

Federalism as a Protection against the Unintended Consequences of Legislation

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The U. S. Constitution, written in the Philadelphia convention in 1787, is based on the principle of federalism. It was a necessary as well as desirable result. The thirteen provinces of England's empire in North America who jointly gained independence sought to retain their autonomy while forming a single entity for international relations.

The Americans were well aware of the confederal forms of The United Provinces of the Netherlands and the Helvetic Confederation. John Adams, Thomas Jefferson and James Madison undertook studies of confederations, ancient and modern. The new state constitutions as well as the Articles of Confederation during the revolutionary war were the subjects of intense discussions in Europe, in particular in France. Articles were published discussing the pros and cons of the different American constitutions.

Felix Morley, the president of Haverford College, saw John Locke as the foundation for the American founding fathers: "Locke's great influence on the founding fathers goes far to explain why the difference between society and state is generally recognized on this side of the Atlantic. Society is the voluntary collective acting of individuals in areas where the state is not concerned. [...] Because the rules of society are voluntarily adopted they generally do not possess the coercive force of the laws that the state makes binding. [...] On the moral scale, however, society is clearly a type of organization superior to the state, since its authority is based on individual agreement rather than on external coercion. Morally speaking, it is reactionary rather than progressive whenever the state expands its authority at the expense of society."(1)

The great advantage of real federalism is that its decentralization permits the wealth creating advantages of tax and regulatory competition. Each state or province or canton has the ability to raise or lower taxes or increase or decrease regulation of activities purely within its territory. Of course, the unit cannot tax or regulate activities which occur beyond or above its area. For example, a U. S. state cannot tax or regulate internet use as it is trans-state in its scope, or air flights above its territory. Otherwise, each state can do it pleases and suffer the benefits or consequences. In the U. S. states which do not have income taxes become the choice for new businesses or retired people. In the U. S. the right to work law permits states to opt out of the compulsory unionism of the national law. Twenty-two states permit the right of workers to work without compulsion to join a union. Those are the states that have become increasingly wealthy as companies move their plants there to gain increased productivity and better wages for workers in freedom from union interference in production.

Tax and regulation competition is a historical tradition in Europe explaining the Rise of the West. 1993 Economics Nobel Prize-winner Douglass North explained the Rise of the West: "Thus, it may be argued that the Christian religious framework of the Middle Ages provided a hospitable filter for learning that led to adaptations congenial to political/economic growth [...]. In that competitive, decentralized environment, lots of alternatives were pursued as each society confronted its own unique external circumstances. [...] The dynamic consequences of the competition amongst fragmented political bodies resulted in an especially creative environment. Europe was politically fragmented; but it was integrated in having both a common belief structure derived from Christendom, and information and transportation connections that made it possible for scientific, technological and artistic developments in one part to spread rapidly throughout Europe."(2)

The foundations of capitalism in Medieval Europe were the Christian religion, the voluntary Law Merchant, representative institutions, and the polycentric political system. Albert Hirschman has described the importance of voice or exit in the polycentric political system of Europe. Merchants in Flanders or Brabant or Basel or Aix or Florence often had branches and relatives in different jurisdictions; if the ruler raised taxes or impeded commerce, the merchant could move to another jurisdiction more hospitable to the economic improvement of its citizens. The citizens could give voice to their doubts about taxes with the option of exit to a more enlightened, lower tax jurisdiction.

The maintenance of federal institutions in the 21st century becomes a challenge. Over time the value of a federalist system may be lost sight of. The federalist system is a protection against the unintended consequences of legislation.

Remarks:

(1) Felix Morley, "Freedom and Federalism", Indianapolis, IN, Liberty Press, 1981, pp. 39–40.

(2) Douglass C. North, "Competition and Values in the Rise of the West", Swiss Review of World Affairs, November, 1993, pp.23–24.

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