

# **The Separation of Church and State**

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The topic chosen for consideration at this convention is one of the burning issues of our day. What are the proper roles of church and state? How separate should they be? Where is the fence between them? How high is it? Are they to be like unfriendly neighbors who are constantly fighting with one another? Or are there times and situations when they, like good neighbors, can work together on a project? Most of us are probably aware of times when the state has interfered with the church's work or when the church has meddled in the affairs of the state or attempted to use the state or its agencies to promote religion.

When one speaks about church and state in this context, the word "state" is used in the broad sense of government, and the word "church" refers to organized religious groups. In a pluralistic society such as ours, the government must deal with religious groups of many kinds. It does not deal with Christians only, and so it does not use the term "church" as we Christians do. The Bible knows of no other church except the Christian church.

The government frequently classifies religious people as either Catholics, Protestants or Jews. With the influx of larger numbers of non-European immigrants, a wider variety of religions have appeared on the American scene. Today Buddhists and Muslims are quite numerous, especially in metropolitan areas. The Mormons, Jehovah's Witnesses and other cults have also gained many adherents. The government lumps all religious groups together as churches. It is obviously not in a position to determine the difference between religious truth and error and to decide which religious organizations are churches in the scriptural sense of the term.

The separation of church and state became a heated issue in Nebraska a few years ago when the North Platte Baptist Church refused to recognize the right of the State of Nebraska to exercise a measure of supervision over the church-operated school by requiring that the school be licensed and the teachers certified. The church maintained that its school was actually a church and that the issue was state licensing of a church. The confrontation was national news and stimulated an intensified debate of the question of the separation of church and state.

This question has been the issue in an unusually large number of cases decided by the Supreme Court of the United States in the last 40 or 50 years. One of these cases, *St. Martin Evangelical Lutheran Church v. South Dakota* (1981), involved a congregation of our synod and our former Northwestern Lutheran Academy at Mobridge, South Dakota. The question was whether the congregation and the synod were required to pay federal and state unemployment taxes for the teachers in their religious schools.

In 1985 the justices of the high court struck down an Alabama statute calling for a period of silence in schools, not to exceed one minute, "for meditation or voluntary prayer." This spring it ruled that the Air Force could prohibit an Orthodox Jew from wearing a yarmulke - a traditional skullcap- while on duty. In another case the justices let stand the decision of a lower court that a Bible-reading club of high school students could meet in the public school at Williamsport, Pennsylvania.

Ever since the Court in 1962 declared prayer in public schools unconstitutional, there has been a movement to add a prayer amendment to the Constitution. In spite of having the support of the president of the United States, this movement has not gotten off the ground. For this we, as members of a church that holds to the scriptural doctrine of fellowship, will be thankful. We recognize that in spite of the well meaning intentions of its supporters, this amendment, if adopted, could actually become a threat to the religious liberty we enjoy in our country.

Local, state and federal governments are continually wrestling with the problem of the separation of church and state. Because of tight budgets, local officials are re-examining the exclusion of church-owned property from the tax rolls. Militant atheists have brought legal suits to remove all vestiges of religion from public life. Erecting a Christmas creche on public property, and the use of the “in God we trust” motto on our money and of the “under God” phrase in the pledge of allegiance to the flag have been challenged.

It is especially in the area of education that our synod and our congregations have wrestled with difficult and controversial church-state questions. What about the participation of our schools in government-supported lunch programs? What about school busing, free textbooks, library services, government loans or grants for tuition or for certain school facilities? What about state certification of the teachers in our schools? What about the taxation of church property such as schools, parsonages and teacherages?

These are just some of the problems that point up the timeliness of our topic. Volumes have been written on the constitutional and legal questions involved in the separation of church and state, but in the time at our disposal we cannot review all of these in detail. We can only briefly sketch what has been decided by the courts. We are meeting here as a district of our synod, as a church, and our primary concern will be to listen to the Scriptures. We believe that the Holy Scriptures are the inspired and inerrant Word of our God and the final authority in all matters of doctrine and practice. What, then, does God’s Word have to say about the separation of church and state? What scriptural principles do we need to keep in mind as we seek God-pleasing answers to the many practical questions that confront us? We will also want to hear what our Lutheran Confessions have to say on this matter. Our Lutheran Confessions, we believe, are a clear and correct exposition of the Scriptures. We believe that what they teach has been taken from God’s Word and is in full harmony with it.

In this essay we intend, therefore, to study first of all the scriptural and confessional principles relating to the separation of church and state. Then we will briefly survey the legal issues involving the relationship between church and state in the United States. And finally we will consider some practical applications of the scriptural and confessional principles our study has brought out.

## **What do the Scriptures and the Lutheran Confessions say about the separation of church and state?**

### **The Church**

When the Bible speaks about the church, it is speaking first of all about the spiritual fellowship of all who believe in Jesus Christ as their Savior from sin (Mt 16:16-18; Ac 2:47; 4:4). All believers in Jesus Christ are joined together in the close, invisible fellowship we call the communion of saints. This is Christ’s church. This is his body. He is the head, and we who believe in him are his members (Eph 1:22,23; 1 Cor 12:12-27).

This church is God’s creation. He brings rebellious sinners, who have been redeemed with the precious blood of Christ, to faith and places them as living stones into the spiritual temple of his church (Eph 2:19-22; 1 Pe 2:4-10). This is the work of the Holy Ghost (1 Cor 12:3). The tool he uses is the gospel of Jesus Christ. This good news is “the power of God for the salvation of everyone who believes” (Ro 1:16). The gospel is a message from God announcing that for Jesus’ sake he has forgiven the sins of all people. It may come to sinners in an oral or written form. It may also come in the form of what has been called “the visible Word,” the sacraments of baptism and the Lord’s Supper. The gospel in the Word and in the sacraments is the channel God uses to convey to sinners the assurance that Jesus has paid for their sins and that through faith in him they will have everlasting life and salvation.

All who by God’s grace believe this good news are members of Christ’s church. This church is invisible because the bond that unites believers with Christ, their head, and with one another is faith, and faith is a matter of the heart” (1 Sm 16:7). Paul tells Timothy, “The Lord knows those who are his” (2 Tm 2:19).

What a blessed privilege it is for us to be a part of this church! Paul assured the Ephesian Christians, “You are no longer foreigners and aliens, but fellow citizens with God’s people and members of God’s household, built on the foundation of the apostles and prophets, with Christ Jesus himself as the chief cornerstone” (Eph 2:19,20). This is the church Jesus was speaking about when he told Peter after he had

confessed that Jesus was the Christ, the Son of the living God, “On this rock I will build my church? (Mt 16:18). This is the church we are speaking of when we confess in the Third Article of the Apostles’ Creed, “I believe in the holy Christian church, the communion of saints.” This is the church in the strict or proper sense of the term.

But the Bible also uses the word “church” in a wider or looser sense. All who profess faith in Jesus Christ and who gather to hear the preaching of the gospel and to receive the sacraments are given this name (3 Jn 10). We speak of this as the visible church. We can see who the members of this church are. Even though there may be hypocrites in the group, the visible assembly is called “church” because of the true believers in it.

God has given us the assurance that where his Word is preached it will not return empty (Is 55:11). Hypocrites may belong to the church in an outward way, but they are not really members of Christ’s church. In the Smalcald Articles Luther writes, “Thank God, a child seven years old knows what the Church is, namely, the holy believers and lambs who hear the voice of their Shepherd” (XII, 2; *Trig.* 499).

### **The Purpose of the Church**

If Jesus’ sole purpose in bringing us into his church were to take us to himself in heaven, he might well take us there immediately after we have come to faith. Then there would be no danger then that we might lose our faith as Judas Iscariot did.

But Jesus does not remove us from this world right after our baptism or conversion. He has work for or us to do. So he leaves us in this world that we might go about the business he has entrusted to us.

This work is first of all that we might serve one another in the body of Christ. Just as the various members of our physical bodies serve the body as a whole, so we who are members of Christ’s spiritual body will promote the welfare of the entire body.

The Holy Spirit has given us a variety of spiritual gifts. He gives them to us “for the common good” (1 Cor 12:7). To the Christians at Rome Paul writes, “We have different gifts, according to the grace given us. If a man’s gift is prophesying, let him use it in proportion to his faith. If it is serving, let him serve; if it is teaching, let him teach; if it is encouraging, let him encourage; if it is contributing to the needs of others, let him give generously; if it is leadership, let him govern diligently; if it is showing mercy, let him do it cheerfully” (Ro 12:6-8). Through faithful use of such gifts of the Spirit the church will be strengthened and built up inwardly “until we all reach unity in the faith and in the knowledge of the Son of God and become mature, attaining to the whole measure of the stature of the fullness of Christ” (Eph 4:13).

Not only are we to contribute to the internal growth of Christ’s body, however. Jesus has also charged us with the responsible task of promoting its outward growth. He has given us the assignment not only to strengthen the stakes but also to lengthen the cords of his spiritual tent (Is 54:2). We are his ambassadors. We have the high privilege and heavy responsibility of bringing the good news of the gospel to our fellow human beings. We are to carry the message of forgiveness and salvation through Jesus Christ to the ends of the earth. He has commissioned us to “go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit” (Mt 28:19). In his name we are “to preach good news to the poor, ...to bind up the brokenhearted, to proclaim freedom for the captives and release for the prisoners, ...to comfort all who mourn, ...to bestow on them a crown of beauty instead of ashes, the oil of gladness instead of mourning, and a garment of praise instead of a spirit of despair” (Is 61:1-3).

Through us Jesus calls sinners to repentance just as he did through Peter. On the day of Pentecost Peter called on the people who had come to Jerusalem from all parts of the world, “Repent and be baptized, every one of you, in the name of Jesus Christ so that your sins may be forgiven” (Ac 2:38).

That is still the purpose of the church today. It is to serve people’s *spiritual* needs. It is to rescue them from the terrible fate of eternal damnation in hell.

Having this spiritual goal does not mean that we Christians will be indifferent to the physical needs of our fellow human beings. As Christians we will see in those who are in need of food, clothing, shelter, medical care and other necessities an opportunity for us to give expression to our faith, to show our thanks to God for

the gift of salvation and to demonstrate our love for Christ. Here is an opportunity for each of us to become, as Luther once said, “a Christ to the other” (LW 31:367f).

But just as Jesus first of all addressed the spiritual needs of the paralyzed man who was brought to him and assured him, “Son, your sins are forgiven” (Mk 2:5), so also our primary concern will be to save souls by leading the lost to Jesus, their only hope for eternal life. And just as the Christians in the congregations Paul founded showed their concern for the needs of their fellow Christians in Jerusalem who were suffering from a famine, so also today we as Christians will take to heart Paul’s admonition, “As we have opportunity, let us do good to all people, especially to those who belong to the family of believers” (Ga 6:10).

### **The Church’s Tools**

To enable the church to fulfill the responsibilities he has placed on it, Jesus has given the church his Word. This Word is a spiritual power that can crush the hard, stony hearts of unbelievers like Saul of Tarsus. It is a living, life-giving power that can bring spiritually dead hearts to spiritual life. “The words I have spoken to you are spirit and they are life,” Jesus told his disciples (Jn 6:63). The writer to the Hebrew Christians says, “The word of God is living and active. Sharper than any double-edged sword, it penetrates even to dividing soul and spirit, joints and marrow; it judges the thoughts and attitudes of the heart” (He 4:12).

God’s Word is of two kinds. On the one hand, there is his holy law. In it God reveals his holy will. He demands that we be holy in all that we think and say and do. “Be holy because I, the LORD your God, am holy” (Lv 19:2).

God’s law serves a threefold purpose. First of all, it exposes our sin. It shows us how far we fall short of meeting God’s demands. Because of our sins we deserve nothing but God’s wrath and punishment. In this way the law shows us our need of a Savior. Secondly, it curbs our Old Adam. With its threats and curses it restrains our sinful nature from doing what it would naturally like to do. And thirdly, the law shows us how we as God’s dear children can please our heavenly Father. It is a guide pointing out to us how to live lives of thankful love. It keeps us from inventing all sorts of good works that aren’t really good works in God’s sight at all.

On the other hand, God’s holy Word also contains his saving gospel. This is the good news that because of Jesus’ holy life and innocent death God has forgiven the sins of all people. It tells us that Jesus “was delivered over to death for our sins and was raised to life for our justification” (Ro 4:25).

Justification is the verdict of “Not guilty!” which God pronounced on the whole world because of Jesus. It is often called universal justification because it includes all people who ever lived or will live. It is also called objective justification because God has declared all people forgiven for Jesus’ sake, and this is a fact whether they believe it or not. Of course, those who don’t believe it will not enjoy the benefits of it. Because they reject God’s gift of salvation, they will suffer the consequences of their sins-eternally in hell.

Luther once wrote, “Many do not believe the gospel, but this does not mean that the gospel is not true or effective. A king gives you a castle. If you do not accept it, then it is not the king’s fault, nor is he guilty of a lie. But you have deceived yourself and the fault is yours. The king certainly gave it” (LW 40, 367). Luther goes on to say that whoever does not believe that his sins are forgiven for Christ’s sake blasphemes God and should “dwell with Judas and Herod in hell, for God does not want to be reviled by our unbelief” (LW 40, 368).

What a tragedy it is that there are so many today, even in the Lutheran church, who deny the scriptural doctrine of objective justification! They fail to realize that if God has not forgiven the sins of the whole world, there really is no good news to announce. Neither is there then a promise for faith to take hold of. If God’s forgiveness has some strings attached to it, if it’s not complete unless I do my part by believing, then the solid basis of our salvation is gone. What if I don’t feel any faith in my heart? How do I know if my faith is strong enough? A conditional gospel is no gospel. In the hour of death the devil’s most fiery temptation comes in the form: Are you sure you believe? The only effective defense against this temptation is to answer in the words of the hymn writer:

I cling to what my Savior taught  
And trust it whether felt or not.

*(Handbook to the Lutheran Hymnal, p 267)*

In addition to the gospel in the Word, Jesus also gave his church the sacraments, baptism and the Lord's Supper. These are an added personal assurance of the forgiveness of sins. These sacraments have been called the "visible Word" because in them Jesus utilizes not only our sense of hearing but our other senses as well to assure us that we have peace with God and are his dear children.

We speak of the sacraments together with the gospel in the Word as the means of grace because God uses these means to convey to sinners his gracious gifts of the forgiveness of sins, life and salvation. Through these means the Holy Ghost works faith, as Paul says, "Faith comes from hearing the message, and the message is heard through the word of Christ" (Ro 10:17). By faith God's wonderful gifts of grace become ours. Jesus says, "Whoever believes and is baptized will be saved" (Mk 16:16).

These, then, are the tools God has given to his church with which to do the work he has assigned to it. It is important at this point to note that God has *not* given his church tools or weapons of wood, stone or steel for its work. It has no authority or means to coerce people to believe. The Apostle Paul strongly emphasizes, "The weapons we fight with are not the weapons of the world" (2 Cor 10:4). The Christian church is not to win converts with fire and the sword as the Mohammedans did. But this does not mean that the church's tools and weapons are ineffective "On the contrary," Paul declares, "they have divine power to demolish strongholds" (2 Cor 10:4).

The battle the church wages is spiritual, and so its weapons, like its Master's, are spiritual. Jesus told Pontius Pilate, "My kingdom is not of this world. If it were, my servants would fight to prevent my arrest by the Jews. But now my kingdom is from another place" (Jn 18:36). In his kingdom Jesus rules by means of his Word of truth, as he explained to the Roman governor. "For this reason was I born, and for this I came into the world, to testify to the truth. Everyone on the side of truth listens to me" (Jn 18:37). That Word of truth is still the means by which Jesus defends and extends his kingdom today.

Jesus strongly impressed this principle on his disciples in his parable of the weeds and the wheat (Mt 13:24-29). The weeds, representing the unbelievers in the world, are not to be pulled out but allowed to grow together with the wheat, God's believing children. In the harvest at the end of the world the heavenly Landowner will tell his harvesters, "First collect the weeds and tie them in bundles to be burned, then gather the wheat and bring it into my barn" (Mt 13:30).

Despite this clearly enunciated principle that the church is not to employ force or violence in doing its work, the church has again and again seized worldly weapons in its efforts to maintain or expand its influence. We are now speaking, of course, about the visible church, the church as a body of professing Christians.

Even Jesus' disciples before Pentecost did not have a clear understanding of this principle of using only the spiritual weapon of God's Word. At times they were tempted to promote Jesus' cause by using force or violence. Because of their fiery zeal Jesus called James and John "Boanerges", which means Sons of Thunder (Mk 3:17). When a Samaritan village did not welcome Jesus because he was on his way to Jerusalem, these two disciples wanted to call down fire from heaven to destroy that village. Jesus rebuked them sharply, pointing out, as some manuscripts have it, that "the Son of Man did not come to destroy men's lives, but to save them" (Lk 9:51-56). On another occasion, a man who was not one of the disciples was driving out demons in Jesus' name. John and the other disciples tried to stop him, but again Jesus corrected them (Mk 9:39f). Peter, too, received a stern rebuke when he seized and swung his sword to defend Jesus at the gate of Gethsemane. "Put your sword back in its place," Jesus told him, "for all who draw the sword will die by the sword" (Mt 26:52).

Church history records many unfortunate instances when the church with mistaken zeal banished, tortured or killed heretics. Michael Servetus, a Spaniard who denied the Trinity, made the mistake of passing through Calvin's Geneva while fleeing from the Catholic Inquisition. Through Calvin's influence he was

arrested, condemned to death as a heretic and burned alive on October 27, 1553. The story of intolerance in the American colonies, some of which had been founded by refugees from religious persecution, is well known.

Unfortunately, the church's record is tarnished not only by the blatant use of force in the interest of the truth, but only too often against the truth. John Hus was burned to death at the stake on July 6, 1415. His follower, Jerome of Prague, suffered the same fate a year later.

The Catholic Inquisition has already been mentioned. For more than 500 years from its beginnings in the twelfth century this so-called "Holy Office" of the papacy earned the notorious distinction of being perhaps the most horrible engine of oppression ever devised by man. Under the shield of Rome and in the sacred name of religion, it was guilty of unprecedented injustice, heinous atrocities and refined cruelties. Hundreds of thousands of Cathari, Waldensians, Lollards, Jews, Moors and Protestants were its victims in Italy, Germany, the Netherlands, England and Spain, and even in the Spanish colonies in the New World. Although the Inquisition was a policy and program of the papacy, and especially of the Dominican Order, it was often carried out in conjunction and cooperation with governments that were under papal influence or control.

Luther wrote his first poetry upon hearing of the martyrdom of two young men in the Netherlands, Heinrich Voes and Johann Esch, who were burned at the stake on June 30, 1523, because of their Lutheran faith. In his poem Luther praises their bold and fearless confession in the face of death. We cite only the first, second and tenth stanzas as a sample:

1. By help of God I fain would tell  
A new and wondrous story  
And sing a marvel that befell  
To His great praise and glory.  
At Brussels in the Netherlands,  
He hath His banner lifted,  
To show His wonders by the hands  
Of two youths highly gifted  
With rich and heavenly graces.
  
2. One of these youths was call'ed John,  
And Henry was the other;  
Rich in the grace of God was one,  
A Christian true his brother.  
For God's dear Word they shed their blood  
And from the world departed  
Like bold and pious sons of God;  
Faithful and lion-hearted,  
They won the crown of martyrs.
  
10. Their ashes never cease to cry,  
The fires are ever flaming,  
Their dust through the world doth fly,  
Their murderers' shame proclaiming.  
The voices, which with cruel hands  
They put to silence living,  
Are heard, though dead, throughout all lands  
Their testimony giving  
And loud hosannas singing.

*(Handbook to The Lutheran Hymnal, p 190)*

This tenth stanza forms the basis for or the hymn “Flung to the Heedless Winds” (Number 259 in *The Lutheran Hymnal*).

What the authority and tools of the church are is clearly spelled out in the Augsburg Confession. It defines the authority of the church as the power “to preach the Gospel, to remit and retain sins, and to administer the Sacraments” and refers to Christ’s commands: “John 20:21 sqq.” *As my Father hath sent Me, even so send I you. Receive ye the Holy Ghost. Whosoever sins ye remit, they are remitted unto them; and whosoever sins ye retain, they are retained.* Mark 16:15: *Go, preach the Gospel to every creature*” (Art. XXVIII, 6,7; Trig., 85). The Augsburg Confession adds,

This power is exercised only by teaching or preaching the Gospel and administering the Sacraments, according to their calling, either to many or to individuals. For thereby are granted not bodily, but eternal things, as eternal righteousness, the Holy Ghost, eternal life. These things cannot come but by the ministry of the Word and Sacraments, as Paul says, Rom. 1:16: *The Gospel is the power of God unto salvation to every one that believeth*” (Art. XXVIII, 8,9; Trig., 85).

The Confession emphasizes this truth once more when it states that those to whom the ministry of the Word and sacraments has been committed have “no jurisdiction except to forgive sins, to judge doctrine, to reject doctrines contrary to the Gospel, and to exclude from the communion of the Church wicked men, whose wickedness is known, and this without human force, simply by the Word” (Art. XXVIII, 21; Trig., 87).

Compare this with the argument of Thomas Aquinas (he died in 1274), who was honored by Rome as “the Prince of Scholastic Theologians,” canonized in 1323 and proclaimed a “Doctor of the Church” in 1567. Aquinas wrote, “If false coiners or other felons are justly committed to death without delay by worldly princes, much more may heretics, from the moment that they are convicted, be not only excommunicated, but slain justly out of hand” (*Summa Theologica*, 2a 2ae, Quest. xi, art. iii). With advice like that from one of its premier theologians, it is not surprising that the Church of Rome vigorously pursued the outrageous orgy of the Inquisition.

In the interest of truth it must be said that the Church of Rome in its Second Vatican Council (1963-1965) endorsed the principle of religious freedom. In its “Declaration on Religious Freedom” the Council stated that “the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that in matters religious no one is to be forced to act in a manner contrary to his own beliefs” (*Documents of Vatican II*, Ch. 1, 2 [New York: America, 1966] p 678f). It bases this right of man, not on so-called freedom of conscience, but on the dignity of the human person and says that “no one is to be forced to embrace the Christian faith against his own will” (Ch II, 10; *ibid.*, p 689). The Council even admitted, “In the life of the People of God as it has made its pilgrim way through the vicissitudes of human history, there have at times appeared ways of acting which were less in accord with the spirit of the gospel and even opposed to it” (Ch. 11, 12; *ibid.*, p 692).

What does this mean? Has Rome changed? Has it repented of the sins committed when it stained its hands with the blood of the martyrs? That we may not read too much into Rome’s current professions abjuring the use of coercion and force in its efforts to make all people subject to the Bishop of Rome, it will be helpful to remember that the papacy is very shrewd in reading the signs of the times. In our day and age it is not politic or practical for it to pursue its aims coercively. A statement renouncing the use of force can serve Rome’s interests well in modern society by portraying the papacy as quite reasonable and tolerant. But of this one may be sure: the apostate church described in the Book of Revelation as “a woman drunk with the blood of the saints, the blood of those who bore testimony to Jesus” (Re 17:6) will never actually change her character. *Roma semper*

*eadem*. She changes only the tone of her tune, speaking now shrilly, now sweetly. But her words, whether shrill or sweet, are always deceptive, always dragon-like, and hence devilish (Re 13:11).

But the defeat of all the forces of the Roman Antichrist and all other enemies of Christ and his church is assured. “The Lamb will overcome them because he is Lord of lords and King of kings—and with him will be his called, chosen and faithful followers” (Re 17:14).

## The State

Luther spoke of the church as Christ’s kingdom of the right hand, “where He reigns Himself, since He does not appoint parents, magistrates, judges, but He Himself preaches the Gospel to the poor” (WA 36, 385; cited in Albert G. Huegli, ed., *Church and State under God* [St. Louis: Concordia, 1964] p 464). The church is Christ’s proper kingdom. But Luther also recognized the state as God’s kingdom. He said, “Secular government may also be called God’s kingdom. For He wants it to remain and desires that we should be obedient to it. But it is only the kingdom of the left hand” (WA 52, 26; cited in Huegli, p 464).

When we speak of the “state,” we mean human government, whatever its form may be. The form most often mentioned in the Bible is monarchy. But one form of government is not more God-pleasing than another. Peter admonishes, “Submit yourselves for the Lord’s sake to every authority instituted among men: whether to the king, as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right” (1 Pe 2:13,14). The Greek expression Peter uses for “every (kind of) authority instituted among men” (πάση ἀνθρωπίνῃ κτίσει, the word κτίσις usually meaning “creation”) suggests that the various forms of government are of human origin. Peter does not with these words contradict the biblical teaching that government derives its authority from God. The point is that government as such is God’s institution, but men may create various types of government to serve their needs.

The public ministry is in this respect a parallel. The public ministry as such has been established by God. The church may, however, in Christian liberty create various forms of the public ministry such as the offices of pastor, teacher, missionary, synodical executive, professor or whatever other offices it finds necessary and useful.

Like Peter, Paul refers to governmental authorities of various kinds when he urges Timothy that prayers be made “for kings and for all those in authority” (1 Tm 2:1,2). Democratic forms of government are not more pleasing to God than totalitarian ones. At the time when Paul wrote his letter to the Christians in Rome admonishing them to be submissive to the governing authorities, Nero, one of the bloodthirstiest tyrants of all time, was Caesar of the Roman empire (54-68 A.D.). Through Jeremiah God urged the Jewish exiles to pray for their cruel Babylonian captors and the welfare of their state. He said, “Seek the peace and prosperity of the city to which I have carried you into exile. Pray to the LORD for it, because if it prospers, you too will prosper” (Jr 29:7). Even the worst government is better than no government. An oppressive government that maintains law and order is better than anarchy.

The authorities that are in actual power constitute the government, whether they have acquired their power legitimately or not. In Romans 13:1 Paul writes, “Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God.” “The authorities that exist” are those who actually wield governmental power and exercise control. Very often they are in power because they have seized it, perhaps even murdering their predecessors as Jehu killed Joram and seized the throne of Israel in fulfillment of divine prophecy (2 Kgs 9:1-26).

During a rebellion or civil war there may be situations when there is a question about which authorities are to be obeyed. The answer for the Christian lies in determining who is in control. There may be a transitional period, but “the authorities that exist” are those who can enforce their laws and exercise their will.

When Pilate boasted of his power either to crucify Jesus or to release him, Jesus expressly told Pilate, “You would have no power over me if it were not given to you from above” (Jn 19:11). Daniel, too, asserted that “God sets up kings and deposes them” (Dn 2:21). He told King Nebuchadnezzar, ruler of the mighty kingdom of Babylon, “The God of heaven has given you dominion and power and might and glory; in your



hands he has placed mankind and the beasts of the field and the birds of the air. Wherever they live, he has made you ruler over them all” (Dn 2:36-38). God humbled this proud king so that he might learn that “the Most High is sovereign over the kingdoms of men and gives them to anyone he wishes and sets over them the lowliest of men” (Dn 4:17).

The state, like the church, is a divine institution. Paul states, “There is no authority except that which God has established, the authorities that exist have been established by God. Consequently, he who rebels against authority is rebelling against what God has instituted” (Ro 13:1,2). Three times within the space of three verses in this thirteenth chapter of Romans Paul refers to the governing authorities as “God’s servants” (vv 4-6). He has placed them in control to serve his purpose.

Our Lutheran Confessions, too, recognize the fact that God has instituted human government. The *Augsburg Confession* refers to the state and the family as “ordinances of God” (Art. XVI, 5; *Trig.*, 51). In the *Apology* legitimate civil ordinances (German: *Obrigkeits und Regiment.*, government and authority) are described as “good creatures of God and divine ordinances” (Art. XVI, 53; *Trig.*, 329). Luther in his Large Catechism speaks of the authority of those who have been placed over us in his discussion of the Fourth Commandment and asserts, “All authority flows and is propagated from the authority of parents” (I, 141; *Trig.*, 621). He points out that the ancient Romans and others “called their national rulers and overlords *patres patriae*, that is, fathers of the entire country” (I, 142; *Trig.*, 621). Civil government, he says, “is all embraced in the estate of fatherhood and extends the farthest of all relations” (I, 150; *Trig.*, 623).

In instituting government God was showing his love for us. Government is a gift of God instituted for our good. It and the church are, according to our Confessions, “the chief blessings of God on earth” (AC, XXVIII, 4; *Trig.*, 85). In what way government is a blessing will become evident as we discuss our next point.

### **The Purpose of the State**

According to Luther’s explanation in the Small Catechism, one of the blessings of God for which we pray in the Fourth Petition of the Lord’s Prayer is “good government.” He explains this more fully in his Large Catechism. He writes:

To comprise it briefly, this petition includes everything that belongs to our entire life in the world, because on that account alone do we need daily bread. Now for our life it is not only necessary that our body have food and covering and other necessities, but also that we spend our days in peace and quiet among the people with whom we live and have intercourse in daily business and conversation and all sorts of doings, in short whatever pertains both to the domestic and to the neighborly or civil relation and government. For where these two things are hindered that they do not prosper as they ought, the necessities of life also are impeded, so that ultimately life cannot be maintained. And there is, indeed, the greatest need to pray for temporal authority and government, as that by which God most of all preserves to us our daily bread and all the comforts of this life. For though we have received of God all good things in abundance, we are not able to retain any of them or use them in security and happiness, if He did not give us a permanent and peaceful government. For where there are dissension, strife, and war, there the daily bread is already taken away, or at least checked.

Therefore it would be very proper to place in the coat-of-arms of every pious prince a loaf of bread instead of a lion, or a wreath of rue, or to stamp it upon the coin, to remind both them and their subjects that by their office we have protection and peace, and that without them we could not eat and retain our daily bread. Therefore they are also worthy of all honor, that we give to them for their office what we ought and can, as to those through whom we enjoy in peace and quietness what we have, because otherwise we would not keep a farthing; and that, in addition, we also pray for them that through them God may bestow on us the more blessing and good (111, 73-75; *Trig.*, 719).

In these words Luther is explaining what Paul means when he says that the governing authorities are “God’s servant to do you good” (Ro 13:4). The same apostle bids us to pray for those in authority “that we may live peaceful and quiet lives in all godliness and holiness” (1 Tm 2:2).

If there were no sin in this world, our lives and property would be in no danger. All people would live together in peace and harmony with each one reflecting his love for God in his love for his fellow *human* beings. There would be no war, no robbery, no rape, no murder, no crime of any kind. Society would be one big, happy, peaceful and peace-loving family. That was, in fact, God’s original intent when he created this world and placed *man* into it to share his serene blessedness as his companion and friend. God made man in his image, creating him in perfect righteousness and holiness (Eph 4:24). As God God’s representative *man* was to rule over the earth and all its living creatures.

But God’s grand plan was shattered when sin came on the scene. Now, as a result, “the whole world is under the control of the evil one” (Jn 5:19). Sin, evil and wickedness are rampant. In the day of Noah the earth was so filled with violence that God decided to destroy it with a flood, sparing only Noah and his family. But this did not change man’s sinful nature. It is still true that every inclination of man’s heart is by nature evil (Gn 8:21). Sinful man is selfish. The dreams men have sometimes had of a utopia here on earth are only that, empty dreams. Jesus warns that as the world rushes toward its final destruction, wickedness will increase (Mt 24:12). “Evil men and impostors,” according to Paul, “will go from bad to worse” (2 Tm 3:13).

Without the wholesome restraints imposed by government, life would be impossible on earth. For that reason God instituted government. It is God’s servant, “an agent of wrath to bring punishment on the wrongdoer” (Ro 13:4). The threat of punishment serves to curb to some extent the evil passions, lusts, hatred, jealousy, greed and other sinful thoughts and desires that are sown in human hearts by the prince of darkness. The purpose of government is to preserve a certain measure of peace and order in a sinful society. Government is to protect law-abiding citizens and to restrain and punish evildoers. In Peter’s words, rulers are sent by God “to punish those who do wrong and to commend those who do right” (1 Pe 2:14).

The *Augsburg Confession* describes the God-assigned responsibility of the state in this way: “The civil rulers defend not minds but bodies and bodily things against manifest injuries, and restrain men with the sword and bodily punishments to preserve civil justice and peace” (Art. XXVIII, 11; *Trig.*, 85).

Christians may, therefore, also serve in government. Because their concern as Christians will be to serve God and their fellow men to the best of their ability, they will be the best stewards of the trust of public office. Faithful and conscientious public service will be a fruit of their Christian faith. When some tax collectors asked John the Baptist what they should do, he did not tell them to resign from public office. But he said, “Don’t collect any more than you are required to” (Lk 30-13). To some soldiers who asked what they should do, he said, “Don’t extort money and don’t accuse people falsely—be content with your pay” (Lk 3:14).

The *Augsburg Confession* therefore says, “Of Civil Affairs they teach that lawful civil ordinances are good works of God, and that it is right for Christians to bear civil office, to sit as judges, to judge matters by the Imperial and other existing laws, to award just punishments, to engage in just wars, to serve as soldiers, to make legal contracts, to hold property, to make oath when required by the magistrates, to marry a wife, to be given in marriage” (Art. XVI, 1,2; *Trig.*, 51; see also *Apol.*, Art. XVI, 53; *Trig.*, 329). The Apology adds: “Public redress, which is made through the office of the magistrate, is not advised against, but is commanded, and is a work of God, according to Paul, Rom. 13:1 sqq. Now the different kinds of public redress are legal decisions, capital punishment, wars, military service” (Art. XVI, 59; *Trig.*, 331).

In the interest of preserving civil justice and peace, the state regulates such things as marriage and divorce (Mt 19:7,8), coins money (Mt 22:19-21), settles property and other disputes (Lk 12:14; Ac 19:38; 1 Cor 6:1-8), awards compensation or punishment for injury (Ex 21:22-25), wages war and sues for peace (Lk 14:31,32) and concerns itself with all matters that affect the safety and general welfare of its citizens.

The purpose for which God instituted government is therefore purely temporal. It has to do with life in this world and not with the hereafter. The state was not intended by God to serve any spiritual, religious or

eternal purpose. To enable it to carry out the functions assigned to it, God has, accordingly also, equipped the state with the necessary tools.

### **The State's Tools**

Because of sinful man's selfish desires and his determination to do as he pleases, the state must use force to control these tendencies. Force, punishments of various kinds and even the right to take human life are the tools God has therefore placed into the hands of the state to enable it to carry out its God-given responsibilities.

To the Romans Paul writes, "He who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer. Therefore, it is necessary to submit to the authorities, not only because of possible punishment but also because of conscience" (13:2-5).

On God's authority the state bears the sword. This means that God has authorized it to take human life, if necessary. Human life is sacred. It is a gift of God, and only God or his appointed representatives have the right to take it.

Any other killing is murder, a sin against God's holy law. In his covenant with Noah God emphasized this when he told him, "For your lifeblood I will surely demand an accounting. I will demand an accounting from every animal. And from each man, too, I will demand an accounting for the life of his fellow man. Whoever sheds the blood of man, by man shall his blood be shed; for in the image of God has God made man" (Gn 9:5,6).

In the beginning, as we have heard, God created man holy and righteous. He was like God in this respect. He was in God's image. And even though man lost this image when he fell into sin, God did not abandon his plan for man's fellowship with him. He found a way to restore his image in man and gave man a time of grace during which he might be rescued from the kingdom of the devil and brought into the kingdom of God's dear Son. Whoever, therefore, murders his fellow man cuts short his God-intended time of grace. To underscore the sacredness of human life God declared the life of a murderer forfeit. Jesus reiterated this principle when he told Peter, "Put your sword back in its place, for all who draw the sword will die by the sword" (Mt 26:52).

When the state, therefore, executes convicted murderers, traitors or other criminals, it is not guilty of "cave man morality," of "legalized murder" or of "brutalizing society," as sentimental social theorists and bleeding-hearted journalists often charge. In carrying out capital punishment the state is upholding the sacredness of human life. It is exercising its God-given authority and duty.

Since it has the power of the sword, the state obviously also has the right to impose lesser punishments of various kinds, such as imprisonment, fines or probation (Ex 21:22,30; Mt 5:25). Its obligation to protect its citizens from foreign adversaries gives it the right and duty to wage war, if necessary. It may also use its military and police forces to maintain internal peace and order by suppressing riots, putting an end to disorders and putting down rebellions.

In carrying out its responsibility to protect the life and property of its citizens the state utilizes and relies on human reason. It uses human reason to decide what laws are necessary and useful. It depends on human reason to produce obedience on the part of its citizens.

"Human reason" is an expression used in our Confessions to sum up the ability which even after the Fall into sin man still has so that he can distinguish between what is beneficial and what is harmful for his life in this world. It includes also the limited ability which natural, unregenerate man has to live an outwardly decent and respectable life. Included in the term "human reason" are also the natural knowledge of God, the moral law inscribed on man's heart, and conscience.

Fallen man still knows that there is a God. He also has some knowledge of God's moral law since God has inscribed this on his heart. In addition, he has a conscience, which accuses him when he transgresses the inscribed law. These truths are evident from Paul's words in Romans 2:14,15, "When Gentiles, who do not have the law, do by nature things required by the law, they are a law for or themselves, even though they do not have the law, since they show that the requirements of the law are written on their hearts, their consciences also bearing witness, and their thoughts now accusing, now even defending them."

The Apology of the Augsburg Confession summarizes these truths in the following words:

The human will has liberty in the choice of works and things which reason comprehends by itself. It can to a certain extent render civil righteousness or the righteousness of works; it can speak of God, offer to God a certain service by an outward work, obey magistrates, parents; in the choice of an outward work it can restrain the hands from murder, from adultery, from theft. Since there is left in human nature reason and judgment concerning objects subjected to the senses, choice between these things, and the liberty and power to render civil righteousness, are also left. For Scripture calls this the righteousness of the flesh which the carnal nature, i.e., reason, renders by itself, without the Holy Ghost (Art., XVIII, 70; *Trig.*, 335).

What is here called "civil righteousness" or "the righteousness of works" the Augsburg Confession calls "the righteousness of reason" (Art. IV, 22-24; *Trig.*, 127). This righteousness of reason is limited to purely outward actions. God's law demands, however, that the thoughts of our heart be pure and holy also. The righteousness of reason is limited, furthermore, in that it is restricted to our relations with our fellow man. In no way does it fulfill the requirements of the First Table of the law that we love God above all things. Natural man, however, repeatedly fails to fulfill the demands of the law even outwardly. Moreover, whatever he does, he does from purely selfish motives and with the mistaken thought that he can earn God's favor by his supposedly good deeds. The Bible makes it clear, however, that "without faith it is impossible to please God" (He 11:6).

Civic righteousness or the righteousness of reason is what the state seeks to produce by means of its laws, threats and punishments. The Apology says, however, "Although we cheerfully assign this righteousness of reason the praises that are due it ... yet it ought not to be praised with reproach to Christ" (Art. IV, 24; *Trig.*, 127). It would be praised with reproach to Christ if it were considered to have some spiritual value. In God's sight, however, man's civic righteousness has no spiritual value whatsoever. It is, in fact, as has just been indicated, sin, and Isaiah declares that "all our righteous acts are like filthy rags" (64:6). Jesus asserted that the tax collectors and prostitutes were entering the kingdom of heaven ahead of the Pharisees, who were models of outward piety and who, because of their self-righteousness, saw no need for a Savior (Mt 21:31).

Nevertheless, God rewards civic righteousness with material, earthly blessings in this life (Mt 6:2). An honest citizen, for example, enjoys a good reputation in his community, and a city or state which has decent, law-abiding citizens will prosper and enjoy success.

The laws of the state often fall far short of God's law, however, even in outward actions. In the nation of Israel, Moses granted divorces, despite the fact that according to God's law marriage is to be for life (Dt 24:1). Moses' permission was a matter of expediency. The requirement that those divorcing their wives get a certificate of divorce was an effort to control the evil to some extent (Mt 19:3-8). Those who were members of God's true spiritual Israel were faithful to their marriage vows, however, and did not divorce their spouses.

Today, too, the state often finds it necessary to act on the basis of expediency. A law that cannot be enforced is impractical. It leads only to disrespect and contempt for the law. Because of the many couples living together outside of marriage, for example, the government does not enforce laws prohibiting cohabitation. In some places houses of prostitution are licensed because the government finds it impossible to stamp out the evil. Licensing is an attempt to exercise some measure of control.

Those who break the laws of the state are subject to punishment of some kind. In this way the state uses force and the threat of force to bring about compliance. Paul points out that we Christians, however, will submit

to the authorities, “not only because of possible punishment but also because of conscience” (Ro 13:5). We recognize the governing authorities as God’s representatives. To disobey them would be sin. It would give us a bad conscience. Out of love for God we will strive to keep a good conscience. Exceptions to the obedience we are to render to the authorities will be mentioned in the next section of our discussion.

### **We Christians Have a Dual Citizenship**

As Christians we are citizens of God’s kingdom both on the right hand and on the left. By faith in Christ Jesus we have become members of God’s family. Hence, as Paul says, “Our citizenship is in heaven. And we eagerly await a Savior from there” (Php 3:20). This world is not our true home. We are pilgrims traveling through the wilderness of this world until we reach our heavenly goal. We view this world, therefore, as the Old Testament patriarchs did, who confessed “that they were aliens and strangers on earth” (He 11:13). Like them, we do not have here “an enduring city, but we are looking for the city that is to come” (He 13:14). Peter, too, reminds us that we are aliens and strangers in the world and urges us therefore to abstain from sinful desires which war against the soul (1 Pe 2:11). The Apostle Paul admonishes, “Since, then, you have been raised with Christ, set your hearts on things above, where Christ is seated at the right hand of God. Set your minds on things above, not on earthly things. For you died, and your life is now hidden with Christ in God” (Col 3:1-3).

We are on our way to receiving “an inheritance that can never perish, spoil or fade,” as Peter says. He adds that it is “kept in heaven for you who through faith are shielded by God’s power until the coming of the salvation that is ready to be revealed in the last time” (1 Pe 1:4,5). If we want to vote in a certain city, our names must be registered on the polling list as citizens of that city. What a privilege and assurance we have as Jesus’ disciples! “Rejoice,” he says, “that your names are written in heaven” (Lk 10:20). They are recorded in “the Lamb’s book of life” (Re 21:27).

As citizens of God’s heavenly kingdom, we will certainly not want to do anything to bring shame on our Savior’s name or to endanger our receiving the inheritance he has won for us. Rather, in thankful love we will strive to follow Paul’s exhortation, “I urge you, brothers, in view of God’s mercy, to offer your bodies as living sacrifices, holy and pleasing to God - this is your spiritual act of worship” (Ro 12:1). He continues, “Do not conform to this world, but be transformed by the renewing of your mind” (Ro 12:2).

The love for God and our neighbor evident in our lives will show everyone that we are citizens of God’s kingdom on the right hand. That will become evident also in the fulfillment of our obligations in God’s kingdom on the left hand.

There are a number of these obligations. Paul sums them all up in the word “submit”: “Everyone must submit himself to the governing authorities” (Ro 13:1). Whatever the laws of the state demand, the Christian will obey. He will do this because it is the will of his Savior-God. It is required by the Fourth Commandment.

The Christian does not obey, however, because it is required or demanded by God’s law. Fear of punishment is not what motivates him. He knows that the law is not meant for a man who is righteous in God’s sight through faith in Christ Jesus, but for lawbreakers and rebels, for the ungodly and sinful, for the unholy and irreligious (1 Tm 1:9).

The Christian’s motivation is his gratitude and love to God for the gift of salvation. With Paul he says, “Christ’s love compels us” (2 Cor 5:14). The Commandments serve simply as a guide to show him what is pleasing to his Lord. To Titus Paul writes, “Remind the people to be subject to rulers and authorities, to be obedient, to be ready to do whatever is good” (Tit 3:1). Peter, likewise, urges, “Submit yourselves for the Lord’s sake to every authority instituted among men: whether to the king, as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right” (1 Pe 2:13,14).

There is only one exception to the obedience which we Christians will render to the governing authorities. That is if the authorities demand that we do something sinful. Then our attitude will be that of Peter and John. When the Jewish Sanhedrin commanded them not to speak or teach in the name of Jesus, they replied, “Judge for yourselves whether it is right in God’s sight to obey you rather than God. For we cannot help

speaking what we have seen and heard” (Ac 4:19,20). When the Sanhedrin repeated this prohibition and demanded that all the apostles obey, Peter boldly answered, “We must obey God rather than men!” (Ac 5:29).

Paul mentions other obligations we have toward God’s kingdom on the left hand when he writes, “Give everyone what you owe him: If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honor, then honor” (Ro 13:7; see also I Pe 2:17). Christians will faithfully pay the taxes they owe. They will give honor and respect to the authorities God has placed over them.

In this respect Jesus not only set an example for us; as our Substitute but he also fulfilled the demands of God’s law to cover our sins and shortcomings with the robe of his perfect righteousness. Although he was exempt from paying the temple tax because he was the Son of God, he paid it for himself and Peter (Mt 17:24-27).

On another occasion Jesus’ enemies tried to trick him into saying something that could be used against him (Mt 22:15-22). The Pharisees sent some of their disciples to him together with the Herodians, Jewish nationalists who wanted to throw off the heavy Roman yoke and strengthen the throne of Herod. Although these two parties were at odds with each other, they joined forces because of their common hatred of Jesus. They began with flattery: “Teacher,” they said, “we know that you are a man of integrity and that you teach the way of God in accordance with the truth. You aren’t swayed by men, because you pay no attention to who they are.” Then they set the trap. “Tell us, then, what is your opinion? Is it right to pay taxes to Caesar or not?” They thought they had pinned Jesus on the horns of a dilemma. If he said it was wrong for Israel, the people of God, to pay taxes to Caesar, a pagan ruler, he would get into trouble with the Roman authorities and be dealt with as they had dealt with Judas of Galilee a few years earlier (Ac 5:37). If, on the other hand, he encouraged paying taxes to Rome, the people might be expected to turn against him. They would no longer regard him as the Messiah or acclaim him as their king. It was a cunning scheme.

As the omniscient Son of God, Jesus read their thoughts. He knew their evil intent. “You hypocrites,” he said, “why are you trying to trap me?” Jesus realized that, although they pretended to be asking for advice in deciding a difficult question, they in fact wanted to destroy him. “Show me the coin used for paying the tax,” Jesus said. When they gave him a small silver coin called a denarius, which was worth the daily wage of a laborer or a Roman soldier, Jesus asked, “Whose portrait is this? And whose inscription?” “Caesar’s,” they replied. On the one side was a picture of Tiberius Caesar, who was the emperor at that time (14-37 A.D.). The Latin inscription read, “Tiberius Caesar, son of the divine Augustus.” On the reverse side Tiberius was shown seated on a throne, wearing a diadem and clothed as a high priest, with the inscription *Pontif Maxim*, meaning high priest. Then Jesus told these agents of the devil, “Give to Caesar what is Caesar’s, and to God what is God’s.”

The Jews were using Caesar’s money. This was a tacit admission that they were Caesar’s subjects. They were enjoying the benefits of Caesar’s rule. There was general peace; they had good roads; law and order were maintained. Therefore they owed Caesar the taxes he levied as well as the honor and respect due him as God’s representative. It was God who had placed Caesar over them as their emperor. In this way God punished them for breaking his covenant. Now they were obligated to “honor the king” (1 Pe 2:17).

But they also had another obligation. That was to give God what was due him: true faith, honor, praise, thanks and obedience in appreciation for all the benefits and blessings he had given them. In fact, obeying Caesar and paying his taxes was a part of their larger duty to God.

Jesus’ answer points to our dual citizenship. We are members of God’s kingdom on the left hand and on the right. We enjoy benefits from each, and we have responsibilities toward each.

### **Separation and Cooperation**

Jesus’ answer to the question about paying taxes to Caesar clearly shows that state and church are two distinct entities. Each has its own God-given purpose and its own God-given tools for fulfilling its purpose. It is significant that Jesus joins the two parts of his answer with the word “and”: “Give Caesar what is his *and* give God what is his.” Jesus does not set one realm over against the other as might be inferred if he had said, “Give

Caesar what is his, *but* give God what is his.” It’s not a case of either-or, but of both-and. The Christian has a twofold obligation: Do the one thing, *and* do the other also.

There is a clear line of demarcation, however, between the state and the church. Jesus made this plain when he refused to render judgment in a case where there was a question about dividing an inheritance (Lk 12:13-21). “Man, who appointed me a judge or an arbiter between you?” he replied when a man wanted Jesus to persuade his brother to share an inheritance with him. The church is not to usurp the functions of government. Jesus’ attitude was the same in this situation as in the case of the woman caught in the act of adultery (Jn 8:3-11). He would not interfere in civic matters that were outside the domain of religion.

On the other hand, the state is not to encroach on or interfere with the mission of the church. Gallio, the Roman proconsul of Achaia, probably did not have a clear perception of the distinction between church and state. But when the Jews in Corinth brought Paul before him and charged that Paul was persuading the people to worship God in ways contrary to the law, Gallio refused to interfere with Paul’s preaching. He declared, “If you Jews were making a complaint about some misdemeanor or serious crime, it would be reasonable for me to listen to you. But since it involves questions about words and names and your own law—settle the matter yourselves. I will not be a judge of such things” (Ac 18:14,15).

Although this may sound as if Gallio had a good understanding of the principle of the separation of church and state, it is more likely that he was merely expressing his prejudice against the Jews. They had recently been expelled from Rome by the emperor Claudius (41-45 A.D.). Gallio was telling them, “You Jews had better not start any trouble, or you may find yourselves driven out of Achaia here in Greece just as you were ordered to get out of Rome.”

Christianity was recognized as a legal religion by the Roman emperor Galerius, who issued the Edict of Toleration on his deathbed in 311 A.D., and by Constantine the Great, who issued the Edict of Milan in 313. Under Constantine, ruled as sole emperor from 323-337, the state began to play an active role in the affairs of the church. Constantine convened the Council of Nicea in 325 to deal with the Arian heresy that threatened to split not only the church, but also the empire. Under the emperors Theodosius 1 (379-395 A.D.) and Justinian (527-565 A.D.) the state persecuted both heathens and heretics. The history of the Middle Ages is by and large a struggle for power between the church and the state. The church, on the one hand, claimed to possess two swords, not only the spiritual but also the temporal. The state, on the other hand, attempted to control the church and use it for political ends.

The scriptural principle of the separation of church and state is clearly set forth in our Lutheran Confessions. The *Augsburg Confession* states:

Therefore the power of the Church and the civil power must not be confounded. The power of the Church has its commission, to teach the Gospel and to administer the Sacraments. Let it not break into the office of another; let it not transfer the kingdoms of this world; let it not abrogate the laws of civil rulers; let it not abolish lawful obedience; let it not interfere with judgments concerning civil ordinances or contracts; let it not prescribe laws to civil rulers concerning the form of the Commonwealth. As Christ says, John 18,36: *My kingdom is not of this world*; also Luke 12,14: *Who made me a judge or a divider over you?* Paul also says, Phil. 3,20: *Our citizenship is in heaven*; 2 Cor 10,4: *The weapons of our warfare are not carnal, but mighty through God to the casting down of imaginations* (Art. XXVIII, 12,13; Trig.,85).

Our Lutheran forefathers had a clear understanding of the scriptural principle of the separation of church and state, as our Confessions show. In spite of this, however, the political and ecclesiastical turmoil of the Reformation period made it difficult to implement such a separation. Luther called on the princes—not as officials of the state but as preeminent members of the church - to act as “emergency bishops” in reorganizing the church because there was no one else who could act, and someone had to take the initiative (EA 55, 223; WA 53, 255,256).

In his appeal in 1520 “To the Christian Nobility of the German Nation concerning the Reforms of the Christian Estate” Luther argued that the princes should act, not as princes but as Christians in virtue of the priesthood of all believers. Although the princes had no more authority in the church than other Christians, their position in secular society put them in a special position to come to the aid of the church in the existing emergency. Luther wrote:

No one can do this so well as the temporal authority, especially since they are also fellow-Christians, fellow-priests, fellow-members of the spiritual estate, fellow-lords over all things. Whenever it is necessary or profitable they ought to exercise the office and work which they have received from God over everyone. Would it not be unnatural if a fire broke out in a city and everyone were to stand by and let it burn on and on and consume everything that could burn because nobody had the authority of the mayor, or because, perhaps, the fire broke out in the mayor’s house? In such a situation is it not the duty of every citizen to arouse and summon the rest? How much more should this be done in the spiritual city of Christ if a fire of offense breaks out! (LW 44, 137).

On this basis also Luther appealed in 1528 to Elector John of Saxony to arrange for a visitation of the congregations in his territory to assess and alleviate the spiritual ignorance and confusion of both the pastors and their people. Luther asked him to do this “out of Christian love (since he is not obligated to do so as a temporal sovereign) and by God’s will for the benefit of the gospel and the welfare of the wretched Christians in his territory” (LW 40, 271).

The Treatise appended to the *Smalcald Articles* called on the kings and princes as “the chief members of the Church” to “guard the interests of the Church, and to see to it that errors be removed and consciences be healed” (Tract. 54; Trig., 519).

Luther did not intend that the princes should exercise a permanent position of authority in the church. After the crisis was over, he expected them to relinquish their special powers. Referring to his ideal of the congregational form of church organization, Luther complained in the Preface to his German Mass of 1526, “As yet I neither can nor desire to begin such a congregation or assembly or to make rules for it. For I have not yet the people of persons for it, nor do I see many who want it” (LW 53, 64).

The distinction Luther made between the position of a prince as the head of state and his position as a leading member of the church was not always carefully observed. The result was that the Lutheran churches of Europe became state churches with their affairs generally being administered by government bureaus called consistories. When the temporary arrangement of consistories began to be established on a more permanent basis in the 1540s, Luther protested that this was an intrusion of the government into the spiritual realm (WA, Br, 10, 436; St. L., XXIb, 2911f). The Lutheran church had God’s pure Word and sacraments, but this did not mean that Luther considered its organizational structure to be the ideal. Not until the Lutheran church was transplanted to American soil did this ideal become a reality.

The Reformed church, on the other hand, like the Roman, from the very beginning considered it the duty of the state to promote Christ’s kingdom. In his *Institutes of the Christian Religion* Calvin wrote that it is the obligation of civil government “to cherish and support the external worship of God, to preserve the pure doctrine of religion, to defend the constitution of the church” (*Institutes*, Bk IV, Ch XX, par. 2, John Allen, tr. [Philadelphia: Presbyterian Board of Christian Education, 1902] 11, 634). The government, Calvin held, has the duty to uphold both tables of God’s law (*ibid.*, XX, par. 9; Allen, 11, 641).

Although church and state are clearly distinct and are not to be confused, it would be a grave mistake to conclude from this that God intends them to be hostile to each other. True, the state often is and often has been antagonistic toward the church, as in Communist or Muslim countries. Government authorities who persecute or suppress the church will have to answer to God for their evil deeds, however. Because both church and state deal with the same individuals, there are some areas of life where they not only may but must interact and



cooperate. In such cooperation each will need to restrict itself to its God-given responsibilities and its God-given tools.

In 1967 our synod adopted a statement entitled “Governmental Aid to Education.” This statement notes: “There is not necessarily a mixture of state and church when both participate in one or the same endeavor but each participates in this endeavor only in the sphere of its own function and restricts itself to its own means” (*Proceedings of the Thirty-Ninth Convention of the Wisconsin Evangelical Lutheran Synod, 1967, p 172*).

Marriage may be mentioned as an example of an activity in which both the state and the church have an interest. The regulation of marriage, as was previously mentioned, is a legitimate concern of the state. Those who wish to enter marriage must meet all the requirements of the laws pertaining to marriage and must obtain a license from the state. The church also has an interest, however, when its members marry. Christians want God’s blessing on their marriage. They want their marriage to a Christian worship service. The church fulfills its spiritual role through the pastor who conducts the service. At the same time he functions as a representative of the state, which authorizes him to perform marriages. More will be said about cooperation between the church and the state, especially in the field of education, later in this essay.

### **Adiaphora and Expediency**

We cannot conclude this discussion of scriptural and confessional principles relating to the separation of church and state without referring to the subject of adiaphora and expediency. Adiaphora are matters which are neither commanded nor forbidden by the Word of God. What we may choose to eat is an example. God has not set down any regulations in the New Testament in regard to what we may eat as he did for Israel in the Old Testament.

In respect to things that lie in the area of adiaphora we enjoy Christian liberty. When the so-called Judaizers wanted to restrict the freedom of the Christians in Galatia by requiring them to practice circumcision, observe the sabbath and other Mosaic laws, Paul told them, “It is for freedom that Christ has set us free. Stand firm, then, and do not let yourselves be burdened again by a yoke of slavery” (Ga 5:1).

We will, therefore, oppose those who want to make something a sin which according to God’s law, is not a sin. On the other hand, we will not make use of our liberty if the exercise of it would lead a weak Christian to follow our example and violate his uninformed conscience (Ro 14:13-21). To go against one’s conscience is a sin even if what one does is not sinful in itself (Ro 14:23).

There may be other considerations also which will lead us to refrain from making use of our Christian liberty. Paul points this out to the Corinthians when he says, “‘Everything is permissible for me’ - but not everything is beneficial” (1 Cor 6:12). Not everything which is permissible is expedient or wise. We will therefore want to use our sanctified Christian judgment in these matters.

It must also be said that when Christian judgment is involved, when a matter is not a question of simple right or wrong, Christians may honestly differ in their judgment. They may disagree on whether an action is expedient or wise, whether the advantages and benefits outweigh the disadvantages and dangers. Such disagreement does not and should not disrupt their unity and fellowship as Christians.

## **Legal Issues in the United States**

### **The Constitution**

The only reference to religion in the Constitution of the United States occurs in Article VI, which states that “no religious test shall ever be required as a Qualification to any Office or public Trust under the United States” (Huegli, p 494). Because many of the colonists who emigrated to America fled from their homeland to escape religious persecution, the First Amendment to the Constitution included a guarantee of religious liberty. It reads, “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof” (ibid.). The Fourteenth Amendment, adopted after the War between the States, extended these guarantees by providing that “no State shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law” (ibid.).

We who live in the United States enjoy an extraordinary blessing of God in these guarantees of religious liberty. In 1802, ten years after the adoption of the First Amendment, Thomas Jefferson wrote a famous letter to the Danbury Baptist Association in which he emphasized “that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinion.” He spoke of the First Amendment as “building a wall of separation between church and state” (ibid., p 28). Through the years, however, there have been repeated attempts to breach that wall.

### **The Bennett Law**

The Bennett Law, passed by the Wisconsin Legislature in 1889, was such an attempt. Because of the importance of the battle against this law in our synodical history, it will be of interest to review this incident in some detail.

The law stated: “No school shall be regarded as a school, under this act, unless there shall be taught therein, as part of the elementary education of children, reading, writing, arithmetic, and United States history, in the English language” (Carl Zollmann, *Church and School in American Law* [St. Louis: Concordia, 1918] p 35). It also established a mandatory annual school term of not less than 12 nor more than 24 consecutive weeks. The local school boards and magistrates were to enforce the law and levy fines of \$3 to \$20 for illegal school attendance. This law and the identical Illinois Edwards Law were conceived by the anti-Catholic and anti-church-school Boston Committee of One Hundred, which made it its aim to preserve the public school and defend American institutions.

In the light of state regulations that apply to our Christian schools today the Bennett Law may not seem unreasonable, but at the time the proponents of the law gave the churches reason to fear that the law would be used to close down parochial schools. The superintendent of schools in Wisconsin’s Manitowoc County called parochial schools a standing menace to the state schools. Legislators, lawyers and journalists spoke in the same vein. In his annual report to the Wisconsin Synod in 1889 President Bading cited statements which had been made such as the following: “The private schools must be put out of business because supporting them is treason to the state.” “The rights of the state are paramount to those of the parents in respect to the training of the children” (*Verhandlungen der Neununddreissigsten Versammlung, der Deutschen Evangelisch-Lutherischen Synode von Wisconsin und anderen Staaten* [1889], p 13). Lesser threats included interference with the church calendar and the possibility that religion and German might be crowded out of the curriculum.

In view of this threatened interference by the state with the spiritual work of the church, the 1889 convention of the Wisconsin Synod adopted a report which stated in part:

We declare that the new school law (Chapter 519, An Act concerning the education and employment of children), in so far as it concerns our parochial schools, is tyrannical and unjust

- a) Because it threatens the existence and effectiveness of our loyal parochial schools and thereby at the same time threatens to harm our Lutheran church itself, or which of these schools are an organic part;
- b) Because we would be forced by this law under certain circumstances to send our children to the public schools instead of to our parochial schools, which we in many instances could not do without violating our consciences;
- c) Because this law presumes without justification to infringe on the rights of parents and on family life;
- d) Because this law violates the spirit of our free institutions ....

We demand therefore that this law be repealed or at least amended in such a way that the independence which our ever-loyal parochial schools, maintained by us at our own expense, have till now enjoyed be guaranteed.

We are determined to back up our demands, if necessary, by way of the courts or the ballot box. Furthermore, we urge the synod to appoint a standing committee to gather information about the implementation and effect of this law, to monitor school legislation in our state, to follow the course of the school controversy also in other states, to give information to the public through the public press, and to take and to suggest all proper, lawful steps necessary to achieve the above mentioned goal (ibid., pp 59-63).

Three committees were appointed. The first, an anti-Bennett campaign committee, consisted of Professors Ernst and Notz of Northwestern College in Watertown, Pastors August Pieper and Christian Sauer, Attorney C. Koerner and Teacher H. Graebner. The second was to examine and publish English textbooks and the third to plan curricula, gather statistics and publish related materials.

At a meeting held in St. John's school in Milwaukee on December 28, 1889, representatives of the Missouri Synod and other interested parties joined our synod's committee in forming an organization to mount a state-wide campaign for repeal of the law. As a result of this campaign, which included public addresses, lectures, debates and widespread publicity, the Republican Party, which supported the law, suffered a crushing defeat in 1891. The objectionable law was repealed, and a new one more favorable to the churches was enacted.

In looking back over this episode in our synodical history we see from their public statements that our fathers regarded this law as a violation of the scriptural and constitutional separation of church and state. If enforced, it might have made it necessary for them to apply the principle, "We must obey God rather than men" (Ac 5:29). Consequently, they took whatever lawful measures were open to them to change the law.

### **The Supreme Court and Religious Liberty**

The Supreme Court of the United States has been a vigilant watchdog in preserving the separation of church and state called for by the Constitution. For this we ought to praise and thank our God. The Court's work has not been easy. How to strike a balance between the "no establishment clause" and the "free exercise clause" of the First Amendment is a continuing problem. How high is the wall of separation between church and state? How much cooperation between them is constitutionally permissible? What constitutes "excessive entanglement" of church and state? What are the parameters of the government's "compelling interest" in aiding or regulating church-related schools?

Some relationship between government and religious organizations has been recognized as inevitable. Separation of church and state is not and cannot be absolute. The Court has cited fire inspections, building and zoning regulations and state requirements under compulsory school attendance laws as examples of necessary and permissible contacts. It has stated that "the line of separation, far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship" (Lemon v. Kurtzman, 1971; Robert T. Miller and Ronald B. Flowers, *Toward Benevolent Neutrality: Church, State, and the Supreme Court* [Waco, Texas: Markham, 1982] p 467).

Although we Americans enjoy a great degree of religious liberty, that liberty is not absolute. There are limits to this freedom when it conflicts with the rights of other individuals and with the interests of society. The Supreme Court has held that the "free exercise clause" does not give anyone the right to engage in activities which endanger the health, safety, morals or welfare of society. Vaccination of school children, for example, and physical examinations before marriage are required, even though some oppose these on religious grounds.

The practice of medicine for a fee by an unlicensed physician is illegal, even though the practitioner claims to heal through prayer. Handling poisonous snakes without reasonable care and consuming poisonous substances are prohibited even in religious rituals.

The Mormon practice of polygamy was seen by many Americans as a threat to the monogamous family unit as the foundation of society. The Supreme Court upheld a law passed by Congress outlawing polygamy. It ruled that while Congress could not interfere with mere religious beliefs and opinions, it could prohibit actions that were subversive of good order (*Reynolds v. United States*, 1878; Miller and Flowers, p 59).

At times the courts have been asked to intervene in religious controversies because of a dispute about property rights. When the members of a local church are under the jurisdiction of a hierarchy as in the Roman Catholic, Episcopal and Presbyterian churches, the decisions of the hierarchy regarding property have generally been accepted. When there is a split in a church which has a congregational polity, however, the property is generally recognized as belonging to the majority faction. The courts have refused to enter into the question of which group has adhered to the original doctrine. The guiding principle has been that the “law knows no heresy, and is committed to the support of no dogma” (*Watson v. Jones*, 1872; Miller and Flowers, p 10). This principle was applied in the Colorado Springs controversy involving a congregation of the Nebraska District of our synod in 1974.

In the forefront of the battle to insure the preservation of religious liberty have been such groups as Jehovah’s Witnesses, conscientious objectors to war, Sabbatarians, Black Muslims and the Amish. Since 1938 Jehovah’s Witnesses have brought about 80 cases to the Supreme Court, forcing the Court to wrestle with issues which in the end gave greater clarity and breadth to the “free exercise clause.” In a reversal of a previous opinion, for example, the Witnesses’ right to refuse to salute the flag on religious grounds, for example, was upheld in 1943 (*West Virginia State Board of Education v. Barnette*; Miller and Flowers, pp 117-131). The Witnesses regard the flag as a “graven image” to which Exodus 20:4,5 forbids one to bow down.

Sunday laws in many states prohibit most commercial activities on Sunday. Although the law of Moses established the seventh day of the week as a day of rest for the Israelites, beginning with the second century after Christ the first day of the week came to be observed quite generally as a day of rest. In 1961 the Supreme Court handed down four decisions recognizing Sunday laws as constitutional on the basis of the history of the practice (Miller and Flowers, pp 252-274).

The Amish, followers of Jacob Ammon, are an Anabaptist Mennonite group who came to this country as early as 1727. They believe that the world is totally corrupt and evil and that they should remain as separate and distinct as possible. They refused to send their children to school beyond the eighth grade because this would expose them to ideas undermining their distinctive life style. Naturally, this brought them into conflict with compulsory school attendance laws. Although they themselves did not initiate litigation, others who were interested in protecting the right of the Amish to maintain their religious beliefs and lifestyle did take the case to the Supreme Court. In *Wisconsin v. Yoder* (1972) the Court upheld the right of the Amish to refuse to send their children to school beyond the eighth grade (Miller and Flowers, pp 278-296). The Court held that the state can encroach on the right to the free exercise of religion only if it can prove that it has a “compelling interest.” This phrase was explained as meaning “interests of the highest order and those not otherwise served” (Miller and Flowers, p 66). Compelling the Amish children to go to school until the age of 16 did not meet this test.

This case serves as a transition to our next point, a consideration of educational matters involving the separation of church and state. Before we move on, however, we ought to observe that in upholding the religious rights of minority groups like Jehovah’s Witnesses, the Amish and others, strange and unpopular as they might be, the Supreme Court has safeguarded our own religious freedom. We have every reason to be grateful to God that until recently the Court has followed the so-called “preferred freedoms” doctrine according to which it “has accorded to the First Amendment commitment to free exercise of religion a position of honor second to none in its scale of constitutional values” (Miller and Flowers, p 66). Some very actions, as we shall see, are a cause for concern.

## **Issues in Education**

Our discussion of the Bennett Law and the Amish has already touched on legal questions in the field of education that involve the separation of church and state. But constitutional questions in this regard have required so much attention on the part of the Supreme Court that more must be said about this subject.

The Court has expressed itself on educational matters involving the relationship between church and state in three broad areas:

- 1) Asserting the right of private and religious schools to exist alongside public schools;
- 2) Endeavoring to keep public schools free of any denominational instruction and influence;
- 3) Prohibiting the expenditure of tax money to promote the teaching of religion.

To gain a historical perspective of the separation of church and state as it relates to our Christian schools it will be helpful for us to review briefly some of the principal decisions of the Court.

The Dartmouth College Case of 1819 was a landmark in establishing the right of private and religious schools to be free of arbitrary state control. The New Hampshire legislature attempted to make Dartmouth, which had been established by Congregationalists as a private college, a public institution. The claim was made that the college was a public corporation operating for public purposes and that it should therefore be under public control. But the Supreme Court ruled that the college was “a private eleemosynary institution” and that therefore it was not subject to control by the state. Its charter was a valid contract that could not be broken.

In the emotional, anti-German climate of World War I the state of Nebraska passed a law forbidding any subject to be taught in a modern foreign language in elementary schools. This posed a threat to parochial schools because German was the language in which religious instruction was given. In 1923 in *Meyer v. Nebraska* the Court ruled, however, that the liberty guaranteed by the Fourteenth Amendment included the right of a parent to control the education of his children. It stated also that the Amendment guaranteed the right of an individual “to worship God according to the dictates of his own conscience” (Huegli, p 268).

When Oregon passed a law which made it mandatory for children of compulsory school age to attend public schools, the Court in 1925 in *Pierce v. Society of Sisters* declared this law unconstitutional on the grounds that it unreasonably interfered with “the liberty of parents and guardians to direct the upbringing and education of children under their control.” It stated that “the child is not the mere creature of the state.” It also asserted, however, that the state has the power “reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare” (Miller and Flowers, pp 430-433). This case has been called the “Magna Carta” of parochial schools.

These decisions served to establish the right of private and religious schools to exist. Equally important have been the rulings which have kept religion out of the public schools and prohibited the use of tax money to promote the teaching of religion. These decisions, too, are laudable, but they have not been universally applauded.

The public schools, which evolved from the Puritan common schools of New England, long had a pronounced religious character. They were sometimes referred to as “the Protestant parochial public school.” In fact, their militant Protestantism was one of the factors that led the Roman Catholic Church to establish its own parochial school system (cf. James E. Wood, Jr., ed., *Religions, The State, and Education* [Waco: Baylor, 1984] p 20f). The Jews took similar steps.

Beginning with the late nineteenth century, however, the public schools became increasingly secular as a result of the growing religious pluralism of the population and the influence of non-Christian educators like John Dewey and William Heard Kilpatrick. Decisions by the Supreme Court accelerated this trend.

In *McCollum v. Board of Education* the Court in 1948 declared the use of public school facilities for religious instruction in released time classes unconstitutional. According to the 1952 *Zorach v. Clauson* decision, such classes were permitted, however, when not held in public school facilities.

In 1962 the Court ruled on the constitutionality of certain public school prayers. The New York State Board of Regents had composed a supposedly nondenominational prayer, which was to be recited at the beginning of each school day. The prayer read, “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country” (Huegli, p 285). The Court held that it was a violation of the First Amendment to require such a prayer and stated, “It is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by the Government” (ibid.).

A furor arose in 1963 following the Court’s decision in two historic cases, *Abington v. Schempp* and *Murray v. Curlett*. The devotional use of the Bible and all forms of prayers were banned from public schools as a contravention of the “no establishment clause.” Objective study *about* religion and reading of the Bible for its literary and historic qualities were not prohibited, however. In the wake of these decisions, a cry was raised for a “prayer amendment” to the Constitution. Nothing has come of this proposal, however, and we fervently hope that nothing ever will. In 1985, as was mentioned earlier, schools have been prohibited from even suggesting that a moment of silence might be used for prayer. No law, of course, can prevent a student from praying silently whenever he chooses.

Parallel to the decisions which aimed at keeping religion out of the public schools and the government out of the business of promoting religion have been a number of controversial decisions to allow the use of tax funds to benefit all citizens equally, including those attending private or parochial schools.

On the basis of the so-called “child benefit” argument the Court ruled, in 1930 in *Cochran v. Louisiana State Board of Education* that children attending parochial schools could be made beneficiaries of the state’s free textbook law. In 1947 in *Everson v. Board of Education* the Court declared, “The First Amendment has erected a wall of separation between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach” (Huegli, p 273f). Nevertheless, this decision approved of the busing of students to nonpublic schools if a state permitted this. It based this on the “public purpose” argument. The state, the Court said, has a legitimate interest in getting the children to school safely.

Health services and subsidized hot lunch and milk programs for school children, including those attending parochial schools, have been provided under the “general welfare” clause of the Constitution. The “G.I. Bill” of 1944 provided for tuition payments for veterans at a college or university of their choice. Those training for the ministry in denominational schools were not excluded.

The National Defense Education Act of 1958, Title II, authorized loans to students in institutions of higher learning, again without discriminating between public and nonpublic institutions. It also offered nonprofit, private elementary and secondary schools loans for the acquisition of laboratory or other special equipment for the improvement of teaching in fields deemed important to national security such as science, mathematics and modern languages.

The Elementary and Secondary Education Act of 1965, Title II, authorized “a program for making grants for the acquisition of school library resources, textbooks, and...instructional material for the use of children and teachers in public and private elementary and secondary schools.” It provided, however, that “the title to such resources, control and administration of their use, shall vest only in a public agency” (*Elementary and Education Act of 1965, Abbreviated Excerpts Taken Directly from Federal Laws*, prepared by Robert J. Voss. Available from the Board for Worker Training of the Wisconsin Evangelical Lutheran Synod, Milwaukee, Wisconsin).

In these laws the government has endeavored to meet its legitimate concerns in the field of education without discriminating against those of its citizens attending nonpublic schools and without infringing on the separation of church and state. Its concern not to violate the religious convictions of its citizens was evident also in Title IX of the Education Amendments of 1972. This law, which prohibited sex discrimination in educational programs receiving federal financial assistance, specifically exempted educational institutions controlled by a religious organization if the application of the law was not consistent with the religious tenets of the organization (Ibid.).

More recently, however, the Court in *Bob Jones v. United States* (1983) held that the IRS properly removed the tax-exempt status of Bob Jones University because of its practice of racial discrimination. The university refused to admit applicants married to a spouse of another race or known to advocate interracial marriage or dating and threatened to expel those who engaged in or advocated such conduct. The Court held that tax exemptions are given on the basis of a “public benefit.” It stated that “contemporary standards must be considered in determining whether given activities provide a public benefit and are entitled to the charitable tax exemption.” Organizations that do not meet the public benefit test should not be “encouraged by having all tax payers share in their support by way of a special tax status.” The Court found that the government has a compelling or overriding interest which outweighs an infringement on the free exercise of religious beliefs (Wood, p 86-90). This ruling has the potential of severely limiting our religious freedom in the future. If “public policy” takes precedence over religious beliefs, the free exercise of religion as one of the “preferred freedoms” may be a thing of the past. Pray God that this may not happen!

Another area of concern appears in the recent *Grove City College* case. In this case the Court ruled that schools which enroll students who receive federal tuition grants are subject to anti-discrimination regulations in spite of the fact that no direct aid is received. If a school does receive aid, only the program directly affected is subject to regulation. Since this decision was rendered, efforts are being made to broaden the application to all programs of a school receiving aid. To date, these efforts have been unsuccessful, but again the potential effects of this approach are far-reaching. Would a demand be made, for example, that our seminary enroll women because some of the seminary’s students receive government loans or aid?

The High Court’s rulings on “parochialism” have not been consistent. Sometimes public assistance to religious schools has been rejected, as we have seen. At other times it has been approved. An example of the latter is the 1983 ruling that a Minnesota law permitting parents to deduct private school tuition from their state income taxes is constitutional. In 1985, however, the Court held that officials in Grand Rapids and New York City may not send public school teachers into parochial schools to provide remedial or accelerated classes for disadvantaged or bright children.

Two matters of special interest to us have been alluded to previously. The 1981 decision in *St. Martin Evangelical Lutheran Church v. South Dakota* overturned a ruling by the state taxing authorities that the Watertown congregation and the synod must pay unemployment compensation taxes for the teachers in the congregation’s parochial school and Northwestern Lutheran Academy in Mobridge. The Federal Unemployment Compensation Tax Act provided exemption for employees of a church or an organization supported by a church. The tax authorities tried to interpret the word “church” to mean a church building. So the teachers, in their opinion, did not work for a church but for a school. The Supreme Court ruled, however, that the employees of a church-related school are in the employ of a “church,” meaning a religious organization, and therefore exempt from the contested tax. The decision was limited to the meaning of the law and did not enter into the larger question whether such taxes were constitutional.

In the *North Platte Baptist Church* case, after bitter controversy the state retreated from its demand that the church’s school be licensed and its teachers certified by the state. The state legislature gave the State Board of Education authority to prepare new rules under which church schools could be exempted from requirements considered objectionable because of “sincerely held religious beliefs.” Parents are to inform the state that they think the school meets safety and curriculum requirements, and the state is to arrange through the parents to have the children tested as a way of verifying the information submitted by the parents. The state’s capitulation began when a study commission appointed by the governor came to the conclusion that Nebraska’s teacher certification laws were an unconstitutional abridgment of religious freedom. Our synod has not considered them to be that. In fact, a former Nebraska District president who later became a professor at our seminary held a lifetime certificate as a teacher in Nebraska.

It is apparent that if the religious freedom we enjoy under the law in our country is to be preserved, perpetual vigilance will be required with the fervent prayer that our gracious God continue to bless us and our children in this very special way.

## **Some practical applications of the principle of the separation of church and state**

The scriptural and confessional principle that the church and the state have separate functions and different means to carry out their functions is simple and clear. The application of this principle is also by and large relatively simple. It is obvious that it is a violation of this principle when the church tries to influence the social, economic or foreign policies of the government. It is also obvious that it is a violation of this principle when the state carries on religious work in military or institutional chaplaincies.

There are many areas, however, where the application of the principle of separation is not so simple, where in fact Christians may differ in their judgment of the situation. This is especially true in activities like education where both church and state have a legitimate interest and responsibility. Applying scriptural principles in these areas requires making careful distinctions.

### **Government Aid to Church-Related Schools**

The state's concern in education is to insure that the students are adequately prepared to meet their responsibilities as citizens of the state. It is also concerned about safety in places of public assembly and about public health. The state may therefore determine how long children must attend school. It may establish curriculum requirements. It may administer achievement tests. It may require teachers to be certified to assure itself that they are qualified. It may make various safety and health measures mandatory such as fire drills, compliance with building codes and periodic physical examinations of teachers and students.

The church's concern in its program of Christian education is that the children are taught God's Word. It wants all subjects to be taught from a Christian perspective. It wants the discipline and atmosphere of the school to be Christian. It may require synodical certification to assure itself that the teachers are qualified for this aspect of their work.

In our land of liberty the state permits us to conduct our own Christian schools, but in various ways it assures itself that its interests are safeguarded. This does not involve a mixing of church and state as long as the state does not take over, subsidize or interfere with the spiritual work of these schools.

In pursuing its own interest the state may decide to provide certain services, equipment or facilities to all schools, parochial and private as well as public. It could, for example, decide to equip all schools with fire extinguishers in the interest of public safety. Some forms of assistance such as health service may be mandatory. Others may be optional. The optional assistance confronts the church with the choice of either accepting the offer or providing the service or equipment out of its own funds if it considers them desirable.

When such aid is offered, the question arises: Is this a form of subsidy for the school, or are the schools merely the most convenient channel for the state to funnel this assistance to the children or their parents? Is the subsidized hot lunch program (where it is still offered), to cite an example, a subsidy for the parents or for the school? Idaho ruled that lunch funds could not be distributed to parochial or private schools. Wyoming, a neighboring state, ruled, however, that "the School Lunch Program is not a direct contribution to the school, but merely a general program to promote the health and well-being of the children" (Huegli, p 336). Wyoming, therefore, offered the program also to religious and private schools. Not only governments differ in their views of such a program, however. Churches also have differed in their judgment on the wisdom of participating.

On the basis of the "child benefit" argument the state provides transportation to and from school for children attending parochial and private schools on the same basis as public school students (*Everson v. Board of Education*, 1947; Miller and Flowers, pp 434-454). This argument and aid has now generally been accepted in our circles although there was considerable debate about it before the Supreme Court's ruling.

The question becomes still more difficult and calls for still more careful distinctions when it involves the actual process of education itself. In the interest of promoting a high level of scholarship in science the state may, for example, offer to provide all schools, including church-related schools, with sophisticated and expensive laboratory equipment. Title II of the Elementary and Secondary Education Act of 1965 provided



funds to make library resources (books, periodicals, documents, audio-visual and other aids), textbooks and instructional materials available “for the use of children and teachers in public and private elementary and secondary schools,” as was mentioned previously. The reason given for this program was that although such materials are necessary for an effective program of education, nearly a third of the elementary and secondary students in the United States were attending schools without libraries.

In deciding whether to participate in such a program, church-related schools will have to weigh various factors. The state’s legitimate interest in the effectiveness of the program of education both public and nonpublic schools is obvious. It is not, therefore, necessarily a breach of the First Amendment for the state to offer such assistance to nonpublic schools. Neither is it necessarily a violation of scriptural principles for church-related schools to participate in such a program in order to accommodate the state in accomplishing its goals. Separation of church and state does not mean that they cannot cooperate in activities where each has an interest or responsibility.

The state, of course, insists on exercising some control over the use of its materials. Our Christian schools must consider whether the stipulation that materials purchased with federal funds are not to be used “for sectarian instruction or religious worship”—an understandable stipulation from the government’s point of view - are incompatible with the schools’ aim to make all instruction Christ-centered. Are the provisions of Section 604 of Title VI of the Act that “nothing contained in this Act shall be construed to authorize any department, agency, office, or employee of the United States to exercise ‘any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system” a sufficient guarantee of the independence of a Christian school from arbitrary state interference? (Cf. “A Description and Analysis of the Elementary and Secondary Education Act of 1965,” by the United States Department of Health, Education, and Welfare - Office of Education.) Will the acceptance of such a program lead to the gradual erosion of the separation of church and state as it relates to our Christian schools? Could it lead to our schools’ becoming dependent eventually on state aid?

This means that the church will have to give consideration to the principle discussed earlier, “‘Everything is permissible for me’ - but not everything is beneficial” (1 Cor 6:12). It will have to ask: Even though this program is permissible, is it expedient? Is it wise? Are there more dangers involved in it than benefits?

This, then, is a matter that lies in the area of Christian judgment. Two congregations may conceivably come to different conclusions. The 1967 resolutions of our synod recognized that there is a “wide realm of contacts in Church and State relations which lie in the area of adiaphora and are not in themselves necessarily a confusion of Church and State” (*Proceedings*, p 186). The synod noted also, however, that “the Church nevertheless should be alert and concerned about the impact that any given aid may have upon the Church and its educational program” (Ibid.). It resolved therefore “that we urge all our church supported schools to heed the warnings to 1) avoid any aid that would hinder our Christian schools from carrying out their objectives, 2) avoid any aid that would lead to dependency upon the government and would undermine our Christian stewardship, 3) avoid any aid that would bring with it improper government control, and 4) avoid any aid that would jeopardize our unified Christian education” (Ibid., p 186f).

A unified Christian education was defined by the Board of Education Wisconsin Synod (as the Board for Parish Education was called at that time) as “an education in which all teaching is in harmony with Scripture, an education in which attitudes and conduct are motivated by the love of Christ and His Word, an education in which the child is under the influence and guidance of Christian teachers who teach the Word of God and can properly apply it” (ibid., p 159).

In recent years the Supreme Court has considered a flurry of cases involving government aid of various kinds to church-related schools, ranging all the way from state-financed academic testing of students to salary supplements for teachers who teach secular subjects to students on the lower end of the socioeconomic scale. In these cases the Court ruled that any aid given must be judged not only as to its “secular purpose” and “primary effect,” which could be that of advancing religion, but also as to a possible “excessive entanglement” of church

and state (Miller and Flowers, p 422ff). Accommodationists like the Roman Church hoped to find some way to aid church-related schools because of increasing difficulties experienced in financing such schools. Expressing his frustration at the repeated defeat of parochial aid, one superintendent of Catholic schools exclaimed, “I don’t believe the Court would give Catholics anything, no matter what they would come up with” (Miller and Flowers, p 427). For that we ought to be grateful.

### **Tax Exemption for Religious Institutions**

A more basic question perhaps is that of tax exemption for religious institutions. Is their exemption from real estate and personal property taxes a violation of scriptural principles and of the First Amendment? Presidents James Madison and U.S. Grant opposed it. From time to time voices are heard urging that it be abolished. It is a tradition, however, which is older than the Constitution. It is a privilege, moreover, that is not restricted to churches and their educational institutions. It is extended to all educational, charitable and other nonprofit organizations. The state makes this exemption because it believes these organizations make a valuable contribution to the well-being of society. Churches promote a morality which the state sees as needed for a stable society. A major argument for the tax exemption of churches was expressed by Chief Justice John Marshall in these terms, “The power to tax involves the power to destroy” (Huegli, p 400). The very concept of the separation of church and state demands therefore that churches should be tax exempt. By draining off the funds with which citizens by their voluntary contributions support religious organizations the government could effectively prohibit the free exercise of religion. A third argument for exemption is that churches often provide certain social services like care of the aged and orphans or education in church-related schools which the state would otherwise have to provide at public expense. The tax exemption of contributions to churches and charitable organizations is based on similar premises.

In 1970 the Supreme Court upheld the tax exemption of religious institutions on the basis of such arguments. It pointed out that collecting taxes from churches would also result in “excessive entanglement” (Walz v. Tax Commission; Miller and Flowers, p 401-422). The state’s reasons for granting the exemption make it clear that the exemption is not in itself a breach of the separation of church and state, and the church may therefore accept it with a good conscience.

### **Government Chaplaincies**

As was mentioned, the government supports military and other chaplaincies. It does this not because it is interested in saving souls, but because it believes its interests are served when a high level of civic morality and morale is maintained. While we agree with James Madison that this is a clear breach of the separation of church and state, the government has its own purposes in view and expects that these purposes will be achieved as side effects of the work the chaplains do. Our synod has established and financed its own military and institutional chaplaincies on principle, and the government has given our programs its wholehearted cooperation. For this we are grateful.

We have not exhausted all the practical applications of our topic. During the late 1970s and early 1980s such issues as the involvement in politics of the Moral Majority, Rev. Jesse Jackson’s supporters and other religious groups, the question of abortion with its moral and theological implications, the teaching of creation-science, and the intervention of aggressive federal and state agencies in the internal affairs of churches provoked intense debate. One may be certain that these and other issues involving church-state relationships will be the focus of continuing controversy and litigation in the years ahead.

### **The Dire Results of Mixing Church and State**

It is clear that any and every breach of the wall of proper separation between church and state is inimical to the interests of both. Whenever the church encroaches on the functions of the state, its attention and energy are diverted from its own God-given mission. To the extent that it makes social issues its concern, it becomes

derelict in its responsibility to act as the light of the world, pointing sinners to Christ, their only hope for eternal happiness.

It is a tragic fact of modern church history that in much of the Christian church the social gospel has crowded out the Savior's gospel. Disenchanted and spiritually starved members of the church often find little reason to attend or support the church. In search of spiritual nourishment many have plunged into the interdenominational neo-Pentecostal movement. Others have become an easy prey for such antichristian cults as the Mormons and Jehovah's Witnesses.

Whenever the church, on the other hand, attempts to do its work of bringing sinners to Christ by using force and civil law instead of the means God has entrusted to it, his message of sin and grace, it inevitably fails. It becomes an instrument of tyranny instead of a herald of peace and hope. Witness the intolerance of the colonial Puritans in Massachusetts.

Tyranny doesn't convince consciences; neither do crusades make converts. Only the good news of God's grace in our crucified and risen Savior can create saving faith. Only the gospel of God's incredible love in Christ can motivate hearts to live a sanctified Christian life. The ill-conceived and short-lived Prohibition experiment testifies eloquently to the problems that arise when the state attempts to legislate morality.

When the church exchanges the Sword of the Spirit for a sword of steel, it forfeits its heritage, forsakes its calling and betrays its Lord. In his amazing grace God has preserved his truth among us in the Wisconsin Evangelical Lutheran Synod. He has given us a clear understanding of the separate roles of church and state and of the distinctive sword to be wielded by each. May he graciously keep us and our children in his holy Word!

Whenever the state, to consider the other side of the coin, intrudes on the realm of the church, the church suffers. Any attempt by the state to hinder the church in its mission means persecution for the church. Any attempt by the state to act as a messenger of the gospel inevitably miscarries. Witness the hardening of the arteries that has set in in the state churches of Europe and Latin America. A once living organism becomes an empty shell, its spiritual life choked off by state regulation, apathy and error. The nauseating stench of death and decay hovers over the carcass. The vultures of a sinecured officialdom feed on the remains.

How shortsighted and foolish those churches are which look to the state to help them pay the costs of their spiritual work! Public funding is addictive. It poisons Christian faith and life. In its smothering heat Christian stewardship withers like Jonah's gourd.

Public funding inevitably brings public control - and properly so! Under public control the church's schools would soon become the state's schools. Christian education would die. The iron fist of the state invariably crushes the fragile flower of the gospel. The life of the spirit is snuffed out by the carbon monoxide of the law.

What a gift of grace God has given us in our extensive system of Christian education! We have 376 Christian day schools, 22 Lutheran high schools and academies, three Lutheran colleges and a seminary. These schools can survive only if we ourselves are wholly convinced of the need for Christian education and wholly committed to its support. Without them our church would wither and die, or at least find it extremely difficult to retain its gospel heritage.

The separation of church and state that we enjoy in the United States of America is a unique blessing of God. Under it our schools and churches have flourished. As we look back on 136 years of synodical history, we ought to fall on our knees and thank God for our precious American heritage of the separation of church and state! Although we are unworthy of it, may God graciously preserve it for us and our posterity! It is the keystone of our religious liberty.