

The rupture of associational ties paradigmatic for liberalism (insofar as it speaks to the priority of the individual over the community of origin) is the so-called excommunication of Spinoza from the Amsterdam Jewish community. I say “so-called” because it is unclear from the record who dumped whom.

“In those days there was no king in Israel and every man did what was right in his own eyes” (Judges 21:25). There is no libertarian jubilation in the pronouncement.

Somewhere along the way, scribes come on the scene as privileged in virtue of their command of documents. Running through the story and grabbing a prominent role at crucial junctures are prophets.

Whenever disputes arose concerning who was the authentic inheritor of covenant, the issue was phrased in terms of competing legal interpretations. Prophets quarreled with priests concerning what was or was not proclaimed by Moses in the wilderness. According to both Josephus and the New Testament book of Acts, Pharisees differed from Sadducees concerning the authority of the Oral Law (and who possesses it). The Dead Sea community at Qumran has left us documents setting out its own legal understandings in opposition to the corrupt establishment in Jerusalem. Nearly all of the post-biblical history of Israel up until the modern era spotlights attempts to establish rabbinic hegemony against competing interpretive tendencies (e.g., Karaites, Sabbatians, and that most obstreperous of offshoots, Christianity). It is not for this essay to offer an opinion concerning how successful these attempts to establish authoritative practices of legal adjudication have been, but it would be hard to deny that covenant displays reflexive self-awareness of its own interpretive dimensions.

4. Constitution Constitution, like social contract and covenant, is a mechanism for generating political outcomes on consensual foundations. Variety among constitutions is great. To the confusion of generations of schoolchildren, a few are characterized as unwritten. Some, most notably the Soviet 1936 constitution, are not worth the paper they’re written on. Others are worthy but obscure. (I have not read the constitution of Luxembourg and predict that I am unlikely to do so.) But just as the covenant at Sinai is the gold standard of covenants, the Constitution of the United States of America is the gold standard of constitutionalism. In the remainder of this discussion, unless explicitly stipulated otherwise, this is the constitution to which I refer. I believe that some of the results elicited in what follows apply to other constitutions, but that argument will not be pursued here.

For example: “Add whole-offerings to sacrifices and eat the flesh if you will. But when I brought your forefathers out of Egypt, I gave them no commands about whole offerings and sacrifice; I said not a word about them” (Jeremiah 7:21–22).

Australia’s constitution would be a good candidate for analysis in this framework, especially because it was largely modeled on the U.S. Constitution, constitutes a new commonwealth, and has had a successful run.

Constitutions can evolve as the unintended and unforeseen result of a process of social development (e.g., the constitution of the United Kingdom), but the one that emerged in