

party balloons, but the grounding postulates must in one way or another always be affirmed. Nor was amendment allowed, at least not officially. In that respect, the purity of the founding document is preserved to the greatest possible extent. Whether that provided not enough, just the right amount, or too much scope to a “living covenant” has been the crux of debate in Israel’s history from antiquity to the present. *Mutatis mutandis*, it is the central ongoing American jurisprudential debate.

5. Conclusion Let me close by trying to be clear about the significance of covenant for understanding the functionality of constitutionalism. It has often been observed that Americans treat their founding documents as having quasi-religious status. This discussion has focused exclusively on the Constitution, but a comprehensive examination of the country’s testamentary inheritance would offer equal attention to the Declaration of Independence. An important book-length development of this theme is Sanford Levinson’s *Constitutional Faith*. As I understand Levinson’s thesis, he argues that Americans have come to view their constitution less and less as an ordinary legal-political document and more as a sacred text. This essay does not dispute that claim but aims to offer a complementary one. I have argued that the biblical narrative of covenant is undeniably theological but also intrinsically political. It presents a theory of institutional justification for which consent is a necessary condition. Unlike the thought experiments of the social contract philosophers, biblical covenant sees fit to supply matters of time, place, and circumstance of its own origin; spells out in considerable specificity its various provisions; makes a strong case for its own stringency; takes the issue of transgenerational consent seriously; and provides within itself a means of ongoing interpretive development. That renders it uniquely suitable as an alternative to social contract for modeling a polity of citizens who are bound by foundational law yet also free.

CONSTITUTIONALISM IN THE AGE OF TERROR.

By Michael Zuckert and Felix Valenzuela.

1. Introduction.

What should constitutions do? To answer this question, we must begin with a prior one: What is a constitution? The idea of a constitution is very old, roughly as old as systematic thinking about politics. It was a central idea in the thinking of the Greeks, the first systematic political scientists. But if we go to Plato or Aristotle expecting to find the concept of constitution we deploy when we speak of “constitution,” we will be surprised and perhaps disappointed. They use the term in the primordial sense of the word that we still readily recognize when we speak of someone as having a strong constitution. “Constitution,” as used here and by the older political writers, means primarily the makeup of something—in the political case, the structure and arrangement of political offices. In the first instance, “constitution” was a descriptive term, but the Greeks also regularly asked: What is the best constitution?—a variant of the question we are asking, “What should constitutions do?”