

The Relationship of Government to the Institutional Church

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Vital, but difficult

Pictographic frustration

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Introduction

In Jesus' name, dear fellow laborers in the Kingdom of our Lord!

"If there be any among us who wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it." (Commager, p. 187) These assurances spoken at Thomas Jefferson's first inauguration expressed a basic attitude of our infant nation. We were determined here within this plot of land to preserve freedom of expression from government interference. In a republican nation, abuse of the right to free speech would be checked by the people's own right to choose and to speak out against abuse.

Would it work? Timothy Dwight, President of Yale, predicted that if Jefferson were elected, we would experience the triumph of atheism. "The Bible would be cast in the bonfire," he foresaw, "our wives and daughters dishonored as in the Jacobin frenzy in France and our sons converted into the disciples of Voltaire." All heaved a sigh of relief, when Jefferson spoke the above words. The freedoms guaranteed in the Bill of Rights would hold. What is more, time would prove that freedom of speech as such would not promote atheism. Left free, the church would make its way among many in the nation by preaching, teaching, exhorting, and comforting. There would be no established religion. Yet churches would be established in various denominations. The form of religious liberty called separation of church and state was a keystone in the framework of our government.

And right there lies our problem. How do we perceive of the relationship of the government to the institutional church? The debate over the question has proven endless. Because it reaches into the areas of our political life and, at the same time, into the sacred, precincts of faith, the question is most difficult and touchy. To be quite frank, when I received the invitation to speak on this topic of church-state relations, I felt about as anxious as the man who, faced with an almost insurmountable task, blurted out, "So I took the bull by the tail and looked him straight in the eye." In wrestling with a problem of this size, we will take the more humble position of the historian, and the even more modest part of a teacher of God's Word. We will expose the relationship of corporate government and corporate church to the spotlight of past action and put it to the test of God's Word. Under God's blessing, our goal will be to deepen our appreciation for the benefits we have received from our country in the past two-hundred years, to broaden our understanding of the Biblical and political side of the church-state question, to sharpen our intent to keep alert to all developments in this vital area, and as God wills, to be moved to seize the opportunity we have to preach the Gospel, as one who has been given a precious moment in time.

The difficulty of the assignment lies in our initial impressions. To crystallize the problem before discussing it, I have in the past invited classes to make a drawing of church-state relations by using two circles for the two realms. The practice of using interpretive models demonstrated the differences in perception. Almost invariably and predictably the models came out in one of three forms. Some drew the two circles side by side, either entirely separate or touching one another but not crossing. The simple idea of church-state separation was reinforced by that design. But the paradigm had its own difficulties. Christians don't live only in the church. They also live in the state.

The second form depicted the intersection of the two circles, using spheres of various sizes. When asked to explain, the student interpreted the area of intersection as the place of Christian activity in the world. But the impression was left that Christians led distinct double lives, moving from church to state along a narrow line of demarcation. The third form, as you have already guessed, put the church as a small circle within the larger sphere of the state. For the majority this illustration seemed the most satisfying. Here the Christian was in the world, but not of the world. He had access to the state and could influence it. But the one-sided impression remained, that the church was a commune isolated within the state. Many felt that a geometric model with its three-dimensional form would help to illustrate the complexity of the problem. And that would have been cybernetic representation at its best.

But in the end all proved to be a pictographic frustration. When we came to discuss the problem of church-state relations, the questions of life were not so easily framed. While the exercise had highlighted the

problem, it only went to prove that scientific investigation has its limitations. Life is shaped by other things than structures. There are motives and attitudes so deep that only the Word of God is able to expose them. There are human affairs so elusive that they are best seen on the backdrop of the past.

In the midst of all, God rules. He exercises His authority over nations, institutions, and individuals with His right hand and with His left. With His left hand He preserves all life according to His eternal will and purpose. This is His kingdom of power. With His right hand He has redeemed the world and leads His children to eternal life with the care of a true Father. This is His kingdom of grace. Despite our frustrations with the problems of life, He has not left us without witness of His will or guidance for our lives. So we turn to His Word for help with our question.

I. The distinction of the two realms: the Biblical perspective

We search in vain for reference to the relationship of the institutional church to government in the Scriptures. The reasons are not hard to find. The New Testament church after, the theocracy of Israel did not assume a legal status. Christ's rule was the rule of the Gospel. He did not establish a kingdom with legal rights. "My kingdom is not of this world," the Prisoner declared to Pilate. (Jn. 18:36) And with those words two kingdoms were rent in twain. Jesus' rule was in the hearts of men. By laying hold of their faith, He laid hold on their minds. Followers of Jesus were admonished to live according to the mind of Christ. "Let this mind be in you which was also in Christ Jesus," the Apostle Paul declared (Phil. 2:5), and then pointed to the all-encompassing new attitude which results when one becomes a new creation in Christ. The Christian way is the way of service to mankind under the lordship of Christ. Even the newly-founded Christian congregations, dotted throughout the Roman world, did not legally incorporate under the Roman state, though individuals made use of their Roman citizenship. Each assembly of Christians, be they two or three gathered in Jesus' name, was well aware of the greater rule they were under: "Jesus is Lord!" This faith they confessed and proclaimed. By this faith the church was known. (Phil. 2:6-11)

Did the rule of Christ, then, eliminate the Roman rule for believers? If Christ was Lord, was Caesar their lord also? That seemed as perplexing a problem then, as it does to us now. For the answer was 'yes' and 'no.' There was no getting around the fact that Caesar was ruler of the empire. It was within his power to regulate the fate of individuals and nations. Under this authority Jesus was enrolled at birth, lived, and was put to death. Under the same authority Christians led their lives.

But in the long run, Caesar's rule was limited. It was bodily, external, temporal. The emperor at Rome had no power over the eternal destiny of his subjects. He could demand their allegiance, but he could not command their faith. Human authority was necessary to preserve life-together in this world. And God instituted it for that purpose. But a higher power still overruled its efforts. Yes, Caesar was lord, to be obeyed in matters of state. But, no! Jesus was Lord to be obeyed in all things. So what was the key to conflicting loyalties? It lay in the distinction of the two realms.

None of us is able to grasp the apparent conflict between the 'yes' and the 'no' of church-state relations without seeing behind and above the work of each the superior struggle between God and Satan. In this respect the third chapter of Genesis is a microcosm of world history. There are superior forces at work to subvert every institutional order among men. The Apostle John describes this cosmic chaos by confessing that Christians know "the whole world is under the control of the evil one" (I Jn. 5:19). John elaborates further on the revolt against God:

And there was a war in heaven. Michael and the angels fought against the dragon, and the dragon and his angels fought back. But he was not strong enough, and they lost their place in heaven. The great dragon was hurled down -- that ancient serpent called the devil or Satan, who leads the whole world astray. He was hurled to earth, and his angels with him. (Rev. 12:7-9 NIV)

What wonder the early Christians made 'renunciation' an essential part of their baptism confession: "I renounce the Devil together with his wicked works and wicked ways."

From this vantage point we can begin to understand the institution of government. God established the power of the sword on earth to hold those demoniac forces in check. The state operates within the realm of good and evil, -- within the moral realm, as Paul carries out in Roman 13. It has its authority from God to promote the good and to resist what is evil. Its tools are reason and law. It calls upon conscience, as the witness of God's law written in the heart, to carry out its difficult task. The secret of its success among the peoples lies in tempering law with justice. When rulers promote civic righteousness among men, they fulfill God's purposes in establishing government best. When the state punishes the evildoer, it acts in God's stead. "Therefore, it is necessary to submit to the authorities, not only because of possible punishment but also because of conscience. Paul says, and then concludes "This is also why you pay taxes, for the authorities are God's servants, who give their full time to governing" (Romans 13: 5-6 NIV).

But God has established another power to deal with Satan which transcends state authority. God sent His Son into the world not to check the forces of evil, but to rout them. The far-reaching consequences of Christ's work places the church's realm of concern beyond that of good and evil. The church deals with the questions of sin and grace. By the Spirit of God, the church preaches the righteousness of faith that will stand the test of time in God's presence.. Its tool is the Holy Gospel of the glory and grace of God. Its message is so wonderful that no review of a nation's history would be complete without it.

As God sent from God, Christ suffered and died to free the world from the bondage to law. Through faith in Him, Christians in deed and in truth share His lordship. We are free from the demons' power, from sin, from death, and from the strictures of law. But living in this present world, we will not use our Christian liberty to despise the worldly power. Precisely because we are free, we are able gladly and willingly to submit to that authority which we are no longer bound to serve.

The Pharisees could never understand such a gospel. They resented the merciful dealing of Jesus. He was breaking down the Jewish national tradition by re-interpreting the Law. "Blessed are the meek; turn the other cheek, walk the extra mile," -- that was giving in to the sinful world, not avoiding it. Where did Jesus stand on relations with Rome, with Moses or with Caesar? They had the perfect case to test Him. The question was about taxes. What about paying tribute money to Caesar, is it right or wrong? Jesus did not fall into the trap that was set. It was no either-or question for Him. Instead He rose above the Pharisees' concern and replied, "Give to Caesar what is Caesar's, and to God what is God's" (Matt. 22:21). Was Jesus dodging the issue? By no means. Knowing the Pharisees' interests, He took the opportunity to teach them the rights of government as God wanted them. He did not intend to establish the principle of separating church from state.

He had opportunity to explain the relationship of the two on another occasion. It happened this way. Temple tax-collectors took Peter aside one day. They asked whether Jesus paid His tribute money. The question bothered Peter. Should the tax be paid, if Jesus had come to free His people from the Law? "What do you think, Simon," Jesus asked. "Kings collect tax money. Do they collect it from their own children or from others?" To the obvious answer that others pay, Jesus added the conclusion, "Then the children are exempt." (Matt. 17:24-27)

The application did not have to be made. Peter had just recently witnessed the transfiguration of Jesus. "This is My beloved Son:" the Father had said in a voice from heaven. And now, as in the story, the Son was claiming the Father's rights, -freedom, freedom from the Law, freedom from the tax burden. Now Peter understood. The life under Christ was truly a life of freedom! But the lesson of freedom and faith was only beginning. Jesus told Peter that the tax should be paid anyway. He should pay it out of love for others who were still under the law.

In all His teaching and action Jesus did not aim to overthrow secular authority in any way, but to support it. He worked to rescue all creation from the superior forces of sin, death, and the devil. By His work, the good news of salvation was distinct and different from the exercise of legal power. The realm of the church remains distinct from the realm of the state. But the two are not to be in conflict. Under God, the one is limited to this world which will pass. Its importance lies in meting out justice and preserving stability in a chaotic world. By

doing this well, it serves the other. For the other realm has an eternal purpose and waits for an age still to come. Yet in its pilgrim life on earth, the church also enjoys the blessing of government and supports this authority within its realm. So the independent function of both realms and their interdependence are derived from the self-same God. Only by His Word can the two realms be rightly distinguished.

But why this review of the Biblical teaching concerning church and state? There is nothing new here; this is true. But the Christian view of the church as an institution distinct from the government must never be taken for granted. For the critical question still remains for us who live in this century. What happens when the church gets legal rights? Does the legal incorporation of the church within the state bring about a false relationship? Does that step endanger or even destroy the work of Christ? These are searching questions, and they deserve our attention for a moment. They lie at the very heart of the topic we are discussing today: the relationship of government to the institutional church. For as we all know, properly speaking, the church is not an institution in a worldly sense. It is, as our Confessions state, "The assembly of all believers among whom the Gospel is preached in its purity and the holy sacraments are administered according to the Gospel'" (CA VI). There are no 'ja-buts' concerning this truth in Scripture. The church is and remains to all eternity the one holy church, the *una sancta*.

That the church is not without some kind of form in this world is another matter. In this area, we have no institution of Christ. We are left free. Yet the church needs outward forms in its present existence precisely because it is in the world, not in heaven. Although the true church, whole and undivided, lives by faith in the Word and promises of God, it still goes about its daily tasks in the here and now. In His High Priestly prayer Jesus reflects on the church in the world, and the seeming conflict between its faith, which separates believers from the world, and its life, which unites believers with the world. "My prayer is not that you take them out of the world but that you protect them from the evil one. They are not of the world, even as I am not of it" (Jn. 17:15 f, NIV). In a similar manner Paul's admonitions to the Corinthian brethren recognized the tension of Christians living in the present world, yet not conforming to it. He writes to them: "What I mean, brothers, is that the time is short. From now on ...those who use the things of the world, (should use them) as if not engrossed in them. For this world in its present form is passing away" (1 Cor. 7:29,31 NIV). Thus in its present condition the church needs outward forms.

In the light of this truth, does the church harm its relationship to the state by becoming an institution under the laws of the state? (It's hard for us even to think of the church without government recognition!) The question is vital. If the church remains committed to preaching the Gospel as Jesus wanted it preached, there should be no problem as far as the church is concerned. Nor does achieving legal status itself cause a difficulty. Biblically speaking, the work of the church remains church and the operation of the state remains state. But incorporation forms the basis for a legal, not a Biblical, relationship. We do well to remember this. The church now operates with legal privileges from the state. In this new form, the temptation of the state to function as church or the danger of the church to become a worldly power is great. The history of the church from Constantine to Luther illustrates the point.

Prior to the coming of Constantine as Roman emperor, the infant church suffered much. In the dark days of persecution, Christians were ordered to sacrifice before the picture of Caesar and to say, "Caesar is lord; let Christ be accursed!" If they failed to do this, they were killed. But when Constantine was converted to the Christian faith, times changed. The Christian church achieved legal status. The emperor wished to unite the empire under its confession. Its privileges included the right to acquire and hold property and to be exempt from taxation. These rights were of great importance for the future of church-state relations, as they are to this very day. So the church's incorporation before law was assured.

The real tragedy of the next thousand years, as far as the church was concerned, did not lie in the tension between princely and priestly rule. Its catastrophe occurred in the gradual, at times almost unnoticeable, mixing together of the two realms. The end result was the practical elimination of the distinction between the functions of church and state. Secular rulers began to exercise spiritual power. At the same time, church authorities began to rule like princes. The Pope at Rome laid claim to a triple crown: bishop of the church, vice-regent of the Lord on earth, and ruler over the angels in heaven. The Gospel was lost in churchly ambition. Under the new legal

framework, church and state got mixed up. For church and state are falsely commingled, when the church tries to exercise Christ's rule with the law, or when government tries to carry out its function with the Gospel. It remained for the man of God, Martin Luther, to re-assert the Biblical distinction of the two realms. He called for a reformation of the church on the basis of God's Word. But significantly for the future history of the church, he did not call for the elimination of the church's legal status. That was not the real problem. At issue was the Gospel of freedom in Christ. The genius of the Reformation insight lay in the return to the Biblical doctrine of the struggle between God and Satan, between Christ and Anti-Christ, within which the rule of church and state takes place. The state itself was not the devil's creation. And even though it might act in a demoniac way, it was still a creation of God to be obeyed within its realm.

Did Luther really get at the problem? There were those who disagreed. The church did not need a reformation in teaching, they felt, but a complete overhaul. The radical solution was a return to the non-legal status. Away with tax exemption and the right to acquire and hold property: One could not distinguish secular from sacred rule. Both were worldly powers. Distinctions are the devil's tool. Government is evil. Those who come under the lordship of Christ no longer need it. Christians live a separate existence and are not to serve as soldiers or swear oaths. By such commitments, the radicals had in effect, created a church society isolated from the evil world. But church and state are falsely separated, when life in the state is no longer a field of action for Christian love and charity in dealing with evil in life.

Was there no chance that government could live with the institutional church in a better relationship, without violating the Biblical distinction between them? Even more critically, could this be done within the legal framework of the state? Could the church, incorporated as an institution, live together with the state in harmony? An answer was to come from the new world. It was to be worked out on the background of the bitter experiences of the religious wars and religious intolerance in Europe.

II. Religious freedom: a political principle and privilege

The new solution was to be found in the Constitution of the United States of America. The breakthrough came with the concept of religious liberty, set forth in the so-called religion clauses and found in the First Amendment and Article VI of the Constitution. The First Amendment reads, in part: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." In the body of the Constitution, Article VI says: "No religious test shall ever be required as a qualification to any office of public trust under the United States." The issue of religious liberty is always interpreted on the basis of one of these points. In this country, churches can legally exist within the framework of government. They continue to enjoy the Constantinian privileges to hold and acquire property and to be tax exempt. But the separation of church and state was also guaranteed as a political principle and privilege. This means that Americans can follow the dictates of their consciences in matters of religion, and no group can dictate religious beliefs to any other group or individual.

It is interesting to note, in passing, that the phrase 'separation of church and state' nowhere appears in the Constitution or the Bill of Rights. For that matter, the words 'church' and 'state' can not be found anywhere in the original charter. The expression that has become so fixed in our everyday speech was first coined in American usage by Roger Williams and then adopted by Thomas Jefferson. In his famous letter to the Danbury Baptist Association ten years after the adoption of the First Amendment, Jefferson wrote:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers or government reach actions only, not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting the establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between church and state.

Jefferson's 'wall of separation' was to become famous as the metaphor with which religious liberty could be described. Americans generally became convinced that this was the best form of church-state relations. For it guaranteed -- and this was the important matter in the beginning! -- that the church could not encroach on the rights of citizens. Contrary to expectations, history would prove that dis-establishment of the church would not destroy churchly activity. The church, or in the American sense, 'churches' prospered under the new relationship.

Was our frame of government truly the best solution? C.F.W. Walther, leader of the Missouri Synod in its infancy, had ambivalent feelings. He honored the American government for the religious freedom it gave the Christian church and citizens. But at the same time he "rejected the moral assumptions of the American political philosophy" as foreign to Christian theology (in Huegli, p. 142). In a sermon on the Pharisees and the tribute-money, Walther maintained, that Christianity is tied to no political form of government. Christ is Lord in both a monarchy and a free republic because His kingdom is not of this world, but in the hearts of men.

Thus even under the new form of government, the tension between church and state was not entirely relieved. For the most part, it was turned inward. The success of the American experiment would depend on the ability to maintain legal safeguards against encroachment on one another's realm. The church was not to become politicized, though its corporate rights under the Constitution needed to be defended. The state was to rule with civil righteousness, and not with the righteousness of Christ. To maintain this separation was, and is, no easy task.

Lest by this time someone is thinking we are listening to mere theory, let us get down to brass tacks and test the theory in practice. To do so, we need to look at the action where it comes to its most crystallized form, -- in the Supreme Court. Under our government, the Supreme Court is charged with protecting the concept of religious liberty and to interpret the religion clauses of the Constitution. There is the awesome responsibility of maintaining a political principle in the midst of new and changing situations. Like the Roman god Janus, the Court has two faces. It feels compelled to look back over the accumulated wisdom of past generations and at the same time, to look ahead to the form of just action which lies right over the horizon in the future.

In the history of the Court's interpretation of religious freedom, Jefferson's picture of the 'wall of separation' has played a major role. For a century and a half, covering the major immigration phase of our two-hundred year's existence, any major challenge to the First Amendment 'establishment of religion' clause has been settled by shoring up the wall rather than building bridges. The European experience was still fresh in the immigrant nation's mind. The Court first incorporated the wall metaphor into our constitutional history in the Reynold's opinion of 1879. From that time on the term 'separation of church and state' became part of our national heritage. Citing Jefferson, the Justices affirmed that you can 'believe' anything you want to or entertain any idea intellectually. Once the belief is translated into action, however, you are subject to the police powers of government. At issue in this case was polygamy. Reynolds was a Mormon and questioned whether federal statutes regarding polygamy applied to him because of his faith. The Court ruled against him because polygamy was detrimental to the general welfare of society. Thus Jefferson's wall was invoked on the side of state law over against religious encroachment.

Not until sixty years later was the wall of separation more precisely defined. In the landmark case of Everson vs. the Board of Control (1947), the Supreme Court applied the 'wall' picture to the broadest area of church-state contact, -- education. The case, as many will recall, involved the busing of parochial students. Everson deemed unconstitutional a New Jersey law authorizing local school boards to reimburse parents whose children were bused to schools of the Roman Catholic Church. For the first time the 'establishment clause' was carefully scrutinized by the Court. It ruled that public subsidies for busing students to parochial schools was not unconstitutional. The simple logic was that money was given to the parents, not to the schools themselves. Hence the state is not supporting the schools, but is interested in a program to help its citizens get safely and expeditiously to and from school without regard to their religious faith. Justice Black wrote:

The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. (Everson vs. Board of Education)

The next year, 1948, the Justices used the theory of separation to strike down a 'released time' program in the state of Illinois. For the first time, the situation was now reversed. Legislation of the state itself was held in violation of religious freedom. The Illinois' plan had made it possible for students to get religious instruction on school time and on school property. Justice Frankfurter wrote:

Separation means separation, not something less. Jefferson's metaphor in describing the relation between Church and State speaks of a "wall of separation," not a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out devious forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. (McCollum vs. Board of Education.)

Despite the rhetoric, cracks began to appear in the wall. The Illinois' released-time case is significant, if for no other reason than that it signaled a change in the history of Constitutional interpretation with regard to the principle of religious liberty. The 'religion clauses' had been set into the Constitution to get away from the powers of national or regional churches. Now the shoe was on the other foot. The state was asking itself how far its responsibilities went for the welfare of its citizens. The pressures were coming from within government itself. The income tax had given government a role unparalleled in our nation's history. In the next years the state would have to weigh how far it could go with its programs and policies without damaging the Constitutional guarantees concerning religious freedom.

Justice Jackson already sensed the problem in the minority opinion on the Illinois' case. He suggested that released-time programs and circumstances would vary widely and would finally turn the Supreme Court into a kind of 'super board of education' for every school district. The Court, Jackson said, must find some other figure that would work better than the 'wall.' Otherwise they were, he said, "likely to make the legal 'wall of separation between church and state,' as winding as the famous serpentine wall designed by Mr. Jefferson for the University he founded."

His predictions rang true. A few years later, 'released time' was again on the agenda in a case from New York. It involved permission to give religious instruction during school hours, but off school property. Under these new circumstances, the Court modified its former interpretation. It stated: "The First Amendment..., does not say that in every and all respects there shall be a separation of Church and State." If the wall of separation were rigidly held in every situation, "municipalities would not be permitted to render police or fire protection to religious groups." The wall metaphor was losing its usefulness because of the complexity of the national life. A new concept was needed to help explain the church-state relationship.

Why was 'separation of church and state' not good terminology? The phrase, first of all it was agreed, does not appear anywhere in the Constitution. 'Church' and 'state' are two words that fit the European situation better than ours. The United States is not a 'state' in their sense, nor is there any one unit we can point to as 'the church.' Our churches are voluntary societies whose memberships are fluid. Secondly, the wall of separation conveys a sense of hostility. This does not really describe what actually happens in America. There is a great deal of unofficial exchange between government and the church. So the phrase is not flexible enough to include the kaleidoscopic quality of American religion. A happier expression was needed to express the real relationship. The Court hit on the concept of neutrality.

The doctrine of neutrality was not entirely new. It came to prominence, however, in the 1960's with the Bible reading and Lord's Prayer cases. The problem involved the place of religion in public education and public institutions. And it proved to be particularly sticky. Public response was sharp. Members of Congress were ready to pass a Constitutional amendment to make prayer in public schools permissible. The state was not godless or amoral, it was argued, as references to God in the pledge of allegiance and on our coin proved.

Throughout the debate, the Supreme Court held to the position of neutrality. They argued that religion has been able to keep its exalted place in American life precisely because the transactions of religion have been performed in:

the home, the church and the inviolate citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel In the relationship between man and religion, the State is firmly committed to a position of neutrality. (374 U.S. 226)

Many were not satisfied with this position of neutrality. They contended the Court was, in fact, establishing a religion of secularism. The Court replied:

We agree of course that the State may not establish a "religion of secularism" ..., thus "preferring those who believe in no religion over those who do believe."... (But) one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. (375 U.S.225)

Strict neutrality was interpreted to mean that one could not teach religion in a public school, but one could teach about religion.

The significant turn-about in the last decade, therefore, was the adoption of a more pragmatic approach to the relationship of government to the institutional church. The Court was less interested in legal theory and more concerned that fair treatment be given the citizen. Therefore, the wall metaphor was dropped and the concept of neutrality adopted. It seemed more flexible and resilient.

In 1970, our present Chief Justice, Burger, introduced still another term to describe church-state relations. In his first major opinion on the matter, he said, "No perfect or absolute separation is really possible; the very existence of the Religion Clauses is an involvement of sorts -- one which seeks to make boundaries to avoid excessive entanglement." Thus the concept of entanglement has become the eye of the storm today. The term 'excessive entanglement' is especially loaded, since the debate over the last years involves tax exemption of churches and tax grants to church institutions. In the broadest context, the Constantinian rights of property ownership and tax privilege, which have come down to us under Roman law, are under fire. With the growth of tax-exempt holding in the churches, people have pointed to abuses. This was true in traditional churches as well as in the smaller and growing cults. In the middle of the debate, the Supreme Court held to the position of avoiding excessive entanglement. Burger pointed out that "the grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state." But then he warned that the matter was one of degree saying:

Either course, taxation of churches or exemption, occasions some degree of involvement with religion. Elimination of exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontation and conflicts that follow in the train of these legal processes. (397 U.S. 675)

How does the government keep entanglement down to a minimum? Since the downfall of the legal principle of strict separation, the question has become more volatile. It was tested in a case regarding the Higher Education Act of 1963. The act provided construction grants for colleges and universities, excluding facilities used specifically for sectarian instruction or religious worship. The Supreme Court divided 5-4 on the issue whether this act endangered religious freedom. The majority maintained such grants were not to be considered excessive entanglement for various reasons. For one, the government has given grants to hospitals operated by religious orders. Secondly, a grant to higher education is different from a grant to secondary or primary schools.

College students, the Court said, are less impressionable and less susceptible to religious indoctrination. The risk of entanglement was therefore less. Finally, these grants were 'one-shot' building grants in contrast to on-going subsidy. For this reason inspection as to use involved minimal contact.

The parochial aid question, however, would not die. On the same day that the review of the Higher Education Act took place, the Court denied the request for appropriating state funds for paying secondary parochial school teachers. This involved excessive intrusion of the state in religious affairs. Again Chief Justice Burger clarified:

Our prior holdings do not call for a total separation between church and state....Some relationship between government and religious organizations is inevitable....Fire inspections; building and zoning regulations, and state requirements under compulsory school attendance law are examples of necessary and permissible contacts. (Lemon vs. Kurtzman)

Thus teachers were different in the Court's views from textbooks. For in 1968 they had ruled that a state could provide textbooks on secular subjects for parochial schools. The reason was that teachers "inevitably experience great difficulty in remaining religiously neutral," but "a textbook's content is ascertainable."

Thus the American experiment with religious liberty continues. In government action over the past two years, two motifs stand out. The state is extremely conscious of its obligations to see to the general welfare of its citizens. This duty increases as the services and demands of our life together in these United States grow more sophisticated. We cannot have the material advantages we have and want without seeking to share them with the general public. At the same time, the state is obligated by our Constitution to keep the role of the church within its proper sphere of action. These two concerns clash, particularly in regard to much of the welfare legislation enacted over the past decades. To lessen the tension, the government has adopted the stance of avoiding excessive entanglement. As citizens, we must appreciate its concerns. Government action should lead us to weigh, define and re-define the church's role in the state as a legal entity which has been incorporated before the law.

Our Wisconsin Evangelical Lutheran Synod has not been entirely remiss in this respect. Over the past several decades it has, a number of times, undertaken the agonizing task of defining government relationship to the institutional church under our Constitution. In an initial reaction to the matter of federal aid to parochial schools, the Synod took a negative stance. The "1963" statement re. Federal Aid" expressed a genuine and overriding doctrinal concern for the church's God-given charge to educate its children in the fear of God. Politically speaking, the Synod expressed fears that state aid would lead to state control of Christian education. The Synod served notice that it viewed such aid as in 'intrusion' and a 'violation of the constitutional principle of church and state.' The critical issue was the use of monies to promulgate religious faith. The question was raised as to safeguards and supervision of such funds. In a sweeping conclusion, the Synod said that "we neither want nor request the assistance of the state in carrying out our educational endeavors."

When the "Elementary and Secondary Education Act of 1965" was passed, the question of church-state relations arose again and assumed greater proportions. The Education Act provided massive doles of monies to non-public schools under five titles. Title II on library assistance was especially appealing. In a review of the offerings, there were those in the Synod who took up the intrusion issue. They pointed out that the act as a piece of welfare legislation, was not a new state concern. Deviation from the Scriptural distinction of realms was not in itself involved. If we were to oppose the Federal Aid, we needed to do so on constitutional grounds (Fredrich, p. 11). The major concern was one of controls, not control. Protection of the institutional church from government control was inherent in the First Amendment. But government controls are intended to be safeguards in the public welfare legislation, and that was another question. The latter argument paralleled the 'excessive entanglement' concerns expressed by the Supreme Court.

Faced with a more pragmatic approach to government aid, the Synod felt obliged to construct amore comprehensive statement on church-state relations. The result was the "1967 Statement on Government Aid to

Education". After defining 'church' and 'state' and their wrongful mixture, the statement concludes with an assessment of religious freedom:

The principle of religious freedom is larger in its scope of application than the principle of the separation of church and state...there is a wide realm of contacts in church and state relations, which lie in the area of adiaphora and are not in themselves a confusion of church and state. Nevertheless, it needs to be borne in mind that actions and decisions in just this realm call for very cautious and discerning judgment in order that in the handling of these adiaphora neither the interests of the church or the state may actually suffer.

Clearly there was an area of interdependence to be evaluated.

In its next session, the Synod endorsed the statement and urged its membership to proceed with caution against excessive entanglement. In a series of four 'avoids', it resolved to warn our schools "to avoid any aid that would hinder our Christian schools from carrying out their objectives, to avoid any aid that would lead to dependency upon the government and would undermine our Christian stewardship, to avoid any aid that would bring with it improper government control, and to avoid any aid that would jeopardize our unified Christian education." The Synod too, was concerned about excessive entanglement with the state in carrying out its role as a church under the Constitution.

III. Conclusion: the heritage in review

The pilgrim church has walked a long road from the Apostles' times to 1976. As we pass the second milestone of the church's life under the Constitution of the United States of America, we have done well to sit down on the wayside marker and reflect. One thing has become obvious to us in retrospect. The shoe is on the other foot. At the beginning of our nation's history, the great concern with regard to religious liberty came because of the intolerable encroachment of ecclesiastical power on state life. The experiences of the national churches in Europe dictated a course of action that was consummated by adopting the First Amendment. But times change. The infant nation grew up fast into an industrial giant and world power. And in the process, church-state relations experienced the changes. Government encroachment on the church's role now became a major concern.

What does this mean for us? It indicates that the church must continue to define for itself its role in relationship to the state as it exists under the Constitution. We have done this in part. But there are areas that need to be highlighted to clarify our thinking and which need further investigation. Let me attempt to outline a few.

The first area is incorporation. We need to understand for ourselves what incorporation implies for the church. There is no question about the fact of incorporation itself. It is so much part of our Western heritage that we take it for granted. We are loath to think of our clergy as state officials. Yet they act in that capacity in marriage, burials, and other matters. Congregations and schools are incorporated under state charters. Why raise the question? Because the issue of incorporation helps us in our self-understanding of the relationship of church and state. By incorporation the church becomes an institutional church before the law. In this respect, church questions now become political ones. To recognize this is especially important, since the Lord Jesus did not establish an institution of that kind. Biblically speaking, the Christian distinction between the two realms pertains whether the church is incorporated or not. Christ's distinction is basic to the all embracing relation of the Gospel to whatever form of political power the church lives under. But granting legal status to the church gives a peculiar form to its relationship. The church acts before the state in these legal matters, not through its members as individuals, but as a body.

Within the church this means there may be varying opinions concerning the course of action to be taken by a church body. These differences should not be viewed as disagreement in doctrine. Since questions involve reactions to government programs within the limitations of the law of religious liberty, political persuasions of

individuals may vary. For situations change. In discussing issues, conservatives are known for their input of preserving stability and tenacity to the past; progressives work to build bridges to the future. Most often people have a little of both qualities. In the church, neither attitude is wrong. But all must keep their eyes pinned on the Gospel.

Speaking of the corporate status of the church leads us to another area of clarification. Much of our Synodical reaction to government programs has been in the field of education and understandably so. But in its concern for the general welfare of its citizenry, the government has also inaugurated many efforts in the fields of helping the needy, the infirm, the less fortunate from birth defects and in the cultivation of talents other than in primary and secondary school. Most of these areas involve bodily or other such social concerns. In these areas the state feels special obligations. Churches also have responded to the needs of its members by organizing efforts-of mercy of various kinds. Geriatric care centers, child and welfare services, hospitals, higher education training for non-religious careers, deaconess training centers, care for the mentally retarded -- all of these are special services in the churches. Many of these institutions which churches organized in the past experienced the 'secular drift.' They have virtually lost their distinctive church affiliation under the pressures of government aid and control. The issue of discrimination on the basis of race, color, sex, or creed has become especially critical in these areas. The question of the church's ministry relative to these special services needs further clarification in the church itself in the light of government rule and regulation. What is the church's role with regard to institutions of mercy and non-religious career training in the welfare oriented state?

The mention of special services brings us to a vital area that is often overlooked when we speak of the church-state question. What distinguished Luther's teaching with regard to the two realms, one man has said (Bornkamm, p. 19), is that his teaching according to Scripture was three dimensional; St. Augustine's was only two dimensional. What did he mean? During Roman times, St. Augustine gave a masterful description of the two realms. He identified them as two cities, the 'City of God' and the 'Secular City.' The one, he said, was the society of Cain and represented pagan ideals; the other was the children of Abel and represented the children of God.

Luther, likewise, spoke of the two societies. What distinguished the Christian was his faith in Christ. This made the Christian church distinct from the world. But Luther also emphasized to a greater degree than Augustine that life in the world was the proving ground for faith. Faith shows itself to be faith indeed, when it is active in love. By love we serve in the world. For "a Christian lives not in himself, but in Christ and in his neighbor. . .He lives in Christ by faith, in his neighbor though love." (Luther in Dillenberger, p. 80) We say no more, since this is the subject of the next paper at this convention.

As we look to the future in the light of the past, what do we see in perspective? Daily we hear about the areas of conflict in the battle of just treatment in this country. The battlegrounds are familiar: religious programs in public schools, tax exemption for church-owned property, tax support for religious schools. The questions multiply. Can state services such as psychologists and reading specialists be used in parochial schools? What about state requirements for teacher certification? What will be the impact of the Equal Rights Amendment, should it become federal law? What are the implications of equal pay and equal opportunities for women in the church? Behind all these questions lie the important considerations. What should we do when the church's legal status is threatened? What should we do if our doctrine is undermined?

It is not the intent of this paper to give practical solutions to all the critical questions that could be asked. That is not the purpose of a bicentennial review. We have reviewed the relationship of the government to the institutional church, as seen from the Scriptures and from the legal history in this country, in order to see where we came from and how we arrived at where we are. According to the Scriptures, as a gathering of Christians we are committed to the distinction of the realms of church and state and to avoid mixing them or separating them falsely. According to our government form, we are committed to the principle and privilege of religious liberty. Is our country's form the best form? Put in another way, is it possible under our frame of government to hold to the flexibility that has entered into the interpretation of religious liberty without eventually moving away from such liberty altogether? Viewed from the past, we must be proud of our heritage. We have been blessed with state protection and help without measure. The Constitution has proven strong and viable precisely because it

was able to contract and expand to meet the changes in the life of its people. That we are able to assemble here today, to preach the Gospel freely, to train our children in parochial schools without fear of punishment is ample proof of our blessings. If, like Dr. Walther, we feel the conflict between our faith and the philosophy of the public, it only underlines our task as church to preach the Gospel of the higher righteousness in Christ. But let us also remember that without faith, the public lives by the righteousness of the law. Without Christ, people live by morals. And the state does best, where it supports the moral life by encouraging that which is good among its citizens, and-punishing that which is evil.

If the state becomes demoniac and immoral in its ways and judgments, we will have to live through the anguish of persecution. We pray our freedoms hold under our present form of government. Constitutionally speaking, if we are of the opinion that the state is encroaching on the rights of religious liberty, we have the privilege of voluntarily avoiding to participate, if that is possible, or of appealing before the law. If a matter of doctrine is involved and the Court would rule against us as a church, we would have to disobey and "obey God rather than man." But let the matter be clearly a matter of public doctrine and not opinion or an open question. The Apostle Peter underscores our Christian attitudes, as he lays out the criteria in our relations with the state:

Submit yourselves for the Lord's sake to every authority instituted among men: whether to the king, as the supreme authority, or to governors, who are sent by him to punish those who do wrong, and to commend those who do right. For it is God's will that by doing good you should silence the ignorant talk of foolish men. Live as free men; but do not use your freedom as a cover-up for evil; live as servants of God. Show proper respect to everyone; Love the brotherhood of believers, fear God, honor the king. (1 Pt. 2:13-17)

We have done no particular flag waving, though our flag hangs high in the background of our discussion. Our bicentennial salute is more in line with the thought that we honor our country best and count our blessing with greatest sincerity when, as citizens, we keep eternal vigilance over our freedoms.

God grant us statesmen who seek to promote justice under the law!
 God grant us churchmen who make judgments according to the mind of Christ!
 God grant us citizens who live as is becoming to citizens of the state!
 God bless our native land!