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## The Framers, Faith, and Tyranny

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# The Framers, Faith, and Tyranny

Marci A. Hamilton\*

“Cousin America has run off with a Presbyterian parson,  
and that was the end of it.”

—Horace Walpole<sup>1</sup>

## INTRODUCTION

There was a preponderance of Calvinists at the Constitutional Convention, nearly one fifth of whom were graduates of the preeminent Presbyterian college of the day, the College of New Jersey, which is now Princeton University.<sup>2</sup> Over one third had direct connections to Calvinist beliefs. These leaders of the time reflected on their collective knowledge and experiences for usable theories to craft a governing structure in the face of the crumbling Articles of Confederation. They were in an emergency and felt no compunction to distinguish between governing ideas that were secular or theological in origin.

Accounts of the Constitution’s framing rarely credit its Calvinist inspiration. What this Article says on that count might come as news, but should come as no surprise: given the Calvinist background of many Framers, it would be exceedingly odd if there were no traces of Calvinism in the document they produced. The distinctively Calvinist themes in the Framers’ debate included a

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1. Howard Miller, *The Grammar of Liberty: Presbyterians and the First American Constitutions*, 54 *J. PRESBYTERIAN HIST.* 142, 161 (1976).

2. See David Bernstein, *The Constitutional Convention: Facts and Figures*, 21 *HIST. TEACHER* 11, 14 (1987).

deep and weary belief in human fallibility, the conviction that all those holding power would abuse it, the notion that a constitution could be constructed, the view that building a constitution was experimental, a hope that a machine-like system could check the inevitable abuses of power, and a preference for representation over direct democracy. These themes ground the United States Government's earliest development, and a clearer understanding of their Calvinist roots will benefit its continued development as inevitable abuses of power demand periodic constitutional adjustment.

Not only were a number of Framers Calvinist, but at the same time that the Framers met in Philadelphia the Presbyterians met across town to craft their own new constitution to structure and reform church governance.<sup>3</sup> The resulting documents bear striking similarities that argue in favor of similar roots.

The Protestant Reformation (early 1500s to mid-1600s), along with its counterpart, the Spanish Inquisition (1478–1834), was a vivid historical presence for the Founding generation. The Inquisition was the benchmark for oppressive tyranny, the Reformation for the hope of better structuring government, both civil and religious. John Calvin, the great systematic theologian of the Reformation, prescribed structural strategies to stem abuses of power for both church *and* state, making his theology relevant not only to Protestantism but also to the foundations of modern government.<sup>4</sup>

Framer James Madison and his mentor, the Reverend John Witherspoon, President of the College of New Jersey and leading Calvinist, exercised such power over public discourse in their day that they could have cemented Calvin's influence by themselves. From the beginning of his tenure, Witherspoon believed that the school should operate for the "Glory of God" and the public interest.<sup>5</sup> The emphasis falls on the latter element. Other elite universities were focused on producing clergy, not public service. He educated

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3. JEFFRY H. MORRISON, *JOHN WITHERSPOON AND THE FOUNDING OF THE AMERICAN REPUBLIC* 15–16 (reprt. ed. 2015).

4. See George J. Gatgounis II, *The Political Theory of John Calvin*, 110 *CHURCHMAN*, 60, 63–69 (1996).

5. JOHN WITHERSPOON, *THE DOMINION OF PROVIDENCE OVER THE PASSIONS OF MEN* (1776), reprinted in *THE SELECTED WRITINGS OF JOHN WITHERSPOON* 126, 144 (Thomas P. Miller ed., paperback ed. 2015) [hereinafter *SELECTED WRITINGS*].

his students to serve the public good, to think as statesmen, and to remember the lessons of the Reformation, which he often cited in his public lectures and sermons. At the same time, he instilled in Madison and the other Framers in his classes the lessons of the influential reformer John Calvin. In sum, teacher and student brought distinctively Calvinist views to the project of constitutional design.

On June 20, 1785, well before Madison appeared at the convention, but after he had completed his studies with Witherspoon, Madison delivered his deservedly famous *A Memorial and Remonstrance* to the General Assembly of the Commonwealth of Virginia.<sup>6</sup> Many scholars regard this seminal piece as the intellectual basis for the First Amendment's ban on the establishment of religion, grounded in concerns about abuses of power by religious leaders.<sup>7</sup> In his preparation notes for his speech against the Virginia religious assessment bill, he named the "Reformation" as a principle to be taken into account as they determined the proper relationship between church and state.<sup>8</sup> In the document itself, Madison also used the horrors of the Inquisition to argue against state support of Christian teachers, saying, "[d]istant as it may be in its present form from the Inquisition, it differs from it only in degree."<sup>9</sup>

Resorting to only Madison and Witherspoon, however, is not necessary, to divine the presence of Calvinism at the Constitutional Convention. Some form of Calvinism played a role in the lives of at least twenty-three of the fifty-five Framers. The two most influential on the question of representation—Madison and Wilson—were steeped in Calvinist concepts. Madison attended the

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6. See James Madison, *Memorial and Remonstrance Against Religious Assessments* (ca. June 20, 1785), NAT'L ARCHIVES, <https://founders.archives.gov/documents/Madison/01-08-02-0163> [perma.cc/T4FX-3Y5Z] (last visited Apr. 18, 2021).

7. See, e.g., Donald L. Drakeman, *Religion and the Republic: James Madison and the First Amendment*, 25 J. CHURCH & STATE 427, 435–37 (1983); Mark David Hall, *Madison's Memorial and Remonstrance, Jefferson's Statute for Religious Liberty, and the Creation of the First Amendment*, 3 AM. POL. THOUGHT 32, 34–36 (2014).

8. JAMES MADISON, Notes of Speech Against Assessments for Support of Religion (Nov. 1784), in 2 THE WRITINGS OF JAMES MADISON 88, 88 (Gillard Hunt ed., 1901).

9. *Id.*

College of New Jersey when Witherspoon was at the height of his powers and where he was delivered “a strong dose of Calvinism.”<sup>10</sup> James Wilson was raised in a strict Presbyterian home and was educated at the Presbyterian St. Andrew’s University of Scotland.<sup>11</sup>

The theology of John Calvin generated three major traditions: the Presbyterian, the Congregationalist, and the Continental Reformed.<sup>12</sup> The majority of those at the Convention who were affiliated in some way with Calvinism were influenced by Presbyterianism. Ten Framers were educated at the College of New Jersey.<sup>13</sup> Six of the Framers were practicing Presbyterians,<sup>14</sup> including Hugh Williamson of North Carolina, who was at one time

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10. Thomas P. Miller, *Introduction to SELECTED WRITINGS*, *supra* note 5, at 1, 34. On issues of religious liberty, Madison was also influenced by other Presbyterian clerics. See BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 260 (fiftieth anniversary ed. 2017) (stating that the Virginia Declaration of Rights was written by James Madison, who was “confessedly influenced by the claims of Presbyterians and the ‘persecuted Baptists’ as well as by enlightenment ideals”).

11. See GEOFFREY SEED, *JAMES WILSON* 3–5 (1978) (discussing Wilson’s education at St. Andrew’s University and stating that Wilson studied the compulsory subjects of Latin, Greek, philosophy, science, and mathematics, as well as the optional subject of civil history).

12. Richard O. Cowan, *Reformed Protestantism, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS* (Jan. 23, 2021), <https://www.churchofjesuschrist.org/study/ensign/1972/02/reformed-protestantism?lang=eng> [perma.cc/RS2Z-RS72].

13. Bernstein, *supra* note 2, at 14. These members included: Gunning Bedford (DE); David Brearly (NJ); William R. Davie (NC); Jonathan Dayton (NJ); Oliver Ellsworth (CT); William Churchill Houston (NJ); James Madison (VA); Alexander Martin (NC); Luther Martin (MD); and William Paterson (NJ). See *Meet the Framers of the Constitution*, NAT’L ARCHIVES, <https://www.archives.gov/founding-docs/founding-fathers> [https://perma.cc/27LE-ZAFD] (last visited Apr. 18, 2021). George Clymer (PA) retired to Princeton in anticipation of sending his children there, but apparently did not attend himself. 3 BIOGRAPHY OF THE SIGNERS OF THE DECLARATION OF INDEPENDENCE 162 (John Sanderson ed., 2d ed. 1831).

14. See Guy S. Klett, *A Phase of the Religious Influence in the Formation of our National Government*, 24 J. PRESBYTERIAN HIST. SOC’Y 129, 132–33 (1946). These members included: William Churchill Houston (NJ); William Livingston (NJ); James McHenry (MD); Hugh Williamson (NC); William Paterson (NJ); and James Wilson (PA). *Id.* Gunning Bedford (DE) also may have been Presbyterian. See *id.* James Wilson later converted to Anglicanism. See Mark D. Hall, *James Wilson: Presbyterian, Anglican, Thomist, or Deist?: Does it Matter*, in *THE FOUNDERS ON GOD AND GOVERNMENT* 181, 187–88 (Daniel L. Dreisbach et al. eds., 2004).

a Presbyterian minister.<sup>15</sup> Of those Framers who attended the College, five studied under the Reverend John Witherspoon while he was President of the College,<sup>16</sup> and four others studied under Samuel Finley, who was deeply influenced by Witherspoon.<sup>17</sup> Two of the Framers were trustees of the College.<sup>18</sup> Three other Framers may have had some meaningful contact with Presbyterianism.<sup>19</sup>

There were also several Framers with non-Presbyterian ties to the Calvinist tradition. Three of them were Congregationalists, an offshoot of Calvinism.<sup>20</sup> Two others acknowledged Calvinist influences: Robert Yates considered himself a Calvinist<sup>21</sup> and studied law under Presbyterian William Livingston, while Roger

15. See Louis W. Potts, *Hugh Williamson: The Poor Man's Franklin and the National Domain*, 64 N.C. HIST. REV. 371, 372 (1987).

16. MORRISON, *supra* note 3, at 4. These members included: David Brearly (NJ); William R. Davie (NC); Jonathan Dayton (NJ); Oliver Ellsworth (CT); William Churchill Houston (NJ); and James Madison (VA). See *Meet the Framers of the Constitution*, *supra* note 13.

17. See *id.* These members included: Oliver Ellsworth (CT); Alexander Martin (NC); Luther Martin (MD); and William Paterson (NJ). *Id.*

18. See MARK A. NOLL, PRINCETON AND THE REPUBLIC, 1768–1822: THE SEARCH FOR A CHRISTIAN ENLIGHTENMENT IN THE ERA OF SAMUEL STANHOPE SMITH 90 (1989) (stating that William Livingston and William Paterson of the New Jersey delegation to the Convention were trustees of the school).

19. Jared Ingersoll, Jr., (PA) was buried in a Presbyterian cemetery. *The Founding Fathers: Pennsylvania*, NAT'L ARCHIVES, <https://www.archives.gov/founding-docs/founding-fathers-pennsylvania#ingersoll> [<https://perma.cc/M5KZ-MNX7>] (last visited Apr. 18, 2021). Alexander Hamilton (NY) was educated as a child by Presbyterian missionaries, see Klett *supra* note 14, at 132, though later rejected by College of New Jersey, RON CHERNOW, ALEXANDER HAMILTON 63–64 (2004). And George Washington (VA) reportedly attended Presbyterian services on occasion. See MARY V. THOMPSON, “IN THE HANDS OF A GOOD PROVIDENCE”: RELIGION IN THE LIFE OF GEORGE WASHINGTON 99 (2008). In total, there were seventeen Framers that were Presbyterian themselves or had meaningful or potential connections to Presbyterianism: Bedford, Brearly, Davie, Dayton, Ellsworth, Hamilton, Houston, Ingersoll, Livingston, Madison, McHenry, A. Martin, L. Martin, Paterson, Washington, Williamson, and Wilson. See *supra* notes 13–19 and accompanying text.

20. These members included: Oliver Ellsworth (CT); Elbridge Gerry (MA); and Caleb Strong (MA). See *Meet the Framers of the Constitution*, *supra* note 13.

21. M.E. BRADFORD, FOUNDING FATHERS: BRIEF LIVES OF THE FRAMERS OF THE UNITED STATES CONSTITUTION 49 (2d ed. 1994).

Sherman had a “Puritan bearing” and “strong ties to the congregationalist establishment.”<sup>22</sup>

The ten Framers who were educated at the College of New Jersey—Bedford, Brearly, Davie, Dayton, Ellsworth, Houston, Madison, Alexander Martin, Luther Martin, and Paterson—were steeped in Calvinist precepts in the College’s curriculum and the compulsory twice-daily chapel.<sup>23</sup> The College was founded for and “devoted to the interests of religion and learning,”<sup>24</sup> where the Reverend Witherspoon was “himself a whole staff of instructors.”<sup>25</sup>

This Article delves into the Calvinist influences at the Constitutional Convention for the purpose of illuminating guiding principles of the constitutional design. In Part I, the Article describes the Presbyterian influences at the time, including the leading Presbyterian cleric and instructor, the form of the Presbyterian polity, and the role of representation in the Presbyterian scheme. Part II describes Calvin’s theories of representation and governance. Part III delineates the Calvinist education of the Framers. Part IV examines the scheme of representation in the Constitution in light of the Calvinist themes previously described. This history puts into context claims that this is a “Christian Nation” as that phrase has been foisted on the public in recent decades. My conclusion is that a dominant Christian influence among the Framers—Calvinism—translates into a principle of distrust of every person who holds power—Christian or not—combined with a hope that a well-designed system could deter the inevitable temptations to abuse power. From this understanding, the contemporary claim that this is a “Christian Nation” that creates a privileged class of Americans who will unilaterally dictate policy choices according to their God is a grab for overwhelming power, not a legitimate interpretation of the Constitution’s foundational principles.

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22. John Witte, Jr., *The Integration of Religious Liberty*, 90 MICH. L. REV. 1363, 1376 (1992).

23. 2 VARNUM LASING COLLINS, PRESIDENT WITHERSPOON: A BIOGRAPHY 148 (1925).

24. *Id.* at 131.

25. *Id.* at 84.

## I. THE PRESBYTERIAN INFLUENCES AT THE TIME OF THE FRAMING

A. *The Instructor: The Reverend John Witherspoon*

The Reverend John Witherspoon was a remarkable man whose pivotal role in the Founding has been forgotten in constitutional scholarship. A Scotsman by birth, and a highly successful Presbyterian minister, he was persuaded to come to the colonies in 1768 to head the College of New Jersey.<sup>26</sup> Witherspoon was a rugged and passionate man and an outspoken patriot. His passion was not limited to church or theology or even advocating independence from Great Britain. He railed as emphatically about the need for a sound economic policy, the perils of inflation, and the evils of price fixing.<sup>27</sup> One English officer declared that Witherspoon was a “political firebrand, who perhaps had not a less share in the Revolution than Washington himself.”<sup>28</sup> He was one of several influential clergymen during the Revolutionary War, but the *only* clergy member whose influence was felt through the drafting of the Declaration of Independence, the Articles of Confederation, the Continental Congress, and through his students, the Constitutional Convention.<sup>29</sup>

Witherspoon was the most prominent and authoritative spokesman for Presbyterian precepts in the states during the period of the Revolution and the Constitution’s framing. A widely respected Calvinist theologian and a gifted preacher, he led the College to become the “school of statesmen’ during the Revolutionary period” and a “highly regarded nursery for the republican principles of the new nation.”<sup>30</sup> “Republican” derives from the Latin *res publica*, which combines the Latin *res* for “thing, affairs and business” with *publica* for “the public or commons.”<sup>31</sup> Witherspoon trained his students to serve the public.

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26. MORRISON, *supra* note 3, at 2.

27. *See id.* at 8.

28. COLLINS, *supra* note 23, at 133.

29. COLLINS, *supra* note 23, at 3–5, 183.

30. NOLL, *supra* note 18, at 52, 54 (quoting THOMAS JEFFERSON WERTENBAKER, PRINCETON 1746–1896, at 80 (1946)).

31. *See* Andre Munro, *Republic*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/republic-government> [<https://perma.cc/2C77-FSF2>] (last updated Aug. 7, 2019).

For Witherspoon, the Reformation was analogous to America's rejection of British rule and its establishment of a new form of government. The Reformation, remembered by Calvinists as a crusade to return the Christian church to its roots by structural reform, served as a powerful model. It was not enough simply to replace the corrupt Church leaders, but rather necessary to remove them all and then rebuild the structure of the Church with mechanisms intended to prevent corruption in the future. Witherspoon saw in the Revolution an analogous response to tyranny, a response that was necessary to wrest states from the corrupt leaders in the Parliament and on the British throne.<sup>32</sup> In a sermon delivered at the College on May 17, 1776, two months before independence was declared, Witherspoon linked the birth of America with the Reformation:

[A]t the time of the Reformation when religion began to revive, nothing contributed more to facilitate its reception and increase its progress than the violence of its persecutors. Their cruelty and the patience of the sufferers naturally disposed men to examine and weigh the cause to which they adhered with so much constancy and resolution. At the same time also, when they were persecuted in one city, they fled to another and carried the discoveries of Popish fraud to every part of the world. It was by some of those who were persecuted in Germany that the light of the Reformation was brought so early into Britain.

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... [T]he violent persecution which many eminent Christians met with in England from their brethren, who called themselves Protestants, drove them in great numbers to a distant part of the New World, where the light of the gospel and true religion were unknown.<sup>33</sup>

Later in the sermon, Witherspoon echoed this Reformation theme of the weak but courageous opponents of powerful tyrants by invoking the Biblical story of David, whom he described as a "stripping [sic] with his sling and his stone," and Goliath, "the

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32. See MORRISON, *supra* note 3, at 75–80.

33. WITHERSPOON, *supra* note 5, at 135–36.

champion armed in a most formidable manner.”<sup>34</sup> Like the Reformation, “the cause in which America is now in arms is the cause of justice, of liberty, and of human nature.”<sup>35</sup> In this way, he made the Revolution and the Reformation one. He brought this Reformation-minded approach to his classroom, where he taught his students to distrust those in power, regardless of their title, but to place their faith in well-crafted governing structures.<sup>36</sup>

B. *The Presbyterian Structure at the Time of the Framing*

While the Framers were crafting a new central government and constitution, the Presbyterian Church was instituting its own new constitution and structures. Both conventions met in Philadelphia at the same time, facing similar problems and devising strikingly similar solutions. Witherspoon chaired the committee that framed the Presbyterian Constitution.<sup>37</sup> Some have asserted that in framing the constitution of the Church his opinions were all but dominant.<sup>38</sup> This may be a bit hyperbolic, for it appears that he did not even attend all of the meetings discussing the framing.<sup>39</sup> There is little question, though, that his vision of the proper polity was borne out by the constitution drafted, that he was a highly respected member of the committee, and therefore that he likely had significant influence on the product even though not physically present at every committee meeting.

Witherspoon’s committee met in Philadelphia while his students met across town to construct the federal government.<sup>40</sup> So it is no more coincidence that an explanation of the Presbyterian polity’s constitutional structure can serve nicely as a template for understanding choices made by the Framers regarding representation.

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34. *Id.* at 139.

35. *Id.* at 140.

36. *See* Miller, *supra* note 10, at 32–34.

37. COLLINS, *supra* note 23, at 3–5.

38. *See, e.g.*, DAVID WALKER WOODS, JOHN WITHERSPOON 173–81 (1906) (stating that where Witherspoon contributed to the Presbyterian Constitution it “may be regarded practically as Witherspoon’s work”).

39. LEONARD J. TRINTERUD, THE FORMING OF AN AMERICAN TRADITION: A RE-EXAMINATION OF COLONIAL PRESBYTERIANISM 287–95 (1949).

40. COLLINS, *supra* note 23, at 160.

The spirit of the Presbyterian Constitution, as well as that of the United States Constitution, is captured in the Presbyterian phrase, “reformed, always reforming.” Neither convention thought it possible to create a perfect governing system, but both acted on the reformist conviction that a suitable structure could be crafted to deter future abuses of power. Moreover, such a governing structure was not set in stone, but rather could and should be adjusted when its shortcomings were revealed.

During the Revolutionary period, there was a lively debate between Presbyterians and Congregationalists over the issue of proper church structure. Presbyterians, who drew on the organization of the Scottish Kirk, favored a representative structure, while the Congregationalists tended to favor town-meeting-style democracy.<sup>41</sup> One Presbyterian minister “poured pages of inky contempt on Congregational [or direct] democracy,” arguing against its “localism, independence, [and] individualism.”<sup>42</sup> The colonial Presbyterians, just as Calvin had before them, disdained the anarchy of direct democracy almost as much as despotic tyranny.<sup>43</sup> Moreover, they saw direct parallels between the structural necessities of church and civil government.<sup>44</sup> For the Presbyterians, government—as opposed to the direct democracy of the Congregationalists—was necessary in order to avoid anarchy, licentiousness, and disorder:

Man’s depraved apostate Condition renders Government needful. Needful both in the State and in the Church. In the former without Government Anarchy wou’d soon take place with all its wild and dire Effects and Men wou’d be like the Fishes of the Sea where the greater devour the less. Nor is Govern[ment] in the Church less needful than in the State and this for the same Reason.<sup>45</sup>

While Presbyterians rejected direct democracy, they equally disliked the top-down structure of an Anglican or Episcopalian

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41. See Leonard J. Kramer, *Presbyterians Approach The American Revolution*, 31 J. PRESBYTERIAN HIST. SOC’Y 71, 72 (1953).

42. *Id.*

43. *See id.*

44. *See id.*

45. *Id.* (quoting Minutes of the Synod of New England, 1776–1782).

bishopric order.<sup>46</sup> As did the United States Constitution, the Presbyterian representative system tried to find a middle ground between monarchical rule by one and anarchical direct democracy by all. The United States Presbyterian Church's Constitution reflects the preference for representation and responsible leaders expressing independent judgment over direct democracy: "Presbyters [representatives within the church] are not simply to reflect the will of the people, but rather to seek together to find and represent the will of Christ. . . . Decisions shall be reached in councils by vote, following opportunity for discussion and discernment, and a majority shall govern."<sup>47</sup> In short, representatives were called to a higher vision than the will of the people, though in pursuing the larger good they were the people's trustees.

The United States Presbyterian representative structure owes its origins to the Scottish Presbyterian Kirk and "springs from its theology."<sup>48</sup> In 1797, the building blocks of the American Presbyterian system that were "radical," by which they meant, "fundamental and basic," were described as a representative structure.<sup>49</sup> Governing power was vested not in individuals, like the bishops of the Catholic or Episcopalian Churches, but rather in representatives whose role was to serve as trustees for their

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46. *See id.* at 83.

47. UNITED STATES PRESBYTERIAN CHURCH, 2 THE CONSTITUTION OF THE PRESBYTERIAN CHURCH (U.S.A.): BOOK OF ORDER 2019–2021, at 14 (2019) [hereinafter BOOK OF ORDER].

48. FRANK A. BEATTIE, COMPANION TO THE CONSTITUTION OF THE PRESBYTERIAN CHURCH (U.S.A.): POLITY FOR THE LOCAL CHURCH 15 (2007).

49. BOOK OF ORDER, *supra* note 47, at 13 n.6. The Presbyterians described that structure in this way:

That the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically the Church; that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united: that is, that a majority shall govern; and consequently that appeals may be carried from lower to higher governing bodies [councils], till they be finally decided by the collected wisdom and united voice of the whole Church.

*Id.*

constituents.<sup>50</sup> The Scottish and United States Presbyterian system consisted of layers of elected representatives—including the session, the presbyteries, the synods, and the General Assembly—that were organized in a hierarchical fashion.<sup>51</sup> Each lower body reported to the higher bodies.<sup>52</sup> The sessions, the presbyteries, and the synods are analogous to the secular world’s local, county, and state governments, respectively in the sense that they are divided along geographical lines. The General Assembly is the national ruling body.<sup>53</sup>

Like the branches of government in the federal Constitution, each of the Presbyterian Church’s governing bodies was “separate and independent” from the others.<sup>54</sup> Also like the Constitution and following Calvin’s division of duties between different offices, the power of each body was “limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries” and “with the acts of each subject to review by the next higher governing body.”<sup>55</sup> The system first appeared in the Scottish Presbyterian Kirk and is described in the contemporary Presbyterian Constitution as follows (each principle here described has been a staple of the United States’ Presbyterian structure since its inception):

***The Session.*** Within each particular church, the members are to elect ruling elders.<sup>56</sup> Along with the minister (or ministers), who are also elected, the elders form the church’s “session,”<sup>57</sup> which is charged with leadership of the congregation in many arenas, including evangelization, mission, worship, church school, and stewardship.<sup>58</sup>

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50. WILLIAM HENRY ROBERTS, *THE PRESBYTERIAN SYSTEM: ITS CHARACTERISTICS, AUTHORITY, AND OBLIGATION* 35 (1895).

51. *See id.*; ROBERT MCAFEE BROWN, *THE PRESBYTERIANS* 8–9 (1966).

52. *BOOK OF ORDER*, *supra* note 47, at 14 (“A higher council shall have the right of review and control over a lower one and shall have power to determine matters of controversy upon reference, complaint, or appeal.”).

53. *See id.* at 57.

54. *Id.* at B-8.

55. *Id.* at 14, 41.

56. *See id.* at 48–49.

57. “Session” is defined as “the council for the congregation.” *Id.*

58. *See id.*

**The Presbyteries.** The presbyteries are composed of selected elders and all ministers from each of the sessions within a designated geographical region.<sup>59</sup> “The presbytery is responsible for the government of the church” in that district.<sup>60</sup>

**The Synods.** Each synod is composed of representatives of no less than three presbyteries in a geographical area.<sup>61</sup> The representatives in a synod are elected by the presbyteries.<sup>62</sup> The “[s]ynod is responsible for the life and mission of the church throughout its region.”<sup>63</sup>

**The General Assembly.** The General Assembly is composed of a set number of elders and ministers from each presbytery.<sup>64</sup> The Assembly “constitutes the bond of union, community, and mission among all its congregations and councils.”<sup>65</sup>

In sum, the Presbyterian levels of government operated as a set of overlapping representative structures, defined by (1) an individual church; (2) a geographical region; (3) a larger geographical region; and (4) a national body. They bear a strong and obvious resemblance to city, county, state, and national levels of government.

The Presbyterian Constitution, like the United States Constitution, also mixes direct and indirect representation. Some representatives—those in the session—are directly elected by the people, while others are chosen from or by intermediate governing bodies. This element underscores the Calvinist distaste for the anarchy they perceived that necessarily followed from placing too much power in the people, or the mob.<sup>66</sup> The Framers relied on the same view and employed the same tactic of mixing direct with

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59. *See id.* at 50.

60. *Id.* at 51.

61. *Id.* at 54.

62. *See id.*

63. *Id.* at 55.

64. *See id.* at 57.

65. *Id.*

66. *See Kramer, supra* note 41, at 72.

indirect representation.<sup>67</sup> Members of the House of Representatives were always directly elected but the selection of Senators was indirect (until the ratification of the Seventeenth Amendment in 1913) and the President's election continues to be indirect under the Electoral College.<sup>68</sup>

C. *The Representative and the People in the Presbyterian Structure*

The Presbyterian scheme is premised on a belief in “the right of the Christian laity to participate, through its chosen representatives, in the government of the Church.”<sup>69</sup> The Presbyterian Constitution states: “The government of this church is representative, and the right of God’s people to elect presbyters and deacons is inalienable. Therefore, no person can be placed in any ordered ministry in a congregation or council of the church except by election of that body.”<sup>70</sup> The Presbyterian members’ representatives are the people’s trustees and answer to a calling higher than the individual desires of the people.<sup>71</sup> Once elected, the presbyters are not subject to a people’s right to instruct and are not limited by the views of the majority of electors.<sup>72</sup> Rather, there is a “double duty . . . that of the people who choose their rulers, and that of the representatives to whom is entrusted the exercise of this delegated authority.”<sup>73</sup>

Whatever other sources the Framers had on hand, including Enlightenment sources such as John Locke, Edmund Burke, David Hume, and Roman and Greek history, Calvin’s theories, explaining and justifying representation, were indispensable to their establishing a representative democracy, and illuminated their

67. See C. MICHAEL BARRY, *THE AMERICAN REPUBLIC: THE FOURTH FORM OF GOVERNMENT* 15–16 (2011).

68. See U.S. CONST. amend. XVII, § 1; *Origins and Development*, U.S. SENATE, [https://www.senate.gov/artandhistory/history/common/briefing/Origins\\_Development.htm](https://www.senate.gov/artandhistory/history/common/briefing/Origins_Development.htm) [perma.cc/RH4X-PW4T] (last visited Apr. 18, 2021).

69. See FREDERICK W. LOETSCHER, ADDRESS ON THE 200TH ANNIVERSARY OF THE ADOPTING ACT 9 (1929); see also ROBERTS, *supra* note 50, at 35 (“[T]he people of Christ are entitled to participation in the government of the Church.”).

70. BOOK OF ORDER, *supra* note 47, at 25.

71. See *id.*

72. See *id.* at 14.

73. COLLINS, *supra* note 23, at 128.

difficult task of establishing a representative government. As taught and developed by Witherspoon and his Framers students, these theories helped ground and shape the themes—debated simultaneously at two constitutional conventions—whose striking similarity illuminates their common derivation.

## II. JOHN CALVIN ON REPRESENTATION AND GOVERNMENT: “AN ARISTOCRACY BORDERING ON DEMOCRACY”

Nearly all constitutional thought builds on a fundamental theory, whether or not acknowledged, and that is a theory of the human capacity to accomplish good or evil. The Framers built the United States’ governing system and its supporting structure of representation on theory bearing strong resemblance to the Calvinist position, which assumes the human tendency to evil as it hopes for the accomplishment of good.<sup>74</sup> In fact, many of the Framers were steeped in Reformation theology, particularly through the Presbyterian Church and especially through the Reverend John Witherspoon’s teachings on the political theology of Calvin and John Knox.

But Reformation theology’s contribution to representation theory cannot fully be understood before considering the historical circumstances of its origin. After all, John Calvin and John Knox—along with Martin Luther and other reformers—were not simply theorizing about governance but rather reacting to the sixteenth-century Roman Catholic Church, which had become tyrannical and corrupt following centuries of overweening power.

### A. *Before the Reformation*

Historians divide the period leading up to the Reformation into three eras. First, the Catholic Church successfully disseminated Christianity from the fifth to the eleventh centuries.<sup>75</sup> Second, it dominated through a theocracy from the twelfth to the fourteenth centuries.<sup>76</sup> Finally, it disintegrated.<sup>77</sup> During the era of dissemination, the Church came to own vast amounts of property

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74. See Kramer, *supra* note 41, at 72; BARRY, *supra* note 67, at 15–16.

75. See THOMAS BOKENKOTTER, A CONCISE HISTORY OF THE CATHOLIC CHURCH 1–2 (2005).

76. See *id.*

77. See *id.* at 2.

and became an integral and powerful part of the feudal system.<sup>78</sup> By the thirteenth century, Pope Innocent III—who initiated the Inquisition—was a powerful papal monarch who controlled “a vast ecclesiastical machinery” that regulated the moral and social behavior of all medieval people including kings and princes.<sup>79</sup> The rulers of the time were the clergy and they were accountable to no one. As Roland Bainton explains:

The Church claimed to be the director of society not by reason of the goodness of churchmen but by virtue of the prerogative of the clergy alone to celebrate the sacraments, through which exclusively salvation is meditated to men . . . . For that reason the meanest priest was greater than the loftiest emperor. The latter could confer on man only tranquility on earth. The former could convey the peace of heaven.<sup>80</sup>

As the most holy of all clergy, the pope was the arbiter of Europe. “With spiritual weapons alone, he held sway from Gibraltar to Jerusalem, from Stockholm to Constantinople, as the vice-regent of Christ and shepherd of the faithful.”<sup>81</sup> So when the Church encountered financial troubles in the fourteenth century, it did not take challenges to its enormous power lying down.<sup>82</sup>

King Philip of France, wanting to raise revenue, imposed heavy taxes on clergy.<sup>83</sup> Pope Boniface angrily responded by declaring that anyone who taxed clerical property without authorization would be excommunicated.<sup>84</sup> Philip retaliated by prohibiting the exportation of any monies from France to Rome and effectively cut off “a major source of papal revenue.”<sup>85</sup>

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78. *See id.*

79. *Id.* at 1–2.

80. ROLAND H. BAINTON, *THE REFORMATION OF THE SIXTEENTH CENTURY* 10–11 (1952).

81. *Id.* at 11.

82. *See* BOKENKOTTER, *supra* note 75, at 180.

83. *Id.* at 179–80.

84. *Id.* at 180.

85. *Id.*

The Church's finances were devastated.<sup>86</sup> At the same time, the development of monetary and financial institutions was transforming the European economy from an in-kind barter-based system to a money-based one.<sup>87</sup> The Church turned to innovative ways to amass wealth in the face of its financial woes, including seizing the income of its own clergy and invading the coffers of its parish churches.<sup>88</sup> Early Italian banks served the needs of the Church by effectuating international money transfers.<sup>89</sup> In working on behalf of the Church they routinely violated the prohibition against charging and paying interest.<sup>90</sup>

However, the Church's most successful gambit became the most notorious symptom of its fall from grace: the sale of salvation through indulgences. The Church sold indulgences as merits in heaven.<sup>91</sup> The purchase of these merits, the parishioners were told, could ameliorate the sinfulness of mortals on earth and "shorten their own time in purgatory."<sup>92</sup> The cost of the indulgence was calibrated to the size or depth of the sin.<sup>93</sup>

During the Renaissance (1350–1600), the papacy was an amalgam of powers, with elements of an Italian city-state, a European power, and the vice-regent of Christ.<sup>94</sup> These three mantles offered popes the ability to exercise power over every sphere of society without accountability.<sup>95</sup> The popes of this era ranged from despotic to indolent, from warmongers to rakes.<sup>96</sup> In this period "[t]he papacy became an Italian Renaissance court and the pope was increasingly perceived to be nothing more than an Italian prince whose problems and interests were now local and

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86. See W. C. TAYLOR, *HISTORY OF FRANCE AND NORMANDY: FROM THE EARLIEST TIMES TO THE YEAR 1860*, 116–17 (1860).

87. E. DAMSGAARD HANSEN, *EUROPEAN ECONOMIC HISTORY: FROM MERCANTILISM TO MAASTRICHT AND BEYOND* 49–50 (2001).

88. M.A. Costello, *Obligaciones pro Annatis Diocesis Ardfertensis*, 21 *ARCHIVIUM HIBERNICUM* 1, 1–2 (J. O'Connell ed., 1958).

89. HANSEN, *supra* note 87, at 52.

90. *Id.*

91. G. R. ELTON, *REFORMATION EUROPE 1517–1559*, at 18–19 (2d. ed. 1999).

92. *Id.* at 19.

93. *See id.*

94. BANTON, *supra* note 80, at 15.

95. *See id.*

96. *Id.* at 17–18.

egoistic rather than universal and pastoral.”<sup>97</sup> Two particular popes exemplify the papacy of this time period. Pope Alexander VI (1431–1503, pope from 1492) won the papacy largely through bribery.<sup>98</sup> He had a penchant for sexual promiscuity and his many mistresses bore him at least eight known children.<sup>99</sup> Pope Julius II (1443–1513, pope from 1503) was proficient in “the art of war.”<sup>100</sup> He continued the effort to “expel all foreigners from Italy” and commanded troops “with such strength and drive that he became known as *terribilita*, the terrible man.”<sup>101</sup> There was no structure within the church that limited such abuses of power or provided incentives for more virtuous leadership, nor was there a governmental scheme or other secular power capable of bringing the church or its leaders to account. Because the church distinguished the office from the man, a man could hold office of pope and claim infallibility as an emolument of that office—even as he publicly sinned time and again. The office thus remained pure though its occupant was not.

As early as the twelfth century, there were calls to reform this corrupt state of affairs, which were echoed in the papal schism of 1378–1417, and then in the appearance of sects that separated themselves from the Church.<sup>102</sup> But by the time of Calvin no internal methods of reform had succeeded in bringing the Church back to a truer path.

## B. *Historical Sources*

### 1. *John Calvin*

John Calvin (1509–1564) responded to the sixteenth century’s Roman Catholic Church with passionate disillusionment and a seminal political theology. Unlike Martin Luther (1483–1546), who focused solely on the theological shortcomings of Roman Catholic Church practices in the sixteenth century, Calvin prescribed a structural fix for the Church’s organization and for civil

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97. CARTER LINDBERG, *THE EUROPEAN REFORMATIONS* 53 (1996).

98. *Id.*

99. *Id.*

100. *Id.* at 53–54.

101. *Id.* at 54.

102. See BAINTON, *supra* note 80, at 14.

government as well.<sup>103</sup> Luther attacked at the level of theory while Calvin focused on the pragmatic operation of the institution.

There is an unstated premise underlying Calvin's landmark *Institutes of the Christian Religion*: the Church, of all institutions, should not have been subject to corruption.<sup>104</sup> Calvin was plainly disgusted with the sinfulness of the Church's leaders.<sup>105</sup> His response, however, was not aimed at individuals *per se* because he accepted the inherent fallibility of all humans.<sup>106</sup> The system was as blameworthy as the errant individual.<sup>107</sup> Thus, replacing the leaders would not be enough.<sup>108</sup>

Calvin sought to construct a *system* that would deter Church leaders from sinning in the future by instituting representation and accountability. As long as the Church leaders were not accountable, the papacy and lesser clergy would be too easily tempted by wealth and power. In creating a system that would check them, Calvin wished not to destroy the Church, but to restore its integrity.<sup>109</sup> He was, on his own term, not a revolutionary, but a reformer—literally.

a. *The Foundation of Distrust and Hope*

Calvin built the reformed Church on a now familiar Protestant theological foundation, the paradoxical union of original sin and divine grace. Calvinism, perhaps more than any other protestant theology, embraces the paradox that man is corrupt by nature but is also capable of doing good. In this paradoxical union, hope, triumph, and possible defeat are mingled.<sup>110</sup> Calvin rejected the

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103. See generally JOHN CALVIN, *THE NECESSITY OF REFORMING THE CHURCH* (Casey Carmichael trans., Ligonier Ministries 2020) (1544).

104. See 1 JOHN CALVIN, *INSTITUTES OF THE CHRISTIAN RELIGION* 14 (John T. McNeill ed. & Ford Lewis Battles trans., reprt. ed. 2006) [hereinafter 1 CALVIN, *INSTITUTES*].

105. See *id.*

106. See *id.* at 23.

107. See *id.*

108. See *id.* at 25.

109. See *id.* at 26.

110. Cf. SØREN KIERKEGAARD, *THE CONCEPT OF ANXIETY* 43–44 (Reidar Thomte trans., ed., Princeton Univ. Press 1980) (1844) (conceptualizing the spirit as both a “hostile” and “friendly power”).

Platonic notion<sup>111</sup> that knowing good produces good: “[M]uch as man desires to follow what is good, still he does not follow it.”<sup>112</sup> Though people *choose* to sin, sin is inevitable.<sup>113</sup> Only the presence of God’s grace makes it possible for the human will to be exercised for good.<sup>114</sup> Without grace, human will is corrupt and tends to evil.<sup>115</sup> Thus, good and evil are both truly possible. Humans can hope for the best but expect the worst from each other and from the societal institutions they devise.

When Calvin’s views were presented in the context of a systematic theology, they were sharpened by the reality of the corruption of his day and tested in Geneva, a center for Church reformation. His observations of the Church left him without a preternatural distrust of human motives, beliefs, and actions.<sup>116</sup> According to Calvin, there was never a moment in history when humanity could be trusted blindly as good—and there is not social organization that can guarantee the generation of good:

[L]et us hold this as an undoubted truth which no siege engines can shake: the mind of man has been so completely estranged from God’s righteousness that it conceives, desires, and undertakes, only that which is impious, perverted, foul, impure, and infamous. The heart is so steeped in the poison of sin, that it can breathe out nothing but a loathsome stench. But if some men occasionally make a show of good, their minds nevertheless ever remain enveloped in hypocrisy and deceitful craft, and their hearts bound by inner perversity.<sup>117</sup>

Thus, Calvin counseled in favor of a diligent surveillance of one’s own actions and the actions of others; he also endorsed the value of the law (both biblical and secular) to guide human behavior

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111. See PLATO, *THE REPUBLIC* 240–49 (Robin Waterfield trans., Oxford Univ. Press 1994) (The Allegory of the Cave).

112. See 1 CALVIN, *INSTITUTES*, *supra* note 104, at 286.

113. See *id.* at 295–96; see also FRANÇOIS WENDEL, *CALVIN: THE ORIGINS AND DEVELOPMENT OF HIS RELIGIOUS THOUGHT* 185 (Philip Mairet trans., 1963).

114. See WENDEL, *supra* note 113, at 185.

115. See 1 CALVIN, *INSTITUTES*, *supra* note 104, at 295 (“[S]imply to will is of man; to will ill, of a corrupt nature; to will well, of grace.”).

116. This distrust extends to our views of ourselves. See *id.* at 242 (“Man by nature inclines to deluded self-admiration.”).

117. *Id.* at 340.

away from its propensity to do wrong.<sup>118</sup> Granted, no man could even live up to all of the law's demands, but it was valuable as a checking measure nonetheless.

As Calvin counseled distrust, he also taught that there was no hierarchy of humans in the eyes of God. *Every* human, by nature, is sinful.<sup>119</sup> Not even the head of the Church should be insulated from the distrust properly trained on all men.<sup>120</sup> Yet, Calvin's message did not stop at his emphasis on distrust. He pointed to the font of human hope—the Holy Spirit—and declared that great good can be done if the Holy Spirit is permitted to work through individuals.<sup>121</sup> He reasoned that while the human baseline is sin, God's forgiveness and redemption made salvation and goodness real.<sup>122</sup> So hope was possible and justified.

The union of hope and distrust led Calvin to forego despair and instead to seek viable means of fixing the Church.<sup>123</sup> The problem he identified was how to reconstruct the Church on the basis of these principles.<sup>124</sup> Calvin believed that if he were to “recount the vices of church government, [he] may find no end of speaking about

118. As important as the law is, it cannot single-handedly open a pathway to redemption and away from sinfulness. Calvin speaks of the “feebleness of the law” in the face of human sinfulness. *Id.* at 352. Human nature makes it impossible to fulfill the law's mandates, and, therefore, “if we look only upon the law, we can only be despondent, confused, and despairing in mind, since from it all of us are condemned and accursed.” *Id.*

119. See, e.g., WENDEL, *supra* note 113, at 185.

120. See 2 JOHN CALVIN, *INSTITUTES OF THE CHRISTIAN RELIGION* 1138–39 (John T. McNeill ed., Ford Lewis Battles trans., reprt. ed. 2006) [hereinafter 2 CALVIN, *INSTITUTES*] (lamenting the lack of restraints on the papacy).

121. See *id.*

122. See *id.*

123. Calvin found most “unbearable” the lack of accountability of the Roman Catholic Church:

[W]hat is most unbearable of all [is that] they leave no jurisdiction on earth to control or restrain their lust if they abuse such boundless power. Because of the primacy of the Roman Church, they say, no one has the right to review the judgments of his see. Likewise: as judge it will be judged neither by emperor, nor by kings, nor by all the clergy, nor by the people.

2 CALVIN, *INSTITUTES*, *supra* note 120, at 1138.

124. See generally CALVIN, *supra*, note 103, at 18–22.

them,” and therefore he proposed and instituted extensive *structural* changes in the governance of the Church.<sup>125</sup>

First, the Roman Church as constituted had to be rejected and condemned.<sup>126</sup> Calvin described in vivid prose the Roman Church’s hubris and its usurpation of power against the people:

Because of the primacy of the Roman Church, they say, no one has the right to review the judgments of this see. Likewise: as judge it will be judged neither by emperor, nor by kings, nor by all the clergy, nor by the people. This is the very height of imperiousness for one man to set himself up as judge of all, and suffer himself to obey the judgment of none. But what if he exercise tyranny over God’s people? If he scatter and lay waste Christ’s Kingdom? If he throw the whole church into confusion? If he turn the pastoral office into robbery? Nay, though he be utterly wicked, he denies he is bound to give an accounting.<sup>127</sup>

Second, another church must be constructed in its place, one with a structure that would guard against the evils of the pre-Reformation Church. The “boundless power” of the monarchical structure of the Roman Catholic Church was to be transformed through the introduction of limited structure.<sup>128</sup> Thus, over two hundred years before the Framers rejected monarchy as an institution unacceptable for the preservation of liberty,<sup>129</sup> Calvin spoke at length on the tyranny of a monarchy within the church.<sup>130</sup> He rejected the Roman Catholic Church’s claim that the pope was the single and universal head of the Christian church.<sup>131</sup> In place

125. *See id.* at 18.

126. *See* 2 CALVIN, *INSTITUTES*, *supra* note 120, at 1141 (describing Roman see as “a hundred times more corrupt than it was in the times of Gregory and Bernard, though even then it greatly displeased those holy men”).

127. *Id.* at 1138.

128. *See id.*

129. *See* Adriene Koch, *Introduction* to JAMES MADISON, *NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787*, at vii, xx (Ohio Univ. Press 1966) (1893); *see also* JOHN WITHERSPOON, *ECCLESIASTICAL CHARACTERISTICS* (1753), *reprinted in* *SELECTED WRITINGS*, *supra* note 5, at 57, 99–100.

130. 2 CALVIN, *INSTITUTES*, *supra* note 120, 1136, 1138.

131. *See id.* at 1117–18. As an interpretive matter, Calvin argues against the notion of a supreme papacy because such an institution was “utterly unknown to the ancient fathers.” *Id.* I leave to future articles the fascinating

of the monarchical and hierarchical church, Calvin proposed a representative structure—one that he considered equally applicable to secular governments.<sup>132</sup>

b. *The Structure of Calvinist Representation*

As Calvin saw it, both church leaders and the civil representatives (known as magistrates) were “ministers” of God, so similar analyses might be applied to their relationship to the people. Calvin endorsed representation as a better choice than either the monarchy of papism or the direct democracy of ancient Athens (a strain of which was later to be found in Calvinist Congregationalist churches).<sup>133</sup> Representation was a practical necessity, he thought; because it permitted the believer to pursue his own calling while religious leaders bore the responsibility of operating the Church.<sup>134</sup> Before prescribing the structures necessary to bring the Church back into line with its holy mission, Calvin described the governing structure of the “ancient church,”<sup>135</sup> which was his designation for the Church before it was corrupted.

As the first structural principle of the ancient church, Calvin addressed “what kind of men to choose” as ministers and how to choose them.<sup>136</sup> He wove together an interesting complex that included a high standard of responsibility and accountability with citizen approval and monitoring of representatives.

c. *Standards, Judgment, and Accountability*

In Calvin’s system, church leaders and magistrates held tremendous power over their charges. Yet, the position of representative did not license tyranny. On the contrary, it burdened representatives with a duty to reach good judgments, protect their charges and account to God for every action. The medieval church had employed representation as a means of

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parallels between Calvin’s interpretive strategies and the strategies of the originalists of our day.

132. See *id.* at 1517–21; JOHN T. MCNEILL, *THE HISTORY AND CHARACTER OF CALVINISM* 364 (1954).

133. See 2 CALVIN, *INSTITUTES*, *supra* note 120, at 1519.

134. See *id.*

135. See *id.* at 1068.

136. *Id.* at 1077.

tethering certain representatives to their districts in order to serve the people's desires,<sup>137</sup> in a simple but brilliant move, Calvin turned that approach on its head by severing the representative's ties to the people's desires and making them the higher good.<sup>138</sup> Representatives were not to represent men's wishes and they were "not to tyrannize, but to serve the flock."<sup>139</sup>

Nor were they supposed to serve their *own* interests, or be slaves to the interests of those they served.<sup>140</sup> He made them servants of God and of God's charges, the people.<sup>141</sup> In this one stroke, Calvin turned privilege and power into duty and responsibility and thereby revolutionized the structure of representation in both the Church and the state.<sup>142</sup> Calvin's formulation channeled the potential for licentious and wayward behavior, so evident in the pre-Reformed Church, toward a path of responsibility.<sup>143</sup> Representatives were to be watched by the people and tethered to their common good, yet they bore the independent duty to make decisions serving the people on behalf of God.<sup>144</sup> The people were not to be the teleology of the system, nor were their perceived desires to be the justification for representative acts.<sup>145</sup> Rather, they were to be the beneficiaries of the system.

Calvin's theology of human nature determined his theory of representation for both church ministers and magistrates. Both types of representatives were human, and therefore predisposed to original sin, but both also were capable of achieving good through the possibility of grace.<sup>146</sup> Both represented God to the people.<sup>147</sup>

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137. See BAILYN, *supra* note 10, at 162–63 (discussing ability of medieval representatives to seek redress in Parliament while remaining firmly bound to local interests and communities through local residency or property requirements as qualifications for election, local control over representatives' wages, and strict accountability).

138. 2 CALVIN, *INSTITUTES*, *supra* note 120, at 1520.

139. T. H. L. PARKER, *JOHN CALVIN: A BIOGRAPHY* 60 (1975).

140. *See id.* at 59.

141. *See id.*

142. *See id.*

143. See 2 CALVIN, *INSTITUTES*, *supra* note 120, at 1519.

144. *Id.* at 1520.

145. *Id.* at 1520–21.

146. *Id.* at 1053.

147. *See id.* at 1510.

While the content of their duties differed, structural principles devised to cabin the human impulse to sin applied equally to church and state.<sup>148</sup> Calvin described magistrates as “God’s deputies” and “ministers of divine justice” engaged in a “righteous calling.”<sup>149</sup> They were required to exercise “judgment,” and were to be accountable for their judgment by “render[ing] account of the administration of their charge” to God.<sup>150</sup> The magistrate was to be a “minister of God” for the people’s “good.”<sup>151</sup>

Stringing one requirement after another, Calvin repeatedly emphasized the many demands God placed on representatives. Acting on behalf of God and in His presence, they needed “great zeal for uprightness, for prudence, gentleness, self-control, and for innocence.”<sup>152</sup> They were required to watch with “care, earnestness, and diligence” that they represent the “image of divine providence, protection, goodness, benevolence, and justice.”<sup>153</sup> Rulers were to exercise both judgment and justice, which “is to receive into safekeeping, to embrace, to protect, vindicate, and free the innocent. But judgment is to withstand the boldness of the impious, to repress their violence, to punish their misdeeds.”<sup>154</sup>

A magistrate who lived up to his calling held many titles, including “father of his country . . . shepherd of his people, guardian of peace, protector of righteousness, and avenger of innocence.”<sup>155</sup> On Calvin’s terms, it was no simple task to be a representative but it was a role that was far more beneficial for the people.

In addition to laboring under God’s judgment, ministers of the ancient church were held to certain standards of quality and were subject to canons governing their behavior. Calvin noted that the ancient church leaders were judged according to how Paul the Apostle had lived his life.<sup>156</sup> The canons were levied against “evil”

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148. *Id.* at 1511.

149. *Id.* at 1491–92.

150. *Id.* at 1491.

151. *Id.* at 1506.

152. *Id.* at 1491.

153. *Id.*

154. *Id.* at 1497.

155. *Id.* at 1511.

156. *See id.* at 1509.

representatives.<sup>157</sup> Yet, all of these earthly punishments paled in comparison to the judgment God would wield against those who abused their charges in His name. The question Calvin pursued was how to craft a governing structure to keep these natural impulses to sin in check and thereby disservice the people.<sup>158</sup>

d. *The Calvinist Form of Government*

Calvin saw no *necessity* for choosing any one particular form of government from among the long-identified choices—monarchy, aristocracy, and democracy—though he did believe an “aristocracy bordering on democracy” was least likely to degenerate into a corrupted relationship between rulers and the people.<sup>159</sup> This was, in fact, the form of government he identified from the history of the ancient church-independent leadership by those who satisfy certain basic criteria coupled with oversight by the people.<sup>160</sup>

According to Calvin, each form of government contained the seeds of its own destruction, but the one to fear most was direct democracy by the people: “The fall from kingdom to tyranny is easy; but it is not much more difficult to fall from the rule of the best men to the faction of a few; yet it is easiest of all to fall from popular rule to sedition.”<sup>161</sup> The touchstone of original sin, man’s inherent fallibility, led him to conclude that “it is very rare for kings . . . to control themselves.”<sup>162</sup> Rather, it is “safer and more bearable for a number to exercise government, so that they may help one another, teach and admonish one another; and if one asserts himself unfairly, there may be a number of censors and masters to restrain his willfulness,” which was a lesson learned from experience and confirmed by the Lord.<sup>163</sup> The numbers of an aristocracy, therefore, secured a measure of accountability through mutual checking, and thereby placed limits on overreaching. When the number of rulers approached the number of citizens though, the system was destined to fall into anarchy and disorder.

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157. *Id.* at 1079.

158. *See id.* at 1485.

159. *Id.* at 1493–94 (“The diversity of forms of government.”).

160. *See id.* at 1494.

161. *Id.* at 1493.

162. *Id.*

163. *Id.* at 1493–94.

Calvin's general observations about the superiority of an aristocracy shaped by democracy, however, were not intended to be rigid prescriptions. It was appropriate that the world would include "various kinds of government" because a particular country's needs depended on its circumstances.<sup>164</sup> "For as elements cohere only in unequal proportion, so countries are best held together according to their own particular inequality."<sup>165</sup> Fitting schemes of governance to a country's character required deliberation.<sup>166</sup>

God would not mandate a single governing structure any more than he would "prescribe in detail" church organization.<sup>167</sup> Rather, church and state government were to be molded to the needs of the moment.<sup>168</sup> This meant that any particular structure was constructed by fallible man but guided by "general rules" laid down by God.<sup>169</sup> Accordingly, Calvin criticized his own blueprint for church reform, the *Institutes*, three years after its first publication: he found the work lacking in depth and inadequate in developing certain themes.<sup>170</sup> As he watched his intended structure unfold in Geneva, he successively amended the *Institutes* to reflect lessons learned. In this sense, building a governing structure for Calvin was an experimental task, based to be sure on general principles from God, but informed by mortal experience.

This experimental approach served Calvin's goal of reconstructing without necessarily displacing the church; it yielded a system that was both stable and flexible. On the one hand, certain structures were capable of deterring abuses of power in particular eras, but on the other hand, a structure could outlive its usefulness. Calvin's reformation turned out to be not a one-time task, but rather a work in progress requiring vigilance. His openness to error, failure, and contingency, combined with a commitment to deterring abuses, is crucial to an understanding of his systematic political theology and of how its prescriptions radically differ from those of the people normally cited as

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164. *Id.* at 1494.

165. *Id.*

166. *See id.* at 1493–94.

167. *Id.* at 1208; *see also* WENDEL, *supra* note 113, at 302–03.

168. *See* WENDEL, *supra* note 113, at 302–03.

169. 2 CALVIN, *INSTITUTES*, *supra* note 120, at 1208.

170. *See* PARKER, *supra* note 139, at 50.

influencing the constitution's framing—Locke, Hobbes, and Burke, especially. By comparison, their theories fail to reconcile the inevitability of flow performance with a commitment to high ideals.

e. *The Office of Representative*

Calvin did not reject every tenet of the Catholic structure. Drawing from Catholic teachings regarding the infallibility of the often-sinners popes, Calvin distinguished the office from its holder: the office was the seat of power, not the individual sitting in it.<sup>171</sup> There were four offices: ministers (or pastors), teachers (or doctors), elders, and deacons.<sup>172</sup> The primary leader of the church and representative of God was the minister, who was chosen by other ministers and the Magistracy (the secular ruler of Geneva), but whose nomination was presented to the people for their consent.<sup>173</sup>

f. *The People*

The people, as Calvin saw them, were inevitably players in the game of representation, but they were not trustworthy players. Nor were their impulses a focal point of the game. Calvin did not identify a *right* of the people to elect their church leaders, but he did approve of election in the ancient church and praised the practice of promoting leaders who had been observed by the people during their term of representation.<sup>174</sup> According to Calvin, the consent of the people was regularly sought regarding church leaders in the ancient church.<sup>175</sup> Some promotions within the church were made without this consent but only after the subject had been “for many years examin[ed] under the eyes of the people.”<sup>176</sup> Bishops of the ancient church were precluded from creating a dynasty by the requirement that their selection of successors be validated by the people's approval, a check on church leaders long left behind by the time of the Reformation.<sup>177</sup> This much involvement by the people was sufficient according to Calvin;

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171. *Id.* at 58.

172. See WENDEL, *supra* note 113, at 76–78; PARKER, *supra* note 139, at 82.

173. See WENDEL, *supra* note 113, at 76.

174. 2 CALVIN, *INSTITUTES*, *supra* note 120, at 1065.

175. *Id.* at 1078.

176. *Id.* at 1079.

177. *Id.*

the clergy and officials could choose rulers, and the people could approve that choice.<sup>178</sup> For Calvin, more involvement would be a mistake.

Calvin commended neither self-rule nor rule by the people at any level. He accused the people of following “foolish desires” and of being a “heedless multitude.”<sup>179</sup> Yet he considered their participation, through oversight and especially during worship, to be essential; the people could provide a vital check on their leaders but were not necessarily a source of wisdom.<sup>180</sup>

Although it was appropriate for the people to elect—and necessary for them to monitor—their leaders, Calvin rejected the notion of a crowd gathering to choose a church leader.<sup>181</sup> Election rather should be orderly and according to procedures.<sup>182</sup> It should also be open: ordinations took place at appointed times so as to keep any candidate from creeping in secretly “without the consent of the believers.”<sup>183</sup>

One of the cornerstones of Calvin’s systematic theology and political philosophy was the pairing of liberty and representation.<sup>184</sup> Liberty, or a degree of autonomy for the people, was essential to keeping representatives accountable to a higher good.<sup>185</sup> Calvin conceived not a pure negative liberty, but rather liberty within structured order.<sup>186</sup> The people needed sufficient autonomy not just to serve their own ends but also to beware of a representative’s actions.<sup>187</sup> The liberty Calvin envisioned made the people responsible for oversight, which kept representation from turning into tyranny.<sup>188</sup> In a properly functioning representative system, the people were freed to fulfill God’s distinctive calling for each of them.

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178. *Id.*

179. *Id.*

180. *See* PARKER, *supra* note 139, at 86.

181. 2 CALVIN, INSTITUTES, *supra* note 120, at 1077–78.

182. *Id.* at 1080.

183. *Id.* at 1079.

184. *Id.* at 1493–94 n.21.

185. *See id.* at 1495.

186. *See id.* at 1520.

187. *See id.*

188. *See id.* at 1518.

By liberty, Calvin meant not anarchy or licentiousness, but rather their *opposite*.<sup>189</sup> “[N]o kind of government is more happy than one where freedom is regulated with becoming moderation.”<sup>190</sup> Far from a license to misbehave, liberty-like representation brought with it a heavy responsibility. Calvin did not remake the Church in toto, he retained the notion of the Church’s (and the civil government’s) power to demand obedience in virtually all circumstances.<sup>191</sup> He counseled general—some might say extreme—obedience to authority.<sup>192</sup> In most circumstances, the people owed fealty to the office created by God, even if that office was held by evil rulers. Only where the believer’s relationship to God was seriously endangered were the people, through their magistrates, permitted to resist or rebel.<sup>193</sup> Calvin saw just that sort of crisis in the pre-Reformation Catholic Church, whose evil was the tyranny of entrenched institutions and of bureaucrats indifferent to the needs of the individuals God charged them to serve.<sup>194</sup>

Under Calvin’s reasoning, the people did not have the authority to disobey bad rulers or to rebel against them. Such power was a more radical change in Church governance at the time than even Calvin could envision. Corrupt or tyrannical rulers were in fact the judgment by God rendered against the people for their own bad acts.<sup>195</sup> This reveals a tension in Calvin’s system: he approved of the people watching over their rulers to prevent tyranny, but assigned them no accountability for stern abuses of power.<sup>196</sup> His structure assigned value to accountability and responsibility, yet it implicitly permitted irresponsibility. It would take John Knox, the leader of the Scottish Reformation, to assign the people an active role in checking their leaders’ abuses of power.

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189. *See id.* at 1494 n.21 (quoting sermons in which Calvin states that “[n]othing is more desirable than liberty,” and liberty is an “inestimable good”).

190. *Id.*

191. *See id.* at 1493–94.

192. *See id.*

193. *See id.* at 1518.

194. *See id.* at 1512, 1518.

195. *See id.* at 1512.

196. *See id.*

## 2. *John Knox and the Role of the People in Checking Their Rulers*

While Calvin's theory left the people subject to a tyrannical ruler in all but the most extreme circumstances, Scottish reformer John Knox (1514–1572) is most remembered for advocating the people's active resistance to corrupt rulers.<sup>197</sup> This was a remarkable position for someone to take at the time and Knox did not begin from it, but reached it only once he was convinced that the normal channels of power could not save Scotland from the Catholic—and therefore idolatrous—Queen Mary.<sup>198</sup> Knox's searing criticism of the Catholic Church led Scotland's nobility and upper class to turn away from the Church and toward Calvin's reformed Church.<sup>199</sup>

Knox, building on Calvin, reasoned that the people had a duty to obey their rulers in most circumstances, but he added a concomitant duty to check rulers who went astray<sup>200</sup>: the office was distinct from the office holder, *and* the officeholder could be held to the requirements of the office.<sup>201</sup> Knox said that “the ordinance of God, and the power giffin unto man, is one thing, and the persone clad with the power or with the authoritie, is an[y] [o]ther [. . .] that the Prince may be resistit, and yit the ordinance of God nocht violatit, is evident.”<sup>202</sup> The right of the people to resist corrupt rulers is so evident, it might seem now, as to demonstrate how much Knox has come to inform our political common sense. But in the sixteenth century, this notion was radical and Knox made that evident through reason that defied the official common wisdom of the day. Although Knox's theory encouraged the common people to attack corrupt rulers through ordinary channels of power such as

197. See Jane E.A. Dawson, *Trumpeting Resistance: Christopher Goodman and John Knox*, in *JOHN KNOX AND THE BRITISH REFORMATIONS* 131, 140 (Roger A. Mason ed., 1998).

198. See *id.* at 144.

199. See *id.* at 145.

200. See Robert M. Healey, *John Knox's "History": A "Compleat" Sermon on Christian Duty*, 61 *CHURCH HIST.* 319, 322–23 (1992).

201. See Dawson, *supra* note 197, at 140. Knox's contemporary Christopher Goodman also advocated disobedience to corrupt monarchs by the people. See *generally id.*

202. *Id.* at 139 (quoting 4 *JOHN KNOX, THE HISTORIE OF THE REFORMATION OF RELIGIUN IN THE REALM OF SCOTLAND* (1566), *reprinted in* 2 *THE WORKS OF JOHN KNOX* 261, 435–36 (David Laing ed., 1848)).

the magistrates Calvin identified, it also permitted and even obligated them to disobey an “idolatrous” monarch—with or without sympathetic authorities in tow.<sup>203</sup> This duty to disobey was coupled with an obligation on the part of the people to monitor their leaders in the interest of the larger polity. If one saw a leader departing from the righteous path, one was required to warn of the dangers likely to follow.

Knox lived his own theory. He felt duty-bound to criticize plans for Queen Mary to enter into a Catholic marriage, and to criticize her Catholic practices, despite the fact that he was a commoner: “Yea, Madam, to me it appertains no less to forewarn of such things as may hurt [the commonwealth], if I foresee them, than it does to any of the Nobility.”<sup>204</sup>

Like Calvin, Knox did not believe that the people were inherently better than their rulers. His conception of their duty to watch and judge their rulers rested not at all on any such superiority. To the contrary, he considered them the “rascal multitude,”<sup>205</sup> and was deeply disappointed by the Scots’ willingness to tolerate Queen Mary’s Catholicism.<sup>206</sup> Knox believed that the people had no inherent right to rule themselves, but rather a God-given duty to ensure that those ruling them ruled appropriately.<sup>207</sup> The concept of this duty—to monitor and check wayward rulers—was Knox’s contribution to reformation theology, to structural political theory, and eventually to United States constitutional theory.

These contributions bore fruit in the Reverend John Witherspoon’s full-throttle support for the colonies’ revolutionary separation from England. Unlike Calvin’s theories, those of Knox would justify rejecting King George III rather than suffering his tyranny. A Calvinist raised in Scotland, such as Witherspoon, was poised to know the difference—and make a difference with it.

Calvin saw a corrupt church and diagnosed its problem with a radical new theory. There was no way to guarantee that church

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203. See Healey, *supra* note 200, at 322–33.

204. *Id.* at 326 (quoting KNOX, *supra* note 202, at 388).

205. Kenneth Lee Cuthbertson, “I Have Been Fighting Satan”: John Knox and the Quest for Godly Liberation in Sixteenth Century Britain (unpublished dissertation, Univ. Iowa 1992) (on file with author).

206. See Healey, *supra* note 200, at 327.

207. See *id.* at 328.

leaders would not abuse their powers. Thus, the solution lay in constructing a better *system* to govern their impulses, a system that would encourage virtue and discourage sin: representation in the service of God and the higher good. No such system would ever generate perfect results, but a particular structure at a particular time could deter some of the inevitable abuses of power. By building his system on the assumption of sin, Calvin eschewed idealism and any revolution that would promise permanent good government. Instead, he counseled *reform*. His conviction that people holding power would abuse it led him to conclude that reform was a never-ending project.

Calvin's paradoxical marriage of sin and grace, of despair and hope, is a move that reveals both Thomas Hobbes' (1588–1679) pessimism and John Locke's (1632–1704) Enlightenment optimism as oversimplifications. Hobbes and Locke are rightly credited with a measure of influence on the shape of representation in the United States, and this Article does not intend to belittle their influence. Their views have been the focus, though for many an analysis that has left out the Calvinist influences that were also present. This Article risks an over-emphasis on Reformation theology but does so for the purpose of counterbalancing the general wisdom that excludes theology from the sources employed by the Framers as they crafted the Constitution's structure. Both Hobbes and Locke directly addressed the relationship between the people and their governors; both have been credited as shaping the Framers' understanding of representation. But neither's work explains the constitutional system quite as well as Calvin's and Knox's.

Hobbes believed so deeply in the ineradicable shortcomings of humankind that he opposed democracy and favored a benevolent monarchical dictatorship.<sup>208</sup> Representation could not work, according to Hobbes, because there were too few to be trusted with such power so the best to be achieved was rule by a single dictator who chose to treat the people fairly and beneficently.<sup>209</sup> While the instinct of distrust can be found in the Constitution, Hobbes's pessimism about representative forms of government cannot.

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208. See THOMAS HOBBS, LEVIATHAN 113 (1651).

209. See *id.* at 144.

Locke, in his *Second Treatise on Government*, opened with the proposition that all men begin in a “state of nature.”<sup>210</sup> He argued further that they formed a contract among equals to create civil society and are governed by natural law, which is accessible by human reason.<sup>211</sup> As he saw it, legislators are (because of their close relation to the people) less likely to abuse their powers than an executive is.<sup>212</sup> This theory fits rather nicely with the Articles of Confederation of government instituted in the United States following the Revolution, but is at odds with the Framers’ observations at the Constitutional Convention. There, they repeatedly identified the legislature as the most dangerous branch of the government.<sup>213</sup> Locke lacks the thorough distrust that undergirded Calvin’s and the Framers’ governing theories.

Attention to Calvin’s views also reveals Edmund Burke (1729–1797) to be unfairly credited as a primary or singular intellectual ancestor of our Constitution’s system of representation. Burke, raised as a Protestant in Ireland, shared Calvin’s belief in the impossibility of perfecting human nature.<sup>214</sup> Unlike Calvin, however, he did not advocate experimenting with temporally-tailored, polity-specific forms of government. Rather, he insisted

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210. See JOHN LOCKE, *SECOND TREATISE ON GOVERNMENT* 4–5 (Maestro Reprints 2012) (1690).

211. See *id.*

212. See *id.*

213. See, e.g., MADISON, *supra* note 129, at 322–23 (statement of Gouverneur Morris) (“It is necessary then that the Executive Magistrate should be the guardian of the people, even of the lower classes, ag[ainst] Legislative tyranny, against the Great Y the wealthy who in the course of things will necessarily compose the Legislative body. Wealth tends to corrupt the mind & to nourish its love of power, and then to stimulate it to oppression” (footnote omitted)).

214. According to Burke, “[p]olitics ought to be adjusted, not to human reasonings, but to human nature; of which the reason is but a part, and by no means the greatest part.” EDMUND BURKE, *OBSERVATIONS ON A LATE PUBLICATION, INTITLED, “THE PRESENT STATE OF THE NATION”* (1769), *reprinted in* 1 *THE WORKS OF EDMUND BURKE* 185, 280 (1902). In politics, due to the weaknesses of human nature, “the greater the power the more dangerous the abuse.” See Edmund Burke, *Speech on the Motions Made in the House of Commons Relative to the Middlesex Election* (Feb. 7, 1771), *in* 7 *THE WORKS OF THE RIGHT HONORABLE EDMUND BURKE* 59, 62 (rev. ed. 1866). Therefore, “[w]hen bad men combine, the good must associate; else they will fall one by one, an unpitied sacrifice in a contemptible struggle.” EDMUND BURKE, *THOUGHTS ON THE CAUSE OF THE PRESENT DISCONTENTS* (1770), *reprinted in* 1 *THE WORKS OF EDMUND BURKE*, *supra*, at 306, 372.

that the structures of the past were the only ones worthy of trust.<sup>215</sup> He was a traditionalist, not a reformer.

Calvin, in contrast, refused to give the past any honorary status. He sought to preserve the Church, not because it already existed, but rather because it must exist. By the sixteenth century, the Church's traditions were an embarrassment, a mockery of the true Church. Calvin's prescription was to find the right structure for the times and to assume that it may have to be adjusted in the future. This allowed the structure of the church and the civil government to follow new paths as well as old.

Calvin's theories alone, however, cannot explain the full impact of Reformation theology on the Framing of the Constitution. Calvin locked himself into a position that required the people to suffer bad leaders, a position that would have counseled against the Revolutionary War and the Declaration of Independence. While structure could be altered, those holding particular offices appear inviolate in his scheme. Nevertheless, his acknowledgment that even church leaders could accomplish evil was a new and liberating idea, but it left his followers in the peculiar position of being powerless to eradicate evil once they had identified it. Knox added the crucial notion that the people may overthrow tyrannical leaders.

Neither Calvin nor Knox believed in direct rule by the people, but Knox added citizen resistance to Calvin's prescription of citizen's observation. Each prescribed radical moves based on radical theories, and they found their way into the Constitution via the influence of Reverend John Witherspoon and the Presbyterian Church in Scotland and the states.

### III. THE CALVINIST EDUCATION OF THE FRAMERS

#### A. *Witherspoon*

Centuries after it was drafted, the United States Constitution has been touted as a "model" for democratic governance. Setting aside the oft-justified charges of hubris and imperialism, the claim can be justified empirically by the success of the Constitution in establishing order and liberty for many years. The notion of the

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215. See Peter Berkowitz, *Burke Between Liberty and Tradition*, HOOPER INST. (Dec. 1, 2012), <https://www.hoover.org/research/burke-between-liberty-and-tradition> [https://perma.cc/QR68-AJWE].

Constitution as a “model framework” was not a view held by the Framers or the influential Reverend John Witherspoon.<sup>216</sup> He would have rejected the very idea of a “model constitution” and taught that constitutions must be fit to a people. To Witherspoon, a constitution has a finite lifespan:

Shall we live without government because every constitution has its old age and its period? Because we know that we shall die, shall we take no pains to preserve or lengthen life? Nay, rather “it only requires the more watchful attention to settle government upon the best principles and in the wisest manner that it may last as long as the nature of things will admit.”<sup>217</sup>

The Framers, acutely aware of their own fallibility and the likely shortcomings of the product they forwarded to Congress, hoped for little more than that the system would, in fact, run in the states. Madison himself despaired that it might not succeed.<sup>218</sup> Witherspoon taught him and others to construct a constitution the way a creative clockmaker would craft a clock; bringing together various cogs and wheels of government into a system.<sup>219</sup> Thus, a machine custom-built for the times and the people was to be constructed, and its one good was the common good.

The Reverend John Witherspoon lectured his students—who included Framers James Madison, David Bready, William R. Davie, Jonathan Dayton, and William Churchill Houston—on the different types of government under the heading, *Lectures on Moral Philosophy*.<sup>220</sup> But by moral philosophy, he did not mean a philosophy, which is the product of reason, does not contradict or displace religion but rather is “coincident with the word of God.”<sup>221</sup> Reason is a God-given tool for divining moral philosophy given by

216. *See id.*

217. COLLINS, *supra* note 23, at 9 (quoting Witherspoon).

218. *James Madison and the Federal Constitutional Convention of 1787*, LIBR. OF CONG., <https://www.loc.gov/collections/james-madison-papers/articles-and-essays/james-madison-and-the-federal-constitutional-convention-of-1787/> [perma.cc/S32B-P3DP] (last visited Apr. 18, 2021).

219. *See* Miller, *supra* note 10, at 37.

220. *See id.* at 26, 34.

221. *See* JOHN WITHERSPOON, *LECTURES ON MORAL PHILOSOPHY* (1800), *reprinted in* SELECTED WRITINGS, *supra* note 5, at 152, 152–53 (“Scripture is perfectly agreeable to sound philosophy. . .”).

God, which is needed because scripture does not “teach us everything.”<sup>222</sup> Witherspoon criticized the influential Scotsman Frances Hutcheson, who believed that all knowledge comes from revelation.<sup>223</sup> On his terms, reason and judgment were indispensable elements of the sort of moral decision making needed for government making.<sup>224</sup>

Witherspoon advocated Calvin’s experimental approach to structuring government, and he preached a responsibility to apply reason to determine the best government for a particular era and people. For Witherspoon, governments had their time: when a governing structure ceased to serve the common good, it was time to craft a new one to fit the current circumstances and needs of the people.<sup>225</sup> Human fallibility kept all structures from perfection, but human reason could work to reform them. Witherspoon taught his students that the four elements of a good government are:

- (1) wisdom to plan proper measures for the public good; (2) fidelity to have nothing but the public interest in view; (3) secrecy, expedition, and dispatch in carrying measures into execution; and, (4) unity and concord, or that one branch of the government may not impede or be a hindrance to another.<sup>226</sup>

The first two elements emphasize that the goal of good government is to serve the public good.<sup>227</sup> The latter two stress that pragmatic measures are necessary to achieve that goal.<sup>228</sup>

Following Calvin, Witherspoon identified the three classic structures of government as monarchy, democracy, and aristocracy.<sup>229</sup> These were the primary building blocks out of which men could structure governments. Again, following Calvin, he believed that the same precepts could be applied to church or

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222. *Id.* at 153.

223. *See* Miller, *supra* note 10, at 36.

224. *See id.*

225. *See id.* at 37.

226. WITHERSPOON, *supra* note 221, at 201.

227. *See id.*

228. *See id.*

229. *Id.* at 200.

government organization, because the fundamental starting point for both was original sin and the need to deter sin.<sup>230</sup>

Each of the classic forms was reflected in one of the post-Reformation Protestant structures. The Episcopal structure, or government by bishops, corresponded to the monarchical structure.<sup>231</sup> The Congregationalist structure, or government by the masses, corresponded to democracy.<sup>232</sup> And the Presbyterian structure, or government by duly elected representatives, corresponded to rule by an aristocracy.<sup>233</sup> All three church orders were evident in the colonies each with its own particular strongholds, and each present at the Constitutional Convention.<sup>234</sup>

Witherspoon echoed Calvin's counsel in the *Institutes* that nations need not choose only one form, and that the "simple forms" could be combined "in equal or in different proportions."<sup>235</sup> No single simple form of government was capable of achieving wisdom, fidelity to the public interest, efficiency, and community. Rather, the primary elements of each must be combined and/or modified for a people at a particular time. Witherspoon's evenhanded analysis invited his students to experiment this way and to analyze any form of government as a complex machine composed of individual mechanisms.

Each form—by itself—had its strengths and its weaknesses, according to Witherspoon. He defined monarchy as a system whose "supreme power is vested in a single person,"<sup>236</sup> and gave it high marks for efficiency but low marks for offering no guarantee of "wisdom or goodness."<sup>237</sup> It was "another name for tyranny, where the arbitrary will of one capricious man disposes of the lives and

230. See WITHERSPOON, *supra* note 5, at 130 n.1.

231. BROWN, *supra* note 51, at 6.

232. See *id.*

233. See *id.* at 6–7.

234. See, e.g., WILLIAM WARREN SWEET, *RELIGION IN THE DEVELOPMENT OF AMERICAN CULTURE, 1765–1840* 85 (1952) (stating that nineteen of the Framers were Episcopalians, eight Congregationalists, seven Presbyterians, two Roman Catholics, two Quakers, one Methodist, and one Dutch Reformed). My research indicates that there were at least seventeen who were influenced by Presbyterianism (including James Wilson, who converted to Anglicanism later in life). See *supra* notes 13–19 and accompanying text.

235. WITHERSPOON, *supra* note 221, at 201.

236. *Id.*

237. *Id.* at 202.

properties of all ranks.”<sup>238</sup> Aristocracy, or the employ of persons of the “first rank” to govern, exceeded the other two forms in wisdom but failed to ensure fidelity to the people’s interest or unity.<sup>239</sup> It “always ma[de] vassals of the inferior ranks.”<sup>240</sup> Democracy was better than either monarchy or aristocracy in ensuring fidelity to the public good, but it failed to secure wisdom and community, and, most particularly, it lacked efficiency.<sup>241</sup> “Pure democracy,” or direct rule by the people, could not last for long, because it was “subject to [the] caprice and the madness of popular rage.”<sup>242</sup> Nor were the people a particularly reliable check on the their leaders’ abuses of power. The people tended to trust their leaders with “such power” that their leaders could make the people serve their whims.<sup>243</sup> In short, “none of the simple forms [of government] are favorable to [liberty].”<sup>244</sup> Witherspoon thus led his students to the conclusion that every form of good government “must be complex.”<sup>245</sup>

Witherspoon offered a three-element prescription for crafting good governments, each element of which appeared to some degree at the Constitutional Convention. First, he preached distrust of human motives, “[f]or all have sinned and come short of the glory of God.”<sup>246</sup> People should assume that all rulers would be tempted to abuse their powers.<sup>247</sup> This was not a pessimistic view: it reflected the Calvinist view that virtuous rulers *could* appear, but that one should expect all to be tempted to forsake virtue for power. Thus, any form of government *could* appear, but that one should

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238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.* at 202–03.

243. *Id.*

244. *Id.* at 202.

245. *Id.* at 203.

246. 1 JOHN WITHERSPOON, THE WORKS OF THE REV. JOHN WITHERSPOON 267–68 (2d ed. 1802) (quoting *Romans* 3:23).

247. See WITHERSPOON, *supra* note 221, at 204.

expect all to be tempted to forsake virtue for power. Thus, any form of government *could* produce virtue and happiness or tyranny.<sup>248</sup>

Second, liberty (his synonym—like Calvin’s—for good government) was achievable if the various elements of government were balanced so that one would check another.<sup>249</sup> In other words, no one part of the government should be permitted to hold overweening power. Each should have just enough power to carry out its duties in the interest of the public good—and no more. This is what he called the “doctrine of the Balance of Power.”<sup>250</sup>

Third, these mutually balanced elements should be interdependent to some degree so as not to whirl away into their own orbits.<sup>251</sup> There must be some necessity binding the otherwise independent forces together.

All the forms of government might produce virtue and happiness, but the securing liberty for all required a system that built in distrust and hope. The resulting system aims for balance and independence to achieve “the protection of liberty.”<sup>252</sup> And why was liberty so precious? Because it alone “put in motion all the human powers.”<sup>253</sup> It was the “nurse of riches, literature, and heroism,”<sup>254</sup> the pathway to cultural and individual riches.

Following Calvin’s and Knox’s prescriptions, Witherspoon did not view self-government as a worthy goal. Ordered liberty was the better goal and could be achieved only through the right structure of government.<sup>255</sup> Witherspoon did not elaborate on why these three elements—riches, literature, and heroism—are worthy goals of good government; he simply stated them. But Calvinist theory can help to explain them as signs of success. For the Calvinist, who can obtain no guarantee in this life of being one of God’s favored,

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248. *See id.* at 205. Witherspoon was quite comfortable bringing together apparent opposites—like distrust and hope—and conceding the paradox. *See also* NOLL, *supra* note 18, at 47.

249. *See* WITHERSPOON, *supra* note 221, at 203.

250. *See* COLLINS, *supra* note 23, at 9–10.

251. WITHERSPOON, *supra* note 221, at 203.

252. *Id.* at 191.

253. *Id.* at 205.

254. *Id.*

255. *See id.* at 203.

earthly success is a sign of being chosen.<sup>256</sup> The governmental structure crafted by Witherspoon implied a society where visible success, and possibly salvation, would be more likely. His structure would have attracted the Calvinist by subtly improving the odds of salvation.

In addition to identifying for his students the building blocks of government and suggesting how they should be combined, Witherspoon also taught them a pragmatic approach to the problem of crafting a new government. He rejected the notion that one ought to “reason downward upon metaphysical principles.”<sup>257</sup> Counseling instead that it was “safer” to reason by “trac[ing] facts upwards.”<sup>258</sup> The man who would formulate good government was not contemplating the Platonic Forms but rather an experimental observer, who should take into account the facts before him and take seriously the lessons of the past.<sup>259</sup> Following Calvin, Witherspoon urged movement *away from* the notion of an ideal government and crystalline metaphysical concepts, and *toward* pragmatic solutions to experienced problems.<sup>260</sup> The forms of government were not vapid structures to be brought together by dilettantes with no reference to political realities. To the contrary, they required all of one’s reason—both practical and theoretical.

The Framers were charged with the job of “fixing” the Articles of Confederation, and the most important among them—James Madison and James Wilson—approached their task as one of reformation, not revolution. Witherspoon’s lectures foreshadowed that approach by inculcating a Calvinist understanding of governments as experimental complexes of basic building blocks.

For the United States, as for the Presbyterian Church, Witherspoon advocated a system of representation that fell between

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256. See Anthony Giddens, *Introduction* to MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM*, at vii, xii–xiii (Routledge Classics 2001) (1930).

257. See WITHERSPOON, *supra* note 221, at 229.

258. *Id.* Given his predilection for a pragmatic approach, it may not come as a surprise that Witherspoon was widely respected as a man of uncommonly “good sense” who placed his emphasis on the “ability of intuition to uncover the truth.” NOLL, *supra* note 18, at 28–29, 41.

259. See *id.* at 46, 47.

260. With this move, Witherspoon is credited with turning Princeton away from the influence of Jonathan Edwards, who heavily influenced Yale. See *id.* at 44–45.

an aristocracy and a democracy. He believed the failure of the Articles of Confederation argued in favor of in a system in which the people did not rule but rather delegated their authority to representatives who were accountable to them to pursue the common good.<sup>261</sup> This system created a “double duty . . . that of the people who choose their rulers, and that of the representatives to whom is entrusted the exercise of this delegated authority.”<sup>262</sup> Representatives were to be trustees of the people’s interest with independent authority to reach judgments in their service.<sup>263</sup>

This representative system was premised on the necessity of choosing representatives who were virtuous. Witherspoon declared that “[t]he people must choose men of high principles” in order for the system to achieve certain good ends: “whatsoever state among us shall continue to make piety and virtue the standard of public honor, will enjoy the greatest inward peace, the greatest national happiness, and in every outward conflict will discover the greatest constitutional strength.”<sup>264</sup>

#### B. *Jonathan Edwards*

An Article claiming a preeminent role for John Witherspoon in the constitutional calculus cannot ignore the fact that there was a more respected and more brilliant Calvinist at the time: Jonathan Edwards. Edwards is credited with being the greatest Calvinist theologian of his time, and perhaps in American history.<sup>265</sup>

Calvinist theology yielded two church structures in the states: the Presbyterian representative systems and the Congregationalist democracies. Witherspoon was the leader of the former, while Edwards served the same role for the latter,<sup>266</sup> which was the branch of Calvinism that gave lip service to rule by the people (though in practice their church governance was not as purely

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261. See Terence S. Morrow, *Common Sense Deliberative Practice: John Witherspoon, James Madison, and the U.S. Constitution*, 29 *RHETORIC SOC’Y Q.* 25, 34 (1999).

262. COLLINS, *supra* note 23, at 128.

263. See *id.*

264. *Id.* at 128–29.

265. See E. BROOKS HOLIFIELD, *THEOLOGY IN AMERICA* 102–27 (2003).

266. See *id.* (describing Edwards’s theology and influence); NOLL, *supra* note 18, at 29–31, 43–47 (describing Witherspoon’s influence and refutation of Edwards).

democratic as their name would imply).<sup>267</sup> Despite Edwards's unquestioned brilliance, there is no evidence that his ideas were influential at the Constitutional Convention. Unlike Witherspoon, he did not train any of the Framers.<sup>268</sup> Edwards might have had the chance to carry the day at the Constitutional Convention, and his influence might have had the chance to produce a different, more democratic system, had he been able to serve longer as President of the College of New Jersey, a position characterized as "the functional leadership of American Calvinism."<sup>269</sup> But after being appointed in January of 1758, he died of smallpox a few months later without having left a lasting mark on the College.<sup>270</sup> Witherspoon eventually replaced him, serving from 1768 until 1794, and steered the school more securely toward Presbyterian and traditional Calvinist precepts.<sup>271</sup>

As Calvinists, Edwards and Witherspoon shared some core theological tenets, especially the consuming focus on original sin. There are marked differences in emphasis, however, where their theories reach questions of church or government organization. Those differences are worth considering here because they bring into focus the distinction between the Constitution that *was* enacted (a republican structure) and the one that so many of our most distinguished constitutional law experts *believe* was enacted (one rooted in the value of self-rule).<sup>272</sup>

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267. See James F. Cooper, Jr., *Higher Law, Free Consent, Limited Authority: Church Government and Political Culture in Seventeenth-Century Massachusetts*, 69 *NEW ENG. Q.* 201, 205 (1996) (describing the power of ministers in church business).

268. See generally PERRY MILLER, *JONATHAN EDWARDS* (1965).

269. ALAN HEIMERT, *RELIGION AND THE AMERICAN MIND* 155 (1966).

270. See Francis L. Broderick, *Pulpit, Physics, and Politics: The Curriculum of the College of New Jersey, 1746–1794*, 6 *WM. & MARY Q.* 42, 59–68 (1949).

271. See M.X. LESSER, *JONATHAN EDWARDS* 19–20 (1988).

272. Compare Mark Noll, *What Has Been Distinctly American About American Presbyterians?*, 84 *J. Presbyterian Hist.* 6, 6 (2006) (describing Presbyterian church government as "combin[ing] substantial elements of both aristocracy and democracy" of "government by elders in a layered series of courts—representatives acting on behalf of God's people"), with Cooper, *supra* note 267, at 205–06 (describing Congregationalist church government as mainly guided and controlled by ministers but with some limitations by the laity to recall errant leaders).

Edwards was educated at Yale and served as a minister for most of his life.<sup>273</sup> Like all true Calvinists, he believed that men “always have a tendency to sin,” and he built his theology around that premise.<sup>274</sup> The reality of original sin and the sinfulness of men over time undermined the facile optimism of the Enlightenment theorists, who had placed too much trust in the capacity of human reason. Rulers, like all others, were likely to abuse their powers.<sup>275</sup>

Sounding themes from Calvin and Knox respectively, Edwards counseled the people to scrutinize and criticize “the management of public affairs, and the duty of the legislature, and those that are at the head of the administration.”<sup>276</sup> From his pulpit he inveighed against local politicians, saying that too many of their kind operate only “to enrich themselves, or to become great, and to advance themselves on the spoils of others.”<sup>277</sup> On these points, he was in harmony with Witherspoon.

As a Congregationalist, however, Edwards had a theology and philosophy tending more toward consensus or community-based decision-making than the representative democracy chose by the Framers and the Presbyterian Church. He sought “the harmonious cooperation of all men” in the public sphere.<sup>278</sup> For him, “community is a defining character of reality,”<sup>279</sup> but bare democracy was untenable because the church required *some* structure to achieve cooperation and organization.

273. See LESSER, *supra* note 271, at 25–27.

274. ROBERT W. JENSON, *AMERICA’S THEOLOGIAN: A RECOMMENDATION OF JONATHAN EDWARDS* 145 (1988); *see also* JONATHAN EDWARDS, *ORIGINAL SIN* 108 (Clyde A. Holbrook ed., Yale Univ. Press 1970) (1758).

275. See JONATHAN EDWARDS, *The Day of Judgment* (Dec. 1729), *in* 14 *THE WORKS OF JONATHAN EDWARDS: SERMONS AND DISCOURSES, 1723–1729*, at 506, 514–15 (Kenneth P. Minkema ed., 1997) (“There are many of the kings and great men that don’t suitably acknowledge the God that is above them, but seem to look upon themselves as supreme, and tyrannize over mankind as if they were accountable to no other.”).

276. JONATHAN EDWARDS, *THOUGHTS ON THE REVIVAL OF RELIGION IN NEW ENGLAND* (1740), *reprinted in* 3 *THE WORKS OF PRESIDENT EDWARDS* 273, 275 (1881).

277. JONATHAN EDWARDS, *CHARITY AND ITS FRUITS: OR, CHRISTIAN LOVE AS MANIFESTED IN THE HEART AND LIFE* 82 (Tyron Edwards ed., Alacrity Press paperback ed. 2015) (1852) (an originally unpublished sermon delivered in 1738).

278. HEIMERT, *supra* note 269, at 155.

279. JENSON, *supra* note 274, at 176.

Even though he did not advocate direct democracy, or rule by the people, he saw in true believers a rightful aristocracy. Edwards lost his pulpit in an attempt to elevate true believers as a class reaching beyond church elders and community leaders and over all others.<sup>280</sup> He argued that only the saints here on earth should receive communion, simultaneously reducing the numbers of those who might take communion but increasing, as a class, the stature of those who did.<sup>281</sup> Thus, his inclination to community was toward a privileged community not the general community. Moreover, his theories were more suited to the Church than civil government, unlike Calvin's and Witherspoon's.

Though he was a Calvinist, Edwards eschewed Calvin's and Witherspoon's chief focus on power. He placed love at the fulcrum of belief and theology.<sup>282</sup> And while this may have counted as a step forward for theology, it firmly settled him outside the bounds of plausible constitutional influence, since the Constitution's decided focus is power. Nor did Edwards explicitly embrace the experiment, context-dependent approach to crafting government charted by Calvin and later embraced by Witherspoon and the Framers. While the Constitution's primary focus on the division and distribution of power can be explained by reference to Calvinism, it is not to the Calvinism of Jonathan Edwards.

Since Calvin's and Knox's reformation approaches to government were brought to the college classroom and to influential Framers such as James Madison through the Reverend John Witherspoon it is no accident that United States governmental structure bears strong similarities to the Presbyterian Church's governmental structure. This link between Reformation political theory and the Framers is probative on the question of the Framers' choice of a governmental structure—it serves to test, try, and prove this Article's theory of why we have the representational scheme we do and how its origins can guide us to reform it.

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280. HEIMERT, *supra* note 269, at 154.

281. *See id.*

282. *See* DOUGLAS J. ELWOOD, *THE PHILOSOPHICAL THEOLOGY OF JONATHAN EDWARDS* 30–31 (1960).

## IV. THE CONSTITUTION'S SCHEME OF REPRESENTATIONS AND THE REJECTION OF SELF-RULE

Framer James Wilson expressed the Presbyterian distaste for direct democracy and the spirit of accountable representation in the following quote. To summarize, the representative is intended to make substantive decisions that are in the best interest of the greater good, not to blindly follow the demands of constituents. This principle is reflected in the fact that the Framers rejected a “right to instruct” their representatives on the part of constituents during the term of representation:<sup>283</sup>

Mr. Wilson could not approve of the Section as it stood, and could not give up his judgment to any supposed objections that might arise among the people. He considered himself as acting & responsible for the welfare of millions not immediately represented in this House. He had also asked himself the serious question what he should say to his constituents in case they should call upon him to tell them why he sacrificed his own Judgment in a case where they authorised [sic] him to exercise it? Were he to own to them that he sacrificed it in order to flatter their prejudices, he stood dread the retort: did you suppose the people of Penn[sylvania] had not good sense enough to receive a good Government?<sup>284</sup>

A paradox of distrust and hope, with strong Calvinist overtones, animated the Framers' discussions during the Constitutional Convention. Wherever the Framers looked, they accepted as a fact that men could and would use their power to accomplish evil, rather than good: “From the nature of man we may be sure, that those who have power in their hands will not give it up while they can retain it. On the contrary we know they will always when they can rather increase it.”<sup>285</sup> In James Madison's words, “[t]he truth was that all

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283. Marci A. Hamilton, *Discussion and Decisions: A Proposal to Replace the Myth of Self-Rule with an Attorneyship Model of Representation*, 69 N.Y.U. L. REV. 477, 494–543 (1994). The principle is also embraced by Edmund Burke, who stated that “[y]our representative owes you, not only his industry, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.” Edmund Burke, Speech to the Electors of Bristol (Nov. 3, 1774), in 2 THE WORKS OF THE RIGHT HONORABLE EDMUND BURKE 89, 95 (1866).

284. MADISON, *supra* note 129, at 454.

285. *See id.* at 266.

men having power ought to be distrusted to a certain degree.”<sup>286</sup> The temper of the debates makes it quite clear that many of his cohorts nodded their heads in silent agreement on this point: no Framer even disputed it.<sup>287</sup> And when it came time to sell the Constitution to the people Madison, in *Federalist Number 51*, pointed to man’s sinfulness as the fact that made government necessary:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.<sup>288</sup>

Yet, while the Framers accepted the fallibility of man and his institutions, they did so in the context of a hardy and fundamentally Calvinist faith in the ability of governing structures to stem human nature.<sup>289</sup> They came to their distrustful attitude through

286. *Id.* at 272; *see id.* at 288 (statement of Elbridge Gerry) (“They will if they acquire power like all men, abuse it.”); *id.* at 193 (statement of Madison) (“In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were first to protect the people ag[ainst] their rulers . . . .”); *id.* at 197 (James Wilson) (referring to “tyranny”); *id.* at 133 (Alexander Hamilton) (“The members of Cong[ress] being chosen by the States and subject to recall, represent all the local prejudices . . . . till a tyrannic sway shall be established.”); *id.* at 279 (statement of Randolph) (referring to legislatures’ propensity to “perpetuate [its] power”); *id.* at 323 (statement of Gouverneur Morris) (referring to “love of power [and] oppression”). Pierce Butler, along with Charles Pinckney and John Rutledge, expressed concern with Edmund Randolph’s proposal to give the national Legislature the power to enact laws “in all cases to which the State Legislatures were individually incompetent.” MADISON, *supra* note 129, at 42–43. Randolph “disclaimed any intention to give indefinite powers to the national Legislature, declaring that he was entirely opposed to such an inroad on the [s]tate jurisdictions.” *Id.* at 44.

287. *See id.* at 271–74.

288. THE FEDERALIST NO. 51 (James Madison) (1788), *reprinted in* THE FEDERALIST PAPERS 263, 264 (Ian Shapiro ed., 2009).

289. *See* MADISON, *supra* note 129, at 44 (expressing a desire to outline the “powers exercised by the national Legislature”); *cf. id.* at 187 (statement of Pinckney) (“The Confusion which has produced the present relaxed State is not owing to [the people]. It is owing to the weakness & [defects] of a Gov[ernment] incapable of combining the various interests it is intended to united, and

theological predisposition as well as the lessons of their recent history. They had learned, and learned at great cost, that Parliament, which was supreme in England, could not be trusted; that King George III could not be trusted to serve the common good. Wherever the colonists—and later, the citizens of the United States—had turned for leadership and justice, they had been disappointed. As heady as the success of the American constitutional experience has been, the Constitution's Framers came to the table preoccupied with the failures of a great many governing schemes. Their goal was to structure a system to avoid tyranny—from any corner.

Because there was broad consensus on this goal, the constitutional debates typically focused on the choice of the best means to achieve it. The premise for the Convention was that the Articles of Confederation had failed to create an entity with sufficient central unity to wage war, engage in foreign commerce, or enforce taxation.<sup>290</sup> The Framers proceeded from this premise on a mission to reform—not revolutionize—the existing system. The Revolutionary era was over and revolution by itself had not yielded a workable government; serious reforms were required or else the confederation, which had won independence from Britain, would disintegrate into thirteen separate states.

The Framers viewed themselves as laboring to achieve the right balance between entities and individuals likely to abuse their powers.<sup>291</sup> Echoing Calvin's assessment of the Pre-Reformation Roman Catholic Church's leaders, they believed that the appropriate exercise of power fell between two extremes: anyone holding power could exercise it ineffectually or too aggressively. Both extremes are unacceptable.<sup>292</sup> James Wilson put it this way:

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destitute of energy.”); *id.* at 222 (James Wilson) (referring to “weakness” of the United States under the Articles of Confederation).

290. *Id.* at 91 (James Wilson) (“To correct [the Articles’] vices is the business of this convention.”).

291. See Marci A. Hamilton, *Representation and Nondelegation: Back to Basics*, 20 CARDOZO L. REV. 807, 809 (1999); Marci A. Hamilton, *The People: The Least Accountable Branch*, 4 U. CHI. L. SCH. ROUNDTABLE 1, 4–5 (1997) (discussing images of solar system and clock); Neil Weinstock Netanel, *Cyberspace Self-Governance: A Skeptical View from Liberal Democratic Theory*, 88 CALIF. L. REV. 395, 415 (2000).

292. Compare MADISON, *supra* note 129, at 296 (statement of James Wilson) (“The great fault of the existing confederacy is its inactivity.”), with *id.* at 288

“Bad govern[men]ts are of two sorts. [First,] that which does too little. [Second,] that which does too much: that which fails thro[ugh] weakness; and that which destroys thro[ugh] oppression.”<sup>293</sup> The Articles of Confederation had produced both types: a weak central government and oppressive state government;<sup>294</sup> the Framers tried to strengthen the national government without anointing it the next oppressor.<sup>295</sup>

The Framers’ shared focus on identifying and preventing abuses of power (whether through inaction or aggression) did not mean they agreed on which governmental structure would tend to tyranny. Rather, these conclusions were empirical. In context of discussing whether there ought to be popular elections, Mason asserted his frustration with the differing empirical claims: “[a]t one moment we are told that the Legislature is entitled to thorough confidence, and to indefinite power. At another, that it will be governed by intrigue & corruption, and cannot be trusted at all.”<sup>296</sup> James Wilson responded that “[t]he legisl[atu]re might deserve confidence in some respects, and distrust in others.”<sup>297</sup> Madison advised the Framers to distrust all men to some degree.<sup>298</sup> Mason disagreed, instead agreeing with Governor Morris that “[t]he best course that could be taken would be to leave the interests of the people to the Representatives of the people.”<sup>299</sup> In turn, it was declared that “[t]he legislature will continually seek to aggrandize

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(statement of Elbridge Gerry) (stating that “all men [ ] abuse” the power given to them).

293. *Id.* at 222.

294. *See id.* (statement of James Wilson) (“Under which of these evils do the U. States at present groan? [U]nder the weakness and the inefficiency of its Govern[men]t.”); *id.* at 296 (statement of Wilson) (“The great fault of the existing confederacy is its inactivity. It has never been a complaint ag[ain]st Cong[ress]s that they governed overmuch. The complaint has been that they have governed too little. To remedy this defect we were sent here.”).

295. *See id.* at 201 (statement of Luther Martin) (stressing that the federal government’s “powers ought to be kept within narrow limits”).

296. *Id.* at 308.

297. *Id.* at 309.

298. NEIL H. COGAN, CONTEXTS OF THE CONSTITUTION: A DOCUMENTARY COLLECTION ON PRINCIPLES OF AMERICAN CONSTITUTIONAL LAW 618 (1999).

299. *Id.* at 619.

and perpetuate themselves, and will seize those critical moments produced by war, invasion or convulsion for that purpose.”<sup>300</sup>

In short, the disagreements at the Convention reflected not different assessments of human nature or different judgements regarding ancient or modern forms of government—on these topics there was general agreement—but rather different empirical assessments by each Framer of the governing structure examined. Witherspoon’s Calvinist stamp seems quite evident here. The Convention’s approach was empirical and experimental. Using their experiences and education—not abstract thought alone—they made factual calculations, tested their hypotheses against known experience, and set forth the Constitution as an experimental model likely in need of recurrent tinkering to make it work. The Constitution was a machine to be set down in the real world and subjected to the stresses and challenges of actual people. Like Calvin, the Framers feared for the failure of their experiment. In the cover letter addressed to Congress that accomplished the Constitution, they acknowledged that their product was not perfect and would likely be in need of reform in the future.<sup>301</sup>

#### CONCLUSION

The answer to whether the United States is a “Christian nation” is complicated, but it is fair to reject the notion that it is a country that was designed to be controlled by one set of religious principles or a religious dogma. Rather, the Constitution’s founding is steeped in the humility of a deep appreciation of human frailty and the dangers posed by power, and we have the Calvinist influence to thank for that. I would posit that this embrace of distrust and hope in the constitutional design is a major contributor to the resilience of the constitutional order.

My answer to the question of whether the United States is a “Christian nation”—if what one means is that the United States is limited to a singular religious viewpoint and certain Christian morals—is that such a claim is evidence of the hubris the Calvinists wisely warned us against.

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300. MADISON, *supra* note 129, at 322.

301. *See id.* at 626–27.