

'Because of your hardness of heart': Calvin and the limits of law

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Abstract

This article proposes that Calvin's 'hardness of heart' principle functions as a substantive limitation on political authority and the law, creating the legal space for meaningful moral pluralism. Calvin distinguished between the spiritual and civil uses of the law, as well as between the natural moral law and the civil law within the Mosaic law. He repeatedly used Jesus' concept of 'hardness of heart' to explain inadequacies within the Mosaic law and to articulate a general principle about the nature and limits of civil law. This approach has important implications for law and morality in contemporary contexts characterised by a degree of moral pluralism that Calvin scarcely could have anticipated.

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John Calvin's general inclinations with respect to submission and resistance to political authority are fairly well known due to the prominent attention he gives these themes in the very last pages of the *Institutes*. Calvin emphasised that subjects in all manner of relationships owe largely unquestioning obedience to their superiors, even when those superiors are unjust, impious or tyrannical. There are really only two general exceptions to this rule. First, in cases of conflict between divine and human law, humans must always, to quote the Apostle Peter, 'obey God rather than men' (Acts 5:29, RSV). When superiors command their subjects to act unjustly or impiously, they must be disobeyed. Second, certain persons in positions of authority – lesser magistrates – have certain rights and obligations to resist their superiors when they act tyrannically towards their subjects. Calvin didn't explain the implications of this principle very precisely (though his theological descendants did), and scholars have been debating its legacy ever since.

But what has received less sustained attention in Calvin's view of submission and resistance (in large part because it goes unmentioned in the *Institutes*) is Calvin's emphasis on the limitations of civil authority given human depravity, or what Jesus called humans' 'hardness of heart'. It is often claimed that Calvin thought government should enforce the whole moral

law of God as a means of advancing and promoting the spiritual kingdom of Christ. By contrast, this article proposes that Calvin's 'hardness of heart' principle functions as a substantive limitation on political authority and the law, creating the legal space for meaningful moral pluralism. I begin by reviewing Calvin's theology of the nature and uses of the law. I then analyse the way Calvin repeatedly used Jesus' concept of the hardness of human hearts to explain inadequacies within the Mosaic law and to articulate a general principle about the nature and limits of civil law given human nature. I conclude by exploring some implications for law and morality in contemporary contexts characterised by a degree of moral pluralism that Calvin scarcely could have anticipated.

Calvin's theology of law

For Calvin God's moral law, revealed in creation as the natural law and summarised in the Ten Commandments, is the perfect rule of righteousness.¹ The moral law 'prescribes nothing which nature does not itself dictate to be most certain and most just, and which experience itself does not show us to be more profitable, or more desirable than anything else'.² Like Augustine before him, however, Calvin carefully distinguished between two kinds of righteousness (or justice): a spiritual, or true, righteousness that characterises people regenerated in the spiritual kingdom of Christ; and an earthly, or civic, righteousness that characterises fallen human beings. As he puts it in his *Commentary on Philippians*, we must distinguish between 'two righteousnesses of the law. The one is spiritual – perfect love to God and our neighbors . . . The other is literal, such as appears in the view of men, while in the meantime hypocrisy reigns in the heart, and there is in the sight of God nothing but iniquity.'³

These two kinds of righteousness correspond closely to Calvin's distinction between the spiritual and civil uses of the law. Calvin explains the difference between these two uses in his discussion of the threefold use of the law in the

¹ As he puts it, 'whenever holiness is made to consist in anything else than in observing the law of God, men are led to believe that the law may be violated without danger'. *Commentary on Matthew* 15: 3 (1555); *Ioannis Calvini opera quae supersunt omnia*, 58 vols, ed. Johann-Wilhelm Baum, Edouard Cunitz, and Eduard Wilhelm Eugen Reuss (Brunswick: C. A. Schwetschke, 1863) [hereafter CO], 45: 449. Cf. *Commentary on Romans* 8: 7 (1556); CO 49: 142–3; 9: 21; CO 49: 447–8; 3: 31; CO 49: 68; *Commentary on 2 Timothy* 3: 16 (1548); CO 52: 382–4; *Commentary on Titus* 2: 12 (1550); CO 52: 423; *Commentary on Psalms* 19: 8 (1557); CO 31: 200–1; *Commentary on 2 Thessalonians* 3: 6–10 (1550); CO 52: 211; *Commentary on James* 2: 12 (1550); CO 55: 402.

² *Commentary on Deuteronomy* 10: 12 (1563); CO 24: 723.

³ *Commentary on Philippians* 3: 6 (1548); CO 52: 46.

Institutes.⁴ The spiritual and 'principal use' of the law constitutes the 'proper purpose of the law', because it 'finds its place among believers in whose hearts the Spirit of God already lives and reigns' (2.7.12). It calls human beings 'not only to outward honesty, but to inward and spiritual righteousness'. It 'demands obedience of soul, mind, and will, . . . an angelic purity which, cleansed of every pollution of the flesh, savors nothing but the spirit' (2.8.6). It points to 'renewed nature, which God forms anew after his own image'.⁵ Because the spiritual use presupposes the liberty from the law that comes through justification by faith, it is entirely free of the law's rigour and threats. 'For the law is not now acting toward us as a rigorous enforcement officer who is not satisfied unless the requirements are met. But in this perfection to which it exhorts us, the law points out the goal toward which throughout life we are to strive' (2.7.13).

In essence, the spiritual use of the law consists in education and exhortation. As an educational instrument the law teaches those who want to love God how they can go about doing so. This 'daily instruction of the law' is necessary in addition to the guidance of the Spirit, if believers are to know God's will (2.7.12). As a means of exhortation, the law arouses the regenerate to obey God's will, 'for, however eagerly they may in accordance with the Spirit strive toward God's righteousness, the listless flesh always so burdens them that they do not proceed with due readiness'. Ready with a vivid analogy, Calvin proposes, 'The law is to the flesh like a whip to an idle and bulky ass, to arouse it to work' (2.7.12).

The civil use of the law, in contrast, applies to all human beings, not simply those who are sanctified by the Spirit. Its purpose is neither to sanctify nor to condemn human beings, but to give order to temporal society, through coercion if necessary. The 'mortal lawgiver's jurisdiction extends only to the outward political order', which is to say, to outward actions. It cannot touch or transform the inward person, nor can it drive her upward and forward to the spiritual kingdom of Christ. It is only concerned with purposes or intentions when they 'come forth into the open' and it

⁴ These are the second and third uses of the law. Of course, Calvin posited three uses of the law. The first use of the law, the pedagogical use, pertains to the 'natural man' who is entirely unable to attain to the purpose and end for which God created the world and human beings. It achieves nothing but condemnation. '[S]ince our carnal and corrupted nature contends violently against God's spiritual law and is in no way corrected by its discipline, it follows that the law which had been given for salvation . . . turns into an occasion for sin and death' (2.7.7). See I. John Hesselink, *Calvin's Concept of the Law* (Allison Park, PA: Pickwick Publications, 1992), pp. 217–76.

⁵ *Commentary on Romans* 7: 14 (1556); CO 49: 128. Cf. *Commentary on Romans* 2: 13, 27 (1556); CO 49: 37, 45; *Commentary on 1 Timothy* 1: 5 (1548); CO 52: 252.

can do nothing unless 'actual crimes are committed' (2.8.6).⁶ Thus Calvin consistently maintained that, whereas the spiritual kingdom is involved in the restoration of true righteousness (the spiritual use of the law), the civil order is merely involved in the restraint of outward unrighteousness (the civil use of the law). The best civil government can do is to create the conditions in which the Gospel can create true righteousness. Still, Calvin insists, 'this constrained and forced righteousness is necessary for the public community of men'. Even believers need this external enforcement of the law because their sanctification is incomplete (2.7.10).⁷

Calvin's theoretical distinction between the spiritual and civil uses of the law was in turn related to his distinction between natural law and the various types of biblical law. Calvin argued that scripture alone holds authority in matters of faith, but he maintained that 'human reasons' hold an important place in 'matters which concern men'.⁸ To be sure, here too counsel is always to be taken with reference to the teaching of scripture.⁹ And Calvin agreed with the other magisterial reformers that the essence of the magistrate's task is the enforcement of the outward piety and justice of the natural moral law, which is most clearly revealed in scripture.¹⁰ But Calvin distinguished

⁶ In a sermon on Deut 5:17 Calvin declared, 'It is true that when magistrates create laws, their manner is different from God's. But then their purpose has to do only with the way we govern ourselves with respect to the external civil order to the end that no one might be violated, and that each might have his rights and have peace and concord among men. That is their intention when they create laws. And why? [Because] they are mortal men; they cannot reform inner and hidden affections. That belongs to God.' CO 26: 328. Cited in John Witte, Jr., *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: CUP, 2007), p. 64. Cf. *Commentary on 1 Timothy 1: 9* (1548); CO 52: 255; Marc Chenevière, 'Did Calvin Advocate Theocracy?', *Evangelical Quarterly* 9 (1937), p. 166.

⁷ Initially Calvin limited his discussion of the civil use of the law to a purely secular purpose, but in the 1543 *Institutes* he suggested that the civil law also plays a role as a 'tutor unto Christ', as described by the Apostle Paul in Gal 3:24. Still, he is clear that it does so not by any sort of spiritual influence, but as a preservative. It restrains human beings from the worst kinds of sin, so preserving them for the possible future influences of the Gospel (2.7.11). See David Little, *Religion, Order, and Law* (New York: Harper & Row, 1969), pp. 53, 72; Thomas F. Torrance, *Kingdom and Church: Study in the Theology of the Reformation* (Edinburgh: Oliver & Boyd, 1956), pp. 151, 158–9; William R. Stevenson, Jr., *Sovereign Grace: The Place and Significance of Christian Freedom in John Calvin's Political Thought* (New York: OUP, 1999), p. 93; Ralph C. Hancock, *Calvin and the Foundations of Modern Politics* (Ithaca, NY: Cornell University Press, 1989), pp. 59–61.

⁸ *Commentary on Acts 17: 2* (1554); CO 48: 393.

⁹ *Commentary on Numbers 10: 2* (1563); CO 24: 374. Cf. 18: 19; CO 24: 187–8.

¹⁰ See Oliver O'Donovan and Joan Lockwood O'Donovan, *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought* (Grand Rapids, MI: Eerdmans, 1999), p. 664; Stevenson, *Sovereign Grace*, pp. 94–5.

sharply between the Old Testament law that applied uniquely to Israel and the natural moral law that applies to all people. He rejected the claim that a commonwealth must conform to the laws of Moses as being 'perilous and seditious', not to mention 'false and foolish' (4.20.14).

It is a fact that the law of God which we call the moral law is nothing else than a testimony of natural law and of that conscience which God has engraved upon the minds of men. Consequently, the entire scheme of this equity of which we are now speaking has been prescribed in it. Hence, this equity alone must be the goal and rule and limit of all laws. Whatever laws shall be framed to that rule, directed to that goal, bound by that limit, there is no reason why we should disapprove of them, howsoever they may differ from the Jewish law or among themselves. (4.20.16)

For that reason Christians should expect to find the natural moral law reflected in the politics and philosophies of all peoples and nations, not only in scripture.

Certainly Calvin believed the natural moral law is summarised and clarified in the Ten Commandments, beyond which 'nothing can be wanted as the rule of a good and upright life'. But that left the vast balance of Old Testament rules and regulations open to interpretation in accord with natural law, and many of them could be readily recognised as political and ceremonial laws potentially useful for, but no longer binding on, Christian commonwealths. In other words, for Calvin it was not enough to show that a particular prescription or proscription appears in scripture. The essential task was to determine, through reason, experience and careful biblical reflection, whether it was an obligation of natural law.¹¹

¹¹ Calvin interpreted the Decalogue representatively, such that a host of moral principles not explicitly mentioned in it were understood to be part of its implicit teaching. In his *Harmony of the Law* he writes that ceremonial laws, which pertain to the first table of the Decalogue (piety and the worship of God), and political laws, which pertain to the second table (justice and relations between human beings) are to be regarded as supplements that do not add anything to the moral content of God's law but that serve 'merely to aid in the observance of the moral law'. They are 'only helps which, as it were, lead us by the hand to the due worship of God, and to the promotion of justice towards men'. To put it in Aristotelian terms, 'they are not, to speak correctly, of the substance of the law', but are 'appendages'. Preface to Calvin's *Harmony of the Law* (1563); CO 24: 7–8. See Guenther Haas, *The Concept of Equity in Calvin's Ethics* (Waterloo, Ontario: Wilfrid Laurier University Press, 1997), pp. 72–5, 84–90. It is true that Calvin was much more sensitive to the error of conflating the Torah's ceremonial laws with the moral law (which he associated with Judaism) than he was to the danger of conflating the political laws with the moral law. In certain respects Calvin also held to a uniquely dogmatic interpretation of scripture's moral teaching compared to other

The limitations of civil law

What is most striking about Calvin's analysis of the political laws of the Torah in light of the natural law is not that he finds many of them to be unique to Israel and therefore inapplicable to Christian societies. We expect this.¹² What we perhaps do not expect is Calvin's consistent willingness to recognise that a good number of them fail to measure up to the natural law. And it is this recognition that leads Calvin to articulate a vital rule of interpretation with important political theological implications: Israel's laws tolerated significant injustice due to the hardness of human hearts.¹³

Calvin did not invent this principle, of course. He found an exegetical basis for it in Jesus' declaration that Moses' law of divorce accommodated human depravity in a way that fell short of God's intent for marriage at creation. What is innovative on Calvin's part is that he deduces a broader interpretive principle from Jesus' declaration, using his own discretion to apply it to a range of cases revolving around marriage, divorce, violence and the treatment of slaves and prisoners. In each of these cases he judges the law to be morally insufficient in comparison with the natural law of equity, and in each of these cases he explains the insufficiency as a necessary accommodation to the hardness of human hearts. The accommodation of human depravity thus becomes characteristic, even typical of 'civil laws, the principle of which is not so exact and perfect, since in their enactment God has relaxed his just severity in consideration of the people's hardness of heart'.¹⁴ If such is true of the Torah, designed for a people with unique political status as God's own, how much more for other political societies, even Christian ones, who do not have such a status?

magisterial reformers. Still, he repeatedly articulates points at which he finds Israel's civil law to be anachronistic, insufficient or even counter to natural law. See John Lee Thompson, 'Patriarchs, Polygamy and Private Resistance: John Calvin and Others on Breaking God's Rules', *Sixteenth-Century Journal* 25/1 (1994), pp. 3–28.

¹² One important theological reason Calvin offers why certain laws in the Torah are not binding on all nations is that God gave Israel laws appropriate for its unique mission as God's sacerdotal kingdom. Such laws include the law about the sharing of manna (*Commentary on Exodus* 16: 17 (1563); CO 24: 171–2); the law about breaking down altars and images (23: 24; CO 24: 546); laws pertaining to the chief priest (*Commentary on Numbers* 3: 5 (1563); CO 24: 444–5); the laws on tithes (18: 20; CO 24: 479–81); laws calling for the extermination of the Canaanites (*Commentary on Deuteronomy* 7: 20–5 (1563); CO 24: 553–4); and laws prohibiting alliances with pagan nations (*Commentary on Isaiah* 30: 1 (1559), 15; CO 36: 506, 517).

¹³ See Arnold Huijgen, *Divine Accommodation in John Calvin's Theology: Analysis and Assessment* (Göttingen: Vandenhoeck & Ruprecht, 2011), pp. 190–200, 208–36.

¹⁴ *Commentary on Exodus* 22: 1–4 (1563); CO 24: 688.

Calvin interprets Jesus' comments on divorce against the backdrop of his criticism of the Pharisees, who, he says, wrongly interpreted the Torah's accommodation of divorce as indication that divorce is morally justified. The Pharisees failed to recognise that the law of divorce was a political law rather than a spiritual law, but the difference is crucial. 'For political laws are sometimes accommodated to the manners of men, but God, in prescribing a spiritual law, looked not at what men can do but at what they ought to do.' Jesus therefore challenged the assumption that 'what is tolerated by the political law of Moses is on that account considered licit in the sight of God'.¹⁵ Divorce was permitted because the people were incapable of attaining to a higher legal standard, not because it is just. Yet as Jesus made clear, the true standard of justice is much higher, and it is rooted in the natural law of the created order.¹⁶ 'Although what relates to divorce was granted in concession to the Jews, yet Christ pronounces that it was never legitimate, because it is directly repugnant to the first institution of God, from whence a perpetual and inviolable rule is to be sought. It is proverbially said that the laws of nature are indissoluble.'¹⁷

Calvin recognises a potential objection: should Moses have 'permitted what was in itself bad and sinful'? To answer this objection Calvin articulates a distinction between what is legally permitted and what is morally approved. '[I]n an unusual sense of the word he is said to have permitted [*permissum*] what he did not severely forbid [*vetuit*].' As it reads in the French version of the commentary: 'strictly speaking, he did not permit [*permis*] it; but in so far as he did not strictly forbid it, he is said to have permitted [*permis*] it.' What is the difference? The former connotes approval whereas the latter simply seeks to regulate and mitigate the destructive consequences of what is unavoidable.

[H]e did not lay down a law about divorces, so as to give them the seal of his approbation, but as the wickedness of men could not be restrained in any other way, he applied what was the most admissible remedy, that the husband should, at least, attest the chastity of his wife. For the law was made solely for the protection of the women, that they might not suffer any disgrace after they had been unjustly rejected. Hence we infer, that it

¹⁵ Commentary on Matthew 5: 31 (1555); CO 45: 180. Cf. Commentary on 1 Corinthians 7: 10 (1546); CO 49: 409.

¹⁶ Commentary on Matthew 19: 1–9 (1555); CO 45: 528.

¹⁷ Commentary on Deuteronomy 24: 1–4 (1563); CO 24: 657–8. Cf. Commentary on Numbers 5: 11; CO 24: 654.

was rather a punishment inflicted on the husbands than an indulgence or permission fitted to inflame their lust.¹⁸

Calvin reminds his readers that one cannot conflate what is legal with what is moral, for 'political and outward order is widely different from spiritual government'. The law that is moral and spiritual, summarised in the Ten Commandments, demands much more than can be enforced by a human court. It is therefore no surprise that some injustice is 'connived at by political laws'. As an analogy Calvin observes that civil law allows broader rights of litigation than the spiritual law of charity permits. This is necessary because 'the right [of litigation] cannot be conferred on individuals unless there be an open door for demanding it'. Freedom to perform one's duties, in other words, is impossible without the broader freedom to use one's discretion for good or ill.¹⁹ By analogy, just as magistrates cannot micromanage their subjects' access to the courts, so a magistrate 'is constrained to bear many things which he does not approve, for we cannot so deal with mankind as to restrain all vices. It is indeed desirable that no vice should be tolerated, but we must have a regard to what is possible.'²⁰ Faithfulness to God on the part of a magistrate does not require the comprehensive enforcement of biblical morality.

While the law of divorce is the pre-eminent instance of a political law accommodating the hardness of human hearts, Calvin identifies numerous analogous cases in the Torah. In many of these instances there is nothing in the text to cue him to this interpretation, nor can he appeal to an authoritative statement by Jesus or the apostles in its defence. Rather, Calvin judges particular laws as lacking from the standpoint of reason or the law of nations. Take, for instance, the law that permitted Israelites to enslave and marry women captured during war. Calvin argues that such forced marriages should not have taken place at all, but because it was so difficult to restrain the lust of victors in war, 'God so tempers his indulgence'. There is no ideal law here, only the embarrassing political regulation of libidinous men, for whom there was clearly 'no room for perfect purity'.²¹

The Torah likewise outlined a procedure for adjudicating cases in which a man had sex with an enslaved woman who was 'assigned to another man'.

¹⁸ 'Moses conceded it on account of their obstinacy and not because he sanctioned it as licit.' *Commentary on Matthew* 19: 7 (1555); CO 45: 529–30.

¹⁹ *Ibid.*

²⁰ *Commentary on Malachi* 2: 16 (1559); CO 44: 456–7. A similar case is the law's toleration of polygamy. See *Commentary on Leviticus* 18: 18 (1563); CO 24: 664; *Commentary on Psalms* 45: 8 [1557]; CO 31: 455; Thompson, 'Patriarchs', p. 15.

²¹ *Commentary on Deuteronomy* 21: 10 (1563); CO 24: 353.

Although adulterers were ordinarily to be put to death, because the woman was a slave the penalty was reduced to a fine and a guilt offering. Calvin points out that in God's eyes there is no difference between slaves and free persons. 'Notwithstanding therefore that the crime is worthy of death, still, in consideration of the people's infirmity, the punishment is mitigated.' But, he insists, Christians should not conclude from the 'lenity or indulgence of the law, that the offense was a trifling one'.²²

Calvin's handling of the law regulating the treatment of male prisoners is even more striking, because Calvin explicitly describes it as being deficient in comparison with the work of heathen writers (specifically Cicero). The law stated that when a city refused to surrender, all of its male inhabitants were to be killed.

The permission here given seems to confer too great a license, for since heathen writers command even the conquered to be spared, and enjoin that those should be admitted to mercy who lay down their arms and cast themselves on the good faith of the general, although the battering-ram may have actually made a breach in the wall, how does God, the father of mercies, give his sanction to indiscriminate bloodshed?

In contrast to Heinrich Bullinger, Calvin refuses to accept the law as a valid norm for just war. His solution is to concede that the civil law tolerated crimes – in this case murder – that were patently against the law of nature.

It has already been stated that more was conceded to the Jews on account of their hardness of heart than was justly lawful for them. Unquestionably, by the law of charity, even armed men should be spared if, casting away the sword, they crave for mercy. At any rate, it was not lawful to kill any but those who were taken in arms, and sword in hand. This permission therefore to slaughter, which is extended to all the males, is far distant from perfection.

Though the law was imperfect, Calvin suggests, its purpose was to regulate the injustice so as to restrain the Israelites from the even greater cruelty of murdering women and children.²³

The law of Exodus 21:7–11 actually provided regulations for the event that a man sold his daughter as a slave-wife to another man. If she did not please her master-husband, the law stated, she should be divorced and freed

²² *Commentary on Leviticus* 19: 20–2 [1563]; CO 24: 649–50.

²³ *Commentary on Deuteronomy* 20: 12 (1563); CO 24: 632. On Bullinger see Mark J. Larson, *Calvin's Doctrine of the State: A Reformed Doctrine and its American Trajectory, the Revolutionary War, and the Founding of the Republic* (Eugene, OR: Wipf & Stock, 2009), pp. 44–50.

rather than sold to a foreign people. Calvin is appalled. 'From this passage, as well as other similar ones, it plainly appears how many vices were of necessity tolerated in this people. It was altogether an act of barbarism that fathers should sell their children for the relief of their poverty. Still it could not be corrected as might have been hoped.' He infers that the intent of the law was to protect enslaved girls by forcing their masters either to marry or free them.²⁴

Another law permitted a slave who had the opportunity to win his freedom to divorce his enslaved wife and forsake his enslaved children. Slavery was sufficiently terrible that such a procedure was tolerated, Calvin declares, but 'nothing could be more opposed to nature than that a husband, forsaking his wife and children, should remove himself elsewhere'. There was no remedy to 'this impious violation of marriage' because, if the wife and children were set free, 'it would have been a spoliation of their lawful master'. In this case the slave's opportunity to win his freedom and the master's right to his slaves equally trumped the sanctity of marriage. But Calvin refuses to consider this procedure just. 'The sanctity of marriage therefore gave way in this case to private right, and this defect is to be reckoned among the others which God tolerated on account of the people's hardness of heart, because it could hardly be remedied.'²⁵

The conclusion that Calvin drew from all of these examples, in which God 'designedly deviated from the more perfect rule',²⁶ was that while Israel's civil laws may be useful for contemporary commonwealths, they are by no means authoritative, nor are they always the best. Calvin's openness to other legal traditions as legitimate expressions of natural law appears from his constant comparisons between the Mosaic law and Roman law.²⁷

²⁴ *Commentary on Exodus* 21: 7–11 (1563); CO 24: 650–1.

²⁵ *Commentary on Exodus* 21: 1 (1563); CO 24: 700–1. Calvin describes other weaknesses in the Mosaic laws pertaining to slavery as well. See 21: 26; CO 24: 626. A final set of cases in which Calvin explained the weakness of the law in terms of the hardness of human hearts related to violence. See 21: 18; CO 24: 623–4; *Commentary on Numbers* 35: 19 (1563); CO 24: 638–40.

²⁶ *Commentary on Exodus* 21: 18 (1563); CO 24: 623–4.

²⁷ He offers comparisons on debt slavery (*Commentary on Exodus* 22: 3 (1563); CO 24: 690); theft (22: 1–4; CO 24: 687–9); the theft of neighbour's landmark (*Commentary on Deuteronomy* 19: 14 (1563); CO 24: 676); just conduct in war (20: 10; CO 24: 632); the treatment of slaves (*Commentary on Leviticus* 25: 39 (1563); CO 24: 703); contract law (19: 35; CO 24: 675–6); and laws on incest (18: 6; CO 24: 661–3). Where the Mosaic law differed from Roman law he occasionally finds the former to be superior. See *Commentary on Deuteronomy* 21: 18–21 (1563); CO 24: 607–8; *Commentary on Exodus* 21: 20 (1563); CO 24: 624; *Commentary on Exodus* 22: 1–4 (1563); CO 24: 687–9.

To be sure, Calvin's intent in emphasising Jesus' logic was not to reduce the rigour of political laws.²⁸ On the contrary, Calvin warns magistrates not to use the principle as an excuse for laxity. Commenting on Jesus' declaration, 'what therefore God has joined together, let not man separate', Calvin writes, 'And as he declares that it is not in the choice of the husband to dissolve the marriage, so likewise he forbids all others to confirm by their authority illicit divorces, for the magistrate abuses his power when he gives favor to the husband to divorce his wife.'²⁹ Jesus' principle does not justify magistrates' 'indolence, if they voluntarily abstain from correcting vices, or neglect what the nature of their office demands'.³⁰ In his commentary on the incest laws in Leviticus 18, he asks whether a magistrate might decide not to enforce such laws of nature. Civil governments might fail to punish certain forms of immorality, he concedes, but they cannot make such actions moral. 'It may indeed be decreed that it should be lawful and unpunished, since it is in the power of princes to remit penalties. Yet no legislator can effect that a thing, which nature pronounces to be vicious, should not be vicious, and if tyrannical arrogance dares to attempt it, the light of nature will presently shine forth and prevail.'³¹

Pluralism and the politics of morality

What I want to propose here is that Calvin's insistence on the limits of the civil law given the hardness of human hearts creates political theological space for the sort of limited government that respects a measure of practical moral pluralism. Making this argument requires reflecting on the reasons why Calvin thought the law has to accommodate human beings' hardness of heart. Calvin doesn't get very explicit or theoretical about this, but what he does say implies several possible reasons.

First, it is vain for the law to require what is impossible for it to coerce. In certain contexts, it is impossible for people to restrain themselves from

²⁸ As Hopfl observes, Calvin believed the church's duty is 'to urge on the magistracy an ever stricter conformity of positive with divine law, and an ever stricter enforcement of obedience to the law'. Harro Hopfl, *The Christian Polity of John Calvin* (Cambridge: CUP, 1982), p. 196.

²⁹ *Commentary on Matthew* 19: 6 (1555); CO 45: 529.

³⁰ *Commentary on Matthew* 19: 7 (1555); CO 45: 529–30.

³¹ On the sexuality laws of Lev 18 Calvin writes, 'If any again object that what has been disobeyed in many countries is not to be accounted the law of the Gentiles, the reply is easy, viz., that the barbarism which prevailed in the East does not nullify that chastity which is opposed to the abominations of the Gentiles, since what is natural cannot be abrogated by any consent or custom.' *Commentary on Leviticus* 18: 6 (1563); CO 24: 661–3. Cf. *Commentary on Exodus* 20: 14 (1563); CO 24: 641–2.

certain immoral or unjust practices, apart from the grace of God. If the law attempts to require of people what they cannot do, they will not only cease to submit to the law – they will cease to try. Thus the integrity and legitimacy of the law requires that it respect the capabilities and circumstances of real human beings. Second, people need the freedom to use their own moral discretion if they are to be able to act responsibly. Such freedom is readily abused, but respect for the duties human beings have as moral agents requires that it be protected. Third, sometimes the law must tolerate certain expressions of sin in order to regulate them and prevent worse abuses from taking place. What is most important is not that sins be punished, but that vulnerable human beings be protected from their gravest consequences.

These three reasons imply a startling conclusion. It is not only human beings' moral uprightness or integrity of conscience that deserves respect from government. Rather, it is the very agency of sinful human beings that deserves government respect. That it is the *sinfulness* of human beings that necessitates this check places Calvin's political theology in sharp contrast to forms of political liberalism whose arguments for freedom presuppose overly optimistic evaluations of human nature. Insofar as Calvin's reflections on the hardness of human hearts provides a more realistic assessment of human nature than does a Rousseauian liberalism, for instance, it also offers a better argument for government restraint. Whatever moral, procedural or administrative rules are deemed to be in accord with the common good, they cannot run roughshod over instincts and habits dear to people even when those instincts and habits are ultimately vicious or unjust. The laws must maintain standards and require practices that are attainable by real, sinful people. Authority must be of the sort that the people can respect, support and realistically submit to. Calvin offers us no social contract, but his analysis does imply the need for a sort of general public consent. The people will only allow themselves to be pushed so far against their nature and will. Even the God of Sinai recognised that.

The same principle implies a necessary respect for practical moral pluralism. Government cannot expect to enforce moral standards about which the people profoundly disagree given their fundamental disagreements about the nature of happiness and the good life, the proper object(s) and forms of piety, and the demands of virtue. Where there is a broad cultural consensus, one might hope for a maximal moral establishment; but where there is substantial moral pluralism, one must necessarily be content with a minimal moral establishment, if only because of the hardness of human hearts.

There is another side to all of this. Though it may at first seem counterintuitive, Calvin's insistence on the limits of the civil law given the

hardness of human hearts inevitably creates space for forms of resistance to authority beyond that which is associated with the authority of the lesser magistrate or even the inviolable rule that humans must always obey God rather than men. To be sure, the permissiveness ceded to sinful human beings does not justify hardness of heart. But it does create a context in which human beings who refuse to tow a political line, *whether because of sin or because of conscience*, have some claim on the magistrate's forbearance. Not only are the consciences and liberties of individuals whom Christians regard as acting uprightly protected against state tyranny, but so are the consciences and liberties of individuals Christians regard as patently against God's will empowered for such resistance.

It is important to take this dimension of Calvin's thought seriously as precisely the element of a Calvinist political theology that bolsters respect for moral and religious pluralism. Classic Calvinist theories of rights, including classic Calvinist resistance theory, associated those rights closely with liberty of conscience and its obligation to obey God. Indeed, John Witte argues in his *Reformation of Rights* that within the Calvinist tradition rights emerged as the rights of individuals to perform duties and obligations assigned by God – especially the Ten Commandments.

The problem with such theories is that they placed the rights of non-believers, or the immoral, in doubt. They were therefore all too easily understood to be compatible with Calvinist defences of religious persecution, not to mention oppressive forms of moral policing. Yet this is where Calvin's emphasis on the legal implications of the hardness of human hearts is relevant. Calvin argued that the refusal of a community – a religious community of Jews or Muslims, for instance – to embrace the true faith legitimately gave rise to the need for religious toleration.³² By contrast, his defence of religious persecution explicitly presupposed a consensus regarding the certainty of religious truth. The same principle might be extended to moral questions. If God was willing to tolerate divorce, polygamy and the murder of captives in Israel's Torah, is it so surprising that Christians should expect the toleration of adultery, sexual immorality or abortion under secular American law? Such toleration does not constitute approval, or even resignation. Christians should continue to promote love, justice and piety in

³² See, for instance, Calvin's *Déclaration pour maintenir la vraye foy que tiennent tous chrestiens de la Trinité des personnes en un seul Dieu: Contre les erreurs détestables de Michel Servet Espagnol. Où il est aussi monstré qu'il est licite de punir les hérétiques, et qu'à bon droict ce meschant a esté executé par iustice en la ville de Genève* (Geneva: Jean Crespin, 1554; available online at the Post-Reformation Digital Library, <http://www.prdl.org/search.php?q=D%C3%A9claration+pour+maintenir+la+vraye+foy>), p. 46.

the spirit of the Gospel. Government should promote virtue and restrain vice as much as is conducive to the common good. But government may only mandate what is possible in light of the nature and dignity of human beings. Human beings have a right to claim this sort of forbearance.

In a society where there is often little consensus or certainty regarding what is true or right, the 'hardness of heart' principle offers a stronger basis for government's respect for individual rights than does any sort of unattainable consensus about the nature of justice. Such is far preferable to a government that seeks definitively to declare what are the basic demands of truth and righteousness, running roughshod over the diversity of a pluralistic society and imposing its will ruthlessly against the wills of a majority of its citizens.

For their part, Christians might disapprove of any number of activities and practices permitted by government without thereby having to feel complicit in the approval of sin. Permission, especially legal permission, does not and cannot constitute moral approval. Christians can and should direct their energies to promoting love, justice and piety in the spirit of the Gospel, building where possible the sort of cultural consensus that might enable the civil laws to be ever more in line with that love, justice and piety. In doing so they witness to the truth of what they believe even as they maintain a fundamental respect for the dignity of all human beings.