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BACKGROUND PAPER**

RELIGIOUS DIVERSITY AND FEDERALISM

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The precise definition of this topic presented to this writer by the conference organizers was "religious diversity and federalism". While I will deal with that topic in the course of this paper, I believe that we must begin by looking more broadly at the relationship between religion and federalism, particularly the way that the origins of both are so intimately intertwined and the way in which the connections between the two, both generally and in connection with religious diversity, have been maintained over the years. The very idea of federalism was initially a religious one, born in the Bible which describes both the relationship between God and the Israelites as His people and the governmental relationship between the twelve tribes of Israel and their national government in covenantal or federal terms.

Whatever its theological significance, politically the idea of covenant carries with it the foundations of the ideas of consent and constitutionalism, namely, that human institutions are formed by mutual consent and that people establish pacts with one another to do so and to conduct their affairs. Both consent and constitutionalism are fundamental to the theory and practice of federalism and the pact that they are presented in holy Scripture as the essence of the relationship between God and humans gives them a very special standing in human affairs, particularly in the Western World.

The very word "federal" is from the Latin "foedus" which is the Latin Vulgate Bible's translation of the Hebrew word "brit" which means covenant. Federalism is based upon the organization of human affairs through covenants, that is to say, through mutually agreed upon, morally informed pacts that pledge the moral commitment of the parties to them to establish and maintain certain relationships and the structures needed for doing so.

This biblically-rooted understanding of federalism reached its fullest religious flowering at the time of the Protestant Reformation in the sixteenth and seventeenth centuries among the Reformed Protestants as expressed by Zwingli, the leading Protestant Reformer of Zurich, Switzerland; Calvin, the leading Protestant Reformer of Geneva, Switzerland; and Knox, the leading Protestant Reformer of Scotland. Through them and their colleagues they developed the federal theology which understood the world as organized around the fundamental covenant between God and man and its subsidiary covenants among humans to achieve various social, political, and theological purposes. The fullest translation of the federal theology into practical political and social life was made by the Puritan Massachusetts Bay Colony, established in British North America in 1629. Its governor, John Winthrop, framed the clearest definition of liberty as either federal or natural in character, pronouncing the former as proper liberty, involving the freedom of humans to live according to their covenants made and the latter, as improper liberty of doing whatever one pleased unless blocked by another. The struggle between those two forms of liberty continues to accompany humanity as it has throughout the modern epoch.

It was from this religious understanding of federalism that a modern political understanding emerged. The linkage was made first by Johannes Althusius, a political scientist and public official (he was syndic or chief magistrate of the city of Emden in Germany) as well as a Reformed Protestant theologian whose book *Politica Methodice Digesta* (Politics Methodically Presented) offered the first comprehensive framework for

organizing a federal polity. While Althusius developed a political theory of federalism, in the New England colonies the Puritans were actually experimenting with federal relationships and arrangements throughout the seventeenth century.

In the seventeenth century, at the beginning of the modern epoch, philosophers began to speak of separating religion and state so as to prevent state enforcement of particular religious beliefs or maintenance of particular churches. In the late eighteenth century, first in the United States, this idea became the constitutional idea of the separation of church and state, with a special federal twist. When the American founders developed modern federation in 1787, they drew upon that religious heritage from two sources, directly from the experiences of the North American colonies, principally but not only New England, and indirectly through the Scottish enlightenment. The federalism they established followed very much the ancient federalism of the Bible whereby all of the constituent parts shared a common constitution and laws for those matters that were critical in defining the polity as a whole and for self-governing constituent units (states) in all of the details. Moreover, the states shared in shaping the national constitution and laws on a continuing basis.

One of the critical decisions of the American founders was that which handled the question of religious diversity. Because the United States was a Protestant country, it began with many different denominations, all of which, in the Protestant manner, were jealously protective of their autonomy and the strongest of which really expected the government to remain neutral in response to the various denominations and their claims. Although federalism was originally born to advance certain original religious ideas of governing by covenant, in the establishment of federalism in the United States it was agreed that for the federal government at least, there should be a strong separation of church and state so that no denomination would be favored over any other. Initially, these strictures applied only to the federal government under the U.S. Constitution to say, Congress, was forbidden from making laws respecting the establishment of religion, limiting the free exercise thereof, or providing support for particular churches. Under their Constitutions, most states could continue their established churches if they chose and a few did so for another fifty years, but ultimately the idea of separation and neutrality among the denominations and their doctrines became the standard of the land. Each of the state constitutions adopted constitutional provisions providing for separation, in many cases through what were known as "Blain Amendments," provisions more extreme than those in the federal constitution. On the other hand, in the nineteenth century, a general system of Protestant belief became the core of the American way of life which did not involve support for any particular denomination but did more or less "establish" a certain world view, to the great discomfiture of the growing Catholic minority. In the twentieth century, through political pressures of the growing Catholic population and a series of legal actions strongly pressed by Jewish legal experts, that informally established Protestantism was eliminated by the United States Supreme Court, to be replaced by the open multiculturalism that is the situation in the U.S. today.

The American position regarding separation of church and state can generally be said to be unique to the United States. Still, the idea of disentanglement or at least limited entanglement between religion and state spread to Europe, first in the French Revolution where the revolutionaries introduced what turned out to be a brief period of separation, more of an effort to abolish religion rather than to free it from state constraint. Even where superficially similar separation exists elsewhere as in France, it is of a different order, designed to promote a secular society. In the United States, separation was introduced to protect the varieties of religious experience which Americans had embraced and remains committed to that purpose, fighting for governmental neutrality for the sake of religion, not in opposition to it. In other federal systems, federalism has been used to protect religious diversity in other ways. During the nineteenth century, six patterns developed in Europe. One, exemplified by the United Kingdom, was an established church with freedom of religion for dissenting churches. A second, exemplified by the German states, was the provision of equal support on a per capita basis for all recognized churches through the state taxation, with the requirement that the churches become in essence

state chartered corporation. A third, exemplified by Italy, where several churches are established and one is particularly favored. Fourth, countries where no religion is established but receive government support either for providing necessary educational and social services and also for religious purposes. Five, countries where no religion is established and none is supported but all are eligible to receive government support to the extent that they provide educational and social services deemed necessary by the state. Six, countries like France where religion and state are sharply separated. Those religions recognized by the state are supported through an equal percentage of the federal income tax allocated according to the membership of the various religious communities and through land support programs conducted through the religious denominations. The latter situation is the pattern in Australia where there is no general state support for religion but certain educational and social welfare functions sponsored by the religious communities are entitled to an equal share of state support. Again, at times the federal government will provide that support, but it is generally a matter of fine tuning. States provide that support in a manner best suited to the religious divisions within their boundaries.

Canada may be the most diverse of any federal system in this respect. Because of the great diversity in religious differences from province to province, the great differences between French Catholic Quebec, Protestant, Ontario, the more diverse and open western provinces, and the strongly Scottish Presbyterian Maritimes have provided a socio-religious basis for those differences.

Today, in the years since World War II, these patterns have begun to converge into one of two, either where there is establishment but equality of treatment, or where there is separation with state support for church provided services deemed necessary for civil purposes by the body politic. In both, Federalism is frequently a mechanism used to handle these tasks. For example, in Switzerland some cantons have established churches and others do not, while religion and state are separated in the federal constitution. An example of the second kind can be found in Australia and Canada where there is no establishment but the states provide religious bodies with support to provide clearly essential educational and social services.

To what extent does federalism contribute to maintaining religious diversity? It should be clear that among the canons of modern and contemporary democracy are those of freedom of conscience and freedom of religion. Experience tells us that this means that religious diversity of varying degrees will be a fact of life wherever democracy prevails. Elsewhere I have made the case for federalism as a major force contributing to the success of democracy. This has to have implications for religious diversity. Those implications may be particularly evident in the development of postmodern federalism. Modern federalism is essentially federation, that is to say, the establishment of a strong national government with strong constituent units in the manner of the United States, the first and most prominent example of modern federalism. Federation was derived via Reformed Protestantism from the similar biblical idea of federalism. Modern federation was so compelling an idea in an era of statism that it drove its only competitor for the name federal, confederation, the predominant form of premodern federalism, from the marketplace as confederation after confederation either disintegrated or consolidated.

Since World War II, new federal arrangements have emerged, the most prominent of which is postmodern confederation, of which the European Union is the best example, whereby formerly sovereign states have transferred part of their sovereignty to a new common entity based upon functional principles. These new style confederal arrangements are becoming the norm in the postmodern epoch, just as American-style federations became the norm in the modern. Although as yet none is as well articulated as the EU, there are similar arrangements in the Caribbean Community and the Association of Southeast Asian Nations, in the Commonwealth of Independent States, and perhaps in time in some of the other regional economic arrangements that have also developed in recent years. These new arrangements have implications for religious diversity, even though they are not necessarily designed for that purpose. In many cases the constituent

states of the confederal arrangement had dominant or even established religions of their own that differed from their associates in the confederation. Thus, churches once considered dominant favorites or favored in particular states come, in some respects, under a more neutral framework which their religious traditions if not their religious institutions must share with other religions with different traditions and institutions.

Federalism has certainly been important in making this possible, especially since these new confederations work on a functional basis and by and large religion has not been among those functions transferred to the confederation except indirectly because of certain functions which religious institutions may perform in the member states that are. Since the direction of change throughout Europe and, it seems, the rest of the world as well is towards convergence, to a position that rejects the establishment of religion, as had been the case in so many European countries in the past, or complete separation of church and state as in the United States, the new arrangement is that all religions are equally favored or disfavored by the governments responsible and are supported to provide those functions which they help provide that people deems to be in their interest. Under such conditions, federalism becomes a very important way for maintaining religious diversity.

Religious diversity thus takes two forms. One is the equal protection of different religious groups within the same polity, and the other is the linking of polities with different dominant religions using federalism as a means to do so while protecting the territorial-based religious diversity that this brings about. Both forms have become considerably more complex in a globalized world.

At the time of the founding of the United States, the American founders could talk about there being equal rights not only for different Christian denominations but also for "Jews, Turks, and infidels." They could do so with ease. At the time, Jews were the only non-Christian group in the Christian world and they were a very small minority indeed, while "Turks", that is to say Muslims, were encountered only occasionally as individuals in passing, and infidels or atheists were just beginning to appear in response to the ideas of the Enlightenment. This remained true in the Western world where federalism developed in the modern epoch until after World War II.

Since then, millions of Muslims have entered first Europe and then North America and members of Eastern religions, not normally considered within the framework of monotheism, have also migrated westward in sufficient numbers to establish their own religious institutions. While the presence of infidels and atheists has not proved to a significant political problem, the emergence of neo-paganism as in the revival of wicca or the religion of witchcraft, and new forms of nature worship, is beginning to raise questions in almost all polities regarding the limits of religious diversity, if any. Polities will have to answer that question each in its own way. Although we know that there are limits to the range of answers that will be considered permissible in the globalizing world with its emphasis on democracy and human rights, including the freedom of religion, federal systems will have to deal with those issues. Federalism by its very nature teaches us how it is possible to enable the maintenance of diversity through compacts, consent, and constitutionalism. In this respect, religious diversity, although a more sensitive subject, is no exception. It is within this framework of federalism that responsibility for government's relations with religion are entrusted.

Thus, as the relationship between religion and state undergoes reevaluation, the maintenance of religious diversity also takes on new forms. In sum, it would be difficult to make the argument that federalism is especially useful for the maintenance of religious diversity, but there seems little question that it does add to the range of possibilities available to do so.

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