

One Nation Under Whose God? How Religion Was Excluded from the U.S. Political System

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RECENTLY RETURNING FROM TEN YEARS of foreign service in the Middle East, a friend mentioned that he was frequently asked how the United States successfully excludes religion from politics. My friend noted that to Middle Easterners religion is not only inseparable from politics, it is often what politics is about. The absence of religion from politics is, to warring Muslims, Jews, Christians, and others of the Mideast, a unique feature of the American political system. My friend was impressed with their question, even though he found it difficult to answer. My discussion with this friend and others stimulated me, in the following pages, to attempt an answer.

DIFFICULT QUESTION

The question is difficult because it addresses two supreme powers each claiming to control human pursuits. The first pursuit is the need to settle human conflicts coercively. The second is the need to settle conflicts about ultimate truth, heavenly pursuits, and godly authority.

Organization is the essential tool for control in both pursuits. State is the name given to the organization with the supreme coercive, punitive power to control conflicts. Church, or organized religion, is the name given to organizations that claim to control access to the non-human power, i.e. God, and his kingdom, here and hereafter. In spite of the potential conflict between the two supreme claims, there is an easy interdependency between the two institutions, as their supremacies may be closely related in use. For example, when a king or head of state adds legitimacy to his punitive controls with a divine power claim, or when a church leader commands the army, he does so to defend the right and protect the righteous. Conflicts are thus more intense when God authorizes war and directs the effort to punish. Political conflicts often have

sought divine approval. Religion, a claimed source of morality and power, turns an omnipotent God into the punitive state. These combined power relationships are frequently observed in recorded history making the distinction and the separation difficult. Christianity, however, provided a distinction between the two powers and proposed a church-state separation. Jesus established his kingdom independent of the state, although he eventually fell under its control. Christianity, however, retained its separateness until the fourth century A.D. when it became a state church and has continued politically intermingled in most Christian-dominated nations even today.

RELIGIOUS SEPARATION IN THE U.S.

Religious separation or exclusion in the political system of the United States, though unique, may not be as apparent to Americans as it is to Middle Easterners. The U.S. Supreme Court's most recent statement of the separation occurred in 1992 and 1995 cases when religious prayers, spoken and sung, were legally prohibited in state high school graduation programs. The court's language in declaring the exclusion in the 1992 case is clear: "Religious belief is irrelevant to every citizen's standing in the political community" (*Lee v. Weissman*, U.S. 112 S.Ct. 2649, L.Ed. 2d. [1992]). We may wonder if our Middle Eastern friends noted the opposition of many Americans to the court's excluding decision. Likewise, inserting "God" in the Pledge of Allegiance may even surprise them. The answer to their question of "how" and "when" regarding this religious exclusion, or separation, may be as interesting to Americans as it is to Middle Easterners.

The question of "how" and "when" may be best answered by reviewing the events in which this unique state-church relationship developed. The question suggests a time, place, and plan. Politics, however, seldom result from a plan, even though there appears an agenda which resembles a plan. Political agendas are set by conflicts from opposing plans. The plans in this instance, however, were made by organized conflict contenders from a place and a time when the state and the church were not separated

COLONIAL DISSENT, RESISTANCE, AND REBELLION

The events of the separation were unique. The British colonial settlement of America resulted from economic and religious conflicts of Western Europe. Each settlement of the thirteen British colonies was a varied mixture of economic and religious motivations. Protestant denominations organized from the sixteenth-century Christian Reformation domi-

nated the colonial settlements. Each colony was authorized and controlled by a charter. The thirteen varied charters from 1607 to 1733 with their different religious involvements, plus the distance from Britain, the freedom of the American frontier, and the time lapse up to 1765, brought feelings of independence to colonists. These feelings were significant enough that when the 1765 Parliament Stamp Tax was imposed, an aroused inter-colonial resistance marked the beginning of the U.S. political system. Twenty-eight aroused delegates from nine colonies met in New York City in October 1765 as the Stamp Act Congress to initiate the uniting effort of the future system.

Nine years later, after more parliamentary taxes, controls, and colonial resistance, fifty-six angry delegates from twelve colonies met on 12 October 1774 in Philadelphia at the First Continental Congress. When British soldiers arrived to enforce the controls and more resistance followed, a Second Continental Congress met in May 1775. This congress is remembered as the one that declared the thirteen colonies independent from Britain on 4 July 1776 and waged the Revolutionary War.

Near the end of the war, a confederacy of the thirteen independent states was established with a document called the Articles of Confederation. The articles unanimously adopted by the thirteen states on 1 March 1781 provided for cooperation in a congress that ensured the independent sovereignty of each state. Conflicts soon arose, however, within and between the states and with other nations, creating fears that the Confederate Congress was not powerful enough to control them. These conflicts appeared to some prominent leaders as a threat to the security of the newly won political independence. To these leaders, a totally united states was the only solution. Amending the articles that protected state sovereignty to correct the power deficient government, however, seemed almost impossible to the leaders of the nationalist movement.

A meeting or a convention, separate from congress, seemed a way to circumvent the unamendable system. After the failure of two convention attempts, the Confederate Congress finally convened in Philadelphia on 14 May 1787. The convention's fifty-five delegates meeting during four hot summer months wrote a document titled a "Constitution" and then got it ratified by independent state conventions. With the ratification, the structure of the U.S. political system was complete; its first congress met on 30 April 1789, elected a president, and was ready to make and enforce laws on people. As part of the original system, and significant to the state-church relationship, are the first Ten Amendments (or Bill of Rights) proposed by the first congress in August 1789. With their ratification in 1791, the formal U.S. political system was established. The original arrangement of the system shaped its future development.

RELIGIOUS OMISSION

Within the events occurring during the twenty-four years from 1765 to 1789, the essence of "when" and "how" of religious exclusion can be found. The exclusion occurred while the state, the supreme secular power, was being relocated from Britain through the thirteen states to the new national system.

Where was religion, the many American churches, during this period? There is no record of any church or religious involvement with the colonial-parliament conflict, nor is there record of religious concern with the conflict. There was much strife among the competing churches for members, but this was separate from the political conflict. The state church of Britain was not involved nor was it appealed to for help or authority. Each colony had its own churches or religious arrangement, but there was not an inter-colonial church with a single deity which would have been useful and necessary for relocating a state. The fragmented colonial religion had little to offer the conflict over taxes, trade restrictions, and the presence of British soldiers, and was in no position to share in the political rebellion that followed.

In the absence of a single church or deity, and the failure of the appeals to the familiar British traditions, colonists sought elsewhere for a power source—the authority with which to promote their political revolt and by which to justify their disagreement with the British government. The writers of the Declaration of Independence found that power source in a non-religious creator that equally endowed all men with "unalienable rights of life, liberty and the pursuit of happiness." These are the words of a philosopher, not of a God who authorizes churches. The European Enlightenment, shared by many congressional delegates, provided a non-religious power source, useful for justifying a political rebellion. Rather than noting that religion was removed from American political beginnings, it may be more accurate to say that religion was omitted; it was not on the political agenda, neither as an issue of conflict nor as an available power authority. The Revolution had secularized American politics.

U.S. POLITICAL SYSTEM ESTABLISHED

Following the successful revolt, however, something politically quite different was needed to unite and control politically. Unlike the Declaration that justified rebellion, governing required unity and stability, a credible power source from which to justify control. In these peculiar circumstances, religion was more than omitted, it was unavailable. The document the delegates wrote in 1787 at Philadelphia not only established, as their first convention motion, a proposed "supreme legislative,

executive & judiciary" power or authority, it also established a super supreme law, one to control the government the Constitution created. The Constitution declared itself the super law, a built-in secular, political supremacy superseding morality, natural law, and religion. The First Amendment to the Constitution proposed by the First Congress emphasized this religious exclusion from the national government with "Congress shall make no law respecting the establishment of religion," and then required religious neutrality among the competing churches by adding "or prohibiting the free exercise thereof." With the constitutional system the nationalist leaders established a non-religious, secular national state. They made no provision for religion or its moral claims in the Constitution and specifically excluded it from future political agendas.

In Article 6 the Constitution's claim of supremacy is most complete. Note the language: "This Constitution ... shall be the supreme law of the land," and then required that "judges in every State to be bound thereby" and that all public officials, national, state, and local, "be bound by oath of affirmation to support this Constitution." It concluded with the secular reminder that "no religious test shall ever be required as a qualification to any office." The super law status of the Constitution is ensured by distinguishing the congressional law procedure provided in Article 1, requiring a majority vote of Congress and the president's signature, from the Constitutional law amending procedure provided in Article 5. An amendment requires a two-thirds vote of both congressional bodies and a ratification of three-fourths of the states.

JUDICIAL REVIEW

Establishing a secular, religiously neutral, and supreme constitution was the essential feature for beginning to exclude religion from the American political system. That, however, was just the beginning. The Constitution that delegated functions and powers to Congress, the Executive, and the Judiciary was also intended, by the delegation, to limit their powers. According to Amendment 10, powers not delegated to the national government were reserved to the states. How to enforce these constitutional assignments was not specified in the Constitution. Many prominent leaders, however, were not surprised when the Supreme Court assumed the enforcement role. This supervisory court function is known as "Judicial Review." The court assumed this review role when it declared a congressional law unconstitutional in 1803 and voided a state law in 1819. It took the Civil War, however, to settle the supremacy issue with the states. Eventually, judicial review became an accepted and unique feature of constitutional supremacy in the U. S. political system and thereby the source of constitutional law. In its two-hundred-year his-

tory, the Supreme Court has declared unconstitutional more than two hundred congressional laws, about forty presidential actions, and over a thousand state laws. This "review" feature created a second political arena to the U.S. political system, a place for settling constitutional conflicts and eventually for responding to alleged religious intrusion.

The First Ten Amendments—the Bill of Rights—approved in 1791 were adopted to appease opponents of the Constitution during the ratifying conventions; it was a States Rights addition. The First Amendment, as noted above, excluded religion from the national Congress and for many years from the Supreme Court's "review." Even though the Fourteenth Amendment, added in 1868, invited the nationalization of the Bill of Rights, it was not until the 1920s that the court began to include the Bill of Rights in its jurisdiction. Not until 1940 did the court review a state law that dealt with a religious conflict. Since then the court has most often used the Establishment Clause of the First Amendment to settle allegations of religious intrusion. Many of the conflicts have been within and about religious activities in the states' educational systems. The court has disapproved the use of classrooms and school time for religious teaching. Prayers in classrooms and graduation ceremonies and moments of silence have been defined as religious and therefore excluded. The court has forbidden Bible reading, teaching the Old Testament creation story, and displaying the Ten Commandments and other religious symbols. Some kinds of state financial aid to parochial schools have also been prohibited.

Similar non-educational religious conflicts have been reviewed. The court has approved, however, most public meeting prayers and some public religious displays and slogans, such as "One Nation Under God" in the Pledge of Allegiance and "In God We Trust" on national currency. The court's declaration and protection of the constitutional "Right of Privacy" which has been used to permit human abortion has brought opposition from many church leaders and their members. The religious claim of a "right to life" for the unborn fetus in opposition to the court's abortion decision has not been acceptable for the court's consideration.

These claims of religious intrusion are made in the same court-controlled arena that reviews non-religious constitutional issues. The court's inclusion of the Bill of Rights, without the formal amending process, amends the First Amendment to read "Congress, 'and other lawmakers at State and local levels of government,' shall make no law respecting the establishment of religion or prohibiting the free exercise thereof."

The court has allowed the Constitution's "Free Exercise" clause to excuse Amish children from a high school attendance law, a Seventh Day Adventist from an unemployment compensation legal payment restriction, and a Jehovah's Witness from a flag salute requirement. It is in this

judicial arena that individuals and minorities are allowed to win. For example, in disallowing a prayer in a New York State school, the court accepted—in its arena—a student's complaint in 1962 that school prayer intruded into the Constitution's protected area. Each of the twenty or so religious cases brought to the court have come from minorities. Losers in law-making arenas initiate judicial procedures by restating their arguments in the judicial arena with added constitutional claims. These constitutional arguments come at the conclusion of the political process where the law impacts individuals, victims of law enforcement, and those neglected or excluded from the political system. An insignificant issue may be used to exclude a religious political intrusion.

Through the court's control of its arena, it (1) sets its agendas from the religious conflicts brought to it, (2) defines religion, (3) interprets the "establishment" and "free exercise" clauses, and (4) excludes religion from the political system, thereby protecting the secular integrity of the Constitution. The judicial arena, secular, legal, and political, is a central feature for the exclusion of religion from the U.S. political system. The court's control is protected from other political forces by (1) difficult constitutional amending procedures, (2) life tenured justices, and (3) the strategic location of the court in law enforcement procedures. The court is in a strategically secure position to ensure the secularity and supremacy of the Constitution.

CONSTITUTIONALISM

A third feature of the system that excludes religion from politics is the system's ideology. All political systems need an ideology to legitimize the political processes—the making and the enforcing of their laws. As noted above, religion in some form has often provided this legitimizing feature in many nations. For example, the belief in Jehovah and his prophets in the Old Testament was the political ideology for the nation of ancient Israel. Also the various Christian religions provide the semblance of a political creed for many current European nations. For the United States, the secular Constitution which provides ultimate authority also provides the basis for an ideology called constitutionalism. The belief, by the citizens, in the Constitution's supremacy makes it so. The political system's effectiveness depends on the citizens' acceptance of the Constitution's supremacy feature.

The credibility promoting claims of the system was provided by nationalists at the 1787 Philadelphia Convention and in their writings to delegates at the state ratifying conventions. Supremacy, the essential feature of law and its enforcement, proposed in the Constitution, was feared by the delegates. At Philadelphia and in one of the ratifying papers, the

power/fear dilemma was explained and the explanation became the basic principle of the creed. Enabling "the government to control the governed, and in the next place, oblige it to control itself" became the basic element of the nationalists' reasoning. The nationalist designers explained that the self-control features were built into the Constitution's governing arrangement. "The Constitution had adequately partitioned or separated the powers," stated one of the papers, "to keep each division in its assigned place." Constitutionalism, then, is the secular ideology, the belief that explains and justifies the supremacy of the Constitution and provides the hope that the built-in controls will protect the citizens from political abuses (*Federalist Papers*, No. 51).

The arguments for the built-in features that convinced delegates at the conventions that supremacy was needed and controllable became the fundamentals of the political creed for all Americans. These built-in features have become acceptable and recognizable as they are taught, preached, and written about by teachers, politicians, pastors, orators, lecturers, and journalists. These well known fundamentals include popular sovereignty, separation of powers, federalism, checks and balances, equality, four freedoms, and even, though not mentioned, judicial review. The first of the four freedoms, religion, is central in the creed which includes a secular, religiously neutral, and supreme constitution. The popular belief that everybody else's religion should be kept out of politics, a part of constitutionalism, is a control feature for excluding religion from American politics.

Constitutionalism—like the Constitution—is ever-changing. The most dramatic change in the Constitution, since its beginning, may be noted in the status and definition of citizenship. Originally blacks, women, Native Americans, and the poor were excluded from the electorate. Now all of those once excluded have Constitutional access to the political system. Religious issues, likewise, have changed. Religion has changed from a state to a national issue, as also has its meaning, political significance, and the way it may be excluded from politics. School prayers, along with all other public school religious disputes, were only recently accepted onto the court's agenda. Central to the evolving constitutionalism are the decisions and opinions of the justices of the Supreme Court interpreting the Constitution's ambiguous language and flexible principles. The Establishment and Free Exercise clauses of the First Amendment await interpretation with each new conflict. Regardless of the conflicts, or the court's decisions, constitutionalism accommodates the changes. Americans believe in a changing Constitution.

A unique feature about the changing state/church relationship in the American system is the many ways the two institutions collide. From its moral claims and its attempt to control people's behavior, there are con-

stant conflicts with religion in the market place, with religion in the educational system, and with religion in science. These contact/conflict points are where the secular cultural world does its business. Religion struggles to be a part of it, to influence and control behavior. The responses to the conflicts are significant to accommodations within the system. The secular and the religious contenders respond differently. Because of their commitment to authority, orthodox religious disputants claim absolute principles, while secular contenders are less dogmatic, accepting compromise and tentative resolution. Any conflict may be tinged with religion and morality, however, and may become intense enough to be thrust into a political arena. Secular constitutionalism, in and out of the political arenas, shares in the many conflicts and their resolutions. The finality of the state extends to constitutionalism, questioning the infallible claims of religion. Secular constitutionalism provides continuous involvement in distinguishing and separating the religious from the secular.

THE SECULAR STATE AND THE CONSTITUTION

As indicated earlier, the Constitution did not create the state, it relocated it. The Constitution did not make the state secular; its secularity is from its supremacy, and its supremacy is from its capacity for final punishment. The U.S. government is authorized by the Constitution to govern, yet the Constitution obtains its implementation and enforcement power from the government. Somewhat circular! The supremacy and the secularity, with constitutional authority, extend to local governments. Most state/church conflicts have developed within the state school system and city and county governments where taxing and punishment are imposed. Because of the imposition of these features, a prayer, spoken or sung, in a public school becomes politicized and secularized. The state's secularizing effects are inescapable. As part of the secularizing effect, a public prayer is noticeably, even religiously, neutralized. The secularity may be noted in the attempt to offer neutral prayers which please neither the faithful nor the non-believer. Public, political prayers thus seemingly lose their religious significance. The insistence on combining religious activities with political events transforms the religious into the secular. Even the court when settling a religious conflict transforms, by its secular supremacy, the religious to the secular. The transformation may not always be apparent to the determined disputants as it occurs during the collision. The inescapable supremacy of the state ensures its secular dominance. This seemingly mysterious change is not unlike that which may be noted in other relationships that involve control. The threat to control seems to be the transforming ingredient. Violence overwhelms restraining principles when control is at stake.

A Supreme Court justice almost noted that mysterious transformation when in 1984 the court allowed a Christian creche to remain in a city Christmas display because it had become commercial. In his dissenting opinion, Justice William Brennan suggests the secularizing transformation with these words:

[G]overnment cannot be completely prohibited from recognizing in its public actions the religious beliefs and practices of the American people as an aspect of our national history and culture. While I remain uncertain about these questions, I would suggest that such practices as the designation of "In God We Trust" as our national motto, or the references to God contained in the Pledge of Allegiance can best be understood, as a form of "ceremonial deism," protected from the Establishment Clause scrutiny chiefly because they have lost through rote repetition any significant religious content (465 U.S. 668 [1984]).

For the Supreme Court, however, school prayers may not yet be of such symbolic religious insignificance that it will allow transformation where young people are being publicly educated.

MORMONISM AND THE CONSTITUTION

Mormonism is not the only religion which threatened the religious Constitutional exclusion feature, but its confrontation is unusual enough to warrant an explanation here. For sixty years the Mormon church collided with the U.S. political system from top to bottom and marked the beginning of the national government's state/church encounter.

The church's experience with the American political system is somewhat historically out of place. When the church was organized, religion was constitutionally, and to the disappointment of the church, a state not a national concern. During its first sixteen years, from 1830 to 1846, the church was often in conflict with other settlers, their churches, and with state governments before the state/church relationship was clarified. The religious freedom included in the states seemed both to protect and reject the church. The church, likewise, was unclear about its political aspirations. It declared a belief in church/state separation, while at the same time appeared to join the two. Finally, after bitter, confusing conflicts, the church was driven from Missouri and Illinois.

In the western territory, Utah, under national government jurisdiction, the church/state relationship was even more unsettled. The church-dominated territorial settlement began, seemingly with national government approval, confusing the relationship. A cloudy fifty-year confrontation followed between the church and the national government. The conflicts were about the church's policies and its political-like controls

over members, non-members, church rebels, and apostates. The conflicts were finally settled by a hostile territorial legislature, an unfriendly U.S. Congress, president, and courts. The Congress and the president used armies, denied statehood, wrote laws against the church's plural marriage doctrine (a church principle), arrested hundreds of church members, denied citizenship to polygamists and women, dissolved corporate legal control, and finally confiscated the central church properties for failure to comply with the anti-polygamy laws. The church's leaders claimed constitutional protection, justifying their disobedience on the religious free exercise clause of the First Amendment. After the court's rejection of numerous constitutional claims and the church's submission to various demands including the abolition of polygamy, Congress admitted the State of Utah with a state constitution that excluded all religion from Utah politics. Mormonism's confrontational threat to the secular Constitutional system ended. The church lost in every arena. All this happened fifty or so years before the nationalization and definition of the "Establishment" and the "Free Exercise" clauses of the First Amendment. Constitutional supremacy and secularity came to Mormonism and Utah long before the other states.

SUMMARY

Let me summarize the "when" and the "how" of why I believe religion was and is excluded from the U.S. political system:

1. Religion was omitted from the first three inter-colonial congresses;
2. Religion was omitted by the political secularization in the Declaration of Independence;
3. Religion, omitted from the Philadelphia Convention, was excluded from the supreme, secular, and religiously neutral Constitution and Bill of Rights;
4. Religion was and is excluded by the Supreme Court in its constitutional arena; and
5. Religion was and is excluded in and by constitutionalism, the U.S. political ideology.

This religious exclusion feature gives meaning and makes possible freedom of religion, a cherished feature of the American political system. However, like the other First Amendment freedoms to speak, to publish, and to organize, religion is involved with individual belief aspirations that unavoidably provoke conflicts. Tolerance, religious and otherwise, is an essential feature in constitutionalism for maintaining non-hostile religious relationships that assist in keeping religious conflicts out of politics.

The religious fragmentation that affected the church/state relationship at the founding of the American political system continues to fragment, which is even more significant to the church/state relationship today. The supreme Constitution with its secular ideology now includes the political aspirations of a varied American religious system. This may be noted in the political patriotism expressed at the diverse American church meetings and celebrations. The secular constitutionalism with its "ceremonial deism" (Justice Brennan's language) must have overwhelmed the U.S. Congress when in 1954 it inserted "under God" in the Pledge of Allegiance. This was done by a Congress which had no delegated constitutional authority over religion, and in spite of the forbidding language of the First Amendment. Obviously, Congress could only "insert" a secular "god." Even so, such an insertion should puzzle our Middle Eastern observers, among others, especially if they noted church members' frequent recitation of the Pledge in and out of their churches. We should remind our friends, however, that Americans are so immersed in secular constitutionalism that they hardly noticed the Supreme Court's endorsement of the Congressional insertion into the Pledge or its approval of a religiously neutral "ceremonial" god. By contrast, it is the protected religious gods of Catholics, Protestants, Jews, Muslims, and Mormons that provoke conflicts and make it into the judicial arena requiring resolution.

How different, then, is a religious god from a secular one? The distinction may be difficult, as many loyal, religiously faithful Americans believe that it was a supreme, neutral "God" who initially excluded religion from the Constitution and it was the same divine power that later inspired the exemption of personal contributions to churches from political income taxes and exclusion of church holdings from property taxes. Also for them, no doubt, it is the same secular neutral "God" to which Congress's chaplains daily pray and presidents sometime ask at the close of their public address to bless America. It must be this same secular, neutral "God" who gives constitutionalism its religious appearance. This may be the religious-like secularism that disturbs religious leaders. Could a religious God transform the Constitution into a religious document? Or could a supreme constitutional system transform a religious partisan God into a secular, neutral one? Both questions sound strange, but critical. How real, then, is the church/state separation in the American political system?

In spite of the confusion between a religious and a neutral "God" and their separation, there is a meaningful distinction in the United States between the secular and the religious. Most Americans agree with the observations of our Middle Eastern friends about the uniqueness of the American church/state relationship, even though the line separating the

secular from the religious is often unclear. The continuous search for an explanation and a separation, however, seems to be a part of the system, and the resulting confusion may be noted in the opinions of the nine secular Supreme Court justices who seldom agree about the definition of religion and what is constitutionally separated and protected. Gratefully, the justices only claim finality, not infallibility. The secular human court makes no decisions about universal truth. Even so, the essential feature of religious separation is in the uniquely limiting secular, religiously neutral, supreme Constitution. If there is a secular, neutral, patriotic "God," "He," "She," or "It" must be found somewhere in that political supremacy. This Americans do mysteriously, when they sing Irving Berlin's "God Bless America" or when they conclude the American hymn "My Country 'tis of Thee ... Great God our King." Most importantly, it is within that supreme, secular, religiously neutral Constitution that freedom of religion is made possible.