

SAMUEL RUTHERFORD ON LAW AND COVENANT

The Impact of Theologico-political Federalism
on Constitutional Theory

by

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In loving memory of my father and for my mother

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CHAPTER 1

Introduction

In his biography of the Scottish Covenanters' great theorist Samuel Rutherford, Coffey states that Rutherford was a complex man: a preacher, pastor, intellectual and ecclesiastical politician whose substantial body of writing covered theology, ecclesiology, political theory, spirituality and apocalypticism.¹ Rutherford's contribution to Reformed thought is not to be discarded. Rutherford no doubt, was both a prominent theologian and political theorist. As political theorist, Rutherford established himself (during and after his life) in his work titled *Lex, Rex*, written in a time when there was an urgency to solve issues of a political and ethical nature. This was the period of the Reformation in the 17th century, a period in which the works of proponents from the first wave of the Reformation such as, Martin Luther, Huldrych Zwingli, Heinrich Bullinger, John Calvin and John Knox, were much cherished. It is also clear that *Lex, Rex* was accepted by many as a relevant and weighty political and jurisprudential tract. Hetherington, in his adept work titled *History of the Westminster Assembly of Divines* has the following comment to make on Rutherford:

In the year 1643, he (Rutherford) was sent to London, as one of the commissioners from the Church of Scotland, to the Westminster Assembly. While he attended that Assembly, he greatly distinguished himself by his skill in debate, his eloquence in preaching, and his great learning and ability as an author. Few works of that age surpass, or even equal those, which were produced by Rutherford, during that intensely laborious period of his life. The first of these was titled 'The Due Right of Presbytery'. Next appeared 'Lex, Rex', a profound work on constitutional law, which has not yet found its superior. Soon afterwards he published a work on 'The Divine Right of Church Government', in opposition to the Erastians.²

¹ John Coffey, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), 27–28.

² William M. Hetherington, *History of the Westminster Assembly of Divines*, (reprint edition of the third edition, 1856, Edmonton: Still Waters Revival Books, 1991), 394. On *ibid.*, 147, Hetherington states: "In his (Rutherford's) celebrated work, 'Lex, Rex', he not only entered the regions of constitutional jurists, but even produced a treatise unrivalled yet as an exposition of the true principles of civil and religious liberty."

These are only some of the works emanating from the hand of Rutherford, and provide an indication of the level of his intellectual acuity.

Of significance is that Rutherford's political and jurisprudential theory contains a tradition pioneered by Heinrich Bullinger, and supported by Philippe DuPlessis-Mornay and Johannes Althusius about covenantal thought and the implications of such thought for the Christian community. In what follows, the assimilation of Rutherford's theologico-political federalism with Bullinger's, Mornay's and Althusius's, is confirmed. This investigation aims at providing the reader with added insight into the relationship between 16th-century Swiss-Germany and 17th-century Scotland about the reception of Bullinger's theologico-political federalism in the political theory as postulated by Rutherford. In other words, there is added insight into Rutherford's federalistic connotations in his political writings. McCoy and Baker state that from the era of Bullinger onward, the stream of theology with the covenant at its core, flourished. Federalism (derived from the Latin word *foedus* meaning covenant, and appropriately referred to as federal theology), flowed down the Rhine from Zurich and, over the course of the 16th and 17th centuries, became a major sector of theology within the Reformed churches of Switzerland, Germany, the Netherlands, Britain, and eventually, New England.³

McCoy and Baker add that the influence of Bullinger is abundantly clear in the continental development of federalism as well as in the Reformed churches of Scotland and England and, through them, in the British colonies of North America. Bullinger's theological and political formulation of covenant thought, for example, can be discerned in the movement that produced the National Covenant in Scotland in 1638 and the Solemn League and Covenant between Reformed movements in England and Scotland in 1643.⁴ In this regard McCoy and Baker state: "This alliance led to the calling of the Westminster Assembly and the formulation of the Westminster Confession. In league with the Independents under Cromwell, this movement overthrew Charles I. Though events did not lead in the direction planned by the Scottish-English coalition of Reformed federalists, the character of British society was changed decisively by the revolution they began."⁵ Accompanying this will be the added insights of Rutherford into governance, the Divine Law, the office of magistracy, forms of government and their validity, the sovereignty of God in a political context and

³ Charles S. McCoy and J. Wayne Baker, *Fountainhead of Federalism. Heinrich Bullinger and the Covenantal Tradition* (with a translation of the *De testamento seu foedere Dei unico et aeterno*, 1534, by Heinrich Bullinger) (Louisville, KY: Westminster/John Knox Press, 1991), 29.

⁴ *Ibid.*

⁵ *Ibid.*

theories on resistance – issues that are as relevant to Christian political and jurisprudential thought today as they were five hundred years ago.

This investigation forms part of a larger dimension concerning Reformed thought on these issues. What has Reformed thought got to say to the temporal activities and institutions of modern man? What relation should exist between church and state and between state and religion? What must the content of the law be? Has the church any right to “interfere” in politics and lay down official lines of policy for all the faithful of Christ to follow? What is the nature of political obligation and the limit of political authority? What are the responsibilities of the people? The answers to these questions form an integral facet of the believer’s knowledge and understanding of the state and governance, the philosophy of law and politics. Taylor rightly states that all these questions have become increasingly urgent during the past hundred years, and they have received much attention in contemporary Christian writings. Not only theologians, but also Christian historians, philosophers, lawyers, sociologists and poets have shared in discussion and debate concerning the above.⁶ Bearing this in mind, this work aims not only at joining in the discussion and debate, but also at complementing that fruitful orchard of grand and worthy Christian insights concerning jurisprudential and political principles and content.

The importance of the ideas and insights emanating from the period of the Reformation also needs to be emphasized. Berman states that the Western legal tradition has been transformed in the course of its history by six great “revolutions”, of which the Protestant Reformation was one. This revolution, like the fifth one, had the character of a national revolution in Germany, starting with Luther’s attack on the papacy in 1517. The remaining five revolutions referred to by Berman are: the Papal, English, American, French and Russian Revolutions. The history of the West had been marked by recurrent periods of violent disturbance, in which the pre-existing system of political, legal, economic, religious, cultural, and other social relations, institutions, beliefs, values, and goals were overthrown and replaced by a new one. The specific patterns and regularities present in these revolutions are: a fundamental, rapid, violent, and a lasting change in the system as a whole. Each has sought legitimacy in: fundamental law, a remote past, and an apocalyptic future. In addition, each of these revolutions produced a new system of law, which embodied some of the major purposes

⁶ E.L. Hebdgen Taylor, *The Christian Philosophy of Law, Politics and the State*, (Nutley: The Craig Press, 1966), x.

of the revolution and which changed the Western legal tradition, but which ultimately remained within that tradition.⁷

These six revolutions were “total” revolutions in that they involved not only the creation of new forms of government but also new structures of social and economic relations, new structures of relations between church and state, and new structures of law, as well as new visions of the community, new perspectives on history, and new sets of universal values and beliefs. Therefore, each of these six revolutions produced a new or greatly revised system of law, in the context of what was conceived as a total social transformation.⁸ As a result, the Protestant Reformation, as one of these six major revolutions in the history of the Western legal tradition, provides, to the Christian of Reformed persuasion, an important epistemological basis for jurisprudential and political insight, and consequently this work wishes to serve and enrich such a cause.

Without negating the numerous contributions from Biblical scholars on issues pertaining to the law and government, it is disappointing to be reminded by Hall about the lack of discussion of these issues from theologians noted for their valuable commentaries of the Bible and teachings of theology in general. Hall states that most systematic theology books offer little or no detailed teaching on politics, and that the formulation of matters of state in most classic theological books shows a noticeable lacuna. In the standard theological texts (e.g., Berkhof, Calvin, Luther, Pieper, Hodge, Buswell, Bavinck, Dabney, Turretin, Erickson, Grudem), one can hardly find systematic Biblical reference to a theology of the state. Hall adds that few resources, above an experiential basis, are available, and popular and experiential approaches have therefore, by default, reigned in this area.⁹ Concerning the present-day approach, Hall says that some recent popular works devote hundreds of pages to various aspects of the state. However, not all Christians agree with those views, and the amount of attention given to this area often indicates a preoccupation, which betrays that some discussions may be reactionary or imbalanced.¹⁰ Nevertheless, it remains important to remind oneself of the following as stated by Hall: “Few would dispute that at the very least the Bible concerns itself with the role and purpose of civil government, with the need for law

⁷ Harold J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition*, (Cambridge, Massachusetts: Harvard University Press, 1983), 18–19.

⁸ *Ibid.*, 20.

⁹ David Hall, *Savior or Servant? Putting government in its place*, (Oak Ridge: The Covenant Foundation, 1996), 4. Hall states: “Less than one percent of the leading systematic theology texts address a matter which now consumes far more than one percent of the average Christian’s interest. More than half of that comes from a single theologian (Calvin). In contrast, some recent popular works devote hundreds of pages to various aspects of the state”, *ibid.*

¹⁰ *Ibid.*

and order, and with other principles of guidance on this whole complexity of questions. It even appears that the Bible addresses the issues of political structure and their relationship to one another.”¹¹ This work is also aimed at contributing to this cause. Ignorance leads to the understanding that religion is a private matter and that it has nothing to do with politics. Moltmann speaks of an inner emigration that has allowed for outer crimes and undermined resistance. Moltmann adds: “The new political theology presupposes the public witness of faith and the freedom for political discipleship of Christ which is not only private and not only inside the Church.” ... “Politics is the wider context of all Christian theology. It must be critical with respect to political religion and religious politics and affirmative with respect to the concrete involvement of Christians ‘for justice, peace and the integrity of creation’ ”.¹²

It must be noted that reformed theologians and theorists on Reformed political theories such as Bullinger, Mornay, Althusius and Rutherford (to name a few), made great contributions to the Biblical teachings on politics and jurisprudence. In this regard McCoy rightly states that Reformed theology is much more than Calvinism, to which Reformed thought has too often been reduced in histories of Protestant theology written in the 19th and 20th centuries. McCoy adds that nowhere is this wider character of Reformed thought more evident than in the federal theology in Germany, especially the covenantal theology that was nurtured at Herborn in the 16th and 17th centuries (and which found acceptance in, among others, Scottish Reformed thought).¹³

Rutherford provided one of the ablest expositions on reformed jurisprudential and political thought that emanated from the Reformation during the 17th century. Coffey rightly states that the meagerness of the academic literature on Scottish Presbyterianism is particularly obvious when one contrasts it with the enormous attention lavished on Puritanism in Old and New England. Coffey adds that the contrast is all the more striking when one realizes that devout Scottish Presbyterians were as “Puritan” in their religious culture as the English and New English for whom the term is usually reserved.¹⁴ Coffey states that historians nowadays tend to employ the term “Puritan” to denote “the hotter sort of Protestant”, the most zealous and strict of Protestants, those who called themselves “the godly” and were called by others “Puritans”. It is now suggested that Puritanism should be thought of as a distinctive religious culture characterized by “a ceaseless round of spiritual activities”, including “Bible-reading

¹¹ Ibid., 12.

¹² Jürgen Moltmann, “Covenant or Leviathan? Political Theology for Modern Times”, *Scottish Journal of Theology*, Vol. 47 (1994), 39–40.

¹³ Charles S. McCoy, “The Centrality of Covenant in the Political Philosophy of Johannes Althusius”, *Rechtstheorie*, 13 Beiheft 7, (1988), 187.

¹⁴ Coffey, *Politics, Religion and the British Revolutions*, 17.

and Bible-study, sermon-attendance and sermon-gadding, fasting and whole-day sabbatarianism”. This religious culture was as evident among Scotland’s “super-Protestants” as among their counterparts in England and New England. Scots like Rutherford, therefore, should be considered part of the Puritan tendency within English-speaking Reformed Protestantism.¹⁵ Rutherford himself stated that “we be nicknamed Puritan” and complained that a “strict and precise walking with God in everything” was scorned as “Puritan”.¹⁶ According to Coffey that despite all this, Scottish Presbyterianism has been largely ignored by historians of Puritanism. Those writing on Puritan theology, politics or spirituality frequently allude to Scots like Rutherford, thereby acknowledging that the Scots shared a great many of the characteristics of the English Puritans, but Scottish Puritanism as a movement has remained unexplored.¹⁷

In the words of Schaeffer: “Many good things in England came from Scotland. The clearest example of the Reformation principle of a people’s political control of its sovereign is a book written by a Scot, Samuel Rutherford ... The book is *Lex, Rex: Law Is King*”.¹⁸ Schaeffer adds that Rutherford’s work and the tradition it embodied had a great influence on the United States Constitution, even though modern Anglo-Saxons have largely forgotten him. Rutherford’s political influence was mediated through, inter alia, John Witherspoon (1723–1794), a Presbyterian who followed Samuel Rutherford’s *Lex, Rex* directly and brought its

¹⁵ Ibid. Coffey adds that: “To describe them (including Rutherford) simply as Presbyterians or Covenanters focuses attention on their particular ecclesiological or political positions, whilst obscuring the ethos and spirituality that they shared with zealous Protestants beyond Scotland”, *ibid.*, 17–18. For an interesting and concise referral to sources pertaining to the meaning to be ascribed to the word “Puritan” refer to Joel R. Beeke’s, *The Quest for Full Assurance. The Legacy of Calvin and his Successors*, (The Banner of Truth Trust, 1999), 82-83.

¹⁶ Coffey, *Politics, Religion and the British Revolutions*, 18. Levy and Young rightly state that notwithstanding elements of autocracy, elitism, and theocracy that dominated early 17th-century Puritan political thought, Puritanism was a bridge from medievalism to the Enlightenment across which traveled many of our most cherished concepts of democratic constitutionalism. The authors add that the social compact theory of government and representative government, government by the voluntary consent of the governed and for the good of the people, natural law and natural rights, written constitutions and constitutional limitations on the power of government, religious liberty and separation of church and state and the exceptional importance of the individual – all may be found in political ideas, Leonard W. Levy and Alfred Young, “Foreword”, pages v–vii in *Puritan Political Ideas 1558–1794*, (edited by Edmund S. Morgan, United States of America: The Bobbs-Merrill Company, Inc., 1965), v–vi. Concerning the latter two concepts, namely the separation of church and state, and the exceptional importance of the individual, it is debatable whether prominent Puritan political theorists supported them. Be as it may, Rutherford, most definitely formed part of this Puritan political thought and contributed greatly towards further insights into political theory. In fact these unique political insights were championed by the theologico-political federalists, as is clear in this study.

¹⁷ Coffey, *Politics, Religion and the British Revolutions*, 18.

¹⁸ Francis Schaeffer, *The Complete Works of Francis Schaeffer: A Christian Worldview*, 2nd edition, (Wheaton: Paternoster Press, 1985), 137. Cf. Hall, *Savior or Servant?*, 3. Hall states: “When Francis Schaeffer was asked to recommend a sound biblical treatise on government, more often than not, all he could commend was an obscure (and at the time out of print) 17th-century work with a Latin title: *Lex, Rex* by Samuel Rutherford. Schaeffer was astute to commend such a solid work, but few of his audience could ever find – much less persevere through – this sturdy and worthwhile book.”

principles to bear on the writing of the Constitution and the laying down of forms and freedoms.¹⁹ *Lex, Rex* gave classic Reformed answers to questions concerning the origin of governments, the scope of their powers, popular conveyance of power by covenant, and the community's ultimate authority.²⁰ According to Maclear, Rutherford's is the most notable English expression of classic Reformed political thought in the 17th century. By the next century, says Maclear, Rutherford was largely forgotten, but in his own age he was linked with Buchanan as a father of orthodox doctrine. Maclear adds that like Knox and Buchanan, he wrote at a time of national crisis, and his writing assisted in the reparation of an enduring national tradition disposed to challenge oppressive government and refer political decision to moral law.²¹

Hall also gives deserving support to Rutherford by stating that: "For a better theology of the state, one would have to revisit the treatises of Althusius, Rutherford, or the Westminster

¹⁹ Schaeffer, *The Complete Works of Francis Schaeffer*, 138. On *ibid.*, 139, Schaeffer states: "Some of the men who laid the foundation of the United States Constitution were not Christians in the first sense, and yet they built upon the basis of the Reformation either directly through the *Lex, Rex* tradition or indirectly through Locke." Also cf. J. F. Maclear, *Samuel Rutherford: The Law and the King* (edited by George L. Hunt; Philadelphia: The Westminster Press, 1965), 86, Maclear stating that Rutherford's is the most notable English expression of classic Reformed political thought in the 17th century, and was unfortunately forgotten by the following century. However, according to Maclear, in Rutherford's own age, he was linked with Buchanan as a father of orthodox doctrine. Maclear adds that like Knox and Buchanan, he wrote at a time of national crisis, and his writing impregnated with a new sense of Scotland's destiny, aided in repairing an enduring national tradition disposed to challenge oppressive government and refer political decision to moral law, *ibid.*

²⁰ J. F. Maclear, "Samuel Rutherford: The Law and the King", in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 68.

²¹ *Ibid.*, 86. It is interesting to note that Rutherford's *Lex, Rex* forms the most concise work on Puritan political theory. In confirmation of this refer to Robert P Martin's *A Guide to the Puritans*, (Pennsylvania: The Banner of Truth Trust, 1997), 126 – 127, where Rutherford's *Lex, Rex* is entered under the heading of "government" and clearly portrays the most concise work on this subject in comparison with similar works by other Puritans. It is also of interest to take note of the following meaningful academic works on Rutherford's political theory to date namely: Omri K. Webb's, *The political thought of Samuel Rutherford*, (unpublished Ph.D. dissertation, Duke University, 1964; C. E. Rae's, *The political thought of Samuel Rutherford*, (unpublished M. A. dissertation, University of Guelph, 1991); Timothy D. Hall's, *Rutherford, Locke and the Declaration: the connection*, (unpublished M. Th. dissertation, Dallas Theological Seminary, 1984); J. F. Maclear's, "Samuel Rutherford: The Law and the King", 65 – 87, in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965); John D. Ford's, "*Lex, Rex iusto posita: Samuel Rutherford on the origins of government*", 262 – 290, in *Covenant and Commonwealth: The language of politics in Reformation Scotland*, (edited by Roger Mason, Cambridge University Press, 1994); Richard Flinn's, "Samuel Rutherford and Puritan Political Theory", *Journal of Christian Reconstruction*, Vol.5, (1978-9), 49 – 74; and John Coffey's, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), more specifically the Chapter titled "The Political Theorist", 146 – 187. In 1963, Webb, in his doctoral thesis on the political thought of Samuel Rutherford states: "The political thought of Samuel Rutherford has had little systematic study in the three hundred years since his death. There are brief mentions of him in standard texts and short summaries of his ideas in biographical accounts, but I have discovered only one critical exposition of his political thought in print, and it is of article length", Webb, *The Political Thought of Samuel Rutherford*, vi. As can be seen from the above sources on Rutherford's political thought, it is a positive development to witness the progress of research since 1963 on Rutherford's political theory.

Larger Catechism's discussion of the Decalogue.”²² Flinn states that Rutherford, like many Puritan divines, was a prolific writer. He adds that Rutherford's *Lex, Rex* is one of the most comprehensive expressions of Calvinistic political theory, and that it is also one of the keystones in the development of modern political theory. Flinn goes on to state that *Lex, Rex* has understandably been studiously avoided by secular political philosophers, for it is unabashedly Christian and Calvinistic. Less understandably however, it has also been avoided or overlooked by many in the neo-Puritan movement of our own day.²³

According to Coffey, Rutherford lived at the end of an era in which religion had formed a sacred canopy covering every area of life, and in which the principle of “one realm, one religion” had been taken for granted. There lay ahead of him not the kingdom of God on earth but a world in which religious plurality and tolerance would gradually expand, and in which religion would eventually be pushed to the margins of political life.²⁴ Rutherford saw the beginning of this trend in England in the 1640s, and he resisted it with all the arguments that he could muster. His books against tolerance of ungodliness perhaps entitle him to be described as one of the last full-blooded defenders of the medieval *Respublica Christiana*. But he was trying to save a sinking ship. The fragmentation of Protestantism was too far advanced, the demands of intolerance too onerous, the attractions of pluralism too great.²⁵ Coffey states that *Lex, Rex* has been called “the most influential Scottish work on political theory”.²⁶ *Lex, Rex* was not Rutherford's only work concerning reformed-jurisprudential and political theory. His *Free Disputation Against Pretended Liberty of Conscience*, has been described by Owen Chadwick as “the ablest defense of persecution in the seventeenth century”.²⁷ With this study, it is also intended to confirm the importance of *Lex, Rex*, as, among others, a political and jurisprudential document.

²² Hall, *Savior or Servant?*, 349.

²³ Richard Flinn, “Samuel Rutherford and Puritan Political Theory”, *The Journal of Christian Reconstruction* Vol. 5 (1978–9), 49. Rae refers to William Campbell who, commenting on Rutherford's *Lex, Rex*, contended that: “by one of the paradoxes with which the life of this man is so filled, he wrote the best book from a Scottish pen against religious toleration and the best book in defense of civil liberty”, C. E. Rae, *The political thought of Samuel Rutherford*, (unpublished M. A. dissertation, University of Guelph, 1991), 19. Rae states: “*Lex, Rex* has even been described as the most elaborate of the summaries of parliamentary argument: As Ernest Sirluck said: ‘he left nothing out’”, *ibid.*, 71–72. Rae also refers to a comment on *Lex, Rex* stating that it “holds, among books on Constitutional Government, a place kindred to that which is held by Adam Smith's ‘Wealth of Nations’ in the science of Political Economy”; Rae also referring to I. M. Smart's comment on *Lex, Rex* namely that it “was the longest and most detailed work of political theory written to justify the covenanter and parliamentary side”, as well as the fact that *Lex, Rex* was a “tour de force” that demolished the arguments of all the leading English and Scottish royalist writers, *ibid.*, 73–74.

²⁴ Coffey, *Politics, Religion and the British Revolutions*, 255.

²⁵ *Ibid.*

²⁶ *Ibid.*, 1–2.

²⁷ *Ibid.*, 2.

More specifically, the importance of this work concerns the confirmation of McCoy and Baker's view that Bullinger's theory of federalism was fundamental to the development of the political theories of Althusius (in the European political tradition) and Rutherford (in the Scottish tradition). The immediate result of Bullinger's theologico-political federalism was the formulation of an answer to the challenge posed by the rapid emergence of the European nation states and the upcoming wave of secular sovereignty in political systems. The later effects of Bullinger's political theories involved the development of a Reformed covenantalism, which provided theologians and political theorists with the principles to formulate alternatives to the secular theory of Bodin.²⁸ The theoretical impact of Bullinger's federalism manifested itself in the thought of Althusius and Rutherford in a number of key-elements: among others, the principle of the protective role of magistracy; the close connection between piety; justice and the office of magistracy; law as the norm for legality and the development of a theory of political resistance to tyranny.²⁹ The practical results flowing from the religious covenants emanating from this Reformed Protestantism, according to Elazar, are that they "gave birth to covenanted commonwealths, the political expression of those ideas, from Switzerland to Scotland and then in British North America and Puritan England." According to Elazar: "These commonwealths preserved the old medieval unities of religion, state, and society, but in a new republican ideational, institutional, and behavioral framework."³⁰ The fiber of Bullinger's federalism permeated Althusius's *Politica*, one of the most valuable contributions to Reformed politics; its extensive, meticulous, detailed, and systematic format attesting to this. The same can also be said about Rutherford's *Lex, Rex*, which was called "the most influential Scottish work on political theory" and "the classic statement" of Covenanter political thought.³¹ In fact, McCoy states that: "A book that takes a position very close to that of Althusius is Rutherford's 'Lex, Rex: The Law and The Prince; A Dispute for the Just Prerogative of Kings and People' (1644). Rutherford was a leader of the Puritan and Scottish Reformed movement that overthrew King Charles I, and his book was influential both in its immediate context and upon subsequent political thought".³² The accuracy of this statement will also be verified in the chapters that follow.

Rutherford's political thought was to a large extent similar to that of Althusius's, and together these writers were pioneers, adding new perspectives and insights to political and jurisprudential theory in general; more specifically contributing to the further development of

²⁸ Andries W. G. Raath and Shaun A. de Freitas, "Theologico-Political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504–1575)", *Westminster Theological Journal* 63 (2001), 303–304.

²⁹ *Ibid.*, 304.

³⁰ *Ibid.*

³¹ *Ibid.*

³² McCoy, "The Centrality of Covenant in the Political Philosophy of Johannes Althusius", 189.

Bullinger's theory on theologico-political federalism. They had presented a theory of polity-building, based on the polity as a compound political association established by its citizens through their primary associations on the basis of consent, rather than a deified state imposed by a ruler or an elite.³³ The epitome of this mutual thought on federalism among Bullinger, Althusius, and Rutherford was the ever-binding authority emanating from within Scripture; hence the fusion of politics and theology. This was the dividing line between the theologico-political federalism that distinguished the federalists of the Reformation from the political federalists of the early Enlightenment, such as Thomas Hobbes and John Locke.³⁴

The outstanding contribution of Bullinger is situated in the fact that he was the originator of a legacy that exposed a unique perspective concerning the relationship between God and man, particularly relating to its political influences. It is this same legacy that provided Althusius, Rutherford, and the likes, such as Philippe Duplessis-Mornay, with an alternative theoretical paradigm to the strong influence of secularism introduced by Jean Bodin.³⁵ The link between Bullinger, the father of theologico-political federalism, and Mornay, Althusius, and Rutherford, will also become clearer in what follows.

It is interesting to note that the Reformation has by and large been the cradle of a social contract theory, thereby preceding the social contract theories emanating from the secular thought of Bodin, Hobbes and Locke. Therefore, although there are several varieties of federalism, the concept that government was based on a covenant or contract was an integral part of the federal tradition prior to Bodin, Hobbes and Locke – all of whom were latter-day faces of 16th-century federalism.³⁶ In fact, the social contract theory that forms such an integral part of the history of the United States of America, can be ascribed to the theologico-political federalism emanating from the thought of Bullinger, and finding a following in Reformed England and Scotland, the Scot, Rutherford also being an adherent to such theory, which eventually was blown over to the colonialists of New England. The core of the

³³ Raath and De Freitas, "Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504–1575)", 304.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Cf. J. Wayne Baker, "Faces of Federalism: Althusius, Hobbes, and Locke" (unpublished paper), 2. In this regard, Hudson states: "Where did Locke derive his political ideas? With regard to his general political principles one need not look far. They were being shouted from the housetops during the years he was at Westminster and Oxford, and they had been explicated again and again by the sons of Geneva with whom he was in contact throughout his life. Even a conservative Presbyterian like Samuel Rutherford, in *Lex, Rex* (1644), invoked almost every argument that was later used by Locke, including an appeal to the law of nature, the ultimate sovereignty of the people, the origin of government in a contract between the governor and the governed, and the right of resistance when that contract is broken", Winthrop S. Hudson, "John Locke: Heir of Puritan Political Theorists", in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 113.

Mayflower Compact, stated that the Separatists covenanted and combined themselves into a Civil Body Politic, solemnly and mutually in the presence of God and of one another, for the better ordering and preservation and furtherance of the aforementioned ends. This covenant included the commitment to set up whatever governmental instrumentalities were appropriate and the promise to give all due submission and obedience to these community decisions. The *Mayflower Compact* was a very firm yet conditional agreement that assumed a previous ordering of society to be continued, renewed, and improved. This religious-political covenant emerged from the federal tradition, fitted into it admirably, and established a clear pattern of federalism among the British colonies in the New World, a pattern that was to be replicated and extended,³⁷ as well as a pattern that has been detected from the early Reformed thought in Zurich, through to 16th and 17th -century Scotland.

It is important to keep in mind the unfortunate development in the history of post-Reformed thought, concerning the “walls of separation” that have been erected between church and government as well as the various sciences. It is a common tendency to view the sciences as autonomous and it has reached a point where the specialist in one field of science hardly dare not enter the field of another. This is clearly visible concerning the present-day approach pertaining to the relationship between jurisprudence, politics and theology, and is a perception that needs remedying. It is therefore hoped that this work will provide the reader with the realization concerning the intimate relationship between these various disciplines. Taylor also states that one of the great tragedies of the Reformation was the failure of the great Reformers, John Calvin and Martin Luther, to develop a doctrine of law, politics and the state, upon truly Reformed and Biblical lines.³⁸ According to Taylor, the Reformers did not bring about any radical departures in the spheres of political science, statecraft and jurisprudence for the simple reason, as the German scholar August Lang has shown, that they were so involved in theological discussion, religious controversy and the very struggle for survival, that they simply did not have any time left in which to develop a Reformed and Biblical theory of politics and government.³⁹ This work also intends to further those Reformed minds that did make radical and insightful departures into the spheres of political science, statecraft and jurisprudence, Rutherford being one of them.

³⁷ McCoy and Baker, *Fountainhead of Federalism*, 84.

³⁸ Taylor, *A Christian Philosophy of Law, Politics and the State*, 1.

³⁹ *Ibid.*

In a contemporary context, McCoy and Baker⁴⁰ illustrate the unfortunate separation between some of the sciences in their observation of federal theology and political federalism. They state:

Because of the specialization and the separation of disciplines in twentieth-century universities, the relation between the theological and political elements in that earlier time (sixteenth and seventeenth centuries) is not always clear. Today, theology deals with religion, and political science with government and politics. The study of the covenant, consigned to theological studies, itself divided into separate disciplines, has generally been left to Biblical scholars, who have dealt with it only as it appears in the Bible. The notion of federalism has become the property of political science, history, and philosophy ... the wholeness of human experiencing is forgotten as fragments are parceled out to various academic specializations for isolated scrutiny. The sectors of human experience examined apart from their relation to one another become distorted and misunderstood. The close connection between covenant and social contract is overlooked ... And, strangest of all, the politics and ethics dominant in modern Western culture can be misread as 'liberalism' without reference to the federal tradition.

In works of political philosophy concerned with the post-Reformation period – more specifically regarding the theories relevant to federalism – an awareness that there is a relationship between theology and politics is not altogether clear. According to McCoy and Baker, scholars have not yet investigated the interrelatedness between these two fields of “sciences”, in any satisfactory fashion. Names such as Robert Blakey, Otto van Gierke, George Sabine and Ludwig Gumplowicz, do identify this potentiality or presence of interrelatedness, yet fail to provide sufficient discussion thereof.⁴¹

On the other hand, Quentin Skinner seemingly regards theological and political federalism as totally unrelated, while Gottlob Schrenk states: “This influence of theological federalism on political theory has still to be investigated thoroughly”.⁴² Had this approach of “separation” been postulated by the Reformers? McCoy and Baker make it clear that prominent religious

⁴⁰ Cf. McCoy and Baker, *Fountainhead of Federalism*, 45

⁴¹ *Ibid.*, 46. Also cf. Flinn, “Samuel Rutherford and Puritan Political Theory”, 51, Flinn stating that during the Reformation, no attempt was made to separate religion from the state; and that such separation was to emerge much later, primarily through the influence of John Locke, and reaching its logical extrapolation in Rousseau.

⁴² McCoy and Baker, *Fountainhead of Federalism*, 46–47.

leaders and political thinkers of the period of the Reformation did not separate these sciences from each other:

In sixteenth, seventeenth, and eighteenth centuries, the era when the institutions of the modern world were taking shape, federal theologians dealt with political as well as ecclesiastical issues and political philosophers concerned with *societal covenants* dealt also with *religious issues*. Bullinger and Rutherford were primarily religious leaders but did not hesitate to spell out the political implications of their theological federalism. On the other hand, political thinkers like Althusius and Thomas Hobbes focused on the political order but included much that now would be regarded as in the domain of theology.⁴³

Flinn states that from the time of Rutherford onwards, a secularizing trend set in which effectively emasculated the political theology of the Reformation. The humanistic political consensus of our day has come to full flower; and then there are those Calvinists who spurn political and economic theology, preferring to hold that the Scriptures do not speak clearly or authoritatively in these areas, and that one should look to “common grace” in developing these fields.⁴⁴ Regarding this and concerning his article on Rutherford in the context of Puritan political theory, Flinn adds: “Fortunately our Puritan forefathers were more jealous for the honor of God, and they were determined to be more faithful to the Scriptures. This ... then, attempts to present Puritan political theory through the mouth-piece of one of its leading exponents – Samuel Rutherford.”⁴⁵ In 1644 Rutherford was appointed one of the eight Scottish commissioners to the Westminster Assembly; and a year later, while the Assembly was in progress, he wrote and published *Lex, Rex*. Concerning the weight attached to Rutherford’s *Lex, Rex* during the period of the Assembly Flinn writes:

Rutherford’s work caused a great sensation upon publication, particularly in the Assembly. That it was an accurate reflection of the political philosophy of the Assembly is evidenced by Bishop Guthrie, who writes that every member of the Assembly ‘had in his hand that book lately published by Mr Samuel Rutherford, which was so idolized, that whereas Buchanan’s treatise (*de Jure Regni Apud*

⁴³ Ibid., 12.

⁴⁴ Flinn, “Samuel Rutherford and Puritan Political Theory”, 49.

⁴⁵ 50, *ibid.* In this regard Richards rightly states: “Rutherford himself saw the political issue as inseparable from theology. He would have vehemently opposed the assertion that the theological question of man’s status before God had little impact on political theory”, Peter J. Richards, “‘The Law written in their Hearts’: Rutherford and Locke on Nature, Government and Resistance”, (unpublished paper, Law and Political Science, United States Air Force Academy), 5.

Scotus) was looked upon as an oracle, this coming forth, it was slighted as not anti-monarchical enough, and Rutherford's *Lex, Rex* only thought authentic.'⁴⁶

With the coming of the Reformation, there developed a strong interest amongst the forces of the Reform in the role and place of the state. Dominated by Rome and the Church, the minorities produced by the Reformation sought to free themselves from Caesaro-papist control and to enunciate a theory of the state which protected their own interests, and allowed the state to stand free from the control of Rome.⁴⁷ Rutherford's *Lex, Rex* no doubt contributed to this cause.

In conclusion, it is important to take note of the fact that there lies a plethora of political and jurisprudential insights emanating from 16th and 17th- century Reformed thought that still needs to be researched. Some criticism that can be leveled at especially 17th century Reformed Scotland is the emphasis on Church government above that of Reformed political theory. This is especially clear when witnessing the substance arising from the Westminster Assembly in the middle of the 17th century. It is hoped that this work will assist in sensitizing present and future generations to the wonderful political and jurisprudential insights gained and postulated by some of the great minds of the Reformation, including the importance of theologico-political federalism to Reformed political and jurisprudential theory, as well as the crucial role that Rutherford played in it all. Maclear states that Rutherford regarded himself as a faithful watchman: "Many before me," he confessed, "hath learnedly trodden in this path", also saying that he "might adde a new testimony to the times." Maclear states that such a new statement was needed because apostasy had "made a large step in Britain", and "Arbitrary Government had over-swelled all banks of Law."⁴⁸ Bearing this in mind, it is also trusted that this work will do further justice to Rutherford's valuable testimony to contemporary and future society.

⁴⁶ Flinn, "Samuel Rutherford and Puritan Political Theory", 50–51.

⁴⁷ 51, *ibid.*

⁴⁸ Maclear, "Samuel Rutherford: The Law and the King", 86–87.

CHAPTER 2

Samuel Rutherford and Theologico-Political Federalism

1. The Idea of the Biblical Covenant

The idea of the *biblical covenant* denotes a unique, biblically-based relationship between God and man, a relationship that was expressly put forward by Heinrich Bullinger in the 16th century.⁴⁹ It was against the background of this idea that Bullinger viewed the covenant as the divine framework for the functioning of God's relationship with man. Bullinger affirmed that Scripture in its entirety taught this covenantal structure, together with the conditions thereof.⁵⁰ What differentiated many other scholars from Bullinger during the Reformation was that Bullinger clearly affirmed the idea of the biblical covenant, making the covenant motive the center of his theology, unlike Zwingli or even Calvin. Although Calvin used the term *covenant* in many of his works, it still did not correspond to the lucid and concentrated degree of thought on the term covenant, as is the case with Bullinger. According to Bullinger, the term covenant means a *bilateral, mutual and conditional agreement* between God and man.⁵¹ Bullinger's explicit assertion of a bilateral conditional covenant was not prominent in the thoughts of Zwingli either.⁵²

Although Zwingli hinted at the bilateral nature of the covenant, he did not convincingly affirm the *mutual* responsibilities of God and humans, nor did he make the covenant the center of his theology. For Zwingli, the covenant motif remained essentially a basis for his

⁴⁹ Heinrich Bullinger, *De testamento seu foedere Dei unico et aeterno*, (1534). Translation by Charles S. McCoy and J. Wayne Baker in *Fountainhead of Federalism. Heinrich Bullinger and the Covenantal Tradition*, (Louisville, KY: Westminster/John Knox Press, 1991), 99–138.

⁵⁰ Charles S. McCoy and J. Wayne Baker, *Fountainhead of Federalism. Heinrich Bullinger and the Covenantal Tradition*, (with a translation of the *De testamento seu foedere Dei unico et aeterno* (1534) by Heinrich Bullinger), (Louisville, KY: Westminster/John Knox Press, 1991), 20.

⁵¹ J. Wayne Baker, *Heinrich Bullinger and the Covenant: The Other Reformed Tradition* (Athens: Ohio University Press, 1980), xxii. Bullinger used the terms *foedus* and *testamentum* to refer to a mutual pact or covenant. Although, for Bullinger, *testamentum* also meant *last testament* and *promise*, it still remained clear that God's agreement with man included not only God's premises but also certain conditions that man was obligated to meet. Also cf. 13, 15–17, *ibid.* In Reformed thought the idea of testament was pervasive. Among the early Reformed thinkers, Bucer was alone in accepting, in 1529, the Zurich concept of a bilateral covenant. Oecolampadius, in 1526, affirmed the unity of the people of God in the Old and New Testament, but this was an understanding based on an Augustinian notion of a unilateral testament. Many Reformed thinkers (including Calvin), followed the lead of Luther and Oecolampadius in accepting a unilateral rather than a covenantal theology, *ibid.*, 25.

⁵² *Ibid.*, 15–16, 18.

reply to the Anabaptist teachings on baptism.⁵³ On the one hand, Zwingli spoke of human *obligations* in the covenant; and the supposition emanating from this was that he hinted at a bilateral covenant. On the other hand, it could be maintained that for Zwingli, the covenant remained a *unilateral promise* to the elect and in which any *conditional* elements were blunted by his doctrine of election.⁵⁴ Hagen points to some clues concerning Zwingli's postulation of a contractual covenant, stating: "For Zwingli, with perhaps a different political model, the discussion of *testamentum* develops in terms of covenant. Man's historical life, inspired by the Holy Spirit, is lived in 'pact' with God. Man's response to the *foedus* must show that he is a confederate".⁵⁵ Hagen refers to Zwingli's work "On Baptism", in which he continues to emphasize (against the Anabaptists), that the sacraments of the Old and New Testament are initiatory signs of the covenant, a pledge to a process of development. "Baptism is an initiatory sign or pledge with which we bind ourselves to God ...". The covenant sign (circumcision and baptism) does not confirm faith, but is a pledge to a life of faith and discipleship – "God calls it a contract [*pactum*]."⁵⁶ Hagen also refers to Bromiley's criticism of Zwingli for an excessive emphasis on the *bilateral* character of the covenant.⁵⁷ Hagen states that in Zwingli's "Commentary on True and False Religion", Zwingli speaks of the covenant; and in his discussion of marriage, "a most holy covenant", he points to Christ's relationship with his bride the church, as an example. Zwingli says that this covenant relationship is "a covenant for life, a sharing of all possessions and a common risk". A common "risk" or "venture" gives to *foedus* a strong *bilateral* connotation. Marriage is not a sacrament; it is a *foedus* which is an enduring relationship between two people. A sacrament is an initiation ceremony or a pledge to a covenant. Zwingli likens it to when people begin

⁵³ McCoy and Baker, *Fountainhead of Federalism*, 21.

⁵⁴ Baker, *Heinrich Bullinger and the Covenant*, 16. Bullinger, on the other hand, left little doubt in his reader's mind that the covenant was *bilateral*, and the human *conditions* were those of faith and piety, *ibid.*, 16–18.

⁵⁵ Kenneth Hagen, "From Testament to Covenant in Early Sixteenth Century", *Sixteenth Century Journal*, III, 1 (April 1972), 22. Hagen adds that there was a development from testament to covenant theology in the first quarter of the sixteenth century. The various hermeneutical, soteriological, and sacramental aspects indicate that this development is basically a shift from emphasizing the sole divine initiative in the God-man relationship, to giving the man-man relationship a bilateral component in the God-man relationship. Hagen goes on to state that the development away from Luther's more magisterial testament theology begins with Melancthon's emphasis on faith as "co-" responsible – Melancthon reads *testamentum* more as *foedus*, *ibid.*, 24. This to indicate the developing trend in covenantal thought, that was to obtain fruition in Bullinger's theology. Cf. *ibid.*, 20, where Hagen states that in Zwingli's "Commentary on Genesis" (1527) the singular *foedus*, *pactum*, *testamentum* is a bilateral treaty between God and his people. Also cf. *ibid.*, 19, where Hagen adds that Zwingli reads testament as covenant and sacrament as public initiary ceremony, which entails man's *responsibility* to fulfill the terms of the contract for man.

⁵⁶ *Ibid.*, 18.

⁵⁷ *Ibid.*

litigation: they deposit earnest money to ratify the contract; and a sacrament is a pledge that one will not withdraw from his commitment – *foedus*, then, means bilateral commitment.⁵⁸

According to McCoy and Baker, Martin Bucer (1491–1551) was the third leader (besides Zwingli and Oecolampadius of Basel (d.1531)), of the Reformed movement who may be viewed as an early covenant thinker. Bucer, however, no more than Zwingli, made the covenant the center of his theology. Consequently, McCoy and Baker come to the conclusion that of those who used the covenant idiom prior to 1534 (when Bullinger’s “The One and Eternal Testament or Covenant of God” was published), only Zwingli and Bucer formulated the term in a way close to its usage by Bullinger, but neither of them can be called a federal theologian in the sense in which the name applies to Bullinger.⁵⁹

This agreement between God and man includes not only God’s promises, but also certain *conditions* that man is *obligated* to meet.⁶⁰ This understanding of the covenant is in harmony with the explanation by Elazar, namely that:

A covenant is 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 integrities of all the parties to it ... Every covenant involves consenting (in both senses of thinking together and agreeing) and promising. Most are meant to be of unlimited duration, if not perpetual. Covenants can bind any number of

⁵⁸ Ibid., 17–18. Also cf. Scott A. Gillies, “Zwingli and the Origin of the Reformed Covenant 1524–7”, *Scottish Journal of Theology* Vol. 54, 1 (2001), 21–50, where Gillies investigates Zwingli’s defense of infant baptism over the years 1524–7 in order to determine at what point the unilateral notion of testament (or covenant) is abrogated for a bilateral or covenantal understanding of the sacrament. At *ibid.*, 49–50, the author, concerning Zwingli states: “Both the *Genesis Commentary* and the *Subsidiary Essay* link the argument for covenant unity to the Abrahamic covenant in Genesis 17 and infant baptism. The bilateral nature of the covenant, comprising both God’s covenant of grace with man and man’s obligations to ‘walk justly before him’, is asserted.”

⁵⁹ McCoy and Baker, *Fountainhead of Federalism*, 21–22.

⁶⁰ Baker, *Heinrich Bullinger and the Covenant*, xxii. This affirmation of the bilateral nature of the covenant, as well as the mutual responsibilities of God and man in this agreement, was strong in the mind of Bullinger. Bullinger no doubt intended that the Zurich church should understand its covenant relationship with God and the concomitant obligations, *ibid.*, 137.

parties for a variety of purposes but in their essence they are political in that their bonds are used principally to establish bodies political and social.⁶¹

A covenant is none other than a *mutual engagement* between two parties, in which certain performances are stipulated on the one hand, and certain promises on the other; a covenant being religious when entered into between God and men with respect to the duties men owe to God, more especially religious duties.⁶²

According to Bullinger, the biblical text serving as primary witness to this idea of the covenant is Genesis 17, where it is clearly stated that God wished to be the God of Abraham and of his seed; in return Abraham and his seed were bound to walk before God in innocence.⁶³ For Bullinger, then, the covenant served as the foundation for social and political policy, and law among Christian people, and thus, as the framework for his social-political (and jurisprudential) theory. The covenant was in fact the cement that unified God's people in the Christian community.⁶⁴ It must be noted that Bullinger nowhere intended to disrupt the basic monergism of the Reformed system. Bullinger did not want to describe man's entrance into the covenant as *bilateral*, but merely man's functioning with God within creation as bilateral and conditional, a view which is characteristic of duopleurism.⁶⁵ It is also interesting to note the basic difference between Genevan orthodoxy and Rhineland teaching regarding covenantal thought. Calvin, Beza and their followers believed in a *unilateral* covenant, while Bullinger was one of the few 16th-century theologians who believed in a *bilateral* covenant.⁶⁶ For Bullinger, the covenant is the exclusive vehicle through which God

⁶¹ Daniel J. Elazar, *Covenant and Polity in Biblical Israel. Biblical Foundations and Jewish Expressions. The Covenant Tradition in Politics*, Volume 1, (New Brunswick, N. J. and London, U.K.: Transaction Publishers, 1995), 22 – 23.

⁶² W. Roberts, "On the duty of Covenanting and the Permanent Obligations of Religious Covenants", (1853), (<http://www.swrb.com/newslett/actualnls/PresCatCove.html>), 1–2.

⁶³ Baker, *Heinrich Bullinger and the Covenant*, 17; McCoy and Baker, *Fountainhead of Federalism*, 104.

⁶⁴ Baker, *Heinrich Bullinger and the Covenant*, 136–137. The importance of this covenant idea to Bullinger is witnessed in his application of this concept in his commentaries and more formal historical and theological works as well as his printed sermons; in his *Summa*; a theological compendium for laymen; and in his catechism of 1559, *ibid.*

⁶⁵ Cf. also, Ronald L. Cammenga, "Bullinger's Covenant Conception: Bilateral or Unilateral?" in *Theological Journal*, (April, 1997, <http://www.prca.org/prtj/apr97.html>), 32.

⁶⁶ David A. Weir, *The Origins of the Federal Theology in 16th-century Reformation Thought*, (Oxford: Clarendon Press, 1990), 31. This observation is not free from criticism. For this refer to Lyle D. Bierma, "Federal Theology in the Sixteenth Century: Two Traditions?", *Westminster Theological Journal*, 45 (1983), 304–321, especially *ibid.*, 320–321, where the author comes to the conclusion that there were no substantial differences in the way the covenant was understood in the Zurich–Rhineland and Genevan theological traditions. Albeit there being differences on certain points of doctrine, these differences cannot be traced to fundamentally different views of the covenant. The author goes on to state that Reformed covenant theologians – Zwingli, Bullinger, Calvin, Olevianus, Musculus, Ursinus, Perkins, and others – recognized both a unilateral and a bilateral dimension to the covenant of grace within the context of a monergistic soteriology.

worked in history with His people.⁶⁷

The fundamentally important contribution of Bullinger to Reformed covenantal thinking is described by Elazar in the following terms:

It remained for Zwingli's disciple and successor, Heinrich Bullinger, to articulate a theology of covenant and, with it, a political theory of the covenantal commonwealth, becoming the first of the Reformers to do so. Bullinger's work not only preceded that of Calvin, but went farther toward the enunciation of a theo-political federal doctrine. Bullinger gave Protestant covenantalism its first major theological expression. As Zwingli's successor in Zurich, Bullinger was an influential figure whose ideas were known to theologians and philosophers throughout Western Europe.⁶⁸

Shortly after this unique contribution by Bullinger appeared, in the person of Philippe DuPlessis-Mornay, a similar understanding regarding man's relationship with God developed. There is a covenant between God, on the one hand, and between the king and the people taken collectively, on the other.⁶⁹ According to Mornay, it is clear that God had chosen Israel from among all the nations of the earth, to be a peculiar people to Him, and He covenanted with them to serve Him purely.⁷⁰ Asa, king of Judah, by the council of the prophet, assembled all the people in Jerusalem to enter into a covenant with God. There also came tribes of Ephraim; Manasses and Simeon who came to serve the Lord, according to His ordinance.

⁶⁷ Weir, *The Origin of Federal Theology in Sixteenth-Century Reformation Thought*, 50, fn. 113.

⁶⁸ Andries W. G. Raath and Shaun A. de Freitas, "Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504–1575)", *Westminster Theological Journal*, 63 (2001), 286.

⁶⁹ Philippe DuPlessis-Mornay, *A Defence of Liberty Against Tyrants*, (A translation of the *Vindiciae Contra Tyrannos* with a historical introduction by Harold J. Laski, London: G. Bell and Sons Ltd., 1924), 71–72. The author refers to the example of "King Joas, Jehoiada and Josias"; who together with the people; were involved in a *conditional bilateral* covenant with God. On *ibid.*, 72–74, the author refers to the examples of Moses, Joshua, Saul, Samuel and David, who did the same. It must be noted here that it is assumed that Mornay was the author of the *Vindiciae Contra Tyrannos*, Gough adding: "It (the *Vindiciae Contra Tyrannos*) was published anonymously, ostensibly at Edinburgh, but really at Basle, over the pseudonym of Stephanus Junius Brutus. Various persons were suggested as the real author, but most scholars came to the conclusion that he was either Languet or DuPlessis-Mornay. Professor Barker has recently reviewed the evidence on the subject, and seems to me to have established fairly conclusively that the author was in fact Languet", John W. Gough, *The Social Contract* (Oxford: Clarendon Press, 1936), 52. On the other hand, McCoy and Baker state that it has been established with a high degree of probability that the author of the *Vindiciae* was Mornay, *Fountainhead of Federalism*, 47. Laski also entertains the latter opinion, cf. Harold J. Laski, "Introduction". Pages 1–60. Mornay, *A Defence of Liberty Against Tyrants*, 34, 57–60. Also cf. Paul T. Fuhrmann, "Philip Mornay and the Huguenot Challenge to Absolutism", pages 46–64, in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 54–55. For purposes of this work, the latter point of view is adhered to.

⁷⁰ Mornay, *A Defence of Liberty Against Tyrants*, 87–88.

Consequently the covenant was *contracted* on the following terms: “Whosoever shall not call upon the Lord God of Israel, be he the last or the greatest, let him die the death”.⁷¹ In the business of making a covenant with the people, God would show that the people had a right to make, hold and accomplish their promises and *contracts*.⁷² Shortly afterwards Johannes Althusius also supported the idea of the biblical covenant. Althusius refers to the religious covenant or *pactum religiosum* where humans promise to God the introduction of orthodox religious doctrine and practice in the realm, as well as the conservation, defense and transmission to posterity of this doctrine.⁷³ The people (together with the rulers) become the *debtors* – those who make the promise; and God is the *creditor* – the one to whom the promise is made.⁷⁴

The latter half of 16th-century Britain witnessed a similar understanding concerning this type of covenantal thought. Knox, in his *Appellation* (his address to the bishops and the estates of Scotland), emphasizes that those wishing to obtain eternal life had to refrain from idolatry, and similarly, England and Scotland were called to keep God’s covenant by refraining from the idolatry of the Mass, hereby emphasizing the idea of a covenanted nation and placing emphasis on the community’s covenantal obligation to be holy before God. Knox refers to Abraham who fled his homeland because of its defilement with idolatry, and therefore we too must follow God if we desire to remain in His covenant.⁷⁵ Knox makes it clear that God’s covenant is *conditional* upon our obedience to Him, and that our obedience is the reason for which God is merciful to us.⁷⁶ It is this covenant background according to the thoughts of Knox, which stemmed from the theological premise that the elect had entered into a *league and covenant* with God, which bound them to the Divine Will as revealed in His Word.⁷⁷ Like Knox, the signatories of the band of 1557 viewed adherence to divine law as part of their *contract* with God which promised them in return the assurance of eternal salvation. It was this belief which lent Knox’s covenanting ideology its apocalyptic urgency and which gave

⁷¹ *Ibid.*, 92.

⁷² *Ibid.*, 92–93.

⁷³ Frederick S. Carney, *The Politics of Johannes Althusius*, (An abridged translation by Frederick S. Carney of the third edition of Johannes Althusius’s *Politica Methodice Digesta Atque Exemplis Sacris et Profanus Illustrata*, including the prefaces of the first and third edition and with a preface by C. J. Friedrich, London: Eyer and Spottiswood, 1964), 157 (hereafter referred to as “Althusius, *Politics*”). Althusius refers to an example of such a religious covenant in Deuteronomy 26: 17–19, where Scripture states that the people of Israel receive the message that they must keep the commandments of God and that God would make them high above the nations. This is characteristic of the idea of the biblical covenant and does not differ in essence from the example to be found in Genesis 17: 1–14 – that part of Scripture duly emphasized by Bullinger to indicate the relationship between God and man.

⁷⁴ *Ibid.*, 158.

⁷⁵ M. Charles Bell, *Calvin and Scottish Theology. The Doctrine of Assurance*, (Edinburgh: The Handsell Press, 1985), 42.

⁷⁶ *Ibid.*

⁷⁷ Roger Mason, “Covenant and Commonweal: The Language of politics in Reformation Scotland”, *Church, Politics and Society: Scotland 1408–1929*, (edited by N. MacDougall, Edinburgh, 1983), 99.

his covenanting terminology – the language of duty, conscience and necessity – its uncompromising character.⁷⁸ Briefly stated, Knox tends to view the covenant of God as a national league or band between God and man which is *conditional* upon man's abstinence from idolatry.⁷⁹

It is also clear that 17th-century (and 16th - century) Scotland continued this tradition of the idea of the biblical covenant. For Samuel Rutherford, although the Lord might have predetermined all things, He still makes great demands on His creatures. Rutherford postulated that just as the covenant with the elect was *conditional and called for their response*, so His covenant with Britain demanded action.⁸⁰ Israel's national covenant is permanently valid, hereby committing the magistrate to preserving true religion in the form of Reformed Protestantism in all its purity.⁸¹ According to Rutherford, the covenant has a religious dimension, adding that the king "is made by God and the people king, for the church and people of God's sake that he may defend true religion for the salvation of all."⁸² Charles, who acted as king of a nation in covenant with God had been *obligated* to prosecute heresy and idolatry with the same zeal as Old Testament rulers. By allowing these transgressions, he had severed the nation's covenant with the Lord.⁸³ Rutherford's *Lex, Rex*, makes it clear that the covenant between God and man is analogous to a *bilateral, conditional relationship*.⁸⁴ This approach by Knox and Rutherford is understandable, considering the context in which their thoughts on the covenant emerged and developed within Scotland, France and England in the period of the 17th century. This is where the political struggles for religious and civil liberty often led to *contractual* ways of thinking about God's relationship with man.⁸⁵ Although any strict theological approach to the covenant and its *bilateral* and *unilateral*

⁷⁸ *Ibid.*, 100.

⁷⁹ Bell, *Calvin and Scottish Theology*, 48.

⁸⁰ John Coffey, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), 144.

⁸¹ *Ibid.*, 157. The term *national covenant* is to be understood as a covenant between God and nation. Also cf. *ibid.*, 165, where the author informs that *Lex, Rex* with its numerous references to Old Testament Israel presupposes such a notion of a national covenant, which also surfaced in Rutherford's *Letters*.

⁸² *Ibid.*, 164.

⁸³ *Ibid.*, 168. Also cf. *ibid.*, 184, where Coffey states that Rutherford believed that Scotland was both a nation with a constitution modeled on natural law principles, and a nation in covenant with God, and on *ibid.*, 227–228, Coffey adds that Rutherford believed that Scotland had made a covenant with God.

⁸⁴ Samuel Rutherford, *Lex, Rex*, (Harrisonburg, Virginia: Sprinkle Publications, 1982), 56, column 1 (56(1))–56, column 2 (56(2)). "But the king and people are not so contracting parties in covenant with God as that they are both indebted to God for one and the same sum of complete obedience, so as if the king pay the whole sum of obedience to God, the people are acquitted; and if the people pay the whole sum, the king is acquitted; of every one standeth obliged to God for himself; for the people must do all that is their part in acquitting the king from his royal duty, that they may free him and themselves both from punishment, if he disobey the King of kings; nor doth the king's obedience acquit the people from their duty", *ibid.*

⁸⁵ James B. Torrance, "The Covenant Concept in Scottish Theology and Politics and its Legacy", *Scottish Journal of Theology*, Vol. 34 (1981), 231.

implications will be limited in this study, and although this issue has been referred to above, it is nevertheless important to investigate the matter briefly further. That the term covenant is totally free from ambiguity would be an inappropriate statement to make.⁸⁶ The meanings given to the terms *bilateral* and *unilateral* requires closer inspection. The term *bilateral* is generally interpreted as being analogous to *pact*, *agreement*, *contract* and *conditionality*, while the term *unilateral* pertains to something similar to a bond of friendship mutually entered into, being sovereignly established and *unconditional*.⁸⁷

Some Reformers such as Bullinger concentrated on the covenant as *bilateral*, while others such as Calvin supported a *unilateral* (testamentary) idea of the covenant.⁸⁸ For many of the prominent theologians of the 16th century, the problem with Bullinger's covenant idea was the tension produced by an affirmation of conditional covenant within the framework of *sola gratia*. It would seem that Luther's assertions on human nature and justification led to a denial of the freedom of the will and thus inevitably to an acceptance of predestination, and within this context, the notion of a conditional covenant was paradoxical. Few were willing to accept such a paradox, especially during the latter part of the century. Some would circumvent this paradox by emphasizing testament rather than covenant.⁸⁹ This "leniency" of Bullinger, the originator of this covenantal structure, to the covenant as *bilateral* and *conditional*, is not to be understood as a sacrifice of his support of God's grace (or predestination for that matter).⁹⁰ In this regard Bierma comments:

Bullinger does not look upon the covenant as exclusively one-sided. It consists rather of two parts: God's promise to us and our obligation to respond to him.

⁸⁶ This is clearly to be witnessed in works such as James B. Torrance, "Covenant or Contract? A Study of the Theological Background of Worship in Seventeenth-Century Scotland", *Scottish Journal of Theology*, Vol. 23, (1970), 51–76; Francis Lyall, "Of Metaphors and Analogies: Legal Language and Covenant Theology" in *Scottish Journal of Theology*, Vol. 32, (1979), 1–17; James B. Torrance, "The Covenant Concept in Scottish Theology and Politics and its Legacy", 225–243.

⁸⁷ Cammenga, "Bullinger's Covenant Conception: Bilateral or Unilateral?", 23.

⁸⁸ This is according to the observation of Trinterud as observed by Weir, *The Origins of the Federal Theology in Sixteenth-Century Reformation Thought*, 26. Trinterud categorizes Zwingli as well as the Rhineland theologians as supporters of the covenant as *bilateral*; Calvin and the Genevan theologians as supporters of the covenant as *unilateral*. It must be emphasized that this observation is not free from criticism, which is to be found in Bierma's article, "Federal Theology in the Sixteenth Century: Two Traditions?", and which was briefly referred to in the above.

⁸⁹ Baker, *Heinrich Bullinger and the Covenant*, 213–214. This latter influence and Calvin, who felt the necessity for emphasizing double predestination so heavily, led to a paralysis of the conditional covenant, *ibid.*, 214.

⁹⁰ McCoy and Baker, *Fountainhead of Federalism*, 104–105, the authors state Bullinger's view that due to the ineffable mercy and divine grace of the eternal God, the covenant is offered out of sheer goodness which is God's nature. The merits of humans play no role on this offering of the covenant. Cammenga, "Bullinger's Covenant Conception: Bilateral or Unilateral?", 27, also supports this. Perhaps one of the clearest expressions of this is the Second Helvetic Confession of which Bullinger was the main architect, the grace and sovereignty of God permeating the teachings within this Confession.

Already in his covenanting with Adam, God had made us ‘partakers of all his good and heavenly blessings’ but had also bound ‘us unto himself in faith and due obedience.’ ... While circumcision and baptism indeed testify to our responsibility in the covenant, they also testify to the fact, Bullinger contends, that it is God who fulfills that responsibility in us and through us. They are signs that God, solely by his grace and goodness, bound himself in a covenant to justify and sanctify us through Christ, ‘who by his Spirit cuts from us whatsoever things do hinder the mutual league [covenant] and amity betwixt God and us; He also doth give and increase in us both hope and charity in faith, so that we may be knit and joined to God in life everlasting.’⁹¹

It is therefore clear that Bullinger put forward a *bilateral conditional covenant* structure without intending the negation nor actually negating the sovereignty and grace of God. Whether this covenantal structure would have been possible without the intervention of God is certainly clear to Bullinger and others. Nothing would have been possible without the intervention of God, and a prerequisite to the materialization of the bilateral conditional covenant between God and man was God’s *unilateral institution* of this very covenantal structure, which in turn is nothing other than a clear expression of God’s free grace.⁹²

Reformers never differed about the fact that behind human faith there stood the elective love of God. Although there were some differences concerning the covenant, these differences were never of such a nature that some Reformers connected election and covenant with each other, while others did not. The differences pertained to “how” the connection between election and covenant must be laid out in order to best accomplish the expression of the complete message of Scripture and in its preaching. Bullinger would opt for a bilateral conditional structure, and Calvin for a unilateral unconditional one. These differences

⁹¹ Bierma, “Federal Theology in the Sixteenth Century: Two Traditions?”, 312.

⁹² Concerning grace and sovereignty that ultimately lies with God, it is unfortunate that McCoy and Baker are criticized for their evaluation of the covenantal thought of Bullinger. For this criticism, refer to Cammenga, “Bullinger’s Covenant Conception: Bilateral or Unilateral?”. Indeed, McCoy and Baker are not to be regarded as negating the grace and sovereignty of God in their discussion on Bullinger as the fountainhead of federalism. It is clear from McCoy and Baker, *Fountainhead of Federalism*, 104–105, and Baker, *Heinrich Bullinger and the Covenant*, xxii, 27–53, 193–197, that the above authors knew more than to limit Bullinger’s teachings to the autonomy of man. Bierma also provides some interesting commentary concerning grace and human responsibility according to the prominent Reformers, including Calvin and Bullinger. It is his conclusion that there was no substantial differences in the way the covenant was understood in the Zurich-Rhineland and Genevan theological traditions. The 16th-century Reformed covenant theologians – Zwingli, Bullinger, Calvin, Olevianus, Musculus, Ursinus, and Perkins – recognized both a unilateral and a bilateral dimension to the covenant of grace within the context of a monergistic soteriology. The conditions of faith and obedience are conditions which the human partners are obligated to fulfill and which they do indeed fulfill when they believe and obey, yet only because God graciously creates in them a believing and obedient disposition, Bierma, “Federal Theology in the Sixteenth Century: Two Traditions?”, 320–321.

between Bullinger and Calvin certainly are misleading for the simple reason that Bullinger, as well as Calvin, knew that it is God who lets the faith work through the Spirit within the heart. Bullinger was more afraid than Calvin of simply coming to logical conclusions. For Bullinger, the covenant is the manner in which God functions with His people in history, with his promise and claim.⁹³ One could say that Bullinger's thought contained more of a historical dimension than that of Calvin. For Calvin, thought from eternity played a larger role than for Bullinger. Calvin views the covenant in such a manner that it is directed at election, while in Bullinger election is of less importance.⁹⁴ It must be noted that Bullinger nowhere excludes the doctrine of election. It is Abraham and his seed that must rule according to the *bilateral conditional covenant instituted by God*. This is what Bullinger tries to emphasize. Whatever God determined before creation is not an issue for Bullinger. What is of importance is the way in which God communicates and functions with man within revelation, irrespective of the fact that all depends, in the final instance, on the grace and sovereignty of God. This covenantal approach has its origin in God's involvement with man as witnessed in Scripture. It is difficult to ignore the unique orientations arising from this specific covenantal perspective. This covenantal relationship between God and man has certainly impacted on society, more specifically politics and jurisprudence. Government, for example, must not only rule according to the will of God, but the parameters of such rule are defined within the biblically expressed *bilateral conditional relationship* between God and man, which, in turn, is embedded within the absolute will and sovereignty of God. A more concentrated awareness and degree of accountability, responsibility and duty is hereby cultivated on the part of society, including government. It must again be emphasized that this study does not include a strict approach to theological issues such as, among others, grace, the sovereignty of God, election, predestination, reprobation and the degree of autonomy of the human will.⁹⁵

⁹³ D. Willie Jonker, *Uit Vrye Guns Alleen. Oor Uitverkiesing en Verbond* (From Grace Alone. Concerning the Election and the Covenant), (Pretoria: NG. Kerkboekhandel, Edms. Bpk., 1988), 89.

⁹⁴ *Ibid.*, 90.

⁹⁵ This view concerning the bilateral conditional relationship between God and man has been (and probably will be) met with criticism. Albeit so, this study must be read, bearing in mind that it is in essence an observation and analysis of the political and jurisprudential implications of such a unique covenantal perspective, also bearing in mind that by this is not to be inferred that theology (as formally understood) and politics do not at all overlap each other.

2. Theologico-Political Federalism

2.1 Defining Theologico-Political Federalism

Having briefly explained the idea of the biblical covenant, the term, *federalism* demands commentary. The context in which the term *federalism* will be dealt with is that of McCoy and Baker.⁹⁶ The terms *federalism* and *covenantal* are virtually interchangeable, and it is the academic specialization in the fields of theology and politics that has contributed to the separation in meaning of these two terms.⁹⁷ Federalism, inter alia, entails an understanding of the relationships between God and the world, and among humans as based on covenants.⁹⁸ Concerning the latter meaning, one may further enquire as to the precise meaning of the term *covenant*. Besides the meaning of the terms *federal* and *covenantal* as virtually interchangeable, the additional explanation of *covenant* (and therefore also the term, *federal*), is what Bullinger understood this term to be. Covenant includes the understanding of a *bilateral, conditional* covenant.⁹⁹ Albeit so, McCoy and Baker state that the precise criteria of what should and should not be included under the term *federalism* (covenant) is not yet finalized; nevertheless adding that it is accurate to speak of Bullinger as the fountainhead of federalism. Bullinger's work titled *De testamento seu foedere Dei unico et aeterno* (The One and Eternal Covenant of God), published in 1534,¹⁰⁰ qualifies Bullinger as the founder of federalism.

This qualification is based on the fact that the framework of federalism is the *bilateral conditional* relationship between God and man, and that the first proper and clear-cut expression of the idea of the biblical covenant finds its origin in the thought of Bullinger. There was no single background to federalism in the centuries prior to the Reformation, although there were a variety of covenantal theories.¹⁰¹ Further characteristics concerning this term are given by McCoy and Baker, including the fact that the inner nature of social groups and the relationships among them are understood as covenantal.¹⁰² Federalism also emphasizes division of powers within every level of organization and among these levels.¹⁰³ Then there is the concept stated by Friederich, namely, that federalism is primarily the

⁹⁶ In particular McCoy and Baker, *Fountainhead of Federalism*, 11–14, 24. This source serves as a worthy orientation to the context in which the term, “federalism” has been approached.

⁹⁷ *Ibid.*, 11–12.

⁹⁸ *Ibid.*, 12.

⁹⁹ *Ibid.*, 24.

¹⁰⁰ *Ibid.*, 11.

¹⁰¹ *Ibid.*, 14.

¹⁰² *Ibid.*, 13.

¹⁰³ *Ibid.*

process of federalizing a political community which, in turn, entails the process by which a number of separate political communities enter into arrangements for, *inter alia*, working out solutions; also the process by which a unitary political community becomes differentiated into a federally organized whole.¹⁰⁴ Finally, federalism entails understanding humans as socially and covenantally shaped and committed.¹⁰⁵ It is important to note that McCoy and Baker only deal with the term *federalism* and not with terms such as *federal theology* or *federal politics* in their orientation toward federalism. In this work, the term *theologico-political federalism* is to be understood according to the insights of McCoy and Baker as discussed above. From where the term, *theologico-political federalism*? The deductions of the relevant proponents of political federalism that will be dealt with, posit an ardent Scriptural basis concerning their political thought, and to withdraw the term *theology* in its entirety from these proceeding federal political observations would be unfair. Hence the term, *theologico-political federalism* is an appropriate reference to theologically based theories on political federalism. It will also become clearer as this investigation develops that the content of the relationship between government and governed is predetermined by the content of the relationship between God and man, the idea of the biblical covenant. Neither federalism nor political federalism can ever escape their theological roots, hence the aptness of the above term. This study is an observation of federalism according to the orientation by McCoy and Baker,¹⁰⁶ and its political and jurisprudential connotation; regardless of any realized, or still to be realized, contrary and different meanings pertaining to *federalism*.

When referring to McCoy and Baker's understanding of federalism, it is possible to extract from within this meaning all *politically*¹⁰⁷ relevant elements. The understanding of the relationships among humans as based on *bilateral*, *conditional* and *mutual* covenants,¹⁰⁸ the understanding of the inner nature of social groups and the relationships among them as

¹⁰⁴ *Ibid.*, 13–14.

¹⁰⁵ *Ibid.*, 14.

¹⁰⁶ *Ibid.*, 11–14.

¹⁰⁷ The term *political* is to be understood as: “That which concerns the state or its government, or public affairs generally”, Cf. *The Concise Oxford Dictionary*, (edited by R.E. Allen, Oxford: Clarendon Press, 1990), 922. “Generally, those interactions among individuals which are employed to design and to implement ways and means of governing an organized society”, W. J. Raymond, *Dictionary of Politics*, Seventh Edition, (Virginia: Brunswick Publishing Corporation, 1992), 394–395. “It is distinguished from other social processes by its concern with the *public* goals of the society. The study of politics attempts to describe, classify, analyze and explain political activity and the values which are implemented by political decisions. This study is also termed *government*, namely the politics of formal institutions at the level of the state, albeit the title of a more restricted field of study”, G.K. Roberts, *A Dictionary of Political Analysis*, (Great Britain: Hazell Watson and Viney Ltd., 1971), 169.

¹⁰⁸ The terms “bilateral” and “conditional” are from the authors’ reference to Bullinger on federalism, cf. McCoy and Baker, *Fountainhead of Federalism*, 24, and therefore the references to “bilateral” and “conditional” are assumed to be included in the authors’ understanding of the terms *covenantal* and *federal* on *ibid.*, 12.

covenantal,¹⁰⁹ the conception of the division of powers within every level of organization and among these levels,¹¹⁰ the process by which separate political communities enter into arrangements and the understanding of humans as socially and covenantally shaped and committed,¹¹¹ are all political elements within the larger context of *federalism* as understood and emphasized by Baker and McCoy. Therefore included in *theological-political federalism* are the above-mentioned political aspects.¹¹²

What is the relevance of the idea of the *biblical covenant* to that of *theological-political federalism*? The latter term, as previously mentioned, refers to the relationship between God and man, as well as between man inter se. This includes all relationships within the religious and public or civil sphere. The subsequent relevance of the idea of the *biblical covenant* to these relationships is the important fact that the nature and content of God's relationship with man forms the basis or foundation of the relationships strictly limited to the confines of the state. These latter relationships, also referred to as the *horizontal* relationships, are determined, controlled and delineated by the blueprint of the relationship between God and man, the *vertical covenant*. Consequently, the idea of the *biblical covenant* forms the essence of *theological-political federalism*. In this regard, a general understanding of theological-political federalism includes, as a point of departure, the presence and importance of a bilateral and conditional relationship between God and man; in other words, the presence of the idea of the biblical covenant. It is precisely this element of federalism that was excluded in the federal theories of the prominent secular political thinkers emanating from the period of the Reformation and enduring into the enlightenment and beyond. Here, one recalls names such as Jean Bodin, Thomas Hobbes, John Locke and Jean-Jacques Rousseau. Their leniency to the absoluteness of the social contract clearly differentiates them from Bullinger, Mornay, Althusius Knox and Rutherford, who postulated the primacy and necessity of accommodating

¹⁰⁹ Ibid., 13.

¹¹⁰ Ibid.

¹¹¹ Ibid., 13–14.

¹¹² Baker also provides additional characteristics to federalism in general in his referral to Althusius, who included all five of the common elements of federalism that he received from Mornay namely: (i) Political society is formed by means of covenant, (ii) government is necessary because of human nature, (iii) the community is formed by symbiotic association, (iv) the community is under the common or natural law, as stated in the Decalogue, and (v) the concept of popular sovereignty, whereby he advocates the deposition of a government that breaks the covenant with the people or with God; J. Wayne Baker, "Faces of Federalism: Althusius, Hobbes, and Locke", (unpublished paper, 2000), 13. Although this is quite similar to McCoy and Baker's orientation concerning federalism in general (in *Fountainhead of Federalism*), and as witnessed in the above; the meaning that McCoy and Baker give to federalism will form the basis of this study. It is somewhat surprising that no formal definition of *federalism* in this context has surfaced to date. Therefore this study is also pursued as a contribution and catalyst to the further development and commentary of this concept in Reformed political thought.

the *vertical covenant* within their political theory.¹¹³ The same development took place after the arrival of the founding fathers on the American continent, where what started as the application of the principles of theological-political federalism, developed into an essentially secular political theory about liberty, equality, freedom and contractual thought limited to the societal plane. Webb states that by the time of Rutherford's writing in the 17th century, the social contract theory had been in use over half a century in defending resistance to a king, Webb adding that Rutherford is very dependent on this tradition, as is evident from his citation of many authors who had developed the theory, especially in the 16th century.¹¹⁴

Although this is not primarily an investigation as to what the relationship between theology and politics precisely is, the observation by McCoy and Baker on the fragmentation of human experience is to be considered. According to the authors, the wholeness of human experience is forgotten as fragments are parceled out to various academic specializations for isolated scrutiny, and that these sectors of experience, examined apart from their relation to one

¹¹³ Within the federal paradigm of political thought it is also important to bear in mind its strict theological implications, as are concepts such as predestination, supralapsarianism, infralapsarianism, covenant of works, covenant of grace, election, reprobation and the covenant idea (concepts that are familiar within the field of federal theology) not entirely alien from federal thought and its political outflows. These concepts are emphasized and discussed in works such as Weir's, *The Origins of Federal Theology in Sixteenth-Century Reformation Thought*, referred to in the above. Also cf. *Encyclopedia of Religion and Ethics*, Volume 4 (edited by J. Hastings, Edinburgh: T. & T. Clark, New York, 1974), 216, stating that *covenant theology* includes thought concerning the agreement between God and Adam and also thought concerning the agreement between God and Christ (as the representative of the elect) and goes on to state: "The covenant theology in its developed form is a scheme of doctrine in which the entire system of divinity is expressed in the terms of these two covenants, and man's assurance of salvation based upon the fact that he is included within the latter." These terms per se, as well as their relationship with, influence on and/or qualification of theological-political federalism, will not be forming the essence of this investigation. Accordingly there will be an avoidance of an in-depth analysis of the theological investigation concerning the differences pertaining to the terms, *contract* and *covenant*. For such discussion refer to works such as: Torrance, "Covenant or Contract? A Study of the Theological Background of Worship in Seventeenth-Century Scotland", 51–76 and Lyall, "Of Metaphors and Analogies: Legal Language and Covenant Theology", 1–17.

¹¹⁴ Omri K. Webb, *The Political Thought of Samuel Rutherford*, (unpublished Ph. D. dissertation, Duke University, 1963), 139. In this secular context of the social contract Webb refers to the "social contract proper", which supposes that a group of individuals living in a "state of nature" agree to form an organized society for purposes of mutual-interest. According to Webb, this idea is as old as the Greek Sophists, who theorized that a social compact came into being as men, who were living in constant war in a lawless state of nature, learned that in order to have any individual freedom, each man had to give up some of his freedom to act completely in independence. Societies were conceived as man-made, built on conventions which are changeable and which vary from place to place, *ibid.*, 139 – 140. Webb refers to a second form of the social contract which can be called "a contract of government" or "a contract of submission". Here, according to Webb, the people are thought to have made a contract with their ruler in which they promise obedience to him, and he promises good government and protection to them. So long as the ruler keeps his part of the bargain, the people must obey him, but if he misgoverns, the contract is made void, and obligations of allegiance are ended. Webb adds that roots of this idea lie in the early Middle Ages in such teachings as the Augustinian concept that secular government is an artificial institution made for the benefit of sinful man; in the teutonic theory of kingship with its practice of the election and coronation of kings; and in the contractual nature of feudalism, *ibid.*, 140.

another, become distorted and misunderstood.¹¹⁵ It is therefore no surprise to conclude that the fields of theology and politics have been exposed to this same unfortunate distortion and misunderstanding. The same observation can be made concerning *federal theology* and *federal politics*. Bullinger and Rutherford, who were primarily known as religious leaders, did not hesitate to spell out the political implications of their theological federalism, while Althusius, who focused on politics, included much that nowadays would be regarded as seated in the domain of theology.¹¹⁶ This is to indicate that consideration must be given to avoiding approaching politics without a theological connotation. The same applies to the relevance of theology as to the science of jurisprudence. Bullinger did not separate his theology from politics, and this was the approach, in general, of the prominent exponents of the Reformed faith in the 16th and 17th centuries. McCoy and Baker emphasize the period of Mornay and Althusius as the genesis of a strictly distinguishable theory on politics from that of theology in the field of federalism.¹¹⁷ Bearing this in mind, the importance of the double covenant scheme within the theory of theologico-political federalism will now follow.

2.2 Theologico-political Federalism prior to Rutherford

2.2.1 The Double Covenant Scheme

With regard to *theologico-political federalism*, it is clear that there are two relationships to be taken into consideration. Firstly, and most importantly, is the relationship between God and man. Secondly, and as a derivative from the first, is the relationship between man and man, more specifically, the relationship concerning the political dimension of society, namely, that between government and governed, between ruler and ruled, between government and the nation. What follows below is a brief referral to the prominence that these two relationships gained in the minds of the *theologico-political federalists* such as Bullinger, Mornay, Althusius, Knox and Rutherford. Theirs was in essence a *double-covenant* scheme. What is meant by *the double covenant scheme*? It refers, in the first instance, to a bilateral, conditional agreement between God and man; and in the second instance, to a bilateral, conditional agreement between government and the people resorting under such a government. In other words, this refers to the essence of the concept of *theologico-political federalism*.¹¹⁸

¹¹⁵ McCoy and Baker, *Fountainhead of Federalism*, 45. This issue has partly also been referred to in Chapter 1, as an obstacle in general, against theology and politics.

¹¹⁶ *Ibid.*, 12.

¹¹⁷ *Ibid.*, Chapter 3, (45–62). The title of this Chapter states it clearly namely, “Federal Political Philosophy: Mornay and Althusius”, *ibid.*, 45.

¹¹⁸ As stated on *ibid.*, 12–13 and 24.

2.2.1.1 Heinrich Bullinger

The year 1643 heralded Rutherford's magnum opus on political thought, more specifically, his thought on political federalism. Approximately a century prior to this and quite a distance to the East, in Zurich, the emergence of a unique reformed line of thinking emerged in the person of Heinrich Bullinger. Bullinger produced the first work that organizes the understanding of God, creation, humanity, human history and society around the covenant, which may be defined as a *bilateral and conditional relationship between God and man*. It is regarded as the point of origin or the *fountainhead of federalism* and has increasingly come to permeate the world in the four-and-a-half centuries since its publication.¹¹⁹ To Bullinger, Scripture confirmed the covenant between God and man, together with its *conditions*. This was the covenant taught by the prophets and the apostles.¹²⁰ To Bullinger, the Bible was a most important source also referring to the various Church Fathers in order to demonstrate that the covenant was not an innovation, but the very fabric from which the history of salvation was woven through the centuries, from Adam to his own day; also citing Augustine, Irenaeus, Tertullian, Lactantius, and Eusebius for patristic support.¹²¹ In fact, Irenaeus was the only church father who hinted at a *conditional* covenant, and he may well

¹¹⁹ Ibid., 9. The authors refer here to the treatise entitled, *De testamento seu foedere Dei unico et aeterno* (The One and Eternal Testament or Covenant of God). In addition to the discussion concerning Zwingli's covenantal thought earlier on in this Chapter, it can be commented that Zwingli also referred to covenantal thought, making it clear that an upright walk before God is one of the 'principal parts' of the covenant and even one of the 'conditions' of the Abrahamic pact in Genesis 17; however, this interpretation by Greaves concerning Zwingli's covenantal thought is criticized by Bierma, the latter stating that nowhere is there by Zwingli (more specifically Zwingli's commentary of Genesis 17) any indication that God's promised blessing is contingent on human fulfillment of certain conditions, cf. Bierma, "Federal Theology in the Sixteenth Century: Two Traditions?", 310–311. Even if Zwingli did emphasize human fulfillment of certain conditions, it was not to the extent as witnessed in Bullinger concerning the conditional bilateral covenant between God and man. A comparative analysis is performed by Baker to indicate the covenantal thought between Zwingli and Bullinger in order to conclude whether Zwingli had been the pioneer of Bullinger's covenantal thought: Baker, *Heinrich Bullinger and the Covenant*, 1–19; Baker came to the conclusion that "Whether or not an exchange of ideas took place (between Bullinger and Zwingli), the fact remains that Bullinger's covenantal thought was not identical to Zwingli's. First, Bullinger had a firmer and more fully developed hermeneutical basis for his covenant idea ... Secondly, Bullinger strongly affirmed the bilateral nature of the covenant, the mutual responsibilities of God and man in this contract. Zwingli's lack of clarity is in contrast with Bullinger's explicit assertion of a conditional covenant", *ibid.*, 15.

¹²⁰ McCoy and Baker, *Fountainhead of Federalism*, 20. Baker states, "Bullinger's approach was biblical and historical rather than systematic and static. For this reason, in order to understand the full importance of the covenant in his thought, his conception of the covenant in history, from Adam to his own day, must be clarified. For Bullinger discovered the prototype for the Reformed community of his own day in the history of God's people within the covenant, especially during the Old Testament period", Baker, *Heinrich Bullinger and the Covenant*, 53; also cf. *ibid.*, 107, where it is stated that Bullinger saw the Reformation as a restoration of the covenant. This entailed that everyone was under this covenant by virtue of baptism, just as circumcision had done before Christ. Every member of Christian society was responsible to fulfill the conditions of the covenant; the covenant norms for such a society established by God in the Old Testament were thus fully applicable to the Christian commonwealth of Zurich; also cf. *ibid.*, 163.

¹²¹ McCoy and Baker, *Fountainhead of Federalism*, 14–15.

have influenced the formation of Bullinger's covenantal idea.¹²² The record of the covenant was to be found in Genesis 17: 1–14; from which it is deduced that God has acted according to human custom at every point. First, the passage explains who bound themselves together, namely, God and the descendants of Abraham. Second, the text states the *conditions* under which they bound themselves together, specifically, that God wished to be the God of the descendants of Abraham and that the descendants of Abraham ought to walk uprightly before God. Third, it is explained that the covenant is made between them forever. And finally, the entire covenant is confirmed with a specific ceremony in blood.¹²³ This *contractual* nature of covenantal thought pointed to the distinction between the covenant idea as emphasized by Bullinger on the one hand and by Augustine and Calvin on the other, the latter not thinking in terms of a bilateral covenant.¹²⁴

The concept of federalism in this context primarily denotes the relationship between God and man and between man inter se, as a bilateral and conditional relationship.¹²⁵ Bullinger did not posit a second political covenant; his was a single covenant,¹²⁶ which, in turn, implied other sub-covenant structures within a political paradigm, such as between the supreme magistrate and the people. A nation is in covenant with God, and government is there to facilitate the required *conditions* of this covenant. The political tradition of federalism also finds its roots in Bullinger's thought. God's people needed the magistrate and his laws to govern every aspect of life. The Christian magistrate was sovereign in Christian societies, and it was his duty to enforce the *conditions* of the covenant. The covenant was therefore the cornerstone of the Christian state.¹²⁷ The divine institution of the Christian magistracy had been restored by the Reformation. Through the Christian ruler, God himself ruled His people. Kingdoms based on human wisdom, such as Athens and Rome, always perished. But not so with God's kingdom: "The Jewish and Christian kingdom alone has always stood high when it held

¹²² *Ibid.*, 15.

¹²³ *Ibid.*, 104. Also cf. Baker, *Heinrich Bullinger and the Covenant*, 76, where Bullinger, discussing the Hebrew word *berith*, emphasizes the conditional nature of covenants, where each side promises something to the other. God makes His covenant with the human race from the very beginning, binding Himself to man and agreeing to certain conditions to be witnessed, inter alia, by Adam, Noah, Abraham, Moses and Daniel.

¹²⁴ McCoy and Baker, *Fountainhead of Federalism*, 23. Also cf. Baker, *Bullinger and the Covenant*, 23, stating that none of the Church Fathers – save perhaps Irenaeus – developed any sort of a bilateral, conditional covenantal notion.

¹²⁵ McCoy and Baker, *Fountainhead of Federalism*, 12, 20, 23–25.

¹²⁶ Baker, *Heinrich Bullinger and the Covenant*, 176. Baker adds that Bullinger applied the one covenant to both religious and civil life; the conditions of the covenant related both to matters of faith and to public policy and justice within the community. Therefore, even though Bullinger did not refer to a purely political covenant, the political implications of the covenant were inherent in what might be called his political theology, *ibid.*

¹²⁷ McCoy and Baker, *Fountainhead of Federalism*, 26–27; Baker, *Heinrich Bullinger and the Covenant*, 66. Cf. *ibid.*, 71–73, for Bullinger's exposition of the four kings of the Old Testament who were classical models for the magistrates of his own day.

steady to God and His word.” *This was God’s charge to the Christian magistrate – to rule well by following the word and law of God. Then God would bless the commonwealth with prosperity and fortune.*¹²⁸ The magistrate aided God’s people in keeping the condition of love within the external church or the Christian Commonwealth, this covenant condition clearly having to do with *judicial* or *civil things*. This, to Bullinger, was part of the enforcement of the duties of piety; these *judicial* or *civil* precepts were necessary for the holiest churches, so much so that they could not exist comfortably without them. Bullinger saw the Old Testament judges and kings as models for New Testament Christian government.¹²⁹ The magistracy and the church were the institutions of the covenant.¹³⁰ In fact, Bullinger interpreted the Reformation within the larger context of the covenant as a *restoration of the covenant*, similar to such restoration in the Old Testament under Hezekiah, Jehoshaphat and Josiah.¹³¹ Referring to the papacy, Bullinger believed that they split the Christian church in much the same way that Israel had been divided into two kingdoms. Just like Israel,¹³² the papists had forsaken the covenant.¹³³ To Bullinger, *true reform meant the restitution of the covenant* and the restoration of the ancient religion of the patriarchs and Christ, the pattern of which was found in the Old Testament. Restitution of the covenant between a people and God encompassed both ecclesiastical and civil, therefore encompassed all matters in society.¹³⁴ As God had a remnant of seven thousand faithful (1 Kings 19: 18), so He had a remnant in Bullinger’s time.¹³⁵

Bullinger refers to the history of the Swiss Confederacy from Morgarten (1315) to the late 15th century, stating that God had protected this Confederacy; God, in turn, requiring the people to show their love to Him.¹³⁶ “In all those wars and battles I was your God, I fought for you, I protected you.’ Who else had God blessed so greatly? ‘Since I have demonstrated my love for you with great signs, it is thus up to you to show your love for me with clear signs. Then, as I have been up until now, I will be your God and you shall be my people.’”¹³⁷ The Confederation had received God’s temporal blessings *in return* for the Confederation’s

¹²⁸ Baker, *Heinrich Bullinger and the Covenant*, 114.

¹²⁹ *Ibid.*, 92.

¹³⁰ *Ibid.*, 107–108, the magistracy and the church (in ecclesiastical sense) were the institutions of the covenant. Also cf. *ibid.*, 120–121, which states that because of the covenant, the Reformed church was the same as the Old Testament church.

¹³¹ *Ibid.*, 100.

¹³² 1 Kings 19: 10–14 on *ibid.*, 101.

¹³³ *Ibid.*

¹³⁴ *Ibid.*, 102.

¹³⁵ *Ibid.*, 101.

¹³⁶ *Ibid.*, 103. Cf. *ibid.*, 105–106, for Bullinger’s comparison between Zurich itself and the old people of the covenant; more specifically, Zwingli, who was cut from the same cloth as the great prophets of the past such as Moses, Isaiah, and Paul. Cf. also *ibid.*, 137–138, for a noteworthy summary on the federalism of Bullinger which places his theologico-political federalism into perspective.

¹³⁷ *Ibid.*, 103.

obedience to God. This keeping of the *covenant conditions* would again bring unity to the Confederacy; with Bullinger playing the prophet by measuring the Swiss Confederation in covenantal terms against Israel and Judah.¹³⁸ As in Israel, the *conditions* of the covenant applied to society as a whole¹³⁹ and did not view the commonwealth in terms of church and state, but rather as the people of God gathered together in a Christian society based on the covenant.¹⁴⁰ Zurich had become a member of the Swiss Confederation in 1351, and Bullinger considered the passage in Genesis in which God made the covenant with Abraham, as well as Paul's comments on this covenant in Galatians, bringing to mind the confederation in which he lived. In 1528, Bullinger, in the form of his *Admonition*, urged a Reformation of the entire Confederation, clearly connecting the *Biblical covenant* with the political federation when he wrote: "Dear Confederates, remember now that in baptism you have bound yourselves to me with an oath stronger than the one with which you have bound one state to another among yourselves."¹⁴¹ Here is clearly witnessed Bullinger's emphasis on the primacy and importance of the covenantal or *contractual* relationship between God and man, as well as between God and state or nation. The commonwealth of Zurich had the same covenanted relationship with God as Israel under Moses or Joshua, with the Christian commonwealth of Zurich viewed as the new Israel.¹⁴²

Bullinger clearly states that *those who are connected by covenants are joined together by certain regulations, so that each of the parties might know its duty, namely, what responsibilities the primary party might have toward the other, and what in return the primary party might expect from the other.*¹⁴³ God, who holds the primacy of this covenant, first expresses and sets forth the divine nature, as much as he wishes to show himself to us. Then God makes it clear what he demands from us in return, and what is fitting for us to do.¹⁴⁴ In return, man must adhere firmly by faith to the one God, inasmuch as He is the one and only author of all good things, and to walk in innocence of life for his pleasure. Anyone who neglects these things by living in ungodliness will be excluded, disinherited, and rejected from the covenant.¹⁴⁵

¹³⁸ Ibid., 104.

¹³⁹ Ibid., 107.

¹⁴⁰ Ibid., 110.

¹⁴¹ McCoy and Baker, *Fountainhead of Federalism*, 16.

¹⁴² Baker, *Heinrich Bullinger and the Covenant*, 163.

¹⁴³ McCoy and Baker, *Fountainhead of Federalism*, 108.

¹⁴⁴ Ibid., 108–109.

¹⁴⁵ Ibid., 111.

In Bullinger's discussion of the Hebrew word *berith*, he clearly emphasized the *conditional* nature of the covenants:

Each side in a covenant promised something to the other: 'Two or more place themselves under obligations or bind themselves to conditions'. Therefore Christianity was called *religio*, from *religare*, to bind. God made His covenant with the human race from the very beginning, binding himself to man and *agreeing to certain conditions* with us which He explained to the blessed patriarchs, such as Adam, Noah, Abraham, and Moses, revealing himself from time to time more and more, clarifying and renewing this covenant or testament.' The covenant conditions for man were by Moses, especially in the Decalogue.¹⁴⁶

This approach by Bullinger to the covenant relied a great deal on a distinctive historical perspective.¹⁴⁷ The covenant between God and man was even a major theme in Isaiah's prophecy in which God demonstrated His mercy and goodness to those preserved in His friendship or society, covenant or association, and Bullinger assures us that Isaiah spoke of the same covenant that had been made with Abraham.¹⁴⁸ Bullinger even refers to Jeremiah's first sermon, intended to bring Judah back into its covenantal relationship with God. Bullinger, commenting on the first verse of Chapter 3, asserts that it is clear from other parts of scripture that a *marriage or covenant has been contracted between God and man*.¹⁴⁹ As a result of the Jews continually violating this covenant in the past, God would abolish the ceremonies along with the priesthood and sacrifices while maintaining the essence of the covenant to be made with the spiritual seed of Abraham.¹⁵⁰ Although Bullinger was not a political theorist,¹⁵¹ his theological federalism had federal political consequences.

Heinrich Bullinger is therefore the fountainhead of federal thought which is unique in that the relationship between God and man is a *bilateral, conditional covenant* within the absolute grace of God. According to Bullinger this is how our relationship with God must be understood, and this is how the whole of society must perceive its place within the sovereign grace and providence of God. Political and jurisprudential matters are therefore included within *theologico-political federalism*, and it is from this point of departure that all political and societal activity must realize their function. Government and the governed work together

¹⁴⁶ Baker, *Heinrich Bullinger and the Covenant*, 76.

¹⁴⁷ *Ibid.*, 55.

¹⁴⁸ *Ibid.*, 73.

¹⁴⁹ *Ibid.*, 74, and on *ibid.*, 75, is referred to the punishing of Judah by God for having violated this covenant.

¹⁵⁰ *Ibid.*, 78.

¹⁵¹ *Ibid.*, 171.

in order to *fulfill the obligation* toward adherence and commitment to God's will and law. It must be the aim of the Christian community to *fulfill the conditions* which were made known to Abraham and which are of relevance to his descendants – the community of the faithful. The Christian community *has the combined responsibility to work towards the attainment of the reward* in the form of God's protection and blessing, and even though God's grace encompasses this whole exercise, it is God's work with man, as witnessed in Scripture, that is emphasized so diligently by Bullinger. Government and the governed have this *responsibility and these obligatory requirements* that are no different to those of the authorities and members of the Jewish nation of the Old Testament. This line of thought is also present in the works of Phillippe-DuPlessis Mornay, Johannes Althusius and Samuel Rutherford, which will be dealt with below.

2.2.1.2 Philippe DuPlessis-Mornay

2.2.1.2.1 The Theological Covenant

Mornay's work, entitled *Vindiciae Contra Tyrannos* (A Defense of Liberty Against Tyrants), published anonymously in 1579, also refers to the *double covenant* idea.¹⁵² It is clear from the above that, although Bullinger is the fountainhead of *theologico-political federalism*, he did not postulate a clear and systematic compartmentalization of the covenant between God and man; and the covenant between ruler (government) and the ruled (people). From Mornay onwards, a more lucid compartmentalization developed between these two covenants, hence the subsequent categorization, namely, the *vertical covenant* (the covenant between God and man) and the *horizontal covenant* (the covenant between ruler and the ruled). These two covenants (contracts) are collectively referred to as the *double-covenant scheme*. Mornay also speaks of two kinds of covenants at the inauguration of the kings; the

¹⁵² McCoy and Baker, *Fountainhead of Federalism*, 47. Fuhrmann also refers to covenantal thought in the late 17th-century Huguenot thought found in an anonymous work titled *The Alarm-clock (Reveille-matin) of Frenchmen and Their Neighbors 1573–1574*. Fuhrmann refers to this work as offering a pell-mell of Huguenot political ideas after the St. Bartholomew Massacre, in which an analogy is made with the high priest of ancient Israel who in the name of God stipulated a pact between God, the king, and the people, the sovereign *promising* to rule according to God, and Israel to obey according to God. If a party did not keep his *promise*, the *pact* was void – the breaking of this pact by tyranny giving the people the right to free themselves from such tyranny, Paul T. Fuhrmann, "Philip Mornay and the Huguenot Challenge to Absolutism", in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 47. The similarity between Rutherford's covenantal thought and that of Mornay's will not only become clear in the discussion below, but also is confirmed by Richards, who refers to Maclear who comments that the centrality of the notion of Covenant in the *Vindiciae* was an idea upon which Rutherford also focused, Peter J. Richards, " 'The Law written in their Hearts'? : Rutherford and Locke on Nature, Government and Resistance", (unpublished paper, Law and Political Science: United States Air Force Academy), 20-21.

first is between God, the king and the people, stating that the people might be the people of God, while the second is between the king and the people.¹⁵³ From this, it is inferred that the king and the people are jointly bound by promise, and do *oblige* themselves by solemn oath to serve God before all things.¹⁵⁴ A brief investigation into the development of contractual theory in 16th-century France reveals that especially after the Massacre of St. Bartholomew, the Huguenots in France were in rebellion against the government that persecuted them, and their pamphlets attacked the monarchy. Gough states that the Huguenots did not as a rule question the form of the state, but took the monarchy for granted; yet in striving for religious freedom, they had to advance arguments against absolutism.¹⁵⁵ As a consequence of this, Gough states: “The best known of the political writings of the Huguenots is the *Vindiciae contra Tyrannos*, but its importance consists more in the clarity and decisiveness with which its views are stated, and the popularity it enjoyed, than in the originality of its contents; for practically all it has to say can be found in a group of smaller pamphlets published during the previous ten years or so ...”¹⁵⁶ In response to Allen commenting that the author of the *Vindiciae* was not really thinking in terms of a proper contract theory and also that the author was vague concerning the covenants referred to, Gough states that the *Vindiciae* gives such prominence to the covenants, and mentions them so frequently, “...than one cannot help feeling that it is going rather too far to deny to them any real significance.”¹⁵⁷

¹⁵³ Mornay, *A Defence of Liberty Against Tyrants*, 71. On this same page is the example of “king Joas”, where a contract was concluded between God, the people and the king when he was crowned king and, as it is said elsewhere, between “Jehoiada the high priest”, all the people, and the king, “that God should be their Lord”. On *ibid.*, 71–72, Mornay emphasizes that in like manner one reads of “Josias” and all the people who entered into covenants with the Lord. Also cf. *ibid.*, 175; McCoy and Baker, *Fountainhead of Federalism*, 48; Baker, “Faces of Federalism: From Bullinger to Jefferson”, (unpublished paper, 2000), 5–6; and Baker, *Heinrich Bullinger and the Covenant*, 174.

¹⁵⁴ Mornay, *A Defence of Liberty Against Tyrants*, 72.

¹⁵⁵ Gough, *The Social Contract*, 49.

¹⁵⁶ *Ibid.* These views, which basically emphasized that monarchy was always limited and never absolute – in that if a king persecutes the true religion, the people’s duty to God overrides their duty to the king (giving rise to a right of resistance directed at the king) – appear (according to Gough) clearly at the outset of the earliest of the Huguenot pamphlets, the anonymously published *De Jure Magistratum in Subditos*, a work that (according to Gough) was almost certainly from the thought of Theodore Beza. Gough adds that a principle that is basic to these views is that, among others, rulers have a duty to their people, as well as a right to expect obedience from them, and the relationship between rulers and subjects is one of reciprocal obligation, *ibid.*, 50.

¹⁵⁷ *Ibid.*, 55. Gough also refers to the Catholic *Monarchomachi*, the earliest of them being Jean Boucher who alludes to the *foedus* made with God on several occasions in the Old Testament, which included king as well as people, and argued that in this covenant the people’s part is greater than the king’s, so that the community is bound to compel the king to observe the compact with God. “But there is no specific political compact between king and people, whose relations are merely said to be ones of *obligatio mutua*, while the king is described as *regni popuque tutor publicus*, and it is pointed out that the teacher who abuses his office is removed”, *ibid.*, 57. Also cf. Hyma’s reference to J. W. Allen’s failure, in his work titled *A History of Political Thought in the Sixteenth Century*, to comprehend fully the idea of the contract as conceived by Mornay; Albert Hyma, *Christianity and Politics. A History of the Principles and Struggles of Church and State*, (J.B. Lippincott Company, 1938), fn. 26, 163.

Firstly, the idea of the vertical covenant entails a *covenant between God and the king* per se. Mornay refers to all kings as the vassals of the King of kings. Such a vassal receives the former, *obligating* himself by oath unto his lord and swears faithfulness and obedience. Mornay refers to the vassal who loses his fee, if he commits a felony, and by law forfeits all his privileges; and that this will appear more clearly by the consideration of the covenant which is *contracted* between God and the king, for God does that honor to His servants to call them His *confederates*.¹⁵⁸ In the covenant between God and king, the latter is *obliged* with the utmost of his abilities to procure the glory of God, God is the proper revenger of this covenant.¹⁵⁹ Mornay refers to Saul who was given to the people as king, according to the desires of the people, but with the following *condition* annexed thereto; “that he himself follow the law of God”. What followed was the rejection of Saul because he did not keep his promise. David was established king on the same *condition*, so was his son Solomon, for the Lord said, “If thou keep my law, I will confirm with thee the covenant which I contracted with David.”¹⁶⁰ Saul’s infringing the law of God as well as him saving the life of Agag, king of the Amalekites, against the express commandment of God, incurred by these *transgressions of the conditions* set forth by God, the necessary punishment to him as well as his successors.¹⁶¹ In the words of Mornay:

Now, although the form, both of church and the Jewish kingdom be changed, for that which was before enclosed within the narrow bounds of Judea is now dilated throughout the whole world; notwithstanding, the same things may be said of Christian kings, the gospel having succeeded the law and Christian princes being in the place of those of Jewry. There is the same covenant, the same conditions, the same punishments, and if they fail in accomplishing a restorative effect the same God Almighty becomes the revenger of all perfidious disloyalty; and as the former were bound to keep the law, so the other are obliged to adhere to the doctrine of the Gospel, for the advancement whereof these kings at their anointing and receiving, do promise to employ the utmost of their means.¹⁶²

At the inauguration of kings we find a double covenant coming into existence, “between God and the king”; and “between God and the people.”¹⁶³ Mornay refers to the king who has an

¹⁵⁸ Mornay, *A Defence of Liberty Against Tyrants*, 70–71.

¹⁵⁹ *Ibid.*, 176.

¹⁶⁰ *Ibid.*, 73.

¹⁶¹ *Ibid.*, 74.

¹⁶² *Ibid.*, 75.

¹⁶³ *Ibid.*, 89. On *ibid.*, 89–90, is emphasized that: “The agreement was first passed between, ‘God, the king, and the people’ ... Or between the ‘High Priest, the people and the king’.”

obligation to piety in that he promises to serve God religiously¹⁶⁴ under the condition expressed, “if thou keep My commandments”.¹⁶⁵ In the *Vindiciae*, Mornay explains that at the coronation of kings, “we read of a twofold covenant of which the first is between God, the king, and the people and that the people will be God’s people.”¹⁶⁶ By this the king himself becomes involved in a *covenantal obligation* firstly and foremostly to God.

Secondly, with regard to the *covenant between God and the people as a whole*, prince included; Mornay refers to the people who represent a *debtor* who has a *joint obligation to pay a certain sum*.¹⁶⁷ God had made a covenant with the entire people under the rule of the king. The king and people acting as a unit had *obligated* themselves within this covenant and it was the king’s *covenanted responsibility* to ensure that the people kept the covenant, and the people in turn had to ensure that the king kept the covenant.¹⁶⁸ In other words, the king was not solely responsible to God for the community; the community also had a *covenantal responsibility* to God in watching over the king’s rule. Mornay clearly formulates the principal points of the covenants in the following; that the king and all the people should act according to the will of God; if they did so, God would assist and preserve their estates. However, if the people acted contrary to the revealed will of God, they would be abandoned and exterminated. Mornay then refers to Moses who propounded these conditions of the covenant to all the people and who also commanded that the precepts given by the Lord and contained in the law, should be kept “in deposito in the ark of the covenant.” Moses’s predecessor, Joshua, desired to make the Israelites understand on what conditions God had given them the country of Canaan and consequently read the law to his people shortly after they had entered Canaan. Joshua also assured the Israelites prosperity if they observed the law and also made it clear that acting contrary to the law would result in ruin. In the period of the judges, as well as in the period of the kings, the covenant between God and the people was vigorously adhered to.¹⁶⁹ Mornay refers to Josias and all the people who entered into covenants with the Lord.¹⁷⁰ With regard to Saul, Mornay refers to Samuel’s words to the people, shortly after Saul was anointed, chosen, and wholly established king: “Behold the king whom you have demanded and chosen; God hath established him king over you; obey you therefore and serve the Lord, as well as your king who is established over you, otherwise you and your king shall perish.” From this Mornay deduced that the people were informed

¹⁶⁴ Ibid., 175.

¹⁶⁵ Ibid., 176.

¹⁶⁶ Baker, “Faces of Federalism: From Bullinger to Jefferson”, 6.

¹⁶⁷ Mornay, *A Defence of Liberty Against Tyrants*, 39. This religious covenant between God and the people influenced Althusius in his analysis of ecclesiastical administration, Althusius, *Politics*, xxvii.

¹⁶⁸ McCoy and Baker, *Fountainhead of Federalism*, 48.

¹⁶⁹ Mornay, *A Defence of Liberty Against Tyrants*, 72–73.

¹⁷⁰ Ibid., 71–72.

that the king *as well as the people themselves* were to observe the law and that if one of them were to fail therein, the king's delinquency would be punished as severely as that of the people. Afterwards Saul was rejected because he did not keep his promise and David was established king on the same *condition*, and so also was his son. The book of the law was called the book of the covenant of the Lord. Samuel put it in the hands of Saul and according to its tenure, Josias yielded himself feudatory and vassal of the Lord.¹⁷¹ Mornay refers to Solomon who revolted against God by worshipping idols, and the subsequent foretelling of the prophet Ahijah that the kingdom would be divided under his son Rehoboam; the word of the Lord was finally accomplished and ten tribes, who made up the greatest portion of the kingdom abandoned Rehoboam and adhered to Jereboam, his servant.¹⁷² This happened as a result of their having left God to follow the god of, among others, the Moabites, hereby violating the covenant and not having kept their promise. The result being that God was no longer tied to them.¹⁷³

According to Mornay, the reason why God allied Himself with the people and not only with the king is that it seemed that God had acted in the same way as those *creditors*, who, having to deal with inefficient borrowers, demanded the whole debt from whom he pleased; in instances where two or more of the debtors were jointly and individually bound, one for the other and each of them apart, for one and the same amount. The reason for this, Mornay explains, is because there was much danger in committing the custody of the church to one man alone, and therefore God recommended, that it be entrusted to all the people. The king might be easily corrupted, and therefore, for fear that the church may crumble, God wanted the people also to be respondents for it. The king and Israel jointly and voluntarily assumed, promised, and obliged themselves to one and the same thing. The king was respondent and so were the people, not severally but jointly, and here we see two undertakers namely the king and Israel, who by consequence were bound one to another and each to the whole. The king for himself, and Israel for itself were bound with all circumspection to see that the church would not be damnified: if either of them be negligent of their *covenant*, God could justly demand the whole from any of the two that pleased Him. In fact it is more probable that God could justly demand the whole from the people than from the king, for that many cannot so easily slip away as one, and have better means to discharge the debts than one alone. The

¹⁷¹ Ibid., 73.

¹⁷² Ibid., 74.

¹⁷³ Ibid. Mornay adds: " 'I (the Lord) will also break in pieces their kingdom': as if he were saying, they have violated the covenant, and have not kept their promise; 'I am no more then tied unto them. They will lessen my Majesty, and I will lessen their kingdom' ", *ibid.* On *ibid.*, 92, Mornay refers to king Josias who, together with the people, made a covenant with the Lord; the king and the people promising to keep the laws and ordinances of God; and even then for the better accomplishing of such an *agreement*, the idolatry of Baal was presently destroyed.

king and Israel, promising to pay tribute to God, who is the King of kings, and where each is obliged to each other for the accomplishment of the covenant. In the words of Mornay:

And as two covenanters by promise, especially in contracts, the obligation whereof exposes the obligees to forfeitures and hazards, such as this is here, the failings of the one endamages the other: so that if Israel forsake their God, and the king makes no account of it, he is justly guilty of Israel's delinquency. In like manner, if the king follows after strange gods, and not content to be seduced himself, seeks also to attract his subjects, endeavoring by all means to ruin the church, if Israel seek not to withdraw him from his rebellion, and contain him within the limits of obedience, they make the fault of their king their own transgression.¹⁷⁴

Mornay further explains that, if there is a danger that one of the debtors, by consuming his goods, may be unable to give satisfaction, the other must satisfy the creditors, and this principle ought not to be doubted with regard to Israel toward their king, and of the king towards Israel in case one of them reverts to the service of idols or *breaks their covenant* in any other way, the one must pay the forfeiture and be punished for the other.¹⁷⁵ Therefore, although there is the covenant between God and the king and the covenant between God and the people, both the king and the people are jointly responsible for the glory of God. It is this first covenant that God had entered into with the entire community; that the king and the people, as a corporate body acting as a single entity, had *obligated* themselves within this covenant. In this covenant is found the king's *covenanted responsibility* to ensure that the people kept the covenant, as well as the people's responsibility that the king kept the covenant.¹⁷⁶ The principal points of the covenants were that the king himself, as well as the people should be careful to honor and serve God according to His will revealed in His Word. If they did so, God would assist and preserve their estates while doing the contrary would result in God abandoning and exterminating them.¹⁷⁷ Then there is also the Old Testament example concerning the covenant between God and the people, including the king, namely, the crowning of king Joas, or as it is said elsewhere, between Jehoiada, the high priest, all the people and the king, "that God should be their Lord".¹⁷⁸ Also the law, kept in the ark, is called the covenant of the Lord with the children of Israel. Finally, the people delivered from

¹⁷⁴ Ibid., 91.

¹⁷⁵ Ibid.

¹⁷⁶ McCoy and Baker, *Fountainhead of Federalism*, 48.

¹⁷⁷ Mornay, *A Defence of Liberty Against Tyrants*, 72, where Mornay refers to Moses who propounded these conditions of covenant to all the people. In this regard the example of Joshua is also relevant.

¹⁷⁸ Ibid., 71.

the captivity of Babylon, renewed the covenant with God and acknowledge that they worthily *deserved* all those punishments for their falsifying their promise to God.¹⁷⁹ Mornay also refers to the example contained in the twenty-seventh chapter of Deuteronomy where Moses and the Levites covenanted in the name of God.¹⁸⁰

In fact, there is also a third contractual relationship, more specifically, the contract between God and the people (excluding the king). This has also been implied in the covenant between God and the nation as previously discussed. For Mornay, society consisted of the king and the people; should one of them *fail to fulfill the terms of the contract*, the *other party would be responsible for the entire debt*. This further entailed that the people had to resist the king whenever the latter strayed from the divine path. This was similar to the Jewish people of Scripture who were warned by the prophets about their duty whenever kings strayed from the precepts of God.¹⁸¹ Although the king and the people were jointly involved in a *contract* with God, the people were *obligated* towards God in keeping the king within the required bounds of his ruling office. A people affected by the true religion would know that in neglecting to perform the duty of reproof, and if need be, repressing a prince who was a risk to society, they would make themselves guilty of the same crime and would as a consequence, merit and receive the same punishment.¹⁸² As examples of this, Mornay refers to the prophets who always addressed themselves to the House of Judah and Jacob, and to Samaria, to remind them of their duties. These prophets also appealed to the people that they not only withdraw themselves from sacrificing to Baal, but also that they reject this idol, and destroy his priests and service, and even to “maugre” the king himself. Ahab was a good example of this, having killed the prophets of God; the prophet Elias assembled the people, and consequently the people, on his exhortation, took and put to death the priests of Baal.¹⁸³ Mornay states that so often, and always when Israel had failed to oppose their king, who would overthrow the service of God, the ill husbandry of the one did ever prejudice the other; for as the king had been punished for his idolatry and disloyalty, the people had also been chastised for their negligence, connivancy, and stupidity.¹⁸⁴ In the words of Mornay:

But tell me wherefore after that the King Manasses had polluted the Temple at Jerusalem, do we read that God not only taxed Manasses, but all the people also? Was it not to advertise Israel, one of the sureties, that if they keep not the king

¹⁷⁹ Ibid., 73.

¹⁸⁰ Ibid., 87–88.

¹⁸¹ Ibid., 39.

¹⁸² Ibid., and *ibid.*, 96.

¹⁸³ Ibid., 93.

¹⁸⁴ Ibid.

within the limits of his duty, they should all smart for it; for what meant the prophet Jeremy to say, the house of Judah is in subjection to the Assyrians, because of the impiety and cruelty of Manasses? But that they were guilty of all his offences, because they make no resistance; wherefore Saint Austin and Saint Ambrose said Herod and Pilate condemned Jesus Christ, the priests delivered Him to be crucified, the people seem to have some compassion, notwithstanding, all are punished. And wherefore so? For so much as they are guilty of His death, in that they did not deliver Him out of the hands of those wicked judges and governors. There must be added to this many other proofs drawn from divers authors for the further explication of this point, were it not that the testimonies of holy scripture ought to suffice Christians.¹⁸⁵

It was therefore lawful for the people of Israel to resist the king and that in neglecting this duty they make themselves culpable of the same crime and shall bear the like punishment with their king.¹⁸⁶ In fact, in this business of making a covenant with the people, God would clearly show that the people have a right to make, hold, and accomplish their covenants and *contracts*.¹⁸⁷

2.2.1.2.2 The Political Covenant

Mornay states that inherent in the covenant between the king and the people is the requirement that the people, by way of stipulation need a *performance of covenants* and the king promises the same. According to the law, the *condition of a stipulator is more worthy than that of a promiser*. Here, the people ask the king whether he will govern justly, upon which the king promises to do so. In turn, the people answer that, while the king governs justly, they will obey him. In this covenant, the king aims at profiting the people and the people become the lawful punisher in this covenant.¹⁸⁸ This leads to Mornay's theory on resistance, the breaking of the covenant between the people and the king, by the king, serving as a just cause for the people to resist the king. In fact, this is the secondary cause for

¹⁸⁵ Ibid., 95–96.

¹⁸⁶ Ibid., 96.

¹⁸⁷ Ibid., 92–93. In this regard, Raath states that although Bullinger's federalism provided for a bilateral, conditional covenant, he did not distinguish clearly between the theological and political covenants. In fact, "it was Martin Bucer who provided in principle for such a distinction, enabling Phillip DuPlessis-Mornay, in his *Vindiciae Contra Tyrannos*, for the first time, to postulate a clear and systematic compartmentalization concerning, on the one side, the covenant between God and man, and on the other, the covenant between political rulers and the nation, Andries W. G. Raath, "John Milton, the Biblical Covenant, and Federal Republicanism", (paper still to be published), 9–10.

¹⁸⁸ Mornay, *A Defence of Liberty Against Tyrants*, 71 and 175–176.

resistance, the first being the breaking of the covenant between God and the community as a whole, by the king – the community hereby being responsible as “co-debtor for the entire sum.” Although the content of *Vindiciae Contra Tyrannos* in general contains a theory on resistance, the covenant between the king and the people is clearly emphasized where Mornay specifically refers to tyrants. A *tyrant by practice* is defined by Mornay as someone who is a king and *neglects those contracts and agreements to the observation whereof he was strictly obliged at his reception*.¹⁸⁹ A tyrant, in general, makes no reckoning of covenants.¹⁹⁰ If the prince fails in his promise, the *contract* is made void.¹⁹¹ If such a tyrant is not resisted by the magistrates, they will fail to keep the covenant with God.¹⁹² The resistance theory of Mornay (and the other theologico-political federalists) will be discussed below. Mornay summarizes this horizontal covenant by saying that there is a *mutually obligatory contract* between the king and subjects which requires the people to obey faithfully, and the king to govern justly; and for the performance whereof the king promises first and afterwards, the people¹⁹³. Whether this *mutual obligation* be civil or natural only, whether tacit or expressed in words, it cannot by any means be abrogated, much less by force made void.¹⁹⁴

In addition, Mornay states that the covenants and *contracts* which are made at the inauguration of kings are sacred.¹⁹⁵ Old Testament examples expressed by Mornay about the covenant between the king and people were Saul, David, who made a covenant in Hebron, “Joas” (Joash) who by the mouth of “Johoiada” (Jehoiada) the high priest, entered into a covenant with the whole people and “Josias” (Josiah), who promised to observe and keep the book of the covenant.¹⁹⁶ Referring to Rehoboam, the son of Solomon, Mornay mentions that according to the *contract* first passed between the king and the people, the prime and principal officers of the kingdom had authority to repress such insolence.¹⁹⁷ Mornay refers to many other examples of rulers *contracting* with the people where the latter’s safety was sought by the king *in return* for the people’s favor towards the king.¹⁹⁸

¹⁸⁹ Ibid., 182 and 212. Also cf. McCoy and Baker, *Fountainhead of Federalism*, 49.

¹⁹⁰ Mornay, *A Defence of Liberty Against Tyrants*, 196.

¹⁹¹ Ibid., 199.

¹⁹² McCoy and Baker, *Fountainhead of Federalism*, 48.

¹⁹³ Mornay, *A Defence of Liberty Against Tyrants*, 180–181, 199 and 212; and McCoy and Baker, *Fountainhead of Federalism*, 48.

¹⁹⁴ Mornay, *A Defence of Liberty Against Tyrants*, 181.

¹⁹⁵ Ibid., 189–190.

¹⁹⁶ Ibid., 175.

¹⁹⁷ Ibid., 202. Here Mornay refers to Brutus and Lucretius who assembled the people against Targuinius Superbus and the cause hereof was briefly that the latter was unconcerned about observing the contracts agreed to between the former kings, the nobility and the people of Rome.

¹⁹⁸ Ibid., 176. Mornay refers to the examples of the Persians contracting with Cyrus for their protection, in return for Cyrus’ support; the agreement in the Roman kingdom between Romulus, the senate and the people that the commonwealth not be subjected to tyranny and that all good emperors have ever professed to hold themselves tied to the laws. On *ibid.*, 177–178, it is stated that in the empire of

Mornay saw these two covenants, of that between God and the people, and that between the king and the people, as two covenants in tandem; in the first covenant or compact, religious piety becomes an obligation; in the second, it is justice. The king promises to obey God religiously and to maintain God's glory. In the second covenant the king promises to rule the people justly, to preserve the people's welfare.¹⁹⁹ Mornay makes an important statement concerning the application of these biblical references of covenant thought in that, although the form, both of church and the Jewish kingdom have changed, the same still applies to Christian kings at present. There is the same covenant, the same conditions, the same punishments, and if they fail in this, the same God Almighty, revenger of all perfidious disloyalty, is present. He adds that ancient histories as well as the time in which he was living, were replete with examples where kings were punished by God due to their transgressions.²⁰⁰ It was Mornay who set up the provinces and cities as guardians of the covenant with God, as well as of the contract with the people, claiming a right and duty of armed resistance to the government who *broke its contract*.²⁰¹ Murray sums it up eloquently by stating that Mornay views proper rule as a *triple contract* on which all good government depends, i.e. that between God and the king, that between God and the people, and that between the people and the king.²⁰² The parallels between the contractual thought of Mornay and of Rutherford (as well as Althusius and Knox) will become clearer as this investigation progresses, Rutherford following Mornay's *Vindiciae* in teaching the three parties of the covenant.²⁰³

French Calvinistic thought, being affected by the massacre of St. Bartholomew's Day, 1572, assisted the formulation of this compact theory between the king and the people. Beza in his *Du Droit des Magistrats sur leur Sujets* (1574) lays stress upon the provisional character of

Germany, the king of the Romans being ready to be crowned emperor, was bound to do homage and make an oath of fealty to the empire, no more or no less than the vassal is bound to do to his Lord when he is invested with his fee. The same concerned Charles the Fifth, of Austria and Henry of Anjou of the kingdom of Polonia. The same was also observed in the kingdoms of Bohemia, Hungary and others. Refer also to *ibid.*, 179–180, for the examples of Spain and Castile.

¹⁹⁹ Baker, *Heinrich Bullinger and the Covenant*, 175–176.

²⁰⁰ Mornay, *A Defence of Liberty Against Tyrants*, 75–76 and 89–90.

²⁰¹ Otto von Gierke, *The Development of Political Theory*, (Translated by Bernard Treyd, New York: Howard Fertig, 1966), 266.

²⁰² Robert H. Murray, *The Political Consequences of the Reformation. Studies in Sixteenth-Century Political Thought*, (Russel & Russel, New York, 1960), 203; as well as on *ibid.*, 114 and 204, Mornay also states that when the political contract is not expressed, it is understood.

²⁰³ J. F. Maclear, "Samuel Rutherford: The Law and the King", pages 65–87, in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 75. Similarly McNeill states: "The development of the "covenant theology" (from Swiss sources) in Scotland, England, and Germany is to be associated with the growing emphasis on the threefold covenant in political thought. This principle was later to find expression in Rutherford's *Lex rex* (1644), and it was the Scottish Covenanters who most tenaciously affirmed it through defeat and persecution ...", John T. McNeill, "Calvinism and European Politics in Historical Perspective", pages 11–22, in *Calvinism and the Political Order*, 17.

men's duty of obedience to kings – royal commands must not be repugnant to those of the sovereign God. Beza understands this condition as implying that kings' commands must not be irreligious or iniquitous, i.e. contrary to the first or second Tables of the Decalogue respectively. Beza regards kings as being created for the people and not *vice versa*, and in introducing the contractual element, he posits a bond of mutual obligation between the two.²⁰⁴ Francis Hotman also indicated a type of contractual theory similar to that of Beza, which was to be found within political theory in the period shortly after the massacre of St. Bartholomew's Day in 1572. Hotman presented in his treatise, a historical treatment of the political liberties that had been the common possession of the Franks before Charlemagne, and that has remained a valuable precedent for the French people ever since. The supreme administrative functions used to be lodged in the public council (so argued Hotman); and there existed at least the rudimentary elements of a contract between ruler and subjects. Consequently, the three estates of France had the right to resist a monarch who was not a faithful and just ruler.²⁰⁵

Mornay's *Vindiciae* features a three-way relationship, among God, ruler, and people, unlike traditional Christian political theory, which held a ruler responsible only to God, whose will was defined by justice and the natural law. The Huguenots argued that God guaranteed a contract between king and people, that government was instituted not merely as an element in God's sovereignty, but to guarantee the fundamental rights of the populace.²⁰⁶

Sanders adds:

The most significant of these documents of French Calvinism was the *Vindiciae contra Tyrannos* (1579), attributed to Philippe du Plessis Mornay, which sums up and expands earlier Huguenot tendencies. The heart of the argument lies in the third query, on resistance to the oppression and ruin of a state by a prince, where a sophisticated and potentially democratic social contract theory appears. The monarchy, it holds, was originally instituted by the people, who transferred power to the king to guarantee their well-being and who can withdraw it if the king does not administer it according to justice and the common good. God holds rulers responsible to the original source of their authority, the people, and

²⁰⁴ A. F. Scott Pearson, *Church and State. Political Aspects of Sixteenth Century Puritanism*, (Cambridge: Cambridge University Press, 1928), 86. Also cf. *ibid.*, 88, where Pearson states the link between this contractual thought and the contractual thought of Mornay.

²⁰⁵ Albert Hyma, *Christianity and Politics. A History of the Principles and Struggles of Church and State*, (J.B. Lippincott Company, 1938), 160–161.

²⁰⁶ T.G. Sanders, *Protestant Concepts of Church and State*, (Holt, Rinehart and Winston, 1964), 233.

the lower officials of the nation and neighboring princes must rescue the rights of a people oppressed by a tyrant.²⁰⁷

2.2.1.3 Johannes Althusius

2.2.1.3.1 The Theological Covenant

It consequently remained for Althusius to build on the development of federalism within the Reformed tradition, of which Mornay was an important element.²⁰⁸ That Mornay influenced the political thought of Althusius is no misconstrued assumption.²⁰⁹ Elazar states that Althusius served as a bridge between the biblical foundations of Western civilization and modern political ideas and institutions. As such, he translated the biblical political tradition into useful modern forms. Elazar contrasts Althusius with Benedict Spinoza, who made a case for a new modern political science by presumably demonstrating that the biblical political tradition applied only to ancient Israel and ceased to be relevant once the Jews lost their state; unless and until the Jewish state was restored.²¹⁰ Althusius confronts the same problems of modern politics without jettisoning or denying the biblical foundations. Althusius' unbending Calvinist emphasis on the necessary links among religion, state, and society, ran counter to the development of the modern secular state.²¹¹ What were the thoughts of Johannes Althusius concerning the covenant between God and man? Althusius specifically connected his entire political theory with the vertical covenant; that is, the covenant between God and community. In this *religious covenant*, the magistrate and all the members of the realm promise to introduce, conserve and defend true religious doctrine and worship. God promises to bless those who fulfill the promise and duty, and punishing those who neglect it. Althusius thus applied the religious covenant to both the civil and ecclesiastical life of the symbiotes.²¹² To Althusius the "biblical grand design" for humankind is federal, in that it is, *inter alia*, based upon a network of covenants beginning with those between God and human beings and eventually weaving a web of human,

²⁰⁷ Ibid.

²⁰⁸ McCoy and Baker, *Fountainhead of Federalism*, 49.

²⁰⁹ Althusius, *Politics*, xxix and xxxii.

²¹⁰ Daniel H. Elazar, "Althusius's Grand Design for a Federal Commonwealth", (preface in an abridged translation by Frederick S. Carney of Johannes Althusius's *Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples*, (Indianapolis: Liberty Fund, 1995), xliii.

²¹¹ Ibid., xliii.

²¹² Baker, "Faces of Federalism: Althusius, Hobbes, and Locke", 12. Refer also to fn. 19, *ibid.*, where it is confirmed that Althusius not only cited numerous Old Testament examples, such as Josiah and Jehoshaphat, but also referred to Mornay's *Vindiciae*; questions one and two respectively, dealing with whether subjects were obligated to obey rulers whose commands contradict God's law and whether a ruler who violated God's law could be resisted.

especially political relationships in a federal way.²¹³ To Althusius, the covenants of humanity exist within the covenant of God and are limited by the Divine covenant. This view is to be anticipated and understood with precision in terms of the tradition of federal theology and ethics in which Althusius was immersed at Herborn. People in covenant and rulers in covenant are also bound to the more comprehensive covenantal order of God.²¹⁴

From this line of thought arose (similar to Mornay) the resistance theory of Althusius, which posits that the ephori are bound in covenant to hold magistrates responsible to the covenant. If magistrates persisted in violating the covenant of God, the ephori had to remove them from their office. This paved the way for revolution – it enjoins the overthrow of a ruler who not only acts against the covenant of the people, but also against the covenant of God.²¹⁵ According to Althusius, one *debtor* is held *responsible* for the fault of the other, and shares his sins if he does not hold the violator of this covenant to his duty, and resist and impede him so far as he is able, “He will cast Israel down because of the sins of Jeroboam”. This is why it is expected of the ephori, firstly, to remind a deviating ruler of his duty, and then to resist him if the latter does not pay heed to such a reminder. If the ephori do not follow this course of action, they are deservedly punished by God for this fault and surrender, as many examples indicate.²¹⁶ As a result of being bound within human covenants to the covenant of God, rulers who administer the sovereignty belonging to the people lose their authority when they violate their covenant with the people, by virtue of which they rule, or transgress the covenant of God.²¹⁷ By a *pactum religiosum*, the magistrate, together with the members of the realm, commonly and solemnly consenting in councils of the realm, *promise to God the performance* of this twofold duty. They agree assiduously to perform this service by which God may be constantly and truly known and worshipped by each and all in the entire realm. And in this *agreement*, they recognize their realm to be under God, and they promise to him fidelity and

²¹³ Elazar, “Althusius’ Grand Design for a Federal Commonwealth”, xxxvi. Note Elazar’s further emphasis on the fact that in the 16th century, this world-view was recreated by the Reformed wing of Protestantism as the federal theology from which, inter alia, the Scottish Covenanters developed political theories and principles of constitutional design. Indeed, Elazar’s observation in the above also includes Samuel Rutherford, the latter having been a prominent Scottish Covenanter.

²¹⁴ Charles S. McCoy, “The Centrality of Covenant in the Political Philosophy of Johannes Althusius”, *Rechtstheorie*, 13, Beiheft 7, (1988), 197.

²¹⁵ *Ibid.*

²¹⁶ Althusius, *Politics*, 158–159; McCoy and Baker, *Fountainhead of Federalism*, 61, “...Althusian federalism drawing on Mornay and often citing the *Vindiciae*, makes it clear that the ephori are responsible for the overthrow of a ruler who acts against the covenant of the people or the covenant of God.”

²¹⁷ McCoy and Baker, *Fountainhead of Federalism*, 61.

obedience as subjects and vassals.²¹⁸ Althusius's biblical references to this covenant are to be witnessed in the following:

You have made a promise to Jehovah this day that he will be your God, that you will walk in his ways, that you will observe his statutes, his precepts, and his judgments, and will give heed to his voice. Jehovah has made a promise to you this day that you will be a special people to him, as he said to you, provided you observe all his precepts, and that he will lift you up above all peoples that he has made, with praise, renown, and glory, and that you will be a holy people to Jehovah your God, as he has spoken.²¹⁹

Althusius also refers to the Old Testament to confirm the *compact* that the people and king entered into with God.²²⁰ According to Althusius, the *debtors* in this religious covenant are those who make the promise, or the supreme magistrate of the realm and its ephori together with the entire people. The *debtors jointly obligate themselves* by indicating that they intend to render to God the things that are his which is the cultivation of the true knowledge and pious worship of Him in the realm according to Scriptures and not according to the mandate of men.²²¹ God does not will that the church, or the responsibility for acknowledging and worshipping Him be committed to one person alone, but to the entire people represented by its ministers, ephori, and supreme magistrate. These administrators represent the people as if they corporately sustain the church as one person.²²² The *creditor is God* to whom the promise is made. God makes a promise to the magistrate and people in this religious covenant concerning those who perform these injunctions, as well as a threat to those who neglect or violate this compact. He promises to those who perform according to his will that he will be their benevolent God and merciful protector; and threatens those who disobey and violate this compact that he will be a just and severe exactor of punishments.²²³ God is the vindicator of this covenant when it is violated by the magistrate or the ephori representing the people.²²⁴ According to Althusius, the nation empowers its governors precisely by a covenant or by the constitution. This covenant instrument binds the magistrate to the body of the

²¹⁸ Althusius, *Politics*, 157. Cf. fn. 3, *ibid.*, where Deuteronomy 26: 17–19 is emphasized by Althusius as an example of this religious covenant.

²¹⁹ *Ibid.*

²²⁰ *Ibid.*, 159, fn. 5, (2 Kings 11: 17; 2 Kings 23: 1–3 and 2 Chronicles 15: 12–15).

²²¹ Althusius, *Politics*, 158.

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ *Ibid.*, fn. 4, *ibid.*, references to 1 Kings 14: 16, which is cited in the text as reading: “He will cast Israel down because of the sins of Jeroboam”. Althusius also refers to question two of Mornay's *Vindiciae* as the authority in this regard. Cf. also David W. Hall, *Savior or Servant? Putting Government in its Place*, (Oak Ridge, Tennessee: The Kuyper Institute, 1996), 237, for a reiteration of this statement concerning the vindication of the religious covenant by God when violated.

universal association to administer the realm or commonwealth according to the laws prescribed by God, “right reason” and the body of the commonwealth.²²⁵ Althusius also dealt with the rule of law which concerned the duties to be fulfilled toward God and the neighbor, and to the love of God and the love of the neighbor. From this it is clear that Althusius did not mean to exclude a Scriptural perspective from his political philosophy.²²⁶ Althusius also

²²⁵ Hall, *Savior or Servant?*, 236. Also cf. Von Gierke, *The Development of Political Theory*, 155, the author stating that Althusius was the first to draw the full consequences of the principle expressed by the Monarchomachi who were agreed that in relation to the people, the ruler is contractually appointed chief minister to whom is granted an independent but “resolutely” conditional right to exercise the State’s power, describing the ruler’s power as an authority limited by the scope of its mandate and the rights of the ruled, and bound by the constitution and the laws. The relation of such an idea to the concept of monarchy and its incidental personal majesty were left uncertain. Althusius formulated the idea of a mutually binding contract of employment, whereby the people as proprietor transfer the exercise of rights of majesty which it cannot wield directly to a chief manager with an independent right of management within the scope of his mandate, following in every detail the forms of private law.

²²⁶ Baker, “Faces of Federalism: Althusius, Hobbes, and Locke”, 11–12. It is difficult to agree with Von Gierke that there are substantial differences among DuPlessis-Mornay and Althusius concerning their theological application to political doctrine. Von Gierke refers to “Junius Brutus” who set his whole doctrine on a purely theological basis, proceeding from this in his own way to a covenant with God and which bears the stamp of the verbal contract of Roman law. Von Gierke further states that Althusius deduces his system in a rational way from a purely secular conception of society and that biblical texts are merely examples, and the events of sacred as well as of profane history serve as illustrations of the results which have first been reached by rational inference, Von Gierke, *The Development of Political Theory*, 70. On *ibid.*, 71, is stated: “...the *Politics* of Althusius, with its systematic ordering of the whole life of the State, is a purely secular book in content and purpose.” On *ibid.*, 75, Von Gierke, with reference to the *Politics* of Althusius, states: “It is indeed significant that the reference to God is nowhere, even formally, the starting-point of the argument, but appears for the first time in the conclusion, and there chiefly as a defense against attacks based on the divine right of princely power.” Concerning this point of view held by von Gierke it is apt to refer to Friederich’s response to someone who stated that Althusius had not considered the foundations of his thinking sufficiently, namely: “This remark is typical of those who do not admit religious ideas as the ultimate basis for thought, an attitude which bars one from comprehending much of the profoundest political thought of mankind”, Baker, “Faces of Federalism: Althusius, Hobbes, and Locke”, 26, fn. 18. Baker uses this extract in a footnote to a text which states that it is clear that Althusius did not mean to exclude a scriptural and Christian perspective from his political philosophy, *ibid.*, 12. In similar fashion, Coffey refers to Skinner, who is, according to Coffey, wrong to say that Althusius made no mention of the religious covenant at all. Althusius explicitly states that the people make a covenant with God, and it would be going too far to portray Althusius (among others) as “talking exclusively about politics, not theology, and about the question of rights, not religious duties”, Coffey, *Politics, Religion and the British Revolutions*, 183. Also cf., Hyma, who states: “Like Emmius and Althusius, he (Grotius) made the Bible his chief source of information on politics and religion”, Hyma, *Christianity and Politics*, 246. Also cf. R. H. Murray, *The Political Consequences of the Reformation. Studies in Sixteenth-Century Political Thought*, (London: Ernest Benn Limited, 1926), 119, Murray states: “The expression of his (Althusius’s) thought is dictated by his belief, and accordingly in him we have the use of the Bible in determining the outward form of Church and State. There is the usual admiration for Jewish law in general and the Decalogue in particular, and of course the Old Testament prevails over the New. The examples he selects seem to illustrate a priori processes of thought, for he so conceives political doctrine as stoutly as any monarchomachs.” Skinner is also open to similar criticism concerning his comment that Althusius, like Buchanan, made no mention of the religious covenant at all – “an eloquent silence which was also to be maintained by Johannes Althusius (1557–1638) in his massive treatise of 1603 ... As Buchanan and Althusius both make clear in the titles of their works, they now see themselves as talking exclusively about politics, not theology, and about the concept of rights, not religious duties”, Quentin Skinner, *The Foundations of Modern Political Thought*, (Cambridge: Cambridge University Press, 1978), 341. Even though Althusius spoke of rights, it is to be understood in the context of the religious covenant with its inherent religious duties.

refers to Barclay's comment about this compact entered into by the king and the people with God – Barclay states that any party may individually uphold it by not allowing itself to be led away from true religion. Althusius accepted this point of view.²²⁷

However, a point of difference between Barclay and Althusius about this compact is that the latter's understanding of the rule that where one debtor who fulfills an obligation releases the other debtor, included an exception, i.e. when a debtor does not fulfill the entire obligation, but only his part thereof. Here one of the debtors who suffers the penalties of God cannot discharge the entire obligation.²²⁸ This is further verification of the fact that Althusius viewed the community as a whole as being a *debtor of God*. Where a king rules according to God's will but the people stray from the path, the nation as a whole (including the king) will be punished; where the people abide by the will of God but fail to rehabilitate or terminate the governance of the king, the nation will likewise be punished. The entire obligation means that king and people adhere to the precepts set for them by God. Like Bullinger and Mornay, Althusius gave the political covenant the same wrapping as the religious covenant.²²⁹ In fact, this concept of the religious covenant comes to the fore in Althusius's approach to resistance theory. Although this has already been referred to previously, it can be added that Althusius's argument was simply a more sophisticated version of Mornay's. According to Althusius, if a ruler violated his covenant with the people or neglected God's covenant, he should lose his authority to rule and the ephori are then responsible for removing a ruler from office *if he persisted in breaking these covenants*.²³⁰

2.2.1.3.2 The Political Covenant

Althusius introduced the doctrine of *symbiotic association* – the community of men living together and united by real bonds which a *contract of union*, expressed or implied,

Skinner adds: "This explicit concern to emancipate the theory of politics from any religious premises prompted Gierke in his classic study of Althusius to treat him as the pivotal figure in the evolution of modern constitutionalism, and to describe him as the first political philosopher who shook off the whole theocratic conception of the State", *ibid.* This comment in the context of the above, is unfortunate and not accurate.

²²⁷ Althusius, *Politics*, 159.

²²⁸ *Ibid.*, 160.

²²⁹ Baker, "Faces of Federalism: Althusius, Hobbes, and Locke", 12. Also cf. Baker, "Faces of Federalism: From Bullinger to Jefferson", 12.

²³⁰ Baker, "Faces of Federalism: Althusius, Hobbes, and Locke", 12–13. Also cf. Baker, "Faces of Federalism", 13–14. Also cf. Chapter 5 below, which deals with the resistance theories of the theologico-political federalists.

institutionalized.²³¹ The constituting of the supreme magistrate is the process by which he assumes the imperium and administration of the realm conferred by the body of the universal association, and by which the members of the realm *obligate* themselves to obey. Or it is the process by which the people and the supreme magistrate enter into a *covenant* concerning certain laws and *conditions* that set forth the form and manner of imperium and subjection, and faithfully extend and accept oaths from each other to this effect. In this *reciprocal contract* between the supreme magistrate as the *mandatory*, or *promisor*, and the universal association as the *mandator*, the *obligation* of the magistrate comes first, as is customary in a *contractual mandate*.²³² No realm or commonwealth had ever been founded or instituted except by *contract* entered into one with the other, by covenants agreed upon between subjects and their future prince, and by an established *mutual obligation* that both should religiously observe.²³³ Althusius adds that there are many precepts, examples and rational evidences of constituting a supreme magistrate by such a covenant or *contract* between the supreme magistrate and the ephori who represent the entire people of the associated bodies.²³⁴ Althusius also refers to the *contract* between the supreme magistrate and the people when discussing transgressions of such *contract*, be it from the side of the supreme magistrate or from the side of the people.²³⁵ This entails that resistance is based on the breach of the civil covenant (between the king and the people), although breach of the religious covenant (between God and the whole community) remains the essential justification for resistance, as discussed earlier. Althusius adds that nobody can doubt that such a compact or covenant (entered into by the king and the people with God) constitutes a right and *obligation* both to God and between the *promising debtors*, namely, between the people and the king.²³⁶

When discussing tyranny, Althusius states that the supreme magistrate is to be resisted so long as tyranny endures, and so far as he assails or acts contrary to the declared covenant.²³⁷

²³¹ Althusius, *Politics*, ix; Baker, “Faces of Federalism: Althusius, Hobbes, and Locke”, 9. Also cf. Elazar, “Althusius’ Grand Design for a Federal Commonwealth”, xli, the author stating that the foundations of Althusius’s political philosophy are covenantal through and through. Pactum (covenant) is the only basis for legitimate political organization; and von Gierke, *The Development of Political Theory*, 35, stating that association itself is the product of a tacit or explicit contract. The parties to this contract become members of society, mutually bound in communion in such things as are useful and necessary for social life.

²³² Althusius, *Politics*, 116.

²³³ *Ibid.*, 117.

²³⁴ *Ibid.*, 117–118. Cf. also fn. 1 on *ibid.*, 118, stating Althusius’s use of theology, history and philosophy respectively in support of his political theories.

²³⁵ *Ibid.*, 129.

²³⁶ *Ibid.*, 159–160.

²³⁷ *Ibid.*, 189. Although Althusius’s thought on the covenant, more specifically in relation to resistance theory, has been briefly mentioned already, it is referred to in this instance as emphasizing the covenantal relationship between the king and the people. In addition, it is assumed that Althusius, in this section, is referring to the covenant between the supreme magistrate and the people, although it could also imply the covenant between God and man. It is also interesting to note that the index of

The covenant concerns a governmental pact between the supreme magistrate and the people, as well as a sound pact between the people themselves.²³⁸ According to Althusius, the relationships between all political and societal entities rest on covenanting²³⁹ and are emphasized in Althusius's concept of politics being the art of associating men for the purpose of establishing, cultivating and conserving social life among them, hence the term *symbiotics*. The subject matter of politics is therefore association, in which the symbiotes pledge themselves each to the other, by explicit or tacit *agreement* to whatever is necessary for the harmonious exercise of social life.²⁴⁰ The symbiotes are co-workers who, by the bond of an associating and uniting *agreement*, communicate among themselves whatever is appropriate for a comfortable life in soul or body.²⁴¹

2.2.1.4 Theologico-Political Federalism on the British Continent

The idea of the *biblical covenant* as postulated by Bullinger, Mornay and Althusius, is also found in Reformed Scotland. From the 16th to the first half of the 17th century, Scotland exhibited thought pertaining to this idea. Puritan sociology revolved around the idea that God was the initiator and administrator of a *binding contract* between himself and human participants, consisting of the *mutual* assent of divine and human participants. The Puritan, George Walker, wrote in 1641 that the “word covenant in our English tongue, signifies, as we all know, a mutual *promise, bargain, and obligation between two parties.*”²⁴² The Scottish mindset concerning this *heavenly contract* permeated Puritan society to produce a group conscience, and Puritans knew that if they abided by the *conditions of this contract*, God would respond positively; if not, God would impose negative sanctions. It was this

Carney's translation expresses the term *covenant* as synonymous to the term *contract* (agreement, bond). For the terms *contract* and *covenant* in the index, refer to *ibid.*, 225. This confirms the similarity between these two terms as experienced in Althusius's thought.

²³⁸ Thomas O. Hüglin, “‘Have We Studied the Wrong Authors?’ On the Relevance of Johannes Althusius as a Political Theorist”, *Rechtstheorie*, Beiheft 16, (1988), 232.

²³⁹ Althusius, *Politics*, 22. Concerning these societal entities smaller than the state, one finds that the simple and private association (family) is initiated by a special covenant among the members. The same covenant application applies to the Collegium, *ibid.*, 28–33; the City, *ibid.*, 34–45; and Province, *ibid.*, 46–60. Also cf. Althusius, *Politics*, ix–x; McCoy and Baker, *Fountainhead of Federalism*, 55–59; and Elazar, “Althusius' Grand Design for a Federal Commonwealth”, xxxviii. For a lucid exposition concerning Althusius' systematic and detailed thought regarding covenant as the basis of human society on the horizontal level cf. McCoy, “The Centrality of Covenant in the Political Philosophy of Johannes Althusius”, 195. The essential idea here is only to indicate the covenantal thought of Althusius.

²⁴⁰ Althusius, *Politics*, 12.

²⁴¹ *Ibid.*, 13–14.

²⁴² George J. Gatis, “Puritan Jurisprudence: A Study in Substantive Biblical Law”, *Contra Mundum*, No. 12, (Summer, 1994), 4. As the Puritan historian Zaret observes: “...in the form of a heavenly contractor, God became less remote and unknowable. No longer was God unaccountable, for God condescended to use a human device, a contract, in his dealings with humanity”, *ibid.*

covenantal thought within Puritan thought that gave rise to a social ethic relevant to an external control of society through the legal system, as well as control from within through the conscience.²⁴³ Puritanism was an interdenominational movement aimed at continuing the Calvinistic Reformation in the United Kingdom and later in British Crown colonies. Puritans sought an intellectual, moral and spiritual “clean-up” of institutionalized Christianity, their standard of purity being the Bible.²⁴⁴ Elazar states that when covenant ideas were introduced into Scotland during the early part of the 16th century, they found receptive soil in an indigenous tradition of public “banding”, which had long existed among clans and tribal groupings. Bands, pacts, and oaths were generally formed for purposes of common defense and regional peacemaking. Elazar adds that, in the minds of the Scots, this tradition was easily combined with Reformed notions of covenant, especially in the light of the Scots’ desire to protect their religious preferences against English intrusions. Consequently, there developed the biblical idea of covenant which served to elevate the practice of banding to a new level of both legitimacy and purpose.²⁴⁵

From a purely political perspective, it is clear that the use of a formal contract binding its signatories to a specified obligation in pursuit of common objectives had a long history in Scotland, falling well within the bounds of accepted political and religious orthodoxy. When confronted with a political stalemate, the protestors thus turned to the familiar remedy of issuing a band of mutual support to both clarify and publicly acknowledge their intentions – an impulse that was part of the early modern convention of political banding.²⁴⁶ Steele adds that, although few of the surviving bands are comparable to the National Covenant, they do show commonality of purpose in their shared sense of political obligation in the face of a threat and in their signatories’ commitment to a specified political end.²⁴⁷ It is also important to note that this was part of the tradition of religious banding in Scotland; Scots showed a preference for religious bands beginning in the late 16th century.²⁴⁸ The National Covenant was unique in that it was the embodiment of the concept of a covenanted nation involving the people of Scotland. This was an all-embracing, perpetual commitment that had never been put into practice before; a realization of the Old Testament ideal of the covenant between

²⁴³ Ibid., 4–5.

²⁴⁴ Ibid., 1.

²⁴⁵ Daniel J. Elazar, *Covenant and Commonwealth. From Christian Separation through the Protestant Reformation. The Covenant Tradition in Politics. Volume II*, (New Brunswick, N. Y.: Transaction Publishers, 1996), 271.

²⁴⁶ Margaret Steele, “The ‘Politick Chritian’: The Theological Background to the National Covenant”, 31 – 67, in *The Scottish National Covenant in its British Context*, John Morrill, ed., (Edinburgh: Edinburgh University Press, 1990), 45.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

God and man.²⁴⁹ Macinnes, on covenantal thought during this period in Scottish history states:

The religious covenant was a tripartite compact between the king and people before God to uphold the purity of ‘the true reformed religion’ as expressed not only in the Negative Confession, but in the enlarged confession of faith established from the Reformation ‘by sundry acts of lawful generall assemblies, and of Parliament’ as by the catechisms, all being grounded exclusively in scripture ... Operating within the framework of this religious covenant was a constitutional contract between the king on the one hand and the people on the other for maintenance of good and lawful government and a just political order. In return for ‘maintaining the King’s Majesty, His Person and Estate’, the people laid down conditions which the king was bound to fulfill. If the king failed to uphold the fundamental laws and liberties of the kingdom or sought to subvert his subjects’ privileges or estates, the people were entitled to take appropriate remedial action, which again included the right to resist.²⁵⁰

Ford refers to the crowning of Charles II as king of Scotland, England, France and Ireland at Scone in 1651, who was told by Robert Douglas, moderator of the General Assembly, about his duty to maintain the true religion and liberties of his people, and urged him to abide by the laws of the land as well as by God’s law.²⁵¹ According to Ford, Douglas managed to inject a radical message into an otherwise conservative doctrine by teaching that “When a king is Crowned, and received by the people, there is a Covenant or mutual Contract, between him and them, containing conditions, mutually to be observed”, and by warning Charles that ‘A King abusing his power, to the overthrow of Religion, Laws and Liberties, which are the very fundamentals of this Contract and Covenant, may be controlled and opposed’.²⁵² Is this covenantal insight contradictory in the context of Romans 13? In other words, does Romans 13 not proclaim a necessity to obey that which is conferred upon all? To this Douglas answers: “It is a great error to think that a Covenant diminisheth obedience ... it was ever

²⁴⁹ Ibid., 46.

²⁵⁰ Allan I. Macinnes, “The Scottish Constitution, 1638–51: The Rise and Fall of Oligarchic Centralism”, 106 – 133, in *The Scottish National Covenant in its British Context*, John Morrill, ed., (Edinburgh: Edinburgh University Press, 1990), 110.

²⁵¹ John D. Ford, “*Lex, rex iusto posita*: Samuel Rutherford on the origins of government”, *Scots and Britons. Scottish Political Thought and the union of 1603*, (edited by Roger A. Mason, Cambridge University Press, 1994), 262.

²⁵² Ibid., 262–263. Ford adds: “As has often been remarked, Douglas’s insistence that ‘a King’s power is a limited power, by this Covenant’, could have come straight from George Buchanan’s *De jure regni apud Scotos*”, *ibid.*, 263. It would also be valid to include the possibility of Rutherford’s covenantal insights in this regard, which will be confirmed in the discussion of Rutherford’s covenantal thought, below.

thought Cumulative”. Ford states that by renewing their covenant with God, the Scots were pledging themselves to continue striving after fulfillment of His law, and since that law included the injunction in Romans 13, “entering Covenant with GOD doth not lessen their obedience and allegiance to the King; but increaseth it, and maketh the obedience firmer”.²⁵³

Nearly a century prior to the Westminster Assembly (1643–1646), Knox’s political thought expressed clear indications of an adherence to the *theologico-political federalism* of Bullinger. There was the injection of Bullinger’s thought via the theology of John Knox and other Scottish theologians, who relied strongly on Bullinger’s idea of the covenant in their theology. Knox’s theology remained closely aligned to Bullinger’s views, and Bullinger’s political views remained an integral part of Knox’s political theology. The reason for this is mainly found in the major impact Bullinger’s views of the covenant had on Knox’s theology and his commitment to the idea of the covenanted Christian community.²⁵⁴ Greaves also comes to the conclusion that Knox’s concept of the covenant in his work was not patterned after Calvin’s thought. Calvin depicts the covenant as God’s promise to man, which had been fulfilled in the incarnation, death, and resurrection of Christ. Greaves furthermore writes that Knox dealt with the covenant essentially as a *conditional* promise calling for man’s *reciprocal* obedience, and this emphasis on the covenant as *contract* was made by Zwingli and Bullinger (among others) on the Continent, and by William Tyndale, John Hooper, and others in England.²⁵⁵ Greaves concludes that “Knox used the idea of band or covenant ... in his History, but he also developed concepts of the covenant more akin to those found in the Zwingli-Bullinger and Tyndale traditions”. Greaves then continues with the following important statement: “Knox’s earliest concept of the covenant was that of an individual engaging in a reciprocal contract with God. Yet the individual is not isolated; he is one of a number of believers acting in concert, though not as a nation”.²⁵⁶

²⁵³ Ibid., 263.

²⁵⁴ Raath and De Freitas, “Calling and resistance: Huldrych Zwingli’s (1484–1531) political theory and his legacy of resistance to tyranny”, 70.

²⁵⁵ Ibid., 71.

²⁵⁶ Ibid. Regarding confirmation of Knox’s contractual political theory, similar to that of Bullinger’s, refer to Raath and De Freitas, “Calling and Resistance: Huldrych Zwingli’s (1484–1531) political theology and his legacy of resistance to tyranny”, 70–72. In the words of Greaves: “Modern scholarship on John Knox has tended to ignore his development of the covenant concept and his place in the covenant tradition. This is especially surprising because of the significance of the covenant idea for 17th-century Scottish history. The covenant, moreover, became a basic theme of English and American Puritan thought in the century following Knox’s death. During the early years of the formulation of the covenant concept in English Puritanism, Knox was a revered figure”, Richard L. Greaves, “John Knox and the Covenant Tradition”, *Journal of Ecclesiastical History*, Volume XXIV, No. 1, (1973), 23. Greaves adds: “Unlike most writers on the covenant, Knox thus developed the covenant concept largely in a political context, and then also applied it to the sacrament of baptism ... When in 1558, he pursued his political conclusions to their end by advocating active rebellion by individual believers as well as by godly nobles and magistrates, it was the covenant idea that served as a principle theological force in his mind. Idolatry was roundly damned because it was a covenant

Elazar expressly states that, although Knox acknowledged Calvin with great respect, the concept of covenant that he transmitted remained much closer to the Zurich school (Bullinger) and its English Puritan expression than to Calvin, with Knox transposing the covenant and its obligations from the religious to the political realm where it found fertile ground in Scottish political culture.²⁵⁷ Knox's political thought stemmed from the theological premise that the elect had entered into a *league and covenant* with God, which bound them to the divine will as revealed in His Word. This concept was to be witnessed in the *Common Band or covenant*, dated 3 December 1557, which signaled the emergence of Protestantism as an organized political force in Scotland. For at the heart of the band lay a pledge to fulfill the law of God. Its signatories, similar to the covenantal thought of Knox, confessed that they "aught, according to our bonden deutie, to stryve in our Maisteris caus, evin unto the death", and promised "befoir the Majestie of God ... that we (by his grace) shall with all diligence continually apply our whole power, substance, and our verray lyves, to manteane, sett forward, and establish the most blessed word of God and his Congregation".²⁵⁸

The idea of "banding" together in loyalty to a common enterprise was familiar enough to 16th-century Scots, and there is evidence of its use in both social and political contexts in pre-Reformed times. However, the band of 1557, by transferring it to a religious sphere, effectively transformed the traditional concept into a concrete expression of the league and covenant envisaged by Knox. Mason adds that, although it remains unstated, it seems reasonable to suppose that, like Knox, its signatories viewed adherence to divine law as part of their *contract* with God which promised them in return the assurance of eternal salvation.²⁵⁹ Although Knox never fully developed a covenant theology, the concept of the

obligation to do so. Idolatry in princes was the reason for rejecting their rule. The Hebrew prophets had been strenuous in their denunciation of idolatry. Fittingly enough, the notion of the covenant was itself Hebrew, and the prophet Jeremiah – one of Knox's favorites – had announced a new covenant. The covenant concept was congruous both with Knox's prophetic task and with his belief. The league aptly met his need for a Biblical vehicle to channel his thought into productive action", *ibid.*, 26–27. Also cf. *ibid.*, 29, concerning Greaves's contention that Knox, in applying the Hebrew notion of covenant to the band in his *Appellation*, was the first to introduce a change in the terminology, and according to Greaves, what is of even greater significance was Knox's reorientation of the band; "in lieu of an agreement among men it became a covenant with God."

²⁵⁷ Raath and De Freitas, "Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504–1575)", 289.

²⁵⁸ Mason, "Covenant and Commonwealth: the language of politics in Reformation Scotland", 99–100. On *ibid.*, 101, the author refers to Lord James Stewart (the future Regent Moray) himself the signatory of a band made in the presence of God and binding him to the aims of the congregation who was aware of the obligations and imperatives stemming from a covenant with God.

²⁵⁹ *Ibid.*, 100. Also cf. George D. Henderson, "The Covenanters", in *Religious Life in Seventeenth Century Scotland*, Chapter 8 (Cambridge, 1937), 162. Hulse states: "Characteristic of the Scottish Reformation was the manner in which the godly banded themselves together under the Lord by solemn oath for mutual assistance and support in the defense of the gospel and the advance of the reformation. The earliest known bond or 'covenant' was made under the leadership of John Knox in 1556", Erroll

covenant is nevertheless a controlling factor in his thinking, whether he is writing of individuals or nations²⁶⁰: “When we²⁶¹ make covenant with God, we must give our oath to refuse fellowship ‘with ony religioun, except with that whilk God hath confirmit be his manifest Word’. As Abraham fled his homeland because of its defilement with idolatry, so too, must we follow after him if we desire to remain in God’s covenant.” Bell adds that Knox therefore states unequivocally that *God’s covenant is conditional upon our obedience to him* in this regard, and that our obedience is the reason why God is merciful to us. Therefore, to ensure that the nation keeps covenant with God, as the civil authorities in Judah and Israel were responsible for maintaining the law of God, so are the Scottish magistrates required to do likewise.²⁶² Knox states that as kings crave obedience of their subjects, so the bond and *contract* to be *mutual* and *reciprocal* in all times coming between the Prince and God and his faithful people according to the word of God.²⁶³

Knox followed Bullinger’s line of argument regarding the overriding importance of the covenant, taking God’s covenant to be the embracing paradigm for the Christian community in that God’s justice, being infinite and immutable, requires obedience in matters of religion of all within his covenant throughout the ages. For those who wish to remain in the covenant with God, there is his express word (law).²⁶⁴ The condition of the covenant between God and the people in the Christian community is such that “he is my tower of defense against my enemyis, preserving and nourishing both the bodie and soule, so must I be wholie his in bodie and soule, for my God is of that nature, that he will suffer no portioun of his glorie to be gevin to another” – God’s covenant is conditional upon our obedience to him and our obedience is the reason why God is merciful to us.²⁶⁵ Implicit in Knox’s views on the office of magistracy, is the concept of covenant; magistracy as “the ordinance of God”, flows from meeting the qualifications for civil society magistracy as founded in God’s law, and ruling with the consent of the people and the investiture of the ruler in office, based on the covenant between himself, God and the people.²⁶⁶ It may be added that although Knox, according to Elazar, always concerned with the covenant within a political context, at the beginning essentially argued for a theological covenant – God demanding of his human covenant partners to stamp

Hulse, *Who are the Puritans? ... and what do they teach?*, (Evangelical Press: Great Britain, 2000), 192.

²⁶⁰ Bell, *Calvin and Scottish Theology*, 41.

²⁶¹ Within this context it is assumed that the term “we” includes the concept of the nation.

²⁶² *Ibid.*, 42.

²⁶³ Murray, *The Political Consequences of the Reformation*, 121. On *ibid.*, 119, the author refers to the contract being as familiar to the mind of Knox as to Althusius. This gives an indication as to the presence of federal political theory also by Knox.

²⁶⁴ Andries W. G. Raath and Shaun A. de Freitas, “Heinrich Bullinger and the Marian Exiles: The Political Foundation of Puritanism”, *Journal for Christian Science*, 3rd and 4th quarters, (2001), 72.

²⁶⁵ *Ibid.*, 72–73.

²⁶⁶ *Ibid.*, 75.

out idolatry – which within two years had moved beyond the theological issue to consider the covenant as a political device, designed to establish regimes, bind rulers and the ruled, and offer the possibilities not only for a religiously correct polity, but also for one in which the ruled could call their rulers to account.²⁶⁷

It is also interesting to note that the basis for Knox's strong theory of resistance flows from his arguments pertaining to the promises binding the individuals in the Christian community to God in terms of the covenant – each individual has, in terms of the covenant, the solemn duty to help resist and remove all idolatrous magistrates. In his *Appellation*, he reaches the climax of his covenantal argument: not only magistrates, but also the people are bound by their oath which they have made to God to uphold the rule of godliness and revenge to the utmost of their power.²⁶⁸ Knox told Queen Mary that subjects have a right to resist even princes, if the latter exceed their bounds, even as children have a right and a duty to repress a frenzied father, and in 1563 Mary again discussed the question of obedience with Knox, who said: "Thei (subjects) ar bound to obey you and that not but in God. Ye ar bound to keape lawis unto them. Ye crave of thame service: thei crave of you protectioun and defence against wicked doaris".²⁶⁹ Reid also states that Knox clearly developed the doctrine of the covenant, not just as a theological concept, but also as a political theory. His view was that Scotland, having accepted the Reformation, had become a "covenanted nation" in much the same way as Israel in Old Testament times.²⁷⁰ In fact, Knox took Calvin's idea of the covenant between God and the individual and carried it over into the political field with the view that there was also a covenant between God and a faithful, believing people.²⁷¹

According to Reid, a tension developed with Knox's concept of a *conditional covenant* on individual and national obedience. Even though Knox understood and appreciated the nature of God's covenant of grace in Christ, his concern that Scotland be a holy nation, free from the idolatry of Romanism, tended to lead him away from the covenant which God made for us in

²⁶⁷ Ibid.

²⁶⁸ Ibid., 83.

²⁶⁹ Pearson, *Church and State*, 80. Pearson suggests that herein lies the idea of a theory on the *compact* which involves the duty of obedience on the part of subjects if the rulers fulfill their duty of good government, *ibid.*

²⁷⁰ W. Stanford Reid, "John Knox's Theology of Political Government", *Sixteenth Century Journal*, XIX, No. 4 (1988), 529. This is similar to Rutherford's thought concerning Scotland as a "covenanted nation", cf., Coffey, *Politics, Religion and the British Revolutions*, 165, 186.

²⁷¹ Ibid., 531. Reid adds: "What was Knox's influence in his own day? ... It is very probable that he had contacts in Geneva with some of the leading Protestant thinkers such as Franci Hotman, Hubert Languet, and Philippe du Plessis-Mornay. It is also probable that he attended the meeting at Poitiers which produced the first French plan for church organization (1557). With these contracts in view, therefore, he may have had considerable influence on the political ideas expressed in such works as the anonymous *Vindiciae Contra Tyrannos* (1579), perhaps written by Languet", *ibid.*, 538.

Christ, stressing our covenanting with God to be a holy nation.²⁷² It was Knox's constistence and persistence in his "biblicism" that expressed this covenanting with God in order to be a holy nation. Accordingly, Knox interprets his contemporary conflicts with the Sovereign and Romanism, in Old Testament terms, of the prophet's conflicts with corrupt kings and idolatry. According to Knox, those who seek eternal life must refrain from idolatry and as Israel and Judah were called to refrain from idolatry, so England and Scotland were called to keep God's covenant. It is following this train of thought that Knox comes to emphasize the idea of a covenanted nation, placing emphasis on man's *covenant obligation* to be holy before God. Just as Abraham fled his homeland because of its defilement with idolatry, so too, must man follow after him in order to remain in God's covenant. Like the civil authorities in Judah and Israel who were *responsible* to maintain the law of God, so were the Scottish magistrates required to do the same.²⁷³ Knox's concern that Scotland be a holy nation, free from the idolatry of Roman Catholicism, emphasizes mans' covenanting with God to be a holy nation.²⁷⁴

²⁷² Bell, *Calvin and Scottish Theology*, 43. Note that by referring to this tension in the thought of Knox, it is merely indicated that Knox did postulate a contractual relationship between God and nation. In fact, not much need be made of the fact that by this, Knox lead the individual away from God's covenant of grace with Christ.

²⁷³ *Ibid.*, 42. John Knox, in his *A Brief Exhortation to England, for the Speedy Embracing of the Gospel Heretofore by the Tyranny of Mary Suppressed and Banished 1559*, (edited by Kevin Reed, Dallas, Texas: 1995), 3–4, states (in the context of God speaking through Moses, Deuteronomy 29: 18 and further): "Then shall all nations say, 'Why hath the Lord done thus to this land?' And they shall answer, 'For because they have left the *covenant* of the Lord, the God of their fathers, which he did make with them when he brought them forth of Egypt.' For they have gone and served other gods (I say), whom they knew not; and therefore was the fury of the Lord kindled against this land ..." On *ibid.*, 4, Knox states: "The history does further witness, that the princes of Judah, after the death of Jehoiada – by whose wife Joash was preserved in that most cruel murder of all the kingly seed made by Athaliah; and by whose most faithful diligence the same Joash was, in the seventh year of his age, made king over Judah; *the covenant and league, before broken by idolatry, was renewed again betwixt God and the people, and betwixt the people and the king:* to wit, that the one and the other should be the people of the Lord; by renewing of which covenant, unhappy and cruel Athaliah was killed; the people did enter into the house of Baal, broke it down with his altars and images ..."

²⁷⁴ *Ibid.*, 43. Also cf. Elazar, *Covenant and Commonwealth*, 272–275, where Elazar provides some valuable insights pertaining to John Knox and covenantal thought. Elazar refers to the fact that Knox, while always concerned with covenant within a political context, at the beginning essentially argued for a theological covenant; meaning that God demanded of his human covenant partners that they stamp out idolatry (in the form of Catholicism), and sought to challenge Mary Tudor for not doing so (1556). Elazar adds: "Within two years he had moved beyond the theological issue to consider the covenant as a political device, designed to establish regimes, bind rules and the ruled, and offer the possibilities not only for a religiously correct polity, but also for one in which the ruled could call their rulers to account ... There is every likelihood that he was also influenced by Bullinger, directly or through Tyndale and his colleagues", Elazar, *Covenant and Commonwealth*, 272–273. Reid states that in Knox's view of the covenanted nation, we see a basic opposition to any government which would give absolute power to a ruler, whether an individual or a parliament or a congress. Reid adds that Knox's desire was for a nation – its rulers and their subjects – to recognize that the ultimate authority is God, who must be obeyed. This is based on the fact that whether the rulers or the people recognize it or not, they are in a covenant relationship with God. The rulers have in fact a covenant to rule for the benefit of the people and for the glory of God, while the people are to obey their rulers for their own benefit and likewise to the glory of God, Reid, "John Knox's Theology of Political Government", 539–540. Reid provides a lucid summary on Knox's understanding concerning political government by stating: "Basic to Knox's

In 16th-century England, it was not much different. Early Puritans, such as William Tyndale, seem to have been influenced by Bullinger and Zurich. It is certain that Tyndale taught a *contractual* covenant:

The generall covebant wherin all other are comprehended and included is this. If we meke oure selves to God / to kepe all his lawes / after the ensample of Christ: then God hath bounde him selfe unto us to kepe and make good all the mercies promised in Christ / throwout all the scripture...For all the promises of the mercie and grace that Christ hath purchased for us / are make upon the condicion that we kepe the lawe.²⁷⁵

In the early 1540s, John Hooper was drawn to the teachings of Zwingli and Bullinger and became a personal friend and disciple of Bullinger, appropriating, among other ideas, Bullinger's Covenant theology²⁷⁶:

But forasmuch as there can be no contract, peace, alliance, or confederacy between two persons or more, except first the persons that will contract agree within themselves upon such things as shall be contracted...; also, seeing these ten commandments are nothing else but the tables or writings that contain the conditions of the peace between God and man...; it is necessary to know how God and man was at one, that such conditions could be agreed upon and

thought on political government was the concept of the covenant, as set forth in the Old Testament. In this he followed Calvin and perhaps Beza, but carried their ideas to a more complete statement and application. During his sojourn in Geneva he apparently worked on the idea, and on his return to Scotland in 1559, sought to have it put into effect: a Protestant country was a covenanted country, and its rulers, the king/queen and subordinate magistrates and people, were to obey God's law in all political matters. This view had considerable influence in Scotland and England into the nineteenth century. It may also have exercised an influence on European and American political thought", *ibid.*, 529. May it be added that Rutherford's political theory nearly a century later would exhibit a similar and more developed approach to the importance of the covenant in a political and theological context. In fact, the possibility of Rutherford also having an influence on European and American political thought in the context of the covenant may not be excluded, as well as the fact that Bullinger's theological-federalism may also have had an influence on Knox and subsequently on Rutherford. This will become more apparent in the chapters that follow.

²⁷⁵ Baker, *Heinrich Bullinger and the Covenant*, 208. This is found in the preface to Tyndale's New Testament, where he introduced the covenant as the main topic of Scripture; *ibid.* Baker states that although the seeds of Tyndale's covenant concept may be seen as early as 1528, his idea was not well developed until 1533 and 1534, too early to have been influenced by Bullinger's, *De Testamento* of 1534, *ibid.*, 209. Tyndale's covenant theology was repeated by Miles Coverdale, a friend and close associate of Tyndale's and it is Coverdale's 1541 translation of *The Old Fayth* that still remains the first incontestable proof of any personal influence by Bullinger on Puritan covenant thought, *ibid.*

²⁷⁶ *Ibid.*, 209.

confirmed with such solemn and public evidences, as these tables be, written with the finger of God.²⁷⁷

It is therefore clear that God is bound to aid and preserve man and to award man with eternal happiness; while it is man's condition to obey God's commandments and to love him. This, then, is characteristic of a *bilateral* covenant, made first with Adam (Genesis 3: 15), renewed with Abraham (Genesis 17), restated by Moses (Exodus 19) and confirmed by Christ.²⁷⁸ It is man's duty to receive God's grace and to consent unto the promise hereby not rejecting the God that calls. God forces no man. The essential elements of Hooper's covenant teaching were similar to Bullinger's.²⁷⁹

Franklin points to the covenantal thought in the political theory of the Marian exiles, stating that:

Among the Marian exiles, who fled to the Continent from the persecutions under Mary Tudor, the basic idea of the Magdeburg *Admonition* was generalized and made more radical by its association with the idea of a Covenant with God. For Knox, Goodman, and Ponet, every Christian people, like the Jews before them, is obliged by a Covenant with God to defend the true religion. This obligation extends not only to the people's magistrates but, if need be, to every individual. Since each is a 'signer' of the Covenant, each is personally responsible to God for the enforcement of its provisions.²⁸⁰

In addition, we find that the federal theology in Scotland, first expounded by Rollock in 1596, now realized its finest hour in such men as Samuel Rutherford, David Dickson, James Durham, Patrick and George Gillespie and through its inclusion in the Westminster documents. The theological, political and social thought of their day was deeply engraved with the covenant / contract notion.²⁸¹ The period from Knox to Rutherford was submerged within a federal theological medium which was inseparably accompanied by federal political

²⁷⁷ Ibid., 210.

²⁷⁸ Ibid.

²⁷⁹ Ibid. Baker adds that after Hooper, Calvin's theology of testament tended to displace Bullinger's covenant idea; Bullinger's version discontinued to find favor with the later Tudor Puritans. Simultaneously, Bullinger's covenant scheme was losing its appeal in England, it was becoming an important factor in Dutch Reformed theology, in the thought of such men as Veluanus, Snecanus, and Wiggertsz; *ibid.*, 210–211.

²⁸⁰ Julian H. Franklin, "Introduction" in *Constitutionalism and Resistance in the Sixteenth Century. Three Treatises by Hotman, Beza, and Mornay*, (Translated and edited by Julian H. Franklin, Western Publishing Company, Inc., 1969), 31.

²⁸¹ Bell, *Calvin and Scottish Theology*, 70. The author also refers to Samuel Rutherford as the prince of the federal theologians, *ibid.*

implications. The custom of *banding* or *bonding* became common amid the disorders of medieval Scottish life. These *bands* were a source of political ideas and practices disturbing to monarchical power, with its emphasis on *shared authority, local initiative, voluntary commitment* and *mutual contractual obligations*.²⁸² Although the Protestant band of 1557 has been called the first covenant, the term was not specifically applied to a political band until 1596 when the General Assembly called for a covenant in opposition to James VI's indulgent policy toward the Catholic earls.²⁸³ In the words of the ministers who protested to the king's representative in 1606; "This solemn covenant the king, and all his subjects, at his command, had renewed with God Almighty, that they should adhere constantlie to the true Reformed Religion, and established discipline of this Kirk...; and let the King take to heart what befell the posteritie of King Saul, for his breake[ing] of not such an oath as the covenant of God with Scotland".²⁸⁴

Morgan states that the Puritans were English Protestants who thought that the Church of England as established under Henry VIII and Elizabeth retained too many vestiges of Rome. In the 1640s and 1650s, they reorganized not only the church but also the government of England, and for eleven years ran the country without a king. Morgan adds that three particular ideas lay at the root of Puritan political thought, even when they were not mentioned, namely; the idea of calling, *the idea of covenant* and the idea of the separate spheres of church and state.²⁸⁵ The transition from medieval to modern times, as has often been suggested, was marked by a transformation in which one man's relationship to another ceased to depend so much on the estate or station in life occupied by each, and came to be based more on whatever covenant, that is, *contract* or *agreement*, might exist between them. Whether this change owed anything to religious ideas or whether certain religious ideas were themselves the product of the change can never be known, but it is clear that many 16th-and 17th-century Protestants, and especially Puritans, thought about their relationship with God as though it were based on a covenant.²⁸⁶ Morgan further states that English and Scottish Protestants seem to have been especially taken with the notion of a national covenant, and even tended to look upon themselves as the successors of Israel, as an elect nation. Though they had to acknowledge that many among them gave no perceptible evidence either of faith or of outward obedience to God's commands, they viewed every failure as a threat to their standing with God. Under Elizabeth they kept hoping for reforms that would assure His

²⁸² Hunt, *Calvinism and the Political Order*, 69–70.

²⁸³ *Ibid.*, 71–72.

²⁸⁴ *Ibid.*, 72.

²⁸⁵ Edmund S. Morgan ed., *Puritan Political Ideas 1558–1794*, (The Bobbs-Merrill Company, Inc., 1965), xiv–xv.

²⁸⁶ *Ibid.*, xx.

continued favor. With the arrival of the Stuarts, that hope grew increasingly dim, and preachers warned about the wrath to come upon a people who broke their covenant.²⁸⁷

Towards early 17th-century England, William Perkins, who was the first English Calvinist to win a major European reputation, and his successors, had much to say about a covenant or contract which God had made with his people, and about the moral obligations which it imposed. Perkins insisted that God's promise to man is that whereby he binds himself to man to be his God, if he performs the condition. Man's promise to God is that whereby he vows his allegiance to the Lord, and performs the condition between them.²⁸⁸ Collinson states that the notion of a covenant between God and man was not new to protestant theology; and the fact that man can choose as well as be chosen is a prominent idea in the Old Testament. This idea colored the teaching of the Zurich reformers and, in England, of Tyndale.²⁸⁹ Collinson adds that this "covenant theology", as taught early in the 17th century, did not necessarily distort Calvin's doctrine of the sheer gratuitousness of salvation, as some writers have supposed, and that Perkins nowhere stated that man can voluntarily choose to enter into a covenant with God.²⁹⁰ As well-to-do members of the growing middle-class, the Puritans were not without financial resources and influential contacts at the court of the king. Plans were laid to secure a charter from the Crown for a trading company to operate in New England and to establish a colony there to which endangered Puritans in England could immigrate.²⁹¹ Consequently, a charter was secured, and beginning in 1628, numerous immigrants went to the New World to settle in the strong and well-financed Massachusetts Bay Colony. John Winthrop (1588–1649), who served many terms as a magistrate, led a group that arrived in 1630 and voiced his federal views in the well-known address given aboard the *Arbella* before they went ashore: "Thus stands the cause between God and us: we are entered into covenant with Him for this work."²⁹² McCoy states that Winthrop shows the impact of Althusian

²⁸⁷ Ibid., xxii.

²⁸⁸ Collinson, *The Elizabethan Puritan Movement*, (Jonathan Cape, 1967), 434–435. In this regard, Raath states that it was only in the sixteenth century that the leadership in covenantal political theory passed to the English Puritans, and that John Milton (1608–1674) was one of the strong covenantal thinkers under the influence of Reformed covenantalism, soon becoming a potent spokesman for the ideal of the political covenant as the basis for theo-republicanism. Raath also adds that the distinction between the covenant between God and man, and on the other hand, the covenant between political rulers and the nation, clearly emerges in Milton's political thought, Raath, "John Milton, the Biblical Covenant and Federal Republicanism", 9–10 Also cf. *ibid.*, 10–22, concerning Milton and the Biblical covenant, the mutuality of God's covenant, the conditionality of God's covenant, the obligatory nature of the covenant, the oath-like nature of the political covenant, and the binding effect of the political covenant. This indicates the similarity of Milton's political thought in the same tradition as that of the theological-political federalists discussed in this study.

²⁸⁹ Ibid., 435.

²⁹⁰ Ibid.

²⁹¹ McCoy and Baker, *Fountainhead of Federalism*, 84–85.

²⁹² Ibid., 85, *ibid.* McCoy and Baker add that Winthrop's speech to the General Court in 1645 contains echoes of Althusius regarding covenantal thought, stating that: "It is yourselves who have called us to

thought (and therefore of Althusius's views on the covenant), and the first article of the New England Confederation in 1643 has striking similarities to the opening of the *Politica*.²⁹³ McCoy and Baker state that federal thought had, by the end of the 16th century become pervasive in the Reformed communities of Europe, and therefore, it is not surprising to discover that federalism was brought over to the New World with the earliest settlements of people of Reformed faith. Most of the leaders of the New England colonies adhered to one or other version of federal theology and politics. According to McCoy and Baker, anyone seeking to find representatives of liberal democracy as understood in the 20th century among

this office; and being called by you, we have our authority from God ... We account him a good servant who breaks not his covenant. The covenant between you and us is the oath you have taken of us, which is to this purpose, that we shall govern you and judge your causes by the rules of God's law and our own, according to our best skill ... There is a twofold liberty – ... The other kind of liberty I call civil or federal; it may also be termed moral, in reference to the covenant between God and man in the moral law, and the political covenants and constitutions amongst men themselves", cf. *ibid.* Morgan states that Winthrop, in less than a year after stating: "My dear wife, I am veryly perswaded, God will bringe some heavye Affliction upon this lande, and that speedlye", he was on his way to New England as governor of Massachusetts. On the way he explained to his fellow passengers that the new colony would be in covenant with God, and its success would depend on keeping the covenant. If it failed to do so, he said, "the Lord will surely breake out in wrathe against us be revenged of such a perjured people and make us knowe the price of the breache of such a covenant", Morgan, *Puritan Political Ideas 1558–1794*, xxii. Also cf. John Winthrop's "A Modell of Christian Charity" written on board the *Arrabella* (on the Atlantic Ocean), in "Theory of State and Society" in *The Puritans. A sourcebook of their writings*, (An unabridged reprint of the work, originally published by Harper & Row, Publishers, Inc., in a two-volume Harper Torchbook edition, in 1963", edited by Perry Miller and Thomas H. Johnson, Mineola, New York: Dover Publications, Inc.), 198, where Winthrop states: "Thus stands the cause betweene God and vs, wee are entered into Covenant with him for this worke, wee haue taken out a Commission, the Lord hath giuen vs leaue to drawe our owne Articles wee haue professed to enterprise these Accions vpon these and these ends, wee haue herevpon besought him of favour and blessing: Now if the Lord shall please to heare vs, and bring vs in peace to the place wee desire, then hath hee ratified this Covenant and sealed our Commission, [and] will expect a strickt performance of the Articles contained in it, but if wee shall neglect the observacion of these Articles which are the ends wee haue propounded, and dissembling with our God, shall fall to embrace this present world and prosecute our carnall intencions seekeing greate things for our selues and our posterity, the Lord will surely breake out in wrathe against vs be revenged of such a perjured people and make vs knowe the price of the breache of such a Covenant." Winthrop adds: "Beloued there is now sett before vs life, and good, deathe and euill in that wee are Commaunded this day to loue the Lord our God, and to loue one another to walke in his wayes and to keepe his Commaundements and his Ordinance, and his lawes, and the Articles of our Covenant with him that wee may liue and be muliplied, and that the Lord our God may blesse vs in the land whether wee goe to possesse it: But if our heartes shall turne away soe that wee will not obey, but shall be seduced and worshipp ... other Gods our plesures, and proffitts, and serue them; it is propounded vnto vs this day, wee shall surely perishe out of the good Land whether wee passe over this vast Sea to possesse it ...", *ibid.*, 199. Winthrop, similar to the theologico-political federlasts also referred to the contract between the ruler and the ruled, Winthrop, in his speech to the "General Court, July 3, 1645" states: "We account of him a good servant, who breaks not his covenant. The covenant between you and us is the oath you have taken of us, which is to this purpose, that we shall govern you and judge your causes by the rules of God's laws and our own, according to our best skill. When you agree with a workman to build you a ship or house, etc., he undertakes as well for his skill as for his faithfulness, for it is his profession, and you pay him for both. But when you call one to be a magistrate, he doth not profess nor undertake to have sufficient skill for that office, or can you furnish him with gifts, etc., therefore you must run the hazard of his skill and ability. But if he fail in faithfulness, which by his oath he is bound unto, that he must answer for ...", *ibid.*, 206.

²⁹³ McCoy, "The Centrality of Covenant in the Political Philosophy of Johannes Althusius", 189.

the New England leaders, was doomed to disappointment.²⁹⁴ For these leaders, the covenant was at the same time a way of expressing the relation between God and humans and also an understanding of the appropriate political order within the divine human covenant. Persecuted by the church and government of Elizabeth, Separatists in great numbers fled to the Continent, many of them settling in Amsterdam and Leiden. The Leiden congregation decided to send part of its membership to America, and in 1620 this group set out under the leadership of William Brewster and William Bradford, and established the colony of Plymouth. This group became known as the Pilgrims.²⁹⁵ From the above examples of federalism in the form of the Mayflower Compact and John Winthrop, Baker states that, years prior to the ideas of Hobbes and Locke, there is the example of laymen who used the rudimentary theory of social compact to build a political community on the basis of the religious covenant.²⁹⁶ Although political theorists such as Locke accommodated a theory of the social compact to build a political community (and postulated a contract or covenant among a group of free individuals, who first joined in a social contract, agreeing to be one people, and then made a second, governmental contract, in which they chose rulers and imposed limits on them), he did not mention God as participant in either covenant. Government existed, not to help the people please God and fend off His wrath, but simply to help them to protect their lives, liberties, and properties against each other. Morgan adds that such protection was a function and duty of government for the 17th-century Puritan too, but for him it had been achieved when his rulers, in performance of their callings, limited the depravity of his neighbors, thus fulfilling the nation's covenant with God.²⁹⁷

Of interest is the fact that before landing, forty-one male passengers (under Brewster and Bradford) assembled in the main cabin of the *Mayflower*, the small vessel on which they traversed the Atlantic Ocean, and signed an agreement known as the *Mayflower Compact*. McCoy and Baker state that nowhere is the compound of theological, communal, political,

²⁹⁴ McCoy and Baker, *Fountainhead of Federalism*, 81.

²⁹⁵ *Ibid.*, 81–82.

²⁹⁶ Baker, “Faces of Federalism: From Bullinger to Jefferson”, 22. Baker also states that one hundred and fifty years later, a more sophisticated theory in the form of the New American face of federalism – became evident in Thomas Jefferson’s *Declaration of Independence* stating: “We hold 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”, *ibid.* Although this does not emphasize the presence of the covenant between God and the people, these sentences, nonetheless, contain several of the common elements of federalism that have been traced from Bullinger to Locke, *ibid.*

²⁹⁷ Morgan, *Puritan Political Ideas 1558–1794*, xli–xlii.

and economic dimensions of the federal tradition represented in such brief compass, which reads as follows:

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, etc., Having undertaken, for the Glory of God and advancement of the Christian Faith and Honour of our King and Country, a Voyage to plant the First Colony in the Northern Parts of Virginia, do by these present solemnly and mutually in the presence of God and one another, Covenant and Combine ourselves together into a Civil Body Politic, for our better ordering and preservation and furtherance of the ends aforesaid; and virtue hereof to enact, constitute and frame such just and equal Laws, Ordinances, Acts, Constitutions and Offices, 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...²⁹⁸.

Moots also refers to the New England Puritans who established their communities on explicit covenants. Moots refers to Winthrop who wrote that God had “ratified this Covenant and sealed our Commission, [and] will expect a strickt performance of the Articles contained init, but if wee shall neglect the observation of these Articles .. the Lord will surely breake out in wrathe against us.”²⁹⁹ Moots adds that they also believed themselves to be in a covenant with one another, Winthrop stating: “We account him a good servant, who breaks not his covenant. The covenant between you and us is the oath you have taken of us, which is to this purpose, that we shall govern you and judge your causes by the rules of God’s laws and our own, according to our best skill” – The Mayflower Compact was intended to “Covenant and Combine” the signers “solemnly and mutually in the presence of God and one of another.”³⁰⁰ Not long after the Mayflower Compact, the *Cambridge Platform*, adopted in 1648 in America also pointed towards contractual perceptions within Christ’s Church. In this regard Gough states:

Here a congregational church is said to be ‘by the institution of Christ a part of the Militant-visible-church, consisting of a company of Saints by calling, united into one body, by a holy covenant, for the publick worship of God, and the

²⁹⁸ McCoy and Baker, *Fountainhead of Federalism*, 82–83.

²⁹⁹ Glenn A. Moots, *The Evolution of Reformed Political Thought and the Revival of Natural Law Theory*, (A thesis for Master of Arts in Political Science, Louisiana State University, 1991), 116–117.

³⁰⁰ *Ibid.*, 117.

mutuall edification one of another, in the Fellowship of the Lord Jesus'. Any of the inhabitants of a New England township who were 'satisfied of one another's faith and repentance' could form themselves into a congregational church by entering into a covenant with one another, a 'visible Covenant, Agreement or Consent, whereby they give themselves unto the Lord, to the observing of the ordinances of Christ together in the same society, which is usually called the Church Covenant'. This covenant is identified with that made with God by Abraham and the Israelites, by virtue of which they became the chosen people of God.³⁰¹

Bamberg refers to John Adams, one of the foremost theorists of the American Revolution during the 18th century, who was influenced by the contractual thought of Mornay and Rutherford. Bamberg states that an examination of the respective arguments indicates that Adams was closer to the tradition of Mornay's *Vindiciae*, Rutherford's *Lex, Rex* and Ponet, than to some of his own contemporaries. In the words of Bamberg: "He (Adams) followed the thinkers of the English Civil War and their contract theory much more than he did Rousseau's *Social Contract* or the writings of Montesquieu. Adams' social contract, based upon the tradition of the Calvinist covenant compact, was familiar in New England."³⁰²

This understanding of the relationship between God and man as being *contractual* was not alien to theological thought in 17th-century Scotland, England and France, where political struggles for religious and civil liberty led to *contractual* ways of thinking about God's relation to man.³⁰³ The Westminster Assembly first met on July 1st, 1643, in Westminster Abbey. The London Parliament desperately needed the help of the Scottish armies in the War and the only way that the Scots would make them available was on the basis of a religious covenant.³⁰⁴ The content of the Solemn League and Covenant attests to the fact that the

³⁰¹ Gough, *The Social Contract*, 82–83. In the same chapter of this work, the author also refers to Rutherford, stating that "... the Rev. Samuel Rutherford published a reasoned defense of the contract of government ...", cf. *ibid.*, 93–94, in this regard.

³⁰² Stanley Bamberg, "A Footnote to the Political Theory of John Adams *Vindiciae contra tyrannos*", *Premise*, Vol. III, Number 7 (1996), 8.

³⁰³ Torrance, "The Covenant Concept in Scottish Theology and Politics and its Legacy", 231. Torrance's observation of the presence of contractual thought concerning God's relationship with man; albeit accompanied by the author's condemnation concerning the perception that God and man have entered into a contract with each other, is additional confirmation of the presence of such a unique thought in Scotland, England and France in the 17th century. On *ibid.*, 235, the author adds that political writers of every persuasion, including the Scottish Covenanters, ransacked the Bible for biblical warrant and justification for their views. Cf. also Baker's reference to the connections between the new Constitution and the old covenant theology as succinctly stated by Elazar; Baker, *Faces of Federalism: From Bullinger to Jefferson*, 23.

³⁰⁴ Peter Toon, *Puritans and Calvinism*, (Swengel, Pennsylvania: Reiner Publications, 1973), 38.

participants of this assembly emphasized man's *obligation* towards God and *in return* for the accomplishment of these obligations, God's favor was bestowed on man.

...we have now at last (after other means of supplication, remonstrance, protestation, and sufferings), for the preservation of ourselves and our religion from utter ruin and destruction, according to the commendable practice of these kingdoms in former times and the example of God's people in other nations, after mature deliberation, resolved and determined to enter into a Mutual and Solemn League and Covenant, wherein we all subscribe, and each one of us for himself, with our hands lifted up to the Most High God, do swear, ...endeavour to bring the Churches of God in the three kingdoms to the nearest conjunction and uniformity in religion, Confession of Faith, Form of Church Government, Directory for Worship and Catechising; that we, and our posterity after us, may, as brethren, live in faith and love, and the Lord may delight to dwell in the midst of us...³⁰⁵ "...and endeavour, for ourselves, and all others under our power and charge, both in public and in private, in all duties we owe to God and man, to amend our lives, and each one to go before another in the example of a real reformation; that the Lord may turn away his wrath and heavy indignation, and establish these Churches and kingdoms in truth and peace. And this Covenant we make in the presence of Almighty God, the Searcher of all hearts, with a true intention to perform the same...³⁰⁶.

Therefore, man was understood as having a *duty to perform* towards God, and man's consequent obedience or resistance concerning this duty would respectively determine either God's blessing or wrath. It is in the document of the Solemn League and Covenant that the reformed groups within Scotland, England and Ireland made known to God that they would abide by His precepts in order to win the favor that God promised to bestow on those that were faithful. This important document was framed by Alexander Henderson, moderator of the assembly,³⁰⁷ one of the six Scottish Commissioners present at the assembly, which is also

³⁰⁵ William M. Hetherington, *History of the Westminster Assembly of Divines*, (reprint edition of the third edition, 1856, Edmonton: Still Waters Revival Books), 130.

³⁰⁶ *Ibid.*, 132.

³⁰⁷ *Ibid.*, 124. In this regard Hetherington adds: "It was suggested by him (Alexander Henderson) to the Scottish commissioners, and by them partially brought before the English Parliament, requesting them to direct the Assembly to write letters to the Protestant Churches in France, Holland, Switzerland, and other Reformed Churches ... and along with these letters were sent copies of the Solemn League and Covenant, a document which might itself form the basis of such a Protestant union. The deep thinking divines of the Netherlands apprehended the idea, and in their answer, not only expressed their approbation of the Covenant, but also desired to join in it with the British kingdoms", *ibid.*, 338. This not only confirms the serious approach by the Scottish divines to the idea of the covenant and its

a clear indication that the other Scottish Commissioners present at the assembly, of which Rutherford was one, shared in this covenantal thought.

This brings forth the reminder of the crucial distinction, around this period, of the apocalyptic and prophetic traditions emanating from the pulpit. The latter tradition emphasized not an offer from God requiring human acquiescence, but God's irresistible action quite independently of human agency. This obtained while the prophetic tradition – espoused by the preachers of 1640–1642, – “delivered” the “word” from the Lord, a “word” embodying judgment and mercy contingent on the people turning or returning to Him; emphasizing “human ability to exercise agency”.³⁰⁸ This is clearly witnessed in the preaching of Cornelius Burges, Stephen Marshall, Edmund Calamy and Thomas Goodwin, who took Old Testament messages of God's offers to Israel and the consequences of human acceptance or rejection of those offers. The history of Israel was precisely and literally matched to the history of Britain³⁰⁹ and is clearly expressed in the following: “If a Nation doth evil in God's sight, God will repent of the good he intended ... when God begins to draw back his mercies from a nation, that Nation is in a woeful plight ... But on the contrary, if we turn from our evil ways, God will perfect his building, and finish his plantation, he will make us a glorious Paradise, an habitation fit for Himself to dwell in.”³¹⁰ The English Parliament's struggle against Charles I was primarily on constitutional issues, whilst that of the Scots was on religious grounds, and it soon became obvious that there was a difference of approach between the Scottish and English negotiators. Robert Baillie, the Scottish theologian present at the Assembly stated that the English were for a civil league while he himself, together with the other Scottish divines were for a religious covenant.³¹¹ Although the *contractual element* of God's relationship with man is not stated in direct manner, it can still reasonably be inferred that in the above was given the emphasis on man's *duty to fulfill the necessary obligations* placed before him by God; there were certain *conditions to be exercised by man* before God's favor could be felt. Therefore, we also find an understanding within 17th-century England concerning a type of *contractual relationship* between God and man, although not in such explicit terms.

application as an effective instrument to develop a godly “continent” but also indicates the honest intention of the Scottish divines to unify the Reformed faith on the basis of the covenant.

³⁰⁸ John Morrill, *The Nature of the English Revolution*, (Longman Group UK Limited, 1993), 83.

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*, 83–84.

³¹¹ Toon, *Puritans and Calvinism*, 56.

2.2.1.5 Other traces of Theologico-political Federalism

2.2.1.5.1 The Theological Covenant

It is generally accepted that John Calvin, Theodore Beza and Caspar Olevianus did not contribute to federal thought to the extent that Bullinger did. It is nonetheless interesting to note the leniencies of such great Reformational names such as Calvin, Beza and Olevianus, concerning the nature of the covenantal relationship between God and man, as well as the relationship between ruler and society. On the periphery of this main stem of political federalism, Calvin and Beza provided supplementary additions to this concept within the earlier period of the Reformation. Calvin envisages a *mutual contract* with God when thinking of the mass of individuals.³¹² Murray adds:

For from theology it readily passed to politics after the middle of this century (the sixteenth century). How easy the transition was is obvious when we note that as there is a contract between God and men, there is – or there may be – one between men and men in general, and between men and their Prince in particular. The contract in the Church is the signing of the confession of Faith. What happens explicitly in the Church happens implicitly in the State. The Confession of Faith, 1537, contains a social pact on the lines of what Calvin conceived to be the pacts of the Old Testament. True, it was mainly religious, but those were the days when religion was politics and politics was religion. A civil ordinance commanded under pain of exile ‘all burghers, inhabitants and subjects to swear to guard and observe’ this coeval covenant. Calvin consistently defended it with an appeal to the covenants made by the Israelites under Moses, Josiah, Asa and ‘the admirable defenders of liberty, Ezra and Nehemiah’. Is not this contract the precursor of the Scots Covenant, 1638, the

³¹² However, Baker states that Calvin cast the covenantal idea within the mould of election; the result was a notion of testament, unlike Bullinger’s covenant idea, despite the often similar terminology. Nor did Calvin clearly tie his ethic to the covenant – that is, the covenant did not become the basis for a community ethic. Calvin did not see covenant in terms of corporation; the reason being that he held to a theology of testament, despite his occasional references to man’s responsibility in the covenant. In Calvin’s thought the covenant was subsequent, logically and theologically, to election. For Bullinger the covenant was antecedent to everything else; and therefore Trinterud is correct in asserting that the mutual, contractual element was missing from Calvin’s covenant idea, that it was simply God’s promise of grace, Baker, *Heinrich Bullinger and the Covenant*, 197. Also refer to the discussion in the above, concerning the idea of the biblical covenant, and how the views of, among others, Calvin and Bullinger, differed from each other concerning covenantal thought.

English Solemn League and Covenant, 1643, and the covenants of New England?³¹³

Calvin believed that the essence of the covenant consisted of an *agreement* to obey the Ten Commandments and went on to teach that it must be possible at any time for a group of godly men formally to reaffirm their *contractual* relationship with God. An outcome of this was the peculiarly Calvinist concept of the covenanting community, the prototype of which was established in 1537, when all the citizens of Geneva were asked to swear an oath binding them to abide by the Decalogue.³¹⁴ Morrill states:

Calvin has indeed many passing references to covenants. He does not admit the complete disappearance of the image of God in man in connexion with the Fall; and, as he will not hand over nature to the devil but insists in finding the redemptive purpose even in creation, he ultimately recognizes only one Covenant, perpetual though modified from time to time as in the days of Abraham and Moses and especially at the coming of Christ ... In connexion with the Covenant he admits a 'mutual obligation', while recognizing that this is simply by the grace of God who is sovereign and thus need not bind Himself.

However, Morrill adds that Calvin's idea of the covenant never assumed a formal position in his system such as was assigned to it by the Federalists.³¹⁵ It is certain that for Calvin, the covenant established with Abraham included a divine promise, the promise of a redeemer to come; in this sense, the covenant is perfectly gratuitous and therefore unconditional.³¹⁶ However, Calvin considers the covenant to be much more than a unilateral divine promise:

If Zwingli and Bullinger no less than he emphasize divine initiative in the covenant, he no less than they leaves room for human response and responsibility, including the response of faith. For whereas 'the covenant begins with a solemn article concerning the promise of grace, faith and prayer are required above all things to the proper keeping of it.' The covenant with Abraham, he explains, had not one but two parts: God's declaration of love and promise of happiness, on the one hand, and 'an exhortation to the sincere

³¹³ Murray, *The Political Consequences of the Reformation*, 106–107.

³¹⁴ Quentin Skinner, *The Foundations of Modern Political Thought, Volume Two: The Age of the Reformation*, (Cambridge: Cambridge University Press, 1978), 236.

³¹⁵ George D. Henderson, *The Burning Bush. Studies in Scottish Church History*, (Edinburgh: Saint Andrew Press, 1957), 66.

³¹⁶ Bierma, "Federal Theology in the Sixteenth Century: Two Traditions?", 313–314.

endeavor to cultivate uprightness’, on the other. This was a ‘mutual covenant’, containing a ‘mutual obligation’ and requiring ‘mutual faith’. As ‘mutual consent is required in all compacts, so when God invites his people to receive grace, He stipulates that they should give Him the obedience of faith ...’ To the promise of redemption in Christ, therefore, ‘a condition was appended, to the effect that God would bless them if they obeyed his commandments’. In fact, Ishmael, Esau, and others were cut off from their covenantal inheritance precisely because they had not kept this condition.³¹⁷

Coffey states:

Calvin’s had been a theology of grace, but it was also a religion of discipline, one which took God’s commands and the human duty to obey them with great seriousness. As David Little has pointed out, Calvin was unique among the major Reformers in his stress on the third use of the law and on the reformation of society in conformity with the law of God. His *sola gratia* theology, like that of Rutherford, did not rule out strenuous moralism. Christians, wrote Calvin, should ‘prepare for a hard, laborious, troubled life’, one characterized by ‘constant endeavour to become better’. As Rutherford was keen to point out, Calvin had been intensely hostile to Antinomians, and had insisted that Christians were ‘not freed from the law’ but had an obligation to mortify their lusts. Indeed, Calvin’s *Contre la Secte Phantastique et Furieuse des Libertins, que se nomment Spirituelz* (1545) is uncannily similar to Rutherford’s *Survey of Spiritual Antichrist*, for both works condemn the moral and hermeneutical laxity of sectarian Protestants. The Calvinist project of building disciplined, godly societies regulated by righteous rules depended on profound respect for the external: the written Word, the moral law, the proper ecclesiastical forms. Antinomianism, with its emphasis on the Spirit within, represented a threat that could not be ignored.³¹⁸

Likewise, Olevianus understood the covenant of grace in a broader sense than to be God’s unilateral promise of reconciliation. God not only binds himself to us in an oath that he will be our father, but we also bind ourselves to him in a pledge of acceptance of his beneficence.

³¹⁷ Ibid., 314. Cf. Murray, *The Political Consequences of the Reformation*, 106, where it is stated that when Calvin thought of the individual, the theory of predestination was in his mind and when he thought of the mass of individuals the theory of contract was in his mind and that this contract with God was mutual.

³¹⁸ Coffey, *Politics, Religion and the British Revolutions*, 135 – 136.

God promises that he will blot out all memory of our sins; we, in turn, promise that we will walk uprightly before him.³¹⁹ In this regard, Bierma further states that:

...when Olevianus discusses the covenant of grace in its broader sense, that is, as a *bilateral commitment between God and us*, he, like his teacher Calvin, does not hesitate to use the term *conditio*. We see already in the establishment of the covenant with Abraham, he argues, that the covenant of grace has not one but two parts: not merely God's promissio to be the God of Abraham and his seed, but that promise on the *condition* of Abraham's (and our) repromissio to walk before him and be perfect.³²⁰

Beza, similar to Mornay, had spoken of two separate *contracts* which the people may be said to sign at the inauguration of a commonwealth: the *religious covenant* or foedus by which they promise God to act as a godly people; and the *political covenant*, embodied in the *Lex Regia*, by which they agree to transfer their Imperium to an elected ruler on certain *mutually acceptable* terms.³²¹

Although there was no single background to federalism in the centuries prior to the Reformation, there were several possible sources that may have assisted in the inspiration of the idea. To ancient Semitic society, the covenant, as revealed in the Bible, described the relation of God to the entire created order and was a way of not only understanding human nature and history, but also of providing the pattern of the organization of society. Bullinger refers to the patristic fathers such as Augustine, Irenaeus, Tertullian, Lactantius, and Eusebius, in order to demonstrate that the covenant was not an innovation, but the very fabric from which the history of salvation was woven through the centuries, from Adam to his own day. However, according to McCoy and Baker, Irenaeus was the only church father who hinted at a *conditional* covenant, and he may well have influenced the formation of Bullinger's covenantal idea.³²² Even Late-Medieval nominalism was another possible source

³¹⁹ Bierma, "Federal Theology in the Sixteenth Century: Two Traditions?", 317.

³²⁰ Ibid., 319. Olevianus is quick to point out, however, that this is not a conditional covenant in the ordinary sense of the term; it is not a *contractus mutuus*, based on full reciprocation, *ibid.*

³²¹ Skinner, *The Foundations of Modern Political Thought*, 341. Gough also states: "Beza goes a step farther, for he refers to the relationship between ruler and subject as a *mutuo consensu ac publice contracta obligatio*, and shortly afterwards as an *obligatio solemnni et publico consensu contracta*. Whether we may regard this as an example of the governmental contract is perhaps largely a question of words, and depends partly on whether we should confine that term to the regular contract of subjection supposed by some theorists to have marked the inauguration of political society ... but it is clear, from the quotations he makes in support of his views, that what really weighed with Beza in the construction of his argument was not any *a priori* consideration of the origin of power, but the historical examples of covenants in the Old Testament", Gough, *The Social Contract*, 50–51.

³²² McCoy and Baker, *Fountainhead of Federalism*, 14–15.

for the Reformed idea of the covenant, where Heiko Oberman writes, “an emerging new image of God ... God is a covenant God, his *pactum* or *foedus* is his self-commitment to become the contractual partner in creation and salvation...In the nominalist view, man had become the appointed representative and partner of God, responsible for his own life, society and world, on the basis of and within the limits of the treaty or *pactum* stipulated by God.” This clearly points to the covenant between God and humans as *bilateral* and *conditional*.³²³

Von Gierke states that in opposition to the trend, in the 17th century, towards centralization and the absolute state, there arose, among some of the adherents of the School of Natural Law, a federal theory. Developing the idea of the Social Contract to its logical conclusion, they sought to place associations generally on the same natural-law basis as the state itself; and they attempted accordingly to vindicate for themselves, even when they were included in the state, an independent sphere of action.³²⁴ The way was prepared for this view, in the course of the 16th century, by the claim (which had been advanced in practice in the Wars of Religion, and was defended in theory by the Calvinistic advocates of popular sovereignty) of a right of resistance of particular provinces against a tyrannical political authority. In this connection the theory propounded by Hubert Lanquet (the assumed author of the *Vindiciae*, albeit that the true author is rather assumed to be Mornay, as discussed earlier, who wrote the *Vindiciae* under the name of Junius Brutus) exercised a deep and particular influence. Provinces and cities, he held, were appointed to superintend (along with and even in lieu of, the national Estates and magistrates) both the pact between the nation and God and that between Ruler and People. More precisely, Gierke explains that this meant that the Ruler was included in both of these pacts – (1) that in which, as *co-promissor*, he is bound, along with the nation, to God, and (2) that in which, as a single *promissor*, he is bound to the people. The first pact, therefore, was not so much “between the nation and God”, as between the nation, *plus* the ruler, and God.³²⁵ Gierke adds that they were therefore entitled, and even obliged, to offer armed resistance to the ruler who broke his contract; and in the last resort they could even renounce their allegiance. The success of the Revolt of the Netherlands gave the seal of historical approval to these views.³²⁶

³²³ Ibid., 15. However, there were differences between Bullinger’s conception of the covenant between God and man and that of the nominalist’s understanding pertaining to this relationship. First, the nominalist *pact* found its basis in a Pelagian doctrine of justification, to which Bullinger could not have subscribed. Second, Bullinger was educated in the *via antiqua* not in the nominalist *via moderna*. It is therefore unlikely that Bullinger was directly influenced by the nominalist idea of *pact*, 15, *ibid*.

³²⁴ Otto von Gierke, *Natural Law and the Theory of Society 1500–1800*, (translated by Ernest Barker, Cambridge: Cambridge University Press, 1950), 70.

³²⁵ Ibid.

³²⁶ Ibid.

2.2.1.5.2 The Political Covenant

Referring to Saul as the first king of Israel, Calvin indicates that there was a *mutual duty* of the Prince towards his subjects: "...the Israelites 'agreed to his appointment', that 'they approved of his office', that they gave their 'good will', that in a solemn assembly they 'consented', and that 'there was a mutual duty of the Prince towards his subjects' ".³²⁷ There is a *mutua obligatio* between the king and the people about which Beza tells us something, while Hotman gives some additional details about its nature. The result is that the people, as a body, can *claim rights under this contract*. The people, as individuals, can claim no legal rights. Beza and Hotman implicitly hold that the city or the district holds itself responsible for the protection of true religion, a position entirely in keeping with that federalist tinge that colored the teaching of Calvin himself. The medieval conception of estates reinforced this federalism that characterized the outlook of all the Huguenot Monarchomachi. The Princes must be obeyed "provided they do not command irreligious or iniquitous matters". Beza is in no way concerned with the question of social contract raised by Rousseau. He is, however, concerned to show that there is a *civil contract* enshrining the Decalogue.³²⁸ Beza speaks of a *mutual oath* between the king and the people of which the character of this agreement is stated in general terms by leading Huguenot writers. *The Awakener*, for instance, speaks of the "mutual and reciprocal obligation between the magistrate and his subjects". Similarly, *The Politician* cites "the reciprocal arrangement between prince and subject."³²⁹ But, whereas

³²⁷ Murray, *The Political Consequences of the Reformation*, 107. However, Calvin was sanguine enough to hope that when the contract had been concluded, it would be fulfilled. Francis I bitterly persecuted the Huguenots. In 1555, in 1557, in 1559, and five times in 1561, Calvin advocated passive obedience and disapproved of the Conspiracy of Amboise in 1560, *ibid.* This is an indication that Calvin's contractual theory was not as developed as that of Bullinger, Mornay, Althusius and Rutherford who postulated an active theory of resistance when the conditions were not adhered to.

³²⁸ *Ibid.*, 186–187. The author states: "Calvin, Hotman and Duplessis-Mornay are not in favour of tyrannicide. Beza forms the one outstanding exception, for, in common with the Jesuits, he is in favour of it...and when Poltrot assassinated the Duke of Guise Beza did not condemn him. 'I do not', admits Beza, 'approve of the opinion of those who, without any distinction or exception, condemn all tyrannicides, to whom Greece formerly offered so many honourable rewards' ", *ibid.*, 188. In comparison with Calvin's contractual theory, this emphasis by Beza concerning resistance indicates a stronger contractual understanding. In this regard Murray adds that according to Beza: "There is no other will than that of God alone ... Divine and natural law limits the power of the ruler ... There is a mutual obligation between Prince and people", *ibid.*, 185. In other words, this mutual obligation entails the exercise of God's Law and this law forms the condition in the mutual obligation or contract between the ruler and the people.

³²⁹ Skinner, *The Foundations of Modern Political Thought*, 331. Franklin states that according to Beza, the creation of a king involved the imposition of definite conditions, Beza appealing to history showing that ceremonies of election and coronation include a promise to obey the law and constitute a kind of compact to which each successive ruler is sworn and bound anew. This contractual relationship is confirmed by reason because of the fact that the people are prior to the king and can survive without him, and therefore it is only reasonable that the people grant authority to the king on a conditional basis, Julian H. Franklin, "Introduction" in *Constitutionalism and Resistance in the Sixteenth Century. Three Treatises by Hotman, Beza, and Mornay*, (Translated and edited by Julian H. Franklin, Western Publishing Company, Inc., 1969), 33. Also cf. *ibid.*, 111, where Beza (in his *Des Magistrats or Right of*

Beza made the “covenant” only one of a range of arguments tending in the direction of a relationship of *mutua* (and now conditional) *obligatio* between rulers and the ruled, Mornay attempted to make covenant central to his account of political relations.³³⁰

Gough states that the Huguenot writers of the 16th century have much in common namely, that to God belongs the only absolute authority; earthly rulers are bound as much as all other men to respect the will of God, which includes the proper worship of God. If a king persecutes the true religion, the people’s duty to God overrides their duty to the king, and a right to resist the king comes into play.³³¹ Gough adds that this view appears clearly at the outset of the earliest of the Huguenot pamphlets, namely, the anonymously published *De Jure Magistratum in Subditos*, which in fact was almost certainly the work of the Calvinist theologian Theodore Beza. In fact, Beza added to the view that the reciprocity of rights and duties between ruler and subjects had at least been overtly recognized by the ruler, who explicitly pledged himself to respect his side of these mutual obligations; for he refers to the relationship between ruler and subject as a *mutuo consensu ac publice contracta obligatio*, and shortly afterwards as an *obligatio solemnem et publico consensu contracta*.³³² There are also traces of the presence of an adherence or practice of covenantal thought in relationships between the ruler and the people. Impetus for the rise of explicitly federal thought in the 16th century came from such sources such as the organization of the Germanic tribes that invaded and settled in western Europe which were covenantal or federal in nature. These social operations were continued in the covenants that underlay feudalism, in such pacts as those represented in the defensive and commercial covenants of the Hanseatic League and in political orders like the Swiss Confederation.³³³

Magistrates – 1574) refers to “... a mutual obligation between the king and the officers of a kingdom ... and that there are definite conditions on either side ...”, and on *ibid.*, 127, Beza refers to “... those (rulers) so authorized to act, if they are not to violate their oaths to God and to their country”. Although Beza did include contractual thought in his political theory, it was to be Mornay that developed and truly emphasized the importance of contractual thought in French Reformed political thought.

³³⁰ Harro Hopfl and Martyn P. Thompson, “The History of Contract as a Motif in Political Thought”, in *The American Historical Review*, Volume 84, Issue 4, October, (1979), 930.

³³¹ Gough, *The Social Contract*, 50.

³³² *Ibid.*

³³³ McCoy and Baker, *Fountainhead of Federalism*, 15.

2.3 The Theologico-Political Federalism of Samuel Rutherford

2.3.1 The Theological Covenant

Mason refers to John Ford's analysis of Samuel Rutherford's political thought, stating that the latter emphasizes the acute tensions in the Presbyterian mind between humanist accounts of civil society such as George Buchanan had propounded, and the powerful strain of biblical literalism associated with Scottish Protestantism since the time of John Knox. Mason says that it was ultimately this intense Biblicism which lay behind the National Covenant; and that it was perfectly possible to find precedents for a godly Scottish commonwealth in the Scottish past itself.³³⁴ Mason adds:

But the pristine – and proto-Presbyterian – glories of the Culdees were as nothing compared to the example of God's chosen people of Israel. Such legitimacy as the covenanters required was to be found in the fact that in 1560 the Scots had entered into a covenant with God which bound them, as it had bound the commonwealth of Israel, to fulfil the imperatives for the divine will. 'Now, O Scotland, God be thanked', wrote Rutherford in 1634, 'thy name is in the Bible.'³³⁵

It is clear that Bullinger's federal thought was never alien to Rutherford.³³⁶ Gough states that Rutherford, following the Huguenots, points to the covenants in the Old Testament, and that Rutherford maintains that there is indeed a covenant between king and people, and, further, that king and people are pledged to God to preserve the true religion.³³⁷ Gough further states:

Where, then, it may be asked, is this covenant? There may, indeed, be no 'positive written covenant', though Rutherford refuses to admit this definitely; at any rate, he contends, 'there is a natural, tacit, implicit covenant', which ties the king by the nature of his office. 'And though there were no written covenant,

³³⁴ Roger A. Mason, "Imagining Scotland: Scottish political thought and the problem of Britain 1560 – 1650", in *Scots and Britons: Scottish political thought and the union of 1603*, (edited by Roger A. Mason, Cambridge: Cambridge University Press, 1994), 12–13.

³³⁵ *Ibid.*, 13.

³³⁶ McCoy and Baker, *Fountainhead of Federalism*, 43. Also cf. Andries W. G. Raath and Shaun A. de Freitas, "Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504-1575)", *Westminster Theological Journal*, 63 (2001), 285 – 304.

³³⁷ Gough, *The Social Contract*, 93. Gough refers to the following quotation: "The people, as God's instruments, bestow the benefit of a crown on their king, upon condition that he will rule them according to God's word", and the "king is made king by the people conditionally": there is a "mutual coactive power on each side", *ibid.*

the standing law and practice of many hundred acts of parliament is equivalent to a written covenant'.³³⁸

With regard to the covenant between God and king, Rutherford makes it clear that the covenant between the king and the people was clearly distinguished from that of the king's covenant with the Lord.³³⁹ The political covenant apparently derived its force from the covenant with God and this God was real, historically realized in Scotland's covenants.³⁴⁰ In answer to Barclay, who states that the covenant obliged the king to God but not to the people, Rutherford only refutes the latter part of Barclay's statement, agreeing to the presence of a covenant between God and the king.³⁴¹ Referring to the example of David, Rutherford, although he refutes that there is only a covenant between God and David, hereby agrees to the existence of this covenantal relationship.³⁴² God made a king *conditionally*, and so by covenant, that king should rule for the safety of the people.³⁴³

Concerning the specific nature of the covenant according to Rutherford, Flinn states that it was an oath between the king and his people, laying on, by reciprocation of bands, mutual civil obligation upon the king to the people, and the people to the king. For example, the elders made a covenant with David before the lord prior to their appointing him king.³⁴⁴ Flinn states that this civil covenant made between the king and the represented people was not the same as the covenant made between the king and the Lord (2 Kings 11: 17). The former was made and ratified publicly and was solemnly made in the house of the Lord; and if the obligations of a covenant were broken, then those who break it could be disciplined according

³³⁸ Ibid., 94.

³³⁹ Rutherford, *Lex, Rex*, 54 (1)–54 (2).

³⁴⁰ Hunt, *Calvinism and the Political Order*, 80.

³⁴¹ Rutherford, *Lex, Rex*, 54 (2).

³⁴² Ibid., 57 (1). On *ibid.*, 60 (1), Rutherford argues the same, emphasizing that it is false that one can only leave it to God and the king to reckon together, because if he be obliged to God only as a king, by virtue of his covenant, how can he fail against an obligation (towards the people) where there is no such obligation? Rutherford hereby implies the existence of a covenant between God and the king, albeit not the only covenant.

³⁴³ Ibid., 57 (2). Cf. also *ibid.*, 58 (1).

³⁴⁴ Richard Flinn, "Samuel Rutherford and Puritan Political Theory", *The Journal of Christian Reconstruction*, (1978–9), 63. Flinn points to 2 Samuel 5: 3 as well as 2 Chronicles 23: 2–3 and Ecclesiastes 8: 2, which indicate the existence of an oath which binds both king and people, *ibid.* Flinn adds: "With our better understanding of covenants and treaties in the Near Eastern world, we see immediately that what we have here is not a vassal treaty, but a treaty between equals", *ibid.* In fact, the oath played an important role in the political theory of both Althusius and Rutherford. To these theologico-political theorists the oath is not merely a ceremony but the outward declaration to the people (that have elected the king) by the king and in which his commitment to the covenant is sworn in and confirmed in front of the people, who act as witnesses to such an oath. The people, also confirm outwardly their acceptance of such an appointment to the crown by allowing such an oath to take place. In this regard cf. Rutherford, *Lex, Rex*, 106 (1), 126 (2), 129 (1), 133 (2), 199 (2), 200 (1)–200 (2), 201 (1), 202 (1), 219 (2), 229 (2)–230 (1). Also cf. Althusius, *Politics*, concerning Althusius's similar thought on the oath namely, 35, 119–120, 127–129, 157–158.

to the oath made to God.³⁴⁵ Flinn adds that some may argue that there are no rulers with whom this formal covenant has been made today, and so the obligations of such a covenant cannot be pressed upon them, particularly now that we live in a pluralistic society. Rutherford agrees that where no formal written covenant can be produced between any particular people and their rulers, then there is a problem when you are dealing with positive laws or mediatory conditions.³⁴⁶ In this regard, Flinn explains that the natural or immediate covenant among God, the king, and the people is automatically presupposed in any expression of civil government, even when there is no vocal or written covenant. Thus, the obligation to rule according to God's law is not part of the mediatory, accidental, particular choice of the people. Theonomic rule is obligatory for all societies at all times.³⁴⁷

Concerning the covenant between God and the people in general (which includes the king), Rutherford refers to Jehoida who made a covenant between the Lord and the people, including the king.³⁴⁸ According to Rutherford, the covenant between God and man is *mutual*; indeed it is so mutual that if the people break the covenant, God is no more bound to fulfilling his part of the agreement.³⁴⁹ Rutherford states that the covenant gives to the believer a sort of action of law to plead with God in respect of his fidelity to stand to that covenant that binds him by reason of his fidelity.³⁵⁰ Rutherford refers to this same covenant when distinguishing between the *indebtedness* between God and the king on the one hand, and between God and the people on the other.³⁵¹ A people in covenant with God, though mortal in its individuals, cannot die.³⁵² In fact, Rutherford in his letters frequently spoke of Scotland's covenant with the Lord,³⁵³ viewing king Charles I as the king of a nation in covenant with God, as having been *obliged* to prosecute heresy and idolatry with the same zeal as Old Testament rulers; however, king Charles I, having done the opposite, *severed the nation's covenant* with the Lord.³⁵⁴

³⁴⁵ Flinn, "Samuel Rutherford and Puritan Political Theory", 63.

³⁴⁶ *Ibid.*, 65.

³⁴⁷ *Ibid.* For more on the law as condition of the covenant, as emphasized by the theologico-political federalists, refer to Chapters 3 and 4 below.

³⁴⁸ Rutherford, *Lex, Rex*, 54 (1), refers to 2 Kings 11: 17 to substantiate this. Cf., also Hall, *Savior or Servant?*, 246, where it is emphasized that the National Covenant was instituted to attain precepts of God's covenant with man in general.

³⁴⁹ Rutherford, *Lex, Rex*, 54 (2). Rutherford refers to Zecharia 11: 10 to substantiate this.

³⁵⁰ *Ibid.*, 54 (2). Here, Rutherford refers to, inter alia, Daniel 9: 4, 5.

³⁵¹ *Ibid.*, 56 (1). On *ibid.*, 57 (1), when mentioning the covenant between Joash and the people, Rutherford also adds that there is a covenant between the Lord on the one hand and the king and people on the other.

³⁵² *Ibid.*, 78 (2). Rutherford refers to Jeremiah 32: 40,41.

³⁵³ Coffey, *Politics, Religion and the British Revolutions*, 165.

³⁵⁴ *Ibid.*, 168.

Rutherford produces historical evidence from acts of parliament, confessions of faith, coronation oaths and custom to claim a written Scottish covenant, but he also argues that the covenant need not be written, with nature and Scripture remedying the defect.³⁵⁵ According to Coffey, Rutherford's desire for a covenanted nation purged of heresy, idolatry and unbelief, makes him appear thoroughly reactionary and utterly committed to the ideals of Christendom. Coffey adds that it was ultimately Rutherford's "reactionary" side that was to win out, for it was the Old Testament concept of a nation in covenant with God that lay closest to his heart.³⁵⁶ It is the king's *duty*, when the people under him, and their fathers, have corrupted the worship of God, to *renew* a covenant with God, and to cause the people to do the like.³⁵⁷ In fact, whether the king commanded it or not, Rutherford made it clear that the people were *obliged to renew* a covenant with God,³⁵⁸ and (Rutherford) asks who may be averse to a religious covenant sworn by the people.³⁵⁹ The doctrine of the covenant lay at the heart of Rutherford's case, and *Lex, Rex* demonstrated familiarity with the evolution of the doctrine in Europe, both in the French religious debate and in later comments from Arnisaeus and Grotius.³⁶⁰ According to Coffey, Rutherford's treatment of Scotland's history was modeled on the way the Hebrew prophets treated the history of Israel, Coffey stating that: "... he believed that Scotland had entered into a covenant with God, in much the same way as ancient Israel had. The future of Scotland was conditional on her response to God. If she obeyed the terms of the covenant, she could expect blessing; if she disobeyed, curses and desertion would follow". This prophetic approach is similar to Hosea, who was committed to delivering ultimatums from the Lord. However and without doing Rutherford's prophetic approach injustice, it is interesting to note Coffey's observation concerning Rutherford's apocalyptic approach, also borrowed from the Hebrew prophets like Daniel, who engaged in the explicit prediction of the future. This prophetic genre emphasized human agency and the conditionality of the covenant, whereas the apocalyptic form stressed divine initiative and the inevitability of God's victory.³⁶¹

The synthesis between Rutherford's prophetic and apocalyptic inclination is captured by Coffey's observation that Rutherford and his fellow militants among the clergy had to persuade the nobility of the necessity and efficacy of action on behalf of the cause, and that

³⁵⁵ Hunt, *Calvinism and the Political Order*, 76.

³⁵⁶ Coffey, *Politics, Religion and the British Revolutions*, 187.

³⁵⁷ Rutherford, *Lex, Rex*, 135 (2), Rutherford refers to Moses, Asa and Jehoshaphat who did the same.

³⁵⁸ *Ibid.*, 135 (2). On *ibid.*, 136 (1), Rutherford refers, inter alia, to Ezra and the people, who failed in no duty against their king; as well as to the strangers of Ephraim and Manasseh, and out of Simeon who fell out of Israel in abundance to Asa and swore that covenant without their own king's consent (2 Chronicles 15: 9, 10).

³⁵⁹ *Ibid.*, 136 (1).

³⁶⁰ Hunt, *Calvinism and the Political Order*, 75.

³⁶¹ Coffey, *Politics, Religion and the British Revolutions*, 227.

potential supporters had to be convinced that God's providence left room for genuine human agency. Coffey adds that: "The 'ordinary logic' that action was useless until the Lord himself began to work was 'not (with relevance to your Lordship's learning) worth a straw'. 'Let us do (act), and not plead against God's office.' Providence ought not to be used as an excuse for inaction. As Rutherford was fond of saying: 'Duties are ours, events are the Lord's' ".³⁶² Coffey also states that: "The religious covenant and God's apocalyptic plan had to take precedence over the traditional prominence of the nobility and the natural right of all men to defend their land when it was attacked. To allow the Engagers to reassume control of the nation was to betray the national covenants with God".³⁶³ According to Coffey, Rutherford's greatest yearning was to see Scotland become a land of "heart-covenanters" truly committed to God, and he believed that such a covenanted Scotland might spearhead the apocalyptic movement that would see the conversion of the Jews, the overthrow of the popish Antichrist, and the establishment of Christ's rule in all the nations of the earth.³⁶⁴ Reid states: "The covenant idea was also expressed in the documents of the Westminster Assembly (1642–48), largely through the influence of Samuel Rutherford and the other Scottish delegates. Rutherford himself had presented the covenant doctrine in his work *Lex, Rex*, which had a great impact on Scottish thinking and was basic to the whole covenanting movement during the latter part of the century, until the fall of the Stewart dynasty."³⁶⁵

2.3.2 The Political Covenant

From a political perspective, Rutherford emphasizes the existence of a covenant per se, between the king³⁶⁶ and the people, Scriptures playing an important role in confirming this.³⁶⁷ The covenant is made between the king and the people, between mortal men. However, they bind themselves before God to each other, adding that the *obligation* of the king in this

³⁶² Ibid., 235.

³⁶³ Ibid., 255.

³⁶⁴ Ibid.

³⁶⁵ Reid, "John Knox's Theology of Political Government", 539. In this regard Rae points to the fact that Rutherford felt that the Christian Church was largely analogous with the Jewish Church. Since then, there could be many unbelievers mixed with believers in the latter, so could there be in the former, and, for the same reason, the state could do right in making them swear and enter into a covenant with God. This is to be understood in the context of Rutherford's view that the Covenant of Scotland is linked with the Covenant of the Jews, where it is said that the Covenant was "sworne and subscribed by many thousands ignorant and prophane, and who never came to such a measure of gracious reformation, as they can testifie their faith and repentance", C. E. Rae, *The political thought of Samuel Rutherford*, (unpublished M. A. dissertation, University of Guelph, 1991), 152.

³⁶⁶ The term *king*, in this context, is to be understood as being synonymous to government or the civil magistrate (authority).

³⁶⁷ Rutherford, *Lex, Rex*, 54 (1)–54 (2). The Biblical texts referred to are 2 Samuel 5: 3; 1 Chronicles 11: 3; 2 Chronicles 23: 2–3; 2 Kings 11: 17, *ibid*.

covenant flows from the peculiar national *obligation* between the king and the estates.³⁶⁸ In fact, the precise *mechanism* by which governments were founded was that of a covenant between king and people.³⁶⁹ To Rutherford, natural law, Scripture and history all combined to prove that government must rest on a covenant between king and people. *Lex, Rex* focused almost exclusively on this horizontal covenant between the king and people.³⁷⁰ Rutherford clearly distinguishes between this covenant, and the covenant between God on the one side and the king and people on the other; referring to Joash who made another covenant with the people. Whoever made a promise to another, gave to that other a sort of right or jurisdiction to challenge the promise.³⁷¹ The covenant between David and Israel was not a covenant between God only, but also a covenant between the king and the people.³⁷² Referring to Saul, Rutherford states that there was no *condition* required of him before they made him king, but only that he covenant with them to rule according to God's law.³⁷³

Concerning tyrants, as long as the people and estates had not recalled their grant to the king, the *covenant mutual* stood.³⁷⁴ The general covenant of nature is presupposed in making a king, where there is no written or social covenant, confirming a covenant structure between the king and people.³⁷⁵ If the king, because a king, was exempt by privilege from all covenant obligation to his subjects, then no law of men could lawfully reach him for any *contract* violated by him; then he could not be a *debtor* to his subjects if he borrowed money from them. Therefore, according to Rutherford, there must be a covenant obligation between the king and the people.³⁷⁶ Rutherford refers to Romulus who covenanted with the people, and Xenophon who said there was a covenant between Cyrus and the Persians; he also refers to Gentilis and Grotius who prove that kings are bound to perform oaths and *contracts* to their people.³⁷⁷ The covenant between the king and people is reported in 17 Deuteronomy, and just

³⁶⁸ *Ibid.*, 56 (2).

³⁶⁹ Coffey, *Politics, Religion and the British Revolutions*, 163.

³⁷⁰ *Ibid.*, 165.

³⁷¹ Rutherford, *Lex, Rex*, 57 (1).

³⁷² *Ibid.* Rutherford refers here to 2 Kings 11: 17 and 2 Samuel 5: 3. On *ibid.*, 60 (1), Rutherford cannot conceive how a covenant can be made with the people, and the king obliged to God, not to the people. Also cf. *ibid.*, 130 (1), 198 (2), 199 (2), 200 (1), 202 (1), concerning the covenant between David and the people (2 Samuel 5: 1–3); and *ibid.*, 198 (2), 199 (2), 219 (2), concerning the covenant between Joash and the people (2 Kings 11: 17, 18); as well as to *ibid.*, 199 (2), concerning Deuteronomy 17: 17–18.

³⁷³ *Ibid.*, 57 (2).

³⁷⁴ *Ibid.*, 59 (1).

³⁷⁵ *Ibid.*, 59 (2). Concerning the written covenant, Rutherford refers to Deuteronomy 17: 15, Joshua 1: 8–9 and 2 Chronicles 31: 32, adding that where there is no written covenant, the law of nature will warrant the people to repeal their right and plead for it. Concerning Scotland and England, Rutherford states that though there was no written covenant, the standing law and practice of many hundred acts of parliament are equivalent to a written covenant, *ibid.*

³⁷⁶ *Ibid.*, 60 (2).

³⁷⁷ *Ibid.*, 61 (1) – 61 (2).

as David was limited by covenant, so were the rest.³⁷⁸ According to Rutherford, the people give themselves *conditionally and covenant-wise* to the king, as to a public servant, and patron and tutor³⁷⁹, and they do not break their covenant when they put in action, that natural power to conserve themselves.³⁸⁰ The king accepts the crown upon the tenor of a *mutual covenant* in which he must govern according to the law.³⁸¹ The people are bound in this covenant no less than the king, and the king's duty is to compel them to *observe the terms* of this covenant: "Each may compell the other to mutuall performance."³⁸² Rutherford refers to the covenant between the king and people when discussing the futility of expressing *any clause in such a covenant* concerning the acceptance by the king to part company when he is guilty of a transgression.³⁸³

The king cannot be above the covenant and law made between him and his people.³⁸⁴ If the people had known that the king would turn tyrant, there would have been much ignorance in the contract between the people and the king.³⁸⁵ All laws of kings, who are rational fathers, and so lead and guide the people by laws which propagate peace and external happiness are contracts of king and people, and the king at his coronation-covenant with the people, gives a most intense consent to be a keeper of all good laws.³⁸⁶ When referring to the similarity between the king's promise and oath, Rutherford states that the *promise* and *covenant* of any man, including the king, do no less than bring him under a civil obligation and political co-action to keep his promise than an oath.³⁸⁷ Referring to Galatians 3: 15, Rutherford states that no man can annul a confirmed covenant, and the king must place himself under the law by a covenant at his coronation.³⁸⁸ This relationship between the king and people is a *contract*

³⁷⁸ Ibid., 62 (1). This was in answer to the objection by Arnisaeus saying that although few of the kings, as David and Joash made a covenant with the people; it does not mean that this was a universal law. Also refer to *ibid.*, 140 (1), where Rutherford refers to Deuteronomy 17, indicating that God has limited the first lawful king (the mould of all the rest) the people ought also to limit the king by a voluntary covenant. It is interesting to note that Deuteronomy 17 is the text most referred to by Rutherford in *Lex, Rex*, and Romans 13, follows closely.

³⁷⁹ Ibid., 82 (1).

³⁸⁰ Ibid., 84 (1).

³⁸¹ Ibid., 106 (1).

³⁸² Hunt, *Calvinism and the Political Order*, 77.

³⁸³ Rutherford, *Lex, Rex*, 118 (1). Rutherford also compares the contract between the king and the people with the contract of marriage between husband and wife. According to Rutherford, it cannot be said, concerning the latter, that you can set down a clause in the contract that if the husband attempts to kill his wife, or the wife the husband, that it would be unlawful for either of them to part company. The same applies to the contract between king and the people, and adds that exigencies of the law of nature cannot be set down in positive covenant, they are presupposed. Note Rutherford's equating of the terms *contract* and *covenant*, *ibid.*

³⁸⁴ Ibid., 126 (2).

³⁸⁵ Ibid., 128 (1).

³⁸⁶ Ibid., 129 (1). Rutherford again uses the term *contract* and *covenant* in the context of having a similar meaning, *ibid.*

³⁸⁷ Ibid., 200 (1).

³⁸⁸ Ibid., 200 (2).

which cannot be dissolved unless by the joint *consent* of both, in instances where the *conditions* of such *contract* are violated by neither side.³⁸⁹ Rutherford also emphasized that even the kings of Scotland are obliged to swear and make their faithful covenant to the true Church of God, so that the *bond and contract shall be mutual and reciprocal* between the prince and people.³⁹⁰

This horizontal covenant was also extended by Rutherford in order to accommodate a *bilateral* and *conditional* agreement between nations. In 1639 Rutherford was called to the chair of divinity at the University of St. Andrews. From that post, he continued as part of the leadership that led to the Solemn League and Covenant of 1643, uniting the Scottish Covenanters and the English Puritans in a federal pact with powerful political, ecclesiastical and military dimensions and which eventually led to the overthrow of Charles I.³⁹¹ Referring to the National League and Covenant; Rutherford states that God severely avenged and plagued *breach of covenant*. Nor had the Lord unstamped His divine Image of making just laws upon any nomothetic power of the most free and independent kingdoms on earth so that the *breach* of lawful promises, covenant, *contracts* (which are against the Law of God, nature and of nations), should or could be the subject matter of any nomothetic power.³⁹² With regard to 17th-century England, Rutherford adds that England did not have the power against the Law of Nature and Nations to break their promise, *agreement*, faith and *contract* made with another kingdom, and that it cannot be accepted that the end of either kingdom, united by covenant and compact in the war, was to spend lives and fortunes for liberty and the establishment of many religions.³⁹³ The covenant bound the three kingdoms to defend one another.³⁹⁴ The kingdom that retracted the covenant broke with God and so with men, seeing that the two kingdoms were *mutually* and *reciprocally* engaged with one another, and they must know that the righteous God shall avenge their *breach of the Covenant*.³⁹⁵

³⁸⁹ Ibid., 201 (1).

³⁹⁰ Ibid., 219 (2) – 220 (1). Reference also to Deuteronomy and 2 Kings 11, *ibid.* Richards also states that Rutherford's argument focused on the second compact, using the language of the legal trust and tutorship to draw the lines of a responsible exercise of kingly authority. Richard adds: "The special status of kings as a political entity rested on their faithful and responsible custodianship of the benefice, the *salus populi*, with which they had been entrusted", Richards, "The Law written on their Hearts?": Rutherford and Locke on Nature, Government and Resistance", 21.

³⁹¹ McCoy and Baker, *Fountainhead of Federalism*, 43.

³⁹² Samuel Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, (London: Printed by RI. for Andrew Crook, 1649), 267.

³⁹³ Ibid., 265, (sic. should be 273) and 271.

³⁹⁴ Ibid., 274.

³⁹⁵ Ibid., 279.

In Rutherford's discussion about the degree to which other nations or heathen nations may be compelled to embrace the true faith, he makes known his contractual understanding, not only regarding the relationships between nations but also between king and people, namely:

If they join with us in a religious covenant, and we swear with our lives and goods to defend one another, we may cause them to stand by the oath of God they were under. As Asa compelled not only Judah but those of Israel that fell in to him, to stand by the oath; for the covenant, when it is mutual, gives a reciprocation of rights to each kingdom, for if he that makes a promise to another, much more he that swears a covenant to another, makes over a right to the other, to plead for the fulfilling thereof ... This is clear in the kings covenanting at his coronation with his people, and the people with the king, in the compacts between the master and the hired servant, between two merchants; if this were not; the nerves of all societies, and lawful confederations between man and man, nation and nation should be broken.³⁹⁶

Coffey also states that *Lex, Rex* incorporated the Scottish Whig historiography, Rutherford contenting himself with bringing Buchanan's story up to date. Buchanan's royal genealogy stressed the *contractual nature* of the relationship between the Scottish people and their kings, enabling the Covenanters to present an historical justification of their revolution. To Buchanan's secular narrative of the ancient constitution, Rutherford added the importance of placing the vision of the history of the *kirk*, which he inherited from his pastor, David Calderwood, which was in essence a story of a covenant *broken* by Scotland. This covenant that was *broken* had its origin in AD 205, when Scotland received the Christian gospel, and it is within this period that it may be assumed that a *religious covenant* (one of those predicted in the Old Testament prophecies) was welded onto the secular covenant established at Fergus's coronation in 330 BC. The Scottish nation has lived a godly life for many centuries since receiving the Christian gospel, but then they became a victim of popish idolatry and superstition. It was at the Reformation in 1560 that the original purity of the Christian religion in Scotland was restored, where Christ renewed the covenant between Him and the people of Scotland in the Negative Confession *contracted* in 1581. Unfortunately, this enjoyment of living under the renewed religious covenant was short-lived. King James VI and his son Charles being desirous to please the English prelates, corrupted the church by reducing it to conform with the Church of England.³⁹⁷ In the words of Coffey: "...it was the Old Testament concept of a nation in covenant with God that lay closest to his (Rutherford's)

³⁹⁶ *Ibid.*, 250–251.

³⁹⁷ Coffey, *Politics, Religion and the British Revolutions*, 185–186.

heart. The quest for a godly nation was destined to undermine the advice of natural reason.”³⁹⁸

Rutherford clearly postulates not only a covenant perspective regarding society per se at the horizontal level, but also society’s relationship with God – the vertical level, and hence we find a double covenant scheme within his thoughts, similar to Bullinger, Mornay³⁹⁹ and Althusius. Rutherford structures the covenant between the king and the people in order to meet the demands of the vertical covenant. Politics to Rutherford is primarily based on the demands of the covenant between God and the people and secondly, on the covenant between the king and the people. The covenant according to Rutherford, is justified primarily by Scriptures, but the law of nature also serves as confirmation of this covenantal perspective. It is obvious that Rutherford, Bullinger, Althusius and Mornay do share common ground in the form of theologico-political federalism. They *expressly* accommodated the relevance of a *horizontal covenant* structure in society emanating from the understanding of a *vertical covenantal* relationship in which God and society are involved. What will also be seen later is that the federal relationship between ruler and the ruled is not (only) a logical extension of the primary federal relationship between God and society; the teachings of Scripture take precedence in the shaping of this horizontal covenantal relationship. It may be true that not all of these prominent thinkers on theologico-political federalism have contributed to this concept of federalism equally. One can also infer that these thinkers had different motivations in their works, for example, Mornay was determined to develop a more concentrated theory of resistance than Bullinger. This, however, does not deprive any of them from belonging to the same unique, developed and specialized field of theologico-political thought.

³⁹⁸ Ibid., 187.

³⁹⁹ Cf. Hunt, *Calvinism and the Political Order*, 75, where it is stated that Rutherford followed the *Vindiciae* of Mornay in teaching the three parties to the covenant – God, ruler, and the people – and two compacts, one between God and the total community, and the other between the ruler and the people. Cf. J. H. M. Salmon, *The French Religious Wars in English Political Thought*, (Oxford: Clarendon Press, 1959), 87. Also cf. the latter page where it is stated that Rutherford championed the contract theory of the *Vindiciae* because he felt that in his own day the royalist writer, Bishop Maxwell, was reproducing Barclay’s opinions against the Covenanters and the Long Parliament. Barclay had held that the biblical covenants with God obliged the king to God but not the king to the people. Rutherford also referred to Arnisaeus who asserted that the divine covenant did not apply to the relations of ruler and subject and that the people were not responsible for the preservation of the true religion. Rutherford added that even Grotius and Barclay had allowed resistance where covenants entered into by the king under the sanctity of the coronation oath had been utterly dishonored. It is also highly probable that Rutherford had been in touch with Mornay’s *Vindiciae Contra Tyrannos* and was influenced by its politico-theological federalistic connotations, because Rutherford refers to Mornay’s (Junius Brutus) *Vindiciae* no less than seven times in *Lex, Rex*, namely on 55 (2), 80 (1), 97 (1), 98 (2), 209 (1), 209 (2), 222 (1).

Rutherford's covenantal thought in no way intended to weaken the view that God determines and is sovereign over all that happens. To Rutherford, God is in no way debtor to anyone and His every act within the covenant, indeed, the very covenant itself, is no less than a gracious condescension towards humans.⁴⁰⁰ Rutherford states: "But no man first acts for God, for God is the first actor and mover in every action, and motion."⁴⁰¹ Rutherford adds:

You can give nothing to God Creator of all, but it must be either an uncreated Godhead, but he who perfectly possesses himself, will not thank you for that, or your gift must be a created thing: But how wide is his universal dominion? Can you give to one that of which he was absolute Lord before? ... Nothing can be given to him, in whose hand is power and might ...: For 1. Riches and things we give are of him. 2. Power, might and strength to give, either physical, to bear burden to his house: or, Morall, a willing mind and heart to give is in his hand Can we give to any that which is his own already?"⁴⁰², "... that God's bargaining with us depends not upon the equality between thing and thing, the work and the wage; but upon his own free pleasure of disposing of his own ...⁴⁰³.

⁴⁰⁰ Bell, *Calvin and Scottish Theology*, 73.

⁴⁰¹ Samuel Rutherford, *The Covenant of Life Opened*, (Harrisonburg, Virginia: Sprinkle Publications, 1982), 23.

⁴⁰² *Ibid.*, 37–38.

⁴⁰³ *Ibid.*, 43. The following excerpt concerning covenantal thought in early 18th-century Scotland provides added insight to the legacy of Rutherford's covenantal thought, and the influence that Scottish covenantal thought in general had on later generations: "If any engagements can be supposed binding to posterity, certainly national covenants to keep the commandments of God, and to adhere to his institutions, must be of that nature. It cannot be denied, that several obligations do bind to posterity; such as public promises with annexation of curses to breakers, Neh. v. 12, 13. Thus Joshua's adjuration did oblige all posterity never to build Jericho, Josh. vi. 26. And the breach of it did bring the curse upon Hiel the Bethelite, in the days of Ahab. Secondly, public vows: Jacob's vow, Gen. xxviii. 21, did oblige all his posterity, virtually comprehended in him, Hos. xii.4. The Rechabites found themselves obliged to observe the vow of their forefather Jonadab, Jer. xxxv. 6, 14, for which they were regarded and commended. Public oaths do oblige posterity: Joseph took an oath of the children of Israel, to carry up his bones to Canaan, Gen. 1:25, which did oblige posterity some hundred years after. Exod. xiii. 19. Josh xxiv. 32. National covenants with men before God, do oblige posterity, as Israel's covenant with the Gibeonites, Josh. ix. 15, 19. The breach whereof was punished in the days of David, 2 Sam. xxi. 1. Especially National Covenants with God, before men, about things moral and objectively obliging, are perpetual; and yet more especially (as Grotius observes) when they are of an hereditary nature, i.e. when the subject is permanent, the matter moral, the end good, and in the form there is a clause expressing their perpetuity. All which ingredients of perpetual obligations are clear in Scotland's Covenants, which are national promises, adjuring all ranks of persons, under a curse, to preserve and promote reformation according to the word of God, and extirpate the opposite thereof. National vows, devoting the then engaging, and succeeding generations to be the Lord's people, and walk in his ways. National oaths, solemnly sworn by all ranks, never to admit of innovations, or submit to usurpations, contradictory to the word of God. National covenants, wherein the king, parliament and people did covenant with each other, to perform their respective duties, in their several places and stations, inviolably to preserve religion and liberty: Yea, more, national laws, solemnly ratified by the king and parliament, and made the foundation of the people's compact with the king, at his inauguration: And, finally, they are national covenants with God, as party contracting, to keep all the

3. Conclusion

The following statement by Laski provides some insight into the relationship between the thoughts of adherents to theologico-political federalism and the secular political thinkers of the period between the Reformation and the French Revolution such as Hobbes, Locke and Rousseau namely: “But ideas have a history more enduring than that of their sponsors. Born of some particular occasion, they live on to become the parent of events far different from what the age of their origin could either have foreseen or desired.”⁴⁰⁴ Flinn states that, in its secular form, the notion of the social contract has been problematic, to say the least. Its popularity in the Enlightenment stems from the fact that it gave cognizance to popular sovereignty, and provided, at least, on the surface, a tool for limiting and controlling government. But as a notion of obligation, it is tenuous. The contract theorists suggest that

words of his covenant. The subject or parties contracting are permanent, to wit, the unchangeable God and the kingdom of Scotland, (the same may be said of England and Ireland,) which, whilst it remains a kingdom, is still under the obligation of these covenants. The matter is moral, antecedently and eternally binding, albeit there had been no formal covenant: the ends of them perpetually good, to wit, the defense of the true reformed religion, and the glory of God, the advancement of the kingdom of our Lord Jesus Christ; the honor and happiness of the King’s Majesty and his posterity, and the public liberty, safety, and peace of the kingdoms, as it is expressed in the Solemn League. And in the form of them there are clauses expressing their perpetuity. In the National covenant it is said, that the present and succeeding generations in this land are bound to keep the foresaid National Oath and Subscription inviolable. And in the Solemn League, Article 1, that we and our posterity after us, may, as brethren, live in faith and love. And Art. 5, that they may remain conjoined in a firm peace and union to all posterity”, Excerpted from: *The Auchensaugh Renovation of the National and Solemn League and Covenant ...* by the Reformed Presbytery, 49–51 (Still Waters Revival Books, reprinted 1995 from the 1880 edition). It is also interesting to take note of the covenantal thought still prevalent in Scotland not long after Rutherford’s death, the latter having an influence on the continuation of this thought in late 17th-century Scotland. In this regard Grant states that Richard Cameron was involved with consultations held in Edinburgh which, among others, lead to the drawing up of a bond or covenant that pledged the signatories to mutual defense and, in effect, constituting them as a party opposed to the established order in church and state, a part of the terms of the bond reading as follows: “We undersubscribers bind and oblige ourselves to be faithful to God, and to be true to one another, and to all others that shall join with us in adhering to the Rutherglen Testimony, and disclaiming the Hamilton Declaration, chiefly because it takes in the king’s interest, which we are loosed from by reason of his perfidy and covenant-breaking both to the Most High God, and the people over whom he was set, upon the terms of his propagating the main end of the Covenants, to wit, the reformation of religion ... And although (as the Lord who searcheth the hearts knows) we be for government and governors both civil and ecclesiastic, such as the Word of God and our Covenants allow; yet by this, we disown the present magistrates who openly and avowedly are doing still what lies in them for destroying utterly our work of reformation from popery, prelacy, Erastianism [i.e. state supremacy over the church] and other heresies and errors”, Maurice Grant, *The Lion of the Covenant. The Story of Richard Cameron*, (Durham: Evangelical Press, 1997), 194. Grant also states: “True, he (Cameron) had previously denounced the corruptions of the king and government, but this was the first time that he had lent his name to a statement directly disowning their authority. It is noteworthy that the grounds stated for doing so were specifically cited as their breach of the Covenant. There could, of course, be no doubt whatever that the king – and those under him – had violated the Covenant. Even those most opposed to Cameron would have conceded that. What was more open to question was whether their breach of Covenant constituted grounds for disowning their authority ... As Cameron well knew, the doctrine of a mutual compact between king and people was well established in the Scottish Reformed tradition ... Its most notable exponent had been Samuel Rutherford, in his *Lex, Rex ...*”, *ibid.*, 195. Also cf. *ibid.*, 248–249, in brief confirmation of Cameron’s link with Rutherford and covenantal thought.

⁴⁰⁴ Hall, *Savior or Servant?*, 253.

the state should be obeyed because the citizens have entered into a contract with it, and by the word of their promise, therefore, they are obligated to submit to it.⁴⁰⁵ The state has been freely given certain power and the responsibility to maintain life, liberty, and property. Flinn adds that there seems to be little doubt that these secular forms of contract theory are perversions of the political theology of Calvinists on the Continent and in Great Britain.⁴⁰⁶ But, because they are a secularized form, they manifest the internal contradictions that are part of all unbelieving systems.⁴⁰⁷

Although the political theories, more specifically the contractual ideas, of Hobbes, Locke and Rosseau are in many facets similar to that of the theologico-political philosophers of the Reformation, it is important to note the fundamental divergence emanating from these secularists around federalism. In what follows is a brief reference to the contractual theories of Hobbes, Locke and Rosseau in order to indicate the secularistic trend that evolved from the original covenantal thought of Bullinger. This unfortunate development stripped political theory of its divine nature and heralded the era in which political theory would become secular and humanistic. As McCoy and Baker point out, Hobbes exhibited federal thought that was not entirely alien to that initiated by Bullinger. In fact, at Oxford, Hobbes was trained in the Puritan covenantal tradition. According to Hobbes, covenants and the consent of the governed in covenant provided the basis of government, with the rights of humans ceded to the sovereign through representation. Justice meant keeping the societal covenant, and because Hobbes had a very pessimistic view of human nature, the covenantal promises had to be reinforced by the power of the sovereign to make sure that the promises would be kept and the well-being of all would remain secure.⁴⁰⁸ However, the covenantal thought exhibited by Hobbes does not prove to be the covenantal thought as postulated by the theologico-political federalists of the Reformation. Hobbes suggested that citizens could establish a contract – a social contract – with a king by which the king would provide stable and centralized rule, while the people submitted to avoid infightings and civil wars.⁴⁰⁹ While Hobbes had at hand the concept of Covenant, by which many people voluntarily entered into treaties with monarchs for protection during the Old Testament, he resorted instead to a more secular man-centered notion.⁴¹⁰ In fact Hobbes represents the beginning of modern humanist

⁴⁰⁵ Flinn, “Samuel Rutherford and Puritan Political Theory”, 59. Cf. *ibid.*, 60 for the reasons given by Flinn concerning problems that inhere all secular contract theories.

⁴⁰⁶ It must also be noted that the contractual political theory as initiated by Bullinger and subsequently adhered to by, *inter alia*, Althusius, Mornay and Rutherford (also Knox) was also perverted by secular philosophers such as Hobbes, Locke and Rosseau.

⁴⁰⁷ *Ibid.*

⁴⁰⁸ McCoy and Baker, *Fountainhead of Federalism*, 90–91.

⁴⁰⁹ Hall, *Savior or Servant?*, 255.

⁴¹⁰ *Ibid.*

governments. His concepts were departures from the Reformation beliefs and more closely related to the philosophical root which led to the French Revolution. His radical contention favored government by the people to be sure; but government by God became disqualified.⁴¹¹ His departure from theological-political federalism concerning contractual theory can truly be regarded as a fundamental departure from Reformational thought, giving rise to secularist political theory. By maintaining the contractual dimension exclusively along the lines of the horizontal covenant, namely, the covenant between the king and the people, Hobbes separated governments and man's responsibility to God and his Word.

Elazar describes Hobbes's postulation of the covenant found in his *Leviathan*, which has some similarity to the idea of the biblical covenant. Hobbes states that Scripture describes how humanity has united with God in two covenants: one, the general covenant between God and mankind and the other, the special pact which makes God the king over the Jews, His peculiar people.⁴¹² Elazar also indicates that Hobbes understood God's covenants with the Israelites as representative of the paradigmatic covenants for all civil society, Hobbes stating: "I find the Kingdome of God, to signify in most places of Scripture, a *Kingdome properly so named*, constituted by the Votes of the People of Israel in peculiar manner, wherein they chose God for their King by Covenant made with Him, upon God's promising them the possession of the land of Canaan ... God not only reigned over all men *naturally* by His might; but also had *peculiar* Subjects, whom He commanded by a Voice, as one man speaketh to another. In which manner he *reigned* over Adam ... After this, it pleased God to speak to Abraham and (Genesis 17: 7-8) to make a Covenant with Him."⁴¹³ Elazar's finding concerning Hobbes's covenantal thought is that:

More important, biblical psychology begins with God and the awe of heaven while Hobbes's psychology is purely secular. Here then, is a kind of a convergence for which it is hard to determine lines of influence, if any. Much the same is true of Hobbes's use of the covenant, except that, while one can find efforts to understand the psychological basis of human behavior elsewhere, the idea of covenant is more unequivocally scriptural, even if filtered through the federal theology of the Reformation. While Hobbes's fundamental covenant is minimalist, to keep the peace, rather than maximalist to mold humans in a certain way, as in the Bible, he could only take the idea of covenant from one place. Moreover, his distinction between covenants and contracts shows the same

⁴¹¹ Ibid.

⁴¹² Daniel J. Elazar, "Hobbes confronts Scripture", *Jewish Political Studies Review*, 4: 2 (Fall 1992).

⁴¹³ Ibid., 12-13.

understanding of the role of mutual promises and trust that is present in biblical covenants. Hobbes does not cite biblical examples in his presentation of the basic covenants of mankind in Fourteen (of his *Leviathan*); he does so in Part III where he presents the paradigmatic commonwealth as described in the Bible.⁴¹⁴

Hobbes therefore contributed to the secularization of the covenant, and although supporting the social contract, transformed its contents to potential change, contrary to theologico-political federalism where the Divine law was the constant measure by which to govern and be governed – There was no continuous mutual obligation, responsibility and accountability applicable to the ruler.

McCoy and Baker indicate that the core of Locke's argument on the federal nature of government and on tyranny can be found in Mornay's treatise, *A Defence of Liberty Against Tyrants*. In fact, Locke did have a copy of this treatise.⁴¹⁵ According to Locke, because humans in a state of nature are not perfect, and therefore are unable to preserve peace and uphold the rights of others, it becomes necessary to form a civil government. This is accomplished when humans by consent enter into a social contract to create a political order. Within this political order, arrangements are made, and if a ruler breaks his agreement with the people and becomes a tyrant, they may overthrow him.⁴¹⁶ Hall refers to Bellah who states that the Lockean myth conflicts with biblical religion in essential ways. It conflicts fundamentally with the Hebrew notion of the covenant. The covenant is a relationship between God and a people, but the parties to the covenant, unlike the parties in the Lockean contract, have a prior relation which is the relation between Creator and created. In addition, the covenant is not a limited relation based on self interest, but an unlimited commitment based on loyalty and trust.⁴¹⁷ Bellah warns that the Lockean foundation, if it is the major philosophical premise for a government, is perhaps as damaging as anything, ultimately elevating the human will above the covenant of God.⁴¹⁸ Morgan states that in the Lockean contractual theory, the shift of emphasis was found to be from the government's obligation to please God to the government's obligation to protect life, liberty, and property. Consequently the way was open for the development of a new concept, namely, the government's obligation

⁴¹⁴ Ibid., 21–22.

⁴¹⁵ McCoy and Baker, *Fountainhead of Federalism*, 91.

⁴¹⁶ Ibid., 92.

⁴¹⁷ Hall, *Savior or Servant?*, 259.

⁴¹⁸ Ibid. Hall states that John Locke is revered as a Christian, as a founding father and often uncritically esteemed as orthodox; and adds that it is perhaps time for Christians to review not only his political writings, but more importantly his theological foundations to ascertain the wisdom of following his views, *ibid.*

to please the people.⁴¹⁹ As the godly purpose of the covenant was replaced, so did the aura of divinity that had once encompassed rulers. The covenant was no longer entered upon to perform a godly service with godly assistance, but merely to serve their fellow men, and the relative importance in the covenant of the rulers' role and the people's role was thus reversed.⁴²⁰ Hall states that the differences between Rutherford's and Locke's views of societal consent to government is, among others, the fact that Rutherford sees three parties in an agreement involving two covenants – the first covenant being one in which the people entrust the king with the power to rule over them for their good, while the second is a three-way covenant among the king, the people and God in which each of the two human parties agree before God to uphold Divine law in its entirety.⁴²¹ Hall adds that Locke also has two agreements, the first being the agreement whereby each individual yields his executive power and right to judge in his own case to the collective group in order to form civil society; and the second being the agreement whereby society entrusts the ruling power to the government. Concerning this first agreement of Locke, Hall states that Rutherford does not accommodate it within his system; since Rutherford denied that each individual possessed the power of the sword, and therefore there was no need to give up what one did not possess.⁴²² Of importance is Hall's finding that Rutherford's inclusion of a covenant among God, king and people is also lacking in Locke's system – Locke feeling no need for a commitment to revealed law in civil government apart from the commitment to rule by man's reason “the voice of God in man”. In this regard Hall adds: “The difference in the parties involved in the covenant is important not only because it demonstrates Locke's secular bent but also because it shows once again the difference in the two men's views of society.”⁴²³

Besides the difference between Rutherford and Locke concerning the parties in the agreement, there is also the difference between them on the nature of the agreement. Hall states that Rutherford specifically terms the agreement between government and society a “covenant” implying some form of mutual obligation and “... though it is true that the covenant between the people and the king is termed “fiduciary” (one which obligates the king to the people to rule only within the prescribed limits), the covenant between God, the king and people is the one which carries true force. This covenant is a true mutual bond which both parties are required equally to keep before God. Either one ought to be disciplined for

⁴¹⁹ Morgan, *Puritan Political Ideas 1558–1794*, xlii.

⁴²⁰ Ibid.

⁴²¹ Timothy D. Hall, *Rutherford, Locke, and the Declaration: The Connection*, (unpublished thesis for Master of Theology: Dallas Theological Seminary: April 1984), 91.

⁴²² Ibid., 92.

⁴²³ Ibid.

breaching the covenants.”⁴²⁴ On the other hand, Locke views men in society as already bound to each other to maintain the law of nature by the societal compact, and when man sets up a government, the terms of the compact are strictly unilateral – “Government is beholden to society, but not society to government.” Hall states that consequently, according to Locke, the compact between society and government is broken by government alone, and never by society.⁴²⁵

In his 1762 *Social Contract*, Rousseau followed Hobbes and Locke in advocating that free men should contract with other free men to form a society subservient to the majority will of the nation. As Rousseau dispensed with God and obligations to him, he also attempted to invent a civil religion established by the state.⁴²⁶ Hall also refers to Dabney who was astute in recognizing that the social contract theory ascribed a liberty to men that is far different from the biblical view.⁴²⁷ It is Rutherford’s political thought that provides added insight into covenant politics within a biblically based covenant theology. Hereby Rutherford confirms the covenantal tradition as postulated by Bullinger, Mornay and Althusius (even Knox), and provides literature on the importance of the covenant to issues such as the office of the king, princes, inferior magistrates and judges, the Divine Law, the sovereignty of the people, the separation of powers and resistance theory. The covenant forms the basis in which these various constitutional aspects function, and therefore provides a unique dimension to a covenantally based constitutionalism, in which the freedoms and liberties of all are confirmed, maintained and protected within the confines of God’s law, which is not only Scripturally commanded, but is also the natural thing for man to do.

In conclusion, although mention has been made that this study in no way seeks to investigate in detail the issue concerning the relationship between God’s absolute sovereignty and providence on the one hand and man’s responsibility within a political context on the other, it is important to refer briefly to Rutherford’s approach to this issue. Coffey states that Rutherford’s sermons to the English parliament in January 1644 and June 1645 were saturated with a Calvinistic insistence on the exhaustive sovereignty of God and the awesome responsibility of man. The texts chosen on both occasions spoke of God’s control over history and nature – Before the House of Commons, Rutherford preached on Daniel 6, where

⁴²⁴ Ibid., 92–93.

⁴²⁵ Ibid., 93.

⁴²⁶ Hall, *Savior or Servant?*, 261.

⁴²⁷ Ibid., 262–263.

Darius the Mede acknowledges the dominion of the God of Israel, and before the House of Lords, he expounded the story of Christ's stilling the storm.⁴²⁸ Coffey further states:

Rutherford's stress on divine sovereignty, therefore, was accompanied by a call to human action. As in his theological treatises, he castigated Antinomians for denying the importance of good works and waiting passively for the Spirit to stir them. 'God blesseth right precisenesse and strictnesse in his way', he declared. The Lord might have predetermined all things, but he still made great demands upon his creatures. Just as his covenant with the elect was conditional and called for their response, so his covenant with Britain demanded action. Rutherford condemned the English parliamentarians for their passivity during the previous decades when the servants of God had been persecuted and corruptions had been brought into the church. Now was the time for them to throw themselves behind the Reformation, to pray for the success of the Gospel, to build God's temple, and 'to send the Glory of Christ over the Sea, to all Europe'. For Rutherford, divine sovereignty and human agency were not merely abstract theological doctrines, they were practical truths.⁴²⁹

⁴²⁸ Coffey, *Politics, Religion and the British Revolutions*, 142–143. In this regard Coffey adds: "The contemplation of God's absolute sovereignty, he (Rutherford) believed, would drive men to deep humility and self-abasement; God owed them nothing, they owed him everything. The notion that 'we are profitable to God' was a false one. God did not need us and he was certainly under no obligation to create us. 'God shall make mortar of thee, O Fool! Who makes a god of borrowed I, great I and poor Nothing-self', Rutherford thundered. His God was as awesome in his sovereignty as the God of Calvin, and human beings were just as humbly and utterly dependent on God's grace as they were in the theology of the Genevan Reformer", *ibid.*, 130.

⁴²⁹ *Ibid.*, 144–145. Rutherford also states: "Yet it was wise to remember that providence was 'a great mystery'; 'Our senses cannot reach the reason of his counsel' ", *ibid.*, 143. Rutherford's active participation in the formulation of the Westminster Confession of Faith, as one of the seven Scottish divines present, is also confirmation of his acceptance of God's absolute sovereignty, and at the same time not negating the responsibility of man both in a soteriological (individual) sense as well as in a political (communal) context. Just as man has the responsibility of refraining from evil, so the community and the king have the responsibility of adhering to the conditions of the covenant, with the Divine Law as authority – and all this takes place under the absolute sovereignty and providence of God. Also cf. *ibid.*, 138–139, Coffey stating: "Like the Reformer (Calvin), Rutherford was concerned to do justice to both God's grace and God's law, to divine sovereignty and human responsibility. The creative tension between these poles was a central feature of Reformed orthodoxy. Rutherford devoted his life's work to combating the twin threats of Arminianism and Antinomianism, both of which seemed to wish to eliminate the tension by emphasizing only one side of it ... The preservation of a fine balance between nature and grace, divine sovereignty and responsibility, man as both patient and agent, lay at the heart of Calvinist religion. However, the twin foci of Rutherford's theology have meant that he has been read in quite contrasting ways by succeeding generations ... The confusion surrounding Rutherford's theology is replicated in the treatment of Reformed orthodoxy in general. On the one hand the orthodox are accused of believing in a God who predetermined everything from eternity by his absolute decrees, and on the other they are accused of teaching that people were saved because of their own repentance and faith ... The problem here is that historians fail to acknowledge that the orthodox believed in both divine predetermination and human agency ... Too many scholars have concentrated on one of these at the expense of the other, so producing seriously distorted accounts

Rutherford's statement that God's providence is no cause for inaction remains an important comment. Here we find another example of the fusion between politics and theology, where the issue concerning man's responsibility and God's sovereignty is shifted from the individual plain to that of the political community. This is in accord with the fact that although there was a strong element of individualism in the Puritan creed (each man had to work out his own salvation, each soul had to face his Maker alone), the theorists of New England (according to Miller and Johnson) thought of society as a unit. They thought of society not as an aggregation of individuals but as an organism, functioning for a definite purpose, with all parts subordinate to the whole.⁴³⁰ In addition, according to the Puritan creed, the natural man was indeed bound in slavery to sin and unable to make exertions towards his own salvation; but the man into whose soul grace had been infused was liberated from that bondage and made free to undertake the responsibilities and obligations of virtue and decency.⁴³¹ In other words grace is primary and from grace arises the freedom of abiding by responsibilities and obligations. The New England divines had as an important addition to the original theory of Calvinism, the statement of the relationship between the elect and God in the form of a covenant. In their view, when a man received the spirit of God, he availed himself of his liberty to enter a compact with the Deity, promising to abide by God's laws and to fulfill God's will to the best of his ability. In turn God guaranteed him redemption – "A regenerate man was thus by definition committed by his own plighted word to God's cause, not only in his personal life and behavior, but in church affairs and in society ... And God commands certain things for the group as a whole as well as for each individual."⁴³²

The governors are elected by the people, but elected into an office which has been established by God. God engenders the society by acting through the people, as in nature He secures His effects by guiding secondary causes; the collective will of regenerate men, bound together by the social compact, projects and continues the will of God into the state. As John Davenport expressed it, 'In regular actings of the creature, God is the first Agent; there are not two several and distinct actings, one of God, another of the People: but in one and the same action, God, by the Peoples suffrages, makes such an one Governor, or Magistrate, and not another.' So, when men have made a covenant with God they have thereby promised Him, in the very terms of that agreement, to compact

of theologians like Rutherford ... Human agency, for preachers like Rutherford, was always a result of divine predetermination ..."

⁴³⁰ Miller and Johnson, *The Puritans. A sourcebook of their writings*, 183.

⁴³¹ *Ibid.*, 188.

⁴³² *Ibid.*, 189.

among themselves in order to form a holy state in which His discipline will be practiced. As one of the ministers phrased it, ‘Where the Lord sets himselfe over a people, he frames them unto a willing and voluntary subjection unto him, that they desire nothing more then to be under his government ... When the Lord is in Covenant with a people, they follow him not forcedly, but as farre as they are sanctified by grace, they submit willingly to his regiment’.⁴³³

Rutherford forms an important facet in the confirmation and development of covenantal thought. The covenant as a bilateral and mutual structure was to Rutherford of great importance, a structure in which the community, under leadership of the ruler is obligated to fulfill the covenantal conditions as prescribed by the Divine Will. Embedded in the principle of God’s divine and absolute sovereignty in the formation of all events (excluding sin) throughout history, is found the political and jurisprudential-relevant Scriptural emphasis on the covenant between God and community, where the latter is both obligated and responsible for the accomplishment of the Scripturally devised conditions directed at it. This has important implications for theories such as the status of God’s Law, the status of the community as a political body (which in turn has consequences concerning themes such as sovereignty and the separation of powers) and theories on resistance (in a political and jurisprudential context). It is also clear that Rutherford forms part of a tradition emanating from Bullinger, and firmly established by writers such as Knox, Mornay and Althusius, who

⁴³³ Ibid., 190. In fact the idea of the covenant as a bilateral, mutual and conditional relationship within God’s absolute predestination in the context of theologico-political federalism can be explained along parallel theological insights by referring to the Puritan theological understanding concerning the covenant of grace and the saving work of Christ, which in turn is grounded in God’s sovereign good pleasure and love in eternal election. In this regard, Beeke states that assurance flows out of the certainty that God will not disinherit His adopted children; His covenant cannot be broken, for it is fixed in His eternal decree and promises, Joel R. Beeke, *The Quest for Full Assurance. The Legacy of Calvin and his Successors*, (The Banner of Truth Trust, 1999), 116. Beeke refers to Perry Miller who stated: “The end of the Covenant of Grace is to give security to the transactions between God and men, for by binding God to the terms, it binds Him to save those who make good the terms”, von Rohr adding to this that Miller overlooked the Puritan teaching that the ultimate security of the covenant rests in the one-sided action of God’s sovereign grace, von Rohr explaining: “The Covenant of Grace is both conditional and absolute. Faith is required as a condition within it antecedent to salvation, but that very faith is already granted by it as a gift consequent of election...”, *ibid.*, 116 – 117. It is in this context that theological-political federalism must be understood, accommodating the political responsibility of the community, yet maintaining the primacy of God’s sovereignty. In this regard, the contribution by the Puritans concerning personal salvation also points to a covenantal approach similar to that of the Christian Community as postulated by theologico-political federalism. The Puritan theorists worked out a substantial addition to the theology of Calvinism which in New England was quite as important as the original doctrine. Embedded in the term “Covenant Theology” or the “Federal Theology”, the Puritans held that after the fall of man, God voluntarily condescended to treat with man as with an *equal* and to draw up a *covenant* or *contract* with His creature in which He laid down the *terms* and *conditions* of salvation, and pledged himself to abide by them – “The covenant did not alter the fact that those only are saved upon whom God sheds His grace, but it made very clear and reasonable how and why certain men are selected, and prescribed the conditions under which they might reach a fair assurance of their own standing”, “Introduction” in *The Puritans. A sourcebook of their writings*, 57 – 58.

have contributed much to clarifying and justifying the importance of covenantal thought for political and jurisprudential theory.

CHAPTER 3

Samuel Rutherford on the Conditions of the Covenant: The Office of Magistracy and the Law

1. Introduction

The idea of the Biblical covenant from Heinrich Bullinger through to Philippe DuPlessis-Mornay, Johannes Althusius and Samuel Rutherford (and even John Knox), contains a particular content that concerns the covenantal functions of the magistrate. These functions form an integral part of the substance of the covenantal thought concerning God, the king and the people, and it is these functions that assist in the identification and recognition of the covenant obligations and responsibilities to be exercised, not only by government, but also by the governed. The covenantal relationship between God on the one hand, and the king and people on the other, implies that the king, as well as the people, are obligated to exercise certain functions in order to maintain the mutual and bilateral relationship between God and the Christian nation properly. In addition, the covenantal relationship between the king and the people implies that both these parties must adhere to their respective obligations and responsibilities in order to maintain a political and jurisprudential relationship properly in which God finds favor. This chapter deals with the functions of the king and it is these functions that form the conditions of the covenant between God and the government, as well as the covenant between the government and the governed. It is within the context of these functions that the covenantal relationship between God and the government, and that between the government and the governed, comes to fruition.

It is also clear that the line connecting the theologico-political federalists, exhibits a common reference pertaining to the office of magistracy, providing a distinction between the ruler as a person and his functions and obligations. For covenantal thought this is most important as the office of magistracy implies a condition and responsibility that lies on the shoulders of the magistrate. The office of magistracy therefore forms part of the covenant and contains the blueprint of what is expected for the maintenance and success of the covenant between God and ruler. From this flows the functions of the magistrate first and fore mostly to God and then to the people; the office of magistracy being synonymous with the various functions to be attributed to the office per se.

Emanating from this analysis of the functions, obligations and responsibilities of the office of the magistrate, is the proper relationship between government (from which emanates the office of the ruler and the church (as visible institution and from which emanates the office of the minister). The identification of the functions of the government necessitates clarity concerning the areas of “functional jurisdiction” of the office of the ruler on the one hand, and the office of the minister (or pastor) on the other. This determination of the relationship between the government and the church is of the utmost importance and forms an integral part of any Christian understanding on politics and jurisprudence. Issues such as the degree of interference (if any) of the ruler in ecclesiastical matters, as well as the jurisdiction of the minister in matters beyond that of the ecclesiastical sphere, are essential in any nation to be governed according to Biblical standards. This also clarifies and removes to a large extent doubt concerning the covenantal conditions to be performed by the magistrate appointed to the office of magistracy. Hetherington states that during the early ages of Christianity the only relationship in which the civil magistrate and the church stood towards each other, was the relationship between persecutors and the persecuted. Eventually, when Constantine initiated the cessation of persecution, the more friendly relation of granting and receiving protection became that between the State and Church. Unfortunately Prelacy lead to the domination over what it regarded as the inferior orders of the clergy, and over the people, and to arrogate to itself exemption from the control of the civil magistrate, even in civil matters. A protracted struggle ensued between the imperial and royal powers and the Bishop of Rome, the issue of which was, not merely an exemption of ecclesiastical matters from civil authority, but the establishment of a supremacy over civil rulers and civil matters wielded by the Romish hierarchy, forming a complete and spiritual despotism.⁴³⁴

It was this despotism that was overthrown by the Reformation and the prominent Christian divines by whose instrumentality the Reformation was affected, which more or less clearly indicated their judgment that the two jurisdictions, civil and ecclesiastical, ought to be, and ought to remain co-ordinate and distinct, mutually supporting and supported. However each ought to abstain from interference with the other’s intrinsic and inherent rights, privileges, and powers.⁴³⁵ Hetherington adds: “In some countries this high and true story was clearly developed, in others more obscurely, and in some not at all. In no part of Reformed Christendom was it so distinctly stated, and so fully realized, as in Scotland; and nowhere

⁴³⁴ William M. Hetherington, *History of the Westminster Assembly of Divines*, Reprint (reprint of the third edition, 1856, Edmonton: Still Waters Revival Books, 1991), 286.

⁴³⁵ *Ibid.*, 286 – 287.

was it so thoroughly rejected as in England.”⁴³⁶ From this it can be deduced that Rutherford’s contribution to this theory concerning the relationship between Church and State formed an integral part of the Reformed doctrine concerning such a relationship. This will be confirmed below, as well as the contributions of the theologico-political federalists in this regard.

2. The Office of Magistracy

2.1 Introduction

Huldrych Zwingli was an important exponent of the office of magistracy in Reformed thought at the dawn of the sixteenth century, and who hereby emphasized the distinction between the ruler as a private person and a person holding office.⁴³⁷ According to Zwingli’s theocratic views, both magistracy and the office of preaching serve the kingly rule of Christ – they are mutually involved because of their common service. The offices of magistracy and preacher are both subject to the law of God and as such both have to apply God’s precepts to the Christian community in their functions of governing.⁴³⁸ A few decades later Bullinger also postulated this concept, and in his *Decades* stated that God is good, and his purpose is directed to the well-being and preservation of men, and that this entails that a distinction be made between the office which is the good ordinance of God, and the evil (sinful) person who executes that good office. The same approach is to be found in Calvin’s views on magistracy being ordained by God, who has entrusted to magistrates the business of serving him in their office.⁴³⁹ Therefore, by office of magistrate, is implied an ordinance which is instituted by God and bearing a holy nature that cannot be equated with the sinful nature of the person of the magistrate. This understanding of the office of the ruler is important in Reformed thought pertaining to resistance theory and its justification, which will be discussed later.

Submerging into a more refined investigation concerning a better understanding of the term “office”, H Evan Runner states:

⁴³⁶ Ibid., 287.

⁴³⁷ Andries W. G. Raath and Shaun A. de Freitas, “Calling and Resistance: Huldrych Zwingli’s (1484-1531) political theology and his legacy of resistance to tyranny”, *Koers*, 66 (1), (2002), 52.

⁴³⁸ Ibid., 50.

⁴³⁹ Ibid., 56 – 57.

Office means therefore limitation; for the person in office is not himself The Sovereign, but stands under the absolutely sovereign authority. We conclude that office expresses the fact that man is placed to a certain task with a divine calling to perform it. It is the familiar idea of the cultural mandate. How better could one express the scriptural revelation that all our life is religion, a single hearted service of God in the whole of the creation. For that reason the concept of office is close to that of the fear of the Lord, in fact, to that of faith and of being a child of God ... Office is not merely service; it is also administration: it is service of God and an administering of God's love and solicitude to the creature at the same time. Office as administration (preserving and orderly form-giving) includes the idea that the future weal or woe of what is being administered depends upon whether the office-bearer does or does not serve God. Scripture speaks of a number of such offices that are both service and administration: of prophet, teacher, priest, judge, king, father, husband etc. The authority of a father over his children does not really lie in his having begotten them but in his having been charged by God himself with that responsibility. This is a divine ordinance. And that is what is meant by office.⁴⁴⁰

Raath states that the application of this to governmental authority, entails that authority (as one person having a say over one (or more) person(s) in the state as community sphere) does not find its basis in man, but in the nature, vertical structure and the destination of the government as a covenantal structure; it is a fundamental principle of the arrangement of order without which the state (government) cannot function. It further implies that the covenantal office of government is in its ultimate capacity an image of the absolute covenantal authority of God; that the person in governmental authority exercises his covenantal authority on behalf of God, as servant of the Almighty, who does not receive his authority from the subjects, but from his covenantal office as determined by God, and who is accountable to God for his covenantal service or covenantal neglect.⁴⁴¹ Flinn states that with this doctrine of office of the ruler, some of the problems of the secular consent theories are immediately removed. Flinn explains this by stating that one does not call upon either citizens or rulers to act selflessly for an amorphous "good of the community": one calls upon

⁴⁴⁰ Andries W. G. Raath, Deel II: "Staats- en regsfilosofiese oopheidsperspektiewe" (Open constitutional- and jurisprudential perspectives), *Journal for Juridical Science*, 22 (1), (1997), 60 – 61.

⁴⁴¹ *Ibid.*, 61. In this regard, Raath adds that it is precisely because of this understanding that those constitutional theories on the authority that supports the idea of subjects as a mere substance of the community and who transfer their authority to the government, must be rejected. Both government and subject are subordinate to God's Will and authority (which forms the content of the office of magistracy), *ibid.*

rulers to be God's deputies on earth.⁴⁴² Although the concept of the office of the ruler did not originate in the thought of theologico-political federalism, much can be attributed to theologico-political federalism as a developing and enriching agent of this concept.

2.2 Samuel Rutherford

Throughout *Lex, Rex*, Rutherford emphasizes the importance of the office of the magistrate. He states that the kingly office itself comes from God.⁴⁴³ Concerning the election of the king by the people, Rutherford refers to Lavater and states that God, by an immediate oracle from heaven, appoints the office of a king; not immediately designing the man, but only marks him out to the people as one who is fitting to such a position.⁴⁴⁴ As will later be confirmed, Rutherford understands the office of the king as absolutely established by God. To Rutherford the magistrate as magistrate is good in the nature of the ruling office and the intrinsic end of his office,⁴⁴⁵ hereby hinting at the distinction between the office of the magistrate (which is synonymous to the Divine Will on governmental matters), and the person of the ruler (who does not necessarily act in accordance with the Divine Will on related matters. According to Rutherford, a king, as a king, and by virtue of his royal office, is the father of the kingdom, a tutor, a defender, a protector, a shield, a leader, a shepherd, a husband, a patron, a watchman, a keeper of the people over which he is king, and so the office essentially includes acts of fatherly affection, care, love and kindness, to those over whom he is placed.⁴⁴⁶ The king is bound in covenant to the estates as a king and not simply as a man.⁴⁴⁷ Kings are fathers metaphorically and not formally, by office, because they should care for their subjects as fathers do for children, and so come under the name of fathers as in the fifth commandment.⁴⁴⁸ The king has the trust of preserving life and fostering religion, and has both Tables of the law in his custody, *ex officio*, to see that other men than himself keep the law.⁴⁴⁹ According to Rutherford, the king is obliged by his office to give his life for the safety of his people and is no more than a royal servant tending *ex officio* to preserve the

⁴⁴² Richard Flinn, "Samuel Rutherford and Puritan Political Theory", *The Journal of Christian Reconstruction*, (Chalcedon Foundation, 1978-9), 61.

⁴⁴³ Samuel Rutherford, *Lex, Rex*, 6, column 1 (6 (1)).

⁴⁴⁴ *Ibid.*, 7 (2) – 8 (1).

⁴⁴⁵ *Ibid.*, 34 (1).

⁴⁴⁶ *Ibid.*, 47 (2).

⁴⁴⁷ *Ibid.*, 56 (2). In this context the "king as king" means the office of the king and not the person of the king.

⁴⁴⁸ *Ibid.*, 62 (1) – 62 (2).

⁴⁴⁹ *Ibid.*, 72 (1).

people, a gift of God given by virtue of his office to rule the people of God.⁴⁵⁰ The king, as a man will die, but the king, as the office of a king is essential to the safety and for the good of the people⁴⁵¹, and whose genuine end is by office, *custos utriusque tabulae*, the preservation of the law against violence and the defense of the subjects.⁴⁵² To Rutherford, the king who by his office destroys, is a curse and will face judgment⁴⁵³, and what kings do by virtue of their royal office, they do *ex debito officii*, i.e. by debt and right of their office; and that they cannot but do, it not being arbitrary to them to do the debtful acts of their office.⁴⁵⁴ The king is a minister by office, and one who receives honor and wages for such work, so that, *ex officio*, he may feed his people.⁴⁵⁵ He keeps laws by office and is a means to preserving law. Rutherford emphasizes that the king may not, by way of his office, buy and not pay; promise and vow and swear to men, and not perform, nor be obliged to men to render a reckoning of his oath, and kill and destroy.⁴⁵⁶ The office of the inferior judges is also emphasized by Rutherford, and forms an essential part of the office of magistracy in general. In this regard Rutherford states that inferior judges are no less essentially judges than the king and so by office must interpret the law.⁴⁵⁷

According to Rutherford, the distinction between the king *in concreto*, the man who is king, and the king *in abstracto*, the royal office of the king is qualified in Romans 13.⁴⁵⁸ In respect of his office, the lawful ruler is not a terror to good works, but to evil. In so far as the king does things contrary to his office, he may be resisted.⁴⁵⁹ Rutherford also states that the intrinsic end of the king's office is that he bear God's sword as an avenger to execute wrath on he who is evil. The man may be resisted, the office not. According to Rutherford the people must be subject to the royal office by reason of the fifth commandment. Paul (Romans 13) forbids the resistance of the power *in abstracto*; it must be the person of the king, *in*

⁴⁵⁰ Ibid., 79 (1) – 79 (2).

⁴⁵¹ Ibid., 83 (1). This indicates that the king as king (the king's office) is separate from the king as person, the former being of continuous character.

⁴⁵² Ibid., 103 (2).

⁴⁵³ Ibid., 104 (2).

⁴⁵⁴ Ibid., 107 (1).

⁴⁵⁵ Ibid., 120 (1).

⁴⁵⁶ Ibid., 129 (1).

⁴⁵⁷ Ibid., 137 (1).

⁴⁵⁸ Ibid., 143 (2). Flinn comments that whereas Deuteronomy 17 is the most frequently quoted passage of Scripture in *Lex, Rex*, it is followed in only slightly less frequency by references to Romans 13: 1-6. This is most significant, for it proves beyond doubt that Rutherford believed that there is continuity throughout history of the divine prescriptions for civil government and the civil magistrate. Flinn adds that the doctrine of Romans 13 does not abrogate the Old Testament stipulations for government, but ratifies them and builds upon them, *ibid.*, 73. From this it can be deduced that (according to Rutherford) the basic requirements and functions of the office of the civil magistrate in the Old Testament continues to the present, Flinn, "Samuel Rutherford and Puritan Political Theory", 72 – 73.

⁴⁵⁹ Rutherford, *Lex, Rex*, 145 (1).

concreto, that must be resisted.⁴⁶⁰ This also implies that the office of the magistrate is linked to power and is synonymous to the Divine Will. Once the ruler diverges from the Divine Will there is no more power, only the person of the ruler and his sinful nature is left. The distinction between the office of the king and the person of the king is indirectly emphasized by Rutherford when referring to a letter by the congregation to the nobility (Knox, History Of Scotland, 1.2) said:

There is great difference betwixt the authority, which is God's ordinance, and the persons of those who are placed in authority. The authority and God's ordinance can never do wrong, for it commandeth that vice and wicked men be punished, and virtue, with virtuous and just men, be maintained; but the corrupt person placed in this authority may offend, and most commonly do contrary to this authority.⁴⁶¹

Rutherford emphasizes the law of God as a condition of the office of the ruler – the king, as king is by office a living and breathing law.⁴⁶² The person of the prince is the object of the people's obedience, but not because he is a man, or a person simply, or a sword-bearer of papists, but for his office: for that eminent place of royal dignity that God has conferred on his person.⁴⁶³ This implies that the people are in covenant with the king so far as the king rules according to God's law. According to Rutherford, unjust violence from a ruler is a special kind of sin of injustice against his office,⁴⁶⁴ Rutherford hereby implies that the office of the king does not act contrary to God's will. The office of the king essentially implies that all the power of the sword that he has be invested for the peoples' safety,⁴⁶⁵ and the king has a duty by way of his office to rise against any offence directed against his kingdom.⁴⁶⁶ The king is not obliged to govern because he receives royal privileges as a reward, but by office he is obliged to govern the commonwealth.⁴⁶⁷ Every office requires essentially a duty to be performed by the person in that office, and where there is a duty to be performed there is some obligation – if it be a politic duty it is a politic obligation.⁴⁶⁸ From this it may be implied that Rutherford is emphasizing that, inherent to the office of the ruler, is a covenantal

⁴⁶⁰ Ibid., 145 (2).

⁴⁶¹ Ibid., 146 (1).

⁴⁶² Ibid.

⁴⁶³ Ibid., 148 (2).

⁴⁶⁴ Ibid., 164 (2).

⁴⁶⁵ Ibid., 184 (2).

⁴⁶⁶ Ibid., 185 (1).

⁴⁶⁷ Ibid., 193 (2).

⁴⁶⁸ Ibid., 198 (1).

duty and responsibility on the part of the ruler. Rutherford adds that the ruler's function is for the praise of well-doing by virtue of his office, and he must therefore oppose and punish evil, especially that which is injurious to Christian societies.⁴⁶⁹

Consequently it is clear that Rutherford views the ruler as bound to a certain office, an office that carries with it certain obligations such as the preservation and the safety of the people. This entails a separation between the office of the ruler and the person of the ruler. Everything that the ruler does in fulfillment of God's law is synonymous to the office of the ruler, everything contrary thereto falls under the responsibility of the person of the ruler. The proper functioning of the office of the ruler is the fulfillment of the covenantal conditions in the covenant between God and king, and in the covenant between the king and the people. By the creation of the office of the ruler a conditional measure is established by which rulers have to rule regardless of the person or persons occupying such a position. In this regard, the office of the ruler entails more than the mere preservation and protection of the people. In fact, Rutherford's contribution in 17th-century Scotland concerning the distinction between the ruler as a person and the office of the ruler, could be viewed as a continuation of what Knox, in the latter half of 16th-century Scotland, postulated in this regard – a distinction which was used to advantage in justifying the deposition of Mary of Guise in 1559, and which Knox defended at length in the General Assembly of 1564.⁴⁷⁰

Tuck makes an important observation concerning the understanding of the office of the king by the Presbyterians, including among others, Rutherford (and in this they differed from the royalists), stating that according to the Presbyterians, the developed social forms of *dominium* (such as government) were constituted (formed or composed) by God as correlatives of his commandments, and in particular the commandments to punish evil-doers and to honor parents (the Fifth Commandment). This approach was unlike the natural law theorists (from Grotius onwards) who believed that any form of *dominium* was constituted by a transfer by humans of their own natural rights of *dominium* over themselves and alien objects.⁴⁷¹ In this regard, Rutherford accepted that the power of government was a separate kind of thing, given to mankind by God, *and not created by them through transfer of right* – “God and nature

⁴⁶⁹ Samuel Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, (London: Printed by R.I. for Andrew Crook, 1649), 146. Also cf. *ibid.*, 147, Rutherford stating that the magistrate by his office is to take care that the people do not serve God according to what seems good to their own conscience.

⁴⁷⁰ Roger A. Mason, “Knox, Resistance and the Moral Imperative”, *History of Political Thought*, Vol. 1 No. 3., December (1980), 428.

⁴⁷¹ Richard Tuck, *Natural Rights Theories. Their origin and development*, (Cambridge: Cambridge University Press, 1979), 144.

intendeth the policie and peace of mankinde, then must God and nature have given to mankinde, a power to compasse this end; and this must be a power of *Government*.”⁴⁷² In other words, the *office* of the ruler is, according to Rutherford equal to the *power* of the ruler, and both are given by God and not devised by man, and the limits of such an office or power is the Divine Law (which also entails the punishment of evil-doers). Contrary to the natural law theorists, this power (or office) of government is not devised (invented) by man, but by God (it is ordained or designed by God), and “it is from the people onely by a virtuall emanation, in respect that a community having no Government at all, may ordain a King, or appoint an Aristocracie.”⁴⁷³ In other words, the people play an active role in the election of the government (for example the people will determine which person will occupy the office of the ruler and execute the power emanating from such an office), hereby determining a specific form of the government, which is brought into action by the people. It is therefore, unlike the natural law theorists, not a matter where the people merely transfer their right of rule (over each of themselves) to an entity in the form of the king or government;⁴⁷⁴ and therefore emphasizes the human element as a source of power. It is interesting to note that both the office of the king as well as the people as a whole have an inherent power, and just as the power emanating from the office of the magistrate is ordained by God, so also the power emanating from the people collectively is a power ordained by God. Flinn also provides added insight, stating that the Biblical perspective calls for a careful distinction between the *institution* (office or power) of civil government and its *form* at any particular time, as well as the relationship between *direct* and *indirect* actions from God concerning the institution and form of government.⁴⁷⁵ The institution of civil government has been directly instituted by God, while the particular form (whether this or that type of government be applicable – in other words either monarchy, aristocracy, mixed monarchy or a democracy; or whether this or that person should be king) that such a government may take is indirectly determined by God via a secondary cause, which is the people as a whole; and which concerns the election of the supreme ruler. Also, because governments are ordained (ordered, commanded, established) by God, people are obliged to obey them, and this according to Flinn, is to Rutherford the foundation of civil government.⁴⁷⁶

⁴⁷² Ibid., 145.

⁴⁷³ Ibid.

⁴⁷⁴ The people also play an active role in a continuous observation of the government’s functioning, the people having the power to resist in instances of serious transgressions by the office of the government – This aspect will be discussed below, in the context of resistance to tyranny. This approach by Rutherford (and other Presbyterians) concerning the office and power of the king (or government) is also relevant concerning theories on the election of the king and resistance, which is also discussed below.

⁴⁷⁵ Flinn, “Rutherford and Puritan Political Theory”, 58.

⁴⁷⁶ Ibid.

A similar approach is found in the political theory of Knox. Knox's distinction between the person of the ruler and the office of the ruler came to the fore in his theory on resistance. Mason states:

While, therefore, the office of kingship was divinely ordained and unchallengeable, the person of the king was liable to imperfection and error and might prove unworthy of the office he held. In that case, Knox went on to argue, he might justly be resisted and even, should his sins merit it, be put to death. While permitting the deposition of an ungodly ruler, therefore, Knox's distinction retained intact the principle – indeed, divine ordinance – of obedience to the royal office and its potentially godly occupants. Such a resolution of the problem of obedience was of paramount importance to the preacher for on it, he believed, depended the correct functioning of a godly commonwealth.⁴⁷⁷

Mason refers to the fact that for Knox and 16th-century reformed political thought, the idea of an inferior magistracy did not solve the conundrum situated in Romans 13; for while it created a magistracy ordained by God to defend the elect from persecution, it also created a plurality of powers to each and to all of whom obedience was theoretically due. Mason adds that this was an absurdity when divinely ordained magistrates were in arms against a divinely ordained prince and both were demanding obedience in accordance with the divine will.⁴⁷⁸

Mason states:

But how was this contradiction to be resolved without denying the Pauline maxim that *all* the powers were ordained by God and should not be resisted? Knox had, in fact, indicated the way out of this dilemma in his *Appellation* where, in arguing the necessity of obedience to a prince's just commands and of opposition to his 'blind rage', he had made an implicit distinction between a prince acting according to God's ordinance (godly magistrate) and a prince acting, as it were, *ultra vires*. He had distinguished, in other words, between the power and had argued that, if the latter failed to discharge his divinely appointed office, he might not only be disobeyed, but also resisted by force.⁴⁷⁹

⁴⁷⁷ Mason, "Knox, Resistance and the Moral Imperative", 428.

⁴⁷⁸ Roger Mason, "Covenant and Commonweal: The language of politics in Reformed Scotland", *Church, politics and the society: Scotland, 1408-1929* (edited by Norman MacDougall, 1983), 102.

⁴⁷⁹ *Ibid.*, 102 – 103.

Do the other federalists have the same understanding concerning the office of the ruler? DuPlessis-Mornay refers to a lesser degree to the office of the ruler. In his, *A Defence of Liberty Against Tyrants*, Mornay refers to the office of kings when stating that all kings are the vassals of the King of kings and are invested into their office by the sword to the end that they maintain the law of God.⁴⁸⁰ In addition, Mornay states that the kingly duty to speak properly, is not a title of honor, but a weighty and burdensome office.⁴⁸¹ In his referral to the German understanding of the duty of the king, Mornay states that they emphasized that the duty of a king consists of an office of a weighty charge and continual care.⁴⁸² In the words of Mornay: "... the name of a king signifies not an inheritance, nor a propriety, nor a usufruct, but a charge, office, and procuration."⁴⁸³

2.3 Johannes Althusius

Johannes Althusius refers to the office of magistracy on numerous occasions in his *Politics*. He states that it pertains to the office of a governor to preserve something and to lead it to its end.⁴⁸⁴ In his discussion concerning the city, Althusius refers to the office of the superior to which the oath of fidelity to certain articles in which the functions of his office are contained stands as a surety to the appointing community, and so these general administrators of the community can never be removed from office by the city. According to Althusius, the superior of the city – consisting of one or more persons – continues to perform the office throughout changes in personnel. Then there is the office of the senatorial collegium and the office of the leader of the senate or the consul, the latter office having the power of, amongst others, calling the senate into session and the power of referring and proposing business to it.⁴⁸⁵ The senatorial collegium of the city also carries with it the responsibility for, and assignment of, public duties and offices.⁴⁸⁶

⁴⁸⁰ Philippe DuPlessis-Mornay, *A Defence of Liberty Against Tyrants*, (A translation of the *Vindiciae Contra Tyrannos* with a historical introduction by Harold J. Laski, London: G. Bell and Sons, Ltd., 1924), 72 – 73.

⁴⁸¹ *Ibid.*, 140.

⁴⁸² *Ibid.*, 142.

⁴⁸³ *Ibid.*, 170.

⁴⁸⁴ Frederick S. Carney, *The Politics of Johannes Althusius*, (An abridged translation by Frederick S. Carney of the third edition of Johannes Althusius's *Politica Methodice Digesta Atque Exemplis Sacris et Profanus*, including the prefaces of the first and third edition and with a preface by C.J. Friedrich, London: Eyre and Spottiswoode, 1964), 15 – 16.

⁴⁸⁵ *Ibid.*, 35 – 37.

⁴⁸⁶ *Ibid.*, 45.

Althusius rejects Bodin's view that the ruler ought not to subordinate his imperium and high office to civil law.⁴⁸⁷ In fact, the rulers and public administrators can also be corrected in office by the fear of these assemblies in which the complaints of all are freely heard.⁴⁸⁸ The public ministers are bound by oath of office to the realm and the electors obligate these ministers to the realm by oath of office.⁴⁸⁹ The power of administering the rights of the realm originates in the election of these ministers and in their undertaking the office entrusted to them.⁴⁹⁰ According to Althusius, the ephori (including patricians, elders, princes, estates, first citizens of the realm, officials of the realm, protectors of the covenant entered into between the supreme magistrate and the people, custodians and defenders of justice and law to which they subject the supreme magistrate and compel him to obey, censors of the supreme magistrate, inspectors, counselors of the realm, censors of royal honor and brothers of the supreme magistrate), who by reason of their excellence and the office entrusted to them must restrain the supreme magistrate from acting beyond the limits of his office.⁴⁹¹ The ephori commit themselves to perform the functions of the office entrusted to them faithfully and diligently and the collegium of ephori proceeds with all things according to the regular procedure of office.⁴⁹² Althusius emphasizes that the office of the ephori can only be fulfilled by the ephori executing the specific duties entrusted to them.⁴⁹³ The office of the ephori is not only to judge whether the supreme magistrate has performed his responsibility or not, but also to resist and impede the tyranny of a supreme magistrate who abuses the rights of sovereignty.⁴⁹⁴ Barclay's example that the cardinals constitute a pope above them, priests a bishop above them, and monks an abbot above them, means that the former is inferior in power and authority to the latter, is met with resistance by Althusius who answers by asking what would happen if the pope, bishop or abbot should become unfit or untrustworthy in office. Althusius adds that when the office and administration of the king is considered, one finds that their nature and constitution are not unlike those of ecclesiastical overseers.⁴⁹⁵ Althusius also refers to temporary, as opposed to permanent ephori, and the former perform their office for a prescribed time only after which they lay it aside.⁴⁹⁶

⁴⁸⁷ *Ibid.*, 67.

⁴⁸⁸ *Ibid.*, 86.

⁴⁸⁹ *Ibid.*, 87 – 88.

⁴⁹⁰ *Ibid.*, 92.

⁴⁹¹ *Ibid.*, xxv, 94, 98, 103.

⁴⁹² *Ibid.*, 97.

⁴⁹³ *Ibid.*, 98.

⁴⁹⁴ *Ibid.*, 101.

⁴⁹⁵ *Ibid.*, 108 – 109.

⁴⁹⁶ *Ibid.*, 110.

Regarding the election of the supreme magistrate, Althusius makes it clear that there must be regard for piety and virtue in the election to this indispensable office. The promise of obedience and compliance that follows the election and inauguration of the supreme magistrate by the members of the realm is made to the magistrate who is about to undertake his office.⁴⁹⁷ The life of the magistrate does not take away his office and whoever disparages the magistrate scorns God.⁴⁹⁸ According to Althusius, if the supreme magistrate does not keep his pledged word, he loses the right to exact them justly and he ought to be removed from office.⁴⁹⁹ It is by political understanding that a magistrate grasps that which he ought to do by reason of his office.⁵⁰⁰ Counselors, who are faithful and skilful persons who supply helpful advice to the supreme magistrate, are selected with a commendation and a warning which is in anticipation of the rewards he ought to expect if he performs his office well.⁵⁰¹ Concerning the ecclesiastical duties, more specifically the constituting of the ministry for the teaching of the true knowledge of God, Althusius states that the first office of the supreme magistrate is to create a system of penalties concerning the true acknowledgement and worship of God according to sacred scripture. The fifth office of the supreme magistrate in the ecclesiastical administration is that he must provide that the ministers rightly administer and dispense the sacraments or tokens of faith.⁵⁰² The office of the magistrate entails administering the means for conserving justice, peace, concord and discipline among the subjects and inhabitants.⁵⁰³ Maintenance suitable to, among others, the magistrate's office requires expenses for food, fine and distinguished clothes, and for the employment of servants and attendants.⁵⁰⁴ The office of the ruler also clearly comes to the fore in Althusius's discussion concerning tyranny and its remedies. He states that it is not proper to call a ruler a tyrant when he has failed only in some part of his office, taking into consideration that even the best at some time or other are weak in the performance of their offices.⁵⁰⁵ According to Althusius, tyranny is firmly entrenched when the magistrate, after having been reprimanded and warned by the optimates without effect or correction in the performance of his office, still does not cease from tyranny. In such an instance the optimates can remove such a person from office.⁵⁰⁶

⁴⁹⁷ *Ibid.*, 128.

⁴⁹⁸ *Ibid.*

⁴⁹⁹ *Ibid.*, 129.

⁵⁰⁰ *Ibid.*, 132.

⁵⁰¹ *Ibid.*, 152.

⁵⁰² *Ibid.*, 160 – 161.

⁵⁰³ *Ibid.*, 177.

⁵⁰⁴ *Ibid.*, 184.

⁵⁰⁵ *Ibid.*, 185.

⁵⁰⁶ *Ibid.*, 189 – 190.

Althusius's approach to the office of the ruler or supreme magistrate is therefore clear and he also applies this term to those persons serving a governmental function such as the superior of the city, the senatorial collegium and the ephori. Althusius also refers to "office" as denoting other sectors of rule besides that of governmental offices. The references to ecclesiastical offices also appear in his *Politics*.⁵⁰⁷ To Althusius therefore, the office of the king, supreme magistrate, ruler, ephor, minister, bishop and senatorial collegium is important.

2.4 Heinrich Bullinger

The concept of "office" is also not foreign to Bullinger. Bullinger emphasizes that the magistrate's office is ordained of God for men's commodity. For the excellence of their office, which is most necessary, God attributes to the magistrate the use of his own name, and calls the princes and senators of the people gods, to the intent that they, by the very name, should be put in mind of their duty, and that the subjects might thereby learn to have them in reverence.⁵⁰⁸ Bullinger, in his *Decades*, makes it known that he was ashamed to compare the holy office of magistrates in those people that flee from the labor and ordinance that God has made profitable for their people and countrymen. According to Bullinger, if the prince does faithfully discharge his office in the commonwealth, he will receive lots of good works and praises.⁵⁰⁹ In the words of Bullinger:

Magistratus (which word we use for the room wherein the magistrate is) doth take the name *a magistris populi designandis*, 'of assigning the masters, guiders,

⁵⁰⁷ The ecclesiastical order of the province has an office entrusted to it, cf. *ibid.*, 50; the presbyters and bishops have an office which entails the observance that the ministers perform their duties, cf. *ibid.*, 51; the church acknowledges his calling and ministry, and in its presence he is reminded of the parts of his office, cf. *ibid.*, 53; the minister takes an oath to the magistrate that he will faithfully and diligently execute the office laid on him, cf., *ibid.*; persons commissioned by the magistrate from the presbytery must examine whether the pastor of the church fulfils his duties, cf. *ibid.*; the other ministers of the same diocese hold the bishop or inspector responsible for the faithful performance of his office, cf. *ibid.*, 55; the clergy (*personae ecclesiasticae*) are in charge of the execution and administration of ecclesiastical offices and the administration of the supreme magistrate directs the clergy as long as he enjoins them to perform the parts of their office according to the word of God, cf. *ibid.*, 155; it is the responsibility of the magistrate to remove bishops and pastors from their office where necessary, cf. *ibid.*, 161; the magistrate must see to it that the ecclesiastical ministers conducting the visitation duties perform their office well, cf. *ibid.*, 164; the magistrate must not permit heretics or atheists to be admitted to office in the church, cf. *ibid.*, 169.

⁵⁰⁸ Heinrich Bullinger, *The Decades of Henry Bullinger*, 4 volumes (translated by H. I. and edited for the Parker Society by Thomas Harding, Cambridge: Cambridge University Press, 1849-1852), the Second Decade of Sermons, 2: 279 (Decade 2, page 279).

⁵⁰⁹ *Ibid.*, 2: 280.

and captains of the people.’ That room and place is called by the name of ‘power’ or ‘authority’, by reason of the power that is given to it of God. It is called by the name of ‘domination’, for the dominion that the Lord doth grant it upon the earth. They are called princes that have that dominion: for they have a pre-eminence above the people. They are called consuls, of counselling; and kings, of commanding, ruling, and governing the people. So, then, the magistracy (that I may henceforth use this word of the magistrate’s power and place) is an office, and an action in executing of the same ... to execute the office of a magistrate, is a worship and service to God himself ... for the office of a magistrate is a thing most excellent, and abounding with all good works ...⁵¹⁰.

Bullinger adds that the magistrate’s office is good, holy, pleasing God, just, profitable, and necessary for men. The rulers who do rightly execute their office are the friends and worshippers of God and there is a difference between the office, which is the good ordinance of God, and the evil person that does not rightfully execute that good office.⁵¹¹ Bullinger refers to Nero, that whatever he did as king, contrary to the office of a good king, he did not of God, but of the devil.⁵¹² Concerning the election of the magistrate, Bullinger states that there is no one and certain rule in determining to whom such an office should belong,⁵¹³ adding that the office of a captain is to know how to set his army in order of battle.⁵¹⁴ The Lord removes many that are in office who desire riches and seek to increase their wealth by bribes.⁵¹⁵ He that is appointed to the office of magistracy must still be the first and the last, and always at one end in all matters of weight and public affairs.⁵¹⁶ According to Rutherford, the whole office of a magistrate seems to consist of three points namely: to order, to judge, and to punish. The care of religion especially belongs to the magistrate; and it is not in his power only, but his office and duty also.⁵¹⁷ Bullinger states that it appears that kings have, during his time, the same office that those ancient kings had in that congregation which they call the Jewish church.⁵¹⁸ Bullinger states that the church of Christ has several distinguished offices, and one must distinguish properly between the office of the king and the office of the

⁵¹⁰ Ibid., 2: 309.

⁵¹¹ Ibid., 2: 314.

⁵¹² Ibid., 2: 315.

⁵¹³ Ibid., 2: 318.

⁵¹⁴ Ibid., 2: 319.

⁵¹⁵ Ibid., 2: 320.

⁵¹⁶ Ibid., 2: 322.

⁵¹⁷ Ibid., 2: 323.

⁵¹⁸ Ibid., 2: 326.

priest.⁵¹⁹ It is the prince's office by compulsion to enforce the priests to live orderly according to their profession, and to determine in religion according to the word of God.⁵²⁰ There are certain laws that the magistrate mainly ought to use for the ordering and maintaining of honesty, justice, and public peace, according to his office.⁵²¹

Bullinger refers to two additional parts of the magistrate's office and duty (besides to order), that is, judgment and punishment. Judgment and punishment therefore are in the magistrate the most excellent offices. These two points require a man of courage, whom the Lord in his law describes as lively and tells what the office is whereto he is called.⁵²² In his *Decades* Bullinger refers to the office of the judge before referring to those references in Scriptures confirming such an office,⁵²³ and concerning the utterance of the holy prophet, Bullinger also refers to such an office,⁵²⁴ declaring what the judge's office is and what vices or diseases infect the judge so that he cannot fulfill his office as he ought to do. The office of a good judge is that he must hear everyone, and this must take place willingly, diligently and attentively. According to Bullinger, it is a vice which infects the mind of the judge to such an extent that he cannot execute his office, when he, in giving judgment does not give attention to the things themselves or on the causes or the circumstances of the causes, but rather accepts the faces or respect of the person(s) involved.⁵²⁵

Bullinger also refers to the gospel according to Luke⁵²⁶ where the Lord reprimands the young man who desired him to speak to his brother for an equal division of the inheritance between them. According to Bullinger the Lord blamed the young man because He thought that it was not his duty, but the judges' office, to deal in such cases.⁵²⁷ According to Bullinger, the third part of the magistrate's office and duty is that by his office he bears the sword and therefore is commanded by God to take revenge for the wrong done to the good and to punish the evil.⁵²⁸ Bullinger adds that if the blood of the guilty is not shed by the magistrate, then that is imputed as a fault and laid to the magistrate's charge; because he, neglecting his office, has pardoned them that were not worthy to be forgiven, and by letting them go has left the innocent

⁵¹⁹ Ibid., 2: 329.

⁵²⁰ Ibid., 2: 331.

⁵²¹ Ibid., 2: 341.

⁵²² Ibid., 2: 345 – 346.

⁵²³ Cf. *ibid.*, 2: 349.

⁵²⁴ Ibid., 2: 346, Deuteronomy 1: 16-17.

⁵²⁵ Cf. *ibid.*, 2: 346 – 348.

⁵²⁶ Ibid., 2: 350, Luke 12: 14.

⁵²⁷ Ibid.

⁵²⁸ Ibid., 2: 351 – 352.

unrevenged.⁵²⁹ Bullinger also states that if Paul had written to Sergius Paulus, or any lieutenant, he would undoubtedly have taught him his office; for the same Paul, standing before Sergius Paulus, then prince of Cyprus, did by his deeds declare to him the duty of a magistrate.⁵³⁰ Bullinger clearly distinguishes between the office of the king and the person of the king by stating:

But how do kings serve God in fear, but by forbidding and punishing with devout severity those things which are done against God's commandments? For in that he is a man, he serveth him one way; but in that he is a king, he serveth him another way: because in that he is a man, he serveth him by living faithfully; but in that he is a king, he serveth him by establishing convenient laws to command that which is just, and to forbid the contrary ...⁵³¹.

Contrary to the view of the Anabaptists, Bullinger states that Christian men may bear the office of a magistrate. A Christian refuses not the office of a magistrate, for the magistrate's office is to do judgment with justice, and to provide for public peace. Bullinger refers to the New Testament where certain noble men are well reported and who, when they were in authority, were not put beside their offices because they were Christians and of a sound religion.⁵³² According to Bullinger, a Christian man ought, out of duty, to take upon himself the office of a magistrate, if it be lawfully offered to him.⁵³³ Similar to Althusius and Rutherford, Bullinger emphasizes the ecclesiastical office in addition to the office of king, magistrate and judge.⁵³⁴

⁵²⁹ *Ibid.*, 2: 354.

⁵³⁰ *Ibid.*, 2: 362 – 363.

⁵³¹ *Ibid.*, 2: 367.

⁵³² *Ibid.*, 2: 385 – 386. Scriptural examples referred to by Bullinger are: Joseph of Arimathea, Mark 15: 43, Luke 23: 50-51; the Ethiopian treasurer, Acts 8; Cornelius the centurion, Acts 10; Erastus the chamberlain of Corinth, Romans 16 and 2 Timothy 4; also cf. *ibid.*, 2: 386 – 387. Bullinger adds, "But our desire is to have the Anabaptists prove and declare out of the scriptures that which they object here, in saying that these men, being once converted to the faith, did straightway put off their robes of estate, and lay aside their magistrate's sword. For we have a little before, by the words of St. Augustine upon John Baptist's answer, (who did himself also preach the gospel,) already proved, that the soldiers that were baptized were not put beside their office, nor commanded by John to give over armour and cease to be soldiers", cf. *ibid.*, 2: 387. Also further cf. *ibid.*

⁵³³ *Ibid.*, 2: 388.

⁵³⁴ Cf. *ibid.*, 2: 329, stating that the several offices of the magistrates and of the ministers must not be confounded. Also cf. *ibid.*, 2: 329 – 330, where Bullinger refers to the godly princes of Israel who disregarded false priests who neglected their offices, as well as Bullinger's reference to 2 Chronicles 8: 14, where it is stated that Solomon set the sorts of priests to their offices as David his father had ordered them. Furthermore, king Ezechias ordained sundry companies of priests and Levites, according to their sundry offices, every one according to his own ministry, *ibid.*, 2: 330. On *ibid.*, 2: 331, Bullinger makes it clear that the proper office of the priests is the determination of religion by evidence

It is therefore clear that the office of the ruler and his delegates such as the ephori and judges, was brought to the fore by these theologico-political federalists. Rutherford's *Lex, Rex*, clearly emphasizes the office of the king or magistrate. Mornay's *Contra Vindiciae Tyrannos* refers to this office to a lesser degree than the other federalists. Althusius, in his *Politics*, and Bullinger, in his *Decades*, refers throughout to the office of the ruler. Althusius and Bullinger extend on this concept by referring to the importance of the various ecclesiastical offices as well. The question that now arises concerns the relevance and importance of the office of the ruler for theologico-political federalism. This federalism, as discussed earlier, implies a conditional, contractual agreement between God and the king, between God and the people and between the king and the people. Is it possible that the office of the ruler is connected to the conditional content in this contractual, bilateral agreement between God and the ruler? Does this office prescribe a duty that must be exercised by the ruler? In order to gain clarity regarding this issue it would be proper to refer to the requirements to be met by the ruler, as postulated by the theologico-political federalists.

from the word of God, and that the prince's duty is to aid the priests in advancement and defense of true religion.

3. Samuel Rutherford on the Duty of Magistracy

3.1 Magistracy and Civil Duties

According to Rutherford, God and nature intends the peace of mankind, and therefore God has given man a power in the form of government to fulfill this intention.⁵³⁵ The magistrate is a minister of God for the good of the people,⁵³⁶ and the genuine and intrinsic end of making kings is not simply governing, but governing the best way, in peace honesty and godliness.⁵³⁷ Rutherford states that a king is the father of the kingdom, a tutor, a defender, protector, a shield, a leader, a shepherd, a husband, a patron, a watchman, a keeper of the people over which he is king. The king must act with a fatherly affection, care, love and kindness, to those over whom he rules and therefore he cannot exercise those official acts on the people against their will, and by mere violence.⁵³⁸ A king is a special gift from God, given to feed and defend the people of God and put evil-doers to shame, that they may lead a godly and peaceable life under him.⁵³⁹ Rutherford emphasizes that a king is a king *conditionally*, for the safety of the people,⁵⁴⁰ their preservation⁵⁴¹ and defense.⁵⁴² According to Rutherford, the king is to be an adopted father, tutor, a politic servant and royal watchman of the state,⁵⁴³ and he should care for the people as fathers do for children, and so to resort under the name of fathers in the fifth commandment. Kings as well as judges are fathers, in defending their subjects from violence and the sword, and fighting the Lord's battles for them, and counseling

⁵³⁵ Rutherford, *Lex, Rex*, 1 (2).

⁵³⁶ *Ibid.*, 34 (1), 70 (1), 70 (2), 83 (1), 102 (1), 103 (2), 104 (2), 106 (2), 119 (2), 126 (2), 132 (2), 141 (2), 145 (1), 153 (1), 187 (1), 193 (2), 194 (2), 198 (1), 201 (2), 227 (2), 228 (2).

⁵³⁷ *Ibid.*, 44 (1). Note that Rutherford refers to the importance of both kings and magistrates (even judges) concerning the functions of government. This is especially emphasized in the chapter dealing with the division of powers, below.

⁵³⁸ *Ibid.*, 47 (2); also cf. *ibid.*, 64 (2), 102 (1).

⁵³⁹ *Ibid.*, 48 (1).

⁵⁴⁰ *Ibid.*, 30 (2), 57 (2), 70 (2), 83 (1), 114 (1), on *ibid.*, 119 (2) – Rutherford stating that: “In the desires of the most holy: Moses, a prince, desired for the safety of God’s people, and rather than God should destroy his people, that his name should be raised out of the book of life; and David saith, (1 Chron. xxi.17.) ‘Let thine hand, I pray thee, O Lord my God, be on me, and on my father’s house; but not on thy people, that they should be plagued.’ This being a holy desire of these two public spirits, the object must be in itself true, and the safety of God’s people and their happiness must be of more worth than the salvation of Moses and the life of David and his father’s house”, *ibid.*, 121 (1), 124 (1) – 125 (1), 126 (2), on *ibid.*, 128 (1) – Rutherford stating that: “It is presumed that God hath not provided better for the safety of the part than of the whole, especially when he maketh the part a mean for the safety of the whole”, 137 (1), 184 (2), 185 (1), 187 (1), 193 (2), 194 (2), 210 (1), 228 (2).

⁵⁴¹ *Ibid.*, 79 (2), 92 (1), 95 (1), 97 (1), 105 (1).

⁵⁴² *Ibid.*, 48 (1), 62 (2), 64 (2), 70 (1), 92 (1), 102 (1), 103 (2), 124 (2), 128 (1) – 128 (2), 142 (1), 164 (1), 182 (1), 203 (2), 208 (1). Also cf. Althusius, *Politics*, 87, 130.

⁵⁴³ Rutherford, *Lex, Rex*, 59 (1).

them,⁵⁴⁴ and the king has no proper, masterly, or lordly dominion over his subjects; his dominion is fiduciary and ministerial.⁵⁴⁵

The king is more properly a sort of patron, to defend the people and a minister, or public and honorable servant for he is the minister of God to the people for their good.⁵⁴⁶ The king is the commonwealth's servant objectively, because all the king's service is for the good, safety, peace and salvation of the people; and he is the servant of the people representatively, in that the people have given in his hand all their power to do royal service.⁵⁴⁷ Rutherford states that the king has the trust of life and religion, and both Tables of the law are in his custody to see that other men than himself keep the law.⁵⁴⁸ The judges also must defend the poor and needy from violence and conserve the community in a peaceable and godly life.⁵⁴⁹ Kings, as well as judges, are devised by God as a remedy to violence and injustice,⁵⁵⁰ and the under-judges are watchmen, and a guard to the church of God.⁵⁵¹ The attainment of justice must also be high on the agenda of the ruler and his delegates (including the estates).⁵⁵² To Rutherford the government in general was to act as a father;⁵⁵³ a watchman;⁵⁵⁴ a servant;⁵⁵⁵ a feeder;⁵⁵⁶ a fiduciary patron;⁵⁵⁷ a tutor;⁵⁵⁸ marital and husbandry power;⁵⁵⁹ the peoples' debtor for happiness;⁵⁶⁰ a relative;⁵⁶¹ a pilot (of a ship);⁵⁶² and a good and saving shepherd.⁵⁶³

⁵⁴⁴ Ibid., 62 (1) – 62 (2).

⁵⁴⁵ Ibid., 64 (2).

⁵⁴⁶ Ibid., 70 (1), 83 (1); Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 43.

⁵⁴⁷ Rutherford, *Lex, Rex*, 70 (1).

⁵⁴⁸ Ibid., 72 (1), 142 (1), 215 (2). Also cf. *ibid.*, 142 (1), 215 (2), for Rutherford's emphasis regarding the responsibility concerning both Tables of the law.

⁵⁴⁹ Ibid., 92 (1), 142 (1).

⁵⁵⁰ Ibid., 116 (2).

⁵⁵¹ Ibid., 182 (1). Concerning the king's duties towards the judges Rutherford states: "All kings as kings, and by a divine law of God, and so by no absoluteness of majesty, are to make men of wisdom, fearing God, hating covetousness, judges under them, Deut. 1: 13; 2 Chron. xix: 6,7; Psalm. ci. 6-8", *ibid.*, 194 (1).

⁵⁵² Ibid., 92 (1), 96 (2), 97 (1), 98 (1), 117 (1), 141 (2), 179 (1), 230 (1).

⁵⁵³ Ibid., 26 (1), 59 (1), 62 (1) – 62 (2), 64 (2), 102 (1), 116 (2), 128 (1) – 128 (2), 164 (1), 218 (1).

⁵⁵⁴ Ibid., 59 (1), 70 (1), 182 (1), 197 (2) – 198 (1).

⁵⁵⁵ Ibid., 59 (1); 70 (1); 79 (2); 145 (1); 197 (2) – 198 (1). In this regard, Rutherford's thought is much the same as Althusius's – cf. Althusius, *Politics*, 15, 106.

⁵⁵⁶ Rutherford, *Lex, Rex*, 64 (2), 65 (1), 132 (2).

⁵⁵⁷ Ibid., 72 (1).

⁵⁵⁸ Ibid., 69 (1), 102 (2), 116 (2), 128 (1) – 128 (2), 153 (1).

⁵⁵⁹ Ibid., 69 (2), 116 (2).

⁵⁶⁰ Ibid., 103 (2).

⁵⁶¹ Ibid., 123 (2).

⁵⁶² Ibid., 102 (2).

⁵⁶³ Ibid., 179 (1) – 179 (2). Also cf. Althusius, *Politics*, 57.

3.2 Magistracy and Religious Duties

Much has, is and still will be debated on the relationship between government and the church (as formal ecclesiastical institution for the exercise of religious duties). Clarity concerning this theme is of importance in order to provide a better demarcation of the magistrate's covenantal duties and obligations. A more precise analysis on this theme also provides the Christian community with a more lucid understanding on their covenantal responsibility in seeing to it that the ruler or government abides by its covenantal obligations. This also has implications not only for the election of the ruler by the people, but also for resistance theory. In other words the people need to elect a ruler that commits himself to strict adherence to the contents of his office, and similarly, the people need to know when it is necessary to oppose the exercise of rule by a ruler that transgresses his civil and ecclesiastical functions. A specific analysis on the relationship between civil and ecclesiastical duties on both the side of the office of magistracy, as well as the ecclesiastical office will shed more light on the covenantal and conditional content of the magisterial office. In this regard Rutherford emphasizes the importance of the magistrate in the maintenance of the church and in matters of religion, and also emphasizes what the relation between church and magistrate should be in the context of each of their duties. According to Rutherford, a king is judged to be a great mercy to church and state.⁵⁶⁴ The intrinsic end of the king includes governing in godliness.⁵⁶⁵ To Rutherford the king is to be a father and protector of the church of God.⁵⁶⁶ Coffey states that according to Rutherford, the civil magistrate was obligated to aid the church by ensuring that she was well-financed and well staffed, and by prosecuting heretics.⁵⁶⁷ Coffey adds that in the polity Rutherford advocated, the church was an institution at least as influential in its own way as the civil power and the godly life was the chief end of national policy.⁵⁶⁸

Rutherford also refers to the responsibility of all those offices in authority besides that of the king, to assist in religious matters. In this regard Rutherford states that the king, princes, judges and the magistrates are obliged to God for the maintenance of true religion. Religion

⁵⁶⁴ Rutherford, *Lex, Rex*, 14 (1).

⁵⁶⁵ *Ibid.*, 44 (1).

⁵⁶⁶ *Ibid.*, 54 (2), 79 (1), 142 (2).

⁵⁶⁷ John Coffey, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), 169.

⁵⁶⁸ *Ibid.*

is not only the responsibility of the king but of all the inferior judges as well as the people.⁵⁶⁹ The king has the trust of life and religion,⁵⁷⁰ and the advancement of religion constitutes part of the formal object of one or many governors.⁵⁷¹ Coffey states: “In England and Scotland, too, the rebellions against Charles I were spearheaded by Puritans who saw a great opportunity to purge the nations of popish idolatry and build a godly Church and society with the aid of the civil magistrate. Preachers like the Scottish divine, Samuel Rutherford ... wrote at length to defend the religious activities of the civil magistrate ...”.⁵⁷² According to Rutherford, the king is not the head of the church and it is asserted that in the pastors, doctors, and elders of the church, there is a ministerial power, as servants under Christ, in his authority and name to rebuke and censure kings.⁵⁷³ Rutherford refers to the example of Uzziah who burned incense in the temple of the Lord, adding that this must not be understood as a confirmation that the king must not be involved in matters of religion (or in the words of the prelate, “matters sacred”). In this regard Rutherford states: “Uzziah did not burn incense, *ex vi ordinis*, as if he had been a priest, but because he was a king and God’s anointed. Prelates sit not in council and parliament, *ex vi ordinis*, as temporal lords The pope is no temporal monarch, *ex vi ordinis* ...”.⁵⁷⁴ Rutherford further explains that ministers of religion can make no laws as kings can do, but only as messengers, declare Christ’s laws. There is no coercive civil power for the church over either kings or any other – it is ecclesiastical; and a power to rebuke and censure was never civil.⁵⁷⁵ Reference by Rutherford is also made to the prelate, stating that if two sovereigns and two independents are made, (referring to the magistracy and the ministry), there is no more peace in the state, than in Rebecca’s womb, while Jacob and Esau strove for the prerogative. To this Rutherford replies: “What need Israel strive, when Moses and Aaron are two independents? If Aaron make a golden calf, may not Moses punish him? If Moses turn an Ahab, and sell himself to do wickedly, ought not eighty valiant priests and Aaron both rebuke, censure, and resist?”⁵⁷⁶

⁵⁶⁹ Rutherford, *Lex, Rex*, 55 (2) – 56 (1), 96 (2) – 97 (1). Cf. the following concerning the maintenance of religion and the resistance and punishment pertaining to heresy and foreign doctrine: Samuel Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 51, 53 – 56, 139 – 140, 151 – 152, 176 – 177, 183 – 185, 187 – 190, 193 – 194, 203 – 204, 206, 219, 224, 227, 229 – 230, 232 – 238, 244, 270, 289 – 290, 296 – 298, 313 – 314, 321, 323 – 324, 347, 356 – 357, 384 – 386.

⁵⁷⁰ Rutherford, *Lex, Rex*, 72 (1).

⁵⁷¹ *Ibid.*, 92 (1).

⁵⁷² John Coffey, *How Evangelicals shouldn’t think about Politics* in Stephen C. Perks, *A Defence of the Christian State*, (The Kuyper Foundation, Taunton, England, 1998), 200.

⁵⁷³ Rutherford, *Lex, Rex*, 213 (1).

⁵⁷⁴ *Ibid.*, 213 (2).

⁵⁷⁵ *Ibid.*

⁵⁷⁶ *Ibid.*, 215 (1).

Clearly distinguishing between the church (as institution) and the magistrate, Rutherford states:

And this is the cause (I conceive) why great Divines have said the object of the Magistrates power as a Magistrate is the externall man, and earthly things, because he doth not in such a spirituall way of working, take care of the two Tables of the Law, as the Pastor does; and yet the spirituall good and edification of the Church in the right preaching of the Word, Sacraments, and pure discipline is his end. It is true, whether the blasphemers professe repentance, or not, the Magistrate is to punish, yea and to take his life, if he in seducing of many, have prevailed, but yet his end is edification, even in taking away the life; for he is to put away evill, that all Israel may feare, and doe so no more; but this edification is procured by the sword, and by a coactive power, and so the Church power and the kingly power differ in their formall objects, and their formal ends.⁵⁷⁷

The magistrate may even punish a minister by death for just causes: "... But if they meane a coactive degradation by the Sword, in banishing, imprisoning, yea and for just causes, punishing Ministers to death with the Sword, this indirect deprivation we do not deny".⁵⁷⁸ Maclear states that according to Rutherford, the magistrate's work was directed, not to the punishment of the heretic, but to the kingdom's spiritual health, "the not perverting of soules and disturbing the safety of humain societies." Maclear adds that Rutherford knew the burning English debate on the issue and he systematically closed doors to avenues by which some Puritan writers were creatively working their way to toleration; and he would have none of "Mr. Williams's Chaldean, and Heathenish or American pece." The king was to "take vengeance upon blasphemy, idolatry, professed unbeleefe ... which are illis not formally contrary to externall quietnesse, but ... moral illis hindering men as members of the Church in their journey to life eternall ..."⁵⁷⁹ Maclear also states that Rutherford, on the eve of the Restoration was still organizing protests against "that vast Toleration in things Religious ... whereby the tye and obligation of these Covenants is wholly casten louse, and turned into oblivion."⁵⁸⁰

⁵⁷⁷ Martin A. Foulner, *Theonomy and the Westminster Confession: an annotated sourcebook*, (Compiled with notes by Martin A. Foulner, Marpet Press, 1977), 15.

⁵⁷⁸ *Ibid.*, 16.

⁵⁷⁹ Maclear, "Samuel Rutherford: The law and the king", 81.

⁵⁸⁰ *Ibid.*

Therefore, Rutherford's aggressive attitude concerning the approach of the magistrate in instances of serious practices of idolatry and blasphemy is justified, in that he regarded the protection of the soul of the individual as an important facet in communal life, and hereby limited the risk of persons being influenced by external sources of idolatry, blasphemy and that which is contrary to the truth as found in Scriptures. Although Rutherford has been criticized for this harsh approach towards religious transgressions, the fact remains that the importance and well-being of the spiritual life of a person cannot be denied. Magisterial protection is not only limited to the physical wellbeing of the person, but also has a duty towards the external influences that have the potential of influencing the faith of the person. The evil that is referred to in Romans 13, a passage that Rutherford refers to on numerous occasions in *Lex, Rex*, speaks about the magisterial power that is to ward off all evil. Included under that which resorts to evil, are not only transgressions of the second Table, but also transgressions of the first Table of the Decalogue. Bullinger, Althusius, Mornay and Knox, had a similar approach, as is discussed above. This understanding is further emphasized in the resistance theories of the theologico-political federalists, where the people have the power and covenantal duty to resist a tyrannous and idolatrous king. This confirms the importance of the maintenance and protection of the true religion, including the fact that the magistrates have a duty to punish serious offences against the first Table.⁵⁸¹

Pertaining to the obligations of the ministers or the pastors, Rutherford says that they are obligated to act as watchmen and should inform the magistrate of his duty. If the magistrate spares the life of a murderer, these watchmen are unfaithful if they do not complain openly and tell the magistrate that he is transgressing his duty.⁵⁸² In addition, Rutherford asks whether it is to be inferred that because of the fact that Christ did not; (i) command the rulers of the people to punish the false witnesses that rose against Him, (ii) rebuke the church or state for tolerating the Publicans who extorted the people, nor the rebuking of Caesar and Pilate, for oppressing the people, nor the Scribes and Pharisees for not preaching against Herod's beheading of John the Baptist, or Pilates' mixing of the Galilean's blood with the sacrifice (Luke 13) – that the ministers are to tolerate bloody magistrates, and not preach against them?⁵⁸³ – Surely not. Rutherford takes it a step further by being adamant about the fact that even a ruler could be excommunicated from the fellowship of the church. He points to the example of Ambrose, who had demanded penance from the Emperor Theodosius after the latter had ordered the massacre of the Thessalonians – If magistrates “crush the poore and

⁵⁸¹ Refer to Chapter 5, concerning an analysis of the resistance theories of the theologico-political federalists.

⁵⁸² Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 43 – 44.

⁵⁸³ *Ibid.*, 205.

needy, and turne tyrant, as heretick and an apostate”, Rutherford warned, “the Pastors may not only denounce wrath from the Lord against them, but also judge them dogs and swine, and not dispense to them the pearls of the Gospel”.⁵⁸⁴

It can also be contended that Rutherford, as a Presbyterian, supported the reduction of the magistrate’s legislative power. In contrast to the Episcopalians, who argued that the king could determine things as he wished and that the people were obliged to follow his ruling, the Presbyterians claimed that nothing was always without hindrance, and that the morality of every action was determined by divine authority. Since everything was regulated by divine law, the people were obliged to examine every law in their consciences before obeying it, so that they could be sure that it was consonant with the Word of God. This meant that they had to rely on the guidance of the clerical casuists who were experts in the divine law of Scripture. Despite their refusal to occupy civil office, the Presbyterians advocated a radical redistribution of moral authority from the civil magistrate to the clergy.⁵⁸⁵ The magistrate is subject to the just power of the Church and the Church to the just power of the magistrate; and neither of them is subject to the other’s power of abuse.⁵⁸⁶ This is an important contribution to Reformed political and jurisprudential theory. The king is limited to the covenantal condition in the form of the Divine law. Even the people are “connected” via their conscience or the natural law, to the Divine law as covenantal condition, a condition that is the responsibility of both the king as well as every individual as part of the covenanted community.

Some of Rutherford’s expositions concerning this distinction between church and state arose from his defense of Andrew Melville’s two kingdom theory, which was in opposition to the view of the Erastians pertaining to this issue. Whereas the Scots, following Melville, saw good discipline (such as excommunication and suspension from communion) as an essential mark of the church to be administered *jure divino* by the elders, the Erastians believed that this exercise of good discipline was too great a power to be left wholly in the hands of the clergy.⁵⁸⁷ Although the major Scottish critic of the Erastian factions was Rutherford’s fellow commissioner, George Gillespie, Rutherford himself produced a major work on the

⁵⁸⁴ Coffey, *Politics, theology and the British Revolutions*, 209.

⁵⁸⁵ Ibid.

⁵⁸⁶ Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 398.

⁵⁸⁷ Coffey, *Politics, Theology and the British Revolutions*, 207 – 208. Therefore, Rutherford does allow a fair weight of authority to the institution of the church to partake in the sanctioning and punishment of issues strictly religious, whereas the magistrate had to apply his mind more to civil matters.

controversy, *The Divine Right of Church Government and Excommunication*, published in March 1646, and it was in this work that he defended Melville's two kingdom theory.⁵⁸⁸ According to this theory, church and state were distinct, with different sources, means and ends. The church was concerned with the internal, spiritual part of man, his soul and conscience, and could only use persuasive, non-violent corrective punishments, most notably excommunication. According to Rutherford, Christ, in Matthew 18, had given the church the authority to preach and the "keys of the kingdom" to discipline its members. However, Christ "hinteth not, in any sort, at any word of blood, wrath, vengeance, the sword ... the proceeding here is with much lenity, patience and long suffering to gain an offender".⁵⁸⁹

Rutherford adds that the magistrate, on the other hand, must be concerned with the external part of man, and he could add co-active, compulsive and penal punishments to the gentle censures of the church. The two powers were intended to be "co-ordinate", "two parallel supreme powers on earth", each operating in their own sphere and complementing each other.⁵⁹⁰ Coffey states that although Rutherford referred often to the reign of "King Jesus", he did not envisage a replacement of secular rulers by godly ministers. According to Coffey, Rutherford, in a letter to the Scottish parliament in 1648, wrote that "we professe our detestation of yt Episcopal disease of authoritative meddling with civil affaires".⁵⁹¹ Coffey adds that the Scottish Presbyterian clergy, did not usurp both swords, but had excluded themselves from civil office in 1638, and condemned the prelates, "because they, being pastors, would be also lords of parliament, of session, of secret council, of exchequer, judges, barons, and in their lawless high commission, would fine, imprison, and use the sword". The Presbyterians, unlike even Catholic conciliarists, claimed no authority to wield "coercive temporal power" and to fine or imprison heretics.⁵⁹² Rutherford also makes it clear that the end of church discipline is edification, and that the taking away of the life of a blasphemer is the good of society (Deuteronomy 13:12), "that all Israel may bear and fear, and do so no more", Rutherford adding that nowhere does one read that the Christian magistrate's end is spiritual.⁵⁹³

In this regard Rutherford continues by emphasizing that the king has a chief hand in church affairs, when he is a "nurse-father", and bears the sword to defend both the Tables of the law.

⁵⁸⁸ Ibid., 208.

⁵⁸⁹ Ibid.

⁵⁹⁰ Ibid.

⁵⁹¹ Ibid.

⁵⁹² Ibid., 209.

⁵⁹³ Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 340.

The king does not act with blind obedience, but with the light of knowledge that synods have; and the king is no more made the servant of the church by this, than the king of Judah and Nebuchadnezzar are servants to Jeremiah and Daniel. Kings may, and do command synods to convene, and do their duty, as well as commanding many duties, never synodically decreed; “as they were to cast out of their court apostate prelates, sleeping many years in the devil’s arms, and are to command trencher-divines, neglecting their flock, and lying at court attending the falling of a dead bishop...to go and attend the flock, and not the court...”⁵⁹⁴ To Rutherford, the king has greater outward glory, and in this differs from the pastor who, in regard of intention, is occupied by nobler things, such as the soul, the gospel, and eternity.⁵⁹⁵

Maclear states that Rutherford carefully kept the magistrate’s labors within the limits sanctioned by the two-kingdom theory. According to Maclear, Rutherford also makes it clear that the magistrate could not convert unbelievers in a forceful manner. The sword could not convert; only ministers might labor in this field. The silent heretic was not to be molested. Aliens, Indians, Jews, “Papists...educated in idolatry,” and others without the national community were not to suffer persecution. The magistrate’s work was directed, not to the punishment of the heretic, but to the kingdom’s spiritual health, “the not perverting of soules and disturbing the safety of humain societies.” Yet the idolator and seducer should die.⁵⁹⁶ According to Rutherford, though the magistrate punishes false teachers by the sword, he is not therefore a church governor and far less the head of the church. The magistrate defends the church against its persecuting enemies, and by his sword procures civil peace and protection to their assemblies, persons and estates. To Rutherford, doing anything in favor of the church does not make Cyrus, Artaxerxes and Darius, spiritual officers and give them headship over the church. The Christian magistrate, having power from the people’s free election to employ his sword for the external peace of the church, has not therefore the power of governing the church from the people.⁵⁹⁷ The civil exercise of the sword for the *external* peace of the church, is not a governing of the church, but the civil external and corporal shielding of them.⁵⁹⁸ The people, says Rutherford, as Christian men walking by the rule of the Word choose a Christian ruler who will procure the good of the church and keep and guard both Tables of the law, for the word of God gives directions to the people that they should not as men or as heathens choose any type of ruler, but godly men fearing God “and

⁵⁹⁴ Rutherford, *Lex, Rex*, 215 (2).

⁵⁹⁵ *Ibid.*, 215 (2) – 216 (1).

⁵⁹⁶ Maclear, “Samuel Rutherford: The law and the king”, 80 – 81.

⁵⁹⁷ Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 404.

⁵⁹⁸ *Ibid.*

such kings as read in the Book of the Law when they sit upon the Throne, Deuteronomy 11, 17: 15–20, Exodus 18: 21.”⁵⁹⁹

According to Rutherford, religion must be persuaded by the word and Spirit, and therefore the magistrate can use no coercive power in punishing heretics and false teachers.⁶⁰⁰ The sword is no means of God to force men positively to external worship or performances; but the sword is a negative means to punish acts of false worship in those that are under the Christian magistrate in so far as these acts are visible and destructive to the souls of those in a Christian society.⁶⁰¹ The magistrate is not to compel nor intend the conversion of a pernicious seducer, but to intend to take his head from him, for his destroying of souls.⁶⁰² The sword is not a means for converting, but the just vengeance that is inflicted by the minister of God on false teachers as on other evil-doers. The use of the sword is not destined by God for spiritual gaining, but for judicial reparation of wrongs done to the Christian society.⁶⁰³ The magistrate must not meddle with the conscience, nor the manner of obedience to the law, whether obedience takes place in faith, or against the light of the conscience – it does not matter to the magistrate who commands but the external actions.⁶⁰⁴ The Lord never appoints a judge to prove opinions by witnesses, nor is it the goal of forcing someone into a sound faith with the sword. The opinions of someone remain within the walls of the heart, and are things of the mind. Rather the aim of punishing idolaters is the avenging of the sin and the removal of evil to save the Israel of God from infection.⁶⁰⁵ Rutherford adds that Christ uses the magistrate as his servant to remove the wolves from the flock, but not as “King, mediator as God-man, head of the Church”, for Christ as Mediator does not work by external violence, or, by the sword, in his mediatory kingdom.⁶⁰⁶ In other words, Christ is directly in charge of matters of salvation, but this does not mean that the magistrate may not punish heresy. To Rutherford, it is not single idolatry that leads to a person’s death, but his idolatry in seducing others by word or example.⁶⁰⁷ Concerning the imposition of the sword in order to cultivate a sound faith Rutherford states:

⁵⁹⁹ Ibid., 404 – 405.

⁶⁰⁰ Ibid., 50.

⁶⁰¹ Ibid., 51.

⁶⁰² Ibid., 53.

⁶⁰³ Ibid., 139.

⁶⁰⁴ Ibid., 140.

⁶⁰⁵ Ibid., 188.

⁶⁰⁶ Ibid., 224.

⁶⁰⁷ Ibid.

The sword did not force the conscience of any then, more than now, nor could it cuddle an idolater, or a blasphemer, into the sound faith then, more than now, and weapons of the prophets in the Old Testament, as well as the apostles in the New, were not carnal but spiritual, and mighty through God. Prophets, as prophets, no more used the sword against mans' conscience of old, than Christ, his apostles, and ministers do now, Matthew 28: 19–20. And as Christ says now, preach the gospel but kill none, use neither staff nor sword, nor miraculous power to destroy heretics, or burn Samaria ... yet he commanded the magistrate to use the sword against the seducing prophet ...⁶⁰⁸.

Rutherford states that the forcing of men to religion is not how God operates, for the preaching of the word, not the using of the sword, is the means of conversion of sinners. Neither the church nor the state can judge opinions of the heart, nor punish them. Neither are the nations of another religion brought to Christ by the sword.⁶⁰⁹ Whatever kings do about matters of religion, they do it in a political way, as not to command the conscience, but in order to impose civil and temporary rewards and punishments.⁶¹⁰ The king is to judge what is murder and what is not, and all matters belonging to a civil judge, what is morally good and evil, and what is punishable by the sword and not, by reading the book of the Law when he sits on the throne (Deuteronomy 17: 18–19). What is important is that the king judges in order to apply civil punishment, and not for the gaining of souls. In the same manner, the magistrate is to judge what is heresy and what is not, otherwise spiritual matters will be misused.⁶¹¹

According to Rutherford, it is nowhere to be found that the prophet ought to compel any, nor that the sword is the ordinance of God to convert oppressors, and murderers to become meek and righteous judges – co-action by fire and the sword can convert none to Christ, the word and the spirit must do this.⁶¹² It is only God that can open the heart, and therefore the sword has no strength against soul obstinance in order to cultivate repentance, and neither has preaching. The sword has strength against the outward man, which includes the tongue, the pen, the protection of seducing preachers, and to guard the flock from grievous wolves. If these wolves be restrained, the flock is in no more danger from the conscience of the heretic,

⁶⁰⁸ Ibid., 189 – 190.

⁶⁰⁹ Ibid., 314 – 315.

⁶¹⁰ Ibid., 217 – 218.

⁶¹¹ Ibid., 329.

⁶¹² Ibid., 341.

than peaceable men are in danger of the bloody man's thoughts, hatred and heart-malice.⁶¹³ The sword of the magistrate produces no repentance, for external repentance is no repentance. The magistrate cannot punish heart-hatred of our neighbor, or rash anger, but in so far as it becomes known to the senses in the form of striking, maiming, or abusive speeches, the magistrate may forbid, censure and punish it.⁶¹⁴ Rutherford emphasizes that the magistrate ought, as the minister of God give commandments to the outward man, under the pain of corporal punishment, and not to the soul or inward man.⁶¹⁵

Rutherford adds that the magistrate commands obedience to the law of God in reference for purposes only of the external peace, and the magistrate “... commands not abstinence from false doctrine out of the love that the messenger owes to him who purchased the flock with his blood ... but only does he command abstinence from speaking lies to the people of God”.⁶¹⁶ Rutherford goes on to state that there are two types of obedience namely, a good, lawful and necessary obedience, as well as a complete and entire obedience, which is full and sincere. The former type of obedience is relevant to the duty of the magistrate, which is an external obedience necessary for the safety of society, and the omission of it is consequently punishable by the magistrate.⁶¹⁷ The obedience which is complete, entire, full and sincere and which is required of the whole man, soul and body, is an obedience commanded by the law of God. In this sense, the magistrate does not demand obedience to the law of God, for the magistrate has nothing to do with the soul and conscience, but only with the outward man.⁶¹⁸ The material object of the magistrate's power though spiritual, renders not his power spiritual. The magistrate punishes spiritual confederacy with Satan, in magicians and sorcerers, and that a witch be put to death.⁶¹⁹ Rutherford also refers to Augustine, who nowhere speaks of the punishing of heretics and seducers of the word, in order to convert them to God, as if the intrinsical end of the magistrate were to conquer a spiritual kingdom to Christ.⁶²⁰

Rutherford, although having opposed the view that the magistrate does not have the power to convert souls, nevertheless emphasizes that fear for the Christian magistrate and the laws of the land should not altogether be discarded. Jude 2: 23, states that some must be saved through fear and pulled out of the fire. Rutherford refers to Augustine who stated that fear for

⁶¹³ Ibid., 351 – 352.

⁶¹⁴ Ibid., 356.

⁶¹⁵ Ibid.

⁶¹⁶ Ibid., 357.

⁶¹⁷ Ibid.

⁶¹⁸ Ibid.

⁶¹⁹ Ibid., 384.

⁶²⁰ Ibid., 405.

the Prince's laws compels men to come in and hear the truth, and truth persuades. Also, that fear of civil laws may draw men out of the society of bewitching seducers, where they are fettered with chains of lies. Finally Augustine states that the fear of laws has daunted wild heretics.⁶²¹ Rutherford refers to examples from the Old Testament concerning the imposition of God's law on the people by heathen kings, and where laws were made by the light of nature by these kings to refrain from the practice of idolatry. Reference is made to Cyrus and Artaxerxes. The latter by the light of nature, and by a civil law established the law of God against idolaters and false prophets.⁶²² Although the Lord does not need the sword of flesh, it is the duty of Artaxerxes and all kings to add their law of death, banishment or confiscation to the law of God so that those who refuse to do the law of God and seduce the people of God with lies and false doctrine may be punished.⁶²³ Rutherford also emphasizes the fact that understanding and will cannot be forced by the sword, but must move in a connatural way by the indictment of reason, and the internal and elicited acts of the understanding and will, cannot be produced by external violence.⁶²⁴ Rutherford goes on to state:

It was no less lawful for a judge in Israel to domineer and tyrannise over the conscience of a false prophet, a priest of Baal, Dagon, and to answer the arguments subverting the doctrine of Moses's law so shining with divinity, majesty, and the wisdom of God, with the bloody sword, and throwing of stones, than it is for the Christian magistrate to labour to convert, the false prophet now, by a sword, or an axe domineering over his conscience, so rendering him a lamb, disputing and trembling under the paw of the lion.⁶²⁵

According to Rutherford, Jews, Indians and Papists are not to be brought to the truth, either by the sword or by excommunication and delivering them to Satan, for those that are without the truth cannot be judged.⁶²⁶ To Rutherford, toleration of many false ways, and permitting men to speak lies in the name of the Lord, and to seduce souls is not qualified in both the Old and New Testaments – It is nowhere written expressly in Scriptures that the magistrate must tolerate such seduction of souls.⁶²⁷ In this regard Rutherford adds that, that which infers necessarily many religions, many faiths, many sundry gospels in one Christian society, is not

⁶²¹ *Ibid.*, 385.

⁶²² *Ibid.*, 385 – 386. Cf. Ezra 6: 3; 7: 23, 26.

⁶²³ *Ibid.*, 386.

⁶²⁴ *Ibid.*, 390.

⁶²⁵ *Ibid.*, 391.

⁶²⁶ *Ibid.*, 394.

⁶²⁷ *Ibid.*, 145, 151.

of God; and the toleration of all ways and many religions is not of God.⁶²⁸ If the magistrate does not put a man to shame for perverting the soul of his brother, then it is as good as if there was not a magistrate.⁶²⁹ The prince, parliament and the magistrate must take care according to their places as fathers of the commonwealth to assist in matters of religion. Eli, a father and a judge despised God for not correcting his sons for abusing their priestly power. Whatever coercive power to command, threaten, promise, punish, restrain and reward God has given to parents, masters of families, teachers, tutors, officers in war, kings and princes, is the good gift of God and a talent to be employed for the good of souls, and in order to observe the duty of the first Table, everyone should act according to their station (office).⁶³⁰ Rutherford refers to the example of the responsibility of keeping the Sabbath holy, which is also to be understood in the context of the king being responsible for keeping the community holy. In this regard Rutherford states that the fourth commandment is given to the father of the house to cause son, servant and stranger to keep the Sabbath, which Nehemiah as a father and a ruler practiced by the sword.⁶³¹ In addition to this, the master of a family may and ought to deny an act of humanity or hospitality to strangers that are false teachers, who bring another gospel, whom he must neither lodge nor bid God speed. Rutherford also refers to David as a head of a house, who will send all liars and wicked persons out of his house, and as a godly king, David will also expel all evil persons from the Church. In the words of Rutherford: “If every Christian family in New England must refuse lodging to a false teacher, must not the Governor and Judges, who have power to command and regulate acts of hospitality, join their civil authority to forbid any master of a house, to lodge such pestilent heretics?”⁶³² Rutherford was also adamant that magistracy and perpetual laws in the Old Testament warrant the civil coercing of false prophets. What the patriarchs and godly princes of Israel and Judah were obliged to do as rulers and princes, all kings and rulers under the New Testament are obliged to do. Godly princes of the Old Testament commanded the

⁶²⁸ Ibid., 146. Rutherford confirms this by referring to Jeremiah 6: 16, Ephesians 4: 4, Jude 3, Proverbs 23: 23, 1 John 1: 1, Acts 4: 12, Zephaniah 1: 5, 1 Kings 18: 21, 2 Kings 17: 33; Rutherford adds that this one way, the people are to keep with one heart (Ezekiel 11: 19), with one judgment, one mind, one tongue, one shoulder (Acts 4: 32, 2 Corinthians 13: 11, Philippians 4: 2, 1 Corinthians 1: 10, Zephaniah 3: 9, Zecharia 4: 9), being rooted and established in the faith (Colossians 2: 7), not tossed to and fro, nor carried about with every wind of doctrine (Ephesians 4: 14) and without wavering (Hebrews 13: 9), *ibid.*

⁶²⁹ *Ibid.*

⁶³⁰ *Ibid.*, 177 – 176 (note that 176 follows on 177 in this source). Cf. *ibid.*, 177 where Rutherford emphasizes the duty of magistrates in matters of religion: “The father commands the children now in the state of sin, to learn and hear the judgments and testimonies of God (Genesis 18: 19, Exodus 12: 27, Psalm 78: 3, 5-6, Joel 1: 2-3) and that in order to the rod and bodily punishment (Proverbs 13: 24; 23: 13)... Damnable heresies bring swift destruction (2 Peter 2: 1).”

⁶³¹ *Ibid.* Reference is also made to Exodus 20, Nehemiah 13: 19-22, *ibid.*

⁶³² *Ibid.*, 176.

putting away of strange gods (as with Jacob), and saw to it that the true God was worshipped (as with Abraham).⁶³³

Rutherford emphasizes the imposition of bodily death on seducers as at the command of Moses the prince, where three thousand were slain for worshipping the golden calf.⁶³⁴ Moses also commands that all the people be hanged because they were joined to “Baal-peor, and the sacrifice of the gods of Moab”.⁶³⁵ Rutherford refers to the first command, written in the heart, stating that he who curses his maker whom he is to love and serve with all his heart, should die. This law compels the stranger and any heathen to be put to death if he should blaspheme God. It was a lawful war attempted by the ten tribes to go against the tribe of Rueben, Gad and half the tribe of Manasseh, because they erected a new altar to worship, which was clear apostasy.⁶³⁶ In this regard Rutherford states:

That Joshua destroyed the Canaanites for their idolatry ... I confess will not warrant us to make war, and destroy with the sword, all the Indians, and Idolaters on earth, and to compel them to worship the true God in the Mediator Christ, without preaching first the gospel to them: Nor can it warrant us to kill every ignorant blinded Papist with the sword, nor can we deny, but what Elias and Paul did against false teachers, was by extraordinary impulsion, because the ordinary magistrate would not, as Achab and Jezebell, and could not, through ignorance of the gospel punish perverters of the truth: but sure these examples prove corporal, and sometimes capital punishment ought by the magistrate to be inflicted on all blasphemers, on all ringleaders of idolatry and false worship.⁶³⁷

Rutherford also refers to the example of Paul as an apostle striking Elimas with blindness because of the latter’s blasphemous actions which was both *extraordinary* and *as a result of*

⁶³³ Ibid., 177. The example of Jacob to be found in Genesis 35: 2-4 and that of Abraham in Genesis 18., *ibid.* Rutherford also refers to Menassah, Asa, Hezekiah and Josiah who removed strange gods, *ibid.*, and adds: “Now that they did this as princes, not as privileged types of Christ, and that God requires this at the hands of king Charles, when God shall establish him in his throne, to take order with Arrians, Socinians, Antitrinitarians, Familists, Antinomians, Anabaptists, Seckers ... is evident”, *ibid.*, 180.

⁶³⁴ Ibid., 182. Reference also to Exodus 32: 26-28, *ibid.*

⁶³⁵ Ibid. Cf. Numbers 25: 1-4, *ibid.* Rutherford also refers to Elias who slayed the priests of Baal with the sword, and Paul who struck the sorcerer with blindness because he labored to pervert Sergius Paulus the deputy from the faith, Acts 13: 8-10, 182-183, *ibid.* Rutherford also refers to Leviticus 24: 10-16, concerning the punishing of the blasphemer, *ibid.*, 183.

⁶³⁶ Ibid., 183. Reference also to Joshua 6; 20 and 22, *ibid.*

⁶³⁷ Ibid.

the magistrate not exercising his duties and obligations. In this regard Rutherford states that it is no rule for ministers to strike false teachers with blindness – but it is the norm for him that bears the sword (the magistrate) to inflict bodily punishment on perverters of the Gospel. Just as a bodily punishment may be *extraordinary* with regard to the *manner* of doing, when done by a miracle, and fire brought from heaven, and also extraordinary in the sense that the person imposing the punishment is not usually the person to impose it (for example Phineas imposing punishment as a priest and Elias, the prophet, doing the same, as well as Paul as an apostle), yet the punishment in the *nature* and *substance* may be according to an *ordinary law of God that binds us*.⁶³⁸ If this was not the case, Joshua’s wars with the Canaanites that were according to a moral and perpetual rule of justice, binding on us, should not bind us to lawful defensive wars (in defense against the influence from ungodly religions) in the like case, which is contrary to nature. Although Joshua, in these wars, did many things extraordinarily (by killing all the cattle and the women with children), these wars were only extraordinary in *manner*, and not in the *substance* and *nature* of the punishment. Consequently there is no justification in saying that because these wars were so extraordinary, they are not to be followed. It is therefore false to postulate that because evil-doers have been punished by some extraordinary warrant or manner, the ordinary magistrate does not have power to punish evil-doers.⁶³⁹ To Rutherford, in this regard, the defense against false religion obligates an active approach by the magistrate, as it is part of the perpetual law of God (found in nature and in Scripture), requiring the true religion to be practiced. This was contrary to the approach of the Libertines supporting the view that false teachers may not be rebuked.⁶⁴⁰

According to Rutherford, the extraordinary punishing (in the context of the above, namely, referring to punishment imposed by persons not usually associated with imposing such punishments or punishment applied by a miraculous method) of those that violate the worship

⁶³⁸ Ibid., 184. Also cf. *ibid.*, 232 – 233.

⁶³⁹ Ibid., 184 – 185.

⁶⁴⁰ Ibid., 184. Cf. *ibid.*, 185, Rutherford states: “The express law of God, and of nature written in the heart of all, proves that the seducer should die, Deuteronomy 13 ... That is no temporary law obliging the Jews only ...” Who were the Libertines that are spoken of by Rutherford in this regard? Lecler most probably gives a description that matches Rutherford’s understanding of the term in that “Libertines” was a term formerly in use at Geneva (towards the end of the 16th century) to designate the political enemies of Calvin. Calvin also used this term to brand those who were inclined to accept only spiritual interpretations of religious realities, and called them “spiritual libertines”. Lecler adds that in the Low Countries these freethinkers or libertines were in fact the small group of humanists who hated violence and dreamt of a peaceful coexistence of the rival denominations. They based their attitude less on political reasons than on an inclination, inherited from Erasmus, to reduce the demands of dogma to a minimum. According to Lecler, they remained Christian humanists, devoted to Scriptures and therefore should not be identified with the French deists and freethinkers of the 17th century. They were rather related to what were later called in England the “men of latitude” or “latitudinarians”. In France they were called “liberals”, Joseph Lecler, *Toleration and the Reformation*, Volume 2, (translated by T. L. Westlow, Longmans, Green and Co. Ltd., 1960), 259 – 260.

of God, and pervert the ways of God and the faith of others, must be the ordinary and constant duty of the magistrate. Rutherford refers to additional examples where the minister had to apply the duties of the magistrate, when the latter did not. In this regard Rutherford states that when the “under-Rulers” did not exercise their duty, Phinehas was praised, that he being a priest, not a judge, slew Zimri and Cozbi, and Phinehas did acceptable service to God in so doing (Numbers 25: 11–13). Elias, in his zeal, killed the priests of Baal when Achab, the ordinary magistrate, sinfully neglected his duty, and Samuel, being no judge, killed Agag where it was the duty of Saul as the ordinary magistrate, to do it. So also Ananias and Saphira lied to the Holy Spirit, and defrauded the church concerning goods, therefore Peter struck them dead. According to Rutherford, if there had been a Christian magistrate, he should have imposed bodily punishment on Annanias and Saphira.⁶⁴¹

To the definitions, teachings and prescriptions of the church, the magistrate could add “a civill sanction”, “an accumulate and auxiliary supplement”. Coffey states that Rutherford knew that the sword “cannot reach soule, minde, will, conscience and affections”, and that it was not “a means of converting soules to Christ”. Albeit, he considered external circumstances to be of considerable importance, believing that the “external” sword could be used to “hinder wolves and grievous foxes”, so that the external environment in which souls dwelt would not be dangerously polluted with heresy.⁶⁴² Coffey adds that Rutherford, like Bullinger in the 16th century and the Anglican divines of the Restoration period, appealed to the authority of St. Augustine’s writings against the Donatists to support his doctrine of persecution. Of greater importance was the example of the Old Testament magistrates who had punished idolaters and apostates, and the commands in passages like Deuteronomy 13 that false prophets should be killed.⁶⁴³ Important is the fact that Rutherford, commenting on Deuteronomy 17, justifies the punishment of idolaters within the context of the covenant. It is not simple idolaters, nor all the nations round about, nor all the Papists (that are educated in idolatry), that shall be put to death by this law, *but those that are within the gates of Israel, and who were in covenant with God.*⁶⁴⁴ This is an important observation concerning Rutherford’s thought on the covenant, where part of the covenantal conditions includes the duty of the king to punish idolaters. Rutherford states that scripture teaches that the sacrificing of children to Molech is punished with death by God’s law, not because it is

⁶⁴¹ Ibid., 232.

⁶⁴² Coffey, *Politics, theology and the British Revolutions*, 217 – 218

⁶⁴³ Ibid., 218.

⁶⁴⁴ Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 187.

murder, but because it is “spiritual whoredom”. This justifies punishment by the magistrate because it is profanity against God’s holy name.⁶⁴⁵

According to Rutherford, even when it comes to disobeying the fourth commandment, punishment must be meted out to those transgressing it. It is most false that magistrates, masters and fathers are not to punish transgressors of the fourth commandment.⁶⁴⁶ By this Rutherford emphasized that the content of the first Table was also to be obeyed, if not, the magistrate had to impose the necessary punishment. Rutherford was also confronted by the following argument: “... that we cannot punish under the New Testament, because the magistrates and ministers, and synods who condemn heresies, errors, schisms, blasphemy, are not fallible, and they know not but they may pluck up wheat instead of tares, and take away the life of elect men who might live and be converted”. If this was the case, replies Rutherford, then the judge should not take the life of a murderer, adulterer or the most dangerous robber, because then the judge would have to read the “Lamb’s book” to see whether the person is included in the elect, before the judge sentences such a person.⁶⁴⁷ In other words, for the magistrate not to judge because he might hereby cause someone to stray from the path, would mean that all crimes may not be punished, an insight which is both ridiculous and contrary to Scripture. There is also the argument that the Christian prince under the New Testament cannot, with such infallibility, punish idolaters or blasphemers. To this, Rutherford replies in the negative, for the Holy Spirit would never “bid us admonish, and after admonition avoid an heretic, ... nor would our Saviour bid us bear of false teachers, and false Christs, and avoid them.”⁶⁴⁸

According to Rutherford, it is a weak argument to state the lawfulness of the toleration of Sadducees and heretics because of Christ not rebuking the church and state for not punishing them. If this kind of reasoning is to be followed one can argue that because Elias did not rebuke Achab for not killing Baals priests, therefore Achab did not, in tolerating false teachers, transgress the law of God; which is a most false assumption.⁶⁴⁹ The fact that Christ, nowhere rebukes in the gospel, the toleration of sodomy and murder, denying of God and blasphemy; does not mean that the church and state must tolerate all these transgressions. According to Rutherford, to say that the church and state must bear all these, is to infer that the church should tolerate all false doctrines, including the denial of the resurrection, and that

⁶⁴⁵ Ibid., 188 – 189. Cf. Leviticus 20: 1-5, *ibid.*

⁶⁴⁶ Ibid., 190.

⁶⁴⁷ Ibid., 193 – 194.

⁶⁴⁸ Ibid., 194.

⁶⁴⁹ Ibid., 203. Cf. Deuteronomy 13: 1-3; 17: 1-3, to which Rutherford refers, *ibid.*

there should be no church censure, which is contrary to Matthew 18: 15–17 and Revelation 2: 1–2, 14–16, 20.⁶⁵⁰

Rutherford refers to the Libertines who argue that the killing of false teachers under the authority of Deuteronomy 13 is not justifiable, for then should, according to this law, all the children and cattle also be killed. To this, Rutherford replies in the negative. He makes it clear that there are three different laws to be found in Deuteronomy 13 namely; one against the seducing false prophet (verses 1–5), a second against any seducing person, if it were brother or wife (verses 6–12) and a third law concerning a city, state or society that will defend a false teacher (verses 13 to the end of the chapter).⁶⁵¹ Concerning the latter type of law, Rutherford distinguishes it from the remaining two. This third law is not to be adhered to, at least concerning the ceremonial part of it,

... for to gather the spoil of such a City, and to burn it every whit, for the Lord, as a cursed and devoted thing or place, is clearly ceremonial and typical, because now every creature of God is clean (Romans 14: 14), and so are all the victuals or meats of Heathens, or Papists now, and good and sanctified (1 Timothy 4: 3–4), and what God has cleansed, we are not to esteem common or profane (Acts 10: 14), and the likes must we say of places 1 Timothy 2: 8, Job 4: 21, Zachariah 14: 21 and by proportion, of all creatures, the creatures cannot now be typically cursed, and execrable as then, Deuteronomy 13: 16, 18.⁶⁵²

Rutherford continues to explain that in this period of the Old Testament, the holy land and every city was made by the Lord typically and ceremonially holy, a pledge of heaven. If therefore a seducer fled from the judge to any city, and that city would partake in the seducer's sin and save him from the hand of justice, that city forfeited its holiness and all things in it made accursed and to be destroyed. This law was not based upon the notion of false teachers, but rather as clear rebellion against God, his holy laws, and the judge, the latter being the minister of God.⁶⁵³

⁶⁵⁰ Ibid., 204 – 205.

⁶⁵¹ Ibid., 205.

⁶⁵² Ibid., 205 – 206.

⁶⁵³ Ibid., 206. In this regard, Rutherford, in reply to the Anabaptists, referring to the Lord commanding Saul concerning the Amalekites (1 Samuel 15), Joshua and Israel going against Jericho and the rest of those cities (Joshua 11: 20), using the same line of argument as the Libertines, Rutherford replies: “We with good ground deny the consequence, because the war with these seven nations was warranted by

Rutherford also adds that judicial laws may be judicial and “Mosaical”, and so not obligatory to us according to the degree and quality of punishment such is Deuteronomy 13, which entailed the destroying of the city and devoting all therein to a curse – This we may not do the same in the like degree of punishment to all that receive and defend idolaters and blasphemers in their city. However, some punishment by the sword to be inflicted on such a city is of perpetual obligation because the magistrate bears the sword to take vengeance on all evil-doers, and so on those who are partakers of evil deeds, those who bring another gospel.⁶⁵⁴ A similar example to the above is found in 1 Samuel 15, where God commanded Saul to destroy all the Amalekites. Rutherford states that this destruction of the Amalekites is temporary and does not obligate us, and the following is in justification hereof namely; the generation of Amalekites that was destroyed by Saul and his army, were the sons of those that lay waiting for Israel to come out of Egypt in the time of Moses, and were therefore not those same persons belonging to the Amalekites that lay in wait for Israel at the time of Moses. Bearing this in mind, we know that one may not punish a son with death, for the sin of his father, and therefore God’s positive command to Saul to kill the Amalekites – God’s reasoning being: “I remember what Amalek did (in Moses’ time) therefore kill them” – does not oblige us, except if we were commanded by God to do the same.⁶⁵⁵ Further, because the slaying of man, woman, infant and babies, ox and sheep, was temporary, and cannot have a perpetually obligatory ground in the law of nature or natural justice which obliges us.⁶⁵⁶ Rutherford also clearly emphasizes the irrelevance of the ceremonial laws concerning the obligations of the magistrate. He states:

I confess when the fault is ceremonial, though the punishment be real, as the cutting off of an infant not circumcised, and some punishments inflicted on the leper, it is no reason the law should oblige us in the New Testament, either as touching the punishment or the degree. Because these punishments for typical faults are ordained to teach, rather than to be punishments, and the magistrate by no light of nature could make laws against unbaptised infants.⁶⁵⁷

the law of nature, but the war, *tali modo*, to destroy utterly young and old, cattle, and all they had, was from a ceremonial and temporal law peculiar to the Jews, because God would have his church neither enriched by their goods, nor to make covenants, and marriages with them, or to live in one society with them, nor to see their groves, lest they should be ensnared to follow their religion and strange gods”, *ibid.*, 209.

⁶⁵⁴ *Ibid.*, 298. Cf. 2 John 10.

⁶⁵⁵ *Ibid.*

⁶⁵⁶ *Ibid.*

⁶⁵⁷ *Ibid.*, 299.

Rutherford refers to the prophecies in the Old Testament, especially to Zecharia 13: 1–7, proving that false teachers under the New Testament, ought to be punished with the sword. Rutherford emphasizes that, that which the prophets foretell shall commend the zeal of kings and rulers under the Messiah’s kingdom, must be the lawful and necessary duty of the Christian prince under the New Testament.⁶⁵⁸ The prophecies concerning kings,⁶⁵⁹ those that are by office to be nurse-fathers to the church, to minister to her and:

lend their royal breasts to be sucked by her, and as godly kings are to praise the Lord as godly kings, are to bring gifts and presents to Christ and are to be wise and serve the Lord, and kiss the mediator, and to bring their royal honour to the New Jerusalem, and by whom kings reign, they and their royal sword cannot be excluded from commanding the priests, prophets and teachers to befriend the bride, and décor, and deck her for her Lord and husband, to give wholesome milk to the children, as they would be rewarded of princes as well-doers, or punished as ill doers, and would be protected from grievous wolves, not sparing the flock, nor can they be excluded from all royal and politic guarding of both Tables of the law ...⁶⁶⁰.

Also in his *Free Disputation*, Rutherford provides a similar argument concerning what the magistrate is “fore prophesied” to do namely, in that whatever the magistrate is “fore prophesied” to be under the New Testament, that he must discharge with all the power God has given him. This must be done on a continuous basis, and not to be bound by a judicial and temporary law, which binds for a time only. Rutherford refers to Isaiah 49: 23; 60: 10; Revelations 21: 26, the magistrate is fore prophesied to be a nurse-father to the church under the New Testament; to keep and guard both Tables of the law; and to see that Pastors do their duty to “minister to the church by his royal power, yes when the fountain shall be opened in David’s house, that is under the New Testament, he shall thrust through the false prophet that speaks lies in the name of the Lord, Zecharia 13: 1–6.”⁶⁶¹ To Rutherford, the breach of all laws of the Old Testament involving blasphemies, heresies, solicitation to worship false gods, was to be punished by the magistrate; and only when such breach is proved by two or more witnesses. However, Rutherford makes it clear that opinions in the mind and acts of the understanding can never be proved by witnesses and therefore neither the

⁶⁵⁸ Ibid., 209 – 210.

⁶⁵⁹ Isaiah 49: 23, 60: 10, Psalm 2: 11, 72: 10, 138: 4, Proverbs 8: 16, Revelation 21: 24, *ibid.*

⁶⁶⁰ Ibid., 217.

⁶⁶¹ Ibid., 321. Rutherford refers to Piscator who said that the prince is called the keeper of both Tables of the law “by our Divines”, and therefore the magistrate is to vindicate God’s glory in both, *ibid.*

magistrates nor the church can censure this. The private and inward elements of these sins are not civil crimes. If a man lusts after a woman he commits adultery (Matthew 5: 28), but he will answer to God not the magistrate.⁶⁶²

The *locus classicus* of Biblical authority concerning the duties and obligations of the magistrate, namely Romans 13, is also referred to by Rutherford as qualification for the vindication of punishment of false teachers by the magistrate. In fact Rutherford concludes his *Free Disputation*, by referring to Romans 13, more specifically arguing that Romans 13 applies not only to the second Table but also to the first. He states:

Neither needs Mr. Williams to prove that the place Romans 13 is meant of the duties, not of the first, but of the second Table of the Law, which we grant with Calvin and Beza; but it follows not, that the magistrate's punishing of ill-doers, and so of seducing Teachers, is excluded, for that punishing is a duty of the second Table of the Law, though the Object be spiritual, as sorcery is against the first Commandment, and punished as an ill-doing, Romans 13, though sorcery be a sin formally against the first Table of the Law, and why should the Magistrate punish one sin against the first Table, and not all, in so far, as they are against peace, and safety of human societies?⁶⁶³

This Biblical reference emphasizes that the powers ordained by God, such as magistracy, are to be a terror to evil, which includes the punishment of those who ruin the souls of others and waste the church. Therefore, in the context of Romans 13, the magistrate must uphold the conditions of the covenant which include the precepts of both the first and second Tables. Philippians 3: 2 qualifies false teachers as evil workers.⁶⁶⁴ In the words of Rutherford:

⁶⁶² Martin A. Foulner, "Goat Hunting with Samuel Rutherford", *Christianity and Society*, Vol. 8, No. 4, (1998), 17. Cunningham further states that concerning this issue, Rutherford is in full agreement with Theonomy and confirms this by referring to some statements by Rutherford such as: "For neither under Moses more than now, could the sword convert men to the true religion, yet bodily death was to be inflicted on the seducer, then, as now. Deut. 13.11", *ibid*; "...but the question may draw this, whether the Laws of England & Scotland be bloody and unjust, that ordains seminary Priests and Jesuits, whose trade it is to seduce souls to the whole body of Popery, to be hanged. I conceive they are most just Laws, and warranted by Deut. 13. and many other Scriptures, and that the King and the Parliaments of either Kingdoms serve Christ, and kiss the Son in making and executing these Laws", *ibid*.

⁶⁶³ Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 410.

⁶⁶⁴ *Ibid.*, 218. Other Biblical references Rutherford refers to concerning the duties of magistracy are; 1 Peter 13: 14, Titus 3: 1, Matthew 22: 21, *ibid*.

The sword is expressly given by God, Romans 13 to Christian Magistrates, and this is not against the meekness of Christ, no more nor to deliver to Satan, or to curse and excommunicate Apostats with that great curse called *Anathema Maranatha*, 1 Corinthians 16: 22. And though Hereticks and Mahomet teach that Hereticks, as also they teach that manslayers, adulterers, paricides should die the death, it followeth not that we are not to teach the same.⁶⁶⁵

The objection is put to Rutherford that in all of the New Testament is found not one prison appointed by Christ for a heretic and blasphemers. To this Rutherford replies that Christ or his Apostles speak no more of blasphemers than of prison, sword, gallows, murderers, patricides and of rebuking and excommunication; and yet Romans 13 appoints prison and sword for all ill-doers.⁶⁶⁶ To the argument that the ignorance of many magistrates on matters of religion is justification that the latter cannot know the difference between false and true teachings (whereas acts such as whoredom, adultery, murder, theft, injustice, sedition and treason are easily identifiable by “the light and law of nature”, and therefore is reason that the magistrate may impose punishment in such instances) and therefore is not in the position to punish false teachers of religion, Rutherford replies that there is no excuse for prohibiting the magistrate in punishing teachers of false doctrine.⁶⁶⁷ Rutherford further states that there are many questions of doubtful disputations beyond the realm of religion and which pertain to the determination of what is right or wrong, according to the “light and law of nature” concerning transgressions such as murder, usury, polygamy, incest, marriage, contracts and false witnesses – all acts which the critics deem punishable by the magistrate. Therefore it is a weak argument to distinguish between matters of religion – which, according to the critics, ought to be excluded as part of the magistrate’s jurisdiction (because of its difficulty of determination whether a specific religious act is for or against the “light and law of nature”), and matters concerning the second Table, where the determination whether an act is for or against the light and law of nature seems to be easier (according to the critics).⁶⁶⁸

Still, in answer to the latter point of criticism, Rutherford points out that the Holy Spirit forbids the master of every Christian family to have a heretic as a guest or to salute him, and therefore if this is expected of all the heads of Christian families, who are more in number than magistrates, then surely one cannot argue (along the same lines as in the above) that

⁶⁶⁵ Foulner, *Theonomy and the Westminster Confession*, 15.

⁶⁶⁶ Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 386.

⁶⁶⁷ 219, *ibid.*

⁶⁶⁸ *Ibid.*

magistrates may not judge in matters of religion.⁶⁶⁹ If such an obligation is expected from heads of families, how much more is it expected of the magistrate? In further justification hereof, Rutherford indicates that Christians are commanded not to eat with idolaters (1 Corinthians 7: 11), to reject a heretic (Titus 3: 10), to avoid false teachers that creep into the houses (2 Timothy 3: 5–6) and such who cause divisions contrary to the doctrine of the Gospel (Romans 16: 17–18). Rutherford states:

... sure he (the Holy Spirit) supposes they have knowledge to judge what is error and heresy, what is truth, otherwise he commands us to turn our backs on such, as the blind man casts his club. May not one say, this is against the wisdom of God in the government of Christian families and societies to interpose our judgment in doubtful disputations, to judge who is the heretics, and to be avoided, who is the sound believer.⁶⁷⁰

Rutherford adds that if God had left no means under the New Testament, but exhorting, to suppress the seducer, what shall be said of 2 John: 10, who forbids to receive a seducer in our house, or bid him God speed? Surely the latter text is a form of external forcing on the conscience of man.⁶⁷¹ Rutherford also opposes the view that false teachers need not be punished by the magistrate because they are innocent, their conscience telling them that what they teach is true. If it is no sin but innocence to teach that which is most erroneous, yet what we judge in our conscience to be true, then the magistrate ought not only to refrain from punishing it, but reward it, and to allow stipends and maintenance to all seducers to teach what errors they judge saving truths; “For he (the magistrate) is obliged to judge that both the sound pastor and the seducer follow their conscience, and in so doing, both fear God and do well, and by his office he is for the praise and reward of well-doers”.⁶⁷² This insight is to Rutherford most false. Rutherford also opposes the Libertine’s understanding that the judging of heretics to be heretical is a bold intrusion into the Lord’s cabinet counsel. Rutherford states that though we are not to judge who are elect and who are reprobate because we are not upon God’s cabinet counsel, yet do we not intrude on God’s secrets to judge who is a heretic or a false teacher, or who is sound in the faith by his doctrine examined by the law and the testimony. How can God, asks Rutherford, say that we must beware the false prophet (Matthew 7: 15) if it were arrogance and an intrusion on God’s cabinet counsel to judge a

⁶⁶⁹ Ibid. Reference to 2 John 10, *ibid.*

⁶⁷⁰ Ibid.

⁶⁷¹ Ibid., 319.

⁶⁷² Ibid., 319 – 320.

false prophet by his doctrine to be a false prophet? How can we avoid a heretic more than a saint if we may not lawfully judge a heretic to be a heretic?⁶⁷³

Rutherford states that if one were to follow the argument postulated by the Libertines that the magistrate owes protection to churches who profess a religion which is true according to their conscience, though their conscience be most erroneous, then by this is a nurse-father, by his office and by Isaiah 49: 23; 60: 10, to bring his glory of protection to the “whore of Rome” (if they be his subjects) as well as to the “New Jerusalem” – but surely the king by these references owes father-nursing and magisterial protection to the true and not the false church, because Isaiah 49: 23 states clearly that such a church is a church, and Scripture states:

(i) that the Lord can no more forget than a woman cannot have compassion on the fruit of her womb (Isaiah 49: 14–15); (ii) that is graven on the palms of God’s hands (Isaiah 49: 16), (iii) whose wasters and destroyers be removed (Isaiah 49: 17) and destroyed (Isaiah 49: 18), (iv) which shall be enlarged by the incoming of the Gentiles, whose place shall be too narrow for multitude of sons and daughters begotten by the power of the gospel, though she was a captive removing to and fro (Isaiah 49: 19–21), (v) that shall lift up a standard to the Gentiles, and nations to take in their sons and daughters to fight under Christ’s colours, as being baptised to the same faith (Isaiah 49: 22), (vi) whose spiritual government, kings and queens shall obey, licking the dust before them and whose people are not ashamed to wait for God (Isaiah 49: 23).⁶⁷⁴

As a consequence, Rutherford states:

Now to say that a false church shall have all these glorious privileges needs no refutation, and they must be stupid who teach that kings are made nurse-fathers by this text to the kingdom of the antichrist, as if the Lord had the beast and his followers written on the palms of his hands, or that kings being made nurse-fathers to the true church, owe nothing to those that wait on the Lord but the

⁶⁷³ Ibid., 402.

⁶⁷⁴ Ibid., 323 – 324.

common protection of subjects which they owe to limbs of Antichrist, Jews, Mahometans, Indians, who worship the Devil, if these be their subjects...⁶⁷⁵.

Rutherford adds that Isaiah 60 leads to the understanding that kings shall minister something to the true church which they will not minister to the false church and it is also most evident that the sucking of the breasts of kings (Isaiah 60: 16), and the kissing of the Son (Psalm 2), must be more than common protection to subjects that are open enemies to Christ and wasters of Zion. In fact it must be some protection to the church as the church, and to the laws and ordinances of God, in rewarding the well-doers, and conserving the ordinances, and the correcting of wolves, imposters and lying prophets.⁶⁷⁶ Therefore the protection of the true Church is to a large extent the covenantal responsibility of the magistrate.

According to Rutherford, that which we are to pray to have, from the office of magistracy, is precisely that which the magistrate must do. We are to pray for kings and all that are in authority, that with the sword they would guard religion, and the church of God from wolves and false teachers, that we may lead a quiet and peaceful life in all godliness and honesty.⁶⁷⁷ Nor can magistrates procure a quiet and peaceful life in all godliness and honesty, but by his sword. The magistrate cannot with mere words of mouth, only exhort as a magistrate the foxes not to destroy the vines, and wolves not to slaughter the sheep, unless he compels false teachers and idolaters to do so.⁶⁷⁸ According to Rutherford, a naked permission from the magistrate to serve God is not enough. If wolves be permitted to teach what is right in their own erroneous conscience, and there be no magistrate to put them to shame (Judges 18: 7), and no king to punish them, then godliness, and all that concerns the first Table of the law must be ruined, and consequently the intrinsical end of the magistrate, which is a peaceable life in all godliness, is not attainable in an ordinary providence. Rutherford also states that it is not proper to argue that Paul will have us to pray for the magistrates that were heathen, who, being ignorant of Christ could confer nothing to godliness, but merely that they persecute not the godly for their conscience, nor permit others not to persecute them, for this is only a negative duty exercised by the heathen magistrate concerning godliness.⁶⁷⁹ Instead, Paul will rather have us to pray for their conversion, that the heathen magistrates may become

⁶⁷⁵ Ibid., 324.

⁶⁷⁶ Ibid.

⁶⁷⁷ Ibid., 229. Reference also to 1 Timothy 2: 1-3, *ibid*.

⁶⁷⁸ Ibid., 230. Reference also to Judges 17: 1-6, Rutherford referring to Micah and his mother who made a molten image and an ephod and imposed it on their house, the Holy Spirit saying: "In those days there was no king in Israel, but every man did that which was right in his own eyes", *ibid*.

⁶⁷⁹ *Ibid*.

Christian magistrates, and come to the knowledge of the truth, and then only do they do more than negatively procure peace for the church, for as magistrates having been converted, they are to praise and reward and promote to the dignity of judges, men fearing God (Deuteronomy 1: 17).⁶⁸⁰ Therefore, according to Rutherford the magistrate has a positive duty to procure the truth, which is in line with the magistrate's (and community's) responsibility to partake in the covenant.

Rutherford refers to 1 Timothy 2: 1–2, where Paul commands us to pray for kings and all who are in authority, and it is clear that some in authority were converted to the Christian faith (Philippians 1: 13; 4: 22).⁶⁸¹ According to Rutherford, this prayer for kings should also not be restricted to the kings and rulers of that period when Paul wrote that, but for all kings to be converted, and who shall believe and be saved as they promote godliness in a political way by their sword. Consequently, those magistrates that have no more to do to procure peaceable life in all godliness by their office than heathens and pagans, can in no manner be the object of our prayers to God for procuring a life in all godliness.⁶⁸² If there be no bodily punishment to be inflicted on false teachers and blasphemers, then must Christ by his blood repeal all those laws in the Old Testament.⁶⁸³ Rutherford also refers to 1 Peter 2: 11–14, emphasizing the subjection due to kings and the governors sent by them, and states that freedom to sin, and consequently freedom to exercise; heresies, and the teaching and spreading of false doctrines, is no less a work of the flesh than adultery, murder and witchcraft.⁶⁸⁴ The conditions of the covenant include religious precepts emanating from the first Table, and not only from the second Table. Rutherford makes it clear that heathen magistrates are not in the position to judge and punish in matters of religion and that in heathen kingdoms this cannot be expected. Neither heathen princes, nor heathen fathers, masters, husbands, tutors and teachers of schools, are obliged to an actual exercise of all and every magisterial, fatherly, masterly, marital and tutorial gospel duties toward their pupils, if they live in a country where they are ignorant of the gospel.⁶⁸⁵ Therefore, only a magistrate that has knowledge of the gospel may punish a heretic.

⁶⁸⁰ Ibid.

⁶⁸¹ Ibid.

⁶⁸² Ibid., 231.

⁶⁸³ Ibid., 233.

⁶⁸⁴ Ibid., 234. Refer to confirmation of this in Galatians 5: 16-21, stating, inter alia, that idolatry, witchcraft and heresies, are works of the flesh in sin.

⁶⁸⁵ Ibid., 221.

Concerning the parable of the wheat and tares (Matthew 13), Rutherford states that the scope of this parable has nothing to do with the office of the magistrate, in punishing or not punishing heretics. Christ did not show that magistrates should punish none of the children of the wicked one, because of the danger of cutting off the children of the kingdom with them, “for the words may bear then (says Calvin), that all punishments and censures, both civil and ecclesiastical rebukes, and excommunications, should cease till the end of the world.” Rutherford also confirms that Bullinger said the same.⁶⁸⁶ In this regard Rutherford adds that the danger of punishing the innocent by mistake in the pursuit of punishing the guilty is no argument qualifying that heretics should not be punished by the magistrate. In the words of Rutherford:

... that the magistrate should punish no false prophets or seducers, but let them all grow till the day of judgment, for fear that he punish or put to death a faithfull teacher in lieu of a false seducer, as Luther following some of the fathers teaches, is so far from being in this text, that it is not a truth contained in all the Old or New Testament. Yes, it is openly false, for then should we not avoid and turn away from idolaters and hereticks contrary to 1 Corinthians 5: 11, Titus 3: 10 and Romans 16: 17; but live and converse with them to the end of the world, because we may take some to be hereticks who are no such thing, but sounder in the faith than ourselves: show me a warrant for such an untruth, that we are to do no duties till the day of judgment, for fear of sinful miscarriages in the manner of doing them.⁶⁸⁷

Rutherford also emphasizes that this parable does not qualify the magistrate to tolerate all those that are wicked. If this parable were to command magistrates to do so then it will mean that all that practice iniquity, adulterers, sorcerers, murderers, traitors, robbers, thieves, heretics and all evil-doers, are to grow and live to the end of the world and therefore the magistrate may just as well “go hunt goats and hang up his sword”.⁶⁸⁸ This parable refers to

⁶⁸⁶ Ibid., 236. Also cf. Stephen C. Perks, *A Defence of the Christian State*, (The Kuyper Press: Taunton England: 1998), 103; the author commenting on Matthew 13: 24-30 (and verses 36 – 43). Perks states that this text does not invalidate the relevance of the State; stating that this passage does not address the issue of law and order and on what basis the magistrate is to administer justice. In fact, it cannot be deduced from the words in this passage that non-believers should not be punished for the crimes that they commit, *ibid.*

⁶⁸⁷ Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 237.

⁶⁸⁸ *Ibid.*, 238.

the godly wonder at a providence in God, and not in magistrates, that good and ill should grow together until the time of the harvest (judgment).⁶⁸⁹

Rutherford refers to the reason given by the Libertines concerning their opposition against the killing of heretics; the reason being that the Libertines view such practice as a danger in that they could be taken away from being part of the elect and before they are converted. This argument, says Rutherford, is against divine providence. The magistrate's duty is to impose justice, while election and reprobation are secrets that belong to the Lord.⁶⁹⁰ This once again emphasizes the king's, magistrate's and community's responsibility in fulfilling the conditions of the covenant. The debate concerning man's responsibility and Divine sovereignty in the covenantal context is brought to the fore, and it is clear that Rutherford (and the other theologico-political federalists) emphasize the ruler's and community's responsibility within God's Divine sovereignty. According to Rutherford, the Lord has appointed a way how to purge heaven out of the church (1 Corinthians 5: 1) and how evil-doers shall be cut off (Romans 13), though not in so strict and accurate a way as we may dream of, who would not have one thistle in our Lord's field.⁶⁹¹ In some laws in the Old Testament, God was severer to things and to persons, for example, where He commands the cattle and women with children, to be killed because God would both give a document of *moral justice* for our imitation and of *typical-ness of justice* (which is now ceased). However, concerning the application of moral justice, the Lord is severer under the Gospel, than under the law (Old Testament), as is evident in Malachi 4: 1–2, Hebrew 2: 1–2, Luke 23: 28–30, and no less jealous of his own glory now than at that time.⁶⁹² For crimes such as murder, the magistrate punishes with death (Numbers 35: 30–31), because the taking away of life is among things that cannot be repaired. Although the case of conscience could not be determined, the heretic who repents, is to be pardoned by the magistrate, while continuous exercise of heresy is punishable by death. The blasphemer who has perverted many souls and has presumptuously dishonored the majesty of God, though he is not put to death, surely has to be punished by the magistrate.⁶⁹³

Rutherford again refers to the Libertines, the latter mentioning an instance where Christ was rejected and denied lodging by the village of the Samaritans, and where John asked Christ whether He would have them command fire to come down from heaven and consume the

⁶⁸⁹ Ibid.

⁶⁹⁰ Ibid.

⁶⁹¹ Ibid., 240.

⁶⁹² Ibid., 244.

⁶⁹³ Ibid., 247 – 248.

Samaritans, as Elias did, to which Christ replying rebuked them stating that the Son of man is not come to destroy men's lives, but to save them.⁶⁹⁴ This the Libertines refer to as justification that the lives of those that refuse the true and sound doctrine of the Gospel are to be spared. Rutherford, in response, refers to Celfus, who stated that this example is not meant to compare the Samaritans with heretics, or the apostles with the ministers and the magistrate, but that the benign and meek nature of Christ, in matters of religion is clear, and that we should abhor cruelty in matters of religion. If the apostles had moved the same question touching heretics at that time, Christ would have given the same answer.⁶⁹⁵ Rutherford continues in his response to the Libertines by firstly challenging the latter to explain from this, that the disciples were applying their minds to matters of religion as to why they would have the Samaritans burnt. From the side of the Samaritans, it was an act of envy rather than opposing the doctrine of the gospel. This was because there was envy between the Jews and the Samaritans, and the Samaritans, having had a high esteem of Christ, were offended that so mighty a Prophet should visit their hateful enemies, the Jews.⁶⁹⁶ Rutherford also acknowledges that the Samaritans were utterly ignorant of the gospel and poses the question whether the first thing to be done to such as will not admit Christ or his messengers within their houses, is to call for the magistrate to destroy them by the sword, or for fire from heaven to destroy them. In this context Rutherford makes it clear that it is not lawful to go with fire and sword, to force Indians, Samaritans or any heathen to embrace the Christian faith.⁶⁹⁷

Whether the punishing of seducers be inconsistent with the meekness of Christ, Rutherford again refers to the critics, who lean on Luke 9: 54 (“And when His disciples James and John saw this, they said, ‘Lord, do You want us to command fire to come down from heaven and consume them, just as Elijah did?’ ”), to justify opposition to the punishing of idolaters by the magistrate's sword; the Libertines viewed Christ as a screen and shield between false teachers and the sword, and so also the Arminians. Rutherford quotes the following criticism pertaining to the latter text namely:

If Christ will not permit to his disciples a desire of punishing, out of zeale and love to Christ, to whom the Samaritans denied lodging, far less will he permit Christians to punish heretics for their conscience only. But Christ proves the former to come from a spirit not such as was in Elias: 1. That spirit is sharp and

⁶⁹⁴ Ibid., 248 – 249. Cf. reference to Luke 9: 51-53, *ibid.*

⁶⁹⁵ Ibid., 249.

⁶⁹⁶ Ibid.

⁶⁹⁷ Ibid., 249 – 250.

bitter. 2. tending to destroy lives, which I came to save. 3. not acceptable to me, in that you would destroy for religion, and this is against all cruelty for religion.⁶⁹⁸

In other words the Libertines emphasize that it is wrong to punish idolaters, just as it is wrong and contrary to the will of Christ for the Apostles to want to destroy the Samaritans, as well as the fact that the approach of Elias (in calling fire from heaven to destroy as witnessed in 2 Kings 1) is to be condemned by Christ's response to a similar act (the desire by the Apostles for the calling of fire from heaven to destroy as witnessed in Luke 9: 54). Referring to Luke 9: 54, Rutherford states that it was Theophilactus who said that this text is an example of blind anger and zeal, and adds that to consume a whole city, consisting of men, mothers, children and many innocent people, a need of an express law of God and the known will of God is required. Though there was a law justifying the destroying of a city that maintained idolaters and that tempted to follow strange gods, and kept out against all Israel, and so defied Israel and their God; yet the execution of such a temporary judicial law is not to be found, without referring to what God commands by his mouth. In this specific instance, says Rutherford, the fiery disciples follow their own way in revenge by asking fire from heaven.⁶⁹⁹ Rutherford also adds that nowhere in this text (nor in the case of Elias), was the argument that which concerned idolatry or false worship, but the denying of an act of humanity to Christ in the form of not providing Christ with lodging. Elias did not desire fire to come down from heaven and burn cities, men, women and children; what he did desire was that fire destroy murderers that came to either kill him or bring him to a tyrant, who against all law, sought his life. Therefore, according to Rutherford, the two examples, namely that of Elias desiring the killing of people and the disciples wanting to kill the Samaritans, cannot be synonymous,⁷⁰⁰ and also cannot be used to justify the toleration of idolatry and heresy.

⁶⁹⁸ Ibid., 288. Concerning the reference to Elias, cf. 2 Kings 1.

⁶⁹⁹ Ibid., 288 – 289.

⁷⁰⁰ Ibid., 289. Also cf. Perks, *A Defence of the Christian State*, 103 – 104, the author commenting on Luke 9: 54-55, states that this passage does not justify the fact that the magistrate must not have regard for religion. Those upon whom the disciples proposed to call down fire had committed no crime, and therefore on what grounds can it be contended that they be punished by the magistrate? There was perhaps sin involved, but not crime. Even if they had committed a crime, the disciples were not magistrates and therefore it was not their duty to judge. For the disciples or Christ to have acted in such a way would have been to bypass and usurp the authority of the duly instituted courts of Israel, and therefore rebellion against the judicial order established by God. Judgment by means of fire from heaven, would not in any case be the exercise of the magistrate's authority and power, but a divine judgment; calling fire from heaven was not the magistrate's job. What this passage refers to is the appropriateness of calling down divine judgment, not the office and calling of the magistrate nor the means at his disposal to pursue that calling, and therefore the magistrate is irrelevant to this instance.

Also, Elias followed God's command in what he did, which is in contrast to the disciples who called for fire from a wild spirit, and it was not a proper function for the apostles, nor had they any extraordinary calling from God as Elias had. Elias came to restore the true religion after great apostasy, while Christ came to propagate the gospel.⁷⁰¹ According to Rutherford, the criticism put forward by the Libertines can just as well use the meekness exhibited by Christ in this text as justification that therefore pastors ought not to rebuke sharply, and magistrates may not in a well ordered city, reprove and punish persons who refuse lodging to innocent strangers, which is against the law of nature.⁷⁰² Rutherford refers to Mimus Celsus who states: "But it is not our mind to compare and resemble by this text Samaritans to Heretics, and ministers of the Word to Magistrates, for that were to no purpose, but to condemn all cruelty flowing from desire of revenge, in the matter of Religion".⁷⁰³ Building on this thought Rutherford states: "... for there can be no greater cruelty than for a Christian magistrate to suffer bloody wolves to prey upon the flock, and false teachers to hunt souls, and destroy them. It was justice, not cruelty, yes mercy to the church of God, to take away the life of Servetus, who used such spiritual and diabolic cruelty to many thousand souls, whom he did pervert ..."⁷⁰⁴

Some additional arguments that the Libertines refer to in order to justify the toleration of false teachers,⁷⁰⁵ is met with further opposition by Rutherford.⁷⁰⁶ Rutherford refers to Christ who is meek to repenting sinners, but a severe judge and a revenger of ill-doers;⁷⁰⁷ nor is the meekness of Christ inconsistent with his justice and righteousness, in commanding the nurse fathers of his house, the rulers of the earth, that which the moral and perpetual standing law of God requires, namely that they use the sword against ill-doers of all sorts and degrees;

... for they stand together in the person of Christ, who is a meek king, Zachariah 9: 9 and lowly and just, having salvation, and breaks not the bruised reed, nor quench the smoking flax, which is not meant of his forbearing the use of the sword against grievous wolves that spares not the flock, and wolves in the skin and cloathing of sheep, seducing heretics, for neither Calvin, Musculus, Gualther, Junius, Scultetus, Marlorat, nor any sound interpreter, Protestant,

⁷⁰¹ Samuel Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 291

⁷⁰² *Ibid.*, 289.

⁷⁰³ *Ibid.*, 289 – 290.

⁷⁰⁴ *Ibid.*, 290.

⁷⁰⁵ Such as Isaiah 42: 1-2; 2 Timothy 2: 25 and 1 Corinthians 4: 5, cf. 291, *ibid.*

⁷⁰⁶ *Ibid.*

⁷⁰⁷ Cf. Revelations 2: 6, 9, 14, 20-22, 24; *ibid.*, 293.

Lutheran or Papist, save Socinians and Anabaptists professed parties, render any such sense ...⁷⁰⁸.

Rutherford also challenges the Libertines to prove that heretics are such tender and weak believers as weak reeds and smoking flax “and that Christ does not only not use the sword against such tender ones, but he takes wolves and seducing teachers in his bosom, and nourishes and tenderly cherishes the leaders of people of corrupt minds, destitute of the truth”.⁷⁰⁹

According to Rutherford, to correct with the sword and with the rod as a father, is consistent with covenant-mercy and meekness; as not to punish is one of divine wrath (Hosea 4: 14) and to judge before the day (1 Corinthians 4: 5) is not to forbid all judging of heretics, for if the latter are not judged as heretics, asks Rutherford, how are we to be aware of them, as Christ commands us (Matthew 7: 15), and shun them (Romans 16: 17) and not bid them God speed, nor receive them into our houses (John 2: 10) and avoid them (Titus 3: 10); and far less must a judicial trial of Jezabel be forbidden to the church of Thiatira (Revelation 2: 20).⁷¹⁰ Rutherford also opposes the argument that the use of the sword against those that commit bloodshed, sorcery, sodomy and parricide, is the cause of hypocrisy, making men to profess the truth against their conscience. According to Rutherford, the sword is innocent, while it is the corruption within their hearts who make themselves hypocrites – men fear him that can kill the body, more than they fear him that can destroy both soul and body in hell (Matthew 10: 28). Consequently, Rutherford asks whether the fact that people abstain from sodomy, bloodshed, sorcery and parricide because of their fear for the sword more than for fear of God, justifies the exclusion of the use of the sword by the magistrate against such transgressions. Rutherford adds that so many people are made hypocrites by the hearing of God’s word, and in external actions, drawing near God with their lips, when their hearts are far from God. Rutherford states:

⁷⁰⁸ Ibid.

⁷⁰⁹ Ibid., 293 – 294. Rutherford states that as Christ is meek to weak ones, so also, He is not so in various other instances, cf. Psalm 110: 5-6 and Revelations 19: 11, *ibid.*, 294. “Considering the parties he has to do with, he is meek toward the meek, but so as he destroys his enemies, and burns their cities with fire, who will not have him to reign over them, Matthew 22: 7, which yet I expound not to be the sword of the Christian ruler, as if he were an office-bearer in the church, but only bring it to prove how weak these allegorick places are, either for or against the point at hand”, *ibid.* What Rutherford is also emphasizing is that Christ’s meekness is not inconsistent with his justice, cf. *ibid.*, 293.

⁷¹⁰ *Ibid.*, 294.

... shall therefore the hearing of the word and the prosperity that follows the gospel which begets believers for a time, who wither when the sun riseth, and shall power in the hands of the people of God, that makes the enemies lie, and hypocritically submit, Psalm 81: 15, be as unlawful as the drawing of the sword against false teachers? For all these beget hypocrisies ... and if we made the sword a means of conviction of sinners, as Libertines falsely suppose, the argument should have some colour ...⁷¹¹.

Concerning the nations that are fixed on idolatry, the nations that worship God in an idolatrous manner, and being of a strange religion, worshipping a strange god, Rutherford states that though such nations do the greatest injury to God that can be, yet in the regard that they are nations that do not exercise such idolatry to the destruction of our peace, liberty and lives, the Christian nation therefore has no right over them, nor is there any authority qualifying the Christian nation to make war against them.⁷¹² Bearing in mind Rutherford's covenantal approach, this understanding also implies that a heathen nation (until they accept the Word and precepts of God) is not in covenant with God and it is therefore not expected of such a nation to adhere to the conditions, unless they, in some or other manner negatively influence a Christian nation's fulfillment of the covenantal conditions. This brings Rutherford to the discussion of the just war, stating that every just war is in some or other way defensive in nature. This must be viewed in the context that every act of the magistrate is an act entailing the defense of the peace, life and liberty of society. According to Rutherford if the life of a murderer be not taken away by the magistrate's sword, the murderer will take the life away of yet another man, for he that is wicked is still presumed to be wicked, except his wickedness be restrained, and:

... to offend a nation or person that has not offended us, must be unjust violence and unlawful war: and to make war against a nation that has worshipped a strange god, and injured God, and not us, supposes that we must instruct them of a wrong done to God, by teaching them, and instructing them in the true religion: for suppose they worship the works of mens hands, and worship Satan as some Indians do and so by their own conscience may be convinced, and so are inexcusable *in soro Dei*, before God's tribunal, yet are they not so inexcusable,

⁷¹¹ Ibid., 295.

⁷¹² Ibid., 300. Also cf. *ibid.*, 315, where Rutherford states: "The nations of another religion are not gained to Christ by the sword, nor can we make war against them because they are idolaters and follow a false religion, nor was idolatry the ground of the war that Israel raised against the Canaanites and other nations".

in soro humano, before man's tribunal, as we can make war against them, till we inform and instruct them positively of the true religion.⁷¹³

In this regard, Rutherford emphasizes the importance of making known to the nations, God's revelation, and that no manner of force can obtain this result. However, they that shed the blood of another nation, and invade the latter's peace and liberties, need not be instructed in the principles of the law of nature, which are written in their hearts.⁷¹⁴ A just cause of war must either be an open breach of nations against the law of nature, as is clear concerning the Amalekites and all the nations who invaded Israel (Joshua 11: 19–20); or when there is clear apostasy from the covenant of God and true religion in the visible church, as in the case of the new altar supposed to be erected by the two tribes and the half tribe against the only one altar commanded by God.⁷¹⁵ Therefore, the breaking of the covenant conditions is a justified cause for a just war.

Rutherford further asks what the case would be where a nation worshipping other gods is not instructed in the true religion? Should not the injuries done to God be avenged? Rutherford replies that there is no ground to justify the enforcement of true religion on idolaters, unless they attempt to impose their ways on the Christian nation and injure the souls of its members. According to Rutherford there is a vast difference between a people that have never received the true religion, and a people who have embraced and submitted to laws that have enacted the profession of the true religion. Those people that have never professed the true religion, cannot be compelled to receive it by the sword of another nation. The "not receiving" of the true religion cannot be the justification for war. However, says Rutherford, when such a godless nation has first been subdued in a just war by a Christian nation, then the latter may educate such a subdued nation and impose laws on such a nation to cast away idols of their fathers and to learn the knowledge of the true God.⁷¹⁶ Rutherford adds that it may be true that God did command his people to destroy the Canaanites, but idolatry was not the reason, the reason being that there was not a nation that made peace with the children of Israel save the Hivites the inhabitants of Gibeon (Joshua 11: 19–20).⁷¹⁷ According to Rutherford the inference cannot be drawn that because false teachers must be punished by the magistrate, that therefore the Jews and nations that blaspheme Christ must be put to the sword. Such nations are not under Christian magisterial power, and they are also not instructed in the

⁷¹³ Ibid., 300 – 301.

⁷¹⁴ Ibid., 301.

⁷¹⁵ Ibid., 315 – 316.

⁷¹⁶ Ibid., 301 – 302.

⁷¹⁷ Ibid., 302.

doctrine of the Gospel.⁷¹⁸ One can also say that such nations are not in covenant with God, having no knowledge of the contents of such a covenant and therefore not being able to enter into such a covenant.

Rutherford states that the argument becomes more difficult when there is a nation practicing a false religion in close vicinity to a nation practicing the true religion; or where there are nations in covenant with each other, agreeing to endeavor the extirpation of all false religions and what is contrary to sound doctrine, but where one of these nations deviates from such covenant. In this context Rutherford refers to the kingdom of Judah, who most certainly might justly have avenged the Apostasy of the ten tribes from David's house, and from Jerusalem where the Lord had set his name, for the worshipping of the golden calves, if the Lord by his prophet had not expressly forbidden them to fight against their brethren (1 Kings 12).⁷¹⁹

Rutherford supports the punishment of idolatry in the midst of a Christian nation, and this he justifies by referring to Joshua 22: 12–13, 15–16, 20, where the children of Israel did justly attempt war against the tribes of Reuben, Gad and to the half tribe of Manasseh, because they erected a new altar for worship, and therefore to act in the same manner as the placing of the wrath of God on all the tribes as Achan did.⁷²⁰ Rutherford then refers to Calvin's commentary on this text namely: "They were angry with a holy zeale. The sword is not given to every man in his hand, but every one according to his calling ought manifestly and constantly to defend the true religion. And if the wrath of God came on all the people for the secret sin of one man, much more the people shall not go unpunished, if they dissemble the manifest idolatry of many"⁷²¹. Piscator, concerning this text, states: "It was piety in the tribes that they resolve to make war with the two tribes and the half, for their defection from the true God". Rutherford, concerning this text, also refers to the Divines of England, stating that: "Such was their zeale that they would rather hazzard their lives, than suffer God's true religion to be corrupted; for God had ordained there should be but one place for public service, and sacrifices, and but one altar (Leviticus 17: 8–9; Deuteronomy 12: 5, 7, 13, 27; 27: 5; Exodus 20: 24)."⁷²² Rutherford also refers to the Geneva notes and the Dutch

⁷¹⁸ Ibid., 386. The question put to Rutherford refers to Exodus 22: 20, Leviticus 24: 16 and Deuteronomy 13 to justify the punishment of those that blaspheme Christ, *ibid.*

⁷¹⁹ Ibid., 302.

⁷²⁰ Ibid., 302 – 303.

⁷²¹ Ibid., 303.

⁷²² Ibid.

annotations that approve the lawfulness of the war.⁷²³ According to Rutherford it is therefore clear from the above, that when a kingdom or two kingdoms are united together, and confederate by the oath of God in one religious covenant, they become an ecclesiastical body, so as the whole may challenge any part that makes defection, and if they continually resist, they are with the sword to decide the matter. If they do not follow such a procedure the wrath of the Lord will break out on the whole confederate body, as for the time of Achan, when the Lord's wrath came upon all Israel.⁷²⁴ In the context of the above, Rutherford adds: "... if the third part of Scotland and England should turn apostates from the religion once sworn, after they had bound themselves in covenant: the question remains, what should the state and parliament do in that case? Should they be indifferent beholders, and not use the sword against such apostates?"⁷²⁵

Coffey (in the context of 17th-century Scotland) refers to Rutherford's emphasis on the responsibilities of the magistrate concerning the maintenance of religion, with the "passionate and ferocious character exhibited in *Lex, Rex*". Coffey states that Rutherford fulminated against the king who was "drinking the blood of innocents, and wasting the church of God". According to Rutherford, the king had invited "a bloody conqueror [the confederate Irish], to come in with an army of men to destroy his people, and impose on their conscience an idolatrous religion".⁷²⁶ That this was a settled disposition (and not a fit of madness) in the king was confirmed by the popish religious policies of the 1630s, and the terrible failure to assist the Protestants at La Rochelle and the palatinate in the 1620s. According to Rutherford, Charles had not only failed to break "the images and idols of his queen, and of papists about him", but he had also commanded good Protestants to commit worse than Babylonian idolatry. Charles could order his subjects "to cast themselves into hell-fire" by following the idolatrous worship of the Service Book; and when they refused, he sent an army to destroy the whole land if they should not submit, soul and conscience, to that wicked service. Coffey

⁷²³ Ibid. Cf. also *ibid.*, 303 – 304, where Rutherford refers to certain popish writers who also commend this zeale found in Joshua 22, and who state that: "all the twelve tribes made but one state and one church", Toftatus saying: "there was a necessity of making war with the two tribes, because the law commanded it, Deuteronomy 13". Lyra stated: "War should not be undertaken, but on a certain and just cause, especially against friends, therefore they send messengers to the two tribes, to try the cause of the new altar". Menochius stated: "Out of zeal they sent messengers to try the crime of idolatry, and to bring them to repentance, if not, to make destructive war against them", and Ferus said: "They were ready, if the two tribes obeyed not, to decide the matter by war. Would God there were such zeal in us, and we see not one altar erected, but a number of superstitious altars".

⁷²⁴ *Ibid.*, 304.

⁷²⁵ *Ibid.*

⁷²⁶ Coffey, *Politics, Religion and the British Revolutions*, 150.

adds that not without reason did Rutherford feel he could introduce the example of Nero, “wasting Rome, burning, crucifying Paul, and torturing Christians”.⁷²⁷

According to Rutherford a Christian prince may deny infidels liberty to dwell in his territory, and subjects may be compelled not to blaspheme Christ, and not to dishonor God with manifestly professed impieties. For, says Rutherford, if Asa made a law, 2 Chronicles 15, that they who would not seek the true God, should be put to death, and if this be only temporary and judicial, then the Christian magistrate is not acting like a Christian magistrate, or as a nurse-father, Isaiah 49: 23. To Rutherford this is surely not part of the peaceableness of Christ’s kingdom, not to rebuke sinners.⁷²⁸ Rather, nurse-fathers and civil tutors must do something for the defense of the truth from errors, “for Constantine the great closed the temples of heathen gods, to the end that heathenish idolatry might be abolished, as Eusebius said”.⁷²⁹ Rutherford also states that those things which are moral, and which cannot be determined by the wisdom and will of man, must be determined by the revealed will of God in his word. God only, and not Moses, nor any other law-giver under him, takes it upon himself to determine death to be the adulterer’s punishment (Leviticus 10), the same pertains to the following namely; intentional murder (Exodus 21: 13), smiting of the father and mother (Exodus 21: 15), man-stealing (Exodus 21: 16), sorcery (Exodus 22: 18), bestiality (Exodus 22: 19), and sacrificing to a strange god (Exodus 22: 20).⁷³⁰ The Scripture is as full in the duties of the second Table, concerning mercy and righteousness, as in the duties of the first Table, concerning piety and religion. In addition, anything pretended to be moral, has God for its author in either the first or the second Table of the law.⁷³¹ Therefore, according to Rutherford, the conditions of the covenant are clearly witnessed in the Decalogue, and the conditions in the first Table (which are of a religious nature) are no less important than those in the second Table. In addition, the ruler’s obligations in fulfilling the conditions of the covenant include not only the duties found in the second Table, but also those in the first. Rutherford is therefore not only clear on what the conditions are, but also that they are to be found in Scriptures, and more specifically in the form of the law of God (which is discussed in more detail below).

⁷²⁷ Ibid.

⁷²⁸ Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 305.

⁷²⁹ Ibid. Cf. *ibid.*, 308, where Rutherford refers again to Eusebius’s confirmation concerning the promulgation of edicts by Constantine, against heretics. Referring to Augustine, Rutherford states: “Augustine says, heretics kill souls, let them be afflicted in body, they bring on men death eternal, and they complain that they suffer temporal deaths”, *ibid.*

⁷³⁰ *Ibid.*, 309.

⁷³¹ *Ibid.*, 309 – 310.

In this context Rutherford states that the will of man cannot be the author of any thing morally good, and the same applies to righteousness, worship and piety, since the word is a perfect rule in matters of doctrine or faith, or of life, manners and conversation, and teaches the judge what he should do (Deuteronomy 17: 18–20, Psalm 19: 8–9, 119: 9, Proverbs 3: 21–23).⁷³² Consequently, the punishing of a seducing teacher is moral in that it is commanded to father and mother not to pity him (Deuteronomy 13: 6) and holds forth in the zeal of God, in father and mother, under the Messiah’s kingdom (Zecharia 13: 1–6); and everyone is forbidden to bid him God speed and commanded to deny him an act of humanity and hospitality, and not receive him in his house (2 John 1).⁷³³ In the words of Rutherford:

If we be commanded to put any shame on him (the false teacher), far more must the ruler be taught of God what shame he should put on him (the false teacher). For whatever in the New Testament is capable of a command, is moral. And if moral, what the magistrate should do to him can no more be determined by the will and wit of man, than it can be determined what punishment the magistrate must inflict upon the murderer, the adulterer, the sorcerer, the sodomite; which all the wisdom of God has determined.⁷³⁴

There is therefore no ground to state that the New Testament dispensation is so spiritual that God will have no remedying of seducing prophets but by the spiritual armor of the word. To argue that the New Testament is as spiritual to gain the sorcerer, thief, sodomite, drunkard, reviler as the idolater, by the spiritual armor of the Word (Act 19: 19, 1 Corinthians 6: 9–11) and therefore that the magistrate may not punish the thief, sodomite, drunkard and sorcerer, is contrary to Romans 13: 1–6, 1 Peter 2: 14, “Especially since the magistrate is not indifferent towards ill-doers, and well-doers, since he must punish the one as a nurse-father, praise and reward the other, 1 Peter 2: 14, gaining of souls is well-doing, Matthew 25: 21, 23. And seducing of souls is by the law of nature and nations the worst of injuries done to men”. To punish the seducing prophet is perpetually moral, and an act of justice at all times and in all places.⁷³⁵

⁷³² Ibid., 310.

⁷³³ Ibid.

⁷³⁴ Ibid. Additional texts Rutherford refers to confirming the approach to be taken against false teachers are: Matthew 7: 15, Titus 3: 10, Romans 16: 17, 2 Timothy 2: 15, 17, 2 Timothy 3 and Titus 1: 10, *ibid.*

⁷³⁵ Ibid., 311. The criticisms by John Coffey on Rutherford, concerning the punishment of idolaters and seducers of the truth is not convincing, Coffey stating: “Francis Schaeffer, too, was fulsome in his praise of the magisterial Calvinists, dedicating one of his most influential books to Rutherford. However ... Schaeffer fails to mention the dark side of the Reformed attempt ‘to build a Christian

Rutherford states that if the law of nature and nations dictates to all societies, that deceivers and such as raise false reports and lies on earthly judges should be punished, far more is it a principle of the law of nature that public liars and such as speak lies in the name of the Lord and deceive and seduce the souls of father and mother, king and ruler, and of all ranks of men in society, should not be tolerated in society.⁷³⁶ Rutherford refers to Job 31: 26–28, where it says that Job, who was a Gentile and under no judicial law, was lead by the law of nature, in his realization that worshipping of the sun and moon is a form of idolatry, which is an iniquity to be punished by the judge.⁷³⁷

Rutherford states that although peace is commanded in the New Testament, Paul exhorting to Christian peace; there is no word of toleration of diverse religions by ‘precept, promise or practice’, nor is there any ground of repealing judicial laws for punishing seducing teachers.⁷³⁸ Endeavoring to keep the unity of the Spirit in the bond of peace (Ephesians 4: 3), is not because of contrary religions but because there is but one Lord, one faith, one baptism –

civilisation’ ... Schaeffer omits all reference to Rutherford’s treatise *A Free Disputation Against Pretended Liberty of Conscience* (1649), which has been described as ‘the ablest defence of religious persecution in the seventeenth century’”, Coffey, *How Evangelicals Shouldn’t think about Politics*, 201. Besides Coffey not producing any substantial reason concerning this statement, Perks comments on this view of Coffey by posing the question as to where in the Bible are we taught the doctrine that the “Jewish magistrate’s punishment of heretics and idolaters, in particular, was simply a typical foreshadowing of the excommunication of heretics in the Church; it had no binding force for any other nation?” Perks asks: “Where are we told ‘in particular’ in the New Testament that the kinds of idolatry and heresy that were criminal offences under the old covenant are no longer to be considered criminal offences under the new covenant because the punishment of such crimes under the old covenant was typological?”, Perks, *A Defence of the Christian State*, 54 – 56. In addition, and in the light of this work on the theologico-political thought of Rutherford in general, it would be false to state that Rutherford formed part of the ablest defense of *religious persecution* that took place in the 17th century, especially from a Scriptural point of view. Also, what Coffey incorrectly states, is that “McGrath and Schaeffer fail to mention the dark side of the Reformed attempt ‘to build a Christian civilisation’”, Coffey, *How Evangelicals Shouldn’t think about Politics*, 201. Here Coffey refers to the “persecutions” that, among others, Rutherford’s political theory resulted in (in his *A Free Disputation Against Pretended Liberty of Conscience*), for example, the punishment of idolatry. However, it must be kept in mind that Rutherford’s political thought, especially that pertaining to resistance to tyranny and the punishment of idolatry and other crimes against the Decalogue, was aimed at the Protestant Christian community on the British Continent at the time, and concerning these issues, Rutherford’s political postulations were not a political tract in order to “establish” Christianity on the continent. Rutherford was writing in this regard on the assumption that a substantial number of people on the continent were of the Protestant faith. In fact, Rutherford’s *Free Disputation*, championed the cause for freedom of conscience and that neither the magistrate nor the church can force religion upon anyone, only by the spreading of the Word, by religious instruction (voluntary) under the leadership of the Holy Spirit. This is confirmed in the above concerning the function of the ecclesiastical office in comparison with the office of magistracy. The establishment of Christianity is an issue altogether different from any Scriptural political theory (among others by Rutherford) on resistance against the tyrannous and idolatrous state by the Protestant community or punishment by the magistrate for crimes committed against the Divine Law in an area which is already substantially Christian.

⁷³⁶ Rutherford, *A Free Disputation Against Pretended Liberty of Conscience*, 313.

⁷³⁷ Ibid.

⁷³⁸ Ibid., 332.

there is a law against the toleration of many religions.⁷³⁹ Rutherford refers to Solomon's toleration of the idolatrous worship (1 Kings 11) that provoked the Lord to anger, and Paul says that we are to follow the things that make for peace (Romans 14: 19), and toleration of many religions is contrary to peace.⁷⁴⁰ According to Rutherford, "... if one of them be the only true way, the rest are all false ways, the mixture of the two contrary seeds, the seed of the serpent, and the seed of the woman must be against peace; and Paul exhorting in the union and Christian peace, thinks many religions, many sects and opinions tolerated (1 Corinthians 1: 10) to be contrary to peace."⁷⁴¹ Rutherford adds:

But I hope Jeremiah had not the people of God in Judea, under the Babylonish captivity, follow a Heathenish peace, with toleration of divers religions, or yet a religious peace, or a church peace, that standeth well with many religions ... Jeremiah 10: 11, and would he have Christians all keeping such a Heathenish unity and peace, as Babylonians and Americans have, and in the mean time tolerate all religions, Christians who have one God, and one faith, and one hope are to follow more than a Civil and Heathenish peace.⁷⁴²

To Rutherford it is therefore in vain for Libertines to state that Abraham lived long amongst the Canaanites, who were contrary to him in religion (Genesis 13); the same concerning Isaac with the Canaanites (Genesis 26), and Jacob who stayed for twenty years with Laban who was an idolater (Genesis 31). It is also vain to argue that Christian peace means that various false religions are to be tolerated in that Israel was in Egypt for 430 years, in Babylon for 70 years, and that Israel was under the Romans with "Herodians" and Pharisees.⁷⁴³ According to Rutherford it is of no consequence to argue that godly magistrates, armed with the sword, must now suffer the sheep of Christ, to be worried and preyed on by wolves.⁷⁴⁴

Whether the punishing of seducing teachers be persecution for conscience, Rutherford, in answer to Mr. Williams (who said that to molest any for their religion is persecution) states that if this was the case then Jeremiah was a persecutor, for he molested those with rebukes and threats, who out of mere conscience, killed their sons and daughters to Molech. In this

⁷³⁹ Ibid. In confirmation of this, Rutherford refers to Matthew 10: 35, 24: 24, Luke 21: 14-18, 1 Timothy 4: 1-4, 2 Timothy 3: 5-8, 2 John 10, *ibid.*

⁷⁴⁰ *Ibid.*

⁷⁴¹ *Ibid.*, 332 – 333.

⁷⁴² *Ibid.*, 333.

⁷⁴³ *Ibid.*

⁷⁴⁴ *Ibid.*, 334.

regard, says Rutherford, one can therefore also reason that Christ molested Pharisees and Sadducees, who out of mere conscience defended the traditions of men, false interpretations of the law, and denied the resurrection.⁷⁴⁵ In addition, the Lord commanded the judges in his law, not only to molest but to stone to death without mercy, those who professed doctrine out of mere conscience, and worship merely on religious grounds, which tended to drive away people from the true God, and such as blasphemed God.⁷⁴⁶ However, God never commanded persecution in any law, but hated it, and no more commanded it than his holy laws can be unjust.⁷⁴⁷ It is also important to note that the loving of our enemies, as commanded by the New Testament (Matthew 5: 44, Luke 6: 35, Romans 12: 20), is also commanded in the Old Testament.⁷⁴⁸ By this Rutherford tries to indicate the weakness in any argument directed at a justification of not punishing seducing teachers and idolaters, by referring to the New Testament commandment to love one's enemies. It is also contrary to Deuteronomy 13 and Leviticus 24 that the blasphemer and the false prophet must be spared for many years, and therefore, it is false to argue that the Lord's patience towards sinners in the Old Testament is justification for not punishing false prophets.⁷⁴⁹

Rutherford adds that Christ nowhere contradicts nor refutes the law as taught by Moses. In fact Christ refutes the false glosses which the Scribes and Pharisees put on the law of Moses. Christ nowhere stated: "It was said by Moses, but I say the contrary".⁷⁵⁰ Rutherford also refers to Matthew 5: 17–18, where Christ states that He has not come to destroy the law, Christ adding that till heaven and earth pass, not one jot or title will pass from the law till all be fulfilled.⁷⁵¹ Therefore, if Christ puts his new laws in opposition to the laws taught by Moses, then Christ, contrary to Matthew 5: 17–18, must destroy the law of Moses and substitute a more perfect law in its place.⁷⁵² Referring to 1 Peter 3: 17, Rutherford poses the question as to how it shall be proved that Christ's foretelling the Apostles that they will be persecuted for the preaching of the truth of God and the Gospel, includes both the Apostles and the Anabaptists.⁷⁵³ Rutherford also asks whether all the blasphemies are part of the Gospel, and that whoever suffers for the propagation of monstrous heresies must suffer as the

⁷⁴⁵ Ibid., 335.

⁷⁴⁶ References to Deuteronomy 13, 17, Exodus 32: 26-27, Romans 13: 4, Leviticus 24: 10-11, 20: 2, *ibid.*

⁷⁴⁷ *Ibid.*

⁷⁴⁸ *Ibid.*, 340. References in the Old Testament to similar commands are: Proverbs 24: 17, 25: 21, Exodus 23: 4, *ibid.*

⁷⁴⁹ *Ibid.*, 341.

⁷⁵⁰ *Ibid.*, 344.

⁷⁵¹ *Ibid.* Cf. Rutherford's other references to indicate that the laws that Christ teaches in the New Testament are similar to the laws taught in the Old Testament, for example unjust anger and lust, *ibid.*

⁷⁵² *Ibid.*, 344 – 345.

⁷⁵³ *Ibid.*, 345.

Apostles did, and consequently lay claim to all the comforts that Christ has bequeathed in his testament? According to Rutherford, if this is the case then surely an erroneous and blasphemous conscience must be righteousness and therefore, to suffer for blasphemy and Satan, must be to suffer for righteousness.⁷⁵⁴ Therefore, Rutherford makes a valid point in commenting that false teaching and prophesying, idolatry and blasphemy are wrong, and must be accordingly dealt with by the magistrate.

Rutherford also adds that God has wise and noble ends why He permits heresies, but it is an error to argue that God determines heresies, for He no more determines heresies than that sin must be, for heresies are sins. Heretics are the church's affliction, and therefore it is false to state that the magistrate must tolerate "all the bloods and oppressions" that the Saints suffer.⁷⁵⁵ According to Rutherford, Scripture calls heretics works of the flesh, doctrines of devils, gangrenous, lies, delusions, corruptions of the mind, perverse disputing, deceits, perverse things, dreams of their own heads, false dreams, vain and foolish things, false burdens "which cannot be spoken of opinions in philosophy, and so these windmills and midnight fancies being the brats and the dunghill conceptions of men's corrupt head and heart, must be contrary to that wisdom expressed in the word, 1 Corinthians 2: 6, Deuteronomy 4: 6, Psalms 37: 30, and they may be for the declaration of the wisdom of God as for the final cause, but nothing from the wisdom of God formally, being themselves mere fools."⁷⁵⁶

Therefore it is clear that Rutherford, on numerous occasions refers to the importance of the office of magistracy in matters religious. More specifically, the magistrate has to punish all ill-doing, which includes blasphemy, false teachings by false prophets, idolatry and sorcery.⁷⁵⁷ Rutherford adds that these evil practices endanger the safety of souls and eventually, if not tempered, leads to the seduction of souls. In the above, it is also clear that

⁷⁵⁴ Ibid.

⁷⁵⁵ Ibid., 402.

⁷⁵⁶ Ibid., 403. References to Scripture indicating the sinfulness of heresy: Galatians 5: 20, 1 Timothy 3: 1-2, 6: 5, 2 Timothy 2: 17, Revelation 2: 20, Acts 20: 30, Jeremiah 23: 27, 32, Lamentations 2: 14

⁷⁵⁷ Cf. *ibid.*, 43 – 44 (pastors may complain to the magistrate of heretics and evil-doers); 51, 53 – 56 (the magistrate must punish the builders of stubble); 62, 104, 132, 139, 140, 145 – 146, 151 – 152, 176, 177 (should follow the example of the patriarchs and the Godly princes of Israel and Judah); 180 (example of Josiah); 182 – 183 (further examples in the Old Testament); 184 – 185, 186 – 189, 190 – 191 (Christ commanded the magistrate to use the sword against the seducing prophet); 193 – 194, 203 (it is a poor argument stating that because Christ nowhere reprov'd church and state for not punishing heretics therefore the magistrate must not punish heretics); 204, 206, 219, 226 – 230, 232 – 238, 244 – 245 (the Lord is no less jealous of His glory than in the period of the Old Testament); 289 – 290, 291 – 293 (meekness of Christ concerning heretics must not be followed by magistrates); 356 – 357, 361, 380, 384, 385 – 386, 402 (concerning the validity of judging heretics); *ibid.*

Rutherford did not postulate an understanding which supported the absolute authority of the magistrate in religious matters. In this regard the limits of magistracy include the fact that the punishment of these evils must not be accompanied with the aim of converting souls for God, as this would resort to a type of violation of the individual's conscience, as well as a violation between the internal relationship between God and man. In addition, the magistrate has no role in converting the conscience of an individual as this is a task to be exercised by the ecclesiastical office, being obliged to teach the Scriptures through the work of the Holy Spirit. Rutherford also views the magistrate's function as warding-off and punishing blasphemy and idolatry that takes place externally⁷⁵⁸ between people, and not transgressions that are housed in the internal confines of the mind and understanding. It is also important to note that the functions of the magistrate in this context are only relevant where the commonwealth or nation is a Christian nation in which the will of God, which includes his Holy Law, forms the basis of such a commonwealth. Therefore, the above functions of the magistrate are to be executed by the Christian magistrate,⁷⁵⁹ in and towards a Christian society.⁷⁶⁰

Therefore, in Rutherford's *A Free Disputation Against Pretended Liberty of Conscience*, one finds a lucid exposition concerning the jurisdiction of the office of magistracy concerning the first Table. However, in Rutherford's *Lex, Rex*, the duty of the magistrate concerning matters found in the second Table is more of prominence, than those pertaining to the external maintenance of the first Table. From the above it is also clear that according to Rutherford, the church is not superior to government and that government is also not superior to the church. The magistrate may be physically stronger but that is how far it goes. According to Rutherford, when one of these institutions exceeds its given authority and power, the other has the responsibility of restraining the former from continuing its abuse. On the other hand, if the state was to allow the crime of rape to go unpunished, it would be the duty of the church

⁷⁵⁸ Cf. *ibid.*, 54 (open seduction); 55, 62, 132 (clearly opened false doctrines); 140, 188 (external acts of idolatry that is proved by two witnesses); 272 (external right); 289 (the open despising of Christ); 296 (external obedience); 351 – 352 (sword against the outward man); 356, 357 (outward man only); 404 (the external shielding of the church).

⁷⁵⁹ Cf. *ibid.*, 51 (in those that are under the Christian magistrate); 223 – 224 (the magistrate as magistrate "lusted" with Christianity); 228 – 229 (Roman magistrate not the same or did not govern as a Christian magistrate would've); 230 (Christian kings); 270 (Christian magistrate); 300 – 301 (the Christian magistrate may deny infidels to be within his bounds); 304 – 305 (Christian prince); 331, 333 – 334 (Godly princes must not suffer the sheep of Christ); 385 – 386 (crave of Christian magistrates to go against idolaters and false prophets).

⁷⁶⁰ Cf. *ibid.*, 51 (but the sword is a means to punish acts of false worship negatively, in those that are under the Christian magistrate and profess the Christian religion, in so far as these acts come out to the eyes of men and are destructive to the souls of these in a Christian society); 146 (magistrate must protect against seducers of souls who are hurtful to Christian societies); 187 – 188 (but such as are within the gates of Israel are to be put to death); 189 (Christian societies); 238 (those that work iniquity in this kingdom); 249 – 250 (but if heathens be within our power we may restrain them); 270 (to the one and only true church of Christ); 404 (Christian men choose such and such rulers).

to remind the magistrate that it is violating its duty by not punishing rapists (who are violators of the second Table). These are of course elementary examples, and hereby complicated contemporary issues are just as relevant, requiring urgent and concise Christian exegesis in order to gain clarity as to their relevance to the second Table, such as abortion, euthanasia, cloning, genetic engineering and so forth). From the above it is also clear that Rutherford emphasizes the mutual relationship between church and government; in other words the one office is there to support the other for purposes of obeying God's will as found in His Law. In this regard it is also to be deduced that if the church becomes idle then government will surely find it difficult to maintain its duties in a society that would be decreasing in holiness. If the church were to function properly while the government becomes idle, the church would find it likewise difficult to maintain its proper functioning. Rutherford's view on the functions of church and state, as well as the relationship between them is similar to those found in the *Second Book of Discipline*, which provided an official statement on the views of the Presbyterians in the latter half of sixteenth-century Scotland pertaining to the relation between church and state, and between ruler and subjects. Hyma states that this understanding of the Presbyterians was to a large extent a recapitulation of the opinions voiced previously in Calvinistic France⁷⁶¹

Johnston states that it is important to note the insistence of the Westminster Confession on government of the church which is distinct from the civil power; and which is also in line with Rutherford's views in this regard. According to Johnston, the influence of the Scottish Commissioners in general was one of the most potent factors in the framing of the Confession – “Not only were these men all theologians of great powers, but it was the purpose of the Assembly to bring the government of the Church of England into conformity with the Church which they represented.”⁷⁶² In this regard Johnston adds:

This is the light in which we must understand the formulation of the Westminster Confession on the relation of the civil magistrate to the church. We must take seriously the solemn averment of the divines that they held to a government of the church which is quite distinct from the government of the state. In harmony with this fundamental principle we must view the statements which grant powers to the magistrate respecting the church as contemplating these as *civil* operations

⁷⁶¹ Albert Hyma, *Christianity and Politics. A History of the Principles and Struggles of Church and State*, (Lippincott Company, 1938), 180. Also cf. *ibid.*, 181.

⁷⁶² Robley J. Johnston, “A Study in the Westminster Doctrine of the Relation of the Civil Magistrate to the Church”, *Westminster Theological Journal*, Volume 12, Number 2, (1950), 128.

having to do with the external aspects of the church. The Confession will brook no interference on the part of the magistrate *in sacris*, and consequently, that power granted to the magistrate *circa sacra* is severely limited to those things in which the church was considered to be subject to civil law just as any society of men would be so subject.⁷⁶³

Knox's views on the supremacy of the Divine Law and its application in the context of the relationship between church and government as well as the covenant, is strikingly similar to Rutherford's. Reid states that Knox believed that for both civil and ecclesiastical government to be true governments they must be obedient to God as He has revealed himself in holy Scripture. Knox believed that a nation which – like England and Scotland – had publicly and officially accepted the Gospel and had become a covenanted nation. According to Knox, this implied that both state and church must obey Divine Law.⁷⁶⁴ Reid adds that according to Knox, church and state were to be separate, each directly responsible to the sovereign God –

True, preachers should have the freedom to preach the Gospel and apply it to matters political, as Knox did on occasion when criticizing Mary. On the other hand, the church could not dictate to the magistrate. At the same time, the role of the state was limited with regard to the church. It was to support the true faith and suppress idolatry. It was to act as a higher court of appeal from a corrupt church, always of course with the proviso that the members who were appealing could reject the state's decisions if they were contrary to Scripture. The state was also responsible for the financial support of the church, and for the punishment of vices repugnant to God as well as for crimes. All this, however, would be possible only if the magistrates were godly. If they were not they should be removed either by those who had appointed them or by the people in general.⁷⁶⁵

Mason states that according to Knox, a godly prince was to rule his *covenanted* people in accordance with the divine law, thus permitting and promoting the spread of Christian virtue within the framework of the religio-political discipline that bound together both the visible

⁷⁶³ Ibid., 135. This is a good summary of the approach of Rutherford (as one of the Scottish Commissioners to the Westminster Assembly) regarding the relationship between church and state.

⁷⁶⁴ W. Stanford Reid, "John Knox's Theology on Political Government", *Sixteenth Century Journal*, Volume 19, (1988), 538.

⁷⁶⁵ Ibid.

church and coextensively the godly commonwealth.⁷⁶⁶ Gray also states that in the crisis of British and European affairs, Knox stood forth as the champion of the fixed and invariable law of God, and accommodated no other equivocation. According to Gray, Knox saw his aim of a godly covenanted kingdom and pursued it without deviating to the right or to the left – “His one end was to glorify God, and in the pursuit of this end, as he saw it, he was willing to sacrifice all other values or principles whatsoever.”⁷⁶⁷ Knox also exhibits much similarity to Rutherford concerning the role of the magistrate in matters religious. In this regard Gray states:

Equally high – or almost so – was the view which Knox had of the king’s functions with regard to religion. Even in his *First Blast* he writes: ‘It principally appertaineth to the King or Chief Magistrate to know the will of God, to be instructed in His laws and statutes, and to promote his glory with his whole heart and study.’ The king is thus given charge of the first table of the law with its religious regulations, as well as of the second with its criminal code.⁷⁶⁸

One can understand the importance and urgency in Rutherford’s time concerning the theory on the relationship between Church and State when one realizes that in England, the despotism of the Prelatic hierarchy tended to produce, in the minds of all zealous assertors of freedom, an instinctive dread of ecclesiastical power. This led to people being ready to oppose the establishment of Presbyterian Church government on the ground of divine right, not because they were convinced that no system of Church government can justly lay claim to an authority so high and sacred; but because they were apprehensive that it would produce a species of spiritual despotism as oppressive as that which they had just been striving to abolish. In vain did the Scottish statesmen and divines (of whom Rutherford was one) answer and refute their objections.⁷⁶⁹ In addition, Hetherington refers to Selden, Whitelocke, Lightfoot, and Coleman, who held that the Christian system ought to resemble the system of the Mosaic Dispensation; attempted to prove, that there were not two distinct and co-ordinate courts, one civil and the other ecclesiastical, among the Hebrews, but that there was a mixed jurisdiction, of which the king was the supreme and ultimate head and ruler. A consequence of this was the understanding that the civil courts determined all matters, both civil and ecclesiastical, and inflicted all punishments, both such as affected person and property, and

⁷⁶⁶ Mason, “Knox, Resistance and the Moral Imperative”, 431.

⁷⁶⁷ John R. Gray, “The Political Theory of John Knox”, *American Society of Church History*, Volume 8, (1939), 132.

⁷⁶⁸ *Ibid.*, 136. In this regard also cf. *ibid.*, 136–137.

⁷⁶⁹ Hetherington, *History of the Westminster Assembly of Divines*, 287–288.

such as affected a man's religious privileges, properly termed "Church censures".⁷⁷⁰ Hetherington adds that from this they concluded, that the civil magistrate, in countries avowedly Christian, ought to possess an equal, or identical authority, and ought consequently to be the supreme and ultimate judge in all matters, both civil and ecclesiastical, inflicting or removing the penalties of Church censure equally with those affecting person and property.⁷⁷¹

Rutherford among others, played an important role in countering these Erastian influences.⁷⁷² Added to the threatening influences posed by Erastianism concerning the relationship between church and state, was the growth of the Separatists or Independents, whose theory that any group of Christians, self-organized and self-supporting, could constitute themselves a church and worship in their own chosen way. Dunning states that the Presbyterian wing of the Puritans, in sustaining their views, needed to add nothing to the complete theories of Calvin and Knox, and that from the Separatists, on the contrary, new and far-reaching doctrines were heard.⁷⁷³ Ecclesiastical authority lay, in their opinion, in the congregation that constituted the church. No power from without had authority to regulate the affairs of an association of Christian worshippers. Neither the bishops of the historical establishment nor even the synods and general assemblies through which the Presbyterians sought to preserve ecclesiastical unity, were regarded by the Independents as Christian institutions. So far as the

⁷⁷⁰ Ibid., 288.

⁷⁷¹ Ibid. Also cf. *ibid.*, 354–355, where Hetherington refers to the risk which Erastianism posed by the blending of the two jurisdictions, namely that of the Church and of the State. According to Hetherington, such a blend would inevitably involve the loss of both civil and religious liberty, and of this the framers (of whom the Scottish divines were part) of the Westminster Confession of Faith were well aware, and therefore strove to procure the well-adjusted and mutual counterpoise and co-operation of the two jurisdictions as the best safeguards of both civil and religious liberty, and as founded on the express authority of the Word of God.

⁷⁷² Cf. *ibid.*, 295–296, Hetherington states: "Another very able and elaborate work on the Erastian controversy was written and published in the year 1646, by Samuel Rutherford, titled, 'The Divine Right of Church Government and Excommunication.'" Coffey states: "If the independents feared the tyranny of synods over local congregations, another minority group within the Assembly feared that the Scottish model would result in a clerical tyranny over the civil magistrates. This group became known as the Erastians, after the Swiss theologian Thomas Erastus (1524-83), who argued against Beza that the civil authorities in a state with one religion have the right to exercise jurisdiction over ecclesiastical matters", *Politics, Religion and the British Revolutions*, 207. In this regard it is also interesting to refer briefly to the similar approach by Knox concerning the responsibility of magistrate in religious matters. Even Knox, who exhibited some sort of covenantal thought which was in line with the above federalists, reminded the civil magistrate not to think themselves free of the "reformation of religion because ye have bishps within your realm, neither yet that ye should judge that religion most perfect which the multitude by wrong custom hath embraced." Knox did not hold the civil magistrate accountable to the bishops, but the bishops accountable to the civil magistrate. He wrote to the nobility: "For if your bishps be proved to be no bishps but deceivable thieves and ravening wolves ... then shall your permission and defense of them be reputed before God a participation with their theft and murder." Knox placed the responsibility for religion mainly with the nobility, or the princes, Glenn A. Moots, *The Evolution of Reformed Political Thought and the Revival of Natural Law Theory*, (unpublished thesis, University of Michigan, 1993), 71–72.

⁷⁷³ William A. Dunning, *A History of Political Theories. From Luther to Montesquieu*, (The MacMillan Company, 1938), 213.

secular authorities sought to sustain such ecclesiastical organs and compel their recognition by Christian subjects, the secular authorities were wrong and must not be obeyed.⁷⁷⁴ Bearing this in mind, one can understand the urgency within Rutherford's time, concerning a correct understanding of the relationship between church and state.

Rae's comment pertaining to Rutherford's understanding of the religious function of the state provides a good summary on the subject. Rae states that for Rutherford, the purpose of the government is not merely the physical well-being of the members of society, but their spiritual well-being as well. This comment is derived from the following quotation from *Lex, Rex* as stated by Rae: "God is the author of civil laws and government, and his intention is therein the external peace, and quiet life and godliness of his church and people, and that all judges, according to their places, be nurse-fathers to the church (Isa. xlix. 23)". In this regard Rae points out that the assumption to be drawn from this is that if government is instituted for the good of man, it must be for the good of the whole man, not just his material well-being.⁷⁷⁵ Therefore, Rutherford's approach to the content of magisterial duty indicates that although the good, safety, prosperity and happiness of society must be striven for by the Christian government in a Christian nation, the importance of the *spiritual* good, safety, prosperity and happiness must also be kept in mind.

⁷⁷⁴ Ibid. Coffey states: "Within the Westminster Assembly he (Rutherford) debated with Independents who placed ecclesiastical authority with the local congregation rather than with synods, and Erastians who gave it to the civil magistrate rather than the clergy. In *The Due Right of Presbyteries* (1644) and *The Divine Right of Church Government* (1646) – both over 750 quarto pages in length – he mounted an exhaustive critique of Independency and Erastianism respectively", Coffey, *Politics, Religion and the British Revolutions*, 53.

⁷⁷⁵ C. E. Rae, *The political thought of Samuel Rutherford*, (unpublished M. A. dissertation, University of Guelph, 1991), 87. Rae also adds that in Rutherford's view it was not the case that church and government had different and complimentary goals – he explicitly rejected this idea – rather they had the same goals but different means. In this regard, according to Rae, Rutherford stated: "both royall power and Church power concurre for the producing of one and the same end, to wit, edification and obedience to both Tables of the law, but after different wayes, carnall and spirituall", *ibid.*, 161–162. To this Rae adds Rutherford's statement that: "On the one hand, he is dear that 'the King as King hath not a nomothetic, or legislative power to make Lawes in matters ecclesiastick, in a constitute Church, nor hath he a definitive sentence as a judge'. He is subject to church censures because he 'is a morall agent, and not infallible in his Lawes and administration'. But on the other hand, it is evident that Rutherford was far from suggesting a theocracy be set up if a theocracy means the Church dictating to the State and the State unquestioningly carrying out the Church's orders". Rae also adds that the Reformation, recent Scottish history, and the multitude of examples from the Old Testament clearly showed that the clergy can become corrupt just as the civil power can. According to Rae, it must be remembered that Rutherford's goal was the reign of Christ Jesus and not the reign of the clergy in Scotland, *ibid.*, 170. For Rutherford the disputed question was not one of obedience to the clergy or the state, but rather "whether Christ or Antichrist be lord or king", *ibid.*, 172.

4. Samuel Rutherford and the Law as content of the Covenant

In the preceding discussion, Rutherford's distinction between the duties of the magistrate and the minister indicates to a large extent the expectations on what the content of the ruler's or government's (covenantal) duties are. This also gives an indication as to what the covenantal conditions are in the covenant between God and government, as well as between the government and those that are governed. In what follows is a more precise observation of the duties of government. From the outset it is emphasized that the Divine Law serves as the terms of the contract – the king promises to govern according to the law of God, which includes defending the true religion, and the people promise to God and the king obedience. Flinn adds that the nature of the contract, then, is that both rulers and ruled mutually obligate themselves to the law of God.⁷⁷⁶ Coffey states that according to Rutherford, the terms of the dual covenant stipulated that the king's rule must be for the *salus populi*, the good of the people. Rutherford declared that the law has one fundamental rule, namely *salus populi*. More specifically, this common good included both secular ends (justice, peace, safety, lives, liberties) and religious ends (the godly life, the salvation of souls).⁷⁷⁷ The power or office of a king is given as a blessing and favor of God to preserve both Tables of the law and it cannot be ordained both according to the intention and intrinsical operation of the power to, on the one hand preserve the Tables of the law, and on the other, to destroy them.⁷⁷⁸ Rutherford refers to the Saxon Confession (exhibited to the Council of Trent; 1551, Art. 23), confirming the fact that the magistrate's office essentially consists in the keeping of the two Tables of God's law; "and so, what can follow hence, but in so far as he defendeth murderers, – or, if he be a king, and shall with the sword or arms impede inferior magistrates to defend God's law and true religion against papists, murderers, and bloody cavaliers, and hinder them to execute the judgment of the Lord against evil-doers, – he is not, in that, a magistrate; and the denying of obedience, active or passive, to him in that, is no resistance to the ordinance of God; but, by the contrary, the king himself must resist the ordinance of God."⁷⁷⁹ Rutherford equates the law with the safety of the people⁷⁸⁰ and speaks against idols, images, altars, idolatry, popery and blasphemy,⁷⁸¹ adding that the law is against idolatry, superstitious worship and murder. These acts are according to Rutherford, a terror to good works.⁷⁸² Rutherford adds that the law itself is *norma et regula juduicandi* – the rule and directory to

⁷⁷⁶ Flinn, "Samuel Rutherford and Puritan Political Theory", 63.

⁷⁷⁷ Coffey, *Politics, Religion and the British Revolutions*, 169.

⁷⁷⁸ Rutherford, *Lex, Rex*, 142 (1), 215 (2).

⁷⁷⁹ *Ibid.*, 222 (2) – 223 (1).

⁷⁸⁰ Cf. *ibid.*, 114 (1), 119 (1) – 119 (2), 122 (2), 124 (1) – 124 (2), 126 (2), 137 (1) – 138 (1).

⁷⁸¹ Cf. *ibid.*, 124 (2), 129 (2), 158 (1), 161 (1), 166 (1), 168 (1).

⁷⁸² *Ibid.*, 145 (1).

square the judge, and that the judge is the public practical interpreter of the law.⁷⁸³ That power which is contrary to the law (and is evil and tyrannical) can bind none to subjection, but is a mere tyrannical power and unlawful.⁷⁸⁴ A king acting and speaking as a king, speaks and acts law and justice.⁷⁸⁵

Foulner states that Rutherford did call for the state to adopt both Tables of the law and enforce them on the nation; not concerning inward inclinations, but only in relation to outward crimes such as proven by two or more witnesses.⁷⁸⁶ Concerning these two Tables of the law, Rutherford states that the power of the king is given as a blessing and favor of God to preserve, inter alia, both Tables.⁷⁸⁷ Rutherford also refers to the Saxon Confession, exhibited to the Council of Trent, (1551, Art. 23), which makes the magistrate's office essentially responsible for maintaining the two Tables of God's law.⁷⁸⁸ Foulner indicates that Rutherford categorized the law into the following: Firstly, there are the moral laws that must be accompanied by moral punishments. Secondly, there are the ceremonial laws accompanied by ceremonial punishments and thirdly, there are the moral laws that are accompanied by ceremonial punishments. The first category are still binding (also referred to the "standing laws"), the second are abolished (such as the law requiring a man "to raise up seed to his brother"); while the third category is that which concerns those laws which were Moral Laws but had a temporary punishment. In this category resides the Mosaic Sabbath.⁷⁸⁹ Flinn states that while *Lex, Rex* does not contain the doctrine of the continuity of the case law in an explicit and fully developed form, or of its application to the duties of the magistrate, the roots and fundamental principles upon which this doctrine is built are plainly present, namely: Firstly, the Old Testament model for the civil magistrate is directly and unashamedly assumed to be binding upon the civil governments of our day. According to Foulner, if civil magistrates in the Old Testament had to apply the case law in their judgment and deliberation at the gate, then contemporary magistrates, being bound under the same covenantal

⁷⁸³ Ibid., 137 (1).

⁷⁸⁴ Ibid., 141 (2).

⁷⁸⁵ Ibid., 177 (1).

⁷⁸⁶ Foulner, "Goat Hunting with Samuel Rutherford", 16 – 17.

⁷⁸⁷ Rutherford, *Lex, Rex*, 142 (1).

⁷⁸⁸ Ibid., 222 (2).

⁷⁸⁹ Foulner, "Goat Hunting with Samuel Rutherford", 17. For a further discussion on the third category of the law and the implications concerning the types of punishments cf. *ibid.*, 17 – 19. Foulner adds that it is clear that capital punishments of the Old Testament were not judicial but moral and perpetual as far as Rutherford and the other Covenanters were concerned. Foulner adds: "This is a fatal blow to those who assume that the general equity clause of the Westminster Confession is non-theonomic, in fact the equity clause is hardly relevant since Rutherford saw these offences as being *Moral* rather than judicial and therefore, in the words of the Confession these capital punishments 'doth forever bind all, as well justified persons as others, to the obedience thereof' (Chap.XIX.v). This should worry Confessional Presbyterians who oppose Theonomy", *ibid.*, 18.

obligations as their Old Testament counterparts, are equally bound to apply the case law.⁷⁹⁰ Secondly, Rutherford holds that God's law alone can define crime. The magistrate cannot arbitrarily suspend punishment or pardon those crimes, which God's law stipulates as capital crimes, and requiring the death penalty. To do so would be to deify the state. While Rutherford is unclear as to whether the penal sanctions should be carried over in all cases (for example, he is prepared to suspend the death penalty for Sabbath breaking, while maintaining it as a civil crime), he is explicit on the fact that all crime and punishment must be tied to God's law.⁷⁹¹ Thirdly, if the magistrate is to preserve the two Tables of the law, then the case law is indispensable in judgment and in crime and punishment, and Rutherford does not at all hesitate in thus employing it.⁷⁹²

Rutherford also is in ardent support of the superiority of the law. Coffey states that the heart of *Lex, Rex* is found in the answers to Questions XXII to XXVII, where Rutherford discusses the relationship between the king and the law, placing *rex* firmly under *lex*.⁷⁹³ Rutherford states that God molded the first king to look to a written copy of the law of God as his rule.⁷⁹⁴ Rutherford emphasizes that the condition required before the people make a person the king, is that he covenant with the people that he will rule according to God's law, just as David had to rule according to the law. If God, by the people's free election, mediate consent and covenant, make a king, God makes him a king conditionally, and so by covenant – a covenant which God expresses in the very words of the people's covenant with the king: "So they walk

⁷⁹⁰ Flinn, "Samuel Rutherford and Puritan Political Theory", 70.

⁷⁹¹ *Ibid.*, 71.

⁷⁹² *Ibid.*, 72. Flinn also states that: "... whereas Deuteronomy 17 is the most frequently quoted passage of scripture in *Lex, Rex*, it is followed in only slightly less frequency by references to Romans 13: 1-6. This is highly significant, for it proves beyond doubt that *Rutherford believed that there is continuity throughout history of the divine prescriptions for civil government and the civil magistrate*. The doctrine of Romans 13 does not abrogate the Old Testament stipulations for government, but ratifies them and builds upon them", *ibid.*, 72 – 73. It must be noted that this work is not aimed at delving too deeply into the postulations and implications of Rutherford's categorization of the law (moral, judicial and ceremonial), and therefore further discussion on this topic is limited. Coffey also provides some interesting observations in this regard, cf. Coffey, *Politics, Religion and the British Revolution*, 155 – 157.

⁷⁹³ Coffey, *Politics, Religion and the British Revolutions*, 152. Also cf. *ibid.*, 171. In this regard it is also interesting to take note of the following observation by North concerning the contribution by Rutherford assisting in the development of "legal liberty", Rutherford playing a crucial role in securing the independence of judges: "Hayek traces the origin of Western legal liberty to the struggles between Parliament and Crown in the Puritan revolution or British Civil War, and subsequently in the Glorious Revolution of 1688. There was a concerted effort to secure the independence of judges. The debates from 1641 to 1660 focused on the prevention of arbitrary actions by the civil government. Hayek even notes the influence of Puritan Samuel Rutherford's defense of the rule of biblical law: 'Throughout, the governing idea was that the law should be king or, as one of the polemical tracts of the period expressed it, *Lex, Rex*' ", Gary North, *Moses and Pharaoh. Dominion Religion versus Power Religion*, 225.

⁷⁹⁴ Rutherford, *Lex, Rex*, 35 (2).

as kings in the law of the Lord, and take heed of God's commandment and statutes to do them".⁷⁹⁵

According to Rutherford, the estates should refuse the crown to him who would refuse to govern them according to God's law, and if the oath of God made to the people does not bind him to the people to govern according to law, it should be unlawful for any to swear such an oath.⁷⁹⁶ The king's will and lust cannot be the rule of his power and dominion, but law and reason must regulate him.⁷⁹⁷ To Rutherford it is a vain thing to distinguish between the office and the power, for the power is either a power to rule according to God's law, as he is commanded (Deuteronomy 17) and this is the very office or official power which the King of kings has given to all kings under him.⁷⁹⁸ The king is only a steward and defender of the laws of the kingdom, not a proprietor.⁷⁹⁹ To Rutherford it is a blasphemous supposition to state that God, by a divine institution, make kings absolute, and above all laws – the Holy Lord gives to no man a power to sin, for God has not himself got such a power.⁸⁰⁰

Rutherford states that the king is a living and breathing law; a *lex animata*,⁸⁰¹ and there is no absolute power in a king to do above or against the law.⁸⁰² The law of the king can be no ground for the king's absoluteness above law, and that which asserts the king's royal dominion over persons and things must be the law of God's approving.⁸⁰³ Rutherford says: "As the king is under God's law both in commanding and in exacting active obedience, so is he under the same regulating law of God, in punishing or demanding of us passive subjection, and as he may not command what he will, but what the King of kings warranteth him to command, so may he not punish as he will, but by warrant also of the Supreme Judge of all the earth ..."⁸⁰⁴ According to Rutherford, any bond that God's law imposes on the king, comes absolutely from God and not from any voluntary contract or covenant (either express

⁷⁹⁵ Ibid., 57 (2) – 58 (1).

⁷⁹⁶ Ibid., 61 (1).

⁷⁹⁷ Ibid., 65 (2).

⁷⁹⁸ Ibid., 72 (2).

⁷⁹⁹ Ibid., 86 (2).

⁸⁰⁰ Ibid., 140 (1). Rutherford once again refers to the importance of Deuteronomy 17, where it is clear that God has limited the first lawful king – the mould of all the rest, *ibid.* Cf. also *ibid.*, 176 (2), where Rutherford refers to Solomon (Deuteronomy 17: 18), who spoke of kings as they are under the law. Also cf. Coffey, *Politics, Religion and the British Revolutions*, 172.

⁸⁰¹ Cf. Rutherford, *Lex, Rex*, 101 (2) where Rutherford states the argument that the politicians exhibit namely, *Rex est lex viva, animata, et loquens lex* (the king as king, is a living, breathing, and speaking law). Cf. also *ibid.*, 111 (1), 116 (2), 146 (1). The king who is inspired with the law, is not to have his power disturbed, 116 (1).

⁸⁰² Ibid., 194 (2).

⁸⁰³ Ibid., 197 (2).

⁸⁰⁴ Ibid., 232 (1).

or tacitly) between the king and the people who made him king. Therefore, if the king transgresses the law he will be accountable to God and not to any man on earth.⁸⁰⁵ The importance of the law as content of the contract between God and man in the thought of Rutherford, was to a certain extent supported by the Scot Buchanan, half a century earlier, who also accepted the theory of the contract between the ruler and his subjects (although not directly referring to the compact between God and man to the direct extent that Rutherford did). Hyma states that Buchanan supported the view that natural and divine law formed the basis of government, and when the ruler becomes a veritable tyrant, he has broken his compact.⁸⁰⁶

This is where the secular philosophers such as Bodin, Hobbes and Locke differ concerning the content of the law. To them the content of the law was determined by the social contract between the king and the people, and God's law (if ever considered) was secondary. Coffey confirms Rutherford's fierce rejection of the royal-command theory of law, which saw law as created by the command of the king. Only God's will and command could create law, and according to Coffey, this was an argument that was repeated several times in *Lex, Rex*.⁸⁰⁷ Since God's laws were embedded in both Scripture and natural law, it followed that there was no need for the king to create law, since it already existed – "There is intrinsically worth in the law prior to the act of the will of lawgivers for which it meriteth to be enacted."; and positive law could simply be derived from entirely obvious principles of divine and natural law. The king merely "putteth on it this stamp of a politic law", adding the threat of punishment to "a thing legally good in itself".⁸⁰⁸ To Rutherford, the law has a supremacy of constitution above the king. The king is subordinate to the law because there is no absolute power given to him

⁸⁰⁵ Ibid., 98 (2) – 99 (1). Hunt confirms the fact that the main theme of Rutherford's *Lex, Rex* is the authority of the law, Hunt adding that Rutherford teaches among others, respect for the law, George L. Hunt, "Our Calvinist Heritage in Church and State", in *Calvinism and the Political Order*, (ed. George L. Hunt, Philadelphia: The Westminster Press, 1965), 180. In fact, the primacy of the law in the thought of Rutherford's political thought is obvious when looking at the title of his political work, *Lex, Rex* (The Law and the Prince). Hunt also speaks of the teaching that the king must rule under law and under the authority of his legislators and advisors as a corollary to the covenant idea, adding: "Respect for law and order, so marked in Rutherford and the Scottish Revolution, is singled out by Ahlstrom as an important element in our Puritan legacy", *ibid.*, 190 – 191. It is interesting to note the various other suitable titles that have been ascribed to what is referred to in this study as *Lex, Rex* – Hunt states that *Lex, Rex* appeared in an Edinburgh edition in 1644. Subsequently, it appeared as *The Preeminence of the Election of Kings* (London, 1648); *A Treatise of Civil Policy* (London, 1657); and with its original title again in 1686, *ibid.*, 201.

⁸⁰⁶ Hyma, *Christianity and Politics*, 179 – 180.

⁸⁰⁷ Coffey, *Politics, Religion and the British Revolutions*, 171. According to Coffey, Questions XXII – XXVII form the heart of *Lex, Rex*, and concerns the relationship between the king and the law (Coffey also mentions this fact on *ibid.*, 154), and it is, according to Coffey, this section which in fact might be called *Lex, Rex*, *ibid.* It is in this section where Rutherford states his theological voluntarism, his belief that law is constituted by the command of God, *ibid.*

⁸⁰⁸ *Ibid.*

to do what he likes as a man; and because God, in making Saul a king, does not by any royal stamp give him a power to sin, or to play the tyrant.⁸⁰⁹ God's law excludes no one (and therefore the king cannot be excluded from the precepts of the law).⁸¹⁰ Rutherford also states that the kings of Scotland have no prerogative distinct from supremacy above the laws.⁸¹¹ All magistrates must do their duty that the law of God has laid on them.⁸¹² Coffey refers to Schaeffer having admitted to being influenced by the Christian Reconstructionists, and one of his associates, John Whitehead, used their work to argue that America had departed from its Judaeo-Christian roots and was been taken over by a secular-humanist elite. In 1982, Whitehead established the Rutherford Institute to defend religious liberties under threat from the secular state. Coffey adds that this Institute takes its name from Rutherford because he "resisted the European doctrine of divine right of kings ... and argued that all men are subject to the law including the king. This same premise, that leaders are responsible to a law apart from and higher than themselves, was central to the formation of the US constitution."⁸¹³

Rutherford's emphasis on the importance of God's commands as content of the law differed from the secular philosophers in his time, among others Thomas Hobbes. Hobbes argued that like the Almighty the earthly sovereign should rule by his own will and pleasure. Hobbes's point was that everyone else was as short-sighted as the king; no-one could penetrate the divine will. It was the height of presumption for anyone to think they knew God's will and then resist the king on the basis of this dubious knowledge; for God's commands were not as perspicuous as they imagined.⁸¹⁴ When men realized this they would see that in order to have peace and freedom from bitter ideological conflict they must submit to the arbitrary will and commands of an earthly sovereign; they had to listen to the voice of the law (the sovereign's voice) rather than the voice of Puritan preachers.⁸¹⁵ To Hobbes: "Law, properly, is the word of him that by right hath command over others"; and the "ultimate human right to command is vested in the sovereign by the contract through which the state is instituted". According to Dunning, Hobbes postulated that the so-called laws of nature are not really laws, but merely conclusions or theorems concerning what conduceth to the conservation and defence" of men – and ultimately the law of nature may be regarded as divine law (which is that which emanates from the will of God), though it is present to men not directly as a command, but as

⁸⁰⁹ Rutherford, *Lex, Rex*, 126 (1).

⁸¹⁰ *Ibid.*, 128 (1). On *ibid.*, 131 (1), Rutherford states that God's law (or his deputy the judges) is not to accept "the persons of the great, because they are great", and "we say that we cannot distinguish where the law distinguisheth not" (Deuteronomy 1: 17; 2 Chronicles 19: 6-7).

⁸¹¹ *Ibid.*, 216 (2).

⁸¹² *Ibid.*, 222 (2).

⁸¹³ Coffey, *Politics, Religion and the British Revolutions*, 13.

⁸¹⁴ *Ibid.*, 172.

⁸¹⁵ *Ibid.*

a body of principles found out by the reason.⁸¹⁶ Hobbes in fact did not make allowance for the divine law, the natural law, and the law of nations as being above the authority of the ruler, as did Jean Bodin, the latter also a pioneer of the secular version of the social contract and other secular influences to political thought towards the later part of the 16th century; and who also emphasized the law as the command of the king, who is the supreme power in the state.⁸¹⁷

Rutherford perceived the king to have been given no absolute and unlimited power above the law; the reason being that the king is appointed of God by office to read the law of God. This must be done so that the king may “learn to fear the Lord his God, and keep all the words of God’s law; and therefore he is not of absolute power above the law.”⁸¹⁸ According to Rutherford, he who is regulated by law, and swears to the estates to be regulated by the law, and accepts the crown covenant-wise, has no unlimited and absolute power from God or the people.⁸¹⁹ Rutherford states that the king, as king, can do no more than that which upon right and law he may do,⁸²⁰ and no acts void of law and reason can be royal acts, for royal acts are acts performed by a king as a king and by a law, and therefore cannot be acts above or beside a law.⁸²¹ Rutherford refers to the king of England who declared that the law is the measure of the king’s power; and also refers to the *Magna Carta*, which states that the king can do nothing but by laws, and no obedience is due to him but by law.⁸²² Concerning judges, Rutherford states that a power contrary to justice, to peace and the good of the people, and that looks to no law as a rule, and so is unreasonable, and forbidden by the law of God (and the civil law) cannot be a lawful power, and cannot constitute a lawful judge.⁸²³ In fact, God is the author of civil laws and government, hereby intending external peace and godliness of

⁸¹⁶ Dunning, *A History of Political Theories*, 293.

⁸¹⁷ Hyma, *Christianity and Politics*, 197. Coffey adds that according to Hobbes, when men realized the impossibility of penetrating the Divine Will, they would see that in order to have peace and freedom from bitter ideological conflict they must submit to the arbitrary will and commands of an earthly sovereign – they had to listen to the voice of law in the form of the sovereign voice, rather than the voice of Puritan preachers. This line of thinking was in contrast to Rutherford’s, who believed that it was never right for the people to obey a law simply because the king had made it; they were obligated in every instance, to discover if the command of a superior was in accordance with the will of God, Coffey, *Politics, Religion and the British Revolutions*, 172.

⁸¹⁸ Rutherford, *Lex, Rex*, 101 (2). Rutherford confirms this by referring to Deuteronomy 17: 18-19.

⁸¹⁹ *Ibid.*, 106 (1).

⁸²⁰ *Ibid.*, 106 (2).

⁸²¹ *Ibid.*, 109 (2). Cf. *ibid.*, 109 (1), where Rutherford states: “And our flatterers of kings draw the king’s prerogative out of Ulpian’s words, who saith, ‘That is a law which seemeth good to the prince’; but Ulpian was far from making the prince’s will a rule of good and ill; for he saith the contrary, ‘That the law ruleth the just prince’.”

⁸²² *Ibid.*, 111 (1).

⁸²³ *Ibid.*, 104 (2).

his church and people, and that all judges be nurse-fathers to the church.⁸²⁴ Rutherford's theory on resistance also emphasizes the importance of the law, which is discussed more specifically in a later chapter.

All in all, to Rutherford, the paradigm of all civil power is given in Deuteronomy 17 (and Romans 13). Even when there is no formal contract, which has been made, that immediate divine stipulation that the king is bound to obey God's law is to govern all civil power. According to Flinn, this also places one in a position to appreciate how the Christian notion of consent and contract differs from, and avoids the problems of, the secular aberrations. First, the notion of contract or consent is already commanded by God, and the mutual obligations of that civil bond are already presupposed by His law. The Christian notion of consent does not have to do with what is justice, or what is crime and what its proper punishment is.⁸²⁵ From this it is deduced that the people, in the act of consenting, do not decide what the content of the law must be. These definitions are already given by the absolute Law-giver. Nor, according to Flinn, is it a contract whereby the people give government authority and responsibility to protect life, health, and property; these are accidental (and secondary) to the notion of Christian government and flow (primarily) from the ruler's (and the community's) obligation to the law of God. It is also interesting to take note of Flinn's comment that the problem of Rousseau's doctrine – that of the inability to determine whether the general will of the community is morally right – is avoided because, in the Christian perspective, the general will of the community is irrelevant to what is morally right. Rather, the general will of the community must at all times be bound by God's law. God's law, then, is the constitutional or fundamental law of all civil society.⁸²⁶ The consent of the governed and the rule of the governor must abide within that framework. In the second place, biblical contract theory does not lead to totalitarianism, because rulers are bound to God's law, and the subjects have an obligation to see that they are governed by God's law. When a ruler transgresses the boundaries of God's law he must be resisted by the people. If the latter do not do so, they are held accountable before God. From this it can clearly be seen that Rutherford (as well the other theologico-political theorists) contributed to the justification of the transcendence of the Creator and, therefore, to the immanent relevance of His absolute law-word to every area of

⁸²⁴ Ibid., 105 (2).

⁸²⁵ Flinn, "Samuel Rutherford and Puritan Political Theory", 62. In other words, the consent of the people is secondary, and not a means of establishing the law, but rather a means of maintaining and adding responsibility concerning the exercise of the law by the king and the community.

⁸²⁶ Ibid., 64 – 65.

life, including the state – a characteristic that divides Christian from humanistic theories of government.⁸²⁷

Mention must also be made of Rutherford's source of reference(s) for the content of the law of God, which entails both a Scriptural as well as a natural law platform. According to Coffey, *Lex, Rex* is saturated with biblical references. Rutherford, regarding the Old Testament narratives as akin to a natural-law casebook, also illustrates principles that could be gathered from human reason.⁸²⁸ However, Coffey adds:

... there was pessimism in Rutherford's account. Man's epistemic faculties had been seriously damaged by the Fall, and his original knowledge of morality and religion was now sadly dimmed. Hence the need for special revelation, for the Decalogue and the rest of Scripture. 'Had [man's] conscience been a faithful register', Rutherford had argued in an earlier sermon, 'there should have been no need of a written Bible. But now the Lord lippened [trusted] more to dead paper than to a living man's soul.' ... Scripture, therefore, may not have added much to what *ontologically* speaking was part of natural law, but it added immeasurably to what *epistemologically* speaking men could now know through natural reason. In particular, the nature and importance of true religion could only be known by those with access to special revelation; it could not be derived from natural reason.⁸²⁹

Coffey adds that, just as Rutherford's friend, George Gillespie argued, Rutherford himself taught that before the Fall, the whole of God's law was imprinted on the heart of man, but after the Fall, it became necessary for man to look to "the divine law, revealed from God". This understanding of Rutherford, according to Coffey, is of considerable importance for understanding *Lex, Rex*. Coffey adds that any interpretation of *Lex, Rex* which focuses on its arguments from natural reason and misses its uniquely biblical arguments is incomplete. Rutherford was not only using Scripture to corroborate his arguments from reason, he was

⁸²⁷ Ibid., 65. In this regard Webb makes a valuable comment: "... the contract of government is not based on expediency of compromise between contending atom-like individuals, as in the liberal theory of contract, but on the mutual desire of a people in society to make effective the purpose of God in human affairs. Under Rutherford's theory, the individual always has the right of appeal to the higher law of God beyond any positive law or any actual state. This right is based on a man's own personal obligation as well as the obligation of the whole society to obey the higher law", Webb, *The political thought of Samuel Rutherford*, 228

⁸²⁸ Coffey, *Politics, Religion and the British Revolution*, 153.

⁸²⁹ Ibid., 154.

also drawing from it something that fallen natural reason could never tell him – the covenant obligations of a godly nation.⁸³⁰ This confirms Rutherford’s understanding that the law forms part of the covenantal obligations in the covenant between God and the whole community, as well as in the covenant between God and the ruler. These covenantal obligations are taught by the law of nature, but to a limited degree.⁸³¹ According to Rutherford, Scripture provides not only the authority and confirmation of the covenant, nor does the law of God form the

⁸³⁰ Ibid., 155. One must also bear in mind Coffey’s comment that Rutherford’s support of the importance of Scriptures as source of the contents of the law does not imply that he was foolish enough to think that every command and example in Scripture was still binding on Christians, and therefore his categorization of the law into moral, judicial and ceremonial law, *ibid.*, 155. This has already been briefly discussed above. For Rutherford’s understanding that natural law also plays a role (although limited) alongside Scripture in the determination of the law cf. *ibid.*, 171, “Since God’s commandments were clearly embedded in both natural law and Scripture, it followed that there was no need for the king to create law, since it already existed”. In this regard also cf. *ibid.*, 117 (1), Rutherford states: “As the Scriptures in all fundamentals are clear ... so all laws of men in their fundamentals, which are the laws of nature and of nations, are clear. Rutherford also refers to the natural law as authority for more general precepts that are in accordance with the Divine law such as self-preservation, cf. Rutherford, *Lex, Rex*, 67 (1) – 67 (2), 81 (2) – 82 (1), 84 (1), 95 (1), 97 (1), 102 (1); the resignation of liberty, cf. *ibid.*, 81 (2), 118 (2); the safety of the people, cf. *ibid.*, 125 (2); and the justification (self-defense) of resistance in instances of tyranny (cf. Chapter 5 of this work for a detailed discussion on Rutherford’s understanding of resistance to tyranny), cf. *ibid.*, 111 (1), 117 (1), 118 (1), 128 (1), 129 (2), 132 (2), 144 (1), 154 (2), 158 (2), 159 (2), 160 (2), 162 (1) – 162 (2), 164 (2), 165 (2), 176 (1), 178 (1), 179 (1) – 179 (2), 184 (2) – 185 (1), 189 (1) – 189 (2), 198 (2), 199 (1), 227 (2). Concerning the natural law justifications of resistance according to Rutherford, also cf. Coffey, *Politics, Religion and the British Revolutions*, 175 – 176 and 251. In this regard, Rae states that Rutherford is “enough of a Protestant Aristotelian to have been characterized as coming ‘as close as any’ of his Calvinist Presbyterian peers to the natural rights theorists, but he simply uses this as a supplement to his demands that men act only in accordance with God’s revealed commandments”, Rae, *The political thought of Samuel Rutherford*, 1991), 56. Rae also refers to the Covenanters whom Smart has recognized as having a political philosophy “rested on scripture and reason rather than on historical precedent”. Rae adds that *Lex, Rex* supports this contention, Rutherford having used arguments from history, Church Fathers, Reformed writers, Jesuits, and his Royalist opponents. In this regard, Rae comments that Rutherford’s references to these various sources are of importance to Rutherford “only in so far as he feels they are consistent with Scripture”, *ibid.*, 76. For mere interest sake, the references to prominent writers in *Lex, Rex* (which is not exhaustive) are: Aristotle: [31 (1), 37 (2), 38 (1), 40 (2), 45 (1), 50 (2), 51 (1), 61 (1), 62 (1), 85 (2), 115 (1), 119 (2), 144 (1) – 144 (2), 185 (1), 192 (1), 198 (1) and 204 (2)]; Althusius: [31 (2), 65 (1), 72 (1), 79 (1), 98 (2), 102 (2), 115 (1), 142 (1), 161 (1), 171 (2), 185 (1) and 209 (1)]; Augustine: [89 (2), 93 (2), 131 (2), 156 (2), 173 (2), 178 (1), 214 (2)], Aquinas: [51 (1), 73 (2), 207 (2)]; Beza: [148 (2), 152 (1), 155 (1), 173 (2), 174 (1), 184 (1) and 209 (1)]; Bodin: [2 (1), 46 (2), 74 (1), 127 (2), 129 (1), 178 (1), 192 (1) and 200 (1)]; Buchanan: [34 (2), 51 (1), 84 (1) – 84 (2), 98 (2), 143 (2), 184 (1), 209 (1), 224 (2) and 225 (2)]; Brutus (Mornay): [55 (2), 80 (1), 97 (1), 98 (2), 209 (1) and 222 (1)]; Calvin: [8 (1), 20 (2), 27 (1), 28 (1), 73 (1) – 73(2), 98 (2), 131 (2), 139 (1), 148 (2), 152 (1), 155 (1), 173 (2), 177 (1), 184 (1), 208 (2) and 222 (1)]; Cicero: [178 (1), 193 (2), 233 (2)]; Grotius: [29 (2), 40 (1), 42 (2), 49 (1), 61 (2), 63 (1), 65 (2), 66 (1), 72 (1), 75 (2), 83 (1), 89 (2), 99 (2), 103 (2), 115 (2), 120 (2), 123 (2), 124 (1), 128 (2), 132 (1) – 132 (2), 143 (1), 145 (2), 147 (2), 164 (2), 172 (2), 173 (2), 183 (1), 200 (2), 204 (2), 207 (1) and 220 (1)]; Knox: [114 (2), 146 (1), 209 (1)]; Luther: [148 (2), 208 (2), 209 (1) and 222 (1)]; Plato: [50 (2) and 228 (1)]. This confirms the weight of Rutherford’s political and jurisprudential insight.

⁸³¹ For some comment on Rutherford’s understanding of the natural law refer to Omri K. Webb, *The Political Thought of Samuel Rutherford*, (unpublished Ph. D. dissertation, Duke University, 1963), 90 – 99. In this regard Webb states: “If a single, summary definition had to be made of Rutherford’s idea of the meaning of Natural Law it would no doubt have to be the statement, Natural is the law of self-preservation”, *ibid.*, 98.

covenantal conditions, but scripture and the law also provide accurate and complete information as to the contents of the law itself.

5. Conclusion

It is important to take note of Perks's comment regarding the condition of modern Western society and the growth of the totalitarian secular state. Perks states that when men cease to acknowledge the sovereignty of God they attribute sovereignty to someone else or something else, which includes deifying the state above all else. The secular state becomes the usurper that sits on the throne of God himself; and the State, as the embodiment of autonomous human will, now determines good and evil and orders the life of society by its own law without reference to any higher law. This is what, among others, Bodin, Hobbes and Locke contributed to contemporary society. The state is the highest law and consequently claims the right to control the whole of life of man and society. In contrast to this, the Magisterial Reformers located this "primordial sovereignty" in the being of God.⁸³²

Within the realm of God's sovereignty as well as his attributes (in this context more specifically God's just and righteous character) is the responsibility of the political community to adhere to God's law, an adherence which forms one of the main distinctions between a Christian and secular political community. More specifically and according to theologico-political federalism, this law forms the covenantal condition by which government and governed interact both with God and with each other. To understand theologico-political federalism implies a secure knowledge in the law emanating from Scriptures. The law is pivotal in the concretization and exercise of a covenanted political community. This also has implications for the view by the theologico-political federalists that the people have sovereignty over the king. This can only be understood within the context of the law being, as condition of the covenantal relationships, supreme over the king and the people, unlike the secular constitutional theory that views the people as sovereign per se, where the community becomes the ultimate and absolute measure for the content of the law. In other words, legitimacy, according to the theologico-political federalists requires the Divine law as final, primary and absolute measure, and not the people. Webb states that the undergirding idea of Rutherford's political theory is that of law. To Rutherford, the fundamental fact of the

⁸³² Perks, *A Defence of the Christian State*, 154.

universe is God, its Creator, and all explanations, justifications, and causes reach back to the divine source – The will of God is manifest in His laws which prescribe for everything its proper place, nature and function.⁸³³

Rutherford's exposition on the law of God is tightly knit with the office of the ruler within the covenanted paradigm. Without paying too much attention to the finer details of Rutherford's postulation regarding the various categories of the law (ceremonial, judicial and moral), and putting aside the debate regarding the relationship between Rutherford's, on the one hand, Scriptural, and on the other, Natural Law, as qualification for the relevance of God's law, the fact remains that Rutherford clearly and sufficiently identifies and explains (from a Scriptural and overwhelmingly theonomic perspective) the content of God's law needed to be applied in the political and judicial realm. In addition, Rutherford clearly introduces the importance of the covenanted structure acting as a vehicle towards the effective exercise and application of God's law for and in the Christian society.

From this discussion arises the unavoidable consequence of analyzing the relationship between church (as a formal ecclesiastical institution) and the state (as a civil or governmental institution). In this regard, the relationship between church and state has been the central point of numerous theories emanating from a plethora of writers of theological and political expertise. Nevertheless, for a more lucid understanding regarding the application of God's law within a covenanted political and jurisprudential structure, it is of the utmost importance to distinguish properly and identify the obligations and responsibilities of both the church and the state. The church (in the above-mentioned context) forms part of the Christian community and therefore needs to be committed to the proper exercise of the covenant conditions, together with the state (in the above-mentioned context). There is no doubt that Rutherford not only links the law of God to the covenant conditions, but also makes it clear that both the church and the state have an active role to play in the fulfillment of these conditions, each institution or office according to the mandate provided by God through Scripture. Resistance theory (which is addressed in Chapter 5) from a Christian political perspective also requires accurate insight as to the parameters not only of the content of God's law which is consequently to be exercised by the ruler, but also with regard to the functional and obligatory distinction and symbiosis between church and state. In addition, the community needs to be informed as to the requirements and content of God's law as this

⁸³³ Webb, *The Political Thought of Samuel Rutherford*, 217.

plays an integral part in other vital political activities such as the election of the ruler (which is addressed in Chapter 5).

Chapter 4

Theologico-political Federalism: The Office of Magistracy, Law and the Separation of Powers (1534 – 1604)

1. Theologico-political Federalism and Magisterial Duty

In the preceding chapter, the federalists' understanding pertaining to the office of magistracy was investigated. A consequence emanating from such an investigation is the necessity for a further enquiry into the functions and obligations of such an office, which in turn leads to the relevance of the law, as well as the question as to what the relationship and distinction between the church as an institution (or ecclesiastical organization), and the state in the context of government (or civil organization), must be. Rutherford's understanding regarding these issues has been discussed, as well as the weight that he attached to the Divine law as a condition of the covenant. From this it became clear that according to Rutherford, Divine law is the sovereign measure by which the government must rule and the civil magistrate has a covenantal obligation to protect and maintain this law within the Christian Commonwealth. It is also evident from the preceding chapter that according to Rutherford, the civil magistrate also has distinct obligations in comparison to that of the ecclesiastical institution. This does not imply that the state must refrain from involvement in matters ecclesiastical, and therefore part of the civil magistrate's duty, is to work towards the development, maintenance and protection of certain religious aspects. Part of any constitutional enquiry includes these aspects, namely the office of magistracy and its corresponding duties, be it civil or/and religious, as well as the content and status of the law. In contemporary secular society this statement will most definitely be foreign because the church as visible institution has been mineralized into insignificance from both a general as well as an academic view. In what follows the approach of the other theologico-political federalists will be investigated regarding these same issues, as well as the contribution of Rutherford and the other federalists regarding the separation of powers, and which forms the office of magistracy can take on (such as monarchy, aristocracy, democracy, or mixed government); concepts that also form an essential part of any general constitutional analysis. Finally, the relevance hereof to the covenant idea will be commented on.

1.1 Heinrich Bullinger

1.1.1 The Civil Duties of Magistracy

Baker states that according to Bullinger the office of the magistrate was much more ancient than Moses; but soon after the exodus, God established the Christian magistracy over his people, church, and commonwealth. Like the other Reformers, Bullinger argued that the magistracy was a divine ordinance, made necessary by human sin to avoid anarchy in society and that Government had existed from the beginning of the world.⁸³⁴ According to Bullinger, the Christian magistrate's divinely ordained task was to ensure that the covenant conditions were observed. The magistrate was to enforce the covenant conditions in society among God's people. The covenant was the standard for life in the commonwealth, both for those who willingly attempted to keep its conditions, and for those whom the magistrate had to force to observe the conditions of piety.⁸³⁵ It must be noted that this enforcement of the conditions of piety must not be confused with the enforcement of religion onto the conscience of the individual. What Bullinger is referring to, is the outward exercise of piety.

According to Bullinger, the magistrate defends good discipline and upright laws.⁸³⁶ God by the magistrate bestows on the people many and great commodities. The magistrate must maintain justice in punishing the guilty and defending the innocent, as well as fighting for the people.⁸³⁷ A magistrate should be good, righteous and have respect for persons.⁸³⁸ Justice and innocence are very well joined to the higher power and the magistrate's authority.⁸³⁹ Bullinger refers to Aristotle, who stated that a magistrate is a keeper of laws, and to Plutarch, who understood princes to be the ministers of God for the oversight and safeguard of the people, so that they may partly distribute, and partly keep, the good things that he bestows on them. The magistracy is a divine ordinance or action whereby good is defended and evil suppressed by the prince's aid, and by whom godliness, justice, honesty, peace, and

⁸³⁴ J. Wayne Baker, *Heinrich Bullinger and the Covenant*, (Ohio: Ohio University Press, 1980), 65. Bullinger's basic support for this understanding came from Romans 13 and Exodus 18: 21, *ibid.* Baker adds that although Romans 13 gave divine sanction to government and was thus an indispensable text for Bullinger, along with the other reformers, Exodus 18 was an actual example of God directing the choice of Christian magistrates to rule over His people, *ibid.*, 66.

⁸³⁵ *Ibid.*, 66 – 67.

⁸³⁶ Heinrich Bullinger, *The Decades of Henry Bullinger*, (translated by H. I. and edited for the Parker Society by Thomas Harding, Cambridge: Cambridge University Press, 1849 – 1852), the Second Decade of Sermons, 2: 276, (Decade 2, page 276).

⁸³⁷ *Ibid.*, 2:279.

⁸³⁸ *Ibid.*, 2: 279–280.

⁸³⁹ *Ibid.*, 2: 298.

tranquility, both public and private, are safely preserved.⁸⁴⁰ According to Bullinger, a greater number of men rather follow the flesh than the spirit and as a result, and therefore God, who loves man, prepared and applied a medicine against the grievous diseases of men and appointed the magistrate to judge and discuss matters between them that are at variance, to bridle and suppress wrong and affections, and to save the guiltless and innocent. The magistrate is ordained by God for the safeguard of good and the punishment of evil; in other words, for the good and quiet state of man. This is why, says Bullinger, we read that from the beginning there have been magistrates in the world.⁸⁴¹ The duties of the magistrate are to lawfully execute his office and duty and not dispose of his authority as he likes, such as an evil magistrate does.⁸⁴² Magistrates must be: "... men of courage, such as fear God, speakers of truth, and haters of covetousness ..."⁸⁴³ A good governor must be a man of courage, of strength or force. This means that he must have the ability to do the things relevant to his appointment. This is a mental rather than a physical ability for it is required that he not be a fool, but wise and skilful in that which he does. Bullinger compares this attribute to the office of a captain, which entails knowledge on how to set his army in order of battle, rather than to fight himself; also to the duty of a surveyor of works which entails the knowledge on how buildings must be erected, rather than to work himself; or, as a chariot-man who has to guide his cart in driving rather than to draw it himself.⁸⁴⁴ Bullinger adds: "And therewithal too, there is demanded a boldness of stomach to dare to do the thing that he already knoweth; for constancy and sufferance are very needful in every captain"⁸⁴⁵

According to Bullinger, there is hope that those commonwealths will prosper and flourish where the princes are God's friends and often confer with God. On the other hand, there needs to be a fear of an unhappy end in those commonwealths where the enemies of God abound.⁸⁴⁶ This points to Bullinger's emphasis on the responsibility of the ruler in the eyes of God. If there are many godless persons in the community, it is the obligation of the ruler to punish and limit the godless acts of these people, otherwise the community will not receive God's favor. This understanding also emphasizes the conditional nature of the covenantal relationship with God. Bullinger states that the magistrate is not to be viewed as a hypocrite,

⁸⁴⁰ Ibid., 2: 309.

⁸⁴¹ Ibid., 2: 313. Bullinger refers to the testimonies of Scripture to confirm these duties and obligations of the magistrate namely, 1 Peter 2: 14; Romans 13: 1 – 4, and he refers to "... Adam, all the patriarchs, Noe, Joseph, Moses, Josue, Gideon, Samuel, David, Josaphat, Exechias, Josias, Daniel, and many other after the time of Christ, who rightly executed the office of magistrates", *ibid.*, 2: 314.

⁸⁴² Ibid., 2: 314.

⁸⁴³ Ibid., 2: 319. Bullinger quotes from Exodus 18: 21, *ibid.*

⁸⁴⁴ Ibid.

⁸⁴⁵ Ibid.

⁸⁴⁶ Ibid., 2: 320.

a liar, a deceiver, a turncoat, "... nor one which out of one mouth doth blow both hot and cold", it is required from the magistrate to be true in word and deed and hereby be faithful, simple, a plain dealer, and blameless. The magistrate must not be more liberal in promising than in performing; must take an oath seriously and not be a false swearer, nor a perjured man.⁸⁴⁷ This taking of the oath was also taken seriously by the other theologico-political federalists, especially by Althusius and Rutherford. The oath formed an important facet in the sealing and confirming of the covenant conditions between the ruler and the people. The magistrate must not desire riches and seek to increase his wealth by means of bribes. The Lord forbids good magistrates to be covetous, and expressly charges them to hate and abhor it, as He does also command magistrates to rid their hands of all rewards.⁸⁴⁸ The Lord also forbids all other vices and evils that may diverge the magistrate from being a good and godly governor, such as; pride, envy, anger, dicing, surfeiting, drunkenness, whoredom, adultery and the likes.⁸⁴⁹ Bullinger states that the magistrate must bear authority, "and not be despised as rascal and vile knaves".⁸⁵⁰ They must be instructed with the Holy Spirit and must be a person whose care, day and night, is to see that the flock of the Lord is not scattered, endangered, nor completely destroyed.⁸⁵¹ The office of the magistrate is to order, to judge, and to punish. The ordinance of the magistrate is a decree, constituted by him, for the maintenance of religion, honesty, justice, and public peace.⁸⁵² The magistrate is ordained by God himself, for the health and wealth of all mankind; as it is expressly witnessed by the prophets and apostles, especially by Paul in the 13th Chapter of Romans. The magistrate is to pass judgment with justice and to provide for public peace. Bullinger states:

Moreover, it is undoubtedly true, as before we have declared, that Moses, Samuel, Josue, and David, are not excluded from the name of Christianity: but since they were in authority and bare the names of magistrates, what let is there, I pray you, why a true Christian man may not bear the office of a magistrate in his commonweal? What may be thought of this, moreover, that in the new Testament certain notable men are well reported of who, when they were in

⁸⁴⁷ Ibid.

⁸⁴⁸ Ibid., 2: 320 – 321.

⁸⁴⁹ Ibid., 2: 321. To confirm this, Bullinger refers to Moses, who said to the people that they must bring men of wisdom, of understanding, and of an honest life, Deuteronomy 1: 13. The beginning of wisdom is the fear of the Lord and entails being a friend of God and true religion. For magistrates to be men of understanding, they must have experience, who, by long and continual exercise in handling of matters, are able at the first brunt, to deal in all cases according to the law. For magistrates to be men of honest report whose life and sound conversation are by their deeds perfectly tried and sufficiently witnessed to the people, *ibid.*

⁸⁵⁰ Ibid.

⁸⁵¹ Ibid., 2: 322.

⁸⁵² Ibid., 2: 323.

authority, were not put beside their offices because they were Christians and of a sound religion?⁸⁵³

Bullinger comments that there are two important parts of the magistrate's office, namely, judgment and punishment, and that these two parts are in the magistrate the most excellent offices. Judgment in this context refers to the sentencing given by judges arising from persons being in variance with each other. Sentencing is derived from the laws, according to right and equity and is pronounced with the intent to give to every man his own. To Bullinger this is the execution of justice, and he adds: "But this kind of quieting and setting parties at one is very mild in comparison of revengement and punishment, which is not executed with words and sentences, but with swords and bitter stripes. And good cause why it should be so, since there be divers causes, whereof some cannot be ended but with the sword, and some more gently with judgment in words. But herein consisteth the health and safeguard of the kingdom or commonweal."⁸⁵⁴ Bullinger refers to Moses who, at the Lord's commandment, told the judges to hear the cause of their brothers, and to judge them righteously between every man and his brother and the stranger that is with him. The judges were also instructed to hear the small and the great, and that they were not allowed to fear the face of any man, for the judgments were the Lord's.⁸⁵⁵ The judge must repel no man, and must hear the parties willingly, diligently, and attentively. No sluggishness of the judge must be allowed, nor a mind occupied with other matters. The judge must see to it that the matter is known before judgment is given and that the other party be given the opportunity to make himself heard.⁸⁵⁶ Bullinger states that: "The magistrate doth judge, therefore, when he defendeth the innocent, and bridleth the hurtful person. But he must judge justly, that is, according to justice, and agreeably to the laws, which give to every man that is his. The judge doth judge unjustly, when of a corrupt mind he pronounceth sentence contrary to all law and equity."⁸⁵⁷

⁸⁵³ Ibid., 2: 386. Bullinger also refers to Joseph of Arimathea, Luke 23: 50 – 51 and Mark 15: 43. In addition, Bullinger refers to the "Ethiopian treasurer, Acts 8; of Cornelius the centurion, Acts 10; and of Erastus the chamberlain of Corinth, Romans 16 and 2 Timothy 4, *ibid.*, 2: 386 – 387.

⁸⁵⁴ Ibid., 2: 345 – 346. Bullinger adds: "The best part therefore of the magistrate's duty consisteth in upright judgment and punishing revengement. And those two points require a man of courage and princely stomach; whom the Lord in his law describeth lively, and telleth what kind of man he would have him to be, and what the office is whereto he is called...", *ibid.*, 2: 346.

⁸⁵⁵ Deuteronomy 1: 16 – 17, *ibid.*, 2: 346.

⁸⁵⁶ Ibid., 2: 347. It is interesting to note that the rule, that a party to a hearing must be given the opportunity to present his case, is better known as the *audi et alteram partem* rule, and forms an integral part of the concept of the rules of natural justice in contemporary procedural law and is also a constituent of the rule of law principle.

⁸⁵⁷ Ibid.

According to Bullinger, one of the vices that usually reigns over judges is the accepting of faces, or respect of persons. This takes place when the judge, in giving judgment, has not his eye fixed on the things themselves or on the causes or circumstances of the causes; but rather has a regard of either “dignity, excellency, humility, poverty, kindred, men of honours, letters, or some such like stuff”. According to Bullinger, another vice that takes hold of judges is that which causes corruption resulting from bribery. Included here is the judge that stands in fear to lose his life or goods, or is afraid to displease a nobleman, or is reluctant to lose the common people’s good will; and he also that takes bribes, or is in hope to be rewarded at one of the parties’ hands, does pervert equity and advance iniquity. The judges must respect the will and law of God.⁸⁵⁸ Bullinger adds: “Beside all this, the most holy prophet Jeremy crieth to the king, and saith: ‘Keep equity and righteousness, deliver the oppressed from the power of the violent; do not grieve nor oppress the stranger, the fatherless, or the widow, and shed no innocent blood.’”⁸⁵⁹

Bullinger refers to the last part of the magistrate’s office, which concerns revenge and punishment. The magistrate, by his office, bears the sword, and therefore he is commanded by God to take revenge for the wrong done to the good and to punish the evil. The sword in the hands of the magistrate either punishes offenders, or executes war in order to repel the violence of foreign enemies, or to repress the rebellions of seditious and contentious citizens at home.⁸⁶⁰ Bullinger is again confronted with critics concerning this issue, who say that, according to the doctrine of the gospel, no man ought either to kill or to be killed, because the Lord has commanded that evil should not be resisted⁸⁶¹ also, that the Lord stated that everyone who uses the sword will perish by the sword.⁸⁶² Bullinger replies to this by stating that, these references teach that taking revenge within a private context is forbidden, and adds that the taking of revenge openly by authority of the public magistrate is never disapproved of or found fault with in the Scriptures.⁸⁶³ He then refers to the 12th Chapter of Paul’s letter to

⁸⁵⁸ Ibid., 2: 348. Bullinger emphasizes various references in Scripture that teach that which is expected from the office of the judge. Cf., also *ibid.*, 2: 349, where Bullinger refers to the following sources in Scriptures, confirming the duties of the judges namely: Deuteronomy 10: 17 – 19, stating that God accepts neither persons nor gifts, and does justice for the fatherless and widow, and loves the stranger to give him meat and clothing. Therefore, the judge must also love the stranger; 2 Chronicles 19, where Josaphat told the judges that they must execute the judgments of God and not of man; Deuteronomy 16: 18 – 20, where it is stated that the judges shall judge the people with equity and justice, not pervert justice, not have respect for persons, nor take a reward; Leviticus 19, says that no unrighteousness must be done in judgment, no honoring of poor persons, nor honoring of the mighty.

⁸⁵⁹ Ibid., 2: 349 – 350. This also confirms the close relationship between the office of magistracy and the office of the judge.

⁸⁶⁰ Ibid., 2: 352.

⁸⁶¹ Referring to Ezekial 21: 9; 30: 24, *ibid.*

⁸⁶² Referring to Matthew 26: 52, *ibid.*

⁸⁶³ *Ibid.*

the Romans, teaching that we must not seek revenge because God says that vengeance is his, and that he himself will repay it; but in the 13th Chapter to the Romans it says that the magistrate is the minister of God who should terrify the evil doers and be the avenger of wrath to those who do evil. According to Bullinger we must gather from this that every one of us must let God alone take vengeance, and that no man is allowed to avenge himself by his own private authority – however, public revengement, applied by the ordinary magistrate, is not forbidden anywhere. Therefore, it can also be deduced that when God says that vengeance is His, He grants authority to the magistrate to exercise, and put that vengeance to use, so that the magistrate's duty is to punish the wrongful acts of wicked men with the sword, in the name, and at the commandment, of God himself.⁸⁶⁴ Bullinger states that there are also examples of some who have incurred the heavy wrath and displeasure of the Lord for their foolish pity in sparing those whom the Lord commanded to be struck with the sword;⁸⁶⁵ on the other hand, there are many examples of most excellent princes, who testify and bear witness to the praise that they deserved for punishing wicked offenders.⁸⁶⁶

Bullinger adds that the magistrate only ought to execute offenders when he perfectly knows that he who is to be punished has deserved the punishment that has been determined by the judges; and that God has commanded, in his law, to punish that offence.⁸⁶⁷ If the magistrate, by God's law, punishes offenders; he may also persecute, repel, and kill rebellious people, seditious citizens, and barbarous soldiers, who under the pretence of war want to openly exercise that which thieves and robbers want to do privately.⁸⁶⁸ Bullinger also distinguishes between just and unjust wars. It is a just war when the war is against open enemies and wicked men that are incurable, but a war is unjust when men direct it at their own fellows and against innocent persons, or people in whom there is hope of amendment. To Bullinger, all things must be examined first before a battle is commenced.⁸⁶⁹

⁸⁶⁴ Ibid., 2: 352 – 353. This is confirmed by, inter alia, Exodus 22: 18, Proverbs 20: 26, Proverbs 17: 15, *ibid.*

⁸⁶⁵ Ibid., 2: 353. Cf., 1 Samuel 15; 1 Kings 20, *ibid.*

⁸⁶⁶ *Ibid.*

⁸⁶⁷ *Ibid.*, 2: 355.

⁸⁶⁸ *Ibid.*, 2: 370. Bullinger refers to Romans 13: 4 as confirmation. Cf. *ibid.*, 2: 376 – 378 for examples taken from Scripture concerning the obligations that the magistrate has concerning his obligation to resist any threat to the true religion, and therefore that princes may make war for the defense of religion. Bullinger also refers to St. Augustine's utterance pertaining to the wars made by Moses, *ibid.* The Lord Jesus Christ, when confronted by the Roman centurion, did not command the centurion to resign as a soldier, *ibid.* Bullinger also states that the princes must thoroughly examine the cause of wars, before they initiate or partake in them, *ibid.*, 2: 376.

⁸⁶⁹ *Ibid.*, 2: 380. Bullinger warns that other men's territories must not be desired; the liberty of other people or the magistrate's own people must not be repressed; there may not be a desire for rule, covetousness, greediness of gifts, envy, and other similar affections. Bullinger also states that the laws of war are recited in the 20th Chapter of Deuteronomy (must be profitable and necessary), *ibid.*

1.2.2 The Religious Duties of Magistracy

Johnston states that from the days of its inception the Christian church has been confronted with the problem posed by its very existence in the world, namely, the problem of the church's relation to the state (government). The question of the attitude and relation which the church should properly bear to the governments of this world has never ceased to agitate the minds of leaders in both ecclesiastical and the political spheres. In the course of the history of the church both extremes in that relation may be witnessed. At one time the church asserts and exercises a dominating influence over the affairs of state. At another time the church becomes the mere tool of the state.⁸⁷⁰ The political and religious upheavals attendant upon the Reformation brought this question into the sharpest focus and forced it upon the consideration of the church. The problem was not solved at once and the history of the struggle to solve it differs with the varying circumstances of each country in which the question arises.⁸⁷¹ The theologico-political federalists, have without a doubt, made important contributions concerning this relationship between church and state – a nation in covenant with God needs to distinguish properly between the conditional requirements expected from both church and government in the exercise of their relevant duties. As is witnessed in the above, Rutherford was an integral part of this contribution. It is now to the other theologico-political theorists that we turn, beginning with Bullinger, in order to acknowledge their contributions to the investigation of the relationship between church and state.

Concerning this relationship, Bullinger provides the following insights: the magistrate must fear God, be religious, and not superstitious; it is an idolater that does not preserve the commonweal, but rather destroys it, and a wicked man that does not defend truth and true religion, but rather persecutes and drives truth and true religion out of his jurisdiction; the magistrate must therefore be of the right religion, sound in faith, believing the word of God, and knowing that God is present among men.⁸⁷² Whether the office of the magistrate is obligated towards the care of religion receives much attention from Bullinger. In this regard he states: “For I see many that are of opinion, that the care and ordering of religion doth belong to bishops alone, and that kings, princes, and senators ought not to meddle therewith. But the catholic verity teacheth, that the care of religion doth especially belong to the magistrate; and that it is not in his power only, but his office and duty also, to dispose and

⁸⁷⁰ Robley J. Johnston, “A Study in the Westminster Doctrine of the Relation of the Civil Magistrate to the Church”, *The Westminster Theological Journal*, Vol.12 No.1, (1949), 14.

⁸⁷¹ *Ibid.*

⁸⁷² Bullinger, *Decades*, 2: 380 (Decade 2, page 380). Also cf. *ibid.*, 2: 321.

advance religion.”⁸⁷³ This is an important observation by Bullinger, confirming that the magistrate has an active role to play in the maintenance and advancement of the Christian religion. He refers to Melchizedech, “... that holy and wise prince of the Canaanitish people, who bare the type or figure of Christ our Lord ...”. Bullinger states that Melchizedech was both king and priest together. Reference to the book of Numbers is also made, “... to Josue, newly ordained and lately consecrated, are the laws belonging to religion given up and delivered”; and also to the kings of Judah who obtained great praise for the proper exercise of control and order concerning matters of religion.⁸⁷⁴ [The magistrate’s duties are not only limited to the provision of protection and prosperity of the commonweal, which he cannot do unless he provides to have the word of God preached to his people, but also cause them to be taught the true worship of God]. By this the magistrate actually makes himself the minister of true religion.⁸⁷⁵ Baker states that according to Bullinger the pastor’s duty is spiritual in nature; the power of the keys (Matthew 16), was interpreted as simply the preaching of the gospel and the exposition of God’s word, which included the prophetic denunciation of error and evil. In these matters, the magistrate was bound to heed the pastor. But neither did the pastor rule nor judge. The magistrate ruled the church and the pastors were subject to the magistrate, with the exception that the preaching of God’s word was free.⁸⁷⁶ In Bullinger’s mind, both religious and civil offences were public crimes, punishable by the magistrate for the improvement and welfare of the Christian commonwealth.⁸⁷⁷ Bullinger argued, since the magistrate had the duty to protect such possessions as inheritance and property, he must be “much more obligated to protect and preserve the greater and more important possessions such as religion, freedom, life, honor, city and country.”⁸⁷⁸ Bullinger refers to Leviticus and Deuteronomy where:

⁸⁷³ Ibid., 2: 323 – 324.

⁸⁷⁴ Ibid., 2: 324 – 325.

⁸⁷⁵ Ibid., 2: 324.

⁸⁷⁶ Baker, *Bullinger and the Covenant*, 110 – 111.

⁸⁷⁷ Ibid., 118. Bullinger states that the magistrate must exercise his police power against transgressions such as filthiness, indecency, lust, rape, fornication, adultery, incest, sodomy, extravagance, drunkenness, avarice, deceptions, ruinous usury, treason, murder, parricide, sedition and so forth. It is important to note that the Christian magistrate also had penal power over religious offenders as well, such as apostates, idolaters, blasphemers, heretics, false teachers and mockers of religion, *ibid.*, 118 – 119.

⁸⁷⁸ Ibid., 155. Bullinger states: “No man denieth that God doth oftentimes use the help of soldiers and magistrates in defending the church against the wicked and tyrants: yea, rather all men will confess, that a good and godly magistrate oweth a duty toward the church of God”, Bullinger, *Decades* 5: 34 (decade 5, page 34). Bullinger adds: “Therefore let bishops take heed, that in this behalf there be no fault committed through their negligence; and if they forget their duty, let the magistrate beware that he wink not at their sluggishness, to the destruction of the whole church and all the ministers of Christ”, *ibid.*, 5: 507.

... the Lord doth largely set down the good prepared for men that are religious and zealous indeed; and reckoneth up, on the other side, the evil appointed for the contemnors of true religion... Let us hear also what the wise man, Salomon, saith in his Proverbs: 'Godliness and truth preserve the king, and in godliness his seat is holden up'... they, which would not have the care of religion to appertain to princes, do seek and bring in the confusion of all things, the dissolution of princes and their people, and lastly, the neglecting and oppression of the poor.⁸⁷⁹

Bullinger adds:

Josue in the mount Hebal caused an altar to be builded, and fulfilled all the worship of God, as it was commanded of God by the mouth of Moses. David, in bringing in and bestowing the ark of God in his place, and in ordering the worship of God, was so diligent, that it is wonder to tell. So likewise was Salomon, David's son. Neither do I think that any man knoweth not how much Abia, Josaphat, Ezechias, and Josias, laboured in the reformation of religion, which in their times was corrupted and utterly defaced. The very heathen kings and princes are praised, because, when they knew the truth, they gave out edicts for the confirmation of true religion against blasphemous mouths.⁸⁸⁰

Bullinger also refers to Nebudchadnezzar who published a decree that whoever spoke reproachfully against the true God who made heaven and earth, should be torn to pieces and his house "made a jakes".⁸⁸¹ Then there was also Cyrus, king of Persia, who freed the Jews from bondage and instructed them to repair the temple, and restore their holy rites again.⁸⁸² The Lord commands that the magistrate judges doctrines and kills those who stubbornly teach against the Scriptures, which results in luring the people away from the true God.⁸⁸³ God also

⁸⁷⁹ Bullinger, *Decades* 2: 324.

⁸⁸⁰ *Ibid.*, 2: 325. Cf. Joshua 8: 30 and further.

⁸⁸¹ *Ibid.* Cf., the 3rd Chapter of Daniel's prophecy. Bullinger refers to the sixth chapter of Daniel's prophecy where: "Darius Medus, the son of Assuerus, king Cyrus his uncle, saith: 'I have decreed that all men in the whole dominion of my kingdom do fear the God of Daniel' ", *ibid.* Also cf., *ibid.*, 2: 367.

⁸⁸² *Ibid.* Cf., Ezra 1. Also cf., Ezra 6: 11, "Darius Persa, the son of Hystaspes, saith: 'I have decreed for every man which changeth any thing of my determination touching the reparation of the temple, and the restoring of the worship of God, that a beam be taken out of his house, and set up, and he hanged thereon, and his house to be made a jakes.' ", *ibid.*, 325 – 326. Bullinger also refers to Ezra 7: 26, *ibid.*, 2: 326.

⁸⁸³ *Ibid.*, 2: 324 – 325. This is to be witnessed in Deuteronomy 13.

disallowed the magistrate to plant groves or to erect images,⁸⁸⁴ hereby emphasizing the responsibility of the magistrate in matters of religion.

Bullinger refers to the critics who are persuaded that the care and ordering of religion belongs to the bishops alone and that the above examples referred to by Bullinger are not of any relevance to Christians because they are examples of the Jewish people. Bullinger responds by stating that such persons ought to prove that the Lord Jesus and his apostles taught that the care of religion belonged to the bishops only, which would be impossible to prove.⁸⁸⁵

Bullinger states:

There is no doubt that they ought to be accounted true Christians, which, being anointed with the Spirit of Christ, do believe in Christ, and are in the sacraments made partakers of Christ. For Christ (if you interpret the very word) is as much to say as 'anointed', Christians therefore, according to the etymology of their name, are anointed. That anointing, according to the apostle's interpretation, is the Spirit of God, or the gift of the Holy Ghost. But St Peter testifieth, that the Spirit of Christ was in the kings and prophets. And Paul affirmeth flatly, that we have the very same Spirit of faith that they of old had; and doth moreover communicate our sacraments with them, where he saith, that they were baptized under the cloud, and that they all drank of the spiritual rock that followed them, which rock was Christ. Since then the case is so, the examples, truly, which are derived from the words and works of those ancient kings, for the confirmation of faith and charity, both are and ought to be of force with us. And yet I know that everything doth not consequently follow upon the gathering of examples.⁸⁸⁶

Bullinger refers to the prophecy of Isaiah, who foretold that kings and princes, after the times of Christ and the revelation of the Gospel, should have a diligent care of the church, and should become the feeders and nurses of the faithful. Bullinger emphasizes what is to be understood concerning feeding and nourishing and that it is similar to being fathers and mothers of the church. If the care of religion was left to the bishops alone then it could not have been correct that magistrates were obligated to be feeders, nurses, nourishers, fathers

⁸⁸⁴ Ibid., 2: 325. This is to be witnessed in Deuteronomy 17.

⁸⁸⁵ Ibid., 2: 326.

⁸⁸⁶ Ibid., 2: 326 – 327. In this quotation Bullinger refers to the following references in Scripture: 1 John 2: 20, 27; 1 Peter 1: 11, 2 Corinthians 4: 13.

and mothers of the church.⁸⁸⁷ The holy emperor Constantine who, by calling a general council, determined the establishment of a true and sincere doctrine in the church of Christ with the aim of eradicating all false and heretical opinions. This emperor blamed the bishops when they did not properly execute their obligations.⁸⁸⁸ After Constantine, the emperors, Gratian, Valentinian, and Theodosius, decreed that: “We will and command all people, that are subject to our gracious empire, to be of that religion, which the very religion, taught and conveyed from Peter till now, doth declare that the holy apostle Peter did teach to the Romans”. According to Bullinger, this is convincing proof that kings and princes, among the people of the new Testament had the obligation of taking care of religion.⁸⁸⁹

Bullinger also refers to Arcadius and Honorius who determined that, so often as matters of religion were called in question, the bishops should be summoned to assemble a council.⁸⁹⁰ The emperors Gratian, Valentinian, and Theodosius, established a law wherein they declared to the world what faith and religion they would have all men receive and retain, namely the faith and doctrine of St. Peter; in which edict they also proclaimed all of those who thought or taught to the contrary to be heretics, allowing those alone who persevered in St. Peter’s faith to be called Catholics.⁸⁹¹ This brings Bullinger to the important conclusion that the proper office of the priest is the determination of religion from the proofs of the word of God, and that the prince’s duty is to aid the priests in the advancement and defense of the true religion. However, if it happened that the priests were slack in doing their duty, then it was the duty of the magistrate’s office to enforce the priests to live in an orderly fashion according to their profession, and to determine religion according to the word of God.⁸⁹² After Bullinger’s referral to the examples of the emperors of old who rightly exercised obligations concerning matters of religion, he concludes, “I do not allege all this as canonical scriptures,

⁸⁸⁷ *Ibid.*, 2: 327. Bullinger refers to Isaiah 49, *ibid.*

⁸⁸⁸ *Ibid.*

⁸⁸⁹ *Ibid.*, 2: 328. Also cf. *ibid.*, 2: 331.

⁸⁹⁰ *Ibid.*, 2: 331.

⁸⁹¹ *Ibid.* Bullinger also refers to emperor Justinian, who, writing to Epiphanius, archbishop of Constantinople, said: “We have, most reverend patriarch, assigned to your holiness the disposition of all things that are honest, seemly, and agreeable to the rule of holy scriptures, touching the appointing and ordering of sacred bishops and reverend clerks ... We give charge and commandment, that no bishop have licence to sell or make away any immovables, whether it be in houses or lands, belonging to the churches”, *ibid.*, 2: 331 – 332. In the sixty-seventh constitution, the emperor commands all bishops not to be absent from their churches and if they are absent, they will receive no remuneration of the provincial stewards, but that their revenue should be employed on the church’s necessities; and in the hundred and twenty-third constitution, the lieutenants of every province are commanded to assemble a council for the use and defense of ecclesiastical laws, if the bishops are slack therein, and immediately after the emperor says: “We do utterly forbid all bishops, prelates, and clerks, of what degree soever, to play at tables, to keep company with dice-players, to be lookers on upon gamesters, or to run to gaze upon may-games or pageants”, *ibid.*, 2: 332.

⁸⁹² *Ibid.*, 2: 331.

but as proofs to declare, that princes in the primitive church had power, official authority, and a usual custom, granted by God, (as Esay did prophesy,) and derived from the examples of ancient kings, to command bishops, and to determine of religion in the church of Christ.”⁸⁹³

In more direct terms, Bullinger states: “But apostates, idolaters, blasphemers, heretics, false teachers, and mockers of religion, do offend against the laws of religion, (and therefore ought they to be punished by the magistrate’s authority).”⁸⁹⁴ It must be noted that Bullinger exhibits sensitivity to this issue by stating that although those (blasphemers and subverters of churches), who err stubbornly, and strive to make and keep other men in their errors, may by law be put to death, it is not therefore to be inferred that everyone who errs must be killed. Concerning these persons, there are alternative punishments applicable in order to keep them from influencing others and to preserve the culprits themselves, that through repentance they may be rehabilitated.⁸⁹⁵ It is also made clear that false prophets, who are rebels against God, are commanded by holy laws and judges to be killed without mercy.⁸⁹⁶ Bullinger refers to St. Augustine, who, while disputing the Donatists, proved by the example of Nebuchadnezzar, that Christian princes do justly punish the Donatists for despising Christ and his evangelical doctrine.⁸⁹⁷ In the New Testament there are the examples of Peter and Paul: “... Christ’s greatest apostles: the one whereof slew Ananias and Sapphira, for their lying hypocrisy and feigned religion; the other struck Elymas the sorcerer blind, and bereft him of his eyes; neither is there one hair’s difference to choose, whether a man be killed with a sword or with a word. For to kill is to kill, by what means or with what instrument soever it be done.” That which is expected from the apostles concerning this issue also applies to the magistrate.⁸⁹⁸ Bullinger emphasizes that there are many laws made by holy Christian princes for the state of religion, which give a special charge to kill idolaters, apostates, heretics and godless

⁸⁹³ Ibid., 2: 332 – 333.

⁸⁹⁴ Ibid., 2: 357. Cf., also *ibid.*, 2: 360, “... without all controversy, adulterers, murderers, rebels, deceivers, and blasphemers, are rightly punished, and not against religion. Wherefore it followeth consequently, that false prophets and heretics are by good right slain: for they are deceivers, blasphemers, and man-quellers”.

⁸⁹⁵ Ibid., 2: 361. Punishments such as imprisonment, the payment of a penalty or various other bodily punishments other than the taking of a life, *ibid.* Also cf. *ibid.*, 2: 362, emphasizing that the magistrate must be very cautious in punishing offenders. Reference is also made to Matthew 18: 15 – 17 and Joshua 22, where this cautious approach in punishing offenders is addressed, *ibid.*

⁸⁹⁶ Ibid., 2: 358. Reference is made to Exodus 22: 20, Leviticus 24: 10 – 16, Numbers 25: 32 – 36, Exodus 32, 1 Kings 28, 2 Kings 9, 2 Kings 23: 20.

⁸⁹⁷ Ibid. Part of St. Augustine’s words in this regard were: “If king Nabuchodonosor did glorify God for delivering three children out of the fire; yea, and glorified him so much that he made a decree throughout his kingdom for his honour and worship: why should not the kings of our days be moved so to do, which see not three children saved from the flame alone, but themselves also delivered from the fire of hell, when they behold Christ, by whom they are delivered ...”, *ibid.*

⁸⁹⁸ Ibid., 2: 359.

people.⁸⁹⁹ Reference is made to Constantine, who commanded resistance to all forms of idolatry and the making of sacrifices; and that those that are guilty of such practices be killed, and have their goods confiscated. It is important to note that the rulers of the provinces were also to receive the same punishment, were they to neglect the punishment of such idolaters.⁹⁰⁰ According to Bullinger there were two categories of persons involved in the violation of religious laws: the malicious leaders who seduced others into following them and those who were seduced. The Christian magistrate must keep the former in check like a contagious disease; and should exercise forbearance toward the latter, however, while attempting to bring them to the truth.⁹⁰¹

According to Bullinger, it was Moses who was the first magistrate and lawgiver of the Jewish commonwealth. It was Moses who appointed the first governors and judges in Israel and the first high priest, Aaron. However, by establishing a priesthood and appointing a high priest, Moses did not divest himself of authority over matters of religion and the church, or even of doctrine – such things were properly the concern of the magistrate, for the ruler was a minister of God and of the church.⁹⁰² Bullinger goes on to state that on the other hand, it was the duty of both prophet and priest to instruct the ruler in God’s law, as Eleazer instructed Joshua (Numbers 27: 15 – 23); nevertheless, Bullinger asserted that the magistrate had complete authority in both ecclesiastical and civil matters. Even though the ruler might not heed the prophet and the priest, they must obey all lawful commands of the magistrate.⁹⁰³

⁸⁹⁹ Ibid. Bullinger, in his discussion of the magistrate’s duties, more specifically with reference to St. Peter who commands obedience to rulers that are there, to ward off evil (most probably 1 Peter 2: 13 – 14), also states that just and honest political laws are a help, provide love and tranquility, and do preserve society, as well as promote the setting forth of religion and the banishment of evil customs, *ibid.*, 2: 206 – 207; also on *ibid.*, 2: 280, Bullinger refers to the magistrate being, among others, the promoter of religion, and therefore the magistrate has an implied duty to maintain and protect the true religion. Also cf. *ibid.*, 2: 262, regarding the Fourth Commandment, Bullinger states: “Why then should it not be lawful for a christian magistrate to punish by bodily imprisonment, by loss of goods, or by death, the despisers of religion, of the true and lawful worship done to God, and of the sabbath day? Verily, though the foolish and indiscreet magistrate in this corrupted age do slackly look to his office and duty ...”, as well as on *ibid.*, 2: 283 – 284: “... a christian magistrate, verily, ought not to deny his assistance and defence to the godly ministers of Christ and the churches ...”, and refers to Hebrews 13: 17, teaching obedience to those that “rule over you”, cf. rest of *ibid.*, 2: 284, in this regard.

⁹⁰⁰ *Ibid.*, 2: 359. Reference is also made to Theodosius and Valentinianus who “by proclaimed edicts command in *Codice Theodosiano*, Tit.2. And Valentinianus and Martianus in *Codice Justiniano*, Tit.2.Lib.1., *ibid.*, 2: 360.

⁹⁰¹ Baker, *Heinrich Bullinger and the Covenant*, 119. Baker adds that Bullinger saw some religious offences as less tolerable than others, and in every case the magisterial police authority should be wielded in love, with the goal being an amendment of life on the part of the offender, *ibid.*

⁹⁰² *Ibid.*, 67.

⁹⁰³ *Ibid.*

Concerning the relationship between the magistrate and faith, Bullinger refers to critics who state that the apostle Paul did not command to kill or punish a heretic after the first and second admonition, but to avoid him. In addition they stated that faith is a gift of God which cannot be given to any man by the rigor of the sword, and that no man is to be compelled to have the faith. In addition the apostles required no aid of kings either to maintain or set out the religion of Christ. Bullinger replies that within this context, Paul wrote to an apostle, instructing the latter on how to behave himself according to his duty toward a heretic past all recovery. It would have however been different had Paul written to Sergius Paulus, or any lieutenant. Bullinger adds:

For the same Paul, standing before Sergius, then prince of Cyprus, did by his deeds declare unto him the duty of a magistrate: for first, he did not only most sharply rebuke the false prophet Elymas, then forsake his company, eschew and shun him, as the apostle John did Cerinthus, but strake him also with bodily blindness ... I grant and confess, that faith is God's gift in the heart of man, which God alone doth search and know. But men are judged by their words and deeds. Admit, therefore, that the erroneous opinion of the mind may not be punished; yet notwithstanding, wicked and infective profession and doctrine must in no wise be suffered.⁹⁰⁴

Bullinger also questioned the validity of punishing adultery and not sacrilege adding: "Is it a lighter matter for the soul to break promise with God, than a woman with a man?" According to Bullinger the fact that bringing men nearer to God through teaching is better than compelling them to it by fear or grief of punishment, is not to say that the latter method ought to be neglected; for it has profited many men first to have been compelled with fear and grief.⁹⁰⁵ Still concerning the relationship between the duties of the office of magistracy and faith, Baker states that Bullinger's affirmation of magisterial power in religious matters raised for Bullinger the question of coercion of faith. Although the magistrate could not make men righteous, he could and should punish the evil in order to protect the good. Bullinger in fact

⁹⁰⁴ Bullinger, *Decades*, 2: 363. Bullinger adds: "Verily, no man doth in this world punish profane and wicked thoughts of the mind: but if those thoughts break forth into blasphemous words, then are those blaspheming tongues to be punished of good princes We must therefore make a difference betwixt faith, as it is the gift of God in the heart of man, and as it is the outward profession uttered and declared before the face of men", *ibid.* In this regard, Bullinger also states that: "For surely, unless our Christian magistrates do become more sharp and severe against blaspheming villainies, I do not see but that they must needs be a great deal worse than the wicked knave Caiphas. Undoubtedly the Lord is true (as every one of you must severally think within yourselves), and he verily will punish in all men the defiling of his name, but much more the malicious blaspheming of the same", *ibid.*, 2: 244.

⁹⁰⁵ *Ibid.*, 2: 368.

asserted that one must distinguish between “faith as it is the gift of God existing in the heart of man, and as it is the external profession declared and testified before men”. So long as false faith was hidden it could not be punished; but as soon as a person propagated his false faith and infected his neighbors (or there is the risk of him infecting his neighbors), he had to be silenced.⁹⁰⁶

Bullinger also emphasized that the office of magistrate and the office of the ministers of the church must not be confused with each other. Critics concerning this religious obligation of the magistrate referred to king Uzziah who entered the Temple and burnt incense on the incense altar, and as a result, was given a dreaded skin disease as punishment by God because the burning of the incense was not to be executed by the king but by the priests.⁹⁰⁷ To this issue Bullinger replied: “They object the Lord’s commandment, who bad Josue stand before Eleazar the priest, and gave the king in charge to receive the book of the law at the Levites’ hands”.⁹⁰⁸ Bullinger adds that the office of the king does not imply that the king preach, baptize and minister the Lord’s supper; or that the priest, on the other hand, sits in the judgment seat and gives judgment against a murderer, or pronounces sentence to take up matters in strife. According to Bullinger, the church of Christ has and retains several distinguished offices, and God is the God of order, and not of confusion. The reason that the law of God was given into the king’s hands by the priests, was that the king would not be ignorant of God’s will concerning matters ecclesiastical and political: by which law he had to govern the nation. Joshua, the captain of God’s people, although he is set before Eleazar, has the authority to command the priests, and, being a political governor, is joined as it were in one body with the ecclesiastical ministers.⁹⁰⁹ The magistrate must listen to what the ecclesiastical ruler has to say, and the latter must obey the politic governor in all that which the law commands. To refuse to listen to the priests is to repel God himself, but when the priest deviates from the truth there is no reason why the prince should obey that which the priest teaches. The godly kings of Israel always aided and assisted the priests, who were the messengers of the Lord of hosts; but false priests, they rejected.⁹¹⁰

⁹⁰⁶ Baker, *Heinrich Bullinger and the Covenant*, 119.

⁹⁰⁷ Bullinger, *Decades*, 2: 328. Cf., 2 Chronicles 26, especially verses 18 – 19.

⁹⁰⁸ *Ibid.*, 2: 328 – 329. Reference is made to Numbers 27: 22 and Deuteronomy 17: 18.

⁹⁰⁹ *Ibid.*

⁹¹⁰ *Ibid.* Bullinger refers to numerous examples concerning the magistrate’s duty towards ecclesiastical matters. Cf. *ibid.*, 2: 330, where examples are given where the king sets forth his authority concerning matters of religion. Cf., 1 Kings 2, where Solomon put Abiathar beside the priesthood of the Lord (that he might fulfill the word of the Lord), and put Zadok in Abiathar’s place. In 2 Chronicles 8 there is Solomon who organized the daily work of the priests and of the Levites who assisted the priests in singing hymns and in doing their work. In 2 Chronicles 24, King Jehoash calls the priest, Jehoiada and gives him a commandment to gather money to repair the temple. In 2 Chronicles 29: 5, 11, King

Bullinger states that the weapons of the office of the pastor in the Christian commonwealth were the pulpit and the pen; the pastor stated God's law as he understood it and thus reminded the magistrates of their duty and God's judgment.⁹¹¹ Bullinger also makes it clear as to what the limitations are concerning the magistrate's jurisdiction concerning the making of laws in matters of religion. The magistrate may make no new laws concerning God and the honor to be given to God.⁹¹² Devout and holy princes faithfully and diligently endeavored the word of God to be preached to the people, to retain and preserve among the people the laws, ceremonies, and statutes of God. These princes were also not slack to banish and rive away false doctrine, profane worshippings of God and blasphemies of his name, but settled themselves utterly to overthrow and root it out forever. It was in this manner that godly magistrates made and ordained devout laws for the maintenance of religion, and bore a godly and devout care for matters of religion.⁹¹³ Bullinger refers to the cities which the Levites had to possess, and which were appointed by Josue for studies' sake, and the cause of godliness.⁹¹⁴ Bullinger also refers to King Hezekiah who was no less careful for the sure payment and revenue of the ministers' stipends than he was for the restoring and renewing of every office. Then there is, according to Bullinger, also the example of Jehoshaphat who sent senators and other officers with the priests and teachers through all his kingdom; for his desire was to have God's word preached with authority and certain majesty, and that this preaching may be the cause of good works.⁹¹⁵ The magistrate may even initiate war when there is a danger of a shift from a holy nation to a godless one. It is lawful for the magistrate to defend his people against idolaters and by war, to maintain and uphold true religion.⁹¹⁶

Baker states that although the crucial point for Bullinger was the freedom of the pulpit and the insistence on the absolute integrity of the preaching office, this commitment to the freedom of the pulpit was soon matched by his support for magisterial authority. Although he denied the council's control over the clergy in their priestly functions (referring to the magisterial

Hezekiah called the priests and Levites and told them to be sanctified, and to sanctify the house of the Lord and to allow no uncleanness to remain in the sanctuary. He also appointed singers in the house of the Lord, and those that should play on musical instruments in the Lord's temple. He also gave charge to all the people to keep holy the feast of the Passover, writing to them all such letters, as priests tend to write, with the purpose of putting their minds to religion and hearty repentance. Also cf. 2 Chronicles 31: 20, *ibid.*

⁹¹¹ Baker, *Heinrich Bullinger and the Covenant*, 113.

⁹¹² Bullinger, *Decades*, 2: 333 – 334.

⁹¹³ *Ibid.*, 2: 334.

⁹¹⁴ *Ibid.* Cf. Joshua 11, *ibid.*

⁹¹⁵ *Ibid.*, 2: 334 – 335, cf. 2 Chronicles 31 and 2 Chronicles 17: 7 – 9 respectively. Other examples of the involvement of the magistrates in matters of religion are: King Jehoash, who destroyed the false priests together with idolatry and the profane worshippings of God. King Josiah, having rebuked the Levites, repaired the decayed buildings of the holy temple, 2 Kings 12, *ibid.* Bullinger also refers to 1 Kings 14: 9 – 10; 15: 29; 16: 2 – 3, 9 – 13; 22: 34 and 2 Kings 9 and 10, at *ibid.*, 2: 336.

⁹¹⁶ *Ibid.*, 2: 378. Also cf. *ibid.*, 2: 376 – 379.

structures in Zurich during the period surrounding the Kappel War), he firmly reasserted its power in matters of discipline.⁹¹⁷ To Bullinger, the magistrate was also a minister of God; and the cooperation of pastor and magistrate in God's work was the very marrow of the Christian commonwealth. Baker makes it clear that in Bullinger's mind, church and commonwealth were indistinguishable, if at all, only in a very limited sense. Bullinger did not view the commonwealth in terms of church and state but rather as the people of God gathered together in a Christian society based on the covenant.⁹¹⁸ Rutherford's political theory also included this understanding, placing the primary emphasis on the covenantal relationship between God and the nation, in which the functions and distinctions between church and government, on a secondary level, enhanced this unified covenant relationship. According to Bullinger the church did not exist within society – it was society – and both the magistrate and the pastor played their roles within the same sphere, whether it was called church or commonwealth – it was the Christian community. However, even though the spheres of church and civil society were not distinguishable for Bullinger, the offices of pastor and magistrate had a clear line of demarcation, similar to the Old Testament church.⁹¹⁹

1.2 Philippe DuPlessis-Mornay

1.2.1 The Civil Duties of Magistracy

Mornay says that all the princes and governors of the world are God's stipendiaries and vassals: "And, therefore, seeing all the kings of the world are under his feet, it is no marvel, if God be called the King of Kings, and Lord of Lords; all kings be termed His ministers established to judge rightly, and govern justly the world in the quality of lieutenants. By me (so saith the divine wisdom) kings reign, and the princes judge the earth".⁹²⁰ According to Mornay, the exercise of judgment and justice by the king is a delight to the Lord. The king is compared with a shepherd who takes care of his flock and at the inauguration of kings and Christian princes, they are called the servants and lieutenants of God, destined to govern His

⁹¹⁷ Baker, *Heinrich Bullinger and the Covenant*, xviii – xix.

⁹¹⁸ *Ibid.*, 110.

⁹¹⁹ *Ibid.*

⁹²⁰ Philippe DuPlessis-Mornay (Junius Brutus), *A Defense of Liberty Against Tyrants*. (A translation of the *Vindiciae Contra Tyrannos* with a historical introduction by Harold J. Laski, London: G. Bell and Sons, Ltd., 1924), 68.

people.⁹²¹ Kings are vassals of God who must, with the sword, maintain the law of God, defend the good, and punish the evil. The king must administer justice and defend the people against their enemies.⁹²² Kings were not ordained to ruin, but to govern the commonwealths.⁹²³ To Mornay, a good king endeavors always to keep peace amongst his subjects, as a father amongst his children, to choke the seeds of trouble, and quickly heal the scars; while simultaneously administering the execution of justice on rebels.⁹²⁴ The king cuts off from his ordinary expenses to ease the people's necessities, and neglects his private state, and furnishes with all magnificence public occasions. The king is wasteful of his own blood, to defend and maintain the people committed to his care.⁹²⁵

Concerning the question whether the king be the proper owner of the kingdom, Mornay states: "Although the people have established thee (the king) judge or governor of a city, or of some province, hast thou therefore power to alienate, sell, or play away a province, the people also are sold, have they raised thee to that authority to the end thou shouldest separate them from the rest, or that thou shouldest prostitute and make them slaves to whom thou pleasest?"⁹²⁶ A true king is a careful manager of public affairs, a protector of the common welfare, and is not a lord in propriety of the commonwealth, having as little authority to alienate or dissipate the public revenue, as the kingdom itself.⁹²⁷ Civility, and the welfare of the public state require that the kings establish judges in all places, who should receive no presents, nor sell justice; and also have the power to assist the execution of their ordinances, and to secure the ways from danger, so that commerce might be open and free.⁹²⁸

According to Mornay the king principally regards the public utility, as opposed to a tyrant whose main aim is to care for his private commodity.⁹²⁹ Kings are established to maintain by justice, and to defend by force of arms, both the public state, and particular persons from all damages and outrages. Mornay refers to St. Augustine who stated: "Those are properly called lords and masters who provide for the good and profit of others, as the husband for the wife,

⁹²¹ Ibid., 68 – 69, 83. Also cf. *ibid.*, 188, where Mornay distinguishes between a tyrant who is as a roaring lion, and a king who is like a shepherd. On *ibid.*, 161, Mornay asks: "For what if a man for the flock's sake have made thee (the king) shepherd, does it follow that thou hast liberty to slay, pill, sell, and transport the sheep at thy pleasure?"

⁹²² Ibid., 71.

⁹²³ Ibid., 172.

⁹²⁴ Ibid., 186.

⁹²⁵ Ibid., 187.

⁹²⁶ Ibid., 161.

⁹²⁷ Ibid., 165.

⁹²⁸ Ibid., 162.

⁹²⁹ Ibid., 189.

fathers for their children.” The king commands as a result of the duty he owes to provide for the good of those who are subjected to him. To govern is nothing else but to provide for, and the only duty of the king is to provide for the good of the people.⁹³⁰ Mornay states that kings are appointed to procure and provide for the good of those who are committed to them, and that this good or profit be principally expressed in two things, namely, in the administration of justice to their subjects, and in the managing of armies for the repulsing of their enemies. From this, according to Mornay, it must certainly be deduced that the prince who applies himself to nothing but his peculiar profits and pleasures, or to those ends which most readily conduce thereto, who contemns and perverts all laws, who uses his subjects more cruelly than the barbarous enemy would do; may be called a tyrant.⁹³¹

The prince is but as the minister and executor of the law, and may only punish those which the law has condemned. If the prince does otherwise, he is no more a king, but a tyrant; no longer a judge, but a malefactor, and instead of that honorable title of conservator, he shall be justly branded as a violator of the law and equity.⁹³² Kings were created for the good and profit of the people, and those that seek the commodity of the people, are truly kings: whereas those who make their own private ends and pleasures the only aim of their desires, are truly tyrants.⁹³³ Mornay adds that kings were instituted to feed, to judge, to cure the diseases of the people.⁹³⁴ The king was created prime and principal superintendent for the preserving of peace and concord among those who govern, and for the prevention of jealousies, factions, and distrusts among men of equal rank and dignity, in the commonwealth and government. The king’s most special care must be for the welfare of the kingdom.⁹³⁵ From the above it is clear that Mornay’s understanding of the civil duties of the ruler was similar to Rutherford’s and Bullinger’s, i.e. that the ruler had to promote and instill the protection, welfare, peace, defense, that which is good, all for the profit of the people.

⁹³⁰ Ibid., 140. On *ibid.*, 143, Mornay refers to the Apostle stating that: “The prince is ordained by God, for the good and profit of the people, being armed with the sword to defend the good from the violence of the wicked, and when he discharges his duty therein, all men owe him honour and obedience.” This is none other than what is proclaimed by Romans 13. Also cf. *ibid.*, 163.

⁹³¹ Ibid., 143.

⁹³² Ibid., 152.

⁹³³ Ibid., 158.

⁹³⁴ Ibid., 182.

⁹³⁵ Ibid., 206.

1.2.2 The Religious Duties of Magistracy

Mornay also provides some insight concerning the function of the king as compared with that of the church. According to Mornay, a bishop is chosen to look to the welfare of the soul, while the king is established to take care of the body, so far as it concerns the public good. The bishop is dispenser of the heavenly treasure while the king is dispenser of the secular treasure.⁹³⁶ As the church is one, so is she recommended and given in charge to all Christian princes in general, and to everyone in particular. As every private person, according to Mornay, is bound by his humble and ardent prayers to God, to desire the restoring of the church, so likewise are the magistrates tied diligently to procure the same, with the utmost of their power and means which God has put into their hands.⁹³⁷ It is the duty of all kings, princes, and magistrates, not only to amplify and extend the limits and bounds of the church in all places, but also to preserve and defend it against all men whatsoever. Mornay states that all Christian kings, when they receive the sword on the day of their coronation, solemnly swear to maintain the catholic or universal church, and the ceremony then used fully expresses it; for holding the sword in their hands, they turn to the east, west, north, and south, and brandish the sword, to the end that it may be known that no part of the world is excepted.⁹³⁸ By this ceremony they assume the protection of the church, and they ought to employ the utmost of their ability to reform, and wholly to restore that which they hold to be the pure and truly Christian church, which is ordered and governed according to the direction of the Word of God.⁹³⁹ Whether it be lawful or not to take arms for religion, Mornay states:

Furthermore, to take away all scruple, we must necessarily answer those who esteem, or else would that others should think they hold that opinion, that the church ought not to be defended by arms. They say withal that it was not without a great mystery that God did forbid in the law, that the altar should be made or adorned with the help of any tool of iron; in like manner, that at the building of the temple of Solomon, there was not heard any noise of axe or hammer, or other tools of iron; from whence they collect the church which is the

⁹³⁶ *Ibid.*, 170.

⁹³⁷ *Ibid.*, 217 – 218.

⁹³⁸ *Ibid.*, 218.

⁹³⁹ *Ibid.* Mornay refers to the examples of kings such as Ezechias (who sent messengers throughout Israel, to the subjects of the king of Assyria, to invite them to come to Jerusalem to celebrate the Paschal Feast; and he also aided the faithful Israelites of the tribes of Ephraim and Manasses, and others, the subjects of the Assyrians, to ruin the high places which were in their quarters), Josias (who expelled idolatry, not only out of his own kingdom, but also out of the kingdom of Israel, which was then completely in subjugation to the king of Assyria); and Constantine (who made war against Licinius, who made war against Christians), cf. *ibid.*, 218 – 219.

lively temple of the Lord, which ought not to be reformed by arms; yea, as if the stones of the altar, and of the temple were hewed and taken out of the quarries without any instrument of iron, which the text of the holy scripture doth sufficiently clear.⁹⁴⁰

Mornay continues by referring to the fourth chapter of the Book of Nehemiah, stating that one section of the people carried mortar, and another section stood ready with their weapons; that some held in one hand their swords, and with the other carried the materials to the workmen for the re-building of the temple – for the purpose of preventing their enemies from ruining their work. Therefore, according to Mornay, it must be emphasized that the church is neither advanced nor edified by these material weapons, but by these arms the church is warranted and preserved from the violence of the enemies. Mornay also states that there has been an infinite number of good kings and princes who, through the use of arms have maintained and defended the service of God against pagans.⁹⁴¹

Then there are those, according to Mornay, that readily acknowledge that wars in this manner were allowable under the law; but since the time that grace has been offered by Jesus Christ (who would not enter into Jerusalem mounted on a brave horse, but meekly sitting on an ass), that this manner of proceeding has come to an end.⁹⁴² To this Mornay replies that Jesus Christ, during all the time that He conversed in this world, took not on Him the office of a judge or king; but rather of a private person, and a delinquent by imputation of our transgressions. Therefore, Mornay states, it is an allegation besides the purpose, to say the He has not resorted to arms. Mornay further states:

But I would willingly demand of such exceptionalists, whether that they think by the coming of Jesus Christ in the flesh, that magistrates have lost their right in the sword of authority? If they say so, Saint Paul contradicts them, who says that the magistrates carry not the sword in vain, and did not refuse their assistance and power against the violence of those who had conspired his death. And if they consent to the saying of the apostle, to what purpose should the magistrates bear the sword, if it be not to serve God, who has committed it to them, to defend the good and punish the bad? Can they do better service than to preserve the

⁹⁴⁰ Ibid., 113.

⁹⁴¹ Ibid.

⁹⁴² Ibid.

church from the violence of the wicked, and to deliver the flock of Christ from the swords of murderers? I would demand of them, yet, whether they think that all use of arms is forbidden to Christians? If this be their opinion, then would I know of them, wherefore Christ did grant to the centurion his request? Wherefore did He give so excellent a testimony of him? Wherefore does Saint John the Baptist command the men at arms to content themselves with their pay, and not to use any extortion, and does he not rather persuade them to leave their calling? Wherefore did Saint Peter baptize Cornelius the Centurion, who was the first-fruits of the Gentiles? From whence comes it that he did not in any sort whatsoever counsel him to leave his charge?⁹⁴³

To Mornay there is no greater tyranny than that which is exercised against the soul, and there is no war more commendable than that which suppresses such a tyranny. Mornay adds that it is to be permitted to make war to keep the limits and towns of a country, and to repulse an invading enemy; and it is more reasonable to take arms to preserve and defend honest men, to suppress the wicked, and to keep and defend the limits and bounds of the church, which is the kingdom of Jesus Christ. If it were otherwise, one must question the purpose to which John has foretold that the whore of Babylon shall be finally ruined by the ten kings, whom she has bewitched.⁹⁴⁴ Good princes and magistrates are said to defend themselves properly and fortify by all means and industry the vine of Christ, already planted, and to be planted, “lest the wild boar of the forest should spoil or devour it”. Mornay states that the princes and magistrates do this by defending with their sword, those who by the preaching of the gospel have been converted to the true religion, “and in fortifying with their best ability, by ravines, ditches, and rampers the temple of God built with lively stones, until it has attained the full height, in spite of all the furious assaults of the enemies thereof”.⁹⁴⁵ From the above it is clear that Mornay had similar thoughts as Rutherford, Bullinger and Althusius in this regard.

⁹⁴³ Ibid., 114.

⁹⁴⁴ Ibid., 114 – 115.

⁹⁴⁵ Ibid., 116.

1.3 Johannes Althusius

1.3.1 The Civil Duties of Magistracy

Althusius states that the ruler, prefect, or chief directs and governs the functions of the social life for the utility of the subjects individually and collectively and continues by saying:

He exercises his authority by administering, planning, appointing, teaching, forbidding, requiring, and diverting. Whence the ruler is called rector, director, governor, curator, and administrator ... it is necessary in civil society that one person rule the rest for the welfare and utility of both individuals and the whole group. Therefore, as Augustine says, to rule, to govern, to preside is nothing other than to serve and care for the utility of others, as parents rule their children, and a man his wife. Or, as Thomas Aquinas says, 'to govern is to lead what is governed to its appropriate end'. And so it pertains to the office of a governor not only to preserve something unharmed, but also to lead it to its end.⁹⁴⁶

The superior is the prefect of the community appointed by the consent of the citizens and he directs the business of the community, and governs on behalf of its welfare and advantage, exercising authority over the individuals, and "An oath of fidelity to certain articles in which the functions of his office are contained stands as a surety to the appointing community".⁹⁴⁷

Concerning governance of the public association, more specifically the city, Althusius refers to the senate, which is a collegium of wise and honest, select men, to whom is entrusted the care and administration of the affairs of the city.⁹⁴⁸ Their supreme power is derived from the purpose and scope of the universal association, namely, from the utility and necessity of human social life, and the nature and character of imperium and power will be that they regard and care for the genuine utility and advantage of their subjects. Althusius refers to Vasquez who stated that there is no power for evil, but only for good, none for doing harm or

⁹⁴⁶ Frederick S. Carney, *The Politics of Johannes Althusius*, (An abridged translation of the Third Edition of *Politica Methodice Digesta, Atque Exemplis Sacris et Profanis Illustrata*, including the prefaces of the first and second editions and with a preface by C. J. Friedrich, London: Eyre and Spottiswoode, 1964), 15 – 16.

⁹⁴⁷ *Ibid.*, 35.

⁹⁴⁸ *Ibid.*, 38.

for ruling in the interest of pleasure or self-aggrandizement, but only for considering and supporting the genuine utility of subjects. It is in this context that Augustine says that to rule is nothing other than to serve the utility of others, as parents rule their children, and a man his wife.⁹⁴⁹ Concerning the ephori and their duties, Althusius states that it is said that these public ministers aim at properly and honestly attending to, administering, governing, and conserving the body and right of the universal association and are bound by oath of office to the realm. As a result, they are called custodians, presiding officers, defenders of the commonwealth, and prudent and diligent executors of right and law.⁹⁵⁰ The public ministers undertake the care and administration entrusted to them for the utility⁹⁵¹ and welfare⁹⁵² of the association, “He is a minister of God to you for good”.⁹⁵³ The people of the realm are collectively like a ward or minor and the constituted ministers are like a guardian in that they bear and represent the person of the whole people.⁹⁵⁴ Althusius states that the king is constituted over the affairs of the universal association, the administration, direction, and government, the care of which has been granted to him. The people or universal association constitutes the king over its affairs as director, governor, and trustee as the king is over individuals, in order to administer rightly, to which extent he is the executor, preserver, and minister of law.⁹⁵⁵ The supreme magistrate is he who has been constituted for the welfare and utility of the universal association.⁹⁵⁶ To Althusius the nature of magistracy and imperium is that they regard the utility of subjects and they administer the commonwealth according to right, reason and justice.⁹⁵⁷ Kings are constituted by the people, for the people, and are its ministers to whom the safety of the commonwealth has been entrusted.⁹⁵⁸

The exercise of justice by the ruler is also important to Althusius. The subject must carry on the business of the social life according to the will of the ruler, provided the latter does not rule unjustly.⁹⁵⁹ One of the duties of the provincial head is to administer justice rightly to individual persons, with the power and the right of inflicting penalties of life, body, goods, and reputation, and of rewarding those who do good.⁹⁶⁰ When the supreme magistrate administers the associated body in a manner that is contrary to, amongst others, justice, then

⁹⁴⁹ Ibid., 68 – 69.

⁹⁵⁰ Ibid., 87.

⁹⁵¹ Ibid., 15, 68, 88, 115, 119.

⁹⁵² Ibid., 35, 88, 115, 130.

⁹⁵³ Ibid., 88. Romans 13: 4 qualifies this, *ibid.*

⁹⁵⁴ Ibid., 89.

⁹⁵⁵ Ibid., 105 – 106.

⁹⁵⁶ Ibid., 115.

⁹⁵⁷ Ibid., 99; concerning piety cf. *ibid.*, 16, 19, 142, 186; and justice cf. *ibid.*, 15, 19, 58, 74, 142, 186.

⁹⁵⁸ Ibid., 117.

⁹⁵⁹ Ibid., 16.

⁹⁶⁰ Ibid., 58.

this is a form of tyranny.⁹⁶¹ To Althusius, government in general was to act as, an administrator,⁹⁶² director,⁹⁶³ curator,⁹⁶⁴ guardian or trustee,⁹⁶⁵ overseer,⁹⁶⁶ a custodian, presiding officer and a diligent executor of right and law.⁹⁶⁷ The ruler must also rule piously, otherwise the subject may not act submissively to the will of the ruler.⁹⁶⁸ The duty of the provincial head is, first, to exercise diligent watch and care over sacred and secular provincial affairs, and to provide that they be lifted up and directed to the glory of God and to the welfare of the members of the entire province.⁹⁶⁹

1.3.2 The Religious Duties of Magistracy

Althusius also provided valuable insights concerning the functions of the church, as distinguished from the functions of the government. Hall states that Althusius noted the fact that government by superiors considers both the soul and the body of inferiors. The right of the realm according to Althusius is twofold, namely, that it pertains both to the welfare of the soul and to the care of the body. According to Hall, Althusius definitely did not confuse the realms of church and state; but neither did he believe that the state was only constrained by secular concerns. Althusius repeatedly asserted that one of the legitimate concerns of the state was to encourage true piety.⁹⁷⁰ To Althusius, ecclesiastical administration is the process by which ecclesiastical functions are administered according to what is prescribed in the Word of God, and that such administration by the supreme magistrate consists of his inspection, defense, care, and direction of ecclesiastical matters. What is important, is that the execution and administration of ecclesiastical offices belongs to the clergy. Therefore, there is a twofold administration of ecclesiastical matters; one part concerning the magistrate, and the other concerning the clergy.⁹⁷¹ The supreme magistrate and the clergy directs and obeys the other, and each helps the other in the distinct administration entrusted to it, according to the example of Moses and Aaron – the administration of the supreme magistrate directs the clergy as long as he enjoins them to perform the parts of their office according to the Word of

⁹⁶¹ Ibid., 186.

⁹⁶² Ibid., 15, 38, 48, 87, 88 – 89, 130.

⁹⁶³ Ibid., 15.

⁹⁶⁴ Ibid.

⁹⁶⁵ Ibid., 106.

⁹⁶⁶ Ibid., 89, 106.

⁹⁶⁷ Ibid., 87.

⁹⁶⁸ Ibid., 16.

⁹⁶⁹ Ibid., 58.

⁹⁷⁰ David W. Hall, *Savior or Servant? Putting Government in its Place*, (Oak Ridge: The Covenant Foundation, 1996), 233.

⁹⁷¹ Althusius, *Politics*, 155.

God, and orders and arranges for other things that are necessary for establishing, conserving, and transmitting to posterity, the true worship of God.⁹⁷² On the other hand, the supreme magistrate is subject to the administration and power of the clergy with respect to censures, admonitions, and whatever concerns eternal life and salvation;⁹⁷³ and in the administration of ecclesiastical matters the magistrate does nothing without the counsel and consent of the clergy based on the Word of God.⁹⁷⁴ The magistrate before anything else, and immediately from the beginning of his administration, should establish and nourish the Christian religion as the foundation of the imperium, and:

This ecclesiastical administration is performed chiefly through two duties. The first is the introduction of orthodox religious doctrine and practice in the realm. The other is the conservation, defence, and transmission to posterity of this doctrine and practice. The former duty is employed in seeing that God is rightly known and worshipped, and the latter that the true understanding or comprehension of God thrives throughout the realm, and the right worship of God maintained freely and publicly by each and all in the whole realm, without any fear or peril. By these two duties of the magistrate, the kingdom of God is raised up and preserved among men in this political society.⁹⁷⁵

Althusius adds that this first duty consists of the establishment of a sacred ministry and of schools entrusted to chosen ministers for teaching the true knowledge of God and for conducting sincere worship of him. This in turn entails the setting forth of public edicts, a system of penalties concerning the true acknowledgement and worship of God according to Scripture and to promulgate penal decrees for violators of these edicts.⁹⁷⁶ The magistrate should also validate orthodox canons of faith. The magistrate must also constitute regular ecclesiastical jurisdictions, presbyteries, synods and to legislate through them concerning the call, examination and ordination of bishops and pastors and their direction, judgment and removal from office. In addition, the magistrate must also see that the ministers of the church are legitimately – inwardly and outwardly – called, elected and confirmed, and that those so called put forth, teach and explain the doctrine of the law and the gospel. In connection with

⁹⁷² Ibid.

⁹⁷³ Althusius refers to the following Scriptural references in support of this, namely: 2 Samuel 12, 24; 2 Kings 20: 19; 2 Chronicles 16; 2 Chronicles 20; 1 Kings 13; 1 Kings 16; 1 Kings 21; 2 Kings 1; and 2 Kings 21, *ibid.*

⁹⁷⁴ Ibid.

⁹⁷⁵ *Ibid.*, 156 – 157.

⁹⁷⁶ *Ibid.*, 160.

this latter duty, the magistrate must also provide that the minister rightly administers and dispenses the sacraments of faith; that in their presbytery they offer prayers, good counsel and admonitions, and that they, with other presbyters, rightly exercise church discipline. From this, according to Althusius, it is apparent that the supreme magistrate has a responsibility to judge concerning the knowledge, discernment, direction, definition and promulgation of the doctrine of faith, that he exercises this on the basis of Scripture and that he commands bishops in keeping with these Scriptures.⁹⁷⁷ In fact, clergymen have been subjected to the power of kings, except in those matters that are proper to them, namely, the preaching of the Word and the administration of the sacraments. But to the extent that they are citizens, they are subject to civil power.⁹⁷⁸ Concerning the second essential function, Althusius states that the magistrate must conserve the church, divine worship and schools, as well as exercise a defense against enemies, persecutors and disturbers. The conservation of religion and worship is the process by which the purity of heavenly doctrine and the orthodox consensus are maintained and transmitted to posterity; and the magistrate will need the cooperation of the clergy to do this.⁹⁷⁹

When the supreme magistrate acts contrary to, amongst others, piety, then this is a form of tyranny.⁹⁸⁰ According to Althusius, the magistrate must provide not only that ecclesiastical ministers conducting the visitation perform their office well, but also that, if necessary, political ministers help them in it. Therefore, the magistrate must order that ecclesiastical and political ministers to extend mutual services to each other, and confer and communicate aid and counsel, as Moses and Aaron did; but the magistrate should not permit political ministers to impede or disrupt ecclesiastical ministers.⁹⁸¹ Althusius also states that the magistrate must decree and promulgate laws concerning the preaching of sound doctrine; the right administration of the sacraments; the arrangement for adiaphorous matters according to decorum and good order; the announcement and convocation of catechetical classes, schools, and synods; the punishment or dismissal of mischievous or useless ministers of the church; discipline of the church; the calling of pastors; the deaconates to the poor; the management of church properties and weddings and funerals. However, Althusius adds that the political magistrate should be very careful in this activity not to apply his own hands to these matters, but commit and entrust them to the clergy.⁹⁸² The magistrate should concern himself only that the external actions of men conform to laws, and that all men including the clergymen are

⁹⁷⁷ *Ibid.*, 160 – 161.

⁹⁷⁸ *Ibid.*, 161 – 162.

⁹⁷⁹ *Ibid.*, 162 – 163.

⁹⁸⁰ *Ibid.*, 186.

⁹⁸¹ *Ibid.*, 164.

⁹⁸² *Ibid.*

to comply obediently with these laws.⁹⁸³ Althusius emphasizes that there is no doubt that the correction and reformation of the church from all error, heresy, idolatry, schism, and corruption pertains to the magistrate.⁹⁸⁴ The magistrate must publish interdicts that prohibit the importation or sale of heretical books in the province. The magistrate must not permit heretics or atheists to be admitted to office in the church or schools, nor must he tolerate convents and colleges for wicked religion to be secretly held. The magistrate must take care that in all matters in which he is able he does not fail to furnish whatever may be necessary for the true acknowledgement and reverence of God.⁹⁸⁵ The administrator ought to establish and permit only the one true religion in his realm; and shall expel all atheists, and all impious and profane men who are obstinate and incurable.⁹⁸⁶ However, the magistrate can admit impious and profane men in whom there is hope of correction to sound and pure worship, or to those external means by which God wills to bring men to the true religion, examples hereof as exhibited by Josiah, Jehoshaphat, and Hezekiah.⁹⁸⁷

Althusius makes it clear that a magistrate in whose realm the true worship of God does not thrive, should take care that he does not claim imperium over that area of the faith and religion of men that exist only in the soul and conscience; God alone has imperium in this area and to him alone the secrets and intimate recesses of the heart are known. God administers his kingdom, which is not of this world, through his ministers of the Word, and for this reason faith is said to be a gift of God, not of Caesar – faith is not of the will, nor can it be coerced; faith must be persuaded not commanded, and taught not ordered.⁹⁸⁸ Those who err in religion are therefore to be ruled not by external force or by corporal arms, but by the sword of the spirit, that is, by the Word and spiritual arms through which God is able to lead them to himself. Such people are to be entrusted to ministers of the Word of God for care and instruction. Althusius says that if they cannot be persuaded by the Word of God, how much less can they be coerced by the threats or punishments of the magistrate to believe what some other person believes. Therefore, according to Althusius, the magistrate should leave this matter to God, attribute to him the things that are his, and reserve to himself what God had given him, namely imperium over bodies.⁹⁸⁹ Althusius adds that although the

⁹⁸³ *Ibid.*, 164 – 165.

⁹⁸⁴ *Ibid.*, 165. Althusius states that this is evident from the example of other pious kings. Cf. 2 Chronicles 17; 22; 31; 34; 2 Kings 18; 22; Exodus 32; Joshua 22, *ibid.*

⁹⁸⁵ *Ibid.*, 169.

⁹⁸⁶ *Ibid.*, 165.

⁹⁸⁷ *Ibid.* Althusius allows for Jews and Papists to live in the realm, provided that certain conditions are adhered to, cf. *ibid.*, 165 – 166.

⁹⁸⁸ *Ibid.*, 167.

⁹⁸⁹ *Ibid.*, 167 – 168.

magistrate must punish heretics, just as any other person, as far as they are delinquent in external actions, the magistrate is forbidden to impose a penalty over the thoughts of men.⁹⁹⁰

Althusius's insights concerning the functions of the magistrate and the relationship between the magistrate and the church within the framework of the covenant is very similar to that of Rutherford, Bullinger and Mornay. According to the theologico-political federalists, the maintenance and development of piety and justice as summarized in the Decalogue formed the basis of the magistrate's functions and duties. These functions of the magistrate form part of the conditions of the covenant between God and the magistrate. That there was a connection between the political and jurisprudential thought of Althusius and that of Rutherford, is clearly confirmed by Friedrich, who states: "Among the writings of this turbulent period of English history, the anonymous book by Samuel Rutherford, entitled *Lex, Rex: The Law and the Prince; A Dispute for the Just Prerogative of Kings and People* (1644), comes perhaps closest to the Althusian position".⁹⁹¹

2. The Content and Status of the Law as Condition of the Covenant

2.1 Heinrich Bullinger

What precisely do the theologico-political federalists understand concerning the meaning of the law within the structure of the covenant? The law acted according to the conditions found in the covenant between God and man; and between God and the nation. Theologico-political federal thought, as derived from Heinrich Bullinger, emphasizes that the law teaches in essence – with the Lord himself as a witness – partly the love of God and partly the love of one's neighbor. In fact, the Decalogue itself seems to be almost a paraphrase of the conditions of the covenant.⁹⁹² Bullinger asserts that the Decalogue is the true absolute and eternal rule for true righteousness and all virtues, prescribed for all places, men and times. The summary of the Decalogue is that we love God and each other. More specifically the first Table teaches faith and worship of God, while the second Table teaches what we owe to

⁹⁹⁰ Ibid., 168.

⁹⁹¹ Ibid., xii.

⁹⁹² Andries W. G. Raath and Shaun A. de Freitas, "Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504 – 1575), *Westminster Theological Journal*, 63 (2001), 286.

our neighbor. Bullinger adds that the Decalogue as a whole contains all the duties of life.⁹⁹³ Of importance is that Bullinger saw the Commandment of Love as the summary of both the conditions of the covenant and of all law. Bullinger, therefore, viewed the conditions of the covenant or the Commandment of Love, not simply as a personal ethic, but also as the basic law for the social, political, and ecclesiastical organization of Christian society. The foundation for all law was God's law, and the conditions of the covenant written in the Scripture, as the records of the covenant. God's law was the basis for the laws of the Christian magistrate.⁹⁹⁴ Bullinger's notion of theologico-political federalism provided the principles for the Christian community to be governed by the magistrate and his laws, in all aspects of life. To Bullinger the covenant was the "center piece of the Christian state" and the moral foundation of society and religion". The basic idea in Bullinger's, thought which served as the basis for the development of a strong theory of political federalism, was that the Christian magistrate had the task to enforce the covenantal conditions in society among God's people, and that the covenant was the standard for conducting one's life in the commonwealth, both to those who willingly attempted to keep its conditions and to those whom the magistrate had to force to observe the condition of piety, thereby requiring the Christian magistrate to make the covenantal conditions clear to all God's people with his just law, based on God's law.⁹⁹⁵

Concerning the prominence of the law, Bullinger states that the laws are undoubtedly the strongest sinews of the commonwealth and the life of the magistrate; for, just as the magistrate cannot conveniently live and rule the public without laws, neither can the laws show their strength and lively force without the magistrate. Therefore, the magistrate is the living law, and by executing and applying the law, the law is made to live and speak.⁹⁹⁶ Bullinger adds the necessary limitations on the magistrate's exercise of the law in that the prince is the living law only if his mind obeys the written laws, and if he does not divert from the law of nature. Consequently, his power and authority are subject to laws; for unless the prince in his heart agrees with the law, and in his breast does write the law, and in his words and deeds expresses the law, he is not worthy to be called a good man, much less a prince.⁹⁹⁷ A good prince or magistrate has power over the law only to the extent that he may put the law into practice among the people, apply it to the necessity of the state, and apply its

⁹⁹³ Baker, *Heinrich Bullinger and the Covenant*, 116.

⁹⁹⁴ *Ibid.*

⁹⁹⁵ Raath and De Freitas, "Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504 – 1575)", 287 – 288.

⁹⁹⁶ Bullinger, *Decades*, 2: 339.

⁹⁹⁷ *Ibid.*

interpretation to that of the meaning of the maker.⁹⁹⁸ The law remains forever immutable and it is unlawful for any man at any time to amend it or wipe it away.⁹⁹⁹ Bullinger refers to Scriptures to emphasize the importance of the law for the magistrate.¹⁰⁰⁰

Bullinger goes a step further, and states that the law of God is divided into moral, ceremonial, and judicial laws. The moral law is that which teaches men manners, and shows the shape of virtue, obedience, and perfection that God looks for in people.¹⁰⁰¹ The ceremonial laws are laws concerning the order of holy and ecclesiastical rites and ceremonies, touching the ministers and things assigned to the ministry and other holy uses.¹⁰⁰² The true spiritual purpose of the ceremonial law was to act as an aid in keeping the covenant condition of faith, and thus ceremonies practiced by those who had no faith in Christ, the promised Seed, were of no value whatsoever.¹⁰⁰³ Finally, according to Bullinger, the judicial laws give rules concerning the judgment of matters between man and man, and for the preservation of public peace, equity, and civil honesty.¹⁰⁰⁴ The judicial or civil laws provide rules for the maintenance of peace and public tranquility, for punishing the guilty, for waging war and repelling enemies, for the defense of liberty, of the oppressed, of widows, of orphans, and of the fatherland, and for the making of laws of justice and equity relating to the purchase, loan, possession, inheritance, and other legal subjects of this nature. According to Bullinger, these things are also included in the very condition of the covenant, which prescribes integrity and commands that we walk in the presence of God.¹⁰⁰⁵ At the time, the judicial law was simply the application of the moral law to social and political life. This was the civil law of the Jewish commonwealth and as such applied only to that time and place. Bullinger found the basis for civil law (in this case the judicial law of the Old Testament), in the second Table of

⁹⁹⁸ Ibid.

⁹⁹⁹ Ibid., 2: 340.

¹⁰⁰⁰ Ibid., 2: 334. Cf. Deuteronomy 17: 18 – 19; 2 Kings 11: 12; Joshua 1: 7 – 8, *ibid.*

¹⁰⁰¹ Ibid., 2: 209.

¹⁰⁰² Ibid., 2: 209 – 210. According to Bullinger, God introduced the ceremonial law because His people had become too corrupt to do without external ceremonies and a priesthood. In Egypt the Jews had seen the outward, expensive worship, with temples, altars, sacrifices, a priesthood, holy days, ornaments, etc., Baker, *Heinrich Bullinger and the Covenant*, 63. Baker states that Bullinger made essentially the same point in *De testamento* about the ceremonial law, but specifically in covenant terms. The Jews had lived in Egypt so long that “not only were they nearly ignorant of the ancestral religion and the covenant itself, but daily went over more and more to Egyptian idolatry.” God first gave the Decalogue as a support “for the collapsing covenant”, then the ceremonial law, also as an aid in keeping the covenant. Therefore, just as God gave the judicial law to help the Jews keep the second Table of the Decalogue or the covenant condition of piety, so He meant the ceremonial law as a support in keeping the condition of faith or the first Table of the Decalogue. Therefore, the ceremonial law had the additional purpose of supporting the true worship of God in the covenant, *ibid.*

¹⁰⁰³ Baker, *Heinrich Bullinger and the Covenant*, 64.

¹⁰⁰⁴ Bullinger, *Decades*, 2: 210.

¹⁰⁰⁵ Raath and De Freitas, “Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504 – 1575)”, 286 – 287.

the Decalogue, in the commandment to love one's neighbor as oneself, in the covenant condition of piety. Just as the judicial laws of the Jews had been based on the moral law, and enforced by the magistracy to help the Jews keep the second Table of the Decalogue, so the civil laws of the Christian magistrate were meant to aid his subjects in keeping the covenant condition of piety or love of one's neighbor. In addition, Bullinger states that just as the ceremonial laws had been intended to aid the Jews in keeping the first Table of the Decalogue, so the ecclesiastical laws of the Christian magistracy helped in fulfilling the condition of faith or the love of God.¹⁰⁰⁶

According to Bullinger, in any age, civil law among God's people must be based on the moral law – in the conditions of the covenant.¹⁰⁰⁷ Bullinger makes it clear that the Decalogue constituted the moral law. Even before the time of Moses, the Decalogue was applicable, in fact even before the beginning of the world.¹⁰⁰⁸ The moral law was first of all set down in tables by God, who was the beginner and writer of them, and after that they were again written into the books by Moses. The Ten Commandments are the absolute and everlasting rule of true righteousness and all virtue, set down for all places, men, and ages, to “frame themselves” by. Bullinger explains that the sum of the Ten Commandments is to show our love to God, and to love one another. This is what God requires at all times, and everywhere, from all men.¹⁰⁰⁹ Bullinger states that the first Table concerns God; the second concerns man. The first Table teaches us what we have to think concerning God, and expresses the worship due to him; it teaches us the perfect way to live uprightly and holily in the sight of God. The second is the rule whereby we have to learn our duty toward our neighbor; which also teaches us humanity, directing us in the way to live peacefully and civilly with one other.¹⁰¹⁰ The magistrate's laws must be based on the Decalogue. Laws concerning religion and the church help in keeping the first Table or the condition of faith. Laws relating to man in society are aids in observing the second Table, the covenant condition of piety.¹⁰¹¹ The covenantal relevance of the Decalogue is emphasized by Bullinger in that:

¹⁰⁰⁶ Baker, *Heinrich Bullinger and the Covenant*, 117. Baker adds that this understanding by Bullinger does not mean that Bullinger equated the laws of the Christian magistrate with the Jewish judicial and ceremonial laws that had been abrogated by Christ. Bullinger did however, see the laws of the Christian commonwealth in the same light as the Jewish laws: they were intended to help in keeping the covenant conditions, in walking in obedience to God's commandments in piety and innocence, in doing good to all men, *ibid.*

¹⁰⁰⁷ *Ibid.*, 62 – 63.

¹⁰⁰⁸ Bullinger, *Decades*, 2: 210.

¹⁰⁰⁹ *Ibid.*, 2: 211.

¹⁰¹⁰ *Ibid.*, 2: 214 – 215.

¹⁰¹¹ Baker, *Heinrich Bullinger and the Covenant*, 66.

Those tables also were kept, as the most precious treasure, in that ark, which of the tables of the covenant (containing in them the chief articles of the eternal league) was named the ark of the covenant: which ark again was laid up in the holiest of the holy. All which circumstances tend to nothing else, but to commend unto us the excellency of the ten commandments, and to warn us to reverence that God which published this moral law, as Him that is the Lord of heaven and earth, and which at His own will and pleasure doth order the disposition of all the elements against disobedient rebels. These circumstances also do admonish us, that even now, in our time also, we have to esteem of the Ten Commandments, as of the dearest jewels to be found in all the world.¹⁰¹²

The importance of the moral law as a condition of the covenant between God and man is traced back by Bullinger to the covenant as it was made with Abraham. In this covenant God had promised that He would be all-sufficient, and the conditions for humans were “to walk before God and be upright” (Genesis 17: 1), and this meant having faith in God and love for one’s neighbor.¹⁰¹³ Bullinger affirmed that Scripture in its entirety, taught the covenant and its conditions. The moral law was a restatement of these conditions, and the magistrate had been designated to enforce the conditions of the covenant among God’s people. The prophets taught the same covenant. Christ renewed and confirmed the covenant; and then the apostles after Christ, taught the same covenant that had been made with Abraham. The ceremonial law had been given to the Jews as a support for the covenant, to help keep them true to the covenant; but the ceremonies had nothing to do with the essence of the covenant except that they were typological foreshadowings of Jesus Christ.¹⁰¹⁴ Baker also confirms Bullinger’s understanding that God made his covenant with the human race from the very beginning,

¹⁰¹² Bullinger, *Decades*, 2: 212. On *ibid.*, 2: 214, Bullinger refers to the passage in Scripture stating: “Verily I say unto you, though heaven and earth do pass, one jot or tittle of the law shall not pass, till all be fulfilled. Whosoever, therefore, shall break one of the least of these commandments, and shall teach men so, he shall be called the least in the kingdom of heaven”, Matthew 5: 17. Concerning the passage in Scripture stating: “To them that love me, and keep my commandments”, Bullinger states: “Here, I say, he requireth two things at their hands that are his. The first is, that they love God, and make account of and take him to be their God: which if they do, then shall there no room be left in the godly for strange and foreign gods. The second is, that they obey God, and walk in his commandments: which if they do, then are all idols and strange worshippings utterly at an end; then doth the Lord by his word reign in the heart of every godly man, whom the bountiful Lord doth liberally bless with all kind of blessings and good gifts. And this clause verily doth especially belong to this commandment, but inclusively also it is referred to all the rest, as by the very words of God we may easily gather. Let us hold and verily think therefore, that the infinite and unspeakable benefits of God are prepared for them that walk in the law of the Lord”, *ibid.*, 2: 236 – 237. This confirms the covenantal condition of abiding by the law of God.

¹⁰¹³ Charles S. McCoy and J. Wayne Baker, *Fountainhead of Federalism. Heinrich Bullinger and the Covenantal Tradition*, (with a translation of Heinrich Bullinger’s *De testamento seu foedere Dei unico et aeterno*, 1534, Louisville: Westminster / John Knox Press, 1991), 20.

¹⁰¹⁴ *Ibid.*

binding himself to man and agreeing to “certain conditions with us which He explained to the blessed patriarchs, such as Adam, Noah, Abraham, and Moses, revealing himself from time to time more and more, and clarifying and renewing this covenant or testament”. The covenant conditions for man were repeated often and were finally written by Moses, especially in the Decalogue.¹⁰¹⁵

To Bullinger, God’s direct revelation to Adam about Christ, the Blessed Seed, included a law, that is, a rule for living God’s will for mankind. Thus the covenant was revealed directly to Adam, along with its conditions. Adam was not only to have faith in Christ, the Savior of the world, but God also taught him that he must serve God as his only God “in purity and righteousness, for all the days of his life”. Therefore, God also instructed the confederates to worship with purity and to obey superiors, which later were written in the two Tables of the covenant. According to Bullinger, the ancient oral tradition contained/encompassed the conditions of the covenant or the moral law, which taught faith and piety.¹⁰¹⁶ The word of God which had existed in the world since the promise to Adam “concerning the restitution of the human race” (Genesis 3: 15), was handed down intact from Adam to Moses. All the patriarchs accepted this word, instituting their whole life and faith according to it. Baker states that Bullinger, after making a similar argument in connection with the covenant and Scripture in the first article of his *Summa*, returned to the topic of this pristine tradition in the article on the law of God. God’s first revelation of His law was to the patriarchs, from the beginning of the world, writing in their hearts everything later given in the Decalogue.¹⁰¹⁷ This law was the will of God, how God wished the *faithful* to live in all ages, “that we should love Him above all things, serve and depend on Him alone, and give perfect obedience with all our strength, in spirit, soul and body. Then God adds promises and threats. Therefore, the law was the conditions of the covenant, faith and piety. It was written in the hearts of men before Moses wrote it as Scripture.¹⁰¹⁸

It is important to note that Bullinger, according to Baker, did not set the moral law against the gospel, rather, the law, as the will of God for man, was the gospel, as explained in the covenant conditions. *To be sure, salvation always had been by faith alone. But those who had faith were faithful, doing their best to fulfill the covenant condition of piety, to live*

¹⁰¹⁵ Baker, *Heinrich Bullinger and the Covenant*, 76.

¹⁰¹⁶ *Ibid.*, 60.

¹⁰¹⁷ *Ibid.*, 60 – 61.

¹⁰¹⁸ *Ibid.*, 61.

*according to God's will in the covenant.*¹⁰¹⁹ The connection between the moral law and the gospel becomes quite clear in Bullinger's treatment of the Decalogue. The Decalogue was the moral law, the will of God for man in all times, places, and conditions. Given to Moses on two stone tablets, it was a summary of true religion. The first Table, taught the true love and worship of God. The remaining six commandments, the second Table, prescribes man's behavior towards other men. In other words, the Decalogue teaches partly the love of God and partly the love of one's neighbor.¹⁰²⁰ According to Bullinger the Decalogue itself appears to be a paraphrase, so to speak, of the conditions of the covenant. Bullinger, then, saw the Love Commandment of Christ as a summary of the Decalogue, of the moral law, and thus a concise statement of the *covenant conditions of faith and piety*. These two Tables of the law were called "the tables of the covenant because they embrace the original main points of that ancient covenant begun with the patriarchs."¹⁰²¹ Aside from the law-gospel issue, the important point made so clearly by Bullinger was that God's people, before and after Christ, must live according to the moral law, the will of God, and the conditions of the covenant. God demanded both *faith and a life of obedience or good works* from community.¹⁰²² Although Christians were justified and claimed the perfection of the law through faith in Christ, that did not mean that they were free from the moral law. Rather, the faithful subjected themselves to the moral law, not from compulsion, but willingly and freely. If the abbreviation of the moral law was the love of God and one's neighbor, then to subject oneself to the moral law was to keep the covenant conditions. Such love of God and one's neighbor, the fruit of faith, summarized the true spirit of the Old Testament. The love of God corresponds to the first Table of the Decalogue, summarizing the *condition of faith*; the love of one's neighbor summarized the *condition of piety* as stated in the second Table.¹⁰²³

The threefold use of the moral law as expounded by Bullinger, provides a clearer perspective concerning the relationship between the moral law and faith. Firstly, according to Bullinger, the moral law gave knowledge of sin, that no one could be justified by his own powers, but only through faith in Christ, by the grace of God. The purpose of the law in this context was

¹⁰¹⁹ Ibid.

¹⁰²⁰ Ibid.

¹⁰²¹ Ibid.

¹⁰²² Ibid., 62.

¹⁰²³ Ibid., 82. It is interesting to note here that Calvin spoke only of the "condition" of piety, not of faith. That is, the condition of faith was fulfilled for the elect, who were then responsible for living a godly life. Baker states that, without attempting to resolve the tension between God's will in election and man's responsibility, it will be sufficient to state that faith was only a hypothetical condition to Calvin. The condition was fulfilled for the elect; the reprobate could never fulfill it; but the believer did have a responsibility to live according to the moral law that was written in his heart by the Holy Spirit, *ibid.*, 195.

to convince a person of his own sin and unworthiness and thus lead him by faith to Christ.¹⁰²⁴ Secondly, the law also taught the proper worship of God and how to live in this world, to those who were already justified by faith. In this context, the law was the explication of the covenant conditions for the faithful. It is the moral law in this context that explains the conditional nature of the law within the covenant between God and man. *Finally, the moral law concretely tied the covenant conditions to socio-political life in the Christian commonwealth. It is this third use of the law that, according to Bullinger, concretely tied the covenant conditions to socio-political life in the Christian commonwealth.*¹⁰²⁵

Therefore, according to Bullinger the Decalogue contained the conditions of faith and piety and the office of magistracy had to regulate, enforce, maintain, and protect the presence of these main conditions in the commonwealth. Concerning faith, the magistrate had the function of protecting sound doctrine from unwanted external influences that could lead souls away from God and that ran the risk of exposing the faithful commonwealth to God's wrath as a result of open transgressions of the first Table. In brief, all external acts contrary to the first Table, such as blasphemy and idolatry, had to be warded off and punished by the magistrate. As discussed in detail previously, Bullinger made it clear that the magistrate has no jurisdiction concerning the consciences of members of the commonwealth. What was in the hearts of men was a matter only between God and the individual, and it was the function of the ecclesiastical office to provide and develop the seed of faith in the people. This is what concerns the condition of faith and the magistrate, and the relevance of it to the office of magistracy within the theologico-political framework. Concerning the second Table of the Decalogue, the magistrate has the function of developing and maintaining piety within the commonwealth, which also included the punishment of acts contrary to the precepts found in the second Table. These are the main elements of the conditions in the covenant between God and the magistrate, and the magistrate would be guilty of transgressing the covenantal

¹⁰²⁴ Ibid., 62.

¹⁰²⁵ Ibid. Baker adds that Bullinger was quite aware that his connection of the moral law with the gospel left him open to the charge that works were necessary for salvation; and consequently his defense was based on the covenant. The promise of the Blessed Seed was reiterated by Moses in the first commandment, with the reference to the exodus from Egypt. Then the covenant itself, renewed with the giving of the law, was fundamentally concerned with this salvation through faith in Christ. Therefore, since the covenant was unchangeable, Moses also preached salvation through faith alone in Christ (Galatians 3: 16 – 18). Baker adds that Bullinger did, however, feel the necessity for asserting specifically that he maintained the proper distinction between the law and the gospel, and not mixing them together. Nevertheless, Baker states that Bullinger did not distinguish as clearly as many of his contemporaries, *ibid.* However, it is important to note that aside from this law/gospel issue, the important point made so clearly by Bullinger, was that God's people, before and after Christ, must live according to the moral law, the will of God, and the conditions of the covenant. God demanded both faith and a life of obedience or good works from His faithful in every age, *ibid.* In fact, one can say that the sum of faith has to lead to the community abiding by the law of God.

agreement between himself and God in instances where the magistrate does not protect and maintain the sound faith as well as piety amongst members of the commonwealth. In the same manner, the people, including the magistrate, are required to obey the conditions of the covenant, and therefore have to live in faith and piety in order to prevent a transgression of the covenant between the commonwealth and God. Concerning the covenant between the magistrate and the commonwealth, these conditions of faith and piety also had to be adhered to by both parties, otherwise there would be a breach of contract from whoever transgresses any or both of these conditions. Where the magistrate rules in an ungodly manner, the people as legitimate parties to this contract may resist the magistrate in order to repair such a breach. (The issue regarding resistance theory will be investigated in a later chapter.) Therefore, according to Bullinger, the law or Decalogue, as a condition of the covenant plays an important role within the covenantal relationship between God and the office of magistracy, between God and the commonwealth and between the office of magistracy and the commonwealth.

Baker effectively sums it up by stating that according to Bullinger, God would bless the commonwealth if the magistrates were pure and the people obedient and pious, as in the time of Hezekiah in Judah. However, God would punish the commonwealth if it ignored His commandments, if it neglected His covenant, just as He had punished Israel and Judah. The works of the pious Christian magistrate were indispensable if the commonwealth was to live under the covenant, obedient to God and His laws. Such was, and always had been, God's way for His people.¹⁰²⁶ The Reformed church, because of the covenant, was the same church as the Old Testament church. Therefore, the Christian magistrate was sovereign: he possessed the same power over both religious and civil life as the Old Testament rulers had possessed before him. The Christian commonwealth had always existed within the framework of the covenant.¹⁰²⁷ The pastor-prophet made God's will known in the church by urging everyone to fulfill the condition of faith and by impelling all to live according to the condition of love of one's neighbor. The Christian magistrate ensured that everyone had the opportunity to fulfill the condition of faith and enforced the condition of piety by means of just laws, honest courts, and the exercise of police power. Everyone, including the pastor, was subject to the magistrate. On the other hand, the magistrate, in order to know and understand God's will, had to listen to the pastor. Therefore, although Bullinger's position on magisterial sovereignty was unequivocal, pastor and magistrate cooperated in keeping God's

¹⁰²⁶ Ibid., 120.

¹⁰²⁷ Ibid., 120 – 121.

people true to the covenant.¹⁰²⁸ For Bullinger then, the covenant served as the foundation for social policy and law among Christian people and thus as the framework for his socio-political theory. The covenant was in fact the cement that unified God's people in the Christian community. According to Baker there is no doubt that the Zurich church should understand its covenant relationship with God and the associated obligations.¹⁰²⁹

Baker states that it was the New England Puritans who, like Bullinger, made the covenant the basis for Christian society. The social covenant was based on the religious covenant; political society thus existed within the framework of the covenant. Baker adds that this was true for New England as it had been with Israel. The "new" covenant ideas of the 17th century were thus clearly not a further development of Calvinism. According to Baker, they were rather part of the other Reformed tradition, which must be traced back to Zurich, particularly to the thought of Bullinger.¹⁰³⁰ Bearing this in mind, it will later become clear that Samuel Rutherford's theological and political theory supported the inheritance of Bullinger's theologico-political federalism by the members of New England during 17th-century New England.

2.2 Philippe DuPlessis-Mornay

Laski states that Mornay's *Vindiciae* is concerned throughout, with the will of God. To Mornay, the crucial point is not the willer, but the substance of the thing willed; and if that substance, when it contradicts divine law, is maintained, it must be resisted at all costs.¹⁰³¹ Laski adds that to Mornay, civil society, as important as it may seem, was superseded by interests higher than those of the state for which no sacrifice is too much. According to Mornay, government is therefore ultimately a theocracy. From this it follows that when the human administrator is in conflict with the divine ruler, the citizen can really have no hesitation as to where his obedience must lie.¹⁰³² According to Laski, like all the Huguenots, Mornay uses the Bible as the obvious source of social truths.¹⁰³³

¹⁰²⁸ Ibid., 121.

¹⁰²⁹ Ibid., 136 – 137. Also cf. *ibid.*, 137 – 140, 163.

¹⁰³⁰ Ibid., 166.

¹⁰³¹ Mornay, *A Defence of Liberty Against Tyrants*, 46.

¹⁰³² Ibid., 47.

¹⁰³³ Ibid., 48.

Mornay states that God commands the king to observe his laws and to have them always before his eyes, promising that he and his successors will possess the kingdom for a long time, if they are obedient. The king must promise solemnly to command according to the express law of God,¹⁰³⁴ and the people are not to bind themselves to the king's commands in instances where such commands transgress the law of God.¹⁰³⁵

Mornay states:

‘Give to Caesar that which is Caesar’s, and to God that which is God’s.’ To Caesar tribute, and honour; to God fear. Saint Peter says the same, ‘Fear God, honour the king; servants obey your master, not only the good and kind, but also the rigorous.’ We must practise these precepts, according to the order they are set down in: to wit, that as servants are not bound to obey their masters if they command anything which is against the laws and ordinances of kings, subjects in like manner owe no obedience to kings which will make them to violate the law of God.¹⁰³⁶

By the law of God, according to Mornay, is to be understood the two Tables given to Moses, “in the which, as in unremovable bounds, the authority of all princes ought to be fixed.” The first Table comprehends that which we owe to God, the second that which we must do to our neighbors. Briefly, they contain piety and justice conjoined with charity, from which the preaching of the gospel does not derogate, but rather authorize and confirm.¹⁰³⁷ In fact, according to Mornay more careful regard must be taken of the first Table than of the second; for it is a thing much more grievous to offend the creator, than the creature, man. There is no question that a more terrible punishment awaits those who infringe the first Table of the law, than for those who only sin against the second, although the one depends on the other.¹⁰³⁸

Mornay refers to the twenty-seventh chapter of Deuteronomy, where Moses commanded the people of Israel to obey the law of God, once they had passed the river Jordan and had entered into Canaan, the Promised Land. From this and from the leadership of Joshua, we see that all

¹⁰³⁴ Ibid., 71.

¹⁰³⁵ Ibid., 80.

¹⁰³⁶ Ibid., 83.

¹⁰³⁷ Ibid., 80.

¹⁰³⁸ Ibid., 81.

people are bound to maintain the law of God to perfect His church, and to exterminate the idols in the land of Canaan: a covenant which can in no way appertain to particulars, but only to the whole body of the people.¹⁰³⁹ According to Mornay, good princes are but an inanimated and speaking law.¹⁰⁴⁰ The law is the soul of a good king, it gives him motion, sense and life. The king is the organ and as if it were the body by which the law displays her forces, exercises her function, and expresses her conceptions.¹⁰⁴¹ Mornay points to the fact that before there was a king in Israel, God prescribed to Moses both sacred and civil ordinances, which he should have perpetually before his eyes; but after Saul was elected and established by the people, Samuel delivered it to him in written form, so that he might carefully observe it. Nor were succeeding kings received before they had sworn to keep those ordinances.¹⁰⁴² Mornay adds: “Set, then, the estates, and all the officers of a kingdom, or the greatest part of them, every one established in authority by the people: know, that if they contain not within his bounds (or at the least, employ not the utmost of their endeavors thereto) a king who seeks to corrupt the law of God, or hinders the reestablishment thereof, that they offend grievously against the Lord, with whom they have contracted covenants upon those conditions.”¹⁰⁴³ Murray states that like Beza, Mornay, in his *Vindiciae*, takes as his premises the idea of God and the Decalogue, and adds: “antecedent respect for both, forms the foundation of all States.”¹⁰⁴⁴

2.3 Johannes Althusius

Similar to Bullinger, Mornay and Rutherford, the law as contained in the Decalogue is, according to Althusius, of the utmost importance to the Christian political system. In the preface to the third edition of his *Politica* (dedicated by Althusius to the “illustrious leaders of the estates of Frisia between the Zuider Zee and the North Sea”) are the following words by Althusius:

¹⁰³⁹ Ibid., 88.

¹⁰⁴⁰ Ibid., 117.

¹⁰⁴¹ Ibid., 145.

¹⁰⁴² Ibid., 148.

¹⁰⁴³ Ibid., 116.

¹⁰⁴⁴ R. H. Murray, *The Political Consequences of the Reformation. Studies in Sixteenth-Century Political Thought*, (London: Ernest Benn Limited, 1926), 114.

And I have included among other things herein, all in their proper places, the precepts of the Decalogue and the rights of sovereignty, about which there is a deep silence among some other political scientists. The precepts of the Decalogue are included to the extent that they infuse a vital spirit into the association and symbiotic life that we teach, that they carry a torch before the social life that we seek, and that they prescribe and constitute a way, rule, guiding star, and boundary for human society. If anyone would take them away from politics, he would destroy it; indeed, he would destroy all symbiosis and social life among men. For what would human life be without the piety of the first table of the Decalogue, and without the justice of the second? What would a commonwealth be without communion and communication of things useful and necessary to human life? By means of these precepts, charity becomes effective in various good works¹⁰⁴⁵

According to Althusius, we should live temperately toward ourselves, justly toward our neighbor, and piously toward God. Piety is to be understood according to the first Table of the Decalogue and justice according to the second.¹⁰⁴⁶ To Althusius, the Christian community – in the form of a universal symbiotic communion – is both ecclesiastical (concerns religion and piety which in turn concerns the welfare and eternal life of the soul) and secular (concerns justice which in turn concerns the use of the body and of this life, and the rendering to each his due). The first and second Tables, of which the Decalogue consists, are the two foundations of every good association.¹⁰⁴⁷ Althusius states that the secular right of the realm, guides the life of justice organized in universal symbiosis according to the second Table of the Decalogue. This right trains us how to live justly in the present world.¹⁰⁴⁸ Althusius refers to John Piscator, who said that the second Table teaches what is just, while ruling in fear of God is understood according to the first. Both these Tables are of concern to the

¹⁰⁴⁵ Althusius, *Politics*, 8 – 9.

¹⁰⁴⁶ *Ibid.*, 69. Cf. also *ibid.*, xix. It is interesting to note the different categorizations of the concept of “piety” by the theologico-political federalists. In the above it is indicated that Bullinger applies “piety” to the second Table, while Althusius applies it to the first Table – not that this is an issue that requires criticism at all, because what each federalist specifically defines as belonging to the first and second Tables respectively, is similar.

¹⁰⁴⁷ *Ibid.*, 70. Althusius adds that the first Table pertains to the performance of our duty immediately to God, and the second to what is owed to our neighbor. In the former are the mandates and precepts that guide the pious and religious life of acknowledging and worshipping God. The first Table instructs and informs man about God and the public and private worship of him; while in the second Table are those mandates and precepts that concern the just, and more civil and political, life. Man is informed by them that he may render and communicate things, services, counsel, and right to his symbiotic neighbor, and may discharge toward him everything that ought to be rendered for alleviating his need and for living comfortably, *ibid.*

¹⁰⁴⁸ *Ibid.*, 74.

magistrate, as can be demonstrated by examples of pious kings, such as David, Solomon, and others who followed them.¹⁰⁴⁹

According to Althusius, the sinews and bond of imperium and commonwealth depend firstly on the rule of living and administering; secondly on the nature of the people; and thirdly on the nature of rule. Concerning the rule of living and administering, Althusius states that the rule of living, obeying, and administering is the will of God alone, which is the way of life, and the law of things to be done and to be omitted.¹⁰⁵⁰ The magistrate must rule, appoint, and examine all the business of his administration with this law “as a touchstone and measure, unless he wishes to rule the ship as an unreliable vessel at sea, and to wander about and move at random”. Therefore, to Althusius, this law alone prescribes not only the order of administering for the magistrate, but also the rule of living for all subjects.¹⁰⁵¹ Althusius adds that this rule, which is solely God’s will for men manifested in his law, is called law in the general sense, in that it is a precept for doing those things that pertain to living a pious, holy, just, and suitable life. In other words, it pertains to the duties that are to be performed toward God and one’s neighbor, and to the love of God and one’s neighbor.¹⁰⁵²

Althusius states that the subject matter of the Decalogue is indeed political insofar as it directs symbiotic life and prescribes what ought to be done therein. For the subject matter of the Decalogue is indeed political insofar as it directs symbiotic life and prescribes what ought to be done within this life. The Decalogue teaches the pious and just life; piety toward God and justice toward symbiotes. Therefore, according to Althusius, each and every precept of the Decalogue is political and symbiotic; the Decalogue is indeed natural, essential, and proper to politics.¹⁰⁵³ Althusius makes it clear to distinguish between the theological and political aspect of the Decalogue. This is explained by Althusius in that when the external and civil life of words, deeds and works is accompanied by true faith – together with holiness of thought and desire, and with a right purpose, namely the glory of God because of true faith – they are pleasing to God. But if they are performed by a heathen, these works are not able to please God in the theological sense. However, in political life even a heathen may be called

¹⁰⁴⁹ Ibid., 154. Scriptural references confirming this are: 1 Chronicles 23 ff.; 1 Kings 4 ff.; 2 Chronicles 2: 12; 14; 15; 17; 19; 23; 30 f.; 34 f.; 2 Kings 12; 18; 22, *ibid.* According to Elazar, Althusius adopts a conventional understanding of the two tables of the Decalogue of his time, namely that the first Table addresses itself to piety and the second to justice, both of which are necessary foundations for civil society, cf. Elazar, “Althusius’s Grand Design for a Federal Commonwealth”, xliii.

¹⁰⁵⁰ Althusius, *Politics*, 134.

¹⁰⁵¹ *Ibid.*

¹⁰⁵² *Ibid.*

¹⁰⁵³ *Ibid.*, 142.

just, innocent and upright because of them.¹⁰⁵⁴ From this it follows that the magistrate is obligated in the administration of the commonwealth to the proper law of Moses so far as moral equity or common law are expressed therein.¹⁰⁵⁵ Althusius also refers to Bodin, stating that the latter disagrees with his understanding by which the supreme power is attributed to the realm or universal association. According to Althusius, Bodin says that the right of sovereignty – “which we have called the right of the realm” – is a supreme and perpetual power limited neither by law nor by time. Neither of these two attributes concerning the right of sovereignty is accepted by Althusius; for the right of sovereignty is not the supreme power; neither is it perpetual or above the law.¹⁰⁵⁶ Althusius adds that this right of sovereignty is not supreme because all human power acknowledges divine and natural law (*lex divina et naturalis*) as superior and he states: “Note the argument of Romans 13: the minister of God is for your good. If he is the minister of God, he can do nothing contrary to the commandment given by his Lord. Indeed, an absolute and supreme power standing above all laws is called tyrannical.”¹⁰⁵⁷

3. Federalism and the Separation of Powers

3.1 Introduction

There are also additional characteristics of theologico-political federalism – additional to that of a bilateral conditional relationship between God and man, and the relationship between the king and the people – both these relationships are guided by the Law of God as a condition of the covenant. In this regard, McCoy and Baker state that within the context of federalism the inner nature of social groups and the relationships among them are understood as covenantal,

¹⁰⁵⁴ Ibid., 142 – 143.

¹⁰⁵⁵ Ibid., 143.

¹⁰⁵⁶ Ibid., 66.

¹⁰⁵⁷ Ibid. However, Althusius adds that on this point, not even Bodin disagrees, *ibid.* What Bodin does say, according to Althusius, is that the supreme power must not be subordinate to civil law and right (*civilis lex et jus*). Althusius states that if the civil law departs entirely from the judgment of natural and divine law, it is not to be called law, *ibid.*, 67. In this regard Elazar states: “For the Bible, only God is ultimately sovereign. Politically, however, sovereignty is vested in the people, who possess operational sovereignty within the framework of God’s constitution. For the Bible, that constitution is the Torah; for Althusius, it is the Decalogue. Thus, the two expressions of sovereignty come together in a constitutional document that, barring direct Heavenly intervention, becomes the actual source of authority, which can be modified by the people within the limits imposed by the laws of piety and justice represented by the two tables of the Decalogue”, Daniel J. Elazar, *Covenant and Commonwealth. From the Christian Separation through the Protestant Reformation. The Covenant Tradition in Politics*, Vol. II, (New Brunswick, N. J.: Transaction Publishers, 1996), 323.

and the division of powers within every level of organization, and among these levels, is also emphasized.¹⁰⁵⁸ McCoy and Baker add that the checks and balances against excessive concentration and misuse of power follow from this division, though functional efficiency and appropriateness of action is also a reason for it.¹⁰⁵⁹ Some views understand the concept concerning separation of powers as referring to the relationship between church and state (probably in theological faculties this would be the meaning attached to this concept). However, the Christian understanding pertaining to the identification of, and the relationship between, governmental organs, also needs to be investigated; more specifically in relation to theologico-political perspectives. Separation of powers not only involves debate about the relationship between the church and state, but should also include an investigation concerning the identification and relationship between governmental organs, also including their status, according to Scriptural teaching. In addition, the idea of the separation of powers also includes checks and balances between the various governmental organs, a characteristic that forms part of theologico-political federalism.

What follows is an investigation into the concept of separation of powers against the background of theologico-political federalism as has emanated from Bullinger, Althusius, Mornay and Rutherford, and will include a comparative analysis of the secular understanding of the separation of powers during approximately the same period. The status of the law in this context will also be investigated. Separation of powers must be understood in the following context: Firstly, it entails the concepts of namely, the law, the executive and the judiciary. This applies to the horizontal governmental structures. Secondly, it is also important to apply the concept of separation of powers to governmental structures and offices on national, provincial and local level – for this the vertical structures of government must be investigated. The end result of such a finding will also lead to a better understanding concerning cooperation between the various governmental organs and offices, be it on a horizontal or vertical level. Such an investigation forms an essential part of any constitutional theory.

¹⁰⁵⁸ McCoy and Baker, *Fountainhead of Federalism*, 13.

¹⁰⁵⁹ *Ibid.*

3.2 The Separation of Powers Theory prior to Rutherford

The general understanding of secular contemporary political thought views the separation of powers as an important constituent of federalism and democracy. This entails a sense of autonomy concerning prominent organs of government, namely the legislature, the executive and the judiciary. Dunning refers to Locke as making new ground concerning the theory of separation of powers. This entails that the making of laws and the execution of them are functions that make very different demands on those to whom they are respectively entrusted. To Locke, it is unwise to give to those who make the laws the duty of executing them, because “they may exempt themselves from obedience to the laws they make and suit the law, both in its making and its execution to their own private wish, and thereby come to have a distinct interest from the rest of the community, contrary to the end of society and government.” For these reasons, the two powers are in distinct hands “in all moderated monarchies and well-framed governments.”¹⁰⁶⁰ Hyma states that Locke discussed with great ability and understanding the separation of the various functions of government, especially of the executive and the legislative powers. One of the chapters in his most notable work is entitled, *Of the Legislative, Executive, and Federative Power of the Commonwealth*. In it, Locke explains that the mass of the people exercise certain powers that have not been delegated to the legislative or the executive branch of the government, such as the right to declare war and peace, to form alliances, and to formulate transactions that concern the whole of the community. The judiciary, on the other hand, was not considered by the author as a distinct part of the government.¹⁰⁶¹ Hyma adds that, according to Locke, the fact that the executive has the right to convene and dismiss the legislature, does not signify that it has greater power than the latter; on the contrary, it merely acts as a trustee for the people.¹⁰⁶² Montesquieu’s devotion to an analysis of the English system also includes the doctrine of the separation of powers. According to Dunning, the most famous discussion by Montesquieu on political liberty and the English Constitution, concerns the doctrine of separation of powers. Montesquieu’s three powers that characterize every state are, as first set forth, precisely Locke’s, namely, legislative, federative and executive.¹⁰⁶³

¹⁰⁶⁰ William A. Dunning, *A History of Political Theories. From Luther to Montesquieu*, (London: The Macmillan Company, 1938), 356 – 357.

¹⁰⁶¹ Albert Hyma, *Christianity and Politics. A History of the Principles and Struggles of Church and State*, (J. B. Lippincott Company, 1938), 259.

¹⁰⁶² Ibid.

¹⁰⁶³ Dunning, *A History of Political Theories*, 412. Dunning adds that Montesquieu assigns the name “executive” to the second species, which Locke had called federative, and gives to the third species the designation “judicial”, Dunning adds: “Thus appears in political philosophy for the first time the now commonplace classification of the powers of government”, *ibid.*

Concerning the division of powers on a vertical level, Hüglin states that the duality of power in the early modern state is based on two overlapping spheres of sovereignty: the territorial ruler rules over the entire realm, and the estates rule over their “lands”. Because they represent the particularism of the “land”, the estates thus constitute the federal element in the dualistic composition of power.¹⁰⁶⁴ Hüglin states that since Bodin could hardly neglect the *de facto* existence of estate power, he incorporated them into the concept of power monopolization: as dependent instruments of decentralized political administration whose public powers can be recalled by the sovereign at any time. This is Bodin’s innovative contribution to the theory of the modern state: the monopolization of unitary political power, and its execution through decentralized public administration. According to Hüglin, what becomes apparent already here, is that administrative decentralization is an essential condition for the institutionalization of centralized political power, and not its cooperative and federal corrective. Bodin seeks to domesticate estate power in the leading-strings of centralized territorial power.¹⁰⁶⁵ On the other hand, that corporate groups, associations and parties have to be eliminated altogether, because even their mere existence poses a potential threat to any system of monopolized power, is an extreme consequence only drawn by Hobbes. Eliminating even the possibility of decentralized administration, which the more pragmatic Bodin still conceded to the estates, Hobbes determines the sovereign as the “absolute representative of all subjects” and transforms the traditional role of the estates into functions of public service in the interest of the state. As the coordinative concept of politics is thus completely given up in favor of vertical governance, modern political science is, for the time being, deprived of one of its most important traditional elements, namely the mutual cooperation of social forces.¹⁰⁶⁶ To Hobbes, any division of powers is impossible, and so is any mixture of forms of the State. The opinion that kings are not *singulis majores* but *universis minores*, is absurd, as it is only in the king that the people are a *universitas*; without him they are nothing but a heap of *singuli*. While the sovereign has to take care of the *public interest*, he is the sole judge of what is for the public interest.¹⁰⁶⁷

¹⁰⁶⁴ Thomas O Hüglin, “‘Have we Studied the Wrong Authors?’ On the relevance of Johannes Althusius as a Political Theorist”, *Rechtstheorie*, Beiheft 16, (1988), 224.

¹⁰⁶⁵ *Ibid.*, 225 – 226.

¹⁰⁶⁶ *Ibid.*, 226. Hüglin adds that Hobbes wanted to guarantee “complete legal security and peace through the radical subordination of all individuals”, and the achievement of this goal consequently required the construction of a “social contract” as the basis for the irrevocable cessation of all individual powers to the omnipotent state, *ibid.*

¹⁰⁶⁷ Otto von Gierke, *The Development of Political Theory*, (translated by Bernard Freyd, New York: Howard Fertig, 1966), 170.

Church states that Bodin's ideas concerning the various institutions of government were in strict accord with his theory of sovereignty. Public authority was situated entirely in the king. There could be no division of it between the ruler and any other individual in the state, no matter how high that person might stand in office or dignity. Sovereignty was by its nature perpetual and complete, and if it were granted to the ruler with limitations either in time or content, he held no true sovereignty because final control rested with that power which had made the grant.¹⁰⁶⁸ For this reason, a regent, lieutenant, or other officer with a delegation of full authority did not hold true sovereignty; he held his right merely by *commission précaire*. Between the holder of sovereignty and all other men, even within the members of the government, there was a large and fixed distinction, i.e. between that of ruler and subjects. Consequently, Bodin regarded the Estates General as holding no authority in matters of government or legislation.¹⁰⁶⁹ Bodin's conclusions concerning the authority of the Parliament and the general body of magistrates in the central government, is that the Parliament is a key unit in the royal administration, since it represented the ancient body of counselors and it continued to advise the king with regard to weighty matters. Likewise, Bodin retained the doctrine that royal edicts and ordinances should be registered by the court; and if the magistrates found that an enactment was not just and reasonable, they should send up appropriate remonstrances to the ruler.¹⁰⁷⁰

Bodin believed that remonstrances might well embody precepts of natural law and justice which bound the ruler; such was the meaning which he ascribed to the court's objections to edicts which were not just and reasonable. By this the traditional concept that the court might limit the king by declaring the law which bound him, was reiterated. However, Bodin made it clear that in verifying royal enactments the court exercised no authority to make law. Remonstrances were merely counsel and statement of the law; the court exercised no further control over the sovereign. Bodin insisted heavily upon the generally accepted idea that when the king was present in his Parliament, that body lost all right of judgment because its entire authority reverted to the king who was its source.¹⁰⁷¹

Concerning the theologico-political understanding of the theory of separation of powers, the importance of the contributions of the theologico-political federalists – Bullinger, Mornay, Althusius and Rutherford – will be investigated next. Hyma states that Althusius, concerning

¹⁰⁶⁸ William F. Church, *Constitutional Thought in Sixteenth-Century France. A Study in the Evolution of Ideas* (Harvard University Press, 1941), 237.

¹⁰⁶⁹ *Ibid.*, 237 – 238.

¹⁰⁷⁰ *Ibid.*, 238.

¹⁰⁷¹ *Ibid.*, 238 – 239.

the executive and legislative functions or branches of government, recognizes a distinction between one person with executive power called the *summus magistratus*, or the chief magistrate, and the larger group of men called the *ephoroi*, or the councilors, who are in charge of administrative and legislative work. In this context the analogy can be drawn emphasizing that the king is part of the executive while the councilors are part of the legislative side of government. However, Hyma goes on to state that a definite division of labor between executive and legislative work is not provided for by Althusius, and that it was left for writers such as Montesquieu in the next century.¹⁰⁷² Albeit, the fact remains that Althusius postulated a separation of powers theory – on the horizontal as well as the vertical level – long before Montesquieu.

Concerning the division of powers on the vertical level, McCoy refers to Althusius's categorization of the various levels of governance to be present in a nation: The city or town as a political order is developed as private associations come together through a covenant to form an inclusive symbiotic grouping that provides for government with laws and leaders, based upon consent.¹⁰⁷³ The city is seen by Althusius as the product of definite steps and progressions of small societies, which are linked together for the purpose of establishing an inclusive political order, which is referred to as a community; an associated body or the pre-eminent political association.¹⁰⁷⁴ In this city, the Superior is the prefect of the community,¹⁰⁷⁵ and he is also the administrator and leader of the citizens. Associated with him are counselors and senators who give advice and constitute the senatorial collegium, which consists in turn of the president and senators.¹⁰⁷⁶ When cities, towns and villages join together in a covenant to form a political association, it is known as a province; and a covenant of provinces or regions provides the foundation of a commonwealth. However, according to Althusius, the comprehensive level does not negate the meaning of the less comprehensive covenants at the next lower level. Each level is important and covenant partners at each level decide issues and carry out governance appropriate for that level.¹⁰⁷⁷ This is a far cry from Bodin's and

¹⁰⁷² Hyma, *Christianity and Politics*, 245.

¹⁰⁷³ Charles S. McCoy, "Covenant in the Political Philosophy of Althusius", *Rechtstheorie*, 13, Beiheft 7, (1988), 195.

¹⁰⁷⁴ Althusius, *Politics*, 34 – 35.

¹⁰⁷⁵ *Ibid.*, 35.

¹⁰⁷⁶ *Ibid.*, 37. Cf. also *ibid.*, xxiii. Althusius adds that administrators of public duties expedite political and ecclesiastical functions in the city, and here one finds: judges, directors, censures, treasurers, councilors, syndics and curators of public roads, ports and buildings, *ibid.*, 42.

¹⁰⁷⁷ McCoy, "Covenant in the Political Philosophy of Althusius", 195. According to Althusius, the province, in turn, contains within it the administration of the provincial right, which involves two parts. One pertains to the members (estates and orders or larger collegia) and the other to its head or president, Althusius, *Politics*, 48. The provincial order may be either sacred and ecclesiastical or secular and civil, *ibid.*, 49 – 50. The prefect of these sacred and secular orders is the superior to whom

Hobbes's understanding of the status of the "lower" governing organs. McCoy states that this aspect of federalism, known usually as the division of powers, is one of the most distinctive and effective aspects of federal government. Decisions are made and affairs governed at a level close to the persons and issues involved, yet the deciding and governing take place with responsibility both at levels above and below.¹⁰⁷⁸ To Althusius, the locus of sovereignty is the *universitas populi*, understood not as an aggregate of individuals connected by social contract, but rather as *homines conjuncti, consociai, et cohaerentes* (in the symbiotic unity of the covenant).¹⁰⁷⁹ McCoy adds that because all are bound in the covenant with other humans to the covenant of God, rulers lose their authority when they violate the covenant through which they are legitimate representatives of the people and exercise social sovereignty. Intermediate officials (ephoroi) are bound in covenant to hold magistrates accountable to the covenant and to remove them from office if they persist in violating the covenant.¹⁰⁸⁰ According to Elazar, in the struggle over the direction of European state-building in the 17th century, the Althusian view, which called for the building of states on federal principles – as compound political associations – lost out to the view of Bodin and the statist, who called for the establishment of reified centralized states, where all powers were lodged in a divinely ordained king at the top of the power pyramid or in a sovereign center.¹⁰⁸¹ McCoy and Baker state that, contrary to political thinkers who focus only on the centralized authority of the state, or only on the individual as a basic unit of society, Althusius articulated a political structure that rejects the dichotomy between the individual and the social whole and articulates a political structure with increasingly comprehensive levels. Althusius affirms the federal principle that the insight for deciding issues on each level belongs most appropriately to those in the covenanted group at that level; and each level retains its importance and its integrity as an operative community with appropriate governmental functions.¹⁰⁸² McCoy and Baker add that this aspect of federalism, which plays a central role in the thought of

is entrusted the administration of the province. He may be called a dynast, eparch, satrap, governor, president, rector or moderator of the province, *ibid.*, 56. The head of the province therefore has the right of superiority and regal privileges in his territory, but without prejudice to the universal jurisdiction that the supreme prince has, *ibid.*, 57 – 58. Regarding the universal association, there are administrators of two kinds: the ephoroi and the supreme magistrate, the ephoroi assisting the magistrate with aid and counsel, *ibid.*, xxv, 94 – 96.

¹⁰⁷⁸ McCoy, "Covenant in the Political Philosophy of Althusius", 195.

¹⁰⁷⁹ *Ibid.*, 197.

¹⁰⁸⁰ *Ibid.*

¹⁰⁸¹ Daniel J. Elazar, "Althusius's Grand Design for a Federal Commonwealth", (preface in an abridged translation by Frederick S. Carney of Johannes Althusius's *Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples*, (Indianapolis: Liberty Fund, 1995), xxxviii. Elazar adds that while Althusian thought had its exponents until the latter part of the century, after that it disappeared from the mainstream of political philosophy. It remained for the Americans to invent modern federalism on the basis of individualism and thus reintroduce the idea of the state as a political association rather than a reified entity, an artifact that is assumed to have an existence independent of the people who constitute it, *ibid.*

¹⁰⁸² McCoy and Baker, *Fountainhead of Federalism*, 57 – 58.

Althusius, is known usually as division of powers; and is one of the most distinctive and effective aspects of a federal government. This division of powers also serves to check and balance the power of each covenanted entity and each level of comprehensiveness.¹⁰⁸³

Mornay also postulates the accommodation of division of powers in his political theory, although to a lesser degree than Althusius and Rutherford. Although not as systematic and analytical as Althusius, Mornay's contribution to the separation of powers theory remains important. According to Méaly, not all Monarchomachists had clearly perceived the principle of separation of powers, but Mornay had certainly suspected its importance. Mornay claimed exclusive legislative authority for the States General, and executive power for the king. Although he did not necessarily understand the separation of powers principle to its fullest extent, he did catch sight of the fact that if the legislative power is the same as the executive, there are then no bounds to the executive power.¹⁰⁸⁴ Mornay states that since the kings began to extend their limits, the officers of the kingdom, who should ordinarily preserve the rights of the people, were established. This type of political dispensation is to be witnessed in the kingdom of Israel, which according to Mornay, "(in the judgment of the wisest politicians) was excellently ordered." The kingdom had officers, namely the seventy-one elders, and the heads and chief chosen out of all the tribes, who had the care of the public faith in peace and war, and the kingdom had magistrates in every town.¹⁰⁸⁵ Mornay also speaks of those who hold their authority from the people, such as the magistrates, who are inferior to the king, and whom the people have substituted, or established. Then there is the assembly of the estate:

which is nothing else but the epitome, or brief collection of the kingdom, to whom all public affairs have special and absolute reference; such were the seventy ancients in the kingdom of Israel, amongst whom the high priest was as it were president, and they judged all matters of greatest importance, those

¹⁰⁸³ Ibid., 58.

¹⁰⁸⁴ Paul T. Fuhrmann, "Philip Mornay and the Huguenot Challenge to Absolutism" in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 64. In fact, the author states that: "Mornay completed the ideas of Hotman and Beza, fixed some Huguenot political concepts which passed abroad and are to be found at the roots of our modern democracies ... Mornay and the Monarchomachists set forth the four great principles: sovereignty of the nation, political contract, representative government, and the separation of powers that really makes up all our modern constitutions", *ibid.* It is interesting to note that Rutherford must've gained some insight from Mornay's constitutional thought as Rutherford referred no less than seven times to Mornay (albeit to Junius Brutus) in *Lex, Rex* – for example cf. Samuel Rutherford, *Lex, Rex*, (Harrisonburg, Virginia: Sprinkle Publications, 1982), 55, column 2 (55 (2)); 80 (1); 97 (1); 98 (2); 209 (1) x 2 and 222 (1).

¹⁰⁸⁵ Mornay, *A Defence of Liberty Against Tyrants*, 127. Mornay also states: "... the kingdom was divided through the pride of Rehoboam. The council at Jerusalem composed of seventy-one ancients, seems to have such authority, that they might judge the king as well as the king might judge every one of them in particular", *ibid.*, 128.

seventy being first chosen by six out of each tribe, which came out of the land of Egypt, then the heads or governors of provinces. In like manner the judges and provosts of towns, the captains of thousands, the centurions and others who commanded over families, the most valiant, noble, and otherwise notable personages, of whom was composed the body of the states, assembled divers times as it plainly appears by the word of the holy scripture ... In like manner all Israel was assembled, or all Judah and Benjamin, etc. Now, it is no way probable, that all the people, one by one, met together there. Of this rank there are in every well governed kingdom, the princes, the officers of the crown, the peers, the greatest and most notable lords, the deputies of provinces, of whom the ordinary body of the estate is composed, or the parliament or the diet, or other assembly, according to the different names used in divers countries of the world; in which assemblies, the principal care is both for the preventing and reforming either of disorder or detriment in church or commonwealth.¹⁰⁸⁶

The king holds the first place in the administration of the state, and the officers of the crown hold the second “and so following according to their ranks; not that they should follow his courses, if he transgresses the laws of equity and justice; not that if he oppress the commonwealth, they should connive to his wickedness. For the commonwealth was as well committed to their care as to his, so that it is not sufficient for them to discharge their own duty in particular, but it behoves them also to contain the prince within the limits of reason...”¹⁰⁸⁷ According to Mornay, in the inauguration of the prince there are covenants and contracts passed between him and the people to obey the prince faithfully while he commands justly, and that while the prince governs according to the law, all shall be submitted to his government. The officers of the kingdom are the guardians and protectors of these covenants and contracts. The officers may judge the prince according to the laws.¹⁰⁸⁸ Skinner states that

¹⁰⁸⁶ Ibid., 97. Mornay also refers to, inter alia, the seven magi sages in the Persian empire, who had almost a paralleled dignity with the king, and were termed the ears and eyes of the king, and who also never dissented from the judgment of those sages. Then there were the ephori, in the kingdom of Sparta, who also had the authority to judge the kings. Mornay also refers to the senators and the magistrates in the Roman commonwealth, and in the time of the emperors there was the senate, the consults, the praetors, the great provosts of the empire, the governors of provinces, “attributed to the senate and the people, all which were called the magistrates and officers of the people of Rome”, *ibid.*, 129. Skinner also adds that Mornay emphasized the importance of the “elected officers of towns”, claiming that each of the towns that form part of the kingdom are to act on behalf of the people as a whole, Mornay also emphasized the importance of “the Parliament, Diet and other such assemblies”, Quentin Skinner, *The Foundations of Modern Political Thought. Volume Two. The Age of the Reformation*, (Cambridge: Cambridge University Press, 1978), 330.

¹⁰⁸⁷ Mornay, *A Defence of Liberty Against Tyrants*, 201. Also cf. *ibid.*, 206 – 207.

¹⁰⁸⁸ *Ibid.*, 212. Mornay adds that of these officers there are two kinds, namely those who have generally undertaken the protection of the kingdom (as the constables, marshals, peers, palatines, and the rest),

the 16th-century Huguenot writers (including Mornay), stressed the legal right of the Parliaments to act as a check on the king, which was another traditional feature of French constitutionalist thought. Skinner points out that Mornay views the Parliament of Paris as a “judge between the king and the people, and especially between the king and particular individuals”. In this regard Parliament was to play an important role in seeing that justice is awarded in instances, for example, where the king acts contrary to the law resulting in an act against an individual, or when war or peace is to be established, then Parliament has an active role to play.¹⁰⁸⁹ Bullinger did not postulate as concise a theory on separation of powers as did Althusius and Rutherford. Nevertheless, traces of separation of powers are to be found in Bullinger’s writings. Bullinger speaks of God who attributes to the magistrate the use of his own name and calls the princes and senators of the people gods.¹⁰⁹⁰

3.3 Samuel Rutherford and the Separation of Powers

Rutherford’s political theory accommodates the separation of powers to a noteworthy extent. In fact, Rutherford’s postulation of a political theory that includes the separation of powers principle, is similar to that of Bullinger, Mornay and Althusius. Coffey states that Rutherford denied that he had turned the king into a mere “delegate”; the people had “irrevocably made over to the king their power of governing, defending, and protecting themselves”, and in the executive power of the law, the king “is really sovereign above the people”. Coffey, however, adds that, considering that the legislative and judicial functions of government were in the hands of the estates and the inferior judges, this could be little comfort to the king. According to Coffey, Rutherford, like Buchanan before him, seemed to render monarchical government wholly ineffective by making the king an enforcer of laws that he himself had not created and had no power to interpret.¹⁰⁹¹ According to Rutherford, wherever God appointed a king, he never appointed such king absolute and a sole independent angel, but always conjoined with him judges who were no less to judge according to the law of God (2 Chronicles 19: 6), than the king (Deuteronomy 17: 15).¹⁰⁹² Rutherford also refers to the

and those who have undertaken the government of any province, city, or part of the kingdom (as dukes, marquises, earls, consuls, mayors and sheriffs), *ibid.*, 212 – 213.

¹⁰⁸⁹ Skinner, *The Foundations of Modern Political Thought*, 317.

¹⁰⁹⁰ Bullinger, *Decades*, 2: 279.

¹⁰⁹¹ John Coffey, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), 173.

¹⁰⁹² Rutherford, *Lex, Rex*, 5 (1). This forms part of Rutherford’s discussion on the validity of an aristocracy and democracy as forms of government.

Parliament, which is as essentially a judge, as is the king, and the king receives royal power with the states to make good laws, and power by his royalty to execute those laws. This power is placed in the hands of the king and the states of parliament by the community.¹⁰⁹³

According to Rutherford there is the stipulation, stated in the king's covenant with the people, that the king must rule with the representatives of the original community, whom he referred to as the "states". Rutherford assured his readers that famous nations had always had states; among the Jews there were fathers of families and princes of tribes; among the Lacedaemonians the Ephori, amongst the Romans the senate, and in Scotland, England, France and Spain, parliaments. The king might be the head of the kingdom, but "the states of the kingdom are as temples of the head".¹⁰⁹⁴ The parliament was to be "co-ordinate" with the king in making laws, but the king's authority was by derivation, whilst the estates – as representatives of the community – were the original fountain power, and thus superior to the king, as the effect was to the cause. Though the power for actual execution of laws was invested more in the king, the legislative power was more in the estates; and without the estates the king could do nothing.¹⁰⁹⁵ Coffey also adds that Rutherford referred to the judiciary as "inferior judges", and they were also to be independent of the king. The judiciary

¹⁰⁹³ Ibid., 35 (1).

¹⁰⁹⁴ Coffey, *Politics, Religion and the British Revolutions*, 170. Rutherford states that the king, in the executive power of laws, is really a sovereign above the people, *Lex, Rex*, 208 (1).

¹⁰⁹⁵ Coffey, *Politics, Religion and the British Revolutions*, 170. Concerning the term "estates", Franklin, in his comment on the political thought of François Hotman, explains the meaning to be ascribed to such a term. Franklin states that in the 16th century, the "estate" was sometimes used for a social order and sometimes for a component of the political order. In the latter case, the first estate would be the King; the second, his high councilors; and the third, the "people", in which not only commoners but lesser nobility and clergy are included without rigid distinction. According to Franklin, it was this latter case that Hotman normally thought of, Julian H. Franklin, "Introduction", in *Constitutionalism and Resistance in the Sixteenth Century. Three Treatises by Hotman, Beza, and Mornay* (translated and edited by Julian H. Franklin, Western Publishing Company, Inc., 1969), 23. In this regard Franklin also comments: "In addition, it may be noted that Hotman sometimes identifies the Estates with the people and the high councilors only, as when he speaks of the right of the Estates to depose the King", *ibid.* It can surely be assumed that Rutherford, who numerous times referred to the term "estates" throughout *Lex, Rex*, ascribed a similar meaning to this term as did Hotman. In fact, Rutherford refers no less than four times to Hotman in *Lex, Rex*. In this regard cf. Rutherford, *Lex, Rex*, 72 (1); 86 (2); 198 (1). On *ibid.*, 98 (2) Rutherford states: "If the Scripture holds forth to us a king in Israel, and two princes and elders who made the king, and had power of life and death, as we have seen; then is there in Israel monarchy tempered with aristocracy; and if there were elders and rulers in every city, as the Scripture saith, here was also aristocracy and democracy; and for the warrant of the power of the estates, I appeal to jurists, and to approved authors ... *Hottoman de jure Antiq. Regni Callici I*". Also cf. Webb concerning the importance to Rutherford of Parliament, as an institution of government closest to the people, the most representative of the people and the voice of the people. In addition Parliament is even superior to the ruler in the authority of making laws, Omri K. Webb, *The political thought of Samuel Rutherford*, (unpublished Ph. D. dissertation, Duke University, 1963). In this regard also cf. *ibid.*, 166 – 167.

was responsible to God and not to the king.¹⁰⁹⁶ According to Rutherford, though the inferior judges are appointed by the king, and so have their external call from God's deputy the king, yet, because judging is an act of conscience, as one man's conscience cannot properly be a deputy for another man's conscience, so neither can an inferior judge, as a judge, be a deputy for a king.¹⁰⁹⁷ This confirms the superiority of the law – that which agrees with the conscience, whether it is for or against the king's wishes. Not only the king is obliged to God for the maintenance of true religion, but also the people, princes, magistrates and judges. Rutherford also refers to Junius Brutus (Mornay), the latter emphasizing that religion is not given only to the king, that he only should keep it, but to all the inferior judges and people, because the estates never gave the king the power to corrupt religion.¹⁰⁹⁸ Not only kings, but all judges are fathers, in defending their subjects from violence and the sword.¹⁰⁹⁹ Rutherford emphasizes that the powers whom we are to obey because they are ordained by God, are as essentially judges as the supreme magistrate the king.¹¹⁰⁰ Rutherford adds that in a free monarchy by the higher power (Romans 13), is the king principally in respect of dignity (and not in regard of dignity) to be understood, but not solely and only, as if inferior judges were not higher powers. The essence of a magistrate equally belongs to all inferior magistrates, as to the king.¹¹⁰¹

¹⁰⁹⁶ Coffey, *Politics, Religion and the British Revolutions*, 170. Webb states that one claim which Rutherford makes again and again is that the judicatory should be wholly separate from the supremacy of the king. Webb adds: "According to him (Rutherford), justice is always in danger of being prostituted when the executive power controls the judges. 'Justice should be at as easy a rate to the poor as draught water'. This cannot be if the executive power or even the wealthy estates can coerce the judges' decisions", Webb, *The political thought of Samuel Rutherford*, 170 – 171. Also take note of the criticism by Webb, stating that Rutherford fails to distinguish sharply enough between the legislative, executive, and the judicial functions of government, *ibid.*, 169 – 170.

¹⁰⁹⁷ Rutherford, *Lex, Rex*, 88 (2). Rutherford also refers to Moses, who appointed judges, but not as his deputies to judge and give sentence, but as subordinate to him, *ibid.*, 89 (1). Rutherford adds that the inferior judge may be called the deputy of the king because he has his external call from the king, and is judge in the name and authority of the king; but being once made a judge before God, he is as essentially a judge, and in his official acts, no less subjected to God than the king himself, *ibid.*, 89 (2). Cf. *ibid.*, 91(1), where Rutherford states that the judgment executed by inferior judges is the Lord's, not a mortal king's, and therefore a mortal king may not prevent the judges from executing judgment. Inferior judges, by conscience of their office, are both to judge righteously, and by force and power of the sword given to them of God (Romans 13: 1 – 4) to execute judgment. Also cf. *ibid.*, 91 (2), 93 (1): the powers of kings and inferior judges are of the same nature, for both are powers ordained of god (Romans 13: 1); *ibid.*, 92 (1): "... not only kings, but *all in authority* (which includes inferior judges) are obliged to procure that their subjects lead a quiet and peaceable life ..."; *ibid.*, 95 (1): "It is not a good argument to prove inferior judges to be only vicars and deputies of the king because the king may censure and punish them when they pervert judgment". Inferior judges are also powers sent by God, *ibid.*, 135 (1).

¹⁰⁹⁸ *Ibid.*, 55 (1).

¹⁰⁹⁹ *Ibid.*, 62 (2).

¹¹⁰⁰ *Ibid.*, 89 (2) – 90 (1). According to Rutherford, inferior magistrates are powers from God, Deuteronomy 1: 17; 19: 6 – 7; Exodus 22: 7; Jeremiah 5: 1; "and the apostle saith, 'The powers that be are ordained of God' ", *ibid.*, 90 (1).

¹¹⁰¹ *Ibid.*, 172 (2).

According to Rutherford, judges cannot but be univocally and essentially judges, no less than can the king, without which, in a kingdom, justice is physically impossible; and anarchy, violence, and confusion, must follow.¹¹⁰² Rutherford states: “When kings, by that public power given to them at their coronation, maketh inferior judges, they give them power to judge for the Lord, not for men (Deut.1. 17; 2 Chron. xix.6.). Now, they cannot both make away a power and keep it also; for the inferior judge’s conscience hangeth not at the king’s girdle. He hath no less power to judge in his sphere than the king hath in his sphere, though the orb and circle of motion be larger in compass in the one than in the other ...”¹¹⁰³ The king is not the only and final interpreter of the law, because then inferior judges would not then be interpreters of the law. According to Rutherford, inferior judges are no less essentially judges than the king (Deuteronomy 1: 17; 2 Chronicles 19: 6; 1 Peter 2: 14; Romans 13: 1 – 2), and so by office must interpret the law, or else they cannot give sentence according to their conscience and equity. The king’s pleasure cannot be the rule of the inferior judge’s conscience, for he is immediately accountable to God, the Judge of all.¹¹⁰⁴ The inferior judge may despise the king’s unjust pardon concerning a murderer to be executed. By this the judge can resist the king’s unjust pardon, and resist the king’s force by his *co-active* power that God has given him, and put to death the murderer.¹¹⁰⁵ The people, including the princes, has a ministerial power to expone the law properly and according to its genuine intent; and that the king as king, has no absolute power to expone the law as he pleases.¹¹⁰⁶ In answer to the question whether or not it is lawful for the subjects to take arms against their lawful prince if he should wickedly use his lawful power, Rutherford states: “The question is not of subjects only, but of the estates, and parliamentary lords of a kingdom. I utterly deny these, as they are judges, to be subjects to the king ...”¹¹⁰⁷

That the king and the inferior magistrate differ in nature is, according to Rutherford, false, and it is a fiction that the inferior judge does not resemble God as the king does; “... yea, there is a sacred majesty in all inferior judges, in the aged, in every superior, wherefore they

¹¹⁰² Ibid., 94 (2). Rutherford adds that when Moses was unable to judge the people on his own, seventy elders were joined with him (Numbers 11: 14 – 17), so were the elders adjoined to help him (Exodus 24: 1; Deuteronomy 5: 23; 22: 16; Joshua 23: 2; Judges 8: 14; 11: 5, 11; 1 Samuel 11: 3; 1 Kings 20: 7; 2 Kings 6: 32; 2 Chronicles 34: 29; Ruth 4: 4; Deuteronomy 19: 12; Ezekiel 8: 1; Lamentations 1: 19), *ibid.*, 95 (1).

¹¹⁰³ Ibid., 113 (1).

¹¹⁰⁴ Ibid., 137 (1). Rutherford also refers to the commands and rebukes for unjust judgment given to others than to kings: Psalm 89: 1 – 5; 58: 1 – 2; Isaiah 1: 17, 23, 25 – 26; 3: 14; Job 29: 12 – 15; 31: 21 – 22, *ibid.*, 137 (2). It is God’s will that other judges be sharers with the king in that power, (Numbers 14: 16; Deuteronomy 1: 14 – 17; 1 Peter 2: 14; Romans 13: 1 – 4), *ibid.*, 140 (2).

¹¹⁰⁵ Ibid., 140 (2).

¹¹⁰⁶ Ibid., 138 (1).

¹¹⁰⁷ Ibid., 139 (2).

deserve honour, fear, and reverence.”¹¹⁰⁸ Rutherford states that the sword in a constitute commonwealth is given to the judge supreme or subordinate (Romans 13: 4); and the power of the sword, by God’s law, is not proper and peculiar to the king only, but given by God to the inferior judges. The inferior judge is essentially a judge no less than the king therefore, he must bear the sword (Romans 13: 4).¹¹⁰⁹ Rutherford also states that by divine right, if the inferior judges have the sword given to them of God, then they also have the power of war, and of raising armies (for the safety of the kingdom).¹¹¹⁰ In Chapter XXI of *Lex, Rex*, Rutherford discusses to what extent the people and states of Parliament have power over the king (and in the state). Rutherford explains that although the king is the head of the kingdom, the states of the kingdom are as the temples of the head, and therefore are essential parts of the head, just as the king is the crown of the head. Rutherford states that these *ordines regni*, have been in famous nations: “so there were fathers of families, and princes of tribes amongst the Jews: the Ephori amongst the Lacedemonians, the senate amongst the Romans; the *forum superbiense* amongst the Arragonians; the parliaments in Scotland, England, France, Spain.” Rutherford refers to Abner, who communed with the elders of Israel to bring the king home, “and there were elders in Israel, both in the time of the judges, and in the time of the kings, who did not only give advice and counsel to the judges and kings, but also were judges no less than the kings and judges ... (2 Samuel 3: 17)”.¹¹¹¹

Rutherford states that as God, in a law of nature has given to every man the keeping and self-preservation of himself and of his brother, Cain ought in his place to be the keeper of Abel his brother; so has God committed the keeping of the commonwealth, by a positive law, not to the king alone, because that is impossible.¹¹¹² Rutherford speaks of parliament which has no

¹¹⁰⁸ Ibid., 175 (2).

¹¹⁰⁹ Ibid., 184 (1) – 184 (2). Cf. *ibid.*, 184 (2), concerning the relevance of the elders.

¹¹¹⁰ Ibid., 184 (2).

¹¹¹¹ Ibid., 95 (1) – 95 (2). Rutherford refers to the following texts to confirm that elders as well as princes, also constitute the office and functioning of the judiciary namely: Deuteronomy 1: 17; 2 Chronicles 19: 6 – 7; 21: 19; 22: 18; Joshua 7: 4; 9: 15; 20: 4; 22: 30; 1 Samuel 8: 2; 2 Samuel 5: 3; Numbers 12: 14 – 17; Jeremiah 26: 10; Micah 3: 1 – 3; Zephania 3: 3, *ibid.*, 95 (2). On *ibid.*, 96 (1), Rutherford refers to Joshua 22, mentioning the convening of a parliament, to take cognizance of a new altar, in the absence of Joshua. Rutherford adds: “It had been good that the parliaments both of Scotland and of England had convened, though the king had not indicted and summoned a parliament, without the king, to take order with the wicked clergy, who had made many idolatrous altars, *ibid.*, 96 (1). Cf. *ibid.*, 96 (2), concerning the fact that the estates are no less judges than the king. Also cf. *ibid.*, 97 (2) – 98 (1), in confirmation of the fact that the estates (in the form of, among others, the elders, princes, captains and the people) have a power of judging with the king or prince in matters of religion, justice, and government, which concern the whole kingdom. On *ibid.*, 182 (1), Rutherford refers to the estates (and the people) who are above the king (and who made the king).

¹¹¹² Ibid., 97 (1). This is confirmed by Numbers 11: 14, 17; 2 Chronicles 19: 1 – 6; 1 Chronicles 27, *ibid.* At 97 (2), Rutherford states: “If Barclay and other flatterers have leave to make the parliament but counselors and advisers of the king, and the king to be the only and sole judge, the king is, by that same

power in trust from the king, because the time was when the man who is the king had no power, and the parliament had the same power that they now have; and now, when the king has received power from them, they have the whole power that they had before – that is, to make laws. Rutherford adds that the parliament resigned no power to the king but to execute laws; and the king’s convening of parliament is an act of royal duty, which he owes to the parliament by virtue of his office, and is not an act of grace.¹¹¹³ Royal power is a part of the parliament, and cannot function when separated from the parliament. By this is deduced that royal power and the parliament are two co-ordinated supremes.¹¹¹⁴ To Rutherford not even the king may raise armies without consent of the parliament (unless in an emergency situation).¹¹¹⁵ The parliament and the princes, and rulers of the land, are God’s lieutenants on earth no less than the king (by our Confession of Faith); and “royalists say, they are but the deputies of the king, and when they do contrary to his royal will, they may be resisted, yea, and be killed, for in so far as they are private men, though they are to be honored as judges when they act according to the king’s will, whose deputies they are”.¹¹¹⁶ This view of the royalists is according to Rutherford erroneous. Rutherford adds: “If the Scripture holds forth to us a king in Israel, and two princes and elders who made the king, and had power of life and death, as we have seen; then there is in Israel monarchy tempered with aristocracy; and if there were elders and rulers in every city, as the Scripture saith, here was also aristocracy and democracy”.¹¹¹⁷ In this regard compare the thought of Mornay, who speaks of the magistrates who are inferior to the king, and whom the people have substituted, and which has a kind of “tribunitial” authority, to restrain the encroachments of sovereignty, and which represents the whole body of the people. Added to this is the assembly of the estates, which is a brief collection of the kingdom to whom all public affairs have special and absolute reference.¹¹¹⁸ Mornay also refers to the “... judges and provosts of towns, the captains of thousands, the centurions and others who commanded over families, the most valiant, noble, and otherwise notable personages, of whom was composed the body of the states, assembled

reason, the sole judge, in relation to all judges; the contrary whereof is clear” (Numbers 11: 16; Deuteronomy 1: 15 – 17; Chronicles 19: 6; Romans 13: 1 – 2; 1 Peter 2: 13 – 14).

¹¹¹³ Ibid., 98 (2). To Rutherford, absolute monarchy is no ordinance of God at all, but contrary to the nature of a lawful king (Deuteronomy 17: 3), *ibid.*, 210 (2).

¹¹¹⁴ Ibid., 186 (2).

¹¹¹⁵ Ibid., 193 (2). Also cf. *ibid.*, 233 (1).

¹¹¹⁶ Ibid., 221 (2). Rutherford also states that inferior magistrates are: God’s ordinances (Romans 13: 7; 1 Peter 2: 17; Psalm 62: 1) and gods on earth (Psalm 82: 6), *ibid.*

¹¹¹⁷ Ibid., 186 (2). Rutherford refers, among others, to Althusius, Brutus (Mornay) and Calvin, in support of this, *ibid.*

¹¹¹⁸ Mornay, *A Defence of Liberty Against Tyrants*, 97. Mornay confirms this by referring to the seventy ancients in the kingdom of Israel, amongst whom the high priest was as it were the president, and they judged all matters of greatest importance, *ibid.*

divers times as it plainly appears by the word of holy scripture.”¹¹¹⁹ Mornay mentions the importance of the princes, the officers of the crown, the peers, the greatest and most notable lords, the deputies of provinces, of whom the ordinary body of the estate is composed, or the parliament, or other assembly, according to the different names used in divers countries of the world; in which assemblies, the principal care is both for the preventing and reforming either of disorder or detriment in the church or the commonwealth.¹¹²⁰

According to Rutherford, parliaments are essentially lord-judges, who in essence make laws, and he emphasizes that the states of parliament are above the king in order to censure him.¹¹²¹ An aristocracy is to Rutherford no less an ordinance of God than royalty, and all in authority are to be acknowledged as God’s vice-regents, the senate, the consuls, as well as the emperor.¹¹²² Parliaments have a nomothetic power with the king because they judge, and in order to prevent tyranny, parliament must keep a co-ordinate power with the king in the highest acts.¹¹²³ According to Rutherford, the will of the king is politically present in all parliaments, courts, and inferior judicatures.¹¹²⁴ The king will also more effectively guarantee the safety of the people with limited power and with other judges to assist him, rather than placing absolute power in one man’s hand; “for a sinful man’s head cannot bear so much new wine, such as exorbitant power is.”¹¹²⁵ In the context of Romans 13, Rutherford states that there is no reason to restrain the higher powers to monarchs only, as if they only were essentially powers ordained of God,

because he calleth them higher powers. Now this will include all higher powers, as Piscator observeth on the place; and certainly Rome had never two or three kings to which every soul should be subject. If Paul had intended that they should have given obedience to one Nero, as the only essential judge, he would

¹¹¹⁹ Ibid. Mornay also refers to the ancients of the people, the heads of the tribe, the judges and governors, and all who had any public command in the town of Israel, who met at Sichem, in the presence of the Lord, and did willingly put on the yoke of the Almighty God. By this it appears that these magistrates did oblige themselves in the names of their towns and communalities that God should be served throughout the whole country, according to how He had revealed in His law, *ibid.*, 102.

¹¹²⁰ *Ibid.*, 97.

¹¹²¹ Rutherford, *Lex, Rex*, 111 (1) – 111 (2). On *ibid.*, 139 (1), Rutherford states: “And, indeed it must follow, if the king, by the plenitude of absolute power, be the only supreme uncontrollable expositor of the law, that is not law which is written in the acts of parliament, but that is the law which is in the king’s breast and head, which Josephus objected to Caius. And all justice and injustice should be finally and peremptorily resolved on the king’s will and absolute pleasure.”

¹¹²² *Ibid.*, 112 (1).

¹¹²³ *Ibid.*, 114 (1). Rutherford states: “We hold the parliament that made the king at Hebron to be above their own creature, the king”, *ibid.*, 115 (2).

¹¹²⁴ *Ibid.*, 116 (2).

¹¹²⁵ *Ibid.*, 121 (1).

have designed him by the noun in the singular number. All the reasons that the apostle bringeth to prove that subjection is due, agreeth to inferior judges as well as to emperors, for they are powers ordained of God, and they bear the sword, and we must obey them for conscience sake, and they are God's deputies, and their judgment is not the judgment of men, but of the Lord (2 Chron. xix. 6, 7; Deut. 1. 16; Numb. xi. 16, 17). Tribute and wages be no less due to them, as ministers and servants, for their work, than to the king¹¹²⁶

Parliament is to regulate the power of the king.¹¹²⁷ Maclear states that according to Rutherford, the magistrates are both more natural and more necessary in society than the king, and were only superficially deputies of the crown. In fact, they are ministers of God, responsible to Him regardless of the king's commands, and they were to be obeyed by all as fathers in the Fifth Commandment. According to Rutherford, inferior judges are found in various roles according to the constitutions of states, but in England and Scotland they are the estates of the realm, and are corporately superior to the king.¹¹²⁸

In reply to the statement inferring that Psalm 16: 10 teaches that: "A divine sentence is in the lips of the king; his mouth transgresseth not in judgment", and therefore that the king only, can expone the law, Rutherford states: "Lavater saith (and I see no reason on the contrary), 'By a king he meaneth all magistrates' ". In this regard Rutherford also comments that it is false to say that if sometimes all is cast on one man's voice, therefore the king may be this one man – this would be to take away inferior judges, which is contrary to God's word.¹¹²⁹ Parliaments and inferior judges are heads no less than the king.¹¹³⁰ According to Rutherford, the inferior magistrates are also immediate vicars and ministers of God as is the king, for their throne and judgment is not the king's, but the Lord's (Deuteronomy 1: 16, 2 Chronicles 21: 6).¹¹³¹ All magistrates, though inferior, must do their duty which the law of God commands

¹¹²⁶ Ibid., 173 (1). Rutherford also refers to 1 Timothy 2: 1 – 2, and 1 Peter 2: 13, that also confirm other forms of authority besides that of kingship, *ibid.*

¹¹²⁷ Ibid., 224 (2). Also cf. *ibid.*, 224 (2) – 227 (1), concerning examples given by Rutherford of kings controlled by Parliament.

¹¹²⁸ J. F. Maclear, "Samuel Rutherford: The Law and the King", in *Calvin and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 76.

¹¹²⁹ Rutherford, *Lex, Rex*, *ibid.*, 139 (1) – 139 (2). Rutherford refers to Deuteronomy 1: 17; 2 Chronicles 19: 6 – 7; Romans 13: 1 – 3 in support of the fact that inferior judges are not to be taken away, *ibid.*, 139 (2).

¹¹³⁰ *Ibid.*, 164 (1). Rutherford confirms this by referring to Numbers 1: 16; 10: 4; Deuteronomy 1: 15; Joshua 22: 21; Micah 3: 1, 9, 11; 1 Kings 8: 1; 1 Chronicles 5: 25; 2 Chronicles 5: 2, *ibid.*

¹¹³¹ *Ibid.*, 173 (2) – 174 (1). Rutherford also refers to Proverbs 8: 16 stating: "By me princes rule, and nobles, even all the judges of the earth", *ibid.*, 174 (1).

them to do, even though the king forbids them to do so.¹¹³² Rutherford refers to the Confession of Bohemia, from which it can clearly be deduced that inferior as well as supreme magistrates, are not to do their own work, nor the work of the king, but the work of God, in the use of the sword.¹¹³³ Rutherford also states: “Now, nature seemeth to me not to teach that only one sinful man should be the sole and only ruler of a whole kingdom; God, in his word, ever joined with the supreme ruler many rulers, who, as touching the essence of a judge, (which is to rule for God), were all equally judges: some reserved acts, or longer cubit of power in regard of extent, being due to the king”.¹¹³⁴

Although the theories on resistance as postulated by the theologico-political federalists is investigated in a proceeding chapter, the aim of this brief reference is to emphasize the importance of other offices of government besides that of the ruler, pertaining to governance. The relevance of powers and authorities additional to that of the king is clearly witnessed in Rutherford’s theory on resistance. The inferior magistrates must resist the tyrannous king, otherwise they are guilty of blood,¹¹³⁵ and other judges are to draw the sword against papists when the king refuses to do so.¹¹³⁶ The under-judges are watchmen and a guard to the church of God and are to defend the flock when necessary.¹¹³⁷ Rutherford’s postulation of the relevance of powers and authorities additional to that of the king, especially pertaining to the theory on resistance came close to Knox’s view in this regard. Mason states that the concept of inferior magistrates as divinely ordained officers charged with establishing and maintaining the “true religion”, was an essential element in Knox’s resistance theory – equally, in the absence of a godly prince, it became essential to his vision of a godly commonwealth.¹¹³⁸

Although the election of the ruler will be dealt with in a proceeding chapter, a brief reference to the importance of the parliament and the estates in the election of the ruler emphasizes the importance of other ruling offices besides that of the ruler himself. In this regard Rutherford states that when the estates create the king, and make a certain individual a king and not another, they hereby give him the power of the sword, and the power of war, “and I shall

¹¹³² Ibid., 222 (2).

¹¹³³ Ibid., 223 (1).

¹¹³⁴ Ibid., 227 (2).

¹¹³⁵ Ibid., 178 (2).

¹¹³⁶ Ibid., 180 (2).

¹¹³⁷ Ibid., 182 (1).

¹¹³⁸ Roger A. Mason, “Knox, Resistance and the Moral Imperative”, *History of Political Thought*, Vol. 1 No. 3 Autumn. December (1980), 431. Mason adds that Knox referred especially to Romans 13 to assure the nobility that God “doth ... assign to the powers their offices, which be to take vengeance upon evil doers, to maintain the well doers, and so to minister and rule in their office, that the subjects by them have a benefit, and be praised in well doing ...”, *ibid.*

judge it strange and unreasonable, that the power given to the king, by the parliament or estates of a free kingdom ... should create, regulate, limit, abridge, yea, and annul that power that created itself.”¹¹³⁹ Flinn also states that Rutherford referred to case law to prove that the lesser magistrates are ministers of God and are responsible to Him, and that all of these case laws give the civil authority of the sword to the lesser officials.¹¹⁴⁰ Coffey states that Rutherford certainly referred to Althusius on a number of occasions, and his ideal polity clearly had a federalist structure: authority ascended from shire and corporation to parliament, and from parliament to the king, with the lower level always retaining its “fountain-power”.¹¹⁴¹ Rae also makes an important observation stating that to Rutherford, decentralization of power was to be preferred because the king remains a man when he becomes king, and like all men is born into sin. Therefore, according to Rutherford, as a result of our fallen condition, many judges and governors are better than one, and limited government is the best form of government. Rae states that Rutherford was also concerned with having a check on the king.¹¹⁴² Rae adds that in general, Rutherford can be said to have favored the Huguenot system of shared sovereignty. According to Rutherford, the king was ideally given the executive power, the Estates the legislative, and the Judge (and not the king) was regarded as “the public practical interpreter of the law”. There was to be no peace; war, or any surrendering of territory made without the states, and, in fact, no royal power at all outside of government.¹¹⁴³ Rae also adds that this view emanating from Rutherford was also in accordance with Rutherford’s views on the relationship between the king and parliament. In this regard Rutherford agrees that “parliament should not be both accuser, judge and witness in their own case” and that no one is to be allowed arbitrary power.¹¹⁴⁴

¹¹³⁹ Rutherford, *Lex, Rex*, 185 (2).

¹¹⁴⁰ Richard Flinn, “Samuel Rutherford and Puritan Political Thought”, *The Journal of Christian Reconstruction*, Vol. 5, (1978 – 9), 73. Rutherford cites the following texts in confirmation of this: Numbers 11: 16 – 17; Deuteronomy 1: 16; 5: 18 – 21; 17: 5; 19: 12 – 13; and 21: 19, 21.

¹¹⁴¹ Coffey, *Politics, Religion and the British Revolutions*, 180. Coffey adds that Rutherford did argue that corporations and shires had an authority that limited parliamentary sovereignty. Counties and corporations retained a “fountain-power of making commissioners, and of self-preservation” analogous to the power the three estates retained for making the king. They elected the knights and burgesses of parliament on a “fiduciary” basis, just as the king was elected by the estates, and retained the right to “resist them, annul their commissions and rescind their acts”, just as parliament itself could resist the king, *ibid.*, 179.

¹¹⁴² C. E. Rae, *The political thought of Samuel Rutherford*, (unpublished M. A. dissertation, University of Guelph, 1991), 83.

¹¹⁴³ *Ibid.*, 89.

¹¹⁴⁴ *Ibid.*, 90.

4. The Forms of Magistracy

Rutherford's approach concerning the form that government should take, also points towards supporting a separation of powers theory. In general, Rutherford accepted the validity of various forms of government, namely that of aristocracy (government by a selected number of persons), monarchy (government by the king), and democracy (government by many). Rutherford states:

It is denied: there is no less somewhat of God's authority in government by many, or some of the choicest of the people, than in monarchy; nor can we judge any ordinance of man unlawful, for we are to be subject to all for the Lord's sake (1 Pet. ii.13; Tit. iii. 1; 1 Tim. ii. 1 – 3) ... Though monarchy should seem the rule of all other governments, in regard of resemblance of the Supreme Monarch of all, yet it is not the moral rule from which, if other governments shall err, they are to be judged sinful deviations.¹¹⁴⁵

Johannes Althusius, in similar fashion speaks of the estates which represent the aristocratic element, the councils, the democratic, and the head – whether it be one person or many in the place of one – the monarchic. According to Althusius, this is similar to the human body in which the head has the likeness of the ruling king, the heart with its five external senses has the likeness of the entire people or populace; and these intermediate magistrates frequently depend immediately on the people when it predominates, in which case the people prescribe

¹¹⁴⁵ Rutherford, *Lex, Rex*, 227 (2). Other references in *Lex, Rex*, indicating Rutherford's accommodation of various forms of government are: 5 (1): "... all the three forms (of government) are from God ..."; 29 (2): "... a community transplanted to India, or any place of the world not before inhabited, have a perfect liberty to choose either a monarchy, or a democracy, or an aristocracy; for though nature incline them to government in general, yet are they not naturally determinated to any one of those three more than another ..."; 30 (1): "... people hath no power to appoint aristocratical rulers more than kings, and so the aristocratical and democratical rulers are all inviolable and sacred as the king ..."; 38 (2) – 39 (1): "... but because God is a monarch who cannot err or deny himself, therefore that sinful man be a monarch is miserable logic ..."; 44 (2): "No nation is tyed, *juro divino*, by the tie of a divine law, to a monarchy, rather than to another government"; 53 (1): "... any of the three forms (of government) are freely chosen by any society"; 93 (2): "... both be laudable and lawful ordinances of God, and the difference merely accidental, being one and the same power from the Lord, (Rom. xiii. 1) which is in divers subjects; in one as a monarchy, in many as in aristocracy; and the one is as natural as the other ..."; 111 (2) – 112 (1): "Aristocracy is no less an ordinance of God than royalty, for (Rom. xiii. 1, and 1 Tim. ii.) – all in authority are to be acknowledged as God's vice-regents ..."; 173 (1): "... there is no need to restrain the higher powers to monarchs only ..."; 192 (1): "Every government hath something wherein it is best ..."; 193 (1): "I see not how monarchy is more opposite to anarchy and confusion than other governments", *ibid.* Also cf. *ibid.*, 25 (2), 31 (1), 30 (2), 31 (1), 34 (1), 44 (1) and 210 (2).

the principles of their administration, and constitute and dismiss them. In such an event the government is called a democracy, which is sometimes dependent immediately on one person who predominates, in which instance it is referred to as a monarchy. At other times they are dependent on one, two, three or four who predominate, in which instance it is referred to as an aristocracy.¹¹⁴⁶

Althusius adds that the democratic element in monarchy and aristocracy is the assemblies of the realm in which the people have reserved for themselves, the right to vote. The aristocratic element in a democracy and monarchy, is the estates of the realm and the intermediate magistrates. A monarchy is represented in an aristocracy and democracy by the concord of the consensus of those who rule in which many voices are accounted as one voice and one will. Althusius states: "... we affirm, every type of commonwealth is mixed, just as the constitution of man, as we have said, is combined from four temperaments. For what is monarchic in a commonwealth conserves and retains in office that which is aristocratic and democratic; and what is aristocratic and democratic checks and retains in office that which is monarchic."¹¹⁴⁷ Bullinger also identifies the three kinds of magistracies namely the monarchy, the aristocracy and the democracy. Concerning the validity of these forms of government, Bullinger states that: "Now touching the excellency of these forms or kinds of government, it maketh not greatly to my purpose to dispute which ought to be preferred before another."¹¹⁴⁸

Bullinger nevertheless opts for an open approach concerning the validity of the various forms of government, stating that monarchies, aristocracies and democracies also have their fair share of weaknesses.¹¹⁴⁹ Bullinger states: "But such is the condition of mortal men in this corruptible flesh, that nothing among them is absolutely and on every side happy; and therefore that seemeth to them to be most excellent, which, although it be not altogether without inconveniences and some kind of vices, doth nevertheless, in comparison of other, bring fewer perils and lesser annoyance."¹¹⁵⁰ What is important to Bullinger is the fact that Christ commanded us to obey the magistrate, whether he be king, or a senate of chosen

¹¹⁴⁶ Althusius, *Politics*, 197.

¹¹⁴⁷ *Ibid.* On *ibid.*, 198, Althusius states: "It is evident that a polity is to be judged best that combines the qualities of kingship, aristocracy, and democracy."

¹¹⁴⁸ Bullinger, *Decades*, 2: 309 – 311.

¹¹⁴⁹ *Ibid.*, 2: 311.

¹¹⁵⁰ *Ibid.*

men.¹¹⁵¹ Bullinger therefore exhibits a similar understanding to Rutherford and Althusius concerning the forms of government and their validity.

To Rutherford, neither Scripture nor reason qualifies the form of government in its rigid purity without mixture (with the other forms).¹¹⁵² According to Rutherford each form of government has its “blessings” as well as “diseases”.¹¹⁵³ Coffey states that ultimately, Rutherford favored the Aristotelian option of “a limited and mixed monarchy” in which parliaments ruled with the king. This combined the glory, order and unity of monarchy; the counsel, stability and strength of aristocracy; and the liberty, privileges, and promptitude of obedience found in democracies.¹¹⁵⁴ To the statement that “monarchy for invention of counsels, execution, concealing of secrets, is above any other government”, Rutherford replies: “That is in some particulars, because sin hath brought darkness on us; so are we all dull of invention, slow in execution, and by reason of the falseness of men, silence is needful; but this is the accidental state of nature, and otherwise there is safety in a multitude of counselors; one commanding all, without following counsel, trusteth in his own heart, and is a fool”.¹¹⁵⁵ Rutherford also states that:

... if we consult with nature, many judges and governors, to fallen nature, seem nearer of blood to nature than one only; for two, because of man’s weakness, are better than one. Now, nature seemeth to me not to teach that only one sinful man should be the sole and only ruler of a whole kingdom; God, in his word, ever joined with the supreme ruler many rulers, who, as touching the essence of a judge, (which is to rule for God) were all equally judges: some reserved acts, or a longer cubit of power in regard of extent, being due to the king.¹¹⁵⁶

Therefore, to the theologico-political federalists the form that magistracy had to take on was not the issue. The issue was rather which form of magistracy can best attain the fulfillment of

¹¹⁵¹ Ibid. In confirmation of this, Bullinger refers to Titus 3: 1; Romans 13: 1 and 1 Timothy 2: 1, *ibid.* On *ibid.*, 2: 312, Bullinger states: “For we ought rather to obey the ordinance of God, than over curiously to dispute of the kinds of governments, which is the better or worse than other.”

¹¹⁵² Rutherford, *Lex, Rex*, 116 (1) – 116 (2).

¹¹⁵³ *Ibid.*, 116.

¹¹⁵⁴ Coffey, *Politics, Religion and the British Revolutions*, 174. Cf. also Rutherford, *Lex, Rex*, 192 (1) – 192 (2). On *ibid.*, 190 (2), Rutherford states that monarchy in itself, monarchy *de jure*, that is, lawful and limited monarchy is best in a kingdom under the fall of sin (if other circumstances be considered). However, this is not to say that other forms of government are not to be considered.

¹¹⁵⁵ *Ibid.*, 192 (2).

¹¹⁵⁶ *Ibid.*, 227 (2).

the covenant conditions as well as which form of magistracy can best support the principles of constitutionality in general. According to the theologico-political federalists there was no absolute form of government that was to be preferred (although there was much support for the concept of the mixed constitution), seeing that constitutional effectiveness could be best served either via a monarchy, aristocracy or democracy, provided that the application of the law and the separation of powers was properly applied.

5. Conclusion

A brief reference to the secular political thought during the period of the early Reformation indicates that together with the rise of sovereign nation states, the need for a theory which could explain the sovereign power and its extent on a secular foundation gained in importance. The work of the French lawyer and statesman, Jean Bodin (1530 – 1596), was intended to provide for this need. The product of this “new” political theory entailed the following: firstly, the notion that sovereignty is a power over citizens and subjects, itself not bound by laws, and secondly, the idea that sovereignty entails essentially the power to make laws for all subjects in general without the consent of anyone else, superior, equal, or subordinate, and that all other features of sovereignty are, in the final analysis, included in this power of legislation. In other words, sovereignty is the power of uncontrolled legislation, and through legislation sovereignty exercises itself.¹¹⁵⁷ In contrast to these secular inclinations, the idea of theologico-political federalism was developed by Reformed thinkers in Europe (Bullinger and Althusius), France (Mornay) and Scotland (Rutherford), into a powerful tradition of limited government; it *assisted* in shifting the political focus from secular sovereignty to the Reformed idea of office limited by law, and transferred the emphasis from unlimited government to magisterial power subject to the law of God. Ultimately the idea of the covenant and its formulation as a political concept gave rise to the development of the federal tradition in law and political systems. In fact, Bullinger’s formulation of the idea of the covenant, early in the 16th century, proved to be one of the most important driving forces in shaping the political tradition of Western Europe in the modern era.¹¹⁵⁸

¹¹⁵⁷ Raath and De Freitas, “Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504 – 1575)”, 285 – 286.

¹¹⁵⁸ *Ibid.*, 286.

In addition, the political theory as postulated by Bodin supported the belief that the root of political wisdom is an unlimited sovereignty, which converts a command into law by the mere supremacy of the person from whom it emanates. The true example of law is therefore that positive enactment which is embodied in legislation. The essential thing is that the *command shall be supreme, irresponsible, and unhindered by the scrutiny of conditions*. Laski makes it clear that it may be true that reference is made by Bodin to laws of nature, of God and of nations by which the ruler is bound. However, as Hobbes was later to point out, since the prince is the only person who can enforce obedience to them, the essence of the theory is the unlimited nature of the sovereign power. The real result is therefore the separation of ethics from politics, and thus to complete, by theoretical means, the division which Machiavelli had effected on practical grounds.¹¹⁵⁹

According to Skinner, the acceptance of the modern idea of the State presupposes that political society is held to exist solely for political purposes (hereby excluding religious purposes). Skinner adds that the endorsement of this secularized understanding remained impossible, as long as it was assumed that all temporal rulers had a duty to uphold godly as well as peaceable government. Skinner adds that the 16th-century reformers were entirely at one with their Catholic adversaries on this point: they all insisted that one of the main aims of government must be to maintain “true religion” and the Church of Christ.¹¹⁶⁰ The understanding that the state becomes supreme upon its own territory, and the expression of its will as law has serious implications. One consequence is that the attempt to introduce moral limitations upon the exercise of that will, becomes clearly impossible. All associations become contingent upon its pleasure; and right is to be defined as that which the sovereign permits. Right becomes, so to speak, pluralized into rights; it is no longer the reflection of a universal good, but a series of privileges to be discovered in the statute-book – the state must be obeyed upon the simple ground that it is a state.¹¹⁶¹ Allen states that to Bodin, writing between 1572 and 1576, it must have seemed that religious dissensions might be the most terrible of all dangers to public peace. Yet it is singular how small is the space devoted in the *Republic* to discussion of the questions involved. According to Allen, on all sides in 1576,

¹¹⁵⁹ Mornay, *A Defence of Liberty Against Tyrants*, 44 – 45.

¹¹⁶⁰ Skinner, *The Foundations of Modern Political Thought*, 352. Skinner adds that the fact that the religious upheavals of the Reformation made a paradoxical yet vital contribution to the crystallizing of the modern, secularized concept of the State. For as soon as the protagonists of the rival religious creeds showed that they were willing to fight each other to the death, it began to seem obvious to a number of *politique* theorists that, if there were to be any prospect of achieving civic peace, the powers of the State would have to be divorced from the duty to uphold any particular faith. With Bodin’s insistence in his *Six Books* that it ought to be obvious to any prince that “wars made for matters of religion” are not in fact “grounded upon matters directly touching his estate”, we hear for the first time the authentic tones of the modern theorist of the State, *ibid.*

¹¹⁶¹ Mornay, *A Defence of Liberty Against Tyrants*, 45.

two questions were being asked: Is it the duty of the magistrate to maintain true religion by force? Have the adherents of the true religion a right forcibly to resist persecution? Allen states that Bodin put neither of these two questions to the fore; his language on the whole subject is cautious to the point of evasion.¹¹⁶²

It is interesting to note that according to Bodin, reverence for the magistrate, obedience to law, the fear of wrongdoing, even mutual friendliness, all practically depend upon religion. Therefore, Calvinists would have to agree this far with Bodin; but to Bodin, it is not any particular form of religion, it is not even “true” religion that is needed. The question as to what religion is best, is irrelevant. What is needed is that the form of religion established in any particular society should not be questioned or denied. To Bodin, one religion is as good as the other.¹¹⁶³ From this it is clear where Bodin’s loyalties lay concerning the relevance of God’s law and His will as part and parcel of the political community. Laski provides a good comparative analysis between Bodin and Mornay as concerns the relevance of God’s will and His law to political theory, which also serves as a good comparison between the theologico-political federalists in general and the secular political philosophers of the period of the Reformation. Laski states that Mornay’s *Vindiciae* was concerned throughout with the establishment of abstract right. By abstract right is basically meant, the will of God; and everything is illegitimate which transgresses its substance.¹¹⁶⁴ Where Bodin, is concerned with the irresponsibility of supreme power, Mornay is concerned with its limitations. To Bodin, therefore, that which is of paramount importance is simply whether the enacting authority is, in the given instance, competent to act in the way it has acted, with the inference that if the authority is the sovereign, then that authority is competent without further scrutiny. To Mornay, on the other hand, the crucial point is not the willer, but the substance of that which is willed; and if that substance, when it contradicts divine law is maintained, it must be resisted at all costs.¹¹⁶⁵ Laski adds that what Mornay was doing for his readers was to refer the actions of the state to the test of an eternal reason which sprang from God and was instinctive with his will; all other laws besides this, were therefore secondary, because they sprang from fallible men. When Bodin, and later, Hobbes, were striving to make the law simply the command of a sovereign power, they were running counter to the whole burden of medieval notions, as their opponents at once recognized,. Mornay was insisting that as important as civil society is, there are interests higher than those of the state for which no

¹¹⁶² J.W. Allen, *A History of Political Thought in the Sixteenth Century*, (London: Methuen and Co. Ltd. London, 1977), 428. Bodin’s support of absolute sovereignty as solution against the religious dissensions at the time will be critically discussed in the conclusion to chapter 5.

¹¹⁶³ *Ibid.*, 428 – 430.

¹¹⁶⁴ Mornay, *A Defence of Liberty Against Tyrants*, 46.

¹¹⁶⁵ *Ibid.*

sacrifice is too much. *Government, for Mornay, is thus ultimately a theocracy*; and it follows that when the human administrator is in conflict with the divine ruler, the citizen can really have no hesitation as to where his obedience must lie.¹¹⁶⁶ As is clear from the above, the same views of Mornay in this regard were also postulated by the other theologico-political federalists.

Adding to the secular political thought postulated by Bodin in the 16th century, are the theories of Hobbes in the 17th century. Where theologico-political federalists such as Bullinger, Althusius and Mornay found their political theory opposed by Bodin and the likes during the 16th century, Rutherford as theologico-political federalist in the 17th century was countered by the secular thought of, among others, Hobbes. Dunning states that Hobbes was in fact a deist. Ecclesiastically, Hobbes was Erastian, and his exaltation of the political sovereign left no room for any church save as a dependency of the sovereign will. According to Hobbes there is no government in this life but the temporal, and any other idea results in faction and civil war between the state and what is called the church. Moreover, Hobbes leaves no hope for those who would maintain some peculiar and independent authority for ecclesiastical dignitaries under the designation “pastoral”.¹¹⁶⁷ According to Hobbes, the basis of moral and legal right was not to emanate from the sages, philosophers and orators of the pagan past, nor from the saints and theologians of the Christian era, but that a people must seek, from the head of the state alone, the decisive judgment on any question of duty, whether political, moral or religious.¹¹⁶⁸ This had serious implications concerning the relationship between church and state. Compared to English Puritan thought in the vicinity of Hobbes’s time, there is a contrast to be witnessed regarding this relationship. The Puritans were not really concerned with effecting an ideal and absolute separation of Church and Commonwealth; but separated absolutely the ecclesiastical from the civil organization of the commonwealth. Although it is the duty of civil magistracy to establish the Scriptural church and maintain the power of its consistories with the sword, the Puritans proceeded to subordinate the civil organization to the ecclesiastical organization. In their ideal commonwealth the action of civil government is controlled and directed by an ecclesiastical

¹¹⁶⁶ Ibid., 47.

¹¹⁶⁷ Dunning, *A History of Political Theories*, 297 – 298. Dunning adds that according to Hobbes, the sovereign is the supreme pastor of his subjects and has full authority to preach, baptize and administer the sacraments. He delegates this authority to the clergy for the same reason that he delegates the administration of justice to the judges – because he is too much occupied with other business to take proper care of this, *ibid.*, 298.

¹¹⁶⁸ Ibid., 301. Dunning adds that Hobbes, in thus setting up the will of the state as the source and criterion of all right, he not only parts company with Grotius and his school, but even goes beyond Machiavelli in exalting political authority – for while Machiavelli makes politics independent of religion and morals as a matter of practice, Hobbes sets politics above religion and morals as a matter of philosophic theory, *ibid.*

organization; and they began, like Calvin, by distinguishing between Church and State and, like him, ended by creating an ecclesiastical State. In fact, there was agreement among the Puritan writers of the 16th century that magistrates, and even the prince himself, must be subject to excommunication.¹¹⁶⁹ This is also in accordance with the views of the theologico-political federalists as discussed earlier.

From this, the position of the secular political theorists during the period of the Reformation concerning the relationship between church and state, as well as the status of the law, can be clearly understood. The law was separated from ethics and morality; and its loyalties towards God's law limited and reduced to a product of man and government. To Bodin, sovereignty has its chief and characteristic function in the making of law; and from the binding force of these laws, the sovereign is by the nature of the case free, but not from all laws.¹¹⁷⁰ Bodin's legislator is the legislator of the jurist, not of the theologian or of the moral philosopher. He assumes, but nowhere closely defines, the *leges divinae, naturae et gentium*. The sovereign, like the subject, is bound by the law of God and of nature, *but his obligation in this respect is to God*, by whom it will be enforced. This is similar to the principle of the Divine Right of Kings. As to the civil law – the law of the land – the sovereign's will is the ultimate source of its every precept, and the will is free.¹¹⁷¹ According to Dunning, in addition to restraints of divine and natural law, there are evidences in Bodin's thought of other limitations upon the sovereign which cannot so easily be put in the category of moral, as distinct from legal, limitations. Bodin also finds laws in the state which the sovereign cannot touch; his allusions to these superior rules are far from clear.¹¹⁷² To Bodin, law and custom depend on the will of those who hold the sovereign power in the state, and in short, he says that law is nothing else than a command of the sovereign. Legislation is not only the chief function of the sovereign; it is practically the sole and all-inclusive function.¹¹⁷³

In opposition to the secular influences on constitutional theory in the 16th and 17th centuries, one finds the approach by the theologico-political federalists such as Bullinger, Mornay, Althusius and Rutherford, who ardently support the prominence of the law of God, more

¹¹⁶⁹ Allen, *A History of Political Thought in the Sixteenth Century*, 220.

¹¹⁷⁰ Dunning, *A History of Political Theories*, 97 – 98.

¹¹⁷¹ *Ibid.*, 98.

¹¹⁷² *Ibid.*, 100 – 101. Dunning adds that the allusions to these superior rules are far from clear, but they seem to indicate a vague notion in the writer's mind of what we call a constitution, that is, of political principles or institutions so fundamental as to determine the very existence of a state. Bodin refers to these principles as the *legis imperii*. Bodin's anxiety to have something in a state more fixed and permanent than the human will, leads him to limit the *legibus soluta*, by *leges* that are neither natural nor divine, *ibid.*, 101.

¹¹⁷³ *Ibid.*, 103.

specifically the Decalogue, and in each case, a case made for the relevance of both Tables of the Law to the office of magistracy, clearly postulated. According to the federal approach, the law forms the content of the covenant between God and man, as well as between the magistrate and the people. The office of magistracy's intent was to protect and maintain piety and justice within the commonwealth; which also implies the issue regarding the relationship that should exist between church and state (government). It is not hereby to be inferred that the federalists were exclusively responsible for discovering the biblically-confirmed duties of the office of magistracy, the relevance of the Decalogue to such an office, and the relationship between church and magistracy, where the latter plays an important role in the external protection and maintenance of religion; although they both played a crucial and essential role in this regard.

What makes the approach by Bullinger, Althusius, Mornay and Rutherford unique concerning the above, is that the office of magistracy, its religious duties, together with the importance of the Decalogue and the relationship between church and state, is the containment of these aspects within the structure of the covenant. In this regard, Bullinger proceeded (and exceeded) Calvin on issues pertaining to political theory in early Reformational thought, which was transferred to prominent figures in Reformed thought such as Mornay, Althusius and Rutherford. Besides teaching us much about the covenant duties of the office of the magistrate, the theologico-political federalists contributed much to the issue relating to the relationship between church and state. What these federalists teach us is in line with Perks's summary on the relationship between church and state, and the functions of each of these institutions. The function of the magistrate is not to promote the Christian faith directly, that is, by preaching the word of God or enforcing observance of the Christian public religious cultus. The state has to recognize the church as a public legal institution forming part of the societal structure of the nation. Furthermore, the magistrate, when he pursues his calling in obedience to God's Word, supports the Christian religion, in that he helps to preserve and uphold a social order based on the moral framework of the Christian faith in which the Christian religion is able to flourish. Likewise, the result of the church's preaching of the gospel is to promote in its own way, that moral framework in terms of which the magistrate is to pursue his calling.¹¹⁷⁴ The state bears the sword, that is, the use of physical coercion, which is an instrument that the church must not use. Instead the church uses the sword of the Spirit, the preaching of the Word of God. Church and state in a Christian society have a reciprocal influence upon each other.¹¹⁷⁵ Perks goes on to state that the function of the church

¹¹⁷⁴ Stephen C. Perks, *A Defence of the Christian State*, (Taunton: The Kuyper Foundation, 1998), 20.

¹¹⁷⁵ *Ibid.*

is to preach the gospel. The power of the state to enforce its decrees is the sword. This sword is not to be used to force people to worship Christ; but it is to be used to enforce God's Law, i.e. God's justice, in the civil sphere.¹¹⁷⁶ The state's authority falls within the sphere of public justice. The church's authority to preach the gospel, and its authority to exercise discipline by the use of spiritual means, (for example excommunication), relates to the Christian public religious cultus, not public justice.¹¹⁷⁷ Furthermore, just because the powers and authority of church and state are clearly distinguished, we are not to imagine that there is therefore a separation of church and state. On the contrary, the magistrate must pursue his vocation as a servant of God, under the discipline of His Word, and this of necessity means that in a Christian society the office of magistrate may only be filled by a Christian, that is, someone in communion with Christ's visible, institutional church.¹¹⁷⁸

As has been mentioned earlier, the theologico-political federalists' understanding of the relationship between church and state, or between the ecclesiastical institution and the civil institution was similar to the views of other reformed writers concerning this issue. However, the federalists such as Bullinger, Mornay, Althusius and Rutherford (and even Knox), must be commended for their emphasis, interest and in-depth investigation concerning this issue. In addition, the clarifying and proper distinction of the duties and obligations of church and state are essential in the context of the biblical covenant idea. The covenant relationship between God and nation necessitates clarification regarding an issue such as this, and which has an effect on the responsibilities of the community institutions in adhering to and fulfilling the covenant conditions. It must also be realized that church and state are not entities in complete isolation from each other, nor is the church one of the many sub-structures of the community, with the government as the superior and overarching institution. Unfortunately this was the understanding emanating from the Enlightenment and the consequences can clearly be witnessed in contemporary society. Rather, church and state, each with their own specific functions and obligations, in addition to their overlapping functions and obligations, form parts of the unified Christian Commonwealth in covenant with God – the ecclesiastical institution as necessary and relevant as the civil institution. In fact, the covenant necessitates that church and state are treated as equals, each with their own specialist fields as well as overlapping fields of application. A consequence of the acceptance of church and state as equals, negates the unfortunate distinction between morality and civility that emanated from secularists such as Bodin and Hobbes, and the theologico-political federalists played a crucial

¹¹⁷⁶ *Ibid.*, 70.

¹¹⁷⁷ *Ibid.*, 71.

¹¹⁷⁸ *Ibid.*, 166, 171.

role in countering this distinction – morality and civility are not to be distinguished from each other and are interrelated and interdependent concepts to be applied in fulfillment of the covenant conditions.

In conclusion, the importance and prominence of the law within the separation of powers theory of the theologico-political federalists must be emphasized. In contemporary jurisprudential and political thought, the separation of powers theory has been highly secularized. Although the secularized division of powers theory also views the executive, judiciary and legislative branches of government as separate (including a fair amount of cooperation between them), there is a significant difference between the secularized and the theologico-political federalist tradition, the latter emphasizing the importance of God's law. It is also important to mention the fact that caution should be exercised in referring to Locke, Montesquieu and other 17th and 18th-century secular political theorists as the pioneers of an explicit and detailed separation of powers' theory. According to the theologico-political federalists, the law supersedes all the branches of government; where the executive, judiciary and legislature are bound and are inferior to God's law. These branches of government may not partake in any actions that exceed the content of the Divine Law. This also applies to all the levels within a nation, from the central government to the provincial and local authorities. The Divine law, as a condition of the covenant between God and man, and to the covenant between government and citizen, serves as an overriding principle to all jurisprudential and political conduct. Therefore, the contribution by the theologico-political federalists to a separation of powers' theory must be applauded, when bearing in mind the relevance of the law to such a theory, where the Divine law forms part of the conditional element of the vertical and horizontal covenants. The rule of law principle, according to theologico-political federalism, speaks of a constant and sovereign law as a condition, contrary to the liberal understanding of the rule of law as a utilitarian tool aimed at social change, where man is changing and evolving and hereby necessitating a changing and evolving law. The theologico-political approach to the rule of law also opposes the rule of judges, meaning the judge's interpretation of the law, or simply the judge's opinion on what the law should be – where the executive and the legislative branches of government and all citizens are bound to submit to their decrees from the bench. A Christian and theologico-political understanding of the rule of law means that all branches of government are subject to the law as a condition in the covenantal relationship between God and the nation.¹¹⁷⁹ It is also clear that the principle

¹¹⁷⁹ Part of this idea pertaining to the "rule of law" was taken from the article by William O. Einwechter, "The Rule of Law", *The Christian Statesman*, Vol. 144, Number 1, (2001), 3 – 4. However, the inclusion of the covenant to this comment is my own.

of separation of powers, checks and balances, federalism, as well as forms of government such as monarchies, aristocracies, and democracies, are not only concepts resorting to secular thought, but are also relevant and applicable to Christian jurisprudential and political thought, especially with regard to the relevancy of these concepts within the covenant.

CHAPTER 5

Theologico-political Federalism on Sovereignty and Resistance Theory

1. Sovereignty

1.1 Introduction

Sovereignty, understood as the ultimate decision-making power within a nation, is most relevant to politics and jurisprudence. It is this understanding of sovereignty that results in a nation having the full and exclusive legal power to make and enforce laws for the people within its territory and under its jurisdiction – and in every nation the ultimate power over its political decisions is located somewhere in its political-governmental structure, whether it be invested in all the people, one of them, or a small group of them.¹¹⁸⁰ The issue of sovereignty gained importance towards and during the period of the early Reformation. The latter part of the 15th and 16th centuries witnessed a tremendous growth of monarchical power in almost every part of Western Europe. Royal power grew at the expense of other institutions, whether they were parliaments, free cities, or clergy. Political power, which had largely been dispersed among feudatories and corporations, was seated in the hands of kings, who were the beneficiaries of increasing national unity in political systems.¹¹⁸¹ The most pervasive form of political thought in the 16th century, was the conception of a sovereign as the fountainhead of political thought – a notion that was supported by jurists under the influence of imperial law and the extreme papists. The opening years of the 16th century thus saw absolute monarchy on a secular basis as the prevailing type of government in Western Europe.¹¹⁸²

The original system of medieval thought had no room for a concept of sovereignty (in its secular context), for it was filled through and through with the idea that every earthly power, even the highest, is a responsible office borrowed directly or indirectly from God and held within certain legal bounds. But already in the 12th century the old idea of the *ruler's office*

¹¹⁸⁰ Austen Ranney, *Governing. An Introduction to Political Science*, (Prentice-Hall International Inc., 1990), 112. The concept of sovereignty has been briefly discussed in Chapters 3 and 4 due to its interrelatedness with the law, especially when approaching it from a Scriptural point of view. However, it needs a more in-depth investigation as an essential concept in political theory.

¹¹⁸¹ Andries W. G. Raath and Shaun A. de Freitas, “Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504 – 1575)”, *Westminster Theological Journal*, 63 (2001), 285.

¹¹⁸² *Ibid.*

was suppressed, or at least modified, by the rising doctrine of absolutism, which claimed a *plenitudo potestatis* for the Emperor in the Empire, just as for the Pope in the Church. This *monarchical omnicompetence* was in fact vested more and more with all the attributes of sovereign power. Its bearer was placed above positive law; its content was declared to need no explanation; its substance was held to be inalienable, indivisible and imprescriptible; and every subordinate power was derived from it as a mere delegation.¹¹⁸³

Sovereignty in the medieval doctrine was not only undeveloped in many details, but in two points of principle was far from being so exalted as it became in later times. A medieval understanding concerning sovereignty included the theory that the sovereign power is not omnipotent with regard to, but while raised above positive law is nevertheless limited by Natural Law.¹¹⁸⁴ The medieval idea of sovereignty (with its application to the internal life of the State), found no new scientific expression of any importance before Bodin. The prevailing doctrine ascribed a sovereign State-power to the ruler, but tended rather to strengthen than to discard the limitations immanent in the received idea of sovereignty.¹¹⁸⁵ Gierke, states that the Reformed and Catholic Monarchomachi stood quite as far from the idea of tolerance as their opponents. Even they ascribed the duty of maintaining the purity of faith to the state. Hence, in order to defend themselves from the oppression of their own religion and church by the monarch, they sought to rid the power of the State itself from the hands of the monarch and revived the doctrine of sovereignty of the people.¹¹⁸⁶ The theological revival of the theocratic idea due to the Reformation, emphasized not only the divine right of rulership, but its official character as well, with the duties and limitations arising from it; and in the case of violation there was often maintained a right of active resistance on the part of the people and even the right to depose the faithless ruler. Positive jurisprudence held fast to the idea of a sovereignty of the ruler grounded on an alienation of the original sovereignty of the people. But its leading representatives themselves, argued strongly for the subjection of the sovereign power to the constitution and the law, and besides the right of the sovereign there was almost universal recognition in principle of an independent right of the people in the State.¹¹⁸⁷

The insight of Bodin, according to Von Gierke, therefore, was an epoch-making insight concerning the meaning ascribed to the concept of sovereignty. When Bodin, on the one hand declared that the nature of sovereignty is incompatible with any limitation in time or

¹¹⁸³ Otto von Gierke, *The Development of Political Theory* (New York: Howard Fertig, 1936), 152.

¹¹⁸⁴ *Ibid.*, 153.

¹¹⁸⁵ *Ibid.*, 157.

¹¹⁸⁶ *Ibid.*, 154.

¹¹⁸⁷ *Ibid.*, 157 – 158.

substance, any restriction by constitution or laws, or any severance of parts by alienation, division or prescription of time; and on the other hand recognized a unitary ruler, whether one man or one assembly, as the only possible “subject” of sovereignty, he totally extinguished the idea of a Constitutional State. For Bodin there are only the three simple forms of State – absolute democracy, absolute aristocracy and absolute monarchy, the last of which he believes to be the best.¹¹⁸⁸ To the true monarch the sovereignty is conveyed completely, permanently and unconditionally; he is dispensed from every human law and can by his own act annul the privileges of the whole community, of individuals and of corporations; for him the resolutions of a parliament can be no more than mere advice; and there is no possible right of resistance against him for alleged tyranny. Bodin’s absolutist idea of sovereignty stops short only at private law; contracts bind even the Sovereign; and personal liberty and property must be recognized by him as inviolable.¹¹⁸⁹ According to Hüglin, Bodin’s definition of political sovereignty as *summa auctoritatis plenitudo* was not really new, but he transformed it in two important new ways: First, the idea of supreme power was no longer meant as an expression of Christian or imperial universality, it now became internationalized as the *privilege of particular power(s)*. Secondly, the concept of *suprema potestas* was no longer meant to secure a relative privilege of the emperor over the *magnae potestates* within the “plurality of rule”, but instead became the theoretical claim of power exclusivity.¹¹⁹⁰ The result was the radical elimination of political compromise between prince and estates: the latter could be conceived as either sovereign or subordinate, and since they obviously were not sovereign, princely power became the only one. Hüglin adds that since Bodin could hardly neglect the *de facto* existence of estate power, he incorporated them into the concept of power monopolization: as dependent instruments of decentralized political administration, whose public powers can be recalled by the sovereign at any time. What becomes apparent here, is that administrative decentralization is an essential condition for the institutionalization of centralized political power, and not its cooperative and federal corrective.¹¹⁹¹

Sovereignty according to theologico-political federalism (with its, among others, strong covenantal approach), differed considerably from the secular approach to sovereignty as postulated by, *inter alia*, Bodin, Hobbes and Locke. According to Baker, the parallels of Bodin’s theory on sovereignty with that of Bullinger’s are rather striking, except that the limits that Bullinger placed on magisterial sovereignty were less clear and perhaps more

¹¹⁸⁸ Ibid., 158.

¹¹⁸⁹ Ibid., 159.

¹¹⁹⁰ Thomas O. Hüglin, “Have We Studied the Wrong Authors? On the Relevance of Johannes Althusius as a Political Theorist”, *Rechtstheorie*, Beiheft 16, (1988), 225.

¹¹⁹¹ Ibid., 225 – 226.

difficult to apply. The only real limits in Bullinger's theory were imposed by God. The pastor could play the prophet, he could exhort and threaten God's punishment, but retribution and correction could only come from God. There were no legal limits, except those imposed by God's law.¹¹⁹² Baker adds that although Bullinger did not discuss popular sovereignty, the source of power being divine, he did praise republicanism as the most felicitous form of government. This approbation of republicanism could not, however, work out its own logic in Bullinger's thought because of his theory of sovereignty; any hint of popular sovereignty was smothered by his conception of magisterial sovereignty.¹¹⁹³ According to Baker, Bullinger was not a political theorist, but his theological idea of the covenant cloaked a radical theory of magisterial sovereignty; when stripped of its theological terminology, it sounds much like the concept of indivisible sovereignty in the thought of such men as Erastus and Bodin.¹¹⁹⁴ It must however be noted that Bullinger did not develop an actual theory on absolutism. Bullinger did not allow his idea of "limited" sovereignty to express itself clearly in his thought. Although he never completely denied the possibility of resistance, neither did he develop a theory of the right of resistance. While he praised republicanism and spoke of divine limits to power, his theory of undivided magisterial sovereignty tended to reinforce authoritarianism.¹¹⁹⁵

Mornay's resistance theory on the other hand, presupposed a truly limited magistracy, which was a theory of popular sovereignty. Bullinger, consistent with his idea of indivisible sovereignty, used the covenant to assure obedience to the magistracy, while Mornay, building on a concept of popular sovereignty, used the covenant to construct a resistance theory.¹¹⁹⁶ Hyma refers to Mornay's *Vindiciae* as expanding on the theory of popular sovereignty versus absolute monarchy in 16th-century France, Hyma adds: "It is argued once more that originally the people delegated political power to the ruler, and that the latter must not overlook this fundamental fact."¹¹⁹⁷

¹¹⁹² John W. Baker, *Heinrich Bullinger and the Covenant. The other Reformed Tradition*, (Athens, Ohio: Ohio University Press, 1980), 173.

¹¹⁹³ *Ibid.*, 171.

¹¹⁹⁴ *Ibid.*

¹¹⁹⁵ *Ibid.*, 173.

¹¹⁹⁶ *Ibid.*, 176.

¹¹⁹⁷ Albert Hyma, *Christianity and Politics. A History of the Principles and Struggles of Church and State*, (J. B. Lippincott Company, 1938), 162. Concerning Mornay's *Vindiciae*, Hyma states: "However, there is not so much deviation from Calvin's original position as one might surmise from the title. The sovereignty of God is emphasized very strongly; obedience to God is considered of primary importance, as before", *ibid.*, 162 – 163. It is interesting to take note of Hüglin's criticism against the Monarchomachs' understanding concerning "popular sovereignty", which was based on the "double covenant" between God, king, and the people of Israel in the Old Testament. Hüglin states that Mornay's *Vindiciae* emanated from this line of thought, adding that not much effort was given by the Monarchomachs in providing a proper theory on the sovereignty of the people. According to Hüglin, the Monarchomachs argued that the people can legitimately resist tyrannical rule as a violation of the

After Bodin the concept of sovereignty was weakened, with Hobbes exalting it to the highest degree, beyond which it was impossible to pay further tribute. He described sovereignty as the right to everything, being transmitted from the state of nature to the state (government), and he saw it alone, and its holder as the *mortal God* (*Deus mortalis*). From this arises this all-embracing, boundless and irresponsible power of dominion, which absorbs the personality, property, rights, conscience and religion of the subjects, is bound by no law, contract or obligation, and knows no judge other than itself. In every form of State this power is the same, in every form it is necessarily concentrated in all its fullness at one point, and is the exclusive source of all other powers. In its presence all subjects or groups of subjects, be they ever so unequal otherwise, are equal in rights or rather equally “rightless”. Any contractual limitation conflicts with the very nature of the sovereign; it destroys his sovereignty and erects another sovereign.¹¹⁹⁸ Baker states that, given the absolute nature of the authority of the Sovereign, it is not surprising that Hobbes rejects every sort of check on the Sovereign’s actions. He explicitly rejects any theory based on a covenant with God: “And whereas some men have pretended for their disobedience to their Sovereign, a new Covenant, made, not with men, but with God; this also is unjust: for there is no Covenant with God, but by

covenant in which they are equal partners, and equally responsible for its adherence, Hüglin, “Have we Studied the Wrong Authors?”, 232. According to Hüglin, the Monarchomachs did not fight for constitutional limitations of the king’s primary right of governance, but for self-defense and survival – the people have a right to defend themselves against tyranny, but they cannot claim sovereignty for themselves, *ibid.* This is in line with Laski’s criticism in this regard, Laski commenting that Mornay’s *Vindiciae* makes the people sovereign, but in such a manner that it makes the people’s supremacy meaningless, save where it is governed by a tyrant who transgresses his power, Mornay, *A Defence of Liberty Against Tyrants*, 48. In the words of Laski: “Duplessis-Mornay shares to the full the characteristic Huguenot contempt for the people. He is like a whig aristocrat of the eighteenth century who welcomes popular support but does not concede to it a share in government. He identifies the people with the state; but the only purpose of the people is to serve as an agency of origin which justifies the resistance of the aristocracy to what they consider an abuse of power”, *ibid.* This criticism does not take into consideration the meaning of sovereignty of the people within the sovereignty of God’s law (the covenant conditions). In this regard cf. Chapter 3, above. Mornay and the other theologico-political federalists such as Althusius and Rutherford, postulated a theory entailing the sovereignty of the people which was emphasized in especially the responsible and authoritative role that the people played in the election and resistance of the ruler. However, these activities were to adhere to the law of God, entailing that no ruler could be elected that did not show loyalty to the law, and where a ruler governed grievously contrary to the law, he had to be resisted. This law, in the context of theologico-political federalism, must be understood in the context of the covenant conditions, and the sovereignty of the people had to adhere to the law as covenant condition. Hüglin’s referral to the king and people as “equal partners”, without any reference to the various other covenants, also needs attention. The covenant between God and the community as a whole (including the king) must be understood together with the other covenants, namely, the covenant between God and the people (excluding the king), the covenant between God and the king, as well as the covenant between the king and the people. In the latter three covenants each “party” is to adhere to the precepts of God’s law. This implied that the person could not be elected as ruler if he was not knowledgeable in, and loyal to, the law of God (in the case of election), and also the ruler had to be resisted in the case of tyranny.

¹¹⁹⁸ Von Gierke, *The Development of Political Theory*, 169.

mediation of some body that representeth Gods Person; which none doth but God's Lieutenant, who hath the Sovereignty under God".¹¹⁹⁹

Although Bodin seeks to domesticate estate power in the leading-strings of centralized territorial power; it was Hobbes that emphasized that corporate groups, associations and parties have to be eliminated altogether because even their mere existence poses a potential threat to any system of monopolized power. According to Hüglin, Hobbes again internalized the universalist claim of power in order to guarantee "complete legal security and peace through the radical subordination of all individuals"; and the achievement of this goal consequently required the construction of a "social contract" as the basis for the irrevocable cessation of all individual powers to the omnipotent state.¹²⁰⁰ Eliminating even the possibility of decentralized administration, which the more pragmatic Bodin still conceded to the estates, Hobbes determines the sovereign as the "absolute representative of all subjects" and transforms the traditional role of the estates into functions of public service in the interest of the state.¹²⁰¹ Hinsley says that while Bodin had set his sovereignty in the framework of the contract of the ruler with the people, and had limited it by natural and customary law; Hobbes postulated that the sovereignty of the state was unlimited, illimitable, irresponsible and omnipotent; was necessarily concentrated in a single center and was armed with power.¹²⁰² It is also interesting to note that Bodin deduced from the nature of government itself the necessarily full and unconditional transfer of sovereignty to the ruler, and the latter to the impossibility of diminishing the people's sovereignty by any contract of rulership, making his contract theory vastly different (as did Hobbes), from that of the theologico-political federalists.¹²⁰³

¹¹⁹⁹ J. Wayne Baker, "Faces of Federalism: Althusius, Hobbes and Locke", (unpublished paper), 16. Baker refers to *Leviathan*, 2, 18 to confirm this). Baker adds, that here Hobbes was speaking of Mornay and his concept of the political and religious covenants existing in tandem, though not by name, *ibid*.

¹²⁰⁰ Hüglin, "Have We Studied the Wrong Authors?", 226. This covenant differs much from the continuous, bilateral and mutual covenant between the king and the people as postulated by the theologico-political federalists.

¹²⁰¹ *Ibid*. Samuel Rutherford confirms the fact that Bodin accommodated, to a larger extent than Hobbes, the people and estates within the exercise of sovereignty: "Bodin proveth, (*de Rep.* 1.2, c. 5, p. 221,) that emperors at first were but princes of the commonwealth, and that sovereignty remained still in the senate and people", *Lex, Rex* (Sprinkle Publications, Harrisonburg, Virginia, 1982), 129, column 1 (129 (1)).

¹²⁰² F. H. Hinsley, *Sovereignty*, (Cambridge: Cambridge University Press, Second Edition, 1986), 143-144. To Hobbes the law is "command" and it is to be assumed that customary law is valid in so far as the sovereign is silent over it, *ibid.*, 144. Moltmann states that although Hobbes also postulated categories of covenant and contracts (he grew up in a Presbyterian home), there was for him no covenant of God with the people, which limits the rulership contract, but only the rulership contract of human beings against hostile nature in order to end the war of all against all; and the sovereignty of the representative is as absolute as human beings can make it, Jürgen Moltmann, "Covenant or Leviathan? Political Theology for Modern Times", *Scottish Journal of Theology*, Vol. 47 (1994), 28.

¹²⁰³ Von Gierke, *The Development of Political Theory*, 94.

Von Gierke states that Althusius accepted the absolutist idea of sovereignty in all its rigor and transferred this sovereignty to the people. Althusius was the first to speak of the “majesty” of the people. He first expressly gave to this “majesty” the attributes of exclusive, inalienable, indivisible and permanent, which Bodin had claimed for the “majesty” of the ruler, and rejected as strongly as his opponents the idea of the mixed constitution and the division of powers. Von Gierke adds that in but one important point did Althusius correct Bodin’s idea of sovereignty: filled with the idea of the legal and constitutional state, he rejected the whole notion of *potestas absoluta* and treated the sovereign power itself as bound not only by Divine and natural law, but also by positive law and especially fundamental law.¹²⁰⁴ Thus, states Von Gierke, while recognizing the public as well as private rights of subject persons and groups of persons as against the sovereign, despite his sharpened concept of popular sovereignty he agreed with his predecessors in ascribing to the legitimately instituted powers, a right which within its assigned limits, is not to be violated even by the people.¹²⁰⁵ Althusius’s idea of the contract of rulership forces him to divide the single personality of the state and to identify the sovereign body with the separately personified *universitas populi* as contrasted with the governing body.¹²⁰⁶ In support of popular sovereignty, Althusius, after introducing the *right of the realm* or *the right of sovereignty*, writes: “This right of the realm, or the right of sovereignty, belongs not to the individual members but to all members in common and to the entire associated body of the realm”. Althusius adds that this *right of the realm* or sovereignty, pertains both to religious and to civil life, and that it consists of *universal symbiotic sharing (communio) and its administration*. By this Althusius emphasized that the community is ruled under a common law, and government is checked by the sovereignty of the people.¹²⁰⁷

This is similar to the principle of popular sovereignty propounded by Locke. According to Locke, though the legislative power is the supreme political power, “yet the legislative being is only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them”. In other words, the people put their political power in trust to the government; if the government violates that trust, it can be replaced by the people.¹²⁰⁸ Hinsley states that it was Althusius who first applied to popular rights, the precise concept of sovereignty which Bodin had formulated in the interests of the authority of the center; and it

¹²⁰⁴ Ibid., 161.

¹²⁰⁵ Ibid.

¹²⁰⁶ Ibid., 163.

¹²⁰⁷ Baker, “Faces of Federalism: Althusius, Hobbes and Locke”, (unpublished paper), 10 – 11. Also cf. J. Wayne Baker, “Faces of Federalism: From Bullinger to Jefferson”, (unpublished paper), 10 – 11.

¹²⁰⁸ Ibid., 19.

was also Althusius who first based the absolute inalienability of the sovereignty of the people, the indestructibility of the underlying contract with the ruler and the right to resist the ruler, on a clear distinction between the contract of rulership, which the people made with the ruler, and the social contract; and which had brought the people itself into being.¹²⁰⁹ Hinsley adds that the distinction between Bodin and Althusius concerning sovereignty, was that Bodin said that the sovereign power must belong exclusively to the ruler, while Althusius insisted that this *majestas* must belong exclusively to the people – that alongside the *majestas* of the people there could be no *majestas* in the ruler.¹²¹⁰ Figgis states that Locke's *Treatise* is expressly directed against the notion that there is any sovereign power in the state. He realizes that the legislative is supreme, yet he aims at fencing it in with limitations of many kinds, such as the duty of respecting liberty and property. The notion of legal omnipotence was abhorrent to Locke, and if the "legislative" exceeded the bounds which Locke had laid down for it, its authority was at an end, and the state was dissolved.¹²¹¹ Gough states that Locke never used Hobbes's word *sovereign*, and his "supreme power" is not "nor possibly can be absolutely arbitrary over the lives and fortunes of the people". The supreme power is no more than "the joint power of every member of the society given up to that person or assembly which is legislator", and could not therefore include powers which no individual possessed in himself in the state of nature; "and nobody has an arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another". The legislative power is "limited to the public good of the society", and it must observe the rules of the law of nature.¹²¹² Therefore, in Locke there is a greater need to limit the power of government than both Bodin and Hobbes exhibit.

Hüglin states that historically, between Bodin and Hobbes, the political theory of Althusius is exactly based on the tradition of societal cooperation.¹²¹³ Althusius worked out far more distinctly and deeply than his predecessors the thought that the state is a social body, organically ordered and articulated and having a personality of its own. Althusius's idea of the contract of rulership forces him to divide the single personality of the State and to identify the sovereign body with the separately personified *universitas populi* as contrasted with the governing body. His idea of the social contract makes him take the view that ultimately the people like any other *universitas* is nothing but a *consoiata multitudo*, an aggregate of *homines conjuncti, consociati et cohaerentes*, a multitude connected by various mutual legal

¹²⁰⁹ Hinsley, *Sovereignty*, 132.

¹²¹⁰ *Ibid.*, 133.

¹²¹¹ John N. Figgis, *The Divine Right of Kings*, (Cambridge: Cambridge University Press, Second Edition, 1914), 242.

¹²¹² J. W. Gough, *The Social Contract. A Critical Study of its Development*, (Oxford: The Clarendon Press, 1936), 133.

¹²¹³ Hüglin, "Have We Studied the Wrong Authors?", 227.

relations and in this conjunction regarded as a unity.¹²¹⁴ This insight also made its mark in Rutherford, as will become clear below. Althusius further understands political sovereignty as the *constituent* power, which is at once a narrower and more republican definition of sovereignty, the plenary character of which is harnessed as the power to constitute government – a power that is vested in the organic body of the commonwealth, that is, the people. Moreover, once the people act, their sovereignty is located in the *jus regni*, the fundamental right / law of the realm, namely the constitution.¹²¹⁵ Rutherford had similar views in this regard.

Elazar adds that in the struggle over the direction of European state-building in the 17th century, the Althusian view, which called for the building of states on federal principles – as compound political associations – lost out to the view of Bodin and the statistes who called for the establishment of reified centralized states where all powers were lodged in a divinely ordained king at the top of the power pyramid or in a sovereign center.¹²¹⁶ According to Elazar, the problem of indivisible sovereignty raised by Bodin became the rock upon which pre-modern confederation was foundered. The modern state system was based on the principle of indivisible sovereignty that in an age of increasingly monolithic and energetic states became a *sine qua non* for political existence, and therefore the medieval world of states based on shared sovereignty had to give way.¹²¹⁷

According to Hüglin, the early modern problem of governance had arisen from the collapse of medieval unity: externally through the expanding power claim of rivaling territorial states, and internally through the particularism of antagonistic religious and social groups. While Bodin attempts to overcome the ensuing state of insecurity and conflict by establishing unitary sovereign power at the expense of all intermediate powers, Althusius redefines sovereignty (*jus maiestatis*) as the right of the universal consociation (*lex consociationis et symbiosis*) which belongs not to the supreme magistrate but instead to the organized body of the people associated in many smaller consociations. The supreme magistrate is only the

¹²¹⁴ Von Gierke, *The Development of Political Theory*, 163. Daniel J. Elazar states that vesting sovereignty in the people as a whole is what, on the one hand, makes the good polity a *res publica* or commonwealth. On the other, it also makes it possible to be a *consociatio consociatorum*, a *univesitas* composed of *collegia*, since the people can delegate the exercise of sovereign power to different bodies as they please (according to their sovereign will), “Althusius’ Grand Design for a Federal Commonwealth”, (preface in an abridged translation by Frederick S. Carney of Johannes Althusius’s *Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples*, (Indianapolis: Liberty Fund, 1995), xli – xlii.

¹²¹⁵ Daniel J. Elazar, “Althusius’ Grand Design for a Federal Commonwealth”, *ibid.*, xlii.

¹²¹⁶ *Ibid.*, xxxviii.

¹²¹⁷ *Ibid.*, xlii.

administrator and not the owner of this right. The right of sovereignty is defined as the governance of the federally-organized people, over all citizens.¹²¹⁸

Hüglin adds that according to Althusius, the unity of political action is not derived from the absolutist centralization of power, but instead from the *co-operation* of a compound polity. The actual ruler or supreme magistrate governs over the individual members of the realm, but never against the will of the organized collectivity. What Althusius proposes is a federally limited “co-sovereignty” jointly exercised by all territorial and functional groups participating in the political process.¹²¹⁹ According to Hüglin, Althusius appears as the only (and last?) political author who argues against the rising notion of inseparable hierarchical order and unquestionable territorial sovereignty. His essential alternative to the modern world-view is that a profane and rational organization of political life need not necessarily and unimaginatively always start from the assumption of radically autonomous individuals.¹²²⁰ Instead of seeking to stabilize and condition society to the needs of “state reason”, as Machiavelli, Bodin and Hobbes do, Althusius makes the “state” at all times and under all circumstances a dependent variable of societal organization.¹²²¹

To Althusius, the ownership of a realm by nature belongs to the people, and only the administration of it to the king. The nature and scope of legitimate government are derived from the purpose and scope of the universal association, namely, from the utility and necessity of human social life. Therefore, those who rule are not superior to those who concede the right of sovereignty, as a conceded power is “always less than the power of the one who makes the concession, and in it the pre-eminence and superiority of the conceiver is understood to be reserved”.¹²²² Carney states that according to Althusius, the commonwealth, as previously noted, differs from the city and province in that it alone possesses sovereignty. This means that only the commonwealth recognizes no human person or association as superior to itself. Sovereignty is the symbiotic life of the commonwealth taking form in the *jus regni*, or fundamental right or law of the realm. Since the commonwealth is composed not of individual persons but of cities and provinces, it is to them when joined together in communicating things, services, and right that sovereignty belongs. Therefore, it resides in the organized body of the commonwealth, which is to say in the symbiotic processes thereof,

¹²¹⁸ Hüglin, “Have We Studied the Wrong Authors?”, 231.

¹²¹⁹ *Ibid.*, 231 – 232.

¹²²⁰ *Ibid.*, 233.

¹²²¹ *Ibid.*, 234.

¹²²² Thomas Hueglin, “Johannes Althusius: Medieval Constitutionalist or Modern Federalist?”, *Publius* (Fall, 1979), 35.

and this organized body is also known to Althusius as the people.¹²²³ According to Althusius, the supreme power cannot be attributed to a king or optimate, as Bodin postulated. Rather it is to be attributed rightfully only to the body of a universal association, namely, to a commonwealth or realm, as belonging to it; and from this body, after God, every legitimate power flows to kings and optimates.¹²²⁴ According to Sabine and Thorson, the most important aspect of Althusius's theory was that he made sovereignty reside necessarily in the people as a corporate body. They are incapable of parting with it because it is a characteristic of that specific kind of association; and consequently it is never alienated and never passes into the possession of a ruling class or family.¹²²⁵

Baker and McCoy state that even more original and influential perhaps than Althusius's introduction of the notion of symbiosis into political philosophy is the way he reformulates

¹²²³ Frederick S. Carney, *The Politics of Johannes Althusius*, (An abridged translation by Frederick S. Carney of the third edition of Johannes Althusius' *Politica Methodice Digesta Atque Exemplis Sacris et Profanus Illustrata*, including the prefaces to the first and third editions and with a preface by C. J. Friedrich, London: Eyre and Spottiswoode, 1964), xxiv – xxv. In the words of Althusius: "I recognize the prince as the administrator, overseer, and governor of these rights of sovereignty. But the owner and usufructuary of sovereignty is none other than the total people associated in one symbiotic body from many smaller associations. These rights of sovereignty are so proper to this association, in my judgment, that even if it wishes to renounce them, to transfer them to another, and to alienate them, it would by no means be able to do so, any more than a man is able to give the life he enjoys to another. For these rights of sovereignty constitute and conserve the universal association. And as they arise from the people, or the members of the commonwealth or realm, so they are not able to exist except in them, nor to be conserved except by them. Furthermore, their administration, which is granted by the people to a single mortal man – namely, to a prince or supreme magistrate – reverts when he dies or is discharged to the people, which is said to be immortal because its generations perpetually succeed one after the other. This administration of the rights of sovereignty is then entrusted by the people to another. And so it remains with the people through a thousand years, or as many years as the commonwealth endures", *ibid.*, 10. Concerning Althusius's connection with the English Continent concerning sovereignty cf., Edward J. Cowan, "The Making of the National Covenant", in *The Scottish National Covenant in its British Context*, (edited by John Morrill, Edinburgh: Edinburgh University Press, 1990), 79, "Althaus takes time out to refute William Barclay's *The Kingdom and Regal Power*, which argued *contra* Buchanan that the people through the *pactum* alienated their power to the king. James VI had, of course, advanced a similar argument and Charles was to carry those identical prejudices to the block. To anyone who has even superficially investigated Scottish political ideas from the Declaration of Arbroath onwards, Althaus's theories on popular sovereignty require no elaboration; they reinforced existing elements in the Scottish political psyche." In this regard also cf., *ibid.*, 78, "In 1638 Archibald Warrinston was studying the *Politica Methodice Digesta* of Johannes Althusius, or Johann Althaus, the great apologist for the Revolt. First published in 1603, the *Politica* can be seen as providing a blueprint for the Scottish Revolution." Also cf., *ibid.*, 81.

¹²²⁴ Althusius, *Politics*, 67. Althusius adds that the power that is conceded to another, is always less than the power of the one who makes the concession, "and in it the pre-eminence and superiority of the conceiver is understood to be reserved", *ibid.*, 67 – 68. "The commonwealth or realm does not exist for the king, but the king and every other magistrate exists for the realm and polity – By nature and circumstance the people is prior to, more important than, and superior to its governors, just as every constituting body is prior and superior to what is constituted by it ... "(were does this set of inverted commas begin?), *ibid.*, 88. In what follows below, the relevance of Althusius's insight pertaining to the active role that the people play in the election (and resistance) of the king will also confirm the sovereignty of the people and the commonwealth as a whole.

¹²²⁵ George H. Sabine and Thomas L. Thorson, *A History of Political Theory*, 4th Edition, (Orlando: Holt, Rinehart and Winston, 1973), 388.

the doctrine of sovereignty. In this regard Von Gierke articulates most directly the view that Althusius took over the absolutistic conception of sovereignty put forward by Bodin and reformulated it into a powerful conception of people's sovereignty – he first enunciated the proclamation of the sovereignty of the people.¹²²⁶ McCoy and Baker add that if Althusius's *Politics* was directed against any political doctrine, it is the notion that sovereignty can only be vested in the king or chief magistrate; and Bodin was the most influential advocate of that position in the time of Althusius. According to Althusius, sovereignty belongs to the *covenanted* society, to the people symbiotically united for the cultivation of what is useful for *piety* and *justice*. To Althusius it is not a collection of individuals but a covenanted whole that has the rights of sovereignty so that “the owner and usufructuary of sovereignty is none other than the total people associated in one symbiotic body from many smaller associations”.¹²²⁷ It is also important to note that political sovereignty, in the federal meaning of Althusius, is not absolute; the covenants of humanity exist within the covenant of God. Because all are bound within human covenants to the covenant of God, rulers who administer the sovereignty belonging to the people, lose their authority when they violate their covenant with the people, by virtue of which they rule, or transgress the covenant of God.¹²²⁸

The principle of sovereignty was more a product of secular thought at the dawn of the Enlightenment than in Christian thought. It was especially Bodin who accentuated this principle for the first time, later to be supported by, among others, Hobbes. Especially in the period of the Reformation, the supremacy of the Divine Law was emphasized. The Scriptural commands of God were the ultimate guides of what was right and wrong. As discussed in earlier chapters the prominence of the law of God in the political and jurisprudential theory of theologico-political federalism is clear. Neither king nor the collective body of the people could follow any other route than that prescribed by the Word of God. Even though Bullinger, Althusius, Mornay and Rutherford add much weight to the power of the people in electing and resisting the ruler in certain instances, the importance of the law as measured against this election and resistance, must be noted. Theologico-political federalism taught a popular sovereignty within the framework of theocracy. Coffey states that Rutherford fiercely rejected the royal-command theory of law, which saw law as created by the command of the king. To Rutherford, only God's will and command could create law. He argued that there is a difference between God's will and the will of the king, or any mortal creature.

¹²²⁶ Charles S. McCoy and J. Wayne Baker, *Fountainhead of Federalism. Heinrich Bullinger and the Covenantal Tradition* (with a translation of *De testamento seu foedere Dei unico et aeterno* (1534) by Heinrich Bullinger, (Louisville, KY: Westminster / John Knox Press, 1991), 59.

¹²²⁷ *Ibid.*, 59 – 60.

¹²²⁸ *Ibid.*, 61. It can therefore be deduced that this understanding accommodates the fact that the sovereignty of the people also loses its authority when the people violate their covenant with the king, by virtue of which they rule or transgress the covenant of God.

Things are good because God wills them so, but God does not will things because they are good and just. The king's (or any other creature's) willing something, does not make it good or just. To Rutherford, law is constituted by none other than God, and since God's commands were clearly embedded in both natural law and Scripture, it followed that there was no need for the king to create law, since it already existed. Positive law could be simply derived from entirely obvious principles of natural and divine law.¹²²⁹

In this regard Elazar states:

The covenant idea has within it the seeds of modern constitutionalism in that it emphasizes the mutually accepted limitations on the power of all parties to it, a limitation not inherent in nature but involving willed concessions. This idea of limiting power is, as the Puritans discussed in this book well understood, of first importance in the biblical world view and for humanity as a whole since it helps explain why an omnipotent God does not exercise His omnipotence in the affairs of humans. In covenanting with humans, God at least partially withdraws from controlling their lives. He offers humans freedom under the terms of the covenant, retaining the covenantal authority to reward or punish the consequences of that freedom at some future date. By the same token, the humans who bind themselves through the covenant accept its limits in Puritan terms, abandoning natural for federal liberty – to live up to the terms of their covenants. Beyond that, the leaders of the people are limited in their governmental powers to serving the people under the terms of the covenant. Thus, the idea of constitutional or limited government is derived from the idea of covenant.¹²³⁰

This is an important insight concerning the idea of sovereignty within theologico-political federalism. Authority and freedom in the king and people were accommodated to a certain extent, being limited by the conditions of the covenant between God and society; and the consequences of this freedom was accompanied by reward or punishment from God. Society, in adhering to the conditions of the covenant had to trust in the promise of a reward and an urgent sense of responsibility was cultivated among king and people alike. In this manner, a

¹²²⁹ John Coffey, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford* (Cambridge: Cambridge University Press, 1997), 171.

¹²³⁰ Daniel J. Elazar, *Covenant and Commonwealth. From Christian Separation through the Protestant Reformation. The Covenant Tradition in Politics*. Volume II, (New Brunswick, N. J.: Transaction Publishers, 1996), 3.

general public commitment required for the good life would be better achieved, as well as the emergence of morally responsible people and government.¹²³¹

Commenting on Rutherford's *Lex, Rex*, Maclear states that the time of its appearance was propitious when argument, both royalist and parliamentarian, was turning from appeal to immemorial custom to more radical speculations, especially concerning the proper locus of sovereignty.¹²³² According to Maclear, *Lex, Rex*, once again gave classic Reformed answers to questions concerning, among others, the community's ultimate authority, adding that *Lex, Rex* helped familiarize the English public with pertinent Continental traditions respecting authority and rebellion, especially those of the French Monarchomachists¹²³³ Ford states:

Within a few months of the appearance of Maxwell's book a response was published by Samuel Rutherford, professor of divinity at St. Andrews. If the short title of his *Lex, Rex: the law and the prince* can be read as a forthright disclaimer of the antinomian principle, the long title suggests that his purpose was to supply at last the large treatise considered essential by the covenanters for an adequate treatment of royal authority. Where Maxwell had given his book the

¹²³¹ Cf. *Ibid.*, 5 – 7. Elazar also states: "More than anything else, cultures, systems, and humans informed by the covenantal perspective are committed to a way of thinking and conduct that enables them to live free while being bound together in appropriate relationships, to preserve their own integrities while sharing in a common whole, and to pursue both the necessities of human existence and the desiderata of moral response in some reasonable balance. There is a dialectic tension between each of these dualities, which adds the requisite dynamic dimension to covenant-based societies, one that makes such societies covenant-*informed* as well as covenant-based", *ibid.*, 7.

¹²³² J. F. Maclear, *Samuel Rutherford: The Law and the King*, in *Calvinism and the Political Order*, (editor, George L. Hunt, Philadelphia: The Westminster Press, 1965), 68.

¹²³³ *Ibid.* Maclear adds that *Lex, Rex* rested much on Scottish political and religious tradition, and it is this background from which Rutherford's book emerged. Unlike England with its substantial inheritance of strong central government, Scotland's monarchy had continually struggled to establish even limited monarchy. This as a result of the nobles checking the crown, sometimes through the Estates, later through the General Assembly, and frequently through extralegal political alliances and military action. Opposed by Mary of Guise and Mary Stuart, Reformation leaders set the pattern of looking beyond the crown to nobility and parliament as to "little nurse-fathers". Maclear adds that even at James's VI death, Scottish political experience remained predominantly that of a pluralistic society with diffused political power, suspicious of royal centralization, and "emotionally committed to the defense of 'true religion' against the political manipulations of the crown", *ibid.*, 69. Adding to this it is contended that Rutherford's theory on the limitation of central government was, in essence, the product of the physical and religious hardships that the Scottish Protestants were experiencing during the seventeenth century British monarchy, resulting in a Scriptural justification in support of limited rule and just resistance, not only by Rutherford, but by Knox, who, possibly influenced by Christopher Goodman's *How Superior Powers Ought to Be Obeyed*, he (Knox) was teaching the positive duty of rebellion against idolatrous sovereigns by 1558. The Scottish custom of banding with its emphasis on shared authority, local initiative, voluntary commitment, and mutual contractual obligations, proved disturbing to monarchical power, *ibid.*, 70. Rutherford (and Knox) also added Scriptural justification to the custom of banding in order to counter unlimited monarchy, and therefore Maclear rightly states that the tradition within which Rutherford wrote *Lex, Rex*, was based partly on Scottish politics and history, partly on medieval constitutionalism and most importantly on the heritage of the "Reformed kirk", *ibid.*, 69.

English title *The sacred and royall prerogative of Christian kings*, Rutherford gave his the subtitle *A Dispute for the just prerogative of king and people*. He would try to show that both king and people had political power, that one prerogative could be reconciled with the other.¹²³⁴

Rutherford therefore made it clear from the outset that power does not only concern the king but also the people. The people, in their first election limit the king in such a manner, so that he governs by law, and give to him so much power for their good and no more.¹²³⁵ According to Rutherford, (and contrary to the belief of the succession of kingship), it is false that a community, before they be established with rulers, has no politic power. The community has virtually a power to lay on commandments on others; and in appointing rulers and in agreeing to laws, they consent they shall be punished by another, upon supposition of transgression, as the child willingly going to school submits himself to school discipline if he were to transgress any school law.¹²³⁶ Rutherford also refers to Bodin who stated that sovereignty remained in the senate and people; and also to Salomonius (a learned Roman civilian), who wrote various books to refute the supremacy of emperors.¹²³⁷

Rutherford refers to the analogy between the king's power and a husbandly power, and explains that the king's power is not properly and univocally a marital and husbandly power, one of the reasons being that the wife, by nature, is the weaker vessel and inferior to the man, whereas the kingdom is superior to the king.¹²³⁸ Rutherford also refers to the end as being greater than the means or medium; the king being the medium that must aim at piety and justice for the nation and the people, this being the end.¹²³⁹ According to Rutherford the "... pilot is less than the whole passengers; the general less than the whole army; the tutor less than all the children; the physician less than all the living men whose health he careth for;

¹²³⁴ John D. Ford, "*Lex, rex iusto posita: Samuel Rutherford on the Origins of Government*", in *Scots and Britains. Scottish Political Thought and the Unions of 1603*, (edited by Roger A. Mason, Cambridge University Press, 1994), 266.

¹²³⁵ Rutherford, *Lex, Rex*, 201 (2).

¹²³⁶ *Ibid.*, 46 (1). This of course (and bearing in mind what has been discussed already concerning Rutherford's thought on sovereignty), does not mean that once the people have elected the king, they have lost their political power (sovereignty). The people retain their sovereignty, and if need be, apply it in instances such as tyranny which is discussed below. On *ibid.*, 69 (2), Rutherford speaks of the people having virtually all royal power in them, as in a sort of immortal and eternal fountain, and may create to themselves many kings.

¹²³⁷ *Ibid.*, 129 (1).

¹²³⁸ *Ibid.*, 69 (2).

¹²³⁹ *Ibid.*, 77 (2) – 78 (1). The kings are given to God for the preservation of the people, and therefore "the gift (namely the king), as the gift, is less than the party (namely the people as a whole), on whom the gift is bestowed", *ibid.*, 78 (2). Also on *ibid.*, 79 (1), Rutherford says that because the king is obliged to give his life for the safety of the people, he must therefore be inferior to the people. In fact, the functions and duties of the office of the king and magistrates (refer to Chapter 3 above), are of such a nature that they confirm the superiority of the people over the king.

the master or teacher less than all the scholars, because the part is less than the whole; the king is but a part and member of the kingdom.”¹²⁴⁰ According to Rutherford, God gave kings as ransom for his church, and slayed great kings for the people’s sake (as Pharaoh king of Egypt; and Sihon king of the Amorites; and Og king of Bashan); God also pleaded with princes and kings for having destroyed his people (Isaiah 3: 12 – 14), and God made Babylon and her king a threshing-floor for the “violence done to the inhabitants of Zion” (Jeremiah 51: 33 – 35), – God’s people must be so much more important to the Lord than we suppose.¹²⁴¹

In accordance with Rutherford’s understanding concerning the power that the people have in resisting and limiting royal power (discussed below), is the fact that the people therefore have the royal power in themselves as a community, to give to the king. To Rutherford, those who limit power, and those who can take away power, can also give power,¹²⁴² and those who have the power to select kings, have the power to remove kings.¹²⁴³ The king is above the people by reason of derived authority as a watchman, and in actual supremacy, but the king is inferior to the people [in respect of the fountain-power], just as the effect is to the cause.¹²⁴⁴ Power is not an immediate inheritance from heaven, but a birthright of the people which is borrowed from them, and the people may “let it out for their good, and resume it when a man is drunk with it.”¹²⁴⁵ Rutherford adds that if the estates of a kingdom give the power to the king, it is their own power in the fountain; and if they give it for their good, they may likewise have the power to judge when it is used against them. Therefore the people have the power to limit the power that they gave.¹²⁴⁶ According to Rutherford, it is absurd to think that the parliamentary power that creates the crown, and gives the sword and all to the king, must give power to the king to use the sword to annul the power of the parliament itself.¹²⁴⁷ In fact, the assets of the nation belong to the people as a whole.¹²⁴⁸

Bearing the above in mind, it is confirmed that Althusius and Rutherford, two stalwarts of theologico-political federalism, played a major role in the development of Reformed political thought concerning the principle of sovereignty (sovereignty actually being a product of secular thought springing from the early Enlightenment). The important role that the

¹²⁴⁰ *Ibid.*, 78 (1). In this regard cf. *ibid.*, 79 (2), Rutherford, referring to any part as being inferior to the whole, just as the thumb, though the strongest of the fingers, is inferior to the hand, and far more inferior to the whole body. Also cf. *ibid.*, 119 (2): “The part cannot be more excellent than the whole’, nor the effect above the cause.”

¹²⁴¹ *Ibid.*, 78 (2).

¹²⁴² *Ibid.*, 80 (2).

¹²⁴³ *Ibid.*, 126 (2).

¹²⁴⁴ *Ibid.*, 115 (1).

¹²⁴⁵ *Ibid.*, 123 (2).

¹²⁴⁶ *Ibid.*, 143 (1).

¹²⁴⁷ *Ibid.*, 186 (1).

¹²⁴⁸ *Ibid.*, 234 (2).

community plays in electing, resisting and checking on the activities of government is in line with the nature of covenantal federalism, with both parties in the contract playing an active role in governance and with the people as a whole also being responsible for adherence to the covenantal conditions. This accounts for the active role that is provided to the community to oversee the functions of the king and resist as well as elect a new king if need be. Although Althusius and Rutherford contributed much to the idea of the sovereignty of the people, the theologico-political approach to sovereignty as such has much to owe to Reformed political thought stemming from 16th-century France. More specifically, Mornay's *Vindiciae*, which, according to Laski¹²⁴⁹, Rutherford, among others, drew nourishment from for his political theory, provides insights, which are in line with the political ideas on sovereignty emanating from both Althusius and Rutherford. According to Mornay, the whole people, taken in one entire body, is above the king and is also in authority before him (yet being considered one by one, they are under the king). An example of this, according to Mornay, is Ephron, king of the Hittites, who could not grant Abraham the sepulcher, except in the presence, and with the consent of the people. Neither could Hemor the Hevite, king of Sichem, contract an alliance with Jacob without the people's assent and confirmation thereof: because it was during that period when it was the custom to refer the most important affairs to be dispensed and resolved to the general assemblies of the people.¹²⁵⁰ Skinner refers to the Huguenot's support of popular sovereignty, which forms the core of their constitutionalism. According to Skinner, this is clearly presented by Mornay, who insisted that "since the people are originally free of government, and only consent to establish it for their own purposes, they at all times must be regarded as 'the true proprietor' of the commonwealth, exercising 'supreme dominion' over it in the same way that the owner of a fief remains in ultimate control, even though he may choose to delegate its actual administration to someone else."¹²⁵¹

There may be some similarity between the sovereignty of the people on the one hand, and the various representational organs, institutions and offices besides that of the central or national government on the other, which are also included in the discussion concerning the division of powers, on the other. In other words, in the writings of Bullinger, Mornay, Althusius and Rutherford, references are made to the various organs and offices (such as that of the inferior judges, ephori, senators, and parliament), that provide for an effective division of powers theory. On the other hand, these same writers also refer to the parliament, senators, inferior judges, associates and magistrates as *representatives* of the people, also being institutions that

¹²⁴⁹ Mornay, *A Defence of Liberty Against Tyrants*, 54.

¹²⁵⁰ *Ibid.*, 127.

¹²⁵¹ Quentin Skinner, *The Foundations of Modern Political Thought, Volume Two: The Age of the Reformation*, (Cambridge: Cambridge University Press, 1978), 332.

represent the sovereignty of the people. This is clearly witnessed in the above statement by Mornay where, directly after discussing the fact that Ephron, king of the Hittites had to consult with all the people (and Hemor, king of Sichem also had to consult with the people), Mornay discusses the established kingdom of Israel in Old Testament times where the kingdom had her officers, namely the seventy-one elders, and the heads and chief was chosen out of all the tribes, who had the care of the public faith in peace and war,¹²⁵² and one could easily refer to this example as confirmation of the division of powers doctrine, instead of such an example confirming the sovereignty of the people. Whether there must be a strict delineation between these two doctrines or principles is doubtful. One can refer to the division of powers doctrine as part of the sovereignty of the people doctrine, and vice versa. Therefore, it is important to understand these doctrines or principles as integrated in some instances and not as entirely separate.

Mornay's views on the continuous and eternal nature of the sovereignty of the people is similar to Rutherford's. Concerning the question whether prescription of time can take away the right of the people, Mornay states that the commonwealth never dies " ... although kings be taken out of this life one after another: for as the continual running of the water gives the river a perpetual being, so the alternative revolution of birth and death renders the people immortal."¹²⁵³ The representative element in the political theory of the theologico-political

¹²⁵² Mornay, *A Defence Against the Liberty of Tyrants*, 127. In fact, Mornay discusses the various representatives of the people – such as the officers of the people and the magistrates in each of the towns, *ibid.*, 127; governors, ordinary judges, centurions, *ibid.*, 128; the seven magi or sages of the Persian Empire, also the praetor, senators and magistrates, *ibid.*, 129; the barons, deputies, counts and princes in Germany, *ibid.*, 130; and the parliament, *ibid.*, 132 – under the heading of *The whole Body of the people is above the king*, *ibid.*, 124. This therefore implies the integration of the sovereignty of the people with the division of powers present in the community as a whole. On *ibid.*, 139, Mornay refers to the people who have *established* the king, then he refers to the fact that kings have had associates joined with them to contain the latter within the limits of their duties, and that these associates are one by one under the king, but altogether in one entire body are above the king. It can be deduced from this that Mornay understands the associates as representatives of the interests of the people and are, as one entire body, sovereign over the king. This in the context of Mornay's references in general pertaining to the fact that the people as a whole are the king's superior. In this regard also cf. *ibid.*, 212. Therefore, it can be inferred from this that the people are, as one entire body, also sovereign over the king, when referring to the associates of the king as a whole, being superior to the king. The issue concerning the associates could also have been discussed in the context of the division of powers theory (which is discussed earlier on). Also on *ibid.*, 39, Mornay refers to the people as meaning their chosen magistrates who represent, and mirror within themselves, the will of the nation. By this it is clearly understood that the associates are representative of the people, which therefore confirms that the people as a whole are the same as the magistrates (associates) as a whole, both being sovereign over the king, while being equal to each other.

¹²⁵³ *Ibid.*, 137. Compare this with Rutherford stating: "That which is eternal, and cannot politically die, yea, which must continue as the days of heaven, because of God's promise, is more excellent than that which is both accidental, temporary, and mortal. But the people are both eternal as people, because (Eccles. 1. 4) 'one generation passeth away, and another generation cometh', and as a people in covenant with God, (Jer. xxxii. 40, 41,) in respect that a people and church, though mortal in the individuals, yet the church, remaining the church, cannot die; but the king, as king, may and doth die", *ibid.*, Rutherford, *Lex, Rex*, 78 (2).

federalists is also important.¹²⁵⁴ Concerning the principle of representation, Von Gierke states that after the Roman-Canonist theory of Corporations, the political theories of the middle ages made considerable use of the idea of representation in the construction of the church and the state. These theorists borrowed from corporation law (besides the conception of the ruler as a representative of the community, and the derivation of the principle of majority rule from the representation of all by the majority) the theoretical formulation of the *idea of the exercise of the rights belonging to a community by a representative assembly*.¹²⁵⁵ Von Gierke adds that whenever against the right of the ruler, these political theorists set up the right of the community, they affirmed the possibility that the right of the community would be exercised by an assembly of representatives. In fact, in all cases where it seemed that the gathering of the community was impossible, or that the function in hand could not properly be performed by the community, then directly representative action was held to be a necessity. In the words of Von Gierke: “This idea was more precisely defined as a full power of agency, so that a proper act of the assembly of representatives had exactly the same legal effect as an act of the assemblage of all would have had.”¹²⁵⁶

Von Gierke also states that in so far as the political rights were ascribed to the whole people, for the most part their exercise by assemblies of estates was taken as a matter of course, without further inquiry into the basis of this representative function. According to Von Gierke, only the Monarchomachi (to a certain extent), gave more attention to the principle of representation, “but even they were satisfied with somewhat vague and general propositions ... it was but seldom that any one reserved the final decision to the direct assemblage of the people; while Junius Brutus ascribed to the assembly of the ‘Repraesentantes populi’ as an ‘Epitome Regni’, with the same right as that of the People, he still regarded them as dependent on the ‘populus constituens’, and argued in particular that the people’s representatives cannot validly impair the people’s rights, either by negligence or by positive

¹²⁵⁴ Rutherford refers to the king as the “servant of the people representatively, in that the people hath impawned in his hand all their power to do royal service”, Rutherford, *Lex, Rex*, 70 (1), the estates represent the people (“... for many represent many, *ratione numeri et officii*, better than one doth”), *ibid.*, 99 (1), and Rutherford speaks of “... that oath given by the representative-kingdom ...”, *ibid.*, 126 (2). Similarly Althusius also emphasized the representative aspect of the ruling office(s). Concerning the senatorial collegium of the city, Althusius refers to such a collegium as being the representative of the whole community, Althusius, *Politics*, 44. In his discussion on the duties of the ephori, Althusius states that the administrators and rectors of the universal symbiosis and realm represent the body of the universal association, or the whole people by whom they have been constituted, *ibid.*, 92. Althusius also states that God does not intend that the responsibility of worshipping him be given to one person alone, but to the entire people represented by its ministers, ephori, and supreme magistrate, *ibid.*, 158. The supreme magistrate bears and represents the person of the entire realm, of all subjects thereof, and of God from whom all power derives, *ibid.*, 127 – 128.

¹²⁵⁵ Von Gierke, *The Development of Political Theory*, 241.

¹²⁵⁶ *Ibid.*

act.”¹²⁵⁷ In this regard Skinner refers to Mornay’s emphasis of the fact that, while the people never forfeit their ultimate sovereignty, they do give up their right to exercise it directly. Mornay adds that this follows from the fact that the covenant with the king, setting out the terms of his rule, is never sworn by the whole body of the people, but only by their selected *representatives*.¹²⁵⁸

According to Von Gierke, Althusius viewed the estates as important institutions representing the people, but also made a point of giving the people parliamentary powers as an imprescriptible right which cannot be destroyed, in instances where there are no representative institutions.¹²⁵⁹ The disintegration of the theory of representative constitution, came to a halt with the triumph of the absolutist movement. The strict development of the idea of “Ruler’s sovereignty”, which gained ascendancy from the time of Hobbes onwards, left no room for any further representation of the people apart from the perfect and exclusive representation of all by the ruler.¹²⁶⁰ Rutherford’s thought concerning representative constitutionalism did not differ much from that of Mornay’s and Althusius’s. The office of the king, as well as that of the estates and inferior judges were representative of the people that elected them, and were obligated to serve the interests of the people within the parameters of the Divine Law. In fact, the representative element forms part and parcel of the office of the king and that of the other inferior ruling parties, and once the obligations of such an office are not exercised, then the office of the ruler ceases as office which automatically causes the representative element to disappear. The breaking of the covenant condition by the king results in the cessation of the king’s representation of the community. The office of the king does not only contain the Divine precepts but is also a power that is representative of the people.

Moltmann refers to Hobbes, who constructed the unity of the *Leviathan* using the idea of representation – and that unity lies in the representer not the represented. Although

¹²⁵⁷ Ibid., 244. Adding to the background of the principle of representation, Franklin states that the idea of institutional restraints on royal power was associated with the rise and development in the Middle Ages, of representative estates assemblies. Franklin adds that in these bodies, the base of the older, feudal forms of consultation was expanded to include deputations from the more important towns and sometimes other segments of society that had become politically significant so that the estates assemblies began to appear as representations of the community at large, Julian H. Franklin. “Introduction” in *Constitutionalism and Resistance in the Sixteenth Century. Three Treatises by Hotman, Beza, and Mornay*, (translated and edited by Julian H. Franklin, Western Publishing Company, Inc., 1969), 12 – 13. The theologico-political federalists such as Mornay, Althusius and Rutherford provided ample discussion on the importance of representation and assisted in the development of this principle, together with others such as Hotman and Beza.

¹²⁵⁸ Skinner, *Foundations of Modern Political Thought*, 331.

¹²⁵⁹ Von Gierke, *The Development of Political Theory*, 244 – 245.

¹²⁶⁰ Ibid., 246.

representation, according to Moltmann, is a normal occurrence in all forms of human social life, this inevitable representation and proxy is always accompanied by the danger of alienation – “Political alienation always arises when representatives lord it over those whom they are to represent and when the people submit to their own government.”¹²⁶¹ Merely representative democracy is not sufficient, although being necessary, it must be supplemented by direct democracy – “The ‘covenantization’ of social life and the federalising of political life – social covenant – generation covenant – covenant with the earth – can lead to pluralism without chaos and to peace without dictatorship.”¹²⁶²

It is this direct democracy that the theologico-political federalists championed, especially Mornay, Althusius and Rutherford. The participatory element – in areas such as the community’s active role in the election of the king, the division of powers principle which supports and promotes participation between various levels of authority, the right of resistance that the people have in situations of tyranny, the idea of sovereignty as first and foremost being present in the people, the bilateral and mutual covenant relationship between the king and the people which forms an inherent and foundational characteristic of theologico-political federalism, and the office of king as limited to, among others, the idea of a functionary acting in the interests of the community – came to the fore in leaps and bounds in the political theories of the theologico-political federalists; with Althusius and Rutherford, aiding the development of direct democracy, under leadership of the Divine Will and the relevance of the Decalogue as a measure for governance. What is important, is the fact that the sovereignty of the people was to be subordinate to the sovereignty of God’s law. The sovereignty of the law also had to be applied to the ruler. Since the ruler’s very position made him more susceptible to sin and misuse of his power, there had to be a superintendent power above the king and God Almighty also had to be above all. Therefore, Rae states that to Rutherford, God’s law was to be sovereign – The king as a reasonable but fallen creature needed law and reason to regulate him and this law had to include some “coercive limitation”.¹²⁶³ The sovereignty of the law also plays a part in Rutherford’s theory on active resistance where Rutherford is primarily concerned with a “moral obligation, not a freedom right to resist the ruler when he governs contrary to God’s law” (more of Rutherford’s theory on resistance below).¹²⁶⁴ This sovereignty of the law and legitimacy of active resistance forms, according to Rae, an integral part of Rutherford’s political theory. Rae states that

¹²⁶¹ Moltmann, “Covenant or Leviathan? Political Theology for Modern Times”, 40.

¹²⁶² *Ibid.*, 41.

¹²⁶³ C. E. Rae, *The political thought of Samuel Rutherford*, (unpublished M. A. dissertation: University of Guelph, 1991), 84. For Rutherford, the law of God also has a constant, determined and continuous character and therefore the law of God as covenantal conditions cannot be changed contractually by either parties to the contract or covenant, cf. in this regard, *ibid.*, 90 – 92.

¹²⁶⁴ *Ibid.*, 77.

Rutherford, in a political context, was involved in three debates. The first being the question as to where sovereignty resided. The second was over the legitimacy of active resistance to authority, and the third (which Rutherford would insist was necessarily linked to the first), concerned the question of whether or not Christ Jesus would be king in Scotland.¹²⁶⁵ In this regard, Rae refers to McKnight's comment, namely:

The answer to this question was given once for all in Rutherford's *Lex, Rex*. Sovereignty resides in the law – proximately in the law of the realm, ethically in the law of righteousness; or, better perhaps, in the law of the realm in so far as the law of the realm springs from and is consistent with, the law of righteousness; which in turn is but to say, in so far as the law of the realm gives expression to, and is a transcript of, the will of God. At bottom, all authority – genuine authority – seated though it is in the people, is from above.¹²⁶⁶

Franklin states that the constitutionalism associated with the Germanic kingships of the early Middle Ages was generally limited to the right of active resistance (by the whole community or any part thereof), against a ruler who had come into serious conflict with the sense of justice embodied in the folk tradition. This implied that the supremacy of law was not guaranteed by regular institutional controls.¹²⁶⁷ Franklin adds that the king could act upon his own discretion, for even if the king was expected to consult with the magnates or wise men of the realm before making any great decision, he was not bound to do so. This type of thought was also accompanied by the understanding that the acknowledged right to resist, or even overthrow a king was not regarded as an act of the community “done in its corporate capacity against a ruler whose authority, as a mandatory of the people, could be revoked by it for cause” – an unjust ruler was simply set aside and a successor subsequently confirmed.¹²⁶⁸ In this regard Franklin comments: “Hence the notion of the supremacy of law, although deeply rooted in the early medieval tradition, was not associated with two ancillary concepts that are fundamental to modern constitutionalism – the idea of a sovereign community from which all authority derives, and the institutionalization of that sovereignty through control of governmental power by the people or their representatives.”¹²⁶⁹ Although this statement of Franklin's refers to the importance of Hotman, Beza and Mornay's contributions to the development of modern constitutionalism, it can be maintained that the theologico-political

¹²⁶⁵ *Ibid.*

¹²⁶⁶ *Ibid.* For more on the law as perceived by Rutherford and the other theologico-political federalists cf. Chapter 3, above.

¹²⁶⁷ Franklin, “Introduction”, 11.

¹²⁶⁸ *Ibid.*

¹²⁶⁹ *Ibid.*, 11 – 12.

federalists (of which Mornay was one), also no doubt, contributed to the development of this modern constitutionalism, where government was subordinate to the people as a whole and where the various representatives of the people could act as an overseer over the acts of the king. There is also no doubt that Rutherford's theologico-political federalism was, to a large extent, responsible for the emphasis of this modern constitutionalism (emphasizing the sovereignty of the people and the importance of representatives of the community as checks on the ruler), in 17th-century Scotland.

1.2 The Divine Right of Kings

Moots states that the very character of the Reformation was a threat to *Divine Right*, and was nothing else but a theological struggle against the Pope as king. Politically, it inspired many revolts against existing regimes. This new development (against the principle of the Divine Right of Kings), resulted in the king's accountability to God becoming paramount in the consideration of rule. The king was not only a man, he was a fallible and fallen man whose rule was conditional upon his compliance with God's law; and this law not only had the potential to be grasped by the ruler and his bishops but by the Spirit that interpreted Scriptures. This made it possible for individual Christian citizens to determine whether the character and work of their ruler was good or evil.¹²⁷⁰ What is to be understood concerning the principle of the Divine Right of Kings? This principle involves the understanding that monarchy is a divinely ordained institution and that a hereditary right is indefeasible. This means that the right acquired by birth cannot be forfeited through any acts of usurpation, of however long continuance, nor by any incapacity in the heir, nor by any act of disposition. In addition, this theory includes the understanding that kings are accountable to God alone and that non-resistance and passive obedience are enjoined by God.¹²⁷¹ By the former is meant

¹²⁷⁰ Glenn A. Moots, *The Evolution of Reformed Political Thought and the Revival of the Natural Law Theory*, (A thesis Submitted to the Graduate Faculty of the Louisiana State University and Agricultural and Mechanical College in partial fulfillment of the requirements for the degree of Master of Arts in Political Science, The University of Michigan, 1991), 108 – 109. At *ibid.*, 109, Moots states: "Goodman, Knox, and Rutherford questioned the divine right of kings by citing potential difficulties in succession and rule."

¹²⁷¹ John N. Figgis, *The Divine Right of Kings*, Second Edition, (Cambridge: Cambridge University Press, 1914), 5 – 6. Also cf., Hinsley, *Sovereignty*, 133; the author referring to Filmer who supported the following elements familiar to the principles of the Divine Right of Kings namely: (1) there is no form of government but monarchy only; (2) there is no monarchy but paternal; (3) there is no paternal monarchy, but absolute or arbitrary; (4) there is no such thing as aristocracy or democracy; (5) there is no such form of government as tyranny; (6) the people are not born free by nature. From a perspective on Scottish history Webb states: "The Divine Right theory of James has the following main parts: (1) a king has a direct individual right from God to his throne; (2) he inherits this right; (3) he is responsible only to God; (4) his right to rule – or prerogative – is an order above the ordinary law of the land. Whether these strong theoretical claims had any appreciable influence in actually securing the throne

that monarchy is pure, with the sovereignty being entirely vested in the king whose power is incapable of legal limitation. The king cannot limit, divide or alienate the sovereignty in any way to prejudice the right of his successor to its complete exercise; and a mixed or limited monarchy is a contradiction in terms.¹²⁷²

Concerning non-resistance and obedience that are enjoined by God in the context of the Divine Right of Kings, it is to be understood that resistance to the king, under any circumstances, is a sin and ensures damnation. When the king issues a command which is directly contrary to God's law, all penalties attached to the breach of the law are to be patiently endured.¹²⁷³ Figgis states that the theory of the Divine Right of Kings arose out of the reaction against the Papal pretensions. It was the need of a controversial method to meet the claims of the spiritual power which produced this doctrine.¹²⁷⁴ Figgis also states that the Divine Right of Kings on its political side was little more than the popular form of expression for the theory of sovereignty.¹²⁷⁵ In 16th-century France, Bodin's statements on legislative sovereignty were regarded as filling a vital need. Theorists had long been feeling their way toward a political conception representing the king as primarily a legislator. Church says that it was not Bodin's thought as a whole which was adopted by his followers, but rather certain salient features which were appropriated because of their immediate value to contemporary writers; and such was the fate of his most important contribution namely his theory of sovereignty.¹²⁷⁶ Hinsley also refers to the influence that Bodin had in strengthening the principle of the Divine Right of Kings; stating that many of the advocates of monarchy continued to rely solely on the theocratic justification of monarchy, but that "at least the more intelligent among them used Bodin's idea to strengthen the Divine Right of Kings – to argue that the sovereign nature of government authority was further proof that it could be held only

for James is doubtful, but in his later actions and pronouncements, he often appears not only to believe they were influential initially, but also that they provide a basis for him to rule as he sees fit without consultation with parliament. John Maxwell's statement of a theory of kingship a half-century later, this time on behalf of James's son, Charles I, adopts the same viewpoint as James and supports it with similar arguments", Omri K. Webb, Jr., *The political thought of Samuel Rutherford*, (unpublished Ph. D. dissertation, Duke University, 1963), 112. In this regards refer also to Webb's discussion on the reasons (Scriptural and the Law of Nature) provided as qualification for the Divine Right of Kings, *ibid.*, 112 – 115.

¹²⁷² Figgis, *The Divine Right of Kings*, 5 – 6.

¹²⁷³ *Ibid.*, 6.

¹²⁷⁴ *Ibid.*, 179, 181.

¹²⁷⁵ *Ibid.*, 237.

¹²⁷⁶ William F. Church, *Constitutional Thought in Sixteenth-Century France*, (Harvard University Press, 1941), 243 – 244. Church states: "That Bodin's approach to kingship through its natural and human basis, rather than its divine, varied from that of his contemporaries is revealed by the criticisms which Duret leveled at him because of his unorthodox statements on that point. Likewise, Grimaudet and Blackwood, while accepting Bodin's theory of the sovereign power, insisted heavily upon its basis in divine institution", *ibid.*, 247.

by a monarch who could be subject only to God.”¹²⁷⁷ Skinner states that in the 1580s, the influence of Bodin’s *Six Books* (together with *Le Roy on Aristotle*), was great among “scholars” and that during this same period Bodin’s distinctive analysis of sovereignty was taken over by a large number of political theorists in France. Skinner adds: “To this list we should add the names of two Gallicised Scotsmen, Adam Blackwood and William Barclay. Both went on to turn these arguments specifically against the writers whom Barclay dubbed the ‘monarchomachs’ or king-killers, and in particular against their own fellow-countryman George Buchanan, the most radical of all the Calvinist revolutionaries.”¹²⁷⁸ Skinner says that as a result of this onslaught, Locke singled Barclay out as one of the greatest “assertors” of “the power and sacredness of kings”. Skinner adds that this description suited all the other French writers on absolutism during this period – All of them took Bodin’s claim that an absolute form of legislative sovereignty needed to be located at some determinate point in every state, adding to this the “originally Protestant belief that all such powers are directly ordained by God, so that to offer any resistance to the king is strictly equivalent to resisting the will of God.”¹²⁷⁹ In this regard Skinner comments that the union of Bodin’s idea concerning sovereignty in a determinate point and the idea that this determinate power of sovereignty (such as in monarchy), is a power directly ordained by God (so that to offer any resistance to the king is strictly equivalent to resisting the will of God), the distinctive concept of the “divine right” of kings was finally articulated.¹²⁸⁰

The element of divine right was present and of increasing influence, but such an interpretation was lacking from Bodin’s fundamental approach – the basis of the sovereign authority he found in its necessity in every legitimate state as a fact of nature. However, the approach through divine right was a favorite with the great majority of the *politiques*, and when they adopted Bodin’s theory of sovereignty, they inevitably placed it in a theoretical framework in which the royal authority rested upon direct divine authorization. Church adds:

¹²⁷⁷ Hinsley, *Sovereignty*, 132.

¹²⁷⁸ Skinner, *The Foundations of Modern Political Thought*, 300 – 301.

¹²⁷⁹ *Ibid.*, 301. It is interesting to note that in this regard, Hall states that Hobbes went so far as to call for an absolutist type *Leviathan*, except that the necessity for such was not based on the traditional British claim for the divine right of kings. Instead, it was founded upon the pragmatic consideration that human beings behaved better and more civilly when supervised by a monarchical power. Hall adds that Hobbes advocated an absolute sovereignty for the monarch and in doing so managed to alienate both the traditional British divine-right theorists, and also the Puritans who were the champions of free men, David W. Hall, *Savior or Servant? Putting Government in its Place*, (Oak Ridge, Tennessee: The Kuyper Foundation, 1996), 254 – 255. Hobbes therefore had similar views as Bodin regarding the authority of the ruler, the latter being inferior to no “higher authority” and also not limited in his rule by any covenantal obligation.

¹²⁸⁰ Skinner, *The Foundations of Modern Political Thought*, 301.

It was the all-important union of legislative sovereignty and the divine right of kings which caused the major distortion of Bodin's idea of rulership and foreshadowed the major development in political theory during the remainder of the century. It would not be great exaggeration to attribute the origins of seventeenth-century absolutism to this union of concepts. But the appearance of that new theory of state was not delayed until the strong rule of the Bourbon kings; it was set forth in its essentials very soon after the publication of the *Republic* because of the immediate adoption of Bodin's contribution by the royalist writers who turned it to account in maintaining the cause of the legitimate monarch, whether Henry III or Henry IV.¹²⁸¹

Church also observes that the French political writers of the 1580s presented a complete theory of the divine authorization of the political power. Although some of them placed much emphasis on the majesty and quasi-divine qualities of the king, their major conception was concerned with the royal authority rather than the person of the king – “Strictly, the theory was one of the divine right of kingship rather than of kings. Although Grégoire placed very heavy stress upon the exalted qualities of royal government, he preserved the distinction between the person of the king and his office, making it clear that the divine character and consequent glory of regality adhered strictly to the latter”¹²⁸²

The theory of the divine right of kings, in which the personal divine right of the monarch was emphasized, in 16th-century France, was to win acceptance in England at a date not far distant. The ruler was regarded as that divinely chosen individual who enjoyed a proprietary right in the entire body of public authority – “Thus, the divine authorization was shifted from the crown to its holder, and the theory became one of the divine right of kings in the strictest sense.”¹²⁸³ Hinsely states that from the beginning of the 17th century, under the influence of Bodin's heightened interpretation of the character of supreme power and from the wish to deny the notion of contract altogether, the doctrine received a final elaboration. Convinced that monarchy was now being “crucified between two thieves, the Pope and the People”, its

¹²⁸¹ Church, *Constitutional Thought in Sixteenth-Century France*, 244 – 245. Also cf., *ibid.*, 250 – 251, “When Bodin's followers gave his theory of sovereignty a basis in divine authorization, they took a major step toward the later theory of absolutism ... Bodin's conception of sovereignty had attributed to the ruler the combined authorities to make new law and to enforce its execution. And when royal authority of that type was given a basis in divine authorization, the resulting idealization of the monarch's rule caused thinkers increasingly to regard the law made by the king as the earthly manifestation of God's will, or at least to believe that it was inspired by agents beyond the capacity of ordinary mortals. Thus the king was a living law in the most complete sense. Likewise, he could do no wrong, for he himself might establish the standard according to which his acts were evaluated.”

¹²⁸² *Ibid.*, 248.

¹²⁸³ *Ibid.*, 249.

adherents at last added to the argument that the king could be responsible to God alone, so that his power was irremovable by human agency. The argument being that this power could be held only by the monarch to whom it had descended by primogeniture in the male line. Hinsley refers to James I, who insisted that God's choice was announced by birth.¹²⁸⁴

In 16th-century Scotland, the principle of the divine right of kings was emphasized by James I who undertook to answer Cardinal Bellarmine with an exposition of this principle. In 1570 the Pope excommunicated Queen Elizabeth, and the Spanish Armada of 1588 was sent to restore the true faith by unseating the untrue Queen. But Englishmen had no desire to be freed from allegiance, and their response to the papal judgment was not limited to gunfire. King James I explained that a king did not receive his authority through the hands of a pope or of any other church officer, but directly from God himself. Morgan states that although the Puritans preferred to think that power passed to the king from God through the medium of a popular choice and covenant, they applauded James's exclusion of the church from any share in the making of governments.¹²⁸⁵ According to Dunning, James I, before his succession to the English throne, formulated a systematic statement of the divine right of kings in his short treatise entitled, *The True Law of Free Monarchy*. This was the formal repudiation of the teachings which Buchanan, as the tutor of James, had embodied in the *De Jure Regni apud Scotos*.¹²⁸⁶ Dunning adds: "The *True Law* had for its thesis the dogma that kings rule by divine right and that subjects have no recourse against them, and undertook to sustain this by arguments from Scripture, from the laws of Scotland and from the law of nature ... From the history of Scotland was derived the conclusion that the king in that country was the supreme legislator and administrator and had power of life and death over every subject."¹²⁸⁷ While denying that there is implied in the coronation oath any contract between king and people, as the monarchomachs¹²⁸⁸ held, James argued that if there were such a contract, it would be the

¹²⁸⁴ Hinsley, *Sovereignty*, 133.

¹²⁸⁵ Edmund S. Morgan, "Introduction", in *Puritan Political Ideas 1558 – 1794*, (edited by Edmund S. Morgan, The Bobbs-Merrill Company Inc., 1965), xxviii.

¹²⁸⁶ William A. Dunning, *A History of Political Theories. From Luther to Montesquieu*, (New York and London: The MacMillan Company, 1938), 215.

¹²⁸⁷ *Ibid.*, 215 – 216.

¹²⁸⁸ The name "monarchomach" was apparently invented by William Barclay in his *De regno et regali potestate* (1600) to describe any writer who justified the right to resist, and it did not imply an objection to monarchy as such, Sabine and Thorson, *A History of Political Theory*, 369. In this regard, Fuhrmann comments that the word "monarchomachists" refers to "enemies of the monarchy" or "fighters against the king"; one of their most frequent arguments being the medieval idea that "magistrates have been created for the people and not the people for the magistrates, and they even insist on the idea that even in hereditary regimes, it is the popular consent that makes the king, Paul T. Fuhrmann, "Philip Mornay and the Huguenot Challenge to Absolutism", in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 48. It is also interesting to note that Fuhrmann emphasizes the idea of the contract in the political thought of the Monarchomachs, stating: "The Monarchomachists use the words 'contract' and 'pact' (Beza's) so frequently that they are now

height of injustice to ascribe to one party the right to say when the agreement had been violated; and that the only umpire would be God, and to Him, therefore, all appeals against tyranny must be made.¹²⁸⁹ James wrote that kings are breathing images of God upon earth adding: “The state of monarchy is the supremest thing upon earth: for kings are not only God’s lieutenants upon earth, and sit upon God’s throne, but even by God himself they are called gods.”¹²⁹⁰ The king is like a father as compared to his children, or like the head as compared with the body. The people are a mere “headless multitude”, incapable of making law, which proceeds from the king as the divinely instituted lawgiver of his people.¹²⁹¹ Applying his theory to Scotland, James asserted that kings existed before there were estates or ranks of men, before parliaments were held or laws made, and that even property in land existed only by the grant of the king: “And so it follows of necessity, that kings were the authors and makers of the laws, and not the laws of the kings”.¹²⁹² In 1616, James charged his judges in Star Chamber: “That which concerns the mystery of the king’s power is not lawful to be disputed; for that is to wade into the weakness of princes, and to take away the mystical reverence that belongs unto them that sit in the throne of God.”¹²⁹³ Elazar makes an important observation on the link between the opposition against the principle of the divine right of kings and the role of the covenant in this opposition:

Perhaps the greatest political revolution of modernity was the republican revolution – the restoration of the idea that the polity was a *res publica*, a commonwealth, the possession of its citizens, and not of some single individual or group who happened to rule it. The republican revolution was born out of the revolt against the divine right of kings, in itself a heresy that grew out of the rejection of medieval constitutionalism in the middle of the previous epoch. The justification for the republican revolution was drawn directly and explicitly from the covenant idea in either its religious or secular form; that is to say, either because God, in establishing His covenant with humanity, rejected tyranny as a violation of the terms of that covenant, or because autonomous humans came

considered the inventors of the contract theory”, and Mornay’s *Vindiciae* leaves no doubt in confirmation of this, *ibid.*, 49.

¹²⁸⁹ Dunning, *A History of Political Theories*, 216. Dunning states that it was on this platform of a divine commission to rule that James consistently maintained his stand against all pretensions to power by his subjects and his philosophical argument for absolute power was supplemented by a habitual assumption in speech of the sacrosanctness and mystery of the royal function, *ibid.*, 216 – 217.

¹²⁹⁰ Sabine and Thorson, *A History of Political Theory*, 368.

¹²⁹¹ *Ibid.*

¹²⁹² *Ibid.*

¹²⁹³ *Ibid.*, 368 – 369. The authors add that James always admitted that he was responsible in the highest degree, but responsible to God and not to his subjects. In all ordinary matters he acknowledged that a king ought to give the same respect to the law of the land that he demanded of his subjects, but this is a voluntary submission which cannot be enforced, *ibid.*, 369.

together in political covenants or compacts to form civil society in order to protect themselves from the errors of living in a state of nature and to gain the benefits of association on the basis of mutuality. In essence, covenants or compacts created the publics out of which republics could be constructed.¹²⁹⁴

It is this understanding, especially and more specifically the idea of the biblical covenant, that theologico-political federalism postulated in order to counter absolute monarchy based on the principle of the Divine Right of kings. In fact, the doctrine of the divine right of kings gave rise to Rutherford's *Lex, Rex*, this work, according to Flinn, being a polemical piece, styled as a point by point refutation of the doctrine of the divine right of kings, "as presented in the work of a 'popish prelate', John Maxwell (who had been excommunicated from the Church of Scotland), entitled 'The Sacred and Royal Prerogative of Christians Kings', or *Sacro-Sancta Regnum Majestas*."¹²⁹⁵ *Lex, Rex* was in opposition to the absolute sovereignty of the king, emphasizing the participation of the community under guidance of the Divine Will. Rutherford's theory concerning the election of the king, the community's responsibility as party to the covenant between God and the community as well as the covenant between the king and the people, and the active role that the people have concerning resistance to tyranny, are issues that Rutherford emphasized as important in countering the absolutist tendencies emanating from the doctrine of the divine right of kings. This contribution by Rutherford is similar to that postulated by the theologico-political federalists, Rutherford forming an important constituent in the development of federalism in 17th-century Scotland. In fact, *Lex, Rex* "literally shattered the old mischievous idea of the Divine Right of Kings."¹²⁹⁶

1.3 The Election of the King

Sovereignty, understood as the ultimate decision-making power of a nation, has implications concerning the appointment, denial and expiration of such decision-making power. Absolute sovereignty in the king implies that the king alone is in control of the appointment, denial and

¹²⁹⁴ Elazar, *Covenant and Commonwealth*, 50.

¹²⁹⁵ Richard Flinn, "Samuel Rutherford and Puritan Political Theory", *Journal of Christian Reconstruction*, Vol. 5 (1978 – 9), 50 – 51. In this regard Webb states: "But while all believed in God, there were various ideas of how He works in the world. Royalist, parliamentarian, Anglican, Presbyterian, Independent, and Roman Catholic alike agreed that God is the source of political power, yet, they advocated different political systems. The differences between the systems were bitterly disputed by their various advocates, each claiming that his system most truly explained how God works in the political order. Rutherford became involved in the controversy, and he singled out the so-called Divine Right of Kings theory for his most vehement opposition. In *Lex, Rex* the Divine Right theory is presented as a complete perversion of what the idea of government 'under God' means", Webb, *The political thought of Samuel Rutherford*, 28 – 29.

¹²⁹⁶ Rae, *The political thought of Samuel Rutherford*, 76.

expiration of the office of kingship, whereas the view of popular sovereignty implies that the people (as a whole) are in control. In this context the principle of election, confirmation and termination of the ruling party provides a clear indication as to the verification of where sovereignty actually is situated. In this context, the theologico-political federalists make it clear that sovereignty resides in the people as a result of the power that the people have concerning the election, confirmation and termination of the ruler. In this regard Bullinger emphasizes the importance of the people in the election of the king. He states that in certain instances the whole community chooses their peers, and in other instances princes come to the throne by succession and birth. However, Bullinger warns that where princes come to the throne by birth, their earnest prayer must be made to the Lord that He will grant them to be good.¹²⁹⁷ From this it should not be inferred that theologico-political federalism was responsible for the emphasis on the importance of the people in the election of the king. In this regard, O'Donovan states that neither St. Augustine nor Suárez (nor the majority of premodern Christian writers), regarded divine appointment to political authority as precluding human appointment. Rather they endorsed a theory of dual appointment, divine and human.¹²⁹⁸ O'Donovan also refers to the tradition of political election, with roots in Teutonic and Roman custom and law, which developed an alternative theological interpretation of the community's role. O'Donovan adds that this interpretation, as authoritatively set out by the civil and canon lawyers and built upon by the late medieval theologians, presents the community as the immediate source of political rule, with the right to confer it on one or more chosen persons –

The theory that God invests self-sufficient human associations with the right to establish governments to serve the common good; so that the consent of the people plays a constitutive role in the institution of political authority, but a secondary role, after God, who remains the primary author. The Protestant reconstruction of this tradition by the insertion of Old Testament covenantal ideas strongly reinforced the primacy of divine over human election. At its most theologically commanding, in the writings of the French Calvinists (*Huguenots*), the institution of political authority entailed two distinct covenants or pacts ...

¹²⁹⁷ Heinrich Bullinger, *The Decades of Henry Bullinger*, 4 Volumes, (translated by H. I. and edited for the Parker Society by Thomas Harding, Cambridge: Cambridge University Press, 1849-1852), (The Second Decade), 2: 319. Bullinger adds: "In discussing which of these orders should be the best, it were but folly to make much ado. For to every kingdom and every city is worthily left their country fashion, unless it be altogether too corrupt, and not to be borne withal", *ibid.*

¹²⁹⁸ Joan Lockwood O'Donovan, "Political Authority and European Community: The Challenge of the Christian Political Tradition", *Scottish Journal of Theology*, Vol. 47, Number 1, (1994), 7.

The two covenants leave no doubt that rulers hold their authority ‘from the people after God’.¹²⁹⁹

This confirms not only the fact that theologico-political federalism formed part of earlier thought on the election of the king by the people, but more importantly, theologico-political federalism introduced this principle into the covenant concept. In this context, the people have a covenantal responsibility to elect a ruler that will be loyal to the covenantal conditions as espoused by the Divine Will.

The contribution of Althusius to the power of the people in the election of the king is important to take note of. This confirms the participation of the people in the contract between them and the king, which also implies the active role that the community plays in the covenantal relationship with God. Althusius briefly refers to the history of Israel, the exodus out of Egypt, the period of the judges and the election of the first king, namely Saul, who was preceded by David. God, by his Word, established the descendants of David in the control of the realm, and these actions were so performed by him that the consent and approval of the people were not excluded from the process of designating these kings and putting them in control of the realm:

Rather the matter was so handled that the kings were considered to be chosen by the people as well, and to receive there from the right of kingship. This can be discovered in sacred history by anyone willing to inspect it, and to study it with care. Indeed, it is evident that the supremely good and great God has assigned to the political community this necessity and power of electing and constituting.¹³⁰⁰

According to Althusius even the ephori are elected and constituted by the consent of the entire people. In this regard Althusius states that the ephori are constituted by, among others, the votes of the entire people, or through the votes and divisions of individuals. Sometimes even the prince, supreme magistrate or optimates have the power of electing an ephor, or of substituting another in place of one who has died, and this is done through the favor and concession of the people.¹³⁰¹ Althusius also speaks of the covenant or constitution by which the supreme magistrate is constituted by the ephori with the consent of the associated bodies.

¹²⁹⁹ Ibid., 8 – 9.

¹³⁰⁰ Althusius, *Politics*, 90. Similar to Rutherford (who is discussed below concerning the election of the king), Althusius refers essentially to Deuteronomy 17 to confirm the election by the people, *ibid.*, 90, more specifically the Biblical texts Althusius refers to in confirmation of the above are: Deuteronomy 16: 18; 17: 14, 15; 2 Samuel 5: 3; 1 Kings 1: 34, 40; 12: 1f.

¹³⁰¹ Ibid., 97. An example of the latter is Moses who constituted seventy elders by the mandate of God (Numbers 11: 24f).

The election is the process by which the ephori of the realm choose and designate the supreme magistrate according to piety and justice (which is none other than the covenant conditions).¹³⁰² Althusius's understanding concerning the presence of sovereignty discussed above, also finds relevance in the election of the king. Althusius states: "Therefore, the king, prince, and optimates recognize this associated body as their superiour, by which they are constituted, removed, exiled, and deprived of authority ...".¹³⁰³ According to Althusius the right of the king consists in the faithful and diligent care and administration of the commonwealth entrusted to him by the people; and when the king dies or is denied the regal throne by any legitimate means, these rights of the king returns to the people as to their proprietor.¹³⁰⁴

The influence that Althusius had on Scottish political thought can be traced in the thought of Rutherford as well as other prominent Scottish political theorists such as Alexander Henderson. Cowan refers to Henderson, who stated in his *Instructions for Defensive Arms* (1639), that: "The people make the magistrate [king], but the magistrate maketh not the people. The people may be without the magistrate but the magistrate cannot be without the people. The body of the magistrate is mortal, but the people as a society is immortal". Cowan adds that these words were lifted straight out of Chapter nineteen of Johan Althaus's *Politica Methodice Digesta*.¹³⁰⁵

Rutherford stated that the king may be said to be from God in the following instances: (1) by permission as illustrated in Jeremiah 43: 10; (2) by way of naked approbation (approval or consent), and this entails that God gives the people the power to choose the government that they deem proper; (3) by particular designation, for example where God appointed Saul by name to be the king of Israel; and (4) the royal office is from God by divine institution, and not by naked approbation.¹³⁰⁶ This latter point refers to the fact that the people as a whole do not create nor determine the contents of the office of magistracy. The conditions inherent in the office are predetermined by God and cannot be amended or added to via consent, unlike the understanding which Hobbes especially propagated. According to Rutherford the way of naked approbation, must be understood as the people playing an active role in the election of

¹³⁰² Ibid., 118. Also cf. *ibid.*, 35, concerning the appointment of the superior of the city by the consent of the citizens; *ibid.*, 36, concerning the election of the superior of the hamlet by the hamlet dwellers; *ibid.*, 38, concerning the election of the senators by the senatorial collegium; and *ibid.*, 87, concerning the election of the public ministers of the realm who are elected by the united and associated bodies or members of the realm for the purpose of conserving the body and rights of the universal association.

¹³⁰³ *Ibid.*, 67 – 68.

¹³⁰⁴ *Ibid.*, 109.

¹³⁰⁵ Cowan, "The Making of the National Covenant", 81.

¹³⁰⁶ Rutherford, *Lex, Rex*, 3 (2) – 4 (1).

the king, and that although God has created the office of the king, the people can choose who the person must be who is to occupy such an office, provided that the requirements as set out in Deuteronomy 17 are adhered to. Although the people partake actively in this election, God directs them in this process. As will be noted below, the people are in addition, free to choose which form of government they want, whether a monarchy, aristocracy or a democracy. Where the king is awarded the throne by means of a particular designation, as with Saul, the consent of the people is still required, although God directs them in such consent. Concerning the royal office that is ordained by God, Rutherford is specifically referring to the office of the king.¹³⁰⁷ The office of the king is separate from the person of the king and concerns the characteristics, requirements, and conditions of ruling. The area so-to-say in which these requirements are lodged constitutes the office, and it is this area that God has created and ordained. Also included in the office is the law of God, which includes the functions and duties that are to emanate from such an office. As to who the occupier should be is another concern. In like manner, Aaron's priesthood is also of divine institution because God stipulates certain requirements for the priesthood, and the same can be said concerning the pastor because the Holy Spirit describes his qualifications (1 Timothy 3: 1 – 4).¹³⁰⁸ Similarly, Deuteronomy 17: 15 and Romans 13: 1, 4; 1 Peter 2: 13 – 14; Timothy 3: 1, refer to this office of the king, and implies an ordinance, power(s), principality(ies) created and instituted by God – it is an invention of God, and it is to these ordinances and powers to which the people (as well as the king), owe subjection.¹³⁰⁹ The office of the ruler can also take on various forms, such as aristocracy, monarchy and democracy.¹³¹⁰

From the outset, it must be borne in mind that Rutherford draws a clear distinction between the office of the ruler and the person of the ruler; the latter being relevant to that which concerns the election of the ruler by the people as a whole (provided that the conditions required by the office and by the covenantal relationship between God and the community, as well as the covenantal relationship between the king and the people, are adhered to). Rutherford, throughout *Lex, Rex*, emphasizes that if there are two or more persons with similar requirements for the crown, it is the people that elect a certain person to the crown, to

¹³⁰⁷ Refer to Chapter 3 above, for a more elaborate discussion concerning the office the king, magistrates and judges, among others.

¹³⁰⁸ *Ibid.*, 4 (1).

¹³⁰⁹ *Ibid.*, 4 (1) – 4 (2).

¹³¹⁰ Rutherford states in *ibid.*, 53 (1): “I believe any of the three forms are freely chosen by the people.” Here Rutherford is referring to the three forms of government namely monarchy, aristocracy and democracy. Also refer to Chapter 4 above, concerning the various forms of government and their validity. Also cf. *ibid.*, 29 (2), Rutherford states: “... a community transplanted to India, or any place of the world not before inhabited, have a perfect liberty to choose either a monarchy, or a democracy, or an aristocracy; for though nature incline them to government in general, yet are they not naturally determinated to any one of those three more than another.”

the exclusion of the others. God had created the crown and the people have an active role to play in appointing someone to that crown. Rutherford states that the power of creating a man a king comes from the people, because those who may elect a certain person as a king rather than any other man, have the power to appoint someone to the throne. Rutherford illustrates this by stating: “If a man have power to marry this woman and not that woman, we may strongly conclude that he hath power to marry.”¹³¹¹ This also implies that just as the man plays an active part in choosing the specific woman, so the people play an active role in choosing a certain person as king, to the exclusion of all others. God, the creator of the office of the king, also partakes in the acts of the people when electing a king; Rutherford referring to God, who, by the people, by Nathan the prophet, and by the servants of David and the states, made Solomon king. This act points to the real action by the people. God is the first agent in all the acts of the creature. In this, one does not find two separate actions, one by God and one by the people, but in one and the same action, God, by the people’s free consent and voices, creates (elects) a certain person as king to the exclusion of countless others.¹³¹² Therefore, according to Rutherford, it cannot be said that the people are passive in the process of election because by the authoritative choice of the states the private man and no king, is made a public person and a crowned king.¹³¹³ The people, because they create the man king,

¹³¹¹ Ibid., 6 (2). Rutherford refers to 1 Kings 16, stating that the people made Omri king and not Zimri, and his son Achab rather than Tibni the son of Sinath. Also in 1 Kings 1 it is stated that the people made Solomon king and not Adonijah, though Adonijah was the elder brother, *ibid.*, 6 (2) – 7 (1). Also cf. *ibid.*, 33 (2): “... for we know no external lawful calling that kings have ... to the crown, but only the call of the people”; *ibid.*, 34 (1): “... the community, orderly convened, as it includeth all the estates civil, have hand, and are to act in choosing their rulers”; *ibid.*, 50 (1) – 50 (2): “... royal dignity is not immediately, and without the intervention of the people’s consent ...”; *ibid.*, 52 (2): “... Scripture cleareth to us, that a king is made by the free consent of the people, (Deut. xvii. 15,) ...”; *ibid.*, 57 (2): “... and if God, by the people’s free election, make a king ...”; *ibid.*, 63 (1): “... a prince is a prince by the free suffrages of a community ...”; *ibid.*, 69 (2): “... the people hath virtually all royal power in them ... and may create to themselves many kings ...”; *ibid.*, 71 (1): “The king is made only by the free election of his people”; *ibid.*, 126 (2) – 127 (1): “Whatever the king doth as king, that he doth by a power borrowed from the estates, who made him king”.

¹³¹² Ibid., 7 (1). Also cf. *ibid.*, 57 (2): “... the Lord and the people giveth a crown by one and the same action; for God formally maketh David a king by the princes and elders of Israel choosing of him to be their king at Hebron ...” Cf. also *ibid.*, 12 (1), Rutherford states that: “We never said that sovereignty in the king is immediately from God by approbation or confirmation only, as if the people first made the king, and God did only by a posterior and latter act say Amen to the deed done, and subscribe, as recorder, to what the people doth: so the people should deal crowns and kingdoms at their pleasure, and God behove to ratify and make good their act. When God doth apply the person to royal power, is this a different action from the people’s applying the person to royal dignity? It is not imaginable. But the people, by creating a king, applyeth the person to royal dignity; and God, by the people’s act of constituting the man king, doth by the mediation of this act convey royal authority to the man, as the church by sending a man and ordaining him to be a pastor ...”

¹³¹³ Ibid., 7 (1). Rutherford refers to the following as examples of this: 2 Samuel 16: 18 – “Hushai said to Absalom, Nay, but whom the Lord and the people, and all the men of Israel choose, his will I be, and with him will I abide”; Judges 8: 22 – “The men of Israel said to Gideon, Rule thou over us”; Judges 9: 6 – “The men of Sechem made Abimelech king”; Judges 11: 8, 11 – (the people made Jephthah king); 2 Kings 14: 21 – “The people made Azariah king”; also 1 Samuel 12: 1 and 2 Chronicles 23: 3; *ibid.* On *ibid.*, 204 (1), Rutherford states that the man is formally king in regard of the formal essence of a king, not immediately from God, as the light is from the sun, but by the mediation of the free

are in this regard above the king, and have a virtual power to compel him to do his duty. Rutherford states that the king, as king, has an authoritative power above the people because royalty is *formally* in him, and *originally* and *virtually* only in the people. There is a mutual coactive power on both sides.¹³¹⁴

Rutherford adds that individual persons, in creating a magistrate, do not properly surrender their right; they only surrender their power of doing violence to those in the same community.¹³¹⁵ To Rutherford it is true that God has placed authority in kings, which is not in the people, because God has transferred the scattered authorities that are in all the people, in one mass; and, by virtue of his own ordinance, has placed them in one man, who is king. However, this does not mean that God confers His authority immediately upon the king, without the mediation of any action of the people. The same concerns the removal of authority from the king – God does not remove the authority of the king from him immediately, but mediately, by the people’s hating and despising him, when they see his wickedness, “as the people see Nero a monster – a prodigious blood-sucker”.¹³¹⁶ It is also

consent of the people (2 Samuel 5: 1 – 3). God regulates his people in making a king, and by this it is insinuated that the people have a power to make this man king, and not that man, *ibid.*, 7 (2). A good example where the content of the regulation is to be found is Deuteronomy 17 where it is stated that the king must adhere and rule according to the law of God, which is none other than the conditions of the covenant. Further, Rutherford states: “Of ten men fit for a kingdom they may design one, and put the crown on his head, and refuse the other nine, as Israel crowned Solomon and refused Adonijah. Is this not a voluntary action, proceeding from a free, active, elective power?”, *ibid.*, 29 (2). Also cf. *ibid.*, 128 (1): “They gave the power to him only for their good, and that they may make him the king, is clear. (2 Chronicles 23: 11; 1 Samuel 10: 17, 24; Deuteronomy 17: 14 – 17; 2 Kings 11: 12; 1 Kings 16: 21; 2 Kings 10: 5; Judges 9: 6.). Also cf. Ford, *Scots and Britains*, 267. According to Ford, Rutherford does not deny Maxwell’s positive contention that God was the immediate author of sovereignty, and was happy to state at the beginning of *Lex, Rex* that “All civill power is immediately from God in its root”, (as qualified by Romans 13: 1 – 7 and 1 Peter 2: 13 – 14). John Maxwell, was the former bishop of Ross who formulated the *Sacro-sancta regum majestas* to undermine the “Puritanicall, Jesuiticall, Antimonarchicall grounds” relied on by the covenanters and others, and to defend instead the theory that “the King is onely and immediately dependent from Almighty God, the King of Kings, and Lord of Lords, and independent in his Soveraigntie and Power, from the Communitie”, *ibid.*, 264 – 265. Ford adds: “Where Maxwell had contrasted the popular *potestas designativa* with the divine *potestas collativa*, and had identified the latter as the true power of constitution, Rutherford contrasted the immediate constitution of the people with the immediate institution of God, going so far as to describe the people’s part as being performed ‘*Collative vel communicative*’”, *ibid.*, 268.

¹³¹⁴ Rutherford, *Lex, Rex*, 56 (2). Rutherford states that it is false to say that sovereignty is not virtually in the people, *ibid.*, 25 (1).

¹³¹⁵ *Ibid.*, 25 (2).

¹³¹⁶ *Ibid.*, 26 (1) – 26 (2). On *ibid.*, 59 (1) Rutherford states: “Any tyrant standeth *in titulo*, so long as the people and estates who made him king have not recalled their grant ...”. Also cf. *ibid.*, 96 (1): “When the supreme magistrate will not execute the judgment of the Lord, those who made him supreme magistrate, under God, who have, under God, sovereign liberty to dispose of crowns and kingdoms, are to execute the judgment of the Lord, when wicked men make the law of God of none effect.” The removal of the authority of the king mediately by the people, will later be discussed in the context of resistance theory, which forms an integral part of not only confirming the contractual nature between God and the people as well as between the king and the people, but also confirms the principle that sovereignty resides in the people as a whole, and also assists the principle that if the people can

important to note that as in a community, finding certain qualities and qualifications as required by the law of God to be in the king, to be in a certain person and not in another, “therefore upon law-ground they make him a king, and, upon law-grounds and just demerit, they may unmake him again; for what men voluntary do upon condition, the condition being removed, they may undo again.”¹³¹⁷ That is why Rutherford emphasizes the fact that although the king receives royal power from the people to execute the law; the community reserves to itself a power to resist tyranny¹³¹⁸ (when the law-conditions of the covenant are violated). To this Rutherford adds:

God only by the action of the people, as his instrument, can make a king; God only by the action of the people, as his instrument, can dethrone a king; for as

resist the king in certain instances, then it is only logical that they also form an active part in the election of the king.

¹³¹⁷ Ibid., 126 (1). In other words, according to Rutherford, the community voluntarily choose a certain person as king under condition of such person meeting the requirements stipulated by the law; and it still remains the prerogative of the people to elect one person out of two or more who have the same required qualities and qualifications, as king. Also cf. *ibid.*, 143 (1): “If the estates of a kingdom give the power to a king, it is their own power in the fountain; and if they give it for their own good, they have power to judge when it is used against themselves, and for their evil, and so power to limit and resist the power that they gave”, also “Those who have the power to make have power to unmake kings”, *ibid.*, 126 (2). The active role that the people play in the election of the king also justifies their active role in the ousting of the king when the latter exercises tyranny. On *ibid.*, 185 (2), Rutherford says that if the estates *create* the king, and *make* a specific person king to the exclusion of others, they *give* to him power, and it would be unreasonable, that this power given to the king by the parliament or estates of a free kingdom “should create, regulate, limit, abridge, yea, and annul that power that created itself. Hath God ordained a parliamentary power to create a royal power of the sword and war, to be placed in the king, the parliament’s creature, for the safety of parliament and kingdom, which yet is destructive of itself?”. This confirms the active role that the people (parliament and estates) play in both electing and giving power to a king as well as resisting such a king in the case of tyranny. In this regard also cf. *ibid.*, 186 (1). On *ibid.*, 201 (2), Rutherford states that the people make the king for themselves and for their own *godly* life, and that the people, in their first election, limit him in such a way, as to govern by law [and so have a coercive power over the king]sense?. In other words, although the people play an active role in the election of the king, the measure, requirements and limits for such an election is the law of God, and the people, in addition also play an active role in seeing that the king abides by the law of God. This is also an element that the doctrine of the divine right of kings did not overly emphasize, namely the relevance and authority of the law in the election of the king (and not even accommodating a resistance theory in instances where the law is transgressed via tyranny). On *ibid.*, 102 (1), Rutherford states: “... but the people have neither formally nor virtually any power absolute to give the king. All the power they have is a legal and natural power to guide themselves in peace and godliness, and save themselves from unjust violence by the benefit of rulers”. Therefore, the people are limited by the law of God, even though they play an important and active role in the election of the king. Rutherford also refers to Deuteronomy 17: 18, as confirmation that the king whom the people have made or elected is to use the law of God as his authority; and therefore the people may not make or elect someone a king who is not committed to the law of God, *ibid.*, 183 (1). Also refer to Chapter 3 above, concerning the importance of the law of God, especially its relevance as a condition of the covenant.

¹³¹⁸ *Ibid.*, 35 (1). The community continuously has a “watchman’s function” to see if the conditions of the covenant are adhered to by the ruler – even though they have elected and king and transferred the royal power to him to ruler according to the precepts of God. In this regard Rutherford states: “... for the tribunal that made the king is above the king. Though there be no tribunal formally regal and kingly above the king, yet there is a tribunal virtual eminently above him in the case of tyranny; for the states and princes have a tribunal above him”, *ibid.*, 81 (2).

the people, making a king, are in that doing what God doth before them, and what God doth by them in that very act, so the people unmaking a king, doth that which God doth before the people; both the one and the other according to God's rule obligeth. (Deut. xvii. 14 – 20)¹³¹⁹

The fact that the people, because they play an active role in the election of the king, also have a responsibility concerning the resistance of the king in instances of tyranny, is nearly identical with Althusius's view on the same matter. Althusius refers to the *optimates* of the realm who, both individually and collectively, can and should resist tyranny to the best of their ability, "For since they have the right of creating the magistrate by the consent and command of the people, they also receive the power of judging and deposing him ... Those who refuse to help the resisting ephori with their strength, money, and counsel, are considered enemies and deserters."¹³²⁰

According to Rutherford, the kingly office is from God and flows from the people, not by formal institution, as if the people had by an act of reason devised such a power – but by God who ordained this power. It is from the people only by virtual emanation, in this respect that a community, having no government at all, may ordain a king or appoint an aristocracy. The question to be posed concerns the designation of the person:

¹³¹⁹ Ibid., 202 (2). This refers to the fact that God's act and the people's act is one act. In addition, this does not only refer to the active role that the people play in electing the king and therefore also dethroning the king when necessary, but also that the people carry with them the responsibility of doing so according to the Divine Will, especially as found in Deuteronomy 17. In this regard Rutherford states that even the people cannot resign their whole liberty to the king, for they cannot give to others that which they have not in themselves, namely to destroy themselves – for God's Law as well as the law of nature does not allow it, *ibid.*, 81 (2) – 82 (1). Therefore, although all power of making and resisting the king be in the people, the people are limited by the precepts of God. This is also relevant within the covenantal paradigm of theologico-political federalism, where the election of the king by the people must be in accordance with the conditions stipulated by Scriptures for kingship, as is specifically witnessed in Deuteronomy 17, a text that Rutherford refers to frequently. Rutherford states that there is no condition required in the king before the people make him a king, but only that he covenant with them to rule according to God's law and "... seeing the people maketh him a king covenantwise and conditionally, so he rule according to God's law, and the people resigning their power to him for their safety, and for a peaceable and godly life under him, and not to destroy them, and tyrannise over them", *ibid.*, 57 (2). Also refer to Chapter 2 above, concerning the covenant as conditional, as well as Chapter 3 above, concerning the importance of the law as a condition within the covenant. Webb also provides some comment on the active role that the people play in resisting the king according to Rutherford (which is in opposition to the insight provided for by the theory on the Divine Right of Kings): If the implementation and preservation of law is the *raison d'être* of government, there must be a final judiciary which will decide if a government is true to its purpose. The Divine Right theorists claim that this judiciary is the government itself in the person of the king. Rutherford, however, asserts that the right and power not only of judging a government, but also of altering such government as is found not in conformity with its true purpose, lies ultimately in the people as a whole", Webb, *The political thought of Samuel Rutherford*, 110.

¹³²⁰ Althusius, *Politics*, 187.

Whence it is that this man rather than that man is crowned king” and whence is it – from God immediately and only – that this man rather than that man, and this race or family rather than that race and family, is chosen for the crown? Or is it from the people also, and their free choice? For the pastor’s and the doctor’s office is from Christ only; but that John rather than Thomas be the doctor or the pastor is from the will and choice of men – the presbyters and people.¹³²¹

Indeed God made the office and royalty of a king above the dignity of the people, but he, by the intervening consent of the people, makes David a king and not Eliab; and the people make a covenant at David’s inauguration, that David shall have so much power to be a father and to fight for the people.¹³²² Sanderson better illustrates this understanding by stating:

... while God was to Samuel Rutherford the *causa causarum*, it by no means followed that He did not work through the medium of other agencies in His general superintendence of Creation, as He lit the earth by the mediation of the sun. So, in the establishment of particular regimes the people were to be considered ‘a sort of vicarious cause in God’s room’, and it followed that the people must be superior to the king because ‘every efficient and constituent cause is more excellent than the effect ... but the people is efficient and constituent cause, the king is the effect; the people is the end ... and the people appoint and create the king out of their indigence to preserve themselves from mutual violence’.¹³²³

¹³²¹ Rutherford, *Lex, Rex*, 6 (1). On *ibid.*, 9 (2), Rutherford states: “... for of six willing and gifted to reign, what maketh one a king and not the other five? Certainly by God’s disposing the people to choose this man, and not another man ... The office is immediately from God, but the question now is, What is that which formally applieth the office and royal power to this person rather than to the other five as meet? Nothing can here be dreamed of but God’s inclining the hearts of the states (cf. *ibid.*, 17 (1)) to choose this man and not that man.”

¹³²² *Ibid.*, 38 (2).

¹³²³ John Sanderson, *‘But the People’s Creatures’*. *The philosophical basis of the English Civil War*, (Manchester and New York: Manchester University Press, 1989), 19. This reference by Sanderson to Rutherford forms part of Sanderson’s observations concerning the understanding by the English Parliamentarians during the 1640s. According to Sanderson, the Parliamentarians believed strongly that, aside from a small number of Old Testament ‘thearchs’, within the several commonwealths of the world, the specific regime and the specific office-holders were the creatures of an entity called “the people”, who delegated power with an “upward” movement to those who were to rule over them. Magistracy was therefore to “be considered under a twofold notion, divine and human. The *genus* which is government itself is divine, so that people are absolutely bound to have government while the species or *modus gubernandi* is human”, *ibid.*, 17. This delegation of power with an “upward” movement entails the understanding of the “ascending” theory – magistracy being the result of an “upward” conferring of authority on the part of those who thereby voluntarily subjected themselves to the ruler, and the persistence of his authority being almost invariably said to depend on the satisfaction of the people that their welfare and benefit were in fact being served, *ibid.*, 7. Cf. *ibid.*, 17 – 19, for Sanderson’s references to various English writers of this period who also postulated this understanding. Rutherford, however, discerns between God’s establishment of the office of the magistracy, and man’s

In the context of Deuteronomy 17: 15 – 16, Rutherford states that it makes no sense that the Holy Spirit should give a commandment to the people to make a certain person a king and forbid them to make another a king; if the people had no active influence in making a king at all.¹³²⁴ Rutherford states: “... and Calvin, Martyr, Lavater, and popish writers, as Serrarius, Mendoza, Sancheiz, Cornelius á Lapide, Lyranus, Hugo Cardinalis, Carthusius, Sanctius, do all hence conclude that the people, under God, make the king.”¹³²⁵ To Rutherford, the applying of the person to royal authority is from the people; but the applying of royal authority to the person of the king, is immediately and only from God, “... as the hand putteth the fagot to the fire, but the fire maketh it burn.”¹³²⁶ Rutherford adds, that it is false to think that all the works of providence, such as is the government of kingdoms, are done immediately by God; for in the works of providence, for the most part in ordinary, God works by means. Similarly it would be false to think that God immediately created man, therefore He keeps his life immediately also without food and sleep. In this regard one finds the important application of the relationship between grace and human action (responsibility). In this context, Rutherford is also emphasizing the responsibility of man to play an active role in the exercise of politics within the larger paradigm of God’s absolute sovereignty and predestination. The making of a king is an act of reason, and God has given a man reason to rule himself; and therefore has given to a society an instinct of reason to appoint a governor over themselves.¹³²⁷

participation in the election and consent of the magistrate or king within the bounds and powerful propagation of covenantalism.

¹³²⁴ Rutherford, *Lex, Rex*, 80 (2). In this regard also cf. *ibid.*, 7 (1) – 7 (2), 17 (2), 18 (2), 19 (2). Rutherford makes it also clear that Psalm 89: 26 – 27 (which is true of Solomon as the type: 2 Samuel 7; 1 Chronicles 17: 22; 2 Samuel 7: 12; and fulfilled of Christ and the Holy Spirit spoken of him – Hebrews 1: 5 – 6) is not relevant to all kings, “... for God said not to Nero, Julian, Dionclesian, Belshazzar ...”, that He will make them His first-born. Although God appoints the office of a king and shows him to the people as one who has most royal endowments and due qualifications required for a lawful magistrate; He does not immediately design the man, Exodus 18: 21; Deuteronomy 1: 16 – 17; 1 Samuel 10: 21; Deuteronomy 17; *ibid.*, 8 (1).

¹³²⁵ *Ibid.*, 8 (1). Rutherford refers to Saul who, after Samuel anointed him, remained a private man, and no king, till the people made him king, and elected him; and David, anointed by that same divine authority, remained formally a subject, and not a king, till all Israel made him king at Hebron. The same can be said concerning Solomon who, although being designed and ordained to be king, was never king until the people made him so, 1 Kings 1, *ibid.*, 9 (1) – 9 (2). Also cf. *ibid.*, 10 (2), 12 (1), 25 (1) – 25 (2), 38 (2), 39 (2) – 40 (1), 41 (2), 47 (2), 70 (2), 98 (1), 130 (1), 203 (1) – (2).

¹³²⁶ *Ibid.*, 11 (2).

¹³²⁷ *Ibid.*, 22 (2) – 23 (1). In this regard Rutherford adds that although sovereignty and all power and virtue is in God infinitely, it does not mean that second causes do not work; “... and if the Prelate argue so frequently from power given of God, to prove that actual reigning is from God immediately, – Deut. viii. 18, The Lord ‘giveth the power to get wealth,’ – will it follow that Israel getteth no riches at all, or that God doth not mediate by them and their industry get them? I think not”, *ibid.*, 23 (2). In this regard, Rutherford also states that when God reconciles and saves men by pastors, he saves and reconciles via the “intervening action of men”, *ibid.*, 23 (1). The same argument Rutherford applies at *ibid.*, 12 (2), asking whether all sciences applied to men are only of God, and not from man’s free will, industry and studies. Also on *ibid.*, 14 (2) Rutherford states that if everything be ascribed to God’s action, does this mean that the church cannot sanction a churchman. Although God has both gifted and called a specific person to the ministry, this does not mean that the church plays no role in ‘designing’

According to Rutherford, royal power is only from God immediately, none but God-appointed should be kings. Rutherford adds that although this royal power is in the people, it is in the people as the principal cause, it is in the people as in the instrument. Rutherford refers to the Old Testament where the people make David their king at Hebron, and in that same act God, by the people using their free suffrages and consent, makes David king at Hebron.¹³²⁸ Rutherford states that it is certain that God by no other act made David king at Hebron, than by Israel's act of freely electing him to be king and leader of the Lord's people, as God by no other act makes it rain but by his "melting the clouds" and causing rain to fall on the earth.¹³²⁹ Rutherford also states that it is a weak argument to say that the Apostles

such a person according to the office to which he has been called. On *ibid.*, 21 (1), Rutherford states: "Many things are ascribed to God only, by reason of a special and admirable act of providence, – as the saving of the world by Christ, the giving of Canaan to Israel, the bringing his people out from Egypt and from Chaldee, the sending of the gospel to both Jew and Gentile; but, shall we say that God did none of these things by the ministry of men, and weak and frail men?", *ibid.*, 21 (1). Also on *ibid.*, 21 (2), Rutherford states: "And what though God gave David a crown, was it not by second causes, and by bowing all Israel's heart to come in sincerity to Hebron to make David king? 1 Kings xii. 38. God gave corn and wine to Israel, (Hos. ii.) and shall the prelate and the Anabaptist infer, therefore, he giveth it not by ploughing, sowing, and the art of the husbandman?" Rutherford poses the argument that when God reconciles and saves men by pastors, He saves them by the intervening action of men, and also that he scourges His people by men as by His sword – "Is it therefore to be inferred from this that God does not immediately scourge His people?", *ibid.*, 23 (1). This line of thought is in agreement with the Reformed approach concerning God's absolute providence and predestination on the one hand and also the responsibility of man on the other – the former being primary and the latter being secondary. This principle, Rutherford (Mornay and Althusius) applies also to the election of the king by the people, although God is primarily the cause for such election, having ordained and created the office of the king and working through the people in the election of a specific person as king, just as God provides for rain via the instrument of the clouds. On *ibid.*, 33 (1), Rutherford says: "God vindicateth to himself, that he giveth his people favour in the eyes of their enemies. But doth it follow that the enemies are not agents, and to be commended for their humanity in favouring the people of God? So Psalm l xv. 9, 10, God maketh corn to grow, therefore clouds, and earth, and sun, and summer, and husbandry, contributeth nothing to the growing of corn ... We grant that this is an eminent and singular act of God's special providence, that he moveth and boweth the wills of a great multitude to promote such a man, who, by nature, cometh no more out of the womb a crowned king, than the poorest shepherd in the land; and it is an act of grace to endue him with heroic and royal parts for the government. But what is all this?. Doth it exclude the people's consent? In no ways. So the works of supernatural grace, as to love Christ above all things, to believe in Christ in a singular manner, are ascribed to the rich grace of God." This issue, which relates to the relationship between Divine sovereignty and man's responsibility is briefly discussed in Chapter 2 above.

¹³²⁸ *Ibid.*, 70 (1) – 70 (2). Rutherford adds that David's person was not made sacred, nor his authority sacred by the anointing of oil, for he remained a private man, and called Saul his king, his master and himself a subject (until he was appointed by the people), *ibid.*, 20 (1). On *ibid.*, 86 (1), Rutherford states: "For we read that Israel made Saul king, and made David king, and made Abimelech king; but never that king Saul made another king, or that an earthly king made another absolute king." Also cf. *ibid.*, 115 (1): "... all the people united made David king at Hebron.", and Rutherford adds that it is most false that king David is so immediately a king from God, as that he is not also by mediation of the people, who made him king at Hebron, *ibid.*, 173 (2).

¹³²⁹ *Ibid.*, 71 (1). Also cf. *ibid.*, 174 (1), Rutherford states: "God alone giveth rain, but not for that immediately, but by the mediation of vapours and clouds" – in other words, God alone gives powers to rule but not so immediately, but by the mediation of the community. Rutherford adds: " ' God alone killeth and maketh alive', Deut. xxxii. 39, that is, excluding all strange gods, but not immediately; for, by is people's fighting, he slew Og, king of Bashan, and cast out seven nations, yet they used bow and sword, as it is used in the book of Joshua; and, therefore, God killed not Og immediately. God hath an infinite, transcendent way of working, so that in is kind e only worketh is alone ... God only giveth

were, both according to their office and the designation of their person to the office, immediately and only from God, without any act of the people, and that therefore the king is immediately from God without any act from the people. Rutherford adds that such an argument is badly coupled with the royal power of David and Saul, who were not formally made kings but by the people at Mizpeh and Hebron.¹³³⁰

Concerning the election of the king, Rutherford exhibited similarities, among others, to Scottish 16th-century political thought, and here specific mention is made of Knox. Knox believed that the people would be accountable to God for the morality of their rulers, and, according to Moots, mentioned both the “appointing” and “election” of rulers. Moots refers to Rutherford who believed that without popular approval, the ruler was illegitimate. Moots adds that while neither Knox nor Rutherford gave specific mechanisms by which a king was appointed, each referred to Old Testament examples in which the king was appointed by God and approved by the people.¹³³¹ Rutherford also provides a good example in order to distinguish between the immediate and mediate actions of God in the election of the king, by referring to Christ, who, as the chief moderator and head of the church, immediately confers abilities on a man to be a preacher, and the church subsequently calls the man to the church as a preacher.¹³³² So far it can be deduced that according to Rutherford the office of the ruler (together with its content), as well as the necessary qualities required in a ruler, are determined by God. However, the people as a community play an active role in choosing such a person as the ruler.

learning and wisdom, yet not immediately always – often e doth it by teaching and industry”, *ibid.*, 174 (1) – 174 (2). In this context Rutherford also states: “If God feed Moses by bread and manna, the Lord’s act of feeding is mediate, by the mediation of second causes; if he feed Moses forty days without eating any thing, the act of feeding is immediate; if God made David king, as he made him a prophet, I should think God immediately made him king; for God asked consent of no man, of no people, no, not of David himself, before he infused in him the spirit of prophecy; but he made him formally king, by the political and legal covenant between him and the people”, *ibid.*, 229 (2). This also implies that the election of the king by the people forms part of the covenant concept between the king and the people and therefore that the people have an active and responsible function within this covenant. The covenant concept in general, in other words, the concept of theologico-political federalism implies a responsibility and active participation by the community, and this is clearly illustrated in the election of the king by the people. Also cf. *ibid.*, 38 (1), Rutherford stating that it makes no sense to say that because it is natural for man to eat (because it is natural for man to be governed), therefore election of this or that meat is not in their choice – in other words it is false to argue that because it is natural for man to be governed (for government is natural) election of this or that person / or type of government as ruler is not in the people’s choice.

¹³³⁰ *Ibid.*, 11 (1). In this context, Rutherford refers to the “second way” that God confers royal power, by moving the people’s hearts to give royal power, and this is virtually in the people and formally in the people, *ibid.* Rutherford also says that when God promised to David’s seed a throne He promised not to him a throne immediately as He raised prophets and apostles, but by mediate action and consent and covenant of the people, *ibid.*, 57 (2) – 58 (1).

¹³³¹ Moots, *The Evolution of Reformed Political Thought and the Revival of Natural Law Theory*, 59.

¹³³² Rutherford, *Lex, Rex*, 81 (1). Also cf. *ibid.*, 10 (2), Rutherford says that an ordinary pastor is not immediately called by God and that the man is made a pastor by the church.

Rutherford questions the understanding that (on the assumption that only God creates the king), the king is promoted by God only, while all the other princes and judges are not. If not only kings, but all judges are gods (Psalm 82: 1 – 2) then all must be “the same way created and moulded of God.”¹³³³ Inferior judges are not necessarily sent by the king, by any divine law, but chosen by the people, as the king is. This is in accord with the fact that God calls upon all “higher powers” to ward off evil.¹³³⁴ According to Rutherford, it is also erroneous to compare a father with a king concerning the transfer of power. In other words, such an analogy cannot be used to justify the fact that there is no transference of power from the people to the king (like the father’s power was in the father before the children could even transfer their power to him or even consent to it).¹³³⁵ Rutherford states: “... the law saith not that the elected king is a king without consent of the subjects, as a natural father is a father without the consent of his sons.”¹³³⁶ Althusius is similar to Rutherford in this regard, Althusius states that the prince is called by analogy, the father of his country, because he ought to embrace his subjects with equal affection. However, according to Althusius, whoever is a father is one by nature, but a magistrate is not a father by nature, but only by election and inauguration.¹³³⁷

The principle of election of the king by the people, and the emphasis on the active role that the people play in this regard, is found in Mornay, Althusius and Rutherford in their references to: the “constituted” and the “constituter”; “he who was established by another”

¹³³³ Ibid., 81 (1). In other words, it was understood by certain theologians in Rutherford’s time that only the king is appointed by God, and that all other subordinate ruling entities be appointed by the states or persons. Rutherford questioned the correctness of such thinking, because Scriptures speak about magistrates as also being gods in the context of Psalm 82: 1 – 2 (as well as Romans 13, to which Rutherford frequently refers), and therefore it does not make sense that only some of these ‘gods’ are created only by God and not by the active election of the people, while others may be actively elected by men only. Interesting to take note of a commentary on Psalm 82: 1 – 2 concerning the word “gods”. According to the *New Geneva Study Bible*, the commentary on this text states: “This short psalm presents some difficult problems. Chief among them is the ‘gods’ mentioned in vv. 1 and 6. A number of scholars take this as a reference to angelic powers, lesser spiritual beings who make up God’s heavenly council. A second interpretation understands “gods” literally, as deities made subordinate to Yahweh. The most probable interpretation is that the ‘gods’ are human judges. The Hebrew word ‘*elohim* (“gods”) is used of human judges in Ex. 21: 6; 22: 8, 9”, R. C. Sproul, *The New Geneva Study Bible. New King James Version*, (Nashville: Thomas Nelson Publishers, 1995), 845. According to this interpretation, Rutherford was in agreement.

¹³³⁴ Ibid., 173 (1). This is also in agreement with the discussion in Chapter 4 above, concerning Rutherford’s (and the other theologico-political federalists’) theory, concerning the division of powers; not only the king but also the judges, princes and inferior magistrates form part of the powers ordained by God as witnessed in, among others, Romans 13. If kings (as powers ordained by God), are elected by the people, then the same applies to all other powers ordained by God, which includes judges, princes and inferior magistrates.

¹³³⁵ Cf. Rutherford’s discussion in this regard, *ibid.*, 202 (2) – 203 (2). Similar criticism also applies to the resisting of tyranny, Rutherford says that it is false to reason that “ ‘ once a father always a father’, so once an elected king always a king, though he sells his subjects ...”, *ibid.*, 64 (1).

¹³³⁶ *Ibid.*, 64 (1).

¹³³⁷ Althusius, *Politics*, 192.

and “he who established him”; “the constituent cause” and “the effect”. Althusius, who, in the context of the province, says that the head of the province differs in power and authority from his constituter; for the constituter is greater than the one constituted, and has general power in all provinces – the one constituted is less than the constituter, and has a special power limited by the constituter to the province. The constituted holds his position in the place of, and by the favour of, his constituter, and if he becomes consumed by his own power, he can be deprived of his position by his constituter.¹³³⁸ Compare this with Mornay’s similar insight namely: “Now, seeing that the people choose and establish their kings, it follows that the whole body of the people is above the king; for it is a thing most evident, that he who is established by another, is accounted under him who has established him, and he who receives his authority from another, is less than he from whom he derives his power.”¹³³⁹ Also compare this to Rutherford’s similar comment: “The people in power are superior to the king, because every efficient and constituent cause is more excellent than the effect.”¹³⁴⁰ Skinner also refers to Mornay’s emphasis on the role of the magistrates who actually choose the king, and also refers to Mornay’s comment that it is “those who represent the people’s majesty” who assign the king his office “together with the sceptre and the crown”.¹³⁴¹ Mornay adds that the conditions for the legitimacy of any ruler is that he should be established in power by the free consent of at least a majority of the people, which, according to Skinner (and rightly so), is made clear by Mornay’s detailed reference to the installation of Saul as king of Israel. Even in the case of Saul’s installation as king, it was not enough that the king had already been “selected” by God. He still needed to be “established” by the general consent of the people “which they duly expressed first by ‘acclamation’ and subsequently by a formal vote which revealed a majority in favour of accepting him.”¹³⁴²

It is important to bear in mind the area of integration that the above sheds to light on the confirmation of the sovereignty of the people on the one hand, and the active role that the people play in electing the king. Both these issues are complimentary to each other and should not be removed too far from each other. The above could also have been discussed in the section dealing with the sovereignty of the people. In the following quotation Rutherford

¹³³⁸ Ibid., 58.

¹³³⁹ Mornay, *A Defence of Liberty Against Tyrants*, 124.

¹³⁴⁰ Rutherford, *Lex, Rex*, 80 (1). Also cf. *ibid.*, 81 (2): “... for the tribunal that made the king is above the king” and *ibid.*, 81 (2): “... the constituent cause is of more power and dignity than the effect, as so the people are above the king.” On *ibid.*, 115 (1), Rutherford also states that the king is above the people by eminence of derived authority as a watchman, and in actual supremacy; but the king is inferior to the people in their capacity as the fountain-power, “as the effect to the cause”.

¹³⁴¹ Skinner, *The Foundations of Modern Political Thought*, 329.

¹³⁴² *Ibid.*, 329 – 330.

gives a clear indication concerning the active role that the people play in the election of the king, and immediately afterwards, refers to the conferring of power to the king by the people:

But the people, having their liberty to make any of ten, or twenty, their king, and to advance one from a private state to an honourable throne, whereas it was in their liberty to advance another, and to give him royal power of ten degrees, whereas they might give him power of twelve degrees, of eight, or six, must be in excellency and worth above the man whom they constitute king, and invest with such honour; as honour in the fountain must be more excellent and pure than the derived honour in the king.¹³⁴³

The doctrine of the divine right of kings also meant that the king's power was hereditary, presumably on the ground that God's choice was manifested in the fact of birth.¹³⁴⁴ Since James's claim to the Scottish throne, and later to the throne of England, was strictly hereditary, it was natural for him to cling to this principle, which expressed merely the inalienable and indefeasible right of the heir in feudal law – the essential legal quality in monarchy is therefore legitimacy as evidenced by lawful descent from the previous legitimate monarch.¹³⁴⁵ Rutherford, in his discussions concerning the election of the king and the right to kingship, opposes this hereditary justification of kingship, emanating from the doctrine of the divine right of kings. According to Rutherford, if God commanded only kingship through birth, then Deuteronomy 17 would not be structured as it is. The first king, as witnessed in Deuteronomy 17: 14 – 15, is not a man qualified by naked birth, “for then the Lord, in describing the manner of the king and his due qualifications, should seek no other but this, You shall choose only the first-born, or the lawful son of the former king.”¹³⁴⁶

The king of God's “first moulding is a king by election, and what God did after, by promises and free grace, give to David and his seed, even a throne till the Messiah should come, and did promise to some kings, if they would walk in his commandments, that their sons, and sons' sons, should sit upon the throne, in my judgment, is not an obliging law that sole birth

¹³⁴³ Rutherford, *Lex, Rex*, 82 (1). Although the king commands the people, and by this obtains an executive power of law above them, yet the people have a fountain-power above the king, because they made him king, *ibid.*, 83 (2). Rae comments that Rutherford, by stating that the people are the “fountain-power” of government means that although the people as individuals do not possess the power to govern themselves, they do, collectively, have the power to decide which form of government they wish to live under (democracy, aristocracy or monarchy), and which man is to be their king, Rae, *The political thought of Samuel Rutherford*, 85 – 86.

¹³⁴⁴ Sabine and Thorson, *A History of Political Theory*, 366.

¹³⁴⁵ *Ibid.*, 368.

¹³⁴⁶ Rutherford, *Lex, Rex*, 39 (1) – 39 (2).

should be as just a title ...”¹³⁴⁷ Rutherford also refers to Aristotle, the latter teaching that it is better that kings be crowned via the process of election, rather than by birth, because kingdoms by birth are more tyrannical.¹³⁴⁸ Rutherford refers to additional authority supporting the understanding that even in the instance of hereditary kings, the consent of the people play an important role in the realization of the crowning of a hereditary king.¹³⁴⁹ According to Rutherford, adhering to birth as qualification for kingship will also oppose conquest as qualification for kingship,¹³⁵⁰ the latter being accommodated within God’s Will – if the birth reveals God’s will that the heir be king, it will always be unlawful for a conquered people to give their consent that a conqueror be their king, (and this is contrary to Scriptures). The result will be a contradiction in the Will of God, qualifying birth as a right to the throne, as well as conquest (in certain instances) as a right to the throne.¹³⁵¹

The royal faculty of governing is above nature and from God, Solomon asked it from God and had it not by generation from his father, David. God’s Spirit would also not have said: “Blessed art thou, O land, when thy king is the son of nobles” (Ecclesiastes 10: 17), if royal honor was qualified by birth. The free suffrages of the states choosing a man whom they believe God has given royal gifts required in the king by God (Deuteronomy 17), is also needed as qualification to the throne, and therefore birth is not an accurate measure for entrance to the throne.¹³⁵² Rutherford asks who made the first father a king, and in his answer states that if the father himself does not make himself king, and if God now does not

¹³⁴⁷ Ibid., 39 (2). Also on *ibid.*, 185 (2), Rutherford states that kings by birth are less rightfully kings, because the first king by God’s institution, [being the mould of all the rest], was by election, and Deuteronomy 17 is proof of this.

¹³⁴⁸ Ibid., 37 (2).

¹³⁴⁹ Ibid.

¹³⁵⁰ Perceptibly not in all instances, Rutherford states: “Conquest, seeing it is an act of violence, and God’s revenging justice for the sins of a people, cannot give in God’s court such a just title to the throne as the people are to submit their consciences unto, except God reveal his regulating will by some immediate voice from heaven, as he commanded Judah to submit to Nebuchadnezzar as to their king by the mouth of Jeremiah”, *ibid.*, 41 (1). In this regard also cf. *ibid.*, 48 (1). To Rutherford, the title by conquest, through the people’s “after-consent”, may be turned into a just title, as in the case of the Jews in Caesar’s time – it constitutes a sort of contract and covenant of loyal subjection made to the conqueror, and therefore sufficient to make the title just; otherwise if the people never give their consent, the conqueror has no just title to the crown, *ibid.*, 47 (1).

¹³⁵¹ Ibid., 40 (1). Rutherford adds: “If birth be God’s regulating will, that the heir of the king is in God’s court a king, no act of the conqueror can annul that word of God to us, and the people may not lawfully, though they were ten times subdued, swear homage and allegiance to a conqueror against the due right of birth, which by royalists’ doctrine revealeth to us the plain contradictory will of God”, *ibid.*, 40 (2). The implications that this has for resistance theory is important. Belief in the hereditary element as the only justification for entrance to the throne contradicts the qualification of resistance in situations where the king abuses his office as king, acting contrary to the commands given by God. Therefore, this section of the doctrine of the divine right of kings aims at excluding resisting tyranny, and it is in opposition to this that the federalists, especially Althusius, Rutherford, and even Knox, provide counter argumentation concerning birth as sole qualification for the throne as well as the ignorant belief in non-resistance in instances of abuse by the bearer of the office of ruler.

¹³⁵² Ibid., 41 (1). In this regard, Mornay states that none were ever born with crowns on their heads, and scepters in their hands, Mornay, *A Defence of Liberty Against Tyrants*, 122.

immediately by the prophets anoint men to be kings; then must the people's election of a king be prior and more ancient than the birth-law to a crown; and election must be a better right than birth.¹³⁵³

There is also, according to Rutherford, no sense in putting the trust of the people in a king who is to protect them, in a birthright instead of being able to choose the best person to function as ruler,¹³⁵⁴ adding that the people make a certain person the king to the exclusion of others, and this they do for themselves and their own godly, quiet, and honest life.¹³⁵⁵ God has not bound any nation irrevocably and unalterably to a royal line, or to any type of government and therefore, no nation can bind their conscience either to one royal line or irrevocably or unalterably to monarchy.¹³⁵⁶ Rutherford refers to Aristotle who also preferred election to succession, and Rutherford adds: "He preferreth Carthage to Sparta, though their kings came of Hercules. Plutarch in Scylla, saith, he would have kings as dogs, that is, best hunters, not those who are born of best dogs."¹³⁵⁷ However, to proclaim that Rutherford totally neglected the relevance of succession in the attainment of kingship is incorrect. In answer to the statement that most of the best divines approve a hereditary monarch, rather than a monarch by election, Rutherford states that he approves of a hereditary monarch in some cases adding: "... there is less danger to accept of a prince at hand, than to seek one afar off. In a kingdom to be constituted, election is better; in a constituted kingdom, birth seemeth less evil. In respect of liberty, election is more convenient; in respect of safety and peace, birth is safer and the nearest way to the well."¹³⁵⁸ Also of interest in this respect is

¹³⁵³ Rutherford, *Lex, Rex*, 43 (2).

¹³⁵⁴ *Ibid.*, 43 (2) – 44 (1). In this regard, Rutherford states: "The genuine and intrinsical end of making kings is not simply governing, but governing the best way, in peace, honesty, and godliness, (1 Tim. ii.) therefore, these are to be made kings who may most expeditely procure this end", *ibid.*, 44 (1). In other words, those persons are made kings who best maintain and exercise the Divine Law. In fact, Rutherford even entertains the idea of a conqueror being given the throne, but as a condition the people first have to give their consent to such an appointment, *ibid.*, 47 (1). However, besides the instance where people give their consent and where the conqueror rules according to the Divine Law, Rutherford warns that conquest by the sword cannot be a manifestation of God's regulating and approving will and therefore cannot be a just title to the crown, just as the killing of Jesus Christ (although part of divine providence), cannot be the manifestation of God's regulating and approving will, *ibid.*

¹³⁵⁵ *Ibid.*, 201 (2). Compare this with a similar thought by Althusius, namely: "Therefore, kings are constituted by the people for the sake of the people, and are its ministers to whom the safety of the commonwealth has been entrusted", Althusius, *Politics*, 117. Also cf. *ibid.*, 120: "Indeed, the people in constituting a prince by no means intended to elect a tyrant to the ruin of itself, or to lose the capacity to protect itself."

¹³⁵⁶ Rutherford, *Lex, Rex*, 44 (1) – 44 (2).

¹³⁵⁷ *Ibid.*, 45 (1).

¹³⁵⁸ *Ibid.*, 46 (2). In this regard it must be noted that the requirements necessitated for occupying the throne as found in Deuteronomy 17 still remain valid in each instance. On *ibid.*, 45 (2) and 201 (1), Rutherford states that no man is born a king, adding at *ibid.*, 45 (2) that no more than an eagle is born king of eagles, a lion king of lions; neither is a man by nature born king of men. On *ibid.*, 31 (1), Rutherford states: "Neither is sovereignty, nor any government, formally inherent in either the

Sanderson's comment that *Lex, Rex* argued at most, that the king could be regarded as an "adopted father", because the distinction between domestic and civil society (although blurred by the Royalists), was fundamental. Rutherford found it "an undeniable truth, that as domestic society is natural, being grounded upon nature's instinct, so politic society is voluntary, being grounded upon the consent of men".¹³⁵⁹ According to Sanderson, John Milton was to pursue a similar theme, stating that "Our king made us not, but we him. Nature has given a father to us all, but we ourselves appointed our own kings. So that the people are not for the king, but the king for them"¹³⁶⁰ Althusius, in similar fashion, is not altogether against hereditary succession of the throne, stating that the election of the supreme magistrate is in accord with either an entirely free election (unrestricted), or an election that is restricted to persons of a certain origin from whom the choice is to be made (which leans towards hereditary succession).¹³⁶¹ Concerning the latter, Althusius says that the restricted election is one that has been limited by the agreement of the people and realm, to persons of a certain origin. In turn, the restricted election is limited either to a certain nation, and the nobles thereof, or to the heirs of the deceased supreme magistrate.¹³⁶²

Bullinger states that there is no certain rule concerning the election of magistrates, adding that in some instances the whole "commonality" chooses, and in other instances princes come to the throne by succession and birth. Concerning the latter, Bullinger states that the princes must earnestly pray to the Lord so the He will grant them to be good.¹³⁶³ Bullinger refers to Exodus 18: 21, where the Lord "... declareth whom and what kind of men he will have to be chosen ...", the requirements being that he be a king of courage, strength, wisdom, skill and that he be religious.¹³⁶⁴ According to Bullinger, every magistrate is ordained of God and is God's minister.¹³⁶⁵ Mornay, commenting on the Old Testament, states that not only the principals of the tribes, but also all the "milleniers, centurions, and subaltern magistrates should meet together, each of them in the name, and for their towns and communalities, to

community by nature, nor in any one particular man by nature; and that every man is born free, so as no man, rather than his brother, is born a king and a ruler, I hope, God willing, to make good ..."

¹³⁵⁹ Sanderson, *'But the People's Creatures': The Philosophical Basis of the English Civil War*, 57.

¹³⁶⁰ *Ibid.*

¹³⁶¹ Althusius, *Politics*, 123.

¹³⁶² *Ibid.*, 125. Also cf. *ibid.*, 123 – 127. Althusius refers to the kings from the family of David who were elected continuously until the fall of Jerusalem under Nebuchadnezzar, *ibid.*, 126. Unlike Rutherford, Althusius does not put considerable emphasis on the free election than on election via hereditary succession. Nevertheless, Althusius, like Rutherford, reiterates the importance of the supreme magistrate to adhere to the true and orthodox religion, *ibid.*, irrespective of whether kingship had been awarded via the people or via birth. Althusius, like Rutherford, remains an ardent supporter of the office of the supreme magistrate (and the inferior magistrates) being strictly bound to the Decalogue, cf. Chapter 4 above.

¹³⁶³ Bullinger, *Decades*, 2: 318 – 319 (Decade 2, pages 318 – 319).

¹³⁶⁴ *Ibid.*, 2: 319. Bullinger also speaks of the guide of the people that must be a man of *choice elected* to be magistrate, *ibid.*, 322.

¹³⁶⁵ *Ibid.*, 2: 334. This is similar to Rutherford's understanding in this regard (as discussed above).

covenant and contract with the king. In this assembly was the creating of the king determined of, for it was the people who made the king, and not the king the people.”¹³⁶⁶ Everyone in the community therefore played an active role in the creation (election), of the king,¹³⁶⁷ as well as the covenanting and contracting with the king. The covenantal understanding that is foundational to theologico-political federalism as well as the sovereignty residing in the people, the estates, parliaments, judges, ephori, princes, inferior magistrates and so forth; implies that the people partake actively in the election of the king as it is the people that have to contract with the king and it is also the people that are responsible for resisting the king in cases of tyranny. Although Mornay states that he is a king who lawfully governs a kingdom, either derived to him by succession, or committed to him by election,¹³⁶⁸ Mornay refers to the kingdoms where the right of election is entirely observed and those kingdoms in which the throne is awarded by simple hereditary succession. Mornay makes it clear that in even in the latter kingdoms, the ruler is to be chosen by the people, and refers to the example of the crowning of the king of France, where the bishops of Laon and Beauvois, the ecclesiastical peers, ask all the people present, whether they desire and command that he who is there before them, shall be their king. Once the people have given the sign of consent, then the king swears that he will maintain all the rights and privileges of the people that chose him.¹³⁶⁹ According to Mornay, the king is neither armed with the sword, nor anointed, nor crowned, nor receives the scepter and rod of justice, nor is proclaimed king before the people have commanded it.¹³⁷⁰ Similar to Rutherford, Mornay refers to the example of David who, by the consent of all Israel, was inaugurated king of Israel in Hebron. Mornay states:

So, then, he is anointed first by the prophet at the commandment of God, as a token he was chosen. Secondly, by the commandment of the people when he was established king. And that to the end that kings may always remember that it is from God, but by the people, and for the people’s sake that they do reign, and that in their glory they say not they hold their kingdom only of God and their

¹³⁶⁶ Mornay, *A Defence of Liberty Against Tyrants*, 175.

¹³⁶⁷ *Ibid.*, 139.

¹³⁶⁸ *Ibid.*, 181 – 182.

¹³⁶⁹ *Ibid.*, 178. For further examples cf. *ibid.*, 122 – 124. Also, in this regard, Mornay says that the sons do not succeed the fathers, before the people have established them anew by their new approbation, and were approved and accounted kings only when they were invested with the kingdom “by receiving the sceptre and diadem from the hands of those who represent the majesty of the people”, *ibid.*, 122. Similar to Rutherford, Mornay states that no one is born with a crown on his head and a scepter in his hand, *ibid.*, 122.

¹³⁷⁰ *Ibid.*

sword, but withal add that it was the people who first girt them with that sword.¹³⁷¹

The prince is not established by private and particular persons, but by all in general considered in one entire body¹³⁷²; princes are chosen by God and established by the people.¹³⁷³ Skinner states that Beza, Mornay and the other leading Huguenots turned to the “scholastic and Roman law traditions of radical constitutionalism.” In this regard, they rejected the tendency to assume that God places the community in a condition of permanent submission as a remedy for all its sins. Consequently emphasis was placed on the natural right of liberty of each individual which “enabled them to abandon the orthodox Pauline contention that all the powers that be must be seen as directly ordained by God. Instead they inferred that any legitimate political society must originate in an act of free consent on the part of the whole populace.” Skinner adds that Beza, Ponet and Goodman emphasized the importance of the free consent and election of the king by the people.¹³⁷⁴ Skinner therefore confirms Mornay’s emphasis on the election of the king by the people. What Skinner does not state is that Mornay not only relied on purely scholastic thought to confirm this but also referred to the Biblical confirmation of the importance of the people in electing the king, citing instances in the Old Testament in confirmation of this, and who uniquely applied the

¹³⁷¹ Ibid., 120. The same applies to the crowning of Solomon, where David “assembled at Jerusalem the princes of Israel, the heads of the tribes, the captains of the soldiers, and ordinance officers of the kings, the centurions and other magistrates of the towns, together with his sons, the noblemen and worthiest personages of the kingdom, to consult and resolve upon election”, *ibid.* The same also applied to Solomon’s son, Rehoboam, Amaziah’s son, Ozias; Ochosias after Joram; and Joachim, the son of Josias, *ibid.*, 121. Mornay also refers to Hushai saying to Absalom: “Nay, but whom the Lord and His people, and all the men of Israel chose, his will I be ...”, Mornay adding that although God has promised to His people a continual successor of the line of David, it remains clear that the kings had not reigned before the people had ordained and installed them, and that the kings were raised to their dignities by the people, *ibid.*

¹³⁷² Ibid., 209.

¹³⁷³ Ibid., 212. Taking the above into consideration and although Mornay speaks of kings that have been *chosen* by God, “... either with relation to their families or their persons only”, and after being *installed* by the people, *ibid.*, 189, and with the people *establishing* the king; it is clear that according to Mornay, the people played an active role in the election of the king, which is similar to the views of Althusius and Rutherford in this regard. On *ibid.*, 118, (and under the subtitle *Kings are made by the people*) Mornay states: “... it is God that does appoint kings, who chooses them, who gives the kingdom to them: now we say that the people establish kings, puts the sceptre into their hands, and who with their suffrages, approves the election.” Cf. *ibid.*, 119 – 122, where Mornay confirms the active role that the people play in the election of the king, in his reference to Saul, David and others who were elected king by the people. Rutherford also refers to this example as confirmation. Cf. *ibid.*, 139: “Now seeing that the kings have been ever established by the people ...”; and *ibid.*, 118, 126 and 161, referring to the *establishment* of the king by the people. On *ibid.*, 168, Mornay refers to the receipt of majesty from the people. Also cf. *ibid.*, 197, Mornay states that the king’s royal authority is given to the king by the people. Moltmann refers to Mornay who postulated that the people installed the rulers, transferred the kingdom to them and confirmed their calling through their voice: “Therefore the kings are always to remember that they indeed rule by the grace of God, but through the people and for the people”, Moltmann, “Covenant or Leviathan? Political Theology for Modern Times”, 23.

¹³⁷⁴ Skinner, *The Foundations of Modern Political Thought*, 320.

voluntary election of the king by the people to the covenantal paradigm, where the people have the freedom and responsibility to actively partake in the election of the king, and to see to it that the elected king maintains his godly rule in fulfillment of the covenant conditions of his office – according to Beza, Goodman and Ponet, although coming to the fore with the idea of the election of the king by the people, did not apply this idea or accommodate it within the covenantal paradigm as did Mornay (as well as Althusius and Rutherford).

Although the distinction between office and the person of the ruler was discussed in a previous chapter,¹³⁷⁵ the relevance of this distinction concerning the election of the king is important. Flinn refers to Rutherford who draws a distinction between the *institution of civil government*, which is given immediately by God, and the *form*, which is given mediately. According to Rutherford, the *office* of the king is from God alone, but as to *which particular person* should rule, God establishes His purposes and makes known His will through the second cause of the people's consent. According to Rutherford, God has given to the governed the responsibility to choose and establish their own rulers; by this mediate means, God establishes forms of government and appoints men to govern.¹³⁷⁶ An important comment by Flinn, is that this consent given by the people to rulers is legitimate consent only if it is a warrant and consent to be governed by the *office of the magistrate* that has been instituted by God.¹³⁷⁷ This “consensual” element that surfaces in, among others, Rutherford's theory on election, emphasizes the responsibility and active role that the community plays in the bilateral relationship between the magistrate and the people. As Hall rightly points out, it was not the Reformation that came upon this concept, as for example, William of Ockham (the great 14th -century English scholastic), postulated “those who are to be ruled have the right to choose their ruler and set him over themselves, whence no ruler ought to be given them against their will.”¹³⁷⁸ In fact, the doctrine of consent was, according to Hall, a thriving concept long before the 17th century, and it was not necessarily tied to the Reformation, although many Protestants adopted it.¹³⁷⁹ Nevertheless, Rutherford and the other theologico-

¹³⁷⁵ Refer to Chapter 3 above.

¹³⁷⁶ Flinn, “Samuel Rutherford and Puritan Political Theory”, 61.

¹³⁷⁷ *Ibid.*

¹³⁷⁸ Timothy D. Hall, *Rutherford, Locke, and the Declaration: The Connection*, (unpublished masters dissertation, Dallas Theological Seminary, April 1984), 93.

¹³⁷⁹ *Ibid.*, 94. Regarding the importance, according to Rutherford (and the other federalists), of the people in the political arena, Webb states that one of the profound problems with which Rutherford grapples in the course of his refutation of Maxwell is concerned with the possibility of the creation of a ruling power out of a people who are the ruled – “If the ruled have ruling power, then why are not they the rulers instead of the ruled, and if they do not have ruling power, how is it possible for them to transfer such power to anyone else?”, Webb, *The political thought of Samuel Rutherford*, 124. According to Maxwell, “if we suppose that all men are initially equal politically, and thus that none possess natural ruling authority so that they can demand obedience from others, how can men create a rulership out of their own resources and confer it upon one of their number? Individuals simply do not

political federalists discuss and emphasize this consensual? act by the community in the context of the covenant, where the community plays both an active and responsible role in the election of the king, being guided in the process by the covenant conditions and the subsequent responsibilities attached thereto.

2. The Theory on Resistance

Resistance theory forms not only an important constituent of political and jurisprudential thought in general, but also emphasizes the community's obligation within the covenantal relationships to secure that the king rules according to the Divine Law. Although there is little doubt that resistance theory forms part of the principle of sovereignty, it is also relevant to discuss resistance theory along with other issues such as the importance of the Divine Law as a condition of the covenant. However, for present purposes, resistance theory – as an important facet to theologico-political federalism from Bullinger to Rutherford – will be investigated alongside the theory on sovereignty. Whatever the insights concerning the resistance theory of a specific mindset (such as, for example, that of theologico-political federalism), clarity of their concept regarding sovereignty, provides a lucid understanding of that particular mindset's approach and teaching. Troeltsch also links the doctrine of popular sovereignty with the theory of the right and duty of violent resistance to godless rulers, even

possess ruling power to transfer, and men cannot give what they do not possess ... The only power pertaining to government which can be conceived to rest in the community is that of capacity to be governed. This fact obliges all by a law of nature to submit to whatever actual government they encounter", *ibid.*, 124 – 125. In answer to this, according to Webb, Rutherford first makes a somewhat fine distinction between what he calls the power of governing and the power of government which are both in the people – the former has to do with the power of the people to rule themselves, the latter with the power of the people to choose a form of government for themselves. Webb adds that in the former case a further distinction is made between virtual power and formal power. In this regard it is, according to Webb, admitted that the community has only the virtual power, or potential power of governing itself – "Two elements must be present before a governing power is actuated: a formal force of authority and a submissive support of the authority. The people as a whole furnish the second element, but as a whole obviously they cannot furnish the first – 'all cannot be kings' ", *ibid.*, 125 – 126. According to Webb the argument thus far is close to Maxwell's in that the people possess the capacity to be governed, and they wait for a formal power to fulfill this capacity. Webb adds that the main difference up to this point seems to be that Maxwell views the community as a passive, inert, and servile object to be governed. Rutherford on the other hand, perceives within the community a surging, active power which responds with vitality to a formal ruling power which may be established over it, *ibid.*, 126. Webb adds: "But the difference is more than this. Rutherford wants to show how the formal ruling power can come from the people. Maxwell claims, with no originality, that the formal power is given to a certain man by an eminent act of God. By divine right this man then 'taps' the power of servitude in the people. Rutherford proposes that not only is the capacity to submit to government in the community, but also the formal power of ruling itself is potentially within the community. Just because this ruling power is not activated, or 'put forth in acts in [all] the people in which it is virtually ... as if all should be kings and governors ...,' does not mean that it is not 'put forth in action in some of them whom they choose to be their governors ...' Thus, 'this power is not idle though it be not reduced in act by all and every individual ...' ", *ibid.*, 126.

to the point of capital punishment if necessary, for the doctrine of the Covenant, and of the right to urge the people to revolt and to fight for the sake of the Gospel.¹³⁸⁰

Hüglin refers to the Monarchomachs who taught “popular sovereignty” based on the “double covenant” between God, king, and the people of Israel in the Old Testament. From this the Monarchomachs argued that the people can legitimately resist tyrannical rule as a violation of this covenant in which they are “equal” partners, and equally responsible for its adherence.¹³⁸¹ Therefore, the Monarchomachs played an important role in the development of resistance theory as part of the theory concerning popular sovereignty or sovereignty in the people as a whole. This no doubt forms part of Mornay’s thought concerning resistance theory, not only in “Monarchomachical” tradition, but also in the tradition of theologico-political federalism.¹³⁸² In this regard, Laski provides some added insight concerning the relationship between the law and the resistance theory of the Monarchomachs. Laski states that both in Scotland, as with Buchanan, and in France, as with Beza and his successors, they were concerned to show the impossibility of an absolute state. For this they had to argue that princes did not have *carte blanche* to arrange the religion of the state as they pleased and that the reason for this limitation lies in the general nature of the state itself.¹³⁸³ Concerning the latter reason, to the Monarchomachs, this general nature of the state itself harbored a contract which always confers certain rights upon the people. Laski comments that this has certain implications for the law, for in such an instance the law is never the simple command of an Austinian system, as for example, that of Bodin. In other words, the law must fulfill the purpose of the social contract.¹³⁸⁴ From the Protestant point of view, the results of this theory taught that a law which violates the purpose of the social contract is not a law at all, and may therefore be resisted. In fact, according to Laski, the Monarchomachs had an importance which went far beyond the very limited aim their effort had in view, and in this there was something valuable in an age of despotic centralization so intense, that as a result, the 16th century saw an effective protest against unlimited power.¹³⁸⁵ The whole Monarchomachic movement points to the fact that the political liberty of the 17th and 18th centuries was the outcome of a protest against religious intolerance – had there not been such a protest, the

¹³⁸⁰ Ernst Troeltsch, *The Social Teaching of the Christian Churches*, Volume Two, (translated by Olive Wyon, London: Novello and Company Ltd., First Published in English in 1931), 633.

¹³⁸¹ Hüglin, “Have we Studied the Wrong Authors?”, 232.

¹³⁸² In this regard, Skinner states: “... perhaps the greatest and undoubtedly the most famous contribution to the Huguenot theory of revolution, the *Defence of Liberty against Tyrants* by Philippe Du Plessis Mornay (1549 – 1623), which gives the fullest summary of all the major arguments developed by the Huguenot ‘monarchomachs’ in the course of the 1570s”, Skinner, *The Foundations of Modern Political Thought*, 305. Mornay’s view on resistance theory is discussed in more detail below.

¹³⁸³ Laski, “Introduction”, 26.

¹³⁸⁴ *Ibid.*

¹³⁸⁵ *Ibid.*

general condition of Europe would have been similar to that of France under Louis XIV, “an inert people crushed into uniform subjection by a centralised and unprogressive despotism.”¹³⁸⁶ Therefore, the Monarchomachs (especially Mornay), must have had an influence on 16th and 17th-century Scotland, and Rutherford no doubt was influenced by their constitutional thought, especially pertaining to the contract and its implications for resistance theory, which will become clear below.

Beyond the confines of the political theories of the Monarchomachs it is clear that resistance theory was present within the early Reformation and period of Calvin, while the latter’s basic commitment is unquestionably a theory of non-resistance, who introduces a number of exceptions into his argument.¹³⁸⁷ Nevertheless Calvin’s political ideas in this regard were not too clear. Hyma points out that Calvin, for example, did not provide much clarity concerning what the rights were of the people as represented by the local magistrates, members of provincial estates, members of national estates, provincial governors and national assemblies. However, the fact that he did refer to the ephori, tribunes, demarchs and national assemblies, indicates that he was familiar with the operation of these various bodies and officials – and since he plainly said that he was only speaking of private citizens when urging people not to resist the government, he clearly had in mind other persons who did have the right.¹³⁸⁸ Mason also states that for Calvinists in particular, obedience to constituted authority was a cardinal principle of the “discipline” essential to the right functioning of those “godly commonwealths” which they sought to establish to the greater glory of God. Mason adds that furthermore they had to contend with Romans 13 where Paul “could hardly have been more explicit” concerning the opposition to resisting constituted authority, either lightly or easily.¹³⁸⁹ Franklin refers to the fact that by the end of the 1550s, almost all the themes of 16th-century resistance doctrine had appeared in one form or another, but that the French development in this regard was more systematic and detailed, because it was much more deliberate and cautious. Franklin comments that this caution was as a result of the influences

¹³⁸⁶ *Ibid.*, 27.

¹³⁸⁷ Skinner, *The Foundations of Modern Political Thought*, 192. Cf., *ibid.*, where Skinner discusses the instances which justify active resistance according to Calvin. On *ibid.*, 214, Skinner states: “Certainly there are signs that Calvin began to modify his doctrine of passive obedience at the end of the 1550s, and started to move towards an acceptance of the constitutional theory of resistance.” In this regard also cf., Hyma, *Christianity and Politics*, 149 – 150. For Martin Bucer’s contributions in the early 16th century concerning the main development of the theory on resistance, refer to *ibid.*, 205 – 206. On *ibid.*, 206, Skinner states: “So he (Bucer) concludes that all such magistrates are constituted to rule not merely as they themselves may wish, but ‘in order to preserve the people of God from evil and to defend their safety and goods’. Having emphasised these two claims, Bucer’s conclusion in favour of forcible resistance readily follows.”

¹³⁸⁸ Hyma, *Christianity and Politics*, 150 – 151.

¹³⁸⁹ Roger Mason, “Covenant and Commonweal: the language of politics in Reformation Scotland”, in *Church, politics and society: Scotland, 1408 – 1929* (edited by Norman Macdougall, 1983), 101.

of Calvin, “who would admit resistance by inferior magistrates only where they had a specific constitutional mandate to control the actions of superiors – as did the Spartan ephori, the Roman tribunes, and the Athenian demarchs.”¹³⁹⁰

It is contended that the reason for Calvin’s weaker theory of active resistance has to be evaluated in the light of his views on the covenant. It is no coincidence that both Zwingli and Bullinger have much stronger views on the covenant and more resistance to tyranny than Calvin; and it was Bullinger with his idea of the Christian community bound by the covenant that in fact promoted Zwingli’s stronger approach to tyranny.¹³⁹¹ These views on the covenant included the idea that the covenant is the divine framework for human life, both religious and civil, and the entire sum of piety consists in the main points of the covenant, namely partly the love of God and partly the love of one’s neighbor. In fact, the Decalogue itself seems to be almost a paraphrase of the conditions of the covenant; and to Bullinger the office of magistracy and all other political aspects are included within the covenant and its conditions.¹³⁹² It is also interesting to note that according to Troeltsch:

... Calvin’s most loyal disciple and follower, Beza, in face of the Massacre of St. Bartholomew, and the irremediable godlessness of the French Government, finally altogether discarded the theory of the duty of subjects to be obedient, and that for such cases of need he frankly proclaimed the sovereignty of the people as the ultimate court of appeal ... also that violent revolution is permitted, if no other means are left.¹³⁹³

¹³⁹⁰ Franklin, “Introduction”, 31. Franklin states that Calvin (who was at one time influenced by Bucer), however, was willing to speculate that powers of control may “perhaps” be attributed to the estates of European kingdoms, *ibid.*, 31 – 32.

¹³⁹¹ Andries W. G. Raath and Shaun A. de Freitas, “Calling and Resistance: Huldrych Zwingli’s (1484 – 1531) political theology and his legacy of resistance to tyranny”, *Koers*, 66 (1), (2002), 64. Zwingli, although subscribing to a more substantial resistance theory than Calvin, remained vague on the issue of whether temporal rulers may be killed. Although killing is implied in the context of his views on the removal of rulers and his conviction that sometimes God intervenes by sending someone to avenge his people, he mostly held the view that such acts are not done on own initiative, but because of the working of the Spirit. The problem remains however, how any person can be sure that such a calling has indeed been issued by God, *ibid.*, 54. Franklin provides another perspective concerning the cautious approach by Calvin (and Beza), on active resistance. Franklin points to the fact that the Huguenots were a minority faction facing a protracted struggle and had to be extremely careful of their grounds if they were to win over, or at least neutralize, the uncommitted, and reassure their own nobility – Hence, according to Franklin, Calvin (and Beza), consistently urged patience, Franklin, “Introduction”, 32.

¹³⁹² Raath and De Freitas, “Calling and Resistance: Huldrych Zwingli’s (1484 – 1531) political theology and his legacy of resistance to tyranny”, 64 – 65. The authors add: “The truth is that Calvin followed the milder approach to resistance to tyranny, and without the idea of the covenanted Christian community, aligned himself to the position of the English Reformers on these issues”, *ibid.*, 74.

¹³⁹³ Troeltsch, *The Social Teachings of the Christian Churches*, 629. Moltmann states that, for Calvin, natural rights and the sovereignty of the people play no role concerning resistance in a political context. Resistance against rulers who oppress the faith is for Calvin, however, a religious imperative,

Moltmann refers to Mornay's *Vindiciae*, in which the traditional right of resistance of the estates against the crown is no longer defended but rather:

... a new federalistic-democratic idea of the State is propagated, although it does not want to abolish the monarchy. Duplessis Mornay was, as far as I know, the first to apply the theological ideas of covenant to the foundation of the right of resistance. Due to the interest in the right of resistance, one usually reads only the third part of the *Vindiciae*, which Carl Bernhard Hundeshagen published in German, and overlooks the theological doctrine of the double covenant which was previously developed in the *quaestio prima* with which Mornay wants to answer four contemporary questions, which are still relevant today: 1. Do subjects owe obedience to a ruler whose decrees contradict the law of God? 2. Is one allowed to resist the ruler if he violates the law of God? 3. Is it allowed to resist a ruler who ruins a state? 4. Are neighbouring rulers allowed to help foreign subjects based on religious or political grounds?¹³⁹⁴

This contract theory, consisting of the above-mentioned principles is based in accordance with the Old Testament on the theology of the double covenant; God having sealed the first covenant with the people of Israel on Mt. Sinai, the law of this covenant being the

Moltmann, "Covenant or Leviathan? Political Theology for Modern Times", 21. Nevertheless, Calvin stated reasons for political resistance in his letters to the Huguenots, only within the framework of the existing laws, but not according to natural law. Moltmann adds that Calvin suggests suffering resistance and leaving the revenge to God, *ibid.* Beza, in 1574 defended the estate-related right to resistance with a view to the rights of the people, *ibid.*, 21 – 22. Laski also states that in Beza's *Rights of Magistrates over their Subjects*, the "theory of Calvinist politics is set forth with perfect clarity. To God alone, it urges, does absolute power belong. Magistrates indeed, have wide authority, and they cannot be held to account by the people. Nevertheless, when they command something that is incompatible with true religion, disobedience becomes a duty. And by disobedience, Beza argues, rebellion may, ultimately, be implied. The value of patience and prayer must not be forgotten; but when the tyranny becomes intolerable, just remedies must be used against it. Not, however, by every member of the state ... the officers of the state, whose business it is to maintain the laws, must secure their authority, but they must not depose the prince ...", Laski, "Introduction", 24 – 25. To a large extent, these thoughts are that of Rutherford's concerning the justification and manner of resistance, and which is confirmed below when discussing Rutherford's approach to resistance. It is interesting to note that Rutherford refers no less than seven times to Beza in *Lex, Rex*, namely on *ibid.*, 148 (2), 152 (1), 155 (1), 173 (2), 174 (1), 184 (1) and 209 (1), (most of these references dealing with resistance theory), and in Rutherford's *Pretended Liberty of Conscience*, there are no less than three references to Beza.

¹³⁹⁴ Moltmann, "Covenant or Leviathan? Political Theology for Modern Times", 22 – 23. Franklin refers to Mornay being more militant than Beza on the question of resistance on religious grounds, Mornay leaning toward the model of the Scottish and English Calvinists concerning the religious obligation of the state – this obligation being presented as a covenant with God, into which the king and the people enter as independent but associated signatories, Franklin, "Introduction", 42. Franklin also refers to the fact that each of these signatories is compared to the co-signer of a promissory note, so that each is responsible for the entire obligation in the event of default by the other – "The people, therefore, is not only entitled to correct a king who persecutes the true religion. It is obliged to do so since it is responsible for his default. This interpretation of the status of the people as an independent co-partner to the covenant is yet another argument for its general power to control the king", *ibid.*

Decalogue.¹³⁹⁵ In general, Mornay's theory on resistance was astonishingly similar to that of the other theologico-political federalists, such as Althusius and Rutherford. The contract that the people (including the king) made with God, resulted in an obligation for the people (via their representatives), to organize resistance against a prince who sought to infringe the Will of God by breaking the covenant.¹³⁹⁶

The people of God sealed the second covenant with their own, God-given King before God, and transferred their sovereignty to him according to the contract of rulership. If the ruler breaks this covenant with the people, he is a tyrant whom the people must resist; and if he breaks the people's covenant with God, then he is a blasphemer who must also be resisted for God's sake.¹³⁹⁷ Moltmann rightly states that the foundation of the right of resistance is, in the above context, not theocratic, nor does it pertain to natural law but rather is derived from a federal theology. Moltmann adds that federal theology does not originate with Calvin in Geneva but in Zürich, more specifically from the thought of Bullinger, and states: "In this tradition of Reformed federal theology is also *Johann Althusius*, who presented his '*Politica methodice digesta*' (1603) in Herborn and not only developed the contract of rulership based on mutuality out of federal theology, but also a social doctrine of the different social contracts from the family all the way to society."¹³⁹⁸ According to Althusius, a tyrant by practice¹³⁹⁹ is to be publicly acknowledged, when it is to be considered firmly entrenched. By firmly entrenched is meant, when the magistrate, having been firmly admonished often by the optimate, continues to tyrannize the community. In such an instance, remedies other than deposition for curbing and coercing tyranny should first be continuously attempted until they prove to be without effect. Once the evilness "increases and gathers strength", resistance must take place immediately before it becomes impossible to cure.¹⁴⁰⁰ Althusius approaches

¹³⁹⁵ Moltmann, "Covenant or Leviathan? Political Theology for Modern Times", 23. Moltmann adds that for Mornay the Old Testament lives on in the New Testament, the people of Israel continue in the form of the people of Christ and therefore, also the *Politia Moysi* in the Kingdom of Christ, *ibid.*, 24. Also refer to Chapter 2 above, concerning the discussion on the contractual theory present in theologico-political federalism and how Mornay's political thought supports the legacy of theologico-political federalism.

¹³⁹⁶ Mornay, *A Defence of Liberty Against Tyrants*, 38 – 39.

¹³⁹⁷ Moltmann, "Covenant or Leviathan? Political Theology for Modern Times", 23.

¹³⁹⁸ *Ibid.*, 25.

¹³⁹⁹ A tyrant by practice is according to Althusius, a person that rightfully occupies the ruling office and who then turns to acts of tyranny. Althusius does not consider a tyrant without title (namely a private person that resorts to tyrannous acts especially by invading a foreign land) to be a tyrant at all, but only a private citizen who is an enemy of the realm, cf. Althusius, *Politics*, footnote 3, 186 – 187. Compare this to the similar thought by Mornay, also referring to a tyrant by practice as someone who has been invested with rulership and thereafter governs contrary to the law, cf. Mornay, *A Defence of Liberty Against Tyrants*, 182. Mornay refers to a tyrant without title, and this is someone who has gained a kingdom by violence, *ibid.* Cf. *ibid.*, 183 – 184, for further discussion by Mornay of these two classes of tyrants.

¹⁴⁰⁰ Althusius, *Politics*, 189.

resistance to tyranny with caution, stating that the manner of resisting a tyrant must first be a defensive nature, and not offensive. This implies that the tyrant is to be approached by “words and deeds: by words when he by words only violates the worship of God and assaults the rights and foundations of the commonwealth: by force and arms when by military might and outward force he exercises tyranny, or has so progressed in it that without armed force such tyranny cannot be restrained, confined, or driven out.” In the latter instance, according to Althusius, it is proper to enlist an army.¹⁴⁰¹ However, Althusius made it clear that such resistance should only be executed by the public official (optimates and ephori), and not by private persons; the latter do not have the *right of the sword*; they may only act on command of the optimates, unless the land is invaded by a tyrant without a title. This does not mean that such private persons be servants of tyranny, and that fleeing under circumstances of tyranny is the proper thing to do, and in the case of defending for their lives, they may resist.¹⁴⁰²

Althusius places his theory of resistance into his covenantal thought by stating that if the supreme magistrate does not keep his pledged word and fails to administer the realm according to his promise, then the realm is the punisher of this violation and broken trust. It then becomes the responsibility of the people to change and annul the earlier form of this polity and commonwealth, and to constitute a new one – because a proper condition of the agreement and compact is not fulfilled, the contract is dissolved by right itself, and the people will not recognize such a compact-breaking person as their magistrate, but treat him as a private person and a tyrant to whom it is no longer required to extend obedience and other

¹⁴⁰¹ Ibid. Althusius adds that the tyrant is to be resisted until the commonwealth is restored to its original position, and if the optimates cannot defend themselves against force by any means, they may kill the tyrant, *ibid.*, 189 – 190.

¹⁴⁰² Ibid., 190. “And we do not say that a tyrannical prince is immediately to be killed, but that resistance is to be made against his force and injury. In one instance only can he justly be killed, namely, when his tyranny has been publicly acknowledged and is incurable: when he madly scorns all laws, brings about the ruin and destruction of the realm, overthrows civil society among men so far as he is able, and rages violently: and when there are no other remedies available”, *ibid.*, 193. Rutherford exhibits a similar approach concerning resistance to tyranny, and the proper order in which the various alternatives in such resistance should take place. Examples concern the importance of first patiently suffering the tyranny until it becomes serious, the need of first communicating and mediating before resorting to actual resistance, the possibility of fleeing as a form of resistance and the importance of self-defense as a form of resistance. Also note that Rutherford had similar thoughts as Althusius in that the representatives of the community, and not individuals, were responsible for resisting the tyrant (although Rutherford was more specific in this regard, linking it to the situation where there is a tyrant with a title). According to Rae, Rutherford insisted that a private man cannot kill a king acting tyrannically, because he took the orthodox approach that “the first, and ultimate, and native subject of all power is the community, not the individual, Rae, *The political thought of Samuel Rutherford*, 115. Rutherford also referred to a tyrant without a title, where the approach is somewhat different to the situation where the tyrant is with a title, Rutherford states, “we teach that any private man may kill a tyrant void of all title”, *ibid.*, 116. More on Rutherford’s theory on resistance, below.

duties it promised.¹⁴⁰³ Althusius also refers to matrimony, the strictest of all bonds, and that if dissolution of such a bond is qualified by Scripture,¹⁴⁰⁴ then surely this must equally qualify the conceding of a divorce between a king and a commonwealth because of the intolerable and incurable tyranny of a king by which all honest cohabitation and association with him are destroyed.¹⁴⁰⁵ The office of the ephori entails both the judgment whether the supreme magistrate has performed his responsibility, and also to resist and impede the tyranny of a supreme magistrate who abuses the right of sovereignty.¹⁴⁰⁶ According to Hueglin, Althusius's right of resistance is the natural extension of the constitutional balance set up between ephori and the supreme magistrate. The ephori are (as a collective body of ephori), on the one hand under the control of the partial associations they represent, and on the other hand the ephori (as individuals), in their capacity as representatives of the various associations, are under the authority of the supreme magistrate.¹⁴⁰⁷ This also indicates

¹⁴⁰³ Althusius, *Politics*, 129. Althusius also states that likewise, the supreme magistrate may also punish the people if they do not manifest obedience and fail to fulfill the service and obligations promised in the election and inauguration of the supreme magistrate, for this constitutes a violation of the trust and compact between the supreme magistrate and the people, *ibid.*

¹⁴⁰⁴ Althusius refers to the authority of Theodore Beza's *De divortii et repudiis* in support of Scripture's qualification of divorce in instances where, for example, the cruelty of the husband makes it impossible for further living together, *ibid.*, 110.

¹⁴⁰⁵ *Ibid.*, 110.

¹⁴⁰⁶ *Ibid.*, 101. Note the reference by Althusius to, among others, Mornay's *Defence of Liberty Against Tyrants* in support of this. That Althusius was influenced by the theologico-political views of Mornay is without question, Frederick Carney states: "Equally important to Althusius' constitutionalism were certain Calvinists. The chief ones were the authors of the anonymous *Defence of Liberty Against Tyrants* (which was perhaps the best written and most widely read of the political tracts that came out of the French Wars of Religion) ...", Althusius, *Politics*, xxix. McCoy states that sovereignty in the federal meaning of Althusius is not absolute, and that covenants of humanity exist within the covenant of God and are limited by the Divine covenant. Both people in covenant and rulers in covenant are bound to the more comprehensive covenantal order of God, McCoy, "*Covenant in the Political Philosophy of Althusius*", 197. Rulers lose their authority when they violate the covenant through which they are legitimate representatives of the people, this is because all are bound in the covenant with other humans to the covenant of God, *ibid.* The implication of this for resistance theory is that "Intermediate officials (ephori), are bound in covenant to hold magistrates accountable to the covenant and to remove them from office if they persist in violating the covenant. The federal political philosophy thus makes room for revolution. Indeed, it enjoins overthrow of a ruler who acts against the covenant of the people and the covenant of God", *ibid.* This indicates Althusius's strong allegiance to the contractual element as justification of resistance.

¹⁴⁰⁷ Hueglin, "Johannes Althusius: *Medieval Constitutionalist or Modern Federalist?*", 37. McCoy and Baker add that Jean Bodin, during the latter half of the 16th century, wrote against resistance to rulers, and had defended the absolute right of kings, also having affirmed that sovereignty requires centralized absolutism. In this regard, the authors state that Althusius can be seen as writing his *Politics* with Bodin as his main opponent and with the clear intention of drawing together into a coherent whole the varied views of those favoring resistance, McCoy and Baker, *Fountainhead of Federalism*, 54, and on *ibid.*, 62, the authors state: "Althusius is carrying forward the teaching of the federal tradition calling for resistance to tyrants", and gives this matter more attention than it had previously received, providing a context of the people's sovereignty and methods for limiting and removing the chief magistrate. In so doing, he formulates what is referred to as "federal revolution", which has been widely influential and practiced in the modern world, in contrast to the conventional notion of revolution today that is necessarily violent and renders the fabric of society with radical change.

Althusius's support of an effective division of powers theory, with the necessary checks and balances emanating from this "dual" responsibility of the ephori.

Danner states that English reformers looked at the nation of England as a new Israel of God, in covenant relationship with him. It did not escape their memory that Constantine himself was of British origin; and that indeed church history emanated from Abraham, whom Jahweh promised to make a nation after his own choice. Therefore, the Old Testament became their favorite authority, for the history of Israel opened up within divine revelation a corporate depository of the divine will within a nation. Seeing themselves as part of God's *covenant* (of promise and fulfillment), the English could think only of the divine right of kings; and David's example of sparing Jahweh's anointed, Saul, was evidence enough of Christian obedience.¹⁴⁰⁸ Danner adds that the accession of Mary Tudor to the English throne changed the complexion of the picture drastically, and consequently the Protestants who became refugees in exile would begin to see things differently. In exile the English reformers gave birth to the theories of resistance to the ungodly magistrate.¹⁴⁰⁹ Therefore, the transition was established from support in the divine right of kings to the rights concerning resistance of the ungodly magistrate. Although not explicitly linked to the theologico-political understanding of the covenant, there were traces in 16th-century English reformed thought concerning the community's responsibility to ward-off evil governance. Also to be witnessed in all of this is the transition from monarchical sovereignty to sovereignty of the people under guidance of the Divine Will. Ponet, Goodman and Knox became pioneers in the further development of resistance theory, Knox especially, hinting at the covenantal paradigm as justification for such resistance. Rutherford would build on this in more explicit terms, involving more strongly theologico-political federalism as justification for such resistance.¹⁴¹⁰ Moltmann refers to the

¹⁴⁰⁸ Dan G. Danner, "Resistance and the Ungodly Magistrate in the Sixteenth Century: The Marian Exiles", *The Journal of the American Academy of Religion*, Vol. 49 (1981), 472.

¹⁴⁰⁹ Ibid. Albeit so, the resistance theory emanating from the prominent reformer John Hooper (like other English Reformers), was the milder approach, similar to that of Zwingli's, and much along the lines in which Calvin interpreted the Swiss Reformation views on resistance to tyranny, Raath and De Freitas, "Calling and Resistance: Huldreich Zwingli's political theology (1484 – 1531)", 70. The reason for this must be sought in the absence of a strong theoretical vision of the covenanted Christian community, as it is manifested in Bullinger's theology. Nowhere in Hooper's approach to politics does a direct link exist between the idea of the Biblical covenant, the office of magistracy and resistance to tyranny, *ibid.*

¹⁴¹⁰ Rutherford was well aware of the support for resistance theories by many of the prominent reformers, such as Beza and Calvin, cf. Rutherford, *Lex, Rex*, 184 (1), and Melancthon, Luther, Mornay, Knox, and Althusius, *ibid.*, 209 (1). These references are not exhaustive and on various other places in *Lex, Rex* concerning Rutherford's resistance theory, many of these names are referred to, as will become evident in what follows. It is also interesting to take note of Greaves's observation concerning Knox's covenantal thought and its link to resistance theory. In this regard Greaves states: "A study of Knox's views on the covenant is also important because of the place of the covenant in the development of his position on the legitimacy of active rebellion against tyrannical, idolatrous sovereigns", Richard L. Greaves, "John Knox and the Covenant Tradition", *Journal of Ecclesiastical*

Confessio Scotica, written in 1560, in Presbyterian Scotland. This *Confessio* specified under the “good works”, after the worship of God and love of neighbor, “*tyrannidem opprimere, ab informioribus vim improborum defender*”, and with this, elevated the resistance against tyrants to a general Christian obligation. Moltmann adds: “To the background of this amazing generalization of the right of resistance belongs the old Scottish law which *George Buchanan* in *De jure regni apud Scotos* (1579), explained accordingly: Because both the elected and the inherited monarchy involve the homage of the people, the people are relieved of their obligation of obedience if the ruler damages the contract of rulership.”¹⁴¹¹

Where Calvin’s interpretation of Romans 13 did not distinguish between the person of the ruler and the office of the ruler, Knox’s did.¹⁴¹² In similar fashion, Rutherford’s doctrine of resistance is built upon Romans 13, being a description of an office, which places an obligation upon officials – “When there is a *man* holding the office who usurps the obligations and responsibilities of the office, replacing God’s law with his own, then the

History, Volume XXIV, Number 1, (1973), 23. That Rutherford was influenced hereby cannot be doubted. In this regard Rae also states that although the idea of a covenant between God and His people was absent from the writings of Ponet and Buchanan, it did appear in the writings of Althusius and the Huguenots, and provided Knox and Goodman with a defense of popular revolution – “Knox going so far as to claim that submitting to the rule of tyrants and idolaters would result in damnation”, Rae, *The political thought of Samuel Rutherford*, 52. In this regard Mason also points to the covenant thought in Knox: “ ‘I fear not to affirm’, Knox wrote in the *Appellation*, ‘that the Gentiles (I mean every city, realm, province or nation amongst the Gentiles embracing Christ Jesus and His true religion) be bound to the same league and covenant that God made with His people Israel’. In the case of England where, under Edward VI, the magistrates and people had ‘solemnly avowed and promised to defend’ God’s truth, Knox insisted that the terms of such a covenant still applied. Consequently, he had no compunction about arguing that there it was ‘lawful to punish to the death such as labour to subvert the true religion’ – including ‘Mary that Jezebel whom they call their queen’. Unlike the English, however, the Scots had never officially embraced Protestantism and were not bound under the covenant in the same way”, Roger A. Mason, “Introduction”, in *John Knox on Rebellion*, (edited by Roger A. Mason, Cambridge: Cambridge University Press, 1994), xx.

¹⁴¹¹ Moltmann, “Covenant or Leviathan? Political Theology for Modern Times”, 22. Rae states that “the role of the developing federal theology was certainly essential in providing justification of resistance and confidence of success to the Scottish Covenanters. In fact, according to Rae, covenanting (and federal theology), although not unknown in England, was certainly more widespread in Scotland. Rae also comments that this undoubtedly provides some clue as to why the Scots (although not eager to resist the king) were more prepared to take action against Charles than the English were, C. E. Rae, *The political thought of Samuel Rutherford*, 69. In this regard, Rae also observes that the concept of the covenant was an important factor in viewing resistance as a religious duty. According to Rae, it is closely linked with federal theology and has parallels in the ancient Scottish practice of banding or bonding, and would be very familiar to anyone with a nodding acquaintance with the Old Testament, *ibid.*, 67.

¹⁴¹² Cf., Mason, “Covenant and Commonweal: the language of politics in Reformation Scotland”, 102 – 103. Initially Knox, came up with the idea that Paul, in Romans 13, had said that the ‘powers’ were ordained by God. This meant that there must exist in each kingdom alternative, albeit inferior, magistrates whose office was, like a king’s, of divine institution and whose duties were, again like a king’s, to punish the wicked and protect the innocent, *ibid.*, 101 – 102. This further meant that even when a superior power commanded the contrary, the inferior magistrates were bound to fulfill the function assigned to them by God, *ibid.* Albeit, this became a problem as it entailed that divinely ordained magistrates were in arms against a divinely ordained prince and both were demanding obedience in accordance with the divine will, *ibid.*, 102.

office gives legitimate sanction to the citizens to resist the *man*.”¹⁴¹³ Rutherford states that Romans 13: 1 – 2 are words resorting under a formal command of God and herein are words of action, as the community is not to resist actively God’s ordinance as his ordinance, and that Romans 13: 3 commands the community to do good and not bad works so as not to have the ruler be a terror to us – we are to do no ill in order to be free of vengeance’s sword; and we are to pay tribute, and give fear and honor to the ruler, Romans 13: 7. According to Rutherford there is no commandment whatsoever in this text concerning passive obedience.¹⁴¹⁴ Rutherford adds that Romans 13 and Titus 3 “is nothing else but an exposition of the fifth commandment; but in the fifth commandment only active obedience is formally commanded, and the subordination of inferiors to superiors is ordained, and passive obedience is nowhere commanded.”¹⁴¹⁵

In this regard, Sanderson states that the distinction between political power in the abstract and political power as it appears in various forms within specific localities is clearly central to the case for resistance which the English Parliamentarians (during the 1640s) sought to establish. Sanderson refers to Charles Herle who stated that: “this government be so, or so moulded, qualified and limited, is as questionless from the paction or consent of the society to be governed” as well as William Bridge who stated that: “We distinguish ... the power abstractively considered from the qualifications of that power, and the designation of a person to that power. The power abstractively considered, is from God, not from the people: but the qualification of that power, according to the divers ways of executing in several forms of government, and the designation of the person that is to work under this power, is of man ... [I]f the person intrusted with that power shall not discharge his trust, then ... it falls to the people, or the representative body of them to see to it.”¹⁴¹⁶ However, it was the Scottish Presbyterians, especially Rutherford, who expressly and concisely linked this distinction to the covenant. Sanderson, commenting on the relationship between the Parliamentarians of

¹⁴¹³ Flinn, “Rutherford and Puritan Political Theory”, 70. Also cf. Rutherford, *Lex, Rex*, 110 (2), Rutherford that the powers referred to in Romans 13 are not absolute. In fact, concerning the distinction between the office and the person of the king, Rutherford refers to Knox who was in agreement to this, Rutherford states: “The congregation, in a letter to the nobility, (Knox, Hist. Of Scotland, 1.2.) says, ‘There is great difference betwixt the authority, which is God’s ordinance, and the persons of those who are placed in authority. The authority and God’s ordinance can never do wrong, for it commandeth that vice and wicked men be punished, and virtue, with virtuous men and just, be maintained; but the corrupt person placed in this authority may offend, and most commonly do contrary to this authority. And is then the corruption of man to be followed, by reason that it is clothed with the name of authority?’ And they give instance in Pharaoh and Saul, who were lawful kings and yet corrupt men. And certainly the man and the divine authority differ, as the subject and the accident, – as that which is under a law and can offend God, and that which is neither capable of law or sin”, *ibid.*, 146 (1).

¹⁴¹⁴ Rutherford, *Lex, Rex*, 155 (2).

¹⁴¹⁵ *Ibid.*, 155 (2) – 156 (1).

¹⁴¹⁶ Sanderson, ‘*But the People’s Creatures*’. *The Philosophical Basis of the English Civil War*, 17 – 18.

the 1640s and resistance theory that is compatible with the Scriptures, says that the Parliamentarians had no doubt that the magistrate who exceeded his powers and became a tyrant could find no protection in those biblical texts upon which the Royalists placed much emphasis (Romans 13 and 1 Peter 2).¹⁴¹⁷ Sanderson adds that for the Parliamentarians, Peter and Paul made it clear that references were to the legitimate ruler exercising authority rather than to anyone who happened to be in a position of power and able to inflict his will upon others. More importantly, Sanderson states that to the Parliamentarians “tyranny is no ordinance of God and He that commands us to obey a king does nowhere subject us to a tyrant”, Sanderson adds that:

Indeed, for Samuel Rutherford, summing up the Parliamentarian case in 1644, tyranny was positively diabolical: it was, he held, a maxim of divinity that tyranny was a work of Satan and could not be from God ‘because sin ... is not from God; the power that is, must be from God; the magistrate ... is good in the nature of office, and the intrinsical end of his office (*Romans xiii*) for he is the minister of God for thy good ... [T]herefore, a power ... to oppress, is not from God ... but from ... the old serpent.’¹⁴¹⁸

Although Sanderson does not provide an in-depth discussion regarding Rutherford’s covenantal approach concerning resistance to tyranny and its link to the distinction between the office of magistracy and the person of the magistrate, he nevertheless gives a brief indication hereof in his reference to Alexander Henderson (who according to Sanderson almost certainly drew some inspiration from Mornay’s *Vindiciae* and was also involved with Rutherford in the Westminster Assembly in the 1640s), who officially justified the defensive war waged by the Scots against Charles by claiming that as magistracy was intended to protect the people and to promote their well-being, a failure to perform these functions made

¹⁴¹⁷ Ibid., 21.

¹⁴¹⁸ Ibid., 22. On *ibid.*, 23, Sanderson states that for Rutherford Romans 13 also called for a distinction between “the power lawful” and the “sinful person” who for the time being abused it. According to Rutherford, in the context of Romans 13, resisting the “power” was absolutely forbidden by the text, whereas he who resisted the man who was king, “commanding that which is against God, and killing the innocent, resisteth no ordinance of God, but an ordinance of sin and Satan.” It is interesting to take note of Sanderson’s comment: “What is probably the most forthright contemporary application of Romans 13 to British affairs came from the pen of Samuel Rutherford”, and in so far as the acts of the king are contrary to the requirements of his office, he could be resisted, for the community is only bound to the office of the king, which implies that the people are only bound to the obligations and functions of the king. This means that the people are only bound to the king in so far as he is a terror to evil, *ibid.*, 24. Jeremiah Burroughs, William Prynne and Stephen Marshall postulated a similar theory to Rutherford concerning resistance theory in the context of the distinction between the office of magistracy and the person of the magistracy, cf. *ibid.*, 22 – 23.

the magistrate vulnerable to resistance.¹⁴¹⁹ In addition, Sanderson states that the understanding of the legitimacy of rulers as an “upward” conferring of authority on them by the “people” (also referred to as the “ascending” theory of politics), contributed greatly to the making intelligible the ideologies and events of the first phase of the Great Rebellion in England up to the execution of the king in 1649. Sanderson adds: “... the importance of the “ascending” theory for the period concerned (England in the 1640s) is beyond question and that, far from having done “no execution”, the “ascending” theory of politics was the principle philosophical justification for the war waged by the Parliamentarians against their king for the trial and execution of that king ...”¹⁴²⁰ Comparing this justification for resistance to that of Rutherford it can be said that while the Parliamentarians used the theory to justify bearing arms against the king, and to legitimize his execution, Rutherford, to a large extent, based his justification for resistance against the king on the serious breach of the covenantal conditions by the latter. However, Rutherford also applied the principle of the sovereignty of the people to qualify resistance as well as principles emanating from the natural law such as the right to self-defense. The royalists on the other hand, based their support for the king on a strenuous denial of the theory, and a conviction that political power came not from the people but from God (an understanding in line with the concept of the divine right of kings).

Mason refers to Knox, who was already toying with the idea that a covenanted people might be duty bound, not simply to disobey, but to take up arms against an idolatrous sovereign. Early in 1554, he was canvassing the leaders of the Swiss congregations for their opinions on such matters as obedience “to a Magistrate who enforces idolatry and condemns true religion”.¹⁴²¹ All forms of idolatry, especially participation in the mass was irrevocably to violate “the league and covenant of God”, which “requires that we declare ourselves enemies to all sorts of idolatry”.¹⁴²² Knox stated that Christians are lawfully bound to defend their brothers from persecution and tyranny against princes or emperors, and he also subscribed to

¹⁴¹⁹ Ibid., 3. May it be mentioned that the contributions of Rutherford on this subject far exceed those of Henderson’s.

¹⁴²⁰ Ibid., 2.

¹⁴²¹ Roger A. Mason, “Knox, Resistance and the Moral Imperative”, *History of Political Thought*, Vol. 1 No. 3. Autumn, December (1980), 415. Concerning a section on Knox’s view on resistance theory as is witnessed in his confrontation Mary Queen of Scots, at Hollyrood, Scotland (1561 – 1563), refer to Randall A. Terry, *The Sword. The Blessing of Righteous Government and the Overthrow of Tyrants*, (Windsor, New York: The Reformer Library, 1995), 75 – 79.

¹⁴²² Mason, “Knox, Resistance and the Moral Imperative”, 414. Mason adds that Knox was aware of approaching this type of resistance theory with the necessary wariness, bearing in mind Bullinger’s emphasis on the fact that worldly motives can lie behind an active approach to resistance theory. Therefore, Knox, in public, continued to urge obedience in all things not repugnant to the law of God, *ibid.*, 415 – 416.

the principle that the nobility have the duty to overthrow an idolatrous sovereign.¹⁴²³ Rutherford himself, confirms Knox's support of resistance against an idolatrous ruler. In this regard Rutherford states that divines acknowledge that the princes of Israel did not halt the communication between Baal's priests and the king; "And, therefore, the land is punished for the sins of Manasseh, as Knox observeth in his dispute with Lethington, where he proveth that the states of Scotland should not permit the queen of Scotland to have her abominable mass."¹⁴²⁴ With the possibility open for subjects to kill tyrants as a measure of active resistance to tyranny, other political authors, like John Ponet and Christopher Goodman, soon followed in Knox's wake. Hereby they gave rise to a political tradition of resistance to tyranny, quite different from that of the English Reformers, who chose passive resistance in particular circumstances only.¹⁴²⁵ To Knox, the people, like the prince and the nobility, as a whole were leagued with God and subject to the moral law. God, he proclaimed, "requireth no less of the subjects than of the rulers" and does "not only punish the chief offenders, but with them doth he damn the consenters to iniquity: and all are judged to consent, that, knowing impiety committed, give no testimony that the same displeaseth them".¹⁴²⁶

Mason states that although it is not clear whether a letter written from Perth by "The Faithfull Congregation of Christ Jesus in Scotland" on 22 May 1559, and addressed to the Regent, Mary of Guise, was drafted by Knox. Its essentially Knoxian character is clear. Mason states that this is so because Knox's political thought stemmed from the theological premise that the elect had entered into a "league and covenant" with God which bound them to the divine will

¹⁴²³ Raath and De Freitas, "Calling and Resistance: Huldrych Zwingli's (1484 – 1531) political theology and his legacy of resistance to tyranny", 72.

¹⁴²⁴ Rutherford, *Lex, Rex*, 114 (2).

¹⁴²⁵ Raath and De Freitas, "Calling and Resistance: Huldrych Zwingli's (1484 – 1531), political theology and his legacy of resistance to tyranny", 73. The authors add: "Two different Reformational political traditions arose in England and Scotland, both based upon the pioneering work done by Zwingli. One of the major differences between these two traditions concerns the issue of active resistance to tyranny. Although the English tradition of John Hooper and others also applied the covenant perspective of Bullinger, it did not adequately accommodate the perspective of the covenanted Christian community. The result was similar to that of Calvin on the matter of active resistance to tyranny, namely a weak view of active political resistance. On the other hand, the Scottish tradition of John Knox, Ponet and Goodman saw active political resistance as a direct result of the covenanted Christian community subject to the law of God", *ibid.*, 74. Rutherford was to follow in the line of the latter point of view.

¹⁴²⁶ Mason, "Knox, Resistance and the Moral Imperative", 425. However, Knox, nowhere in the *Letter to the Commonalty*, explicitly urged the people to regicide or even deposition; unlike his friend Christopher Goodman, Bullinger stopped short of investing them with authority to depose and execute an idolatrous sovereign, "On that score, Knox remained – perhaps deliberately – ambiguous", *ibid.* Mason adds: "The *First Blast*, the *Appellation* and the *Letter to the Commonalty* contain the fullest expression of Knox's radical political ideas. The exasperated exile had finally broken with the principle of passive disobedience and imposed on the mass of a covenanted people the moral duty of resistance when their religion was endangered", *ibid.*, 426.

as revealed in His Word irrespective of merely human laws and constitutions.¹⁴²⁷ Mason adds:

Consequently, when the laws of men contradicted the law of God – when obedience to man meant rebellion against God – then the elect had in conscience no choice but to obey the binding imperative of the divine injunction and, sure in the knowledge of eternal felicity, suffer whatever infelicity they might in the meantime incur. Patently, it was in accordance with just such an imperative that the Congregation felt obliged in conscience to defy the Regent. Moreover, if there is no explicit mention of a covenant in their letter, the idea is nonetheless latent in their commitment, on pain of damnation, to the laws of God rather than of men.¹⁴²⁸

In fact, Knox's theory on resistance was similar to that of the Monarchomachs (including Mornay), and who postulated a theory of resistance that differed from Calvin's. Greaves states that Knox's extension of the principle of active resistance to the people in 1558, occurred in a covenant context and because of covenant obligations. Knox reiterated this point in his 1564 debate with William Maitland of Lethington in the General Assembly of the Kirk of Scotland. Greaves adds that Knox referred to the commandment to the Hebrews not to make a league with the Canaanites (Exodus 34), with Knox writing of "the people assembled together in one body of a Commonwealth, unto whom God has given sufficient force, not only to resist, but also to suppress all kind of open idolatry ..."¹⁴²⁹ Greaves also comments that the ultimate divergence of Knox and Calvin on the nature of lawful rebellion against temporal sovereigns can be traced to their differing interpretations of the covenant. Greaves adds: "It was Knox, not Calvin, who was willing to contend actively for the right of the people to resist a tyrannical monarch. The covenant was an idea with awesome political potency, as Knox demonstrated, and as the French Huguenots and the English Puritans as well as Knox's Scottish followers subsequently discovered."¹⁴³⁰ In the words of Elazar:

¹⁴²⁷ Mason, "Covenant and Commonweal: the language of politics in Reformation Scotland", 99.

¹⁴²⁸ Ibid. Mason also discusses the latentness of this concept throughout the early writings of the Congregation and not least in that "Common Band" or covenant which signaled the emergence of Protestantism as an organized political force in 16th and 17th-century Scotland, *ibid.*, 99 – 100.

¹⁴²⁹ Greaves, "John Knox and the Covenant Tradition", 28. In this regard Greaves adds: "The Old Testament was thus a fertile source to illustrate and support Knox's covenant conceptions", *ibid.*

¹⁴³⁰ *Ibid.*, 32. Interestingly, Greaves adds a footnote comment stating: "Ultimately Knox probably influenced Calvin, for in the aftermath of the Scottish Reformation Calvin adopted a position of active resistance by the people in his commentary on Daniel", *ibid.* In this regard it is also interesting to note that according to Greaves, Knox had submitted inquiries to Calvin and Bullinger in 1554, on the subject of disobedience. Greaves adds that Calvin did not respond in writing, but to Knox's query of whether obedience is to be rendered to a magistrate who enforces idolatry, Bullinger responded negatively, admitting the lawfulness of using force to oppose idolatrous sovereigns. Regarding who

In tracing the history of the rise of the radical movement or position among the Huguenots in the second half of the sixteenth century, W. Standford Reed argues that John Knox, the founder and great leader of Scottish Presbyterianism, was the first of the monarchomachs, those who fomented resistance against the French monarchy and as such had a major direct influence on the Huguenots. Indeed, Reed argues that by taking this step Knox broke with Calvin's ideas of submission to constituted civil authority to propound the idea of the legitimacy of religiously motivated resistance. Knox based his break on his understanding of covenant theory which, to him, justified the common people taking up arms against a tyrannical and idolatrous ruler. Whatever his impact on the Huguenots, which seems to have been very real, Knox had even greater impact on his own people the Scots, who began their century-long path toward seeking covenantally-based political solutions to their religio-political problems. Developed first for the Huguenots in the 1550s, Knox's views became dominant among the Huguenots after the St. Bartholomew's Massacre in 1572 and in Scotland in the late 1560s and early 1570s.¹⁴³¹

Rutherford played an important role in the development of a lucid resistance theory, not only in the context of theologico-political federalism but also in the development of resistance theory in 17th-century Scotland. Resistance theory formed an integral part of Rutherford's political theory, and for 16th and 17th-century Scotland, Rutherford proved to be one of the first and most prominent reformed political theorists. This however does not negate the contributions by Knox concerning covenantal thought as well as the idea of resistance, as such contributions assisted in paving the way for Rutherford's concise application concerning the political dimension of the covenant, more specifically for purposes of this chapter, that which pertains to sovereignty and resistance theory. Mason states that Knox never was concerned with developing a political theory aimed at either limiting the authority of the prince, or at vesting in the people's powers of resistance and restraint as constitutional rights.¹⁴³² Mason states:

should exercise this force, Bullinger stated that not only the "divinely appointed agent" but also magistrates and the people were responsible for resisting ungodly kings, Richard L. Greaves, "The Nature and Intellectual Milieu of the Political Principles of the Geneva Bible Marginalia", *Journal of Church and State*, (1980), 246.

¹⁴³¹ Elazar, *Covenant and Commonwealth*, 205.

¹⁴³² Mason, "Knox, Resistance and the Moral Imperative", 427. Also cf. *ibid.*, 435.

It is true that, in the undeveloped propositions of the *Second Blast of the Trumpet*, Knox hinted at the existence of reciprocal obligations between the ruler and the ruled, and that elsewhere, in discussing the duties of a prince towards his subjects with Mary Stewart, he even went so far as to exhort her to consider ‘what it is he ought to do unto them by mutual contract’. But he never developed a constitutionalist theory on this basis and never justified resistance in these terms. Unlike the Huguenot theorists of the 1570s, and unlike his compatriots John Craig and George Buchanan, Knox rested his case for resistance on neither the utility nor the reasonableness of a mutual contract drawn up between the ruler and his subjects. On the contrary, his foundation and authority was the law of God and the contract or covenant that bound the faithful, in the assurance of His protection in this world, and their salvation in the next, to the absolute will of God.¹⁴³³

Moots, states that Rutherford’s resistance theory was based in popular consent and self-defense,¹⁴³⁴ and Rutherford believed that tyranny was the work of Satan, and not of God.

¹⁴³³ Ibid.

¹⁴³⁴ Rutherford’s *Lex, Rex* has references concerning the principle of self-defense as a vital aspect of resistance theory. Cf. *ibid.*, 117 (1), the people are by nature to defend themselves “if the king bring in upon his native subjects twenty thousand Turks armed ...”; *ibid.*, 141 (1), Rutherford states that the bloody king may be resisted by defensive wars at the commandments of the estates; *ibid.*, 148 (1), Rutherford states that lawful killing of the king is defensive; *ibid.*, 157 (2), “But I grant, to offend or kill is not of the nature of defensive war, but accidental thereunto; and yet killing of cut-throats, sent forth by the illegal commandment of the king, may be intended as a mean, and a lawful mean, of self-defence”; *ibid.*, 158 (2), Rutherford states that wars for purposes of defense must be offensive, but they are offensive by accident; *ibid.*, 161 (1), Rutherford speaks of an immediate defense of life and a remote or mediate defense of life, the latter pertaining to an instance where there is no actual invasion made by someone seeking the life of another, and in such an instance violent “re-offending” is not to be applied. As an example of this Rutherford refers to David, who might have killed Saul when he was sleeping, but did not because man is made in the image of God and it is therefore unnecessary to kill someone except in the case of a necessity – “David having Saul in his hand was in a remote posture of defence, the unjust invasion then was not actual ... for king Saul was then in a habitual, not in an actual pursuit of the whole princes, elders, and judges of Israel ... but if Saul had actually invaded David for his life, David might, in that case, make use of Goliath’s sword ...”, *ibid.*, 161 (1) – 161 (2). In this regard also cf. *ibid.*, 167 (2). Concerning the application of this principle to the circumstances in England and Scotland during the period that *Lex, Rex*, was written, Rutherford states: “Now the case is far otherwise between the king and the two parliaments of England and Scotland, for the king is not sleeping in his emissaries, for he hath armies in two kingdoms, and now in three kingdoms, by sea and land, night and day, in actual pursuit, not of one David, but of the estates, and a Christian community in England and Scotland, and that for religious, laws, and liberties; for the question is now between papist and protestant, between arbitrary or tyrannical government, and law government, and therefore by both the laws of the politic societies of both kingdoms, and by the law of God and nature, we are to use violent re-offending for self-preservation, and put to this necessity, when armies are in actual pursuit of all the protestant churches of the three kingdoms, to actual killing, rather than we be killed, and suffer laws and religion to be undone”, *ibid.*, 161 (2). In other words, self-defense concerning the lives of the protestants as well as the defense of the faith justifies actual killing; and the importance concerning the defense of the protestant faith on the British continent in the 17th century, cf. *ibid.*, 166 (1) – 166 (2). On *ibid.*, 168 (1) – 168 (2), Rutherford (referring to David and Saul) states that one man sleeping cannot be in actual pursuit of another man so that the self-defender may lawfully kill him in

Rae puts it neatly by stating that Rutherford's theory on resistance is at its foundation dependent on "the old Jewish doctrine that it was not unlawful to oppose acts of tyranny – in fact, according to Rutherford, Divine law and obedience to God required such opposition."¹⁴³⁵ According to Rutherford, God worked through the people to remove the ruler, and cited Nero as an example where "God doth not take the authority of the king from him immediately, but mediately, by the people hating and despising him, ... and take again, that awesome authority that they once gave him." To Rutherford, resistance was the duty of the common people as well as the lower magistrate. Passive resistance was not to be implemented, but active resistance directed at the king by removing him from power.¹⁴³⁶ Rutherford's approach concerning the active role that the people play in the election of the king was similar to the role the people played in resisting a tyrant. According to Rutherford, God worked out His purposes through the people. Scripture's referral to the Lord who "scattered" and "slew" His enemies, does not infer that the people never shot an arrow or never drew a sword. God did all these as the first, eminent, principal, and efficacious pre-determinator of the creature – God moved His people to accomplish his desired ends, He moved people to commit the act of tyrannicide.¹⁴³⁷ Moots adds that Rutherford, as well as Goodman, made civil disobedience as much a part of holy perseverance as any other Christian duty, and believed the wrath of God to be on anyone who failed to carry out their duty. This made everyone below the ruler not

his sleep; "but the case is far otherwise in lawful wars; the Israelites might lawfully kill the Philistines encamping about Jerusalem to destroy it, and religion, and the church of God, though they were all sleeping; even though we suppose king Saul had brought them in by his authority..."; *ibid.*, 172 (1), Rutherford also refers to the city of Abel which resisted Joab (David's general), for he came to destroy the city, and therefore they had to defend themselves (2 Samuel 20); *ibid.*, 179 (1) – 179 (2): "The wife is obliged to bed and board with her husband, but not if she fear he will kill her in the bed. The obedience of positive duties that subjects owe to princes cannot loose them from nature's law of self-preservation, nor from God's law of defending religion against papists in arms, nor are the sheep obliged to trust themselves but to a saving shepherd; *ibid.*, 185 (1), the law of nature necessitates a person to defend himself; *ibid.*, 189 (2), God's law commands us to love one another, and this implies that we are to defend one another against unjust violence, "if the left hand be wounded, and the left eye put out, nature teacheth that the whole burden of natural acts is devolved on the other hand and eye, and so are they obliged to help one another"; *ibid.*, 210 (2): "The people cannot divest themselves of power of defensive wars more than they can part with nature, and put themselves in a condition inferior to a slave, who, if his master, who hath power to sell him, invade him unjustly, to take away his life, may oppose violence to unjust violence"; *ibid.*, 230 (2): "... all inferiors may defend themselves by opposing violence against unjust violence ..." Self-defense, according to Rutherford is also authorized by the law of nature, *ibid.*, 165 (2), Mornay also states the same, cf. Mornay, *A Defence of Liberty Against Tyrants*, 190.

¹⁴³⁵ Rae, *The political thought of Samuel Rutherford*, 37.

¹⁴³⁶ Moots, *The Evolution of Reformed Political Thought and the Revival of Natural Law Theory*, 99.

¹⁴³⁷ *Ibid.*, 114. Cf. also Rutherford, *Lex, Rex*, 26 (1) – 26 (2), Rutherford states that God does not immediately remove the authority of the king, but mediately, through the people's hating and despising the king. Rutherford adds that if God alone takes away the king's authority, then one could argue that it would be unlawful to resist even a foreign king because then he would be sacred to all men, *ibid.*, 26 (2). Also cf. *ibid.*, 59 (1), Rutherford referring to the fact that any tyrant stands until the people who made him king have not recalled their grant. "Power is not an immediate inheritance from heaven, but a birthright of the people borrowed from them; they may let it out for their good, and resume it when a man is drunk with it", *ibid.*, 123 (2). Also cf. *ibid.*, 202 (2).

only accountable to evaluate the morality of that ruler, but also to punish him for any transgressions, which he may have committed.¹⁴³⁸ What must not be forgotten is the role that the covenant played in the moulding of Rutherford's theory on resistance; and although popular consent and self-defense are used as qualifying terms concerning justification of resistance, the foundational qualification for such justification is the covenant, and the community's responsibility within this covenant. Hall confirms this in his observation of the distinction between Rutherford and Locke concerning resistance theory in a political context. Hall states that for Rutherford, the ruler has broken a sacred covenant with God and acts as a man rather than a duly-constituted ruler of the realm. Society therefore has a sacred duty under God to oppose the tyrannous ruler under leadership of the "lesser magistrates".¹⁴³⁹ Theologico-political federalists, especially Bullinger, Mornay, Althusius and Rutherford were clear on this. The influence of Bullinger's line of thinking about resisting tyranny, exerted through the political theory of Althusius, is clearly observable in Rutherford's exposition on political resistance.¹⁴⁴⁰

Flinn, in his discussion on Rutherford's theory on resistance, refers to the distinction between God's perceptive will and His providential ordering of the world. The fact that a government may be allowed to engage in tyrannical acts under God's sovereign pleasure indicates, in no sense, His moral approval of that government. As an example of this, although Herod massacred children in Judea, and although Christ was executed by the will of God, this does not make either action morally right. From this it follows that a particular government does not have God's moral approval, nor is necessarily a minister of God, simply because it exists.¹⁴⁴¹ To Rutherford, tyranny exists when the political authority exerts its power for ends other than those given in the nature of the office – when the king exerts an arbitrary authority over his subjects; that is, when he replaces God's law with his own.¹⁴⁴² The office of the

¹⁴³⁸ Moots, *The Evolution of Reformed Political Thought and the Revival of Natural Law Theory*, 110. That Rutherford was informed concerning the insights of Calvin, Luther, Knox, Mornay, Beza and Althusius pertaining to resistance theory is also evident, cf. Rutherford, *Lex, Rex*, 208 (2) – 209 (1).

¹⁴³⁹ Hall, *Rutherford, Locke, and the Declaration: The Connection*, 96.

¹⁴⁴⁰ Raath and De Freitas, "Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504 – 1575)", 303. Similar to Althusius, Rutherford also supports the idea that the people collectively may violently resist tyranny, provided such resistance has as its main purpose the defense of the community and its worship of God, *ibid.* In this regard there is no reason why Knox cannot also be included.

¹⁴⁴¹ Flinn, "Rutherford and Puritan Political Theory", 66.

¹⁴⁴² *Ibid.* This is in line with the distinction Rutherford (like Althusius), makes concerning the person of the ruler and the office of the ruler. Before proceeding any further it is important to bear in mind that Rutherford states that the *office* and *power* of a king must not be distinguished from each other because the power is either a power to rule according to God's law (as is commanded in Deuteronomy 17), and this is the very office or official power which the King of kings has given to all kings under him, and this is a power of the royal office of a king, and any rule contrary to this is tyranny, Rutherford, *Lex, Rex*, 72 (2). The office of the ruler implies governance in accordance with the precepts of God as summarized by the Decalogue. Once the ruler seriously transgresses his obligations then this is

king concerns the execution of the Divine Law. The law according to Maclear forms the main theme of *Lex, Rex*. All rightful authority lies in law, whether it is the authority of the king, estates, populace, or church. The king is truly king only when he identifies himself with the law, and only to the degree that he succeeds in executing the law. The nearest the king personifies the law, the more king he is, “in his remotest distance from Law and Reason, he is a Tyrant.”¹⁴⁴³

contrary to his office and therefore the ruler as a person must be resisted, as the office of the ruler cannot be resisted as it cannot transgress God’s law because according to, among others, Romans 13, all powers are ordained by God and God cannot ordain sin. Rutherford confirms this by stating that: “If the power of killing the martyrs in Nero was no power ordained of God, then the resisting of Nero, in his taking away the lives of the martyrs, was but the resisting of tyranny; and certainly, if that power in Nero was a power ordained of God, and not to be resisted, as the place (Rom. xiii.) is alleged by royalists, then it must be a lawful power, and no tyranny; and if it cannot be resisted, because it was a power ordained and settled in him, it is either settled by God, and so not tyranny, (except God be the author of tyranny,) or then settled by the devil, and so may well be resisted. But the text speaketh of no power, but of that which is of God”, *ibid.*, 151 (2) – 152 (1), and therefore tyranny may be resisted because it is a power or office not from God. The king who acts contrary to his office may be resisted, the community only having to be subject to his power and royal authority in so far he acts in accordance with his office, which entails acting towards the good of the people, *ibid.*, 145 (1). Rutherford refers to that power which is obliged to command and rule justly and religiously for the good of the subjects and acts as an authority over the subjects on certain conditions, and when this power is abused the people may resist, *ibid.*, 141 (2). On *ibid.*, 220 (2), Rutherford states: “... while king and parliament do acts of tyranny against God’s law, and all good laws of men, they do not the things that appertain to their charge and the execution of their office; therefore, by our Confession, to resist them in tyrannical acts is not to resist the ordinance of God.” On *ibid.*, 110 (2), Rutherford says: “It is denied, that the power, (Rom. xiii.,) as absolute, is God’s ordinance. And I deny utterly that Christ and his apostles did swear non-resistance absolute to the Roman emperor.” In this regard, and adding to the meaning of Romans 13 regarding the justification of resistance, Rutherford states: “... Paul established magistracy, and commandeth obedience in the Lord; and he is more to prove the office of the magistrate to be of God than any other thing, and to show what is his due, than to establish absoluteness in Nero to be of God; yea, to me, every word in the text speaketh limitedness of princes, and crieth down absoluteness: – (1.) No power of God, (2.) no ordinance of God, who is a terror to evil, but a praise to good works, (3.) no minister of God for good, &c. can be a power to which we submit ourselves on earth, as next unto God, without controlment”, *ibid.*, 156 (1). On *ibid.*, 178 (1), Rutherford adds: “The unlawful resistance condemned by Paul (Rom. xiii.) is not upon the ground of absoluteness, which is in the court of God nothing, being never ordained of God, but upon reasons of conscience, because the powers are of God, and ordained of God ...”; in fact, Paul nowhere commands absolute subjection to tyrannous rulers, *ibid.*, 179 (1). Rutherford also states: “Because God is the immediate author of the pastor and of the apostle’s office, does it therefore follow that it is unlawful to resist a pastor though he turn robber?”, *ibid.*, 10 (1). Cf. also *ibid.*, 14 (2). Likewise, it can be said that those acts of tyranny that Saul committed after his inauguration as king, was not done by him as king, nor was it done from the principles of royal power given to him by God and the people, and therefore Saul could be resisted, *ibid.*, 58 (2). Also refer to Chapter 3, dealing with Rutherford’s (and the other theologico-political federalists) view concerning the office of the ruler. It is within this office ordained by God where one finds the conditions (in the form of the Divine Law), of the covenant between God and the people, and once the ruler transgresses these laws there is a breach of the covenant, calling for resistance in order to mend that which is broken. Also cf. *ibid.*, 103 (2), 143 (2) and 221 (1), for express confirmation by Rutherford, that ruling contrary to the office of the king is tyrannous.

¹⁴⁴³ Maclear, *Samuel Rutherford: The Law and the King*, 77 – 78. Maclear also states that Rutherford devotes no section of his work (*Lex, Rex*), to a definition of the law that the king is to incarnate, *ibid.*, 79. Nevertheless, *Lex, Rex* contains enough content to make it clear that Rutherford champions and propagates the Decalogue (cf. also Chapter 3 above), which is the measure of all other laws, and is superior to both the king and the people. As stated earlier, the Decalogue forms the conditions of the covenant, not only between God and the nation, but also between the king and the people as well as between God and the king.

A tyrannical power is not from God; it is Satanic,¹⁴⁴⁴ and is no more from God than a license to sin is from God.¹⁴⁴⁵ Compare this with Bullinger stating: “And Paul, the teacher of the Gentiles, saith: ‘There is no power but of God, and the powers that are ordained by God’”, and that God is the author of good and not of evil, for God by his nature is good. This implies that the ordaining of the magistrate is good, more specifically because he must work towards the health and preservation of the people.¹⁴⁴⁶ Similar to Rutherford, Bullinger states that there is a difference between the office (which is the good ordinance of God), and the evil person that does not properly execute such an office, which gives rise to tyranny.¹⁴⁴⁷

How is resistance theory accommodated within the covenantal paradigm? Does the contract between the king and the people not exclude the validity of resistance to tyranny, as the ruler is consented to by the people who appointed him to rulership? According to Rutherford the sovereignty of the law (and by implication the law as condition of the covenant) plays an important role in the solving of this issue. Rutherford states that the people can never enter into a contractual obligation with a ruler in which the terms of the contract are outside the law of God, Flinn referring to Rutherford’s understanding, says that: – “God has given people the

¹⁴⁴⁴ Cf. Rutherford, *Lex, Rex*, 34 (1), *ibid.*, Rutherford states that tyranny is sin, and that sin cannot be from God, therefore it is from Satan. On *ibid.*, 102 (2), Rutherford states that the acts of tyrannical power are acts of sinful injustice and cannot be from God, just as the powers of a physician to destroy; the power of a pilot of a ship to cast the ship on the rock; the power of a tutor to waste the inheritance of the orphan; the power of parents to kill their children and the power of the mighty to defraud and oppress, are not from God. In support of this, Rutherford refers, among others, to Althusius. In fact a mad pilot of a ship who wants to cast the ship upon the rocks is limited by the passengers, and mad parents are limited by their children when such parents want to destroy the house, *ibid.*, 114 (2) – 115 (1). Rutherford also refers to examples from Scriptures, commanding love and respect to sons, daughters, brothers and friends, and husbands that are to love their wives (Ephesians 5: 25), yet the Scripture also commands the execution of judgment on sin (which is from Satan), without pity (Deuteronomy 13: 8 – 9); also the father is to love the son, but if the son prophesies falsely in the name of the Lord, the father is to kill him (Zechariah 13: 3), *ibid.*, 180 (2). Therefore, love and reverence to the king may be commanded as well as defensive wars against the king, *ibid.* In this regard also cf. *ibid.*, 147 (2) – 148 (1), where Rutherford refers to Levi who is not to know his sinful parents (Deuteronomy 33: 9), and yet has to honor them as parents, and the fact that an Israelite is not to pity his wife that commits idolatry, and is to kill her (Deuteronomy 13: 6 – 8); and yet the husband is to love the wife as Christ loved his church (Ephesians 5: 25).

¹⁴⁴⁵ Flinn, “Rutherford and Puritan Political Theory”, 67. Additional references by Rutherford to tyranny include the following: Someone who takes the lawful goods of the subjects and uses them as if it belongs to him, *ibid.*, 68 (1), the example of Samuel’s sons who took after lucre and bribes and perverted judgment, *ibid.*, 74 (2), the power in a king’s sergeants and emissaries to waste and destroy the people of God, *ibid.*, 76 (2), a power used for the hurt and destruction of the people, *ibid.*, 102 (1), the slaying and keeping alive of whom Nebuchadnezzar chose, regarding that which was pleasing to him as superior to the law, *ibid.*, 109 (1), an absolute and arbitrary power, *ibid.*, 103 (2), and Aristotle says that a tyrant is someone that seeks his own good, while a king seeks the good of his subjects, *ibid.*, 198 (1), (Aristotle also commenting that it is natural to resist a tyrant, *ibid.*, 144 (1)).

¹⁴⁴⁶ Bullinger, *Decades* 2: 314.

¹⁴⁴⁷ *Ibid.*, 314 – 315. Bullinger adds: “... we ought not at any time to defend tyrannical power, and say that it is of God: for tyranny is not a divine, but a devilish, kind of government; and tyrants themselves are properly the servants of the devil, and not of God ...”, *ibid.*, 315, and the commands of wicked rulers ought not to be obeyed, *ibid.*, 316.

duty and obligation not to kill, from which we infer the duty not to kill oneself. From this, we further infer that self-defense is obligatory. No people, either individually or corporately, have the power to dismiss the obligation to self-defense.”¹⁴⁴⁸

Therefore the king is obligated not to resort to tyrannous acts, and the people are obligated to resist the king when he resorts to such acts. Rutherford refers to an army appointing a leader over them, and this appointment is based on the condition that such a leader will not betray them to the enemy. Once such a leader has or is in the process of committing such a betrayal, the people have the right to resist him.¹⁴⁴⁹ From this it is clear that the covenantal relationship between the king and the people means that the king is appointed on the condition that he abides by the law of God, hereby serving the interests, peace and well-being of the community that has elected him. This is a mutual relationship based on condition, and the law of God forms the content of this condition.¹⁴⁵⁰ In the event of the condition not being fulfilled, the people have the right to resist, such resistance being a consequence of breach of the covenant between the king and the people. This also implies a breach of the covenant between God and the community. According to Rutherford, although Saul committed acts of tyranny “as seem destructive of the royal covenant”, this does not prove that Saul was not made king by the Lord and the people conditionally. In fact, these tyrannous acts of Saul were contrary to the covenant that Saul swore at his inauguration, and contrary to the conditions that Saul, in the covenant, took on him to perform at the making of the royal covenant. Therefore, the people, who elected Saul as king, may lawfully dethrone him and anoint David as their king.¹⁴⁵¹

¹⁴⁴⁸ Flinn, “Rutherford and Puritan Political Theory”, 67.

¹⁴⁴⁹ Rutherford, *Lex, Rex*, 61 (2). In this regard Rutherford adds that if a master binds himself by oath to his servant, he shall not receive such a benefit of such a service if he violates the oath; and such an oath must give the servant a right to challenge his master, *ibid.* Rutherford’s analogy of the relationship between the king and the people to that of a contract between husband and wife, also confirms his understanding of the relationship between the king and the people as contractual, adding that the law of nature does not require a clause in a contract of marriage stating that if the husband attempts to kill his wife, then they must part company, *ibid.*, 118 (1). In other words, the people may resist the king and remove him from office even though this has not been stipulated in the contract that was instituted when they elected and appointed him as king – on election of a king, a contract is implied, and this is in accordance with Rutherford’s emphasis on the establishment of the contract between the king and the people, either tacitly or expressly.

¹⁴⁵⁰ Cf. *ibid.*, 61 (2): “... the estates should refuse the crown to him who would refuse to govern them according to God’s law ...”; *ibid.*, 118 (1): “For Dr Ferne saith, ‘That personal defence is lawful in the people, if the king’s assault be sudden, without colour of law ...’; *ibid.*, 137 (1): “... whatever interpretation swerveth either from fundamental laws of policy, or from the law of nature, and the law of nations, and especially from the safety of the public, is to be rejected as a perverting of the law ...”; *ibid.*, 141 (2): “That power which is contrary to law ... can tie non to subjection, it may lawfully be resisted ... God hath not said to me in any moral law, Be thou killed, tortured, beheaded; but only, Be thou patient if God deliver thee to wicked men’s hands, to suffer these things.”

¹⁴⁵¹ *Ibid.*, 58 (2).

The link between Rutherford's covenantal thought and his theory on resistance also comes to the fore in his answer to the statement that God rather works through miracles when delivering the people from a tyrant, as was the case concerning Moses, whom God sent to free the Israelites from Egypt. Rutherford states that the Israelite's failure to resist Pharaoh does not negate the fact that a community may resist a tyrant,¹⁴⁵² one of the reasons being that Pharaoh did not receive his crown from Israel. This supports Rutherford's understanding that those who elect the king may also remove the king under certain conditions, such as tyranny. Another reason being that Pharaoh had not sworn to defend Israel, nor did he become their king on the condition that he should maintain and profess the religion of the God of Israel. Therefore Israel could not challenge Pharaoh of breach of oath. Another reason also being that Pharaoh "was never circumcised, nor within the covenant of the God of Israel in profession."¹⁴⁵³ Further confirmation of the link between covenantal thought and resistance in the political theory of Rutherford is his answer to Arnisaeus, who stated that a contract cannot be dissolved in law, but by the consent of the two contracting parties, "... therefore, if the subjects go from the covenant that they have made to be loyal to the king, they ought to be punished."¹⁴⁵⁴ To this Rutherford replies that the law says that vassals lose their farms if they pay not what is due: "Now, what are kings but vassals to the state, who, if they turn tyrants, fall from their right."¹⁴⁵⁵ In addition, cognizance must be taken of Salmon's comment regarding the similarity of Rutherford's covenantal thought to Mornay's, and therefore the

¹⁴⁵² Ibid., 133 (2).

¹⁴⁵³ Ibid. Rutherford, in his commentary concerning the relationship between the oath and promise of the king, states that if the contractor violates both his promise and oath to rule according to the conditions, then he comes under the guilt of perjury which may be punished; Rutherford also emphasizing that a covenant brings the king under a political obligation, *ibid.*, 200 (1) – 200 (2).

¹⁴⁵⁴ Ibid., 201 (1).

¹⁴⁵⁵ Ibid., 201 (2). Flinn states that one of the basic arguments presented by Rutherford in order to establish the right and duty of resistance to unlawful government is that the king is granted power conditionally, and therefore as a consequence, the people have the power to withdraw their sanction if the conditions are not fulfilled. This confirms the strong influence of covenantal thought as an essential basis in Rutherford's thought concerning resistance theory. This also forms part of the theory that the political authority is a fiduciary figure, meaning that such an entity holds its authority in trust, Flinn, "Rutherford and Puritan Political Theory", 67. The other two basic arguments posed by Rutherford establishing a right of resistance according to Flinn are: Tyranny is satanic, and to resist it is to glorify God and the obligation of self-defense is given by God, and to give up this obligation constitutes sin, *ibid.* The covenant as an essential cause for resistance in the mind of Rutherford, does not imply that Rutherford therefore excluded other important principles as justification for resistance, such as the law of nature. Coffey asks whether it was necessary for Rutherford to refer to natural law theory when dealing with the issue of resistance when the main problem was idolatry; and since the natural law does not by definition tell men about revealed religion, Rutherford should have rather limited such theory to Biblical evidence. Coffey consequently provides some answers on this, stating that while the king's tyranny might have been specifically religious and not secular, armed resistance to it could be legitimized by appeal to both "nature's law of self-preservation" and "God's law of defending religion against papists in arms". To this Coffey adds that true religion could be accommodated within a natural-law definition of human welfare – Since men were by the law of nature "to care for their own souls", according to Rutherford, it therefore followed that they were "to defend in their way true religion, which so nearly concerneth them and their eternal happiness". Grace in fact perfected nature, *ibid.*, 183.

strong possibility of Mornay's influence on Rutherford, among other aspects, in theories on resistance. Salmon states that *Lex, Rex* identified itself with all the principles of Mornay's *Vindiciae*, Rutherford representing himself as the champion of the contract theory of the *Vindiciae*, which included the resistance theory emanating from such contractual theory.¹⁴⁵⁶ Concerning the foundations of Mornay's theory on resistance, Skinner states that the outcome of Mornay's twofold system of contracts arrives at two distinct justifications of resistance. In this regard, Skinner states that one of Mornay's resistance theories arises out of the scholastic idea that because the people create their rulers on certain conditions, they must always retain a right of resistance if these terms are not honored.¹⁴⁵⁷ Then there is the other theory postulated by Mornay regarding the qualification of resistance, namely that both the king and the inferior magistrates are said to have promised to uphold the law of God. This entails that if the king transgresses these laws, it becomes a religious duty on the part of the lesser magistrates to resist the king – “If they fail to use force when the king ‘overturns the law and the Church of God’, they will be failing in their promise to God and will thus be ‘guilty of the same crime’ and ‘subject to the same penalty’ as their ungodly king.”¹⁴⁵⁸

Similar to Althusius and Mornay, Rutherford emphasizes the right that the estates, and the inferior judges (under-judges) have in resisting the supreme magistrate. The estates have the power to resist and limit the power they gave to the king, when such power is used against themselves (as well as the parliament):¹⁴⁵⁹ “Inferior judges, as judges, are immediately subordinate to God as the king, and must be guilty of blood before God if they use not the sword against bloody cavaliers and Irish cut-throats ...”.¹⁴⁶⁰ In this regard, Rutherford refers to the thirty-sixth article of the Belgic Confession of Faith stating that all magistrates, no less than the king and though inferior to the king must exercise their God-given duty. The Belgic Confession of Faith (and Scripture) states that it is (also) the duty of the inferior magistrates to “relieve the oppressed, to use the sword against murdering papists and Irish rebels and

¹⁴⁵⁶ J. H. M. Salmon, *The French Religious Wars in English Political Thought*, (Oxford: Clarendon Press, 1959), 87. Cf. Mornay, *A Defence of Liberty Against Tyrants*, 38 – 40, for confirmation of Mornay's contractual theory as a just cause for resistance. Also cf. McCoy and Baker, *Fountainhead of Federalism*, 48 – 49, concerning the similarity of Mornay's covenantal thought as justification for lawful resistance, to Rutherford's.

¹⁴⁵⁷ Skinner, *The Foundations of Modern Political Thought*, 325. Also cf. *ibid.*, 335, Skinner states that the Huguenots made an epoch-making move from a purely religious theory of resistance (which depended on the idea of a covenant to uphold the laws of God) to a genuinely political theory of revolution based on the idea of a contract which gives rise to a moral right (and not merely a religious duty) to resist any ruler who fails in his corresponding obligation to pursue the welfare of the people in all his public acts.

¹⁴⁵⁸ *Ibid.*, 325 – 326.

¹⁴⁵⁹ Rutherford, *Lex, Rex*, 143 (1). Also cf. *ibid.*, 173 (1) – 173 (2), 180 (2).

¹⁴⁶⁰ *Ibid.*, 178 (2). Cf. *ibid.*, 180 (2), where Rutherford refers to the example of Elijah's (the prophet) assisting in the resisting of the idolaters, the idolatrous king not doing anything about the idolatry. Also cf. *ibid.*, 182 (1).

destroying cavaliers; for, shall it be a good plea in the day of Christ to say, ‘Lord Jesus, we would have used thy sword against bloody murderers if thy anointed, the king, had not commanded us to obey a mortal king rather than the King of ages, and to execute no judgment for the oppressed, because he judged them faithful catholic subjects’.”¹⁴⁶¹ Rutherford also refers to Mornay, who stated that the care of religion is not only given to the king, but also to the inferior judges (and the people), in the context of resisting the ungodly magistrate.¹⁴⁶² Bamberg comments that the *Vindiciae* does not argue for anarchy, and recommends resistance to tyranny as based on the authority of lower officers of the state.

¹⁴⁶¹ Ibid., 222 (2). Rutherford adds: “Let all Oxford and cavalier doctors in the three kingdoms satisfy the consciences of men in this, that inferior judges are to obey a divine law, with a proviso that the king command them so to do, and otherwise they are to obey men rather than God. This is evidently holden forth in the Argentine Confession, exhibited by four cities to the emperor Charles V., 1530, in the very same cause of innocent defence that we are now in the three kingdoms of Scotland, England, and Ireland”, *ibid.*

¹⁴⁶² Ibid., 55 (2). In addition, cf. Mornay, *A Defence of Liberty Against Tyrants*, 196, where Mornay refers to *those who represent the body of the people* are obligated to firstly admonish the prince in instances where there are signs of serious transgressions being conducted by the latter. In this regard also cf., *ibid.*, 204, Mornay referring to the catholic church, where the cardinals are firstly responsible for admonishing the pope, and then the patriarchs. Also cf. *ibid.*, 39, Mornay states: “But to say that a whole people must resist does not mean that so many headed a monster as the multitude has the duty to revolt. By the people is meant their chosen magistrates who represent, and mirror within themselves, the will of the nation. It is their business to restrain the encroachments of the prince and, in the last instance, to exercise a final control”; and on *ibid.*, 40, Mornay adds that the engagement of the community as a whole through the magistrates, does not infer that the private individual can suddenly turn to revolt, unless he is officially commanded to do so by the godly magistrates – “If each man were to follow his own conscience, there would result not only confusion, but the fatal deception which comes from man’s willingness to mistake his private desire for the will of heaven”, *ibid.* In this regard Skinner comments: “... for even in Mornay’s *Defence*, the most consistently militant of the major revolutionary tracts, the lawfulness of tyrannicide is only mentioned as a remote possibility and is handled with the utmost cautiousness. Mornay concedes of course that ‘by means of his divine justice’ God may sometimes ‘send us a Jehu’ in order to ‘overturn and deliver us from tyrants’. But he repeatedly stresses that ‘where God has not spoken’ in this way, any man who feels ‘called’ to exercise such a grave responsibility ‘must be extremely circumspect and sober’, since he runs the terrible risk that he may ‘confuse himself with God’, and may thus be led to ‘conceive vanities and beget lies’ instead of serving as a genuine instrument of justice”, Skinner, *The Foundations of Modern Political Thought*, 306. This confirms Mornay’s vigilant approach concerning active resistance, more of which is discussed together with a similar approach by Bullinger, Althusius and Rutherford, below. In fact, this approach was similar to that held by the writers in the tradition of the political theory of the Monarchomachs in general. In this regard Jeannin states that the theory of resistance to tyranny is the most concrete element of the Monarchomachist thought, and adds that these writers constantly appeal to the people, but the people, however is to act only through its “representatives”, which are the intermediary aristocracy and magistrates, Fuhrmann, “Philip Mornay and the Huguenot Challenge to Absolutism”, *Calvinism and the Political Order*, 49. Franklin also states: “Mornay ... is much more explicit than Beza on the right of general officials to act unilaterally if need be, and he is also more detailed on the right of local magistrates. The covenant with God is binding not only on the people as a whole but also on the units of which it is composed, which are the local subdivisions of the kingdom as opposed to private individuals”, Franklin, “Introduction”, 43. In fact, Franklin adds that Mornay also accommodated the activation of resistance by private persons. Mornay, unlike Calvin or Beza, boldly said that God, whose mercy is unchanging, may raise up liberators now as in the past, although there may be many warnings on self-delusions and on the danger of false prophets. According to Mornay, clear external signs should be demanded, in general, and the claim of extraordinary calling may also be tested by qualities of mind and conscience. In this regard, Franklin states: “Hence, although roughly the same as that of the *Right of Magistrates* (by Beza), the resistance doctrine of the *Vindiciae* consistently tends to be more radical”, *ibid.*, 43 – 44.

Bamberg adds that as such, the *Vindiciae* should be considered an argument for a conservative revolution.¹⁴⁶³ The judge has a duty to execute judgment for the oppressed because the king has no power from God to exercise acts of tyranny without any resistance (Job 29: 12 – 17; Jeremiah 22: 15 – 16). In addition, the perverting of judgment and exercise of heinous sins of the wicked is condemned (1 Samuel 15: 23; 1 Kings 20: 42 – 43; Isaiah 1: 17; 10: 1; 5: 23), and therefore God has given no power to a judge to permit wicked men to commit grievous crimes, without any punishment.¹⁴⁶⁴ This line of thought is also found in Knox's *First Blast*, emphasizing the importance of the "lesser magistrates" in the context of political revolution. Knox noted that Athaliah was ordered killed, and Baalism was destroyed by the "people", and "if any tried to defend the impiety, they too were deserving of death."¹⁴⁶⁵ Danner confirms that Knox was convinced that it was the responsibility of the nobles and lesser magistrates to revolt and defend the laws of God, adding that according to Knox: "It is sinful to accept the concept of Christian obedience to rulers when it is clear that Christians are being commanded to violate God's laws in favor of 'their ungodly commandments and blind rage'."¹⁴⁶⁶

Rutherford, like Mornay and Althusius, approaches resistance vigilantly,¹⁴⁶⁷ taking into consideration the importance of first suffering patiently before resorting to active

¹⁴⁶³ Stanley Bamberg, "A Footnote to the Political Theory of John Adams *Vindiciae contra tyrannos*", *Premise*, Volume III, No. 7, (1996), 7, Bamberg adding that at the same time, the *Vindiciae* brought the contract theory into play against the claims of divine right absolutism, and in this way contributed to later contract theory, *ibid.*

¹⁴⁶⁴ Rutherford, *Lex, Rex*, 76 (1). In confirmation of the importance of the judges and inferior magistrates concerning resistance, Maclear states that like the Huguenot theorists, Rutherford disallowed tumult in rebellion, stressing the rightful leadership of inferior governments in this regard, Maclear, *Samuel Rutherford: The Law and the King*, 76. However, Coffey states that if Rutherford balked at resistance by private individuals, "he did make one strikingly radical point: parliament itself could be resisted by the original community. If parliament erred, he remarked at one point, 'the sounder part may resist'. According to Coffey, Rutherford never endorsed violent resistance by parties of private individuals. However, he did believe that any magisterial() authority, no matter how low, had the right and the duty to defend the covenant when it was being subverted, Coffey, *Politics, Religion and the British Revolutions*, 178. Cf. also *ibid.*, 178 – 179. In this regard it is also interesting to note the similarity to Calvin, who indicated (Institutes. IV, 20, 31) that certain inferior magistrates, like the ephori of Sparta, the tribunes of Rome and the Estates, have a positive duty to take the lead in opposing tyrants, A. G. Dickens, *Reformation and Society in Sixteenth-century Europe*, (Thames and Hudson Ltd., 1966), 162.

¹⁴⁶⁵ Dan G. Danner, "Resistance and the Ungodly Magistrate in the Sixteenth Century: The Marian Exiles", *The Journal of the American Academy of Religion*, Volume 49, (1981), 477.

¹⁴⁶⁶ *Ibid.* In fact Knox called upon the nobility and the estates to do more than merely limit the persecutions – they had to kill idolaters at the command of God. According to Danner, Knox held the whole community responsible for the punishment of idolatry, and just as Israel punished and exterminated whole cities for the idolatry of a few, so the whole population had to be held responsible if idolatry was not punished, *ibid.*, 477 – 478. In this regard also cf. John R. Gray, "The Political Theory of John Knox", *American Society of Church History*, Volume 8, (1939), 138 – 139.

¹⁴⁶⁷ Skinner states that the *Vindiciae* understands active resistance as a remote possibility "and is handled with the utmost cautiousness", Skinner, *The Foundations of Modern Political Thought*, 306.

resistance.¹⁴⁶⁸ Coupled to this is the allowance to some degree of transgressions by the ruler. According to Rutherford: “Every act of injustice doth not unking a prince before God, as every act of uncleanness doth not make a wife no wife before God.”¹⁴⁶⁹ The people should not apply their power when anything whatsoever is done inappropriately by the ruler; and the people are to suffer much before they resume their power.¹⁴⁷⁰ Moderation must be the

¹⁴⁶⁸ On 141 (2), *Lex, Rex*, Rutherford refers to “patient suffering”.

¹⁴⁶⁹ *Ibid.*, 37 (1). This is also similar to Althusius, who states that when a ruler has failed only in part of his office, he is not immediately called a tyrant, provided the foundations of the commonwealth remain intact, Althusius, *Politics*, 185. In this regard, Althusius provides an analogy by stating that the wicked life of a magistrate does not invalidate his royal authority, “just as a marriage is not dissolved by every misdeed committed by one mate against another – unless it is the misdeed of adultery, because this is directly contrary to the nature of marriage ...”, *ibid.* Compare this to Bullinger, states: “It happens oftentimes, that magistrates have a good mind to promote religion, to advance common justice, to defend the laws, and to favor honesty; and yet notwithstanding, they are troubled with their infirmities, yea, sometime with grievous offences: howbeit, the people ought not therefore to despise them and thrust them beside their dignity ... So likewise in other princes there are no small number of vices, which nevertheless neither move nor ought to move godly people to rebellious sedition, so long as justice is maintained and good laws and public peace defended”, Bullinger, *Decades*, 2: 280. Mornay likewise refers to the fact that all persons are born men, and therefore princes who are absolute in perfection must not be expected. Consequently: “... although the prince observe not exact mediocrity in state affairs; if sometimes passion overrule his reason, if some careless omission make him neglect the public utility; or if he do not always carefully execute justice with equality, or repulse not with ready valor an invading enemy; he must not therefore be presently declared a tyrant”, Mornay, *A Defence of Liberty Against Tyrants*, 195. Also cf. *ibid.*, 196, regarding Mornay’s similar views that all avenues must first be attempted before active resistance takes place: “Therefore it becomes wise men to try all ways before they come to blows, to use all other remedies before they suffer the sword to decide the controversy. If then, those who represent the body of the people, foresee any innovation or machination against the state, or that it be already embarked into a course of perdition; their duty is, first to admonish the prince ...”. Also cf. *ibid.*, 204, Mornay, referring to the cardinals who elected the pope and who may judge the pope when circumstances so require, states: “But if they obstinately abuse their authority, there must (saith Baldus) first be used verbal admonitions; secondly, herbal medicaments or remedies; thirdly, stones or compulsion; for where virtue and fair means have not power to persuade, there force and terror must be put in use to compel.”

¹⁴⁷⁰ Rutherford, *Lex, Rex*, 36 (2). According to Rutherford, to submit to tyrants who sin, is natural however, to submit to tyrants by suffering punishment is contrary to nature, *ibid.*, 30 (1). According to Rutherford, Scripture makes it clear that the church of God is to bear with all patience the indignation of the Lord, because the church has sinned. However, this does not mean that the church may not fight against its enemies, in fact it is obliged to do so, *ibid.*, 152 (2). An example Rutherford refers to is David, who did bear most patiently the wrong that his own son Absalom and Ahitophel, and the people inflicted on him, in attempting to kill David and take the kingdom from him. David prayed for a blessing on the people that conspired against him (Psalm 3: 8); and yet did he lawfully resist Absalom and the conspirators and sent out Joab and an army in open battle against them (2 Samuel 18: 1 – 4), *ibid.*, 152 (2) – 153 (1). Rutherford adds: “And were not the people of God patient to endure the violence done to them in the wilderness by Og, King of Bashan; Sihon, king of Heshbon; by the Amorites, Moabites, &c.? I think God’s law tyeth all men, especially his people, to as patient a suffering in wars. (Deut. viii. 16.) God then trying and humbling his people, as the servant is to endure patiently, unjustly inflicted buffets (1 Pet. ii. 18); and yet God’s people at God’s command did resist these kings and people, and did fight and kill them, and possess their land, as the history is clear. See the like Josh. xi. 18, 19. One act of grace and virtue is not contrary to another; resistance is in the children of God an innocent act of self-preservation, as is patient suffering, and therefore they may well subsist in one. And so saith Amasa by the Spirit of the Lord, 1 Chron. xii. 18, ‘Peace, peace be unto thee, and peace to thy helpers, for God helpeth thee.’ Now in that, David and all his helpers were resisters of king Saul”, *ibid.*, 153 (1). Rutherford adds that although servants, upon supposition that they are servants and who are treated unjustly by their masters, are commanded by Peter (1 Peter 2: 20) to suffer patiently, it does not mean that the servant is not to defend his life when his master poses a threat to him (although to be a king is something different than being a master – and “... the people

measure concerning resistance to tyranny in the context of an invasion. This entails aggressive resistance only when the violence is sudden and manifestly inevitable, and when the magistrate is absent and cannot assist.¹⁴⁷¹ Similar to Rutherford, Mornay and Althusius, Bullinger is also vigilant concerning resisting the magistrate, referring to the confirmation in Scripture that God is faithful and will not allow his people to suffer beyond that which they can take. Bullinger adds that God delivers his people at a time that pleases Him, and He is also able to influence the hearts of ungodly princes.¹⁴⁷² In fact, when Knox approached

doth not make themselves slaves when they constitute a king over themselves ...”, *ibid.*, 82 (1)); *ibid.*, 111 (1). Concerning 1 Peter 2: 18 – 19, Rutherford adds that this text does not recommend suffering from the example of Christ, but patient suffering in the context of 2 Timothy 3: 11; 1 Corinthians 10: 13; 13: 7; Hebrews 12: 2, 17; 1 Timothy 5: 5; and that these derivations signify patience, as do Beza, Calvin and Marloratus also support, in other words “it is suffering like Christ, without rendering evil for evil, and reviling for reviling”, *ibid.*, 155 (1). Rutherford states that all the places in Scriptures that recommend suffering to the followers of Christ do not command formally that we suffer, *ibid.*, and that there is no law in Scriptures that commands formally obedience passive, *ibid.*, 155 (2). Also cf. *ibid.*, 154 (2), and the rest of *ibid.*, 155 (1) and 155 (2), concerning Rutherford’s argument that suffering by men of this world falls not formally and directly under any divine positive law; for the law of nature does not command suffering or anything contrary to nature, because nature is sinless. In other words, patient suffering has to give way to instances where self-defense is required. “God hath not said to me in any moral law, Be thou killed, tortured, beheaded; but only, Be thou patient, if God deliver thee to wicked men’s hands, to suffer these things”, *ibid.*, 141 (2). In this regard also cf. *ibid.*, 156 (2). In addition, regarding 1 Peter 2, Rutherford adds that according to this reference in Scripture, all violent resisting is not forbidden, it only forbids revengeful resisting of repaying one wrong with another “from the example of Christ, who, ‘when he was reviled, reviled not again; when he suffered, he threatened not’ ...”, *ibid.*, 153 (1), and “... only the unlawful manner of resistance by way of revenge, or for defence of popery or false religion, and out of impatient toleration of monarchy or any tyranny, is forbidden by God’s word”, *ibid.*, 155 (2). Cf. *ibid.*, 153 (2) – 154 (1), concerning Rutherford’s argument why the passive obedience of Christ cannot be compared to the passive obedience to a tyrannous king – Christ could have defended himself but it was not his purpose to do so, and not because active resistance would have been unlawful, *ibid.*, 181 (1). Rutherford also rightly points out that it is flawed to state that because patient suffering is lawful, therefore resistance is unlawful, “both must be lawful to us; and so we hold, of ten lawful means, fit to compass God’s blessed end, he may choose one and let go nine. Shall any infer, therefore, these other nine means are unlawful, because God chose a mean different from those nine, and refused them? ... So Christ and the apostles, who could have wrought miracles, might have wrought reformation by the sword, and destroyed kings and emperors, the opposers of the Lamb; and they did reform by suffering; therefore, the sword is unlawful in reformation. It followeth not. The means Christ used, is lawful; therefore, all other means that he used no, are unlawful. It is vain logic”, *ibid.*, 228 (2) – 229 (1).

¹⁴⁷¹ *Ibid.*, 163 (2). Rutherford adds that there must be no desire for revenge and that the weaponry applied in such resistance must be proportional to that posing the threat, *ibid.* Rutherford adds that any conquest (invasion) made by violence may be dissolved by violence, *ibid.*, 49 (1) – 49 (2). It can be assumed that these requirements can also be applied as guidelines not only to an invasion, but also where the ruler resorts to some or other sort of tyrannous act. In this regard Rutherford states that the law of nature teaches to repel violence with violence, *ibid.*, 158 (1), and that nature has appointed innocent and offending violence against unjust violence as a means of self-preservation, *ibid.*, 158 (2). On *ibid.*, 165 (2), Rutherford states: “When the losses are such as can never be repaired, as death, mutilation, loss of chastity ... things of that kind once done, can never be undone, we are to prevent the enemy.” On *ibid.*, 160 (2), Rutherford states that violent re-offending is necessary when there is no other alternative.

¹⁴⁷² Bullinger, *Decades* 2: 317. References are made, among others, to 2 Peter 2; 1 Corinthians 10 and the examples in the books of Kings, Esdras, Nehemia and in the volume Daniel’s prophecy, as well as Nebuchadnezzar, in confirmation hereof. Bullinger also accommodates the possibility that sometimes persons are influenced by God to resist a tyrant, but that this idea must be approached with the utmost care, so that is not abused and so that it is based on a true calling from God, *ibid.*, 2: 318. This makes

Bullinger in 1554 in order to “put some deeply troubling questions to him about the limits of political obligation, Bullinger was careful in his response. According to Skinner, one of Knox’s questions was, “Whether obedience is to be rendered to a magistrate who enforces idolatry and condemns true religion”, Bullinger being much alarmed by the implications of the enquiry, and answered that it was “very difficult to pronounce” on such a topic.¹⁴⁷³ Bullinger added that he would need to have “an accurate knowledge of the circumstances” before he could offer any advice at all, and that even then “it would be very foolish” to try to say “anything specific upon the subject”.¹⁴⁷⁴ Bullinger therefore was not as explicit and accurate on active resistance, and part of the reason for this being that a sense of urgency in this regard was greater by Knox, who was asking this question against the background of growing fears about the whole future of the Protestant faith.¹⁴⁷⁵ The same can surely be said of the urgency felt by Rutherford in the context of the threat posed against the Protestant faith in 17th-century Scotland.

It is interesting to note that Rutherford expresses confidence in popular judgment as to when rebellion may lawfully take place, contrary to the royalists who argued that statecraft was complicated and that a man except the king himself could rightly judge that the covenant had been fundamentally broken. Maclear adds that according to Rutherford, resistance may not take place when tyranny is obscure, although Rutherford doubts whether tyranny can be obscure for long.¹⁴⁷⁶ When life is threatened then re-offending is necessary in order to allow self-defense, but when the matter is “lighter” (as in paying tribute or suffering a buffet or battering from a rough master), we are not to use any act of re-offending “... because Christ

Bullinger less prone to support of an aggressive resistance theory, than that which is found in the thought of Althusius, Mornay and Rutherford (these authors also having written considerably more than Bullinger on the subject). In the same breath it may not be said that Bullinger hereby relinquishes his support for active resistance against the tyrant. Bullinger even supports the possibility of a just war where the Christian nation is threatened by a foreign ungodly nation, that poses a serious threat to the lives and religion of such a nation *ibid.*, 2: 378 – 379, but makes it clear that it must only be applied in serious instances where there is no other alternative, *ibid.*, 2: 380. Cf. further in this regard, *ibid.*, 2: 381 – 385. However, Bullinger, unlike Rutherford, does not discuss the issue of war against a foreign ungodly and threatening nation by the people of the threatened nation where the supreme magistrate of the threatened nation is also ungodly. To Rutherford the people have the right to enter into war, supported by godly princes and inferior magistrates and judges, without the support of the supreme magistrate where circumstances so require.

¹⁴⁷³ Skinner, *The Foundations of Modern Political Thought*, 189.

¹⁴⁷⁴ *Ibid.*

¹⁴⁷⁵ *Ibid.*

¹⁴⁷⁶ Maclear, *Samuel Rutherford: The Law and the King*, 77. Maclear adds that Rutherford did postulate refraining from resistance for a few infractions of the covenant, although when it comes to tyranny, it will be obvious and therefore the people may judge, *ibid.* Rae also provides further insight in this regard by pointing to Rutherford’s understanding pertaining to the requirements needed to constitute a tyrant namely: “To find out the essential difference between a king and a tyrant, we are to observe, that it is one thing to sin against a man, another thing against a state ... A tyrant is he who habitually sinneth against the catholic good of the subjects and state, and subverteth the law”, Rae, *The political thought of Samuel Rutherford*, 115 – 116.

... would rather give of his goods, and pay tribute where it was not due, than that this scandal be in the way of Christ, that Christ was no loyal subject to lawful emperors and kings.”¹⁴⁷⁷ The justification of aggressive resistance in instances where suffering is serious and a threat to life, Rutherford emphasized the importance of aggressive resistance as in the instance where idolatry poses a serious threat to the Christian community. In this regard, Rutherford refers to Elijah, who did not flee but denounced wrath against the king and cavaliers who joined with them in idolatry and stirred the people up to kill the seducing idolaters when the idolatrous king refused to do it.¹⁴⁷⁸ In this regard it is important to take note of Rae’s observation that Rutherford gave numerous answers as to who shall judge between the king and the people when it is alleged that the king is a tyrant – Rutherford refers to Scriptures, “fundamental laws which is with the people in this extremity as if they had no ruler”, “nature in acts of natural self-defence”, and “the people injured in the matter of self-defence”. Rae adds that Rutherford also admitted that the king, parliament, people and posterior parliaments all can err, leaving only God to remedy the situation.¹⁴⁷⁹ According to Rutherford, the position in Scotland at the time, was different to when David managed to approach a sleeping Saul, and David eventually did not even attempt to kill Saul. In other words, the fact that David did not kill Saul is not to be applied as justification for not resisting the ruler. The reasons being that Saul did not intend an arbitrary government; nor did he want to make Israel a conquered nation; nor did he want to introduce idolatry to the Israelites.¹⁴⁸⁰ In this

¹⁴⁷⁷ Rutherford, *Lex, Rex*, 157 (1). A similar example is found in 1 Corinthians 6, where the Corinthians would rather suffer the loss of their goods, than to appear before infidel judges, hereby preventing even greater inconveniences, mutilation and death, *ibid.* Therefore suffering must take place where the threat is not serious by nature, and that such suffering also take place in order to prevent an even more serious threat that might lead to death. Though something is due to you, and if it be something of less serious nature, then suffering as a result thereof, is to be chosen rather than risking the course of the gospel, and therefore in such an instance one must refrain from actively wanting to reclaim that which is due, the example of Paul, who rather did not accept stipends due to him (hereby patiently suffering), than hinder the course of the gospel (1 Corinthians 9), *ibid.*, 157 (1).

¹⁴⁷⁸ *Ibid.*, 180 (2). Cf. 1 Kings 18.

¹⁴⁷⁹ Rae, *The political thought of Samuel Rutherford*, 122 – 123.

¹⁴⁸⁰ Rutherford, *Lex, Rex*, 166 (1) – 166 (2). Rutherford however, adds that in the case of the Philistines encamping around Jerusalem, the Israelites may lawfully kill these Philistines who have encamped around Jerusalem with the intention to destroy it, the religion and the church of God; even though they were asleep when being attacked by the Israelites, *ibid.*, 168 (1) – 168 (2). On *ibid.*, 168 (1), Rutherford states: “For armies in actual pursuit of a whole parliament, kingdom, laws, and religion, (though sleeping in a camp) because in actual pursuit, may be invaded, and killed, though sleeping.” Rutherford also refers to Mornay who stated that the care of religion is also the responsibility of the people, and the estates never gave the king power to corrupt religion “and press a false and idolatrous worship upon them, therefore when the king defendeth not true religion, but presseth upon the people a false and idolatrous religion, in that they are not under the king, but are presumed to have no king, *catenus*, so far, and are presumed to have the power in themselves, as if they had not appointed any king at all ... If therefore he (the king) defend not religion for the salvation of the souls of all in his public and royal way, it is presumed as undeniable that the people of God, who by the law of nature are to care for their own souls, are to defend in their way true religion, which so nearly concerneth them and their eternal happiness”, *ibid.*, 55 (2) – 56 (1). From the above it can be deduced that the threat concerning the destruction of the protestant religion in Scotland was to Rutherford ample reason to merit active resistance. This is also confirmed by the following statement by Rutherford: “Now it is clear, a

regard, Maclear states that Rutherford's restatement of the Reformed tradition was more satisfying to the Scottish than to the English revolution. The reason being that the prime need of Scotland, according to William Haller, was the freedom and solidarity of the church as the effective organ of spiritual life in an unstable society. England by contrast, was seeking the means whereby individual freedom might be assured in a stable society.¹⁴⁸¹ The protection and development of the Protestant religion was therefore an important factor, not only for 17th-century Scotland but also for Rutherford, and he opted for the championing thereof, among others in his political thought, Rutherford strictly adhering to the Scriptures as authority. It is therefore not surprising that Maclear states that "Rutherford's" is the most notable English expression of classic Reformed political thought in 17th-century Scotland.¹⁴⁸²

According to Rutherford, Saul did not want to oppose even the princes, elders and people who made him king; Saul only sought David's life. Contrary to the intentions of David, the "papists and malignants" under the king (in 17th-century Britain), who intended to destroy parliament (which promulgated laws in opposition to idolatry), their aim was that the protestants become a conquered people. In addition, they arose in arms against all the princes in the kingdom, "who were no less judges and deputies of the Lord than the king himself; and

worshipping of bread and the mass commanded, and against law obtruded upon Scotland, by influence of the counsel of known papists, is to us, and in itself, as abominable as the worshipping of Dagon or the Sidonian gods; and when the kingdom of Scotland did but convene, supplicate, and protest against that obtruded idolatry, they were first declared rebels by the king, and then an army raised against them by prelates and malignants, inspired with the spirit of antichrist, to destroy the whole land, if they should not submit, soul and conscience, to that wicked service", *ibid.*, 182 (2), and "The king of Britain was not mad when he declared the Scots traitors (because they resisted the service of the mass) and raised an army of prelatical cut-throats to destroy them, if all the kingdom should resist idolatry (as all are obliged)", *ibid.*, 37 (1). In this regard Rae also comments that Rutherford wanted to defend armed resistance for the cause of the true Protestant religion, and therefore, according to Rutherford, no distinction between the Christian as Christian and the Christian as citizen could be appealed to. Instead, states Rae, Rutherford had to explain that it is permissible, in certain instances, for a Christian to use force for Christian purposes, Rae, *The political thought of Samuel Rutherford*, 117. This comment by Rae attains even more meaning when considering the covenant conditions to be upheld, the covenant providing the unification of citizenship and religious responsibility. Rae also points to the fact that Rutherford's view of prophecy and close relationship on the one hand, and the belief in the internal consistency of Scripture on the other, naturally lead to the view that if the Old Testament legitimated armed resistance to authority *for the cause of religion*, and Christian states were more or less directly analogous to the old Jewish state, then the New Testament could obviously not forbid resistance for the cause of religion – "that would mean to say that Scripture contradicted itself, which would constitute blasphemy", *ibid.*, 121 – 122. Compare this to Mornay stating: "The Apostle himself has told us that the magistrate does not bear the sword in vain; to what better use could he devote it than to the service of the true faith? Even more, it is his duty to take to himself every weapon that may fortify the vine of Christ against the wild boar of the forest that seeks to uproot and devour it", Mornay, *A Defence of Liberty Against Tyrants*, 40.

¹⁴⁸¹ Maclear, *Samuel Rutherford: The Law and the King*, 86.

¹⁴⁸² *Ibid.* Also cf. Coffey, *Politics, Religion and the British Revolutions*, 181, Coffey states: "... *Lex, Rex* concentrated on the religious duty to resist. The cause of true religion was always preeminent in Rutherford's mind, and, in comparison with it, other concerns paled into insignificance."

would kill, and do kill, plunder, and spoil us, if we kill not them.”¹⁴⁸³ The possibility of fleeing, as an alternative to active resistance must also first be considered before any other form of resistance be resorted to. In fact, according to Rutherford fleeing is a form of resistance.¹⁴⁸⁴ Fleeing, however, does not always negate the action of re-offending or re-action, and although self-defence be natural to man and lamb alike, a lamb naturally defends itself against beasts by flight only, where a man does not necessarily resort to flight – for “If a robber invade me, to take away my life and my purse, I may defend myself by re-action ...”¹⁴⁸⁵ Similarly it is, according to Rutherford, impossible for the people in Scotland to flee:

Now the unjust invasion made on Scotland in 1640, for refusing the service-book, or rather the idolatry of the mass, therein intended, was unavoidable; it was impossible for the protestants, their old and sick, their women and sucking children to flee over sea, or to have shipping betwixt the king’s bringing an army on them at Dunse Law, and the prelates’ charging of ministers to receive the mass book.¹⁴⁸⁶

Rutherford refers to David concerning the order in which various forms of resistance must be used. Firstly, David made his defense by words via the mediation of Jonathan; secondly, when the first option failed, David resorted to fleeing, and thirdly, when this did not prove to be safe, “He took Goliath’s sword, and gathered six hundred armed men”.¹⁴⁸⁷ Rutherford also

¹⁴⁸³ Rutherford, *Lex, Rex*, 166 (2). Rutherford adds that it would have been unwise and unjust if David was to kill a sleeping Saul, because to kill someone in self-defense must be only when the enemy invades and the life of the defendant cannot otherwise be saved, *ibid.*, 167 (2).

¹⁴⁸⁴ *Ibid.*, 159 (1). Fleeing as a form of resistance is evident from Christ’s commandment: “If they persecute you in one city, flee to another” (Matthew 10: 23), and Rutherford also refers to Matthew 23: 24, concerning Christ fleeing from the fury of the Jews till the hour had come, *ibid.* Additional examples of persons fleeing are Urijah (Jeremiah 24), Joseph and Mary, the martyrs who hid themselves in caves and dens (Hebrews 11: 38 – 39) and Paul who was let down through a window in a basket at Damascus, *ibid.* It is also interesting to take note of Clauson’s comment that Rutherford (in *Lex, Rex*) “talks about ‘flight’ as one among several legitimate means of resisting unrighteous government. He commands this method, though not equally in all situations. Clearly Rutherford has in mind the Great Migration of Puritans between 1630 and 1640 (just prior to the English Civil War), which saw some 25,000 Puritans flee to America to escape the persecutions of King Charles I and his Archbishop Laud”, Kevin Clauson, “City on a Hill”, *The Christian Statesman*, Vol. 142, No.2 (1999).

¹⁴⁸⁵ Rutherford, *Lex, Rex*, 160 (1). Although a private man has no way to defend himself but by flight, it does not necessarily mean that a community has no other way but to defend themselves by flight, *ibid.*

¹⁴⁸⁶ *Ibid.*, 161 (1). Rutherford also refers to Althusius who said that though private men may flee, the estates may not when their country, including their religion is threatened, *ibid.*

¹⁴⁸⁷ *Ibid.*, 160 (1). Rutherford adds: “ ... so re-offending is policy’s last refuge. A godly magistrate taketh not away the life of a subject if other means can compose the end of the law, and so he is compelled and necessitated to take away the life; so the private man, in his natural self-defence, is not to use re-action, or violent re-offending, in his self-defense against any man, far less against the servants of a king, but in the exigency of the last and most inexorable necessity ... So, to a church and a community of protestants ... who are pressed either to be killed or forsake religion and Jesus Christ, flight is not the second mean ... because not possible”, and therefore it is proper to actively resist, *ibid.*,

argues that it is false to reason that because of various Old Testament examples of God allowing invasions against the Israelites, that therefore resistance should not take place. Although Isaiah 10: 5; 12: 13 tells us that God punished His people for their sins by putting the Assyrians upon them, it does not merit the fact that the Israelites therefore may only resort to prayer and may not resist the Assyrians.¹⁴⁸⁸ A similar argument can be held for the Amalekites who came up against the Israelites for their sins, and Sennacherib who came up against Hezekiah for the sins of the people, as well as Asa's enemies who fought against him for his and the people's sins. Rutherford confirms this principle by referring to the analogy of famine, often being a punishment from God (Amos 4: 7 – 8), yet it cannot be argued that therefore those who are punished only resort to prayer and that it is unlawful for the people to cultivate the earth and to provide bread by their industry.¹⁴⁸⁹

According to Rutherford, the fact that God commanded the Israelites to submit themselves to the Babylonian king, to serve and to pray for him, was not because of the fact that the Babylonian king was their king,¹⁴⁹⁰ and if God, via Jeremiah, had not expressly commanded that both king and kingdom of Judah should submit to the king of Babylon, it would have been as lawful for them to rebel against the tyrant, as it would have been to fight against the Philistines.¹⁴⁹¹ It is also, according to Rutherford, wrong to argue that because God moved

160 (1) – 160 (2). In addition, natural defense includes staying and defending, *ibid.*, 160 (2). Also cf. Flinn, "Samuel Rutherford and the Puritan Political Theory", 69, Flinn states that according to Rutherford's understanding of fleeing, when the offense is against a corporate group such as a duly constituted state, town, local body or church, then flight is often an impractical and unrealistic means of resistance; and cannot be a natural means of self-preservation when it is physically impossible Flinn adds that therefore, with respect to a corporate group or community, there are two levels of resistance: remonstrance, and then, if necessary, violent self-defense, *ibid.*

¹⁴⁸⁸ Rutherford, *Lex, Rex*, 75 (2).

¹⁴⁸⁹ *Ibid.*

¹⁴⁹⁰ *Ibid.*, 16 (2).

¹⁴⁹¹ *Ibid.*, 40 (1) – 40 (2). In this regard, Rutherford argues by stating that it makes no sense to think that because God exposed his people to subjection by the Persian monarchy, therefore the Israelites had to subject themselves to the absolute rule of the Babylonian king. To think like this would mean that because God is absolute in this sense, therefore the king may also be absolute and do what he wishes with the Israelites, which would include making wicked laws, committing murder and performing idolatrous acts. This was not the intention of Jeremiah, who gave the Israelites the command (on behalf of God) to subject themselves to the Babylonian authorities. This would mean that the Israelites may not resist if the Chaldean king were to command the Israelites to subject themselves to death by the sword. According to Rutherford, this makes no sense, and there would be no reason why the Israelites may not defend themselves against the wickedness of the tyrannous king. In fact, what Jeremiah intended was that the Israelites subject themselves to suffering, *ibid.*, 110 (1). Therefore, this part of Scripture cannot be used as authority to qualify obedience to a tyrannous king. In fact, Rutherford states that the position in Scotland at the time of writing *Lex, Rex*, was in an even more threatening position than that of the Israelites in Babylonian exile, "Now, the Service Book commanded, in the king's absolute authority, all Scotland to commit grosser idolatry, in the intention of the work, if not in the intention of the commander, than was in Babylon. We read not that the king of Babylon pressed the consciences of God's people to idolatry, or that all should either fly the kingdom, and leave their inheritances to papists and prelates, or then come under the mercy of the sword of papists and atheists by sea or land", *ibid.*, 110 (1) – 110 (2).

the heart of Cyrus in setting the Israelites free from Babylon by immediate means (the Israelites having no hand in it, only accepting the fact), therefore the people, who made the king, cannot limit the king's tyrannical power if he makes captives and slaves of them, as the kings of Chaldea made slaves of the people of Israel. Therefore, because God uses a certain mean, is no justification for arguing that any other mean is unlawful.¹⁴⁹² In fact, Ezekiel 22: 1 – 7; Jeremiah 22: 3 is clear on the commandment to execute judgment and righteousness and to deliver the spoiled out of the hands of the oppressor, and this is, according to Rutherford (and rightly so) applicable to the same degree that it was applicable to the Israelites at the time.¹⁴⁹³

Rutherford also refers to Elisha, expounded in 2 Kings 6, where Elisha, conferring with the elders of the city (and not with the king), resisted the messenger sent to him by the king, and in this resisted the king himself. Rutherford states: "Elisha keepeth the huse violently against the king's messenger, as we did keep castles against king Charles' unlawful messengers. 'Look (saith he) when the messenger cometh, – shut the door.' There is violence also commanded, and resistance to be made. 'Hold him fast at the door.'" ¹⁴⁹⁴ Rutherford also refers to 2 Corinthians 26: 17, concerning the example of resistance against Uzziah the king by the priests, because the king would take it upon himself to burn incense to the Lord, against the law.¹⁴⁹⁵ In the case of Jonathan being rescued by the people, Rutherford states: "If the people may covenant by oath to rescue the innocent and unjustly-condemned from the sentence of death, notoriously known to be tyrannous and cruel, then may the people resist the king in his unlawful practices; but this the people did in the matter of Jonathan", (1 Samuel 14) – the people, including their princes of the land and the captains of thousands, being involved in the defending of Jonathan's life, and no word in Scripture concerning this event refers to either prayers, supplications or tears.¹⁴⁹⁶ Rutherford refers to 2 Chronicles 21: 10, where it is stated that Libnah revolted against Jehoram, because Jehoram had forsaken the God of his fathers. Rutherford states that Libnah "made defection from him, as the ten tribes revolted from Rehoboam for Solomon's idolatry."¹⁴⁹⁷ Rutherford also refers to the city of

¹⁴⁹² Ibid., 135 (1).

¹⁴⁹³ Ibid., 222 (1). Rutherford refers to Mornay as authority in this regard, *ibid.*

¹⁴⁹⁴ Ibid., 169 (1).

¹⁴⁹⁵ Ibid., 170 (1) – 170 (2). Also cf. *ibid.*, 182 (2) regarding the resisting of king Uzziah. This example as well as the previous one concerning Elisha also confirm the duty that the church has to resist the magistrate in instances where the king seriously transgresses the laws of God, cf. Chapter 3 above.

¹⁴⁹⁶ Ibid., 171 (1) – 171 (2). Also cf. *ibid.*, 189 (1).

¹⁴⁹⁷ Ibid., 171 (2) – 172 (1). Rutherford adds: "The text showeth what cause moved Libnah to revolt: it was a town of the Levites, and we know they were longer found in the truth than the ten tribes (2 Chron. xiii. 8 – 10; Hosea xi.12). Lavater saith, Jehoram hath pressed them to idolatry, and therefore they revolted. Zanchius and Cornelius a Lapide say, This was the cause that moved them to revolt, and it is clear, (ver. 13,) he caused Judah and the inhabitants of Jerusalem to go a whoring from God, and no doubt tempted Libnah to the like", *ibid.*, 172 (1). Rutherford also refers to Ambrose who: "...

Abel (2 Samuel 20), doing well to resist Joab, David's general, for he wanted to destroy the city; and for Sheba they resisted and defended themselves. The city Abel, in defending itself, did nothing against peace, for they delivered Sheba, the traitor to Joab's hand "and Joab pursued them not as traitors for keeping the city against the king, but professeth in that they did no wrong."¹⁴⁹⁸

According to Rutherford, just as the people gave their oath to Athaliah as the only heir of the crown, they not knowing that Joash, the lawful heir was living; so may conditional oaths in which there is interpretative and virtual ignorance be broken – Rutherford adds that if this is the case, should it not also be the case that if the people swear loyalty to a specific person conceived to be a father, may they not also resist such a person when committing tyranny?¹⁴⁹⁹ When the prophets, as witnessed in the Old Testament, complain that the people execute no judgment and do not relieve the oppressed, they are expressly crying out against the sin of non-resistance.¹⁵⁰⁰ Rutherford states: "If the king turn distracted, and an ill spirit from the Lord come upon Saul, so as reason be taken from a Nebuchadnezzar, it is certain the people may put curators and tutors over him who hath the royal power."¹⁵⁰¹ By this, Rutherford produces ample Scriptural evidence concerning the justification of resistance when circumstances so require. In addition, Rutherford states that the authority of the king is not even required in instances where there is an invasion by a foreign power. This aspect forms part and parcel of the power and authority that the inferior judges and the people have, not only the king, concerning the safety and self-defense of a nation, and the fifth and sixth commandments act as justification for this.¹⁵⁰²

commendeth Moses who killed the Egyptian in defending a Hebrew man. To deliver is an act of charity, and so to be done, though the judge forbid it, when the innocent is unjustly put to death", *ibid.*, 188 (2).

¹⁴⁹⁸ *Ibid.*, 172 (1).

¹⁴⁹⁹ *Ibid.*, 175 (2).

¹⁵⁰⁰ *Ibid.*, 181 (2).

¹⁵⁰¹ *Ibid.*, 82 (2). It is also false to argue that because the Sanhedrin did not punish David (for arranging the murder of Uriah by Joab), therefore that it is not lawful to challenge a king for any one act of injustice, *ibid.*, 36 (2). Also Bathsheba, who committed adultery with the king, cannot rely on the fact that because it was with consent from the king, that the act was committed, therefore it cannot be adultery and therefore she may not be killed, *ibid.*, 36 (2) – 37 (1), in fact it is her duty to resist such an act even though it is commanded by the king because a woman or a young man may lawfully oppose even a king if he were to force one of them to adultery or incest, *ibid.*, 162 (1). Also cf. *ibid.*, 149 (1). In other words, anyone or any institution may resist transgressions of the law, and if Bathsheba may resist David's intentions, then so much more may the people resist a tyrannous king.

¹⁵⁰² *Ibid.*, 184 (1) – 187 (1), which forms the whole of Question XXXVI, in *Lex, Rex*, namely: "Whether the power of war be only in the king". More specifically, reference is made to the example of David, who, without the consent of Saul, resisted and defeated Goliath, took his sword and became a captain, *ibid.*, 185 (1) – 185 (2). That not only the king but also the inferior judges and the people may have a right to war presupposes the sovereignty that the people have when the king, who has been elected by the people, does not provide the nation with adequate protection, hereby acting contrary to his office and the Law of God. Therefore, the people may bypass the authority of the king when the king is either not available or does not want to go to war, when such rising of arms is needed in order to

In what manner did the resistance theory of the theologico-political federalists differ from the influences emanating from the Enlightenment? Although the social contract formed an important facet of 16th and 17th-century secular political theory, the emphasis on the active responsibility of the people to resist tyranny was not as emphasized as those theories emanating from theologico-political federalism. The emphasis that Mornay, Althusius and Rutherford (and even Knox), placed on the resistance by the people to tyranny, enhanced the bilateral nature of the covenantal relationship between the king and the people, unlike the theories from secular political thought in the period of the Reformation and Enlightenment. Baker states that Hobbes, though he shared most of the common elements of federalism, explicitly denied the right of resistance, even against a tyrant, for any reason, political or religious.¹⁵⁰³

Skinner points out that the separation between the classic “liberal” theory of popular revolution postulated by John Locke, and the resistance theories formulated by Ponet, Goodman and Knox, is that the radical Calvinists of the 1550s did not accommodate the concept of political resistance as a right. Skinner states:

While they (Calvinists) are willing to defend the revolutionary suggestion that it may be lawful for the whole body of the people to limit and depose their governors, they continue to assume that the fundamental reason for the existence of political society must be to uphold the laws of God and the exercise of the true (that is, the Calvinist) faith. They continue in consequence to think of political society as ordained of God to treat tyranny as a form of heresy, and to construe the lawfulness of resistance as a religious duty – a duty based on a promise to uphold the laws of God – and not as a moral right at all.¹⁵⁰⁴

The theologico-political federalists were similar in their justification to resist tyranny because it is an obligation based on the promise that God’s laws are to be upheld in society. This understanding differed from that of Locke, and it was not only Ponet, Goodman and Knox that emphasized the importance of resistance to tyranny as fulfillment of the promises that God’s law is to be upheld, but also the theologico-political federalists such as Althusius, Mornay and Rutherford who even more clearly illustrated this obligation emanating from the covenantal arrangement. Thus although the idea of the Biblical covenant as cause for

defend the people and their interests. Rutherford refers, among others, to Althusius in discussing this aspect, *ibid.*, 185 (1).

¹⁵⁰³ Baker, “Faces of Federalism: Althusius, Hobbes and Locke”, 14.

¹⁵⁰⁴ Skinner, *The Foundations of Modern Political Thought*, 239 – 240.

resistance was lacking in Locke, it is interesting to take note of the possible influences of especially *Lex, Rex* on Locke's theory on (among others), resistance. In this regard Richard comments that although no tangible evidence exists to support a causal link between Rutherford and Locke, it is asserted by Hudson that the fundamental identity of essential points in the theories on resistance by Rutherford and Locke, suggests that especially Rutherford, might as well have provided the outline for Locke's theory of resistance.¹⁵⁰⁵

Stevenson, commenting on resistance theory in 16th-century France, states that both the Catholics of the Holy League and the Huguenots had produced religious justifications for resistance to kings who persecuted true religion or who were not sufficiently zealous in upholding it.¹⁵⁰⁶ Stevenson also deduces that these religious justifications for resistance to kings which took place in France were followed with interest in Scotland and England, but that their practical impact was much greater in Scotland than in England. Stevenson adds: "The course of the Scottish Reformation, originating in rebellion against the monarchy (represented by a French regent), was much more similar to the pattern of Reformation in France than to that in England. To similarities between political and religious developments in Scotland and France were added strong intellectual ties, and three of the best-known Scottish political theorists of the age, George Buchanan, Adam Blackwood and William Barclay, were as much at home as in France."¹⁵⁰⁷ Stevenson continues by stating that Buchanan was by far the most radical of all the Calvinist revolutionaries, and although he owed much to Huguenot writers, he reached more radical conclusions than they did. The reason being that Buchanan's *De jure regni apud Scotos* (1578) argued in favor of a limited monarchy, and that the power of monarchs be granted conditionally by the people.¹⁵⁰⁸ Stevenson also adds:

In reaction to the disastrous civil wars which such theories helped to justify, some turned back to the monarchy as the only effective guarantor of law and order; only absolute monarchy, it seemed, could prevent anarchy. Some stressed the divine right of kings, thus continuing to rely on religious arguments. But Bodin made a radical break with the past. Recognizing that the main

¹⁵⁰⁵ Peter J. Richards, " 'The Law written in their Hearts'? : Rutherford and Locke on Nature, Government and Resistance", (unpublished paper), 23 – 24. Adding to this Richards, at *ibid.*, 2, refers to Hudson who stated that: "Even a conservative Presbyterian like Samuel Rutherford, in *Lex, Rex* ..., invoked almost every argument that was later used by Locke, including an appeal to the law of nature, the ultimate sovereignty of the people, the origin of government in a contract between the governor and the governed, and the right of resistance when that contract is broken."

¹⁵⁰⁶ David Stevenson, " 'The Letter on sovereign power' and the influence of Jean Bodin on Political Thought in Scotland", *The Scottish Historical Review*, Volume LXI, 1: No. 171: April (1982), 31.

¹⁵⁰⁷ *Ibid.*, 32.

¹⁵⁰⁸ *Ibid.*

problem of political authority in the post-Reformation world lay in that men claimed to be doing God's will but could not agree on what God's will was, Bodin largely separated politics from religion and sought to justify submission to the 'sovereign power' in the state (which in France lay in the monarchy), on grounds of practical necessity as revealed through the detailed study of the actual working of states. However, God was not entirely banished from the political scene; sovereign power is subject to divine law.¹⁵⁰⁹

Bearing the above in mind, the issue arises concerning the validity of tyranny in the context of the risk that active resistance may lead to a weightier and more prolonged degree of confusion, chaos and arbitrary governance. In other words, is Bodin's argument valid in supporting an absolute sovereign so that the risks involved in religious dissent may be lessened? To what extent is Stevenson's argument valid in conferring the terms "radical" and "revolutionary" (in a negative sense), to the Calvinist supporters of active resistance? Can one support the view of Bodin because of the mere fact that people could not attain consensus regarding which religion was to be applied in society? The comment of Stevenson in the above gives the impression that not only Buchanan and the French Huguenots were revolutionaries and radicalists in the negative sense of the word, but from this it can be inferred that Bullinger, Mornay, Althusius, Rutherford and Knox, were the same. This is confirmed by Stevenson's comment that:

John Corbet, a Scottish minister deposed by the covenanters, denounced their ideas on grounds based on Bodin ... arguing that tyranny was better than anarchy. 'It's no question, but great hurt may fall out to both Prince and people, while the Prince, pressing upon his authority, abuseth the same, and makes himself liable to the wrath of God. But much more hurt would follow upon the other hand, if the Prince's power were subject to the inferior subjects; that would breed great confusion, and turns all upside down.' In the same tract Corbet implied that the covenanters were acting in ways similar to the Holy League, and the following year he extended this useful argument by claiming that the covenanters, for all their talk of protecting protestantism from the Catholic menace, were behaving in exactly the same way as seditious Catholics, (Stevenson adds:) With considerable ingenuity Corbet sought to demonstrate that the

¹⁵⁰⁹ Ibid., 31 – 32.

ideas on resistance to royal authority of Calvin, Beza, Knox and Buchanan were indistinguishable from those of Jesuit authors such as Bellarmine, Suarez, Mariana and Ignatius Loyola.¹⁵¹⁰

Stevenson is not only unconvincing in his attempted justification of Bodin's validation of absolute sovereignty, but his approach is based on the supposition that there is no already-established Christian Commonwealth in which there is a Divine law that must be honored, maintained and protected within the covenantal structure – because this was the point of departure concerning the resistance theories postulated by the theologico-political federalists as well as many of the other French Huguenots and Scottish Covenanters of the 16th and 17th centuries. The argument can be leveled at Bodin, from a theologico-political perspective, that Bodin had no respect for the upholding of God's will in the community, rather justifying and deifying the principle of peace than the holiness of God. Stevenson also seems to negate the potential risks of Bodin's political theory concerning the humanist and secular influences that Bodin and the likes introduced into the biblically-based constitutional theories emanating from the Reformation – not to even mention the risks in this for democracy in general. What the theologico-political federalists stood for was the holiness of the law and will of God and that the community in covenant with God had the responsibility of opposing any serious form of ungodliness or tyranny – active resistance to tyranny, according to the federalists, was also not to be approached impulsively and arbitrarily – there was a certain sequence to follow as was discussed above. The French Huguenots, the Scottish Covenanters and the theologico-political federalists were everything but supporters of violence, it was precisely the acts of violence and ungodliness that inspired their theories on active resistance. The argument in support of an absolute monarchy executing an arbitrary and changeable law, in order to counter “religious dissensions at the time”, is not at all convincing. Is it proper to support peace and hereby to agree with Bodin's theory, or is it rather correct to support the attainment of a confessional truth in society when seriously threatened even if it means the imposition of violence? Nevertheless, Stevenson must be applauded for the issue that he raises, as it is most relevant to constitutional theory, more specifically to the debates regarding the validity of active resistance in instances of tyranny, and needs to be investigated from a more in-depth angle than has been discussed in this work.¹⁵¹¹

¹⁵¹⁰ Ibid., 33 – 34. Stevenson also talks of “Archibald Johnston of Wariston, the fanatical young lawyer who drafted many of the covenanters' declarations and petitions, and who was responsible for much of the national covenant”, *ibid.*, 34. The words “fanatical” and “young” used by Stevenson indeed violates the credibility of Archibald Johnston, who was a brilliant exponent for the cause of a Christian Commonwealth in covenant with God.

¹⁵¹¹ Also refer to the discussion and criticism of Bodin's political theory in the conclusion to Chapter 4 of this work. The following statement by Stevenson is also unfounded namely: “The authors of the two major Scottish political treatises of the period, on the other hand, took ideas from Bodin directly as well

3. Conclusion

Theologico-political federalism exhibited a theory on sovereignty much different to the secular understanding regarding it. The law of God exceeds all other structures usually associated with sovereignty, especially that as proclaimed by the secular approach, which places much emphasis in either the people or ruler per se, as sovereign, which may lead to a changeable jurisprudential and moral content. In addition, the unfortunate proclamation of the principle of the divine right of kings was countered by theologico-political federalism, the latter supporting the view that the king is both responsible (in covenant), to God and the people, while being lead by the Divine law. This included the idea that succession is not a guarantee for rulership, but rather a merit served as qualification for such rulership.

What makes the theologico-political approach unique is that it provides a mechanism, in the form of the covenant, to strengthen the political community's commitment in giving effect to the law, the law being the measure by which political and legal activities must take place. The processes of election, overseeing the functioning of rulership as well as a resistance to tyranny, form part of this commitment on the part of the community. Concerning election of the ruler by the people, the people as a whole constitute the secondary cause of God's interaction with the nation – God, via the people, determines the ruler, just as God, via the clouds, causes the rain to fall. The law of God comes to expression in the people via the structure of the covenant. The people are responsible for electing an appropriate ruler and this they must exercise in all earnestness and diligence, because of their covenant responsibilities. The office of the magistrate is ordained by God, and God, via the community, chooses the person to occupy the office. It is clear from especially Rutherford and Althusius, that by providing the people with a covenant responsibility in the election of the ruler, they not only confirmed what the Scriptures state on this subject, but also prevented any arbitrary appointment of a ruler, as found, for example, in the principle of the divine right of kings, as well as the various theories emanating from the Enlightenment. The risk attached to a changeable jurisprudential and moral content was also limited in this manner. This

as indirectly ... The other major Scottish writer of the period, Samuel Rutherford, wrote his *Lex, Rex* (1644) specifically to refute John Maxwell, but he also sought to discredit William Barclay and Arnisaeus. Thus those whom he saw as his main opponents were all men who had relied much on Bodin; but the same is true also of Rutherford himself, for his work is based on Althusius' adaptation (or distortion) of Bodin's doctrines in order to uphold popular sovereignty, and Althusius too had singled out Barclay and Arnisaeus for denunciation ...", Stevenson adds that *Lex, Rex*, a work pleading for popular sovereignty, derived from Bodin, *ibid.*, 35. On *ibid.*, 43, Stevenson states: "In royalist Oxford John Maxwell's *Sacro-sancta* was printed, only to be promptly countered by the appearance of Rutherford's *Lex, Rex* in parliamentary London, both works being, as already noted, founded on the thought of Jean Bodin." Stevenson should provide proof for validating his comment that Althusius and Rutherford derived their ideas from Bodin.

principle of the people playing an active role in the election of the ruler refers to that instance where God's sovereignty and man's responsibility meet – it is God that moves the people to elect a certain person as ruler to the exclusion of others, yet it is man that chooses the ruler and it is man that is covenantally responsible for choosing the proper ruler. This understanding did not weaken the principle that God was not the *causa causarum*, and this has been confirmed in the thoughts of the theologico-political federalists.

Unlike the theories emanating from Bodin and Hobbes, the federalists provided a responsibility on the part of the community to continuously oversee the functions of the ruler and to elect a new ruler if need be. What could be more secure than the wishes of a community whose heart has been converted, and who has found God and His Law? Such a state comprises true freedom within society, where any act contrary to a godly conscience results in a limitation of freedom, freedom to partake in the desires of the communal conscience which loves and is loyal to none other than He who is Lord over all – this is the true definition of liberty and freedom. Theologico-political federalism countered the unconstitutional theory of the state as supported by Bodin, where the true monarchy receives sovereignty completely, permanently and unconditionally, where the Decalogue and the participation of the people play no role. Contrary to this point of view, there was the view of theologico-political federalism that there is a mutual, bilateral, covenantal relationship between the king and the people, with the king taking the oath to exercise godly rule which included the protection of the community, and the people promising their allegiance to the ruler in so far as he exercises godly rule. Added to this was the mutual, and bilateral covenant between God and the community, where the community as a whole commits itself to the fulfillment of the Divine Will in exchange for God's favor and protection.

Also emanating from the covenantal responsibility of the community is the theory on resistance. Active resistance against an ungodly ruler was no more to be perceived as sin, as was proclaimed by those loyal to the concept of the divine right of kings. The ruler that seriously transgressed the will of God, constituted a tyrannous king that had to be opposed forcefully by the people. This further implied that resistance had to take place via a structured process, where the various representatives of the people, after meticulous and patient planning, had to approach the ruler via mediation and warning activities, and if this did not work then active force had to be applied. The theologico-political federalists, when compared to the reformed understanding of resistance in general, added much weight to active resistance (which was also not contrary to Scriptures) – possibly because of the seriousness attached to the adherence to the covenantal conditions. Therefore, in the context of sovereignty theory, theologico-political federalism elevated the role of the community in not

only the election of the ruler but also in the fact that it was the community's covenanted responsibility to elect a godly ruler that would protect them. In addition, the people continuously inspect the governance by the ruler and have the power to actively resist tyranny where the covenant conditions are seriously violated. However, this power of the people did not act as the final sovereign, the actual sovereign being the Divine Law which is part of the character of the Divine Being (the true Sovereign). Therefore, it can be contended that theologico-political federalism contributed to issues such as sovereignty, the election, overseeing the activities of the ruler, resistance to tyranny, and it substantiated the theories emanating from these concepts by referring to Scriptures. In fact, the covenant structure provides these concepts with a greater sense of urgency – the aim being the political community's responsibility to adhere to the covenantal conditions.

CHAPTER 6

Conclusion

Samuel Rutherford's *Lex, Rex* has long been regarded as an important exposition regarding Reformed political and jurisprudential theory. Rutherford was responsible for one of the few publications emanating from both the 16th and 17th centuries dealing exclusively, systematically and in its entirety with constitutional thought along strict Scriptural and theonomic lines. Rutherford not only provides constitutional thought in the covenant tradition but also confirms this by returning to the original biblical texts with great piety and with precision in the classic Reformed approach constituted of a strong desire to understand God's Word. Possibly only Althusius's *Politics* can compete with *Lex, Rex* in this regard.

Regard must be taken of Rae's comment that while the immediate cause of *Lex, Rex* being published was the appearance of Bishop John Maxwell's *Sacro-Sancta Regum Majestas*, Rutherford's political theory cannot be said to be solely a response to immediate circumstances. In the words of Rae: "W. M. Campbell has argued with some plausibility that Questions 28 – 37 of *Lex, Rex* (it is divided into 44 such questions), dealing with the lawfulness of defensive wars were written earlier on, and while this still does not necessitate that *Lex, Rex* was inspired by anything other than the National Covenant of 1638, even a cursory reading of the first few pages of the book will make it evident that Rutherford, too, saw himself as answering timeless questions which could be applicable to any immediate circumstances."¹⁵¹²

This view must also be understood in the context of Rutherford's constitutional theory, it being evident that he has contributed much to not only theologico-political federalism, but also to Reformed political and jurisprudential theory in general. Unfortunately, during a period of little over 350 years and from a purely constitutional point of view, few in-depth studies directed at *Lex, Rex* have been pursued. This study is, among others, aimed at reviving the valuable contribution by Rutherford to constitutional theory not only in the Reformed tradition, but also and more specifically to the legacy of covenantal thought. Rutherford's input came at a time when the sciences of theology (according to the contemporary understanding), politics and legal theory were fused – when there was nothing

¹⁵¹² C. E. Rae, *The political thought of Samuel Rutherford*, (unpublished M. A. dissertation: University of Guelph, 1991), 14.

strange in having a theologian write on political and legal theory. Unfortunately, for contemporary society (Christian and non-Christian alike), the jurisdiction of a theologian does not include the world of politics and law. This has led to the view that persons such as Bullinger, Knox, Althusius and Rutherford did not have much to do with constitutional theory. Part of this work is to postulate that these reformers were as sound theologians as political theorists. In addition, these reformers made a point of expressing their political thought, not in tiny and dispersed bits of information to be found between the lines of their theological works, but in the formulation of a formal and separate commentary. What makes these reformers even more unique is that the covenant idea was common among all of them, although some expressed it more concisely than others.

Protestantism itself flowed from the renewed contact with Scripture, from which emanated a renewed understanding of biblical covenantalism, a theology which was not only to become the cutting edge for the most powerful and influential group within Protestantism, but which, later secularized, was to have a profound influence on the 17th-century political philosophers, unfortunately ending in a largely secular and impious concern with the apparent contradictions, omissions and duplications in the biblical text.¹⁵¹³ The covenant and its political manifestations was used by the Reformed Protestant federalists and the pursuit of commonwealth was integrally linked to their federal theology, through which the covenant was to inform every aspect of a religiously-grounded and politically-integrated polity in which individuals would find self-expression through an elemental common unity.¹⁵¹⁴ Rutherford, who formed part of the covenant tradition, no doubt exhibited acumen both on theological as well as political grounds, making him a member of a select group of which, he may well be in the leading ranks. Not only are Rutherford's insights regarding magistracy and its office, the law, the election and form of leadership, tyranny, and the relationship between church and government exceptional, but also the unique fact that these insights form part of a larger structure, namely that of covenantal and federal theory (referred to as theologico-political federalism) as first promulgated by Bullinger, and thereafter continued and developed by Mornay, Althusius and even Knox. Theologico-political federalism provided a model of how the constitutional dispensation of the Christian Community should be structured, and as point of departure, political society's status as a party to the covenant with God was postulated, this covenant relationship acting as the fundamental framework for political content and activity. According to the theologico-political federalists, within the

¹⁵¹³ Daniel J. Elazar, "Hobbes confronts Scripture", *Jewish Political Studies Review*, 4: 2 (Fall 1992).

¹⁵¹⁴ Daniel J. Elazar, *Covenant and Commonwealth. From Christian Separation through the Protestant Reformation. The Covenant Tradition in Politics*, Volume II, (New Brunswick, New Jersey: Transaction Publishers, 1996), xi.

realm of God's sovereignty is the responsibility of the political community to adhere to God's law. More specifically, this law forms the covenantal condition by which government and governed interact both with God and with each other. The personal relationship between God and the political community as not only an effective constitutional model, but also a biblically qualified and practical constitutional theory was proposed by the federalists. It is also confirmed that not only did the federalists provide a well researched constitutional model to be applied to the ideal Christian Community, but also assisted in championing constitutional values such as liberty, equality, the rule of law, limited governance, and democracy.

Although Rutherford was not the pioneer of many of the concepts and themes dealt with in *Lex, Rex*, the fact remains that he provided a systematic and biblically confirmed exposition on governance and the law, hereby providing a theonomic constitutional theory fitted into a covenantal structure. Far beyond the uniqueness of *Lex, Rex* as a document attempting the union between natural and the Divine law, lies the idea of the Biblical covenant and its implications for governance and the exercise of religious and civil justice. *Lex, Rex* was nothing less than a profound attempt to ground society in both religious and political covenants, which was also in accordance with the legacy of theologico-political federalism. Rae states that Rutherford believed that the "godly" would have an active role to play in ushering in Christ's kingdom – a view that can be understood as explaining almost the whole of Rutherford's political theory.¹⁵¹⁵ This is an indication of Rutherford's optimism on the community's active and responsible role in fulfilling the covenantal conditions, hereby paving the way for the materialization of Christ's kingdom. Rutherford supported a collective communal responsibility in the context of the covenant and the resultant punishments that may arise when the covenantal conditions are violated. Rutherford also supported the idea that if the land sins against God, it will be punished for it (as Judah was punished for the sins of king Manasseh). Rae states that national repentance was assumed to be needed along with personal repentance and, according to Rae, this is why even in defeat Rutherford can write with full confidence that: "This despised Covenant shall ruin Malignants, Sectaries, and Atheists. Yet a little while, and behold He cometh and walketh in the greatness of His strength, and His garments dyed with blood. Oh, for the sad and terrible day of the Lord upon England, their ships of Tarshish, their fenced cities, etc. because of a broken covenant."¹⁵¹⁶

According to Rae, the English had abandoned what Rutherford thought was the cause of God – Presbyterianism and the Solemn League and Covenant – and would therefore be held to

¹⁵¹⁵ Rae, *The political thought of Samuel Rutherford*, page 1 of the abstract.

¹⁵¹⁶ *Ibid.*, 160.

account for it.¹⁵¹⁷ This confirms Rutherford's adherence to the covenant responsibilities and consequences to be followed by not only Scotland but any Christian state. According to Rutherford and the other theologico-political federalists, the biblical design for humankind is primarily based on the covenant between God and the community, from which emanates political covenanting working towards the fulfillment of the covenant between God and the people. In this regard, the Divine law forms a pivotal and central role in the execution of the relationship with God and the Christian community, in the sense that the law acts as a condition to be fulfilled within the political community. This has serious implications for the content of the office of magistracy, the relationship between church and state, the sovereignty of the people, the election of the ruler by the people, and the resistance theory. The office of magistracy may not deviate from these conditions; this conditional nature also adds emphasis to obligation, responsibility and accountability of the office of magistracy. Clarity on the relationship between the government and church as a formal institution, also attains a higher sense of urgency via the covenant, resulting in each of these institutions being attentive to their obligations (common and specific), required to satisfy the covenantal relationship with God. There is no doubt that Rutherford not only links the law of God to the covenant conditions, but also makes it clear that both the church and the state have an active role to play in the fulfillment of these conditions, each institution or office according to the mandate provided by God in Scripture.

The sovereignty (in the context of secondary cause and according to the Divine Will) of the people, is limited to the covenant conditions, where the choice is theirs as a unified body to abide by the law in pursuit of God's blessings. Also, freedom and responsibility is bestowed on the people as a unit to actively partake in the election of the ruler within the confines of the covenant conditions, while the same is applicable in instances of resistance. The people are responsible for electing an appropriate ruler and this they must exercise in all earnestness and diligence, because of their covenant responsibilities and obligations. The office of the magistrate is ordained by God, and God, via the community, chooses the person to occupy the office. It is clear from especially Rutherford and Althusius, that by providing the people with a covenant responsibility in the election of the ruler, they not only confirmed what the Scriptures state on this subject, but also prevented any arbitrary appointment of a ruler, as found, for example, in the principle of the divine right of kings, as well as the various theories emanating from the Enlightenment. The risk attached to a changeable jurisprudential, moral and political content was also limited in this manner, bearing in mind that the covenanted "communal conscience" of the faithful cannot easily be turned aside. This principle of the

¹⁵¹⁷ Ibid.

people playing an active role in the election of the ruler refers to that instance where God's sovereignty and man's political and social responsibility meet, in the context of a communal covenantal responsibility and obligation.

In addition, active resistance against ungodly rule was no longer to be perceived as sin, as was proclaimed by those loyal to the concept of the divine right of kings. The ruler that seriously transgressed the Divine Will, constituted a tyranny that had to be opposed by the people. This further implied that resistance had to take place via a structured process, where the various representatives of the people, after meticulous and patient planning, had to approach the ruler via mediation and warning activities, and if this did not work then force had to be applied. The theologico-political federalists, when compared to the reformed understanding of resistance in general, added much weight to active resistance – possibly because of the seriousness attached to the adherence to the covenantal conditions. Therefore, in the context of sovereignty theory, theologico-political federalism elevated the role of the community in not only the election of the ruler but also in fact that it was the community's covenanted responsibility to elect a godly ruler that would protect them. In addition, the people continuously inspect the governance by the ruler and have the power to actively resist tyranny where the covenant conditions are seriously violated.

In general, the biblical covenant provides a sense of seriousness and urgency in that the political community will be met with God's wrath if it does not live up to its obligations. However, it also provides a sense of hope and a promising incentive to aim at, in that God's blessings will be bestowed upon a society that endeavors the fulfillment of the Divine Will. The least that can take place concerning the latter is that the communal conscience can be at rest, come what may. The covenant structure also provides a practical approach, one that is in line with the nature of human relationships and relationships between the various sectors in the communities with each other. The process of contracting is embedded in a plethora of activities on an individual or organizational level. Theologico-political federalism not only confirms the applicability of the contractual nature within society, but qualifies the application of this principle by referring to Scriptures.

In addition, the themes of *liberty* and *authority* that form such an integral part of political theory is to be understood within the context of the Divine Will. Hueglin states that: "According to Proudhon all political order is determined by the inescapable antagonism of authority and liberty. Both principles are inherent in any political system, and never can one of them completely be replaced by the other. Authority stands for man's natural attraction to hierarchy, centralization, and absorption, whereas liberty is the rational category aiming at

individualism, choice, and contract. History then is a permanent conflict between the two principles, and the appropriate political system is not the one which pretends to achieve the impossible, that is, a final synthesis ending all conflict, but a system of federalism, in which both principles are balanced in a constitutional system of law and contract.”¹⁵¹⁸ In applying this idea in the context of theologico-political federalism, my interpretation would be as follows: The law acts as authority in controlling liberty, and the law also acts as an instrument for the protection of liberty. In this regard, theologico-political federalism, by introducing the covenantal conditions (which is none other than the Divine law), as a structure within which these principles are to operate, assists the synthesis between liberty and authority. Liberty and authority may not exceed the precepts of God, and in this manner a constant and continuous restriction is placed on the manifestation of ungodliness by the individuals and the community as a whole, on the one hand, and on the other, the risks of ungodly rule. The covenant, with its view of the law as a condition, provides the law with greater meaning and emphasis, and the covenant also acts as a practical tool to instill the law within the political community. In fact it is these conditions that form part of the natural law, only in a more vague form than is found in Scriptures. The understanding of the theologico-political federalists would be that the law of nature would also dictate these conditions of the covenant, and therefore living according to these conditions, which is none other than the law of God, does not form a restriction on godly man, thereby limiting his freedom. In fact, godly man and the community experiences the highest sense of liberty when being able to live according to the precepts dictated to him by nature. Therefore, in a covenanted society, where the materialization of the pre-condition of such a society has already taken place, namely that the “heart of the community (or most of it anyway) has already been converted”, liberty obtains its highest enjoyment by the members of the community. This is so because living in opposition to the precepts which are in the hearts and minds of both the individual and the community, results in an inherent resistance to anything which is contrary.¹⁵¹⁹

¹⁵¹⁸ Thomas Hueglin, “Johannes Althusius: Medieval Constitutionalist or Modern Federalist?”, *Publius*, (Fall, 1979), 13 – 14.

¹⁵¹⁹ Liberty in this context is similar to the liberty that Winthrop spoke of: “The other kind of liberty I call civil or federal, it may also be termed moral, in reference to the covenant between God and man, in the moral law, and the politic covenants and constitutions, amongst men themselves. This liberty is the proper end and object of authority, and cannot subsist without it; and it is a liberty to that only which is good, just, and honest. This liberty you are to stand for, with the hazard (not only of your goods, but) of your lives, if need be. Whatsoever crosseth this, is not authority, but a distemper thereof. This liberty is maintained and exercised in a way of subjection to authority; it is of the same kind of liberty wherewith Christ hath made us free ... On the other side, ye know who they are that complain of this yoke and say, let us break their bands, etc., we will not have this man to rule over us. Even so, brethren, it will be between you and your magistrates. If you stand for your natural corrupt liberties, and will do what is good in your own eyes, you will not endure the least weight of authority, but will murmur, and oppose, and be always striving to shake off that yoke; but if you will be satisfied to enjoy such civil and lawful liberties, such as Christ allows you, then will you quietly and cheerfully submit unto that authority which is set over you, in all the administrations of it, for your good”, “Winthrop’s

Consequently the dichotomy that may be perceived as existing between liberty (properly exercised in accordance with the Divine Will) and authority (properly exercised in accordance with the Divine Will) is avoided.

Theologico-political federalism also supports Godly freedom in the various levels of social and political interaction and it provides the necessary scope for inspection, communication and accountability, not only between organs of government, but also between national, provincial and local authorities. The latter is referred to in contemporary constitutional theory as the principle of cooperative governance. In this manner, the theologico-political federalists devised a unique model within which constitutional theory is to be understood and which is in line with Scripture. This was in opposition to the political theories of, among others, Bodin and Hobbes, who were largely responsible for the secularization of the covenant idea as well as the exclusion of the Divine law, as constant and continuous content, and a condition in the exercise of governance and justice. Hobbes for example, expressly postulates a liberty free from covenants, and comes to more direct conflict with the regnant Puritan view of federal liberty, which according to Elazar, is a liberty derived from the fundamental covenants between God and man. Hobbes's understanding of liberty was also directed away from the communal connotation and moved towards the individual.¹⁵²⁰ The covenantal contribution of theologico-political federalism addresses the interests, obligations and responsibilities of the political community (without derogating the individual's role in fulfillment of his Scriptural responsibilities). Emphasis on accountability of the office of magistracy, the representatives of the various levels in society and the community are also emphasized, (and which eventually also includes the individual as a member of the group).

It must however be remembered that the status of individual interest differs between a liberal Western understanding and a theologico-political federalist's understanding of the term. According to the federal approach, the wholes of which individuals are parts, such as social groups, political societies and the like, have an independent reality over and above that of their components. The Christian Community obtains via the covenant a single entity that interacts with God. Consequently, this idea has important implications for political society in the exercise of its religious and civil duties. Beyond the Christian duties provided for in the Scriptures, and within the confines of God's absolute sovereignty and predestination, is the community's obligation to function according to the Divine precepts in return for God's

Speech to the General Court, July 3, 1645", in *The Puritans. A sourcebook of their writings*, (edited by Perry Miller and Thomas H. Johnson; an unabridged reprint of the work, originally published by Harper and Row, Mineola, New York: Dover Publications, Inc.), 206 – 207.

¹⁵²⁰ Daniel J. Elazar, "Hobbes confronts Scripture", *Jewish Political Studies Review*, 4: 2 (Fall 1992), 8.

favor. Theological issues such as predestination, human depravity and absolute grace do not negate the idea of the biblical covenant, no more than the Scriptural commands on the individual's obligations and responsibilities as a Christian, which are negated by these same issues. Responsibility and accountability become concepts as relevant to the community as to the individual. The idea of the biblical covenant is as much a Scripturally-qualifying tool for the optimal functioning of a political society as the bilateral and mutual relationship between God and the individual, the latter having been given a choice to either obey or disobey the obligations and responsibilities prescribed by Scriptures.

In this regard, an interesting issue that emanates from theologico-political federalism is the debate about God's omnipotence and man's responsibility that becomes intertwined with the political scene. Theologico-political federalism places the emphasis on communal responsibility as much as reformed theology places a responsibility on the individual to live according to the precepts of God. At the same time, God's absolute omnipotence leaves nothing for man or political society to dictate of his own, unaided, free will. The office of magistracy is not only ordained by God for all eternity, but also controlled by Him. God will either harden the heart of a Pharaoh, or lead a Nebuchadnezzar nearer to Him. An all-controlling God poses no threat to the federal constitutional principles postulated by Rutherford and the other federalists. In this context, attention must be given to Calvin's warning against being too curious concerning an investigation into the mystery of God. Since there are two different levels, on the one hand God's eternal council and on the other hand created beings, there cannot be a conflict between God's eternal will and human actions. Van de Beek states that on the level of creation we are dealing with human choices, human action, human responsibility; and these are not in competition with God's almighty providence. Although our eternal destination is in God's hands, this does not impede Reformed theologians from speaking about human guilt.¹⁵²¹

In the same manner, political society is responsible within the covenant to fulfill the covenant conditions, if not, there is a communal or political guilt that originates from a breach of the conditions. Theologico-political federalism does not cancel the careful distinction between the first cause and secondary causes. God firstly and absolutely acts within the human and communal agent, and it is only at the secondary level that we find man and political society acting freely and voluntarily with God and with each other. It is on this secondary level that Rutherford and the other federalists speak about the bilateral and mutual covenant between God and the community. On this level the people play an active role in checking and

¹⁵²¹ A. van de Beek, "God's Omnipotence and Human Freedom", *Essentialia et Hodierna, Acta Theologica Supplementum* 3, (2002), 174.

overseeing the functions of the king, and they are also active in electing and resisting the ruler when necessary, using the Divine law as their measure. The following statement by Von de Beek provides a good perspective on this issue namely:

An analogy from modern physics may clarify the way Thomas and the *Canons* deal with predestination and human freedom. In physics, light can be considered both as waves and as particles. Dependent on the aim and nature of your research you can make your calculations according to the one model or to the other. Both are equally valid. You must only avoid confusing the models. In a similar way we can say that we can view a human's life both in the perspective of human freedom and responsibility and in the perspective of divine determination. Both are equally valid. You must avoid speaking about human achievements in the discourse of final salvation. You must also avoid speaking about limitations on human choice in the discourse of human calling and responsibility. Our salvation is totally of God, and we are fully responsible as well, just as light is a particle and waves as well. You cannot stress the one at the cost of the other.¹⁵²²

This analogy should also serve as illustrative of the relationship between the covenanted communal responsibility and God's determination of political society. Rutherford and the other federalists formulated their political theory on a Scripturally-confirmed and practical model, which endeavors to realize the materialization of a political obligation in return for God's favor – a model which does not interfere with God's absolute predetermination. Once the covenant conditions are fulfilled and maintained there must always be the appreciation that all of it was made possible by the absolute grace of God.

Theologico-political federalism accommodates the individual in the commonwealth while simultaneously emphasizing the fabric of the commonwealth as a collectivity with its own responsibilities. This Elazar explains in the following: The individual who is created in the image of God has the task of striving to be holy by acting according to the Divine precepts (such as doing justice, providing for the poor, maintaining human freedom and dignity, and assuring a basic economic floor for every household). What is important, is that every individual is morally autonomous and his or her consent is required for all acts, which includes responding to God's commandments. This means that they listen to God's

¹⁵²² Ibid., 175.

commandments and decide whether or not to observe these commands.¹⁵²³ Humans act together, beginning with the foundation of existence, namely man's covenant with God, whereby God enters into a partnership with humans for the fulfillment and governance of this world. According to the terms of the constitution that God has set before them, all human organization flows from that original covenant, and it was the Reformed Protestants in particular, who applied this idea in order to build the holy commonwealth.¹⁵²⁴ North speaks of a consistently social philosophy which acknowledges the reality of both the one and the many. This is illustrated by individuals who are responsible before God for all that they say or do in life, and they will be judged individually on the day of judgment in terms of their performance. At the same time, social aggregates are also responsible for their adherence to the laws of God that are relevant for the particular aggregates: families, civil government, businesses, ecclesiastical organizations and so forth.¹⁵²⁵ North points to the fact that an entire society can be found guilty before God, within the parameters of time and on earth (Deuteronomy 28: 15 – 68), and therefore we cannot ignore the laws relating to individual behavior – both individuals and social aggregates are responsible before God.¹⁵²⁶ The theologico-political federalists emphasized this understanding concerning social aggregates, drawing nearer the covenantal paradigm in order to put this understanding into effective practice.

North moves closer to the views postulated by the federalists by stating: “We have to recognize (as part of our responsibility before God), the covenantal relationship between men, and also under God. When a man and a woman make a contract (a covenant), before God in establishing a family, they are responsible as individuals for the performance of their vows ... When men establish a civil government, they are also required to impose the rule of God's

¹⁵²³ Elazar, *Covenant and Commonwealth*, 311 – 312.

¹⁵²⁴ *Ibid.*, 312.

¹⁵²⁵ Gary North, “Comprehensive Redemption: A Theology for Social Action”, *The Journal of Christian Reconstruction*, Volume 8 No. 1, (1981), 12.

¹⁵²⁶ *Ibid.*, 12. The following observation by North also indicates the relevance of communal responsibility and where the community as a whole can receive God's wrath as punishment for ungodliness: “The Pharaoh's court magicians warned him. They told him that he was facing God almighty. He did not accept their evaluation, or at least he chose to challenge the God of Moses anyway. Did this protect the families of the magicians? Did they avoid the plagues? Did they escape the death of their firstborn? Not without the blood on the doorposts. Not without an outward covenantal sign indicating that they had placed themselves under the sovereignty of God. They gave the king good advice, but he did not take it, and they did not escape. When God brought judgment on Egypt, the seemingly innocent Egyptians were not spared. This was because there were no innocent Egyptians. They were all under the Pharaoh's covenant, they all operated in terms of his divinity, and they felt the wrath of God, in time and on earth. They were doomed because he was doomed. He was their representative in a great confrontation with God, almost as the Philistines were represented by Goliath. The result was the same in each instance: death for the representative, and the scattering and defeat for the represented”, Gary North, *Moses and Pharaoh. Dominion Religion Versus Power Religion*, (Tyler, Texas: Institute for Christian Economics, 1985), 114 – 115.

law for the civil government (Deut. 8).”¹⁵²⁷ This forms part of the theory proclaimed so many years back by the federalists, in their search for comprehensive redemption on a communal plane – the covenant must be invoked in order to bring the Christian community into a “negotiable” stance in the face of God, where renewed commitment is offered by the community to adhere to God’s precepts in return for His favor and compassion, and all this within the absolute grace and eternal providence of God. From this investigation of the idea of the biblical covenant, McAllister’s idea of the state as a moral person, “that is, a being which can and ought to be conscious of its duties, and which for the fulfilling of these duties is responsible before God and mankind”,¹⁵²⁸ attains deeper meaning within the context of the idea of the biblical covenant.

Theologico-political federalism also provides a distinction between the covenant with God and social contract theory. The latter being secondary to the biblical idea of the covenant while to the secular political theories it is primary. According to Locke “the only way whereby any one divests himself of his natural liberty and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst the other, in a secure enjoyment of their properties and a greater security against any that are not of it.”¹⁵²⁹ Government is viewed as a compact among men, with no reference to God, where community is viewed as the source of peace, with no reference to God. Woods also indicates that Locke asserted that the only lawful foundation on which any government rests is the will of the majority. In this regard, Locke predated Rousseau and clearly influenced him.¹⁵³⁰ As Woods indicates, by contrast, the covenant model posits the foundation of civil government in God and His Word, where God is invoked as party to the covenant. God’s law provides the operational framework for the government, and He is the ultimate enforcer of its provisions. God is acknowledged as an active participant, not just a remote spectator as under the social compact.¹⁵³¹

Woods also warns against limiting the covenant of God to Israel alone. The covenant with God, for example, made when Joshua led the Israelites into following the conquest of

¹⁵²⁷ North, “Comprehensive Redemption: A Theology for Social Action”, 12.

¹⁵²⁸ David McAllister, “The True Idea of the State”, *The Christian Statesman*, Vol. 144, Number 1, (2001), 29 – 30.

¹⁵²⁹ Dennis Woods, *Disciplining the Nations. The Government Upon His Shoulders*, (Franklin, Tennessee: Legacy Communications, 1996), 134.

¹⁵³⁰ *Ibid.*, 134 – 135.

¹⁵³¹ *Ibid.*, 135.

Canaan,¹⁵³² and the reform under king Josiah,¹⁵³³ is as applicable today as it was then, also demonstrating that the national covenant with God may be reaffirmed at any point in a nation's history. Theologico-political federalism assisted in the proclamation and development of this idea of the biblical covenant, and made it applicable to constitutional theory in general. The national covenant is not only limited to Israel, but all nations are expected to submit themselves to God's rule, the covenant forming a tool for the political and jurisprudential participation by the community with God. As a consequence of Hobbes and various other secular philosophers of the Reformation and Enlightenment-period, a risk was cultivated in the form of state absolutism, as well as a saturated emphasis on individualism, which it turn could have its own dire results. In this regard it must also be understood that to imagine that the judgments of God, in time and on earth, are limited to personal, individualistic penalties, is to misinterpret the Bible. North states that if anything, the reverse is true, in time and on earth: "it is the collective blessings of God, which are set forth in the Bible".¹⁵³⁴ According to North, God does not promise that every good man will prosper economically, or that every evil man will be brought low, but "what the Bible promises is that covenantally faithful *societies* will prosper in the long run, and that covenantally rebellious ones will be crushed eventually".¹⁵³⁵ North adds: "This brings up the question of methodological individualism. The Bible teaches *methodological covenantalism*, not methodological individualism. When we speak of 'society', we have in mind an association

¹⁵³² "If you forsake the Lord and serve foreign gods, then He will turn and do you harm and consume you, after he has done you good.' And the people said to Joshua, 'No, but we will serve the Lord!' So Joshua said to the people, 'You are witnesses against yourselves that you have chosen the Lord for yourselves, to serve Him.' And they said, 'We are witnesses!'. 'Now therefore,' he said, 'put away the foreign gods which are among you, and incline your heart to the Lord God of Israel.' And the people said to Joshua, 'The Lord our God we will serve, and His voice we will obey!' So Joshua made a covenant with the people that day, and made for them a statute and an ordinance in Shechem"; Joshua 24: 20 – 25.

¹⁵³³ "Then the king stood by a pillar and made a covenant before the Lord, to follow the Lord and to keep His commandments and His testimonies and His statutes, with all his heart and all his soul, to perform the words of this covenant that were written in this book. And all the people took a stand for the covenant", 2 Kings 23: 3. In this context, note is also taken of Perks's comment on the continuous relevance for society in general concerning the political covenant with Old Testament Israel: "... the Old Testament denounces the nations for their failure to conform to God's law (Lev. 18: 24-30; 20: 22-23; Dt. 8: 20). The judgement visited upon Sodom and the expulsion of the Canaanites from the land as a consequence of their sins are graphic illustrations of this. Therefore, since the nations are expected to submit to God and obey his law, the covenant with Israel with regard to the standard of civil righteousness (justice) required by God was not unique; rather, it was the pattern, the *example*, that Israel was to set for all the nations. This is *evidently* confirmed in the Old Testament. Jonah's preaching to the city of Nineveh and its subsequent repentance and deliverance from judgement (Jonah 3: 1-10; 4: 11) demonstrates that Israel's covenant relationship with God as regards the obligations of magistrates was so totally unique that it was not to be imitated by any other nation? Exactly the reverse is taught by Scripture, namely, that Israel was to be a *light to the nations* (Is. 42: 6), i.e. an example for the nations to *follow* (Dt. 4: 6-8; Is. 2: 2-5 etc.), Stephen C. Perks, *A Defence of the Christian State*, (Taunton: The Kuyper Foundation, 1998), 52 – 53.

¹⁵³⁴ Gary North, *Moses and Pharaoh, Dominion Religion versus Power Religion*, (Tyler, Texas: The Institute for Christian Economics, 1985), 110.

¹⁵³⁵ *Ibid.*

of men which is under the law of God, and through which men and institutions are blessed or judged by God. A social covenant *does* exist, whether explicit or implicit in human documents or institutions.”¹⁵³⁶ It is within this context that the contribution of theologico-political federalism must also be appreciated – although society is not only there to be viewed as a personal entity separate from men, its importance as a political instrument in covenant with God is not to be disregarded.

Theologico-political federalism – although it did not discover the principles generally connected to a modern democracy such as the idea of limited sovereignty, a government subordinate to the law, and the right of opposition when there is a violation of the law – it contributed much to contemporary constitutional theory. It would be unfair in the context of Reformed political theory, to ascribe all the merit to the theologico-political federalists for the development of constitutional theory. To do so would be to ignore the efforts by, for example, Ponet, Goodman, Beza, Hotman, Calvin and Zwingli. However, theologico-political federalism differs from other Reformed political theories in that it introduces the covenant relationship between God and the community as a basis for constitutionality, and in addition, provides a concise and systematic constitutional model strictly based on Scripture. These characteristics are evident in the works of all the theologico-political federalists. From this emanates the obligation and responsibility of the ruler and the ruled to participate in the political and legal activities in fulfillment of the covenant conditions, thereby maintaining a proper relationship between God and the Christian Commonwealth. In fact, the covenant is the divine framework for human life, both religious and civil, which is taught by Scriptures. This is the thought first proclaimed by Bullinger, where civil or judicial laws are brought into connection with the covenant condition of love. God’s people needed the magistrate and his laws to govern every aspect of life, and the law commandment was both sovereign and the pivotal design for effective interaction between God and the community.

According to the theologico-political federalists, the covenant was the centerpiece of the Christian religion, the cornerstone of the Christian state as well as the moral foundation of society and religion. Not only Bullinger, but Mornay, Althusius and Rutherford were clear on this, as is both implicitly and expressly deduced from their works. This understanding was also brought to America by early settlers in the British colonies, unfortunately succumbing to the temptations that a secular federalism had to offer. Elazar rightly states that it was not that the modern world was unaware of Reformed Protestantism and its contribution, but that they lost their understanding of its covenantal character in their pursuit of other lines of thought.

¹⁵³⁶ Ibid., 111.

This in turn served to block attempts to reconstruct that covenantal character and the relationship of covenant to the pursuit of the idea of the commonwealth, which in time became the idea of modern constitutional democratic republicanism.¹⁵³⁷ Religious covenants of Reformed Protestantism gave birth to covenanted commonwealths, the political expressions of those ideas, emanating from Switzerland to Scotland and then in British North America and Puritan England.¹⁵³⁸

The great idea of biblical covenant monotheism, whereby humans were envisaged as entering into a morally-grounded and informal pact with God, out of which came the people of Israel, had similar parallels during the 16th century where a theology of the covenant gave rise to the theo-political transformation that followed in countries such as Switzerland, the Netherlands, Scotland, and England.¹⁵³⁹ Rutherford no doubt formed part of this development in 17th-century Scotland. In this regard it must be added that when attempting to determine whether one author has influenced another, two types of evidence may be adduced to support such a claim. The first is called *external* evidence, which entails the question whether the author directly refers to the work of another author. The other type of evidence is called *internal* evidence, which stresses the similarity of arguments, main points, language, or general ideas. In this work, it is clear that the influence of the theologico-political federalists on Rutherford is confirmed externally (directly), as well as internally (implicitly). That Rutherford, in many of his works, but especially concerning his inputs regarding constitutional theory, directly referred to Bullinger, Mornay, Althusius and Knox is made clear. As is also indicated in the preceding chapters, it is evident that this influence is internally clearly visible with regard to their similar theories regarding theologico-political federalism.

It is important to take note of the fact that the constitutional model provided for by theologico-political federalism is only applicable to a society that is already Christian. This model is the ideal model for an ideal Christian society. This entails that the office of magistracy and the people can only partake in the covenant once their hearts (or the majority of hearts) have been converted and once the nation is adherent to a biblically-based confession. Much can be said of this issue, especially concerning the obligation in contemporary secular society which has been placed on the shoulders of the church as a messenger of the truth. The idea of a confessional nation will also have to be clarified concerning the fundamental doctrines to be accommodated. Nevertheless, theologico-political federalism provides a valuable contribution once other preceding measures have

¹⁵³⁷ Elazar, *Covenant and Commonwealth*, xii.

¹⁵³⁸ *Ibid.*, xiv – xv.

¹⁵³⁹ *Ibid.*, xv.

been taken. Therefore, this work does not provide a constitutional model for a contemporary biblically-loyal Christian society to follow, as numbers and votes are not enough. Nor does this work provide a theory on a Christian's political obligations within a pluralistic and secular society. This work finds application once communal conversion has taken place, emphasizing the importance of Rutherford's, and the other federalists' constitutional thought, pertaining to the ideal Christian Commonwealth. The least that this work can do for contemporary reformed society (which unfortunately forms a minority group), is to inject some sort of zealotry into the church at present, in order to work towards the attainment of effective support. However, the latter will only be possible once the church, by the grace of God, has fulfilled its role of effective evangelization. There are few better ideas of comfort than the possibility that with every new converted individual in society, we come nearer to the establishment of a covenant with God, and the sooner we can partake in His interactive fellowship from a communal perspective, the better.

Christian politics and jurisprudence must not shy away from God's attribute of being a personal God that interacts with His creation, and the covenant is the ideal instrument given to us by Scriptures, to facilitate this interaction and the subsequent bestowing of God's favor on humanity within the context of political society. The covenant idea provides a sense that the relationship between God and community can be intensified – all that is required is that the community becomes committed to the Divine precepts. Federalism highlights the personal character of God in His interaction and participation with the political community in terms which are understandable, effective and practical for society. The sooner this responsibility placed on man, within the context of his membership of the community as a whole is accomplished, the sooner and more effectively the individual can partake in political interaction with God. The idea of the biblical covenant provides political society and constitutional theory with a purpose, and it should be the aim of the church as an institution to pursue the attainment of the covenant structure in order to develop the relationship with God more effectively, not only between God and society, but also between each and every individual in society. The implications of this for personal salvation as one of the many graces that can be bestowed by God on man, is awe inspiring, although it is not the purpose of this work to dwell on the issue of the link between the advantages of a Christian polity for personal assurance and salvation. In this regard, the emphasis of the day should not primarily be directed at the political party but rather at the effectiveness of the church in fulfilling its missionary duty. Once the latter has satisfactorily been established, then the political and jurisprudential theories offered by Rutherford and the likes can be used as a guide and measure.

The uniqueness and importance of the covenant for constitutional theory is clearly stated by Elazar, who basically states that the covenant is a way of requiring and obligating men to live up to their promises, not only to God, but also to each other in the manner of God's covenants with humanity¹⁵⁴⁰:

The covenants of the Bible are the founding covenants of Western civilization. Perforce, they have to do with God. They have their beginning in the need to establish clear and binding relationships between God and humans and among humans, relationships which must be understood as being political far more than theological in character, designed to establish lines of authority, distributions of power, bodies politic, and systems of law. It is indeed the genius of the idea and its biblical source that it seeks to both legitimize political life and to direct it into the right paths; to use theo-political relationships to build a bridge between heaven and earth ... without letting either swallow up the other.¹⁵⁴¹ ... The covenant idea has within it the seeds of modern constitutionalism in that it emphasizes the mutually accepted limitations on the power of all parties to it, a limitation not inherent in nature but involving willed concessions. This idea of limiting power is ... of first importance in the biblical worldview and for humanity as a whole since it helps explain why an omnipotent God does not exercise His omnipotence in the affairs of humans. In covenanting with humans, God at least partially withdraws from controlling their lives. He offers humans freedom under the terms of the covenant, retaining the covenantal authority to reward or punish the consequences of that freedom at some future date. By the same token, the humans who bind themselves through the covenant accept its limits in Puritan terms, abandoning natural for federal liberty – to live up to the terms of their covenants. Beyond that the leaders of the people are limited in their governmental powers to serving the people under the terms of the covenant. Thus, the idea of constitutional or limited government is derived from the idea of covenant.¹⁵⁴²

The reformers saw all institutions under the sovereign administration of Christ, and therefore the power of the state could never be ultimate or complete. Hall refers to Althusius and others (such as Rutherford and the other theologico-political federalists), who spoke of the power of the state as limited and qualified by some objective standards outside itself – state

¹⁵⁴⁰ Ibid., 155.

¹⁵⁴¹ Ibid., 3.

¹⁵⁴² Ibid.

legitimacy was always contingent upon conformity to an objective, supra-national, and unchanging standard.¹⁵⁴³ Theologico-political federalism gave this understanding added meaning via the covenant and the importance and sacredness of its conditions, also better justifying the principle of resistance to tyranny as a result of a serious breach of these conditions – God being the vindicator of the covenant when it is violated by the magistrate or the representatives of the people.

This raises some complicated issues in the context of the relationship between the individual and the community regarding God's grace and salvation. What are the implications for an ungodly political and societal dispensation for personal salvation? How does one reconcile communal reward and punishment with individual reward and punishment? Does the Christian Commonwealth in covenant with God entail that all its members are part of the elect?¹⁵⁴⁴ At what precise moment can it be claimed that a Christian society has been established? Would it require a 95%, 75% or 55% vote? What is the relationship between the covenant of works and the covenant of grace on the one hand, and the covenant with God in a political and jurisprudential context on the other? What has also not been investigated is the specific approach of the various theologico-political federalists regarding the origin of government. Is there a political society in a state of nature? What is the specific content of the moral, judicial and ceremonial law in the context of the law in general acting as a condition of the covenant? There could also be questions concerning the relationship between the status of the natural law and the Scriptures as the authority for God's will, especially regarding Rutherford, who has received much comment by writers concerning this issue.

¹⁵⁴³ David W. Hall, *Savior or Servant? Putting Government in its Place*, (Oak Ridge, Tennessee: The Kuyper Institute: 1996), 235.

¹⁵⁴⁴ In this regard it must be noted that Rutherford addressed this issue. In the words of Coffey: "In his letters, Rutherford frequently spoke of Scotland's covenant with the Lord. Yet the concept was a problematic one. Whilst it is often asserted that covenant theology inspired the idea of a national covenant, the precise relationship between the two is usually left vague. The widespread popularity of federal theology obviously made it natural to think in terms of covenant relationships with God, but how did theologians move from the theological idea of covenant to the political concept? How did they move from the covenant of grace, which was made only with the elect, to the national covenant, which was made with a whole people, both elect and reprobate? ... Rutherford explained that Reformed theologians made a sharp distinction between national covenants and the covenant of grace. The covenant of grace, he argued, was a personal or 'internal' covenant. Those who were party to this covenant were the elect, the members of the invisible church. By contrast, national covenants were 'federal' or 'external', and included every baptised member of the visible national church. Just as God had shown mercy to a thousand generations of Abraham's descendants, and included them in the covenant their forefather had made, so he accepted infants into an external covenant with himself; even though they had no 'personal' holiness, they were partakers of a 'federal' holiness derived from their parents or godly forefathers. The National Covenant of 1638, therefore, was nothing new. Along with the 'covenants' of 1560, 1581, 1590 and 1596, it simply mended the 'external' covenant relationship between God and the nation which was first established at the time of Scotland's conversion to Christianity but had been repeatedly broken by apostasy", John Coffey, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), 165 – 167.

Also, there is the relationship between faith and its works (fruits) from a political or communal perspective, as a condition of the covenant. In other words, what is the importance and validity of speaking of a unified faith and a consequent communal loyalty to attaining good works? These are issues that need to be addressed in a separate work.

Then there is the issue regarding the precise reasoning behind the constitutional theories dealt with in this work by the federalists. For example, the question regarding the theory on resistance from a covenantal perspective which might be too contextualized. By this is meant that it may be said that Rutherford's views on active resistance was more developed than Calvin's, due to the different circumstances that both these theologians were faced with. It may even be said that Rutherford's strong views on the covenant were the result of his idealist vision of Scotland or Britain as God's chosen nation. This type of thought takes the emphasis away from the principle *per se*. In other words, a point is made in support of the theories emanating from theologico-political federalism, not primarily because it was the proper theory for that time, but rather because such a theory should form the ideal principle for any Christian state. Rutherford no doubt contributed to covenanted constitutional theory based on a biblically-based view, irrespective of his yearning to see Scotland become a land of "heart-covenanters" truly committed to God, and the fact that, according to Coffey, Rutherford, in his most ecstatic moments, believed that such a covenanted Scotland might spearhead the apocalyptic movement that would see the conversion of the Jews, the overthrow of the popish Antichrist, and the establishment of Christ's rule in all the nations of the earth.¹⁵⁴⁵ To place too much emphasis on the latter, would be to forget the importance of the biblically-based principles emanating from such thought. Therefore, in general, one must look at the product as a proposal for an ideal and constant, Scripturally-founded model, irrespective of the more specific and peripheral *causa* that may have been applied by the various federalists.

The impact of theologico-political federalism on constitutional theory does not entail the question as to what the theologico-political federalists contributed to constitutional theory as primary subject. Yes, one can provide a good case for the contribution of Rutherford and the other federalists to contemporary political and jurisprudential theory in general, but initially such a theme concerns the importance of theologico-political federalism as the ideological and presuppositional basis for what Constitutional theory should be. Questions as to whether it is totally against, satisfactorily in line with, or totally for contemporary Western constitutional theory is in fact irrelevant in the context of a primary justification and qualification of such a theory – not that it is a waste of time to compare theologico-

¹⁵⁴⁵ Ibid., 255.

federalism with contemporary constitutional theory for the sake of comparison, and not for purposes of seeking which model is the best. Such comparison is useful in the sense that it indicates the points of deviation from biblical to secular constitutional theory, and provides one with a list of persons and schools of thought to be held responsible for such a deviation. This provides the Christian politician and legal philosopher with an added orientation in these fields. In fact, the primary question to be postulated by the secularists is how far they (the secularists) themselves have deviated from the true form of constitutionality that must be applied in any political society. If shame and guilt has to be apportioned in this regard, it is upon all forms of constitutional theory that emanate from ungodly sources. Rae concludes his dissertation on the political thought of Rutherford by stating:

What then can we conclude about Rutherford's legacy as a political figure? Even after all the necessary qualifications have been made, his positive contribution must be seen in his staunch adherence to the maxim, 'We must obey God rather than men' and his demolishing of Royalist, Hobbist, or indeed any other arguments which make the individual subservient to the arbitrary dictates of the state and seek to absolve him from moral responsibility.¹⁵⁴⁶

In conclusion, it is therefore clear that Rutherford not only contributed much to biblical constitutional theory, but found himself a member of the legacy emanating from theologico-political federalism as postulated by Bullinger, Mornay, Althusius and Knox. Familiar as these names may be in theological circles, it is to be remembered that they should also be familiar because of the precious constitutional insights they had – a precious tool to the political and jurisprudential theorist of biblical persuasion.

¹⁵⁴⁶ Rae, *The political thought of Samuel Rutherford*, 179. In the words of Webb: "Samuel Rutherford solidly agreed with his contemporaries that the idea of a sovereign God is the only framework in which the facts and ideals of politics can be discussed. He did not treat the subject by itself in *Lex, Rex*, but it is an assumption throughout the work. That anyone should seriously doubt the belief probably did not occur to him", Omri K. Webb, Jr., *The political thought of Samuel Rutherford*, (unpublished Ph. D. dissertation, Duke University, 1963), 28.

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ABSTRACT

This thesis primarily concerns the constitutional theory postulated by the 17th-century reformed Scottish theologian and political theorist, Samuel Rutherford. In this regard the angle of approach is done against the setting of the political and constitutional concepts arising from theologico-political federalism formulated by the federalists – Heinrich Bullinger, Philippe DuPlessis-Mornay and Johannes Althusius. Included among these concepts are: the law – its content and status, the separation of powers principle, the office of magistracy, the civil and religious duties of the office of magistracy, the election of the ruler, sovereignty, the relationship between church and state, and active resistance to tyranny. In addition, theologico-political federalism entails in essence the idea of the biblical covenant, which concerns the biblically confirmed bilateral, mutual and conditional relationship between God and the Christian Community, as well as the political covenant between government and the governed within such a community. It was especially the relevance of the Divine law (summed up in piety and civility) as condition of the covenant that was emphasised by the federalists, and which gave a unique meaning to the concept of sovereignty as branch of the primary and absolute holder of sovereignty, namely God. It was to be from this basis that the content of the separation of powers principle, the office of magistracy, the election of the ruler, sovereignty, the relationship between church and state, and resistance to tyranny, were to be determined and given perspective. This thesis not only confirms that Rutherford and the mentioned federalists had much in common regarding political and constitutional content, but also and more specifically, that Rutherford's view on the biblical covenant and the law as foundation of politics and constitutionality was similar to those of the federalists. It is also confirmed that theologico-political federalism rates among one of the most valuable and insightful formulations emanating from reformed constitutional thought in general. Theologico-political federalism, although not the only stream of thought to be applauded for its contribution to Western constitutional theory in the 16th and 17th centuries, contributed much to such theory. Amidst the development of secular constitutional theory during the period of the Reformation, the federalists provided a model of how the constitutional dispensation of the Christian Community should be structured, and as point of departure, political society's status as a party to the covenant with God was postulated, this covenant relationship acting as the fundamental framework for political content and activity – albeit within the absolute grace and predestination of God. The personal relationship between God and the political community as not only an effective constitutional model, but also a biblically qualified and practical constitutional theory was proposed by the federalists. It will also be confirmed that not only did the federalists provide a well researched constitutional model to be applied to the ideal Christian Community, but also assisted in championing constitutional values such as liberty, equality, the rule of law, limited governance, and democracy. In conclusion, may it be said that it can be deduced from this thesis that Rutherford's participation in the continuation and development of the legacy of theologico-political federalism was substantial, and consequently it is hoped that his already-respected contribution to reformed constitutional theory is duly enriched.

OPSOMMING

Hierdie tesis is primêr gemoeid met die staatsregtelike teorie, gepostuleer deur die 17de-eeuse gereformeerde teoloog en politieke teoretikus, Samuel Rutherford. In hierdie opsig word die invalshoek gedoen teen die agtergrond van die politieke en staatsregtelike konsepte voortspruitend uit teo-politiese federalisme soos geformuleer deur die federaliste – Heinrich Bullinger, Philippe DuPlessis-Mornay en Johannes Althusius. Ingesluit by hierdie konsepte is: die wet – die inhoud en status daarvan, die skeiding-van-magte-beginsel, die amp van die regeerder, die burgerlike en godsdienstige pligte van die amp van die regeerder, die verkiesing van die regeerder, soewereiniteit, die verhouding tussen kerk en staat en aktiewe verset teen tirannie. Daarbenewens behels teo-politiese federalisme in essensie die Skriftuurlike verbonds-idee, wat die Bybels-bevestigde bilaterale, gemeenskaplike en voorwaardelike verhouding tussen God en die Christengemeenskap, asook die politieke verdrag tussen die regering en die burgers, insluit. Dit was veral die toepaslikheid van die Goddelike wet (opgesom in heiligheid en burgerlikheid) wat as voorwaarde van die verbond deur die federaliste beklemtoon is en wat 'n unieke betekenis aan die konsep van soewereiniteit as vertakking van die primêre en absolute bron van soewereiniteit, naamlik God, gegee is. Dit was dan ook vanaf hierdie basis wat die inhoud van die skeiding-van-magte-beginsel, die amp van die regeerder, die verkiesing van die regeerder, soewereiniteit, die verhouding tussen kerk en staat en verset teen tirannie, bepaal is en perspektief aan verleen is. Hierdie tesis bevestig nie net dat Rutherford en die genoemde federaliste baie in gemeen gehad het wat die politieke en staatsregtelike inhoud betref nie, maar ook, en meer spesifiek, dat

Rutherford se siening van die Bybelse verbond en die wet as grondslag van politiek en staatsregtelikheid dieselfde was as dié van die federaliste. Dit word ook bevestig dat teo-politiese federalisme onder een van die mees waardevolle en insiggewende formuleringe, voortspruitend uit staatsregtelike denke in die algemeen, beskou word. Teo-politiese federalisme, hoewel nie die enigste denkrigting wat erkenning ontvang het vir hul bydrae tot die Westerse staatsregtelike teorie in die 16de en 17de eeue nie, het baie bygedra tot so 'n teorie. Te midde van die ontwikkeling van 'n sekulêre staatsregtelike teorie gedurende die periode van die Reformasie, het die federaliste 'n model verskaf van hoe die staatsregtelike bestel van die Christengemeenskap gestruktureer moes word. As vertrekpunt is die politieke gemeenskap se status as 'n party van die verbond met God gepostuleer, met hierdie verbondsverhouding wat dien as die fundamentele raamwerk vir politieke inhoud en aktiwiteit – hoewel dit binne die absolute genade en voorbeskikking van God is. Die persoonlike verhouding tussen God en die politieke gemeenskap as nie net 'n effektiewe staatsregtelike model nie, maar ook 'n Bybels-gekwalfiseerde en praktiese staatsregtelike teorie, is deur die federaliste voorgestel. Dit sal ook bevestig word dat die federaliste nie net 'n goed nagevorsde staatsregtelike model daargestel het vir die toepassing op die ideale Christengemeenskap nie, maar ook meegehelp het met die ondersteuning en beskerming van staatsregtelike waardes soos vryheid, gelykheid, regsoewereiniteit, beperkte owerheidsbestuur en demokrasie. Samevattend kan gesê word dat dit uit hierdie tesis afgelei kan word dat Rutherford se deelname aan die voortgang en ontwikkeling van die nalatenskap van teo-politiese federalisme wesentlik was en gevolglik word gehoop dat sy reeds gerespekteerde bydrae tot die reformatoriese staatsregtelike teorie tereg verryk is.

Key Concepts:

samuel rutherford
 johannes althusius
 heinrich bullinger
 philippe duplessis-mornay
 john knox
 federalism
 biblical covenant
 church and state
 reformed constitutional theory
 christian community