

The Lutheran Doctrine of the Two Kingdoms: Current Problems Concerning Christian Citizenship and the Separation of Church and State

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GENERAL PRINCIPLES OF CHRISTIAN CITIZENSHIP

The Christian's Dual Citizenship

Christians are citizens of two kingdoms, one a heavenly spiritual kingdom, and the other an earthly political kingdom. Because of this dual citizenship a Christian has dual obligations and loyalties.

A Christian's primary responsibility is his citizenship in the kingdom of God. Although he was born as an alien and foreigner to God's kingdom, the Christian has become a fellow citizen of the saints through faith in Christ Jesus (Eph. 2:19-22). Because he has received the gift of citizenship in the kingdom of God, he has now become an alien and foreigner on the earth, who is eager to reach his homeland in heaven (Phil. 3:20; Heb. 11:13-16; 13:14). As citizens of God's holy nation, as his own special people, we are to abstain from the lusts of the world which have become foreign to us. We are now to devote ourselves to the honor and glory of our King (1 Peter 1:1, 2:9-12; 4:2) Our first priority in life is to serve our King through faithful worship, stewardship and evangelism. We are eagerly awaiting his return and praying that his kingdom will soon come in all its glory.

But in the meantime, we find that we are still living in the world as citizens of an earthly community. Although we are citizens of heaven who are fed by the Bread of Life, we still need such necessities of earthly life as food and clothing (Mt. 6:32-33). We still have regular business and social contacts with the people of this world (I Cor. 5:10-11). But in spite of our continued contact with the things of this world, we are not attached to them, nor do we desire to cling to them (I Cor. 7:29-31, Rom. 12:2, 1 John 2:15-17; John 17).

Whenever we speak the whole truth of God's Word and live according to it, it will be obvious to the people of this world that we are foreigners, who don't fit in here. Whenever this contrast between our values and their values becomes clear, we will be hated strangers, just as Abel, Noah, Lot, and the early Christians were (I John 3:11-13; 2 Timothy 3:12). Indeed, when the world is very comfortable with our presence, we may need to ask if we are hiding our light and blending in too readily. "Woe unto you when all men speak well of you for that is how their fathers treated the false prophets." (Luke 6:26)

But even when they are hated by the world, the citizens of God's kingdom are not to withdraw from the world. Our King has sent us into this world as his ambassadors. We are here on a mission from him. We are to carry his message to the world, but as we work in this world we are to remain loyal to him. Though we are in the world, we are not of the world (John 17:14-19). We are to bring glory to our Father in heaven by the way in which we live in this world. We are lights to a world filled with darkness. We are salt to a world rotten with corruption (Mt. 5:13-16). As blameless and pure children of God, in a crooked and depraved world we shine like stars in the universe as we hold out the word of life (Philippians 2:15-16).

We cannot divorce our activities as citizens of a human community from our citizenship in the kingdom of God. A Christian activities and participation in earthly citizenship are not ends in themselves. They are not a separate arena of action from his activities as a citizen of God's kingdom. All of a Christian's earthly activities are a part of a his responsibility to serve his neighbor in love. Being a faithful Christian also means being a responsible citizen, because responsible citizenship is one way in which we fulfill the second table of the law,

“You shall love your neighbor as yourself.” All of a Christian’s actions as a citizen of a human community must be guided by the same Law of God which governs us as citizens of the kingdom of God.

This brings us to the basic question which we are discussing in this pastors’ institute: How does our citizenship in the kingdom of God affect our activities as citizens of an earthly kingdom?

The Christian View of Government

When we consider our citizenship in the human community, we probably think first of all of our attitude toward government. We will, therefore, briefly review the Biblical principles concerning government, especially as they are found in Romans 13:1-7 and I Peter 2:11-17. God has established government so that people may live in some degree of peace in a sin-filled world. Governmental authority is an ordinance of God, regardless of the form of government which may be in force in a particular place. The government’s responsibility is to preserve the greatest possible peace and order in the world by punishing evil-doers, rewarding those who do good, and protecting the rights of the law-abiding. To accomplish this, government may make laws based on reason and enforce them on the disobedient even to the extent of imposing the death penalty when it is appropriate and necessary. The government may wage war for the protection of its citizens if this becomes necessary.

Although the basic institution of government is established by God, Scripture does not prescribe a particular form of government, although monarchy was recognized as the prevailing form in the Biblical world.

Literally translated, 1 Peter 2:13 says, “Submit yourself to every human creation (*ktisis*).” The NIV translates “Submit yourselves for the Lord’s sake to every authority established among men.” The King James says, “Submit yourself to every ordinance of man.” This usage of *ktisis* is unusual, but the passage seems to say that particular forms of government and specific laws are invented and established by men. This does not contradict Paul’s statement that government is established by God because the authority is from God even when the form is chosen by man. Specific rulers are chosen or raised to power by human actions, sometimes through legal actions, sometimes through sinful actions. In either case established governments rule with authority established by God and should be obeyed. The form of government is not essential. Any of the common forms of government would be good if they were controlled by good people, but since bad people make bad rulers (and bad subjects too) every form of government devised by men fails to achieve its aims fully because of the sinful selfishness of the people involved in it. Whether we are talking about the selfishness of an absolute monarch or the selfishness of the masses of a democracy, the same principle holds. We favor democracy, not because it is a perfect form of government or because it has a specific Scriptural mandate, but because in this form of government the selfishness of one sinner tends to keep in check the selfishness of another sinner as each competes for his own advantage. In this way, at least relative freedom is preserved for the

majority. The writers of Scripture also recognize the danger of one-man rule with a sinner as the head. This is most clearly reflected in I Samuel 8, Samuel’s description of the abuses that can be expected from a typical king. When we are evaluating forms of government as they exist in this sinful world, Churchill’s axiom is probably not too far from the mark. “Democracy is the worst form of government that has been invented by man, except for every other form that has been tried.”

Government is a good gift of God, but like every gift of God it can become an idol or a tool of Satan when it is misused by sinners. At Babel a sinful society made a human empire its god and tried to defy the plans of this world’s real king (Gen. 11). Government takes on a monstrous form when Satan uses it to spread suffering and bloodshed and in his vain attempts to destroy the kingdom of God. Jezebel, Athaliah, Antiochus Herod, Pilate and the Sanhedrin, the world empires pictured in Daniel 7 and Revelation 13, and the medieval papacy which descended from them are but a few examples of Satan’s henchmen sitting on the throne and serving the Dragon. History books and our daily newspapers are filled with many further examples of the perverse misuse of this good gift of God for selfish, sinful purposes.

God often uses one such tyrant to bring judgment on another. The cruel rulers of Assyria sweep away the corrupt, self-indulgent rulers of Israel. The proud Babylonians destroy both the Assyrians and the “rulers of Sodom” seated in Jerusalem. Persia crushes Babylon, Alexander destroys Persia. On and on it goes. Every Jezebel has her Jehu. Every shah has his ayatollah. “Thousand Year Reichs” collapse in a decade. Through it all, as the world tyrants briefly strut their stuff, the one enthroned in the heavens laughs. The Lord scoffs at their vain pretensions. Only his King, enthroned on Zion, will rule forever. (Psalm 2)

As we proceed with our study of a Christian’s participation in earthly government, we shall have to keep both facets of the Biblical view of government in mind. Government is a good institution of God, but it has been perverted by sin. If we remember this, we will avoid both sinful extremes, that of making government a god which we trust and obey without question, and that of making government a devil which we hate and despise.

The Christian’s Responsibility to Government

The Christian’s first responsibility toward government is to *obey*. In Peter’s first letter God tells Christian’s “Submit yourselves for the Lord’s sake to every authority instituted among men.” (1 Peter 2:13). Paul says, “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. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves... Therefore, it is necessary to submit, not only because of possible punishment but also because of conscience.” (Romans 13:1, 2, 5) The Christian should obey the law, not because he is afraid of punishment, but because the Lord tells him it is the right thing to do. The Christian is to obey his government even if it is unfair and not to his liking. Caligula and Nero, rulers well-known to Paul’s readers, were hardly model rulers, but the Roman Christians were to obey them. As Luther put it, “A golden necklace is good and does not become worthless, just because a harlot is wearing it.” Government does not become worthless just because an immoral man is heading it. The Christian is free from the obligation to obedience only when the demands of the government are in direct conflict with God’s Word. Then we must apply the principle, “We must obey God rather than men.” (Acts 5:29)

Today when there is so much disrespect for law, it is especially important that Christians set a good example to others by respecting and obeying the law. Parents should be especially concerned to set a good example for their children. “Obeying every ordinance of man” is not confined to avoiding homicide and bank robbery. It includes setting an example by respecting “lesser” laws like traffic laws, tax laws, gambling laws, ethical business practices, and so on. If our example is to be effective, we cannot be selective in our obedience to the law.

The Christian also has an obligation to *support* his government. God tells us, “If you owe taxes, pay taxes, if revenue, then revenue.” (Romans 13:7) Jesus too recognized the government’s control in taxation and economic matters when he held up the denarius and commanded, “Give to Caesar, what is Caesar’s.” (Mt. 22:21) Jesus himself set a good example by paying his taxes even though he, as the real king of the whole world, had no obligation to do so. He tells us, to do likewise, even though we, as the King’s children, are really not subject to any earthly ruler. To avoid offense, even the King and his children pay taxes. (Matthew 17:24-27) A Christian, therefore, is to support his government with the taxes and services legally required of him.

We are also to *honor* our rulers. We are not to despise them, nor provoke them to anger. We are to honor, serve and obey them and give them love and respect. Our talk about our government and rulers is not exempt from the eighth commandment. We may not lie about them, betray them, or give them a bad name, but should defend them, speak well of them, and interpret their words and actions in the kindest way possible. David’s pangs of conscience at even the small offense of cutting the corner off the robe of the Lord’s anointed king (I Samuel 24:5) and Paul’s reluctance to insult even a corrupt high priest (Acts 23:5) are examples for us when we are under rulers who are less than ideal models.

Finally, Christians should *pray* for their government. “I urge, then, first of all, that requests, prayers, intercessions, and thanksgiving be made for everyone—for kings and all those in authority, that we may live peaceful and quiet lives in all godliness and holiness. This is good and pleases God our Savior, who wants all men to be saved and to come to a knowledge of the truth.” (1 Timothy 2:1-4) Jeremiah wrote to the exiles in Babylon, “Seek the peace and prosperity of the city to which I have carried you into exile. Pray to the Lord for it, for if it prospers, you too will prosper.” (Jeremiah 29:7) How difficult it must have been for the Jews and for the early Christians to pray for their Babylonian and Roman oppressors. We certainly have been blessed with a government which provides us with many more blessings than the governments which they endured. We should, therefore, gladly pray for the welfare of our government and thank God for the benefits which we receive through it. We receive many earthly benefits through government, but our most important concern for government is that it will promote peaceful conditions in which the Gospel can be freely preached, so that all people will have the opportunity to come to the knowledge of the Gospel.

The Christian’s Participation in Government

In the preceding section we have discussed a Christian’s submission to government. If a Christian lives under a totalitarian government, his responsibility may be largely submission. He will be given little chance to participate. The question of a Christian’s responsibility to participate actively in government is especially important to Christians living in a participatory democracy.

Throughout the history of the church there have been groups like some of the Anabaptists of the 16th century who have insisted that Christians should avoid all participation in government. But is this a Biblical position? Should Christians avoid participation in government?

The New Testament does not answer the question directly, since there was no participatory democracy as we know it in the Mediterranean world at that time. The New Testament does not speak directly on the responsibilities of Christian citizenship, but there are several Scriptural principles which justify the conclusion, “Being a faithful Christian includes being a responsible, patriotic citizen.”

Paul’s instructions to Titus concerning the care of the congregations entrusted to him include the admonition, “Remind the people to be subject to rulers and authorities, to be obedient, to be ready to do whatever is good, to slander no one, to be peaceable and considerate, and to show true humility toward all men.” (Titus 3:1-2) We are urged, “Each of you should look not only to your own interests, but also to the interests of others.” (Philippians 2:4) If we are ready to do whatever is good and are concerned for the welfare of our neighbors, we will want to promote their interests by every avenue open to us, including participation in government. Participation in government is one way we can love our neighbor by “helping and being a friend to him in every bodily need” and by “helping him improve and protect his property and business.”

There is additional support for an interest in good government in the Old Testament civil law and in the admonitions of the prophets. God not only established government, but he wanted his people to have a good government. In the Old Testament God often called for justice in government and for fair treatment of the needy and the oppressed. Examples of such concern will be found in such chapters as Exodus 22 & 23, Leviticus 19, and Isaiah 1. The book of Proverbs also abounds in references to justice and good government. God often calls rulers to account for injustice. (Ps. 82) All of this is evidence of God’s interest in good government.

Our Lutheran Confessions support Christian participation in governmental affairs. The most extensive treatment is Article 16 of the Augsburg Confession and the Apology, which sets forth the right and responsibility of Christians to participate in civil affairs on the basis of their duty to promote the welfare of their neighbors. “[The Gospel] permits us to outwardly use legitimate political ordinances of every nation in which we live, just as it permits us to use medicine or the art of building, or food, drink and air. Neither does the Gospel bring new laws concerning the civil state, but commands that we obey the present laws, whether they have been framed by heathen or by others, and that in this obedience we should exercise love.” (*Trig.* p. 331)

A Christian should not participate in civil affairs simply to advance his own interests. His purposes are to glorify God by his works, to promote conditions in which the Gospel can be preached freely, and to serve the

best interests of his neighbors by seeking justice for all, by protecting the rights of individuals, and by hindering evil.

In our next four sessions we will be discussing in more detail some of the ways in which a Christian may promote just laws, protect life, and help his neighbor protect and improve his property. We will conclude this session with a few remarks concerning our basic attitude toward Christian citizenship.

The Attitude of the Christian Citizen

The key to a Christian view of citizenship is moderation and a balance between the extreme of placing too much trust and energy into human efforts to improve the world and the opposite error of sitting back and doing nothing because we feel that the situation is hopeless.

The Christian should not have an overly optimistic view of human efforts to improve the world. Human affairs are so corrupt that they cannot be corrected by human effort. Injustice is always present in the world, and it will remain until judgment day. No amount of utopian dreaming, no amount of human effort is going to remove it. Man's most reasonable and well intentioned efforts to improve the world often fail miserably, at the same time that fools succeed in their folly and the vile prosper in their wickedness. (Eccl. 3:16, 5:18, 8:14, 9:11) As we see in Revelation the horsemen of war, economic disparity, and death repeatedly smash human efforts to possess Paradise without God. Man builds his Babels, but God casts them down. "Wars to end all wars" sow the seeds of the next war. A period of prosperity prepares the way for the next depression. Revolutions to bring freedom usher in tyrannies more monstrous than those they depose. Human dreams of an earthly utopia based on human effort are doomed to failure. As long as we are in the world, we will have to live with evil.

Luther says, "If you are thrust into the obligation of having to help make things better, do what is permissible, and God will do what he wills. But if you want to go beyond this and mingle with the world, straighten every curve, cure every evil, and throw Satan out of the world, you will cause yourself nothing but sorrow and labor. You will accomplish nothing more than if you forbid the Elbe to flow. Human affairs refuse to be and cannot be governed by the will of man, but He who created all things also rules them by his will."

However, even though the Christian sees the corruption of human nature and the basic futility of human efforts to improve the world, he does not have the pessimistic outlook of the dropout. Things may look bad, but God is still firmly in control of the situation. Christ, our brother, still has all power in heaven and in earth. We have no excuse for harboring gloomy pessimism or defeatism. We have no reason to carry around a dark cloud of despair in our hearts. If we do, we are seeing things only with worldly eyes which judge by outward appearance, rather than with the eyes of faith which see the Lord of history ruling over all things. It is true that when we seek to promote good in earthly affairs, we must battle not only against flesh and blood, but against the powers of this dark world and against the spiritual forces of evil in heavenly realms, but as we struggle, angelic forces sent by God oppose the efforts of Satan and support us in our battle. (Ephesians 6:12, Daniel 10) When overcome by fear or despair, we should pray, "Lord, when we dread the powerful forces of evil in the world, open our eyes as you opened the eyes of the prophet's servant at Dothan so that we see and believe that the forces that are with us are more than those with them." (II Kings 6:16)

Although we must speak against evil as fearlessly as John the Baptist, our role is not fulfilled by standing on the side-lines of life, bemoaning the evil condition of the world and longing for the "good old days." There never have been any "good old days" except in Eden, and those days will not return till we enter God's Paradise again. God has not left us here on earth to long for the past or to agonize over the future, but to use the gifts he has given us to the best of our ability in the present. God tells us not to trust in human effort. He tells us not to worry about the future. But he also tells us to redeem the time. He tells us not to bury our talents. He tells us to be busy when he comes. He tells us to work for our neighbors' good. The following quotation adapted from Edward Everett Hale is not Scripture, but I think it expresses a good practical attitude for Christian citizens. "I am only one man. I can't do everything. Yes, but I am one man, and I can do something. And what I can do, I should do. And what I should do, with the grace and help of God I will do."

Active participation in government will present us with temptations to sin, but what area of life does not? Christians like Joseph, Daniel, and Naaman served their governments without compromising their principles. We must not be paralyzed into inaction by fear of failure. We must first trust God's guidance and his help and then act boldly, confident of his forgiveness when we fall short.

Who can serve the government better than a Christian? Only a Christian can have truly unselfish motivation, for he realizes that true happiness is not a life cluttered with possessions and honors, but a life filled by Christ. A Christian citizen, who already possesses all things through Christ, does not have to grasp and claw for his own advantage. He can risk himself and his own possessions. He can let go of self interest because he knows that Christ is his solid possession. Because he has a sober, realistic view of earthly life, a Christian can serve without desperation or fanaticism. As Christian citizens we should work hard to help create an atmosphere in which the Gospel may have free course and in which people can live in peace with justice, yet we will trust all our hope for the future to God alone.

THE CHRISTIAN AND SOCIAL CONCERN

The Christian and Economic Policy

Many aspects of daily life and earthly happiness depend on money. Any Christian concern for promoting earthly good can, therefore, hardly avoid the issue of economics. Many contemporary Christians have not hesitated to become involved in economic issues and to make economic pronouncements. The result has been considerable disagreement in the church over economic systems and economic policies. Some Christians, usually those of a more liberal theological position, are strongly pushing socialism as the most Christian economic system. Others, usually more conservative in their theology, are just as vehement in defending a capitalistic or a free market system. Does the Bible give the Christian citizen any definite guidelines in the field of economics?

The Bible does not specifically advocate any particular system of economics. It does not advocate unrestricted free enterprise, nor does it specifically condemn socialism or governmental controls (or even ownership) of the means of production. As long as people are sinful, no ideal or perfect economic system is possible. Economics should not operate by the law of the jungle, and it cannot operate by the law of brotherly love. Every system needs regulation to restrain selfishness. A person may be a greedy materialist whether he is a socialist or a capitalist, whether he is rich or poor. God's law condemns the evils committed under every system of economics.

Although Scripture does not set forth a specific system of economics, there are several principles in Scripture, which guide us in our evaluation of economic systems and policies. The right of an individual to hold property is definitely set forth and protected in the seventh, ninth and tenth commandments. The Lutheran Confessions affirm this right when they state, "It is also a most vain delusion that it is Christian perfection not to hold property. For Christian perfection consists not in the contempt of civil ordinances, but in the disposition of the heart. ... For Scripture does not command that property be common, but the law of the Decalog, when it says, Ex. 20:15, 'Thou shalt not steal,' distinguishes rights of ownership and commands each one to hold what is his own." (Apology, *Trig.* p. 333) Indeed, family ownership and retention of their inheritance on the land was one of the most basic principles of the system which God desired for his people Israel. The Jubilee Year was one of the special features of the law which was intended to preserve individual ownership of property. (Leviticus 25) The stories of Zelophehad's daughters (Numbers 36) and Naboth's vineyard (I Kings 21) are further illustrations of the importance of this principle in Israel. The New Testament also treats the family as the basic economic unit of society. "If anyone does not provide for his relatives, and especially for his immediate family, he has denied the faith and is worse than an unbeliever." (I Timothy 5:8) The Old Testament law not only protected the property rights of individuals, but it also emphasized the protection of the weak from exploitation by the strong. The six year limitation on debt slavery (Exodus 21:2, Dt. 15:12), the cancellation of debts in the seventh year (Deuteronomy 15), the provision for gleaning (Dt. 24:19), the restrictions on interest

and security pledges (Exodus 22:25-27, Dt. 23:19) and the triennial tithe for the poor (Deuteronomy 14:29) are just a few examples of such principles in the law.

Both the law and the prophets condemn exploitation of workers and the concentration of wealth in the hands of a few. “Woe to you who add house to house and join field to field till no space is left and you live alone in the land. The LORD Almighty has declared in my hearing. Surely the great houses will become desolate, the fine mansions left without occupants.” (Isaiah 5:8-9) “Woe to you who are complacent in Zion, and to you who feel secure on Mount Samaria. ... You put off the evil day and bring near a reign of terror. You lie on beds inlaid with ivory and lounge on your couches. You dine on choice lambs and fattened calves. You strum away on your harps like David and improvise on musical instruments. You drink wine by the bowlful and use the finest lotions, but you do not grieve over the ruin of Joseph. Therefore you will be the first to go into exile; your feasting and lounging will end.” (Amos 6:1-7)

Economic systems which disregard or destroy the rights and the integrity of the family unity which was established by God, and economic systems which are indifferent to the poor and oppressed do not conform to the pattern which God chose for his people Israel.

The Bible condemns every form of greed and selfishness. “Watch out! Be on guard against all kinds of greed; a man’s life does not consist of the abundance of his possessions.” (Luke 12:15) “Be content with what you have, because God has said, ‘Never will I leave you; never will I forsake you.’” (Hebrews 13:5) “Each of you should look not only to your own interests, but also to the interests of others.” (Philippians 2:4)

How do the economic systems common in our world today compare with these Biblical principles? This is not an easy question to answer, because there are no pure forms of any of the classical economic systems, such as capitalism, socialism, or communism, actually functioning in the world today. It is also difficult to distinguish evils which are inherent in the system from those which are due to sinful misuse of the system. Nevertheless, a few observations may be in place.

The promotion of socialism is often based on selfishness and a desire to deprive one’s neighbor of his property in order to gain it for oneself. Promotion of socialism may reflect a desire to relieve the needs of the poor by giving them someone else’s money, rather than sharing with them from my own. Socialism often promotes class hatred and envy and stirs up discontent with the status people have in life. An alleged concern for “economic justice” is often used by tyrannical demagogues to gain power for themselves. Pure socialism or welfarism depend on a non-existent goodness in human nature to motivate people to “give according to their ability” so that others can “have according to their need.” Pure socialism tempts the laziness and selfishness in human nature to let someone else carry the burden. The situation at Thessalonica shows that even Christians are not immune from this temptation to idleness, since they have a sinful nature. A strong case can be made that many of the basic premises and arguments of socialism as it is practiced today are unscriptural. Reason and experience may show other shortcomings of socialism, which should sound a warning to those Christians who are rushing to jump on the socialist band-wagon. But a discussion of these is beyond the scope of our discussion here.

I do not believe, however, that we can conclude from what has been said above that all governmental control of economics or all governmental ownership of the means of production is unscriptural. Such governmental control and ownership was common in Biblical times. To cite but one example, Joseph helped establish a system which brought the entire economy of Egypt under Pharaoh’s control. The kings of Israel certainly controlled vast segments of their land’s economy.

Governmental intervention and control of economics is necessary to some extent, because a completely free system leaves the door open to the greed of the powerful. Pure free enterprise depends on a non-existent goodness in human nature to restrain people from taking advantage of their neighbors. When most people talk about free enterprise, their emphasis is usually on freedom for *me* to get everything I can for *myself*. An economic system in which everyone fights for his own self interest may be the most workable system for a pack of sinners, since each of them has an ample supply of self-interest, and they tend to serve as a check on each other. This does not mean, however, that such a system is holy or any more sin-free than socialism or some

form of collective society. The profit motive is nowhere listed among the Christian virtues. Working to serve others is. Though free enterprise seems to be riding high today, we should not attach the church to this bandwagon.

As we have seen above, the Old Testament law recognized the need for laws to restrict the economic activities of the powerful. The prophets often denounced the ruthless practices of the ruling oligarchies of Israel and Judah. The New Testament also advocates the principle of fair pay for work, even for animals and pastors (Luke 10:17, Deuteronomy 25:4, 1 Corinthians 9:9).

In his writings Luther advocated a certain amount of government regulation of economics. It may surprise some to learn that Luther advocated anti-trust laws to prevent monopolies as well as government controls of prices. He felt that the law of supply and demand was un-Christian, because it is wrong to take advantage of people by charging more when a commodity is scarce and needed most. Luther's viewpoint is probably well taken regarding the basic necessities of life in a subsistence economy. However, supply and demand has its place as the most effective way of regulating a luxury economy like ours. In a complex economy such as ours the only alternative to supply and demand as a method of economic regulation is a bureaucracy which sets prices. Many Christians have argued that such a board would lead to prices and wages that were more moral than those created by the amoral processes of the marketplace. (After all, if we had a board that set salaries on the basis of true worth instead of the demands of the marketplace, pastors' salaries would be much higher, and those of rock stars would take a nosedive.) However, experience demonstrates that distribution of wealth by a centralized bureaucracy is always based more on political "merit" than on real moral merit. Economic revolutions have a way of simply redistributing injustice, rather than achieving justice.

Although he sometimes offered opinions on economic issues, Luther recognized that his understanding of economics was limited, so he avoided the dogmatic pronouncements typical of many present-day theologians. His sympathies were clearly with agriculture and against commerce, especially trade for foreign luxuries. He never felt comfortable with the practice of charging interest¹ and called bankers "armchair robbers,"² but he suggested regulation of interest rates, rather than an outright ban. The following statement illustrates his sympathies rather well.

"We really must put a bit into the mouth of the Fuggers and similar corporations. How is it possible that in the lifetime of a single man such great possession, worthy of a king, can be piled up and yet everything be done according to the laws of God and man? I am not an economist, but I do not understand how a man with a hundred gulden can make a profit of twenty gulden in one year, nay, how with one gulden he can make another. Moreover, he does not make all this profit by agriculture or cattle raising in which the increase of wealth depends not on man's wit, but on God's blessing. I commend this problem to the men of affairs. As a theologian I have nothing to blame in the business but its bad and offensive appearance. ... This I know well: It would be more God-pleasing to increase agriculture and decrease commerce, and they do much better who, according to Scripture, till the soil and seek their living from it." (*German Nobility*, Plass, p. 440, LW 44, p. 213)

Luther expressed his opinion of the ethics of many businessmen with the axiom "Let the man who would engage in business hang his soul on the wall for a while." (Plass, 442) Luther spoke often along these lines, but in all of his statements his concern was with instructing Christian consciences, rather than imposing reforms on society.

In summary, I believe the Bible points us toward a balanced view in economic matters. Since the Bible does not legislate a particular economic system, we do not have Biblical grounds to defend vehemently a particular economic system. We should be on guard against being so tied up with the theoretical requirements

¹ Lutheran aversion to charging interest is derived from a ban on Israelites exacting interest from each other (Deuteronomy 23:23, Ezekiel 18:8, Psalm 15:5, and Nehemiah 5:7). These passages are talking about help to the needy, not about commercial investment. See also Luke 6:34-35 and Matthew 25:27.

² Some have questioned Luther's understanding of the term *stul reuber*. See the note LW 45, p. 308.

of an economic theory that we are blind to the effects which they have on people. The “health of the economy” and “advancing the revolution” can become economic idols which blind leaders to the real needs of their people. Our most urgent economic duty as Christians is not to promote one economic theory, but to condemn the sins of greed and materialism which take place under every system and to advocate concern for the weak and truly needy, regardless of what system we live under. Although concern for a fair economic system which protects property rights and provides for the needy is one way in which we can observe the seventh commandment, I do not believe that it is good stewardship for Christians to become too absorbed in defending some economic system which is attached to a world which is passing away. God’s primary concern is not with the system or the economic results which it produces, but with the hearts and motives of those who live under the system, whatever it may be. The most important economic question for a Christian is “How can I do the most to serve God and my neighbor with the means that God has entrusted to me within the system into which he has placed me?”

Those who choose to go beyond this and take an active role in promoting economic reforms in society (as a Christian citizen may legitimately choose to do) should take care to distinguish between things which they believe and advocate on the basis of Scripture and policies which they advocate on the basis of reason and personal opinion. Christians who advocate specific economic policies have a responsibility to be well-informed on the issues. It is not enough to have compassion for the poor and oppressed. Solutions which are long on heart and short on wisdom will only make a bad situation worse. The person who cries “Exploitation!” may be a prophet, but he may simply be the victim of his own naive belief that there has to be a simple solution to every complex problem. Christians should furthermore beware of judging the actions, motives, and faith of other Christians on the basis of their own personal economic judgments.

For large segments of the church today the greatest danger in the sphere of economics appears to be promoting a brand of “Gospel Socialism” which dwells on corporate evil and neglects individual sin, which sees the poor as virtuous and the wealthy as evil, and which dogmatically seeks to enforce simplistic solutions to complex problems. It is proper to warn against this folly. But we should not be blind to the opposite evil which is perhaps a greater danger for US. In the past and in the present the, church has all too often been a spokesman for the vested interests of the powerful and the rich. For example, we need to be careful that when we condemn labor violence, we also condemn the greed of executives who are more concerned with their companies profits than with their workers’ welfare. The “philanthropists” who make a name for themselves with money they squeezed from the labors of others are hardly deserving of that name. As Christians who must count ourselves among the rich people of this world, we should take care not to lose the perspective of James. “Has not God chosen those who are poor in the eyes of the world to be rich in faith and to inherit the kingdom he promised those who love him? But you have insulted the poor. Is it not the rich who are exploiting you? Are they not the ones who are dragging you into court? Are they not the ones who are slandering the noble name of him to whom you belong? ... Now listen, you rich people, weep and wail because of the misery that is coming upon you. Your wealth has rotted, and moths have eaten your clothes. Your gold and silver are corroded. Their corrosion will testify against you and eat your flesh like fire. You have hoarded wealth in the last days. Look! The wages you failed to pay your workmen who mowed your fields are crying out against you. The cries of the harvesters have reached the ears of the Lord Almighty. You have lived on earth in luxury and self-indulgence. You have fattened yourselves for the day of slaughter.” (James 2:5-7, 5:1-5)

In the same vein a famous American theologian has said, “The present great troubles which have come upon our laboring men are not by any means simply a natural necessity. The cause of the trouble is to be found somewhere else, namely, in part, yes almost altogether, in the self-interest, avarice, and selfishness, in the cruelty and heartlessness, and to speak plainly, in the vampirism and the tyrannical oppression of the worker on the part of the rich.... When [the rich] look upon [their workers] as existing simply for their profit,...if they will not give their workers proper wages, if they will not, when such is possible, procure for them paying labor, if they will not pay for damages sustained to the laborer who has been unfortunate while in their services, if they will not support the laborer and his family in case of sickness, if they can live in luxury and be unconcerned

when the laborer is suffering, then we are not their friends, but, from principle, their enemies. O my brothers, what terms of reproach might not be justly applied to us if we sided with the human vampires and not with the oppressed.” These strong words are not the tirade of a left-wing theologian. They are C.F.W. Walther’s rebuttal of the charge that the Lutheran Church sides with the rich when it opposes labor violence, socialism, and communism (*Communism and Socialism*, p. 36). In this tract Walther also devotes considerable attention to rejecting communism and socialism and to warning Christians against it, but he strives to avoid having the church identified with the interests of the rich. Greed and tyranny are not the monopoly of any one economic class. We must denounce sin on every level. Scripture warns against favoritism toward either the rich or the poor (Ex. 23:3,6), but it nevertheless does devote a special emphasis toward speaking for the poor and defenseless. We should do the same.

The Christian and Social Concern

Most of our discussion so far has been concerned with the Christian’s relationship to the state and government, but a Christian citizen’s responsibility does not end when he has fulfilled his duty toward the state. Indeed, it has barely begun. A Christian can often do more good and have more impact with individual acts of love and concern than with a lot of political involvement. We should get involved in helping our neighbors with our time and money just as the Good Samaritan did. If we pass by a neighbor in need, we are guilty of sin. (1 John 3:18, James 4:17) If we serve others, motivated by faith-born love we should not fear that we will be left empty by the Lord, nor should we be discouraged by the ingratitude one often finds in those who have been helped. We will gladly do all we can, knowing that our smallest acts of love are a service to the Lord which will by no means lose its reward (Mt. 10:42).

If we need ideas for service, we can find plenty in the book of James. Patient listening (1:19), helping widows and orphans (1:27), avoiding favoritism or prejudice (2:1), giving food and clothing to the needy (2:15), seeking peace, not strife (4:15), comforting the afflicted and the sick (5:13,14) and admonishing sinners (5:19) are but part of his list. Jesus’ testimony on Judgment Day provides a similar list: giving food and drink, helping strangers, clothing the needy, visiting the sick and prisoners (Matthew 25:35-40).

We can do many of these things as individuals or through non-religious charities, but the errors of the Social Gospel should not frighten us away from doing this work together as Christians through our church. The first avenue of care for the needy should be the family. “If any woman who is a believer has widows in her family, she should help them and not let the church be burdened by them, so that the church can help those widows who are really in need.” (1 Timothy 5:16) In the New Testament church when family help was inadequate, help was provided at the congregational level. (Acts 6) Relief work was also carried out as a co-operative work of groups of congregations. The relief collections for the needy Christians of Judea play a prominent role in Acts and Paul’s epistles. (Acts 11:29-30, 1 Cor. 16, 11 Cor. 8-9, Gal. 2:10) Charitable help was also provided for those outside the household of faith. “As we have opportunity let us do good to all people, especially to those who belong to the family of believers.” (Galatians 6:10) “Do not forget to do good and to share with others, for with such sacrifices God is well pleased,” (Hebrews 13:16).

We cannot eradicate poverty from the world, but the inevitability of poverty is not an excuse to do nothing but an incentive and opportunity to do good (Deuteronomy 15:11, John 12:8, Matthew 26:11, and Mark 14:7).

Charitable work is an important concern for Christians. But we are to remember that the priority of ministers of the Word is the ministry of the Word and prayer. It is not right to neglect the ministry of the Word to wait on tables. (Acts 6:2-4) As a general ruler the main responsibility for the administration of charitable work should rest with lay Christians if it is a time-consuming program.

Though there certainly are many other channels for our charitable gifts, a look at the budget of our synod’s Committee on Relief makes us wonder if we are negligent in this aspect of Christian living. In spite of a generous response to recent disasters our offerings for this purpose are still less than a dollar per communicant per year. Perhaps we need to evaluate the proportion of our offerings which we give for such work. “It would be

satisfactory if we gave a smaller proportion to churches, altars... and the like, and let the main stream flow toward God's commandments, so that among Christians charitable deeds done to the poor would shine more brightly than churches of wood and stone. God will not ask you at the Last Day how much you left in your will, whether you have given so and so much to churches—though I do not condemn this—but will say to you, “I was naked and you did not clothe me. I was hungry and you gave me no food.” Take these words to heart... The important thing is whether you have given to your neighbor and treated him well. Beware of show and glitter which draw away from this.” This rather surprising admonition is not the words of a 20th century advocate of the Social Gospel. These are the words of Luther. (*Trade and Usury*, p. 126) Even though conditions in the church and the needs of the church may be quite different than in Luther's day, his words are still food for thought. The

Scripture has harsh words for those who feast every day, unmoved by the sight of poor Lazarus lying at the door. Let us do all we can to help those in real need. It is a sad commentary on the state of the church if “Samaritans” make the best neighbors.

THE CHRISTIAN OPPOSES INJUSTICE

In our first session we talked about some ways in which a Christian can be a good citizen: praying for the government, paying taxes, obeying the law, and so on. We have relatively little difficulty understanding and explaining the Christian's duty to do good. More difficult questions arise when we consider the Christian's responsibility to oppose and combat injustice. What steps may a Christian legitimately take to oppose unjust laws or evil acts directed against him?

In the New Testament it is plain that a Christian's basic reaction to injustice which he suffers because he is a Christian is patient endurance. “It is commendable if a man bears up under the pain of unjust suffering because he is conscious of God. ...If you suffer for doing good, and you endure it, this is commendable before God. To this you were called, because Christ suffered for you, leaving you an example, that you should follow in his steps.” (1 Peter 2:19-21) The patient response of Christ to the injustice which he suffered at the hands of Pilate, Herod and the Jews is our example. Violent attacks on those who treat us unjustly are plainly ruled out by the example of David toward Saul (1 Samuel 24), by Christ's rebuke to Peter in the garden (Matthew 26:52), and by the examples of the apostles, who rejoiced for the privilege of suffering in Christ's name. (Acts 5:41). Among the many Scripture passages which forbid personal vengeance are Romans 12:11-19: “Never pay back evil for evil to anyone. ... Do not take revenge, my friends, but leave room for God's wrath.” and Proverbs 20:22 “Do not say, ‘I'll pay you back for this wrong.’ Wait for the Lord, and he will deliver you.”

However, the fact that a Christian must suffer injustice patiently does not always mean that he must be quiet about it. Injustice must be endured, but a Christian may still war against it by prayer, by warning and admonition, and, within limits, by passive disobedience,³ by political action and by legal action. A Christian in a position of authority may also have the duty to use force to oppose evil.

When faced with evil, a Christian can and should pray against evil as David did in the imprecatory psalms or as Christ did in the Lord's Prayer, so that God will break and hinder every evil counsel which would not let us hallow God's name nor let his kingdom come. People are often shocked by some of the prayers of David in the psalms, but David could hardly pray that Saul should win and that God's promises should fail. In a certain sense, we cannot pray without cursing. Every time we pray “Hallowed be Thy name, Thy kingdom come, Thy will be done,” we are praying that the plans of Satan and all who serve him will come to naught and that they will receive the judgment which they deserve. We should indeed pray that God will lead our enemies to repentance and forgiveness as Christ and Stephan did, but we must also pray that all who continue to defy him will receive the justice which they deserve. God is a God of absolute holiness. It is in agreement with his character and attributes which he has revealed in Scripture when we pray, “If only you would slay the wicked, O God! ... Do I not hate those who hate you, O LORD, and abhor those who rise up against you?” (Psalm

³ That is, he will disobey and take his punishment. He will not use violence.

139:19-21) One of the strongest curses in the psalms, “May they be blotted out of the book of life and not be listed with the righteous,” is not merely the prayer of David, but a prophetic statement of the prayer of the Messiah. (Psalm 69:28) Even the saints in heaven pray, “How long, Sovereign Lord, holy and true, until you judge the inhabitants of the earth and avenge our blood.” (Rev. 6:10) In the same way, we should oppose evil with prayer.

Christians should warn against sin and injustice no matter who is doing it. Nathan and the other Old Testament prophets, John the Baptist, and Jesus denounced the sins of the mighty and of the lowly alike. They showed no partiality. Although they commanded patience to the oppressed, they made it equally clear that God hates tyrants and oppressors, and that they will answer to him for their misdeeds. In Psalm 58 David denounces unjust rulers, “Do you rulers indeed speak justly? Do you judge uprightly among men? No, in your hearts you devise injustice, and your hands mete out violence on the earth...Break the teeth in their mouths, O God, tear out, O LORD, the fangs of the lions.” (Ps. 58:1-6) Isaiah denounced oppressors regardless of whether they were Israelites or heathen. To the oppressive rulers of Israel he says, “Hear the word of the Lord, you rulers of Sodom listen to the law of our God, you rulers of Gomorrah. The multitude of your sacrifices what are they to me? ... Your rulers are rebels, companions of thieves. They all love bribes and chase after gifts. They do not defend the cause of the fatherless. The widow’s case does not come before them. Therefore, the Lord, the LORD Almighty, the Mighty One of Israel declares: Ah, I will get relief from my foes and avenge myself on my enemies.” (Is. 1:10-31) In the same way Isaiah denounces the haughty rulers of Babylon, “See the Day of the LORD is coming—a cruel day, with wrath and fierce anger. ...Babylon, the jewel of kingdoms, the glory of the Babylonians’ pride, will be overthrown by God like Sodom and Gomorrah.” (Isaiah 13) Such a catalog of warnings to oppressor nations is a regular part of the prophetic books. (Isaiah 13-34, Jeremiah 46-51, Ezekiel 12-32, Amos 1-2) The protests and warnings of the prophets are echoed in the New Testament, especially in Matthew 23 and Revelation. When Jesus and the prophets commanded non-violence and patient suffering, they never gave the impression that they condoned or served oppression or injustice, as the visible church has done at times. Luther too was very outspoken in his denunciation of oppressors and bad rulers whether it was the pope, the emperors or the princes who ruthlessly slaughtered the peasants. When we preach the law against the sins of the lowly, we must preach just as vigorously against the sins of the mighty.

A Christian should also oppose injustice by refusing to obey laws which require him to sin. “We must obey God rather than men!” (Acts 5:29) Here the strong warning is in place that we should be sure that the law which we are disobeying does indeed require an act contrary to God’s law and that we are not simply following our own whims. If we disobey the law for conscience sake, we will then have to suffer the consequences without taking violent steps to defend ourselves. At times we may be confronted with difficult cases. God has commanded that we train our children in his Word. He has not told us that we must do this through Christian Day Schools. Could we obey a law requiring all children to attend public school? To what extent can we obey restrictions placed on missionary activities by various countries? Should our disobedience be open or secret? For the sake of their testimony the apostles openly and flagrantly disobeyed the restrictions placed on their preaching. Daniel and his friends were open in their defiance of idolatrous decrees. On the other hand, to protect lives the midwives kept the truth from pharaoh and concealed their defiance of his decree (Ex. 1), and Obadiah concealed his faithfulness in order to protect the prophets of God from Jezebel (I Kings 18). We too may have to use our best judgment in choosing our course of action in difficult circumstances. The main question to ask ourselves is whether we are hiding the truth to protect ourselves from persecution or to protect the innocent.

What political and legal actions may a Christian take to fight injustice? This too is a difficult question in practice because differing circumstances may make the best course of action in a particular case difficult to determine. There may be cases in which different Christians reach different conclusions. However, there are some definite Scriptural principles which guide us in making our decisions.

Since those who silently ignore evil are guilty of indirectly aiding it, as Christian citizens we should use any peaceful and lawful means of declaring our political or legal opposition to laws or acts which we believe

are unjust. Under our system of government this may include voting, lobbying, or campaigning to influence government and public opinion. We must, however, beware of our motivation since pressure groups tend to be self-centered and concerned about advancing their own interests without equal concern about the needs of others. “Let no one seek his own good, but that of his neighbor.” (1 Corinthians 10:24)

May a Christian go beyond expressing his opinion and seek to compel the correction of injustice through legal action? This question is especially important at a time when our own synod has had a legal case reach the Supreme Court, and we see more and more church property disputes going to court. 1 Corinthians 6 makes it clear that it would be better for Christians to suffer injustice than to battle fellow Christians in civil courts of law. In the Sermon on the Mount Christ makes it clear that we are not to jealously insist on our rights or to retaliate for injustice. “Do not resist him who is evil, but whoever slaps you, turn to him the other cheek. If anyone wants to sue you and take your shirt, let him have your cloak also. And whosoever shall force you to go with him one mile, go with him two.” (Matthew 5:39-41) In conformity with this principle Christ suffered silently before Pilate (Matthew 27:14). On the other hand, Christ challenged the high priest’s servant who illegally struck him without cause and contrary to Jewish law. (John 18:23) In Acts Paul sometimes demanded the legal rights which he had as a Roman citizen. He compelled the magistrates at Philippi to apologize for their illegal actions (Acts 16). He vigorously defended himself against the charges of the Jews and took the initiative of appealing his case to Rome (Acts 24 & 25). Christians can certainly seek and impose legal penalties against criminals so that justice is done and the innocent protected.

There is no contradiction between these diverse actions, if we remember that we really have no inherent claim to our own dignity, our own time, or our own property. We belong completely to the Lord, and the question which governs our actions is “How can we best serve him?” If we can best display our faith by enduring the unjust loss of our property or by suffering unjust punishment and thus showing that we are not attached to the things of this world, but to Christ, let us be willing to do that. If we can serve God best by forcing the ungodly to stop interfering with our time and possessions so that we can use them in the work which the Lord has given us to do, that is the course of action which we should take. At times Paul followed the course of silent suffering or even flight. At other times he vigorously defended his rights. In every case, his first concern was to choose the course which would bring the most glory to God, rather than his own comfort.

We need to find the Scriptural balance between two extremes: on the one hand, the literalistic interpretation of the Sermon on the Mount which maintains that a Christian should never go to court under any circumstances, and on the other hand, the increasing willingness of Christians to rush into court to fight for their own interests. Which is the greatest danger for us? It seems to me that there is a tendency today to make the hard words of the Sermon on the Mount a mere counsel of perfection which is not very applicable to the hard facts of life in the world as it is. The power of rationalization makes it easy for us to mistake a desire to shield ourselves from loss or suffering as concern for the kingdom of God. Christians today could use more of the spirit of Abraham who was willing to let Lot have the better part of the land. We live in a time when people are very conscious of their rights and very demanding about obtaining them. We need to be reminded that we should gladly give up our rights if demanding them would hinder our Christian testimony. We may use the legal protection to which we are entitled, but we should beware of false motives. We are not to resort to the law for personal vengeance or selfish gain. Our motive should be the protection of the freedom of the Gospel and the protection of society from lawlessness. Many times, of course, it will be difficult to determine which course of action to follow. Because of our sinful nature, it is impossible for us to keep our motives completely pure. We can only pray that the Lord will cleanse our hearts of selfishness and hypocrisy so that we serve him as best we can. When we fail and fall short, we can come before him confident of the forgiveness which we have through Christ.

Can a Christian ever go beyond legal action and use physical violence to oppose evil? As an individual he cannot, but as a participant in government he may. In spite of the claim of some Christians to the contrary, Scripture clearly upholds the right and even the duty of the government to use capital punishment. We call this an established natural order for all nations on the basis of Genesis 9:6, “From each man too, I will demand an

accounting for the life of his fellow man. Whosoever sheds the blood of man, by man shall his blood be shed.” Capital punishment had a strong role in the civil law which God gave to Israel. The same God who said “You shall not murder” also said, “Anyone who strikes a man and kills him shall surely be put to death.” (Ex.21:12) (Incidentally the translation. “You shall not murder” is a good one since the Hebrew word *ratzach* is used of killing of one private individual by another, not of formal state executions. The apparent exception, the use of the word in reference to the avenger of blood in Numbers 35, is not really an exception, since the act of the avenger was not a state-sponsored execution, but a form of justifiable homicide.) Scripture supports capital punishment as a satisfaction of the demands of justice. “Do this so that innocent blood will not be shed in your land... so that you will not be guilty of bloodshed. ... You must purge from Israel the guilt of shedding innocent blood.” (Dt. 15:4-13) Scripture also recognizes a deterrent value in capital punishment. “Show him no pity. ... Stone [the idolator] to death. ... Then all Israel will hear and be afraid and no one among you will do such an evil thing again.” (Dt. 13:6-11) The New Testament upholds the principle of capital punishment in Romans 13. “He does not bear the sword for nothing. He is God’s servant, an agent of wrath to bring punishment on the evildoer.” In light of these clear passages, it is difficult to understand how some Christians can condemn capital punishment as un-Christian. The Scriptural principles are clear enough for a child to understand. I remember a first grader in our former Sunday School who was asked to recite the fifth commandment shortly after he had studied the story of David and Goliath. He immediately responded, “Thou shalt not kill ---- except for bad giants.” The church needs more theologians with such clear insight. It is clear that a Christian prosecutor may seek the death penalty. A Christian juror could vote for it. A Christian judge could impose it. A Christian executioner could carry it out. Both Article 16 of the Apology and Article 12 of the Formula of Concord explicitly endorse the right or duty of a Christian to administer capital punishment. (Trig. p. 341, 1099) The Apology says, “The Gospel forbids private redress. ... Public redress, which is made through the office of the magistrate, is not advised against, but it is commanded and is a work of God, according to Paul, Rom. 13:1 ff. Now the different kinds of public redress are legal decisions, capital punishment, wars, and military service.” Luther says, “Should you see that there is a lack of hangmen, bailiffs, judges, lords, or princes and should you find that you are qualified, you should offer your services and apply for the position so that necessary government may by no mean be despised and become inefficient or perish.” (Plass, p. 227) We might just note in conclusion that although Scripture clearly endorses capital punishment, if we speak in favor of capital punishment, we need to speak with balance. When we speak in favor of capital punishment, it is important that we also speak for fairness and impartial justice. If capital punishment depends on race, wealth, or other such criteria, such abuses will bring the law into disrepute and undermine justice. We may also recognize the possibility of mercy as Christ did in John 8.

As we have seen above, the Lutheran Confessions consider just war as an extension of the government’s authority to use the sword to punish evil. (The traditional criteria of a just war are 1) a war waged by a legal authority, 2) for a just cause, 3) as a last resort, 4) with a reasonable probability of success, 5) with proportionate means, 6) with regard for the innocent.)

Luther’s “*Can Soldiers Too Be Saved?*” (1526) remains the classic treatment of the subject of war and conscientious objection from a Christian point of view. (He also deals with the subject in “*Temporal Authority*” and “*War Against the Turk.*”) Luther bases his conclusion that Christians can serve in just wars on Romans 13, 1 Peter 2, and John the Baptist’s directions to soldiers in Luke 3, and on the wars conducted by Old Testament saints. Other appropriate references are the believing centurions in the New Testament church and Psalm 144, “Praise be to the Lord, my Rock, who trains my hands for war, my fingers for battle.” Luther recognized both the evil of war and its necessity in a sinful world. “When I think of a soldier fulfilling his office by punishing the wicked, killing the wicked, and creating so much misery, it seems an un-Christian work completely contrary to Christian love. But when I think of how it protects the good and keeps and preserves wife and child, house and farm, property, honor and peace, then I see how precious and godly this work is, and I observe that it amputates a leg or a hand, so that the whole body may not perish. ... What men write about war saying that it is a great plague is all true. But they should consider also how great the plague is that war prevents.” (Tappert, IV

436) Luther recognized that wars could be selfish and unjust and advised Christians to refuse to participate in wars which they knew to be unjust. It is not just for a ruler to enter a war of rebellion or to start a war. A just war is a war of self-defense in which offers of peace had been rejected by the enemy. If the citizen is uncertain whether the war is just, he should obey his ruler and leave the ruler's judgment to God.

On the basis of Scripture's commands to obedience and patient suffering Luther rejected all rebellion against rulers. "If injustice is to be suffered, it is better for subjects to suffer it from their rulers than for the rulers to suffer it from their subjects. The mob has neither moderation nor even knows what moderation is. Every person in it has more than five tyrants hiding in him. Now it is better to suffer wrong from one tyrant, that is the ruler, than from unnumbered tyrants, that is from the mob. ... I am not discussing here what heathen do or have done... but what one can do with a good conscience. ... I have read in not a few history books of subjects deposing and exiling and killing their rulers, The Jews, the Greeks and the Romans all did this and God permitted it and even let these nations grow and prosper in spite of it. However the final outcome was always tragic." (*Soldiers Too*, LW 46, p. 106) The history of the revolutions since Luther's day have only emphasized the truthfulness of his observations. Besides the American Revolution it is hard to think of one that had a happy outcome.

Luther did concede that the princes might have grounds for waging a defensive war against the emperor, if he was violating rights which they had under imperial law. However, it does not appear that he felt very comfortable with this concession. In 1531 he wrote, "We have placed this proposition before the jurists. If they find (as some think they do) that the imperial law teaches self-defense in such a case, we cannot check the course of temporal justice. For as theologians we are obliged to teach that a Christian is not to offer resistance but to suffer everything. ... If therefore the jurists are right in saying that a Christian may offer resistance, not as a Christian, but as a citizen and member of the body politic, we let that pass. ... They will have to take this responsibility upon their conscience." (Letter to L. Spengler, Plass, p. 600.) This letter is of special interest to us because the same justification is sometimes claimed for the American revolution, namely, that legal governments were resisting usurpation by the king of governing rights which were legally theirs. This was perhaps true in Virginia but doubtful in Massachusetts.

Luther did maintain that although it was wrong to use violence against one's rulers, violent self-defense against criminals was allowed. "Yes, indeed! In that event [if I was attacked by robbers] I should be the authority and wield the sword, because no one else would be near to protect me. I should strike as many dead as I could and thereupon receive the Sacrament and should consider myself to have done a good work. But if I were attacked as a preacher for the sake of the Gospel, I should fold my hands and say, "Well, my Christ, here I am. I have preached thee. If my time has come, I commit myself into your hands. And thus I should die." (Plass 243) That such a view is not entirely without Scriptural sanction is indicated by the fact that the same Christ who told Peter to put away his sword when they were being persecuted by the government for Christ's teaching told those who were preparing to go on dangerous missionary journeys, "If you don't have a sword, sell your cloak and buy one." (Luke 22:36)

The Christian has various tools for resisting evil—prayer, admonition, his legal rights as a citizen, and insofar as he is enforcing earthly law and order, the punitive power of government. In using any of these he should take care that he is seeking the glory of God, the defense of the Gospel, or the welfare of his neighbor, and not indulging in personal vengeance. May God guide and direct us in this difficult matter.

THE SEPARATION OF CHURCH AND STATE

General Principles of Church and State

In our first three sessions much of our discussion has concerned the activities of individual Christians as they carry out their duties and responsibilities as citizens of the state. In our final two sessions we will discuss one of the hottest political issues of our day, the separation of church and state. Today we will discuss the

general principles concerning the separation of church and state. We will also discuss one of the most controversial efforts of the church of today to enter into the affairs of the state, namely, its attempts to make the civil law of our land conform to God's moral law, or at least their perception of God's law. Next week we will discuss current laws and judicial decisions pertaining to the separation of church and state.

I think all of us accept the separation of church and state as a basic principle of good theology and good government. Most of the time we probably do this without very much thought about either the theological or legal basis of this principle. Since both these bases are seriously challenged by many Christians today, we will need to examine both.

There is no explicit discussion of the separation of church and state in Scripture. In the Old Testament theocracy there was, of course, no sharp separation of church and state, of civil and moral law, or of religious offenses and civil punishment. Even the leaders of the post-exilic Jewish state were willing to accept financial aid from the Persian government for the construction of the Temple and for the sponsorship of religious services. (Ezra 6:8-10, 7:13-26) They apparently regarded it as a kind of reparations for past damages.⁴

In the New Testament world the only real threat to the separation of church and state was the oppression of the church by both the Jewish and Roman states. It is therefore not surprising that there is little explicit discussion of the topic in the New Testament. The passages which are most often adduced as proof passages for a doctrine of the separation of church and state address the issue only indirectly. For example, "Give to Caesar what is Caesar's and to God what is God's" (Mt. 22:21) Jesus' remark simply states that the political realm and the spiritual realm are distinct kingdoms, and that we have responsibilities toward both. He gives no directions for keeping the activities of the two kingdoms separate. However, since Tiberius claimed the title "Pontifex Maximus" on the back of his denarius, Jesus' remark, "Give to God what is God's," may contain a rebuke of Tiberius' pretensions in spiritual matters that was more obvious to Jesus' contemporaries than to us.

In his statement, "Man, who made me a judge or an arbitrator between you?" (Luke 12:14) Jesus simply states that he had not come to be an authority in legal disputes, but as the messenger of the Gospel. Again he offers no specific guidelines on the separation of church and state.

The doctrine of the separation of church and state is established not so much by direct statements of Scripture but by a comparison of the work and the tools which God has assigned to church and state.

We will, therefore, briefly review the purpose and means of government which we discussed in our first session on the basis of Romans 13:1-7 and 1 Peter 2:11-17. God has established government so that people may live in some degree of peace in a sin-filled world. The government's responsibility is to preserve the greatest possible peace and order in the world by punishing evil-doers, rewarding those who do good, and protecting the rights of the law-abiding. To accomplish this, governments may make laws based on reason and enforce them on the disobedient even to the extent of imposing the death penalty when necessary and appropriate.

The mission and tools of the church are quite different. God has established the church so that people may live with him in peace forever. The church's responsibility is to preach the Gospel and to administer the sacraments through which saving faith is created and nourished. The church does not wage its battles with the sword of the state, but with the sword of the Spirit, the Word of God. (Matthew 28:19-20, John 18:36-37, also 2 Cor. 10:4-6, Eph. 6:3-17) The church is not responsible for disciplining those outside the church. (Corinthians 5:12)

Since God has assigned to both the church and state their own distinct purposes and distinct tools, these should not become mixed or confused. Neither church nor state should try to do the work of the other. Neither should ask the other to do its work. Neither should seek to accomplish its ends by using the tools of the other. This is what we mean by the separation of church and state. Such separation of church and state is a valid deduction from the distinct missions and tools which God has assigned to church and state. Since there are some areas in life, in, which both the state and the church have a valid interest, such as marriage, sexual morality, education, and so on, their interests and activities may sometimes overlap. Perhaps it might, therefore,

⁴ On the other hand, they were not willing to accept financial help from the Samaritans who offered it as a religious fellowship.

be clearer if we would speak of “avoiding a mixture or confusion of church and state,” rather than of a “separation of church and state.” It is riot possible to demand a total separation of all activities of church and state. One area in which we regularly accept a certain overlap of interests is in the public establishment of a marriage. In the marriage of a Christian couple the church is interested helping the couple begin their marriage on the basis of God’s Word and in seeking his blessing upon them in prayer. The state is interested in a witnessed, written confirmation of the legal contract, which has serious implications regarding property rights and inheritance. We allow both of these purposes to be fulfilled on the basis of a single ceremony. The exact mechanics vary from state to state, but to some degree our pastors act as legal representatives of the state in establishing the legal aspects of the marriage. Other examples of church-state interaction could be cited as evidence that no absolute separation is possible. For example, our churches incorporate as legal entities for the purpose of holding property and use public utilities and services.

The Lutheran Confessions clearly set forth the Scriptural principles of the separation of church and state, especially in Article 28 of the Augsburg Confession. “The power of the church and the civil power must not be confounded. The power of the church has its own commission to teach the Gospel and administer the Sacraments. Let it not break into the office of another. ... Let it not prescribe laws to civil rulers concerning the form of the commonwealth.” (*Trig.* p. 85)

The Reformed and Catholics both entangled the church and state. The Reformed generally saw the state as the partner of the church in enforcing God’s law, including the first table. (Calvin’s *Institutes* V 11 780) This was really not far removed from the Catholic position which made the pope the head of all secular rulers, since in both cases the punitive power of the state was used to enforce the laws of the church.

Unfortunately, the clear Lutheran position was never really put into practice. Luther’s views were remarkably clear and consistent considering the attitudes and conditions of his day.

After the abolition of the Law the secular emperors, kings, and princes were entrusted with the sword of iron, and the oral sword was assigned to the apostles and us preachers. This distinction must remain intact; and let all who can lend a hand to that end. But if the princes continue to jumble the two, as they are now doing, then may God in his mercy shorten our lives that we may not witness the ensuing disaster. For in such circumstances the Christian religion must go to wrack and ruin. This is what happened in the papacy when the bishops became secular princes. And if the secular lords now become popes and bishops and insist on sermons that defer to their wishes, then let the wretched devil preach to them, for he preaches too. But let us pray God that neither the spiritual nor the secular realm abuses its office that way (*LW* 22, 228, Commentary on John 2).

But Luther lacked the opportunity to put his views into practice.

I do not yet have available the persons necessary to accomplish it (the actual separation of church and state and proper congregational life) nor do I see many who strongly urge it (*LW* 53, 64, “German Mass”).

If Luther’s views would have been put into practice, a separation of church and state similar to that which existed in 19th century America might have resulted. Practical difficulties and a deterioration of the Lutheran position prevented this from ever happening. The writings of our 17th century dogmaticians are very disappointing in this regard. Like the Calvinists they speak of the magistrate as having a duty *circa sacra* (but not *in sacra*), a duty to uphold both tables of the law in so far as they pertain to outward discipline. They regularly refer to kings as the “nursing fathers of the church” (Is.49: 23) and its “wall and shield” (Ps. 47:10). Luther’s distinction of what princes might do as princes and what they might do as leading members of the church was becoming blurred. The dogmaticians envision a protecting and even supervising role for the state which goes far beyond anything that can be validly deduced from I Timothy 2:2. Among the responsibilities which they assign to the magistracy are the appointing of ministers, the erection and preservation of churches and schools, providing for the support of ministers, appointing visitations and councils, framing and

maintaining the laws of the church, preservation of church discipline, the trial of heretical ministers and those of bad character, and the punishment of heretics (Schmid. It is thus not surprising that many historians classify the church polity of the Lutheran territories of Europe as the most Erastian,⁵ except for the Anglican. We will leave it to the church historians among us to debate the validity of this ranking. At any rate it seems fair to say that the good foundation laid by Luther was not well built upon, and that there was more regression than progress after Luther.

In spite of the good start made by Luther, the greatest achievement in the separation of church and state would take place not on Lutheran soil, but elsewhere. God uses strange instruments at times. It was an unlikely combination of Baptists and rationalistic deists, Jehovah's Witnesses and liberal supreme court justices that became the main contributors to the separation of church and state which we enjoy in America today. At the time of the American Revolution the convergence of such factors as the prevalence of separatist denominations (most notably the Baptists), the personalizing of religion in the Great Awakening, and the aversion to any state church on the part of the deists who were the leaders of the revolution brought about the constitutional separation of church and state which we enjoy today.

The second grounds for our present separation of church and state is, therefore, constitutional and legal. Actually the constitutional basis for such separation is very brief and undeveloped. The constitution itself merely forbids religious tests for public office. (Article VI) The first amendment says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The "establishment clause" forbids the federal government to help the church by aiding the establishment of any religion. The "free exercise clause" forbids the government to interfere with the church by hindering the free exercise of religion. It has been and still is being hotly debated, even among the justices of the Supreme Court, whether these two principles of the Constitution actually require a "wall of separation" between church and state. The wall of separation is actually not a constitutional concept, but the personal interpretation of Thomas Jefferson, which he expressed in his 1802 letter to the Danbury Baptists. Finding a balance between the establishment and free exercise clauses and determining the permissible degree of church-state contact which they permit has been one of the most pressing concerns of our judiciary in recent years. This struggle will be the topic of next week's session.

There may be areas of church-state interaction which cannot be declared to be sin on the basis of Scripture, nor have they been declared unconstitutional in court, but it nevertheless would be dangerous for us to become involved in them, because of the controls they might bring. The third ground for separation of church and state is, therefore, expediency. Certain forms of co-operation may be lawful, but not expedient. We may feel that such co-operation would be unwise, and we should argue against it on that basis. But we should be careful not to confuse what is unwise with what is illegal, or with what is sinful. There are three distinct bases for the separation, of church and state, Scriptural principles, constitutional law, and expediency. We must not confuse them. Considerable damage has been done when this distinction has not been observed. The Brookfield case in which one of our high schools was harshly condemned for receiving state aid was a prime example of such a failure to distinguish between things which are sin and things of which one disapproves. The case eventually resulted in church discipline against the accusers.

The separation of church and state is an important principle of theology and law, but it is not very specifically defined in either Scripture or our Constitution. We should be careful about judging fellow Christians on the basis of boundaries which we have established on the basis of our own judgment.

Having briefly outlined the basic principles of separation, let us now consider the question of Christian efforts to shape the laws of the state.

Moral Law and Civil Law

One of the most timely topics in the area of church and state relations is Christian attempts to influence the civil law of the land. Since the 1908s when Jerry Falwell and the "Moral Majority" burst into the limelight,

⁵ Named for Thomas Erastus, who advocated supremacy of the state over the church in ecclesiastical matters.

efforts of conservative Christians to influence public morality by means of legislation are regularly discussed on the editorial pages of our leading newspapers. Few people are neutral or indifferent to their efforts. Some applaud their efforts. Others dread their influence. Where should we stand in regard to these efforts to lobby for “moral” laws? Christian citizens face some difficult questions in this matter. We are caught between a rock and a hard place. On the one hand, we are appalled by the increasingly flagrant immorality of the people of our land—the shocking decline of sexual morality, the campaign for gay rights, rampant divorce, flourishing pornography, child abuse coming more and more into the open, the frequency of crime in the streets and in corporate offices. On the other hand, we may sometimes be disturbed by the methods, the goals and the tone of religious leaders who crusade for laws which would enforce a stricter morality in our nation. Again our aim must be to keep a Scriptural balance between the extremes.

Our duty as church is to preach God’s law, not to reform Caesar’s law. It should be clear to us that all of a Christian’s actions must be guided by God’s moral law, regardless of what the civil law of the land may allow. The means of promoting morality which God has given to his church are teaching its members God’s will as it is revealed in his law and motivating them with the gospel. Equipped with such teaching, they will not be conformed to the pattern of this world, but will be transformed by the renewing of their minds so that they test and approve the good, pleasing and perfect will of God. (Romans 12:2) The church’s goal for those outside the church is not to regulate their conduct, but to change their hearts. This can be done only by a fearless preaching of God’s law, which produces contrition, and by the life-giving message of the gospel, which produces the faith without which no genuine moral improvement is possible. The church’s primary concern in the area of law is to use the law as a mirror to expose and condemn sin, and then when the Gospel has done its work, to use the law as a guide or rule for Christian life.

Nevertheless in this realm of sinners, the law must function as a curb or restraint of evil doers. “The law is not made for good men, but for lawbreakers and rebels, the ungodly and sinful, the unholy and irreligious, for those who kill their fathers or mothers, for murderers, for adulterers and perverts, for slavetraders and liars and perjurers.” (1 Tim. 1:9) It is this restraining function of law which is the concern of the state. In fact, such a restraining function is the only purpose which civil law can serve.

So the question remains: “How hard should a Christian fight to bring the civil laws of the state into agreement with God’s moral law?” This is a question of great practical importance when we consider laws concerning abortion, divorce and marriage, sexual conduct, pornography, capital punishment, and other matters. Here again, there are two different, and in some respects, opposing factors which we must consider. The first is that God holds all nations responsible for their violations of his moral law and punishes them for such conduct. The Canaanites were exterminated because of their flagrant disregard for God’s moral law. When the sin of the Canaanites reached its full measure, the land vomited them out because their rottenness had become intolerable. (Gen 15:16, Leviticus 18:24-25) The cities of Sodom and Gomorrah were burned to ashes as an example of what is going to happen to the ungodly. (2 Peter 2:7) Isaiah cries out to the nations, “The earth is defiled by its people. They have disobeyed the laws, violated the statutes, and broken the everlasting covenant. Therefore a curse consumes the earth. Its people must bear their guilt.” (Is. 24:5) A nation is not excused for its sinful practices, simply because it is not a theocracy or a truly Christian nation. God’s wrath justly falls on those who suppress the natural knowledge of God and who sin against the inscribed law and their own consciences. God begins his judgment against such people by giving them over to uncleanness, to sinful desires, and to a depraved mind, so that they receive the due penalty for their error, even in their own bodies. (Romans 1 and 2) Although God temporarily spares the world from the general judgment which it deserves (Gen. 8:21, Acts 17:30), he already is sending warning judgments against those who trample on his moral law. The principle still holds, “Righteousness exalts a nation, but sin is a disgrace to any people.” (Prov. 14:34) As a general rule, nations as well as individuals reap what they sow. Respect for family life and for authority tend to contribute to the stability and welfare of a nation. Conversely, a society usually pays for the breakdown of the family and of respect for authority with increased crime and disorder. Sexual immorality and drug abuse exact both a physical and emotional price. The first payment of the wages of sin is usually delivered already in this life. The life of a

prodigal son leads to shame and ruin; the life of a Pharisee leads to earthly honor. Of course there are apparent exceptions. Some of the guilty escape, at least for awhile. Sometimes the innocent suffer along with the guilty. Nevertheless, the general principle holds. This principle of divine retribution is one reason that Christian citizens are interested in good laws and in the outward morality of their land. Such morality contributes to the welfare and security of the land and its citizens. Immorality which disregards the basic principles of God's law brings judgment on a nation. For this reason Christian citizens want the laws of their land to reflect the moral principles of God's law.

On the other hand, because of the darkness and hardness of human hearts it often is impossible for civil law to correspond with the ideal set forth in God's moral law. Sinners have partially lost or suppressed the knowledge of what is right. Natural knowledge of the law is not clear and complete. It is partial and weak. Sometimes people know what is right, but simply refuse to do it. Even the civil law which God gave to Israel made concessions to the hardness of the human heart. For example, divorce was permitted in the civil law, even though this was contrary to the will of God which was revealed when marriage was established. The chief purpose of civil law is to maintain as much peace and order as is possible in a sinful world. If a woman had to remain with a husband who was embittered against her, great harm and disorder could have followed. The permitting of divorce, even on questionable grounds, could actually be a protection for the wife. She might be better off if she was sent away by a hardened, embittered husband, than if they had been compelled to remain together. The civil law accepted the evil of divorce to minimize the evil of bitter domestic warfare which would have been even more disruptive of the peace of society. (It should be mentioned that the divorce law in Dt. 24, does not encourage divorce or establish grounds for divorce. It discourages divorce by restricting the possibility of remarriage.)

The aim of civil law is to produce the greatest degree of outward peace and order. Every law is an attempt to legislate outward morality. That is, every law is an attempt to prevent individuals from harming other individuals or the interests of society as a whole by imposing punishment on those who violate the standards of society. Civil morality is generally defined on a utilitarian basis. Whatever a society judges to be harmful is considered to be immoral and is declared illegal. When a society is convinced that an act is harmless, it becomes legal. A civil law will normally be effective only if the majority of the citizens are convinced that violating that law is harmful and if punishment is certain enough and severe enough to deter those who remain unconvinced.

No anti-abortion law will be effective, if most people believe that abortion is not much different than a tonsillectomy. No law restricting pornography will be very effective if most people believe that pornography is harmless or even enjoyable. Capital punishment is of little value if public opinion is so against it that no judge or jury will use it. We cannot expect a country to have laws which uphold sound moral values if its people are abandoning even those moral standards which are supported by reason and the natural knowledge of the law.

The first priority for Christian citizens is to educate. We should help to bring society back to its senses by promoting sound moral values. We will have moral laws only when a majority of the citizens and public officials of our land recognize the value and necessity of such basic moral principles as the right to life, high regard for marriage and the family, and the accountability of every individual for his actions. On the basis of such standards, we can then promote good, moral laws. In doing this, we are not trying to force Christianity on anyone by law. Reason, the inscribed law, and the conscience of natural man all testify to these standards, and when we are promoting civil laws, we must argue on this basis. Such educational efforts can bear fruit. The campaign to expose the true nature of abortion in the battle over "partial-birth abortions" seems to have had an impact on public opinion.

Even if we are successful in obtaining good, moral laws, we must recognize the severe limitations of civil laws. Legislating and enforcing good moral laws does not make a nation and its people any more Christian or any more moral in a true spiritual sense. Such laws cannot change the inner motivation of the heart. They only restrain outward conduct. For example, when we promote laws which restrict abortion, we are not trying to create hearts obedient to the fifth commandment, nor can such laws make an unwanted child wanted. The only

thing which the law may be able to accomplish is to protect the life (and the time of grace) of some of our neighbors who are unable to protect themselves. Laws restricting pornography can't legislate chaste and decent hearts, but they may diminish temptations to sexual immorality, which harms society. They may help stem the shocking tide of sex crimes in our land. They may help restore an atmosphere in which stable family life, which is a needed foundation for society, can be maintained. All of these are only outward functions which do not touch the heart. Laws against racial prejudice cannot make anyone love neighbors of a different race, but they may prevent him from interfering with their life and livelihood. In short, good laws cannot do anything to Christianize a nation or to promote true inner morality, but they have value as a curb which protects individuals and society from the evil effects of rampant immorality. As Christian citizens we should promote such laws as part of our concern for our neighbors' life and property.

However, a number of cautions should be observed. Even when the cause is good and the case is clear-cut, as in the effort to gain laws which restrict abortion, we should be very cautious about trying to influence legislation as a church body or as members of church-affiliated societies. Such efforts can very easily reinforce the common impression that the church is basically a moral reform agency, whose goal is to make the world a better place to live. As a church we should not substitute the goal of reforming society for our higher goal of reforming human hearts. Our tools are God's law and gospels not man's law and sword.

Even in our efforts as citizens, careful discernment and balanced judgment are needed. We should remember that even when Christians are agreed on the moral goals which are desirable for society, they may disagree about the best way to achieve those goals in given circumstances. We may agree that pornography is evil. One of us may feel that a certain restrictive law is a partial solution. Another may oppose that law, because he believes that it is so broadly worded that it could threaten legitimate freedom of expression. None of us would argue in favor of having holdup-men shoot grocery clerks, but we might disagree on whether a specific law restricting handgun ownership would increase or diminish the possibility of that happening. Even when we are agreed on identifying evils, we must be careful in prescribing a specific solution as *the* Christian solution because the problem may be very complicated in its nature and in its response to specific remedies.⁶ Christians should apply Christian principles and sound thinking to public policy as best they can, but with a proper degree of humility concerning the remedies which they suggest. We need to find the balance between thinking we can reform the world by legislation and withdrawing into a shell and letting the world go its way.

Although we should seek good laws, we realize that civil laws will never conform to the standards which God's moral law sets for us. Even when civil law is lax, we must always guide our conduct by God's law. Even the best civil laws will never produce the kind of morality which God desires. None of this causes us to despair. Even when the standards of society crumble, we have a sure foundation to build on. Today, many are echoing the despairing question addressed to David, "If the foundations are destroyed, what can the righteous do?" It is important that we remember his answers "The Lord is in his holy temple. The Lord's throne is in heaven. His eyes behold. His eyelids test the sons of men. The upright shall behold his face." (Ps. 11) No matter how much indulgent rulers, lax laws, and vile sinners undermine the foundations of God's moral law, this truth still stands, "God's solid foundation stands sure, sealed with this inscription: the Lord knows those that are his, and everyone who confesses the name of the Lord must turn away from wickedness" (II Tim, 2:19)

PRESENT DAY DISPUTES CONCERNING THE SEPARATION OF CHURCH AND STATE

Current Legal Principles Concerning Church and State

Last week we discussed the three bases for the separation of church and state: Scriptural principle, constitutional law, and expediency. Today we want to discuss current problems in the application of these

⁶ Of those who think they have quick fixes for the world's problems Luther said, "The spectator can play the game best. For they imagine that if they were to get the ball into their hand, they would hit twelve pins, although only nine were standing in the alley. So they imagine until they find out that there is also a gutter running alongside the alley" (Plass, p. 585, W 51, 202).

principles, particularly the current legal trends. Let us quickly review the basic constitutional principle. The first amendment simply says, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The present meaning and application of these simple phrases has been developed only by years of judicial process. Finding a balance between the establishment and free exercise clauses and determining the degree of church-state contact which they permit has been one of the most pressing concerns of our judiciary in recent years. It has not been an easy task. Justice Burger said, “Total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. ... 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.* (Miller and Flowers, p. 467) On the present Supreme Court Justice Rehnquist has been one of the strongest exponents of the view that the Constitution does not mandate separation of church and state, but only forbids establishment of a state religion.⁷ Other justices argue for a strong wall of separation. Possibilities for litigation of church and state issues have been expanded greatly since the 14th Amendment has been interpreted as extending the principles of the 1st amendment to all state laws. Recent challenges of state laws have greatly clarified the legal definition of the “wall of separation.” Let us therefore look at the current situation and how it may affect us as individuals and congregations and as a synod. We will look at some of the most important cases in the various areas of conflict. (It should be noted that none of the interpretations expressed in this paper are adequate guidance for specific legal cases. One often finds conflicting interpretations of some of these cases in different sources. Every issue of *Church Law and Tax Report* is filled with new cases and rulings. Most follow past precedents, but the results are sometimes unpredictable.)

Government Intervention in Church Disputes

Government intervention in church disputes normally arises only when there is a split in a church, and one of the parties goes to court to obtain control of the property. The basic principle established for such cases by the Supreme Court is “The Law knows no heresy and is committed to the support of no dogma.” (Watson v. Jones 1872) This means that ordinarily no secular court is qualified to decide which party in a church dispute is faithful to the original doctrine of the church body. Therefore, property must normally be disposed of by majority rule in churches with congregational polity or by decision of the hierarchy in hierarchical churches. A possible exception allows courts “marginal review” if church officials have practiced “fraud, collusion, or arbitrariness” such as a violation of the constitution and bylaws. The extent to which the Supreme Court will follow the non-intervention principle is illustrated by the cases in which hierarchies in Iron Curtain countries have been able to retain control of the property of seceding American churches. (Kedroff v. St. Nicholas Cathedral 1952) Some state courts have tried to apply a “departure from doctrine” test, but it is questionable if the precedent set by recent Supreme Court cases would allow the enforcement of the “faithful majority” clauses in many of our congregational constitutions if they would ever be tested in federal court.

Another area of potential court involvement is when members of the church who have been disciplined take legal action against the church for invasion of privacy. The case of Guinn v. Church of Christ of Collinsville which was contested in Oklahoma courts throughout most of the 1980s warns against publicly pursuing discipline against a person who has resigned from the church. Churches can exercise discipline against their members, but this should clearly be spelled out in the procedures by which people become members. The distinction between members and non-members was re-enforced by a 1999 Michigan case. A summary of precedent setting cases is reviewed in *Church and State*, March 99 (p. 1-8).

Preserving Free Exercise

A very important area of litigation has been the struggle to preserve the free exercise of religion. The pioneers in this area of law were the Mormons. The leaders in winning new protections are the Jehovah’s Witnesses, who have been to the Supreme Court at least 80 times. The experiences of these two groups are good

⁷ This is sometimes called the accommodationist view.

illustrations of the limits which the Court will tolerate in both directions. Some of the earliest religious cases which the Court received involved the Mormon practice of polygamy. These cases helped establish the principle that religious freedom does not protect actions which are dangerous to the health, safety, morals, and welfare of society. The outlawing of polygamy was upheld on these grounds (*Reynolds v. United States*, 1878). Religious snake handling, religious drug use, compliance with zoning and safety codes, mandatory immunization of school children, and medical treatment of children against the will of their parents are examples of other matters that would be covered by this principle.

The extreme to which the Court will go in allowing religious freedom is illustrated by the case upholding the right of Jehovah's Witnesses to refuse to salute the flag (*West Virginia State Board of Education vs Barnette* 1943). This ruling was especially remarkable because it came in the middle of World War II and reversed a Court ruling against the Witnesses on the same issue only three years earlier. The Jehovah's Witnesses and other unpopular or separatist groups such as conscientious objectors, Sabbatarians, Hare Krishna, Black Muslims, and the Amish have been the source of many of the decisive rulings which tested and expanded the limits of religious freedom and which set the precedents which offer us so much protection today.

The Court has reached a position at which it tends to give "preferred freedom" status to "sincerely held religious beliefs." If laws of the state conflict with religious freedom, the state has an obligation to prove that it has a "compelling interest" in enforcing the law, and that it does not have "alternative means" of achieving its goals. Let us look, at the application of these principles to several areas of religious freedom.

Clergy Rights To Hold Political Office

In post-Revolutionary America many states enacted laws forbidding clergymen from holding government office. In 1978 (*McDaniel v. Paty*) the last such law was declared unconstitutional.

Sunday laws and protection of Sabbatarians

Reasonable Sunday laws do not constitute an "establishment of religion" and can be upheld if they have a secular motive. Historical precedent is a major factor here. The rights of Sabbatarians to reasonable protection in their terms of employment has been upheld on several occasions, but it cannot be maintained if it works undue hardship on co-workers or interferes with essential services (*Sherbert v. Verner* 1963 and *Trans World Airlines v. Hardison* 1977). This principle is again a point of contention as various religious groups fight for the rights of their adherents to wear religious garb on the job.

Freedom of Witnessing

Laws which forbid, license, or tax door-to-door witnessing or witnessing in public places have repeatedly been declared unconstitutional. For example, gospel banners cannot be excluded at football stadiums if other banners are allowed. However, reasonable regulations to assure health, order, and safety and protection against fraud are permissible. A city could, for example, require a parade license, if there were uniform requirements for all applicants.

Free Access to Public Forums

Public universities which allow groups promoting various viewpoints to meet in their facilities cannot deny the same privilege to religious groups, even when the religious group conducts worship activities as part of its program. In this type of situation the issue is no longer whether granting religious groups the use of facilities would be an establishment of religion, but whether barring them from an open forum on the grounds of the content of their speech would be hostile to free exercise of religion and freedom of speech. If school facilities may be used to discuss anti-clerical views, comparable use by a group desiring to express a belief in God must also be permitted. The establishment clause does not deny general benefits like police and fire protection to religious groups. Access to open forums is a general benefit which cannot be denied to religious speech. However, a university can ban even 1st Amendment activities that violate reasonable campus rules. (*Widmar v.*

Vincent 1981) This ruling does not apply to lower level schools such as high schools, in which such an open forum does not necessarily exist. In 1990, however, the Court upheld the Equal Access Act of 1984 which applied a “limited open forum” rule to secondary schools (Board of Education v. Mergens).

Rental of Public Property for Worship Services

State courts have upheld the rental of public property, such as schools, for religious purposes since the state has a valid secular purpose for such rental, namely to make money which benefits all the citizens of the state. Such use must be occasional or temporary to avoid excessive entanglement. The Supreme Court affirmed this principle in 1993.

Zoning Problems for Religious Groups

Around the country churches and religious groups often find that they are forced into conflict with civil authorities over zoning restrictions that limit their ability to meet, worship, and practice their faith. Issues include use of private homes for religious meetings, as well as churches in residential areas. In Evansville, Indiana, Kevin Wilson has been struggling with such a problem. After purchasing some property with an existing church building in 1994, Wilson was told that he could not use his church building as a church without obtaining a special use permit from the city. When he applied for the permit he received a conditional permit limited to one year because of the concerns of neighbors over parking issues and the number of people who might be using the building (the building holds 60 and Wilson’s congregation averages 20-30 on Sundays).

In Evansville, Illinois, the Vineyard Christian Fellowship finds itself in a similar situation. It owns an office building in downtown Evansville that is zoned for commercial use only. Under the restrictions the congregation can hold classes and meetings in the building, have concerts and other special programs during the day or in the evening. The church can do almost anything with its building except hold worship services in it. The city council has refused to change the zoning restrictions to accommodate the church despite a recommendation from the city’s zoning commission in favor of the church. One member of the city council has said that the church could obtain the zoning ruling it sought if it agreed to pay the city \$35,000 each year to compensate for having tax-exempt status.

These cases and many others like them from around the country reflect a growing unwillingness to tolerate religious groups and persons of faith among authorities in many communities. This, in turn, reflects a rising suspicion and intolerance of religion and religious persons in American public life as our society becomes increasingly polarized over a variety of moral and cultural issues.

Educational Freedom

At various times parochial schools have been unpopular because they were considered to be un-American. Think of the Bennett Law in Wisconsin or the Nebraska law that no foreign language could be taught in any school before the ninth grade. (German was the target.) In 1923 (Meyer v. Nebraska) the Supreme Court ruled that such laws violate the 14th Amendment because they interfere with the right of teachers to teach and the right of parents to employ teachers for their children. But the law which has been called “the Magna Charta of parochial schools” is *Pierce v. Society of Sisters* (1925). In this case an Oregon law requiring all students to attend public school was ruled unconstitutional both on the grounds of financial damage to established private schools and as an interference with parents’ rights. The court declared, “The fundamental theory of liberty ... excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional obligations.” Let us pray that these words of Justice McReynolds always remain a fundamental principle of our law. This ruling did not, however, question “the power of the state to reasonably regulate all schools, to inspect, supervise and examine them, their teachers, and pupils; to require... that certain studies plainly essential to good citizenship must be taught and that nothing be taught which is manifestly inimical to the public welfare.” This

case set the precedents both of parochial schools' right to exist and of the state's right to reasonable regulation. State courts have again and again re-asserted this right of reasonable regulation. The crucial question, of course, is what is reasonable.

Some indication of the limits of reasonable regulation is given by the ruling in *Wisconsin v. Yoder* (1972). In this case Amish parents won exemption from regulations requiring them to send their children to public high schools until age 16. The basic grounds for the decision were that the Amish obviously had a sincerely held religious belief, that enforcement of the state regulation would harm their way of life, and that the state had no compelling interest, since the Amish teenagers were well prepared to be productive citizens by the vocational training they received in lieu of high school. One justice suggested that the ruling might be different if the children wanted high school training which the parents refused to give. This view suggests that the religious freedom of parents may be limited not only by compelling interests of the state, but perhaps by choices of their children.

A 1985 decision of the Iowa Supreme Court, which the US Supreme Court declined to review, suggested that it may be difficult for individual parents who wish to hold their children out of public or certified schools to obtain the same exemption which the Amish have won, if those parents are part of the "mainstream" of American life. We assume WELS is "mainstream" by these standards of Iowa.

Some state courts have interpreted the "compelling interest" of the state in an expansive manner. Nebraska is a good example of a prime offender in this regard. The *Yoder* decision implies that the state's "compelling interest" is in the final product, namely an educated, productive citizen, and that the state should seek this end with the least restrictive means possible, leaving as much freedom of method as possible. The record of state courts in applying this principle has been very spotty. They have often consented to laws which severely restrict the method of achieving the desired educational goals. On the other hand, some state courts have rejected unreasonable regulations such as the oppressive Ohio code, which in effect was little more than a poorly disguised attempt to destroy Christian schools. Some states have very strong protections, such as the provision of the Kentucky constitution that no person can be compelled to send his child to a school to which he is conscientiously opposed. The diverse state practices and the continued meddling of legislators and bureaucrats make this an area in which we must practice continued vigilance.

An ominous development was the refusal of the Supreme Court to overturn a ruling of a lower court that the state of New Jersey could strip Shelton College of its right to grant degrees since granting degrees is not a religious function. Although the quality of education at Shelton may be open to question, the decision may be a dangerous precedent in defining the rights of states to license religious colleges.

Freedom from Taxation

In Western civilization the long tradition of tax exemption for churches rests in part on the traditional application of such Bible passages as Ezra 7:24 and Genesis 47:26. The constitutionality of such tax exemption for property used for religious purposes was upheld in 1970 (*Walz v. Tax Commission*). The grounds were that taxation of churches would create "excessive entanglement" of church and state if the state took legal action against churches in tax disputes or if it had churches under continuing surveillance to assure compliance. Though tax exemption is an indirect economic benefit, it creates less danger of church-state entanglement than taxation would. In this matter, the need to prevent government interference or oppression through taxation outweighs the indirect aid which is given by exemption. It can be noted that taxation was one of the chief means which the Communists used to destroy the church in the Soviet Union.

Tax exemption, however, is not an assured right. It can be removed from institutions which practice policies deemed detrimental to public policy, if the government has a compelling interest which cannot be achieved in a less restrictive way. The main case here is that of Bob Jones University which was denied tax exemption by the IRS for its racial policies. In this case, a number of disturbing questions were left unresolved. How is it determined if a school has violated public policy? How far can the IRS go in investigating religious

schools? At some future date might speaking against homosexuality or discrimination against women be “detrimental to public policy?”

Other reasons for loss of exemption are spending more than an insubstantial amount of time in lobbying for candidates or legislation (*Christian Echos National Ministry v. United States* 1972), or engaging in other non-religious activities. In 1986 the Catholic hierarchy of the United States was fined \$100,000 per day when they refused to turn over church records on the order of a judge who was trying a suit to remove the church’s tax exemption because of its pro-life lobbying and endorsement of candidates. At the instigation of Americans United for Separation of Church and State the IRS is currently seeking revocation of tax-exemption against non-profit groups or congregations that are judged to have endorsed particular candidates (*C & S*, Jan and Mar 99, *WLQ*, Su 99 p. 225). A church in Green Bay is on the list of those being pursued. Churches may distribute non-partisan, neutral materials, but not “biased materials.” The Christian Coalition recently won a case against the FEC in US District Court protecting its right to distribute non-partisan election guides. (It was convicted, however, of illegal support of the campaigns of Oliver North and Newt Gingrich.) Six US Senators (Coverdell, Helms, Sessions, Thurmond, Nickles and Brownback) have requested that Attorney General Janet Reno conduct a criminal investigation into the activities of the non-profit organization Americans United for the Separation of Church and State. In their letter to Reno the senators say that Americans United has attempted to “disenfranchise religious voters by intimidating people of faith into not participating in the political process.”

Churches whose funds are used for the personal benefit of individuals, such as mail-order ministers operating as tax dodges, also are not exempt.

Our synod’s little footnote in the realm of religious freedom litigation falls into this category of freedom from taxation. In *St. Martin Ev. Lutheran School v. South Dakota* (1981) two of our schools challenged the right of South Dakota to impose unemployment compensation taxes on our schools. South Dakota was enforcing a ruling of the Secretary of Labor that a recent amendment of the law had made church-related schools subject to this tax. Congress had removed the exemption of private schools but not the exemption of employees of a church or an organization which is operated primarily for religious purposes. The South Dakota appeals referee ruled that “church” means church building, so our teachers did not work for a church, but for a school, and that the primary purpose of a school is educational, not religious. Therefore, our schools were not exempt. This ruling was overturned by the Supreme Court which ruled that “church” obviously refers to an organization of worshippers, not to a building, since the law is talking about employers, not places of employment. Our teachers are clearly in the employ of a church. If Congress had intended to repeal the exemption of our schools, they bungled the job since the language of the law still included individuals in the employ of a church, of which class our teachers were an obvious example. The case was thus decided on statutory grounds and did not address the constitutional issue of whether our schools could be subjected to such taxes if the law did indeed include them in such coverage.

The LCMS instituted legal action against the IRS challenging the ruling which classifies women teachers as employees for Social Security purposes (which would seem to contradict the so-called Missouri Synod view of the ministry). Our policy of accepting this distinction would not seem to be in accord with our view of the ministry.

Application of non-discriminatory policies

Federal non-discrimination legislation is of two types, that which applies to those receiving government aid and that which applies to all employers.

An example of aid-based legislation is Title VI which forbids racial discrimination in any program or activity receiving federal financial assistance. This law does not grant an exemption for religious conviction, and it applies to all forms of aid including V.A. benefits. Title IX forbids sex discrimination in educational programs and activities which receive federal assistance. Title IX does allow an exception for institutions controlled by religious organizations if application of its provisions would not be consistent with their religious

beliefs. This religious exemption must be claimed in writing. This claim must specify which provisions of the law conflict with the petitioner's religious beliefs and the specific beliefs with which they conflict.

The two key questions in the area of aid-linked regulation are: 1) Does aid to students, such as grants or loans, make the school a recipient of aid and therefore subject to regulation? 2) If a school receives aid, are all programs in the school subject to regulation or only those which receive aid? The Supreme Court answered both of these questions in the case of *Grove City College v. Bell* 1984. In this case a Christian college in Grove City, Pa. refused to comply with a government request that it sign a non-discrimination statement. It claimed that it received no government aid and thus was not subject to regulation. The Court ruled that colleges which enroll students who receive federal tuition grants are subject to anti-discrimination regulations, even though they receive no direct aid. However, the Court ruled that only the programs which received the aid are subject to government regulation, in this case the financial aid program of the college. However, this limitation is based on the wording of the current law. In March of 1988 Congress overrode President Reagan's veto of the Civil Rights Restoration Act of 1987, which stated that the whole of an institution is subject to anti-discrimination regulations if any of its programs receive even indirect aid. This case is a warning that church schools risk government regulation, even when they accept indirect aid which is funneled through students or parents

An example of regulation not dependent on receipt of aid is Title VII (Civil Rights Act) which prohibits discrimination in employment based on race, color, religion, sex or national origin, unless these criteria are bona fide occupational qualifications. (Race, however, is never a bona fide requirement under most interpretations of the law.) The law allows discrimination on the basis of religion at schools entirely or substantially controlled by religious groups or at institutions directed toward the propagation of religion. On this basis, EEOC regulations require all institutions of higher learning with more than 15 employees, including theological seminaries, to file reports on compensation, tenure, race and sex of employees. Southwestern Baptist Theological Seminary refused to submit such reports. The U.S. Court of Appeals ruled that teachers and supervisors of teaching are exempt ministers. Support people are exempt if they have religious responsibilities which go beyond simple employment duties and church membership. If not, they are subject to EEOC regulation. Title VII, therefore, does not provide blanket exemption for religious schools, but only for areas in which specific religious tenets are involved. It is unclear how this regulation will be enforced since the EEOC allowed Seattle Pacific University to give preference to those of its own religion even in jobs not directly related to religious duties.

In 1986 a case which was expected to have a decisive impact on church "employment practices" came to an indecisive conclusion in the Supreme Court. Both church groups and civil rights activists awaited the settlement of the case of *Dayton Christian Schools* with apprehension. A woman teacher had been dismissed by the Christian school because of its policy of not hiring married women with small children and because she violated the church's beliefs and policy by taking the dispute outside the church for settlement. She had appealed to the Ohio Civil Rights Commission. The school claimed that the commission had no jurisdiction since the church's personnel policies were protected by separation of church and state. The Court's verdict was a limited defeat for the church. The Court ruled that the Civil Rights Commission could review the case to see if the woman was, in fact, dismissed on religious grounds. The Court ruled that the church could press its claim of religious exemption before the Civil Rights Commission. Even religious organizations cannot claim to be wholly exempt from state regulation. According to this ruling, the federal courts will intervene only after state agencies and courts have acted on the basis of state law. This means that the question of government interference in the hiring policies of church schools is left unresolved.

The Court in 1986 let stand a ruling of the Fourth US Circuit Court of Appeals that the 1964 Civil Rights Act does not apply to a church's pastoral hiring decisions. The suit of *Carole Rayburn* against the Seventh Day Adventists, based on her claim that the need to eliminate racial and sexual discrimination overrode the church's First Amendment rights, was rejected. Thus, for the time being there seems to be less danger of intrusion into the "hiring" of pastors than of teachers, but lower courts have upheld the right to discriminate also in positions other than pastor. In 1987 the 7th Circuit Court upheld the right of Marquette University to refuse a

teaching position in the theology department to a woman who held theological views contrary to those of the Catholic church. In 1980 the California Superior Court ruled that a city ordinance banning discrimination on the basis of sexual preference could not be applied to the position of church organist if the organist was a part of the church worship team.

The focus of the battle in this area of the law now centers on efforts of the Boy Scouts to discriminate against homosexuals. State courts have come up with conflicting rulings. The supreme courts of four states (Connecticut, Oregon, Kansas and California) have ruled that the Scouts are a private club and exempt from non-discrimination statutes. According to a 1999 New Jersey Supreme Court ruling the Scouts are a public accommodation and not exempt. The New Jersey court also held that the Scouts' ban on homosexuals was rooted in prejudice and bigotry. The New Jersey decision has significant implications for churches and other religious organizations. While churches themselves have a high degree of protection in the law, other religiously-oriented organizations in New Jersey must face the possibility that a future court could find them also to be public accommodations, and subject them to the same anti-discrimination statutes as the Scouts. The enforcement of the New Jersey ruling is likely to be placed on hold while the Scouts appeal the case to the US Supreme Court.

An Ominous Change in Direction?

A 1990 Supreme Court decision seemed to be such a grave threat to religious freedom that representatives of a large number of religious groups ranging from the American Jewish Congress to the Unitarian-Universalist Church to the Lutheran Church-Missouri Synod filed a petition requesting a rehearing of the decision.

The case (*Employment Division v. Smith* 1990) seemed harmless enough in itself. The Court sustained the right of the state of Oregon to deny unemployment benefits to counselors who were fired for using the drug peyote during Native American religious rites. In and of itself this ruling would not be a departure from the longstanding principle that religious freedom does not protect actions which are dangerous to the health, safety, morals and welfare of society. Mormon polygamy, sacred prostitution of the Church of the Most High Goddess, religious snake handling, and compliance with fire and safety codes are among other practices which have previously been regulated on this basis. Regulation of drug use would seem to fall into the same category.

What alarmed guardians of religious freedom was not the ruling itself, but the rationale set forth in Justice Scalia's majority opinion, which seems to establish a very dangerous change of direction in the Court's basic principles. In recent years the Court has recognized that sincerely held religious beliefs should receive a "preferred freedom" status which entitles them to special protection. This principle was established in the 1963 *Sherbert v. Verner* case. The so-called Sherbert Test states: If the laws of a state conflict with religious beliefs and practices, the state has an obligation to prove that it has a "compelling interest" in enforcing the law and that it does not have "alternative means" of achieving its goals. It would seem that religious drug use could have been banned as against the "compelling interest" of the state, but Justice Scalia chose to base the decision on a dangerous new precedent.

Justice Scalia's opinion modified the basic attitude of the Court toward exemptions from the law on religious grounds. In his view the government may grant religious exemptions, but has no constitutional obligation to do so. In effect, the state may restrict the free exercise of religion as long as it does so inadvertently through a generally applicable law. Scalia admitted that his ruling will force religious minorities to seek relief from oppressive laws by lobbying elected officials for relief, and that some will fail in their efforts. Scalia observed that leaving the accommodation of religious needs to the political process will place a disadvantage on those religious practices which are not widely engaged in, but this unavoidable consequence of democratic government must be preferred to a system where each conscience is a law unto itself. There is no special entitlement to religious exemptions unless they can be attached to some other constitutional right, such as freedom of speech. This line of reasoning was acceptable to conservative justices Scalia, Rehnquist, White, Kennedy, and the more liberal Stevens, who often takes a narrow view on the free exercise of religion.

Justice O'Connor supported the ruling against drug use, but dissented from the language of Scalia's opinion as incompatible with our nation's fundamental commitment to individual liberty. She defended the Sherbert Test as an effort to strike a sensible balance between religious liberty and the compelling interests of the state. The more liberal justices Marshall, Blackmun, and Brennan supported O'Connor's opinion but would have gone farther in granting the claim of the adherents of the Native American Church.

Strong objections to the ruling and fears about its future implications came from across the whole range of religious groups, liberal and conservative, Christian and non-Christian. The relatively little support the ruling received came from the conservative constitutional scholars and columnists. George Will offered the opinion that the subordination of religion to the political order is a central purpose of America's political arrangements and that religious freedom consists of freedom to *believe* what you want in private, but not freedom to *practice* those beliefs against the political will of the majority.

If this ruling becomes the basis of future court actions, protection of the religious rights of unpopular minorities who have no significant political power will depend on the whims of legislators, not on constitutional principle. The Scalia opinion seems to throw the defense of unpopular minority religious views and practices into the political arena from which the constitution sought to remove it.

Many observers, of course, see a certain amount of irony in the fact that conservative Christians, who were often strong supporters of a more conservative court, may be among the first to be threatened by the shifting court majority if the new court doctrine is ultimately used against churches that discriminate on the basis of sex or sexual preference in selecting employees. This is not a new trend, however, since for several decades it has been the liberal justices who have been the most outspoken defenders of unpopular, minority religious views.

In 1993 Congress passed the Religious Freedom Restoration Act which declared that the compelling interest test must be applied in all cases in which the free exercise of religion is substantially burdened. The Supreme Court in turn declared the RFRA unconstitutional in *City of Boerne v. Flores* (1997) on the ground that it violated separation of powers. Currently Congress is trying to pass another law aimed at overthrowing the Smith decision, entitled the Religious Liberty Protection Act. The once well-settled interpretation of the free exercise clause is now muddled.

CASES PREVENTING THE ESTABLISHMENT OF RELIGION

Aid to Christian Schools

The most controversial issue involving the establishment clause is the question of government aid to religious schools. There have been many cases concerning this issue so we can only summarize the main points. The Supreme Court has permitted loans of text books to children (*Cochran v Board of Education* 1930) and other "child benefit" aid such as transportation, health tests, and standard achievement tests (*Wolman vs Walter* 1977). The recent tendency has been to set very strict limits on such aid. Released-time religious instruction may not be held on public premises, but it is permissible to allow children to go to church facilities for such classes (*McCullum v Board of Education* 1948 & *Zorach v. Clauson* 1952). Public funds may not be used to make payments to religious schools even for secular subjects (*Lemon v. Kutzmann*, 1971), nor may "auxiliary services" be provided on religious premises (*Meeks v Pittenger*, 1973). Indirect aid to religious schools is permissible only if it meets at least three tests: 1) it has a secular purpose, 2) its primary effect neither advances nor enhances religion, and 3) it avoids excessive entanglement of church and state. Some justices have suggested that such aid must pass a fourth test: it does not create political divisiveness. The justices made a partial retreat from a strict ban on direct aid in *Committee for Public Education and Religious Liberty v. Regan* (1980), which allowed cash payments to religious schools for administering standard tests. In the most recent cases they have again tightened restrictions against any form of direct aid (*Aigular v. Fenton* 1985 and *Grand Rapids School District v. Ball* 1985). In these rulings New York and Michigan laws allowing public school teachers to offer remedial and other classes in religious schools were rejected, in spite of strict controls to assure

that teaching in the classes would be secular. Though the laws had a secular educational purpose, they nevertheless advanced religion and created church state entanglement by offering substantial aid or by increasing state supervision of church schools. The Court will allow indirect and insubstantial aid, but not aid which is direct or substantial. The issue was further confused by the 1997 *Agostini v. Fenton* case which allowed publicly funded special education teachers to teach inside parochial schools. It seems that regular classes are not permitted, but special services to children with special needs are.

One form of indirect aid, tax credits to parents with children in private schools, was rejected in *Committee for Public Education & Religious Liberty v. Nyquist* (1973) on grounds that such credits were an advancement of religion and increased rather than decreased church-state involvement. Under some conditions tax credits to parents are permissible. A Minnesota law was upheld because it offered tax credits for tuition to parents of public and private school pupils (*Mueller v. Allen* 1983). Of course, few public schools have tuition charges.

In January, 1986 (*Witters v. Washington Dept. of Services to the Blind*) the Supreme Court ruled that the constitution does not prohibit the state of Washington from granting vocational aid to a blind man training for the ministry. The state is merely aiding a person to obtain vocational training so that he can function independently. The vocational choice was made by the student. The program has a secular purpose of aiding the blind, and does not have the primary effect of advancing religion. The present Court would not approve “ingenious plans for channeling aid to sectarian schools”, but only genuinely neutral programs.

Since many of the decisions were by narrow margins, there was an obvious struggle going on between the justices who favor a “indistinct, variable barrier” (Rehnquist, Burger, O’Conner, White) and those who favor the “high impregnable wall” (Marshall, Brennan, Stevens, Blackmun) (Powell swingman).⁸ Overall, the Supreme Court appears to have erected a substantial barrier to aid to religious schools. The exception is church-affiliated colleges and universities, since they are considered to be providers of a more general education. For example, government funds can be used for buildings at church affiliated colleges if they are not used for religious purposes (*Fulton v. Richardson College*).

This battle is now being fought again over school choice and various voucher systems. Because plans vary from state to state a comprehensive treatment is not possible. Of special interest is the struggle in Wisconsin. In 1989 the legislature approved a limited voucher program whereby public funds could be used to pay for tuition at non-sectarian private schools. In 1995 the program was expanded to include religious schools. In January 1997 after the state supreme court deadlocked on the issue a state circuit court ruled the voucher plan unconstitutional since it forces taxpayers to support religious institutions. The judge quoted from the schools’ own statements of purpose which clearly stated their religious aims. In June 1998, however, the state supreme court upheld the constitutionality of the plan on the grounds that it has a secular purpose, did not have the primary purpose of advancing religion, and avoided excessive entanglement. It is the last point that is especially debatable. Most of our schools have concluded that there are enough entanglements and strings attached that they should not participate. (*WLQ* Winter 1999, p. 66-68; *NL* October 1998, p. 20). Voucher battles are going on in at least a dozen states, and it will probably be some time before the last word is heard.

Religion in Public Schools

The Court has taken a strong stand against religious practices in public schools. The most famous case is *Engel v. Vitale* (1962), which banned government-written prayer in public schools. The tendency to keep religion out of public schools has been strongly enforced in recent decisions. *Abington Township School District v. Schempp* (1963) added devotional use of the Lord’s Prayer and Scripture to the list of banned practices. However, non-devotional and non-evangelistic teaching about religion is permissible. More recently, a Kentucky statute requiring the posting of the 10 Commandments was overturned because it did not have a genuine secular purpose. An avowed secular purpose is inadequate basis for such a law (*Stone v. Graham*

⁸ Of the more recent justices Scalia and Thomas seem to fall into the accommodationist camp, Souter, Kennedy, and Ginsberg into the strict separationist camp. Some of the justices are not consistently in one camp.

1980). The most recent cases (Wallace v. Jaffree 1985 & Lee v. Weisman 1992) continued this trend by striking down an Alabama law which authorized silent meditation and prayer and by banning prayers at middle and high school graduations. States can allow moments of silent meditation, but they cannot suggest that they be used for prayer.

Chaplains

A strange anomaly in the area of constitutional law is the legality of state and federal chaplaincies contrary to all the principles espoused by the court. This is upheld as a “historical exception” on the basis of long-standing precedent (Marsh v. Chambers 1983). WELS had a small role in the case as opponents of the chaplaincy pointed to WELS as an example of how churches should serve their men without government aid.

CONCLUSION

Where then do we stand today? On the whole, we would have to say that in issues of religious freedom and separation of church and state the Supreme Court has done a good job of preserving these freedoms. If anything, they have probably extended the separation beyond that intended by the language of the Constitution. (There were, however, probably as many different interpretations of the 1st Amendment among those who adopted it as among more recent Supreme Court justices.) The court has tried to establish not only a strict separation but, on the whole, a “benevolent neutrality.” Russia too has separation of church and state, but it is a hostile separation, intended to hinder the church in every way possible. If anything, the Court has tended to give preferred status to religious freedoms. One of the biggest surprises for me in preparing for this institute has been the number of wise statements and the deep concern for religious education from some of the most liberal Supreme Court justices, justices whom I had been hoping would soon shuffle off this mortal coil. Regardless of its record in some other areas, on the whole the Court’s record in religious freedom issues has been excellent, though there has been some wavering in recent years.

The record of lower courts and federal and state bureaucrats has been much less distinguished. Though there have been occasional bright spots, there has not been a conspicuous shortage of overzealous bureaucrats, legislating judges, and gullible legislators in recent years. The most conspicuous threats have been from state educational bureaucracies, federal civil rights inspectors, and an increasingly aggressive IRS. Though we can be very thankful for the degree of freedom we have, we will have to keep a vigilant eye on the activities of some of these groups if we hope to preserve it.

Appendix 1: Confidentiality and Sexual Abuse

Government efforts to battle sexual abuse are increasingly becoming a new battleground in church and state relations, which is beginning to rival government regulation of education as a prime area of conflict. There is no dispute about the need to take strong measures to combat child abuse and sexual abuse of every form, but conflict and questions are increasing in two areas: requirements that pastors report suspected abuse even in violation of confidentiality, and changing standards for defining sexual abuse by counselors.

Confidentiality v. Reporting Requirements

The Autumn 1990 issue of the *Journal of Church and State* contained one of the more comprehensive recent surveys of this issue. This report by Alexander Hill and Chi-Dooh Li is recommended reading for anyone with a special concern for this topic.

All states except one offer clergy some degree of exemption from exposing confidences received in the course of their pastoral duties,⁹ but in recent years more states have been denying such an exemption in the case of suspected child abuse and demanding that all such cases be reported to authorities immediately. Currently 17

⁹ Information which a pastor receives by report or observation is in a different class than confidences received in confession or counseling.

states require pastors to report, and 33 do not. The great variability of state laws is like a patchwork quilt leaving pastors and counselors bewildered as to what they should do to meet legal requirements, not to mention their ethical responsibilities as counselors. In some states a counselor who has received a confession of child abuse will be in violation of a law forbidding the disclosure of confidences if he reports the abuse or in violation of a law which requires the reporting of all suspected abuse if he does not. Clearly, such laws are in need of clarification, but it is likely that this will come only as a result of litigation.

Even if the law does not require a pastor to report suspected abuse, a counseling pastor still does not know where he stands in this matter. The lengths to which zealous prosecutors will go in this matter was illustrated by the 1987 case of Rev. Scott Hartley of Seattle. He was convicted of violating the state reporting law in spite of the facts that the state law did not require pastors to report, that he had taken steps to have the suspected abuser removed from contact with the child, he had carefully investigated the case even though the accused abuser had a reputation for honesty and the accuser a reputation for lying, he had urged the mother to report the alleged abuser when evidence of guilt was uncovered, and the abuser had been convicted. In spite of all this, a year after the case the prosecutor sought and obtained a conviction on the grounds of her contention the Hartley should be held accountable to the law's requirements for social workers since in his counseling capacity he was a social worker, not a pastor. Her view that all practical work is secular, not spiritual, would have truly frightening implications for the curtailment of religious freedom if it were widely adopted. In this case, Hartley's conviction was reversed on the grounds that he had been improperly denied clergy status.

In California two pastors were convicted of failure to report abuse, even though the California law exempts clergy. A girl had privately disclosed abuse to one of the pastors and asked that he not tell any one. The pastors confronted and disciplined the stepfather. He was later arrested and convicted. Nevertheless, the pastors were convicted on the grounds that they were obligated to report the suspected abuse as administrators of the congregation school (reported in *National & International Religion Report*, 12-31-90).

In the view of Hill and Li the danger of similar prosecutions in the future will be increased by the Supreme Court decision in the "peyote case" (*WLQ*, Fall 90, p. 308) which overturned the long standing legal precedent which required that states cannot restrict the free exercise of religion unless they have a compelling interest which cannot be met by less intrusive means.

In addition to the danger of legal prosecution in some states pastors also face the danger of civil suits brought by the victims of abuse if they fail to report.

In assessing the situation Hill and Li express the following concerns:

- 1) The law should not put pastors and other clergy in a dilemma where they must choose between violating either the law or the ethical and spiritual standards of confidentiality. The law should not be so inconsistent or unclear that pastors can't really figure out what is legally required of them.
- 2) Laws should take into consideration efforts of counselors to rectify the situation. Under some current laws a pastor could provide financial help and babysitting for single working mothers who were having trouble giving full care to their children and still be convicted for failure to report potential neglect.
- 3) In the long run laws which make it impossible for abusers or parents who have difficulty providing for their children to seek help and counseling without being imprisoned or losing their children may actually prove harmful to the very children they are trying to protect. This may happen if troubled parents or children become afraid to seek help and counseling, knowing that their confessions or pleas for help will surely be exposed to the law. Their only course of action will be to hide their need for help.
- 4) There should be a stronger criterion for triggering the reporting requirement than mere suspicion. Some concern must be shown for reputations which can be permanently damaged by reporting incidents which have no basis in reality. A case was reported (*NIRR* 12-31-90) in which a 5th or 6th grade girl "swore on a stack of Bibles" that a teacher had touched her breast even though competent witnesses who were present knew this had not happened. What would have happened to the

teacher's career if no other witnesses had observed the incident, and he had been suspended on the basis of the girl's report? Other recent studies have revealed that children are more susceptible to suggestion or coaching in reporting and describing sexual abuse than had been recently thought. This phenomenon also is a factor in the second part of this report.

Avoiding Accusations of Abuse

Various aspects of this topic were discussed in *NIRR* (Dec. 31, 1990). Our concern in this matter goes beyond the necessity of guarding our hearts and practicing discretion in counseling so that we as pastors never become guilty of actual sexual abuse. This, of course, is essential for the spiritual well-being of the people we serve and for the reputation of the church and its ministry. However, in this report we are concerned with going the extra mile to avoid even the suspicion of such abuse arising.

In this matter, expectations are becoming even more stringent than they were in the past. Not too long ago, it was not unusual for pastors to be advised by secular counselors to be "warmer" and more open in displaying affection. Such advice is seldom heard today. Much of the most recent discussion flows out of Minnesota Statute 148A which allowed a parishioner to sue a pastor for emotional damages due to consensual or non-consensual sexual contact. It is somewhat hazardous to draw general applications from Minnesota law since it is the most extreme in the nation, but a consideration of this law gives a warning of the increased hazards in this area. Minnesota psychologist Gary Schoener and attorney Patrick Schiltz give strong warnings to pastors in this regard. (*NIRR*, 12-31-90, *Lutheran* 1-31-90, p. 40). Pastors should avoid warm-hearted hugs in the church narthex, while counseling, perhaps even after funerals. Pastors should "cool all affection if they want to steer clear of lawsuits." They should especially avoid touching adolescent girls who are entering into sexual feelings and experiences much earlier than they used to. Attorney Schiltz advises that even single clergy who date members do so at their own legal peril because it would be hard to say when they were not counseling. Even after marriage a spouse could sue on the basis of the claim that she (or he) was manipulated into the marriage. (The February 20, 1991 issue of *The Christian Century* p. 196-99 contains a very strong article on this subject from an ethical, rather than a legal point of view, which is worth critical study by those with responsibility in this area.)

An additional factor of the Minnesota law is that it makes employers (i.e. congregations and maybe districts) liable if they have not screened and/or disciplined counselors (i.e. pastors) whom they have hired (i.e. called.) This Minnesota law may represent an extreme, but it emphasizes that importance of not only avoiding evil in this matter, but of avoiding even the appearance of evil.

Conclusions for Pastors

- 1) Stay informed. Know the particular points that pertain to pastors in your state's laws. Read books on the subject. Survey periodicals like *Church and State*. Make sure you have a state legislation committee that is keeping you informed about such matters.
- 2) Practice the highest degree of discretion and good judgement in your counseling practices. The traditional warnings (Have a third party nearby, preferably visible, during counseling, etc) are more necessary than ever. Other contemporary legal suggestions: make referrals to doctors and therapists when necessary; place counselees in groups when dependency or transference will result from continued personal counseling; (from a New York attorney) don't keep counseling notes which can be subpoenaed and cultivate a "forgetfulness of God" about confidences communicated during counseling.
- 3) In these matters psychologists and lawyers can give us insights as to what will be right, or at least expedient, in the eyes of men, but we must do our own study of Scripture to determine what is right in the eyes of God. We have a higher responsibility than avoiding lawsuits, that is, our responsibility to conduct a ministry in conformity with Matthew 18 and all other pertinent parts of Scripture. If situations arise in which there is a conflict between the two responsibilities, we know which we will have to choose. For this reason, this topic

should be studied and discussed in local pastors' meetings so that we all make every effort to do what is right both in the eyes of men and in the eyes of God.

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