PRESBYTERIAN PRECEDENTS

The American Judicial System and Presbyterian Government

There is much concern and discussion among modern American Christians about the religious roots of our country. Is American truly a *Christian* nation? Is America, like ancient Israel, a nation in *covenant* with God? Can we appeal to a distinctively Christian foundation to solve the moral problems that split our country today? Although today we often hear pleas for "family values" or increased morality, these cries are not necessarily integrated with the need for biblical revelation and a saving knowledge of Christ.

It can hardly be denied that *some* biblical influence undergirds our legal system. The bankruptcy laws, limiting cancellation of debts to once every *seven* years, allude back to a similar practice in Old Testament times and contrast with harsh systems such as debtor's prison.[1] In Minnesota, mortgage loan companies are required by law to be closed on Sunday.[2] Laws against murder and theft are even more explicit, grounded in the Ten Commandments.

More examples would undoubtedly emerge if we continued our search for biblical influence on American law. However, the specific purpose of this paper is to explore the roots of the American judicial system, which bears a striking resemblance to the structure of Presbyterian judicatories. Is this mere coincidence, is it simply the strong influence of Presbyterians, or could there be a deliberate patterning of American courts after Presbyterian polity? The third option would surely support the view that American has strong Christian foundations.

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[1] Webster, p. 3.

[2] Minn. Ann. Stat. Section 56.12. In reviewing mortgage loan laws for all states, apparently only Minnesota has a specific law against mortgage companies being open on the Sabbath.

One author set out on a similar journey, exploring the relationship between Puritanism and English common law in order to determine how each might have influenced the other.[3] The presumed mutual influence could not be conclusively demonstrated from the author's research, although he did see a relationship of "ideological parallelism."[4] Perhaps this is what we will find. If so, there is a still strong case to be made for biblical roots in our country. The recognition of such roots could strengthen the moral fabric of our nation, which currently appears to be unraveling.

Judicial structures. Article III, Section 1, of the Constitution reads as follows:

> "The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Prior to the final draft, much debate centered around the desirability of these inferior courts:

> "The most serious question was that of inferior courts. The difficulty lay in the fact that they were regarded as an encroachment upon the rights of the individual states. It was claimed that the state courts were perfectly competent for the work required, and that it would be quite sufficient to grant an appeal from them to the national supreme court...the matter was compromised: inferior courts were not required, but the national legislature was *permitted* to establish them."[5]

Proposals from the various states differed. The Virginia Plan was one in which the national judiciary would consist of one supreme court plus several inferior courts.[6] In the New Jersey plan, there was to be a supreme court with original jurisdiction in certain cases and appellate jurisdiction from the state courts on other specified matters.[7] Basically, the objection to lower federal courts was the sense that cases should be tried initially in the state courts and come to national courts only on appeal. The matter was resolved by *allowing*, but not *requiring*, the establishment of these inferior

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[3] Eusden, p. vii.
[4] Ibid., p. viii.
[5] Farrand, p. 79-80.
[6] Ibid., p. 70.
[7] Ibid., p. 86.

courts.[8] In certain instances, such as those involving foreign ministers or where one state is a party, the Supreme Court was granted original jurisdiction. Otherwise, the rights of the individual states were guarded; appeals are not taken at the Supreme Court level unless all available legal steps have been taken in the lower court levels.[9] The matter of constitutional judicial review, wherein the Supreme Court has power to declare a state law void, is a widely disputed matter not addressed in the proceedings of the original constitutional convention.[10]

Despite initial objections, inferior federal courts have indeed been established. Presently, there is a three-tiered structure to the federal court system. At the lowest level is the trial court (Federal District Court), then the Circuit Court of Appeals (organized by eleven geographical zones), and finally the U. S. Supreme Court. A similar arrangement exists in California, with two types of trial courts (municipal and superior),[11] the Court of Appeals, and the California Supreme Court.

This triple layered hierarchy is amazingly similar to the polity of Presbyterian and Reformed churches. In the OPC, for example, there is a session exercising jurisdiction over the local church, presbyteries overseeing the churches throughout a particular region, and the general assembly over matters that concern the entire church. Lower assemblies are subject to the review of higher assemblies, and appeals may be made from one level to the next higher level.[12]

Looking at history, Irish immigrant Francis Makemie was instrumental in establishing Presbyterian government in America. He helped organize Presbyterian churches in the late

[8] Ibid., p. 154-155.
[9] Beth, p. 37.
[10] Farrand, p. 156.

seventeenth century in the Maryland area, then later (1706) assisted in the organization of the first American presbytery. In contrast to Presbyterianism in Scotland, this first presbytery was organized "from the ground up" rather than "from the top down."[13] The American structure contrasts with its counterpart across the seas:

> "In American...the higher judicatories were created by the lower, establishing the more democratic nature of American Presbyterianism, and strengthening the concept that undelegated powers remain in the presbyteries, not in the highest judicatories."[14]

In 1716, the Presbytery, with seventeen ministers on its roll, transformed into a General Synod with several New England presbyteries under its wing.[15] A General Assembly was established in 1788, consisting of elected delegates and having synods subordinate to it. This replaced the existing system, wherein the Synod was composed of all ministers plus one elder for each congregation. The first meeting of this General Assembly was held in May 1789 at the Second Presbyterian Church of Philadelphia. At the same time, the first U. S. Congress met in New York under the new Constitution. A committee of the General Assembly, led by John Witherspoon, prepared an address to President George Washington.[16] Americans at this time were certainly thinking about the organization of government, both in the church and in the state. Even the legal scholar Corwin, who professes no Christian commitment, notes the church debate over whether congregations should be autonomous or governed in submission to a synod.[17] It is hard to miss the parallel between American and Presbyterian forms of government. But how do we account for that parallel? To

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[11] Municipal court handles civil matters up to $25,000 and criminal misdemeanors. Superior court handles civil matters over $25,000, felonies, and special areas of laws including probate, family law, juvenile matters, and appeals from municipal court.
[12] *OPC Book of Church Order*, p. 41.
[13] Loetscher, p. 60-61.
[14] Ibid., p. 61-62.
[15] Ibid., p. 63.
[16] Ibid., p. 76-77.

investigate, we will need to look closely at the foundations of early American law, as well as the religious and political convictions of colonial Americans.

Historical Background - England. Many early Americans were Presbyterians who immigrated from England, Scotland, and Ireland, seeking to escape the religious persecution of government-supported Anglican prelates.[18] Therefore, some brief attention to English law is a most helpful starting point.[19]

Both Puritans and lawyers were highly concerned with law--the former with biblical law, the latter with "fundamental law." Both viewed institutions, such as the church and the crown, as independent of one another yet accountable to God and thus limited in power. One author sees this perspective as an essential element of modern democracy.[20]

Three distinct forms of church government existed in seventeenth century England among Puritans: the Episcopalian, the Congregational, and the Presbyterian.[21] Presbyterians fluctuated in numbers and influence, and church polity was not the major concern of English Puritans.[22] They *were* deeply disturbed over the Stuart crown's interference with the church, particularly when the 1604 canon held that immutable law for the church could be legislated by an earthly king.[23] In the middle of the century, their strength was evident in the meeting of the Westminster Assembly of Divines as well as Parliament's declaration of Presbyterianism as the official form of church

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[17] Loss, p. 129.
[18] Loetscher, p. 73.
[19] Much American law is grounded in English common law. At least, this is true in 49 of the 50 states. Louisiana (perhaps in deference to Peter Jones) is somewhat like another country, basing its law on that of France.
[20] Eusden, p. 5-6.
[21] Ibid., p. 12.
[22] Ibid., p. 13, 18.
[23] Ibid., p. 67, 69.

government in England.[24] Yet Presbyterians were not long a majority in England after the time of Charles I. Differences among them, related to both church and civil government, split them apart and weakened their power.[25] After Cromwell's death and the restoration of the monarchy in 1660, they found themselves a persecuted minority. Later, the Glorious Revolution in England in 1688 brought about a victory for their ideals, including the granting of religious liberty. They failed to gain control of the Church of England, but their perspective "contributed heavily to the transformation of the English-speaking world."[26] No doubt the many trials faced by Presbyterians in England, despite occasional successes, contributed in some manner to the later development of American law, as Puritans fled across the ocean from England to seek religious freedom in a new land.

Sources of law. In the church, we readily acknowledge that God, speaking to us in His Word, is the ultimate source of law. When we approach civil law, debate rages. One author notes the prevalent medieval view that the law of the land ought to be grounded in the law of God:

> "Medieval institutions were founded upon the idea that the prince was limited in his power, and that the limits were imposed by God and the ancient customs of the realm. Divine limitations arose, of course, out of the Christian faith and the idea of a universal divine law. In Christian thought, that government seemed best which most nearly governed according to the will of God."[27]

Corwin, a noted legal scholar, informs us that it was during this period of time that "the conception of natural law as a code of human rights first took on real substance and importance."[28]

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[24]Loetscher, p. 49.
[25]Ibid., p. 50.
[26]Ibid., p. 51.
[27]Beth, p. 3.
[28]Loss, p. 196.

In America, the Constitution as the ultimate law is viewed with a reverence approaching what is normally accorded only to Scripture. Like the Bible, it must be exegeted, and this powerful interpretive role has fallen to the courts: "What counts is what the Supreme Court has said about the Constitution...."[29] Deliberating on this supremacy of constitutional law, Corwin offers us two explanations. One, which he rejects, is that there exists a law higher than the will of human rulers, a divine order, which must be recognized by human governments and constitutions. The other explanation is one of "popular will," wherein people are themselves the source of law and the constitution is merely the "highest embodiment of human will."[30] Corwin admits, however, that this explanation is a relatively late development in American constitutional theory.[31] Nevertheless, he was a critic of constitutional worship and higher law, advocating popular sovereignty instead. He labored to demonstrate that higher law was illusionary, that "no unchangeable standards existed to guide human legislation."[32]

Corwin did, however, recognize a parallel between the American Revolution and the Protestant Reformation:

> "The Reformation superseded an infallible pope with an infallible Bible; the American Revolution replaced the sway of a king with that of a document."

There is a similarity here in that a written *document* is recognized as the ultimate law. Great power rests in whomever is entrusted with the interpretation of that document:

> "Whoever hath an absolute authority to interpret any written or spoken law, it is he who is truly the lawgiver, to all intents and purposes, and not the person who first wrote or spoke them."[33]

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[29]Levy, p. 16.
[30]Loss, p. 22-23, 66.
[31]Ibid., p. 81.
[32]Ibid., p. 41-42.
[33]Levy, p. 23.

The analogy does have important limitations. God doesn't grant human leaders this sort of *absolute* authority to interpret His laws. We interpret Scripture with Scripture. It is God who first spoke His Word. Furthermore, since there is no *one* ultimate, infallible author of the Constitution, men may quarrel over whether it is a statement of fundamental, immutable law, or whether its framers intended plasticity.[34]

We could devote far more space to a study of the Constitution, but that would lead us astray from the subject at hand. Meanwhile, we can at least acknowledge the importance of presuppositions. Law is not created in a vacuum. As our apologist friend Cornelius Van Til would agree, law is not religiously neutral. Religion, concerned as it is with fundamental values and norms, has a powerful role in shaping the social context in which it exists. That social context, meanwhile, "is not a bare, uninterpreted reality but always includes an interpretive framework."[35] We will need to look more closely at the social and religious context of colonial America, in order to consider the origins of our judicial system.

Church and State in America. Today, there seems to have been a final decree of divorce between church and state, a "wall" of separation erected to be as sturdy as the rock over our Lord's tomb. But it was not always so. Early American history paints a far different picture, one where religion and law frequently intersect, and where their relationship is opened acknowledged.

In England, membership in the Church of England was required in order to hold office.[36] In America, there was initially an establishment of religion quite different from the wall of separation

[34]Ibid., p. 16-17.
[35]Clark, p. 3-4.
[36]Levy, p. 174.

erected in later years. However, the concept of establishment differed significantly from that which existed in Europe. The European model, using an *Encyclopedia Britannia* definition, is as follows:

> "A single church or religion enjoying formal, legal, official, monopolistic privilege through a union with the government of the state."[37]

On the American scene, no single church enjoyed this privileged status:

> "...at the time of the framing of the Bill of Rights all state establishments which still existed in America were *multiple* establishments of *all* churches, something unknown in European experience."[38]

European-type establishment existed, on the eve of the Revolution, in Virginia, Maryland, North Carolina, South Carolina, and Georgia. In Georgia, the Episcopalian Church (Church of England) was established. Taxes supported these established churches.[39] No established church existed in Rhode Island, Pennsylvania, Delaware, or New Jersey. A uniquely American *multiple* establishment existed in New York, Massachusetts, Connecticut, and New Hampshire. The Dutch Reformed Church was originally the established church of New York, but later this was replaced with a multiple establishment of several Protestant churches.[40] Between the Declaration of Independence in 1776 and the inauguration of the Constitution in 1789, many states granted religious freedom.[41] When the Constitution was written, six states either maintained or authorized some establishment of religion.[42] Finally, in 1833, the state established churches disappeared altogether.[43] These American establishments, even when multiple in nature, were always of various Christian denominations,

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[37]Ibid., p. 191.
[38]Ibid., p. 191.
[39]Ibid., p. 191.
[40]Ibid., p. 192.
[41]McGrath, vii.
[42]Levy, p. 229.
[43]McGrath, p. vii.

never Judaism, Buddhism, Islam, or other non-Christian religions.[44] The Revolution may have triggered a long-desired movement for disestablishment,[45] which eventually did occur in all states. Baptists were insistent on a rigid church-state separation,[46]while Madison and Jefferson both considered religion a private matter between the individual and God.[47] Nevertheless, the social-religious context of early America differs significantly from the society in which we modern Americans live.

Benjamin Franklin and American Presbyterians. Benjamin Franklin's stormy relationship with the Presbyterians is an interesting factor to mention in our study. An entire book was written to chronicle the struggle that Franklin had with Presbyterians, whose authority he regarded as a "major concern" prior to 1770, but whom he later accepted. Franklin is said to have portrayed himself as a "live-and-let-live deist," benevolent toward his fellow man regardless of religion or station in life.[48] In the New England area, where Presbyterians had always been strong, Franklin was distressed at their attempt to seize political and social power from his political allies. When they began to grow in numbers and importance throughout the country, Franklin was frightened to the point that he determined to settle in London if their denomination seized power in Pennsylvania![49] He was also alienated from the Church of England, whom he previously respected, due to their favorable attitude toward American Calvinists.[50]

In approximately 1735, Franklin had settled in Pennsylvania as a mature businessman and owned a successful newspaper, the *Pennsylvania Gazette*. He used this publication to attack the

[44]Levy, p. 201, 230.
[45]Ibid., p. 196, 230.
[46]Ibid., p. 189.
[47]Ibid., p. 201, 204, 208.
[48]Buxbaum, p. 1-2.

growing Presbyterian church and to restrain its influence. He lumped Presbyterians with Congregationalists, finding their doctrines authoritarian and threatening to liberty, morality, and "rational" religion.[51] During the Great Awakening a few years later, Franklin continued to work against Calvinism despite his favorable reception (at least for a time) of George Whitfield's preaching.[52]

Major changes occurred, however, by the time of the Revolution. Old hatreds were pushed aside when a common enemy, England, forced Franklin to unite with his Presbyterian and Congregationalist enemies.[53] By the time Franklin wrote his memoirs in 1788, his former animosity had transformed into respect, as he had seen the intense patriotism among Presbyterians.[54]

This brief detour through American history is one that highlights a couple of pertinent points. First, we see the power of Presbyterianism, such that Benjamin Franklin was extremely disturbed and devoted a significant amount of energy to restraining its supporters. Secondly, we must note that while Presbyterians were influential, they were by no means the *sole* influence on American society. Thus we cannot presume, without additional evidence, that the judicial system was consciously designed on the model of Presbyterian polity.

Varied religious influences in early America. A variety of religious perspectives existed at the time our country was founded. Although many of these were some form of Christianity, the outright *secular* nature of the constitutional convention has been noted by more than one observer.

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[49]Ibid., p. 3.
[50]Ibid., p. 41.
[51]Ibid., p. 76-77, 114.
[52]Ibid., p. 116.
[53]Ibid., p. 210.
[54]Ibid., p. 146.

There was little attention given to religion, no reference made to God in the Constitution, and no request for divine guidance in the deliberations.[55] Corwin puts it quite bluntly:

> "The atmosphere of the Convention was, in fact, almost scandalously secular. Despite the social pre-eminence of the cloth in 1787, not a clergyman was listed among its fifty-five members; and when Franklin suggested that one be recruited to open the meetings with prayer, the proposal was shelved by his obviously embarrassed associates with almost comical celerity. Nor did the Constitution as it came from their hands contain a bill of rights."[56]

In tracing the existence of a general religious or moral influence, we can hardly bypass the roles of John Witherspoon and Samuel Stanhope Smith. Witherspoon, a delegate to the Continental Congress in 1776, participated actively in the Revolution and signed the Declaration of Independence. He was president of the College of New Jersey (Princeton) from 1768 to 1794, and he was active in establishing the Presbyterian denomination.[57] Smith was his son-in-law and successor at Princeton. Both exerted a strong influence, through their students, on the development of American religious and political life.[58] Witherspoon was active in politics during the last 20 years of his life, even though, as a Scotsman, he had previously held that ministers should stay out of politics. Witherspoon's conception of the relationship between religion and national prosperity was "a synthesis of Reformed theology, the rational legacy of the Enlightenment, and American social and political development."[59] Influenced by the philosophy of Thomas Reid, Witherspoon was a vigorous proponent of Scottish common sense philosophy, which held that all men could know the truth through intuition and reason.[60]

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[55]Levy, p. 171.
[56]Loss, p. 170.
[57]Hood, p. 11-12.
[58]Ibid., p. 10.
[59]Ibid., p. 10-12.
[60]Ibid., p. 13.

The political philosophy shared by Witherspoon and Smith was one that viewed religion as an essential requirement for national prosperity. However, despite participation in the Presbyterian denomination, there are indications that Smith leaned toward a religious pluralism in the political arena:

> "Consistent with his belief about the universality of the moral sense in man and in the uniformity of moral law, Smith at no point attempted to discuss the diversity of non-Christian religions and any consequent variation in their moral tendency. Religions were for him essentially equivalent to each other."[61]

Smith withdrew from the ancient concept of a state-established religion, but envisioned a strong relationship between religion, national prosperity, and social order. What he presented was a "rational case" for the necessity of religion that was accepted by many and promoted by Washington in his Farewell Address. The Witherspoon-Smith philosophy seemed acceptable to a scientific age and has appeared to many to be compatible with Reformed orthodoxy.[62]

Another highly significant religious outlook is deism. Deism emerged during the American Revolution and existed alongside a revised Christian orthodoxy. Thomas Jefferson was a deist who rejected Christ as Redeemer but found it prudent to conceal his deism while holding the presidency.[63]

Congregationalism, with its polity of autonomous congregations, is a significant segment of the Reformed community that coexisted in early America with the Presbyterians. As some of the Presbyterian refugees from the Church of England settled in New England and other colonies, such as Virginia, many advocated a congregational form of church government. Three states

[61]Ibid., p. 19.
[62]Ibid., p. 26.
[63]Kirk, p. 342-343.

(Massachusetts, Connecticut, and New Hampshire) actually established that polity by law.[64] Here is how one author summarizes the minority status of those who held a strict Presbyterian view of church government:

> "Cotton Mather, a prominent New England Puritan, estimated that of the 21,000 Puritans coming to New England between 1620 and 1640 more than 4,000 held Presbyterian theories of church government. But many of these were soon carried along by the tide of Congregationalism; and though Scotch-Irish Presbyterians and some Huguenots later entered new England, the Presbyterians there remained a small minority compared with the prevailing Congregationalists."[65]

Congregational influence in the southern Reformed community is also reported as strong, with Witherspoon again on the scene:

> "The Presbytery of Charleston itself exhibited this desire for autonomy. Under the leadership of John Witherspoon of Princeton, a national church--the Presbyterian Church in the United States of America--had been organized in 1788. Following the model of the Church of Scotland, a General Assembly was established with four synods and sixteen presbyteries. The Presbytery of Charleston (1790-1819) never joined the Assembly."[66]

Congregationalism certainly had its say in early American culture, and its influence is not to be disregarded as we search the records to understand the founding of our judicial system.

One author describes in detail a wide variety of influences on the formation of American law, encompassing everything from ancient Greek philosophy, to the Old and New Testaments, the Roman Empire, medieval England, Scotland, David Hume, John Locke, John Wesley, and various others. It is something of a "quilt," patching together numerous sources to arrive at the system we often take for granted today.[67] Another historian notes that early colonists were not entirely homogeneous in their religious faith. Quakers, Congregationalists, Catholics, Calvinists, and

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[64]Loetscher, p. 57-58.
[65]Loetscher, p. 58-59.
[66]Clark, p. 113.
[67]Kirk describes these varied influences through his book exploring the roots of the American legal system.

Episcopalians were all dispersed throughout the new land, from New England to southern states such as Georgia.[68] Legal scholar Corwin credits seventeenth-century English political theory and eighteenth-century Enlightenment thinking, along with natural law, as being the foundation of the American political structure.[69] Certainly, we must acknowledge that Presbyterian polity was not the *only* factor driving the structure of the judicial system. Considering the varied influences, it is rather astounding that our courts are so very similar to the Presbyterian judicatories!

Reformed/Presbyterian influences. It is not surprising that Christians of a Reformed persuasion would want to have a voice in the political sphere. God is sovereign, and His providence encompasses every area of life:

> "Because in *all* of life one has to do with God, Reformed communities have sought to build their Holy Commonwealths, to reform societies of which they are a part, and to order their personal lives in such a way as to reflect their theological and ethical convictions."[70]

Those in the Reformed tradition are concerned with reform of both church and society, including culture, family, and politics. In the church arena, Presbyterians are persuaded that their polity, with its graded series of ruling bodies (session, presbytery, synod, general assembly), is found in the Scripture.[71] It would certainly be a logical step for politically minded Presbyterians to promote a similar system when afforded the opportunity to do so in newborn country. One American historian notes that some of the clergy during this time period were eager to point out similarities between the U.S. Constitution and Scottish covenants, as well as Presbyterian government.[72] Another author,

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[68]McGrath, vii.
[69]Loss, p. 180, 195ff.
[70]Clark, p. 19.
[71]Ibid., p. 20.
[72]Ibid., p. 180.

examining the various roots of American law, notes the influence on colonial politics of the relatively democratic form of church government found in the Scottish Presbyterian church.[73]

Massachusetts is one state where we can see the strong influence of Presbyterianism. One author, George Haskins, has expended considerable research time reviewing the religious and political history of this state in its initial years.

The Massachusetts Bay Colony was established in 1630 as a small Puritan community.[74] Although there are many facets to Puritanism, along with some misunderstandings, it has been noted that:

> "...Puritanism advocated replacing the ecclesiastical hierarchy of the Established Church of England with a system approximately the Reformed polity of Scotland and Geneva."[75]

The court system established in early Massachusetts reflects a hierarchy similar to that of the Presbyterian church as well as the judicial system later established in America. There were the Great Quarter Courts, the Interior Quarter Courts (also known as County Courts), and the Court of Assistants, which heard appeals from the County Courts. This judicial system was fairly comprehensive for a simple frontier town.[76] Puritan *religious* ideas were instrumental in the formation of Massachusetts government, including the belief that government's purpose is to regulate man's sin and that civil law is to be obeyed.[77] These colonists clearly desired a government grounded in the law of God. Throughout his treatise on early Massachusetts law, Haskins affirms the strong influence of biblical authority in the state's legal system during this time period, noting that much of that influence is attributable to the standards of English law and legal thinking, which

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[73]Kirk, p. 256.
[74]Haskins, p. 1.
[75]Ibid., p. 13.
[76]Ibid., p. 32-33, 35.

were in turn strongly influenced by the Bible.[78] Massachusetts offers evidence that Reformed Americans had a powerful voice in structuring the judicial system.

Covenantal thinking was prominent in the New England states, as contrasted with the more heterogeneous Reformed community of the southern and middle states.[79] In England, social contract political theory, coupled with covenantal theology, was a driving force behind the Puritan revolt against Charles I.[80] A similar combination drove the American Revolution.[81] Thus Puritanism is credited as an important early force in the development of modern democracy.[82] Additionally, Corwin notes the individualist implications of the Protestant "priesthood of all believers," later translated into political expression.[83] This is perhaps another relevant factor in the development of American democracy, which is evident in the tiered structure of the country's courts. No longer is a nation under the sole authority of one man, but a plurality reminiscent of what we find in the New Testament church, where a group of elders oversees God's flock.

Reformed interest in politics is evidenced by the day of prayer and fasting appointed by the Presbyterian Synod of New York and Philadelphia on May 17, 1775, following the first bloodshed of the American Revolution. Meanwhile, the Presbytery of Hanover (Virginia) endorsed the Declaration of Independence.[84] One researcher notes the Reformed community's particular attention to the *national* government. They were already influential in state and local government, and reasonably satisfied at those levels. It was agreed that civil law should be grounded in the law of

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[77]Ibid., p. 43.
[78]Ibid., p. 142-143.
[79]Hood, p. 28.
[80]Loetscher, p. 50.
[81]Wood, p. 118.
[82]Loetscher, p. 50.
[83]Loss, p. 120.
[84]Ibid., p. 74.

God, and that civil rulers ought to support the Christian faith in their private and public lives.[85] After the Revolution proved victorious, a spirit of patriotic nationalism swept the country and many denominations organized on a national basis.[86] The primary goal of that organization was church polity:

> "When the Reformed were organized in the wake of the American Revolution, they conceived of the denomination almost solely as a means for the internal government of the church. Each denomination was based on a presbyterial form of government with varying numbers of local or regional bodies between the local church and the highest body in the denomination. Each denomination's constitution specified in great detail the duties and responsibilities at every level of church government."[87]

As American legal philosophy developed, it tended to coincide with the Reformed conviction that religion and national welfare are integrally related. In fact:

> "Soon after the Revolution it became a widespread legal opinion that Christianity itself was a part of American common law, and in 1844 this opinion was adopted by the United States Supreme Court."[88]

Presbyterians were undoubtedly active and vocal in the early years of our country. Although they found themselves a minority and thus tended to be champions of religious liberty,[89] they were by no means silent or lacking in substantial influence.

Summary and conclusion. The striking similarity between the American and Presbyterian court structures is surely a matter that causes us to scrutinize the historical record and ask *why*. One careful historian has concluded that the resemblance is explained by influence rather than a conscious attempt at duplication:

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[85]Hood, p. 88.
[86]Loetscher, p. 76.
[87]Hood, p. 113.
[88]Ibid., p. 89.
[89]Loss, p. 121; Loetscher, p. 62.

> "Claims have sometimes been made that the United States Constitution was deliberately patterned after the Presbyterian form of government. It is nearer the truth to say that resemblances existing between the two are due to the fact that the principles of representative government upon which both rest were the common heritage of the men and women of the Revolutionary period, many of whom came of Calvinistic stock and most of whom had been influenced by the political thought of the Puritan revolution."[90]

However influential the Presbyterians, they were not the sole religious influence on the American legal system and society. Deism and Enlightenment thought, advocated by key American leaders such as Thomas Jefferson, also had their input. Quakers, Catholics, Congregationalists, and other religious persuasions were on the scene. Nevertheless, we can see the prominence of Presbyterians, and the overall strength of Protestant Christianity. The judicial system formed under leadership of early Americans is one that bears a striking resemblance to Presbyterian polity. In the providence of God, that is surely no mere coincidence, but evidence that our national roots are saturated with Christianity, much of which is Presbyterian in nature.

[90]Loetscher, p. 77-78.

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