

The Constitution as Covenant

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The Constitution of the United States is the legacy of “a peculiar moment in history when all knowledge coincided, when classical antiquity, Christian theology, English empiricism, and European rationalism could all be linked.”¹ And *covenant* was the linking concept. The religious idea of covenant was particularly and profoundly important in the evolution and inspiration of the American Constitution, for the political idea of, and the political concepts embodied in, the Constitution can be traced in “an unbroken line of descent” to the seventeenth-century covenant theology.² In this sense, the constitution of the American republic was formed long before the Constitution of the United States was drafted in the summer of 1787. It had been evolving in the hearts and minds, and in the habits and customs, of the people who inhabited the thirteen colonies since the days of the first settlements.

In this essay, I will review the origins of the Constitution in covenant theology. But the concept of covenant was not limited to religious doctrines; it was “central and dominant” in the everyday lives of American Protestants and in their view of the world and all of God’s workings in it.³ Particularly important to the development of American constitutionalism were the organization of the church by covenant and the belief in the covenant origins of civil government. The covenant legacy is also apparent in the fundamental principles of the Constitution, especially the two most important principles, popular sovereignty and limited governmental authority, which were derived directly from covenant theology.

The influence of the clergy and of religion at the crucial period of history was also important. The sense of divine destiny, or “millennialism,” that prepared the American people for the tumultuous events of the last quarter of the eighteenth century was significantly attributable to religious influence. The covenant clergy’s preaching of the right (if not the duty) to resist ultra vires governmental authority stimulated and supported the War of Independence. Covenant clergy led the insistent demands for constitutional conventions where “the people” rather than the legislatures could compose the basic civil covenant.

Three Dimensions of Covenant Theology

Covenant theology, sometimes called federal theology (from the Latin *feodus*, meaning *covenant*), had roots in Calvinism and developed prominently

among the Dutch dissenting Protestants, particularly the Anabaptists, the English Dissenters, especially the Puritans, and Scottish Presbyterians.⁴ The influence of covenant theology was not limited to the dissenting churches; the Westminster Confession provides compelling proof that even established churches embraced covenant concepts.⁵ “Wherever the Reformed religion made its appearance, the idea of the covenant became prominent.”⁶

Covenant theology came to America with the separatist Pilgrims, the reformist Puritans, the dissenting Anabaptists, the independent Presbyterians—indeed with virtually all the churches and settlements. The influence of covenant theology in the New World was so broad that “it could be received with minor variations, by almost the entire spectrum of American Protestantism.”⁷ The covenant perspective “permeated the mind of the American Puritan.”⁸ The Puritans were “obsessed with the covenant or contract, relying on this handy instrument to explain almost every relation of man to man and man to God.”⁹ But the concept of covenant was particularly dominant and central in three respects: in religious doctrine (theology), in church government, and in civil or political organization.¹⁰

Building upon the essential Calvinist ideas of the depravity of man, the sovereignty of God, and the necessity of ordering the church in strict accordance with biblical prescriptions, covenant theology emphasized that the foreordained and saving grace of God was extended to the “elect” by covenant.¹¹ God had made a covenant of works with Adam and Eve, who breached that covenant. Then, in his mercy, God made a covenant of grace with the descendants of Adam and Eve by which Christ, having voluntarily covenanted with the Father to be the Mediator, paid the penalty for the broken covenant and became the Lord and Savior of mankind. Salvation was promised to the predestined elect who exercised faith in Christ.¹² The heart of covenant theology was the idea that God’s predestination of mankind was not arbitrary and impersonal, but was the fulfilling of the covenant of grace made with Abraham and his seed. Individuals “called” to the election of grace by conversion were allowed to make a personal covenant with God, as had Abraham.¹³

Covenant theology was revolutionary for its time, emphasizing individualism, breaking with traditional doctrines, and challenging established order.¹⁴ And in America, the theology came to emphasize the part that man played in salvation, deemphasizing predestination.¹⁵ Individual conscience and consent became prominent. The God-given right of individuals to associate by covenant was the underlying principle for which these believers, and their descendants, eventually went to war.

Covenant was also the foundation of church government for the dissenting Protestants in America. As it was at the root of all God’s dealings with men, so it was the basis for all dealings of men with one another.¹⁶

“Family, church, and commonwealth were established by covenant, like all human voluntary relationships.”¹⁷ Churches were established by believers in covenant with each other “as a ‘communion of saints.’”¹⁸

The belief that church government should be by covenant (that is, by consent of the congregation) was one of the most revolutionary aspects of covenant theology, especially in the early years of its development. At a time when established churches exercised absolute ecclesiastical control in the states of Europe, this was a radical notion.¹⁹ The sacrifices made by the Dutch Anabaptists and the English Dissenters to establish this principle were enormous. The Anabaptists united “because they felt the need of each other’s help in their struggle against many adversaries.”²⁰ They used the term *covenant* to describe their “Christian brotherhoods” a century before the Reformation was viable.²¹ Robert Browne, the father of Congregationalism, “insisted that the church is a voluntary association of those who have pledged themselves by covenant to lead a Christian life.”²² John Robinson, the influential Separatist pastor at Scrooby, England, defined a church as a company of two or more individuals, separated from the world and gathered to Christ “by a covenant made to walk in all his ways.”²³

From the time the Puritans came to America, “the idea of a covenant or contractual relationship was the central and pivotal idea of the organization of the church. Where Congregationalism or Separatism or Independency went, there went also the theory and the fact of compact and covenant.”²⁴ The members of these Protestant faiths, “who made up perhaps four-fifths of church-going New England, believed that the church could only exist by covenant, a sacred and binding agreement or compact made by the members with each other and with God only so could they be given power one over the other.”²⁵ As Thomas Hooker wrote in *The Summe of Church-Discipline*, “Mutuall covenanting and confoederating of the Saints in the fellowship of the faith according to the order of the Gospel, is that which gives constitution and being to a visible Church.”²⁶

The political theory of social compact can be traced to its roots in covenant theology. It was inevitable that the covenant theologians who wrote about church government and sacred history would also write about the origins and limitations of civil government and would apply the same principles.²⁷ The Pilgrims and Puritans who came to Massachusetts attempted to put their Christian ideals into practice in civic life. In the Mayflower Compact, the Pilgrims agreed to “covenant and combine [them]selves together in to a civil body politic . . . and by vertue [t]hereof to enact, constitute, and frame such just and equal laws, ordinances, acts and constitutions, and offices . . . as shall be thought most meete and convenient for the general good.”²⁸ Their intent was to establish a theocracy—a “Holy Commonwealth.”²⁹ *A Critical Bibliography of Religion in America* states:

The covenant is the clue to the New England Puritan understanding of . . . the order of the church and society—the “Holy Commonwealth.” . . . To the Puritan, God had always dealt with his children by covenant. . . . It was not only individual, between each man and God; it was also public, respecting the formation of Churches and of civil government. . . . [T]he state was established upon a covenant, like the Mayflower Compact of 1620. The Puritan theology therefore considered economic, political and social affairs in a corporate sense, and the Church assumed responsibility for society because the Puritans considered both church and state as under covenant.³⁰

Church and state in the early New England colonies were organized on equal footing. Accordingly, in 1631 the General Court of Massachusetts Bay Colony decided “that the franchise would be limited to those who had entered the church covenant.”³¹ While this limitation on the franchise, which continued until 1691, restricted the actual number of voters, the underlying principle was democratic.³²

Similarly, John Winthrop, in a sermon written on board the *Arabella*, which brought the founders of Boston to America, preached that his people had covenanted with God to obtain a new place and new government by mutual consent.³³ A generation later, John Cotton, teacher of the Boston church, proclaimed from the pulpit that “there is no other way” for God’s people to be governed “but only by mutual Covenant.”³⁴ When Rhode Island was settled in 1637, under Roger Williams, “The Bible was searched, as doubtless it had been many times before, to demonstrate that covenanting was the Lord’s chosen method for social and religious combination.”³⁵

Throughout New England, towns were organized in this fashion. Thus, the settlers of Guilford, Massachusetts, organized their town government by “gathering together in a church way.”³⁶ The “Fundamental Orders” adopted by the river towns of Connecticut in January 1639, which has been called “the first written constitution in history,” opened with an explicit acknowledgment that “God requires” his people to form their civil government “by common consent according to God.”³⁷ In 1639 the inhabitants of New Haven, Connecticut, “by a show of hands” adopted the “Fundamental Articles of New Haven,” incorporating a reference to an earlier “plantation covenant.” Thomas Hooker, the founder of Connecticut, taught that “there must of necessity be a mutual engagement each of the other, by their free consent, before by any rule of God they have any right or power, or can exercise either, each towards the other.”³⁸

Twenty years before John Locke wrote his *Second Treatise of Government*, John Davenport, in New England, “outlined the organization of civil society in compact, as indeed he had done some years before in his *Power of the Congregational Churches*.”³⁹ Massachusetts divine John Wise likewise taught that the civil state had its moral origins in covenant.⁴⁰ Rossiter states, “The doctrines of popular government held in many a Massachusetts village were largely a secularized and expanded Congregationalism.”⁴¹

The Covenant Legacy in Constitutional Principles

The fundamental principles of American constitutionalism developed naturally out of covenant theology. Combined with other intellectual, economic, political, and social influences, covenant theology generated and nurtured the principles of popular sovereignty, limited government, the written constitution, supreme law, inalienable rights, and republican virtue.

The line between religious and political ideas, especially during the crucial prerevolutionary years, was very fine and extremely porous. The analogy between covenant religious theology and Enlightenment political philosophy of the American settlers is very close.⁴² Nowhere is this more apparent than in the development of the idea of popular sovereignty.

By the time of the American Revolution, the principle that the origins of society and of government rested upon the common consent of the people was familiar throughout the American states “to men whatever their faith.”⁴³ As Rossiter states, “The Puritan theory of the origin of the church in the consent of the believers led directly to the popular theory of the origin of government in the consent of the governed.” He adds, “It was hardly accidental that New England ministers gave the first and most cordial reception to the arguments of John Locke and other great English liberals, and broadcast from their pulpits the new gospel of government by consent.”⁴⁴ Presbyterian and Congregationalist preachers “taught the political doctrines of Locke and Milton until the members of their congregations held the liberal theories of government which rendered them most sensitive to governmental oppression.”⁴⁵ Indeed, some American preachers “stated Locke’s theories more clearly than Locke himself.”⁴⁶ Locke, who has been called “America’s philosopher” because of the enormous and lasting influence of his political writings, and who was one of the most frequently cited nonbiblical writers in the revolutionary era,⁴⁷ “rode into New England on the backs of Moses and the prophets.”⁴⁸

The sentiments of popular sovereignty were formally expressed time and again. The freeholders of Mendon, Massachusetts, voted “that all just and lawful Government must necessarily originate in the free Consent of the People.”⁴⁹ And, not surprisingly, the Massachusetts Constitution of 1780 stated: “The body politic is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenant with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.”⁵⁰

In her masterful monograph, *The New England Clergy and the American Revolution*, Alice Baldwin wrote:

The New England Clergy preserved, extended and popularized the essential doctrines of [Enlightenment] political philosophy, thus making familiar to every church-going New Englander long before 1763 not only the doctrines

of natural right, the social compact, and the right of resistance but also the fundamental principle of American Constitutional law, that government, like citizens, is bounded by law.⁵¹

Thus, the theological doctrine that government and society are predicated upon covenant “paved the way” for the ultimate triumph of popular sovereignty in America.⁵²

An indispensable component of covenant theology was the rejection of absolute authority and the belief that rulers were subject to limitations and boundaries, defined in the civil covenant, which God required them to observe. The governor or government that exceeded its proper limits “did not have the sanction of God.”⁵³ The God of covenant theology was a God who governed by laws which even he observed. The universe He ruled was a constitutional one.⁵⁴ If God had bound himself by covenant to observe certain laws, no earthly delegate could claim unlimited authority.⁵⁵ So long as authorities were acting within the sphere of authority established by covenant, the people were obligated to obey.⁵⁶ As God’s laws were inviolable, so also the covenants which bound his rulers on earth were binding and immutable.⁵⁷ Thomas Hooker, in the first half of the seventeenth century, was an exponent of this principle.⁵⁸ In a dispute with Governor Winthrop, Hooker resisted the proposition of absolute discretion of judges with the argument that even the rulers are subject to law. Taking as his authority Deuteronomy 17:10–11, Hooker reasoned: “The law is not subject to passion, nor to be taken aside with self seeking ends, and therefore ought to have chief rule over rulers them selves.”⁵⁹

Thus, starting with a belief in the supremacy of God’s law, covenant clergy emphasized that even the rulers were subject to that law, and therefore there were God-given limits on the powers of government and governors. As God’s boundaries on government were derived from the covenant, the government was limited by the power given to it by the people who made the covenant. In this manner did covenant-believers move themselves, and eventually an entire nation, from the rule of men to the rule of law.

With their covenant theology background, Americans in 1787 viewed a constitution as “a fundamental law designed by the people to be separate from and controlling of all the institutions of government.”⁶⁰ The government created by a constitution would be circumscribed and limited by it. So profound was the influence of this basic covenant idea in the American consciousness that it has been said that *The Federalist*, which so clearly articulate the notion of limited but effective central government, “can be read as Puritan contributions to Enlightenment political theory.”⁶¹

A basic principle of covenantism was the idea of fixed, immutable, supreme law. “God and Christ governed by fixed rules, by a divine constitution, and therefore so must human rulers.”⁶² As God’s constitutional

universe was governed by divine, immutable law, the basic constitution of men must also be fixed and unchanging.⁶³ “To men of the eighteenth century there was no more solemn and forceful word than ‘compact’ unless possibly ‘constitution.’”⁶⁴ Thus, the pastor of one Massachusetts village emphasized the need for the state government to be established “upon a permanent foundation that no length of time can undermine.”⁶⁵

In accordance with covenant theory, then, a civil constitution needed to be the supreme, inviolable law of society. A century before the American Constitution was written, the “Levellers” made an agreement that declared “that all laws made or that shall run contrary to any part of this Agreement, are hereby made null and void.”⁶⁶ Nearly twenty years later, a former governor of Massachusetts Colony wrote a “fundamental constitution, [which] shall be laid and inviolably observed as the conditions upon which the whole body . . . do consent” and which, when adopted, “will be without danger of being broken or departed from.”⁶⁷ Thus, a belief in a settled, supreme law limiting government authority was an established part of the covenant tradition.

Because covenant theology emphasized man’s spiritual ability more than God’s predestination, it was natural for the political concept of individual rights to be nurtured by this faith. Indeed, one of the bedrock premises of covenant theology was the existence of the individual with certain God-given rights, beginning with the rights to worship God and to assemble with fellow believers to do so.⁶⁸ Covenant theologians believed that civil government was ordained of God and for the good of the people. “The good of the people . . . meant it assured the protection of their natural rights.”⁶⁹

Clinton Rossiter, the noted historian, has written:

American democracy owes its greatest debt to colonial Protestantism for the momentum it gave to the growth of individualism. The Reformation, which was powered by the revolutionary notion that man could commune with God without the intercession of a priest, did as much as the rise of capitalism to spread the doctrine of individualism.⁷⁰

Covenant theology put individual rights of conscience (obedience to God) at the top of the list of moral duties where prior philosophies had put obedience to established authority.⁷¹ Thus, not only did the struggle of American dissenters for religious liberty contribute to the development of constitutional protection for the freedom to worship, and protection against an established church, as well as recognition of the right of assembly, the right to petition, and other specific rights guaranteed by the Bill of Rights, but the very notion of inalienable individual liberties germinated and grew in the fertile soil of covenant theology.

The American wilderness was settled by God-fearing people who came to establish a “Holy Commonwealth.” To merit the blessings of God, they

believed they had to be virtuous. Around the meaning of that requirement developed significant theological controversies, but the belief in the necessity of virtue was unquestioned.⁷² They clearly believed that God expected “strict observance” of his laws if they were to enjoy his blessing in their new land.⁷³ By the time of the American Revolution, the oppressions of the British government were viewed as God’s punishment for iniquity, as well as a trial of the faith and obedience of his American Israel. Deliverance (independence) was seen as the blessing that would come from purification and repentance.⁷⁴

The evolving political science of social compact also emphasized the necessity for public virtue. Montesquieu, the nonbiblical writer cited most frequently during the constitution-drafting decade of 1780, identified the fundamental principle of democratic government to be “virtue.”⁷⁵ “The eighteenth-century mind was thoroughly convinced that a popularly based government ‘cannot be supported without *Virtue*.’”⁷⁶ The kind of virtue that the republican theorists focused on was public virtue—the willingness of each citizen to subordinate his or her personal wants to the greater good of the community. But public virtue was the companion of, and could not be separated from, private virtues.⁷⁷ In Britain, Edmund Burke eloquently summarized this doctrine:

Men are qualified for civil liberty in exact proportion to their disposition to put moral chains on their own appetites. . . . Society cannot exist unless a controlling power upon the will and appetite be placed somewhere, and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters.⁷⁸

In America, as Vetterli and Bryner have pointed out,

The idea of virtue was central to the political thought of the Founders of the American republic. Every body of thought they encountered, every intellectual tradition they consulted, every major theory of republican government by which they were influenced emphasized the importance of personal and public virtue. It was understood by the Founders to be the *precondition* for republican government.⁷⁹

Samuel Adams declared, “We shall succeed if we are virtuous.” And Benjamin Rush believed that “liberty without virtue would be no blessing to us.”⁸⁰

Covenant Legacy in Establishing the Constitution

The principles of constitutionalism and covenant were of little benefit to anyone while the government denied their validity and prevented their implementation. Thus, perhaps the greatest contribution of covenant theology and theologians was not conceptual or intellectual, but the practical political establishment of the Constitution of the United States. In large

degree, the prerevolutionary sense of destiny that united the country, the revolutionary war itself, and the constitutional conventions were the results of the pervasive influence of covenant religion.

Owing to their covenant theology, the settlers of America had a particular view of their place in world history. They believed that God's hand could be seen in history. God governed not only in space, but in time as well, and there was a divine purpose in the major events that manifested themselves in history. They firmly believed that the new world was a special land of opportunity prepared and reserved by God for his special purposes, and that they had been brought by the hand of God to work his will in this chosen land.⁸¹

Particularly noteworthy was the ever present religiously oriented sense of mission which guided people of all ranks to the New World early during the period between 1607–1820. . . . A favoring Providence was seen as directing the destiny of His “chosen people” in the abundant wilderness called America.⁸²

By the middle of the eighteenth century, the idea that “America had a special place, as yet not revealed, in the architecture of God's intent” was pervasive in the American colonies.⁸³ The Great Awakening in the fourth decade of the eighteenth century fueled Americans' beliefs that they were on the verge of great events in which they were destined to play a major role. The sense of millennialism in the revolutionary era is evident even in the writings of the most secular political leaders of the time.⁸⁴ But undergirding and overarching all the rest were religious statements of impending providential events. “The clergy, like many other Americans, felt the country ‘to be on the eve of some great and unusual events’ and their language, ecstatic but not uniquely religious, took on the millennial tone.”⁸⁵ Combined with emphatic calls for purification and repentance of the people, this religious millennialism imparted a sense of crisis that prepared the Americans for the convulsive events about to unfold. After the war, “American destiny” became a “civil religion.” The war was seen as another exodus from Egypt, and Washington was considered to be the Moses of the new world.⁸⁶

The resistance of American Protestants that ultimately led them to declare their independence from Britain and to create a separate nation on this continent derived from two covenant-religion sources: the tradition of dissent and the belief in the duty to resist ungodly authority. Historically, the American dissenting Protestant churches had been resisting the authority of established churches for two centuries before the first shot was fired in the War of Independence. America was settled by dissenters fleeing persecutions that resulted from their resistance to government-supported ecclesiastical authorities. These churches owed their very existence to their unrelenting resistance to the unjustified exercise of authority. As Burke observed, the American Protestants of the revolutionary era were

of that kind which is the most adverse to all implicit submission of mind and opinion. This is a persuasion not only favourable to liberty, but built upon it. . . . The dissenting interests have sprung up in direct opposition to all the ordinary powers of the world. . . . Their very existence depended on the powerful and unremitted assertion of that claim [to natural liberty].⁸⁷

When Britain forced dissenting Protestants to flee to America, it merely postponed for a hundred and fifty years the ultimate separation and conflict.⁸⁸

But more profoundly influential than the history of practical resistance to established churches was the belief, grounded in covenant theology, that resistance to the exercise of authority beyond the limits established by consent was a basic moral duty. This belief was the unavoidable consequence of the concept of the sacredness of covenant. Over and over again the American clergy of the seventeenth and eighteenth centuries taught their congregations about “the sacredness of covenant and the divine character of government.”⁸⁹ For instance, the Reverend Jonas Clerk explained to his fellow townsmen that “a civil Constitution or form of government is of the nature of the most sacred covenant or contract.”⁹⁰ Because government established by covenant was sacred, God expected strict compliance with its terms.⁹¹ As God’s delegates on earth, rulers and magistrates were expected to imitate God’s government. When they exceeded the bounds of authority established by covenant, they defied God. Covenants of government, like God’s covenants of salvation, “were always conditional and implied strict obligations on each side.”⁹² Social compacts, like the covenants entered into by ministers and their congregations, “were sacred and binding and to break them was a serious offense. Their nature and their sanctity were the constant theme for the clergy for more than a hundred years before the Revolution.”⁹³

The culmination of this tradition and this theology was the doctrine of the right to resist. New England ministers, and their counterparts throughout the colonies, “were preaching . . . that people were justified in rising even against the sovereign himself in order to ‘redress their grievances; to vindicate their natural and legal rights; to break the yoke of tyranny.’”⁹⁴ Both religious and secular writers placed “special emphasis” on the broken covenant as a justification for community resistance to British laws. Reflecting two centuries of covenant theology, leading American writers argued that King George had “unkinged” himself by breaking social compact.⁹⁵ Resistance to illegal governmental authority, exercised in breach of the social compact, “was more than just a right and ‘a virtue.’ It was ‘the Christian and social duty of each individual.’” One pamphleteer thundered that “the man who refuses to assert his right to liberty, property, and life, is guilty of the worst kind of rebellion; he commits high treason against *God*.”⁹⁶

A generation before the revolutionary war, the Reverend John Wise, of Ipswich, Massachusetts, refused to pay taxes and was imprisoned by the royal governor. Afterward he published compelling arguments establishing

the connection between democracy in church government, based on covenant, and democracy in political government based on social compact.⁹⁷ In 1772, two of his tracts on resisting unlawful authority, written fifty years earlier, were republished in Boston and were so popular that second editions were published.⁹⁸ In 1740, Reverend Jonathon Mayhew published his startling “Discourse Concerning Unlimited Submission” in which he preached openly the doctrine of resistance to extracovenantal authority. A few years later, John Adams was to write, “If the orators on the 4th of July really wish to investigate the principles and feelings which produced the Revolution, they ought to study . . . Dr. Mayhew’s sermon on passive obedience and non-resistance.”⁹⁹

After hostilities broke out, the dissenting clergy in every section of the country took up the work of arousing the people.¹⁰⁰ “The Bible was raked with a fine Calvinistic comb for every quotation seeming to give divine sanction for resistance to Great Britain.”¹⁰¹ Independence became not only a political ideal but a religious and moral article of faith. “Revolution, republicanism, and regeneration all blended in American thinking.”¹⁰²

After the Americans had declared their independence from Great Britain, the influence of covenant-based theology in political philosophy was directly manifest in the great decade of constitution writing. Constitutionalism was the logical outgrowth of covenant theology.

Three dimensions of the covenant faiths combined to create a powerful impetus for the adoption of written constitutions. In the first place, rationalism constituted a potent strain of federal theology. The New England clergy were well-educated, thoughtful men.¹⁰³ The clergy believed in a constitutional God who grounded his universe in laws that could be perceived and understood by rational men, who administered his immutable laws in conformity with natural-law reason.¹⁰⁴ Covenant theologians believed that the will of God was manifest through reason and nature as well as divine revelation.¹⁰⁵ Believers in a higher law, they insisted that the higher law could be known and should be expressed clearly. “The traditional American insistence on a written constitution owes something to the insistence of the Puritan that higher law could be written law.”¹⁰⁶

The second dimension of covenant theology that created such a forceful influence for a written constitution was the enormous respect for and use of the Bible. “The Puritans were confirmed believers in higher law, going most men one better in being able to point to its existence in writing! . . . It was their conviction . . . that the Scriptures offered correct answers to all problems of individual conduct, church government, and social and political organization.”¹⁰⁷ The thinking of the covenant clergyman was markedly legalistic: “He started with a written document; he applied his logical faculties to its interpretation, and to the application of

its teachings and its examples or precedents.”¹⁰⁸ If God’s holy laws could be written in the Bible, then man’s basic covenants could also be written.

Finally, not only did the belief in written constitutions stem from covenant theology, but “the insistent demands from the towns for a constitutional convention seems to have been due in part at least to the ministers.”¹⁰⁹ The clergy would tolerate no “make-shift government” set up by a mere legislature. The people, by breaking with the British government, were in a state of nature, and only they, the people, had the right to set up a new government by “a compact made by themselves in a constitutional convention for that purpose.”¹¹⁰ Thus, when the Massachusetts legislature drafted a constitution and presented it to the people, the ministers of the towns and villages led the opposition to its ratification because only the people, they reasoned, had the right to create a constitution. The Constitutional Convention, the brilliantly simple institution created during this era as a means of implementing the covenant-social compact theory of government, has been called “America’s basic institution.”¹¹¹ And the clergy helped conceive and implement it.

Although the influence of the clergy and of the churches had diminished by the time of the actual drafting of the Constitution, significant vestiges remained of the tremendous role the clergy had played in the settling of America. “In the days of New England’s foundation, political leadership as well as moral guidance was beyond question with the clergy, and only the commandments of God took precedence over their teachings.”¹¹² For more than a century after the first colonies were planted in the New World, ministers, as a class, exercised predominant leadership in civic and social affairs, as well as ecclesiastical matters. As late as 1740, clergymen exercised greater political influence and leadership than lawyers, as a class.¹¹³ And while “nonprofessing” Christians accounted for a large percentage of American population in the early eighteenth century, it would be erroneous to construe this to mean that these “nonprofessing” Christians were neither religious nor influenced by the clergy.¹¹⁴ In the first place, the fact that many believers were not admitted to the church covenant was due to the strictness of the Calvinist doctrine of election. The fact that God had not predestined them for election (or church membership) did not mean they did not seek the blessings of his grace, or respect the influence of ministers in civic affairs. Moreover, after the Great Awakening the number of churches and church members dramatically increased. By 1780 there were more than nineteen hundred congregations of “covenant theology” main-line denominations (Congregationalists, Presbyterians, and Baptists).¹¹⁵

By the time of the revolutionary war, the roles of clergymen and churches, if “not always consistent and calculated,” were conspicuous and critical.¹¹⁶ “Men of the time asserted that the dissenting clergy and

especially the Puritan clergy of New England were among the chief agitators of the Revolution and, after it began, among the most zealous and successful in keeping it alive.¹¹⁷ The evidence strongly supports this claim. The pulpits “thundered” with patriotic sermons.¹¹⁸ And “it must be remembered, too, that the pulpit was in that day the most direct and effectual way in reaching the masses—far outrivaling the newspaper, then only in its infancy.”¹¹⁹ The educated and literate citizenry, moreover, were inundated with the pervasive written influence of the clergy. In the first half of the eighteenth century, more than two-thirds of the books and pamphlets printed in the American colonies were on religious subjects. And from 1750 to 1775, approximately one-half of all American publications dealt with religious matters.¹²⁰

The political leaders of the revolutionary movement openly courted the clergy.¹²¹ In some cases, little persuasion was necessary. The legend and lore of American revolutionary history are filled with stories of the colorful, firebrand, liberty-preaching clergymen of the day, such as the pastor of the German church in the Shenandoah Valley, who, after preaching from Ecclesiastes 3:8 (“A time of war, and a time of peace”) ended his sermon with the declaration: “‘There is a time to fight and the time is here.’ Removing his clerical gown, he appeared in a colonel’s uniform; whereupon, three hundred men of his congregation enlisted under him.”¹²² And there is also the story of the Presbyterian minister in South Carolina who reportedly “preached with a gun in his pulpit and a powderhorn suspended about his neck.”¹²³

After the military victory was won, the clergy also played a “conspicuous role” in setting up the new constitutional governments of the various states and of the United States.¹²⁴ It was natural for citizens who had learned the fundamental ideas of political philosophy from the pulpit to turn to their ministers for assistance in writing their constitutions.¹²⁵ For example, in the three New England states in which state constitutions were drafted during this era, sixty-six different ministers were listed as members of congresses, conventions, or public committees, and more than half of them were directly involved in writing or amending constitutions.¹²⁶ In Massachusetts alone, thirty-eight ministers were identified, including twenty-six who were directly involved in constitution-drafting bodies.

It should be clear, then, that “covenant” was the germinal concept for many of the feelings, thoughts, and practices that gave rise to American constitutionalism. And this driving idea was manifest first, and most importantly, in covenant theology. The most fundamental concepts and institutions that were incorporated into the Constitution of the United States evolved out of the values and institutions of covenant theology, including popular sovereignty, limited government, and the notion of supreme, immutable law. The leaders and members of covenant-based churches

believed in, and fought for centuries to assert, God-given inalienable rights. And they believed in and preached the necessity for republican virtue.

The covenant perspective on the Constitution has particular significance for members of The Church of Jesus Christ of Latter-day Saints, who consider themselves to be the modern heirs of the Abrahamic covenant. The doctrines of the restored Church emphasize the covenant perspective. A computerized scripture search indicates that the word “covenant” and derivations of it appear 294 times in modern revealed scriptures, 159 times in the Book of Mormon alone, and a total of 637 times in all the canon including the Bible; the word “promise” and derivations of it appear 188 times in modern revealed scriptures, 119 times in the Book of Mormon alone, and 361 times in all the scriptures including the Bible. Latter-day Saints believe that America was settled, liberated, and raised up as a nation “by the power of God” (1 Ne. 13) and that God “established the Constitution of this land, by the hands of wise men whom [he] raised up unto this very purpose” (D&C 101:80). The Book of Mormon teaches that Americans will forfeit their liberties and suffer destruction if they break the covenant which is upon all the inhabitants of this land to worship and obey the Savior.¹²⁷

In this year of the bicentennial of the signing of the Constitution, we would do well to remember the heritage of our Constitution as a covenant. For the covenant perspective that so thoroughly pervaded the spirit and values of the Constitution, as well as its words and institutions, is still relevant today. It holds enormous significance for such contemporary controversies as whether judges hearing constitutional cases are bound to interpret the Constitution or whether they may take a modern “noninterpretivist” approach. More importantly, if the founders of 1787 and their covenanting forebears were right about the necessity of a virtuous citizenry, the sacredness of civil covenants, and the serious consequences that attend their neglect or breach, Americans of 1987 have an urgent duty to rediscover the Constitution as covenant.

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¹Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969), 7. For backgrounds of the era, see Sydney E. Ahlstrom, *A Religious History of the American People*, 2 vols. (Garden City, N.Y.: Image Books, 1975), 1:130–35, 300–305, 355–64; Alice Mary Baldwin, *The New England*

Clergy and the American Revolution (New York: F. Ungar Publishing Co., 1958), passim; Peter Ymen DeJong, *The Covenant Idea in New England Theology, 1620–1847* (Grand Rapids, Mich.: Wm. B. Eerdmans Publishing Co., 1945), 78–92, 211–14; Andrew Cunningham McLaughlin, *The Foundations of American Constitutionalism* (New York: New York University Press, 1932), 68; Clinton L. Rossiter, *Seedtime of the Republic* (New York: Harcourt, Brace, 1953), 36–56, 393–409; Nelson R. Burr, James Ward Smith, and A. Leland Jamison, eds., *A Critical Bibliography of Religion in America*, 4 vols. (Princeton: Princeton University Press, 1961), 4:963–80; and Claude H. Van Tyne, “Influences of the Clergy, and of Religious and Sectarian Forces, on the American Revolution,” *American Historical Review* 19 (October 1913): 44–64.

²McLaughlin, *Foundations*, 70. McLaughlin makes an impressive argument that the fundamental principles of American constitutionalism derive from Reformation covenant theology, colonial corporate organization, and Enlightenment political philosophy.

³*Ibid.*, 72; DeJong, *Covenant Idea*, 61.

⁴Ahlstrom, *Religious History* 1:130–31; *Covenant Idea*, 15–24.

⁵Ahlstrom, *Religious History* 1:131.

⁶DeJong, *Covenant Idea*, 24.

⁷Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Belknap Press, 1967), 32.

⁸McLaughlin, *Foundations*, 33. McLaughlin also declares that the concept of covenant was “dominant and central” (72).

⁹Rossiter, *Seedtime*, 53.

¹⁰See Baldwin, *New England Clergy*, 24.

¹¹Burr, Smith, and Jamison, eds., *Critical Bibliography* 4:966–69.

¹²Baldwin, *New England Clergy*, 13–14.

¹³Ahlstrom, *Religious History* 1:131; DeJong, *Covenant Idea*, 87–92.

¹⁴McLaughlin, *Foundations*, 14–16.

¹⁵Burr, Smith, and Jamison, eds., *Critical Bibliography* 4:974–76; DeJong, *Covenant Idea*, 15–79.

¹⁶Baldwin, *New England Clergy*, 24; DeJong, *Covenant Idea*, 80.

¹⁷Burr, Smith, and Jamison, eds., *Critical Bibliography* 4:970–71.

¹⁸*Ibid.* 4:969–70.

¹⁹See, generally, McLaughlin, *Foundations*, 14–16.

²⁰DeJong, *Covenant Idea*, 64. According to DeJong, the Anabaptists emphasized covenant in church government; the Reformers emphasized covenant in church doctrine (73).

²¹*Ibid.*, 64.

²²*Ibid.*, 68.

²³*Ibid.*, 81. The Pilgrims were separatists from the established church; the Puritans were reformers who tried to remain within the established church. Nevertheless, as DeJong points out, within a month after the establishment of the first Puritan settlement at Salem the settlers “had formulated and agreed upon a church covenant” (83).

²⁴McLaughlin, *Foundations*, 20.

²⁵Baldwin, *New England Clergy*, 19, and for examples of church covenants see Appendix A, 173–82; see also DeJong, *Covenant Idea*, 84–86.

²⁶Quoted in Rossiter, *Seedtime*, 172.

²⁷McLaughlin, *Foundations*, 22.

²⁸*Ibid.*, 25–26; DeJong, *Covenant Idea*, 72, 78.

²⁹DeJong, *Covenant Idea*, 78.

³⁰Burr, Smith, and Jamison, eds., *Critical Bibliography* 4:969–70.

³¹*Ibid.*

³²*Ibid.*, 214; see also Rossiter, *Seedtime*, 43–47; see, generally, DeJong, *Covenant Idea*, 110–22. Indeed, evolution of a theological doctrine of the Half-Way Covenant can be seen in terms of political theory as an attempt to extend the franchise to more members of the community.

³³McLaughlin, *Foundations*, 33.

³⁴*Ibid.*, 69.

³⁵*Ibid.*, 34.

³⁶DeJong, *Covenant Idea*, 81.

³⁷McLaughlin, *Foundations*, 35–37; see also Rossiter, *Seedtime*, 174.

³⁸McLaughlin, *Foundations*, 69; see also Rossiter, *Seedtime*, 172–74. Hooker also taught that “the foundation of authority is laid, firstly, in the free consent of the people” (Baldwin, *New England Clergy*, 26–27). Hooker’s explanation of the covenant basis of society and of government was so clear that it has been said he “could have written Chapters 7 and 8 of Locke’s *Second Treatise*” (Baldwin, *New England Clergy*, xii).

³⁹McLaughlin, *Foundations*, 73.

⁴⁰*Ibid.*, 74.

⁴¹Rossiter, *Seedtime*, 53. For examples of some of the town covenants used in New England towns, see Appendix A of Baldwin, *New England Clergy*, 173–82.

⁴²Baldwin, *New England Clergy*, 74: “The continuity of this [covenant] theory of religion and civil organization is perfectly plain.”

⁴³McLaughlin, *Foundations*, 86.

⁴⁴Rossiter, *Seedtime*, 53.

⁴⁵Van Tyne, “Influences,” 48. “Samuel Davies, the eloquent Virginia preacher to whom Patrick Henry listened from his eleventh to his twenty-second year, taught that the British constitution was “but the voluntary compact of sovereign and subject.” It is not surprising to find Patrick Henry espousing the same idea (*ibid.*, 49).

⁴⁶*Ibid.*, 49.

⁴⁷Merle Curti, “The Great Mr. Locke, America’s Philosopher, 1783–1861,” *Huntington Library Bulletin* 11 (April 1937): 107 8; Wood, *Creation*, 283; John Eidsmoe, *Christianity and the Constitution* (Grand Rapids, Mich.: Baker Books, 1987), 51–53. Locke was the writer most frequently cited in American political writings during the period from 1760 to 1779 (Eidsmoe, *Christianity and the Constitution*, 53).

⁴⁸Rossiter, *Seedtime*, 40.

⁴⁹*Ibid.*, 407.

⁵⁰*Ibid.*, 406.

⁵¹Baldwin, *New England Clergy*, xii.

⁵²See DeJong, *Covenant Idea*, 212; Rossiter, *Seedtime*, 53.

⁵³Baldwin, *New England Clergy*, 23.

⁵⁴McLaughlin, *Foundations*, 108–9.

⁵⁵*Ibid.*, 75.

⁵⁶Baldwin, *New England Clergy*, 15, 39.

⁵⁷McLaughlin, *Foundations*, 108–9.

⁵⁸“Hooker was the most constructive exponent among orthodox Puritans of . . . the sovereignty of the people, which is the logical foundation of the theory of free association, and limited magisterial authority, which is its most logical extension” (Rossiter, *Seedtime*, 174).

⁵⁹*Ibid.*, 177.

⁶⁰Wood, *Creation*, 283.

⁶¹Ahlstrom, *Religious History* 1:363; see also Baldwin, *New England Clergy*, xii.

⁶²Baldwin, *New England Clergy*, 35.

⁶³McLaughlin, *Foundations*, 108–9.

⁶⁴*Ibid.*, 82.

⁶⁵Baldwin, *New England Clergy*, 142.

⁶⁶McLaughlin, *Foundations*, 100–101.

⁶⁷*Ibid.*, 102 (describing a monograph published in 1656 by Sir Henry Vane).

⁶⁸*Ibid.*, 21, 72.

⁶⁹Baldwin, *New England Clergy*, 23.

⁷⁰Rossiter, *Seedtime*, 40.

⁷¹*Ibid.*, 54.

⁷²See, generally, DeJong, *Covenant Idea*, 93–176.

⁷³Baldwin, *New England Clergy*, 138; McLaughlin, *Foundations*, 29–34, 75.

⁷⁴Wood, *Creation*, 116.

⁷⁵Chap. 3 of bk. 3 of Charles Louis de Montesquieu, *The Spirit of Laws* [1748], trans. Thomas Nugent, 2 vols. (London: G. Bell and Sons, 1902). Montesquieu is identified as the most cited theorist of the 1780s in Eidsmoe, *Christianity*, 53.

⁷⁶Wood, *Creation*, 68.

⁷⁷*Ibid.*, 69.

⁷⁸*The Works of Edmund Burke*, 12 vols. (Boston: Little, Brown and Co., 1866), 4:51–52.

⁷⁹Richard Vetterli and Gary Bryner, *In Search of the Republic: Public Virtue and the Roots of Republican Government* (Totowa, N.J.: Rowan and Littlefield, 1987), 1.

⁸⁰Wood, *Creation*, 124. Fifty years after the Constitution was adopted, Tocqueville documented the continued belief in the necessity of virtue: “Religion in America takes no direct part in the government of society, but nevertheless it must be regarded as the foremost of the political institutions of that country. . . . [Americans] hold it to be indispensable to the maintenance of republican institutions. This opinion . . . belongs to the whole nation, and every rank of society” (Alexis de Tocqueville, *Democracy in America* [1835], 2 vols. [New York: Alfred A. Knopf, 1945], 1:305–6; see also 2:20, 145). In his farewell address, George Washington warned: “Morality is a necessary spring of popular government. Let us with caution indulge this opinion that morality can be maintained without religion. . . . Reason and experience both forbid us to expect the national morality can prevail in exclusion of religious principle” (John C. Fitzpatrick, “George Washington and Religion,” *Catholic Historical Review* 15 [April 1929]: 23, 41–42). Even today it is widely believed (though perhaps less widely than before) that “American democracy rests squarely on the assumption of a pious, honest, self-disciplined, moral people” (Rossiter, *Seedtime*, 55).

⁸¹On these ideas see McLaughlin, *Foundations*, 33; DeJong, *Covenant Idea*, 61; Sidney E. Mead, “Abraham Lincoln’s ‘Last, Best Hope of Earth’: The American Dream of Destiny and Democracy,” *Church History* 23 (March 1954): 3, 5–9; and Bailyn, *Ideological Origins*, 32.

⁸²R. Mathisen, *The Role of Religion in American Life* (Washington, D.C.: University Press of America, 1982), 1.

⁸³Bailyn, *Ideological Origins*, 33.

⁸⁴See John Adams, *A Dissertation on the Canon and the Feudal Law* (London: N.p., 1765); and Wood, *Creation*, 114–18.

⁸⁵Wood, *Creation*, 117.

⁸⁶Louis Weeks, *A New Christian Nation* (Wilmington, N.C.; Consortium, 1977), 5; Robert N. Bellah, “Civil Religion in America,” *Daedalus* 96 (Winter 1967): 1–21.

⁸⁷Rossiter, *Seedtime*, 39.

⁸⁸Van Tyne, "Influences," 44.

⁸⁹McLaughlin, *Foundations*, 71.

⁹⁰Baldwin, *New England Clergy*, 138; McLaughlin, *Foundations*, 96.

⁹¹In a sermon written aboard the *Arabella*, John Winthrop taught that if God would bring them to a new place and give them a new government, which they would establish by consent, "then hath he ratified this covenant and sealed our Comission, and will expect a strict performance of the articles contained in it" (McLaughlin, *Foundations*, 33).

⁹²*Ibid.*, 15. The clergy believed that rulers were God's delegates and as such were entitled to all respect and obedience. But the delegation did not come directly from God; rather, God had authorized the people to establish their governments.

⁹³*Ibid.*, 20.

⁹⁴Van Tyne, "Influences," 50.

⁹⁵Rossiter, *Seedtime*, 393–94. Scores of published letters and pamphlets developed this argument (see *ibid.*, 395–97).

⁹⁶*Ibid.*, 395. See also Van Tyne, "Influences," 54–56.

⁹⁷Baldwin, *New England Clergy*, 29.

⁹⁸McLaughlin, *Foundations*, 75.

⁹⁹*The Works of John Adams*. 10 vols. (Boston: Little, Brown, and Co., 1850), 10:301; see also Van Tyne, "Influences," 49–51.

¹⁰⁰Van Tyne, "Influences," 59.

¹⁰¹*Ibid.*, 58.

¹⁰²Wood, *Creation*, 117. British tyranny had been explained at least in part as divine punishment for the wickedness of the American people. Deliverance would come as a result of repentance (*ibid.*, 116).

¹⁰³Ahlstrom, *Religious History* 1:130.

¹⁰⁴Burr, Smith, and Jamison, eds., *Critical Bibliography* 4:974: "The aim of Puritan theology was to elucidate the laws of God's universe"; McLaughlin, *Foundations*, 71.

¹⁰⁵Baldwin, *New England Clergy*, 29 n. 22.

¹⁰⁶Rossiter, *Seedtime*. 54. Another scholar has written that these clergymen "took nothing upon human authority alone" (Frank H. Foster, "The Eschatology of the New England Divines," *Bibliotheca Sacra* 43 [1886]: 1).

¹⁰⁷Rossiter, *Seedtime*, 54.

¹⁰⁸McLaughlin, *Foundations*, 76.

¹⁰⁹Baldwin, *New England Clergy*, 137.

¹¹⁰*Ibid.*, 136.

¹¹¹McLaughlin, *Foundations*, 95. During the decade prior to the drafting of the Constitution of the United States, all of the American states, except for Rhode Island and Connecticut, were engaged in drawing up constitutions for their own state governments.

¹¹²Van Tyne, "Influences," 54.

¹¹³McLaughlin, *Foundations*, 71; Baldwin, *New England Clergy*, 33; Martin E. Marry, *Religion, Awakening and Revolution* (Wilmington, N.C.: Consortium, 1977), 114.

¹¹⁴See Rossiter, *Seedtime*, 39; Marry, *Religion*, 112–20.

¹¹⁵Marty, *Religion*, 120. In New England alone, the number of local churches trebled after the Great Awakening, going from 146 in 1700 to 423. This number nearly doubled again, rising to 749 by the time of the Revolutionary War (*ibid.*, 53).

¹¹⁶*Ibid.*, 112; see, generally, McLaughlin, *Foundations*, 71; Marry, *Religion*, 112–15.

¹¹⁷Baldwin, *New England Clergy*, xi; Van Tyne, “Influences,” 48: John Adams regarded the Calvinist preachers Johnathon Mayhew and Samuel Cooper as “prime movers” of the Revolution.

¹¹⁸Van Tyne, “Influences,” 52, 57.

¹¹⁹*Ibid.*, 54. From the earliest colonial times, the custom had developed of preaching “Election Day Sermons” which were subsequently printed, widely distributed, and widely read (especially after 1760).

¹²⁰*Ibid.*, 54 n. 48. In the 1770s, 44 percent of the political writings cited the Bible (Eidsmoe, *Christianity*, 51–52).

¹²¹Van Tyne, “Influences,” 55.

¹²²*Ibid.*, 56.

¹²³*Ibid.*, 57.

¹²⁴McLaughlin, *Foundations*, 71.

¹²⁵Baldwin, *New England Clergy*, 134.

¹²⁶*Ibid.*, 183–89.

¹²⁷See 1 Nephi. 14:6–7; 2 Nephi. 1:6–7, 10:10–20; 3 Nephi. 16:8–16, 20:15–20, 21:14–21; Morm. 5:19–24; Ether 2:9–12.