

STATE BUILDING AND THE FUNDAMENTALS OF GOVERNANCE:  
JUDAIC INFLUENCES ON THE PERSPECTIVES OF EARLY AMERICA  
AND THE FOUNDING FATHERS

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## STATE BUILDING: JUDAIC AND AMERICAN PERSPECTIVES ON FUNDAMENTALS OF GOVERNANCE AND THE INFLUENCE OF THE FORMER UPON THE LATTER

Dov S. Zakheim

It is well known, and has recently been a subject of popular literature, that the Founding Fathers often drew upon the Bible when making the case for an independent republic.<sup>1</sup> The thirteen colonies generally shared a Protestant literalist view of the Bible, which imbued their own sense of a special destiny that was the hand of Providence. Protestants were as conversant with what they termed the Old Testament as with the New. Their clerics often mastered Hebrew so as to study the sacred texts in their original language. That their support of the American revolution was peppered with scriptural references from the Old Testament, and particularly the Pentateuch, was therefore only natural.

The Bible offered more than just exhortative language, however. It provided the framework within which the colonists viewed their mission. There are, in fact, a number of parallels between the founding of the Israelite state and that of the United States. These include not only a sense of Divine destiny, but also an assertion of exceptionalism, a rejection of tyranny, a commitment to freedom for a chosen few, and, despite all of the foregoing, great difficulties in achieving a unified state. At the same time, however, there were some significant differences as

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<sup>1</sup> See Bruce Feiler, *America's Prophet: Moses and the American Story* (New York: Morrow, 2009).

well, as the following pages will attempt to demonstrate.

## GOVERNANCE IN ANCIENT ISRAEL

### Moses and the Exodus

Until their bondage in Egypt, the Israelites were a collection of tribes that drew upon a common ancestry and identity. The Midrashic dictum that the Israelites were redeemed because they changed neither their names nor their language, because they did not reveal their secrets, and because they preserved the rite of circumcision<sup>2</sup> reflects an earlier, ancient tradition that the Israelites had developed the major elements of nationhood while still aliens in Egypt. They might have assimilated into the dominant culture; instead, their enslavement appears to have reinforced their sense of distinctiveness.

Another major factor contributing to their sense of a unique identity was, at least among some of the Israelites, a longing for their homeland. For despite living the lives of nomadic shepherds, the twelve sons of Jacob had not drifted apart from one another as Abraham and Lot had done. Nor, with the exception of their attitude toward Joseph, had they fallen out with one another, despite their descending from four different women, two of whom were of different, and inferior, ethnic origin.<sup>3</sup> As they told Joseph when they did not yet recognize that the Viceroy of Egypt was their

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<sup>2</sup> *Midrash Shochar Tov* 114

<sup>3</sup> Bilhah and Zilpah were, respectively, maidservants to the sisters Rachel and Leah (see *Genesis* 30:2-13).

brother, “We your servants are twelve brothers, sons of one man in the land of Canaan.”<sup>4</sup> And more. The offspring of the twelve brothers inherited their ancestors’ sense of covenant, *bnai brit*, a covenant that God had first entered into with Abraham and had reiterated with Isaac and Jacob. Circumcision was the most visible manifestation of that covenant, one that set the Israelites apart from their oppressive hosts, but it was only one of several covenants with God into which the Patriarchs had entered. The web of relationships, among the Tribes and between them and God, “laid the foundations for the later emergence of Israel as a nation within a twelve-tribe constitutional framework.”<sup>5</sup>

It was Moses who, with his brother Aaron in an important supporting role, led what was essentially an Israelite revolution against Egypt and under whose leadership the Israelites coalesced into a nation. The Torah that Moses transmitted as the word of God represented Israel’s constitution, and identified them as a “kingdom of priests and a holy nation.”<sup>6</sup> It differed from the previous covenants with the patriarchs in that it was concluded between God and the entire people, who pledged that “All that the Lord has spoken we will do”<sup>7</sup> It also established specific roles for different actors within the society. Moses was both prophet and leader; Aaron was the high priest. Each tribe was led by its own prince. In addition, the *edah*, the notables or elites, contributed the seventy elders who assisted Moses in governing the people. Finally, the new covenant provided for military conscription of all males between the ages of twenty and

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<sup>4</sup> *Ibid.*, 42:13.

<sup>55</sup> Daniel J. Elazar and Stuart A. Cohen, *The Jewish Polity: Jewish Political Organization from Biblical Times to the Present* (Bloomington: Indiana University Press, 1985), p.46.

<sup>6</sup> *Exodus* 19:6

<sup>7</sup> *Ibid.* 19:8; see Elazar and Cohen, *Jewish Polity*, p. 59.

sixty.<sup>8</sup> Moses, as the leader of the people, acted as commander in chief, sometimes leading battles himself, and at other times delegating leadership to his chief field commander, Joshua. The latter was supported by a priest especially designated to accompany the forces, later termed by the Talmud as *mashuach milchama* (literally, “anointed for battle,”), who, together with other designated officials, was responsible for vetting the recruits, and an officer corps that commanded the troops divided into squads of ten, platoons of fifty, companies of one hundred and battalions of one thousand.

The Bible also outlines the administrative judicial structure that Moses created. Although it mirrored the military structure, the organization of the judiciary derived not from Divine instruction but rather from a foreign “consultant.”<sup>9</sup> Jethro, Moses’ father-in-law, was a priest of Midian, a nation with whom the Israelites would later be at war. It was he who suggested to the overstretched Moses that he appoint a judicial bureaucracy to administer the laws.

Despite their common heritage, characteristics and practices, and in the face of increasingly manifest Divine support for Moses and Aaron, it is quite clear from the biblical narrative that the Israelites were highly ambivalent about leaving Egypt, and often chafed under the leadership of Moses and Aaron, both in Egypt and subsequently. Moses was an outsider, a man who had not suffered the miseries of slavery and who in fact had lived a privileged existence until he chose to

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<sup>8</sup> The Torah allowed for a number of exemptions outlined in *Deuteronomy*, 20:5-8. Those exempted were men who had built a new house that had not yet been dedicated; who had planted a vineyard that had not yet been harvested; that were betrothed but not yet married; and that were cowards.

<sup>9</sup>For a discussion of Jethro’s unique role and the innovative nature of his advice, see Nahum M. Sarna, *The JPS Torah Commentary: Exodus* (Philadelphia: Jewish Publication Society, 1991), p. 100.

identify with the Israelites. His initial intervention into Israelite affairs resulted in his self-imposed exile;<sup>10</sup> subsequently, his return to Egypt prompted a short lived burst of enthusiastic support followed by rebuke from the Israelite officials who supervised slave activity for the Egyptians. That resentment persisted throughout the exodus from Egypt, and until the revelation at Sinai.

Aaron's status with the people was less clear. He had remained in Egypt, and Midrashic and later commentators seem to feel that he was a leader accepted by both the Egyptians and the Israelites, whose priestly status seems to have exempted him from slavery. He reportedly prophesied to his people that redemption was at hand.<sup>11</sup> Nevertheless, once he became identified with his brother's efforts to lead the people out of Egypt, he too was the subject of Israelite resentment.<sup>12</sup>

Moses was never able to command all of the people's complete trust even as he led them out of Egypt, nor even subsequent to the revelation at Sinai. Certainly, as the Bible recounts, there were periods when the Israelites seemed united in their support of Moses, for example, when reciting the song of triumph after crossing the Red Sea, or when "all the people answered as one, saying All that the LORD has spoken we will do."<sup>13</sup> But these periods were brief, and were followed by backbiting and resentments.

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<sup>10</sup> *Exodus* 23-15.

<sup>11</sup> *Exodus Rabbah* 5:10.

<sup>12</sup> *Exodus*, 5:20-21.

<sup>13</sup> *Ibid.*, 19:8.

Moreover, the people still were organized on a tribal basis, and the tribes varied in their allegiance to Moses. Marital bonds linked the powerful tribe of Judah to Moses and Aaron. The latter had married Elisheba, the sister of Judah's chieftain Nahshon. (Midrashic tradition also has it that Caleb, a leading figure in the tribe, was married to Miriam, sister to Moses and Aaron.)<sup>14</sup> The Tribe of Ephraim, the more significant of the two tribes descending from Joseph, likewise identified itself with Moses in the figure of Joshua, who served as the prophet's acolyte and field general, and who succeeded him as leader of the Israelites. Caleb and Joshua also proved to be Moses' strongest supporters during the debacle of the spies; of the dozen sent to reconnoiter Canaan, only they were prepared to report back positively on the prospects for its conquest.

Other tribes were not as supportive. Most notable was that of Reuben, whose namesake had been discredited by his father after failing to rescue Joseph. Dathan and Abiram joined the Levite Korach in what was the most serious rebellion against Moses and Aaron's authority. Whereas Korach was merely seeking the spoils of leadership, rather than challenging the special standing that the tribe from which he sprang, Dathan and Abiram appear to have challenged the entire structure that Moses and Aaron had organized. The tribe of Simeon was likewise restive. It was the tribal leader, Zimri, who provoked yet another crisis by openly challenging Moses' authority when he undertook a public dalliance with a Midianite princess.

Moses ultimately was able to hold the tribes together, primarily because of constant Divine intervention, often accompanied by bloodshed. In fact, Moses, who himself had not sought

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<sup>14</sup> *Sifrei, Behaalotcha*, 78.

kingship, had laid down some very specific regulations regarding royal power. Nevertheless, these were all in the form of limitations on royal prerogative. The king was not to have an excessive number of wives or horses, nor was he to amass an inordinate amount of gold and silver. He was not to lead the Israelites back to Egypt.

Yet *Deuteronomy* made clear that the appointment of a king was the people's prerogative: "If after you have entered the land that the LORD your God has assigned to you...you decide, "I will set a king over me, as do all the nations about me."<sup>15</sup> And the Torah assigned no real responsibilities to the king, other than to write a copy for himself, and to refer to it on a regular basis so as not to adopt a haughty posture toward his countrymen. Moreover, the Torah explicitly recognized the role of the tribal chieftains, referring to them as *Nasi*<sup>16</sup> --a term it also employed for heathen chieftains such as those that were to descend from Ishmael<sup>17</sup> --and applying a number of laws equally to them and to a king.<sup>18</sup>

Interestingly, the Bible does not mention the king at all when discussing the conduct or leadership of military operations. Instead it refers only to an unspecified, but presumably senior priest, as well military officials, who determine the composition of the military cohort. While it might be assumed that the officials reported to the king, given the independent nature of the

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<sup>15</sup> *Deuteronomy* 17:14

<sup>16</sup> *Numbers* 7 *passim*, 13:2, 34 *passim*.

<sup>17</sup> *Genesis* 17:20.

<sup>18</sup> *Exodus* 22:27; *Leviticus* 4:22. Many classical Jewish commentators stated that the term, when applied in the context of Biblical law rather than narrative, actually applied to the king, cf. Ibn Ezra and Nahmanides, *idem*. The latter also speculated that the *Nasi* might be the leader of the Sanhedrin.

priesthood, that was unlikely to have been the case with respect to the military priest. Thus, even the conduct of military operations was not solely a royal prerogative.

*Deuteronomy* provided for a third center of power apart from the king and the priests. A judicial system would function in “all the settlements,” in which the Israelites would dwell. Those cases that could not be dealt with at a local level would be brought to what presumably would be a supreme court, manned by “the levitical priests, or the magistrate in charge at the time”<sup>19</sup> and located at “the place that the LORD your God will have chosen.”<sup>20</sup> The king was evidently not part of the judicial chain; he is not mentioned at all.

### The Judges and Anarchy

Joshua likewise recognized the role of the chieftains when he succeeded Moses as leader of the people.<sup>21</sup> With one exception discussed immediately below, Joshua appears not to have faced the same degree of difficulty with the independent minded tribes as had his predecessor, perhaps because his career was marked by a series of battlefield triumphs that obtained the Promised Land for the people. Joshua also appears to have filled the role of prophet: though he did not foretell the future, as Moses, or for that matter, Balaam, had done, he did have visions of angels appearing to him.

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<sup>19</sup> *Deuteronomy* 17:9

<sup>20</sup> *Ibid.*, 17:8.

<sup>21</sup> *Joshua* 14:1; 19:51, 21:1, 22:14,30, 23:2, 24:1

While Joshua was the acknowledged leader of the Israelites, he had a priestly counterpart in Phineas, the slayer of Zimri, and now the High Priest. His youthful zealotry behind him, Phineas developed into an able diplomat, whose successful effort to reconcile the TransJordanian tribes of Reuben, Gad and half of Manasseh with Joshua, averted a major blow-up that might have led to a breakaway state.

The bifurcated nature of the Israelites leadership that had originated with Moses and Aaron was thus sustained by their successors; with Joshua serving as both interpreter of the law and secular leader, and Phineas holding leadership of the cult of worship. The Talmudic notion of “Three Crowns,” referring to the leadership of Torah, the priesthood and temporal rule, had not yet truly materialized. Indeed, once Joshua had left the scene, tribal loyalties re-emerged, and the notables (*Edah*) reverted to roles they had held prior to Moses’ return to Egypt. The absence of a strong central government constituted the central fact of Israelite life for the following 150 years.

The tribes were organized in a loose league or confederation, to which their loyalties were intermittent. Although they shared a common language, heritage, and sense of destiny and election, they varied in population, military strength, and economic structure, development, and wealth. The southern tribes in the interior were nomadic shepherds and religiously conservative. The coastal tribes were either agrarian or mercantile, and were more open to foreign influences.

Virtually all had made the strategic error of not driving out the indigenous population, however. While some of the tribes taxed the local Canaanites,<sup>22</sup> others, like Asher, were unable to do so. Moreover, several of the tribes were outnumbered by the Canaanites in their territories, rendering them especially vulnerable to military attack. Even those tribes that sought to drive out the natives were unable to do so.

Some tribes do appear to have attempted, or at least contemplated, driving out the natives, but were militarily unable to do so. The foot infantry of Judah could not budge the natives of the coastal plain, who boasted chariot-based armor. The Benjamites could not seize the mountain stronghold of Jebus (later Jerusalem).<sup>23</sup> The Dan tribesmen were not strong enough to prevent the Amorites from forcing them to retreat to mountain fastnesses.<sup>24</sup>

In practice, the confederation meant very little. There was little government of any kind. “Every man did what was fit in his eyes,” was more than a biblical epigram; it accurately described the state of affairs in the land of Israel. None of the tribes had a standing army, or a central store of weapons. The tribes only sustained their individual militias consisting of yeomen who might or might not join forces with another tribe if they perceived to have a common enemy. Often they did not.

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<sup>22</sup> Ephraim, Manasseh, Zebulun, Naphtali, see *Judges 1*.

<sup>23</sup> *Judges 1:21*.

<sup>24</sup> *Ibid.* 1:34.

None of the tribes had a standing administrative structure, nor was there any sort of permanent judiciary. The “Judges” were sometimes true judicial figures—many Jewish commentators classed the prophetess Deborah in that category—and sometimes military leaders, such as Shamgar, the son of Anot. While the tribal elites were most likely hereditary, the role of “Judge” was not. Moreover, the writ of a judge rarely extended to the entire Israelite community, whether in peace or in war. Deborah, for example, could not mobilize the Tribes of Reuben and Gad in her battle against Sisera; Gideon could not command even logistical service support from the tribe of Gad in his battle against the Midianites.<sup>25</sup>

The net result of this lack of organization and unity was a series of incursions by neighboring nations that invariably placed a number of tribes in vassal status before they were liberated by a savior. While the lack of a unitary structure clearly contributed to this state of affairs, it is arguable that the people’s indifference to Torah was an equal, if not more important factor. The Torah was the people’s constitution; it had the potential to unite them in a way nothing else could. It underscored their sense of exceptionalism by virtue of their special relationship with God and their commitment to serve Him. It therefore provided them with a unique form of common identity, coupled with a common legal framework that derived from God Himself. In the face of intermarriage with the local population, as well as multiple ethnic origins due to the differing ethnic backgrounds of Jacob’s wives, the Torah alone offered unity, and warned of the consequences of religious indifference, a warning that was shortly after Joshua’s demise.<sup>26</sup>

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<sup>25</sup> See *ibid.* 5: 16-17; 8:4-9.

<sup>26</sup> *Judges* 2

Prophets continued to function, and to warn the people of the consequences of their behavior. As they did so independently of the judges, they were in a sense a separate “crown.” With the exception of Deborah, however, who in fact combined prophesy with secular rule, none was sufficiently prominent to have any real impact on the general populace.

The priesthood likewise remained intact, with the priests carrying out the ritual sacrifices at the Tabernacle in Shilo. In that sense they too were a separate “crown.” Nevertheless, the widespread use of *bamot*, ad hoc altars that mimicked those of the surrounding heathens, undermined the central role of the Tabernacle and therefore of the priesthood. In addition, no high priest after Phineas achieved any degree of prominence until the emergence of Eli, who presided over the rituals at Shilo. Because Eli’s sons were notorious for their corruption and licentiousness, the priesthood had lost its remaining luster as well, adding to the sense of rootlessness among the people.

At one point it appeared that the Tribes might have accepted a hereditary ruling (though not royal) family.<sup>27</sup> The offer was made to Gideon and indeed, though he formally rejected the proposal—he recognized the weakness of his tribe—his son Abimelech succeeded him as judge. Once the latter was killed, there were no attempts to create a new ruling family. Instead, the tribes reverted to the anarchy that tended to prevail during the intervals of the Judges’ rule. That

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<sup>27</sup> There is a difference between a ruling family and a royal one. The former leads by ongoing consent of other leading families, and is, in effect, *primus inter pares*. The al-Sabahs of Kuwait are a ruling family, in contrast to the Royal Family of the House of Windsor, or, for that matter, the al-Saud.

state of affairs reached its zenith when the tribes fought a major civil war that resulted in the near-extinction of the tribe of Benjamin.

### Unity—Followed by Schism

In the aftermath of the civil war, the tribes appeared to have recognized that they were on the verge of societal collapse. It was then that Samuel emerged as a leader of a people who could no longer afford the situation that Judges summed up in its final words: “in those days every man did what was right his own eyes.” Samuel was a Levite, who from his youth had been apprenticed to Eli. Samuel was both prophet and lay governor, and in that sense carried on the tradition that had been dormant since the days of Deborah. His influence over the national psyche was so profound that the Psalmist likened him to Moses and Aaron.<sup>28</sup> He was able to forge a sense of national unity among the tribes, to the point where they lobbied him to anoint a king. Despite his misgivings, Samuel anointed Saul initially as *Nagid*, or leader, and then as king, making the Benjamite the first leader of a united polity since Joshua. Saul maintained a court, delegated special military responsibilities to his son Jonathan and maintained a standing army led by Abner. Scripture is silent about the specifics of his governance, however. We know little about his administrative system, or his judiciary. His rule was marked by self-doubt and depression, warfare with Israel’s enemies and then civil war with David’s forces, and it was the latter who truly established a governing structure for the unified state.

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<sup>28</sup> See Psalm 99:6. The tradition that Samuel was on a par with Moses and Aaron was preserved in *Bamidbar Rabbah* 45 on *Psalms* 99:6.

As recorded in both II *Samuel* and *Chronicles*, David maintained a formal administrative structure to support his rule once he was acclaimed by the entire nation as its ruler. David placed himself at the head of both a formal military and judicial structure, much as Moses had done, leaving the priesthood to the descendants of Aaron. The high priests, Zadok and Ebyatar were powerful figures in their own right, and served as major advisors to the king. They were the first to embody a truly separate and powerful “crown” since the days of Phineas.

David appointed Joab as his commander-in-chief, leading an army that was structured exactly as it had been under Moses. He appointed Jehosephat as the state secretary; Seraya, the state recorder or scribe; and Benayahu son of Yehoyada as commander of the king’s special forces, the *Kreiti* and *Pleiti*.<sup>29</sup> David’s sons also had some indeterminate role probably senior Ministers, much as is the practice among ruling families in the Arabian Gulf today.<sup>30</sup>

Talmudic lore ascribed the third crown, that of the Torah to David himself. The rabbis identified David as the head of a special court that legislated *takanot*, or religious adjustments with the force of law, which later became an essential element of normative Rabbinic Judaism. On the other hand, Scriptural text identified two powerful prophets in particular, Gad and Nathan, upholders of the Torah and spokesmen for the will of the people. Neither was afraid to confront the king; both were able to wring abject apologies from him. They were a separate center of power; they shared the “crown of Torah” with the king.

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<sup>29</sup> Thus the *Targum* in II Samuel 8:18. The Talmud (B. Brachot 4a) renders these groups the Samhedrin with Benayahu as its leader (see Tosafor, b.v. Benayahu). A. Even Shoshan, in his *New Concordance*, follows Ibn Janach in rendering them Philistine mercenaries.

<sup>30</sup> For a discussion, see Yehuda Kil, *Daat Mikra: Shmuel B* (Jerusalem: Mossad Harav Kook, 1981), p. 398.

Talmudic literature tells us that David's power was circumscribed even in matters of war and peace, normally the sole prerogative of royal leadership. This view represented an expansion of *Deuteronomy's* guidelines for the conduct of military operations, which, as noted, were not placed solely in the king's hands. In describing the process by which Israel initiated a discretionary war against a putative enemy, the Rabbis noted that David first had to seek the permission of both the Sanhedrin, the supreme rabbinical court, with which David shared the crown of Torah as he did with the prophets, and the *Urim V'Tumim*, the Divine oracle consisting of precious stones on the High Priest's breastplate.<sup>31</sup> The Talmud thus underscored the degree to which Scripture itself described the system of governance under David as one of checks and balances among the king, the prophets and the priests.

David's administrative structure was further solidified under Solomon. Upon claiming the crown, Solomon immediately exerted control over both the military and the priesthood. He executed Joab and replaced him with Benayahu and installed Zadok as the sole high priest. Once he was settled on the throne, Solomon undertook a massive program of economic expansion and royal construction. He created a merchant fleet, and negotiated treaties with kingdoms near and far to expand his country's foreign trade. Most critically, he press ganged Israelite labor to support his massive construction projects, creating tremendous resentment among the common people.

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<sup>31</sup> *TBav Berakoth 3b-4a.*

The tribal elders, who never reconciled themselves to their loss of independence, but supported David's popular rule, likewise increasingly chafed under the domination of his son, who had metamorphosed into an absolute monarch, and drew significant support from the disillusioned and oppressed populace.<sup>32</sup> When Solomon was succeeded by his pig-headed son Rehoboam, the northern tribes broke away under the leadership of Rehoboam, who had already stirred the embers of rebellion during Solomon's lifetime. The Israelite state was permanently fractured, and its system of governance was never restored.

The legacy of Israel lay in the dicta of the Torah, rather than the behavior of the people. Fractious and rebellious from the start, the Israelites often grudgingly accepted the leadership of Moses, despite his revolutionary role and unique relationship with God. They flouted the commandments with regularity, especially after the passing of Joshua. They quarreled among themselves, and were often dominated by foreign invaders. When they finally accepted an established dynasty, it lasted but two generations. Not surprisingly, when the overwhelmingly Anglo-Protestant Founding Fathers looked to the Bible for inspiration, they rarely went beyond the Five Books of Moses. All that followed the Pentateuch was problematic given their own sense of Divine inspired exceptionalism.

## GOVERNANCE IN THE FLEDGLING AMERICAN REPUBLIC

### From Settlement to Revolution

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<sup>32</sup> For a discussion see John Bright, *A History of Israel*, 3<sup>rd</sup> ed. (Westminster), pp. 190 ff.

With the notable initial exceptions of Dutch Reformed New York, and Catholic Maryland, the founders of the thirteen colonies were all English Protestants. Strictly speaking, even the Protestantism of the English settlers was not of a uniform sort, however. The New England states were dominated by dissenters of various types, as were Pennsylvania's Quaker elite. In contrast, the southern states, most notably Virginia, were led by members of the latitudinarian Established Church. Nevertheless, it was more than language that the elites of all the thirteen colonies that had come into existence by the beginning of the eighteenth century had in common. All were imbued with a sense that "God is English."<sup>33</sup> They also shared a common aversion to both the Catholic church and the High Anglican ritual that prevailed in the mother country.

The colonies also reflected a common governing structure. Despite differing origins, and different initial governing structures, by 1700 all had a governor, a governor's council, an elected assembly, and relatively independent lower courts that ruled in accordance with English Common Law. In the minds of the colonists, all therefore reflected a balance of power between the citizens of the colonies and the Crown.<sup>34</sup> That was certainly not the reality, at least as seen in London. Parliament and Government scoffed at the assemblies' notion that by virtue of their ability to tax their citizens they were somehow co-equal to Parliament, and that, indeed, only they could impose taxes on their constituents. "The colonial assemblies existed by virtue of royal

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<sup>33</sup> John Aylmer, a leading Protestant pastor, quoted in Walter A. McDougall, *Freedom Just Around the Corner: A New American History 1585-1828* (New York: Perennial, 2004), p. 27.

<sup>34</sup> "The twelve mainland American colonies were...largely self-governing and willing to recognize British authority so long as it was not really enforced." *Ibid.*, p. 115.

charter and hence had no higher legal standing than the aldermen's corporation in any English borough, or indeed a joint-stock business enterprise."<sup>35</sup>

The colonists may therefore have had an exaggerated sense of their own importance, but they all had the same view. All also had a strong sense of the importance of the liberties outlined in their charters. Finally, all made the strong connection between self-government and Protestantism, with its rejection of the central authority of the Catholic Church.

New Englanders were the most extreme in tying religion to governance. Non-conformist preachers wielded tremendous influence and often real power, with the most famous of them, such as the Mathers and Jonathan Edwards, acting as both priests and prophets. Lay civic leaders not only avoided challenging the pastors, but, at least outwardly, governed in accordance with their teachings. The general populace resonated to religious preaching, even if their practices fell short of the ideal. The 1730s witnessed the first, but not the last, American "Great Awakening," when evangelical preachers called on people of all classes and regions to "return: to their faith. Not surprisingly, political rhetoric was laced with Biblical allusions.

The high church leanings of the southern Anglicans did not prevent them from also citing the Bible when it suited them politically. Even Pennsylvania's pacifist Quakers were not above doing so as well, as were Deists throughout the American colonies. As Walter McDougall has

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<sup>35</sup> Fred Anderson, *The War That Made America: A Short History of the French and Indian War* (New York: Viking: 2005), p. 243

written, “The American cause was profoundly religious for Protestants and Deists alike because both identified America’s future with a Providential design and both entertained millenarian hopes. Even Deists believed in God, after all—that is what the word Deist means.”<sup>36</sup>

The Old Testament, especially the Pentateuch, viewed through Protestant eyes, was a particularly rich source of political allusion, especially as the colonies increasingly moved toward asserting their rights vis a vis the mother country. The Exodus from Egypt, representing the successful rebellion of the oppressed against their tyrannical overlords, the birth of a new nation composed of multiple tribes, and the manifestation of God’s “strong hand and outstretched arm” miracles that accompanied it, motivated Americans of all stripes, High and Low Church Protestants, dissenters and free thinkers, and even the tiny Jewish community. Jewish rabbinic lore had also argued that the Egyptians were debauched; strict Protestants certainly saw the behavior of the elites in Georgian England in much the same light,<sup>37</sup> even if they were not aware of the rabbis’ *aggadic* interpretations.

Moreover, Americans saw themselves in relation to God and other men as the Israelites had. Led by Moses, “the prophet who [stood] up to the mightiest king ever known,; they had crossed the Red Sea to freedom.”<sup>38</sup> By accepting the Law at Mount Sinai nearly immediately thereafter, however, they made it clear that they were God’s servants, but no one else’s. As the Rabbis of

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<sup>36</sup> *Ibid.*, p. 237.

<sup>37</sup> *Ibid.*, p. 207.

<sup>38</sup> Feiler, p. 22.

the Talmud opined, “For it is to me that the Israelites are servants<sup>39</sup>--and not servants to servants.”<sup>40</sup> Similarly, and without drawing upon rabbinical dicta, “most Americans before, during and after their War of Independence shared the assumption...that liberty is a gift of God....Americans called upon God to protect them because He—not George III—was their king.”<sup>41</sup> It is no coincidence, therefore, that it was a passage in Leviticus, translated in the King James Bible as “proclaim liberty throughout all the land unto all the inhabitants thereof,” that was engraved on what came to be called the Liberty Bell, America’s great icon of independence.<sup>42</sup>

There were other parallels as well. Since their founding, each of the colonies maintained its own independent militia. Like those of the ancient Israelites, these militias consisted primarily of farmers who took time off from their agricultural duties to take up arms. Also like their ancient predecessors, they had no real military organization, no formal military training, no sense of tactics, much less operations or strategy, no central repository of weapons, nor, for that matter, any heavy weapons to speak of. Even when they fought in the French and Indian War, they did so as irregulars, not as part of the British formations.

### The Founding—and Foundering—of the State

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<sup>39</sup> *Leviticus* 25:55.

<sup>40</sup> *T Bav. Kidushin* 22b.

<sup>41</sup> Walter A. McDougall, *Promised Land, Crusader State: The American Encounter with the World Since 1776* (Boston and New York: Houghton Mifflin, 1997), p. 15.

<sup>42</sup> For a discussion see Feiler, *America’s Prophet*, pp. 45-53.

As the colonies increasingly clashed with the government in London, they recognized that they needed to function in concert if they were to achieve their political objectives, which, by 1776, meant for the New Englanders and the southern states, not only liberties to which they had become accustomed until the Lord North's "Tories" asserted London's power under George III, but independence from Britain as well. Yet, like the Israelite tribes, they were highly protective of their own prerogatives and suspicious of central power. Indeed, not all the states were equally enthusiastic about independence; many of the leaders and ordinary citizens of the mid-Atlantic states, and particularly New York, were more inclined to maintain their loyalty to the British crown.

The Israelites had been brought together by one man, Moses. For the Americans, that Moses was George Washington. The real Washington almost renders the Washington of legend unnecessary. To be sure, his military record in the French and Indian War was unremarkable. But in the following decade he had transformed himself into a man to whom all looked for leadership, a man above faction, above religious denomination, above regional interest. As a Mason—like so many of the Founding Fathers—he was a fraternal brother of Jews as well as Christians; he was by no means a man without faith, but his faith was highly latitudinarian. Did he see himself as a latter day Moses? Probably not. But others certainly did.<sup>43</sup>

As the Continental Congress struggled to chart a course for the colonies, now united by the Declaration of Independence, as Benjamin Franklin, Silas Deane and Arthur Lee tried to

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<sup>43</sup> *Ibid.*, pp. 102-104.

negotiate financial and military support, and a treaty, from an ambivalent King Louis XVI—the latter two objectives took much longer to achieve<sup>44</sup>—Washington had to lead a ragtag, untrained, outnumbered, outgunned and constantly rotating force against the might of the British crown. Moreover, he received pitifully little financial and material support from the weak Congress. That the Americans survived odds that seemed insurmountable was remarkable, if not miraculous. Washington, who served without pay and led his troops by example, rightly reaped the reward of their improbable triumph.

Once hostilities had ended, however, the states reverted to their old ways. They had little inclination to undertake what today is termed “nation building.” The Continental Congress, a creature of the colonies, now states, had virtually no authority to speak of under the Articles of Confederation. There was no executive to provide any kind of national leadership. When the Congress did create what outwardly appeared to be an executive department, the tiny Department of Foreign Affairs, it constrained its activities to the point of virtual strangulation.

Congress functioned through committees, when it functioned at all. It was, as Arthur Schlesinger wrote when introducing his examination of the growth of presidential power culminating in the Nixon era, “a parliamentary government without a prime minister.”<sup>45</sup> It could not raise revenue; it could issue currency; it could not raise an army, or a navy, for that matter. It could not guarantee any foreign treaties it negotiated. It had no control over trade and commerce, either

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<sup>44</sup> Many volumes have been written on this subject. For a brief discussion see Bradford Perkins, *The Creation of a Republican Empire: 1776-1865* (Cambridge: Cambridge University Press, 1995), pp. 26-31.

<sup>45</sup> Arthur M. Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghton Mifflin, 1973), p. 2.

internally between and among the states, or externally. It could not add to its powers, because any amendment to the Articles of Confederation had to be adopted unanimously. Indeed, the passage of any law required the approval of at least nine states. As a result, it had little credibility, either vis a vis the states, with respect to America's relations with foreign powers.

The states functioned as they had in the past, on the basis of a tripartite separation of powers among the governor, no longer appointed by the Crown, the legislature, and the judiciary. States regulated their own trade, imposed their own tariffs—including against each other—and maintained their own militia. Eleven of the thirteen also maintained their own navies.

Much as they valued their independent freedom of action, acting individually the states were unable to protect their interests in the international arena. They were unable to prevent British and Spanish diplomatic pressure, political meddling and military and mercantile exploitation. They also found themselves at the mercy of the Barbary pirates, who exploited the fact that the United States did not have, and could not finance, a navy to confront them. As a result, the Congress was forced to pay tribute to north African states like Morocco in order to free hostages that the pirates had captured on the high seas.<sup>46</sup> Indeed, because the Congress could not compel

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<sup>46</sup> Robert F. Turner, "President Thomas Jefferson and the Barbary Pirates," in Bruce A. Elleman, Andrew Forbes and David Rosenberg, eds. *Piracy and Maritime Crime: Historical and Modern Case Studies* (Newport, RI: Naval War College Press, 2010), p. 158.

them to fund international agreements, the states lost out on an opportunity to join with European states in a collective treaty to take joint action against the Barbary pirates.<sup>47</sup>

Moreover, given their unequal size and wealth, not all of the states were able to satisfy the economic frustrations of their citizenry, or provide a credible bulwark against Indian incursions across their frontiers. Finally, state legislators were notoriously corrupt, and often incompetent as well. “Men [were] seated in the state legislatures who before 1776 would have been unlikely to have held a county post or an office in even the tiniest village.”<sup>48</sup>

If Americans had once seen themselves as the beneficiaries of Divine intervention against British tyranny, their situation under the state-dominated Articles was now more reminiscent of the Israelite tribes after Joshua’s death. Indeed, in addition to foreign pressure, a condition that had, as noted, also plagued the tribes, the states also faced major internal pressures that, as had been the case with the Israelites, threatened to tear them apart. And, just as the Israelites began seriously to consider the importance of a central authority after their civil war, the states did so in the wake of Shays’ rebellion, an insurrection by indebted Massachusetts farmers faced with the loss of their farms that was put down by the state militia.

### The Constitution and the American Nation

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<sup>47</sup> Thomas Jefferson proposed the treaty in 1786, and won support from a number of European states. Since funding was required to take military action against the pirates, the United States needed to commit to its share of the effort; this the Congress could not do. See *ibid.*, pp. 160-61.

<sup>48</sup> John Ferling, *Adams vs. Jefferson: The Tumultuous Election of 1800* (Oxford: Oxford University Press, 2004), p. 42.

The framers of the Constitution recognized that only a new form of government could rescue the fledgling Republic. As Alexander Hamilton wrote when justifying the creation of a strong and single executive: ““A feeble Executive implies a feeble execution of government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.”<sup>49</sup> Hamilton preferred the strongest possible executive, but even he would not argue for a king; the Framers might quote the Bible, but they did not copy it.

Instead the Framers agreed upon a tripartite separation of powers among a Chief Executive, a bicameral Congress, and a Supreme Court. They also erected a balance between the States and the Federal Government, the division of powers, though initially the states appeared to get the lion’s share of that division. That division was expressly codified in the last of the ten initial amendments to the Constitution that collectively were termed the Bill of Rights: all powers not delegated to the Federal Government were reserved to the States. This arrangement was unique; and, as with the choice of a president rather than a ruler, Biblical references did not translate into the practical organization of government.

The Constitution offset Presidential power and initiative by granting the Congress the power of the purse. To this day, it is arguable that “the budget is policy.” While the Executive Branch might frame spending proposal, it was—and is—the Congress that deliberates upon them and approves them. Congressional activism regarding budgetary spending has waxed and waned over

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<sup>49</sup> Alexander Hamilton, “The Executive Department Further Considered” (Federalist No. 70), *New York Packet*, March 18, 1788.

the decades—an example of its budgetary muscle flexing was the its cutting off funds to support America’s involvement in the Vietnam War—but it has always been a constant in American governance, which Presidents and Administrations have ignored at their peril.

There was considerable vagueness about many aspects of the new national security system, notably the place of the Executive and Legislative Branches within that system. As a respected military analyst has written “the Constitution...is a virtual invitation to struggle over national security affairs.”<sup>50</sup> That vagueness particularly applied to the respective roles of the President and Congress in making treaties and war. The Constitution had granted the Senate the power to declare war, but named the President as commander-in-chief, though it remained silent on his ability to order military operations without first obtaining a formal declaration of war.

The Founders recognized that only if the proposed federal government had the power to raise an army and equip a navy could the Nation defend its interests in the face of foreign pressure or aggression. As the same time, since the memories of the behavior of Britain’s standing army were still fresh and raw, even the most committed Federalists did not advocate the creation of its American equivalent. As James Madison would argue in defense of the proposed constitution, “A standing force...is a dangerous, at the same time that it may be a necessary, provision.” He added, making the case for limiting to two years any appropriations to support an army, “the best

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<sup>50</sup> Joseph J. Collins, “What Civil-Military Crisis?,” *Armed Forces Journal* (February 2010), p. 20. Dr. Collins, currently at the National War College, is a former Army officer who also has served alongside the author as a Deputy Assistant Secretary of Defense.

possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support.”<sup>51</sup>

It is noteworthy that, in contrast to its restrictions on the Army, the constitution did provide for a standing Navy. As a serving Army officer has recently noted, whereas “the Founders viewed armies as temporary necessities to deal with particular crises [they] understood that the maintenance of a navy was an enduring requirement.”<sup>52</sup> Without a permanent naval force (and marines to accompany it), the fledgling republic would have no credibility either in negotiating trade treaties or in trying to enforce them.

At the same time, even as they had set the conditions for raising an Army and maintaining a Navy, the Founding Fathers established a clear system of civilian control of the military. The system was actually one of dual control. As noted, the President was commander-in-chief; it helped that George Washington, unanimously elected the first President actually had already been commander-in-chief. The chief executive nominated all military officers, effectively controlling their promotions and thus their loyalties. At the same time, however, the Constitution gave the Congress the power to confirm the President’s nominations.

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<sup>51</sup> James Madison, “General View of the Powers Conferred by The Constitution” (Federalist No. 41), *Independent Journal* (January 19, 1788).

<sup>52</sup> Lt. Col. Paul Yingling, “The Founders’ Wisdom,” *Armed Forces Journal* (February 2010), p. 15.

There have been many changes to the nature of governance since the first years of the Republic. Civilian control of the military is not one of them, however. Civilian leadership remains paramount, and has been embedded in the military culture. Generals have served as Presidents, as Washington had done, but America has never had a Napoleon, or, it might be argued, even a Boulanger.

The Constitution also provided for a third, nominally co-equal branch of government, the Supreme Court. Moreover, one might have expected, given the religious predilections of so many of the Founding Fathers, that the Court would have been at least as powerful as the other branches. After all, ancient Israel laid great stress upon the rule of Divine Law. The Pentateuch had rendered the king subservient to the Law. The prophets Samuel, Nathan and Gad all had reinforced that principle. Samuel, having relinquished secular leadership of the people to Saul, twice chastised the king for violating Divine instruction, with the result that Saul lost his legitimacy as the founder of a hereditary monarchy. Nathan upbraided David for his affair with Bath Sheba,<sup>53</sup> Gad did so when David took a census, which violated the prohibition against a head-count of the Israelites.<sup>54</sup> Even the evil king Ahab had submitted to Elijah's chastisement for robbing Naboth of his vineyard.

In fact, Biblical precedent, and Constitutional language did not a powerful court make. Until John Marshall was sworn in as Chief Justice on February 4, 1801, the Supreme Court was the weakest sister of the three branches of government. It was the least respected as well.

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<sup>53</sup> II *Samuel* 12.

<sup>54</sup> *Ibid.* 24:12-18.

Under Chief Justice John Jay and his successor, Oliver Ellsworth, the court gave little sign of either importance or independence. Only four of the Court's six members attended its first meeting in 1791. John Jay resigned to become governor of New York. While he still served on the court, Jay nevertheless took leave to negotiate his eponymous treaty with Great Britain in 1794. Similarly, Ellsworth absented himself from the Court to serve as a member of the diplomatic mission to France that negotiated the Convention of Mortefontaine. These activities, and others that had nothing at all to do with government service of any kind, raised few eyebrows in Washington.<sup>55</sup> With the exception of the Court's 1796 decision in *Ware vs. Hylton*, which upheld the Constitution's supremacy clause,<sup>56</sup> the Court did assert its prerogatives until the Marshall Court began to issue its epic rulings such as *Marbury vs. Madison*.

The ascendance of the Supreme Court was only one of many developments that solidified the new American edifice that the Constitution had erected. Washington's attempts to stay above the internecine warfare between Hamilton and Jefferson, which foreshadowed clashes between leading Cabinet officials that continue to this day, was clearly a major factor in keeping the country together. The smooth transition, despite an amazingly bitter Presidential campaign, from

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<sup>55</sup> For a brief discussion see James F. Simon, *What Kind of Nation: Thomas Jefferson, John Marshall and the Epic Struggle to Create a United States* (New York: Simon and Schuster, 2002), pp. 138-39.

<sup>56</sup> Article VI of the Constitution states that "This Constitution, and the Laws of the United States and all Treaties...shall be the supreme law of the Land." Virginia challenged the clause by ignoring the provisions of the Treaty of Paris that English creditors could recover their debts from Americans. Instead, Virginia arrogated to itself the debts owed by its citizens to English creditors. The Court ruled against Virginia, ordering debtors to pay their English creditors even if they had already paid off those debts to the Commonwealth. See Perkins, *Creation of a Republican Empire*, pp.61-62.

John Adams to Thomas Jefferson, was another.<sup>57</sup> America's economic and population growth also were major contributors. So too were Washington, Adams, and Jefferson's success in keeping America out of the Napoleonic Wars that were tearing Europe apart.

Finally, there was one other factor that preserved the legacy of the Founding Fathers. Religion. During the late eighteenth and early nineteenth centuries, "Only one book held the power to bind or loose the whole nation. That, of course, was the Bible."<sup>58</sup> Even those whose belief in the Holy Writ was weak at best nevertheless saw themselves in Biblical terms, as God's elect. And many Americans retained their strong religious beliefs, as evidenced by the "Second Awakening" that began to emerge when the ink on the Constitution had barely dried.

The Constitution itself did not mention the Bible. And the Founding Fathers do not appear to have claimed Divine inspiration. But many of them did seek Divine support. More broadly, it was merger of their religious belief with their vision of their nation as the embodiment of their belief, that enabled Americans to develop their sense of exceptionalism, their religion of America. In that sense, as in so many others, Americans emulated the Israelites of the Old Testament that the Protestants among them so deeply venerated. Israel was the Bible's Chosen People. Americans inherited that mantle three millennia later. And they have yet to relinquish it, at least in their own minds.

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<sup>57</sup> For contrasting views of Jefferson's putative "revolution of 1800," see Ferling, *Adams vs. Jefferson*, pp. 207-15, and McDougall, *Freedom*, pp. 386-87 and ff.

<sup>58</sup> *Ibid.*, p. 379.