Before Federalism?
Thomas Aquinas, Jean Quidort
and Nicolas Cusanus

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Introduction

The names of Thomas Aquinas, Jean Quidort and Nicolas Cusanus are not usually associated with federalism. Federalism is widely thought to be a modern political invention, whereas these three writers are conventionally classified as strictly medieval, and between the modern and the medieval there is a vast gulf, it is said (Beer 1986; Beer 1993, ch. 1). But what precisely is the difference between the medieval and the modern, and how does it apply to federalism? While much thought and discussion has been given to this question of difference, relatively little has been devoted more specifically to the issue as it relates to federalism. This is an extraordinary omission because among the many dimensions of our modern ideas about politics and government, federalism is a concept which bridges both worlds (Hueglin 1999).

In this chapter, I am concerned with political ideas and institutions and their development through time. My intention is to focus upon several pre-modern writers and, in particular, Thomas Aquinas, as a means of drawing attention to the respects in which federalism as a political idea and a form of political organization bridges the divide between the medieval and the modern. It is not my intention to grapple directly with the question of what actually distinguishes the medieval from the modern, but it is to be hoped that my analysis of the federal idea and its development through time might shed some light upon this question.

1 This chapter restates and develops arguments first advanced in Aroney (2007), Subsidiarity, federalism and the best constitution: Thomas Aquinas on city, province and empire, Law and Philosophy 26:2, 161–228.
To refer to federalism in this way courts the danger of anachronism. To speak in terms of an “-ism” is to adopt a decidedly modern idiom (Hopfl 1983). *Foedus* was a term known to medieval writers, but its use was usually technical in the sense of the Roman and civil law idea of a treaty between nations (Kunkel 1973, 38). Cognates of the word, such as *confederatio*, were also known (and in fact used by Aquinas) to refer loosely to agreements, pacts or covenants of various kinds, but without the specific associations of the modern usage. In modern usage, by contrast, a sharp distinction is usually drawn between the treaties and covenants of international law, and the founding compacts and constitutions of nation-states, and it is only with respect to the latter that the term “federal” is used, usually in order to distinguish federal states from unitary states. It is only in relatively very recent times, with the emergence of the European Union that the word “federal” has sometimes been associated (controversially) with a community of states founded upon international treaties (Aroney 2005). These distinctions and these developments need to be kept in mind when trying to trace an intellectual history of the federal idea.

In terms of modern usage, following the lead of Preston King and others (King 1982; Burgess 2006, 47–48; Watts 1999, 6–7), in this chapter I use the term “federalism” to designate a certain body of ideas, while I reserve the term “federation” to refer to a particular form of political organization influenced by those ideas. My concern in this chapter is not directly with the more technical distinction between federation and confederation, nor with the (problematic) use of the idea of sovereignty to draw distinctions in this field (see Friedrich 1968, ch. 2; Davis 1978, 215), although some mention of these matters will have to be made towards the end of the discussion.

My argument is that when our modern conception of federalism and the contemporary institutions with which we associate this idea are closely analyzed, a number of distinct elements become apparent, and when we look to see whether these elements exist in the political philosophies of the medieval past, both continuities and discontinuities can be identified. Which of these elements is the most significant is a highly controversial question, not unrelated to the problem of the medieval and the modern noted above. In this chapter, I limit my argument to the demonstration of the continuities and discontinuities specifically in relation to Thomas Aquinas and several other late medieval and early modern writers, while gesturing only tentatively in relation to the more debatable question of what is significant or decisive in this context.

Before turning to the relevant texts, it is necessary to make one last preliminary observation regarding the provenance of the present inquiry. Especially as we consider the relationship between medieval and modern political thought, it is important that we do not get confused about what we mean by political philosophy and how philosophy thus conceived might be distinguished from theology. It is conventional, since at least Thomas Aquinas, to understand the distinction between theology and philosophy as a difference between systematic thought founded upon premises supplied by a divine revelation and systematic thought founded upon premises discovered (or else constructed) by human reason. Given the specific subject matter of this chapter, however, my concern cannot be with philosophy
alone, but must be with systematic thought founded on premises delivered by
both human reason and divine revelation. For if this is not conceded, much of the
political thought of medieval times will be excluded from consideration, and we
will be left with an attenuated picture of the history of the federal idea. Similarly,
my concern also has to be with systematic thought about all forms of social
organization, not just the political. For if we do not follow Aquinas in traversing the
domestic, the economic, the social, the ecclesiastical and the political, our picture
will be incomplete and particular similarities between medieval social theory and
later federal thought will be overlooked.

Defining Federalism

Definitions of federalism and federation break down into three basic categories.
One of the most common approaches focuses upon the idea of a distribution
of powers between central and regional governments, prescribed in a written
document (usually called a constitution) and typically enforced by an independent
judiciary. There are several variations on this theme, many of them appealing to
the idea of coordinate or mutually independent governments operating in legally
defined spheres (e.g., Finer 1974, 208–11; Riker 1975, 101; Dahl 1986, 114).

A second approach to defining federalism emphasizes, not so much the division
of powers between central and regional governments, as the idea of several
governments (or several political communities represented by such governments)
participating in a system of government in which they each share and to which
they each are submitted (King 1982, 77). Systems of “federal representation” and
“intergovernmental cooperation” in this sense can be institutionalized in different
ways, depending for example upon whether it is the governments, legislatures or
voting public in each political community who choose those who will represent the
community in the governing institutions of the entire federal system (Aroney 2006,

A third approach to defining federalism, while it generally acknowledges the
importance of the two elements described above, is more concerned with the political
sources from which the federal system derives its origin and, more specifically, the
nature of its founding agreement (Elazar 1995–1991). Recalling that the English
term “federal” is derived from the Latin *foedus*, this approach emphasizes the idea
that federal systems of government find their origin in a federating agreement or
covenant. A federating agreement such as this presupposes the prior, independent
existence of certain constituent political communities, and it sets out what they agree
shall be the institutional conditions of federal union, including the distribution of
powers, the representative institutions of the federation and the processes by which
the federal constitution can be altered in the future (Aroney 2006; cf. Hueglin and
Fenna 2006, chs 5–7, 9–10).

The central advantage of this third approach is that it has greater explanatory
power. Not only does it incorporate a wider range of features of existing federal
systems (Watts 1999, 7), including what Daniel Elazar called “self-rule” and “shared-rule” (Elazar 1987, 12), it sheds light on the relationship between the formative ideas and institutional processes by which a federal system comes into being and the distribution of powers, the representative institutions and the amendment formulas adopted thereunder (Aroney 2006, 320–35). Focusing on only one element – the distribution of powers, for example – shuts out from consideration other elements which are equally typical of federal systems and, in so doing, obscures important similarities between the federations of the present and the political institutions and ideas of the medieval past. In this chapter I am therefore interested in all four of these elements: the formative grounds of the system, the configuration of power between the various spheres of government, the representation of the constituent communities within the decision-making institutions of the system as a whole, and the authoritative processes by which the entire arrangement can be altered in the future. When the political ideas and institutional arrangements of both the past and the present are assessed with these four indicia in mind, a much wider range of potential continuities and discontinuities comes into view. It is on the basis of these criteria that I will proceed to analyze the systematic reflection on problems of human organization and community in the thought of Thomas Aquinas and several other late medieval and early modern publicists, all with a view to identifying the extent to which “federal” ideas and institutions can be identified in these writers, as well as the extent to which they cannot.

**Thomas Aquinas**

Space does not permit detailed contextualization of the social and political thought articulated by the thirteenth-century theologian and philosopher St Thomas Aquinas. Thomas was born in Naples around 1225, the son of Landulph, Count of Aquino in the kingdom of Naples, and Theodora, Countess of Teano, through whom he was related to the Hohenstaufen dynasty of Holy Roman emperors. He commenced studies at the University of Naples, where his precocious talents soon began to be noticed. Soon thereafter, having come under the influence of the Dominicans, he joined their order – against his family’s wishes. He went on to study in Cologne under Albertus Magnus, whom he later accompanied to the University of Paris, where he soon distinguished himself as a controversialist and a scholar. During the extraordinarily productive career which followed, Aquinas thereafter held lecturing and professorial positions at Cologne, Bologna, Naples, Paris, Rome and elsewhere. In his day, great controversy attached to his attempts to synthesize the received theology of the Church with the recently recovered philosophical and political writings of the Greek philosopher Aristotle. Among his works, Aquinas is best known for his massive systematic exposition of theology, the *Summa Theologiae*, and his earlier apologetic work, the *Summa contra Gentiles*, together with numerous treatises on disputed topics and commentaries on the works of Aristotle and particular biblical and theological writings, as well as (part of) a treatise *On
Kingship. Today, Aquinas’s erudition, philosophical sophistication and profound influence is widely acknowledged and he has been officially regarded within the Roman Catholic Church as its foremost theologian and philosopher (Leo XIII, Aeterni Patris, 1879).

A central motif of Aquinas’s thought lay in his attempt to synthesize the deliverances of natural human reason with the propositions of Christian revelation in a manner which admitted the findings of reason as regards those matters falling within the proper scope of each of its sciences, but which preserved the ultimate unity of the truths known by both reason and faith, and yet insisted that revealed truths exceed those truths that can be known by reason (ScG, 1.9.1; 1.3.2, 4; 1.7.3). For Aquinas, philosophy is especially concerned to discover the nature of things “in themselves”, whereas theology begins with the knowledge of God and understands all things in relation to Him (ScG, 2.4.2). Moreover, because philosophy considers creatures as they are in themselves, he concluded that there are “different divisions of philosophy according to the different classes of things” (ScG, 2.4.1, 5).

Aquinas’s observations and conclusions about matters of politics and social organization need to be understood with this background in mind. Indeed, many of his most important propositions relating to such matters were written in the context of specifically theological enquiries and, even in those cases where the basic considerations were fundamentally philosophical in character, his conclusions were still shaped, sometimes critically, by theological premises. Perhaps the most important example of this for present purposes concerns the way in which Aquinas adopted and developed Aristotle’s theory of the polis (roughly translated, “city-state”). Aristotle had said that it is in the polis that human beings realize their chief end and highest good (Politics, I.1, 1252a). Notably, Aquinas was able to agree with this, provided that the proposition could be limited to its proper domain: political science regards humanity in itself and deals only with specifically human ends, whereas sacred theology concerns humanity’s ultimate end without qualification, and therefore transcends it. Aquinas could therefore affirm that cities or states (civitates) exist to pursue the ultimate ends of human life, considered in themselves. But he was careful to point out that “the ultimate end of the whole universe is considered in theology, which is the most important without qualification” (ScG, 3.17; Eth., I.2.13 [31]).

Aquinas’s attempt to integrate Aristotle’s political thought into a medieval intellectual and cultural context also required important adjustments in order to make room for the institutions of the Church at a parochial, diocesan and catholic scale, as well as the cities, kingdoms and provinces of the Holy Roman Empire (compare Nederman 1987; Blythe 1992, 46). Classical antiquity had no conception of church and state as separate institutions, but the seeds of the idea were in Christianity from the very beginning (Mark 12:17; Acts 5:29). Combined with the

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2 Summa contra Gentiles (1259–1265). Unless indicated otherwise, in-text references to Aquinas’s works are to the book, section and paragraph numbers. For more on this motif, see Fortin 1987.

3 Sententia libri Ethicorum (1271–1272).
Roman law idea of *jurisdictio* and related concepts, medieval jurists developed the idea that church and state, as well as particular institutions within church and state, possessed distinct and limited jurisdictions (Tellenbach 1993, 309; Berman 1983, 205–15). Aquinas followed this lead by drawing a definite distinction between spiritual and temporal authority. In those matters which affect the salvation of the soul, he said, spiritual power is to be obeyed, whereas in those matters which concern the civil welfare, the temporal should be obeyed (Sent., II.44 ex. ad 4).

There is some dispute over the precise lines that Aquinas would draw between the temporal jurisdiction of the state and the spiritual jurisdiction of the church. There are passages, such as the one just cited, which can be interpreted to suggest that the pope’s authority extends, at least in some specific contexts, into temporal affairs, and there are others which can be interpreted to suggest that the legitimate concerns of a king include the spiritual well-being of his subjects (*De Regno*, I.16.2 [115]). Wherever the line was to be drawn, however, Aquinas clearly thought that there was such a line, and that church and state had distinct and by implication limited jurisdictions. And, while the nature and functions of each was unique, there was a sense in which they each confronted one another on an equal basis: Aquinas appears to have classified them both as “public associations” and as “perfect communities” (*Impugn.*, II.2, ad 9; *ST*, II–II, 31.3 ad 3; 43.8; Finnis 1998, 226, n 31).

Aristotle considered the polis to be a composition of households, clans and villages (*Politics*, III.9, 1280b). The latter, he said, are formed to secure the bare necessities of life, whereas the *polis*, being self-sufficient, is concerned with securing the good life (*Politics*, I.1–2, 1252a–1252b). The *polis* is therefore prior to families and villages in nature or essence, just as the whole is prior to the part. For, as Aristotle put it, man is by nature a political animal, whose end is fulfilled only in the *polis* (*Politics*, I.2, 1253a; III.6, 1278b). Subject to the qualification that we are here concerned with “human affairs” and with the order of “nature” (see *Eth.*, I.9.10–11 [112–113]), Aquinas again agreed with the general thrust of these propositions. But there were important differences in exposition and detail. When commentating on Aristotle’s *Ethics*, Aquinas emphasized that human communities such as political societies are “wholes” which possess not an “absolute unity”, but rather a “unity of order” (Gilby 1958, 251–6; Eschmann 1947, 29–34). This meant that political communities consist of parts that in some respects have an operation independent of the whole, while in other respects participate in the operations of the whole community (*Eth.*, I.1.5 [5]; Finnis 1998, 24–5). Notably, the Aristotelian text upon which Aquinas commented here made no explicit mention of the question of the relationship of the whole to its parts (*Nic. Ethics*, I.1, 1094a1–18). Yet Aquinas considered it necessary to insist that, while a political community is a composition of households, this does not mean that the political community is an absolute

4  *Scriptum super Sententii magistri Petri Lombardi* (1256).
5  *De Regno ad regem Cypri* (c. 1267).
6  *Contra impugnantes Dei cultum et Religionem* (1256); *Summa Theologiae* (1265–1268, 1271–1273). In-text references to the *ST* are to the Question and article, with references to specific arguments or answers dealt with in each article as applicable.
unity in which the household has no powers of independent operation. While such a conclusion is generally consistent with Aristotle’s own view (see Politics, I.2, 1252b, 1253a; II.2, 1261b), Aquinas’s emphasis on the idea that the state is a unity of order laid the foundation for several significant ways in which he departed from Aristotle.

Firstly, rather than follow Aristotle by always defining human beings simply as a “political animals”, Aquinas usually preferred the designation “political and social” or simply “social”, and added that human nature is not only political or civil, but also profoundly “domestic” (see, e.g., ST, I, 96.4; I–II, 61.5, 72.4, 95.4; De Regno, I.1.3 [4], I.13.2 [94]; ScG, III.85.11; Eth., I.1.4 [4]), VII.6.7 [1391], VIII.12.18 (1719–20); Pol., I.1.29 [37]).

Compared to Aristotle, Aquinas thus placed relatively greater emphasis on the various “non-political” forms of human association and community (compare Scully 1981; Finnis 1998, ch. 7; Aroney 2007, 177–79). Indeed, Aquinas said that it is one of the hallmarks of a tyrant that he deliberately undermines all forms of social solidarity among his subjects, preventing them from joining in various kinds of compacts and associations (confederationes) between individuals and families by which social friendship, familiarity and trust is generated (De Regno, I.4.7 [27]).

Secondly, although Aquinas generally followed Aristotle in regarding self-sufficiency to be an essential characteristic of the polis or civitas which distinguishes it from a mere household or neighbourhood (Pol., I.1.3 [11], I.1.7–9 [15–17], I.1.23–25 [31–33], I.1.30–32 [38–40]; ST, I–II, 90.3 ad 3, II–II, 47.11, 50.1), he elsewhere treated self-sufficiency in relative terms, saying that households and neighbourhoods can possess a kind self-sufficiency themselves, and adding that wider political units such as provinces, kingdoms, nations and, by implication, the empire and indeed the entire universe as a whole, possess degrees of self-sufficiency and completeness which surpass that of an individual city.

The general principle seems to have been that, as Aquinas put it, “a government is the more perfect according as it is more universal, extends to more matters, and attains a more ultimate end” (ST, II–II, 50.1). The implications of this principle were stated plainly in De Regno, where Aquinas described the self-sufficiency of the various forms and degrees of human society (De Regno, I.2.4 [14]). Whereas an isolated individual, he said, is not self-sufficient, a solitary household enjoys a degree of self-sufficiency, particularly with regard to the giving of birth to offspring and the provision of food. Likewise, a particular street or neighbourhood within a city will be self-sufficient in respect of the particular trade that is practised there and, in turn, a city is by comparison self-sufficient in respect of all the necessities of

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7 Sententia libri Politicorum (1269–1272).
8 Note that Sententia libri Politicorum and Sententia libri Ethicorum were expositions of, and not commentaries upon, Aristotle’s Politics and Ethics.
9 On cities and provinces, see De Regno, I.2.4 [14]; on cities and kingdoms, see De Regno, I.14.5 [100]; on nations, see Quaestiones Disputatae de Veritate (1256–1259), 5.3 co; and on the universe as a whole, see ST, I–II, 91.1, 21.4, 100.5; ScG, I.42, 70–71, 78, 85–86, 93, 102, II.39, 42, III.64, 98.
life – but not, it seems, absolutely so. Rather, a province is even more self-sufficient than a city, particularly in respect of its capacity to defend the community against its enemies. Thus, although Aquinas followed Aristotle in progressing from household to city, as well as in distinguishing the city as a perfect and self-sufficient community, he here diverged from Aristotle in identifying a relative self-sufficiency in the household and neighbourhood and an even greater self-sufficiency in the province (Woolf 1913, 274–75; Gierke 1968, 96).

While Aristotle could write simply of the polis, Aquinas appears to have been acutely conscious of the fact that he had to address a wide range of both private and public forms of human association and government. As far as public associations were concerned, sometimes he used generic terms, such as “civic community”, “political society” and so on, and referred to cities, kingdoms and provinces interchangeably – for what he had to say in these cases applied to them all without distinction (Finnis 1998, 219). But at other times, as has been seen, Aquinas referred to cities, kingdoms and provinces distinctly, for what he had to say about each one was different. Moreover, while Aquinas’s picture was undoubtedly hierarchical (e.g., ST, I, 108.1–8, 112.1–4; cf. Beer 1986), it was a hierarchy which included a remarkable diversity of jurisdictions. Thus, although Aquinas regarded human beings and angels to be part of the one hierarchy of rational creatures under God, he maintained that there is a real sense in which they live under different hierarchies (Murphy 1997), just as those, he said, “that cannot be governed in the same way by a prince belong to different principalities” and, therefore, “under one king there are different cities, which are governed by different laws and administrators” (ST, I, 108.1; see also ST, I, 22.1 res; Impugn., II.3; ScG, II.15.4, III.98.1; De Malo, I.1 res).10

Aquinas also often had occasion to remark about the superior power of the emperor over a proconsul and of a proconsul over a governor and, likewise, the power of the pope over every other spiritual power in the church (ST, I–II, 19.5, 96.5; II–II, 69.3, 104.5; De Regno, II.3.12 [112]). Yet, elsewhere, he pointed out that “the subjects of one city or kingdom (civitate vel regno) are not bound by the laws of the sovereign of another city or kingdom, since they are not subject to his authority” (ST, I–II, 96.5 res).

Thus, thirdly, Aquinas developed a typology of kinds and forms of society which, while distinguishing “public” societies such as cities, provinces and kingdoms, from “private” societies such as households, business partnerships, craft guilds and religious associations, nonetheless classified them all as particular kinds of “society” (Impugn., II.2, co; see also Impugn., II.3, ad 6; Pol., I.1.23 [31]). These various forms of society Aquinas saw as possessing both a degree of separateness and independence from one another and a degree of integration and interdependence. An individual can be a member of a particular private society which, to a certain extent, governs itself, he said, while at the same time by virtue of that membership that individual

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10 In Quaestiones de quodlibet, II, 5.1 res., Aquinas likewise described and limited the authority of the head of a household to matters pertaining to the management of the home, and that of a king to those matters pertaining to the government of the realm.

11 On medieval guilds in particular, see Berman 1983, 390–92; and Black 1984.
may be a member of a wider public society of which the smaller society is a part and in which governing institutions its representatives participate (Impugn., II.2, ad 2). Aquinas here seems to have had a conception of both an inclusive membership in a set of integrated societies, and a conception of membership of several private or public societies separately and simultaneously, including a conception of dual citizenship of different cities (Impugn., II.2, ad 3).

Finally, this idea of a plurality of communities of a political, ecclesiastical, social and economic nature, themselves composed of smaller constituent communities, extended for Aquinas to at least the beginning of the idea that this implies a kind of elective, corporate representation of the smaller community in the governing institutions of the larger. This conception Aquinas appears to have derived from certain texts of the Old and New Testaments in which the idea of the nation of Israel as constructed out of a plurality of tribes, clans and families (ST, I–II, 105.1 res., citing Exodus 18:21 and Deuteronomy 1:13, 15), parallels the idea of the church as a universal community constructed out of a plurality of dioceses and parishes (Impugn., II.3; Expositio in Lucam, commenting on Luke 10:1), each in a sense self-governing, but also subject to a hierarchy of courts of appeal, themselves constituted by representatives of the constituent communities. Even the pope was presented here as a limited monarch, constrained by the fundamental beliefs, standards and institutions of the Christian faith (Impugn., II.3). Similarly, while in some contexts Aquinas clearly favoured monarchical rule (ScG, IV.76.4; De Regno, I.3.1–4 [15–19]), he was acutely conscious of the propensity of kings to fall into tyranny, and he suggested several ways in which the authority of a king ought to be tempered, including the formation of compacts (pacta) which place constitutional limits on his power, mechanisms by which a tyrannical king can be deposed and systems of “mixed government” which enable all to have a “share” in ruling (Pol., II.7.4 [245]; De Regno, I.7.1–12 [41–52]; ST, I–II, 95.4 and 105.1).12

### Approximating Federalism

How close was this to modern federalism? A number of features of Aquinas’s social thought stand out. First, there is Aquinas’s recognition that society as a whole consists of a multiplicity of groups of a familial, social, economic, religious and political character, each possessing its own unique functions and jurisdiction. Especially as regards the institutions of church and state, Aquinas conceived of a “unity of order” which leaves room for constituent units at different levels to have an independent operation, while at the same time participating in the operations of the whole. Thus, Aquinas said that the subjects of one city or kingdom are not bound by the laws of another, and he wrote about the limitations on power to which even the pope (and by implication, the emperor) are subject. At the same time, however, he drew attention to the superior power of emperors and popes

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12 See, further, Tierney 1979; Blythe 1992; Murphy 1997; Aroney 2007, 198–220.
over their subordinates in certain respects, and the similar power of proconsuls and bishops over those of inferior rank. An individual, according to Aquinas, may be a member of a particular corporation quite independently of the larger organization of which that corporation is a part, but in other cases membership in a constituent body necessarily entails membership in the larger one. Aquinas accordingly drew a picture of state and church constructed out of a plurality of villages and parishes, cities and dioceses, provinces and archdioceses, with the suggestion that in certain respects these communities are self-governing, in other respects they are subject to the authority of the governing institutions of the communities of which they are a part, and yet in each case there is a sense in which each smaller community is represented in the wider institutions charged with the government of the whole. Aquinas thus had a conception, similar to modern federalism, of a jurisdictional distribution of competencies between the parts and the whole, as well as a conception of corporate representation of the constituent bodies in the larger bodies of which they are a part.

In what way was Aquinas’s social thought, nonetheless, conceptually distinct from modern federalism? Obviously, Aquinas’s ideas were not limited to the “political” narrowly conceived. The specific institutions were different and the number and complexity of levels of government was relatively greater. Furthermore, while both the empire and the church allowed significant degrees of autonomy to their constituent parts, they were more hierarchical and aristocratic in character than could be said of most modern federations. While medieval government was clearly representative, it was certainly not democratic in the modern sense of the word. However, probably the most significant difference between Aquinas’s social thought and modern federal ideas is that Aquinas did not understand these interrelationships to have been founded upon a series of federating covenants between the constituent units, but rather saw it as an outworking of the natural order of things. It was only in the context of his discussion of the constitutional limits upon the power of a king and the capacity of subjects to resist a tyrannical king that Aquinas discussed, in passing, the existence of certain pacts or agreements between king and people, to which the king may be held to account.13 This is significant, but apart from this, Aquinas’s social and political thought was not explicitly covenantal, a characteristic which goes to the very core of what distinguishes his thought from that of modern federalism.

Later theologians and canonists, some of them associated with the conciliar movement of the fourteenth and fifteenth centuries, developed the ideas of jurisdictional diversity and corporate representation in greater detail than Aquinas had (Tierney 1968; Black 1979). Jean Quidort (c. 1255–1306) set forth in *De potestate regia et papali* (c. 1302) a very detailed treatment of church and state which covered their distinct origins, jurisdictions, powers and relationships. The separate jurisdictions of archbishops, primates and pope were particularly distinguished (*De potestate*, X.119, XXV.251), but most originally, John argued that, on analogy with the representation of the elected elders of the tribes of Israel in the Sanhedrin

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13 *De Regno*, I.7.1–12 [41–52].
(Deuteronomy 1:15), the various provinces of the Church should be represented within the governing institutions of the church as a whole (De potestate, XIX.207). Pierre D’Ailly (c. 1350–1420) and Jean Gerson (1363–1429), writing about a century later, repeated the same basic idea, D’Ailly emphasizing that it was the role of the college of cardinals, as representatives of the church, to temper the power of the pope (Blythe 1992, 246, 251). Similarly, in De Concordantia Catholica (c. 1433), Nicolas Cusanus (1404–1464) closely developed the idea of the corporate representation of the provinces in the councils of the church, extending the analysis to the representative roles of priests, bishops, archbishops, metropolitans and pope, each within their respective synods at a parochial, diocesan, metropolitan, provincial and universal level (De Concord., II.1.71) and envisaging a similar representative arrangement of governors, counts, marquesses, dukes, kings and emperor in the temporal sphere (De Concord., III.1.292; III.7:350; III.12:377–8; III.25:469–72; III:35:527). In both spheres, Cusanus insisted upon the election of rulers by representatives of the constituent jurisdictions, such as the election of the pope by the cardinals as representatives of the provinces (De Concord., II.18.163–65) and the election of the emperor by the princely electors within the empire (De Concord., III.4:325, 332, 338).

Fundamental to the conciliar ideas proposed by these writers was the proposition that the fundamental locus of authority in the church rests, not with the pope, but with the congregatio fidelium, the entire body of the church, represented in its councils (Tierney 1968, 4–6). However, while the Councils of Constance (1414–1418) and Basel (1431–1435) marked the high point of conciliarism within the Roman Catholic Church, the movement was condemned at the Fifth Lateran Council (1512–1517).

While it has been argued, with some force, that the political thought that emerged from the Reformation during the sixteenth and seventeenth centuries drew very significantly on late conciliarist ideas (Oakley 1962), the decisive break with the Roman papacy occasioned by the Reformation gave Reformed theologians, jurists and publicists the opportunity to develop and vigorously promote the idea that both church and state ought, for fundamentally biblical reasons, to be understood as a composition of constituent communities at a local, regional and national level (e.g., Rutherford 1644a; Rutherford 1644b). The basic idea here was of a consociation or federation (both terms were used) of constituent communities, governed under a system of representative councils and graded courts, united on the basis of a common profession of faith or a common allegiance, and adopted by oath in the form of a covenant. The Vindiciae contra Tyrannos (1579) forcefully argued, for example, that the legitimate political authority of a king rests upon a series of covenants he has entered into with representatives of the people in their various towns and provinces, and that it rests with duly constituted inferior magistrates to resist, if necessary, a tyrannical king. The most systematic statement of the theory was set forth by Johannes Althusius (1557–1638) who founded his socio-political theory upon the general proposition that organized society is properly built up through a succession of compacts among constituent elements: starting with families and kinship groups, then guild associations and corporations, through villages, towns and cities, and culminating in entire provinces confederated together to form a universal political association or commonwealth (Althusius 1614). In Althusius,
one encounters a conception of society that is thoroughly federalized in its familial, social, economic, ecclesiastical and political relations.

The social contract theory of Thomas Hobbes (1588–1679) and John Locke (1632–1704), while in certain respects similar to the covenantalism of Rutherford and Althusius, was nonetheless significantly different. Hobbes, like Althusius, wrote of a “covenant” or “social contract” lying at the foundation of political society, but Hobbes’s compact was but a single agreement, entered into by all the individuals in a certain territory, who commit themselves to an absolute subjection to a single, common power: “one Man or one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will”, as Hobbes put it (Leviathan, II:17). For Hobbes, this “Leviathan” or “Mortall God” is “called Soveraigne, and said to have Soveraigne Power” (Leviathan, II:17), whether such government be in the form of monarchy, aristocracy or democracy (Leviathan, II:19). In a Hobbesian democracy, the singularity of the will of the sovereign is guaranteed through strictly majoritarian rule (Leviathan, II:18). And, according to Hobbes, under the unitary authority of the sovereign, all other groups are absolutely subject (Leviathan, II:20), just as all minor covenants are regarded as absolutely inferior to the social contract (Leviathan, II:18). Hobbes admitted that there may be within a political society various towns, provinces, universities, colleges or churches, each with their distinct laws and customs, but for Hobbes these are all ultimately and absolutely subject to the superior will of the sovereign (Leviathan, II:20). Leagues or covenants among subjects are in fact dangerous, he said, and therefore unlawful (Leviathan, II:20). Accordingly, “things that weaken or tend to the dissolution of a commonwealth” include the opinion that the sovereign is subject to civil law and that the sovereign is divided (Leviathan, II:1). Among them also is “the immoderate greatness of a Town” or a “great number of corporations; which are as it were many lesser Commonwealths in the bowels of a greater, like wormes in the entrayles of a naturall man” (Leviathan, II:29).

Hobbes was of course an extreme case, but a unitary conception of political society is also to be discerned in John Locke’s Second Treatise of Government. For although Locke’s scheme very clearly allowed a diversity of associations and institutions to operate freely within society, these associations were nothing other than expressions of the autonomous rights of individuals and were therefore strictly private in character. Political society, for Locke, is founded upon a social contract between individuals, not a federal compact between smaller constituent political communities (Second Treatise, §4). Locke envisaged the possibility of a league, and even a confederation, created by the exercise of the “federative power” of the commonwealth, but this did not create a political society in any significant sense analogous to our modern idea of federation (Second Treatise, §145). Locke’s theory was likewise consistent with a form of political decentralization through the exercise of the community’s primordial power to decide what “form” of government “they think good” (Second Treatise, §132). Indeed, Locke explicitly considered the case of subordinate communities such as cities (Second Treatise, §133), and discussed the status of the subordinate magistrate (Second Treatise, §210). However, as his discussion of these possibilities makes clear, Locke, like Hobbes, considered that
true political society is *unitary* in its essential nature, with the legislative power in each society being *supreme over all subordinate institutions*, and expressing its will by *simple majority vote* (Second Treatise, §96, §134).

On this general approach to political philosophy, there are only two possible kinds of “federal” government, broadly conceived. The first is a confederation of independent states through which individual political societies agree to cooperate and yet retain their unique status as sovereign nation-states. The second is a situation where a unitary state decides to adopt a decentralized system of government, perhaps even going so far as to guarantee to the local or regional units of government certain spheres of independent operation. However, it is not possible on the basis of classical social contract theory to conceive of a political system which falls between these two possibilities. And yet, classic modern federations such as the United States, Switzerland and Australia partake of both sets of characteristics. All three came into being through agreements among constituent states and show the marks of this in their representative institutions, configurations of power and amending formulas. Thus, all three constitutions: (1) provide for the special representation of the states or cantons in the federal legislature, (2) assume that state or cantonal power is original and general, whereas federal power is specifically granted and (3) require state or cantonal approval of constitutional changes and, in certain cases, the consent of individual states. However, at the same time, all three exhibit characteristics which distinguish them from mere confederations. Thus, in all three systems: (1) ultimate interpretive authority is vested in the governing institutions of the whole (federal courts in the United States and Australia, the federal legislature in Switzerland) and (2) the constituent states are not (as it has turned out) free to secede from the federation on their own motion.

To explain the features of modern federations in their covenantal foundations, representative structures, configurations of power and amendment formulas, one must look, therefore, to theories which pre-date classical liberal theories of politics (where the only really essential elements in politics are the individual and the state). In Rutherford, Althusius and other post-Reformation jurists, publicists and theologians, one meets with a vision of society founded upon a succession of covenants, and which, while not democratic in the modern sense, is thoroughly federal in terms of its covenantal foundation, representative structures, configuration of power and amendment processes. In Cusanus and others associated with the conciliarist movement, one finds a vision of church and state which, though not founded upon a succession of covenants, is nonetheless systematically federal in structure, especially in terms of its systems of corporate representation and jurisdictional diversity. Similarly in Thomas Aquinas, although one does not find a covenantal motif, one does encounter a far-reaching jurisdictional diversity and the beginnings of the idea of corporate representation, both of which are necessary, if not sufficient, indicators of the existence of a federal system of government in the modern sense of the word.
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