

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

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

**REPORT OF THE CHURCH/STATE SUBCOMMITTEE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>3</sup> *Ibid.*, pp. 144,145

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

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

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

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

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

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

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

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Ibid., pp. 59,60.

Ibid., p. 31.

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

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

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

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

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

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

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6 Ibid., p. 66.

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

8 Ibid., p. 84.

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

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

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

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

### II. Historical Background of our Contemporary Church/State Context

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>14</sup> Cord, op. cit, p. 109.

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

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

The Everson case would seem to be merely one illustration of a radically different principle of interpretation of the U.S. Constitution on the part of the Supreme Court. Contemporary legal scholars such as Professors Herbert W. Titus<sup>16</sup> and John Brabner-Smith<sup>17</sup> have argued that much of the increasing restriction on church and religious freedom since the time of Everson by the American judiciary is the end result of an evolutionary view of law and language according to which "constitutional language is fluid and malleable" rather than of absolute and fixed meaning, so that the Court can shift its interpretations of the First Amendment to fit the perceived contemporary political consensus of the national majority. This leads us to our third major section.

### III. Current Church/State Problems and Possible Christian Responses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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