

Rights of love and the dynamics of social benevolence: interpreting Martin Luther's thoughts on social rights

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A constructive interpretation of Martin Luther's teaching on social rights reveals that human rights are not the institutions or instruments of evil that some Christian viewpoints take them to be. On the contrary, natural rights are gifts of God, inscribed on humankind's heart in the kingdom of creation for serving God and one's neighbour through love. Human rights are fundamentally rights of love, to be maintained for the glory of God. In the social sphere both private and public social rights are of fundamental importance in steering humanity towards attaining peace and justice in society.

Regte van liefde en die dinamiek van sosiale welwillendheid: 'n interpretasie van Martin Luther se denke oor sosiale regte

'n Konstruktiewe interpretasie van Martin Luther se boodskap betreffende sosiale regte behels dat menseregte nie instellings of instrumente van die bose is soos sommige Christelike standpunte dit vertolk nie. Inteendeel, natuurlike regte is gawes van God, gegrif op die menslike hart in die koninkryk van die skepping met die doel om God en die naaste in liefde te dien. Menseregte is fundamenteel regte van liefde wat in stand gehou moet word tot die eer van God. In die sosiale sfeer is private en publieke sosiale regte van wesenlike belang ten einde die mensdom so te stuur dat vrede en geregtigheid in die samelewing gestalte kan kry.

Martin Luther is generally regarded as the father of Protestantism and the initiator of the Reformation of the Church. In his discursive and polemical theological writings Luther was confronted with many social, economic and political issues. His answers to questions touching on sensitive and complicated legal and political issues were not cast in a systematic structure. A study of Luther's political and jurisprudential views is complicated by the fact that his thoughts on some fundamental aspects related to law and politics were subject to development and refinement. Although extracting his views on law in general, and rights in particular, is a most demanding enterprise, a comprehensive statement of his approach to social rights theory may be gleaned from his academic endeavours, which covered a period of more than forty years. Such an effort is only possible due to the impressive consistency in Luther's writings on theological, ecclesiastical, economic, political and jurisprudential matters.

Because analysis of Luther's legal and jurisprudential views has been inadequate up to now, in spite of the fact that he exerted a compelling influence on Reformation movements beyond the borders of Germany, his contribution to the debate in these areas merits further attention. No systematic statement of Luther's views on social rights in particular has yet been undertaken, despite the fact that his comments on the principles underlying some of these issues have profound implications for political, social and legal ethics.

This study will attempt to reconstruct and constructively interpret Luther's perspectives on the foundations of social rights, with particular emphasis on the principle of social benevolence and its implications for rights in society.

1. The foundations of Luther's social and political theory

1.1 Luther's doctrine of the two kingdoms and the two governments

Luther's ethical theory is based largely on his distinction between two kingdoms (*Zwei-Reiche-Lehre*) and two governments (*Zwei-Regimente-Lehre*). The two kingdoms are representative of the two areas of Christian existence in the world: the life of the Christian before God and the life

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of the Christian in society. The two governments reflect the two ways in which God governs the world. Through the gospel, the church is subject to God's divine government, a government from which all forms of coercion are excluded.¹ On the other hand, the world is governed by God through law and coercion, a government which cannot achieve its ends merely through the preaching of love.² Although these two areas of human existence are distinct, they are ever present in the lives of believers.

The distinction between the two kingdoms is essential in order to appreciate the depth of Luther's teachings on political ethics because of the closely related impact of both kingdoms and their respective roles in the lives of believers. At the heart of Luther's ethical approach is his theological commitment to the principle of justification by faith alone; his view is that all Christians have both a civic and a social responsibility to discharge and that some Christians have the calling to serve public office in the state. The gospel provides guidance to believers in the execution of their duties as political rulers or administrators in the public sphere, and the state has an essential role and duty to achieve, which is different from that of the church. To this end God provides political rulers with the instruments of human reason, wisdom, natural law, and the application of force to curb humankind's avarice and violence.

- 1 In WA 10(3): 379, Luther describes the nature of the kingdom of the Spirit as follows: "[D]a darff man keines schwerts unnd gesez, das ader anders so zur oeberkeit gehoerett. Wo nun das geistlich Regiment Christi ist, da soel man Joberman lassen gehen, da stett Joberman wol mit dem andern, da hilfft man einander, und das Regiment und den fride bringt Cristus zu wegen".
- 2 The kingdom of the world is described by Luther in the following terms: "Aber iczundt hat der teuffel den meisten hauffen gesammelt unnd under seinem regiment, Daruemb mus ein ander regiment sein, da kuempt das weltlich schwert, da muss man fuersten und amptleutt haben, die sein uns von noeten" (WA 10(3): 379). See also WA 11: 252: "Darumb muss man die beyde regiment mit vleyss scheidyen und beydes bleyben lassen: Eyns das frum macht, Das ander das eusserlich frid schaffe und boesen wercken weret. Keyns ist on das ander gnüig ynn der welt." The two kingdoms reflect the two natures of humankind. The "spiritual kingdom" is the kingdom of redemption, where the Word reigns. The "worldly kingdom" is the kingdom of creation and encompasses the whole of humankind's temporal existence. In both kingdoms God gives His blessings, the worldly for humankind's temporal existence and the spiritual for his eternal life (WA 40(1): 395).

The Christian lives in both the secular and the spiritual kingdoms, and is a citizen of both.³ He belongs to the kingdom of the world even before he belongs to the kingdom of God, because he was born in the flesh before he became a Christian. He is obligated to the emperor for his outward existence, and to Christ inwardly with his conscience and in faith. Although the two kingdoms are distinct, they do not function in isolation. To Luther the watchword for the desired co-operation between the two kingdoms is obedience to the word of God:

The decisive question then is whether people in both governments have subjected themselves to the word of God and seek to serve God, or whether they glorify themselves by placing themselves above and seeking to rule God and his word. Such autonomy of the offices and powers results in infringements on the area of the other and in mutual conflict. The willingness to serve and obey prevents these difficulties from arising (Althaus 1972: 147).

Luther ascribes the conflict between the two forms of government to man's sinful nature:

Therefore all the wrangling and complaining about the confusion of the spiritual and the secular realms are in the interest of domination and not of service. Everyone wants to produce and make something new; no one wants to serve and obey, either in divine or secular matters. All this comes from that wretched original sin, that hereditary plague, that poison ingrafted into the original tree and into the paternal blood of Adam when the devil pelted him and poisoned him thoroughly with the word which he spoke:⁴ 'You will be like God.' It is this same damned deity that is responsible for the fact that everything is mingled and confused (*LW* 13: 196 SP 1956, Psalm 101).⁵

3 "Regiment" refers to the way in which God governs the world. The kingdom of God is one, encompassing the whole of life, but within the kingdom Luther distinguishes a spiritual and a worldly government (or regiment): "Gestern habt ir gehoertt was das reich gottes sey, worinnen das stellt, und das soelchs niemants anders regirn kan dan got durch seinen heyligen geist, Das in dem auch soellen geistlich und weltlich regiment regirtt werden an alles unser zu thun, an alle unsere werck und freyen willen, dan got mus das regirn und niemants anders" (*WA* 10(3): 379).

4 Genesis 3: 5.

5 References to Luther's Works (*LW*), are to the St Louis edition: Concordia Publishing House and Philadelphia: Fortress Press, 1955. For purposes of elucidation of Luther's thoughts, references to his writings in the Weimar edition (*WA*) are included. The following abbreviations are used for specific works by Luther in the *Works*: *Selected Psalms* (SP); *Confession concerning Christ's Supper* (CCC); *On the Councils and the Church* (CC); *Lectures on Genesis* (LG); *A Sermon on Keeping Children*

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The offices of temporal and ecclesiastical office-bearers meet at the point of God's law. Whereas political authority is basically the office of the law,⁶ the office of the ministry concerns the preaching of the law and of grace. The preaching of the law is not committed to the church merely to reveal humanity's sins and to lead them to grace, but also to contribute towards instructing people in all stations of life that the orders in which they act are the work of God.

- in School (SCS); Whether Soldiers Too Can Be Saved (SBS); Lectures on Galatians (LGS); The Sermon on the Mount and the Magnificat (SMM); Confession Concerning Christ's Supper (CCS); Sermons (S); The Catholic Epistles (CE); Lectures on Titus, Philemon and Hebrews (TP&H); Admonition to Peace: A Reply to the Twelve Articles of the Peasants in Swabia (AP); Commentary on Romans (CR); An Exhortation to the Knights of the Teutonic Order (TO); Sermons on the Gospel of St John (SJ); Against the Heavenly Prophets in the Matter of Images and Sacraments (HP); Table Talk (TT); On Marriage Matters (OM); Theses Concerning Faith and Law (F&L); Trade and Usury (T&U); Prefaces to the Old Testament (POT); An Exposition of the Lord's Prayer for Simple Laymen (ELP); The Book of Concord (BK); The Bondage of the Will (BW); Letters (L); Lectures on the Minor Prophets (LMP); The Disputation Concerning Man (DCM); On Translating: An Open Letter (OOL); Theses Concerning Faith and Law (TF&L); Prefaces to the New Testament (PNT); The Judgment of Martin Luther on Monastic Vows (JMV); Liturgy and Hymns (L&H); The Second Work of God, Breaking Spiritual Pride (BSP); Prefaces to the Apocrypha (PA); Temporal authority: To What Extent It Should Be Obeyed (TA); On the War Against the Turk (WAT); Treatise on Good Works (TGW).*
- 6 Political authority is primarily a divine institution — a divine “creation and regiment” — an outstanding gift of God which is essential for man's social existence: “[D]as weltlich regiment erhelt zeitlichen und vergenglichen frieden, recht und leben. Aber dennoch ists eine herrliche Goettliche ordnung und eine treffliche gabe Gottes, der es auch gestiftt und eingesetzt hat und auch wil erhalten haben, als des man aller ding nicht emperen kan, Und wo es nicht were, kundte kein mensch fur dem andern bleiben, Es muste einer den andern fressen, wie die unvernunftiger thier untereinander thun, Darumb gleich wie des predig ampts werck und ehre ist, das es aus sundern eitel heiligen, aus todten lebendige, aus verdampften seligen, aus teuffels dienern Gottes kinder macht, Also ist des weltlichen regiments werck und ehre, das aus wilden thieren menschen macht und menschen erhelt, das sie nicht wilde thiere werden [...] Weil denn nu das gewis ist, das es ein Goettliche creatur und ordnung, da zu uns menschen jnn diesem leben ein noetiges ampt und stand ist, des wir eben so wenig emperen koennen als des lebens selber, Sintemal on das selbige ampt dis leben nicht bleiben kan, So ists leich zu rechten, das Gott nicht darumb befolhen und gestiftt hat, das es solle untergehen, sondern wils [Rom. 13; Petri 2: 13f] erhalten haben, wie Paulus Rom. 13 und 1 Petri 3 klerlich stehet, das sie sollen die frumen schuetzen, und die boesen straffen” (WA 30(2): 554-6).

1.2 The stations and vocations in the world

All the orders, institutions, offices and hierarchies (or stations) in society were established by God (*LW* 37: 364 CCC, 41: 177 CC, 13: 368, SP Psalm 112). Among the stations in life, Luther mentions those of fathers and mothers, married people, servants and maids, lords and subjects, and pastors (*LW* 13: 358, SP Psalm 111). These stations may be divided into three basic categories or stations: ministry, marriage (or the family, including all business matters and the economy), and secular authority (*LW* 37: 364 CCC, 41: 177 CC, 3: 217, LG Genesis 18).⁷ Regarding the stations pertaining to political government, Luther refers to the positions of “princes and lords, judges, civil officers, state officials, notaries, male and female servants and all who serve such persons, and further all obedient subjects” (*LW* 37: 364-5 CCC). These stations and orders are of divine origin because they were established by God; they are all equal in honour and respect, and they ought to show equal respect to one another (*LW* 46: 246 SCS).

Through the providence of God, a variety of stations were established for maintaining order in the world. All stations contribute equally to the proper functioning of life in the world. They are the institutions and structures by which God preserves and orders humanity. Through them order, justice and peace are established and maintained (*LW* 46: 246-248 SCS, 13: 358, 369, 370, SP Psalm 111). Although a society’s legal system may change, these stations remain unchanged (*LW* 13: 369, SP Psalm 111); it is the will of God that they remain if the world is to stand (*LW* 13: 358, SP Psalm 111). To Luther mankind is dependant on these stations and this knowledge is taught to all men by reason and natural law (*LW* 13: 369, SP Psalm 111), although the unbelievers may not know that they were established by God. These stations are instituted, presupposed, recognised, and honoured by Scripture and are therefore “contained and involved in God’s word and commandment” (*LW* 13: 370, SP Psalm 111).

7 Cf *WA* 47: 853-4: “Si ego parochus *spreche dich los und frey* a potestate Diaboli et, si credis, tam es liber, ac si a Deo audisses. Sic ista tria visibilia *regiment regirt* per homines et conservat, *hillft* piis ad pacem, *und selig und bie zeitlich gut regiment* in civitate, mundo et postea per Ecclesiam ad salutem.”

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The stations are divine institutions intended by God to “serve God and the world” (*LW* 46: 252 SCS), through the law of love (*LW* 46: 131 SBS). The social order is dependant on, and functions through, the stations of life upon which civil society is established. All of human life is comprehended in them. The concept of station (*Stand*) implies more than merely social standing, position, rank, and class. It also implies that every person has his position and role awarded by God and the universal duty to serve God and man in his station, and to fulfil of the law of that station. The will of God takes on a specific form and carries specific duties pertaining to the context of the particular station which a man occupies and in which he functions (*LW* 5: 72, *LG* Genesis 26: 26f). At the end of his Small Catechism, Luther provides a list of the duties pertaining to the various stations (*WA* 30(1): 397-8).⁸

God’s calling of man to particular stations is accompanied by the vocations (*Beruf*) related to the functioning of each station. In his later career Luther used the term *Beruf* in a wider context, inclusive of station (*Stand*), office or function (*Amt*), and duty (*Befehl*). Carl Holl suggested that Luther uses “vocation” synonymously with “station” so that every Christian, insofar as he belongs to a particular station in life, may also feel that he has been called (Holl 1932: 217-8). God’s commandments take on specific form for us in terms of our station and vocation. Luther calls on each person to fulfil his duties in his vocation, or as Althaus (1972: 39) succinctly observes:

There is no limit to what our station and vocation require of us. If we take that requirement seriously, we have neither time, nor space, nor energy to seek special works for ourselves.

Luther himself declares: “There is so much to do “that all our time is too short, all our space too narrow, and all our energies too limited” (*LW* 27: 56, *LGS* Galatians 1). Reason and the immanent law of each vocation tell man in each station how to fulfil his duties and functions

8 So, for example, subjects of political authorities have the duty to obedience: “Jederman sey der Oberkeit unterthan, Denn die Oberkeit, so allenthalben ist, ist von Gott geordnet. Wer aber der Oberkeit widerstrebet, der widerstrebet Gottes ordnung. Wer aber widerstrebet, wird sein urteil empfahen, Denn sie tregt das schwert nicht umb sonst, Sie ist Gottes dienerin, eine Racherin zur straffe ubder die, so boeses thun.”

in accordance with the Biblical demands of love. The Christian's duty to "preach" the gospel in each particular vocation is described vividly by Luther:

If you are a manual labourer, you find that the Bible has been put into your workshop, into your hand, into your heart. It teaches and preaches how you should treat your neighbour. Just look at your tools — at your needle or thimble, your beer barrel, your goods, your scales or yardstick or measure — and you will read this statement inscribed on them. Everywhere you look, it stares at you. Nothing that you handle every day is so tiny that it does not continually tell you this, if you will only listen. Indeed there is no shortage of preaching. You have as many preachers as you have transactions, goods, tools, and other equipment in your house and home. All this is continually crying out to you: 'Friend, use me in your relations with your neighbour just as you would want your neighbour to use his property in his relations with you' (*LW* 21: 237, *SMM* Matthew 7).⁹

All men are equally called to love in the same way, however, because through love one serves not only the three orders, but also every needy person with all kinds of benevolent deeds (*LW* 37: 365 CCS). The Christian's service of love towards neighbours goes far beyond the required duties of his vocation, examples of which are "feeding the hungry, giving drink to the thirsty, forgiving enemies, praying for all men on earth, suffering all kinds of evil on earth" (*LW* 37: 365 CCS).

The fulfilling of our vocations and offices is pleasing to God in spite of the fact that we are sinful creatures, because the stations and vocations remain divine institutions according to the Word of God:

Show me a station established by God that is without sin. If there were such, I would not have to preach anymore, no servant or maid would have to serve his master, the authorities would never again have to use the sword, and no knight would have to mount his horse [...] In this life we will never be so pure as to do any good works without sin. We must constantly confess: I believe in the forgiveness of sins. And we must daily pray the Lord's Prayer and say: 'Forgive us our

9 A life of love is also a life of joy: "Therefore men are completely mistaken when they imagine that they really understand the commandment to love. They have it written in their hearts, of course, because by nature they judge that one should do to others what one wants done to oneself (Matthew 7: 12). But it does not follow that they understand this. For if they did, they would demonstrate it in their actions and would prefer love to all other works. Nor would they exaggerate and inflate their own childish toys, that is, such nonsense and superstition as this: walking around with a sour face and a downcast head, living a celibate life, subsisting on bread and water, dwelling in the desert, wearing dirty clothes, and the like."

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debts.' [...] Now, even though no one fulfils his station without sin, yet God's word is so great that our station remains pure and holy (WA 34(1): 71, Predigten 1531).

Although we remain sinners we should not forsake our calling and station, because we serve one another in our stations and thereby preserve order in the world. One should not, therefore, concern oneself with striving to perform “holy works” beyond the scope of the execution of one’s normal tasks and duties of office. In his lectures on Genesis Luther states that age, sex, and callings differ greatly in this life: one teaches the church; another serves the government; still another instructs the youth; a mother busies herself with the care and upbringing of children, and the husband is concerned with providing an honest living — all very grand and impressive works (*LW* 2: 355, *LG* Genesis 13). If these works are done in one’s calling and in the faith of the Son of God, “they shine in the sight of God ...” (*LW* 2: 356, *LG* Genesis 13). In all stations and callings man is subject to the good and perfect will of God. This means that the statement of God’s will in His Law is also perfect and right.

2. The nature of man and natural law

2.1 Reason, will and natural law

Luther subscribes to the notion of the pre-lapsarian integrity of man’s faculties. Thus, for Luther, man was originally created in the image of God with “no leprosy of sin adhered to his (man’s) reason or to his will”. Man’s intellect, to Luther, was the clearest, his memory was the best, and his will was the most straightforward (*LW* 1: 62, *LG* Genesis 1). Adam had an enlightened reason, a true knowledge of God, and a most sincere desire to love God and his neighbour (*LW* 1: 63, *LG* Genesis 1). Man’s sinless dominion was reflected in his knowledge of God, through his perfect reason, his justice and his wisdom (*LW* 1: 65, *LG* Genesis 1). In sum: God did not create man evil, He created him perfect — rational, holy, with a knowledge of God, with sound reason, and with good will toward his creator (*LW* 2: 122, *LG* Genesis 8).

Every imagination of man’s thoughts without the enlightenment of the Holy Spirit is evil. Without the enlightening work of the Holy Spirit, every capacity of human reason is bad. Without the Holy Spirit man is

completely ungodly before God. Enlightenment comes only through the working of the Holy Spirit; therefore unenlightened reason and imagination fail where the senses and understanding are mortified with all their powers, and where man lives solely by the Word of God (*LW* 6: 261, LG Genesis 35). Enlightenment comes only through the gospel; because it is very near to us, it also shines in our hearts. Luther mentions St Paul's statement in Romans 10:6-8, where he refers to Moses' statement in Deuteronomy 30:12, 14, to the effect that it is not necessary for man to travel across the ocean, nor to climb into heaven or hell for enlightenment: "It is near to you, in your heart and in your mouth". This what was meant by the light shining in the darkness and not being comprehended until John and the gospel came and revealed it. "Then man is illumined by it and comprehends it, and yet it changes neither time, place, person, nor age, but only the heart" (*LW* 52: 57, S The Gospel for the Main Christmas Service, John 1: 1-14).

Enlightened reason will draw man's sinful will in its wake. If reason is changed into a new light, then man's entire life and all of his powers must follow after the new light and be changed. For wherever reason goes, there man's will follows. Wherever the will goes, there love and desire follow; the whole of man must follow the gospel and become new (*LW* 52: 78, S The Gospel for the Main Christmas Service, John 1: 1-14).

In its unregenerated state man's will is sinful and fallible, therefore "(o)ur will is unimportant; God's will and choosing is decisive" (*LW* 30: 6, CE 1 Peter 1). God's will is expressed in every command that He Himself alone should be loved and preferred above all things (*LW* 29: 185, TP&H Hebrews 6). It is God's will that in the temporal domain the king be honoured and the rebels destroyed (*LW* 46: 18 AP). This also means that political authorities should be obeyed because it is God's will (*LW* 46: 132 SBS). We are pleasing the divine will and doing right whenever we do the will and pleasure of the ruler, for God has attached and bound His will to rulers when He says, "Render therefore to Caesar the things that are Caesar's"¹⁰ and "Let every person be subject to the governing authorities".¹¹ To Luther the whole world ought to think of this as a great joy and comfort and even as a compelling reason to love and honour those who rule over us (*LW* 46: 134 SBS).

10 Matthew 22: 21.

11 Romans 13: 1.

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In his commentary on Psalm 101: 2, Luther devotes considerable attention to issues pertaining to natural law at the time (*LW* 13: 160, *SP* Psalm 101). Natural law is understood by Luther to be the “spiritual law” in a moral sense (*LW* 25: 180, *CR* Romans 15). Natural law is inscribed in the hearts of men by the Holy Spirit; the written moral law contained in the Ten Commandments is the corollary of this spiritual law written in man’s innermost being by the Spirit of God. This means that natural law is the divine creational law instilled in man’s heart as the result of God’s acts of creation. In his comments on Psalm 112: 1, Luther equates God’s righteousness with natural law:

God’s righteousness endures forever. These divine stations and orders have been established by God that in the world there may be a stable, orderly, and peaceful life and that justice may be preserved. The Psalmist calls it ‘God’s righteousness’; lawyers call it ‘natural law’. God had instituted these stations according to natural law (*LW* 13: 369, *LP* Psalm 112).

A typical feature of natural law is the fact that it transcends man’s subjective whims and fancies because the precepts of natural law are not subject to manipulation by man but are of divine origin. These precepts are rationally discernible because all laws have their origin in reason and God has subjected temporal rule and all physical life to man’s reason (*LW* 46: 241f *SCS*). Natural law is accessible by means of reason to the extent that reason is enlightened by the Holy Spirit (see *LW* 45: 129 *TO*, 46: 242 *SCS*, *WA* 11: 280, 17(2): 91, 30(2): 562). Because of the centrality of man’s reason in gaining knowledge of the precepts of natural law, Luther in his commentary on Romans 1: 19 that even the Gentiles have a rational knowledge of the precepts of natural law, thereby knowing that murder, adultery, theft, usury, lying, deceit and blasphemy are wrong because their natural reason teaches them that there is a God and that he punishes such vices (*LW* 22: 150f, *SJ* John 1). For this reason transgressors of the law, whoremongers, murderers and thieves, were severely punished by the Romans and other pagan nations — they had the content of the Law of God and the Ten Commandments written in their hearts by nature; they could recognise wrong both in themselves and in others; they too broke the law if they could do so in secret (*LW* 22: 150f, *SJ* John 1).

Luther emphasises that because of man’s sinful nature, man’s reason, without the gospel, gives only “left-handed” knowledge (*LW* 22: 150,

SJ John 1). Through reason man is able to arrive at a “legal knowledge” of God; a knowledge that is conversant with God’s Commandments and can distinguish between right and wrong. But the knowledge of God derived from the Law is not the true knowledge of Him, whether it be the Law of Moses or the Law instilled in our hearts. The people do not obey this Law, especially when they look about and observe that “the greater the rogue, the greater the fortune”. They infer that there is no God who punishes sin, and accordingly “they follow the crowd bent on sin” (LW 22: 150, SJ John 1). Even the pagan philosophers develop all sorts of good principles from their reason, and unbelieving rulers prescribe many kinds of laws and statutes that pertain to this life, in other words to man’s civic life in this world, such as we lead before the world outwardly: a decent, virtuous, and moral course and conduct whereby we uphold temporal government, maintain peace, honour, and order, and promote the acquisition of goods and honour by ways and means that are confined to this temporal life. Therefore, we dare not listen to the dictates of reason or of the law or the notions of humankind, nor dare we follow them as they would show us the way in the spiritual domain (LW 24: 37, SJ John 14).

Because natural law is implanted in humankind’s heart by God, these precepts are valid *per se*, and need no human agent to declare them valid. This knowledge of natural law Luther calls “natural justice”, “natural law” or “law of nature” (LW 40: 97-98 HP). A clear distinction should, therefore, be maintained between natural law and positive law (or man-made law): natural law is a practical first principle in the sphere of morality, which forbids evil and commands good; positive law is a decision that takes circumstances into account and conforms with natural law on credible grounds. The basis of natural law is God, who has created this light, but the basis of positive law is civil authority (LW 54: 293, TT No 3911: Difference Between Natural and Positive Law, July 7, 1538).

Because natural law is an imprint of moral law in the innermost recesses of humankind’s existence, its principles are immutable, although the application of natural law precepts may differ from time to time and from place to place because a person does not recognise God’s will for himself independently, but only by hearing the Scripture. This implies that natural laws are always and universally valid: unlike positive

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laws and rules, whose validity is limited to a particular time and place, they “prevail and remain in all lands” (*LW* 40: 97-98 HP, *LW* 46: 291 OM, *LW* 14: 14 SP, *WA* 30(3): 225, *WA* 31(1): 233). Whereas positive laws must be changed as circumstances require, natural law is unchangeable.

Although the precepts of natural law are immutable, this does not mean that their application is static and fixed. Through the dynamics of faith and the Spirit, humankind is able to make “new” decalogues, as Paul does in all the epistles, as does Peter, but above all Christ in the gospel, for if the Gentiles in their corrupt nature were able to know God and be a law unto themselves, according to Romans 2: 14, how much more is Paul or the perfect Christian, full of the Spirit, able to set in order a certain decalogue and “judge more correctly about all things”, just as all the prophets and patriarchs spoke all things which are contained in the Scriptures by the Spirit of Christ (*LW* 34: 112, F&L Paragraphs 52-57: September 11, 1535). Christians are therefore called upon to make creative decisions and to use their own consciences to decide what God commands here and now (*LW* 45: 245 T&U). In effect this means that the Christian cannot arrive at the necessary decision simply by reading the directions given in Scripture or by finding applicable statements in the New Testament — such directives have to be applied under the guidance of the Spirit in order to promote justice more fully (Althaus 1972: 31). Because the directives of the Bible are not adequate in terms of specific situations that differ from previous situations, the Biblical precepts have to be interpreted in new ways. At every moment of his life the Christian is subject to the precepts of natural law and called upon to interpret them freely in terms of the nature of Christian love. They then have to be updated on the basis of the whole gospel in order to be applied to contemporary problems in new ways (cf Althaus 1972: 22).

The essential requirement for all law is to maintain peace and promote harmony in the temporal sphere.¹² All rights and all laws, of whatever kind, must be directed at maintaining peace, although, of course, human laws are not to be put on par with the laws of God in every respect (*LW* 2: 338f, LG Genesis 13). Where public peace is in danger, Chris-

12 Also the heathen nations accept the principle that worldly government is for man's good: “Die Heyden, weil sie von Gott nichts gewust, auch nicht erkand haben, das weltliche regiments Gottes ordnung sey (denn sie habens fuer ein menschliche glueck und that gehalten)” (*WA* 19: 633).

tians are called upon to let love be the queen and teacher who moderates the laws and modifies them with a view to lessening their severity and preventing an over-zealous emphasis on the utmost justice and the letter of the law (*LW* 2: 338f, *LG* Genesis 13).

Luther does not limit law to its normative dimension — law also contains a “rights” dimension. Luther’s thoughts on rights can be summarised as follows: not only did God create the whole of reality; He still maintains it in His benevolent rule and providence. In order to assist man after Adam’s fall into sin, God gave Moses the two tables of the Decalogue as a written record of the law of nature inscribed in humankind’s heart (*LW* 22: 150, *SJ* John 1). The Decalogue is a reflection of God’s “perfect and right” will (*LW* 35: 244 *POT*), and contains both a normative and a rights element. The normative dimension of the Decalogue is contained in the authoritative divine laws contained in both tables. The laws of the Second Table in particular are expressive of the demand to love one’s neighbour, and constitute the essence of humankind’s duty to maintain benevolence in his social relationships in society. The two tables of the Decalogue thus constitute the norms and rights pertaining to the benevolent treatment of others in society. The Second Table of the Decalogue, as a statement of humankind’s duties and rights towards others, has a number of important consequences. Firstly, God’s divine right to pass judgement (*LW* 22: 139, *SJ* John 1), 383 *SJ* John 3) and to give and take as He wills is not subject to the precepts of natural law contained in the Decalogue (cf *LW* 42: 30, *ELP* 32, *ELP* 232). Secondly, because of God’s sovereign rule over man, we can give God no rights (*LW* 21: 217 *SMM*) and we have no right towards God (*LW* 25: 375, *LR* Romans 8, 394 *LR* Romans 9, 420 *LR* Romans 11) — He has full rights on us (*LW* 21: 133 *SMM*). Thirdly, only through faith in Christ do all people (including the Gentiles) have the right to become God’s children (cf *LW* 22: 101, *SJ* John 1, 118, *SJ* John 1), 135, *SJ* John 1, 387, *SJ* John 3) and although God cannot become a “debtor” through natural right, He does so through grace in the sphere of faith (*LW* 26: 124, *LG*, Galatians 2).¹³ Fourthly, man’s rights are of no avail or value in the sight of God (*LW* 25: 439, *LR* Romans 12). Finally, man also does not have any right in relation to the divine will

13 In essence this means that we have no “perfect right” to God’s blessings because in actual fact, these are gifts of pure grace (*LW* 14: 48, *SP* Psalm 118).

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either (*LW* 33 BW: 70, BW 188, BW 140, BW 146, BW 191, BW 267), or against God's commandments (*LW* 49: 27 L, to the Council of the City of Stettin Wittenberg, January 11, 1523).

Luther emphasises the fact that humankind is called by God to serve Him in all areas of life: in both the spiritual and the worldly domains and in all hierarchies and estates of the kingdom of creation. The principles of love contained in the precepts of natural law have universal application in all spheres of human society. The divine ordinances in man postulate natural rights for man to fulfil his calling and duty towards God and to live in peace with his fellow man. So, for example, according to Luther, the jurists have wisely and correctly stated that the institution of marriage — the union of man and woman — is an institution according to natural right. Since natural rights are in essence unchangeable, the right to contract marriage, for example, must always remain. In the Book of Concord, the principle is stated: "Where nature does not change, there must remain that ordinance which God has built into nature and human regulations cannot abolish it. Therefore the union of man and woman is by nature right." (BK Apology of the Augsburg Confession: 1, xi, 7). Natural rights are really divine rights because they are stamped on man's nature.¹⁴ Since only an extraordinary act of God can change this right, the right to contract marriage, for example, necessarily remains. Because the natural desire of one sex for the other is an ordinance of God, it is therefore a right. Because all stations and callings have to serve God and one's neighbour, these institutions and the natural rights accompanying them are rights of love (cf *LW* 25: 216 LR Romans 3, 441 LR, Romans 12, 470 LR, Romans 13, 501 LR, Romans 14, 502 LR Romans 14 and *LW* 25: 446 LR Romans 12).

Natural law and natural right, as indicated above, are institutions for maintaining peace and order in the world; they are also known among the Gentiles because they, too, have these precepts and duties

14 Fundamentally, therefore, marriage is sanctioned by natural law: "So it is ridiculous for our opponents to say that originally marriage was commanded but that it is no longer commanded. This is the same as saying that formerly men were born with sex and now they are not or that originally they were born with a natural right and now they are not. No one could fabricate anything more crafty than this foolishness, thought up in order to circumvent the natural law" (BK Apology of the Augsburg Confession: 1, XI, 7).

inscribed on their hearts and are also subject to the demands of love contained in the Decalogue. This is the angle from which Luther explains the humaneness of the Gentiles towards the Jews in kindly receiving and tolerating them by a “kind of natural right”, even though there was no positive law forcing them to show such benevolence (*LW* 3: 7, *LG* Genesis 15).

Because the supreme divine law for the attainment of justice in society amounts to the demand to love one’s neighbour as oneself and the requirement not to do unto others what one does not want others to do to one, natural law and natural right have an important role to play in steering human society towards its proper goal and the peace needed to make human society possible. Therefore, at the root of the natural laws and rights in the temporal domain is situated the rule of love as expressed in the demand of social benevolence towards others in the legal order.

2.2 Social benevolence, natural law and the good of society

The essence of natural law is love of one’s neighbour and the promotion of peace and justice in society. The supreme divine law for the attainment of justice in society is the twofold command of love contained in the precept to love one’s neighbour as oneself and the instruction to treat one’s neighbour as one would like to be treated. For the attainment of the highest good in society God gives a number of mechanisms for promoting love and peace. These mechanisms assist in steering human society towards its proper goal and in securing the peace that is necessary for society to answer to its callings and to fulfil its offices and estates. This is only possible by practising love aimed at promoting social benevolence in social relationships. The essence of the social benevolence is expressed in Luther’s commentary on Romans 13: 10: “Love worketh no ill to his neighbour: therefore love is the fulfilling of the law” (*LW* 25: 474, *LR* Romans 13). To Luther the benevolent implications of the statement that “love is the fulfilling of the Law” by observing the commandment “You shall love your neighbour as yourself” are to be understood in a twofold manner, as stated in Matthew 19: 19 or Leviticus 19: 18: “Love your friend as yourself”. This can be understood, says Luther, in the sense that both the neighbour and the self are to be loved. But in another sense it can be understood that we are only

commanded to love our neighbour, with our love for ourselves being cited as an example. This, to Luther, is the better interpretation, because man in his natural sinfulness does love himself above all others, seeks his own good in all matters, and loves everything for his own sake, even when he loves his neighbour or his friend, “for he seeks his own in him” (*LW* 25: 475f, *LR Romans* 13). To Luther this commandment is most profound, and each person must test himself according to it by means of careful examination, for through this expression, “as yourself”, every pretence of love is excluded. Therefore he who loves his neighbour on account of the latter’s money, honour, favour, power or comfort, and does not love the same person if he is poor, lowly, unlearned, hostile, dependent or unpleasant, clearly has a hypocritical love, not a love for himself, but a love for his neighbour’s goods for his own benefit, and thus he does not love him “as himself,” even if he is a pauper, or a fool, “or a plain nothing”: “For who is so useless that he does not love himself and does not love others in the same way?” (*LW* 25: 475, *LR Romans* 13). Therefore, says Luther, this is the hardest commandment of all, if we really think about it, and thus it is that no one wishes to be robbed, harmed, killed, to be the victim of adultery, to be lied to, victimised by perjury, or to have his property coveted. But if he does not feel the same way also about his neighbour, he is really guilty of breaking this commandment (*LW* 25: 475, *LR Romans* 13).

This commandment also includes the basic truth of Matthew 7: 12: “So whatever you wish that men would do to you, do so to them; for this is the Law and the Prophets”. Although this commandment, when viewed in a superficial and general way, seems quite a small matter, for Luther, if we apply it to particular cases, it is a source of infinite salutary teachings and gives us “faithful direction” for all our dealings (*LW* 25: 475, *LR Romans* 13). Luther adds that he who wishes to think seriously about this commandment and apply it, ought not to depend on his own actions which are elicited from within, but rather he must compare all the acts, words, and thoughts of his whole life with this commandment as a rule, and immediately “the contention, the de-traction, the dissention will cease, and there will be present the whole host of virtues, every grace, every act of holiness, and as it says here, ‘the fulfilling of the Law’” (*LW* 25: 475, *LR Romans* 13).

In the same commentary, Luther, in commenting on the words: “Let each of us please his neighbour” in Romans 15: 2, observes that the implication of the text in Mark 8: 35, Philippians 2: 4 and I Corinthians 13: 5 that he who hates himself and loves his neighbour, “this person truly loves himself”. “For he loves himself outside of himself, thus he loves himself purely as long as he loves himself in his neighbour” (LW 25: 511-2, LR Romans 15). In addition Luther points towards the careful language of the apostle who does not say “we ought not please ourselves” but “we ought to please others”. For if others were pleasing to us, it would no longer be necessary to bear with their weaknesses, that is, to endure their unpleasant qualities. On the contrary, however, we ought to please others, as we read in 1 Corinthians 10: 32-33: “Give no offense to Jews or to Greeks or to the church of God, just as I try to please all men in everything I do”. Luther emphasises the words in the text of Romans 15: 2, to the effect that every one of us should please his neighbour for his good to edification, meaning towards the good, that is, that the person may be moved in the direction of the good which is pleasing; not to the good *per se*, but to edify. The apostle, says Luther, contrasts edification with giving offence, and *vice versa*, as he also says in Romans 14: 19: “Let us pursue what makes for peace” (namely, that they are not offended) “and for mutual upbuilding” (that is, that they may not be made to stumble) — peace as the opposite of offence, edification as the opposite of causing to stumble, taking care of the weak as the opposite of weakening them. Thus Luther has used these three concepts in Romans 14: 21: “make the brother stumble” (that is, that he becomes disquieted rather than being at peace), or “be upset” (that is, that he falls instead of being built up, and thus becomes worse), or “be weakened” (the opposite of being received) (LW 25: 514, LR Romans 15).

This implies that he who loves his neighbour loves himself. By promoting the general welfare such a person also promotes his own. By optimising the freedom and equality of all he is also working towards increasing his own liberty and equality. Social benevolence in this sense works to the general good and the well-being of each person within the social body, individually and collectively.

Because peace is the highest good to aspire to in the temporal domain, loving oneself and one’s neighbour are the first steps towards

promoting the much needed peace without which no society can function. Because peace is an important requirement for attaining the ideal of justice, and *vice versa*, Luther often sets it as the highest virtue to be gained in the temporal sphere. In his commentary on the text of Micah 6: 8 (*LW* 18: 260, LMP Micah 6), Luther reflects on the perspective of justice mentioned in his comments on Romans 15. The text in Micah 6: 8, “[H]e hath shewed thee, O man, what is good, and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?” requires the doing of justice; it means to harm no one, to render to each person what is his own, to bother no one; on the other hand, the instruction is to help others, to promote their welfare, to prevent damage and violence, so that the wealthy may not surround and oppress the needy, and so that the guilty may be punished and the innocent protected. This is also stated in Jeremiah 7: 5: “If you execute judgment between a man and his neighbour”, that is, if you restrain the wicked and protect the good. This, then, applies to all people, for the prophet wants them to be influenced in such a way that they may be concerned about the public peace so that the state may be in good condition and each person may in peace enjoy what is his own. But he says clearly “to do” justice because he wants to see these things presented not merely with words but with the matter itself: “With this one impression he has embraced the good part of Christian behaviour or of Christian morals. You see, violence against one’s neighbour is forbidden; then covetousness, that I should not covet my neighbour’s goods, or wish him ill, but to protect him, ward off danger from him, etc.” (*LW* 18: 260, LMP Micah 6) — this is the truly good behaviour which God requires of the devout.

Luther’s answer to the question as to how the members of a society can accomplish the good of that society returns to the principle of love at the heart of the principle of social benevolence: the good of society can only be attained by loving God above everything else and your neighbour as yourself. This implies that any person wishing the good of the social body must consequently wish the good of all those forming the body of which he himself is one (*LW* 25: 475ff, LR Romans 13). In a social context benevolence, based on love towards one’s neighbour, requires human beings to consider and love themselves as members of society. Furthermore, they associate with other people in return for the

advantage to be gained from the social association. People therefore attach themselves to a society, loving it and its common good, for their own good as well as, that is, because of the universalising of the love for themselves. They do not love the good of others in the first instance or necessarily for the other's good (as in friendship) but rather because they find it a necessary condition for their own particular good. In his commentary on Romans 13: 10, "Love worketh no ill to his neighbour: therefore love is the fulfilling of the law" (*LW* 25: 474, LR Romans 13), Luther makes the point for the benevolent implications of the statement that "love is the fulfilling of the Law", by observing, as has been shown, that the commandment "You shall love your neighbour as yourself" is understood in a twofold manner, as it reads in Matthew 19: 19 or Leviticus 19: 18, where it reads: "Love your friend as yourself".

Promoting the good and attaining justice are by implication only possible through the work of the Holy Spirit. For this reason we need the Decalogue not only to apprise us of our lawful obligations (towards others) but to discern how far the Holy Spirit has advanced us in His work of sanctification and by how much we still fall short of the goal, lest we become secure and imagine that we have now done all that is required. Thus we must constantly grow in sanctification and always become new creatures in Christ. This means "grow" and "do" so more and more (2 Peter 3: 18) (*LW* 41: 166 CC) — this is sanctification according to the Second Table of Moses.

By practising love in furthering social benevolence, the law is fulfilled and the "practitioner" of love towards one's neighbour experiences the blessings of promoting good and justice in society, while society is transformed into the most noble love of moral virtue, and aims at every other good only in relation to this supreme good. Then benevolence and friendship become one, as Christ proclaimed in the "new commandment": "That you love one another as I have loved you" with the most perfect friendship and social benevolence. Social benevolence, so to speak, proceeds from a "subjective" platform, generating "objective" virtues; it increases as society increases; and society improves as it increases, because benevolence is perfected by this growth in the social body. Society increases qualitatively as love, peace and justice, which form the end of society, are formed. This also means that, as long as one person remains outside society, and some good is excluded from its aim, it has not

attained its ultimate goal. Justice is not only the best good but the condition and legitimate origin of every good. Such a society will therefore tend principally to love as the greatest good and source of every good.

The kind of benevolence proper to the noblest of societies will be that by which each member of the society desires principally moral perfection, through love for God and each other, for all the associates of the social body. Therefore societies should strive for that benevolence which is purely a love of virtue, an essentially objective, unselfish expression of love. To attain this ideal, God's law, as expressed in both the Decalogue and the precepts of natural law, forms the basis for attaining the highest good in the secular sphere.

3. Social benevolence, natural right and society

In Luther's social and legal thought, his conceptions of natural law and natural rights come into play at the intersection of man's callings, stations and estates on the one hand, and love, social benevolence and justice on the other. The complexity of Luther's thought on issues pertaining to rights is enhanced by the fact, as stated above, that apart from incidental reflections on rights issues, Luther left no comprehensive or systematic statement of his views on rights. An important key to approaching Luther's views on rights is contained in the close link between his perspectives on natural law¹⁵ and his views on natural right. In essence, natural law in Luther's view refers to God's ordering of the universe and the functioning of the human will in accordance with God's will. The latter is natural right, or justice, understood in human society as distributive justice, entailing appropriate guilt and punishment for violation. The human conscience is natural right within the human soul: the ability to distinguish between right and wrong. Conscience, to Luther (because of its revelatory character of natural law) refers generally to the special revelation of the universal ordering will of God for creation, particularly as republished for the chosen people in the Decalogue, and commented upon by the prophets and the apostles. In relation to God's calling of man, man's duty to serve God and his neighbour in all hierarchies, estates and callings, natural law, being the restate-

15 For Luther's views on natural law see *LW* 45: 127note 117 TA, *LW* 40: 97-8 HP. Cf also *LW* 45: 287, 292, 296 T&U.

ment of love towards the neighbour, has universal application in society. The divine ordinances in man give rise to natural rights for man to fulfil his calling and duty towards God, live in peace with his fellow-man and promote justice in society. To put it differently: a person has rights in order to discharge duties; therefore, as John Witte says, freedoms and commandments, rights and duties, belong together in Luther's formulation. To speak of one without the other is ultimately destructive. "Rights without duties to guide them quickly become claims of self-indulgence. Duties without rights to discharge them quickly become sources of deep guilt" (Witte 2002: 302). Therefore the moral duties set out in the Decalogue are translated into reciprocal rights. The First Table of the Decalogue prescribes duties of love that each person owes to God: to honour God and God's name, to observe the sabbath day of rest and worship, to avoid false gods and false swearing. The Second Table prescribes duties of love that each person owes to neighbours: to honour one's parents and other authorities, not to kill, not to commit adultery, not to steal, not to bear false witness, not to covet (cf Witte 2002: 302-3). Thereby social benevolence underlies and undergirds all social duties and rights:

One person's duties not to kill, to commit adultery, to steal, or to bear false witness thus give rise to another person's rights to life, property, fidelity, and reputation. ... For a person to insist upon vindication of these latter rights is not necessarily to act out of self-love. It is also to act out of brotherly love. To claim one's own right is in part a charitable act to induce one's neighbour to discharge his or her divinely ordained duty (Witte 2002: 303).

The divine law for the attainment of justice in society is contained in the precept to love one's neighbour and its manifestation in the Second Table of the Decalogue. Within human society (and its respective estates) natural law and natural right have an important role to play in steering human society towards its proper goal of securing justice and attaining its proper end to establish peace among men. Natural law and natural right are largely dependent on the attainment of the principle of social benevolence in social relationships.

4. Social rights and benevolence in society

4.1 Private and public social rights

Apart from a number of extra (or non-social) rights, for example the right to liberty of conscience, Luther makes mention on occasion of a number of rights inherent in the social relations of which society is made up. Some of these rights reflect what may be called the rights of individual members of society (private social rights), while others determine the rights of the government of society, of the members of society and of the society itself relative to the government, as well as the titles that any person, family or other social body has or can have relative to the government of a given society or with the offices of government (public social rights).

Luther devoted much attention to family and marriage issues and to the rights of marriage partners as well as those of parents in respect of children and *vice versa*. An instance of his views on private social rights is contained in his analysis of the case of Rachel and Leah's answer to Jacob in Genesis 31: 14-16, after Laban's wickedness and ill-treatment of his two daughters as well as his son-in-law, and their decision to leave their parental home and despoil their father of their lawful property. By acting with avarice, forgetting his natural inclination and love towards his children, Laban allowed the natural love of parents towards their offspring to be overcome and driven out by greed, in conflict with nature. Although it is natural that a father should provide food and clothing for his daughters as for the weaker sex, Laban regards his daughters as foreigners, with the result that they are compelled to complain that the condition of maidservants is better, "for by all rights, human and divine, wages and food for the labourer are owed to a maidservant" (*LW* 6: 17, *LG* Genesis 31). Due to his tyranny, the fourth commandment ceases to apply. To Luther the remarks of Laban's daughters imply that the resources which God had given their husband, Jacob, were held captive under the hand of mammon and the greed of their father. These resources were owed to them by divine and human right, but, because of Laban's malice, neither Jacob nor his wives had yet had possession of them. To Luther, this example has strong parallels with the deed of the Israelites in despoiling the Egyp-

tians of what was owed to them by natural right, “not as a result of their lusts but by God’s will and authority” (*LW* 6: 19, *LG* Genesis 31).

Furthermore, the right of parents to demand obedience in the family is subject to the will of God and the demands of God in the First Table of the Decalogue. The obedience which God enjoins in the Second Table must certainly be shown. However, if the First and Second Tables come into conflict, the correct method of interpreting the rights contained in the Second Table must yield to the First, “for God is the Creator, the Head, and the Lord of father and mother, the state, and the home” (*LW* 6: 27, *LG* Genesis 31). Luther adds:

All these (precepts and rights) must be subject to the Creator. And when the question is asked, which of the two should be abandoned, the Creator or the creature, I reply that the creature should be abandoned. For the First Table takes precedence, and when it has been obeyed, then also the Second Table has its place; then you should obey your parents and bear and suffer wrongs for them, ‘but for Me’, says God, ‘not against Me and against the First Table’ (*LW* 6: 27, *LG* Genesis 31).

God’s sovereign will not only takes away or limits rights, but also awards rights where none existed in terms of the Second Table. So for example the Second Table prohibits killing (Exodus 20: 13). But if the First Table orders killing, the commandment of the Second Table yields. So also the Seventh Commandment about not stealing becomes invalid when God orders you to take what is your father’s. So also the Eighth Commandment prohibits the desire to curse and defame, especially in the case of parents, but the rights of the First Table must be preserved (*LW* 6: 27, *LG*, Genesis 31). This principle also extends to the sphere of the right to demand obedience in political matters. The commands and rights of the pope have to be weighed in accordance with the true meaning of the commandments of the First Table. According to Luther the prince does not have to obey the emperor, and he is absolved from obedience not only to the pope but also from obedience to the whole empire and the emperor, because the emperor and the pope give orders and issue instructions contrary to the First Table. Therefore neither the prince nor the people are bound to obey commandments contrary to their obedience to God, because the emperor and the pope falsely arrogate to themselves what they do not have (*LW* 6: 2, *LG* Genesis 31).

Because all rights are divine gifts of God, there is no room for self-aggrandisement of man’s rights or a humanistic revelling in our human

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rights. The history of Abraham is a case in point. Commenting upon Genesis 12: 3, regarding God's promise to give Abraham a great name among the nations, Luther answers in the affirmative to the question of whether Abraham had the right to revel and to glory in that name, because it was not he himself who had made it but the Lord Himself, and all the glory is due to God Who awarded Abraham this right (*LW* 2: 258, LG Genesis 12).

Public social rights fall into two categories: first, those concerning the rights and duties of the government of society, and secondly the rights and duties of the members and the society itself relative to the government and the offices of government. The Lutheran Confession of Faith deals with both aspects. The Lutheran position testifies that all government in the world and all established rules and laws were instituted and ordained by God for the sake of good order. This also includes the rights of Christians who, without sin, may occupy civil offices or serve as princes and judges, give decisions and pass sentences according to imperial and other existing laws, punish evildoers with the sword, engage in just wars, serve as soldiers, buy and sell, take required oaths, possess property, be married, and so on. (*The Confession of Faith* 2, xv, 4). The Gospel does not overthrow civil authority, the state, and marriage, but requires that all these be kept as true orders of God (*Wahrhaftige Gottesordnung*) and that everyone, each according to his own calling, manifest Christian love and genuine good works in his station of life. Accordingly, Christians are obliged to be subject to civil authority and obey its commands and laws in all that can be done without sin. But when the commands of the civil authority cannot be obeyed without sin, we must obey God rather than men (Acts 5: 29) (*The Confession of Faith* 2, xv, 4).

Luther quite often comments on tyranny and the abuse of political authorities acting beyond the scope of their powers to govern. In his comments on the text of Amos 2, Luther perceives the main evil of governments behaving oppressively towards their subjects as being in the fact that, when the fear of God is abandoned and men have no respect for the ordinance of God, they also lose their respect for human rights. Alluding to the text in the book of Amos, Luther summarises the prophet's prophecy rebuking the wickedness of Israel and condemning

the tyranny and incredible greed accompanying their oppressiveness, which has perverted their sense of justice (*LW* 18: 139, LMP Amos 2).

Luther admonishes his followers, reminding them that all rights are relative to God's love, God's grace and God's mercy. Therefore, although the rights and laws in the secular domain are important for preserving peace and attaining the ideals of justice, we should not harbour Messiasces to be used by men to further peace and promote justice in society. In his lectures on Genesis Luther mentions the outstanding laws and rights of the Romans to illustrate this point:

The Romans were the authors of very fine rights and laws, as the poet praises them: 'Remember, o Roman to rule the peoples.'¹⁶ But they are nothing else than reason which is born of the flesh through a woman and a man. This is altogether unprofitable and dead before God. Consequently, no papist or Turk or monk or jurist or physician will save himself, for whatever there is in the entire world in the way of very fine and useful things is all condemned by one name, namely, because it is flesh and the glory of the flesh¹⁷ (*LW* 4: 350, LG Genesis 25).

Although right in the temporal domain is of great value, it should not be confounded with grace in the spiritual sphere. Luther refers to the Biblical example of Ishmael and Hagar in Scripture. Ishmael is cast out of the house of Abraham, in order to let him know that the kingdom of God is not owed to him by reason of a natural right but comes from pure grace (*LW* 4: 42, Genesis 21). For God gives nothing to anyone as the result of a right, in accordance with the statement (Romans 11: 35): "Who has first given to Him?" Nor is God anyone's debtor, for we would fare badly if He were our debtor. Indeed, we are all indebted to God. Therefore, if He gives us something, He gives it not because of a right, but out of grace, which he lavishly and richly offers to all who believe His promise (*LW* 4: 42, LG Genesis 21). Ishmael and his mother had to learn this lesson, since both wanted to proceed against Isaac on the strength of a right. Luther adds: "Accordingly, I have no doubt that after this presumption of a right was destroyed by so harsh an expulsion, Ishmael and his mother returned to Abraham" (*LW* 4: 45, LG Genesis 21).¹⁸

16 Virgil, *Aeneid*, VI, 851.

17 Cf Isaiah 40: 6.

18 For Hagar's return to Abraham, Luther relies on Lyra's comments on Genesis 21: 15-16. The important principle highlighted by Luther is: that "[B]efore God nothing except grace has any value. If the Turks, the Jews, and the pope appre-

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The superiority of grace to rights entails that obedience to God is of much more importance than the maintenance and enforcement of rights: “Let everything in the world go, even Moses, laws, rights, and listen to this King” (*LW* 12: 73, *SP* Psalm 2). While rights belong to the temporal domain, grace belongs to the spiritual sphere; therefore, there is in Scripture no spiritual authority or power, but only servants and subjects — together with all the rights, liberties, and privileges pertaining to them (*LW* 21: 332, *SMM* Luke 1). Elsewhere Luther states that not rights but the Word of God must rank supreme (*LW* 34: 134 *DCM*), and that neither laws nor rights contribute towards our justification but only faith in Christ (cf *LW* 35: 194 *OOL*).

4.2 God’s sovereign will and man’s common right

How should we respond to calls that it is the will of God that we have an extraordinary calling to act beyond the normal scope of God’s precepts and the normal limits of our “common” rights? This issue became a matter of primary importance during the Peasant Uprisings in Germany in the year 1525. Luther answers by asserting the common right of mankind and man’s common subjection to the precepts of the moral law (and natural law) until God calls or compels someone to do something special. Therefore we should remain within the limits of our common rights and the moral law unless a special vocation or “heroic inspiration calls us away” (*LW* 5: 310, *LG* Genesis 29). God’s will is supreme; He is the Manager and Governor of all. If He inspires someone to do what is contrary to the common rule (law or right), the rule should not be broken or set aside by this. No, one must stay with the common right and permit God Himself to except those whom He wishes. For only God can rightly say: “This is what I command; let My will be the reason”¹⁹ (*LW* 5: 311, *LG* Genesis 29). For this reason Luther criticises Müntzer’s call on the peasants during the revolt, with reliance on the achievements of Joshua, Samson, and David, to change the existing political state of affairs: “But the conclusion is false for heroic men who have special impulses are excepted from the rule. We, too, who

hended it through Christ, they would be saved; but since they are utterly blinded, they reject grace and rely on right and merit. Therefore they perish eternally.” (*LW* 4: 44, *LG* Genesis 21).

19 See Juvenal, *Satires*, Book VI, line 223.

are under the rule, neither can nor should imitate them.” (LW 5: 311, LG Genesis 29). Laws and customs must simply be observed, and no transgression should be tolerated, lest confusion arise. Therefore the examples of heroic men should not be followed because their breaking of the rule does not leave behind an example:

Customs, laws, and rights should be observed and examples should be followed. But in the case of heroic men there is no precedent. No example is valid unless it is similar in all respects (LW, 5: 307 (LG, Genesis 29)).

4.3 Social benevolence and social rights

Luther's views reflect a strong current of thought that, without the inspiration of moral obligation and the urgency of virtue, social right breaks down. The teaching of social benevolence in the attainment of virtue and justice keeps society motivated in furthering the moral good. If naked rights are considered and duty is forgotten, rights are converted into wrongs and the ancient adage, *summa jus, summa injuria* (there is no greater injury than supreme right), is verified. Social benevolence sets the context within which rights can play the essential role of furthering justice. This means that moderation must be allowed to attain the highest good in society. An important outflow of the view that rights are not goals within themselves but essential means (or “instruments”) for attaining the supreme good in society is expressive of the anti-positivistic and anti-legalistic application of rights and the role of moderation in focusing on the aims of society, rather than on the rights themselves. Luther explains as follows:

Accordingly when Scripture presents deeds and rights, examples and rules, miracles and commands or a law, the right, the rule and the law must be taught and considered. If a grammarian lays down the rule that every noun ending in ‘a’ is of the feminine gender, the word *poena* is a miracle, so to speak, when it is considered according to this rule; for it is a neuter noun. Thus in the case of a right, moderation should be aimed at. This is a miracle of the jurists, because it deviates from the rule. For it is true that the height of right is the height of wrong²⁰ (LW 3: 261, LG Genesis 19).

We need more than knowledge of our rights if we are to learn to act as we should. Man must be fully cognisant of the limits of his rights,

20 Cf Cicero, *De officiis*, I, 10, 33 and LW 13: 15, SP Psalm 101, note 12.

and the way in which they are to be employed, if the supreme good in society is to be attained. Only the moral impact of social benevolence teaches this. The kind of behaviour which runs counter to the principle of social benevolence that Luther has in mind occurs when a person with a right allows himself to think that he can use it capriciously and without limit. This error has extreme implications because it produces insubordination and rebellion on the part of subjects in society and strong-arm tactics and despotism on the part of government. Subjects advance the idea that they have to take steps to preserve their rights as individuals and as citizens; at the same time government strives to take precautions to prevent harm to society and often becomes increasingly involved in over-seeing and managing the private and the secret, the sacred and the profane.

In Luther's social thought, the ideals of mutual confidence, harmony, peace and collective security in the field of social rights are only possible if the idea of extended, undetermined rights is given limits by the ethics of social benevolence: good faith, equity and goodness — in other words by duty and moral virtues. Only through the intervention and moral impact of social benevolence can the various parties to social relationships be forbidden the abuse of their cold, coarse rights.

How can these safeguards be established by social benevolence? In the moral dimension social benevolence implies that no one has the right to make "bad" use of his own right. The application of social rights in the context of Luther's social thought would mean that, because individuals and governments often vaunt "precautionary" or "reactionary" right as an excuse for acting without limit or supervision, it would be important that such precautionary and reactionary rights be used "well" and as little as possible. Unnecessary enactments or restrictions would cause the limits of moral right to be overstepped, and would bring about injustice and the *summa jus, summa injuria* warned against earlier. Luther's criticism of the *summa jus, summa injuria* abuse of right from the perspective of social benevolence has a number of important implications. The fact that social benevolence places certain moral restrictions on the naked exercise of right in the field of private social right also means that, because government is composed of fallible human beings, it cannot be claimed to be infallible. This also affects the right of individuals who demand that they be governed well without considering the limitations of this right. In Luther's *Theses concerning faith and law* he

stresses the fallibility of man in making and enforcing law. Reason and laws are full of perils. No-one has been found anywhere at any time so good and perfect, in which not many defects remained, so that legislators themselves and certain philosophers prepared remedies as if for sick laws, which they call reasonable judgements (*Epikias*), equities, Lesbian rules, natural points, the indivisible middle, or in general the judgment of the good (reasonable) man. Since that is true, says Luther, the loftiest right is the greatest injustice:²¹

Unless there are good men among them who do not strike the mark but who come close to hitting it, that is, who are less evil, although they cannot be good, then they teach that many injustices in the state must be tolerated with respect to both laws and magistrates for the sake of avoiding a greater evil (*LW* 34: 130 TF&L).

In his commentary on Romans, Luther reflects on the essence of benevolence and its impact on the failings of mankind: because rights and laws should be rights and laws of love, those who are strong are to uphold the weak and promote their good. The strong have to bear with the failings, the weaknesses and the defects of the weak, because according to 1 Corinthians 13: 7, “love bears all things, and not (to) please ourselves, for to please ourselves is to give cause for dissention, which is opposed to love, but this is a love not for oneself, but for another” (*LW* 25: 119, LR Romans 15). God overlooks faults in spite of nature; He also overlooks political faults. Who does not see the various illnesses and faults in the laws and in government:

Where is there a commonwealth, be it ever so justly arranged and administered, in which unjust deeds are not often sanctioned and permitted? As the proverb declares, ‘The highest right is the highest

21 Luther is particularly fond of quoting the maxim *Summum jus, summa iniuria* (here cited as *summa iniustitia*) from Cicero’s *De officiis* 1, 10, 33. In his famous treatise *On Secular Authority* (1523), Luther describes how the ruler should (1) fear God, (2) show love for his subjects, keeping his eye on the example of Christ, (3) be cautious of human counsellors, and (4) practise equity (*epieikeia*, *Billigkeit*, fairness, cf Aristotle’s *Nicomachean Ethics*, VX) and moderation towards evildoers. The Lesbian rules were referred to in Erasmus’s *Adagia*, *Adagiorum D. Erasmi Roterdami Epitome*, 348, as *Lebia regula*, where Erasmus explains them as the name describing the accommodation of reason to fact, not fact to reason, law to customs, not customs to law, or when the prince accommodates himself to the customs of the people, or on the other hand when he calls upon the people to order life according to his will, as long as he himself has respect for the rule and goal of virtue.

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injury'.²² This is not merely the fault of men; the laws are not without fault either, even the fairest of them. Therefore they need a good administrator, who can make them either laxer or stricter as the need of the particular situation requires (*LW* 12: 348, *SP Psalm* 51).²³

Still God puts up with these faults so that at least some form of government exists, children are educated, the earth is tilled, and business can go on. To eliminate all the faults from public affairs and laws would be to do away with governments and laws themselves:

All the more insane is it when some lawyers first come into court or public life and want to cut everything to the quick and bring about an arithmetic equality in everything. Those who do this disturb the peace (*LW* 12: 349, *SP Psalm* 51).

Luther adds that a wise lawyer ought therefore to have his eyes above all on the commonwealth: how to promote peace and the public tranquility of the citizens so that education and other political and domestic duties may be preserved: "And if certain faults should occur, he should ignore them rather than disturb the public peace on account of them" (*LW* 12: 349, *SP Psalm* 51).

Only through virtue, that is, equity, benignity and charity, can this manifestation of *summum jus, summa iniuria*, be tempered and the unjust pretensions of subjects be limited. So the principle of charity, for example, obliges individuals to renounce their own right generously and to prefer not to offend other's rights rather than to exercise their own. Luther stresses the fact that, even in the most just commonwealth, unjust deeds are sometimes sanctioned and permitted to prevent the application of the highest right from causing the highest injury (*LW* 12: 349, *SP Psalm* 51).

22 For Luther's remarks on the phenomenon of *summum jus, summa iniuria*, see *LW* 13: 150, *SP Psalm* 101, 267, *SP Psalm* 110, *LW* 54: 241, *TT* No 3604A: Interpretation of the Inheritance of Widows Between June 18 and July 28, 1537.

23 For equity in Luther's theory, cf *Witte* 2002: 14-5. *Witte* (2002: 165) interprets the position of Luther and Melancthon to mean that both contrasted equity with strict law. Equity, they believed, corrected defects in a strict rule or its application. But equity was for the exceptional case. To use it indiscriminately, they believed, would erode the rule of law — both natural law and civil law. Comments by Luther on the role of equity sometimes suggest the application of equity under all circumstances: "Nu wir aber ytzt gesagt haben, das die Billicheit solle des rechts meisteryn sein und wo es die zufelle foddern, das recht lencken, heysßen und lassen da widder thun ..." (*WA* 19: 633).

Luther uses the Biblical example of Abraham, who aspired to further the highest good, namely peace and justice, as an example of the working of social benevolence in the spheres of both private and public social rights. To Luther, Abraham's conduct is a model of moral conduct to be followed. By "lowering" himself beneath Lot by giving him the choice of where he would most like to go, Abraham yields to the nephew, "the older to the younger, the prophet and priest of God to the pupil" — and all this is to keep their love from being destroyed and to avoid creating an occasion for strife (*LW* 2: 337, *LG* Genesis 11). This account, says Luther, is worthy of our careful attention, for it teaches how "all laws and rights" are to be dealt with. "Because the purpose of all earthly laws is peace, harmony, and quiet, or, 'as we theologians express it, love', whoever does not direct the laws (and rights) to this end, or understands them in a different manner, is greatly in error. Thus we see that today the misuse of laws (and rights) is very great" (*LW* 2: 337, *LG* Genesis 11). Luther cautions, however, that because the world is engrossed in ambition and is profoundly wise, there is no place for love: jealousies, dissensions and wars abound everywhere. Even though we may do what Abraham did for Lot and yield our rights, yet peace cannot be maintained, not even if we should bear wrongs and disregard them. So corrupt and wicked is the world! (*LW* 2: 338, *LG* Genesis 11).

Luther identifies an educational aspect attached to the benevolence of Abraham:

Nevertheless, the pious must be taught and admonished diligently. After they have come to know God and have begun to believe, they must also learn how to conduct themselves towards their brethren, so that, following the example of [Abraham], they may yield their right. For the purpose of all laws (and rights) is love and peace. To this end all rights and all laws, of whatever kind they are, must be directed, although, of course human laws (and rights) are not to be put on par with the laws (and rights) of God in every respect (*LW* 2: 338, *LG* Genesis 11).

This means that God's precepts and promises cannot be suspended. Because the purpose of earthly laws and rights is love, they must be invoked in such a manner that no offence is committed against love and, as Abraham says in Genesis 13: 8, that there be no strife. Abraham remains Lot's "most affectionate uncle"; Lot, in turn, remains Abraham's "very dear nephew" (*LW* 2: 338, *LG* Genesis 11). Luther admonishes readers, warning that where public peace is in danger, "let love be the

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queen and teacher who moderates the laws (and rights) and modifies them with a view toward lessening severity” (*LW* 2: 338, *LG Genesis* 11). However, this is not easily accomplished, and “modification”²⁴ of laws and rights calls for “courageous” and “extraordinary” men. An important reason for this is contained in the fact that the teachers of law do not debate according to love; but everywhere they stress the utmost injustice and the letter of the law, as they term it. “Hence they do not deserve to acquire this godly knowledge” (*LW* 2: 338, *LG Genesis* 11).

Social benevolence plays an important role in determining and limiting the application of laws and rights, insofar as laws and rights are unequivocally limited by, and receive their force and application from, the principle of love. If a law (or a right) is in conflict with love, it is no law or right. Love is the “mistress” and “teacher” of the law, who commands laws and rights to keep silence; for in certain cases laws and rights teach injustice, not justice. This happens if someone should want to follow one without moderation (*LW* 2: 340, *LG Genesis* 11). The principle should be maintained that where love and rights are in conflict, love determines (*LW* 35: 390 *PNT*). The example of Christ teaches that one must forget one’s own injuries and rights, and think only of how one may rescue the wicked men and one’s enemies from their evils (*LW* 35: 390 *PNT*). This means not to engage in litigation as one wishes, not to avenge oneself; not to hate one’s enemy; not to demand one’s rights, and to give and lend (*LW* 44: 265 *JMV*). Applying social benevolence (because it is based on love) to the realities of injustice in Germany during the 1520s, Luther strongly condemned irresponsible merchants, attacking economic injustice and proposing government controls to halt unfair commercial and labour practices (cf *LW* 45: 231-310 *T&U*, *WA* 15: 279-313, 321-322, *WA* 6: 36-60). Against both the reckless mobs which confused their Christian freedom with their civil rights, and the cruel rulers who disregarded their responsibility to God for their subjects’ economic and social welfare, Luther appealed for both civil obedience and — less strongly! — political justice in a community of law and order (cf *LW* 13: 39-72, *SP Psalm* 82, *WA* 30(1): 189-218).

The insight that peace and love are the moderators and administrators of all virtues and laws, says Luther, is not limited to Christians.

24 For the moderation of law, cf also *LW* 45: 118 *TA*.

Pagan philosophers stressed the same principle: for example, Aristotle stressed clemency in his *Nicomachean Ethics*.²⁵ Luther also quotes St. Augustine, who said that not everyone is to be clothed, fed, and ruled in the same way, “because not everyone is in the same state of health” (*LW* 2: 340, *LG* Genesis 3). Consequently St. Augustine did not maintain the arithmetic proportion, which is “the most accurate and divides things equally”, but the geometric, which distributes in keeping with circumstances (*LW* 2: 340, *LG* Genesis 3).²⁶

Luther compares the application of love (on which social benevolence is based) to the legal approach of his time. If, says Luther, Abraham had consulted some young jurist or superstitious theologian of his day, he would have been urged not to yield but to insist on his right; for the promise concerning the land had been given to him, to be held and safeguarded, and so no perpetual servitude should be imposed on his descendants:

Indeed, a fair-seeming speech! But because it does not serve peace and harmony, it must be rejected and must be considered most inequitable, however much it may appear to have been drawn from what is really the law (*LW* 2: 341, *LG* Genesis 3).

Throughout his commentaries and polemic writings Luther conveyed a strong message of love preceding the exercise of right.²⁷ In his commentary on the letter to the Galatians he stresses this same principle while pointing out the difficulties of propagating the principle of love to further the aims of justice:

[I]t is impossible to teach or persuade unspiritual people of this teaching about the love to be mutually observed among us. Christians comply with it voluntarily. But when the others hear this freedom proclaimed, they immediately draw the inference: ‘If I am free, then I have the right to do whatever I please’ ... In their great smugness such people shrug off this yoke and obligation of the flesh, and they transform the freedom of the Spirit into the license and lust of the flesh (*LW* 27: 50, *LGS* Galatians 1).

Luther warns the doers of injustice that they use their bodies and their powers for their own lusts — as they are certainly doing when they refuse

25 Book 5, Chapter 10.

26 Also cf *LW* 13: 120, *SP* Psalm 90, note 68.

27 For love overriding rights, cf *LW* 46: 165 *WAT*. Also note *LW* 44: 90 *TGW*.

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to help the poor or to share, but defraud their brethren in business and acquire things by fair means or foul — then they are not free, as they loudly claim to be, but have lost both Christ and freedom, “and are slaves of the devil ...” (*LW* 27: 50, LGS Galatians 1). It was the loveless exercise of right and might that caused the greatest injustice — the crucifixion of the Lord Christ! (*LW* 53: 227, 257 L&H).

The application of benevolence to the sphere of laws and rights implies that the highest good, namely the attainment of peace and justice, must constantly be borne in mind. It also means that one should yield one’s rights for the sake of peace (*LW* 50: 43, 45, L, Number 246, to Elector John [Wittenberg, about February 12, 1532]); also see 46, L, Number 247, to Mrs Martin Luther [Torgau,] February 27, 1532) and 72, L, Number 253, to Nicholas von Amsdorf [Wittenberg,] November 2, 1532). It applies not only to the exercise of private social rights, but also to the exercise of public social rights in general and government in particular. In the exercise of its functions, government must always bear in mind the principle of benevolence in the preservation of peace:

If a prince were to punish the offences of his people in such a way as to give occasion for uprisings, it would be better to close his eyes to the offences than to punish them. What good is the law (and right) if it fails in its purpose and if everything goes to pieces? (*LW* 2: 339, LG Genesis 9).

In essence, social benevolence in the sphere of public social rights reflects the wishes of God, who does not want “bodies to be killed”, but spared; indeed, He wants them to be nourished and fostered, in order that they may be fit for their calling and the duties they owe their neighbours (*LW* 2: 339, LG Genesis 9). Moderation also has a role to play in maintaining harmony in the social body, which means not only that extreme right is the highest injustice, but also that extreme justice is extreme disharmony (*LW* 2: 341, LG Genesis 9). This concerns only this earthly life, not the laws of God, His promises or His Sacraments. For there extreme justice should prevail, in accordance with the statement: “He who loves father and mother more than Me is not worthy of Me”.²⁸ But in those things which people command us to do, allowance is made for love, the moderator of the law and of all court actions; it is the main thing to be considered and followed (*LW* 2: 341, LG Genesis 9).

28 Matthew 10: 37.

Benevolence in the public sphere also entails yielding one's rights in furthering love, peace and justice. In his comments on Genesis 14: 21, Luther alludes to the example of Abraham's refusal (to the king of Sodom) to take his share of the booty as an instance which reflects the yielding of one's rights in the public sphere. The example of Abraham, who achieved victory through danger, efforts, and expense, is set before the entire world as an exceptional pattern of all virtues. Contrary to the political rulers of his day, namely the centaurs, who "rightly or wrongly seize for themselves whatever they can", and the princes who, if they add even one village to their domain, "at once demand that their titles and coats of arms be inscribed and amplified", seeking glory, prestige, and advantage in everything they undertake, Abraham is concerned solely about the welfare of his neighbour: "He does not want to be enriched and does not want even a thread added to his possessions" (*LW* 2: 398, LG Genesis 14). Not only was Abraham the head of his family, he was also the political leader of his clan. Through his fair and virtuous acts he also served as an example of social benevolence in the sphere of public social rights. This inspired his servants to yield their right to the booty, thereby following gladly "in the path of his (Abraham's) godliness and his courtesy" (*LW* 2: 398, LG Genesis 14).

The moral restrictions imposed by social benevolence not only limit the rights of subjects towards government but also those of government towards its subjects. The acknowledgement of the human fallibility of government also prevents it from exercising *summum jus, summa injuria*, by advancing the argument that "we have the right to administer and govern, and therefore administer and govern as we want without ever being censured for what we do". The application of the principle of social benevolence insists that no one has the right to use his right badly, and obliges rulers to bear their own fallibility in mind, to receive enlightenment and to discuss all the aspects of instances where individuals feel offended. The exaggeration of social right produces the errors of social positivism and legalism.²⁹ These errors are not limited to monarchical governments, but also extend to democratic systems of political rule. In the case of a monarchical government, all laws are deduced from the will of the head of society (*a rege lex*), and democratic rule acknowledges

29 While social positivism acknowledges only positive laws emanating from the legislative power of society, legalism makes the value of all laws consist in the external forms constituting legality.

only the popular will as the fount of laws. Luther's view of rights ascends much higher than human will or human society, by postulating a divine source for rights and laws which bind human beings. Rulers who promote absolutism sin against the Holy Spirit. In the Book of Wisdom,³⁰ says Luther, rulers who abuse their legitimate authority by stating: "Let our might be our law of right" and those who declare in Psalm 12: 4: "With our tongue we will prevail, our lips are with us; who is our master?" are described as in Psalm 73: 4ff. as being "arrogant with unconcern, and when they use force on others, they boast of it" — these being people who oppose the Holy Spirit through their usurpation of power and tyranny, when He warns, entreats, teaches and reproves them through people like Lamech, Noah, and the sons of Noah (*LW* 2: 32, *LG* Genesis 6).

What are the implications of substituting right for might? In his summary of the prophet Amos's prophecy against Israel for treating the poor unjustly, Luther makes the point that, where respect for the ordinances of God is lost, respect for human rights is also tarnished (*LW* 18: 139, Amos 2). Luther ascribes the use of violence in defending oneself "by right or might" to man's ignoring God (*LW* 14: 215, *SP* Psalm 37). Elsewhere Luther consoles the victims of injustice that in days of trouble might makes right but eventually injustice and deception will not abide (*LW* 14: 252, *SP* Psalm 94). If one commits one's business to God, one may be sure that one's right will not remain in the darkness (*LW* 14: 213, *SP* Psalm 37, *LW* 21: 341, *BSP* Luke 1). God will come to the assistance of those whose rights are trampled underfoot.³¹ So also Philo, after having suffered injustice, gained a hearing from God (*LW* 35: 342 PA).

In Luther's commentary on the song of praise of Mary, the aim of justice remains supreme in the public sphere. Wisdom, might and riches are deprecated by saying that no one should glory in these things, be-

30 Wisdom of Solomon 2: 11.

31 Arguably the strongest criticism against the lack of benevolence and the perpetration of injustice is to be found in Luther's commentary on Habbakkuk 1 (cf *LW* 19: 161, *LMP* Habbakkuk 1). For the results of elevating might above right, cf *LW* 19: 161-172, *LMP* Habbakkuk 1), *LW* 54: 273, *TT* No 3793: Practice Teaches More Than Theory, March 25, 1538 and 212, *TT* No 3490: High Recommendation of Aesop's Fables Between October 27 and December 4, 1536). Also note Luther's remarks in *WA* 3: 181, *WA* 4: 113 on abusing law as a mechanism for exerting power.

cause God does not delight in them. Over and above these things God sets three other principles, namely kindness (social benevolence), justice and righteousness (*LW* 21: 331 *SM&M*, Luke 1).

How should we react towards those who inflict harm and violence with a show of right? Using the example of the greed of the Philistines in taking the well dug by Isaac by force, as described in Genesis 26: 21, Luther remarks that the Spirit wanted to record this infliction of harm and violence with a show of right for our instruction. Whilst the Philistines maintain the view that the land is theirs, and therefore what the land has produced and contains belongs to them, Isaac, a saintly, upright and non-quarrelsome man, bears the injustice calmly, “although it is a troublesome affliction that the wickedness of these people is so great that they even begrudge him a drink of water God has granted him and take the water from him by force” for it had not been given to them or discovered by them, but had been bestowed upon this saintly man by a special blessing. Luther contrasts the legalistic handling of the matter by the jurists with the pious and benevolent attitude of Isaac:

Here the jurists would have had a subject for at least 100 years of litigation. But Isaac yields to the time, the persons, and the pretexts; and he relinquishes the well. I would have prayed so much that God would have stopped the spring water and the well that had been discovered without any effort on their part (*LW* 5: 65, cf *LG* Genesis 26).

However, Isaac exercises the most blameless patience, “which is a very holy virtue and sustains itself with the consciousness of what is right, just and harmless. It does not offend the neighbour, much less God in His saints” (*LW* 5: 65, *LG* Genesis 26). Luther warns those who inflict violence with a show of right: “If you take away my property and leave me faith and a good conscience, then you have already lost your faith and have God as your adversary, and together with the chaff itself you will be hurled headlong into eternal destruction” (*LW* 5: 65, *LG* Genesis 26).

5. Conclusions

Human rights are not the institutions or instruments of evil that some Christian viewpoints take them to be. On the contrary, natural right is a gift of God, inscribed on man’s heart in the kingdom of creation for serving God and one’s neighbour through love. Human rights are fundamentally rights of love to be maintained for the glory of God.

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In the social sphere, private and public social rights are of fundamental importance in steering human society towards peace and justice.

In the fallen state of mankind both man's knowledge and the application of human rights have become blurred as a result of sin. The practices of "might is right" and of *summum jus, summa injuria* testify to man's abuse of right and of justice. However, this does not mean that human rights are institutions of the devil or of evil. Through faith in Christ and the work of the Holy Spirit, much of the original purpose and aim of human rights in society can be salvaged.

Probably the most valuable message emanating from Luther's social rights theory is contained in his emphasis on the overriding importance of the context within which social rights are to be identified and applied. Luther maintains that social benevolence is the core principle for ensuring that, through one's striving towards and aiming for peace and justice as the supreme good in society, one is actually investing in one's own "rights" position in society. This also means that the practice of social benevolence enhances both the qualitative and the quantitative good of society to the benefit of all. The other side of the coin is that the naked exercise of rights — stripped of the moorings of love — has profoundly negative and even devastating consequences for society. On the positive side benevolence in the application of law manifests itself through the principle of equity (*aequitas*), in a broad normative sense. It is also linked with the notion of *lex naturae*, the command of an "inner voice" through which the enlightened reason of man may speak. Recourse to *aequitas* permits the infusion of moral values into the law and, as such, constitutes an effort to go beyond the formal sources of law and to reach for a higher, enduring, normative system of law. It is not so much a source of law as an anti-legalistic principle by which cases can be judged and the law be interpreted and developed. In Luther's thought *aequitas* reflects the Christian ethical principles of piety (*pietas*), affection (*caritas*), humanity (*humanitas*), kindness (*benignitas*) and clemency (*clementia*) — all basic requirements for meeting the demands of a just social order.

The fact that Luther reflects on both private and public social rights, within a comprehensive ethical order of benevolence, creates the impression and possibility of nurturing a legal culture of anti-positivistic and anti-legalistic implications — both loveless evils that may seriously

jeopardise the legal order and eventually lead to the downfall of civil society.

Arguably of equal importance is the implication of Luther's social rights theory that, because the Holy Spirit works and testifies in the hearts of both believers and unbelievers, discourse on social benevolence and the essentials of social rights in society is an attainable ideal and provides common ground for communication between Christians and non-Christians in a society on the most fundamental moral foundations underlying the social order.

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