

LAW, RELIGION AND THE COVENANTED  
COMMUNITY: THE IMPACT OF THE ZURICH  
REFORMATION ON THE EARLY CAPE  
SETTLEMENT, 1652–1708.<sup>1</sup>

A.W.G. Raath<sup>2</sup>

ABSTRACT

The Zurich Reformation was actively supported by the Dutch East India Company in its care for the religious, political and legal needs of the early Cape settlement. Not only the promotion of the Reformed religion by the Classis of Amsterdam but also the political and legal interests of the settlement were advanced on the basis of the Zurich reformation and its emphasis on the covenant. It was Huldrych Zwingli and his successor Heinrich Bullinger whose idea of the covenanted community served as the blueprint for the activities of the Sick Comforters, the proceedings of the Council of Justice and the decisions of the Council of Policy, rather than the influence of the Genevan reformer John Calvin. The so-called Calvinistic roots of the early settlement at the Cape, flowing from Calvin's doctrine of predestination, must therefore, be thoroughly revisited.

- 1 This covers the rule of the following commanders and governors of the Dutch East India Company: Johan Anthonie van Riebeeck, Commander from 8.4.1652 to 6.5.1662; Zacharias Wagenaer, Commander from 6.5.1662 to 27.9.1666; Cornelis van Qualberg, Commander from 27.9.1666 to 18.6.1668; Jacob Borghorst, Commander from 18.6.1668 to 25.3.1670; Pieter Hackius, Commander from 25.3.1670 to 30.11.1671; Albert van Breugel, Acting Commander from 25.3.1672 to 2.10.1672; Isbrand Goske, Governor from 2.10.1672 to 14.3.1676; Johan Bax (entitled van Herentals), Governor from 14.3.1676 to 29.6.1678; Hendrik Crudop, Acting Commander from 29.6.1678 to 12.10.1679; Simon van der Stel, Commander from 12.10.1679 to 31.5.1691, and Governor from 1.6.1691 to 11.2.1699; Willem Adriaan van der Stel, Governor from 11.2.1699 to 3.6.1707; Johan Cornelis D'Ableing, Acting Governor from 3.6.1707 to 1.2.1708, and the first year of the government of Louis van Assenburgh, Governor from 1.2.1708 to 27.12.1711.
- 2 Prof. A. W. G. Raath, Departement Constitutional Law & Philosophy of Law, Faculty of Law, University of the Free State, Bloemfontein.

## 1. INTRODUCTION

Earlier interpretations of the dominant paradigm determining the religious and social relationships in the Dutch Republic and the early Cape settlement in its founding stage proceeded from the assumed Calvinistic views governing the religious and social thought at the time.<sup>3</sup> The Dutch author G.J. Renier<sup>4</sup> advanced the idea of the pervasive role of Calvinism as the dominant influence in the Dutch Republic in its early years.<sup>5</sup> Proceeding from the alleged Calvinistic basis of the Dutch people, authors like G.D. Scholtz promoted the view that the cultural identity of the new Dutch (Afrikaner) settlement at the Cape drew its strongest inspiration from the Calvinistic religion and its advancement through the Reformed Church;<sup>6</sup> that Calvinism contributed to the inherent conservatism of the new community;<sup>7</sup> that Calvinism determined the spiritual identity of this new cultural community and that Calvinism was one of the most important influences that shaped the political thought of the new Dutch settlement.<sup>8</sup>

In his work on the development of the political consciousness of the Afrikaner-Dutch community, J. Albert Coetzee<sup>9</sup> identified Calvinism as the

3 See e.g. A.W.G. Raath & J.H. de Bruin, "Federale teonomie: die impak van die federale teologie op die publieke regslewe van die vroeë Kaapse volkplanting (1652-1708) – Deel 1" (Federal theonomy: the impact of the federal theology on the public law sphere in the early Cape settlement (1652-1708) – Part 1), *Tydskrif vir Regswetenskap* 24 (December 1999):171-204; Raath, "Federal jurisprudence in the public sphere of the early Cape settlement, 1652-1708", *Pu-blius* 30 (Spring 2000): 87-109.

4 *De Noord-Nederlandse natie* (The Nation of the Northern Netherlands) (Utrecht: 1948):116-118.

5 The same author on page 13 traces the roots of resistance to tyranny in the Lower Netherlands to the influence of Calvinism. The historian J. Huizinga, *Nederland's beschaving in de zeventiende eeuw* (Dutch civilization in the seventeenth century) (Haarlem: 1956):80-81 refers to the "purposive efficiency" of Dutch Calvinism and its dominating influence in the Dutch Republic and on the Dutch people.

6 G.D. Scholtz, *Die ontwikkeling van die politieke denke van die Afrikaner*, Deel I, 1652-1806 (The development of the political thought of the Afrikaner, Part I, 1652-1806) (Voortrekkerpers: Johannesburg, 1965):165, 182.

7 *Ibid.*, 181.

8 *Ibid.*, 181, 193.

9 *Politieke groepering in die wording van die Afrikanernasie* (Political grouping in the formation of the Afrikaner nation) (Johannesburg: Voortrekkerpers, 1941):15.

main formative power followed by Lutheranism. S.P. Engelbrecht<sup>10</sup> described the influence of Calvinism in the establishment of the new Cape settlement as a power which was absent from Lutheranism — the outflow of the resistance of Dutch Calvinism to Spain. Coetzee also traces the roots of republicanism introduced to the Dutch settlement in South Africa to the influence of Calvinism,<sup>11</sup> although, according to him, principles of enlightened revolutionary people's sovereignty were also attached to the basic idea of Calvinism during the Batavian rule at the Cape. Elsewhere the same author comes to the conclusion that the Dutch settlement at the Cape is of Calvinistic descent and that the Netherlands and North America also received their "republican freedom" from Calvinism.<sup>12</sup>

More recently the South African historian Karel Schoeman rejected the views that the Netherlands of the 17<sup>th</sup> century was indeed as religious or committed to the Reformed Church as was traditionally accepted.<sup>13</sup> Schoeman finds support for his views in the fact that unacceptable interference by political authorities in church affairs occurred at this time;<sup>14</sup> that the Dutch East India Company manifested "arrogant" and "autocratic" conduct in its relationship with the church;<sup>15</sup> that the Reformed Church in the Netherlands had a position of subservience towards and was mainly dependant upon the state<sup>16</sup> and that generally speaking the Reformed religion had a position of subjection in the trade empire of the Dutch East India Company.<sup>17</sup>

The two conflicting views above either tend to equate Calvinism with the Reformed faith and fail to appreciate the origin and role of Calvinism within the Reformed tradition or focus too much attention on the role of Calvinism as a formative power in the context of Europe and the early Cape settlement. Furthermore, both interpretations dealing with the dominant ideological influences operative within early Cape society do not appreciate the historical, religious and political impact of theological federalism on the social structures in the settlement. A closer analysis of the role of the Council of Policy, the judgements of the Council of Justice and the relation-

10 "Hul geestelike nalatenskap" (Their spiritual heritage), *Die Huisgenoot* 15.09.1939.

11 See *ibid.*, 35.

12 *Ibid.*, 34-35.

13 *Armosyn van die Kaap. Voorspel tot vestiging, 1415-1651* (Armosyn of the Cape. Prelude to settlement, 1415-1651) (Cape Town, Pretoria, Johannesburg: Human & Rousseau, 1999):46 note 37.

14 *Ibid.*, 210.

15 *Ibid.*

16 *Ibid.*, 211.

17 *Ibid.*, 361.

ship between church and political bodies in the early Cape settlement reveals the predominant influence of the Zurich Reformation and its emphasis on the covenant, rather than the predestination perspectives of John Calvin. Among others, the impact of the Zurich Reformation, through the work of Huldrych Zwingli and Heinrich Bullinger, is clearly discernible in the relationship between the political and ecclesiastical bodies and the functioning of the political and jurisprudential structures in the Cape community. The covenantal structure of the Cape community had as its immediate outflow a very strong social solidarity, and secondly, a much deeper religious commitment than is recognised by authors like Schoeman.

Although it is not disputed that Calvinism did play an important role in the shaping of the early Cape society, it is disputed that it was the most important formative force that shaped the early Cape settlement.

## 2. LAW, RELIGION AND THE COVENANT IN THE ZURICH REFORMATION

### 2.1 The idea of the covenanted community in the Zurich Reformation

The idea of community in the Zurich reformation shows a high degree of cohesion and communality. In Huldrych Zwingli's (1484-1531) theology, this is reflected in his views on the Christian commonwealth forming one community under the sovereign rule of God. Both the ministry of the church and that of political society (or magistracy) concern the whole of life of the commonwealth. The offices of pastor and magistrate in the Christian commonwealth are closely related – covering the whole of society. The basis on which society functions is the Biblical covenant. This is largely due to his emphasis on the direct relationship between God and man in history. Proceeding from the sovereignty of God as creator, in whom alone we should put our trust, to whom we are bound by virtue of the covenant, Zwingli denies human merit. Man's dependence is the basis of the Christian faith.<sup>18</sup>

The function of the eucharist is twofold: to strengthen the faith of the believer and to unite Christians in the Christian community, so that they are one body, and may live the life of Christ.<sup>19</sup> From this appears the oath-like character of the Christian community, united by the sacraments. It is

18 See A. Baur, *Zwingli's Theologie* Erster Band (Halle: Max Niemeyer, 1885):245.

19 *Huldreich Zwingli's Sämtliche Werke* (Berlin, Leipzig, Zurich, 1905), hereafter abbreviated as Z, III 123.12-127.10.

also within the context of the sacraments that Zwingli applies his idea of the covenant. Baptism, to Zwingli, is merely the New Testament's sacramental counterpart to circumcision of old.<sup>20</sup> Circumcision is designated by Zwingli as "Pact", "Pflicht", and "Pflichtzeichen".<sup>21</sup> Children in the Old Testament were counted as God's people, and, Zwingli argues, that the Christian covenant or New Testament is the same as the old covenant with Abraham.<sup>22</sup> There is no other covenant but this one covenant. The children of Christian believers are no less children of God because their children are no less God's children in the covenant. In Zwingli's theology baptism is the New Testament sign of entering into the covenant — the one and eternal covenant with God.<sup>23</sup> Baptism, therefore, is the sign of entering into the covenanted Christian community, so that believers may be one church and one people.<sup>24</sup> The importance of the sacrament of baptism in Zwingli's theology, in this context, reflects three important elements: Firstly, as the children of Hebrews in the Old Testament were one with their parents in the covenant and received the sign of the covenant, so the children of Christian parents should be baptised as the sign of the covenant;<sup>25</sup> secondly, through baptism we become members of the visible church on earth, and therefore, baptism has corporate rather than an individual significance, reflecting the essential solidarity of the Christian community; and thirdly, baptism is seen as the sign of the covenant, reflecting the Christian's pledge to live a holy life in the Christian community.<sup>26</sup> Baptism in the Christian

20 S. Strehle, *Calvinism, federalism, and scholasticism. A study of the Reformed doctrine of the covenant* (Bern, Frankfurt am Main, New York, Paris: Peter Lang, 1988):129.

21 *Ibid.*, see note 35.

22 Z IV 629.1-634.2.

23 See *ibid.*, VII 156.39-41.

24 To Zwingli the words of Christ in Matthew 8:11 and passages such as Romans 11, Ephesians 2:11-20, Hebrews 12:22, and 1 Peter 2:9-10 reflect this unity in the Christian community, based on the covenant. See *ibid.*, VII 169.4-6, 164.2-4, 163.8-19, 164.7-11, 165.3-16, 166.3-5, 166.13-168.31.

25 See *ibid.*, VII 373.27-35, 374.8-12, 470.40-471.8.

26 W.P. Stephens, *The theology of Huldrych Zwingli* (Oxford: Clarendon Press, 1966):215, comments as follows on the role of baptism in the covenanted Christian community:

In contrast with the traditional view of baptism as a sacrament, Zwingli sees it as an initiatory sign, a sign of the covenant, an idea developed at first in terms of our pledge to live the Christian life. This is less suited to infant baptism, as the child is not able to make a pledge, so that it is interpreted as the parent's pledging of the child and the child being pledged to the law.

community has a strong unifying character — in the Christian community the believers are all one, so that all may live peacefully and united. The Christians are to live in unity with Christ and with one another.<sup>27</sup> Disharmony is contrary to the working of the Spirit of God.<sup>28</sup> The Christian community, therefore, firstly shows an oath-like character and, secondly, the community is bound together by the pledging of Christians. This view of the Christian community, based on the covenant, provides the basis for Zwingli's theocratic thought. Church and magistracy form one whole community under the governance of God's law.<sup>29</sup>

Zwingli's theology of the covenant was carried forward by the work of Heinrich Bullinger (1504-1575), his successor in Zurich. To Bullinger the Reformation represented the restoration of the covenant. He saw the covenantal norms for the Christian commonwealth, established by God in the Old Testament, as fully applicable to the Christian community of Zurich.<sup>30</sup> In his theology Bullinger took the rite of baptism to be the initiatory device to enrol the individual in the Christian commonwealth. Through baptism everyone was placed under the promises and conditions of the covenant.<sup>31</sup> According to Bullinger's interpretation of Matthew 13, the Christian community, the visible church, the kingdom of God on earth, included both the faithful and the hypocrites. Since the visible church was coterminous with civil society, the conditions of the covenant were applicable to both church and commonwealth. The close covenantal relationship between church and

27 Z III 211.23-219.9.

28 *Huldrych Zwingli's Werke*, Erste vollständige Ausgabe durch Melchior Schuler und Joh. Schultess (Zurich, 1828-1842), hereafter cited as S VII 211.23-212.9.

29 Stephens, *The theology of Huldrych Zwingli*, 295, makes the important observation that a

theocratic view does not of necessity require the total independence of the church from government, but that government, as well as church, submit itself to the law of God.

30 J. Wayne Baker, *Heinrich Bullinger and the covenant: The other Reformed tradition* (Athens: Ohio University Press, 1980):107:

Bullinger saw the Reformation as the restoration of the covenant. The covenant norms for Christian society established by God in the Old Testament were thus fully applicable to the Christian commonwealth of Zurich.

31 *Idem.*:

Inasmuch as baptism placed everyone under the great promise of the covenant, every member of Christian society was responsible to fulfill the conditions of the covenant.

magistracy in the Christian commonwealth was formulated by Bullinger in the Second Helvetic Confession (1566), with reference to the primary role of the Christian magistrate, “of what sort so-ever it be”, being ordained of God Himself, “and so that he should have the chief place in the world”.<sup>32</sup> The chief duty of the magistrate was to procure and maintain peace and public tranquility, which, doubtless, he would never do more happily than

when he shall be truly seasoned with the fear of God and true religion — namely when he shall, after the example of the most holy kings and princes of the people of the Lord, advance the preaching of the truth, and the pure and sincere faith, and shall root out lies and superstition, with all impiety and idolatry, and shall defend the Church of God.<sup>33</sup>

Bullinger then added these meaningful words: “For indeed we teach that the care of religion does chiefly appertain to the holy magistrate”.<sup>34</sup> In Chapter XXX.3 Bullinger added to the preceding that the magistrate must “hold the Word of God in his hands, and ensure that nothing be taught contrary thereunto”.<sup>35</sup>

The effect of Bullinger’s Zwinglian approach, as Baker observed, was firstly a fuller statement of covenantal theology, and secondly, the promotion of the Christian community along the lines of covenantal thinking. Therefore, although the pastor had the duty of advising the magistrate, like the Old Testament magistracy, concerning God’s will, it was the Christian magistrate who, like the Old Testament kings, was fully in charge of the

32 Also see Chapter XXX.1. in Joel R. Beeke & Sinclair B. Ferguson (eds.), *Reformed confessions harmonized. With an annotated bibliography of Reformed doctrinal works* (Grand Rapids, Michigan: Baker Books, 1999):230.

33 Chapter XXX.2. *ibid.*

34 *Idem.*

35 Chapter XXX.3. To which he added:

In like manner, let him govern the people, committed to him of God, with good laws, made according to the Word of God in his hands, and look that nothing be taught contrary thereunto. Let him hold them in discipline and duty and in obedience. Let him exercise judgement by judging uprightly; ... Therefore let him draw forth this sword of God against all malefactors, seditious persons, thieves, murderers, oppressors, blasphemers, perjured persons, and all those whom God has commanded him to punish or even to execute. Let him suppress stubborn heretics (who are heretics indeed), who cease not to blaspheme the majesty of God, and to trouble the Church, yea, and finally to destroy it.

community.<sup>36</sup> The magistrate's laws were the only basis for community discipline — there was no separate church discipline. These views appear to have been predominant in the Netherlands until the Synod of Dordrecht when the influence of Calvinism gradually gained on that of Bullinger.<sup>37</sup>

In contrast to Bullinger, John Calvin did not promote a strong conception of the covenant in his theological system, and the place the covenant did hold was influenced by Bullinger's views on the covenant.<sup>38</sup> For Calvin the relationship between church and magistracy is based on predestination. According to Calvin the *corpus christianum* was based on the secret election of God.<sup>39</sup> Calvin's views on church and magistracy entail that these are se-

36 See Robert C. Walton, "The institutionalization of the Reformation at Zurich", *Zwingliana* 13 (1972):497-515. He clearly shows the supremacy of the Christian magistrate over the church in Zwingli's and Bullinger's theology. For the magistrate's duty to protect true religion, see Bullinger, *Festorum dierum Domini et servatoris nostri Iesu Christi Sermones ecclesiastici, Heinricho Bullingero auctore* (Zurich, 1558):196-197; *Bericht wie die so von waegen unsers Herren Jesu Christi und seines heiligen Evangeliums/jres glaubens ersuocht/unnd mit allerley fragen versuocht werden/ antworten und sich halten moegind: schriben durch Heinrichen Bullingern* (Zurich, 1559):203-208; *Vermanung an alle Diener des worts Gottes und der kyrchen Jesu Christi/dass sy jre spaenn/die sy gegen andern habend und uebend/binlegen/und in disen letsten verderbten gefaarlichen zyten/der waelt einbaellig allein unnd einfaltig den waaren glauben in Jesum Christum/und die besserung des laebens/predigen woellind/ geschriben durch Heinrichen Bullingeren Dienern der kyrchen Christi zou Ziirych* (Zurich, 1572):fol. 36(b)-37.

37 According to Baker, "Zwinglianism", *The Oxford Encyclopedia of the Reformation*, Volume 4 ed., in chief Hans J. Hillerbrand (New York/Oxford: Oxford University Press, 1996):324, the main areas of influence of Zwingli and Bullinger can be traced not only to France, Hungary, and Austria, but also to Switzerland itself, the Palatinate, the Netherlands, England and Scotland.

38 Gottlob Schrenk, *Gottesreich und Bund im älteren Protestantismus* (Giessen/Basel: Brunnen Verlag, [1923] 1985), explicitly traces the origins of covenant theology in the Reformed tradition to Zwingli and Bullinger, from whom Calvin took over the basic design:

Zwingli ist der eigentliche Erneuerer des biblischen Bundesgedankens für die reformierte Theologie, aber die Anregung dazu kam ihm wohl von täuferischer Seite. Bullinger gibt im Anschluss an ihn den ersten Entwurf. ... Calvin übernimmt Zwinglis und Bullingers Grundlinien, ja sogar die Formulierungen des Letzteren.

39 John Calvin, *Institutes of the Christian religion*. The Master Christian Library — version 5 (Ages Digital Library, 1996):4.1.2 (book 4, chapter 1, section 2; hereafter cited as *Institutes*).



parate entities, although interrelated: members of the church are also subjects of the state; the church finds expression within the territorial area of the state and the state is expedient for the church in so far as the state must protect the church against godlessness and promote the “pure worship of God”.<sup>40</sup> On the other hand, it is clear that the magistrate was brought into existence not only to judge among humankind, but to protect the true preaching of the gospel according to the prescriptions of God’s law and the honour and holiness of God. Philip E. Hughes interpreted Calvin’s views to mean that the whole structure of society, as conceived by Calvin, was based on the distinction between church and magistracy

as two separate powers whose spheres of authority were clearly defined, the former wielding the spiritual sword in the faithful proclamation of the Word of God, and the latter the secular sword in the maintaining of good and just government and the punishment of offenders against statutory laws.<sup>41</sup>

Although Calvin referred to the covenant, it was limited to his views on the church.<sup>42</sup> Pronouncements on the covenant by Calvin also assisted to strengthen the idea of the covenant in the Netherlands and elsewhere in Europe where covenant theology had gained a foothold, albeit that Calvin did not subscribe to the idea of the covenant in the strong sense in which Bullinger used it in his theology.<sup>43</sup>

## 2.2 Law and magistracy in the public sphere according to the Zurich reformation

The effects of Zwingli’s views on covenantal theocracy entail that within the Christian community, magisterial office bearers do not function within a separate sphere in the form of the state, but represent an inherent part of

<sup>40</sup> *Commentaries on the Gospel according to John*, XVIII:xxxiii.

<sup>41</sup> Philip E. Hughes, transl. & ed., *The register of the company of pastors of Geneva in the times of Calvin* (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1966):6.

<sup>42</sup> See e.g. *Institutes*, 4.2.11.

<sup>43</sup> Schrenck, *Gottesreich und Bund*, 36, states that the Zurich idea of the covenant permeated Dutch Reformed theology to the extent that it influenced the teaching at all Reformed universities in the Netherlands:

Von Zürich ist diese Richtung über Heidelberg, Marburg und Herborn nach Bremen gewandert und von dort nach Holland gekommen. Nicht als ob dies das einzige Geleise ihres Siegeszuges wäre — sie ist auch schon unmittelbar von Zürich her in die Niederlande eingedrungen und wirkt schon früh auf allen reformierten Hochschulen.

the indivisible Christian community. Furthermore the political rulers in the Christian community are not endowed with sovereign political power to the exclusion of the pastoral office bearers in the community. This means that the Christian magistrate needs the church to govern, and the Christian pastor has to preach God's Word to the whole covenanted community. In a Christian society, based on the corporate view of social relationships, where the magistrate and pastor performed the tasks assigned by God, the divine purpose would be carried out and the Christian community exists as a Christian body to which Reformed religion is fundamental for the proper operation of magisterial government and a vital condition for the existence of a Christian society. For the proper functioning of the Christian commonwealth, based on the covenant, the maintenance of both tables of the law are of the most importance. To Zwingli the precepts of natural law are ingrained in the image of man and revealed through the working of God's Spirit.<sup>44</sup> The law of nature is nothing other than true religion; it is the knowledge, worship, and fear of the supreme deity which is taught by God alone and written in man's heart, confounded by evil, and renewed by the grace of Christ.<sup>45</sup>

Zwingli's Reformed theocratic views were systemised and developed by Bullinger into a strong theory of theologico-political federalism with a strong emphasis on the theocratic ideal, along the same lines envisaged by Zwingli. To Bullinger the basis of the Christian community is the covenant. The covenant is the subject of all Scripture and the target at which all Scripture aims.<sup>46</sup> The entire sum of piety consists in the main points of the covenant.<sup>47</sup> Nothing else was handed down to the saints throughout the Scripture, other than what was included in the main points of the covenant.<sup>48</sup> All matters pertaining to faith in God, about the vanity of idols, about worshipping the one God, about the calling upon the one God, and also about true justice, about judgement, and about cultivating equity and charity —

44 See W.P. Stephens, *The theology of Huldrych Zwingli* (Oxford: Clarendon Press, 1986):153.

45 S VI I 243.44-244.27

46 Heinrich Bullinger, *A brief exposition of the one and eternal Testament or Covenant of God* (De testamento seu foedere Dei unico et aeterno) (1534), in Charles S. McCoy and J. Wayne Baker, *Fountainhead of federalism* (Louisville, Kentucky: Westminster/John Knox Press, 1991):112 (fol. 16(a)).

47 *Ibid.*

48 *Ibid.*

all of these things that have been transmitted through various laws, through the many discourses of the prophets, through the epistles of the apostles, and finally through the gospel narratives, have been summed up in these few words: "You, however, shall keep my covenant, you shall walk before me, and you shall be complete or upright".<sup>49</sup>

To Bullinger the Decalogue itself seems to be almost a paraphrase of the conditions of the covenant. Also the civil or judicial laws are included in the condition of the covenant which prescribes integrity and commands that we walk in the presence of God.<sup>50</sup> Laws in the Christian commonwealth are needed to order external dealings among people in their social life.<sup>51</sup> For these reasons they need magistrates to enforce the precepts of natural law and the Decalogue.<sup>52</sup> With particular reference to the precepts of natural law, Bullinger holds that the law of nature is an instruction of the conscience, and, as it were, a certain direction placed by God himself in the minds and hearts of men, "to teach them what they have to do and what to eschew".<sup>53</sup> According to Bullinger the conscience is the knowledge, judgement, and reason of a man, whereby every man in himself, and in his own mind is either condemned or acquitted.<sup>54</sup> This in effect means that the gentiles too have the principles of justice embodied in their hearts and minds.<sup>55</sup> Because the law of nature answers to the moral law, the precepts of the law of nature can be summarised in two points: firstly, acknowledge God, and worship him; the second is, keep or maintain society and friendship among men.<sup>56</sup> In his *Decades* Bullinger elaborates on the offices of magistracy and pastor in the Christian commonwealth, based on the covenant. In the second decade, discussing the fifth precept of the Ten Commandments, Bullinger includes both offices under the name of parents.<sup>57</sup>

Regarding the co-operation between the offices of magistracy and pastor, Bullinger states that the magistrate, in political matters, is commanded to

49 *Ibid.*, 112 (fol. 17(a)).

50 *Ibid.*, 113 (fol. 18(a)).

51 *Ibid.*, 114 (fol. 19(b)).

52 *Ibid.*

53 *The decades of Henry Bullinger*, 4 vols., ed. for the Parker Society (Cambridge: 1849-1852) 2:193-194 (decade 2, sermon 1 [II: 1]).

54 *Ibid.*, 194 [II: 1]).

55 See *ibid.*, 196 [II: 1]).

56 *Ibid.*, 196 [II: 1]).

57 *The decades of Henry Bullinger*, 4 vols., ed. for the Parker Society (Cambridge: 1849-1852) 2:268-269 (decade 2, sermon 5 [II: 5]).

listen to the ecclesiastical ruler, and the ecclesiastical minister must obey the magistrate, as political ruler, in all things commanded by the law.<sup>58</sup> Both offices, therefore, are subject to God's law:

So then the magistrate is not made subject by God to the priests as to lords, but as to the ministers of the Lord: the subjection and duty which they owe is to the Lord himself and to his law, to which the priests themselves also ought to be obedient, as well as the princes.<sup>59</sup>

The implications of the Zurich ideal of the Christian community relate to a number of important principles: firstly, because every magistrate is ordained by God, and is God's minister, so must he be ruled by God and enforce God's law;<sup>60</sup> secondly, both offices of pastor and magistracy have to perform their duties within the Christian commonwealth on the basis of the covenant, to which the sacrament of baptism gives entry;<sup>61</sup> thirdly, the duty of the pastor is to make God's will known in the church by urging everyone to fulfil the condition of faith and to call upon everyone else in the Christian commonwealth to live according to the condition of love of the neighbour;<sup>62</sup> fifthly, the Christian magistrate ensures that everyone has the opportunity to fulfil the condition of faith and enforce the condition of piety by means of just laws;<sup>63</sup> next, in all political matters the office of pastor is subject to the office of magistracy, and in all matters of religion the office of magistracy must listen to the pastor, in order to know and understand God's will.<sup>64</sup>

58 *Ibid.*, 2:329 (II: 6).

59 *Ibid.*

60 *Ibid.*, 2:334 (II:7). This is the reason, states Bullinger, why the kings in Israel had to have the book of God's law (Deuteronomy 17:18, 19), so that they might learn the way to perform those actions they were required by duty to do.

61 J. Wayne Baker, *Heinrich Bullinger and the covenant: the other Reformed tradition* (Athens, Ohio: Ohio University Press, 1980):121:

Baptism enrolled the individual among the people of God and obligated him to keep the conditions of the covenant. Even if he did not appropriate the spiritual blessing of the covenant through faith, he still remained under the covenant as part of the Christian community, subject to the covenant conditions that not only prescribed man's relationship with God but also set the standard for all social relationships within the Christian commonwealth.

62 *Ibid.*

63 *Ibid.*

64 *Ibid.*

Through the efforts of Zwingli and Bullinger the theocratic ideal of the Zurich reformation based on the covenant entered the mainstream of Reformed political thought before the middle of the sixteenth century. This stream of influence was composed of four essential elements: firstly, the idea of the Biblical covenant as the basis of the Christian commonwealth; secondly, the solidarity between the offices of magistracy and pastor in the Christian community; thirdly, the separation of powers between pastor and magistrate, and fourthly, both offices subject to the will and law of God.

### 3. THE IMPACT OF THE ZURICH REFORMATION ON THE DUTCH SETTLEMENT AT THE CAPE OF GOOD HOPE

#### 3.1 Baptism and the relationship between church and magistracy under the governance of the Dutch East India Company

The Reformed tradition in the line of Zwingli and Bullinger was introduced to the Netherlands from Zurich *via* Heidelberg, Marburg, Herborn and Bremen, apart from the influence exerted directly from Zurich by this strand of Reformed theology.<sup>65</sup> The impact of Bullinger in the Netherlands is manifested in the fact that, according to the prominent Dutch theologian of the 17<sup>th</sup> century, Johannes Uytenbogaert (1557-1644), Bullinger's *Decades* were read more than any other Reformed work in the initial stages of the Reformation, the Bible excluded.<sup>66</sup> The influence of Bullinger's Reformed federalism in the Netherlands is also clearly discernible in the works prescribed for the spiritual needs of the settlers in the new Dutch colonies. The Dutch East India Company, in 1638, compiled a list of books for use by the Sick Comforters in performing their duties on land. Apart from the Bible, the works prescribed were Heinrich Bullinger's *Housebook*, which was divided into five decades, namely 50 sermons on the most important chapters of the Christian religion, and to which was added two other works dealing

65 Schrenk, *Gottesreich und Bund*, 36.

66 H.D.A. du Toit, *Predikers en hul prediking in die Nederduitse Gereformeerde Kerk van Suid-Afrika* (Preachers and their preaching in the Dutch Reformed Church of South Africa) (Unpublished doctoral thesis, University of Pretoria, 1947): 32, 33. See also C.A.L. van Troostenburg de Bruyn, *De Hervormde Kerk in Nederlandsch Oost-Indië onder de Oost-Indische Compagnie (1602-1795)* (The Reformed Church in Dutch East India under the East India Company (1602-1795) (Arnhem: 1884):111.

with the origins of the flaws in the pagan, Jewish, and Christian religions;<sup>67</sup> the *Treasurebook* by Zacharias Ursinus (1534-1538), Bullinger's student, a work on Christian doctrine, which entailed an exposition of the Catechism in the spirit of the later Canons of Dordt, translated by Festus Hommius and revised by Johannes Spiljardus;<sup>68</sup> the *House Sermons on the Gospel* by Justus Bulaeus (1580-1611);<sup>69</sup> Jean Taffin's (c1528-1602) *Penitance of life in four books ... containing short ... consolations ... for fears of the conscience*;<sup>70</sup> and works like those of Roelof Pietersoon Niedeck (Rudolphus Petri) (1586-1649), *Praise Jesus Christ – short expositions on the images of Christ in the Bible*;<sup>71</sup> Simon Gaulart's (1543-1628) *Forty descriptions of death*;<sup>72</sup> translated by J. Paniel, and L. Bayly's *Exercises in piety*, translated by E. Schuttenius.<sup>73</sup>

Also on board the ships of the Dutch East India Company the works by Bullinger and his spiritual followers played an important role in addressing the religious needs of the sea-faring community. The books prescribed for use on the ships of the Company included works by Ursinus, Bulaeus, and

67 The title of the work in Dutch being *Huys-boeck: vijf decades, dat is, vyftich sermoenen, van de voorneemste hoofdstucken der Christlicker religie, in dry deelen gescheyden ... waer by nu van nieuws noch twee andere schoone wercken des seluigen autbeurs gewoecht zijn, namelick, van den oorspronck, afcoemst ende voortganck aller dwalingen, die oyt by den beydenen, Joden ende Christenen geweest zijn ende noch bedendaechs ghevonden worden, ende, Van de concilien ... uut de Latijnsche in onse Nederduytsche sprake oergheset, door I.G.* (Dordrecht: 1582).

68 The title of the work being *Het schat-boeck der Christelyke leere, ofte, uitlegginge over den catechismus ... Vertaelt, ende met tafelen, verlicht, door ... Festus Hommius ... nu van nieuws oversien ... Door Johannes Spiljardus ...* (Leyden: 1602).

69 *Huis-postille, ofte, prdicatien, over de zondaagsche evangelien, die men in de Christelyke kerke 't gebeele jaar door van ouds gewoon is te verklaren. Dewelke ... Op de toestand dezer eeuwwe ... geapliceert worden ...*, 5<sup>th</sup> ed. (Amsterdam: 1642).

70 *Boetveerdigheydt des levens, in vier boecken t' samen vervat ... ende getrouwelyk uyt den Francoyschen in de Nederlandsche tale overgeset door Johannem Crucium ... Noch is hier by-gevoegt de Merckteecken der kinderen Godts ... mitsgaeders een korte schoone onderwysinge inhoudende gewisse vertroosting in allerhande beswaernissen ende angst der conscientien, genomen uyt de boecken van Jan Espin* (Amsterdam: Layrens Jacobs, 1593).

71 *'t Lof onzes Heeren Jesu Christi dat is, korte verklaringe van eenige bysondere voorbeelden, gelykenissen, gesigten, eeren-tytelen, cier-namen ende cierlyke beschryvingen die Jesu Christo in het Oude ende Nieuwe Testament gegeven worden ...* (Amsterdam: Hendrik Laurentz, 1624).

72 *Veertich tafereelen des doodts* (Amsterdam: 1615).

73 *De practycke ofte oeffeninge der Godsaligheyt*, 4<sup>th</sup> ed. Amsterdam: 1627).

Bayly.<sup>74</sup> In the introduction to Bullinger's work *Festive days of our Lord*, included in the Dutch translation of his *Decades*;<sup>75</sup> published in 1622, Johannes Lydius states that *The decades* of Bullinger was also used for the religious services on board the Company's ships. The orders for maintaining religious services on board the ships were strictly enforced, and absence from these gatherings was a punishable offence.<sup>76</sup> The historical perspectives emerging from the foregoing facts confirm that Bullinger's works were standard sources used by the Comforters on land and sea in the service of the Dutch East India Company. No reference to works by Calvin for ministering to the religious needs of the sea-faring community and the early Dutch settlements could be traced. Neither could works by Calvin be found in early book collections used in the Cape settlement.

The theological influence emanating from Bullinger's works at the Cape is nowhere more clearly evident than in the relationship between church and magistracy, baptismal practices and issues pertaining to slavery under the governance of the Dutch East India Company. The views of the Council of Policy pertaining to these matters reflected the same line of political intervention in church affairs as the position in the Netherlands. Under the influence of the Zurich reformation the political authorities in the Netherlands substantially increased their involvement in internal church affairs in the course of the 16<sup>th</sup> and 17<sup>th</sup> centuries.<sup>77</sup> The differences between church

74 See Willem J. van Zijl, *Van skeepskis na wakis tot boekrak* (From ship's kist to wagon kist to bookcase) (Kaapstad: Lux Verbi, 1992):56.

75 Fol. 159(b). For the fact that Bullinger's works were taken to almost all the British and Dutch possessions by the founding fathers, see J. Staedtke, "Bullinger's Bedeutung für die protestantische Welt" ("The meaning of Bullinger for the Protestant World"), *Zwinglandia* 11 (1961):372-388.

76 See G.C. Udemans, *'t Geestelijck roer van 't coopmans schip* (The spiritual rudder of the merchant's ship) (Dordrecht: 1638).

77 For a clear overview of the measure of political interference in ecclesiastical affairs, see Schoeman, *Armosyn van die Kaap*, 209-212. A.L. Geyer, "Die Stellenbosche gemeente in die agtiende eeu" (The Stellenbosch congregation in the eighteenth century), *Annale van die Universiteit van Stellenbosch* IV, series B, 1 (June 1926):14, observes that political authorities in North and South Holland had a particularly strong hold on the Reformed Church. For an informative analysis of the dissatisfaction of the Reformed pastors with their role of subservience to the political authorities, see Gerrit Groenhuis, *De predicanten; de sociale posisie van de gereformeerde predikanten in de Republiek der Verenigde Nederlanden voor 1700* (The Pastors; the social position of the Reformed pastors in the Republic of the United Netherlands prior to 1700) (Groningen: Wolters-Noordhoff,

and magistracy resulted in sharp conflicts with regard to baptismal practices and the government fighting for inclusive baptism on a broad basis. The introduction of the church order of 1576 issued by the authority of the States of Holland and Zeeland, signed by William himself, stated in Article 22 that “baptism will not be denied to any child presented.”<sup>78</sup> The theological motivation for this article stated that it is the

feeling of our government, that also for Papists, that ... will follow our side ... that we should permit the open exercise of the papist Religion ... yes we permit the Anabaptists themselves, since we consider that true religion is a gift of God, and that people [ought] not to be forced to it through fear of exile or punishment, but through mild exhortation from the Word of God ... We do not want to deny baptism to anyone, but we well preserve what Christ has commanded, that one should not hinder from him (Luke 18) wherein he also showed no concern for the parents ...<sup>79</sup>

The Reformed churches were opposed to this call for the unconditional baptism of all children without the parents having committed themselves to the Reformed religion. The opposition was so strong that the course promoted by the political authorities was never implemented.<sup>80</sup> The view of the church was that those who presented the children should at least answer the questions in the baptism formula and support the Reformed doctrine.<sup>81</sup> At the Synod of Dordt in 1618/19 the majority of the Dutch delegates

1977):32-33. Cornelia Roldanus, *Zeventiende-eeuwse geestesbloei* (Seventeenth century spiritual revival) (Amsterdam: De Bataafsche Leeuw, 1996):50, describes the relationship between the preachers and the political officials in terms of “the preachers barking, but the masters (political authorities) biting”, meaning that although the preachers protested, the political authorities had the upper hand.

78 C. Hooijer, *Oude Kerckenordeningen* (Old Church Orders) (Zout Bommel, 1885): 119-120.

79 *Ibid.*, 129. Quoted by Jonathan Neil Gerstner, *The thousand generation covenant. Dutch Reformed covenant theology and group identity in colonial South Africa, 1652-1814* (Leiden, New York: E.J. Brill, 1991):191.

80 See C.A. Tucker, *Het klassikaal doopformulier, rondom het doopvond* (The classical baptism formulary, around the baptismal font) (Goudriaan: De Groot, 1983): 313; Hendrik Jan Olthuis, *De dooppraktijk der Gereformeerde Kerken in Nederland: 1568-1816* (The practice of baptism of the Reformed Churches in the Netherlands) (Utrecht: G.J.A. Ruys, 1908):60.

81 F.C. Rutgers, *Acta van de Nederlandsche Synoden der zestiende eeuw* (Acts of the Synods in the Netherlands in the sixteenth century) ('s Gravenhage: Martinus Nijhoff, 1899):270.



opposed the idea that “heathen” children could be baptised so long as they received a Christian upbringing and would not be sent back to heathen parents, and decided that such children were born of parents, both of whom are heathen, and therefore stand outside the covenant and have no part of the promise.<sup>82</sup> It was furthermore held that because an Israelite could not hold his countrymen in bondage perpetually, and the New Testament principle of freedom applied, no one could keep a Christian in slavery. If a slave, therefore, joined the church through baptism, he had to be set free.<sup>83</sup> In spite of these resolutions, however, the political authorities firmly held to their belief of general baptism. The magistrate in the city of Groningen even forbade the use of the baptismal questions entirely, even by those parents who were willing to answer them. In opposition to the church’s baptismal policy that “children of all except Jews, Turks and heathen should be baptised because God’s covenant reaches to the thousandth generation”, the magistrates were unswervingly dedicated to seeing that every citizen possible was baptised.<sup>84</sup>

The conflicts ensuing from these opposing views and the efforts of the political authorities to involve themselves in the internal baptismal issues and exploit this church rite for political purposes, also found their way to the Cape settlement. The manner in which these issues were dealt with also determined the racial attitudes in the settlement. The political rulers at the Cape followed the aim of the Dutch authorities on the baptism of slaves, because

from the earliest days of slavery at the Cape the conversion to Christianity of those in bondage was always a cherished aim of the Dutch Government, whose invariable policy it was to raise the status of any slaves who embraced the Christian faith.<sup>85</sup>

The reason for this attitude, according to De Kock, is to be found in the fact that the Dutch East India Company looked on all those who deviated from the tenets of the Reformed faith with deep disapproval; and that their attitude towards any who wished to worship in accordance with the rituals

82 See H. Kaajan, *De Pro-Acta der Dordtsche Synode in 1618* (The Pro Acta of the Synod of Dordt in 1618) (Rotterdam: J.B. Wolters, 1982):1:2-3.

83 Herman Huber Kuyper, *De Post-Acta of nabandelingen van de nationale Synode van Dordrecht in 1618 en 1619 gehouden* (The Post Acta or the Post Acts of the national Synod of Dordrecht held in 1618 and 1619) (Amsterdam: Hoveker and Wormser, 1899):148.

84 Gerstner, *The thousand generation covenant*, 200-201.

85 Victor De Kock, *Those in bondage. An account of the life of the slave at the Cape in the days of the Dutch East India Company* (Pretoria: Union Booksellers, 1963):107.

of the Church of Rome, was one of “contempt and obstruction”.<sup>86</sup> Therefore, the Political Council endeavoured to initiate the slave community into the Christian community of the settlement as soon as possible.

The status of being baptised also had important legal implications for slaves in the settlement. In his work *Race attitudes in South Africa*, I.D. MacCrone<sup>87</sup> pointed out the most important implications of the rite of baptism for the slave community at the Cape. After baptism a non-European was accepted in the Christian community and socially received as a member of the settlement. Legally it meant freedom in the Christian commonwealth. The issue of baptism of slaves soon became a bone of contention in the settlement: the local church applied the requirements set by the Synod of Dordt strictly by demanding that parents wishing to have their children baptised have the required knowledge of Christian doctrine, while the Council of Policy demanded that all persons submitting children for baptism be allowed to do so. This as a matter of fact had the effect of dividing ecclesiastical and political authorities on the issue with the resulting conflict ensuing. A service in which a slave woman tried to have her child baptised was interrupted by the pastor of the ship *Weenenburgh* who objected to the baptism of the child and the officiating clergyman refrained from performing the ceremony.<sup>88</sup> The next morning, however, the Council met and unanimously resolved to adhere to the orders received from the authorities and to instruct the minister to baptise the rejected slave child on the following Sunday, together with any others who might be brought forward for that purpose. Their motivation was that “it is our desire to preserve harmony and peace in ecclesiastical as well as political matters at this place.”<sup>89</sup> In 1679 Van Arckel’s baptism policy was once again questioned, this time by the Reverend Johannes Overney. When he became pastor at the Cape in that year, he wrote to the Classis in Amsterdam for clarification of the correct procedure concerning baptism of “heathen” children.<sup>90</sup> The Classis responded by quoting verbatim from the resolutions at the Synod of Dordt, and concluded that they

86 *Ibid.*

87 *Race attitudes in South Africa: historical, experimental & psychological studies* (Johannesburg & Oxford, 1937):41; also see 7, 40-46, 76-78, 129 note 1, 134-135.

88 See De Kock, *Those in bondage*, 10.

89 *Ibid.*, 110-111. Translation by the author AWGR.

90 See the letter of the Reverend Johannes Overney to the Classis of Amsterdam, n.d., in C. Spoelstra, *Bouwstoffen voor de geschiedenis der Nederduitsch-Gereformeerde Kerken in Zuid-Afrika*, deel I (Basic sources for the history of the Dutch Reformed Churches in South Africa, part II) (Amsterdam: HAUM, 1907):28.

trust that your reverence will desire, in these and other cases, to establish the church order along the line of the Fatherland, for more unity and edification.<sup>91</sup>

The Classis in effect repudiated the policy of Van Arckel and the Company on this issue. Ten years later the issue flared up again, when the Church Council stated that the custom of baptising black children whose parents were not Christians should be altered. The local church was of the conviction that when children of parents who were not Christian were brought for baptism, the rite should be deferred and the parents instructed in the tenets of Christianity. The Council of Policy, however, referred the Church Council to the orders from Batavia and that was the end of the matter for the time being. The issue remained a dividing matter until well into the second half of the 18<sup>th</sup> century and the instructions issued from time to time were ignored. A clear indication of the strong opposition by pastors to the attitude of the Council of Policy appears from the rather aggressive remarks by the Reverend E.F. Le Boucq, who, appealing to the enforcement of the policy established at the Synod of Dordt, observed that the rite of baptism was shamefully abused and turned into an “abomination” because, without making any distinction and determining whether parents were of Christian persuasion, persons applying for the baptising of their children were indiscriminately given the opportunity to do so. Le Boucq added:

If the Governor would clothe a sheep in human garments and send it to the pastor, it would be baptised, because the pastor’s main aim would be to gain the favour of the Company to please him.<sup>92</sup>

The point is that the Zurich line of Reformed theology created the possibility of stronger involvement by the political authorities in the internal functioning of the church and its ministration of the sacraments. This possibility was exploited by the Council for its own selfish reasons.

### 3.2 Covenant theology and the administration of justice by the Council of Justice

The influence of the Zurich reformation also extended into the sphere of the administration of justice by the Council of Justice. Because of the elementary nature of the law applied at the Cape, the absence of professional lawyers in the first years of the settlement as well as the absence of law books in the settlement, the jurisprudence administered by Jan van Rie-

91 Undated letter c1679, Classis Amsterdam to the Reverend Johannes Overney, in Spoelstra, *Bouwstoffen*, part I:10.

92 Spoelstra, *Bouwstoffen* I:64. Translation by the author AWGR.

beeck and his Council was based mainly on the interpretation of the theological sources available.<sup>93</sup> During the whole period of rule by the Company (1652-1795), no comprehensive set of instructions was available for application by the Council of Justice.<sup>94</sup> Although Dutch law theoretically had priority in cases before the Council of Justice at the Cape, Jan van Riebeeck and his Council mainly relied on sources which could be applied and understood in a community bound together by joint theological views and which could be understood by lay persons not schooled in jurisprudence. The acceptance of the principle that the whole of life and society are bound together by common bonds and that the whole community under the rule of government, is compelled to obey God's law, was the result of the view of the Christian community as a corporate entity acting as a single unit, with the members bound together within the covenant. A direct consequence of this view is the duty of political rulers to uphold God's law and punish offenders. As a matter of fact, the application of God's law is the pivot where a unity of covenant and religion serves as the basis of the rule of law to be applied in the community.<sup>95</sup> An analysis of the jurisprudence of the Council of Justice confirms the strong impact of covenant theology in the legal administration. The performance of the functions of public officials reflects a sensitivity for and commitment to the precepts of covenant theology in the public sphere of the settlement. The principles of theological federalism are reflected in the standard formulary prayers at official functions,<sup>96</sup> the correspondence by and to public officials and bodies, the reso-

93 See Raath, "Federal jurisprudence ...", 100-101.

94 G.G. Visagie, *Regspleging en reg aan die Kaap van 1652 tot 1806* (Administration of justice and law at the Cape from 1652 to 1806) (Cape Town, Wynberg, Johannesburg: Juta, 1969):45.

95 See A.W.G. Raath, "Federale teonomie: Die impak van die federale teologie op die publieke regslewe van die vroeë Kaapse volksplanting (1652-1708)" ("Federal theonomy: the impact of federal theology on public law in the early Cape settlement (1652-1708) (Unpublished paper: University of the Orange Free State, 1999).

96 A good example of such a formulary prayer is the one prescribed by the Dutch East India Company and prayed by Van Riebeeck on board ship on 30 December 1651 (see *Resolusiën van den commandeur en raden van het Fort De Goede Hoop, 1652-1662* (Resolutions of the commander and council of the Fort of Good Hope, 1652-1662), ed. H.C.V. Leibbrandt (Cape Town: W.A. Richards & Sons, 1898), Foreword.

lutions of the Council,<sup>97</sup> and, above all, the strong emphasis on the application of God's moral law as a standard for managing public functions.<sup>98</sup> The practical nature of the commentaries by Bullinger and Ursinus on the precepts contained in the First and Second Tables of God's Law provided the Council of Justice with basic source material which was not unknown to the simple and unsophisticated sea-faring community subjected to the preaching by the Sick Comforters, thereby eliminating the excuse of ignorance of the law. The edicts issued by the Governor supplemented the commentaries on the Decalogue. These edicts can in certain respects be seen as the result of the general principles of law expressing a clear covenantal basis and providing the Council of Justice with the material to develop a distinct system of federal jurisprudence. On the foundations of Reformed covenant theology the whole system of public education was legally structured to educate the children in the basics of the Reformed religion;<sup>99</sup> the promotion and maintenance of the true worship of God;<sup>100</sup> the protection of the sanctity of the sabbath;<sup>101</sup> the protection of public authority;<sup>102</sup> the protection of public

97 See *ibid.*, 2, 4, 10, 15, 18, 20, for examples of resolutions confessing man's dependence on God.

98 See Raath, "Federal jurisprudence", 102-103.

99 In terms of the Church Law of 1624, teachers were compelled to maintain the principles of the Reformed religion in the public education of children. This was enforced at the Cape. In order to infuse a positive spirit to honour God's name, the School Ordinance of 1712, by Jan de la Fontaine, regulated the religious education provided at public schools. See Cape Archives, *Cape book of edicts, Part II, 1707-1753*, 35.

100 E.g. under Van der Stel's rule the abuse of God's holy name was strongly prohibited, and heavy penalties, including piercing of the offender's tongue, were enforced for transgressing these orders. See Cape Archives, *Cape book of edicts, Part II, 1707-1753*, 145.

101 Already in 1657 Van Riebeeck took steps to ensure that innkeepers would not sell liquor during religious services. See Cape Archives, *Cape book of edicts, Part I, 1652-1707*, 84. In 1665 Zacharias Wagenaar was forced to issue a law to prohibit gambling on Sundays. See Cape Archives, *Cape book of edicts, Part I, 1652-1707*, 84.

102 All forms of insubordination to legitimate authority were heavily punished and corporal punishment was usually inflicted. See A.J. Boëseken, *Uit die Raad van Justisie, 1652-1672* (From the Council of Justice, 1652-1672) (Pretoria: Government Printer, 1986):1-2 (Council of Justice (C.J.)) 780.

morality;<sup>103</sup> the protection of public and private property;<sup>104</sup> the protection of the honour and good name of the residents in the settlement;<sup>105</sup> and the education of the residents to respect justice, virtue, and honesty.<sup>106</sup>

The covenantal paradigm providing the backbone for the application of the rule of law, reflected a strong Scriptural basis. In the case of Jan Leendertsz of 18 September 1656, he was found guilty of murder and sentenced to be scourged and branded and locked in chains for 15 years for his “godless intention and impetuosity.”<sup>107</sup> On 22 March 1668, a number of trials were held in which the mutinous behaviour of the crew on board the ship *Huijs te Velsen* was condemned, and a number of the hands on deck were found guilty. The conduct of some of the mutineers was described as intolerable to a well-organised government and “punishable in terms of all the laws of God and man and as a deterrent by means of the harshest punish-

103 All forms of adultery, immorality, such as fornication, prostitution, immoral acts, and lasciviousness, were severely punished by law. In a number of edicts, public manifestations of immorality, such as intimacy with slaves and keeping of concubines, were strongly prohibited. See Cape Archives, *Cape book of edicts, Part I, 1652-1707*, 151-152. In 1610 e.g. Pieter Hansz took refuge on a ship at the Cape because of the heavy penalties for fornication with women of the indigenous population (*Precis of the Archives of the Cape of Good Hope, Letters received, 1695-1708*, ed. H.C.V. Leibbrandt (Cape Town: W.A. Richards & Sons, Government Printers, 1896):233).

104 All instances of theft were punished very strictly and banishment and corporal punishment by scourging, whipping, lashing, and flogging were common forms of punishment. See the many cases reported in Boëseken, *Uit die Raad van Justisie, 1652-1672*, dealing with theft. In many instances, thieves were locked in chains or keelhailed. See the case of Jan Pieter Soenwater, found guilty of theft on 6 December 1652 (Boëseken, *ibid.*, 35-36 (C.J. 780, 18-21)).

105 For cases falling in this category see Boëseken, *Uit die Raad van Justisie, 1652-1672*.

106 This was the direct result of the emphasis placed on the principle that man’s thoughts, motives, and inclinations ought to be consistent with the will of God and that a spirit of obedience be cultivated among the people. To this end, the penalties for transgression of the principles of the moral law were applied in such a manner in order to deter and discourage criminal conduct. In many instances, these penalties were exacted in public so as to deter possible future criminal acts. See Boëseken, *Uit die Raad van Justisie, 1652-1672*, for the wide variety of penalties inflicted.

107 Boëseken, *Uit die Raad van Justisie, 1652-1672*, 88-96.

ments”.<sup>108</sup> In the case of Jeronimus Cruse from Bielefeld the prosecutor demanded his removal from office for three months because his challenging of a compatriot to a duel was in conflict with the “laws of God and man” and contrary to military discipline.<sup>109</sup>

Not only the application of the precepts of the moral law were enforced in line with the expositions of Bullinger and other proponents of covenant theology but also the principles of natural law and the role of these precepts in the public sphere. The view that God, through His Spirit, implanted the basic notions of right and wrong in the heart, reason and conscience of man at creation and that the moral law revealed in Scripture merely reflects a more complete statement of this basic natural law, was also applied with criminal sanction in the settlement. On 27 May and 6 July 1671, Gerrit Ridder Muijs, Huijbert Balthese Gruijt, and Frans de Vries were convicted for abandoning 17 crew members of their ship in the bay of Osmedos de Cura.<sup>110</sup> In the course of the trial, the prosecutor branded their behavior as conduct in conflict with “all reasonableness and their conscience through their purposeful inconsiderateness” and whose transgression was not only “in conflict with the commandments of God and Christian love, but also contrary to natural and civil laws”.<sup>111</sup> Although the unbaptised Hottentots at the Cape were not included in the covenanted community, they were judged on the basis of the naturally revealed knowledge of right and wrong in their hearts. The basic covenantal principle that both heathen and Christian were subject to the precepts of God’s Word, that God implanted his revelation in the hearts of the heathens, and that they were also deemed to be subject to God’s law was also applied in the criminal jurisprudence of the settlement. Such a case in point was that in which five Hottentots were tried on 10 February 1672 for murder and stock-theft.<sup>112</sup> They were found guilty, and three of the group were scourged, branded, and sent to Robben Island. The contentious issue was whether they could be tried on the same basis as Europeans in spite of their perceived barbarity. The prosecutor contended that although they appeared to be more beastly than human in nature in terms of their education and intercourse, they did have a reason-

108 *Ibid.*, 249 (C.J. 2952, 185-190; C.J. 1, 412 and 414-416; C.J. 780, 243-248).

109 *Ibid.*, 321-324 (C.J. 1, 624-626).

110 *Ibid.*, 326-364 (C.J. 281, 229-334; C.J. 2925, 373-387; C.J. 1, 657, 662, 674 and 683-688).

111 *Ibid.*

112 In Boëseken, *Uit die Raad van Justisie*, 374-384 (C.J. 2925, 487-489; C.J. 1, 746-747; C.J. 282, 37-66; C.J. 383-387).

able soul and, consequently, had the law of nature implanted in them.<sup>113</sup> With the extract from Justinian in mind that natural law consists of that which nature teaches all living beings, he further advanced the conclusion that they had the law of nature (and thus the common law of nations) implanted as a natural gift.<sup>114</sup> This implied, the prosecutor argued, that man has an inborn judgement of reason to do good and to shun evil, different from animals.<sup>115</sup> Because the Hottentots had also received God's general revelation, the implication was that they also had a natural knowledge of right and wrong, and, to that extent, they also participated in the law of nature and the common law of mankind. They, therefore, had access to the knowledge of the religion of God, respect for authority, defence of the body, freedom, and the like.<sup>116</sup> Because of this implied knowledge the prosecutor argued that they should be found guilty. Although being "godless unchristians", they nevertheless had God's general revelation and thus had to be punished for their crimes. The accused Hottentots were subsequently found guilty and convicted for their crimes.

#### 4. CONCLUSIONS

The investigation into the impact of Reformed religion on the religious, social and legal structures in the early Cape settlement leads us to the influence of the Zurich reformation with its emphasis on the covenant with its infralapsarian theological elements in the line of Huldrych Zwingli, Heinrich Bullinger and Zacharias Ursinus. In the centre of this stream of thought man's direct and personal relationship with God is stressed, as well as man's responsibilities in obeying God's law, and the active role of believers in shaping society, polity, and system of law in which they live. Different from Calvin's predestinarian views, with its supralapsarian character, man's active role and responsibility in giving shape to social, political and legal structures and the covenant providing a strong sense of solidarity and social commitment is stressed, forming the common bond for active community life. The daring nature of the Dutch sea-faring community, the ability to endure severe hardships, the perseverance in the efforts to make the settlement a profitable venture and the commitment to the economic cause which the pioneering settlers took upon themselves are indicative of the dynamics of the motivational cause of the covenant rather than the predestinarian commitment of John Calvin.

113 *Ibid.*, 378.

114 *Ibid.*

115 *Ibid.*

116 *Ibid.*



The historical, sociological, theological and political implications of the covenant paradigm on South African history and human relationships appear to be of major significance. It, therefore, appears that no jurisprudential, sociological, theological, or political study of white South African society generally, and Boer society in particular, can be undertaken without considering the role of the covenantal perspective in the shaping of social relationships and legal obligations in the political system. In any event, the so-called Calvinistic roots of South African society and/or a fixation on the alleged impact of Calvin's theology on the sea-faring community of the Dutch East India Company and the early Cape settlement needs urgent and thorough reconsideration.

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