2021

Biblical Principles of History and Government

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BIBLICAL PRINCIPLES *of* HISTORY *&* GOVERNMENT

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INTRODUCTION

The greatest problem facing American government today . . .

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The President walked by his secretary as he headed into the Oval Office. She looked up, and handed him his schedule.

"Your list of appointments for today, sir."

He stopped, and took the paper out of her hand, looking it over without comment. She was about to ask him about a scheduling conflict, but thought better of it. His furrowed brow, pursed lips, and tired eyes told her that he had other things on his mind. He gave her a brief nod and walked into his office.

He set his briefcase on his desk, pulling out several reports which had been prepared for him by various staff members. He let out a sigh, and after sitting down, began looking through them.

One discussed the current proliferation of nuclear and chemical weapons in the Middle East. Those pesky terrorists were at it again.

Another discussed relations with China: a gracious but pointed "Mind your own business" was the main theme that seemed to be coming out of Beijing.

Another discussed the upcoming battle in Congress over Medicare. Was anyone in the House or Senate with him on this one?

Another mentioned signs of a stagnating economy . . . and inner city strife . . . and a dismal announcement that America's seventh graders had placed "thirty-fourth" internationally in math and science testing . . . and that the Congressional Budget Office had rejected the President's proposed budget as being "fiscally unsound" . . . and . . . that was it. What? No discussion on the status of America's kitchen sinks?

The President put both elbows on his desk. Could anything else possibly go wrong?

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Hundreds of miles away, in a classroom somewhere in the Midwest, a teacher waited patiently as her students got out a clean piece of paper and a pen. With only fifteen minutes left in class, she could tell that she was loosing them. When the rustling of paper quieted down, she stepped away from the podium.

"You have ten minutes to write this essay." She waited for the groans to die down before she continued. "Here's the question I want you to answer. Ladies, I want you to pretend that today you found out you were pregnant."

A few snickers could be heard in the back of the classroom. She shot a warning look to the perpetrators of the disruption.

"What will you do? Will you tell your parents? What about your boyfriend? Is he going to

know about it? Are you going to have an abortion, or are you going to try to take care of it? Make sure you discuss the consequences of your actions."

She could tell the girls were already deep in thought. "Boys, I want you to pretend that your girlfriend just told you that she was pregnant."

"Is it mine?" one of the boys asked, appreciating the laughter he received.

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The Press Secretary stuck his head in the doorway of the Oval Office, not wanting to come closer. The President was scribbling furiously on a note pad.

"Mr. President, the Press is getting anxious to get a statement from us regarding the accusations of sexual mis--the uh, scandal. I don't think that we can hold them off much longer."

The President looked up from his work, giving him a scowl.

The Press Secretary took a step through the doorway. This was definitely not going to be fun. "I've got a couple of options that you might want to review--if now is a good time." He was more than willing to put this meeting off to another time, maybe a decade or so from now.

The President motioned him to a chair in front of the desk and began to look over the options the Press Secretary had written down for him.

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"Yes. It's yours," the teacher responded, just a little bit louder. "So what are you going to do about it? How are you going to handle it?"

More snickers. One young man mumbled a vow to dump the girl.

"This is not speech class, Aaron. I want you to *write* about it. So let's get busy. You have less than fifteen minutes."

The students started writing. Some, however, were not yet willing to commit their thoughts to paper. They stared off into the distance . . . thinking. The teacher walked behind her desk, and surveyed her students. Her hands were clasped, held near her chin.

One girl on the front row raised her hand. "Ms. Harper, I don't think I'm going to be able to write this in fifteen minutes. I need more time to think about it." Several students offered their mumbled agreement.

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The President looked over the options that had been handed him. Slim pickings. He looked

up at his Press Secretary.

"Are you sure that we have to address this today?"

"Pretty much."

"I see. . . . How are my approval ratings holding up?"

The Press Secretary shifted uncomfortably in his chair.

"They happen to have dipped down into the forties, sir."

The President leaned back in his chair. With more good days like today, he'd be kicked out of office in no time.

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The teacher came out from behind her desk before responding.

"Students, I know this is a tough question. This is an exercise in thought. I want you to *think* about this and then *express* how you feel on paper."

She looked around the room. Some still wore troubled looks on their faces.

"Look, you don't have to try to persuade *me* about anything," now she was in front of her podium.

"There's no right answer here, OK?"

* * * * *

The President suddenly looked pained. He abruptly got out of his chair, and turned to look out the window. The Press Secretary looked at him dubiously. The President seemed to be searching for something out there . . . trying to perceive things that went deeper than tomorrow's headlines.

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The greatest problem facing American government today . . .

. . . has nothing to do with government at all. A recent poll revealed that "66 percent of Americans believe that 'there is no such thing as absolute truth.' Among young adults, the percentage is even higher: 72 percent of those between eighteen and twenty-five do not believe absolutes exist" (Veith, p. 16).

Is there a "right answer" today?

Apparently, many in America do not think so. But teachers in Christian schools all across this country know otherwise. They realize that God still holds men accountable for their actions, and that nations still rise or fall according to the righteousness of their people.

Therefore, they also know that when they teach their students about government, they cannot just mention how the electoral process works, or how a bill becomes a law, or how the state governments interact with the national government. They have to teach their students more than just the bare facts. They have to teach their students about the sovereign law and will of God, and about how these both influence history and government . . . in every nation . . . in every generation . . . without exception.

The purpose of this resource book, then, is to enable Christian school teachers to communicate to their students what those vital Biblical principles of government are, and how those principles, when implemented, can save our nation. Therefore, the starting point in this resource book is that the people of a nation--and therefore their government--must acknowledge the sovereignty of God. **Righteous government cannot be instituted unless the people themselves are first righteous**.

Who Is Sovereign Determines Who Governs.

The Individual vs. the State.

The reason this resource book takes such a "personal" view of preserving government can be further supported by explaining how a person's view of sovereignty inevitably leads to the type of government to which he is bound (Burtness, p. 62). First of all, government can be succinctly summarized into three types: 1) one which produces anarchy (the absence of government); 2) one which produces tyranny (the over-bearance of government); and 3) one which produces liberty (the presence of government without the over-bearance). Obviously, it is this last type of government which we are trying to achieve.

Regarding a person's view of sovereignty, it can be said that if a person views himself as sovereign, then serving himself is the highest end of his life, and nothing else really matters. The result of a nation full of people living this way is painfully clear: **anarchy**. People do not care for one another, or abide by the law, or sacrifice for the common good. If a person views the state as sovereign, then he lives for the state, and subjects himself to

the state's control (or he is forced to subject to the state). Obviously, **tyranny** can result from this situation quite easily.

Anarchy vs. Tyranny.

Which of these views do the American people espouse? Based on the signs of moral decay in today's society, it appears that Americans tend to view the individual as absolutely sovereign, and that therefore there are no "absolute morals" by which to live, much less an absolute government. But the problem with this belief in the absolute sovereignty of the individual is that it can lead to anarchy and the disintegration of society. Furthermore, if anarchy occurs, then it is very likely that tyranny will occur, because **if a person is not capable of ruling himself, then someone else will rule for him**. That is why "the greatest problem facing American government today" is not the threat of war from abroad, or the danger of economic instability from within, but the moral decay of America's people: a people who apparently "believe that there is no such thing as absolute truth," and therefore feel no reason to be bound by the Word of God.

Liberty Comes from Acknowledging the Sovereignty of God.

This therefore brings us to the third view of sovereignty. If people view God (and therefore His Word, the Bible) as sovereign, then liberty results. Why? Because a person who views God as sovereign learns to control his sin nature and to love others. He no longer craves unrestrained freedom, and so he is no longer bound by uncontrolled sin. We as Christians know this is true liberty, and we thank God for the saving work of Jesus Christ on the cross that made this liberty possible. Therefore, once a person is able to control himself, he is no longer willing to have an arbitrary, tyrannical state controlling him. He does not need other people to tell him how to find fulfillment; he does not need someone else to provide for him; and he does not need anything from government but the protection from evildoers and injustice. To this government--a government which protects his freedom instead of stealing it--he willingly submits. It is this type of person and government that this resource book is devoted to forming, by communicating the Biblical principles that can bring about this type of person, this type of government, and therefore, this type of liberty. A major assumption of this resource book then, is that **if society and government are going to be preserved and set free from the bondage of sin and its deadly influences, then change has to occur first of all on a personal level**. There is no way around this important truth.

So while this resource book deals with government and historical trends of government, the principles discussed here can also be used for classes besides government, such as classes dealing with Bible, history, current events, and philosophy, because they address the foundational problems of the nation, in the context of the individual in relation to government, rather than specific, institutional problems of government.

Structure of the Resource Book.

Book I.

This resource book is divided into two books. **Book I** discusses the Biblical principles of government needed to preserve society. These principles are divided into five sections: I) the importance of acknowledging the sovereignty of God as the basis of government; II) the need for justice in government; III) implementing covenantal relationships as the basis for society; IV) maintaining a proper relationship between church and state; and V) understanding the proper means of resisting tyranny in government.

Section I discusses the following principles: 1) acknowledging God as the absolute source of truth, power, and authority; 2) the importance of humility in government; 3) the importance of acting under authority; 4) the importance of being accountable to the truth.

Section II addresses the following principles: 1) government is to be just in every aspect; and 2) justice is secured by protecting the inalienable rights of the people.

Section III addresses the following principles: 1) government is formed by a covenant of the people; 2) just government is achieved by willful concessions of power; 3) just government is upheld by mutual obligation; 4) just government is protected by rule by consent; 5) just government is protected by separation of powers; 6) just government is established by a constitution; 7) just government can only function properly with self-government; and 8) just government can only function properly with loving fulfillment of covenant obligations.

Section IV discusses the following principles: 1) church and state have separate functions; 2) the church should not be endorsed by the state; and 3) separation of church and state does not mean a separation of the state from Biblical principles.

Section V discusses the following principle: the people have a right and duty to resist an unjust government.

Each of these principles are explained in detail and supported with Biblical evidence as well as historical evidence. As will be seen, the discussion of principles in Book I becomes more and more specific from section to section.

Book II.

Book II (the beige-colored pages) presents a collection of key documents of government and history--with brief commentary and historical overview--which have played an important role in bringing about the implementation of the Biblical principles discussed in Book I into society and government. This resource book is in no way intended to provide an entire survey of world history, or even American history. But historical documents and examples were included in order to convey the relevance and applicability of the Biblical principles of government.

The exciting aspect about this work has been the realization that America, for all of its shortcomings, has produced a government which is in many ways the culmination of all of these Biblical principles. Hopefully, this resource book will be one more step in the direction of bringing America back to these principles, and therefore back to the liberty before God that comes with it.

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BOOK I

EXPLANATION *of* PRINCIPLES

SECTION I

ACKNOWLEDGING *the* SOVEREIGNTY *of* GOD AS *the* BASIS *of* GOVERNMENT

Principle 1
Acknowledging God as the Absolute Source of Truth, Power, and Authority.

For the Christian, it goes without saying that God is the ultimate source of truth, power, and authority. As Christians, we acknowledge that God, as creator and ruler of the universe, knows all things and controls all things. It is important that this truth be reiterated, however, because as we look for principles on which to build good government, it reminds us that the Bible is an important guide along the way. The Bible has preeminence above all other books and above all opinions of man, because, of course, it is the Word of God and contains God's commandments for us as to how we should live.

Principle 2
The Importance of Humility in Government.

A natural result of acknowledging the sovereignty of God is practicing humility. Humility is important when discussing good government because it addresses two common problems known to man: 1) his lack of wisdom, and 2) his foolish pride. A person may have an idea as to how government should be established and maintained, but if his ideas contradict principles set forth in the Bible, then his ideas must be disregarded. It is important to remember that in our search for how to create good government, we must start with acknowledging the sovereignty of God. We must turn to Him and to His Word for the truth. This takes humility.

But the need for humility goes beyond seeking the truth. Humility is needed in every aspect of government, because without it, a person will not necessarily feel bound to serve the needs of the people, he will not necessarily feel bound to operate according to set laws,

he will not necessarily feel bound to submit himself to the truth, and he will not necessarily be opposed to selfishly hoarding power to himself. A person who is not humble before the Lord will not necessarily feel the need to submit himself to any moral or spiritual guidelines. His rebellious pride will tend to lead him away from God, the truth, and therefore, away from the practices needed for good government.

Principle 3
The Importance of Acting under Authority in Government.

The Use of *Exousia* in the Bible.

That God is sovereign is the main reason that we know that government in general, and government officials in particular, should not have unlimited power. Looking at how the Bible distinguishes between *power* and *authority* will further help to illuminate that point. A basic point of distinction between the two terms is that *power* is the *ability* to do something, while *authority* is the *permission* to do something. If God has all authority, then we must act according to His authority. Just because we have the power (ability) to do something does not mean therefore that we have God's authority (or permission) to do it. The Bible affirms this distinction between *power* and *authority*, **including in the realm of government**. A key word in the New Testament which helps us understand this difference is the word *exousia*.

> The New Testament uses the Greek word *exousia* to mean "authority." *Exousia* occurs 103 times in the Greek New Testament. The King James Version translates *exousia* with the English words "power" (66 times), "authority" (28 times), "jurisdiction" (once), and "right" (once). In most instances, where the King James Version renders *exousia* by "power" the better translation would be "authority" or "right" (Amos, *Inalienable Rights*, p. 7).

Exousia and *Exestin*.

The term *exousia* is derived from the term *exestin*, which in Greek writing came to mean an action "that is not prevented by a higher norm or court, that it may be done or is not forbidden" (Amos, *Inalienable Rights*, p. 7). Originally, use of *exestin* was rarely used by Greek cultic writers for religious or cultic commandments, but "in the LXX (Septuagint) and in the New Testament, it is used 'especially to denote the prohibitions of the Jewish Law' or the law of God. In Jewish and Christian writing it begins to take on the clear meaning of lawful in the *moral* and *judicial* sense [Emphasis added.]" (Amos, *Inalienable Rights*, p. 7).

Exousia Used in the Context of the Legal Order.

If *exestin* is used in the Greek New Testament to mean something that is lawful (Amos, *Inalienable Rights*, p. 7), then it is easy to see why *exousia* means authority rather than merely power or might: "In the Hellenistic period, *exousia* meant the unrestrained 'freedom' to perform an action. It was also 'the possibility granted by a higher norm or court, and therefore, the right to do something or the right over something'" (Amos, *Inalienable Rights*, p.

8). The term *exousia* was also used in the context of legal power:

> . . . *exousia* was 'mostly used in the context of the legal order.' This probably is the reason why the Jews and Christians chose the term to translate Hebrew words for authority and rights. Jews and Christians poured much more legal meaning into the term than the Greeks who originated it. The Greeks never used the term to denote the government as such. Yet, Paul in Romans 13 did use it to describe the authority of the government as such (Amos, *Inalienable Rights*, p. 8).

The use of *exousia* in the Bible, particularly in Romans 13, provides a limit on government power because it stipulates that it must act according to the authority given to it by God. The rulers do not have unlimited power to do whatever they want:

> "In the LXX *exousia* first means right, authority, permission or freedom in the legal or political sense, and it is *then used for the right or permission given by God*." Especially in Daniel and Maccabeees, it denotes God's 'power to decide.' The translators of the LXX used it to translate a number of Aramaic words, giving it a new and wholly different meaning than had the Greeks. It came to signify 'the unrestricted sovereignty of God as the One who has the say, whose Word is power' [Emphasis added.] (Amos, *Inalienable Rights*, p. 8).

The Influence of the Hebrew Term *Reshut* Upon Exousia.

That *exousia* is used in the Bible to limit the power of government according to the authority of God can be seen even more clearly when its relationship to the Hebrew word *reshut* is examined:

> In the Hebrew-Rabbinical tradition, the semitic word which had the most influence on changing the meaning of *exousia* was *reshut*. "At all essential points *reshut* is co-extensive with *exousia* but goes beyond it in the very matters in which the New Testament does so. As a legal term, it has the general sense of power of disposal, but in detail it means the right of possession to something, or the authority or commission, the right, or the freedom to do something. In the singular it then denotes government as such. . . . In this respect its influence is reflected in the New Testament in the use of *exousia* for government, for which there is no parallel in ordinary Greek" (Amos, *Inalienable Rights*, p. 9).

Summary: *Exousia* Means More than Just Power.

As a means of summary, *exousia* (as used in the New Testament) is different from power in three ways. First of all, it "denotes the power which decides" (Amos, *Inalienable Rights*, p. 9), and stands in contrast to other words which denote "'indwelling, objective, physical or spiritual power,' such as *dunamis* (power, ability), *kratos* (might), or *ischus* (strength)" (Amos, *Inalienable Rights*, p. 9). Secondly, "this power of decision is active in a legally ordered whole, especially in the state and in all the authoritarian relationships supported by it. All these relationships are the reflection of the lordship of God in a fallen world where nothing takes place apart from His *exousia* or authority. They are based upon

this lordship. . . . In the New Testament, "'nothing takes place apart from the *exousia* or will of God'" (Amos, *Inalienable Rights*, p. 9). Finally, *exousia*, unlike terms for power, can denote "the freedom which is given to the community," since "this *exousia* which is operative in ordered relationship, this authority to act, cannot be separated from its continuous exercise" (Amos, *Inalienable Rights*, p. 9).

An Analysis of Romans 13:1-4.

The above discussion provides further evidence that in government, as in all areas of life, God determines how humans may use the power given to them. Therefore, when we look at Romans 13:1-4, two principles come to mind. The first is that government operates under authority from God; and the second is that government is designed to prevent evil. This second principle will be discussed later. The first principle comes from verse one of Romans 13, which states, "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God." The Greek word for power and powers in this verse is indeed *exousia* (Strong, *Concordance* and its complimentary "Greek Dictionary of the New Testament," pp. 802-3 of the *Concordance* followed by p. 30 from the Greek Dictionary). Therefore, a better translation would be, "Let every soul be subject unto the higher *authorities*. For there is no *authority* but of God: the *authorities* that be are ordained of God."

The state is not the absolute source of power according to this verse, nor does it have absolute power. Its power is on lease from God, given to it with authority, which determines how the state may use its power. A logical corollary of this truth is that *even though the state gets its authority from the people to some degree, it is ultimately accountable to God, and not to the people*. Just as the state is not the absolute source of power, so the people are not the absolute source of power. Both must submit to the sovereign will of God.

Principle 4
The Importance of Government Being Accountable to the Truth.

Considering that God is the ultimate source of truth, it is safe to say that Government and government officials should also be accountable to the truth. Doing so keeps government from vast departures from God's will. Looking at history gives us a deeper understanding of this fact. When we consider the actions of tyrants such as Hitler or Stalin, we see a vast abandonment of truth leading to terrible atrocities. Although there actions are obviously extremes, they serve as a reminder of the *potential* of man's sin nature, particularly in government, where power is the greatest. It is important for our leaders to be aware of the Biblical principles of government, and then to abide by them.

Logic also serves to guide man to the truth, assuming that he humbly acknowledges that God is the source of all truth. Without logic, even the Bible can be misused. After all, a person can claim to be guided by the Bible, but what if he misreads or misapplies the Bible? A person can claim to be led by the voice of God, but what if his actions disobey specific commandments given in the Bible? Logic serves as a means of accountability by which an individual may keep himself from jumping to conclusions. A further dissemination of the rules of logic is therefore warranted.

Inductive and Deductive Logic.

There are two types of logic: inductive and deductive. The New Webster's Dictionary defines deduction as "reasoning from the general to the particular," and as "reasoning in which the conclusion follows necessarily from given premises." A deductive argument therefore, leads to conclusions which cannot be questioned. Obviously, deductive arguments are quite strong, but it can be hard to make a deductive argument when one is uncertain about the premises. We as humans do not always have the privilege of making absolute judgments of this sort, because we do not have access to absolute truth, as God does. We do not understand every detail of creation, as God does, nor do we understand the heart of man, as God does.

It is for this reason that using inductive logic is also necessary. The New Webster's Dictionary defines induction as "the drawing of a general conclusion from a number of known facts." This definition provides some important insight as to how a person is to arrive at truth. It is not wise to jump to conclusions. Since we do not have access to absolute truth, we must take the time to seek after the truth and to understand the way things are. If a person noticed that on Tuesday of one week it rained, he would be foolish to state that therefore it must rain on every Tuesday. Inductive logic would require him to study the weather patterns of the entire year before he started making any assumptions. And then, even if he were able to determine a particular pattern of weather after extensive study, it would still be inappropriate to dogmatically state that in one particular month it will be cold and rainy and in another month it will be hot and dry, and so on, because even a set climatic pattern will occasionally produce unusual weather patterns. Such is the nature of our human existence that we cannot always claim to be absolutely sure about the things we

believe. But if we are studious in the inductive logical process, then we are able to arrive at conclusions of which we can be reasonably sure.

The bottom line is that if we are truly concerned about knowing the truth, we should be willing to cautiously seek the truth ("study to show thyself approved," as II Timothy 2:15 says) rather than forming a conclusion on limited information. This is true regardless of whether we are using deductive logic or inductive logic. Often we really do not want to put the time in to studying something in order to truly understand it. But if we do not humbly submit ourselves to logical thought processes in finding the truth, then the only way we will arrive at any true conclusion is by chance. *This weakness becomes particularly grievous when exhibited by government officials, because they have more power, and therefore, the consequences of their actions are greater.*

Requirements for a Sound Logical Argument.

Certain criteria exist which can help us create sound logical arguments (and therefore arrive at sound logical conclusions), whether we are using deductive or inductive logic. The first criterion is the **Relevance Criterion**. As T. Edward Damer says in his book, *Attacking Faulty Reasoning*, "A premise is relevant if its acceptance provides some reason to believe, counts in favor of, or makes a difference to the truth or falsity of the conclusion. A premise is irrelevant if its acceptance has no bearing on, provides no evidence for, or makes no difference to the truth or falsity of the conclusion" (Damer, p. 13). The second criterion is the **Acceptability Criterion**, which requires that any premises being used should be premises that "a reasonable person *should* accept" (Damer, p. 14). The third criterion is the **Sufficient Grounds** (for the truth of its conclusion) **Criterion**, which stipulates that "if the premises are not sufficient in number, kind, and weight, they may not be strong enough to establish the truth of the conclusion, even though they may be both relevant and acceptable. Additional relevant and acceptable premises may be needed to make the case" (Damer, p. 15). The final criterion is the **Rebuttal Criterion**, which stipulates that "a good argument should also provide *effective rebuttal* to the strongest arguments against one's conclusion and also perhaps to the strongest arguments in support of the alternative position" (Damer, p. 16). These four criteria will help to ensure that a person's argument for or against something follows proper logical and systematic thought processes.

Biblical Evidence

Some of the many verses which speak of the sovereignty of God, and of the need for man to humbly submit to Him are the following:

Ge. 32:10
Nu. 23:19
Job 28:28
Ps. 9:12, 18:30, 25:14, 27:1, 84:11, 86:1, 15, 103:15-16, 121:7-8, 147:6
Pr. 1:7, 3:5, 9:10, 15:33, 18:10, 22:4, 27:2, 28:13-14, 29:1, 23
Is. 40:3-5, 40:28, 31, 41:10, 45:6-9, 51:1, 57:15, 64:8, 66:2
Je. 10:10, 18:4
La. 3:22-23, 25-26
Ez. 16:62-63, 36:23
Ha. 2:14

Mt. 24:35
Lu. 1:37
Jhn. 14:6, 15:5,7, 16:33
Ro. 3:4, 8:37, 9:20-24, 10:4, 12:3
I Co. 1:9, 10;12
Ep. 3:16
Php. 1:6, 2:13, 4:6, 13, 19
I Th. 5:24
He. 7:24-25, 9:24
Ja. 4:6, 10
I Jhn. 3:22-23, 4:4, 5:4

In addition to these verses, one can find numerous examples of God demonstrating His sovereignty to the people of Israel. This story, of course, makes up most of the Old Testament. Furthermore, the Old Testament reveals that God even dealt with the nations around Israel for their sinfulness.

Historical Evidence

Although today we are accustomed to hearing the argument for complete and absolute separation of church and state, history reveals that many nations have acknowledged God as their Lord. The mighty **Roman Law**, which had been imprinted upon numerous subjugated peoples before the fall of the Western Roman Empire, was revised according to Biblical standards by the **Byzantium (Eastern Roman Empire) Emperors**, especially by **Emperor Justinian** and his successors (Berman, p. 168).

Furthermore, in the ashes of the old Roman empire in **Western Europe**, the

Catholic Church emerged as the dominant force in society during the **Middle Ages**, helping to preserve society and ensuring that the kingdoms which arose under its shadow acknowledged God as Lord (Kirk, pp. 171-4).

Of course, to say that the Catholic Church's predominance led nations to adhere to Biblical mores is not the same as saying that all nations and institutions were perfectly aligned with the Word of God. Even the Catholic Church, the very agent which helped to preserve early Western Europe, was at times accused of sinfulness, especially by the **Protestant Reformers** (Kirk, p. 231). But the bottom line is that when the Catholic Church of Rome became the "spiritual center" of early Western Europe (Kirk, p. 172), a tradition began in which the political mirrored the spiritual (or at least attempted to mirror it). This tradition lasted long past the Middle Ages and reached into the founding of **American government**:

> That order of which **Gregory** [Gregory the Great, pope and saint, last of the Latin Doctors of the Church] was steward would endure through the centuries, and would enter into the foundation of American society. The American order of the soul would be Christian. . . . And the political order of America, though pluralistic and in part secularized, also would owe much to Christian teaching. . . . At the end of the Middle Ages, changes of religious forms would be reflected in changes of political forms; still, the Christian patrimony would endure. So it is that a Christian understanding of the human condition, transmitted for the most part through Britain, still gives coherence to America's political order. American politics is not a matter of national party conventions or of presidential elections merely: rather, those conventions and elections and all the other contrivances of American practical politics are means for implementing a body of beliefs about the human condition. Those beliefs are not Christian only, but they are Christian in very large part. (Kirk, pp. 173-4).

Though America has never been a pure theocracy, in the sense that God is acknowledged as the head of the state (as with the **Hebrew Republic**), it was founded on Biblical principles, and her people acknowledged the sovereignty of God by living according to Biblical principles. As **John Adams** declared, "Our constitution was made only for a moral and religious people. It is wholly inadequate for the government of any other" (Eidsmoe, p. 381). Eidsmoe goes on to say that "Americans in 1787 had sinful natures, but due to the influence of religion and tradition in that day, the outward expression of sin was greatly restrained. Oaths were considered sacred, and a man's word was his bond. Crime rates were lower, and sexual immorality was not as widespread as today" (Eidsmoe, p. 381). In the sense that her people lived by Biblical standards, America was based on an acknowledgment of the sovereignty of God.

The question is, can America survive without honoring God? Today, we see an America of "soaring crime rates, rampant disregard for law, tax evasion, unreliable promises, common place infidelity and immorality, with divorce and abortion as easy solutions . . . " (Eidsmoe, p. 381). What is America's destiny if we continue violating God's law found in the Bible?

Perhaps by looking at the fate of other nations whose people disregarded Biblical

virtues we can understand the dangers that lie ahead for America if her people do not honor God by living according to His Word. Kirk points out that in *The City of God*, **St. Augustine** explains why the **Roman Empire** was declining:

> It was not the coming of Christianity, Augustine replies, that has brought afflictions upon Roman civilization: for from Adam's fall, before cities existed, man has been corrupt. Every age, suffering from violence and fraud, complains of its tribulations; but if we read history, we perceive that the human adventure is a chronicle of disasters. In every age, society has been relieved only by the endeavors of a few people moved by the grace of God. . . . Rome has fallen, Augustine says, for want of order in the soul. By their nature, men seek for order. . . . They must have a purpose in their existence. And what is that purpose? Why, to glorify God, to know Him and enjoy Him forever. . . . Despite their yearnings for order, the vast majority of human beings go astray in this quest. Until Adam and Eve sinned, they enjoyed perfect freedom. After the Fall, people still possess freedom--though ordinarily only the freedom to choose among sins. The power of sin is so mighty that it triumphs over man's rationality and man's will. And what is the essence of this Original Sin by which we are corrupted? With Saint Paul, Augustine replies that it is pride: *the desire of the human creature to make himself the center of the universe*. In this bondage to sin, the body commands the soul; the order that God had designed for man is inverted [Emphasis added.] (Kirk, p. 161).

According to Augustine, Rome fell because her people tried to exalt themselves above God and live their lives according to their own will rather than the standards revealed in the Word of God. Another nation which faced a similar fate was **France** during the **French Revolution**. Though her people were trying to find freedom, their sinfulness led them into bondage. The freedom found in the American system of government did not work for them. **Gouverneur Morris**, one of America's founding fathers, realized that the

> **U.S. Constitution** would not work in France because of the low moral character of the French people. He noted the French disrespect for religion, love of violence, breaking of promises, and sexual immorality. Morris accurately predicted the result of their behavior: revolution, anarchy, chaos, terror, and ultimate despotism. What distinguishes twentieth-century America from eighteenth-century France? [Emphasis added.] (Eidsmoe, pp. 381-2).

If America--and nations in general--want to avoid the same tragedy that faced the people of the Roman Empire and of France during the French Revolution, then their people must humbly acknowledge the sovereignty of God and live by His Word. Otherwise, their destinies lie with the decay of the Roman Empire and the anarchy of the French Revolution.

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SECTION II

the NEED *for* JUSTICE *in* GOVERNMENT

Introduction

If we accept that God is sovereign, and that His Word, the Bible, should be the guideline for government, then we must understand what the Bible says about government. One important message conveyed by the Bible is the need for the exercise of justice in all areas of life, including government. Throughout the Old and New Testaments, God exhorts His people--be they rulers or citizens--to practice justice. Indeed, the call and expectation for justice is an explicit theme in the Bible.

Principle 1
Government Is to be Just in Every Aspect.

The Significance of *Mishpat* for the Role of Justice in Government.

The Hebrew term *mishpat* is an important Biblical term which links government activity with justice. *Mishpat*, which can be defined as "justice, ordinance, custom, or manner" (Harris, Archer, & Waltke, vol. 2, p. 948), represents what is

> doubtless the most important idea for correct understanding of government--whether of man by man or the whole creation of God. Though rendered "judgment" in most of the four hundred or so appearances of *mishpat* in the Hebrew Bible, this rendering is often defective for us moderns by reason of our novel way of distinctly separating legislative, executive, and judicial functions and functionaries in government. Hence *shapat*, the common verb (from which our word *mishpat* is derived) meaning "to rule, govern," referring to all functions of government is erroneously restricted to judicial processes only, whereas both the verb and noun include all these functions (Harris, Archer, & Waltke, Vol. 2, p. 948).

So what government functions does the term *mishpat* entail? An analysis of the Bible reveals that there are thirteen separate yet interrelated government functions (defined by using the term *mishpat*), "which if to be rendered by a single English word with similar range

of meaning, ought by all means to be the word 'justice'" (Harris, Archer, & Waltke, vol. 2, p. 948).
They are as follows:

1. The act of deciding a case of litigation brought before a civil magistrate. . . .
2. The place of deciding a case of litigation. . . .
3. The process of litigation. . . .
4. A case of litigation (i.e., a specific cause brought to the magistrate). . . .
5. A sentence or decision issuing from a magistrate's court. . . .
6. The time of judgment. . . .
7. Sovereignty, the legal foundation of government in the sense of ultimate authority or right. . . .
8. The attribute of justice in all correct personal civil administration is emphasized.
9. An ordinance of law--often used coordinately with *hoq* "ordinance" (Ex 15:25) and *tora* "law" (Isa 42:4). . . .
10. A plan (Ex 26:30) or
11. custom (II Kgs 17:33) or even
12. a fitting measure taken (I Kgs 5:8) seem to come under the scope of this word. . . .
13. One's right under law, human or divine, is denominated *mishpat* (Deut 18:3; Jer 32:7) (Harris, Archer, & Waltke, vol. 2, pp. 948-9).

Justice, therefore, should be the basis of government. This is not merely a suggestion for government activity, it is a commandment: "When therefore the Scripture speaks of the *mishpat* of God, as it frequently does, the word has a particular shade of meaning and that is not so much just statutes of God as the *just claims* of God. 'God, who is the Lord, can demand and He does demand.' . . . All the right (justice, authority, etc.) there is is his, "because Jehovah is the God of justice (Isa 30:18; cf. Gen. 18:25). God loves *mishpat* in this sense (Ps 37:28)" (Harris, Archer, & Waltke, vol. 2, p. 949).

Principle 2
Justice Is Secured by Protecting the Inalienable Rights of the People.

What does it mean for a government to be just? Certainly there are implications of protecting the liberty of its citizens, upholding fairness and impartiality in judicial proceedings (and in government in general), providing protection against lawlessness, exploitation and criminal activity (both in and out of government), and avoiding tyranny in legislation and other governmental decrees. But a more specific way in which government can be just is by upholding the **inalienable rights** of man. When a government acknowledges the inalienable rights of its people, it is hard for it not to ensure their liberty. Over the centuries inalienable rights have been defined as the rights to **life**, **liberty**, and **property**. For the sake of definition, inalienable rights are those rights given to man by God, which cannot be *taken* away by any man, and which cannot be *given* away by any man.

When we examine the Biblical evidence for both the concept of justice and inalienable rights, we will have a better framework for what government can and should do, and what it cannot.

Biblical Evidence

Justice

The following is a compilation of verses dealing with justice in some form or another. Verses that are in bold refer specifically to just government of some sort. Verses that are italicized refer to God as being just.

Ge. 6:9, 18:19,
Le. 19:36,
De. 16:18, 16:20, 25:15, 32:4, 33:21,
II Sam. 8:15, 15:4, **23:3**,
I Ki. 10:9,
I Ch. 18:14,
II Ch. 9:8,
Ne. *9:33*,
Job *4:17, 8:3, 9:2,* 12:4, 27:17, 33:12, 34:17, 36:17, *37:23*,
Ps. 7:9, 37:12, 82:3, *89:14*, 119:121,
Pr. 1:3, 3:33, 4:18, **8:15**, 9:9, 10:6, 10:7, 10:20, 10:31, 11:1, 11:9, 12:13, 12:21, 13:22, 16:11, 17:15, 17:26, 18:17, 20:7, 21:3, 15, 24:16, 29:27,
Ec. 5:8, 7:15, 7:20, 8:14,
Is. *9:7*, 26:7, 29:21, **45:21**, 56:1, 58:2, 59:4,9,14,
Je. 22:15, *23:5*, 31:23, *50:7,*
La. 4:13,
Eze. 8:5, 18:9, **45:9,10**,
Ho. 14:9,
Am. 5:12,
Hab. 2:4,
Zep. *3:5*,
Zec. *9:9.*

Mt. 1:19, 5:45, 13:49, 27:19, 27:24,
Mr. 6:20,
Lu. 1:17, 2:25, 14:14, 15:7, 20:20, 23:50
Jhn. *5:30*,
Ac. *3:14*, *7:52,* 10:22, *22:14,* 24:15,
Ro. 1:17, 2:13, 3:8, *3:26*, 7:12,
Ga. 3:11,

Php. 4:8,
Col. 4:1,
Tit. 1:8,
Heb. 2:2, 10:38, 12:23,
Jas. 5:6,
I Pe. 3:18,
II Pe. 2:7,
I Jo. *1:9*,
Re. *15:3*.

Inalienable Rights

The Bible provides five general areas of support for inalienable rights as defined by life, liberty and property: 1) that man is made in the image of God; 2) that God has given man dominion over the earth; 3) the Noahic covenant; 4) the Ten Commandments; and 5) the commandment to "love thy neighbor as thyself."

Made in the Image of God.

The fact that we are made in the image of God, as Genesis 1:26 states, should remind us that no human should be disregarded as irrelevant or unworthy of protection. No government should dare to infringe upon the inalienable rights of any person, for to do so would be to disregard the very image of God. This truth is particularly relevant when we remember the words of Jesus Christ in Matthew 25:40: "Inasmuch as you have done it unto the least of these my brethren, ye have done it unto me."

The Concept of Dominion.

The very first command given to man from God recorded in the Bible is found in Genesis 1:28: "And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth." The key word in this verse pertaining to a discussion of good government is the word "dominion." From the Hebrew word *rada*, it means to rule (Harris, Archer, & Waltke, vol. 2, p. 833). This definition of *rada* is used

> some twenty-two times in the Old Testament, occurring in every section and type of context. The initial usage appears in Gen. 1:28. . . . Generally *rada* is limited to human rather than divine dominion (Harris, Archer, & Waltke, vol. 2, p. 833).

The concept of dominion is important when discussing inalienable rights because it reminds us of the importance of man taking charge of his world and subduing it. This is partial support for the right to private property. Taking dominion of the earth means, to some degree, taking ownership of it.

The Noahic Covenant.

The Noahic Covenant is an important Biblical covenant which ensures inalienable rights.

> In the biblical worldview, all humans are expected to be bound by the [Noahic] covenant, which obligates them to recognize God's sovereignty, protect human life, and pursue justice on earth, and also endows them with all the basic human rights. Those who refuse to be bound by accepting the obligations of the [Noahic] covenant are thereby not entitled to those basic human rights because they have proclaimed themselves outlaws (Elazar, p. 87).

The most important aspect of the Noahic covenant is its prohibition against murder (Genesis 9:6). This is obviously an affirmation of the right to life. Elazar also contends that there are other commands implicit in the Noahic covenant:

> While there is some disagreement as to precisely which commandments are included, it is generally agreed that idolatry, blasphemy, shedding human blood, sexual sins, theft, and eating parts from a living animal are the six prohibitions, while establishing a legal order is the one positive injunction (Elazar, p. 112).

This interpretation would therefore provide protection of the inalienable right to property and liberty, since the prohibition against theft protects one's property and the establishment of a legal order would preserve one's freedom. (It is assumed that this legal order would be just, as God is just).

The Ten Commandments.

The Ten Commandments also serve to protect inalienable rights. First of all, they acknowledge that God has all authority (Ex. 20:3 "Thou shalt have no other gods before me"). This is the basis of inalienable rights, because only God gives inalienable rights, and only God can take them away. Secondly, they acknowledge the right to life (Ex. 20:13 "Thou shalt not kill"). Thirdly, they protect the right to property in three ways. The first protection is found in Ex. 20:14: "Thou shalt not commit adultery." This implies that a person cannot take another man's wife or another woman's husband, because they already belong to someone else. Co-ownership is an implicit aspect of a marital relationship. The second protection is found in Ex. 20:15: "Thou shall not steal," and the third protection is found in Ex. 20:17: "Thou shalt not covet thy neighbor's house, thou shalt covet thy neighbor's wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor any thing that is thy neighbour's." The protection of life and property are the two most obvious rights protected by the Ten Commandments. However, it is a logical progression that a person's right to liberty is therefore protected because if a person's life is protected, and his property is protected (which means that he has the freedom to do what he would like with his property) then he has already achieved a certain degree of freedom.

"Love Thy Neighbor as Thyself."

In addition to these specific protections of inalienable rights, the Bible goes further by exhorting each man to love his neighbor as himself and to treat one another in kindness (Ex. 20:16; Le. 19:13, 18, Ps. 15:1-3; Ro. 13:10, 15:2, I Co. 13). It can safely be argued that no man would want his life, liberty, or property taken away from him, so, according to the Bible, he should not try to take those rights away from others.

Historical Evidence

It would be impossible to find nations which are totally just. Even America which has been one of the most just regimes in the history of the world, has committed terrible injustices, such as slavery and abortion. However, the idea of justice, including an understanding of inalienable rights, has been passed down throughout the centuries and throughout the nations.

Ensuring Justice.

Many important political writers have spoken of the need for government to ensure justice. **Martin Luther**, for instance, in his text, *Church, State, and Citizenship*, states that government must prevent human evil: "If this restraining power were removed--seeing that the entire world is evil and that among thousands there is scarcely one true Christian--men would devour one another, and no one could preserve wife and child, support himself, and serve God. Thus the world would be reduced to chaos" (Amos, *Common Law*, p. 19).

John Calvin, in his *Institutes of the Christian Religion*, argues that government should uphold justice for all, and that it should have the power to defend all citizens from abuse:

> For if power has been given to them [the government] to maintain the tranquillity of their subjects, repress the seditious movements of the turbulent, assist those who are violently oppressed, and animadvert [sic] on crimes, can they rise it more opportunity than in repressing the fury of him who disturbs both the ease of individuals and the common tranquillity of all; who excites seditious tumult, and perpetrates acts of violent oppression and gross wrongs? If it becomes them to be the guardians and maintainers of the laws, they must repress the attempts of all alike by whose criminal conduct the discipline of the laws is impaired. Nay, if they justly punish those robbers whose injuries have been inflicted only on a few, will they allow the whole country to be robbed and devastated with impunity? Since it makes no difference whether it is by a king or by the lowest of the people that a hostile and devastating inroad is made into a district over which they have no authority, all alike are to be regarded and punished as robbers. Natural equity and duty, therefore, demand that princes be armed not only to repress private crimes by judicial inflictions, but to defend the subjects committed to their guardianship whenever they are hostilely assailed. Such even the Holy Spirit, in many passages of Scripture, declares to be lawful (Amos, *Common Law*, p. 50).

Sir William Blackstone, one of the most well-known commentators on the British common law, agreed that the "principal aim of society is to protect individuals in the

enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse, which is gained by the institution of friendly and social communities (Amos, *Common Law*, p. 31).

Ensuring Justice by Protecting Inalienable Rights.

The development of a theory of inalienable rights took a huge step forward during the Medieval era when jurists and canon lawyers modified **Roman** law to develop a new theory of property rights according to a Biblical worldview. **Medieval jurists and canon lawyers** used two Roman legal terms--*dominium* and *ius*--to posit the statement that every person has a right (*ius*) to his property (*dominium*) (Tuck, p. 13). This understanding of *dominium* and *ius* was the cornerstone to building a theory of rights in which an individual has rights as a result of being a person made in the image of God as opposed to having rights because another individual or entity deemed him worthy of receiving rights, a process which is of course unjust and arbitrary. To understand the significance of the relationship between these two words in laying the foundation for protecting inalienable rights, it is necessary to begin our discussion by explaining how those terms were used under a system in which the Roman emperor had absolute control over his subjects.

The Imperial Roman System of Rights.

The term *dominium* initially signified "man's total control over his physical world - his land, his slaves or his money" (Tuck, p. 10). The Christian may look at this understanding of *dominium* and suggest that only God has total control, and that it is therefore inappropriate to suggest that any mere human has total control over anything he owns or does. This is a valid point, of course, and this understanding of total control--and who has it--will come to play later on in our discussion of inalienable rights.

In defense of the understanding of *dominium* in which a man can have total control over his property and situation, it can at least be said that this type of *dominium* belonged to more than just one person, at least initially. In other words, at least initially, *dominium* could be applied to more than one person in more than one context, because no individual had *total* control over *everything*, just over his own little world. The Christian can look at this and at least appreciate that it did not suggest *total* control of *everything* by a tyrant, which, as we have already discussed, is clearly in violation of Biblical principles of government (especially as mentioned in <u>Section I</u> of this Resource Book).

The original understanding of the term *ius* was relatively tame from a Christian perspective as well. The term *ius* originally denoted an inherent standard of rightness or a right ruling (Tuck, p. 8). This seems relatively innocuous, as does the original meaning of *dominium*. Unfortunately, the meanings of both of these terms became more and more aligned with a tyrannical system of rule as the Roman emperor gained more power (Tuck, p. 11). For instance, the term *ius* eventually came to mean something "which one possessed as a result of one's relationship with the state, the public, or the Emperor" (Tuck, p. 11). The emphasis, therefore, was on a person's relationships with other persons or entities, rather than on one's own independence. Furthermore, the understanding of *dominium* was also

affected by the growing powers of the Emperor. Towards the end of the Roman era, the meaning of *dominium* began to change, because

> such an independent and total control began to seem increasingly implausible. The Emperor was now someone with whom all citizens had bilateral relationships, and who claimed to be able to intervene in their social and economic life in a wide variety of ways. The consequence is easy enough to understand: *dominium* came to be seen as another kind of *ius*. . . . The lawyers were now able to describe anything which we could call a property right as a *ius*, because all property could be interpreted as subsisting in bilateral relationships between citizen and Emperor" (Tuck, pp. 10-11).

In other words, in order for an individual to have *dominium* of any sort, he had to have a *ius* as a result of his relationship with the Emperor. Theoretically, therefore, if the Emperor chose not to recognize the *dominium* of a certain individual or group of individuals, as occurred to early-church Christians, for example, then, according to the prevailing power structure (rule by might), he could persecute, torment, and kill Christians. All protection and freedom, therefore, came from being protected by the Emperor, and, as evidenced by the severe persecution of early-Church Christians, little understanding or regard existed for *inalienable* rights. If an individual did not have an *ius* through the Emperor, then the chances of that individual having any control (*dominium*) over his property or his life were slim.

The purpose of this discussion, of course, is not to focus on whether or not an individual could have had an *ius* through his relationship with an individual or entity besides the Emperor. That may have been possible, but the question that arises at that point would be that if the Emperor did not recognize that *ius*, or chose to disregard it, who would be able to prevent him from interfering with that person's *dominium*, since the power structure catered to rule by might as opposed to rule by justice? The end of the Roman era, therefore, came with a closer relationship of the terms *dominium* and *ius*. The end of the Roman era, however, also brought with it the end of the very foundation upon which the relationship between those two terms existed, because with the fall of the western half of the Roman Empire came a crumbling of the imperial power structure (Tuck, p. 12). With no Emperor with which to have an *ius*, how was *dominium* to be achieved?

The Medieval Era: a New Foundation for Rights.

In the Medieval era, this question was answered from more of a Christian perspective. Before the increase in imperial power, *dominium* and *ius* were not related. *Dominium* meant total control. When *dominium* began to be viewed as a type of *ius*, thanks to the power of the Emperor, it no longer implied total control, in the sense that different people could have total control over their belongings and lives, because only the Emperor had total control. When imperial power ended in western Europe, thanks to the fall of the Roman Empire, *dominium* still continued to mean less than total control. In imperial Rome, *dominium* meant less than total control because the Emperor had all power, so it would be impossible for mere Roman citizens to claim total control over anything. In the Medieval era, *dominium* meant less than total control as well, but for different reasons. These different reasons led to a totally new theory of inalienable rights.

But before we discuss those reasons, it is important to understand how the Medieval use of *dominium* and *ius* differed from that of the Roman era. As already mentioned, in the Medieval era, in which the **Catholic Church** was supreme, the idea of *dominium* being interrelated with *ius* continued:

> There is one feature which remained constant throughout the period, however, and which to some extent serves to mark medieval law studies off from those of the Renaissance: the medieval lawyer always regarded *dominium* as a *ius*, and hence was prepared to talk about *property* rights" (Tuck, p. 13).

A major theme of the Medieval era, then, was that the two terms were closely interlinked. "As **Irnerius**, the founder of the law school at **Bologna** at the turn of the eleventh and twelfth centuries, said, '*dominium* is a kind of *ius*', and that remained a basic assumption until the **Renaissance** [Emphasis added.]" (Tuck, p. 13).

As mentioned earlier, the term *ius* meant something that one possessed as a result of one's relationship with other persons or entities, such as the Emperor, but in the Medieval era, it took on more the meaning of a right, because it became more intertwined with personhood. Medieval jurists began to look at *ius* as a *claim that each person could make against others*: "The theory they employed to elucidate and extend the concept of a *ius* was embodied for them most neatly in the famous phrase of **Ulpian** and the ***Institutes***, 'Justice is the continuous and lasting determination to assign to everyone their *ius*' [Emphasis added.]" (Tuck, pp. 13-14). This understanding was further developed when Medieval commentators such **Azo** took this to mean that "people should recognize and respect one another's claims" (Tuck, p. 14). Furthermore, the Catholic church used this understanding of *ius* to argue that the poor should be cared for:

> Ecclesiastical law was of course greatly concerned with general questions of welfare: in the Church, Europe had an institution unprecedented in the Roman world in that it was actually designed (at least in part) for charitable purposes. It is not surprising that a theory about rights as claims should have evolved from within an institution which was so concerned with the claims made on other men by the needy or deserving" (Tuck, p. 15).

The significance of this use of *ius* was a key development in the theory of inalienable rights because it meant that the emphasis of rights was no longer on a person's relationship with another person or entity, but on the fact of personhood alone.

Combining this change with further changes in the use of *dominium* led to a greater understanding of inalienable rights. During the first and second decades of the 13th century, **Accursius** was the first to classify *dominium* into *dominium utile*, which described the property rights that the usufructuary (the person using the property) possessed (Tuck, p. 16), and *dominium directum*, which described the property rights enjoyed by the superior lord (Tuck, p. 16). Since *dominium* was already considered to be a type of *ius*, and as a result, a property right, the significance of this division into *dominium utile* and *dominium directum* further emphasized the understanding that one need not have total control of property in order to have a property right in it. With *ius* being looked upon as a claim that each person can make on others, particularly in regard to obtaining justice as Ulpian suggested, then the use of

dominium utile was an important step forward in the direction of recognition of inalienable rights:

> But the recognition of the category of *dominium utile* was to transform rights theories. For now *dominium* was taken to be any *ius in re*: *any* right which could be defended against all men, and which could be transferred or alienated by its possessor, was a *property* right, and not only rights of total control. **The process had begun whereby all of a man's rights, of whatever kind, were to come to be seen as his property**. . . . There is a direct line linking Accursius with the late medieval rights theorists, and through them with the great seventeenth-century figures [Emphasis added.] (Tuck, p. 16).

An individual did not need to have total control over his world to have rights. He did not need to have absolute power to have rights. In the Roman era, one had rights only under the authority of the Emperor. A person's *dominium* was therefore limited. In the Medieval era, a person's *dominium* was considered to be limited as well, but with the creation of *dominium utile*, a person had rights without having to have total control or without having to receive permission from anyone. They were inherent. This was a key difference between the Roman system of rights and the Medieval system of rights. Why did this change occur? Tuck cites the argument made by Meynial:

> The complexity of feudal relationships had reached such a point by the mid-thirteenth century that either all lords had *dominium* of some kind or the notion ceased to have much sense. A great web of sub-infeudations, mutual infeudations and so on covered Europe: it was reasonably clear what kind of person had traditionally counted as a *dominus*, but according to the classical theory one such *dominus* might well not have *dominium* of any kind over his land, while his neighbor (indistinguishable in all other respects) would have. In such a society, *dominium* had to be taken in a looser or more extended sense (Tuck, p. 17).

Another possible explanation is that in an era in which the Catholic church was supreme, an understanding that only God had total control over the world may also have contributed to the development of the idea that humans did not need total control over anything to have rights. Regardless of which possibility had greater influence, both espoused the understanding that no one had *total* control, but individuals did have control over their own part of the world, and it was this understanding that allowed for the development of *dominium utile*. Notice also that the creation of *dominium utile* answers the Christian argument to the original, pre-imperial Rome understanding of *dominium*: a person's total control over his world. The Christian realizes that no individual can claim absolute autonomy, even over his own little part of the world: all must answer to God. Therefore, from the Christian perspective, both the imperial-Rome understanding of *dominium*, in which control over one's property could only be gained as a result of the emperor's benevolence, and the pre-imperial Rome understanding of *dominium*, in which individuals have total control over their property, are unacceptable. The Medieval era offered a different perspective: *man does not need to have total control over his property to still have property rights*.

The Franciscan Challenge to the Theory of Property Rights.

From the late thirteenth century to the mid-fourteenth century, an argument arose from the **Franciscan** order that private property was not an inherent right of man. **Duns Scotus**, a Franciscan scholar, argued that "common use was the optimum strategy for men in a state of innocence" (Tuck, p. 21). Private property was therefore considered sinful. **Pope John XXII**, in his ***Quia vir reprobus***, challenged this thinking by asserting that

> God's *dominium* over the earth was conceptually the same as man's *dominium* over his possessions, and that Adam 'in the state of innocence, before Eve was created, had by himself *dominium* over temporal things,' even when he had no one to exchange commodities with. A history could be told of the transition of such *dominium* after the fall down to the present day: property was thus natural to man, sustained by divine law, and could not be avoided. For John, all relationships between men and their material world were examples of *dominium*: for some lonely individual to consume the products of his countryside was for him to exercise property rights in them. Property had begun an expansion towards all the corners of man's moral world (Tuck, p. 22).

William of Ockham offered the last pro-Franciscan rebuttal to Pope John's argument, but even this rebuttal accepted the foundational assertions of those who argued that private property was inherent to man:

> Ockham had made the major concession when he allowed that natural man had active *iura* [plural for *ius*] over the material world, for in effect that was all that the opponents of the Franciscans had been trying to argue when they claimed that natural man had *dominium* over his world. Ockham rescued the form of the Franciscan case, that they need not have *dominium* in their possessions, only to lose the substance, that they need not have *iura* in them (Tuck, p. 23).

Richard Fitzralph built on the Pope's argument by asserting that

> God admitted man to *share* in his *dominium*, in the same way as commoners admit a new member to share in their rights without losing them themselves. By thus putting man on a level with God in his rule over the world, Fitzralph might have seemed to be elevating man's own inherent qualities to a divine status: but he avoided doing so by stressing that God admitted men to share out of his *grace*, and that it was thus only men who enjoyed God's grace who could be said to have dominium (Tuck, p. 25).

Pierre d'Ailly (the French nominalist and conciliarist) took this argument a step further by arguing that the grace of dominium was given to *all* men regardless of their relationship with God because "it was not the grace needed for personal salvation; it was ministerial and not personal" (Tuck, p. 25).

Property Rights Linked with Liberty.

Jean Gerson, Chancellor of the University of Paris, argued that liberty was a right when he claimed that *ius* was a *facultas* (an ability), as well as an *auctoritas* (authority) from God, which means that not only does man have rights under God's authority, but that they have rights by their inherent ability:

> The Romans had in fact contrasted *libertas* with *ius*, and emphasized its natural, non-moral character. As **Florentinus** said in a famous remark, later incorporated in the ***Institutes***, liberty is the '*facultas* to do what one wants, unless prevented by force or *ius*.' But by claiming that *ius* was a *facultas*, Gerson was able to assimilate *ius* and *libertas*. As he said in another work, his ***Definitiones Terminorum Theologiae Moralis*** (written between 1400 and 1415), '*Ius* is a *facultas* or power appropriate to someone and in accordance with the dictates of right reason. *Libertas* is a *facultas* or the reason and will towards whatever possibility is selected [Emphasis added.] (Tuck pp. 26-7).

Impact of the Medieval Theory of Rights.

This comprehensive and complex theory of inalienable rights, which came of age in the Medieval era, and was finalized by Gerson, was dominant until the Renaissance: "by the second decade of the sixteenth century, the Gersonian theory of rights seemed to reign supreme. . . .The Renaissance pulled the foundations out from underneath the theory, and it had to be laboriously rebuilt at the end of the sixteenth century. But there can be no doubt of the theory's strength in the fifteenth century" (Tuck, p. 29). Upon this concept of man's rights being related to his personhood came the view that man's inalienable rights fall under the categories of **life**, **liberty**, and **property**. **Sir William Blackstone** wrote that man's rights consist in "the right of personal security, the right of personal liberty; and the right of private property." He considered these rights to be "inviolate" (Amos, *Common Law*, p. 33). This same understanding was captured by America's **Declaration of Independence**, which states:

> 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 owners in such form, as to them shall seem most likely to effect their Safety and Happiness.

America's **founding fathers** believed that government should be established to serve the people, not the other way around. They further believed that the only way for government to serve the people was to protect their inalienable rights. Contrast this view of government with the view that government is a means of controlling the people, and is the supreme source of power in a nation. Only a tyrant would dare to posit himself and his government as such a power, in direct disobedience and irreverence to God. It would be

nice to think that this scenario has not happened in world history, but obviously such is not the case. The history books are full of accounts of the injustice, death, and bondage exacted by tyranny. Only the nation which acknowledges God as the supreme source of truth, power, and authority, and therefore patterns itself after the stipulations set forth in His Word, will be able to avoid the downfall of tyranny.

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SECTION III

IMPLEMENTING COVENANTAL RELATIONSHIPS AS *the* BASIS *for* SOCIETY

Introduction

We as Christians are keenly aware of man's propensity to sin and of how sin negatively affects everything we do and everything of which we are a part, including society. We also understand that ultimately, only the power of God can set us free from sin and its consequences. However, because we live in a society in which many people do not have a personal relationship with God, and therefore do not have an *internal* means of limiting sin, we as a society must have an *external* means of controlling sin. In Section I we learned that government is meant to be an *external* means of controlling sin. In Section II we learned that the Biblical understanding of a **just** government is one which prevents those **public** sins of **action** which violate the **inalienable rights** of others (consequently, in Section IV, we will take this discussion further by pointing out that the Bible prohibits government from punishing **private** sins of **thought** and **conscience**). We therefore cannot conclude that government should be an ultimate, totalitarian regime which has total control over its citizens in order to limit sin for two reasons. First of all, the inalienable rights of life, liberty, and property must be protected, and a government which has unlimited power, thereby taking away the freedom of its citizens, will not be able to protect those rights. Secondly, because we understand man's propensity to sin, we understand that a government which has unlimited power is a breeding ground for a blatant misuse of power and authority.

So what is needed is a **just** government which protects the **inalienable rights** of the people by not infringing upon those rights and by punishing people who violate those same rights. Basing a government upon **covenantal principles** ensures that it will be just, because inherent in covenantal relationships are such characteristics as **constitutionalism**, **separation/limitation of powers, rule by consent**, **mutual obligation**, and **self-government**. But before we see how these characteristics come into play in a covenantal relationship, and therefore how they ensure that government will be just, it is important to define what a covenant is.

Covenant Defined.

Harris, Archer, and Waltke define covenants by classifying their structures. Between nations, a covenant is a "treaty, alliance of friendship" (Harris, Archer, & Waltke, vol. 1, p. 128), between individuals, it is a "pledge or agreement; with obligation between a monarch and subjects: a constitution" (Harris, Archer, & Waltke, vol. 1, p. 128), between God and man, it is a "covenant accompanied by signs, sacrifices, and a solemn oath that sealed the relationship with promises of blessing for keeping the covenant and curses for breaking it" (Harris, Archer, & Waltke, vol. 1, p. 128).

Elazar defines covenant as

> a morally informed agreement or pact based upon voluntary consent, established by mutual oaths or promises, involving or witnessed by some transcendent higher authority, between peoples or parties having independent status, equal in connection with the purposes of the pact, that provides for joint action or obligation to achieve defined ends (limited or comprehensive) under conditions of mutual respect, which protect the individual integrity of all the parties to it. Every covenant involves consenting (in both senses of thinking together and agreeing) and promising (Elazar, pp. 22-3).

Covenants are means of "constitutionalizing" relationships (Elazar, p. 24) within a political context, in that their "bonds are used principally to establish bodies political and social" (Elazar, p. 23).

Principle 1
Government Is Formed by a Covenant of the People.

Covenantal relationships should be the basis for government, because they ensure that the concerns and rights of the people are protected. Without government, although people are not bound by any civil laws, they are also not protected from the violence of evil-doers. Therefore, when people come together to form a government, they do it for their protection. They establish rules making violence, theft, and murder crimes punishable by the state. But they also take steps to ensure that they do not lose any of their God-given freedoms (the right to life, liberty, and property).

This stands in contrast to a tyrannical government, in which the despotic ruler forces his will upon the people and violates their inalienable rights. The tyrant does not care about the concerns of the people, but only about his own selfish goals. Thus, tyrannical government is not of the people, and is unjust government. As we have already discussed, injustice in government is prohibited by God.

Principle 2
Just Government Is Achieved by Willful Concessions of Power and by Accountability.

One of the main benefits of a covenantal relationship is that it achieves a means of security for a society and yet still allows a relative level of freedom and diversity. This happens when the parties in a covenant accept limitations on their power (Elazar, p. 68). This willful limitation provides the framework for cooperation. Covenantal politics links "people and communities as partners in common tasks," and allows them space to be free (Elazar, p. 43). The tribes of Israel, for instance, were in a covenantal relationship with one another. They had common purposes, such as to uphold the law of God and provide for national security, but they also had the freedom to live as they chose, provided they lived according to God's law. Freedom and diversity are possible because the covenant is based on achieving certain goals. Outside of those goals, the covenant does not place any restraints on any of the parties.

A corollary of this is that once a person or party is part of a covenant, he becomes **accountable** to the terms of the covenant, and therefore to the other parties of the covenant. A person covenantally linked does not have unrestrained freedom. Considering the sin nature of man, it becomes clear that it is necessary to create means which serve to limit man's actions to some degree. Covenantal relationships are an excellent way of doing so. When parties covenant to ensure safety, they establish laws that make crimes illegal, and provide a means for punishment for those who commit those crimes. In this way, a participant becomes accountable for his actions. On the other hand, as already mentioned, he also is able to enjoy the freedom and security that come with living in a society where crime is prevented.

Accountability is an inherent part of a covenantal system. First of all, the people, and the government they created, are to be accountable to God and His Word. Secondly, the people are accountable to one another, fulfilling their basic covenantal obligations. Thirdly, the leaders of government, who of course were put in office by the people, must therefore be accountable to the will and concerns of the people, providing that the will and the concerns of the people are in obedience to God's Word, of course.

Another important aspect of a covenant is that it involves **willful consent**. The participants are not forced to enter into the covenantal agreement. They therefore retain their freedom even as they willfully place limits upon their powers. Covenants will not work when either freedom or the willful relinquishment of power is not present.

Principle 3
Just Government Is Upheld by Mutual Obligation.

The secret of a covenant's success is found in the fact that the parties **willingly** fulfill their end of the agreement. According to Elazar, "covenants establish justice through **mutual obligations**, indeed systems of mutual obligations, whence are derived (in modern terms) the partners' rights [Emphasis added.]" (Elazar, p. 86). If a person refuses to uphold his end of an agreement, and commits a crime, another person's freedom is threatened. Therefore, "under the covenantal system, there are no rights that are not derived from obligations" (Elazar, p. 87). Indeed, as was discussed under the inalienable rights section, every person, by nature of being bound by the **Noahic covenant**, is required to respect and protect the lives of others (See Ge. 9:6, which states "Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man"). Therefore, covenants play an important role in protecting rights.

Principle 4
Just Government Is Protected by Rule by Consent.

Since in a covenant, the people come together to freely form a relationship, it follows that the covenantal regime is founded on the basis of **reflection** and **choice** (Elazar, p. 41), which means that the people are **ruled** by their own freely-given **consent**. Since just government is one formed by the will of the people (by covenanting) it follows that just government is upheld by the people willingly consenting to set up government and to submit to the government leadership where appropriate. This involves **rule by consent**, and as mentioned above, involves **accountability**. The people are accountable to the government (in certain areas, and not to the point of loss of their inalienable rights, of course), and the government is accountable to the people, to uphold their inalienable rights and to enact the will of the people. Therefore a just (covenantally formed) government is a **representative** government.

Principle 5
Just Government Is Protected by Separation of Powers.

When people form a covenantal relationship, one way they ensure that their rights are protected is by keeping a share of the power to themselves. People in a covenantal relationship are not content to trust all the power and responsibility to one person or institution. As a result, **many power centers** are established, because responsibilities are shared; and therefore, **separation of powers** exists (Elazar, p. 41). Furthermore, "both the framing institutions and their constituent bodies share authority and power on a fundamentally equal basis" (Elazar, p. 41). Notice that all of these features allow for freedom of the parties involved and that basically, **limitation of powers** is achieved by **separation of powers**. This is the direct opposite of a tyrannical regime, because the tyrant hoards all power to himself and forces people to submit to his rule, whether they want to or not.

Principle 6
Just Government Is Established by a Constitution.

Another feature is the presence of a **constitution**, which "delineates the basis upon which institutions are organized and authority and power are shared and divided" (Elazar, p. 41). The constitution is necessary to define the rights and responsibilities of all parties. Since no one group or person has all of the power, and since all parties are involved of their own free will, a constitution is necessary. A tyrant, on the other hand, does not care about a constitution, and does not feel bound to abide by any rules, written or otherwise.

Principle 7
Just Government Can Only Function Properly with Self-government.

Even though the covenantal relationship is designed to limit the effects of sin upon society, it is still dependent upon individual **self-government**. For the sake of the discussion, **self-government** will be defined as the ability to control one's sinful urges in order to please God, be a good steward of one's responsibilities, and to be a productive member of society. Obviously, self-control and moral fortitude are implicit in this definition. Only self-governing individuals can enter into covenantal relationships because of the degree of responsibility required to found and maintain the covenantal relationship. A person has to be willing to unselfishly sacrifice his own desires for the good of the covenantal community. A selfish, lazy person will not be able to uphold his covenantal responsibilities.

Principle 8
Just Government Can Only Function Properly with Loving Fulfillment of Covenantal Obligations.

As mentioned earlier, everyone is accountable to everyone else in a covenantal relationship, and everyone has certain obligations to fulfill. But fulfilling these obligations requires more than just doing the bare minimum: it requires *lovingly* fulfilling the obligations. An important term in understanding this is the Hebrew word ***hesed***. As Elazar says:

> The operative mechanism of *brit* [covenant] is *hesed*. The biblical term *hesed* is often mistranslated as grace but is better translated as covenant love or the loving fulfillment of a covenant obligation. *Hesed* is the operative term in a covenantal relationship, which translates the bare fact of a covenant into a dynamic relationship. It prevents the covenant from becoming a mere contract, narrowly interpreted by each partner for his benefit alone, by adding a dynamic dimension requiring both parties to act toward each other in such a way as to demonstrate their covenant love; that is, beyond the letter of the law (Elazar, p. 71).

The participants in a covenantal relationship are required not only to fulfill their

obligations but to fulfill them lovingly. To understand the importance of *hesed* in a covenantal relationship, it might be helpful to look at a situation where *hesed* is not being practiced. In this scenario, people are concerned only with doing the bare minimum. They only care about themselves, and the only reason that they do things for others is because they have to. Furthermore, under this situation, the law becomes a tool which a person can manipulate to serve his needs. Rather than considering the spirit of the law, a person will try to find loopholes in the law. But practicing *hesed* means that a person actually has to care about his fellow man and that he has to put an emphasis on the needs of others rather than upon his own desires. It also means that he does not try to manipulate the law to serve his needs, but rather tries to uphold the spirit of the law in addition to the letter of the law. To summarize, without *hesed*, people do the bare minimum in order to serve themselves; with *hesed*, people go above and beyond the bare minimum to serve others.

Hesed is a particularly important principle for those who serve in government. It serves as a reminder that the reason they are in government is to serve the nation's citizens, and not themselves. An attitude of lovingly fulfilling covenantal obligations will prevent a person from misusing his power, because he will go the extra mile to serve his constituents and to avoid any practice that may harm his constituents.

Conclusion

Covenantal relationships Are Dependent upon Divine Intervention.

That divine intervention is needed in order to preserve a covenantal relationship is due to man's propensity to sin. Practicing *hesed*, in which a person lovingly fulfills his covenantal obligations, simply does not come naturally to the unsaved person. As mentioned earlier, only the saving work of Jesus Christ can change an inherently selfish person into a person that walks in love toward his fellow man, and only the saving work of Jesus Christ can make a person self-governing.

Covenantal relationships Avoid Tyranny *and* Anarchy.

The covenantal system provides a happy medium between the extremes of **tyranny** and **anarchy**. With tyranny, power is hoarded by a very small minority. The state is sovereign, and the state controls the people without any regard for the people. A covenantal relationship prevents this, because the people themselves decide how government should be operated and why government should be established in the first place. Furthermore, those who do govern are of the people themselves. In a tyrannical situation, the leader imposes his will upon the people, but in a covenantal system, the leader is one of the people and therefore is more likely to represent the will of the people, and because the people are active participants in the system, they will keep the leaders accountable to the constitution.

A covenantal system also helps to prevent anarchy. When people choose to live their lives without regard for others and without regard for what is right, anarchy occurs. People in a state of anarchy are not safe--unless they happen to have a large amount of power. The weak, however, are subject to the whim of the strong, and if the strong choose to steal from the weak or hurt the weak, who will stop them? After all, in anarchy, there is

no structure to ensure the safety of anyone. But if a covenantal relationship is established, the weak join together to protect themselves against the violent and evil doers. People in a covenantal system choose (without coercion) to place limitations on their power in order to ensure their safety. By taking care of their fellow man, people in a covenantal system ensure that they themselves are taken care of. And if the violent and evildoers want to be a part of the covenantal system, they too must choose to care for those around them instead of exploiting them. If the violent and evildoers choose to disregard the covenantal system and try to hurt those in the covenantal system, they face the wrath and power of those organized under the covenantal system.

An important point to remember is how closely tyranny and anarchy are related to one another. In a tyrannical situation, the state is the sovereign source of power; it determines who has rights and who does not (Burtness, p. 62). In an anarchy, the individual is sovereign. Each person therefore can do whatever he or she wants to do (Burtness, p. 62). These two systems may seem contradictory, but the great similarity is that in both situations, *only the strong rule*. Those people or groups who have the most power determine the rules. Therefore, although an anarchy may start out as a situation in which everyone does "that which is right in his own eyes," (Judges 21:25) it leads to tyranny, because *no system is in place to stop the powerful from exploiting the weak*.

Biblical Evidence

Old Testament Support for the Covenantal system.

Obviously, the Old Testament is a series of covenants, beginning with the Adamic Covenant, proceeding with the Noahic and Abrahamic Covenants, and concluding with the Mosaic Covenant.

More specifically, several terms can be found in the Old Testament which help to describe God's covenantal relationship with the people of Israel. A brief description of these terms will serve to further illuminate the nature of a covenant. Particularly important terms are *brit*, *hesed*, *federal*, *shamoa,* and *vayishma*.

1) **brit**: Hebrew for covenant. It appears in the Hebrew Bible 286 times.
    a) It is related to the Akkadian word *biritu* - to bind together or fetter (Elazar, pp. 64-5).

2) **likrot brit**: To cut a covenant- (both dividing and binding).
    a) "This refers in part to the original form of covenant making, which was by sacrificing an animal, dividing it in half, having the parties to the covenant pass through the two parts, and then binding the two parts together" (Elazar, p. 65).

3) **shamoa, vayishma**: Hearkening [to God's commands] (hearing & choosing to respond, not just obeying).
    a) It is a sign of freedom, free will, consent.
    b) Hearkening is not the same as obeying, because obeying is an

involuntary response engendered by the nature of hierarchical relations.
c) "Hearkening is a form of consent whereby the individual receives an instruction and in the process of hearkening makes a decision to accept and follow it" (Elazar, pp. 70-71).

4) **hamas**: "chaotic anarchy, senseless destructive anger, and social disorganization (Gen. 6:13), the kind of anarchy that brought the flood."
a) "Liberty that is not federal liberty becomes anarchy and leads to *hamas*" (Elazar, p. 71).

5) **hesed**: A brief discussion of *hesed* from the Old Testament perspective was given earlier, but it is important to note that the principle of *hesed* carries over into the New Testament. I Corinthians 13, which describes the basic characteristics of love, certainly picks up on the message behind *hesed*, and Jesus Christ's admonitions to turn the other cheek (Mt. 5:39), and to go the extra mile (Mt. 5:41) are also examples of exceeding the letter of the law.

6) **la'asot hesed**: To act out of loving covenant obligation.
a) "Reflects the way the burden is on him who is obligated to do what he does because of his covenantal obligation and is connected with holiness" (Elazar, p. 90).

7) **federal**: "derived from the Latin word *foedus* which means covenant" (Elazar, p.26). The term "foedus" was used in the Latin version of the Old Testament

The Hebrew Republic.

A brief study of the **Hebrew Republic** as instituted by God under Moses and Joshua will reveal a large number of covenantal principles as discussed in this section. **Separation/limitation of powers**, **rule by consent**, **accountability**, **self-government**, and use of a **constitution** are some of the principles that were present under the Hebrew Republic.

The Constitution.

The **constitution** of the Hebrew Republic was basically the book of **Deuteronomy**. "The Book of Deuteronomy is a restatement of the entire constitution in a more systematic fashion, modified to provide for the *edah* [congregation of Israel] in its new land (Elazar, p. 193).

The Chief Magistrate.

The chief magistrate was the ***Eved Adonai***: God's prime minister (Elazar, p. 77). The *Eved Adonai* held his office for life (Wines, p. 157). The position was not hereditary, as it was under the kingship (Wines, p. 157). The *Eved Adonai* had to be elected. "The oracle

[God], the high priest, and all the congregation, are distinctly recorded to have concurred in the elevation of **Joshua** to his office" [Emphasis added.] (Wines, p. 158). His authority extended to both war and peace, in that he was the chief of the military forces of the Israelites, and chief judge in civil causes (Wines, p. 158). Resisting the authority of the *Eved Adonai* was considered treason (Wines, p. 159).

It would be wrong to say, however, that the *Eved Adonai* had unlimited power. His power was **limited** by God's intervention (Wines, p. 159), and by the **consent** of the people, specifically by the **senate** and **congregation** (Wines, p. 160). Of course, the **constitution** of Israel, God's law given to them, also served as a limitation on his power. The *Eved Adonai* also had no salary, nor had he the ability to enact laws (Wines, p. 161). He could not appoint officers either, except perhaps in the army (Wines, p. 161).

The Hebrew Senate.

The term, "Hebrew senate," is nowhere found in the Bible, but Wines uses it to describe a body of elders who were to help in the governing process. Originally, the senate derived from the **seventy elders** that God required **Moses** to choose to help him in his leadership responsibilities (Wines, p. 193). Wines suggests that these seventy elders were already recognized leaders of the tribes when they were chosen to be the assistants of Moses. Therefore, these seventy elders were **approved by the people** (Wines, p. 194). These senators did not assist Moses with the "ordinary administration of justice, for provision had been made for that in the institution of the **Jethronian** judges. So far, therefore, as the senate was to assist Moses in judiciary matters, it could only be in those greater and more important causes, which were brought before him on appeal, or those difficult questions, which the judges of the inferior courts themselves referred to him" [Emphasis added.] (Wines, p. 195). Wines also argues that these senators were to be "permanent assistants of Moses in his councils. They were to aid him with their advice on all occasions, to **preserve peace and good order among the people**, to strengthen the sentiment of **loyalty to the constitution**, and to prevent those mutinies and seditions, which, if permitted to break out and rage, would in the end prove fatal to the government and the nation" [Emphasis added.] (Wines, pp. 195-6). Wines acknowledges the difficulty of trying to explain the relationship between the tribal leadership that existed before Moses and the senate which Moses created. He suggests that the seventy elders were merely a select group of a much larger senate, which consisted of all of the princes and chief fathers of Israel (Wines, pp. 199-200).

The Hebrew Commons.

Wines suggests that there was also another **representative** body, representing the will of the entire congregation of Israel (Wines, p. 203), which he calls the **Hebrew Commons** (again, he is using a term for explanation's sake, not because it is used in the Bible). He argues that those passages of scripture that refer to Moses speaking to the congregation could not have been done without representatives to communicate the message to the people and to communicate the will of the people to Moses (Wines, p. 205). Some of these representatives were judges, while others were heads of families. Through these representatives, the congregation participated in "the election of magistrates, the management of foreign relations, the adjudication of civil and criminal causes, and the care

of ecclesiastical affairs" (Wines, p. 206).

The Priesthood.

The **Levites** and the **priesthood** (who of course were also Levites) served as a branch of power in the Hebrew government as well. The Levites were **chosen** by the people and by God to fulfill their position (Wines, p. 225, see also Nu. 8:5-22). In addition to performing spiritual duties, the Levites also were responsible for many political duties. "Besides performing the ceremonies of public worship, it [the tribe of Levi] was destined to preserve in its integrity, and to interpret in the seat of justice, the text of the fundamental laws; to teach these laws to all Israel, to inspire the people with a love for them; to oppose all its own authority and influence against any and every attempt to overthrow them; and to bind firmly together all the parts of the body politic" (Wines, pp. 226-7). The Levites also served as judges, and were the academia of Israel. "The tribe of Levi, then, comprehended the learned of all names; the sages and professors of law and jurisprudence; of medicine and physiology, of the physical and mathematical sciences; in short, of all the so called liberal arts and sciences, the possession and application of which constitute the civilization of a country" (Wines, p. 229).

Although the Levites had important political responsibilities, they were not able to hoard power and prestige to themselves, for several reasons. First of all, they had no personal property, with the exception of a living habitation (Wines, p. 233). Secondly, they had no tribal government, like the other tribes (Wines, p. 233), and thirdly, they were completely devoted to upholding the law and the justice of the law and to the service of the people (Wines, p. 233). Furthermore, although they received a revenue from the people, they did not have the authority to determine how much that revenue should be (unlike America's Congressmen and Senators, to the regret of many), and they were dependent "solely upon the national faith for its payment, while they divested themselves of all power of re-entry in case of non-payment" (Wines, p. 233). They truly were public servants with no legitimate means with which to amass power unto themselves.

The Prophets.

Though **prophets** were not an official part of the Hebrew government, they still played an important role in influencing the government leaders. The prophets, of course, were sent by God to inform the people and their leaders of their wrongdoing and to repent before God's judgment fell. The prophets, therefore, could be said to be defenders of the covenant established between God and the people of Israel:

> It has been suggested that the prophets even presented their critiques of Israelite society in the form of covenant lawsuits. . . . If this indeed the case, then the prophets help to round out the covenantal system by suggesting that it has a negative dynamic as well, that is to say, it provides a framework for bringing charges against *Adat Bnei Yisrael* [the nation of Israel] for violating the terms of the covenant, and this is one of the major tasks of God's messengers, the prophets (Elazar, pp. 338-9).

In other words, the prophets provide accountability to the people and the leaders.

The Tribal Level of Government.

The **tribes** had their own governing structure that served both to limit and to complement the power of the national authorities. Wines maintains that the tribes were **self-governing** and equal (Wines, p. 121), and often acted like independent nations, even when there were kings (Wines, p. 122). Wines also argues, however, that while the tribes were often independent, they still had to answer to the stipulations of the covenant. He cites two scriptural proofs to support his point. The first is found in Numbers 36, in which the tribe of Manasseh appealed to the national authorities for a change in the inheritance rules regarding the daughters of Zelophehad: "What course did the tribe pursue? She did not attempt to rebel against the authority of the nation, and nullify the laws of the land. She brought the case before the national legislature, and sought relief through its action" (Wines, p. 133). The second proof he cites comes from Judges 19 - 20, in which the tribe of Benjamin refuses to give to the national authorities an offender of the law: "What said the national government? Did it say, that Benjamin, being a sovereign state, had a right to interpret the constitution for herself, and to act her own pleasure in the matter? Far from it. . . . the nation at once proceeded to vindicate her own sovereignty and supremacy. There was no coaxing, no truckling, no faltering. No honied words, but hard blows, promptly administered, and with a terrible energy and rapidity of repetition, were the means employed to sustain the majesty of the government and the authority of the law" (Wines, p. 134).

Elazar provides details into the structure of the tribal governments. He states that the tribal government was based upon the local familial structure:

> Local institutions had their origins in the familial structure developed before the first national constitution when the Israelites were semi-nomads. The various *mishpahot* (clans) formed by the combination of households (*bet ab*) formed the tribal substructure in those times. After the Israelite settlement of Canaan during the first constitutional period, the clans settled down in discrete villages or townships (a more accurate term) and the relationship among those households was transformed into one that was linked with the particular locality of their settlement (Elazar, p. 349).

Elazar goes on to say that ordinary decisions in the tribe were made by an assembly of all of the males and that for major constitutional decisions such as covenanting, men, women, and children were present (Elazar, p. 349). Referring back to the clans, Elazar states that they "were governed on a daily basis by elders (*zekenim*), no doubt consisting of the heads of several of their households" (Elazar, p. 349). Elazar also points out that the Bible portrays special commissions for special purposes on the basis of one representative per tribe (Elazar, pp. 351-2).

Conclusion.

As seen, the Hebrew Republic demonstrates many of the covenantal principles. **Accountability to God** was present, in the form of the law of God and in the authority of the Levites, priests, and prophets. **Accountability to the people** was present in the form of *hesed*, **separation of powers**, **rule by consent**, **mutual obligation**, and in the presence of

the **constitution**. **Self-government** was also present, because the people had to educate themselves and their children in reading and writing and in the law, and they had to be active participants in upholding the law and in covenanting with God and with one another. Finally, **inalienable rights** were upheld in God's law, specifically in the Ten Commandments. The Israelites lost their liberty because they failed to keep their covenant with God. Captivity ensued, and autonomy ended. Because they could not be self-governing individuals, their nation could not be a self-governing entity.

New Testament Support for the Covenantal system.

Just as the New Testament contains the principle of *hesed*, it contains the concept of a covenant in general. We know that the Body of Christ is a federal body, in that its members are linked to one another and to God through the New Covenant and also in that different members have different functions (I Corinthians 12:14-30).

Covenant or Testament?

There was a time when the covenant emphasis in the Bible was replaced with a more testamentary view due to a transition from Hebrew translations to Greek and Latin translations. After **Alexander the Great** had conquered much of the Mediterranean world, including **Palestine**, the **Hebrew Old Testament** was translated into **Greek** (this translation was known as the **Septuagint**). In this translation, the Greek word *diatheke* was used exclusively to translate the Hebrew word *berith*, which like *brit*, is the Hebrew word for covenant. "*Diatheke, as* it was commonly used in Greece, was by no means a direct equivalent of the Hebrew term *berith*, but Greek-speaking Jews filled *diatheke* with Palestinian meaning so that it acquired a regional definition peculiar to the Jewish dialect and religion" (Amos, *Constitutional Law*, p. 19).

Later, when much of the civilized world was speaking Latin, and the Bible was translated into Latin, the covenant implication behind *diatheke* was lost, and so rather than translating it into the Latin word for covenant, translators used the Latin word *testamentum* to replace *diatheke*. In other words, the covenantal emphasis of the Bible was changed into a testamentary emphasis (Amos, *Constitutional Law*, pp. 19-20). The consequences of this mistranslation were serious:

> Testament is a one-party monolateral disposition whereas a covenant always involves more than one party, and they are mutually bound together by a promise or set of promises and conditions between them. A testator is a person who owns an estate and monolaterally decides how that estate will be disposed at his death. While he lives he can write as many wills or codicils as he so desires and there is no condition other than death that can keep him from changing his mind and drawing up a new will with new conditions. He has not bound himself by any legally enforceable promise. . . . A covenant, on the other hand, involves an understanding between two or more parities, with sworn obligations, duties, conditions, and commitments that

> must be honored and observed between the parties. Regardless of whether a covenant is unilateral or bilateral, always there is present an element of mutuality and reciprocity between the parties that is absent in the typical last will and testament (Amos, *Constitutional Law*, p. 20).

Although it can be argued that "testament" should be translated as "covenant" in the Bible, it can also be argued that in some instances, testament is an appropriate translation. For instance, we as Christians receive the benefits of the covenant because Jesus Christ as the testator passed unto us those benefits when he died. Nevertheless, the use of testament even in this situation does not negate the use of covenant. Therefore, it is helpful not to underestimate the importance of covenant in the Bible.

Is a Covenantal System of Government Required by the Bible?

Does the Bible dogmatically assert that a covenantal system of government is the only permissible system of government? Perhaps not, and so this Resource Book will not try to do so either. However, certain principles are found in the Bible which can lead us to conclude that a covenantal system of government is very likely the *best* system of government, even if it is not the *only* system of government allowed by the Bible. Without going into an exhaustive explanation of those principles, the following brief discussion will at least address them and provide Scriptural evidence for them, with the understanding that the support provided here is not the only support found in the Bible for those principles.

Man's Tendency to Sin.

Ro. 7:18-19: "For I know that in me (that is, in my flesh,) dwelleth no good thing: for to will is present with me; but *how* to perform that which is good I find not. For the good that I would I do not: but the evil which I would not, that I do."

Ro. 13:3-4: For rulers are not a terror to good works, but to the evil. Wilt thou then be afraid of the power? do that which is good, and thou shalt have praise of the same: For he is a minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil."

Man's tendency to sin, and therefore the need for government to control that sin (within certain limitations) is one of the major premises of this Resource Book, as discussed in Sections I & II, and as reaffirmed in the introduction of this section (Section III). It is furthermore the assertion of this section, of course, that a covenantal system of government does the best job of preventing the violation of inalienable rights, because a covenant government, by its very design, is **limited** and based upon the **consent of the people**.

Going the Extra Mile to Avoid Sin.

Mt. 5:41 "And whosoever shall compel thee to go a mile, go with him twain."

Ph. 2:12: "Wherefore, my beloved, as ye have always obeyed, not as in my presence only,

but now much more in my absence, work out your own salvation with fear and trembling."

I Th. 5:22: "Abstain from all appearance of evil."

We as Christians understand the seriousness of sin, and we therefore take our personal actions very seriously. In "fear and trembling" we analyze ourselves, checking our motives to see if we might possibly be displeasing God in anything we do or say. We are therefore willing to avoid even the "appearance of evil" in order to avoid even the slightest chance of displeasing God.

This correlates with the principle of *hesed* which permeates covenantal relationships. Just as we "go the extra mile" to avoid sin on a personal level, we also "go the extra mile" to fulfill our responsibilities as participants in a covenantal system of government, be they as government leaders, or as citizens. With "fear and trembling" do we consider the consequences of our actions, again be they as government leaders or otherwise, and therefore, rather than risk even a small chance of violating God's law in regard to society and government (i.e., protecting the inalienable rights of all) we willingly avoid the "appearance of evil" both in our relationships with our fellow citizens and as participants in government. For the same reason, we employ **separation/limitation of powers**, and use of a **constitution** in a covenantal system of government.

Accountability and Submission As a Means of Avoiding Sin.

Ep. 5:21: "Submitting yourselves one to another in the fear of God."

Ja. 5:16: "Confess your faults one to another . . ."

As Christians, we are willing to submit ourselves "one to another in the fear of God" and to confess our faults "one to another" in order to limit our own tendency to sin, and in order to respect those around us. We understand that being accountable to others and submitting to others keeps us in a proper relationship with God and makes it less likely that we will disobey God.

Similarly, in a covenantal system, accountability and submission is employed to protect the rights of all. The government leaders are accountable to the people (**rule by consent**), and the people are accountable to one another (**mutual obligation**), so that overall, the system does not violate the law of God.

Historical Evidence

The Influence of Covenantal Principles upon Political Theory and Government.

Covenantal principles had a great impact upon political thought and government practice, particularly upon American government. The following will be an overview of how a covenantal view of government spread from the Protestant Reformation into American government.

Using Covenant instead of Testament.

The overview begins with the shift in emphasis in Bible translation from testament to covenant. When the emphasis in translating the Bible returned to a covenantal view, the foundation was laid for the view that government should operate according to covenantal principles, rather than testamentary principles. The trend began when **Jerome**, in the early 5th century translated the Bible to Latin directly from the Hebrew rather than from the Greek [this translation is known as the **Latin Vulgate**]:

> After studying Hebrew with Jewish Rabbis in Jerusalem for more than a decade, he came to the conclusion that the Latin word *testamentum* did not represent the meaning of the Hebrew word *berith*. To represent the full range of meaning of *berith*, Jerome found it necessary to use two Latin words, *foedus* and *pactum*, interchangeably. His translation gained wide acceptance in the eighth century and served to ameliorate some of the worst effects of testamentary theology (Amos, *Constitutional Law*, p. 20).

The **Catholic Church**, which was the dominant institution in the **Middle Ages**, used this covenantal view in the Bible to order society to some extent: Catholic teachers and clergy ensured that the **feudal system** of the **Middle Ages** was based upon "foederal" principles (Amos, *Constitutional Law*, pp. 20-21). However,

> events of the twelfth and thirteenth centuries placed the feudal system (of local-self government by the covenant) under great stress. The feudal principle of localism was not well suited to provide a framework for the government of the national states that were emerging. What was needed was a renewed understanding of the kind of Biblical **federalism** [remember that the Latin word for covenant is *foedus* or *fedis*, which means that **federalism** deals with covenantal principles] that linked Israel's twelve feudal tribes into one federal nation. Unfortunately, a **testamentary view** of centralized political control had come to define the hierarchy of the **Catholic Church** by this time, and the Catholic leaders of the new territorial states preferred to see themselves as testators, with absolute and unrestrained power of disposition, rather than as servants of the people bound by the law and the covenant. . . . Only the rediscovery of the principles of covenant by the **Reformers** could interfere with the success of "Christian" centralized statism [Emphasis added.] (Amos, *Constitutional Law*, p. 21).

The Development of Federal Theology by the Reformers.

To understand how covenant principles of government were instituted in American government, one must understand how covenant or **federal theology** [remember that federal means "covenant"]came about, and how this federal view of theology influenced theories of government:

> Few today are aware that the term **"federalism"** [a system of government based on separation of powers] came into common use in America through **Puritan theology** and the **Protestant Reformation**. The age of federalism began when the Reformers

> criticized the existing translations of Scripture and used the word "covenant" in many places that older translations had used "testament." The term "federal" was an English derivative of the Latin *foedus*, which was one of the two words in the Vulgate Old Testament for "covenant." . . . After the sixteenth century, the **Puritans**, the **Huguenots**, the **Calvinist Anglicans**, and the **Scottish Presbyterians** moved away from a "testamentary" view of God and religion, and adopted a "federal" or covenant view of Scripture. Their reasons for this shift are crucial to a proper understanding of political federalism in the founding of America" [Emphasis added.] (Amos, *Constitutional Law*, pp. 17-18).

Therefore, one of the major efforts of the Protestant Reformation was to emphasize federal [or covenant] theology: "Through the **Zurich** and **Rhineland reformers**, **Calvin** and **Geneva reformers**, and the heirs of **Wycliffe** and **Tyndale** in **England**, **covenant theology** became the single most important event in the history of ideas in the sixteenth century [Emphasis added.]" (Amos, *Constitutional Law*, p. 22).

This covenant, or federal theology, emphasized God's covenant relationship with His people and therefore the importance of covenants in human relationships. It followed, therefore, that if covenants were an important part of human relationships in general, then surely covenants were an important part of the set of human relationships defined as government. However, as mentioned above, this emphasis upon covenantal principles was not welcomed by rulers with a more Catholic perspective, and therefore a more testamentary view of ruling. Therefore, all across Europe, persecution of **Protestants** was rampant (Amos, *Constitutional Law*, pp. 24-5). Many **Protestants** fled their home countries to avoid this persecution, and often they fled to **America**:

> All throughout Europe adherents of federal theology [who also favored a covenantal view of government]came under severe repression, including not only the Puritans of England, the Presbyterians of Scotland, but also the Huguenots of France. Decade after decade, large numbers fled or migrated to America. They brought with them their stories of suffering and injustice, and they made sure that their new neighbors, their children, and their grandchildren knew the intimate details. The memory of these atrocities was still very much alive and current at the time of the **American Revolution**. It was remembered by Puritans and Presbyterians in New England, by Huguenots in North Carolina, by **Baptists** throughout the **middle colonies**, and by Scottish Presbyterians in the **Blue Ridge**. . . . In America, federal theology flourished from the very beginning [Emphasis added.] (Amos, *Constitutional Law*, p. 25).

America, therefore, was greatly influenced by covenant (or federal) theology. The idea of the covenant formed the basis for its government.

Political Writers with a Covenantal View of Government.

Further evidence that America was influenced by covenantal principles of government can be seen in the fact that three of the most heavily-cited political writers in American dialogue during the Revolutionary era--Blackstone, Montesquieu, and Locke--all

discussed covenantal principles to some degree.

Covenant as a Means of Protecting the Rights of the People.

It was stated earlier that people come together to form covenantally based government in order to uphold their inalienable rights. It was further explained that under a covenantal system, government is meant to protect inalienable rights, not take them away. Both of these concepts have been communicated by the learned commentators on law and have been implemented in the American system of government.

John Locke used the terms **state of nature** and **state of war** to explain the need for government:

> To understand political Power, right, and derive it from its Original, we must consider, what State all Men are naturally in, and that is, a *State of perfect Freedom* [also called the State of Nature by Locke] to order their 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 (Hall, p. 58).

But whereas everyone is free to do as they wish in a state of nature, it is also far more likely that some, violating the law of nature, will try to hurt or kill the innocent, or steal their property. Therefore, the negative connotation of the state of nature, where everyone lives as they like, is the state of war, where everyone must fight for themselves. This is why people covenant with one another: to create a government which will prevent such atrocities from happening:

> To avoid this *state of War* (wherein there is no Appeal but to Heaven, and wherein every the least Difference is apt to end, where there is no Authority to decide between the Contenders) is one great *reason of Mens putting themselves into Society*, and quitting the Sate of Nature. For where there is an Authority, a Power on Earth, from which Relief can be had by *Appeal*, there the continuance of the *state of War* is excluded, and the Controversie is decided by that Power (Hall, p. 62).

William Blackstone, in his ***Commentaries on the Law of England*** (Book One, Chapter One): "Of the Absolute Rights of Individuals) also argued that government was instituted to protect man's inalienable rights, not to take them away:

> The absolute rights of man, considered as a free agent, endowed with discernment to know good from evil, and with power of choosing those measures which appear to him to be most desirable, are usually summed up in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature: being a right inherent in us by birth, and one of the gifts of God to man at his creation, when he endued him with the faculty of freewill. But every man, when he enters into society, gives up a part of his natural liberty, as the price of so valuable a purchase; and, in consideration of receiving the advantages of mutual commerce, obliges himself to

> conform to those laws, which the community has thought proper to establish. And this species of legal obedience and conformity is infinitely more desirable, than that wild and savage liberty which is sacrificed to obtain it. For no man, that considers a moment, would wish to retain the absolute and uncontrolled power of doing whatever he pleases; the consequence of which is, that every other man would also have the same power; and then there would be no security to individuals in the enjoyments of life. Political therefore, or civil, liberty, which is that of a member of society, is no other than natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public. Hence we may collect that the law, which restrains a man from doing mischief to his fellow citizens, though it diminishes the natural, increases the civil liberty of mankind. (Amos, *Common Law*, p. 31).

Both Locke and Blackstone were heavily referred to during the **Revolution** era in **America**. In fact, these two were two of the three most cited thinkers of that time (**Montesquieu** was the most cited author) (Eidsmoe, pp. 52-3). It is no surprise, then, that the **Declaration of Independence** shares the same view:

> 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. . . .

Separation of Powers.

Montesquieu, in ***The Spirit of Laws***, supported separation of powers:

> Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals" (Hall, p. 135).

Since he was the most cited author of the Revolutionary era in America, it is again no surprise that America had three branches in the national government: **executive**, **judicial**, and **legislative**.

Self-government and Rule by Consent.

Montesquieu, in *The Spirit of the Laws*, was also a strong proponent of local **self-government** and **representative government**:

> The inhabitants of a particular town are much better acquainted with its wants and interests than with those of other places; and are better judges of the capacity of their neighbors than of that of the rest of their countrymen. The members, therefore, of the legislature should not be chosen from the general body of the nation; but it is proper that in every considerable place a representative should be elected by the inhabitants (Hall, p. 136).

The Application of Covenantal Principles in American Government.

Early Colonial Period.

The implementation of covenantal principles can be first seen in the colonial structure of government. Lutz points out that the colonists, being a religious people, often used church covenants as the basis of their political constitutions:

> The overall process of American development between 1620 and 1787 can be summarized as follows: 1) religious covenants in America become political covenants; 2) political covenants are secularized into political compacts; 3) the last covenant/compact element, the institutional description, evolves into what is called a constitution . . .[Lutz also included in this process the development of a preamble, bill of rights, and an emphasis on the sovereignty of the people instead of the king] (Lutz, p. 39).

The Culmination of Covenantal Principles in American Government.

Looking at the United States Constitution and government, one can clearly see covenantal principles. First of all, we know that American government is guided by the **United States Constitution**. This constitution is considered as the "basis for our **federal** system of government [Emphasis added.]" (Hicks, p. 94). The specific type of government called for in the Constitution is a **representative democracy**, which is subsequently based upon "two major principles, the **separation of powers** and **federalism** [Emphasis added.]" (Wilson, p. 28). Wilson goes on to define federalism as a "political system in which there are local (territorial, regional, provincial, state, or municipal) units of government, as well as a national government, that can make final decisions with respect to at least some governmental activities and whose existence is specially protected" (Wilson, p. 45). It has already been stated that separation of powers, and use of a constitution are characteristics of a covenantal system, as is a **representative democracy**, because it is based upon **rule by consent**, which also occurs in a covenantal system. It is safe to say then, that American government was built upon covenantal principles, at least to some degree.

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SECTION IV

MAINTAINING BALANCE BETWEEN CHURCH & STATE: SEPARATE *but* EQUAL

Introduction

Who Rules Whom?

In the past, competition between the church and state has often led to war and bloodshed. Although we do not necessarily deal with that same type of conflict in society today, we do struggle with the dilemma of the proper relationship between the two realms of authority. Is it appropriate to espouse Biblical principles in government? What influence should the state have upon the church and vice versa? These are just a few of the questions that Christians and non-Christians alike must answer to ensure that both institutions are able to fulfill their proper roles in society. The following discussion will reveal that the church and state should be separate institutions, and that they should respect one another's sovereignty and try not to interfere with one another's God-given responsibilities.

Principle 1
The Church and State Have Separate Functions.

The key principle that must be asserted in a discussion of church and state relations is that both have legitimate, God-given roles to fulfill in society and that neither should interfere with the other's responsibilities:

> This is the doctrine of the *two swords directly under God*. This is not a state-church (state over the church, as in Germany), nor a church-state (church over the state, as in Iran), nor the mere separation of church and state dependent on a moral pluralism (which is the humanistic separation of church and state under humanly devised "gods"), but is a separation of church and state under *God*. Only this will preserve true righteous freedom for all, and liberty for all (Kickasola, p. 18).

So what are the specific duties of each realm? As we have discussed in previous sections, the purpose of the state is to uphold justice, specifically by protecting the inalienable rights of the people living under its protection. This means that those who infringe upon the inalienable rights of others become subject to prosecution and punishment by the state.

And what of the duties of the church? While the sword of justice is "wielded by the state against crime to the extreme of *execution* . . . " (Kickasola, p. 18), the church wields the sword of the Spirit "against sin to the extreme of *excommunication*" (Kickasola, p. 18). This is an important distinction. The state is to prevent crime and the violation of inalienable rights. The church is to convict the world of its sin, and draw all men unto repentance through Jesus Christ. Only the church, which is made up of the children of God, can do this. Likewise, only the state can punish someone for crime. The difference between the roles of the church and state, therefore, arise from the difference between *sin* and *crime*:

> Strictly speaking, all Biblical crimes are Biblical sins, but not all Biblical sins are Biblical crimes. For example, as has been said, anger is a sin which can be disciplined by the church, but not punished by the state. However, if one acts out his anger in an *act* of violence or slander, then the state is authorized to punish this crime of the "wrong*doer*" (Ro. 13:4). Crime is *publicly* punishable sin, for which God has provided the just punishment [Emphasis Kickasola] (Kickasola, p. 18).

The state should never tell the church how to conduct its services or deal with its members (unless the services are criminal or the members are violating the rights of others), nor should the church try to involve itself directly in state affairs. Based on our discussion of covenantal relationships, we know that every person, group, and institution has certain responsibilities given to them by God which only they can perform. The relationship between church and state is no exception to this rule. The church should only involve itself in its God-given responsibilities, and nothing else, as should the state.

Principle 2
The Church Should Not Be Endorsed by the State.

To take this discussion to a deeper level of understanding, we can examine the benefits of a church operating without *restraint* or *direct assistance* from the state. Such a church would be a "free church," which means the

> withdrawal of *special* rights, status, and support granted an established church by a state. Such a church is jurisdictionally a "free church." Such a free church could even be a "national church" if it were an independent church representing the prevalent religion within a country, because a national church, like the Presbyterian Church of Korea, need not be an established state-church (Kickasola, p. 22).

Only a church with such freedom can operate as the representative of God to the unsaved in society. In contrast, a church whose authority comes from the state loses its ability to influence society and to cause the unsaved to *freely* repent:

> In our opinion, the blessings of *a disestablished church in a Christian nation* . . . are enormous. To realize this, all one needs to do is to compare the ecclesiastical situation of the United States with that of Europe. . . . In short, Switzerland, as in other European countries with *state-related* churches (England, Scotland, West Germany, Scandinavia), the church is *endorsed* by the government and largely *ignored* by the people. In modern Europe *officially supported* Christianity, *both Catholic and Protestant*, seems rather like the official cult of emperor worship in ancient Rome: everyone is *obliged* to give lip service, but hardly anyone takes it *seriously* [Emphasis Kickasola] (Kickasola, p. 25).

Principle 3
Separation of Church and State Does not Mean a Separation of the State from Biblical Principles.

The previous discussion was not meant to support the argument that Biblical principles should be separated from the realm of government. As we have discussed in previous sections, government is to be based upon an acknowledgment of God and of His Word, the Bible. Therefore, there is a big difference between a separation of church and state and a separation of Biblical principles *from* the state. One is appropriate, the other is not. Unfortunately, today many argue that morality should indeed be separate from politics and government. But this argument is quite detrimental for a just ordering of society:

> [The phrase, "separation of morality and state"] often takes the form of a protest, "You can't legislate morality." This statement is amazing when one realizes that law, by definition, *is* enforced morality: good laws enforce good morals (such as restraining a rapist), and bad laws enforce bad morals (such as removing the protection of law from a preborn human life). In the United States, the First Amendment to the Constitution . . . does not contain the expression "separation of church and state," but rather states, "Congress . . . shall make no law respecting an *establishment* of religion [that is a federal *denomination*], or prohibiting the *free exercise* thereof [which power is left to the several *states*]." When revisionists in the name of the *establishment* clause resist the efforts of private citizens to put God and morality back into national life they are in fact violating the *free exercise* clause and the religious right of such citizens [Emphasis Kickasola.] (Kickasola, p. 12).

Biblical Evidence

Old Testament Support.

The Legitimacy of the State.

The Old Testament supports the need for a state in the sense that "blood vengeance" must be prevented. For example, if a person is wrongly accused of murdering someone, and the victim's family wants to take vengeance on the accused (even though in reality, the accused is innocent), what is to stop the family from fulfilling its desires and killing the accused? Only the state, which has the power to hold an *impartial* trial (and to protect the accused until his guilt or innocence can be determined), can ensure that justice rules the day.

In the **Noahic covenant**, God prohibited murder. Implied in that commandment (Ge. 9:6) is the need to create a jurisdiction of power capable of ensuring that justice is protected in cases of capital punishment:

> The jurisdiction of the state was founded with Noah with the institution of capital punishment. Noah as the head of his family was also a nuclear magistrate in the postdiluvian world. The state does not need to be a nation, but is a jurisdiction within it and smaller groups. . . . The "avenger of blood" is merely the aggrieved who rightly performs the execution as an agent of the court, the state, the land. This becomes clear when one notices that the text says "when he [the avenger of blood] meets him [the murderer]" to execute him (Nu. 35:19) that it means *after trial*. Such is proven from verse 12, "They [the cities of refuge] will be places of refuge from the avenger, so that a person accused of murder may not die *before he stands trial* before the assembly" (Nu. 35:12), and by verse 30, "But no one is to be put to death on the testimony of only one witness" (Nu. 35:30). Vengeance by the avenger of the blood *before* this is "rage" (De. 19:6) and he would be "guilty of bloodshed" (De. 19:10) (Kickasola, pp. 14-15).

Even in the Hebrew Republic, Church and State Were Separate.

Many Christians might find this assertion questionable. After all, was not the **Hebrew Republic** founded on law given directly to the people from God? And was not God their direct ruler? The answer to both of these questions is obviously yes. However, it does not necessarily follow that, as a result of direct intervention and reliance upon God, the church and state were one entity in the Hebrew Republic:

> A priest could not be king (the line of Judah), and a king could not be a priest (the line of Levi through Aaron). King Uzziah was smitten with leprosy from the Lord when he attempted to offer incense in the temple of the Lord, a duty and privilege of priests alone (II Ch. 26:19) (Kickasola, p. 15).

Kickasola also refers to II Chronicles 19 as evidence of separation of church and state:

> Note that Amariah, representing the Jewish *church* (religion), "will be over you in any matter concerning the *Lord*," which would deal with the *equity* side and all ecclesiastical matters, and Zebadiah (from the ruler-tribe of Judah, cf. Ge. 49:10), representing the *state*, "will be over you in any matter concerning the *king*," which would deal with the *law* side and all civil matters. . . . Lastly here, note the separation of powers and wide representation in the several offices mentioned: prophet, judges, Levites, priests, family heads, chief priest, tribal leader and officials, all serving their "countrymen" and the "Lord" [Emphasis Kickasola.] (Kickasola, p. 16).

Furthermore, this separation of church and state meant that the Hebrew "church" did not bear the "sword of the state":

> While it was a sin not to believe in the Lord, it was not a crime, since crimes have references to deeds, not to matters of the heart. The Old Testament state did not financially assist the church, since the tithe was not a tax, i.e., it was not coerced or punished, but rather voluntaristic in policy, being a voluntary contribution by church persuasion (unlike the tax-financed church in Germany, for example). It was a sin not to tithe and be generous of heart, but not a crime (Kickasola, p. 27).

Even though separation of powers existed, however, there was certainly no separation of *morality* from the State:

> Note the clear separation of church and state, but also note that there is no separation of God and state, for both church and state are here under God--one nation under God; and there is no separation of "Christianity" (here Hebraism or Judaism) and state, speaking analogically, because certain qualified Levites and priests were called upon to assist the state in the difficult cases of the appellate court in Jerusalem; and there was no separation of morality and state, for they administered the law of the Lord and urged the people not to sin when settling disputes (Kickasola, p. 16).

New Testament Support.

The New Testament also supports separation of church and state: "When coming to the New Testament evidence for the institutional separation of church and state, one sees a totally different political reality--the Roman occupation and rule over the Jewish nation and early church, as well as its *pax romana* over nearly all the inhabited world known to these people. Yet the Biblical politics of the New Testament with regard to the *jurisdiction* question, unlike the new political reality, is remarkably similar to that of the Old Testament, at least in fundamentals" [Emphasis Kickasola] (Kickasola, p. 16).

Render unto Caesar What Is Caesar's.

The New Testament commentary made on the role of government can be found in the Gospels (Mt. 22:15-22, Mk. 12:13-17, Lk. 20:20-26), where Jesus Christ addresses the question of the validity of paying taxes to **Caesar**. His answer, of course, is to "render therefore unto Caesar the things which are Caesar's [i.e., pay your taxes]; and unto God the things that are God's [i.e., pay your tithes and offerings]" (Mt. 22:21, Mk. 12:17, Lk. 20:25--Kickasola, p. 17):

> So by His answer He sided with the Herodians, which demonstrated in a very negative antitaxation context a remarkably positive view of civil government. But His answer also reminded all that Caesar's jurisdiction is *limited*. It not only upheld separation of church and state, but the principle is so Biblical that He even upheld it in the midst of oppression and pagan foreign rule! (Kickasola, p. 17).

Another key verse is I Timothy 2:1-2, in which Paul exhorts his readers to pray for the civil authorities: "I urge, then, first of all, that requests, prayers, intercession and thanksgiving be made for everyone--for kings and all those in authority, that we may live peaceful and quiet lives in all godliness and holiness." This is a significant request, because "living peacefully and quietly" would require "a great deal of civil wisdom and religious toleration on the part of the state" (Kickasola, p. 17).

A Free Church in a Free Society.

Another key passage is I Peter 2:13-17, which states that Christians should:

> Submit yourselves for the Lord's sake to every authority instituted among men: whether to the king, as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right. For it is God's will that by doing good you should silence the ignorant talk of foolish men. Live as free men, but do not use your freedom as a cover-up for evil; live as servants of God. Show proper respect to everyone: Love the brotherhood of believers, fear God, honor the king.

This passage suggests an environment in which a free church can operate in a free society, because it calls for submission, which suggests a willful limitation of one's power (which we know to be a characteristic of covenantal relationships):

> Surely this is teaching submission because of honor for what the civil authorities are *called* by God to do, and such civil law powers are put in explicit moral law terms--"wrong," "right," "good," and "evil." Further, the freedom sought is the freedom to obey, for true liberty comes from obedience to the will of God. Surely what is sought here is a free church in a free state. In time this moral doctrine of freedom and behavior did lead to the demise of the Roman Empire, the rise of the Holy Roman Empire, and to mostly Christian constitutional republics in the West (Kickasola, p. 17).

The Doctrine of the *Two Swords*.

Romans 13:1-7 is another illuminating text on the role of church and state:

> Let every soul be subject unto the higher powers. For there is no power [as previously discussed, the term *authority* would be a better translation than *power*] but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good and thou shalt have praise of the same: For he is the minister of God to thee for good. But if thou do that which his evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. For this cause pay ye tribute also: for they are God's minister's, attending continually upon this very thing. Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour.

This passage helps to define, and therefore contrast, the role of the state from the role of the church:

> The titles for the civil magistrates are titles of a minister ("deacon," "liturgist") who performs the "service," but the service here is not an ecclesiastical worship service, but a civil service in the state. These titles emphasize the point that a civil magistrate is a minister of *God*, not the minister who has the "sword of the Spirit" (Eph. 6:17), which is the sword of love and mercy, but God's other "minister," the one who has the "sword" of steel, which is the sword of law and justice, the one who is the "agent of wrath," who "does not bear the sword for nothing" (Ro. 13:4). From this we get the doctrine of the two swords [Emphasis Kickasola.] (Kickasola, p. 18).

Why not a Theocracy?

The New Testament does not espouse a theocracy as Israel had in the Old Testament because "the nations of the world outside of and since Old Testament Israel are fundamentally different in character and calling from Israel. . . . Israel was a *nation*-state with an extremely homogeneous *natio* (birthgroup), with a strong feeling of *nation*ality. This is in contradistinction to the city-states and especially empires of the ancient world, and to the nation-states of the gentiles, especially in the modern period of heterogeneous democratic societies in an age of mobility" (Kickasola, p. 27). Furthermore, it can be argued that Israel had a special calling from God which superseded His call for all nations to be righteous: "God's call . . . was in Israel's case a call to a special and unique holiness set apart from the nations of the world, as is illustrated by the fact that crimes such as blasphemy and idolatry, with the severest of penalties, polluted the sanctuary of the Lord in their midst" (Kickasola, p. 27).

Nevertheless, as mentioned before, it is still appropriate to instill Biblical principles in the area of government just as it is in all realms of life. "However, this imposition must

be with the consent of the people as a whole to be true to both of the covenantal principles of the rule of law and national consent, as was true, for example, in the ratification and amendment process of the Constitution of the United States" (Kickasola, p. 27).

Historical Evidence

History of Church-State Relationships: an Overview.

Historically speaking, relationships between church and state can be classified into eight categories (Kickasola, p. 13):

1. Totalitarianism: "The state is ultimate and over all the culture, as was true of many ancient regimes, and some modern ones."

In totalitarianism, the church does not have the ability to operate freely and may be "underground," and all power is derived from the state.

2. Hebraism [the **Hebrew Republic**]: Based on covenantal relationships, this system allowed for individuals, groups, and institutions to stand before God on the basis of equality, submitting to the God-given authority of each other:

"The revelation of God in Hebraism broke with the nations around it by putting *directly under* God individuals, who then fill roles *secondarily under* the authority of the family, the Jewish church, and the state, whose leaders the people (individuals) chose."

3. Constantinianism: In this model, the church becomes an organ of the state, and a tool of the state:

"**Constantine** in the fourth century turned the pagan **Roman Empire** into the **Holy Roman Empire**, the world's first Christian regime, over which he was the Christian emperor. He officially established the church, creating the first state-church regime. This is clear from the **Code of Justinian** (d. 565), **Byzantine** emperor, who compiled the ***Corpus Juris Civilis***, which is comprised of the Institute (laws), Digest (jurists), Code (enactments of Justinian) and Novellae (supplements to the Code, enactments after Justinian). This Code taught that the monarch's will is supreme, legitimazing state over church which has characterized the subsequent history of the **Eastern Orthodox** civilizations" [Emphasis added.].

4. Islam: In this model, the state becomes the tool of the church:

"In the seventh century, **Muhammad** birthed **Islam**, whose followers were ruled by **Muslim** holy men (**caliphs** over the **Sunni** and **imams** over the **Shi'i**), whose church-state regimes warred with the state-church **Eastern Orthodox**" [Emphasis added.].

5. Papism: This model is quite similar to the **Islamic** model, with the exception that the religion was **Christianity** rather than **Islam**:

> "After this the papacy grew in power, having the same vertical hierarchy as **Islam**, but much older and **Christian**, led by the **Bishop of Rome** (the **Pope**), whose church-state regime would eventually assert the right to depose kings in **Europe**" [Emphasis added.].

6. Erastinianism: This **Protestant** world-view of government, although emphasizing the sovereignty of the individual more than the above models, also emphasized the role of the state in enforcing religion:

> "Within Protestantism, the newest regimes in history, all three jurisdictionional hierarchies enunciated by **Erastus**, **Calvin**, and the **Puritans** had in common the **Protestant** emphasis on the **individual priesthood of all believers**. **Thomas Erastus**, a **Swiss** theologian, in his ***Explicatio Gravissimae Quaestionis*** ('Exposition of a Most-grave Question,' published in 1589) held, contrary to the **Calvinists**, that a state which professes but one religion has the right and duty of supremacy over all matters, whether civil *or ecclesiastical*, as the prior **Eastern Orthodox** had held" [Emphasis added.].

7. Calvinism: This model reverted back to Hebraic world-view of government, emphasizing covenantal relationships:

> "**Calvinism**, however, reverted back to the **Hebrew** model of a multiplicity of nonhierarchical institutional jurisdictions, interdependent and filled with individuals who are primarily answerable to God, and secondarily to each other whenever proper" [Emphasis added.].

8. Puritanism: This model, while emphasizing the sovereignty of the individual before God, like **Erasatianistic** and **Calvinistic** models, made the state the tool of the church:

> "**Puritanism** had, in effect, the **Protestant** version of the **Catholic** model, *mutatis mutandis*, but with the emphasis on the **priesthood of all believers**. For example, in **Massachusetts Bay Colony** all **burgesses** (magistrates) had to be members of churches and with a religious test for office, being virtually a church-state" [Emphasis added.].

And where does the **United States** scheme of government fit into all of this? The founding fathers opted for the **Calvinistic** view of government, rejecting even its **Puritan** heritage of church over state:

> The founding fathers of the United States, steering away from state-church traditions (such as those of **Byzantium**, **Germany**, and **England**) and away from church-state traditions (such as those of **Roman Catholic** countries, and of their **Puritan**

colonial forebears), they opted for the free-church tradition of a free church in a free state, a Christian country with a disestablished church. They rejected a state-church, which *secularizes* the church, and they rejected a church-state, which *sacralizes* the world. They refused to put together what God had put asunder [Emphasis added.] (Kickasola, p. 13).

The Medieval Era: the Beginning of the End.

The question is, what influenced America's Founding fathers' decision to accept a covenantal world-view of church-state relationships? Certainly, as discussed previously, **federal theology** influenced their decision making. But the implementation of covenant principles into (gentile) society actually began to occur towards the end of the **Roman Empire** and the beginning of the **Middle Ages**, in the sense that separation of powers began to be emphasized.

This trend began after the fall of **Rome**, and the subsequent fall of the **Western** half of the **Roman Empire**. In the Fourth Century, the new capital of the **Roman Empire** became **Byzantium**, and the power of the Empire revolved around that epicenter. Of course, the **Eastern** (or **Byzantium**) **Empire** continued on for hundreds of years more, and therefore, the close ties between the **Greek Orthodox Church** and the state continued on as well.

However, in the **West**, there was no empire to which to be bonded (Congar, p. 7). The **Western** (**Roman Catholic**) **Church** found itself separate from any secular authority and therefore, in an area of **Europe** that had no overriding power structure, became the overriding authority. The **Catholic Church** was reminded of its uniqueness, and became increasingly hostile to the intervention of a secular authority (the **Byzantine Emperor**) into spiritual matters (Congar, p. 11). Rather than submitting to the will of the Emperor, and causing the **Germanic tribes** of Western Europe to follow suit, the Catholic Church became intertwined with a distinctive **West**, even contributing to the legitimacy of a Western European power structure, by assisting in the formation of the **Holy Roman Empire** (Congar, p. 18). The result of this is the existence of a "Byzantine world which affirms that it is the legitimate continuation of Rome, and the Latinized barbarian world, spiritually dominated by Apostolic and Papal Rome. The two worlds do not accept each other" (Congar, p. 18). The bottom line is that the political separation caused by the fall of the Western half of the Empire led to the separation of the Greek Orthodox (Eastern) Church from the Roman Catholic (Western) Church. This separation became known as the **Eastern Schism** or **Great Schism**, which was finalized in 1054.

The trend for increasing separation of church and state continued when **Pope Gregory VII** led Western Europe into great upheaval in 1075 by writing the ***Dictatus Papae*** (***Dictates of the Pope***). To summarize this work would be to say that it attempted to assert the papal authority above secular authority (Berman, pp. 95-6):

> Before the time of Pope Gregory, the church and state in the West were usually merged, the churches being controlled by "the state" or emperors, kings, and feudal lords. The Gregorian Reform and the Investiture Struggle made up a movement to

> free the church from control of secular political powers and make the church a self-governing entity (Amos, *Defending the Declaration*, p. 132).

Pope Gregory's *Dictates* ignited the struggle that already existed between the **Pope** and **Emperor Henry IV**. The result was the **War of Investiture** (Berman, p. 97). Ultimately, the war led to compromise, in the **Concordat of Worms** in 1122. The **Concordat** was a compilation of concessions granted by both sides (Berman, p. 98). In addition to signifying the end of the **War of Investiture**, the **Concordat** signified a further separation of secular and spiritual authorities. In the ensuing years, "the separation, concurrence, and interaction of the spiritual and secular jurisdictions was a principal source of the Western Legal Tradition" (Berman, pp. 98-9), as the two jurisdictions sought to define the extent of their powers.

Therefore, one of the major results of the **Gregorian Reform** and the **War of Investitures** was a trend toward increasing separation of powers between church and state. This can be further seen in the legal systems of both realms. In the wake of the **Gregorian Reform**, a new system of canon law and a new system of secular legal systems arose (Berman, p .116). Pluralism and dualism, both within and between secular and ecclesiastical systems arose (Berman, p. 118).

Of course, this trend of separation of powers was only the beginning. As we have already seen, the **Protestant Reformation** brought a further emphasis on separation of church and state. **Martin Luther** clearly understood the dangers of mixing the two realms:

> Noblemen and young lords want to rule consciences and issue commands in the church. And someday, when the theologians get back on their feet, they will again take the sword from the temporal authorities, as happened under the papacy. This is my opinion: One should not mix these two authorities, the temporal and spiritual, the courthouse and the church; otherwise the one devours the other and both perish, as happened under the papacy (Amos, *Common Law*, p. 19).

John Calvin also agreed with this view, stating in his ***Institutes of Christian Religion*** that

> He who knows to distinguish between the body and the soul, between the present fleeting life and that which is future and eternal, will have no difficulty in understanding that the spiritual kingdom of Christ and civil government are things very widely separated . . . let us, considering, therefore, as Scripture clearly teaches, that the blessings which we derive from Christ are spiritual, remember to confine the liberty which is promised and offered to us in him within its proper limits (Amos, *Common Law*, p. 46).

William Blackstone, in his ***Commentaries on the Law of England*** (Book One, Chapter One), argued that the state should only punish those acts which threaten the liberty of others (which means that it should not punish acts which do not threaten anyone's liberty but may offend the church):

> But with regard to absolute duties, which man is bound to perform considered as a mere individual, it is not to be expected that any human municipal laws should at all explain or enforce them. For the end and intent of such laws being only to regulate the behavior of mankind, as they are members of society, and stand in various relations to each other, they have consequently no business or concern with any but social or relative duties. Let a man therefore be every [sic] so abandoned in his principles, or vicious in his practice, provided he keeps his wickedness to himself, and does not offend against the rules of public decency, he is out of the reach of human laws. But if he makes his vices public, though they be such as seem principally to affect himself, (as drunkenness, or the like) they then become, by the bad example they set, of pernicious effects to society; and therefore it is then the business of human laws to correct them (Amos, *Common Law*, p. 31).

As mentioned previously, one of the main reasons that **Puritans** faced so much persecution from **Catholic** governments in the 16th and 17th centuries, and why many of them therefore fled to **America**, was because they espoused a covenantal view of government in which power was shared among various institutions and groups (defined partially by a separation of church and state), and in which the individual had more freedom and responsibility before God (the ***priesthood of all believers*** concept).

The United States: A Christian Nation without a Church-State.

To say, therefore, that the **United States of America**, being influenced by **federal theology**, and being aware of the tyrannical implications of a state-church or a church-state, created a society in which church and state were separate, would be correct. What would NOT be correct, however, is to say that Biblical principles and Christian leaders therefore had NOTHING to do with secular government. On the contrary, Biblical principles permeated early American society, including government:

> The founding fathers of America did not break . . . with Christianity in 1787 (the date for the drafting of the Constitution), officially or unofficially. They formally declared the church disestablished at the federal level. The *Novus Ordo Seclorum* was

> the New Order of the Ages, not because it was "secular utopianism," but because it was the first time *a Christian nation* had been founded with *a disestablished church*. This is *not neutral but nonecclesiastical*; it is *not secular but nonsectarian* (Kickasola, pp. 25-6).

Furthermore, we also know that the **founding fathers** themselves were very much inundated with a Christian worldview. In his exhaustive, well-documented book, *Christianity and the Constitution*, Dr. John Eidsmoe concludes that each of the founding fathers

> professed and exhibited a deep faith in God. They believed not only in a God of creation, but also in a God who is active in human history. . . . At least eight and probably eleven believed Jesus Christ is the Son of God. . . . The founding fathers were students of the Bible. They quoted it authoritatively and made frequent allusions to Scripture in their writings and speeches. . . . All of the founding fathers except Jefferson concurred with the Bible that man is basically sinful and self-centered; they did recognize that man is capable of certain civic virtue (Ro. 2:14-15). . . . All thirteen of the founding fathers had great respect for organized religion, particularly Christianity. . . . The founding fathers who did not choose to be Christians expressed gratitude for Christianity's influence within their nation. If the founding fathers were to see the hostile contempt with which modern thinkers treat Christianity, I believe they would consider it strange, offensive, and self-destructive (Eidsmoe, pp. 341-2).

What do we have then, in the **American** system? We have a system where the religious liberty, and indeed, liberty in general flourishes, because our founding fathers, honoring the sovereignty and authority of God and His Word, the Bible, chose to separate the church and state, thereby limiting tyranny and maximizing liberty.

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SECTION V

RESISTING *a* TYRANNICAL STATE

Principle 1
The People Have a Right to Resist an Unjust Government.

A Summation of Covenant Principles.

What are citizens supposed to do when their **inalienable rights** are violated by the state? An understanding of **covenantal principles** offers guidelines for such a scenario. We know that in a covenantal relationship, all parties involved enter into the agreement by **free choice**, not by force, and that the rights of all the parties are protected, because the parties have the chance to stipulate that their rights be protected during the negotiation process. We also know that once the **covenantal relationship** is established, the parties involved must **willingly submit to one another** in order to fulfill the various requirements of the covenant. Furthermore, we know that the parties to a covenant are not at liberty to break the covenant every time one of the other parties **falls short in fulfilling the covenantal obligations**. The concept of ***hesed***, which is **covenantal mercy**, denotes an act of forgiveness which should be exhibited among all of the parties. But this act of covenantal mercy has its limits. When one of the parties fails to fulfill his **covenantal obligations in a serious matter**, thereby **negating the very principles** upon which the covenant was based, it is then appropriate for the other members to free themselves from their covenant obligations to the violator, and where applicable, to punish or disqualify the violating party from the covenantal agreement and the blessings of the covenant:

> A covenant includes mercy [this mercy is related to *hesed*, in that the members are willing to go the extra mile to preserve the covenant - see Section III] so that if a party fails to keep the covenant perfectly, it is still valid. However, a particular kind of failure--a material breach of the terms or conditions--frees the injured party from any further obligations under the agreement (Amos, *Defending*, p. 129).

Application of Covenantal Principles.

These principles can be applied to a situation where the covenant is between the state and the people, and the state begins to overreach its covenantally-proscribed powers by violating the inalienable rights of the people, or by trying to lead the people into disobedience of God's law. We know from Section I that all government should be based upon an **acknowledgment of and obedience to God and His Word, the Bible**. We also know, therefore, that the purpose of government is to **protect the inalienable rights of its citizens and to uphold justice** (Section II). Therefore, no covenant should violate these principles, even if the covenant involves an entire nation and its government. In the situation described above, the offenses committed by the ruler or state are so egregious to the nature of the covenant and to what is acceptable according to Biblical standards that the people are obligated to remedy the situation, even if it means annulling the covenant altogether. However, *hesed* [covenant mercy] can play a role even in this situation. The people, rather than throwing off all civil rule, must turn to those pre-established leaders (who are not violating the covenant) to remedy the situation. In this way the covenant can be preserved with only minor changes. This process is known as **interposition**:

> What is the Christian theory of revolution? Stated simply, if through acts of tyranny the highest ruler in a country forfeits his right to rule, lower officers who still have a right to rule [in other words, those who have not disqualified themselves from leadership by committing a material breach of the covenant] can declare a change of government. Those who have a right to rule must be representing the law and "the people," because the people can resist tyrants only through lawful representatives. Lower rulers must act to defend the covenant or compact of government. Once the lower rulers declare a change of government, "the people" in self-defense of their rights may use force to remove the tyrant from office. Such force can be used only under the direction or authority of lawful rulers. "The people" cannot become a destroying mob, acting apart from the direction of lawful representatives. If they do, they lose the right to resist. This theory of revolution is known by the term "interposition" (Amos, *Defending*, pp. 131-2).

Of course, in the extreme case, where ALL of the established authority figures are committing material breaches of the covenant, it would be appropriate for the people to totally annul the covenant, to create a new covenant (and therefore establish new leaders), and, if necessary, to fight against the tyranny of the old authorities.

Biblical Evidence

There are three categories of Biblical evidence supporting this theory of civil resistance. First of all, the Bible discusses many instances where a covenant is annulled due to a material breach of the people: "Adam's eating the forbidden fruit was a material breach of God's covenant of works (Ge. 2:17). Idolatry was a material breach of God's covenant of law on Mount Sinai (Ex. 32). Adultery is a material breach of the covenant of marriage (Mt. 19:9) [Emphasis added.] (Amos, *Defending*, pp. 129-130).

Secondly, the Bible provides examples where the covenant of government has been

annulled by the leader's evil deeds. One example is found in I Kings 12:1-25, where the people ask **King Rehoboam** to lighten the taxes. When he disregards their request, and instead promises to be even more severe than his father Solomon was, all of the tribes except **Benjamin** and **Judah** rejected the leadership of Rehoboam and formed a new government under **Jeroboam**, which the Lord approved (vv. 15, 24). Another example is when **Athaliah** illegally made herself queen over Israel:

> God had given **Israel** a covenant or compact of government in the book of Deuteronomy (De. 29:1-21). The covenant provided for male leadership only (De. 17:15). **Athaliah**, mother of king **Ahaziah**, made herself Queen of Israel by trying to kill all the royal line of **Judah** when her son died (II Ch. 22:10). Only the infant **Joash** survived, hidden by **Jehoiada** the priest (II Ch. 22:11). When Joash reached the age of seven, Jehoiada made covenants with the leaders of Israel to remove Athaliah from the throne (II Ch. 23:1-5). In a public ceremony, they crowned Joash king (II Ch. 23:1-5). Athaliah screamed "treason" but was arrested and executed (II Ch. 23:15). The whole people then ratified the revolution by entering into covenant with King Joash (II Kings 11:17) [Emphasis added.] (Amos, *Defending*, p. 131).

A third area of Biblical support is that the Bible does not condone tyrannical rulers:

> Civil rulers do not have an absolute right to rule (I Sa. 13:13-14). God has commanded civil rulers to honor those who do right and punish those who do wrong (I Pe. 2:14; Ro. 13:4). They are sent by God to help those who are doing right (Ro. 13:4). Their purpose is to uphold justice in the nation for everyone (De. 17:18-19; Ps. 72:12-14; Pr. 31:5, 8-9; Je. 22:3-4). They govern "for the people," not for their own benefit or to increase their own power and wealth. If they put themselves above the people, doing evil rather than justice, they lose their right to rule (Pr. 16:12) [Emphasis added.] (Amos, *Defending*, pp. 130-131).

Historical Evidence

Several political writers have supported this Biblical theory of civil resistance. The **Gregorian Reform**, discussed in Section IV and in the Historical Documents Section in the Medeival category, helped to develop this theory. **Pope Gregory VII**, looking for a justification for deposing **Henry IV**, turned to **Manegold of Lautenbach in Alsace** to apply the principles of the **social compact** (covenant) to the current situation:

> Manegold, drawing on the Bible and medieval feudalism, explained that Henry IV had broken his contract with the people and was in **material breach** of the conditions of the contract through **tyrannically destroying peace and justice**. The people, represented by all the princes collectively, were absolved from allegiance to him and free to depose him [Emphasis added.] (Amos, *Defending*, p. 133).

William Blackstone also commented on the right to oppose and overthrow an evil tyrant. In his *Commentaries on the Law of England* (Book One, Chapter One), Blackstone first of all argues that the people have the right to petition the king in case of injustice:

> If there should happen any uncommon injury, or infringement, of the rights beforementioned, which the ordinary course of law is too defective to reach, there still remains a fourth subordinate right appertaining to every individual, namely, the right of petitioning the king, or either house of parliament, for the redress of grievances (Amos, *Common Law*, p. 38).

Blackstone also supported the right of the people to bear arms, in order to protect themselves "when the sanctions of society and law as are found insufficient to restrain the violence of repression" (Amos, *Common Law*, p. 38).

John Locke based his discussion of civil resistance on the understanding of the **state of nature** and the **state of war**. People leave the state of nature by forming government, which is designed to protect their rights. But when the government violates the rights of the people, the bond of society is dissolved, and the people are in a state of war with the government:

> Whenever the *Legislators endeavour to take away, and destroy the property of the People,* or to reduce them to Slavery under arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence. Whensoever therefore the *Legislative* shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, *endeavour to grasp* themselves, *or put into the Hands of any other an absolute Power* over the Lives, Liberties, and Estates of the People; By this breach of Trust they *forfeit the Power*, the People had put into their Hands, for quite contrary ends, and it devolves to the People, who have a Right to Resume their original Liberty, and, by the establishment of a new Legislative, (such as they shall think fit) provide for their own Safety and Security, which is the end for which they are in Society. What I have said here, concerning the Legislative in general, holds true also concerning the supreme Executor, who having a double Trust put in him, both to have a part in the Legislative, and the supreme Execution of the Law, acts against both, when he goes about to set up his own arbitrary Will, as the Law of the Society [Emphasis Locke.] (Hall, p. 117).

Many historical events, in which a ruler is forced to change his evil practices or be overthrown, have been based on this same theory of resistance. Events such as the signing of the **Magna Carta**, the **Glorious Revolution** the **English Bill of Rights**, and the **American Revolution** are excellent examples. (For a discussion of these events, see the following headings in the Historical Documents Section: Magna Carta, English Bill of Rights, and the **Declaration of Independence**).

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BOOK II

HISTORICAL DOCUMENTS

ROMAN ERA

Constantine I: Laws for Christians

Before A.D. 313, **Christianity** was persecuted in the **Roman Empire**. One would think therefore, that the spread of **Christianity**, much less its ability to influence society, would be severely limited, but such was not the case:

> Christians were imprisoned, beaten, starved, burned alive, torn apart by wild beasts in the arena for the amusement of the Romans, and crucified. However, the persecutions did not last long enough to extirpate the new religion. Actually they strengthened the determination of most of the faithful and won new converts, who were awed by the extraordinary courage of the martyrs willingly dying for their faith (M. Perry & Cooper, p. 126).

As a result of this rapid growth, "Roman emperors decided to gain the support of the growing numbers of Christians within the Empire" (M. Perry & Cooper, p. 126). In A.D. 313, **Emperor Constantine I** issued the **Edict of Milan**, granting toleration to Christians (M. Perry & Cooper, p. 126). In A.D. 392, **Emperor Theodosius** made Christianity the state religion (M. Perry & Cooper, pp. 126-7). One might think therefore, that **Christians**, being a member of the officially endorsed religion of the most powerful empire in the world would be able to freely implement Biblical principles into society and thereby reform it. But such was not always the case.

In our discussion of separation of church and state (Section IV) we learned that under the **Constantinian** view of government, the church became a tool of the state. The following collection of letters and laws decreed by **Emperor Constantine** exemplifies how the state assumed responsibility and authority over church matters in the **Roman Empire**, and how the church was granted official endorsement and support:

> No sooner had Constantine I made his decision in favour of the Church than he began to regulate it. Many of his laws worked to the advantage of the Church, although they also implied a hitherto unknown state control and interest in internal Church matters (Medieval Source Book).

With the church being controlled by the state, would Christians be able to fulfill their God-given duties to spread the Gospel?

Law: Restoration of Goods only to Catholic Christians

[Copy of another imperial decree which they issued, indicating that the grant (of free worship) was made to the Catholic Church alone.]

Eusebius: Book 10, Chapter 5

Greeting to thee, our most esteemed Anulinus.

It is the custom of our benevolence, most esteemed Anulinus, to will that those things which belong of right to another should not only be left unmolested, but should also be restored. Wherefore it is our will that when thou receivest this letter, if any such things belonged to the Catholic Church of the-Christians, in any city or other place, but are now held by citizens or by any others, thou shalt cause them to be restored immediately to the said churches. For we have already determined that those things which these same churches formerly possessed shall be restored to them. Since therefore thy devotedness perceives that this command of ours is most explicit, do thou make haste to restore to them, as quickly as possible, everything which formerly belonged to the said churches,-whether gardens or buildings or whatever they may be--that we may learn that thou hast obeyed this decree of ours most carefully. Farewell, our most esteemed and beloved Anulinus.

Law: Ordering a Synod in Rome

[Copy of an epistle in which the Emperor commands that a synod of bishops be held at Rome in behalf of the unity and can-card of the churches.]

Constantine Augustus to Miltiades, bishop of Rome, and to Marcus.

Since many such communications have been sent to me by Anulinus, the most illustrious proconsul of Africa, in which it is said that Caecilianus, bishop of the city of Carthage, has been accused by some of his colleagues in Africa, in many matters; and since it seems to me a very serious thing that in those provinces which Divine Providence has freely entrusted to my devotedness, and in which there is a great population, the multitude are found following the baser course, and dividing, as it were, into two parties, and the bishops are at variance, -- it has seemed good to me that Caecilianus himself, with ten of the bishops that appear to accuse him, and with ten others whom he may consider necessary for his defense, should sail to Rome, that there, in the presence of yourselves and of Retecius and Maternus and Marinus, your colleagues, whom I have commanded to hasten to Rome for this purpose, he may be heard, as you may understand to be in accordance with the most holy law. But in order that you may be enabled to have most perfect knowledge of all these things, I have subjoined to my letter copies of the documents sent to me by Anulinus, and have sent them to your above-mentioned colleagues. When your firmness has read these, you will consider in what way the above-mentioned case may be most accurately investigated and justly decided. For it does not escape your diligence that I have such reverence for the

legitimate Catholic Church that I do not wish you to leave schism or division in any place. May the divinity of the great God preserve you, most honored sirs, for many years.

Law: A Synod to be Held Against Dissension

[Copy of an epistle in which the emperor commands another synod to be held for the purpose of removing all dissension among the bishops.]

Constantine Augustus to Chrestus, bishop of Syracuse.

When some began wickedly and perversely to disagree among themselves in regard to the holy worship and celestial power and Catholic doctrine, wishing to put an end to such disputes among them, I formerly gave command that certain bishops should be sent from Gaul, and that the opposing parties who were contending persistently and incessantly with each other, should be summoned from Africa; that in their presence, and in the presence of the bishop of Rome, the matter which appeared to be causing the disturbance might be examined and decided with all care. But since, as it happens, some, forgetful both of their own salvation and of the reverence due to the most holy religion, do not even yet bring hostilities to an end, and are unwilling to conform to the judgment already passed, and assert that those who expressed their opinions and decisions were few, or that they had been too hasty and precipitate in giving judgment, before all the things which ought to have been accurately investigated had been examined--on account of all this it has happened that those very ones who ought to hold brotherly and harmonious relations toward each other, are shamefully, or rather abominably, divided among themselves, and give occasion for ridicule to those men whose souls are aliens to this most holy religion. Wherefore it has seemed necessary to me to provide that this dissension, which ought to have ceased after the judgment had been already given by their own voluntary agreement, should now, if possible, be brought to an end by the presence of many. Since, therefore, we have commanded a number of bishops from a great many different places to assemble in the city of Arles, before the kalends of August, we have thought proper to write to thee also that thou shouldst secure from the most illustrious Latronianus, corrector of Sicily, a public vehicle, and that thou shouldst take with thee two others of the second rank whom thou thyself shalt choose, together with three servants who may serve you on the way, and betake thyself to the above-mentioned place before the appointed day; that by thy firmness, and by the wise unanimity and harmony of the others present, this dispute, which has disgracefully continued until the present time, in consequence of certain shameful strifes, after all has been heard which those have to say who are now at variance with one another, and whom we have likewise commanded to be present, may be settled in accordance with the proper faith, and that brotherly harmony, though it be but gradually, may be restored. May the Almighty God preserve thee in health for many years.

Law: Granting Money to Churches

[Copy of an Imperial Epistle in which Money is granted to the Churches.]

Eusebius; Book 10, Chapter 6

CONSTANTINE AUGUSTUS to Caecilianus, bishop of Carthage.

Since it is our pleasure that something should be granted in all the provinces of Africa and Numidia and Mauritania to certain ministers of the legitimate and most holy catholic religion, to defray their expenses, I have written to Ursus, the illustrious finance minister of Africa, and have directed him to make provision to pay to thy firmness three thousand folles. Do thou therefore, when thou hast received the above sum of money, command that it be distributed among all those mentioned above, according to the briefs sent to thee by Hosius. But if thou shouldst find that anything is wanting for the fulfillment of this purpose of mine in regard to all of them, thou shalt demand without hesitation from Heracleides, our treasurer, whatever thou findest to be necessary. For I commanded him when he was present that if thy firmness should ask him for any money, he should see to it that it be paid without delay. And since I have learned that some men of unsettled mind wish to turn the people from the most holy and Catholic Church by a certain method of shameful corruption, do thou know that I gave command to Anulinus, the proconsul, and also to Patricius, vicar of the prefects, when they were present, that they should give proper attention not only to other matters but also above all to this, and that they should not overlook such a thing when it happened. Wherefore if thou shouldst see any such men continuing in this madness, do thou without delay go to the above-mentioned judges and report the matter to them; that they may correct them as I commanded them when they were present. The divinity of the great God preserve thee for many years.

Law: Exempting Clergy from Civic Duties

[Copy of an epistle in which the emperor commands that the rulers of the churches be exempted from all political duties.]

Eusebius; Book 10, Chapter 7

Greeting to thee, our most esteemed Anulinus.

Since it appears from many circumstances that when that religion is despised, in which is preserved the chief reverence for the most holy celestial Power, great dangers are brought upon public affairs; but that when legally adopted and observed it affords the most signal prosperity to the Roman name and remarkable felicity to all the affairs of men, through the divine beneficence--it has seemed good to me, most esteemed Anulinus, that those men who give their services with due sanctity and with constant observance of this law, to the worship of the divine religion, should receive recompense for their labors. Wherefore it is my will that those within the province entrusted to thee, in the catholic Church, over which Caecilianus presides, who give their services to this holy religion, and

who are commonly called clergymen, be entirely exempted from all public duties, that they may not by any error or sacrilegious negligence be drawn away from the service due to the Deity, but may devote themselves without any hindrance to their own law. For it seems that when they show greatest reverence to the Deity, the greatest benefits accrue to the state. Farewell, our most esteemed and beloved Anulinus.

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www.fordham.edu/halsall/source/const1-laws2
Internet Medieval Sourcebook
(www.fordham.edu/halsall/source)
from Eusebius, Church History , trans in Nicene and Post-Nicene Fathers, 2nd Series, ed. P. Schaff and H. Wace, (repr. Grand Rapids MI: Wm. B. Eerdmans, 1955), I, 380-384.
[Internet]
Accessed March 5, 1998.

Theodosian Code XVI.i.2

The Banning of Other Religions

The trend of combining church and state that was begun by **Emperor Constantine** was continued by **Emperor Theodosius I** (379-395). This trend was to continue well after the fall of the **Western** half of the **Roman Empire**:

> Although toleration was given to Christianity in 311 by Constantine I, Christianity did not become the legal religion of the Roman Empire until the reign of Theodosius I (379-395). At that point not only was Christianity made the official religion of the Empire, but other religions were declared illegal (Medieval Sourcebook).

As mentioned earlier, only after the separation of the **Roman Catholic** Church from the **Greek Orthodox** Church did this trend begin to slowly reverse itself.

It is our desire that all the various nations which are subject to our clemency and moderation, should continue to the profession of that religion which was delivered to the Romans by the divine Apostle Peter, as it has been preserved by faithful tradition and which is now professed by the Pontiff Damasus and by Peter, Bishop of Alexandria, a man of apostolic holiness. According to the apostolic teaching and the doctrine of the Gospel, let us believe in the one diety of the Father, Son and Holy Spirit, in equal majesty and in a holy Trinity. We **[**the State**]** authorize the followers of this law to assume the title Catholic Christians; but as for the others, since in out judgment they are foolish madmen, **we decree that they shall be branded with the ignominious name of heretics, and shall not presume to give their conventicles the name of churches. They will suffer in the first place the chastisement of divine condemnation and the second the punishment of our authority** [the authority of the State]**, in accordance with the will of heaven shall decide to inflict.**

[Emphasis added.]

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www.fordham.edu/halsall/source/theocodexv1.html
Internet Medieval Sourcebook
(www.fordham.edu/halsall/source)
from Henry Bettenson, ed., Documents of the Christian Church,
(London: Oxford University Press, 1943), p. 31
[Short extract used under fair-use provisions]
[Internet]
Accessed March 5, 1998.

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Corpus Iuris Civilis: Novellae

In 476, the **Western** half of the **Roman Empire** fell, leaving only the **Eastern** portion as the last remnant of the great **Roman Empire**. The **Eastern (Byzantine) Empire** survived for several more centuries. One of its most powerful and successful emperors was **Justinian**:

> By the end of Justinian's reign (527-565), the Byzantines had spread an urban civilization around virtually the entire Mediterranean. In it they imaginatively integrated Christianity and Graeco-Roman culture (Kagan & Turner, p. 205).

In Principle 4 (Separation of Church and State), the ***Corpus Iuris Civilis*** is discussed as an example of how **Emperor Justinian** sought to control the church. The ***Civilis***, generally speaking, is quite important:

> Roman law developed as a mixture of laws, senatorial consults, imperial decrees, case law, and opinions issued by jurists. One of the most long lasting of Justinian's actions was the gathering of these materials in the 530s into a single collection, later known as the *Corpus Iuris Civilis* [The Code of Civil Law]. The text is of historical importance for a number of periods: first it illuminates the Roman society of the time the individual parts were first written; next it says a great deal about 6th century Byzantium both in the selection criteria, and in the laws made specifically by Justinian; and finally it was of tremendous importance in later Western Europe where it provided, after the 11th century, the basis for the development of both Church, or "canon" law and the civil law of most European countries except England. As a system of law based on principles, not case law, it was re-invigorated by Napoleon and in that form remains the basis of the legal system of most of continental Europe, as well as the former colonial dependencies of those European countries [including most of Africa, China, Latin America and Japan]. It is also the basis of law in Louisiana and Quebec. In fact the only legal systems that rival Roman law in usage are the Anglo-American "common law" tradition, and the Islamic Sharia (Medieval Sourcebook).

For our purposes, excerpts from the ***Novellae*** will be examined, because it reveals how the state controlled the church in the **Byzantine Empire**:

> The concept of a free and independent Church was unacceptable to Justinian. He regarded himself as head of the Church and insisted on his right and duty not only to regulate the smallest details of discipline but also to dictate the theological opinions of the Church. (Medieval Sourcebook).

The problem with these laws is not that they necessarily proscribe some ungodly activity, but that the state assumes responsibility for determining church conduct. In addition to limiting the church's autonomy (and therefore its ability to be led by God), this activity made it more

likely that power would be hoarded by one entity (the Emperor), which increases the chance of tyranny.

Excerpts from Novel 137:

If for the general welfare, We have taken measures to render the civil laws more effective, with whose execution, God, through His good will towards men, has entrusted Us, **how much more reason is there not for Us to compel the observance of the sacred canons, and Divine Laws, which have been promulgated for the safety of Our souls?** For those who observe the sacred canons become worthy of the assistance of Our Lord God, while those who disobey them render themselves liable to be punished by Him. **Therefore, the most holy bishops who are charged with the enforcement of these laws are liable to severe penalties when they allow any breaches of them to remain unpunished.** And, indeed, as the sacred canons have not been, up to this time, strictly observed, various complaints have been made to Us of clerks, monks, and certain bishops, on the ground that they do not live in accordance with the divine canons; and indeed there are even some among them who are either ignorant of, or do not perform the holy service of the mass, or of the ceremony of baptism.

[The Emperor on specific guidelines for consecration of bishops.]

Therefore We, conceding the authority of the sacred canons, do promulgate the present law, by which We decree that every time it may be necessary to consecrate a bishop in any city, the clergy and principal citizens of the said city shall assemble, and issue proclamations by which they nominate three persons, and then make oath on the Holy Gospels, in conformity with the Scriptures. This oath, inserted in the proclamations, shall be worded as follows:

That they did not select the three persons whom they have nominated in consideration of any gifts or promises made to them; nor through friendship, nor induced by any affection whatsoever, but for the reason that they knew that the candidates whom they have chosen are steadfast in the Catholic Faith, and of honorable life; that they have passed the age of thirty years, and have neither wives nor children; and that they have had neither concubines nor natural children, nor have any at present; and if any of them formerly had a wife, be had but one, and she was neither a widow, nor separated from her husband, and that his marriage with her was not prohibited, either by the sacred canons, or by secular laws; that neither of the three candidates is charged with the

duties of any public office . . .

[The Emperor, on the holding of synods.]

As what is laid down in the canons relating to the episcopal synods, which should be held in every province, is not observed, this is the first thing that should be remedied. . . . We order that one synod shall assemble in each province in the month of June or September. . . . We desire that ecclesiastical questions having reference to the Faith, to canonical points, and such as relate to the administration of church property; . . . and . . . to all matters which have need of correction, shall be debated and examined in each synod, and **We desire that abuses shall be disposed of in accordance with Our laws and the sacred canons**.

[The Emperor on Baptisms.]

We order all bishops and priests to repeat the divine service and the prayer, when baptism is performed, not in an undertone, but in a loud voice which can be beard by the faithful people, in such a way that the minds of the listeners may be induced to manifest greater devotion, and a higher appreciation of the praises and blessings of God. . . . **We notify all ecclesiastics that if they should violate any of these provisions, they must render an account of their conduct on the terrible judgment Day of Our Lord and Saviour Jesus Christ; and that We, when informed of these matters, shall not disregard them, and leave them unpunished**.

We also order that if the Governors of provinces should ascertain that any of the rules which We have promulgated are not observed, they shall first compel the metropolitans and other bishops to call the synods together, and do what We have just prescribed; **and when the bishops do not immediately obey, the Governors must notify Us of the fact, in order to enable Us to promptly punish those who refuse to convoke the synods; and We hereby warn the Governors, as well as their courts, that if they do not see that what We have decreed is executed, they shall be put to death.**

[Emphasis added.]

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www.fordham.edu/halsall/source/justinian-nov137

Internet Medieval Sourcebook
(www.fordham.edu/halsall/source)
From Justinian, Novella, CXXXVII, translated by S.P. Scott: *The Civil Law* (Cincinnati, Ohio: 1932), Vol. XVII, pp.
152-156. Reprinted in Leon Bernard and Theodore B. Hodges, eds.

Readings in European History, (New York: Macmillan, 1958),
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[Internet]
Accessed March 5, 1998.

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MEDIEVAL ERA

Gelasius I on Spiritual and Temporal Power
494

In Principle 4, it was discussed that the **Papism** view of government put the state beneath the authority of the church. This trend began to assert itself well before the **Great Schism of 1054**. The following letter is an example of that view:

> Letter of Pope Gelasius to Emperor Anastasius on the superiority of the spiritual over temporal power: The pope's view of the natural superiority of the spiritual over the temporal power finds a clear expression in the following remarkable letter of Gelasius I (494) (Medieval Sourcebook).

Gelasisus' Letter to the Emperor:

There are two powers, august Emperor, **by which this world is chiefly ruled**, namely, the **sacred authority** of the priests and the **royal power**. **Of these that of the priests is the more weighty**, since they have to render an account for even the kings of men in the divine judgment[Notice the separation of powers recognized here--but with the church over the state]. You are also aware, dear son, that while you are permitted honorably to rule over human kind, **yet in things divine you bow your head humbly before the leaders of the clergy and await from their hands the means of your salvation**. In the reception and proper disposition of the heavenly mysteries **you recognize that you should be subordinate rather than superior to the religious order**, and that in these matters you depend on their judgment rather than wish to force them to follow your will.

If the ministers of religion, recognizing the supremacy granted you from heaven in matters affecting the public order, obey your laws, lest otherwise they might obstruct the course of secular affairs by irrelevant considerations, with what readiness should you not yield them obedience to whom is assigned the dispensing of the sacred mysteries of religion. Accordingly, just as there is no slight danger in the case of the priests if they refrain from speaking when the service of the divinity requires, so there is no little risk for those who disdain--which God forbid--when they should obey. And if it is fitting that the hearts of the faithful should submit to all priests in general who properly administer divine affairs, how much the more is obedience due to the bishop of that see which the Most High ordained to be above others, and which is consequently dutifully honored by the devotion of the whole

Church.

[Emphasis added.]

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www.fordham.edu/halsall/source/gelasius1.htm
Internet Medieval Sourcebook
(www.forham.edu/halsall/source)

translated in J. H. Robinson, *Readings in European History*, (Boston: Ginn, 1905), pp. 72-73

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[Internet]
Accessed March 5, 1998.

Letter to Gregory VII
January 24, 1076

The trend toward separation of church and state intensified in **Western Europe** during the power struggles between **King Henry IV** and **Pope Gregory VII**, as the **Roman Catholic Church** tried to assert its supremacy over the State. **Pope Gregory VII** was a major instigator in this struggle:

> In 1075, after some twenty-five years of agitation and propaganda by the papal party, Pope Gregory VII declared the political and legal supremacy of the papacy over the entire church and the independence of the clergy from secular control. Gregory also asserted the ultimate supremacy of the pope in secular matters, including the authority to depose emperors and kings (Berman, p. 87).

The emperor--**King Henry IV** (1056-1106) **of Saxony**--took issue with this proclamation. In this letter, **King Henry IV** in January 1076, condemned **Gregory** as a usurper (Medieval Sourcebook).

Henry, king not through usurpation but through the holy ordination of God, to Hildebrand, at present not pope but false monk.

Such greeting as this hast thou merited through thy disturbances, inasmuch as there is no grade in the church which thou hast omitted to make a partaker not of honour but of confusion, not of benediction but of malediction. For, to mention few and especial cases out of many, not only hast thou not feared to lay hands upon the rulers of the holy church, the anointed of the Lord-the archbishops, namely, bishops and priests--but thou hast trodden them under foot like slaves ignorant of what their master is doing. Thou hast won favour from the common herd by crushing them; thou hast looked upon all of them as knowing nothing, upon thy sole self, moreover, as knowing all things. This knowledge, however, thou hast used not for edification but for destruction; so that with reason we believe that St. Gregory, whose name thou has usurped for thyself, was prophesying concerning thee when he said: "The pride of him who is in power increases the more, the greater the number of those subject to him; and he thinks that he himself can do more than all." And we, indeed, have endured all this, being eager to guard the honour of the apostolic see; thou, however, has understood our humility to be fear, and hast not, accordingly, shunned to rise up against the royal power conferred upon us by God, daring to threaten to divest us of it. As if we had received our kingdom from thee! As if the kingdom and the empire were in thine and not in God's hand! And this although our Lord Jesus Christ did call us to the kingdom, did not, however, call thee to the priesthood. For thou has ascended

by the following steps. By wiles, namely, which the profession of monk abhors, thou has achieved money; by money, favour; by the sword, the throne of peace. And from the throne of peace thou hast disturbed peace, inasmuch as thou hast armed subjects against those in authority over them; inasmuch as thou, who wert not called, hast taught that our bishops called of God are to be despised; inasmuch as thou hast usurped for laymen and the ministry over their priests, allowing them to depose or condemn those whom they themselves had received as teachers from the hand of God through the laying on of hands of the bishops. On me also who, although unworthy to be among the anointed, have nevertheless been anointed to the kingdom, thou hast lain thy hand; me whoas the tradition of the holy Fathers teaches, declaring that I am not to be deposed for any crime unless, which God forbid, I should have strayed from the faith--am subject to the judgment of God alone. For the wisdom of the holy fathers committed even Julian the apostate not to themselves, but to God alone, to be judged and to be deposed. For himself the true pope, Peter, also exclaims: "Fear God, honour the king." But thou who does not fear God, dost dishonour in me his appointed one. Wherefore St. Paul, when he has not spared an angel of Heaven if he shall have preached otherwise, has not excepted thee also who dost teach other-wise upon earth. For he says: "If any one, either I or an angel from Heaven, should preach a gospel other than that which has been preached to you, he shall be damned." Thou, therefore, damned by this curse and by the judgment of all our bishops and by our own, descend and relinquish the apostolic chair which thou has usurped. Let another ascend the throne of St. Peter, who shall not practise violence under the cloak of religion, but shall teach the sound doctrine of St. Peter. I Henry, king by the grace of God, do say unto thee, together with all our bishops: Descend, descend, to be damned throughout the ages.

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www.fordham.edu/halsall/source/henry4-to-g7a.html
Internet Medieval Sourcebook
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from MG LL, folio II, pp. 47 ff; translated by Ernest F. Henderson,
Select Historical Documents of the Middle Ages, (London: George Bell and Sons, 1910), pp. 372-372
.
[Internet]
Accessed March 5, 1998.

Gregory VII: First Deposition and Banning of Henry IV
February 22, 1076

Pope Gregory VII responds to the inflammatory letter of Henry IV:

O St. Peter, chief of the apostles, incline to us, I beg, thy holy ears, and hear me thy servant whom thou has nourished from infancy, and whom, until this day, thou hast freed from the hand of the wicked, who have hated and do hate me for my faithfulness to thee. Thou, and my mistress the mother of God, and thy brother St. Paul are witnesses for me among all the saints that thy holy Roman church drew me to its helm against my will; that I had no thought of ascending thy chair through force, and that I would rather have ended my life as a pilgrim than, by secular means, to have seized thy throne for the sake of earthly glory. And therefore I believe it to be through thy grace and not through my own deeds that it has pleased and does please thee that the Christian people, who have been especially committed to thee, should obey me. And especially to me, as thy representative and by thy favour, has the power been granted by God of binding and loosing in Heaven and on earth. On the strength of this belief therefore, for the honour and security of thy church, in the name of Almighty God, Father, Son and Holy Ghost, I withdraw, through thy power and authority, from Henry the king, son of Henry the emperor, who has risen against thy church with unheard of insolence, the rule over the whole kingdom of the Germans and over Italy. And I absolve all Christians from the bonds of the oath which they have made or shall make to him; and I forbid any one to serve him as king. For it is fitting that he who strives to lessen the honour of thy church should himself lose the honour which belongs to him. And since he has scorned to obey as a Christian, and has not returned to God whom he had deserted-holding intercourse with the excommunicated; practising manifold iniquities; spurning my commands which, as thou dost bear witness, I issued to him for his own salvation; separating himself from thy church and striving to rend it--I bind him in thy stead with the chain of the anathema. And, leaning on thee, I so bind him that the people may know and have proof that thou art Peter, and above thy rock the Son of the living God hath built His church, and the gates of Hell shall not prevail against it.

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www.fordham.edu/halsall/source/g7-ban1.htm
Internet Medieval Sourcebook
(www.forham.edu/halsall/source)
from Gregory VII, Reg. III, No. 10 a, translated in Ernest F. Henderson, *Select Historical Documents of the Middle Ages*, (London: George Bell and Sons, 1910), 376-377
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[Internet]
Accessed March 5, 1998.

Gregory VII: Lay Investitures Forbidden

Pope Gregory VII, during the "**Investiture Controversy**," proclaimed that lay persons, such as kings or emperors, did not have the authority to appoint bishops or abbeys in the church. Hence, the separation of (and the battle between) church and state continued:

> Gregory issued a decree in 1073 forbidding prelates to receive their churches from lay rulers. The text of this decree against "lay investiture" has been lost. The following text is a reenactment of the same prohibition in 1078 (Medieval Sourcebook).

Inasmuch as we have learned that, contrary to the establishments of the holy fathers, the investiture with churches is, in many places, performed by lay persons; and that from this case many disturbances arise in the church by which the Christian religion is trodden under foot: we decree that no one of the clergy shall receive the investiture with a bishopric or abbey or church from the hand of an emperor or king or of any lay person, male or female. **But if he shall presume to do so he shall clearly know that such investiture is bereft of apostolic authority, and that he himself shall lie under excommunication until fitting satisfaction shall have been rendered**.

[Emphasis added.]

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www.fordham.edu/halsall/source/g7-reform2.htm
Internet Medieval Sourcebook
(www.forham.edu/halsall/source)
translated in Ernest F. Henderson, *Select Historical Documents of the Middle Ages*,
(London: George Bell and Sons, 1910), p. 365
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[Internet]
Accessed March 5, 1998.

Gregory VII: Dictatus Papae
1090

The ***Dictatus Papae***, was yet another step toward conflict between the church and state. The actual date and author of this important document, however, is uncertain:

> The *Dictatus Papae* was included in Pope's register in the year 1075. Some argue that it was written by Pope Gregory VII (r. 1073-1085) himself, others argue that it had a much later different origin. In 1087 Cardinal Deusdedit published a collection of the laws of the Church which he drew from many sources. The Dictatus agrees so clearly and closely with this collection that some have argued the Dictatus must have been based on it; and so must be of a later date of compilation than 1087. There is little doubt that the principles below do express the pope's [Gregory VII] principles (Medieval Sourcebook).

It was these principles that so inflamed **Henry IV** and embroiled **Western Europe** for more than thirty years.

That the Roman church was founded by God alone.

That the Roman pontiff alone can with right be called universal.

That he alone can depose or reinstate bishops.

That, in a council his legate, even if a lower grade, is above all bishops, and can pass sentence of deposition against them.

That the pope may depose the absent.

That, among other things, we ought not to remain in the same house with those excommunicated by him.

That for him alone is it lawful, according to the needs of the time, to make new laws, to assemble together new congregations, to make an abbey of a canonry; and, on the other hand, to divide a rich bishopric and unite the poor ones.

That he alone may use the imperial insignia.

That of the pope alone all princes shall kiss the feet.

That his name alone shall be spoken in the churches.

That this is the only name in the world.

That it may be permitted to him to depose emperors.

That he may be permitted to transfer bishops if need be.

That he has power to ordain a clerk of any church he may wish.

That he who is ordained by him may preside over another church, but may not hold a subordinate position; and that such a one may not receive a higher grade from any bishop.

That no synod shall be called a general one without his order.

That no chapter and no book shall be considered canonical without his authority.

That a sentence passed by him may be retracted by no one; and that he himself, alone of all, may retract it.

That he himself may be judged by no one.

That no one shall dare to condemn one who appeals to the apostolic chair.

That to the latter should be referred the more important cases of every church.

That the Roman church has never erred; nor will it err to all eternity, the Scripture bearing witness.

That the Roman pontiff, if he have been canonically ordained, is undoubtedly made a saint by the merits of St. Peter; St. Ennodius, bishop of Pavia, bearing witness, and many holy fathers agreeing with him. As is contained in the decrees of St. Symmachus the pope.

That, by his command and consent, it may be lawful for subordinates to bring accusations.

That he may depose and reinstate bishops without assembling a synod.

That he who is not at peace with the Roman church shall not be considered catholic.

That he may absolve subjects from their fealty to wicked men.

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www.fordham.edu/halsall/source/g7-dictatap.html
Internet Medieval Sourcebook
(www.fordham.edu/halsall/source)
translated in Ernest F. Henderson, *Select Historical Documents of the Middle Ages*,
(London: George Bell and Sons, 1910), pp. 366-367
.
[Internet]
Accessed March 5, 1998.

Paschal's Privilege
February 12, 1111

Even after the death of **Pope Gregory VII**, the struggle of powers, including the intermittent wars between secular and ecclesiastical powers, waged on. As the fighting continued, both sides debated as to how the secular and ecclesiastical power should be balanced:

> One solution was suggested by the canonist Ivo of Chartres in 1097--that it was fine for kings to invest bishops provided that they did not intend to give spiritual power but only secular estate [see From "Epistola and Hugoncm," in Libelli de Lite (Hanover: Monuments Germaniae Historica, 1892), II, pp. 644-645, copyrighted translation by Brian Tierney available]. Pope Paschal II (1099-1118) suggested a more radical solution for the dispute in 1111, but it was not to the liking of the imperial bishops (Medieval Sourcebook).

Pope Paschal II suggested a deeper separation of church and state:

Bishop Paschal, servant of the servants of God. To his beloved son Henry and his successors, forever.

It is both decreed against by the institutions of the divine law, and interdicted by the sacred canons, that priests should busy themselves with secular cases, or should go to the public court except to rescue the condemned, or for the sake of others who suffer injury. Wherefore also the apostle Paul says: "If ye have secular judgments constitute as judges those who are of low degree in the church." Moreover in portions of your kingdom bishops and abbots are so occupied by secular cares that they are compelled assiduously to frequent the court, and to perform military service. Which things, indeed, are scarcely if at all carried on without plunder, sacrilege, arson. For ministers of the altar are made ministers of the king's court: inasmuch as they receive cities, duchies, margravates, monies and other things which belong to the service of the king. Hence also the custom has grown up--intolerably for the church--that elected bishops should by no means receive consecration unless they had first been invested through the hand of the king. From which cause both the wickedness of simoniacal heresy and, at times, so great an ambition has prevailed that the episcopal sees were invaded without any previous election. At times, even, they have been invested while the bishops were alive. Aroused by these and very many other evils which had happened for the most part through investitures, our predecessors the pontiffs Gregory VII and Urban 11 of blessed memory, frequently calling together episcopal councils did condemn those investitures of the lay hand, and did decree that those who should have obtained churches through them should be deposed, and the donors also be deprived of

communion--according to that chapter of the apostolic canons which runs thus: "If any bishop, employing the powers of the world, do through them obtain a church: he shall be deposed and isolated, as well as all who communicate with him." Following in the traces of which (canons), we also in an episcopal council, have confirmed their sentence. And so, most beloved son, king Henry,--now through our office, by the grace of God, emperor of the Romans,--we decree that those royal appurtenances are to be given back to thee and to thy kingdom which manifestly belonged to that kingdom in the time of Charles, Louis, and of thy other predecessors. **We forbid, and under sentence of anathema prohibit, that any bishop or abbot, present or future, invade these same royal appurtenances. In which are included the cities, duchies, margravates, counties, monies, toll, market, advowsons of the kingdom, rights of the judges of the hundred courts, and the courts which manifestly belonged to the king together with what pertained to them, the military posts and camps of the kingdom. Nor shall they, henceforth, unless by favour of the king, concern themselves with those royal appurtenances. But neither shall it be allowed our successors, who shall follow us in the apostolic chair, to disturb thee or thy kingdom in this matter. Furthermore, we decree that the churches, with the offerings and hereditary possessions which manifestly did not belong to the kingdom, shall remain free; as, on the day of thy coronation, in the sight of the whole church, thou didst promise that they should be. For it is fitting that the bishops, freed from secular cares, should take care of their people, and not any longer be absent from their churches.** For, according to the apostle Paul, let them watch, being about to render account, as it were, for the souls of these (their people).

[Emphasis added.]

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www.fordham.edu/halsall/source/paschal2-priv1.html
Internet Medieval Sourcebook
(www.forham.edu/halsall/source)
from MG LL, folio II, pp. 68 ff, translated in Ernest F. Henderson,
Select Historical Documents of the Middle Ages, (London: George Bell and Sons, 1910), pp. 405-407
.
[Internet]
Accessed March 5, 1998.

Paschal's Privilege
April 12, 1111

Pope Paschal II found himself in a dilemma with his earlier proclamation. On April 12, 1111, he reduces the severity of his position, but even this does not please some:

> Paschal II faced such opposition from the bishop to his first proposal, that he effectively gave in and conceded to King Henry V (1106-1125) the right of investing prelates with ring and staff. This arrangement was also repudiated by many bishops and subsequently annulled by the pope (Medieval Sourcebook).

Extract from Paschal's Privilege (April 12, 1111):

That prerogative, therefore, of dignity which our predecessors did grant to thy predecessors the catholic emperors, and did confirm by their charters, we also do concede to thee, beloved, and do confirm by the page of this present privilege: that, namely, **thou may'st confer the investiture of staff and ring, freely, except through simony and with violence to the elected, on the bishops and abbots of thy kingdom**. But after the investiture they shall receive the canonical consecration from the bishop to whom they belong. If any one, moreover, without thy consent, shall have been elected by the clergy and people, he shall be consecrated by no one **unless he be invested by thee**.

[Emphasis added.]

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www.fordham.edu/halsall/source/paschal2-priv2.html
Internet Medieval Sourcebook
(www.fordham.edu/halsall/source)
from MG LL, folio II, pp. 72 ff, translated in Ernest F. Henderson, *Select Historical Documents of the Middle Ages*, (London: George Bell and Sons, 1910), pp. 407-408.
[Internet]
Accessed March 5, 1998.

The Concordant of Worms
1122

The **Concordant of Worms** ended the bloody struggle of the **Investiture Controversy**, the result being a further separation between church and state:

> Paschal II's capitulation to Henry V did not last. The first phase of the papal-imperial struggle of the Middle ages only finally came to an end with the Concordant of Worms in 1122. The King was recognized as having the right to invest bishops with secular authority, but not with sacred authority. The struggle, however, would continue (Medieval Sourcebook).

This struggle did indeed continue, effecting many positive changes. So positive and powerful were the changes that the entire period, beginning with the efforts of Pope Gregory VII, have been termed the **Papal Revolution**:

> Thus the Papal Revolution may be viewed in political terms, as a massive shift in power and authority both within the church and in the relations between the church and the secular polities; also it was accompanied by decisive political changes in the relations between western Europe and neighboring powers. The Papal Revolution may also be viewed in socioeconomic terms as both a response and a stimulus to an enormous expansion of production and of trade and to the emergence of thousands of new cities and towns. From a cultural and intellectual perspective, the Papal Revolution may be viewed as a motive force in the creation of the first European universities, in the emergence of theology and jurisprudence and philosophy as systematic disciplines, in the creation of new literary and artistic styles, and in the development of a new social consciousness. These diverse political, economic, and cultural movements may be analyzed separately; yet they must also be shown to have been linked with one another, for it was the linking of them all that constituted the revolutionary element in the situation (Berman, p. 100).

Privilege of Pope Calixtus II

I, bishop Calixtus, servant of the servants of God, do grant to thee beloved son, Henry-by the grace of God august emperor of the Romans-**that the elections of the bishops and abbots of the German kingdom, who belong to the kingdom, shall take place in thy presence, without simony and without any violence; so that if any discord shall arise**

between the parties concerned, thou, by the counsel or judgment of the metropolitan and the co-provincials, may'st give consent and aid to the party which has the more right. The one elected, moreover, without any exaction may receive the regalia from thee through the lance, and shall do unto thee for these what he rightfully should. Be he who is consecrated in the other parts of the empire (i.e. Burgundy and Italy) shall, within six months, and without any exaction, receive the regalia from thee through the lance, and shall do unto thee for these what he rightfully should. **Excepting all things which are known to belong to the Roman church. Concerning matters, however, in which thou dost make complaint to me, and dost demand aid--according to the duty of my office, will furnish aid to thee**. I give unto thee true peace, and to all who are or have been on thy side in the time of this discord.

Edict of the Emperor Henry V

In the name of the holy and indivisible Trinity, I, Henry, by the grace of God august emperor of the Romans, for the love of God and of the holy Roman church and of our master pope Calixtus, and for the healing of my soul, **do remit to God, and to the holy apostles of God, Peter and Paul, and to the holy catholic church, all investiture through ring and staff; and do grant that in all the churches that are in my kingdom or empire there may be canonical election and free consecration. All the possessions and regalia of St. Peter which, from the beginning of this discord unto this day, whether in the time of my father or also in mine, have been abstracted, and which I hold: I restore to that same holy Roman church. As to those things, moreover, which I do not hold, I will faithfully aid in their restoration.** As to the possessions also of all other churches and princes, and of all other lay and clerical persons which have been lost in that war: according to the counsel of the princes, or according to justice, I will restore the things that I hold; and of those things which I do not hold I will faithfully aid in the restoration. And I grant true peace to our master pope Calixtus, and to the holy Roman church, and to all those who are or have been on its side. And in matters where the holy Roman church shall demand aid I will grant it; and in matters concerning which it shall make complaint to me I will duly grant to it justice.

[Emphasis added.]

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www.fordham.edu/halsall/source/worms1.html
Internet Medieval Sourcebook
(www.fordham.edu/halsall/source)
in MG LL folio II, pp. 75 ff, translated in Ernest F. Henderson,
Select Historical Documents of the Middle Ages, (London: George Bell and Sons, 1910), 408-409

[Internet]
Accessed March 5, 1998.

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REFORMATION ERA

Address to the Christian Nobility of the German Nation 1520

A Religious Reformation with Political Implications

Although **Martin Luther's *95 Theses*** are not implicitly political, the revolution that began as a result of his protest of the shortcomings of the **Roman Catholic Church** led to great political changes:

> Lutheranism appealed to the devout, who resented the worldliness and lack of piety of many clergy. But the movement found its greatest following among German townspeople, who objected to money flowing from their country to Rome in the form of church taxes and payment for church offices. In addition, the Reformation provided the nobility with the unprecedented opportunity to confiscate church lands, to eliminate church taxes, and to gain the support of their subjects by serving as leaders of a popular and dynamic religious movement. The Reformation also gave the nobles a way of resisting the Catholic Holy Roman Emperor, Charles V, who wanted to extend his authority over the German princes (M. Perry & Cooper, p. 223).

In 1520, **Luther** continued his controversial movement by writing three pamphlets: the ***Address to the Christian Nobility of the German Nation***, "which urged the German princes to force reforms on the Roman Church, especially to curtail its political and economic power in Germany (Kagan & Turner, p. 372), the ***Babylonian Captivity of the Church***, "which attacked the traditional seven sacraments, arguing that only two, Baptism and the Eucharist, were proper, and exalted the authority of Scripture, church councils, and secular princes over that of the pope" (Kagan & Turner, p. 372); and the ***Freedom of a Christian***, "which summarized the new teaching of salvation by faith alone" (Kagan & Turner, pp. 372-3). Of particular importance to our discussion of Biblical principles of government is **Luther's *Address to the Christian Nobility of the German Nation***, because it calls for accountability in the **Roman Catholic Church**--a church which, because of its governmental worldview of **Papism**--believed that it controlled the state and was therefore answerable only to God. The **German princes** were eager to challenge this notion of church supremacy, and with **Luther** drawing the wrath of **Charles V**, **Holy Roman Emperor**, opportunities arose for them to assert their independence.

Luther was placed under imperial ban at the **Edict of Worms** on **May 26, 1521** (Kagan & Turner, p. 373). However, **Charles V**, preoccupied with military engagements elsewhere, determined, through his representatives during the **German Diet of Speyer** in **1526**, that each German territory would have to enforce the **Edict of Worms** separately, "so as to be able to answer in good conscience to God and the emperor:"

> That concession in effect, gave the German princes territorial sovereignty in religious matters and the Reformation time to put down deep roots. Later (in 1555) such local princely control over religion would be enshrined in imperial law by the Peace

of Augsburg (Kagan & Turner, p. 374).

The **Peace of Augsburg** helped to settle the growing dispute between **Catholic German princes** and **Lutheran German princes** (M. Perry & Cooper, p. 224). The **Peace of Augsburg** was also important for the cause of religious freedom, because it stipulated that

> each territorial prince [of Germany--be they Catholic or Lutheran] should determine the religion of his subjects. Broadly speaking, northern Germany became largely Protestant, while Bavaria and other southern territories remained in the Roman Catholic church. The Holy Roman emperor, who had been successfully challenged by the Lutheran princes, saw his power diminished" (M. Perry & Cooper, pp. 224-5).

Luther's *Address to the Christian Nobility of the German Nation*, then, is an important key to understanding the political implications of the **Protestant Reformation**, and the Biblical principles (federal theology, separation of powers, accountability) that emerged as a result:

> In his *Address to the Christian Nobility of the German Nation* (1520), Luther protested against the three "walls" of Rome that had prevented reform in the church by making the pope immune to corrective action on the basis of secular, biblical, and conciliar authority (Kagan & Turner, p. 373).

Following are excerpts from *Address to the Christian Nobility of the German Nation* (Kagan & Turner, p.373):

The Romanists have with great dexterity built around themselves three walls, which hitherto have protected them against reform; and thereby is Christianity fearfully fallen.

In the first place, when the temporal power has pressed them hard [to reform], they have . . . maintained that temporal power has no jurisdiction over them, that, on the contrary, the spiritual [power] is above the temporal.

Secondly, when it was supposed to admonish them from the Holy Scriptures they said, "It befits no one but the pope to interpret the Scriptures."

And thirdly, when they were threatened with a council, they invented the idea that no one but the pope can call a council.

Thus have they secretly stolen our three rods so that they may go unpunished, and entrenched themselves safely behind these three walls in order to carry on all the knavery and wickedness that we now see. . . .

Now may God help us, and give us one of those trumpets that overthrew the walls of Jericho, so that we may also blow down these walls of straw and paper and . . . regain possession of our Christian rods for the chastisement of sin and expose the craft and deceit of the Devil.

The Western Heritage, third edition, pg. 373.
Kagan, Donald, and Frank M. Turner.
New York: Macmillan Publishing Company, 1987.

Ulrich Zwingli
Sixty-Seven Articles
1523

The **Protestant Reformation**, which initiated in **Germany** due to the efforts of **Martin Luther**, spread throughout **Western Europe**. **Switzerland** also experienced its own **Protestant Reformation**, and as was true for other parts of **Western Europe**, the Reformation not only influenced Switzerland's religious atmosphere, but her politics and government as well.

Thus, the advent of the Protestant Reformation in Switzerland was brought about by both religious and political factors:

> Among the preconditions of the **Swiss Reformation** were the growth of national sentiment occasioned by opposition to **foreign mercenary service** (providing mercenaries for Europe's warring nations was a major source of Switzerland's livelihood) and a desire for church reform that had persisted since the **councils of Constance** (1414-1417) and **Basel** (1431-1449) [Emphasis added.] (Kagan & Turner, p. 376).

This religious/political atmosphere set the stage for the emergence of **Ulrich Zwingli**, who would later be recognized as the leader of the Swiss Reformation (Kagan & Turner, p. 376). Known for his opposition to mercenary service and to the **sale of indulgences**, and to religious superstition, Zwingli competed for and won the post of **people's priest** in the main church of **Zurich** in 1519 (Kagan & Turner, p. 376). Zwingli used this opportunity to effect a Protestant revolution in Switzerland:

> From his new position as people's priest in Zurich, Zwingli engineered the Swiss Reformation. In March 1522 he was party to the breaking of the Lenten fast--an act of protest analogous to burning one's national flag today. Zwingli's reform guideline was very simple and very effective: whatever lacked literal support in Scripture was to be neither believed nor practiced. As had also happened with Luther, that test soon raised questions about such honored traditional teachings and practices as fasting, transubstantiation, the worship of saints, pilgrimages, purgatory, clerical celibacy, and certain sacraments. A disputation held on January 29, 1523, concluded with the city government's sanction of Zwingli's Scripture test. Thereafter Zurich became, to all intents and purposes, a Protestant city and the center of the Swiss Reformation. A harsh discipline was imposed by the new Protestant regime, making Zurich one of the first examples of a puritanical Protestant city (Kagan & Turner, p. 376).

Zwingli faced opposition, of course. In fact, Switzerland was thrown into a period of civil war as a result of Zwingli's ambitious reforms. Two major battles occurred, both at **Kapel**, in June of 1529 and in October 1531:

> The first ended in a Protestant victory, which forced the Catholic cantons to break their foreign alliances and to recognize the rights of Swiss Protestants. During the

second battle Zwingli was found wounded on the battlefield and was unceremoniously executed, his remains scattered to the four winds so that his followers would have no relics to console and inspire them. The subsequent treaty confirmed the right of each canton to determine its own religion (Kagan & Turner, p. 378).

The impact of Zwingli's leadership lasted well past his death. The Protestant atmosphere that he helped to foster made the nation an important player in the development of Biblical principles of history and government. From 1541 to 1555, **Geneva,** Switzerland, became the basis for **John Calvin's** version of Protestantism, a worldview which, as already mentioned in Section III, carried covenantal principles of government into the New World and the settling of **America**, primarily through its influence upon other countries. In **England**, during the Protestant reign of **Edward VI**, the **duke of Somerset** and Edward VI "corresponded directly with John Calvin" (Kagan & Turner, p. 395) as they sought to implement an English version of the Protestant Reformation. **John Knox** used the ideas of Calvinism in his efforts to reform Scotland (Kirk, p. 247). In **France**, over two-fifths of the aristocracy became **Calvinists** (Kagan & Turner, p. 410). In the **Thirty Years' War**, in which **Charles V** sought to recapture the Protestant territories of Germany (and therefore to return them to Catholicism), Switzerland entered the war and played a key role in preventing him from realizing his goals (Kagan & Turner, p. 440).

Zwingli, therefore, is an important participant in the struggle that swept through Western Europe with the Protestant Reformation.

Below are excerpts from his ***Sixty-Seven Articles***, which summarizes the errors of the Roman Catholic Church:

All who consider teachings equal to or higher than the Gospel err, and they do not know what the Gospel is.

In the faith rests our salvation, and in unbelief our damnation; for all truth is clear in Christ.

In the Gospel one learns that human doctrines and decrees do not aid in salvation.

That Christ, having sacrificed himself once, is to eternity a certain and valid sacrifice for the sins of all faithful, wherefrom it follows that the Mass is not a sacrifice and assurance of the salvation which Christ has given us.

That God desires to give us all things in his name, hence it follows that outside of this life we need no [intercession of the saints or any] mediator except himself.

That no Christian is bound to do things which God has not decreed, therefore one may eat at all time all food, wherefrom one learns that the decree about cheese and butter [i.e., fasting from such foods at certain times of the year] is a Roman swindle.

That no special person can impose the ban upon [i.e., excommunicate] anyone, but the Church, that is, the congregation of those among whom the one to be banned dwells, together with their watchman, i.e., the pastor.

All that the so-called spiritual [i.e., the papal church] claims to have of power and protection belongs to the lay [i.e. secular magistracy], if they wish to be Christians.

Greater offense I know not than that one does not allow priests to have wives, but permits them to hire prostitutes.

Christ has borne all our pains and labor. Hence whoever assigns to works of penance what belongs to Christ errs and slanders God.

The true divine Scripture know naught about purgatory after this life.

The Scriptures know no priests except those who proclaim the word of God.

[Emphasis added.]

The Western Heritage, third edition, pg. 378.
Kagan, Donald, and Frank M. Turner.
New York: Macmillan Publishing Company, 1987.

Theodore Beza
On the Right of Magistrates over Their Subjects
1574

In Section V, we discussed the Biblical principles behind the theory of civil resistance. Much of the formation behind this theory arose out of the Protestant Reformation. The spread of **Lutheranism** in **Germany** brought about the **Peasants' Revolt**, which was an effort by the **German peasantry** to resist "efforts by territorial princes to override their traditional laws and customs and to subject them to new regulations and taxes" (Kagan & Turner, p. 375). Several leaders of this movement, being Lutherans, turned to Luther for support. Luther, however, wanted no part in the affair, encouraging the German princes to "knock down, strangle, and stab" the insurgents (M. Perry & Cooper, p. 224).

The Peasants' Revolt was put down by 1525. But the idea behind the Revolt became one of the themes associated with the **Protestant Revolution**: the theory of civil resistance. Ironically, two of the most influential Reformational leaders--**Luther** and **Calvin**--did not really focus on the theory of civil resistance. Why was this so?

Luther "was a political conservative who hesitated to challenge the secular authority. To him, the good Christian was an obedient subject" (M. Perry & Cooper, p. 223). And yet, thirteen years after the end of the **Peasants' Revolt**, Luther found himself supporting and participating in the formation of the **Schmalkaldic League** (1538), a defensive league of Protestant territories arrayed against **Charles V**, who had mandated that all Lutherans were to revert back to **Catholicism** (Kagan & Turner, p. 380). This League helped to preserve the freedom of **Lutherans** in the **Holy Roman Empire**, leading to the **Peace of Augsburg** (1555), which allowed rulers to determine the religion of their respective territories (Kagan & Turner, p. 382).

Calvin, who played an active role in the governance of **Geneva**, frowned upon rebellion aimed at the civil authorities as well. Calvin's government "enforced the strictest moral discipline, meting out punishments for a broad range of moral and religious transgressions--from missing church services (a fine of three sous) to fornication (six days on bread and water and a fine of sixty sous)--and as time passed, increasingly for criticism of Calvin and the consistory" (Kagan & Turner, p. 386). Calvin even played an "active role in the capture and execution of the Spanish physician and amateur theologian Michael Servetus in 1553" (Kagan & Turner, p. 386). But, on the other hand, he was not totally against the ideal of civil resistance, provided that it was done properly:

> Calvin, who never faced the specter of total political defeat after his return to Geneva in 1541, had always condemned willful disobedience and rebellion against lawfully constituted governments as unchristian. But he also taught that lower magistrates, as part of the lawfully constituted government, had the right and duty to oppose tyrannical higher authority (Kagan & Turner, 414).

But it was other **Protestant** leaders who more enthusiastically took up the banner of civil resistance, perhaps because the situations which they faced in their own countries were so desperate. One of the first was **John Knox**:

> The exiled reformer John Knox, who had seen his cause crushed by Mary of Guise, the Regent of Scotland, and Mary I of England, had pointed the way for later Calvinists in his famous *Blast of the Trumpet Against the Terrible Regiment of Women* (1558). Knox declared that the removal of a heathen tyrant was not only permissible, but a Christian duty. He had the Catholic queen of England in mind (Kagan & Turner, p. 414).

Another important development in the theory of civic resistance came after the **Saint Bartholomew's Day massacre** in 1572, in which thousands of **French Huguenots** were killed (M. Perry & Cooper, p. 226):

> Calvinists everywhere came to appreciate the need for an active defense of their religious rights. Classical Huguenot theories of resistance appeared in three major works of the 1570s. The first was the *Franco-Gallia* of Francois Hotman (1573), a Humanist argument that the representative Estates General of France historically held higher authority than the French king. The second was Theodore Beza's *On the Right of Magistrates over Their Subjects* (1574), which, going beyond Calvin's views, justified the correction and even the overthrow of tyrannical rulers by lower authorities. Finally, there was Philippe du Pleiss Mornay's *Defense of Liberty Against Tyrants* (1579), an admonition to princes, nobles, and magistrates beneath the king, as guardians of the rights of the body politic, to take up arms against tyranny in other lands (Kagan & Turner, pp. 414-5).

This theory of civil resistance gave Protestant leaders in various countries--particularly **England** and **America**--the impetus to overthrow unjust leaders.

The following is an excerpt from **Theodore Beza's *On the Right of Magistrates over Their Subjects***:

It is apparent that there is a mutual obligation between the king and the officers of a kingdom; that the government of the kingdom is not in the hands of the king in its entirety, but only the sovereign degree; that each of the officers has a share in accord with his degree; and that there are definite conditions on either side. If these conditions are not observed by the inferior officers, it is the part of the sovereign to dismiss and punish them. . . . If the king, hereditary or elective, clearly goes back on the conditions without which he would not have been recognized and acknowledged, can there be any doubt that the lesser magistrates of the kingdom, of the cities, and of the provinces, the administration of which they have received from the sovereignty itself, are free of their oath, at least to the extent that they are entitled to resist flagrant oppression of the realm which they swore to defend and protect according to their office and their particular jurisdiction?

We must now speak of the third class of subjects, which though admittedly subject

to the sovereign in a certain respect, is, in another respect, and in cases of necessity the protector of the rights of the sovereignty itself, and is established to hold the sovereign to his duty, and even, if need be, to constrain and punish him. . . . The people is prior to all the magistrates, and does not exist for them, but they for it. . . . Whenever law and equity prevailed, nations neither created nor accepted kings except upon definite conditions. From this it follows that when kings flagrantly violate these terms, those who have the power to give them their authority have no less power to deprive them of it.

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The Western Heritage, third edition, p. 414.
Kagan, Donald, and Frank M. Turner.
New York: Macmillan Publishing Company, 1987.

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Revocation of the Edict of Nantes
October 22, 1685

From 1562 until 1598, **France** was rocked with religious wars between **Catholics** and **Huguenots** (French Protestants) (Kagan & Turner, p. 415). From this period arose the infamous **Saint Bartholomew's Day Massacre**, among other atrocities. In April of 1589, **Henry III**, king of France, struck an alliance with **Henry of Navarre**, the leader of the **Protestant** forces in France (Kagan & Turner, p. 415). Shortly thereafter, Henry III was assassinated by a Jacobin friar, which made Henry of Navarre, heir to the French throne, king (Kagan & Turner, p. 415).

Faced with determined **Spanish** military intervention, and weary of religious strife, France's new leader, Henry of Navarre, now called **Henry IV**, attempted to strike a compromise with the warring factions:

> On July 25, 1593, he publicly abjured the Protestant faith and embraced the traditional and majority religion of his country. "Paris is worth a mass," he is reported to have said. It was, in fact, a decision he had made only after a long period of personal agonizing. The Huguenots were understandably horrified by this turnabout and Pope Clement VIII remained skeptical of Henry's sincerity. But the majority of the French church and people, having known internal strife too long, rallied to the king's side. By 1596 the Catholic League was dispersed, its ties with Spain were broken, and the wars of religion in France, to all intents and purposes, had ground to a close (Kagan & Turner, p. 415).

Although France was to remain a Catholic country, the **Edict of Nantes** proclaimed by Henry IV granted the Huguenots "freedom of public worship, the right of assembly, admission to public offices and universities, and permission to maintain fortified towns" (Kagan & Turner, p. 416). This freedom, however, was short-lived.

In 1685, **Louis XIV** revoked the Edict of Nantes, in the name of "one king, one church, one law" (Kagan & Turner, p. 417). France was not yet ready for the religious freedom desired by the French Huguenots, but America was, which became a new home for many Huguenots.

Louis, by the grace of God king of France and Navarre, to all present and to come, greeting:

King Henry the Great, our grandfather of glorious memory, being desirous that the peace which he had procured for his subjects after the grievous losses they had sustained in the course of domestic and foreign wars, should not be troubled on account of the R.P.R., as

had happened in the reigns of the kings, his predecessors, by his edict, granted at Nantes in the month of April, 1598, regulated the procedure to be adopted with regard to those of the said religion, and the places in which they might meet for public worship, established extraordinary judges to administer justice to them, and, in fine, provided in particular articles for whatever could be thought necessary for maintaining the tranquillity of his kingdom and for diminishing mutual aversion between the members of the two religions, so as to put himself in a better position to labor, as he had resolved to do, for the reunion to the Church of those who had so lightly withdrawn from it.

As the intention of the king, our grandfather, was frustrated by his sudden death, and as the execution of the said edict was interrupted during the minority of the late king, our most honored lord and father of glorious memory, by new encroachments on the part of the adherents of the said R.P.R., which gave occasion for their being deprived of divers advantages accorded to them by the said edict; nevertheless the king, our late lord and father, in the exercise of his usual clemency, granted them yet another edict at Nimes, in July, 1629, by means of which, tranquillity being established anew, the said late king, animated by the same spirit and the same zeal for religion as the king, our said grandfather, had resolved to take advantage of this repose to attempt to put his said pious design into execution. But foreign wars having supervened soon after, so that the kingdom was seldom tranquil from 1635 to the truce concluded in 1684 with the powers of Europe, nothing more could be done for the advantage of religion beyond diminishing the number of places for the public exercise of the R.P.R., interdicting such places as were found established to the prejudice of the dispositions made by the edicts, and suppressing of the bi-partisan courts, these having been appointed provisionally only.

God having at last permitted that our people should enjoy perfect peace, we, no longer absorbed in protecting them from our enemies, are able to profit by this truce (which we have ourselves facilitated), and devote our whole attention to the means of accomplishing the designs of our said grandfather and father, which we have consistently kept before us since our succession to the crown.

And now we perceive, with thankful acknowledgment of God's aid, that our endeavors have attained their proposed end, inasmuch as the better and the greater part of our subjects of the said R.P.R. have embraced the **Catholic** faith. And since by this fact the execution of the **Edict of Nantes** and of all that has ever been ordained in favor of the said R.P.R. has been rendered nugatory, we have determined that we can do nothing better, in order wholly to obliterate the memory of the troubles, the confusion, and the evils which the progress of this false religion has caused in this kingdom, and which furnished occasion for the said edict and for so many previous and subsequent edicts and declarations, than entirely to revoke the said **Edict of Nantes, with the special articles granted as a sequel to it, as well as all that has since been done in favor of the said religion.**

I.

Be it known that for these causes and others us hereunto moving, and of our certain knowledge, full power, and royal authority, we have, by this present perpetual and irrevocable edict, suppressed and revoked, and do suppress and revoke, the edict of our said grandfather, given at Nantes in April, 1598, in its whole extent, together with the particular articles agreed upon in the month of May following, and the letters patent issued upon the same date; and also the edict given at Nimes in July, 1629; we declare them null and void, together with all concessions, of whatever nature they may be, made by them as well as by other edicts, declarations, and orders, in favor of the said persons of the R.P.R., the which shall remain in like manner as if they had never been granted; and in consequence we desire, and it is our pleasure, that all the temples of those of the said R.P.R. situate in our kingdom, countries, territories, and the lordships under our crown, shall be demolished without delay.

II.

We forbid our subjects of the R.P.R. to meet any more for the exercise of the said religion in any place or private house, under any pretext whatever, . . .

III.

We likewise forbid all noblemen, of what condition soever, to hold such religious exercises in their houses or fiefs, under penalty to be inflicted upon all our said subjects who shall engage in the said exercises, of imprisonment and confiscation.

IV.

We enjoin all ministers of the said R.P.R., who do not choose to become converts and to embrace the Catholic, apostolic, and Roman religion, to leave our kingdom and the territories subject to us within a fortnight of the publication of our present edict, without leave to reside therein beyond that period, or, during the said fortnight, to engage in any preaching, exhortation, or any other function, on pain of being sent to the galleys . . .

VII.

We forbid private schools for the instruction of children of the said R.P.R., and in general all things what ever which can be regarded as a concession of any kind in favor of the said religion.

VIII.

As for children who may be born of persons of the said R.P.R., we desire that from

henceforth they be baptized by the parish priests. We enjoin parents to send them to the churches for that purpose, under penalty of five hundred livres fine, to be increased as circumstances may demand; and thereafter the children shall be brought up in the Catholic, apostolic, and Roman religion, which we expressly enjoin the local magistrates to see done.

IX.

And in the exercise of our clemency towards our subjects of the said R.P.R. who have emigrated from our kingdom, lands, and territories subject to us, previous to the publication of our present edict, it is our will and pleasure that in case of their returning within the period of four months from the day of the said publication, they may, and it shall be lawful for them to, again take possession of their property, and to enjoy the same as if they had all along remained there: on the contrary, the property abandoned by those who, during the specified period of four months, shall not have returned into our kingdom, lands, and territories subject to us, shall remain and be confiscated in consequence of our declaration of the 20th of August last.

X.

We repeat our most express prohibition to all our subjects of the said R.P.R., together with their wives and children, against leaving our kingdom, lands, and territories subject to us, or transporting their goods and effects therefrom under penalty, as respects the men, of being sent to the galleys, and as respects the women, of imprisonment and confiscation.

XI.

It is our will and intention that the declarations rendered against the relapsed shall be executed according to their form and tenor.

XII.

As for the rest, liberty is granted to the said persons of the R.P.R., pending the time when it shall please God to enlighten them as well as others, to remain in the cities and places of our kingdom, lands, and territories subject to us, and there to continue their commerce, and to enjoy their possessions, without being subjected to molestation or hindrance on account of the said R.P.R., on condition of not engaging in the exercise of the said religion, or of meeting under pretext of prayers or religious services, of whatever nature these may be, under the penalties above mentioned of imprisonment and confiscation. This do we give in charge to our trusty and well-beloved counselors, etc.

Given at Fontainebleau in the month of October, in the year of grace 1685, and of our reign the forty-third.

[Emphasis added.]

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history.hanover.edu/texts/nonantes.htm
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Hanover College

(www.hanover.edu)
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Treaty of Westphalia
1648

The **Treaty of Westphalia** (1648) was another step in the process of securing religious freedom. The Treaty of Westphalia brought to an end the **Thirty Years' War** (1618-1648), which was a struggle between Catholics and Protestants for control of Germany: "Germany had always been Europe's highway; during the Thirty Years' War it became its stomping ground" (Kagan & Turner, p. 434).

The Treaty of Westphalia, in addition to ending the Thirty Years' War, also reaffirmed the principles of the **Peace of Augsburg** (1555), which was overturned in 1629, when **King Ferdinand of Bohemia**--the primary **Catholic** leader in the struggle--issued the **Edict of Restitution** after gaining a decisive edge in the conflict against the **Protestants**:

> This proclamation [Edict of Restitution] dramatically reasserted the Catholic safeguards of the Peace of Augsburg (1555). It reaffirmed the illegality of **Calvinism**--a completely unrealistic move in 1629--and it ordered the return of all church lands acquired by the Lutherans since 1522, an equally unrealistic mandate [Emphasis added.] (Kagan & Turner, p. 439-40).

For a time, it seemed as if Ferdinand's dream for a reunited, **Catholic Holy Roman Empire** would be realized:

> The Austrian branch of the Hapsburgs family joined forces with their Spanish cousins [the Catholic side] and neither the Swedes and Germans nor the Dutch [the Protestant side] could stop them. Only French participation in the Thirty Years' War on the Protestant side tipped the balance decisively against the Hapsburgs (M. Perry & Cooper, pp. 242-3).

The end of the Thirty Years' War was marked by the signing of the Treaty of Westphalia, which restored order and peace, allowed for some semblance of religious freedom, and revoked Ferdinand's Edict of Restitution (Kagan & Turner, p. 440). It is important to note, however, that the term *religious freedom* as it is used to describe the peace at the end of the Thirty Years' War, does not have the same meaning that we associate with the term today in America. For, under the stipulations of the Treaty of Westphalia, if a person were Catholic, but lived in a Lutheran or Calvinist territory in Germany, he could not worship in the Roman Catholic Church, and vice versa. Today, when we think of religious freedom, we think of being able to serve God in whatever church we desire, wherever we desire. Such was not the reality in Europe at that time. Nevertheless, the Treaty of Westphalia took a step in the right direction by protecting the Protestant denominations of Calvinism--even in the Peace of Augsburg, Calvinism was illegal (Kagan & Turner, p. 440)--and **Lutheranism**.

Following are excerpts from the **Treaty of Westphalia**:

Munster, October 24, 1648

Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies.

In the name of the most holy and individual Trinity: Be it known to all, and every one whom it may concern, or to whom in any manner it may belong, That for many Years past, Discords and Civil Divisions being stir'd up in the Roman Empire, which increas'd to such a degree, that not only all Germany, but also the neighbouring Kingdoms, and France particularly, have been involv'd in the Disorders of a long and cruel War: And in the first place, between the most Serene and most Puissant Prince and Lord, Ferdinand the Second, of famous Memory, elected Roman Emperor, always August, King of Germany, Hungary, Bohemia, Dalmatia, Croatia, Slavonia, Arch-Duke of Austria, Duke of Burgundy, Brabant, Styria, Carinthia, Carniola, Marquiss of Moravia, Duke of Luxemburgh, the Higher and Lower Silesia, of Wirtemburg and Teck, Prince of Suabia, Count of Hapsburg, Tirol, Kyburg and Goritia, Marquiss of the Sacred Roman Empire, Lord of Burgovia, of the Higher and Lower Lusace, of the Marquisate of Slavonia, of Port Naon and Salines, with his Allies and Adherents on one side; and the most Serene, and the most Puissant Prince, Lewis the Thirteenth, most Christian King of France and Navarre, with his Allies and Adherents on the other side. And after their Decease, between the most Serene and Puissant Prince and Lord, Ferdinand the Third, elected Roman Emperor, always August, King of Germany, Hungary, Bohemia, Dalmatia, Croatia, Slavonia, Arch-Duke of Austria, Duke of Burgundy, Brabant, Styria, Carinthia, Carniola, Marquiss of Moravia, Duke of Luxemburg, of the Higher and Lower Silesia, of Wirtemburg and Teck, Prince of Suabia, Count of Hapsburg, Tirol, Kyburg and Goritia, Marquiss of the Sacred Roman Empire, Burgovia, the Higher and Lower Lusace, Lord of the Marquisate of Slavonia, of Port Naon and Salines, with his Allies and Adherents on the one side; and the most Serene and most Puissant Prince and Lord, Lewis the Fourteenth, most Christian King of France and Navarre, with his Allies and Adherents on the other side: from whence ensu'd great Effusion of Christian Blood, and the Desolation of several Provinces. It has at last happen'd, by the effect of Divine Goodness, seconded by the Endeavours of the most Serene Republick of Venice, who in this sad time, when all Christendom is imbroil'd, has not ceas'd to contribute its Counsels for the publick Welfare and Tranquillity; so that on the side, and the other, they have form'd Thoughts of an universal Peace. And for this purpose, by a mutual Agreement and Covenant of both Partys, in the year of our Lord 1641. the 25th of December, N.S. or the 15th O.S. it was resolv'd at Hamburgh, to hold an Assembly of Plenipotentiary Ambassadors, who should render themselves at Munster and Osnabrug in Westphalia the 11th of July, N.S. or the 1st of the said month O.S. in the year 1643. The Plenipotentiary Ambassadors on the one side, and the other, duly establish'd, appearing at the prefixt time, and on the behalf of his Imperial Majesty, the most illustrious and most excellent Lord, Maximilian Count of Trautmansdorf and Weinsberg, Baron of Gleichenberg, Neustadt, Negan, Burgau, and Torzenbach, Lord of Teinitz, Knight of the Golden Fleece, Privy Counsellor and Chamberlain to his Imperial Sacred Majesty, and Steward of his Houshold; the Lord John Lewis, Count of Nassau, Catzenellebogen, Vianden, and Dietz, Lord of Bilstein, Privy Counsellor to the Emperor, and Knight of the Golden Fleece; Monsieur Isaac Volmamarus, Doctor of Law, Counsellor, and President in the Chamber of the most Serene Lord Arch-Duke Ferdinand Charles. And on the behalf of the most Christian King, the most eminent Prince and Lord, Henry of Orleans, Duke of Longueville, and Estouteville, Prince and Sovereign Count of Neuschaftel,

Count of Dunois and Tancerville, Hereditary Constable of Normandy, Governor and Lieutenant-General of the same Province, Captain of the Cent Hommes d'Arms, and Knight of the King's Orders, &c. as also the most illustrious and most excellent Lords, Claude de Mesmes, Count d'Avaux, Commander of the said King's Orders, one of the Superintendents of the Finances, and Minister of the Kingdom of France &c. and Abel Servien, Count la Roche of Aubiers, also one of the Ministers of the Kingdom of France. And by the Mediation and Interposition of the most illustrious and most excellent Ambassador and Senator of Venice, Aloysius Contarini Knight, who for the space of five Years, or thereabouts, with great Diligence, and a Spirit intirely impartial, has been inclin'd to be a Mediator in these Affairs. After having implor'd the Divine Assistance, and receiv'd a reciprocal Communication of Letters, Commissions, and full Powers, the Copys of which are inserted at the end of this Treaty, in the presence and with the consent of the Electors of the Sacred Roman Empire, the other Princes and States, to the Glory of God, and the Benefit of the Christian World, the following Articles have been agreed on and consented to, and the same run thus.

I.

[A call for peace.]

That there shall be a Christian and Universal Peace, and a perpetual, true, and sincere Amity, between his Sacred Imperial Majesty, and his most Christian Majesty; as also, between all and each of the Allies, and Adherents of his said Imperial Majesty, the House of Austria, and its Heirs, and Successors; but chiefly between the Electors, Princes, and States of the Empire on the one side; and all and each of the Allies of his said Christian Majesty, and all their Heirs and Successors, chiefly between the most Serene Queen and Kingdom of Swedeland, the Electors respectively, the Princes and States of the Empire, on the other part. That this Peace and Amity be observ'd and cultivated with such a Sincerity and Zeal, that each Party shall endeavour to procure the Benefit, Honour and Advantage of the other; that thus on all sides they may see this Peace and Friendship in the Roman Empire, and the Kingdom of France flourish, by entertaining a good and faithful Neighbourhood.

II.

[Pardon of all atrocities commited by both sides.]

That there shall be on the one side and the other a perpetual Oblivion, Amnesty, or Pardon of all that has been committed since the beginning of these Troubles, in what place, or what manner soever the Hostilitys have been practis'd, in such a manner, that no body, under any pretext whatsoever, shall practice any Acts of Hostility, entertain any Enmity, or cause any Trouble to each other; neither as to Persons, Effects and Securitys, neither of themselves or by others, neither privately nor openly, neither directly nor indirectly, neither under the colour of Right, nor by the way of Deed, either within or without the extent of the Empire, notwithstanding all Covenants made before to the contrary: That they shall not act, or permit to be acted, any wrong or injury to any whatsoever; but that all that has pass'd on the one side, and the other, as well before as during the War, in Words, Writings, and Outrageous Actions, in Violences, Hostilitys, Damages and Expences, without any respect to Persons or Things, shall be entirely abolish'd in such a manner that all that might be demanded of, or pretended to, by each other on that behalf, shall be bury'd in eternal

Oblivion.

III.

[No making of alliances with others against one another.]

And that a reciprocal Amity between the Emperor, and the Most Christian King, the Electors, Princes and States of the Empire, may be maintain'd so much the more firm and sincere (to say nothing at present of the Article of Security, which will be mention'd hereafter) the one shall never assist the present or future Enemys of the other under any Title or Pretence whatsoever, either with Arms, Money, Soldiers, or any sort of Ammunition; nor no one, who is a Member of this Pacification, shall suffer any Enemys Troops to retire thro' or sojourn in his Country.

VI.

[Restablishment of privileges and honor that was disregarded due to the war.]

According to this foundation of reciprocal Amity, and a general Amnesty, all and every one of the Electors of the sacred Roman Empire, the Princes and States (therein comprehending the Nobility, which depend immediately on the Empire) their Vassals, Subjects, Citizens, Inhabitants (to whom on the account of the Bohemian or German Troubles or Alliances, contracted here and there, might have been done by the one Party or the other, any Prejudice or Damage in any manner, or under what pretence soever, as well in their Lordships, their fiefs, Underfiefs, Allodations, as in their Dignitys, Immunitys, Rights and Privileges) shall be fully re-establish'd on the one side and the other, in the Ecclesiastick or Laick State, which they enjoy'd, or could lawfully enjoy, notwithstanding any Alterations, which have been made in the mean time to the contrary.

XIV.

[Creation of an eighth electorate.]

As for what regards the House of Palatine, the Emperor and the Empire, for the benefit of the publick Tranquillity, consent, that by virtue of this present Agreement, there be establish'd an eighth Electorate; which the Lord Charles Lewis, Count Palatine of the Rhine, shall enjoy for the future, and his Heirs, and the Descendants of the Rudolphine Line, pursuant to the Order of Succession, set forth in the Golden Bull; and that by this Investiture, neither the Lord Charles Lewis, nor his Successors shall have any Right to that which has been given with the Electoral Dignity to the Elector of Bavaria, and all the Branch of William.

XV.

[Reclamation of Lower Palatinate by the Palatine Electors and Princes.]

Secondly, that all the Lower Palatinate, with all and every the Ecclesiastical and Secular Lands, Rights and Appurtenances, which the Electors and Princes Palatine enjoy'd before the Troubles of Bohemia, shall be fully restor'd to him; as also all the Documents, Registers and Papers belonging thereto; annulling all that hath been done to the contrary. And the

Emperor engages, that neither the Catholick King, nor any other who possess any thing thereof, shall any ways oppose this Restitution.

XXII.

[Amnesty for the Palatine House.]

Further, that all the Palatinate House, with all and each of them, who are, or have in any manner adher'd to it; and above all, the Ministers who have serv'd in this Assembly, or have formerly serv'd this House; as also all those who are banish'd out of the Palatinate, shall enjoy the general Amnesty here above promis'd, with the same Rights as those who are comprehended therein, or of whom a more particular and ampler mention has been made in the Article of Grievance.

XXVIII.

[Acknowledgment of and respect for those supporting the Augsburg Confession, which was a "moderate statement of Protestant beliefs" (Kagan & Turner, p. 380).]

That those of the **Confession of Augsburg**, and particularly the Inhabitants of Oppenheim, shall be put in possession again of their Churches, and Ecclesiastical Estates, as they were in the Year 1624. As also that all others of the said **Confession of Augsburg**, who shall demand it, shall have the free Exercise of their Religion, as well in publick Churches at the appointed Hours, as in private in their own Houses, or in others chosen for this purpose by their Ministers, or by those of their Neighbours, preaching the Word of God.

XXXVII.

[Annullment and abolishment of all agreements under threat of harm.]

That the Contracts, Exchanges, Transactions, Obligations, Treatys, made by Constraint or Threats, and extorted illegally from States or Subjects (as in particular, those of Spiers complain, and those of Weisenburg on the Rhine, those of Landau, Reitlingen, Hailbron, and others) shall be so annull'd and abolish'd, that no more Enquiry shall be made after them.

XLI.

[Ensuring due process of law for cases that were tried during the struggle.]

That Sentences pronounc'd during the War about Matters purely Secular, if the Defect in the Proceedings be not fully manifest, or cannot be immediately demonstrated, shall not be esteem'd wholly void; but that the Effect shall be suspended until the Acts of Justice (if one of the Partys demand the space of six months after the Publication of the Peace, for the reviewing of his Process) be review'd and weigh'd in a proper Court, and according to the ordinary or extraordinary Forms us'd in the Empire: to the end that the former Judgments may be confirm'd, amended, or quite eras'd, in case of Nullity.

XLIII.

[Restoration of position and property for men in service of the army or church.]

Finally, That all and each of the Officers, as well Military Men as Counsellors and Gownmen, and Ecclesiasticks of what degree they may be, who have serv'd the one or other Party among the Allies, or among their Adherents, let it be in the Gown, or with the Sword, from the highest to the lowest, without any distinction or exception, with their Wives, Children, Heirs, Successors, Servants, as well concerning their Lives as Estates, **shall be restor'd by all Partys in the State of Life, Honour, Renown, Liberty of Conscience, Rights and Privileges, which they enjoy'd before the abovesaid Disorders**; that no prejudice shall be done to their Effects and Persons, that no Action or accusation shall be enter'd against them; and that further, no Punishment be inflicted on them, or they to bear any damage under what pretence soever: And all this shall have its full effect in respect to those who are not Subjects or Vassals of his Imperial Majesty, or of the House of Austria.

XLIV.

[Amnesty granted--and conformity expected--for subjects and heredity vassals of the Emperor and of the House of Austria.]

But for those who are Subjects and Hereditary Vassals of the Emperor, and of the House of Austria, they shall really have the benefit of the Amnesty, as for their Persons, Life, Reputation, Honours: and they may return with Safety to their former Country; but they shall be oblig'd to conform, and submit themselves to the Laws of the Realms, or particular Provinces they shall belong to.

XLV.

[Reclamation of property lost during the war.]

As to their Estates that have been lost by Confiscation or otherways, before they took the part of the Crown of France, or of Swedeland, notwithstanding the Plenipotentiarys of Swedeland have made long instances, they may be also restor'd. Nevertheless his Imperial Majesty being to receive Law from none, and the Imperialists sticking close thereto, it has not been thought convenient by the States of the Empire, that for such a Subject the War should be continu'd: And that thus those who have lost their Effects as aforesaid, cannot recover them to the prejudice of their last Masters and Possessors. But the Estates, which have been taken away by reason of Arms taken for France or Swedeland, against the Emperor and the House of Austria, they shall be restor'd in the State they are found, and that without any Compensation for Profit or Damage.

XLVI.

[Justice ensured for Catholics and Protestants in the realms of the Emperor.]

As for the rest, Law and Justice shall be administer'd in Bohemia, and in all the other Hereditary Provinces of the Emperor, without any respect; as to the **Catholicks**, so also to the Subjects, Creditors, Heirs, or private Persons, who shall be of the **Confession of Augsburg**, if they have any Pretensions, and enter or prosecute any Actions to obtain

Justice.

XLIX.

[Liberty in the exercise of religion.]

And since for the greater Tranquillity of the Empire, in its general Assemblys of Peace, a certain Agreement has been made between the Emperor, Princes and States of the Empire, which has been inserted in the Instrument and Treaty of Peace, concluded with the Plenipotentiarys of the Queen and Crown of Swedeland, touching the Differences about Ecclesiastical Lands, and the **Liberty of the Exercise of Religion**; it has been found expedient to confirm,and ratify it by this present Treaty, in the same manner as the abovesaid Agreement has been made with the said Crown of Swedeland; also with those call'd the **Reformed**, in the same manner, as if the words of the abovesaid Instrument were reported here verbatim.

LXIV.

[Territorial princes regain autonomy.]

And to prevent for the future any Differences arising in the Politick State, all and every one of the Electors, Princes and States of the Roman Empire, are so establish'd and confirm'd in their antient Rights, Prerogatives, Libertys, Privileges, free exercise of Territorial Right, as well Ecclesiastick, as Politick Lordships, Regales, by virtue of this present Transaction: that they never can or ought to be molested therein by any whomsoever upon any manner of pretence.

LXV.

[Autonomy of the territories defined.]

They shall enjoy without contradiction, the Right of Suffrage in all Deliberations touching the Affairs of the Empire; but above all, when the Business in hand shall be the making or interpreting of Laws, the declaring of Wars, imposing of Taxes, levying or quartering of Soldiers, erecting new Fortifications in the Territorys of the States, or reinforcing the old Garisons; as also when a Peace of Alliance is to be concluded, and treated about, or the like, none of these, or the like things shall be acted for the future, without the Suffrage and Consent of the Free Assembly of all the States of the Empire: Above all, it shall be free perpetually to each of the States of the Empire, to make Alliances with Strangers for their Preservation and Safety; provided, nevertheless, such Alliances be not against the Emperor, and the Empire, nor against the Publick Peace, and this Treaty, and without prejudice to the Oath by which every one is bound to the Emperor and the Empire.

LXXVII.

[Upholding of the Catholic faith in the Empire.]

The most Christian King shall, nevertheless, be oblig'd to preserve in all and every one of these Countrys the Catholick Religion, as maintain'd under the Princes of Austria, and to abolish all Innovations crept in during the War.

CIV.

[Enforcement of the Treaty.]

As soon as the Treaty of Peace shall be sign'd and seal'd by the Plenipotentiarys and Ambassadors, all Hostilitys shall cease, and all Partys shall study immediately to put in execution what has been agreed to; and that the same may be the better and quicker accomplish'd, the Peace shall be solemnly publish'd the day after the signing thereof in the usual form at the Cross of the Citys of Munster and of Osnabrug. That when it shall be known that the signing has been made in these two Places, divers Couriers shall presently be sent to the Generals of the Armys, to acquaint them that the Peace is concluded, and take care that the Generals chuse a Day, on which shall be made on all sides a Cessation of Arms and Hostilitys for the publishing of the Peace in the Army; and that command be given to all and each of the chief Officers Military and Civil, and to the Governors of Fortresses, to abstain for the future from all Acts of Hostility: and if it happen that any thing be attempted, or actually innovated after the said Publication, the same shall be forthwith repair'd and restor'd to its former State.

CVII.

[Process of restitution of property and rights.]

If any of those who are to have something restor'd to them, suppose that the Emperor's Commissarys are necessary to be present at the Execution of some Restitution (which is left to their Choice) they shall have them. In which case, that the effect of the things agreed on may be the less hinder'd, it shall be permitted as well to those who restore, as to those to

whom Restitution is to be made, to nominate two or three Commissarys immediately after the signing of the Peace, of whom his Imperial Majesty shall chuse two, **one of each Religion**, and one of each Party, whom he shall injoin to accomplish without delay all that which ought to be done by virtue of this present Treaty. If the Restorers have neglected to nominate Commissioners, his Imperial Majesty shall chuse one or two as he shall think fit (observing, nevertheless, in all cases the **difference of Religion**, that an equal number be put on each side) from among those whom the Party, to which somewhat is to be restor'd, shall have nominated, to whom he shall commit the Commission of executing it, notwithstanding all Exceptions made to the contrary; and for those who pretend to Restitutions, they are to intimate to the Restorers the Tenour of these Articles immediately after the Conclusion of the Peace.

CVIII.

[The speedy restoration of property and rights by all.]

Finally, That all and every one either States, Commonaltys, or private Men, either Ecclesiastical or Secular, who by virtue of this Transaction and its general Articles, or by the express and special Disposition of any of them, are oblig'd to restore, transfer, give, do, or execute any thing, shall be bound forthwith after the Publication of the Emperor's Edicts, and after Notification given, to restore, transfer, give, do, or execute the same, without any Delay or Exception, or evading Clause either general or particular, contain'd in the precedent Amnesty, and without any Exception and Fraud as to what they are oblig'd unto.

CX.

[Release of prisoners.]

Moreover, all Prisoners on the one side and the other, without any distinction of the Gown or the Sword, shall be releas'd after the manner it has been covenanted, or shall be agreed between the Generals of the Armys, with his Imperial Majesty's Approbation.

CXXI.

[Supremacy of this treaty over competing laws and decrees.]

That it never shall be alledg'd, allow'd, or admitted, that any Canonical or Civil Law, any general or particular Decrees of Councils, any Privileges, any Indulgences, any Edicts, any Commissions, Inhibitions, Mandates, Decrees, Rescripts, Suspensions of Law, Judgments pronounc'd at any time, Adjudications, Capitulations of the Emperor, and other Rules and Exceptions of Religious Orders, past or future Protestations, Contradictions, Appeals, Investitures, Transactions, Oaths, Renunciations, Contracts, and **much less the Edict of 1629**. or the Transaction of Prague, with its Appendixes, or the Concordates with the Popes, or the Interims of the Year 1548. or any other politick Statutes, or Ecclesiastical Decrees, Dispensations, Absolutions, or any other Exceptions, under what pretence or colour they can be invented; **shall take place against this Convention, or any of its Clauses and Articles** neither shall any inhibitory or other Processes or Commissions be ever allow'd to the Plaintiff or Defendant.

CXXII.

[Penalty for violating the treaty.]

That he who by his Assistance or Counsel shall contravene this Transaction or Publick Peace, or shall oppose its Execution and the abovesaid Restitution, or who shall have endeavour'd, after the Restitution has been lawfully made, and without exceeding the manner agreed on before, without a lawful Cognizance of the Cause, and without the ordinary Course of Justice, to molest those that have been restor'd, whether Ecclesiasticks or Laymen; he shall incur the Punishment of being an Infringer of the publick Peace, and Sentence given against him according to the Constitutions of the Empire, so that the Restitution and Reparation may have its full effect.

CXXVIII.

[Concluding remarks: those party to the treaty.]

In Testimony of all and each of these things, and for their greater Validity, the Ambassadors of their Imperial and most Christian Majestys, and the Deputys, in the name of all the Electors, Princes, and States of the Empire, sent particularly for this end (by virtue of what has been concluded the 13th of October, in the Year hereafter mention'd, and has been deliver'd to the Ambassador of France the very day of signing under the Seal of the Chancellor of Mentz) viz. For the Elector of Mayence, Monsieur Nicolas George de Reigersberg, Knight and Chancellor; for the Elector of Bavaria, Monsieur John Adolph Krebs, Privy Counsellor; for the Elector of Brandenburg, Monsieur John Count of Sain and Witgenstein, Lord of Homburg and Vallendar, Privy Counsellor.

In the Name of the House of Austria, M. George Verie, Count of Wolkenstein, Counsellor of the Emperor's Court; M. Corneille Gobelius, Counsellor of the Bishop of Bamberg; M. Sebastian William Meel, Privy Counsellor to the Bishop of Wirtzburg; M. John Earnest, Counsellor of the Duke of Bavaria's Court; M. Wolff Conrad of Thumbshirn, and Augustus Carpzovius, both Counsellors of the Court of Saxe-Altenburg and Coburg; M. John Fromhold, Privy Counsellor of the House of Brandenburg-Culmbac, and Onolzbac; M. Henry Laugenbeck, J.C. to the House of Brunswick-Lunenburg; James Limpodius, J.C. Counsellor of State to the Branch of Calemburg, and Vice-Chancellor of Lunenburg. In the Name of the Counts of the Bench of Wetteraw, M. Matthews Wesembecius, J. D. and Counsellor.

In the Name of the one and the other Bench, M. Marc Ottoh of Strasburg, M. John James Wolff of Ratisbon, M. David Gloxinius of Lubeck, and M. Lewis Christopher Kres of Kressenstein, all Syndick Senators, Counsellors and Advocates of the Republick of Noremberg; who with their proper Hands and Seals have sign'd and seal'd this present Treaty of Peace, and which said Deputys of the several Orders have engag'd to procure the Ratifications of their Superiors in the prefix'd time, and in the manner it has been covenanted, leaving the liberty to the other Plenipotentiarys of States to sign it, if they think it convenient, and send for the Ratifications of their Superiors: And that on condition that by the Subscription of the abovesaid Ambassadors and Deputys, all and every one of the other States who shall abstain from signing and ratifying the present Treaty, shall be no less oblig'd to maintain and observe what is contain d in this present Treaty of Pacification, than

if they had subscrib'd and ratify'd it; and no Protestation or Contradiction of the Council of Direction in the Roman Empire shall be valid, or receiv'd in respect to the Subscription and said Deputys have made.

Done, pass'd and concluded at Munster in Westphalia, the 24th Day of October, 1648.

[Emphasis added.]

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Translation: British Foreign Office
Fletcher School of Law & Diplomacy (Tufts University): Multilaterals Project
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[Internet]
Accessed March 5, 1998.

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ENGLISH HISTORY

Charter of Liberties of Henry I
1100

In 1066, when **William of Normandy** invaded **England** and successfully fought for his royal claim to the English throne (a claim acknowledged by his **Anglo-Saxon** predecessor, **Edward the Confessor**, but ignored by the **Anglo-Saxon assembly**) (Kagan & Turner, p. 282), he set the stage for the further development of Biblical principles in English government . Respecting the **Anglo-Saxon democratic tradition** nurtured by the **English king Alfred the Great** (871-899), William made it a practice to consult regularly with his nobles, while at the same time ensuring that they were thoroughly subjected to him (Kagan & Turner, pp. 282-3). The fact that he was willing to limit his power and to rule by consent (although on a limited basis) suggests that covenantal principles of government were present at least to a small degree under his rule.

This trend continued under his son, **Henry I**, who ruled from 1100-1135. One of the most important accomplishments of his reign, from a Biblical perspective, was the enactment of a royal charter which he granted in the first year of his reign:

> This charter, granted by Henry when he ascended the throne, is important in two ways. First, Henry formally bound himself to the laws, setting the stage for the rule of law that parliaments and parliamentarians of later ages would cry for. Second, it reads almost exactly like the Magna Carta, and served as the model for the Great Charter in 1215 (Medieval Sourcebook).

The fact that Henry I was willing to limit his power by being bound to law is, as we have already discussed in <u>Section III</u>, an important principle of covenantal relationships, in the sense that his willful obedience to the law provided a means of protecting the rights of the people. Therefore, he took a step away from tyranny and a step toward liberty by issuing this charter. As will be seen, this charter upholds the **inalienable rights of life, liberty and property**, calls for **justice and peace** in the land, respects **separation of powers**, and respects the **law of the land**. All of these are evidence of a king who ruled according to covenantal principles, at least to some degree. And of course, as already mentioned, this charter was the basis for the **Magna Carta**, which took another huge step in the development of Biblical principles of government.

Henry, king of the English, to Bishop Samson and Urso de Abetot and all his barons and faithful, both French and English, of Worcestershire, [copies were sent to all the shires] greeting.

I.

[Respecting a separation of power between church and state.]

Know that by the mercy of God and the common counsel of the barons of the whole kingdom of England I have been crowned king of said kingdom; and because the kingdom had been oppressed by unjust exactions, I, through fear of God and the love which I have toward you all, in the first place make the holy church of God free, so that I will neither sell nor put to farm, nor on the death of archbishop or bishop or abbot will I take anything from the church's demesne or from its men until the successor shall enter it. And I take away all the bad customs by which the kingdom of England was unjustly oppressed; which bad customs I here set down in part:

II.

[A call for justice in the relief of land.]

If any of my barons, earls, or others who hold of me shall have died, his heir shall not buy back his land as he used to do in the time of my brother, but he shall relieve it by a just and lawful relief. Likewise also the men of my barons shall relieve their lands from their lords by a just and lawful relief.

III.

[Respecting liberty in marriage and property rights.]

And if any of my barons or other men should wish to give his daughter, sister, niece, or kinswoman in marriage, let him speak with me about it; but I will neither take anything from him for this permission nor prevent his giving her unless he should be minded to join her to my enemy. And if, upon the death of a baron or other of my men, a daughter is left as heir, I will give her with her land by the advice of my barons. And if, on the death of her husband, the wife is left and without children, she shall have her dowry and right of marriage, and I will not give her to a husband unless according to her will.

IV.

[Respecting liberty in marriage and property rights.]

But if a wife be left with children, she shall indeed have her dowry and right of marriage so long as she shall keep her body lawfully, and I will not give her unless according to her will. And the guardian of the land and children shall be either the wife or another of the relatives who more justly ought to be. And I command that my barons restrain themselves similarly in dealing with the sons and daughters or wives of their men.

V.

[Justice in money collecting.]

The common seigniorage, which has been taken through the cities and counties, but which was not taken in the time of King Edward I absolutely forbid henceforth. If any one, whether a moneyer or other, be taken with false money, let due justice be done for it.

VI.

[Remittance of debt, upholding just inheritances.]

I remit all pleas and all debts which were owing to my brother, except my lawful fixed revenues and except those amounts which had been agreed upon for the inheritances of others or for things which more justly concerned others. And if any one had pledged anything for his own inheritance, I remit it; also all reliefs which had been agreed upon for just inheritances.

VII.

[Protecting inheritance rights.]

And if any of my barons or men shall grow feeble, as he shall give or arrange to give his money, I grant that it be so given. But if, prevented by arms or sickness, he shall not have given or arranged to give his money, his wife, children, relatives, or lawful men shall distribute it for the good of his soul as shall seem best to them.

VIII.

[Just process of trying crime, accountability to the law.]

If any of my barons or men commit a crime, he shall not bind himself to a payment at the king's mercy as he has been doing in the time of my father or my brother; but he shall make amends according to the extent of the crime as he would have done before the time of my father in the time of my other predecessors. But if he be convicted of treachery or heinous crime, he shall make amends as is just.

IX.

[Upholding the law against murder.]

I forgive all murders committed before the day I was crowned king; and those which shall be committed in the future shall be justly compensated according to the law of King Edward.

X.

By the common consent of my barons I have kept in my hands forests as my father had them.

XI.

To those knights who render military service for their lands I grant of my own gift that the lands of their demesne ploughs be free from all payments and all labor, so that, having been released from so great a burden, they may equip themselves well with horses and arms and be fully prepared for my service and the defense of my kingdom.

XII.

[A command for peace.]

I impose a strict peace upon my whole kingdom and command that it be maintained henceforth.

XIII.

[Upholding the law of the land.]

I restore to you the law of King Edward with those amendments introduced into it by my father with the advice of his barons.

XIV.

[Just retribution for theft, a prohibition against theft.]

If any one, since the death of King William my brother, has taken anything belonging to me or to any one else, the whole is to be quickly restored without fine; but if any one keep anything of it, he upon whom it shall be found shall pay me a heavy fine.

Witnesses Maurice bishop of London, and William bishop elect of Winchester, and Gerard bishop of Hereford, and earl Henry, and earl Simon, and Walter Giffard, and Robert de Montfort, and Roger Bigot, and Eudo the steward, and Robert son of Hamo, and Robert Malet. At London when I was crowned. Farewell.

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The Magna Carta
1215

In addition to securing important rights and liberties in the royal charter of 1100, **Henry I**, and his successor **Henry II**, also implemented more Biblical principles of justice under their collective rule; specifically, the development of the **English common law** (in other words, the development of a set standard of law upon which the people could rely):

> A crucial development in shaping national unity was the emergence of common law. During the reigns of Henry I (1100-1135) and Henry II (1154-1189), royal judges traveled to different parts of the kingdom. Throughout England, important cases began to be tried in the king's court rather than in local courts, thereby increasing local power. The decisions of royal judges were recorded and used as guides for future cases. In this way, a law common to the whole land gradually came to prevail over the customary law of a specific locality. Because common law applied to all England, it served as a force for unity. It also provided a fairer system of justice. The common law remains the foundation of the English people, including the United States (M. Perry & Cooper, p. 161).

Henry II also played a key role in developing a fair judicial system:

> Henry II made trial by jury a regular procedure for many cases heard in the king's court, thus laying the foundations of the modern judicial system. Twelve men familiar with the facts of the case appeared before the king's justices and under oath were asked if the plaintiff's statement was true. The justices based their decisions on the answers. Henry II also ordered representatives of a given locality to report under oath to visiting royal judges any local persons who were suspected of murder or robbery. This indictment jury was the ancestor of the modern grand jury system (M. Perry & Cooper, pp. 161-2).

Nevertheless, Henry II became more autocratic during his reign, "subjecting his vassals more than ever to the royal yoke" (Kagan & Turner, p. 284). His efforts to amass more and more power, particularly over the **clergy** (such as with the **Constitutions of Clarendon** in 1164) were thwarted only when the **archbishop of Canterbury**, **Thomas 'a Becket**, Henry's main challenger, was assassinated by courtiers of the king in 1170: "Becket's subsequent assassination in 1170 and his canonization by Pope Alexander III in 1172 forced the king to retreat from his heavy-handed tactics, as popular resentment grew" (Kagan & Turner, p. 285).

But the trend of tyrannical rule continued in the subsequent reigns of Henry's successors, the brothers **Richard the Lion-Hearted** (1189-1199) and **John** (1199-1216)--as did increasing English resistance to their rule (Kagan & Turner, p. 285). The leadership of King John was particularly inept:

> In 1209 **Pope Innocent III** excommunicated King John and placed England under

> interdict. This humiliating experience saw the king of England declare his country a fief of the pope. But it was the defeat of the English by the **French** at **Bouvines** in 1214 that proved the last straw [Emphasis added.] (Kagan & Turner, pp. 285-6).

And thus, the stage was set for a bold declaration of the people's rights, as defined by the **Magna Carta**. But to understand why the events behind the signing of Magna Carta occurred, it is necessary to review the **theory of civil resistance** and the implications of a **material breach of a covenantal relationship** (both of which are referred to in Section V, and in the Reformation section of the historical documents). These two concepts, of course, are closely related. In Section V, it was mentioned that in 1080, **Manegold** clearly articulated the implications of a material breach on the part of the king, thereby giving the people the obligation and right to dethrone him.

When King John tried once again to make war with **France**, the **barons** refused to support him. Therefore, he "decided to make war against the barons" (Amos, *Defending*, p. 133). **Stephen Langton, Catholic Archbishop of Canterbury**, supported the barons (this is no surprise considering that King John often confiscated church property and attempted to dominate the church) and informed them of Manegold's **theory of social compact**:

> The barons, acting on Langton's advice, renounced allegiance to John and elected Robert Fitz-Walter as their leader on May 5, 1215. The barons and bishops, the "lower magistrates," presented the king with the choice of affirming known rights by means of a written compact and ending oppression of the church by the state, or face armed resistance which they themselves would lead. Helplessly outnumbered, John agreed to meet the demands of the lower rulers and the people, and signed the Magna Carta at Runnymede on June 15, 1215 (Amos, *Defending*, pp. 133-4).

The Magna Carta made a strong historical impact on England and America. **Sir Edward Coke's** detailed treatment of the Magna Carta in his ***Second Institute*** (1628) "influenced not only the legal thinking of his own day but also helped shape the constitutional theories which developed in America during the seventeenth and eighteenth centuries" (Amos, *Defending*, p 134). Furthermore, although the Magna Carta was in many ways a feudal document, written specifically to preserve the rights of the barons, it helped to cement Biblical principles in government for centuries to come:

> The Magna Carta is celebrated as the root of the unique English respect for basic rights and liberties. Although essentially a feudal document directed against a king who had violated the rights of feudal barons, the Magna Carta stated principles that could be interpreted more widely. Over the centuries, the principles were expanded to protect the liberties of the English against governmental oppression, [enforcing such principles as] . . . the king could not levy taxes without the consent of the Parliament . . . that no freeman shall be taken or imprisoned . . . save by the lawful judgment of his peers or by the law of the land. The barons who drew up the document had intended it to mean that they must be tried by fellow barons. As time passed, these words were regarded as guarantee of trial by jury for all men, a prohibition against arbitrary arrest, and a command to dispense justice fully, freely, and equally. Implied in the Magna Carta is the idea that the king cannot rule as he pleases but must govern according to the law--that not even the king can violate the

law of the nation. Centuries afterward, when Englishmen sought to limit the king's power, they would interpret the Magna Carta in this way (M. Perry & Cooper, p. 162).

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects,

Greeting.

KNOW THAT BEFORE GOD, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom, at the advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter Bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the knighthood of the Temple in England, William Marshal earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galloway constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppeley, John Marshal, John Fitz Hugh, and other loyal subjects:

I.

FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe

ourselves, and desire to be observed in good faith by our heirs in perpetuity.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

II.

If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall have his inheritance on payment of the ancient scale of 'relief'. That is to say, the heir or heirs of an earl shall pay for the entire earl's barony, the heir or heirs of a knight l00s. at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees.'

III.

But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without 'relief' or fine.

IV.

The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same 'fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them. If we have given or sold to anyone the guardianship of such land, and he causes destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same 'fee', who shall be similarly answerable to us.

V.

For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.

VI.

Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be' made known to the heir's next-of-kin.

VII.

At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.

VIII.

No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.

IX.

Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

X.

If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.

XI.

If a man dies owing money to Jews, his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. Debts owed to persons other than Jews are to be dealt with similarly.

XII.

No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.

XIII.

The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

XIV.

To obtain the general consent of the realm for the assessment of an 'aid' - except in the three cases specified above - or a 'scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

XV.

In future we will allow no one to levy an 'aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable 'aid' may be levied.

XVI.

No man shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it.

XVII.

Ordinary lawsuits shall not follow the royal court around, but

shall be held in a fixed place.

XVIII.

Inquests of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.

IXX.

If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.

XX.

For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

XXI.

Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence.

XXII.

A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.

XXIII.

No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.

XXIV.

No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices.

XXV.

Every county, hundred, wapentake, and tithing shall remain at its ancient rent, without increase, except the royal demesne manors.

XXVI.

If at the death of a man who holds a lay 'fee' of the Crown, a sheriff or royal official produces royal letters patent of summons for a debt due to the Crown, it shall be lawful for them to seize and list movable goods found in the lay 'fee' of the dead man to the value of the debt, as assessed by worthy men. Nothing shall be removed until the whole debt is paid, when the residue shall be given over to the executors to carry out the dead man s will. If no debt is due to the Crown, all the movable goods shall be regarded as the property of the dead man, except the reasonable shares of his wife and children.

XXVII.

If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved.

XXVIII.

No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.

XXIX.

No constable may compel a knight to pay money for castle-guard if the knight is willing to undertake the guard in person, or with reasonable excuse to supply some other fit man to do it. A knight taken or sent on military service shall be excused from castle-guard for the period of this service.

XXX.

No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.

XXXI.

Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.

XXXII.

We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the 'fees' concerned.

XXXIII.

All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.

XXXIV.

The writ called *precipe* shall not in future be issued to anyone in respect of any holding of land, if a free man could thereby be deprived of the right of trial in his own lord's court.

XXXV.

There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. There shall also be a standard width of dyed cloth, russett, and haberject, namely two ells within the selvedges. Weights are to be standardised similarly.

XXXVI.

In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused.

XXXVII.

If a man holds land of the Crown by 'fee-farm', 'socage', or 'burgage', and also holds land of someone else for knight's service, we will not have guardianship of his heir, nor of the land that belongs to the other person's 'fee', by virtue of the 'fee-farm', 'socage', or 'burgage', unless the 'fee-farm' owes knight's service. We will not have the guardianship of a man's heir, or of land that he holds of someone else, by reason of any small property that he may hold of the Crown for a service of knives, arrows, or the like.

XXXVIII.

In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

XXXIX.

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

XL.

To no one will we sell, to no one deny or delay right or justice.

XLI.

All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.

XLII.

In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision.

XLIII.

If a man holds lands of any 'escheat' such as the 'honour' of Wallingford, Nottingham, Boulogne, Lancaster, or of other 'escheats' in our hand that are baronies, at his death his heir shall give us only the 'relief' and service that he would have made to the baron, had the barony been in the baron's hand. We will hold the 'escheat' in the same manner as the baron held it.

XLIV.

People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.

XLV.

We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

XLVI.

All barons who have founded abbeys, and have charters of English kings or ancient tenure as evidence of this, may have guardianship of them when there is no abbot, as is their due.

XLVII.

All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.

XLVIII.

All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.

XLIX.

We will at once return all hostages and charters delivered up to us by Englishmen as security for peace or for loyal service.

L.

We will remove completely from their offices the kinsmen of

Gerard de Atheacute, and in future they shall hold no offices in England. The people in question are Engelard de Cigogneacute, Peter, Guy, and Andrew de Chanceaux, Guy de Cigogneacute, Geoffrey de Martigny and his brothers, Philip Marc and his brothers, with Geoffrey his nephew, and all their followers.

LI.

As soon as peace is restored, we will remove from the kingdom all the foreign knights, bowmen, their attendants, and the mercenaries that have come to it, to its harm, with horses and arms.

LII.

To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgment of his equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgment of the twenty-five barons referred to below in the clause for securing the peace. In cases, however, where a man was deprived or dispossessed of something without the lawful judgment of his equals by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.

LIII.

We shall have similar respite in rendering justice in connexion with forests that are to be disafforested, or to remain forests, when these were first a-orested by our father Henry or our brother Richard; with the guardianship of lands in another person's 'fee', when we have hitherto had this by virtue of a 'fee' held of us for knight's service by a third party; and with abbeys founded in another person's 'fee', in which the lord of the 'fee' claims to own a right. On our return from the Crusade, or if we abandon it, we will at once do full justice to complaints about these matters.

LIV.

No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

LV.

All fines that have been given to us unjustiy and against the law of the land, and all fines that we have exacted unjustly, shall be entirely remitted or the matter decided by a majority judgment of the twenty-five barons referred to below in the clause for securing the peace together with Stephen, archbishop of Canterbury, if he can be present, and such others as he wishes to bring with him. If the archbishop cannot be present, proceedings shall continue without him, provided that if any of the twenty-five barons has been involved in a similar suit himself, his judgment shall be set aside, and someone else chosen and sworn in his place, as a substitute for the single occasion, by the rest of the twenty-five.

LVI.

If we have deprived or dispossessed any Welshmen of lands, liberties, or anything else in England or in Wales, without the lawful judgment of their equals, these are at once to be returned to them. A dispute on this point shall be determined in the Marches by the judgment of equals. English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.

LVII.

In cases where a Welshman was deprived or dispossessed of anything, without the lawful judgment of his equals, by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. But on our return from the Crusade, or if we abandon it, we will at once do full justice according to the laws of Wales and the said regions.

LVIII.

We will at once return the son of Llywelyn, all Welsh hostages, and the charters delivered to us as security for the peace.

LIX.

With regard to the return of the sisters and hostages of Alexander, king of Scotland, his liberties and his rights, we will treat him in the same way as our other barons of England, unless it appears from the charters that we hold from his father William, formerly king of Scotland, that he should be treated otherwise. This matter shall be resolved by the judgment of his equals in our court.

LX.

All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.

LXI.

SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security:

The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.

If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress. If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon. Having secured the redress, they may then resume their normal obedience to us.

Any man who so desires may take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing us to the utmost of his power. We give public and free permission to take this oath to any man who so desires, and at no time will we prohibit any man from taking it. Indeed, we will compel any of our subjects who are unwilling to take it to swear it at our command.

If-one of the twenty-five barons dies or leaves the country, or is

prevented in any other way from discharging his duties, the rest of them shall choose another baron in his place, at their discretion, who shall be duly sworn in as they were.

In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five, whether these were all present or some of those summoned were unwilling or unable to appear.

The twenty-five barons shall swear to obey all the above articles faithfully, and shall cause them to be obeyed by others to the best of their power.

We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

LXII.

We have remitted and pardoned fully to all men any ill-will, hurt, or grudges that have arisen between us and our subjects, whether clergy or laymen, since the beginning of the dispute. We have in addition remitted fully, and for our own part have also pardoned, to all clergy and laymen any offences committed as a result of the said dispute between Easter in the sixteenth year of our reign (i.e. 1215) and the restoration of peace.

In addition we have caused letters patent to be made for the barons, bearing witness to this security and to the concessions set out above, over the seals of Stephen archbishop of Canterbury, Henry archbishop of Dublin, the other bishops named above, and Master Pandulf.

LXIII.

IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fulness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the above mentioned people and many others.

Given by our hand in the meadow that is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign (i.e. 1215: the new regnal year began on 28 May).

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www.wwlia.org/uk-magna.htm
United Kingdom Legal Information Centre
(www.wwlia.org/uk-home.htm)
[Internet]
Accessed April 20, 1998.

The Petition of Right
1628

The reign of **Elizabeth I** in **England** was a time of peaceful transition before heightened strife between **Parliament** and the king led to a continued emphasis of political rights:

> The Elizabethan period was characterized by a heightened sense of national identity. The **English Reformation** enhanced that sense, as did the increasing fear of foreign invasion by **Spain**. The fear was abated only by the defeat of the **Spanish Armada** in 1588. In the seventeenth century, the English would look back on Elizabeth's reign as a golden age. It was the calm before the storm--a time when a new commercial class was formed, which, in the seventeenth century, would demand a greater say in government operations. Religion played a vital role in this realignment of political interests and forces. Many of the old aristocracy clung to the **Anglicanism** of the **Henrican Reformation**, and in some cases to **Catholicism**. The newly risen gentry found in the **Protestant Reformation** of **Switzerland** and **Germany** a form of religious worship more suited to their independent and entrepreneurial spirit. Many of them embraced Puritanism, the English version of **Calvinism** [Emphasis added.] (M. Perry & Cooper, pp. 250-1).

Unfortunately for Elizabeth's successors, their reigns were not blessed with such unity and support from the people. The strife and uncertainty began with the ascension of **James I** to the throne in 1603. Unfortunately for James, the problems that he inherited with the throne--"a royal debt of almost one-half million pounds, a fiercely divided church, and a Parliament already restive over the extent of his predecessor's claims to royal authority" (Kagan & Turner, p. 449)--were enhanced by his own actions:

> The new king utterly lacked tact, was ignorant of English institutions, and strongly advocated the divine right of kings, a subject on which he had written a book in 1598 entitled *A Trew Law of Free Monarchies*. He rapidly alienated both Parliament and the politically powerful Puritans (Kagan & Turner, p. 449).

In an attempt to increase revenue, James resorted to applying levying "impositions"--without the consent of Parliament--claiming that these money raising techniques came with his royal power. "Parliament resented such independent efforts to raise revenues as an affront to its power, and the result was a long and divisive court struggle between the king and Parliament" (Kagan & Turner, p. 449).

James I became even more unpopular with his staunch support of the **Anglican Church**, favoring its "elaborate religious ceremonies" and "hierarchical Episcopal system of church governance" over a "more representative Presbyterian form like that of the **Calvinists** churches on the **Continent**" [Emphasis added.] (Kagan & Turner, p. 450). It also did not help his popularity when he tried--unsuccessfully--to relax the penal laws against **Catholics** (Kagan & Turner, p. 450). Suspicions of his pro-Catholic leanings were deepened

when he made peace with **Spain** in 1604, "England's chief adversary during the second half of the sixteenth century" (Kagan & Turner, p. 450).

Another blow to James's popularity was the fact that his court was a "center of scandal and corruption:"

> He governed by favorites, the most influential of whom was the duke of Buckingham, whom rumor made the king's homosexual lover. Buckingham controlled royal patronage and openly sold peerages and titles to the highest bidders--a practice that angered the nobility because it cheapened their rank (Kagan & Turner, p. 450).

With the succession of James's son **Charles I** (1624-1649) to the throne, Parliament's distrust of the monarchy increased even more. In an attempt to raise funds for new hostilities with Spain,

> Charles, like his father, resorted to extraparliamentary measures. He levied new tariffs and duties, attempted to collect discontinued taxes, and even subjected the English people to a so-called forced loan (a tax theoretically to be re-paid), imprisoning those who refused to pay. Troops in transit to war zones were quartered in private homes (Kagan & Turner, p. 450).

In response to these activities, Parliament wrote the **Petition of Right** in 1628, "making the king's request for new funds conditional on his recognition of the Petition of Right" (Kagan & Turner, p. 450). The Petition of Right contains many Biblical principles of government, such as the call for **accountability to the law**, **due process of law**, **trial by jury**, **no taxation without consent**, and **respect of life, liberty, and property**. All of these principles, as already mentioned, are supported by Biblical principles of **justice**, **covenant**, and of **inalienable rights**.

Unfortunately, "there was little confidence that [Charles] would keep his word" regarding his assent to the Petition of Right, especially since he went on to dissolve Parliament in 1629 after it accused him of treason for his "'popery'--Charles's high-church policies were meant--and the levying of taxes without parliamentary consent" (Kagan & Turner, p. 450). Parliament would not be reconvened until 1640. Nevertheless, the principles embedded in the Petition of Right were not forgotten, but in fact reappeared in the **Bill of Rights** in 1689.

The Petition exhibited to his Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's royal answer thereunto in full Parliament.

To the King's Most Excellent Majesty,

[Prohibition against taxes or loans levied without consent.]

Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembles, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward I, commonly called Stratutum de Tellagio non Concedendo, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament.

II.

[Prohibition of unlawful, forced loans, and ensuing punishment for non-compliance.]

Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound and make appearance and give utterance before your Privy Council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others, by command or direction from your Majesty, or your Privy Council, against the laws and free custom of the realm.

III.

[Punishment meted out by due process of law only.]

And whereas also by the statute called 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

IV.

[Imprisonment or seizure of property prohibited without due process of law.]

And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited nor put to death without being brought to answer by due process of law.

V.

[*Habeas corpus* required for all arrests and imprisonment.]

Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your Majesty's writs of habeas corpus, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

VI.

[Quartering of soldiers illegal.]

And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people.

VII.

[Loss of life or limb prohibited without due process of law.]

And whereas also by authority of parliament, in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that no man shall be forejudged of life or limb against the form of the Great Charter and the law of the land; and by the said Great Charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm, or by acts of parliament: and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless of late time divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause

to be executed and put to death according to the law martial.

VIII.

[The king's punishments were illegal without due process of law.]

By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

IX.

[All must be accountable to the laws of the land.]

And also sundry grievous offenders, by color thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretense that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

X.

[Summary: no taxation without willful consent; due process of law; no quartering of troops.]

They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.

XI.

[Summary: abiding by the law of the land.]

All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honor of your Majesty, and the prosperity of this kingdom.

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www.constitution.org/eng./petright.txt
Liberty Library of Constitutional Classics
(www.constitution.org/liberlib.htm)
part of
The Constitution Society
(www.constitution.org/default)
[Internet]
Accessed March 18, 1998.

The English Bill of Rights
February 1689

Charles I, ruling without **Parliament**, attempted to rule **England** as an **absolute monarch**. However, he did not have the resources (or the support of his people) to do so:

> This became abundantly clear when he and his religious minister, **William Laud** (1573-1645; after 1633, the **archbishop of Canterbury**), provoked a war with **Scotland**. They tried to impose the **English Episcopal** system and prayer book almost identical to the **Anglican** *Book of Common Prayer* on the **Scots** as they had done throughout England. From his position within the **Court of High Commission**, Laud had already radicalized the **Puritans** by denying them the right to publish and preach [Emphasis added.] (Kagan & Turner, pp. 451-2).

The Scots were ready to resist any such efforts. Charles therefore felt compelled to reconvene Parliament in order to secure more funds, but Parliament was not willing to grant him the needed money until "the king agreed to redress a long list of political and religious grievances. The result was the king's immediate dissolution of Parliament--hence, its name, the Short Parliament (April-May 1640)" (Kagan & Turner, p. 452). Nevertheless, when the Scots invaded England and defeated an English army at the **battle of Newburn** in the summer of 1640, Charles had no choice but to reconvene Parliament, and this time on its own terms (Kagan & Turner, p. 452).

> Parliament was able to act with the widespread support of the people, because:
>
> The landowners and the merchant classes represented by Parliament had resented the king's financial measures and paternalistic rule for some time. To this resentment was added fervent Puritan opposition. Hence, the **Long Parliament** (1640-1660) acted with widespread support and general unanimity when it convened in November 1640 [Emphasis added.] (Kagan & Turner, p. 452).

Parliament, therefore, was able to accomplish several important measures. It impeached and executed the **Earl of Stafford and Archbishop Laud** (Kagan & Turner, p. 452). It also abolished the **Court of Star Chamber** and the **Court of High Commission**, which were "royal instruments of political and religious 'thorough,' respectively" (Kagan & Turner, p. 452). The statute abolishing these courts was a major victory in upholding the rights of the English people:

> The main affect of the abolition of the Star Chamber was to establish in England a system of justice administered by the courts instead of by the administrative and executive branch of the government. The statute [abolishing the courts] thus constituted an important reaffirmation of the concept of due process of the law including the protection of trial by jury. The Privy Council was deprived by this statute of all jurisdiction to hear and determine criminal cases, but it still had power to commit persons suspected of crime to prison pending trial. Section VIII of the

> statute, however, stated that every person so committed should be entitled to a writ of habeas corpus so that the legality of his imprisonment could be determined. The statute was thus one of the principal enactments of the seventeenth century in which that right was strengthened. The abolition of the Court of Star Chamber and the Court of High Commission also opened the way for the establishment of the privilege against self-incrimination (R. Perry, p. 132).

The Long Parliament, therefore, issued "a firm and lasting declaration of the political and religious rights of the many English people represented in Parliament, both high and low, against autocractic royal government" (Kagan & Turner, p. 452).

Charles, however, was not content to totally abandon the fight for his right to rule absolutely. Aware that Parliament was divided over the issue of religious toleration, Charles entered Parliament with his soldiers in January of 1642 in order to arrest his key opponents. The arrest failed in more ways than one, since those opponents had been forewarned of the arrest and managed to escape, and also because Parliament saw no choice but to declare war upon Charles I: "Shocked by the king's action, a majority of the **House of Commons** thereafter passed the **Militial Ordinance**, a measure that gave Parliament control of the army. The die was now cast. For the next four years (1642-1646) civil war engulfed England" [Emphasis added.] (Kagan & Turner, p. 453).

Oliver Cromwell's New Model Army decisively defeated Charles's army, and Cromwell saw to it that Charles was executed (Kagan & Turner, p. 453). Cromwell then established himself as the absolute ruler of England. He made England a **Puritan republic**, going on to conquer **Ireland** and **Scotland**, and ruling with a Parliament which he had ensured would support him (Kagan & Turner, p. 453). But Cromwell's dictatorship stifled liberty and was therefore despised by the people:

> But his military dictatorship proved no more effective than Charles's rule had been and became just as harsh and hated. Cromwell's great army and foreign adventures inflated his budget to three times that of Charles. Trade and commerce suffered throughout England, as near chaos reigned in many places. Puritan prohibitions of such pastimes as theaters, dancing, and drunkenness were widely resented. Cromwell's treatment of Anglicans came to be just as intolerant as Charles's treatment of Puritans had been. In the name of religious liberty, political liberty had been lost. And Cromwell was unable to get along with the new Parliaments that were elected under the auspices of his army. By the time of his death in 1658, a majority of the English were ready to end the Puritan experiment and return to the traditional institutions of government (Kagan & Turner, pp. 453-5).

In 1660, after the death of Cromwell, **Charles II** became England's king, restoring the hereditary monarchy and the supremacy of the **Anglican Church** (Kagan & Turner, pp. 455-6). On more than one occasion, Charles tried to implement decrees calling for religious toleration (especially for **Catholics**) but Parliament would not let him do so (Kagan & Turner, pp. 456-7). Faced with a war with **Holland**, and a Parliament which was suspicious of his Catholic tendencies and which was unwilling to give him the financial support he needed to wage war with Holland, Charles was forced to ally England with **France**. **Louis XIV**, king of France, in addition to the war chest he had already given to Charles, promised

an additional sum of money if Charles would announce his conversion to **Catholicism** (when the circumstances permitted) (Kagan & Turner, pp. 456-7). Charles also resorted to manipulating the members of Parliament and to disregarding its right to establish taxes:

> More suspicious than ever of Parliament, Charles II turned again to increased customs revenue and the assistance of Louis XIV for extra income and was able to rule from 1681 to 1685 without recalling Parliament. In these years Charles suppressed much of his opposition, driving the **earl of Shaftsbury** into exile, executing several **Whig** leaders for treason, and bullying local corporations into electing members of Parliament submissive to the royal will. When Charles died in 1685 (after a deathbed conversion to Catholicism), he left James the prospect of a Parliament filled with royal friends [Emphasis added.] (Kagan & Turner, p. 457).

James II did not last long on the throne in England, in part because of his forceful efforts for more religious toleration (Kagan & Turner, p. 457), but mostly because of his despotic rule:

> Under the guise of a policy of enlightened toleration, James was actually seeking to subject all English institutions to the power of the monarchy. His goal was absolutism, and even conservative, loyalist **Tories** could not abide this. The English had reason to fear that James planned to imitate the policy of Louis XIV, who in 1685 had revoked the **Edict of Nantes** . . . and had returned France to Catholicism, where necessary, with the aid of dragoons. A national consensus very quickly formed against the monarchy of James II [Emphasis added.] (Kagan & Turner, pp. 457-8).

The English were dismayed when James's Catholic wife gave birth to a son--thereby ensuring a Catholic heir to the throne. Therefore, they turned to James's eldest daughter (and a Protestant), **Mary**:

> Mary was the wife of **William III of Orange**, *stadholder* of the **Netherlands**, great-grandson of **William the Silent**, and the leader of European opposition to Louis XIV's imperial designs. Within days of the birth of a Catholic male heir, Whig and Tory members of Parliament formed a coalition and invited Orange to invade England to preserve "traditional liberties," that is, to the Anglican church and parliamentary government [Emphasis added.] (Kagan & Turner, p. 458).

And so William III of Orange invaded England, facing no opposition from James II, who fled to France. William and Mary were made monarchs in 1689 (Kagan & Turner, p. 458). Two significant acts occurred quite quickly after they ascended the throne. First, they recognized the **English Bill of Rights** (Kagan & Turner, p. 458). As mentioned earlier, this upheld the principles of the **Petition of Right of 1628**. Therefore, the Bill of Rights played a key role in enunciating Biblical principles of government. Not much later, the **Toleration Act of 1689** "permitted worship by all Protestants and outlawed Roman Catholics and antitrinitarians (those who denied the Christian doctrine of the Trinity)" (Kagan & Turner, pp. 458-60). Therefore, a degree of religious freedom was also implemented in a revolution which brought increasing political freedom and which has been called the "**Bloodless Revolution**" or the "**Glorious Revolution**:"

> The "Glorious Revolution" of 1688 established a framework of government by and for the governed. It received classic philosophical justification in **John Locke's** *Second Treatise of Government* (1690), in which Locke described the relationship of a king and his people in terms of a bilateral contract. If the king broke that contract, the people, by whom Locke meant the privileged and powerful, had the right to depose him. Although it was, neither in fact nor in theory, a "popular" revolution such as would occur in France and **America** a hundred years later, the Glorious Revolution did establish in England a permanent check on monarchical power by the classes represented in Parliament [Emphasis added.] (Kagan & Turner, p. 460).

Following are key excerpts from the Bill of Rights:

Whereas the lords spiritual and temporal, and commons assembled at Westminster, lawfully, fully, freely representing all the estates of the people of this realm, did upon the thirteenth day of February, in the year of our Lord 1688, present unto their Majesties, then called and known by the names and style of **William and Mary**, **prince and princess of Orange**, being present in their proper persons, a certain declaration in writing made by the said lords and commons in the words following, viz.:

[The wrongdoing of the king.]

Whereas the late **King James II**, by the assistance of diverse evil counselors, judges, and ministers employed by him, did endeavor to subvert and extirpate the **Protestant religion** and the **laws** and **liberties** of this kingdom:

I.

[Disregarding the law of the land.]

By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without **consent of Parliament**.

II.

[Punishing those who oppose his unlawful acts.]

By committing and prosecuting divers worthy prelates for humbly petitioning to be excused from concurring to the same assumed power.

III.

[Establishing his own court system.]

By issuing and causing to be executed a commission under the Great Seal for erecting a court, called the "Court of Commissioners for Ecclesiastical Causes."

IV.

[Levying taxes without Parliament's consent.]

By levying money for and to the use of the crown, by pretense of prerogative, for other time and in other manner than the same was granted by Parliament.

V.

[Quartering troops and maintaining an army without Parliament's consent]

By raising and keeping a standing army within this kingdom in time of peace, without consent of Parliament, and quartering soldiers contrary to law.

VI.

[Arming Catholics illegally and disarming Protestants illegally.]

By causing several good subjects, being Protestants, to be disarmed, at the same time when papists were both armed and employed contrary to law.

VII.

[Interfering with the electoral/representative processes of Parliament.]

By violating the freedom of election of members to serve in Parliament.

VIII.

[Executing judgment against the law of Parliament.]

By prosecutions in the Court of King's Bench, for matters and causes cognizable

only in Parliament; and by diverse other arbitrary and illegal courses.

IX.

[Use of questionable jurors in cases, thereby tainting justice.]

And whereas of late years, partial, corrupt and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

X.

[Applying excessive bails.]

And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of laws made for the liberty of the subjects.

XI.

[Imposing excessive fines and cruel and unusual punishment.]

And excessive fines have been imposed; and illegal and cruel punishments inflicted.

XII.

[Applying fines and forfeitures without due process of law.]

And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes and freedom of this realm.

And whereas the said late King James II having abdicated the government, and the throne being thereby vacant, his Highness the prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the lords spiritual and temporal and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being Protestants; and other letters to the several counties, cities, universities, boroughs [for choosing representatives to a Parliament which might vindicate and assert the ancient rights and liberties of the nation]. . . .

[Rights of the People.]

And thereupon the said lords spiritual and temporal, and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid; do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties declare;

I.

That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

II.

That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it has been assumed and exercised of late, is illegal.

III.

That the commission for erecting the late court of commissioner for ecclesiastical causes, and all other commissions and courts of like nature are illegal and pernicious.

IV.

That levying money for or to the use of the crown, but pretense of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

V.

That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

VI.

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

VII.

That the subjects which are protestants, may have arms for their defense suitable to their conditions, and as allowed by law.

VIII.

That election of members of parliament ought to be free.

IX.

That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

X.

That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

XI.

That jurors ought to be duly impaneled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

XII.

That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

XIII.

And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his highness the prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence that his said Highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them [Parliament] from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties.

The said lords spiritual and temporal, and commons assembled at Westminster, do resolve that William and Mary, prince and princess of Orange, be and be declared king and queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said prince and princess during their lives and the life of the survivor of them . . .

And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law . . .

I A.B. do sincerely promise and swear, That I will be faithful, and bear true allegiance, to their Majesties King William and Queen Mary:

So help me God.

I, A. B., do swear that I do from my heart abhor, detest, and abjure, as impious and heretical, this damnable doctrine and position that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign prince, person, prelate, state, or potentate has, or ought to have, any jurisdiction, power, superiority, preeminence, or authority, ecclesiastical or spiritual, within this realm. So help me God.

Upon which their said Majesties did accept the crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said lords and commons contained in the said declaration . . .

And whereas, it hath been found by experience that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince or by any king or queen marrying a papist, the said lords spiritual and temporal, and commons, do further pray that it may be enacted that all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with, the see or Church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and be forever incapable to inherit, possess, or enjoy the crown and government of this realm . . .

[Emphasis added.]

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www.wwlia.org/uk-billr.htm
United Kingdom Legal Information Centre
(www.wwlia.org/uk-home.htm)
[Internet]
Accessed April 20, 1998.
also
Richard Perry's *Sources of Our Liberties* (1991), pp. 245-7.

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AMERICAN HISTORY

Mayflower Compact
1620

The **Pilgrims** faced serious problems of government upon arriving in the New World. The *Mayflower* was blown off course by a storm, and the Pilgrims ended up landing much further north than they had intended:

> Having landed so far north, they found themselves outside the limit of their patent and outside the jurisdiction of the **London Company**. They had no legal right to settle and no basis for civil government among themselves [Emphasis added.] (Lowman, p. 35).

Therefore, in order to ensure some semblance of government,

> they took a step which was to become a milestone in human history. Even before the settlers went ashore forty-one men went into the cabin of the *Mayflower* and drew up and signed what has come to be called the **Mayflower Compact**. . . . The Mayflower Compact established a 'civil body politic.' It did not actually set up a government, but it expressed the consent of the people that a government might be set up [Emphasis added.] (Lowman, p. 35).

The Mayflower Compact is truly the **written record** of a **covenant agreement**. The parties involved, seeking to provide a setting of safety and justice in which to start their new lives, came together, in the presence of God, and agreed to submit to one another (**willful concession of power**) for the end of ensuring **justice** and **order**. The emphasis, then, of the Mayflower Compact, was one of **self-government**, including in the realm of making **just laws**.

IN THE NAME OF GOD, AMEN. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King *James*, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, *Defender of the Faith*, &c. Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of *Virginia*; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience. **IN WITNESS** whereof we have hereunto subscribed our names at *Cape-Cod* the eleventh of November, in the Reign of our Sovereign Lord King *James*, of *England*, *France*, and *Ireland*, the eighteenth, and of *Scotland* the

fifty-fourth, *Anno Domini*; 1620.

Mr. John Carver,
Mr. William Bradford,
Mr Edward Winslow,
Mr. William Brewster, Isaac Allerton,
Myles Standish,
John Alden,
John Turner,
Francis Eaton,
James Chilton,
John Craxton,
John Billington,
Joses Fletcher,
John Goodman,
Mr. Samuel Fuller,
Mr. Christopher Martin,
Mr. William Mullins,
Mr. William White,
Mr. Richard Warren,
John Howland,
Mr. Steven Hopkins,
Digery Priest,
Thomas Williams,
Gilbert Winslow,
Edmund Margesson,
Peter Brown,
Richard Britteridge
, George Soule,
Edward Tilly,
John Tilly,
Francis Cooke,
Thomas Rogers,
Thomas Tinker,
John Ridgdale, Edward Fuller,
Richard Clark,
Richard Gardiner,
Mr. John Allerton,
Thomas English,
Edward Doten,
Edward Liester.

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www.yale.edu/lawweb/avalon/mayflower.thm

The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America

Compiled and Edited Under the Act of Congress of June 30, 1906
by Francis Newton Thorpe
Washington, DC : Government Printing Office, 1909.

An Electronic Publication of the Avalon Project
(www.yale.edu/lawweb/avalon/avalon.htm)
William C. Fray and Lisa A. Spar, Co-Directors

[Internet]
Accessed March 5, 1998.

Fundamental Orders of Connecticut
1639

In 1635, **Thomas Hooker**, pastor of a **Puritan congregational church** in the **Massachusetts Bay Colony**, requested and was granted approval by the **Massachusetts General Court** to settle new territory along the **Connecticut River** (Lowman, p. 41). Just a few years later, the towns of **Hartford**, **Wethersfield**, and **Windsor** were established, and in 1639 the people adopted what many consider to be the first written constitution in America, the **Fundamental Orders of Connecticut**:

> The Fundamental Orders were not a constitution in the modern sense, because they could be changed by a majority vote of the **General Court** of Connecticut. Nevertheless, they set a precedent for government by the people and for the people [Emphasis added.] (Lowman, p. 41).

The Fundamental Orders allowed for a more broad basis of representation than did the Massachusetts Bay Colony. In the Massachusetts colony, only **freemen** could participate in government, and freemen were defined as members of the Puritan congregational churches. In other words, one had to be a member of the established church to be able to participate in government (Lowman, p. 40). The Fundamental Orders allowed for slightly more participation, but they were still based on the belief that church and state should be fused together:

> Although the founders of Connecticut wanted more political freedom than they had enjoyed in Massachusetts, they did not really understand the importance of separation of church and state. Technically one did not have to be a member of the established church in Connecticut in order to vote. But only freemen were allowed to vote, and the General Court admitted as freemen only those of orthodox Puritan faith. There was a broader base of political participation in Connecticut than in Massachusetts, but still only Puritans could live at peace within the colony. There was no separation of church and state (Lowman, p. 41).

In contrast to this view was the view of church and state espoused by the **Plymouth Plantation** (of the **Pilgrims**). Emphasizing separation of church and state, the Pilgrim government was a system which allowed for more freedom:

> The Pilgrims' overriding reason for leaving England had been to obtain religious freedom. They had come to realize in England that as long as civil government tries to control a people's religion, there can be no real political liberty. . . . Because the Pilgrims realized the relation between religious and political freedom, Plymouth had no established churches in its early years. There was no particular government church that all were required to attend or to which all had to contribute financial support. There were no religious qualifications for voters or office holders. All men had an equal chance to participate in the political affairs of the colony. None

enjoyed special privilege because of supposed religious superiority. A system of limited government, adopted to protect religious liberty, also protected and promoted true political liberty (Lowman, p. 37).

Nevertheless, the **Fundamental Orders** is an important step in the **covenantal/ constitutional** path upon which American government progressed, and in that it respects the need to **ensure justice** and **safety**, and to uphold **rule by law**.

For as much as it hath pleased Almighty God by the wise disposition of his divine providence so to order and dispose of things that we the Inhabitants and Residents of Windsor, Hartford and Wethersfield are now cohabiting and dwelling in and upon the River of Connectecotte and the lands thereunto adjoining; and well knowing where a people are gathered together the word of God requires that to maintain the peace and union of such a people there should be an orderly and decent Government established according to God, to order and dispose of the affairs of the people at all seasons as occasion shall require; do therefore associate and conjoin ourselves to be as one Public State or Commonwealth; and do for ourselves and our successors and such as shall be adjoined to us at any time hereafter, enter into Combination and Confederation together, to maintain and preserve the liberty and purity of the Gospel of our Lord Jesus which we now profess, as also, the discipline of the Churches, which according to the truth of the said Gospel is now practiced amongst us; as also in our civil affairs to be guided and governed according to such Laws, Rules, Orders and Decrees as shall be made, ordered, and decreed as followeth:

I.

[Establishment of representative government for the purpose of ensuring justice; rule by law and by the Word of God.]

It is Ordered, sentenced, and decreed, that there shall be yearly two General Assemblies or Courts, the on the second Thursday in April, the other the second Thursday in September following; the first shall be called the Court of Election, wherein shall be yearly chosen from time to time, so many Magistrates and other public Officers as shall be found requisite: Whereof one to be chosen Governor for the year ensuing and until another be chosen, and no other Magistrate to be chosen for more than one year: provided always there be six chosen besides the Governor, which being chosen and sworn according to an Oath recorded for that purpose, shall have the power **to administer justice according to the Laws here established**, and for want thereof, **according to the Rule of the Word of God**; which choice shall be made by all that are admitted freemen and have taken the Oath of Fidelity, and do cohabit within this Jurisdiction having been admitted Inhabitants by the major part of the Town wherein they live or the major part of such as shall be then present.

II.
[Description of the electoral process.]

It is Ordered, sentenced, and decreed, that the election of the aforesaid Magistrates shall be in this manner: every person present and qualified for choice shall bring in (to the person deputed to receive them) one single paper with the name of him written in it whom he desires to have Governor, and that he that hath the greatest number of papers shall be Governor for that year. And the rest of the Magistrates or public officers to be chosen in this manner: the Secretary for the time being shall first read the names of all that are to be put to choice and then shall severally nominate them distinctly, and every one that would have the person nominated to be chosen shall bring in one single paper written upon, and he that would not have him chosen shall bring in a blank; and every one that hath more written papers than blanks shall be a Magistrate for that year; which papers shall be received and told by one or more that shall be then chosen by the court and sworn to be faithful therein; but in case there should not be six chosen as aforesaid, besides the Governor, out of those which are nominated, than he or they which have the most written papers shall be a Magistrate or Magistrates for the ensuing year, to make up the aforesaid number.

III.
[Experience required to serve as a Magistrate.]

It is Ordered, sentenced, and decreed, that the Secretary shall not nominate any person, nor shall any person be chosen newly into the Magistracy which was not propounded in some General Court before, to be nominated the next election; and to that end it shall be lawful for each of the Towns aforesaid by their deputies to nominate any two whom they conceive fit to be put to election; and the Court may add so many more as they judge requisite.

IV.
[Election rules for the position of Government; term limits.]

It is Ordered, sentenced, and decreed, that no person be chosen Governor above once in two years, and that the Governor be always a member of some approved Congregation, and formerly of the Magistracy within this Jurisdiction; and that all the Magistrates, Freemen of this Commonwealth; and that no Magistrate or other public officer shall execute any part of his or their office before they are severally sworn, which shall be done in the face of the court if they be present, and in case of absence by some deputed for that purpose.

V.
[The role of the Court of Election and the General Court.]

It is Ordered, sentenced, and decreed, that to the aforesaid Court of Election the several Towns shall send their deputies, and when the Elections are ended they may proceed in any public service as at other Courts. Also the other General Court in September shall be for making of laws, and any other public occasion, which concerns the good of the Commonwealth.

VI.

[Stipulations for convening an assembly of the Magistrates.]

It is Ordered, sentenced, and decreed, that the Governor shall, either by himself or by the Secretary, send out summons to the Constables of every Town for the calling of these two standing Courts one month at least before their several times: And also if the Governor and the greatest part of the Magistrates see cause upon any special occasion to call a General Court, they may give order to the Secretary so to do within fourteen days' warning: And if urgent necessity so required, upon a shorter notice, giving sufficient grounds for it to the deputies when they meet, or else be questioned for the same; And if the Governor and major part of Magistrates shall either neglect or refuse to call the two General standing Courts or either of them, as also at other times when the occasions of the Commonwealth require, the Freemen thereof, or the major part of them, shall petition to them so to do; if then it be either denied or neglected, the said Freemen, or the major part of them, shall have the power to give order to the Constables of the several Towns to do the same, and so may meet together, and choose to themselves a Moderator, and may proceed to do any act of power which any other General Courts may.

VII.

[Stipulations for choosing Deputies.]

It is Ordered, sentenced, and decreed, that after there are warrants given out for any of the said General Courts, the Constable or Constables of each Town, shall forthwith give notice distinctly to the inhabitants of the same, in some public assembly or by going or sending from house to house, that at a place and time by him or them limited and set, they meet and assemble themselves together to elect and choose certain deputies to be at the General Court then following to agitate the affairs of the Commonwealth; which said deputies shall be chosen by all that are admitted Inhabitants in the several Towns and have taken the oath of fidelity; provided that none be chosen a Deputy for any General Court which is not a Freeman of this Commonwealth.

The aforesaid deputies shall be chosen in manner following: every person that is present and qualified as before expressed, shall bring the names of such, written in several papers, as they desire to have chosen for that employment, and these three or four, more or less, being the number agreed on to be chosen for that time, that have the greatest number of papers written for them shall be deputies for that Court; whose names shall be endorsed

on the back side of the warrant and returned into the Court, with the Constable or Constables' hand unto the same.

VIII.

[Proportional representation.]

It is Ordered, sentenced, and decreed, that Windsor, Hartford, and Wethersfield shall have power, each Town, to send four of their Freemen as their deputies to every General Court; and Whatsoever other Town shall be hereafter added to this Jurisdiction, they shall send so many deputies as the Court shall judge meet, a reasonable proportion to the number of Freemen that are in the said Towns being to be attended therein; which deputies shall have the power of the whole Town to give their votes and allowance to all such laws and orders as may be for the public good, and unto which the said Towns are to be bound.

IX.

[Fair elections and orderly conduct required of the elected.]

It is Ordered, sentenced, and decreed, that the deputies thus chosen shall have power and liberty to appoint a time and a place of meeting together before any General Court, to advise and consult of all such things as may concern the good of the public, as also to examine their own Elections, whether according to the order, and if they or the greatest part of them find any election to be illegal they may seclude such for present from their meeting, and return the same and their reasons to the Court; and if it be proved true, the Court may fine the party or parties so intruding, and the Town, if they see cause, and give out a warrant to go to a new election in a legal way, either in part or in whole. Also the said deputies shall have power to fine any that shall be disorderly at their meetings, or for not coming in due time or place according to appointment; and they may return the said fines into the Court if it be refused to be paid, and the Treasurer to take notice of it, and to escheat or levy the same as he does other fines.

X.

[Composition and powers of the General Court.]

It is Ordered, sentenced, and decreed, that every General Court, except such as through neglect of the Governor and the greatest part of the Magistrates the Freemen themselves do call, shall consist of the Governor, or someone chosen to moderate the Court, and four other Magistrates at least, with the major part of the deputies of the several Towns legally chosen; and in case the Freemen, or major part of them, through neglect or refusal of the Governor and major part of the Magistrates, shall call a Court, it shall consist of the major part of Freemen that are present or their deputies, with a Moderator chosen by them: In which said General Courts shall consist the supreme power of the Commonwealth, and they only shall have power to make laws or repeal them, to grant Levites, to admit of

Freemen, dispose of lands undisposed of, to several Towns or persons, and also shall have power to call either Court or Magistrate or any other person whatsoever into question for any misdemeanor, **and may for just causes displace or deal otherwise according to the nature of the offense**; and also may deal in any other matter that concerns the good of this Commonwealth, except election of Magistrates, which **shall be done by the whole body of Freemen**.

In which Court the Governor or Moderator shall have power to order the Court, to give liberty of speech, and silence unseasonable and disorderly speakings, to put all things to vote, and in case the vote be equal to have the casting voice. **But none of these Courts shall be adjourned or dissolved without the consent of the major part of the Court.**

XI.

[Methods of paying taxes; no taxation without representation.]

It is Ordered, sentenced, and decreed, that when any General Court upon the occasions of the Commonwealth have agreed upon any sum, or sums of money to be levied upon the several Towns within this Jurisdiction, that a committee be chosen to set out and appoint what shall be the proportion of every Town to pay of the said levy, **provided the committee be made up of an equal number out of each Town.**

14th January 1639 the 11 Orders above said are voted.

[Emphasis added.]

Plantation Agreement at Providence
August 27, 1640

Like the **Plymouth Plantation**, the settlement at **Providence** (**Rhode Island**) was based upon the principles of separation of church and state and liberty of conscience. Its founder, **Roger Williams**, had been banished by the **General Court of the Massachusetts Bay Colony** in 1635, for his preaching on separation of church and state:

> Williams insisted that church officers should not interfere in civil matters and that civil officers should not attempt to enforce ecclesiastical law. He continued to call for complete separation from the **Church of England** and criticized the colonists for illegally taking land rightly belonging to the **Indians**. William's reputation as a minister could not be questioned. Even his staunchest opponent, **John Winthrop**, called him, "a godly minister." But his preaching was a threat to the "city upon a hill" [Emphasis added.] (Lowman, p. 42).

> Roger Williams clearly distinguished the powers of each realm:

> The government of the civil Magistrate extends no further than over the bodies and goods of their subjects, not over their souls, and therefore they may not undertake to give Laws unto the souls and consciences of men. . . . The Church of Christ doth not use the Arm of secular power [compare this to the "sword of the state" discussed in Section IV] to compel men to the true profession of the truth, for this is to be done with spiritual weapons [the "sword of the spirit"], whereby Christians are to be exhorted, not compelled (Lowman, p. 42).

The importance of **separation of church and state** to Williams can be seen in his quest for a **charter** from the king of England which specifically made provisions for such an enactment. In 1636, Williams founded the settlement of Providence. In 1644, **Parliament** issued a charter which combined the four settlements in Rhode Island under one government (Lowman, p. 43). But Williams wanted his colony to be "a shelter for persons distressed for conscience" (Lowman, p. 43). **Oliver Cromwell** denied his request, but in 1663, under the reign of **Charles II**, the charter was granted, which reads in part:

> No person within the said Colony, at any time hereafter, shall be in any wise molested, punished, disquieted, or called in question, for any differences in opinions in matters of religion, and do not actually disturb the civil peace of our said Colony; but that all . . . may from time to time, and at all times hereafter, freely and fully have and enjoy his and their own judgments and consciences, in matters of religious concernments . . . not using this liberty to licentiousness and profaneness, nor to the civil injury or outward disturbance of others (Lowman, p. 43).

This **liberty of conscience** can be seen in the requirements for participation in government:

> The colony of Rhode Island became a place of true political and religious freedom. There were no religious qualifications for voting or holding public office. The only qualification for voting was the ownership of property. It was felt that this requirement would insure that all voters would have a concern for the common good. Since it was possible for virtually everyone to own property, such a requirement was no hindrance to political participation. A representative system of government was set up, in which the voters elected deputies (legislators), a governor, and his council assistants (Lowman, pp. 43-4).

Other colonies embraced the concept of liberty of conscience, such as **Pennsylvania** (Lowman, p. 49) and **Maryland** (Lowman, p. 46), and of course, the **American system of government** embraced it as well. Other principles found in this document are an emphasis on **due process of law**, **justice**, and **accountability**.

The following is the **Plantation Agreement**, initiated at Providence in 1640.

Wee, Robert Coles, Chad Browne, William Harris, and John Warner, being freely chosen by the consent of our loving friends and neighbors the Inhabitants of this Towne of Providence, having many differences amongst us, they being freely willing and also bound themselves to stand to our Arbitration in all differences amongst us to rest contented in our determination, being so betrusted we have seriously and carefully indeavoured to weigh and consider all those differences, being desirous to bringe to unity and peace, although our abilities are farr short in the due examination of such weighty things, yet so farre as we conceive in laying all things together we have gone the fairest and equalist way to produce our peace.

II.

[Due process, trial process, and liberty of conscience.]

Agreed. We have with one consent agreed that for the disposeing, of these lands that shall be disposed belonging to this towne of Providence to be in the whole Inhabitants by the choise of five men for generall disposeall of lands and also of the towne Stocke, and all Generall things and not to receive in any six dayes at townesmen, but first to give the Inhabitants notice to consider if any just cause to shew against the receiving of him as you can apprehend, and to receive none but such as subscribe to this our determination. Also we agree that if any of our neighbours doe apprehend himselfe wronged by those or any of these 5 disposers, that at the Generall towne meeting he may have a tryall.

Also, we agree for the towne to choose beside the other five men one or more to keepe Record of all things belonging to the towne and lying in Common.

Wee agree, as formerly hath bin the liberties of the town, so still, to hould forth **liberty of Conscience**.

III.
[Just arbitration process.]

Agreed, that after many Considerations and Consultations of our owne State and alsoe of States abroad in way of government, we apprehend, no way so suitable to our Condition as government by way of Abritration. But if men agree themselves by arbitration, no State we know of disallows that, neither doe we: But if men refuse that which is but common humanity betweene man and man, then to compel such unreasonable persons to a reasonable way, we agree that the 5 disposers shall have power to compel him to choose two men himselfe, or if he refuse, for them to choose two men to arbitrate his cause, and if these foure men chosen by every partie do end the cause, then to see theire determination performed and the faultive to pay the Arbitrators for theire time spent in it: But if these foure men doe not end it, then for the 5 disposers to choose three men to put an end to it, and for the certainty thereof, wee agree the major part of the 5 disposers to choose the 3 men, and the major part of the 3 men to end the cause having power form the 5 disposers by a note under theire hand to performe it, and the faultive not agreeing in the first to pay the charge of the last, and for the Arbitrators to follow no impoloyment til the cause be ended without consent of the whole that have to doe with the cause . . .

IV.
[Enforcing accountability to the law.]

Agreed, that if any person damnify any man, either in goods or good name, and the person offended follow not the cause upon the offendor, that if any person give notice to the 5 Disposers, they shall call the party delinquent to answer by Arbitration . . .

V.
[Just cause required in the trial process.]

Agreed, for all the whole Inhabitants to combine ourselves to assist any man in the pursuit of any party delinquent, with all best endeavours to attack him: but if any man raise a hubbub, and there be no just cause, then for the party that raised the hubbub to satisfy men for their time lost in it.

VI.
[The right to appeal one's case.]

Agreed, that if any man have a difference with any of the 5 Disposers which cannot be deferred till general meeting of the towne, then he may have the Clerk call the towne together at his (discretion) for a tryall . . .

VII.
[Protection of private property.]

Agreed, that the towne, by the five men shall give every man a deed of all his lands lying within the bounds of the Plantations, to hould it by for after ages.

VIII.
[Government to function on a regular basis.]

Agreed, that the 5 disposers shall from the date hereof, meete every month-day upon General things and at the quarter-day to yeeld a new choise and give up their old Accounts.

IX.
[Government to function on a regular basis.]

Agreed, that the Clerke shall call the 5 Disposers together at the month-day, and the generall towne together every quarter, to meete upon general occasions from the date hereof . . .

XI.
[Acts of disposal.]

Agreed, that all acts of disposall on both sides to stand since the difference.

XII.
[Equal responsibility of all to support the government.]

Agreed, that every man that hath not paid in his purchase money for his Plantation shall make up his 10s. to be 30s. equal with the first purchasers: and for all that are received townsmen hereafter, to pay the like somme of money to the towne stocke.

These being those things wee have generally concluded on, for our peace, we desiring our loving friends to receive as our absolute determination, laying ourselves downe as subjects to it.

Henry Steele Commager, *Documents of American History*,

(F.S. Crofts & Co.: New York: 1942): pp. 24-6.

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Declaration of Independence
July 4, 1776

When the Founding fathers wrote the **Declaration of Independence**, they were operating under a Biblical worldview of government, and they were able to look back at the history of England to guide them. The main event in English history which gave the colonists the impetus to reject the **king of England** as their ruler was the signing of the **Magna Carta**:

> Magna Carta played an essential part in the history of American constitutional development. It came to be regarded by the colonists as a generic term for all documents of constitutional significance. . . . In addition, the colonists frequently embodied the provisions of the Magna Carta, particularly chapter 39, into their own legislation. . . . the colonists always claimed the rights which they considered were to be founded in the Magna Carta (M. Perry & Cooper, pp. 9-10).

It is also evident that the Founding fathers were using **covenantal principles** to justify their expulsion of English rule over them. The Declaration reads as a list of wrongs committed by the king against them, thereby constituting a **material breach** in the convenant. The Founding fathers were therefore obligated to rebel:

> The Declaration says that governments are formed by compact. Those compacts are conditional. The condition is that the government rule for the safety, well-being, and protection of the people. When the government destroys people's lives and rights, it becomes tyrannical. Tyranny is a material breach of the compact. The king of England is a tyrant, the Declaration pleads. He has committed a series of tyrannical abuses; obstructed justice; acted contrary to the public good; suspended or impeded legislatures; interfered with elections; corrupted the judiciary; wasted public and private wealth; enforced martial law in time of peace; spied on the people; broken the charters; left government to others who had no right to rule; waged war against unarmed towns and cities; and perpetrated continued acts of theft, murder, and barbarity. In short, he has denied the laws of nature, denied divine law, denied the laws of England, and repudiated his charters. He is thus a tyrant who can lawfully be deposed. He has materially broken his promise (Amos, *Defending*, p. 148).

The Founding fathers were also aware of the implications of a material breach of a covenant. As Locke wrote in his *Second Treatise of Government* (see Section V), they realized that America was now in a state of war with England. Only God could be their judge now. It was fitting, then, that the Declaration calls upon God to judge America's case against the king of England.

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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**. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. **But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security**. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasions from without and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws, giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;
For transporting us beyond seas, to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burned our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury [notice the emphasis on "going to extra mile to preserve the current goverment rather than overthrowing it]. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in our attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have

conjured them, by the ties of our common kindred, to disavow these usurpations which would inevitably interrupt our connections and correspondence. **They too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends**.

We, therefore, the representatives of the United States of America, in General Congress assembled, **appealing to the Supreme Judge of the world for the rectitude of our intentions**, do, in the name and by the authority of the good people of these colonies solemnly publish and declare, That these United Colonies are, **and of right ought to be**, ***FREE AND INDEPENDENT STATES***; that they are absolved from all allegiance to the British crown and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do. And for the support of this declaration, **with a firm reliance on the protection of Divine Providence**, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK , [et. al.]

[Emphasis added.]

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www.yale.edu/lawweb/avalon/declare.htm

An Electronic Publication of the Avalon Project-
(www.yale.edu/lawweb/avalon/avalon.htm)
William C. Fray and Lisa A. Spar, Co-Directors

[Internet]
Accessed March 5, 1998.

The United States Constitution
September 17, 1787

It quickly became apparent that the **Articles of Confederation**, ratified by all the states by March 1781, was insufficient in several areas (Lowman, pp. 121-22). One of the main weaknesses was that it had no means of enforcing laws, or to settle disputes arising out of national laws. This placed the **states** in the position of being independent nations (Lowman, p. 122). The states had no rights with one another that were easily protected, and neither did their citizens. **Shays' Rebellion**, which occurred in **Massachusetts** in 1786, magnified this problem and was the event that caused the **founding fathers** to discuss plans for a better system of government:

> Shays' Rebellion was limited to Massachusetts, but it threw fear into the hearts of Americans in general. It rudely awakened them to the truly desperate political and economic conditions in America. **George Washington**, in a letter to **John Jay**, wrote that "our affairs are drawing rapidly to a crisis. We have errors to correct; we have probably had too good an opinion of human nature in forming our **Confederation**. Experience has taught us that men will not adopt, and carry into execution, measures the best calculated for their own good, without the intervention of coercive power. I do not conceive we can exist long as a nation without lodging, somewhere, a power which will pervade the whole **Union** in as energetic a manner as the authority of the state governments extends over the several **states** [Emphasis added.] (Lowman, p. 124).

A convention was called to revise the Articles of Confederation, but under the leadership of George Washington, the delegates pushed for a more ambitious plan: creating an entirely new system of government:

> The Convention had been called only for the purpose of revising the Articles of Confederation. But most of the delegates realized from the beginning of their discussions that this was not enough to solve the nation's pressing problems. What was needed was a new and stronger national government. Since whatever action they took would only result in a recommendation to the states and would not be binding on anyone, they made the bold decision to put aside the Articles and draft a brand new Constitution for the United States. In making the *"Great Decision,"* they heeded the advice of George Washington, who is reported to have told the delegates even before the Convention officially began: "It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we ourselves disapprove, how can we afterwards defend our works? Let us raise a standard to which the wise and honest can repair. The event is in the hands of God" (Lowman, p. 126).

And so the delegates created and successfully pushed for ratification of the Constitution. The **United States Constitution** can be looked at as the culmination of many historical trends, which, throughout the centuries, led to an understanding of a Biblical framework

upon which government should operate. The Constitution includes references **to separation of powers**, **due process of law**, **rule by consent**, **rule by law**, **rule by justice**, **protection of inalienable rights**, and **federalism**, among other things. Furthermore, it was based upon an understanding of **covenantal principles**. Before the Constitution was ratified, the states were practically in a state of nature [defined by Locke as a situation in which no government existed to ensure basic rights among various parties; see Section III] with one another, since the Articles of Confederation were so weak. The Constitution was a means by which the people of America, as one nation, could come together to ensure that their rights were protected.

PREAMBLE

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

Section 1.

[Legislative powers; in whom vested.]

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2.

[House of Representatives, how and by whom chosen Qualifications of a Representative. Representatives and direct taxes, how apportioned. Enumeration. Vacancies to be filled. Power of choosing officers, and of impeachment.]

1. The House of Representatives shall be composed of members chosen every

second year by the people of the several States, and the elector in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives [and direct taxes] **[Altered by 16th Amendment]** shall be apportioned among the several States which may be included within this Union, according to their respective numbers, [which shall be determined by adding the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.] **[Altered by 14th Amendment]** The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the Executive Authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3.

[Senators, how and by whom chosen. How classified. State Executive, when to make temporary appointments, in case, etc. Qualifications of a Senator. President of the Senate, his right to vote. President pro tem., and other officers of the Senate, how chosen. Power to try impeachments. When President is tried, Chief Justice to preside. Sentence.]

1. The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,] **[Altered**

by 17th Amendment] for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; [and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.] **[Altered by 17th Amendment]**.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of the President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4.

[Times, etc., of holding elections, how prescribed.
One session in each year.
]

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be [on the first Monday in December,] [Altered by 20th Amendment] unless they by law appoint a different day.

Section 5.

[Membership, Quorum, Adjournments, Rules, Power to punish or expel. Journal. Time of adjournments, how limited, etc.]

1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6.

[Compensation, Privileges, Disqualification in certain cases.]

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under

the authority of the United States, which shall have increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7.

[House to originate all revenue bills. Veto. Bill may be passed by two-thirds of each House, notwithstanding, etc. Bill, not returned in ten days to become a law. Provisions as to orders, concurrent resolutions, etc.]

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8.

[Powers of Congress .]

The Congress shall have the power

1. to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court:

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations:

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years:

13. To provide and maintain a navy:

14. To make rules for the government and regulation of the land and naval forces:

15. To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions:

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And,

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Section 9.

[Provision as to migration or importation of certain persons. *Habeas Corpus*, Bills of attainder, etc. Taxes, how apportioned. No export duty. No commercial preference. Money, how drawn from Treasury, etc. No titular nobility. Officers not to receive presents, etc.]

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importations, not exceeding 10 dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. [No capitation, or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken.] **[Altered by 16th Amendment]**

5. No tax or duty shall be laid on articles exported from any state.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to,

or from one state, be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States: And no person holding any office or profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10.

**[States prohibited from the exercise of certain powers.
]**

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in a war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

Section 1.

**[President: his term of office. Electors of President; number and how appointed. Electors to vote on same day. Qualification of President. On whom his duties devolve in case of his removal, death, etc. President's compensation. His oath of office.
]**

1. The Executive power shall be vested in a President of the United States of America. He shall hold office during the term of four years, and together with the Vice President, chosen for the same term, be elected as follows

2. [Each State] **[Altered by 23rd Amendment]** shall appoint, in such manner as the Legislature may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector [The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for each; which list they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.] **[Altered by 12th Amendment]**

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. [In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or

inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.] **[Altered by 25th Amendment]**.

6. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation:

> I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.

Section 2.

[President to be Commander-in-Chief. He may require opinions of cabinet officers, etc., may pardon. Treaty-making power. Nomination of certain officers. When President may fill vacancies.]

1. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have the power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Section 3.

[President shall communicate to Congress. He may convene and adjourn Congress, in case of disagreement, etc. Shall receive ambassadors, execute laws, and commission officers.]

He shall, from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he may receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers

of the United States.

Section4.

**[All civil offices forfeited for certain crimes.
]**

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

Section 1.
[Judicial powers. Tenure. Compensation.]

The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2.
[Judicial power; to what cases it extends. Original jurisdiction of Supreme Court Appellate. Trial by Jury, etc.]

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; [to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.] **[Altered by 11th Amendment]**

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before-mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by

law have directed.

Section 3.

[Treason defined. Proof of Punishment .]

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.

ARTICLE IV

Section 1.

[Each State to give credit to the public acts, etc. of every other State.]

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Section 2.

[Privileges of citizens of each State. Fugitives from Justice to be delivered up. Persons held to service having escaped, to be delivered up.]

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. **[See the 14th Amendment].**

2. A person charged in any state with treason, felony, or other crime, who shall flee justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. [No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.] **[Altered by 13th Amendment .]**

Section 3.

[Admission of new States. Power of Congress over territory and other property.]

1. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, without the consent of the legislatures of the states concerned, as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4.

**[Republican form of government guaranteed. Each State to be protected.
]**

The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V

**[Amendments
.]**

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

[Constitution as the supreme law of the land.]

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

[Ratification.]

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

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www.constitution.org/usconsti.htm
The Constitution Society,
(www.constitution.org/default.htm)
[Internet]
Accessed March 18, 1998.

The Bill of Rights of The United States of America
December 15, 1791

Ratifying the **Bill of Rights** was an important step in assuring that the Constitution itself was ratified and supported by the American people. The Bill of Rights was a culmination of a tradition of specifically enumerated rights. The **Massachusetts Body of Liberties** (1641); the **English Bill of Rights** (1689); the **Virginia Declaration of Rights** (1776); and the **Virginia Statute of Religious Freedom** were documents which influenced the people's call for an American bill of rights (Hicks, p. 236).

One of the key proponents in the call for a bill of rights was **James Madison**:

> James Madison finally won ratification of the Constitution in Virginia by gaining the support of the numerous **Baptists** in that state. He won their confidence in the Constitution by incorporating a plea for a bill of rights within Virginia's ratification and by promising to propose a bill of rights at his earliest convenience if elected to Congress. Virginia's convention ratified the Constitution on June 25, 1788, and the voters subsequently sent Madison to the **House of Representatives**. Madison proposed the Bill of Rights in Congress on September 25, 1789, and ten of the twelve amendments that he proposed became the first ten amendments to the Constitution when they were ratified by the states by December 15, 1791 [Emphasis added.] (Hicks, p. 236).

The Bill of Rights makes specific provisions for **upholding justice** and **rule of law**, while at the same time stipulating that it was not the sole source of the American people's **rights**.

AMENDMENT I

[Liberty of conscience and of press.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

[Right to bear arms.]

A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

AMENDMENT III

[Quartering of soldiers in private houses forbidden without consent.]

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

[Searches and seizures must be done lawfully.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

[Criminal proceedings must be just.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT VI

[Criminal proceedings must be just.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by

an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT VII

[Trial by Jury.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

AMENDMENT VIII

[Excessive bail and fines and cruel and unusual punishment are prohibited.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

[Protection of unenumerated rights ensured.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

[States' rights.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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www.constitution.org/usconsti.htm
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Accessed March 18, 1998.

Emancipation Proclamation

January 1, 1863

One of the key weaknesses of the **Constitution** was that it did not protect the inalienable rights of **African-Americans**. Due to **Southern** opposition to the banning of **slavery**, the **founding fathers** worked a compromise in the Constitution, allowing slavery, but limiting the Southern states' representative power in **Congress** (the Southern states did not want to consider African-Americans as people with rights, but they did want to count them as people when determining the number of representatives they were to receive for the House of Representatives) (Lowman, p. 127).

With the expansion of **United States territory** in the 1800s, the question of the legality of slavery came into sharper focus. While Southern states tended to argue that slavery should be allowed in the new territories, the **Northern** states tended to argue the opposite. Various compromises were implemented to attempt to resolve the conflict, such as the **Missouri Compromise of 1820**, the **Compromise of 1850**, and the **Kansas-Nebraska Bill**, but peace was short-lived (Lowman, pp. 280-81). The **Dred Scott** case, decided by the **Supreme Court** in 1857, further ignited tension between the North and South:

> The justices differed widely in their opinions, but the Court definitely ruled in favor of the Southern view of slavery in the territories. Under the leadership of Roger Taney . . . the Court ruled that Dred Scott was still a slave. The most momentous decision of the Court in the Dred Scott case was that since the Constitution guarantees the protection of private property, the Missouri Compromise of 1820 . . . had been unconstitutional. The Dred Scott decision had far-reaching effects. It made the South more certain that it was right, and it made the North exceedingly angry with the Supreme Court (Lowman, p. 282).

Tension over the slavery issue came to the breaking point in the **Presidential elections** of 1860. When **Republican** candidate **Abraham Lincoln** was elected, the Southern states began to secede, fearing that Lincoln would push for the abolition of slavery (Lowman, pp. 284-5). The **Civil War** began in 1861. In 1862, Lincoln drafted the **Emancipation Proclamation**, which banned slavery in all areas at arms against the Union:

> The Emancipation Proclamation did not immediately abolish slavery from the country. It only applied to areas in arms against the Union. It did not apply to the border states that remained within the Union. In the areas where it did apply, it was generally ignored. Only as the Union conquered various portions of the South was the proclamation put into force (Lowman, p. 307).

After the Civil War ended, however, the freedom and rights of African-Americans were guaranteed by the **13th**, **14th** and **15th Amendments** (Lowman, p. 316).

January 1, 1863

By the President of the United States of America: A Proclamation.

Whereas, on the twentysecond day of September, in the year of our Lord one thousand eight hundred and sixty two, a proclamation was issued by the President of the United States, containing, among other things, the following, towit:

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

"That the Executive will, on the first day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be, in good faith, represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such State shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States."

Now, therefore I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion against authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this first day of January, in the year of our Lord one thousand eight hundred and sixty three, and in accordance with my purpose so to do publicly proclaimed for the full period of one hundred days, from the day first above mentioned, order and designate as the States and parts of States wherein the people thereof respectively, are this day in rebellion against the United States, the following, towit:

Arkansas, Texas, Louisiana, (except the Parishes of St. Bernard, Plaquemines, Jefferson, St. Johns, St. Charles, St. James[,] Ascension, Assumption, Terrebonne, Lafourche, St. Mary, St. Martin, and Orleans, including the City of New-Orleans) Mississippi, Alabama, Florida, Georgia, South-Carolina, North-Carolina, and Virginia, (except the fortyeight counties designated as West Virginia, and also the counties of Berkley, Accomac, Northampton, Elizabeth-City, York, Princess Ann, and Norfolk, including the cities of Norfolk & Portsmouth); and which excepted parts are, for the present, left precisely as if this proclamation were not issued.

And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.

And I further declare and make known, that such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this first day of January, in the year of our Lord one thousand eight hundred and sixty three, and of the Independence of the United States of America the eighty-seventh.

By the President: ABRAHAM LINCOLN

WILLIAM H. SEWARD, Secretary of State.

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www.thelincolnmuseum.org/research/speeches/emancipation.html
The Lincoln Museum
(www.thelincolnmuseum.org)
[Internet]
Accessed April 4, 1998.

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CONCLUSION

The Answer to the Greatest Problem Facing American Government Today.

If, as postulated in the Introduction, the greatest problem facing American government today has to do with the American people's disregard of absolutes, specifically the Word of God, then two questions have to be asked:

First of all, how does this disregard of the Word of God manifest itself in society and government?

Secondly, what can be done to remedy the situation, or in other words, how can the principles discussed in this book be applied to solve the "greatest problem facing American government today"?

These questions are not easily answered, and entire books could be written to answer each one, but the following will be a brief attempt to answer both questions, within the context of the principles discussed in this book.

Finding Solutions from a Spiritual *and* Practical Standpoint.

Before going any further, however, it is important to remember that as Christians, we need not feel compelled to discuss the problems of government solely in a context of government, because we understand that the sin nature, which begins its evil work on a personal level, goes on to taint everything with which it comes into contact, including government. More importantly, we understand that Jesus Christ, who, as God, became flesh and therefore a part of the everyday world in which we live, has answers to the problems of mankind which *go deeper and solve more clearly those problems than any government program or law could do.*

On the other hand, we do need to feel compelled to provide specific solutions to the problems of government and society, and therefore we should address them in the specific contexts in which they occur. Just as Jesus Christ became flesh, so is the kingdom He is building. Jesus commanded a fig tree to wither and die when it was not bearing fruit. What does it say of our devotion to Jesus Christ if our interaction in society does not bear fruit? Although we are not to be "of the world," we are certainly to "be in it." We fail to do justice to the power of God when we avoid discussions of the problems of society simply because they are of the world and not related to spiritual issues in their entirety (we know, of course, that basically every problem that mankind deals with is the result of the sin nature, and therefore to some degree related to spiritual concerns). It is entirely appropriate to provide practical solutions to the problems of government today, and it is entirely

appropriate to use our intellect to put forth solutions, because when Jesus Christ died on the cross, He did so not just to renew our spirits, but our minds as well. The following, then, is an attempt to balance an understanding of the spiritual dimension of the problems of American government with the practical solutions that can be applied to the problems once the spiritual dimension has been addressed.

How Does the Disregard of the Word of God Manifest Itself in Society and Government?

In his book, *When Nations Die*, Mr. Jim Black discusses ten areas of decay ravaging American society today. Mr. Black also posits that these problems have brought down nations and empires in the past. He therefore concludes that America is headed in the same direction. These ten problem areas are: 1) lawlessness; 2) the loss of economic discipline; 3) rising bureaucracy; 4) decline of education; 5) weakening of cultural foundations; 6) loss of respect for tradition; 7) increase in materialism; 8) a rise in immorality; 9) a decay of religious belief; and 10) a devaluing of human life. The following is a general paraphrase of the content of his book regarding those specific problem areas.

Lawlessness.

Black discusses the increase of lawlessness in America as a sign of decay. People no longer feel compelled to live by the laws of the land, or to care for one another. What we see today is often a blatant disregard for any obligation to anyone at any time. This is not surprising considering the lack of respect for absolute values, and the falling apart of the American family (Black, pp. 24-5).

According to Black, while crime increases, the very structure intended to prevent it, the government, has begun to lose its ability to limit crime because the justice system has begun to emphasize social engineering rather than punishment of crimes. This means that criminals, rather than being punished by the state, are being dealt with in a far more gentle manner. In many instances, government, particularly the judicial branch, has begun to retreat from the idea of the covenant, in which the understanding of government was to protect the people from the violence of evil doers (Black, pp. 30-31).

The Loss of Economic Discipline.

Today, it seems that the American people are in a pattern of spending and consumption without any self-control. Many people find themselves wrapped up in debt, and are hard pressed to get themselves out of debt, due to lack of control (self-government) and poor spending habits.

Furthermore, the American people have allowed the government to take more and more of their money through taxes, and to offer more and more social programs that were once offered by churches and other private institutions (Black, pp. 50-51). The American

government has contributed to the loss of economic discipline by overtaxing the American people and in turn by making the American people so dependent upon government (Black, pp. 55-6).

Government leaders have forgotten that the principal aim of government is to uphold the people's inalienable rights. If the government were not doing so many other things, and offering so many other programs, would it need so much of our hard-earned money?

Rising Bureaucracy.

The rising bureaucracy could also be called the increasing involvement of government into every aspect of life. In some areas, there is simply no way around government regulation. Because government is dedicated to protecting life, liberty, and property, it needs to be able to ensure that individuals, groups, and businesses are conducting themselves in a manner conducive to protecting the freedom and security of others. But in other areas, the people have allowed the government to be more involved than it should be, such as in the area of providing welfare. But if the citizens were willing to be more self-governing, government would not necessarily need to be so active even in legitimate areas. When the people are lawless, government is forced to become more and more intrusive into the lives of the people and to make more and more laws to hold them accountable, but when the people are self-governing, government is less compelled to make laws in a given area, because no problem exists in that area. Black argues that as government has been allowed to provide more and more of the needs of the people, an increase in bureaucracy has resulted, which in turn has lead to a loss of individual freedom. As in other areas, government has abandoned its mandate to allow for as much freedom as possible for the individual in the name of caring for as many people as possible.

Decline of Education.

The status of public education today is that in many instances, the classroom has become a laboratory for social experiment rather than for teaching students how to read, write, and to become productive members of society. Furthermore, government has played a key role in this process. The result has been the loss of academic proficiency and the destruction of a Biblical value system (Black, pp. 73-99). Unfortunately, it seems as if many parents are either not aware or concerned about this very serious problem, thereby allowing the damage to continue.

Weakening of Cultural Foundations.

In the past few decades in America--especially in the sixties--many have pushed for change, often solely for the sake of change. The traditional system of government has often been viewed as oppressive and in need of radical reform. The result is an American people who are somewhat separated from the cultural and moral foundations--including religion--that have kept America strong for over 200 years.

Loss of Respect for Tradition.

In a similar vein, America has lost the profound sense of meaning in life. Religion, tradition, and cultural norms, in addition to God and his Word, have been disregarded for relativism. The people have lost a sense of social bonds with one another that is the essence of any covenantal relationship. In the vacuum that has occurred, people feel a great insecurity and ambivalence about the meaning of life.

A Decay of Religious Belief.

We as a people have forgotten our Judeo-Christian heritage. Instead, we have chased materialism, as already mentioned, or new age religion. This problem goes hand in hand with a loss of respect for traditional values and a loss of respect for cultural foundations.

Increase in Materialism.

With no traditions, moral guidelines, or religious beliefs to hold them together and to give them true meaning to life, the American people have become a nation of pleasure-seekers (Black, pp. 149-169). After all, if there is nothing worth dying for, and nothing worth fighting for, why not just live for oneself and disregard the concerns of others? This explains in part the instability of the family, and of relationships in general. People today are so distracted by entertainment, sports, and material success that they have forgotten to think deep thoughts and to consider the possibility of a just God who will take into account their actions.

A Rise in Immorality.

A corollary to this lack of values and pursuit of materialism is an increase in immorality. Since there are no absolutes, and since fulfilling oneself is the ultimate goal, who cares about being "good"? This attitude has resulted in dishonesty, hatred for one another, and a disregard of law in general. Obviously, the concept of a covenantal bond is not to be found in this view.

A Devaluing of Human Life.

The devaluing of human life is a natural progression of a rejection of absolutes and the subsequent rise in immorality. With no sense of meaning to life, and no sense of right and wrong, life in general becomes meaningless. It is no surprise, therefore, to see that abortion, suicide, and brutal crime have been so prevalent in America.

How Can Biblical Principles Be Applied to Remedy the

Problems of American Government and Society?

As mentioned above, this discussion is led by the attempt to balance the need for spiritual reform with the need for practical reform in government. The ten problems presented above fall in varying degrees between these two approaches. The **weakening of cultural foundations**, a **loss of respect for tradition**, a **decrease in religious belief**, an **increase in materialism**, a **rise in immorality**, and a **devaluing of human life** are closely affected by the *spiritual state* of the American people. If individuals do not have a personal relationship with God, they are not as likely to respect the cultural/traditional/moral guidelines of society as one who has a personal relationship with the Lord. Therefore, the solution to these problems in general is a spiritual renewal. This is the part of the solution which government cannot address; it has to come solely from the hand of God as He works through His church. We, as Christians, should start by praying for a spiritual change in this nation. We should be praying for revival in every area of society. The other problem areas--**lawlessness**, the **loss of economic discipline**, **rising bureaucracy**, and the **decline of education**--involve more practical solutions. But both sets of problems need both sets of solutions to some degree, so the following is a scenario of how both could be applied in America.

The Spiritual Aspect of the Solution.

The church would have to become more active in society, through revival, and through general interaction. We, as Christians, must fight the temptation to be wrapped up in materialism. If we focus on the pursuit of pleasure rather than our covenantal obligations to God and to man, then society has no hope of being reformed. It is our job to raise up a generation of people who know God's Word, and, relating to the discussion of good government, who know the Biblical principles of government needed to ensure freedom. We as the church should also seek to reach out to those who are weak. We should be the family to those who have no family and are not familiar with what it feels like to be loved. We need to show those who devalue life, and see no reason to live, that they are special in the eyes of God. We should be the first ones to demonstrate the principle of *hesed* in a society that is unfamiliar with the importance of covenantal relationships.

As this process of interaction in society continues at the very basic (and more spiritual) levels, it progresses into more practical involvement. For instance, Christians should continue to involve themselves more and more in the process of education for their children. The public schools will probably never teach Biblical principles, and so someone must. Another example is in helping the poor. We should increase our efforts to help the poor, because we, as Christians, are in the unique position of being able, through the grace and power of God, to address the spiritual needs of the poor rather than just their material needs. Furthermore, we can do it on a daily, personal basis, in which the person sees the love of God. The government really cannot perform this special work.

When the church becomes involved in society, the role of government is positively affected, even though government is not specifically involved in these solutions. This is so

because as God works through the church to draw men unto Him, and therefore draw men unto holiness and righteousness (self-government), lawlessness will decrease. As the church begins to involve itself with helping the poor more and more, the government will feel less and less compelled to create programs to help the poor. As the church continues to provide viable options to public education, the need for government involvement in education will decrease. *It is this process of upholding those covenantal obligations which are so vital to American government even though they do not necessarily involve government*. It is inappropriate for the American people to look to the government to take care of their lives. We need to be self-governing. We need to be willing to go into the inner city and spread the Word of God, thereby stopping the culture of death from spreading. We need to open crisis pregnancy centers, where the love of God can be shown to the many young women contemplating abortion. We need to do what God has called us to do, and then, and only then, can the problems of government be addressed.

The Practical Aspect of the Solution.

Let us suppose, then, that the church and the American people in general are fulfilling their covenantal obligations to themselves and to one another. What if the government is still controlled by ungodly, power-hungry people? The solution to this problem also begins with the American people, who should become more involved in the electoral process by keeping themselves informed of the actions of their elected leaders and by voting in godly men and women to represent them. As more and more people begin to serve God and to uphold their covenantal obligations, more and more godly people will be elected into office. Leaders who do not embrace a Biblical worldview of justice will eventually be removed from office. *It is vital that the American people keep their government leaders accountable for their actions*. It is easy to forsake this responsibility, because most people find it difficult to stay interested in what is going on in government, and many people, especially with life being as busy as it is, do not want to take the time to understand what is happening. But this is a covenantal duty, and must therefore be upheld. Furthermore, the American people must get involved in the local and state levels of government, not just the national level. After all, *it is at these lower levels of government that the people have the most influence*.

And what should leaders in government be doing? Once the American people are fulfilling their covenantal obligations, the task of government becomes much easier. The government no longer becomes the sole force trying to keep society together; it becomes an institution that ensures that a self-governing society is protected from violence and injustice, from within and from abroad. Government leaders should understand that they serve limited roles according to the function of government mentioned above. They are to uphold the constitution, which represents the will of the people. They are to be accountable to the people, and to keep their best interests in mind. They should not try to perform duties which are reserved for other groups in society to perform, such as education. They should protect the inalienable rights of the people without hesitancy. This view of government is in stark contrast to what many people think of when they consider entering government. Many involve themselves in government because of the great power that is involved with leadership, but in a covenantal system, *the preeminence of government is very limited*.

Finally, it must not be forgotten that all of the duties required by every individual and group in society must be lovingly fulfilled. This brings us right back to the spiritual aspect of the solution: good government, and just ordering of society, is not created by good laws (although they help), *but by good people*, and the process of making a person good falls under the responsibility of God.

Therefore, in one sense, these solutions are quite simple. Although this has been a very brief discussion regarding the problems of American government and society, the brevity does not negate the relevancy of the solution. The challenge is not with the solution, however; it is quite simple. The problem is with the application, because we have to deal with the sin nature of ourselves and of others. Preserving a just society is not an easy task, but it must be done without reluctance, if we are to ensure that liberty is present for the next generation.

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