

Declaration of Rights

THE CURRENT VALIDITY OF THE COMPACT THEORY¹

Disenchanted with the obligations imposed upon it by the compact theory and the resulting loss of state sovereignty, the State of Florida omitted the idea of the compact theory from its constitution in 1865; and Arkansas did likewise in 1868. It is doubtful that the constitutional conventions in these states were motivated solely by a desire for verbal simplicity. Even before the civil war period the compact theory of government had been subject to negative criticism.

It is the aim of this paper to outline the weaknesses of this theory, to interpret the theory in the light of the history before and since the age of the enlightenment in which the compact theory thrived, and to suggest whether statements made in 1967 as to the theory's current validity and the desirability of its verbal extension are based upon sound argument.²

It will be advantageous to examine briefly the historical development of the

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² See Appendix to this article.

theory. It is known that the theory's ultimate fruition in the eighteenth century was due to an increased need to reconcile the enforcement of law with civil liberty. The record of European monarchs is by no means so immaculate as to be beyond reproach. The rule of King George III of England, in particular, was subjected to considerable opposition by the colonists because they felt inadequately represented in Parliament. The origins of the compact theory concept, however, can be established much before the time of George III. They can be found in the biblical references to David's contract with his people and in the literature of ancient Greece.

Aristotle de-emphasized the idea of a contract between the governor and the governed. Instead, he asserted that man is "by nature a political animal," whose association, one with another, produces protection and commerce; but, more important, a moral relationship whereby duty replaces instinct, justice takes on meaning, and man's highest faculties have a theatre in which to develop so that man may be enabled to live the "Good Life."³ The resulting society, as Aristotle saw it, was but a necessary

³ ARISTOTLE, *DE REGIME PRINCIPUM*.