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978-0-521-81842-1 - The Reformation of Rights: Law, Religion, and Human Rights in  
Early Modern Calvinism

John Witte

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## THE REFORMATION OF RIGHTS

John Calvin developed arresting new teachings on rights and liberties, church and state, and religion and politics that shaped the law of Protestant lands. Calvin's original teachings, which spread rapidly throughout the West, were periodically challenged by major crises – the French Wars of Religion, the Dutch Revolt, the English Civil War, American colonization, and the American Revolution. In each such crisis moment, a major Calvinist figure emerged – Theodore Beza, Johannes Althusius, John Milton, John Winthrop, John Adams, and others – who modernized Calvin's teachings and translated them into dramatic new legal and political reforms. This rendered early modern Calvinism one of the driving engines of Western constitutionalism. A number of basic Western legal ideas of religious and political rights, social and confessional pluralism, federalism and social contract, and more owe a great deal to this religious movement.

This book is essential reading for scholars and students of history, law, religion, politics, ethics, human rights, and the Protestant Reformation.

JOHN WITTE, JR. is Jonas Robitscher Professor of Law and Director of the Center for the Study of Law and Religion at Emory University, Atlanta. His many publications include *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (2002) and *To Have and to Hold: Marrying and its Documentation in Western Christendom, 400–1600* (2006).

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# THE REFORMATION OF RIGHTS

*Law, Religion, and Human Rights in Early  
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JOHN WITTE, JR.

*Emory University*



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CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9780521521611](http://www.cambridge.org/9780521521611)

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First published 2007

Printed in the United Kingdom at the University Press, Cambridge

*A catalogue record for this publication is available from the British Library*

ISBN 978-0-521-81842-1 hardback

ISBN 978-0-521-52161-1 paperback

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*To Ria, Gertie, and Jane  
My sisters, my friends*

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## *Preface and acknowledgments*

Over the past three decades, a veritable cottage industry of important new scholarship has emerged dedicated to the history of rights talk in the Western tradition prior to the Enlightenment. We now know a great deal more about classical Roman understandings of rights (*iura*), liberties (*libertates*), capacities (*facultates*), powers (*potestates*), and related concepts, and their elaboration by medieval and early modern civilians. We can now pore over an intricate latticework of arguments about individual and group rights and liberties developed by medieval Catholic canonists, philosophers, and theologians, and the ample expansion of this medieval handiwork by neo-scholastic writers in early modern Spain and Portugal. And we now know a good deal more about classical republican theories of liberty developed in Greece and Rome, and their transformative influence on early modern common lawyers and political theorists, eventually on both sides of the Atlantic.

This volume tracks the development of rights talk in those parts of the Western tradition inspired by the teachings of the Genevan Reformer, John Calvin (1509–1564). Building in part on classical and Christian prototypes, Calvin developed arresting new teachings on authority and liberty, duties and rights, and church and state that have had an enduring influence on Protestant lands. Calvin's original teachings were periodically challenged by major crises in the West – the French Wars of Religion, the Dutch Revolt, the English Revolution, American colonization, and the American Revolution. In each such crisis moment, a major Calvinist figure emerged – Theodore Beza, Johannes Althusius, John Milton, John Winthrop, John Adams, and others – who modernized Calvin's teachings and converted them into dramatic new legal and political reforms. This rendered early modern Calvinism one of the driving engines of Western constitutionalism. A number of our bedrock Western understandings of civil and political rights, social and confessional pluralism, federalism and social contract, and more owe a great deal to Calvinist



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theological and political reforms. This is the main argument of this volume.

Some of this argument will be familiar to some readers, especially to specialists on the history of Calvinism. A century ago, great European scholars like Otto von Gierke, Max Weber, Emile Doumergue, Abraham Kuyper, Georg Jellinek, Josef Bohatec, Charles Borgeaud, and others drew direct and easy lines from Geneva to Philadelphia, from Calvin to Rousseau. In the past half century, whole societies of specialists have emerged to study some of the individual titans who appear in these pages – Calvin, Beza, Althusius, Milton, and Winthrop especially. The classic overviews of Calvinism, however, were focused largely on large political patterns, and paid rather little mind to the emerging rights talk and legal nuances of the tradition. And the more recent case studies of individual titans, however excellent, do not track the gradual development of a distinctly Calvinist doctrine of law, religion, and rights over time and across cultures. This volume tells this story of the development of Calvinist rights doctrines to complement the many fine studies on the development of Catholic rights doctrine already in hand.

I would like to express my warmest appreciation to Dr. Craig Dykstra and his colleagues at the Lilly Endowment, Inc. in Indianapolis for their extraordinarily generous grant that provided me with research support and time to work on this and related volumes on law, religion, and the Protestant tradition. I would also like to offer my profound thanks to Dr. Alonzo McDonald and his colleagues in the Alonzo L. McDonald Family Agape Foundation for lending further generous support and wise counsel.

I would also like to express my gratitude to several scholars who were kind enough to offer me their criticisms and counsel. These include my Emory colleagues, Frank S. Alexander, Harold J. Berman, Timothy P. Jackson, Michael J. Perry, Philip L. Reynolds, and Steven M. Tipton, as well as several colleagues and friends at other universities, notably Patrick M. Brennan, Don S. Browning, Charles Donahue, Daniel L. Dreisbach, R. H. Helmholz, Wolfgang Huber, Robert M. Kingdon, David Little, Martin E. Marty, David Novak, Joan Lockwood O'Donovan, Steven Ozment, Charles J. Reid, Jr., David VanDrunen, Johan van der Vyver, and Nicholas P. Wolterstorff.

I would like to recognize several joint degree graduates of our Center for the Study of Law and Religion at Emory University who furnished valuable research assistance on this and related volumes, notably Amos Davis, Laurie Ann Fallon, Christy Green, Charles Hooker, Anne Jacobs, Joel Nichols, Sarah Pentz, Jimmy Rock, and Judd Treeman, and also three other young

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scholars, Collin Freer, Wallace McDonald, and Gregory Williams. I owe special thanks to my Center colleagues, April Bogle, Anita Mann, Amy Wheeler, and Janice Wiggins for their expert services in support of the Lilly and McDonald projects of which this volume is part and product. And I owe a mountain of debt to my wife Eliza for enduring so many conversations about the themes of this volume, and for sharpening so many passages herein with her keen editorial eye.

My warm thanks to the curators and librarians at the following institutions who were kind enough to open their marvelous collections to me – the British Library in London, the Max Planck Institute in Frankfurt am Main, the Newberry Library in Chicago, the Robbins Collection at the University of California at Berkeley, and various libraries at Cambridge University, Edinburgh University, Harvard University, Heidelberg University, Oxford University, Princeton University, and the University of Chicago.

Finally, I would like to express my deep appreciation to Kate Brett and Kevin Taylor at Cambridge University Press for taking on this volume and for working so assiduously to see to its timely publication, despite my unconscionably tardy delivery of the manuscript.

This volume is dedicated to my three sisters, Ria, Gertie, and Jane, who in their own unique ways have taught me the true meanings of “liberty” and “reformation.”

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Adams *The Works of John Adams, Second President of the United States, with a Life of the Author, Notes, and Illustrations*, ed. C. F. Adams, 10 vols. (Boston, 1850–1856)

AFR *Archiv für Reformationsgeschichte*

Calvin, Seneca *Calvin's Commentary on Seneca's De Clementia*, trans. Ford Lewis Battles and A. M. Hugo (Leiden, 1969)

CO *Ioannis Calvini opera quae supersunt omnia*, ed. G. Baum, *et al.*, 59 vols. (Brunswick, 1863–1900). References throughout to Calvin's Sermons (Serm.), Commentaries (Comm.), and Lectures (Lect.) are to this edition of his works unless otherwise indicated; all translations from this source are by the author.

CPW *Complete Prose Works of John Milton*, 7 vols., Don M. Wolfe gen. ed. (New Haven, CT, 1953–1980)

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LW Jaroslav Pelikan and Helmut T. Lehmann, eds., *Luther's Works*, 55 vols. (Philadelphia, PA, 1955–1968)

MC *Confessio et apologia pastorum & reliquorum ministrorum Ecclesiae Magdeburgensis* (Magdeburg, 1550)

NTAnn Theodore Beza, *Iesu Christi D. N. Novum Testamentum, sive novum foedus*, 2 vols. (Geneva, 1565)

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Thorpe Francis Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, 7 vols. (Washington, DC, 1909)

*TT* Theodore Beza, *Tractationum Theologicarum*, 3 vols., 2nd edn. (Geneva, 1582)

*WA* D. Martin Luthers Werke: Kritische Gesamtausgabe, repr. edn., 78 vols. (Weimar, 1883–1987)

*ZSS (KA)* Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung

All Bible quotations are taken from the Revised Standard Edition unless clearly indicated.

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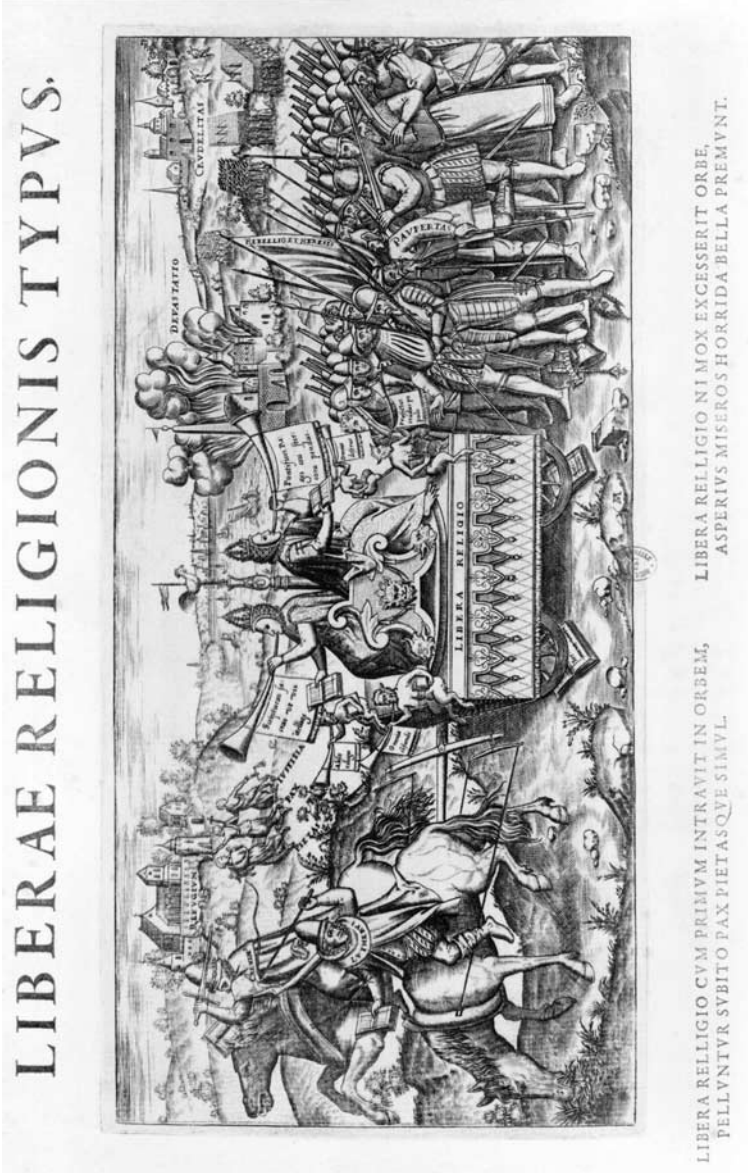


Fig. 1. "Liberae Religionis Typus", allegory on the Reformation depicting John Calvin (1509–1564) and Martin Luther (1483–1546)