Samuel Rutherford's theologico-political federalism in early American Society

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Opsomming

Die impak van Samuel Rutherford se verbondsmatige denke op die kerklike en politieke lewe in die vestigingsfases van die Amerikaanse samelewing – 'n dubbele ironie.

Die puriteinse skrywer Samuel Rutherford het 'n beduidende impak op die teologiese en politieke denke van die Amerikaanse pionierskolonies gehad. Rutherford se klem op die verbond is deur skrywers gebruik in hul weerstand teen die Britse monargie (Thomas Paine). Sommige skrywers het aansluiting gevind by die popularisering van Rutherford se verbondsdenke in Lex, Rex (John Adams), terwyl andere by Rutherford se politieke denke aanklank gevind het (Thomas Jefferson). Rutherford se invloed het direk en indirek 'n sterk invloed op die vroeë Amerikaanse kerklike en politieke lewe uitgeoefen.

Abstract

The seventeenth-century Scottish theologian and author of Lex, Rex*, namely Samuel Rutherford, is either overestimated or understated regarding the influence of his political theory on the early colonies of America. This essay aims at bridging the gap between these extreme poles by providing a more nuanced analysis of the status of Rutherford's works (especially his political thought) during*

the early part of American history. In this regard, two ironies come to the fore: firstly, it was ironic that whilst both Rutherford (and his Puritan supporters) in Scotland and Richard Mather (and the Puritan Congregationalists) in America, found their nourishment from the same covenantal sources, in practice there remained an unsurpassable ecclesiastical abyss between the two opposing views. Secondly, it is deduced that because of Rutherford's strong Puritan (and Presbyterian) background, the Deists, although considerably influenced by Rutherford's political thought, were reluctant to commit themselves openly to Rutherford's political position because of his views on religious liberty. Beyond the wishful streams of political and theological thought stating Rutherford's influence as of fundamental importance or of no importance whatsoever to early American society, lies a more informative and realistic presentation of the reception of Rutherford's thought during the time. Lex, Rex*, to a certain degree, popularised preceding Calvinist works on political covenantalism and arguments in favour of lawful resistance to tyranny,* Lex, Rex *also contributing substantially towards cultivating a political sensitivity to the idea of social contractarianism as the driving force for social and political life in American society. It is fairly safe to conclude that Rutherford did not enjoy explicit popular referencing and acclaim in early American society; however, it will also be wise not to negate absolutely Rutherford's presence and influence in the political (and theological) questions during the early American settlement.*

1. Introduction

Views on Rutherford's influence on early American political and theological history are either overestimated or understated. According to Francis Schaeffer, Samuel Rutherford's work (and the tradition it embodied) had a great influence on the United States Constitution. Schaeffer states that Rutherford's political influence was meditated through, *inter alia*, John Witherspoon (1723-94), a Presbyterian who followed Rutherford's *Lex, Rex* (1644)[1] directly and brought its principles to bear on the writing of the Constitution

1 *Lex, Rex* (or *The Law and the Prince*)*, A dispute for the just prerogative of king and people.* Harrisonburg, Virginia: Sprinkle Publications, 1982.

and the laying down of forms and freedoms.[2] Schaeffer states: "Some of the men who laid the foundation of the United States Constitution were not Christians in the first sense, and yet they built upon the basis of the Reformation either directly through the *Lex, Rex* tradition or indirectly through Locke."[3] According to Robert Arnold, Schaeffer linked the ideologies of the political theorist, John Locke (1632-1704), a source for the Declaration of Independence, with that of *Lex, Rex*. By doing so, he attempted to prove that the United States was established upon Judeo-Christian principles, instead of post-enlightenment humanism.[4] According to Arnold, Schaeffer "went on to suggest that Jefferson, who was a deist, and others, knew they stood in the stream of Locke, and while Locke had secularized *Lex, Rex,* he had drawn heavily from it. These men really knew what they were doing. We are not reading back into history what was not there. We cannot say too strongly that they really understood the basis of the government which they were founding".[5] After having investigated the matter, Arnold comes to the following conclusion:

> It has been shown that major elements of Locke's political theory, even those similar to Rutherford's *Lex, Rex*, could be linked with other writings or contemporary political forces. Admittedly, similarities existed, there were parallels surrounding the events that shaped the lives of Rutherford and Locke, and possibly, they met, but that proved nothing, and the connection between *Lex, Rex* and Locke's *Two Treatises of Government* remained dubious at best. The evidence that undermined Schaeffer's assertion was that Locke never mentioned Rutherford, despite his meticulous crediting of other philosophers and political thinkers, and that Schaeffer admitted that the *Two*

2 Francis Schaeffer, *The Complete Works of Francis Schaeffer: A Christian Worldview*, Vol. 5. *A Christian View of the West*, Second Edition (USA: Paternoster Press, 1982), 138.

3 Schaeffer, *The Complete Works of Francis Schaeffer*, 139.

4 Robert Arnold, "Was Samuel Rutherford a Source for John Locke's Political Theories?", *Global Journal of Classical Theology,* Vol. GJCT 07: 1 (Feb. 2009).

5 Arnold, "Was Samuel Rutherford a Source for John Locke's Political Theories?", 2.

> *Treatises of Government* were secular in nature. Without more information, Schaeffer's assertions failed to meet the burden of proof. Schaeffer's theory is plausible, but significant assumptions were made, and his hard-line position untenable. A more cogent assertion is that both humanistic Enlightenment reasoning and Christian biblical theology influenced Locke as he penned *The Two Treatises*, which may include elements of Rutherford's *Lex, Rex*.[6]

Arnold presents a convincing argument that Schaeffer's assertions that Locke's political theory was influenced by Rutherford's theory (with special reference to *Lex, Rex*) failed to meet the burden of proof. On the other hand, Arnold's proposition that both humanistic Enlightenment reasoning and Christian biblical theology influenced Locke during his writing of *The Two Treatises*, and Arnold's view that this "may include elements of Rutherford's *Lex, Rex*," requires further analysis. This essay focuses on the broader context in which Rutherford's theologico-political federalism contributed to the discourses in church and state in early American society, and presents a more nuanced and informative approach pertaining to the relevance of Rutherford's political (and federal) ideas to early American ecclesiastical and political history. Consequently, this essay unveils important indicators showing that Rutherford's influence in early American political and theological history is underestimated.

More specifically, this essay introduces the reader to the transfer into early American thought of the theologico-political federalism of Rutherford. This provides a better understanding as to why some may have been tempted to be rather idealistic in proclaiming Rutherford as having had a substantial influence on early American political history. On the other hand, it also confirms the reasonable expectation that Rutherford's political work would not be totally excluded by prominent authors and leaders within a general Puritan and Covenantal mould seeking ways to vindicate the limitation of abusive political power. The essay also deals with a realistic observation pertaining to factors that may have hindered a more popular reception of Rutherford's political expositions among the early American settlements. Irrespective, this

6 Arnold, "Was Samuel Rutherford a Source for John Locke's Political Theories?", 21.

essay makes it clear that there are glimpses (direct and indirect) of where Rutherford's political thought was deemed by prominent political thinkers to be a contribution worthy of note – particularly during the era immediately preceding the American War of Independence. Two ironies emanate from this study as well. Firstly, it was ironic that whilst both Rutherford (and his Puritan supporters) in Scotland and Richard Mather (and the Puritan Congregationalists) in America, found their nourishment from the same covenantal sources, in practice there remained an unsurpassable ecclesiastical abyss between the two opposing views. Secondly, it is deduced that because of Rutherford's strong Puritan (and Presbyterian) background, the Deists, although considerably influenced by Rutherford's political thought, were reluctant to commit themselves openly to Rutherford's political position because of his views on religious liberty.

2. The Old Testament, Puritan Covenantalism and Samuel Rutherford

The Puritans[7] viewed both the Old and New Testaments alike as equally inspired by God; every precept contained therein served as a divine command and rule of life. W.B. Selbie observes that for many of the Puritans the Old Testament became the blueprint for the ordering of political and religious life. The Old Testament met their peculiar needs and provided a congenial atmosphere for their thought. The dominant idea was that of the Covenant, to which God and His people were parties, and in terms of which grace, faith and predestination were included. Puritanism drew its inspiration from the Old Testament ideals and was a genuine attempt to reconstruct society on the foundations of Hebrew models in the Old Testament. After the appearance of T. Bilson's pamphlet, *The Perpetual Government of Christ's Church* (1593)[8], it became a virtual commonplace

7 Puritanism is to be understood for the purposes of this essay as a reform-minded Calvinistic movement in Britain during the late sixteenth and early seventeenth centuries. The Puritans were best known for emphasising pure, scripturally-regulated worship and biblical church government. Also see George J. Gatis, 'Puritan Jurisprudence: A Study in Substantive Biblical Law', *Contra Mundum* Vol. 12, 2(1994), 4.

8 The full title reads *The Perpetual Government of Christe's Church. Wherein are handled: The fatherly superioritie which God first established in the*

to refer to Old Testamentary examples as ideal standards for the reformation of the Reformed Churches. Also, Puritan political tracts frequently alluded to the Old Testament in their appeals for political reform.[9] In both ecclesiastical and political matters the Puritan love of liberty[10] was kindled by the Old Testamentary views on man's responsibilities to God alone, the rights and dignities possessed by man and the vindication of God's cause in fighting human tyranny.[11]

The winds of this Puritan appreciation for also the authority of the Old Testament soon reached the shores of America. Together with the Old Testament, the *Book of The Psalms* drawn from the Hebrew Psalter served as an important source for the practical worship of God. As early as 1539 Miles Coverdale (1488-1568) had issued his *Goostly Psalms and Spiritual Songs*[12], drawn for the largest part from the Old Testament and for the most part based on the works of Luther. In the New England colonies the *Bay Psalm Book of the New England Puritans* (1640) superseded the version of Henry Ainsworth of Amsterdam. The extent to which the Old Testament became the blueprint for regulating social, ecclesiastical and politi-

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Patrirakes for the guiding of his Church, and after continued in the tribe of Levi and the Prophets: and lastlie conformed in the New Testament to the Apostles and their successours.

9 An example of such tracts touching upon ecclesiastical and political concerns by Puritans is contained in the anonymous tract *The Reformation of religion by Josiah a commendable example for all Princes professing the Gospel to follow, with a warning to all faithfulle and true-hearted subjects, to encourage their princes in so happie a course* (1600).

10 Reflecting upon the Old Testament, the Puritans placed strong emphasis on liberty. In his work, *The Rise and Influence of Rationalism in Europe* (Vol. II, p. 172), Lecky states: "It is at least an historical fact that in the great majority of instances the early Protestant defenders of civil liberty derived their principles chiefly from the Old Testament and the defenders of despotism from the New. The rebellions that were so frequent in Jewish history formed the favorite topic of the one – the unreserved submission inculcated by St. Paul of the other", W.E.H. Lecky, *The Rise and Influence of Rationalism in Europe*, 2 Vols. (London: Longmans, Green, and Co, 1866).

11 See W.B. Selbie, "The Influence of the Old Testament on Puritanism", in Bevan, E.R. (Ed.) *The Legacy of Israel*, (Oxford: Clarendon Press, 1927), 418-419.

12 *Goostly Psalms and Spiritual Songes Drawen out of the Holy Scripture, for the Comforte and Consolacyon of Soch as Love to Rejouse in God and His Worde* (Southwark: Johan Gough, 1553).

cal matters in the founding colonies of America can be gauged from the boyhood recollections of William Lawrence of Massachusetts. Although, says Lawrence, both the Old and New Testaments were regarded as divinely inspired, the chief emphasis was upon the Old Testament. Whoever questioned the Scriptural statements on the creation of the world in six days, the narrative of the flood or God's miracles in Old Testament was deemed to be a sceptic or an atheist "and liable to be damned".[13]

The important role that the Old Testament played in societies in early American history went hand-in-hand with the importance of the covenant and a covenantal way of political and societal life. Donald Lutz and Charles Hyneman conducted an exhaustive ten-year research project, investigating approximately 15000 political documents of the Founding era (1760-1805) and found among other things, that the authors referred most frequently to the sections in the Bible on covenants and God's promises to Israel, as well as to similar passages in Joshua, I and II Samuel, I and II Kings, and Matthew's Gospel.[14] Evans observes that the communities that first came to New England were heavily drawn to the covenantal doctrines of the Old Testament, with specific emphasis on the authority of the congregation in the election of ministers. This resulted in the view that a congregation was a body politic,

13 See Selbie, "The Influence of the Old Testament on Puritanism", 430.

14 P.J.D. Jacobs, *The Influence of Biblical Ideas and Principles on Early American Republicanism and History*, (dissertation in partial fulfilment of Philosophiae Doctor, Faculty of Theology of the Potchefstroom University for Christian Higher Education, 1999), 68. John Witte observes that more than a hundred social covenants similar to the Mayflower Compact of 1620, are sprinkled throughout the seventeenth-century New England archives. Similar examples are also reflected in the new town of Salem which convened in 1629 to formulate a covenant, and the same applied to the Watertown Covenant (1630), the Fundamental Orders of Connecticut (1638/9), and the Covenant of Exeter, new Hampshire (1639), John Witte, Jr., *The Reformation of Rights. Law, Religion, and Human Rights in Early Modern Calvinism*, (Cambridge: Cambridge University Press, 2007), 296-297. Witte also observes that the belief that the covenant society lived perennially under "solemn divine Probation" is reflected in sundry legal and theological texts alike, see, ibid., 300-301. Also see Glenn A. Moots, *Politics Reformed. The Anglo-American Legacy of Covenant Theology*, (Columbia and London: University of Missouri Press, 2010), 99-106.

comprised of members who, by means of a willing covenant made with their God, were under the government of God.[15] David Hall, in his erudite investigation regarding the influence of the Genevan Reformation on early American political history, states that in seventeenth-century America, the widespread use of 'covenants' (or civil pacts in political contexts) reveals a paternity of ideas harking back to the Switzerland of Heinrich Bullinger, John Calvin and T. Beza.[16] Jonathan Edwards (1703-58), one of the most eminent Reformed theologians of the period, believed, for example, that God had entered into a covenant with the American nation.[17]

Rutherford reflects this view of general Puritanism. Rutherford's opposition to the abuse of political power relied heavily upon the authority of the Old Testament. John Coffey comments that: "… in *Lex, Rex* it was the historical books of the Old Testament that were most commonly referred to. This was, of course, because these books crammed with historical references to kings and covenants,

15 M. Stanton Evans, *The Theme is Freedom*, (Washington, D.C.: Regnery Publishing, Inc., 1994), 188. Also see ibid., 189-193.

16 David W. Hall, *The Genevan Reformation and the American Founding*, (New York: Lexington Books: 2005), 297. Also see Gordon S. Wood, *The Creation of the American Republic, 1776-1787*, (Chapel Hill: The University of North Carolina Press, 1969), 115, and Andrew R. Murphy, *Conscience and Community*, (University Park, Pennsylvania: The Pennsylvania State University Press, 2001), 37-42. Moots (referring to Dale Kuehne's *Massachusetts Congregationalist Political Thought, 1760-1790: The Design of Heaven*) observes that of the twenty-nine sermons published by Massachusetts clergy from 1777 to 1783, twenty-two reminded the listeners of the covenant and called them to virtue and piety, Moots, *Politics Reformed*, 111.

17 See Hall, *The Genevan Reformation and the American Founding*, 344. Glenn Moots also confirms John Edwards' emphasis on the covenant, see Moots, *Politics Reformed*, 109-111. Also of interest are Hutson's comments that for a decade, from the first proclamation of a national fast on 12 June 1775 to 3 August 1784, Congress adopted and preached to the American people the political theology of the national covenant, the belief that the war with Britain was God's punishment for America's sins ibid., 387. Years later there would still be remnants of this political covenantal language reflected in Lincoln's Second Inaugural Address, which according to Bellah, is probably the greatest expression of the theme of covenant and judgment in the entire course of American history (which was also a final statement on slavery as sin), see Robert N. Bellah, *The Broken Covenant. American Civil Religion in Time of Trial*, (New York: The Seabury Press, 1975), 53-54.

and provided a mine of political quotations for Rutherford … References to the New Testament in Rutherford's political theory were overwhelmingly outnumbered by those to the Old Testament … he believed that Israel was still to be a model for contemporary Christian nations".[18] Also, politics to Rutherford is based primarily on the demands of the covenant between God and the people, and secondly on the covenant between the king and the people. The covenant, according to Rutherford, is justified primarily by Scriptures, but the law of nature also serves as confirmation of this covenantal perspective. Rutherford's covenantal thought was nothing unique in the British context at the time.[19] Puritan sociology revolved around the idea that God was the initiator and administrator of a *binding contract* between himself and human participants, consisting of the *mutual* assent of divine and human participants. The Puritan, George Walker, wrote in 1641 that the "word covenant in our English tongue, signifies, as we all know, a mutual *promise, bargain*, and *obligation between two parties*".[20] The

18 John Coffey, *Politics, Religion and the British Revolutions. The mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), 80-81.

19 According to George Gatis, the Scottish mindset concerning this heavenly contract permeated Puritan society to produce a group conscience, and Puritans knew that if they abided by the conditions of this contract, God would respond positively; if not, God would impose negative sanctions. It was this covenantal idea that gave rise to a social ethic relevant to an external control of society through the legal system, as well as control from within through the conscience, Gatis, "Puritan Jurisprudence: A Study in Substantive Biblical Law", 4-5. Dan Danner states that English reformers looked at the nation of England as a new Israel of God, in covenant relationship with him. It did not escape their memory that Constantine himself was of British origin; and that indeed church history emanated from Abraham, whom Jahweh promised to make a nation after his own choice. Therefore, the Old Testament became their favourite authority, for the history of Israel opened up within divine revelation a corporate depository of the divine will within a nation, Dan G. Danner, "Resistance and the Ungodly Magistrate in the Sixteenth Century: The Marian Exiles", *The Journal of the American Academy of Religion*, Volume 49, (1981), 472.

20 Gatis, "Puritan Jurisprudence: A Study in Substantive Biblical Law", 4. As the Puritan historian Zaret observes: "… in the form of a heavenly contractor, God became less remote and unknowable. No longer was God unaccountable, for God condescended to use a human device, a contract, in his dealings with humanity", ibid.

Scottish mindset concerning this *heavenly contract* permeated Puritan society to produce a group conscience, and Puritans knew that if they abided by the *conditions of this contract*, God would respond positively; if not, God would impose negative sanctions. It was this covenantal idea within Puritan thought that gave rise to a social ethic relevant to an external control of society through the legal system, as well as control from within through the conscience.[21] The National Covenant was unique in that it was the embodiment of the concept of a covenanted nation involving the people of Scotland. This was an all-embracing, perpetual commitment that had never been put into practice before; a realisation of the Old Testament ideal of the covenant between God and man.[22]

McCoy and Baker state that from the era of Heinrich Bullinger (sixteenth century) onward, the stream of theology with the covenant at its core, flourished. Federalism (derived from the Latin word *foedus* meaning covenant, and appropriately referred to as federal theology), flowed down the Rhine from Zurich and, over the course of the sixteenth and seventeenth centuries, became a major sector of theology within the Reformed churches of Switzerland, Germany, the Netherlands, Britain, and eventually, New England.[23] According

21 Ibid., 4-5. Also see Daniel J. Elazar, *Covenant and Commonwealth. From Christian Separation through the Protestant Reformation. The Covenant Tradition in Politics. Volume II*, (New Brunswick, N. Y.: Transaction Publishers, 1996), 271 and Margaret Steele, "The 'Politick Christian': The Theological Background to the National Covenant", 31-67, in *The Scottish National Covenant in its British Context*, John Morrill (Ed.), (Edinburgh: Edinburgh University Press, 1990), 45.

22 Ibid., 46.

23 Charles S. McCoy and J. Wayne Baker, *Fountainhead of Federalism. Heinrich Bullinger and the Covenantal Tradition* (with a translation of the *De testamento seu foedere Dei unico et aeterno*, 1534, by Heinrich Bullinger) (Louisville, KY: Westminster/John Knox Press, 1991), 29. Theologico-political federalism provided a model of how the constitutional dispensation of the Christian Community should be structured, and as point of departure, political society's status as a party to the covenant with God was postulated, this covenant relationship acting as the fundamental framework for political content and activity. According to the theologico-political federalists, within the realm of God's sovereignty is the responsibility of the political community to adhere to God's law. More specifically, this law forms the covenantal condition by which government and governed interact both with God and with each other. Not only did the federalists provide a well researched constitu-

to McCoy and Baker, the influence of Bullinger is abundantly clear in the continental development of federalism as well as in the Reformed churches of Scotland and England and, through them, in the British colonies of North America.[24]

The parallels between, on the one hand, the loyalty of early American society to Old Testamentary authority and consequently to the Covenant (theologically and politically), and Samuel Rutherford's (and the Presbyterian's) regard for the Old Testament and the idea of the Covenant (theologically and politically) are clear.

Bearing in mind the loyalties emanating from the general Puritan spirit for having the Old Testament and the idea of the covenant serve as authority in the limitation of political power, one would expect the reception of the works of Rutherford pertaining to the rule of law including the limitation of political power and covenantal thought, to have been more than what has surfaced to date. An overestimation of Rutherford's direct political influence in early American history (as, for example, reflected in Schaeffer) can probably be due to the temptations arising from these parallels sketched by the general spirit of Puritanism (as mainly reflected in the use of Old Testamentary authority and covenantal thought in the stemming of political power) that came to fruition during the Westminster Assembly and continued towards the different Puritan settlements in America. These parallels also make it easier to accept (and make much of) views such as those of McCoy, that Rutherford's *Lex, Rex* was influential both in its immediate context and upon subsequent political thought.[25] However, one needs to

tional model to be applied to the ideal Christian Community, but they also assisted in championing constitutional values such as liberty, equality, the rule of law, limited governance, and democracy.

24 Ibid.

25 Charles S. McCoy, "The Centrality of Covenant in the Political Philosophy of Johannes Althusius", *Rechtstheorie*, 13 Beiheft 7, (1988), 189. C.E. Rae refers to William Campbell who, commenting on Rutherford's *Lex, Rex*, contended that: "by one of the paradoxes with which the life of this man is so filled, he wrote the best book from a Scottish pen against religious toleration and the best book in defense of civil liberty", C.E. Rae, *The political thought of Samuel Rutherford*, (unpublished M. A. dissertation, University of Guelph, 1991), 19. Rae states: "*Lex, Rex* has even been described as the most elaborate of the summaries of parliamentary argument: As Ernest Sirluck

work carefully with the parameters of Rutherford's influence in the political thought of early American society and not be carried away by drawing too many lines between Rutherford's Old Testamentary usage including covenantal thought, and the whole of early American arguments opposing the limitation of political power. In this regard, it is important to emphasise the representation of many streams of Puritanism which differed from one another in, among other things, the practical implementation of covenantal thought which had implications for different models on church and state relationships. Then there was also the growing popularity of Arminianism and liberal thought. At the same time, one should not exclude the possibility that due to the many parallels between sixteenth and seventeenth-century Presbyterianism and the general spirit of Puritanism in America during this same period, the political thought of Rutherford provided an attractive source of authority regarding the limitation of the abuse of political power.

3. Samuel Rutherford's views in the early American Puritan colonies

The founding of America was perceived by many of its earliest Reformed inhabitants as a God-given blessing to many thousands of Protestants who were persecuted for their religion in England, Scotland and on the European continent. The Puritan element in early American society constituted only a small albeit influential segment of American pioneering life. The American Reformed pioneers did not in all material respects form a homogenous religious entity. Apart from the Pilgrim and Puritan Reformed group who consolidated their religious and social life mainly to New England, there were the Dutch Reformed Calvinists who settled mainly in New York, the French Huguenots who inhabited mainly

said: 'he left nothing out'", ibid., 71-72. Rae also refers to a comment on *Lex, Rex* stating that it "holds, among books on Constitutional Government, a place kindred to that which is held by Adam Smith's 'Wealth of Nations' in the science of Political Economy"; Rae furthermore refers to I.M. Smart's comment on *Lex, Rex,* namely that it "was the longest and most detailed work of political theory written to justify the covenanter and parliamentarian side", as well as the fact that *Lex, Rex* was a "tour de force" that demolished the arguments of all the leading English and Scottish royalist writers, ibid., 73-74.

the middle and southern colonies, the German Reformed members who had an affinity for the middle colonies and the Scottish-Irish Presbyterians who favoured the middle and southern colonies.[26]

The Separatist (or radical) Puritans intended the formation of a colony in North Virginia, but under the guidance of William Brewster and William Bradford, after severe hardship, settled in New England in 1620. They formed the Plymouth colony, a strong Calvinistic abode, strongly opposed to the mainstream ecclesiastical institutions in the motherland. Eight years later the numbers of the more conservatively-inclined Puritans were strengthened by the arrival of a group of Puritans who settled mainly in the New England colony of Salem in 1628. By 1640 their numbers had grown to almost 20000, most of them immigrating from the surroundings of Cambridge in England. Although suspicious of the Pilgrims in Plymouth, the hardships endured by the Puritans in Salem in the course of time moved them much closer religiously to their Plymouth brethren. In 1691 the Plymouth and Massachusetts Bay colonies were united in their common ecclesiastical commitment to Congregationalism.[27] In addition to the more radically-inclined Puritans, a vast number of Scottish-Irish Calvinists found their way to America, where they entered through the port of Boston and settled initially in the New England states. Their religious commitment to traditional Presbyterianism contributed substantially to their gradual settlement in the middle and southern colonies.[28] The Dutch Calvinists who settled at New Netherlands (later called New York) introduced the principle of "liberty of conscience" obtaining in their homeland, Holland, at the time. In 1687 it was reported that the "most prevailing opinion" amongst them was that of Dutch Calvinism. Their ranks were strengthened by French Huguenots and settlers of German Reformed persuasion who, for various reasons, chose New York, and especially Pennsylvania, when William Penn invited them to settle there permanently.[29] William Sweet writes that

26 J.H. Bratt, "The History and Development of Calvinism in America", in Bratt, J.H. (Ed.) *The Rise and Development of Calvinism*. Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company, 1968, 114.
27 Bratt, 1968:115.
28 Bratt, 1968:121-122.
29 Bratt, 1968:118.

a considerable number of persecuted French Huguenots and German Reformed settlers from the Palatinate strengthened their numbers, but that by 1687 Governor Dongan reported that the most prevailing opinion was that of the "Dutch Calvinists".[30]

Also, adding to the diversity, strands of Reformed faith that reflected strong undercurrents of Arminianism were already evident in the early American colonies, via England, particularly those which showed strong imprints of Dutch Calvinism. The influence of Hugo Grotius made itself vigorously felt via Holland and England, where he also lectured to John Locke who spent some time in the Netherlands and elsewhere on the continent, as well as other Armenians and Deists who in one way or another were committed to the natural light of reason.[31]

The invasion of liberalism into the Congregational Pilgrims towards the end of the seventeenth century and the beginning of the eighteenth century manifested itself in the traditional Congregationalist Churches of New England. Gradually, Congregationalism had a strong injection of democratic political influence. In an effort to oppose Presbyterian influences, John Wise in 1710 defended Congregationalism based on a philosophy of democracy. Strengthened by views on the natural light of reason, together with the autonomy of local congregations, which made the church particularly vulnerable to liberal heresies, the way was prepared for Renaissance humanism in various forms in American society: Arminianism, Universalism, Unitarianism, Classic Modernism, and Christian Realism. Already the younger Jonathan Edwards broke with the traditional Puritan Reformed faith when he accepted the governmental view of Grotius, in which the emphasis shifted from God as sovereign to God as moral governor of the universe, and, contrary to his father, taught "moral inability but natural ability".[32]

This confirms the diversity of Christian groupings and ideological trends within the early settlements in America.[33] Although there were the parallels of loyalty to Old Testament authority and the political

30 W. W. Sweet, *The Story of Religions in America*, (New York, 1930), 135.
31 See Bratt, 1968:124-125.
32 See Bratt, 1968:116 n. 3, 124-125.
33 Coffey states: "… a number of Rutherford's friends, deeply committed to the Protestor vision of a pure church but disillusioned with the political struggles … gravitated towards Independency and Quakerism. Roger Williams – in his

role of the covenant, there were differences in the practical application of such authority pertaining to ecclesiastical government. The political spin-offs of Congregationalist thinking provided a different political model from that of the Presbyterian approach regarding especially the relationship between church and state, which included views on the functions and responsibilities of the office of magistracy. Then there were the fears on the part of the Congregationalists that the Presbyterian ecclesiastical model allowed for a too powerful elevation of the church over society. Glenn Moots comments that differences over ecclesiastical and civil polity grew wider after 1647. To Congregationalists such as John Milton, the Presbyterian form of ecclesiology seemed like spiritual tyranny.[34] Also during this period, the despotism of the Prelatic hierarchy tended to produce, in the minds of all zealous assertors of freedom, an instinctive dread of ecclesiastical power. This led to people being ready to oppose the establishment of Presbyterian Church government on the ground of divine right, not because they were convinced that no system of Church government can justly lay claim to an authority so high and sacred; but because they were apprehensive that it would produce a species of spiritual despotism as oppressive as that which they had just been striving to abolish.[35] Coffey adds: 'If the independents feared the tyranny of synods over local congregations, another minority group within the Assembly feared that the Scottish model would result in a clerical tyranny over the civil magistrates. This group became known as the Erastians, after the Swiss theologian Thomas Erastus (1524-83), who argued against Beza that the civil authorities in a state with one religion have the right to exercise jurisdiction over ecclesiastical matters'.[36]

This in turn implies a divergence of views on which extra-Scriptural political and theological sources are relevant, and what the relative

anti-Constantinian tract, *The Bloudy Tenent of Persecution* (1644) – had pointed the way out from the *respublica christiana* just as surely as John Locke was to do", Coffey, *Politics, Religion and the British Revolutions*, 256-257.

34 Moots, *Politics Reformed*, 97.

35 William M. Hetherington, *History of the Westminster Assembly of Divines* (Edinburgh, 1856) (Reprint, Edmonton, 1991), 287-8.

36 Coffey, *Politics, Religion and the British Revolutions*, 207.

weight should be of such sources. This surely has implications regarding the relevance of and/or the prioritisation of Rutherford's political and theological works in early American society.

3.1 Rutherford and the debates with the New England Congregationalists

The Pilgrims and the Separatist (or Congregational) Puritans in the American colonies maintained the basic views of the Reformed Puritans in England and Scotland but with distinct differences in the practical application of the foundational views to their pioneering conditions.[37] The issue of church government provides a vivid example of the differences in practical implementation of the Puritan Reformed principles by the Congregationalists on the one hand and those of Rutherford and the Presbyterian Puritans in Scotland on the other. Because of Rutherford's criticism of the practice of Congregationalism in the New England colonies, and his views on church government, the Reformed Presbyterians in Scotland were regarded with suspicion by the New England colonists. It was particularly through Richard Mather's responses to Rutherford's criticism that the New England Pilgrims took a dislike to Rutherford's critical views on the developments in New England.[38]

The Stuart regime drove many Puritans to the shores of the newly established American colonies. Among these Puritans who fled their motherland in search of freedom of religion in early America were also correspondents with prominent Scottish Puritans like Rutherford. Others, like Richard Mather and thousands of other reformed Puritans, left England in the Great Migration. By 1639, the last year of the Puritan flood leaving England for the shores of

37 For the views on the New England Church polity see E.S. Morgan, *Visible Saints: The History of a Puritan Idea.* Ithaca/New York: Cornell University Press, 1963) and L. Ziff, (Ed.), *John Cotton on the Churches of New England*, (Cambridge, Mass.: Belknap Press of Harvard University Press, 1968).

38 The chief actors on the side of Scottish Puritanism were Samuel Rutherford, *The Due Right of Presbyteries* (London: 1644), and Charles Herle, *The Independence of Churches* (London, 1643). The leading responses drawn from the circles of Congregationalism were from Thomas Hooker's, *A Survey of the Summe of Church Discipline* (1648); and John Cotton's, *The Way of Congregational Churches Cleared* (London: 1648), and *The Keys of the Kingdom of Heaven* (London: 1644).

America, Richard Mather had become most sceptical of the future of Christ's Church in England. When Richard Mather arrived in Boston, Congregationalism was already well-established in New England. New England Puritanism emphasised the fact that Christ's Church in the world should be restructured to "visible saints", people who gave some evidence of holiness in the world. The visible Church was deemed to be composed of self-governing particular churches, separated from the State and other institutions reliant on the Church's support. These particular congregational Churches of the faithful were to be gathered out of the world and formed on the basis of the covenant, "a joint agreement of the saints with one another, and with God, to worship together according to the criteria laid down by the Gospel".[39] Robert Middlekauff points out that a strong pastor in the Congregationalist Church could render liberty of the lay brethren almost meaningless if he chose; and in a few cases, the church expanded its liberty from consent to an authority to rule. It is ironical that although both the Puritan Congregationalists in New England and the Presbyterian Puritans in Scotland and England subscribed to a strong emphasis on the idea of the Biblical covenant, a heated debate ensued as to the practical implications of the ecclesiastical covenant for church government.[40]

In England and Scotland, Presbyterians criticised the Congregational dedication to the autonomy of the particular church because of indications of repression and possible anarchical implications of Congregationalism. The two leading critics on Congregationalist forms of church government in New England were Charles Herle (a Presbyterian minister who preached before the Long Parliament) and Samuel Rutherford (a Professor of Divinity at St. Andrews). Their criticisms drew responses from Thomas Hooker, John Cotton and Richard Mather. Rutherford's critical views in his *Due Right of Presbyteries* (1644)[41] were answered by

39 Robert Middlekauff, *The Mathers. Three generations of Puritan Intellectuals 1596-1728*, (Berkeley/Los Angeles/London: University of California Press, 1999), 44.

40 Middlekauff, 1999:45.

41 Already in his work, *A Peacable and Temparate Plea for Paul's Presbyterie in Scotland* (1642), Rutherford, prior to his work at the Westminster Assembly, considered the various positions of the Congregationalists and the

Thomas Hooker's *A Survey of the Summe of Church Discipline* (1648) and John Cotton's *The Keyes of the Kingdom of Heaven* (1644), and *The Way of Congregational Churches Cleared* (1648).

The debates between Rutherford and Herle on the one hand and Mather, Cotton and Hooker on the other did not only concern the practical implications of the ecclesiastical covenant in church formation, but also the authority of the Old Testamentary principles for the formation of churches in New England and what Rutherford perceived to be sectarian tendencies in New England.[42] Richard Mather took pains to demonstrate that the Church from Israel's day to his own embodied the continuity of the Church, while Rutherford and Herle, on the other hand, expressed their scepticism about this contention. According to them, if New England was "the Gentile version of Israel", why did it not hold true to the Jewish ecclesiastical pattern and establish a hierarchy of synods and classes which could review the practices of local churches and weed out the errors that could easily spring up in bodies with no checks on their autonomy? In his *The Due Right of Presbyteries*, Rutherford argued that the church in Jerusalem and the churches Paul wrote to were in each case a presbytery composed of congregations meeting privately in houses.[43] The one visible church is made up of various congregations united under one visible government.[44] This fellowship of church communion ought to extend to all the visible churches on earth.[45] Rutherford concludes: "Thus it is cleare that our brethren deny all communion of Churches, while they confine a visible Church to one only single and independent Congregation, subjected in its visible government to Christ Jesus immediately, and to no universal visible Church or Synod on earth".[46] To

Separatists. Rutherford's contributions to the Assembly culminated *inter alia* in his, *The Due Right of Presbyteries* (London: 1644). The pagination of Rutherford's *Due Right of Presbyteries* is inconsistent, and does not follow chronologically upon the first part. Pages affected from the second half of the book will be identified by an asterisk.

42 Bryan D. Spinks, *Sacraments, Ceremonies and the Stuart Divines: Sacramental theology and liturgy in England and Scotland 1603-1662* (Aldershot: Ashgate, 2002), 121.

43 Rutherford, *Due Right of Presbyteries*, 425-446, 457-476.

44 Ibid., 53.

45 Ibid., 57-59, 416-418.

46 Ibid., 351*.

Rutherford, Scripture allows various levels of government by elder assemblies.[47] Also the decrees of church synods are binding acts of church authority, and provide a remedy when many churches are perverted.[48]

An important aspect implicit to the debate was whether New England could continue as the Lord's Israel without following exactly the Israelites' ecclesiastical patterns. Richard Mather believed that it could. The polity of Israel resided in the nation and hence was inapplicable; the Gospel had opened the Congregational way, a way unknown to the Church of the Old Testament. The judicatories in Israel included civil authorities and extended to civil administration; and besides judicatories, there were no synods at that time. Also the particular congregations of the Jews could not be regarded as churches invested with the authority to administer the ordinances. Mather also had to address the issue concerning the role of the covenant in the Hebraic Church and in his own Congregational Church in New England. Mather held to the principle that though the New Testament Church polity differed greatly from the old, the covenant cherished by saints everywhere remained the same in substance as that of the Israelites. The covenant would endure until the Second Coming of Christ even though it was embodied in a Congregation rather than in a national polity. With the coming of Christ more light had been thrown on the Church, which light was increasing as the end of the world approached.[49]

It is submitted that Rutherford's criticism of Congregationalism and Mather's reaction to Rutherford's views on church government, contributed to Rutherford's unpopularity in early Pilgrim and Puritan ecclesiastical circles in America in the seventeenth century. It is ironic that whilst both Rutherford (and his Puritan supporters) in Scotland and Mather (and the Puritan Congregationalists) in America, found their nourishment from the same covenantal sources, in practice there remained an unsurpassable ecclesiastical abyss between the two opposing views.

47 Ibid., 331-334.
48 Ibid., 365-370, 373-376, 380-406, 414-418, 330-346*.
49 See Middlekauf, 1999:47; Isbell, http://www.westminsterconfession.org/the-church/introduction-to-samuel-rutherfords-... (accessed on 2011/03/25).

Richard Mather (silenced twice in England) set sail on 23 May 1635 from Bristol for New England and reached Boston on 17 August. After residing in Boston where both he and his wife joined the Church, he received a call to be the minister of the Dorchester Church. He later moved to Windsor, Connecticut, where he became the teacher of the new Church. He continued as preacher until his death on 22 April 1669.[50] In the collections of the printed books that belonged to Richard, Increase, John Cotton and Samuel Mather in the American Antiquarian Society's Mather Family Library, the largest extant portion of colonial New England's most important library, a representative collection of Rutherford's works, amongst those of other Puritan divines and older Reformed works on the covenant, was available.[51] The number of Rutherford's works in the Mather libraries suggests that Rutherford's covenantal works were read in scholarly circles and that his views on the Biblical covenant were not unknown in early American ecclesiastical circles. The book collections of the Massachusetts Historical Society's acquisitions reflective of early American history contain four of Rutherford's most important theological and political works.[52] The

50 Julius Herbert Tuttle, *The Libraries of the Mathers*, (published for the American Antiquarian Society, Massachusetts Historical Society, by Davis Press, Worcester, Massachussets, 1910), 10-11.

51 *Exercationes de gratia*; *Christ Dying and Drawing sinners to Himself* (London: 1647); *Influences of the Life of Grace* (London: 1659); *Letters* (3ed.) (1675); *Peacable Plea for Paul's Prebyterie in Scotland* (London: 1642); *Sermon Before the House of Lords, 25 day of June 1645, the day for Solemne and Publique Humiliation* (London: 1645), [bound with his *Tryal and Triumph* (1652)]; *Sermon Preached to the House of Commons at their Fast*, *1644* (London: 1644) [bound with his *Tryal and Triumph* (1652)]; and *Tryal and Triumph of Faith* (London: 1652), Tuttle, 1910:22, 81.

52 *Survey of the spirituall Antichrist: opening the secrets of Familisme and Antinomianisme in the antichristian doctrine of John Saltmarsh, and Will. Del., the present teachers of the army now in England, and of Robert Town, Tob. Crisp, H. Denne, Eaton, ...* (1648); *Due right of presbyteries, or, A peacable plea for the government of the Church of Scotland ...* (1644); *Sermon preached before the right honorable House of Lords: in the Abbey Church at Westminster, Wednesday the 25 day of June, 1645; Being the day appointed for solemne and publique humiliation ...* (1645); and *Lex, Rex: the law and the prince: A dispute for the just prerogative of king and people. Containing the reasons and causes of the most necessary of defensive wars of the kingdom of Scotland, and of their expedition for the ayd and help of their dear brethren ...* (1644).

Prince collection in the Boston City Library also contains a good number of Rutherford's theological works. Reverend Thomas Prince (1687-1758), former pastor of the Old South Church in Boston, bequeathed his library of some 2000 volumes, including a number of Rutherford's works, to the church in 1758. In 1866 this collection was deposited in Boston Public Library.[53] In addition to Rutherford's theological and political works in the libraries of American colonists prior to the American War of Independence, his letters were also popular and contributed towards a broad knowledge of Rutherford's works in ecclesiastical and political circles.[54]

Rutherford's polemical attitude towards ecclesiastical matters, particularly on covenantal issues, separated him further from the covenanters in New England with the publication of his *The Covenant of Life Opened. Or, A Treatise of the Covenant of Grace* (Edinburgh: Printed by Andro Anderson for Robert Brown (1655)), in which he carried further his disputes with the New England Congregationalists, on issues pertaining to the covenant of grace. The title of Rutherford's work was probably an effort to allude implicitly to Peter Bulkeley's work, *The Gospel-Covenant; or The Covenant of Grace Opened ... Preached in Concord in New England* (London: Printed by M.S. for Benjamin Allen, 1646). The Reverend Peter Bulkeley (1583-1659) attended St. John's College

53 Works by Rutherford are the following: *The Covenant of Life Opened* (1655); *Disputatio scholastica de divina providentia, variis praelectionibus. Adjectae disquiritationes de ente, possibili, dominio Dei in entia & non entia* (Edenburghi, MDCXLIX); *Exercitationes apologeticae pro divina gratia. Adversus Arminium & Iesuitas* (Franekerae, 1651); *Plea for Pauls presbyterie in Scotland* (London, 1642); *Sermon before the house of commons, Januar. 31. 1643* [Title-page wanting]; and *Sermon before the house of commons, Januar. 31. 1643* (London, 1644). Copies of Rutherford's works also appear in other old book collections, for example, those of the Massachusetts Historical Society Library: *The Due Right of Presbyteries* (1644); Virginia Historical Society's book collections: *The Trial and Triumph of Faith, or, An Exposition of the History of Christ's Disposessing of the Daughter of the Woman of Canaan ...* (1840).

54 Cf. for example, the inventory of the estate of Mr John Hunter, Alexandria, Fairfax County, Virginia, Fairfax County Will Book B1, 1752-1767, 411-414; taken: 30 November 1764, recorded: 24 October 1765. Also note the copy of Rutherford's *Letters* (1724 edition) in the collections of the Historical Society of Pennsylvania.

in Cambridge, and left England because his religious nonconformity placed him at odds with Archbishop Laud. In the company of the fur trader Simon Willard and twelve families, Bulkeley settled in Concord, which was incorporated in September of 1653, and gathered the Concord church at Cambridge in July of 1636. His *Gospel-Covenant* was first published at London in 1646, a collection of sermons that Bulkeley had preached on issues concerning the relationship between works, grace, faith, justification, and salvation. Rutherford's *The Covenant of Life Opened* was evidently aimed at Bulkeley's efforts to establish the covenant of works on the inner natural light in the heart of man, and to oppose any efforts at separating the covenant of works from the covenant of grace. It is submitted that because of Rutherford's arguments with the Congregationalists about his differences with Bulkeley, the New England Puritans distanced themselves further from Rutherford's uncompromising Presbyterianism. This would most probably have had an effect on the direct references to Rutherford's political (and theological) contributions in early American history.

The differences between Rutherford on the one hand, and the New England Congregationalists and Bulkeley on the other regarding the nature and application of the Biblical covenant, would naturally have contributed towards widening the gap between Rutherford (who was very polemical) and early residents in early American circles. The vehemence with which Rutherford debated with the Congregationalists overshadowed his contributions in other fields of theology and politics. In Richard Baxter's (1615-1691) *A Christian Directory* he includes only Rutherford's disputational work with the New England Congregationalists in his lists of recommended sources for the "poor man's library".[55]

In other theological circles in America there was high regard for Rutherford's Reformed faith. Jonathan Edwards, arguably the most prominent Reformed theologian in the period preceding the American War of Independence, in his work *A Treatise Concerning Religious Affections* (Boston: 1746), drew from the English and Scottish Puritans (inclusive of Rutherford), to the measure that John

55 Richard Baxter, *A Christian Directory* (Morgan, PA: Soli Deo Gloria Publications, 1996:734).

F. Smith observes that the contribution of these Puritans on the formation of Edwards' thought has been underestimated: "his (Rutherford's) *Lex, Rex*, the work for which he is chiefly known, became one of the most important documents of political Calvinism, showing the illegitimacy of absolute royal claims".[56] Less well known than *Lex, Rex* was Rutherford's *A Survey of the Spiritual Antichrist*, first published in 1648, a voluminous attack upon antinomianism, enthusiasm and visionary religion. In his *Religious Affections* Edwards quotes from Rutherford's section on "Luther against Antinomians", in order to prove that Luther was an opponent of antinomianism. Edwards also observes that "Mr. Rutherford is spoken of as a great author by Mr. Ebenezer Erskine. Erskine's Sermons ... and Mr. Noble of New York greatly commended the excellency of some of his writings as tending greatly to promote vital piety."[57] Edwards also alludes to that "eminently holy man, Mr. Samuel Rutherford" in his display of the *Spiritual Antichrist*."[58]

It is also submitted that because of the centrality of the covenant and his views on political authority expressed in the works concerning Congregationalism as well as his other theological treatises, Rutherford's theological works in an indirect fashion bolstered the broader culture of theologico-political federalism emanating from the political views in his *Lex, Rex*.

3.2 Political covenantalism and Lex, Rex in early American political thought

By 1750, Rutherford's theologico-political views had strengthened the culture of the American Puritans to establish a framework for theologico-political government founded on the covenant and

56 John E. Smith (ed.), *The Works of Jonathan Edwards*, Vol. 2 (New Haven: Yale University Press, 1959), 72.

57 Smith, *The Works of Jonathan Edwards*, Vol. 2, 72.

58 *The Works of Jonathan Edwards*, Vol. 2, 287. In a letter to the Reverend John Erskine, dated April 15, 1755, Jonathan Edwards acknowledged receipt of a pamphlet by Rutherford, *Powers of Faith and Prayer, Inquiry into the Method of settling Parishes, The Nature of the Government and Constitution of the Church of Scotland, Essay on the Gospel and Legal Preaching, Necessity of Zeal for the Truth ...* (*Jonathan Works,* Vol. 16, 662 (Ed. George Claghorn, *Letters and Personal Writings* (New Haven and London: Yale University Press, 1998)).

rejecting tyrannous government to a substantial degree. Jonathan Mayhew's sermon, *A Discourse concerning Unlimited Submission and Non-Resistance to the Higher Powers: with Some Reflections on the resistance Made to King Charles I* (1750), which was on Romans 13, reflects the public acceptance of a number of key principles from the arsenals of the theologico-political Reformers, of which Rutherford was a primary exponent. Particularly Rutherford's pioneering anti-monarchical views and his opposition to tyranny had assisted in cultivating an eagerness for political liberty and limited political government in Anglo-American Puritan circles. In his sermon, Mayhew espouses the cause of liberty and the right and duty to resist tyranny. Mayhew argues that civil rulers, as they are supposed to fulfil the pleasure of God, are the ordinance of God. However, rulers not performing the pleasure of God, by doing good, are servants of the devil. Mayhew advances the principle that each should receive his due: render therefore to all their dues; tribute, to whom tribute is due; custom, to whom custom; fear, to whom fear; honour, to whom honour. Mayhew concludes that common tyrants and public oppressors are not entitled to obedience from their subjects.[59] Mayhew's discourse on limited government and the king's powers limited by law, based on the Biblical principle of the dues of political rulers, run parallel to Rutherford's arguments on dues to political rulers as stated in his *Lex, Rex*: Questions XIIV; VII; XIV (Due obedience of subjects); XV (that which is due by law); XVI (absolutism destroys the dues to subjects); XIX (limited power is due to the king); and XIX (abuse of power oversteps that which is the king's due). The impact of Mayhew's sermon on limited government was described by founding father John Adams as having "great influence in the commencement of the Revolution"[60].

The educational levels of the rural communities in early American Boston, Virginia and Maryland were more sophisticated than often presumed. Many estate files of residents in these areas in the

59 Rutherford's principles of the dues to the king in *Lex, Rex*: Questions: XIIV; VII; XIV (due obedience of subjects); XV (that which is due by law): XVI (that which is due to the office of the king); XVI (absolutism destroys the dues to subjects); XIX (limited power is due to the king); and XIX (abuse of power oversteps the laws of the king).

60 http://teachingamericanhistory.org/library/index.asp?document=905.

period from 1750 to 1810 reflect works by Greek authors like Homer and Stoics such as Cicero, as well as books by John Milton, John Locke, Samuel Pufendorf, Algernon Sidney and numerous Puritan authors. Although Rutherford's works very rarely appear in estate documents of deceased residents from the founding colonies of this period, early American residents were aware of the general Puritan sentiments in Scottish and English circles, and were exposed to the views of social contractarians and covenanters who stood in the tradition of Rutherford and others. In the book collections of the Virginia Historical Society, no less than four copies of works related to the trial and execution of Charles I, King of England, 1600-1649, are preserved.[61] Also works on the Puritan struggles in Scotland and publications related to the Westminster Assembly were to be found in the estates of deceased persons in the inventories of various counties in the years preceding the American struggle for indepen-

61 One copy of *A perfect narrative of the whole proceedings of the High Court of Justice in the tryal of the King in Westminster Hall, on Saturday the 20. and Monday the 22. of this instant January [to Jan. 27] ... : With the several speeches of the King, Lord President, and Solicitor General. Published by authority to prevent false and impertinent relations ... London: Printed for John Playford, and are to be sold at his shop in the Inner Temple., Jan. 23. 1648 [i.e. 1649];* Two copies of the 1648 (should read 1649) edition of *A continuation of the narrative: being the last and final dayes proceedings of the High Court of Iustice, sitting in Westminster Hall on Saturday, Jan. 27, concerning the tryal of the King: with the severall speeches of the King, Lord President, & Solicitor General: together with a copy of the sentence of death upon Charls Stuart, King of England / Published by authority to prevent false and impertinent relations. London: Printed for John Playford, and are to be sold at his shop in the Inner Temple;* one copy of *A perfect narrative of the whole proceedings of the High Court of Justice in the tryal of the King in Westminster Hall, on Saturday the 20. and Monday the 22. of this instant January [to Jan. 27]...: With the several speeches of the King, Lord President, and Solicitor General. Published by authority to prevent false and impertinent relations ...* London: Printed for John Playford, and are to be sold at his shop in the Inner Temple., Jan. 23. 1648 [i.e. 1649], and one copy of the 1703 edition of *England's black tribunal. Set forth in the tryal of King Charles I. by the pretended High Court of justice in Westminster-hall, Jan. 20., 1648. Together with His Majesties speech, on the scaffold erected at White-hall-gate, Tuesday, Jan. 30. 1648. Also a perfect relation of the sufferings, and death of divers of the noblity and gentry, who were inhumanly murther'd for their constant loyalty to their Sovereign Lord the King: together*

dence.[62] It is noteworthy that next to works by political authors from the enlightenment era – particularly Deists like Pufendorf and Locke – works on Scottish constitutional history, particularly those by George Buchanan (1506-1582)[63], rank among the most frequently cited books in the lists of booksellers and book collections in the American colonies, particularly in the areas of New England, New York, New Jersey, Pennsylvania, and the Southern Colonies prior to the American War of Independence. Hottoman's *Franco Gallia*[64] – one of the most influential works justifying the right to armed resistance and limited government – was also well-represented in early American library collections. In these works and in Rutherford's *Lex, Rex*, the key elements of limited government and the rule of law are to be found. By the time of the American War of Independence, the ideas contained in the works of the Monarchomachs, the Scottish covenant-compact tradition, and those of the Scottish Puritans had provided the campaigners for limited government and

with their several dying speeches: from the year 1642 to 1658, viz. Earl of Stratford. Arch-bishop of Canterbury. Duke Hamilton [and others]. The fourth edition. To which is added, an historical preface, by a true churchman. London, Printed for H. Playford [etc.] 1703.

62 Cf. for example, the Charles County Inventories, 1735-1752, 476-749 for a copy of the Shorter Catechism in the estate of John Cunningham (entered February 28, 1750).

63 *Rerum Scotarum*, referred to in the catalogue of 1743 of Harvard College; Buchanan's *History of Scotland* (three volumes)) reflected in the library catalogue of Redwood-Library, Newport, Rhode Island, of 1750 etc. The popularity of this work on Scottish history can be gleaned from a random selection of Buchanan's work in a few of the library collections from the middle of the 18th century: the library catalogue of 1768 of Providence Library, Providence, Rhode Island; library catalogue, 1754, New York Society Library; a copy added to the collections of the Library Company of Philadelphia, 1764; also a copy in the Union Library Company of Philadelphia, 1754, etc. Buchanan's *De jure regni apud Scotos* was also well represented in library collections from this period, e.g. a 1594 copy in the James Logan Library, Philadelphia according to the library catalogue of 1760.

64 Cf. for example, the two editions of *Franco Gallia*, dated 1573 and 1586 respectively, added to the Harvard College collections between 1773 and 1790. In 1764 a copy of Hotman's *Franco Gallia* (translated by Molesworth), was added to the collections of the Library Company of Philadelphia. According to the library catalogue, 1760, of the James Logan Library, Philadelphia their collections contained the 1665 edition of *Franco Gallia.*

anti-monarchism with the basic materials for justifying armed resistance against the British monarchy. It was arguably the blend of Puritan theologico-political federalism (including Rutherford's *Lex, Rex*), together with Monarchomachian writings (particularly *Franco Gallia*) and Scottish covenantal sources (Buchanan's works) and the theories on natural law and social contractarianism of the Deists (notably Pufendorf, Milton, Sidney and Locke) that constituted the core of early American political ideology, and gave shape and content to early American resistance theories and expressions of social contractarianism. In this ideological potpourri with a central core of covenant-compact inclinations, Rutherford's *Lex, Rex* played a significant though not dominant role.

Rutherford's *Lex, Rex* appeared at a time when the Puritans in Scotland and England were seriously in need of answers to address issues regarding political absolutism, the negation of the liberty of subjects and the consolidation of state power to the detriment of individual liberties. The golden thread of Rutherford's work hinged on the principle of Reformed theocentricity flowing from democratic covenantalism and Old Testamentary social contractarianism. It was particularly Rutherford's application of the Biblical covenant and his statements on political power limited by law that impacted upon Scottish and English thought from the middle of the seventeenth century and later on early American political thought on various levels of intensity. By way of introduction, this essay also confirms the following: Firstly, Rutherford's political thought influenced covenantal politics in a direct fashion. Rutherford's *Lex, Rex* was deemed by political commentators to be one of the foundational works supportive of the American struggle for independence. Stephen Case, for example, was one of the American political authors whose work reflected Rutherford's reliance upon Biblical covenantalism. Secondly, *Lex, Rex* popularised preceding Calvinist works on political covenantalism and arguments in favour of lawful resistance to tyranny. The pseudonymous *Vindiciae contra Tyrannos* from the era of the French religious wars was one such work, and John Adams and other political theorists were exposed to Puritan literature on Biblical covenantalism mainly through works like *Lex, Rex.* Thirdly, Rutherford's work contributed substantially towards cultivating a political sensitivity to the idea of social contractarianism as the driving force for social and political life in

American society. Thomas Jefferson's affinity to works on social contractarianism, though secular, within the broad stream of English constitutional history, also fits the broad picture of the upsurge of social contract theory, partially the result of Rutherford's work, after the English Civil Wars. Citations of and references to *Lex, Rex* in American political literature amidst the din and clamour of the American War for Independence are scarce. As is usually the case under tumultuous conditions during wars and rebellions, ideas and principles are often borrowed from diverse and sometimes even diametrically opposing sources. *Lex, Rex* is no exception in this regard. Rutherford emerged as the primary Puritan political theorist during the English Civil War. In the line of John Ponet, John Knox and George Buchanan, Rutherford's matured articulation of the covenantal basis of political authority, Christian liberty, lawful resistance to tyranny, his denial of limitless sovereignty of political rulers, and his view that political authority is bestowed by the voluntary consent of the people, surely must have impacted strongly on the political theories beyond the boundaries of Scottish Puritanism.

The ideas of English authors on covenantal politics and social contractarianism in certain respects served as the blueprints for political leaders in the American colonies during the American War for Independence. In scholarly circles in early American society, *Lex, Rex* was not an uncommon work, together with other Puritan classics on political covenantalism, like James Stuart's *Jus Populi Vindicatum, or the People's Right to defend themselves and their covenanted religion vindicated* and *Naphtali, or the Wrestlings of the Church of Scotland for the Kingdom of Christ.* Significantly, copies of *Lex, Rex* and James Stewart's *Jus Populi Vindicatum* were available in the libraries of Richard, Increase, Cotton, and Samuel Mather.[65] It is also noteworthy that three of the most influential political authorities from this period voiced strong covenant-based views that can directly or indirectly be related to Rutherford's seminal work of more than a century before the War of Independence: Thomas Paine, Thomas Jefferson and John Adams, although outside the parameters of Puritan political thought, applied

65 Tuttle, 1910:26, 81.

the basic ideas associated with Rutherford's views on covenantal politics.[66]

The extent to which *Lex, Rex* was associated with the American resistance to British rule can be gleaned from Stephen Case's 1783 election sermon with the appealing title "Defensive Arms Vindicated".[67] In his sermon signed "A Moderate Whig", dated 17 June 1782 at New-Marlborough, and dedicated to George Washington[68], he explicitly mentions Samuel Rutherford, Sir James Stewart (a Puritan Covenanter and author of *Naphtali* and *Jus Populi Vindicatum*), and the social contractarian George Buchanan (author of *The Rights of the Crown of* Scotland, 1579) as the real champions of American freedom. According to Robert Schultz, Case contends that the American case for justifiable resistance arose "from these old Puritans."[69] The motivation for writing the text as stated by the author is to clear up "the lawfulness of the use of defensive arms against tyrants and tyranny, whenever they shall endeavour to deprive a people of their liberty and property" (Preface to the Reader). Case then proceeds to prove the lawfulness of taking up arms "to oppose all tyranny, oppression, and those who abuse and misuse their authority."[70] He states that "(t)his great truth is sufficiently made manifest by the most famous and learned patrons and champions for this excellent privilege of mankind, the unanswerable authors of *Lex, Rex*, the apologetically relation

66 See fn. 77.

67 It can safely be assumed that Stephen Case wrote this piece because in the text the author indicates that this was the year in which the piece was written. The author is probably Captain Stephen Case born in Orange County, New York, in 1746, who served in Colonel Jonathan Hasbrouck's regiment of the Ulster County militia during the American Revolution, and who died in Marlborough, Ulster County, New York, in 1794. In the Preface to the Reader the author addresses himself to "my dear brother soldiers", which confirms his identity to some extent.

68 "To His Excellency George Washington, Esq. Generalissimo of the army of the United States in America, Lieutenant General in the army of France, and Commander in Chief of all the French forces by sea and land in America."

69 Roger Schultz, "Puritan Political Theory: Covenants, Lesser Magistrates, and American Liberty", 5 (ariseamerica.org/asp/admin/Publication/ (untitled document originally published in *Faith for All of Life*).

70 Ellis Sandoz, "Political Sermons 1998" Vol. 1, Ch. 24 (Electronic version in Online Library of Liberty), 5.

Naphtali and *Jus Populi Vindicatum"*.[71] Alluding to the authors cited above, Case states the case both for resistance against the abuse of a lawful power, and against the use and usurpation of a tyrannical power, "and infer not only the lawfulness of resisting kings, when they abuse their power", but also the "expediency and necessity of the duty of resisting this tyrannical power, whenever we are by a good providence of God, called thereunto".[72]

Considering the instances under which subjects may lawfully resist the power of ruler, Case states that tyrants or magistrates turning tyrant are not God's ordinances. Therefore, the duty to keep the king's commandments is to be understood only of the lawful commands of lawful things. Secondly, Case states the principle that it is right and lawful, "to all intents and purposes", to rebel against tyrants, as all are who offer, or attempt, to govern contrary to the laws of the land; for where law ceases, tyranny begins." Case's argument, for a large part, proceeds along the lines of Rutherford's answer to Question XXIX in *Lex, Rex*, whether there is a distinction between the person of the king, and the office and royal power he has from God and the people. With Rutherford, Case finds that according to Scripture all war of subjects declared against a lawful king, who governs and rules according to law should be abhorred; "as also all war against lawful authority, founded upon, or designed for maintaining principles inconsistent with government, or against policy and piety; yea all war without authority".[73] When, however, "all authority of magistrates supreme and subordinate is perverted and abused, contrary to the ends thereof, to the oppressing of the people and overturning their laws and liberties, people must not, in such cases which was exactly ours, suspend or delay their resistance, waiting for the concurrence of men of authority, and neglect the duty in case of necessity, because they have not men of authority to lead them; for if the ground be lawful, the call is clear, the necessity cogent, the capacity probable, they that have the law of nature, the law of God, and the fundamental laws of

71 Sandoz, "Political Sermons 1998", 7.
72 Sandoz, "Political Sermons 1998", 7.
73 Sandoz, "Political Sermons 1998", 10.
74 Sandoz, "Political Sermons 1998", 10-11.

the land on their side, cannot want authority, although they may be destitute of a king to lead them".[74]

Two further aspects of Case's treatment of *Lex, Rex*, need to be mentioned. Through Case's reading of *Lex, Rex*, he was introduced, albeit secondarily, to the views of William Barclay, Hugo Grotius, Jean Bodin and Arnisaeus.[75] Case's reference to Barclay's view that if a king alienates his kingdom without his subjects' consent, the people may lawfully resist him, runs parallel to *Lex, Rex* Questions IX and XXVI.[76] Case's citation of Arnisaeus' statement that if the king proceeds extra judicially, without order of law, by violence, every private person has the power to resist, is analogous to *Lex, Rex* Question XXVIII. Secondly, Case's knowledge of Rutherford's anti-tyrannical statements was also strengthened by John Stewart's references in his *Jus Populi Vidicatum* (1669) to *Lex, Rex*, alluding to *Lex, Rex* "burnt into ashes, as being judged no otherwayes answerable but by a fiery faggot".[77]

Dated 1776 and written during from the revolutionary era for the struggle of American independence, Thomas Paine's pamphlet *Common Sense*, quoting from Scripture, aims directly at the abuses of monarchical government in his statements that monarchy is depicted in Scripture as a sinful institution of the Jews. Paine cites Judges 6 and 1 Samuel 8 in his statements to the effect that these passages are direct and positive and do not admit of equivocal construction. To the question of who the true king and ruler of America is, Paine answers: "(H)e reigns above ... (L)et a day be solemnly set apart for proclaiming the charter; let it be brought forth placed on the divine law, the word of God; let a crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that in America the law is king".[78] Rutherford appeals to

75 For his references to Barclay, Grotius, Bodin and Arnisaeus, see Sandoz, "Political Sermons 1998", 16.

76 Also note *Lex, Rex* 118(1) and 141(1).

77 James Stewart, London, 1669: Epistle to the Christian Reader.

78 Paine, 1946:12, 14, 30 in Roger Schultz, "Puritan Political Theory: Covenants, Lesser Magistrates, and American Liberty", 5 (ariseamerica.org/asp/admin/Publication/getPDF.asp?ID=32 (untitled document originally published in *Faith for All of Life*). This alludes to Rutherford's *Lex, Rex* (the Law is King).

1 Samuel 8 at least forty times to demonstrate that the king's rights towards the people are limited. In Question VII of *Lex, Rex*, Rutherford refutes the arguments in favour of absolutism with reference to Judges.

John Adams' link to Rutherford's covenantal thoughts on politics is somewhat more indirect and runs via Adams' reading of the pseudonymous work, *Vindiciae Contra Tyrannos,* a product of the French civil wars when the Catholic kings tried to stamp out the underlying idea justifying armed resistance by the Calvinists against kingly oppression and religious intolerance. Although Mornay's *Vindiciae* was available in the colonial libraries of Brewster, Harvard, Princeton and Dartmouth, according to Kathleen W. MacArthur[79], it was much less known in the period prior to the War of Independence than the *Franco Gallia* and Buchanan's works on Scottish constitutional history. Largely through Rutherford's *Lex, Rex*, did the *Vindiciae* become one of the standard sources quoted in favour of religious liberty. In his *Defence of the Constitutions of Government of the United States of America*, Adams refers to a number of English authors in addition to the *Vindiciae.* Adams pays tribute to the Calvinist John Ponet, who expressed "all the essential principles of liberty, which were afterwards dilated by Sidney and Locke".[80] In addition, he mentions James Harrington, John Milton, Benjamin Hoadly, John Trenchard, Thomas Gordon, and "many others (who) rose to the cause of liberty".[81] Adams also urged Americans to "make collections of all these speculations, to be preserved as the most precious relic's of antiquity, both for curiosity and use". The fact that Adams cites a number of English political authors of arguably lesser stature than Rutherford, begs the question as to why he did not include Rutherford in his list of "precious relics of antiquity".

79 Kathleen W. MacArthur, *The Vindiciae Contra Tyrannos: A Chapter in the Struggle for Religious Freedom in France*, *Church History*, Vol. 9(4), (1940), 286.

80 John Adams, *Defence of the Constitutions of the Government of the United States of America* (London: C. Dilly, 1787), cited in Adams' *Works* (ed. Charles Francis Adams, 10 Vols., Freeport, New York: Books for Libraries Press, 1969), Vol. 6, 3-4.

81 Adams' *Works,* Vol. 6, 4.

The answer arguably lies in the reference to the *Vindiciae*. This French source received its strongest promotion through *Lex, Rex*.[82] Through Rutherford's political expositions, the *Vindiciae* gained in popular support. Mornay's arguments found fruitful development and amplification in the work of Rutherford: firstly, the subjects need not obey rulers when the rulers' commands violate the law of God; secondly, it is legal to resist rulers who encroach upon the law of God; thirdly, a ruler who oppresses a state may be resisted, and fourthly, neighbouring rulers may aid the subjects of another ruler persecuted either for their religious beliefs or if they are victims of tyrannical oppression. The kernel of Mornay's views on the twofold compact of the Old Testament in the *Vindiciae*, is fruitfully applied by Rutherford in the covenantal structure of *Lex, Rex*. At the inauguration of kings, a covenant is concluded between God, the king and the people, as well as a compact between the king and the people that the people shall obey faithfully, and the king command justly.[83] Was Adams therefore, introduced to the *Vindiciae* through *Lex, Rex*? Probably, yes. Harold Laski remarks that the *Vindiciae* determined the character of political speculation from the end of the sixteenth century until the advent of Jean-Jacques Rousseau. Laski adds that Prynne and Rutherford both drew their nourishment from this source; that the ideas of the Levellers rests upon kindred foundation; that through Locke it is the base of the thought of Price and Priestly, and also through Locke, supported the perspectives of the American Revolution. The principles of theologico-political federalism and the culture of political covenanting were introduced into English political thought by Rutherford's theological and political works, the latter probably acting as a conduit towards the unveiling of prominent, yet older political tracts such as the *Vindiciae* to political theorists and leaders in the early years of American society.

Regarding Adams' reference to the *Vindiciae*, Stanley Bamberg concludes that Adams was closer to the tradition of *Vindiciae*, Rutherford's *Lex, Rex* and Ponet than were some of his own

82 Rutherford refers to Brutus' *Vindiciae* in a positive sense at least five times.
83 In *Lex, Rex*, Question XIV, Rutherford discusses the limits placed on rulers by oaths of the people. Cf. particularly Question XLIII.

contemporaries. He followed the thinkers of the English Civil War and their contract theory. Bamberg adds that Adams' social contract, based upon the tradition of the Reformed covenant-compact, was familiar in New England, and that because of this he emphasised "concrete legal arguments" more than the "abstract natural rights" propounded by Locke and, thereby, Jefferson and Paine.[84] Adams reaps the fruits of *Lex, Rex* on two key matters: firstly, Rutherford's statement of the principle theoretical foundations of the rule of law by quoting from the *Vindiciae* in at least five instances; and, secondly, the covenantal base of government. Rutherford's *Lex, Rex*, by reversing the traditional *rex lex* ("the king is law") to *lex rex* ("the law is king"), was among the pioneering early modern works to give the principle of the rule of law a firm theoretical foundation. Rutherford borrowed from the *Vindiciae* in at least five instances the key ideas in support of the rule of law. Firstly, Rutherford took from the *Vindiciae* the idea that the king is not the sole custodian of religion in the commonwealth (Question XIV); secondly, the people may limit the powers transferred to kings (Question XIX); thirdly, the king wields a fiduciary power towards the people (Question XXI); fourthly, tyrannous kings may be resisted by lower functionaries to preserve the commonwealth (Question XLI); and, fifthly, rulers are appointed for civil policy (Question XLIII). In 1780, Adams enshrined this principle in the Massachusetts Constitution by desiring "a government of laws and not of men".[85] Although the ideas associated with theologico-political covenan-

84 Stanley Bamberg, "A footnote to the political theory of John Adams *Vindiciae Contra Tyrannos*" (originally published in *Premise*, August 31, 1996, (http://capo.org/premise/96/aug/p960810.html).

85 Massachusetts Constitution, Part The First, art. XXX (1780). John Adams, largely responsible for drafting the Massachusetts Constitution in 1789, ensured that it contained a strict separation of powers "to the end it may be a government of laws and not of men". Regarding the covenantal basis of the American constitutional system, Adams referred to the various "express and implied contracts" made between the colonists and the "natural person of that prince (George III, king of England) who shall rightfully hold the kingly office in England and no otherwise". Adams added that: "As soon as the colonists came to America they "got out of the English realm, dominions, state, empire, call it by what name you will, and out of the legal jurisdiction of parliament. The king might, by his writ or proclamation, have commanded

talism had already surfaced in the works of Knox, Brutus and other biblical federalists, Rutherford's *Lex, Rex* was the first source in Anglo-American thought to postulate a strong commitment to the idea of the rule of law, based on theologico-political federalism, and it was Rutherford's pioneering work in this field that represented his most original impact on American political thought in the years preceding the American War of Independence.

Through *Lex, Rex*, the non-monarchist elements from Hugo Grotius' *De jure belli ac pacis* also became a source of major importance in the Anglo-American legal and political world. In his *Lex, Rex*, Rutherford in some instances heavily criticises the "royalist" Grotius, while in others, he quotes him in support of the view that kings are bound to perform oaths and contracts to their people "in such a thing as a covenant tying the king no less than the subjects".[86] Rutherford also relies on Grotius for the principle that if a king turns enemy to the kingdom, for their destruction, he loses his kingdom because, says Grotius, "a will to govern and to destroy cannot exist together in one",[87] "(t)herefore, a king turning tyrant loses his title to govern". Grotius' opinion that if the lesser part of the people should defend themselves against a tyrant, *ultimo necessitatis praesidio*, it cannot be condemned, was also supported by Rutherford.[88]

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them to return, but he did not" (Bamberg, "A footnote to the political theory of John Adams *Vindiciae Contra Tyrannos*", 1996:5). By implication the compact was nullified and the emigrants from England and Scotland were no longer bound by their oaths of loyalty to the English King. Adams attacked Paine's *Common Sense*, writing that although it had been a general opinion that Paine's pamphlet was of great importance in the Revolution, it was not. Adams doubted it at the time, "and have doubted it to this day". The gist of Adams' argument is that Paine's tract only gave those who already favoured independence arguments for their position. However, Adams did not attack the substance of Paine's views. Bamberg also concludes that Adams, like other American Whigs, derived his theory from the English Civil War tradition which was itself informed by *Vindiciae*, and, "(a)t the same time, it is important to realize that the final product of Adams' thinking was profoundly influenced by his American experience" (Bamberg, "A footnote to the political theory of John Adams *Vindiciae Contra Tyrannos*", 1996:8).

86 *De jure belli ac pacis*, II, 11-13. Rutherford refers no less than thirty-three times to Grotius in *Lex, Rex*.

87 *Lex, Rex*, Question XXVI.

88 *Lex, Rex*, Question XL.

Thomas Jefferson very strongly emphasised the fact that "(o)ur laws, language, religion, politics and manners are so deeply laid in English foundations, that we shall never cease to consider their history as a part of ours, and to study ours in that as its origin".[89] He regarded the historical roots of American political life and the broader political culture as English legacies. For this reason Jefferson regards the historical origins of American liberty as being very closely related to constitutional developments and the commentaries of political authors in England and elsewhere on the continent as important sources – particularly those of Locke, Grotius, Pufendorf and Sidney.[90] Jefferson was particularly interested in the covenantal aspects as well as the practical application of the principles pertaining to the rule of law. For example, Jefferson compared the views of these political authors on the topic of whether treaties remain obligatory notwithstanding any change in the form of government, except in the single case where the preservation of that form was the object of the treaty. Jefferson quotes from Grotius, Pufendorf and Locke.[91] Although works by Pufendorf and Locke were widely distributed in the book collections of the farming communities in the areas of Boston, Maryland and Virginia, Grotius remained a somewhat obscure author to most of the American population. Jefferson was well read in the political classics of Cicero, Locke, Sidney, Chipman and Beccaria. Although he does not refer to Rutherford by name it is clear that he was thoroughly imbued with the thought of social contractarianism prevalent in American society at the time, and to which the pioneering work *Lex, Rex* had contributed in more than a substantial measure by fostering a culture of anti-monarchism and the rule of law, as well as

89 *Political Writings*, 283 (Letter to William Duane, August 12, 1810).

90 Jefferson's library holdings testify to the fact that he was well steeped in English, Scottish and Irish political history – particularly the constitutional upheavals of the seventeenth century, cf. for example, a copy of the *History of the Civil wars in Ireland* in the list inherited from Peter Jefferson, 1757, from the Virginia Gazette Day Books for the 1760s, and the invoice from *Messrs Perkins, Buchanan and Brown, October, 1769.*

91 For an extensive overview of the most important literature and sources that impacted upon the ideological origins of the American Revolution, see Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Massachusetts: The Belknap Press, 1967), 54.

highlighting the legal arguments drawn from Grotius and others in favour of governing subject to law. In his statements on the binding nature of contracts and the natural law basis of their enforcement, Jefferson remarks that in natural law, he who promises another confers on him a perfect right to require the thing promised, and that, consequently, not to observe a perfect promise is to violate the right of another; "it is as manifest injustice as to plunder any one of their right. All the tranquillity, the happiness and security of mankind rest on justice, on the obligation to respect the rights of others."[92] Jefferson's statements echo the Rutherford statement that: "Whoever made a promise to another, gave to that other a sort of right or jurisdiction to challenge the promise."[93]

Although Jefferson refers to Locke quite frequently, it is clear from his statements that expressions on social contractarianism reminiscent of covenantal works in the Puritan line of Rutherford, must have figured prominently in his political beliefs and breathed the general culture of constitutional liberty based on the covenant-compact idea and the rule of law to which the Monarchomachs, Puritans like Rutherford, and the Deists had contributed. To understand Jefferson's thought it is important to note that through Rutherford's critical analysis of views emanating from authors like Grotius, together with the anti-royalist sentiments expressed in *Lex, Rex*, an academic and scholarly culture was cultivated in the field of political theory which strengthened the covenantal discourse on matters dealing with securing the rights of subjects to a substantial degree. The overall impact of Rutherford's political ideas in the era of the American War of Independence is summarised by Kopel (arguably somewhat too strongly) as follows: "... King George III reportedly denounced the American Revolution as a 'Presbyterian rebellion.' The sentiment was correct. It was the Presbyterian ideas of *Lex, Rex,* which were brought into America by the preachers and which legitimated, and even mandated, revolution as a Christian duty against tyrants".[94]

92 T. Jefferson, *Political Writings* (eds. Joyce Appleby & Terrence Ball), (Cambridge: Cambridge University Press, 1999), 563.

93 Rutherford, *Lex, Rex*, 57 (1).

94 Kopel, David B., "The Scottish and English Roots of the American Right to Arms: Buchanan, Rutherford, Locke, Sidney, and the Duty to Overthrow Tyranny", *Bridges*, Vol. 12, (3/4), 299.

The fact that Rutherford's influence is more clearly manifest in eighteenth-century Deist circles in America produces a second ironical situation regarding Rutherford's political impact on early American society. Because of Rutherford's strong Puritan background, the Deists, although substantially influenced by his views on the rule of law and of covenantal thought, were not inclined to give Rutherford the credit he deserved. The conclusion is that although Rutherford in a few instances was given credit by Puritan-minded authors, the Deists drew the benefit of his covenantal thought on various levels: (i) firstly, by using Rutherford's views in justifying the cause of the American resistance to British monarchy (Stephen Case); secondly, by reverting back to covenantal sources prior to *Lex, Rex* and popularised by Rutherford's work (John Adams): and, thirdly, by studying political works made part of the Anglo-American culture of political scholarship and to which culture *Lex, Rex* contributed to a large extent (Thomas Jefferson). In both instances of irony pertaining to the early American use of Rutherford's ideas, the common factor is that Rutherford had directly and indirectly, positively and negatively been consulted in early American ecclesiastical and political life. In the case of Rutherford's political views, authors (mostly Deists) benefited from his political ideas on the rule of law applicable to American political life by taking from him what they needed and rejecting what they did not like, the most probable reason primarily being because they did not agree with Rutherford's views on religious liberty.

4. Conclusion

Beyond the wishful streams of political and theological thought stating Rutherford's influence as of fundamental importance or of no importance whatsoever to early American society, lies a more nuanced and realistic idea of the reception of Rutherford's thought during the time. In seventeenth-century England and Scotland, Presbyterians criticised the Congregational dedication to the autonomy of the particular church which was flourishing in America during the same period. This, in addition to the diversity of Christian and ideological groupings within the early settlements in America, contributed towards widening the gap between Rutherford and early residents at the time. In addition, strands of Reformed faith that reflected strong undercurrents of Arminianism that was already

evident in the early American colonies, as well as the invasion of liberalism into the congregational Pilgrims towards the end of the seventeenth century, also played a part in widening this gap. Irrespective, glimpses of Rutherford's political thought did appear in the works of prominent authors. Also, *Lex, Rex* to a certain level popularised preceding Calvinist works on political covenantalism and arguments in favour of lawful resistance to tyranny. What is more, Rutherford's work contributed substantially towards cultivating a political sensitivity to the idea of social contractarianism as the driving force for social and political life in American society. One needs also to bear in mind that *Lex, Rex* was one of the few concise, systematic and English compilations of political thought available to prominent leaders and theorists during the early years of American history. The conclusion of this study is that in the case of Rutherford's political views, some American authors (mostly Deists) at various levels benefited from his political ideas on the rule of law applicable to American political life by taking from him what they needed and rejecting what they did not, probably, as mentioned above, the most probable reason being primarily because they did not agree with Rutherford's views on religious liberty. This essay presents glimpses of Rutherford's presence in early American history which must have influenced the political theorists and leaders of the day. It is fairly safe to conclude that Rutherford did not enjoy explicit popular referencing and acclaim in early American society; however, it would be wise not to negate absolutely Rutherford's presence and influence in the political and theological questions during the American settlement. Forrest McDonald probably comes closest with his observation that most Americans in early American society shared a common *matrix* of ideas and assumptions about government and society, about liberty and property, about politics and law, and that these ideas and assumptions together with the belief that they shared a common historical heritage, made their achievements possible.[95] This essay concludes by observing that Samuel Rutherford's works contributed to this common *matrix* of theologico-political thought in American society in a substantial measure.

95 Forrest McDonald, "A Founding Father's Library", (http://oll.libertyfund.org/index.php?option=com...).

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