



## Chapter from Thesis

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**SAMUEL RUTHERFORD ON LAW AND COVENANT:  
THE IMPACT OF THEOLOGICO-POLITICAL FEDERALISM ON CONSTITUTIONAL THEORY**  
by

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## Chapter 1

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In his biography of the Scottish Covenanters' great theorist Samuel Rutherford, Coffey states that Rutherford was a complex man: a preacher, pastor, intellectual and ecclesiastical politician whose substantial body of writing covered theology, ecclesiology, political theory, spirituality and apocalypticism.<sup>1</sup>Rutherford's contribution to Reformed thought is not to be discarded. Rutherford no doubt, was both a prominent theologian and political theorist. As political theorist, Rutherford established himself (during and after his life) in his work titled *Lex, Rex*, written in a time when there was an urgency to solve issues of a political and ethical nature. This was the period of the Reformation in the 17<sup>th</sup> century, a period in which the works of proponents from the first wave of the Reformation such as, Martin Luther, Huldrych Zwingli, Heinrich Bullinger, John Calvin and John Knox, were much cherished. It is also clear that *Lex, Rex* was accepted by many as a relevant and weighty political and jurisprudential tract. Hetherington, in his adept work titled *History of the Westminster Assembly of Divines* has the following comment to make on Rutherford:

In the year 1643, he (Rutherford) was sent to London, as one of the commissioners from the Church of Scotland, to the Westminster Assembly. While he attended that Assembly, he greatly distinguished himself by his skill in debate, his eloquence in preaching, and his great learning and ability as an author. Few works of that age surpass, or even equal those, which were produced by Rutherford, during that intensely laborious period of his life. The first of these was titled 'The Due Right of Presbytery'. Next appeared 'Lex, Rex', a profound work on constitutional law, which has not yet found its superior. Soon afterwards he published a work on 'The Divine Right of Church Government', in opposition to the Erastians.<sup>2</sup>

These are only some of the works emanating from the hand of Rutherford, and provide an indication of the level of his intellectual acuity.

Of significance is that Rutherford's political and jurisprudential theory contains a tradition pioneered

by Heinrich Bullinger, and supported by Philippe DuPlessis-Mornay and Johannes Althusius about covenantal thought and the implications of such thought for the Christian community. In what follows, the assimilation of Rutherford's theologico-political federalism with Bullinger's, Mornay's and Althusius's, is confirmed. This investigation aims at providing the reader with added insight into the relationship between 16<sup>th</sup>-century Swiss-Germany and 17<sup>th</sup>-century Scotland about the reception of Bullinger's theologico-political federalism in the political theory as postulated by Rutherford. In other words, there is added insight into Rutherford's federalistic connotations in his political writings. McCoy and Baker state that from the era of Bullinger 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 16<sup>th</sup> and 17<sup>th</sup> centuries, became a major sector of theology within the Reformed churches of Switzerland, Germany, the Netherlands, Britain, and eventually, New England.<sup>3</sup>

McCoy and Baker add that 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. Bullinger's theological and political formulation of covenant thought, for example, can be discerned in the movement that produced the National Covenant in Scotland in 1638 and the Solemn League and Covenant between Reformed movements in England and Scotland in 1643.<sup>4</sup> In this regard McCoy and Baker state: "This alliance led to the calling of the Westminster Assembly and the formulation of the Westminster Confession. In league with the Independents under Cromwell, this movement overthrew Charles I. Though events did not lead in the direction planned by the Scottish-English coalition of Reformed federalists, the character of British society was changed decisively by the revolution they began."<sup>5</sup> Accompanying this will be the added insights of Rutherford into governance, the Divine Law, the office of magistracy, forms of government and their validity, the sovereignty of God in a political context and theories on resistance – issues that are as relevant to Christian political and jurisprudential thought today as they were five hundred years ago.

This investigation forms part of a larger dimension concerning Reformed thought on these issues. What has Reformed thought got to say to the temporal activities and institutions of modern man? What relation should exist between church and state and between state and religion? What must the content of the law be? Has the church any right to "interfere" in politics and lay down official lines of policy for all the faithful of Christ to follow? What is the nature of political obligation and the limit of political authority? What are the responsibilities of the people? The answers to these questions form an integral facet of the believer's knowledge and understanding of the state and governance, the philosophy of law and politics. Taylor rightly states that all these questions have become increasingly urgent during the past hundred years, and they have received much attention in contemporary Christian writings. Not only theologians, but also Christian historians, philosophers, lawyers, sociologists and poets have shared in discussion and debate concerning the above.<sup>6</sup> Bearing this in mind, this work aims not only at joining in the discussion and debate, but also at complementing that fruitful orchard of grand and worthy Christian insights concerning jurisprudential and political principles and content.

The importance of the ideas and insights emanating from the period of the Reformation also needs to be emphasized. Berman states that the Western legal tradition has been transformed in the course of its history by six great "revolutions", of which the Protestant Reformation was one. This revolution, like the fifth one, had the character of a national revolution in Germany, starting with Luther's attack on the papacy in 1517. The remaining five revolutions referred to by Berman are: the Papal, English, American, French and Russian Revolutions. The history of the West had been marked by recurrent periods of violent disturbance, in which the pre-existing system of political, legal, economic, religious, cultural, and other social relations, institutions, beliefs, values, and goals were overthrown and replaced by a new one. The specific patterns and regularities present in these revolutions are: a fundamental, rapid, violent, and a lasting change in the system as a whole. Each has sought legitimacy in: fundamental law, a remote past, and an apocalyptic future. In addition, each of these revolutions produced a new system of law, which embodied some of the major purposes of the revolution and which changed the Western legal tradition, but which ultimately remained within that tradition.<sup>7</sup>

These six revolutions were “total” revolutions in that they involved not only the creation of new forms of government but also new structures of social and economic relations, new structures of relations between church and state, and new structures of law, as well as new visions of the community, new perspectives on history, and new sets of universal values and beliefs. Therefore, each of these six revolutions produced a new or greatly revised system of law, in the context of what was conceived as a total social transformation.<sup>8</sup> As a result, the Protestant Reformation, as one of these six major revolutions in the history of the Western legal tradition, provides, to the Christian of Reformed persuasion, an important epistemological basis for jurisprudential and political insight, and consequently this work wishes to serve and enrich such a cause.

Without negating the numerous contributions from Biblical scholars on issues pertaining to the law and government, it is disappointing to be reminded by Hall about the lack of discussion of these issues from theologians noted for their valuable commentaries of the Bible and teachings of theology in general. Hall states that most systematic theology books offer little or no detailed teaching on politics, and that the formulation of matters of state in most classic theological books shows a noticeable lacuna. In the standard theological texts (e.g., Berkhof, Calvin, Luther, Pieper, Hodge, Buswell, Bavinck, Dabney, Turretin, Erickson, Grudem), one can hardly find systematic Biblical reference to a theology of the state. Hall adds that few resources, above an experiential basis, are available, and popular and experiential approaches have therefore, by default, reigned in this area.<sup>9</sup> Concerning the present-day approach, Hall says that some recent popular works devote hundreds of pages to various aspects of the state. However, not all Christians agree with those views, and the amount of attention given to this area often indicates a preoccupation, which betrays that some discussions may be reactionary or imbalanced.<sup>10</sup> Nevertheless, it remains important to remind oneself of the following as stated by Hall: “Few would dispute that at the very least the Bible concerns itself with the role and purpose of civil government, with the need for law and order, and with other principles of guidance on this whole complexity of questions. It even appears that the Bible addresses the issues of political structure and their relationship to one another.”<sup>11</sup> This work is also aimed at contributing to this cause. Ignorance leads to the understanding that religion is a private matter and that it has nothing to do with politics. Moltmann speaks of an inner emigration that has allowed for outer crimes and undermined resistance. Moltmann adds: “The new political theology presupposes the public witness of faith and the freedom for political discipleship of Christ which is not only private and not only inside the Church.” ... “Politics is the wider context of all Christian theology. It must be critical with respect to political religion and religious politics and affirmative with respect to the concrete involvement of Christians ‘for justice, peace and the integrity of creation’ ”.<sup>12</sup>

It must be noted that reformed theologians and theorists on Reformed political theories such as Bullinger, Mornay, Althusius and Rutherford (to name a few), made great contributions to the Biblical teachings on politics and jurisprudence. In this regard McCoy rightly states that Reformed theology is much more than Calvinism, to which Reformed thought has too often been reduced in histories of Protestant theology written in the 19<sup>th</sup> and 20<sup>th</sup> centuries. McCoy adds that nowhere is this wider character of Reformed thought more evident than in the federal theology in Germany, especially the covenantal theology that was nurtured at Herborn in the 16<sup>th</sup> and 17<sup>th</sup> centuries (and which found acceptance in, among others, Scottish Reformed thought).<sup>13</sup>

Rutherford provided one of the ablest expositions on reformed jurisprudential and political thought that emanated from the Reformation during the 17<sup>th</sup> century. Coffey rightly states that the meagerness of the academic literature on Scottish Presbyterianism is particularly obvious when one contrasts it with the enormous attention lavished on Puritanism in Old and New England. Coffey adds that the contrast is all the more striking when one realizes that devout Scottish Presbyterians were as “Puritan” in their religious culture as the English and New English for whom the term is usually reserved.<sup>14</sup> Coffey states that historians nowadays tend to employ the term “Puritan” to denote “the hotter sort of Protestant”, the most zealous and strict of Protestants, those who called themselves “the godly” and were called by others “Puritans”. It is now suggested that Puritanism should be thought of as a distinctive religious culture characterized by “a ceaseless round of spiritual activities”, including “Bible-reading and Bible-study, sermon-attendance and sermon-gadding, fasting and whole-

day sabbatarianism". This religious culture was as evident among Scotland's "super-Protestants" as among their counterparts in England and New England. Scots like Rutherford, therefore, should be considered part of the Puritan tendency within English-speaking Reformed Protestantism.<sup>15</sup> Rutherford himself stated that "we be nicknamed Puritan" and complained that a "strict and precise walking with God in everything" was scorned as "Puritan".<sup>16</sup> According to Coffey that despite all this, Scottish Presbyterianism has been largely ignored by historians of Puritanism. Those writing on Puritan theology, politics or spirituality frequently allude to Scots like Rutherford, thereby acknowledging that the Scots shared a great many of the characteristics of the English Puritans, but Scottish Puritanism as a movement has remained unexplored.<sup>17</sup>

In the words of Schaeffer: "Many good things in England came from Scotland. The clearest example of the Reformation principle of a people's political control of its sovereign is a book written by a Scot, Samuel Rutherford ... The book is *Lex, Rex: Law Is King*".<sup>18</sup> Schaeffer adds that Rutherford's work and the tradition it embodied had a great influence on the United States Constitution, even though modern Anglo-Saxons have largely forgotten him. Rutherford's political influence was mediated through, inter alia, John Witherspoon (1723–1794), a Presbyterian who followed Samuel Rutherford's *Lex, Rex* directly and brought its principles to bear on the writing of the Constitution and the laying down of forms and freedoms.<sup>19</sup> *Lex, Rex* gave classic Reformed answers to questions concerning the origin of governments, the scope of their powers, popular conveyance of power by covenant, and the community's ultimate authority.<sup>20</sup> According to Maclear, Rutherford's is the most notable English expression of classic Reformed political thought in the 17<sup>th</sup> century. By the next century, says Maclear, Rutherford was largely forgotten, but in his own age he was linked with Buchanan as a father of orthodox doctrine. Maclear adds that like Knox and Buchanan, he wrote at a time of national crisis, and his writing assisted in the reparation of an enduring national tradition disposed to challenge oppressive government and refer political decision to moral law.<sup>21</sup>

Hall also gives deserving support to Rutherford by stating that: "For a better theology of the state, one would have to revisit the treatises of Althusius, Rutherford, or the Westminster Larger Catechism's discussion of the Decalogue."<sup>22</sup> Flinn states that Rutherford, like many Puritan divines, was a prolific writer. He adds that Rutherford's *Lex, Rex* is one of the most comprehensive expressions of Calvinistic political theory, and that it is also one of the keystones in the development of modern political theory. Flinn goes on to state that *Lex, Rex* has understandably been studiously avoided by secular political philosophers, for it is unabashedly Christian and Calvinistic. Less understandably however, it has also been avoided or overlooked by many in the neo-Puritan movement of our own day.<sup>23</sup>

According to Coffey, Rutherford lived at the end of an era in which religion had formed a sacred canopy covering every area of life, and in which the principle of "one realm, one religion" had been taken for granted. There lay ahead of him not the kingdom of God on earth but a world in which religious plurality and tolerance would gradually expand, and in which religion would eventually be pushed to the margins of political life.<sup>24</sup> Rutherford saw the beginning of this trend in England in the 1640s, and he resisted it with all the arguments that he could muster. His books against tolerance of ungodliness perhaps entitle him to be described as one of the last full-blooded defenders of the medieval *Respublica Christiana*. But he was trying to save a sinking ship. The fragmentation of Protestantism was too far advanced, the demands of intolerance too onerous, the attractions of pluralism too great.<sup>25</sup> Coffey states that *Lex, Rex* has been called "the most influential Scottish work on political theory".<sup>26</sup> *Lex, Rex* was not Rutherford's only work concerning reformed-jurisprudential and political theory. His *Free Disputation Against Pretended Liberty of Conscience*, has been described by Owen Chadwick as "the ablest defense of persecution in the seventeenth century".<sup>27</sup> With this study, it is also intended to confirm the importance of *Lex, Rex*, as, among others, a political and jurisprudential document.

More specifically, the importance of this work concerns the confirmation of McCoy and Baker's view that Bullinger's theory of federalism was fundamental to the development of the political theories of Althusius (in the European political tradition) and Rutherford (in the Scottish tradition). The immediate

result of Bullinger's theologico-political federalism was the formulation of an answer to the challenge posed by the rapid emergence of the European nation states and the upcoming wave of secular sovereignty in political systems. The later effects of Bullinger's political theories involved the development of a Reformed covenantalism, which provided theologians and political theorists with the principles to formulate alternatives to the secular theory of Bodin.<sup>28</sup> The theoretical impact of Bullinger's federalism manifested itself in the thought of Althusius and Rutherford in a number of key-elements: among others, the principle of the protective role of magistracy; the close connection between piety; justice and the office of magistracy; law as the norm for legality and the development of a theory of political resistance to tyranny.<sup>29</sup> The practical results flowing from the religious covenants emanating from this Reformed Protestantism, according to Elazar, are that they "gave birth to covenanted commonwealths, the political expression of those ideas, from Switzerland to Scotland and then in British North America and Puritan England." According to Elazar: "These commonwealths preserved the old medieval unities of religion, state, and society, but in a new republican ideational, institutional, and behavioral framework."<sup>30</sup> The fiber of Bullinger's federalism permeated Althusius's *Politica*, one of the most valuable contributions to Reformed politics; its extensive, meticulous, detailed, and systematic format attesting to this. The same can also be said about Rutherford's *Lex, Rex*, which was called "the most influential Scottish work on political theory" and "the classic statement" of Covenanter political thought.<sup>31</sup> In fact, McCoy states that: "A book that takes a position very close to that of Althusius is Rutherford's 'Lex, Rex: The Law and The Prince; A Dispute for the Just Prerogative of Kings and People' (1644). Rutherford was a leader of the Puritan and Scottish Reformed movement that overthrew King Charles I, and his book was influential both in its immediate context and upon subsequent political thought".<sup>32</sup> The accuracy of this statement will also be verified in the chapters that follow.

Rutherford's political thought was to a large extent similar to that of Althusius's, and together these writers were pioneers, adding new perspectives and insights to political and jurisprudential theory in general; more specifically contributing to the further development of Bullinger's theory on theologico-political federalism. They had presented a theory of polity-building, based on the polity as a compound political association established by its citizens through their primary associations on the basis of consent, rather than a deified state imposed by a ruler or an elite.<sup>33</sup> The epitome of this mutual thought on federalism among Bullinger, Althusius, and Rutherford was the ever-binding authority emanating from within Scripture; hence the fusion of politics and theology. This was the dividing line between the theologico-political federalism that distinguished the federalists of the Reformation from the political federalists of the early Enlightenment, such as Thomas Hobbes and John Locke.<sup>34</sup>

The outstanding contribution of Bullinger is situated in the fact that he was the originator of a legacy that exposed a unique perspective concerning the relationship between God and man, particularly relating to its political influences. It is this same legacy that provided Althusius, Rutherford, and the likes, such as Philippe Duplessis-Mornay, with an alternative theoretical paradigm to the strong influence of secularism introduced by Jean Bodin.<sup>35</sup> The link between Bullinger, the father of theologico-political federalism, and Mornay, Althusius, and Rutherford, will also become clearer in what follows.

It is interesting to note that the Reformation has by and large been the cradle of a social contract theory, thereby preceding the social contract theories emanating from the secular thought of Bodin, Hobbes and Locke. Therefore, although there are several varieties of federalism, the concept that government was based on a covenant or contract was an integral part of the federal tradition prior to Bodin, Hobbes and Locke – all of whom were latter-day faces of 16<sup>th</sup>-century federalism.<sup>36</sup> In fact, the social contract theory that forms such an integral part of the history of the United States of America, can be ascribed to the theologico-political federalism emanating from the thought of Bullinger, and finding a following in Reformed England and Scotland, the Scot, Rutherford also being an adherent to such theory, which eventually was blown over to the colonialists of New England. The core of the *Mayflower Compact*, stated that the Separatists covenanted and combined themselves into a Civil Body Politic, solemnly and mutually in the presence of God and of one another, for the better ordering and preservation and furtherance of the aforementioned ends. This covenant included the commitment to

set up whatever governmental instrumentalities were appropriate and the promise to give all due submission and obedience to these community decisions. The *Mayflower Compact* was a very firm yet conditional agreement that assumed a previous ordering of society to be continued, renewed, and improved. This religious-political covenant emerged from the federal tradition, fitted into it admirably, and established a clear pattern of federalism among the British colonies in the New World, a pattern that was to be replicated and extended,<sup>37</sup> as well as a pattern that has been detected from the early Reformed thought in Zurich, through to 16<sup>th</sup> and 17<sup>th</sup> -century Scotland.

It is important to keep in mind the unfortunate development in the history of post-Reformed thought, concerning the "walls of separation" that have been erected between church and government as well as the various sciences. It is a common tendency to view the sciences as autonomous and it has reached a point where the specialist in one field of science hardly dare not enter the field of another. This is clearly visible concerning the present-day approach pertaining to the relationship between jurisprudence, politics and theology, and is a perception that needs remedying. It is therefore hoped that this work will provide the reader with the realization concerning the intimate relationship between these various disciplines. Taylor also states that one of the great tragedies of the Reformation was the failure of the great Reformers, John Calvin and Martin Luther, to develop a doctrine of law, politics and the state, upon truly Reformed and Biblical lines.<sup>38</sup> According to Taylor, the Reformers did not bring about any radical departures in the spheres of political science, statecraft and jurisprudence for the simple reason, as the German scholar August Lang has shown, that they were so involved in theological discussion, religious controversy and the very struggle for survival, that they simply did not have any time left in which to develop a Reformed and Biblical theory of politics and government.<sup>39</sup> This work also intends to further those Reformed minds that did make radical and insightful departures into the spheres of political science, statecraft and jurisprudence, Rutherford being one of them.

In a contemporary context, McCoy and Baker<sup>40</sup> illustrate the unfortunate separation between some of the sciences in their observation of federal theology and political federalism. They state:

Because of the specialization and the separation of disciplines in twentieth-century universities, the relation between the theological and political elements in that earlier time (sixteenth and seventeenth centuries) is not always clear. Today, theology deals with religion, and political science with government and politics. The study of the covenant, consigned to theological studies, itself divided into separate disciplines, has generally been left to Biblical scholars, who have dealt with it only as it appears in the Bible. The notion of federalism has become the property of political science, history, and philosophy ... the wholeness of human experiencing is forgotten as fragments are parceled out to various academic specializations for isolated scrutiny. The sectors of human experience examined apart from their relation to one another become distorted and misunderstood. The close connection between covenant and social contract is overlooked ... And, strangest of all, the politics and ethics dominant in modern Western culture can be misread as 'liberalism' without reference to the federal tradition.

In works of political philosophy concerned with the post-Reformation period – more specifically regarding the theories relevant to federalism – an awareness that there is a relationship between theology and politics is not altogether clear. According to McCoy and Baker, scholars have not yet investigated the interrelatedness between these two fields of "sciences", in any satisfactory fashion. Names such as Robert Blakey, Otto van Gierke, George Sabine and Ludwig Gumplowicz, do identify this potentiality or presence of interrelatedness, yet fail to provide sufficient discussion thereof.<sup>41</sup>

On the other hand, Quentin Skinner seemingly regards theological and political federalism as totally unrelated, while Gottlob Schrenk states: "This influence of theological federalism on political theory has still to be investigated thoroughly".<sup>42</sup> Had this approach of "separation" been postulated by the Reformers? McCoy and Baker make it clear that prominent religious leaders and political thinkers of the period of the Reformation did not separate these sciences from each other:

In sixteenth, seventeenth, and eighteenth centuries, the era when the institutions of the modern world were taking shape, federal theologians dealt with political as well as ecclesiastical issues and political philosophers concerned with *societal covenants* dealt also with *religious issues*. Bullinger and Rutherford were primarily religious leaders but did not hesitate to spell out the political implications of their theological federalism. On the other hand, political thinkers like Althusius and Thomas Hobbes focused on the political order but included much that now would be regarded as in the domain of theology.<sup>43</sup>

Flinn states that from the time of Rutherford onwards, a secularizing trend set in which effectively emasculated the political theology of the Reformation. The humanistic political consensus of our day has come to full flower; and then there are those Calvinists who spurn political and economic theology, preferring to hold that the Scriptures do not speak clearly or authoritatively in these areas, and that one should look to "common grace" in developing these fields.<sup>44</sup> Regarding this and concerning his article on Rutherford in the context of Puritan political theory, Flinn adds: "Fortunately our Puritan forefathers were more jealous for the honor of God, and they were determined to be more faithful to the Scriptures. This ... then, attempts to present Puritan political theory through the mouth-piece of one of its leading exponents – Samuel Rutherford."<sup>45</sup> In 1644 Rutherford was appointed one of the eight Scottish commissioners to the Westminster Assembly; and a year later, while the Assembly was in progress, he wrote and published *Lex, Rex*. Concerning the weight attached to Rutherford's *Lex, Rex* during the period of the Assembly Flinn writes:

Rutherford's work caused a great sensation upon publication, particularly in the Assembly. That it was an accurate reflection of the political philosophy of the Assembly is evidenced by Bishop Guthrie, who writes that every member of the Assembly 'had in his hand that book lately published by Mr Samuel Rutherford, which was so idolized, that whereas Buchanan's treatise (*de Jure Regni Apud Scotus*) was looked upon as an oracle, this coming forth, it was slighted as not anti-monarchical enough, and Rutherford's *Lex, Rex* only thought authentic."<sup>46</sup>

With the coming of the Reformation, there developed a strong interest amongst the forces of the Reform in the role and place of the state. Dominated by Rome and the Church, the minorities produced by the Reformation sought to free themselves from Caesaro-papist control and to enunciate a theory of the state which protected their own interests, and allowed the state to stand free from the control of Rome.<sup>47</sup> Rutherford's *Lex, Rex* no doubt contributed to this cause.

In conclusion, it is important to take note of the fact that there lies a plethora of political and jurisprudential insights emanating from 16<sup>th</sup> and 17<sup>th</sup>- century Reformed thought that still needs to be researched. Some criticism that can be leveled at especially 17<sup>th</sup> century Reformed Scotland is the emphasis on Church government above that of Reformed political theory. This is especially clear when witnessing the substance arising from the Westminster Assembly in the middle of the 17<sup>th</sup> century. It is hoped that this work will assist in sensitizing present and future generations to the wonderful political and jurisprudential insights gained and postulated by some of the great minds of the Reformation, including the importance of theologico-political federalism to Reformed political and jurisprudential theory, as well as the crucial role that Rutherford played in it all. Maclear states that Rutherford regarded himself as a faithful watchman: "Many before me," he confessed, "hath learnedly trodden in this path", also saying that he "might adde a new testimony to the times." Maclear states that such a new statement was needed because apostasy had "made a large step in Britain", and "Arbitrary Government had over-swelled all banks of Law."<sup>48</sup> Bearing this in mind, it is also trusted that this work will do further justice to Rutherford's valuable testimony to contemporary and future society.

# Footnotes

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1 John Coffey, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), 27–28.

2 William M. Hetherington, *History of the Westminster Assembly of Divines*, (reprint edition of the third edition, 1856, Edmonton: Still Waters Revival Books, 1991), 394. On *ibid.*, 147, Hetherington states: “In his (Rutherford’s) celebrated work, ‘Lex, Rex’, he not only entered the regions of constitutional jurists, but even produced a treatise unrivalled yet as an exposition of the true principles of civil and religious liberty.”

3 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.

4 *Ibid.*

5 *Ibid.*

6 E.L. Hebden Taylor, *The Christian Philosophy of Law, Politics and the State*, (Nutley: The Craig Press, 1966), x.

7 Harold J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition*, (Cambridge, Massachusetts: Harvard University Press, 1983), 18–19.

8 *Ibid.*, 20.

9 David Hall, *Savior or Servant? Putting government in its place*, (Oak Ridge: The Covenant Foundation, 1996), 4. Hall states: “Less than one percent of the leading systematic theology texts address a matter which now consumes far more than one percent of the average Christian’s interest. More than half of that comes from a single theologian (Calvin). In contrast, some recent popular works devote hundreds of pages to various aspects of the state”, *ibid.*

10 *Ibid.*

11 *Ibid.*, 12.

12 Jürgen Moltmann, “Covenant or Leviathan? Political Theology for Modern Times”, *Scottish Journal of Theology*, Vol. 47 (1994), 39–40.

13 Charles S. McCoy, “The Centrality of Covenant in the Political Philosophy of Johannes Althusius”, *Rechtstheorie*, 13 Beiheft 7, (1988), 187.

14 Coffey, *Politics, Religion and the British Revolutions*, 17.

15 *Ibid.* Coffey adds that: “To describe them (including Rutherford) simply as Presbyterians or Covenanters focuses attention on their particular ecclesiological or political positions, whilst obscuring the ethos and spirituality that they shared with zealous Protestants beyond Scotland”, *ibid.*, 17–18. For an interesting and concise referral to sources pertaining to the meaning to be ascribed to the word “Puritan” refer to Joel R. Beeke’s, *The Quest for Full Assurance. The Legacy of Calvin and his Successors*, (The Banner of Truth Trust, 1999), 82–83.

16 Coffey, *Politics, Religion and the British Revolutions*, 18. Levy and Young rightly state that notwithstanding elements of autocracy, elitism, and theocracy that dominated early 17<sup>th</sup>-century Puritan political thought, Puritanism was a bridge from medievalism to the Enlightenment across which traveled many of our most cherished concepts of democratic constitutionalism. The authors add that the social compact theory of government and representative government, government by the voluntary consent of the governed and for the good of the people, natural law and natural rights,



written constitutions and constitutional limitations on the power of government, religious liberty and separation of church and state and the exceptional importance of the individual – all may be found in political ideas, Leonard W. Levy and Alfred Young, "Foreword", pages v–vii in *Puritan Political Ideas 1558–1794*, (edited by Edmund S. Morgan, United States of America: The Bobbs-Merrill Company, Inc., 1965), v–vi. Concerning the latter two concepts, namely the separation of church and state, and the exceptional importance of the individual, it is debatable whether prominent Puritan political theorists supported them. Be as it may, Rutherford, most definitely formed part of this Puritan political thought and contributed greatly towards further insights into political theory. In fact these unique political insights were championed by the theologico-political federalists, as is clear in this study.

17 Coffey, *Politics, Religion and the British Revolutions*, 18.

18 Francis Schaeffer, *The Complete Works of Francis Schaeffer: A Christian Worldview*, 2<sup>nd</sup> edition, (Wheaton: Paternoster Press, 1985), 137. Cf. Hall, *Savior or Servant?*, 3. Hall states: "When Francis Schaeffer was asked to recommend a sound biblical treatise on government, more often than not, all he could commend was an obscure (and at the time out of print) 17<sup>th</sup>-century work with a Latin title: *Lex, Rex* by Samuel Rutherford. Schaeffer was astute to commend such a solid work, but few of his audience could ever find – much less persevere through – this sturdy and worthwhile book."

19 Schaeffer, *The Complete Works of Francis Schaeffer*, 138. On *ibid.*, 139, 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." Also cf. J. F. Maclear, *Samuel Rutherford: The Law and the King* (edited by George L. Hunt; Philadelphia: The Westminster Press, 1965), 86, Maclear stating that Rutherford's is the most notable English expression of classic Reformed political thought in the 17<sup>th</sup> century, and was unfortunately forgotten by the following century. However, according to Maclear, in Rutherford's own age, he was linked with Buchanan as a father of orthodox doctrine. Maclear adds that like Knox and Buchanan, he wrote at a time of national crisis, and his writing impregnated with a new sense of Scotland's destiny, aided in repairing an enduring national tradition disposed to challenge oppressive government and refer political decision to moral law, *ibid.*

20 J. F. Maclear, "Samuel Rutherford: The Law and the King", in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 68.

21 *Ibid.*, 86. It is interesting to note that Rutherford's *Lex, Rex* forms the most concise work on Puritan political theory. In confirmation of this refer to Robert P Martin's *A Guide to the Puritans*, (Pennsylvania: The Banner of Truth Trust, 1997), 126 – 127, where Rutherford's *Lex, Rex* is entered under the heading of "government" and clearly portrays the most concise work on this subject in comparison with similar works by other Puritans. It is also of interest to take note of the following meaningful academic works on Rutherford's political theory to date namely: Omri K. Webb's, *The political thought of Samuel Rutherford*, (unpublished Ph.D. dissertation, Duke University, 1964; C. E. Rae's, *The political thought of Samuel Rutherford*, (unpublished M. A. dissertation, University of Guelph, 1991); Timothy D. Hall's, *Rutherford, Locke and the Declaration: the connection*, (unpublished M. Th. dissertation, Dallas Theological Seminary, 1984); J. F. Maclear's, "Samuel Rutherford: The Law and the King", 65 – 87, in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965); John D. Ford's, "*Lex, Rex iusto posita: Samuel Rutherford on the origins of government*", 262 – 290, in *Covenant and Commonwealth: The language of politics in Reformation Scotland*, (edited by Roger Mason, Cambridge University Press, 1994); Richard Flinn's, "Samuel Rutherford and Puritan Political Theory", *Journal of Christian Reconstruction*, Vol.5, (1978-9), 49 – 74; and John Coffey's, *Politics, Religion and the British Revolutions. The Mind of Samuel Rutherford*, (Cambridge: Cambridge University Press, 1997), more specifically the Chapter titled "The Political Theorist", 146 – 187. In 1963, Webb, in his doctoral thesis on the political thought of Samuel Rutherford states: "The political thought of Samuel Rutherford has had little systematic study in the three hundred years since his death. There are brief mentions of him in standard texts and short summaries of his ideas in biographical accounts, but I have discovered only one critical exposition of his political thought in print, and it is of article length", Webb, *The Political Thought of Samuel Rutherford*, vi. As can be seen from the above sources on Rutherford's political thought, it is a positive development to witness the progress of research since 1963 on Rutherford's political theory.

22 Hall, *Savior or Servant?*, 349.

23 Richard Flinn, "Samuel Rutherford and Puritan Political Theory", *The Journal of Christian Reconstruction* Vol. 5 (1978–

9), 49. 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 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 also referring 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.

24 Coffey, *Politics, Religion and the British Revolutions*, 255.

25 *Ibid.*

26 *Ibid.*, 1-2.

27 *Ibid.*, 2.

28 Andries W. G. Raath and Shaun A. de Freitas, "Theologico-Political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504-1575)", *Westminster Theological Journal* 63 (2001), 303-304.

29 *Ibid.*, 304.

30 *Ibid.*

31 *Ibid.*

32 McCoy, "The Centrality of Covenant in the Political Philosophy of Johannes Althusius", 189.

33 Raath and De Freitas, "Theologico-political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504-1575)", 304.

34 *Ibid.*

35 *Ibid.*

36 Cf. J. Wayne Baker, "Faces of Federalism: Althusius, Hobbes, and Locke" (unpublished paper), 2. In this regard, Hudson states: "Where did Locke derive his political ideas? With regard to his general political principles one need not look far. They were being shouted from the housetops during the years he was at Westminster and Oxford, and they had been explicated again and again by the sons of Geneva with whom he was in contact throughout his life. Even a conservative Presbyterian like Samuel Rutherford, in *Lex, Rex* (1644), invoked almost every argument that was later used by Locke, including an appeal to the law of nature, the ultimate sovereignty of the people, the origin of government in a contract between the governor and the governed, and the right of resistance when that contract is broken", Winthrop S. Hudson, "John Locke: Heir of Puritan Political Theorists", in *Calvinism and the Political Order*, (edited by George L. Hunt, Philadelphia: The Westminster Press, 1965), 113.

37 McCoy and Baker, *Fountainhead of Federalism*, 84.

38 Taylor, *A Christian Philosophy of Law, Politics and the State*, 1.

39 *Ibid.*

40 Cf. McCoy and Baker, *Fountainhead of Federalism*, 45

41 Ibid., 46. Also cf. Flinn, "Samuel Rutherford and Puritan Political Theory", 51, Flinn stating that during the Reformation, no attempt was made to separate religion from the state; and that such separation was to emerge much later, primarily through the influence of John Locke, and reaching its logical extrapolation in Rousseau.

42 McCoy and Baker, *Fountainhead of Federalism*, 46-47.

43 Ibid., 12.

44 Flinn, "Samuel Rutherford and Puritan Political Theory", 49.

45 50, *ibid.* In this regard Richards rightly states: "Rutherford himself saw the political issue as inseparable from theology. He would have vehemently opposed the assertion that the theological question of man's status before God had little impact on political theory", Peter J. Richards, " 'The Law written in their Hearts': Rutherford and Locke on Nature, Government and Resistance", (unpublished paper, Law and Political Science, United States Air Force Academy), 5.

46 Flinn, "Samuel Rutherford and Puritan Political Theory", 50-51.

47 51, *ibid.*

48 Maclear, "Samuel Rutherford: The Law and the King", 86-87.

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