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Covenant and Compact: Bases for Citizen Obligation

by
David H. Moore

Views on the role of the government and the role of the citizen have changed in modern America, leading to an idea that government is the provider of goods to be consumed and that citizens have no obligations with respect to the government. The founding documents of America suggest that this is not so. Rather, the American founding is based on the ideas of covenant and compact. Covenants and compacts require all parties to agree to certain obligations. The founding of America and of American states was accomplished through covenants and compacts, and consequently place obligations on citizens.

Introduction

Today, America’s political and social system suffers from what Daniel Elazar terms consumerism. Instead of seeing themselves as responsible citizens, many Americans perceive themselves as consumers (Elazar 1988, 82). The traditional idea of citizenship as individual participation in the polity and contribution to society (upon which our nation was founded) has been supplanted by the notion of residence, which allegedly entitles the individual to demand benefits from a government "out there," whose success is measured by its ability to deliver (Elazar 1976, 4). In response, governments have solicited greater resources in a "politics of purchased solutions" which "substitutes money for commitment" (21). This trend that is transforming citizenship into consumerism and government into commerce has lead to predatorial behavior and has eclipsed understanding of individual responsibility to society and to the polity. To combat this threat, we must restore a true understanding of the principles upon which our nation was founded: the principles of covenant and compact. In this essay, I will explain the concepts of covenant and compact and show that our system was founded on them. I will then explore the obligations that result from our national covenant and compact.

The Concepts of Covenant and Compact

The idea of the covenant, as Elazar explains, comes from Hebrew scripture and consists of a mutual promise voluntarily effected by independent parties in the presence of higher authority, often God. Covenants are usually meant to be eternal and are often political, though they also govern the divine relationship between God and man (1988, 30, 90). As witnessed in the Bible, the covenant places moral and legal obligations on all who enter into it. The covenant people of Israel, for example, were not only to measure their products justly, but they were also to "be holy" as the Lord was holy (Leviticus 19:2, 36). Thus, the covenant bound all, including God, to legal and moral virtue (Wardle 1987, 16).

While the American colonists, according to Donald Lutz, often used the verbs "agree," "compact," and "covenant" synonymously, there remains a difference between these concepts (1988, 16, 19). Both covenants and compacts involve consensual public agreements and require participants to treat each other
according to the spirit of the law and not according to the narrow, contractual readings. The covenant, however, differs from the compact in that its moral aspects supersede its legal aspects (Elazar 1988, 91; Lutz 1988, 18). Further, God is usually cited as a witness in the covenant, while the people remain the highest authority in the compact (Elazar 1988, 91; Lutz 1988, 17, 28). As both Lutz and Elazar recognize, the compact is a secular form of the covenant which removes God as a party and focusses on relationships between men (Elazar 1988, 30; Lutz 1988, 28).

Locke best explained the notion of the compact. He believed that in the state of nature, men are free and equal (1689, 3). In order to receive the benefits of community, men make social compacts to form societies. This voluntary agreement is the only way that a legitimate political system may begin and is "[t]he only way whereby any one divests himself of his natural liberty and puts on the bonds of civil society" (58). Once men unite in society, they surrender the powers necessary to accomplish the ends of that society and submit to majority rule, limiting their own freedom (60). Thus, the compact, like the covenant, places limitations and obligations on its integrants.

Citizen Obligations Inherent in Covenants and Compacts

When men enter into a covenant, "[s]o long as [the] authorities [of the covenant are] . . . acting within the sphere of authority established by the covenant, [men are] . . . obligated to obey" (Baldwin cited in Wardle 1987, 16). As mentioned, even God becomes subject to the covenant's terms (Wardle 1987, 16). Obedience to the law is thus the most basic obligation emanating from a covenant or compact.

John Finnis elucidates why covenantors or compactors are obligated to obey. When men enter a covenant or compact, he explains, they do so for the common good, i.e., to obtain rewards attainable only in a community and only through the rule of law. He states that, first, citizens must be law-abiding in order to obtain the common good. Second, where an act is made obligatory by law, the citizen must perform that act to be law-abiding. Thus, the citizen is obliged to execute acts required by the law (1988, 316). At the very least, then, any covenant or compact requires participants to obey the law.

This is true; but more is required. As Milton Knovitz notes, the voluntary nature of the covenant provides a basis for both political and moral obedience (Cited in Vetterli and Bryner 1987, 36). Similarly, the voluntary social compact stipulates that people receive the benefits of societal life and in turn owe certain obligations, besides obedience (Cheney 1985, 7). They enjoy what Daniel Elazar entitles "federal liberty." When the Declaration of Independence speaks of liberty as an inalienable right, says Elazar, it does not refer to an absolute liberty, but a federal liberty (1988, 98). According to Elazar, "[f]ederal liberty is necessary to prevent the disorder of anarchy and the diseases of natural liberty" (172) and consists of freedom to live in accordance with the rules of the covenant (or compact) that initiated the system (128). Acts that violate the nature of the societal agreement are anarchic and so justifiably prohibited and punished by government (128). Thus, the covenant and the compact not only oblige the citizen to obey the laws, but also to live in accordance with the spirit or principles of the covenant or compact. While obedience remains a constant obligation for citizens of all covenanted or compacted societies, the principles that citizens must adhere to vary depending on the nature of each covenant or
compact. Therefore, after addressing arguments against the idea that covenants and compacts provide a basis for citizen obligation, and after documenting how covenant and compact form the foundation of the American polity and society, I will identify some of the American citizen's obligations that stem from that foundation.

Obligation of Those Born into the Covenant or Compact

Locke, in his Second Treatise of Government, identifies an alleged flaw in his theory of the social compact: that except for the original compactors, all men are born under a government and so never have the opportunity to voluntarily enter the social compact into which they are born or to establish another one (1689, 69). Locke responds "that a child is born a subject of no country or government." Children are raised by their parents until they reach the age at which they can choose independently what society they will join (72). This choice can be made through express or tacit consent (72). For example, while a child may not expressly offer his consent, if he accepts his father's property, obtains other possessions within the realm of that society, or enjoys some of the benefits of that society, then he has given his tacit consent and he is obligated to fulfill the responsibilities of a citizen of that compact (71, 73).

The Conventionalists, as Noel Reynolds explains, offer a similar explanation to the problem of birth under the covenant or compact (1991). Like Locke, they believe that a man can show his consent through his actions as well as his words. They assert that children are not full citizens, because they do not have all the benefits of the society. Consequently, children do not have the same citizen obligations as do adults, and their punishments for disobeying the law are less severe. When, however, a child reaches an age where he is free to leave the country or change its laws through suffrage and political participation, then he shows his acceptance of the system by remaining under its jurisdiction and enjoying its benefits. Thus, even those who do not participate in the original covenant or compact do, at least in the United States, have the opportunity to voluntarily consent to or dissent from the system. Once they consent, they are morally bound to fulfill their citizen obligations.

The American Polity as Covenant and Compact

The fact that our political system was formed by both covenant and compact is evident from the pervasiveness of these ideas before and at the time of the founding and from the documents that affected the founding of our nation and of our government: the Declaration of Independence, the federal Constitution, and the state constitutions.

The Pervasiveness of Covenantism in Colonial America

The idea of the covenant was commonplace and widely accepted in colonial America. As Lynn Wardle notes in his article "The Constitution as Covenant," almost all the religious sects and settlements that came to America brought with them covenant theology: the Pilgrims, the Puritans, the Anabaptists, the Presbyterians, etc. (1987, 12). The Puritans, most often recognized as the primary adherents to and disseminators of covenantism, were, according to Clinton Rossiter, "'obsessed with the covenant or contract, relying on this handy instrument to explain almost every relation of man to man and man to God'" (cited in Wardle 1987, 12). While Donald Lutz
recognizes the expansive influence of the Puritans, he maintains that the Calvinists were also very familiar with covenant theology and as the dominant religion in much of colonial America, were even more influential in spreading the covenant perspective (1988, 24-25).

Regardless of which sect was most instrumental in spreading covenant theology, the fact remains that about four-fifths of colonial New England's church-attenders belonged to Protestant faiths that taught the covenant theology as an essential part of their doctrine (Wardle 1987, 13). By 1780, America boasted over 1900 congregations of "covenant theology" mainline denominations" (Marty cited in Wardle 1987, 23). Clearly, covenantism was a widely accepted doctrine in colonial America.

### The Use of Covenant in Colonial America

Not only was covenantism a widespread idea, but the idea of the covenant was put into practice in organizing churches, "scientific and reform societies, labor unions, and professional associations as well as business corporations" (Elazar 1988, 33). Most importantly, the covenant formed the base of many of the colonial political organizations (Wardle 1987, 12). Those of the Plymouth Colony, for example, covenanted to form a "body politic" when they arrived. Their covenant, recorded in the Mayflower Compact, reads:

> Haveing undertaken, for the glorie of God, and the advancemente of the Christian faith, and honour of our king and countrie, a voyage to plant the first colonie in the Northerne parts of Virginia, doe by these presente solemnly and mutually in the presence of God, and one another, covenant and combine our selves togeather into a civil body politicke; for our better ordering and preservation and furtherance of the ends aforesaid; and by vertue hearof to enacte, constitute, and frame such just and equall lawes, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meete and convenient for the generallgood of the Colonie, unto which we promise all due submission and obedience (cited in McLaughlin 1932, 18-19).

Thus, they called upon God as a witness and covenanted both to him and to each other to establish a political system. Later, in 1639, the people of Connecticut made a similar covenant which is recorded in America's "first written constitution": the Fundamental Orders of Connecticut (McLaughlin and Rossiter cited in Wardle 1987, 14). In this document the people agreed to "assitiate and conioyne [them]... selues to be as one Publike State or Comonwelth; and . enter into Combination and Confederation togather" in order to establish a government "according to God" (Perry 1978, 120). Other political documents, like the 1636 Pilgrim Code of Law, were also based on covenants (Lutz 1988, 25). The most important of these is the Declaration of Independence, which created the American nation through a covenant.

### The Covenant as the Foundation of the American Nation

In that famous document, "representatives of the UNITED STATES OF AMERICA ... appealing to the Supreme Judge of the world for the rectitude of [their]... intentions, [and]... in the name, and by the authority of the good people of these colonies, solemnly [declared]...... That these United Colonies are and of a right ought to be, FREE and INDEPENDENT STATES" (Perry 1978, 321). This statement embodies a tripartite covenant between God as the witness, the states and the United States (Elazar 1988, 106). The representatives' recognition of the "consent of the governed" as the basis for all
government and the grievances against King George, which suggest what the Americans thought good government should be, constitute the terms of that covenant (100, 105). Thus, America as a nation was born out of and remains founded on a covenant.

The Pervasiveness of Compact Philosophy in Colonial America

Having established the influence of covenant theology in America and having shown that the American nation is based on a covenant, I will now proceed to document the influence of the idea of the compact and its role in the founding of our political system. Once again, evidence of the expansive acceptance of this philosophy combined with documentary examples of its practice in the United States will prove that our system is based simultaneously on the covenant and the compact.

Like the concept of the covenant, that of the social compact (that society and government are formed by the consent of those involved) was widespread in colonial America (McLaughlin cited in Wardle 1987, 15). John Davenport, a New Englander, explained the idea of the social compact twenty years before Locke did in the Second Treatise (15). Preachers freely taught the doctrines of Milton and Locke from the pulpit, making them familiar to all (15). As Andrew McLaughlin pointed out, "[t]he New Englander of 1780, when he voted to ratify and establish the state constitution, or later . . . the Constitution of the United States . . . would have been perplexed had he been told that power, authority, and obedience were not all the fruit of the agreement" (1932, 84). All the men educated in the thinking of the day "believed that all decent government originated in compact; they were not as yet far removed from Milton's declaration that no one would be so stupid as to deny it" (81).

The Use of the Compact in Colonial America

As a result of this widespread acceptance of the compact and the secularization of the covenant (Lutz 1988, 28), the bulk of colonial political structures were established as compacts. The 1641 Combination of the Settlers Upon the Piscataqua River for Government was the first intentionally secular covenant and hence, compact (30). A host of political compacts followed. The 1641 Massachusetts Body of Liberties, for example, identified the rights of the citizens and affirmed them "with . . . sollemne consent" (Perry 1978, 148). The Virginia Bill of Rights of 1776, recognized that certain rights could not be wrested from men by compact and that all political "power is vested in . . . the people" (311). In the same year, the Constitution of Pennsylvania thanked God (though it did not call on Him as a witness) that "the people of this State, by common consent," were able to establish their own rules for their government (328). Concurrently, the Delaware Declaration of Rights and the Constitution of Maryland declared "that all government of right originates from the people, is founded in compact only, and instituted for the good of the whole" (338, 346). Further, the 1780 Constitution of Massachusetts explained that "[T]he body politic is formed by a voluntary association of individuals. It is a social compact by which the whole people covenants with each citizen and each citizen with the whole people, that all shall be governed by certain laws for the common good" (cited in Elazar 1988, 33). All these documents testify that many if not most colonial polities were founded on a social, political compact.
The Compact as the Foundation of the American Political System

The most central political documents of the modern United States are the federal and state constitutions. Also influenced by the widespread covenant/compact philosophy of colonial times, these constitutions reveal that America's modern governments and political societies are based on compact. A constitution, according to Lutz, is a document that describes the political institutions and structure of a society (1988, 34). In accordance with this definition, both the federal and the state constitutions focus on describing the structure of the governments they form.

The preambles of these constitutions, however, identify them as compacts. The federal Constitution, for example, reads, "We the people of the United States . . . do ordain and establish this Constitution for the United States of America." This statement, enforced by the fact that the federal Constitution was ratified by the American people, established the Constitution as the record of a national compact.

Similarly all the state constitutions begin with a preamble that says something like this: We, the people of the State of ________, in order to obtain certain ends (for example, justice, liberty and domestic tranquility) (1901 Constitution of Alabama in Legislative Drafting Research Fund of Columbia University 1962, 1: 9) and grateful for the blessings of the Almighty God, "do ordain and establish this constitution" (1959 Constitution of Alaska in Legislative Drafting Research Fund 1962, 2: 7). All the state constitutions, except those of Oregon and Tennessee, mention God in their preamble, giving them a decidedly moral tone. The Constitution of West Virginia goes so far as to say, "we, the people of West Virginia, in and through the provisions of this Constitution, reaffirm our faith in and constant reliance upon God" (2: 7). None, however, call upon God as a witness to their agreement; therefore, none constitute covenants. All do, however, in the style of a compact recognize that "[a]ll political power is inherent in the people" (1912 Constitution of Arizona in Legislative Drafting Research Fund of the University of Columbia 1962, 1:9). The 1867 Constitution of Maryland goes further to explain "[t]hat all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole" (1: 9). And the 1784 Constitution of New Hampshire further articulates that "[w]hen men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others" (2: 7). Thus, the preambles of the state constitutions—which establish them as acts of the people of the states and as a recognition of the principles of the social compact—identify the state polities as compacts.

Lutz explains that technically, the preambles in both federal and state constitutions should come before the title constitution, for what we have now are "really compacts in which the constitution [the description of the government's institutions] became predominant" (1988, 34). Regardless of where the preambles figure in the text of the various constitutions, they signal that the federal and state political systems are formed by compact.

Some would argue that the federal Constitution is actually a covenant. Lynn Wardle, for example, traces the influence of covenant theology in colonial America and demonstrates how the Constitution and many of the ideas in it emerged from the covenant tradition and concludes that the Constitution is a covenant (1987). According to our definition of covenant, however, this conclusion cannot be valid, for the Constitution of
1787 removed God as a witness and created a secular compact (Elazar 1988, 136).

The federal Constitution, aside from being a compact, may be said to embody a covenant. As Elazar explains, "Normally a covenant precedes a constitution and creates the people or civil society that then proceeds to adopt a constitution of government for itself. Thus a constitution involves implementing a prior covenant--effectuating [it] . . . into an actual frame or structure of government" (1988, 91). This view seems plausible. We established that the Declaration of Independence constituted a national covenant which created us as a nation or society. According to Elazar's view, the Articles of Confederation and later the Constitution can thus be seen as the constitutions that established, through compact, a political structure for that original covenant.

**Citizen Obligations that Result from the Covenant/Compact Foundation of the American Political System**

While the federal Constitution may be considered a compact embodying a covenant, it remains clear that the state constitutions are compacts and that our national identity, created by the Declaration of Independence, is founded on a covenant. From these covenants and compacts emerges a strong justification for the obligation of American citizenship.

**Obedience and Civic Duties**

We have already noted that all covenants or compacts require obedience to the laws. Civil obedience, then, is an obvious obligation of members of the American nation and polity. But the obedience required of Americans must be active not passive, says Associate Justice Brewer (1909, 9293). Brewer, the Founders, President Lincoln and others realized that a greater degree of citizenship was required of Americans, because they had been given so much, and because the American system locates political control in the hands of the people (Brewer 1909, 23). Lincoln reminded a group of citizens in Indianapolis in 1861, "that with [the citizen] . . . and not with politicians, not with the President, not with office-seekers, but with [the citizen] . . . is the question, 'Shall the Union and shall the liberties of this country be preserved to the latest generation?'" (Cited in Elazar 1988, 211). The United States citizen cannot transfer his obligation to the government, because "[h]e is the government" (Brewer 1909, 27).

Because the American compacts created a representative democracy requiring citizen participation, the American citizen has a host of civic duties. According to Cheney, who wrote to a juvenile audience, these civic duties include participating in government in order to influence laws, expenditures and taxation (1985, 16-17), cooperating with authorities to enforce the law (17), paying taxes fairly (23), accepting a draft assignment or possibly volunteering for the armed forces (30-32), obtaining an education so as to be able to participate intelligently in society (34, 3738), casting informed votes (39-40), and cooperating in the community, realizing that we share our world with others (51). Brewer notes many of the same civic duties (Brewer 1909, 62, 64). Joseph Larsen, writing specifically to Latter-day Saints, identifies two main civic duties: electing good leaders and participating in public decision-making and problem-solving (1986, 14).

**Moral Duties**

Due to the fact that the American compact established a republic, relying to a large extent on self-control and not on government coercion, the responsibilities of the American citizen do not stop with obedience to law and
civic involvement. The American Founders believed that man had a dual nature, capable of both virtue and vice (Madison 1787, 15; Hamilton 1787, 11; Vetterli and Bryner 1987, 170; Elazar 1988, 165). They knew that for society to survive, men had to control their vices (Paine cited in Vetterli and Bryner 1987, 180). Because the American system would not control its citizens, they would have to moderate themselves. Thus, the Founders expected a certain character from the American citizen, a moderate virtue, and they knew that without it, the system would fail (Vetterli and Bryner 1987, 187).

Others have echoed this view. Cheney holds that citizens should do good because it will benefit society as a whole, not because it will bring them profit or allow them to escape punishment. Brewer asserted that "each citizen owes to the nation the duty of maintaining in himself a high, clean, moral character" (1909, 35). He also advanced that citizens have an obligation of willing, intelligent, "unselfish and conscientious" service (61). Finally, he believed that Americans have an obligation to work to improve the nation's life (109). In view of the blessings that we receive from living in America, Brewer said, we should strive to preserve and strengthen the morality of the nation (109).

Conclusion

The list of moral and legal obligations of the American citizen could continue. These suffice to show that trends toward consumerism and excessive individualism and away from citizenship circumvent our true responsibility. Adult American citizens who possess and enjoy the property, public services and other benefits of this system and who have means whereby to participate in the system are legitimately subject to obligations emanating from the covenant expressed in the Declaration of Independence and from the compacts recorded by the federal and state constitutions. To check any moves toward predatory consumerism, we must resurrect an understanding of our citizen obligations, teach them to our populace, and begin to live them in order to preserve the covenant and compact, which constitute the foundations of our nation.
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