297 LH

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The Protestant Reformation of Constitutionalism

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Abstract

The sixteenth-century Protestant Reformation brought far-reaching changes to Western constitutionalism. The Lutheran reformers vested each territorial state with much of the jurisdiction held by the medieval church, arguing that the magistrate was the custodian of both the religious and civil duties set out in the Ten Commandments. They also merged church courts and state courts, placing both legal and equitable power in the hands of conscientious Christian judges. The Anabaptists ascetically withdrew from civil and political life into small, self-sufficient, and often intensely democratic communities governed by simple biblical principles and dialogical forms of internal governance. Despite ample persecution, Anabaptists were fervent champions of religious liberty and separation of church and state. The Calvinist reformers separated the offices of church and state but called both authorities to help create an overtly Christian local polity governed by written constitutions based on the Bible and natural law but with detailed positive laws tailored to local needs. Calvinist also developed robust biblical-based theories of natural and positive rights, whose persistent and pervasive breach triggered the right of resistance and revolution.

Keywords: Lutheranism; Anabaptism; Calvinism; legislation; equity; natural law; natural rights; written constitutions; religious liberty; separation of church and state.

Introduction

The Protestant Reformation erupted with Martin Luther's posting of the Ninety-Five Theses on the church door in Wittenberg in 1517 and his burning of the medieval canon law books at the city gates three years later. The Reformation soon split into four main branches, with ample regional and denominational variation within each branch. *Lutheranism* spread throughout the northern Holy Roman Empire, Prussia, and Scandinavia, consolidated by Luther's catechisms and the Augsburg Confession (1530), and by local Bible translations modeled on Luther's German Bible. *Anabaptists* fanned out in small communities throughout Europe, Russia, and eventually North America, most of them devoted to the founding religious principles of the Schleitheim Confession (1527) and the ideals of the New Testament. *Anglicanism* was established in England by King Henry VIII and Parliament in the 1530s, and, once consolidated by the Book of Common Prayer (1559/1662) and later the King James Bible (1611), spread throughout

the vast British Empire in North America, Africa, the Middle East, the Indian subcontinent and Australasia. *Calvinist* communities, modeled on John Calvin's Geneva and anchored by the Geneva Bible and Genevan Academy, spread into portions of Switzerland, France, Germany, Hungary, the Netherlands, Scotland, England, and North America. In Europe, this checkerboard of Protestant communities, living uneasily alongside each other and their Catholic neighbors, was protected for a time by such constitutional documents as the Peace of Augsburg (1555), the Edict of Nantes (1598), the Peace of Westphalia (1648), and the Toleration Act (1689), but religious persecution and religious warfare were tragically regular events until well into the eighteenth century. [1]

Although the Protestant Reformation built on several late medieval reform efforts, it also offered several distinct theological teachings that had direct legal implications. Early Protestant Reformers were largely united in teaching that salvation came through faith in the Gospel, not by works of the Law. Each individual was to stand directly before God, to seek God's gracious forgiveness of sin, and to conduct life in accordance with the Bible and Christian conscience. To the Reformers, the medieval canon law administrated by the clergy obstructed the individual's direct relationship with God and obscured simple biblical norms for right living. Early Protestants further taught that the church was at heart a community of saints, not a corporation of law. Its cardinal signs and callings were to preach the Word, to administer the sacraments, to catechize the young, and to care for the needy. The medieval clergy's expansive legal rule in Christendom, in the reformers' view, obstructed the divine mission of the church and usurped the role of the state as God's vice-regent and legal ruler in the earthly kingdom. Protestants recognized that the church needed internal rules to govern its polity, teaching, and discipline. Church officials and councils needed to oppose legal injustice and combat political tyranny. But for most early Protestants, law was primarily the province of the state, not the church—of the magistrate, not the pastor.

These new Protestant teachings helped to transform early modern Western constitutionalism. The Protestant Reformation permanently broke the international rule of the medieval Catholic Church and canon law, splintering Western Christendom into competing nations and regions, each with its own religious and political rulers. The Protestant Reformation triggered a massive shift of power and property from the church to the state. State rulers now assumed jurisdiction over numerous subjects, persons, and social institutions previously governed by the Catholic Church and its canon law. And the Protestant Reformation catalyzed a wide range of new legal and political theories and laws, not least on constitutionalism.

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[1] See Thomas Albert Howard and Mark A. Noll, eds., *Protestantism After 500 Years* (Oxford: Oxford University Press, 2016); Udo Di Fabio and Johannes Schilling, eds., *Die Weltwirkung der Reformation: Wie der Protestantismus unsere Welt verändert hat* (Munich: C. H. Beck, 2017); John Witte, Jr. and Amy S. Wheeler, eds., *The Protestant Reformation of the Church and the World* (Louisville, KY: Westminster John Knox Press, 2018).

But the wide variety of early modern Protestant confessions also yielded a similarly wide variety of constitutional norms and practices. Absolutist monarchists in France, Denmark, England, and Prussia were as fervently Protestant as democratic revolutionaries in Scotland, the Netherlands, England, and America. Strict Anglican or Lutheran religious establishments were as deeply rooted in Reformation teachings as novel Anabaptist or Calvinist theories of religious freedom. Some early modern Protestant groups were intense religious pietists and political quietists, while others worked relentlessly to develop written constitutions, enumerated bills of rights, clear separations of powers, and federalist structures of government. Some Protestants turned cheeks in expression of Christian love and martyrdom; others swung swords in pursuit of just wars and democratic revolutions.

This chapter illustrates a few of these diverse Protestant contributions to Western constitutionalism. I focus on early modern Lutherans, Anabaptists, and Calvinists on both sides of the Atlantic. Readers can learn about the medieval antecedents and parallel Anglican expressions of these views in the marvelous chapters in this volume by R.H. Helmholz and Joan Lockwood O'Donovan. More extensive discussions of the development of human rights, natural law, covenant, and federalism — within and well beyond the Protestant world — appear in the excellent chapters by John Milbank Julian Rivers, David Van Drunen and Nicholas Aroney.

Lutheran Constitutionalism

The Forms and Functions of the State. The Lutheran Reformation of Germany and Scandinavia gave the local Christian magistrate ample new political power over civil and spiritual affairs.[2] Luther replaced the medieval "two swords" teaching with a new "two kingdoms" theory. The *invisible* church of the heavenly kingdom, he argued, was a perfect community of saints, in which all stood equal in dignity before God, all enjoyed perfect Christian liberty, and all governed their affairs in accordance with the Gospel. The *visible* church of this earthly kingdom, however, embraced saints and sinners alike. Its members still stood directly before God and still enjoyed liberty of conscience, including the liberty to leave the visible church itself. But unlike the invisible church, the visible church needed both the Gospel and human law to govern its members' relationships with God and with fellow believers. The clergy must administer the Gospel. The magistrate must administer the law.

Luther was more concerned with the function than with the form of the state. On the one hand, he believed that the magistrate was God's vice-regent in the earthly

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[2] For illustrative writings, see Hermann W. Beyer, *Luther und das Recht,* repr. ed. (Paderborn: Salzwasser-Verlag Gmbh, 2013); J.M. Porter, ed., *Luther—Selected Political Writings* (Philadelphia, PA: Fortress Press, 1974). For overviews, see Martin Heckel, *Martin Luthers Reformation und das Recht* (Tübingen: Mohr Siebeck, 2016); Virpi Mäkinen, ed., *Lutheran Reformation and the Law* (Leiden: Brill, 2006); Mathias Schmoeckel, *Das Recht der Reformation* (Tübingen: Mohr Siebeck, 2014); W.D.J. Cargill Thompson, *The Political Thought of Martin Luther,* ed. Philip Broadhead (Totawa, NJ: Barnes and Nobles, 1984); John Witte Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002).

kingdom, called to enforce God's Word and law, to reflect God's majesty and authority, to render God's justice and judgment on earthly affairs. The state was, in this sense, a "divine office," a "holy estate," a "Godly calling" within the earthly kingdom, Luther wrote. "Law and earthly government are a great gift of God to mankind," indeed "an image, shadow, and figure of the dominion of Christ." But that divine political mandate included exercising God's judgment and wrath against human sinfulness. "Princes and magistrates are the bows and arrows of God," Luther wrote, equipped to hunt down God's enemies near and far, using military power and criminal punishment when needed. Indeed, the hand of the Christian magistrate, judge, or soldier "that wields the sword and slays is not man's hand, but God's."[3]

On the other hand, Luther regarded the magistrate as the loving "father of the community," called to care for his political subjects as if they were his children, with his political subjects honoring and obeying him as the Bible commanded. Like a devout father, the magistrate was to keep the peace and to protect his subjects from danger and damage to their persons, properties, and reputations. He was to deter his subjects from abusing themselves through drunkenness, wastrel living, prostitution, gambling, and other vices. He was to nurture and sustain his subjects through the community chest, the public almshouse, and the state-run hospital. He was to educate them through the public school, library, and lectern. He was to see to their spiritual needs by supporting the ministry of the locally established church and encouraging their attendance and participation through the laws of Sabbath observance, tithing, and holy days. He was to see to their material needs by reforming inheritance and property laws to ensure more even distribution of parents' property among their children. And the magistrate was to set a moral example of virtue, piety, love, and charity in his own home and private life for his faithful subjects to emulate and to respect.[4]

These twin metaphors of the Christian magistrate—as the lofty vice-regent of God and as the loving father of the community—described the basics of Lutheran political theory for the next four centuries. For Luther, political authority was divine in origin, but earthly in operation. It expressed God's harsh judgment against sin but also God's tender mercy for sinners. It communicated the Law of God but also the lore of the local community. It depended upon the church for prophetic direction but it took over from the church all jurisdiction—governance of marriage, education, poor relief, and other earthly subjects traditionally governed by the Catholic Church's canon law. Either metaphor standing alone could be a recipe for abusive tyranny or officious paternalism—both of which sometimes occurred in Lutheran lands in later centuries. But both metaphors together provided Luther and his followers with the core ingredients of a robust Christian republicanism and budding Christian welfare state.

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[3] *D. Martin Luthers Werke: Kritische Gesamtausgabe* (Weimar: H. Böhlaus Nachfolger, 1883–), 30/2:554 [hereafter WA]; Jaroslav Pelikan et al., eds., *Luther's Works* (Philadelphia, PA: Muhlenberg Press, 1955–68), 2:139; 13:44; 17:171; 44:92; 45:85; 46:96, 237 [hereafter LW].
[4] WA 30/1:155.

State Jurisdiction and Legislation. Building on Luther's views, Lutheran jurists defined more clearly the subject matter jurisdiction of the state, and the ambit of the new state legislation that was to replace the medieval canon law and the medieval church courts. A decisive early contribution came from Luther's Wittenberg colleague and successor, Philip Melanchthon (1509–1560). He described the Christian magistrate as "a voice of the Ten Commandments" within the earthly kingdom. "When you think about *Obrigkeit*, about princes or lords, picture in your mind a man holding in one hand the tables of the Ten Commandments and holding in the other a sword," he wrote provocatively.[5]

Melanchthon took this image directly into his account of the positive law, which he organized using the two tables of the Decalogue. The First Table of the Decalogue, Melanchthon wrote, undergirded state laws governing spiritual morality, the relationship between persons and God. The Second Table undergirded state laws governing civil morality, the relationships between persons.

As custodians of the First Table of the Decalogue, magistrates must not only pass laws against idolatry, blasphemy, and violations of the Sabbath — offenses that the First Table prohibits on its face. They must also "establish pure doctrine" and right liturgy, "prohibit all wrong doctrine," "punish the obstinate," and root out the heathen and the heterodox. Melanchthon came to this position reluctantly in the 1530s and 1540s, knowing that he was departing from Luther's early call for universal "freedom of a Christian."[6] But Melanchthon lamented the perennial outbreaks of violent antinomianism and spiritual radicalism in Reformation Germany by those who took too literally Luther's teachings of free grace. To allow such blasphemy and chaos to continue without firm rejoinder, Melanchthon believed, was ultimately to betray God and the political office that enforced God's law in earthly life. Magistrates must "maintain external discipline according to *all* the commandments," he concluded, and thus must "prohibit, abolish, and punish these depravities" and "compel them to accept the Holy Gospel."[7]

This was the theoretical basis for the welter of new state laws establishing religion in Lutheran lands. These laws were set out in the hundreds of elaborate church ordinances promulgated in the sixteenth and seventeenth centuries. These church ordinances both reflected and directed the resystematization of dogma; the truncation of the sacraments; the reforms of liturgy, devotional life, and the religious calendar; the vernacularization of the Bible, liturgy, and preaching; the expansion of catechesis and religious instruction in schools and universities; the revamping of corporate worship, congregational music, religious symbolism, church art, and architecture; the radical reforms of ecclesiastical discipline and local church administration; and the new

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[5] *Melanchthons Werke,* in G. Bretschneider, ed., *Corpus Reformatorum* (Brunswick: H. Böhlau, 1864), 22:615 [hereafter CR].
[6] LW 31:327-377.
[7] CR 22:617–18; *Melanchthon on Christian Doctrine: Loci Communes 1555*, trans. and ed. Clyde L. Manschrek (Oxford: Oxford University Press, 1965), 324–36.

practices of tithing, baptism, confirmation, weddings, burial, diaconal care, sanctuary, and much more.

All these aspects of spiritual life had been at the heart of the spiritual jurisdiction of the medieval church and its canon law. They were now subject to the Protestant state's religious establishment laws. Particularly after the Peace of Augsburg (1555) and the Peace of Westphalia (1648) confirmed the constitutional principle that each civil ruler was free to establish the religion of his own local polity (*cuius regio eius religio*), religious establishment laws became increasingly detailed, ornate, and routinized.[8] Vestiges of these laws remain in place in Lutheran lands today, although strong new policies of religious disestablishment are now afoot in Scandinavia and several German states.

While the First Table of the Decalogue helped define the state's spiritual jurisdiction, the Second Table supported the state's civil jurisdiction, the positive laws governing relations between persons. Melanchthon and other Lutheran writers, such as Johann Oldendorp (ca. 1486–1567), Martin Chemnitz (1522–1586), and Nicolaus Hemming (1513–1600), set out a whole series of state laws under each commandment. On the basis of the commandment to "Honor thy father and mother," they argued, magistrates were obligated to prohibit and punish disobedience, disrespect, or disdain of authorities such as parents, political rulers, teachers, employers, masters, and others. Magistrates were also to build the positive laws of authority — constitutional law, administrative law, master-servant laws, and more. The commandment, "Thou shalt not kill" undergirded laws against unlawful killing, violence, assault, battery, and other offenses against the bodies of one's neighbors. "Thou shalt not commit adultery" and "Thou shalt not covet thy neighbor's wife or maidservant" were the foundations of laws against sex crimes — adultery, fornication, sexual indulgence, prostitution, pornography, obscenity, and similar offenses as well as positive laws of marital formation, maintenance, and dissolution; child care, custody, and control; and other aspects of the marital household. "Thou shalt not steal" supported positive laws against theft, burglary, embezzlement, and similar offenses against another's property, as well as waste or noxious or sumptuous use of one's own property. This commandment also supported positive laws of real and personal property, its acquisition, use, maintenance, encumbrance, sale, alienation, and more. On the basis of the commandment, "Thou shalt not bear false witness," magistrates were to punish all forms of perjury, dishonesty, fraud, defamation, and other violations of a person's reputation or status in the community. And they were to build the positive laws of oaths, promises and contracts, of keeping one's word to one's neighbor, as well as the laws of procedure, evidence, and testimony in court proceedings. Finally, on the basis of the commandment "Thou shalt not covet," magistrates were to punish all attempts to perform offensive acts against another's person, property, reputation, or relationships,

[8] In Sidney Z. Ehler and John B. Morrall, eds., *Church and State Through the Centuries: A Collection of Historic Documents with Commentaries* (Westminster, MD: Newman Press, 1954), 164–73, 189–93.

and to establish the basic rules protecting the privacy of one's household from the covetous privations of neighbors.[9]

Many of these aspects of social intercourse had also been governed by medieval canon law and organized in part under the church's seven sacraments.[10] The sacrament of marriage, for example, supported the positive canon laws of sex, marriage, and family life. The sacrament of penance supported the canon law of crimes against the persons, properties, and reputations of others. The sacraments of baptism and confirmation undergirded the constitutional law of natural rights and duties of Christian believers. The sacrament of holy orders supported the law of the clergy. The sacrament of extreme unction supported the positive laws of burial, inheritance, foundations, and trusts. Lutheran jurists replaced the seven sacraments with the Ten Commandments to organize the various systems of positive law, and they looked to the state, instead of the church, to exercise this jurisdiction.

Equity and Adjudication. Lutheran writers insisted that these new state laws required firm application but also equitable judgment by the judiciary. "The strictest law [can do] the greatest wrong," Luther wrote. Thus "equity is necessary" in the application of the law. Judges must not "rashly … relax laws and discipline." But they must balance firmness and fairness and recognize circumstances that might mitigate against literal application of the rule or that might raise questions that the rule does not and perhaps should not reach. In such instances, "equity will weigh for or against" strict application of the rule, and a wise ruler will know the juster course. "But the weighing must be of such kind that the law is not undermined, for no undermining of natural law and divine law must be allowed."[11]

Lutheran jurist Johann Oldendorp went further in insisting that every application of a legal rule required a judge to apply equity, for every law was, by its nature, general and abstract. No legislator can perfectly anticipate the circumstances in which the rule will be applied. Thus, every application of every rule has to be governed by equity, lest the rule of law and the justice of the state be compromised.[12]

Oldendorp defined equity as the capacity and responsibility of a judge to make a reasoned and conscientious judgment in each particular case. Equity required the judge to study carefully the rules and the facts of the particular case and to compare them to similar rules and cases. This, he said, was an exercise of "civil reason." Equity also required the judge to consult and apply his conscience, the God-given "law inside

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[9] See detailed sources in Witte, *Law and Protestantism,* 121–76.
[10] See Paul Wilpert, *Lex et Sacramentum in Mittelalter* (Berlin: W. De Gruyter, 1969); Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), 165–98; R.H. Helmholz, *The Spirit of the Classical Canon Law,* repr. ed. (Athens: University of Georgia Press, 2010).
[11] WA TR 3, Nos. 315, 4178, LW 54:43–44, 325.
[12] See Johann Oldendorp, *Wat byllich und recht ist* (1529), in Erik Wolf, ed., *Quellenbuch zur Geschichte der deutschen Rechtswissenschaft* (Frankfurt am Main: Klosterman, 1950), 51–68, at p. 59; Johann Oldendorp, *De iure et aequitate forensis disputatio* (Cologne: Johann I. Köln, 1541), 72.

people." This was "a judgment of the soul," which required prayer, meditation on the Bible, and sober reflection in search of God's guidance for the case. This pious method was to be used not only for the hard case—whether to execute a felon convicted for a capital crime on slender evidence or to separate a young child dependent on its loving mother in a case of disputed custody. This method was to be used in every legal case, since every case required equity. In some cases, this equitable method might yield a strict application of the rule. In other cases, it might compel the judge to suspend a legal rule; to interpret it favorably towards one of the parties; to give special solicitude to parties who were poor, orphaned, widowed, or abused; or to reform and improve the rule to ensure its future equitable application or legislative amendment.[13] As a theory of judicial judgment, Oldendorp's theory of equity was a distinct form of both conscientious practical reasoning and pious judicial activism.

Oldendorp's theory of equity built squarely on Luther's belief in the Christian conscience as the ultimate source of moral decisions. Luther had justified his own defiance of the emperor at the Diet of Worms in 1521 as an act "for God and in my conscience."[14] In his later writings, he also urged every magistrate not only to "have the law as firmly in hand as the sword," but also, Solomon-like, to "cling solely to God, and to be at him constantly, praying for a right understanding beyond that of all the law books and teachers, to rule his subjects."[15] Oldendorp made God-given conscience a constituent element of his theory of legal judgment, and made equitable judgement the vocation of a professional Christian judge. Just as Luther, a learned theologian of the church, could ultimately break the canon law of the church that violated conscience, so the judge, a learned counselor of the state, could ultimately waive the civil law of the state that trespassed these same transcendent norms.

Oldendorp also built on the traditional medieval teaching that the Catholic Church's canon law was the "the mother of exceptions," "the epitome of the law of love," and "the mother of justice."[16] These equitable qualities had traditionally rendered the canon laws applied in church courts an attractive alternative to the civil laws applied in secular courts. Oldendorp's theory sought to render these equitable qualities endemic to all state laws and to all state courts. Law and equity, he believed, were fundamentally conjoined, whatever the source of the law, and whatever the forum for its implementation. It was the duty of the Christian legislator to promulgate civil laws consistent with the moral teachings of divine law and natural law. It was the duty of the Christian judge to interpret these laws with the equitable methods of both civil and spiritual reason.

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[13] Ibid., 13; Johann Oldendorp, *Lexicon Juris* (Frankfurt am Main: Egenolph, 1553), s.v. "aequitas" and "iudicium"; Johann Oldendorp, *Topicorum Legalium* (Marburg, n.p., 1545), 194–96.
[14] WA 7:838.
[15] WA 11:272–73.
[16] Oldendorp, *De iure et aequitate,* 32–33. See Eugen Wohlhaupter, *Aequitas canonica: Eine Studie aus dem kanonischen Recht* (Paderborn: F. Schoningh, 1931); Harold J. Berman, "Medieval English Equity," in id., *Faith and Order: The Reconciliation of Law and Religion* (Grand Rapids, MI: Wm. B. Eerdmans, 1993), 55–82.

Before the Protestant Reformation, equity was largely the prerogative of the canon law and ecclesiastical judge. Thus, in medieval Germany, cases that required formal equitable remedies were removed to the church courts for resolution. Likewise in medieval England, equity was administered in the court of the Chancellor, staffed by a ranking ecclesiastic trained in canon law. Oldendorp's theory effectively merged law and equity, *ius et aequitas*. This theory helped to support the merger of church courts and state courts; separate courts of equity were no longer required. It helped to support the convergence of canon law and civil law in Lutheran Germany. And it helped to support the growing professionalization of the German judiciary and the requirement that judges be educated both in law and in theology, in civil law and in canon law.[17] Through the writings and work of Luther, Melanchthon, Oldendorp and many others, Lutheran jurisprudence contributed significantly to the development of modern theories of the state.

Anabaptist Constitutionalism

Early modern Anabaptists expounded a two-kingdoms theory that more fully separated the redeemed realm of religion and the church from the fallen realm of politics and the state.[18] Emerging as a new form of Protestantism in the early 1520s, Anabaptists were scattered into various groups of Amish, Brethren, Hutterites, Mennonites, and later Baptist and Free Church groups on both sides of the Atlantic. But most followed the lead of such theologians as Pilgrim Marpeck (d. 1556), Menno Simons (1496–1561), Dirk Philips (1504–1568), and others who called for a return to the simple teachings of the New Testament and apostolic church.

Separation of Church and State. Emulating the apostolic church, Anabaptist communities ascetically withdrew from civil and political life into small, self-sufficient, and often intensely democratic communities. These communities were governed internally by biblical principles of discipleship, simplicity, charity, and nonresistance. They set their own standards of worship, liturgy, diet, discipline, dress, and education. They handled their own affairs of property, contracts, commerce, marriage, and inheritance — so far as possible by appeal to biblical laws and practices, not those of the state. And they enforced their internal religious laws not by coercion but by persuasion, and not for the sake of retribution but for the redemption of the sinner and restoration of that person to community. Recalcitrant sinners and community members who grew violent or destructive or persistently betrayed the community's ideals faced shunning and banishment from the community. Moreover, when Anabaptist

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[17] See generally Karl H. Burmeister, *Das Studium der Rechte im Zeitalter des Humanismus im deutschen Rechtsbereich* (Wiesbaden: G. Pressler, 1974); R.H. Helmholz, ed., *Canon Law in Protestant Lands,* repr. ed. (Berlin: Duncker & Humblot, 2013).

[18] For illustrative writings, see Walter Klaassen, *Anabaptism in Outline* (Scottdale, PA: Herald Press, 1981). For overviews, see William R. Estep, *The Anabaptist Story: An Introduction to Sixteenth-Century Anabaptism* (Grand Rapids, MI: Eerdmans, 1996); Robert Friedmann, *The Theology of Anabaptism,* repr. ed. (Scottdale, PA: Herald Press, 1998); Guy F. Hershberger, ed., *The Recovery of the Anabaptist Vision,* repr. ed. (Scottdale, PA: Herald Press, 2001); George Huntston Williams, *The Radical Reformation*. 3rd rev. ed. (Kirksville, MO: Truman State University Press, 2000).

communities grew too large or too internally divided, they deliberately colonized themselves, eventually spreading from Russia to Ireland to the farthest frontiers of North America.

The state and its law, most Anabaptists believed, was part of the fallen world, to be avoided so far as possible in accordance with biblical injunctions that Christians should not be "of the world" or "conformed" to it. Once the perfect creation of God, the world was now a fallen, sinful regime that lay beyond "the perfection of Christ" and beyond the daily concern of the Christian believer. God had built a "wall of separation" between the redeemed church and the fallen world, Menno Simons wrote, quoting Ephesians 2:14.[19] God had allowed the world to survive by ordaining magistrates who were empowered through positive laws to use coercion to maintain a modicum of order and peace. Christians should obey the laws of political authorities, so far as the Bible commanded — paying taxes, registering properties, avoiding theft and homicide, keeping promises, and testifying truthfully. But Christians should avoid active participation in and unnecessary interaction with the world and the state — avoiding litigation, oath-swearing, state education, banking, large-scale commerce, trade fairs, public festivals, drinking houses, theaters, games, political office, policing, and military service. Most early modern Anabaptists were pacifists, preferring derision, exile, or death to active participation in war or violence. This aversion to common political and civic activities often earned Anabaptists scorn, reprisal, and repression by Catholics and Protestants alike – violent martyrdom in some instances.[20]

Religious Liberty. While unpopular in its genesis, Anabaptism ultimately proved to be a vital source of Western constitutional arguments for religious liberty. Particularly Baptists and other Free Church groups in England and early America advocated "a wall of separation between the garden of the Church and the wilderness of the world," as Rhode Island founder Roger Williams put it famously in 1643.[21] They also advocated the liberty of conscience of every individual and the freedom of association of every peaceable religious group without state establishments of religion.

"The notion of an [established] Christian commonwealth should be exploded forever," wrote John Leland (1754–1841), the fiery American Baptist preacher in summary of Anabaptist teachings.[22] All religious establishments are "evil," because when "uninspired, fallible men make their own opinions tests of orthodoxy," then religion is stunted and stilted, "ignorance and superstition prevail, or persecution rages." Establishments inspire hypocrisy because people embrace the religion favored and pampered by law. "Establishments not only wean and alienate the affections of one from another," but they drive nonconformists away from the state, taking their loyalty, work, and taxes with them and leaving dull, anemic religions to propagate themselves or convert others by coercion or bribery. Establishments reduce religion and church into an

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[19] Primary texts in Klaasen, *Anabaptism in Outline*, 245–57.
[20] See J. Thieleman Van Braght, *Martyr's Mirror,* repr. ed. (Scottdale, PA: Herald Press, 1981).
[21] *The Complete Writings of Roger Williams*, 7 vols. (New York: Russell and Russell, 1963), 1:392.
[22] *The Writings of John Leland,* ed. L.F. Greene (New York: Arno Press, 1969), 118.

agent and “trick of the state.” And establishments merely cover for the insecurity and doubt of both church leaders who lack faith in the cogency of their views, and political rulers, who “often fear that if they leave every man to think, speak, and worship as he pleases, that the whole cause [of statecraft] will be wrecked in diversity.”[23]

In place of state establishments of religion and Christian commonwealths, Anabaptists advocated religious voluntarism—the freedom of each person to choose, change, or reject religion. God called the adult individual to make a conscientious choice to accept the faith and to signal that acceptance through adult baptism—metaphorically, to scale the wall of separation between the fallen world and the garden of religion to come “within the perfection of Christ.” State coercion or control of this choice—either directly through persecution and repression or indirectly through withholding civil rights and benefits from those who made the choice—was an offense both against the individual and against God. A plurality of religions should coexist in the community. It was for God, not the state, to decide which religion should flourish and which should fade.

In place of state patronage of religion, Anabaptists demanded autonomy of church governance. Every religious body, they argued, should be free from state control of its assembly and worship, from state regulations of its property and polity, from state incorporation of its society and clergy, from state interference in its discipline and government, and from state collection of religious tithes and taxes. Some Free Church advocates went further to oppose such traditional state supports of religion as tax exemptions, civil immunities, and property donations. They feared that religious bodies receiving any state benefits would invariably become beholden to the state, dependent on its largess, and distracted from their divine mandates. “[I]f civil Rulers go so far out of their Sphere as to take the Care and Management of religious affairs upon them,” reads a 1776 Baptist Declaration, “Farwel[l] to ‘the free exercise of Religion.’”[24]

Calvinist Constitutionalism

The Separation and Cooperation of Church and State. Calvinists charted a course between Lutherans, who subordinated the church to the state, and Anabaptists, who withdrew the church from the state and society.[25] Like Anabaptists, Calvinists

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[23] Ibid., 179–92.
[24] “Declaration of the Virginia Association of Baptists (December 25, 1776),” in *The Papers of Thomas Jefferson,* ed. Julian P. Boyd (Princeton: Princeton University Press, 1950), 1:660–61.
[25] For sources, see Emile Rivoire and Victor van Berchem, eds., *Les sources du droit* (Arau: Sauerländer, 1930). For overviews, see Philip Benedict, *Christ’s Church Purely Reformed: A Social History of Calvinism* (New Haven, CT: Yale University Press, 2002); Matthew J. Tuininga, *Calvin’s Political Theology and the Public Engagement of the Church* (Cambridge: Cambridge University Press, 2017); Harro Höpfl, *The Christian Polity of John Calvin* (Cambridge: Cambridge University Press, 1982); Robert M. Kingdon, *Church and State in Reformation Europe* (London: Variorum Reprints, 1985); Christoph Strohm, *Calvinismus und Recht* (Tübingen: Mohr Siebeck, 2008); John Witte Jr., *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007).

insisted on a basic separation of the offices and operations of church and state, leaving the church to govern its own doctrine and liturgy, polity and property, without interference from the state. John Calvin set the foundation for this church-state division in the Ecclesiastical Ordinances of Geneva (1541/1561), which were echoed in many later Calvinist cities.[26] "There is a great difference and unlikeness between the ecclesiastical and civil power" of the church and state, Calvin explained. "A distinction should always be observed between these two clearly distinct areas of responsibility, the civil and the ecclesiastical." The church has no authority to punish crime, to remedy civil wrongs, to collect taxes, to make war, or to meddle in the affairs of the state. The state, in turn, has no authority to preach the Word, to administer the sacraments, to enforce spiritual discipline, to collect tithes, to interfere with church property, to appoint or remove clergy, to obstruct bans or excommunications, or to meddle in the internal affairs of a congregation. To permit any such interference between church and state, said Calvin, would "unwisely mingle these two which have a completely different nature."[27]

Like Lutherans, on the other hand, Calvinists insisted that each local polity be an overtly Christian commonwealth adhering to the general principles of natural law and translating them into detailed new positive laws of religious worship, Sabbath observance, public morality, marriage and family, crime and tort, contract and business, charity and education. Calvin drafted many of these new laws for Geneva during his tenure there from 1541 to 1564, and many of these piecemeal laws were incorporated into the Civil Edict of Geneva (1568), drafted by Calvinist jurist Germain Colladon (1508–1594).[28] These Genevan laws were also duplicated and expanded in hundreds of Calvinist polities over the next two centuries.

Unlike Lutherans and Anabaptists, however, Calvinists stressed that both church and state officials were to play complementary roles in the creation of the local Christian commonwealth and in the cultivation of the Christian citizen. Calvin did not contemplate a secular society with a plurality of absolutely separated religious and political officials within them. Nor did he contemplate a neutral state that showed no preference among competing concepts of the spiritual and moral good. For Calvin, each community was to be a unitary Christian society, a miniature *corpus Christianum* under God's sovereignty and law. Within this unitary society, the church and the state stood as coordinate powers. Both were ordained by God to help achieve a godly order and discipline in the community and to aid and accommodate each other on a variety of levels.

Calvin rooted this view of church-state cooperation, in part, in the familiar Protestant theory of the "uses of the law" — that, is the purposes or ends of the law in

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[26] In *Ioannis Calvini opera quae supersunt omnia*, ed. G. Baum, et al., 59 vols. (Brunswick: Böhlau, 1863–1900), 10/1:15–30, [hereafter CO]; the 1541 text is translated in *The Register of the Company of Pastors of Geneva in the Time of Calvin*, trans. Philip E. Hughes (Grand Rapids, 1966), 35–52.
[27] John Calvin, *Institutes of the Christian Religion*, ed. John T. McNeill, trans. Ford Lewis Battles (Philadelphia, PA: Westminster Press, 1960), 3.19.15; 4.11.3–16; 4.20.1–4 [hereafter Institutes (1559)]; CO 10/1: 215–17, 223–24.
[28] In Rivoire and Berchem, *Sources du droit,* vol. 3, item 1081.

earthly life. Like others, Calvinists stressed the *civil use* of the law: to restrain persons from sinful conduct. "[T]he law is like a halter," Calvin wrote, "to check the raging and otherwise limitlessly ranging lusts of the flesh." Threatened by punishment, persons obeyed the basic commandments of the moral law—to obey authorities, to respect their neighbor's person and property, to remain sexually modest and faithful, to speak truthfully of themselves and their neighbors. The law thus imposed upon everyone "a forced righteousness," an external or "public morality." Although "such public morality does not merit forgiveness of sin," said Calvin, it did allow for a modicum of peace and stability in this sin-ridden world. "Unless there is some restraint, the condition of wild beasts would be better and more desirable than ours."[29]

In a Christian commonwealth, however, law also has an *educational* use of enhancing the spiritual development of believers, of teaching "the works that please God" to those who have already been justified by faith. The law teaches believers not only the "public" or "external" morality common to all persons but also the "private" or "internal" morality that is becoming only of Christians. As a teacher, the law not only coerces them against violence and violation but also cultivates in them charity and love. It not only punishes harmful acts of murder, theft, and fornication but also prohibits evil thoughts of hatred, covetousness, and lust.[30] Through the exercise of this private morality, the saints glorify God, exemplify God's law, and impel other sinners to seek God's grace.

This two-track system of morality corresponded to the proper division of jurisdiction between church and state, as Calvinists saw it. It was the church's responsibility to teach aspirational spiritual norms. It was the state's responsibility to enforce mandatory civil norms. This division of responsibility fit rather neatly into the procedural divisions between the consistory and the council in John Calvin's Geneva. In most cases that did not involve serious crimes, the consistory would first call parties to their higher spiritual duties, backing its recommendations with (threats of) spiritual discipline. If such spiritual counsel failed, the parties were referred to the council to compel them by civil and criminal sanctions to honor at least their basic civil duties.[31]

In sixteenth-century Geneva and other Swiss cities, the consistory was a mixed body of civil and religious officials that served as something of a hearings court and mediation center in most noncriminal cases, as well as an advisory and investigative body for the city council. Among most later Calvinists, the Genevan-style consistory was transformed into an elected body of pastors, elders, deacons, and teachers who governed each local church congregation, but often played a less structured political and legal role in the broader Christian commonwealth. Yet local clergy still had a strong role in advising magistrates on the positive law of the local community, and local churches and their consistories also generally enjoyed autonomy in administering their

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[29] Institutes (1559), 2.7.10, 4.20.3.; CO 52:255; CO 39:66.
[30] Institutes (1559), 2.7.12; 2.8.6.
[31] See detailed cases and sources in John Witte Jr. and Robert M. Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva,* 2 vols. (Grand Rapids, MI: Eerdmans, 2005, 2019)

own doctrine, liturgy, charity, polity, and property and in administering spiritual discipline over their members without interference from the state courts.

Rights, Resistance, and Revolution. Beginning in the 1550s, Calvinists in France, Scotland, the Netherlands, and England faced bitter persecution, repression, and genocide that killed tens of thousands of them over the next century and half. In response, they developed a robust theory of rights, resistance, and revolution against tyranny. This required them, however, to deal with several key biblical texts that called Christians to political obedience. "Let every person be subject to the governing authorities," reads Romans 13:1-5. "For there is no authority except from God, and those that exist have been instituted by God. Therefore, he who resists the authorities resists what God has appointed, and those who resist will come into judgment. For rulers are not a terror to good conduct, but bad. Therefore one must be subject, not only to avoid God's wrath, but for the sake of conscience." 1 Peter 2:13–17 was even more pointed: "Be subject for the Lord's sake to every human institution, whether it be to the emperors as supreme, or to governors as sent by him to punish those who do wrong and to praise those who do right.... Live as free men, yet without using your freedom as a pretext for evil." "Honor your father and mother" and other divinely appointed authorities, biblical laws commanded, "so that your days may be long in the land which the Lord your God has given you."[32] All this seemed rather firm and clear biblical authority that a conscientious Christian must respect and obey the authorities and suffer patiently and prayerfully if they become tyrants.

In defending the Christian right to resist and revolt against tyranny, Calvinists like Theodore Beza (1519–1605), John Knox (c. 1513–1572), and Philip de Mornay (1549–1623), first flipped these biblical passages onto their heads. Yes, we must honor the authorities "so that our days may be long," they argued. But if our days are being cut short, then we should not honor those authorities who shorten them. Yes, the authorities were "appointed by God to do good." But if they are not doing good, then they could not have been appointed by God. Yes, the magistrate is not "a terror to good conduct but to bad." But if he becomes a terror to good conduct, then he must no longer be a legitimate magistrate. Yes, we must "render to Caesar the things that are Caesar's, and to God the things that are God's." But if Caesar wants or takes what is God's, then we must withhold or retrieve it for God's sake. Yes, "he who resists the authorities resists God." But if the authorities themselves resist God, then surely we must avenge God's honor. Yes, "vengeance is mine," God says in the Bible.[33] But we believers, as God's sovereign image bearers and ambassadors, are also God's "instruments of righteousness," and we must execute God's judgment of wrath on earth when needed.[34]

Calvinists also built on the familiar legal doctrine of legitimate self-defense. Defense of oneself and of third parties against attack, using proportionate, even deadly force and violence when necessary, was an ancient legal teaching. The law of

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[32] Exodus 20:12.
[33] Romans 12:19.
[34] Romans 6:13. See sources in Witte, *Reformation of Rights,* 102–33, 181–202, 219–25.

resistance to tyranny was simply the law of self-defense writ large, Calvinists argued. When a magistrate exceeds his authority, he forfeits his office and becomes like any other private person. His victims and third parties may resist him passively or actively, just as if he were any other criminal.

Calvinists also drew in the biblical idea of covenant.[35] The political government of each community, they argued, was formed by a three-way covenant among God, the rulers, and the people, modeled in part on ancient biblical covenants. By this covenant, God agreed to protect and bless the rulers and the people in return for their obedience to the laws of God and nature. The rulers agreed to honor these higher laws and protect the people's essential rights, particularly those rights rooted in the Bible. The people agreed to exercise God's political will for the community by electing and petitioning their rulers and by honoring and obeying them so long as the rulers honored God's law and protected the people's rights. If any of the people violated the terms of this political covenant and became criminals, the magistrate could properly prosecute and punish them — and sentence them to death in extreme cases. In turn, however, if any of the magistrates violated the terms of the political covenant and became tyrants, they could be properly resisted and removed from office — and sentenced to death in extreme cases if convicted.

The power to resist and remove tyrants lay not directly with the people, however, for that would produce anarchy. The exercise of this power involved "constitutional judgments" by the lower magistrates, Beza argued. In cases of seeming tyranny, these magistrates were called to judge the tyrant's behavior against the terms of the political covenant — an early statement of the idea of judicial review. If the tyrant was found guilty, he was to be removed from office and could be banished from the community, even executed in extreme cases. The remarkable trial and execution of the Stuart king Charles I of England, in 1649, was a textbook example of this stern Calvinist resistance logic in action. But if the tyrant refused to leave or persisted in his tyranny, the lower magistrates were to organize and direct the people in revolt — in all-out revolution, if needed to unseat this tyrant.[36] This logic animated Calvinist revolutionary movements in France, the Netherlands, Scotland, England, and eventually America from the later sixteenth to later eighteenth centuries.[37]

Calvinists also built on the idea of fundamental rights, whose chronic and pervasive breach by a tyrant triggered the most basic right to resist and revolt. Early

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[35] See ibid., 130–39 and the chapters by Nicholas Aroney and David Van Drunen herein.
[36] Théodore de Bèze, *Du Droit des Magistrats*, ed. Robert M. Kingdon (Geneva: Droz, 1970), translated as Theodore Beza, *Concerning the Rights of Rulers Over Their Subjects and the Duties of Subjects Toward Their Rulers*, trans. Henri-Louis Gonin (Cape Town: Juta, 1956), 27, 36–38, 72–74.
[37] See Michael Walzer, *The Revolution of the Saints: A Study in the Origins of Radical Politics* (Cambridge, MA: Harvard University Press, 1965); R.R. Palmer, *The Age of the Democratic Revolution*, 2 vols. (Princeton: Princeton University Press, 1959–1964); John W. Sap, *Paving the Way for Revolution: Calvinism and the Struggle for a Democratic Constitutional State* (Amsterdam: VU Press, 2001); David T. Ball, *The Historical Origins of Judicial Review, 1536–1803: The Duty to Resist Tyranny* (Lewiston, NY: Edwin Mellen Press, 2005).

modern Protestants accepted the enumerated lists of rights and liberties set out in classical Roman law and expanded in medieval and early modern laws.[38] But they rearranged, prioritized, and expanded this roll of rights on the basis of the Bible, in part. The most important rights, they reasoned, had to be the religious rights of "liberty of conscience" and "free exercise of religion."[39] After all, persons are created first and foremost as subjects and ambassadors of the Creator God and called to honor God above all else. The Ten Commandments enjoined them to worship God, to observe the Sabbath, and to avoid blasphemy and idolatry. The New Testament ordered the faithful to "obey God rather than men."[40] If the political magistrate — created by this same God and representing God's authority on earth — breaches a person's rights to discharge these religious duties, then nothing can be sacred and secure any longer.

Moreover, protecting religious rights and duties required protecting several other correlative rights that early modern Calvinists came to discover when they were persecuted minorities. The rights of the individual to religious conscience and exercise required attendant rights to assemble, speak, worship, evangelize, educate, parent, travel, and more. The rights of the religious group to worship and govern itself as an ecclesiastical polity required attendant rights to legal personality, corporate property, collective worship, organized charity, parochial education, freedom of press, freedom of contract, freedom of association, and more. And both individuals and groups had to live by many other biblical commandments that set out the rights and duties of life, liberty, property, marriage, family, household, sanctuary, poor relief, charity, education, and more.[41] In the 1560s, Calvinist writers like Christopher Goodman (1520–1603) joined Beza and Knox in calling these rights "unalienable" and "fundamental."[42]

Early modern Protestants enumerated these fundamental rights not only in learned tracts but also in lofty texts forged in the aftermath of revolution against tyranny. In their 1581 Declaration of Independence, for example, Dutch Protestant revolutionaries declared independence from Spain and its tyrannical rules "in accordance with the law of nature and in order to preserve and defend ourselves and our fellow-countrymen, our rights, the privileges and ancient customs and the freedoms of our fatherland," which they then enumerated and expanded at length in national and provincial constitutions.[43] In the 1628 Petition of Right directed against the tyranny of King Charles I, the English Parliament called for protection of such fundamental rights as no taking of "any man's life, liberty," or "property" "but by due process of law"; no taxation without "common consent"; no forced quartering of soldiers or mariners in

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[38] See chapter by R.H. Helmholz herein and further Allen D. Hertzke and Timothy Shah, eds., *Christianity and Freedom,* 2 vols. (Cambridge: Cambridge University Press, 2016).
[39] Beza, *Rights of Rulers,* 85.
[40] Acts 5:29.
[41] Beza, *Rights of Rulers*, 28–29, 84–86.
[42] Christopher Goodman, *How Superior Powers Ought to be Obeyd* [1558], facs. ed., ed. Charles H. McIlwain (New York: Columbia University Press, 1931), 160–61. See further ibid., 52–53, 74–76, 97–99, 142.
[43] Formally known as the Act of Abjuration (1581), in Herbert H. Rowen, ed., *The Low Countries in Early Modern Times: A Documentary History* (New York: Harper & Row, 1972), 102.

private homes; no suspension of the writ of habeas corpus; and no criminal prosecution or punishment without a clear statute; among others.[44] Across the Atlantic in 1641, Calvinist jurist and theologian Nathaniel Ward, steeped in Protestant opposition to the tyranny of the English monarchy, set out a twenty-five-page "Body of Liberties" for the new colony in Massachusetts Bay, detailing sundry public, private, procedural, and penal rights.[45] The Toleration Act and Bill of Rights, both passed by Parliament in 1689 in the aftermath of the Glorious Revolution against the tyranny of King James II, added further protections for the freedoms of speech, press, and assembly, an act that governed both the English mother country and her many colonies, including in America.[46] These enumerations of rights multiplied in the eighteenth century on both sides of the Atlantic. It is a telling anecdote, however, that already by 1650, almost every right that would appear in the United States Bill of Rights of 1791 had already been defined, defended, and died for by Calvinists.

Written Constitutions. Seventeenth-century Calvinist writers like Johannes Althusius (ca. 1563–1638), John Lilburne (1614–1657), and John Milton (1608–1674) called for the integration of these political covenants and fundamental rights statements into written constitutions. Such constitutions, Althusius argued, provided the commonwealth with "a guiding light of civil life, a scale of justice, a preserver of liberty, a bulwark of public peace and discipline, a refuge for the weak, a bridle for the powerful, a norm and straightener of rulership." For Althusius, a properly governed nation or state needed more than a mythical or ancient founding political covenant or contract. It needed more than just a collection of dusty old charters, like the Magna Carta (1215) and its Continental analogues that once protected the rights of the aristocracy.[47] Rule-of-law commonwealths needed clear and comprehensive written constitutions that bound all rulers and all subjects. Such constitutions should specify in detail the mutual rights and duties, powers and prerogatives of the rulers and the people, and the principles and procedures for the creation and enforcement of positive laws. "Written constitutions," Althusius wrote, provide the best "fences, walls, guards, or boundaries of our life, guiding us along the appointed way for achieving wisdom, happiness, and peace in human society."[48]

Puritan Calvinists in seventeenth- and eighteenth-century England and New England emphasized strongly that written constitutions needed adequate checks and

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[44] In Carl Stephenson and Frederick George Marcham, *Sources of English Constitutional History,* rev. ed., 2 vols. (New York: Harper and Bros., 1972), 450–53.
[45] In Edmund S. Morgan, *Puritan Political Ideas, 1558–1794,* repr. ed. (Indianapolis, IN: Liberty Fund, 2003), 177–203.
[46] In Stephenson and Marcham, *Sources,* 599–605, 607–08.
[47] See discussion in Robin Griffith-Jones and Mark Hill, eds., *Magna Carta, Religion, and the Rule of Law* (Cambridge: Cambridge University Press, 2015).
[48] Johannes Althusius, *Politica Methodice Digesta of Johannes Althusius (Althaus)*, ed. Carl J. Friedrich (Cambridge, MA: Harvard University Press, 1932), partly translated in *Politica Johannes Althusius*, ed. and trans. F.S. Carney (Indianapolis, IN: Liberty Fund, 1995), X.4; XIX.6, 15, 23, 29, 49; XX.18; XXVIII.30–32. For the views of Lilburne, Milton, and other English constitutionalists, see Witte, *Reformation of Rights,* 209–26.

balances on church and state authorities. While the offices of church and state were ordained by God and represented God's authority on earth, their individual officers were sinful human beings. Without built-in restraints, even the best officers would slowly convert their offices into instruments of self-gain and self-promotion. Drawing in part on traditional constitutional lore, Puritans thus advocated a number of constitutional safeguards: popular election of ministers and magistrates; limited tenures and rotations of ecclesiastical and political office; separation of church and state; separation of ministerial, disciplinary, and diaconal powers within the church and separation of executive, legislative, and judicial powers within the state; various checks and balances between and among each of these powers; federalist layers of authority with shared and severable sovereignty; open meetings in congregations and towns with rights of petition for the people; clearly enumerated and codified canons and laws for churches and states; and transparent proceedings and records within consistories, courts, and councils.[49]

Conclusions

In *The Hebrew Republic,* Harvard historian Eric Nelson sharply criticizes the "standard narrative" of early modern political and constitutional history. The standard narrative describes the sixteenth and seventeenth century as an era devoted to the separation of religion and politics and to the construction of a secular order built on "pagan classical" learning, Machiavellian politics, and early Enlightenment liberalism. This narrative is largely a myth, Nelson argues, propounded by postmodern secularists. The reality is that the early modern period saw "the full fervor of the Reformation unleashed" and Protestant political and legal teachings integrated into "the mainstream of European intellectual life." It was in this overtly religious milieu that the West built many of its cardinal political and constitutional ideas and institutions. Protestant theological jurisprudence, Catholic neoscholasticism, and Jewish biblical thought, says Nelson, were just as critical to the modern Western political project as the purportedly secular theories of Machiavelli or Hobbes.[50]

This chapter has illustrated briefly "the full fervor of the Reformation unleashed" onto the Western constitutional tradition. The Lutheran, Anabaptist, and Calvinist Reformations produced a wide range of constitutional teachings and reforms for early modern Europe and North America. These teachings reached the theories and laws of churches and states, authorities and liberties, duties and rights, legislation and adjudication, religious establishment and religious freedom, resistance and revolution, written constitutions and rule of law, enumerated powers and bills of rights. Some of these early modern Protestant teachings were highly original and innovative; some were classical, biblical, and medieval teachings recast in new ensembles; still others had analogues in various schools of Catholic neoscholasticism, legal humanism,

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[49] See sources in ibid., 294–320.

[50] Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, MA: Harvard University Press, 2010), 2–3.

republicanism, and monarchism that circulated in the day. But the Protestant Reformation proved to be a fertile seedbed for the growth of Western constitutionalism.