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STATEMENT

of

THE AMERICAN JEWISH COMMITTEE

on Proposed Constitutional Amendments Concerning School Prayer

before the

Subcommittee of the Constitution of the

SENATE COMMITTEE ON THE JUDICIARY

June 19, 1985

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The beneficent teachings of religion have contributed immeasurably to human progress from barbarism to civilization. Our nation, in particular, settled in large measure by people who were yearning for freedom of conscience, having fled religious persecution, has been profoundly influenced by religious concepts. Every variety of denominational belief has flourished in this country, hand in hand with the American constitutional principle of separation of church and state, which has served as a bulwark of religious liberty. Religion has indeed flourished here with a vitality that is the envy of devout men and women the world over. The tradition of separation of religion and government, as guaranteed by the First Amendment, is surely one of the cornerstones of our freedom. It should be reinforced, not eroded or tampered with. Underlying the Establishment Clause of the First Amendment was the conviction on the part of the Founding Fathers that any union of government and religion inevitably would impair government and would degrade religion. Tax-supported, non-sectarian public schools have served as a unifying force in American life -- welcoming young people of every creed, seeking to afford equal educational opportunity to all, emphasizing our common heritage and serving as a training ground for community living in our pluralistic society. In 1962, the U.S. Supreme Court, in Engel v. Vitale, ruled that the recital of a state-composed ostensibly non-denominational prayer by public school children at the

insulted and ostracized, as are their children in the public schools. If a prayer amendment were to be adopted, these violations could be expected to proliferate.

One may wonder why there exists this apparent preoccupation with the need to intrude group prayer into our public schools. With some, it seems almost an obsession. If they wish their own children to pray in school, they can instruct them accordingly. On the other hand, if it is other people's children for whom they wish to prescribe prayer, their concern is surely presumptuous.

We do indeed face a crisis in public education. We all have a vital interest in upgrading the quality of the education now being received and experienced by American children, in the sciences and in mathematics in particular. But the controversy over prayer and meditation has nothing whatever to do with this. In fact, it is a "smokescreen" and a distraction from what ought to concern us all. If we are truly serious about what is going on--and what is not going on--in our public schools, what is urgently needed is to restore Federal funds that have been slashed from various educational assistance programs.

It is indeed the task of the public schools to reflect and to help inculcate the highest moral and ethical values of our society, as well as to develop character and responsible citizenship. But if this is the main concern of the sponsors of the proposed amendment, it must be said that permitting organized prayer would hardly suffice to serve this purpose. What does belong in public schools, however, is the teaching of common core values--honesty, decency, compassion, patriotism, fairness, respect for the rights of others--that are broadly shared by people of all denominations and none. Nor is there anything in U.S. Supreme Court decisions to preclude such instruction, provided it is not couched in religious terms. These values can be taught far more effectively by adult example and by the day-to-day behavior of parents, school principals, administrators and teachers than by organized prayer, whether spoken or silent.

start of each school day violated the First Amendment. The following year, in Abington School District v. Schempp, the Court struck down a program in which passages from the Bible were required to be read and the Lord's Prayer recited. The rationale for these decisions is as compelling as ever. The Lord's Prayer, for example, is a Christian prayer. And no prayer, however neutral it may seem, can ever be truly non-denominational. In attempting to incorporate the tenets of several major religions, the meaning of prayer can only be diluted. It is simply not a proper function of our government to compose or to sponsor prayers for American children to recite. In the words of conservative libertarian columnist James J. Kilpatrick, writing in the Washington Post of December 10, 1981: "The state simply has no business in the religion business... The best solution is to leave a child's religious instruction where it belongs, in the home, in the church, in the temple, in his mind and heart."

It should be stressed, however, that there is nothing in the Supreme Court rulings in Engel v. Schempp (or for that matter, in the most recent ruling in Wallace v. Jaffree on June 4) which prevents any public school pupil from praying, either silently or aloud, whenever the spirit moves him or her to do so, provided only that the school program is not disrupted thereby. There are public school children today who engage in serious prayer during school hours (before examination, for example), and, to the best of our knowledge, nobody has ever interfered or denied their right to do so. It would seem, therefore, that there is no need whatever for any constitutional amendment to permit prayer, whether vocal or silent, in public schools.

It is important to note that the practices which would be permitted by any of the proposed amendments would not take place in a social vacuum. In hundreds of public school districts throughout the country, organized spoken prayer, Bible reading and religious proselytization are taking place today on a regular basis, in outright defiance of the Supreme Court decision in Schempp. Citizens who dare to challenge such practices frequently are threatened,

~~School Prayer~~

S T A T E M E N T

of

NATHAN Z. DERSHOWITZ

on behalf of the

AMERICAN JEWISH CONGRESS

before the

SENATE FINANCE COMMITTEE

PROPOSING AN AMENDMENT TO THE
INTERNAL REVENUE CODE RELATING TO
TUITION TAX CREDITS

Chuck
Jack

15 East 84th Street

New York, New York 10028

July 16, 1982

INTRODUCTION

The American Jewish Congress is a membership organization of American Jews founded in 1918 and dedicated, in part, to achieving educational opportunities for all Americans. It welcomes this opportunity to submit testimony in opposition to S. 2673, a bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition. The AJCongress believes that S. 2673 is inequitable in its effect, misdirected in its approach and unconstitutional by its very nature.

The American Jewish Congress, as a membership organization, recognizes the economic difficulties parents of nonpublic school children are experiencing as tuition costs continue to rise. However, we believe that it is in the best interest of the American Jewish community in particular, and of the American public in general to oppose tuition tax credits. The AJCongress is fully committed to private education in this country. We are also fully committed to public education. This is why we oppose tuition tax credits.

Our dual commitments may seem contradictory, and the conclusion to which they lead may seem, at first blush, illogical. But the contradiction is resolved, and the logic of our conclusion becomes clear when it is realized that the tuition tax credit scheme would ultimately harm both public and private education in our country.

Tuition tax credits undermine private, religious education because, inevitably and despite the bill's disclaimer, governmental funds always come with strings attached. And they hurt the public schools in ways outlined at length below.

Finally, because nonpublic schools are overwhelmingly sectarian, tuition tax credits are an affront to the First Amendment as interpreted by the Supreme Court. They would irreparably breach the wall separating Church and State by providing a proscribed form of public aid to parochial schools. The Supreme Court has spoken with a clear voice, a voice which is at once respectful of legislative goals and plain in its disapproval of tuition tax credits.

NONPUBLIC SCHOOLS IN AMERICA

A. The Value of Education

In advancing the argument that financial considerations should not impede the right of parents to send their children to a school of their choice, Senator Packwood has stated:

> The [tuition tax credit] bill would help Americans keep the dream of education for themselves and their children alive, but not on the terms of the Federal government, but on their independent, individual efforts. Self-determination and freedom is where the American dream began, and education is one reason it has thrived.

B. Jewish Day Schools

The Jewish commitment to religious education remains strong. The Jewish community in America maintains day schools for a large number of its children. Twenty-five percent of Jewish children who receive formal religious education are enrolled in Jewish day schools, an increase of 28 percent over a ten-year period. These schools serve the community well and AJCongress remains committed to their continued existence as a necessary and desirable assurance of Jewish continuity. These schools are presently a most important source of future professional and intellectual leaders of American Jewry. They make Jewish culture, history and religion available to children in a way which cannot be duplicated in other educational settings.

The growth and success of the Jewish day school movement stands as a monument to the value of pluralism in American education. America's pluralism permits each minority group to maintain its own

integrity and identity, and contribute from its own traditions and creative forces to the mainstream of American life. The day school is one of the best ways in which the Jewish community maintains its integrity and encourages its own singular creativity.

C. Tuition Tax Credits and Their Effect on Nonpublic Schools

The American Jewish Congress, therefore, is fully aware of the value of nonpublic schools and is committed to educational pluralism. We nevertheless oppose this tuition tax credit bill because we believe that it would not lessen the burden of increasing tuition costs. It is unclear as to whether the bill would make the nonpublic schools financially accessible to those who cannot now pay the price of nonpublic education and it is equally unclear as to whether it would provide significant relief to those who are presently paying for nonpublic education. Moreover, we believe that it is not the obligation of the American public to financially support those parents who decide to send their children to diverse and often sectarian nonpublic schools through a significant restructuring of the tax credit system.

Significant studies indicate that tuition tax credits (1) may predominantly favor the wealthy, and (2) are not likely to increase the number of poor and minority students who would enroll in the nonpublic schools. Other studies, whose validity is being challenged, question these conclusions. At best, then, it cannot be said with any certainty that tuition tax credit will benefit anyone other than the wealthy. A time of fiscal austerity is no time to begin a program whose benefit is not proven.

The proposal would provide federal assistance where no proven need exists, as in the case of wealthy families whose children attend nonpublic schools. Approximately one third of the tuition tax credits would be distributed to families with incomes of over $25,000. Children from families with an income of $25,000 or more would generate a share of credits roughly twice as large as their representation in the school-age population. The most needy benefit least. Children in families with incomes of less than $5,000 would generate a share only about one-fourth as large as their representation in the school-age population.*

The tuition tax credit proposal would not open the doors of the nonpublic school to the poor. It is unlikely that significant numbers of parents who could not afford to send their children to a nonpublic school which charges $250 (the median cost of elementary education in the Northeast where 31% of nonpublic elementary schoolchildren are enrolled) would be capable of doing so after receiving a $125 tuition tax credit (a real savings of $2.40 per week received eight months after the full tuition has been paid). The poor are simply not able to match the 50% tax credit with their own funds.**

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* Current Population Survey as reproduced in the Journal of Education Finance, Vol. 5, no. 3.

** This is the conclusion of analysis provided by the Office of the Assistant Secretary for Planning and Budget of the Department of Education cf., Phi Beta Kappan, Vol. 61, no. 10, June 1980, pp. 679=81.

Religious schools understandably value their autonomy. Although the bill seeks to preclude supervision of church-related schools, there is no escape from the fact that, when the federal government legislates tax benefits, it also imposes obligations. To go no further than the bill itself, it would bar benefits to students attending schools which were not non-profit or which discriminated on the basis of race, color or national origin. The IRS would have an obligation to see that each school named in a taxpayers' return was in fact non-profit. The Attorney General would have to undertake enforcement of the anti-bias provision, a task which will involve government agencies in extensive supervision of institutions receiving government aid.

The sponsors of S. 2673 undoubtedly want to provide tax credits while avoiding government surveillance. We submit that that is not possible. And, given the chioce between the two, we believe parents who send their children to nonpublic schools prefer maintaining the schools' autonomy, despite the financial burdens they face.

TUITION CREDITS: THEIR EFFECT ON THE PUBLIC SCHOOLS

It is not our purpose to pit public education against nonpublic education. Nor do we believe that our opposition to S. 2673 expresses or implies hostility to nonpublic education. The right of a parent to send his or her child to a nonpublic school is protected by the First Amendment, Pierce v. Society of Sisters, 268 U.S. 510 (1925), and confirmed by educational wisdom. But this does not mean that government must actively support that right by offering financial incentives and benefits for its exercise. The Constitution sanctions freedom of speech, but the government does not subsidize newspapers, radio and television stations and pamphleteers. Public education in America deserves and currently receives the undivided support of the taxpaying public. That circumstance could change dramatically if tuition tax credit passed.

Public education throughout American history was designed to overcome the political, cultural and economic inequities of the disadvantaged. More positively, it was meant to instill a common commitment to a democratic and political community.

The Jews in America are particularly aware of the importance of public education. Public education is in large part responsible for the success of the American Jewish community, a community largely composed of East European immigrants who came to America in the early twentieth century in search of freedom and economic opportunities for themselves and their children. Public education has offered the same opportunities to numerous other minority communities.*

* Moshe Davis, "Jewish Religious Life and Institutions in America," in The Jews: Their Religion and Culture, ed., L. Finkelstein, pp. 273 and 297 (1971) See also Irving Howe's The World of our Fathers, pp. 271-288 (1976) and Encyclopedia Judaica 381-466.

At best it is paradoxical, and at worst hypocritical, for advocates of tuition tax credits to nonpublic schools to support the program because of the benefits which would supposedly accrue to the public schools. The fact of the matter is that S. 2673 would not improve the public schools either by encouraging competition between the two sectors or by saving the public school system money. What the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education stated in 1970 remains true today:

> No studies ... can be cited to demonstrate the effectiveness of a "free market" concept between the public and nonpublic sectors. There are no effective links between the public and nonpublic sectors to allow for the dissemination ... of innovative techniques, so that to consider nonpublic schools as models is not valid.

In any event, the argument in favor of "competition" between the public and nonpublic schools rests on the premise that public schools are educationally inferior to private schools and would thus benefit from the competition. But this premise is itself unsound; comparing the two systems is not valid. While the public schools cannot be selective in accepting students, the nonpublic schools can. While the public schools have great difficulty in expelling a child for serious misbehavior, the nonpublic schools do not. The public schools are mandated by law to provide for the intellectually and physically handicapped; the nonpublic schools do not operate under similar restraints. In short, public schools must provide quality education for all children. Surely, public schools should learn what they can

from their nonpublic counterparts. But tuition tax credits are not necessary for this result. The argument is a makeweight, masking the destructive effect of the proposal on the public school system.

The argument that tuition tax credits would actually save money for the public schools by allowing more children to transfer to nonpublic schools is similarly unsound. It has been estimated that federal aid to education now provides less than $100 per public school pupil. Since the tuition tax credit bill would allow a tax credit of 50% of the school's tuition with an ultimate ceiling of $500, it is difficult to understand how this translates into a savings. In this connection, it should be noted that tuition tax credits are being considered at a time when federal aid to public education is being sharply cut. The symbolic message of the two proposals is obvious.

In any case, it is illogical to treat any tax-credit as significantly different from an appropriation. An individual's income is taxable in an amount fixed by statute. The taxpayer pays this amount to the government so that it may serve the public interest and further the community welfare. Congress, of course, has the power to grant certain taxpayers tax credits. But when it does so, it makes the judgment that the public will be better served by financing those taxpayers to that extent -- rather than by having more money available for public projects.

The actual revenue loss would certainly exceed current estimates since it is unlikely that the ceiling would remain fixed at $500. If the bill is designed to assist parents who send their children to nonpublic schools, it follows that, as costs of nonpublic education increase, the actual ceiling itself would be increased. Moreover, if Congress now takes the unprecedented step of supporting nonpublic education in the form of tuition tax credits, parents of nonpublic school children will be encouraged to lobby Congress until the full cost of nonpublic education is borne by the government.

The Supreme Court took note of the same phenomenon in its decision condemning a tax-credit plan adopted by New York State. Speaking for the Court, Justice Powell said:

> We know from long experience with both Federal and State Governments that aid programs of any kind tend to become entrenched, to escalate in cost, and to generate their own aggressive constituencies ...

Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 797 (1973).

The hidden costs of the tuition tax credit bill are likely to take their toll on more sensitively targeted federal aid programs. It is hard to imagine that billions of dollars could be lost to federal revenues without threatening other programs, particularly federal educational programs.

Finally, there are those who advance a tax equity argument in support of tuition tax credits. They claim that parents who send their children to nonpublic schools are taxed twice, once for the public schools their children do not attend and once for the nonpublic schools which they do. No claim could be more inimical to our entire system of taxation. Individuals pay taxes not for his or her child's schooling. Rather, Americans are taxed for public purposes, just as one's taxes go for police and fire protection. School taxes are paid -- by corporations as well as individuals, by non-parents as well as parents -- to achieve the public objective of insuring that the next generation is adequately educated.

TUITION TAX CREDITS ARE UNCONSTITUTIONAL

Ninety -four percent of nonpublic school enrollment is sponsored by religious organizations. S.2673, therefore, raises serious constitutional questions.

Many Congressmen believe that there is no clear constitutional rule and that doubt about S.2673's constitutionally should not abort congressional efforts to serve the public good. The truth, however, is that there is no such doubt. The Supreme Court has held that tuition tax credits are unconstitutional, Committee for Public Educ. and Religious Liberty V. Nyquist, 413 U.S. 756 (1973). Accordingly, members of Congress voting for S.2673 must recognize that by casting such a vote they are supporting legislation inconsistent with the Constitition as interpreted by the Supreme Court.

The Supreme Court has recognized the importance of church-related education, Lemon v. Kurtzman, 403 U.S. 602, 625 (1971), but it has also made clear "that the interest of the public lies not so much in the continuation of aid to nonpublic schools as it does in the continued vitality of the Establishment Clause." Marburger v. Public Funds For Public Educ., 358 F. Supp. 29, 43 (N.J. 1973) summarily aff'd, 417 U.S. 961 (1974).

While the Establishment Clause does not proscribe all forms of public aid to nonpublic education, it does proscribe all forms of aid which do not satisfy the Court's well settled tripartite test:

> [T]o pass muster under the Establishment Clause the law in question first must reflect a clearly secular legislative purpose, e.g., Epperson v. Arkansas 393

> U.S. 97 (1968), second must have a primary effect that neither advances nor inhibits religion, e.g. McGowan v Maryland, 366 U.S. 420 (1968); School District of Abington Township v. Schempp, 374 U.S. 203 (1963), and, third, must avoid excessive government entanglement with religion, e.g. Walz, v. Tax Comm'm (397 U.S. 664 (1979).

In 1973, the Supreme Court invalidated New York State's tuition tax credit law as a violation of the Establishment Clause of the First Amendment. Committee for Public Education and Religious Liberty v. Nyquist, supra. The challenged New York statute gave a tuition tax credit to certain parents of private school pupils. The amount of the credit was unrelated to the amount of tuition actually paid and decreased as the amount of taxable income increased.

The Court found, of course, that the recitation of legislative purposes appended to the New York law did express a secular purpose. Id. 413 U.S. at 773. But it cautioned that "the propriety of a legislature's purpose did not immunize from further scrutiny a law which either has a primary effect that advances religion, or which fosters excesive entantlements between Church and State." Id. And, it held that the tax credit violated the "effect" test.

The Court said:

> In practical terms there would appear to be little difference, for purposes of determining whether such aid has the effect of advancing religion, between the tax benefit allowed (under Sections 3, 4 and 5) and the tuition grant allowed under

> Section 2. The qualifying parent under either program receives the same form of encouragement and reward for sending his children to nonpublic schools. The only difference is that one parent receives an actual cash payment while the other is allowed to reduce by an arbitrary amount the sum he would otherwise be obligated to pay over to the State. We see no answer to Judge Hays dissenting statement below that "[I]n both instances the money involved represents a charge made upon the State for the purpose of religious education." 350 F. Supp. at 675.

413 U.S. at 790-91 (emphasis added)

Nor, in the Court's view, was there any controlling significance in the fact that financial aid was afforded the parents of nonpublic school students and not delivered directly to the schools themselves. 413 U.S. at 780-85. Finally, the Court rejected the argument that tuition tax credits are merely an

> analagous endeavor to provide comparable benefits to all parents to schoolchildren whether enrolled in public or nonpublic schools...for it would also provide a basis for approving through tuition grants the complete subsidization of all religious schools on the ground that such action is necessary if the State is fully to equalize the position of parents who elect such schools - a result wholly at variance with the Establishment Clause.

413 U.S. at 782 n. 38. (emphasis in original)

We have had occasion to quote extensively from the Nyquist decision precisely because the statute at issue there was in many respects identical to S.2673. Like the New York scheme, S.2673 does not place any restrictions on the type of educational institution for which the tuition tax credit is claimed except as noted above. Like the New York law, S.2673 would have the primary effect of aiding and advancing religious institutions.

It has been argued that the square ruling against tax-credit legislation in the Nyquist case does not apply here because it dealt with a state rather than a federal statute. The First Amendment is applicable by its express terms to federal laws and only by construction via the Fourteenth Amendment to state laws. It would be anomalous indeed if it were interpreted more broadly in the latter case than in the former.

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After Pawtucket: Religious Symbols on Public Land

A Report

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The Creche Decision and the Community Response: The First Year's Experience

BACKGROUND

In *Lynch v. Donnelly*,* the Supreme Court held that the town of Pawtucket, Rhode Island could fund and erect a nativity scene as part of a holiday display** in a downtown shopping square without violating the Establishment Clause of the United States Constitution. This decision was greeted with consternation and dismay by many in the Jewish community, who viewed it as sending a message to them that, in NYU Law School Dean Norman Redlich's words, they were "strangers in their own land."

After *Lynch* was decided in March of 1984 there was serious apprehension that nativity scenes would appear on almost every village green and shopping mall in the coming 1984-1985 holiday season. This expectation was heightened when the Supreme Court agreed to consider another case involving a nativity scene. This time the issue involved a display on public property which had relied on the *Lynch* precedent. In *Village of Scarsdale v. McCreary*, the Court of Appeals for the Second Circuit*** decided that a village could not refuse a private group's request to display a solitary creche in a public park which had traditionally been the site of other non-religious signs and symbols as well as religious services and demonstrations. The Court had held that the park was a traditional public forum and the nativity scene a form of speech whose display, according to *Lynch*, would not constitute an Establishment Clause violation.

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* 104 S.Ct. 1355 (1984).

** The display included among other symbols a Santa Claus house, reindeer pulling Santa's sleigh, candy striped poles, a Christmas tree, carolers, cutout figures representing such characters as a clown, an elephant, and a teddy bear, etc. The *Lynch* decision left open the question of whether a governmentally funded and erected nativity scene standing alone would similarly pass muster under the Establishment Clause. In ACLU v. City of Birmingham, 588 F. Supp. 1337 (E.D. Mich., 1984), a district court decided that *Lynch* did not apply to a creche standing alone and enjoined its display on the City Hall lawn during the holiday season. The appeal to the Sixth Circuit, in which AJCongress filed a brief *amicus*, is pending.

*** 739 F.2d 716 (1984).

Although the *Scarsdale* creche case was appealed to the Supreme Court, that Court, because of the illness of Justice Powell and his failure to participate in the decision, divided 4 to 4 on the issue, leaving the *Scarsdale* decision itself intact but denying it precedential value in any other case. Thus not only did *Lynch* leave a number of unsettled issues but the non-decision in the *Scarsdale* case added to the uncertainty.

In the Fall of 1984, conferences and consultations were held among Jewish communal leaders to map a concerted and effective strategy to deal with the expected torrent of publicly funded, endorsed or sited Christian religious symbols. AJCongress, which had called the first two of these conferences, set out immediately after the holiday season to discover whether in fact the fears of the Jewish community were realized and to find out if the agreed upon Jewish strategy was working or in fact needed further refinement and/or elaboration. It therefore put a number of questions to its own staff members throughout the country as well as to selected JCRC directors nationwide.

Among the questions AJCongress asked were:

> After the Supreme Court's decision did most American towns and cities follow Pawtucket's lead? When publicly funded creches appeared in front of town halls or on village greens, what was the reaction of the Jewish community and of the community in general? Did the organized Jewish community, or a part of it, seek to erect menorahs? In those communities where there was public opposition by the Jewish community to a creche, was there any evidence of anti-Semitic backlash? What was the public response, Jewish and non-Jewish, to the erection of menorahs?

What follows is a review of the creche-menorah controversies in selected cities around the country based on responses to these questions as well as on relevant newspaper accounts. That review is preceded by a brief summary of our findings and some conclusions about the implications of these controversies for the Jewish community.

Summary and Conclusions

I. Creches

Since the *Lynch* decision made legal attacks on most publicly funded and erected nativity scenes largely unavailing in 1984-85, the Jewish community shifted the focus of its activities to the policy forums—local town boards, village councils and the forum of public opinion.

Protests by Jewish groups and others against decisions by municipal authorities to erect creches, generated ugly anti-Semitic feeling and community tension in three communities: York County, Pennsylvania; Barrington, Rhode Island and Chicago, Illinois. Fanned by local electoral politics,

the creche issue was part of a larger political struggle between the Mayor and City Council in Chicago.

But these communities were the exception. Despite the fact that the Supreme Court had given what was in effect a legal green light to municipalities to display nativity scenes, municipal authorities in many communities declined to authorize publicly sponsored creches at all or moved them to privately owned sites. Some did so without even being asked. This heartening development teaches that it is worthwhile for Jewish communities to approach local authorities and raise arguments concerning the divisiveness and harm to good community relations inherent in government sponsorship of religious symbols.

As experience indicates, these approaches require careful preparation and community education. They must be initiated well before the advent of the holiday season and executed not only in a statesmanlike fashion, but with the fullest cooperation and participation of all possible constituent groups including sympathetic non-Jewish groups.

2. Menorahs

The widespread erection of menorahs in public parks, the participation of government officials in Menorah lighting ceremonies, and the fact that the issue of appropriateness of religious symbols in public parks was before the Supreme Court for decision during this holiday season, particularly muddled both the constitutional and policy issues concerning menorahs. There have been *Chanukiot* on public sites in cities throughout the country in past years. However, there was particular attention devoted to religious symbols by the media this year as a consequence of the *Lynch* and *Scarsdale* decisions. Further, the *Lynch* decision probably emboldened the Lubavitch to increase their efforts to erect *Chanukiot* in communities where formerly there were no such displays. These factors no doubt heightened the visibility and public perception of menorahs nationwide. A NJCRAC survey revealed that there were publicly displayed menorahs in twenty out of the thirty-two communities reporting. Efforts initiated prior to the holiday season to convince Lubavitch to place their *Chanukiot* on private property initiated prior to the holiday season were unavailing. In almost every instance, letters to this effect were uniformly ignored. No response other than erection of the menorah was forthcoming. In Cleveland, however, some eight to ten years ago, an arrangement had been made by the local Federation to place the menorah on private land.

The muddled legal situation with respect to extended display of menorahs in public parks coupled with the natural desire of members of the Jewish community not to engage in internecine warfare with their co-religionists, made Jewish proponents of church-state separation reluctant to engage in public disavowal of the Lubavitch's actions. Yet failure of the organized Jewish community to publicize its opposition to the extended display of menorahs on public property was confusing and on occasion was commented on by the general media. In these instances the church-state position of the Jewish community was made to appear unprincipled and self-serving.

Options for Future Actions

As the 1985 holiday season approaches, legal ambiguities remain as to the full scope of the *Lynch* decision, and as to the legal rights of private groups to display religious symbols for an extended period in public parks. Some of these ambiguities will no doubt be resolved as cases prosecuted by organizations such as American Jewish Congress come up through the legal pipeline. However, until definitive legal rulings are obtained, the Jewish community faces a serious question of internal policy making: how best to deal with the problem of public display of menorahs. Resolution of this problem will require all the statesmanship, imagination and resolution of which the community is capable.

One option for the organized Jewish community is to find private but still highly visible sites for the display of menorahs and convince Lubavitch and others to place their *Chanukiot* at these locations. This was the route followed successfully by the Cleveland Federation a number of years ago. Another option, where the first strategy is not successful, is to pursue litigation against menorahs displayed in public parks for extended periods (as opposed to mere lighting ceremonies). A third suggestion, not necessarily inconsistent with the first two, is to urge officials in all the communities involved to ban all freestanding displays in municipal parks as well as to refrain from paying for or erecting nativity scenes or menorahs on such public forums as courthouse and municipal building lawns, lobbies, and the like.

Banning all free standing displays in municipal parks and other public forums could ameliorate some of the tensions created by the varieties of opinion within the Jewish and non-Jewish community. It would eliminate the likelihood of the possibly unseemly display of one part of the Jewish community suing another, without on the other hand leaving that portion of the community firmly committed to church-state separation open to the charge of opportunism and favoritism.

One thing is certain, however; all factions in the community will not be satisfied or mollified by any one strategy. Unless there is a clear ruling from the Supreme Court striking down all religious symbols in public parks soon, an unlikely prospect at this writing, the issue is again likely to roil the Jewish communities, casting a continued cloud over the Christmas-Chanukah season.

NATIONWIDE SURVEY RESULTS

Atlanta

No problems relating to the public display of religious symbols by government entities were reported in the mid-south area, in contrast to past years when some isolated incidents occurred. The Atlanta area is populated by Southern Baptists and other Protestants to whom the creche is less significant than to other religions, notably Catholics and "liturgical" Protestant churches. The Dallas area, as well as parts of Florida inhabited by similar groups, also did not have significant creche problems. *See infra p. 7.*

Baltimore County

In Baltimore, a menorah lighting ceremony took place at the Baltimore County Courthouse. There was no organized opposition. The ceremony was said to have been prompted by Jewish employees in the County Commissioner's office who put pressure on the County Commissioner. Although the AJCongress position in opposition to the menorah was broached to the local JCRC, no action was taken by it. However, the JCRC is proposing to "educate" the community on the menorah issue and discuss it before the next Christmas-Chanukah season.

Bethesda Naval Hospital

The community officer at the Bethesda Naval Hospital authorized the lights of the facility to be turned on in a way that created the appearance of an illuminated cross on the building. A memo was sent by AJCongress to Community leadership urging calls of protest. As a result, the cross was discontinued.

Birmingham, Michigan

In this Detroit suburb, with few Jewish residents, Federal District Court Judge Anna Diggs Taylor, in July, forbade the placement of a creche standing alone in front of City Hall. When the city, in November,

asked for a stay of the order pending appeal, Judge Taylor denied it, stating that "It is extremely unfortunate that the city ... wishes to continue to send a message of rejection to all those ... citizens who are not Christian." On appeal, AJCongress filed an *amicus curiae* brief in support of Judge Taylor's decision. The case is now pending before the United States Court of Appeals for the Sixth Circuit.

Chicago

In October, AJCongress joined some 33 other Jewish organizations constituting the CRC Public Affairs Committee ("PAC") in publicly condemning government sponsorship of religious symbols of all kinds. Subsequently, after Mayor Harold Washington's chief of staff ordered the removal of a privately funded and erected plaster nativity scene that had been displayed in the lobby of the City Hall for 45 years, the creche became the center of a political controversy.

The City Council, which has been continuously at odds with the Mayor, passed an ordinance mandating that the creche be re-erected, claiming that the creche was protected and revered by the city. Only one Alderman, a Jewish independent, voted against it. The Mayor, on his own, reversed his chief of staff and ordered the creche re-erected.

Prior to removal, the American Jewish Congress, in addition to joining in the CRC press release, had called upon the city officials not to display the creche. It argued that the constitutional question was not settled and questioned the policy of creating an aura of implied religious endorsement of the creche by placing it in the lobby of the City Hall. Subsequently, AJCongress wrote a letter of protest concerning the re-erection which received substantial media attention. It was the only organization to protest. **Time** Magazinereported that the creche issue generated "an ugly rash of anti-Semitic phone calls to 'a local radio talk show' even though, according to **Time**, it was never established that Jewish groups had complained about the creche in the first place."—a puzzling statement, given the AJCongress and PAC statements.

The **Chicago Sun Times**, in an editorial, branded opponents of government sanctioned religious displays as "that crowd" who will "never be satisfied...", "people with a fetish for undermining all religion." The editorial concluded that "City Hall should be available as a backdrop for all special observances in the city." A cartoon in the same paper depicted Mayor Washington as King Herod snatching away the Baby Jesus from the Crib. The **Chicago Tribune** titled their disapproving editorial "The Grinch in City Hall" and noted in criticizing the removal of the creche that

> City Hall surely cannot be accused of excluding religious displays other than Christian ones: religious and ethnic groups have not only been allowed but encouraged to display symbols of their heritage in the Hall or Civic Center Plaza.

Tribune Columnist Mike Royko called those who opposed the Nativity scene "Kneejerkers" and opined that

> there's not much of a political gain to be appearing to be anti-Christmas ... when there is no longer a legal reason to continue the silly boring practice of squabbling over nativity scenes.

On the other hand, Ray Larson, a **Sun Times** columnist, wrote that although a City Hall nativity display might be legal, such a display was not always wise.

> As a Christian, I believe that generic forms of civic piety are a bland caricature of a vital tradition .... As a member of the dominant religious group in this country I believe I have a special responsibility not to be domineering .... By trying to force my faith on others, I do not reflect the depth of my commitment; I reflect an underlying anxiety about the ability of my faith to survive in the free marketplace of ideas."

For the second year Chabad of Illinois placed an 18 foot high Chanukah menorah at the Daley Center Plaza to celebrate the Jewish holiday. Daley Center Plaza plays host to many free standing symbols and displays and might be considered a limited public forum. Rabbi Daniel Muscovitz of Chabad commented "The Constitution guarantees freedom of religion, not freedom from religion." AJCongress did not comment publicly on Lubavitch's action. Previously, however, Congress' regional director had expressed support for the Highland Park City Council when in the fall it rejected a request by an Orthodox group to erect a sukkah on public property.

In contrast, in Skokie, where the population is approximately 40 percent Jewish, no one objected to the manger donated by local merchants in front of City Hall. A demonstration on behalf of Soviet Jews was conducted right alongside the manger scene in early December. There were few municipally sponsored mangers, however, in other Chicago suburbs.

Charlottesville, Virginia

In Thomas Jefferson's home town, despite the Supreme Court's decision in *Lynch*, the municipal officials reversed a previous decision and banned a nativity scene from a downtown public park on the grounds it violated the Constitution.

Cleveland

Although there was a creche on Public Square, in a city park, and in City Hall, no community protest of any sort was initiated. The community, which has significant fiscal and other problems, was "not exercised about religious displays." In an unusual development, approximately eight to ten years ago, an arrangement had been made by the local Federation with Chabad to place the annual menorah on the site of a Jewish agency; therefore no "menorah" problem exists.

Dallas

A torch was flown from Israel to kindle Chanukah Menorahs in half a dozen cities in the United States. In Dallas, the ceremony was sponsored by the Zionist-oriented Masada Youth movement, as well as by the Jewish National Fund, two Orthodox parochial schools and a chapter of United Synagogue Youth (Conservative). The Menorah was to be lit by members of the City Council at City Hall, and hence caused some confusion and consternation among those parts of the Dallas Jewish community committed to church-state separation.

Concerned by the co-mingling of church and state which an official menorah lighting ceremony would entail, representatives of the local JCRC, including AJCongress, prevailed on the sponsors to omit the menorah in the ceremony and to be content with a secular ceremony paying tribute to Russian and other Jews facing persecution around the world. Although the incident ended happily, it highlighted again the differences in approach and tactics between, on the one hand, elements of the religious community and Zionist groups desiring "to assert the positive aspects of Judaism through placing religious symbols in public places" and, on the other, those parts of the Jewish community concerned about the need to maintain church-state separation.

Dearborn, Michigan

U.S. District Court Judge Anna Diggs Taylor granted an injunction in an ACLU initiated suit barring the city from owning, storing or displaying a nativity display on its City Hall lawn, which had been the city's custom for some 30 years. The Dearborn City Council, after adding reindeer and a Santa Claus to the display, responded by voting unanimously 7-0 to sell the display and the ground under it to a non- profit foundation.

Controversy over the suit, according to the Detroit Free Press, prompted a demonstration by hundreds of people who opposed the removal of the creche and inspired a death threat and numerous phone calls to one

of the non-Jewish plaintiffs. After the sale, the ACLU went into court asking that the city be found in contempt on the ground that the transfer to the non-profit corporation was a subterfuge to avoid compliance with the court's injunction. The judge, however, found the action constitutional.

Detroit

Prompted by erection of a privately owned nativity scene in front of Detroit's City County Bulding, a neo-Nazi group requested permission to display a picture of Hitler and conduct a ceremony in honor of Hitler's birthday on that same site. The ceremony was to include a march with guns. The Legal Department of the City County Building Authority denied the original request but another location was arranged. Subsequently the group celebrated Hitler's birthday at a location outside Detroit with litte media or other attention. Subsequently the private group owning the creche sold it to a church. Next year it will be displayed on church, rather than city, property.

Florida

A survey of the ten Jewish Federations through the State of Florida taken to determine the extent of public and private support for the display of creches and other religious symbols on public property originally revealed a widespread lack of awareness of the presence of such displays. It is not clear, however, that such lack of awareness is attributable to the absence of such displays in areas where most Florida Jews work and live, or whether it can be ascribed merely to a low sensitivity and concern about such displays among Florida Jews. Creches appeared in a public park in Coral Gables and in front of the City Hall in West Miami. Menorahs were reported lit at the Tampa City Hall, at the Hollywood Mall, on city property in Bal Harbour and in front of the West Miami City Hall. The West Miami displays were privately funded, since use of public funds was barred as a result of a consent agreement reached in 1983 to settle a lawsuit. There was discussion of an effort to vacate the consent agreement in light of *Lynch*. No formal motion was filed, but the city in fact permitted the erection of religious symbols this year.

Kansas City

North Kansas City had both a menorah and a creche in a public park. The creche prompted the Kansas City Star to comment that "the assumption by elected officials as in West Kansas City recently, that a nativity scene belongs in a public park is a very big assumption." It opined that

"America works best when the variety, views and backgrounds of its citizens are equally respected, not when one private view is pronounced as the official public view."

Los Angeles Area

On the first night of Chanukah, a Jewish city councilman lit a menorah in a ceremony sponsored by Chabad in front of the Los Angeles City Hall. The previous year, Los Angeles Mayor Bradley had lit the menorah, but this year he had been dissuaded by the local JCRC from doing so. The AJCongress regional director wrote the Mayor and members of the City Council protesting the ceremony.

The question of the proper response to the menorah situation engendered substantial private debate within the local JCRC. Originally, no public comment concerning the menorah lighting was forthcoming from the organized Jewish community. This was probably because the chairman of the JCRC believed that, so long as no public funds were expended, such a ceremony was constitutional. Moreover, fears were expressed that protests would embarrass the Jewish Councilman who lit the menorah as well as Chabad.

However, as a result of persistence by the AJCongress within the JCRC, its Executive Committee eventually decided to send a letter to the Mayor and members of the City Council reiterating the CRC's "long-standing position against the display of Christian, Jewish or other religious symbols or statues on publicly owned property, government premises or other locations supported by tax funds." No response was received.

In a Santa Monica park, several displays were erected depicting the life of Jesus. The parking meters in front of the display were covered over by the city. The creche sponsors included the Chamber of Commerce and local churches. The city posted a disclaimer which read: "These scenes are arranged under the auspices of the nativity committee of Santa Monica. The city of Santa Monica has played no role in the production of this program."

Staff at the Santa Monica City Attorney's office refused to discuss the display except to verify that the property is city-owned. Santa Monica Mayor, Christine Reed, revealed that the display has been part of the community Christmas display for at least twenty years. Initially, it was a city-erected display, though this relationship was severed in the 1970's. The city is reimbursed for the electricity and lost parking revenue by the Chamber of Commerce and churches which sponsor the display. The Mayor indicated that to the best of her knowledge, no complaints are made to the city regarding the display. Three city council members are Jewish.

The local CRC director confirmed that the organized Jewish community in Santa Monica had never complained about the display. The CRC was satisfied when the city withdrew from involvement. The CRC has ignored it completely since it had not received any complaints about it this year.

None of the CRC directors in Los Angeles County and Long Beach received complaints about religious displays or personally observed any displays on public property.

New York City

New York City had, as was to be expected, a significant creche/menorah controversy. The controversy centered around Central Park, Manhattan. A menorah placed in a small park in Riverdale (The Bronx) also drew some attention, as did a Chanukah candle lighting ceremony conducted by the Mayor at City Hall.

The Central Park controversy arose when the Catholic League for Religious and Civil Rights, noting that a menorah had been placed and lit on Parks Department land at another location by the Lubavitch Youth Organization since 1977, requested that a nativity scene be displayed "with similar visibility to reflect the values of the entire population in this our pluralistic society."

The Catholic League's request, as well as the request relating to the Riverdale menorah, along with letters of opposition to the latter, prompted the Parks Department to ask for a legal opinion by the New York City Corporation Counsel. That opinion concluded that since the law was unsettled, any decision made this year should not constitute a precedent for future years. It argued further that, although the Parks Department was not compelled to grant any applications for semi-permanent displays for explicitly religious symbols, it would be "Scrooge-like" to deny the applications for the creche and menorahs this year.

The special circumstances the opinion noted were that 1)the menorah had been permitted in Central Park for some seven years; 2)current federal law (the appeals court's Scarsdale creche decision) required the City to allow the display of a private creche in a public park as an aspect of free speech; 3)the Supreme Court was going to provide guidance soon; and 4)the Parks Commissioner would probably be issuing comprehensive guidelines to be issued after the Supreme Court delivered its opinion in the Scarsdale case.

The opinion noted that in such guidelines the Park Department might want to consider whether it would be desirable parks policy to have a New York City "Hyde Park corner" (a)reserved through the year for a

rich variety of symbolic displays (b)reserved on a rotating basis (c)limited to a winter holiday display area, or if legal, (d)should parks be limited to their traditional uses including demonstrations and assemblies, but excluding freestanding plastic displays?

Accordingly, the Parks Department gave its sanction to the display of not only the creche and menorah in Central Park but to two other Chanukah menorahs in the City's parks; however, disclaimer signs were required.

Two Jewish organizations, the Union of American Hebrew Congregations and the New York Chapter of the American Jewish Committee, criticized the Parks Department, as did a Protestant leader. The National Council of Young Israel supported it. The American Jewish Congress had already expressed its opposition to placement of religious symbols on public property in a letter in which it also declined the Mayor's invitation to attend an official Mayoral Chanukah candle lighting ceremony. The Mayor did not respond to AJCongress' letter.

Concomitantly, the Rabbi who had requested and received permission to erect a menorah in Riverdale wrote the local legal press objecting to the Corporation Counsel's linkage of the creche and the menorah in his opinion. (The effort to erect a menorah in Riverdale created some controversy in the local Jewish community. The reform and conservative rabbis opposed the erection of the menorah, as did one of the Orthodox rabbis in the community.) He argued that the menorah was more akin to a Christmas tree, both of which have a more universal symbolism, a lesser religious significance and transmit a more neutral concept to all people. Accordingly, he argued, public display of creches should be forbidden, but menorahs, like Christmas trees, may be displayed on public lands.

AJCongress responded, arguing that in fact the menorah was a truly religious symbol and the Rabbi's efforts to secularize it in order to permit display by a government obliged to be neutral, illustrated precisely what was wrong in the effort to obtain support for religious displays on public land.

Washington, D. C.

Washington, D. C., also was the focal point of a significant creche controversy. In the wake of the *Lynch* case, the National Park Service a division of the Department of Interior, decided to include a creche in the government-sponsored annual Christmas Pageant of Peace on the Washington Ellipse, which is public property.

The government's practice of including a creche as part of its Christmas display, which also included some 50 trees decorated with ornaments

supplied by the 50 states was discontinued in 1973 as a result of two United States District of Columbia Circuit Court of Appeals decisions barring use of government funds for this purpose.

The Park Service justified its decision to include the creche this year on the ground that the creche would be paid for and maintained by a private group, and that *Lynch* vitiated the validity of the earlier decisions. The Service made no effort, however, to vacate the prior judgment. Further, the Service said that display of the creche in the display was consistent with *Lynch* because "the creche in the [Pageant] display depicts the historical origins of this traditional event long recognized as a National Holiday."

The Park Service's decision was criticized by some parts of the Jewish community as well as by some other groups. The American Jewish Congress, ADL, AJCommittee and NJCRAC all wrote letters of protest. AJCongress circulated a letter to the President among Congressmen, signed by Representatives Ackerman and Edwards, protesting the decision to erect the creche. Some 15 Congressmen, a majority of whom were not Jewish, eventually signed.

Circulation of the letter by AJCongress was not approved by NJCRAC, as it believed that it put Congressmen on the spot with their constituents during the Christmas season. The American Jewish Committee's letter of protest was also signed by Americans for Religious Liberty, the Washington office of the Episcopal Church, the Office of Government Affairs of the Lutheran Council U.S.A. and the Washington office of the Unitarian Universalist Association.

The local Jewish Community Council, however, refrained from issuing a statement. A local spokesman said it refrained out of a desire not to harm Jewish-Christian relations. This concern was also reflected in the actions of the Washington Interfaith Conference, consisting of Protestant, Jewish, Catholic and Moslem officials, which refused to condemn inclusion of the creche directly but noted obliquely its concern that religious symbols not be employed for divisive purposes.

The creche, as finally erected despite these protests, consisted of some 20 pieces, including the figure of Mary, the baby Jesus and Joseph surrounded by cattle, shepherds, the Magi and angels and cost about $3,500, which was paid for by the Pageant of Peace committee, a private group.

Complicating the creche issue for the Washington Jewish community was the almost simultaneous erection in Lafayette Park not far from the Ellipse Creche site of a large Menorah by Lubavitch. The Washington JCRC as early as November 21 had written to Lubavitch, to no avail, urging it to place the Menorah on private ground. AJCongress Washington Chapter had planned a demonstration in front of the White House

opposing the erection of *any* religious symbols on public property. This demonstration, which because of the geography involved would have appeared to the media as particularly directed against the Menorah, was opposed by both the local JCRC and the NJCRAC on the ground that it was their policy not to exacerbate tensions by taking action against Christian religious symbols *during* the holiday season and also because Lubavitch had not been given advance notice of the demonstration and would view the demonstration as insulting.

An impromptu poll conducted by the ADL among 280 Washington subway riders of all religions revealed that 80 percent perceived the creche as religious; however, the AJCongress regional director believes that far fewer felt there was anything wrong with a creche, did not view the creche as offensive and believed it could be included in "official" celebrations, particularly since the majority of the country is Christian. In addition, this director noted that while the Washington area did not see an increase in anti-Semitism in the District, the chairman of the Washington City Council sent out a message that we (Jewish groups) are "too defensive" on the issue.

Nashua, New Hampshire

In Nashua, New Hampshire the town posted a sign declaring that the nativity scene on a wide strip of sidewalk in front of its town hall was not owned by the city.

New Jersey

For the most part, there was no great increase in the number of creches or menorahs displayed in New Jersey and there were few community relations problems. In Hayworth, New Jersey (Bergen County), a judge of the Superior Court ruled that the front stretch of lawn in front of the municipal complex had been opened to the public since a peace sign had been displayed there, and Memorial Day and Christmas tree decoration ceremonies had been held there.

The judge, relying on the opinion of the Second Circuit in the *Scarsdale* case, held that, under the Free Speech Clause, a local creche committee had the right to place a privately funded creche on the lawn if it also erected a sign indicating that the creche is sponsored by a private organization.

Philadelphia Area

This past holiday season Philadelphians grappled with a creche on the site of the municipal zoo located in the city's Fairmont Park as well as a giant 23 foot menorah placed on Independence Mall by Rabbi Abraham

Shemtov, the leader of the Philadelphia Lubavitcher Center. The Menorah was erected despite a plea from the leadership of the Greater Philadelphia Council of the AJCongress to Rabbi Shemtov, delivered in October, urging him to erect the menorah this year on non-public property.

Philadelphia AJCongress President Arnold Silvers urged that in the light of the current "sweeping attack on the constitutional principle of church-state separation, the foundation of religious freedom and tolerance in America," the Rabbi refrain from using public space for the display of a sacred symbol.

The effort was but the latest of a series of initiatives directed over the years to the Philadelphia Chabad. Rabbi Shemtov, who was responsible for the erection of the Washington menorah in 1979, in discussing the Washington controversy, told a Washington paper that "public display of the Menorah is the only public mitzvah required of Jews" ... and is "an expression of pride in the triumph of Jews over Secularism." He did promise, however, to meet with the Philadelphia CRC in order to avoid further controversy.

Another Philadelphia Rabbi, Seymour Rosenbloom, told the Jewish Exponent

> "If anything would blur the line between church and state, it would be the presence of Christian symbols alone, owing to our inaction. As long as the law allows for the display on public property of symbols and exhibits that mark the religious holidays of some Americans, our position should be that it must allow for the public display of symbols and exhibits that mark the religious holidays of all Americans. That will advance the cause of religious pluralism in our country farther than our adherence to self imposed restrictions based on a notion of ideological purity."

Barry Ungar, Philadelphia CLSA chair, responded to Rabbi Rosenbloom in the Jewish Exponent. He pointed out that the Supreme Court had yet to approve display of Christian symbols on *public* property (Pawtucket's display being placed on private property) and argued that there was a significant difference between the Christmas tree, reindeer and Santa Claus and the creche. Just because the Jewish community may have to put up with the former, it should not even implicitly concede the latter, he argued. Finally, he indicated that because of church state separation, Jews are no longer "guests in someone else's country and he for one was unwilling to turn[ing] our backs on the principle which has served us so well."

Use of public high school choirs to sing Christian religious music at Philadelphia Christmas tree-lighting ceremony

On December 5, 1984, a choir of one thousand Philadelphia public high school students performed a concert of music by Bach, most of which was Christian in theme, at the municipal Christmas tree lighting ceremony. The Philadelphia School District strongly urged its high school choirs to participate in the event, which was vigorously praised in a Philadelphia **Inquirer** editorial for promoting "a sense of togetherness."

Although the Philadelphia school system has a declining number of Jewish students, some were in the choir and according to reports expressed discomfort at the idea of seeking excusal from the celebration. After obtaining and reviewing a copy of the program, AJCongress' CLSA sent letters to School Superintendent Constance Clayton and Mayor Wilson Goode explaining their opposition to the use of public school students in what amounted to a Christian religious celebration, and recommending strongly that greater sensitivity to constitutional principles and minority religious groups be displayed in future years. The JCRC sent a similar communication to the school district.

Mayor Goode responded to the AJCongress' letter by pointing out that at the tree lighting ceremony banners were displayed "celebrating Hanukkah, Kwanzaa, Christmas" and the Universal Dove of Peace. Also sung was the Hebrew verson of "Rock of Ages." However, Mayor Goode indicated he would discuss the AJCongress' concerns with appropriate officials in his administration and consider how "future City governments can become more ... sensitive in planning events."

Creche and menorah displays at Philadelphia Zoo

During the holiday season the Philadelphia Zoo, located on parkland owned by the city, erected a nativity scene which lacked any of the non-religious "cultural" symbols apparently required by *Lynch* to pass constitutional muster. In addition, the zoo co-sponsored, with Gratz College of Philadelphia, a one-day Chanukah celebration featuring Israeli dancers and singers, latkes, an art exhibit, a Chanukah gift shop, and a mock menorah lighting ceremony.

The zoo display received comparatively little public attention. The local ADL chapter, which learned first of the display, wrote to the zoo requesting that it refrain from displaying its creche and conducting its Chanukah program. The zoo director responded by rejecting the idea that the zoo was a governmental entity and declaring its intention to continue sponsoring such "cultural events" in the future.

Creche display on county courthouse steps in York, Pennsylvania

A nativity scene displayed on the steps in front of the York County courthouse became the subject of a heated public controversy after a letter from the vice-president of the York Jewish Community Council to the County Commissioner. In the letter, which he sent in a private capacity, he expressed opposition to the display of the creche. A copy of this letter was sent to the local newspaper, which ran a news article about it under the headline, "Creche Stirs Irate Letter." The resulting publicity occasioned numerous anti-Semitic letters-to-the-editor and phone calls to Jewish community leaders.

The creche involved is owned by the York Chamber of Commerce but is stored and erected by city employees on public property. During the controversy, which AJCongress learned about only after the holiday season, the Jewish Community Council elected to seek to minimize the damage to community relations by avoiding public statements about the creche. The JCC plans to approach public officials and local Christian clergy later in the spring or summer to try to convince the county to reverse its position as well as to mend damaged fences.

Nativity scene in front of Bucks County courthouse

For several years, a nativity scene was displayed on the steps of the Bucks County courthouse in Doylestown, Pennsylvania. In light of the general controversy surrounding the creche issue this year, however, the county chose not to display the nativity scene this year. To our knowledge, there was no organized Jewish communal opposition which prompted the county's decision. It is not clear whether the decision was reached on legal or policy grounds.

In sum, although there was heated debate over the general subject of public religious displays and their significance for church-state separation in the Philadelphia area, there were relatively few instances of government sponsored religious celebrations in this region.

Rhode Island

As was perhaps to be expected, some of the most acrimonious creche-menorah disputes, all of which received extensive coverage by the press, occurred in the tiny state of Rhode Island, whose Pawtucket creche display last year called forth the Supreme Court's *Lynch* decision. Ironically, in

that state's capital of Providence, the Knights of Columbus' plan to install a nativity scene on the City Hall steps were cancelled at the request of the Mayor, who heeded the Jewish Community Council's request, sent to all Rhode Island communities, to keep religious displays off public property during the holiday season.

The Mayor's decision was reluctantly supported by the Roman Catholic Bishop of Providence and commended by other Catholic priests in the area. Bishop Gelineau, in agreeing that the nativity scene should not be installed on the steps of City Hall, did express regret, commenting that he

> would have hoped that the spirit of dialogue and understanding nourished in recent years would have resulted in no opposition to the presence of the creche on public property. The motivation and the message are not direct attacks upon the beliefs of others, nor upon the principle of church state separation ... in an issue such as this, is there a sign of such distrust and fear among us as to remand all religious expression out of the public life of our country?

Despite the supportive action of the Catholic clergy, however, a radio talk show host led 200 people in a pro-creche rally at which a toy cradle was symbolically and defiantly placed under the City's Christmas tree and later removed.

In contrast to the relative harmony which existed in Providence, the JCRC's letter to the Barrington, R. I. community sparked a storm of controversy. The Barrington Council refused to restore a privately funded life-size creche to the Town Hall lawn, after a debate described as ugly and marked with boos and hisses directed at Jewish opponents of the creche. A private group surreptitiously erected a creche on the City Hall lawn. The following day the town manager had it removed to another site. It was subsequently reassembled on private property but, a few days later, the Christ child figurine was stolen.

Local Jewish leaders in Barrington, who declined to be quoted, said that the JCRC letter, whose author claimed it was prompted largely by a concern about public menorahs, had "damaged years of carefully nurtured harmony between the local Jewish community and members of other denominations." Ironically, one such Barrington Jew now believes not only that the creche has become a "no win issue" but is thinking of proposing that the town display both the creche as a symbol of peace and good will and a menorah as a symbol of "freedom" as a means of bringing his town "back together" next year.

Though the attempt to display the Barrington manger on public property prompted controversy, the Chanukah menorah lighting ceremony

in the City Council chamber in Cranston was a feast of good feeling. The ceremony was approved and attended by the Governor-elect and even the Executive Director of the Rhode Island Civil Liberties Union.

The latter opined to the press that there was a difference between lighting the menorah which is taken down after the ceremony and a creche which is kept up for several weeks. A letter writer to the Providence Journal, however, failed to note the distinction. The author asked in connection with the menorah display where "our famous ACLU was besides arguing against the creche display."

San Francisco

San Francisco's Jewish community contended not only with a proposal for reintroducing a creche under the Christmas tree in the City Hall, erection of a brightly lit menorah in Union Square, and a proposal for another menorah under the Golden Gate Bridge, but also had to consider a post-Christmas legislative suggestion that the City government recognize December as Religious Arts Observance month and authorize display of religious art in public parks and buildings.

After the 1978 decision of the California Supreme Court in *Fox v. City of Los Angeles* affirming that the display of a lighted cross on Los Angeles City Hall violated the California Constitution, the holiday creche, which had been displayed for many years in the San Francisco City Hall, was removed. This year, relying on the *Lynch* decision, an effort was made and defeated by the Board of Supervisors to reintroduce the creche. At the hearings, the Jewish Community Relations Council, along with the AJCongress and other national Jewish groups, opposed erecting the nativity scene.

A parallel effort on the part of the Chabad to place a menorah at a conspicuous spot near the Golden Gate Bridge entrance was voted down by the Golden Gate Bridge District Board. Again the Jewish Community Relations Council, AJCongress and other national Jewish organizations expressed public opposition to the display. The rank and file of the Jewish community, however, was said to support Chabad's efforts to erect the menorah. The refusal of the San Francisco Board of Supervisors and the Golden Gate Bridge Board to permit religious displays did not affect Chabad's prominent display of the menorah in Union Square, a public park. AJCongress had offered to find a suitable private place for the menorah.

The irony of the denial of the creche by the Board of Supervisors and the seeming unopposed erection of the Chanukah menorah by Chabad did not escape Cal Thomas, a syndicated columnist for the Washington

Times, and vice-president of the Moral Majority, who commented on the situation, noting that

> if it is anti-Semitism to ban a symbol of Judaism from public property, is it not fair to label the banning of a Christian religious symbol anti-Christian bigotry .... So long as public property is available to all religions there can be no harm to religion or to the Constitution by allowing its free exercise.

Joel Brooks, AJCongress' regional director, wrote Thomas, explaining that AJCongress opposed Chabad's Menorah on public property just as strongly as it opposed the creche and explaining the constitutional basis for its view. Mr. Thomas' reply indicated he remained unconvinced not only as to the merit of AJCongress' constitutional position but as to the policy advantages of separating church and state. His reply concluded,

> I believe that the culture has suffered greatly from the lack of religious involvement, and not because of over-involvement by people of religious faith. Instead of looking for new ways to stifle religious expression and its application in a free society, we ought to be looking for ways we can celebrate it to the end of achieving mutual appreciation, understanding and impact of the principles and values we share in common, regardless of religious difference.

No doubt seeking a politically attractive way out of the holiday dilemma, a member of the Board of Supervisors sponsored a resolution to declare December "Religious Art month" and to authorize display of religious art of all faiths in public parks and buildings. This compromise, which its sponsor described as akin to "Black History month," was criticized by AJCongress, the JCRC and by the president of the Northern California Board of Rabbis. The chairwomen of the San Francisco JCRC labeled it "a rather transparent effort to display religious doctrinal material by the back door."

St. Louis

A Christmas tree and a 15 foot menorah were on display at the St. Louis County Government Center. The menorah was put up with private funds. Members of the Jewish community met unsuccessfully with Chabad to persuade it *not* to put up the menorah this year on public property. To provide an example of a more appropriate holiday observance, a community celebration was planned in the Jewish Federation building.

The St. Louis Post Dispatch took note of the difference of opinion in the Jewish community as to the appropriateness of the menorah on public land and recalled last year's dispute in which some Jewish leaders

had persuaded the County Executive to remove the Menorah placed in the Government Center Plaza by Lubavitch. No such county actions took place this year. The St. Louis Globe Democrat editorialized that "Religious symbols play an important role in Americans' lives and their public display should be encouraged as reminders that the United States is not an atheistic or secular humanist society. Nearly every year some busybodies take it upon themselves to try to ban Christmas crib scenes from public places. Fortunately, these efforts usually fail."

The AJCongress Regional Director, when asked whether AJCongress efforts in this area were worthwhile, stated: "... until the climate is better... we are spinning our wheels and our energies should go elsewhere. I think the Chabad movement's placement of the menorahs has been more damaging than the Supreme Court's decision. And I can't see suing them at this time."

Suffolk County, Long Island, New York

In Suffolk, the major religious symbols appearing on public land were two privately funded menorahs, one placed on the grounds of the County Seat, the other placed in the Bayshore (a city of some size) city square. Unlike prior years when a nativity scene decorated the county seat, the only nativity scene to be seen was erected on the property of the Long Island Railroad, an independent government corporation which now runs the formerly private railroad. A large billboard with a cross and the word Prayer appeared briefly on a median of a state-maintained highway near Stonybrook, but, after AJCongress complained, it was removed.

Community reactions to the menorahs and the accompanying lighting ceremonies were mixed, according to the AJCongress area director. The rank and file in the Jewish community favored the menorahs, while Jewish community leadership generally opposed them. One usually friendly state senator indicated his belief that every time Jewish groups took strong action against religious symbols, it prompted an even stronger action by the religious right. Our action, he said, raised the ante and in the ensuing competition he did not believe the Jews could win.

The only organized local opposition to religious symbols came primarily from the AJCongress and the Nassau branch of the ACLU and took the form only of surveys and letters to local school officials asking them to be sensitive to feelings of minority religious students. These efforts, as well as opposition of national AJCongress leadership to religious symbols, and speeches of the regional director before local church groups and in the media in other areas received local press coverage. They resulted in some letters and calls of praise, but more letters of opposition, a few of

which were anti-Semitic. A number of letters to the editor in the local press could also be viewed as anti-Semitic. The absence of any response from the Christian leadership on this issue prompted an AJCongress effort to revive the Long Island Interfaith Council.

VARIETIES OF OPINION ON RELIGIOUS SYMBOLS IN THE JEWISH COMMUNITY

As the foregoing material indicates Chabad did not share the view of the organized Jewish community that display of religious symbols either government-sponsored or erected by private groups in public parks was unwise. It is not at all clear that the leadership of the community carried the support of the Jewish person in the street along with it on this issue either. According to reports we received, many of the latter seemed to favor display of the menorah if creches were erected.

The reasons for this failure to persuade both Chabad and many of the Jewish rank and file are, of course, probably as varied as the range of opinions among the different Jews to whom the appeal was made. In the first instance, the subtleties of the church-state separation constitutional argument, complicated as it was by the free speech implications of the *Scarsdale* creche case, were difficult to explain and dramatize.

In San Francisco, for example, in a vote taken after the holiday season, half of the local Jewish Community Relations Council opposed even a memorial lighting ceremony in a public park, a constitutionally protected exercise. Many Jews don't believe the creche is a serious problem of church-state relations. Church-state separation advocates often times confuse and characterize this very real difference of opinion with a mere failure to understand or be educated and sensitized to the issue.

In addition, some Jews in small towns did not want to complain about creches because they feared anti-Semitism and religious hostility. In some instances, as in Barrington, Rhode Island, this fear was justified. Others among the rank and file Jews are either so secure, or so divorced from the Jewish community and Jewishness, that they are neither threatened or offended by the creche. Others feel that, having lost the battle in *Lynch*, the Jewish community should seek its share of the action.

Michael Berenbaum, writing in the December 27th **Washington Jewish Week**, made the point that for the individual Jew "The intensity of a Jew's response to the creche and the menorah mirrors his Jewish and American identities...."

Chabad, for example, was probably not influenced by arguments about church-state separation, or about being "outdisplayed" in small

communities, nor by the contention that they should be affronted by the creche because it tells them they are "outsiders." As Berenbaum argues,

> Many of those who take pride in the menorah have limited expectations as to the Jewish role and Jewish acceptance in America. They see the menorah as a symbol of the right of Jews to practice their Judaism openly with the consent of the government.
>
> Chabad—the Lubavitch movement—could erect the menorah because they have never expected to be fully part of America. Their attitude toward America resembles Abraham's statement toward the people of Het: '**ger vetoshav anochi imachem**'—a stranger and sojourner I am among you. And they never feared a backlash. According to tradition, the religious obligation is clear: Jews are commanded to make public the miracle of Chanukah.

Of course, to the leadership of the organized and more secular Jewish community, on the other hand, mostly composed of the more assimilated American Jews, the creche is a threat and a shock, especially after a period when they appeared to wield great power on the American political scene. Berenbaum notes:

> To assimilated American Jews, relegation to minority status within American society comes as a great shock. A tree can be viewed as a secular symbol of the season—something that can be accepted as a beautiful adornment even if they won't bring it into the home—but the creche tells the story of the birth of the Christian messiah. There is no way to evade its religious significance.
>
> Most Jews intuitively know that if the evangelical right succeeds in Christianizing America, Jews will again find themselves an isolated minority, alien to the American mainstream. The creche symbolizes the ascending power of these Christianizing forces.

The seeming confusion and variety of opinions on the creche-menorah controversy among the Jewish person in the street was reflected also in a wide diversity of opinion among Jewish opinion makers. A well-known political activist on the left, Arthur Waskow, active in the Sukkot Shalom disarmament protest, argued that religious symbols are a means of generating the most intense, powerful and significant thoughts and emotions in public discourse. If Jews cede the use of religious symbols in public to the right wing, he argued, they will be depriving themselves of effective weapons in their effort to bring their views to bear on public policy.

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Waskow, writing in **Sh'ma** on February 8th, continues:

> Why should authentic religious symbols that stir people to take public positions not be brought into public space? Should people who arrive at their political views out of religious conviction abandon their own deepest symbols in that way? Does this not abandon the public arena to sheerest secularism? For Jews, does this mean that we say—for example, to those of us who are passionately committed to ending the nuclear arms race—"Join SANE, or the Freeze Committee—but stay away from Jewish life?"
>
> Are liberals who are sensitive to pluralism and the religion-state issue trapping themselves into a position where they won't use religious symbols in public but the right wing *will*? After all, we *lost* the Pawtucket case. Politics and constitutional law are often a game of leapfrog. If the rules have "changed" (or gone back to what they were 30 years ago), how long do we sit on the sidelines and let others play the only game in town, and when we do decide to use the new rules to advance pluralism, liberalism, our own vision of religion?
>
> For example, how dangerous would it be for Christians to put up creches in public spaces as expressions of the religious roots of their own political beliefs, and for Jews to build *sukkot*? Are our fears rooted in an earlier era when we felt both very weak vis-a-vis the non-Jews of America, and very weak in regard to our own religious and cultural roots? Has anything changed? (Maybe not!)

Another point of view expressed in **Sh'ma** believes church-state separation is important but sees creches as relatively unimportant—a view shared by many others. Marvin Schick, writing in the same issue of **Sh'ma** notes:

> I should say here for fear of being too misunderstood that I consider church-state separation as crucial to American Jewish security. I do not like to see our government sponsor creches and I am unhappy about much of what has happened over the past several years....
>
> Nativity scenes, whatever their initial and intrinsic religious significance, are not very important nowadays. I doubt whether even government aid to parochial schools is important any more, the contrary views of both Orthodox supporters of aid and strict separationist opponents notwithstanding. Religious lobbying and religious politics are far more dynamic elements in the church-state equation in the closing years of the 20th century. Yet, we cling to the old issues and give them prominence in our platforms and our litigation dockets.

Another **Sh'ma** writer, David Elcott, argued:

> I suppose that I will be accused of naivete and gross insensitivity when I whisper my disinterest in and confusion over much of the Jewish response to matters of church and state....
>
> As a Jewish American I am not embarrassed by my use of Jewish history, values, mitzvot and needs to determine my policy choices. I am certainly not afraid to voice my support or rejection of candidates or legislation on the basis of the Judaism by which I live. I consider the use of Jewish language and symbols in public debates a right of citizenship.... Hearing political office holders and public figures offer Christian images, values and symbols makes me somewhat queasy, but I have no reason to complain. I certainly will not invalidate or deprecate the religious framework and motivation which inspired the public service of these individuals.
>
> I was brought up to be a Jew among Christians, respecting their beliefs and pageantry while expecting and receiving respect for my own. I now wonder whether the attempt to supress religious America in public will stifle our uniqueness and separateness and make being Jewish less of the clear choice that it is.
>
> My hunch is that this society is healthier than we admit and that our deepest fears, angers, and biases about Jesus and his adherents are, at least in America, our own problem. They are not a product of contemporary Jewish-Christian interaction nor an abuse of power by God-fearing Christians. We should see in the present debate over the role of the Church in the State a collective seeking to improve the spiritual quality of life and to utilize the religious impulse to make America a better place for all.

Meg Greenfield, the **Washington Post** columnist, summed up another ambivalent Jewish view about what she called "the trend to introduce ever more elements of Christian liturgy into the practices of state." Describing the creche case as having initiated a "punishing fight for principle" in which each side feels it is being abused—one that it is being denied its religious consolation, the other that it is being told it doesn't belong, she concluded "This is one of those fights that can only make things worse no matter which side wins."

Theodore Mann, president of the American Jewish Congress, however, in a recent summing up of his view at the NJCRAC Plenum, pointed out that the creche represented a crucial symbol to Christianity whose adoption by Government might have a devastating effect on the ability of Jews to live both religiously and fully as Americans. He indicated that individual Jews were unanimous in opposition to the creche and sounded the clarion call for more Jewish initiated litigation against creches and more efforts to educate the Christian community. But in response to a question, he said it may be necessary to litigate a menorah case.

It is time, he said, [for the Jewish Community] "to send a message that we understand pluralism to mean that we are to be citizens of this nation exactly as everyone else, legally and psychologically and that we simply will not be made strangers in what we regard to be our own land."

However, it should be noted that in no instance of which we are aware did a community which erected or permitted the erection of a creche refuse to allow a menorah to be erected. The movement to erect creches may be less a Christian sectarian movement than part of the general yearning for "religion" now abroad in the land.

FUTURE LEGAL ISSUES

Unfortunately, the case expected to resolve one aspect of the dilemma created by the *Lynch* decision—the municipality's power to control the erection of religious symbols in public forums (public parks and plazas customarily used for speeches and demonstrations)—was not settled by the Supreme Court. Because of the illness of Justice Powell, the Court divided equally on the issue, affirming the decision of the Second Circuit which had held that the village of Scardsale could not ban a privately funded creche from a small public park on Establishment Clause grounds.

The issue will probably be raised in future litigation. The Jewish community should not now abandon its position that public bodies can exclude religious displays, particularly those standing alone, while permitting Boy Scout and community chest displays.

It may be, however, worthwhile to begin exploring the possibility of enacting bans on *all* freestanding displays, whether religious or secular. Such a rule, while not entirely beyond constitutional challenge, is far less likely to be successfully challenged. Adoption of this rule would also solve the problem created by the erection of menorahs, without the necessity of potentially ugly law suits. Such a campaign should involve early discussion with all local community groups whose non-religious displays might be affected. An equally vigorous campaign should be

launched to show that the divisiveness and community conflict attendant upon creating a Hyde Park of religious and other displays in public parks warrants the adoption of bans on all free-standing displays in these areas. Finally, efforts must be made to find suitable private locations for private religious displays.

In addition to dealing with the question of private religious displays on public land, Jewish community relations strategy must include a vigorous effort to convince local ofice holders as well as their constituents that *Lynch* does not require display of publicly funded or sponsored nativity scenes or menorahs.

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Church and State

The subject of church and state refers to the existence among the same people of two institutions, religious and secular, both claiming the people's loyalty. Theoretically, the loyalty is clearly divided: "Render therefore to Caesar the things that are Caesar's, and to God the things that are God's" (Matt. 22:21); but, in fact, the areas in which the ecclesiastical and temporal powers claim loyalty tend to overlap, offering the possibility of frictions.

Unity of the religious and the temporal in primitive society

In primitive human society it is impossible to distinguish between the religious and secular aspects of community life in the way customary today. Not only are practically all activities of the tribe—hunting, agriculture, legislation, and justice, for example—permeated by concepts and rites that one would call religious but the community as a whole also worships its gods or venerates impersonal supernatural forces. Because kingship and priesthood are closely linked, the ruler is normally the representative of his people to the gods or spirits and is indeed often himself regarded as divine. The same is broadly true of all early civilizations and can be observed in China, Egypt, Babylonia, Assyria, and Persia, for example, and is a recognized feature of the life of the classical world of Greece and Rome. Down to the adoption of Christianity by the Roman Empire the emperor held the title of *pontifex maximus* and controlled the state religion, and he himself was the object of worship as a god on earth. Relics of this practice persisted long into the Christian Era, especially in Byzantium, as is shown in the continued use of such epithets as "divine" in reference to the person and court of the emperor. The concept of church and state as used by historians and sociologists today had no place in the ancient world and could become meaningful only when a distinction was drawn between the secular human community on the one hand and the religious community or communities within a political entity on the other.

EARLY RELATIONS BETWEEN CHURCH AND STATE

Judaism and the beginnings of Christianity. It would not be strictly accurate to say that the distinction between church and state was created by Christianity, even though it was largely responsible. The process began in Judaism, with the fall of Jerusalem in 586 BC, after which the Jews ceased to exist as an independent political community (except briefly under the Maccabees). Both in Palestine itself and in the Diaspora, they were under alien rule, a religious minority in non-Jewish states, and they therefore had to think of their religious fellowship and their secular citizenship as two distinct things—the essence of the distinction between church and state. From the beginning, Christianity, itself a schism from official Judaism, found itself in a position that, because of its claim to a unique revelation, prevented it from joining in the cults of non-Christian states and compelled it to think of itself as a religious brotherhood submitting to non-Christian rulers in political matters but having its own organization, deriving from the original Apostolic Church. This attitude in religious matters cut the Christians off from their fellow citizens and became the basic cause of their persecution by the Romans, who could not conceive of the compatibility of political loyalty with a refusal to worship the official gods. (The Christian use of the term ecclesia to express this primary loyalty is noteworthy here. Originally, the Greeks used the term to denote the legislative meetings of citizens; then they also used the term to translate the Hebrew *qahal*, the technical word for the congregation of Israel, the religious fellowship of the chosen people. Because the notion of any religious community distinct from the state was foreign to the Greco-Roman world, there was no term in Greek, other than a political one, which could express it.)

Differing Roman and Christian views of loyalty

With the end of the period of persecution and the introduction of toleration by the emperor Constantine the Great in the fourth century, Christianity was faced with an entirely new aspect of the relations of church and state. What were to be the relations between the Christian ecclesiastical community and the political state in an empire of which the rulers themselves were Christians? It was a novel position with no precedents except those that could be found in the Old Testament, when there had been a Jewish monarchy. Moreover, there was a period of transition during which the state paganism of Rome remained an established religion that the emperors did not dare to disfranchise, while at the same time the Christian Church, to which the emperor personally belonged and which was now not only tolerated but privileged, had equally the official recognition of the state. It is clear that the early Christian emperors regarded themselves as holding a position in the church in some ways equivalent to that which, as *pontifices maximi*, they had held in Roman state paganism—that is, they were not only the protectors of the church but in some sense its rulers. This becomes very obvious when one considers their actions in the doctrinal disputes that broke out within Christianity during the 4th and 5th centuries, beginning with the Arian controversy (see CHRISTIANITY BEFORE THE SCHISM OF 1054). They summoned councils of bishops and were far from remaining neutral in the ensuing debates, while they enforced conciliar decisions by means of their political authority. The bishops' attitudes toward this exercise of imperial authority varied. Some were primarily courtiers, ready to lend their support, sometimes unthinkingly, to the theology favoured by the emperor; others, especially in the West, claimed that it was for the church to decide its doctrines for itself and for the secular power, itself part of the lay element in the church, to accept the decisions of the episcopate, the chief depositary of Christian revelation and tradition.

The problem was not made easier when, from the time of Theodosius I the Great at the end of the 4th century, Christianity became the sole official religion of the Roman Empire, and both paganism and Christian heterodoxy were proscribed. For now the process began by which church and state came to be seen as two aspects of one Christian society, the *res publica Christiana*. Now freedom of conscience—which Christianity had early claimed as a right and which it largely continued to preach theoretically, in the sense that it normally frowned upon forcible conversion—would obviously be in jeopardy, if only because the state considered it its duty to suppress the practice of any beliefs or cults opposed to orthodox Christianity. In the case of paganism, which it considered to be not merely an error but a positive worship of demonic powers, the church fairly readily agreed to, and indeed incited, the emperors' efforts to close temples and prohibit pagan rites. With a little more reluctance, but finally with positive approval, it accepted the policy of proscribing heresy, which it saw as a danger to the Christian faith and harmful to souls. By the 5th century the state's enforcement of orthodoxy was an accepted principle, even if practical difficulties often made it impossible to implement fully.

The rise of *publica Christiana*

At this point, enforced state orthodoxy came up against major political problems and added to their intractability. The conquest of the West by Teutonic barbarians who professed Arian Christianity resulted in Catholicism's becoming a subject religion in the Visigothic and Ostrogothic states in Spain and Italy and actually suffering acute persecution in Vandal Africa. This situation was altered only after the conquest of Gaul by the Franks, who had been converted directly from paganism to Catholic Christianity, and after Emperor Justinian I's reconquest of North Africa and Italy during the 6th century. In the East the rejection of the teachings of the Coptic and Syrian churches by the Council of Chalcedon in 451 led many Egyptians and Syrians to acts of resistance; they were the more ready to oppose the emperors' religion because of their resentment against oppressive political rule and their nationalistic desire to revert to their old Coptic and Syriac cultures that had lain so long submerged under Hellenic and Roman civilization. Attempts by the Eastern emperors to reach doctrinal compromises with the Egyptians and Syrians for the sake of political unity failed because of the papacy's refusal to agree and the strong opposition of hard liners in the East-

ern Church. All this further exacerbated the tensions inevitably involved in the very notion of a *res publica Christiana*.

Islām. It was upon a Christendom vexed in this way that the storm of militant Islām fell in the 7th century; indeed, the dramatic and rapid Muslim conquests were facilitated by the readiness of dissident Egyptians and Syrians to accept Muslim rule, knowing as they did that Islām believed in the toleration, albeit as second-class citizens, of non-Muslims who were monotheists, whether Jew or Christian. This is the place to consider the policy of Islām, which, in its own way, was faced by a problem akin to that of church and state in Christendom. Because Muhammad, unlike Christ, became the secular as well as the religious leader of his followers, Islām was a far more unified community than Christendom; and this remained true even when the Islāmic armies, after effecting their conquests, separated off into different Islāmic states. To this day Islāmic countries, except insofar as secularism has affected them, know no distinction between the political society and the religious such as is expressed in the Christian phrase church and state. The caliphs, the successors of the Prophet as Commanders of the Faithful, held absolute sway, limited only by their obligation to obey the rule in accordance with the doctrines of Islām and the *sharī'ah*, or sacred law, which regulated social as well as religious life. Because Islām has never had a priesthood like that of Christendom claiming spiritual authority deriving from the Apostles, there has been no room for an organized church of the Christian form, distinct from the state. Nevertheless, the *'ulamā'*, the learned expounders of Islāmic religion and law, have, in virtue of their function, been able to exercise a considerable influence not only over the ordinary believers but also over Muslim rulers; and to this extent one can speak of a "spiritual power" akin to the medieval Christian use of that phrase standing over against the temporal power of secular rulers.

Christianity in the early Middle Ages. Although Islām was a serious rival to Christianity in the early Middle Ages and offered a military threat that did not end until the decline of the Ottoman Empire after the 16th century, it played no part in molding the pattern of church and state in Christendom. One can trace a polarization of two different notions of church-state relations as the Middle Ages developed, and this polarization corresponded to the differences between the Eastern and Western churches that by the 11th century escalated into open schism. East and West had different conceptions of imperial power and differing political evolutions. None of the emperors of Constantinople was able to maintain direct authority in the West or to break the pattern of independent kingdoms established there after the barbarian invasions. Emperor Charlemagne did temporarily coalesce these kingdoms along the lines of the old Roman Empire, but his empire did not long survive his death in 814. All this gave the papacy in Rome the opportunity to become an international power, claiming, and normally receiving, spiritual obedience from the whole Western Church and often wielding considerable authority over the Christian sovereigns of the West. In the Eastern Empire, though its territories diminished steadily until the final fall of Constantinople to the Turks in 1453, Christian emperors ruled over all the orthodox Christian lands and maintained control over the church.

The Eastern Orthodox Church. The Byzantine or Eastern system may be considered first. This system has been described, not altogether accurately, as caesaropapism, conventionally defined in *The Oxford English Dictionary* as "the supremacy of the civil power in the control of ecclesiastical affairs." If this term is understood to mean that Byzantine emperors occupied a position akin to that of the pope of Rome, it is certainly not true. There was no suggestion that the emperor possessed sacerdotal status; he was a layman, albeit a privileged one. But it is true that Eastern emperors regarded themselves as divinely appointed protectors and guardians of the church, with a responsibility for its good order; that they could and did legislate about ecclesiastical discipline; and that their ecclesiastical decrees were regarded as part of the canon law of the church. They influenced the choice of bishops and claimed a right to confirm their elections, and they never hesitated to depose prelates who displeased them. They formally invested the patriarch of Constantinople before consecration. They summoned councils and watched their proceedings either in person or through a delegate. Moreover, various emperors issued dogmatic decrees professing to lay down the orthodox interpretation of the church's faith. But, on the other hand, it should be noted that on every occasion on which the imperial decision proved to be contrary to the general mind of the church (as in the Iconoclastic controversy over the veneration of images), they ultimately failed. Nor was it impossible for the Byzantine patriarchs to excommunicate emperors who had transgressed the church's moral code. As in the West, the balance between civil and episcopal power varied according to the strength or weakness of individual monarchs and ecclesiastics. It has been noted by a distinguished Byzantinist, Louis Bréhier, that in the last centuries of the Eastern Empire ecclesiastical opposition to unpopular imperial policies grew stronger; therefore, "the Church ended by detaching itself completely from the imperial power." The same author defines the Byzantine system as not caesaropapism but rather "a theocracy, in which the Emperor holds a preponderant position, but not an exclusive one"; and this is perhaps the best description of the facts. (From L. Bréhier, *Le Monde byzantin*, II, *Les institutions de l'empire byzantin* [Paris, 1949], pp. 440, 442.)

The Roman Catholic Church. In the West down to the 11th century, the relations of church and state were not wholly different, even though the papacy, which claimed spiritual authority over the whole of Christendom, possessed an aura never attained by the patriarchs of Constantinople. Its position, nevertheless, did not free it from some degree of control by the secular powers—then or ever. Official doctrine on the matter was laid down in 494 by Pope Gelasius I in a letter to the emperor Anastasius I (a time when the papacy still recognized the emperors of Constantinople): there were, he said, two principles by which the world was ruled, "the sacred authority of pontiffs and the royal power," of which the pontifical authority was weightier because bishops had to render account to God even for secular rulers. The emperor, though taking precedence over the human race in dignity and, by divine appointment, having a right to the obedience even of bishops in matters of public order, nonetheless had to "bow his neck" to prelates in spiritual matters and especially to the pope, the head of the episcopate. Obviously this theory, which was not wholly different from that current at Byzantium, left scope for a great deal of dispute as to what matters were spiritual and what temporal; and indeed the subsequent history of Western Christendom is studded with disagreements about the limits between secular and ecclesiastical power.

The theory of papal supremacy

In fact, for some centuries after 494 the balance swung in favour of the state as, after the disappearance of direct imperial authority in the West, the new barbarian monarchies established themselves and claimed power over the church. The most noteworthy swing came with the consolidation of the Carolingian Empire, which controlled virtually all the land area of western Europe, a phenomenon canonized by the Pope's coronation of Charlemagne as "Emperor and Augustus" in AD 800. Although Charlemagne did not necessarily regard himself as sole Roman emperor (there were many precedents for the coexistence of two or more emperors in the Roman world) and seems to have thought of himself as a colleague rather than a rival of the Byzantine emperors, his power was supreme in the West, and his conception of the rights that his position gave him in the church was no different from those claimed by the Eastern emperors and indeed virtually surpassed them. As king of the Franks he had already regarded himself as divinely authorized to rule the church, and his new title added nothing to his practical ecclesiastical power. Thus, in his

The idea of imperial supremacy

edicts he legislated on church affairs as well as on secular ones. In 794 he presided over the Council of Frankfurt, which he had summoned, and manoeuvred it into accepting certain of his recommendations that ran counter to those approved by the pope. Charlemagne usually appointed bishops by his own authority and, when appointed, required them, in addition to their ecclesiastical functions, to undertake many of the duties incumbent upon secular vassals. Byzantium could go no further, if as far.

CHURCH AND STATE IN THE LATE MIDDLE AGES AND THE REFORMATION

The antithesis to the Carolingian system developed in the 11th century. With the decay of the Carolingian state and its territorial division, centralized secular institutions were largely replaced by feudalism at a local level. This event increased the hold of the laity over ecclesiastical institutions, for landowners maintained almost complete control over the churches that they built and endowed upon their land, and over the clergy who served them. In parallel fashion, kings and great vassals regarded bishoprics and abbeys as private churches on a larger scale and treated them as fiefs, appointing the bishops and abbots. This led to simony, the buying and selling of church offices; also, because of the laxity regarding clerical celibacy, some of these clerical fiefs became almost hereditary. It was against such developments that church reformers of the early 11th century set their face, at first quite happy to work with monarchs willing to use their power in church to effect reform. But, after the middle of the century, the great pope Gregory VII adopted a policy of demanding freedom, as he understood it, for the church, insisting on the right of free election of bishops and abbots and striving by every means to bring lay control of ecclesiastical offices to an end. This almost necessarily involved a claim that the spiritual power was superior to the temporal; and it developed into a doctrine that, in the last resort, the papacy could coerce secular authorities. The papacy, it was held, could excommunicate recalcitrant rulers; it could proclaim their deposition and absolve their subjects from the duty of obedience; it could even promote armed rebellion.

Struggles between popes and monarchs. From the 11th to the 13th centuries the theory, implied or stated, that the ecclesiastical power was naturally superior to the secular and in the last resort could control it was never universally held, even by the clergy; but it had great influence and lay at the root of the great disputes between the papacy and the Holy Roman Empire, which were such striking features of the age, as well as of quarrels between popes and national monarchs, such as King John of England. The theory was usually defended on the ground that when a ruler violated the Christian moral law in exercising his power, he was, like any other Christian, subject to the censures of the church and could be coerced physically by those laymen loyal to the church. (This is what is known technically as the *ratione peccati* argument for indirect papal power in temporal affairs.) A more extreme thesis, delivered formally by Pope Boniface VIII in his bull *Unam Sanctam* in 1302 (though adumbrated earlier), was that the powers over the church given by Christ to St. Peter, the Apostle, and his successors, the popes, included ultimate temporal supremacy simply because the spiritual power was by its nature superior to the temporal. Upon St. Peter and his successors Christ had bestowed "two swords" (Luke 22:38), symbolizing spiritual and temporal power; the spiritual sword the popes wielded themselves, delegating the temporal sword to lay rulers, but the latter must nevertheless use the temporal sword according to papal directions.

The idea of the natural superiority of the church

It is significant that Boniface, who issued this declaration in his quarrel with Philip IV the Fair, of France, failed to enforce it and died after being temporarily kidnapped by agents of the French monarch. The papacy was to find the rapidly developing national states less tractable than the old Holy Roman Empire. By the end of the Middle Ages it was becoming more and more apparent that once again the lay powers were gaining dominance over the church in the national states, in the almost independent principalities within the Holy Roman Empire, and even in city-states within and without the empire. The papacy was also weakened by the 15th-century Conciliar movement, which tried to make the papacy subject to general councils of the whole church. The papacy was therefore in no position to assert power over the states of western Europe and instead had to make ecclesiastical treaties (concordats) with them that granted their rulers considerable rights over the church in their domains. A good example was the informal arrangement whereby the kings of England nominated their candidates for bishoprics, and the popes thereupon almost automatically accepted the nominees and "provided" them their sees. More than a century before Henry VIII broke with Rome and had Parliament give him the right to appoint bishops without reference to the pope, his predecessors had in fact been choosing their own bishops with only a nod to the popes.

The Protestant reformers. The Reformation in one sense began with Martin Luther's denial of any real distinction between the spiritual and temporal powers. He naturally tended to support the idea of state control of the church and contended that since the laity, no less than the clergy, were baptized Christians, the lay power had both the right and the duty to reform the church, which the clergy, left to themselves, would never do. This view was enhanced by his doctrine that every Christian possessed priestly powers, the clergy being merely a body of men chosen to fulfill duties that could be performed by any layman; they were not a sacramentally ordained group possessing an indelible character that gave them supernatural powers. Huldrych Zwingli, the Swiss reformer, believed rather similarly that the state should decide how its religion should be organized and what doctrines should be taught, according to its assessment of the arguments of such reformers as himself, whose function he equated with that of Old Testament prophets sent by God to declare his will to rulers.

The Lutheran view

John Calvin's conception of the relationship of church and state was rather different. He believed that even though the personnel of church government and state government were virtually identical, the two organizations should be distinct in their functions. It was the function of the church community to decide upon doctrine and to maintain moral discipline by spiritual censures; it was the function of the state to enforce this discipline upon recalcitrants. It will be noticed that this system is in fact almost identical with the medieval system that held that the duty of the secular arm was to enforce the doctrinal and disciplinary judgments of the church by burning obdurate heretics and imprisoning excommunicates who refused to seek absolution and make amends. (One of the most significant differences between Calvin's view and the medieval view, however, was that Calvin invited lay participation in church government, whereas the medieval church strictly excluded laymen from its government.) Under this circumstance, one can understand the epigram of the French scholar Georges de Lagarde that whereas Luther had secularized the church, Calvin clericalized the state. Neither remark is entirely accurate, but the broad distinction is true. In this respect, Calvinism, as was often maintained in the 17th century, stood closer to Roman Catholicism than it did to Lutheranism.

The Calvinist view

Effects of the religious wars. In the outcome, Lutheranism, Calvinism, and Roman Catholicism alike had to accept a greater measure of state control of the church than any of them would have ideally liked. The fundamental cause of this was that in a world torn by religious dissension and wars, all three religions were compelled to rely for survival upon state support. Lutheranism would have been suppressed in Germany but for the armed aid of those secular princes who accepted it, and Luther was driven more and more to attribute ecclesiastical authority to the godly prince. As Calvinism outside Geneva—in such countries as the Netherlands and France—met with opposition and persecution, it was increasingly dependent upon the armed support of its laity. This brought about a diminution in the influence of the

Calvinist clergy in secular affairs and a greater authority of the laity—although, relatively speaking, the Calvinist tradition remained less tolerant of state control than did the Lutheran, as can be seen in England and Scotland, where Calvinism was critical of state-ordered religion and proved at times a revolutionary force. Roman Catholicism, strive as it might to maintain the independence of the church under the authority of the pope, ultimately relied upon state support for the Counter-Reformation and thus had to accept a very considerable measure of state control. In Spain, the Inquisition itself was controlled by the crown; papal bulls could be put into effect only with the state's consent; and the crown nominated to all bishoprics. In the New World, Spanish control of the church was even more absolute, and it was only through the crown that the clergy could communicate with Rome. In France, the Gallican doctrine that papal authority was limited by the traditional rights of the Gallican Church came to mean in practice that the church was subject to the king in large areas of its activity. In the Catholic states of the Holy Roman Empire, the princely governments kept tight control of ecclesiastical matters.

All these tendencies were reinforced by the principle adopted in the Peace of Augsburg of 1555, which ended the wars between Catholic and Lutheran princes; the principle of *cujus regio, ejus religio* ("whose kingdom, his religion") held that it was for the local prince to decide which religion should be maintained in his territories. Adherence to this principle was felt to be the only way of curbing religious wars, as in fact it did until the outbreak of the Thirty Years' War in the next century. It is significant that the Peace of Westphalia (1648) ending this latter war endorsed and extended the principle, adding Calvinism to the other two religions that princes could maintain exclusively in their lands. Indeed, down to the French Revolution, the idea of religion as an affair of state remained the norm in Europe; church and nation were regarded as inseparable.

THE EVOLUTION OF TOLERATION

The claims of the individual conscience nevertheless could not be wholly ignored. Minority groups of Protestants in Catholic countries, as well as of Catholics in Protestant countries, could not be exterminated, even though they were often fiercely persecuted. Smaller sects that often regarded state establishment of religion as false in principle managed to maintain themselves despite state attempts at repression. Though the number of thinkers who regarded toleration as right in principle were few, politicians increasingly came to see that the endeavour to maintain strict religious uniformity defeated its own political purpose, namely that of preserving the unity of the nation. This was earliest seen in France, where, during the course of religious wars, certain people known as Politiques argued for toleration on the ground that religious differences should be subordinated to nationalist ends. Such a principle was adopted by Henry IV, who became a Catholic in 1593 in order to win acceptance as king of France and then by the Edict of Nantes in 1598 secured for his erstwhile Protestant or Huguenot supporters not only freedom of worship in their own districts but also political and military safeguards for their continuing freedom. Although these latter safeguards were drastically limited by Cardinal de Richelieu in the Peace of Alais in 1629, after the Huguenots had risen in rebellion, the Edict of Nantes itself was not repealed until 1685, by Louis XIV. Even then the more steadfast Huguenots resisted conversion; and although many emigrated, many remained to survive the suppressions and severe disabilities until the French Revolution won them freedom. These Protestants remain a relatively small but important element in the French nation to this day.

The English compromise. The advance of toleration was irregular both in time and place, chiefly because the pressures toward or against it varied according to the political circumstances of each nation and state. In this connection, it is particularly instructive to turn one's eyes to the British Isles, where the Reformation and its aftermath took a peculiar and virtually unique course. In the first instance, the English Reformation was political rather than doctrinal. As is well known, it began with the quarrel between Henry VIII and Pope Clement VII over the Pope's refusal to grant Henry's request to nullify his marriage to Catherine of Aragon in order that he might wed Anne Boleyn and hopefully secure a male heir to the throne. It is conceivable that a breach with Rome would have come about anyway as an outcome of the dissatisfaction felt by a powerful dynasty like the Tudors with the medieval system under which, as Henry put it, the clergy were "but half his subjects and scarce his subjects," their spiritual allegiance being to the pope and not to him. But this is no more than speculative; the actual immediate reason why in 1533–34 the King renounced obedience to the Pope and established royal ecclesiastical supremacy in place of papal was the necessity, as he saw it, of carrying through the divorce, now urgently necessary because of the imminence of the birth of Anne's first child in 1533. The only alternative to a papal nullity decree was to secure one through the new archbishop of Canterbury, Thomas Cranmer; and that in turn meant bringing the English ecclesiastical courts under royal authority. As royal supremacy was rapidly extended to make the king supreme in various ecclesiastical matters, the advantages in securing unitary sovereignty for the monarchy became more and more apparent. Thus, after 1534 Henry took the title of supreme head of the Church of England, though he claimed no sacerdotal powers, and exercised all the jurisdiction in England hitherto claimed by the pope. The title and powers passed to his son, Edward VI, in whose reign Protestant doctrines were furthered by the government, resulting in radical doctrinal and liturgical changes. When Catholic Mary I succeeded her brother in 1553, she was able to reverse these trends and even restore papal authority. But on Mary's death in 1558, Elizabeth I, Anne's daughter, restored the royal supremacy and adopted a religious compromise. The alteration in the royal title, by which Elizabeth claimed to be supreme governor rather than head of the English Church, may have been designed to placate Catholics and some Protestants who found her father's title offensive, especially when attributed to a woman; but the change made no practical difference to the powers over the church wielded by the Queen.

Doctrine of royal supremacy

What was hoped to be a final settlement of religion met opposition from the first, both from Roman Catholics who refused to abandon the pope or accept the changes in worship and also from extreme Protestants who regarded these changes as insufficiently radical. Throughout the reign, the government was occupied with trying to force Roman Catholics to conform and to compel Puritan clergymen to carry out the Anglican ceremonies. Both tasks were made more difficult by the relations of both parties with continental developments. Some Puritans who admired the Calvinist polity of Geneva tried by parliamentary means to set up similar presbyterianism in England and, when that failed, set about establishing at the local level private shadow presbyteries designed in due time to supplant the medieval structure of dioceses continued in the Elizabethan Church. Some Roman Catholics, after failing to replace Elizabeth with her Catholic cousin Mary, queen of Scots, turned increasingly to Philip II of Spain, the former husband of Mary I and for a brief time king of England, as champion of the Catholic cause. The Elizabethan government naturally regarded one movement as seditious and the other as treasonable and persecuted them with greater rigour than ordinary refusal to conform. The whole story illustrates vividly the inevitable links between religious and political disputes in the circumstances of the day and the difficulties faced by any idea of toleration, a policy that, in any case, had few supporters in an age when uniformity of religion was assumed to be called for both by the demands of truth and by the need for national unity. The situation was complicated first by the problem of Ireland, where the vast majority of the population, always restive under English rule, remained firmly Roman Catholic

Links between religious and political disputes

and resisted conversion by force, and second by the problem of Scotland, where a radically Protestant Reformation had succeeded in setting up a Calvinist Church, though the Scottish king James VI, destined to succeed Elizabeth on the English throne as James I in 1603, disliked the Calvinist policy. These events caused the Elizabethan policy, at once antipapal and anti-Puritan, to be continued in the next century, and the situation became even more acute when, under James's son Charles I, the monarchy increasingly identified itself with the anti-Puritans and appeared, at least to the Puritans, to be moving in the direction of Rome. This was one of the causes of the English Civil War (1642–51), which brought about the defeat and execution of Charles and the temporary overthrow of the Anglican system. When Anglicanism was restored, together with the monarchy, in 1660, the new king, Charles II, inclined carefully toward toleration and secretly allied with Catholic France; but his avowedly Roman Catholic brother, James II, succeeding to the throne in 1685, pursued open policies leading to rebellion against him in 1688, whereupon he was driven into exile. Under succeeding Protestant monarchs, William and Mary, and Anne, Protestantism was secured in England.

It is perhaps surprising that the maelstrom of the 17th century did not do away with the Anglican pattern of church settlement established by Elizabeth I. Its survival can be explained only on the supposition that, though without many positive defenders at first, it came gradually to commend itself to the majority of Englishmen as a *via media* between Roman Catholicism and Protestantism of the continental types. Whatever the reason, it has continued into the 20th century, and the relations between church and state in England today are, at least theoretically, those established in 1558. The royal supremacy is acknowledged, and no changes of moment can be made in the Anglican Church without the consent of the monarch in Parliament. Since the Enabling Act of 1919, however, the church has gained the right to initiate legislation in its National Assembly (succeeded in 1970 by the General Synod), legislation that, if not challenged in Parliament, receives the royal assent and goes into effect. The Anglican Church, though the nation's established church, has, of course, ceased for a long time to be a body to which citizens are compelled to belong. After the Restoration of 1660 the nonconformist groups, though placed under severe disabilities, were allowed to exist and by the 19th century had gained complete toleration. The penal laws against Roman Catholics became less and less rigorously enforced during the 18th century and were abolished by the Catholic Emancipation Act of 1829.

Effects of the French Revolution

The continental solution. The situation in the British Isles described above is in many ways almost unique in the modern world. On the continent of Europe the French Revolution ended almost everywhere the old concept of church and state as two aspects of a national society. The Revolution was anticlerical and secularist, influenced as it was by the ideas of the 18th-century Enlightenment, which had undermined faith in the Christian religion and had attempted to propagate, if not atheism, a natural religion derived from philosophy. In France itself, after an attempt to set up a democratically organized and state-controlled church had failed, Napoleon concluded the Concordat of 1801 with Pope Pius VII, which established a system whereby the church accepted the confiscation of its landed property carried out by the Revolution, and the state, in return, paid the stipends of the Catholic bishops and clergy (as well as those of Protestant ministers and Jewish rabbis) and retained the right to nominate bishops. By the Organic Articles added unilaterally to the concordat, Napoleon gave himself the power to restrict papal jurisdiction in France and to influence the curricula in the seminaries. Despite the successive revolutions and changes of regime that characterized 19th-century French history, this system was maintained until 1905, when the Third Republic, in the anticlerical crisis created by the Dreyfus affair, denounced the concordat and broke off diplomatic relations with the Vatican. Since then the French Catholic Church has been a self-supporting body, allowed by the state to use the churches, which are legally state property, but paying its clergy from the offerings of the faithful.

CHURCH AND STATE IN THE MODERN WORLD

It is impossible to describe in detail the varying types of church-state relationships in the modern world because they vary greatly from country to country. In most Roman Catholic countries there are concordats between the state and the Vatican that define the legal position of the church and the precise degree of self-government allowed it. (In some cases the state is given some control over episcopal appointments.) Establishment, in the historic sense, implying a union of church and state, scarcely exists, though sometimes, as in the case of the Irish republic, the state formally recognizes the Roman Church as the religion of the majority of its people. In the Eastern Orthodox world, the church of Greece preserves the old Byzantine tradition of church-state unity, and the state has a large measure of control over the church. Because almost everywhere else the Orthodox Church lives under either Muslim or Communist regimes, its position is regulated by states that are to a greater or lesser degree antipathetic to it; in the Soviet Union, of course, the state is determinedly antireligious. Thus, in such areas, though the church is allowed to exist, it is kept under strict surveillance and control.

Separation of church and state

In the United States, the First Amendment of the ten original amendments to the Constitution forbids Congress to make any law "respecting an establishment of religion, or prohibiting the free exercise thereof," thus establishing the principle that all religious bodies shall be voluntary organizations within the state, enjoying the privileges of such organizations and subject only to the general laws governing them. This may be said to be today the general pattern of church-state relations in democratic states (with the exceptions already noted), even where freedom of religion, subject only to the requirements of public order, is not explicitly written into the constitution.

This does not mean, of course, that states escape having to deal with religious matters in law courts or legislatures. In the United States, for example, the migration of the 1840s brought in thousands of people whose tradition was Roman Catholic. Fears that the new immigrants would receive public funds for their separate educational facilities resulted in many states' adopting restrictive clauses in their constitutions against such a practice. The 20th century saw the First and Fourteenth amendments to the Constitution applied with considerable strictness by the courts in the field of education. These judicial decisions prohibited aid to private education or the introduction of any form of religious belief or teaching (including prayers) in public schools.

In many countries the very fact that religious bodies are incorporated causes them to make appeals to the state or to be somehow supervised by the state. On occasion they may have to resort to state courts for adjudication of their own internal affairs or to request legislation to enable them to amend their organization or rules (as happens in the case of other incorporated associations). One of the most celebrated instances of this occurred in Scotland in 1900, when the Free Church united with the United Presbyterian Church to form the United Free Church. Some members of the old Free Church, claiming that the union violated certain doctrinal standards hitherto held, refused to enter the union. A lawsuit, taken on appeal from the Scottish courts to the House of Lords, the supreme appeal court for the British Isles, resulted in the contention of the dissidents being upheld and all the property of the Free Church adjudged to the small dissident body. Because this was considered inequitable, even if legal, a special act of Parliament of 1905 divided the property in dispute, allocating most of it to the new United Free Church. These events are a good illustration of how impossible it is even for voluntary religious bodies, if they are incorporated, to be free from all connection with the political state.

Nevertheless, it can be said that in the modern world, in which the idea of conterminous religious and political human communities has to all intents and purposes disappeared, the problems of church and state relations that have played such a large and often divisive part in Christian history have assimilated themselves to the general problems presented by the relationship of sovereign states to human associations within them.

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(T.M.P.)

Churchill, Sir Winston

Winston Churchill, author, orator, and statesman, led Britain from the brink of defeat to victory as wartime prime minister from 1940 to 1945. After a sensational rise to prominence in national politics before World War I, he acquired a reputation for erratic judgment in the war itself and in the decade that followed. Politically suspect in consequence, he was a lonely figure in the 1930s, until his response to Adolph Hitler's challenge brought him to leadership of a national coalition in 1940. In combination with Franklin D. Roosevelt and Joseph Stalin he shaped the Allied strategy in World War II, and after the breakdown of the alliance he alerted the West to the expansionist threats of the Soviet Union. He led the Conservative Party back to office in 1951 and remained prime minister until 1955, when ill health forced his resignation.

Churchill was born on November 30, 1874, prematurely, at Blenheim Palace, Oxfordshire. In his veins ran the blood of both of the English-speaking peoples whose unity, in peace and war, it was to be a constant purpose of his to promote. Through his father, Lord Randolph Churchill, the meteoric Tory politician, he was directly descended from John Churchill, 1st duke of Marlborough, the hero of the wars against Louis XIV of France in the early 18th century. His mother, Jennie Jerome, was the daughter of a New York financier and horse racing enthusiast, Leonard W. Jerome.

The young Churchill passed an unhappy and sadly neglected childhood, redeemed only by the affection of Mrs. Everest, his devoted nurse. After indifferent preparatory schooling he entered Harrow, where his conspicuous lack of success at his studies seemingly justified his father's decision to enter him on an army career. It was only at the third attempt that he managed to pass the entrance examination to the Royal Military College, now Academy, Sandhurst, but, once there, he applied himself seriously and passed out (graduated) 20th in a class of 130. In 1895, the year of his father's tragic death,

Churchill, photographed by Yousuf Karsh.
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he entered the 4th Hussars. The young subaltern craved action and an opportunity to make his mark. Initially the only prospect of action was in Cuba, where he spent a couple of months of leave reporting the Cuban war of independence from Spain for the *Daily Graphic* (London). In 1896 his regiment went to India, where he saw service as both soldier and journalist on the North–West Frontier (1897). Expanded as *The Story of the Malakand Field Force* (1898), his dispatches attracted such wide attention as to launch him on a career of authorship, which he intermittently pursued throughout his life. In 1898 he wrote *Savrola* (1900), a Ruritanian romance, and got himself attached to Lord Kitchener's Nile expeditionary force in the same dual role of soldier and correspondent. *The River War* (1899) brilliantly describes the campaign.

Early career as a soldier and journalist

POLITICAL CAREER BEFORE 1939

The five years after Sandhurst saw Churchill's interests expand and mature. Routine army life in India bored him, but he put its enforced leisure to good use by a program of reading designed to repair the deficiencies of Harrow and Sandhurst. In 1899 he resigned his commission to make a living by his pen and to enter politics. Immediately on his return to England he fought a by-election at Oldham as a Conservative. He lost by a narrow margin but found quick solace in reporting the South African War for *The Morning Post* (London). Within a month after his arrival in South Africa he had won fame for his part in rescuing an armoured train ambushed by Boers, though at the price of himself being taken prisoner. But this fame was redoubled when less than a month later he escaped from military prison. Returning to Britain a military hero, he laid siege again to Oldham in the "Khaki" election of 1900, so called because the Conservatives appealed to their recent victories in the South African War. Churchill this time succeeded in winning by a margin as narrow as that of his previous failure. But he was now in Parliament and, fortified by the £10,000 his writings and lecture tours had earned for him, was now in a position to make his own way in politics.

A self-assurance redeemed from arrogance only by a kind of boyish charm made Churchill from the first a notable House of Commons figure, but a speech defect, which he never wholly lost, combined with a certain psychological inhibition to prevent him from immediately becoming a master of debate. He excelled in the set speech, on which he always spent enormous pains, rather than in the impromptu; Lord Balfour, the Conservative leader, said of him that he carried "heavy but not very mobile guns." In matter as in style he modelled himself on his father, as his admirable biography, *Lord Randolph Churchill* (1906; revised edition 1952), makes evident, and from the first he wore his Toryism with a difference,