

15th General Assembly, 1987, Appendix Q, p. 429

NOTE: The following positions of the Church/State Committee were received for information and study but not adopted by the 15th General Assembly.

REPORT OF THE CHURCH/STATE SUBCOMMITTEE

I. PREAMBLE TO CHURCH/STATE SUBCOMMITTEE REPORT
TO THE PCA GENERAL ASSEMBLY
BIBLICAL, HISTORICAL, AND CONTEMPORARY CONCEPTS OF
CHURCH/STATE RELATIONS
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To be submitted to the Fifteenth Meeting of the General Assembly in Grand Rapids, Michigan:

Over the past 3 or 4 years, the General Assembly of the Presbyterian Church in America has received a number of overtures from various Presbyteries asking for guidance in dealing with actual or potential difficulties in church/state relationships. These concerns range from whether the denomination should remain an incorporated body, what should be the response of churches to F.I.C.A., property, and other forms of civil taxation, what are the rights of parents and churches to educate their own children as they see fit, to such matters as the propriety of Christian resistance to unjust governmental policies such as the legalization of abortion. These and other concerns have caused the General Assembly to set up a special subcommittee on Church/State relationships.

Your committee, made up of both ruling and teaching elders—including some attorneys at law—has been studying these matters carefully for nearly a year in order to bring you this report. Before we can offer specific guidance on our contemporary difficulties, we must first briefly consider the Biblical and historical background. We may consider both principally and practically our current church/state problems and possible responses.

I. Biblical and Theological Background of God, man and government

The Bible begins with the greatest reality of all: God. Everything that can be said about man and society, life, structure and order ultimately flows from and depends upon who God is. Old and New Testaments reveal that God is an infinite Person; indeed, He is the one, true God, eternally existing in three Persons: Father, Son, and Holy Spirit. This God, out of his sovereign plan and good pleasure, created the world—and all reality—out of nothing, and gave it the structures and principles of energy and activity that He wished it to have. As the crowning work of creation, God created man—male and female—in his own image, with dominion over the creatures. Man, though finite, is like God in that he has personality and is made to reflect God's personality (e.g. His holiness and love) in his individual life and social relationships of every kind.

Only God has sovereign, unlimited power, but He gave man to share His power in a limited and structured way as His image-bearer. From the very beginning, man has been involved in a definite power (or authority) structure. God has total authority overall and humankind has limited authority under God. The male has a certain limited authority under God. The male has a certain limited authority over his wife, the parents over the children, and human beings over the animals and natural environment. In other words, God's authority which He imparted to man was first of all mediated through the structure of the family. The family was in a sense the first school, the first church, the first farm and factory, and the first state. Man was responsible to live his life and thus to exercise power through these structures in a way that was in accordance with the character of God in whose image he was created.

The tragic coming of sin into the world negatively and drastically affected individual and corporate man in all of his relationships, but it did not remove the essential structures by which man was to live his life and exercise the power that was necessary to do so. We may summarize the outward effects of these sin-altered relationships by saying that parents were given the rod and the state was given the sword to maintain order and make the living of life possible in a fallen world. The final effects of sin issue not merely in the rod and the sword, but in the unspeakable horror of death and hell.

But Scripture reveals that God not merely limits the effects of sin during this earthly life via the rod and sword and finally punishes it in outer darkness, but more importantly, out of His sheer grace and love He has provided a way—in accordance with an eternal plan—for multitudes of sinful humanity to be redeemed. And so from the time of our first father Adam's fall, God has made gracious promises of salvation to man and has called humanity into a new relationship with Himself that we traditionally call the Covenant of Grace.

Just as God provided a structure through which what we might call "civil" aspects of human relationships might be carried on in terms of orderly and limited power, even so He provided a structure through which the gracious, redemptive aspects of divine/human, and human/human relationships could flow. This structure or sphere of power and authority is the church or people of God in both its Old and New Testament aspects. Put in another way, the Bible teaches that both state and church are ordained by God with legitimate and limited authority for the structuring of man's life.

Now the concern of our committee has not been so much with the redemptive structure and ministry of the church as it is with the relationship of the church to an institution of equally divine ordination: the state. On the basis of the preceding theological context of church and state in light of who God is and what His plan is, we may draw some preliminary conclusions about how the structures of church and state are intended to function.

First we note that only God is sovereign and only God has absolute and unlimited power. Man, in the image of God, does have power and authority, but since man is finite and limited, his authority and power, whether he exercises it individually or through the structures of the church, state, family, or school is finite and limited in terms of who God is and what God's plan for man is. Thus the exercise of all human power of every sort (whether individual, family, school, church, or state) is defined and limited by virtue of the agents (who man is and who God is) and by virtue of the relationship between them (which we may term "covenant" or divinely-instituted relationship; whether the creation relationship with all men, sometimes called

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“Covenant of Works” or the redemptive relationship with the elect, usually called “Covenant of Grace”).

To carry this matter further, we must look at the inherent limitations of legitimate state power and the ramifications of this for its relationship to the church. On the one hand, Scripture teaches the necessity for all men in general and for Christians in particular to be in subjection to the authority of the civil government or state. Christ says: “Render unto Caesar the things that are Caesar’s, and to God the things that are God’s” (Matt. 22:21). Whatever else this may entail, it certainly means that the legitimate authority of the state (or Caesar) is not absolute; it is limited in respect to what is owed to God. Romans 13, which speaks of civil rulers as ordained ministers of God to whom every soul is to be subject, also specifies the goals for which these ministers are granted power: to be a terror to evil, to give praise to good works, and to revenge wrath upon those who do evil. Thus the state which is carrying out these goals is acting in terms of legitimate, divinely given authority, and is to be unreservedly submitted to for conscience’s sake. H. C. G. Moule summarizes both sides of the equation:

...One side of the angle is the indefeasible duty, for the Christian citizen, of reverence for law, of remembrance of the religious aspect of even secular government. The other side is the memento to the ruler, to the authority, that God throws His shield over the claims of the state only because authority was instituted not for selfish but for social ends.¹

Yet both Biblical and secular history teach that there are many times in which civil authorities no longer act in terms of the divinely given goals of state power and indeed pervert the very ends of government by commanding men to do what God forbids. What then is the Biblical teaching on the appropriate response of the believer when the civil government seriously overlaps its limits?

The Calvinist tradition sees civil governments as well as individual citizens under covenant obligations to God. The powers of civil authorities and governmental structures are therefore specifically limited by God’s transcendent, covenantal requirements upon all human governing authorities. If and when those civil authorities flagrantly transgress their divinely ordained limitations, then the people of God are honor-bound to resist them.

The famous 17th century Scottish Calvinist scholar and statesman, Samuel Rutherford, explains it this way:

That power which is obliged to command and rule justly and religiously for the good of the subjects, and is only set over the people on these conditions, and not absolutely, cannot tie the people to subjection without resistance, when the power is abused to the destruction of laws, religion, and the subjects. But all power of the law is thus obliged (Rom. 13:4; Deut. 17:18-20; 2 Chron. 19:6; Ps. 132:11, 12; 89:30, 31; 2 Sml. 7:12; Jer. 17:24, 25), and hath, and may be abused by kings to the destruction of laws, religion, and subjects. The proposition is clear: 1. For the powers that tie us to subjection only are of God. 2. Because to resist them, is to resist the ordinance of God. 3. Because they are not a terror to good works, but to evil. 4. Because they are not God’s

1. Handley C. G. Moule, *The Epistle of St. Paul to the Romans*, ed. W. Robertson Nicoll, *The Expositor’s Bible*, Vol. V (Hartford: The S. S. Scranton Co.), p. 354.

ministers for our good, but abused powers are not of God, but of men, or not ordinances of God; they are a terror to good works, not to evil; they are not God's ministers for our good.²

In other words, Rutherford does not interpret the expression “higher powers” (of Rom. 13:1) in absolutist terms. If a civil magistrate consistently abuses his position contrary to the limitations placed on him by the transcendent law of the Creator, then Christians have the right and duty to unseat him or indeed, an entire civil order (under extreme conditions). That is, a king or government by flagrantly violating the basic moral law can turn themselves from a “higher power” into a “lower power”.

... no subjection is due by that text (i.e. Rom. 13:1), or any word of God, to the abused and tyrannical power of the king, which I evince from the text, and from other Scriptures.

1. Because the text saith, “Let every soul be subject to the higher powers.” But no powers commanding things unlawful, and killing the innocent people of God, can be *ιχυσται υπερχυσται* (higher powers), but in that, lower powers. He that commandeth not what God commandeth, and punisheth and killeth where God, if personally and immediately present, would neither command nor punish, is not in these acts to be subjected unto, and obeyed as a superior power, though in habit he may remain a superior power...

... but when they command things unlawful, and kill the innocent, they do it not by virtue of any office, and so in that they are not higher powers, but lower and weak ones ...

But he who resisteth the man, who is the king, commanding that which is against God, and killing the innocent, resisteth no ordinance of God, but an ordinance of sin and Satan; for a man commanding unjustly and ruling tyrannically, hath in that, no power from God...

... we are to be subject to his power and royal authority, in abstracto, is so far as, according to his office, he is not a terror to good works, but to evil.³

Underlying the resistance theory of Rutherford and his Scottish, English, and American successors are at least two important assumptions about the nature of government itself and about the balance between sovereignty and responsibility. First, because all men are created in the image of God, the powers of human government are never absolute: rather, they are limited by the nature of God, man, and the various covenants between them, covenant relationships which are rooted in the very structure of man and nature:

But the general covenant of nature is presupposed in making a king, where there is no vocal or written covenant...

² Samuel Rutherford, *Lex, Rex* (Sprinkle Publications: Harrisonburg, VA, 1980, reprint), p. 141.

³ *Ibid.*, pp. 144,145

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When the people appointed any to be their king, the voice of nature exponeth their deed, though there be no vocal or written covenant; for that fact—of making a king—is a moral lawful act warranted by the word of God (Deut. 17:15, 16; Rom. 13:1, 2) and the law of nature; and therefore, they having made such a man their king, they have given him power to be their father, feeder, healer, and protector, and so must only have made him king conditionally, so he be a father, a feeder, and tutor. Now, if this deed of making a king must be exported to be an investing with an absolute, and not a conditional power, this fact shall be contrary to Scripture, and to the law of nature; for if they have given him royal power absolutely, and without any condition, they must have given to him power to be a father, protector, tutor, and to be a tyrant, a murderer, a bloody lion, to waste and destroy the people of God.⁴

The very nature of man as creature in the image of Almighty God, in the traditional Reformed view, means that a people never have even the right to give away their liberty to any governmental order:

A people free may not, and ought not, totally surrender their liberty to a prince, confiding on his goodness. (1) Because liberty is a condition of nature that all men are born with, and they are not to give it away—no, not to a king, except in part and for the better, that they may have peace and justice for it, which is better for them *hic et nunc*.⁵

Rutherford goes on to explain why it would be immoral for a people to sell themselves out to an absolutist governmental order:

It is false that the people doth, or can by the law of nature, resign their whole liberty in the hand of a king. 1. They cannot resign to others that which they have not in themselves. *Nemo potest dare quod non habet*; but the people hath not an absolute power in themselves to destroy themselves, or to exercise those tyrannous acts spoken of, 1 Sam. 8:11-15, & c; for neither God nor nature's law hath given any such power...

... for the fountain-power (of government) remaineth most eminently in the people. 1. Because they give it to the king, *ad modum recipientis*, and with limitations; therefore it is unlimited in the people, and bounded and limited in the king, and so less in the king than in the people ...

... the fountain-power, which the people cannot give away, no more than they can give away their rational nature; for it is a power natural to conserve themselves, essentially adhering to every created being...

Ibid., pp. 59,60.

Ibid., p. 31.

All that you can imagine to be in a king, is all relative to the safety and good of the people (Rom. 13:4) “He is a minister for thy good.” He should not, as king, make himself, or his own gain and honour, his end.⁶

In answer to the argument that in the providence of God, the people of a land have been placed under a certain government, and therefore, are morally obliged to accept it, even if it is tyrannical, Rutherford states:

This is a begging of the question; for it is denied that the people can absolutely make away their whole power to the king. It dependeth on the people that they be not destroyed. They give to the king a politic power for their own safety, and they keep a natural power to themselves which they must conserve, but cannot give away; and they do not break their covenant when they put in action that natural power to conserve themselves; for though the people should give away that power, and swear though the king should kill them all, they should not resist, nor defend their own lives, yet that being against the sixth commandment, which enjoineth natural self-preservation, it should not oblige the conscience, for it should be intrinsically sinful; for it is all one to swear to non-self-preservation as to swear to self-murder.⁷

This sort of argumentation (in a less explicitly theological form) was taken up and developed by John Locke, and served as an inspiration and apology for both the 1688 Glorious Revolution in England (under the claim that James II had broken the covenant which allowed the people to change governments), and the 1776 American Revolution (under the claim that King George III had broken his covenant with the colonies which allowed them to set up a new form of government). Closely related to this implied “natural” covenant idea, is another theological assumption which has strengthened the hearts and hands of Calvinists in overturning hostile governments: the sovereignty of God and the responsibility of man are always to be held together and to be acted upon in the great issues of life and government.

From this viewpoint, the claim traditionally advanced by many sincere Christians that the sovereignty of God has set up even the most wicked governments, and therefore the appropriate response of the persecuted believer is passively to suffer (since it is after all, willed by the God who “ordains higher powers”) constitutes a failure to adhere to the Biblical balance between divine sovereignty and human responsibility. Rutherford specifically disputes the claim that the sovereignty of God precludes believers from any action against an unjust government other than “tears and prayers”:

When he hath proved that God is the immediate author of sovereignty, what then? Shall it follow that the sovereign in concreto may not be resisted, and that he is above all law, and that there is no armour against his violence but prayers and tears? Because God is the immediate author of the (church) pastor and of the apostle's office, does it therefore follow that it is unlawful to resist a pastor though he turn robber?⁸

6 Ibid., p. 66.

7 Ibid., pp. 81,82,83.

8 Ibid., p. 84.

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Some three centuries after Rutherford, the Southern Presbyterian theologian, Robert L. Dabney, points to the important balance which is needed between God's ordaining sovereignty and man's intelligent responsibility in these difficult governmental matters:

The argument for passive obedience, from Romans 13, is at first view, plausible, but will not bear inquiry. Note that the thing which is there declared to be of divine authority, is not a particular form of government, but submission to the government, whatever it is... The end of government is not the gratification of the rulers, but the good of the ruled. When a form of government entirely ceases, as a whole, to subserve its proper end, is it still to subsist forever? This is preposterous. Who then is to change it? The submissionists say, Providence alone. But Providence works by means. Shall those means be external force or internal force? These are the only alternatives; for of course corrupt abuses will not correct themselves, when their whole interest is to be perpetuated...we have seen that the sovereignty is in the people rather than the rulers; and that the power the rulers hold is delegated. May the people never resume their own, when it is wholly abused to their injury? There may be obviously a point where "resistance to tyrants is obedience to God." The meaning of the Apostle is, that this resistance must be the act, not of the individual, but of the people. The insubordination which he condemns is that which arrays against a government, bad like that of the Caesars perhaps, the worse anarchy of the individual will. But the body of the citizens is the commonwealth and when the commonwealth arises and supersedes the abused authority of her public servants, the allegiance of the individual is due to her, just as before to her servants.⁹

We may summarize therefore the Biblical balance between legitimate submission to state power and the necessary maintenance of individual liberty under God by remembering that the power of the state to which believers are required to submit is not absolute, but is limited in terms of divinely imposed covenant and in terms of man's inherent obligation to use intelligent means to reach proper ends. These Biblical limitations then to state authority have given man an inalienable dignity and liberty which has asserted itself again and again in the overthrow of tyrants and the support of true rulers.

We must now in the second place look at the impact of the biblical heritage on our own Western historical background in order to see who we are, how we got here, and thus how we are to interpret what is happening in our present society.

II. Historical Background of our Contemporary Church/State Context

While our committee wishes to speak in terms of general principles which will apply to all countries, particularly to those nations where the Presbyterian Church in America has missionaries, we must at the same time devote some attention to the current situation in the United States since so many of our Presbytery overtures deal with the problems that are occurring here.

⁹ Robert L. Dabney, *Systematic Theology* (Richmond, VA: Presbyterian Committee of Publication, 1871), p. 872.

It would be inappropriate and impossible in this report to give even a superficial outline of what has happened in the realm of church/state relations between the close of the New Testament period and our own day. Nevertheless, we must attempt to hit a few high spots—with an apology for the selective nature of the exercise.

Any responsible discussion of church/state relations in this country must start with the fact that Americans are, culturally at least, transplanted Europeans: indeed, Northwestern Europeans (for the most part) who come from a centuries old Christianized cultural background. The fact that we come from a more than millennial old Christian cultural context rather than from an Islamic, Buddhist, or French Revolution secularist background is of utmost importance in properly interpreting who we are and how our civil and ecclesiastical structures function.

After over two centuries of persecution of Christianity by the Roman State, the Emperor Constantine was converted to the faith and began the process of making Christianity the official religion of the Roman Empire. As this process continued, there was a movement to Christianize the great law codes of the Roman (and Byzantine) traditions, as seen in such Biblically influenced codifications of civil legislation as the Theodosian and Justinian Codes, which gave protection to the family, regularized inheritance and usury, outlawed perversion, etc. After the Fall of Rome and the rise of European feudal states and then monarchies, the influence of the Bible with its view of limited human governmental power was very strong by way of church canon law as it interfaced with local and national customary law.

As central state claimed more power and control over the populace under various monarchs, the Christian people of Western Europe from time to time reasserted their historic Biblically based liberties through such movements and instruments as the Spanish and English Magnae Chartae. Absolutist monarchs and a would-be all-powerful papacy were continually stymied by the Common Law legacy of Biblically-based, Covenant insured freedom of the people (within certain limits). The Reformation and Puritan periods have long been studied in these very terms—of the reassertion of Biblical liberty of thought and life over illegitimate, absolutist centralized authority.

The initial settlement of the United States came of course during the Puritan Period in the early 1700's, as a consequence of the English Middle Class's struggle for Biblical, Common Law liberty against a church/state establishment which had arrogated to itself powers far beyond legitimate covenant bounds.

Most of the American colonies had official charters which specified their Biblically based liberties (at least, in general), and by the time of the American Revolution in 1776, nine of the thirteen original states had established state churches. By this time however American life was marked by a variety of different denominations and sects so that the desire was widespread to disestablish the Anglican and Congregational Churches in favor of "a free church in a free state". There was very little desire though to separate the state (i.e. the new national government) from Christianity itself; but rather from particular denominational hierarchies.

This is the background to the First Amendment to the U.S. Constitution which guarantees that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof..." Robert L. Cord, an acknowledged expert on the history of the First Amendment, concludes that it was intended to accomplish three purposes:

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First, it was intended to prevent the establishment of a national church or religion, or the giving of any religious sect or denomination a preferred status. Second, it was designed to safeguard the right of freedom of conscience in religious beliefs against invasion by the national Government. Third, it was so constructed in order to allow the States, unimpeded, to deal with religious establishments and to aid to religious institutions as they saw fit. There appears to be no historical evidence that the First Amendment was intended to preclude Federal governmental aid to religion when it was provided on a nondiscriminatory basis. Nor does there appear to be any historical evidence that the First Amendment was intended to provide an absolute separation or independence of religion and the national state. The actions of the early Congresses and Presidents, in fact, suggest quite the opposite.¹⁰

Until the late 19th and early 20th centuries, the American courts largely proceeded on the assumption that while America had no established or favored denomination, still the basics of Christian morality were part and parcel of the Common Law.¹¹ Based on a study of judicial cases all through the 19th century, William George Torpey has noted:

Under this theory, the state adopted a common law recognition of Christianity, rejecting those portions of the English law on the subject which were not suited to their institutions. Hence, freedom for the exercise of Christian beliefs has antedated freedom for the exercise of any belief and freedom for lack of belief.¹²

By the period of the War Between the States, powerful secularizing trends were abroad in America which would by and by deeply affect the relationship between the civil and ecclesiastical structures of the nation. Some aspects of our contemporary church/state problems would later arise as a by-product of the Fourteenth Amendment

10 Robert L. Cord, *Separation of Church and State: Historical Fact and Current Fiction* (Lambeth Press: New York, 1982), p. 15. A very different view from Cord is presented by Thomas J. Curry, *The First Freedoms: Church and State in America to the Passage of The First Amendment* (Oxford University Press, 1986). Other important contemporary volumes which should be studied on this issue are: James McClellan, *Joseph Story and the American Constitution*, 1971; an article by McClellan—"The Making and Unmaking of the Establishment Clause", in *A Blueprint for Judicial Reform*, 1981. See also: F. O'Brien, *Justice Reed and the First Amendment*, 1958; Charles Fairman, an article—"Does the Fourteenth Amendment Incorporate the Bill of Rights?", in *Stanford Law Review*, vol. 2, pp. 5ff., 1949; Michael Malvin, Religion and Politics, *The Intentions of the Authors of the First Amendment*, 1978.

11 In 1892 the Supreme Court of the United States, after reviewing the entire history of America, concluded that "this is a Christian nation" in *Church of the Holy Trinity v. United States*, 142 U.S. 457, 471 (1891). Justice Joseph Story, renowned commentator on the American Constitution, stated: "One of the beautiful boasts of our municipal jurisprudence is, that Christianity is a part of the Common Law, from which it seeks the sanctions of its rights, and by which it endeavors to regulate its doctrines.... There has never been a period in which the Common Law did not recognize Christianity as lying at its foundations" (see Story, "Discourse Pronounced Upon the Inauguration of the Author As Dane Professor of Law in Harvard University. August 25th, 1829," reprinted in *The Legal Mind in America*, Perry Miller, ed., 1962, p. 178.)

12 William George Torpey, *Judicial Doctrines of Religious Rights in America* (Chapel Hill: The University of North Carolina Press, 1948), p. 31.

to the U.S. Constitution, which applied various aspects of the Bill of Rights (originally intended for the Federal Government) to the actual State governments. For instance, the alleged “tension” between the two clauses of the First Amendment ((a) Congress shall make no law respecting an establishment of religion and (b) or prohibiting the free exercise thereof) is traced, in part, by Justice William Rehnquist to this very source:” . . . Second, the decision by this court that the First Amendment was “incorporated” into the Fourteenth Amendment and thereby made applicable against the States . . . similarly multiplied the number of instances in which this ‘tension’ might arise. . .”¹³

More significant than this however was the general post-Civil War tendency for the turning of the United States from a (relatively) Christian-based constitutional Republic into a (relatively) secularized central Democracy. The Fourteenth Amendment is merely a part of this latter movement in American history. While we cannot examine the details of this secularizing tendency, we must glance at a few of its most important judicial results insofar as these impact current church/state relations.

If Robert L. Cord is correct, then 1947 is a pivotal year in reaping the results of a changing and more hostile relationship of state to church in America:

Everson v. Board of Education is the single most important American constitutional law case in the realm of the Establishment of Religion Clause. There, for the first time—over a century and a half after the Clause was added to the Constitution—the U.S. Supreme Court set forth a comprehensive interpretation of the minimal prohibitions that the Court said were required by the phrase, “Congress shall make no law respecting an establishment of religion. . .”¹⁴

In this case, the Court dealt with the controversial question of the right of New Jersey authorities to send Catholic children to parochial school on public school buses (or to reimburse their parents for the equivalent expense). While this right was in fact upheld by the Court, Cord suggests that the way the decision was written was out of line with the traditionally friendly relationship between the American Republic and its various churches:

There is no historical evidence to suggest, however, that the Establishment Clause in any way constitutionally precludes non-discriminatory governmental aid to religion. In fact, the converse is confirmed historically.

How can the hundreds of thousands of federal dollars given to missionaries of many Christian faiths to support their mission schools in christianizing the Indians—a practice that was continuous since the First Amendment was added to the Constitution and curtailed as late as the end of the nineteenth century—be reconciled with Justice Black’s pronouncement? Did all of our early Presidents and Congresses violate the Establishment Clause and the First Amendment for over a century? Or could it be that Justice Black is wrong?

¹³ William Rehnquist in *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981), quoted in Steven Alan Samson, *Crossed Swords: Entanglements Between Church and State in America*, University of Oregon, Ph.D., 1984 (University Microfilms International, Ann Arbor, MI), p. 376.

¹⁴ Cord, op. cit., p. 109.

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. . . How can the clear and direct financial aid to missionaries and the U.S. treaties to build churches be reconciled with the Everson decision? The clearest answer is that much, if not most, of Black's Everson interpretation of the Establishment Clause and the reality of American governmental involvement in religious practices from the earliest days of the Federal Republic are mutually exclusive.¹⁵

Without going into the details of the judicial decisions that have followed the nearly four decades after Everson, we may simply note that an originally friendly (though cautious, non-discriminatory, non-sectarian) relationship to Christianity on the part of the State has increasingly turned into what is at times a strongly confrontational, if not openly hostile relationship, that appears to be marked by a growing tendency of the secularized state to attempt to control many aspects of the formerly free life of the church.

The Everson case would seem to be merely one illustration of a radically different principle of interpretation of the U.S. Constitution on the part of the Supreme Court. Contemporary legal scholars such as Professors Herbert W. Titus¹⁶ and John Brabner-Smith¹⁷ have argued that much of the increasing restriction on church and religious freedom since the time of Everson by the American judiciary is the end result of an evolutionary view of law and language according to which "constitutional language is fluid and malleable" rather than of absolute and fixed meaning, so that the Court can shift its interpretations of the First Amendment to fit the perceived contemporary political consensus of the national majority. This leads us to our third major section.

III. Current Church/State Problems and Possible Christian Responses

In a recent doctoral dissertation written for the University of Oregon on these problems, Steven Samson takes us a step beyond the merely negative procedure of

¹⁵ Ibid., pp. 112, 113, 114. Underlying Dr. Cord's argument against current Supreme Court policy is the view that the Constitution actually allows government support of religion-in-general, but bars preferential treatment of one denomination over another. This historical viewpoint is labeled by Professor Carl Esbeck "non-preferentialist". Esbeck lists four other widely held viewpoints on the true constitutional relationship between church and state in America: "strict-separationist"—religion is private and individualistic, and should have little or no influence on public affairs, and the church should have no ontological status before the law; "pluralistic-separationist"—the state is said to be neutral toward religion and a strong dichotomy is drawn between secular and religious; there is no transcendent point of reference for judging the state, but churches do have institutional rights; "institutional-separationist"—much like the former except that they do admit a transcendent world view (based on Judeo-Christian thought) which can judge the state; and finally, "restorationists"—who feel that a "neutral" state is impossible so that the state should be confessionally Christian, though protecting religious-based conscience and refraining from coercion against non-believers. See Carl H. Esbeck, "The Five Predominant Theories of Church-State Relations In Contemporary American Thought," For Presentation at the Thirty-Eighth National Conference of Americans United for Separation of Church and State, "Church, States and the Law," September 18-20, 1985, Washington, D.C.

¹⁶ See Herbert W. Titus, "Religious Freedom: The War Between Two Faiths," (CBN University, Virginia Beach, VA 23464, 1983), and Titus, "Education, Caesar's or God's: A Constitutional Question of Jurisdiction," (*Journal of Christian Jurisprudence*).

¹⁷ John Brabner-Smith, *The Laws of Nature: The Relationship of Science, Theology and Philosophy in the Field of Law including The Effect of Physical Science Theories on the Laws of the United States* (Volume Two in *Law for Layman Series*, 1984).

Everson to an even more serious development in the attitude of some departments of the civil government towards the freedom of the church:

The role of the judiciary as an arbiter between the social regulatory policies of the state and the free exercise of church doctrine is not a new one. What is new is the growth of affirmative as well as prohibitive rules directly affecting churches. To their credit, many courts have resisted this trend and have frequently dismissed suit brought against churches by public agencies simply for what William Ball has called “hasty overbreadth in regulating.” But demands for church files, special permits, and employment statistics frequently lead to a hardening of battle lines. Typically, confrontations may be the result of mistakes, ignorance, suspicion, or alarm on either side. But many disagreements appear to arise from the sometimes different logic by which church and state pursue their professed goals . . .¹⁸

This is the type of thing that has caused so many overtures to be sent up to the General Assembly of our Church in recent years. The Conference on Government Intervention in Religious Affairs, held in 1982 in Washington, D.C., listed a number of contemporary areas where the secular state seems to be trespassing on traditional “free exercise” rights of the church:

1. Efforts by state and local governments to regulate fund-raising by religious bodies.
2. Efforts to require religious bodies to register with and report to government officials if they engage in efforts to influence legislation (so-called “lobbying disclosure” laws).
3. Efforts by the National Labor Relations Board to supervise elections for labor representation by lay teachers in Roman Catholic parochial schools (which have been halted by the U.S. Supreme Court).
4. Internal Revenue Service’s definition of “integrated auxiliaries” of churches that tends to separate church-related colleges and hospitals from the churches that sponsor them and to link them instead to their “secular counterparts”.
5. Attempts by state departments of education to regulate the curriculum content and teachers’ qualifications in Christian schools (which have been halted by state courts in Ohio, Vermont, and Kentucky, but upheld in Nebraska, Wisconsin, and Maine).
6. Attempts by federal and state departments of labor to collect unemployment compensation taxes from church-related agencies that hitherto were exempt, as churches are.
7. Imposing by the (then) Department of Health, Education and Welfare of requirements of coeducational sports, hygiene instruction, dormitory and off-campus residence policies on church-related college (such as Brigham Young University) which have religious objections in such ways.
8. Efforts by several federal agencies (Civil Rights Commission, Equal Employment Opportunities Commission, Department of Health and Human Service, Department of Education) to require church-related agencies and

18 Samson, *op. cit.*, p. S40.

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- institutions, including theological seminaries, to report their employment and admissions statistics by race, sex, and religion, even though they receive no government funds, with threats to cut off grants or loans to students unless they hire faculty, for instance, from other religious adherences.
9. Sampling surveys by the Bureau of the Census of churches and church agencies, requiring them to submit voluminous report under penalty of law, even though the Bureau admitted to a church attorney that it had no authority to do so, but refused to advise churches that they were not required to comply.
 10. Grand jury interrogation of church workers about internal affairs of churches.
 11. Use by intelligence agencies of clergy and missionaries as informants.
 12. Subpoenas of ecclesiastical records by plaintiffs and defendants in civil and criminal suits.
 13. Placing a church in receivership because of allegations of mismanagement of church funds made by dissident members.
 14. Granting by courts conservatorship orders allowing parents to obtain physical custody of (adult) offspring out of unpopular religious movements for purposes of forcing them to abandon their adherence thereto.
 15. Withdrawal by IRS of what is "religious ministry" by clergy to qualify for exclusion of cash housing allowance from taxable income (often in contradiction to the religious body's own definition of "ministry").
 17. Redefinition by the civil courts of ecclesiastical polity, so that hierarchical bodies are often in effect rendered congregational with respect to their ability to control local church property, and dispersed "connectional" bodies are deemed to be hierarchical with respect to their ostensible liability for torts committed by local entities, contrary to their own self-definition in both cases.¹⁹

Allan C. Carlson sees the nub of the problem as follows:

Religious organizations are seeing their activities and autonomy compromised indirectly by governmental definitions that confine unrestricted "church activity" to an ever smaller circle... Joining most other private institutions, the churches are facing for the first time the discomfiting adjustments demanded by a bureaucratic state pursuing a set of abstract policy goals. Social regulations have spread far beyond its once limited domain. The government's commitment to an "affirmative" vision of individual and group equality and to augmented collective security, together with state protection of a new set of "rights" unknown several decades ago, is altering the religious community.²⁰

Professor of Law, Carl Esbeck, addresses the question of why there is this attempt on the part of the state to restrict the activities and rights of the church basically to worship and sacraments:

... [S]ome secularists view religion as a reactionary force retarding the moral evolution that they deem desirable...

¹⁹ Dean M. Kelley, "Religious Freedom: The Developing Pattern of Restriction," in *Freedom and Faith: The Impact of Law on Religious Liberty*, ed. Lynn R. Buzzard (Westchester, IL: Crossway Books, 1982), pp. 82,83.

²⁰ Allan C. Carlson, "Regulators and Religion: Caesar's Revenge," *Regulation*, May/June 1979, p. 27.

At its root, secularists view a church as nothing more than a collection of individuals having no greater rights than the aggregate liberties of its individual members ...

The issue which divides, then, is that secularists do not give assent to the divine origin and nature of the church. As the secularists' thinking has worked its way into the policies of the state—and it undeniably has to a marked degree—the state through its offices and laws has come to regard churches sociologically rather than spiritually. Thus, today when churches venture out beyond the hallowed building under the steeple, they are dealt the same governmental treatment as their so-called “secular counterparts”. Any request for exemption from general legislation is greeted with incredulity as if the church is proposing an unthinkable and novel privilege. On occasion, exemption from regulation is rejected on the basis that it would constitute an establishment of religion contrary to the first amendment. Thus, separation of church and state, which began in part to protect the church, ironically is turned on its head and becomes a tool for confining the church.²¹

In a word, the ultimate cause of our current church/state problems lies in a deep shifting of moral and theological values in America that has been occurring for more than a century, and that has picked up great impetus since the 1960's. Steven Samson has stated it in these words:

Americans today are forgetting their cultural traditions and losing their moral consensus. The problem is both religious and political, not simply one or the other...

The American constitutional system is founded on the Reformation ideal of individual self-government. It is expressed in the cherished rights of free speech, religious liberty, and private property. But the center of American life has been shifting so dramatically that many of the old customs of local self-government, like the town meeting, are becoming cultural artifacts fit only for display . . . Any standard of value other than an ultimately hedonistic utilitarianism is apt to be rejected as an intolerable imposition.²²

In accordance with the Scriptural principles that “judgment begins in the house of God” and “Woe to them that dwell at ease in Zion,” we will not be far wrong to assume that secularist hostility to the church on the part of various departments of state

21 Carl H. Esbeck, “Toward A General Theory of Church-State Relations and the First Amendment,” *Public Law Forum*, Vol. IV, No. n, 1985, pp. 328, 329. The important point of the jurisdiction or structural (i.e. “non-derived” from personal liberties) rights of the church is carefully argued in an Amicus Curiae brief of the Rutherford Institute in the Supreme Court Case, October Term, 1985, *Ohio Civil Rights Commission v. Dayton Christian Schools*, Appeal from the Sixth Court of Appeals (The Rutherford Institute, Manassas, Virginia 22110).

22 Samson, op. cit., p. 536.

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could not have gained the power it has, if the church had not lost much of its faith in God and His Word as well as losing much of its cultural vitality during the last century and a half. The aphorism of James Hitchcock is not comforting, that “in practice an orthodoxy which loses its authority has trouble even retaining the right of toleration.”²³

Many of us believe that there has been a turning away from secularism and back to vital, evangelical Christianity within the United States since the early 1970's on the part of multitudes of individuals and many denominational groups, of which the Presbyterian Church in America is a part. While this evangelical trend may hearten us as believers, it is profoundly disturbing to dedicated secularists (in and out of civil government) who see it as a halting of a positive evolutionary trend towards democratic secularism. Thus, we may realistically be prepared for even more confrontations between church and state during the final years of this century.

The far-seeing British historian, Christopher Dawson, wrote in 1940 words that seem prophetic: “The modern state is daily extending its control over a wider area of social life and is taking over functions that were formerly regarded as the province of independent social units, such as the family and the church, or as a sphere for the voluntary activities of private individuals.”²⁴

Before we offer the specific responses of the committee to the four major problems that have been brought before us, let us say a brief word concerning how our local congregations and presbyteries might inform and educate their people on these issues in the future. First, we trust that sessions might make a study of this committee report with the hope that it might in some way clarify their understanding of the nature of the contemporary church/state conflict so they may be better able to guide their people in these areas in days ahead. Secondly, we earnestly encourage a great deal of specific prayer by churches and individuals on such matters as proper ways to protest abortion, appropriate changes in tax legislation, freedom of Christian schools and ministries, beneficial changes in the curriculum of public schools, and a general renewal of the spiritual condition of the nation.

Thirdly, we encourage sessions and perhaps appropriate committees of presbyteries to think of how they may keep themselves informed on vital church/state issues and also of what means or programs they may use to educate their congregations and Sunday schools on such portions of these subjects as they may deem appropriate. Our committee would suggest such resources as *World* magazine (published weekly by The Presbyterian Journal), or *The Religious Freedom Reporter of the Christian Legal Society* (P.O. Box 1492, Merrifield, VA 22116), or “Gammon & Grange Non-Profit, Religious Liberties Newsletter”, (Gammon & Grange Law Offices, Suite 300, 1925 “K” Street N.W., Washington, DC 20006) in order to keep the church abreast of important relevant events. Various helpful books and films are available on the history and contemporary status of religious and constitutional liberty in the western world. It might be useful to study some of these resources.

23 James Hitchcock, "Competing Ethical Systems," *Imprimis*, April, 1981, p. 2.

24 C. Dawson, *Religion and the Modern State* (1940), p. 45.

II. SHOULD THE PRESBYTERIAN CHURCH IN AMERICA REMAIN INCORPORATED?

by Douglas Kelly

Oklahoma Presbytery sent an overture to the Thirteenth General Assembly of the PCA requesting a study of the theological implications of the denomination's remaining incorporated. The central concern of the Oklahoma Presbytery overture was: "...a corporation is considered to be under the jurisdiction of a state" but "...the church of Jesus Christ is under no jurisdiction of human government."

Your committee responds to this request as follows:

I. The Historical Background of Incorporation

A study of Western Civilization, especially since the Constantinian settlement in the fourth century A.D., indicates that the concept of incorporation has come into economic and political currency by way of the Christian Church.²⁵ The inspired

²⁵ The practice of ecclesiastical incorporation is, historically speaking, a post-canonical development, and therefore as such, is not specifically inculcated by particular passages of scripture. It is, however, a development which is consistent with the general principles of the Word of God in the spirit of the Westminster Confession, I. vi:

...There are some circumstances concerning the worship of God, and government of the church, common to human actions and societies, which are to be ordered by the light of nature and Christian prudence, according to the general rules of the word, which are always to be observed.

More particularly, incorporation is a legitimate development of the Biblical concept of the fellowship or assembly of the people of God (who, for instance, need to possess a meeting place—equivalent to the Tabernacle or Temple in the OT and synagogue in the NT, and who need the functional authority of the legal structures of the society in which they must live in order to receive, control and disburse funds in accordance with the divinely inculcated goals of the fellowship, e.g. I Cor. 16:1-3 and II Cor. 8:4,10,11). That is, the people of God or corpus Christ! (body of Christ, I Cor. 12:27), being an embodied fellowship, need—within the appropriate legal structures of their particular generation and culture—a place for “the body” to be and means to gather, maintain, control and disburse funds for the wellbeing and increase of the body (I Chron. 17:12 and Luke 4:16). That is, the church is not merely a spirit, but is a real body in space and time, and thus is obligated to care for that body within the structures of the real world. Incorporation is a legitimate means to these Biblically necessary ends (of care, maintenance and increase of the body) in the legal structures of the real world.

Furthermore, post-Constantinian (4th century A.D.) incorporation of the church is a legitimate development of the central Biblical concept of covenant. “For all the promises of God” in the Covenant of Grace (running through both Old and New Testaments) in Christ “are yea, and in him Amen...” (II Cor. 1:20). These covenant promises, of which Christ is the sum and substance, are based on the unvarying fidelity and utter consistency of the character of God, who has confirmed the immutability of his counsel by “oath and promise” (Heb. 6:15-18). The constitutional basis or bylaws of various ecclesiastical incorporations are based upon the Biblical covenant practice of specifying promises, threats, limits, benefits and liabilities, and then consistently carrying out the terms of the constitution, thus “walking in the truth” (III John 3).

A partial synopsis of the traditional Roman Catholic teaching on incorporation is given in Code of Canon Law: Latin English Edition (Canon Law Society of America: Washington, D.C. 20064), 1983, Canons 96-144; 1254-1310. From a conservative Protestant viewpoint, R. J. Rushdoony has written concerning ecclesiastical incorporation from a positive stance in *Christianity and the State* (Ross House Books, 1986), chapter 25, and in “Position Paper No. 50” (Chalcedon, P.O. Box 158, Vallecito, CA 95251). Gary North has written critically of church incorporation in I.C.E. Position Paper No. 1, July

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Pauline teaching that the Church is the “body of Christ” (i.e. corpus Christi) in solidarity with the Old Testament people of God caused the church to be understood as a divine incorporation. At the root of this corporate concept is the Biblical doctrine of covenant and federal headship.

In the development of Medieval History, the church in virtue of its divinely ordained corporate identity was therefore also a primary, legally recognized incorporation with appropriate power to inherit, receive, buy, sell, and control property and other forms of wealth. As time went on, through canon law, common law, and later statute legislation in the various European countries, a whole body of legal rights, privileges, immunities, responsibilities, and liabilities were recognized as inherent in the concept of the church as a divinely ordained, legally accepted incorporation.

Partly because most of the civil servants of the Medieval and early Modern kingdoms were religious clerics (who were expert in canon law), many aspects of church corporate theory and procedure were applied by analogy to various departments of the civil government as well as to merchant guilds and trading companies. While it is not our purpose to pursue the details of this complex history, we must recognize that incorporation is a Christian concept, which by analogy has been applied in many other fields outside of the Church proper. To identify the historical origin of the corporation is of course by no means sufficient to settle the question of its current validity.

II. The Contemporary Legal Advantages and Disadvantages of Incorporation

The influential eighteenth century English legal scholar, William Blackstone, dealt with the important legal advantages of ecclesiastical corporations in his epoch-making *Commentaries on the Laws of England* (so influential on the founding documents of the United States). Significant contemporary work has also been done on the advantages of church incorporation. Attorney Wendell R. Bird has summarized the legal benefits as follows:²⁶

The legal advantages of incorporation include (1) limitation of personal liability, (2) litigation in the corporate name, (3) convenience in holding property, (4) availability of financing, (5) limitation of charitable trust regulation, and (6) better protection of the organizational name.

1. **Limitation of Personal Liability.** Incorporation produces a limitation of personal liability on both contract claims and tort claims, whereas an unincorporated status brings a greater threat of personal liability for church members and non-church organization members. Examples of contract liability are claims of creditors such as construction contractors and printers, and examples of tort liability are slips and falls on stairways, bus accidents, and athletic injuries. Although it is possible for an unincorporated organization to purchase insurance, tort claims often are made that far exceed the maximum insurance coverage available, and the claimants would therefore have to sue all members of the organization as well as the unincorporated ministry. Furthermore, liability insurance is often more expensive for an unincorporated organization than for a corporation. Director and officer insurance is very difficult if not impossible to obtain for an unincorporated ministry, and if available is generally more expensive for an unincorporated ministry. An unincorporated ministry should

1984. The differing positions have been discussed by Martin G. Selbrede in *Dominion Network*, Vol. One, No. One, Jan/Feb. 1985, pp. 14-15.

²⁶ Wendell R. Bird, “Ought Christian Ministries Incorporate?” (Atlanta, GA, no date), pp. 2-4.

- consider whether it has a moral obligation to inform prospective members as well as existing members of their potential personal liability for such claims.
2. **Litigation in the Corporate Name.** An incorporated ministry is ordinarily sued in its corporate name, whereas an unincorporated association must be sued in the names of all members, and an unincorporated trust often is sued in the names of all members as well as of the trust itself. Such suits, besides producing the possibility of personal liability as mentioned above, cause cautious members to have to pay for separate legal counsel, and in the event of conflicts of interest between governing boards and members would make it necessary to pay for two or more teams of attorneys in the absence of written consent to joint representation. Furthermore, litigation initiated by an unincorporated ministry in many states must be filed in the names of individual members rather than the association, and the defendant often will file a third-party claim against some or all individual members.
 3. **Convenience in Holding Property.** An incorporated ministry finds it much easier to hold property than an unincorporated association. This is both because property can be held in the corporate name instead of in the names of all members, and because transfers of property are easier to accomplish with far fewer legal documents necessary. Although it is possible for an unincorporated ministry to hold property in trust, that is also more cumbersome because of the additional documents necessary for property transfers, and because of the almost inevitable omission of some future-acquired property under the trust terms. Moreover, as pointed out below, property held by a trust is subject to charitable trust regulations in some states that do not apply to religious ministry property held by an incorporated ministry.
 4. **Availability of Financing.** An incorporated ministry has the option of issuing church bonds (if it complies with applicable securities laws), whereas an unincorporated ministry cannot issue bonds in most jurisdictions. A corporation also can more readily borrow significant funds through a line of credit or a long-term loan, whereas an unincorporated ministry either cannot feasibly do so or generally can borrow funds only with personal guaranties of wealthy members or officers.
 5. **Limitation of Charitable Trust Regulation.** Charitable trust statutes generally do not apply to incorporated ministries other than for specific trusts that they establish, whereas they do apply directly to all property of unincorporated ministries that choose a trust form. On the other hand, common law trust requirements would apply equally to charitable corporations and trusts.
 6. **Better Protection of the Organizational Name.** A corporate name is generally easier to protect legally than an unincorporated association name. Although a fictitious name can be reserved, in most states that filing must be made in each county, whereas the corporate name is reserved for the entire state.

There are also certain legal disadvantages of incorporation. These are also summarized by Wendell Bird:²⁷

27 Ibid., pp. 4-6.

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LEGAL DISADVANTAGES OF INCORPORATION

1. Expenses and Formalities for Corporations. Incorporation does involve filing and legal costs for establishment, amendment, and dissolution. However, generally higher costs are incurred in drafting professional legal documents for a charitable trust or for an unincorporated association, although these can be amended and dissolved more easily if necessary. An annual form must be filed by corporations in most states to maintain corporate status, but many states require similar filings by trusts, and the federal tax forms are the same for all forms of organization. Although minutes are required for corporations, such minutes ordinarily would be kept for all other forms of organization. Although statutory requirements exist for corporations, most requirements in most states are only presumptive and a nonprofit corporation may select contrary provisions.
2. Constitutional Protections and Governmental Regulations for Corporations. In general, corporate status does not reduce the constitutional protections enjoyed by religious ministries. The First and Fourteenth Amendments recognize the same protection for religious corporations, trusts, and associations. Corporate status also does not increase the governmental regulations applicable to a ministry in comparison with the regulations that would be applicable in trust or unincorporated association form:
Employment standards, discrimination laws and requirements concerning withholding of income taxes for employees apply to associations whether incorporated or not. Finally, when state and local taxation is levied upon an association, it is usually unaffected by the group's corporate status. The same is true with securities laws, charitable disclosure laws, labor laws, Social Security and unemployment compensation and other federal taxes, sales and use and other taxes, and property and intangibles and other local taxes.

* J. Jacobs, *Association Law Handbook* 15 (1981). *Accord*, B. Hopkins, *The Law of Tax-Exempt Organizations* 503 (3d ed. 1979); H. Oleck, *Non-Profit Corporations, Organizations and Associations* 18 (3d ed. 1974); G. Webster, *The Law of Associations* 2-3 (rev. ed. 1976); see G. Lamb & C. Shields, *Trade Association Law and Practice* 185 (rev. ed. 1971).

III. Current Problems with Ecclesiastical Incorporation

Your committee recognized that while the historic concept of incorporation is rooted in Christian history, nonetheless there are serious contemporary problems with corporate theory and practice, which are of legitimate concern to the Christian. Perhaps the two central problems most discussed among conservative Christian critics of incorporation are the ethical question of corporate "limited liability" and the allegedly "implied subordination" of the incorporated church to the state.²⁸

As to the very real ethical problem of corporate limited liability, this committee feels that it is not our task to enter into either the generalities or specifics of this matter which largely devolves upon secular corporations. This is a legitimate and important task, but it is not our task. We are presently concerned only with the ethics of the

28 See article by North (Footnote 1).

church as an incorporation, and presumably there is no accusation that the church has been using the tool of limited liability in any unethical way.

The real concern over church incorporation (as for instance in the Oklahoma Presbytery overture) would seem rather to be a fear of implied subordination to the secular state. This committee believes that while it is certainly possible for a given church to concede too much to the secular state in its particular incorporation procedures, nevertheless, the mere fact of legal incorporation by no means has to imply a recognition of statist authority over the church. But what would be the appropriate response if a church was felt to have conceded too much in its incorporation papers?

IV. Suggested Solutions to the Problems Raised by Ecclesiastical Incorporation

First, your committee believes that problems and abuses connected with modern statist ideas of incorporation do not justify jettisoning the entire, age-old concept. It is not proper “to throw out the baby with the bath water.” For the church to be incorporated is to say no more and no less than to confess that the church is a divinely ordained institution, which looks to God—not to the state—for its right to exist and to handle its own affairs with integrity. Historically, the civil government has simply recognized the corporate rights and independent jurisdiction of the church in its own realm as a previously existing fact (a fact not created by the state, but rather given by God and merely recognized by the state). At the same time, the Church recognizes the state as a divinely ordained institution, and realizes that certain transactions and relationships of the church within the body politic and with the civil government itself have properly been recognized and regularized in terms of specific legal procedures.

Therefore, when a church in a particular country seeks incorporation it is not necessarily doing anything other than specifying in mutually accessible legal terms that which already exists by divine right. To do such has nothing to do with a subordination of the Body of Christ to the civil authority. Incorporation is not subordination, but the recognition of mutually independent jurisdictions. This, at any rate, is the general situation.

Some in our denomination, however, are of the opinion that the Certificate of Incorporation of the PCA in Delaware concedes too much authority to the state and implies an inappropriate subordination to civil government. Those who hold this view should propose amendments to our Certificate of Incorporation rather than seeking to dissolve the incorporation of our denomination. Prior to proposal of these amendments, however, they should be studied by competent legal counsel for tax and constitutional implications.

Moreover, we need to keep in mind that as Bird has pointed out, “In general, corporate status does not reduce the constitutional protections enjoyed by religious ministries.” Or to state this negatively, a church’s being unincorporated does not in the least remove it from having to deal with the same laws and regulations faced by an incorporated church in an increasingly secularized society. To the contrary, to be unincorporated may in fact cause the church more practical problems than to be incorporated. The real problem is of course not with incorporation but with humanistic secularization. The church must use all the means within its power (including incorporation) to maintain its right to preach and practice the Gospel in order to reverse the secularism of our time. For these reasons your committee recommends that the Presbyterian Church in America retain its incorporated status.

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III. TAXATION AND THE CHURCH

by Thomas O. Kotouc

The Biblical Position

When dealing with taxation, Jesus commanded us to “[r]ender unto Caesar the things that are Caesar’s and unto God the things that are God’s.” Matthew 22:21. Here Jesus as Head of the Church acknowledged His individual obligation to pay the poll tax to Caesar.

Although there is no reference in the New Testament to the Church as an institution paying taxes, historically the Church, and before it the Temple, and those who ministered in the House of God (including singers and porters) were exempt from “toll, tribute or custom.” Ezra 7:24. As we shall see, this exemption continued through the Roman times, the Constantinian settlement, and into the Twentieth Century. The biblical rationale for the Church’s exemption lies in Leviticus 27:30: the tithe belongs to the Lord. Leviticus 27:30.²⁹ Thus, when Caesar requires the church to pay a tax on the tithe, Caesar is actually taxing the Lord Jesus Christ.³⁰

I. The Historical Exemption of the Church from Jurisdiction of the State

Both the Church and the civil government are under the authority of God. “[T]here is no authority except from God, and those which exist or are established by God.” Romans 13:1. The Church like the government has but one sovereign, the Lord Jesus Christ. Therefore, the Church should not pay tax to the State even as the State need not support the Church and its ministers.

In the Roman Empire, when the Church first came into prominence, it was treated by the Roman civil authorities as a legitimate Jewish sect, and as such, the Church, like the Jewish religion, was exempt from taxation.³¹

When Constantine made Christianity the official state religion, the civil government had absolutely no authority to tax churches. The Constantinian settlement recognized that churches were already tax exempt by virtue of the fact that they paid taxes (tithes and offerings) to their Head, Jesus Christ, while the state paid taxes to its temporal head, Caesar and his successors. This settlement was later backed up by the influential Theodosian and Justinian Codes which had so much authority in shaping legislation in all the Christian countries of medieval Europe.³²

Even during the time of King Henry VIII and during the French Revolution, although the civil government forcibly closed down monasteries and confiscated their lands and wealth, civil authorities did not attempt to tax churches. Closing the

29 "All the lithe of the land, of the seed of the land or of the fruit of the tree, is the Lord's; it is holy to the Lord." Leviticus 27:30.

30 Both Harold O. J. Brown and R. J. Rushdoony believe that tithes should not be taxed.

31 When Jerusalem fell in 70 A.D., it and the Church were no longer exempt from taxation. The Emperor wanted Christians to swear to him as final lord over all (including the Church) and to sacrifice to him as being the world's center of unity. See Douglas F. Kelly, "Who Makes Churches Tax Exempt?" Chalcedon Report, August, 1982.

32 One exception to this practice was in medieval Europe during the crusades when the Church itself asked the civil authorities to tax church income in order to finance the crusades. See C. W. Previte-Orthon, *The Shorter Cambridge Medieval History*, (Cambridge: At The University Press 1971), p. 618.

monasteries (as they saw it) was a police action because the monasteries were dens of corruption and a hazard to the well-being of the nation.

Instead, civil government exempted even church businesses and lands from taxation because monasteries and other branches of the Church were historically seen as caring for the sick and the poor. Even after Henry VIII established himself as head over the church and the concept of a free state and a free church evolved, the Church was still seen in England and Europe as owing allegiance to its Sovereign alone. This understanding was carried into the colonies where nine had established state churches at the time of the Revolution (and six at the time the Constitution was adopted). Only with the late 18th Century Humanist Enlightenment did some states (as France in 1789) begin to claim sovereignty including financial control over the Church. The United States was already a free country by this time, however, with its own Constitution rooted—not in the Humanist Enlightenment—but in the earlier medieval, Reformation Christian order.

Only when the same Humanist Enlightenment reached the American shores in the late 19th Century, did secularists begin to view the Church “as nothing more than a collection of individuals having no greater rights than the aggregate liberties of its individual members.”³³

II. The Individual Christian is Subject to Two Jurisdictions

There is no question that the individual Christian citizen is subject to both the civil government and to the Church. He pays tithes to God which are held by God but administered by the local congregation or church. He pays taxes to the civil government in obedience to Romans 13:7 in support of the civil government which God has established.

The head tax, for example, was commanded in Scripture for the service of the tent of meeting. It was paid by every male citizen over twenty years of age including the Levites and priests. The tax was not graduated in terms of ability to pay: everyone, rich or poor, paid the one-half shekel of silver (about one-fifth of an ounce). Exodus 30:11-16. This was also known as the “temple tax.”

Jesus declared that he was exempt from this tax as a Son. However, he did not declare that the tax was in any way improper and paid it for both himself and Peter. Matthew 17:24-27.³⁴

However, the civil government may intervene in relations between members of the church even on church property when a member seeks to take the life or property of another. When Adonijah sought to usurp his authority by taking Abishag, David’s concubine, as a wife, Solomon not only ordered Adonijah’s death, but commanded that Joab be slain beside the altar in the tent of the Lord where he had fled, for Joab supported Adonijah. I Kings 2: 29-34.³⁵

33 “[T]he issue which divides, then, is that secularists do not give assent to the divine origin and nature of the Church.... Thus, separation of church and state, which began in part to protect the church, ironically has turned on its head and become a tool for confining the Church.” Carl H. Esbeck, “Toward a General Theory of Church-State Relations and the First Amendment,” *IV Public Law Forum* (1985), pp. 328-29.

34 Some believe this tax was collected by the civil government.

35 The reason Solomon did not kill Adonijah earlier in I Kings 1:50-53 when he fled to the horns of the altar for refuge seemed to depend more on his worthiness than the place where he was seeking refuge.

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III. The Limited Role of Civil Government

Thus, civil government does not biblically and has not historically had the authority to tax the tithes of God's people. Romans 13 teaches that government's legitimate role is to avenge those who practice evil as a minister of God, praise those who do good, and collect taxes as God's servant. Romans 13:4-6. The *Westminster Confession of Faith* Chapter 23 "Of the Civil Magistrate" agrees:

God, the Supreme Lord and King of all the world, hath ordained civil magistrates to be under Him over the people, for His own glory, and the public good; and to this end, hath armed them with the power of the sword, for the defense and encouragement of them that are good, and for the punishment of evil-doers. ... It is the duty of the people ... to pay them tribute or other dues. (Emphasis added.)

This authority of civil government is to be honored, however, even when the government oversteps its clearly limited sphere of punishing evil and rewarding good. Charles Hodge in his commentary on the *Epistle to the Romans*, 405 (1886), points out that

[i]t is a very unnatural interpretation which makes [the] word [magistrates] refer to the character of the magistrates, as though the sense were, "Be subject to good magistrates." This is contrary to the usage of the term, and inconsistent with the context. Obedience is not enjoined on the ground of the personal merit of those in authority, but on the ground of their official station.

The prophet Samuel noted that the king for whom the people asked would become a tyrant over the people because he extracted the tithe from them. I Samuel 8:15-17.³⁶ Yet Samuel did not state that this excessive taxation would be a basis for civil disobedience.

IV. Recent Attacks on the American Church's Tax Exemption

Churches have traditionally objected to and successfully resisted taxes on church-owned land or property. In *Walz v. Tax Commission of New York*, 97 U.S. 664 (1970), the Supreme Court of the United States held that a New York City property tax exemption of church real estate would not violate the Establishment Clause since "elimination of exemption would tend to expand the involvement of government by giving rise to tax evaluation of church property, tax liens, tax foreclosures and the direct confrontations and conflicts that follow in the train of those legal processes."³⁷

Solomon said, "[if Adonijah] will be a worthy man, not one of his hairs will fall to the ground; but if wickedness is found in him, he will die." I Kings 1:52.

There is no question that a man who had accidentally shed blood could flee to a city of refuge for safety from his avenger. Numbers 35:6-15. However, these cities are part of the judicial laws and seem unconnected with a temple or sanctuary being located in the cities.

³⁶ David Chilton, *Productive Christians in an Age of Guilt Manipulators* (1981), p. 70. Although Samuel did not specify the amount of taxation that he considered the upward Biblical limit, the passage indicates that in his thinking even a tithe or 10% of the income would be oppressive.

³⁷ *Walz v. Tax Commission*, 97 U.S. 664, 674 (1970). "Few concepts are more deeply imbedded in the fabric of our national life beginning with pre-revolutionary colonial times, than for government to

However, with the breakdown of the historical exemption of church from government taxing authority, the state has attempted to tax the church as it would any corporation or business. Many states, for example, collect sales or use taxes from churches on construction materials used in their buildings, on materials and equipment purchased for the church, and on sales by church-run bookstores.³⁸ These taxes are paid without apparent objection from the church. Since the church uses the tithe to pay this tax, however, it may legitimately object to this tax as it does to property taxes levied on its sanctuary.

Some commentators see a sales tax as a tax on commerce, but not on the church. Similarly, a sewer levy may be seen as payment for services, rather than a tax.

Some churches have resisted the imposition of workmen's compensation and state unemployment taxes which would be paid out of the tithe. Other churches have resisted inquiry by Internal Revenue Service as to the amount of donations made by individuals.³⁹

When the federal government recently attempted to assess social security taxes on church employees, some churches have protested the civil government's taxing of churches for the employer's share of social security taxes:

Social security does not fall within the boundaries of legitimate duties of the civil magistrate, and neither finances the defense of the people, nor does it provide conditions conducive for the encouragement of good. It is not the government's duty to provide for the retirement of its citizens. The Lord God requires of each individual under His authority to provide for himself and his family. (Proverbs 6:6-11, II Thessalonians 3:6-10, I Timothy 5:8.) One of the functions of a genuine church, according to the Scriptures, is to carry on a ministry of compassion and mercy to the people in need. Deacon boards should address themselves to the needs of the community in which they live. The church and other volunteeristic organizations should carry on ministries of mercy to people who are in need during their retirement years. This is not the duty of the civil government.⁴⁰

exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference." *Id.* at 676-77.

38 Some 34 states exempt churches and their purchaser completely or to some extent from sales and use taxes. Some 25 states also exempt church sales to some extent.

39 See page 14 of the Preamble to this paper.

40 Roland S. Barnes, *PCA Messenger* 4 (October 1984), p. 4. Congress has recognized this conflict and has allowed pastors who certify within two years of their ordination (or the due date for the tax return for the second year in which a pastor receives ministerial income) to exempt out of the social security program if they certify their opposition because of religious principles to accepting public insurance benefits from services performed as a minister.

Because of opposition by churches to payment of the social security tax, Congress repealed the original law bringing employees of churches under the social security system and allowed churches that oppose payment of FICA taxes on their employees for "religious reasons" to exempt out of the system. Form 8274 had to be filed with the Internal Revenue Service by October 30, 1984, or, if no taxes have been yet paid on a non-ordained church employee, on one day before the due date for the first quarterly employment tax return. However, employees of churches which opt out of the social security system are still liable for social security (SECA) taxes which the employees pay through quarterly estimated tax payments or voluntary employer deductions. Churches electing exemption from FICA taxes must still withhold income taxes for non-ordained employees and transmit them to the IRS. Churches making the election must also file annual W-2 wage statements for employees.

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If a church finds that a certain tax is confiscatory, seizing property necessary for the church to carry out its mission of worship, evangelism, and caring for the poor, it should appeal to the authority of Acts 4:18-20 and refuse to pay it, or pay it under protest. In this passage Peter and John confronted the Sanhedrin's authority to prohibit their evangelization and preaching in the temple.

However, if a tax stops short of taking the property from the church or making it impossible for the church to carry out its mission, is civil disobedience justified? For example, if social security is viewed as outside legitimate duties of the civil magistrate and as supplanting the responsibilities of the individual, the family and the church, should the church refuse to pay such a tax on its employees?⁴¹

V. Options Available

There are several options for the Church short of civil disobedience. Dr. Francis Schaeffer in *A Christian Manifesto* suggested that: first, we seek to change the law through our duly-elected representatives. Secondly, the law should be protested in the courts or through demonstrations. Finally, the citizen may flee to another jurisdiction, as our founding fathers did when they left England for America. If all these options fail or are not available, then civil disobedience or absolute refusal to pay the tax is appropriate. *A Christian Manifesto*, p.103 (Crossway Books, 1982).

In practice, the church may seek to change an offensive tax law while it pays the tax under protest. After it has paid the tax under protest, the church may file for a refund and even go to court to collect it and have the law declared unconstitutional as a violation of the First Amendment's free exercise protection. But some would question if the church should be taking its valuable resources and time to protest a tax instead of focusing on its commission to evangelize, teach, and care for the poor.

The clearest basis for the church's refusal to pay a tax or paying it under protest would arise where civil government seeks to impose an income tax on the tithe of the church. The church should object to such a tax as taxing the property of the Lord.⁴² The same reasoning may be used to exempt church-owned land and property from property taxation. However, where a church owns land or property which is not used in carrying out its mission, then may there be a Scriptural basis for protest, since the church may be misusing the Lord's property?⁴³

Where a tax as the social security tax (FICA) oversteps the legitimate limited role of civil government, should the church disobey the government and refuse to pay the tax? Perhaps it depends on whether this tax will (1) tax the tithe of the church —

41 See Roland S. Barnes, "Forum: Taxing Question for the Church," *PCA Messenger* (October, 1984), p. 4.

42 The Internal Revenue Service recognizes the tax-exempt status of churches as well as associations of churches and church auxiliaries and does not require any application form to be filed for tax-exempt status under Section 508 of the Internal Revenue Code.

However, in order for the income of a church to be exempt from taxation under the Internal Revenue Code, the church must meet five requirements: (1) the church's purpose must be exclusively charitable; (2) no private profit should inure to any of the church's officers or members; (3) the church should derive no substantial commercial profit from its activities; (4) it cannot divert any substantial amount of money for lobbying; and (5) it cannot divert any funds for a political campaign.

43 The Supreme Court of the United States denied tax exemption as to church-owned land which was not being used for church purposes. *Gibbons v. District of Columbia*, 116 U.S. 404 (1886). Similarly, the parking lot of a church or the yard around a parsonage has been taxed.

from which the employer's share of FICA is usually paid (Leviticus 27:20) or (2) impede or even make the church's mission impossible (Acts 4:18-20) because of the financial burden the tax imposes.

VI. **Conclusions**

Some have suggested that the distinction between legitimate and illegitimate taxation in the Scripture turns on an examination of whom it is that the government attempts to tax. For instance, the poll tax which Christ paid was levied on Him as an individual and not on the Church as an institution.⁴⁴ The head tax was also payable by individuals. Exodus 30:11-16. Thus tax on a citizen in the civil sphere would be permissible, but a tax on the church would not.

Many agree that the ultimate issue in this dispute is the attempt of the civil government to take jurisdiction over the church. Christ's command to render unto Caesar the things that are Caesar's and unto God the things that are God's coupled with His payment of the poll tax suggests that Christ as a citizen of the body politic recognized the jurisdiction of the civil government over some areas of His life and the lives of His followers (even though there is no indication that the Church as a body was under its jurisdiction. "My Kingdom is not of this world." John 18:36. In fact, the jurisdiction of Church and civil government may be concurrent in many areas (as it is where both the Church and civil government are interested in the protection of members against fire or health hazards). And both civil government and the Church have an "interest" in whether the income and property of the Church which is not related to or used in the mission of the Church is taxed, for both the Church and the state can utilize this property and income in carrying out their unique roles.

When the income and property of the Church are or will be used in the mission of the Church, then any attempt to tax that income or property may be considered an attempt to tax the tithe—property which belongs to the Lord. Here the jurisdiction of the Church controls within the sphere of sovereignty which Christ has delegated to it. Especially where a tax makes the mission of the church impossible (as worship, evangelism, and care of the poor), any attempt to tax such income and property should be resisted on biblical grounds and perhaps could go as far as civil disobedience or refusal to pay the tax.

IV. EDUCATION AND PARENTAL RESPONSIBILITY

by Roland S. Barnes and Thomas O. Kotouc

I. THE BIBLICAL POSITION

The Parental Responsibility for Education

There is probably no more important duty than that of the education of our children. The future success of the Kingdom of our Lord is, to a great extent, dependent upon the successful education of covenant children in the knowledge of our Lord and in

44 Roland Barnes, *PCA Messenger* (October, 1984), p. 5.

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a biblically consistent world and life view. The following quote from Robert Lewis Dabney is particularly pertinent in this regard:

Seeing the parental relation is what the Scripture describes it, and seeing Satan has perverted it since the fall for the diffusion and multiplication of depravity and eternal death, the education of children for God is the most important business done on earth. It is the one business for which the earth exists. To it all politics, all war, all literature, all money-making, ought to be subordinated; and every parent especially ought to feel, every hour of the day, that, next to making his own calling and election sure, this is the end for which he is kept alive by God — this is his task on earth. On the right training of the generation now arising, turns not only the individual salvation of each member in it, not only the religious hope of the age which is approaching, but the fate of all future generations in a large degree.⁴⁵

The duty of education is (from the biblical perspective) a parental duty. According to Scripture, children are a gift from the Almighty God and thus are a sacred trust. Therefore, the Lord requires that parents provide all that their children need! Parents are required to feed, clothe, house and protect their children and prepare them for adulthood. Dr. Norman Harper states this very clearly in his book *Making Disciples, The Challenge of Christian Education at the End of the Twentieth Century*:

The authority and responsibility of the training of children is delegated primarily to the parents. It was to the parent that the command was given: "...provoke not your children to wrath: but bring them up in the nurture and admonition of the Lord" (Ephesians 6:4, KJV).⁴⁶

The duty of education is therefore a family responsibility. The family is the fundamental unit of society under God, and it is the duty of parents as led by the father to prepare their children to function righteously under God's rule in all spheres of life (Genesis 1:26-28; 2:18-25; 18:19; Psalm 127:3-5; Ephesians 6:1-4).

In order for this task to be successful, education must be distinctively Christian; i.e., based upon God's revelation of His Truth in His Word (Psalm 36:9; Exodus 20:16; John 17:17; John 14:6; John 8:32). Education is a necessary task for equipping children to glorify God in work and worship that is according to His Word. Thus, Christian education is necessary and essential for a godly use of talents (Psalm 78:1-8).

This responsibility cannot be abdicated by parents, for God holds them accountable. Parents may delegate this responsibility to surrogate parents who meet biblical qualifications while retaining the responsibility of education and the authority over their children.

The modern concept of children belonging to the state is anti-Christian. The responsibility for educating children does not belong to the state and therefore the state should not usurp this responsibility from parents. Robert Lewis Dabney comments very lucidly on whose responsibility the education of children is:

⁴⁵ Robert Lewis Dabney, *Discussions of Robert Lewis Dabney*, vol. 1, p. 691 (1982).

⁴⁶ Norman Harper, *Making Disciples, The Challenge of Christian Education at the End of the Twentieth Century*, p. 46 (1981).

Is the direction of the education of children either a civic or an ecclesiastical function? Is it not properly a domestic and parental function? First, we read in holy writ that God ordained the family by the union of one woman to one man, in one flesh, for life, for the declared end of “seeking a godly seed.” Does not this imply that he looks to parents, in whom the family is founded, as the responsible agents of this result? He has also in the fifth Commandment connected the child proximately, not with either presbyter or magistrate, but with the parents, which, of course, confers on them the adequate and the prior authority. This argument appears again in the very order of the historical genesis of the family and State, as well as of the visible Church. The family was first. Parents at the outset were the only social heads existing. The right rearing of children by them was in order to the right creation of the other two institutes. It thus appears that naturally the parents’ authority over their children could not have come by deputation from either State or visible Church, any more than the water in a fountain by derivation from its reservoir below.⁴⁷

The state is assigned a ministry of the sword in the execution of justice against evildoers (Romans 13:1-4). The state is not assigned the duty of educating our children. It is highly questionable whether it is wise for Christian parents to send their covenant children to a school system operated by the state which is openly or otherwise hostile to the Christian faith. It is inconceivable that Abraham would have sent Isaac to the Canaanites to learn about the world God had created. Christian parents who send their covenant children to state schools to learn about God’s world (science, etc.) and God’s activities (history, etc.) should seriously consider whether it is possible to equip their children to function responsibly in this world under God according to His Truth when their children are subject to prolific falsehoods and open hostility (Psalm 1:1-3; Exodus 34:12-16), whether it is possible to send their children to public schools (which are to a great extent dominated by Humanism) and at the same time fulfill their duty to rear their children in the nurture and admonition of the Lord (Ephesians 6:1-4).

Some educators believe that covenant children must not be shaped by a non-Christian religious educational institution:

The choice is between a Christian religious education and a non-Christian religious education. If this is true, there are no material circumstances that can justify a Christian parent in giving his child an education that is man-centered and thus dishonoring to God. Would you send your child to a Buddhist shrine to worship because it was nearer your home or because it was already paid for by the state? Of course not! Then we can say with equal certainty that we cannot send our children, in the most formative years of their lives, to be shaped religiously by a non-Christian religious educational institution.⁴⁸

But others are convinced that Christian teachers can have a godly influence in the public schools and that many public school teachers and administrators are not hostile to a Christian world view.

The ideal situation would be for Christian parents to have their covenant children educated in a thoroughly Christian atmosphere. Such an atmosphere would

47 Robert Lewis Dabney, *Discussions of Robert Lewis Dabney*, vol. 3, pp. 290-91 (1982).

48 Norman Harper, *Making Disciples, The Challenge of Christian Education at the End of the Twentieth Century*, p. 75 (1981).

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certainly include a thoroughly Christian curriculum which recognizes all truth as God's truth and teaches nothing as true in subject matter contrary to God's revealed word. It would also include Christian teachers who love God and seek to convey God's truth as well as demonstrate a concern for the spiritual well-being of their students. It would as well be an atmosphere in which the Scriptures are regularly consulted and prayer is regularly offered.

This ideal atmosphere would ordinarily be the Christian parents' first choice for the education of their covenant children.

However, it is recognized that Christian parents do choose other means of educating their children for a variety of reasons.

If state or public education is decided upon by the parent, the parent must determine that the content of subject matter being taught in the public school is Scripturally appropriate. The church should educate and inform the parent of general problems in the public school curriculum (as the teaching of Humanistic, anti-Christian values in moral and sex education and the omission of facts about the history, existence, role and contributions of Christianity in the United States and the world from the history and social studies textbooks). Then the parent can protect his child by special instruction or by asking that his child be excused from certain parts of the curricula.

A parent with children in public school (and many private schools which use the same textbooks) should be careful to supplement in his home the Christian values and facts of history which are omitted from the public school curriculum. Where public school values contradict those of the Christian faith, the parent should instruct his children in Biblical values, pointing out to them the error of their public school textbook. For a parent to send a child to a public school, he must be very careful, well-informed and involved.

In addition, parents should study the content of their children's textbooks and then inform the church of their findings. Parents should be actively involved in the public school through the Parent Teacher Association or other such groups.

If the local public school does not provide an education compatible with Scriptural principles and the parent cannot change the public school curriculum by talking with his child's teachers, then it is improper for a Christian parent to permit his child to be taught ungodly principles, Deut. 6:5-9; 11:18-21. If public officials will not allow a child to be excused from a class or from part of the curriculum which contradicts and undermines a child's faith, the parent has no excuse for leaving his child in that school.

Churches and Presbyteries should consider how they might encourage parents in the task of providing their children with an education that is consistent with biblical Truth and that will prepare them for effective service for God's Kingdom in all spheres of life. Churches should seriously consider providing thoroughly Christian and biblical schools for their covenant children as well as many other children in their respective communities. If necessary, the church should assist in providing the means by which a parent can educate his child, whether it be through establishment of a Christian school or financial assistance to the parent to provide for a Christian or private education elsewhere.

Undoubtedly, many problems with respect to adolescent rebellion in covenant children can be partially attributed to the schizophrenic world view that is absorbed where church and family embrace a wholly different world view than that which is promoted in the public educational system.

The need for quality education in our modern, technological society is paramount for all of our young people. The public schools have failed to truly educate our children in two fundamental areas. First, they have often distorted reality by insisting on a radically secular and Humanistic world view. Second, they have often failed to provide the basic skills needed for a young person to become a productive member of society.

This is nowhere more evident than in our major cities where an enormous drop-out rate of often above one-third demonstrates the ineffectiveness of many school systems. This substandard education points toward the creation of a permanent underclass of functionally illiterate adults who will emerge alienated from a society which has not provided them with equal access to opportunities for the future.

Such a felt need provides the PCA with a unique opportunity in its strategic concern to evangelize the great metropolitan centers of North America. We have the opportunity open before us to truly penetrate the urban culture by providing quality Christian education at reasonable cost. Our suburban and exurban churches can establish a true bridge of friendship and understanding by becoming partners to the urban church, providing personal and financial resources for the nurturing of all of our children.

II. CONSTITUTIONAL ISSUES IN EDUCATION

The First Amendment to the Constitution states that Congress shall make no law prohibiting the free exercise of religion.

The Supreme Court of the United States has long upheld the right of parents to direct the upbringing and education of their children. In the case of *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Court ruled that:

[The State may not] unreasonably interfere[] with the liberty of parents and guardians to *direct the upbringing and education of children under their control*.... 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.⁴⁹

In 1944, the Supreme Court also recognized the unique relationship between parents and children—a relationship which belongs exclusively to the parents and not to the State:

It is cardinal with us that the custody, care and nurture of the child will reside first in the parent, whose primary function and freedom include preparation or obligation that the State can neither supply or hinder.

Prince v. Massachusetts, 321 U.S. 158,166 (1944).

Again in 1968, the Court noted that “constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the

⁴⁹ *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (emphasis added). In this case, the State of Oregon had sought to eliminate the private school system and require all students to attend public schools. The Supreme Court has reaffirmed its commitment to the interest of parents in guiding the religious education of their children in *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

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rearing of their children is basic in the structure of our society.”⁵⁰ Similarly, in 1982, the Supreme Court upheld the “fundamental liberty interest of natural parents in the care, custody, and management of their child” against the State’s terminating that right even when the parents “have not been model parents or have lost temporary custody of their child to the State.” *Santosky v. Kramer*, 71 L.Ed.2d 599,606 (1982).⁵¹

However, social services departments; state, family and juvenile courts; and legislative and other judicial bodies have been more and more willing to interfere with the right of the parents to raise their children. The ostensible reason for removing children from the custody of their parents or ignoring the parental right to control the content of their children’s teaching is to protect the child from abuse by his parents. Increasingly, state agencies and courts have interpreted emotional and physical abuse to include the teaching of religious doctrines to children in Christian schools or at home.

A. Options for Christian Education:

1. Church Schools

Where parents have sought to control directly the content of their child’s education, they have been most successful where their child is in a private Christian school or where they are educating their child at home. As noted above, the United States Supreme Court, in 1925, in the case of *Pierce v. Society of Sisters*, ruled that a state may not prohibit private education. It specifically upheld the right of a Catholic order to establish a private denominational school.

In 1972 the Court upheld the right of Amish parents to withdraw their children from public school to protect their religious values:

This case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western Civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Ohio Supreme Court in 1976 similarly ruled: “[I]t has long been recognized that the right of a parent to guide the education, including the religious education, of his or her children is indeed a ‘fundamental right.’ ” *State v. Whisner*, 41 Ohio St.2d 181, 213-14, 351 N.E.2d 750,769 (1976).

However, state departments of education and social services have attacked these forms of education as providing an inferior result, as was noted in the Faith Baptist Church case in Louisville, Nebraska, recently. A number of courts have upheld state departments of education.⁵²

⁵⁰ *Ginsberg v. New York*, 390 U.S. 629,630 0968), quoted in H. L. V. Matheson, 450 U.S. 398,410 (1981).

⁵¹ “Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental right have a more critical need for their procedural protections than do those resisting State intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair, perfect procedures.” *Santosky v. Kramer*, 71 L.Ed.2d 599,606 (1982). The Court here protected parental rights under the due process clause of the Fourteenth Amendment.

⁵² In *Braintree Baptist Temple v. Holbrook Public Schools*, 616 F. Supp. 81 (D. Mass. 1984), a federal district court rejected the argument that the state has no right to regulate private schools.

However, in response to legislative efforts by Christian educators, pastors and parents, a number of states have protected the right of churches to establish their own Christian school independent of state control.⁵³ In other situations federal and state courts have found that the First Amendment right of free exercise of religion guarantees to parents their right to instruct their children in a Christian school, even though that Christian school or church school does not meet the requirements of the state department of education or a private school.⁵⁴

Because the cost of church and Christian school education is often out of reach of many parents, churches and presbyteries should consider the support of Christian education. One means of financing available in some states (as Minnesota) is the voucher system.

2. Home Schools

In an increasing number of states, legislatures have acted to protect the right of parents to educate their children at home.⁵⁵ In other states, state courts have protected the right of parents to educate their children at home, even overturning compulsory education laws which apparently prohibit home education as unconstitutional.⁵⁶ State Supreme Court decisions in Illinois, Iowa, Michigan, Oregon, Virginia, and West Virginia, however, indicate hostility toward home schooling.⁵⁷

According to the court, permissible regulations include minimal hours of instruction, teacher qualifications and coverage of certain prescribed subjects. This decision will add to the difficulties of parents who are conscientiously opposed to any government regulation of their children's education. See also *Pruessner v. Burton*, 368 N.W.2d 74 (Iowa 1985) *cert. den.* 54 U.S.L.W. 3411 (Dec. 11, 1985) (No. 85-671).

53 Such was a resolution of the conflict between Christian schools and the State of Nebraska. States that permit church schools to function without state-certified teachers or licensing control are: Alabama, Arizona, Louisiana, Maine, Mississippi, and North Carolina. Tennessee, West Virginia and Florida allow church schools if the school is under the oversight of a state Christian school organization. Nebraska and Vermont require periodic testing of the children for them to remain in the church school. Other states require a church school to meet the state requirements for certification of teachers and even of the school itself. Iowa and Michigan are currently the most hostile to church schools. Additional information on the laws in the various states on church schools can be obtained from the Education Commission of the States, 1860 Lincoln Street, Suite 300, Denver, Colorado 80295, in their publication *Compulsory Education Laws and the Impact on Public and Private Education*, by Patricia M. Lines, copyright 1985.

54 See *Bangor Baptist Church v. Maine*, 576 F. Supp. 1299 (1983). *State v. Whisner*, 47 Ohio St.2d 181, 213-M, 351 N.E.2d 750, 769 (1976), recognizing "that the right of a parent to guide the education, including the religious education, of his or her children is indeed a 'fundamental right.'"

55 Included in this list are Arizona, Arkansas, Colorado, Florida, Georgia, Louisiana, Mississippi, Montana, New Mexico, Nevada, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Seventeen states require home schools to be approved by the local school district or school board: Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, and Vermont.

However, Iowa, Michigan and North Dakota require all schools, including home schools to have a certified teacher involved in some degree in the instruction.

Additional information on the home school laws in the fifty states is available from the Home School Legal Defense Association, Post Office Box 2091, Washington, D.C. 20013 and from The Rutherford Institute, Post Office Box 510, Manassas, Virginia 22110.

56 North Carolina, Minnesota, Missouri, and Iowa (in part).

57 *Scoma v. Chicago Board of Education*, 391 F. Supp. 452 (M.D. Ill. 1974); *State v. Moorehead*, 308 N.W.2d 60 (Iowa 1981); *Shanson v. Kushman*, 490 F. Supp. 109 (W.D. Mich. 1980); *State v. Bowman*,

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406 U.S. 205 0972), upheld the right of Amish parents to withdraw their children from public school in order to provide alternative education where “such public education ‘substantially interfere[d]’ with the religious development of the Amish child and his integration into the way of life of the Amish Faith Community.” However, there has been no definitive Supreme Court case upholding the right of private religious education either in church school or at home. The Supreme Court recently declined to review the case of *Dvaro v. District Attorney*, 712 F.2d 96 (4th Cir. 1983), *cert. den.* 104 S.Ct. 998 (1984).

B. Problems With Public Education

The First Amendment as passed by the First Congress in 1789 provides: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...” Fifty-eight days prior to Congress¹ adopting this Amendment, it appropriated government land for public schools in the Northwest Territories with the proviso:

Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.⁵⁸

Separation of church and state was originally understood to *prevent the federal government* from interfering with the free exercise of religion by individuals and churches. The First Amendment was also passed to prohibit establishment of a national church, although not to interfere with state-established churches, for six of the states still had established churches at the time. One scholar noted that there is no historical evidence that the First Amendment was intended to preclude federal government aid to religion when it is provided on a nondiscriminatory basis.⁵⁹

The words “separation of church and state” are not found in the 1787 Constitution or the 1789 Bill of Rights. This phrase was not used until 1803 by Thomas Jefferson in a letter to Danbury Baptist Association and was not recognized as a significant constitutional idea by the Supreme Court until 1878.

The idea that the church and religious activities should be kept out of the public sphere did not gain legal support until 1947 when the Supreme Court ruled that the establishment clause meant that “[n]either a state nor the Federal government...can pass laws which aid one religion, aid all religions, or prefer one religion over another.”⁶⁰ This interpretation was applied to prohibit public school prayer and Bible reading in 1962 and 1963, the posting of the Ten Commandments in 1980, and even silent prayer in 1985.⁶¹ Teaching of evolution was protected.⁶² However, the Court has thus far refused

60 Ore. App. 184,653 P.2d 254 0982); *Grigg v. Virginia*, 297 S.E.2d 799 (Va. 1982); and *State v. Riddle*, 285 S.E.2d 359 (W. Va. 1981).

In some states, parents must bring their home school under the sponsorship of a church in order to avoid violation of compulsory education laws.

58 Northwest Ordinance, article III, 1 Stat. 52 (August 7, 1789).

59 Robert L. Cord, *Separation of Church and State: Historical Fact and Current Fiction*, p. 15 (1982).

60 *Everson v. Board of Education*, 330 U.S. 1,15 (1947).

61 *Engel v. Vitale*, 370 U.S. 421 0962); *Abington School District v. Schempp*, 374 U.S. 203 1963); *Stone v. Graham*, 449 U.S. 39 (1980); and *Wallace v. Jaffree*, 105 S.Ct. 2479 1985).

to review cases which challenged the teaching of Humanism in values and sex education which conflicted with the theistic beliefs of children and parents.⁶³

A District Court Judge in the recent case of *Jaffree v. James*, 544 F. Supp. 727 (1982), however, recognized the discrimination of the public schools against the Christian religion:

It is common knowledge that miscellaneous doctrines such as evolution, socialism, communism, secularism, humanism, and other concepts are advanced in the public schools. Teachers adhering to such tenets [sic] are more likely to expose their students to these ideas. *Reading, teaching or advancing Biblical principles, however, is strictly prohibited.* It is time to recognize that the constitutional definition of religion encompasses more than Christianity and prohibits as well the *establishment of a secular religion*.⁶⁴

Additionally, a new study performed for the National Institute of Education as an official government study demonstrates the practice of excluding theistic religions from the textbooks in the Nation's public schools.⁶⁵

For example, in its review of the social studies textbooks in grades 1 through 4, the study noted that:

[N]ot one of the forty books in the study had one word of text that referred to any religious activity representative of contemporary American life. That is *no text referred to any present day American who prayed, or participated in worship* or in any other way represented active religious life.⁶⁶

The author adds:

[T]his...strongly suggests the psychological interpretation of the motivation behind the *obvious censorship of religion* present in these books. Very briefly those responsible for these books appear to have the *deep-seated fear of any form of active contemporary Christianity*, especially serious, *committed Protestantism*. This fear has lead the authors to deny and repress the importance of this kind of religion in American life.⁶⁷

In reviewing social studies' texts in grades 1 through 6, the study concluded that "there was not one word or image in all the social studies books ... that referred in any way to the powerful and active world of contemporary American Protestantism."⁶⁸ The

62 *Epperson v. Arkansas*, 393 U.S. 97 (1968). *McLean v. Arkansas Board of Education*, 429 F. Supp. 1255 (1982) also struck down an Arkansas statute where the state legislature sought to present a balanced treatment of scientific evidence for evolution and creation.

63 *Grove v. Mead School District*, 753 F.2d 1528 (1985), 106 S.Ct 85 (1985); *Smith v. Ricci*, 446 A.2d 501 (1981) *appeal dismissed*. 459 U.S. 962 (1982).

64 *Jaffree v. James*, 544 F. Supp 727, 732 (1982) (emphasis added). The Court noted that "[t]he religions of atheism, materialism, agnosticism, communism and socialism have escaped the scrutiny of the courts throughout the years... it is apparent from a reading of the decision law that the courts acknowledge that Christianity is the religion to be proscribed." *Id.* This decision was overturned on appeal on another issue, so it has no precedential value. Nonetheless, the judge's reasoning is certainly worthy of note.

65 National Institute of Education, *Equity Values Education: Do the Values Education Aspects of the Public School Curricula Deal Fairly With Diverse Belief Systems?* (1985). Dr. Paul Vitz' report is available from Servant Books under the title *Censorship: Evidence of Bias in Our Children's Books*.

66 *Ibid.*, Section 1, Part 2, i (emphasis added).

67 *Ibid.*, Section 1, Part 2,13 (emphasis added).

68 *Ibid.*, Section 1, Part 2, iii.

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study of eleventh and twelfth grade history books, noted that “[t]here was not one book that recognized the many evangelical movements through U.S. history since the colonial period.”⁶⁹

The study also found that of 670 stories and articles from widely-used grade three and six readers, “[n]ot one story or article in these books [used to teach reading] had a religious or spiritual theme as central to it.”⁷⁰

It concludes:

These basic readers are so written as to represent a systematic *denial of the history, heritage, beliefs and values* of a very large segment of the American people.⁷¹

In certain limited situations, the Supreme Court has ruled that public education may interfere with the basic religious tenets in practice of a religious community. In *Wisconsin v. Yoder*, 406 U.S. 205, 217-18 (1972), noted above, the Supreme Court held:

The conclusion is inescapable that secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals and values contrary to beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish Faith Community at the critical adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.

The Supreme Court has ruled that such interference was a violation of the parents’ and children’s free exercise of religion under the First Amendment of the Constitution. In the same case the Supreme Court noted:

A state’s interest in universal education, however highly we rank it, is not totally free from a balancing process when it infringes on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment and the *traditional interest of parents with respect to the religious upbringing of their children*.

Wisconsin v. Yoder, 406 U.S. 205, 214 (1972) (emphasis added).

Yet, state and federal courts have almost uniformly overlooked their obligation to protect against attacks of Christian beliefs and censorship of Christian history, contributions and role while the same textbooks and teacher materials advance that of other religions and philosophies. It is imperative that Christian people pray to God and petition school authorities for equal protection of their ideas, history and activities in public schools.⁷²

69 Ibid., Section 1, Part 2,55 (emphasis added).

70 Ibid., Section 1, Part 2, v.

71 Ibid., Section I, Part 2,71 (emphasis added).

72 Under the neutrality doctrine imposed on American public schools by the decision in *Wallace v. Jaffree*, 105 S.Ct. 2479 (1985), teachers and textbooks cannot advance religious “beliefs,” although they may teach the existence, contributions, role, and history of religion. This fact is being pressed by 624 teachers, students and parents in the follow-up case of *Smith v. Board of School Commissioners of Mobile County* in federal district court in Alabama. These plaintiffs are arguing that Humanism may not be advanced as a religion in textbooks and that the existence, contributions, role and history of Christianity may not be excluded from textbooks and teacher materials.

The Protection of Pupil Rights Act, 20 U.S.C. 1232h (1978), was enacted to protect children from psychological examination or treatment which requires the pupil to reveal information concerning “political affiliations,” “sex behavior and attitudes,” “mental and psychological problems potentially embarrassing to the student or his family,” or critical appraisals “of behavior and attitudes with family members” without “the prior written consent of the parent.”⁷³

However, if the offensive material is not a psychological examination or treatment, but a public school textbook or teaching method, then the parent must rely upon the willingness of the public school teacher or principal to make an exception for his child and to excuse him from exposure to the material as a federal district court recently held in *Mozert v. Hawkins County Public Schools*, F.Supp. (E.D. Tenn. Oct. 24, 1986). If the school authorities do not permit the child to be excused, then the parents’ next recourse is to appeal to the board of education of that city or county or to the courts, as parents did recently in the case of *Grove v. Mead School District*, 753 F.2d 1528 (9th Cir. 1985). In this case, however, the Ninth Circuit held that the Constitution does not protect individuals from being religiously offended by what the government does, even though the Court acknowledged that offensive material “generally denigrates the figure of Jesus and casts doubt upon much fundamentalist doctrine—from the efficacy of prayer to the inerrancy of Scripture and benevolence of God.” *Id.* at 1541. On appeal, the Supreme Court denied *certiorari* and refused to review the lower court decision.⁷⁴ Some believe that because of the hostility of public schools to theistic ideas, Christian parents should remove their children from the public school system. Psalms 1:2-3.

A favorable Supreme Court decision to protect the beliefs of Christian children in public schools is greatly needed. Prayer and financial support should be directed to cases as *Mozert*, referred to above, and to the case of *Smith v. Board of School Commissioners of Mobile County*, successor to the *Jaffree* case. Here 624 parents, teachers and students are asking Judge Brevard Hand to prohibit the establishment of Humanistic moral values in the public school curriculum and to protect their children against the censorship of textbooks as to the existence, history, role and contributions of Christianity.⁷⁵

73 See *Child Abuse in the Classroom* (Crossway Books: 1984) for the transcript of hearings on current abuses in the classroom and regulations to implement this law.

74 *Grove v. Mead School District*, No. 354,753 F.2d 1528 (1985) *cert. den.* 106 S.Ct. 85 0985). The Sixth Circuit Court of Appeals, however, took a somewhat contrary position when it held that exposure to offensive religious beliefs through an elementary school reading program may in fact constitute a violation of the students’ or parents’ free exercise of religion in *Mozert v. Hawkins County Public School*, 763 F.2d 75 (6th Cir. 1985).

75 Nearly all Humanists agree on the following principles:

- a. God is either nonexistent or irrelevant to modern man.
- b. Man is the supreme value in the universe.
- c. Man is purely a material or biological creature.
- d. Man, through the use of his scientific reason, will save himself.

The *Smith* case has received substantial support from PCA churches. Two of the lead attorneys are PCA elders; four of the witnesses are Presbyterian pastors or seminary professors; and the lead Plaintiff is a member and deacon of a PCA church. Eastwood Presbyterian Church in Montgomery, Alabama, and Briarwood Presbyterian Church in Birmingham, Alabama, have been channeling gifts for the effort.

An example of the anti-Christian teachings of two of the textbooks reviewed in the *Smith* case is:

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The last alternative for a Christian parent is to instruct his child to refuse to study the materials which undermine the child's faith and morals regardless of the consequences to the child's grades or to withdraw the child from the public school and to enroll him in a Christian school or home school discussed above. If a parent cannot afford this option, the church is responsible to help a parent obey God (Acts 2:45).

CONCLUSION

Scripture clearly requires that Christian parents train their children to know and follow God (Deuteronomy 6:6-9, Proverbs 22:6, Ephesians 6:3-4). The parent is personally responsible for this, although he may ask others to help him, as the church (Ezra 10:1). However, a parent should not ask an individual to teach his children where the parent does not have authority over the content of what is taught. A parent may control what a child is taught by supplementing classroom or textbook materials or by removing his child from the classroom when the materials are so hostile or damaging that the parent does not believe that he can supplement and effectively neutralize their anti-Christian bias. Where a parent allows an individual to teach ungodly or unbiblical ideas to his child, he violates Scripture (Proverbs 1:8-33, Isaiah 8:16-20). Thus, a parent must determine how he can best follow God in educating his children. The choices before him are home schools, church schools, private independent schools or state schools. Parents must choose the educational system that will best enable them to fulfill their duty before God. Churches and presbyteries should consider supporting Christian and home schools (where parents cannot afford these alternatives) and efforts to end the hostility toward the Christian faith and the censorship of Christianity's existence, contributions and history from public school textbooks.

"There are several things you should not do when telling children about death.... Do not say, 'God took Daddy away because he wants Daddy to be with him in heaven.' Not only is this confusing, but it causes the child to fear and hate God for taking the father away....

"The simplest way to talk to a child about death is to talk about how flowers and pets die. If you explain that death is a normal part of life, the child will be able to accept it" *Contemporary Living* by Verdene Ryder, The Goodhart-Wilcox Co., Inc. at page 329.

Another example:

"Too strict a conscience may make you afraid to try new ventures and meet new people. It may make you feel different and unpopular. None of these feelings belongs to a healthy personality.

"You can learn about yourself when you listen to your conscience. It is you talking to yourself, guiding you." *Today's Teen* by Joan Kelly and Eddy Eubanks, Charles A. Bennett Co., Inc. at page 23.

**V. PROPRIETY OF THE CHRISTIAN'S NONVIOLENT DISOBEDIENCE
TO THE CIVIL MAGISTRATE
IN THE ABORTION CONTROVERSY**

by Mark Belz and Linward Crowe

I. The Issue.

Evangelical Christians in America, in increasing numbers, have been expressing their opposition to abortion and the current law in America which permits and protects that practice, by open violation of the civil law. Some members of the Presbyterian Church in America, both lay and clergy, have joined ranks with members of other denominations in both legal and illegal protests at abortion clinics.¹

Some of these protests have included illegal pickets at abortion clinics, "sit-ins," or similar actions. The scope of this committee's work is limited to a discussion of such non-violent actions. The open confrontation which takes place between the protester and the abortion clinic personnel or local police force is an expected and usual result. This confrontation often results in the arrest, prosecution and conviction of the protester.

The Christian who undertakes this kind of protest finds himself in the strained position of intentionally confronting and resisting the civil magistrate and government. The Christian who protests in this way typically is an otherwise law-abiding citizen who desires to promote respect for the civil order, and who loves a peaceful, well-ordered society. But he is also a person who feels conscience-stricken regarding the issue of abortion and believes, on the basis of Scripture, that the act of abortion is a direct and immediate violation of the Sixth Commandment, "Thou shalt not kill." The Presbyterian Church in America has emphatically adopted this position:

We cannot stress too strongly our authority in this matter. God in His Word speaks of the unborn child as a person and treats him as such, and so must we. The Bible teaches the sanctity of life, and so must we. The Bible, especially in the Sixth Commandment, gives concrete protection to that life which bears the image of God. We must uphold that commandment.²

But while the constituency of the Presbyterian Church in America may be clearly united in their opposition to abortion, i.e., that the act of abortion is a violation of the Sixth Commandment, they are by no means of one mind on the issue of disobedience to the civil magistrate in the abortion controversy. Like the "underground railway" issue in the slavery controversy more than a century ago,³ the internal conflict sharply divides members of the Presbyterian Church in America, sometimes even within our local churches. Thus, in one of our presbyteries, in the Spring of 1985, we find a Presbyterian Church in America pastor and members of his church refusing to leave the parking lot of an abortion clinic, while a member of another Presbyterian

¹ The Presbyterian Journal, Vol. 43, No. 28, Nov. 7, 1984, pp. 3, 6-8.

² Report of the Ad Interim Committee on Abortion, adopted by the Sixth General Assembly of the Presbyterian Church in America, Grand Rapids, Michigan, June 19-23, 1978, p. 11.

³ Andrew E. Murray, *Presbyterians and the Negro--A History*, Presbyterian Historical Society, Philadelphia, PA 1966, pp. 63-130.

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Church in America church in the same presbytery--the chief of the county policy force—ordered, directed and presided over their arrest and imprisonment.⁴ And where political conservatism is prevalent in the Presbyterian Church in America, two current themes of that conservatism come into apparent conflict: law and order, on the one hand, and open resistance to the laws which protect the right of abortion, on the other.

Recognizing the need for some guidelines, then, in this area, and being convinced that Christians within the Presbyterian Church in America on both sides of the issue desire to speak and act on the matter in a way consonant with Scripture, your committee has attempted to bring Scriptural principles to bear on these questions: What are the broad Scriptural principles regarding submission to the civil magistrate? What examples or teaching can be found in Scripture where disobedience to the civil government was approved or required? Is resistance to abortion through disobedience to the civil law an area where the Christian may disobey the law? What guidelines or safeguards should the Christian adhere to if he is civilly disobedient?

II. Scriptural Principles.

Discussions regarding the Christian's responsibility to the civil government inevitably begin with a look at two of the more obvious texts on the subject: Romans 13:1-7 and I Peter 2:13-17. Both texts deal specifically with the issue of submission to the civil authorities, and both were written to Christians who were living their day-to-day lives under a pagan civil government. These passages make it clear (a) that civil government is established by God, (b) that God establishes civil government to promote good and punish evil, (c) that the civil magistrate, in his governing function, is God's servant, (d) that therefore the Christian must submit to the civil magistrate in his governing function, (e) that rebellion against the civil order is rebellion against God and results in judgment. In short, the Christian has a high duty to respect and obey the civil law, not because government is intrinsically good or right, but because the child of God must obey God who ordained government, even pagan government, for His glory and our good. (See also Titus 3:1 and I Timothy 2:1,2).

The Christian's responsibility to submit to or obey the civil magistrate, like all other "lateral duties in Scripture, arises out of his duty to obey God. Similarly, children are to obey parents "in the Lord;" slaves are to obey their masters out of obedience to Christ; the wife is to submit to her husband as to the Lord; the husband is to love his wife as Christ loves the church (Ephesians 5:22-6:9). We pay taxes and we also tithe not because we answer to two ultimate authorities but because it is King Jesus who has told us to do both (Luke 20:20-26 and Romans 13:6, 7). The Christian has but one Lord—he answers to only one ultimate authority.

It is clear, therefore, that the authority of another human being or institution is not intrinsic, and thus not absolute. If obedience to any human authority requires disobedience to God, then a child must disobey his parent, a wife must refuse to submit to her husband, and a servant cannot follow his master's orders. Nor can the Christian citizen comply with an order from the civil magistrate which requires disobedience to God's commands. Scripture itself reveals numerous incidents where this principle was at work, some of the more outstanding examples of which are:

(a) The Hebrew Midwives, under orders to kill boy babies born to Hebrew women, rather "feared God and did not do what the king of Egypt had told them to do,

⁴ St. Louis County v. Dye and MacNaughton, filed May 20, 1985, Division 36, St. Louis Missouri, Associate Circuit Court.

but saved the babies alive, and in fact misled Pharaoh about what they had done. Because they "feared God and did not do what the King of Egypt had told them to do", they received not the condemnation of God but His blessing: "...because the midwives feared God, He gave them families of their own" (Exodus 1:15-22). Likewise, Moses' parents, who violated the same law by hiding their child from the civil authorities, enjoy distinction in the faith "hall of fame" because "they were not afraid of the king's edict" (Hebrews 11:23).

(b) Rahab the prostitute is also listed as one of the heroes of faith (Hebrews 11:31) specifically for hiding the Israelite spies in direct disobedience to the king of Jericho's command. She also deceived the king and surreptitiously delivered the spies to safety (Joshua 2). Because of her disobedience to the civil magistrate, she and all her family were spared destruction and judgment (Joshua 6:17b, 25).

(c) When Ahab and Jezebel, king and queen of Israel, issued death warrants for Elijah and others of the Lord's prophets, Obadiah, who had been given charge of the king's palace, appears as a "devout believer in the Lord." He hid one hundred of the Lord's prophets in two caves, to protect them from the state's power (I Kings 18:1-15).

(d) Two accounts in the book of Daniel provide us with some of the most important Biblical data concerning the relationship of the child of God to the state. The first is the story of Shadrach, Meshach and Abednego—all government officials in Babylon under King Nebuchadnezzar. They were commanded by the civil magistrate to disobey the God of Israel: to fall down and worship a golden image, Nebuchadnezzar's symbol of state sovereignty. The king was requiring them to perform an act which was actively disobedient to the God of Israel. Their refusal, of course, resulted in immediate prosecution and the death sentence, from which God miraculously delivered them (Daniel 3). By way of contrast, the story of Daniel's confrontation with King Darius in chapter 6 displays the other side of the principle: Daniel was commanded by the government to cease praying to the God of Israel; i.e., to omit to perform an act which was required by the God of Israel. He was required by civil law to sin by omission; his three friends had been required to sin by commission. But whether the civil law required "want of conformity unto" or "transgression of" the law of God, the answer of the child of God is the same: God's command is superior and must be obeyed.

(e) Peter and the apostles' dispute with the Sanhedrin (Acts 5:17-42) was of the same genre as the Daniel-Darius crisis. The apostles were commanded to desist from their peace-disturbing preaching. Though they had been jailed and were under strict orders not to preach and teach in the name of Jesus, Peter and the apostles boldly responded: "we must obey God rather than men!" (Acts 5:29b). Like Daniel, they could not neglect positive duty required of them by God even though the civil magistrate outlawed their actions.

John Calvin, in the Institutes of the Christian Religion (Book IV, Chapter 20), clearly sets forth the divine institution and support of the civil magistrate, and the Christian's high duty to respect and obey even unworthy or evil rulers (IV, 20, 1-31). But Calvin ends that discussion with the following words:

But in the obedience which we have shown to be due to the authority of governors, it is always necessary to make one exception, and that is entitled to our first attention -- that it do not seduce us from obedience to him to whose will the desires of all kings ought to be subject, to whose decrees all their commands ought to yield, to whose majesty all their scepters ought to submit. And, indeed,

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how preposterous *it* would be for us, with a view to satisfy men, to incur the displeasure of him on whose account we yield obedience to men! The Lord, therefore, is the King of kings; who, when he has opened his sacred mouth, is to be heard alone, above all, for all, and before all; in the next place, we are subject to those men who preside over us, but no otherwise than in him. If they command anything against him, it ought not to have the least attention, nor, in this case, ought we to pay any regard to all that dignity attached to magistrates, to which no injury is done when it is subjected to the unrivaled and supreme power of God... [A]s if God had resigned his right to mortal men when he made them rulers of mankind, or as if earthly power were diminished by being subordinated to its author before whom even the principalities of heaven tremble with awe. I know what great and present danger awaits this constancy, for kings cannot bear to be disregarded without the greatest indignation; and "the wrath of a king," says Solomon, "is as messengers of death" (Prov. 16:14). But since this edict has been proclaimed by that celestial herald, Peter, "We ought to obey God rather than men," (Acts 5:29)—let us console ourselves with this thought, that we truly perform the obedience which God requires of us when we suffer anything rather than deviate from piety. And that our hearts may not fail us, Paul stimulates us with another consideration—that Christ has redeemed us at the immense price which our redemption cost him, that we may not be submissive to the corrupt desires of men, much less be slaves to their impiety (I Cor. 7:23).⁵ (Emphasis added).

In summary, Scripture teaches that the child of God has a high duty to obey the civil law. That duty arises out of his duty to obey God. Where the civil law requires the Christian to disobey the commands of Scripture, either through a sin of commission or omission, the Christian must reject that provision of the civil law. He has only one God; he must obey Him rather than men.⁶

III. Application of Biblical Principles to the Abortion Controversy.

The 1973 United States Supreme Court decision of *Roe v. Wade*⁷ legalized abortion on demand in this country, as a matter of constitutional law. The Court held that the United States Constitution implies a "right to privacy" which gives every pregnant woman in America the freedom, in consultation with her doctor, to choose to destroy her pre-born infant. Between 1973 and 1985, it is estimated that over 18 million abortions had been obtained in the United States under the guidelines of the *Roe v. Wade* decision.

Neither *Roe v. Wade* nor any other known law in the United States requires any person to obtain an abortion, or to participate in the abortion procedure. Therefore, current law does not make the sin of abortion obligatory upon the Christian. The

⁵ John Calvin, *Institutes of the Christian Religion*, Book IV, Chapter 20, Section 32.

⁶ See also Samuel Rutherford, *Lex, Rex, or the Law and the Prince*, Sprinkle Publications, Harrisonburg, Virginia, reprinted 1980; John Knox, "Letter to the Commonality of Scotland," in *Select Practical Writings of John Knox*, Committee of the General Assembly of the Free Church of Scotland, 1845; Robert L. Dabney, *Lectures in Systematic Theology*, Presbyterian Committee of Publication, Richmond, VA 1871.

⁷ *Roe v. Wade*, 410 U. S. 113, 93 S.Ct. 705 (1973).

Christian in America today is not faced precisely with the Shadrach, Meshach and Abednego kind of crisis. The state has guaranteed to the citizenry generally that abortion is permissible, but the state has required it of no one. How, then, does a Christian justify disobedience to the civil magistrate at the abortion clinic?

The Christian abortion protester blocks the doorway at the abortion clinic out of a deep sense of Christian duty. He is willing to attempt to forbid entrance of a pregnant woman to an abortion clinic, even to the extent of violating the law, in order to save the child's life. He feels the need to intervene on behalf of the child. His purpose in blocking the doorway is not primarily or essentially for publicity, nor to work a change in the law, nor to impose his moral code on the mother or doctor involved. Rather, he believes it is his duty to do what he can to protect and preserve the life of the unborn child who is only moments away from death. In this regard, his action is substantially identical with that of the Hebrew midwives. Unlike the Supreme Court, but like the Presbyterian Church in America, he believes the unborn child to be a person. He believes that this person has a right to expect a helping hand in his time of need.

His sense of duty in this regard derives from the positive duty implicit in the Sixth Commandment, "thou shalt not kill." This is the duty to protect and preserve our own lives and the lives of our neighbors, clearly set forth in both the Larger and Shorter Catechisms.⁸ It is also the duty which Jesus taught in the parable of the Good Samaritan (Luke 10:25-37) and which Moses summarized as "Love your neighbor as yourself" (Lev. 19:18 and Mt. 22:39). The Christian who attempts to put himself between the pregnant woman and the abortionist does so in a direct attempt to protect and preserve the life of the unborn child, his neighbor. It is the duty most succinctly summarized by Jesus in the Sermon on the Mount: "In everything, do to others what you would have them do to you, for this sums up the Law and the Prophets" (Mt. 7:12).

It should be noted that God's people have a high duty to defend, protect, and support the innocent, the widow, the weak, and the orphan (Mk. 12:40, Isa. 1:16-20, Ex. 22:22, Micah 6:8 and I Thess. 5:5, 22). This duty could exclude the unborn child only to the extent that the unborn child is excluded from personhood. The duty is specifically emphasized in Proverbs 24:11, 12:

Rescue those being led away to death; hold back those staggering toward slaughter. If you say, "But we knew nothing about this," does not he who weighs the heart perceive it? Does not he who guards your life know it? Will he not repay each person according to what he has done? (NIV)

It is crucial to note at this point that the duty which the Christian has to protect the physical well-being (especially the life) of his neighbor, is really a duty which good government otherwise should undertake through keeping the peace (I Tim. 2:1, 2 and Romans 13). Interestingly, Paul's discussion in Romans 13 on civil government is all within the context of love (Romans 12:9-21 and 13:8-10); Paul closes this discussion with these words: "Love does no harm to its neighbor. Therefore love is the fulfillment of the law" (Romans 13:10). Civil government, established by God, is meant to work in generally the same direction as the law of love; when, as under current abortion laws, the civil law punishes those who protect the helpless from death, the civil authority is (to that extent) at war with itself and with God, having denied the basic foundation of law itself.

⁸ Westminster Larger Catechism, Questions 135, 136; Westminster Shorter Catechism, Questions 68, 69.

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Assuming that a moral duty exists, then, toward the unborn child, i.e., that the Christian has the same duty to love him and to protect his life as the Christian owes to born children or adults, the Christian is not absolved of that duty when the civil law tells him that he cannot protect the unborn child's life. The Christian abortion protester sees neglect of the duty to protect the helpless unborn as constituting neglect of duty to God. It should be noted that many evils exist in modern society and government, and that the Christian's opposition to other evils does not necessarily justify violation of the civil law. For example, evils such as divorce or pornography should also be opposed, but direct intervention involving disobedience to the civil law would not be warranted. But several aspects of abortion make it unique: (1) every abortion involves the intentional, premeditated taking of a human being's life; (2) the consequences of the act of abortion are immediate and irretrievable; and (3) the act of abortion always involves a helpless, non-consenting victim. Furthermore, it should be re-emphasized that disobedience to the civil law in opposing abortion is not primarily to compel the pregnant woman or the doctor to lives of holiness, but rather to save the life of the child.

IV. Conclusion.

Without question, the abortion controversy in the United States today has brought the Christian into direct conflict with the state. Where the Christian openly resists the state through his attempt to intervene for the life of an unborn child, his act of disobedience to the civil law seems clearly justifiable on the basis of Scripture. Christians within the Presbyterian Church in America who, after careful study of the Scriptures and prayer, believe that they must personally intervene for the unborn child and thus violate the civil law, should have the concerned support of the body of believers. However, certain cautions should be borne in mind:

1. Recognizing that God has ordained all civil government, the participant should maintain a generally high respect for the civil law and the magistrate. While particular acts of non-violent civil disobedience might be necessary to fulfill Christian duty, the Christian still must recognize that not all government or law is thus to be disrespected or demeaned (Romans 13 and I Peter 2).

2. The Christian who violates the law within the confines of this issue must remember that many fellow Christians will disagree; uncertainty and ambiguity usually surround any acts of civil disobedience. The Christian should act with humility, out of a sense of duty rather than superiority, and should refrain from harsh judgment of brothers and sisters who stop short of violation of the law.

3. Whenever the Christian stands in direct opposition to evil, as in the present controversy, it is essential that he remember that "our struggle is not against flesh and blood, but against the rulers, against the authorities, against the powers of this dark world and against the spiritual forces evil in the heavenly realms" (Eph. 6:12). Because the battle is spiritual at its roots, all acts of resistance to the civil magistrate must be supported by much prayer, recognizing that ultimate victory on the abortion crisis, as in any issue, will be a result not of our work but of God's grace in answer to the prayers of his saints.