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## Theological Sources of American Constitutionalism

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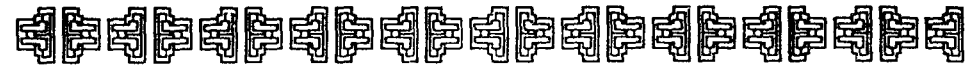
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could be withdrawn. Secession and active resistance could be used justifiably.

Why rehash such an old tale, one of history and political theory? Primarily, to learn from the South's mistake—it failed to fully utilize the historical precedent in its favor. The Southern understanding of localism rooted in the family, and national government being created by the states, was remarkably similar to the associational federalism in its earliest, most complete form as propounded by Althusius. An opportunity to revitalize the roots of the American compact was lost before and during the War for Southern Independence. Only by reviewing such lost opportunities can we avoid making similar mistakes in the future.

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## Theological Sources of American Constitutionalism

Steven Alan Samson

*The men who wrote the U.S. Constitution were children of a religious tradition that reached back two hundred years. Our author is Associate Professor of Political Science at Hope College, Michigan.*

Last year, 1989, was the two hundredth anniversary of the French Revolution: an event that some consider the beginning of the modern era. Its historical proximity of 1789 to the American War for independence of 1776 has linked the two events in the minds of many. But a generation ago, the Austrian-American political scientist, Peter Drucker, denied that the American Revolution was a revolution at all. Instead, he called it "a conservative counterrevolution."

The difference between the two events is reflected in the scope of the social, economic, and political changes—and in the casualty figures.

The French revolutionaries waged a total war on the Old Régime. Power was transferred from the monarchy to first one novel set of institutions, then another. At times it was vested in the hands of terrorists. Church, state, and the nobility were shaken to the core. Attempts were made to erase all traces of Christianity from the life of the people. It was the first great secular revolution.

The conservative nature and limited objectives of the American War for independence, however, are difficult to appreciate apart from an understanding of the religious sentiments—the essentially biblical world-view—of the early colonists. To make such a statement is to invite debate in a continuing controversy. But apart from an acquaintance with some of the religious sources of our constitutional tradition, our understanding of the War of Independence and the Constitution of 1787 will be incomplete.

### BIBLICAL LAW AND LIBERTY

From the start, the Bible was a primary source of colonial ideas about law and liberty. The Pilgrims drew sustenance from the Geneva Bible with its marginal notes. King James I was so persuaded of its seditious influence, he had a new translation made with no marginal notes. This Authorized Version then came over with the Puritans.

In his study of colonial education, Lawrence Cremin stated that the Bible was “the single most important cultural influence in the lives of “Anglo-Americans” throughout the first century of settlement.

Though the Bible had been richly valued for generations, it was not until the seventeenth century that it was widely read and studied. The message of Protestantism was that men could find in Scripture the means to salvation, the keys to good and evil, the rules by which to live, and the standards against which to measure the conduct of prince and pastor. And so men turned to the Bible with reverence and restless curiosity, finding there, not an abstruse exposition of high-flown principles, but an imaginative portrayal of the life of a historic people, contending in their families and communities with day-to-day problems of belief and conduct, freedom and authority, virtue and depravity.

The Bible was especially valued as a source of law and government. Its historical illustrations provided a practical foundation for government during the long period prior to independence when the colonies enjoyed relative peace and a high degree of self-government. Indeed, this was the case long before the influence of Enlightenment, rationalism, or the Whig interpretation of history modified the earlier Puritan concept of Biblical Commonwealth.

### Covenantalism

As Protestants, the New England colonists in particular shared the Reformation belief that the basis of civil government is a covenant binding the ruler and the people. They put this belief into practice by inventing and developing

the modern written constitution out of traditions of church covenants and compacts begun by Protestant dissenters in the late 1500s.

Originally, the *church covenant* was a formal agreement made “by members of a congregational church to constitute themselves as a distinct religious community.” It rested on the consent of the members, who promised to walk according to the rules of the Gospel and in conformity to God’s holy ordinances in mutual love and respect. The covenant was essentially an oath witnessed and secured by God.

In the political sphere, a *compact*—like the Mayflower Compact—was made specifically to form a new community or a new people. It was often at once a civil and a religious covenant secured both by God and the Crown, and based on the consent of the governed.

In England, an illustration of the covenant theory of government may be found in the writings of Rev. Samuel Rutherford, a seventeenth century Scottish Presbyterian whose ideas about resistance to tyranny were part of a tradition that linked the later views of John Locke and Jonathan Mayhew back to John Knox and even John Calvin.

The covenant betwixt the king and the people is clearly differenced from the king’s covenant with the Lord, 2 Kings xi.17. . . . There was no necessity that this covenant should be made publicly before the people, if the king did not in the covenant tie and oblige himself to the people; nor needed to be made solemnly before the Lord in the house of God.

These words came out of the English Civil War of the 1640s and hearken back to political theories of the late Middle Ages and the Reformation. More than half a century earlier, similar sentiments were voiced by Huguenot leaders following the Saint Bartholomew’s Day Massacre in France. But the words of Samuel Rutherford also spring from a tradition dating back at least to the Magna Carta and the commentary of Bracton which placed the king beneath the law. Moreover, as the jurist Helen Silving has shown, the Magna Carta explicitly drew upon the example of what she termed the “jurisprudence of the Old Testament.”

The Magna Carta set forth a concept of rule of law that looked back to the Old Testament “law of the land” and forward to American innovations in the concepts of limited government and consent of the governed. Even earlier than the Magna Carta, King Alfred the Great incorporated the Mosaic Law in his

Law Code, following the practice of early Celtic Church communities dating back at least to the time of Patrick.

### Local Self-Government

How did this covenant tradition translate into actual political practice? Here we may turn, first of all, to the American tradition of local self-government. Unlike the Spanish and French colonists, the British colonists were originally granted a large measure of local self-government under their charters, although they remained nominally under the control of a board of directors. But time, distance, wilderness hardships, and—finally—the English Civil War increasingly compelled the colonists to rely upon themselves.

As early as 1606, the Virginia Charter acknowledged that the American colonists took with them their rights as English citizens. Although they brought their civilization with them, as with the fictional figure of Robinson Crusoe, necessity proved the mother of invention. This pattern of chartered self-government later culminated in full-fledged charter-constitution, such as the Connecticut Charter of 1662 and the Rhode Island Charter of 1663.

### Constitutionalism

The invention of the constitution may be credited to an even earlier period. By the year 1641, American colonists had already developed the earliest true constitutions: specifically the Pilgrim Code of Law and the Fundamental Orders of Connecticut. In addition, we may see an early bill of rights in the Massachusetts Body of Liberties. We may also find federal structures in the Connecticut, New Haven, and Rhode Island colonies as towns joined together to form colonial governments.

Already in 1629, the Mayflower Compact had created a “civil Body Politick” for the stated purpose of “glorifying God, advancing the Christian religion, honoring king and country, and valuing justice, equality, and the common good.” This same “combination,” as it was later called, was incorporated, along with the Massachusetts Charter of 1629, in the Pilgrim Code of Law of 1637. All these innovations occurred half a century before John Locke wrote his *Treatises on Civil Government*. They occurred, for the most part, even before the English Civil War broke out and further isolated the colonists.

### Federalism

Let us take a closer look at one of these innovations. Federalism, as it is associated with the Constitution of 1787, is considered by many scholars to be

America’s most important original contribution to political theory. The word “federal” derives from a Latin root meaning “covenant.” In practice, it means that jurisdiction is divided between a central government and local governments, which was fairly common in the northern colonies. In principle, it is derived from a theological tradition that recognizes that all authority derives from God, so that sovereignty on earth must be divided. Thus federalism, which permits the formation of larger units of government, also helps limit the power of government.

Historians often comment on the fact that communication between the American colonies was, at best, rudimentary before the 1740s and 1750s. This may have contributed to the common assumption that American political ideas were for the most part derived from English and European antecedents. But that does not appear to have been the case, as these illustrations suggest. What is even more remarkable, many of these constitutional practices apparently developed independently of each other in the middle and southern colonies, as well.

The political scientist Donald Lutz argues that “the gradual convergence of a number of peoples into one is too easily explained by a common language, a common background of English legal and political institutions, and a common enemy in the form of a mother country perceived as having grown too domineering.” He has observed that “many Americans viewed themselves as essentially self-governing long before the break with Britain, and even prior to wanting independence.”

### Influence of Calvinism

If true, this perception raises a question that begs for an answer. What beliefs and practices did the colonists have in common that might account for the growth of a new constitutional tradition? One thing most had in common, along with a large degree of local self-government, was adherence to a Calvinistic form of Christianity. The Plymouth Pilgrims were Calvinistic Separatists who broke with the Church of England, which in turn was governed by the largely Calvinistic Thirty-Nine Articles. The Puritans who came to America were non-separating congregationalists who sought to reform the Elizabethan Settlement. In addition to Anglican, communities of Scottish and Scotch-Irish Presbyterians, French Huguenots, and Dutch Reformed settlers were scattered through the middle colonies and parts of the southern colonies.

Lutz and other scholars associated with the Temple University’s Center for the Study of Federalism have concluded, after a close examination of dozens

of early founding documents, that the written constitution as we know it is primarily an enlargement of one or two of the four foundation elements found in colonial church governments and compacts. Specifically, the modern constitution is an outgrowth of those elements that provided a self-definition of the community and/or a description of its form of government.

Out of this common core, then, we may then recognize the unfolding of many practices—some with ancient roots—that we today associate with constitutionalism: a written document, a double agreement among the people and then between the people and their government, federalism, popular sovereignty, majority rule, separation of powers, preambles, bills of rights, frequent elections, a broadly defined electorate, and certain inalienable rights.

This should strike us as remarkable. Here we have self-governing colonists who taxed themselves, passed local ordinances, established or disestablished churches, and held the rights of English citizens.

## THE ROAD TO INDEPENDENCE

But this leads to another question that begs for an answer. What finally brought these colonists collectively—as one people—to a parting of the ways from the mother country?

The Declaration of Independence specifically cited abuses by the Crown, one of which was the imposition of taxes by Parliament. Gary Amos sees the Declaration as a logical outgrowth of this covenantalism:

Because God made men and gave them their rights, men create governments under God's law to protect those rights. A government that destroys inalienable rights deserts its purpose and forfeits its right to rule. Men must endure bad government but not a tyrannical one.

The other issues were manifold: the navigation Acts, proposals to send Anglican bishops, the extradition of colonists for trial in England, and finally Parliament's declaration late in 1775 that the Americans were an enemy people. But whatever might be said about the legalities of the war for independence, the colonists had for more than a century considered themselves self-governing people who taxed themselves through their own legislatures. Taxation without their consent they regarded as the very definition of tyranny.

We should not conclude that the patriots of 1776 were reckless anarchists. We may find recklessness aplenty in various incidents. But the colonists

generally believed that just as authority is subject to the rule of God's law, so is liberty. The apostle James described the Scripture as "the perfect law of liberty" (Jas. 1:25). Similarly, the apostle Paul counseled: "Stand fast therefore in the liberty wherewith Christ hath made us free. . ." (Gal. 5:1). These and similar passages were frequently cited in the New England election sermons and thanksgiving sermons that helped preserve the covenant tradition while encouraging public virtue. As the practice spread, they became an important part of a large body of literature that helped forge a common political culture.

## Liberty and Conscience

The influential Westminster Confession provided a model for religious liberty—or liberty of conscience—in section two of the twentieth chapter:

God alone is lord of the conscience, and hath left it free from the doctrines and commandments of men which are in any thing contrary to his word, or beside it, in matters of faith or worship. So that to believe such doctrines, or to obey such commandments out of conscience (i.e., apart from conscience), is to betray true liberty of conscience: and the requiring of an implicit faith, and an absolute and blind obedience, is to destroy liberty of conscience, and reason also.

## Lawful Resistance

But many asked, then as now: Is resistance justified? Protestants split over this issue. Martin Luther and Judicious Hooker answered in the negative. But many of the early Calvinists emphasized that various degrees of resistance to tyranny are permitted where life is endangered or impiety decreed.

In his *Institutes*, John Calvin was led to write: "We are subject to the men who rule over us, but subject only in the Lord. If they command anything against Him let us not pay the least regard to it. . . ."

The Huguenot tract *Vindiciae contra tyrannos* further developed Calvin's suggestion that tyranny be resisted through lesser magistrates. Thus it anticipated the later American practice of using elected magistrates and official committees of correspondence to register colonial grievances as well as to discuss possible courses of action.

The concern for procedure—for due process—that characterized much of the colonial resistance illustrates Samuel Rutherford's recommendation that the proper sequence of steps to follow is supplication before flight, and flight before the taking up of arms. Only where supplication fails and flight is out of

the question does armed resistance become lawful. In fact, Rutherford advanced the view that resistance is an assertion of law when the law of the land has been violated by the ruler:

The covenant giveth the believer a sort of action of law, and *jus quoddam*, to plead with God in respect to his fidelity, Psa. xliiii. 25; lxiii. 16; Dan. ix. 4,5; and far more a covenant giveth ground of a civil action and claim to a people and the free estates against a king, seduced by wicked counsel to make war against the land, whereas he did swear by the most high God, that he should be a father and protector of the church of God.

Here in short is the ideological basis for John Locke’s famous “appeal to heaven.” In fact, both Locke and the American colonists were heirs of reformation tradition that worshipped God as the author of law. Notwithstanding various secular, rationalist influences on the founding generation, the Christian religion and the covenant tradition provided a basis for a “government of law, not men.”

**CONCLUSION**

Archie Jones has summarized the connection between early American political thought and Biblical doctrine as follows:

What were the teachings of this New England theo-political philosophy? Its starting premise was the Puritan concept of God as sovereign of the universe, who made man a rational creature, put “Law into the very Frame and Constitution of his Soul,” and deals with men on the basis of conditional and obligatory compacts or covenants. This sovereign God is the Lawgiver, who has established perfectly wise, just, and good laws, founded upon the nature and relation of things, which are of universal obligation. This fixed and fundamental law is threefold, including the law of nature, the law of the Old Testament, and the law of Christ. The law of nature is not distinct from the law of God. Rather, it is as legally binding as any other part of the divine law, and gains greater force as a part of God’s law, especially since it is clarified by the binding portion of the Old and New Testament law.

Since God’s government is founded and limited by law, all human governments must be so founded and limited.

It is the ministry of civil officers to enforce this law. It is the ministry of the church and family to teach it (I Pet. 2:13-14; Matt. 28:19-20; Deut. 6:6-7).

The final responsibility, however, rests with the individual, who is expected to walk by faith: that is, by inward desire to obey God. As R. J. Rushdoony comments:

Law is good, proper, and essential in its place, but law can save no man, nor can law remake man and society. The basic function of law is to restrain (Rom. 13:1-4), not to regenerate, and when the function of law is changed from the restraint of evil to the regeneration and reformation of man and society, then law itself breaks down, because an impossible burden is being placed upon it. Today, because too much is expected from law, we get less and less results from law, because law is put to improper use.

These are some of the presuppositions undergirding the American system of government and upon which political and religious liberty were declared. They converge in a concept of limited government which begins with the self-governing individual and leads to the formation of social institutions based on voluntary union. The reverse side of this concept may be described as separation of powers, multiple jurisdictions, or “sphere sovereignty.” Both aspects are inherent in the biblical covenant and the federal theology of the Puritans. Together they form the basis of what Verna Hall has called “Christian self-government with union.”

