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Faces of Federalism: From Bullinger to Jefferson

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This study argues that the eighteenth-century political philosophy of federalism found its roots in the covenant theology of early Reformed Protestantism in Zurich. It contends that there was a progression in covenant or federal thought from the first published articulation of the theological covenant by Heinrich Bullinger in 1534, through the use of the covenant notion in defense of tyrannicide by Philippe Duplessis-Mornay, to Johannes Althusius's political philosophy of federalism, as well as the political theories of Thomas Hobbes and John Locke, to the Declaration of Independence and the Constitution of the United States. These different faces or variations of federalism shared several common elements over the 250-year span.

Daniel Elazar, during the 25 years I knew him, was an inspiration in my own research—both through his prodigious publications on federalism and the symposia he organized from time to time. In his writings, Elazar shows how the political theology of federalism has had an impact on modern federalism.¹ In this essay, I wish to expand our understanding of the connections between covenant theology and later political ideas of federalism by suggesting that there were several layers or faces of federalism in the stream of thought from the early Protestant Reformation to the founding fathers of the United States. As important as the ancient and medieval background may be, Elazar points out that the basis for the development of modern federalism was the covenant theology of early Protestantism: “[The modern theorists] borrowed it lock, stock, and barrel . . . Rather than draw upon Roman or medieval contractualism, these modern theorists and practitioners embraced the covenant idea and secularized it.”²

Therefore, the subject of this essay is the sixteenth-century roots of political federalism—in the thought of Heinrich Bullinger and Philippe Duplessis-Mornay—and the fuller development of these ideas in the seventeenth century by Johannes Althusius, Thomas Hobbes, and John Locke. Briefly stated, Bullinger created a powerful concept of the religious covenant in the 1520s and 1530s. Mornay built on the idea of the religious covenant when he developed the first expression of a political philosophy of federalism in 1579. In 1603, Althusius used Mornay's incipient federal

¹Especially in his *Covenant & Commonwealth: From Christian Separation through the Protestant Reformation. The Covenant Tradition in Politics*, vol. II (New Brunswick and London: Transaction Publishers, 1996).

²Elazar, *Covenant & Commonwealth*, p. 45.

framework to provide the first systematic, well-developed philosophy of political federalism, which he based on the religious covenant. Therefore, the concept that covenant or compact is the foundation of government was an integral part of the federal tradition prior to Hobbes and Locke.

Each of these faces of federalism shared five common elements. First, federal thinkers agreed that political society was formed by means of covenant or compact. Second, they shared a general view of human nature. Third, federal thinkers placed a high value on the community. Fourth, federalists placed all members of the community under a common law. Finally, federal thinkers held the community and its leader to covenant faithfulness by means of checks and balances.

BULLINGER'S ONE AND ETERNAL TESTAMENT OR COVENANT OF GOD: THE ORIGINAL FACE OF FEDERALISM

Heinrich Bullinger (1504-1575), who replaced Huldrych Zwingli as the chief minister of the Zurich Reformed church in 1531, was the founder of Reformed covenant or federal theology.³ He began to develop his concept of the covenant in November 1525 and, in the next few years, used the idea repeatedly in a variety of writings. His masterpiece, however, was his *One and Eternal Testament or Covenant of God (De testamento seu foedere dei unico & aeterno)*⁴ of 1534, the first treatise to be published on covenant.

The covenant was a distinguishing feature of Bullinger's thought. He presents the covenant as the divine framework for human life, from the beginning of the world to the end, in both religious and civil affairs. The eternal covenant, first made with Adam, then renewed with Abraham, is bilateral in nature, as God made clear when he said to Abraham, "Walk before me and be upright" (Genesis 17:1). God promises to be all-sufficient to those who are faithful in the covenant; the conditions for humans are to have faith in God and to love their neighbor. It is thus a conditional covenant.

Bullinger saw the entire Scripture as an affirmation of the covenant and its conditions. The moral law, the Decalogue, is a restatement of the conditions of the covenant. The first four commandments teach humans how to walk before God; the other six commandments explain how to love the neighbor in human society. Furthermore, the Old Testament prophets taught the same covenant, with the same conditions—faith in God and love of the neighbor. Finally, Christ renewed and confirmed the covenant, and the Apostles taught the identical covenant. Therefore, for Bullinger, there is *only one covenant* of God. Nonetheless, the sacraments of the covenant in

³See J. Wayne Baker, *Heinrich Bullinger and the Covenant: The Other Reformed Tradition* (Athens, OH: Ohio University Press, 1980).

⁴For an English translation, see Charles S. McCoy and J. Wayne Baker, *Fountainhead of Federalism: Heinrich Bullinger and the Covenantal Tradition* (Louisville, KY: Westminster/John Knox Press, 1991).

the Old Testament were changed in the New Testament; the old sacraments of circumcision and the Passover were replaced by baptism and the Eucharist. Therefore, in the same manner that infants, before Christ, were initiated into the covenant by circumcision, after Christ, they are enrolled among the people of God by baptism.

It is important to note how much emphasis Bullinger put on the community in connection with the covenant. Not only does the individual become a member of the covenant itself by means of baptism, but, of equal importance, a person becomes a member of the covenanted community, which is ruled by the civil magistrate under divine sanction. Consequently, even if an individual does not keep the condition of faith, that person is still obligated, as a member of the covenanted community, to keep the condition of love of the neighbor. Bullinger's covenantal doctrine was thus closely connected with his view of the Christian community.

Bullinger felt that the norm for the Christian community was set in the Old Testament. He believed that the Christian magistrate, like the Old Testament rulers, is sovereign over all aspects of life, over the church as well as the civil community. In fact, Bullinger hardly differentiated between the two spheres of church and state. The magistrate controls all discipline; the church has no powers of discipline. The magistrate has been given a charge by God to enforce God's will—the conditions of the covenant—within the Christian community. The magistrate does this not only by making sure that the Gospel is preached but also by enforcing the condition of love of the neighbor by means of godly laws based on the moral law. Hence, the covenant is the foundation of religion and of political society because it is the centerpiece of the Christian religion and the cornerstone of the Christian community.

Bullinger did not set out to create a political philosophy, but his system does contain four of the five common elements of later political federalism: (1) he envisions a society formed on the basis of the covenant; (2) he sees human nature as the very reason why the covenant is necessary; (3) he emphasizes the community; and (4) he teaches that the community is to be governed by God's law. However, there are no checks and balances in his system. Even though he does hold the community and its leaders to faithfulness in the covenant, the only suggestion of a check to the authority of the magistrate is the threat of divine punishment. It was Mornay who advanced the idea of a real check, the deposing of a ruler who violates the covenant.

MORNAY'S DEFENSE OF LIBERTY AGAINST TYRANTS: THE EARLY POLITICAL FACE OF FEDERALISM

Mornay was the first to develop a rudimentary theory of political federalism in his *Defense of Liberty against Tyrants: or, Of the lawful power of the Prince*

over the people, and of the people over the Prince (*Vindiciae contra tyrannos: sive, de principis in populum, populi in principem, legitima potestate*). Mornay's justification of resistance to tyranny rested on his belief in a series of covenants, both religious and political, which made the civil ruler responsible not only to God, but also to the people, who held ultimate political sovereignty. Mornay's covenantal thought was similar to Bullinger's,⁵ but the political implications he drew from the covenant were more radical because he structured his political thought around the concept of popular sovereignty. In the *Defense*, Mornay explains that at the coronation of kings, "we read of a twofold covenant: the first, between God, the king, and the people that the people will be God's people; the second, between the king and the people that if he is a proper ruler, he will be obeyed accordingly."⁶ The first is the religious covenant and the second, the political covenant. Mornay deals with these covenants in terms of three questions: the first two have to do with the religious covenant, the third with the political covenant.

The first question—whether subjects are obligated to obey rulers whose commands contradict God's law—he answers negatively. After giving examples of Old Testament rulers who either kept the covenant or broke it, and thus lost their kingdoms, Mornay warns Christian rulers that they are bound by the same covenant, the same stipulations, and the same penalties. The stipulations of the covenant in any age are the love of God and the neighbor.⁷ All of this is nearly identical with Bullinger's idea of the covenant.

Mornay gives a positive answer to his second question—whether a ruler who violates God's law and desolates the church may be resisted. Such a ruler can be actively resisted because the king and the people as a whole have obligated themselves to the covenant, "the corporate body of them here acting as a single individual." It is the king's duty to enforce the covenant among the people; the people, however, "have the right, not only of making a Covenant, but also of performing it and of enforcing its performance" by the ruler. Mornay assures the reader that when he speaks of the people in a collective sense, he means "those who receive authority from the people, that is, the magistrates below the king who have been elected by the people or established in some other way."⁸

⁵There is no proof that Mornay read Bullinger on the covenant, but the text of Bullinger's *De testamento* was easily available to Mornay. Bullinger's treatise was first published in Latin in 1534; then it was reprinted as an appendix to five different editions of Bullinger's New Testament commentary, the last in 1558. If Mornay had not read Bullinger himself, he surely had read the works of others who were influenced by Bullinger.

⁶Julian H. Franklin, trans. and ed., *Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, and Mornay* (New York: Pegasus, 1969), p. 143. This is an abridged translation.

⁷Franklin, *Constitutionalism and Resistance*, pp. 144-145; Harold J. Laski, ed., *A Defense of Liberty against Tyrants* (1924; reprint, New York: Burt Franklin, 1972), pp. 71-75, 80-85. Laski's is a full translation.

⁸Franklin, *Constitutionalism and Resistance*, pp. 146-158; Laski, *A Defense of Liberty*, pp. 87-116.

Mornay begins his discussion of the third question—whether a ruler who oppresses or devastates a kingdom may be resisted—with a clear affirmation of popular sovereignty. A tyrant may be resisted because, although God chooses rulers, the people establish them. In essence, then, the people as a whole, represented by lesser magistrates, is greater than the king. Rulers, established by the people as guardians of justice, are not above the law. All of this has to do with the political covenant in which the ruler promises to rule according to justice and law. The ruler’s promise is absolute, but the promise of the people, to obey as long as the king rules justly, is conditional.⁹

Therefore, Mornay’s twofold covenant, religious and political, was, in reality, one covenant. In the tradition of Swiss covenantal thought, he used the terms *pactum* and *foedus* interchangeably, whether referring to the religious or political covenant. He explicitly states that the two covenants exist in tandem:

By the first covenant, or compact, religious piety becomes an obligation; by the second, justice. In the first the king promises to obey God religiously, in the second, to rule the people justly; in the former, to maintain God’s glory, in the latter, to preserve the people’s welfare. The condition in the first is: ‘If you will observe My Law’; the condition in the second is: ‘If you will render each his own.’¹⁰

There is no doubt, then, that Mornay closely connected religious and political life within the federal framework.¹¹ As Bullinger put it, love God *and* the neighbor.

Mornay thus articulated all five of the common elements of federalism: (1) political society is formed by means of a twofold covenant; (2) this covenantal arrangement is necessary because of sinful human nature; (3) postulating the existence of the societal covenant in tandem with the religious covenant, he clearly defined the connection between faith in God and the obligations of the community within a political covenant; (4) the community is governed by God’s law; and, therefore, (5) if the ruler breaks his

⁹Franklin, *Constitutionalism and Resistance*, pp. 158-181; Laski, *A Defense of Liberty*, pp. 117-174.

¹⁰Franklin, *Constitutionalism and Resistance*, p. 181.

¹¹Quentin Skinner insists, wrongly, that there are two distinct covenants in Mornay’s thought and that the implications of the two covenants are almost incompatible. Skinner sees the political covenant as the “typically scholastic idea of a contract between the king and the representatives of the people” and places it in opposition to the religious covenant. He states further, “This contract (*pactum*) is wholly separate from the idea of the religious covenant (*foedus*). . .” Quentin Skinner, *The Foundations of Modern Political Thought*, vol. 2, *The Age of Reformation* (Cambridge: Cambridge University Press, 1978), 325, 332.

Mornay certainly did not see the incompatibility that Skinner imagines. Rather, Mornay saw the two covenants in tandem, not as distinct and separate. While Skinner sees the use of *lex regia*, the idea that a ruler’s authority derived ultimately from a grant from the community, as a purely secular concept, it is clear that Mornay did not. Mornay discussed the reform of Josiah in connection with the concept of *lex regia* and the covenant. Josiah promised to observe the precepts and commandments in the Book of the Covenant, “and he is thus referring to the precepts of religion and justice.” Franklin, *Constitutionalism and Resistance*, p. 180.

promise to rule according to justice and law, he can be replaced.

The federal framework that Mornay began to build was given its first systematic, well-developed expression by Johannes Althusius, who frequently referred to Mornay.¹²

ALTHUSIUS'S *POLITICS*: THE BRIDGE BETWEEN THE RELIGIOUS COVENANT AND POLITICAL FEDERALISM

By the late sixteenth century, the connection between the religious covenant and political federalism was beginning to emerge.¹³ Johannes Althusius (1557-1638) was the person most responsible for clarifying this connection. His political philosophy of federalism was the result of a variety of influences.¹⁴ Althusius began his university studies at Cologne in 1581, then moved on to Basel, where he took the doctorate in civil and ecclesiastical law in 1586. While living in Basel at the home of the Swiss Reformed theologian, Johann Jacob Grynæus, Althusius became familiar with the federal religious ideas of the Reformed community. From 1586 to 1604, Althusius lectured in law at Herborn, a major center of federal thought and theology. Then, in 1604, as a result of the publication of the *Politics* the previous year, Althusius was invited to become syndic (chief executive, designated by the council) of the city-state of Emden, near the Dutch border. Therefore, in addition to the usual Greek and Roman sources from which the political thought of his time drew, Althusius's political philosophy was shaped (1) by his observation of the federal political system in Switzerland, (2) by his daily practice and experience in politics, and (3) especially by his knowledge of the federal theological tradition, which he learned at Basel and at Herborn.

Althusius's masterpiece—*Politics Methodically Set Forth (Politica Methodice Digesta)*—published in 1603, contains the first fully formed federal political philosophy. His political thought is fundamentally covenantal.¹⁵ The first

¹²Space does not allow the tracing of the further development of sixteenth- and seventeenth-century federalism in Germany, Britain, and France: in Germany, Matthias Martini (1572-1630), a colleague of Althusius, and later, professor at Bremen, and his brilliant student, Johannes Cocceius (1603-1669); in England, Dudley Fenner (c. 1558-1587) and William Perkins (1558-1602); in Scotland, Robert Rollock (1555-1599) and, especially, Samuel Rutherford (1600-1661); and in France, at the Academy of Saumur, John Cameron (c. 1580-1625) and Moïse Amyraut (1596-1664). See McCoy and Baker, *Fountainhead of Federalism*, pp. 39-44, 64-79.

¹³The connection is clear even in the derivation of the terminology. The German word *Bund* is the term for both the theological covenant and a political federal arrangement. The Latin word *foedus*, from which the term "federal" derives, likewise refers both to the theological covenant and to a political federal arrangement. Therefore, by definition, a covenantal order is federal, and a federal order is covenantal.

¹⁴Biographical data have been gleaned from Carl Joachim Friedrich, *Politica Methodice Digesta of Johannes Althusius (Althus)* (Cambridge, MA: Harvard University Press, 1969), and from Frederick Carney, *The Politics of Johannes Althusius* (Indianapolis: Liberty Fund, 1995).

¹⁵See Charles S. McCoy, "The Centrality of Covenant in the Political Philosophy of Johannes Althusius," *Politische Theorie des Johannes Althusius*, eds. Karl-Wilhelm Dahm, Werner Krawietz and Dieter Wyduckel (Berlin: Duncker & Humblot, 1988), pp. 187-199.

paragraph of Chapter 1 reads,

Politics is the art of bringing humans together for the purpose of establishing, developing, and conserving social life among them. For this reason it is called symbiotics. The content of politics, therefore, is association, by which, in either an explicit or tacit covenant, the symbiotes mutually obligate themselves to a mutual sharing of whatever things are useful and necessary for harmony and productive activity in social life.¹⁶

At the outset, then, Althusius asserts clearly that this covenantal symbiosis is the basis of his political philosophy.

He goes on to state that such symbiotic, covenantal interdependency is absolutely necessary if humans are to live comfortable, safe lives. No one is self-sufficient; everyone is miserable alone. No individual can provide a comfortable and happy life for himself. Therefore, as Aristotle taught, human beings turn to symbiotic association by necessity.¹⁷ Althusius concludes Chapter 1 by stating, “Thus, the arrogance and ferocity of man must be restrained by the certain reins of reason and law and political authority, lest he cast himself into the abyss of destruction.”¹⁸ Here, on the matter of human nature, Althusius is a bridge between the sixteenth-century federal thinkers and Hobbes and Locke. Bullinger knew that government was necessary because humans are sinful by nature. Without mentioning sin, Hobbes and Locke wrote instead about “the state of nature,” which makes government necessary. Althusius was certainly aware of the sinful nature of humans—he was, after all, an elder in the Reformed church in Emden—but he couched his warning in non-theological terms.

Having defined the symbiotic, covenantal basis of political life, Althusius then turned to the specific modes of association. The first type of association, “simple and private,” ranges from the family to voluntary associations, such as the guilds or the collegia of theologians, philosophers, magistrates, and judges.¹⁹ The second type is the “mixed and public” associations of the community, province, and commonwealth.²⁰ The community is made up of all the families and collegia in a village or a city. The province is composed of all the communities within a defined territory. The commonwealth includes all private and public associations and is thus a “universal association” where “the people have been united into one body and gathered together under one law by the agreement of many symbiotic associations and particular bodies.”²¹

At this point, Althusius turned to his concept of popular sovereignty.

¹⁶Friedrich, *Politica Methodice Digesta*, p. 15; Carney, *Politics*, p. 17.

¹⁷Friedrich, *Politica Methodice Digesta*, pp. 15-16, 19; Carney, *Politics*, pp. 17-18, 24-25.

¹⁸Friedrich, *Politica Methodice Digesta*, p.19; Carney, p. 26.

¹⁹Friedrich, *Politica Methodice Digesta*, p. 20-38; Carney, *Politics*, pp. 27-38.

²⁰Friedrich, *Politica Methodice Digesta*, pp. 38-94; Carney, *Politics*, pp. 39-78.

²¹Friedrich, *Politica Methodice Digesta*, p. 88; Carney, *Politics*, p. 66.

After introducing the topic of “the right of the realm” (*ius regni*) or “the right of sovereignty” (*majestatis jus*), he wrote: “This right of the realm, or the right of sovereignty, belongs not to individual members but to all members in common and to the entire associated body of the realm.”²² Then, Althusius stated that this “right of the realm,” or sovereignty, pertains both to religious and to civil life, and that it consists of “universal symbiotic sharing (*communio*) and its administration.” This “universal symbiotic sharing of the realm,” he wrote, “is either ecclesiastical or civil.” He asserted that the former has to do with religion and piety, and with the first table of the Decalogue, “which pertains to the salvation of the soul and eternal life.” The latter corresponds with justice, “rendering to each what is due to him, the second table of the Decalogue, which concerns the use of the body and this life. In the former, all things must return directly to the glory of God; in the latter, directly to the use and welfare of the people associated in one body.”²³ This is an echo of Bullinger’s insistence that the conditions of the covenant cover all aspects of life—both civil and religious—in the covenanted community.²⁴

By this point, Althusius has laid out the major themes of his theory of society and government. The symbiotic community and political society are formed by means of a covenant because of human nature. The community is ruled under a common law, and government is checked by the sovereignty of the people. The remainder of the *Politics* makes the main points of Althusius’s theory more explicit and clarifies the implications of his themes.

Althusius argued that actual government is constituted when a covenant is made between the supreme magistrate and the ephors (inferior magistrates). The ephors, who represent *all* the people of the universal association, are elected by the consent of the *entire* people.²⁵ The ephors and the people promise obedience to and compliance with the laws of the supreme magistrate, as long as these laws do not conflict with the law of God and the right of the realm. Here, as in so many other places, Althusius cited Mornay’s *Defense* (question three, on popular sovereignty), along with numerous Old Testament passages.²⁶

Having discussed the basis for the authority of the supreme magistrate,

²²Friedrich, *Politica Methodice Digesta*, p. 91; Carney, *Politics*, p. 70.

²³Friedrich, *Politica Methodice Digesta*, pp. 93-94; Carney, *Politics*, pp. 74-75. This hardly sounds like an author who was “talking exclusively about politics, not theology, and about the concept of rights, not religious duties.” Skinner, *The Foundations of Modern Political Thought*, 2:341.

²⁴Friedrich (*Politica Methodice Digesta*, p. civ) lists Bullinger as one of the authors whom Althusius often cited. Friedrich compiled his list of authors not only from the *Politics*, but also from Althusius’s *Oratio Panegyrica*, an appendix to the *Politics*. Friedrich specifically cites Bullinger’s *In omnes apostolicas epistolas* to which *The One and Eternal Testament of Covenant of God* was appended. Friedrich puts the total number of Althusius’s citations of Bullinger’s works at about 150.

²⁵Friedrich, *Politica Methodice Digesta*, pp. 162-163, 145; Carney, *Politics*, pp. 123, 102.

²⁶Friedrich, *Politica Methodice Digesta*, pp. 178-185; Carney, *Politics*, pp. 133-134.

Althusius then devoted several chapters to what he calls political prudence, or the art of governing. Chapter XXI deals with the rule of law, which pertains “to the duties that are to be fulfilled toward God and the neighbor and to the love of God and the neighbor”—Bullinger’s two conditions of the covenant. Althusius goes on to distinguish between common law and proper law. The Decalogue embodies the common law. The first four precepts, the first table, deal with one’s duties toward God and the love of God. The second table, the last six commandments, deal with one’s duties toward the neighbor. The crucial point here is that the common law is identical with the moral law and natural law, and applies to all people.²⁷

It is, therefore, clear that Althusius did not mean to exclude a scriptural and Christian perspective from his political philosophy. His use and treatment of the Decalogue clarifies what he meant when he stated in the preface that he wished to return the theological element to its proper place. His political science would still have a Christian framework and perspective, but he would not dabble in theology per se in his political philosophy.²⁸

In fact, Althusius specifically connects his entire political theory with the religious covenant. In this religious covenant, the magistrate and all the members of the realm promised to introduce, conserve, and defend true religious doctrine and worship. God promised to bless those who fulfilled this duty, and God would punish those who neglected it. Althusius then cites numerous Old Testament examples and, subsequently, refers to question one (whether subjects are obligated to obey rulers whose commands contradict God’s law), as well as question two (whether a ruler who violates God’s law can be resisted) of Mornay’s *Defense*. He then concludes, “What is at stake in this obligation is not only the public practice of the honest worship of God and of orthodox religion . . . but also the correct and honest administration of Justice, the second table of the Decalogue.”²⁹ Althusius thus applied the religious covenant to both the civil and ecclesiastical life of the symbiotes.

Therefore, like Bullinger and Mornay, Althusius gave the political covenant the same wrapping as the religious covenant. In the preface to the

²⁷Friedrich, *Politica Methodice Digesta*, pp. 190-194; Carney, *Politics*, pp. 139-144.

²⁸Skinner quotes from the preface of *Politica* to the effect that Althusius had “the ambition to emancipate the study of ‘politics’ from the confines of theology and jurisprudence, and to return ‘all merely theological, juridical and philosophical elements to their proper places’ in the name of concentrating exclusively on the independent subject-matter of political science.” *The Age of Reformation*, 342. Friedrich’s response to someone who stated that Althusius had not considered the foundations of his thinking sufficiently, also might suffice for Skinner: “This remark is typical of those who do not admit religious ideas as the ultimate basis for thought, an attitude which bars one from comprehending much of the profoundest political thought of mankind.” *Politica Methodice Digesta*, p. lxvi.

²⁹Friedrich, *Politica Methodice Digesta*, pp. 261-263; Carney, *Politics*, pp. 163-164.

1610 edition, immediately following his statement that he would return all theological elements to their proper place, he wrote:

And I have included among other things herein, all in their proper places, the precepts of the Decalogue and the rights of sovereignty, about which there is a deep silence among some other political scientists. The precepts of the Decalogue are included to the extent that they infuse a vital spirit into the association and the symbiotic life that we teach, that they carry a torch before the social life that we seek, and that they prescribe and constitute a way, rule, guiding star, and boundary for human society. If anyone would take them out of politics, he would destroy it; indeed, he would destroy all symbiosis and social life among men. For what would human life be without the piety of the first table of the Decalogue and without the justice of the second? What would a commonwealth be without the sharing and communication of things useful and necessary to human life?³⁰

This is precisely what he meant later in the treatise when he referred to the “political doctrine of the Decalogue,” and it is reminiscent of Bullinger’s teaching about the social and political implications of the conditions of the covenant, of which the second table of the Decalogue is the clearest expression.

Althusius introduced his argument for popular sovereignty (against Jean Bodin) in the preface to the 1603 edition, where he argued that the supreme magistrate is the steward of the rights of sovereignty, but the ownership of these rights “properly belongs to the total realm or people.” The people have established these rights and have granted their administration “to a prince by a . . . covenant.”³¹ When, toward the end of the *Politics*, Althusius considered tyranny and its remedy, Mornay plays an important role. Here, Althusius’s extensive argument is simply a more sophisticated version of Mornay’s theory. If a ruler violates his covenant with the people or neglects God’s covenant, he should lose his authority to rule, which was given to him by the people. The ephors are responsible for removing a ruler from office if he persists in breaking these covenants.³²

Althusius’s theory was thus the first complete expression of a political philosophy of federalism. He included all five of the common elements of federalism that he received from Mornay: (1) political society is formed by means of covenant; (2) government is necessary because of human nature; (3) the community is formed by symbiotic association; (4) the community is under the common or natural law, as stated in the Decalogue; and (5) he affirms the concept of popular sovereignty, whereby he advocates the depo-

³⁰Carney, *Politics*, pp. 11-12; Friedrich, *Politica Methodice Digesta*, pp. 7-8.

³¹Carney, *Politics*, p. 7; Friedrich, *Politica Methodice Digesta*, p. 5.

³²Friedrich, *Politica Methodice Digesta*, pp. 376-402; Carney, *Politics*, pp. 191-200.

sition of a government that breaks the covenant with the people or with God.

Therefore, Althusius is the bridge between the sixteenth-century expressions of federalism and those of the seventeenth century. While he based his political philosophy on rational principles, he did not divorce it from the theological idea of the covenant or from scriptural principles. The theories of Hobbes and Locke, later in the seventeenth century, were “secularized” versions of sixteenth-century federalism, based on “rational” principles, without any significant appeal to religion.

HOBBS'S *LEVITHAN*: THE DARK FACE OF FEDERALISM

Thomas Hobbes and John Locke are often contrasted, one as the precursor of conservatism and authoritarianism, and the other, of liberalism and democracy, in the modern world. While that may be true, they have some things in common. One important similarity is that both built a political theory on the sixteenth-century foundations of federalism. They are two faces of federalism in the second half of the seventeenth century. Locke agreed with all five of the common elements of federalism, but Hobbes accepted only four of them, hence, the differences in their political philosophies. On one hand, Hobbes, with his dark view of human nature, thought that the absolute state, the “mortal god,” was the only guarantee of a peaceful and stable society. On the other hand, Locke’s mitigated view of human nature allowed him to construct a theory based on the sovereignty of the people. However, both men used the concept of covenant, or social compact, in constructing their political philosophies; both emphasized the community; and both advocated a community under the rule of a common law.

Hobbes is hardly a perfect fit into the framework of federalism that came out of the thought of Mornay and Althusius. Although he shared most of the common elements of federalism, he did not agree with the concept of checks and balances, and this gave his political theory a totally different cast. He explicitly denied the right of resistance, even against a tyrant, for any reason, political or religious. In this respect, he echoed Bullinger,³³ the founder of the Reformed federal tradition, more than he did Althusius. However, while Bullinger’s covenantal theory simply lacked any practical check on the civil rulers, Hobbes’s theory explicitly rejected such a check. Inasmuch as he rejected the entire concept of popular sovereignty, which Mornay and Althusius made an important element of federalism, it may seem that Hobbes’s theory does not correspond with these earlier faces of federalism.

Nonetheless, Hobbes places himself within the framework of federal-

³³He also resembled Bullinger in his affirmation of the sovereignty of the chief magistrate over religious matters as well as civil matters.

ism. In the Introduction to *Leviathan*, he explains that the commonwealth is an artifact, made by the art of humans in imitation of the art of God in making and governing the world. Moreover, both the work of God and the work of humans are federal in nature: "The *Pacts* and *Covenants*, by which the parts of the Body Politique were at first made, set together, and united, resemble that *Fiat*, or the *Let us make man*, pronounced by God in the Creation."³⁴ The entire discussion in *Leviathan*, throughout its four books, revolves around this covenantal understanding of God's relation to the world. This covenantal understanding, plus the fact that about one-half of *Leviathan* deals directly with religion, is often ignored by scholars. Therefore, although it is true that Hobbes's political philosophy is based on rational principles, in the sense that he does not base his argument on Scripture or religious tradition, it is also true that his entire argument is founded in the concept of covenant, which was first articulated in the sixteenth century.

Hobbes's theory is a type of federalism. With the exception of the one element of checks and balances, his theory includes all other elements of federalism during the period. His "state of nature" is a condition of violence and misery because of human nature.³⁵ Political society, or a commonwealth, is instituted by means of a covenant, a covenant made among the people, who then make a Sovereign, either explicitly or implicitly.³⁶ The Sovereign legislator is not subject to the civil laws, but the entire community is subject to the laws of the Sovereign. Although Hobbes speaks of natural law, he equates it with civil law: "The Law of Nature, and the Civill Law, contain each other, and are of equall extent."³⁷ Therefore, the Sovereign defines natural law when he makes civil law.

Given the absolute nature of the authority of Hobbes's Sovereign, it is not surprising that he rejects every sort of check on the Sovereign's actions. He explicitly rejects any resistance theory based on a covenant with God:

And whereas some men have pretended for their disobedience to their Sovereign, a new Covenant, made, not with men, but with God; this also is unjust: for there is no Covenant with God, but by mediation of some body that representeth Gods Person; which none doth but Gods Lieutenant, who hath the Sovereignty under God.³⁸

Here, Hobbes alludes to those who accepted Mornay's concept of the political and religious covenant existing in tandem. He clearly does not refer to the biblical covenant, because he deals with it at some length in

³⁴Thomas Hobbes, *Leviathan*, ed. C. B. Macpherson (Baltimore: Penguin Books, 1968), pp. 81-82.

³⁵*Ibid.*, 183-188.

³⁶*Ibid.*, 228-239.

³⁷*Ibid.*, 311-335, here 314.

³⁸*Ibid.*, 230.

Part 3, in connection with the Kingdom of God, which he equates with the civil kingdom and the Sovereign of the civil kingdom.³⁹

Hobbes's political theory thus includes most of the elements of the federalism of the seventeenth century: (1) political society is created by means of a covenant; (2) political society must exist because of the meanness of human nature in the state of nature; (3) this covenant creates a community; and (4) this community is ruled under the common law of the Sovereign, who is absolute and whose authority is not subject to any checks.

It is the absolutist part that makes his theory sound antithetical to federalism. Hobbes's absolutism is based on rational principles rather than on an appeal to Scripture or tradition or divine right. In this sense, his absolutism is new, although it serves the same purpose as the absolutist arguments of Bodin and other earlier thinkers. Hobbes's rejection of popular sovereignty or any other check on the Sovereign fostered a new, secular conservatism and absolutism in the future. In this sense, Hobbes's theory is the dark face of federalism.

LOCKE'S SECOND TREATISE OF GOVERNMENT: A NEW FACE OF FEDERALISM

Nonetheless, the idea of popular sovereignty turned out to be as powerful as federalism itself. Perhaps Mornay's *Defense of Liberty against Tyrants* was a factor in the resilience of the idea of popular sovereignty in England, when, in 1649, the English acted out their own tyrannicide. Mornay's treatise was published in an English translation in 1622, then reprinted in 1631 and in 1648, the year before the execution of Charles I. Then it was reprinted two additional times, in 1660, at the Restoration, and in 1689, at the Glorious Revolution. The core of John Locke's arguments on the federal nature of government, on tyranny, and on the right of resistance is present in Mornay's treatise, and, in fact, Locke owned two Latin copies of the treatise.⁴⁰ This is not to suggest that Locke's political theory is identical with Mornay's; it is not. However, the connection between Locke and Mornay does establish a pedigree for the federalism of Locke.

Although the basic thrust of the political theories of Locke and Hobbes are rather different, there are two important similarities. First, both Locke and Hobbes created their theories on the basis of rational principle; neither appealed directly to tradition nor to biblical principles. Second, both men saw government as a human artifact, a federal artifact; their arguments were ultimately based on the idea of covenant, which had its roots in the idea of the theological covenant. Otherwise, their arguments are dissimilar. Locke's "state of nature," his social compact, the type of community he

³⁹Ibid., 442-451.

⁴⁰John Harrison and Peter Laslett, *The Library of John Locke* (Oxford: At the University Press, 1971), No. 1856, 2054c, pp. 181, 193.

advocated, and the limits that he placed on government clearly differentiate him from Hobbes.

In his *Second Treatise of Government*, Locke describes the state of nature as “a *State of perfect Freedom* to order their [human] Actions, and dispose of their Possessions and Persons, as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.”⁴¹ It is a state of equality and of liberty: “The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions.”⁴² In the state of nature, humans have the right to protect their lives, liberty, and property from any who might encroach upon them.⁴³ The problem is, however, that not everyone will recognize the rule of reason or the law of nature. Therefore, even though Locke’s was a mitigated view of human nature when compared to Hobbes, Locke’s state of nature is, nonetheless, an inconvenient state, where life, liberty, and property are constantly threatened.⁴⁴

Therefore, in order to gain greater security, Locke believed that every person should consent to a social compact which forms political society and government, under common, established laws. The purpose of political society is to preserve life, liberty, and property.⁴⁵ The legislative power is the supreme power in the commonwealth, but its power is not absolute: “Thus the Law of Nature stands as an Eternal Rule to all Men, *Legislators* as well as others.”⁴⁶

Locke introduces the concept of popular sovereignty at this point. Even though the legislative power is the supreme political power, “yet the Legislative being only a Fiduciary Power to act for certain ends, there remains still *in the People a Supreme Power* to remove or *alter the Legislative*, when they find the *Legislative* act contrary to the trust reposed in them.”⁴⁷ In other words, the people put their political power in trust to government; a government that violates that trust can be replaced by the people. The same principle applies to tyranny: “*Wher-ever Law ends, Tyranny begins.*”⁴⁸ In a case where the lives, liberty, and property of the majority of the people are endangered, the people can resist such a tyrant.⁴⁹

⁴¹John Locke, *Two Treatises of Government*, ed. Peter Laslett 2d ed. (Cambridge: At the University Press, 1967), p. 287.

⁴²*Ibid.*, 289.

⁴³*Ibid.*, 289-290, 341-342.

⁴⁴*Ibid.*, 368-370.

⁴⁵*Ibid.*, 348-351, 368-369, 371.

⁴⁶*Ibid.*, 376.

⁴⁷*Ibid.*, 385.

⁴⁸*Ibid.*, 418.

⁴⁹*Ibid.*, 422-423.

The fiduciary aspect of Locke's theory is also the key to his understanding of the relationship of the individual and the community. Locke is often presented as teaching that the individual is self-directing and self-sufficient—as the first advocate of liberal individualism.⁵⁰ This, however, is not quite true. Individuals are not sovereign. According to the social compact, each individual surrenders his executive power of the state of nature to the community. The community is now governed by a common law. As Locke expressed it, “And thus all private judgement of every particular Member being excluded, the Community comes to be Umpire, by settled standing Rules, indifferent, and the same to all Parties.”⁵¹ Therefore, the individual, by virtue of the social covenant, surrenders his right of judgment and is subject to the common law of the community.

Locke thus included all five of the basic elements of federalism: (1) the political community, the commonwealth, is formed on the basis of a social covenant or compact; (2) in the state of nature, political society becomes a necessity because of human nature; (3) the community replaces the private judgment of the individual because (4) individuals have agreed to live in the commonwealth under a common law based on the law of nature; and (5) the people have ultimate sovereignty. If the government does not preserve these basic rights, or if the government becomes tyrannical, the people may replace it, and, if necessary, they may resist a tyrant to the point of rebellion.

The idea that government is based on covenant or compact was thoroughly embedded in the federal tradition by the second half of the seventeenth century. Hobbes and Locke were the heirs of sixteenth-century federalism. Hobbes, because he rejects any check on the power of government, is the dark face of federalism. Locke's political theory is usually treated without even a nod toward federalism, but it is, in reality, a face of federalism. Locke's role was to “secularize” the idea, to state it in more “rational” terms, so that it could be further developed in the eighteenth century as social compact theory. Locke's new face of federalism carried forward the fully developed federal philosophy, including the concept of popular sovereignty, into a new era.

THE AMERICAN FACE OF FEDERALISM

In the American experience, we witness two early instances of the concept of covenant being used to lay the basis for political society. In 1620, while still aboard the *Mayflower*, the Pilgrims made a covenant, which reads in part:

⁵⁰See, for instance, C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (London: Oxford University Press, 1962); John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

⁵¹Locke, *Two Treatises*, p. 342.

We whose names are under-written . . . doe by these presents solemnly and mutually 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 hereof to enacte, constitute, and frame such just and equall laws, ordinances, acts, 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.⁵²

Ten years later, in 1630, on the voyage to establish the colony of Massachusetts, John Winthrop preached a sermon that dealt with the problem of establishing a political and ecclesiastical community upon the arrival of the colonists in New England. In that sermon, Winthrop said:

Thus stands the cause betweene God and us, wee are entered into Covenant with him for this worke, wee have taken out a Commission, the Lord hath given us leave to drawe our owne Articles . . . Now if the Lord shall please to heare us, and bring us in peace to the place wee desire, then hath hee ratified this Covenant and sealed our Commission, [and] will expect a strickt performance of the Articles contained in it, but if wee shall neglect the observation of these Articles . . . the Lord will surely breake out in wrathe against us . . . and make us knowe the price of the breache of such a Covenant. . . [F]or wee must Consider that wee shall be as a City upon a Hill, the eies of all people are upon us.⁵³

Thus, years prior to the ideas of Hobbes and Locke, we discover two laymen using a rudimentary theory of social compact to build a political community on the basis of the religious covenant.

One-hundred-fifty years later, a more sophisticated theory—the new American face of federalism—is evident in Thomas Jefferson’s Declaration of Independence:

WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.⁵⁴

Although these familiar words are seldom thought of in connection with

⁵²William Bradford, “History of the Plimoth Plantation,” in Perry Miller and Thomas H. Johnson, *The Puritans*. Revised edition (New York: Harper Torchbooks, 1963) 1:102. I have modernized the spelling of all English texts.

⁵³John Winthrop, “A Modell of Christian Charity,” in Miller and Johnson, *The Puritans* 1:198-199.

⁵⁴Action of the Second Continental Congress, July 4, 1776.

federalism, these sentences, nonetheless, contain several of the common elements of federalism that we have traced from Bullinger to Locke. Jefferson succinctly affirms that government is formed by compact in order to secure “certain unalienable rights.” When a government breaks the compact, the people have the right to abolish that government and to form a new government. His insistence that the basis of government is the consent of the governed is simply a restatement of the concept of popular sovereignty. Although the tone and even the words may bring up the image of John Locke, these ideas also echo the Mayflower Compact and Winthrop’s sermon, and their deeper roots are found in the federalism of the sixteenth century.

Finally, in 1789, after a period of loose union under the Articles of Confederation, the founders formed a new government of the United States under the Constitution. The connections between the new Constitution and the old covenant theology are succinctly stated by Daniel Elazar:

By 1787 the theological stream of covenant ideas and the philosophic stream of compactual ideas had become so intermingled in the concept of constitutionalism that it is difficult to separate their effects. Albeit, given that the federal system established by the framers bears a much greater similarity to the political systems proposed by the federal theologians and implemented in their church polities than to the political systems proposed by Hobbes or Locke, and given that Americans were already covenanting into civil societies well before the speculative philosophers adopted the idea, it is difficult to avoid the conclusion that covenant ideas had, in the final analysis, a more decisive influence than those of the new political science.⁵⁵

The founders formed a federal community based on a covenant among the people. The Constitution itself is the basic law under which this covenanted community exists. Although no mention is made about the human condition, the Constitution does contain a variety of checks and balances, including the separation of powers. Finally, while no provision is made for the overthrow of this government if it breaks the compact, the principle of popular sovereignty assures a continuing federal revolution in the form of the ballot box.

Such a republican form of government was far from the minds of Bullinger and Mornay, but it was their federal framework that formed the roots of American federalism and made possible the modern federal republic.

⁵⁵Daniel J. Elazar, *The Covenant Tradition in Politics*, vol. 3, *Covenant and Constitutionalism: The Great Frontier and the Matrix of Federal Democracy* (New Brunswick and London: Transaction Publishers, 1998), 78.