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Sources of American Federalism: Founders, Reformers & Ancient Hebrews

By Kelly O'Connell Sunday, June 27, 2010

Federalism, as understood today, began in America, intuited by James Madison, Thomas Jefferson and other Founders. Yet, despite its spectacular success, the development of federal political theory is not widely understood. Its growth from covenant and federal theology traces an unbroken line from the Reformation, then back to ancient Jewish federal covenant systems.

Federalism was originally created to fight against the predictable tyrannical nature of top-down hierarchical governments, existing globally in the ancient and medieval worlds. The ultimate source of this theory was the federal theology developed by the Reformers, battling to distance an all-powerful Church. This formula was then taken by political reformers, like the Founding Fathers and Framers, to be used as a diagram for how effectively to run a state. Federalism is the most flexible and nuanced government theory in history. This essay plumbs this tale.

I. Overview

The term "federal" comes from the Latin word foedus, meaning "covenant." As detailed previously, the term covenant itself is a Hebrew word meaning "to cut," emphasizing the nature of Old Testament pacts marked by the killing of animals, consummating in blood a contract or pact. A covenant between a person and God is like a marriage agreement, between a lesser and greater power, where the sovereignty of the lesser is preserved. The ceremonial sacrifice of animals is a rich Israeli tradition, especially seen in the Jewish Temple. Biblical writers claim Adam and Eve's sin in Eden caused the need for blood atonement. Accordingly, this spilling of animal blood merely foreshadowed Christ's judicially sacrificial death later chronicled in the New Testament.

The ancient Jews developed the first federal system of government. But after the land was judged by Yahweh, and subjugated, the practice fell into disuse. It was not implemented again until the Reformers began studying the Old Testament form of government for clues on God's approach to civil society. As a result, the Puritans and others spent centuries developing the ideas of covenant and federal theology, eventually transferred to America, where it blossomed into civil government theory.

Federalism Defined: Daniel Elazar, in Exploring Federalism, defines federalism as "self-rule plus shared rule. Federalism thus defined involves some kind of contractual linkage of a presumably permanent character that (1) provides for power sharing, (2) cuts around the issue of sovereignty, and (3) supplements but does not seek to replace or diminish prior organic ties where they exist."

According to world famous Dutch political scientist Arend d'Angremond Lijphart, in his article "Non-Majoritarian Democracy: A Comparison of Federal and Consociational Themes," Federalism contains five aspects:

1. A written constitution which specifies the division of power and guarantees to both the central and regional governments that their allotted powers cannot be taken away;
2. A bicameral legislature in which one chamber represents the people at large and the other the component units of the federation;
3. Over-representation of the smaller component units in the federal chamber of the bicameral legislature;
4. The right of the component units to be involved in the process of amending the federal constitution but to change their own constitutions unilaterally;
5. Decentralized government, that is, the regional government's share of power in a federation is relatively large compared to that of a regional governments in unitary states.

II Ancient Hebrew Roots

Foundations for modern federalism come from Old Testament covenants sworn between the Israelis and God. The first covenant was memorialized between all people and God, symbolized to Noah after the Genesis Flood by a rainbow (Genesis 9:8-17). Then, when Moses ascended Mt. Sinai he made a covenant with Yahweh, which the congregation of Jews (Adat Bnei Yisrael) swore to after he descended. Details of this were noted in the Ten Commandments (Exodus 19:1-8), being the shnei luhot ha-brit (two tablets of the covenant). The rest of the law was the Sefer ha-Brit, according to Daniel J. Elezar and Stuart A. Cohen, who have written in great detail on the structure of ancient Israeli government in "The Jewish Polity, Jewish Political Organizations From Biblical Times to the Present."

It was Joshua's work (Joshua 24)i with the Tribes (Edah, ie 12 Tribes) where the model for the modern covenant and federal union was formed. Joshua and the Hebrew tribal officers met at Schechem to renew Moses' covenant and reestablish the Israelite confederacy on a landed basis. Here the covenant was related from persons to God, from the permanent heads (Nesiei ha-edah) of individual Tribes (shevatim) to national magistrate (Shofet), to townships (Arim), households (Batei av) and between the entire people to each individual. The federal nature of the Old Testament government stands out, where smaller entities have independence and representation for each group. For example, the individual tribes were governed by a Magistrate (Nasi), given advice by a council of elders (Zekenim), which oversaw the tribal council of all males over 20 years of age (Ha-Shevet). And the entire community of families, tribes, prophets, priests and king were all federally under Yahweh and His Word.

Daniel Elazar, in his Covenant & Polity in Ancient Israel, writes the biblical record describes two government types – the first represented by Egypt (Genesis 10:13-14), and Nimrod's kingdom (Genesis 10:1-12), being the formation of the empires created by natural man. The second is the covenant form of government, found only in the Semitic peoples, resulting from revelation. As Elazar states, "A covenantal politics, then, is directed simultaneously toward linking people and communities as partners in common tasks and allowing them space in which to be free." So in Yahweh's economy, both covenant and federal theology are designed to increase the security and

freedom of mankind.

The Old Testament notion of covenant was taken from the formula in Deuteronomy 26:16-19:

> The LORD your God commands you this day to follow these decrees and laws;
> carefully observe them with all your heart and with all your soul. You have declared
> this day that the LORD is your God and that you will walk in his ways, that you will
> keep his decrees, commands and laws, and that you will obey him. And the LORD has
> declared this day that you are his people, his treasured possession as he promised,
> and that you are to keep all his commands. He has declared that he will set you in
> praise, fame and honor high above all the nations he has made and that you will be a
> people holy to the LORD your God, as he promised.

III Reformed Covenant Foundations

Three seminal theologians paved the way for federal civil government theory: Bullinger, Althusius, and Cocceius. But the trend started when Martin Luther (1483-1546), John Calvin (1509-1564) and colleagues started the Reformation (beginning October 31, 1517), un-tethering the Medieval Church from its bombastic moorings. These Reformers studied biblical languages and Bible anew, believing the Church had buried much history to help establish power.

Many scholars followed with studies of covenant and federal theology, and therefore, eventually federal civil government. The earliest covenant writer was Swiss Huldrich Zwingli, founder of Reformed Protestantism. He outlined modest applications of the covenant, then used by Heinrich Bullinger in the first real modern covenant system, his systematic federal theology. Eventually the torch passed to John Calvin in Geneva.

Towards the end of the 16th century, the first modern Reformed Protestant political scientist, Johannes Althusius, wrote Politica Methodice Digesta. This work offered a realistic model for a proper civil government founded on covenants. It set the mold for all future federal theology. Then Johannes Cocceius commented upon the work, using knowledge of the Hebrew language and culture to help explain the topic.

A. Heinrich Bullinger

Heinrich Bullinger was the first Reformed covenant theologian, writes J. Wayne Baker in "Covenant and Community in the Thought of Heinrich Bullinger." He was the first to declare the bilateral nature of the covenant, seeing in them foundation for ancient Jewish society. Bullinger taught the Ten Commandments were a "renewal of the ancient covenant, a written summary of God's will for His people, an explication of the conditions of the covenant." Bullinger's description of society by covenant was groundbreaking—no ancient pagan author had ever conceived it. Yet, he still had no remedy for tyranny. A single covenant existed between the people and God, and they either enjoyed a godly ruler, or suffered under an impious one.

B. Johann Althusius & Politica Methodice Digesta

The Politica Methodice Digesta by Johann Althusius is the first modern work of political science. It accepts John Calvin's idea that God's Grace was available to those who followed His commands and lived under his covenants, according to Thomas O. Hueglin in "Covenant and Federalism in the Politics of Althusius." This opposed the Medieval Church's teaching that Grace was only for those in heaven. Many early Pilgrims sat under Althusian teaching in Leiden, Netherlands before coming to America, so similarity between his work and say, the sermon A Model of Christian Charity by John Winthrop aboard the flagship Arabella, is by no means chance.

Althusius tackles the thorniest societal dilemmas: 1) How to handle tyranny? And, 2) How a society can be constructed upon biblical covenant model, yet allow religious tolerance within various sects of believers, and even accept non-believers? His answer to the first problem was to add another covenant. This means Bullinger's initial God-King-People covenant gets added another, between the King & People – a second civil covenant to add to the first religious one.

This second covenant becomes the foundation for the famed "social contract" so influential by Rousseau and Locke, decades later, which also created a true foundation for religious liberty. It opened the development of a truly civil society, not dependent upon religious identity. This entire model is based upon the outline of the doctrine of God's Sovereignty, whereas – many are called, but few are chosen, yet all must still take their predestined part in civil society.

C. Johannes Cocceius
Johannes Cocceius powerfully impacted federal theology, having delivered the first new Christian theology since Augustine, claims Charles S. McCoy in "History, Humanity and Federalism in the Theology and Ethics of Johannes Cocceius." A prodigy in languages, Cocceius mastered Hebrew and then studied the Jewish covenants, supplying irreplaceable insights to Bullinger and Althuius' works on federal theology.

McCoy states Cocceius saw the role of mankind in Yahweh's world as dynamic. His view of the covenants rested upon four propositions: 1) Creation is incomplete and in process toward greater fulfillment and consummation; 2) history occurs in developmental phases through God's covenants; 3) History's development demands divine-human interaction, guided by God, to achieve man's destiny ; 4) Human history is defined by sin & redemption; and salvation and liberation. Cocceius' theology claimed that no human activity could occur without a covenant foundation, and that people were God's partner in the creation of history.

IV New World Federalism

Daniel Elazar, in his "Covenant and Civil Society," traces New World federalism to the doctrines of Reformed Protestantism. This is ultimately linked to a single state – Switzerland, and two main areas, Zwingli and Bullinger in Zurich, and Calvin in Geneva. These early sources then filtered out and influenced the French Huguenots, the Dutch Reformed, the Scots Covenanters, and the English Puritans. And it was the Puritans who then developed the most sophisticated theory on federal theology.

As the Enlightenment developed and grew, Puritanism diminished. Such influential philosophical writers as John Locke, Baruch Spinoza, Thomas Hobbes, Jean Jacques Rousseau, etc helped secularize covenant theory. One result was the American Constitution. All of this was articulated in the commonplace of natural law, understood to be divine in origin, but worldwide in application.

V American Federalism

A. John Winthrop
A British founder of the Massachusetts Bay Colony, John Winthrop came to the New World in 1630. A wealthy lawyer, Winthrop was a deep-thinking, pious Puritan who became Governor of Massachusetts. According to Edmund S. Morgan, in "The Puritan Dilemma, The Story of John Winthrop," he and other Puritans believed their sworn covenants with God would bring a blessing if they also followed his Commands, but a curse, if they did not.

While at sea Winthrop delivered the sermon "A Model of Christian Charity" which discusses many

covenant ideas. Here is an excerpt:

> Thus stands the cause between God and us. We are entered into covenant with Him for this work. We have taken out a commission. The Lord hath given us leave to draw our own articles. We have professed to enterprise these and those accounts, upon these and those ends. We have hereupon besought Him of favor and blessing. Now if the Lord shall please to hear us, and bring us in peace to the place we desire, then hath He ratified this covenant and sealed our commission, and will expect a strict performance of the articles contained in it; but if we shall neglect the observation of these articles which are the ends we have propounded, and, dissembling with our God, shall fall to embrace this present world and prosecute our carnal intentions, seeking great things for ourselves and our posterity, the Lord will surely break out in wrath against us, and be revenged of such a people, and make us know the price of the breach of such a covenant.

Winthrop's government of Massachusetts was itself based upon a covenant, as Puritans believed every proper state should be. He wrote, "It is the nature of and essence of every society to be knit together by some Covenant, either express or implied."

B. James Madison

A century later, during the fight over the Constitution, the Founding Fathers battled over which form of government to choose, writes Jean Yarbrough in "Federalism & Rights." Against today's definitions, "federalism" then meant "confederal" or "confederacy," referring to a "league of friendship." At that time the agreement between the states was one of mutual protection, and not much more. Following Montesquieu's lead, the Anti-Federalists wanted a small state and society of virtues, whereas the Federalists were certain the only way a large country like America would survive was through centralized government. Yet, a compromise was hammered out.

According to John Samples, in "James Madison and the Future of Limited Government," Madison, the chief architect of the Constitution, was aided by Thomas Jefferson in his painstaking research of governments of history. Madison slowly concluded the only hope for America was federalism, but in a manner never attempted before – where dual sovereignty was truly split between state and national government.

Madison created a novel kind of government which was neither a tyranny, nor a loosely joined confederacy, but a third type – the modern federal government, according to Daniel Elazar in "The Covenant Connection; From Federal Theology to Modern Federalism." In this he located all sovereignty in the People, neither centralized, nor decentralized – but by non-centralization. This assumes no single source of authority, but authority split between different powers, ie the famed "checks and balances" system. It also adds the tripartite fissure in government power – between the legislative, judicial and executive branches. The government itself then became the model which civil society was based upon.

The ultimate model for all of this is biblical federal covenant theology, but after the idea was stripped of its religious definition by Enlightenment thinkers. It then became the "social compact," which lifted men and women out of the state of nature and into a civil society from which the modern world then developed.

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Kelly O'Connell is a writer and attorney. He was born on the West Coast, raised in Las Vegas, and matriculated from the University of Oregon. After laboring for the Reformed Church in Ireland, he returned to America and attended law school in Virginia, where he earned a JD and a Master's degree in Government. He spent a stint working as a researcher and writer of academic articles at a Miami law school, focusing on ancient law and society. He then returned West and worked as an assistant district attorney. Kelly is now is a private practitioner with a small law practice in New Mexico.
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