



Religious Freedom Review

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Department of the Prime Minister and Cabinet
Commonwealth of Australia
Canberra, ACT

January 6, 2018

The Honourable Philip Ruddock (Chair, Expert Panel)

Dear Sir,

It is our privilege to submit to you and the panel a proposal for your consideration.

We argue that the twin 'Freedoms of Expression and Religion' are, in the language of the American Declaration of Independence, 'inalienable rights endowed by the Creator'. The notion of 'inalienable rights' declares that that which God grants man cannot rescind nor endow. It is therefore not in the remit of the state to deny or grant these rights.

The Preamble to the Constitution of the Commonwealth of Australia opens with the founding sentiment of "humbly relying on the blessing of Almighty God". This positions our nation's founding document as a Christian one, grounded in a millennia-and-a-half of the Western cultural tradition. This tradition, contrary to popular perceptions, pioneered the separation of spheres, especially that of church and state, albeit with varying measures of success. Nonetheless, the American and Australian experiments, building on that heritage and especially that of British Common Law, grounded in King Alfred the Great's codification of the Moral Law of God (The Ten Commandments) into English law, and more especially the English heritage of parliamentary democracy, sought to preserve the integrity of separate spheres in the delineation of the civil state as *secular* from the church as *sacred*. Contrary to common perception, as we will demonstrate, the notion of the secular was original to the Christian tradition. However, as the American Declaration of Independence, U.S. Constitution, and Australian Constitution exhibit, their design was never to preclude Christianity's voice from the civil sphere. Rather, they were designed to protect the Freedoms of Expression and Religion.

The 20th Century's premiere scholar of Federalism, Daniel J. Elazar (Temple University, Philadelphia), convincingly demonstrated the link between 16th Century Reformation theology and the subsequent

development of federal political systems. It is often overlooked that the 18th Century Scottish Enlightenment thinkers were first readers of these works before developing their political theories. Separation of church and state was first modelled in Israel. Under God, the political and cultic were separate spheres (unlike the pagan societies of antiquity), governed by kings and priests respectively. Independent of both, the prophets spoke as God's voice to violations of his covenant in either sphere. Furthermore, Israel modelled federal principles of government: although David was divinely called to be king he made covenant with the tribal leaders for the equitable functioning of his kingly authority. Federalism – a sharing of powers by sovereign states – as a political system was rooted in the covenant life of Israel. In fact, our word “federal” comes from the Latin *foedus* for covenant. The Swiss Reformers first recognised these covenantal principles, developing a political theology that travelled from the continent to the British Isles, and thence to America. So, from the biblical view, God is sovereign over all human governments and spheres, including church and state, covenanting with them and delegating his authority to them. Each sphere is divinely defined and limited; nonetheless, God speaks into them with moral and spiritual authority, without violating their delegated authority and function.

Christ taught that we should render to Caesar the things that are Caesar's, and to God the things that are God's (Matt. 22:21). There is a clear distinction between two spheres: the civil and the ecclesial. The state enforces its authority by the sword – that is, by force of arms (Rom 13:4) – whereas the church enforces its authority, also by a sword but in its case by the 'sword of the Spirit' which is the word of God (Eph 6:17) – that is, by the force of propositional truth; the former is coerced obedience, the latter un-coerced.

The church is not to rule over the state nor vice versa. Both, though, are sovereign spheres under God—all authority devolves from him (Rom 13:1). Paul teaches that the state is a “servant of God” and must be obeyed as an “avenger of God's wrath on the wrongdoer” (Rom 13:4-6). The role of the state is to enforce God's justice, but how will it know what justice is unless the church fulfils its role to teach the nations the word of God? Clearly, then God's word contains the wisdom and ways of God for the governance of nations—for public policy and ethics. Abraham Kuyper, Prime Minister of the Netherlands, Theologian, and founder of the Free University of Amsterdam, was also an influential advocate of these principles, of what is termed 'sphere sovereignty'.

The civil applicability of biblical law has been explicit throughout the history of the Christian movement. From early Christian Europe through to Anglo-Saxon Christian England to the Reformation and beyond, the ethical influence of Christianity, including the Old Testament law, has been potent in establishing an objective standard for justice. As already stated, King Alfred the Great

(AD 871-924), for example, understood that the Old Testament law had not been rescinded by Christ, maintaining the judicial law's general equity in a non-Israelite setting. He thus codified the Ten Commandments, as well as the judicial law and biblical case laws, into his Law Code, establishing a transcendent ethical foundation for justice and the development of English Common Law. Biblical law was thus foundational for the law-system of the English-speaking world. That system, grounded in biblical law, is therefore inevitably one of *interpretation* not *creation*, unlike the *fiat* laws of tyrannical states.

The totalitarian state's claim to lordship is a declaration of war against God's sovereignty. Caesar Augustus took on the title and office of *Pontifus Maximus*, the high priest of the Roman state cult, combining political *and* religious authority. As a polytheistic culture, Rome's pantheon of gods grew with the empire and consequently Rome practiced religious toleration to the degree a religion acknowledged Caesar as lord. This the early Christians could not do. Thus Peter's proclamation of Christ's gospel of salvation and sovereignty in the face of the false gospel – the Emperor cult – declaring that “there is salvation in no one else [i.e. Caesar], for there is no other name [i.e. Christ's] under heaven given among men by which we must be saved” (Acts 4:12). The word “gospel” (*euangelion*), despite its theological roots deep in the Old Testament, was repossessed from the Emperor cult. With the advent of Caesar Augustus – the god-man – it proclaimed that a new era of salvation had begun for the whole world. The messianic emperor and state were sovereign. Thus, while practicing religious *toleration*, Rome could not allow religious *liberty*. Toleration permitted freedom of *worship* but never freedom of *religion*—freedom in the public square. Tertullian refers to *religio licita* (permitted religion) in his Apologeticum (21.1) which, while not found in other literature of the time, does suggest either state licensure or at least informal recognition of compliant religions. The totalitarian state is supreme over the secular *and* the religious.

Consequently, to claim that Christianity, including the Old Testament law and separation of spheres, should have no influence in society and public policy is contrary to history and more especially God's design for the world. While maintaining the integrity of the sovereign spheres of church and state, God's people are responsible to be a prophetic voice to their culture. How can this occur except their voice is free to be heard in the public square? This provided the theological ground-motive for the carving out of the freedoms that we have historically enjoyed. And as a corollary all religions and belief systems have enjoyed the same. This is not the case in any other system. It is unique to the Christian tradition and, thus, the attraction to the politically and religiously oppressed of other nations.

While the Constitution of the Commonwealth of Australia proscribes the Commonwealth from enforcing or prohibiting a religion (clause 118) and where an inconsistency occurs between state and

Commonwealth laws, the latter prevails (clause 109), we argue, based on the notion of inalienable rights, that a *declarative* statement of rights be promoted through a people-sponsored Bill of Rights as an amendment to the Commonwealth Constitution.

We trust our modest contribution to this complex issue is of some assistance in your deliberations.

Sincerely,

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Suggested reading:

Daniel J Elazar, *The Covenant Connection: From Federal Theology to Federalism*, Maryland: Lexington Books, 2000.

" *Covenant and Civil Society: The Constitutional Matrix of Modern Democracy*, New Jersey: Transaction Publishers, 1998.

Harold J Berman, *Law and Revolution: The Formation of the Western Legal Tradition*, Harvard University Press, 1983.

" *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition*, Belknap Press, 2006.