

***The Idea of Covenant*****Covenant and the American Founding*****The Covenant Tradition in Politics, Volume 3, Chapter 1*****Daniel J. Elazar**

On his way to Washington to take the oath of office as President of the United States of America, at a time when the U.S. itself seemed destined for dissolution, Abraham Lincoln pointedly stopped in Philadelphia to visit Independence Hall. Standing before that historic landmark on February 21, 1861, Lincoln emphasized to his audience that he had come "to listen to those breathings rising within the consecrated walls where the Constitution of the United States, and I will add, the Declaration of Independence was originally framed." Lincoln continued:

I have never asked anything that does not breathe from those walls. All my political warfare has been in favor of the teachings coming forth from that sacred hall. May my right hand forget its cunning and my tongue cleave to the roof of my mouth, if ever I prove false to those teachings.¹

America's Covenantal Vocation

Lincoln's paraphrase of the fifth and sixth verses of Psalm 137 is one of many manifestations of his view of the American experience as being parallel to that of biblical Israel. If Americans were not the chosen people, they were at least, in his eyes, an "almost chosen people."

Every cadence and content of Lincoln's remarks at Independence Hall and on similar occasions suggest that he shared the sense of an American vocation similar to that described by Governor John Winthrop, the foremost of the American Puritan founders.² In his *Modell of Christian Charity* delivered aboard the *Arrabella* on the Atlantic Ocean in 1630, Winthrop summarized the enterprise upon which the first Puritan emigrants from England had embarked in

the New World: "We are entered into Covenant with him for this work, we have taken out a Commission...."

In January 1965, Winthrop's statement found an echo in President Lyndon B. Johnson's inaugural address:

They came here -- the exile and the stranger, brave but frightened -- to find a place where a man could be his own man. They made a covenant with this land. Conceived in justice, written in liberty, bound in union, it was meant one day to inspire the hopes of all mankind; and it binds us still. If we keep its terms, we shall flourish.

The American covenant called on us to help show the way for the liberation of man. And that is today our goal. Thus, if as a nation there is much outside our control, as a people no stranger is outside our hope.³

Thus, almost 3,000 years after the Covenant at Sinai, when the Israelites ratified their exodus from pharaonic bondage and signified their consent to Moses with Amens, the Pilgrims, who saw themselves as new Israelites embarked on a venture into their own "hideous and desolate wilderness," likewise consented to a covenant with their signatures and Amens.⁴ In doing so, the Pilgrims introduced into North America a major stream of thought derived from the biblical idea of covenant. While often more latent than manifest since the days of the Puritans, and partially submerged within other streams and eddies of American thought and culture -- especially secular constitutionalism -- covenant ideas not only formed a significant part of the foundation of the United States, but have continued to influence American life in various ways.

Thus, from their earliest beginnings, the people and polities comprising the United States have bound themselves together through covenants to erect their New World order, deliberately following biblical precedents. The covenant concluded on the Mayflower on November 11, 1620, remains the first hallowed document of the American constitutional tradition:

In the name of God, Amen. We whose names are under-written, the loyall subjects of our dread soveraigne Lord, King James, by the grace of God, of Great Britaine, Franc, and Ireland king, defender of the faith, etc., haveing undertaken, for the glorie of God, and advancemente of the Christian faith, and honour of our king and countrie, a voyage to plant the first colonie in the Northerne parts of Virginia, doe by these presents solemnly and mutuallly in the presence of God, and one of another, *covenant* and combine our selves together into a civill body politick, for our better ordering and preservation and furtherance of the ends aforesaid; and by vertue hearof to enacte, constitutions, and offices, from time to time, as shall be thought most meete and convenient for the generall good of the colonie, unto which we promise all due submission and obedience. In witnes wherof we have hereunder subscribed our names at Cap Codd the 11. of November, in the year of the raigne of our soveraigne lord, King James, of England, France, and Ireland the

eighteenth, and of Scotland the fiftie fourth. Ano: Dom. 1620.⁵

A classic covenant, it explicitly created a community and the basis for its subsequent constitutional development. With more pride than accuracy, John Quincy Adams once referred to that Mayflower Compact as "perhaps the only instance in human history of that positive, original social compact which speculative philosophers have imagined as the only legitimate source of government."⁶

In fact, there were many such covenants at the time of the settlement of British North America. His point is an important one, however. The Mayflower Compact occurred at least thirty years before the speculative philosophers of Europe imagined it. By the time that Hobbes and Locke formulated their compactual theories, there were already many compactual civil societies in the New World.

The American people have developed two major covenantal celebrations that persist into the postmodern epoch, albeit with their covenantal messages considerably diminished and confined to the ritual or the pro-forma. They are Thanksgiving and Independence Day. The first commemorates the first founding in the colonial period before independence.

Although the idea of thanksgivings was used by subsequent generations of Americans for other kinds of commemorations as well, the Thanksgiving that survives and has become the premier American national holiday is the November Thanksgiving attributed to the Pilgrims. It is the premier national holiday because of what it combines and what it excludes. It combines both religious and patriotic sentiments in proper proportion. It is exclusively American and celebrates not only the American civil religion but the religious character of the American people yet it is not identified with any specific religion or religious denomination. Hence it is open to full participation on the part of all Americans, which none of the denominational holidays or holy days are or can be without being denatured. Thanksgiving is not strictly religious just as it is certainly not strictly civil, but each generation can develop its own combination of the two. For many generations the religious motif was dominant. The civil motif gained in importance in the latter part of the nineteenth century and on into the twentieth but the public motif remained mainly religious.

As those original motifs were modified, both the religious and civil motifs became more a matter of private observance through families and churches while the public celebration came to identify with the motifs of twentieth century America, of those of the American dream rather than the American vision, with commercial Thanksgiving Day parades to open the Christmas buying season and professional football contests to provide entertainment and capitalize on people being free from work on that day. In this sense Thanksgiving, with all the pain involved, continues to speak with the American people even in its new emphasis on their dream rather than their vision.

For the patriots of Samuel Adams's "solemn league and covenant" against British oppression; for the framers of the constitutional compact of 1787; for Jefferson, who referred to the young republic in his first inaugural address as a "chosen country;" for Lincoln, who often characterized the American union as "a regular

marriage;" for Johnson; and for millions of ordinary Americans, the concept of covenant has been reflected in real experiences from Jamestown to the present whereby individuals and families have come together to establish governing arrangements by compact.

The Puritans: Covenant Comes to the New World

Perry Miller, the great scholar of American Puritanism summed up the earliest foundations of American political theory in this way:

To the [Puritans] the basic idea was the covenant...primarily a grandiose theological conception, it became also a theory of society....In the Puritan formulation it held that a body politic could be constituted only out of the consent of the governed, yet also out of an agreement not to terms of the people's own devising but only to the pre-stated terms of God's eternal law of justice....

The great revival of the covenant tradition in sixteenth and seventeenth century Europe was connected with the economic, social and political transformations taking place on that continent at that time. The rise of early modern capitalism and republicanism led to a breakdown of the medieval connections between persons, communities, and places. People became more detached, even alienated, from their surroundings as they had to leave the places of their birth to search for work and had to find new places as individuals without the protections and supports of community. These socially naked individuals sought to continue their connections with communities through the religious ideas embodied in covenant theology and their political manifestations.⁷

The covenant tradition was linked with the development of psychological individualism as people began to conceive of themselves apart from their classes, communities, and families. Peacock describes the change in this way:

The individual as he was emerging in the sixteenth and seventeenth centuries was beginning to imagine himself, not as an organ of the social body, nor as a personality in the psychological sense -- an organization integratable with other individuals into family, occupation, class, church, government, etc., yet by nature sufferable from these institutions as never before, since they were all becoming more and more separate from each other....Medieval man, by contrast, had pictured himself less as an individual than as an organ of the body politic -- whether a limb or a head, depended on his class position. Organic imagery abounded in medieval public records, and in secular and religious literature. The body politic was thought to be God's ordinary Providence for society: He had ordained for each nation an organic life, integrated in all its parts, destined to thrive for its natural life like any organism, and destined to die like one....Three organic principles constituted the medieval body politic ideal: (1) organic hierarchy among the body's superior and inferior

organs; (2) organic involuntarism ("one part set against the head...tends to the dissolution of the whole" -- quotation from Henry Ferne, a royalist pamphleteer during the English Civil War); (3) organic cyclicism (nations "have their youth, their strength and after a while their delineation" -- cited from Stephen Marshall).⁸

While the Puritans often used the organic imagery of the time, in fact their ideas and behavior were designed to undermine organicism and were contrary to it.⁹

The covenant idea provided the Puritans with a way out. History was no longer viewed as cyclical as organic thought demanded, but, like biblical history, as teleological; that is to say, with a beginning and an end as prescribed in the Bible, though, because of man's fall, requiring God's intervention to bring it to its appropriate end. The result was an ambiguous language of discourse and, since language is man's "program," ambiguous thought on the matter in certain quarters that led to the idea of an elected nation, originally applied to England by the Puritans and later to New England by its Puritan settlers.

John Peacock describes the transformation in this way: "In the early modern body politic, organic reciprocity replaced organic hierarchy."¹⁰

Covenant identity is "federal identity"; that is to say, one's identity is defined through the reciprocal relationship. It is no longer defined organically by birth which fixes the individual's place in the community, but by agreement and the assumption of certain obligations in return for certain liberties. Thus John Winthrop could try to balance personal and federal identity among the passengers on the *Arabella* in his famous sermon to them. As Peacock concludes, "'A Model of Christian Charity' is one of the first steps in an American evolution from covenant to constitution."¹¹

A major problem in this new situation was how to reconcile commerce and charity. The idea of charity or, as it was often known, Christian charity, was a Christian modification of the biblical concept of *tzedakah* (derived from the Hebrew word *tzedek* or justice). As for Judaism, it was and is one of the fundamentals of proper life in this world. Most pronouncedly, this was true with regard to Reformed Protestantism. Yet the new economics, based on commerce and a blending of commerce and individualism, was not necessarily conducive to charity, so the two had to be reconciled. This has been, indeed, a major problem for Americans since the very founding of the first English colonies on North American shores. American political culture itself is rooted in the two bases of marketplace and commonwealth as a result.

The Puritans confronted the problem head-on. John Winthrop, the first governor of Massachusetts Bay Colony addressed it aboard the *Arabella* on the voyage over and suggested the reconciliation of the two through the Puritan's covenant with God.¹² He specified the articles of that covenant as a practical guide to that reconciliation. In true covenantal style, Winthrop's discussion emphasized the obligations on the rich to help the poor, not the virtues of the poor or any rights of theirs to that help. A proper Christian thus was obligated to reconcile charity and commerce and to provide his share of Christian charity for those less fortunate than he, no matter whether the recipients were deserving or were not.

Covenant, then, was designed to mediate between self-interest and conscience, material means and transcendental ends, and personal and collective destinies in the commonwealth. Winthrop's title for his lecture, "A Model of Christian Charity," suggests how he intends to address those tasks. It was in this address that he spoke of the New Englanders as being "a city upon a hill" with "the eyes of all people...upon us," and that the Puritans "shall find that the God of Israel is among us,"¹³ All of this contingent upon maintaining the articles of the covenant and providing Christian charity so as to approach if not achieve saintly conduct. The body politic, indeed, could only stand if it were properly informed religiously since by itself it was too weak a reed. Indeed, the synthesis between the religious spirit in its demands and the necessities of civil life lay at the key to Winthrop's thought.

Covenant used in this way undermined feudal hierarchy. The new body politic under special Divine providence did not involve superiors and inferiors in an army-like chain of command, but mutual consent among "the members of this body one towards another" who served "out of love [and] sympathy,"¹⁴ a concept akin to the biblical *hesed* (freely translated as loving covenant obligation).

Winthrop's theory of affections was the cement that linked his ideas of sacrifice, commerce, and equality within the body politic. Note his definition: "...it is not possible that love should be bred or upheld without hopes of requital....Love is always under reward, it never gives but it always receives with advantage....Among the members of the same body, love and affection are reciprocal in a most equal and sweet kind of commerce....Regard of the pleasure and content that the exercise of love carries with it as we may see in the natural body...labor...is accompanied with such pleasure and content as far exceeds the pains it takes: so is it in all the labor of love, among Christians, the party loving, reaps love again as what was showed before, which the soul covets more than all the wealth in the world...for to love and live beloved is the soul's paradise, both here and in Heaven."¹⁵ In this way Winthrop replaced hierarchy with reciprocity, theologically reordering feudal reciprocity federally, that is, through covenant.

Edmond Morgan sums up the meaning of this transformation:

The transition from medieval to modern times, as has often been suggested, was marked by a transformation in which one's relationship to another ceased to depend so much on the estate or station in life occupied by each and came to be based more on whatever covenant, that is, contractor agreement might exist between them. Whether this change owed anything to religious ideas or whether certain religious ideas were themselves the product of the change can never be known, but it is clear that many sixteenth and seventeenth century Protestants, and especially Puritans thought about their relationship with God as though it were based on covenant."¹⁶

Morgan was writing with the skepticism of the twentieth century historian. Nevertheless, he properly connects covenant and contract. Sir Henry Main had earlier set forth the fundamental theory that the transition from the medieval to

the modern epoch was a shift from status to contract.¹⁷

In the last analysis, Maine is right, but it is important to recall the difference between covenant and contract. For those concerned with more than material relationships, neither status nor contact is enough. There must be the bridge of covenant in between. Preceding Lincoln, Winthrop referred to covenant as a marriage, that is to say, what one might call a sacramental contract freely entered into, yet binding, requiring the highest religious obligation together with the most worldly pursuit of happiness.¹⁸

How do moderns enter into covenant and know that it is a covenant that they have entered into? Winthrop tells us: "The Lord hath given us leave to draw our own articles....Now if the Lord shall please to hear us, and bring us in peace to the place we desire, then hath He ratified this covenant."¹⁹

Thus the first political principles systematically enunciated in America were extensions and adaptations of the Puritans' federal theology which saw all society as an outgrowth of the basic biblical covenants between God and His people.²⁰ Winthrop referred to the good commonwealth as one committed to "federal liberty," or the freedom to freely hearken to the law of the covenant. The Puritans sought to place all relationships between people on a covenantal basis. Their congregations were covenant-formed partnerships of "saints" which came into existence only when potential members covenanted among each other, and survived only so long as the covenantal act remained valid (potentially but not necessarily forever).

Similarly, civil government among the Puritans was instituted by civil covenant among the residents (or potential residents) of virtually every town in most of the New England provinces.²¹ The Mayflower Compact (originally known as the Plymouth Combination) was the first of these covenantal acts. Subsequently, the same mode of town formation was extended to virtually every settlement created in New England and to many created in the other colonies as well. Connecticut and Rhode Island, for example, were formed by their towns covenanting together. John Clarke and his Narragansett associates expressed the basic idea in their Plantation Agreement:

It is agreed by this Present Assembly thus Incorporate, and by this Present Act declared, that the Forme of Government Established in Providence Plantations is Democraticall; that is to say, a Government held by ye Free and Voluntarie Consent of all, or the greater Parte of the Free Inhabitants.²²

The ability of all to enter into the covenant meant that all were, ipso facto, equal in the most crucial manner, i.e., in the ability to bind themselves to proper standards of life.

The New England town was the highest embodiment of the Winthropian covenanted community. Based on the voluntary commitment of its residents to the congregational covenant as a basis for civil citizenship, it was illegal to live more than half a mile from the meeting house and biblical laws were applied in many areas of personal behavior. It was the severity of some of those laws plus

the limitations on normal life that contributed to the westward migration of many of the children of those towns because however much the Puritan model drew on earlier times, New England was a modern colony with modern aspirations of individual self-fulfillment and success.

As Henry Steele Commager has observed:

All through the colonial era Americans went from compact to compact -- the Fundamental Laws of Connecticut of 1639, the 'Solemn Compact' at Portsmouth of 1638, and its successor the Charter of the Providence Plantations of 1647, the Pennsylvania Charter of Privileges of 1701 (not quite so clear a case, to be sure), and thereafter a score of compacts and agreements on one frontier after another."²³ As Richard Niebuhr observed some years ago: "one of the great common patterns that guided men in the period when American democracy was formed...was the pattern of the covenant or of federal society."²⁴

As Winthrop and his colleagues such as Thomas Hooker, the Mathers and John Cotton reveal in their works, the Puritans who settled in New England combined a fundamental conservatism with an unhesitating radicalism in a way that was to become as paradigmatic for Americans as other aspects of their approach to life. That combination was no doubt directly related to their covenantal ideology, which saw humans as bound to God through predestination, yet through that binding free to live according to the constitution He provided for their salvation. To implement that constitution required a revolt against the existing society, but the goals of that revolt were to restore prelapsinarian (before Adam's fall) harmony to the world. The Puritans came to the New World to build a new society, but never lost sight of human weakness in trying to do so.

The synthesis did not always hold together. Those who leaned more to the radical side, such as Roger Williams and Ann Dickinson, almost immediately broke away. Williams established his own covenantal commonwealth of Rhode Island and Providence Plantations that was as firmly grounded in covenant in matters civil and political as Massachusetts, only it was so grounded in order to guarantee openness in matters religious, something that the Puritans believed was impossible for the attainment of salvation.

Others occasionally allowed the conservative dimensions of Puritanism to overwhelm them; viz. the Salem witch trials in which the continued Puritan emphasis on the devilry in human souls got out of hand as a result of popular mischief. But for the most part the synthesis held, spinning off different versions. Thomas Hooker, for example, moved his congregation from Massachusetts to found Connecticut in 1636 to develop a more egalitarian Puritan commonwealth, but one no less faithful in combining conservative and radical dimensions. Here his supporters wrote the first full American constitution, *The Fundamental Orders of Connecticut*, and adopted the Mosaic law as the basis of Connecticut law, by reference.

Puritan federalism expressed itself philosophically and socially through the concept of "federal liberty" which John Winthrop articulated in his Address to the

General Court in 1645. For Winthrop and the other Puritans, federal liberty stood in contradistinction to natural liberty. John Winthrop, one of the founders of Massachusetts, enunciated his famous doctrine of federal liberty in 1645:

There is a two-fold liberty, natural (I mean as our nature is now corrupt) and civil or federal. The first is common to man with beasts and other creatures. By this, man, as he stands in relation to man simply, hath liberty to do what he lists; it is a liberty to evil as well as to good. This liberty is incompatible and inconsistent with authority and cannot endure the least restraint of the most just authority. The exercise and maintaining of this liberty makes men grow more evil and in time to be worse than brute beasts: *omnes sumus licentia deteriores*. This is that great enemy of truth and peace, that wild beast, which all of the ordinances of God are bent against, to restrain and subdue it. The other kind of liberty I call civil or federal; it may also be termed moral, in reference to the covenant between God and man, in the moral law, and the politic covenants and constitutions between men themselves. This liberty is the proper end and object of authority and cannot subsist without it; and it is a liberty to that only which is good, just and honest. This liberty you are to stand for, with the hazard (not only of your goods, but) of your lives if need be.

Whatsoever crosses this is not authority but a distemper thereof. This liberty is maintained and exercised in a way of subjection to authority; it is of the same kind of liberty where with Christ hath made us free. The woman's own choice makes such a man her husband; yet, being so chosen, he is her lord, and she is to be subject to him, yet in a way of liberty, not of bondage; and a true wife accounts her subjection her honor and freedom and would not think her condition safe and free but within her subjection to her husband's authority. Such is the liberty of the church under the authority of Christ, her king and husband; his yoke is so easy and sweet to her as a bride's ornament; and if through forwardness or wantonness, etc., she shake it off at any time, she is at no rest in her spirit, until she takes it up again; and whether her lord smiles upon her and embraceth her in his arms, or whether he frowns, or rebukes, or smites her, she apprehends a sweetness of his love and all, and is refreshed, supported, and instructed by every such dispensation of his authority over her. On the other side, ye know who they are that complain of this yoke and say, let us break their bands, etc.; we will not have this man to rule over us. Even so, bretheren, it will be between you and your magistrates. If you want to stand for your natural corrupt liberties, and will do what is good in your own eyes, we will not endure the least weight of authority, but will murmur and oppose, and be always striving to shake off that yoke; but if you will be satisfied to enjoy such civil and lawful liberties, such as Christ allows you, then will you quietly and cheerfully submit unto that authority which is set over you, in all the administrations of it, for your good.²⁵

James Wilson was to restate Winthrop's point in connection with the proposed Federal Constitution of 1787:

In considering...the system before us, it is necessary to mention another kind of liberty,...federal liberty. When a single government is instituted, the individuals of which it is composed, surrender to it a part of their natural independence....When a confederate republic is instituted, the communities, of which it is composed, surrender to it a part of their political independence....The states should resign to the national government, that part, and that part, only, of their political liberty, which, placed in that government, will produce more good to the whole, than if it had remained in the several states. While they resign this part of their political liberty, they retain the free and generous exercise of all their other faculties, as states, so far as it is compatible with the welfare of the general and superintending confederacy.²⁶

In truth, others who came to America were attracted by the openness of a wild land and sought natural liberty. Natural liberty means that everyone is free to do what he or she pleases provided it is perceived as not hurting anyone else. In colloquial American, it is "doin' what comes naturally" rather than being bound by any human social or political restrictions. In American mythology, in general, frontiersmen who went beyond the limits of civilization, most especially mountain men, were best able to fulfill this desire for natural liberty while, just as federal liberty is a Puritan idea whose roots go back to the Bible, natural liberty as moderns and postmoderns understand it philosophically is Rousseauian but has far earlier roots. This has been a continuing tension in American society.

Donald Lutz comments that federal liberty rests upon a combination of virtue and trust, and a tension between individualism and communitarianism. Although the combination originally relied upon religion, it has been transformed into a civil concept.

Puritan covenantalism touched every sphere of life. Even the militia, that at first glance seems to be merely a continuation of medieval organizational patterns, was covenanted and became both an instrument and a manifestation of Puritan covenantalism.²⁷

In this respect they continued the ancient tradition of the role of the militia in covenanted polities as the means for individuals to express a major part of their obligations to the community as legitimizing their rights of citizenship.

From the first, the Puritan settlers of New England had to organize their defense, particularly against the Indians. They did so in the English way, not by standing armies but through the train band militias, at times organized and trained by a handful of veteran soldiers who were paid for the task.

Unlike the English militias which were confined to certain middle and upper classes, the New England militia train bands democratically accepted just about everybody from the first. Moreover, in the spirit of Puritan covenantalism, the train band was based on voluntary consent. The train bands were covenanted organizations by design, one aspect of which was the selection of their own officers. This power evolved over a period of years but it came to be because it fit into the general pattern of civil and ecclesiastical elections in the colony. One

qualified as a militia participant by taking the oath of fidelity which was viewed as the basic act of consenting. By 1652 the Massachusetts legislature declared that "all Scotsmen, Negers, and Indians having with or servants to the English" would be enrolled, thereby further expanding the militia's openness and the military franchise. There were even controversies over elections and who had been elected.

By the 1650s locals who were not Puritans could in many places outvote those who were in the militia and the legislature began to be concerned by what for them was an excess of democracy. From 1656 on, the legislature tried to limit the franchise to real members of the Puritan community until in 1668 the Massachusetts General Court abolished local train band elections altogether and left only the right of the freemen to select a major general, the colony's highest-ranking officer, ostensibly to abide by the rules imposed by Charles II after the restoration of the monarchy in England.

In terms of political organization, the high point of Puritan federalism was in the New England Confederation, which in the end was destroyed by the British as a threat to the empire. Organized originally by the four New England colonies of Plymouth, Massachusetts Bay, Rhode Island and Connecticut for defensive purposes, it followed the style of confederacies of communities in which the real locus of power and commitment remained in the constituting units, but it soon showed signs of going beyond a mere military alliance.²⁸

Although the New England Puritans remained the most eloquent articulators of the covenant idea, they were not the only ones to bring it to America. The Scotch-Irish of the mountains and piedmont from Pennsylvania to Georgia; the Dutch of New York; the Scottish Presbyterians; and to a lesser extent, the Quakers and German Sectarians of Pennsylvania and the Middle States; and the Huguenots of South Carolina were all nurtured in churches constructed on the covenant principle. The first ministers of the Gospel in Virginia -- the colony usually cited as the antithesis of New England -- were also Puritans.²⁹ Indeed, the tradition became so widespread that by 1776 over half of the new nation's church congregations were based on covenant principles.

Initially, the basic covenants of town and congregation united individuals and families. Parallel to those covenants there developed the network of voluntary associations -- commercial, social, church, and civic -- which represent the non-governmental aspects of a civil society founded on the principles of free contract. From the first, networks of communities were united as colonies, then states. Ultimately, the network of states was linked in a federal union, always paralleled by a similar network of associations.

Covenants and Other Bonds

The American federal system is very much an outgrowth of both the theological and philosophic streams of covenantal thought and the political experiences of the emergent American people that converged about covenant by the late

seventeenth century. If covenant ideas were first brought to the New World in an organized fashion by the Pilgrims and Puritans who settled New England, another set of covenant-related ideas entered America through the teachings of the new political science, especially those of Harrington, Locke, Montesquieu and the Scottish Enlightenment. That is why federalism in the United States is more than a political device for dividing and sharing power among the state and federal governments but, rather, the *form* of the American polity in the eighteenth century sense of the term, that is to say, the principle that *informs* every aspect of the polity.³⁰

As the form of the American polity, federalism has its roots not only in the political dimension of American society, but in the economic, social, and religious dimensions as well. As we have seen, the political and religious dimensions are closely linked. Significantly, the economic roots of American federalism also have a compactual base. They can be traced back to the early trading companies that sponsored British and Dutch settlement in North America and to the system of governance encountered by those settlers on the voyage over.³¹

The trading companies, each with its royal monopoly, were organized on a shareholding basis, so that both ownership and control was spread among the shareholders. In some cases, the shareholders remained in Europe and tried to hold the actual settlers within their grasp on the basis of their control of the company. Invariably, this failed for political reasons. In a few cases, the settlers or some significant portion of them were themselves shareholders and, as such, combined political and economic control. In either case, the pattern of shareholding led to a corporate structure that was at least quasi-federal in character.

In the very earliest days the line between the political and economic aspects of the charters establishing the colonies was not at all clear. As the companies lost their monopolies, charters turned more in the direction of political constitutions, pure and simple, thereby reinforcing the theopolitical covenantal dimension where it was present or providing a complementary, compactual alternative where it was not.

Even the voyage over contributed to the covenantal experience of the colonists. The governance of ships had a contractual character that at least involved federal principles to the extent that every member of a ship's crew was in some respects a partner in the voyage. By signing the ship's articles, a crew member was entitled to an appropriate share of the profits of the voyage while at the same time formally submitting himself to the governance of the captain and the ship's officers. Since every ship that ventured forth on the ocean was, in effect, leaving civil society for a state of nature, every voyage had to be based upon a prior compact among all participants which would determine the political arrangements that would prevail for that voyage and the distribution of the economic benefits that would result.

Two centuries later, this system resurfaced in slightly different form in the organization of the wagon trains that crossed America's western plains. They also

left civil society -- this time for a land voyage through the state of nature. Their members also had to compact with one another to provide for their internal governance during the long trek westward. Echoing their earlier seaborne predecessors, they did so by compacting to establish a (temporary) political order.

These religious, political, and economic elements combined to socialize Americans into a kind of federalistic individualism. That is to say, not the anarchic individualism of Latin countries, but an individualism that recognized the subtle bonds of partnership linking individuals even as they preserve their respective integrities. William James was later to write about the federal character of these subtle bonds in his prescription for a pluralistic universe.³² Indeed, American pluralism is based upon the tacit recognition of those bonds. Even though in the twentieth century the term pluralism has replaced all others in describing them, their federal character remains of utmost importance. At its best, American society becomes a web of individual and communal partnerships in which people link with one another to accomplish common purposes or to create a common environment without falling into collectivism or allowing individualism to degenerate into anarchy. These links usually manifest themselves in the web of associations which we associate with modern society but which are particularly characteristic of covenanted societies such as that of the United States.³³

In a covenanted society the state itself is hardly more than an association, writ large and endowed with exceptional powers but still an association with limited means and ends. Were Americans to adopt a common salutation for some farfetched reason, like "comrade" in the Soviet Union or "citizen" in the days of the French Revolution, in all likelihood the American salutation would be "pardner," the greeting of the archetypal American folk figure, the cowboy, who embodies this combination of individualism and involvement in organized society and who expresses the character of that involvement through the term "pardner."

The American Colonial Experiments with Covenants and Constitutions

As noted above, many of the early settlers in British North America explicitly used covenants to found their communities and polities. Covenants were particularly useful in the founding of towns and congregations, often involving the same people, especially in New England, less so in the other colonies except where Reformed Protestants settled.

Since the United States was "founded from the ground up," in the words of Donald Lutz, this is enormously significant.³⁴ In a certain way this was a continuation of late medieval Old World Reform and Protestant theory practice, albeit with a radically new turn, since opportunities presented themselves in the New World to turn theory into practice that had not existed in the Old due to the settlers' having had to establish new settlements where none (or at least none

recognized by Europeans) had previously existed. The European settlers saw themselves as beginning from a political tabula rasa, the state of nature, as they phrased it, and hence were able not only to start anew but to design their institutions and constitutions from the very beginning according to their beliefs.

That kind of constitutional design could work as long as those beliefs squared with the necessities of living in the New World. Frederick Jackson Turner has emphasized the degree to which those necessities also differed from those the settlers knew in Europe and hence served to radically shake up the new societies they founded, basing success and prosperity of whatever kind on the ability to cope with the new situations; in other words, on merit rather than on a previously ascribed status.³⁵

The combination of covenantal ideology and practical necessity was most felicitous in terms of the development of modern democratic republicanism. Covenants among equals, who established or reaffirmed their equality through achievement in a relatively harsh environment, led to communities and polities whose democratic orientation was built in from the first and was reaffirmed by critical subsequent experience.

The British settlers' use of covenants did not stop there. Having no indigenous traditions to draw on and having the necessity to constitute new civil governments for their new territories, the settlers were propelled from covenants to constitutions. Thus they were the first people at the eve of the modern epoch or after its beginning to develop constitutions of government of their own, based upon civil principles or, in many cases, on the half-civil, half-religious covenants they had established for themselves as their initial means of self-organization.

As scholar after scholar has shown in research in this century, the development of modern constitutions of government by the Puritans did not rest upon the work of John Locke, his predecessors, or his successors among political philosophers and could not have, because they preceded Locke by as much as two generations, certainly half a century.³⁶ Indeed, as Perry Miller has demonstrated quite convincingly, Puritan political thought explaining, elaborating, and justifying the Puritan system of government with its covenants and constitutions also preceded Locke by at least a generation. Its first exponents were contemporaries of Hobbes and Harrington, but the content of their thought was indigenous and original, derived from the same biblical, Puritan, and European sources that influenced the great political philosophers, and which they transformed in a quasi-Puritan way, similar to the way that the latter revolutionized classical political thought. Thus both in practice and in theory American covenantalism and constitutionalism were unique, independent inventions, based upon new and independent experience. At the same time, they drew upon an old, classic, and hallowed tradition dating back to the Bible.

If Perry Miller was the leading discoverer of this tradition in America, Donald Lutz is the leading collector and interpreter in our time of the documents of this political foundation.³⁷ Lutz identifies the two stages of the covenantal founding of society, the founding of a people and then the founding of a governing arrangement for them. As he points out, in indigenous American developments

these were in place before Locke, who conventionally is given credit for the idea of that two-fold founding, was even born. By paying careful attention to the language used as a guide to uncovering what Lutz, following Voegelin, describes as the symbols and the myths that form the founding story of the American people, we can see even more clearly how covenantalism led to constitutionalism in colonial America and the United States.

A mere listing of the documents to which Lutz refers is impressive. One is provided in Table 6.1.

TABLE 6.1

COLONIAL AMERICAN FOUNDING DOCUMENTS

	Document Number and Short Name	Type of Document	Foundation Elements	Who is Acting
1	Articles, Laws (1610-1611)	I&J	3	executive
2	Laws enacted (1619)	I&J	3	legislature
3	Agreement (1620)	A,D,G&H	1,2,3&4	people
4	Laws and Orders (1624)	J	3&4	legislature
5	Plymouth Oath (1625)	C	1&3	people
6	Salem Covenant (1629)	A	1&3	people
7	Agreement (1629)	A,D&G	1&2	people
8	Watertown Covenant (1630)	A&G	1&3	people
9	Mass. election (1631)	G&J	4	people
10	Oath of a Freeman (1631)	C	1&3	people
11	Mass. Agreement (1632)	G	4	people
12	Cambridge Agreement (1632)	D&G	4	people
13	Dorchester Agreement (1633)	D&G	4	people
14	Cambridge Agreement (1634)	G&J	4	people

15 Mass. Agreement (1634)	G&J	4	legislature
16 Oath of a Freeman (1634)	C	1&3	people
17 Salem Oath (1634)	C	1&3	people
18 Watertown Agreement (1634)	B	4	people
19 Enlarged Salem Covenant (1636)	A&F	1&3	people
20 Plymouth Agreement of 1636	D,G&H	2	special body
21 Pilgrim Code of Law (1636)	B,D&J	3&4	special body
22 Dedham Covenant (1636)	D&G	1,3&4	people
23 Providence Agreement (1637)	G	2	people
24 Orders (1638)	J	3&4	legislature
25 Act for Establishing the House (1638)	B&D	4	leg. & people
26 Government of Pocasset (1638)	A&D	1,2&3	people
27 Plantation Covenant at Quinnipiack (1638)	A&D	3	people
28 An Act for Church Liberties (1638)	J&G	3	prop. & people
29 Act for Swearing Allegiance (1638)	A,C&J	3	legislature
30 An Act What Persons (1638)	B&J	4	legislature
31 Act for the Liberties (1638)	J	3	legislature
32 Fundamental Orders of Conn. (1639)	A,D&I	2&4	people
33 Newport Agreement (1639)	D&G	1,2&4	people
34 Government of Portsmouth (1639)	B&D	2&4	people
35 Guilford Covenant (1639)	A&D	1&3	people

36 Structure of Town Governments (1639)	H	4	legislature
37 Fundamental Articles of New Haven (1639)	A,D&I	2,3&4	people
38 Agreement of Settlers (1639)	A,D,G&H	1,2&3	people
39 Plantation Covenant (1640)	G&H	3&4	people
40 Connecticut Oath of Fidelity (1640)	C	1&3	people
41 Mass. Body of Liberties (1641)	D,I&J	3&4	legislature
42 Piscataqua Combination (1641)	D&H	1,3&4	people
43 Government of R.I. (1642)	D&G	2&4	legislature
44 Capital Laws of Conn. (1642)	J	3	legislature
45 Government of Guilford (1643)	D&G	1,2,3&4	people
46 New Haven Fundamentals (1643)	D,G&I	1,2,3&4	people
47 New England Confederation (1643)	D,G&H	2,3&4	legislature
48 Mass. Bicameral Ordinance (1644)	J	4	legislature
49 Mass. Ordinance on the Legislature (1644)	J	4	legislature
50 Majority Vote of Deputies (1645)	J	4	legislature
51 Warwick Agreement (1647)	D&G	2&3	people
52 Acts and Orders (1647)	D,I&J	2,3&4	people
53 Laws and Liberties (1647)	F,I&J	3&4	legislature
54 Mass. Ordinance (1648)	J	4	legislature
55 Charter of Providence (1649)	J&L	2&4	legislature
56 Maryland Toleration Act (1649)	J	3	legislature

57 Towns of Wells (1649)	D&H	2&4	legislature
58 Connecticut Code of Laws (1650)	F&J	3	legislature
59 Cambridge Agreement (1652)	G	3&4	people
60 Puritan Laws and Liberties (1658)	F&J	2,3&4	legislature
61 An Act of General Court (1661)	J	3&4	legislature
** Charter of Conn. (1662)	B&L	1,2,3&4	king&leg.
** Charter of R.I. (1663)	B&L	1,2,3&4	king&leg.
** Concessions and Agreement of N.J (1664)	D&G	1,2,3&4	leg.&props.
** Concessions and Agreement (1665)	B,D&L	1,2&4	leg.&props.
62 Letter from Governor (1665)	J	3&4	governor
63 General Assembly of R.I.(1666)	J	4	legislature
64 Preface to General Laws (1672)	F&J	3	legislature
** Concessions of W N.J. (1677)	D,G&I	3&4	people&props.
65 Laws and Liberties of N.H. (1680)	F,I&J	3&4	legislature
66 Fundamentals of W N.J. (1681)	D,G&I	3&4	people&props
67 Concessions to PA. (1681)	D,E&J	3	people&props
68 Laws&Liberties of N.H. (1682)	F,I&J	3&4	legislature
69 Frame of Gov. of PA. (1682)	B,I,J&L	4	proprietor
70 Act for Freedom (1682)	G&J	3	prop.&leg.
** Frame of Gov. of PA. (1683)	B&J	4	prop.&leg.
** Laws on Personal Freedom (1683)	J	3	legislature

** Fundamental Constitutions (1683)	B,D,I&L	2,3&4	proprietors
71 Charter of Liberties (1683)			
72 Articles of Agreement (1686)	I&J	3&4	gov.&leg.
** Admonition for Reformation (1689)	F,G&J	3	gov.&leg.
** Frame of Gov. of PA. (1696)	F,I&J	4	governor
73 Division of Conn. (1698)	J	4	legislature
** Charter of Privileges (1701)	F,G&L	3&4	prop.&leg.
74 Act to Ascertain (1721)	J	4	gov.&leg.

Code for Types of Documents (with respect to form):

A - religious H - combination
 B - civil covenant I - fundamentals
 C - oath J - ordinance
 D - compact K - patent
 E - contract L - charter
 F - organic act M - constitution
 G - agreement

Code for Foundation elements:

1. creation of a people
2. creation of a government
3. provision of a self-definition
4. creation or description of a specific form of government or set of political institutions

Source: Donald Lutz, *Documents of Political Foundation Written by Colonial Americans* (Philadelphia: ISHI Press, 1986).

Lutz brings documents from eleven of the thirteen states, all except Georgia, which was not founded until 1732, and North Carolina, whose only seventeenth century document was also that of South Carolina and which Lutz brings. The oldest is "Articles, Laws and Orders, Divine Politic and Martial for the Colony in Virginia" established between May 1610 and June 1611, that is to say, assembled and approved by different persons on those two dates, and the last, "The Act to Ascertain the Manner and Form of Electing Members to Represent the

Inhabitants of this Province in the Commons House of Assembly of South Carolina" in 1721.

Lutz also presents a set of principles which he derived from his analysis of these foundation documents. They are as follows:

1. The use of the covenant form for political foundation is derived from the use of covenants for the foundation of religious communities.
2. The political covenant evolved rather quickly into the compact form.
3. The use of the compact form for documents of political foundation was a fundamental step in the development of popular sovereignty.
4. The secular "agreement" was a variant of the compact form.
5. The covenant and compact forms were used in such a way that they could contain any or all of the foundation elements.
6. With few exceptions, when the covenant or compact forms are used it is the people who are acting.
7. When the legislature acts it usually uses the ordinance form, of which the "fundamentals" form is a variant.
8. With few exceptions, the ordinance form is used primarily so as to include only the last two foundation elements.
9. The formal oath, when used by itself, contained the first and third foundation elements, and when embedded in a longer document such as a constitution, it contained only the third element.
10. Although present mainly in embryonic form at the beginning, the fourth foundation element becomes prominent in later documents.
11. While this fourth foundation element was prominent in the early state constitutions, the other three elements were often present also so that these documents in effect were using the compact form.
12. The third foundation element evolved into a form we now call a bill of rights.
13. In 53 instances the third and fourth elements are separated, i.e., one is found in a document without the other. In 28 instances they are found together in the same document. Thus, colonists were twice as likely to separate these two elements as combine them.
14. Number 13 led to some confusion as to whether state constitutions should include bills of rights. Some combined the third and fourth elements in the body of the document, many separated the two elements into two sections, calling only that section containing the fourth element the "constitution," and some did not contain a bill of rights at all.
15. The colonists were willing to let the legislatures speak for them in matters of foundation, except when forming themselves into a people and founding a government. The exception to the latter is found in those documents founding a federation of existing towns.
16. Number 15 leads to the natural expectation that legislatures could write state constitutions, although when these documents were in the compact form, and thus contained all four foundation elements, the expectation was that the people should also approve them. When the first two elements were not present, such popular ratification was not expected.

As we can see from this list, American constitutionalism fits exactly into the

covenantal mold and indeed represents the successful adaptation of that mold to modernity. In part this is because, as Lutz also points out, the American constitutional tradition is comprised of a weaving together of two strands, one initially composed of charters issued by the colonizing governments to their settlers in North America, which provided frames of governmental organization but that either required complementary local documents to be drafted by the colonists themselves or provided great room for the colonists to develop their own constitutional expressions within these charters. These charters were in general secular documents, and did not claim to have other than the most nominal religious basis if that. Some were charters of trading companies.

The other strand involved documents drafted and ratified by the colonists themselves -- the covenants, combinations, compacts and constitutions prepared on the ground, as it were, either within frameworks provided by the colonizing charters or even independent of them. These often were highly religious in their bases, although designed for civil purposes. Lutz attributes the basic form of the colonists' founding documents to the Bible, which was omnipresent in all of the colonies, not only New England. He suggests that what is common to these documents is that the operative word is "agreed," and that the agreement is made by everyone in the community, although drafted by representatives. It establishes a people set off from other people and it establishes a government for making the collective decisions required by the community with its form, institutions and principles.

Moreover, the people is "a religious people who need leaders to keep them close to God" and a common moral code. The influence of the Protestant Reformation and, in particular, Reformed Protestantism is evident here. It should be recalled that the first of these American founding documents came either at the same time as or earlier than the parallel documents in England and Scotland that have been well noted in the history books. These civil documents grew out of and paralleled the many church covenants that established congregations of believers at the time and that did not serve civil purposes.

Both civil and church covenants emphasized such operative words as "bind" and "promise" in addition to "agree" and "covenant." As Lutz explains,

In almost every significant detail the church covenants written in early colonial America resemble Jewish covenants, with one important exception -- they do not establish a specific form of government. When colonists found themselves in the position of having to create a government, therein to flesh out a government granted in the charter, they tended simply to add this element to the church covenant form and thereby completely recover the foundation elements in Jewish covenants. They did not do so consciously, perhaps, but the radical Protestant return to biblical sources for ordering their lives led to their becoming, to a far greater extent than they realized, precisely what they saw themselves as metaphorically -- a modern version of the Jewish people.³⁸

The Plymouth Combination (it was not known as the Mayflower Compact until

1793, when it was renamed in the language of the American Revolution) was the first such political covenant. In the document itself, it uses the terms "covenant and combine" (not compact). It is justly revered for what it is, the founding document of New England and much of American civil society, but also represents the first step in the modern transformation of covenant into compact. In itself it can be viewed as both, especially when we understand that "combine" was the term generally associated with the compact form. Since not all who signed the document were identified Reformed Protestants, covenanting had to be supplemented by combining to bind them all. This, indeed, was the modern problem and project, combining active believers and others into civil bodies politic. This combination of covenant and compact was later to be featured in the Massachusetts Constitution of 1780, the classic American state constitution, still in effect in Massachusetts and probably the oldest continuing written constitution of government of the modern world.

The first true constitution written by Americans that included a detailed description of governmental institutions and their operating principles came to be known as the Pilgrim Code of Law, written by the people of Plymouth Colony in 1636. It was adopted along with the Plymouth Agreement, enacted by the colony the same day and inserted as a preface to the Code of Law, giving it all four foundation elements that Lutz has identified. While the compact dimension was given more emphasis in this document than the covenant dimension, both were still intertwined.

Lutz indicates that the oldest pure compact in American political history that is also complete as a foundation document is the Piscataqua Combination adopted in 1641. Nevertheless, the combination of the two forms persisted. Only occasionally were the colonists willing to put their trust entirely in popular sovereignty. Most of the time they wanted God to be at least a witness to their founding documents. Thus the colonial Americans wrote founding documents that were constitutional and that evolved into constitutions, but they did not use the term "constitution" (although they did periodically use the term "constitute"). These were combinations, agreements, fundamentals, frames, covenants or the like. Lutz provides definitions of all the terms used and where and how they were used.³⁹

The documents themselves indicate the order of progression of terminological development. By the time of the American Revolution the term "constitution" had become the accepted one. The term grew directly out of the covenantal tradition and covenantal language to become one of the great political transformations of the modern epoch and one of the foundations of the modern project.

The American polities began as commonwealths. Four of the American states -- Massachusetts, Pennsylvania, Virginia, and Kentucky -- officially still are. Three of those are among the original thirteen. Not only that; each is the mother state of its section -- in the case of Virginia and Massachusetts, historically as well as constitutionally, and in the case of Pennsylvania, constitutionally only, while Kentucky broke off from its mother commonwealth, Virginia, to become the first western state admitted to the new American union after the adoption of the

Constitution of 1787.

Most American states were either founded as civil societies or transformed from embryonic commonwealths to civil societies (as were the four whose names still reflect the old usage). That transformation is marked by their constitutional documents, which can be used as tracers to identify these developments. Thus the American colonies-cum- states culminating in the United States of America made a priceless contribution to the development of modern government and civil society. This contribution was an outgrowth of the covenantal tradition in both of its strands. Even where American political philosophers drew upon non-covenantal sources, they did so either to give a different and more secular justification of covenantal ideas or to buttress a basically covenantal approach at certain points, not from outside of that covenantal framework. Indeed, those they drew upon most frequently, the English political philosophers of the seventeenth century and the political philosophers of the Scottish Enlightenment of the eighteenth, themselves came from covenantal traditions and used those traditions either directly or indirectly in the development of their political philosophies.

This was a new sense of what constituted a constitution. The ancients also knew about constitutions but they saw them as more comprehensive, not simply or predominantly covenants, bills of rights, and frames of government, but involving specified moral foundations and socio-economic distributions of power as well. The ancient constitutions paid great attention to the family and to inheritance from one generation to the next as the principal foundations of their constitutions. We see strong echoes of that in the early seventeenth century documents before the North American colonists stepped out onto the new road of modern constitutionalism.

At the time of the American Revolution, constitutional treatment of such matters was generally reduced to a kind of irreducible minimum that was deemed to be indispensable for the public order. Thus, early in the Revolution, those American states that inherited them abolished primogeniture and entail in a bid to prevent the formation of a landed aristocracy in their states. Indeed, government continues to provide regulations for family living but changes them by statute as the people change their beliefs as to what is socially desirable, rather than vesting these regulations in the constitution itself.

In other words, as the distinction between public and private grew sharper in the modern world, personal and family matters were relegated to the private sphere and hence were removed from public constitutions. While this change was actually recognizable in the colonial documents, it became fully grounded in first the American and then the modern constitutional system only after the American Revolution. This was a radical change but it was nonetheless within the covenantal tradition, although we can argue about what it did to the essence of the original tradition.

The Covenant Idea and Liberty: A Summary Statement

The covenant principle has also served the cause of individual and social liberty. In its most basic meaning: the right to contract implies the freedom of all the contracting parties. This is one reason why the Puritans, even though aspects of their regime in Massachusetts would be considered repressively by contemporary democratic standards, can be regarded as the fathers of American liberty. Their application of the daring biblical idea that people are free enough to make pacts with god became one of the bases for all people's claims to liberty in relation to one another.

Following the Hebrew Scriptures (which they knew as the Old Testament), the Puritan's federal theology held that god voluntarily limited Himself by endowing humans with sufficient freedom to be linked with Him through a covenant. The terms of God's covenant were clear. People were free to live according to those terms, but could expect punishments if they did not, just as they could expect rewards if they did.⁴⁰ What is important is that the freedom to act was endowed them by their Creator, and once that freedom was in their hands, the Puritans could and did argue that people need not be subject to any of their fellows, except by their own consent. Leader, Hobbes, Locke, Spinoza and others of the same philosophic persuasion embraced this theme and redirected it into more secular channels.

Parallel to the theological and philosophic dimensions is the socio-political aspect of the covenantal founding of new societies. A principal, although not necessarily universal characteristic of new settlement is that it tends to promote equality.⁴¹ People come together in a new place, away from the established civil order and must organize their own political life. The natural inclination is for them to do so on the basis of equality because of the equal risks involved. Moreover, they can only do so through some contractual means whereby each agrees to accept the jurisdiction of the whole, and is only likely to do so if each preserves those liberties deemed essential and acquires some share in the common decision-making processes. The further removed a new settlement is from older political orders, whether physically or in other ways, the more likely it is that this will be the model for its founding. Where previously existing political authority can be effectively extended over new territories, and older constitutional arrangements enforced, there is less room for the application of this model, although even in such cases the very fact of new settlement tends to bring some of its elements into play. Where the old order cannot be effectively extended, or where it actively encourages a contractual founding in the new territory, the model is more likely to be implemented in its fullness.

The cases of Switzerland and Sicily illustrate this point. The territories of what is today Switzerland were for many generations wildlands at the peripheries of the various royal, imperial, and feudal domains of Europe. People seeking to be free of autocratic rule fled to those wildlands where they organized themselves into civil communities with a minimum of outside interference. Hence theirs were communities of equals. When the Hapsburg emperors sought to impose their rule on those communities, the Swiss fought back, organizing to do so by applying the same federal principles to the confederation of communities that they had to earlier unions of families.⁴²

In nineteenth century Sicily, on the other hand, the settlement of the interior of the island took place at the initiative of local gentry who mobilized their peasants to establish plantations to empty land under the laws of the island. The founder-leaders of these efforts remained the leaders by predetermined right, with their tenants linked to them by contract. The lot of the latter was improved by virtue of those contracts which advanced their status but they were not equal partners in the new communities.⁴³

Thus, the covenant idea has been important for the growth of democratic government. It presupposes the independence and worth of each individual and the truth that each person possesses certain inalienable rights, because only free people with rights can enter into agreements with one another. It also presupposes the necessity for government and the need to organize civil society on principles that assure the maintenance of those rights and the exercise of power in a cooperative or partner-like way.

On the other hand, covenantal liberty is not simply the right to do as one pleases, within broad boundaries. Contractual liberty could be just that but covenantal liberty emphasizes the liberty to pursue the moral purposes for which the covenant was made. This latter kind of liberty requires that moral distinctions be drawn and that human actions be judged according to the terms of the covenant. This does not preclude changes in social norms but the principles of judgment remain constant. Consequently, covenantal societies, founded as they are on covenantal choice, tend to emphasize constitutional design and choice as a continuing process.

Notes

1. Abraham Lincoln, *Collected Works*, ed. Roy P. Basler (New Brunswick: Rutgers University Press, 1953-1955), Vol. IV, p. 239.
2. John Winthrop, "A Modell of Christian Charity," *The American Puritans*, ed. Perry Miller (Garden City: Doubleday, 1956).
3. Lyndon Baines Johnson, *A Time for Action* (New York: Pocket Books, 1964).
4. On the Pilgrims, see Francis Dillon, *A Place for Habitation: the Pilgrim Fathers and their Quest* (London: Hutchinson, 1973), and John Abbot Goodwin, *The Pilgrim Republic* (Boston: Houghton, Mifflin, 1895).
5. Lutz, *Documents*, *op. cit.*
6. John Quincy Adams, *The Writings of John Quincy Adams, 1767-1848* (New York: Greenwood Press, 1968).
7. John Peacock, *Covenant, Body Politic and the Great Migration* (Philadelphia: Center for the Study of Federalism, 1980), deals with this very directly in connection with the founding of the Massachusetts Bay Colony.

8. Peacock, *ibid.*, pp. 4-5.
9. Michael Walzer, *The Revolution of the Saints: A Study of the Origins of Radical Politics* (Cambridge: Harvard University Press, 1965), p. 176).
10. John Peacock, *Covenant in John Winthrop's "A Model of Christian Charity,"* p. 1.
11. Peacock, *ibid.*, p. 16.
12. "A Model of Christian Charity."
13. Winthrop Papers, (Boston: Massachusetts Historical Society, 1929-1944), vol. 2, pp. 294-295.
14. *Ibid.*, pp. 289-90.
15. *Ibid.*, p. 291.
16. Edmond S. Morgan, *Puritan Political Ideas, 1558-1794* (New York: Bobbs-Merrill, 1965).
17. Henry Maine, *Ancient Law* (London: Dent, 1965).
18. Peacock, p. 31.
19. Winthrop Papers, p. 294.
20. On Puritan ideas, see Lutz, Donald, *From Covenant to Constitution in American Political Thought* (Philadelphia: Center for the Study of Federalism, Temple University, 1980) and Perry Miller, *Orthodoxy in Massachusetts, 1630-1650* (New York: Harper and Row, 1970); Lutz, Donald and Charles Hyneman, eds. *American Political Writing During the Founding Era 1760-1805* (Indianapolis: Liberty Press, 1983).
21. On Puritan government, see Ralph Barton Perry, *Puritanism and Democracy* (New York: Vanguard Press, 1944); Virginia Anderson, *New England's Generation* (Cambridge: Cambridge University Press, 1993).
22. Lutz, *Documents, op. cit.*
23. Henry Steele Commager, *The Empire of Reason: How Europe Imagined and America Realized the Enlightenment* (Garden City, NY: Doubleday, 1978).
24. Richard Niebuhr, "The Idea of Covenant and American Democracy," *Church History* 23 (June, 1954), p. 129.
25. Lutz, *op. cit.*
26. *The Records of the Federal Convention of 1787*, vol. 3, ed. Max Farrand (New Haven: Yale University Press, 1963).
27. E.H. Vreen, "English Origins and New World Development: The Case of the Covenanted Militia in Seventeenth Century Massachusetts," *Past and Present*,

no. 27 (1972):74-96.

28. Henry M. Ward, *The United Colonies of New England 1643-90* (New York: Vintage Press, 1961).

29. Lutz, *op. cit.*

30. See Daniel J. Elazar, *The American Constitutional Tradition* (Lincoln: University of Nebraska Press, 1988).

31. Andrew McLaughlin, *The Foundations of American Constitutionalism* (Greenwich, Conn: Fawcett Publications, 1961).

32. William James, *A Pluralistic Universe* (London: Longmans Green and Co., 1909); Harry Levinson, "William James and the Federal Republican Principle," *Federalism as Grand Design, Publius*, vol. 9, no. 4 (Fall 1979).

33. Robert MacIver, *The Web of Government* (NY: The Free Press, 1966); Corrine Gelb, *Hidden Hierarchies* (NY: Harper and Row, 1966).

34. Donald Lutz, *The Origins of American Constitutionalism* (Baton Rouge, LA: Louisiana State University Press, 1988).

35. Frederick Jackson Turner, "The Significance of the Frontier in American History," *The Frontier in American History* (New York: Henry Holt and Co., 1953).

36. Perry Miller, *Errand into the Wilderness* (New York: Harper and Row, 1956).

37. Donald S. Lutz, ed. *Documents of Political Foundation Written by Colonial Americans from Covenant to Constitution* (Philadelphia: Institute for the Study of Human Issues, 1986); and Donald S. Lutz and Jack D. Warden, *A Covenanted People: The Religious Tradition and the Origins of American Constitutionalism* (Providence: The John Carter Brown Library, 1987). Through these two works Lutz explores the connections between covenant and constitution in the American historical experience.

38. Lutz, Documents, *op. cit.*, pp. 9-21.

39. Lutz, *From Covenant to Constitution, op. cit.*

40. Sacvan Bercovitch, *The American Jeremiad* (Madison: University of Wisconsin Press, 1978).

41. The classic exposition of this thesis is that of Frederick Jackson Turner in *The Frontier in American History, op. cit.*

42. Benjamin R. Barber, *The Death of Communal Liberty* (Princeton: Princeton University Press, 1974).

43. Fillipo Sabetti, *Political Authority in a Sicilian Village* (New Brunswick, NJ: Rutgers University Press, 1984).

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