
GOD ALONE

IS LORD OF THE CONSCIENCE



A Policy Statement
Adopted By The 200th General Assembly (1988)
Presbyterian Church (U.S.A.)

“GOD ALONE IS LORD OF THE CONSCIENCE”

**POLICY STATEMENT AND RECOMMENDATIONS
REGARDING RELIGIOUS LIBERTY**

**REPORT OF THE COMMITTEE ON RELIGIOUS LIBERTY
AND CHURCH/STATE RELATIONS**

**ADOPTED BY THE 200TH GENERAL ASSEMBLY (1988)
PRESBYTERIAN CHURCH (U.S.A.)**

**THE OFFICE OF THE GENERAL ASSEMBLY
THE PRESBYTERIAN CHURCH (U.S.A.)
LOUISVILLE, KENTUCKY**

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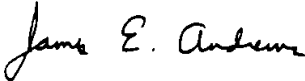
January 1989

Dear Colleagues:

The 200th General Assembly (1988) adopted the statement of policy and recommendations which form Part I of the publication "*God Alone Is Lord of the Conscience*" and instructed me to distribute it to "Synods, Presbyteries, Presbyterian Resource Centers, and Colleges and Seminaries" of the denomination. Printed with it is a significant body of background information and recommendations which make up this publication on religious liberty and church/state relations. I feel it is one of the most significant documents in the field that we have produced in sometime, and I am confident that it will be a significant aid to our study of this significant and critical area of our denominational life.

Please assist us in making the availability of this document known to your colleagues and members through those channels which are available to you, sharing with them the ordering information which is to be found on the copyright page of this publication.

Sincerely,

A handwritten signature in cursive script that reads "James E. Andrews". The signature is written in black ink and is positioned above the printed name.

James E. Andrews

Stated Clerk of the General Assembly

The 200th General Assembly (1988) adopted the following policy statement and recommendations:

1. Adopted Part I, A Statement of Policy and Recommendations entitled “God Alone Is Lord of the Conscience”; and received the Foreword and background papers on the theological, historical, and constitutional context.
2. Commended the policy statement and background papers for study and appropriate response in the governing bodies and congregations of the church.
3. Requested the Stated Clerk of the General Assembly to distribute separately printed copies of the entire report to synods, presbyteries, Presbyterian resource centers, and colleges and seminaries of the church; and to make additional copies available for sale to congregations and individuals in the church.
4. Urged synods to identify lawyers and other resource persons within their bounds who can assist governing bodies, congregations and related agencies and institutions to deal with increasing efforts at regulation, taxation, and litigation involving churches.
5. Requested the General Assembly Council and appropriate ministry units to explore ways of strengthening ecumenical and interfaith efforts concerned with religious liberty and of increasing the participation of Presbyterians in them.
6. Commended the Stated Clerk of the General Assembly for his continued attention to court cases concerning religious liberty and efforts to assure competent legal advice on these issues.
7. Commended the Committee on Religious Liberty and Church/State Relations for their hard work and excellent report.

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FOREWORD

Establishment and Work of the Committee

The 195th General Assembly (1983) of the Presbyterian Church (U.S.A.) adopted a policy statement and recommendations concerning “Reformed Faith and Politics?” prepared by the Advisory Council on Church and Society and the Council on Theology and Culture. The policy statement contained the following paragraphs:

Church-state issues have become occasions for often bitter confrontations between Christian groups. The requests of the parochial school systems and the Christian academies for access to public funding through tax support or some other means have been divisive. Prayer in the public schools, which seems to some to be appropriately excluded and to others to be a legitimate means of religious expression, becomes a matter for concern in an increasingly pluralistic society. The demand for limitation or exclusion of the use of public funds for abortion and the call for a legislative or constitutional declaration of a particular theological view about the origin of human life pit religious traditions against each other.

In the Reformed view no action of the state should enshrine a particular religious view in law or constitution. On the other hand, no action of the state should preclude the open discussion of issues and advocacy of views by people moved by religious concern to gain public acceptance of policies rooted in a Christian understanding of justice for society and for persons. (*Minutes*, 1983, Part I, p. 778.)

Recommendation D explicitly urged that a new study on church-state relations be undertaken:

D. In responding to issues of church and state, the General Assembly also reaffirms the positions adopted by previous General Assemblies relating to public education, tuition tax credits for private schools, prayer in the public schools, the teaching of creationism and the nature and beginning of human life.

The General Assembly also urges the undertaking of a careful study of the relationship of church and state in American society. (*Minutes*, 1983, Part I, p. 779.)

The 1983 General Assembly also received and approved a report from the Advisory Council on Church and Society and the Council on Church and Race (NY) growing out of a consultation on “Tension Between Concerns for Religious Liberty and Racial and Social Justice.” The consultation and report had been requested by the 194th General Assembly (1982) of the United Presbyterian Church in the U.S.A., growing out of controversy over the filing of an *amicus curiae* brief with the United States Supreme Court in the case of *U.S. vs. Bob Jones University*. The report contained the following section:

As the two councils have struggled to define and deal with the dimensions of the assignment given to us, we have become aware that the dimensions of the religious liberty tradition and current issues and problems in that area are not well or widely understood. An understanding of such issues is important in its own right and not simply as a means of dealing better with religious liberty-racial justice tensions. Such tensions represent only a small fraction of the issues confronting the church in this area. The Presbyterian Church needs some means of heightening understanding and providing continuing information on these issues to its agencies and members.

Therefore, the

... Advisory Council on Church and Society (is) requested to constitute an ongoing sub-committee or advisory panel on religious freedom to study current problems, provide interpretation to the church, and suggest means by which the church may respond to issues

... The Stated Clerk of the General Assembly (should) be consulted in the formation of the group, be involved in its work as possible, and facilitate its counsel on issues and cases that may arise. (*Minutes*, 1983. Part I. p. 373.)

In July 1983, the Advisory Council on Church and Society reviewed the requests from the 195th General Assembly and authorized the initiation of an Advisory Committee on Religious Liberty and Church-State Relations. The committee was duly constituted and held its first meeting in New York City in December 1983. The committee held five subsequent meetings, and the Advisory Council on Church and Society submitted reports of the committee's work and progress to each General Assembly since its appointment.

During particular meetings, the Advisory Committee on Religious Liberty and Church-State Relations engaged in discussion with representatives of various church groups, the Internal Revenue Service, religious counselors and de-programmers, specific groups interested in religious liberty issues, and local Presbyterian clergy and laypersons involved in religious liberty or church-state relations problems. The committee held hearings at the 1984 General Assembly and received and responded to a number of communications about the issues with which it has been concerned. Members of the committee have also advised the Stated Clerk and the staff of the Advisory Council on Church and Society on several court cases concerning religious liberty or church-state matters.

Members of the committee prepared three major substantive background papers setting forth the theological, historical, and constitutional foundation for its report. These are titled as follows and were published in the expanded May-June 1986 issue of Church and Society magazine: "Reformed Faith and Religious Liberty" by Professor David Little; "A Theological and Biblical Reflection on Religious Liberty" by the Rev. Charles B. Casper, Esq.; and "A Legal and Constitutional Survey of Religious Liberty in the United States" by Professor Douglas Laycock. Since these background resources are readily available, the text of this report submitted to the 200th General Assembly (1988) contains only edited summaries of them to provide an essential background for the understanding and preparation of commissioners.

The members of the Advisory Committee on Religious Liberty and Church-State Relations have been: The Rev. Gregory Gibson, Esq., Convenor, Dayton, Ohio; the Rev. John C. Bennett, Claremont, California; Alice Bonner, Esq., Atlanta, Georgia; Braxton Epps, Esq., Camden, New Jersey; Doris Haywood, New York, New York; the Rev. Elenora Ivory, Washington, D.C.; Robin Johansen, Esq., San Francisco, California; Douglas Laycock, Professor of Constitutional Law, University of Texas at Austin; David Little, Professor of Religious Studies, University of Virginia at Charlottesville; Lee McDonald, Professor of Govern-

ment, Pomona College at Claremont, California; William Scheu, Esq., Council on Theology and Culture member, Jacksonville, Florida; the Rev. Richard Symes, Advisory Council on Church and Society member, Palo Alto, California.

The committee had the consistent services of three consultants in its meetings: The Rev. Charles Casper, Esq., Philadelphia, Pennsylvania; the Rev. Dean M. Kelley, Religious Liberty staff for the National Council of Churches, New York, New York; and William P. Thompson, Esq., Princeton, New Jersey. The Rev. Dean H. Lewis and Gail Hastings Benfield of the Advisory Council on Church and Society staff have provided administrative staff support.

I. “GOD ALONE IS LORD OF THE CONSCIENCE”

For two hundred years, General Assemblies of the Presbyterian Church have been concerned with religious liberty and the relationship of church and state. The first General Assembly might well have heard the echo of Hanover Presbytery’s mighty Memorial to the Virginia legislature: “We ask no ecclesiastical establishments for ourselves; neither can we approve of them when granted to others.” Since 1788, our basic Principles of Church Order have placed in the first position the powerful commitment of our Reformed faith to religious liberty: “God alone is Lord of the conscience.... We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for protection and security, and at the same time be equal and common to all others.”

The Bill of Rights in the Constitution of our civil order also accords the first position to this same commitment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...” These clauses have been remarkably successful in guaranteeing religious liberty and assuring religious peace in a nation of extraordinary religious vitality and pluralism. As we deal with the difficult and controversial issues of religious liberty, we must not lose sight of its many aspects that are not controversial. Freedom of religious belief is unquestioned in this country. The right to basic religious observance is unquestioned. It is unthinkable that civil and political rights might be conditioned on adherence to a particular religious faith. In many countries of the world, none of these things are true.

Religious tolerance and pluralism are our political and societal norm. We do not perfectly achieve that norm and intolerance has not been eliminated, but it is not respectable and it is often muted. We have not had serious outbreaks of religious violence in nearly a century. In many countries of the world these things are not true either.

We believe that the rights to free exercise and nonestablishment are of equal importance in guaranteeing religious liberty. It is frequently said that there is a tension between the clauses, because one forbids government to harm religion and the other forbids government to support religion. It is true that there is sometimes a tension with respect to particular applications. But the great purposes of the two clauses are in harmony. Together the two clauses guarantee that the people will have the fullest possible religious liberty. The state may not interfere with the private choice of religious faith either by coercion or by persuasion. It may not interfere with the expression of faith either by inducing people to abandon the religious faith and practice of their choice, or by inducing them to adopt the religious faith and practice of the government’s choice.

We believe that the establishment clause requires government to be wholly neutral in matters of religion. Government may not require adherence to a particular religious belief, designate an official state church, or endorse a religion.

Government may not sponsor religious observances or grant financial aid to religion. Nor may government support religion in some generic fashion that is allegedly nonpreferential. No support of religion could be nonpreferential in a society as religiously diverse as ours. At best the government would support a broad group of somewhat similar majority religions, with the inevitable result that nonbelievers and members of religious minorities are excluded. Actual or symbolic exclusion of such minorities is inconsistent with one great purpose of the establishment clause: to affirm that every individual can be a full member of the civil polity whatever his or her religious belief.

We believe that the free exercise clause protects religious exercise in all its manifestations. It protects religious belief and basic religious observance. It protects religious proselytizing, the religious teaching of moral values, and the churches' invocation of those values in the political process. It protects the right of churches and individual believers to exercise religious conscience in the face of laws that would force them to violate that conscience. It protects the right to build religious institutions and to manage those institutions autonomously with a minimum of interference from government regulation. Some of these rights may on occasion be overridden by a compelling government interest, but such interests must be truly compelling, involving intolerable threats to public health and safety or serious impositions on persons not affiliated with the church.

The application of such sweeping guarantees to such an important dimension of public and private life is always complex and often controversial, particularly since adoption of the Fourteenth Amendment and subsequent Supreme Court decisions brought the Bill of Rights to bear on actions by state and local governments as well as the federal; and more particularly in the past fifty years as the Supreme Court made clear that the religion clauses were included in the reach of the Fourteenth Amendment.

In each historical era the General Assembly of the Presbyterian Church has addressed the problems that seemed important at that time. In the period from World War II to the 1970s, much of the attention was devoted to establishment clause issues. There were vigorous and continuing debates over religious instruction during public school hours, prayer and Bible reading in public schools, diplomatic representation at the Vatican, and financial aid to religious schools. Free exercise issues were not ignored, but establishment clause issues dominated.

Recently, a different kind of problem has become apparent: governmental intrusions into religious institutions and activities, and restrictions on the free exercise of religion. In 1976 the General Assembly of the Presbyterian Church in the United States protested the use of missionaries as informants by federal intelligence agencies. In 1981, the church adopted changes in the Form of Government in response to the use by civil courts of the concept of "neutral principles of law" to permit congregations to withdraw from Presbyterian and other presbyterial and hierarchical denominations and to take the church property with

them, in effect reducing these churches to a congregational polity by judicial fiat.

Amicus filings led the 1982 General Assembly of the United Presbyterian Church to wrestle painfully with the implications of the Internal Revenue Service's revocation of the tax exemption of Bob Jones University for "violation of public policy" with respect to racial discrimination; and led the 1984 General Assembly to debate issues arising from the firing of a bank teller because he refused to resign from the leadership of an organization of his church advocating for the civil rights of homosexual persons. In 1985, the Stated Clerk of the General Assembly entered suit against the United States government for hiring persons with criminal records to infiltrate churches and tape religious meetings, seeking evidence against church leaders and workers active in the "sanctuary movement?"

Other troubling developments suggest increasing impairments of the free exercise of religion and the right of churches to control their own affairs. Some examples:

- Local governments have used zoning regulations to restrict the mission of local churches, such as feeding or sheltering the homeless, to prohibit prayer meetings in private homes, to bar new churches from residential areas, and even to bar any church at all from an entire municipality.
- Church buildings have been designated as landmarks without the consent of the religious groups that own them, thus obligating the churches to maintain the facade at their own expense or face criminal penalties.
- The highest court of Massachusetts has authorized a trial court to entertain an invasion of privacy suit by a clergyman against his bishop, and to examine the deliberations of church tribunals that resulted in the clergyman's involuntary retirement in order to determine whether the church tribunals relied on information allegedly obtained from the clergyman's psychiatrist, and to award damages accordingly.
- More than a dozen state statutes that require the reporting of suspected child abuse make an exception for the attorney-client privilege but not for the priest-penitent privilege.
- A judge issued an order barring a divorced father from taking his children to a Presbyterian Sunday School while he had legal custody of them.
- California courts allowed the attorney general to place an entire church in receivership on the complaint of disgruntled members, alleging that member contributions created a charitable trust that the state was permitted to supervise.
- Tennessee courts held that churches which openly opposed a liquor-by-the-drink referendum had to register as political action committees and file financial reports.

- In several states, courts have awarded punitive damages to members or disaffected former members of churches who have received church discipline or alleged that the religion held out promises to them which were not fulfilled.

- The Internal Revenue Service has applied the section of the tax code that prohibits religious and charitable organizations from intervening in political campaigns to religious efforts to influence public opinion and public policy on moral issues, even to the extent of questioning the distribution of voting records of incumbent legislators.

- The Internal Revenue Code exempts churches and their “integrated auxiliaries” from filing annual information returns. The Internal Revenue Service defined “integrated auxiliaries” in a way that excluded church-owned hospitals, orphanages, and social service agencies, even when the church defined these agencies as integral to its mission.

- Judges have signed orders permitting adults to be seized and held against their will for the purpose of reversing religious commitments of which their parents disapproved.

- An appellate court in California ruled that a church and its leaders can be sued for punitive damages because of the suicide of a young man who was being counseled.

Such new problems illustrate the need to reexamine church-state relations with a special concern for the free exercise of religion. This does not mean that the earlier concern to prevent the establishment of religion is less important, for the prohibition against establishment is under attack today as perhaps never before in modern times. But it is essential to give equal attention to the free exercise of religion, and particularly to the corporate free exercise of religion. If the free exercise clause does not apply fully to religious bodies, then the religious liberty of individuals will also in time be curtailed, for the very continuity and perpetuation of religious life depends on religious movements, organizations, and institutions. In a day when institutions of all kinds are not held in high esteem, it is important to reaffirm their essential role in carrying vital patterns of human commitment beyond the passing moment.

Since the time of Calvin, Reformed Protestants have felt called to share their vision of God’s intended order for the human community, and Presbyterians have recognized and acted on the responsibility to seek social justice and peace and to promote the biblical values of freedom and liberty as well as corporate responsibility within the political order. The church itself must consider what conditions of the civil society are necessary to the effective conduct of the church’s mission and ministry, and to seek the recognition of those needs by society and state. If the church does not do so, no one else will do it for us. Many of the troubling encroachments listed above result from a lack of comprehension on the part of judges, legislators, and administrators of the proper scope, intensity, and importance of religious commitment and activity, and of its value for religious adherents and for the whole society.

The rules established by the religion clauses of the First Amendment have served us well. But the continuing vitality and clarity of religious liberty rests also, in a very important way, on the strong societal commitment to tolerance symbolized by these clauses and now taken for granted by most of the citizens and major religions in this country. The constitutional clauses and the societal commitment reinforce each other in important ways. The constitutional guarantee of religious freedom provides a legal mechanism through which government can be called to account judicially. But efforts to invoke the Constitution will falter and may ultimately fail if the society is sufficiently insensitive, indifferent or hostile to the need for tolerance and the value and meaning of religious liberty. So the constitutional guarantee of religious liberty is also an important symbolic mechanism through which the church and others must seek to keep the societal understanding of and commitment to religious liberty vital and clear from generation to generation.

Our struggle with the difficult and controversial issues dealt with in this report and our necessary endeavor to articulate the conditions of the civil society necessary to the free and effective conduct of the church's mission and ministry, then, are not dictated simply by institutional self-interest. They are also a vital dimension of Presbyterian witness and responsibility for the fundamental importance of religious liberty in and to the civil commonwealth. As a contemporary foundation for both tasks, we reaffirm the great historic principle of 1788, cited earlier, that "God alone is Lord of the conscience"; and the words of a proposed amendment to the Westminster Confession of Faith adopted by the General Assembly of the Presbyterian Church U.S.A. in 1938, the 150th anniversary of the adoption of that principle. Although more than sixty-eight percent of the presbyteries that voted approved the amendment, it narrowly failed because a few presbyteries did not vote. The words still ring true and relevant as a classic statement of Reformed understanding of relations between church and state, commitment to religious liberty, and the rights and duties of Presbyterians and the Presbyterian Church in the civil order:

Civil government ... may not assume the functions of religion. It must grant equal rights to every religious group showing no favor and granting no power to one above another. ... Civil government has the right to require loyalty and obedience of its citizens, but may not require of them that allegiance which belongs to God alone. It must recognize the inherent liberty of the church to determine its faith and creed, to maintain public and private worship, preaching and teaching, and to hold public and private religious and ecclesiastical assemblies. It must recognize the right of the church to determine the nature of its government and the qualifications of its ministers and members; ... to render Christian service and to carry on missionary activity at home and abroad.... For the attainment of all such ends, the church has the right to employ the facilities guaranteed to all citizens and associations; but it must not use violent or coercive measures for its spiritual ends, nor allow their use on its behalf. (*Minutes*, PCUSA, 1938, Part I, pp. 46-47. See Appendix A for complete text.)

The following analysis and affirmations regarding contemporary religious liberty issues considers them under seven general headings:

The Right of Church Autonomy and Government Regulation of Church Activity

Conduct Motivated by Conscience

Government Support for Religious Institutions Taxation and Religious Organizations

New Religions and Threats to Conversion Religious Expression in Public Places

Religious Participation in Public Life

A. The Right of Church Autonomy and Government Regulation of Church Activity

The extent to which the Constitution protects the autonomy of churches has become an increasingly important legal issue, with profound theological implications, as both the scope of church activity and the scope of government regulatory effort have expanded. The right of individuals freely to hold and express faith is widely understood to be at the heart of the First Amendment rights to freedom of religion and freedom of speech. The right of church autonomy—that is, the right of the corporate worshipping community to order itself and carry on its activities free from government intervention—is less well understood and documented, but no less clear and vital.

The individual's right to believe cannot be divorced from the right to exercise that belief in the company and community of others. For nearly every human being, the right to practice religion only as a solitary individual is virtually no right at all. The constitutional right to the free exercise of religion must protect not only the right to hold faith and speak freely of it to others but also the right freely to practice it through a worshipping body at work in the world.

We begin, therefore, with the principle that each worshipping community has the right to govern itself and order its life and activity free of government intervention. Churches must be free of government regulation of any kind and at any level in all but the most compelling circumstances. This right of church autonomy is protected by the Free Exercise clause of the First Amendment, but it is not the same as the right to conscientious objection discussed below. That right involves a claim of exemption from a statute of general application on the grounds that enforcement would result in a violation of individual conscience. The right of the church to control its own life and activity should not depend upon a showing that a governmental regulation violates a central tenet of church doctrine or even that other bodies of the same faith claim exemption from the regulation at issue.

The definitional question of what constitutes a “religion” or an “exercise of religion” is at the threshold of the issues of government regulation. We recognize that in the most rudimentary legal sense courts and public agencies must often make a determination of whether a particular group is a “religion” entitled to First Amendment protection as matters apparently related to religious bodies

come before them. In such instances, great latitude must be given to the self-understanding of the group in question, since it is for the religious group—not the government—to state whether it is a “church.” Government may inquire into the sincerity with which beliefs are held but may not rule upon their authenticity. On those occasions when determination of First Amendment applicability is necessary, the court or agency must of course bring some criteria to bear, but we reject the notion of a single, formal objective definition based on traditional forms of religion. Appendix B presents general propositions which we commend as useful in such situations.

Many claims of the power to regulate arise from attempts to divide church activities into a protected “religious” category and non protected “non religious” ones, based on the nature of the activity or the organizational form it takes. There is a profoundly disturbing apparent misperception about the nature of the church and its mission at the root of most such attempts. The liturgical, sacramental, doctrinal “core functions” are identified as the “religious” dimension. The program activity of the church and the structures that administer and support it are categorized as “integrated auxiliaries” and “secular functions.” The scope of First Amendment protection is effectively narrowed to the four walls of the sanctuary and within them extended only to the cultic practices absolutely unique to the church.

Programs of service and charity are as vital to the life and mission of most churches as acts of worship and evangelism. The church’s pension agency is no less “church” because business corporations also have pension agencies. Church activities and affiliates should not be subject to regulation merely because they are doing things that are also done by secular charities and others. Nor should it matter whether such affiliates are separately incorporated. How a church structures itself and how it allocates authority should be irrelevant to the state. Churches may be hierarchical or congregational, episcopal or democratic, clerical or lay, incorporated or informally associated, a single entity or a network of subsidiaries and affiliates—all are entitled to autonomy by the Free Exercise clause. We oppose regulations based on governmental distinctions among the church’s activities and organizational structure, such as the Internal Revenue Service regulations on integrated auxiliaries, and will continue to seek their defeat or repeal.

As a general matter, then, churches should be left alone except when there is a compelling reason for government interference or regulation, or when they voluntarily seek government assistance in the form of police or fire protection. However, the right of church autonomy is not absolute; it must be balanced against governmental interests in protecting the public health and safety. We claim no right for human sacrifice or mass suicide. But not every building code is essential to safety, and non-essential building codes or zoning regulations should not be applied to prevent the use of existing religious buildings for additional religious purposes. As with any other constitutionally protected activity, the government must first show a genuinely compelling state interest in order to

justify any intrusion into religious activity at all. Even when such an interest is demonstrated, such as the need to enforce the criminal laws, government must be limited to the least intrusive means by which to accomplish the stated purpose.

There is a tendency for governmental agencies to define every regulatory activity as serving a compelling purpose, and governments often assert interests that are wholly inadequate to justify restrictions on church activity. For example, we reject the use of zoning authority to prevent church members from gathering to pray in private homes, or in an attempt to close a shelter for the homeless, and the use of the license and inspection power to require permits for church suppers. Similarly, while the state may have an interest in preserving historic buildings, it may not reorder the funding priorities of the congregation by insisting that the church devote significant sums to the maintenance of a church structure, without regard to whether it has money left for its mission; nor may the government exercise its powers of eminent domain to operate the building as a state-run museum.

A church's claim to autonomy is strongest with respect to its own internal affairs. Religious bodies are entitled to autonomy in determining the terms and conditions of membership, doctrine and polity; the selection, supervision and discipline of employees; the confidentiality of records and communications within the church; and the use and control of church property.

Disputes among church members about the handling of church funds or property should be decided by the highest ecclesiastical authority recognized by both sides to the dispute before the disagreement arose. Submission of such disputes to the civil courts is improper. If they are brought before a civil court, any judgment other than that which affirms the jurisdiction of the highest ecclesiastical authority is a violation of church autonomy. We reject the application of so-called "neutral principles" of law to internal church property disputes. Such an approach is an unwarranted intrusion into the internal affairs of any church; and, we believe, an unconstitutional usurpation of the authority of churches with hierarchical and connectional polities. Similarly, individual members who have become disaffected from a religious group or chafe under its discipline are not entitled to seek redress in the courts. Those who have affiliated themselves with a church have consented to its authority. If they become dissatisfied with the church they can leave it, but the government has no right to respond to their appeals to regulate their relationship with their church.

Statutes regarding the solicitation and handling of funds may be applied where charges of fraud are made, but great care must be taken to avoid unnecessary interference with church activities and records in adjudicating such claims. While we do not claim charitable immunity for personal injuries caused by the negligence of church employees, we reject the notion that the state may place a church in receivership or otherwise dictate its day-to-day affairs even in the presence of a bona fide claim of criminal fraud.

The church's claim to autonomy is less strong when a governmental regulation purports to protect those outside the church who may come in contact with it. Those who have affiliated themselves with a church have not only consented to its authority; they also constitute a private association. Where such consent or associational character is lacking or suspect, the state has a greater right and responsibility to regulate to protect public health and safety. Thus, because children lack full power to consent, state regulation of the activities of church day schools and childcare centers may be looked at differently than regulation of adult Bible study groups. However, regulation of church schools and day care centers should take account of the need for religious freedom, and such schools should not be required to use the same methods and personnel as public schools. It should be sufficient if students in a church school are performing at roughly the same grade level as those in public schools.

Labor regulations and employment discrimination laws often come in conflict with a church's constitutional right to autonomy. We recognize and affirm the duty of the church to be a just and compassionate employer. As Presbyterians, we oppose employment discrimination based on religion, race, sex, national origin or sexual orientation, both inside and outside the church except where these are bona fide qualifications for church leadership. Similarly, we believe that the church has a moral duty to provide adequate compensation and working conditions for its employees. We reject, however, the notion that the government may impose such regulations on employment in all church activities. Any consideration of the degree of permissible regulation must depend upon the type of employment involved.

Church employees may cover the spectrum from "insiders," such as the clergy, to "outsiders," such as those who work in church-owned businesses like wineries or publishing houses. The appropriateness of government regulation concerning these employees depends upon the terms under which they undertook employment. If they entered employment with full knowledge of the church's employment practices or with the understanding that their employment was an exercise of faith, the government should not attempt to regulate their relationship with the church employer. If, however, they work in a primarily technical activity or one that principally serves a public clientele, such as a church-run hospital or publishing house; and if the church contracted with them on essentially secular terms, the argument for government interest in regulating the terms of their employment is more persuasive, provided that it not interfere with religious activities. Where church employees have given informed consent to special terms or practices of employment, little if any justification exists for regulation of the employment relationship beyond protection of the basic health and safety of employees in the workplace. An employee's commitment to work long hours for low pay or a church's decision to fire an unwed parent are free exercises of religion that should not be regulated or reviewed by the state.

A church has an absolute right to be free of government infiltration. Because government infiltration destroys the fabric of trust and fellowship essential

to a worshipping community, it strikes at the very heart of church autonomy. If the government has reasonable cause to believe that certain church members are involved in criminal activity, it may take appropriate steps within the law to investigate the activities of those members, not the overall activities of the church. The government should never be permitted to conduct wiretaps of church telephones, monitor church services and meetings electronically or otherwise search church premises without a warrant based on a strong showing of good cause to believe that evidence of criminal activity will be removed or destroyed if the warrant does not issue. Nor should the government use or seek to enlist church missionaries or employees in covert activities, either against fellow church members or against foreign governments.

In summary, churches have a First Amendment right to order their life and carry on their activities free of government intervention. Government assertions of the right to regulate cannot be allowed to intrude upon protected religious activity. Neither interest—that of the government to regulate or of the church to autonomy—is absolute. The rights of the church are strongest and most in need of First Amendment protection when the issue is internal to the church and the activity is intensely religious in nature. In such situations, the government can assert little or no permissible interest and should be prohibited from intruding at all. In other areas, such as those involving persons not members of the church or where the activity is less intensely religious, government intrusion may be justifiable, assuming a compelling state interest and means carefully tailored to accomplishing the state's legitimate goal in a manner least intrusive upon First Amendment freedoms.

In view of the foregoing considerations, the 200th General Assembly (1988) adopts the following affirmations:

1. Churches have a right of autonomy protected by the Free Exercise clause of the First Amendment. Each worshipping community has the right to govern itself and order its life and activity free of government intervention.

2. The government must assert a compelling interest and demonstrate an imminent threat to public safety before the right of autonomy may be set aside in specific instances and government permitted to interfere with internal church activities. The need to separate business activity from residential areas is not sufficient to justify use of zoning regulations to prevent prayer meetings in private homes nor prohibit the use of the church building as a shelter for the homeless.

3. Churches have a fundamental right to be free of government infiltration. Court-approved wiretaps and searches of church premises can only be made on a showing that evidence of crime endangering public health or safety will be removed or destroyed and that no other less intrusive means exist to satisfy the need to preserve such evidence.

4. We concede the appropriateness of some governmental regulation of church activities in the interests of public health and safety. Fire and earthquake regulations, sanitary and building codes may properly be made applicable to churches, provided that they do not entail unreasonable cost, are genuinely health and safety related, and are appropriate to the pattern of church activity rather than a supposed secular analog. A church kitchen used a few hours a month for church groups is not the same as a public restaurant.

5. The government may not require a congregation to maintain a church structure because of its historical significance or subject it to proceedings in eminent domain in order to preserve a church structure. The church should make every effort to cooperate with efforts to preserve esthetic and architectural character but must finally itself be the judge of what religious life and mission require concerning property and its use.

6. Internal disputes within churches, including disputes over church property, should be decided by the highest ecclesiastical authority recognized by both sides before the dispute arose. The application of so-called "neutral principles of law" by civil courts violates the right to autonomy of hierarchical and connectional churches.

7. Those who consent to be governed by a church, including its employees, should not be subject to governmental regulation. We reject the notion that minimum wage laws or other labor regulations may properly be applied to church organizations.

8. As a matter of faith and witness, the church has a moral duty to provide adequate compensation and safe working conditions for its employees and to offer employment without discrimination. The church should voluntarily meet or exceed the standards and practices required by law for non religious employers.

9. Courts and public agencies called upon to assess the bona fides of a claim to protection under the First Amendment should not base their decision on traditional notions of religion but should give substantial deference to the self-understanding of that group, looking to the three considerations described in this statement.

B. Conduct Motivated by Conscience

The exercise of individual and corporate conscience must be affirmed as an integral aspect of religious liberty. The church is always obliged to respect claims of conscience lest it frustrate efforts to obey the will of God. We need not agree with the specific dictates of another's conscience to respect and support the right to exercise that conscience. Paul told Christians that they were freed from Jewish dietary laws, but if the conscience of another is offended by eating

certain foods, “for conscience” sake—I mean his conscience, not yours—do not eat it” (I Corinthians 10:28–29). The obligation to respect the exercise of conscience is not only a dynamic of life within the church; it is both a demand and a dilemma of the First Amendment’s protection of religious freedom.

The demand, of course, arises from the basic structure of the First Amendment: no prohibition on the free exercise of religion, on activity flowing from religious faith. The dilemma arises when an individual or group claims exemption from laws or regulations that on their face do not seem to concern religion, on the grounds that compliance would require conduct contrary to religious conscience and thus unconstitutionally burden free exercise.

In regard to churches, as noted in the discussion of the right of church autonomy, many laws governing the behaviour of corporate bodies in this nation contain specific exemptions for “churches, conventions or associations of churches and their integrated auxiliaries.” These exemptions arise from the appropriate recognition of church autonomy; they nevertheless forestall any objection of conscience.

The broad form exemption on the grounds of conscience rarely occurs in legislation primarily affecting individual conduct. Some exemptions have been recognized by special legislation: Amish people do not have to pay Social Security taxes, pacifists do not have to serve in the military, and Jewish officers in the army may wear yarmulkes. But the dilemmas surrounding response to conduct motivated by religious conscience are most often worked out in the courts as individuals raise claims of conscience as grounds for exemption from laws of general application. The values of religious liberty are so paramount that such claims should be accorded the greatest deference.

Claims of conscience, however, are not self-validating. The mere assertion of a conscientious objection cannot automatically ensure exemption. Society through government is justified in appropriate examination to test sincerity of conscientious belief, though not to judge its validity. As with church autonomy, claims of conscience cannot be absolute; they may sometimes need to be overridden. The burden of proof should be powerfully upon those who would deny the exercise of conscience in any given situation. The courts have said that the governmental interest must be “compelling” before overriding a claim of conscience, but that term lacks definition. Every governmental bureaucracy believes that its program serves a compelling interest. More helpfully, the Supreme Court has said that government can infringe the claims of conscience only when “the gravest abuses endangering paramount interests give occasion for permissible limitation” (*Sherbert v. Verner*, 1963).

We therefore believe that individuals should be excused from the obligation to obey laws of general application that violate their conscience unless an exemption threatens an intolerable risk to public health or safety or a serious imposition on specific individuals who have not consented to the imposition.

The formation of conscience occurs in community, but its exercise is very often finally an individual matter. Because the individual is the bearer of conscience, it does not matter whether others of the same faith make the same conscientious claim, a point now recognized in constitutional interpretation (*Thomas v. Review Board*, 1981). Nor should it be determinative whether the corporate body has defined the matter as a central point of doctrine or requirement of piety. The legal protection of idiosyncratic individual beliefs should be equal to the protection of the most traditional orthodoxies.

The exercise of religious conscience has come in conflict with governmental policies in a variety of contexts. Some of the most significant and troublesome areas are examined briefly in the following sections.

1. *Military Service and Other Civic Duties*

The very term “conscientious objection” has come to be applied in popular usage almost exclusively to those who refuse military service on grounds of conscience. Though we have here appropriately applied the term to a far wider range of conduct motivated by conscience, issues of conscience and war deserve first discussion since exemption for conscience has been recognized in both legislation and court decisions.

Present selective service laws grant exemption from military service to those who by “religious training and belief are conscientiously opposed to participation in war in any form.” (The military draft ended in 1972, but registration was resumed in 1980.) The basis for conscientious objection to military service was broadened beyond traditional religious grounds to individual moral grounds in 1965 and 1970 (*Seeger v. U.S.*), but the limitation of the exemption to those who oppose war in any form has remained and been deemed permissible (*Gillette v. U.S.*, 1971). This effectively excludes from the exemption those whose conscience conforms to the position of the Presbyterian Church and others in the just war tradition, who say that in good conscience they could fight in a just war but could not fight in an unjust war. Given the long history of theological reflection about just war and the incorporation of just war criteria in common political discourse and international law, it would be rational and consistent to extend the exemption to conduct informed by such conscience. The refusal to do so undoubtedly stems from prudential rather than principled reasons: there are far more Christians in the just war tradition than pacifists; and more and more people are coming to believe that opposition to policies predicated on the permissibility of nuclear war is an act of conscience since nuclear war violates just war criteria.

The General Assembly of the Presbyterian Church (U.S.A.) maintains a register of Presbyterians who object to participation either to all war or to unjust wars on the grounds of conscience; and continues to seek changes in Selective Service law and regulations to recognize these claims of conscience.

Persons exercising religious conscience may also refuse to work on the production of munitions, to perform certain civic obligations such as jury duty, or may even engage in civil disobedience rather than acquiesce in conduct that violates conscience. A nineteenth century example of the latter is the transportation of escaped slaves to Canada in violation of the fugitive slave laws. The protection of political refugees from Central America may eventually be construed as civil disobedience on grounds of religious conscience. Some forms of conscientious civil disobedience are undertaken to induce government to fulfill its legal responsibilities in such areas as civil rights or environmental protection.

2. Conscientious Objection and Civil Disobedience

There is an important distinction between conscientious objection and civil disobedience, though the two concepts are frequently confused. One may conscientiously object to disfavored acts of government without engaging in specific acts of disobedience to law, particularly if one is not immediately affected personally, as white people were not barred from restaurants under Jim Crow laws. Likewise, one may, for the sake of publicity, group solidarity, or tactical advantage, engage in acts of civil disobedience without (necessarily) invoking the dictates of conscience. Often what is properly to be understood as legal may be in doubt. Local laws may be challenged in the name of a higher constitutional law, as happened in the civil rights protests of the 1960s. The claims of moral law attach to the higher constitutional law, but the claims are not “only” moral. Sanctuary workers are asserting the rights of conscience but are also challenging the interpretations of existing federal law by the Immigration and Naturalization Service, claiming to obey laws being flouted by government officials. Despite the many acts that are loosely called “civil disobedience,” it is probably quite rare in the American legal system for what is established as sealed constitutional law to be explicitly violated on the grounds of a countervailing moral law. More typically, the objectors seek to introduce their understanding of the moral law into the realm of constitutional protections.

The usual distinction between “civil” disobedience and ordinary criminal disobedience rests not only on the appeal to law as the source of motivation but also on the willingness of the civil disobedient to accept the penalty normally imposed for the infraction. Criminals do not announce their intentions in advance as civil disobedients do. So conceived, such acts of civil disobedience may be an exercise of conscience whether explicitly religious or not. They should be respected by the church as fully as acts of explicitly religious conscience.

3. Medical Treatment

Jehovah’s Witnesses have refused blood transfusions, and others have refused medical treatment on the grounds of religious conscience. The courts have at times overridden that right, especially when a child’s life is at stake and parental objections to medical treatment are based upon the parents’ religious be-

liefs. Most often, the courts have allowed competent adults to refuse medical treatment on religious grounds. We believe that this strikes the right balance. Denial of the right to refuse medical treatment exemplifies the conflict between the freedom of religious expression and the need to protect the innocent from direct harm not of their own choosing.

Holistic medicine has been growing as a field, and many have a new awareness of ancient truths about the spiritual dimension of healing. In addition, we are confronted in new ways with ethical issues relating to conception, abortion, euthanasia, and the rationing of costly medical technologies. Facing these issues has enlarged our understanding of—or at least heightened our concern for—the complex intersection between religion and medicine. Religious liberty bears on medical practice in new ways as personal decisions based on religious convictions confront the traditional and legal commitments of medical practitioners and both confront the capacities of new technologies. Courts will, of course, decide many cases in this area; but the church should not leave such issues to the courts. Sensitive to the demands of conscience and committed to their protection, the church should be prepared to offer independent counsel and support to those facing difficult medical choices.

4. *Conditions of Employment, Sabbath Observance, Nondiscrimination*

The right to observe the Sabbath according to the tenets of one's religion despite conflicting work schedules has been tested on numerous occasions in the courts.

The Supreme Court has held that unemployment compensation benefits could not be withheld from a Seventh-day Adventist discharged because she would not work on Saturday, and in *Hobbie v. Unemployment Appeals Commission*, 1987, resoundingly reaffirmed that position. The Civil Rights Act of 1964 gave statutory acknowledgement to the right of religious conscience in employment situations and a certain amount of protection, though courts have held the required accommodation to conduct motivated by religious conscience to be de minimus.

If Sabbath observance is regarded as protected religious expression, this does not mean that in employment cases the protection can extend to the point of discriminating against other workers. An airline was required to make only “reasonable” adjustments of work schedules to accommodate a Seventh-day Adventist (*TWA v. Hardison*). A recent case (involving a Presbyterian) held that if time off for Sabbath observance has the effect of imposing greater burdens on workers with higher seniority than on the Sabbath observant, this would be a violation of the establishment clause (*Thornton v. Calder*).

In a rather different recent discrimination case (*Dorr v. First Kentucky National Corp.*), a bank manager was forced out of his job when he would not resign as president of an Episcopal-Catholic organization advocating the rights of gays and lesbians. He claimed that the office was an expression of his religious

conviction. The federal district court, however, held that this discrimination was not on the basis of religion and therefore not covered by the Civil Rights Act of 1964, largely on the grounds that such activity was not required by the doctrine or discipline of his church. The court's willingness to blank out individual conscience if not a required tenet of organizational creed and substitute its own judgment of what constitutes religious motivation to that of the claimant are most disturbing.

5. *Use of Illegal Drugs for Religious Purposes*

The California Supreme Court in *People v. Woody* in 1964 found that the application of the state criminal statutes to American Indians using peyote in a traditional religious ceremony was unconstitutional. The finding that the use of peyote was central to their faith influenced the court in distinguishing between that case and the prohibition of polygamy as applied to the Mormons in 1878. The prosecution in *Woody* contrasts sharply with the exclusion of sacramental wine from anti-alcohol laws during Prohibition. The religious exercise of majorities, or influential minorities, will often be protected by the legislative process. These cases also illustrate the difficulty of drawing the line between protecting public health and safety and protecting religious conscience.

6. *Sanctuary for Political Refugees*

Some Presbyterians are deeply involved in the issue of providing sanctuary for political refugees, especially those from Central America. While sanctuary advocates claim that United States statutory law and international law support their position, those openly providing shelter for refugees also realize the potential risk that they will ultimately be held to have violated immigration laws. The claims of conscience should be respected with regard to those in the sanctuary movement who struggle to provide a refuge for victims of repression and violence in light of civil laws that may hinder such refuge.

Summary

The exercise of conscientious objection should not be seen primarily as a negative legal right, but as a positive moral virtue. "Conscientious objection" has often come to signify merely a negative right to object. It should also signify acts of affirmation, the affirmation of fundamental values of justice and of equal dignity and respect for all humans. Ultimately, we are called to "obey God rather than men" (Acts 5:29). The legal right is itself positive; it is grounded not in grudging governmental concession to conscience but in the positive protection of religious conscience as a fundamental civic value.

The courts have been wisely reluctant to assume the task of defining what constitutes "religious" convictions, though they have not always been steady in their resolve to prevent other governmental officials from doing so. There was a time when periodicals that editorialized against war lost their second class mailing privileges and ministers who preached against war were prosecuted. At least one socialist was sentenced to three years in federal prison for saying that the draft law was unconstitutional.

The protection of conduct motivated by religious conscience is fundamental to the vitality of the Free Exercise clause. In seeking to maintain it, we are grateful for the words of Justice Jackson in the *Barnette* case, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, other matters of opinion, or force citizens to confess by word or act their faith therein.”

In view of the foregoing considerations, the 200th General Assembly (1988) adopts the following affirmations:

1. Individuals should be excused from obeying laws of general application which violate their conscience except when “the gravest abuses endangering paramount interests give occasion for permissible limitation.”

2. The legal defense of freedom of conscience must be conceived broadly enough to include freedom for the nonreligious conscience.

3. The protection of religious conscience should not be limited to actions stemming from beliefs shared by all members of one’s religious group or to what is required by the creed or order of one’s religious group. It includes practice that may be regarded as voluntary by one’s religion as well as that which is individually derived.

4. The right of adults to refuse medical treatment for themselves on religious grounds should be upheld; but not their right to withhold medical care for their minor children when such treatment is deemed necessary to prevent death or permanent injury.

5. The diversity of understandings of different religious groups as to what constitutes health should be respected.

6. The right to observe the Sabbath and other days of religious obligation should be protected, but not to the significant material disadvantage of co-workers whose days of religious obligation are different or those who are not religiously affiliated.

7. The present selective service law, which requires that conscientious objectors be opposed to all wars, should be changed to allow exemption as well for those opposed only to participation in particular wars on the ground that they are unjust.

8. Not all employment discrimination can be reached by laws. The church should be prepared to expose, analyze and confront cases of discrimination in public or private employment based on religious conviction or status, as well as on grounds of race, religion, nationality, sex, or sexual orientation, and to provide aid and comfort to the victims.

9. Claims of Christian conscience should not be lightly or cynically made, and should be tested to the maximum extent possible by the counsel of the Christian community.

C. Government Support for Religious Institutions

Religious organizations in the United States have almost unvariably understood activities in education, welfare, health, and other social services to be part of religious commitment and mission, sometimes focused on those in their own faith group but very often extended to serve the needs of the public community. Over the course of our history as a nation, the society has increasingly recognized a public responsibility to meet such needs through the use of public funds. In some instances, governmental agencies provide such programs directly (public schools, veterans' hospitals, unemployment benefits, public welfare, etc.); in others, public funds are made available to individuals, through grants or vouchers (education loans, GI Bill, food stamps, Medicare, etc.); in a third pattern, private institutions receive loans or grants of public funds to provide the defined service to the public (student and elderly housing, hospital construction, job training, halfway houses, feeding programs, hotels for the homeless, etc.).

In the past forty years there has been a great expansion in the scope of governmental social service, health and education programs in this third pattern, through which public funds are available for a wide range of privately sponsored and administered social service activities. These programs exist at every governmental level and government often actively seeks the participation of religious organizations in many of them. There is continuing controversy within both the religious and secular community about both the constitutionality and the propriety of such government assistance and church participation.

These are not new issues. When the General Assembly of the United Presbyterian Church adopted the landmark 1963 report on Relations Between Church and State and the guidelines it contained, there was no guideline relating to church use of public funds. Those who drafted the report were not unaware of the issue but noted that it was a problem "so complex as to deny responsible consideration within the limited time and space available?" Shortly thereafter a new process was initiated, resulting in a report and recommendations on "Church Participation in Public Programs" approved by the 181st General Assembly (1969). This analysis is based on that report and, we believe, consistent with it. Portions are quoted below and Appendix C contains the complete text of the sections on "Assumptions," "Policies," and "Cautions?"

In these developments, the distinction between purely private and purely public agencies has become blurred as national need demanded and public policy permitted vastly expanded cooperation between voluntary organizations and government. The provisions of the First Amendment create a unique context and tension for church-government cooperation in this regard. On the one hand, churches should not have to abandon needed social services traditionally part of their life in an era when cooperation between government and private agencies has become both common and productive. Indeed, to exclude them from eligibility alone among voluntary agencies would seem to be arbitrary and discriminatory and a possible infringement on the free exercise of religion. On the other hand, government may not use its influence and funds to support or advance

religion, requiring that substantive religious character and purpose be divorced from the activity. Government in the United States is not only required by the Constitution to safeguard the freedom of religious exercise; it is also expressly forbidden to take any measures that establish religion. The 1969 General Assembly recognized this tension:

Applied literally, “organic separation of church and state” would forbid not only churches but their representatives, clergy or laymen, even to organize enabling bodies, entirely independent of church control, to set public programs afoot in local communities. But this would refuse minimal cooperation with a legitimate activity of government and would disbar church-associated citizens from exercising their civil rights. Yet if the wisdom of the separationist tradition is ignored, initial activity by churches may well evolve into uncritical acceptance of government policy at the expense of the church’s prophetic function. The church must not sell itself to any government elite... “Separation of church and state” does not mean the divorce of religion from social and political concern, nor silence the church’s social witness, nor forbid loyalty to and support of just government; it warns against the legal establishment of religion, restrictions on its free exercise, and the gradual development of organic institutional ties that fix public obligations on churches and thus erode religious liberty and tend to bring government under the influence of any or all religious groups to the disadvantage of other Americans ...

The churches cannot afford to assume a position that will impede effective welfare work by church or state or limit the liberty of the state to meet fairly the diversity of demands made upon it in a pluralistic society, or systematically refuse cooperation with government in meeting this human need. On the other hand, the church cannot consent for itself or other religious bodies to measures of cooperation with government which endanger the freedom of the church to witness as it sees fit, or tend toward an establishment of religion or which present the church to public view in any way inconsistent with its primary character as witness to God’s reconciliation of the world in Christ.

As these citations make clear, the General Assembly has recognized for many years that, apart from questions of constitutionality, the church faces serious issues related to its own liberty of faith and action when it receives government funds. The 1969 General Assembly noted the distinction between “church-controlled” and “church-related” and urged that “temporary or permanent community agencies qualified to receive public funds” be established at church initiative to maintain such programs; and, if church control was temporarily necessary for start up or experimental programs, that “any permanent program resulting . . . be removed from church control and put under the control of independent community-based bodies.” Holding that “in the conduct of social services church agencies should accept necessary and proper governmental regulation and supervision,” the Assembly noted:

The church

...must decide from its own point of view whether or not it will enter into cooperative arrangements with government. The church’s overriding problem is whether or not God’s work in Christ is obscured by its cooperation in a particular government program and the acceptance of the legal structures attendant upon it.

In the section on church autonomy, we noted that under the Free Exercise clause the church should be free of both government interference and government regulation in ordering its life and activity, except where truly compelling

government interests are at stake. When government appropriates funds for a constitutionally permitted social service to citizens and structures the service in such a way that private agencies are permitted to act as agents for government in the delivery of the service, we believe that churches should be eligible to receive such funds, but with significant conditions that modify the understanding noted above. In short, the area of permissible government regulation of the church's activity is widened; and the church's right to structure its activity to reflect its religious character and purpose is narrowed. Public funds require public accountability and may not be used in ways that advance or support religion, whether or not in the context of charitable service.

The church is not obligated to accept public funds to support its works of humanitarian service and indeed may deem the necessary conditions too harsh to meet. There is no constitutional right to receive such public funds; their denial in order to avoid palpable infringement of the establishment prohibition does not itself constitute a burden on the free exercise of religion. The church may initiate service ministries and operate service agencies, either for its own adherents or for the public, without governmental intervention and regulation when it uses its own resources to do so. When it wishes to use public funds for serving public needs, the church should understand that it gives implied consent to necessary and proper governmental regulation and supervision, and to the civil compact concerning the organic relationship between church and state.

It is useful to repeat that public funding for specific social service activities does not permit government regulation in a way that compromises the autonomy or leads to entanglement with the more central religious functions of the religious body. To facilitate the proper relationship, we strongly recommend that churches and church agencies adopt organizational structures for conducting social service activities open to the public that keep them distinct from other aspects of church life, though not necessarily separate, if any use of public funds is contemplated.

1. *Education*

Constitutional and public policy doctrines have evolved to permit and regulate substantial use of public funds by religious organizations in the areas of health and welfare, social service and higher education, though there are still areas of tension and controversy. Religiously controlled elementary and secondary education, however, remains a source of unsettled legal interpretation and unresolved policy conflict. For that reason, it requires a brief separate analysis.

Some religious faiths believe that the general education of children and young people should occur in an explicitly religious context—that religious and secular education should be thoroughly integrated. Public education cannot accommodate their belief. Those who hold such belief have a right under the Constitution to create and attend such schools, and many have done so, most notably the Roman Catholic Church and conservative Christian groups who operate “Christian academies.” In providing general education, these schools are helping to achieve a highly valued public purpose—the education of the public—and

many have long contended that they should in some way be aided by public funds.

Those who have argued for such support point out that the cost of executing and maintaining the physical facilities for these schools, quite apart from the cost of instruction, saves the state from financing identical facilities for public schools. They further contend that such schools provide substantial instruction in secular subjects and that public funds could be allocated to those subjects without violating the prohibition on state support for religion. It is also argued that requiring students who attend church-sponsored schools to forfeit public support that would have been available if they had attended public schools penalizes the exercise of their religious liberty and unfairly discriminates against religious members of the public in the expenditure or administration of public funds.

Those who have argued against such support point out that those who create such schools openly acknowledge that they do so in order to achieve the pervasive and thorough integration of secular and religious education. The pervasive religious character and purpose of the school means that all education in such schools is religious so that aid to such schools aids religious instruction. There is, in short, no secular function that the state can permissibly aid, since government may not sponsor or support religion or religious education. It is acknowledged that persons who pay tuition for religious schools also pay taxes for public education, but the payment of taxes by religious persons does not create any right whatsoever to a proportionate distribution of the total tax fund for their religious enterprises. Neither does the Constitution require reimbursement for such expense as the state may have been spared by the free exercise of religion.

At the level of constitutional interpretation, government aid to religious schools has been on the Supreme Court's docket almost continuously for twenty years. The Court has been unwilling either to ban all aid or to permit all forms of aid that have been proposed. It has to all appearances searched for a formulation that would validate some aid, but not too much, relying principally on the "child benefit" approach or the "secular component" approach. The former holds that the state can constitutionally fund educational benefits directly to children or their parents, even if used at or in connection with a religious school, though it cannot provide the same aid directly to the school. The latter relies on an attempt to divide the activities of a religious school into components that are wholly secular and components that clearly are or might be affected by religion, approving aid only if it can be traced to a wholly secular expenditure. Since the whole purpose of such schools is to integrate secular and religious education, such an approach seems well nigh conceptually impossible. A third approach, "purchase of services," in which the state provides services through independent contractors, was upheld in regard to religious hospitals that cared for indigents (*Bradfield v. Roberts*, 1899) and to religious schools providing Indian education (*Quick Bear v. Leupp*, 1908) but does not seem to enter into court consideration of modern religious schools cases.

The result of the Supreme Court's search for a coherent formulation is a series of inconsistent and finely distinguished decisions that have permitted the state to fund bus transportation to and from school, lend secular textbooks to students, provide on-site diagnostic services by state employees to students, pay religious schools to administer objective secular tests designed by the state and to take attendance; but have prohibited the state from funding bus transportation for field trips, providing maps or projectors, providing counseling or remedial instruction by state employees onsite, or paying a proportion of teacher's salaries for the time spent teaching secular subjects.

In *Mueller v. Allen* in 1983, the Supreme Court held that state income tax deductions for the expenses of sending children to religious schools were constitutionally permissible, at least in some circumstances. It was significant to the Court that the deduction applied to expenses for transportation and supplies which could be claimed by parents of public school children and to tuition payments by a small number of children attending public schools outside their own districts. Here was an apparent use of an "equal treatment" approach: the state was not required to discriminate against religion by denying a deduction available to parents of public school children.

Thus, it would appear that income tax deductions for private school tuition would be constitutionally permissible; and, if so, it would be discriminatory to deny the deduction to parents who sent their children to religious private schools. Such a deduction tailored only to religious school tuition would be unconstitutional; but in the affirmative, it would appear that if the deductibility of contributions to charitable organizations can constitutionally be extended to churches, then a similar deduction for private schools could extend also to religious schools.

Alternatively, it has been proposed that the state could give the parents of every school age child a voucher with which to purchase education in any accredited institution of their choice. In such a policy scenario, it would certainly appear constitutional for the voucher to be spent for tuition at a religious school. To deny that, we note again, would be discriminatory. The Supreme Court articulated this principle in *Witters* recently (1986), though it has been accepted at the policy level at least since the GI Bill was used for seminary training following World War II. *Witters* concerned the refusal of the State of Washington to allow Witters to use a state scholarship for vocational training for the blind to be trained as a pastor or church youth director. Since he could have used the scholarship to learn any secular occupation, the Court held that it did not violate the First Amendment for him to use it for religious training.

The search for a legal formulation that will permit direct state aid to religious schools will most likely continue to occur within very narrow limits, frustrated by the pervasive religious character and purpose of the schools and the constitutional barrier to government support of religion.

The opposition of Presbyterian General Assemblies to tuition tax credits and vouchers does not rest on constitutional arguments or interpretation but on

the long-standing commitment to free and universal public education of the highest possible quality. That opposition was vigorously restated in 1982: "... on record as opposing all forms of tuition tax credits and vouchers at levels lower than the college level." The introduction to that action provides a succinct restatement of the historic rationale for it:

Whereas universal public education has its roots in the Presbyterian Church and pronouncements of The United Presbyterian Church in the United States of America, historically, have sought to undergird public education and have opposed use of public funds for private or parochial schools; and

Whereas free public education has been a cornerstone of American democratic society, playing an important role in building an educated and freedom-loving nation and teaching children of many different national origins, languages, cultures, and religions how to live together; and

Whereas many powerful voices favor tuition tax credits, which would offer substantial rewards to parents for withdrawing their children from public schools and enrolling them in private schools, or a voucher system by which public funds would be channeled by parents directly to private schools; and

Whereas such methods would stimulate development of schools for separate races, religions, languages, cultures, political groups, and social and economic classes, and would cause a decline of the public schools; and

Whereas many private schools thus obtaining public funds would either be remote from public control or would find increasing control damaging to their reason for existence; and

Whereas many private schools could operate largely or entirely lacking licensed teachers, racial equality, sexual equality, and a commitment to religious freedom and our traditional democratic ideals. (*Minutes*, 1982 UPC, Pan I, pp. 520–521.)

Conclusion

As Presbyterians continue to struggle with the theological, legal, and public policy issues of government aid to religious institutions, they should take thought about three matters. First, we must take care that our particular institutional history and interests do not distort our constitutional and public policy views. Presbyterians have social service agencies but no parochial schools. Second, we must take care that our theological and ecclesiastical history of hostility to Roman Catholicism does not unconsciously continue to affect our constitutional and public policy views. Third, we must take care that the integrity of the faith and mission of the church are not slowly and subtly compromised by the relationship with government that comes with financial support. Religious liberty can be put at risk by our own decisions to mute witness and trim behavior so as not to give offense quite as readily as by overt governmental restrictions.

The 1969 General Assembly spoke to all three of these concerns:

The greatest danger is that the church will misunderstand itself. The United Presbyterian Church intends to be and always become a fellowship of the servants of Christ. It does not intend to become a hostage of government. It does intend to join with public and private bodies in continuing service to humankind and thus bear witness to God's own reconciliation of the world in Christ. It does not intend to support programs of cooperation between church and state that may be fairly regarded by other Americans as inconsistent with the First Amendment as understood by the Supreme Court. It does intend to reserve the right at all times to judge proposals and programs of cooperation with government from two points of view that answer to its own double character: Do such programs of cooperation enable the church both to manifest

and witness effectively to God's own reconciling action in Jesus Christ? Do such programs of cooperation make for equal justice to all citizens and religious groups in the American constitutional framework?

The United Presbyterian Church asks nothing for itself that it does not willingly grant others. The General Assembly recommends to its agencies, judicatories, and institutions of the Church the following criterion: If our own proposals were substantively adopted as the official position of the Roman Catholic hierarchy, the Jewish community agencies, and others, would United Presbyterians be satisfied with the consequent evolution of church-state relations in the United States?

In view of the foregoing considerations, the 200th General Assembly (1988) adopts the following affirmations:

1. Government payments on behalf of individuals, under programs such as Medicare, Medicaid, and scholarship assistance, should without exception be available to clients and students at church-sponsored agencies and institutions on exactly the same terms as if those patients or clients were receiving their services from secular entities.

2. Government should not discriminate against religious institutions and agencies in the expenditure or administration of public funds when the public purpose can be achieved by the religious group in a way that does not support or advance religion. When public funds are made available to private agencies to meet welfare and social service needs, religious programs and agencies should not be excluded provided that:

(a) the service is open to the public without discrimination on the basis of race, age, sex, religion or national origin;

(b) the service is administered without religious emphasis or content, or religious preference or other discrimination in employment or purchase of services;

(c) no public funds are used by religiously controlled organizations to acquire permanent title to real property. (Where existing religiously owned property requires minor modifications to meet specific requirements of the particular program and there are public funds expressly available for such purpose, they may be used by the church also);

(d) the religious organization or agency is subject to the same provisions for safety, general standards and licensing, qualifications of personnel, and financial accountability as other private agencies.

3. Since each state guarantees the right to a free public elementary and secondary education and maintains universally accessible institutions for that purpose, we oppose as a matter of public policy the use of substantial public funds to support private educational systems, including tax deductions or credits and use of educational vouchers.

4. Where government provides noncurricular services to both public and private schools that involve the itineration of public employees to the

institutions, schools sponsored by religious organizations should not be excluded.

5. Tax deductions for contributions to religious agencies, or for payments to religious schools should they be enacted, should not be viewed as support or aid for religion. A policy decision by the state to refrain from taxing is not equivalent to a decision to appropriate public revenues.

6. Service ministries operated by or related to Presbyterian governing bodies, whether or not they receive public funds, should offer all services without restriction based on race, sex, religion, ethnic origin, or sexual orientation, and should conform to requisite health and safety requirements and standards regarding licensing and personnel qualifications. Where such programs are expected to continue for considerable time, placing them under the control of independent community-based bodies should be carefully considered.

7. In light of the division within the religious and public life of this nation concerning government aid for religious schools and the great significance of quality education for all our children, we urge continuing study and reflection on the whole subject at every level of the church. The child benefit, purchase of service, and equal treatment approaches in particular merit careful analysis, both in ongoing constitutional interpretation and in public policy considerations.

D. Taxation and Religious Organizations

Questions concerning the tax status and tax liability of religious property, persons, income, and activity continue to arise at every level of political and religious life. The taxing power is the lifeblood of society from neighborhood to nation. But the power to tax is the power to reward and regulate, and sometimes to destroy. By taxing some things and refraining from taxing others, or by making tax benefits conditional on certain behavior, governing authority can reward, punish, or induce conformity to its purposes.

Issues surrounding taxation and religion are older than the First Amendment, which frames American consideration of them. The power to tax citizens to pay clergy salaries was a prominent aspect of the debate leading to the adoption of the Bill of Rights. Variations of that question continue to arise, joined by new issues arising from the expanded activity and wealth of both government and religion since the eighteenth Century: property, income and sales tax exemptions for religious organizations; clergy housing allowances and Social Security participation; the tax status of religious organizations that engage in lobbying on political issues; the taxation of “activities income” of religious organizations; loss of tax exemption because of “nonconformity to public policy”; taxation of church-sponsored and controlled activities because they are deemed by the state to be “nonreligious”; etc.

“No establishment” and “free exercise” interests are intertwined in such issues. The two First Amendment clauses are closely related, often simply different perspectives on a given issue. There is very nearly always tension between the two clauses; and court decisions move narrowly along the line of tension, with particular solutions determined by whether free exercise or no-establishment interests are seen to dominate.

The threshold constitutional issue is whether the state is required to exempt religious organizations from taxation in order to avoid infringing the right of free exercise, or prohibited from exempting religious organizations to avoid establishing religion. For example, there is a plausible constitutional claim to property tax exemption for houses of worship. For if a church could not afford to pay, it might have to abandon its house of worship or see it sold at auction. Surely, that is an intolerable burden on free exercise. On the other hand, if the church does not pay tax on its land and building, others must pay a bit more to support public services that benefit all property owners, including the church. These others, nonbelievers and all, are arguably being required to support the church and that sounds like an establishment.

In the *Walz* case in 1970, the Supreme Court held that giving churches the same property tax exemption available to other charitable organizations does not violate the establishment clause. In 1943, in the *Murdock* case, states had been told that they may not collect a peddler’s tax from proselytizers who distribute religious literature and request contributions in return, seemingly embracing the broad principle that the state may not tax specifically religious exercise; it could not tax sermons, or prayers, or distribution of the Sacrament. But the Court said that these sorts of taxes were different from taxes on property and income, and it has never decided whether the Free Exercise clause requires tax exemption for church property or income.

However, it is increasingly common at the lower levels for courts to hold that the exemption of religious organizations from taxation is a matter of “sovereign grace” and not a matter of constitutional right. Most cases stating this doctrine arise at the boundaries of state exemption statutes; they tend to involve property such as church camps and parking lots. Courts tend to say that because the exemption is a matter of grace, the legislature can decide which property is exempt and which property is taxable. The Supreme Court, in the *Bob Jones* decision in 1983, itself commented that tax exemption was a matter of legislative grace, but since the university’s free exercise claims were rejected on the grounds of a compelling state interest in racial equality in education, it is unclear whether the Court would deny tax exemption to religious organizations for violating “public policy” where the government interest is less than compelling.

When the tension between no-establishment and free-exercise is resolved in a way that leaves legislatures some discretion to tax or exempt from tax, a second and wholly different question arises. May the legislature grant a conditional tax exemption, exempting only those churches that conform to government policy? If government were free to grant tax or withhold exemptions as

different churches pleased or displeased it, government could control all but the most resolute of the churches. Recent Court decisions appear to lean in this direction, with potentially very serious implications for both establishment clause and free exercise clause interpretation. These implications are discussed more fully below and in the background material.

Thus, the constitutional situation in general seems to be: The state may grant tax exemptions to religion without violating the Establishment clause; the state may not tax specifically religious exercise, but may tax some religious property or activity or place conditions on a grant of tax exemption without violating the Free Exercise clause.

The church's position on these issues is not dictated by court decisions. We believe that government cannot constitutionally tax the core exercise of religion, and that it therefore cannot constitutionally tax the property integral to those functions. Sacred location and space, a place to meet for prayer, praise, instruction, and celebration, are intrinsic to communities of faith. Such property is currently exempt in all states, so despite the loose language of court opinions, there is no square holding that states or municipalities could constitutionally tax such property. Where the costs of general community services such as fire and police protection, street lights, highway maintenance, education, and culture are met by taxes based on the assessed value of property and buildings, churches should vigorously resist any attempt to repeal the existing exemptions for core religious property, even if courts hold such taxes constitutional. Such taxes would strike at the heart of religious exercise and fall with devastating force on economically marginal congregations whose land and property might be assessed at very high levels.

On the other hand, where service is provided directly and billed separately, such as water and sewer service or sidewalk construction, the church should pay, even for that part of the cost pertaining to core religious property. When a community decides to bill individual users for a service, the church cannot plausibly claim the same service for free. The distinction is between services provided on a fee-for-service basis, with charges approximating the cost of providing the service, and services provided to the public as needed and funded by general taxation.

We recognize that the definition of "core religious property" will be varied and controverted. It may be a large cathedral or a tiny storefront, a mountain or a mesa. It may include ornate altars or plain classrooms. When and if definitional questions arise, a religious organization's sincere judgment that property is essential to its core cultic exercise is entitled to substantial deference.

Some congregations have made voluntary contributions to government "in lieu of tax." Such contributions should be viewed as truly a matter of grace, not as an obligation or a quid pro quo for tax exemption. We do not generally recommend them, though in particular circumstances other governing bodies may find them appropriate.

Regardless of what property is tax exempt, it is even more critical that any tax exemptions for churches not be conditional on the church's belief or behaviour. The Supreme Court has held in other contexts that the government may not penalize constitutionally protected conduct by withholding a tax exemption (*Speiser v. Randall* 1958)). This protection surely applies to churches, but the Court has never had occasion to say so. Some lower courts have thought that if tax exemption is a matter of governmental grace, the government can condition tax exemption on waiver of constitutional rights. In 1972, the Christian Echoes decision denied tax exemption to a religious organization that had violated the restriction on influencing legislation in section 501(c)(3) of the Internal Code. The court of appeals said bluntly that churches could speak on political issues and pay taxes or remain silent and be tax exempt, but that they had no constitutional right to free speech and tax exemption at the same time.

The Supreme Court did not review the Christian Echoes decision, so it did not set a national precedent. However, two important decisions in 1983 seemed to move the Court in the direction of the Christian Echoes position, though a careful reading indicates that it has not fully embraced it. In *Bob Jones*, as noted above, the Court held that the Internal Revenue Service may deny tax exemption to religious institutions that violate "public policy" where a compelling government interest is at stake. The principal factor operating was not "conformity to public policy" but "compelling state interest." As we have recognized in other sections, a truly compelling government interest may override religious free exercise interests that would otherwise rise to the level of constitutional rights.

The other 1983 decision, *Taxation With Representation* (TWR), did not involve religion but is analogous in potentially important ways. TWR argued that the 501(c)(3) restriction on influencing legislation violated its rights to free speech. The Court agreed that "the government may not deny a benefit to a person because he exercises a constitutional right." But it held that this rule did not apply to TWR's case because it could organize a 501(c)(4) affiliate, completely under its control, to carry on its political activities. Contributors to the 501(c)(4) could not claim a deduction, but the Court found no constitutional right to a tax deduction for contributions to influence legislation. Tax exemption for influencing legislation was a matter of grace. The Court agreed that government could not penalize TWR's exercise of constitutional rights but found no penalty on the basis of the particular facts in the case.

The matter is quite different for the church, but there is no certainty that the Court would so construe. In "attempting to influence legislation" churches speak to the moral aspects of political issues. Such witness flows directly from fundamental faith and is integral to its free exercise. It is essential to the church's identity and mission, and to the moral authority of its pronouncements, that it speak as "church" through its religious structures and leaders. No church can be restricted to speaking on political issues solely through functionaries employed by a political affiliate without violating its faith and calling. Any attempt to segregate a church's political speech from its moral and religious speech funda-

mentally misunderstands the nature of church speech on political issues. A later section of this statement analyzes why speaking on the moral implications of political issues is a core religious function, protected by the free exercise clause, though it is also political speech, protected by the free speech and free press clauses.

We hold that the restrictions in section 501(c)(3) when applied to the speech of the church and its leaders are unconstitutional as a limitation on a core religious function. Religious organizations must be permitted to express their religious and moral perspective on political issues directly without forfeiting their tax exemption or the deductibility of contributions to them. This constitutional protection is extended to those religious organizations whose participation in public political debate is in the context of their overall religious witness. Religious organizations are not and should not be structured for the main purpose of supporting particular candidates or influencing particular legislation. If it is alleged that an organization has claimed religious character to shelter a principally political purpose, evaluation of such organizations must be made on the same considerations outlined elsewhere in this statement for determining what is or is not a religious organization.

More generally, we deny the legitimacy of government attempts to regulate churches by granting or withholding tax exemptions. Regulations attached to tax exemption must be justified by a compelling government interest. As affirmed in the sections on conscientious objection and church autonomy, “compelling interest” must be narrowly defined.

When the state grants exemption from taxes to religious organizations, the basic definition of what constitutes religious activity must be made by those organizations. With increasing frequency, taxing jurisdictions seek to collect taxes from religious organizations on particular property or activity in the face of statutory provisions exempting “churches, conventions, or councils of churches and their integrated auxiliaries” from tax liability. In such instances, the justification is most often that the property or activity is not sufficiently “religious” to qualify, although wholly owned, operated, controlled, and defined by the religious organization as a part of its life and work. We urge Presbyterians, when dealing with such situations, to recognize that the issue is not “whether the church should pay taxes.” The issue is: “Who defines the church’s nature and ministry?” The church need not argue that it is constitutionally entitled to a particular exemption; it need not necessarily press for exemptions defined in past times to be retained, except for those related to core religious functions. But where the law contains the broad-form exemption for religious and charitable organizations and activities, Presbyterians must resist any attempt by taxing authorities to define some of the properties and activities wholly controlled and defined by the church as nonreligious.

These considerations, of course, do not apply to what is generally known as the “unrelated business income” of religious organizations and the property used

to produce it. The Presbyterian Church and others have long affirmed both the constitutionality and appropriateness of such taxation. Indeed, most of the so-called mainline religious bodies requested the legislation covering such income and property in sections 501(b), 511, 512, and 513 of the Internal Revenue Code.

Subject to the foregoing, particular taxes or exclusions from taxes should treat religious organizations equally with charitable and nonprofit organizations; or put another way, religious organizations should not be singled out for either penalty or privilege.

Some have argued that the church should pay taxes whether or not similar charitable and nonprofit organizations do. This argument may be based on a conviction that tax exemption for churches is an unconstitutional establishment of religion. That argument has been rejected by the Supreme Court. The argument may also be based on a conviction that the church compromises its potential for prophetic witness if it “accepts favors” from the state. Unless the church has sought or defended privileged tax status only for religious organizations, which Presbyterians should certainly oppose except for property essential to the core functions of religion, we do not believe this argument has weight. Indeed, if churches were excluded from tax provisions, either exemptions or liabilities, applicable to general charitable and nonprofit organizations, that would discriminate against them simply because of their status as religious bodies. That could well be unconstitutional but should be opposed in any case.

Two existing provisions of the Internal Revenue Code violate the principle of no special benefit—no special burden for religious organizations. Under one section, clergy are permitted to exclude from taxable income a housing allowance or the value of the free use of a manse provided to them. The exclusion applies to ordained persons who are educators, administrators, and other church functionaries as well as to retired clergy. Another section of the code permits employees of other organizations to exclude the value of housing furnished to them for the convenience of their employer at the place of employment, but the exclusion for clergy applies whether or not the manse meets the standards specified in that section. Such a provision available only to clergy raises establishment of religion questions and is inappropriate under the principle noted above. The tax status of the value of clergy housing should be determined by the same provisions that apply to employees of other organizations.

Sections 1401 and following of the Internal Revenue Code require clergy to pay Social Security taxes as “self-employed persons” imposing a special burden on these religious employees relative to the employees of other organizations. The rationale for this legal fiction was that a requirement that the religious organization pay the tax would constitute a free exercise burden on the religious body itself. Since the funds in either case come from the same source, the believing contributors, free exercise is no more or no less burdened by either method of payment. The pattern of Social Security tax payments for clergy should be the same as for employees of other organizations.

The 1970 General Assembly (PCUS) approved several criteria regarding taxation and tax exemption of religious bodies. The criteria are generally consistent with the analysis and recommendations of this report, with the exception of “voluntary contributions in lieu of taxation,” and are reprinted in full in Appendix D.

In view of the foregoing considerations, the 200th General Assembly (1988) adopts the following affirmations:

1. The state may not use its power to tax or to exempt from taxation, to restrict, or place conditions on the exercise of religion.

2. The state may not tax the central exercise of religion or property essential to the core functions of religion. We hold that the application of the restrictions in Section 501(c)(3) of the Internal Revenue Code to the speech of the church and its leaders are an unconstitutional limitation on a central exercise of religion.

3. We support exemption of other church property and income as a matter of legislative policy. Such exemptions do not “establish” religion.

4. We concede that some properties and operations of religious organizations may be subjected to taxation by legislative act; but we will resist all efforts to do so by administrative determination, in the face of statutes that exempt churches from taxation, that some properties or activities wholly controlled and operated by the church as part of its mission are “nonreligious:”

5. We affirm the legitimacy of taxing unrelated business income and property used to generate such income.

6. Particular taxes or exclusions from taxes should treat religious organizations equally with charitable and nonprofit organizations; religious organizations should not be singled out for either penalty or privilege except for the exemption of property essential to the core functions of religion.

7. Special tax exemptions or burdens for the property and income of ministers or other church employees are inappropriate. They should be phased out over a period long enough to accommodate the reliance of many churches on existing exemptions.

8. Payments to government for specific services billed separately to all property owners are not “taxes” and may legitimately be required of religious organizations at the same rate as for other property owners.

9. Churches should feel no obligation to make voluntary contributions in lieu of taxes, and all such contributions should be truly voluntary. They are not a quid pro quo for tax exemption.

E. New Religions and Threats to Conversion

When the First Amendment to the Constitution was written two hundred years ago there were thirty-six religious bodies or denominations serving a population of approximately five million. Now there are over fifteen hundred religious bodies in the United States. Two hundred years of religious freedom, immigration, and cultural evolution have created a far more pluralistic religious climate. In the nineteenth century there were large immigrations of Catholics and Jews. New denominations emerged, as diverse as Jehovah's Witnesses and Mormons. More recently, Buddhists and others have come from the Far East, and Moslems from the Middle East. Eastern religions have won converts here, and new indigenous religions have developed. Finally urbanization and increasing mobility have led to the geographical dispersion and greater visibility of once relatively isolated groups and consequently much more interaction with religions once on the edge of society.

These new religions, often indiscriminately branded as "cults," compete with the interests of the more traditional religions in the society. They often have charismatic leaders and rigorous pieties that demand much more of their followers than is demanded by older religions that have become less militant and more comfortable. New religions may deviate in other ways from the cultural and religious norms of the society in which they exist. They are often feared and disliked, and their success engenders hostility. The conflicts and persecutions associated with the spread of Christianity, the spread of Islam, and the Protestant Reformation illustrate that at times there can be no greater danger to religious liberty than the conflict between new and traditional religions.

Some people have resorted to extraordinary means in the attempt to control "cults" and "rescue" their converts. Unwilling to believe that a loved one would convert to a strange religion that demands great personal sacrifice, distraught relatives and friends are quick to conclude that the "cult" must have "brainwashed" the convert. Relatives of converts have fought "brainwashing" with "deprogramming," a process in which individuals who are members of a religious group are abducted and held captive during efforts to persuade them to recant their beliefs. Some courts have held that such deprogramming is false imprisonment, a civil wrong for which the victim can recover damages. A few deprogrammers have been criminally prosecuted for kidnapping.

Deprogrammers have sought to avoid these risks by finding legal authority for their actions. In several states, legislation has been introduced that would allow parents to seize adult children from religious groups and initiate deprogramming. Other deprogrammers have invoked statutes providing for guardians or conservators of incompetents. A few courts have appointed parents as guardians over their adult children, with authority to hold the "ward" for deprogramming. In vacating such an order, the California Appellate Court noted that guardianship of adults who experienced religious conversion would violate religious liberty and license "therapy" for purposes of thought control.

We can be sympathetic to the fears and anxieties engendered when family members or friends become deeply involved with strange and demanding religious groups, but the charge of brainwashing is rarely justified and the response of deprogramming under physical restraint is indefensible. Some new religions do win converts through emotional manipulation. So do some traditional religions. It is undoubtedly true that television evangelists manipulate more peoples' emotions in our society than do proselytizing cults. Nearly all religions make unverifiable promises of spiritual benefits; some religions, both old and new, make more or less specific promises of material benefit as well. The essence of Christianity is the miracle of Christ's death and resurrection and the promise of eternal life through God's grace. These are not "provable propositions," and we have no right to insist that the claims of new religions be subjected to empirical verification. As the Supreme Court recognized in *United States v. Ballard* (1943), people "may believe what they cannot prove. ... Religious experiences which are as real as life to some may be incomprehensible to others."

The law cannot question claims of faith, nor can it fairly distinguish among external environmental influences and "the inner testimony of the Spirit" to judge the authenticity of conversion. Mystery and emotion are vital elements in the life and expression of nearly all religions. Incense and invitation hymn, ritual of friendship and mourner's bench--by what standards can courts differentiate the great variety of ways by which religion "manipulates" the emotional environment of potential converts. Neither courts nor other private parties are in a position to evaluate the subjective experience of someone converted or introduced to a new religious faith. Government intrusion into the embrace of faith violates the First Amendment guarantee of free exercise in the most fundamental way.

The law must confine itself to clearly defined and identifiable abuses. Most fundamentally, physical coercion must be forbidden whether engaged in by proselytizers or deprogrammers. To legalize any form of physical coercion or restraint for purposes of deprogramming strikes at the heart of the right to choose one's own religion. The law can provide remedies for fraudulent claims about empirical facts in this world, not dependent on any claim of faith, whether engaged in by proselytizers or deprogrammers. A religious leader cannot solicit money for relief of the poor or construction of a shrine when he intends to spend it on luxuries for himself. For better or worse, he can solicit money on the promise that God will bless the giver. Proper enforcement of existing laws would provide adequate remedies for physical coercion and secular fraud.

Several cases are in the courts now in which former members of new religious groups seek damages on various grounds, usually some form of fraud. In most instances, the persons had been active and satisfied adherents for a considerable period of time before becoming disaffected. They are ordinarily backed by organizations known principally for their anti-cult stance and activity. Some extremely punitive damage verdicts (in the millions of dollars) have been awarded by lower courts. Some of these have been reversed, but several cases

are still in the trial or appeals process. We view such litigation with the same perspective outlined above. It is no more appropriate for the courts to judge the authenticity of faith and conversion retrospectively than at its initiation. The prospect of government assessing financial penalties on religious bodies to compensate disillusioned lapsed members is so fundamentally offensive to the First Amendment as to appear incomprehensible. The possibility of disillusionment with faith is part of the freedom to embrace it in the first place. The law should not attempt to preclude the latter or protect us from the former.

Finally, we recognize the rights of parents to control their unemancipated children and the pain of parents when children at any age leave the family's religion. Greater attention and education must be provided to families whose members have become involved in a new religion. The church community should be encouraged to assist family members, parents and friends attempting to cope with the seemingly "alien" religious experience of a loved one. Likewise the church community must always be supportive and compassionate toward individuals attempting to grow in their conversions and religious experiences, remembering that life in faith is also a developing and changing reality for those embracing new religions.

In view of the foregoing considerations, the 200th General Assembly (1988) adopts the following affirmations:

1. The right to choose one's own religion, and to change that choice, is the most fundamental religious liberty. This right must be vigorously protected from governmental intrusion or physical coercion, either by those seeking to convert or those seeking to prevent conversion. This right should also be protected from fraud, but courts cannot evaluate claims of religious faith.

2. The church should be tolerant of other religions and respect their right to proselytize and practice their beliefs in accordance with the tenets of their faith.

3. We oppose judicial and legislative efforts to interfere with freely chosen and maintained religious commitments by legal adults, whether based on attempts to define legally undesirable "cult" religion, the use of conservator and guardian procedures, or reversal through legally authorized deprogramming.

4. We further oppose the use of civil law by persons disaffected or disenchanted with their religious experience, unless plausible allegations of physical coercion or fraudulent claims related to empirical facts are present. The right of religious freedom carries responsibility for its exercise and the risk of disenchantment.

5. The church should provide counsel, education, and support for the family members and friends of those who have converted to a new faith or undergone a powerful religious experience, and indicate understanding and continued openness to those who have converted.

F. Religious Expression in Public Places

Prayer and other religious expression in public places have been the subject of continuing controversy. Some have sought to eliminate all religious expression from public places; others have aggressively promoted it with the stated intent to imply governmental approval, if not sponsorship, of Christianity. In between are those who simply want, for instance, to gather on a university campus for Bible study like other students gather to seek a ban on nuclear testing and find themselves in court instead. Most of these controversies can be resolved by maintaining a clear distinction between government-sponsored expression and private expression. Religious expression by the government itself or sponsored by the government threatens religious liberty and is forbidden by the establishment clause. On the other hand, religious expression by private citizens and organizations, initiated by private citizens and organizations, is protected by both the free speech and free exercise clauses and cannot be banned from public places. Like political speech, religious speech in public places can constitutionally be subjected to neutral regulations of time, place, and manner. But it may not be restricted because of its content by either prior restraint or subsequent penalty.

Religious expression takes different forms, of course. An Easter sunrise service in the city park or a papal mass in the plaza is clearly appropriate and constitutional on the principle stated above. The proposal to erect a large lighted cross in a public park overlooking the city is another matter. Such a prominent and permanent display of religious symbolism can hardly avoid the color of religious establishment. The initiative and the funds to implement it may be private but the “speech” is governmental.

Government should be absolutely neutral in matters of religion, and the religion clauses commit the nation to that posture. Much of the controversy over school prayer and other public religious expression arises from the conviction that government may support one religion if it tolerates other religions, or that it may support religion generically if it does so nonpreferentially and noncoercively. The drafters of the First Amendment repeatedly rejected language that would have allowed such a stance. Such convictions, then, do not pass constitutional muster and would in any event be bad public policy, they do not keep the government sufficiently out of religion. The establishment clause prohibits government preference for one religion over others or of religion over nonreligion. This does not mean that the clause prefers nonreligion; indeed, it prevents governmental indoctrination against religion. Neither government programs nor public school curricula may be shaped to any theological view, whether theistic, agnostic, or atheistic.

The ban on religious expression by government protects religious choice from government intrusion. It also protects religion from trivialization by government. Of necessity, seeking not to offend, not to exclude and not to particularize, government religious expression would be a vague and syncretistic civil religion. The inevitable tendency would be to endorse a pale version of the predominant beliefs in the locality, offending not only those who hold other beliefs but also those who take seriously the predominant beliefs. The Supreme Court recognized these problems in its 1963 decisions prohibiting state-sponsored or teacher-initiated religious expression in public schools. It is regrettable that the Court has departed from this rule in other contexts, as in its decisions permitting legislative prayers, *Marsh v. Chambers* (1983), and municipal nativity scenes, *Lynch v. Donnelly* (1984). The Court's emphasis on the secular nature of Christmas in concluding that a creche does not sponsor or endorse religion is offensive to Christians and transparently false to non-Christians.

Although government may not sponsor religious expression, it does not follow that private citizens cannot pray or speak of religion in public places. To forbid religious speech in a public place where nonreligious speech is permitted would violate the free speech, free exercise, and equal protection guarantees of the Constitution. That would convert the required governmental neutrality toward religion into governmental hostility. The Supreme Court properly applied this principle in *Widmar v. Vincent* (1981) holding that student religious groups are entitled to meet on college campuses on the same terms as nonreligious extracurricular groups.

There has been controversy and litigation over whether high school students are entitled to this right to conduct religious activities on school grounds. There are clear differences in the context. In most instances, high school students are in school under compulsory attendance laws; that is, their presence is more a matter of government requirement than private choice. In many instances, clubs and activities are structured during the instructional day and are viewed explicitly as part of the instructional curriculum, making them more "curricular" than "extra-curricular" and more "government-sponsored" than private. And it has been argued by courts that high school students are more impressionable than college students, therefore more likely to take school permission as school sponsorship.

Nevertheless, we believe that the principle noted above can be applied equally to high school students. That is, if the high school has created an "open forum," allowing genuinely extracurricular and privately-initiated student groups to meet in the school building, it should grant the same rights to student religious groups. There is no requirement that schools establish such an open forum, though we are persuaded that it is a sound policy, subject to reasonable time, place, and manner regulations. The fear that such equal treatment of religious speech will permit evasion of the school prayer decisions arises from failure to distinguish government-sponsored speech from private speech that happens to occur in a public place. To preserve that distinction and avoid abuses,

school officials must not be allowed to create and sponsor student religious groups.

The controversy over “moments of silence” in public schools illustrates another failure to distinguish private from public religious speech. Most courts that have considered the matter have held “moment of silence” legislation or policies to be unconstitutional, discovering that the expressed intent and classroom implementation make it a “silent prayer” sponsored by the school. Experience confirms that such abuse has been widespread where the “moment of silence” has been instituted. Prayer should remain a private religious expression without government sponsorship or endorsement. A “moment of silence” is not inherently unconstitutional, of course, but we do not believe that such statutes should be enacted. The pressure to enact them comes from those who openly acknowledge the intent to “get prayer back in the schools”; thus it is improbable that the “moment of silence” would be implemented in a wholly neutral way.

The public school does not have to pretend that religion does not exist or is not to be mentioned in public, though it may neither endorse or oppose religious beliefs nor observe or belittle religious rituals. Public schools are constitutionally permitted and should be strongly encouraged to teach about the role religious faith and religious persons and groups have played in history, politics, social life, literature, and art; so long as the treatment is comprehensive, objective and treats different religions with complete neutrality. The exclusion of the role of religion tragically distorts the curriculum and the educational experience. The distortion is widespread, as recent textbook evaluation studies have demonstrated. In the interests of authentic education, this situation must be remedied.

There are difficulties in this “objective inclusion of the role of religion”; and it is largely those difficulties, rather than hostility to religion, that deter textbook publishers and school administrators and teachers. There are those in the community who see “endorsement” in any mention of religion in the school curriculum. There are those who want any mention of religion to be tailored to essentially evangelistic ends. And there are those for whom “objectivity” precludes the mention of unflattering things about their particular religion or any mention at all of the role of religions of which they disapprove. However, between the endorsement of religion and the exclusion of religion, there is a wide range of possibilities, some of which come close to the ideals of neutrality and objectivity. This particular form of “religious expression in public places” is so important and so neglected that Presbyterians should give particular attention to the efforts to find that neutral and objective middle.

Public schools do have a responsibility to teach general moral values around which there is substantial social consensus. This teaching must not depend upon theological justification or invoke theological sanctions. The duty to teach the religious basis for moral values rests with the home and the church. When the state recognizes a compelling need to deal with controversial moral issues such as sexuality, it may constitutionally hold and teach values based on nontheologi-

cal considerations but would be wise to acknowledge competing views and treat them with respect and encourage students to think through moral questions for themselves. Students holding minority views are bound to be offended when the government adopts one position on a controversial moral question without reference to other views.

Religious expression also often asserts views on controversial matters, such as the origin of the universe and the forms of life. Religious views of these matters may sometimes conflict with views from scientific or other perspectives. The right of public expression for religious views does not carry a guarantee that they will not be challenged. The state is entitled to express views on these matters from nonreligious perspectives, even though it is obligated to remain neutral on questions of religion. Thus, for example, the state is free to teach the scientific evidence in favor of evolution and to require students to achieve basic literacy in science. But it cannot require students to accept the premise that science is the only way to answer these questions. If some students believe that the scientific evidence is irrelevant because religion provides a different answer, the state must respect that belief.

Religion in its many forms and expressions is a vital force in the lives of people in this nation and thus in the society in the largest sense. Arguments and efforts that tend toward the total exclusion of religious expression from the public life of the people are mischievous and mistaken and must be resisted. However, public expression must not be confused with official sponsorship which is both unconstitutional and bad policy. The line is not always clear, of course. In those instances, commitment to freedom of expression deserves at least equal weight to concern about establishment, particularly as close cases are considered.

Christianity is the historic and familiar majority religious faith in the United States. Our stories of civic origin, whether flowing from New England or New Spain, are inseparably intertwined with Christian energy and expression. The Presbyterian Church is a well-known and highly respected expression of Christian religion, deeply rooted in American life and history and enjoying both political and social access and influence in most places. Because of these things, Presbyterians have particular responsibility for community leadership in safeguarding the legal and responsible public expression of religion and for modeling such expression in their own life.

Presbyterians should, first, be careful of the constitutional limits and legal requirements when considering or planning public services or acts of witness, either for themselves or with other religious groups. Majority status and political access can lead us or others unconsciously to forget the limits and bypass the requirements.

Presbyterians should, second, be alert to the barriers encountered by religious minorities, particularly new and unfamiliar ones, in exercising rights to constitutional and legal public expression. Remembering our own early history

as Protestants, we should be quick to advocate and defend their rights, no matter how “wrong” their faith or how strange their practice may seem. Their liberty is of a piece with our own.

Presbyterians should, third, be sensitive to the faith and feeling of others in planning public religious expression. “Appropriateness” should not be simply a legal question. Such consideration for others is right in itself; it is also important in keeping the civil compact of tolerance strong. We should give careful thought as to whether the “time, place, and manner” we contemplate will give unnecessary offense to those of other faiths or no faith, not simply if they conform to legal requirements.

In view of the foregoing considerations, the 200th General Assembly (1988) adopts the following affirmations:

1. Government must be neutral in matters of religion. It may not show preference of one religion over others, for religion in general, or for religion over nonreligion. While contact and conversation between public officials and religious leaders on public policy issues are certainly appropriate, official institutional ties between government and religion are not. For that reason, we continue to oppose the appointment of ambassadors to the Holy See of the Roman Catholic Church.

2. Government may not engage in, sponsor or lend its authority to religious expression or religious observance. We continue to oppose any constitutional amendment to permit public schools to sponsor prayer.

3. Religious speech and assembly by private citizens and organizations, initiated by them, is protected both by the Free Exercise of Religion and Free Speech clauses of the Constitution and cannot be excluded from public places.

4. The display of religious symbols in connection with private speech and assembly in public places is appropriate and legal. We oppose the permanent or unattended display of religious symbols on public property as a violation of the religious neutrality required of government.

5. Religious speech and assembly in public places may be regulated by government as to time, place, and manner, but only in a neutral manner and not to any greater extent than nonreligious expression.

6. Statutes permitting “moments of silence” in public schools are not inherently unconstitutional but should not be enacted because they are subject to misuse through pressures to allow state-sponsored prayer or endorse religion.

7. If a public secondary school permits genuinely extra-curricular student-initiated group activities in noninstructional time, religious expression should be permitted, subject to the same regulations and restrictions.

8. Public schools may constitutionally teach their students about religion in a neutral way. The incorporation of factual and objective references to the role of religion when teaching history, social studies, art, and literature is essential to a comprehensive and balanced education and should be encouraged and assisted in every possible way.

9. Presbyterians should be particularly vigilant to protect the right to public religious expression for new and unpopular minority faiths, and be sensitive to the faith and feelings of others in their own public expressions of faith.

G. Religious Participation in Public Life

The metaphor of a “wall of separation between church and state” is particularly misleading when used to advocate the separation of religion from politics or from any other dimension of the public order. The First Amendment has never meant separation of religion from community or separation of the church from public life. On their face, the religion clauses constitute an absolute prohibition on government participation in religious life; there is no hint that that barrier was even thought to isolate religion from the life of the republic.

For Reformed Christians, there is a happy coincidence between the legal and the theological: Participation by individuals and groups in public life, including its political, economic and social dimensions, is not only a constitutional right but also a religious responsibility. From 1788, in the same Basic Principles that placed a commitment to liberty of conscience at the heart of the church’s faith and governance, the Presbyterian Church in this nation has articulated “an inseparable connection between faith and practice, truth and duty” (FG-1.0304). We assert that “the promotion of social righteousness” is one of the great ends of the church (FG-1.0200); and that “the recognition of the human tendency to idolatry and tyranny calls the people of God to work for the transformation of society by seeking justice and living in obedience to the Word of God” (FG-2.500). The church is called to share “with Christ in the establishing of his just, peaceable, and loving rule in the world” (G-3.0300). What is articulated in order has been made central in confession: “To be reconciled to God is to be sent into the world as God’s reconciling community. This community, the church universal, is entrusted with God’s message of reconciliation and shares God’s labor of healing the enmities which separate people from god and from each other. . . The church gathers to praise God . . . and to speak and act in the world’s affairs as may be appropriate to the needs of the time” (BC-9.31, 9.36).

According to the Reformed tradition and the standards of the Presbyterian Church (U.S.A.), then, it is a limitation and denial of faith not to seek its expression in both a personal and a public manner, in such ways as will not only influence but transform the social order. Faith demands engagement in the secular order and involvement in the political realm.

Participation in public life implies both support for and criticism of the public order. Religious bodies and people of faith hold to a wide variety of convictions, ideas, and values that make important contributions to the shape and strength of public life. That life has been shaped by individuals and groups that have sought to create new forms, sustain traditional ones, challenge existing ideologies and reform or resist unjust institutions. Participation is thus viewed by the government sometimes as a blessing and at other times as a threat. It is not surprising that many, particularly those who hold power, often prefer less participation by citizens and groups in the public arena, including those motivated by religious convictions, or at least wish that such participation be limited to a supportive role.

The participation of church bodies and believers in public life has seldom gone uncriticized or unchallenged and that is perhaps more true today than ever. Religious groups have participated vigorously on both sides of public policy debates on Central America and abortion, in the face of internal criticism and public challenges, both legal and rhetorical. In each major political party, ordained clergy candidates for the presidency have developed impressive strength, based in large part on the support of coreligionists who have moved into local and state politics as organized religious groups, in a direct way. In 1984, the stance of the candidate for Vice President on abortion was publicly criticized by leaders of her own church which occasioned widespread analysis and debate within the Catholic Church and the public media. In all these and similar developments, there were frequent charges that such activity was in violation of the “separation of church and state” allegedly required by the First Amendment.

However, the Supreme Court has properly rejected claims that legislation violates the establishment clause if it embodies the moral teachings of a religious group or has been advocated by religious groups (*Harris v. McRae*, 1980; *McGowan v. Maryland*, 1961). The Court has struck down a clause in the Tennessee constitution that disqualified clergy from serving in the state legislature (*McDaniel v. Paty*, 1978). Such victories on behalf of religious participation in the political realm should not tempt us to relax our vigilance. Attempts to deny and reduce the full expression of religious convictions within the public order, whether by churches or their adherents, are not likely to diminish.

Some of the most serious pressures on religious participation in public life have come through the provisions of the Internal Revenue Code that a tax exempt religious organization is not to devote a “substantial” part of its activity to attempts to influence legislation nor participate or intervene in political campaigns on behalf of any candidate for public office. In 1976, the IRS held that an organization that had asked candidates for public office to endorse a code of campaign ethics had engaged in prohibited activity, though the organization had not endorsed any candidate or published the response to its request. In 1978, the IRS denied tax exemption to an organization that had sent a questionnaire to candidates and published the responses without comment in its newsletter. That created such an uproar that it was replaced by a vague ruling establishing an “all

the facts and circumstances test” Two 1980 rulings seemed to relax the IRS limitations to some degree. A “private letter ruling” held that the reporting of votes on proposed legislation and the presentation of testimony to the platform committees of the two major political parties did not constitute participation in a political campaign. Revenue Ruling 80-282 held that publishing congressional voting records on a number of issues after the close of the session would not jeopardize exempt status, though the publication would show whether the votes were in accord with the organization’s positions on the issues. The Internal Revenue Service does not seem to be able to distinguish between discussion of issues and candidates, on one hand, and intervention in campaigns on behalf of specific candidates on the other, though the Supreme Court emphasized the necessity of this distinction in interpreting laws dealing with political expression (*Buckley v. Valeo*, 1976).

The Supreme Court has never had opportunity to rule squarely on the restrictions on political activity by churches contained in the Internal Revenue Code. We believe that the right of religious bodies and individuals to participate in public political life is not only an imperative of faith but is grounded in the guarantees of the First Amendment. Religious groups and people of faith enjoy freedom of speech and assembly, petition for redress of grievances, and all the other liberties accorded other groups and individuals under the Constitution. In the case of religious groups, however, these are the instruments of the transcendent guarantee of religious liberty. The right to petition and the right to speak freely are in service to the even more fundamental right to free exercise of religion, which government may not infringe. The First Amendment does not and could not compel religious participation in public life; but it stands sentry over all attempts to ban or burden it.

For these reasons, limitations upon the freedom of religious bodies to participate in public life are illegitimate and unconstitutional. The church is bound to reject any regulations limiting church advocacy of particular legislation or endorsement of candidates, or establishing religious qualifications for office holders. We acknowledge that some campaign finance laws and similar regulations applicable to all could also be applicable to churches, though not in any fashion that suggests that political activity is the major purpose of churches or that requires excessive governmental entanglement in the overall affairs of the church. But we deny the legitimacy of special restrictions on religious bodies or clergy, whether imposed on the basis of religion or as a condition of tax exempt status. And we deny the legitimacy of any restrictions on the church’s own speech on social or political issues. Specifically, the political activity provisions of 501(03) of the Internal Revenue Code, which limit the right of tax exempt churches to influence legislation or political campaigns, abridge religious liberty. As affirmed in the section on the church and taxation, they should be repealed or held unconstitutional.

We recognize the tendency of governments, political parties, and candidates to invoke the support of religion and religious bodies to legitimate their policies

and power, and to seek the blessing of religious authority for partisan purposes. We must also recognize that churches can be tempted to seek political authority and control of the political process in the effort to make their vision of society mandatory for the society. It is easy to step from advocating our vision to seeking to enforce it, from protecting religious liberty to requiring “right” belief and action.

The church must advocate its positions on public issues, but it should not seek to exercise political authority in its own right. We venture no opinion on whether explicitly religious political parties would be held to be a constitutional form of participation in public life. We do assert that we are opposed to such participation on both theological and public policy grounds; and that any such party that might win election would be barred by the First Amendment from implementing an explicitly religious platform.

For the same reasons of policy, we believe that the church’s advocacy of public policy goals should not draw heavily on the specific theological language and symbols that animate our vision of public life. We should translate our vision into the language of public discourse. When we support job training programs for the homeless poor, we draw motivation from the Old Testament witness of God’s care for the sojourner and Jesus’ infinite love for the excluded, but we should not advocate the policy on the ground that God wills it, whether or not such advocacy is constitutional. We should translate our advocacy into the language of the common civic vision, the language of justice, equality, and opportunity.

Presbyterian Elder Thomas Wiseman, Chief Judge of the United States District Court for the Middle District of Tennessee, speaks of religious participation in public life as “evangelizing Caesar” and admirably summarizes the issues of public participation, after noting that some attempts are both unwise and unconstitutional:

Not that churches and individual Christian Americans should not evangelize Caesar to observe what Christ has commanded. Urging an end to the arms race, or advocating greater emphasis on social programs to aid the poor and oppressed, are advancing Christian precepts but not the Christian religion.

... As a Reformed Christian, I am dedicated to the continuing effort to reform the world and its institutions. Political participation is where much of the action is in this effort ...

In my own Presbyterian church today there are those who believe the immigration laws are contrary to the law of God and, therefore, they are participating in the sanctuary movement. Putting this kind of belief into action is in the highest tradition of the faith, as when the apostles told the high priest they must obey the law of God rather than man. It is another way of evangelizing Caesar and has proved effective as in the civil disobedience of the Civil Rights movement and opposition to the war in Vietnam.

... We can insist upon maintaining the wall of separation between church and state while still exercising the church’s prophetic role of calling Caesar to task when he commits error. I have suggested to you that there is no inconsistency between maintenance of that wall and an evangelical advocacy of Caesar to exercise his functions according to the teachings of Christ, so long as we don’t ask Caesar to put on the trappings of religion. I have suggested that it is constitutionally acceptable, but often prudentially unwise, to attempt to evangelize others to moral conduct through Caesar; it violates both the Establishment Clause, and its historical and theo-

logical reason for being, to attempt to evangelize others through Caesar in any matter relating to worship or religious practice, or inculcation of belief.

In view of the foregoing considerations, the 200th General Assembly (1988) adopts the following affirmations:

1. The corporate entities and individual members of the Presbyterian Church (U.S.A.) are obliged by the religious faith and order they profess to participate in public life and become involved in the realm of politics.

2. Pastors and officials of the church, as well as lay members, have the right and responsibility to stand for and hold public office when they feel called to do so.

3. The “free exercise of religion” must be understood to include and protect the right to practice faith in public and private as well as the right to believe; and thus to include participation in public affairs by the individuals and church bodies for which such participation is an element of faith.

4. As part of the church’s participation in public life, governing bodies of the Presbyterian Church (U.S.A.) at every level should speak out on public and political issues, taking care to articulate the moral and ethical implications of public policies and practices.

5. We recognize that speaking out on issues will sometimes constitute implicit support or opposition to particular candidates or parties, where policy and platform differences are clearly drawn. Since such differences are the vital core of the political process, church participation should not be curtailed on that account; but we believe that it is generally unwise and imprudent for the church explicitly to support or oppose specific candidates, except in unusual circumstances.

6. We reject and oppose any attempts on the part of the church to exercise political authority or to use the political process to achieve governmental sponsorship of worship or religious practice.

7. We oppose attempts by government to limit or deny religious participation in public life by statute or regulation, including Internal Revenue Service regulations on the amount or percentage of money used to influence legislation, and prohibition of church intervention in political campaigns. We will join with others, as occasion permits, to seek repeal of such regulations and statutes, or a definitive ruling by the Supreme Court on their constitutionality.

II. BACKGROUND

A. Biblical and Theological Reflections

In reflecting on how Presbyterians should understand relationship to their government in the present age, we are tempted to look everywhere but the Bible. After all, our government is democratic—unlike the monarchies and empires of

the biblical world—and highly complex. Yet the state is still part of God’s world, and the Bible has something to say about it. We see the state through different eyes than those who lived in biblical times, yet the truth about God’s world and the truth about God’s love for the world that they saw still guides us. Along with Paul, we see the state as a necessary instrument for creating an ordered world in which we can live, work, and worship. Also with Paul, we believe that we are called to freedom, and we therefore value religious liberty. Along with the Old Testament prophets, we believe that the church has a vision of what God wants for the world, and we feel compelled to share that vision with society, and the political realm. Along with Moses, Elijah, Daniel, and the apostles, we understand that the governing powers must sometimes be resisted.

The picture of church-state relations that we can fairly derive from these biblical examples and principles is thus a subtle and complex canvas with many shades and nuances. From our perspective, we see biblical affirmation for the representative democracy in which we live and for its constitutional arrangements regarding religious liberty and relations between church and state. Yet we see free and vital faith in other polities and do not doubt biblical warrant for these as well. As Reformed Christians, we feel a biblical challenge to seek in the public arena to give earthly reality to the biblical vision of the Kingdom of God, while respecting the liberty that the Bible affirms for those whose vision differs, and we rejoice to live in a state that protects our freedom to do so. Yet we know that many faithful Christians seek withdrawal from the world rather than engagement with it, and do not doubt biblical warrant for their views.

The world of church-state relations, viewed from a wholistic biblical perspective, is thus a world of tensions and choices in which we must respect the need for order, on the one hand, and for liberty—most specifically including religious liberty—on the other.

1. *Religious Liberty*

“For freedom Christ has set us free; stand fast therefore and do not submit again to a yoke of slavery” (Galatians 5:1). Religious liberty in its current meaning was unknown in the world of the Bible. It would be wrong to assert direct biblical sanction for either religious toleration or religious diversity on the basis of Paul’s passionate assertion or his later echo to the Galatians. “You were called to freedom, brothers and sisters” (Galatians 5:13). And yet it seems undeniably true that the spirit of liberty in faith so precious to us today is the consequence, centuries later, of that liberty of the spirit proclaimed and lived with such clarity and conviction in the first century.

Liberation is at the heart of the Christian experience of God as freedom is the necessary dynamic of faith. “If you continue in my word, you are truly my disciples and you will know the truth and the truth will make you free (and) if the Son makes you free, you will be free indeed” (John 8:31,36). In more than fifty references in the New Testament, the early apostles probed the meaning and dimensions of “the glorious liberty of the children of God” (Romans 8:21).

Apart from freedom there is no faith; in the absence of liberty, there is no present Lord: “Now the Lord is the Spirit and where the Spirit of the Lord is, there is freedom” (II Corinthians 3:17). Karl Barth echoes this profound simplicity in his definition of the church: “The church is the fellowship of those who are freely called by the Word of grace and the Spirit and love of God to be the children of God.” (*The Christian Community and the Civil Community*, page 173).

Liberty, then, is the substance of God’s gift to us through the Lord and the Spirit. But there is another dimension to our understanding of religious liberty, concerning not only the substance but the structure and source of the Spirit’s gift. Religious insight and faith come from God, who exists over and beyond the powers and principalities of earth. Such insight and faith are recognized and received; they can neither be commanded or controlled by civil authority, military power or religious piety. Of this overarching reality, biblical faith is supremely and unshakably confident. In hundreds of references in both Old Testament and New, the Spirit (or Word) from God, recognized as the source of authentic insight, is understood to “blow where it will” (John 3:8). “Who has directed the Spirit of the Lord or as counselor has instructed God?” (Isaiah 40:13).

There are no foolproof human mechanisms by which to test the authenticity of insight claimed to be from God. Even officially certified mainline religious officials can be prophets of a lying Spirit (I Kings 22) or “blind leaders of the blind” (Matthew 15:14). There are many biblical reminders of the capricious and surprising manner in which the Spirit or Word is manifested in unusual ways and unexpected people. Jesus reminded his disciples of the unreliability of all human criteria for validating the presence of the Spirit as he told them of the surprises that awaited at the final accounting (Matthew 25). In Martin Luther’s paraphrase of Jesus’s words in Matthew 21:31, the thieves and prostitutes go into heaven ahead of the doctors of the church. And Rahab the Harlot made the mighty roll call of the faithful in Hebrews 11.

“The Spirit of the Lord came upon” Balam (Numbers 24:12), Joshua (Numbers 27:18), Gideon (Judges 6:34), Jephthah (Judges 11:29), Saul (I Samuel 10:10), David (I Samuel 16:13), Azariah (II Chronicles 15:1), Isaiah (Isaiah 61:1), Jesus (Mark 1:10), Stephen (Acts 6:5), Peter (Acts 4:8), and Paul (Acts 9:3). Wherever faith occurs—in William, Pablo, Ivan, Chang, Teresa, Susan, or Helga, and just perhaps in the Scientologist, the Hare Krishna, the follower of Rev. Moon or Joseph Smith—the Spirit must be credited. There is a powerful biblical logic that holds us back from overmuch attempt to sort it all out, summarized in Jesus’s parable: “Let all grow together until harvest time, lest in pulling the weeds you root up the wheat along with them”. (Matthew 13:29).

Here then is the second dimension to the biblical grounding for religious liberty: a combination of conviction that the source of authentic religious insight

is beyond earthly power to compel or control, and attention to the biblical warning to be skeptical of human judgment as to the validity of faith or human attempts to regulate it. Liberty—freedom—is the Spirit’s way as well as the Spirit’s gift.

For almost two hundred years, Presbyterians in the United States have given theological expression to these biblical principles in their constitutional documents, as the first of the historic principles of church order:

That God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to God’s Word, or beside it, in matters of faith or worship.

Therefore, we consider the right of private judgment, in all matters that respect religion, as universal and unalienable: We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for protection and security, and at the same time, be equal and common to all others.

The worship and service of God are ultimate and profoundly personal commitments, ones which the state may not legitimately infringe. Any attempt to subvert these most basic and personal freedoms, either to control and direct the church or to restrict or proscribe the right of individuals to believe or worship in certain ways, seeks human political control of a God-given gift.

Such control can sometimes be sought by religious adherents themselves who want to have civil power—the power of the sword—used to mandate their particular orthodoxy and penalize all other religious views. In the seventeenth century, Roger Williams, a minister who believed that the state should provide order and peace for its citizens but leave them free to make up their own minds about religion, was forced to leave the Massachusetts Bay Colony operated by Calvinist Puritans on just such theocratic lines. He went on to found Rhode Island where religious freedom became the rule.

“Can the sword of steel or arm of flesh make men faithful or loyal to God?” Williams asked. Does God really want governments to require outward loyalty and faithfulness to the church when the “inward man is false and treacherous?” And since “civil and corporal punishments do usually cause men to play the hypocrite,” how can the government know that those from whom it forces confessions to orthodoxy really believe what they are confessing? Williams pointed out that because “the world is situated in wickedness, and consequently according to its disposition endures not the light of Christ,” as the First Letter of John says, then the civil magistrates cannot perceive God’s will and enforce obedience to it without making mistakes. Magistrates have no right to compel obedience to their human and therefore flawed vision of what God wants for the world. Rather they must stick to their own business—the business of governing—and do what they can within that sphere to foster peace, order, and justice. It is a misuse of their mandate to govern to enforce religion.

The religion clauses of the First Amendment to the Constitution of the United States prohibit governmental establishment or support of religion and

guarantee the free exercise of faith to religious groups and believers, paralleling the convictions expressed in the 1788 Presbyterian principle quoted above. Presbyterians and all Americans are thankful to be governed in such a polity, committed to respect and defend religious liberty. But in the final analysis, our biblical and theological understanding of that liberty is that we have it as a gift from God and not at the sufferance of the sovereign. A recent General Assembly put the matter succinctly:

Freedom of faith is not finally a gift of governments, but of God. That is in fact what makes authentic faith such a threat to the governments of this world that they instinctively seek ways to contain and control it. The church must witness to its faith and vision, regardless of whether that witness is protected by the world's laws. In the absence of legal liberty, the church will suffer persecution for its faith, but legal liberty is not the source or the precondition of faithfulness. The church does not denigrate such freedom, but it does not depend on it. The church does not seek persecution but is willing to accept it. (*Minutes*, 1983, Part I. page 371.)

2. *State and Citizen: Their Mutual Responsibility*

The Apostle Paul's reflection on the relationship between the state and its citizens in Romans 13 is one of the primary, explicit biblical texts. Paul, who dedicated his life to spreading the gospel of Jesus Christ in a hostile world, learned much about the relationship of a citizen to the state and experienced for himself the painful ordeal of a person caught between his duties of God and his duties to the state. The Roman government blocked his ministry as best it could and finally, it appears, put him to death.

Paul advised the members of the Christian community at Rome to "be subject to the governing authorities . . . not only to avoid God's wrath but for the sake of conscience" (Romans 13:1-5). Paul explained that all authority, including civil authority, comes from God: . . . "[T]here is no authority except from God, and those that have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment" (Romans 13:1-2).

The point is that God has provided for civil authority to enable a life together of people born with original sin, who, if unrestrained, would harm each other. Civil authority is a gift of God to meet a human need. Jesus recognized that even Pilate's authority came from God, even though Pilate used it to condemn him unjustly: "You would have no power over me unless it had been given you from above . . .," Jesus said. God's gift of civil authority, however, does not mean that we are required blindly to obey. Paul, the apostles, and Jesus himself disobeyed sometimes. A closer look at Romans 13 shows that God's gift of civil authority does not raise government authority above challenge; rather it requires those who govern to use their power properly.

"Let every person be subject to the governing authorities." Paul told the church at Rome (Romans 13:1). As the Swiss theologian Karl Barth pointed out in 1938, Paul's Greek word translated as "be subject to" does not mean to be directly and absolutely subject to someone but to respect that person as that per-

son's fidelity to his or her office demands. Accordingly, one's submission to a ruler is determined and conditioned by the ruler's submission to the function that God intends rulers to perform. Paul assures us that the ruler's function is established by God to provide peace and order. Hence Paul calls Christians to respect the state because it is the vehicle for mediating the God-given gifts of peace, order, and justice which allow the state's citizens to live and work in freedom, and the church to carry out its task of proclaiming salvation. Thus Christians are called to support and respect the state not because it is the state but because it exercises a necessary function in the world that God created: It is intended to assure peace, order, justice and freedom.

A better translation of the Greek term often rendered as "be subject to" or "submit" might be "order yourselves under." Paul could have chosen a Greek term that implies unqualified obedience. If he had, we might be able to say that Paul tells us to obey the government even when it is grossly wrong. But he did not. He avoided that term, which he used elsewhere to describe the unqualified duty that Christians owe to God, and instead chose another to describe the duty owed to the state. Far from counseling blind obedience, Paul was warning the state that it must be faithful to its calling, for the citizens' duties to it are conditioned upon that faithfulness. When unjust, the state still provides a vehicle of order, but is not entitled to acquiescence in its unjust acts.

All of the apostles came to know from their own experiences that obeying God could at some point require them to disobey the emperor. Peter and the others, jailed by the Sanhedrin—the Jewish council, which the Romans allowed to govern religious matters—refused the Sanhedrin's order to stop preaching Jesus Christ. "We must obey God rather than men," they replied (Acts 5:29). When the authorities' orders squarely conflicted with the apostles' religious duty, they followed God.

Paul did not meekly submit to direct Roman authority when it was not exercised properly. The Romans beat him at least three times. (II Corinthians 11:25). In Philippi the Roman magistrates not only flogged him but threw him into jail unjustifiably (Acts 16:22–24). Paul did not suffer these wrongs passively. Rather, he demanded justice. When the magistrates in Philippi told him to leave quietly the morning after they beat and imprisoned him, he refused. Not until the magistrates came personally to apologize for mistreating him would Paul leave the city (Acts 16:35–39). Paul must have known that Jesus himself had defied Roman power. Herod had tried to interrogate Jesus, but Jesus refused to answer (Luke 23:9). He also remained silent before Pilate when the Jewish high priests and scribes and the Roman procurator accused and questioned him (Mark 15:5).

Paul's attitude toward the state was positive. He saw that it played an important role in God's creation, but he was not afraid to measure the state by the standards of love and justice and to act when it fell short. The ruler "is God's servant for your good," Paul wrote (Romans 13:4). "Therefore one must be subject, not only to avoid God's wrath, but also for the sake of conscience" (Romans 13:5). Being "subject," as we have seen, means giving thanks for the func-

tion that government serves. As Paul's own life shows, however, it does not mean obeying blindly if government does not act for good but for ill. The duty of obedience is conditioned upon the state's faithfulness to its own duties.

There are other New Testament references to the subject, more casual and less nuanced than Paul's discussion in his letter to the Christians in Rome. The First Epistle of Peter encourages Christians in Asia Minor to "be subject for the Lord's sake to every human institution, whether it be to the emperor as supreme or to governors as sent by him. . . Honor all men. Love the brotherhood. Fear God. Honor the emperor" (I Peter 2:13,17). And Titus is advised to remind his congregation "to be submissive to rulers and authorities" (Titus 3:1). The context for both these admonitions is very explicitly the issues of pastoral discipline and public acceptance that the struggling new Fellowship of the Way of Freedom faced from the beginning: "For it is God's will that by doing right you should put to silence the ignorance of foolish men. Live as free persons, yet without using your freedom as a pretext for evil" (I Peter 2:15-16). The character and weight of the pastoral advice to Titus is clarified by a look at other phrases in the same sentence: "Remind them . . . to be ready for any honest work . . . to avoid quarreling . . . and to show perfect courtesy toward all" (Titus 3:1-2). Good advice then and now but not major doctrinal formulation. The phrase "for the Lord's sake" conditioned and grounded all such behavioral advice; "that the Word of God may not be discredited" (Titus 2:5) was its stated motivation. Obedience and honor to God—not to the emperor and his governors—was the fundamental dynamic.

Such advice is not unique to the New Testament, of course. The book of Proverbs says that one should "fear the Lord and the King and . . . not disobey either of them, for disaster from them will arise suddenly, and who knows the ruin that will come from them both? (Proverbs 24:22). The writer knew however that "it is an abomination of kings to do evil for the throne is established by righteousness" (Proverbs 16:12) and also something of the contingent authority of the sovereign: "By me kings reign and rulers decree what is just; by me princes rule and nobles govern the earth" (Proverbs 8:15-16). And in an extraordinary display of ambivalence, the Old Testament contains a remarkable record of "those days (when) there was no king in Israel (and) everyone did what was right in his own eyes" (Judges 21:25); "when the Lord your God was your king," (I Samuel 12:12) understood to rule without mediators. And when a rebellious and idolatrous Israel insisted upon an earthly sovereign to govern them "that we also may be like all the nations," God tells Samuel, "they have rejected me from being king over them . . . you shall solemnly warn them and show them the ways of the king who shall reign over them" (I Samuel 8). The profile of government as both burden and blessing has rarely been so starkly illustrated.

John Calvin was deeply persuaded by the biblical teachings that see civil authority as a gift from God:

Subjects ought to be induced to submit to princes and governors not merely from a dread of their power . . . but because the obedience which is rendered to princes and magistrates is rendered to God, from whom they have received their authority.

Subjects approve their obedience to them in submitting to their edicts, in paying taxes, in discharging public duties and bearing burdens which relate to the common defense, and in fulfilling all their other commands.

If there is anything in the public administration which requires to be corrected, let them not raise any tumults, or take the business into their own hands ... but let them refer it to the cognizance of the magistrate who is alone authorized to regulate the concerns of the public.

Yet Calvin also taught that civil servants had a duty to resist the “violence or cruelty of kings.” Though he was very careful in admitting challenge to the properly appointed authorities, he recognized that God had overthrown rulers and dropped a thinly-veiled hint:

But whatever opinion be formed by acts of men, yet the Lord equally executed his work by them when he broke the sanguinary scepters of insolent kings and overturned tyrannical governments. Let princes hear and fear.

Mere obedience, then, is clearly not the end of the matter for Calvin. In the remarkable concluding section to the Institutes, he makes clear and explicit the exception to the presumption of obedience.

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 does not seduce us from obedience to God 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. Indeed, how preposterous it would be for us, with a view to satisfy men, to incur the displeasure of God on whose account we yield obedience to men...If they command anything against God, 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 unrivalled and supreme power of God.

Calvin knew that he was not dealing with abstract theological principles. He understood well the political consequences of fidelity to the exception he recognized:

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.” But since this edict has been proclaimed by the celestial herald, Peter, “We ought to obey God rather than men,” 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.

Civil government is a gift from God that we thankfully order ourselves under. But the government’s job is to be God’s servant for our good, to order public life rightly and to punish the wrongdoer so that society might live in justice and its members might live in safety (Romans 13:4-6). When the government ignores or corrupts its role, flouts justice and endangers peace, it is no longer fulfilling the purpose for which God gave us the gift of civil authority. When that happens, Christians, one by one and as the church, must search consciences and seek the Spirit’s guidance to discover what it will mean in a particular time to obey God rather than men.

3. *The Church's Role in Civil Society*

In the Reformed understanding of Scripture and faith, the church is called to bear witness in the civil society to the insight and vision freely given by the free Spirit. The church attempts to function as a sentry, to cry out when it sees something amiss, and also to prepare its members to serve peace, justice, and order in the vocations and governance of the common life. The roots of this instinct to speak truth to power run deep in the biblical heritage, which understands the requirement to come from God and not from political ideology or ambition. “And the Lord sent Nathan to David” (II Samuel 12:1) with a message about the king’s stewardship of the authority given by God: “Why have you despised the word of the Lord, to do what is evil in his sight?” (II Samuel 12:9). In contemporary terms, it is God who commissions the lobbyist: “The word of the Lord came to Elijah, in the third year, saying, ‘Go, show yourself to Ahab’ (I Kings 18:1). And when the king, frustrated and weary over his three year struggle with the prophets of the Lord” in which many had died (I Kings 18:13), angrily denounced Elijah’s meddling in governmental policy, he got the still relevant reply, “I have not troubled Israel, but you have because you have forsaken the commandments of the Lord” (I Kings 18:18). The government must be called to account when it misuses its God-given authority and ignores or subverts its God-given responsibilities.

The Old Testament prophets are properly seen as the major source of biblical definition and support for this function, even though they often did not make the translation from religious to governmental language we know is required in our circumstances. During the unusually peaceful and prosperous reign of Jeroboam II, who was king of Israel from 786–746 B.C., Amos assailed the state for its oppression and injustice, even in prosperity:

Hear this word, you cows of Bashan, who are in the mountain of Samaria, who oppress the poor, who crush the needy, who say to their husbands, “Bring, that we may drink” (Amos 4:1). . . [B]ecause you trample upon the poor and take from him exactions of wheat, you have built houses of hewn stone, but you shall not dwell in them; you have planted pleasant vineyards, but you shall not drink their wine. For I know how many are your transgressions and how great are your sins—you who afflict the righteous, who take a bribe and turn aside the needy in the gate. (Amos 5:11–12).

Amos publicly pronounced God’s judgment on the king, who represented the state, because the state failed to fulfill its role. Even though peace and prosperity reigned, oppression and injustice were everywhere, and Amos drew upon his vision of God’s ways to condemn the king’s actions.

A generation later, when the Northern Kingdom of Israel had fallen to Assyria and the Southern Kingdom of Judah worried about the monster lurking on its northern boundary, Isaiah of Jerusalem took the state to task for its greed, injustice, and oppression of the poor. “Your princes,” he said, “are rebels and companions of thieves. Everyone loves a bribe and runs after gifts. They do not

defend the fatherless, and the widow's cause does not come to them" (Isaiah 1:23). Isaiah saw the rich profiting by exploiting the poor. "What do you mean," he asked, "by crushing [God's] people, by grinding the face of the poor?" (Isaiah 3:15). He pronounced woe to those who "decree iniquitous decrees" . . . "turn aside the needy from justice, and . . . rob the poor of [God's] people of their right" (Isaiah 10:1–2). Isaiah predicted that God would send an enemy from the north, perhaps the Assyrians, to punish Judah for its sins. What was needed, he said, was a king who would provide justice and compassion, who "with righteousness . . . shall judge the poor, and decide with equity for the meek of the earth" (Isaiah 11:14).

Isaiah saw the king as an instrument of God's providence, a divine provision for peace, order, and justice. He also saw God as continually involved in the king's affairs. God raised up prophets to call for change and, if that failed, might even send the dreaded Assyrians. Isaiah saw God as a living God involved with the people. A prophet, therefore, had to act as a sentry for the state. He could not resist proclaiming God's judgment on oppression and injustice. Isaiah did not want to do away with the king or to assume the king's role himself. On the contrary, says Old Testament theologian Gerhaard von Rad, "he looked for a king who would bring peace and righteousness. Much the same can be said for Amos and Micah." Jeremiah and Zephaniah also stood in that tradition. They conceded the king's role—indeed, they saw kingship as a gift from God—but expected the king to carry out his duties with justice and compassion. They reached this view because they knew that the whole world was God's. The king was responsible as a steward of a part of God's world to govern it properly, and the prophets kept him accountable. While they assailed him for infidelity to God's commandments, we would seek to point out his failure to fulfill his God-given function as a ruler. We would translate our vision into the language that the government understands.

Presbyterians affirm a duty to witness to government based on a vision of the promised kingdom. We do so out of obedience to God's Word and Spirit as best we can understand and follow it, but we do not seek to capture or manipulate the coercive power of government to impose our religious vision on the whole society. We advocate our views about sound policy for the public as vigorously, specifically and persuasively as we can, but we do not form a Presbyterian Party. We seek to influence electoral and governmental choices and to make our voice heard and heeded in the political process, but we do not run our own candidates for public office. Though we may have prudential reasons for avoiding direct political authority, there is a theological basis for our reticence. The church compromises its calling to provide a vision of God's intended order by succumbing to the temptation to wield political power directly, just as the state subverts its calling if it seeks to become the final source of vision and meaning in the society.

Exactly fifty years ago, in 1938, the General Assembly of the Presbyterian Church in the U.S.A. adopted a report proposed by a Special Committee on the

Amendment of the Confession of Faith regarding civil government. Though the proposal later narrowly failed official ratification by the presbyteries because some did not vote, one section provides an excellent theological summary of the church's duties toward the government:

It is the duty of the Church to pray for the government and for the people to whom it pertains; to uphold the civil and religious liberties of all citizens; to support the policies of the government when they are in accord with the standards of righteousness revealed in the Word of God and to bear witness against such policies as depart from these standards. ... The Church must educate its members as Christian citizens, cultivating within them a conscience sensitive to all forms of oppression, injustice and social maladjustment and inspiring them to bring about their correction. The Church must quicken and instruct the public conscience..." (*Minutes*, 1938, Part I, p. 47).

Conclusion

Presbyterians give thanks to God for the gift of civil government, which is intended to bring order to our world, to provide a framework in which we can live together in peace and search for fulfillment. We believe, as Paul said, that we are called to freedom, and that government should recognize freedom as an important resource for its people. We believe in saying "yes" to the overall role that government plays, even though we may be called to say "no" to the government in a particular time and place. We believe that we have a vision of the coming kingdom of God, which we should announce to the world in terms of justice, compassion, and peace, although we refrain from infringing others' freedom by seeking to impose our religious views on our society. We believe that we should stand guard as sentries and cry out against abuse, but never forget that the church must always claim independence for itself and never seek to undermine the independence of the state.

B. Historical Development of Calvinist Thought on Religious Liberty

Introduction

There exists at the heart of Reformed faith a deep tension in regard to religious liberty and civil authority. That tension derives from certain theological and ecclesiological themes that pull in different, if not conflicting, directions.

On the one side, the tradition has consistently emphasized an essential distinction between the "internal forum" of conscience and the "external forum" of civil authority, between the "law of the spirit" and the "law of the sword." Such a conviction implies firm lines of separation between church and state and vigorous respect for the free exercise of conscience in religious belief and practice.

On the other side, the tradition has understood the civil order to need a religious foundation. That conviction favors positive, cooperative relations between

church and state, and calls for civil encouragement and promotion of religious belief and practice in the interest of maintaining civil order. Some modern efforts sometimes seem to echo the earlier themes of governmental responsibility to limit or restrict unorthodox religious doctrine or practice.

The varying approaches to resolution of the strain between these two basic convictions is an important part of the story of Reformed faith, and more particularly of Presbyterianism, from the sixteenth century to the present.

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1. *Calvin and the Reformation*

The Protestant reformers’ concern to work out the relations between church and state was not new. The problem had been at the heart of Christian thought and experience from the beginning of Christianity. By forming itself into a separate “spiritual” institution alongside the “temporal” institution of the state, and by laying claim to its own independent jurisdiction, the Christian church dramatically recast the existing Roman and Judaic understanding of the state and of its shape and purpose. At the same time, the emergence of the church in the first century A.D. established a central perplexity for all who would come after, including the members of our own age: how to relate the two spheres or “two kingdoms” without forgetting the distinction between them.

There is much ambiguity and tension in Calvin’s thought on this question; that is part of the abiding volatility of the Calvinist response to this central perplexity of Christian thought and life. On the one hand, Calvin, like many of the Anabaptists, emphasized the sharp separation between freedom and coercion, between the spirit and the sword. We must appreciate, he writes,

... how great a difference and unlikeness there is between ecclesiastical and civil power. For the church does not have the right of the sword to punish or compel, not the authority to force; not imprisonment, nor the other punishments which the magistrate commonly inflicts.

Then, it is not a question of punishing the sinner against his will, but of the sinner professing his repentance in a voluntary chastisement. The two conceptions are very different. The church does not assume what is proper to the magistrate; nor can the magistrate execute what is carried out by the church. (IV, 9. 3. This and similar citations are to *The Institutes of the Christian Religion*.)

Indeed, Calvin laid it down in no uncertain terms that the two kingdoms “must always be examined separately; and while one is being considered, we must call away and turn aside the mind from thinking about the other.”

On the other hand, Calvin proceeded in numerous places to disregard his own counsel.

We must know [the two kingdoms] are not at variance. For spiritual government, indeed, is already initiating in us upon earth certain beginnings of the Heavenly Kingdom, and in this mortal and fleeting life affords a certain forecast of an immortal and incorruptible blessedness. Yet civil government has as its appointed end, so long as we live among men, to cherish and protect the outward worship of God, to defend sound doctrine of piety and the position of the church, to adjust our life to the society of men, to form our social behavior to civil righteousness, to reconcile us with one another, and to promote general peace and tranquility (IV, 20, 2)

The conflict is between two incompatible images of the relations between church and state. One is a uniformist, establishmentarian image according to which the state enforces, at least externally, true piety and worship as well as civil righteousness, after the fashion of Calvin’s own experiment in the sixteenth century Geneva. In this image, as exemplified in much of the Old Testament, proper piety and worship are taken to be indispensable to the cultivation of civic virtue, namely the restraint of arbitrary violence (murder, theft, libel) such as is proscribed in the second table of the Decalogue.

The other image differentiates true piety and worship—“things of the spirit,” of the inner life—from social behavior and civic virtue. As civil offenses themselves involve the use of illicit coercion and victimization by one human being against another, the state may properly intervene and apply coercion in order to restrain or punish such offenses. But because the inner life—the sphere of mind and conscience—is effectively addressed and transformed, not by weapons of the body but only by weapons of the spirit, the spiritual order must at all costs be placed beyond the reach of civil “courts, laws and magistrates,” and must conduct its affairs independently of them.

The underlying assumption is this: In regard to “heavenly things” (pure knowledge of God, the nature of true righteousness, and the mysteries of the heavenly kingdom), “human knowledge wholly fails” (II, 2, 24), and thus requires explicit supernatural assistance. In regard to the conduct of “earthly” affairs (government, household management, mechanical skills, and the liberal arts), on the other hand, “there exist in all men’s minds universal impressions of a certain civic fair dealing and order” . . . “some seed of political order has been implanted in all men. And this is ample proof that in the arrangement of this life no man is without the light of reason” (II, 2, 13). Consequently, “men have somewhat more [‘natural’] understanding of the precepts of the Second Table

[than the First] because these are more closely concerned with the preservation of civil society among them.” (II, 2, 24)

In other words, Calvin here attributes to human beings a significant degree of natural moral capability to order their lives without requiring any particular religious revelation or guidance. This is the basis in Calvin’s thought for the provisional separation of the civil and moral sphere from the religious or spiritual sphere, a separation that would have important consequences in the hands of the left-wing Calvinists like Roger Williams.

Accordingly, although Calvinism unquestionably inspired an impulse toward uniformity and established religion, it simultaneously inspired a countervailing impulse toward dissociating the spiritual from the temporal kingdoms, immunizing the one from the other.

2. Post-Reformation Developments in Scotland and France

Armed with this unstable combination of ideas, it was not surprising that wherever it went, Calvinism worked a peculiarly destabilizing and renovative effect on political and religious life.

The central theme of the Scottish Reformation under the leadership of John Knox, as also of the French Huguenot movement, was precisely the attempt “to rescue consciences from the tyranny of men?” In the name of the freedom of Christian conscience, Knox endeavored to reform Scotland along the lines of Calvin’s Genevan ideal. The resulting brand of Scottish Presbyterianism was a particularly resolute form of the uniformist, establishmentarian side of Reformed faith.

Although the Huguenots in France initially manifested many of the same emphases, their attempts to work out a doctrine of church-state relations reveal an even more complex amalgamation of the divergent themes of original Calvinism. The Huguenot leader Philip Mornay defended the use of force to suppress heresy and idolatry, but Huguenot thought also reflected the strand in Calvin’s theory that featured the sharp separation of the spiritual from the temporal realm. Mornay himself came to place more and more emphasis on permitting the free operation of the inner and voluntary characteristics of the religious life, writing that “idolatry must be overthrown by the Word of God, not by the hammer blows of men:”

3. The English Experience in the Late Sixteenth and Seventeenth Centuries

From roughly the middle of the sixteenth century, when Calvinism began to have a decisive impact upon English life and thought, the conflicting and countervailing tendencies in Calvin’s thinking began to express themselves in diverse and frequently antagonistic religious movements and parties. Starting in the 1550s, Reformed Christianity polarized into the Presbyterians on the one side

and a “free church” separatist form of Congregationalism, on the other. The Presbyterians featured the uniformist, establishmentarian part of Calvin’s thought. In contrast, the separatist Congregationalists made much of the Calvinist commitment to the superiority of voluntary and consensual over coerced religious participation.

Although sixteenth century Presbyterians resolutely excluded any consideration of religious toleration or freedom of conscience as later generations came to understand those ideas, they nevertheless did furnish some of the premises from which such ideas might eventually follow. In fact, it was these very ideas out of which Robert Browne, father of separatist Congregationalism, deduced a more radical lesson. Among other things, he provided a basis for the doctrine of religious toleration and freedom that was to come to fruition in the latter seventeenth century.

The antagonism between the Presbyterians and the separatist Congregationalists set the terms of debate among Reformed Christians that dominated affairs during the Puritan Revolution and the Interregnum (1640–1660). Into the 1640s, the Presbyterians, very much reinforced by Scottish Presbyterians like Samuel Rutherford, pursued the uniformist side of the Calvinist tradition. The Westminster Assembly (1643–44), which was called by the Parliament to resolve the divisions concerning the religious character of England, proposed a Presbyterian form of church life in place of the existing Anglican system. The Westminster Confession of 1647 left no doubt that the proposed arrangement would be backed by civil enforcement, thereby preventing religious pluralism and toleration.

But the Presbyterians did not have their way. With the failure of the Presbyterian alternative, the “Independent” and left-wing Puritans began experimenting with quite radical doctrines of liberty of religion and conscience, all very much cast in the terms of a voluntary, consensual, covenantal fellowship sharply separated from the engines of civil coercion and intended as a master model for organizing political and other societies. Historians have now clearly shown the effects of this kind of thinking on the development of elaborate doctrines of religious liberty, separation of church and state, and freedom of conscience by late seventeenth century figures such as John Locke.

4. *The American Tradition*

a. *Seventeenth Century.* The impact of Reformed Christianity on the American struggle for religious liberty can only be understood against the background of the seventeenth-century New England experience. In general, those developments were simply an extension of the religious conflicts in England that to an important extent had been generated by the inner tensions of Calvinism. Although Presbyterians as such were effectively absent from the unfolding drama in America until the eighteenth century, the uniformist and establishmentarian side of Calvinism was vigorously represented in Massachusetts Bay by the non-separatist Congregationalists, led by John Cotton. The opposition, still

mostly within the Calvinist fold, was rallied by Roger Williams, who laid out in definitive terms the grounds for and shape of the doctrines of religious liberty, freedom of conscience, and the separation of church and state that became foundational for the American tradition.

Cotton leaned toward Calvin's Genevan model as a guide for determining the right relations between church and state. Like Calvin, he meant to distinguish clearly the inward or spiritual from the outward or temporal sphere. Nevertheless, Cotton balanced this emphasis with an announced preference for direct civil protection of Reformed religion. He held, again as did Calvin, that the two tables of the Decalogue ought not to be too sharply divorced, for there is a profound connection between true piety and civil virtue. Cotton goes so far as to argue that if the state punishes a person for heretical belief, the state is not thereby violating freedom of conscience, but is in fact enforcing it. The consequence of all this was the imposition of religious qualifications for citizenship and other civil opportunities upon the populace of Massachusetts Bay. The magistrates laid it down in no uncertain terms that "no man shall be admitted to the freedom of this body politic, but such as are members of some of the churches within the limits of the same."

Roger Williams, whose lengthy disputes with Cotton well exhibit the conflicting tendencies within Calvinism, perpetuated and extended the radical "free church" side of the tradition. He was, to be sure, a deviant Calvinist, but the central doctrines of Calvin's theology constituted his basic point of reference. In arguing his case, Williams took up and redeployed some favorite tenets of Calvin. First, he took what he believed were the consequences of Calvin's contention that the "inner forum" of conscience is both distinguishable from and prior to the external authority of the civil order. To try to convince a person of the truth of something by threatening injury or by imprisoning that person is mistaken, given how the mind and spirit actually work.

To his argument that civil force avails nothing "in the soul," Williams conjoined a second of Calvin's fundamental convictions, that in matters relating to civil order and righteousness—matters touching the second table of the Decalogue—human beings have "somewhat more" natural understanding (or understanding independent of expressly religious instruction). Therefore, it would seem, they could be trusted to conduct their civil affairs in relative independence of authorized religious guidance. Against the beliefs of the established church in Massachusetts Bay, Williams asserted that to confound "the nature of civil and moral goodness with religious [goodness], is as far from goodness as darkness is from light." Moral and civil virtue does not depend upon a prescribed and shared set of religiously-based beliefs and values.

For Williams, conscience could successfully exercise its sovereign rights only in a society that acknowledged its limitations in regard to religious affairs, that appreciated how unsusceptible to civil control were the affairs of the heart and spirit. Too much suggestion of an easy compatibility between religion and

the civil order would impede the vitality of religious exploration implied in Williams's vision.

b. *Eighteenth Century*. As the Presbyterians quickly grew to become a leading influence in the middle colonies, as well as a burgeoning force in Virginia, they were drawn progressively into the problems of religious liberty. Throughout the eighteenth century, they exhibited something of the ambivalence toward church-state relations characteristic of Calvinism from its beginnings.

The ambivalence appeared dramatically in the struggle among Presbyterians in Virginia over disestablishing religion, culminating in 1786 with the adoption of Jefferson's Statute for Religious Freedom. On the one side were those Virginia Presbyterians who favored a form of "public Christianity" as the proper basis for American civil order. They were skeptical of Jefferson's statute. By 1785, however, Hanover Presbytery had changed its attitude and thereby laid the foundation for the denomination's future position on church-state relations. Virginia Presbyterians came to join forces with the Baptists and they thereby helped to provide the necessary backing for the final adoption of the Statute. At that time, the majority swung toward the "free-church" side of the Calvinist tradition, toward Williams's liberal interpretation of freedom of conscience and the separation of church and state. In the words of the Memorial of the Presbytery of Hanover sent to the Virginia legislature: "We ask no ecclesiastical establishments for ourselves; neither can we approve of them when granted to others."

There were several factors that influenced this movement toward the "free-church" side of the tension. Virginia Presbyterians were of course aware that they, like the Baptists, would not be established in that commonwealth. Most Presbyterians in the new nation were undoubtedly caught up in the excitement and ferment of the triumphant revolution with its emphasis on liberty. And finally we must remember that a sizeable number of Tory Presbyterians opposed to the revolution had removed to Canada during its course.

Jefferson's Statute for Religious Freedom, together with James Madison's Memorial and Remonstrance against Religious Assessments (which indirectly supported the Statute), drew directly upon the standard free-church arguments for religious liberty. There is the same concern to draw firm lines between the "internal forum" and the "external forum," and to protect the former from the latter by guaranteeing every individual's natural civil and political rights. There is the same conviction that the law of mind and heart is not the same as the law of prison and sword. There is the same contention that neither true religion nor a just civil order can exist unless each properly respects the independence of the other.

At about the same time, the Presbyterian Synods of New York and Philadelphia appointed a committee to reconsider church organization, including the question of church-state relations. With the help of strong advocates of religious freedom such as John Witherspoon, president of Princeton, the committee proposed revisions in church order and even more radical alterations in the doc-

trines of religious uniformity and establishment contained in the Westminster Confession of 1647.

After 1789, when these proposals were adopted, the teaching of the church no longer ascribed to the civil magistrate the right to initiate action against heresy or to convene a church synod. As “God alone is Lord of the conscience,” in the words of the Preface to the New Form of Government, the church considers “the rights of private judgment in all matters that regard religion as universal and unalienable.” No church ought to be “aided by the civil power, further than may be necessary for protection and security, and at the same time may be equal and common to all others.”

However, even in face of this unmistakable stride in the direction of free-church Calvinism, the concern for religious uniformity and for civil encouragement of religion that was so much a part of Genevan Calvinism, and of Scottish and English Presbyterianism, did not completely die. Even though a fundamental redefinition in Presbyterian doctrine concerning civil authority had occurred by the end of the eighteenth century, the key tensions over church-state questions that lay so deep in the Calvinist experience were by no means thoroughly relaxed.

c. *Nineteenth and Twentieth Centuries.* Nor were they relaxed in the next two centuries. On one extreme, the Reformed Presbyterians, in the early nineteenth century, thoroughly rejected Jefferson and Madison’s ideas of church-state separation. At the other extreme, Presbyterians in the South, partially in response to the crisis over slavery, developed a doctrine of the “spirituality of the church” which was simply a radical interpretation of the deep separationist impulse that constituted one side of Calvinism.

The majority of Presbyterians tried, during the nineteenth and the first half of the twentieth century, to work out some sort of compromise between the two extremes. Nevertheless, without formally revising or abandoning the principles of separation laid down in 1789, the balance of sentiment unquestionably tipped toward affirming and, when possible, enforcing explicitly religious directives by civil means.

For example, New School Presbyterianism—that vigorous and influential response to the evangelicalism of the “Second Great Awakening” in the early decades of the nineteenth century—singled out slavery and southern defense of that institution during the Civil War as an everlasting affront to the millennial kingdom of God that was in process of being created in America. For New School Presbyterians, the doctrine of the divine mission of America wedded evangelical and millennial fervor to the civil theology that Calvin and many of his followers had constructed out of an Old Testament vision of God’s ultimate reign.

In the nineteenth century also, Presbyterian support for an informal, but pervasive, “Protestant Establishment” protected by civil authority was manifested

in the politics of hostility toward Roman Catholic immigrants as well as in unrelenting opposition to the Mormon practice of polygamy, where Presbyterian self-assurance regarding the compatibility of God's law and proper civil order was overtly expressed. The 1881 General Assembly avoided any consideration of the intricate questions of religious liberty and free exercise by holding that any teaching "condemned alike by the church and the state" could not be considered a bona fide religious teaching in the first place and therefore was not even eligible for consideration under the First Amendment.

The establishment instinct was manifested also in agitation for prohibition and Sabbath observance throughout the late nineteenth century and well into the twentieth. It was also nurtured by growing concern that America's identity as a (Protestant) Christian nation was threatened by extensive immigration and increasing religious pluralism. A report to the 1909 General Assembly asserted: "Our continent was not settled by bands of atheists and infidels having no religion, nor by Jews or Mohammedans refusing the name of Christ, but by colonies of Christian people acknowledging Jesus Christ as Lord." The General Assembly called for renewed public support for that tradition. And, although General Assemblies registered some initial qualms about American participation in the First World War, by 1918 it was able to discern the unmistakable religious purpose of the war and communicate its strong support to the Presbyterian in the White House: "We believe that, with your superb courage and sublime faith, you will be used as the means of saving to us and to humanity the Christian principles which are the priceless heritage from our fathers."

The free-church strain of the tradition may have been in the shade, but it remained vigorous. By 1938, exactly 150 years after the 1788 revision of Westminster, another proposal to amend Chapter XXIII concerning civil government was submitted to the presbyteries of the Presbyterian Church in the U.S.A. The proposed substitute chapter clearly reflected the classic Reformed tension. It recognized the divine appointment of civil government but explicitly defined both the derivative and conditional nature of its authority and the limits on it: "It may not assume the functions of religion?" "... (it) may not require of (citizens) that allegiance which belongs to God alone." The proposed language was equally direct in defining the duties of Christians as citizens: "It is the duty of Christian citizens to give loyalty and obedience to the government, save in cases where such loyalty and obedience would be clearly contrary to the command of God."

The proposed 1938 confessional revision echoed the Hanover Presbytery Memorial in its rejection of any establishmentarian tendency. The state "must grant equal rights to every religious group, showing no favor and granting no power to one above another." For the attainment of its described ends, "the Church has the right to employ the facilities guaranteed to all citizens and associations; but it must not use violent or coercive measures for its spiritual ends, nor allow their use on its behalf."

The proposed revision would also have asserted the church's responsibility to witness to and sometimes oppose government policy as a confessional obligation: "It is the duty of the Church ... to support the policies of the government when they are in accord with the standards of righteousness revealed in the Word of God and to bear witness against such policies as depart from those standards?"

The vote of the presbyteries on the proposed revision was 168 affirmative; 65 negative, 12 no action. It fell just short of the required two thirds of all presbyteries since a few did not vote at all. Since a large part of the energy behind the proposed revision had come from anti-war sentiment rather than direct concern for religious liberty or church-state relations the outbreak of the war in Europe effectively ended the effort. It did not surface again in a prominent way until the 1960s.

Presbyterian voices were raised on both sides of the controversy over religious observances in public schools in the early sixties, reflecting both the establishmentarian and libertarian strains in the Calvinist tradition. The 1909 General Assembly (PCUSA) action, quoted earlier, had also addressed "the educational problem":

The solution of the educational problem is connected with the question, "Is this a Christian nation?" It seems strange to us that such a question should be raised at all. There is just now a contention by Jews and others opposed to Christian teaching, which is going on according to a plan, all over this country. ... Our opponents say that all such exercises as express any Christian theme, even those that breathe the sweet Christmas cheer, should be excluded from the public schools and all other institutions of the state. Their contentions must be opposed.

However, after three years of study and church-wide discussion, in 1963 the General Assembly of the United Presbyterian Church (UPC) adopted a policy statement on "Relations Between Church and State in the United States of America" that represented a strong reaffirmation of the principles of separation that had existed, if ambiguously, in the Calvinist tradition from the beginning. "Presbyterians said this back in 1789; we say it again today. American Presbyterians believe in religious liberty. They do not believe that the state should exercise control over the church. "They do not even wish to see any religious constitution aided by the civil power?"

The 1963 report was as unambiguous in its rejection of civil authority as a means of supporting or encouraging the church's ends as was the proposed 1938 confessional revision, whether in relationship to censorship, Sunday closing laws, marriage and family laws, contraception and other medical issues, religious displays on public property or religious observances in public schools, which should "never be held in a public school or introduced into the public school as part of its program." Also in the spirit of the 1938 proposal, the report called strongly for the church to witness to and when necessary call into question the policies of the state.

A 1964 report on “The Lord’s Prayer and Bible Reading in Public Schools in the Light of Recent Supreme Court Decisions,” approved by the General Assembly of the Presbyterian Church U.S. (PCUS), however, tilted perceptibly toward the establishmentarian side of the tradition: “If the ideals of religion are excluded, the corporate character of the school is affected thereby... The absence of any sort of public acknowledgement of God could, in effect, be an unspoken suggestion that education is exclusively a secular pursuit without moral and spiritual considerations ... We hold that religious ceremonies may be held in public schools on a permissive, voluntary basis without violation of conscience.”

d. *The Contemporary Situation.* To an important extent, the present-day debates over the relation of religion to the civil order reveal the same tensions that have existed in the Reformed tradition from the beginning.

On the one hand, there is widespread concern, expressed by President Ronald Reagan, Secretary of Education William J. Bennett, and by numerous religious leaders in the land, that America is a religious nation that is losing its bearings through a process of radical secularization. In order to endure, in order to preserve its identity, the nation must return to its Judeo-Christian heritage, must unashamedly espouse and inculcate the fundamental beliefs and values associated with that heritage by means of direct governmental encouragement. Here are the strong echoes of the one side of Calvinism, the side that favors governmentally supported and encouraged religious belief and practice in the interest of civil harmony and prosperity.

Responding to the same establishmentarian instinct, some religious organizations seek public policies in a number of areas that would incorporate sectarian viewpoints, directly entering the political arena with an explicitly sectarian agenda. Contemporary debate about religion and politics is punctuated also by a renewed insistence by some Roman Catholic leaders that Roman Catholic political leaders are obligated to uphold the teachings of that church in the discharge of their public duties.

The other side of Calvinism is visible in the contemporary concern for increased vigilance on behalf of religious liberty and the free exercise of religion. Such commitments are not only fervently expressed by the many who oppose such initiatives as noted in the paragraph above, but also by a great many others who see any extension of government regulations to activities sponsored by religious groups as a violation of constitutional guarantees of the free exercise of religion. The fact that many in the latter group of free-exercise libertarians, such as those who operate Christian schools, are also among the establishmentarians seeking civil recognition and support of religion is simply another reminder of how complex the tension between the two sides of the tradition can be.

If our historical analysis is correct, Reformed Christians should not be surprised by these contemporary controversies or the diversity of conviction and commitment in the church itself. Whatever other factors may enter into a full explanation of these controversies, they are also a dramatic reminder that the

fundamental tension that has always been present in our tradition is still very much with us, in both the church and the society.

C. Constitutional Developments Regarding Religious Liberty in the United States

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” (First Amendment to the Constitution of the United States of America).

This section presents a summary of the current state of the law on religious liberty and church-state relations and how it developed. It relies primarily on decisions of the Supreme Court of the United States, but notes a few important developments that did not reach that Court. Insofar as this history is accompanied by an analytic framework, it draws both on the Court’s own explanation of its decisions and independent outside judgment. In both instances, the point of view reflects a strong commitment to religious liberty and an equally strong conviction that both the free exercise and establishment clauses should be taken seriously.

1. *Origins and Early Practice*

By the end of the American Revolution, the citizens of the United States were approaching consensus in support of religious toleration and even liberty. There was also substantial support for disestablishment, but that was more controversial, and some states still had formally established churches. Several of the state constitutions written in the revolutionary and immediate post-revolutionary period contained bills of rights that guaranteed free exercise, nonestablishment, or both.

The most significant political development prior to the federal Constitution occurred in Virginia, where disestablishment of the Anglican Church was a recurring issue in the legislature from 1776 to 1786.

Before 1777, all Virginians were taxed to support salaries for Anglican ministers, although at least half the population adhered to other churches or to no church at all. In 1776, the legislature voted to suspend the tax, and subsequent debates centered on bills to reinstate it. In 1784, supporters of establishment introduced a bill that was not limited to Anglicans. It would have imposed a tax to support Christian ministers, and it would have allowed each taxpayer to designate the church that would receive his tax. This gathered support from some of the non-Anglican denominations, and the bill passed second reading in the fall.

James Madison managed to delay final consideration until the legislature reconvened in the fall of 1785. In the meantime, he published his Memorial and Remonstrance Against Religious Assessments, setting out his argument against any form of establishment. Many other citizens and churches also petitioned the

legislature on the issue. In the course of this debate, the Hanover Presbytery changed its position, providing important support for the coalition opposing the bill. When the legislature reconvened, the bill to tax for the support of ministers was defeated. In its place, the legislature enacted the Bill for Establishing Religious Freedom, first introduced by Thomas Jefferson in 1779 and unsuccessfully introduced in each intervening legislature. The Bill for Establishing Religious Freedom enacted both free exercise and disestablishment in Virginia. Three years later, in 1789, Madison was the principal drafter and sponsor of the religion clauses of the First Amendment.

In contrast to the lengthy battle in Virginia, the debates over religion in the drafting of the federal Constitution were brief and uninformative. The Constitution was proposed in 1787 without a Bill of Rights. Its only reference to religion was the test oath clause in Article VI: “No religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”

The lack of a bill of rights was a principal source of opposition to the proposed Constitution. Some of the Constitution’s supporters promised to add a bill of rights by amendment. By July of 1788, eleven states had ratified the new Constitution, but five had appended requests for amendments to their ratifications. Three of those had proposed freedom of religion clauses.

When the First Congress convened in the Spring of 1789, Madison promptly moved to consolidate support for the new Constitution by proposing the promised amendments. The religion clauses, which were incorporated in what became the First Amendment, went through several drafts, with the final version emerging from a conference committee of the House and Senate in the fall. It is actually the broadest version considered by either House.

Some who favor government support of religion today argue that Supreme Court decisions interpreting the establishment clause are fundamentally wrong. In their view, the establishment clause had a narrow and specific purpose: to prevent government from aiding one religion over another while permitting non-preferential government support for religion generally.

However, the Senate and the Conference Committee rejected several drafts that were unambiguously limited to preferential aid. There is no reason to believe that the framers did not understand what they were doing when they repeatedly rejected versions that would have permitted nonpreferential aid. The religion clauses are best understood as requiring the government to be entirely neutral toward religion, not as permitting it to support religion generally while trying to be neutral among particular religions.

However, government practice in the generation of the framers was not entirely consistent. The First Congress appointed chaplains, and even Madison acquiesced. Presidents Washington, Adams, and Madison issued Thanksgiving proclamations, although Madison did so only in time of war and at the request of Congress, and his proclamations merely invited citizens so disposed to unite

their prayers on a single day. President Jefferson refused to issue Thanksgiving proclamations, believing them to be an establishment of religion. In retirement, Madison concluded that both the congressional chaplains and the Thanksgiving proclamations had violated the establishment clause.

Congress also subsidized missionary work among the Indians, and even President Jefferson signed a treaty agreeing to provide a church building and a Catholic priest to the Kaskaskia Indians. These missionaries were expected to provide secular teaching, but there is no doubt that religious teaching was also an accepted part of their mission. Congress continued to support sectarian education on Indian reservations until 1896.

2. *The Fourteenth Amendment*

As originally adopted, the religion clauses did not bind the states. The First Amendment refers only to Congress. In *Barron v. Mayor of Baltimore* in 1833, the Supreme Court decided that the protections of the whole Bill of Rights were good only against the United States and not against state or local governments. Some states guaranteed free exercise and disestablishment in their own constitutions, but some did not. Formally established churches persisted in Massachusetts and South Carolina until the 1830s. In 1842, a Roman Catholic priest in New Orleans was convicted of saying a funeral mass in his own church. A local ordinance permitted such masses only in the cathedral. The Supreme Court upheld his conviction in *Permoli v. City of New Orleans*. The First Amendment applied only to the federal government; Father Permoli must look to the law of Louisiana for protection against New Orleans.

At the end of the Civil War, Congress proposed and the states ratified the Fourteenth Amendment. Section 1 of that amendment provides in part as follows:

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 laws.

This amendment was intended to do what the Bill of Rights had not done—to give individual citizens federally enforceable constitutional rights against their states. The Supreme Court has held that those rights include all the rights protected against the federal government by the free exercise and establishment clauses.

A persistent minority has also criticized the Supreme Court's interpretation of the Fourteenth Amendment, arguing that Congress did not intend to change *Barron v. Baltimore* or *Permoli v. New Orleans*. Some claim support for this view in the legislative history of the Fourteenth Amendment, ignoring the fact that the principal sponsor of the Amendment in each House said explicitly that the privileges and immunities clause would make the Bill of Rights binding on

the states. The fact that the Supreme Court relied instead on the due process clause to reach that conclusion is an oddity of no significance.

The sponsors' explanation is supported by the lessons of the Civil War, the resulting understanding of our governmental structure, and the text of the Fourteenth Amendment. In 1789 the federal government was new and fearsome; the framers perceived it as the principal threat to liberty. The Civil War and its aftermath made clear that state governments are as much a threat to liberty as the federal government. It would be intolerable to allow individual states the choice to respect religious liberty or not; these rights must be guaranteed throughout the land and against all levels of government. It is textually implausible to suggest that free exercise of religion and freedom from establishment are not privileges and immunities of citizens of the United States. The Supreme Court has persistently rejected all attacks on its firmly settled conclusion that the Bill of Rights binds the states. There is no prospect that it will change its mind.

3. *The Development of Constitutional Religious Liberty Doctrine*

a. *The Mormon Cases.* The Supreme Court's first serious encounter with the religion clauses arose out of the nineteenth century persecution of the Mormons. The early Mormons in the east and midwest encountered hostility both from government and private citizens. Their prophet, Joseph Smith, was murdered by a mob while held prisoner in an Illinois jail. In 1847, the Mormons fled to Utah. They hoped that isolated and surrounded by desert they would be left alone.

But the 1848 treaty ending the war with Mexico made Utah a territory of the United States, subject to the power of Congress. In the 1860s, Congress enacted a series of laws against polygamy, obviously directed at the Mormons. *Reynolds v. United States* was a criminal prosecution under those laws. The Supreme Court affirmed Reynolds' conviction in 1878, saying that the free exercise clause protected his right to believe but not his right to act on those beliefs. The 1879 General Assembly (PCUSA) recorded its

... grateful acknowledgement to God that the legal status of this affront to our Christian civilization and this menace to our social order has been finally determined, and so determined as to declare the laws and the policy of our country, in respect to this crime, to be in accord with the conscientious convictions of all patriotic and Christian men, ... and directed that the action "be transmitted, as an official action of this body to His Excellency the President of the United States."

Unfortunately for the Mormons, the Supreme Court finally would not protect even their right to believe, as two 1890 decisions attest. In *Davis v. Beason*, the Court upheld an Idaho territorial statute that required all voters to sign an oath swearing that they were not a member of any organization that taught polygamy or celestial marriage. In short, voters had to swear that they were not Mormons. And in *Mormon Church v. United States*, the Court upheld government confiscation of all property of the church. The religion clauses had failed at

their most fundamental task: they had failed to prevent government persecution of a religious minority.

The Supreme Court upheld a conviction of a religiously motivated polygamist as recently as 1946. *Davis v. Beason*, the test oath case, was presumably overruled in *Torcaso v. Watkins* in 1961. The Maryland law in *Torcaso* required all holders of public office to swear that they believed in God. *Torcaso* refused, and the Supreme Court held the requirement unconstitutional. *Davis* was not mentioned and it could conceivably be distinguished, but not on any intellectually respectable ground.

b. *The Catholic Experience.* Nineteenth century hostility to Roman Catholics was partly religious, partly ethnic, and partly hostility to the waves of recent immigrants. Catholicism was viewed as a threat to American liberties and Anglo-Saxon Protestant hegemony. The mid-nineteenth century was marked by violence between Protestant and Catholic mobs; many lives were lost, and Protestant mobs in Philadelphia burned Catholic churches in 1844. The Know Nothing party, the political expression of the Protestant Nativist Movement, was explicitly anti-Catholic and anti-immigrant. It swept elections in eight states in the 1850s. Catholics were also victimized by a de facto Protestant establishment. When the states began to create public schools in the nineteenth century, many of those schools openly taught Protestant Christianity and read from the King James Version of the Bible.

Anti-Catholicism did not end with the turn of the century. Oregon banned private schools in the wake of World War I, a move with enormous impact on Catholics. The Oregon law was invalidated in 1925 in *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, a case that also involved secular schools and was not decided on grounds of religious liberty.

A minority of Protestants openly opposed the election of John Kennedy in 1960 on grounds of his Catholicism. The policy statement on church-state relations of the 1963 General Assembly of the United Presbyterian Church U.S.A. found it necessary to consider whether Presbyterians should evaluate the “fitness of candidates for public office on the basis of religious affiliation,” a roundabout way of asking whether Presbyterians could vote for Catholic candidates. The answer was in the affirmative but with a caveat that effectively meant that Presbyterians should not vote for any candidate who supported government financial aid to religious schools. Thus the General Assembly had no objection to Catholic candidates in principle, but it encouraged single-issue voting that disqualified most of them in practice.

About the same time, an independent press with the word Presbyterian in its name published an elaborate hate tract proposing that Catholics be barred from teaching in the public schools or holding high public office. The book described Catholicism as a “totalitarian system” that threatened American freedoms and was more dangerous than communism because “it covers its real nature with a cloak of religion.” Justice Douglas quoted this book in his opinion in a 1971

case on financial aid to church schools, and a United States Court of Appeals quoted the book again in 1977.

c. *The Jehovah's Witnesses Cases and the Right to Proselytize.* Like the Mormons, the Jehovah's Witnesses in the 1930s and 1940s were an intensely unpopular new religion. Their own doctrines were intolerant, especially of Catholics, and they preached those doctrines aggressively. They proselytized on street corners and door-to-door. All over the country, cities tried to stop the Jehovah's Witnesses from proselytizing, prosecuting them under a wide variety of statutes.

The Witnesses aggressively litigated these prosecutions, believing the state had no right to license religious teaching. A large number of cases eventually reached the Supreme Court. For the most part, the Witnesses won. Many of these cases were decided under the free speech clause instead of the free exercise clause; religious speech is protected by both.

The Court struck down licensing laws that gave public officials any discretion to decide who could solicit door-to-door and who could not (1938). It struck down outright bans on door-to-door distribution of literature (1943). It struck down taxes on the sale of Witness literature (1943). It struck down bans on the use of loudspeakers (1948). It struck down prohibitions on proselytizing or holding religious services in public parks (1953). It overturned breach of peace convictions of Witnesses who promulgated anti-Catholic propaganda in a Catholic neighborhood (1940).

But the Court did uphold some regulation of proselytizing. It affirmed the conviction of a Jehovah's Witness who cursed a police officer, denying First Amendment protection to "fighting words" that tended to provoke an immediate retaliatory response (1942). It upheld application of the child labor laws to Witnesses who allowed their children to help distribute religious literature (1944). It upheld restrictions on the sound level produced by loudspeakers (1949). And it upheld a nondiscriminatory licensing requirement for religious services in public parks (1953).

Another controversy involving Jehovah's Witnesses in this period turned on compulsory flag salutes in public schools. In 1940, the Supreme Court held that the free exercise clause did not exempt religiously-motivated conscientious objectors from schoolroom flag salutes. In 1942, after a change in personnel and some changes of mind, the Court invalidated compulsory flag salutes on free speech grounds. The Court held that no one could be forced to affirm views he does not believe, whether or not the objection is religiously based. In Justice Jackson's memorable words, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, other matters of opinion, or force citizens to confess by word or act their faith therein."

(1) *New Religions and Threats to Conversion*

Today's unpopular religions are often referred to by their detractors as "cults." These include religions such as the Unification Church, the Church of Scientology, the International Society for Krishna Consciousness, and the Children of God. These groups often proselytize in aggressive ways, and families are understandably unhappy when children convert to an unfamiliar faith that demands a sharp break with the convert's past. As a result, these groups have been surrounded by controversy.

There have been dozens of lower court cases involving the Hare Krishna's right to solicit in various public places. Only one of these cases has reached the Supreme Court. In *International Society for Krishna Consciousness v. Heffron* (1981), the Court upheld a rule that required solicitors and exhibitors at the state fair to remain in a booth. The Court has always permitted reasonable restrictions on the time, place, and manner of speech when the state's purpose is traffic control or some other legitimate goal unrelated to censorship. The Court thought the booth rule was reasonable in light of the congestion at state fairs.

The most serious issues about the new religions have not yet reached the Supreme Court. These issues relate to allegations that some of the new religions convert new adherents by brainwashing and to efforts by parents and others to forcibly withdraw converts from these religions. Parents have physically abducted adult converts and held them against their will until they agreed to leave their new religion. Other parents have held their adult children under guardianship orders during efforts to turn them away from a new religion. Parents often hire persons who specialize in persuading or coercing abducted converts to renounce their new religion. These persons, who call themselves deprogrammers, say that some "deprogrammed" converts leave their new religion and express gratitude at being rescued. Others return to their new religion at the first opportunity and sue their parents and the deprogrammers.

The resulting litigation has produced mixed results. Most appellate courts have recognized the threat to free exercise rights and have been reluctant to legitimate abduction, involuntary "deprogramming," or guardianship orders against adults not proven to be mentally incompetent. But some courts have assumed that brainwashing by new religions is a serious threat and have tolerated, or even assisted, parental intervention by force and threats of force. Even in cases where the deprogrammed convert won, juries have rarely returned substantial verdicts.

The right to choose one's own religion is the very essence of religious liberty. Courts and families might legitimately intervene when there is evidence of coercion. But in the cases to date, there has been no evidence that proselytizers for the new religion have used physical force and little evidence of brainwashing, though there has been largely undisputed evidence of physical force by parents and deprogrammers. We must insist on clear proof when new religions are charged with wrongdoing, in the light of historical persecutions, and on especially clear proof when the right to religious conversion is at risk.

d. *The Ballard Case and the Issue of Religious Fraud.* In *United States v. Ballard* (1944), the Supreme Court has its only encounter with one of the most difficult religious liberty issues, an accusation of religious fraud. The Ballards claimed to have received divine revelations and miraculous powers and to have performed miraculous cures. They solicited contributions on the strength of these representations and sold books and records alleged to have supernatural powers. In their own defense, they noted that other religions made similar claims, including Christianity. They argued that if it were legal to solicit money on the strength of ancient miracles, it could not be illegal to solicit money on the strength of contemporary miracles.

The trial judge instructed the jury not to consider whether the Ballards' claims were true, but only to consider whether the Ballards really believed their own claims. So instructed, the jury found them guilty. The Court of Appeals reversed, holding that the jury should have been instructed to find whether the claims were true. The Supreme Court reversed again, holding that no secular court could pass on the truth of religious claims. But the Court did not decide whether the trial court had properly instructed the jury to consider whether defendants really believed their own claims; it sent the case back to the Court of Appeals for further consideration.

Justice Jackson would have dismissed the prosecution. He thought it impossible to determine whether defendants really believed their claims without determining whether they were true, that literal truth was often not the point of religion, and that such prosecutions could easily degenerate into persecution of minority religions. He "would have done with this business of examining other people's faiths."

The underlying issue in *Ballard* remains unresolved. The convictions were eventually reversed on the ground that women had been excluded from the jury, and the Supreme Court has never decided whether jurors can decide whether religious solicitors really believe their own claims. But for a long time Justice Jackson's view seemed to have prevailed in practice. Entrepreneurial preachers continue to solicit money and promise miracles, but criminal prosecutions have been rare to nonexistent. However, disgruntled members of the Church of Scientology and other nontraditional religions have begun to challenge this consensus, filing civil fraud suits against their church. None of these cases have reached the Supreme Court.

e. *Evolution of Establishment Clause Doctrine*

(1) *Financial Aid*

The first significant establishment clause case in the Supreme Court was *Bradfield v. Roberts* (1899), upholding federal payments to a Catholic hospital for the care of indigents. The Court reasoned that the government was entitled to purchase medical care for its wards, and that the religion of those who ran the hospital was wholly irrelevant.

In 1908 the Court approved the use of Indian trust funds to support Catholic schools for Sioux Indians, citing Bradfield. The implication seems to be that even government money could have been spent: that when the government purchased services, the religious affiliation of the provider was irrelevant, and educational services were no different from medical services.

The most important establishment clause case is *Everson v. Board of Education* in 1947. A closely-divided Supreme Court upheld a program under which state-funded buses transported students to their schools. The program covered both public and parochial schools. The majority viewed transportation to schools as a secular public service that the state could provide to all; the dissenters thought the program gave an impermissible state subsidy to religious education.

Everson was the first case to hold that the establishment clause is binding on the states, and the first case to explore the history of the establishment clause. All nine justices agreed that the establishment clause embodies Madison's approach to disestablishment, and thus all nine agreed that the clause forbids government aid to religion, even though they divided on the facts in *Everson*. Despite many twists and turns of doctrine, the Court has adhered to those basic principles ever since.

(2) *Released Time*

The next problem before the Supreme Court was released time programs: programs under which public schools released students for religious education by their own churches on school property during regular school hours. Students who chose not to participate were not free to leave, but neither could their secular education continue. In 1948, the Court struck down such programs in Illinois *ex rel. McCollum v. Board of Education*. The Court reasoned that the program invoked the power of the truant officer to coerce students to go to church.

There was widespread protest. Four years later, the Supreme Court retreated in *Zorach v. Clauson* (1952). *Zorach* was identical to *McCollum* in every way but one. In *McCollum*, the ministers came to the school and gave religious instruction on school property; in *Zorach*, the students were released to go to their separate churches. That had nothing to do with the rationale of *McCollum*; in each case, students were detained without purpose unless they went to church. But the majority seized on the incidental distinction to rewrite *McCollum*. The Court said that the only problem in *McCollum* was that religious instruction took place on public property; released-time programs were permissible if the religious instruction took place on private property.

(3) *Sunday Closing Laws*

In 1961, the Supreme Court upheld the Sunday closing laws of several states. The Court reasoned that Sunday closing laws had come to serve secular as well as religious purposes, by providing a uniform day of rest when families could be together. It was irrelevant that this purpose coincided with religious

teachings, just as it was irrelevant that laws against murder coincided with the Sixth Commandment. The Court also held that the Sunday closing laws did not violate the rights of Orthodox Jews whose religion compelled them to close on Saturdays as well.

(4) *School Prayer*

The next year the Supreme Court had its first encounter with school prayer. The case was *Engel v. Vitale* (1962). The New York Board of Regents wrote a prayer and recommended its use in every public school classroom in the state; local school boards adopted the prayer. Students who objected could be excused from the room during the prayer. The Court noted the inherently coercive effect of this practice on religious minorities, but it insisted that coercion was not essential to its decision.

Rather, with only one dissenting vote the Court held that for the state to promulgate and encourage recital of a prayer was wholly inconsistent with the establishment clause.

Engel also produced a storm of public protest, but this time the Court did not back down. It reaffirmed *Engel* in *School District v. Schempp* (1963). The cases consolidated for decision in *Schempp* involved a Pennsylvania requirement that all public schools begin the day by reading a chapter from the Bible, and a Maryland requirement to begin either by reading a chapter from the Bible or reciting the Lord's prayer.

The Supreme Court could have summarily held these practices unconstitutional in light of *Engel*. Instead, it undertook to respond to the protest, explaining once again, in more than a hundred pages of majority and concurring opinions, why the state could not conduct religious exercises consistently with the establishment clause. The protesters were unconvinced, and the controversy continues to this day, generating unsuccessful efforts to amend the Constitution and attempts to develop a form of school prayer that will pass constitutional muster.

(5) *Church Taxation*

Churches have traditionally been tax exempt, and there has been little constitutional litigation about that exemption. Most litigation is in state courts and involves details of applying the exemption to auxiliary church facilities. There is no decision holding that churches are entitled to general tax exemption. There is a 1943 Supreme Court decision, *Murdock v. Pennsylvania*, that states cannot tax religious solicitation.

The property tax exemption has been attacked as an establishment of religion. The Supreme Court dealt with the claim in *Walz v. Tax Commission* (1970), holding that churches may constitutionally be included in a broad tax exemption for charitable organizations generally. Undoubtedly the Court would

decide the same way with respect to the exemption from federal income tax. Presumably it would uphold the income tax deduction for gifts to churches on the same ground, but that is less clear. Exemptions available solely to religion and not to secular charities, such as the income tax exemption for housing allowances for ministers, would be harder to defend under the *Walz* rationale.

The Internal Revenue Service increasingly views tax exemption as a means of regulating tax exempt entities, including churches. *Bob Jones University v. United States* (1982) was such a case; the Supreme Court held that tax exempt entities must comply with public policy. The IRS has also tried to force church entities providing services that it considers to be secular, such as orphanages and social service agencies, to file informational tax returns. Two recent lower court cases have involved the Tennessee Baptist Children's Home and Lutheran Social Services of Minnesota. The church prevailed at the Court of Appeals level in both cases, and the IRS has apparently given up its efforts in this regard.

Undoubtedly the most serious regulatory use of tax exemption is 501(c)(3) of the Internal Revenue Code. That section provides that tax exempt entities cannot endorse candidates for public office or devote any substantial part of their funds to influencing legislation. The Supreme Court has never passed on the constitutionality of this provision as applied to churches. In *Regan v. Taxation with Representation* (1983), the Court has upheld the restrictions as applied to secular organizations devoted to public education on political issues. Several justices in that case relied on the availability of 501(c)(4) to save the constitutionality of the restrictions in 501(c)(3). An organization that wishes to receive tax deductible contributions and also influence legislation or elections can divide itself into two organizations, one created under 501(c)(3) and one under 501(c)(4). The (c)(4) affiliate must do all the political work, and contributions to it are not tax deductible. This is not a viable solution for a church whose religious faith compels it to speak through its religious leaders on the moral aspects of political issues.

f. *Government Aid to Religious Schools.* Government aid to religious schools has been on the Supreme Court's docket almost continuously since 1968. The Court has been unwilling either to ban all such aid or to permit all such aid. Instead, it has groped for a compromise formulation that would permit some aid but not too much. The difficulty of course stems from the intimate combination of religious and secular education in church-sponsored elementary and secondary schools. It is settled constitutional doctrine that government cannot support religious functions financially. But since *Bradfield v. Roberts* in 1899, the Court has also agreed that the Constitution permits financial payments to religious institutions to perform some functions that might otherwise be performed at state expense, at least under some circumstances.

As the Court has struggled with these issues, at least six inconsistent theories have been endorsed by one or more justices, and the majority has switched from one theory to another more than once. At least four of these theories are

plausible. The result has been a series of inconsistent and almost inexplicable decisions.

(1) *The Possible Theories*

The first plausible view is the no-aid theory: that religious instruction permeates the church-sponsored school, and that any state money paid to a church-sponsored school or its students expands the school's budget and thus unconstitutionally aids religion. The dissenters in *Everson* in 1947 took this view, but the majority saw bus rides as secular public service. The Supreme Court has repeatedly rejected the no-aid approach but it nevertheless applied the theory to instructional materials in *Wolman v. Walter* (1977).

A second plausible view is the purchase of services theory: that any state money paid to a church-sponsored school is simply a purchase of educational services, wholly constitutional, since the state is obligated to educate its children. As long as the state does not pay more than the costs of the secular aspects of the education provided, it is only paying for services rendered, not subsidizing religion. The Court applied this theory to medical services in *Bradfield v. Roberts* (1899), but no justice has applied it in its pure form to educational services.

A third plausible view is the equal treatment theory: that government must, or at least may, spend as much for the basic education of students in church-sponsored schools as it spends on children in public schools. Children have a federal constitutional right to attend church-sponsored public schools, and a state constitutional right to a free public education. To deny all government aid to students in church-sponsored schools forces them to choose between those rights; the loss of free education in secular subjects penalizes exercise of the right to attend religious school. The equal treatment theory is based on the principle that the government cannot discriminate against religion, which is as basic as the principle that the government cannot support religion. The Court relied on the permissive version of the equal treatment theory in *Mueller v. Allen* (1983), when it upheld state income tax deductions for tuition payments to church-sponsored schools. It had rejected the mandatory version of the equal treatment theory in *Committee for Public Education and Religious Liberty v. Nyquist* (1973).

A fourth plausible view is the child-benefit theory: that the state can provide educational benefits directly to a child, even if the child uses those benefits at a church-sponsored school, but it cannot provide comparable aid directly to a church-sponsored school. The Court relied on the child benefit theory to uphold bus rides in *Everson v. Board of Education* (1947), textbook loans in *Board of Education v. Allen* (1968), and state income tax deductions in *Mueller v. Allen* (1983). Proposals that the state issue vouchers directly to students or their parents to be spent at any school rely on this theory as well as the equal treatment and purchase of services theories for their conviction that such vouchers could be constitutionally used to pay for education in religious schools.

A fifth theory, frequently invoked by the Supreme Court, is the tracing theory. The Court tries to divide all the activities of a church-sponsored school into components that are wholly secular and components that are, or might be, affected by religion. Then it tries to trace each dollar of government money to see what the school spent it on. It upheld bus rides in *Everson*, and secular textbooks in *Allen*, in part because they could be traced to wholly secular functions. But it has rejected payments for teacher's salaries, *Lemon v. Kurtzman* (1971), except where the teachers were being paid to perform an identifiable secular function, such as taking attendance or administering state prepared exams, *Committee for Public Education and Religious Liberty v. Regan* (1980). In applying the tracing theory, the Supreme Court has distinguished primary and secondary education from higher education, holding that religious primary and secondary schools are pervasively religious but that religious colleges and universities are not. Tracing theory tests for elementary and secondary religious schools are therefore very rigorous. The Court assumes that any teacher in any subject might also teach religious values.

A sixth theory is the little-bit theory: that a little bit of aid is permissible, but it must be structured in a way that keeps it from becoming too much. The Court relied in part on this theory in *Grand Rapids School District v. Ball* (1985), and *Meek v. Pittenger* (1975), but it may in fact really explain more of the Court's decisions than the theories it relies on more often. The little-bit theory may be behind the Court's solution to other establishment clause conundrums such as approval of legislative chaplains and municipal nativity scenes.

(2) *The Court's Results*

It is hardly a surprise that this mix of theories has not produced coherent results. The issues are so important that rather full discussion of the confusion is warranted.

Bus transportation to and from school is permitted, but bus transportation on field trips is forbidden. Why? Because the teacher might discuss religion on the field trip. Thus, under the tracing theory, the bus ride to school is wholly secular, but the field trip might not be.

The state can loan secular textbooks to students in religious schools, but it cannot loan maps, projectors, or other instructional materials. The child-benefit theory might have reconciled these holdings because each child needs his own textbook but only the school needs maps and projectors. But that is not what the Supreme Court said. Rather, it decided the first textbook case on a combination of child-benefit and tracing theories; then it decided the instructional materials case on the theory that any aid to the school helps religion. The Court noted that its approach to books was inconsistent with its approach to other instructional materials, but it declined to reconcile the case's. Even more strange, in the very opinion in which it adopted the no-aid theory for instructional materials, it used the tracing theory to allow state-administered tests in religious schools.

The Supreme Court also used the tracing theory to hold that guidance counseling, remedial instruction, and other therapeutic services are permissible if provided by public school teachers away from the religious school campus, but not if provided by public school teachers on the religious school campus. Why? Because the public school teachers might be influenced by the religious environment and inadvertently discuss religion with their students, but that danger is insubstantial away from the religious school. However, diagnostic services are permissible even on the religious school campus because the diagnostician will not spend enough time with any one student to develop a relationship, and without a relationship, is unlikely to talk religion.

Grand Rapids School District v. Ball offered two additional reasons why supplemental public instruction cannot be offered on religious school campuses. First, public instruction at the religious school creates a symbolic union of church and state. Second, in an explicit application of the little-bit theory, the Supreme Court said that public instruction might gradually displace the entire secular part of the religious school curriculum, resulting in too much aid.

The tracing theory also produced paradoxical results with respect to teacher salaries and testing expenses. The state cannot pay fifteen percent of the salary of teachers who teach secular subjects in religious schools. It cannot pay religious schools for the cost of conducting state-mandated testing if the religious school teachers design and grade the test. In neither case could the money be traced to wholly secular uses, because the teachers might include religious material in their classes or on the exams, even in secular subjects. But the state is permitted to administer required tests to religious school students and grade the tests itself. State designed and administered tests present no danger of religious content; they are wholly secular.

Does it follow that the state can pay the school to administer objective secular tests designed by the state? The Court said yes. There was no risk of testing religious content, and paying the school to administer the tests was no more a subsidy than having the state administer the tests directly. Either approach relieved the school of the expense. On the same rationale, the state could require religious schools to take attendance and pay for the expense of doing so. In each case, the expense consisted of part of the time of the teachers; the state paid as much as 5.4 percent of the faculty payroll under this program. So it turns out that with enough red tape, the state can pay part of the salaries of teachers in religious schools after all. What is required is that the state identify wholly secular components of the job and the time required to perform them, and pay the school for that time. This carried the tracing theory to its fictional extreme. And this decision came after the Court's rejection of the tracing theory with respect to instructional materials.

In 1983, *Mueller v. Allen* held that state income tax deductions for the expenses of sending children to religious schools are permissible. But ten years earlier, *Committee for Public Education and Religious Liberty v. Nyquist* held

that state income tax credits for the expenses of sending children to religious schools are forbidden. What is the difference? What the Supreme Court said was that the tax credits in *Nyquist* were dovetailed with a program of scholarships to low-income students, making it clear that the tax credits were themselves a thinly-disguised scholarship. In addition, the credit applied only to private school tuition. The tax deduction in *Mueller* also applied to expenses of transportation and supplies, which could be claimed by parents of public school children, and to tuition payments by the handful of children attending public schools outside their own district.

Those were real differences but not very significant ones. Again, a shift in theories was more important. *Nyquist* was written on the tracing theory or perhaps on the no-aid theory. Scholarships and tax credits were invalid under either, because once the students paid the money to the school; it went into general revenues and could not be traced. But in *Mueller*, the Court emphasized the child-benefit theory and the equal-treatment theory. The Court thought it important that the tax savings went to parents instead of religious schools, and that parents decided independently whether to send their children to public or private schools. The state was not required to discriminate against religion by denying a deduction available to parents of public school children. It was irrelevant that ninety-six percent of the deductions were in fact claimed by parents of children in Catholic and Lutheran schools. This was a break with earlier cases in which the Supreme Court had thought it significant that most private schools were religious. *Mueller* obviously rejected the no-aid theory and did not mention the tracing theory.

Many commentators thought that *Mueller* indicated a substantial shift in direction—that the Court would then allow much more aid. But in 1985, in *Grand Rapids v. Ball* and in *Aguilar v. Felton*, the Supreme Court returned to the tracing theory to strike down supplemental courses in religious schools. The political context highlights the majority's aversion to substantial aid: *Aguilar* struck down federally-funded remedial instruction for impoverished children. The Court again thought it significant that most private schools receiving the aid were religious schools. If *Mueller* were intended to be a new beginning, that new beginning was erased in *Grand Rapids* and *Aguilar*.

g. *The Three-Part Test for Establishment.* At the root of this confusing mix of competing views is a judicial standard which itself has overlapping requirements. In *Lemon v. Kurtzman* (1971), the Supreme Court distilled from its earlier cases a three-part test to identify violations of the establishment clause. The Court said:

First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster “an excessive government entanglement with religion.”

The Supreme Court has generally adhered to this verbal formulation ever since. In cases involving prayer or religious teaching in the public schools, the

Court has generally found no secular purpose. In the cases on financial aid to religious institutions, the Court has held that states are pursuing the secular purpose of educating children. But it has generally found a dilemma in the second and third parts of its test. Under the tracing theory, if aid cannot be traced to a wholly secular function, it has a primary effect of advancing religion. But if the state imposes substantial controls to insure that the aid is not diverted to religious purposes, that creates too much entanglement between church and state. One way or the other, most aid to religious schools fails the three-part test.

The Court's three-part test has been subjected to intense scholarly criticism. Some scholars have argued that the ban on excessive entanglement in the third part of the test and on effects that inhibit religion in the second part of the test are free exercise concepts that have nothing to do with the establishment clause. The dispute is more than academic. Only the affected churches or affected believers can sue under the free exercise clause. But by defining "inhibiting religion" and "entanglement" into establishment clause violations, the Supreme Court permits anyone to file taxpayer suits to save the churches whether or not the churches want to be saved.

In addition to this expansion of the usual understanding of establishment, the three-part test has been so elastic in its application that it means everything and nothing. The meaning of entanglement has been especially slippery. All of the financial aid cases summarized in the previous section were decided under the three-part test; the Court modified the three parts as necessary to accommodate all the different results and all the different theories. The Court upheld municipal Nativity scenes under the three-part test, finding that depictions of the Holy Family had a secular purpose and effect and did not cause excessive entanglement between government and religion. The prayer cases and the financial aid cases, the two preeminent establishment clause issues, have been described without using the three-part test. While it is part of the historical development of constitutional doctrine, the three-part Lemon test may actually hamper understanding of the real issues in the complex interaction between the two religion clauses of the First Amendment.

h. *The Constitutional History of Conscientious Objection Doctrine.* The First Amendment on its face denies government the right to prohibit the free exercise of religion. Though there have been some examples of legislation clearly intended to squelch religious activity, the more common and more complicated issues concern the degree to which the Constitution permits or requires accommodation to behavior arising from religious belief. The most accurate label for this area of constitutional interpretation is "conscientious objection claims."

Conscientious objection claims arise when an individual or group claims exemption from statutory requirements on the grounds that compliance would require behavior contrary to religious conscience and thus unconstitutionally burden the free exercise of religion. In popular usage, the term "conscientious objector" has most often been used for those who oppose participation in war on

grounds of conscience, but this is only the best known example of conscientious objection. It is well known because refusal to participate in war is a fundamental and distinctive tenet of several well-known American churches; because conscientious objection to military service has received statutory recognition and protection; and because each major war produces thousands of cases.

Most other claims of conscientious objection must appeal directly to the free exercise clause of the First Amendment rather than to a statutory exemption. The great diversity of faiths in this country produces a continuous and equally diverse set of claims that compliance with the law would violate a believer's conscience. Constitutional doctrine is still developing in this area, and recent trends are somewhat disquieting for any who believe that society and the state should make maximum accommodation to actions stemming from sincere religious conscience.

(1) *Origins*

In *Reynolds v. United States*, the nineteenth century Mormon case, the Supreme Court said, in essence, that the free exercise clause protected only belief and never action. Thus, there could be no constitutional right to exemption from government policies that require individuals to violate their religious conscience. The Jehovah's Witnesses cases made some inroads into that view, but all of them could be explained on free speech grounds as well as on free exercise grounds. Nevertheless, judicial recognition of the right to conscientious objection to public policy has its roots in these cases.

The Supreme Court decisively repudiated the Reynolds view in 1963 in *Sherbert v. Verner*, the first decision squarely requiring a religious exemption from a law of general application. *Sherbert* involved a Sabbatarian who lost her job because she refused to work on Saturday. The Supreme Court held that the state could not treat her as having quit voluntarily and thus refuses to pay unemployment compensation. It said that the state could not penalize her religious belief without demonstrating a compelling reason for doing so.

In *Wisconsin v. Yoder*, decided in 1972, the Court went further, upholding conscientious objection to laws enforced by criminal penalties. Yoder involved Amish parents who trained their children at home and feared that public high school would lead their children away from the faith. The Court held that these families were exempt from the compulsory education laws, finding the state's interest in two more years of public education insufficiently compelling to justify the severe burden on the Amish religion. But the Court emphasized that the balance of government and religious interests in Yoder was "close" and that few religions could qualify for the exemption granted the Amish.

(2) *Conscientious Objection to the Military Draft*

Congress has made statutory provision for conscientious objectors to military service in each major war. The World War I exemption was limited to

members of historic peace churches, and the Supreme Court in 1918 saw no problem in this discrimination against conscientious objectors from other religions. The 1941 General Assembly of the Presbyterian Church in the U.S.A. received a report noting that 372 laymen, 44 laywomen and 88 ministers had registered as conscientious objectors with the Stated Clerk of the General Assembly. It went on to “record its purpose to consult with the United States Government about establishing the status of Presbyterian conscientious objector before the law.” Several hundred Presbyterians served in Civilian Public Service camps.

In the 1960s and 70s, the Vietnam War produced a large number of new cases involving conscientious objection to military service. The Selective Service Act exempted from the draft any person who, “by reason of religious training and belief, is conscientiously opposed to participation in war in any form.” The definition of religious training required belief in relation to a “Supreme Being.”

Exemption for conscientious objectors only if they held theistic beliefs discriminated against conscientious objectors with less orthodox beliefs. In *Seeger v. United States* (1965), the Court exempted conscientious objectors who did not believe in God if their objection was based on a “sincere and meaningful” belief that “occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption,” thus markedly broadening the definition of “religious belief.” In *Welsh v. U.S.* (1970) the court extended the same rights to moral and ethical objectors.

Another provision in the statute limited exemption to those who objected to “war in any form.” Thus, Presbyterians and many others who subscribed to just war doctrine were denied exemption, no matter how deeply held their conscientious belief that a particular war was unjust. The Supreme Court upheld this denial of exemption, under both the establishment and free exercise clauses, in *Gillette v. United States* (1971). It thought that the greater difficulty of adjudicating claims of conscientious objection to particular wars was a compelling interest that justified the discrimination between religious beliefs and the burden on the selective conscientious objector’s exercise of religion. In 1968, the General Assembly of the United Presbyterian Church assured “those whose positions of conscience are not now legally recognized” that they had “full claim on the Church’s ministry of compassion and community” and created an Emergency Ministry on Conscience and War to provide counseling and both legal and material assistance for them in the United States and Canada.

(3) *Other Conscientious Objection Cases*

The constitutional law of conscientious objection has continued to develop in contexts other than the military draft. But there are only a few cases at the Supreme Court level, and it is hard to generalize about them.

In *Thomas v. Review Board of the Indiana Employment Security Division* (1981), the Supreme Court required Indiana to pay unemployment compensation

to a Jehovah's Witness who quit his job in a defense plant for reasons of conscience. The Court found it irrelevant that other Witnesses worked in the plant. The test of individual conscience is what the individual believes, not what his denomination believes.

In *United States v. Lee* (1982), the Court refused to exempt Amish employers from the Social Security tax on their Amish employees, although self-employed Amish are exempted by statute. The Court found Social Security tax indistinguishable from any other tax, and found the government interest in collecting its revenues to be compelling. The Court used the example of war tax resisters to illustrate how unworkable it would be to let people refuse to pay taxes for programs to which they had religiously motivated objection.

The Supreme Court also rejected a conscientious objection claim in *Bob Jones University v. United States* (1983). The university refused, on grounds of religious belief, to allow interracial dating among its students. The Court held that the government's interest in eliminating racial discrimination in education substantially outweighed the university's free exercise rights. Thus, the Court upheld the revocation of Bob Jones' tax-exempt status by the Internal Revenue Service.

In *Jensen v. Quaring* (1985), the Supreme Court was presented with the claim of a woman who conscientiously objected to having her picture on her driver's license. Frances Quaring took literally the commandment to make no graven images. The Court of Appeals held that the Constitution protected her right to a driver's license without a photograph. But the Supreme Court was unable to decide the case. Four justices would have allowed her claim; four would have rejected it; Justice Powell did not participate. That affirmed the lower court decision in favor of Quaring, but it did not establish a rule for anyone else.

The Court's sharp division continued in the 1985 term's conscientious objection cases. In *Goldman v. Weinberger*, the Court refused to invalidate military rules that precluded an Orthodox Jewish officer—a psychiatrist stationed in a state-side hospital—from wearing his yarmulke with his uniform. The Court's opinion deferred to the military's asserted need for uniformity for the sake of uniformity, and it was impossible to identify any more substantial interest. The government's brief and three concurring justices took the possibly broader ground that yarmulkes could not be distinguished from turbans, saffron robes, and dreadlocks without invidiously discriminating among minority religions. These justices were unwilling to draw such lines, and they were unwilling to exempt all religious garments. There were four dissents. Congress has since dealt with this "compelling governmental interest" by passing a law that permits non-regulation headwear of religious character.

Bowen v. Roy involved an applicant for welfare benefits who conscientiously refused to request or provide a social security number. Three justices thought it important that the government merely withheld welfare benefits and did not

impose criminal penalties on individuals without social security numbers. They would uphold a statute denying benefits without any effort to accommodate conscientious objectors if the rule is facially neutral, is not motivated by any intent to discriminate on religious grounds, and is “a reasonable means of promoting a legitimate public interest.” The statute requiring social security numbers easily passed that deferential test. They distinguished application of the compelling state interest test in earlier public benefit cases on the ground that the statutes in those cases provided for individualized determinations of eligibility and the Social Security Act did not. Much of this analysis was derived from the government’s brief.

The Court’s judgment was simply to vacate and remand for further proceedings. The lead opinion represented neither a majority nor a plurality, and five justices rejected its proposed test. A year later, five justices did vote to apply the compelling interest test in its original form in deciding the *Hobbie* case, described below.

Collectively, these cases reveal judicial ambivalence about a constitutional right to conscientious objection. Conscientious objectors won in *Sherbert*, *Yoder*, and *Thomas*; they lost in *Gillette*, *Lee*, *Bob Jones*, and *Goldman*; *Bowen* remains unsettled. The outcome in any case appears to hinge on at least two factors. Conscientious objectors to state statutes have won; conscientious objectors to federal statutes have lost. The Court seems generally more inclined to find compelling interest in federal laws than in state. But the outcome is also clearly related to the level of generality with which the Court defines the government interest at issue. In *Yoder*, they did not define the interest as “education” but specifically as two years of schooling for Amish children who will be appropriately trained for life in their own community anyway. A comparable formulation in *Lee* would have looked at the government’s interest in collecting Social Security taxes from Amish employees of Amish employers serving only the Amish community, of which self-employed members are exempt from Social Security taxes by law. But for some reason, the Court decided that the interest at issue was “collecting taxes” which is obviously a compelling one. A broad or narrow formulation of the governmental interest virtually determines the result.

(4) *Exempting Conscientious Objectors as Discrimination Against Others*

One argument against claims of conscientious objection is that any exemption of conscientious objectors appears to discriminate against those who might bear an extra burden or disadvantage because some are exempted, or those who object to the policy in question for reasons unrelated to conscience. This problem of fairness to others has troubled the Court since it worried in 1961 that exempting Sabbatarian merchants from the Sunday closing laws would give them an unfair advantage over other merchants.

There are two quite different aspects to the problem. The first is whether the state can exempt some conscientious objectors and not others. The unfairness in

the World War I draft law that exempted conscientious objectors from some churches but denied it to members of other churches was corrected, but in 1971 the Court still permitted Congress to exempt objectors to all wars without exempting objectors to particular wars deemed unjust. Captain Goldman may well have been denied the right to wear a yarmulke in uniform to avoid the distinctions between yarmulkes and more exotic items of religious raiment.

The second aspect of the issue concerns the possibility of burden or disadvantage to others arising from the exemption of the conscientious objector. The problem of the merchants closed on Sunday is just one example. If Sabbatarian airline clerks are given Saturdays off, other workers who would like to spend Saturday with their families will be unable to do so. If ten thousand conscientious objectors are exempt from the military draft, ten thousand others must serve in their place. Some of the substitutes may be killed. In a sense, these other workers and other draftees are discriminated against because of their religion. If they would only adopt religious beliefs that made them conscientious objectors, they too would be exempt from the draft and from working on Saturday.

The Supreme Court acted on these concerns in *Estate of Thornton v. Calder, Inc.* (1985). A Connecticut statute allowed every employee to designate his Sabbath and refuse to work on that day. An employee designating a Sabbath did not have to claim that his conscience compelled him to abstain from work on that day. In a narrow opinion, the Court held that the statute supported religion by granting an absolute preference for religious interests over the competing interests of employers and fellow employees. Consequently, the statute violated the establishment clause.

It does not follow that the Court will never exempt conscientious objectors from governmentally imposed requirements even if the result is to shift the burden of the requirement to someone else. The Court seems to have an intuitive judgment that most exemptions for conscientious objectors do not impermissibly discriminate against others. Professors Stephen Pepper and Marc Galanter have each offered an explanation, arguing that the political process provides substantial protection against government policies that would violate the consciences of large numbers of believers in mainstream religion. Thus, constitutionally mandated exemption for conscientious objectors redresses a form of discrimination: It gives members of small religious minorities the same protection that the political process affords to the large and politically significant numbers of mainstream believers.

(5) *The Current Status of Conscientious Objection*

The principle of conscientious objection remains controversial. Government enforcement agencies are reluctant to recognize exemptions; they tend to argue that all their interests are compelling. The four votes in 1985 to require pictures on drivers licenses in *Jensen v. Quaring* are most alarming. The state's interest in pictures on drivers' licenses is largely a matter of administrative convenience. Unlike conscientious objection to paying taxes or fighting in Vietnam, there is

no economic or other self-interested incentive to falsely claim conscientious objection to driver's license photographs. If Frances Quaring were issued a license without a picture, no one else has to carry two pictures to make up for it. If the right to conscientious objection amounts to anything, *Jensen v. Quaring* should have been an easy case. But the Court could not decide it.

The United States filed an amicus brief in *Jensen*, arguing that the government's interest should be measured by the cost of removing pictures from the licenses of all the drivers in the state. The government took a similar position in *Bowen*, and in *Goldman* argued that the claim should be measured by the disruptive impact of saffron robes, turbans, and dreadlocks instead of the yarmulke at issue. In *Hobble v. Florida Unemployment Commission*, the government argued that burdens on free exercise require no justification at all unless they are so severe that they are tantamount to a criminal prohibition.

These government briefs cast important light on the Reagan Administration position. It has been quite vocal in its minimalist view of the establishment clause. In these cases, it takes an equally minimalist view of the free exercise clause. Its position in these briefs is not proreligion, but simply statist. The Administration generally does not believe that minorities should have rights that are judicially enforceable against majorities.

There has been some anxiety that the Court would accept such views and return to the nineteenth century Mormon cases, holding that the First Amendment protects belief but not behaviour, that conscientious objection is wholly a matter of government grace. However, in its eight to one decision on *Robbie* in 1987, the Court emphatically reaffirmed the test laid down in *Sherbert* and *Thomas* in 1963 and 1981: Government may compel compliance against individual conscience only to avoid "the greatest abuses involving paramount interests." The opinion stated: "The employee was forced to choose between fidelity to religious belief and continued employment. The forfeiture of unemployment benefits for choosing the former over the latter brings unlawful coercion to bear on the employees choice." Chief Justice Rehnquist in dissent adhered to the view he stated in 1981 that the Constitution gives states broad latitude to accommodate religious practices by creating special exceptions to generally applicable laws, but does not require them to do so.

i. *Church Autonomy: Institutional Implications of Free Exercise.* An increasingly important and controversial issue is the extent to which the constitution protects the autonomy of churches. Church autonomy claims are distinct from conscientious objection claims. If a church entity conscientiously objects to some requirement placed on it by the government, the church entity will be protected under the same standards that would apply to an individual conscientious objector. But more often, churches object to government interference not on grounds of conscience but on the ground that the government is interfering with the church's control of its own affairs. Such claims arise in many forms; we will refer to them collectively as claims of church autonomy. The courts have

protected church autonomy sporadically; the right is well established only in certain contexts.

The Supreme Court has repeatedly said that one purpose of the establishment clause is to prevent “excessive entanglement” between church and state. The entanglement doctrine is the Court’s most explicit statement of a right to church autonomy, even though the doctrine has mainly been developed in cases on financial aid to religious institutions.

(1) *Origin*

The submission of internal church disputes to secular courts is a recurring source of religious liberty litigation, and at the heart of autonomy issues. The first case was *Watson v. Jones*, decided in 1871. The case arose when both a “northern” faction and a “southern” faction claimed the property of the Walnut Street Presbyterian Church in Louisville. The case was decided as a matter of federal common law, but the Supreme Court said that its decision was “founded in a broad and sound view of the relation of church and state under our system of laws.” The Court held that federal courts were bound by the decision of the highest church authority recognized by both sides before the dispute began. It feared that any other rule would involve secular courts in theological controversies.

The Supreme Court constitutionalized these principles in *Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church* in 1952, holding that the Free Exercise clause protected the right of churches to resolve disputes internally. The holding was reaffirmed in 1960.

(2) *Internal Church Disputes*

Unfortunately, churches and their members continue to take internal disputes to the secular courts. Most of these cases involve disputes over the right to a church building claimed by a denomination and also by a local church, or claimed by two factions within a local church. Sometimes they involve even more sensitive questions. For example, in 1975 the Illinois Supreme Court undertook to decide which of two competing claimants should be the North American bishop of the Serbian Eastern Orthodox Church. An increasing number of cases involving internal church discipline have arisen in lower courts, but none has reached the Supreme Court as yet.

By 1960, the Supreme Court had apparently constitutionalized the rule that secular courts faced with internal church disputes were bound by the decision of the highest church authority to consider the matter. However, subsequent decisions less protective of church autonomy have altered the situation. While the Supreme Court has forbidden the once widespread rule that disputed church property should be awarded to the faction that, in the eyes of the court adhered to the original doctrine of the church, it permitted lower courts to settle property disputes under “neutral principles of law,” construing deeds and contracts as

ordinary legal instruments without regard to the religious polity. In the case, *Jones v. Wolf*, decided in 1979, the Supreme Court allowed a Presbyterian church to disaffiliate, with the church property, by a majority vote of the congregation, disregarding the decision of presbytery and thus effectively converting our connectional polity into a congregational one and negating the *Watson* rule.

The Presbyterian Church (U.S.A.) amended its constitution to protect itself as much as possible from the threat of secular adjudication of internal disputes under the neutral principles of law rule. So far the Supreme Court has permitted this approach only in property disputes. It required deference to the highest church tribunal in a case involving competing claimants for bishop and whether a church should be one diocese or three (*Serbian Eastern Orthodox Diocese v. Milivojevic*, 1976). But there is no guarantee that it will not extend the reach of the rule.

(3) *Government Regulation of Churches*

The most important body of church autonomy litigation involves government regulation of churches. Churches have been increasingly unwilling to submit to burdensome regulations, and government agencies have been increasingly unwilling to grant exemptions. Some of the resulting cases involve claims of conscientious objection, but more often the church is claiming a right to autonomy.

The only Supreme Court case squarely presenting such a claim is *National Labor Relations Board v. Catholic Bishop* (1979). Teachers in a parochial school organized a labor union and demanded that the bishop bargain with them under the National Labor Relations Act. The Catholic Church has no moral objection to collective bargaining, but it insisted that it was entitled to control its own schools and that it need not share control with a labor union or the Labor Board. The Supreme Court agreed, concluding that Congress never intended to apply the labor laws to teachers' unions in religious schools. Because it found the labor laws inapplicable, the Court did not decide whether the constitution protects a church autonomy claim to exemption from regulation. Four dissenting justices, however, thought that the law did apply, though they agreed that to enforce it would raise a serious constitutional question.

New York applied its State Labor Relations Act to Catholic schools and was upheld by the United States Court of Appeals in 1985. Conceding that this might infringe the churches' right to free exercise of religion, the court found a compelling state interest in "the preservation of industrial peace and a sound economic order." The court did not explain how that interest was threatened by the church or why the state had any interest at all in the economic order inside a religious institution. The opinion reflects a dilution of the compelling interest test in another way. The Supreme Court first found an interest so compelling that it justified infringement of a constitutional right in 1944—it relied on the government's interest in defending against a feared invasion. The Court did not

find another compelling interest for decades. But the test has gradually been weakened and every government agency now argues that its program serves a compelling interest. The casual acceptance of that argument in New York suggests an increasing danger that any reasonable government program may be held by the courts to serve a compelling interest.

The state court and the lower federal courts have decided many other church autonomy claims. Claims of church autonomy have been most successful in cases involving the most religiously central church activities—the church itself and its relations with its clergy. There have been dozens of cases in which religious schools have challenged state licensing, curriculum and teacher certification requirements. Regulatory authorities have won most of these, though a few state courts have granted autonomy exemptions. Autonomy claims on behalf of church agencies such as day care centers, orphanages, social service agencies and publishing houses have been notably less successful. In many of these cases, the government takes the threatening position that the church agency is not performing a religious function because secular agencies could and do perform similar services. This position clearly assumes government authority to define the scope of the church’s mission. No clearer risk to church autonomy and free exercise could be imagined.

j. *Free Exercise in Public Life*

(1) *Religious Participation in Public Affairs*

Those who attack the right of churches to participate in politics simply misunderstand the First Amendment; they have been misled by the metaphor of separation of church and state. The word “separation” does not appear in the First Amendment. That amendment forbids the state from trying to influence the church, either by helping (establishment clause) or hindering (free exercise clause). But it says nothing special about efforts by the church to influence the state. Such efforts are constitutionally protected, just like any other efforts to influence the state by private groups in a democracy.

The right of the faithful to participate in public life and to apply their moral and religious beliefs to political issues is firmly established in Supreme Court decisions. States cannot bar the clergy from holding public office, *McDaniel v. Paty* (1978), and laws do not establish religion merely because they coincide with the moral teachings of a religion and were supported by that religion’s adherents, *Harris v. McRae* (1980); *McGowan v. Maryland* (1961). There are recurring political attacks on religious participation in public life, but these attacks have no basis in the case law, and they ignore the historic role of churches on such issues as slavery, prohibition, pornography, civil rights, peace, and social justice.

The right of the church as an entity to participate in political debate is equally clear in principle. However, that right is restricted by the Internal Revenue Code, which limits the political activities of tax-exempt organizations.

Those limitations and their chilling effort on the free exercise of religion, as well as pertinent court decisions, are discussed in the section on the tax status of churches and the policy statement.

(2) *Religious Expression in Public Places*

Analysis of issues and cases concerning religious expression in public places is greatly facilitated if one essential factor is kept clearly in mind: the difference between government initiation and sponsorship and private initiation and sponsorship. The City Council may not call or conduct a prayer service for peace in the City Plaza. The First Presbyterian Church can (and a Presbyterian city councilwoman can) offer a prayer.

The establishment clause clearly means that government may not endorse or promote religion. The Supreme Court has so held in important contexts. It has held that ministers may not teach sectarian religion in the public schools in *McCullum v. Board of Education* (1948), and that public school teachers may not lead the class in prayer or Bible reading in *Wallace v. Jaffree* (1985), *Abington School District v. Schempp* (1963), and *Engel v. Vitale* (1962).

A substantial part of the population has never accepted the legitimacy of these decisions, and there have been continuing efforts to reverse or attenuate them. In 1980, the Court invalidated a Kentucky statute that permitted public schools to post privately donated copies of the Ten Commandments in classrooms (*Stone v. Graham*). In 1982, the Court summarily affirmed the ruling of the Court of Appeals striking down a Louisiana statute authorizing teachers to ask for volunteers to lead prayer, or voluntarily lead the prayer if no student did (*Karen B. v. Treen*). In 1985, the Court invalidated an Alabama law authorizing teachers to announce “that a period of silence not to exceed one minute in duration shall be observed for meditation or voluntary prayer” (*Wallace v. Jaffree*). In all these instances, the Court saw state endorsement or sponsorship of religion.

Cases on government-sponsored prayer are sometimes confused with cases on private prayer in public places. The Supreme Court has held that student prayer groups must be allowed to meet on college campuses on the same terms as other groups (*Widmar v. Vincent*, 1981). Application of this principle to high schools has been controversial, and lower courts have been reluctant to extend it, citing differences between the college and the high school as well as in the presumed “impressionability” of their students. The Supreme Court decided the one case that had reached it (*Bender v. Williamsport Area School District*, 1986) on procedural grounds, leaving the substantive issue unclear. Congress has passed an Equal Access Act which would give religious expression equal access if high schools create an extracurricular open forum for student-initiated activities. When one of the new cases now in the lower courts reaches the Supreme Court, a more definitive judgment should eventuate.

The continuous controversy over government-sponsored religious observance is part of a very old debate about multiple, or “nonpreferential,” establishments. Some have thought it permissible for government to support religion generically, or even Christianity generically, so long as it does not coerce religious minorities or prefer one denomination over others. Nonpreferential aid to religion was rejected in the intellectually formative debates on disestablishment in Virginia in 1784–86. The First Congress rejected drafts of the establishment clause that would have permitted nonpreferential aid. The claim that the establishment clause permits nonpreferential aid has been repeatedly rejected by the Supreme Court, but it has continuing support among many citizens, and it is the current position of the Department of Justice.

Although the Supreme Court has repeatedly rejected the principle of “nonpreferential” support of religion, it has not been thoroughly consistent in applying it. The Court has avoided passing on baccalaureate services and Christmas assemblies in public schools, though they appear irreconcilable with the decisions in the prayer cases. The Eighth Circuit Court of Appeals approved Christmas programs with religious symbols and Christmas carols, but it forbade more intensely religious dimensions such as a set of questions about the baby Jesus. The Supreme Court declined to review the decision (*Florey v. Sioux Falls School District*, 1981).

The Supreme Court has permitted state-sponsored prayer or religious observance in contexts other than schools. Thus, it allowed states to hire legislative chaplains to open each day of a legislative session with prayer (*Marsh v. Chambers*, 1983). And it permitted municipal Nativity displays, at least one that was part of a larger display including Santa Claus, reindeer, and the like (*Lynch v. Donnelly*, 1984). The Court has cited a variety of rationales in these decisions: long historical usage; the impossibility of a single test for what support of religion was permitted and what forbidden; and the “secular purpose” of a creche in depicting “the historical origins of this traditional event.” But it has made no comparative references to its rationale in deciding the school prayer cases. The Court’s position may be that some government support for majoritarian religion is permissible if it is non-coercive, sanctioned by long usage, and generally outside the public schools.

APPENDIX A

PROPOSED 1938 REVISION OF THE WESTMINSTER CONFESSION

Approved by the 150th General Asseble (1938) of the Presbyterian Church U.S.A. and sent to the presbyteries for action. The vote reported to the 1939 General Assembly was 168 affirmative; 65 negative; 12 no action.

Chapter XXIII Of Civil Government

I. Civil government is a divinely appointed order in human society. Its ultimate authority does not reside in itself, but is derived from God, whose servant it is to promote order, peace and justice in a world of sin and change. It may not assume the functions of

religion. It must grant equal rights to every religious group, showing no favor and granting no power to one above another. In the exercise of its function government must minister to the common good, by the enactment and administration of just laws, and by the positive pursuit of that which pertains to the temporal welfare. Likewise it must restrain evil, discipline wrongdoers, and protect civil and religious liberties. It is the duty of every government, under God, to pursue understanding and concord with other governments, having concern for the welfare of all nations and the peace of mankind under the reign of righteous law.

II. Civil government has the right to require loyalty and obedience of its citizens, but may not require of them that allegiance which belongs to God alone. It must recognize the inherent liberty of the Church to determine its faith and creed, to maintain public and private worship, preaching and teaching, and to hold public and private religious and ecclesiastical assemblies. It must recognize the right of the Church to determine the nature of its government and the qualifications of its ministers and members; to control the training of its ministers; to provide for the education of its youth and adult members, and for the nurture of their religious life; to render Christian service and to carry on missionary activity both at home and abroad. It must recognize the right of each communion of the Church to relate itself freely to other communions within the Church Universal. For the attainment of all such ends, the Church has the right to employ the facilities guaranteed to all citizens and associations; but it must not use violent or coercive measures for its spiritual ends, nor allow their use on its behalf.

III. It is the duty of the Church to pray for the government and for the people to whom it pertains; to uphold the civil and religious liberties of all citizens; to support the policies of the government when they are in accord with the standards of righteousness revealed in the Word of God and to bear witness against such policies as depart from these standards. The Church must exemplify among its own members the true meaning of a Christian society.

The Church must educate its members as Christian citizens, cultivating within them a conscience sensitive to all forms of oppression, injustice and social maladjustment, and inspiring them to bring about their correction.

The Church must quicken and instruct the public conscience. To this end it is its bounden duty to assert the value and dignity of every man, woman and child made in the image of God, without any discrimination; and to awaken a sense of responsibility for the sick and those in prison, for the poor and those without a helper.

IV. It is the duty of Christian citizens to give loyalty and obedience to the government, save in cases where such loyalty and obedience would be clearly contrary to the command of God.

It is the right and duty of Christians to hold public office when called thereto, and to continue therein so long as conscience permits. In the discharge of their offices they are under especial obligation to exemplify their Christian calling.

It is the duty of Christian citizens to work for the increasing realization, in the policies of government and in social relations, of the ideal for human life revealed in the Word of God.

V. It is the duty of Church and government to work for a just and peaceable ordering of human life, within each nation and in the society of nations, and for the furtherance

of desirable change without violence. Both must labor to remove those tempers and injustices which cause conflict, and to establish peace.

War, wherever it appears, is a manifestation of the power of sin in the world. It defies the righteousness of God, disrupts His worldwide family, and outrages the human personalities which Christ came to redeem. Even when war is waged with sincere purpose to restrain evil, it tends to produce greater evils than those against which it is directed. The Church, which is the Body of Christ, set in the world to preach the Gospel of Peace, must ever bear witness to this character of war. If occasions arise when the government deems it necessary to wage war. Christians, whether as private citizens or as public officers, are bound, in relation to it, to obey their consciences before God, who alone is Lord of the conscience; and the Church must recognize and uphold their duty thus to obey conscience, whatever its commands may be. Whenever war occurs the Church must be true to its nature as the Universal Christian Community, the Body of Christ, whose members, even though scattered among the contending parties, must ever preserve the unity of the Spirit in Christ, praying, laboring and suffering for one another and looking for the coming of the Kingdom of God, which is righteousness, peace and joy in the Holy Spirit.

APPENDIX B

GENERAL PROPOSITIONS USEFUL WHEN LEGAL DETERMINATION OF FIRST AMENDMENT STATUS AS “CHURCH” BECOMES NECESSARY

1. Whether the new set of ideas or beliefs attempts to confront the same concern or serve the same purpose in the lives of its adherents as that of unquestioned and accepted religions. The court may inquire into the sincerity with which the beliefs are held, including the length of time they have been called religious, the degree of commitment to the beliefs demonstrated by the adherents, and the financial gain, if any, the adherents may realize if granted recognition as a religion;

2. Whether the new set of ideas or beliefs exhibits a comprehensiveness broader in scope than a single moral precept or philosophy and purports to state an ultimate and comprehensive truth about the fundamental concerns of human existence;

3. Whether the new set of ideas or beliefs exhibits any formal external signs that may be analogized to accepted religions, such as formal services, ceremonial functions, the existence of clergy, efforts at propagation, observation of holidays and other similar manifestations associated with traditional religions. These signs are not determinative by their absence and should never serve as the primary or deciding factor.

APPENDIX C

CHURCH PARTICIPATION IN GOVERNMENT PROGRAMS

Excerpted from the Report Adopted by the 181st General Assembly (1969) of the United Presbyterian Church U.S. A.

Assumptions

1. The immense expansion of the role of government at all levels through programs on behalf of the sick, ill-educated, and poor, and the heightened sensed responsibility to human and social need in the churches have brought the problem of relating

church and state from its earlier, relatively simple and largely legal setting into a period of much greater complexity, subtlety, and responsibility.

2. The distinction between purely private and purely public agencies of health, education, and welfare is being blurred as national need increasingly demands cooperation between voluntary organizations and government. Churches should not abandon needed social services because of rigid adherence to obsolete distinctions; neither may they abandon their own just claim to religious freedom.

3. The concern for the welfare of human beings that drives church and state toward cooperation in the field of Health, Education, and Welfare, does not primarily create embarrassment or require intransigent defense of vested interest, but demands rather a singular flexibility and imaginativeness in developing instruments of cooperation that maintain the freedom and independence fundamental to both church and state while making their cooperation effective.

4. The cardinal values recognized by the church in the new church-state situation are these: churches and religion must be themselves and be free to think, teach, publish seek forms of community and take socially significant action which answer to their own religious character; religious liberty must be preserved for the sake not only of churches but of the whole people; churches and religion must be free to relate themselves supportively and cooperatively or critically and prophetically to government and other public manifestations.

5. "Separation of church and state" does not mean the divorce of religion from social and political concern, nor silence the church's social witness, nor forbid loyalty to and support of just government; it warns against the legal establishment of religion, restrictions on its free exercise, and the gradual development of organic institutional ties that fix public obligations on churches and thus erode religious liberty and tend to bring government under the influence of any or all religious groups to the disadvantage of other Americans.

6. Any private agency providing humanitarian service with public funds is subject to regulation customary for similar programs, including safety, general standards and licensing, qualifications of personnel, and financial accountability.

7. There is a distinction between cooperation between essentially independent and self-sustaining institutions, and cooperation which creates such dependence that its termination would threaten the existence or seriously alter the function of the dependence partner.

8. There is a distinction between cooperative arrangements which do not materially limit the authority or independence of judgment of the fund-receiving organization, and arrangements which tend toward a loss of autonomy.

9. There is a distinction between purely religious activities, such as the public worship of God, religious education, and evangelism, which are the interest of believers, their children, and other consenting persons; and social services conducted by church agencies for all persons regardless of religious belief. While cooperation with government must never entail any limitation of freedom of purely religious activity, in the conduct of social services church agencies should accept necessary and proper governmental regulation and supervision.

10. There is a distinction between “church control” and “church relation”. “Church-controlled” means that policies are determined by church authorities. An agency of health, education, or welfare may be church related through tradition and general social character without being church controlled. If the services rendered by such a church-related agency are offered without distinction of race, creed, or national origin, acceptance of public funds is not objectionable in principle.

11. There is an important distinction between the various legal and institutional relations of religion and government in any particular nation and religious liberty itself. Religious liberty is invariably necessary to the health of contemporary religion and modern society.

12. The United Presbyterian Church does not hold that the payment of taxes by Presbyterians or by the United Presbyterian Church creates any right whatsoever to a proportionate distribution of the total tax fund for Presbyterian enterprises. The same principle applies to all other American groups. The common tax fund is to be used at the discretion of representative government to foster the interests of the whole society.

Policies

1. It is a legitimate function and responsibility of church judicatories, agencies and institutions to identify public need neglected by government and private agencies, to devise and test programs to meet such need, and to establish temporary or permanent community agencies qualified to receive public funds to maintain necessary programs. Health, education, and welfare services ought to be initiated by the church and its agencies (a) where adequate public services are not available; (b) where available public services are insufficient or are of poor quality, or (c) where experimental programming is essential to meet or demonstrate actual need.

2. Neither through government programs of loans, grants, nor any other means should church-controlled organizations acquire title permanently to real property at the public expense. Church-controlled organizations which find it necessary to acquire real property in this way should move rapidly in the direction of autonomy.

3. It is appropriate for church-controlled social service agencies to accept public funds for operating expense only if (a) all services offered are open to the public without restriction on grounds of race, creed, or national origin; (b) all services are administered without sectarian emphasis; (c) any permanent program resulting will be removed from church control and put under the control of independent community-based bodies; (d) the program is so planned that it will revert to private support within a reasonable period when continued control by a church agency is anticipated. United Presbyterian Church participation in interdenominational organizations for humane service should be subject to the provisions of (a)–(d) above.

Cautions

1. Systematic acceptance of public funds by church-controlled religious institutions for permanent programs at best tends toward the establishment of religion and is to be avoided, irrespective of the purpose, scope, or type of service rendered.

2. During a period of transition from church-control to autonomy, a presently church-controlled agency receiving public funds may never under any circumstances divert them either to advocacy of, or attack upon any particular religion, or religion in

general, either directly or indirectly through such policies as “budget equalization.” For example, costs of constructing and/or maintaining a religious facility in publicly aided hospital, school, home for the aged, etc., should be borne privately through proration of the cost.

3. Church-related agencies should not be drawn into programs of health, education, and welfare, or accept support for expansion of existing programs which limit or might foreseeably limit the development of more adequate and extensive services by government.

4. Since the church is committed in its social mission to reach all social and economic classes, races, and nationalities, the church must be wary lest the availability of public funds determine mission strategy, either directly or indirectly.

5. Contracts between government and independent agencies established in consequence of church initiatives should provide so far as possible for full financing, including such indirect, hidden, and anticipated disallowance costs as usually characterize such operations.

6. American concepts of church-state relations should not be imposed by American church agencies on sister churches in other lands. However, the experienced historical need of the Christian church for religious liberty should be steadily affirmed.

7. Judicatories of the United Presbyterian Church are strongly urged not to enter into governmental contracts or commit themselves to long-term programs involving legal and/or financial obligations to government without consultation with the next higher judicatory. Judicatories and institutions are reminded of counsel available to them from boards and agencies concerning the implications for developing relations of church and government in the United States or the relevant nation.

APPENDIX D

CONVICTIONS ABOUT THE TAXATION AND TAX EXEMPTION OF RELIGIOUS BODIES

Adopted by the 110th General Assembly (1970) of the Presbyterian Church U.S.

[The recommendations of the 200th General Assembly (1988) of the Presbyterian Church (U.S.A.) deal with the issue of service charges and voluntary contributions in lieu of taxes in a slightly different way. The public disclosure recommended in #6 below could not properly be at government requirement under the policy of the 200th General Assembly (1988).]

1. The church has no adequate theological grounds for laying claims on the state for special privileges. The church exists to serve, not to be served. Therefore, the church should neither seek nor accept a special status or favored position. Any exemptions granted exclusively or almost exclusively to churches should be abolished.

2. Discrimination against churches in governmental taxation would be just as improper as discrimination in favor of churches. Therefore, where governments, for any reason of public policy, create or recognize a general category of nonprofit charitable organizations for purposes of tax exemption, churches ought to be included in such a general category in recognition of their contributions to the common good. There is no reason to deny schools, hospitals, children’s homes, and other charities owned and oper-

ated by churches the same tax treatment they would receive if they were owned and operated the same way by some other private agency.

3. It is good policy for the state through its tax laws to encourage contributions to voluntary, nonprofit organizations of a charitable, health, educational, or religious character. It is in the public interest to have strong organizations of this sort, both because of their positive contributions to the common good, and to avoid total reliance upon governmental agencies for public services. Therefore, we favor the continuation of laws allowing tax deductions for contributions for eleemosynary purposes, including religious purposes, although we recognize the right of governments to limit the deductions allowed.

4. The general public should not bear for religious or other private institutions their cost to the government. Therefore, it is proper for local governments to levy upon churches and other private institutions nondiscriminatory charges for municipal services such as water, sewage, police, and fire protection. Until such charges are levied, churches and church-related institutions ought to make voluntary contributions in lieu of taxation for services received in connection with all of their real property.

5. Ministers of the gospel should be subject to the same tax regulations as other citizens. We see no justification for either preferential treatment for them or discrimination against them.

6. Churches and church agencies ought to make available to the public full information regarding their income and expenditures, assets and liabilities.