

Benevolence, Covenant, and the Ciceronian Spirit in Early Puritan Political Theory

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1. Introduction

For Reformational Christians there is a challenge regarding discourse with non-Christians on common ground in ethics and matters of justice. In a wider context, Reformational views on justice contribute very little in providing platforms to either evangelical Christians or non-Christians for engagement on issues related to legal ethics, justice and human rights.² [2] Issues relating to the "point of connection" and/or "responsibilities of common ground on social matters between Reformational evangelicals and non-Christians" confronted the Reformers in the initial stages of the early Reformation. Luther, Melancthon, and early Puritanism, especially against the background of the Ciceronian spirit of equity and justice, were reflective of a successful endeavour towards the attainment of commonality regarding justice and equity. This also countered a widely held Protestant view that there is no common ground relating to justice, fundamental rights and practical jurisprudence. Implicated in this is a convincing argument in support of Romans 2:14-15³ [3] and the relevance of this text regarding a reconsideration of power against the background of an emphasis on benevolence, contract and the limitation of power. Benevolence, contract and the limitation of power (resistance theory) forms the blueprint for a truthful mechanism for power (politics) to be applied in the execution of a truthful norm (jurisprudence). Herein also lies an important apologetical angle, in that Christianity may also lay claim in support of a political and jurisprudential theory that seems to be in so many instances the child of only the secular.

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2 [2] A Raath, "The Justness of Love: The Essence and Status of Justice in Luther's Theology", *Studia Historiae Ecclesiasticae*, Vol. 32, 1(2006), 337.

3 [3] "for when Gentiles, who do not have the law, by nature do the things contained in the law, these, although not having the law, are a law to themselves, who show the work of the law written in their hearts, their conscience also bearing witness, and between themselves their thoughts accusing or else excusing them", New King James Version (Nashville: Thomas Nelson Publishers, 1982). Also see Romans 1:18-20; Psalms 19:1-4.

It is against this background that Cicero's contributions regarding the proclamation of universal principles gains added meaning ♦ something that was not only to play an influential role in the early Reformation, but also something that was to be witnessed in early Puritan political theory. Cicero 's *De Republica* was not only indicative of a sense of awareness of God⁴ [4] , but also of a positive sentiment towards a law that is everywhere the same.⁵ [5] Van Zyl states that the great interest in natural law and justice, which has fascinated thinkers throughout the ages up to the present time, owes much to the role played by Cicero , in acting as a conduit between ancient Greek and Stoic natural law doctrines and the natural law theories of later Western philosophy and legal thought.⁶ [6] In this regard, Coffey's observation that the premise that leaders are responsible to a law apart from and higher than themselves, was central to the formation of the US constitution, gains added insight.⁷ [7] Cicero 's political thought was read by everybody, and all of philosophy as it stood at the beginning of the first century before Christ has to be gathered from Cicero .⁸ [8] Melancthon, Luther, Calvin, and Rutherford, only to name a few of the great minds in Reformed political theory, referred to Cicero in their works. Althusius's monumental work *Politics* (to which Rutherford 's epic *Lex, Rex* shows many similarities⁹ [9]), refers extensively to the

4 [4] See DH van Zyl, *Justice and Equity in Cicero*, (Pretoria: Academica, 1991), 51-56.

5 [5] J Budziszewski, *Natural Law for Lawyers*, 17 (module prepared for the Blackstone Legal Fellowship Programme, hosted by the Alliance Defence Fund, United States of America).

6 [6] Van Zyl, *Justice and Equity in Cicero*, 234.

7 [7] J Coffey, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), 13.

8 [8] GH Sabine, *A History of Political Theory*, 3rd ed., (George G. Harrap & Co. Ltd: London, 1963), 161-162. Also see Van Zyl, *Justice and Equity in Cicero*, 56, observes that some of the great Christian theologians, and more particularly the "patristic fathers" such as Jerome, Augustine and Ambrose, appear to have owed much to Cicero in the development of their own theological views and in the evolution of their theological works. This in turn influenced the Christian political views, which relied on the writings of the patristic fathers, providing an indirect influence *via* Cicero's thought.

9 [9] In this regard see SA de Freitas, *Samuel Rutherford on Law and Covenant: The Contribution of Theologico-political Federalism on Constitutional Theory*, (LL.M thesis, Faculty of Law, University of the Free State, 2003).

political views of Cicero .¹⁰ [10] John Adams, in a letter to Thomas Jefferson [9 July 1813] made it clear of his (Adams 's) knowledge of the works of Cicero . In fact, Adams emphasised the importance of Cicero 's discourses on government, which in the words of Adams : "perhaps were worth all the rest of his [Cicero 's] Works".¹¹ [11] Consequently, this article unfolds the Ciceronian contribution to benevolence, covenant and the limitation of power and shows the existence of these same principles in the early Reformation and its legacy harboured in early Puritan circles¹² [12] . In addition, this Ciceronian spirit gives witness to the content of Romans 2:14-15, and confirms that even Roman Paganism forms part of God's law.

2. The Ciceronian Spirit in Early Reformational and American Political Thought

2.1 Reason

According to the widely accepted natural law philosophy of Greek antiquity, there are two distinct ways of using the word "right" or "just" to describe human action. In an ultimate sense the word can be used of an action that corresponds to the eternal moral order of the universe, called "natural law"; but in a limited sense the word is also applicable to actions that conform to the laws devised by societies for the administration of their business, to what is called "positive law". The ideal, according to Greek philosophy,

¹⁰ [10] See FS Carney, *The Politics of Johannes Althusius*, (An abridged translation by Frederick S. Carney of the third edition of Johannes Althusius's *Politica Methodice Digesta, Atque Exemplis Sacris et Profanis Illustrata*, including the prefaces of the first and second editions and with a preface by C. J. Friedrich, London: Eyre and Spottiswoode, 1964), 14, 15, 17, 21, 24, 61, 77, 101, 118, 131, 133, 135, 138, 148, 175 and 212.

¹¹ [11] Lester J. Cappon (ed.), *The Adams-Jefferson Letters. The Complete Correspondence between Thomas Jefferson & Abigail & John Adams*, (Chapel Hill & London: The University of North Carolina Press, 1959), 351.

¹² [12] Puritan in this context refers to the 16 and 17th-century Scottish Reformers as well as the period from approximately Winthrop's arrival on the East Coast of the US (early 17th century) and early 19th -century America.

was congruence if not an identity, between the absolute and relative normative systems of justice.¹³ [13] To Cicero, the eternal (absolute) moral order of the universe is reflective of the divine reason and will. He voices the opinion of wise men that "law is not a product of human thought, nor is it any enactment of peoples", but something eternal which rules the whole universe by its wisdom in command and prohibition. Therefore, the wise men have been accustomed to say that law is the primal and ultimate mind of God, "whose reason directs all things either by compulsion or restraint".¹⁴ [14] Reason and speech represent the most comprehensive bond that unites together the whole of mankind; "and under it the common right to all things that nature has produced for the common use of man is to be maintained", so that we are all effectively taught to bestow even upon a stranger what it costs us nothing to give".¹⁵ [15] The commands and prohibitions of nations "have the power to summon to righteousness and away from wrong-doing".¹⁶ [16] This power is not merely older than the existence of nations and states, it is coeval with that God who guards and rules heaven and earth, because the divine mind cannot exist without reason, and divine reason cannot but have this power to establish right and wrong. Cicero cites the examples of Coclus, who showed exceptional bravery, and Sextus Tarquinius who broke the eternal law by violating Lucretia in transgression of the will of the divine mind.¹⁷ [17] God's will reflected in nature, distinguishes between things just and unjust.¹⁸ [18] Because the gods are the lords and rulers of all things, and that which is done, is done by their will and authority, the virtue of justice is reflective of the divine will.¹⁹ [19] All human life is subject to the decrees of the supreme divine law.²⁰ [20] The true

13 [13] Raath, "The Justness of Love: The Essence and Status of Justice in Luther's Theology", 335-354.

14 [14] *De Legibus (DL)*, II. iv. 8.

15 [15] Cicero, *De Officiis (DO)*, Book I, paragraphs 51-52 (page 55).

16 [16] *DL*, II. iv. 9-10.

17 [17] *DL*, II. iv. 10.

18 [18] *DL*, II. V. 13.

19 [19] See *DL*, II. 15-vii. 16.

20 [20] *DL*, II. 1. 2-3.

and primal law, applied to command and prohibition, is the right reason of God.²¹ [21] Therefore, the citizens must be persuaded that the gods are the lords and rulers of all things, and that what is done, is done by their will and authority; that they are benefactors of man, taking note of the pious and impious.²² [22]

Luther and Melanchthon wanted to provide meaning regarding the political and jurisprudential implications of Romans 2:1-15. Cicero's view that "nature's gifts" and the "possessions of the human mind" united mankind and that "only after all these things have been made clear that the origin of Law and Justice can be discovered", hinted towards and supported the Lutheran views of a "higher" moral law, susceptible to human reason.²³ [23] Furthermore, it assisted towards limiting, as Cicero observed, the civil law to a "small and narrow corner", compared to the "whole range of universal Justice and Law", encompassing the total existence of man.²⁴ [24] Luther, although committed to the principles contained in the Scriptures, relying on Augustine's *Treatise on the Spirit and the Letter*, leaves room in the kingdom of the world, for philosophers and "Platonists" to teach what is true and in harmony with the Christian faith; that we are not to shrink from it, but to claim it for our own use "from those who have unlawful use of it".²⁵ [25] In effect Luther was saying that the pagan philosophers should not be discarded but their

21 [21] *DL*, II. iv.10.

22 [22] *DL*, II. vi-vii.

23 [23] Raath states that the perspective emanating from Luther's natural law theory has an important political message for mankind as a whole in its implicit warning against positivistic and legalistic perspectives on law because these are apt to lead to confusion, relativism and historicism. Man, according to Luther's view, therefore, has to revert to more fundamental principles (or values), representative of "ideal", "good", or "true", norms for testing man made law. In this regard see, A Raath, "Writing ♦new' decalogues: Martin Luther's development of the Pauline-Augustinian tradition of natural law", *Koers*, 70, 3(2005), 425-455.

24 [24] *DL*, I, v. 16.

25 [25] Luther alludes to the metaphor of Israel's appropriation of the Egyptian vessels and ornaments of gold and silver, and garments, "designing them for better use", in addition to the fact that "in the same way all branches of heathen learning have not only false and superstitious fancies and heavy burdens of unnecessary toil, which every one of us, when going out under the leadership of Christ from the fellowship of the heathen, ought to abhor and avoid; but they contain also liberal instruction which is better adapted to the use of the truth, and in some most excellent precepts of

writings should be studied in such a way that other "Christian" teachings "are disentangled from the rest".²⁶ [26] Although, therefore, the "heathen" writings are unable to give guidance in matters of faith, they are pregnant with instruction in the spheres of law, politics and social rights in so far as they can be reconciled with the teachings of the Bible. With reference to Romans 1:19, Luther states that even Gentiles have a rational knowledge of the precepts of natural law ♦ thereby knowing that murder, adultery, theft, usury, lying, deceit, and blaspheming are wrong. Their natural reason also teaches them that there is a God and that He punishes such vices.²⁷ [27] Particularly in the field of political ethics, Luther consistently used the writings of ancient philosophers, particularly Cicero, in so far as they can tolerate the light of Scripture. Except for Luther's views on man's fall into sin, and the effects of sin on the faculties of man²⁸ [28] , Luther's views on the faculties of man come close to Cicero's statements on the distinguishing features of man.

Luther proceeds from the biblical perspective of man created in the Image of God, endowed with gifts of reasoning, discernment and justice, bound together by the abilities of reason and speech. Whilst animals are designated as the "footprints" of God, man alone is God's image. In man there is such wisdom, justice and knowledge of all things that he may rightly be called a world in miniature.²⁹ [29] Because of man's

morality." This is a reference to Augustine's *A Treatise on the Spirit and the Letter* (S&L), Book 2, Chapter 40, 1158-1159 (2, 40:1158-1159).

²⁶ [26] S&L, 2, 40:1159.

²⁷ [27] Raath, "Writing ♦new' decalogues: Martin Luther's development of the Pauline-Augustinian tradition of natural law", 440.

²⁸ [28] In his *Lectures on Genesis* (LG), Luther states that in Adam there was an enlightened reason, a true knowledge of God, and a most sincere desire to love God and his neighbour (Volume 1: page 63 [1:63]). The image of God, according to which Adam was created, says Luther, was something far more distinguished and excellent, since obviously no leprosy of sin adhere either to his reason or to his will. Both his inner and his outer sensations were all of the purest kind. His intellect was the clearest, his memory was the best, and his will was the most straightforward ♦ all in the most beautiful tranquility of mind, without any fear of death and without any anxiety (*LW*, 1:63, LG [Genesis 1:27]). *LW* refers to: Luther, *M Works* (55 vols.), Pelikan, J (ed.), vols. 1-30 and Lehmann, H (ed.) vols. 31-55, Philadelphia, Pa: Concordia, 1958-1976.

²⁹ [29] *LW*, 1:68, (Lectures on Genesis, Genesis 1).

sinful nature, man is not able to fully comprehend God's perfect justice. However, all men have a certain knowledge implanted in their minds by which they know naturally that one should do to others what one wants done to oneself. This knowledge is the law of nature, the foundation of human law and all good works. Man's reason, though, is so corrupted and blinded by malice of the devil that it does not understand this inborn knowledge; or even if it has been admonished by the Word of God, it deliberately neglects and despises it.³⁰ [30] What is also interesting is the similarity between Cicero's and Luther's view on justice as inherent in the mind of man. Cicero supports the view that justice is essentially natural (not everything is just which is found in the customs or laws of nations.³¹ [31] Luther states that man's ability to know justice, flows from man's createdness in the image of God. God created Adam and Eve in His image and likeness, that is, in justice, wisdom and happiness.³² [32] God created man with knowledge of God and with utmost freedom from fear, with justice and wisdom.³³ [33]

Melanchthon, Luther's follower, pursued the Ciceronian perspectives on the foundational importance of man's reason for man's existence in civil society with much more enthusiasm. During the unrest at Wittenberg from 1521-1522, when Luther was confined to the Wartburg and the radicals at Wittenberg were resorting to violence, Melanchthon saw the necessity to seek in law and natural reason certain ethical requirements, which would be binding on all men. To Melanchthon these were to be found in the natural light of man's reason, thereby making room for a philosophic ethic and the laws of men apart from scriptural justification by faith in Christ.³⁴ [34] In his tract, *Unterschiedt zwischen weltlichet und*

30 [30] *LW*, 27:53 (Lectures on Galatians, Galatians 1).

31 [31] *DL*, I. xiv. 40.

32 [32] *LW*, 1:69 (Lectures on Genesis, Genesis 1).

33 [33] *LW*, 1:73 (Lectures on Genesis, Genesis 1).

34 [34] Melanchthon never suggested that the keeping of the ethical laws could justify man with God, but he did maintain that the rationality of man and communal living demanded such external discipline. To Melanchthon the natural light, kindled by the Holy Spirit, as a basis for external, disciplined behaviour for the unredeemed, has no bearing on the internal forgiveness and faith of the Christian ♦ in no way is faith subverted. In the 1555 edition of his *Loci*, Melanchthon maintained the view that the unredeemed should also abide by the Ten Commandments, at least externally, because they are specific expressions of God's divine law which, but for the Fall, would be clear to man's natural light (*LCT* [1555]: Introduction) ♦ *LCT* refers to Melanchthon, P *The*

Christlicher Fromkeyt (1521/1522), dating from approximately the same time as his *Loci*, Melanchthon maintained that worldly piety, in distinction from internal piety practiced through faith, is composed of external conduct based on man's reason; external piety is written in man's reason by God.³⁵ [35] Although, says Melanchthon, Cicero and Plato erred by relying too strongly on deriving formulae from the nature of man, and following too much their own devices and the precepts of man rather than the precepts of the Holy Scripture, man has a certain knowledge of precepts engraved on his mind, not discovered by his own ingenuity, but by man's inborn judgment provided by God.³⁶ [36] According to Melanchthon, man's natural reason can provide guidance in moral matters to the same extent as gaining knowledge of numbers, order, syllogisms, geometrical principles and physics.³⁷ [37] Because life demands numbers and order, says Melanchthon, practical principles pertaining to the distinction between good and bad, should be as clear and as firm as the knowledge of numbers.³⁸ [38] However, because man's understanding is darkened, mankind fails to distinguish between that which is good and that which is bad, and therefore people do not constantly act in accordance with the knowledge that God has to be

Loci Communes, (Transl. by Hill, CH), (Boston: Meader, 1944). Melanchthon in his *Unterschiedt zwischen weltlicher und Christlicher Fromkeyt* draws a distinction between worldly (or external) piety, practiced by human reason, from Christian (or internal) piety, practiced through faith (Melanchthon Werke [MW], Part I:171-172). MW also refers to Melanchthon Works: Melanchthon, P *The Loci Communes*, (Transl. by Hill, CH), (Boston: Meader, 1944). Worldly piety, to Melanchthon, is the world order, composed of external conduct based on man's reason (MW, I:172). External piety is, therefore, written in man's reason by God; it is planted in man's reason, demanding that nobody shall be hurt, the common peace be kept and the love of the neighbour be maintained (MW, I:172), although human reason has no knowledge of God and God's grace (MW, I:172). In his *LCT* [1555] Melanchthon applies this same distinction between internal and external piety (see for example, *LCT* [1555]:152).

35 [35] MW, 1:171-172.

36 [36] *LCT* [1521]: 42(17-21).

37 [37] *LPT* [1559]:138. *LPT* refers to: *Loci communis von 1521. Loci praecipui theologici von 1559* (II. band, 1 Teil. 1952, C. Bertelsmann verlag).

38 [38] *LPT* [1559]:138.

obeyed ♦ adultery has to be avoided, and honourable agreements should be observed in the same way as effect is given to the knowledge that two times four amounts to eight.³⁹ [39]

In early American thought the importance of Godly reason, in the spirit of Cicero, Luther and Melancthon, is also clear. Jonathan Mitchell's statements on natural law is representative of the typical New England commitment to natural law giving guidance in matters concerning the kingdom of this world. In his *Nehemiah on the Wall in Troublesome Times* (1671) he deduced the maxim *Salus Populi Suprema Lex* from the "forehead of the law and light of nature". To Mitchell the law of nature is "owned and confirmed" by the Scriptures; it is deducible from the Law of God: "for that is indeed the Law of Nature, is a part of the Eternal Law of God; and the Law of God enjoyns, that in Humane Civil Affairs, things be managed according to right Reason and Equity; and that Rulers, as they are for the people, so they are to make it their main business, and the scope of all their Actions, Laws and Motions, seek the welfare of the people".⁴⁰ [40] Similarly, John Wise in his 1717 work, *Vindication of the Government of New England Churches*, observed that reason and revelation is equally an emanation of God's wisdom, "(f)or that Light of Reason as a Law and Rule of Right, is an Effect of Christ's Goodness, care, and creating Power, as well as of Revelation; though Revelation is Natures Law in fairere and brighter Edition".⁴¹ [41]

³⁹ [39] *LPT* [1559]:138.

⁴⁰ [40] P Miller & H Johnson (eds.), *The Puritans. A Sourcebook of Their Writings*, [Two Volumes Bound as One], (New York: Dover Publications Inc., [1938] 2001), 237.

⁴¹ [41] Miller & Johnson, [1938] 2001, 260. Moots observes the following regarding Wise's over emphasis of natural law in comparison to Scriptures: Wise wrote to defend the independent character of the Congregational form of ecclesiastical government. He argued *A Vindication of the Government of New England Churches* (1717) using four sources, "Antiquity, The Light of Nature; Holy Scripture; and from the Noble and Excellent Nature of the [ecclesiastical] Constitution it self." Although Wise was orthodox in defending Congregationalism in a sixteen-page exposition of Scripture, he devoted twice as much space to his forty page "Demonstration Defense of our Platform, which is founded in the Light of Nature." Wise considered reason and all forms of revelation to be equal as sources of God's word. Wise claimed that "we attribute it to God whether we receive it nextly from Reason or Revelation" equating each to be "an Emanation of His Wisdom." Both reason and revelation were considered to be "so many Lights to guide man through a dark World." Revelation was simply "Natures Law in a fairer and brighter Edition." "Mans Reason" was considered to be "the Law of Nature." Wise equated reason with conscience. He wrote that "a narrow Watch, and accurate Contemplation of our Natural Condition" together with three obvious conditions helped even the "very dull Scholar to Nature . . . to make Proficiency in the Knowledge of her Laws." These three natural conditions of man were "A Principle of Self-Love, . . . A Sociable Disposition . . . An Affection or Love to Man-kind in General." This was certainly a generous view of man for a Congregationalist like Wise. He further claimed that the

In his opinion on the French Treaties, Jefferson invokes the same argument as the basis for recognising the existence of natural law; those who write treatises of natural law, says Jefferson, can only declare what their own moral sense and reason dictate in the several cases they state: "Such of them as happen to have feelings and a reason coincident with those of the wise and honest part of mankind, are respected and quoted as witnesses of what is morally right or wrong in particular cases".⁴² [42]

2.2 Benevolence

Cicero regarded man's propensity to love his fellow-man as the "foundation of the law".⁴³ [43] Cicero's "connecting" of benevolence and the interests of society, provided a useful platform for the early Reformers to postulate the notion of social benevolence as the guiding idea in the public sphere. So, for example, both Luther and Melanchthon found a valuable biblical parallel in Cicero's statements that we are not borne for ourselves alone, "but our country claims a share of our being, and our friends a share", and as men are borne for the sake of others, "that they may be able mutually to help one another", by following nature, to contribute to the general good "and by an interchange of acts of kindness, by giving and receiving, and thus by our skill, our industry and our talents to cement human society more closely together, man to man"⁴⁴ [44] The precept that nobody should suffer hardship, can without doubt be

Law of God is "published by the dictates of Right Reason . . . Therefore says *Plutarch*, *To follow God and obey Reason is the same thing*." These laws of nature and "Types of Reason" were the only things which could make man virtuous and free. This method of Wise's, arguing from man's "Common Reason," allowed him to derive such a large portion of his discourse from sources other than Scripture. While divine revelation was not his primary rhetorical weapon, he did not discard it entirely. Rather, he constructed his argument to prove from nature that "there be various regular models of Government," but that "Divine Wisdom is pleased to interpose and over-rule Natures agitations . . . God has Disclosed his Mind by Revelation, that his Churches be the Subjects of a Democracy." Therefore, Wise's primary argument was an appeal to natural law and man's reason, confirmed by a short Biblical exegesis. Essentially, this was a reversal of previous Calvinist rhetoric, GA Moots, *The Evolution of Reformed Political Thought and the Revival of Natural Law Theory*, (Thesis in partial of the Master of Arts Degree, Louisiana State University, 1993), footnote 84-95 in the text.

⁴² [42] Jefferson, T. *Political Writings* by Appleby, J. and Ball, T (eds.), (Cambridge: Cambridge University Press, 1999), 559.

⁴³ [43] Van Zyl, *Justice and Equity in Cicero*, 56.

⁴⁴ [44] *De Officiis (DO)*, I, vii. 22-23.

collected, says Melancthon, from the necessity of the community where everybody is born bound and joined to everybody else⁴⁵ [45] This is confirmed in the Holy Scriptures, where it is stated that it is unbecoming for man to live alone, but a life companion should be joined to him.⁴⁶ [46] Further, it means that nobody should cause harm to anybody else, that we should eagerly love everybody else and that everybody should treat our benevolence with respect.⁴⁷ [47] Luther's commitment to the pre-lapsarian integrity of man's faculties, to the effect that Adam had an enlightened reason, a true knowledge of God, and a most sincere desire to love God and his neighbour,⁴⁸ [48] does not imply that man, as a result of the fall into sin, is no longer able to comprehend the demand of neighbourly love inscribed in man's reason. Enlightenment of man's reason, to Luther, is only possible through the gospel.⁴⁹ [49] Enlightenment reason will then be able to do God's will by serving God and the world,⁵⁰ [50] through the law of love.⁵¹ [51]

The discourse on public morals in 18th - century America , for the most part followed the early Reformational-Ciceronian interpretation of man's sociality in terms of basic moral obligations of association serving as the fountainheads of further or other obligations. Thomas Jefferson for example transposes man's political duties in terms of the moral demands of social benevolence. In a letter to Peter Carr, Jefferson argues as follows concerning man's moral commitments to society: God, who made us would have been a pitiful ♦bungler' if He had made the rules of human conduct a matter of science. For one man of science, there are thousands who are not. What would have become of them? Man was ♦destined' for society. His morality therefore was to be formed to this object. Man was endowed with

45 [45] *LCT* [1521]:43 (6-8).

46 [46] *LCT* [1521]:43 (9-10).

47 [47] *LCT* [1521]: (11-13).

48 [48] *LW*, 1:63 (*LG*, Genesis 1:27).

49 [49] *LW*, 52:57 (G, The Gospel for the Main Christmas Service, John 1:1-14).

50 [50] *LW*, 46:252.

51 [51] *LW*, 46:131.

a sense of right and wrong merely relative to this. This sense is as much a part of his nature as the sense of hearing, seeing, feeling; "it is the true foundation of morality" ♦ The Moral sense, or conscience, is as much part of man as his leg or arm." It is given to all human beings in a stronger or weaker degree, "as force of members is given them in a greater or less degree".⁵² [52] Jefferson argues that civil society has a moral dimension flowing from the Christian command of love. In a letter of April 9, 1803, Jefferson remarks on Christ's teachings that His system of morality was the most benevolent and sublime "probably that has ever been taught", and consequently more perfect than those of any of the ancient philosophers.⁵³ [53] To James Fishback, on September 27, 1809, Jefferson wrote that the practice of morality being necessary for the well-being of society, "He (God) has taken care to impress its precepts so indelibly on our hearts that they shall not be effaced by the subtleties of our brain." To Jefferson there is general agreement "in the moral precepts of Jesus, and nowhere will they be found delivered in greater purity than in his discourses".⁵⁴ [54] Jefferson underscores the principle that morality is composed foremost of fundamental duties and faithfully fulfilling them.⁵⁵ [55] The moral requirements of Christianity and the Christian duty of benevolence are identified by Jefferson as providing the basic moral framework for man's involvement in the public sphere. After having stated the merits of Epictetus (giving us "what was good of the Stoics"), and Seneca ("a fine artist"), Jefferson declares Jesus of Nazareth the "(g)reatest of all the reformers of the depraved religion of His own country", and the "outlines" of Christ's teachings as "a system of the most sublime morality which has ever fallen from the lips of man".⁵⁶ [56] Different from Epictetus and Epicurus, Jesus gave a supplement of the duties and charities we owe to others.⁵⁷ [57]

⁵² [52] Jefferson, *Political Writings*, 253 (Letter to Peter Carr, 10 August 1787).


⁵³ [53] *Ibid.*, (Letter to Joseph Priestly).

⁵⁴ [54] *Ibid.*, 281, (Letter to James Fishback, 27 September, 1809).

⁵⁵ [55] *Ibid.*, 281, (Letter to James Fishback, 27 September, 1809).

⁵⁶ [56] *Ibid.*, 314 (Letter to William Short, 31 October, 1819).

⁵⁷ [57] *Ibid.*, 286-287, (Letter to William Short, 31 October, 1819).

Jefferson places benevolence at the core of man's moral commitment. Not the right of self-love, but the duty of benevolence postulates the essence of man's moral commitment to others. The relations with others constitute the boundaries of morality. To ourselves we can owe no duties because obligation requires two parties, and therefore self-love is no part of morality. With reference to the example of the good Samarathan, Jefferson considers the question why acts of benevolence give pleasure. He answers from the Lutheran-Ciceronian view that because nature has implanted in man's breast a love of others, and inculcated a sense of duty to them, a moral instinct, man's is prompted to "irresistably  feel and succor their distress",⁵⁸ [58] because the Creator would have been "a bungling artist, had he intended man for a social animal, without planting in him social dispositions".⁵⁹ [59]

Cicero's concept of benevolence also intertwined with his views on justice against the background of reason. Cicero's efforts to postulate a non-relativistic standard of justice lead him to describe it as "right reason applied to command and prohibition".⁶⁰ [60] If nature is not to be considered the foundation of justice, that will mean the destruction of the virtues on which human society depends, generosity, love of one's country, loyalty, the inclination to be of service to others, and to show gratitude for favours received.⁶¹ [61] For these virtues originate in man's natural inclination to love his fellow-men, and this is the foundation of justice.⁶² [62] To Cicero justice is the supreme virtue.⁶³ [63] Through justice, in which is the "crowning glory" of the virtues, the common bonds of society are maintained.⁶⁴ [64] Cicero's conception of justice also comes to the fore in his theory on resistance. According to Cicero, the fundamental principles of justice, that no harm be done to anyone; and that common interests be

⁵⁸ [58] *Ibid.*, 287.

⁵⁹ [59] *Ibid.*, 287.

⁶⁰ [60] *DL*, I. xv. 42.

⁶¹ [61] *DL*, I. vix-xv. 43.

⁶² [62] *DL*, I. xv. 43.

⁶³ [63] *DO*, II. ix. 34.

⁶⁴ [64] *DO*, I. vii. 20.

conserved, are modified, moral duty of observance also undergoes a change, and it does not always remain the same, for a given promise or agreement may turn out in such a way that its performance will prove detrimental either to the one to whom the promise has been made or to the one who has made it.⁶⁵ [65] This principle also covers the sphere of laws made by legislatures. If, therefore, legislatures formulate wicked and unjust laws, they break their promises and agreements, and put into effect anything but "laws", because the very definition of the term "law", inheres the idea and principle of choosing what is just and true.⁶⁶ [66]

2.3 Covenant

Elazar states that covenant was, especially in its political dimensions, a truly seminal concept in Western civilization,⁶⁷ [67] and formed an integral part of American political theory.⁶⁸ [68] The seminal role that covenanting played in early American and Puritan political theory is indicative of the Ciceronian emphasis on covenanting and oath-taking as a moral concept emanating from reason. According to Cicero, a commonwealth is not a collection of people brought together in any sort of way, but an assemblage of people in large numbers associated in an agreement with respect to justice and the partnership of the common good.⁶⁹ [69] The cause of this binding together for purposes of justice, says Cicero, is not so much the weakness of the individual as "a certain social spirit which nature has implanted in man",

⁶⁵ [65] *DO*, I. ix. 30-x. 31.

⁶⁶ [66] *DL*, II. v. 12.

⁶⁷ [67] DJ Elazar, *Covenant and Commonwealth. From Christian Separation through the Protestant Reformation. The Covenant Tradition in Politics*, Vol. II, (New Brunswick and London: Transaction Publishers, 1996), xvi.

⁶⁸ [68] Elazar, *Covenant and Commonwealth*, 2.

⁶⁹ [69] *De Re Publica [DRP]*, I. xxv. 39.

because man is not a solitary or unsocial creature, but born with such a nature that not even under conditions of great prosperity of every sort is he willing to be isolated from his fellow men.⁷⁰ [70] Through agreements and covenants in a short time a scattered and wandering multitude had become a body of citizens.⁷¹ [71]

What is rather striking in Cicero's covenantal thought are the references to covenanting with the gods (God). Alluding to oath-taking as the mechanism for invoking the "higher" authority of the gods, Cicero makes social covenanting the means for assuring man's well-being in civil society: "Who will deny that such beliefs are useful when he remembers how often oaths are used to confirm agreements, how important to our well-being is the sanctity of treaties, how many persons are deterred from crime by the fear of divine punishment, and how sacred an association becomes when the immortal gods are made members of it, either as judges or as witnesses?"⁷² [72] The social covenant of men is only binding and enforceable if a vow to God binds the covenanting parties. The vow to God is in effect a contract.⁷³ [73] No bond is more effective in guaranteeing good faith than an oath.⁷⁴ [74] It is also virtuous because nothing is more pleasing to God than a life devoted to the good of our fellow men.⁷⁵ [75] Cicero states that without man's propensity to love his neighbour, man's consideration for his neighbour and his

⁷⁰ [70] *DRP*, I. xxv. 39.

⁷¹ [71] *DRP*, I. xxv. 39.

⁷² [72] *DL*, II. vii. 16.

⁷³ [73] *DL*, II. xvi. 41.

⁷⁴ [74] *DO*, III. xxxi. 111.

⁷⁵ [75] *DRP*, VI. 13f. Implicated in Cicero's reference to covenanting with "God" is the question as to what extent Cicero's religion had a deistic connotation to it. Van Zyl states that there is little doubt that Cicero considered religion to play a highly significant role in politics. According to Van Zyl, the functional and almost practical way in which Cicero refers to God or the gods does cast certain doubt as to the depth of his religious feelings. However, the pre-eminence of the divinity of nature and of man's soul was far too deeply ingrained in Cicero to admit of religious superficiality, *Justice and Equity in Cicero*, 55. This in turn supports Romans 2:14-15 and is indicative of God's light in the hearts of men, although this light is not necessarily the light of salvation, and although this light shines brighter in some than in others.

observance of the religious rites and ceremonies employed in the worship of the gods would be lost. Cicero adds that these rites and ceremonies should be maintained not by the prompting of fear, but by the bond between man and God.⁷⁶ [76]

As part of early American thought, we find a substantial application of the covenant concept. The *Mayflower Compact*, stated that the Separatists covenanted and combined themselves into a Civil Body Politic, solemnly and mutually in the presence of God and of one another, for the better ordering and preservation and furtherance of the aforementioned ends. This covenant included the commitment to set up whatever governmental instrumentalities were appropriate and the promise to give all due submission and obedience to these community decisions. The *Mayflower Compact* was a very firm yet conditional agreement that assumed a previous ordering of society to be continued, renewed, and improved. This religious-political covenant emerged from the federal tradition, fitted into it admirably, and established a clear pattern of federalism among the British colonies in the New World, a pattern that was to be replicated and extended.⁷⁷ [77] John Winthrop stated that the foundation of the people's power is their liberty, and explained that men were not to be brought under any rule otherwise "then according to their will, and covenant".⁷⁸ [78] William Hooker unequivocally stated that no person has

⁷⁶ [76] Van Zyl, *Justice and Equity in Cicero*, 56.

⁷⁷ [77] CS McCoy and JB Wayne, *Fountainhead of Federalism. Heinrich Bullinger and the Covenantal Tradition*, with a translation of the *De testamento seu foedere Dei unico et aeterno*, 1534 by Heinrich Bullinger, (Louisville: Westminster/John Knox Press, 1991), 84.

⁷⁸ [78] Miller, P *The New England Mind*, (1939), 408. John Winthrop (1588–1649), who served many terms as a magistrate, led a group that arrived in 1630 and voiced his federal views in the well-known address given aboard the *Arbella* before they went ashore: "Thus stands the cause between God and us: we are entered into covenant with Him for this work.", McCoy and Baker, *Fountainhead of Federalism*, 85. McCoy and Baker add that Winthrop's speech to the General Court in 1645 contains echoes of Althusius regarding covenantal thought, stating that: "It is yourselves who have called us to this office; and being called by you, we have our authority from God. We account him a good servant who breaks not his covenant. The covenant between you and us is the oath you have taken of us, which is to this purpose, that we shall govern you and judge your causes by the rules of God's law and our own, according to our best skill, *ibid*. Winthrop also referred to the contract between the ruler and the ruled, Winthrop, in his speech to the "General Court, July 3, 1645" states: "We account of him a good servant, who breaks not his covenant. The covenant between you and us is the oath you have taken of us, which is to this purpose, that we shall govern you and judge your causes by the rules of God's laws and our own, according to our

authority over others from any "impression of nature" except fathers over their children, none from any "rule of providence" or "appointment of God", now that God no longer informs prophets and kings by direct revelation; hence "there must of necessity be a mutual engagement, each of the other, by their free consent, before by any rule of God they have any right or power, or can exercise wither, each towards the other".⁷⁹ [79] Although, towards the 18th century in Massachusetts, it became increasingly difficult to maintain the notion that New Englanders were a chosen people, enjoying a special covenant with God, the view that government rests on covenant acquired a new popularity in England. In 1690 John Locke published his *Two Treatises of Government*, placing the origin of both society and government in covenant. Also, in 1703, Basil Kennett published an English translation of Samuel von Pufendorf's *De Jure Naturae et Gentium*. In such writings the role of God in the forming of society and government was of less importance than it had been for the 16th- and 17th - century Puritans, but the idea of a covenant as the basis of all human relations remained strong.⁸⁰ [80] Bamberg states that John Adams, one of the foremost theorists of the American Revolution during the 18th century, was influenced by the contractual thought of, among others, Rutherford.⁸¹ [81]

best skill. When you agree with a workman to build you a ship or house, etc., he undertakes as well for his skill as for his faithfulness, for it is his profession, and you pay him for both. But when you call one to be a magistrate, he doth not profess nor undertake to have sufficient skill for that office, or can you furnish him with gifts, etc., therefore you must run the hazard of his skill and ability. But if he fail in faithfulness, which by his oath he is bound unto, that he must answer for ♦ ", Miller and Johnson [1938] 2001, 206. Moots adds, that they also believed themselves to be in a covenant with one another, Winthrop stating: "We account him a good servant, who breaks not his covenant. The covenant between you and us is the oath you have taken of us, which is to this purpose, that we shall govern you and judge your causes by the rules of God's laws and our own, according to our best skill" ♦ The Mayflower Compact was intended to "Covenant and Combine" the signers "solemnly and mutually in the presence of God and one of another.", *The Evolution of Reformed Political Thought and the Revival of Natural Law Theory*, 117.

⁷⁹ [79] Miller, *The New England Mind*, (1939), 408. Also see *ibid.*, 409.

⁸⁰ [80] E Morgan (ed.), *Puritan Political Ideas 1558-1794*, (The Bobbs-Merrill Company, Inc., 1965), 251-252.

⁸¹ [81] S Bamberg, "A Footnote to the Political Theory of John Adams *Vindiciae contra*", *Premise*, Vol. III, No. 7, Internet.

2.4 Theory on Resistance (Limitation of Power)

According to Cicero, lawful authority only exists where a ruler is as solicitous for the welfare of his people as is a father for his children, and maintains in the best possible conditions of life those over whom he is set.⁸² [82] Without probably intending it, Cicero voiced a framework for resistance to tyranny which provided the alternative framework for resistance to tyranny as stated by the Lutherans in the early years of the Reformation. Particularly his emphasis on self-preservation, endowed by nature, of avoiding injury to life and limb, set Cicero's theory of resistance in opposition to the Lutheran emphasis on the preponderance of man's obedience to civil authorities expressed in Romans 13:1-4. Thereby the basis for a strong theory of resistance to unjust political power was laid. Cicero states that tyranny is vile and horrible, more hateful to gods and men than can be imagined; "for, though he bears a human form, yet he surpasses the most monstrous of the wild beasts in the cruelty of nature".⁸³ [83] Cicero remarks that tyrants cannot be given the name of human beings, because they desire no community of justice, no partnership in human life with his fellow-citizens "aye, even with any part of the human race?"⁸⁴ [84] Cicero's hint to tyrannicide under certain conditions is clearly contained in his advice that the means employed to rid a nation of a tyrant, may even include "amputation" from the body of civil society: "And this may be done by proper measures for as certain members are amputated, if they show signs of themselves of being bloodless and virtually lifeless and thus jeopardize the health of the body, so other parts of the body, so those fierce and savage monsters in human form should be cut off from what may

⁸² [82] *DRP*, II. xxv. 47.

⁸³ [83] *DRP*, II. xxv. 48.

⁸⁴ [84] *DRP*, II. xxviii. 48. Cicero cites the example of Brutus who, although a private citizen, demonstrated that no one is a mere private citizen when the liberty of his fellows needed protection. On his initiative and under his leadership the people, because of the king's, Tarquinius's, pride and acts of injustice, banished the king and his family (*DRP*, II. xxv. 46). No amount of power of a tyrant, says Cicero, can withstand the hatred of many (*DO*, II. vii. 23).

be called the common body of humanity".⁸⁵ [85] Although citizens have the duty to obey the just commands of civil authorities without protest, the compulsion of magistrates may be curbed by an equal or higher authority, or the people may forbid it.⁸⁶ [86]

In early America, Jefferson, arguing from the self-evident truths of nature, inscribed in man's conscience, held that although compacts are obligatory, there are circumstances which sometimes excuse the non-performance of contracts between parties. This includes the situation when performance becomes "self-destructive" to the party, and the law of self-preservation overrules the laws of obligations to others. For the reality of these principles, says Jefferson, "I appeal to the true fountains of evidence, the head & heart of every national & honest man. It is where Nature has written her moral laws, & where every man may read them for himself. He will never read there the permission to annul his obligations for a time, or for ever, whenever they become "dangerous, useless, or disagreeable".⁸⁷ [87] In Jefferson's draft of the Declaration of the Representatives of the United States of America (1776), he reverts to those self-evident truths in the minds of men, and which had been violated by not deriving just powers from the consult of the governed, and that, because it has become destructive of these ends, provided the American people with the right to alter or abolish it, and to institute a new government.⁸⁸ [88] Jefferson subscribes to the principle that subjects have the right and duty, to throw off a government, if it "evinces a design to reduce them (the people) under absolute despotism".⁸⁹ [89] With the spirit of the revolution still fresh in his mind, Jefferson wrote to William Stephens Smit in 1787 that the: "tree of liberty must be refreshed from time to time with the blood of patriots and tyrants", adding that "it is its natural manure."⁹⁰ [90]

⁸⁵ [85] *DO*, III. vi. 32.

⁸⁶ [86] *DL*, III. iii. 6.

⁸⁷ [87] Jefferson, *Political Writings*, 555.

⁸⁸ [88] *Ibid.*, 97.

⁸⁹ [89] *Ibid.*, 97.

⁹⁰ [90] *Ibid.*, 110.

3. The Ciceronian Spirit in Early (Scottish) Puritanism

The Ciceronian Spirit in Early Scottish Puritanism deserves a separate emphasis due to the legacy of Rutherford's monumental contribution to Reformed political and jurisprudential theory. The reason being that Rutherford's *Lex, Rex*, was the last vestige of proper biblical dependency regarding political theory within Puritanism. Moots observes that an examination of the language of these political thinkers between 1558 and 1774 demonstrates a significant change in the Reformed understanding of man's corruption and the usefulness of natural law. Moots adds that originally, there was a clear hierarchy in which divine revelation was held superior to natural revelation. However, with the reinterpretation of Adam's Fall, modified from the Lockean position, the primary means of argument became an appeal to reason and nature. Sermons were still based on portions of Scripture, but there was comparatively less exegesis of these passages in the classical Puritan style.

What also must be kept in mind is that Rutherford and Milton were leading theorists within the same period of Scottish and English history. Both supported the idea of democratic nationalism, but there was a central difference. Rutherford's democratic nationalism was based on, and tempered by, the biblical covenant; while Milton's, in the tradition of Buchanan, was colored by Neostoic conceptions of social contractarianism. Buchanan's popularist federalism and its implications of democratic nationalism, represented a major turn in the development of Reformational politics in the 16th and 17th centuries. England was gradually secularized under the influence of a post-Puritan generation, which contributed to a separation between the religious and secular covenantal traditions.⁹¹ [91] The modern theorists of the post-Puritan generation embraced the idea of a secular covenant, at first reducing divine involvement to

⁹¹ [91] Elazar, *Covenant and Commonwealth*, 45.

a peripheral place, and then gradually eliminating that involvement.⁹² [92] Milton's political theory borders on support of this reduction of divine involvement to a peripheral place regarding the covenant idea in politics. Rutherford and Milton represent two detectable streams of political theory to be found towards the close of the Puritanist era in Britain (the one marking the end of an era, the other the beginning) - biblical Covenantalism versus an enlightened Christian democratic nationalism. In terms of Edgar Bodenheimer's⁹³ [93] classification of the evolution of the classical law of nature philosophy, in its progress toward the development of classical liberal political theory, both Milton and Rutherford should belong to the second epoch, which started approximately with the English Puritan Revolution of the 1640s. Whereas Rutherford opposed the emerging tensions of pre-liberalism in British political thought, Milton's pre-liberal approach towards politics served as an important catalyst toward free capitalism in economics and liberalism in politics. The third epoch, marked by a strong belief in popular sovereignty and democracy, and natural law entrusted to the "general will" and the majority decision of the people, was the outflow of ideas generated by pre-liberals working within the context of Puritanism. Not only did Rutherford bring Buchanan's political theory back to Scripture, he also provided opposition to Milton's Neostoic influences. Unlike Milton, Rutherford, against the background of Scripture, balanced the communal will with reason, with the Divine law, with God's absolute sovereignty, and with the active and responsible political role of the community.⁹⁴ [94]

Therefore, the powerful reflection of the Ciceronian spirit in *Lex, Rex* truly confirms the parallels between a truly Reformed Christian view and secular views on natural law.

⁹² [92] Ibid.

⁹³ [93] E Bodenheimer, *The Philosophy and Method of the Law*, (Cambridge, Mass.: Harvard University Press, 1962).

⁹⁴ [94] For a more in-depth commentary in this regard see: Andries Raath and Shaun de Freitas, "Theologically United and Divided: The Political Covenantalism of Samuel Rutherford and John Milton", *Westminster Theological Journal*, 67 (2005): 301-21.

Rutherford provided one of the ablest expositions on reformed jurisprudential and political thought that emanated from the Reformation during the 17th century.⁹⁵ [95] In the words of Schaeffer: "Many good things in England came from Scotland. The clearest example of the Reformation principle of a people's political control of its sovereign is a book written by a Scot, Samuel Rutherford. The book is *Lex, Rex: Law Is King*".⁹⁶ [96] Schaeffer adds that Rutherford's work and the tradition it embodied had a great influence on the United States Constitution, even though modern Anglo-Saxons have largely forgotten him. Rutherford's political influence was mediated through, *inter alia*, John Witherspoon (1723–1794), a Presbyterian who followed Samuel Rutherford's *Lex, Rex* directly and brought its principles to bear on

95 [95] Hall also gives deserving support to Rutherford by stating that: "For a better theology of the state, one would have to revisit the treatises of Althusius, Rutherford, or the Westminster Larger Catechism's discussion of the Decalogue.", DW Hall, *Savior or Servant? Putting Government in its Place*, (Oak Ridge: The Covenant Foundation, 1996), 349. Flinn states that Rutherford, like many Puritan divines, was a prolific writer. He adds that Rutherford's *Lex, Rex* is one of the most comprehensive expressions of Calvinistic political theory, and that it is also one of the keystones in the development of modern political theory. Flinn goes on to state that *Lex, Rex* has understandably been studiously avoided by secular political philosophers, for it is unabashedly Christian and Calvinistic. Less understandably however, it has also been avoided or overlooked by many in the neo-Puritan movement of our own day, R Flinn, "Samuel Rutherford and Puritan Political Theory", *The Journal of Christian Reconstruction* Vol. 5 (1978–9), 49. Rae refers to William Campbell who, commenting on Rutherford's *Lex, Rex*, contended that: "by one of the paradoxes with which the life of this man is so filled, he wrote the best book from a Scottish pen against religious toleration and the best book in defense of civil liberty", CE Rae, *The political thought of Samuel Rutherford*, (M. A. dissertation, University of Guelph, 1991), 19. Rae states: "*Lex, Rex* has even been described as the most elaborate of the summaries of parliamentary argument: As Ernest Sirluck said: 'he left nothing out' ", *ibid.*, 71–72. Rae also refers to a comment on *Lex, Rex* stating that it "holds, among books on Constitutional Government, a place kindred to that which is held by Adam Smith's 'Wealth of Nations' in the science of Political Economy"; Rae also referring to I. M. Smart's comment on *Lex, Rex* namely that it "was the longest and most detailed work of political theory written to justify the covenanter and parliamentary side", *ibid.*, 73–74. Coffey states that *Lex, Rex* has been called "the most influential Scottish work on political theory", *Politics, Religion, and the British Revolutions*, 1–2.

96 [96] F Schaeffer, *The Complete Works of Francis Schaeffer: A Christian Worldview*, 2nd edition, (Wheaton: Paternoster Press, 1985), 137. See Hall, *Savior or Servant? Putting Government in its Place*, 3. Hall states: "When Francis Schaeffer was asked to recommend a sound biblical treatise on government, more often than not, all he could commend was an obscure (and at the time out of print) 17th-century work with a Latin title: *Lex, Rex* by Samuel Rutherford. Schaeffer was astute to commend such a solid work, but few of his audience could ever find much less persevere through this sturdy and worthwhile book."

the writing of the Constitution and the laying down of forms and freedoms.⁹⁷ [97] According to Maclear, Rutherford's is the most notable English expression of classic Reformed political thought in the 17th century.⁹⁸ [98]

Although there are approximately only three prominent references to Cicero in *Lex, Rex*, the Ciceronian spirit of universal norms, benevolence, covenant and the limitation of power, is clearly reflected in Rutherford's work.⁹⁹ [99] Rutherford refers to nature's intention for the peace of mankind¹⁰⁰ [100] and the aims of government to be the attainment of the good¹⁰¹ [101] , preservation¹⁰² [102] , defence¹⁰³

⁹⁷ [97] Schaeffer, *The Complete Works of Francis Schaeffer*, 138. On *ibid.*, 139, Schaeffer states: "Some of the men who laid the foundation of the United States Constitution were not Christians in the first sense, and yet they built upon the basis of the Reformation either directly through the *Lex, Rex* tradition or indirectly through Locke." Also see JF Maclear, *Samuel Rutherford: The Law and the King* (edited by George L. Hunt; Philadelphia: The Westminster Press, 1965), 86, Maclear stating that Rutherford's is the most notable English expression of classic Reformed political thought in the 17th century, and was unfortunately forgotten by the following century. However, according to Maclear, in Rutherford's own age, he was linked with Buchanan as a father of orthodox doctrine.

⁹⁸ [98] Maclear, *Samuel Rutherford: The law and the King*, 86.

⁹⁹ [99] During the time of Rutherford's studies the curriculum at the Edinburg college began in the first year with the students, among others, translating Cicero from the Latin, Coffey, *Politics, Religion and the British Revolutions*, 63.

¹⁰⁰ [100] S. Rutherford, *Lex, Rex (or The Law and the Prince), A dispute for the just prerogative of king and people*, (Harrisonburg, Virginia: Sprinkle Publications, 1982), 1 (2) and 48 (1).

¹⁰¹ [101] *Ibid.*, 34 (1), 70 (1) ♦ 70 (2), 83 (1), 102 (1), 103 (2), 104 (2), 106 (2), 119 (2), 126 (2), 132 (2), 141 (2), 145 (1), 153 (1), 187 (1), 193 (2), 194 (2), 198 (1), 201 (2), 227 (2) and 228 (2).

¹⁰² [102] *Ibid.*, 79 (2), 92 (1), 95 (1), 97 (1) and 105 (1).

¹⁰³ [103] *Ibid.*, 48 (1), 62 (2), 64 (2), 70 (1), 92 (1), 102 (1), 103 (2), 124 (2), 128 (1) ♦ 128 (2), 142 (1), 164 (1), 182 (1), 203 (2) and 208 (1).

[103], safety¹⁰⁴ [104], and peace¹⁰⁵ [105] of the people.¹⁰⁶ [106] Government must act with a fatherly affection, care, love and kindness, to those over whom he rules and therefore he cannot exercise those official acts on the people against their will, and by mere violence.¹⁰⁷ [107] The king is to be an adopted father, tutor, a politic servant and royal watchman of the state,¹⁰⁸ [108] To Rutherford the government in general was to act as a father;¹⁰⁹ [109] a watchman;¹¹⁰ [110] a servant;¹¹¹ [111] a feeder;¹¹² [112] a fiduciary patron;¹¹³ [113] a tutor;¹¹⁴ [114] marital and husbandry power;¹¹⁵ [115] the

¹⁰⁴ [104] Ibid., 30 (2), 57 (2), 70 (2), 83 (1), 114 (1), 119(1) ♦ 119 (2), 121 (1), 122(2), 124 (1) ♦ 125 (1), 126 (2), 128 (1), 137 (1), 138(1), 184 (2), 185 (1), 187 (1), 193 (2), 194 (2), 210 (1) and 228 (2).

¹⁰⁵ [105] Ibid., 92 (1) and 142 (1).

¹⁰⁶ [106] Rutherford's view on the natural law states: "Because conscience was no longer like Scripture, nor ♦ God nor Pope, but can reele, and totter and dream', it was not to be considered as ♦ an Absolute and independent Sovereigne, whose voice is a law', but as ♦ an under-Judge onely', subordinate to God's will revealed in the law of nature written in the hearts of all ♦", Coffey, *Politics, Religion and the British Revolutions*", 215. Also see *ibid.*, 172.

¹⁰⁷ [107] Rutherford, *Lex, Rex*, 47 (2). Also see *ibid.*, 64 (2) and 102 (1).

¹⁰⁸ [108] Ibid., 59 (1).

¹⁰⁹ [109] Ibid., 26 (1), 59 (1), 62 (1) ♦ 62 (2), 64 (2), 102 (1), 116 (2), 128 (1) ♦ 128 (2), 164 (1), and 218 (1).

¹¹⁰ [110] Ibid., 59 (1), 70 (1), 182 (1), and 197 (2) ♦ 198 (1).

¹¹¹ [111] Ibid., 59 (1); 70 (1); 79 (2); 145 (1); and 197 (2) ♦ 198 (1).

¹¹² [112] Ibid., 64 (2), 65 (1), and 132 (2).

¹¹³ [113] Ibid., 72 (1).

¹¹⁴ [114] Ibid., 69 (1), 102 (2), 116 (2), 128 (1) ♦ 128 (2), and 153 (1).

¹¹⁵ [115] Ibid., 69 (2), and 116 (2).

peoples' debtor for happiness;116 [116] a relative;117 [117] a pilot (of a ship);118 [118] and a good and saving shepherd.119 [119] Compare this with the view by Cicero that: Lawful authority only exists where a ruler is as solicitous for the welfare of his people as is a father for his children, and maintains in the best possible conditions of life those over whom he is set.120 [120]

Regarding the covenanting, the rich Scottish history of banding, John Knox's covenantal expressions, the Scottish National Covenant (of 1581 and 1638), the Solemn League and Covenant (1643), and the publication of *Lex, Rex* (1644), are some of the events in British history that serve as beacons attesting to the legacy of the British Isles to political covenantal theory.121 [121] To Rutherford, natural law, Scripture and history all combined to prove that government must rest on a covenant between the king and the people. *Lex, Rex* focuses almost exclusively on the covenant between the king and the people.122 [122] Concerning the specific nature of the covenant according to Rutherford, Flinn states that it was an oath between the king and his people, laying on, by reciprocation of bands, mutual civil obligation upon the king to the people, and the people to the king. For example, the elders made a covenant with David before the Lord prior to their appointing him king.123 [123] When referring to the similarity between

116 [116] Ibid., 103 (2).

117 [117] Ibid., 123 (2).

118 [118] Ibid., 102 (2).

119 [119] Ibid., 179 (1) ♦ 179 (2).

120 [120] *DRP*, II. xxv. 47.

121 [121] See SA de Freitas & AWG Raath, "Reformation Britain, the Political Dimension of the Covenant, and the Contribution of the Scots", *Journal for Christian Scholarship*, 3rd & 4th Quarter, (2004), 117-146.

122 [122] Coffey, *Politics, Religion and the British Revolutions*, 1997:165. Also see Rutherford, *Lex, Rex*: 57 (1)-57 (2), 60 (2), 61 (1)-62 (1), 82 (1), 84 (1), 106 (1), 118 (1), 129 (1), 200 (1)-201 (1), and 219 (2)-220 (1).

123 [123] R Flinn, "Samuel Rutherford and Puritan Political Theory", 63. Flinn points to 2 Samuel 5: 3 as well as 2 Chronicles 23: 2 ♦ 3 and Ecclesiastes 8: 2, which indicate the existence of an oath which binds both king and people, *ibid.* Flinn adds: "With our better understanding of covenants

the king's promise and oath, Rutherford states that the *promise* and *covenant* of any man, including the king, do no less than bring him under a civil obligation and political co-action to keep his promise than an oath.¹²⁴ [124]

According to Maclear, the law forms the main theme of *Lex, Rex*. All rightful authority lies in law, whether it is the authority of the king, estates, populace, or church. The king is truly king only when he identifies himself with the law, and only to the degree that he succeeds in executing the law. The nearest the king personifies the law, the more king he is, "in his remotest distance from Law and Reason, he is a Tyrant."¹²⁵ [125] According to Rutherford, "♦ whatever interpretation swerveth either from fundamental laws of policy, or from the law of nature, and the law of nations, and especially from the safety of the public, is to be rejected as a perverting of the law ♦".¹²⁶ [126] Rutherford refers to an army appointing a leader over them, and this appointment is based on the condition that such a leader will not betray them to the enemy. Once such a leader has or is in the process of committing such a betrayal, the people have the right to resist him.¹²⁷ [127] From this it is clear that the covenantal relationship between the king and the people means that the king is appointed on the condition that he abides by the law of God, hereby serving the interests, peace and well-being of the community that has elected him. This is a mutual

and treaties in the Near Eastern world, we see immediately that what we have here is not a vassal treaty, but a treaty between equals", *ibid.*

¹²⁴ [124] Rutherford, *Lex, Rex*, 200 (1).

¹²⁵ [125] Maclear, *Samuel Rutherford: The Law and the King*, 77 ♦ 78.

¹²⁶ [126] Rutherford, *Lex, Rex*, 137 (1).

¹²⁷ [127] *Ibid.*, 61 (2). In this regard Rutherford adds that if a master binds himself by oath to his servant, he shall not receive such a benefit of such a service if he violates the oath; and such an oath must give the servant a right to challenge his master, *ibid.* Rutherford's analogy of the relationship between the king and the people to that of a contract between husband and wife, also confirms his understanding of the relationship between the king and the people as contractual, adding that the law of nature does not require a clause in a contract of marriage stating that if the husband attempts to kill his wife, then they must part company, *ibid.*, 118 (1). In other words, the people may resist the king and remove him from office even though this has not been stipulated in the contract that was instituted when they elected and appointed him as king ♦ on election of a king, a contract is implied, and this is in accordance with Rutherford's emphasis on the establishment of the contract between the king and the people, either tacitly or expressly.

relationship based on condition, and the law of God forms the content of this condition.¹²⁸ [128] Rutherford states that the law says that vassals lose their farms if they pay not what is due: "Now, what are kings but vassals to the state, who, if they turn tyrants, fall from their right."¹²⁹ [129] Rutherford also states that the law of nature makes people identify tyranny, and so they are by nature to defend themselves.¹³⁰ [130]

4. Conclusion

The normative dimension emanating from political science in the form of what justice *should* be forms an integral facet regarding the organization of power in society. In this regard, Scripture refers to a normative view that is universal and essential to humanity experiencing a good or ideal existence ♦ at the root of Romans 2:14-15 is the idea that law is something more than merely Hobbes's convention or a command of the sovereign power, as well as the Rossouw's loyalty to the will of the majority. The application of power or the legislative decrees of governments, depend on a "higher" law for their authority ♦ a law which human beings discover in the deep structure of the moral intellect.¹³¹ [131] The idea of a universal normative system is most relevant in defining the nature and parameters of political power. Especially since post-World War II, the world has reconsidered the importance of fundamental universal laws, as especially reflected in many of the codified and uncoded sources of public international law. In other words, a renewed sense of the applicability and necessity of natural law theory, which served as the axle on which Western jurisprudence turned, has come to the fore in contemporary political debate.

¹²⁸ [128] See Rutherford, *Lex, Rex*, 118 (1): "For Dr Ferne saith, ♦ That personal defence is lawful in the people, if the king's assault be sudden, without colour of law ♦"; *ibid.*,

¹²⁹ [129] Rutherford, *Lex, Rex*, 201 (2). Flinn states that one of the basic arguments presented by Rutherford in order to establish the right and duty of resistance to unlawful government is that the king is granted power conditionally, and therefore as a consequence, the people have the power to withdraw their sanction if the conditions are not fulfilled. This confirms the strong influence of covenantal thought as an essential basis in Rutherford's thought concerning resistance theory.

¹³⁰ [130] Coffey, *Politics, Religion and the British Revolutions*, 172.

¹³¹ [131] Budziszewski, *Natural Law for Lawyers*, 1.

Law's reigning positivism and political theory's staunch nationalism, as well as the intersection between law and politics reflected in the concept of the sacredness of state sovereignty, has for centuries and still does, dominate the jurisprudential and political landscape. These developments also established a lush breeding ground for the separation of traditional religion from both law and politics, and did much to expose the law to a plethora of diverse meanings. Power was now understood in strictly humanistic and secular terms, and was accompanied by a skewed emphasis consisting of the law being constrained under individualism, rationalism, relativism and nationalism. Among others, Grotius' loyalty to positive law as harbouring the law of nature principles; Hobbes' and Bodin's faith in the decisive judgment of the sovereign power in the state; the Lockean influence towards mutually exclusive private and public spheres; and Kant's glorification of rationality¹³² [132] ; all contributed to a diluted rendition of the classical view on natural law. This has led to dire consequences - the secular state becomes the usurper that sits on the throne of God himself; and the State, as the embodiment of autonomous human will, now determines good and evil and orders the life of society by its own law without reference to any higher law. This necessitates a revisitation regarding the relevance of natural law for contemporary political debate. On the other hand, there has always been a general accommodation regarding the importance of certain universal norms such as the preservation, safety, and good of the community, which is clearly reflected in international codified and uncoded norms.

Although the Reformers located the "primordial sovereignty" in the being of God¹³³ [133] , the classical sources played a major role in influencing the early Reformers' apologetics on the rationality and universality of a Godly political system. This was accomplished by the identification of universal principles that were also proclaimed by classical Greek and Roman philosophy. According to Budziszewski one of the main reasons why the tradition of natural law took root in the West was because of the Greek invention of philosophy.¹³⁴ [134] More specifically, it was Stoicism that introduced pagan awareness of both the Divine and universal norms, and which had a strong influence on Cicero . In fact, the general

¹³² [132] Berman states that this emphasis on rationality, and a gradual withdrawal from "traditional religious" points of departure, gained momentum, and it was especially during the 20th century that the gradual reduction of traditional religion to the level of a personal, private matter occurred, HJ Berman, *Law and Revolution. The Formation of the Western Legal Tradition*, (United States of America: Harvard University Press, 1983), 31.

¹³³ [133] SC Perks, *A Defence of the Christian State*, (Taunton: The Kuyper Foundation, 1998), 154.

¹³⁴ [134] Budziszewski, *Natural Law for Lawyers*, 13.

feeling immediately preceding Stoicism and which can be paralleled with contemporary sentiments, was that the only thing certain in this world was that nothing is certain ♦ the foundations of knowledge was shattered in that there were too many voices. This lead the Stoics (and so it should lead us too) to search for something firm in an agonizing world.¹³⁵ [135] Consequently, a call for opposition against nationalism, antiquity, and custom and a new construction based on universal reason and cosmopolitanism was endeavoured.¹³⁶ [136] Cicero 's contributions to political and jurisprudential thought also contributed to this Stoic endeavour to regain sanity in an otherwise insane environment.

The early Reformers, and later the early Puritans were (whether directly or indirectly) loyal to Cicero 's quest towards a universal measure of equity and justice. For contemporary Reformed political and jurisprudential debate the parallels between Cicero on the one hand, and the early Reformation as well as Puritanism on the other, is of the utmost importance for mainly the following reasons: Firstly, these parallels revitalise the common ground that there is regarding future debate between Christian and non-Christian views in political and jurisprudential theory. In other words, the principle of benevolence can form the common basis regarding debate on, for example, the jurisprudential validity of humanitarian intervention as exception to the sacredness of state sovereignty; the right to exercise abortion as well as the limitation of excessively liberal approaches to the trade in promiscuity. From a political angle, benevolence can add much necessitated attention to fair treatment by government to, for example, civil societal (church) interests, environmental concerns, poverty alleviation, the limitation of corruption and charitable foreign policies. Secondly, such parallels are indicative of the importance of Romans 2:14-15 for politics and the law (and therefore counters the familiar view within Christian circles that debate between the Christian and non-Christian views is impossible); and thirdly, these parallels attest to the fact that Christian political and jurisprudential thought has been for ages, and to a large extent, loyal to fundamental and root political ideas that enjoy universal support.

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¹³⁵ [135] See ELH Taylor, *The Christian Philosophy of Law, Politics and the State*, (Nutley: The Craig Press, 1966), 119.

¹³⁶ [136] Taylor, *The Christian Philosophy of Law, Politics and the State*, 131.

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