Christian Roots in American Constitutional Law

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Introduction: Rousseau and Locke

> "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, 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."

Written in 1787, this preamble to the United States Constitution is said to be rooted in the social compact theories of the 17th Century English political philosopher, John Locke and of 18th Century French political philosopher, Jean Jacques Rousseau. While it is true that both Locke and Rousseau attributed the origin of legitimate government to a contract in which the governed have consented to be ruled by the governor, it is a mistake to assume that the United States Constitution, or any of its predecessor state constitutions were based upon both Locke and Rousseau. That would be impossible because those men held antithetical views about the nature of the social compact.

First of all, they differed as to whether any social compact had ever been made in the history of mankind. Rousseau did not believe and he did not argue that man had at some time in history moved from a "state of nature" to a ''state of civilization'' by means of a "social contract." Locke, on the other hand, attempted to prove that his "social contract" was more than a theoretical construct, but had provided the basis in history for the beginning of all political societies.

What is the significance of this difference? Rousseau wrote The Social Contract in 1762 in the solitude of a country retreat in France after he had grown disenchanted with the sophisticated intellectual life in Paris. Locke wrote his Two Treatises of Government in 1689, in the aftermath of the political restoration of King William and Queen Mary to the throne of England in the Glorious Revolution of 1688. Rousseau wrote of an idealized Geneva, Switzerland, in which he had been born and of which he was a citizen; Locke wrote of actual England at a critical point in her history.

Thus, Rousseau introduced his ideas with the following speculation: "My design in this treatise is to inquire whether, taking men such as they are, and laws as they may be made, it is not possible to establish some just and certain rule for the administration of the civil order." Whereas, Locke prefaced his ideas with the following justification: "These (ideas) . . ., I hope, are sufficient to establish the throne of our great restorer, our present King William – to make good his title in the consent of the people . . .."

In 1776, the leaders of the American War for Independence desired "to make good" the title of the new American state governments. In 1787, the leaders of the Federal Constitutional Convention desired ''to make good" the title of the New United States of America. The War for Independence had not been a speculative venture, nor had the failures of the states under the 1781 Articles of Confederation been unreal. Thus, the preambles of some of the state constitutions, such as Pennsylvania's and 1aryland's referring to the break from England and the articles of all of the state constitutions referring to the inherent rights of man to abolish one government and to form a new one were designed to justify the establishment of the new state governments independent from the Mother Country.

Likewise, the Preamble of the United States Constitution was designed to justify a new United States of America divorced from the old Confederation of thirteen states. It was Locke, the political realist and the political historian, not Rousseau, the political idealist and the political philosopher, to whom our forefathers turned.

But the difference between Locke's and Rousseau's "social contract" theories is even more pronounced than this. Rousseau did not believe and did not argue that man had any "natural rights" other than the one to consent or not to consent to the social contract. All other rights, for Rousseau, were to be defined by the majority who governed: "The constant will of all of the members of the State is the general will; it is by that they are citizens and free." If a citizen found himself out of accord with the general will, Rousseau argued, that citizen was mistaken about what he really wanted so the majority had the right to overrule him and force him to be free!

Rousseau's ideas were adopted in the French Revolution of 1789 and were embodied in the following provisions of the August 27, 1789 *Declaration of the Rights of Man and Citizen*:

> "3. The source of all sovereignty resides essentially in the nation; no group, no individual may exercise authority not emanating expressly therefrom.
>
> "4. Liberty consists of the power to do what- ever is not injurious to others; thus the enjoyment of the natural rights of every man has for its limits only those that assure other members of society the enjoyment of those same rights; such limits may be determined only by law. * * *
>
> "6. Law is the expression of the general will . . .."

Thus, the French Revolution endorsed Rousseau's argument that the purpose of the social compact was to establish the primacy of the "general will."

For John Locke, however, the purpose of the social compact was to preserve man's freedoms to "which he was entitled, not by the state, but by nature.

Again, the early American state constitutional documents are clearly based upon Locke, not Rousseau. For example, each of the early constitutions of the original thirteen states contained a provision comparable to Section 1 of the Virginia June 12, 1776 Bill of Rights.

> "That all men are by nature equally free and independent, and have certain unalienable rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

In addition, the sovereign power of government for Locke resided in the people, not in the state. That principle, too, was unanimously endorsed by the thirteen original states. Section 2 of the 1776 Virginia Bill of Rights read:

> "That all power is vested in, and consequently derived from the people; that magistrates are their trustees and servants, and at all times amenable to them."

Section 3 of that same document proves that the people really believed in this principle:

> "That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; . . . and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public need."

It is evident from this very brief survey that it would be a very serious mistake, indeed, to link the American War for Independence and its constitutional history to Rousseau's "social compact.'' In fact, Rousseau's ideas led inevitably to the failure of the French Revolution, to the Napoleon counter-revolution and, ultimately, to Marxist-.Leninist Communism. But it is not my purpose in this paper to trace for you the link between the late 18th Century French democracy and the modern totalitarian Communist state. Rather, I desire to trace the American Revolution and American Constitutional Law back to the 16th and 17th Century Reformation and the Holy Bible.

At the turn of the century the major historians, both American and European, credited the American Revolution and its constitutional development to the Christian Reformers of the 16th Century rather than to the rationalistic thinkers of the 18th Century. George Bancroft, the major 19th Century American historian, was quoted as having said:

> "He that will not honor the memory and respect the influence of Calvin (John Calvin 1509-1564, the Geneva Reformer) knows but little of the origin of American independence."

German historian, Leopold von Ranke, made an even stronger statement when he said: "John Calvin was the virtual Founder of America." And Spanish statesman, Emilio Castelar, outlined the prevailing 19th Century view in a speech that he made before the March 12, 1870 Constitutional Assembly of Spain, a portion of which I quote as follows:

> The French democracy has a glorious lineage of ideas--the science of Descartes, the criticism of Voltaire, the pen of Rousseau, the monumental Encyclopedia; and the Anglo-Saxon democracy has for its only lineage a book of a primitive society – the Bible."

These statements – that Calvin had a major impact on the origin of these United States of America and that the Bible was the source of ideas for this country – surprised me when I first read them about two years ago. I had always assumed – as I had always been taught – that the great principles of American government had come from the Age of Reason, the 18th Century enlightenment. But what has surprised me even more is that these 19th Century men are right.

Beginning with the 1765 Resolutions of the Stamp Act Congress and ending with the 1776 *Declaration of Independence*, the Colonists appealed to the English King through their elected

representatives for their legal rights. In the 1765 Stamp Act Resolutions the colonists claimed that the rights of Englishmen to which they were entitled by law gave rise to their right to be free from taxation by the English Parliament:

> "That it is . . . the undoubted rights of Englishmen, that no taxes should be imposed upon them, but with their own consent, given personally, or by their representatives. That the people of these colonies are not . . . and cannot be represented in the house of commons in Great Britain. That the only representatives of the people of these colonies, are persons chosen by themselves; and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures."

In its October 14, 1774 *Declaration and Resolves*, the 1st Continental Congress, repeating the claims that the British Parliament had exceeded its "constitutional" powers in levying taxes on the colonists, added other "unconstitutional" Parliamentary excesses. Even in the July 6, 1775, the Second Continental Congress, when it drafted the *Declaration of the Causes and Necessity of Taking Up Arms*, recited the several "constitutional abuses'' and sought a reconciliation with the Mother Country "on reasonable terms."

When the break finally carne with the July 4,1776, *Declaration of Independence*, the leaders of the American colonies remained steadfast in their contention that England had violated its legal obligation to the colonies. The only difference between the *Declaration* and the earlier documents is that the king, not the Parliament, was named as the oppressor. Among the numerous grievances recited, the Congressional representatives complained against King George III –

> "For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments."–

as proof of their contention that the King's "direct object" was ''the establishment of an absolute tyranny over these states."

In reviewing these documents of the American Revolution, I have highlighted two facts: first, the message and second, the messengers. From the beginning to the end the message was that the English Parliament and the English King had violated the rights of the American colonists – rights that they deserved as Englishmen. In each of these documents the messengers were always the elected representatives of the people in the American colonies. It was no accident that these documents contained this basic message and these people's signature.

They followed a pattern that had been established first by John Calvin's Institutes of the Christian Religion, that had been popularized by the French Huguenot 1579 document, The Vindication Against Tyrants, and that had been utilized in 1581 by the Dutch people to rebel against an unjust king. While the people, themselves, had no right to revolt against a government however oppressive, the people, if led by lesser magistrates, had the duty to oppose any ruler who violated the traditional rights of the people in order to uphold the law.

That idea reappeared two hundred years later on American soil because the people of the American

Colonies at the time of the Revolution were overwhelmingly Christian and, therefore, were familiar with and receptive to these ideas. Moreover, the Revolutionary leaders, while not all Christians, were very familiar with these basic Christian documents.

If the Revolution, itself, was based upon Reformation ideas and not upon the Enlightenment, did those same leaders turn away from these Christian roots when they set about establishing the constitutional structures for the new state governments. As I have already pointed out they turned to Locke, not Rousseau, for the basic foundational idea, the social compact. Locke's ideas, in turn, were derived not from man's autonomous reason, but rather were based upon the Bible.

A Christian, Locke was influenced very much by 16th Century Reformation writings. In fact he devoted his entire First Treatise on government to a rebuttal of the claim that a king ruled by divine right which was derived from the authority that God had originally given to the first man, Adam. Locke summarized his conclusions on this issue in chapter 1 of the Second Treatise as follows:

> ''it is impossible that the rulers now on earth should make any benefit or derive any the least shadow of authority from that which is held to be the fountain of all power: Adam's private dominion and paternal jurisdiction . . ..
>
> "To this purpose, I think it may not be amiss to set down what I take to be political power; that the power of a magistrate over a subject may be distinguished from that of a father over his children . . .."

Locke not only believed that God had actually created the first man, Adam, as it is recounted in Genesis, but he believed that one must understand God's charge to Adam if he is to understand the basic principles of human government:

> "(F)or men being all the workmanship of one omnipotent and infinitely wise maker – all the servants of one sovereign master, sent into the world by his order, and about his business – they are his property whose workmanship they are, made to last during his, not one another's, pleasure . . .."

From this great truth came Locke's notions of the equality of man and, in turn, the often quoted phrase from our Declaration of Independence:

> "We hold these truths to be self-evident: that all men are created equal . . .."

As Thomas Jefferson was not the originator of this idea, neither was Locke the originator of his ideas about the equality of man. They were explicitly derived from the Bible. Moreover, Locke was not the first man to discover the significance of this Biblical truth for political society. Forty-five years before a Scottish Presbyterian theologian, Samuel Rutherford, wrote Lex, Rex: The Law and the Prince, a book that became a national sensation in England and that served as the foundation stone for the Protestant Revolution under Oliver Cromwell. Locke had simply secularized Rutherford's views in order to avoid lighting once again the controversy that had so divided England during the Cromwellian Protectorate.

The parallels between Locke and Rutherford are striking. Let me draw upon just one. Locke, if you recall, argued that no king could claim the right to rule because of the authority that God had granted Adam. Rutherford had come to the same conclusion when he examined the Bible. He found that God had only decreed and appointed Adam as the ruling head of his family. While government outside or across family structures had been ordained by God, no particular government nor specific individual ruler had been assigned by God to any group of men.

Those decisions – as to forms of government and as to the selection of rulers – were left to men. Since each man was born a sinner, no man was superior in righteousness to any other man; hence, no man was created by nature as a ruler. In support of this proposition Rutherford cited Psalm 78:70-71 and 1 Samuel 13:13 as proof that both David and Saul, having been exalted by God, ruled by divine grace and bounty, not by natural right. Moreover, Rutherford cited 1 Samuel 8 as proof that God had not decreed monarchy as the only form of government. After all, Israel received a king only because they had asked Samuel to appoint them one.

From these Biblical truths Rutherford argued that the authority of any ruler "is only that of a trustee who is empowered to make good laws; and to administer the law, not to break it, nor to dispense with it, nor even to interpret it . . .. The ruler is the highest servant of the State, but is a servant always . . .." That legacy of separation of powers and servanthood was rediscovered 250 years later by the framers of the new state constitutions. Again, the 1776 *Virginia Constitution* is representative. Section 5 read as follows:

> "That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating in the burdens of the people, they should, at fixed periods, be reduced to private station, return to that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections . . .."

As influential as Rutherford and Locke were, one should be careful not to overlook the influence of American thinkers and political leaders. Nowhere is this influence more pronounced than in the charters of the New England colonies, beginning in 1620 with the Mayflower Compact. Consider the words of that 17th Century document:

> "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."

The parallels between this statement and the Preamble to the United States Constitution are striking. In fact the ideas that were embodied in the early New England covenants were popular during the

1770's. The New England clergy had preached the idea of the social compact and American political writer John Wise had written popular best selling pamphlets expounding that idea.

But the roots of the New England compacts, themselves, may be traced to the Sixteenth Century English Religious Separatists who believed that any group of people by covenant could form a church without regard to the church established by the government. That principle of the right of individuals to enter into a covenant of mutual support was not confined to the church. Rather, Robert Browne, the founder of the Separatist movement, argued that the same principles applied to civil government. And there can be no mistake that these principles for church and civil government came straight from the Bible. Consider the preamble from the January 14, 1639 *Fundamental Orders of Connecticut*, the "oldest truly political constitution in America:"

> "For as much as it hath pleased the 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, Harteford and Wethersfield are now cohabiting and dwelling in and upon the River of Connecticut . . . 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 . . . do therefore associate and conjoin ourselves to be as one Public State or Commonwealth . . .."'

Note the parallels between this 1639 covenant and the one documented in 1 Chronicles 11:3:

> "So all the elders of Israel came to the King at Hebron, and David made a covenant with them in Hebron before the Lord; and they anointed David King over Israel, according to the word of the Lord through Samuel."

There ought to be no question after this survey that the social compact, a conspicuous principle of American constitutionalism, is rooted in the Bible and in the Christian religious movements of the 16th and 17th Centuries.

But the influence of Christian thought and of the Christian Reformation is not confined to this one principle. Rather, it cuts deep into the great fundamental principles of American government, namely, the principle of limited government power and limited individual liberty. That balance between government power and individual freedom is a product of the conviction, widely held by our forefathers, that man is a sinner. Consider the following passage from Federalist paper No. 51 as the writer attempts a justification of the separation of powers among the legislative, executive and judicial branches of government:

> "Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this:

> you must first enable the government to control the governed; and in the next place oblige it to control itself."

Because of this distrust of human nature, a distrust that the Federalist authors – Hamilton, Madison and Jay – held in common with John Calvin and which they repeated again and again in the Federalist, the civil order embodied in the United States Constitution contained not only the principle of separation of powers, but the additional ones of checks and balances and federalism. Again, listen to Alexander Hamilton's argument for a federal union of states that he wrote in the Federalist No. 6:

> "A man must be fargone in Utopian speculations who can seriously doubt that, if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other. To presume a want of motives for such contests as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious."

While these quotes could be linked to the 17th Century political theory of Englishman Thomas Hobbes, who held an identical view of human nature, our forefathers rejected the Hobbesian solution, namely, the all-powerful state. Hobbes believed that without an authoritarian state there would be anarchy and life would be "solitary, poor, nasty brutish and short." But the solution of our forefathers was to provide for individual liberty limited by careful constitutional guidelines set forth in the various provisions of the state and federal constitutions, now popularly known as bills of rights.

Today, when asked the source of these rights, one is apt to get one of two answers: 1) the "natural law" or 2) the constitution, itself. The latter cannot be historically accurate for the several state constitutions contain provisions attesting to the fact that the rights protected by the compact pre-existed the compact. As to the former answer, one must be careful not to assume that what is meant by "natural law" today – namely, an unwritten law discoverable by human reason – was what was meant by the term "the laws of nature and of nature's God" contained, for example, in the introductory sentence of the Declaration of Independence.

While the record is not a clear one, nevertheless there are some clues in the American experience that God, not nature and not man's reason, was the source of the individual liberties that are defined and protected in the American Constitutions.

As one might expect, the clearest statement of this distinction is found in the writings of a New England statesman, John Winthrop. In a discourse entitled Arbitrary Government Described and the Government of Massachusetts Vindicated From that Aspersion, he described two kinds of liberty; ''natural liberty" and "civil or federal liberty." Natural liberty he said is an unrestrained power of doing whatever a man pleases:

> ". . . it is a liberty to evil as well as to good. This liberty is incompatible and inconsistent with authority, and cannot endure the least restraint of the most just authority . . .. This is that great enemy of truth and peace, that wild beast, which all the ordinances of God are

bent against, to restrain and subdue it."

Civil or federal liberty, on the other hand, is "a liberty to that only which is good, just and honest;" it is a regulated liberty "of the same kind of liberty wherewith Christ hath made us free."

While Winthrop's terminology was dropped by his political successors, Winthrop's distinction between liberty discovered by man and liberty revealed by God continued down to the time of the American Revolution. Thomas Jefferson wrote:

> "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."

The drafters of the August 16, 1776 Pennsylvania Constitution wrote:

> "Whereas all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individual who compose it to enjoy their natural rights, and other blessings which the Author of existence has bestowed upon man . . .."

The natural rights referred to in these two documents are those bestowed upon man by God, the Creator. If God is the author of those rights, then one ought to find those rights in His revealed word.

In two recent issues of the Liberty magazine, a publication of the Religious Liberty Association of America and the Seventh-Day Adventist Church, there appeared two articles, one tracing freedom of speech and another tracing religious freedom to the Bible. As the author of the second item wrote: "Religious liberty is Biblically rooted in the limited state in which civil authority has no jurisdiction over matters of religious belief and practice."

While this statement was linked by the author to the New Testament texts containing Christ's famous statement in Matthew 22:21: "Render unto Caesar the things which are Caesar's; and unto God the things which are God's" and Peter and John's equally famous statement that they must obey God rather than men (Acts 5:29), the roots of religious freedom run even to the Old Testament kingdom of Israel.

In 1 Samuel Chapter 13 we find King Saul at war with the Philistines. Hard-pressed to keep his army together and impatient towards the late-arriving Samuel, Saul, himself, offered the burnt offering to obtain the favor of the Lord. When Samuel arrived immediately after the offering had been made, Saul was rebuked for having assumed the priestly office contrary to the commandment of God. Even in theocratic Israel the state was not the way of salvation; the king's powers were limited to ministering God's law governing external behavior. Man's heart – his beliefs and his relationship to God – was in God's, and his anointed prophet's, domain.

That great principle had been endorsed once again by the Puritan Separatists in 16th Century

England:

> "'We believe,' said one pronouncement of faith, 'the word of God, contained in the Old and New Testament, to be a perfect rule of faith and manners; that it ought to be read and known by all people, and that the authority of it exceeds all authority, not of the Pope only, but of the Church also; and of councils, fathers, men, and angels. We condemn, as a tyrannous yoke what- soever men have set up of their own invention, to make articles of faith, and the binding of men's consciences by their laws and institutions.' Not authority of human rulers or ecclesiastics, not historical tradition, but the written word alone, which was held to be the word of God the Sovereign, was the basis of faith and the source of knowledge."

That principle later became embodied in the various religious liberty clauses in every American Constitutional document that has been written.

Conclusion

I have attempted to give in this presentation but an overall survey of the Christian heritage embodied in American constitutional history. Other freedoms – such as freedom of speech and various criminal procedural safeguards – are also rooted in the Christian belief that the state is not the way of salvation. It is time to recapture that Christian heritage from the dominant secular humanist claim on our constitutions.

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