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## **Religious foundations of the social contract as the basis of American federalism from the perspective of Vincent Ostrom**

### **Introductory remarks**

Today, the global spread of federalism is the most clearly seen in the formation of the European Union. The recent emergence of political realities, such as environmental problems, massive migration, shared monetary policies, intensive international trade, demands new types of institutional relationships and some forms of supra-national connections<sup>1</sup>. Although, the unitary original structures of many modern democracies seem unprepared to deal with, well-grounded and thought out federalism can produce some democratic improvements. It is interesting to consider that the American case of federalism depicts a lot of advantages of this kind of a system of government, therefore, the insight into the historical experience and the nature of covenantal background of federalism might be beneficial to some extent, while pondering the promotion of democratic principles. Perhaps, it is worth returning to the fundamentals of American federalism in the context of its significance for the development of contemporary state systems.

The search for a new political system after the colonies gained independence was of great importance for the origins of American federalism. The original statehood initially began with taking shape on the basis of confederation. There were doubts as to how far the future Union would respect the particularities in the characteristic of its constituent states. The

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<sup>1</sup> Cf. J.G. André, *Federalism and the future of democracy*, „Bajo Palabra. Revista de Filosofía” 2014, Vol. 9, p. 86.

adopted political solutions had to be a compromise between federalists and republicans<sup>2</sup>.

The identification and search for the sources of American federalism occupies an important place in the American political thought and legal history. American legal, historical, and political subject related literature is impressive (e.g. the works of Daniel J. Elazar, Joseph F. Zimmerman, Larry N. Gerston, Robert F. Nagel, Morton Grodzins, William H. Riker, or John Kincaid)<sup>3</sup>. The research conducted by Vincent Ostrom, a professor of political science who died in 2012, is of high importance as far as the consideration on American federalism is concerned. Dealing with the nature and creation of social order, he was one of the pioneers of the institutional approach, which was put forward and promoted in the 1990s. He was the author of many publications on the institutional and cultural foundations of American democracy<sup>4</sup>. For Ostrom, as a scholar deeply committed to defending the American way of life, traditional American cultural values such as individualism, independence, civic attitude towards state institutions, tolerance, and a practical approach to life, influence the development of the American political system. As an original continuator of the theoretical tradition created by James Madison and Alexander Hamilton, the scholar instinctively captured the essence of the American civilisational phenomenon and the place of democratic traditions within it. The supporters of the newly proposed Constitution for the United States of America advanced in *The Federalist*, a collection of papers written in 1787–1788, an innovative set of institutions upon the foundations

<sup>2</sup> For more about the development of American federalism in the 18th and 19th centuries see: E. Sokalska, *Legal and political dimensions of American federalism: development and interpretations*, Olsztyn 2018, pp. 125–276.

<sup>3</sup> See, e.g. D.J. Elazar, *Exploring federalism*, Tuscaloosa–London 1991; J.S. Zimmerman, *Contemporary American federalism. The growth of national power*, 2nd ed., New York 2008; L.N. Gerston, *American federalism. A concise introduction*, New York 2007; R.F. Nagel, *The implosion of American federalism*, New York 2001; M. Grodzins, *The future of American federalism*, [in:] D.J. Elazar (ed.), *Cooperation and conflict: readings in American federalism*, 2nd ed., Itasca 1969; D.J. Elazar, J. Kincaid (eds.), *The covenant connection: from theology to modern federalism*, Lanham 2000; W.H. Riker, *The development of American federalism*, Hingham 1987; J. Kincaid, *From cooperative to coercive federalism*, „The Annals of American Academy of Political and Social Science” 1990, Vol. 509, pp. 139–152. See also the comparative approach to federalism presented by M. Burgess, *In search of the federal spirit. New theoretical and empirical perspectives in comparative federalism*, Oxford 2012. Among Polish scholars interested in the subject of American federalism there can be mentioned, e.g. J. Jaskiernia, R.M. Małajny, A. Pułło, or K. Maćkowska.

<sup>4</sup> See, e.g. V. Ostrom, *The political theory of a compound republic: a reconstruction of the logical foundations of American democracy as presented in „The Federalist”*, Blacksburg 1971; idem, *The political theory of a compound republic: designing the American experiment*, Lincoln 1987; idem, *Local government in the United States*, New York 1988; idem, *The meaning of American federalism: constituting a self-governing society*, San Francisco 1991. See also: B. Gołębiowski, *Federalizm amerykański. Tworzenie społeczeństwa samorządnego, Vincent Ostrom 1994* [review], „Kultura i Społeczeństwo” 1995, Vol. 39, No. 4, pp. 182–183.

of what Alexander Hamilton had called the “general theory of limited constitution”. Essential foundations for liberty expressed in a federal system of government assumed checks and balances between national, state, and local levels of government. However, Vincent Ostrom saw something more complex. He perceived the American political system as a broader system of *polycentric governance*, “which extended far beyond the standard array of explicitly political institutions”<sup>5</sup>.

The purpose of the present study is an attempt to identify the nature of American federalism in the perception of Vincent Ostrom. Particular emphasis is placed upon the covenantal character of federalism, the covenant as a foundational element for both self-rule and shared-rule, key components of a federal system, and the religious roots of the American covenant.

Unfortunately, since the modest scope of this article does not allow for an exhaustive treatment of the subject, the present work is contributory in nature. The reflection of some chosen American scholars will be also taken into consideration to some extent. The main questions the present study strives to answer are: What are the key components of covenantal federalism; What is the *federal theology*?

The work consists of two parts. In the first part of the article, there is a short exposition of some selected positions relating to the covenantal tradition (particularly – Heinrich Bullinger and Johannes Althusius). The second part of the publication is devoted to the Vincent Ostrom’s concept of a covenant referring to the development of the American federal state. In this particular study, the historic-descriptive method of theoretical analysis and the formal-dogmatic method were applied to address the research questions and to reach some conclusions.

## Covenantal tradition

The essence of the covenant tradition is the idea of human beings freely associating for common purposes through pacts of mutual commitment. Enlightenment thinkers proposed a new vision of a state. Some of them put forward the idea of the source of political power located in the sovereign people. Although, Adam Smith, David Hume<sup>6</sup>, or Adam Ferguson, rejected the idea

<sup>5</sup> M.D. McGinnis, *Legal pluralism, polycentricity, and faith-based organisations in global governance*, a paper for a conference on „Vincent Ostrom: The Quest to Understand Human Affairs” 2006, May 31 – June 3, p. 2, <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=ae1582106cf1c3f0bb7e58b35c072f180fd450c7> (accessed: 4.05.2025).

<sup>6</sup> However, as far as David Hume is concerned, the issue is not so unambiguous. Although Hume rejects the social contract as a historical fact, in *A Treatise on Human Nature* he uses it as a philosophical concept – cf. J. O’Neill, J. Salter, *Hume, republicanism, and relations to posterity*,

of social contract, such philosophers as Jean Jacques Rousseau or John Locke saw the social contract as the basis of that power.

The recent research on the Anglo-American tradition of federalism has revealed the aspect of federalism, which was not identified earlier. The federalist thought is much different from the ideas of the representatives of the secular liberal Enlightenment as Locke or Montesquieu. This current is called the *covenant theory*, and it enriches the historical and philosophical understanding of federalism. In this context, federalism can be understood as the relationship between God and the world and people. It is based on covenants among the members of the society. It was Heinrich Bullinger who can be regarded as the forerunner of federalism<sup>7</sup>. The dynamic vision of the federal relations was strongly connected with the covenantal perception of federalism. The relationship within the social groups was seen by federalists as covenantal.

In 1991, Charles S. McCoy and J. Wane Baker, two American academic specialists in theology, published their monograph entitled *Fountainhead of Federalism. Heinrich Bullinger and the Covenantal Tradition*. In Michael Burgess's opinion, it was a 'revisionist monograph'<sup>8</sup>. According to Charles S. McCoy and J. Wayne Baker, *De testamento seu foedere Dei unico et aeterno* by Heinrich Bullinger (1504–1575), published in 1534, was the first treatise that focused on the covenant, and it contained philosophical and political views that were explicitly federalist. The scholars examine federalism in connection with the term *covenantal*. As they assume, the terms "*federal* and *covenantal* are closely related to each other and even interchangeable: *federal* derives from the Latin *foedus*, which means covenant. A covenantal order is federal. A federal order is covenantal"<sup>9</sup>. To clarify the above assumption, the authors at first examine the meaning of federalism and its background. Political thought made federalism applicable to some political patterns of the modern world, while theology and biblical studies understand the word *covenant* as a prominent concept in the Bible and a topic in the Reformation and post-Reformation Christian doctrine.

[in:] S. Gardiner (ed.), *The Oxford handbook of intergenerational ethics*, pp. 178–196, [https://pure.manchester.ac.uk/ws/portalfiles/portal/1551774839/O\\_Neill\\_and\\_Salter\\_Hume\\_Republicanism\\_and\\_Relations\\_to\\_Posterity.pdf](https://pure.manchester.ac.uk/ws/portalfiles/portal/1551774839/O_Neill_and_Salter_Hume_Republicanism_and_Relations_to_Posterity.pdf) (accessed: 23.09.2025).

<sup>7</sup> About Bullinger's life and literary output see D. Timmerman, *Heinrich Bullinger on prophecy and the prophetic office (1523–1538)*, Göttingen 2015. About the theological thought of Bullinger see more in E. Dowey, *Heinrich Bullinger as theologian: thematic, comprehensive, schematic*, pp. 42–43, [http://foundationrt.org/bw-content/uploads/2016/03/Doewy\\_Bullinger](http://foundationrt.org/bw-content/uploads/2016/03/Doewy_Bullinger) (accessed: 5.06.2025).

<sup>8</sup> M. Burgess, *Federalism and European Union: the building of Europe 1950–2000*, New York 2005, p. 3.

<sup>9</sup> C.S. McCoy, J.W. Baker, *Fountainhead of federalism. Heinrich Bullinger and the covenantal tradition*, Louisville 1991, pp. 11–12.

*The One and Eternal Testament or Covenant of God* was the most influential of Bullinger's works<sup>10</sup>. It was written as a response to controversy concerning the context of the debate on church, state, and Christian discipline. It should be stressed that he introduced the idea of the covenant a few years before the appearance of the book in his letters and several publications. He made the covenant a central theme of his theology, often repeated in the books published later. As McCoy and Baker assume, in his treaty Bullinger provided the most important source of federalism. He viewed the covenant as the framework for human life, both religious and civil, from the beginning of the world until the last judgment. In the first chapter of the work, Bullinger discussed the meaning of the word *testamentum* – a last will, a promise, or a covenant – and he assured the reader that he understood the term in the third sense, as covenant. Consequently, he dealt with the covenant, as it was made with Abraham. The third section presented the conditions of the covenant<sup>11</sup>.

During the era of shaping the institutions of the modern world “federal theologians dealt with political and ecclesiastical issues and political philosophers concerned with societal covenants dealt also with religious issues”<sup>12</sup>. McCoy and Baker are of the opinion that Heinrich Bullinger was primarily a religious leader, but there are also seen some political implications of his theological federalism. Simultaneously, some political thinkers as Thomas Hobbes or Johannes Althusius primarily were interested in the political order, however, they also included some theological aspects in their literary legacy. In general, Bullinger as well as Hobbes and Althusius influenced the covenantal or federal tradition.

Federalism can be understood as the relationship between God and the world, and people, it is based on covenants among the members of the society, some inherited from the past, and some just made or renewed. According to McCoy and Baker, “in the Bible, humans make covenants with one another that shape economic, political, and familiar relations. The relation of God with the creation and humanity is depicted in covenantal terms. God makes a covenant with Noah, all humanity, and nature after the flood, with Abraham and his descendants, and with the Hebrew people after the deliverance from bondage in Egypt”<sup>13</sup>. Therefore, federal theologians affirm that

<sup>10</sup> By the end of the 16th century, this treatise initiated the federal tradition in the Western thought and became the hallmark of Reformation. Federal theology and political philosophy were shaped by Bullinger – cf. J.B. McSwain, *The origins of the federal theology in sixteenth-century reformation thought*, Weir, D.A.: New York: Oxford University Press, 244 pp., Publication date 1990 [book review], „History: Reviews of New Books” 1992, Vol. 20, p. 8.

<sup>11</sup> C.S. McCoy, J.W. Baker, op. cit., p. 20.

<sup>12</sup> Ibidem, p. 12.

<sup>13</sup> Ibidem, p. 13.

God's covenant and subsequent covenants, which continue, renew, and respond to the compact, by which the world was created. This pattern is also used by political philosophers. Thomas Hobbes in the introduction to his *Leviathan* assumes, that the state is created by human compact in a way parallel to God's covenantal act of the world creation.

The relationship within the social groups can be seen by federalists as covenantal<sup>14</sup>. In families, or other basic social entities, there are some relations among the members that are defined by explicit compacts and "the elements of voluntary participation, of the rights and responsibilities of membership, of commitment to the group and its patterns of governance, and of holding leaders to their covenanted obligations are central to a federal order whether ecclesiastical, economic, or political"<sup>15</sup>.

McCoy and Baker emphasize the existence of the dynamic element in federal theology: "this dynamic element is affirmed by viewing the creation of the world and humanity, not as complete, but as developing toward ever greater fulfillment within the unfolding economies of covenant of God. God's covenant is not a static order but a pattern of changing relations in the world toward greater justice and love"<sup>16</sup>.

It is significant that the historical setting is emphasized by the thinkers who identify covenantal origins of federalism. They do not recognize any roots of federalism before the time of Reformation. In fact, some political, ecclesiastical, and intellectual precedents influenced the dissemination of the idea. To some extent, Late Medieval nominalism may be regarded as possible force for the Reformed idea of covenant. It is significant that Reformed idea of the covenant was not homogeneous. The Bible served as the basis for the development of the modern idea of federalism. The nominalist theology of the pact, as well as the conciliary spirit of association, or economic confederation, reinforced the federal thought.

The general common consent requirement and social solidarity in Johannes Althusius' theory of federalism are significant. It should be taken into consideration that the general tenets of federalism influence other elements of Althusius' thought. The unity of a complex and elaborate federal polity would be inevitably based on the form of the social contract, compact, or covenant.

Johannes Althusius (1557–1638) was a German Calvinist, who emerged out of the reformist tradition and built a political philosophy based on the covenant theology. The influence of Althusius' political thought was gradually

<sup>14</sup> D.J. Elazar, *The political theory of covenant: Biblical origins and modern development*, „*Publius: The Journal of Federalism*” 1980, Vol. 10, pp. 3–30.

<sup>15</sup> C.S. McCoy, J.W. Baker, op. cit., p. 13.

<sup>16</sup> Ibidem, p. 14.

diminishing by the end of the 17th century but in the last century regained its renaissance. The general common consent requirement in Althusius' concept of federalism plays a very significant part<sup>17</sup>. He argued that the fundamental law was in some way a collection of certain covenants (*pacta*), by which some cities and provinces got closer and agree to establish the defined commonwealth. It was done by common work, counsel, and aid<sup>18</sup>.

Social solidarity is the next principle of the Althusian concept of federalism. Althusius perceived participation as the actions of varied societies at all levels to obtain the good of a republic or a kingdom. The republic is a society that is based on the alliance – a kind of agreement or contract – that is confirmed by the parties. The parties are obliged to take care of the good of the republic and to provide the common work and advice. The establishment of the republic is the act while the process of creating of the lower alliances has finished. When one of the parties withdraws its approval, it means the final point of the republic<sup>19</sup>. Such consent as social solidarity cannot be reached in a short period of time, but only, when the material results of policymaking are acceptable to all as fair and equitable. The form and content of governance cannot be separated. In the modern meaning of federalism this is a matter of fiscal federalism and regional equalization. In the opinion of Althusius, it was rather a dialectical relationship between the right of self-governance and an obligation to mutual sharing and aid expressed in the idea of subsidiarity<sup>20</sup>.

It is significant that the general conceptualization of Althusian federalism influences the other central themes of political thought. The unity of the complex and elaborate federal polity would be inevitably based on the form of social contract, compact, or covenant. It is remarkable that Althusius had developed the theory of social contract. It is also worth mentioning that Althusian social contract is perceived as a compact not between individuals, but communities, which are themselves constituted based on previous agreement. Moreover, in contrast to Thomas Hobbes, Althusius separates social contract from the government contract<sup>21</sup>.

<sup>17</sup> T.O. Hueglin, *Johannes Althusius: medieval constitutionalist or modern federalist?*, „Publicus: The Journal of Federalism” 1979, Vol. 9(4), pp. 9–41.

<sup>18</sup> Althusius, *Politica [1614]. An abridged version of politics methodically set forth and illustrated with sacred and profane examples*, XIX, § 49, trans. F.S. Carney (ed.), foreword by D.J. Elazar, Indianapolis 1995, <http://oll.libertyfund.org> (accessed: 10.06.2025).

<sup>19</sup> Ibidem.

<sup>20</sup> T.O. Hueglin, *Early modern concepts for a late modern world. Althusius on community and federalism*, Toronto 1999, p. 4.

<sup>21</sup> Cf. ibidem, p. 4; L. Chmielewska, *Johannes Althusius: pierwszy teoretyk federalizmu*, „Doctrina. Studia Społeczno-Polityczne” 2012, Vol. 9, p. 22. It is significant that Otto von Gierke pointed out the importance of Althusius's thought to the Western political theory. See: O.F. von Gierke, *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien. Zugleich*



Daniel Elazar confirms the inspiration of Jewish political tradition in Althusius' writings. He finds some connections with the federalism of Israelites that is described in the Bible. Federalism is expressed here as entering into covenants. The covenants created the network of human relations, especially political relations in a federalist way, where the background was a voluntary agreement, an obligation, and a promise<sup>22</sup>.

Alexis de Tocqueville (1805–1859), a representative of French liberalism, politician, and political thinker, as an attentive observer of the American democracy, during his staying in the United States, wrote his most famous work *Democracy in America*, where he analyzed the character of American democracy<sup>23</sup>. Tocqueville's research seeks to understand the peculiar nature of American political life. According to Tocqueville, not only the American Constitution is the basis for creation a federal society. The powers delegated by the Constitution are few and defined, while state governments exercise numerous and indefinite powers. "The powers reserved to the federal states will extend to all the objects which, in the ordinary course of affairs, concern the internal order and prosperity of the state"<sup>24</sup>. Tocqueville analyzes the functioning of political society and various forms of political associations, although he also brings some reflections on civil society, taking into account the relations between political and civil society. Civil society for him is a sphere of private business and civilian affairs, which are regulated by civil

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*ein Beitrag zur Geschichte der Rechtssystematik*, Breslau 1880, passim. See also here: E. Sokalska, *Searching for the best legal interpretation and the ideal formula of a state: Otto von Gierke and corporatism as the basis for a new federal state*, „Sudia Prawnoustrojowe” 2022, Vol. 56, pp. 265–280.

<sup>22</sup> D.J. Elazar, *Exploring federalism...*, p. 139. In his works devoted to federalism, Elazar emphasizes that the term *federal* comes from the Latin word *foedus*, which, like the Hebrew *brit*, means an agreement or covenant. By using the word *covenant* rather than *agreement*, Elazar draws attention to the religious element in establishing an agreement. The Bible provides information about the idea of federalism. Initially, the use of the term *brit* was theological in nature, and it defined the relationship between God and man. It was the beginning of the idea of a contractual (federal) relationship between individuals and families, leading to the formation of political bodies that in the future enabled the creation of compound societies. The covenant between the Israelites and God was contractual in nature, and the origins of the federal formula can be found in it. The contractual approach meant that individuals acting together established some political bodies, which task was to affirm equality and ensure their natural rights. Elazar also finds these contractual social foundations in Hobbes' philosophy. Societies and states, which roots can be traced back to a covenant, in the long term will take into account a broad participation of society in influencing the constitutional character of the state, which in the future will be associated with its democratic character. On the basis of the above reasoning, Elazar concludes that the state structures based on the foundations of a covenant will have a federal character by their nature. See: *ibidem*, pp. 4–5. See also here chapter *Daniel J. Elazar and Federalism as Covenant*, [in:] M. Burgess, *In search of the federal spirit...*, pp. 180–219.

<sup>23</sup> A. de Tocqueville, *Democracy in America*, Chicago 2002.

<sup>24</sup> *Idem*, *Democracy in America. Part I*, chapter VIII: *The federal constitution, summary of the federal constitution*, <http://www.gutenberg.org/files/815/815-h/815-h.htm> (accessed: 4.05.2025).



code<sup>25</sup>. Although, the foundations of American federalism in the Tocqueville's perception are not strictly religious, he makes references to social contract as the background of American federalism<sup>26</sup>.

## Vincent Ostrom and the federal covenant

It is significant that it is emphasized in the subject related literature the fact that the American Constitution was not merely a political manifesto of the Founders of the American state, but above all, it served as a set of fundamental norms addressed to the state authorities for their strict observance. However, the established organisation of public authority and the framework for its operation raise certain doubts in practice, and the interpretation of constitutional provisions has not always been uniform<sup>27</sup>. Vincent Ostrom, while examining the institutional and cultural foundations of American democracy, attempted to define the essence of American federalism, drawing attention to two aspects related to the creation of the federal system of government as expressed in the Constitution, first – the conceptual difficulties associated with the creation of a federal system of government, and second – the limitation of the power of federal government. The scholar states that the concept of federalism is most often associated with the development of the American system of government. Federalism was a key matrix concept used in the formulation of the United States Constitution of 1789. Vincent Ostrom examines thoroughly the meaning of the term federalism in *The Federalist Papers*<sup>28</sup>. *The Federalist Papers* presented the difficulties associated with the practical organisation of a federal system, including those related to the selection of appropriate concepts. Not only according to Ostrom, but also according to other scholars studying the foundations of American federalism, Hamilton's reformulation of the concept of confederation points to a fundamental feature of what lies behind the term *federal system of government*<sup>29</sup>.

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<sup>25</sup> For more see: E. Kozerska, *Tocqueville wobec amerykańskiej demokracji społecznej*, „Opolskie Studia Administracyjno-Prawne” 2009, Vol. 6, pp. 213–225; eadem, *Jednostka a państwo w poglądach Alexisa de Tocqueville'a*, [in:] J. Przygodzki, M.J. Ptak (eds.), *Spółczesność a władza. Ustrój, prawo, idee*, Wrocław 2010, pp. 415–424; K.T. Burch, *Democratic transformations. eight conflicts in the negotiation of American identity*, London–New York 2012, pp. 27–30.

<sup>26</sup> Cf. E. Sokalska, *Legal and political dimensions...*, p. 114. See the further dissertation on the covenantal federal thought of Heinrich Bullinger and Johannes Althusius in ibidem, pp. 70–75, 78–88.

<sup>27</sup> See, e.g. M. Tushnet, *Why the constitution matters*, London 2010, pp. 93–150.

<sup>28</sup> V. Ostrom, *The meaning of American federalism: constituting...*, pp. 69–98; idem, *The meaning of American democracy and the vulnerability of democracies. A response to Tocqueville's challenge*, Ann Arbor 2000, pp. 9–10. See: *The federalist papers*, <https://guides.loc.gov/federalist-papers/full-text> (accessed: 11.05.2025).

<sup>29</sup> V. Ostrom, *Federalizm amerykański. Tworzenie społeczeństwa samorządnego*, Warsaw–Olsztyn 1994, p. 16.

The scholar characterises federalism as a constitutional decision understood in such a broad sense that it can apply to many different centres of power, however, the centres are limited by the effective rules of constitutional law. It is significant that in the perception of Ostrom, the American system is deeply thought-out, and it is based on polycentric models, which are obviously not free from potential flaws and threats<sup>30</sup>. Federalism is not only the form of government, but also the method of solving problems and a way of life. Its attributes are diverse, and the creation and maintenance of federal structures in a state depends on some intelligent process of creation involving the citizens of federal societies<sup>31</sup>.

Ostrom relies on the thesis that the fundamental premise of American federalism is reliance on the processes of contracting and the creation of self-governing communities based on mutual relationships. The legal basis for these relationships is contained in some colonial and state documents, *the Articles of Confederation*, the Constitution of the United States, and municipal documents, and it is reflected in the emerging forms of social organisation that make up contemporary American society<sup>32</sup>. The scholar describes the American political system as polycentric, and he treats polycentrism as an indispensable feature of democratic systems. This polycentric political system consists of a significant number of autonomous, formally independent entities, which take into account the interests of others in the process of cooperation, competition, conflict, and conflict resolution<sup>33</sup>.

Comparing other societies, Ostrom is of the opinion that the federal systems developed by the American society and, e.g. by the autocratic Soviet Union were based on diametrically opposed logic. The scholar tends to downplay the connection between American federalism and the coexistence of limited state governments, instead emphasising the explanation of the fundamental elements of federalism and their integration into a coherent system of government. These elements include the following: a contract-based approach, pluralism of governing institutions<sup>34</sup>, constitutional authority,

<sup>30</sup> More about the Ostrom's concept of polycentricity see, e.g. P.D. Aligica, V. Tarko, *Co-production, polycentricity, and value heterogeneity: the Ostroms' public choice institutionalism revisited*, „American Political Science Review” 2013, Vol. 107, No. 4, pp. 1–16; P.D. Aligica, P. Boettke, *The two social philosophies of Ostroms' institutionalism*, „The Policy Studies Journal” 2011, Vol. 39, No. 1, pp. 30–33.

<sup>31</sup> D.J. Elazar, *The political theory of a compound republic...*, p. 25; V. Ostrom, *Federalizm amerykański...*, p. 36.

<sup>32</sup> Articles of Confederation (1777), <https://www.archives.gov/milestone-documents/articles-of-confederation>, (accessed: 10.05.2025); Constitution of the United States, <https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm> (accessed: 10.05.2025).

<sup>33</sup> For the further characteristic of polycentric systems in the perception of Vincent Ostrom see: E. Sokalska, *Policentryzm jako strukturalna podstawa amerykańskiego federalizmu w recepcji Vincenta Ostroma*, „Przegląd Prawno-Ekonomiczny” 2018, Vol. 42(1), pp. 90–93.

<sup>34</sup> See here the importance of self-government V. Ostrom, *The meaning of American federalism: constituting...*, passim; V. Ostrom, R. Bish, E. Ostrom, *Local government in the United*

contestation as a means of dealing with and resolving conflicts, active citizen participation in public affairs, the creation of new communities of relationships in open societies, and the achievement of reformability of association patterns in societies<sup>35</sup>.

While analysing the contract as the basis of American federalism, Vincent Ostrom refers to the experiences of Tocqueville, who pointed out a certain affinity between religion and public opinion<sup>36</sup>. The concept of a covenantal relationship between God and those who had decided to follow divine laws in their lives was of great importance to him. Public opinion seeks kinship with religion. By implementing the concept of a state based on Judeo-Christian tradition, the *American Declaration of Independence* adopted the basic tenets of these religions, namely that all people are equal. This is a feature present in the model of social bonds based on contract, which reflects the essence of American federalism as a social philosophy – the metaphysics of citizenship in a self-governing society<sup>37</sup>.

Tocqueville believed that the core of American democracy was linked to Puritan theology of contract and the use of a contract-based approach to create civil society. Ostrom is of the opinion that the assumptions of the contract-based approach are the basis for the development of a fundamental principle: 'treat others as you would like them to treat you'. The same rule applies to conflict mitigation, allowing individuals to support each other by building a legal system that embraces diversity rather than uniformity. The contractual approach can therefore be considered as the Montesquieu's spirit of law in societies built on federal principles<sup>38</sup>.

Ostrom assumes that it is impossible to understand the American federation – a grand experiment that has been the subject of constant influences and changes over the years – without referring to some metaphysical assumptions. The belief in the existence of a coherent basis for human order, which he refers to as the golden rule, is a prerequisite for restraining 'power by power' and constructively resolving conflicts. For Ostrom, federalism is not just a form of government, but the way of life, and the method of solving problems. Despite the diversity of attributes, the creation and maintenance of federal principles of statehood depend on the process of intelligent

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*States*, New York 1988, pp. 1–251; T.J. Anton, *The meaning of American federalism: constituting a self-governing society*, by Vincent Ostrom. San Francisco: Institute for Contemporary Studies Press, 1991, 299 pp. [book review], „Publius: The Journal of Federalism” 1992, Vol. 22(3), pp. 205–207.

<sup>35</sup> V. Ostrom, *Federalizm amerykański...*, p. 223.

<sup>36</sup> S.J. Wilford, *Tocqueville and the Ostroms*, „History of Human Sciences” 2023, Vol. 36(3–4), pp. 27–54; E. Sokalska, *Umowa jako podstawa amerykańskiego federalizmu w recepcji Vincenta Ostroma*, „Studia Prawnoustrojowe” 2018, Vol. 41, p. 200.

<sup>37</sup> V. Ostrom, *Federalizm amerykański...*, pp. 68–69.

<sup>38</sup> Ibidem, p. 224.

creation, which must involve the citizens of federal societies. At this point, we can pose a question: How do citizens deal with democratic problem solving through agreements? Certainly, individuals, acting alone and in associations, should be able to understand how to deal with the problematic situations. A critical reflections on citizenship in a democratic society should lead to the deeper inquiries into the nature of federalism and its place in sustaining civilisation<sup>39</sup>.

### Concluding remarks

The so-called *covenant theology* created by Protestant thinkers in the 16th and 17th centuries was also the theology of compacts or contracts. Vincent Ostrom viewed the covenant, a binding agreement between parties, as a crucial antecedent to the development of federalism. He highlighted the religious aspect of the federal covenant, which established a framework for shared governance, the further consequence which was polycentricity as the aspect of pluralism, which is the principle of social organisation and regulation, based on the dispersion and separation of centres of power, and reference points in various areas of social life and social organisation. As a result, this leads to the distinctiveness and independence of evaluation criteria, hierarchies of people, institutions, values, and authorities in the spheres of politics, economy, ideology, and culture.

In the view of Barbara Allen, the covenant and federal theology provided New England Puritans with basis for federated church and civil government, which directly influenced American constitutionalism and the republican institutions<sup>40</sup>. According to Daniel Elazar, in the domain of politics, the idea of covenant has been specifically influential in frontier lands. Covenant fostered the establishment of the American federal system and contemporary idea of federalism, being enriched with the idea of federated commonwealth that emerged out of the protestant reformation. It is interesting to consider that the covenantal tradition facilitated the collapse of some totalitarian solutions in the 20th century, and the return to political covenantalism might be seen an appropriate response to the crisis of modern civilisation. The scholar explores the tradition from covenanted commonwealth of the protestant reformation to the modern civil society. He also traces the role of the covenant in the development of modern democracy, however, he is of the opinion that a covenantal model is more appropriate for the Western

<sup>39</sup> Ibidem, p. 81, 220. For more see: E. Sokalska, *Umowa jako podstawa...*, pp. 200–202.

<sup>40</sup> B. Allen, *Tocqueville, covenant, and the democratic revolution: harmonizing earth with heaven*, Lanham 2005, pp. 1–414.

tradition<sup>41</sup>. It is interesting to consider here that quite the opposite, Baoang He, Laura Allison-Reumann, and Michael Breen in their article concerning federalism emphasize that the covenant connection thesis forms an important basis from which to understand the religious source of federalism in Asia<sup>42</sup>.

Vincent Ostrom is of the opinion that the basic assumptions of the contract-based approach are of fundamental importance for the formation of democratic societies, as they provide a suitable foundation for what we understand as federalism. In order to better understand ourselves and the world around us, we must rely on each other, however, being prone to errors, we often make mistakes, and many questions are beyond human understanding<sup>43</sup>.

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<sup>41</sup> D.J. Elazar, *Covenant and civil society: constitutional Matrix of modern democracy. The covenant tradition in politics*, Vol. 4, New York 2018, pp. 1–24. See also here how Elazar explores the paths that emerged out of the constitutionalized covenantal tradition in Europe, idem, *Covenant and constitutionalism: the great frontier and Matrix of federal democracy. The Covenant tradition in politics*, Vol. 3, London–New York 2018, pp. 1–296.

<sup>42</sup> B. He, L. Alisson-Reumann, M. Breen, *The covenant connection reexamined: the nexus between religion and federalism in Asia*, „Political Studies” 2017, Vol. 66(3), p. 752.

<sup>43</sup> V. Ostrom, *Federalizm amerykański...*, p. 224. About the legacy of Vincent Ostrom see G.J. Blicharz, *The republic can never be taken for granted. Ronald J. Oakerson on Vincent Ostrom's legacy* [interview], „Forum Prawnicze” 2019, pp. 3–5.

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## Summary

### Religious foundations of the social contract as the basis of American federalism from the perspective of Vincent Ostrom

**Keywords:** American law, federalism, federal competence, compact, social contract, covenantal federalism, federal theology.

The essence of the covenant tradition is the idea of human beings freely associating for common purposes through pacts of mutual commitment. The purpose of the present study is an attempt to identify the nature of American federalism as perceived by Vincent Ostrom. Particular emphasis is placed upon the covenantal character of federalism, the covenant as a foundational element for both self-rule and shared-rule, key components of a federal system, and the religious roots of the American covenant. The so-called *covenant theology* created by Protestant thinkers in the 16th and 17th centuries was also a theology of compacts or contracts. Vincent Ostrom viewed the covenant, a binding agreement between parties, as a crucial antecedent to the development of federalism. He highlighted the religious aspect of the federal covenant, which established a framework for shared governance, the further consequence of which was polycentricity as the aspect of pluralism.

## Streszczenie

### Korzenie religijne umowy społecznej jako podstawy amerykańskiego federalizmu w ujęciu Vincenta Ostroma

**Słowa kluczowe:** prawo amerykańskie, federalizm, kompetencje federalne, porozumienie, umowa społeczna, federalizm kontraktowy, teologia federalna.

Istotą *covenant tradition* jest idea dobrowolnego zrzeszania się ludzi w celu realizacji wspólnych celów poprzez zawarcie porozumień opartych na wzajemnych zobowiązaniach. Celem niniejszego opracowania jest próba zidentyfikowania natury amerykańskiego federalizmu w ujęciu Vincenta Ostroma. Szczególną uwagę skupiono na charakterze federalizmu jako przymierza, elementu fundamentalnego zarówno dla samorządności, jak i wspólnego sprawowania władzy, kluczowych elementach systemu federalnego oraz religijnych podstawach amerykańskiej umowy federacyjnej. Tak zwana teologia przymierza, stworzona przez protestanckich myślicieli w wiekach XVI i XVII, była również teologią umów lub kontraktów. Vincent Ostrom postrzegał przymierze jako wiążącą umowę między stronami i kluczowy warunek dla rozwoju federalizmu. Podkreślił on religijny aspekt umowy federacyjnej, stanowiący ramy wspólnego sprawowania rządów, czego konsekwencją był politycentryzm – aspekt pluralizmu.