

Fountainhead of Liberalism

By Ruben C. Alvarado

Symposium on *Fountainhead of Federalism: Part II*
Reflections on the Fountainhead of Federalism thesis of Charles S. McCoy
and J. Wayne Baker

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This book promises a lot. It purports to lay bare the very essence of Western civilization: federalism. Federalism, our authors aver, permeates modern society and structures our whole way of life. The ubiquity of federalism is such, however, that it has yet to be fully recognized as “the core, for good or ill, of what can be called the modern world” (p. 7). We take it for granted without recognizing its being there: “As someone has remarked, whoever it was that discovered water, we may be sure it was not the fish who dwell in it as the medium of their existence” (p. 8). Our authors' mission is to reveal to us this most crucial element of our culture.

What makes their thesis so appealing is that they see the source of federalism in Reformed theology. The authors claim that Reformed theologians' use of the doctrine of covenant, in what became known as federal theology, was also the source of its use as a paradigm in political theory. In other words, Reformed theology begat constitutionalism.

McCoy & Baker rest their case on a claim to comprehensive authority. As if to leave no room for doubt, they begin by rebuking a pair of scholars for misconstruing the nature and importance of this federal tradition. One of these unfortunates, a certain James B. Torrance, claimed that English Puritans founded federal theology, which lies at the heart of the federal tradition, and that this federal theology was the equivalent of Calvinism. Nothing could be further from the truth— “Whether myopia, amnesia, or inadequate scholarship, there is no excuse for [these] errors.... The resources are certainly available in contemporary works by German and American scholars, even articles in encyclopedias written in English if one does not read German or lacks the time to read lengthy books by foreign authors, to provide enough information to correct some of the misstatements” (p. 8).

For their part, it seems, our authors have a comprehensive knowledge of the literature in both the fields of inquiry they cover in this work—historical theology and the history of

political thought—and they inform us that they wrote this book as a sort of primer for beginners and specialists in other fields to keep them from making like errors. Implied is that behind the little book lies a mountain of substantial research which could effortlessly be marshalled to the cause should that be necessary. To further underline this impression, the authors include a substantial bibliography which they claim to be comprehensive in these two areas, covering both English and German work.

In the light of such promise, it should come as no surprise that the book came highly recommended to me by friends whose scholarly opinions I esteem. I certainly looked forward to reading it, having already become acquainted with Mr. McCoy's work through an article of his about Johannes Althusius (called in the present work “the first systematic expositor of federal political philosophy” [p. 9]). At the time, I thought the article quite good. It was the only English-language presentation included in a German collection, published in 1986, devoted to Althusius.¹

Although this article was listed in *Fountainhead of Federalism's* bibliography, however, the collection in which it appeared was not. Nor was any information given about the many substantial and excellent articles in that collection. Perhaps that was because they were all in German, I thought, but then I recalled that our authors piqued themselves on having compiled a thorough bibliography of both English and German works; why did they not discuss or list or recommend at least some of the articles in that collection, to which McCoy himself had contributed? Especially since I myself found these articles to contain the latest and perhaps most indispensable information on Althusius, one of the key characters in *Fountainhead of Federalism*.

It did not take long to realize that none of German works which I have found helpful in coming to grips not only with Althusius but with constitutional thought in general were listed in this bibliography. In addition to the above-mentioned collection, I have in mind such works as Ernst Reibstein's *Johannes Althusius als Fortsetzer der Schule von Salamanca*, Peter Jochem Winter's *Die “Politik” des Johannes Althusius*, Josef Bohatec's *Calvins Lehre von Staat und Kirche*, and Dieter Wyduckel's *Princeps Legibus Solutus*. In fact, in this entire bibliography, entitled “Bibliography of Federal Theology and Political Philosophy”, described by the authors as “useful both to scholars specializing in this period and to those less well acquainted with federalism who wish to study it further” (p. 10), I found precious little on the history of political thought in either German or English beyond some very well-known, rather basic works.

This was the first warning signal that something was amiss with this book. Things did not get any better either. As I worked my way through it, I rapidly came to the conclusion that what I had before me was less a work of scholarship than a piece of propagandizing polemic meant to convince the reader of the following points:

¹ Karl-Wilhelm Dahm, Werner Krawietz and Dieter Wyduckel (eds.), *Politische Theorie des Johannes Althusius* (Berlin: Duncker & Humblot, 1988).

- That covenant ('federal') theology began with Bullinger and was developed mainly by non-Calvinist Reformed theologians; in fact, Calvinists were peripheral to its development;
- even worse: the entire Augustinian tradition was 'anti-federal' because of its adherence to the doctrine of predestination, which denies human freedom and therefore leaves no place for covenantal relationships;
- that although Calvinism has often been considered the midwife of constitutional thought, it was actually the long-neglected non-Calvinist Reformed tradition in which constitutional liberty was nurtured; Calvinists, in fact, were supporters of absolute monarchy and hindered the advance of freedom, as, for example, in the Netherlands;
- this 'federal' tradition was continued through the likes of Thomas Hobbes and John Locke, and culminated in the American federalism of the Founding Fathers.

Such a series of claims of course contradict the views of many Reformed thinkers past and present. We are accustomed to think of Calvinism as one of the driving forces behind the growth of constitutional liberty. McCoy & Baker tell us that we have it all wrong: it was actually Arminians, not Calvinists, who nurtured liberty in the West. We owe our entire "federal" civilization to that Reformed tradition, not the one fathered by Calvin.

Our authors begin by dethroning Calvin from his status as the founder of the Reformed tradition, and replacing him with Heinrich Bullinger. "Fountainhead" status is imputed to one of his major works (a translation of which is included as an appendix), *De testamento seu foedere Dei unico et aeterno*, "'The One and Eternal Testament or Covenant with God.'" As it was "the first work that organize[d] the understanding of God, creation, humanity, human history, and society around the covenant", "it must be regarded...as the point of origin or the fountainhead of federalism as it has increasingly come to permeate the world in the four and one half centuries since its publication" (p. 9).

Covenant theology, it is claimed, found its starting point with Bullinger. The entire Augustinian tradition as regards covenantalism was barren, because among the church fathers only Irenaeus hinted at a "conditional covenant" (p. 15)—thus only a purely conditional covenant is acceptable. As regarding the unity of the covenant over time, Augustine certainly understood "the unity of God's people throughout history", but did not maintain Bullinger's concept of the covenant (p. 15).

How about late-medieval nominalism? Did the *via moderna* [nominalism] have any influence on Bullinger? The nominalists did hold to the idea of a bilateral *pactum* or covenant between God and man, but explained this on the basis of a "Pelagian concept of justification" with which Bullinger did not agree; besides, Bullinger was educated in the *via antiqua* (no explanation of what this is [Thomism]), not the *via moderna*. Therefore, the grand conclusion is drawn that even though Bullinger cites Tertullian, Augustine, Irenaeus, Lactantius and Eusebius in this work, the pre-Reformation theological tradition had "minimal" influence on his eventual doctrine (p. 15).

As a source of “explicitly federal thought”, our authors point to “the covenants that underlay feudalism”, which in turn were the continuation of “the organization of the Germanic tribes that invaded and settled western Europe” which were “covenantal or federal in structure” (p. 15). This is a restatement of the discredited 'Teutonic' thesis of the origin of feudalism—that it was an outgrowth of Teutonic tribal customs. That this is so baldly stated by our authors, with no discussion as to the controversy surrounding this thesis or the consensus among scholars that it entirely lacks foundation,² is an indication of the lack of command they actually have of the material they are trying to cover.

McCoy & Baker are on firmer ground when they speak of “the covenants that underlay feudalism” and “the manner in which society and the church were organized in the late Middle Ages” as sources of federal thought. But even here, the way in which our authors further develop this “insight” (really more of a commonplace than anything else) betrays a fundamental lack of acquaintance with the reality. For example, this howler: “On the ecclesiastical level, memories of parliaments and estates-generals led to the conciliarist argument that the papacy was a limited government, subject to the representative council of the church.” What does this mean? What *memories*? Are we speaking of bygone institutions which have been lost and whose memory we are therefore invoking, whose reality we are recovering? If so, this is simply another formulation of the old Teutonic thesis: the Germanic tribes originally had parliaments, and these were done away through the pernicious work of popes and kings. Let me repeat: this thesis, all the rage in the nineteenth century, has since been thoroughly discredited and therefore must be rejected from the start. Whether the conciliar movement took its cue from developing parliamentary institutions in contemporary secular society is another question (but of course, here we are not dealing with “memories” but hard realities). Even here, though, the reality is that the conciliar movement grew out of the canon law tradition, in dialectic relation with Roman and feudal law developments in the secular sphere; the development of parliamentary institutions in secular government was a concurrent one.³

McCoy & Baker point to further candidates as antecedents of their federalism. The medieval guild system is one. Another, more direct, example: the Hanseatic League of German cities, bound together in a *confederatio* for trading purposes. But our authors' most direct example is the Swiss Confederation, of which Bullinger as a citizen of Zurich was a member, and had this situation specifically in mind as he formulated his covenant theology. McCoy & Baker then leap into the familiar genealogy of liberty: nurtured in the Reformed communities in Europe and America, particularly Switzerland and the

2 Cf. e.g. Donald Kelley, “De Origine Feudorum: The Beginnings of an Historical Problem”, in *Speculum* XXXIX, 2, April 1964, pp. 207-228; P.D. King, “The Barbarian Kingdoms”, in J.H. Burns (ed.), *The Cambridge History of Medieval Political Thought c. 350-c. 1450* (Cambridge, England: Cambridge University Press, 1988), pp. 123-153, esp. pp. 147ff.; R. van Caenegem, “Government, Law and Society”, in *ibid.*, pp. 174-210, esp. pp. 198ff. Personal bonds between chieftain and warriors were common in Germanic tribes; further than that, absolutely no basis exists to attribute to these tribes a complex, formal political structure, as our authors do in attributing to them a “covenantal or federal structure”.

3 As only one example among many, see Antony Black, “The Conciliar Movement”, in Burns, *Medieval Political Thought*, pp. 573-587. We will recur to this point in detail below.

Netherlands. The conclusion: the environment of the Reformed communities provided the essential elements by which a theology of federalism could be elaborated; this theology then spawned political federalism. “Heinrich Bullinger of Zurich brings these varied elements together in work that can with justice be regarded as the fountainhead of federalism” (p. 17).

Our authors now turn to examine why Bullinger's influence in the Reformed tradition has been generally forgotten. The reason? “His stature...has been largely obscured by John Calvin and by the followers of Calvin.” Because the Reformed tradition is generally considered the same thing as Calvinism, the “federal stream” within that tradition has simply been hidden from view. Federalism and Calvinism are mutually exclusive.

As we go on, we get more and more of the flavor of what McCoy & Baker are getting at as they persist in banning Augustine and Calvin from the federal tradition. They praise Bullinger to the skies for developing the idea that God's covenant with man was one and the same throughout history, an idea which he developed through confrontation with Anabaptists. But realizing that Calvin and Augustine also spoke of God's relationship to man as being essentially the same throughout history, with Old Testament and New Testament intrinsically on one level although demonstrating a clear development in history, our authors claim that Bullinger apparently had something else in mind in his idea of the covenant; this, even though “Bullinger quoted Augustine at length in *The Covenant* to support his affirmation of the unity of the people of God” (p. 23). Again, our authors mean that Bullinger put forward a bilateral covenant, a conditional covenant, and Augustine and Calvin did not. “Augustine did not think in terms of a bilateral covenant; he was not a covenant theologian. Nor was Calvin..., despite the fact that he often referred to the covenant and spent many, many pages in his *Institutes* writing about the covenant” (p. 23).

This idea of a bilateral covenant, our authors claim, is fundamentally at odds with the Augustinian/Calvinist idea of the covenant (p. 24). It is this fundamental cleavage which distinguishes our authors' Bullingerite “federalism” from Calvinism. There are these two streams within the broad Reformed tradition, and the influence of the “federal” stream was much greater than has been imagined. For example, McCoy & Baker see the Westminster Confession of Faith as a predominantly “Federalist” rather than Calvinist document.

Our authors' brand of “federal theology” gave rise to “federal” political thought (pp. 26ff.). Bullinger's writings were the source of constitutional theory *in toto*. Bullinger discussed judicial laws in his treatise on the covenant and in his other writings. “The political tradition of federalism...finds its roots” in these writings. Bullinger provided for “checks on civil rulers”: this idea spawned the following notions in later federal thought: society based on covenant or contract; an “ambiguous” view of human nature—“that is, having potential for both good and evil” [what's so earth-shaking about that?]; limitations on power, both civil and ecclesiastical, with governmental checks and balances. All this began with Bullinger! Later political theorists Philippe du Plessis-Mornay and Johannes

Althusius (everyone else knows them as Calvinists, but our authors, evidently knowing better, include them in their "federal" tradition) further developed Bullinger's ideas. The legacy continued in the seventeenth century through John Winthrop, Samuel Rutherford, Thomas Hobbes, and John Locke (how can one mention these four in the same breath?); in the eighteenth century, John Witherspoon and James Madison. "Political federalism develops [sic] beyond Bullinger's views. But later expansions only demonstrate that he is a [a! Hadn't you said *the*?] primary source of the movement." Mr. Bullinger was certainly prolific of intellectual offspring.

What is one to make of this audacious series of claims? For one thing, we should certainly acknowledge that the use of the idea of covenant as theoretical organizing principle was Bullinger's contribution to the history of ideas. Due largely to his efforts, it seems, the idea of covenant took on the status of motif within the Reformed tradition. Covenant was used as the central category upon which to build a systematic theology by Caspar Olevianus, co-author of the Heidelberg Catechism. In political thought, the *Vindiciae contra Tyrannos* (Defense of Liberty against Tyrants), published in 1579 and presumably authored by Mornay, used the idea of covenant, as exemplified in Old Testament Israel, as organizing principle. That theology and political philosophy took this turn is likely due to Bullinger. To that extent the thesis that Bullinger is the "fountainhead of federalism" is true. But the amazing extrapolations our authors then derive from this are simply untenable.

For instance, the divorce of covenant theology and Augustinianism/Calvinism proposed by our authors: can such a position be maintained? Consider that the idea of covenant as presented in the Bible cannot be reduced to a simple contract between equals, the idea which controls our authors' interpretations. A simple glance at the terminology used in the Bible reveals this. The Old Testament uses *berith*, a rather flexible term as it could include agreements between equals; but keeping in mind modern scholarship on suzerainty treaties, we must also recognize that the covenant between God and Israel takes on something more of the form of "an offer you can't refuse." Suzerainty treaties were imposed upon conquered peoples by foreign rulers. Agreement to a subservient relationship was hereby obtained (coerced). Such a covenant, therefore, by no means can be seen as an *ipso facto* contradiction of other Calvinist doctrines such as predestination. In the New Testament, the word used to translate covenant is *diatheke*, testament, something which again differs substantially from a simple agreement. Hebrews 9:16ff. quite clearly gives an explanation of the covenant between believers and God as a testament, effected by the death of the testator, Jesus Christ. The element of free will on the part of the recipient takes a decidedly subordinate position in *diatheke*. It seems clear that Calvinist theology is in agreement with this rather than in opposition. In fact, it is the concept that God and man are somehow equal partners—the core of the Arminian position defended by the authors—which fails to do justice to the Biblical idea of covenant.

Let us take this argument one step further. The motif of salvation in both Old and New Testaments is *redemption*. Redemption is the buying back of something, by a former

owner, from someone else who has since entered into possession. In the case of the Old and New Testaments, persons are redeemed, and they are redeemed because they are slaves. They are bought back from slavery, and given freedom by their new owner. The point is this: does the slave choose his owner? Does a slave say to his master, “You know, we are actually equals, cooperating together to keep the household running”? The slave, be it said, says nothing. He is a passive participant. His destiny is entirely in the hands of his master. The question is this: which theology better fits the reality of redemption, Calvinist or Arminian?

The root error in this approach is this horizontal concept of covenant. For McCoy & Baker, a covenant can only be made between two more or less equal parties, and they approvingly quote Friedrich's claim to that effect (p. 12). But the Biblical concept of covenant cannot be restricted to that; for this reason, it is no tragedy that covenant has traditionally been translated as testament. In this regard it is instructive to take a closer look at the Roman legal term *foedus*, which in Reformed theology came to replace *testamentum*. It should come as no surprise that this term conforms remarkably well to the suzerainty-treaty model highlighted in contemporary Biblical studies. In ancient Rome, a *foedus* was a treaty between nations. Over time, as Rome gained hegemony over surrounding nations, a *foedus* came to signify an imposed settlement, by which Roman overlordship was recognized according to certain stipulations. A *foedus* was much more than simply a *pactum* or contract, with a much more specific and restricted application. It was a legal relation specific to international law. For example, Althusius never uses *foedus* as a synonym for covenant, but rather *pactum*. Roman lawyer that he was, he reserves *foedus* for treaties between nations.⁴ A *foedus*, if you wish to be blunt about it, is a formal declaration of conquest—legalized imperialism.

McCoy & Baker can as little claim that federal *political* theory began with Bullinger. The problem with their approach is that they take advantage of the mental associations the word “federalism” evokes. Their logic runs as follows: Bullinger initiated federal theology; federal theology is federalism; federalism is federal political theory; Bullinger wrote a few things about politics, law and government; Bullinger initiated federal political theory.

Our authors do ascribe a certain significance to the medieval political tradition as “background” to the development of constitutionalism, but no mention is made of the development of medieval political *thought* as a possible source of constitutionalism. Nor is any credit given to Greek and Roman political and legal philosophy. This is sheer blindness, especially considering that the terms our authors throw around—*pactum*, *foedus*, *confederatio*—are all Roman legal terms. How can anyone pretend to discourse about fountainheads of federalism when they evince such a lack of acquaintance with the tradition of political and constitutional thought in the West?

4 Johannes Althusius, *Politica Methodice Digesta*, edited by Carl Joachim Friedrich (New York: Arno Press, 1979 [1932]), XXVII, [[section]][[section]] 30, 32, 50, 53; XXV, [[section]][[section]] 20, 21; XXXIV, [[section]][[section]] 49-51. An abridged translation of this work is available in English: Frederick Carney, *The Politics of Johannes Althusius* (London: Eyre & Spottiswoode, 1965 [1964]).

As an example from that tradition, let's take Aristotle. By our authors' account, someone such as he could have had nothing to do with “federal political theory”, presumably because Aristotle never mentioned *foedus* nor did he live after Bullinger. I will let the reader decide, however, if the following excerpt answers to a “federal” or constitutional description of government:

When states are democratically governed according to law, there are no demagogues, and the best citizens are securely in the saddle; but where the laws are not sovereign, there you find demagogues. The people becomes a monarch, one person composed of many, for the many are sovereign, not as individuals but as an aggregate. What kind of multiple rulership, collective or of several individuals, Homer meant, when he spoke of it as being a bad thing, I do not know. But at all events, such a people, in its role as a monarch, not being controlled by law, aims at sole power and become like a master, giving honour to those who curry its favour. Such a democracy is the counterpart of tyranny among monarchies. Hence its general character too is exactly the same: both play the master over the better sort of person, and the decrees of democracy are the directives of tyranny; the tyrant's flatterer is the same as, or analogous to, the demagogue, each having special influence in his sphere, flatterers on tyrants, demagogues on peoples such as I have described. They are able to do this primarily because they bring every question before the people, and make its decrees sovereign instead of the laws. This greatly enhances their personal power because, while the people is sovereign over all, *they* rule over the people's opinion, since the multitude follows their lead. Moreover, the accusers of the officials claim that the decision ought to belong to the people; the people need no second invitation, and so all the offices are brought low. So if you were to say that such a democracy is not a constitution at all, your strictures would seem to be perfectly right. Where laws do not rule, there is no constitution.⁵

Such a passage demonstrates not only the clear grasp of “federalism” broadly speaking—the kind of which our authors are usually speaking—but also is as good a description as any of modern democracy. Surely Aristotle perceived the basis of constitutional government?

Our authors go pretty far in their zeal to clear the Arminian stream of the Reformed tradition out from under the Calvinist shadow; beyond merely accusing Calvinism of incompatibility with true covenant theology. They also make the claim that Calvinists worked against political liberty in favor of absolute monarchy. The case study brought to bear to vindicate this claim is the early history of the Dutch Republic. According to our authors' version of events, republican “freedom fighters” teamed up with Arminians to provide the new republic with constitutional government, whilst hard-line Calvinists worked together with the prince of Orange to suppress liberty, in both church and state.

⁵ Aristotle, *The Politics* (Penguin Books, 1981), pp. 250-251 [1292a7-1292a31].

The truth is, of course, quite different. The “States Party” of city magistrates who supported the Arminians in their struggle with Calvinists in the Dutch church were little more than oligarchs (answering quite well to Aristotle's descriptions of oligarchy in *The Politics*), bent on consolidating all political power in their own hands, by restricting the prince's powers as much as they could get away with and by tyrannizing the church. The Arminians were their instruments within the church to neutralize the church as a force for public right. When after years of noninterference Prince Maurice finally took the side of the Calvinists in their dispute with the magistrates—for if the church had been left to make up her own mind on the matter, the Arminian position would long before have lost out—the leader of the States party, “Prime Minister” Johan Oldenbarnevelt,⁶ unilaterally attempted to call up a militia. It was this direct challenge to the prince—by oath, the Prince of Orange was the military commander-in-chief—which precipitated Oldenbarnevelt's arrest and eventual condemnation. The Synod of Dort was entirely independent of Oldenbarnevelt's trial. The Synod meted out ecclesiastical sanctions only.

One obvious proof that Calvinists were not out to establish a monarchy is that in the aftermath of their and the prince's victory over the States party, no monarchy was established. If ever a monarchy might have been established in the republic, it was then. Why didn't they seize the opportunity?

The absurdity of the authors' claims that Calvinists were on the side of despotism is conclusively revealed when one examines the position of Johannes Althusius. For our authors, Althusius is “the major figure in the development of an explicit federal political philosophy” (p. 47). Althusius was “immersed in Reformed faith, in the political thought of the Reformed communities, and in biblical and theological scholarship of the Reformed tradition.” What's more, “the sector of that tradition that influenced him most deeply is the distinctively federal stream of thought.” If we stick to our authors' terminology, this latter sentence is code for Althusius's being at least sympathetic to Arminianism, if not an Arminian himself. Why then, in his treatise on politics, did Althusius explicitly place that bogey-man of Arminian folklore, Geneva's ecclesiastical polity (drawn up by arch-fiend Calvin himself!), at the center of his own version of political community?⁷ Why, also, was Althusius so vehemently opposed to the Arminians in their struggle with the Calvinists? An exchange of letters between Althusius and one of the leaders of the Calvinist party in the Dutch Republic, Sibbrandus Lubbertus, shows this clearly:

[In these letters, Althusius] minces no words in condemning the heretical opinions of Vorstius and Grotius, and encourages Lubbert in his defense of the orthodox dogma of predestination recalling in this connection the controversy between Zanchius and Marbach at Strassburg. Of Grotius in

6 See page 67. Oldenbarnevelt was certainly not “Prime Minister”: the office did not exist. Oldenbarnevelt was the legal representative of the province of Holland, one of the seven provinces making up the republic. His power on the national level was *de facto*, and, in constitutional terms, usurped.

7 See ch. 8, [[section]] 24.

particular he writes that his tract “Pietas” tries to destroy the independent right and liberty of the Church and to transfer these to the government; he likens such doctrines to the opinions of the devil. It will be recalled that the followers of Arminius (Arminians, *Remonstranten*) wished to attenuate the severity of the doctrine of predestination by maintaining that God had foreseen the sins of men. Besides they asserted that the civil authorities had the right to arbitrate in theological controversies in order to maintain peace.⁸

Clearly, Althusius was as opposed to McCoy & Baker as Calvin himself would have been.

Why, if our authors are right, did high Calvinists at the Synod of Dort, such as Gisbertus Voetius (later the rector of the university at Utrecht and a recognized leader of international Calvinism) continue the Althusian tradition practically single-handed? Arminians certainly did not. Hugo Grotius, mentioned above in the Friedrich excerpt, was Johan Oldenbarnevelt's right-hand man and chief spokesman for the States party. No more leading representative of full-orbed Arminianism might be found than him. Why is it, then, that his political theory, as expounded in his work *The Law of War and Peace* (1625), *refuted* that of Althusius? This work was formative to the tradition of liberalism. Grotius would have served our authors far better as the link between Arminian theology and political theory, for the basis of Grotius's theory was the doctrine of contract pure and simple. Grotius vociferously attacked the theory of resistance as espoused by Mornay and Althusius.⁹ In fact, those in the early seventeenth century who sympathized with the Arminian position or leaned toward an Arminian theology and ecclesiology also leaned toward absolutism, whether monarchical or oligarchical. Grotius's theory, however, also contained the seeds of a resistance theory, although one fundamentally different from that expounded by Mornay and Althusius. This theory would be based on the natural rights of the autonomous individual in a state of nature. It was this thread in Grotius's thought which was picked up and developed by such thinkers as John Locke, who was also of the Arminian persuasion.¹⁰

The series of claims McCoy & Baker make regarding the Synod of Dort are nothing less than imbecilic, although typical of Arminian historiography. McCoy & Baker claim that the English delegates to the synod “declined to sign the Canons of Dort” (p. 69-70). Well now—I happen to have a copy of the *Acta* or transactions of the synod. My copy, a reprint of the Dutch translation, runs for 963 folio-sized double-column pages. It gives a full blow-by-blow account of all 152 sessions, and includes the written submissions made by all the delegations. Only when one peruses the *Acta* can he really get a feel for the international character of the synod. In fact, such a gathering of churches from different

8 See Friedrich's introduction to the *Politica Methodice Digesta*, p. xli. The letters in question, in Latin, are contained in this edition, beginning on p. cxxviii.

9 See *The Law of War and Peace*, Book I, Chapter IV, [[section]] VI.

10 On Hugo Grotius as the founder of the tradition of liberalism, see Richard Tuck's seminal book, *Natural Rights Theories: Their Origin and Development* (Cambridge, England: Cambridge Univ. Press, 1979).

Protestant countries was quite unprecedented, before or since. I can't think of a comparable event in the history of Protestantism. In addition to the representatives from all the different Dutch provinces, delegates came from Great Britain, the Palatinate, Hessen, Nassau, Zurich, Bern, Basel, Schaffhausen, Geneva, Bremen, and Emden. Each of this submitted their own substantial commentary on each of the five canons, and each delegation signed each of the canons—including the delegates from Great Britain. These were George Carleton, Bishop of Llandaff; John Davenant, President of Queen's College and Lady Margaret Professor of Divinity, Cambridge; Samuel Ward, Archdeacon of Faunton and Master of Sidney Sussex College, Cambridge; Thomas Goad, chaplain to George Abbot, Archbishop of Canterbury; and Walter Balcanequal, representing the Church of Scotland.

McCoy & Baker also state that the Church of England “with its strong Reformed tendencies, explicitly rejected the synod's decrees” (pp. 67-68). It is hard to make out what he means here, because the English church was in a turmoil at the time, with war breaking out between Calvinist and Arminian. Which Church of England “explicitly rejected” the Canons? According to the accomplished English historian Hugh Trevor-Roper (certainly no friend to the Calvinist cause), the Canons were “received by the English Church, which thus implicitly condemned the whole liberal movement within it.”¹¹ In fact, all the delegates, both Dutch and foreign, were unanimous in accepting the Canons.

McCoy & Baker claim that “it is far from clear that the Swiss churches endorsed the results.” That means it is far from *un* clear that they did *not* accept the results—thus a nothing statement. “The French and German Reformed churches refused to be guided by the results of Dort.” The French Reformed Church was not even *allowed* to attend the synod, by decree of Louis XIII. It did, however, hold a national synod, in Alez in 1620, in which the Canons were unconditionally accepted. The document attesting to the fact is included in my edition of the *Acta*, complete with a page and a half of signatures. For their part, the German churches were practically wiped out in the initial phase of the Thirty-Years War, which began not very long after the synod ended. Churches which scarcely exist have their minds on other things than whether to be guided by the findings of a recent synod. “Even in the Netherlands a more moderate theological and political temper prevailed than that controlling the dominant Dutch sector [*sector?*] of the assembly.” How now? Quote from someone else: “The Synod's demand that confession of the Dordrecht doctrine be made a condition for appointment to government office was never conceded by the secular authorities. Petition after petition to that effect was coolly ignored by the merchant rulers.” Of course! The “merchant rulers” were precisely the sector (!) which always supported the Arminians! They never let the synod's rulings take full effect. For example, the synod also called for a reconvening every three years; the oligarchs made sure that a national synod never met again.

¹¹ Hugh Trevor-Roper, *Catholics, Anglicans and Puritans: Seventeenth Century Essays* (Chicago: University of Chicago Press, 1988), pp. 58-59.

McCoy & Baker also try to enlist the theologian Matthias Martini to their cause, implying that he too rejected the findings of the synod (pp. 64ff.). But guess what? Martini personally signed each of the five Canons! Our authors' claims against the synod prove to be groundless.

McCoy & Baker also make grand claims regarding Johannes Cocceius, the Dutch Reformed theologian who stood against hard-line Calvinists such as Gisbertus Voetius. He was, they gush, “The Zenith of Federal Theology”. Now, no doubt Cocceius did much to further the discipline of Biblical, as opposed to systematic, theology. But his theology proper cannot be seen as a continuation of Bullinger-type single-overarching-covenant theology. Cocceius championed a dispensationalist approach to the covenants, in which salvation was gained one way in the Old Testament, another way in the New. For this reason among others, Voetius staunchly opposed Cocceius. This may be hard to swallow for our intrepid authors, but it is nevertheless the sad truth that the Calvinists championed Bullinger-brand covenant theology *over against* the “Federalists”. In fact, two parties formed in the Dutch church in the 1650s, Voetians and Cocceians, precisely over this issue. This party formation dominated that church for a long time. Guess which party was supported by the merchant oligarchs? Need I say it? The Cocceians. Historians agree that the Cocceians favored a caesaropapist hegemony of the state over the church, while the Voetians championed an independent church to give constitutional balance to the state. The Voetians were Althusians, the Cocceians were not. The implication that Althusius and Cocceius were somehow on the same doctrinal and political wavelength is anything but the truth. But that is the problem with this whole book: it attempts to co-opt all the fruits of Calvinism to the Arminian cause.

McCoy & Baker place a lot of emphasis on “representation” as an essential characteristic of federalism. In theology, representation is exemplified in Adam “in creation, in his disobedience, and in the fall into sin”, while Christ is representative of the human race in “redemption, in obedience, and in salvation”. From this principle the authors derive the representative principle in human society: “representative humans...function as the head of a social unit...whose actions are actions of the entire group, whether family or guild, city or province, church or kingdom. This concept of representation is central both for federal theology and for federal political philosophy” (p. 52). So far, so good. (Although I wish the authors would leave off of their trendiness and simply use the word *men* rather than *humans*—after all, the justification for using man is that the male gender is *representative* (!) of both genders; what's more, men historically have always filled the place of the representative, at least until ultrahypermodernity struck. We were not condemned in Eve but in Adam; a woman didn't die for our sins, but a man—*anthropos*—the man Christ Jesus. And what about the laughter penned by our stalwarts of PC in the introduction: “There were powerful spokespersons in England for federalism.” Spokespersons? Name one woman—just one—who defended federalism in England! But back to our story...) However, do our authors realize that this principle found its greatest realization in the “Holy Roman Empire of the German Nation”, the real model underlying Althusius's work (another crucial factor which our authors never mention)? And that its use by Mornay and Althusius makes their polities fundamentally different from modern

“federal” democracies such as the United States?

There is in fact a chasm between the kind of polity put forward by Mornay and Althusius and that of “our covenantal culture” (p. 8). What distinguishes them is precisely the concept of representation. That principle is recognized and appropriated in those earlier polities; it is essentially jettisoned in modern democracy. In the earlier version, “the people” are not individuals abstracted from social context, but groups of individuals represented in terms of Aristotelian distributive justice. This is illustrated in Mornay's famous metaphor for “the people”, also used by Althusius:

We speak not here of private and particular persons considered one by one, and who in that manner are not held as parts of the entire body, as the planks, the nails, the pegs, are no part of the ship, neither the stones, the rafters, nor the rubbish, are any part of the house. But we speak of some town or province, which makes a portion of a kingdom, as the prow, the poop, the keel, and other parts make a ship: the foundation, the roof, and the walls make a house. We speak also of the magistrate who governs such a city or province.¹²

Individuals find representation in groups: first the family, then the city, then the nation. Every level of government builds on the level immediately under it. This was the structure of authority which arose and developed in Western Europe, in feudalism, in cities, and in kingdoms. Modern democracy, in which 'representation' means individuals are directly connected with the highest levels of government, does not truly embody the representative principle at all. It is faceless mass majoritarianism, where politicians are demagogues and the people are a tyrant. Sadly, our authors appear totally oblivious to such a distinction.

This book boils down to just another version of the old myth described by Herbert Butterfield as “The Whig Interpretation of History.”¹³ That myth sees the period before the Reformation as static and unfruitful, a Dark Age which was superseded by the Reformation, which itself was valuable only as a precursor to the Enlightenment, when “progress” finally got under way. Protestantism is the vehicle of enlightenment against benighted Catholicism; Arminianism, in turn, is the vehicle of enlightenment against bigoted Calvinism. Constitutional history is the story of freedom struggling and eventually triumphing against priestcraft and kingship, first in the Dutch Republic and thereafter in England (the Glorious Revolution) and America (1776 and all that). The French Revolution is seen as either a deviation from or as the culmination of this trajectory, depending on whether one is a conservative Whig or a liberal Whig.

It is important that the historiographical snow job performed complements of the Whig

12 Junius Brutus [Philippe du Plessis-Mornay], *A Defence of Liberty against Tyrants* (Edmonton, AB, Canada: Still Waters Revival Books, 1989 [1689]), p. 35.

13 Herbert Butterfield, *The Whig Interpretation of History* (New York: W.W. Norton & Co., 1965 [1931]).

Interpretation of History be debunked—because *it is modern democracy's fundamental sustaining myth*. It is the ground upon which its dialectical opposite, the Marxist Interpretation of History, is built. The Marxist wars against the Whig even as he shares his basic presupposition: freedom over against the authority-structure of Christendom. Whiggery and Marxism need each other in order to stave off the threat of true Christian culture.

The funny thing is, scholarship in the twentieth century, beginning with J.N. Figgis at the turn of the century,¹⁴ has been demolishing these historiographical pillars of modernism, and recovering the truth beyond them: that medieval, thus Catholic, Christendom was responsible for creating the institutions of liberty which our civilization is now squandering away. This is a long story and one which cannot be told here. One could begin with Harold Berman's *Law and Revolution*, which describes the role of the Papal Revolution of the eleventh century in shaping the European legal system.¹⁵ Further evidence is provided in the work of Brian Tierney and Francis Oakley, which focus on the role of conciliar theory in the formation of the constitutional tradition.¹⁶ A pupil of Figgis's, C.N.S. Woolf, published a landmark work back in 1913 about the 14th-century Roman lawyer Bartolus, which already showed the high level to which constitutional thought had developed by that period.¹⁷ From such works it becomes clear that the major contributors to constitutional theory in the West were canon and Roman lawyers.

The history of this process should be recounted in broad strokes to give the reader an idea of the error of the standard interpretation, given a new twist by our authors but no more than that.

The major driving force behind the development of secular constitutional theory was the need to reconcile fact with law, feudal institutions with Roman legal theory. Roman lawyers beginning with Azo (d. 1230) worked to put the institutions of feudalism on such a legal basis. Azo's contribution was to reverse the original Roman law definition of two crucial terms, *imperium* (sovereignty) and *jurisdictio* (jurisdiction). Originally, jurisdiction was held to be derived from sovereignty. The emperor was the source of all authority. Lesser authorities were entirely dependent upon his delegating power, and had no independent basis for their authority. Azo reversed this relation. Jurisdiction was primary, and sovereignty was derived therefrom. Thus a sovereign was not the source of authority: authority was derived from God, who delegated all jurisdictions, the chief of

14 Figgis's best-known work in this regard is his *Studies of Political Thought from Gerson to Grotius, 1414-1625* (Cambridge: Cambridge University Press, 1923 [1900]).

15 Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), pp. 113ff.

16 A convenient summary of Tierney's thought, along with references to his further work, is contained in his *Church Law and Constitutional Thought in the Middle Ages* (London: Variorum Reprints, 1979). See especially "Medieval Canon Law and Western Constitutionalism" contained therein. Oakley's major articles are also conveniently bundled in a Variorum reprints edition: *Natural Law, Conciliarism and Consent in the Late Middle Ages* (London: Variorum Reprints, 1984).

17 C.N.S. Woolf, *Bartolus of Sassoferrato—His Position in the History of Medieval Political Thought* (Cambridge: Cambridge University Press, 1913).

which was the sovereign. Lesser magistrates did not derive their authority from the sovereign, but from God; they therefore had an authority independent of the sovereign's, although still subordinate to it.

Azo developed this theory in the light of feudal realities, in which lords and vassals established a relationship of authority and subjection between themselves by virtue of covenant. This pattern was taken a step further in the fourteenth century, among the cities in Italy. This was the period in which Italian cities were struggling to define their independent status in legal terms vis-à-vis the emperor and other lords and kings. It was Bartolus (d. 1357) who developed legal formulae to safeguard the relative independence of cities, while preserving the authority of the emperor. In so doing, he provided the basis for federal constitutional theory. These formulae included *merum vs. mixtum imperium* (pure vs. mixed sovereignty), *de facto* (factual/actual) vs. *de jure* (legal) sovereignty, and his most famous formula, *civitas sibi princeps* (the city is equal to the prince).¹⁸ Bartolus helped give Germany the constitutional-legal framework which would make possible the Reformation. Without the relative independence of German princedoms within the Empire, the Reformation would never have gotten off the ground.¹⁹

Constitutional theory took a further step forward with the work of the School of Salamanca in sixteenth-century Spain. At this point it must be made clear that the chief Catholic contributors to the development of constitutionalism were not conciliarists (most of whom were representatives of the nominalist *via moderna*) but papalists (Dominicans of the *via antiqua*). I have written on this school elsewhere, chiefly with regard to its founder, Francisco de Vitoria.²⁰ Salamanca was crucial not only to the growth of constitutionalism but also to international law and free market economics. The common denominator: *jus gentium*, "law of nations".

The *jus gentium* became central to the work of Salamanca because of the demands placed on Spain by its empire in the New World. The discovery of hitherto unknown indigenous peoples on an unknown continent, and the necessity to determine Spain's moral and legal relationship to those peoples, forced Vitoria and his followers to apply the *jus gentium* beyond the framework of Europe and East Asia. A universal legal framework was the result, concerned with *totius orbis*, the entire world. The nations of the world formed a community. National sovereignty was externally conditioned by this community of nations. The criteria of the *jus gentium* also conditioned national sovereignty internally. Sovereignty was attributed to the people, i.e. the nation, not to the state. The state received delegated powers of sovereignty from the people/ nation. Nations were the sovereign members of the international community, not states.

18 Quick summaries of Bartolus's achievement are contained in Quentin Skinner, *Foundations of Modern Political Thought: Volume I, the Renaissance* (Cambridge: Cambridge University Press, 1978), pp. 9ff.; Burns, *Medieval Political Thought*, pp. 469ff.

19 On the federal constitutional framework of the Holy Roman Empire, see Friedrich's introduction to Althusius's *Politica* (cf. n4 above), pp. xxix and following. The best place to see it, however, is in Althusius's *Politica* itself.

20 See "Vitoria's New World Order", *Symbiotica* I, 3, pp. 25-31 (also published in *Contra Mundum*, No. 2, pp. 2-8); "Nationhood and the Future of Europe: Vitoria and Althusius", *Symbiotica* II, 1, pp. 12-18.

The chief formulators of this full-orbed constitutionalism were Diego Covarruvias (canon law) and Fernando Vasquez de Menchaca (civil law). Although not well known in the English literature, continental scholarship has taken full cognizance of the importance of these scholars' work.²¹ It is difficult to overstate the importance of their achievement. It was they who put the right to resistance on a universal basis. Their work was foundational to that of Calvinist constitutionalists—Beza, Mornay, Daneau, Althusius, Rutherford. As Reibstein writes with regard to Althusius's constitutional theory:

This entire section [of Althusius's *Politics* devoted to constitutionalism], spread over a number of chapters, only gains its true clarity and lucidity when seen as a minute systematization of the fundamental thought of Covarruvias and Vasquez. Then it becomes understandable why Althusius undertook precisely this selection and composition of material and no other.²²

Through the work of these men, constitutionalism first broke out of the narrow confines of the canonist/civilian tradition. Vasquez in particular gave constitutionalism the universal form which is now so familiar to us.

The struggle for the rights of individuals and nations, and for law itself, using the instruments of systematic jurisprudence, began over 400 years ago. The extraordinary and, in our day, again fascinating aspect of this is that a member and dignitary of what at the time was the richest and most powerful nation on earth took this struggle upon himself. The confidant of Charles V and Philip II proclaimed that princes were bound to their own laws, that state power had its origin in the people, that the mutual relations of states were under the authority of fixed legal principles, and—at a time when Spanish sea power was at its height—that the seas were free; and all of this not as legal-political assumptions but as binding conclusions from the essence, the tradition and the meaning of law as a moral order of human community. A Europe which more than ever pursues a conscious relation to the spiritual foundations of its existence and its character sees even more interest in this struggle as it is faced with tasks and problems which experience teaches cannot be dismissed. It therefore becomes not only of legal-historical but also of eminently practical interest to again take up that struggle's original document. We would thus get to know a jurist who was convinced that the power flowing from his profession entails a like moral duty to fulfill the task set before the law: oversight of the interest of the whole as well as the individual according to fixed principles which know no other authority than right reason and no higher consideration than the commandments of justice. By his scientific

21 In particular, the work of Ernst Reibstein focused on this school, especially Vasquez. See *Die Anfänge des Neueren Natur- und Völkerrechts: Studien zu den "Controversiae Illustres" des Fernandus Vasquius (1559)* (Bern: Verlag Paul Haupt, 1949); *Johannes Althusius als Fortsetzer der Schule von Salamanca: Untersuchungen zur Ideengeschichte des Rechtsstaates und zur altprotestantischen Naturrechtslehre* (Karlsruhe: Verlag C.F. Müller, 1955).

22 Reibstein, *Althusius*, p. 200.

treatment of these principles, this sixteenth-century royal Spanish senator made himself the standard-bearer of an old European tradition and at the same time the herald of a new epoch of legal consciousness, the modern European-American, whose most striking form of expression is the rule of law and the equal rights of nations.²³

Conclusion: Althusius culminated the tradition of canon/Roman-legal constitutionalism. This tradition was maintained by both Catholic and Protestant constitutional thinkers, over against absolutists of both Catholic and Protestant persuasion.²⁴ This tradition was *replaced* by thinkers of McCoy & Baker's persuasion.

I think the problem exemplified by McCoy & Baker is not limited to our authors but is endemic to modern Christians, conservative and liberal. What we must keep in mind is that many of the great thinkers of the sixteenth and seventeenth centuries received Roman-legal training, often receiving degrees *utriusque* (in both civil and canon law), and this holds true for many of the Reformers. John Calvin, Theodore Beza, Lambert Daneau, Johannes Althusius, and François Hotman were all trained in Roman law, and Althusius was a professor of Roman law. I do not believe we can overestimate the significance of this. Roman law provided a paradigm of forensic/judicial thinking which has permeated Western theology (*judicial* theology) and philosophy from the beginning. The founder of Latin theology, after all, was Tertullian, a Roman jurist by profession.²⁵

Hostility to the Roman legal tradition among modern Christians is also endemic. Although understandable, it is rooted in ignorance as to what that tradition entails. The hostility, as one might guess, stems directly from the Whig Interpretation of History, which in legal history comes in the form of the Common Law Mind.²⁶ For English common lawyers, “The enemies at the gates...were those twin menaces, civil and canon law, which—coiled like two snakes about Mercury's wand, as Selden put it—Englishmen tended to regard with a sort of fascinated horror.”²⁷ The immediate cause of the hostility to Roman law which has always been part and parcel of conservative Whiggery was the use to which it was put in the service of absolute monarchy. To that degree the criticism is justified. But we need to keep in mind McIlwain's conclusion: “The fundamental doctrine underlying the Roman state, its true guiding spirit, is constitutionalism, not

23 Ernst Reibstein, *Anfänge*, pp. 26-27. For more on Vasquez's contribution to constitutional theory, see my article “The Sacred Public Square”, *Contra Mundum* No. 8 (Summer 1993), pp. 5ff.

24 For an example from the seventeenth century, I direct the reader to Samuel Rutherford's *Lex Rex* and challenge him to count the number of times Rutherford references members of the School of Salamanca, such as Francisco de Vitoria, Domingo de Soto, Francisco Suarez, Covarruvias and Vasquez.

25 For the importance of Roman law as Western theoretical paradigm, see the work of Donald R. Kelley. A good place to start—in his case as well—is the Variorum Reprints edition devoted to his work: *History, Law and the Human Sciences: Medieval and Renaissance Perspectives* (London: 1984).

26 For more on the Common Law Mind, see J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge, England: Cambridge University Press, 1987 [1957]).

27 Donald R. Kelley, “History, English Law and the Renaissance”, in *History, Law and the Human Sciences*, XI-37.

absolutism.... The really decisive influence of Rome on later European politics came, not after the Italian Renaissance in the tendency toward absolutism, but during the middle ages in the reinforcement of constitutionalism.”²⁸ One thing the keepers of the Common Law Mind often forget is that Roman jurisprudence presided at its inception, represented in such figures as Glanvill and Bracton.

In a sense, McCoy & Baker really have made a contribution to the debate regarding the origins of the modern world. It is certainly true that Calvinism rather than Arminianism has hitherto been viewed as the precursor of liberal ism. In fact, however, Arminianism was its real source. Not only did Arminianism give birth to liberal natural rights individualism, it also formed the ecclesiastical counterpart to the rising institutions of modern public banking and national debt.²⁹ In viewing Arminianism in this light, we can see how important religion was to the rise of the political and economic institutions upon which our society is based. But this is only to prove our authors' thesis in a negative sense. They help us to see where we as a civilization went wrong, but not how we can get back on course.

The true hero of McCoy & Baker's story is not Althusius but another Roman lawyer, Hugo Grotius. These contemporaries were on opposite sides of the great divide between theocracy and individualist/statist absolutism. Grotius depended on the same sources as Althusius, and specifically mentions both Covarruvias and Vasquez in the Prologue to his great work, *The Law of War and Peace*. But how does he speak of them? As on the wrong side of the absolutism vs. constitutionalism issue! The modern world came into existence in 1648 with the signing of the Treaty of Westphalia, when the law of nations a la Grotius triumphed at the expense of both Geneva and Salamanca.³⁰ Our authors really have in mind a different book altogether, one featuring Grotius rather than Bullinger, with the title, *Fountainhead of Liberalism*.

28 Charles Howard McIlwain, *Constitutionalism: Ancient & Modern* (Ithaca, NY: Great Seal Books, 1958 [1940]), p. 57.

29 I have written an article outlining the rise of these institutions in the Dutch Republic and in England. See “Thoughts on Monetary Union: A Historical Perspective”, in *Symbiotica*, I (1), pp. 3-15. I also have a large manuscript in preparation which details this connection and its importance to the rise of the modern world.

30 This was the theme of a series of taped lectures I gave in early 1992 at the conference, “Calvinism, Arminianism, and Theocracy”, sponsored by Biblical Horizons and available from the same. (PO Box 1096, Niceville FL 32588) I must mention the fact that my research on this matter has progressed considerably since then, and I hope DV to be able to present it in published form before too long.