

DRAFT

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Covenant Liberty in Puritan New England

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Abstract

This Article argues that New England Puritan covenant theology was a fertile seedbed for a number of American constitutional ideas of ordered liberty and orderly pluralism. Puritan constructions of the "liberty of covenant" inspired later theories of liberty of conscience and free exercise of religion. Puritan constructions of social, political, and ecclesiastical "covenants of liberty" provided a foundation for later understanding of republican nationalism, separation and cooperation of church and state, and sundry checks and balances on authorities within both church and state.

Introduction

"Politics is the art of persons associating in order to establish, cultivate, and conserve social life."² "The protection of liberty [is] the vital spirit, soul, heart, and life of the commonwealth."³ On these twin foundations, the great Protestant jurist Johannes Althusius constructed his famous covenantal theory of authority and liberty in 1603. The foundation of Althusius's commonwealth was the family, formed by

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² *Politica Methodice Digesta of Johannes Althusius* [1614], ed. Carl J. Friedrich (1932), I.1 (p. 16).

³ Preface to *Politica Methodice Digesta* (1603 ed.), in *ibid.* (p. 5). See also *Politica* (1614), VIII.4-7, XVIII.63-69, 123-124, XXXIX.1-9. In his *Dicaelologicae libri tres, totum & universum Jus, quo utimur: methodice complectenes* (1618), I.18-34 Althusius described the "body and soul" of liberty more fully, and tied it to the rights to have property, make contracts, form households, and join other communities such as churches and guilds.

the covenant relationship between a man and a woman and their respective kin. Groups of families covenanted together to form villages, guilds, and churches. Groups of villages covenanted together to form provinces, the building blocks of nation-states. These layers of covenant community, Althusius believed, each formed through the consent of their constituent members, provided the foundation for both orderly pluralism and ordered liberty.

Much has been written on the intellectual origins and institutional progeny of Althusius' covenantal theory of authority and liberty (also called a "federal" theory, from *foedus*, the Latin term for covenant).⁴ It is now well understood that Althusius's work was a watershed in the Western intellectual tradition that gathered, mixed, and redirected several streams of biblical, classical, Catholic, and Protestant ideas of authority and liberty. It is also well understood that Althusius' work provided something of an apologia for the intense pluralism of the Holy Roman Empire and an architecture for building harmonious constitutional relations among the Empire's sundry political and religious units. In his own day, Althusius's ideas had rather little impact on the Holy Roman Empire itself which descended into the bitter Thirty Years War of 1618-1648. But Althusius's ideas did have influence on the Dutch politics of his day, particularly in the city of Emden where Althusius served as city official from 1604 until his death in 1638. For two centuries thereafter, his covenantal theories were sources of political inspiration and instruction on both sides of the Atlantic.

One group that took up Althusius's covenantal ideas were the New England Puritans, a number of whom spent in the Netherlands, including Emden, before making their way to the New World. The exact means by which Althusius and his writings influenced the New England Puritans is the subject of some controversy.⁵ But, regardless of whether Althusius's influence on the New England Puritans was personal or literary, direct or

⁴ See sources and discussion in Hans Ulrich Scupin, Ulrich Scheuner, and Dieter Wyduckel, eds., *Althusius-Bibliographie*, 2 vols. (1973); Thomas O. Hueglin, *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism* (1999); Emilio Bonfatti, Giuseppe Duso, and Merio Scattola, eds., *Politische Begriff und historisches in der Politica Methodica Digesta des Johannes Althusius* (2002); *Politica Johannes Althusius*, trans. and ed. Frederick J. Carney (1995); Otto von Gierke, *The Development of Political Theory*, trans. Bernard Freyd (1939).

⁵ See sources and discussion in my *The Reformation of Rights: Law, Religion, and Human Rights in the Calvinist Tradition* (2005), chap. 6; David W. Hall, *The Genevan Reformation and the American Founding* (2003), 203-216.

mediated, independent or intermixed, it is quite clear that some of his covenantal ideas of authority and liberty found their way into the political thought and practice of New England Puritans. The Puritans used these ideas to construct a distinctive understanding of what they called "covenant liberty."

Liberty of Covenant in Colonial New England

The royal charters that first constituted the New England colonies gave the Puritans broad latitude to conceive and create their ideal theology and polity. The charters imposed neither a religious nor a royalist establishment. The colonists were largely free to propound and profess their own religious beliefs, provided that they "wynn and incite the Natives of Country, to the Knowledg and Obedience of ... the Christian Fayth."⁶ The colonists were largely free to develop their own political and legal structures, provided that they "be not contrarie or repugnant to the Lawes [and] Statutes of ... England."⁷ They were largely free to sponsor the emigration of like-minded believers to the colony, provided that "none of the saide Persons be ... restrained" by the Crown and "[t]hat every [one] of them shalbe [temporarily] free and quitt from all Taxes."⁸ In the later seventeenth century, English authorities tried repeatedly to impose their will on colonial religion and politics through new forms of legislation and review. They succeeded somewhat at the turn of the eighteenth century with the passage of a new provincial charter in Massachusetts and with the reinforcement of royal control in the other New England colonies.⁹ For some four generations, therefore, the Puritans enjoyed both the homogeneity and the hegemony to carry out their theological and political experiments.

The doctrine of covenant was an essential solvent in both their theological and political experiments. The idea of a divine covenant between God and humanity, of course, was part of Western Christian theology from the very beginning. Theologians distinguished two biblical covenants: (1) the covenant of works

⁶ Charter of Massachusetts Bay (1629), reprinted in F. Thorpe, ed., *Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* (1909), 3:1846, 1857. See also Charter of Connecticut (1662), in *ibid.*, 2:529, 534.

⁷ Massachusetts Charter (1629), in *ibid.*, 3:1857. See also Connecticut Charter, in *ibid.*, 2:534; Grant of New Hampshire to Capt. John Mason (1629), in *ibid.*, 4: 2433, 2436.

⁸ Massachusetts Charter (1629), in *ibid.*, 3:1855.

⁹ Massachusetts Charter (1691), in *ibid.*, 3:1870.

whereby the chosen people of Israel, through obedience to God's law, are promised eternal salvation and blessing; and (2) the covenant of grace whereby the elect, through faith in Christ's incarnation and atonement, are promised eternal salvation and beatitude. The covenant of works was created in Abraham, confirmed in Moses, and consummated with the promulgation and acceptance of the Torah. The covenant of grace was created in Christ, confirmed in the Gospel, and consummated with the confession and conversion of the Christian. A few earlier Christian writers had also described the church as a "covenant community" and the Christian sacraments as "signs" and "symbols" of the covenant of grace. On the whole, however, discussions of covenant in the Christian theological tradition were only incidental and isolated, comprising little more than a footnote to the great doctrines of God and humanity, sin and salvation, law and Gospel.¹⁰

Puritan writers, first in Europe and then in America, transformed the covenant into one of the cardinal doctrines of their theology. "The whole of God's word," wrote one Puritan theologian already in 1597, "has to do with some covenant...."¹¹ "All that we teach you from day to day," another Puritan informed his students, "are but conclusions drawn from the covenant."¹² The doctrine of covenant, wrote another leading divine, "embraces the whole of the catechism.... [N]o context of Holy Scripture can be explained solidly, no doctrine of theology can be treated properly, no controversy can be decided accurately" without reference to this doctrine.¹³

The Puritans made two innovations to traditional understandings of God's covenant relations with persons. Together, these innovations proved critical to the expansion of the covenant motif within their theology of salvation, and to the liberalization of their theory of religious liberty.

First, the Puritans developed a more participatory theory of the covenant of works. Traditionally, the covenant of works was treated as God's special relation with the chosen people of

¹⁰ See detailed sources in Daniel J. Elazar, *Covenant & Commonwealth: From Christian Separation Through the Protestant Reformation* (1996); id., *Covenant and Civil Society: The Constitutional Matrix of Modern Democracy* (1998).

¹¹ Robert Rollock, *Tractatus de Vocatione Efficaci* (1597), in W. Gunn, ed., *Selected Works of Robert Rollock* (1849), 15.

¹² John Preston, *The New Covenant* (1629), 351; see David Zaret, *The Heavenly Contract: Ideology and Organization in Pre-Revolutionary Puritanism* (1985), 151.

¹³ Johann Heinrich Alsted, *Catechetical Theology* (1619), 28-29; see Jaroslav Pelikan, *Reformation of Church and Dogma, 1300-1700* (1984), 367.

Israel and their representatives, Abraham, Moses, and David. It designated the Israelites as God's elect nation and called them to serve as special agents in God's kingdom. It divulged to them in detail the requirements of God's law -- their obligations towards God, neighbor, and self. It demanded of them perfect obedience of God's law, and perfect fulfillment of their divine callings. It promised them, in return, eternal prosperity, blessing, and salvation.

For many Puritan writers, the covenant of works was not so limited in participation or purpose. The covenant of works was not created in Abraham, the representative of the Jews, but in Adam, the representative of all humanity. It was not a privileged relation in which only elect persons participated, but a natural relation, in which all persons participated. For the covenant of works was established at the creation of the world, before the fall into sin, the Puritans argued. Through Adam, the "federal head of the human race," all persons were parties to this covenant. Through Adam, all persons received its promises and blessings as well as its threats and curses.

This pre-fall covenant of works, the Puritans believed, was "God's special constitution for mankind," God's "providential plan for [all] creation."¹⁴ The covenant of works defined each person's telos or purpose in life, each person's role in the unfolding of God's providential plan. It instituted basic human relationships of friendship and kinship, authority and submission. It established basic principles of social, political, familial, and moral life and thought. It created the conditions for perfect communion with God, and perfect community among persons. To abide by this divine covenant, in every particular, was to earn eternal life and salvation; to breach the covenant was to receive eternal death and damnation.¹⁵

Adam and Eve's fall into sin did not abrogate this covenant of works, the Puritans argued. It only altered humanity's relation to it. The created norms set out in this covenant for the ordering and governing human life remained in effect. All persons still stood in covenant relationship with God. Because of their sin, however, all persons had lost their view of the norms of creation and lost their capacity to earn their salvation. Thus, after the fall, God sent his son, Jesus Christ, as humanity's guarantor and representative. As guarantor, Christ satisfied each person's debt under the

¹⁴ William Ames, *Medulla Theologica* (1623), 1.10; John Norton, *Orthodox Evangelist* (1654), 102ff.

¹⁵ *Ibid.*, 14-15; *The Works of Thomas Shepherd* (1851-1853), 1:17ff., 90ff.

covenant of works and absorbed the punishment which he or she deserved because of their sin. As representative, as the "second Adam," Christ negotiated a second covenant with God, the covenant of grace whereby the elect, despite their sin, could still inherit salvation.¹⁶ This new covenant of grace repeated the terms of the old covenant of works. But, unlike the old covenant, it conditioned a person's salvation on faith in Christ, not on adherence to the terms of the covenant. And this new covenant of grace revealed the terms of the covenant not only in the hearts and consciences of persons, but also in the pages of Scripture. Accordingly, the Puritans frequently referred to the Bible as The Book of the Covenant, the Covenant Register, The Book of Covenant Liberty.

Second, the Puritans reconfigured not only the traditional covenant of works, but also the traditional covenant of grace. Traditionally, the covenant of grace was treated primarily as God's merciful gift to his elect. God set the terms and obligations of the covenant and determined its parties and their participation. Persons, in their sin, could not demand God's gracious covenant gift or bind God by it once it was conferred. Persons could simply accept the covenant in gratitude.

Many Puritan writers, by contrast, came to describe the covenant of grace as a bargained contract between God and each person. Acts of divine will and human will were required to form this covenant. Through "voluntary condescension" (as the Westminster Confession put it), God offered the terms of salvation and promised to abide by the offer. Through a voluntary act of faith, a person accepted God's offer. Once God and the person had accepted the terms, both parties were contractually bound to the covenant. Each could insist upon the faithful compliance of the other.¹⁷ God could demand faithful devotion and service from the person; if the person refuses it, God was released from the covenant and free to consign the person to hell. But the person could also demand God to abide by his promise of salvation. "You may sue [God] of his bond written and sealed," wrote one Puritan, "and he cannot deny it." "Take no denyall, though the Lord may defer long, yet he will doe it, he cannot chuse; for it is part of his covenant."¹⁸ What traditionally had been treated as God's gift of faith and salvation to the elect became, in later Puritan covenant

¹⁶ Richard Alleine, *Heaven Opened: Or the Riches of God's Covenant of Grace* (1645), 29ff.

¹⁷ William Perkins, *A Treatise on God's Free Grace and Man's Free Will* (1626).

¹⁸ John Preston, quoted by Christopher Hill, *Puritanism and Revolution* (1958), 246.

theology, a bargained contract. What traditionally had been understood as God's covenant faithfulness to persons became God's contractual obligation to them. What traditionally had been a person's faithful acceptance of God's irresistible call to elected salvation became a person's voluntary formation of a covenant relationship with God.

Both the expansion of the parties and the contractualization of the terms of the covenant of salvation helped to expand Puritan understandings of religious liberty and religious pluralism. Initially, seventeenth-century Puritans still treated this covenant as something of a "divine adhesion contract." God set the covenantal terms for salvation in the Bible; a person had only the freedom to accept or reject them. Such sentiments can be seen in a lengthy 1682 tract on "covenant liberty" by Samuel Willard, the great New England systematizer of Puritan doctrine. Willard argued that every person had the "equal right," "title," "claim," "liberty" and "prerogative" "to enter and to enjoy every blessing of the covenant." But, by the time Willard finished spelling out all the standard terms and conditions of the covenant, there seemed to be few at liberty to enter the covenant, and little liberty left for those few who could.¹⁹

By the eighteenth century, however, some Puritan writers began to view this covenantal relationship between God and persons in more open and voluntarist terms. Not only was the covenant made more accessible to parties of various Christian faiths. The terms of the divine covenant itself were made more open to personal deliberation and innovation. Elisha Williams, the great grandson of early Puritan stalwart John Cotton, put the matter thus in 1744: "Every man has an equal right to follow the dictates of his own conscience in the affairs of religion. Every one is under an indispensable obligation to search the Scriptures for himself ... and to make the best use of it he can for his own information in the will of God, the nature and duties of Christianity. And as every Christian is so bound; so he has the inalienable right to judge of the sense and meaning of it, and to follow his judgment wherever it leads him; even an equal right with any rulers be they civil or ecclesiastical."²⁰ Such formulations became increasingly common among Puritan writers in the later eighteenth century. These sentiments

¹⁹ Samuel Willard, *Covenant-Keeping the Way to Blessedness* (1682). See further id., *Morality not be Relied on for Life* (1700); id., *Walking with God, The Great Duty and Privilege of True Christians* (1701).

²⁰ Elisha Williams, *The Essential Rights and Liberties of Protestants* (1744), 3, 7-8.

helped lead the New England leaders to greater toleration of Baptists, Anglicans, and other Christians who abided by the basic terms of the biblical covenants.

It was only a short step from this formulation to the more generic and generous religious liberty guarantee of the 1780 Massachusetts Constitution: "It is the right as well as the duty of all in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace or obstruct others in the public worship."²¹

Covenant theology was certainly not the only argument available for this constitutional guarantee of religious liberty. But, for the New England Puritans, covenant theology provided a sturdy foundation for a theory of ordered religious liberty and orderly religious pluralism. By expanding the ambit of the covenant of works, the Puritans expanded the realm of religious liberty to all persons, not just the elect. By contractualizing the terms of the covenant of grace, the Puritans expanded the range of religious exercises, no longer privileging established forms. But not all claims of religious liberty could be accepted. Legitimate claims had to be anchored in some semblance of a covenant with God, however each person chose to define this God and covenant. Legitimate claimants had to abide by the natural duties of love of God, neighbor, and self taught by the covenant of works, however each community chose to delineate these duties.

Covenants of Liberty

The Puritans regarded themselves not only as covenant persons in their relationship to God, but also as covenant people bound together by covenants with each other. Each of these covenants, they believed, though formed by voluntary human acts, was ultimately founded on the norms and principles set forth in the covenant of works. Each of these covenants had a place in God's providential plan, a purpose for which it existed.

²¹ Massachusetts Constitution (1780), Part I, Art. 2; see my "'A Most Mild and Equitable Establishment of Religion': John Adams and the Massachusetts Experiment," *Journal of Church and State* 41 (1999): 213-52.

Building in part on European prototypes, the New England Puritans distinguished three such covenants: (1) a social or communal covenant; (2) an ecclesiastical or church covenant; and (3) a political or governmental covenant. The social covenant created the society or commonwealth as a whole. The political and ecclesiastical covenants created the two chief seats of authority within that society, the church and the state, whose authority was both separated and pluralized. The social, ecclesiastical, and political covenants confirmed and coordinated the natural, religious, and political liberties of the members of these covenant communities.²²

Natural Liberty and The Social Covenant. At the creation of the world, the Puritan believed, God had vested all persons with "a natural liberty" and subjected them to "a natural law." The natural person, Winthrop declared, "stands in relation to [his fellow] man simply, [and] hath liberty to do what he lists; it is a liberty to [do] evil as well as to [do] good."²³ The vice or virtue of a person's actions is determined by the natural law, which God has written into the covenant of works that is binding on all.²⁴

The Puritans believed, however, that "the Voice of Nature plainly declares that Mankind" join together in social covenant and "dwell together in Societies."²⁵ This calling from a natural state to a social state was born of both human necessity and divine destiny.

On the one hand, God had called all persons to form societies in order to provide the order and stability needed to maintain the natural liberty and natural law that God had created. "The exercise and maintaining of [natural] liberty," without social constraints, wrote Winthrop, "makes men grow more evil, and in time to be worse than brute beasts."²⁶ Persons "prey" upon each other, placing the natural liberty of all into jeopardy. Society helps guarantee such liberty. Moreover, in a

²² For reasons of space, I have omitted analysis of the foundational "marriage covenant" that undergirded this Puritan system, and which rendered the Puritans' formulations even more comparable to those of Johannes Althusius. See John Demos, *A Little Commonwealth: Family Life in Plymouth Colony* (1970); and my *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (1997), 74-198.

²³ John Winthrop, *Winthrop's Journal*, ed. James K. Hosmer ed. (1908), 2:238.

²⁴ John D. Eusden, "Natural Law and Covenant Theology in New England, 1620-1670," *Natural Law Forum* 5 (1960): 1.

²⁵ John Barnard, *The Throne Established By Righteousness* (1734), in Perry Miller and Thomas Johnson eds., *The Puritans* (1938), 270-71.

²⁶ *Winthrop's Journal*, 2:238.

natural state, persons suffer from "weakness, impotencie and insufficiency" both in the apprehension of and the obedience to the natural law.²⁷ Society helps reconfirm and reinforce these natural law principles.

On the other hand, and more importantly, God had called the Puritans in particular to form their society to help fulfill His providential plan in the New World. The Puritans believed that God had entered into a special covenant relationship with them to be His "surrogate Israel," His newly chosen people.²⁸ By this covenant, they were called to be a "city on the hill," a "light to the nations," "a model of Christ's kingdom among the heathens."²⁹ They were commanded to preserve and propagate godly beliefs and values, to adopt and advocate godly morals and mores, to arouse themselves and all those around them to godly obedience. God had promised them peace and prosperity if they succeeded in their covenantal task, death and damnation if they failed.³⁰

The Puritan colonists swore allegiance to such social covenants before God and each other when forming their new communities. "We whose names are underwritten," reads the famous Mayflower Compact of 1620, "[h]aving under-taken for the glory of God, and advancement of the Christian Faith, ... a Voyage to plant the first Colony ... doe by these presents, solemnly & mutually in the presence of God and one of another, covenant, and combine our selues together into a civill body politike, for our better ordering and preservation, and furtherance of the ends aforesaid."³¹ The citizens of the new town of Salem convened in 1629 to swear: "We Covenant with the Lord and one with an other; and doe bynd our selves in the presence of God, to walke together in all his waies, according as he is pleased to reveale himself unto us in his Blessed word of truth."³² The following year John Winthrop declared to the new citizens of Massachusetts Bay: "Thus stands the cause betweene God and us, wee are entered into Covenant with him for this worke, wee have

²⁷ Thomas Hooker, *The Application of Redemption* (1659), 43.

²⁸ Cotton Mather, *The Serviceable Man* (1690), in Edmund S. Morgan, ed., *Puritan Political Ideas* (1965), 233. See also J. Higginson, *The Cause of God and His People in New England* (1663), 18.

²⁹ John Winthrop, *A Model of Christian Charity* (1630), in Morgan, ed., *Puritan Political Ideas*, 75, 93. J. Scottow, *Narrative of the Planting of Massachusetts* (1694), in *Collections of the Massachusetts Historical Society* (4th ser.) (1871), 4:279.

³⁰ Samuel Willard, *Covenant-Keeping the Way to Blessedness* (1682).

³¹ The Agreement Between the Settlers of New Plymouth (1620), in Williston Walker, *The Creeds and Platforms of Congregationalism* (1960), 92.

³² The Covenant of 1629, in *ibid.*, 116.

taken out a Commission, [and He] will expect a strickt performance of the Articles contained in it."³³

Participation in this social covenant had to be wholly voluntary and consensual. "There can be no necessary tye of mutuall accord and fellowship come, but by free engagement," wrote Thomas Hooker, the founder of New Haven. "[H]e that will enter must also willingly binde and ingage himself to each member of that society ... or else a member actually he is not."³⁴ The voluntary participation of both the entering individual and the existing community were essential. No person could be forced to join the community whose covenant and culture he or she found objectionable. No community could be forced to accept or retain a person whose convictions or conduct it found objectionable.³⁵

Those who voluntarily joined this covenant were subject to both the benevolence and the discipline of the community.

The Puritans attached great importance to public benevolence. Charity and public spiritedness were prized. Churlishness and private sumptuousness were scorned. "[W]ee must entertaine each other in brotherly Affeccion," declared Winthrop. "[W]ee must delight in eache other, make others Condicions our owne rejoyce together, mourne together, labour, and suffer together, allwayes haveing before our eyes our Commission and Community in the worke, our Community as members of the same body."³⁶ These were not just homiletic platitudes. The New England Puritans prescribed and practiced good samaritanism. They punished citizens who failed to aid their neighbors in need or peril. They set up public trusts, community chests, and work programs for indigents and immigrants. They developed systems of relief for the poor, the elderly, and the handicapped. They established systems of academic and vocational education.³⁷ This was a very modest social welfare program when viewed by contemporary standards, but rather magnanimous when judged by standards of the day.

³³ Winthrop, *Christian Charity*, 92.

³⁴ Thomas Hooker, *A Survey of the Summe of Church-Discipline* (1648), I.47, 50
Thomas Hutchinson, *A Collection of Papers Relating to the History of Massachusetts Bay* (1769), 63, quoting John Winthrop: "No commonwealth can be founded but by free consent."

³⁵ See, e.g., John Winthrop, "A Defense of an Order of Court Made in the Year 1637," in Miller and Johnson, eds., *The Puritans*, 200-01.

³⁶ Winthrop, *Christian Charity*, 92; Increase Mather, *The Excellency of a Publick Spirit* (1702).

³⁷ Robert W. Kelso, *The History of Public Poor Relief in Massachusetts, 1620-1920* (1922).

The Puritans attached even greater importance to public discipline. The social covenant, the Puritans believed, placed the community "under a solemn divine Probation" and under threat of "eminent [divine] trial."³⁸ This belief had two consequences. First, it translated the most mundane of human affairs into cosmic terms. The Puritans stressed ambition, austerity, frugality and other supposed virtues in their lives precisely because the social covenant rendered them agents of God, instruments of God's providential plan. For them to be lax in zeal, loose in discipline, or sumptuous in living would be a disservice to God, a breach of the social covenant. Such a breach would inevitably bring divine condemnation on the community in the form of war, pestilence, poverty, and other forms of force majeure.

This belief that the community lived perennially under "solemn divine probation" is reflected not only in sundry sermons but also in many statutes of the day. A 1675 Massachusetts statute, for example, prefaced its rigid disciplinary code with these words: "Whereas the most wise & holy God, for seuerall yeares past, hath not only warned us in his word, but chastized us with his rods, inflicting upon us many generall (though lesser) judgments, but we haue neither heard the word nor rod as wee ought, so as to be effectually humbled for our sinns, to repent of them, reforme and amend our wayes...."³⁹

Second, this belief in a "solemn divine probation" rendered the reformation of society a constant priority. The Puritans had to ensure that all institutions and all aspects of society comported as closely as possible with the covenantal ideal. Thus Puritan sermonizers urged perennial reform on their listeners: "Reform all places, all persons and all callings. Reform the benches of judgment, the inferior magistrates.... Reform the universities, reform the cities, reform the counties, reform inferior schools of learning, reform the Sabbath, reform the ordinances, the worship of God. Every plant which my Father hath not planted shall be rooted up."⁴⁰

³⁸ W. Stoughton, *New Englands True Interest: Not to Lie* (1670), in Miller and Johnson, eds., *The Puritans*, 243.

³⁹ N. Shurtleff, ed., *Records of the Governor and Company of the Massachusetts Bay in New England* (1853-54), 5:59; *Election Day Sermons: Plymouth and Connecticut* (fasc. ed. 1983).

⁴⁰ Quoted in Harold J. Berman, "Religious Foundations of Law in the West: An Historical Perspective," *Journal of Law and Religion* 1 (1983): 3, 30.

These twin goals of the social covenant -- to maintain natural law and natural liberty and to attain the ideal community of benevolence and discipline -- could not be realized without institutions of law and authority. The church and the state were the two chief instruments of law and authority, the Puritans believed. God had laid the foundations for both these in the covenant of works of creation, on which natural foundation the new covenants of church and state had to be built.

Religious Liberty and The Church Covenant. Following Calvinist commonplaces, the Puritans believed that God had vested in the church the spiritual power of the Word. The church had the power to preach the Gospel, to administer the sacraments, to teach the young, to fight injustice, and to care for the poor and the needy. By such activities, the church would lead all members of the community to a greater understanding of their covenantal responsibilities of benevolence and love. The church also had the power to devise its own polity, to define its own doctrine, and to discipline its own members who had sinned -- using the spiritual means of instruction, the ban, and excommunication. By such activities, the church would confirm and reinforce the natural law and the divine authority that undergirded it.⁴¹

The New England Puritans had a congregationalist understanding of the church. Each congregational church was constituted by a voluntary covenant between God and like-minded believers. By this covenant, these believers swore to God and to each other to uphold God's ordinances, to discharge the special calling of the church, and to be subject to those who came into authority within the church. "Saints by Calling," reads one Puritan document, "must have a Visible-Political-Union amongst themselves." They must form a "Co[m]pany of professed believers Ecclesiastically Confoederat."⁴² "This Form is the Visible Covenant, Agreement, consent wherby they give up themselves unto the Lord, to the observing of the ordinances of Christ together in the same society, which is usually called the Church-Covenant; For wee see not otherwise how members can have Church-power one over another mutually."⁴³

⁴¹ *The Cambridge Synod and Platform* (1648), chaps. 1-3, 5, in Walker, *Creeeds and Platforms*, 203-210. See also Richard Mather, *Church Government and Church-Covenant Discussed* (1643), in R. Robey, ed., *Church Covenant: Two Tracts* (1972), 217.

⁴² *Cambridge Synod and Platform*, chaps. 4-10.

⁴³ *Ibid.*, chap. 4.

Many of the Puritan congregational churches swore to such covenants both upon initially forming the church and upon subsequently admitting new members to it. The Watertown Covenant-Creed of 1647 contains typical language: "We believe that God's people, besides their general covenant with God, ... ought also to join themselves into a church covenant one with another, and to enter into a particular combination together with some of his people to erect a particular ecclesiastical body, and kingdom, and visible family and household of God, for the managing of discipline and public ordinances of Christ in one place in a dutiful way, there to worship God and Christ, as his visible kingdom and subjects, in that place waiting on him for that blessing of his ordinances and promises of his covenant, by holding communion with him and his people, in the doctrine and discipline of that visible kingdom.... We ... do here bind ourselves, in the presence of men and angels, by his grace assisting us, to choose the Lord, to serve him, and to walk in all his ways, and to keep all his commandments and ordinances...."⁴⁴ These church covenants formed the core of congregational church constitutions, which defined in detail the form and function of the church offices and the rights and responsibilities of its parishioners.

Political Liberty and the Political Covenant. While God vested in the church the spiritual power of the Word, God vested in the state the temporal power of the sword. "Civil Rulers," the Puritans believed, were "Gods Vice[regents] here upon earth."⁴⁵ They were called to reflect and represent God's majesty and authority. They were to exemplify godly justice, mercy, discipline and benevolence. Political rulers were vested in their offices by a three-party covenant among God, the people, and themselves. By this covenant, the rulers accepted the divine mandate for their political office. The people, in turn, vowed to God and to the rulers to oblige and submit to this rule, to accept and respect the laws.⁴⁶

Political officials took on three specific responsibilities under this political covenant. First, political officials were required to appropriate and apply natural law in the positive

⁴⁴ Watertown Covenant-Creed (1647), in *ibid.*, 149, 155-156. See detailed discussion in David A. Weir, *Church Covenants and Covenanting in New England* (2004)

⁴⁵ Samuel Willard, *The Character of a Good Ruler* (1694), in Miller and Johnson, eds., *The Puritans*, 253; John Todd, *Civil Rulers the Ministers of God for Good to Men* (1749).

⁴⁶ *Ibid.* See also John Winthrop, *On Arbitrary Government*, in Morgan, ed., *Puritan Political Ideas*, 152; Cotton Mather, *Bonifacius: An Essay Upon The Good*, ed. D. Levin (1966), 91, 94.

law of the state. The Puritans often equated this natural law with the Decalogue and thus described the magistrate as a custodian of both tables of the Decalogue.⁴⁷ The positive law of the state was thus to govern both the relationship between persons and God, based on the First Table of the Decalogue, and the multiple relationships among persons, based on the Second Table. On the authority of the First Table, political officials were to punish all forms of idolatry, witchcraft, blasphemy, false swearing, and Sabbath Day violations.⁴⁸ On the authority of the Second Table, they were to punish all forms of disobedience to authority, all violations of the person or property of the other, all adultery, prostitution, and other sexual misconduct, all dishonesty, false testimony, and other fraud against another.⁴⁹ Only those positive laws that were rooted in and reflected the natural law, the Puritans believed, had legitimacy and authority.

This concern that political officials preserve the natural law is prominent in many of the early New England law codes of the seventeenth century. The preface to the famous *Booke of the Generall Lawes and Liberties of New Plymouth* has typical language: "God being the God of order and not of confusion hath Comaunded in his word; and put man into a capasitie in some measure to obserue and bee guided by good and wholesome lawes which are soe fare good and wholsome; as by how much they are deriued from and agreeable to; the Ancient platforme of Gods lawe ... [which are] soe exemplary being grounded on principalls of morall equitie as that all men; Christians especially ought alwaies to haue an eye thervnto; in the framing of their Politique Constitutions."⁵⁰

Second, political officials were required to protect and promote the liberties and rights of their subjects. "A People are not made for Rulers, But Rulers for a People," wrote a leading Puritan.⁵¹ God has set the rulers in authority, and the people have submitted to that authority, in order to gain a "Civil felicity" not available to them in the "natural state."⁵² Such "felicity" can exist only "[w]hen men can enjoy their Liberties and Rights without molestation or oppression," "when they are secured against Violence, and may be Righted against

⁴⁷ *Cambridge Synod and Platform*, ch. 17.

⁴⁸ *Ibid.*

⁴⁹ Letter from John Cotton to Lord Say (1636), in Miller and Johnson, eds., *The Puritans*, 209-12; Willard, *The Character of a Good Ruler*, 250-256.

⁵⁰ *The Generall Lawes and Liberties of New Plymouth*, 148.

⁵¹ Willard, *The Character of a Good Ruler*, 254.

⁵² *Ibid.*

them that offer them any injury, without fraud; and are encouraged to serve God in their own way."⁵³

This concern that political officials preserve the natural liberty of subjects by positive law was equally prominent in the early New England law codes. The most famous statement of this principle appears in the opening words of the Laws and Liberties of Massachusetts (1648): "Forasmuch as the free fruition of such Liberties, Immunities, priviledges as humanitie, civilitie & christianity call for as due to everie man in his place, & proportion, without impeachment & infringement hath ever been, & ever will be the tranquility & stability of Churches & Commonwealths; & the deniall or deprivall thereof the disturbance, if not ruine of both: It is therefore ordered ... [t]hat no mans life shall be taken away; no mans honour or good name shall be stayned; no mans person shall be arrested, restrained, bannished, dismembred nor any wayes punished; no man shall be deprived of his wife or children; no mans goods or estate shall be taken away from him; nor any wayes indamaged under colour of Law or countenance of Authoritie unless it be by vertue or equity of some expresse law of this Country warranting the same established by a General Court & sufficiently published; or in case of the defect of a law in any particular case by the word of God."⁵⁴

Third, political officials were to be the catalysts and champions of the perpetual reformation mandated by the social covenant. "[A] work of Reformation," wrote Samuel Willard, "is set about in vain, and to no purpose, if Rulers do not lead in it."⁵⁵ Officials were required to compel the community by their example, by their authority, and by their law to reach and retain the covenantal ideals to which the community had subscribed in the social covenant. This mandate often required that the law itself be perpetually emended and amended. "The reformation of the law, and more law for the reformation of the world, is what is mightily called for."⁵⁶

Separation of Church and State. The theological doctrine of separation of church and state went hand-in-hand with the doctrine of ecclesiastical and political covenants. The

⁵³ Ibid., 255.

⁵⁴ *The Book of the General Laws and Liberties Concerning the Inhabitants of Massachusetts* (1648), ed. Max Farrand (1929), 1.

⁵⁵ Samuel Willard, *A Sermon Upon the Death of John Leverett, Esq.* (1679), 6; see also Increase Mather, *The Necessity of Reformation With the Expedients Thereunto Asserted* (1679), iii-iv

⁵⁶ Mather, *Bonifacious*, 130.

Puritans conceived the church and the state as two separate covenantal associations, two coordinate seats of godly authority and power in society. Each institution had a distinctive calling and responsibility. Each had a distinctive polity and practice. "[O]ur Churches, and civil State have been planted, and growne up (like two tvvinnes)," reads the preamble to the Laws and Liberties of Massachusetts. To conflate these two institutions would be to the "misery (if not ruine) of both."⁵⁷

The Puritans adopted a variety of safeguards to ensure this basic separation of the associations and activities of church and state. Church officials were prohibited from holding political office, from serving on juries, from interfering in governmental affairs, from endorsing political candidates, or from censuring the official conduct of a statesman who was also a parishioner in the church. Political officials, in turn, were prohibited from holding ministerial office, from interfering in internal ecclesiastical government, from performing sacerdotal functions of clergy, or from censuring the official conduct of a cleric who was also a citizen of the commonwealth.⁵⁸ To permit any such officiousness on the part of the church or the state, Winthrop averred, "would confounde those Jurisdictions, which Christ hath made distinct."⁵⁹

Although church and state were not to be confounded, however, they were still to be "close and compact."⁶⁰ For, to the Puritans, these two institutions were inextricably linked in nature and in function. Each was an instrument of godly authority. Each did its part to establish and maintain the covenantal ideals of the community. "I look upon this as a little model of the Gloriou[s] Kingdome of Christ on Earth," wrote Uriah Oakes. "Christ Reigns among us in the Common wealth as well as in the Church, and hath his glorious Interest involved and wrapt up in the good of both Societies respectively." Thus "the Interest of Righteousness in the Common wealth, and Holiness in the Churches are inseparable. The prosperity of Church and Common wealth are twisted together. Break one Cord, you weaken and break the other also."⁶¹

⁵⁷ *Laws and Liberties of Massachusetts*, A2.

⁵⁸ *Ibid.*, 18-20; *Cambridge Synod and Platform*, ch. 17. See also Thomas Breen, *The Character of the Good Ruler 1630-1730* (1970), 37-44.

⁵⁹ *Ibid.*, 42.

⁶⁰ Letter from John Cotton to Lord Say (1636), 209.

⁶¹ Uriah Oakes, *New England Pleaded With, and Pressed to Consider the Things Which Concern Her* (1673), 49.

It was on the strength of such arguments that various laws and policies were enacted to facilitate the coordination and cooperation of church and state in colonial New England, even while keeping the institutions separate from each other in core form and function. The state provided various forms of material aid to congregational churches and officials. Public lands were donated to church groups for the construction of meetinghouses, parsonages, day schools, orphanages, and other structures used in the church's ministry. Tithes and church taxes were collected to support congregational ministers and teachers, elders and deacons. Tax exemptions and immunities were accorded to some of the religious, educational, and charitable organizations that they operated. Special subsidies and military protections were provided for congregational missionaries.

The state also provided various forms of moral support to ensure that "the people be fed w[i]th wholesome & sound doctrine" and to preserve the "order and comunion of churches."⁶² Sabbath-day laws prohibited all forms of unnecessary labor and uncouth leisure on Sundays and holy days; they also required faithful attendance at services. Blasphemy laws prohibited all forms of false swearing, foul language, and irreverence either "toward the Word preached or the Messengers thereof." Idolatry laws sanctioned various forms of sacrilege, witchcraft, sorcery, magic, alchemy, and other invocations of "false gods." Religious incorporation laws required all new churches to secure "the approbation of the Magistrates," and required all "schismaticall" churches to submit to the "coercive power" of the magistrates.⁶³

Churches, in turn, provided various forms of material aid and accommodation to the state. Church meetinghouses and chapels were used not only to conduct religious services, but also to host town assemblies, political rallies, and public auctions, to hold educational and vocational classes, to house the community library, to maintain census rolls as well as birth, marriage, and death certificates. Parsonage were used not only to house the minister and his family, but also to harbor orphans and widows, the sick and the aged, victims of abuse and disaster, and other wards of the state.

Churches also afforded various forms of moral support to the state. They preached obedience to the authorities and

⁶² *Massachusetts Records*, 5:328.

⁶³ *Ibid.*; *Laws and Liberties of Massachusetts*, 18-20; *Cambridge Synod and Platform*, chap. 17.

disciplined by spiritual means those parishioners found guilty of "serious" crimes. They encouraged their parishioners to be active in political affairs and each year offered "election day sermons" on Christian political principles. These ministers also offered learned advice on the requirements of godly law, and were often asked to participate in the drafting of new legislation and the resolution of cases that raised particularly trying moral issues.

Checks and Balances. Beyond insisting on this balance of separation and cooperation of church and state, the New England Puritans were rather pragmatic in developing the appropriate forms of government for each. They made little pretense that their government structures were biblically commanded or divinely inspired. "I know of no particular Form of ... Government," wrote one Puritan leader, "that God Himself has, directly, and immediately, appointed, by any clear Revelation of His Mind and Will, to any People whatever.... God Almighty has left it to the natural Reason of Mankind, in every Nation and Country, to set up that Form, which, upon a thorow Consideration of the Nature, Temper, Inclinations, Customs, Manners, Business, and other Circumstances of a People, may be thought best for them."⁶⁴

One constant element in the "nature, temper, and inclination" of persons, however, was their sinfulness. Each person, by his or her very nature, the Puritans believed, is a fallen, sinful, and depraved creature. Each person is inherently tempted by egoism, greed, and corruption. "Sin has ... vitiated the humane Nature," wrote one New England leader, and driven persons to "unruly Lusts," "rampant Passions," and "a constant Endeavour ... to promote his own, and gratify Self."⁶⁵

This temptation toward self-indulgence and self-gain was particularly strong and dangerous among officials in church and state. "Power is too intoxicating and liable to abuse," wrote one Puritan leader.⁶⁶ Many officials succumb to their corrupt natures and "make no other use of their higher station, than to swagger over their neighbors, and command their obsequious flatteries, and enrich themselves with the spoils of which they

⁶⁴ John Barnard, *The Throne Established by Righteousness* (1734), in Miller and Johnson, eds., *The Puritans*, 273.

⁶⁵ *Ibid.*, 272.

⁶⁶ P. Whitney, *The Transgression of a Land Punished by a Multitude of Rulers* (1774), 21; John Cotton, *An Exposition on the Thirteenth Chapter of the Revelation* (1655), in Morgan, ed., *Puritan Political Ideas*, 175.

are able to pillage them."⁶⁷ Such official arbitrariness and abuse would inevitably lead to both popular insurrection and divine sanction. The New England Puritans therefore advocated and adopted a variety of safeguards against autocracy for the state as well as the church. Many of these safeguards were the prototypes of those written into state and federal constitutions in the following century.

First, the Puritans insisted that all officials have as "godly a character" as possible, notwithstanding their inherent sinfulness.⁶⁸ Officials were to be models of spirituality and morality for the community. They were to be professing members of a local congregational church and to swear oaths of allegiance to God upon assuming their office. They were also to be diligent, upright, respectful, authoritative, and free from guile and graft. "Their very Example," wrote Samuel Willard, "will have the force of a Law in it, and win many by a powerful Attraction, to the avoiding of sin, and practising of Righteousness.... [T]heir faithful administrations will render them a Terror to Evil Doers, and an Encouragement to them that do well."⁶⁹

Second, the Puritans insisted that both state and church officials occupy their offices only for limited tenures. Life tenures were too dangerous, the Puritans believed, for they afforded the official the opportunity slowly to convert his office into to an instrument of self-gain and self-aggrandizement. It was safer to limit the official's tenure and require periodic rotation of officers.⁷⁰

Third, the Puritans advocated the development of what they called self-limiting "republican" forms of government for both the church and the state. Rather than consolidate all forms of authority in one person or one office, they insisted on separate forms or branches of authority, each empowered to check the excesses of the other. Without such division and diffusion of authority, one preacher put it, "we shall ultimately find papacy in the church and monarchy in the state."⁷¹ Church government was thus divided among the offices of pastor, elder, and deacon. Each office held a distinct responsibility in the congregation,

⁶⁷ Mather, *Bonifacious*, 92.

⁶⁸ Willard, *The Character of a Good Ruler*, 250.

⁶⁹ *Ibid.*, 254.

⁷⁰ Breen, *The Character of a Good Ruler*, 74-75.

⁷¹ B. Higginson, *Of Right and Wrong Government* (1658), 6; Willard, *The Character of a Good Ruler*, 251-52; Hooker, *The Summe of Church-Discipline*, 3-5.

and each wielded a measure of authority over the others.⁷² Political government was divided into executive (administrative), legislative, and judicial offices. Each office had a distinct responsibility in the commonwealth. Each wielded a measure of authority over the others.

Fourth, the Puritans advocated the development of legal codes and clear statutes so that "magistrates might not proceed according to their discretions."⁷³ Early colonial leaders, such as John Winthrop and John Cotton, had resisted such codification. Codified law was, for them, inequitable because it deprived the magistrate of following "the wisdome and mercy of God as well as his Justice: as occasion shall require."⁷⁴ Opponents to discretion, such as Thomas Hooker, found this "a course which wants both safety and warrant, [for] it is a way which leads to tyranny, and so to confusion."⁷⁵ Proponents of codification prevailed. The Puritans devised elaborate legal codes and subjected the most minute of daily affairs to close statutory regulation. Among the most famous of such early codes was the Laws and Liberties of Massachusetts (1648), the Connecticut Code of Laws (1650), and the New Hampshire (Cutt) Code (1680), which were reprinted in endless local and amended variations throughout the colonial period.

Finally, the Puritans advocated the "democraticall election" of both church and state officials. Early colonial leaders, like Winthrop and Cotton, opposed democracy as vehemently as they opposed codification. "A democratie is ... accounted the meanest & worst of all formes of Governmt," Winthrop declared.⁷⁶ Likewise Cotton argued that democracy is not "a fitt government eyther for church or commonwealth. If a people be governors, who shall be governed."⁷⁷ Other colonial leaders, however, insisted that "Election is the Foundation of our Government."⁷⁸ On the one hand, God uses democratic elections to select those officials who will best maintain the covenantal ideal of the community. Thus "the privilege of election, which belongs to the people," wrote Hooker, "must not be exercised according to their humours, but according to the

⁷² *Cambridge Synod and Platform*, chaps. 5-7.

⁷³ *Winthrop's Journal*, 2:191.

⁷⁴ Quoted by Breen, *The Character of a Good Ruler*, 60.

⁷⁵ Thomas Hooker, in *Collections of the Connecticut Historical Society* (1860). 1:11; Perry Miller, "Thomas Hooker and the Democracy of Early Connecticut," *New England Quarterly* 4 (1931): 663.

⁷⁶ *Life and Letters of John Winthrop*, ed. R. Winthrop (1895), 2:430.

⁷⁷ Quoted by Clinton Rossiter, *The First American Revolution*, rev. ed. (1956), 90.

⁷⁸ William Hubbard, *The Benefit of a Well-Ordered Conversation* (1684), 25.

blessed will and law of God."⁷⁹ On the other hand, the people use elections to protect themselves against autocratic, arbitrary, and avaricious rulers. "They who have the power to appoint [or elect] officers and magistrates, it is in their power, also, to set the bounds and limitations of the power and place unto which they call them."⁸⁰

Both church and state officials came to be democratically elected in the colony. Communicant members of the congregation voted by simple majority rule on the pastors, elders, and deacons who served in the church.⁸¹ Citizens of the townships and commonwealth voted by simple majority rule for their respective executive, legislative, and judicial officials.⁸² Between such democratic elections, the Puritans held periodic popular meetings. Town meetings were convened for officials to give account of their conduct and citizens to give air to their concerns. Congregational meetings were convened for the purpose of "discussing and resolving of any such doubts & cases of conscience concerning matter of doctrine, or worship, or government of the Church."⁸³

A Puritan Seedbed of American Constitutionalism

This New England Puritan understanding of liberties of covenant and covenants of liberty was one fertile seedbed out of which later American constitutionalism grew. Many of the basic constitutional ideas and institutions developed by the Puritans in the seventeenth century remained firmly in place in the eighteenth century. These ideas and institutions were advocated and adopted not only in their original forms by Puritan sermonizers and political conservatives, but also in vestigial forms by those who had claimed no adherence to Puritan beliefs.

Puritan constitutional ideas survived among both the "Enlightenment Liberal" and the "Civic Republican" schools of political thought in the later eighteenth century. Liberal writers found in the Puritan ideas of natural man and natural law important sources and analogies for their ideas of the state of nature and natural liberty. They found in the Puritan ideas of a social covenant and a political covenant pristine

⁷⁹ *Connecticut Collections*, 1:20; Hooker, *Summe of Church-Discipline*, 8-13.

⁸⁰ *Connecticut Collections*, 1:20.

⁸¹ *Cambridge Synod and Platform*, ch. 8.

⁸² *Laws and Liberties of Massachusetts*, 20-21, 50-51.

⁸³ *Ibid.*, 19.

prototypes for their theories of a social contract and a governmental contract. They found in the doctrine of separation of church and state a foundation for their ideas of disestablishment and free exercise of religion.⁸⁴ Republican writers, in turn, transformed the Puritan idea of the elect nation under "solemn divine probation" into a revolutionary theory of American nationalism under divine inspiration. They recast the Puritan ideal of the covenant community into a theory of public virtue, discipline, and order. They translated the Puritans' insistence on spiritual rebirth and reformation into a general call for "moral reformation" and "republican regeneration."⁸⁵

Some Puritan constitutional institutions likewise survived within the new federal and state constitutions of the later eighteenth century. Political rulers were still required to manifest a moral, virtuous, and godly character, and to swear oaths attesting to the same. Most officials were required to stand for democratic elections to their offices. Political offices had limited tenures in many states. Political authority was distributed among executive, legislative, and judicial branches, each with authority to check the others. Liberties of citizens were copiously enumerated. Church and state were separated, yet allowed to cooperate.

James Bryce once wrote that "the American Government and Constitution are based on the theology of Calvin and the philosophy of Hobbes." "This at least is true," he concluded: "there is a hearty Puritanism in the view of human nature which pervades the instrument [the United States Constitution] of 1787. It is the work of men who believed in original sin, and were resolved to leave open for transgressors no door which they could possibly shut. Compare this spirit with the enthusiastic optimism of the Frenchman of 1789. It is not merely a difference of race temperaments; it is a difference of fundamental ideas."⁸⁶

⁸⁴ See generally Bernard Bailyn, *The Ideological Origins of the American Revolution* (1967), 32-34, 161-229, 246-72.

⁸⁵ See Gordon Wood, *The Creation of the American Republic, 1776-1787* (1969), 107-24.

⁸⁶ James Bryce, *The American Commonwealth* (1889), 1:299.