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## Real Property Tax Exemption of Churches

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and federal legislation. The enactment of minimal federal legislation regulating internal union affairs is therefore desirable. Such legislation should be designed, not only to afford adequate relief against abuses of union power, but also to encourage and assist unions to improve their own self-government.<sup>83</sup>



## REAL PROPERTY TAX EXEMPTION OF CHURCHES

### *Introduction*

The power to tax is an inherent attribute of sovereignty.<sup>1</sup> In the United States it is vested exclusively in the legislative branch of government unless limited by constitutional provision.<sup>2</sup> Incidental to this power is the power to exempt, and, in the absence of constitutional prohibition, its exercise is essentially a question of a choice of policy. In response to the will of the people, this legislative discretion has traditionally been resolved in favor of exempting the real property of religious institutions from taxation.

At the present time thirty-three state constitutions contain provisions pertaining to this type of exemption. In eighteen constitutions these provisions are mandatory;<sup>3</sup> in fourteen they are permissive;<sup>4</sup> and the remaining one contains a combination of both features.<sup>5</sup> Jurisdictions which lack specific constitutional authorization grant like exemption by general legislation.<sup>6</sup> It has long been settled that

<sup>83</sup> *Id.* at 674.

<sup>1</sup> See *Curry v. McCannless*, 307 U.S. 357, 366 (1939); *Transportation Co. v. Wheeling*, 99 U.S. 273, 281 (1878); *The Delaware Railroad Tax*, 18 Wall. 206, 226 (U.S. 1873); *McCulloch v. Maryland*, 4 Wheat. 316, 429 (U.S. 1819).

<sup>2</sup> See *People ex rel. Griffin v. Mayor of Brooklyn*, 4 N.Y. 419, 426 (1851); see also *Meriwether v. Garrett*, 102 U.S. 472, 515 (1880).

<sup>3</sup> ALA. CONST. Art. IV, § 91; ARK. CONST. Art. 16, § 5; CAL. CONST. Art. XIII, § 1½; FLA. CONST. Art. XVI, § 16; KAN. CONST. Art. 11, § 1; KY. CONST. § 170; LA. CONST. Art. X, § 4; MINN. CONST. Art. 9, § 1; N.J. CONST. Art. 8, § 1, ¶ 2; N.M. CONST. Art. 8, § 3; N.Y. CONST. Art. XVI, § 1; N.D. CONST. Art. XI, § 176; OKLA. CONST. Art. X, § 6; S.C. CONST. Art. 10, § 4; S.D. CONST. Art. XI, § 6; UTAH CONST. Art. XIII, § 2; VA. CONST. Art. XIII, § 183; WYO. CONST. Art. 15, § 12.

<sup>4</sup> ARIZ. CONST. Art. 9, § 2; GA. CONST. Art. VII, § 2-5404; ILL. CONST. Art. IX, § 3; IND. CONST. Art. 10, § 1; MO. CONST. Art. X, § 6; MONT. CONST. Art. XII, § 2; NEB. CONST. Art. VIII, § 2; NEV. CONST. Art. VIII, § 132; N.C. CONST. Art. 5, § 5; OHIO CONST. Art. XII, § 2; PA. CONST. Art. 9, § 1; TENN. CONST. Art. 2, § 28; TEX. CONST. Art. VIII, § 2; W. VA. CONST. Art. X, § 1.

<sup>5</sup> COLO. CONST. Art. 10, § 5.

<sup>6</sup> CONN. GEN. STAT. §§ 1761(11), 1763 (1949); DEL. CODE ANN. tit. 9, § 8103 (1953); IDAHO CODE ANN. § 63-105(2) (Supp. 1953); IOWA CODE c. 427, § 427.1(9) (1949); ME. REV. STAT. c. 81, § 6(V) (1944), as amended, Laws

such legislation is not in conflict with state constitutional provisions which prohibit the levying of taxes to aid any religious group or sect.<sup>7</sup> Exemption provisions, however, do not include special, local assessments,<sup>8</sup> unless expressly provided,<sup>9</sup> or taxes due on the real property prior to its acquisition by a religious institution.<sup>10</sup>

Although such exemption is universal<sup>11</sup> in this country, it is far from uniform, and in determining the extent of property exempt in particular jurisdictions the constitutions or statutory language<sup>12</sup> and judicial decisions<sup>13</sup> of the various jurisdictions must be examined. Some jurisdictions limit the exemption to land used "exclusively" for religious purposes<sup>14</sup> or to land "actually" used or occupied.<sup>15</sup> Other

of Me. 1951, c. 62; MD. CODE ANN. art. 81, § 8(4) (Flack, 1951); MASS. LAWS ANN. c. 59, § 5(11) (Supp. 1953); MICH. COMP. LAWS § 211.7(5) (Mason, Supp. 1952); MISS. CODE ANN. § 9697(d) (Supp. 1952); N.H. REV. LAWS c. 73, §§ 24-26, 28 (1942); ORE. REV. STAT. c. 307, § 307.140 (1953); R.I. GEN. LAWS c. 29, § 2 (1938), as amended by Laws of R.I. 1947, c. 1855, § 1; VT. STAT. §§ 649(IV), 652 (1947); WASH. REV. CODE tit. 84, § 84.36.020 (1952); WIS. STAT. § 70.11(4) (1953).

<sup>7</sup> See *Trustees of Griswold College v. Iowa*, 46 Iowa 275 (1877). "The argument is, that exemption from taxation of church property is the same thing as compelling contribution to churches to the extent of the exemption. We think the constitutional prohibition extends only to the levying of tithes, taxes, or other rates for church purposes, and that it does not include the exemption from taxation of such church property as the legislature may think proper." *Id.* at 282.

<sup>8</sup> *City of Atlanta v. First Presbyterian Church*, 86 Ga. 730, 13 S.E. 252 (1891); *City of Ottawa v. Trustees of The Free Church*, 20 Ill. 423 (1858); *Lefevre v. Mayor of Detroit*, 2 Mich. 587 (1853). "No answer to this question is afforded by citing the clause of the constitution which authorizes the general assembly to exempt church property as well as public property from taxation. . . . This court has ruled . . . that the taxation to which that power relates is taxation for revenue, and not local assessments for the improvement of streets, which latter are in the nature of an interchange of equivalents between the public and the owners of property locally benefited. . . ." *City of Atlanta v. First Presbyterian Church*, *supra*, 13 S.E. at 254.

<sup>9</sup> *State, Protestant Foster Home Society, Pros. v. Mayor of Newark*, 36 N.J.L. (7 Vroom) 478 (1873).

<sup>10</sup> *Accord*, *People ex rel. Thompson v. Saint Francis Xavier Female Academy*, 233 Ill. 26, 84 N.E. 55 (1908).

<sup>11</sup> Exemption is also granted in the District of Columbia. D.C. CODE tit. 47, § 47-801a(n) (1951).

<sup>12</sup> See notes 14-18 *infra*.

<sup>13</sup> Compare *Immanuel Presbyterian Church v. Payne*, 90 Cal. App. 176, 265 Pac. 547 (1928), with *Enochs v. City of Jackson*, 144 Miss. 360, 109 So. 864 (1926).

<sup>14</sup> Constitutional provisions: ALA. CONST. Art. IV, § 91; CAL. CONST. Art. XIII, § 1½; GA. CONST. Art. VII, § 2-5404; ILL. CONST. Art. IX, § 3; KAN. CONST. Art. XI, § 1; MO. CONST. Art. X, § 6; MONT. CONST. Art. XII, § 2; N.D. CONST. Art. XI, § 176; OHIO CONST. Art. XII, § 2; OKLA. CONST. Art. X, § 6; S.D. CONST. Art. XI, § 6; WYO. CONST. Art. XV, § 12.

Legislative provisions: CONN. GEN. STAT. §§ 1761(11), 1763 (1949); MD. CODE ANN. art. 81, § 8(4) (Flack, 1951); MO. STAT. ANN. § 137.100 (Vernon, 1952); W. VA. CODE § 678 (1949).

<sup>15</sup> KY. CONST. § 170; S.C. CONST. Art. X, § 4. Pennsylvania and Texas exempt "actual places of religious worship." PA. CONST. Art. IX, § 1; TEX.

jurisdictions limit it to land held or owned by religious societies and used exclusively for religious purposes.<sup>16</sup> In addition to these restrictions, some jurisdictions limit the amount or value of property exempt,<sup>17</sup> but most jurisdictions expressly exempt rectories and parsonages.<sup>18</sup> This lack of uniformity also exists in determining when the exemption begins.<sup>19</sup> While it is the policy of the law to favor a strict construction of statutes exempting property from taxation,<sup>20</sup> these statutes are liberally construed in most jurisdictions.<sup>21</sup>

CONST. ART. VIII, § 2. See also MONT. REV. CODE § 84-202 (1947) ("places of actual religious worship"). Massachusetts does not extend the exemption to "houses of religious worship appropriated to other uses." MASS. CODE ANN. c. 59, § 5(11) (Supp. 1953).

<sup>16</sup> Constitutional provisions: FLA. CONST. ART. XVI, § 16; NEB. CONST. ART. VIII, § 2; N.J. CONST. ART. VIII, § 1, ¶ 2; N.Y. CONST. ART. XVI, § 1; TENN. CONST. ART. II, § 28; VA. CONST. ART. XIII, § 183.

Legislative provisions: IDAHO CODE ANN. § 63-105(2) (Supp. 1953); MISS. CODE ANN. § 9697(d) (1952); NEB. REV. STAT. § 77-202(3) (1950); N.C. GEN. STAT. § 105-296(3) (1950); TENN. CODE ANN. § 1085(2) (Williams, 1943); WIS. STAT. § 70.11(4) (1953).

<sup>17</sup> ALA. CONST. ART. IV, § 91 (up to one acre in, or within one mile of, an incorporated city or town; elsewhere, up to five acres); ILL. STAT. ANN. § 32.264 (Jones Cum. Supp. 1949) (up to ten acres); IND. STAT. ANN. § 64-201(6) (Burns, 1951) (not exceeding fifteen acres); KY. CONST. § 170 (not exceeding one-half acre in cities and towns; not exceeding two acres elsewhere); N.H. REV. LAWS c. 73, §§ 25, 26 (1942) (limited to \$150,000, but towns may increase exemption); WASH. REV. CODE § 84.36.020 (1952) (not exceeding five acres; church seats must be free to all).

<sup>18</sup> See, e.g., IDAHO CODE ANN. § 63-105(2) (Supp. 1953); IND. STAT. ANN. § 64-201(6) (Burns, 1951); KY. CONST. § 170; ME. REV. STAT. c. 81, § 6(V) (1944), as amended, LAWS OF ME. 1951, c. 62; MD. CODE ANN. art. 81, § 8(4) (Flack, 1951); MASS. CODE ANN. c. 59, § 5(11) (Supp. 1953); MICH. COMP. LAWS § 211.7(5) (Mason, Supp. 1952); N.H. REV. LAWS c. 73, § 24 (1942); N.C. GEN. STAT. § 105-296(3) (1950); S.C. CONST. ART. X, § 4; TEX. CONST. ART. VIII, § 2; VT. STAT. § 649(IV) (1947); VA. CONST. ART. XIII, § 183(b); WASH. REV. CODE § 84.36.020 (1952); W. VA. CODE § 678 (1949); WIS. STAT. § 70.11(4) (1951); WYO. CONST. ART. XV, § 12. See also Allred, *Tax-Exemption For Rectories*, 13 JURIST 209 (1953).

<sup>19</sup> See TORPEY, JUDICIAL DOCTRINES OF RELIGIOUS RIGHTS IN AMERICA 178 (1948).

<sup>20</sup> See *People ex rel. Mizpah Lodge v. Burke*, 228 N.Y. 245, 126 N.E. 703 (1920); 84 C.J.S. § 227.

<sup>21</sup> See Note, 64 HARV. L. REV. 288 (1950). The rule requiring strict construction of exemption statutes should not be slavishly followed when the property is used for a purpose encouraged by the exemption and the application of this rule would frustrate that purpose. See *New York Catholic Protectory v. City of New York*, 175 Misc. 427, 428, 23 N.Y.S.2d 789, 791 (Sup. Ct. 1940). See also *Matter of Major Deegan Blvd.*, 131 N.Y.S.2d 330 (Sup. Ct. 1954).

Notwithstanding the universal and traditional extent of this practice, it has not received uncritical acceptance. Some reports have been directed at its constitutionality, while others are concerned with its wisdom and advisability. In order to remove any misunderstanding which might result from these reports, the legal, ethical, social and economic justification for this practice will be explored.

### *Legal Justification*

As pointed out above, the constitutions of most states explicitly authorize tax exemptions for the real property of religious institutions,<sup>22</sup> and exemptions by state legislation have been held not violative of state constitutional provisions prohibiting the levying of taxes to aid religious groups.<sup>23</sup> Similarly, such exemptions do not violate any provisions of the Federal Constitution.

The only objection that could be made to such exemption under the United States Constitution was that they contravened the "establishment of religion" clause of the First Amendment<sup>24</sup> as applied to the states via the Fourteenth Amendment under the absorption theory.<sup>25</sup> It was not until the decisions in *Everson v. Board of Education*<sup>26</sup> and *Illinois ex rel. McCollum v. Board of Education*<sup>27</sup>

<sup>22</sup> See notes 3, 4 and 5 *supra*.

<sup>23</sup> See note 7 *supra*.

<sup>24</sup> U.S. CONST. AMEND. I: "Congress shall make no law respecting an establishment of religion. . . ."

<sup>25</sup> Originally, this clause was not applicable to the several states. *Permol v. First Municipality*, 3 How. 589 (U.S. 1844); *cf. Barron v. Mayor of Baltimore*, 7 Pet. 243 (U.S. 1833). For an exposition of the theory by which certain clauses or amendments of the Bill of Rights are applied against the states through the due process clause of the Fourteenth Amendment, see *Palko v. Connecticut*, 302 U.S. 319, 324-328 (1937); *Adamson v. California*, 332 U.S. 46, 62-68 (1947) (concurring opinion).

<sup>26</sup> 330 U.S. 1 (1947). Before this decision, there was sporadic criticism that statutes exempting church property from taxes were at variance with the fundamental laws or principles of our government which required separation of church and state. See *Stimson, The Exemption of Churches from Taxation*, 18 TAXES 361, 364 (1940); *Stimson, The Exemption of Property from Taxation in the United States*, 18 MINN. L. REV. 411, 422 (1934); *Baker, Tax Exemption Statutes*, 7 TEXAS L. REV. 50, 84 (1928). But they do not denounce it as being unconstitutional, and seem to confuse disestablishment with freedom of religion. See, *e.g.*, *Stimson, The Exemption of Churches from Taxation, supra* at 364 n.12: "While separation of church and state is based chiefly upon the principle that each member of society should be free to do as he pleases regarding religion, and hence that he should not be forced to contribute to the support of churches, administrative and financial considerations are also present."

<sup>27</sup> 333 U.S. 203 (1948).

that any doubt as to the constitutionality of exemptions was advanced by some writers.<sup>28</sup> However, the familiar declaration in the *McCullum* case to the effect that the "establishment" clause is ". . . a wall between Church and State which must be kept high and impregnable"<sup>29</sup> was unnecessary for the decision and was directed towards a specific question, namely, the validity of released time programs. The instability of so extreme a position is evident from its repudiation less than four years later in *Zorach v. Clauson*.<sup>30</sup> In that case, the Court stated: "The First Amendment . . . does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependence one on the other."<sup>31</sup> The Court here lauded state cooperation with religious institutions as a recognition of the religious nature of our people and as in the best American tradition.<sup>32</sup> In rejecting the principle of total separation as a constitutional mandate, the Court refused to espouse a construction that would deny all cooperation between Church and State and result in favoring irreligion over religion.<sup>33</sup> Moreover, illustrating that the First Amendment does not require complete separation, the Court pointed out that if such were the rule, any taxation of religious institutions would be a violation of the constitutional requirement.<sup>34</sup>

### *Social and Ethical Justification*

Tax exemptions for church property have been known from earliest times.<sup>35</sup> In colonial America, such exemptions were justified on the theory that established churches were governmental agencies and to tax them would be self-taxation.<sup>36</sup> It has been suggested that since the doctrine of disestablishment now prevails, the reason for the exemption no longer holds and that tax exemption of church property, no matter how noble the motives prompting it, should be abolished.<sup>37</sup>

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<sup>28</sup> See Paulsen, *Preferment of Religious Institutions in Tax and Labor Legislation*, 14 LAW & CONTEMP. PROB. 144, 147 (1949); Notes, 49 COL. L. REV. 968, 986 (1949), 3 RUTGERS L. REV. 115, 122 (1949). See also Notes, 33 CORNELL L.Q. 122, 128 (1947), 8 LA. L. REV. 136, 140 (1947). But see Editorial, *Churches Should Pay Taxes!*, 64 CHRISTIAN CENTURY 454 (1947), expressly describing such exemption unconstitutional as a violation of the First Amendment.

<sup>29</sup> See *Illinois ex rel. McCollum v. Board of Education*, *supra* note 27 at 212.

<sup>30</sup> 343 U.S. 306, 315 (1952).

<sup>31</sup> *Id.* at 312.

<sup>32</sup> *Id.* at 313-315.

<sup>33</sup> See *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 238-256 (1948) (dissenting opinion); see PARSONS, *THE FIRST FREEDOM* 79 (1948).

<sup>34</sup> See *Zorach v. Clauson*, *supra* note 30 at 312.

<sup>35</sup> See PFEFFER, *CHURCH, STATE AND FREEDOM* 183 (1953).

<sup>36</sup> *Id.* at 183-184; see TORPEY, *JUDICIAL DOCTRINES OF RELIGIOUS RIGHTS IN AMERICA* 171 (1948).

<sup>37</sup> See ZOLLMANN, *AMERICAN CHURCH LAW* § 344 (1933); Stimson, *The*

Nevertheless, there remain compelling reasons for continuing these exemptions.

George Washington's Farewell Address urged the necessity of morality and integrity of individuals if the United States was to prosper. Religion, by its very nature, inculcates these standards in individuals, and thus strengthens the moral fiber of the community.<sup>38</sup> Since in a state without a religious people social and moral chaos will inevitably result, it is to the advantage of the state to aid religion through tax exemptions.<sup>39</sup> In accord with such reasoning, President Eliot, formerly of Harvard University, deplored taxation of property used for religious purposes, characterizing it as taxation of the highest good of the state for lesser state functions.<sup>40</sup>

Thus, a tax exemption for meeting places of public worship is a reward for socially desirable actions.<sup>41</sup> Inestimable benefits are conferred on society ". . . [by] men . . . subduing their irregular appetites and propensities . . ." <sup>42</sup> as a result of religious discipline. One court remarked that the moral discipline of religion is as much value to society in preserving property as the most competent police system.<sup>43</sup> Hence, taxpayers in general are directly benefited by these exemptions since the irenic influence of religion instills in church members morality and respect for the property rights of others.<sup>44</sup>

The state, then, benefits from religion, and thus is warranted in exempting property used for such purposes from taxation. But the state also has an affirmative moral duty, from its very nature, to foster religious sentiment among its citizens. The constitutional concept of separation of Church and State guarantees to each autonomy

*Exemption of Property from Taxation in the United States*, 18 MINN. L. REV. 411, 416 (1934). Of course, it is clear that religious societies conducting educational or charitable institutions merit exemptions since they are performing a governmental function.

<sup>38</sup> See BROWN, SOME REASONS FOR THE EXEMPTION OF CHURCH PROPERTY FROM TAXATION 13 (1881).

<sup>39</sup> See TOBIN, THE EXEMPTION FROM TAXATION OF PRIVATELY OWNED REAL PROPERTY USED FOR RELIGIOUS, CHARITABLE AND EDUCATIONAL PURPOSES IN NEW YORK STATE 21 (1934). "However, the most essential attribute of any religious doctrine or creed, and the one that consequently recommends the church for every possible measure of public support, is its powerful moral influence. While this factor is not susceptible to any pecuniary evaluation yet its contribution to the material welfare of the community is of tremendous importance. The churches and synagogues give forth an inspiration for good citizenship without which this country can not survive. A community, a state or a nation, without such institutions would not be a fit place to live."

<sup>40</sup> See PFEFFER, CHURCH, STATE AND FREEDOM 186 (1953).

<sup>41</sup> Cf. *People ex rel. The Seminary of Our Lady of Angels v. Barber*, 42 Hun 27, 30 (N.Y. 1886), *aff'd mem.*, 106 N.Y. 669, 13 N.E. 936 (1887); *Barnes v. First Parish in Falmouth*, 6 Mass. 401, 409 (1810).

<sup>42</sup> See *Barnes v. First Parish in Falmouth*, *supra* note 41.

<sup>43</sup> See *Commonwealth v. Young Men's Christian Ass'n*, 116 Ky. 711, 76 S.W. 522, 523 (1903).

<sup>44</sup> See *Barnes v. First Parish in Falmouth*, *supra* note 41.

in its own legitimate sphere.<sup>45</sup> However, the doctrine of disestablishment should not be interpreted to prohibit cooperation between Church and State.<sup>46</sup> Indeed, one reason for granting tax exemptions to churches was to reinforce the freedom of religion provision contained in the First Amendment.<sup>47</sup> Furthermore, it is the function of the state, supreme in the temporal sphere, to promote the common good of its citizens.<sup>48</sup> To aid its individual members in attaining their supernatural end—the purpose for which they were created—is to promote the common welfare.<sup>49</sup> This is especially true where, as in this country, the government itself is predicated upon a belief in God.<sup>50</sup> Consequently, the state is obliged to refrain from interfering with religion, and it is likewise obligated to take affirmative measures to promote religion and morality.

Pope Leo XIII's encyclical letter *Immortale Dei* sums up the proposition in the following manner:

All who rule, therefore, should hold in honor the holy name of God, and one of their chief duties must be to favor religion, to protect it, to shield it under the credit and sanction of the laws, and neither to organize nor enact any measures that may compromise its safety. This is the bounden duty of rulers to the people over whom they rule. For one and all we are destined by our birth and adoption to enjoy, when this frail and fleeting life is ended, a supreme and final good in heaven, and to the attainment of this every endeavor should be directed. Since, then, upon this depends the full and perfect happiness of mankind, the securing of this end should be of all imaginable interests the most urgent. Hence civil society, established for the common welfare, should not only safeguard the well-being of the community, but also have at heart the interests of its individual members, in such a mode as not in any way to hinder, but in every manner to render as easy as possible the possession of that highest and unchangeable good for which all should seek. Therefore, for this purpose,

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<sup>45</sup> See MARITAIN, *MAN AND THE STATE* 153 (1951); PARSONS, *THE FIRST FREEDOM* 90 (1948).

<sup>46</sup> See Harpster, *Religion, Education and the Law*, 36 MARQ. L. REV. 24, 65 (1952). PARSONS, *op. cit. supra* note 45, at 107 n.12, quotes Dean Weigle of the Yale Divinity School: "The separation of church and state . . . means that church and state are mutually free, and that neither may rightfully control the other. It does not mean that church and state, being mutually free, may not co-operate with each other."

<sup>47</sup> ADAMS, *STATEMENT BEFORE THE SPECIAL COMMITTEE OF THE HOUSE OF REPRESENTATIVES TO INVESTIGATE TAX-EXEMPT FOUNDATIONS* 5 (American Council on Education, 1954).

<sup>48</sup> See MARITAIN, *op. cit. supra* note 45, at 178.

<sup>49</sup> ". . . [I]t was the Creator's will that civil authority should regulate social life after the dictates of an order changeless in its universal principles; should facilitate the attainment in the temporal order, by individuals, of physical, intellectual and moral perfection; and should aid them to reach their supernatural end." POPE PIUS XII, *SUMMI PONTIFICATUS* 24 (N.C.W.C., 1939). See Harpster, *supra* note 46, at 63.

<sup>50</sup> *DECLARATION OF INDEPENDENCE*; see *Zorach v. Clauson*, 343 U.S. 306, 313 (1952); ZOLLMANN, *AMERICAN CHURCH LAW* § 27 (1933).



care must especially be taken to preserve unharmed and unimpeded the religion, whereof the practice is the link connecting man with God.<sup>51</sup>

By exempting property used for religious purposes from taxation, the state is contributing to the advancement of the common welfare, and discharging its moral duty toward its members to facilitate the attainment of their ultimate end.

### *Economic Justification*

In addition to the confusion concerning the constitutionality of, and justification for, exempting church property from taxation, there exist unfounded beliefs that a large amount of revenue is lost to the states through its continuance,<sup>52</sup> and that an intolerable amount of tax is shifted to other taxpayers.<sup>53</sup> These beliefs usually stem from unsupported statements<sup>54</sup> and unreliable forecasts of people in responsible positions. Significant in the latter category is an excerpt from President Grant's message to Congress in 1875:

. . . I would also call your attention to the importance of correcting an evil that, if permitted to continue, will probably lead to great trouble in our land before the close of the nineteenth century. It is the accumulation of vast amounts of untaxed church-property.

. . . So vast a sum, receiving all the protection and benefits of government, without bearing its proportion of the burdens and expenses of the same, will not be looked upon acquiescently by those who have to pay the taxes. . . . The contemplation of so vast a property as here alluded to, without taxation, may lead to sequestration without constitutional authority and through blood.

I would suggest the taxation of all property equally, whether church or corporation, exempting only the last resting-place of the dead. . . .<sup>55</sup>

Equally misleading are statistical reports which show the increase of all exempt property in terms of dollar value or percentage of increase.<sup>56</sup> Investigation reveals that the amount of church-held property in proportion to other exempt property is very small.<sup>57</sup> In New

<sup>51</sup> POPE LEO XIII, *Immortale Dei* in ENCYCLICALS OF LEO XIII 111 (Wynne, 2d ed. 1903).

<sup>52</sup> "Against any social benefits . . . must be set the cost of the exemption subsidy. The exemption of church property . . . is a significant problem at the present time." Stimson, *The Exemption of Churches from Taxation*, 18 TAXES 361, 363 (1940).

<sup>53</sup> "The accumulation of such property has now become so great and is increasing so rapidly that its removal from the tax rolls adds an unjust and increasingly felt burden upon every taxpayer." Editorial, *Churches Should Pay Taxes!*, 64 CHRISTIAN CENTURY 454 (1947).

<sup>54</sup> *Ibid.*

<sup>55</sup> See 1 U.S. FOREIGN REL.: 1875 at V (Dep't State 1875).

<sup>56</sup> See, e.g., CURRENT TAX PROBLEMS IN NEW YORK STATE 43 (1931).

<sup>57</sup> See Paulsen, *Preferment of Religious Institutions in Tax and Labor Legislation*, 14 LAW & CONTEMP. PROB. 144, 155 (1949).

York the amount of exempt religious property represented only 7.194 per cent of the value of all exempt property in the State for the year 1948.<sup>58</sup> Furthermore, analysis of relevant economic data indicates that the proportion of property so held is constantly decreasing. In 1919 it represented 13.7 per cent of the value of all the exempt property in New York.<sup>59</sup> In 1928 it was 10.5 per cent.<sup>60</sup> In 1936 this figure dropped to 8.6 per cent<sup>61</sup> and, as previously stated, it was 7.194 per cent in 1948.

Inasmuch as the State of New York has not imposed a levy on real property since 1927, exemptions for religious property have no direct effect on state revenues. But since real property taxes constitute a major part of local government assessments, religious exemptions do have an impact on these revenues. Nevertheless, the statistics show a corresponding decrease in the proportion of religious exemptions to all exemptions on the local government level as exemplified by the City of New York. Whereas in 1931 religious exemptions constituted 8.37 per cent of all exemptions in the five counties embracing the City of New York,<sup>62</sup> in 1948 that figure had dropped to 5.76 per cent.<sup>63</sup> Similarly, consistent with the state trend, the aggregate value of real property exempt for religious purposes dropped from 374 millions of dollars in 1931 to 322 millions in 1948.<sup>64</sup>

Since the decrease in percentage of religious exemption is due in part to the increase in the amount of tax exempt federal, state and municipal property such as low rent housing projects,<sup>65</sup> and since most church property is fully developed while other exempt property is undergoing further development thereby increasing its assessed valuation, it is most unlikely that this trend will cease. In this regard, it is interesting to note that while religious exempt property has decreased consistently both percentage-wise and in actual value, the proportion of all exempt property to all real property has increased from 17.31 per cent in 1931<sup>66</sup> to 22.48 per cent in 1948<sup>67</sup> for New

<sup>58</sup> See 1949 LEG. DOC. NO. 87, REPORT, N.Y. STATE TAX COMMISSION 83 (1949).

<sup>59</sup> See CURRENT TAX PROBLEMS IN NEW YORK STATE 43 (1931).

<sup>60</sup> *Ibid.*

<sup>61</sup> See N.Y. STATE CONSTITUTIONAL CONVENTION COMMITTEE, PROBLEMS RELATING TO TAXATION AND FINANCE 211 (1938).

<sup>62</sup> See 1931 LEG. DOC. NO. 11, REPORT, N.Y. STATE TAX COMMISSION (1931) *passim*.

<sup>63</sup> See 1949 LEG. DOC. NO. 87, REPORT, N.Y. STATE TAX COMMISSION (1949) *passim*.

<sup>64</sup> See notes 62 and 63 *supra*. Throughout the state, the aggregate value of religious exempt property dropped from 607 millions of dollars in 1931 to 574 millions in 1948. *Ibid.*

<sup>65</sup> Whereas in 1931 property exempt for federal and state housing aggregated only \$4,053,950, in 1948 that figure had risen to \$154,844,153, more than 35 times the 1931 value.

<sup>66</sup> See note 62 *supra*.

<sup>67</sup> See note 63 *supra*.

York State and from 18.54 per cent<sup>68</sup> to 24.12 per cent<sup>69</sup> for the same period in New York City.

Another facet of the problem is the fact that real property is rapidly losing its importance as a source of revenue both on the state and local levels as new sources are tapped.<sup>70</sup> Whereas in 1931 real property levies collected throughout the State of New York constituted 73.4 per cent of all taxes,<sup>71</sup> in 1948 that figure had dropped to 50.49 per cent.<sup>72</sup> As early as 1917, the State of New York had begun to share its revenues with the various local governmental units of the State.<sup>73</sup> In 1946, the somewhat confused situation was rectified by a codification of all tax-sharing legislation into a newly enacted Article 4-A of the New York Finance Law.<sup>74</sup> Under the sections of this article adopted "... for the support of local government and *the reduction of local real estate taxes . . .*,"<sup>75</sup> the State binds itself to contribute a fixed sum to each city, town and village of the State on a per capita basis, providing that the constitutional limitations<sup>76</sup> on real property taxes are not exceeded by the various units. Since 1933 the City of New York has been authorized to enact a variety of excise taxes.<sup>77</sup> In addition, since 1937<sup>78</sup> and 1950<sup>79</sup> respectively, other cities and villages have been authorized to impose taxes on utilities operating within these political subdivisions, and in 1947,<sup>80</sup> the Legislature authorized counties and cities other than New York to impose a variety of non-property taxes.

In view of these increasing inroads into the real property tax as a source of revenue and in view of the decreasing proportion of re-

<sup>68</sup> See note 62 *supra*.

<sup>69</sup> See note 63 *supra*.

<sup>70</sup> See HELLERSTEIN, STATE AND LOCAL TAXATION 4-8 (1952). The real property tax continues to be the mainstay of local revenue, but even there it is losing its significance. *Id.* at 9-10. Statistics indicate that the percentage of real property exempt because of its religious use is relatively constant on the local level. See Paulsen, *Preferment of Religious Institutions in Tax and Labor Legislation*, 14 LAW & CONTEMP. PROB. 144, 155 (1949).

<sup>71</sup> See note 62 *supra*.

<sup>72</sup> See note 63 *supra*.

<sup>73</sup> See Kassell, *Introduction to the Tax Law of New York*, 59 MCKINNEY'S CONSOL. LAWS OF N.Y. ANN. XIX (1954).

<sup>74</sup> Laws of N.Y. 1946, c. 301.

<sup>75</sup> N.Y. FINANCE LAW § 54.

<sup>76</sup> N.Y. CONST. Art. VIII, § 10.

<sup>77</sup> *E.g.*, Laws of N.Y. 1933, c. 815; Laws of N.Y. 1934, c. 302; Laws of N.Y. 1934, c. 873 (general city excise taxes); Laws of N.Y. 1941, c. 199 adding N.Y. GEN. CITY LAW § 24-a (general business tax); Laws of N.Y. 1952, c. 235 (cigarette tax); Laws of N.Y. 1953, c. 202 adding N.Y. GEN. CITY LAW § 25-a *et seq.* (joint payroll tax). For detailed list of New York City taxes, see 4 CCH STATE TAX REPORTER—NEW YORK ¶ 100-106 *et seq.* (Rep. #199, 1954).

<sup>78</sup> Laws of N.Y. 1937, c. 321 enacting N.Y. GEN. CITY LAW § 20-b.

<sup>79</sup> Laws of N.Y. 1950, c. 591 enacting N.Y. VILLAGE LAW § 138-d.

<sup>80</sup> Laws of N.Y. 1947, c. 278.

ligious exempt property as indicated above, it is clear that no substantial revenue is lost by continuing the practice of religious tax exemption.

### *Conclusion*

This discussion clearly demonstrates that tax exemption of real property of religious institutions is legally, ethically, socially, and economically justified. Nevertheless, this justification is, at times, beclouded by unfounded criticism and misleading reports. In view of these facts, it would seem reasonable for all states to make such exemption mandatory by constitutional provision, and thereby prevent hasty, ill-considered repression of this socially desirable practice by general legislation, particularly when it would not result in a significant increase in the base taxable property.