

THE SEPARATION OF CHURCH AND STATE

General Principles of Church and State

In our first three sessions much of our discussion has concerned the activities of individual Christians as they carry out their duties and responsibilities as citizens of the state and members of society. In our final two sessions we will discuss one of the hottest political and legal issues of our day, the separation of church and state. In this session we will discuss the general principles concerning the separation of church and state. We will also discuss one of the most controversial efforts of the churches of today to enter into the affairs of the state, namely, its attempts to make the civil law of our land conform to God's moral law, or at least their perception of God's law. In the next session we will discuss current laws and judicial decisions pertaining to the separation of church and state.

I think all of us accept the separation of church and state as a basic principle of good theology and good government. Most of the time we probably do this without very much thought about either the theological or legal basis of this principle. Since both these bases are seriously challenged by many Christians today, we will need to examine both.

There is no explicit discussion of the separation of church and state in Scripture. In the Old Testament theocracy there was, of course, no sharp separation of church and state, of civil and moral law, or of religious offenses and civil punishment. The leaders of the post-exilic Jewish state were willing to accept financial aid even from the heathen Persian government for the construction of the Temple and for the sponsorship of religious services (Ezra 6:8-10; 7:13-26). They apparently regarded it as a kind of reparations for past damages.¹

In the New Testament era the only significant threat to the separation of church and state was the oppression of the church by both the Jewish and Roman states. It is therefore not surprising that there is little explicit discussion of the topic in the New Testament. The passages which are most often adduced as proof passages for a doctrine of the separation of church and state address the issue only indirectly. For example, in Jesus' remark "Give to Caesar what is Caesar's, and to God what is God's" (Mt. 22:21) he simply states that the political realm and the spiritual realm are distinct kingdoms, and that we have responsibilities toward both. The specific responsibility which he is addressing is paying taxes. He gives no directions for keeping the activities of the two kingdoms separate. However, since the emperor Tiberius claimed the title "Pontifex Maximus" (high priest) on the back of his denarius, Jesus' remark, "Give to God what is God's," may contain a subtle rebuke of Tiberius' pretensions in spiritual matters that was more obvious to Jesus' contemporaries than to us.

¹ On the other hand, they were not willing to accept financial help from the Samaritans who offered it as a religious fellowship.

In his statement, “Man, who made me a judge or an arbitrator between you?” (Luke 12:14) Jesus simply states that he had not come to be an authority in legal disputes, but as the messenger of the gospel. Again he offers no specific guidelines on the separation of church and state.

The doctrine of the separation of church and state is established not so much by direct statements of Scripture, but by a comparison of the work and the tools that God has assigned to church and state.

We will, therefore, briefly review the purpose and means of government which we discussed in our first session on the basis of Romans 13:1-7 and 1 Peter 2:11-17. God has established government so that people may live in some degree of peace in a sin-filled world. The government’s responsibility is to preserve the greatest possible peace and order in the world by punishing evil-doers, rewarding those who do good, and protecting the rights of the law-abiding. To accomplish this, governments may make laws based on reason and enforce them on the disobedient even to the extent of imposing the death penalty when necessary and appropriate. Every state is based on the use of force.

The mission and tools of the church are quite different. God has established the church so that people may live with him in peace forever. The church’s responsibility is to preach the gospel and to administer the sacraments through which saving faith is created and nourished. The church does not wage its battles with the sword of the state, but with the sword of the Spirit, the Word of God (Matthew 28:19-20, John 18:36-37, also 2 Corinthians 10:4-6, Ephesians 6:3-17). The church is not responsible for disciplining those outside the church (1 Corinthians 5:12).

Since God has assigned to both the church and the state their own distinct purposes and distinct tools, these should not become mixed or confused. Neither church nor state should try to do the work of the other. Neither should ask the other to do its work. Neither should seek to accomplish its ends by using the tools of the other. Observing these distinctions of purposes and tools is what we mean by “the separation of church and state.” Such separation of church and state is a valid deduction from the distinct missions and tools which God has assigned to church and state. Since there are some areas in life, in which both the state and the church have a valid interest, such as marriage, sexual morality, education, and so on, their interests and activities may sometimes overlap. Perhaps it might, therefore, be clearer if we would speak of “avoiding a confusion of the roles of church and state,” rather than of a “separation of church and state.” It is not possible to demand a total separation of all activities of church and state. One area in which we regularly accept a certain overlap of interests is in the public establishment of a marriage. In the marriage of a Christian couple the church is interested helping the couple begin their marriage on the basis of God’s Word and in seeking his blessing upon them in prayer. The state is interested in a witnessed, written confirmation of the legal contract, which has serious implications regarding property rights and inheritance. We allow both of these purposes to be fulfilled on the basis of a single ceremony. The exact mechanics vary from state to state, but to some degree our pastors act as legal representatives of the state in establishing the legal aspects of the marriage. Other examples of church-state interaction could be cited as evidence that no absolute separation is possible. For example, our churches incorporate as legal entities for the purpose of holding property, and we use public utilities and services.

The Lutheran Confessions clearly set forth the scriptural principles of the separation of church and state, especially in Article 28 of the Augsburg Confession. “The power of the church and the civil power must not be confounded. The power of the church has its own commission to teach the Gospel and administer the Sacraments. Let it not break into the office of another. ... Let it not prescribe laws to civil rulers concerning the form of the commonwealth” (*Trig.* p. 85).

The Reformed and the Catholic Church both entangled church and state. The Reformed generally saw the state as the partner of the church in enforcing God’s law, including the first table (Calvin’s *Institutes* V II 780). This was really not far removed from the Catholic position which made the pope the head of all secular rulers, since in both cases the punitive power of the state was used to enforce the laws of the church.

Unfortunately, the clear Lutheran position was never really put into practice. Luther’s views were remarkably clear and consistent considering the attitudes and conditions of his day.

After the abolition of the Law the secular emperors, kings, and princes were entrusted with the sword of iron, and the oral sword was assigned to the apostles and us preachers. This distinction must remain intact; and let all who can lend a hand to that end. But if the princes continue to jumble the two, as they are now doing, then may God in his mercy shorten our lives that we may not witness the ensuing disaster. For in such circumstances the Christian religion must go to wrack and ruin. This is what happened in the papacy when the bishops became secular princes. And if the secular lords now become popes and bishops and insist on sermons that defer to their wishes, then let the wretched devil preach to them, for he preaches too. But let us pray God that neither the spiritual nor the secular realm abuses its office that way (*LW* 22, 228, Commentary on John 2).

But Luther lacked opportunity to put his views into practice.

I do not yet have available the persons necessary to accomplish it [the actual separation of church and state and proper congregational life] nor do I see many who strongly urge it (*LW* 53, 64, “German Mass”).

If Luther’s views would have been put into practice, a separation of church and state similar to that which existed in 19th century America might have resulted. Practical difficulties and a deterioration of the Lutheran position prevented this from ever happening. The writings of our 17th century dogmaticians are very disappointing in this regard. Like the Calvinists they speak of the magistrate as having a duty *circa sacra* (but not *in sacra*), a duty to uphold both tables of the law in so far as they pertain to outward discipline. They regularly refer to kings as the “nursing fathers of the church” (Isaiah 49:23) and its “wall and shield” (Psalm 47:10). Luther’s distinction of what princes might do as princes and what they might do as leading members of the church was becoming blurred. The dogmaticians envision a protecting and even supervising role for the state over the church which goes far beyond anything that can be validly deduced from 1 Timothy 2:2. Among the responsibilities which they assign to the magistracy are appointing ministers, building and preserving churches and schools, providing for the support of ministers, appointing visitations and councils, framing and maintaining the laws of the church, preserving church discipline, trying

heretical ministers and those of bad character, and punishing heretics (Schmid, p. 616-619). It is thus not surprising that many historians classify the church polity of the Lutheran territories of Europe as the most Erastian,² except for the Anglican. We will leave it to the church historians to debate the validity of this ranking. At any rate it seems fair to say that the good foundation laid by Luther was not well built upon, and that there was more regression than progress after Luther.

In spite of the good start made by Luther, the greatest achievement in the separation of church and state would take place not on Lutheran soil, but elsewhere. God uses strange instruments at times. It was an unlikely combination of Baptists and rationalistic deists, Jehovah's Witnesses and liberal supreme court justices that became the main contributors to the separation of church and state which we enjoy in America today. At the time of the American Revolution the convergence of such factors as the prevalence of separatist denominations (most notably the Baptists), the personalizing of religion in the Great Awakening, and the aversion to any state church on the part of the deists among the leaders of the revolution brought about the constitutional separation of church and state which we enjoy today.

The second grounds for our present separation of church and state is, therefore, constitutional and legal. Actually the constitutional basis for such separation is very brief and undeveloped. The constitution itself merely forbids religious tests for public office (Article VI).³ The first amendment says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The "establishment clause" forbids the federal government to help the church by aiding the establishment of any religion. The "free exercise clause" forbids the government to interfere with the church by hindering the free exercise of religion. It has been and still is being hotly debated, even among the justices of the Supreme Court, whether these two principles of the Constitution actually require a "wall of separation" between church and state. The wall of separation is actually not a constitutional concept, but the personal interpretation of Thomas Jefferson, which he expressed in his 1802 letter to the Danbury Baptists. Finding a balance between the establishment and free exercise clauses and determining the permissible degree of church-state contact which they permit has been one of the most pressing concerns of our judiciary in recent decades. That struggle will be the topic of the next session.

There may be areas of church-state interaction which cannot be declared to be sin on the basis of Scripture, nor have they been declared unconstitutional in court, but it nevertheless would be dangerous for us to become involved in them, because of the controls they might bring. The third ground for separation of church and state is, therefore, expediency. Certain forms of co-operation may be lawful, but not expedient. We may feel that such co-operation would be unwise, and we should argue against it on that basis. But we should be careful not to confuse what is unwise with what is illegal, or with what is sinful. There are three distinct bases for the separation of church and state: scriptural principles, constitutional law, and expediency. We must not confuse them. Considerable damage has been done when this distinction has not been observed. The "Brookfield Case" in which one of our high schools was harshly condemned for receiving state aid was a prime example of such a failure to distinguish between things which are sin and things of which one disapproves. The case eventually resulted in church discipline against the accusers.

² Named for Thomas Erastus, who advocated supremacy of the state over the church in ecclesiastical matters.

³ This provision is taking on new importance in view of the recent practice of special interest attack ads and attack blogs on candidates' religions.

The separation of church and state is an important principle of theology and law, but it is not very specifically defined in either Scripture or our Constitution. We should be careful about judging fellow Christians on the basis of boundaries which we have established on the basis of our own judgment.

Having briefly outlined the basic principles of separation, let us now consider the question of Christian efforts to shape the laws of the state.

Moral Law and Civil Law

One of the most timely topics in the area of church and state relations is Christian attempts to influence the civil law of the land. Since the 1980s when Jerry Falwell and the “Moral Majority” burst into the limelight, efforts of conservative Christians to influence public morality by means of legislation are regularly discussed on the editorial pages of our leading newspapers. A most extreme form of this movement is known as Theonomy, Dominion Theology, or Christian Reconstructionism. It teaches that the civil law of America should be based on the Old Testament civil law of Israel. Two of its proponents, Greg Bahsen and Gary North, explain its basic premise.

The New Testament teaches us that—unless exceptions are revealed elsewhere—every Old Testament commandment is binding, even as the standard of justice for all magistrates (Rom. 13:1-4), including every recompense stipulated for civil offenses in the law of Moses (Heb 2:2). From the New Testament alone we learn that we must take as our operating presumption that any Old Testament penal requirement is binding today on all civil magistrates. The presumption can surely be modified by definite, revealed teaching in the Scripture, but in the absence of such qualifications or changes, any Old Testament penal sanction we have in mind would be morally obligatory for civil rulers (*No Other Standard*, p 68).

The proper exegetical principle is this: Mosaic law is still to be enforced, by the church or the State or both, unless there is a specific injunction to the contrary in the New Testament (*The Sinai Strategy: Economics and the Ten Commandments*, p 255).

Few people are neutral or indifferent to these efforts. Some applaud the efforts. Others dread their influence. Where should we stand in regard to these efforts to lobby for “moral” laws? Christian citizens face some difficult questions in this matter. We are caught between a rock and a hard place. On the one hand, we are appalled by the increasingly flagrant immorality of the people of our land—the shocking decline of sexual morality, the campaign for gay rights, rampant divorce, flourishing pornography, child abuse coming more and more into the open, the frequency of crime in the streets and in corporate offices. On the other hand, we may sometimes be disturbed by the methods, the goals, and the tone of religious leaders who crusade for laws which would enforce a stricter morality in our nation. Again our aim must be to keep a scriptural balance between the extremes.

Our duty as church is to preach God's law, not to reform Caesar's law. It should be clear to us that all of a Christian's actions must be guided by God's moral law, regardless of what the civil law of the land may allow. The means of promoting morality which God has given to his church are teaching its members God's will as it is revealed in his law and motivating them with the gospel. Equipped with such teaching, they will not be conformed to the pattern of this world, but will be transformed by the renewing of their minds so that they test and approve the good, pleasing and perfect will of God (Romans 12:2). The church's goal for those outside the church is not to regulate their conduct, but to change their hearts. This can be done only by a fearless preaching of God's law, which produces contrition, and by the life-giving message of the gospel, which produces the faith without which no genuine moral improvement is possible. The church's primary concern in the area of law is to use the law as a mirror to expose and condemn sin, and then, when the gospel has done its work, to use the law as a guide or rule for Christian life.

Nevertheless in this realm of sinners, the law must function as a curb or restraint of evildoers. "The law is not made for good men, but for lawbreakers and rebels, the ungodly and sinful, the unholy and irreligious, for those who kill their fathers or mothers, for murderers, for adulterers and perverts, for slavetraders and liars and perjurers" (1 Tim. 1:9). It is this restraining function of law which is the concern of the state. In fact, such a restraining function is the only purpose which civil law can serve.

So the question remains: "How hard should a Christian fight to bring the civil laws of the state into agreement with God's moral law?" This is a question of great practical importance when we consider laws concerning abortion, divorce and marriage, sexual conduct, pornography, capital punishment, and other matters. Here again, there are two different, and in some respects, opposing factors which we must consider. The first is that God holds all nations responsible for their violations of his moral law and punishes them for such conduct. The Canaanites were exterminated because of their flagrant disregard for God's moral law. When the sin of the Canaanites reached its full measure, the land vomited them out because their rottenness had become intolerable (Genesis 15:16, Leviticus 18:24-25). The cities of Sodom and Gomorrah were burned to ashes as an example of what is going to happen to the ungodly (2 Peter 2:7). Isaiah cries out to the nations, "The earth is defiled by its people. They have disobeyed the laws, violated the statutes, and broken the everlasting covenant. Therefore a curse consumes the earth. Its people must bear their guilt" (Isaiah 24:5). A nation is not excused for its sinful practices, simply because it is not a theocracy or a truly Christian nation. God's wrath justly falls on those who suppress the natural knowledge of God and who sin against the inscribed law and their own consciences. God begins his judgment against such people by giving them over to uncleanness, to sinful desires, and to a depraved mind, so that they receive the due penalty for their error, even in their own bodies (Romans 1 and 2). Although God temporarily spares the world from the general judgment which it deserves (Genesis 8:21, Acts 17:30), he already is sending warning judgments against those who trample on his moral law. The principle still holds, "Righteousness exalts a nation, but sin is a disgrace to any people" (Proverbs 14:34). As a general rule, nations as well as individuals reap what they sow. Respect for family life and for authority tends to contribute to the stability and welfare of a nation. Conversely, a society usually pays for the breakdown of the family and of respect for authority with increased crime and disorder. Sexual immorality and drug abuse exact both a physical and emotional price. The first payment of the wages of sin is usually delivered already in this life. The life of a prodigal son leads to shame and ruin; the life of a Pharisee leads to earthly honor. Of

course there are apparent exceptions. Some of the guilty escape, at least for a while. Sometimes the innocent suffer along with the guilty. Nevertheless, the general principle holds. This principle of divine retribution is one reason that Christian citizens are interested in good laws and in the outward morality of their land. Such morality contributes to the welfare and security of the land and its citizens. Immorality which disregards the basic principles of God's law brings judgment on a nation. For this reason Christian citizens want the laws of their land to reflect the moral principles God's law.

On the other hand, because of the darkness and hardness of human hearts it often is impossible for civil law to correspond with the ideal set forth in God's moral law. Sinners have partially lost or suppressed the knowledge of what is right (for example, concerning homosexuality). Natural knowledge of the law is not clear and complete. It is partial and weak. Sometimes people know what is right, but simply refuse to do it. Even the civil law which God gave to Israel made concessions to the hardness of the human heart. For example, divorce was permitted in the civil law, even though this was contrary to the will of God which was revealed when marriage was established. The chief purpose of civil law is to maintain as much peace and order as is possible in a sinful world. If a woman had to remain with a husband who was embittered against her, great harm and disorder could have followed. The permitting of divorce, even on questionable grounds, could actually be a protection for the wife. She might be better off if she was sent away by a hardened, embittered husband, than if they had been compelled to remain together. The civil law accepted the evil of divorce to minimize the evil of bitter domestic warfare which would have been even more disruptive of the peace of society. (It should be mentioned that the divorce law in Deuteronomy 24, does not encourage divorce or establish grounds for divorce. It discourages divorce by restricting the possibility of remarriage.)

The aim of civil law is to produce the greatest degree of outward peace and order. Every law is an attempt to legislate outward morality. That is, every law is an attempt to prevent individuals from harming other individuals or the interests of society as a whole by imposing punishment on those who violate the standards of society. Martin Luther King Jr. observed, "Morality cannot be legislated, but behavior can be regulated. Judicial decrees may not change hearts, but they can restrain the heartless (*Testament of Hope*, p. 124).

Civil morality is generally defined on a utilitarian basis. Whatever a society judges to be harmful is considered to be immoral and is declared illegal. When a society is convinced that an act is harmless, it becomes legal. But this is not necessarily so. Civil religion may be more than a set of beliefs used by the state to foster its own ends. It may also refer to a set of shared beliefs and values with transcendent sources (based on a natural or revealed knowledge of the law) held in common by people of the community. Most people believe that the principle, "Thou shalt not steal" is based on more than expediency. A civil law will normally be effective only if the majority of the citizens are convinced that violating that law is harmful and if punishment is certain enough and severe enough to deter those who remain unconvinced.

No anti-abortion law will be effective, if most people believe that abortion is not much different than a tonsillectomy. No law restricting pornography will be very effective, if most people believe that pornography is harmless or even enjoyable. Capital punishment is of little value if public opinion is so against it that no judge or jury will use it. We cannot expect a country to have laws

which uphold sound moral values if its people are abandoning even those moral standards which are supported by reason and the natural knowledge of the law.

The first priority for Christian citizens is to educate. We should help to bring society back to its senses by promoting sound moral values. We will have moral laws only when a majority of the citizens and public officials of our land recognize the value and necessity of such basic moral principles as the right to life, high regard for marriage and the family, and the accountability of every individual for his actions. On the basis of such standards, we can then promote good, moral laws. In doing this, we are not trying to force Christianity on anyone by law. Reason, the inscribed law, and the conscience of natural man all testify to these standards, and when we are promoting civil laws, we must argue on this basis. Such educational efforts can bear fruit. The campaign to expose the true nature of abortion in the battle over “partial-birth abortions” seems to have had an impact on public opinion.

Even if we are successful in obtaining good, moral laws, we must recognize the severe limitations of civil laws. Legislating and enforcing good moral laws does not make a nation and its people any more Christian or any more moral in a true spiritual sense. Such laws cannot change the inner motivation of the heart. They only restrain outward conduct. For example, when we promote laws which restrict abortion, we are not trying to create hearts obedient to the fifth commandment, nor can such laws make an unwanted child wanted. The only thing which the law may be able to accomplish is to protect the life (and the time of grace) of some of our neighbors who are unable to protect themselves. Laws restricting pornography can’t legislate chaste and decent hearts, but they may diminish temptations to sexual immorality and sexual abuse, which harm society. They may help stem the shocking tide of sex crimes in our land. They may help restore an atmosphere in which stable family life, which is a needed foundation for society, can be maintained. All of these are only outward functions—they do not touch the heart. Laws against racial prejudice cannot make anyone love neighbors of a different race, but they may prevent him from interfering with their life and livelihood. In short, good laws cannot do anything to Christianize a nation or to promote true inner morality, but they have value as a curb which protects individuals and society from the evil effects of rampant immorality. As Christian citizens we should promote such laws as part of our concern for our neighbors’ life and property.

However, a number of cautions should be observed. Even when the cause is good and the case is clear-cut, as in the effort to gain laws which restrict abortion, we should be very cautious about trying to influence legislation as a church body or as members of church-affiliated societies. Such efforts can very easily reinforce the common impression that the church is basically a moral reform agency, whose goal is to make the world a better place to live. As a church we should not substitute the goal of reforming society for our higher goal of reforming human hearts. Our tools are God’s law and gospel, not man’s law and sword.

Even in our efforts as citizens, careful discernment and balanced judgment are needed. We should remember that even when Christians are agreed on the moral goals which are desirable for society, they may disagree about the best way to achieve those goals in given circumstances. We may agree that pornography is evil. One of us may feel that a certain restrictive law is a partial solution. Another may oppose that law, because he believes that it is so broadly worded that it could threaten legitimate freedom of expression. None of us would argue in favor of having

holdup-men shoot grocery clerks, but we might disagree on whether a specific law restricting handgun ownership would increase or diminish the possibility of that happening. Even when we are agreed on identifying evils, we must be careful in prescribing a specific solution as *the* Christian solution because the problem may be very complicated in its nature and in its response to specific remedies.⁴ Christians should apply Christian principles and sound thinking to public policy as best they can, but with a proper degree of humility concerning the remedies which they suggest. We need to find the balance between thinking we can reform the world by legislation and withdrawing into a shell and letting the world go its way.

Although we should seek good laws, we realize that civil laws will never conform to the standards which God's moral law sets for us. Even when civil law is lax, we must always guide our conduct by God's law. Even the best civil laws will never produce the kind of morality which God desires. None of this causes us to despair. Even when the standards of society crumble, we have a sure foundation to build on. Today, many are echoing the despairing question addressed to David, "If the foundations are destroyed, what can the righteous do?" It is important that we remember his answer, "The Lord is in his holy temple. The Lord's throne is in heaven. His eyes behold. His eyelids test the sons of men. The upright shall behold his face" (Psalm 11). No matter how much indulgent rulers, lax laws, and vile sinners undermine the foundations of God's moral law, this truth still stands, "God's solid foundation stands sure, sealed with this inscription: the Lord knows those that are his, and everyone who confesses the name of the Lord must turn away from wickedness" (2 Tim. 2:19).

⁴ Of those who think they have quick fixes for the world's problems Luther said, "The spectator can play the game best. For they imagine that if they were to get the ball into their hand, they would hit twelve pins, although only nine were standing in the alley. So they imagine until they find out that there is also a gutter running alongside the alley" (Plass, p 585, W 51, 202).