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Colloquium Foreword

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Tensions Between Religious or Ethnic Communities and the Larger Society: A Frances Lewis Law Center Colloquium

FOREWORD

FREDERIC L. KIRGIS, JR.*

For as long as heterogeneous cultures have existed within nation-states, conflicts have been present between groups bound together by some common belief, by a shared value system, or simply by history (sometimes called communities), and larger local, state or national societies. Sometimes these conflicts have been violent, sometimes not. They arise either when the value system of the community leads to practices the larger society (or at least a dominant group in the society) sees as threatening to its own widely-shared values, or when the interests of a controlling group in the society lead to action that does not fully respect the specific interests of the community. The law and legal institutions have to try to deal with such situations. This often produces winners and losers. The losers in such contests, in which basic value systems are at stake, may view the law as having ignored, or as deliberately subordinated, their vital interests.

In 1982 the Frances Lewis Law Center became interested in this problem. It was immediately apparent that the problem was not simply "legal." That is, the problem was not one that those trained in the law could solve by relying on their legal expertise. Perhaps no persons trained in any discipline could give satisfactory answers, but it seemed nevertheless that a start could be made by bringing together a select group of experts trained and experienced in the social disciplines (cultural anthropology, political science and social history, as well as law) to examine and discuss a few discreet case studies in community-society tension. The vehicle for this would be the preparation of three papers, one each by an expert on the Amish, the Poletown situation in Detroit, and

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the Mbuti hunter-gatherers in Zaire, to serve as the basis for a two-day colloquium involving experts from outside Washington and Lee University as well as some members of the Washington and Lee faculty.

Invitations to prepare the main papers went out to Professors John Hostetler, an anthropologist at Temple University and an expert on the Amish; John Bukowczyk, a social historian at Wayne State University and a close student of the Poletown conflict in Detroit; and Colin Turnbull, a renowned anthropologist at George Washington University who has studied and lived with the Mbuti. All three graciously accepted the invitations, and all submitted manuscripts for discussion by a distinguished group that included Dr. Gertrude Huntington, an anthropologist at the University of Michigan; Dr. John Kromkowski, a political scientist at the National Center for Urban Ethnic Affairs; Dr. Thaddeus Radzialowski, a historian from Southwest State University in Minnesota; Professor Carol Weisbrod, of the University of Connecticut School of Law; Dr. Harlan Beckley, a professor of religion from Washington and Lee; and several Washington and Lee law professors.

The community-society issues raised in the three manuscripts were discussed in detail during the two days. The authors then returned home to wrestle with the ideas put forward during the discussions, and to rewrite their manuscripts in light of those ideas. The Hostetler, Bukowczyk and Turnbull articles found in this issue are the final products of that process.

A recurring theme that ran through the discussion was the difficulty of defining "community." Clearly, the kind of community under discussion was not a "community" in the popular sense; we were not talking about towns or neighborhoods, but about groups that have more in common than mere proximity of residence. It soon emerged, as well, that we were not talking about loosely associated religious or ethnic groups. Protestants, as a group, do not make up a community, nor even do Episcopalians. But Polish Catholics in a well-defined area of Detroit, popularly dubbed Poletown, just might be a community. Professor Bukowczyk's paper examines this question. Professor Turnbull explores the definitional issue even more fully, as an abstract matter and in the specific contexts of the Mbuti and of his own residential area in Eastern Virginia. Professor Hostetler's study of the Amish encounters fewer definitional difficulties than the others (however one defines community, the Amish seem to fit) and thus is able to focus from the start on the tensions that have arisen involving the Amish and the ways in which the tensions have or have not been resolved.

These discussions, of course, did not reach any grand conclusions about how to resolve community-society tensions. Neither did the discussions or any of the papers, even reach any agreed conclusion on how to define "community." Nevertheless, the papers adeptly illustrate the dynamics involved in relations between societies and groups that at least have some claim to be called communities. Moreover, the papers offer some penetrating ideas on the ingredients of effective communities and on possible reforms that could alleviate community-society tensions. Worthwhile reading-awaits those who turn the page.

THE AMISH AND THE LAW: A RELIGIOUS MINORITY AND ITS LEGAL ENCOUNTERS

JOHN A. HOSTETLER*

I. INTRODUCTION

The Old Order Amish, who arrived on American shores in colonial times from about 1727, have survived in the modern world in distinctive and viable, small communities. They are the most traditional of several branches of Mennonites originating from the Swiss Anabaptist movement of 1525,¹ having resisted modernization more successfully than most. In planting and harvest time one can see their bearded men working the fields with horses and their women hanging out the laundry in neat rows to dry. Many American people have seen Amish families, with the men wearing broad-brimmed black hats and the women in bonnets and long dresses, in railway depots or bus terminals. Although the Amish have lived on the fringes of industrialized America for over two and a half centuries, they have moderated its influence on their personal lives, their families, communities, and values.

Thirty years ago, social scientists predicted that the Amish would be absorbed into the larger society in a few decades. It was reasoned that once the vitality of European customs was exhausted, like a run-down clock, the Amish would be assimilated into the dominant society. The predictions were wrong. Moreover, the Amish population has more than doubled in thirty years. In 1950, there were an estimated 33,000 Amish persons in the United States. Today, the Amish population stands at approximately 90,000. Amish communities are in twenty states and in one province (Ontario) of Canada. None remain in Europe.

Compulsory school attendance laws were problematic to the Amish people for decades. The Amish felt that attendance at secondary schools, private or public, was contrary to their religious faith. Sending their children to high school, they asserted, would endanger their own faith community by preparing their children for a way of life outside the redemptive community. In *Wisconsin v. Yoder*,² the United States Supreme Court agreed. The Court ruled that compulsory schooling as applied to those Amish children who have completed the elementary grades, but are not yet sixteen years of age, unjustifiably interfered with the free exercise of the Amish religion in violation of the First and Fourteenth Amendments. The Court recognized that states have the responsibility of improving the education of their citizens, but

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1. For standard descriptions of Amish culture see generally J. A. HOSTETLER, *AMISH SOCIETY* (1980); WILLIAM I. SCHREIBER, *OUR AMISH NEIGHBORS* (1962); CALVIN G. BACHMAN, *THE OLD ORDER AMISH OF LANCASTER COUNTY, PENNSYLVANIA* (1942, 1961).

2. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

measured this interest against the legitimate claims of the free exercise of religion. A recognized authority on church and state, Leo Pfeffer, called *Wisconsin v. Yoder* "a landmark case in American constitutional history."³ The ruling confirmed the right of the Plain People to be let alone, a right which Mr. Justice Brandeis called, "the most comprehensive of rights and the right most valued by civilized men."⁴

My purpose here is not to comment on the legal consequences of the Court's ruling, for commentaries in professional journals are abundant. Rather, I shall describe the religious and cultural context of disputes within the Amish community as distinguished from conflict with state governments or with outsiders. Further, I shall discuss some of the problems of a minority group that is prevented by its own ideology from using the courts as a means of dispute settlement, how Amish disputes enter the courts, the problems encountered by the legal profession in representing the Amish, and the ultimate resolution of such disputes. These issues come into sharp focus if we understand the religious and philosophic basis of the Amish faith community.

II. THE CHARTER OF THE AMISH COMMUNITY

A. *A Redemptive Community*

The Amish people are engaged in a social discourse with reality that requires them to build and maintain a redemptive community.⁵ They view themselves as a Christian body suspended in a tension-field between obedience to an all-knowing Creator on one hand and the forces of disobedience on the other. Central to their world view is the story of creation in the Genesis account, the Garden of Eden, with its many plants, animals, birds, and fishes. Because of the "fall", human beings became heir to a disobedient or carnal nature which is under the curse of death. Redemption from death and restoration to eternal life is believed to be possible. Of his own free will the individual must acknowledge his natural sinful status, accept the love-gift of God (the substitutionary suffering and death of the Son of God), and live obediently in a disciplined community of believers.

The articulation and maintenance of a brotherly community is a love-response to God and distinguishes Anabaptist groups from most Protestants. The model for this community (the teaching and examples of Christ, especially in *Matthew* 5, 6, and 7) are the attributes of submission, humility, forgiveness, brotherly love, and nonresistance. The community is made up of "surrendered" members with Christ-like incarnated spiritual qualities. As a corporate offering to God, the brotherly community must exist "without spot or blemish" (*Ephesians* 5:27; *1 Peter* 1:19; *2 Peter* 3:14) and must be "a light to the world" (*Matthew* 5:14). By living in a state of harmony and

3. LEO PFEFFER, *COMPULSORY EDUCATION AND THE AMISH* 136 (A. L. Keim ed. 1975).

4. *Olmstead v. United States*, 277 U.S. 438, 478 (1928).

5. J. A. HOSTETLER, *AMISH SOCIETY* 75-92 (1980) (more extensive treatment of "The Amish Charter").

constant struggle to be worthy "as a bride for the groom" (*Revelations* 21:2), the community must be vigilant, living on the edge of readiness. Within the community the gift of God is shared and reciprocated among the members, for since God loves all, "we ought also to love each other" (*John* 3:23).

Separation must be maintained between those who are obedient to God and those who are proud and disobedient. The community must be "nonconformed to the world" (*Romans* 12:2). The Amish are mandated to live separate from the "blind, perverted world" (*Philippians* 2:15) and to have no fellowship with "the unfruitful works of darkness." The Amish try to be "in the world but not of it" and hence claim the status of "strangers and pilgrims" (1 *Peter* 2:11). As a believing community, the Amish strive to be a "chosen generation" (1 *Peter* 2:9), "a congregation of the righteous," and a "peculiar people" (*Titus* 2:14) prepared to suffer humiliation or persecution.

B. *Ordnung*

Amish mythology and religious ideals are binding on individual members. Loyalty to God is judged by obedience and conformity to the community's rules of discipline. These rules, called *Ordnung*, enacted by each congregation, stipulate the ways in which members may interact with outsiders. Members may not be "unequally yoked with unbelievers" (2 *Corinthians* 6:14). On such grounds business partnerships or conjugal bonds with outsiders are forbidden. Strife and violence have no place in the community or in the life of members. Members may not function as officers or caretakers of the political or worldly society. The community rules clarify what is considered worldly and sinful, for to be worldly is to be alienated from God. Some of the rules have contextual support from biblical passages; others do not. Regulations that cannot be directly supported by biblical references are justified by arguing that to do otherwise would be worldly. The old way, *das alt Gebrauch*, is the better way.

Separation from the world means that one must be different from the world. Being different is more important, within limits, than specific ways of being different. The Amish feel some affinity to other Anabaptist "plain" groups, for example, Hutterite and Old Order Mennonite, who differ from them in specific ways such as dress and grooming, but who teach and maintain separation from the world. An overriding commitment to the practice of separation from the world also helps to explain why the Amish are not disturbed by slightly different rules in other Amish communities.

The rules of the Amish church-community cover a wide range of human behavior. Although there are slight variations among Amish communities, the most universal norms include the following: no high-line electricity, no telephone in the home, no central heating system, no automobiles, no tractors with pneumatic tires, and horse drawn machinery must be used for farming. Married men must wear beards but moustaches are not allowed. Members must dress in plain and traditional styles of clothing. No formal education beyond the elementary grades is a rule of life. No meetinghouses are allowed, because members gather in farm homes for worship services. Adults only may

become members of the *Gemeinde*, or congregation, by voluntary choice by taking the vow of water baptism. The baptismal vow includes the promise to abide by the *Ordnung* of the church. Some of the Amish rules, those recorded at special ministers' conferences, have been published, but the functioning *Ordnung* of each local group remains unwritten. These rules represent the deliberations of the ordained leaders with the endorsement of the members at a special "preparatory" service held semiannually before the communion service. Twice each calendar year, the members must affirm the rules and express their unity with all other members before taking communion. Unless there is unanimous expression of "peace with God" and unity with all believers, there can be no communion service. Offenses must be confessed and wrongs made right.

Interpreting the essence of Christianity as a love-community, a voluntary *Gemeinde* of the believing, is central to Anabaptist teaching. It cost the Amish and their ancestors, the Swiss Anabaptists of the sixteenth century, great sacrifice of blood and much harassment to establish this concept of the church-community. It meant severing their relationships with the state-church reformers, specifically the Reformed Church of Zwingli, and deportation and disfranchisement of themselves as citizens. Although highly valued as skillful farmers in Germanic countries, the Amish were denied the rights of ownership. They were totally dependent on the goodwill of lesser rulers for a peaceful existence. Only after coming to America did the Amish have the opportunities to buy land and to organize unique communities never realized in the Old World.

III. DISPUTE SETTLEMENT WITHIN THE COMMUNITY

A. *Excommunication and Shunning*

Much of the Amish ritual consists of maintaining the high standards of purity and the unity of the community. The disobedient and those who cause disunity must be excluded, for a blemish cannot be tolerated in the "bride" offered to God. The "old leaven", disorderly and carnally minded members, must be purged from the group. Most offenses in the community are violations of the rules, or actions by persons who, frequently without their knowledge, become the focus of disunity. Economic disputes occur infrequently. The offender in an Amish community must be dealt with in the manner stated in *Matthew* 18:15-17:

If your brother sins against you, go and show him his fault, just between the two of you. If he listens to you, you have won your brother over. But if he will not listen, take one or two others along so that every matter may be established by the testimony of two or three witnesses. If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, treat him as you would a pagan.

Excommunication from membership is exercised after the offender has

been properly warned and remains unwilling to acknowledge his transgression. The ordained leaders attempt to be loyal to every instruction of the Word, to avoid offending the weak believers, and to cause the sinner to examine himself and repent. Until they are restored to full membership, excommunicated persons must be shunned. Social avoidance, *Meidung*, or shunning is the practice of restricting member associations with persons who have been excommunicated. Members must neither "eat with" nor "keep company" with such a person (1 *Corinthians* 5:11). The doctrine of avoidance is taken from *Romans* 16:17, where the apostle instructs the believer to "avoid" those who work against the unity of the church. In the sixteenth century, social avoidance was exercised by the Anabaptists against "fanatical" persons including the Munsterites, Badenburgers, and the Davidians. A century and a half later, Jacob Ammann, founder of the Amish group, reintroduced the practice among the Swiss Mennonites in 1693-1697 which resulted in a church division. The Amish today practice shunning as taught by Ammann. While the Mennonites do not practice shunning at the domestic table, they do exclude offenders from participation in the communion or ceremonial "table".

The following instances of disputes within the community are not necessarily representative, but they are illustrative. Disagreements within the community are typically settled between the parties, and the offenses are forgiven and forgotten, but frequently not without economic loss and personal humiliation.

B. Examples

Case No. 1. A newly married couple, Susie and Sam Yoder,⁶ settled on a farm beside the bride's parents, Lydia and Eli Miller. Because the Yoders' acreage was small, the Millers' donated and later deeded forty acres of their farm to the young couple. For ten years, all was neighborly and pleasant. Then Sam's father, who was known to be economically well off and adept in matters of finance, persuaded his son to sell his farm, including the lands donated to him by his wife's parents, Lydia and Eli Miller. Sam was to relocate in a more prosperous region closer to his own father. When the young couple announced their decision, the Miller family was dismayed. The two families stopped talking. After examining the records in the courthouse, Miller discovered that he had unknowingly signed over his lands to his son-in-law's father who was listed as having power of attorney for the young couple. Since Miller was a minister of the church, ostensibly an example of Christian character in the brotherhood, he had double reason for not contesting the transaction or seeking legal recourse. The estimated value of the "lost" acreage was \$100,000. The transaction passed without contest and without publicity.

Case No. 2. Two large chicken houses on the farm of Joe Lapp burned to the ground. The losses were estimated at 170,000 dollars. Fire marshals

6. All names appearing in the disputes described here are fictitious except concerning the Andrew Yoder case. See *infra* note 7.

who investigated the cause of the fire brought charges against Lapp for intentionally spreading liquid fuel on his premises for the purpose of collecting insurance. Lapp was brought to trial and a jury found him not guilty. The dispute and trial received full coverage in the local press. Lapp was excommunicated for hiring a lawyer to defend himself in court.

During the course of the trial, additional facts and accusations were reported. According to an Amish spokesman, Lapp was also excommunicated from the Amish church for operating a truck, a direct violation of Amish *Ordnung*. He denied owning a truck, but witnesses said they saw him driving the vehicle.

At the time of the fire, Lapp had insurance coverage of 245,000 dollars. He had increased his coverage with the Amish Aid Plan one month prior to the time of the fire, and three months earlier he had taken 82,000 dollars additional coverage from a non-Amish insurance agency. For several months Lapp tried, unsuccessfully, to sell his farm and egg business. At the time of the fire he had already bought a farm for 300,000 dollars in an adjoining county with the intention of moving.

Lapp rejected the sanctions of the Amish church, and said he would seek another religious affiliation that was more friendly. The Lapp family had previously had two fires on their property, and in one had lost a young son. The Amish Aid Committee deliberated whether they should pay a claim by a person who had been excommunicated. After consultation with the Amish bishops, the claim was paid in full. Lapp did not seek reinstatement with the Amish church.

The record suggests that Joe Lapp was hard-pressed financially. Whether or not he burned his own chicken houses, he may have over-stepped the Amish rules. Although he claimed that he did not drive a farm truck nor personally own one, he had purchased a truck in the name of his business firm and paid nonmembers for operating the vehicle. In doing this, he acted like a few Amish engaged in small businesses such as painting, plumbing, and the building trades.

Case No. 3. In a highly publicized case, Andrew Yoder, an excommunicated Amish member of Wayne County, Ohio, in 1947 retaliated by suing each of four Amish ordained officials for 10,000 dollars each.⁷ Yoder had been excommunicated and shunned after he joined an Amish group that permitted the use of automobiles. Claiming that he needed an automobile to transport his daughter to the doctor for frequent medical attention, Yoder began to attend a meetinghouse Amish church that allowed automobiles. Yoder claimed economic hardships as a consequence of the shunning. In a trial by jury, Yoder was awarded 5,000 dollars in damages. When the defendants made no attempts to pay, the farm of Bishop John Helmuth was put up for sheriff's sale. Such law suits are rare, but several have occurred. In some cases there appears to have been envy between individuals or families, in which in journalistic parlance, spite turned into 'mite', a derogatory rendering of *meide*

7. John H. Yoder, *Caesar and the Meidnung*, MENNONITE Q. REV. 23, 76-98 (Jan. 1948).

or *meidung*, meaning to shun. In long-standing shunning cases, the divisive consequences on individuals and family members are far-reaching.

Case No. 4. Henry Zook was an enterprising farmer, involved in construction, saw-milling, cattle raising, maintaining a dairy herd, and horse-trading. At the age of forty-seven, he became the focus of criticism, possibly also of envy among other Amish members. Regarding dress and grooming, he and his family more than conformed to Amish rules. Nevertheless, after a sequence of accusations, each followed by visits from the ordained officials, he had been excommunicated for reasons he could not accept. His wife requested that she be excommunicated with him. At the outset the accusations appeared to be petty and insignificant, but they became more serious. Pride was manifested in his various farm enterprises. Eventually he was accused of embezzling the estate of which he was the executor.

After a lapse of three years, reconciliation seemed remote. The couple had no inclination to liberalize by joining another Amish affiliation. When it became apparent that no reconciliation was possible, the family sold their Pennsylvania farm and moved to Iowa "to get away from church trouble." On their arrival in Iowa the couple applied for membership in the Amish church. They were received as members on confession of their faith. When the Pennsylvania bishop learned that the couple had been granted membership, he wrote the Iowa bishop explaining that if he did not promptly exclude the couple and honor the Pennsylvania shunning policy, the whole Iowa Church would be excluded from fellowship. Not prepared for a confrontation, the Iowa bishop promptly complied with the Pennsylvania ultimatum, excluded the couple, and advised them to return to Pennsylvania to make the necessary reconciliation. After four separate journeys to Pennsylvania to "make peace", no satisfactory reconciliation was achieved. After seven years of living without membership in any church, the couple joined a Mennonite congregation only after their grown children had done so and at the urging of the Mennonite bishop. Relatives and friends who remained faithful to the Amish church were obliged to shun the couple as long as they lived, a span of over forty years.

What had Henry Zook done to merit exclusion? No single offense was singled out. One obtrusive fact remains: he "talked back" to his accusers and to the ordained Amish officials, something that no excommunicated person must ever do if he wishes to be reinstated. As indicated, no amount of argument, justification, or logic will aid in reconciliation. A submissive attitude is absolutely necessary.

Backstage there were informal contributory factors that help to explain the accusations against Henry Zook, many of which were in the nature of harassment. Zook, it was learned in later life, had insisted that one Amish family, the Hertzlers, should not be invited to the wedding of his oldest daughter. All other families in the church were invited, but the Hertzlers were singled out as "not-invited". It was Hertzler, an older uncle of the bishop, who had initiated a series of accusations against Henry Zook. The young bishop felt morally compelled to pursue the allegations of his uncle. Why did Henry

Zook insist that Hertzler be excluded from the wedding? Because Hertzler in the previous year excluded Henry from the wedding of his own daughter.

C. *The Pressure to Conform*

Social ills associated with jealousies between neighbors or family lines frequently lie in the background of Amish disputes. When transgressions are clearly in evidence as in the case of moral lapses, and when the offender accepts the accusation, the threat of exclusion is a powerful technique for assuring conformity. In rare cases, excommunication can turn "sour".

This may occur when the accused person feels he is a victim of spite, unjust accusation, and is dealt with in an arbitrary manner. A person in such circumstances has no recourse, no court of appeal, and no alternative, for only the church has the power "to bind or to loose" (*Matthew* 16:19). An excommunicated person must, in keeping with Amish practice, show submission even if he considers himself innocent. Should such a person seek justice for himself or engage in arguments, he will certainly bring shunning on himself. The reason for this extreme action is that the church-community as the "bride of Christ" cannot tolerate arrogance or disunity.

The Amish, who work so hard to maintain unity and uniformity, nevertheless suffer the consequences of individual deviation or of persons who cannot achieve the high ideals. They fear the prospect of a fragmented social order. The symbols over which they may polarize into divisions are diverse. In the past, divisions have focused on the shape or color of a garment, the style of a house, carriage, harness; or the use of labor-saving machines. Members typically tend to suppress their feelings since no one wishes to become the object of publicity or of fostering disunity. Instead of disputing, those members who may be dissatisfied with the prevailing *Ordnung* may move to a more compatible Old Order community or start a new settlement.

IV. FIRST AMENDMENT ISSUES

A. *Education*

Wisconsin v. Yoder was preceded by several decades of uncertainty and a history of legal confrontations unfavorable to the Amish.⁸ The Amish opposition was remarkably uniform in the various states, but the legal attempts to enforce attendance took various forms. A Kansas court found the "[t]he question of how long a child should attend school is not a religious issue."⁹ Most court decisions acknowledged that the Amish have sincere beliefs, but failed to see how Amish worship was violated. The notion of confining religious practices by defining religion was a serious challenge.

In Lancaster County, Pennsylvania, a large consolidated school supported

8. See A. Keim, *From Erlanbach to New Glarus*, reprinted in *COMPULSORY EDUCATION AND THE AMISH* 1-15 (A. L. Keim ed. 1975); see also Paul Ruxin, *The right not to be Modern Men: The Amish and Compulsory Education*, 53 *Va. L. Rev.* 925-52 (1967).

9. Ruxin, *supra* note 8, at 945.

by federal funds was planned for East Lampeter Township in 1937. The Amish leaders were concerned about its meaning and initially were divided as to the action to be taken. One element wanted to withdraw its children from the public schools. Others feared disobeying the law. An Old Order Amish School Committee of sixteen members was formed, to which representatives of the Old Order Mennonites were also invited. An attorney advised the Amish to use the legal process to stop construction of the school. A petition signed by 3,000 persons was sent to state officials. It asked for eight months of schooling per year, exemption from schooling after completion of the elementary grades, and the privilege of attending one-room schools. The petition was of no avail and the new consolidated school was soon built.

Children in Pennsylvania were required to attend school until their seventeenth birthday, but those engaged in farm work were permitted to apply for a farm permit at the age of fifteen. Many, however, had repeated the eighth grade in order to stay out of high school and were still not old enough to apply for a farm permit. The conflict erupted when schools were no longer willing to tolerate the practice of allowing the Amish children to repeat grade eight. School officials tried withholding the farm permits. The state threatened to withhold funds from districts that did not comply with the law. When the parents did not send their children to the consolidated high school, they were summoned to court and fined. They refused to pay the fines on grounds that this would admit guilt. The parents were then sent to the county jail. Anonymous friends and businessmen frequently paid the fines to release the parents from prison. Some were arrested as many as ten times.

Attorneys and friends of the Amish who took the case to the courts found no legal solution. After many confrontations, Governor George Leader in 1955 arranged a reinterpretation of the school code and introduced a compromise plan, the Amish vocational school. Under this plan, the pupils performed farm and household duties under parental guidance, kept a daily journal of their activities, and met in classes three hours per week. The schools were required to teach certain subjects, and to file attendance reports, but teachers were not required to be state certified.

Other states began to follow the Pennsylvania plan. In Ohio, there were many legal attempts to force the Amish to attend the public school. In Indiana, the State Superintendent of Schools encouraged the Amish to organize their own schools and develop standards in keeping with their prerogative as a religious body. In all of these states, the Amish began to form their own country schools, hiring experienced teachers who had retired from the public school system. When this was no longer possible, they staffed the schools with their own Amish teachers

The Amish in Hardin County, Ohio, had established a private school in 1954. The teacher had had no college training, and apparently no experience as a teacher. John P. Hershberger was tried and found guilty of failing to cause his children to attend school as required by the compulsory education laws of Ohio. The court found no question of religious freedom in the case. The issue was whether the instruction provided in the private school was

equivalent to the instruction given in the public schools. The court said it was not. Hershberger was fined and ordered to comply with Ohio law.

Hershberger then moved to Wayne County, Ohio, where he and other Amish parents were charged with child neglect for failing to send their children to school. Following numerous court delays, the children were found to be neglected and the parents were ordered to surrender their children to the custody of the Child Welfare Board. On the appointed day, the parents appeared without the children. The parents claimed they could not find the children and the judge sentenced them to jail for contempt of court. The truant officer was sent to the Hershberger farm where he found some twenty children all dressed alike. When "he asked for Andy Hershberger, he received twenty answers, all in Pennsylvania Dutch."¹⁰ There was public sympathy for the jailed parents. The judge ordered the parents released on condition that they return with the children on Friday. The parents appeared on Friday, but without the children. The bishop agreed to have the children appear in school on Monday. On Monday they did not appear. When it became apparent that the Amish were going to appeal the contempt order, the Wayne County Board of Education dropped the charges against the Amish.¹¹

The controversy in Iowa during the mid-1960's illustrates the complex differences between local, county, and state authorities and the Amish.¹² In the Amish settlement in Buchanan County, Iowa, school authorities forced their way into an Amish private school in order to compel the children to board a bus to take them to the consolidated town school. The press got wind of impending events and recorded the scene as frightened youngsters ran for cover in nearby cornfields and sobbing mothers and fathers were arrested for non-compliance with an Iowa school law. The Iowa incident became the subject of worldwide publicity. School officials were deluged with adverse reactions from people who sympathized with the Amish.

The emergence of a number of educational and legal problems in operating nonpublic schools prompted Donald A. Erickson, of the University of Chicago, in 1967 to plan a two-day National Invitational Conference on State Regulation of Non-public Schools on "Freedom and Control in Education." Attending were members of state departments of education, members of the legal profession, representatives of religious denominations operating private schools, and a few university professors. In another expression of concern, a group of citizens in 1967 organized the National Committee for Amish Religious Freedom with a Lutheran Pastor, Rev. William C. Lindholm, as chairman. The

10. *Id.* at 943.

11. Ohio has not modified any of its laws to meet Amish objections. The state issued a report entitled *Amish Sectarian Education*, Research Report No. 44, Ohio Legislative Service Commission (1960). See also F. S. Buchanan, *The Old Paths: A Study of the Amish Response to Public Schooling in Ohio*, Ph.D. dissertation, Ohio State University (1967).

12. Donald A. Erickson, *Showdown at an Amish Schoolhouse: A Description and Analysis of the Iowa Controversy*, reprinted in PUBLIC CONTROLS FOR NON-PUBLIC SCHOOLS 9-60 (Donald A. Erickson ed. 1969) (full description). See also HARRELL RODGERS, JR., COMMUNITY CONFLICT, PUBLIC OPINION AND THE LAW: THE AMISH DISPUTE IN IOWA (1969).

immediate task was to appeal to the United States Supreme Court a Kansas Supreme Court decision against Amishman Leroy Garber.¹³ A number of religious leaders, politicians, and educators wrote articles in national magazines advising conciliation. Governor Hughes of Iowa said, "I am more willing to bend laws and logic than human beings. I will always believe that Iowa and America are big enough in space and spirit to provide a kindly place for all good people, regardless of race, or creed."¹⁴

It was against this background that the United States Supreme Court settled the long-standing controversy on May 15, 1972. Since the Amish would not initiate legal action, one of their members asked the National Committee for Amish Religious Freedom for assistance. The committee hired attorney William B. Ball, an expert in constitutional law and religion, and raised the needed funds. In laying the groundwork for a First Amendment religious issue, Mr. Ball attempted to show that a true religious liberty claim was involved, that the state was interfering with the Amish religion, and that despite the state's interests in compelling children to attend school, the Amish position did not present any significant threat to society.¹⁵ As in previous court cases, the county court and the circuit court ruled that even though the Amish were sincere, the compelling interest of the state was greater. When the case reached the Wisconsin Supreme Court, it ruled that the state had failed to prove its case. The Department of Education in Wisconsin was not satisfied to let the matter rest. It appealed to the United States Supreme Court, which granted a review of the case. Wisconsin argued that compulsory education is necessary to maintain the political system, that the state has a right to free the children from ignorance, and that only legislatures can determine educational policy. The Supreme Court held to the contrary, at least with respect to the Amish.

Why did this far-reaching case emerge in a remote Amish community in Wisconsin and not in Lancaster County, Pennsylvania, or Holmes County, Ohio, where there are large concentrations of Amish? How was the Amish disdain for legal suits overcome? The geographic and cultural context of the case was significant. The cheese-making Swiss-Americans of Green County, Wisconsin (New Glarus) were indifferent to the Amish in their midst. The local school officials were ambitious in promoting education and the educational standards of the state. The Amish settlement was new and small. There were twenty-four Amish families living in the community. There was no residing bishop, and the bishop overseeing the ceremonial functions of the New Glarus group did not prevent the defendants from seeking legal advice from the National Committee for Amish Religious Freedom. An Amish bishop in Iowa, however, expressed fear of taking the issue to court. The Amish are extremely careful and usually reluctant to permit others to litigate in their behalf.

13. In a 4-3 decision, the Kansas Supreme Court declined to hear the case. See Donald A. Erickson, *The Persecution of Leroy Garber*, reprinted in *COMPULSORY EDUCATION AND THE AMISH* (A. L. Keim ed. 1975).

14. WILLIAM LINDHOLM, *DO WE BELIEVE IN RELIGIOUS LIBERTY—FOR THE AMISH?* (1967).

15. See William B. Ball, *Building a Landmark Case: Wisconsin v. Yoder*, reprinted in *COMPULSORY EDUCATION AND THE AMISH* 114-23 (A. L. Keim ed. 1975).

The legal counsel for the Amish avoided the pitfall experienced by attorney Shepard Cole who represented the Amish in their case against the Social Security Administration in 1961. After Cole had completed all the necessary legal work, the Amish bishops changed their minds as they ascended the steps of the Federal District Court in Pittsburgh and asked that the case be dropped. In *Wisconsin v. Yoder*, this circumstance was avoided.

The National Committee for Amish Religious Freedom placed the problem of Amish education on a broader base than was possible for the local Amish community or the Mennonite denomination, thus giving it national perspective. Public opinion had become favorable to the Amish as a result of previously publicized incidents. The Amish defendants were not disciplined by their church for allowing the National Committee for Amish Religious Freedom to litigate in their behalf. In the Amish view, the Wisconsin Department of Education was the aggressor. The Department was the party that appealed the case to the United States Supreme Court. That was important to the Amish participants.

The threat of the large school and its associated values has been stopped, at least temporarily for the Amish. It is clear that the Amish will not tolerate the removal of their children from their homes to distant schools where they are placed in large groups with narrow age limits, taught skills useless to their way of life, and exposed to values contradictory to their culture.¹⁶ Although they have won the legal protection in some respects, they have little guarantee other than public sentiment for the maintenance of their schools. The certification of teachers remains a problem in a few states. For example, a newly formed Amish community in Nebraska in 1978 was forced to leave that state in 1982 following unsuccessful attempts to operate their own schools. This can happen even though the Amish willingly comply with state requirements of attendance, length of the school year, length of the school day, health and safety standards, and the teaching of basic skills.

B. Compulsory Insurance

The Amish opposition to compulsory insurance was widely publicized when social security benefits were extended through Public Law 761, January 1, 1955, to cover self-employed persons, including farmers. A delegation of bishops made numerous trips to Washington seeking exemption from the tax and its benefits. Before congressional committees, they contended that "Old-Age Survivors Insurance is abridging and infringing to [sic] our religious freedom."¹⁷ In support of their stand, they said the Bible teaches "if any provide not . . . for those of his own house, he hath denied the faith, and is worse than an infidel." (1 *Timothy* 4:8). To pay social security tax, the Amish say, is to admit that the government has a responsibility for aged Amish members, and to admit this is to deny the faith. They foresaw that this alliance

16. J. A. HOSTETLER & G. E. HUNTINGTON, *CHILDREN IN AMISH SOCIETY* (1971) (description of Amish educational philosophy and schooling).

17. *Our Religious Convictions against Social Security* (April 1960).

with government would make future generations dependent on the government. Federal means of providing for these needs were viewed as purely secular, if not sinful.

Some Amish paid the self-employment tax and others maintained bank accounts against which levies could be made. The Internal Revenue agents met with the Amish to persuade them to comply with the law. When this failed, the Internal Revenue Service took legal action to seize horses from as many as thirty delinquent Amish farmers. Valentine Byler of New Wilmington, Pennsylvania, for example, was approached on May 1, 1961, by law enforcement officers on his farm. Three horses were unhitched, taken to market and sold. His tax and the expenses of transporting and feeding the horses were deducted from the proceeds, and the balance was returned to him. The incident received such widespread publicity that the Internal Revenue Service placed a moratorium on further enforced collections, pending a test of constitutionality. Finally, on July 30, 1965, President Lyndon Johnson signed Public Law 89-97 to provide medical care for the aged under the Medicare section of the Social Security Act. Section 319 of the bill contained a subsection permitting an individual to apply for exemption from the self-employment tax.¹⁸ The applicant must be a member of a religious body, conscientiously opposed to social security benefits, that makes reasonable provision for its own dependent members. The waiver applies only to self-employed persons and not to individuals who are employees and work for wages. The Supreme Court has ruled that Old Order Amish employers must withhold wages from employees who are Amish, even though such employees refuse old age pensions.¹⁹ Those Amish who engage in business or manufacture are faced with still other compulsory entanglements such as unemployment insurance, accident compensation, and workers' compensation taxes.

When the Occupational Safety and Health Administration of the United States Department of Labor ruled that employees in construction and carpentry work must wear hard hats, the Amish refused to give up their traditional broad-brimmed felt hats. Hard hats would in effect obliterate their identity as Amish persons. They had no dispute with the safety standards, but since the regulation affected their own safety, and not the safety of others, they considered the requirement a violation of their religion. After four hundred Amish were furloughed from their construction jobs in Allen and DeKalb counties in Indiana, they sought and won an exemption from the regulation. They did not file suit. Rather, they asked for an exemption, which was granted in June 1972. When the safety of others is directly involved, as in the laws requiring lights on horse-drawn vehicles and SMV (slow moving vehicle) emblems on the rear of such vehicles, the Amish generally comply. Only in a few regions have the Amish objected to SMV emblems on grounds that they are too ostentatious for their way of life.

18. I.R.C. § 1402(g) (1982) (exemption for members of specified religious faiths); *see* I.R.C. § 1402(h) (1982) (definition of self-employed).

19. *United States v. Lee*, 455 U.S. 252, 256-61 (1982).

V. AMISH USES OF THE LAW

Like their Anabaptist founders, the Amish acknowledge the necessity of government and its prerogative to rule over its citizens. Rebellion against the government would be considered un-Christian and unthinkable. The function of the state is to maintain order in the natural or carnal world. The Amish do not run for public office and they avoid any kind of political activity that would require the use of force, for this would violate the higher law of Christian love as they understand it. They are admonished to suffer injustices rather than instigate law suits or defend themselves in the courts. They are forbidden to take oaths, serve on juries, or collect debts by using the courts. The Amish have an outstanding reputation as law-abiding citizens. However, in matters that violate their conscience and religion, they resolutely stand their ground, and as a consequence they have advanced the cause of religious liberty for all Americans.

In practice, some Amish have made use of the law in the past, depending on the circumstances and their conscience. Some family heads are more inclined to use the law than others. When fined for refusing to send their children to high school, Amish parents have refused to pay. In some cases, attorneys have represented them in courts. Their ambivalence about going to court was expressed by an Amishman who remarked, "The trouble with a lawsuit is that if you lose you lose, and if you win, you lose too (in good will)." Some Amish have a superstitious fright of going to court, fearing that if the powers of evil are coerced, greater evil and catastrophe will result. Although holding public office is forbidden, voting in local or national elections is not. Voter turnout is heaviest in local township elections.

Controversies that have drawn the Amish into community conflict with the non-Amish have generally centered on cultural values or beliefs rather than on economics or power. The Amish pay federal, state, and local taxes, as well as property taxes. A few Amish have been jailed for contempt for failing to secure building permits, in violation of municipal zoning ordinances. In one community, zoning would require installing septic tanks on their farms, using certified plumbers, and the elimination of outdoor toilets. Some Amish communities are not prepared to make the change.

There have been no studies of acts of violence against the Amish. Amish are frequently helpless, as pacifists, to defend themselves or their property. Members typically do not report acts of violence or destruction of private property to law enforcement officials. Rancorous behavior, threats, deliberate destruction, vandalism, and arson are known to occur and are most likely under-reported. In the community of Berne, Indiana, an Amish infant was killed by a rock thrown into an Amish buggy at night by four juveniles from the local village.²⁰ For several weeks, juveniles routinely were spending their evenings throwing rocks at Amish buggies. A woman in Ohio was shot in

20. Barry Siegel, *A Quiet Killing in Adams County*, ROLLING STONE (Feb. 19, 1981) (full report of incident).

the face. Firecrackers are frequently thrown at Amish horses. The Amish are easy targets, since most know that they will not prosecute.

The Amish are well aware that they cannot halt modernization nor throw industrialization off their backs. The most they can hope for is tolerance for their religious communities, existing as pockets in rural America. They have no interest in allying themselves with an agrarian movement or a political party. Their community life is precarious in a world enamored with the illusion of having power over nature. As they view the general decay of sensibilities in the outside world, they maintain a willingness to suffer as may be necessary for their redemption.

