *via moderna* is familiar to scholars of this period.").

student at Paris.⁶⁴ Yet we must be careful to distinguish Calvin's ultimate theological positions from nominalism and voluntarism in general and terminism in particular. Terminist logic games are absent from the *Institutes*.⁶⁵ Instead, the *Institutes* begin with Calvin's confident declaration that "[n]early all the wisdom we possess, that is to say, true and sound wisdom, consists of two parts: the knowledge of God and of ourselves."⁶⁶ As T.H.L. Parker notes:

a complete intellectual reversal [was] necessary before [Calvin] could confidently and joyfully understand that knowledge was relationship between subject and object . . . and that the intellect, far from moulding the object, is itself formed to the capacity of the knowledge of the object by the object itself.⁶⁷

Calvin certainly emphasized the importance of the will of God. He wrote in connection with the doctrine of election that "[God's] will is, and rightly ought to be, the cause of all things that are. For if it has any cause, something must precede it [and] this is unlawful to imagine."⁶⁸ Moreover, the typical Thomistic language of human participation in the divine reason is absent in his writings. Yet Calvin should not be counted a voluntarist. He heartily rejected the Ockhamist distinction between God's *potentia absoluta* (absolute power) and *potentia ordinata* (ordained power).⁶⁹

The distinction between God's absolute and ordained powers can be traced to the early years of scholasticism. Thomas introduced his discussion of this distinction in connection with his Question 25—"The Power of God." Restating Thomas we ask: if God is omnipotent,⁷⁰ then can he do what he has not in fact done?⁷¹ Or, more to the point, can God

64. See Alister E. McGrath, *A Life of John Calvin: A Study in the Shaping of Western Culture* 21-50 (Basil Blackwell 1990) [hereinafter McGrath, *Life*]; Parker, *Biography*, *supra* n. 61, at 10-12.

65. Calvin was certainly not illogical; he freely used the Aristotelian categories of "cause" where helpful. See e.g. Calvin, *Institutes*, *supra* n. 25, at III.xiv.21; John Calvin, *Commentary on the Epistles of Paul to the Galatians and Ephesians* 201 (Ages Software 1998) (1548) (commenting on *Ephesians* 1:5).

66. Calvin, *Institutes*, *supra* n. 25, at I.i.1. See Dewey J. Hoitenga, Jr., *Faith and Reason from Plato to Plantinga: An Introduction to Reformed Epistemology* 143-174 (SUNY Press 1991) [hereinafter Hoitenga, *Faith and Reason*] (providing an extended account of Calvin's robust theory of knowledge).

67. Parker, *Biography*, *supra* n. 61, at 12.

68. Calvin, *Institutes*, *supra* n. 25, at III.xxiii.2.

69. See Helm, *Calvin's Ideas*, *supra* n. 49, at 117 ("Calvin repeatedly denies that his view of providence requires that God be understood, in accordance with that 'Sarbonic dogma', as pure will . . .; rather, in God will and wisdom are inseparably united in one simple essence.")

70. Aquinas, *S.T.*, *supra* n. 56, at Ia.25.3 ("All confess that God is omnipotent; but it seems difficult to explain in what His omnipotence consists . . .").

71. Aquinas, *S.T.*, *supra* n. 56, at Ia.25.5.

change his will with respect to the law? If the answer were yes, then order in the divine mind would be too unpredictable to ground a natural law. Law for the believer would at best be justified upon divine positive law. The orders of the human mind and nature would remain but, as Hittinger has demonstrated, such purely terrestrial orders have not proved up to the task of supplying a non-arbitrary prior premise to evaluate positive law.⁷² Thomas ultimately rejected the division between the two powers on ontological grounds. God is certainly free to do other than He has chosen but God's freedom should not be understood apart from His nature. The range of what God can conceivably do is not *ab extra*: "[w]hatever can have the nature of being falls within the range of things that are absolutely possible, and it is with respect to these that God is called omnipotent."⁷³ Consistency with God's being—not simply logical consistency—is the range of God's power. Thus variation in the natural law (reflecting order in the divine mind) is greatly limited. God cannot will today that murder is wrong and decree the opposite tomorrow.

The tight connection between the two *potentiae* dissolved following Thomas and the distinction between them became more important in dogmatic theology with nominalists.⁷⁴ For the nominalists, God's power was not limited by the unity of his nature. God could do whatever was consistent with the laws of logic. While God could not simultaneously decree that murder and preservation of life were moral goods, there would be no reason why he could not do so sequentially.⁷⁵ On the other hand, Church doctrine and scriptural revelation clearly rejected such an inordinate divine freedom. The nominalists were able to keep within the pale of orthodoxy by emphasizing another doctrine clearly taught in Scripture—covenant.

To understand how the covenant idea functioned in nominalism, the dialectic between God's *potentia absoluta*—His absolute power—

72. Hittinger, *The First Grace*, *supra* n. 7, at xxiii ("Thomas differs from modern philosophers who speak of inclination as mere physical appetite that provides the material for instrumental reason—reason as the slave of the passions.").

73. Aquinas, *S.T.*, *supra* n. 56, at Ia.25.3.

74. See Oberman, *Medieval Harvest*, *supra* n. 57, at 36.

75. As Oberman notes:

For both Biel and Thomas natural law known by the dictate of right reason is dependable and immutable. The difference appears that in the sovereign God has, according to Biel, the freedom to dispense momentarily and in particular cases with some of the commandments derived through direct revelation. This is impossible for Aquinas since all the commandments of the Decalogue are, as norms in the strictest sense of the word, a direct extension of the natural law and share therefore in its indispensability.

Oberman, *Medieval Harvest*, *supra* n. 57, at 110.

and His *potentia ordinata*—His ordained power—must be kept clearly in mind. The first represents God's absolute power and sovereignty to do whatsoever He desires free from all limitations except the law of non-contradiction. The second is God's ordained power which is the way God has freely chosen to work. Here, God is bound by laws He has imposed upon Himself. Since they are self-imposed, they are still a result of God's *potentia absoluta*. In this way, the nominalistic theologians were able to claim to hold to divine sovereignty and freedom, yet also advocate the synergistic *facientibus* principle [human merit] that obligates God to save the ones who do their best.⁷⁶

Many scholars have claimed that Calvin was greatly indebted to nominalism.⁷⁷ Yet each of them has acknowledged that Calvin rejected the sort of divine freedom exposed in nominalistic voluntarism. However, they have failed to demonstrate the continuity of Thomas and Calvin at this point. Like the nominalists, covenant was certainly important to Calvin's thought.⁷⁸ And God's covenant entailed voluntarily undertaken obligations on his part.⁷⁹ Yet Calvin emphatically rejected the voluntaristic distinction between the two *potentiae* of God in favor of the unity of his nature, thus following Thomas.⁸⁰ With respect to the nominalists' emphasis on the

76. Peter A. Lillback, *The Binding of God: Calvin's Role in the Development of Covenant Theology* 46-48 (Baker Academic 2001) [hereinafter Lillback, *Binding of God*]. See also Oberman, *Medieval Harvest*, *supra* n. 57, at 245-246:

[For nominalists] God is committed to give his grace to all who do what is in them. This does not detract from his sovereignty, since in eternity God was free to establish totally different laws; he was free to act with absolute power, the *potentia absoluta*, subject only to the law of non-contradiction or the law of consistency. Out of sheer mercy and grace, he freely decided in eternity to establish the law that he would convey grace to all who make full use of their natural capacities. Though the law as such is freely given . . . God is now committed to it, in the order chosen by him, the order of his *potentia ordinata*, and he therefore gives his grace "necessarily."

77. See e.g. David C. Steinmetz, *Calvin in Context* 40-50 (Oxford U. Press 1995); Anna Case-Winters, *God's Power: Traditional Understandings and Contemporary Challenges* 41-46 (Westminster/J. Knox Press 1990).

78. See generally Lillback, *Binding of God*, *supra* n. 76.

79. Lillback, *Binding of God*, *supra* n. 76, at 141 ("[T]he covenant for Calvin implies the self-binding of God through His Word of promise whereby He has chosen or adopted a people for Himself").

80. See Schreiner, *Theater of His Glory*, *supra* n. 26, at 34:

Calvin was eager, however, to define this power as reliable rather than as an ungoverned, cruel, or tyrannical will. His rejection of the distinction between the *potentia absoluta* and the *potentia ordinata* demonstrates this concern. Ignoring the nominalist emphasis on God's reliable commitments to his ordained *pactum*, Calvin angrily rejected this "blasphemous" separation of God's power from his justice. Such an (alleged) separation of God's attributes, he feared, would make God into a tyrant who could *de potentia absoluta* act according to a tyrannical and absolute will and could "toss men about like balls." (citation omitted) (emphasis in original).

unconstrained freedom of God, Calvin could write that:

[I]t is easier to dissever the light of the sun from its heat, or for that matter its heat from fire, than to separate God's power from His righteousness. Let these monstrous speculations be put far away from pious minds, that God should be able to do more than is proper to Him or to act without rule or reason For to make God beyond law is to rob Him of the greatest part of His glory, for it destroys His rectitude and His righteousness.⁸¹

With even more vigor, Calvin asserted that "[w]hat the Sorbonne doctors say, that God has an absolute power, is a diabolical blasphemy which has been invented in hell."⁸² God has his reasons for everything he does, including the promulgation of a moral order. Calvin acknowledged that we do not always know those reasons, but he clearly rejects voluntarism. Following Thomas, Calvin maintains that God cannot act inordinately because he can act only in conformity with his nature. There is a fundamental divine order on which to justify natural law.

Calvin's rejection of intellectualism and voluntarism is significant for his understanding of natural law. On the one hand, Calvin does not identify natural law with human reason's participation in God's eternal law. Natural law is not a reified semi-autonomous mediator between God and humanity in general. On the other hand, Calvin does not identify natural law with divine positive law; Biblical injunctions, even the Ten Commandments, are not the only resource for knowing God's law. Order in nature can be known naturally through the use of human reason. While human and divine reason are not the point of contact, they are not unrelated. The unity of God's nature insures that the natural law is not inconsistent with the divine wisdom and the divine will.⁸³

See also Helm, *Calvin's Ideas*, *supra* n. 49, at 312-323. But see McGrath, *Life*, *supra* n. 64, at 169 ("God is not a law unto himself, nor is he above the law (*ex lex*); rather, his will is the foundation of existing conceptions of morality. [Calvin, *Institutes*] III.xxiii.2. These terse statements represent one of Calvin's clearest affinities with the late medieval voluntarist tradition."). Unfortunately, McGrath leaves out the following line from the same section of the *Institutes* that undercuts his attribution of voluntarism to Calvin: "And we do not advocate the fiction of 'absolute might'; because this is profane, it ought rightly to be hateful to us. We fancy no lawless god who is a law unto himself." Calvin's rejection of voluntarism could hardly be more clear.

81. John Calvin, *Concerning the Eternal Predestination of God* 179 (J.K.S. Reid trans., paperback ed., J. Clarke 1982) (1552).

82. John Calvin, *Sermon on Job lxxxvii (on Job 23:1-7)*, in *Corpus Reformatorum XXXIV: Johannis Calvini Opera quae supersunt omnia* 339 (quoted in Calvin, *Institutes*, *supra* n. 25, at I.xvii.2 n. 7).

83. Schreiner, *Theater of His Glory*, *supra* n. 26, at 78 ("Calvin carefully maintained that in God's superiority to natural law his power is always conjoined with his justice.") (footnote omitted).

So far we have seen how Calvin rejected elements of both Thomistic and nominalistic scholastic thought. He thus discarded Thomistic realism and ignored Thomas's Aristotelian participation metaphysics.⁸⁴ He also rejected nominalism's inordinate stress on the will as opposed to the reason of God and, as we shall see, developed a strong doctrine of common grace to ground epistemic certainty.⁸⁵ Calvin's emphasis on the extent of the depravity of the human intellect distanced him from the prevailing nominalistic tradition. For Calvin, there was only one mediator between God and man—the Lord Jesus Christ—not only in the economy of salvation but also in the order of providence.⁸⁶

Calvin's understanding of natural law is embedded in a complex and interrelated matrix of theological concepts; it does not stand alone. We will therefore take an abbreviated look at Calvin's positions on human nature, the nature of human understanding and his doctrine of providence before proceeding to common grace, and finally, natural law.

B. Calvin's Ontology and Epistemology

Calvin has much to say about "nature." And what he says of nature can be divided between two uses that must carefully be distinguished. "Nature" can refer either to the fallen condition of the world or the created cosmos as such, irrespective of its moral state:

84. See John Calvin, *Commentary on the Gospel According to John 21* (Ages Software 1998) (1553) where Calvin writes with respect to Augustine's realistic epistemology:

Augustine, who is excessively addicted to the philosophy of Plato, is carried along, according to custom, to the doctrine of ideas; that before God made the world, he had the form of the whole building conceived in his mind; and so the life of those things which did not yet exist was in Christ, because the creation of the world was appointed in him. But how widely different this is from the intention of the Evangelist we shall immediately see.

85. Here too we see that Calvin was closer to Thomas, who freely acknowledged the serious impact of sin on human reasoning (see Aquinas, *S.T.*, *supra* n. 56, at IIa.85.3) than to Thomas's nominalistic successors (see Oberman, *Medieval Harvest*, *supra* n. 57, at 128-131). As Paul Helm puts it:

[O]ne cannot fail to be struck by a number of evident similarities and equally evident dissimilarities between [Aquinas'] position and Calvin's. . . . We must make a broad and rough distinction between [1] the ontological status of natural law, what natural law is, [2] its epistemological status, how it is known, and [3] thirdly, how it is to be applied. The relation between Aquinas and Calvin might roughly be expressed as one of considerable agreement about the first, of some disagreement about the second, and agreement about the third.

Helm, *Calvin's Ideas*, *supra* n. 49, at 370.

86. See Calvin, *Institutes*, *supra* n. 25, at II.xii.4 ("Of course I admit that in the original order of creation and the unfallen state of nature Christ was set over angels and men as their Head."). See generally Hesselink, *Calvin's Concept of Law*, *supra* n. 267, at 69.

Therefore we declare that man is corrupted through natural vitiation, but a vitiation that did not flow from nature. We deny that it has flowed from nature in order to indicate that it is an adventitious quality which comes upon man rather than a substantial property which has been implanted from the beginning. Yet we call it "natural" in order that no man may think that anyone obtains it through bad conduct, since it holds all men fast by hereditary right.⁸⁷

Sin was not part of the created order but the effects of sin are now part of the nature of things. God created nature good but by Adam's original sin, nature, particularly human nature, has been corrupted in all respects.⁸⁸ Nature should never be understood as possessing ontological independence. Calvin made no use of the Thomistic notion of the analogy of being common to God and humanity (the *analogia entis*). Nature at all times, in whatever state, is dependent on God's will for its continued existence. But it is also true that nature exists separately from God and the human mind and, as we shall see, can be truly known by human beings.⁸⁹

Hittinger's three orders, but especially his emphasis on the primacy of order in the divine mind for a proper understanding of natural law, resonates with Calvin. As William Keesecker puts it,

[f]ollowing the lead of Augustine, Calvin held that one source of law is to be found in nature, but maintained that natural law does not derive from humans standards but from God who originally created all things to be orderly, harmonious and good.⁹⁰

87. Calvin, *Institutes*, *supra* n. 25, at II.i.11.

88. Calvin comments that:

[I]t is pointless and foolish to restrict the corruption that arises thence [after the sin of Adam] only to what are called the impulses of the senses. . . . From this it follows that that part in which the excellence and nobility of the soul especially shine not only has been wounded but so corrupted that it needs to be healed and to put on a new nature as well.

Calvin, *Institutes*, *supra* n. 25, at II.i.9.

Original sin, therefore, seems to be a hereditary depravity and corruption of our nature, diffused into all parts of the soul. . . . [T]his perversity never ceases in us, but continually bears new fruits. . . . Those who have said that original sin is "concupiscence" have used an appropriate word, if only it be added . . . that whatever is in man from the understanding to the will, from the soul even to the flesh, has been defiled and crammed with this concupiscence.

Id. at II.i.8.

89. See Hoitenga, *Faith and Reason*, *supra* n. 66, at 151 ("For [Calvin] the ontological status of human nature and of the universe in which that nature has a place is *confirmed* by the revelation of God in Scripture, according to which both are objective realities that God created distinct from himself.") (emphasis in original).

90. William F. Keesecker, *The Law in John Calvin's Ethics*, in *Calvin and Christian Ethics* 19, 20 (Peter De Klerk ed., Calvin Study Socy. 1987). See also David Little, *Calvin and the*

The natural created order in turn reflects the order of the divine mind:

Meanwhile let us not be ashamed to take pious delight in the works of God open and manifest in this most beautiful theater [A]lthough it is not the chief evidence for faith, yet it is the first evidence in the order of nature, to be mindful that wherever we cast our eyes, all things they meet are works of God, and at the same time to ponder with pious meditation to what end God created them.⁹¹

Finally, Calvin recognized that order in the human mind (implanted by God) made possible the perception of natural law: "we observe that there exist in all men's minds universal impressions of a certain civic fair dealing and order For their seeds have, without teacher or lawgiver, been implanted in all men."⁹²

Calvin's emphasis on the independence of God and the dependence of human beings is as significant to his understanding of how humans come to know natural law as it is for his doctrine of salvation. But Calvin does not mention participation as the means of our awareness of God. "Even if man had remained free from all stain, his condition would have been too lowly for him to reach God without a Mediator."⁹³ Divine-human participation occurs only in the hypostatic union of God and man in Christ. To be sure, Calvin agrees that the order of the human mind continues, allowing human beings to know of God and about him: "[t]here is within the human mind, and indeed by natural instinct, an awareness of divinity [*sensus divinitatis*] . . . God himself has implanted in all men a certain understanding of his divine majesty."⁹⁴ Human awareness of God for Calvin was immediate (i.e., properly basic, in contemporary parlance) and vital.⁹⁵ And human beings can certainly

Prospects for a Christian Theory of Natural Law, in Norm and Context in Christian Ethics 175 (Gene H. Outka & Paul Ramsey eds., C. Scribner's Sons 1968) [hereinafter Little, *Prospects*] ("Calvin's reflection on these matters begins with the theological assumption that all experience is ordered according to a divine design."). See also Guenther H. Haas, *The Concept of Equity in Calvin's Ethics* 71 (Wilfrid Laurier U. Press 1997) [hereinafter Haas, *The Concept of Equity*] ("For Calvin the true moral law originates from God, not nature. It is not transparently clear to human rational ability alone").

91. Calvin, *Institutes*, *supra* n. 25, at I.xiv.20.

92. *Id.* at II.ii.13. See also Haas, *The Concept of Equity*, *supra* n. 90, at 76 ("Calvin the person outside of Christ does have *some* knowledge of the equity of natural law. . . . But Calvin insists that it is God who implants this 'natural light of righteousness' in the human heart." (emphasis in original)).

93. Calvin, *Institutes*, *supra* n. 25, at II.xii.1.

94. *Id.* at I.iii.1.

95. As Calvin notes:

Men of sound judgment will always be sure that a sense of divinity which can never be effaced is engraved upon men's minds. . . . [I]t is not a doctrine that must first be learned in school, but one of which each of us is master from mother's womb and which nature

have knowledge notwithstanding the effect of sin on human nature.⁹⁶ Calvin explicitly taught that faculties like reason and the will remain intact in fallen humanity.⁹⁷ People still evaluate and judge according to a rational standard, however clouded that standard may be. And for Calvin human beings still act on their rational judgments and volitional desires. Yet reason and will are, in Calvin's phrase, corrupted by sin.⁹⁸ Citing Augustine, Calvin expressly adopts "the common opinion . . . that the natural gifts were corrupted in man through sin, but that his supernatural gifts were stripped from him."⁹⁹

God's continuing maintenance of the order of nature is also fundamental for Calvin: "[God] sustains, nourishes, and cares for, everything he has made, even to the least sparrow."¹⁰⁰ A strong form of God's providential care extends even to the detailed governance of human affairs.¹⁰¹ The divine will, together with providence and the immediate knowledge of God (the *sensus divinitatis*), provides the foundations for the orders of natural law. It is the immediate knowledge of God that forms the basis for the exercise of the faculty of judgment, in other words, the capacity by which humanity knows that there is a right and wrong. In turn, the categories of implanted law (largely the Decalogue) and the mediated knowledge of God from experience inform the conscience, that faculty which fills the concepts of right and wrong with content.¹⁰² Or, to use Hittinger's terminology, the *sensus divinitatis* and providence combine to reveal the divine order. Yet the significant impact of sin clouds the issue.¹⁰³ In the comments that follow we will

itself permits no one to forget, although many strive with every nerve to this end.

Id. at I.iii.3. Compare Calvin with nominalist Gabriel Biel who, according to Heiko Oberman, held that "knowledge [about God] is originally acquired by experience or abstraction . . . and is not *per se nota*." Oberman, *Medieval Harvest*, *supra* n. 57, at 40 (emphasis in original).

96. See Carl F.H. Henry, *God, Revelation and Authority* vol. 2, 136 (Word Books 1976) ("However serious its consequences and however far-reaching its effects, the fall of man . . . did not involve man's total loss of knowledge of God, nor of his rational competence or ethical accountability.").

97. Calvin, *Institutes*, *supra* n. 25, at II.ii.12 ("Since reason . . . by which man distinguishes between good and evil, and by which he understands and judges, is a natural gift, it could not be completely wiped out. . . . Similarly the will, because it is inseparable from man's nature, did not perish . . .").

98. *Id.*

99. *Id.*

100. *Id.* at I.xvi.1.

101. *Id.* at I.xvi.4-6.

102. *Id.* at II.viii.1 ("Now that inward law, which we have above described as written, even engraved, upon the hearts of all, in a sense asserts the very same things that are to be learned from the two Tables.").

103. See Helm, *Calvin's Ideas*, *supra* n. 49, at 373:

The contrast with Calvin at this point is fairly sharp. For Aquinas the revelation of the Decalogue complements the natural law which is recognizable by all. For Calvin,

see how Calvin relates the basis for natural law to human comprehension of it.

C. Calvin's Doctrines of Providence and Common Grace

Calvin's understanding of creation and the fall were traditional. God created everything good but the fall affected all of creation. With respect to the doctrine of providence, Calvin asserted that God is not only the creator of everything that is, "he is also everlasting Governor and Preserver—not only in that he drives the celestial frame . . . but also in that he sustains, nourishes, and cares for, everything he has made"¹⁰⁴

Commenting on *Psalm* 104, Calvin writes that,

we are taught that the winds do not blow by chance, nor the lightnings flash by a fortuitous impulse, but that God, in the exercise of his sovereign power, rules and controls all the agitations and disturbances of the atmosphere.¹⁰⁵

Providence is the means by which God continues to govern all events.¹⁰⁶ Yet, the creation was seriously impaired by the fall: "Nor is it any wonder that . . . by his rebellion . . . he [Adam] perverted the whole order of nature in heaven and on earth."¹⁰⁷ But by God's continued providence nature has remained sufficiently orderly to allow for the flourishing of human society. Calvin admitted that "sometimes the causes of the events are hidden."¹⁰⁸ Thus, the human ability to correctly interpret the meaning of natural events and human history is severely limited and humility is the appropriate virtue. Given the conflicting

though those without benefit of special revelation know that there is a natural law and have some sense of its content, nevertheless what that moral law is can as a result of the Fall only be known clearly through a reasoned understanding of special revelation. . . . For Thomas, the Decalogue expresses particular instances of the natural law, which we know as well as or even better than the Decalogue. Calvin recognizes the fact of natural law, and the limited though essential role that it plays, but the Decalogue has a more fundamental epistemological position. From its particularities more general principles . . . may be derived. Nevertheless, even for Calvin the natural law functioning in those bereft of special revelation has a positive effect.

104. Calvin, *Institutes*, *supra* n. 25, at I.xvi.1.

105. John Calvin, *Commentary Upon the Book of Psalms* 146 (Ages Software 1998) (1563).

106. Calvin, *Institutes*, *supra* n. 25, at I.xvi.4 ("[P]rovidence means . . . that by which, as keeper of the keys, he governs all events."). Calvin does not posit a passive attitude toward creation; rather, as Paul Helm describes it: "Creation, for Calvin, is of different kinds of things, for God 'endowed each kind with its own nature, assigned functions, [and] appointed places and stations,' kinds of things that have different and distinctive sets of powers, such as the power to propagate." Helm, *Calvin's Ideas*, *supra* n. 49, at 99 (footnote omitted).

107. Calvin, *Institutes*, *supra* n. 25, at II.i.5.

108. *Id.* at I.xvii.1.

signals of nature, Calvin, quoting Augustine, concluded that, “[b]ecause we do not know all the things which God in the best possible order does concerning us, we act solely in good will according to the law”¹⁰⁹ Even before addressing the question of the effect of the fall on order in the human mind, we see Calvin’s emphasis on the need for God’s revealed law due to human limitations when one is confronted by an order in nature affected by sin.

The fall affected not only the natural order but all of human nature. Humanity’s natural gifts, including reason, were seriously impaired: “soundness of mind and uprightness of heart were withdrawn at the same time. This is the corruption of the natural gifts.”¹¹⁰ Note that Calvin implicitly acknowledges that even sinful human nature retains the mind and the will; the faculties of our created human nature remain. Had it been otherwise, “our fall would have entailed the destruction of our whole human nature.”¹¹¹ People are not reduced to less than animals.¹¹² God could have removed even the natural gifts from humanity after the fall but out of his gracious good will he did not. This aspect of God’s grace is not salvific but it is common to the whole of humanity. While neither Budziszewski nor Hittinger address the doctrine of common grace, later writers in the Reformed tradition have thus described God’s preservation of humanity and prolongation of time as common grace.¹¹³

But what is Calvin’s evaluation of the extent of the corruption of the natural gifts? Is reason after the fall simply a capacity that invariably goes awry? “[E]ven though something of understanding and judgment remains . . . we shall not call a mind whole and sound that is both weak and plunged into deep darkness,” he wrote.¹¹⁴ Sin renders the mind incomplete and unsound. While we see that for Calvin reason is not completely incapacitated, this only pushes the question back another step: Of what value is a mind in such a state? Can we trust many, some, or none of the deliverances of reason? And if we can trust only some of what reason discloses, what should be our degree of confidence in those

109. *Id.* at I.xvii.2.

110. *Id.* at II.ii.12.

111. *Id.* at II.ii.17.

112. *Id.* (“To sum it up: We see among all mankind that reason is proper to our nature; it distinguishes us from brute beasts . . .”).

113. *Id.* at II.ii.16, *supra* n. 25 (“[W]e ought not to forget those most excellent benefits of the divine Spirit, which he distributes to whomever he will, for the common good of mankind.”). See also Hesselink, *Calvin’s Concept of Law*, *supra* n. 267, at 70-71 (“Calvin’s high evaluation of natural law and his acknowledgement of natural human achievement in several significant areas is not based on humanity’s inherent goodness or worth but on God’s grace.”).

114. Calvin, *Institutes*, *supra* n. 25, at II.ii.12.

conclusions?

Even impacted by sin, the human mind can discover some truth.¹¹⁵ Calvin writes, however, that the truth-identifying function of human reason varies significantly with the objects of consideration.

[T]here is one kind of understanding of earthly things; another of heavenly. I call "earthly things" those which do not pertain to God or his Kingdom, to true justice, or to the blessedness of the future life; but which have their significance and relationship with regard to the present life and are, in a sense, confined within its bounds. I call "heavenly things" the pure knowledge of God, the nature of true righteousness, and the mysteries of the Heavenly Kingdom.¹¹⁶

Calvin here comes close to the well known Thomistic aphorism about grace building upon nature. The common order of human nature¹¹⁷ and the order of world around us¹¹⁸ so constrains human reason that reason "can't help" but discover the truth about many states of affairs. Topics such as the liberal arts and the sciences fall into this category of "can't help."¹¹⁹ Yet, even in the world of the mundane the effects of sin are significant. And more importantly, those whose reason has not been illuminated by faith have no foundation for their conclusions. In the current parlance of epistemology, they lack justification. As Calvin puts it:

But lest anyone think a man truly blessed when he is credited with possessing great power to comprehend truth under the elements of this world, we should at once add that all this capacity to understand . . . is an unstable and transitory thing in God's sight when a solid foundation of truth does not underlie it.¹²⁰

Thus, even when the world of nature is under consideration, the noetic effects of sin are significant. Unregenerate human reason is ultimately subject to futility. However, reason's futility for Calvin does not primarily consist in erroneous judgments (although that is certainly a symptom); rather, reason's futility is revealed in its impiety. Although the penultimate effects of sin do not utterly incapacitate reason's

115. Calvin, *Institutes*, *supra* n. 25, at II.ii.12 ("When we so condemn human understanding for its perpetual blindness as to leave it no perception of any object whatever, we not only go against God's Word, but also run counter to the experience of common sense.").

116. *Id.* at II.ii.13.

117. John Calvin, *Commentary on the Book of Genesis* 135 (Ages Software 1998) (1554) ("[M]an is a social animal, and all naturally desire mutual intercourse . . .").

118. See Cochrane, *Church-State Relations*, *supra* n. 267, at 189 ("Calvin finds the origin and basis of all offices involving superiority and subordination not in the Fall, but in the order of nature.").

119. Calvin, *Institutes*, *supra* n. 25, at II.ii.14-15.

120. *Id.* at II.ii.16.

effectiveness among the ungodly, their correct judgments are not “good” because they are not ordered to the worship and praise of God.¹²¹ The will corrupted by sin invariably diverts reason’s power of judgment from its divinely appointed end.¹²²

Sin’s effects become more pronounced when the object of analysis moves from the terrestrial to the heavenly. With respect to matters related to the worship of God, Calvin writes that “if we want to measure our reason by God’s law, the pattern of perfect righteousness, we shall find in how many respects it is blind! Surely it does not at all comply with the principal points of the First Table”¹²³ Yet it is clear that for Calvin, the natural law and civil government in general fall within the class of earthly things, things with respect to which the penultimate deliverances of even unregenerate reason can frequently be correct.

D. Calvin and Natural Law

Having identified foundations for discovering the law of God with respect to civil society from nature and reason, it remains to be seen how Calvin deploys the concept of natural law. Of the sources of natural law Calvin writes:

[S]ince man is by nature a social animal, he tends through natural instinct to foster and preserve society. Consequently, we observe that there exist in all men’s minds universal impressions of a certain civic fair dealing and order. Hence no man is to be found who does not understand that every sort of human organization must be regulated by laws, and who does not comprehend the principles of those laws. Hence arises that unvarying consent of all nations and of individual mortals with regard to laws. For their seeds have, without teacher or lawgiver, been implanted in all men.¹²⁴

Two things should be noted about Calvin’s view of the foundation of natural law from the outset. First, it exists “naturally.” There is no

121. Calvin writes:

[W]e [ought] to repudiate the opinion of those who suppose that there is deliberate malice and depravity in all sins. For we know all too well by experience how often we fall despite our good intention. . . . [O]ur diligence, insight, understanding, and carefulness [is] so completely corrupted that we can devise or prepare nothing right in God’s eyes [. . .] [T]o the Holy Spirit who “knows that all the thoughts of the wise are futile” and who clearly declares that “every imagination of the human heart is solely evil” it seems most fitting.

Id. at II.ii.25.

122. *Id.* at II.ii.24.

123. *Id.*

124. *Id.* at II.ii.13.

need to reason from the contingent fact of human sociability to the substance of the natural law. Although Calvin states the obvious—that man is a social animal—he disagrees with later natural law writers like Samuel Pufendorf who ground the natural law solely in “order in nature.”¹²⁵ For Calvin, man does not create natural law because he is sociable; rather, man is sociable because God has implanted the law in his heart.

Second, like the *sensus divinitatis*, natural law is not so much an order in the human *mind* but it is part and parcel of even fallen human nature.¹²⁶ The natural law is, of course, articulated through the faculty of reason but not because human reason participates in the divine. Instead, Calvin places the natural law in the human heart. Calvin’s doctrine of the heart is difficult to identify with precision, but he closely identifies the heart and the will.¹²⁷ Calvin identifies the directional center of human existence with the will with rather than the mind’s participation in divine reason. We can therefore expect that Calvin’s articulation of the natural law can be configured consistently with Hittinger’s three orders¹²⁸ but its application limited to Budziszewski’s apologetic use.¹²⁹

Calvin’s comments about the ancient writers who discussed the natural law disclose his doctrine of common grace and his placement of the seeds of the natural law in the pre-theoretical human heart. On the one hand, he writes that “[i]n every age there have been persons who, guided by nature, have striven toward virtue [T]hey have by the very zeal of their honesty given proof that there was some purity in their

125. See Samuel Pufendorf, *De jure naturae et gentium libri octo* 205 (C.H. & W.A. Oldfather trans., The Clarendon Press 1934) (1688) (“There seems to us no more fitting and direct way to learn the law of nature than through careful consideration of the nature, condition, and desires of man himself.”).

126. See John Calvin, *Commentaries on the Epistle of Paul the Apostle to the Romans* 96-97 (Ages Software 1998) (1540) (Since then all nations, of themselves and without a monitor, are disposed to make laws for themselves, it is beyond all question evident that they have some notions of justice and rectitude . . . and which are implanted by nature in the hearts of men.”).

127. As Calvin explains:

[I]t behooves us to consider the sort of remedy by which divine grace corrects and cures the corruption of nature. . . . When the apostle tells the Philippian he is confident “that he who began a good work in you will bring it to completion at the day of Jesus Christ” [Phil 1:6], there is no doubt that through “the beginning of a good work” he denotes the very origin of conversion itself, which is in the will. God begins his good work in us, therefore, by arousing love and desire and zeal for righteousness in our hearts; or, to speak more correctly, by bending, forming, and directing, our hearts to righteousness.

Calvin, *Institutes*, *supra* n. 25, at II.iii.6. But see Calvin, *Commentary on Romans*, *supra* n. 126, at 96-97 where he asserts that the word “heart” as used in *Romans* 2:15 is not to be identified with “the seat of affections, but only for the understanding”

128. See Hittinger, *The First Grace*, *supra* n. 7.

129. See Budziszewski, *Written on the Heart*, *supra* n. 4, at 184-186.

nature."¹³⁰ On the other hand, "these are not common gifts of nature, but special graces of God, which he bestows variously and in a certain measure upon men otherwise wicked."¹³¹ Calvin could speak highly of the ancient jurists:

[s]hall we deny that the truth shone upon the ancient jurists who established civic order and discipline with such great equity? . . . [W]e cannot read the writings of the ancients on these subjects . . . without recognizing at the same time that it comes from God.¹³²

But he also noted that "even here one sometimes detects a failure to endure . . . [because] the natural man refuses to be led to recognize the diseases of his lusts."¹³³ And, notwithstanding the great insights of the ancient pagans into natural law, they inevitably failed to pursue these truths in a way that honored God with true worship. The greatest observations of the ancients about civic life were inextricably mingled with gross forms of idolatry and frequently with grossest immorality as well.¹³⁴

In the content of the natural law, Calvin basically follows the medieval tradition—the Ten Commandments.¹³⁵ The purpose of the inscription of the natural law by God at Mt. Sinai according to Calvin was also commonplace—to provide a clearer witness of what sin had obscured.¹³⁶ Calvin intentionally did not pursue the outworking of natural law at great length.¹³⁷ That Calvin did not perceive the necessity

130. Calvin, *Institutes*, *supra* n. 25, at II.iii.3.

131. *Id.* at II.iii.4. Note that Calvin does not identify natural law as a prelapsarian (pre-fall) "grace" but simply as part of the creation order. *But see supra* n. 37 (Hitinger describing natural law as the "first grace").

132. Calvin, *Institutes*, *supra* n. 25, at II.ii.15.

133. *Id.* at II.ii.24.

134. Calvin's doctrine of the "two kingdoms" explains his positive view of the natural law for ongoing civic (but not ecclesiastical) affairs. *See* Calvin, *Institutes*, *supra* n. 25, at III.xix.15. *See generally* VanDrunen, *Context of Natural Law*, *supra* n. 63.

135. Calvin, *Institutes*, *supra* n. 25, at II.viii.1 ("Now that inward law, which we have above described as written, even engraved, upon the heart, *in a sense* asserts the very same things that are to be learned from the two Tables." (emphasis added)). Calvin was apparently unwilling to assume a one-to-one relationship between the natural law and the Ten Commandments but did not spell out where they differed. *See also* Haas, *The Concept of Equity*, *supra* n. 90, at 65 ("Natural law reveals His will, but because sin has affected our ability to perceive it, God gives clear witness to His will in the written law of scripture." (footnote omitted)).

136. Calvin, *Institutes*, *supra* n. 25, at II.viii.1 ("But man is so shrouded in the darkness of errors that he hardly begins to grasp through this natural law what worship is acceptable to God. . . . Accordingly, . . . the Lord has provided us with a written law to give us a clearer witness of what was too obscure in the natural law . . .").

137. Calvin writes only that:

But because I have undertaken to say with what laws a Christian state ought to be governed, this is no reason why anyone should expect a long discourse concerning the best kind of laws. This would be endless and would not pertain to the present purpose

of detailed analysis of the application of natural law is consistent with his robust doctrine of common grace. The development of positive law to the middle of the sixteenth century as informed by natural law was satisfactory.¹³⁸ One can only wonder whether the contemporary state of positive law, uninformed by any objective version of higher law, would have prompted Calvin to pursue the topic further.

Calvin's strong doctrine of sin suggests that he would not find appeals to natural law with the unconverted as useful as Thomas seems to suggest. Nature suffers the disordering effects of sin and, while reason remains common to all people, it is corrupted. Thus, in the postlapsarian age, the results of even correct judgments are vitiated by a corrupt will.¹³⁹ And even where the corrupt will acts on a correct judgment in a single matter its concupiscence overflows in many other situations. Natural law functions for Calvin as a tacit platform for common action in a civic polity but functions explicitly as a tool by which God restrains a descent into bestiality—God's bridle, as it were.

Others [the unregenerate] he merely restrains by throwing a bridle over them only that they may not break loose Hence some

and place. I shall in but a few words, and as in passing, note what laws can piously be used before God, and be rightly administered among men.

Calvin, *Institutes*, *supra* n. 25, at IV.xx.14. Given his legal training, Calvin was certainly well-acquainted with natural law. See McGrath, *Life*, *supra* n. 64, at 58-62; John T. McNeill, *Calvin on Civil Government*, 42 *J. Presbyterian Hist.* 71 (1964) ("John Calvin [was] the son of a law clerk, a graduate in law, a classicist familiar with the political treatises of Plato and Aristotle, Cicero and Seneca . . ."); see generally Haas, *The Concept of Equity*, *supra* n. 90, at 7-8 (discussing Calvin's legal studies at Orleans). Like Hittinger and Budziszewski, Calvin believed that natural law provided the contours for the laws of a civil polity, not the details. See generally John Witte, Jr. & Robert M. Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva* (W.B. Eerdmans Pub. Co. 2005) [hereinafter Witte & Kingdon, *Sex, Marriage, and Family*] (describing in detail Calvin's influence on Geneva's (and Europe's) development of family law through Genevan legislation, consistory (church court) cases, commentaries, and correspondence).

138. McNeill, *Calvin on Civil Government*, *supra* n. 137, at 82 ("In areas where Christ's kingship is not thought of by ruler or people [Calvin] sees the civic order as a valid organ of the divine purpose functioning through natural law.") See also Witte & Kingdon, *Sex, Marriage, and Family*, *supra* n. 137; Harro Hopfl, *The Christian Polity of John Calvin* 150 (Cambridge U. Press 1982) [hereinafter Hopfl, *Christian Polity*]:

[P]art of the reason for this [failure to assemble his moral and political ideas into a single treatise] is . . . that Calvin regarded what he had to say on moral matters (and to that extent on political and legal ones) as obvious to all godly men, and in many cases to ungodly and even pagan ones as well. . . . His "office" as a theologian and a minister was to remind men of what they knew already and to urge them on to better performance

139. As Haas puts it,

Calvin's doctrine of *ordo naturae* is "less a description of nature as it is and more a description of nature as it was originally meant to be." . . . 'The perfect *ordo naturae* in human history . . . has continuing significance rather as precept, or law of God, rather than as a description of an existing order.

Haas, *The Concept of Equity*, *supra* n. 90, at 70 (footnote omitted).

are restrained by shame . . . others by the fear of the law Still others, because they consider an honest manner of life profitable Others rise above the common lot, in order by their excellence to keep the rest obedient to them. Thus God by his providence bridles perversity of nature, that it may not break forth into action; but he does not purge it within.¹⁴⁰

Note that the bridling effect of natural law is not primarily to be found in its existence as such. Even where corrupted reason exercises correct judgment, the corrupt will may follow that judgment for a number of reasons. None of those reasons, however, is to pay homage to God “because, however excellent anyone has been, his own ambition always pushes him on—a blemish with which all virtues are so sullied that before God they lose all favor”¹⁴¹ Unregenerate humanity’s decision to follow the natural law is due to human nature as preserved by God. Implementation of the broad dictates of the natural law is due in large part to the human instinct of self-preservation, an instinct left by God due to his gracious character.¹⁴²

BACK TO THE FUTURE: CALVIN’S TEACHINGS ON NATURAL LAW IN A POST-CHRISTIAN WORLD

Calvin’s realism about the limits of natural law outside a Christian commonwealth finds ample support in the lament in Hittinger’s Introduction: “[p]remises or conclusions even remotely theological

140. Calvin, *Institutes*, *supra* n. 25, at II.iii.3. See also John Calvin, *Commentary on the First Epistle to Timothy 2:3* (Ages Software 1998) (1556). As Haas puts it,

Calvin considers the demands of natural law to be the same as those of the Second Table, and he believes these to be the expressions of the principle of equity, the implementation of the rule of love of neighbour. . . . “The second [table requires that] we render to our neighbors what belongs to them and observe the natural law . . . of not doing anything to anyone unless we would want them to do the same to us.” For Calvin, it is equity, at least in its outward social expression and the rule of love of neighbour, that are the essential features of the natural law that God implants

Haas, *The Concept of Equity*, *supra* n. 90, at 68 (footnote omitted).

141. Calvin, *Institutes*, *supra* n. 25, at II.iii.4.

142. According to Calvin:

[I]f we hold the view that men have, part from grace, some impulses (however puny) toward good, what shall we reply to the apostle who even denies that we are capable of conceiving anything [2 Co 3:5]? . . . Rather let us value Christ’s saying: “Every one who commits sin is a slave to sin” [John 8:34]. We are all sinners by nature; therefore we are held under the yoke of sin. But if the whole man lies under the power of sin, surely it is necessary that the will . . . be restrained by the stoutest bonds

Id. at II.ii.27. I thus find myself out of accord with Hopfl’s assertion that Calvin had no meaningful place for natural law. See Hopfl, *Christian Polity*, *supra* n. 138, at 179-182. For a critical analysis of Hopfl’s position, see Helm, *Calvin’s Ideas*, *supra* n. 49, at 363-364; see generally Haas, *The Concept of Equity*, *supra* n. 90.

(natural or revealed) are unacceptable for public purposes.”¹⁴³ And in Budziszewski’s characterization as “pearl casting” the ineffectual fruit of those who would simply toss *bons mots* of sacred texts into the public square.¹⁴⁴ When the nature (and even existence) of “prior premises” is a contentious issue, debaters in the contemporary public square are expected to avoid appeals to premises that refer to controversial concepts. The centrality of the heart (or will) to Calvin’s anthropology makes clear the reason for this state of affairs. Until the heart is regenerated and reoriented by God’s redeeming grace, Calvin would have expected little more from a neo-pagan world. Consistent with Budziszewski’s apologetic use of natural law, Calvin would have understood that appeals to the constraints of shame, fear, and desire for profit will have to do in the earthly kingdom.

While in Calvin’s view God’s common grace will continue bridling the worst of human corruption, we should not presume that God will do more than the minimum in the post-Christian West. Given postmodernism’s rejection of order in nature (following modernity’s rejection of order in the divine mind), we can expect even less restraint in the face of increasing demands for subjective individual autonomy. The confusion of contemporary thinking about the natural law engenders more pessimism.¹⁴⁵ At this point Calvin and those like Hittinger and Budziszewski are one. Natural rights, understood as a zone of autonomy to be protected by legal immunities, simply do not exist. All of life is *coram deo*, before the face of God, and lawful order is a fundamental aspect of human nature.

CONCLUSION

The cosmos and the human heart reflect the original divine order regardless of their suppression by a large mass of humanity. Hittinger’s three orders provide a useful framework for understanding what the natural law is. Yet, Budziszewski is also correct to question how explicit appeals to the truth of order in the divine mind will be effective

143. Hittinger, *The First Grace*, *supra* n. 7, at xvii-xviii.

144. J. Budziszewski, *What We Can't Not Know* 202-203 (Spence Publ. Co. 2003).

145. As Hittinger puts it:

[W]e find functional appeals to a higher law that turns out to be no higher law at all [P]olitical institutions are required to recognize and protect the immunity of individuals from any known source of obligation and authority. In the name of authority—the authority of some “higher law”—the individual comes to occupy an authority-free zone in the very midst of civil society.

Hittinger, *The First Grace*, *supra* n. 7, at xv (emphasis in original). See generally Pauline C. Westerman, *The Disintegration of Natural Law Theory: Aquinas to Finis* (Brill 1998).

in a world which suppresses them. We can expect a direct correlation between the bridling effect of natural law and a society's openness to instruction from the law written on its hearts and God's providence. Calvin would not be surprised by the lawlessness of a society which denies God and consciously rejects meaning in history. While Calvin was no biblicist in his understanding of the divine law,¹⁴⁶ he would certainly not rule out direct appeals to Scripture in grounding positive law. Nonetheless, Protestants should not be afraid of using natural law to critique positive law and propose new laws.¹⁴⁷ Whether explicit attributions are made to its foundation in the divine order is a matter of prudence. References to "higher law" may work for the time being.¹⁴⁸ In any event, as Calvin would have it, faith in God's promise of common grace and hope in his ultimate eschatological re-ordering will have to be enough in a world which has turned its back on the one and rejects the other.

146. Calvin tersely comments that:

I would have preferred to pass over this matter in utter silence if I were not aware that here many dangerously go astray. For there are some who deny that a commonwealth is duly framed which neglects the political system of Moses and is ruled by the common law of nations. Let other men consider how perilous and seditious this notion is; it will be enough for me to have proved it false and foolish.

Calvin, *Institutes*, *supra* n. 25, at IV.xx.14.

147. As McQuade and Bowser put it:

We have here [in natural law] a fine product. It was designed in ancient times and has proved itself capable of being adapted to meet the needs of every age, both legal and societal. It provides, as it has always provided, a basis for living together in harmony and moving forward to better arrangements of our affairs.

McQuade & Bowser, *Marketing Natural Law*, *supra* n. 1, at 215.

148. Hitinger, *The First Grace*, *supra* n. 7, at 36.