

The Separation of Church and State as It Relates to Our Christian Schools

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The separation of church and state is one of the burning issues of our day. Our local, state, and federal governments are wrestling with the problem continually. Tight budgets prompt local officials to reexamine the exclusion of church-owned property from the tax rolls. State and federal authorities are confronted with dozens of questions ranging all the way from the legality of the military chaplaincy to the right of citizens to refuse to salute the flag on religious grounds, and from the authority of the state to overrule the religious convictions of parents who refuse to allow a child to be given a needed blood transfusion to the right of a Unitarian church to conduct classes in sex education using pornographic materials.

It is especially in the area of education that troublesome questions have arisen. To what extent may the state give aid to church-related schools? Where is the boundary between the state's legitimate concern-for the welfare of its citizens and unconstitutional support of a religion?

Our Synod and our congregations have also wrestled with difficult problems and controversial questions. What about the exemption of our male teachers from military service? What about the tax exemption of our teacherages and professorages? What about the participation of our schools in the government supported milk and hot lunch programs? What about school busing, free textbooks, library services, government loans or grants for tuition or for certain school facilities? What about state certification of the teachers in our schools and the related question of the accreditation of our teacher-training college? Our Synod's president devoted a considerable part of his most recent *Newsletter* to an investigation by the Department of Labor of our Synod's salary scale for teachers.

All of these problems point up the relevancy of the topic assigned for this essay. It is obvious that we cannot exhaust the subject in the time allotted for this discussion. It will be our chief aim, however, to highlight the scriptural principles that have a bearing on the separation of church and state as it relates to our Christian schools. These principles will be our guide as we seek God-pleasing solutions to a variety of practical problems.

It is self-evident among us, of course, that the Holy Scriptures are God's inspired and inerrant Word and therefore the final authority in all matters of doctrine and practice. It should also be said at the outset that while we may be in full agreement on the principles involved, there may well be differences of opinion among us on the wisdom of particular policies or practices which lie in the area of adiaphora. Such questions will be a matter of Christian judgment. Differences in practice in such areas should not disturb us any more than the fact that some of our congregations use individual communion cups and others the common cup.

The committee that assigned this essay also indicated four points it wished to have discussed. Those points will therefore form the divisions for this presentation. They are:

- I. The Scriptural and Confessional Principles Involved;
- II. A Historical Perspective with Special Reference to the Bennett Law;
- III. Some Practical Applications; and
- IV The Long Range Consequences of Not Observing the Separation of Church and State.

The Scriptural and Confessional Principles Involved

Let us begin by defining what we mean by the terms "church", and "state." The word "church" is used in Scripture in a double sense. In the strict or sense it is the spiritual fellowship of all who believe in Jesus Christ as their Savior from sin (Mt 16:16-18; Ac 2:47; Eph 1:22,23). This church is God's creation. He brings sinners whom He has redeemed with the precious blood of Christ to faith through the means of grace and places them as living stones into the spiritual temple of His church. This church is invisible to us because we cannot look into

men's hearts (1 Sam. 16:7). We cannot see who the true believers in Christ are. Only "the Lord knoweth them that are his" (2 Tim 2:19). This is the church we are speaking of when we confess in the Apostles' Creed, "I believe in the holy Christian church, the communion of saints."

In the wider sense the word "church" is used of the whole group of those who profess to believe in Christ and who gather to hear the Gospel preached and to receive the sacraments (3 Jn 10). This group is called the "church" because of the true believers in it. It is the empirical church, the church as we know it. This is the only form in which we can recognize or deal with the church in this world. It is this church that we are referring to when we speak of the separation of church and state.

By the "state" we mean human government, whatever its form may be. The authorities that are in actual power constitute the government, whether they acquired their power legitimately or not. In Romans 13:1 the Apostle Paul admonishes, "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God." Those who exercise governmental authority and control have their power from God. Jesus expressly told Pilate when Pilate boasted of his power either to crucify or to release Him, "Thou couldest have no power at all against me, except it were given thee from above" (Jn 19:11).

From Paul's words in Romans 13 we see also that God has established government. Like the church, the state is a divine institution. Paul speaks of it as "the minister of God" (Rom. 13:4). It is His servant. Those who hold positions of civil power are God's representatives. He requires that they be obeyed. "Whosoever therefore resisteth the power, resisteth the ordinance of God," Paul declares (Rom. 13:2) and adds, "Wherefore ye must needs be subject, not only for wrath, but also for conscience sake" (Rom.13:5). The only exception to such required obedience is when these authorities demand something of us that is sin. In such a case "we ought to obey God rather than men" (Ac 5:29).

Luther spoke of the church as Christ's kingdom of the right hand and the state as His kingdom of the left hand.¹ As Christians we belong to both kingdoms. We are not only members of the church but also citizens of the state. This does not pose any difficulty for us, however, because these two kingdoms are entirely different. The one is spiritual, the other physical; the one heavenly, the other earthly; the one eternal, the other temporal. We can distinguish one from the other just as clearly and sharply as Bill Brown distinguishes between St. John's church council and St. John's baseball team, though he is a member of both.

The purpose of the church council and of the baseball team are entirely different. So also the purpose of the church and of the state are radically different. God has assigned a different role and responsibility to each.

The church is to call sinners to repentance (Ac 2:38; Jn 20:21-23). It is to make disciples of all nations (Mt 28:19). It is, furthermore, to strengthen and encourage those who have become disciples of Christ in their Christian faith and life (Eph 4:11-13).

The state, on the other hand, has the purpose of preserving a certain measure of peace and order in human society. It is to protect law-abiding citizens and to restrain and punish evildoers. Paul describes it as "a minister of God to thee for good" and as "a revenger to execute wrath upon him that doeth evil" (Rm 13:4). The same apostle bids us to pray for those in authority "that we may lead a quiet and peaceable life in all godliness and honesty" (1 Tim 2:2). Peter admonishes, "Submit yourselves to every ordinance of man for the Lord's sake; whether it be to the king, as supreme; or unto governors as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well" (1 Pe 2:13,14).

The Augsburg Confession describes the God-assigned responsibility of the state in these words: "The civil rulers defend not minds but bodies and bodily things against manifest injuries, and restrain men with the sword and bodily punishments in order to preserve civil justice and peace."²

In the interest of preserving civil justice and peace the state regulates such affairs as marriage and divorce (Mt 19:7,8), money matters (Mt 22:19-21), property and other disputes (Lk 12:14; Ac 19:38; 1 Cor 6:1-8),

¹ WA 36, 385. Quoted in *Church and State Under God*, Albert G. Huegli, ed. (St. Louis: Concordia, 1964), p. 464

² Art. XXVIII, 11; Triglotta, 85.

compensation or punishment for injury (Ex 21:22-25), war and peace (Lk 14:31,32), and all such matters that affect the general welfare and safety of its citizens.

To enable the church and the state to accomplish these wholly disparate purposes God has provided them with wholly different tools.

To the church He has given His Word, consisting of both Law and Gospel (Mk 16:15; Ac 20:27). The Law is to serve in its threefold function as a mirror, revealing man's sin; as a curb, restraining man's wickedness; and as a guide, directing Christians in their sanctification. The Gospel in Word and Sacrament is to function as a means of grace, conveying to sinners God's gracious gifts of forgiveness, life, and salvation.

To the state God has given the sword as a means to enforce its laws (Gn 9:6; Rm 13:4). The power of the sword is the right to take human life. The state may then obviously also impose lesser punishments such as imprisonment, fines, or probation (Ex 21:22,30; Mt 5:25).

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

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

Fallen man still knows that there is a God. He also has some knowledge of God's moral law, since God has inscribed this on his heart. In addition, he has a conscience, which accuses him when he transgresses the inscribed law. These truths are evident from Paul's words in Romans 2:14,15: "When the Gentiles, which have not the law [that is, the written law which God gave to Israel through Moses] do by nature the things contained in the law, these, having not the law, are a law unto themselves: which shew the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the meanwhile accusing or else excusing one another."

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

The human will has liberty in the choice of works and things which reason comprehends by itself. It can to a certain extent render civil righteousness or the righteousness of works; it can speak of God, offer to God a certain service by an outward work, obey magistrates, parents; in the choice of an outward work it can restrain the hands from murder, from adultery, from theft. Since there is left in human nature reason and judgment concerning objects subjected to the senses, choice between these things, and the liberty and power to render civil righteousness, are also left. For Scripture calls this the righteousness of the flesh which the carnal nature, i.e., reason, renders by itself, without the Holy Ghost.³

Here Melancthon calls natural man's outward obedience to the law "civil righteousness" or "the righteousness of works." The Augsburg Confession calls it "the righteousness of reason."⁴

This righteousness of reason is imperfect in that it is limited to outward actions. It does not recognize that God's law demands that the thoughts of our heart be pure and holy. It is imperfect also in that it is limited to our relations with out follow man. In no way does it fulfill the requirement of the First Table of the law that we love God above all things. It is imperfect, furthermore, in that natural man repeatedly fails to fulfill the demands of the law even outwardly. And it is imperfect finally in that natural man's motives are purely selfish. His actions are governed by the mistaken thought that he can merit God's favor by his "good" deeds, whereas Scripture makes it clear that "without faith it id impossible to please him" (He 11:6).

³ Art. XVIII, 70; Triglotta, 335.

⁴ Art. IV, 22-24; Triglotta, 127.

In the sight of God man's civic righteousness has no spiritual value. It is, in fact, sin, for Isaiah declares that "all our righteousnesses are as filthy rags" (Is 64:6) and Jesus asserted that the tax collectors and prostitutes were entering into the kingdom of heaven ahead of the Pharisees, who were paragons of this kind of piety (Mt 21:31). Nevertheless, God rewards civic righteousness with material, earthly, and temporal blessings in this life (Mt 6:2). An honest citizen, for example, enjoys a good reputation in his community.

From all that has been said we see that the church and the state each have a distinct function to serve in this world and God-given means with which to carry out these responsibilities Scripture also makes it clear that each is to remain within its assigned sphere. The church is not to take over or meddle in functions that are the responsibility of the state. When a man asked Jesus to persuade his brother to divide an inheritance with him, Jesus refused, saying, "Man, who appointed me a judge or an arbiter between you?" (Lk 12:13,14, NIV). Neither is the state to encroach on or interfere with the mission of the church. When the Jews in Corinth brought Paul before Gallio, the Roman proconsul of Achaia, with the charge that he was persuading the people to worship God in ways contrary to the law, Gallio very properly refused to interfere with Paul's preaching, stating, "If you Jews were making a complaint about some misdemeanor or serious crime, it would be reasonable for me to listen to you. But since it involves questions about words and names and your own law - settle the matter yourselves. I will not be a judge of such things" (Ac 18:14,15, NIV).

If the church does presume to meddle in the affairs of the state or the state in the affairs of the church, we usually speak of this as a confusion or mixing of church and state. Such confusion occurs also if the church attempts to carry out its mission of saving men's souls (1 Cor 9:22) by using force in one form or another. It occurs likewise if the state attempts to perform its duties by presuming to teach God's Word.

That there is according to the will of God a clear division between the provinces of the church and the state is clear also from the familiar incident when the Pharisees and Herodians tried to trap Jesus into making a statement that could be used against Him by asking the question, "Is it right to pay taxes to Caesar or not?" (Mt 22:17, NIV). Jesus asked them to show Him a coin with which the taxes were paid and pointed out to them that Caesar's picture and inscription were on it. They were using Caesar's money and were enjoying the benefits of Caesar's rule. They owed obedience therefore to Caesar as their ruler.

Such obedience included paying the taxes which Caesar levied. "Render therefore unto Caesar the things which are Caesar's," was Jesus' reply. But immediately He added, "And unto God the things that are God's" (Mt 22:21). They also had obligations to God. These obligations in no way conflicted with those they had to Caesar, as they had suggested. In Romans 13:7 Paul says explicitly, "Give everyone what you owe him: If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honor, then honor" (NIV).

The distinct difference between the means to be employed by the church and the state in performing their separate functions is evident also from Jesus' rebuke to Peter when Peter drew his sword to defend Jesus at the gate of Gethsemane (in 18:10,11) and from Christ's words to Pilate, "My kingdom is not of this world: if my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews: but now is my kingdom not from hence To this end was I born and for this cause came I into the world, that I should bear witness unto the truth. Everyone that is of the truth heareth my voice" (Jn 18:36,37). The church is not, therefore, to use the worldly weapons of civil law and force in doing its work.

The scriptural principle of the separation of church and state is clearly enunciated in our Lutheran Confessions. The Augsburg Confession declares:

Therefore the power of the Church and the civil power must not be confounded. The power of the Church has its own commission, to teach the Gospel and to administer the Sacraments. Let it not break into the office of another; let it not transfer the kingdoms of this world; let it not abrogate the laws of civil rulers; let it not abolish lawful obedience; let it not interfere with judgments concerning civil ordinances or contracts; let it not prescribe laws to civil rulers concerning the form of the Commonwealth. As Christ says, John 18,36: My kingdom is not of this world; also Luke 12,14: Who made Me a Judge or a divider

over you? Paul also says, Phil. 3,20: Our citizenship is in heaven; 2 Cor. 10, 4: The Weapons of our warfare are not carnal, but mighty through God to the casting down of imaginations.⁵

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

In things that belong to the area of adiaphora we enjoy Christian liberty. “Stand fast therefore in the liberty wherewith Christ hath made us free.” Paul admonished the Galatians (Ga 5:1) when the Judaizers wanted to impose restrictions on their freedom. Accordingly, we will oppose the claims of those who wish to make something a sin which is not a sin according to the law of God. At the same time we will not make use of our liberty if the exercise of it would lead a weak Christian to follow our example in violation of his uninformed conscience (Fan 15:15). To go against his conscience would be a sin for him even though what he did was not in itself sinful (Rm 14:23).

There maybe other considerations also which will lead us to refrain from making use of our Christian liberty, as Paul points out to the Corinthians when he says, “All things are lawful unto me, but all things are not expedient” (1 Cor 6:12). Not everything which is permissible is beneficial. We will want to use our sanctified Christian judgment in these areas of life. The application of these principles will be reserved for the third part of our discussion.

A Historical Perspective with Reference to the Bennett Law

The principle of the separation of church and state is clearly set orth in Scripture, as we have seen above. Nevertheless, from 311 A.D. on, when the Edict of Toleration issued by Emperor Galerius made Christianity a *religio licita* in the Roman Empire,⁶ the state has repeatedly encroached on the affairs of the church and the church on the affairs of the state. The history of the Middle Ages is by and large a record of the struggle for power between the church and the state. The church, on the one hand, claimed to possess two swords, not only the spiritual but also the temporal, and the state, on the other hand, attempted to control the church and use it to achieve political ends.

Our Lutheran forefathers had a clear understanding of the scriptural principle of the separation of church and state, as the statements quoted above from the Lutheran Confessions show. In spite of this, however, the political and ecclesiastical turmoil of the Reformation period made it difficult to implement such a separation. Luther called on the princes - not as officials of the state but as preeminent members of the church⁷ - to act as “emergency bishops” in reorganizing the church because there was no one else who could act, and someone had to take the initiative. Referring to his ideal of the congregational form of church organization, Luther complained, “I do not yet have available the persons necessary to accomplish it; nor do I see many who strongly urge it.”^{7a} The distinction between the position of a prince as the head of state and his position as a leading member of the church was not always carefully observed, however. The result was that the Lutheran churches of Europe became state churches with their affairs generally being administered by government bureaus called consistories.

The Reformed Church, on the other hand, like the Roman, from the very beginning considered it the duty of the state to promote Christ’s kingdom. It has continually made it its practice to attempt to influence the state in the conduct of its affairs and has not hesitated, when it had the opportunity, to use civil law and the sword to propagate its beliefs.

⁵ Art. XXVIII, 12, 13; Triglotta, 85.

⁶ See *Documents of the Christian Church*, Henry Bettenson, ed., second edition (London: Oxford, 1963), pp. 21f.

⁷ The Smalcald Articles, Of the Power and Primacy of the Pope (Triglotta, 519:54): “But especially the chief members of the church, kings and princes, ought to guard the interests of the church.”

^{7a} Huegli, p. 86.

Because many of the colonists who emigrated to America fled from their homeland to escape religious persecution, the First Amendment to the Constitution of the United States included a guarantee of religious liberty. It states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”⁸ The Fourteenth Amendment, adopted after the War between the States, extended these guarantees by providing that “no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.”⁹

We who live in the United States have enjoyed an extraordinary blessing of God in these guarantees of religious liberty. In 1802, ten years after the adoption of the First Amendment, Thomas Jefferson wrote a famous letter to the Danbury Baptist Association in which he spoke of that Amendment as “building a wall of separation between church and state.”¹⁰ Through the years, however, there have been repeated attempts to breach that wall.

The Bennett Law, passed by the Wisconsin Legislature in 1889, was recognized as such an attempt. This law stated: “No school shall be regarded as a school, under this act, unless there shall be taught therein, as part of the elementary education of children, reading, writing, arithmetic, and United States history, in the English language.”¹¹ It also established a mandatory annual school term of not less than 12 nor more than 24 consecutive weeks. The local school boards and magistrates were to enforce the law and levy fines of \$3 to \$20 for illegal parochial school attendance. This law and the identical Illinois Edwards Law were conceived by the anti-Catholic and anti-church-school Boston Committee of One Hundred, which made it its aim to preserve the public schools and defend American institutions.

In the light of state regulations that apply to our Christian schools today the Bennett Law may not seem unreasonable, but at the time the proponents of the law gave the churches reason to fear that the law would be used by opponents of parochial schools to close them down. The superintendent of Manitowoc county called parochial schools a standing menace to the state schools. Legislators, journalists, and lawyers spoke in the same vein. In his annual report to the Synod in 1889 President Bading cited statements which had been made such as the following: “The private schools must be put out of business because supporting them is treason to the state;” “The rights of the state are paramount to those of the parents in respect to the training of the children.”¹² Lesser threats included interference with the church calendar and the possibility that religion and German might be crowded out of the curriculum.

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

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

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

⁸ Huegli, p. 494.

⁹ Ibid.

¹⁰ Ibid, p. 28.

¹¹ Carl Zollman, *Church and School in American Law* (St. Louis: Concordia, 1918), p. 35.

¹² *Verhandlungen der Neununddreißigsten Versammlung der Deutschen Evangelisch-Lutherischen Synode von Wisconsin und anderen Staaten* (1889), p. 13.

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

We are determined to back up our demands, if necessary, by way of the courts or the ballot box. Furthermore, we urge the Synod to appoint a standing committee to gather information about the implementation and effect of this law, to monitor school legislation in our state, to follow the course of the school controversy also in other states, to give information to the public through the public press, and to take and to suggest all proper, lawful steps necessary to achieve the above mentioned goal.¹³

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

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

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

The Supreme Court of the United States has been a vigilant watchdog in preserving the separation between church and state called for by the Constitution. For this we ought to thank and praise our God.

The Court has expressed itself on educational matters involving this separation in three broad areas:

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

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

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

In the emotional, anti-German climate of World War I the state of Nebraska passed a law forbidding any subject to be taught in a modern foreign language in elementary schools. This posed a threat to parochial schools because German was the language in which religious instruction was given. In 1923 in *Meyer v. Nebraska* the Court ruled, however, that the liberty guaranteed by the Fourteenth Amendment included the right of a parent to control the education of his children. It stated also that the Amendment guaranteed the right of an individual "to worship God according to the dictates of his own conscience."¹⁴

¹³ Ibid, pp. 59-63.

¹⁴ Huegli, p. 268.

When Oregon passed a law which made it mandatory for children of compulsory school age to attend public schools, the Court in 1925 in *Pierce v. Society of Sisters* declared this law unconstitutional on the grounds that it unreasonably interfered with “the liberty of parents and guardians to direct the upbringing and education of children under their control.”¹⁵

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

The public schools, which evolved from the Puritan common schools of New England, long had a pronounced religious character. They were sometimes referred to as “the Protestant parochial public school.” In fact, their militant Protestantism was one of the factors that led the Roman Catholic Church to establish its own parochial school system.

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

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

In 1962 the Court ruled in *Engel v. Vitale* on the constitutionality of public-school prayers. The New York State Board of Regents had composed a supposedly non-denominational prayer, which was to be recited at the beginning of each school day. The prayer read, “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country.”¹⁶ The Court held that it was a violation of the First Amendment to require such a prayer and stated, “It is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by the Government.”¹⁷

A furor arose in 1963 following the Court’s decision in two historic cases, *Abington v. Schempp* and *Murray v. Curlett*. The devotional use of the Bible and all forms of prayer were banned from public schools as a contravention of the Establishment Clause. Objective study about religion and reading of the Bible for its literary and historic qualities were not prohibited, however. Proposals for a “prayer amendment” to the Constitution made in the wake of this decision did not get off the ground.

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

On the basis of the so-called “child benefit” argument the Court in 1930 ruled in *Cochran v. Louisiana State Board of Education* that children attending parochial schools could be made beneficiaries of the state’s free textbook law. In 1947 in *Everson v. Board of Education* the Court declared, “The-First-Amendment has erected a wall of separation between church and-state. That wall must be kept high and impregnable. We could not approve the slightest breach.”¹⁸ Nevertheless, this decision approved of the busing of students to nonpublic schools if a state permitted this. It based this on the “public purpose” argument. The state, the Court said, has a legitimate interest in getting the children to school safely.

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

¹⁵ Huegli, p. 268.

¹⁶ Huegli, p. 285.

¹⁷ Ibid.

¹⁸ Huegli, p. 273f.

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

The Elementary and Secondary Education Act of 1965. Title II, authorized “a program for making grants for the acquisition of school library resources, textbooks, andinstructional materials for the use of children and teachers in public and private elementary and secondary schools.” It provided, however, that “the title to such resources, control and administration of their use, shall vest only in a public agency.”¹⁹

In these laws the government has endeavored to meet its legitimate concerns in the field of education without discriminating against those of its citizens attending nonpublic schools and without infringing on the separation of church and state. Its concern not to violate the religious convictions of its citizens is evident also in Title IX of the Education Amendments of 1972. This law, which prohibits sex discrimination in educational programs receiving federal financial assistance, specifically exempts educational institutions controlled by a religious organization “if the application of this subsection would not be consistent with the religious tenets of such organization”,²⁰ is a provision similar to that in the Civil Rights Act of 1964 which exempts religious organizations, including their educational institutions, from the prohibition of discrimination on the basis of religion in the hiring of employees. This concludes our brief survey of the history of the relations between church and state through the years.

Some Practical Applications

The scriptural principle that the church and the state have separate functions and separate means to carry out their functions is simple and clear. The proper application of this principle is also by and large relatively simple. It is obvious that it would be a violation of this principle for the church to attempt to influence the economic or international policies of the government. It is also obvious that it would be a violation of this principle for the government to subsidize the church or its schools.

When the principle is violated, the reason is usually that people are unwilling to follow the principle. On the one hand, therefore, church conventions take it upon themselves to pass resolutions on social, economic, or political issues and the Roman Catholic Church persists in its efforts to get government subsidy for its schools., and, on the other hand, some public schools persist in conducting religious baccalaureate services.

The question arises, however: Is the exemption of religious institutions from real estate and personal property taxes also a violation of the scriptural principle and of the First Amendment? James Madison and U. S. Grant opposed it. From time to time voices are heard today urging that this exemption be abolished. It is, however, a tradition which antedates the Constitution. It is a privilege, furthermore, that is not restricted to churches and their educational institutions. It is extended to all educational, charitable, and other nonprofit organizations. The state makes this exemption because it believes that these organizations make a valuable contribution to the well-being of society. Parochial schools, for example, save the state many times the cost of their tax exemption. In some states the property owned by such organizations is taxable unless it is actually used for religious, educational, or charitable purposes. The state’s reason for granting the exemption makes it clear therefore, that the exemption is not in itself a breach of the separation between church and state, and the church may accept this with a good conscience.

The income tax exemption of gifts to such organizations is based on another argument. Chief Justice John Marshall stated, “The power to tax involves the power to destroy.”²¹ The argument has prevailed that by draining

¹⁹ Elementary and Education Act of 1965, abbreviated excerpts taken directly from federal laws prepared by Robert J. Voss. Available from the Commission on Higher Education of the Wisconsin Evangelical Lutheran Synod, Milwaukee, Wisconsin.

²⁰ Ibid.

²¹ Huegli, p. 400.

off the funds which citizens have for voluntary contributions to religious organizations the government could effectively prohibit the free exercise of religion in contravention of the First Amendment.

The government supports military and other chaplaincies. It does this not because it is interested in saving souls but because it believes its interests are served when a high level of morality and morale is maintained. We may agree with Madison that this is a clear breach of the separation of church and state, but the government has its own purposes in view and expects that these purposes will be achieved as side effects of the work which the chaplains do.

Applying the principle of the separation of church and state calls for careful distinctions in various activities in which both have an interest. The statement adopted by our Synod in 1967 on "Governmental Aid to Education" notes: "There is not necessarily a mixture of state and church when both participate in one or the same endeavor but each participates in this endeavor only in the sphere of its own function and restricts itself to its own means."²²

The regulation of marriage, as was previously mentioned, is a legitimate concern of the state. Those who wish to enter marriage must meet all the requirements of the laws pertaining to marriage and must obtain a license from the state. The church also has an interest, however, when its members marry. Christians want the Lord's blessing on their marriage. They want their marriage to be a Christian service. The church fulfills its spiritual role through the pastor who conducts the service. At the same time he functions as a representative of the state, which has authorized him to perform marriages.

Another activity in which both the church and the state have a legitimate interest is the educational program of our Christian schools. The state's concern is that the students receive an adequate training to enable them to meet their responsibilities in life as citizens of the state. It may therefore determine how long the children must attend school. It may establish minimum curriculum requirements. It may administer achievement tests. It may require the teachers to be certified so as to assure itself that they are qualified. It may make various safety and health measures mandatory such as fire drills, compliance with building codes, and periodic physical examinations of teachers and students.²³ Some states are far more restrictive in their supervision and regulation of nonpublic schools than others.

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

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

A decision of the Wisconsin Supreme Court a few years ago is of more than passing interest in this connection. It ruled that the application of compulsory education laws to Amish children is unconstitutional. The chief justice wrote in an 18 page opinion that the Amish "will not be required to attend school beyond the eighth grade," because "there is not such a compelling state interest in two years of high school compulsory education as will justify the burden placed on the free exercise of religion."²⁴

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

²² *Proceedings of the Thirty-Ninth Convention of the Wisconsin Evangelical Lutheran Synod*, 1967, p. 172.

²³ For the regulation of nonpublic schools in Rhode Island, Michigan, and Nebraska see Huegli, pp. 325-327.

²⁴ Cf. *The Northwestern Lutheran*, February 14, 1971, p. 50.

When such aid is offered, the question arises: Is this a form of subsidy for religious schools, or are the schools merely the most convenient channel for the state to funnel this assistance to the children or their parents? Is the subsidized hot lunch program, for example, a subsidy for the parents or for the school? Idaho ruled that lunch funds could not be distributed to parochial or private schools. Wyoming, a neighboring state, ruled, however, “The School Lunch Program is not a direct contribution to the school, but merely a general program to promote the health and well-being of the children.”²⁵ Therefore it offered the program also to religious and private schools. Not only governments differ in their views of such a program, however. Churches also have differed in their judgment on the wisdom of participating in it.

The question becomes more difficult when it involves transportation to and from school. It calls for still more careful distinctions and difficult decisions when it involves the actual process of education itself.

For example, in the interest of promoting a high level of scholarship in science the state may offer to provide all schools, including church-related schools, with rather sophisticated and expensive laboratory equipment. Title II of the Elementary and Secondary Education Act of 1965 provides funds to make library resources (books, periodicals, documents, audio-visual materials, and other related materials), textbooks, and instructional materials available “for the use of children and teachers in public and private elementary and secondary schools,” as we noted previously.

“A Description and Analysis” of this Act by the Office of Education of the United States Department of Health, Education, and Welfare explains the reason for this program as follows: “Educational specialists - from the fields of both instruction and library science - have pointed up the growing importance of well-stocked libraries, audio-visual materials, and up-to-date textbooks and materials in an effective program of education.” Nevertheless, it reports, “approximately 12,000,000 of 41,000,000 public and nonpublic elementary and secondary students in the United States - nearly a third of them - attend schools without libraries.” It emphasizes that “materials would belong to a public agency and would be loaned - not given away.”²⁶ Our parochial schools have frequently in the past made use of local public libraries, some even drawing books for a semester at a-time and placing them at the disposal of the students. In effect, the new program establishes a huge federally funded public library.

In deciding whether to participate in such a government program, church-related schools will have to weigh various factors. The state has a legitimate interest in the effectiveness of the program of education in both public and nonpublic schools. It is not therefore necessarily a breach of the First Amendment for the state to offer such assistance to nonpublic schools. Neither is it necessarily a violation of the scriptural principle of the separation of church and state for church-related schools to participate in such a program any more than it is for a pastor to act as a representative of the state in performing a marriage. They are accommodating the state in accomplishing its special and legitimate interests. Separation of church and state does not mean that they cannot cooperate with one another in activities where each has an interest or responsibility.

It is to be expected, of course, that the government will exercise some control over the use of its materials. Our church-related schools will have to consider whether the stipulation that the materials purchased with federal funds are not to be used “for sectarian instruction or religious worship” - an understandable stipulation from the government’s point of view - will be incompatible with the schools’ aim to make all their instruction Christ-centered. Will the provisions of Section 604 of Title VI of the Act that “nothing contained in this Act shall be construed to authorize any department, agency, office, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system” be a sufficient guarantee of the independence of a Christian school from arbitrary state interference? Would the acceptance of such a program lead to the gradual

²⁵ Huegli, p. 336.

²⁶ “A Description and Analysis of the Elementary and Secondary Education Act of 1965,” by the United States Department of Health, Education, and Welfare-Office of Education, available from the Commission on Higher Education, Wisconsin Evangelical Lutheran Synod.

erosion of the separation of church and state as it relates to our Christian schools? Would it perhaps eventually lead to our schools becoming dependent on state aid?

This means that the church will have to give consideration to the principle in 1 Corinthians 6:12, “All things are lawful unto me, but all things are not expedient.” It will have to ask: Even though this program is lawful, is it expedient? Are there more dangers involved in it than benefits?

This is then a matter that lies in the area of Christian judgment. Two congregations may conceivably come to different conclusions. The 1967 resolutions of our Synod recognized that there is a “wide realm of contacts in Church and State relations which lie in the area of adiaphora and are not in themselves necessarily a confusion of Church and State.”²⁷ The Synod recognized also, however, that “the Church nevertheless should be alert and concerned about the impact that any given aid may have upon the Church and its educational program.”²⁸ It resolved therefore “that we urge all our church supported schools to heed the warnings to 1) avoid any aid that would hinder our Christian schools from carrying out their objectives, 2) avoid any aid that would lead to dependency upon the government and would undermine our Christian stewardship, 3) avoid any aid that would bring with it improper government control, and 4) avoid any aid that would jeopardize our unified Christian education.”²⁹

A unified Christian education was defined by the Board of Education -Wisconsin Synod as “an education in which all teaching is in harmony with Scripture, an education in which attitudes and conduct are motivated by the love of Christ and His Word, an education in which the child is under the influence and guidance of Christian teachers who teach the Word of God and can properly apply it.”³⁰

We have not exhausted all the practical applications of our subject, but it is time to turn our attention briefly to

The Long Range Consequences of not observing the Separation of Church and State

There are obviously two avenues that can lead to the destruction of the wall of separation between the church and the state. The one is through violations of this principle on the part of the church, the other through violations on the part of the state. Any and every breach of that wall is inimical to the interests of both the church and the state. It is our purpose here to sketch only a few of the disastrous consequences of such infractions.

On the one hand, whenever the church encroaches on the functions of the state, its attention and energy are diverted from its own divinely assigned mission. To the extent that it makes social issues its concern, it becomes derelict in its responsibility to act as the light of the world, pointing men to Christ, their only hope for eternal happiness.

It is a tragic fact of modern church history that in the major Protestant denominations the social gospel has crowded out the Savior’s Gospel. Disenchanted and spiritually starved, their members often find little reason to attend or support the church, which has become merely another social service center. Reduced receipts then make retrenchment and recall necessary on the church’s world mission fields. In search of the spiritual nourishment they failed to find in the established churches many have plunged into the interdenominational Pentecostal movement. Others have fallen victim to such antichristian cults as Jehovah’s Witnesses and the Mormons.

On the other hand, whenever the church attempts to do its work of bringing sinners to Christ by using force and civil law instead of the means God has entrusted to it, His message of sin and grace, it inevitably fails. It becomes an instrument of tyranny rather than a herald of peace and hope. Witness Calvin’s Geneva, where the heretic Michael Servetus was burned at the stake, and the intolerance of the Puritans’ Massachusetts colony.

Tyranny doesn’t convince consciences, neither do crusades make converts. Only the good news of God’s grace in our crucified and risen Savior can create saving faith. Only the Gospel of God’s incredible love in Christ

²⁷ *Proceedings*, p. 186.

²⁸ *Ibid.*

²⁹ *Ibid.*, p. 186f.

³⁰ *Ibid.*, p. 159.

can motivate hearts to live a sanctified Christian life. The ill-conceived and ill-famed Prohibition experiment testifies eloquently to the problems the state has in legislating morality. We know, of course, also that a more outward obedience to the moral Law is not sufficient to satisfy the holy God. Scripture impresses on us, furthermore, that “without faith it is impossible to please him” (He 11:6).

When the church exchanges the Sword of the Spirit for a sword of steel, it has forfeited its heritage, it has forsaken its calling, it has betrayed its Lord. In His incredible grace God has for the past 125 years preserved His truth among us in the Wisconsin Evangelical Lutheran Synod. He has given us a clear understanding of the separate roles of church and state and of the distinctive sword to be wielded by each. May He graciously continue to keep us and our children in His holy Word, for Jesus sake!

To consider the other side of the coin, whenever the state intrudes on the realm of the church, the church suffers. Any attempt by the state to hinder the church in its mission brings persecution. Any attempt by the state to act as a messenger of the Gospel inevitably miscarries. Witness the hardening of the arteries that sets in whenever the state takes over the church. A once living organism becomes an empty shell, its spiritual life choked off by the cancerous growth of state regulation, apathy, and error. The nauseating stench of death and decay hovers over the carcass. The vultures of a sinecured officialdom feed on the remains.

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

Public funds inevitably bring public control - and properly so! Under public control the church’s schools would soon become the state’s schools. Christian education would die. The iron fist of the state invariably crushes the fragile flower of the Gospel. The life of the spirit is snuffed out by the carbon monoxide of the Law.

What a gift of grace God has given us in our extensive system of Christian education with our Christian day schools, Christian high schools and Christian institutions of higher learning! These schools can survive only if we ourselves are wholly convinced of the need for Christian education and wholly committed to its support.

The separation of church and state that we enjoy in the United States of America is a unique blessing of God. Under it our schools and through them our churches have flourished. As our nation celebrates its two hundredth birthday, we of the Wisconsin Evangelical Lutheran Synod have a special reason to thank God for our precious American heritage of the separation of church, and state! May He continue to preserve it for us! It is the keystone of our religious liberty.