AN ANALYSIS OF THE DIALOGICAL EXCHANGE BETWEEN THE AMERICAN POLITICO-LEGAL SYSTEM AND THE AMISH

by

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ABSTRACT

This study explores the interaction between the American politico-legal system and the Amish Christian minority at federal, state and local level and argues that there are three models in interaction: the ‘negotiation model’, the ‘constitutionalism model’, and the ‘hybrid model’.

Based on archival research and semi-structured interviews of American authorities in Indiana, Ohio, New York and Pennsylvania and a sample of Amish leaders, case studies are used to emphasise relations between American governance and Amish. Earlier scholarship mostly suggested a ‘negotiation model’ operating between governments and Amish groups, in which legal disputes are settled through mutual understanding. This research identified two complementary models working at state and federal levels to bridge the tension between the American democracy and the Amish theocracy. Analysis of empirical data confirmed that principles established by the Founders in the Bill of Rights (1791) attached to the American Constitution (1787) operate to protect freedom of religion and equality before the law of all American citizens including Amish sectarian groups. This thesis argues that the ‘negotiation model’ can still function at local level but that the ‘constitutionalism model’ also describes the way Amish respond to U.S. State or individual state intervention. A third ‘hybrid model’ operates, combining elements of the two other models. Thus, this research opens new perspectives in understanding how religious groups with constitutional rights may progressively assimilate/integrate into the American liberal democracy.

To my dear sons Benoît-Michel and Guillaume-François

and

my darling grand-daughters Constance, Philippine and Alix.

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1. INTRODUCTION

1.1 Thesis Argument

This thesis explores the interaction between the American politico-legal system and the Amish Christian minority at federal, state, and local levels. It considers the way in which authorities approach Amish difference.

Qualitative research included semi-structured interviews of American authorities in Indiana, Ohio, New York and Pennsylvania and a small sample of influential Amish people. Case studies are used to emphasise the relations between American governance and the Amish.

Earlier scholarship has mostly suggested a negotiation model operating between governments and Amish groups, in which legal disputes are settled through mutual understanding. My research proposes alternative models at work to bridge the tension between American democracy and Amish theocracy. Analysis of empirical data confirmed that principles established by the Founders in the Bill of Rights (1791) attached to the American Constitution (1787) were sufficient to protect freedom of religion and equality before the law of all American citizens, including Amish sectarian groups. This thesis argues that the negotiation model can still operate at local level, but that there are alternatives, including the constitutionalism model that also describes the way Amish respond to state intervention. A third way appeared when exploring further data and literature: the hybrid model. My thesis brings to the fore the three models and shows how they interact.

This thesis consequently opens new perspectives in understanding how religious groups with constitutional rights may progressively assimilate into American liberal democracy.

1.1.1 Defining Terms

The authorities are officials who enact laws, lawyers at different levels, individuals administering local agencies. To understand the complexity of the U.S. federal system, see Section 3.7.

The Amish are an offshoot of the European Anabaptist movement that started in the sixteenth century. They are named after 'Jakob Ammann (1644– ca. 1730), their leader at the time of the 1693 schism' (Kraybill, 2010: 7–8). The Amish are not easy to define, as there are several groups with different *Ordnungs*, a 'German word meaning "regulations", often translated as "discipline" in English' (Kraybill, 2010: 161). Steven Nolt portrays them like this: 'the image of the Amish as reclusive, dark-clad, horse-and-buggy-driving folks conjures notions of the nineteenth century and hardly comports with twenty-first-century satellite technology' (2016: 1). My focus is on the 'tradition-minded or Old Order Amish of the 1860s' (Nolt, 2016: 23). They are voluntarily separated from the 'world'. In Amish phraseology, the concept of 'the world' comes from the Bible verse found in Romans 12:2, 'be not conformed to this world'; in other words, 'the world' is all that is not Amish (*1001 Questions & Answers on the Christian Life* [hereafter *1001 Questions & Answers*], 2001: 120). The Amish obey this verse literally and practice separation from the rest of the world as much as they possibly can. Another key concept called by the Amish '*Gelassenheit*' comes into the equation in understanding their relationship with American authorities. *Gelassenheit*

means: submission to authority, to God, to church, denying individuality (Kraybill, 2010: 93). This idea is explained at length in section 4.2.2. One of their traditional practices has to be mentioned here: *Rumspringa*. Donald Kraybill, Karen Johnson-Weiner and Steven Nolt explain this term: *'Rumspringa* is a rite of passage that starts at about sixteen years of age when youth begin to socialise with their friends on week-ends (…) but as one Amish father said, "the main purpose of Rumspringa is courtship"' (2013: 214). During this period Amish youth also explore 'the world' for example getting a driving license (section 5.4).

Through my interviews and study of the literature, I uncovered that a small portion of the Amish church aspires to more liberty and has started down the path of assimilation. Some of them ambiguously keep a deep attachment to their Amish roots and sit on the fence between full and partial 'Amishness' (Johnson-Weiner 2020: 244). However, between the ultra-conservative Swartzentruber groups and the most progressive Amish there is an array of nuance that makes generalisation impossible (Kraybill *et al.*, 2013: 12). During my first undergraduate field trip to Pennsylvania, I interviewed Donald Kraybill, who strongly stressed that latter point: 'there is no such thing as THE Amish; there are at least forty different groups of Amish people' (2011). This understanding is borne in mind throughout this thesis.

The 'English': this word is used by the Amish to denote non-Amish people (Nolt, 2016: 11).

Assimilation/acculturation: The concept of acculturation is defined by David Sam and John Berry as 'the process of cultural and psychological change that results following meeting between cultures' (2010: 472). Citing Robert Redfield, Ralph Linton and

Melville Herskovits, Sam and Berry acknowledge that ‘assimilation (…) is at times a phase of acculturation’ (Sam and Berry, 2010: 473; Redfield *et al.*, 1936: 149–52).

1.1.2 Introduction to Chapter 1

In this introductory chapter, I present the historical background of this thesis. I develop the purpose and significance of my research on the dialogical exchange between the American politico-legal system and the Amish Christian minority, and how authorities respond to this peculiar religious group. Then, I explore the existing literature on the topic, before laying out the thesis outline.

1.2 Historical Background

My research on the interaction between the American government, at federal, state, and local levels, with the Amish minority has been conducted to understand and analyse how the American mega-liberal-democratic state deals with a small religious minority. For this purpose, historical foundations must be factored into this study, because all the mechanisms inducing Amish migration to America (see Appendix 9) and the establishment of the American nation through its Constitution and Bill of Rights interlock. Ultimately, these foundations underpin my constitutionalism model. The European historical background of the Amish and the American historical politico-legal context are the starting points. Following the sixteenth-century Protestant Reformation prompted by Martin Luther in Germany (Atkinson, 1982), another Radical Reformation followed, led by those who were called Anabaptists, meaning ‘rebaptised’. Although already baptised as babies, the first Anabaptists chose to be baptised again as adults to show their commitment ‘to follow Christ’ (Kraybill, 2010: 10). One of the Anabaptist historical principles is that church and state must be separated (Nolt, 2003: 10, also

chapter 4). The Anabaptists' renegation of state compulsory baptism sanctioned by systematic acquisition of citizenship caused massive persecution by the state (Nolt, 2003: 10; Braght, Sohm and Luyken, 2009). In the seventeenth century, after internal dissensions, the Amish branched out from the Mennonites (Dutch Anabaptists) who were Anabaptist radical reformers (Kraybill *et al*., 2013: 23–33). Between the eighteenth and nineteenth centuries the Amish emigrated to America, a beacon of freedom of religion (2013: 38–9).

Meanwhile the constitutional American nation was created through separation from the British Empire, the ratification of the American Federal Constitution (1787) and the Bill of Rights, including the 1791 First and 1868 Fourteenth Amendments (Klarman, 2016: 1–2, 546). In 1802 President Thomas Jefferson acknowledged that the First Amendment built 'a wall of separation between church and state' (Segers and Jelen, 1998:125). Regardless of the common denominator between the American state and the Amish minority found in the concept of separation between state and church, gradually the American state impinged on Amish life (Kraybill *et al*., 2013: 355–6). From the twentieth century onwards, frictions between the Amish theocratic minority and American liberal democracy have generated different approaches to understanding the mechanisms operating between the two entities (Hamilton, 2005; Kraybill, 2003). According to Donald Kraybill, one of the main characteristics of the Amish is negotiating, in the sense of bargaining (Kraybill, 2001: 23–4). His proposal encompasses several areas of Amish lifestyle and practices. 'Negotiating with modernity' includes for example adaptation and transformation of technology (2001: 236). Kraybill went on to apply his negotiation model to legal matters (Kraybill, 2003: 18–20). This model is explored in Section 4.4.1.

1.3 Purpose and Significance of this Thesis

The purpose of this thesis is to understand the historical and politico-legal mechanisms that continue to operate today in the dialogical exchange between the American government and the Amish religious minority. This research is significant because, for the first time, it has been conducted from the American government perspective as opposed to the Amish perspective of previous studies (Smith, 1961; Hostetler, 1963; Cline, 1968; Kraybill, 1993). One of the original points of my research is the empirical data collected through interviewing a sample of American authorities, non-Amish American citizens, and Amish leaders. Another original approach is that I expand on the European religio-political context in which the Amish lived before their migration to America (see Appendix 9), as well as integrating the main elements of the foundation of the American nation. This method gives a solid basis for understanding why the Amish had little option but to move to the New World and why they are, politically speaking, a religious minority in America, where freedom of religion is an essential doctrine based on the First Amendment to the U.S. Constitution. Further and more significantly, I expand and build upon Kraybill's negotiation model. Applying the framework provided by the Framers of the Constitution and the First and Fourteenth Amendments, I concur with Kraybill in saying that at local level (e.g., township or county levels) Amish leaders can negotiate with local authorities to a certain degree and within the boundaries of the law. However, during my research I identified that in legal/judicial terms, at state level the negotiation process is more limited, and thus a hybrid model has emerged. At the federal level there is no potential negotiation, as the federal government operates under the authority of the Constitution, leading to the

constitutionalism model whereby the Amish need to use constitutional rights to secure religious freedoms.

Establishing my constitutionalism model on the Founding Fathers' framework contextualises the Amish religious minority as American citizens who therefore benefit from the First and Fourteenth Amendments to the Constitution. Furthermore, in the twenty-first century, Amish society in its position within the broader American secular society is challenged in its daily interactions with the dominant 'English' majority, inducing some trends towards assimilation. In order to explore the phenomenon of Amish acculturation/assimilation (Sam and Berry, 2010: 472), I apply the theoretical concept provided by Armand Mauss (1994, see also chapter 7). Hence, one innovative part of my work is to incorporate a discussion on the potential assimilation/acculturation of Amish American citizens. Since the American notionally secular political system is set within a liberal multicultural society, there are few overt assimilation policies. Additionally, the First Amendment protects religious freedom. Nonetheless, increasing rules and regulations on every American citizen pressurise Amish sectarian groups into conforming to general rules that may clash with their religious beliefs and practices.

1.4 Literature Review

Although for the most part academics in Amish research state that sociologist John Hostetler was the first to write about the Amish in his *Amish Society* (1963), in fact there was previous scholarship in this field (Anderson, 2017; Donnermeyer, 2017). Donald Kraybill confirms that work by 'Walter M. Kollmorgen and George Calvin Bachman, which both appeared in 1942, and Elmer Lewis Smith's *The Amish Today*, which appeared in 1961, all focused primarily on the Amish of Lancaster County'

(Weaver-Zercher, 2005: 46). Nevertheless, in his appraisal of earlier Amish scholarship, Kraybill asserts that these publications did not have the depth and understanding shown by the insider Hostetler, and did not receive 'endorsement by academic publishers' (2005: 46). I concur with Kraybill about the uniqueness of Hostetler's work due to his Amish origins. While Hostetler chose not to join the Amish church, he remained in contact with his Amish family and friends (Weaver-Zercher, 2005: ix). Hence, he was an insider/outsider who was able to bridge the gap between 'the world' and the Amish, and more precisely between the academic world and the Amish (2005: ix).

However, Joseph Donnermeyer suggests the need for a greater recognition of scholars who studied the Amish before Hostetler, and I agree. Adding to Kraybill's list, Donnermeyer mentions Charles Loomis (1960) and William Schreiber (1962) (2017: 1). Their contribution is to offer an outsider's view on the Amish community at a time when research on this minority was not as prolific as today. They all contributed to the advancement of Amish scholarship, to one degree or another, and for this reason deserve our attention.

Although Smith's *The Amish Today* was not published by an academic press, it is worth including in the literature on the Amish of Pennsylvania (1961: 11). He was the first sociologist to produce an all-encompassing and orderly study of Amish groups in Pennsylvania. Part four of his book, 'Contemporary Problems' [of the Amish], is of great interest to my study because his Chapters 15 and 16 detail tensions between state school authorities and Amish parents regarding Amish children's education (1961: 209). He loosely points to Article Ten of the U.S. Constitution (1961: 223). In fact, he is referring to the 1791 Tenth Amendment of the Bill of Rights, which stipulates: 'The

powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people' (U.S. Const. amend. X). Smith underlines that education is the responsibility of individual states, which consequently produced '50 different state school systems in the nation' (1961: 223), and each state had to deal separately with their Amish communities. This conflict is analysed in Chapter 6 of this thesis. In his Chapter 19, 'The Amish and Government', Smith briefly addresses contemporary issues of his time, which provided me with enough background for further investigation. Hostetler seems to have followed suit with his Chapter 12, 'Government and the Amish', in his book *Amish Society* first published in 1963 (1993: 255–76). Like Smith, he gives details about the school controversy and why the Amish object to higher education. He discusses the mid-1960s Iowa school case that led non-Amish citizens to create the 'National Committee for Amish Religious Freedom' (Hostetler, 1993: 267; Lindholm, 1993: 109–23). Hostetler was one of the expert witnesses in the *Wisconsin v. Yoder* (1972) case, ruled on by the U.S. Supreme Court, and in the fourth revised edition of his book he gives a very short summary of the case; he also wrote a chapter in the 1975 book on the case edited by Albert Keim (Weaver-Zercher 2005: 35; Peters 2003: 3, 90–4; Keim, 1975: 99–113). Again, Hostetler covers briefly the tensions generated by the American welfare system impinging on Amish communal solidarity, issues around military conscription and 'Amish Lawyering', explaining why the Amish do not want to be involved in politics or engage in litigation (1993: 275–6). Hostetler's interpretation of Amish reluctance to be entangled with legal and political matters was challenged by Kathleen Conway. In her unpublished Master's research (examined later), she uncovered the dichotomy between Amish discipline and Amish actions with reference to their interaction with

American authorities (1967: 94). In his chapter on the Amish/government relationship, Hostetler introduces his intriguing concept of negotiation between the Amish and government (1993: 275). My French Cartesian mindset could not readily accept the idea of bargaining with government over respect for the law. However, he points out that 'The Old Order National Steering Committee (…) was formed in 1966 to negotiate directly with the Selective Service officials to solve problems connected with conscription' (Hostetler, 1993: 275). It is undeniable that, as Kraybill contends, Hostetler's legacy to academia continues to initiate neophytes in Amish studies (Weaver-Zercher, 2005: 48). Certainly, one of them would be Kraybill, who has become Hostetler's academic successor and has since been an assiduous writer on the Amish.

Kraybill published his first volume on the Amish, *The Riddle of Amish Culture* (hereafter *Riddle*), in 1989. This book pivots around the main 'riddle' of Amish survival and 'how they manage to thrive in a postmodern age' (2nd edn 2001: xii). Kraybill's focus is the Amish of Lancaster County in Pennsylvania (2001: xii). As an undergraduate student researching the Amish, I found this book extremely helpful preparing for my first field trip in Lancaster County in 2011. Kraybill explains that he is not using specialist terminology, which makes the book an easy read (2001: xiii). It has a twofold readership, academic and popular. In *Riddle*, Kraybill, following in Hostetler's footsteps, introduces his hallmark model regarding the Amish 'negotiating with modernity' (2001: 23–4). He states:

> when the negotiable items are values, ideas, beliefs, and ways of thinking—cultural phenomena—we can call the process *cultural bargaining*. When patterns of social organisation are on the negotiating table, the exchange

> involves *structural bargaining* (…) The negotiating metaphor implies a dynamic process of give-and-take both within the Amish society and *between* the Amish and the larger world (2001: 23).

The same golden thread permeates the book *The Amish*, co-written by Kraybill, Karen Johnson-Weiner and Steven Nolt (2013). The argument presented in the Preface is: 'as the Amish grappled with the forces of modernity, they employed a three-pronged strategy: *resistance, acceptance,* and *negotiation*' (2013: xi). In Chapter 19, 'Government and Civic Relations', the Amish approach to their relations mainly with the U.S. government, including civic duties, is summarised. One of the sections is pertinent to my research argument because it covers 'negotiation and litigation' (2013: 357–60).

The concept of negotiation is central to Kraybill's work as he continued to interpret different aspects of Amish society following this idea. His approach to judicial and legal cases through the 'negotiation model' emerged in *The Amish and the State*, a book he edited in 1993 (2nd edn 2003: 18-20). This book triggered my own research on the dialogical exchange between the American authorities and the Amish religious minority. The American government's point of view (U.S. federal government, individual states, and under-state governance bodies) is the focal point of my research rather than the Amish perspective. My investigation, underpinned by the Founding Fathers' framework, revealed a nuanced approach to the relationship between the state and the Amish. It is all dependent on the political level of intervention: federal, state or local. At the time of publication, *The Amish and the State* was a much-needed comprehensive study of conflicts, and resolutions of conflicts, between the Amish and the state. Today, it provides essential grounding to understand Amish behaviour when

it comes to litigation, or rather their refusal to litigate. Essays describing incidents that led to the creation of essential bodies to help the Amish, throughout the nation, with growing state interference are invaluable. However, editor Kraybill sets the tone with his 'negotiation model' (2003: 18–20). As a result, several very well-documented essays incorporate the negotiation concept. For instance, Albert Keim, in his chapter on 'Military Service and Conscription', covers different wars up to the Vietnam War that led in 1966 to the creation of the Old Order Amish Steering Committee, which officially dealt with conscription. Echoing Hostetler and Kraybill's negotiation concept, Keim affirms that 'for the first time in two hundred years, the Amish approached government officials directly to negotiate relief from the draft system' (Hostetler, 1993: 275; Kraybill, 2003: 64). My interpretation of this latter quote is that the Amish met with authorities in Washington, DC to explain their position, which within the limits of the law was dealt with by higher administrative representatives (2003: 61). The chapter on the First Amendment written by attorney William Ball contributes a crucial element of the book. He emphasises how the Amish, among other religious minority groups, benefit from their constitutional right embedded in the First Amendment giving them protection and religious freedom. Nevertheless, I would side with John Janzen, whose book review found that despite the effectiveness of *The Amish and the State* as a whole, the 'theoretical reasoning on the state is rather weak' (Janzen, 1995: 45). He adds that 'it would seem that far more than modernity, it is the U.S. Constitution and the Bill of Rights that define the state in Amish experience' (1995: 45). He also suggests that a historical basis on the establishment of the state would have benefited this volume. My own research, in Chapter 3 and Appendix 9 of this thesis, incorporates this missing element in the study of the dialogical exchange between the state and the Amish.

Regarding the state–Amish relationship in general, there are two noteworthy studies. The first is Kathleen Conway's unpublished Master's thesis, 'Politics and the Amish, the Political Behavior of the Amish as Exhibited towards Public Education, the Courts and Law Enforcement, Government Aid, Military Service and Voting and the Holding of Public Office' (1967). Conway mainly compared Amish political actions regarding their beliefs with their church regulations based on biblical principles. As explained above, her conclusions challenge Hostetler's views of Amish involvement with the American government. She argues that despite their religious beliefs, 'the Amish have shown that they do participate in the political systems represented by the five areas of investigation [enounced in her title]' (1967: 94).

The second study is the thesis by Paul Charles Cline, 'Relations between the "Plain People" and Government in the United States' (1968). "Plain People" is an expression that describes groups with lasting traditions that include separation from mainstream society based on religious beliefs, 'basic beliefs of non-resistance', wearing plain clothes, using horse and buggy transportation, and German-based vernacular (Cline, 1968: 1). He gives an extended picture of conflicts opposing Plain People and the U.S. government in 'the military service, education, and social security' areas, in part echoing Conway's research (1968: 2). One of his aims was 'to obtain an insight into the problems faced by a minority living under the rules of the majority' (1968: 2). That latter idea reverberates through my own research. Moreover, Cline's own analysis looking at tensions between the U.S. government and Amish groups informed my study up to 1968, but my case studies carried the analysis further and deeper, due to the passing of time and more available resources. For his study Cline selected 'The Amish and Mennonites of the Old Order and the Dunkard Brethren' (1968: 3). He places the

Amish within the genealogy of the Plain People and includes them under the Plain People canopy except when he investigates specifically Amish issues (1968: 25–37). In his conclusion, Cline recognised a change of approach regarding inter-relations between the U.S. government and the Plain People. Their personal approach in the form of 'petitions, letters, and personal appeals to individuals in authority in government' transformed into understanding and how they used 'the governmental processes' (1968: 207). I concur with Cline's statement, as my own research comes to the same conclusions. I would add that the Amish of the twenty-first century, through the Old Order Amish Steering Committee (Section 4.2.4) are even more shrewd, because through their interactions with political representatives they can monitor and try to pre-empt new laws that could be detrimental to their community. I identified Amish astuteness in an Amish leader I interviewed in 2018. He was waiting for the report of the commission engaged by President Barack Obama regarding the registration of women for the draft as it might affect Amish women (see Section 4.2.4.6).

1.4.1 Legal Cases Involving the Amish

Legal cases involving the Amish are not legion, because non-resistance is one of their established principles (Hostetler, 1993: 256; Peters, 2003: 2). However, compulsory school attendance after the eighth grade has generated a series of court cases, which are recorded in Keim's book. They started in 1927 and concluded in 1972 with the landmark case *Wisconsin v. Yoder* (1972) ruled on by the U.S. Supreme Court. I selected several items, including the deviant Bergholz case when an Amish dissenting group attacked fellow Amish of another group with whom they had disagreements. This was unprecedented. I also included an environmental court case*: Amos Mast et al. v. Fillmore County, Minnesota, et al.,* 594 U.S. (2021) (Section 6.5). Although Minnesota

is not a state I covered in my research, I considered that this recent case is transferable to other U.S. states that have a sizeable Amish population.

1.4.1.1 School Cases

In 1969, Harrell Rodgers published *Community Conflict, Public Opinion and the Law: The Amish Dispute in Iowa.* Rodgers took as a case study a conflict between the Old Order Amish and the school local authorities over mandatory employment of state-certified teachers. The main objective of his study was to understand the circumstances of resolving disputes within a community using legal instruments. In his research Rodgers interviewed 'decision-makers (…) members of the school-board, the school superintendent, and the Buchanan County attorney' (1969: 3); the 'opinion-leaders' who could advise decision-makers; and 'the local citizens' who could give their opinion about the resolution of the school/Amish conflict (1969: 4–5). The significance of this book for my research is the parallel logic I developed to study the interaction between the American politico-legal system and the Amish minority at federal, state, and local levels. Interviewing American authorities, non-Amish citizens and Amish leaders fed my understanding and guided my analysis of the politico-legal system when looking at the Amish exception. Quotes from my interviews, interspersed throughout this thesis, support my conclusions. In the 1960s Rodgers used the then latest University of Iowa IBM computer programs to analyse his data (1969: 153-54), whereas fifty years later I used NVivo 12 to compute the results of my interviews. My methodology chapter expands on the software used, and diagrams of my results can be found in Chapter 4.

The conflict that started in 1962 in Iowa went through judicial steps to no avail, as charges against the Amish fathers were dropped (1969: 3). That having failed, the Governor of Iowa 'call[ed] a moratorium (…) to seek resolution once more by compromise rather than through the courts; and the decision [was made] by Iowa legislature in the summer 1967 to exempt the Amish from the state school standards' (1969: 4).

The compromise suggested by the Governor of Iowa resonates with Kraybill's negotiation model, but the conflict was ultimately resolved constitutionally as legislators voted an exemption for the Amish. This case corresponds to the themes of my thesis where I explore the First and Fourteenth Amendment continuity that encompasses all citizenry including Amish, and Kraybill's negotiation/compromise model.

The next key book supporting my argument is *The Yoder Case, Religious Freedom, Education, and Parental Rights* by Shawn Francis Peters (2003). Peters picks up where Rodgers left off. He briefly recounts the Iowa case and how several Amish parents moved from Iowa to Wisconsin (2003: 44–7). In his well-documented account of the *Wisconsin v. Yoder* (1972) case, Peters first explains the dispute between Wisconsin local school authorities and the Amish. In Chapter 3 he clarifies the position of the American authorities on education since its beginnings in the nineteenth century: giving access to free public education would train good, reliable citizens and hard workers. Problems started when the state mandated school attendance, however a segment of parents felt deprived of their right to educate their children according to their wishes or beliefs (2003: 37). The opening of the chapter furnishes the reader with a history of education in America and the atmosphere in which the *Yoder* case developed, which is an essential foundation to understanding it (2003: 37–43). As a

European citizen, this was invaluable to enable me to grasp the importance and intensity of the *Yoder* case, which Peters' subsequent chapters clearly articulate. What makes this narrative so compelling is that Peters' book was published thirty years after the decision of the U.S. Supreme Court in favour of the Amish. He was able to analyse in hindsight the human difficulties as well as the judicial quandaries. The book *Compulsory Education and the Amish: The Right Not to Be Modern*, edited by Albert Keim in 1975 and already cited above, has the strong advantage of hearing the voices of contemporaries to this case and participants in the U.S. Supreme Court's work, such as attorney William Ball who defended the case at the U.S. Supreme Court. Nevertheless, the tension between parents' rights and children's rights is still well explored by Peters in recounting Justice Nathan Heffernan's dissent from the Justices' majority of the Wisconsin Supreme Court, arguing that the Amish children's rights were not addressed (2003: 112–19). Heffernan's dissent is consistent with the case made by lawyers Gage Raley in 2011 and David Gan-wing Cheng in 2010, who both advocate revisiting or even overturning the *Yoder* case. In his article Cheng explores how the Free Exercise Clause and the parents' right to decide their children's education disregarded 'a potential right which the Court has never considered: the child's "right to an open future," first proposed by philosopher Joel Feinberg' (Cheng, 2010: 3). Raley's argument about keeping Amish children for several more years in their own would-be private high schools to match public school standards corroborates what Peters outlined (Raley, 2011: 688–9). Peters asserts that Chief Justice E. Harold Hallows, of the the Wisconsin Supreme Court, did not address the potential opening of Amish high schools that would 'maintain their separation from the world at large and still comply with the attendance statute' (Peters, 2003: 107, 111).

More recently, Karen Johnson-Weiner re-examined the *Yoder* case. She comprehensively assessed and compared the Amish education background of 1972 and the context of Amish education in the twenty-first century. She contends:

> Ironically, (…) the agency afforded the Amish by the Supreme Court's decision in *Wisconsin v. Yoder, et al*. means that as Amish increasingly engage with the mainstream, education has for many become less about isolating children from the world than it is about shaping their interaction with it (2015: 29–30).

Marcia Hamilton engaged in a more virulent approach. In *God vs. the Gavel* (2005), she develops her argument on the legitimacy of religious accommodation applying the First Amendment of the U.S. Constitution. She broaches the subject of the *Yoder* case by stating: 'the Amish compulsory education issue is on par with the religious medical neglect cases' (2005: 131). In her opinion, lack of education can incapacitate children and hinder their future life by failing to give them any prospects or choice.

1.4.1.2 A Deviant Amish Case

In his publication *Renegade Amish, Beard Cutting, Hate Crimes, and the Trial of the Bergholz Barbers* (2014), Kraybill, an expert witness and adviser to the U.S. Department of Justice on Amish matters, recounts the atypical case of Amish Bishop Samuel Mullet, who orchestrated physical attacks on fellow Amish, and the ensuing prosecution. This book deserves attention because it departs from the idea that the Amish are a peaceful/perfect community. They are not perfect, as several of my Amish friends have said to me in our informal conversations. *Renegade* essentially demonstrates that this court case was a criminal case and as such the Amish are fairly treated like any other American citizens. The time-span covered by Kraybill is from

September 2011 until February 2013 (2014: xv–xvi). Appeals were filed after this date, including in 2016 a *petition for writ of certiorari* (www.techlawjournal.com, n.d.); in other words, an appeal by the losing party to the U.S. Supreme Court to review the judgment of a lower court. In February 2017, the petition was denied (*Samuel Mullet, Sr., Lester Miller, and Kathryn Miller, Petitioners v. United States* (2017) No 16-6133). Kraybill's book about the *Bergholz* case is a report of events happening two years before its publication. Consequently, it would need a follow-up volume to complete the narrative. The mechanisms of justice Kraybill describes corroborate my interviews with Federal Judge Dan A. Polster, who completed the missing years of Kraybill's book (2014 to 2018), and Defense attorney Dean Carro (2016). The *Bergholz* book enriched my research on a recent criminal case involving Amish people, and how justice is an equaliser, which is expanded upon in Section 5.6 of this thesis. This is a strong example of the non-negotiability of the law.

1.4.1.3 An Environmental Case

I chose *Amos Mast et al. v. Fillmore County, Minnesota, et al.* (2021) to illustrate the legal/judicial progression of the case. From a local agency dispute with a Swartzentruber group, the case was presented in turn to a District Court, to the Court of Appeals and to the Minnesota Supreme Court, before reaching the U.S. Supreme Court. This case consolidates my constitutionalism model, because the interaction between the American legal/judicial apparatus put pressure on an Amish group to comply with the law.

1.4.2 History

To grasp why the Amish have sustained their way of life since arriving in America in the eighteenth century, it is essential to look back at their European origins and how and why they migrated to America (Nolt 2003: 63 and Appendix 9). In 1992, Steven Nolt published *A History of the Amish* (2nd edn 2003). This is one of the most accessible sources on Amish history to date. Nolt's book is also an excellent platform to encourage researchers to scrutinise more specialised books, especially to study the European religious and political context. Nolt's book explains the Amish position during the Civil War (2003: 149–56, 176–7), which can be further explored in the academic study *Mennonites, Amish, and the American Civil War* (Lehman and Nolt, 2007). The chronology unfolding through its chapters is a real compass for understanding the Amish's European beginnings within the wider historical religious context of the Protestant Reformation and Radical Anabaptism, followed by the transit from Europe to America and the Amish's survival and prospering in the New World. In his penultimate chapter Nolt explores the 'challenges in a new century, 1900–1945'. For instance, how technology redefined Amish identity (2003: 259–66) and how the Amish reacted to the First and Second World Wars (2003: 266–73, 287–90), but also the first school disputes. In his last chapter Nolt gives further consideration to schooling issues in different states (2003: 273–8, 300–10), including the *Yoder* case (2003: 304–10), and to the American welfare state of the twentieth century. I suggest that the last chapter dealing with contemporary history has a more sociological approach and seems a bit rushed. A possible solution could have been to write volume two of the history of the Amish from 1945 onwards.

Nolt also writes about Amish divisions between 1850 and 1878 (2003: 157–92), which connects with the book published in 1991 by Paton Yoder, *Tradition & Transition, Amish Mennonites and Old Order Amish 1800–1900*. In his close examination of the nineteenth-century Amish, Yoder explains in detail how 1800–50 was the 'Era of consolidation' [of the Amish community] (1991: 28–40). The following chapters delve into Amish religious beliefs and discipline. In this part, he touches on 'the Amish view of Government' (1991: 94–8). The school attendance laws starting in the early 1920s seriously disturbed the peace and quiet of Amish communities across America (Pratt, 2004: 73), although draft laws had had an impact on Amish communities as early as the Civil War period. From the Amish perspective, Yoder announces that 'it required little discussion to conclude unanimously that service in the militia (…) was to be forbidden' (1991: 96). Amish internal disagreements, which he calls 'the Great Schism', explain how divisions within the larger community gradually drove more conservative Amish to be called Old Order Amish (1991: 261). The history of divisions does not come only from internal struggles but from outside pressures too, which suggests that looming acculturation/assimilation has been a threat from very early on in Amish life in America (1991: 135). This acculturation/assimilation is a thread that runs through the twenty-first century, which I debate in Chapter 7.

1.4.3 Specific State Resources

Because of the profile of my research, investigating the Amish in specific areas of Indiana, Ohio, Pennsylvania and New York states, several books regarding Amish communities in these states enriched my preliminary study. Each volume in its entirety has been a valuable source in shaping my thinking, but the following regional book review considers only the significant chapters that helped my research.

As referenced above, several authors have studied the Amish of Pennsylvania and especially those located in Lancaster County: for example, *The Amish Today* by Smith, *Amish Society* by Hostetler, *The Riddle* by Kraybill and many more.

An Amish Paradox, Diversity and Change in the World's Largest Amish Community (2010), co-written by Charles Hurst and David McConnell, studies the Amish community of Holmes County in Ohio. Starting where Yoder left his narrative in 1900, the authors emphasise Amish internal schisms leading to the emergence of four main affiliations (Yoder, 1991). Chapter 5 dedicated to Amish schooling puts the accent on the multiplication of Amish private schools after the *Wisconsin v. Yoder* (1972) court case. Conversely, 'half of all children enrolled in the public schools in Holmes County are Amish' (2010: 153). Amish parental choice is 'to do with preparing children for a world of ever-increasing contact with the "English"' (2010: 153). Chapter 7 is an unusually long chapter on health and the Amish, which has an interesting part on 'paying for health care' (2010: 248–53). This topic demonstrates tensions between traditional Amish refusal of government help through Medicare/Medicaid, which is provided by non-Amish employers, and the Amish's own 'Hospital Aid Program' (2010: 248, 250). Both Chapters 5 and 7, addressing school issues and Amish reactions to the U.S. welfare programme, added a regional nuance to the analysis of my case studies in Chapter 6 of this thesis.

When preparing for my field trip to northern Indiana, three books were essential to understanding the 'Amish multicultural' aspect of the region. *An Amish Patchwork: Indiana's Old Orders in the Modern World* (2005), co-authored by Thomas Meyers and Steven Nolt, laid the foundation regarding Amish ethnicity in Indiana, by explaining that 'Ethnicity commonly means a shared sense of group identity based on culture,

language or national origin' (2005: 57). Different languages and traditions are outlined regarding German Amish roots and Swiss Amish origins (2005: 58–70). Again, looking at the northern Indiana regional context gave more depth to understanding what Smith reported about the multiplicity of school systems in fifty different states (Smith, 1961: 223). Chapter 6 of *An Amish Patchwork* concentrates on Amish schools. It expands on the gradual changes occurring in Indiana from the 1920s when Amish fathers were arrested in LaGrange County 'for failing to comply with the State's Compulsory School Attendance Act' (2005: 89). However, the State of Indiana did not wait for the U.S. Supreme Court ruling of *Wisconsin v. Yoder* (1972) to 'grant the Amish community the right to establish their own schools' (2005: 95). Chapter 7 was another key chapter to grasp the diversification of Amish occupations. It provided information that fed my debate on potential Amish assimilation in my Chapter 7. From working the land to working in factories and Amish small enterprises, Meyers and Nolt's chapter was revelatory on the interaction between separated Amish communities and the workplace of the 'English' world. (2005: 112–21).

Nolt and Meyers repeated the exercise with their volume *Plain Diversity: Amish Cultures and Identities* (2007). They widened and strengthened their study of Amish diversity and identity in northern Indiana. Their Venn diagram posits Amish identity connecting 'local and regional contexts, migration, history, ethnicity, and *Ordnung*' (2007: 14). For Amish people it encompasses 'rules and regulations (behavioural expectations) of the local church body' (Kraybill, 2010: 161). Nolt and Meyers' Chapter 5 compares Elkhart-LaGrange and Nappanee settlements. They apply their model (delineated in their Venn diagram) to analyse pressures caused by internal (2007: 79–83) or external factors (2007: 83–90). The topic of education is interspersed

throughout the book following the regional context and other factors. Chapter 6 investigates 'Swiss Settlements of Eastern Indiana', which was my first encounter with non-Pennsylvania Dutch Amish. The complexity of the Swiss Amish entity scrutinised by Nolt and Meyers was also ubiquitous when I visited Adams County, as Commissioner Doug Bauman and attorney Adam Miller stressed during my interviews with them (2018).

The third book I found helpful, *Shipshewana: An Indiana Amish Community* (2004), by Dorothy Pratt, examines the history of Elkhart-LaGrange County between 1841 and 1975. The fascinating parts of her study are Chapters 3 and 4 focusing on the First World War, Chapter 6 on the Great Depression, followed by Chapters 7 and 8 covering 'Civilian Public Service' and the '(…) Second World War'. This part of her volume was a foundation stone for comprehending how the Amish worked on the Vietnam War draft and the necessity of constituting the Old Order Amish Steering Committee, which I investigate in Section 4.2.4. What is compelling in Pratt's book is the use of countless newspaper extracts that sustain her narrative, as her end-notes demonstrate (2004: 157–97).

The last state for which I needed preparatory research and reading was New York. Karen Johnson-Weiner's *New York Amish: Life in the Plain Communities of the Empire State* (2010) focuses in Chapter 1 on the Amish from their European origin to their contemporary American history. She also gives a convincing definition regarding Amish identity: 'to be Amish is to always be in church. Amish identity, encoded in the Ordnung, is the church, and, because the church is the community, it is a way of life' (2010: 27). The Amish moved to New York State for two main reasons: to find affordable farmland and as a result of internal struggles (2010: 32; 52). From

Chapter 2 Johnson-Weiner explores different areas of Amish settlements in New York State. Chapter 3 was key for my 2018 field trip, as Johnson-Weiner expands on the most conservative Amish, the Swartzentruber Amish of St Lawrence County. Positing that 'The ultra-conservative Swartzentruber Amish originated in a schism that occurred in the Holmes County, Ohio, Old Order Amish community between 1913 and 1917' (2010: 54), Johnson-Weiner details further divisions in this group, as well as their *Ordnungs* and their daily life. She includes how their economy is organised around farming first and then their handicrafts that non-Amish purchase, which puts them regularly in contact with their 'English' neighbours (2010: 72–3). Later in her book Johnson-Weiner introduces how the relationships between local authorities and the Amish of New York have developed (2010: 92–4). In some instances, they are positive, such as 'in June 2007, [when] Lowville Town Council voted unanimously to waive the building permit fee for a schoolhouse the Amish were planning to build' (2010: 93). Conversely, in Morristown, the Amish encountered serious problems regarding building code requirements. Assistant St Lawrence County Public Defender Steven Ballan, whom I interviewed in October 2018, assisted the Amish in court, arguing that 'the citations for building code violations (…) were a violation of the Amish men's religious freedom (…)' (2010: 94). The Becket Fund for Religious Liberty was also involved in this case. The contrast between meeting members of the Old Order Amish and meeting the Swartzentruber Amish put into perspective why today this ultra-conservative Amish segment continues to have conflicts with local authorities. This is a perfect example of when my 'constitutional model' can be applied.

My literature review brought together works that have inspired me to start my research. Most of them have explored, and analysed the interaction between the Amish and the

State in that order. My original contribution is to present the results of my investigation of the relationship between these two bodies from the perspective of the State.

1.5 Thesis Outline and Interconnection between Chapters

An introduction starts my thesis (*Chapter 1*), followed by the methodology applied to conduct my research (*Chapter 2*). After that, the American politico-legal context is examined (*Chapter 3*). The next chapter uncovers and tests three models of interaction. Amish theocracy and American liberal democracy are explored, before the negotiation, constitutionalism and hybrid models are presented (*Chapter 4*). Next, American citizenship and the Amish are analysed (*Chapter 5*), followed by scrutiny of legal tensions between the U.S. government and the Amish, looking at judicial and legal cases applying the three models in operation (*Chapter 6*). Chapter 7 recapitulates the salient points (Section 7.2) and expands on the contemporary context of secularism in the United States (Section 7.3), counterbalanced by what is called American historical 'exceptionalism' or how America is 'different and special' in politico-religious terms (Ramrattan and Szenberg, 2017: 222; Section 7.4). This dovetails with the interaction between the Amish and the notionally secular American government and mainstream society, which I suggest shows how more progressive Amish groups lean towards assimilation (Section 7.5). I conclude with a discussion of my original contribution, my input to Amish and wider scholarship, and suggestions for further research (*Chapter 7*).

1.6 Summary

This chapter has introduced the context, purpose and significance of my research on the dialogical exchange between the American politico-legal system and the Amish

Christian minority. The significance and context of my research were presented, followed by my literature review and an outline of my thesis. The next chapter presents my research methodology.

2. METHODOLOGY

2.1 Introduction

The outline of the methodology used for this investigation entails several steps. In Section 2.2, I present my objective and selection of methodology. After that, I introduce the challenges of researching overseas, combined with crucial reflections on research on the ground (Section 2.3). Then I examine the process of empirical data collection (Section 2.4), followed by archival research data gathering (Section 2.5). Ethical considerations come next (Section 2.6), after which I explore the 'insider/outsider' concept and reflect on my position as a researcher (Section 2.7). Section 2.8 concludes the chapter.

2.2 Choosing Methodology and Overall Design

The objective of this research is to understand the interaction between the American authorities at federal, state and local levels and the Amish Christian minority. It aims to identify the legal/judicial mechanisms that operate between the state and a small religious minority.

2.2.1 Qualitative and Quantitative Research

Historically, according to David Silverman, quantitative research, which is essentially based on numerical data, had the reputation of being more reliable than qualitative research (2006: 35–6). Gordana Jovanović concurs with Silverman about the predominance of quantitative research over qualitative research (2011: 12–17). In a comprehensive article on 'social history of qualitative research', she scrutinises the dichotomy between quantitative and qualitative research and explains the

development of the qualitative approach. I draw heavily on her work to make sense of the quantitative/qualitative demarcation. Jovanović assesses the 'historical trajectories' of those two kinds of approaches (2011: 4). She contends that Western intellectual history began in ancient Greece, 'but its most important part belongs to modernity' (2011: 4). The seventeenth century was an era when natural science increased significantly. The Medieval Christian world view of divine order was gradually left behind, to the benefit of the 'new modern age' (2011: 6–7). Jovanović's definition is that 'the new, modern age is an epoch based on the principle of self-determination and self-assertion' (2011: 7). She argues that as modern science developed, it acquired 'an undisputable privileged epistemological status' (2011: 11). During the modern era, everything became quantifiable (2011: 15). However, in the middle of the twentieth century 'the first Department of Sociology at the University of Chicago (…) essentially shaped sociology as a discipline' (2011: 5). Coincidentally, the emergence of the Chicago School was paralleled by contemporaneous books of research on the Amish sect published by Elmer Smith in 1961 and John Hostetler in 1963. They put the Amish on the map of sociology.

In the twenty-first century, Paul Leedy and Jeanne Ormod succinctly defined qualitative research as 'research yielding information that cannot be easily reduced to numbers; [it] typically involves an in-depth examination of a complex phenomenon' (2020: 456). I contend that their definition is too vague to grasp the essence of what qualitative research represents. However, John Creswell and David Creswell encapsulate the process of qualitative research:

> Qualitative research is an approach for exploring and understanding the meaning individuals or groups ascribe to a social or human problem. The

> process of research involves emerging questions and procedures, data typically collected in the participant's setting, data analysis inductively building from particulars to general themes, and the researcher making interpretations of the meaning of the data. The final written report has a flexible structure. Those who engage in this form of inquiry support a way of looking at research that honours an inductive style, a focus on individual meaning, and the importance of reporting the complexity of a situation (2018: 3).

Creswell and Creswell's dynamic approach to qualitative research points out essential steps to be taken to explore a phenomenon involving individuals. However, they use technical jargon. The 'inductive style' used on page 3 of their book is explained on page 63: 'An inductive process [is] building from the data to broad themes to a generalised model or theory' (2018: 63). Even more precise is the definition given by David Gray. He asserts that the inductive process includes the gathering of information and during analysis discovering 'if any patterns emerge that suggest relationships between variables' (2004: 6). He makes an important point by arguing that the inductive method considers previous theories.

Qualitative research has its own pitfalls too. Alan Bryman points to the propensity of qualitative research to be 'subjective' or biased, because there is no transparency in the thought process of the researcher and the actions taken during the research, as well as how they lead to the result (2001: 282–3). Bryman also emphasises the difficulty of reproducing qualitative research, because from a small-size sample it is difficult to replicate a study. Furthermore, the interaction between participant and researcher is exclusive to one particular study (2001: 282).

2.2.2 Choice of Approach

The complex phenomenon I planned to explore – that is, the mechanisms implemented in inter-relations between the state and the Amish – needed a qualitative strategy, because a sample essentially involving individuals working for American government agencies and American citizens in relation to the Amish had not been studied before (Creswell and Creswell, 2018: 19). A qualitative approach enabled me first to explore and gather data through interviews using semi-structured questions; then I applied an inductive method using the software NVivo 12 to code and analyse my data. In the process of refining the analysis of my data, I used NVivo 12 to illustrate my theory or model with graphics. Graphics appear more commonly in quantitative research, therefore the use of this function of NVivo 12 brings an element of a mixed approach to my research.

I agree with Creswell and Creswell's argument that a 'worldview' has to be included in research methodology (2018: 5). The worldview that best fits my research is 'constructivism' (2018: 8). In other words, 'the goal of the researcher is to rely as much as possible on the participants' views of the situation being studied' (Creswell and Creswell, 2018: 7). Thus, listening to my participants, in their own environment, was a crucial activity for collecting their views on the functions of the American government in relation to a small religious minority. It also gave me first-hand information on the historical, social, and cultural context (2018: 8). The contribution of my participants in this project helped me to 'construct' my own theory. Creswell and Creswell claim that the personal experiences of the researcher come into the equation (2018: 8). I recognise that my previous training in French law, International Commerce and Theology played a significant role in the way I conducted my interviews and

subsequently analysed my data and constructed my models. That latter statement agrees with what Bryman calls ‘subjectivity’ (2001: 282). I discuss my positionality as a researcher more in Section 2.7.

2.3 Challenges of Researching Overseas

2.3.1 Obstacles, Limitations and Reflexivity

From the outset my research had limitations because of the characteristics of the population under scrutiny: high-profile professionals on the one hand, and members of a tightly closed sect on the other. This is discussed in ‘Ethics’, Section 2.6. Geographical distance was another challenge, as my respondents were all based in the United States and I live in the United Kingdom. This specific factor meant very careful advance planning. Time and distance limited the number of interviews I could conduct during my field trips in America. Over my four trips, I covered approximately 39,000 miles. Some states were visited several times, others only once. The locations included Indiana, Ohio, Pennsylvania, upstate New York and Washington, DC.

2.3.1.1 Challenge of Fixing Appointments

One of the obstacles to overcome was the difficulty of accessing American citizens in governmental or legal positions because of their busy schedules and the short and infrequent times I spent in the United States during field trips. Karen Duke echoes my statement when she asserts: ‘researching powerful individuals (…) generates a unique set of dilemmas and complexities for the researcher’ (2002: 39). One of the corollaries of the problems encountered in fixing appointments is directly linked to the fact that I was exploring Amish geographical areas. People who live and work with the Amish tend to be slow to organise their diary. Some of them candidly stated that we would

have plenty of time to fix appointments when I arrived in their state and that it was enough to give them a telephone call on the day of my arrival.

2.3.1.2 Vulnerability and Logistics

In their book *Reflections on Research*, Nina Hallowell, Julia Lawton and Susan Gregory gathered reflections and experiences of a number of seasoned social researchers (2005: 1). They contend that today, reflexivity on emotions felt during research are usually part of a research report (2005: 2). Through their book, they attempt to open up a more genuine approach of reporting research that includes emotions and also encompasses some practical and ethical issues (2005: 1–2). Catherine Exley contends: 'Emotional fact: (…) research requires an awful lot of emotional energy and many emotions from the researcher' (Hallowell *et al.*, 2005: 17). Conversely, one of the aspects of fieldwork that does not appear to be addressed in any literature regarding research methodology is the challenges occurring in the logistics area such as those I faced regarding organising appointments and sending email.

2.3.1.3 Internet Security Problems

One of the unexpected difficulties I had to deal with was my emails bouncing back when I sent them to post-holders of county offices. Cyber-security is very strict in some states, for instance this happened in Elkhart County in Indiana and in St Lawrence County in upstate New York. I had to telephone to explain my problem and reach an arrangement with my interlocutors whereby I could resend my emails to personal email addresses. The circumvolution of the process considerably reduced the

speed of making appointments, as the intermediary who kindly gave me their personal email address had to then contact the person I was trying to reach.

2.3.1.4 Funding and Time

Another limitation was my self-funded status. University fees and field trips were a challenge to the family budget. However, in 2016 the University of Birmingham helped me with a small award for my first field trip, and in 2018 I received a significant amount of money from the University that helped me to organise my second field trip. The financial aspect is a recurrent problem for researchers, as Andrea Doucet explains regarding the number of interviews she could manage: 'I could do this [interview a hundred people] because I had the privilege of a research grant which provided some research assistance (for scheduling interviews and transcription costs)' (Doucet, 2012: 25–6).

In June 2016 the conference I attended and the field trip required rearrangement of my work schedule in the United Kingdom, as twenty-two days were needed to achieve a productive result. Again in 2018 I reorganised my work schedule and combined my annual leave to enable me to complete my second field trip, which took twenty-seven days. Therefore, the frequency of transatlantic field trips was reduced by time and budget restraints, an experience echoed by Jerry Savells and Thomas Foster who experienced 'limitation of research fund for travel (…) time for commuting to interviews', when researching Amish groups (1987: 27–8). Despite these limitations, my field trips were completed successfully.

2.3.1.5 Transportation Issues and Missed Appointments

Anyone who travels the world can tell stories about flight delays, luggage issues, car-rental problems and more. When an accumulation of those occurs during business travel and someone is on a tight schedule, problems can snowball and cause loss of business and a high level of stress. This was my case when I travelled to the United States to gather my empirical data.

2.3.1.5.1 Airline Companies and Flights

- It is essential to choose a well-established airline company. My experience of using a low-budget airline was that accumulated mistakes on its part resulted in more expense than anticipated.
- When crossing the Atlantic, allow one day at least between the day of departure and the first appointment. My first ordeal was to be grounded for twenty-four hours in Keflavik (Iceland) while flying from London (UK) to Baltimore (USA). Consequently, I missed my first two important meetings with Donald Kraybill and archivist Rachel Grove Rohrbaugh, at the High Library in Elizabethtown College. They understood my predicament and allowed me to reschedule the lost appointments. The networking opportunity provided by a reception for international delegates was irretrievable, however.
- Weather conditions are another challenge that no careful planning can avoid. Fog was responsible for missing a day of appointments with Karen Johnson-Weiner in upstate New York. Fortunately, she was able to reschedule. Flying from Harrisburg (PA) to Washington, DC was uneventful, but the connection to Ottawa (Canada) was delayed by twenty-four hours because

of the fog. I also had to reschedule my hire car to drive to my final destination, Canton in upstate New York. I had to email the company as my mobile phone was blocked.

2.3.1.5.2 Mobile Phone Problems

Although my mobile phone contract had been checked before going to the United States, and it was not the first time I had used it there, on my second day in Elizabethtown (PA) my phone was blocked. I had no time to deal with it as I was in the middle of sorting out car rental. My internet connection at Elizabethtown College enabled me to talk to my husband, who had to solve the problem from England. It took three full days before I could use my mobile phone again, and I also had problems during my travel crisis between Pennsylvania and Canton via Ottawa.

2.3.1.5.3 Car Hire Issues

An example of a car hire issue illustrates the impact on scheduled appointments with participants. On my way from Harrisburg airport to Elizabethtown, my hire car developed a serious technical problem with the engine that could be fixed only in a garage. Once more, I had to contact several participants by email to rearrange appointments as my mobile phone was still an ongoing issue.

2.3.2 Reflection on the Vulnerability of the Researcher during Field Trips

This account of the accumulation of incidents during my field trips is aimed at raising the awareness of any researchers who engage in research overseas. The meticulousness with which I prepared my trips was not enough to cover all aspects of the problems I would encounter. At some points the level of stress was very high,

particularly when my mobile phone company let me down in the middle of a transportation crisis. The researcher must be extremely fit in order to physically walk the extra mile and handle heavy luggage, but even more so they must be mentally very strong to weather any episodes that come their way. One of the biggest challenges is to cancel appointments that have been organised months in advance and face the fact that they might not be retrievable. Nevertheless, I acquired new skills: taking control of bad situations while I was dealing with people, with a smile or even a sense of humour, asking for yet another favour regarding rescheduling appointments. As British people were encouraged to do from the beginning of the Second World War, I had to 'Keep Calm and Carry On' (Irving, 2014).

In conclusion, despite a succession of obstacles, I was able to meet my interviewees and gather important empirical data. At no time did I regret what I was doing or lose the focus of my research. My determination was to lead my expeditions to success, remaining practical and rational through each adverse event. Another challenge that stands in its own category was the Covid-19 restrictions, an issue I examine in the next section.

2.3.3 Covid-19's Impact on Research

Nothing could prepare researchers to face the challenges occasioned by the Covid-19 pandemic that started in 2020. Fortunately, my field trips were completed and I had gathered all my data, including archival research in Elizabethtown. However, the pressure of the pandemic materialised during the first lockdown. For three months I spent time teaching, via Skype, my three primary-school grandchildren, based in France, in turn. The French curriculum was very demanding and I spent five hours a

day online. The daily sessions did not leave much time or strength to continue my research. My concentration levels dropped dramatically. Nonetheless, I fitted writing into every possible hour left in my busy schedule. The Covid-19 pandemic irreversibly delayed my PhD timetable.

2.3.4 Summary

In summary, Figure 2.1 illustrates the essential elements of this section.

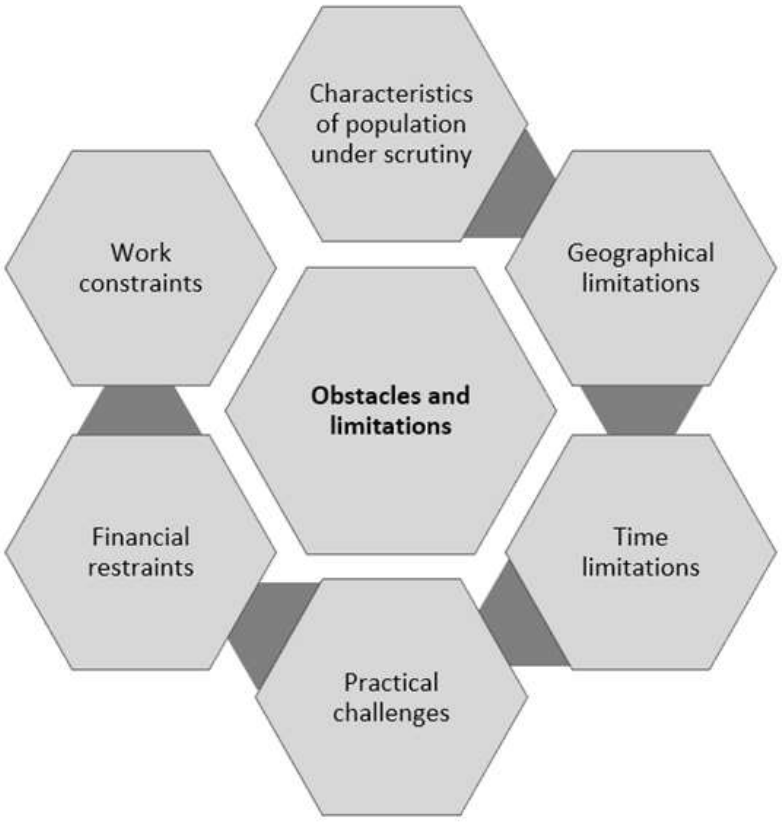

Figure 2.1 Obstacles and limitations associated with research

2.4 Data Collection: Interviews

This section focuses on the technique used to select my dual sample, considering the characteristics of the population under scrutiny. Planning fieldwork and looking at different ways of interviewing come next. Then transcription is examined, followed by conclusions.

2.4.1 Delineating the Sample

I conducted forty-three interviews involving fifty individuals, thirty-nine males and eleven females. Most of my participants were over forty years old. My sample was composed of ten people working in the political/legal/judicial sector, seven with local authorities, six worked in the health/social sector, seven were non-Amish business people, eight were in academia and twelve were Amish leaders. Interviews took place in a Congress office, in Court Houses, in County Commissioners' offices, in a bank, and for Amish leaders in their office or home.

2.4.1.1 Choosing a Sample

Marten Shipman, in a chapter on 'Sampling', outlines what a 'purposive sample' is: 'The judgment, purposive or quota samples are all variations on the method of selecting individuals or groups who are seen to be representative of the target population' (1972: 51). I implemented the purposive method in order to map the underpinning tension between democracy and theocracy within a particular constituency. I chose this method because the people I selected would potentially provide a wealth of information, helping me to meet the objective of my investigation (Pickard, 2013: 64). Hence, I interviewed American legislators and judicial actors embodied by elected representatives, at federal and state level, officials, judges, and

attorneys, as well as American non-Amish citizens living within reach of Amish communities. Several participants were academics with solid expertise in Amish groups. Amish leaders and members of their communities, representing the theocratic side of the study, were also part of my sample. The heterogeneity of the sample shows how these two concepts are in conversation to explain how the Founding Fathers of the American democratic Constitution privileged religious freedom when accommodating religious groups needing to express their own identity, as explained in Chapter 5 of this thesis (U.S. Const.). Consultations on some laws or regulations have taken place when they were against a group's proclaimed faith. This is in total accord with the First Amendment of the U.S. Constitution, which empowers American citizens to this day, including the Amish (U.S. Const. amend. I). This particular aspect is expanded in Chapter 3 of this thesis.

The size of the interview sample is a moot point, as Sarah E. Baker and Rosalind Edwards consider in their research 'How Many Qualitative Interviews Is Enough?' (2012: 37). A very large sample was not envisaged for several reasons. First, the research question was established to address the relationship between the American politico-legal system and the Amish. In other words, I interviewed legal and political representatives focusing on their interaction with the Amish. The other group included some members of the Amish population. As already stated, the purposive technique used meant that the selected individuals would yield rich information. Limitations of cost, distance and time were also considered. However, my sample was sizeable and sufficient.

Choosing to interview the elite demanded thorough preparation. It meant researching who the important person I was going to interview was. The internet was an invaluable

tool for groundwork on the careers and public lives of this group of interviewees. In their book about qualitative interviewing, Rosalind Edwards and Janet Holland emphasise the necessity of 'doing homework' and confirm that it helps 'to decrease the status imbalance between themselves [interviewers] and their interviewees, and to position themselves as someone who can be considered equal in terms of situated knowledge' (2013: 82).

I examine closely the case of interviewing Congressman Joseph Pitts (PA) in Section 2.6 on 'Ethics and Interviewing'. Being *au fait* with Congressman Pitts' political profile and career was instrumental in gaining access to this important figure. I selected him because he helped his Amish constituents by introducing to Congress their request regarding children's work. This specific topic is thoroughly treated in Chapter 6. To give other examples, and the list is not exhaustive, in Pennsylvania my Amish respondents were primarily selected from the group I lived among in 2011. In the State of Ohio, I selected one of the judges because he ruled in a case of Amish sexual assault. Thus, my sample was enhanced and increased by the 'networking method' during empirical data collection. This method, expounded by Hennie Boeije, is also called the 'snowball method' (2010: 40). The elite group was eager to help in my research and recommended me to colleagues; that is, other judges and lawyers. The networking technique also brought positive results with Amish citizens, who graciously accepted to be interviewed because I was introduced by one of their acquaintances. This meant that my sample was enlarged and I required some flexibility and promptitude in order to meet with these unexpected new candidates for my research.

To summarise, the choice of my twofold sample was thus in agreement with my research question and involved legal and political individuals as well as Amish people.

When conducting the interviews, the networking method yielded several new participants. This points to a tangible contrast between desk planning and the reality of fieldwork, which I turn to next.

2.4.2 Fieldwork Planning

My first study tour started with the 2016 Amish Conference, *Continuity and Change, 50 Years of Amish Society*, which took place in Elizabethtown, PA. I presented a paper: 'The American Politico-legal System and the Amish between 1963 and 2013' (Green, 2016). This conference gave me an opportunity to continue some conversations with specialists on Amish groups (Professor Emerita Karen Johnson-Weiner, Professor Emeritus Donald Kraybill, Dr Joseph Donnermeyer) and to do some networking. After the conference I was ready to start face-to-face interviewing.

A comparison can be made between the preparation for each of my field trips, because I approached them differently. Several months before my first tour, at the beginning of 2016, I gradually contacted American professionals in both Pennsylvania and Ohio, and wrote to Amish contacts in Pennsylvania. To prepare for my second field trip in 2018, I planned for a year in advance as I would visit Indiana, Ohio, Pennsylvania, and upstate New York. It is noteworthy that the difference between my two main field trips was the change of strategy. Because of my experience in 2016, I had a real understanding of the American legal and business culture and also, I trusted the effectiveness of the 'snowballing' effect. When I was given a contact name, I interacted with people with more confidence. I contacted academics, County Commissioners, lawyers, and other agencies. In 2016, my initial approach was to contact the Supreme Courts of Pennsylvania and Ohio by email.

Pennsylvania State: I visited the website of the Supreme Court of Pennsylvania State. Then I contacted the District Court Administrator of Lancaster County Court of Common Pleas (DCALCCP), MD. This contact was not very responsive, even though I emailed him at regular intervals. He eventually was helpful when I was already in the United States and my schedule was full. I kept the contact details he provided for my second field trip. I telephoned and emailed attorney Elizabeth Place, who was involved with zoning issues and who wrote two parts of the book *The Amish and the State*. Unfortunately, it was not possible to make an appointment while I was in America. I also directly contacted some of my potential interviewees, including academics like Donald Kraybill, an international leader in Amish studies, whom I had already interviewed in 2011. I telephoned the Lancaster office of Congressman Joseph Pitts, who suggested I phone his office in Washington, DC. I then had my first encounter with his 'gatekeeper'. For a detailed analysis of her role, see Section 2.6.2. My ongoing correspondence with an Amish woman, P.E., since 2011 was an avenue into investigating the possibility of interviewing her and her husband as well as some members of her community. At first, I was reluctant to ask P.E., as she had been my friend for five years. She was amiable though and I was able to conduct a few interviews in her community. For my next field trip in 2018, because of my tight schedule visiting different states, I chose not get in touch with the DCALCCP and Elizabeth Place, because my previous experience of lack of responsiveness was a real deterrent. However, I was able to interview several academics who were working at or visiting the Young Center (Elizabethtown College). I wanted to interview them because first they were American citizens, and second, they had a point of contact with the Amish. After presenting a paper at the 2019 'Health and Well-Being in Amish Society:

A Multidisciplinary Conference' in Elizabethtown, through networking, I managed to interview six health/social professionals in Lancaster, all of whom had a good proportion of Amish clients (Green, 2019). This was very edifying. It helped me to understand the mechanisms of local negotiations between the hospital and the Plain Community. Also, the apparatus (social services, tribunal and Plain Community special committee: Conservative Crisis Intervention) addressing the thorny subject of sexual abuse in the Plain Community was explained to me when I interviewed Robin Boyer and Allan Hoover (Green, 2019). Those meetings strengthened my understanding of the topic and especially how authorities and the Amish interact locally. In retrospect, the Amish conferences I attended in Elizabethtown were extremely productive because attending lectures and workshops not only enhanced my knowledge of Amish groups, it gave me great opportunities to interact with people who later became participants in my research.

Ohio State: In 2016, I explored the website of the Supreme Court of Ohio State. I emailed Bret Crow, Director of the Office of Public Information of the Supreme Court of Ohio. I received an immediate response; he was extremely effective in recommending me to attorneys and judges. Subsequent emails flowed comfortably and gradually my timetable was expanding. In Holmes County, I interviewed two judges. These encounters led to more contacts and ensuing interviews. The 'snowball' effect was in action. In Logan County, an Amish convert I met at the 2013 'Amish America: Plain Technology in a Cyber World' conference (where I presented a paper) opened doors to meetings with Amish business owners (Green, 2013). No formal interviews were set up, but informal conversations enriched my understanding of the regional differences between Pennsylvania and Ohio.

Indiana: in 2018, the process was much simpler and smoother. A particular contact (S.N.) introduced me to one of the County Commissioners of Elkhart County, who in turn put me in contact with the Prosecutor of the County, lawyers, business owners, Amish leaders and one of the Commissioners of Adams County. The latter proceeded in the same manner and introduced me to lawyers, a bank director, and local authorities.

I was able to prepare meticulously for my different field trips because of the training I received during my two-year course in International Commerce. Market research and cultural differences guided me in the 'recruitment' of my interviewees. Taking advice from experts in the Amish field was key to the process (at conferences and previous meetings). Furthermore, my import/export trading organisational skills were extremely useful for planning and keeping my timetable under control, even when unforeseen situations happened. As Carl Nelson maintains: 'Plan, plan plan (…) talk to those who have experience (…) be persistent – don't give up' (2009: 341–3).

Planning for my first field trip involved preparing detailed documents explaining to respondents the purpose of my research and the essential Consent Form to be signed in order to comply with university ethics policies. I elaborate on the creation of the Schedules and Research Participant Information Sheets in Section 2.6.3 on 'Handling Ethical Challenges'.

2.4.3 Interviewing and Its Purpose

After a general analysis of interview mechanisms and the choice of a semi-structured interviewing method, this section examines the face-to-face interviews, followed by the use of telephone and Skype. It ends by examining the transcribing process.

Steinar Kvale gives an interesting definition of what an interview is: ‘The interview is a conversation that has a structure and a purpose determined by the one party: the interviewer (…). The qualitative research interview is a construction site for knowledge’ (2007: 6).

I totally agree with this latter metaphor. Each interview represents a conceptual unit allowing the researcher to draw conclusions in order to build a theory offering a new approach to general knowledge. Martin Packer adds another component to the discussion of interviewing and the forms it can take. He brings an element of special care towards interviewees. I endorsed the idea that this kind of interview ‘is superior in its sensitivity to the unique experiences and subjectivity of the interviewee’ (2011: 47–9). It clearly illustrates that qualitative research deals with individuals. The fact that the aim is to gather opinions and evidence to prove a theory should not obscure the potential vulnerability of interviewees facing the interviewer. Without falling into the trap of being too sensitive and losing the initial focus altogether, the interviewer’s professionalism has to be paramount. In my experience, most of my interviewees were professionals with a great command of interaction with an outsider asking questions. Judges, lawyers, business people and academics did not seem to be fazed by any of my questions. I did not feel that they were unsettled during my interviews. However, with my previous experience of interviewing Amish people as an undergraduate in 2011, I was vigilant not to cause any anxiety. Building trust was my supreme goal. My technique was to start gently with an informal conversation about family, which is always welcomed by Amish people. Then I would ask if they were ready to answer my questions, making clear that if they did not want to answer one of them, with or without justification, I would respect that. When I felt hesitation, I probed slightly and if there

was resistance, I swiftly moved on to the next question. Overall, the results were very positive. I only felt a lot of restraint when I interviewed a very conservative Amish businessman in Adams County. He kept referring to his bishop who would know the answer better than he.

Kvale maintains that ‘we should not regard a research interview as an open dialogue between egalitarian partners’ (2007: 14–15). He develops an analysis in six arguments proving that ‘the interview entails an asymmetrical power relation’. Interviewers are in control because they induce the interview and then lead it to reach a pre-established target. The outcome can be manipulated and the final analysis certainly belongs to the interviewers/researchers. In practice, it is obvious that my goal was to explore, through my questions, the American politico-legal system in relation to the Amish community. My list of questions was focused on this area and my respondents were aware of the topic I was investigating. Yet I firmly disagree with Kvale about the idea that I would manipulate my interviews. I believe that the essence of qualitative interviews is to listen to participants and build a theory through the analysis of their replies, not to push my theory. In my opinion, researchers must always consider that although the success of their research partly depends on successful interviews, they must balance that with the well-being of their interviewees and furthermore with an impeccable ethical attitude regarding the results.

I adopted a semi-structured interviewing technique to collect data. Alan Bryman describes a semi-structured interview as a series of questions ‘often referred to as an interview guide’. He emphasises the flexibility of this type of interview, which gives participants ‘a great deal of leeway in how to reply’ (2001: 311). He also indicates that it gives the interviewer some space to incorporate follow-up questions. Therefore, this

was my preferred method to keep the necessary adaptability to allow interviewees to express themselves about the questions asked. However, there were certain drawbacks associated with the use of semi-structured interviews, as some participants tended to expand and easily go off on a tangent. This was obvious with one of the American citizens with Amish roots (Y.M.), who undertook the interview as an opportunity for 'story telling' and embellished his replies with many anecdotes. Several times I had to gently steer him back to the original question.

2.4.3.1 Interviewing Face-to-Face

Kvale explains that 'a weekend course and an introductory interview textbook may be sufficient to embark on a PhD project based on interviews' (2007: 47). My own experience contradicts this assertion, because textbooks and introductory courses did not prepare me enough to work in the field. Only practice helped to improve my technique. The main elements that cannot be taught are how to approach participants sensitively, how to adapt to their context, and crucially how to promptly bounce a new question back, taking into account the two previous points.

2.4.3.2 Practicalities of Interviewing

Boeije recommends choosing a 'setting' in order to gather a sample (2010, 34–5). In other words, I had to target locations where people responding to my participant profile were in high concentration. My setting encompassed the legal and political fields in the form of courts and Congress for the main group interviewed. Amish people were met in their own environment, mainly their homes or businesses. I conducted interviews in different settings, from a luxurious office on Congress premises, to a garden in front of

a barn and many other places, including a noisy metalwork company and a restaurant. I had to adapt to different contexts and remain focused on my objectives.

My dress code also acknowledged the respective cultures of two different groups of people. I wore a navy-blue suit when interviewing American officials and non-Amish citizens. When I was interviewing Amish people, I wore a long navy-blue dress with long sleeves and a scarf on my head.

My protocol was, after initial greetings, first to present my interviewee with the Research Participant Information Sheet and then the Consent Form to be signed (Appendices 1 and 3). I explained the content of these documents, although most of my non-Amish citizens had received them by email. After small talk, I invited them to start the interview. For the Amish I obtained a waiver from the Ethics Committee of my university so that they did not have to sign the Consent Form. This procedure is explained in detail in Section 2.6.3.

My conspicuous French/British accent was often a conversation starter. Thus, people understood when sometimes I asked my interviewees to repeat their answers. This was a common point with my Amish interviewees, who did not speak their mother tongue with me but English. Interviews were mostly recorded on my MP3 device. For my non-Amish American participants, it was not an issue at all. Several Amish people agreed to be recorded on the condition that I destroyed my recording after transcription. However, when Amish people refused my digital technology, I asked permission to take notes on the spot. They all graciously accepted that method. I completed gaps just after my interviews. Depending on the availability of my participants, interviews lasted one hour on average.

In the context of interviewing face-to-face, body language is a great help for reading how interviewees react to a question. Muhammad Bilal Farooq contends 'this "natural encounter" is necessary for the interviewer to build and maintain rapport with interviewees' (2015: 5). However, considering the geographical distance I was away from some participants, I also had to consider interviewing using telecommunications and virtual technology. Judith Sturges and Kathleen Hanrahan contend that progress in technology has changed methods regarding interviewing in the research arena. They say that 'researchers need to consider how the technology in question fits in the lives of potential respondents' (2004: 107–18). Gathering more data materialised in the form of interviewing one person using a telephone and others using virtual technology.

2.4.3.3 Telephone versus Face-to-Face Interviewing

For a long time, social researchers have conducted face-to-face interviews. Virginia Braun and Victoria Clarke claim that 'face-to-face contact between researcher and participant has typically been viewed as the ideal way to collect interview data' (2014: 79). In general terms I agree with this claim when potential participants and researchers are local. Conversely, when they live on different continents, as in my own research, virtual interviewing is worth considering. Farooq asserts that although telephone interviewing 'is shunned by traditionalists and is regarded as inferior (…) criticisms against the use of the telephone are now being subjected to academic investigation' (2015: 3–4). I contend that telephone interviews are impersonal, as there is no time for casual conversation. In a way it is 'doing business', getting straight to the point. However, that does not mean that the content is not rich. In a thorough literature review on the subject, Farooq concludes that there is little difference between face-to-face interviews and telephone interviews, despite the obvious lack of visual signs

(2015: 9–10). Hannah Deakin and Kelly Wakefield reached the same conclusion (2014: 606). One of the main differences is the economic side of telephone interviewing in terms of time and financial cost, as opposed to travelling and interviewing in person (Farooq, 2015: 9). The other dissimilarity is the possibility to take notes without disturbing the flow of the conversation when using the telephone (2015: 13).

During one of my field trips, ‘snowballing’ resulted in a telephone interview. I had a face-to-face interview with Herman Bontrager in Pennsylvania. He knew an Amish business owner (B.J.) who had a significant role in his community. However, Old Order Amish do not have telephones in their houses but in a barn or shanty. Telephones are usually equipped with answerphone machines (Kraybill, 2001: 195). After my return to the United Kingdom, Bontrager and I exchanged several emails in order to organise a telephone interview with B.J. He received information from Bontrager, his ‘gatekeeper’, about the purpose of my research. A day and time were set and I interviewed B.J. via telephone. This was a challenge, because B.J. allocated 20 minutes for our interview as he had an appointment booked after our conversation. We thus did not have a lot of time to create a rapport with small talk.

Annie Irvine emphasises that ‘qualitative telephone interviewing requires just as much stamina and concentration as face-to-face interviewing if not more’ (2010: 2). I totally concur with her analysis; while the telephone connection was good overall, it took a lot of concentration to listen intently and understand B.J., since he has a heavy German accent. Likewise, he asked me to repeat some of my questions as my French/British accent was not familiar to him. In this telephone interview setting I regretted the lack of visual cues that a face-to-face conversation would have provided. Sturges and Harahan, however, allege that ‘respondents provide verbal cues – hesitation, sighs,

(…) that can indicate that a follow-up question or probe is in order' (2004: 114). I think there are skills to be acquired in this area, but the constricted time I had with B.J. did not allow me to comprehend the 'verbal cue[s]' nuances. The missing physical context was also problematic in that a voice does not reveal the background of the person interviewed. In this specific aspect I join ranks with ethnographers and others whose research depends on close interaction in the environment of the respondent, who might supplement face-to-face interviews with telephone contact (2004:116). I overcame my difficulties by relying on my memories of previous interactions with Amish men. I pictured B.J. in his Amish garb and sitting in a black swivel chair (the Amish head of the house usually sits on one of these at the head of the family table) in a very plain office with no pictures. Then, I focused on the conversation while I was making notes. Despite the lack of visual pointers, this interview was rich in data. Interviewing an Amish person over the phone was a surreal enterprise knowing the Amish limits on this device in their daily life. Their *Ordnung* is precise about its use (Hurst and McConnell, 2010: 106–7). Although it is accepted for business transactions, it was an exception to be able to interview B.J. via telephone.

The next important virtual challenge was posed by using Skype when interviewing a judge.

2.4.3.4 Interviewing by Video-Conference: Skype/Zoom

Deakin and Wakefield offer a comprehensive analysis of 'the use of online synchronous interviews' and argue that 'there is little discussion around' this technology in the literature (2014: 604). I concur with these authors, as I had some difficulty in finding academic work to corroborate and reflect on my own experience. At

the beginning of the twenty-first century a new verb took root in English parlance: ‘to skype’ (Lexico Dictionaries |English, n.d.). The 2003 innovative internet application called Skype was to revolutionise the virtual world of communication, as Sally Seitz asserts (2016: 230). This video-conferencing system became very popular among the younger generation before engulfing older generations and academia (2016: 230). Skype has a lot in common with its ‘sibling’ the telephone, except for one more technical convenience provided by the visual element and being a ‘cheaper alternative to telephone calls’ in general and particularly mobile phone calls (Farooq, 2015: 24). Since starting my research, the visio-conference application called Zoom has won over the world. In his article, Alex Konrad describes Zoom as ‘one of the leading tools to keep businesses up and running, students learning and people connected through virtual birthday parties (…)’ (2020 [n.p.]). Undoubtably, since the Covid pandemic in 2020 Zoom has been used by many institutions and private households as I have experienced myself. Today, Zoom’s powerful technology is a great asset to any qualitative researcher.

Once again, a ‘snowballing’ effect produced an opportunity to conduct an interview using Skype software. While in Ohio, I interviewed face-to-face attorney Dean Carro, who took a serious interest in my research and recommended me to Judge Dan Polster. Both Carro and Polster were involved in a criminal case casually called the Bergholz case, where following serious disagreement, an Amish dissident group had attacked other Amish. I was eager to discuss that case with the judge and engage with him concerning the relationship between justice and the Amish in his experience. The case is examined in Chapter 5 of this thesis. Although Judge Polster accepted to be interviewed in the first place, he had to withdraw because a *writ of*

certiorari (a decision by the Supreme Court to hear an appeal from a lower court) had been filed (www.techlawjournal.com, n.d.). Therefore, attorney Carro told me, 'He [Judge Polster] cannot discuss the case with you while that is pending' (2016). 'This only meant that the interview had to be delayed by nine months and then was conducted by virtual means namely Skype' (Green, 2017: 8).

I found no guidelines dealing with 'Internet-mediated research' before interviewing the judge, so I created my own protocol (Deakin and Wakefield, 2014: 606). Correspondence with his 'gatekeeper' H.N. gave me the opportunity to prepare for the appointment with the judge in advance. Sally Seitz explains the value of 'testing out Skype ahead of time', but at the time I had not read her article and it was, for me, just common sense, as this appointment was extremely important and I did not want a technology failure to be an obstacle to its success (2016: 230). With H.N. we organised a test session to check the broadband effectiveness and strength. We adjusted the system, as I could not see her even though she could see me. We also struggled with the sound, because she could not hear me until her IT department helped her through a phone call. Paul Hanna encountered similar 'technical hitches' during his own doctoral research (2012: 241).

The appointment with Judge Polster was due to take place on a Monday at 2 pm UK time, taking into account the five-hour difference with Ohio. Unfortunately, the judge had a funeral to attend, so it was postponed until 6 pm UK time. The flexibility offered by the telephone is applicable to Skype (Farooq, 2015: 16). This was a great asset in this case, as we were able to reschedule on the same day with no cost, frustration or mortification on either side of the Atlantic. Another step of my protocol was, after greeting the judge, to show him my passport on the webcam so he could officially check

my identity. My studies in French Law gave me an awareness of the risks involved and possible identity theft. It seemed essential to me, as anyone could use my name and skilfully do an interview on my behalf. Deakin and Wakefield raise the issue of making a difference between 'corporeal (…) and virtual identity', which can be confusing, or exchanging photos to identify parties and build rapport (2014: 610; 605). They also touch on ethical challenges raised by this mode of interviewing, qualifying them as 'work in progress', although they do not tackle the serious legal responsibility coming with this new territory (2014: 606). This topic remains ambiguous at the time of writing this thesis. Then, via webcam, I showed him both my MP3 and my mobile phone (as a back-up) to record our interview. In my opinion these steps were extremely important to illustrate transparency in the procedure of my interview.

While all bases were covered before the actual interview started, we encountered some technical difficulties. Farooq relates a similar complication as 'the quality of the internet connection fluctuat[ed] during the call' (2015: 24). We regularly had to repeat either the question or the answer because the screen kept freezing. Often this happened when the judge was so enthusiastic in communicating that he moved a lot in front of the camera, which generated several glitches. Farooq argues that telephone/Skype technology 'sharpens listening skills' (2015: 10–11). I agree with his argument in terms of physical attentiveness, but my counterargument is that it is exactly the same in face-to-face meetings if the researcher wants to engage deeply with the respondent. Seitz, in her 'moving forward' section, asserts that Skype 'offers the possibility of interviewing anyone in the world from the researcher's own personal space (…) sampling is still limited in the sense that participants themselves must have access to Skype' (2016: 233). My research population was very broad. Professionals

and American citizens in general can be reached via Skype, but *not* the Amish (see Chapter 4).

To summarise, I defend the idea that telephone and Skype software are convenient when geographical distance prevents interviewing in a physical face-to-face mode. It allows flexibility in organising or amending the timetables of both parties involved. However, visual clues are absent in telephone interviews. Both telephone and Skype give limited/no space to build a rapport with interviewees. Moreover, since the Skype technology used in academia is in its infancy, there is an indisputable lack of protocols and precise ethical guidelines in this domain (at least in 2017).

Different methods of interviewing conclude automatically with transcribing the conversations. It is the logical phase between recording the interviews and eventually analysing the results.

2.4.4 Interview Transcription

Transcription is not a straightforward exercise. Kvale explains: 'a transcript is a translation from one narrative mode – oral discourse – into another narrative mode – written discourse' (2007: 92–3). This implies noting down verbatim what has been said and attributing it to the right speaker. Braun and Clarke make a solid point about avoiding the use of punctuation when transcribing as 'people don't talk in sentences' (2014: 163). The difficulty is to translate into writing not only what was said, but also the tone of voice, repetitions, silences, looks and body language. I concur with Kvale, who expounds on transcribing when he says that it is an 'interpretative construction' that 'decontextualizes conversations' (2007: 98). In other words, it is trying to reproduce in an abstract manner an encounter between at least two people in a face-

to-face situation or using technologies like telephone or video-conference systems. To ease the reading/analysis of my interviews, I colour-coded the speakers' dialogue: black for interviewees, green for me. I chose red for any noises, moods, or body language that I picked up and blue for people who were part of a meeting. Pauses were transcribed with three dots. I also integrated in the margin the timing of my recordings at regular intervals; these signposts were essential when I had to listen again for some specific answers. To avoid any breaches of security and confidentiality, transcriptions were done in my house and shared only between my assistant (my husband) and me. This part of my research was long and tedious. First, I transferred my interviews from my MP3 to my laptop. Then I was able to listen to and type them up. I discovered that my concentration was enhanced by using headphones plugged into my laptop. The next phase included the transfer of my data to the NVivo 12 software in preparation for coding and analysis. This latter process is explained with a practical case in Chapter 4.

As already mentioned, the settings in which I conducted the interviews varied from plush offices to restaurants or homes. Obviously, the background noise of a restaurant (cutlery clatter, waitress interrupting to top up cups of coffee) made the transcription work difficult and lengthy. Jeffrey Berry had a similar experience. He says: 'it takes me two hours of transcription for every half hour of interview' (2002: 680). For some of my interviews it took me three hours for a half-hour conversation. Nevertheless, this compulsory stage of the whole research brought an abundance of rich data. This fundamental exercise is the central axis of this kind of research, leading to the final analysis and discussion that give some answers to the research question. This concurs with Gina Wisker's statement:

> Then you stand back, clarifying the areas of questions, the theories and the conceptual framework and start to put it all into some kind of order so that your data can genuinely be analysed, and findings drawn from it which relate to your original questions and conceptual framework (2001: 244).

2.4.5 Conclusions

This section has reviewed the delineation and choice of my sample followed by fieldwork planning. In the planning steps, I compared the preparation of my two main field trips and lessons learnt. After examining interviewing and its purpose, I explained my preference for semi-structured interviews and how this form of interview was used in face-to-face, telephone and Skype interviews. This section concluded with exploration of the transcription activity, integrated as the central point of the whole research investigation. The next section focuses on archival research.

2.5 Data Collection: Archival Research

Sandra Roff convincingly argues that 'treasures await students and researchers on the shelves of libraries and archives (…) but unfortunately, they often remain unknown to the "modern" researcher who limits his/her research to using the Internet' (2007: 1). The pleasure of browsing in a library and the excitement of being shown some precious specimen in the archives cannot be compared with research conducted online. I also agree with Cheryl Mason-Bolick, who argues that changes of dynamic in archival research have been revolutionised by the digitisation of documents and that consequently digital archives are 'hypertext' (n.d.: 125). In other words, researching key-words can lead to different paths of internet research and links, meaning that this kind of research is unlimited.

When I planned my 2016 fieldwork, I contacted Donald Kraybill to organise an interview with him and talk about research in the Hess Archives attached to the High Library at Elizabethtown College. He allowed me access to his personal academic material, which includes a variety of primary sources. Kraybill, who was retiring from teaching, transferred all his personal research documents to the College archives three months prior to my visit. Only a few items were already catalogued, but he instructed archivist Rachel Grove Rohrbaugh to give me access to anything of interest for my research. Professor Kraybill also copied more than 10,000 documents onto a flash drive for me, including Google alerts on the Amish. For four days (13–17 June 2016) I spent around twenty hours researching in the archives. I was able, with the help of my assistant (my husband), to scan a large number of primary sources. For example, the Old Order Amish Steering Committee Minutes were a mine of data. A lot of newspaper cuttings gave me a deep sense of participating in the history of the exchange between the American Supreme Court and the Amish. This was vivid in respect to the Supreme Court's dilemma regarding Amish children's education. Papers and articles on a variety of subjects touching Amish communities were enlightening. Study of archives and documents helped me 'to critically evaluate common sense understandings of the causes and consequences of institutional contexts, differential social positions, and social encounters', as Alan Warde puts it (2020, [n.p.]). Overall, I felt extremely privileged to be allowed such full access to these archives. Ultimately, my archival research gave me freedom to choose from a wide variety of primary sources in the form of physical documents.

The obstacles I met with searching primary documents on the Amish were of two kinds. Firstly, historically the Amish have corresponded by handwritten letters, therefore

several documents were difficult to decipher. Secondly, some documents were written in German and my command of the language was not sufficient to understand them.

In this section I have summarised the benefits of archival research and the obstacles I faced. In the next section I explore ethical considerations.

2.6 Ethics

Ethical rules and regulations are the bedrock of any research project today. The research arena is indebted to the International Military Tribunal that convicted Nazi doctors following the atrocities they committed on prisoners during the Second World War (Macfarlane, 2009: 10–12). At the time there were no legal safeguards to hamper these doctors and in 1947 the 'Nuremberg Code' was drawn up (Homan, 1991: 9–10). Homan argues that this was the first contemporary code giving some limited instructions in how to conduct ethical research on human subjects and that these biomedical guidelines inspired other models to be applied to social science research (1991: 11; 15). Indeed, the precept of ensuring the protection of others who agree to participate in a research project is a direct legacy of the Nuremberg Code (Israel and Hay, 2012: 2).

Every recent book on social research has a section or chapter dedicated to this fundamental question. However, no rigid ethical frames were in place prior to the 1990s. This was confirmed through personal correspondence with eminent sociologists whose work was active in that period. Professor Eileen Barker wrote to me: 'I'm afraid when I was doing my research the concept of a Consent Form did not exist – nor did ethical committees – one advantage of being very old!' (2015). Professor James Beckford made a similar comment: 'As for your question about consent forms,

the short answer is that they didn't exist until relatively late in my career as a researcher' (2015). Professor Kraybill concurred with his British colleagues to a certain extent, but added information on how new policies transformed his work. He said:

> When I did my research (…) [for] the books that I wrote in the 1990s, IRBs [Institutional Review Boards] had not developed in most small colleges. They did develop beginning about 2000. So, for several of my research projects since that time I have had to relate to the Elizabethtown College IRB because it's a college policy that anyone doing research must inform the IRB (2017).

Israel and Hay confirm Kraybill's experience: 'by the early 2000s, roughly three-quarters of the largest United States research institutions (…) had voluntarily expanded the IRB system to embrace *all* research involving human "subjects"' (2012: 49). To encapsulate the importance of informed consent and its corollaries, Israel and Hay encourage individual researchers to act 'with integrity as we negotiate the competing claims of ethical conduct and regulatory compliance' (2012: 144).

As explained previously in this chapter, my project involved desk research but also fieldwork including interviewing. Consequently, a process to obtain full ethical approval from my University Ethics Committee was begun and a close study of ethical issues was essential in preparation. This process included the creation of participant information sheets and consent forms.

2.6.1 Informed Consent

The theory of 'informed consent' and the ever-demanding ethical dilemmas of confidentiality and anonymity are central to ethical considerations. In this section I discuss 'informed consent' and its intricacies, including the concept of Schedules and

Research Participant Information Sheets, before expanding on these two key features of sociological research, confidentiality, and anonymity. Two study cases from my own experience are followed by consideration of how the challenges were handled and my conclusions.

2.6.1.1 Informed Consent and Its Intricacies

In Roger Homan's terms,

> the essence of the principle of informed consent is that the human subjects of research should be allowed to agree or refuse to participate in the light of comprehensive information concerning the nature and purpose of the research (1991: 69).

'Informed consent' is materially characterised by two pieces of paper. The first is the Research Participant Information Sheet, the second the Consent Form signed by respondent and researcher. Those two elements encompass the principle as explained by Homan, but also the notion of protecting potential participants against any harm during the research and when results are disseminated. It is also about ensuring confidentiality and anonymity in order to conform to Ethics Committee requirements and inherent human rights. Therefore, I designed two interview schedules and participant information sheets (see Appendices 4, 5, 1 and 2).

2.6.1.2 Interview Schedules and Participant Information Sheets

Creating interview Schedules and Research Participant Information Sheets entailed using accessible language, an issue stressed by Bryman (2001: 311). I adjusted my

two sets of Schedules and Research Participant Information Sheets focusing on this principle. A clarification is necessary:

> the Amish vernacular is Pennsylvania German/Pennsylvania Dutch. This language is passed on within the family and in preaching sermons during Sunday services, while High German is the language for prayers and the Bible (Kraybill, 2010: 65).

Also, as the Young Center/Amish Studies website explains, '10 to 15 percent of Pennsylvania German vocabulary is English-derived; its core grammatical structures remain Palatine German' (n.d.). English is the Amish's third language. However, I did not need to translate my documents into German for my Amish respondents, because my 2011 immersion in an Amish community in Pennsylvania demonstrated their strong command of English due to their daily dealings with Americans. One schedule was devised for non-Amish American citizens and one for Amish citizens. The latter version was more accessible in terms of formulation. Research Participant Information sheets were planned for the reasons already mentioned and, as a rule, were given out before the interview. A comprehensive list of points had been generated, so potential participants would be fully informed of what the research entailed. The Consent Form was produced only for non-Amish American citizens who accepted to be interviewed (Appendix 3). Amish respondents benefited from a waiver. This issue is fully examined in Section 2.6.2.2. All documents were examined and approved by the Ethics Committee of my university.

After analysing the main theoretical principles applicable to my research, I next draw two examples from my experience in interviewing to illustrate the disjunction between theory and practice.

2.6.2 Ethics and Interviewing

A flexible strategy was required to interview my twofold sample: on the one hand very influential people with high level academic education, and on the other hand people with less formal education but nonetheless extremely sharp in their approach to being interviewed. My investigation into the politico-legal interaction between the United States and the Amish started with interviewing American non-Amish and Amish citizens in June 2016 and was continued in the autumn of 2018. As a demonstration I focus on two significant examples; a non-Amish prominent political figure, Congressman Joseph Pitts (Republican), and an Old Order Amish farmer and bishop whom I will call by his initials K.D., for reasons of anonymity.

2.6.2.1 A Congressman

My drive to interview Congressman Pitts was to receive first-hand comments from one of the initiators of the Federal Child Labor Law amendment that defended Amish interests based on their religious beliefs and traditions (U.S. House, 1998). This was of prime importance as Congressman Pitts retired in December 2016. After overcoming several hurdles personified by his ‘gatekeeper’ or scheduler, M.W., I eventually obtained fifteen minutes in the sacrosanct premises of Congressman Pitts’ office in Washington, DC. In sociological jargon, gatekeepers are ‘those who control access to a valuable resource or outlet, by virtue of occupying a particular position’ (Lawson and Garrod, 2011: 206). All the administrative preparation took place between

his scheduler and me, such as sending the Research Participant Information Sheet as well as explaining in more detail the importance of this interview for my research. Carla Reeves expands on the central role of gatekeepers in accessing sites and negotiation: ‘These people can help or hinder research depending upon their personal thoughts on the validity of the research and its value, as well as their approach to the welfare of the people under their charge’ (2010: 317). Signing a Consent Form for Congressman Pitts was a routine act, so the ethical challenges for me lay in delineating the limits in terms of confidentiality and anonymity. Robert Thomas developed a model about interviewing the elite that is applicable to interviewing Congressman Pitts (1993: 81–96). He says, ‘it is important to be clear about which personae [*sic*] you want to interview: the individual, the position or the organization’ (1993: 88). The meeting revealed the public persona of Congressman Pitts in his legislator role, as he is a well-known American politician. He had actively worked as a state legislator since 1972 and took office as Congressman from 1997 until 2016 (U.S. House, n. d.). The interview was mainly about the Child Labour Bill that was signed into law in January 2004 by President George W. Bush. The Official Hearing transcript is accessible to the public in the archives of the Congress website (U.S. House, 1998). Section 11.02 (c) of the Ethics Guidelines of the American Sociological Association stipulate that ‘confidentiality is not required in the case of information available from public records’ (2008: [n.p.]). Robert Bower declares that privacy is an ambiguous concept because of

> the lack of information about its content (…) that makes it extremely difficult if not impossible to decide what data may be and may not be collected about subjects on purely a priori grounds (1978: 22).

I concur with Bower's declaration, as in social science the range of interviewees, like in my own research, varies from very public persona like Congressman Pitts to the Amish, whose way of life is more separate from 'the world' and private. The Amish can be suspicious when researchers approach them. Chester Bennett tackles the subject under the angle of 'right to privacy'. This right makes a great difference, as people claiming it have the feeling that they would have been 'forced or persuaded against [their] will, or that [their] willing communications are being misused'. Bennett emphasises the value of communicating rather than being stopped by the 'sanctity of privacy' (1967: 371). As he affirms, 'Any candidate for office forfeits the privilege of keeping secrets', thus in my view anonymity had no *raison d'être* regarding this high-profile political person (1967: 374). I could not see any vulnerability in this figure, but his reputation could be at risk if I were a malevolent interviewer, especially when Congressman Pitts accepted to be recorded on my digital audio-recorder. Yet, even then, a human shield in the person of his aide was sitting through the interview listening closely at the beginning. He pointedly asked what the objective of the interview was, checking political risk in the conversation. Later, although still listening, he was casually reclining in his armchair, fiddling with his mobile phone, indicating that Congressman Pitts was probably safe in this interview!

2.6.2.2 An Old Order Amish Bishop

The challenges to overcome with K.D. were of another nature. Before going on my field trip, I secured, via the Ethics Committee, permission not to ask my potential Amish participants to sign a Consent Form. My request came from my experience in interviewing Amish people during another field trip in 2011. The Ethics Committee challenged the fact that Amish folk dislike being involved in worldly matters and being

put under scrutiny for academic research (2015). Their concern was the possibility of causing discomfort to participants if involved in this project. Therefore, I explained:

> This general statement covers the wide spectrum of different groups of people. There are around forty different Amish groups/sub-groups. Some of them would not want to be interviewed at all. At the other end of the spectrum some will be happy to do so and even help to find family or friends who would kindly accept to reply to questions. Sensitivity in finding participants is key. All the approaches need to be done verbally and in a gentle manner as not to cause any discomfort. This comes from my previous experience in interviewing Amish people in 2011 (Green, 2015).

Signing a Consent Form is anathema to an Amish person. They would not sign a Consent Form because they would not understand this 'worldly' notion and would distrust such a quasi-legal procedure (Handrick, 2018: 65–6). It is important to understand that the Amish end their schooling at age fourteen and have no notion of what university entitles and rules attached to it. Hostetler confirms: 'all Amish children attend elementary school through grade eight' (1992: 130). Concomitant to my point is the position of anthropologists, who have to explain in simple terms the purpose of their research to communities that have no 'concept of social research' (Homan, 1991: 74). Therefore, obtaining consent from a possible respondent does not necessarily involve a signature on a piece of paper. It can be done orally with due respect and binding words, as Suzanne Woods-Fisher says relating to the Amish attitude to contracts: 'with a handshake, a word of honour, and trust' (2012: 77). Furthermore, a Consent Form stipulating 'UK Data Protection Act 1998' guaranteeing legal protection would have an adverse effect on a potential Amish respondent (Appendix 3 of this

thesis). This stems from their *Ordnung*, which in most groups prohibits engaging in litigation. Kraybill and Nolt declare: 'the Amish have always been wary of using the law to protect their personal or business rights. "Going to law" as they put it, is contrary to the submissive spirit of non-resistance that undergirds Amish culture' (1995: 181–2). During an email exchange with Kraybill about informed consent, he explained further reasons for the Amish refusal to sign a Consent Form:

> This is typical of many Amish people. They are worried who will see the form and will some government organization track them down etc. They don't understand the necessity of consent forms and being part of a verbal face-to-face culture, they trust a promise more than a piece of paper (Kraybill 2017).

To return to this Amish case study, after my introduction and oral explanation of what consenting to be interviewed would imply and the possibility of refusing or withdrawing later, K.D. asked a number of questions to which I replied as accurately as possible. After this 'ethical exchange', K.D. agreed to be interviewed. This conversation raised K.D.'s interest and in its form was directly linked with the Amish tradition of 'visiting with people'. Face-to-face meeting is a daily practice, which Kraybill calls 'the national sport of Amish society' (2001: 150).

But how did I access K.D.? Hostetler explains that the Amish are in the category of a 'sectarian society', to use a sociological classification. In his words, 'sects have employed various techniques of isolation for maintaining separateness' (1993: 5–6). Coming from 'the world' after a full-on day of meetings with two judges, K.D.'s 'gatekeeper' P.N., a semi-retired lawyer, was enthusiastic about driving me over to 'visit with K.D.'. This interview illustrates a typical 'snowballing effect', which can

transport one into a high-wire exercise in using ethical codes in an unforeseen practical situation. There was no time to change from my navy suit into what I call my Amish 'uniform', a long plain navy-blue dress with long sleeves and a headscarf, and I had no time to put my jewellery away. Such adornment is disapproved of in biblical terms, which the Amish fully obey (I Timothy 2.9). I usually wore plain attire out of respect for their beliefs, to blend into their community and make them comfortable. Making my participant comfortable was building capital as much as building mutual trust. The irony was that K.D. felt completely relaxed and I felt extremely self-conscious at the beginning of the interview.

From consent to anonymity, two interlaced concepts. There was another ethical challenge before me. In the Amish context, questions of anonymity and confidentiality must be addressed with the understanding of the concept of *Gelassenheit*, as defined in section 1.1.1. This implies that they do not want to be shown to be individuals and spoken about by their names. Humility is entirely a part of Amish character. However, this is in conflict with truth-telling and integrity. Frances Handrick explains the quandary of confidentiality in her own experience of interviewing Amish people in Ohio (2013: 5–6). One of her Amish contacts refused anonymity or a pseudonym, because it would be a form of lying. During my own interviews in Pennsylvania, contrary to Handrick's experience, my Amish contacts needed reassurance about privacy and anonymity. This is what occurred with K.D. He did not want to be named or identified as a bishop in his community. The debate was lively as I gently argued with him about the fact that he was a well-known author in his own circle. This did not deter him from claiming anonymity when it came to participating in my research. This could have been a breaking point in agreeing to be interviewed or not, which is in concordance with

Homan's assertion that 'the assurance of confidentiality is introduced (…) as a factor in negotiating with potential subjects for their participation' (1991: 140). Furthermore, an assertion by Israel and Haye turns the anonymity concept on its head:

> the requirement that participants sign their name has the potential to remove the protection of anonymity from incriminating statements (…) instead of protecting participants, such a requirement places them at greater risk (2012: 68–9).

Despite the lack of a signed Consent Form, my actions were congruent with the specifications of my university Code of Practice for Research, protecting K.D. against any harm that could be caused by revealing his identity when disseminating my work (University of Birmingham, 2013). As a bishop he could suffer serious reputational damage if identified by members of his flock and might risk being shunned for lack of humility. All things considered, K.D. gave his opinions freely in replying to my questions without worrying about possible risks or consequences. It has to be noted that K.D. and I agreed that he would read the Research Participant Information Sheet I gave him at his leisure.

K.D. had mixed feelings about our interview being recorded on my MP3 recorder. The ethical point here was to inform him thoroughly about what would happen after transcription and why it would be helpful for me to record the conversation. As Paul Oliver writes: 'as researchers (…) we all take all reasonable measures to ensure the peace of mind, and fair treatment' of respondents (2003: 46). Our agreement included that some of the recording would be 'off the record' and I would respect this contract. Also, the fact that we were both speaking in a second language helped me

to convince K.D. of the importance of audio-recording our conversation for accuracy. He understood the difficulty of taking notes by hand when trying to concentrate on his replies and maintaining 'the free flow of conversation' (Kvale, 2007: 94). Berry emphasises the difficulty of juggling listening, understanding, and thinking about the next question as well as making notes (2002: 679–82). K.D.'s own unusual life experience led him to kindly accept this technology. During the Vietnam War, as a conscientious objector, he had to do Alternative Service and was detached for two years to work in a hospital. His taste of 'the world' during those years left a mark on his understanding of non-Amish people.

2.6.2.3 Keeping Data Confidential

In both cases keeping my data confidential was essential and in compliance with ethical regulations. It was my responsibility, under the UK Data Protection Act 1998 (British Sociological Association [BSA], n.d.), to securely store all the paperwork and digital recordings related to my research. While this is clearly stated in the Consent Form handed out to my participants to be read and signed, this information had to be plainly explained to my Amish respondents and agreed to. Once again, the trust factor had to prevail over suspicion, which is confirmed by Boeije, who says that 'a basic concept of qualitative research is trust' (2010: 44). Currently these records are kept in a locked drawer. Recordings of interviews are saved on my laptop, which has an access code. No one, other than me, has access to any of the data as my office is home-based.

2.6.3 Handling Ethical Challenges

In this critical analysis of the ethical challenges I faced, considering informed consent, anonymity, and confidentiality, I deduced that some were common to the two case studies under investigation and some were very specific to each case. The common points between the Congressman and the Old Order Amish bishop were that because of their prominent status in their own sphere of action, they were targeted to be interviewed in my research. Access was totally different. In the case of the national politician, after overcoming the challenge of access to this important figure, the difficulty was to delineate the limits addressing anonymity. For K.D. access was facilitated by an unexpected coincidence, but this meant that no information could be sent in advance.

Another dissimilarity was that the Consent Form that is fundamental in sociological research was a simple formality for the politician, whereas it was not even possible to ask the Amish bishop to consider signing such a document. There were some theoretical challenges on paper, understood before the fieldwork started, and some occurring unexpectedly during fieldwork. Reading meticulously the Statement of Ethical Practice from the British Sociological Association (BSA, n.d.) and the Ethics Guidelines from the American Sociological Association (ASA, 2008) revealed ethical challenges regarding informed consent and anonymity within a very strict framework. For example, the ASA in its confidentiality section says: ‘Sociologists have an obligation to protect confidential information and not allow information gained in confidence from being used in ways that would unfairly compromise research participants’ (ASA, 2008: 11.01 (b)). The meticulous approach of the University Ethics Committee did not leave any details unexamined and unquestioned. This was

conspicuous when writing the Consent Form and two different Research Participant Information Sheets. It must be noted that these two documents were written in accessible language to be presented to my two very different audiences, non-Amish and Amish people. It is important to remember, as already explained in Section 2.6.1.2 on designing documents, that the Amish mother tongue is Pennsylvania Dutch. High German is the language found in their *Ausbund* hymnbooks used during their church services (Kraybill, 2010: 20). English is their second language, which added to the reasons for their unwillingness to sign a document like a Consent Form (Louden, 2020:2-4). Thus, the Ethics Committee agreed to my Amish sample group giving verbal consent to participate in the research. I concur with Israel and Haye in considering that whatever the demands of the ethical code might be, 'the requirements of informed consent have proved to be anything but straightforward in social science' (2012: 75).

Before Ethics Committees were established in the social sciences, researchers were still aware of the possible vulnerability of their participants. Correspondence with Barker, Beckford and Kraybill demonstrate this point (Section 2.6). Experienced academics were able to communicate to beginner researchers how to approach their respondents with sensitivity. My previous academic education provided me with essential skills to start my research well equipped, especially with American authorities and non-Amish citizens. Furthermore, my prior research on the Amish and having lived among them were assets to conducting my project with sensitivity. Common sense and adaptability are skills that are extremely useful in interviewing people from all walks of life.

In the two case studies in this section, I established that gatekeepers can either hinder access to a very important political figure – Congressman Pitts – or open access, in

the case of a ‘snowballing’ effect, to a very important person, belonging to a quasi-inaccessible religious sect – Amish farmer and bishop K.D. I also debated the concept of anonymity, which revealed a great gap between the theoretical frame of ethics code rules applicable to any sociological research and the pragmatic encounters with people illustrated in my case studies.

2.6.4 Reflexivity on Ethics

Reflecting on my research interests and the way I handled ethical issues, I would argue that my earlier training in French Law and in Theology and Religion both contributed solid capital to help me remain rigorously within the limits of ethical guidelines and morality. Homan contends:

> there is little talk of morality in the literature treating the ethics of social research. Where one finds reference to the morality of a researcher, it is normally to the set of values and dispositions which he or she brings to the situation of research (1991:182).

However, Kvale emphasised the importance of the ‘integrity of the researcher’ (2007: 29). The application of ethical codes merged with my own integrity was also guided by prior fieldwork in Amish society. This comes under the category of ‘ethical mindfulness’, which, as Kristin Heggen and Marylis Guillemin expound, ‘amounts to actively attending to, and framing, the interview process in terms of its ethical implications for the researcher and the participant’ (2012: 472). Having been immersed in the Amish context contributed to practical knowledge that helped me to anticipate the impossibility for my Amish participants of signing a Consent Form during fieldwork.

Backed up by my personal experience, I also raised the necessity of being aware of clashes between the researcher's code of practice and outsiders' own professional ethical codes, crucially when the law takes precedence. I conclude that in terms of ethical considerations, the researcher must be prepared to have plans overturned by external events. Another conclusion drawn by exchanging views with Eileen Barker, James Beckford and Donald Kraybill is that ethics committees and policies in sociological research have emerged progressively from around the end of the twentieth century and what is current practice today was non-existent before that time. Accepted moral ethics have turned into implicit legal straitjackets. Overall, I consider that ethical problem-solving is an ongoing activity during the process of research and fieldwork, but the ethical crux prevails: respecting respondents and protecting them against any risks from participating in research must be at the centre of any sociological investigation. The final word goes to Aristotle, who had his own argument regarding ethics. Albert Jonsen and Stephen Toulmin expand on his stance:

> Aristotle declared, ethics is not and cannot be a science. Instead, it is a field of experience that calls for a recognition of significant particulars and for informed prudence: for what he called *phronesis*, or 'practical wisdom (1989: 19).

The next section looks at the 'insider/outsider' concept in research, followed by a consideration of reflexivity.

2.7 Insider/Outsider Reflexivity

When doing qualitative research, researchers need to gain entry into a group or groups to investigate. A researcher can be identified as an 'insider' or an 'outsider'. Frances Handrick defines the insider/outsider dichotomy as follows: 'Generally,

insiders are those who choose to study a group to which they belong, whilst outsiders study a group of which they are not a member' (2018: 61–2). Being an insider can raise some issues in terms of emotional attachment and can threaten researchers' ability to 'maintain a professional "distance"' in their own milieu (Gray, 2004: 242). As Gray, citing Flick, contends, 'a research project is an intrusion into the life of an institution and is inherently unsettling for it' (2004: 37). Therefore, the researcher is viewed as an 'intruder or outsider' (2004: 37). My position was very clear when researching both American authorities and American non-Amish or Amish groups. I am a French/British citizen belonging to a mainstream Christian denomination. Therefore, I am an outsider. My outsider status was not an obstacle to build rapport with my interviewees. This step was essential and natural to enable me to listen carefully and understand the viewpoints of my participants.

My interest in law and religion was at the origin of this project. Studying French law gave me a taste for legal/judicial issues and the study of theology represents my quest for the Divine. My first encounter with Plain People took place more than twenty-five years ago at a friend's gathering where I met a Mennonite couple. During our conversation, I asked questions about the Amish. My awareness of this religious group started with the film *Witness* (1985). It uncovered a whole new world for me and was the trigger to investigate this sect. My undergraduate project (Theology and Religion) was on 'The Amish: Why and How Does This Distinctive Religious Community Still Survive in Our Post-Modern World?' (Green 2012). In 2011, I went to Pennsylvania to research, meet and interview Professor Kraybill and some Amish people. I developed a good relationship with academics there and with several Amish families. After this event, my enthusiasm was unquenchable. When finances permitted, I engaged in

researching the interrelation between the American government and the Amish, which encompasses my binary interest in legal/judicial matters and religious questions. In research conducted on relations between the state and the Amish, most studies have been undertaken from the Amish perspective (Kraybill, 2003). The lack of studies investigating issues between the state and the Amish from the government point of view gave me the impetus to start my own research.

To conclude this section, I confirm that I had to consider carefully my 'outsider' status when approaching American authorities, non-Amish citizens, and Amish people. Yet, regardless of the challenges I faced during my research, my determination to lead this project to its conclusion was unstoppable.

2.8 Summary

This chapter has considered the methodology applied through my research work. It covered my choice of methodological approach, research design, empirical data collection, ethical considerations, and insider/outsider status. Because of the binary aspect of my research, I have explained the balancing act of preparing and working in the field with both American authorities and members of the Amish religious sect.

3. THE AMERICAN POLITICO-LEGAL CONTEXT

3.1 Introduction

This chapter is the genesis of my ‘constitutionalism model’ and forms the background to understanding the interaction between the American authorities and religious minorities such as the Amish.

This chapter is divided into five main sections. After a brief exploration of the implications and aftermath of the American Revolution (1775–83) (Section 3.2), I consider some salient points of the 1776 United States Declaration of Independence (Section 3.3). Next, I explore the 1787 American Federal Constitution (Section 3.4), followed by a study of two crucial Amendments: the 1791 First and 1868 Fourteenth Amendments (Section 3.5). Section 3.6 examines the separation of state and church and Section 3.7 and 3.8 focus on the complexity of the U.S. federal system and the development of modern state and federal laws. The chapter is summarised in Section 3.8.

3.2 Implications of the American Revolution (1775–83) and Its Aftermath

Until the Revolution, the thirteen American colonies lived under British rule (Bernstein, 2015: 33). Throughout eight years of war, the American states became prolific at writing their own Constitutions, some of which included bills of rights (2015: 34–5). Richard Bernstein contends that after securing independence from British rule, the thirteen colonies faced the challenge of achieving a solid union (2015: 47). It was difficult to govern thirteen states spread out over a huge geographical area.

Consequently, the Framers of the Constitution created a federal structure, within which states and the overall government had to interact (2015: 47–8).

Kermit Hall, Paul Finkelman and James Ely argue that the British had a great influence in the making of colonial laws, as 'their cultural "baggage" included English statutes, case law, and common law, (…) local rules, customs, and usages' (2005: 1). Hall *et al.* note that it was not until the latter part of the eighteenth century that English people in America thought of themselves as 'Americans'; until then they regarded themselves as subjects of the British Crown living overseas (2005: 1).

One crucial and innovative element of the making of American law, according to Hall *et al.*, was that there was not an established church, unlike in England, but a conglomerate of groups that, 'along with Pennsylvania, pioneered in creating governments that tolerated religious diversity' (2005: 2). It was a definite and necessary adaptation to a new context in the American colonies. The evolution of legal and constitutional thinking was enriched by 'Roman law, (…) biblical law (…) [and] they turned to various sources for political theory including the writings of Montesquieu, James Harrington and John Locke' (2005: 2, 37).

Among serious matters with which the American Revolution had to deal was the concept of equality. The Declaration of Independence of 1776 proclaimed that 'all men are created equal'. In the eighteenth century, slavery pervaded America. A significant part of the economy in some states depended heavily on slave labour. This issue was circumvented by not using the word 'slave' or 'slavery' in the Federal Constitution. This was the price to pay to preserve the Union (Bernstein, 2015: 70–3). Native Americans were also victims of the Revolution. Their treaties were broken by states and

government and their lands were stolen by white Americans who were expanding across the continent (Tindall and Shi, 2013: 175). Despite their participation in the Revolution effort, by actively 'handling supplies, or serving as couriers or spies,' women did not benefit as much from the Revolution and did not reach equal status with men at that time (2013: 174). Abigail Adams, John Adams' wife and his close adviser, pleaded for women's equal status to no avail (Bernstein, 2015: 70; Tindall and Shi, 2013: 174). The multifaceted history of the American Revolution cannot be thoroughly explored further within the frame of this thesis. However, one facet needs to be included: the parallel world of the Amish in the setting of this specific American crisis.

Steven Nolt's *History of the Amish* provides the Amish inside story of the Revolutionary War. The Amish along with other non-resistant plain sectarian groups were caught between the rebel Patriots and the Loyalists who retained their allegiance to the British King George III (Nolt, 2003: 89). According to Nolt, they 'believed they represented a third option: peaceful neutrality' (2003: 89). However, Nolt reports that there was no real choice for the Amish, as 'since 1727, in order to settle in the English colonies, all German immigrants had signed a declaration of loyalty to the British crown' (2003: 90). Moreover, he gives an example of Amish people, living in Lancaster County, whose conscience did not allow them to take up arms. To participate in humanitarian help, they offered to collect money instead. Little did they know, Nolt claims, that this money would be used for military purposes (2003: 91). In Pennsylvania, because the Amish remained loyal to George III, they suffered consequences. For example, their right to vote was forfeited and they had to pay twice as much tax. Moreover, some young

Amish were enticed by ‘the patriot Committees’ and as a result ‘left or simply never joined the Amish church’ (Nolt 2003: 92, 94). This conflict shook Amish identity.

The factors outlined in this section converged with the American Declaration of Independence of 1776.

3.3 American Declaration of Independence 1776

In a nutshell, Justin Blake Litke claims that the 1776 Declaration was plainly a document that was conceived ‘to legitimate the thirteen former colonies’ separation from Great Britain and elevation to the dignity of sovereign statehood’ (2010: 127). Yet, Ann Fairfax-Withington elaborates on the gradual tension growing between Great Britain and the American colonies that eventually led America to independence. She says: ‘Independence did not come in a flash on the road to Damascus’ (1991: 16) and explores the genesis of American independence, going back to the First Continental Congress (1774) that voted for a drastic ‘moral program’ besides organising a boycott on imports taxed by the British (1991: 11). The First Continental Congress was the first tangible political event that unified the thirteen colonies against the British Crown (Rakove, 1982: 21–41).

The moral aspect of the background to independence is remarkable and mirrors the moral principles of the Amish plain way of life. The ‘moral program’ prohibited activities including ‘horse-racing, cockfighting, all gambling, theatre, and expensive entertainments of any kind (…) funeral expenses’ (Fairfax-Withington, 1991: 11). The consensus around this abstemious behaviour incorporated into politics ‘worked as a political strategy’ (1991: 14). With this strategy, colonists placed themselves on a moral pedestal, implying that ‘their resistance to England was moral’ (1991: 15). Fairfax-

Withington argues that through this process, rebellious colonists built up a new separate identity from the British, ‘a character grounded in virtue’ (1991: 16). The central axis of the moral program found its source in Montesquieu’s political philosophy, revolving around his definition of virtue (1991: 16). Carole Dornier explains that in *L’Esprit des Lois* (1758, XIX), ‘which Montesquieu devoted to morals’:

> the word [virtue] is reserved for the principle of republican government which is defined in a play of opposition to the other two principles: the honour of monarchies and the fear of despotic government (Dornier, 2013: 5).

Fairfax-Withington argues that in the context of the Anglo-American conflict of the eighteenth century, ascetic behaviour would promote a republican government instead of an autocratic regime (1991: 18-19). Her analysis provides an understanding of the relationship between Puritan ideals and politics that resonates with the relationship between the American government and the ‘virtuous’ Amish.

The year 1776, a crucial one for the future of America, started with the publication of the pamphlet *Common Sense* written by an English emigrant named Thomas Paine. This booklet demolished British monarchic authority and called for the American colonies’ independence. Steven Sarson contends that ‘the Continental Congress was undoubtedly further emboldened by [its] impact’ (2005: 241), adding that *Common Sense* ‘either captured people’s imagination or, more likely, articulated what many were already thinking or feeling’ (2005: 241).

Records of the Journals of Congress dated 7 June 1776, attest that Richard Henry Lee, Virginian Delegate, pushed forward a resolution of independence and it was accepted (Journal of the Continental Congress, 1776: 425, n.2). This was a turning

point for the Continental Congress in furthering the course of independence. A committee was organised on which sat 'John Adams, Benjamin Franklin, Thomas Jefferson, Robert R. Livingston, and Roger Sherman "to prepare a declaration to the effect of" Lee's resolution' (Sarson, 2005: 242). The appointed penman was Jefferson. In the context of my thesis, John Somerville's close examination of the American Declaration of Independence is germane. He debates the place of God in the Declaration. Outlining eighteenth-century religious beliefs and philosophical thinking, he explains that God gave authority to Adam and that down the generations, monarchs were his legitimate heirs. In other words, the king or queen received their power to govern from God and people had no right to interfere with divine investiture (Somerville, 1978: 490). Somerville juxtaposes with this John Locke's philosophical doctrine that 'the legitimate authority and powers of government come only and wholly from the people' (1978: 490). This latter doctrine particularly inspired Jefferson. However, George Brown Tindall and David Emory Shi assert that the 'legislators made eighty-six changes in Jefferson's declaration, including the insertion of two references to God' (2013: 136). They also indicate that Jefferson's reference to the British monarch forcing slavery on the colonies was deleted (2013: 138).

The irony of the Declaration of Independence lies in the emphasis put on equality in an era when slavery was at its peak and when Jefferson, as well as George Washington, among others, were rich slave-owners (Somerville, 1978: 494). Somerville declares:

> the most glaring contradiction between professed principle and actual practice in relation to the Declaration comes out precisely here. That is, Black slavery, the legal ownership and sale of humans by other humans, was allowed to stand

> in the new state, in spite of what the Declaration said about the inalienable right to liberty (1978: 494).

To conclude this section, it is appropriate to quote the Preamble of the American Declaration of Independence: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness' (America's Founding Documents, (n.d.).

Indeed, the Preamble includes two concepts that are later developed in the Amendments to the Federal Constitution, which are equality between human beings and the inalienable right to liberty. These two key themes behind the foundation of the American state, equality and (religious) liberty, are crucial to my thesis examining the relationship between the U.S. authorities and the Amish religious minority.

3.4 American Federal Constitution 1787

Bruce Ackerman argues that while the 'original Constitution codified the Revolutionary generation's defeat of monarchy on behalf of republican self-government; the Civil War amendments codified the struggle of an entire generation to repudiate slavery on behalf of a new constitutional ideal of equality' (Ackerman, 1999: 19).

During the period between the Declaration of Independence in 1776 and the final approval of the American Federal Constitution by the states' delegates in 1787, American political sensibility developed organically. In his historical-chronological analysis, Cole frames 'the coming of the American Revolution 1763–1775 (…) [and] the American Revolution 1775–1783' (1968: 25–36). The year 1783 stands as a landmark in American, British, French, and Spanish history, with the signing of another

Treaty of Paris officially ending the turf war. Within these time brackets Cole signposts ‘the Confederation Period 1777–1789’ when ‘the Articles of Confederation 1776–1781’ were drafted, adopted, and ratified by Congress (Cole, 1968: 37–9). He adds more details about ‘the Confederation Period, 1777–1789’ (1968: 37–41), and describes the making of the American Federal Constitution between 1785 and 1790, which is the topic of this section (1968: 42–4). This brisk introduction portrays the busyness of that period, which was periodically marked by founding documents underpinning the major transformations undergone by the American colonies.

In his historical introduction to the Federal Constitution, Franklin Benjamin Hough lays out how this founding document arose naturally after flaws were discovered in the application of the Articles of Confederation (1872: 20–1). He contends that prior to 1788, ‘Congress had no power to enforce its own ordinances’ (1872: 20). Congress recommended measures to the separate states, which then applied them or not at their convenience. The idea of drafting a new Constitution came slowly to fruition between 1782 and 1787. Hough declares that different states like New York, Maryland and Virginia wanted to regulate taxes, ‘particularly with the reference to the power to provide for local naval force and a tariff of duties upon imports’ (1872: 20–1). In February 1787, Congress approved the recommendation to ‘render the Constitution of the Federal Government adequate to the exigencies of the union’ (1872: 21).

Michael Klarman emphasises what the framing of the Constitution achieved, through an analysis of two of the comments Benjamin Franklin made at the closure of the Federal Convention:

> For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an Assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does (Klarman, 2016: 1; Franklin, 1787: [n.p.]).

Klarman contends that since then, the American people have venerated the Constitution, 'often regarding them [the Framers] as divinely inspired' (2016: 1). He explains that 'God's divine inspiration' was strategically used to encourage the ratification of the Constitution (2016: 2). Yet nowhere is God mentioned in the American Constitution (Litke, 2010: 146). Derek Davis claims that the allusion to religion is found in a negative form in Article VI, clause 3 which relates to officers of the federal government (2010: 28):

> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States (U.S. Const. art. VI, Cl.3).

The Constitution was drawn up by delegates who 'voted to keep their deliberations secret' (Broadwater, 2012: 46). Only a few months – May–September 1787 – were needed to create the most fundamental document in the political life of America. A mere seven articles aimed at solving what Jack Rakove lists under the categories of

‘*federalism* (…) the division of authority between the Union and the states, and the adequacy of the powers that Congress possessed (…) the internal governance of the states (…) and what kind of nation-state the emerging American *imperium* should form’ (2008: 493–4).

Klarman relates comments made by Thomas Jefferson based in Paris and John Adams based in London at the reception of the Constitution sent to them by James Madison. Both politicians accepted the general terms of the Constitution, but drew attention to a missing ‘declaration of rights’ (Klarman, 2016: 546). Indeed, more political debates between the Federalists and the anti-Federalists ensued until the Constitution was ratified. One of the bones of contention was the addition of a Bill of Rights to the Constitution. In 1788 the requirement of nine states to ratify the Constitution was reached (Rakov, 2008: 516). Although Madison was not particularly in favour of working on a Bill of Rights, he later embraced the cause politically and he enthusiastically drafted

> the most valuable amendment in the whole list’, he told the House. (…) Madison regarded as the most important individual liberties: equal rights of religious conscience, freedom of the press, and the right to a jury trial in criminal cases (Rakove, 2008: 516, 580–1).

In 1789, twelve amendments to the Constitution were proposed, and debated, butonly ten were ratified in 1791. Following the same procedure more amendments would be accepted in the future (America’s Founding Documents, n.d).

My focus turns now to the two amendments that have serious significance in the life of religious minorities and particularly the Amish: the First Amendment ratified in 1791

and the Fourteenth approved in 1868 (Tindall and Shi, 2013: Appendices A86 and A89–90).

3.5 Two Crucial Amendments: First Amendment 1791 and Fourteenth Amendment 1868

Tindall and Shi claim that constitutional amendments were adjustments to add protection of 'individual freedoms, states' rights, and civil liberties' (2013: 209). In 1789, James Madison became a Virginia Representative in the U.S. House of Representatives. Vincent Phillip Muñoz asserts that it was 'one of his [Madison's] legislative aims (…) to secure the adoption of a bill of rights' (2003: 17–32). For Madison it was more by moral obligation than by pure conviction. *De facto*, Madison wanted to honour a commitment he had made to the states that agreed to ratify the Constitution with the hope that amendments would follow (2003: 25).

The 1791 First Amendment to the American Constitution reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (U.S. Const. amend. I).

Before proceeding further, attention must be drawn to James Madison's objective regarding the First Amendment. Muñoz comments that 'Madison's understanding of the proper relationship between church and state continues to be debated vigorously' (Muñoz, 2003: 17; McConnell, 1990: 1417; Eastland, 1993: 3). Interpretations of Madison's rationale oscillate between 'strict separationist' related to the Establishment clause, meaning that 'Madison sought to erect a wall separating state from church',

and ‘nonpreferentialist’, which claims that Madison meant to preclude ‘the state from favouring one religious sect over others’ (Muñoz, 2003: 17). Muñoz argues that none of the above opinions reflects Madison’s real mind and that in fact Madison ‘champions a “religious-blind” constitution (…) that prohibits the state from taking cognizance of religion’ (2003: 17). He sustains his point by saying that ‘the ground for the principle of “nonrecognizance” is man’s inalienable natural right to religious freedom’ (2003: 29).

Melissa Rogers emphasises that the First Amendment hampers government from favouring or establishing any specific religion, but in the same breath offers rights to religious people or institutions to take full part in civic arguments (2010: 99). She demonstrates her argument by elaborating on the early twentieth-century ‘emergence of the Federal Council of Churches, the National Catholic War Conference, and a trio of Jewish Advocacy Groups’ (2010: 100–5). These organisations have been the interface between religious citizens and the U.S. government. What is also noteworthy in Rogers’ study is her claim that the U.S. Supreme Court, beginning in the 1940s, associated the First and Fourteenth Amendments which is also known as the ‘incorporation doctrine’ (Cornell Law School, n.d.). She says:

> the Court determined that the religious liberty clauses of the First Amendment (…) applied to states and localities as well as to the federal government by virtue of the Fourteenth Amendment to the United States Constitution (2010: 105).

The Fourteenth Amendment originated in and was part of what John Frank and Robert Munro call ‘the three Civil War amendments (…) to take and perpetuate the fruit of the revolution’ (1973: 51). The three amendments were drafted to consolidate the abolition of slavery. In 1865, Amendment XIII legally ended slavery for black

Americans, in 1868 Amendment XIV, among other things, gave equal protection to all under the laws and the XV Amendment in 1870 enfranchised former slaves to vote (Tindell and Shi, 2013: Appendices A89–A90).

The 1868 Fourteenth Amendment declares:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (9 July 1868) (U.S. Const. amend. XIV.S1).

Philip Kurland argues that the Fourteenth Amendment is now closely associated with the First Amendment in religious cases (1978: 8–9). Yet the dichotomy between 'non-establishment of religion' and 'free exercise' in the First Amendment has not been solved. Kurland, in a virulent article challenging the Supreme Court, enriches the debate by arguing that 'there is no part of the history of the fourteenth amendment that provides any guidance whatsoever for the application of the religion clause to the states' (1978: 14). In consequence, he asserts that there are no 'constitutional provisions' for the Supreme Court to rule in church and state cases (1978: 14).

However, the U.S. Supreme Court gained the power to interpret the Constitution through the *Marbury v. Madison* case (1803) (McKeever and Davies, 2012: 21). This case pinpoints why the U.S. Federal Supreme Court can decide, as a last recourse, judicial cases that demand an interpretation of the Constitution and its Amendments.

In the context of my thesis, this precedent anticipates how, based on the background of the case, the Amish won a landmark case in 1972 lawfully exempting their children from going to high school after completing their eighth grade. (This case is scrutinised in Chapter 6.) The amendments that addressed slavery issues for black American people, and the Fourteenth Amendment, are an additional resource to defend Amish cases.

This section provided an understanding of the function of the First and Fourteenth Amendments in the American historical landscape, prefiguring their impact in Amish cases discussed in Chapter 6. The following section considers the separation of state and church in America.

3.6 Separation of State and Church

Legal tension over the separation of state and church in America can only be understood by delving deeper into the history of the subject and progressively examining more contemporary data. Here, a point of connection is established with the Anabaptist doctrine of separation of church and state (Chapter 4 of this thesis).

Writing about ‘The Origins and Historical Understanding of Free Exercise of Religion’, McConnell expands on the seventeenth-century British heritage; ‘The Church of England was the established church of the realm’ (1990: 1421). Protestants, Dissenters and Roman Catholics were oppressed in turn and religious freedom was denied to persecuted groups. When various religious groups like the Congregationalists or Puritans moved to the New World, their project was to create ‘a Christian commonwealth that would be led by the revealed word of God’ (1990: 1422). Colonies like Virginia and Maryland were under the established Church of England.

More open to religious diversity were New York and New Jersey. McConnell contends that freedom of religion appeared *de facto*, for example in Pennsylvania, where 'the free exercise of religion emerged as an articulate legal principle' (1990: 1424–5).

In McConnell's words, the difference between Jefferson, who was 'the most advanced advocate of disestablishment', and Madison's 'more sympathetic attitude towards religion' launched the conceptual controversy over the First Amendment (1990: 1452). In brief, Randall Bezanson renders the legal quandary devised by the writers of the First Amendment like this: 'the First Amendment religion guarantees were drafted in frustratingly general and ambiguous language that prevented their being tied to any practice or view' (Bezanson, 2006: 2). He also asserts that only Congress had a legal role, while individual states received no guidance regarding religious freedom. As explained in the previous section, the U. S. Supreme Court later fixed this loophole by associating the First and Fourteenth Amendments.

A forthright assertion from Clarke Cochran sums this up: 'like it or not, Americans are a religious people. Religion has played a major part in the chief development of our history' (1998: x). This statement is echoed by Derek Davis, who says 'America is diverse in its religious makeup, but is unmistakably one of the most religious nations on the globe' (2001: 11). Adding to those statements is Kent Greenawalt's declaration of 'over 90 per cent [of American people] affirming a belief in God, and more than half regularly active in group worship' (2008:11). Chapter 7 of this thesis expands on American religious exceptionalism. This concept is best defined by Lall Ramrattan and Michael Szenberg, who have reviewed long-established authors like Jefferson, Montesquieu and de Tocqueville. They argue that American exceptionalism means 'that something is different, (…) special about America' (Ramrattan and Szenberg,

2017: 222) (see Section 7.4). Greenawalt's dissection of the First Amendment posits the difficulties generated by the interpretation of the Free Exercise and Establishment Clauses, and the intended separation between state and church. In 1802, President Thomas Jefferson wrote a letter to the Danbury Baptist Association and confirmed:

> I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof', thus building a wall of separation between church and state (Segers and Jenel, 1998: 125).

Certainly, the judicial wing of American establishment hotly debates the 'wall of separation' and the intentions of the Founders. No simple definition has eased the ultimate decisions made by the U.S. Supreme Court. Jenel suggests that 'a determination of the "real" intentions of the Framers is probably a fruitless exercise' (1998: 10).

McConnell gives evidence to understand how the U.S. Supreme Court administers cases. His stance is that, in the ruling on *Reynolds v. United States,* 98 U.S. 145 (1878), the Supreme Court relied on Jefferson's strict separation between state and church (1990: 1451, n 218). The Supreme Court Justices ruled against the Mormons' practice of polygamy. It was a landmark in the arbiter role performed by the Supreme Court. Depending on the makeup of the Supreme Court, the separation between state and church fluctuates between strict separation and more relaxed interpretation of the Free Exercise Clause (Segers and Jenel, 1998: 10). To illustrate this fluidity, Cochran asserts that in 1993, Congress and President Bill Clinton promoted 'the Religious Freedom Restoration Act' in an attempt 'to return religion's special status' (1998: xiii).

However, the ‘Supreme Court declared [it] unconstitutional in the 1997 *Boerne* Case’ (1998: xiii). To corroborate Cochran’s assertion, Thomas Robbins expounds, in three points, how there was ‘a contemporary “crisis” in Church–State relations in the United States’ (1993: 515). He wrote about

> (1) a constitutional transformation (…) (2) a period of increasing Church–State tension and litigation (…) (3) [how] the mid-century period of (roughly) 1940–1975 was a pivotal period which reshaped Church–State jurisprudence in the direction of a greater emphasis on a ‘wall of separation’ between Church and State (…) (Robbins, 1993: 515).

Additionally, Robbins notes the increase of public acceptance of religious minorities, but also acknowledges the existence of another parameter: pluralism of religion generated by new waves of immigration, which can generate litigation between state and church (or religions) (1993: 515–16). What complicates matters is that each state holds its own Constitution and has its own Supreme Court. Kathleen Brady declares that most states agreed, from the very beginning, that state and church should not interfere with each other, and that ‘protections against this type of interference appeared in nearly every state constitution in the new republic’ (2015: 113).

The definition of ‘religion’ has somewhat shifted over the centuries. In her discussion of the difficulty of finding an egalitarian contemporary concept of religion, Brady gives an opening to what ‘religion’ can mean in the judicial courts’ context. First, she suggests that the Founders had a universal understanding of a

> phenomenon with features that are widely shared across the world’s major religions (…). For religious believers, the divine is present in their lives as

> something good and trustworthy, and salvation or liberation or fulfilment inheres in a union or communion with the divine that overcomes humanity's deepest existential threats (2015: 287).

Second, in the Founders' perception of state and church relations they held some strong principles, including free exercise of religion and freedom of conscience. Brady asserts that for Madison 'the nature of faith means that the government must not intentionally interfere with religious belief and practice' (2015: 287). She then explains the post-modern quandary of philosophers of religion who, following 'Ludwig Wittgenstein's philosophy of language', cannot agree on a broad definition of religion, as they conclude 'there is no set of essential features that all religious phenomena share and that distinguish religious beliefs and practice from nonreligious ones' (2015: 286).

The short sample of opinions examined in this section cannot lead to a definitive conclusion. The prolific literature debating state/church separation has not resolved this dilemma. Most of the sources can only start to explain this dichotomy through jurisprudence.

3.7 Complexity of the U.S. federal system

The complexity of the U.S. federal system plays a key role in the difficulties over settling frictions occurring between citizens and individual states and the federal government. The U.S. Constitution, the foundational document, and the individual state Constitutions regulate American citizens' life.

To clarify, the federal American government is structured on federalism which means that the central government, based in Washington, DC interacts with governments of

the fifty states that constitute the United States of America (Dautrich, K. and Yalof, D., 2012: 60; 84). ‘States’ governments exercise authority over local governments’ (2012: 566). Local governments can be defined ‘as a city, a town, a township, or a county or parish’ and they oversee local public services e.g., ‘fire and police protection (…) sewer and water facilities’ (2012: 567). To grasp the extent of the intricate government network American citizens have to navigate, some numbers can inform the reader.

The United States Census Bureau (hereafter Bureau) provides detailed data showing the multiple layers of government that exist in America (Bureau, n.d.). An extract of the Bureau’s data shows, in Table 3.1, the total number of separate governments in America, 90,126 in 2017, including one federal government and fifty state governments (from Municipalities to Special Districts, Official Count of Every Type of Local Government in 2017 Census of Governments, n.d.). Table 3.2 indicates the total number of local governments in the United States, 90,075 in 2017; that breaks down into 51,296 local government units with special purposes (special district, independent school district). The final figure of 38,779 corresponds to local government units dedicated to general purposes (county governments, municipal government, township).

According to the White House, ‘under the Tenth Amendment to the U.S. Constitution, all powers not granted to the federal government are reserved for the states and the people’ (The White House, n. d.). Hence, the pyramidal system originates first in the U.S. Constitution, then goes down to each state Constitution, which delegates responsibilities to local governments. This is noticeably replicated in the booklet produced by the National Association of Counties (NACo), called *Why Counties Matter!*

It asserts that ‘States decide counties’ roles and responsibilities’ (NACo, 2019: 7). Equally, in a National Association of Towns and Townships brochure a similar statement appears: ‘responsibilities and form of town and township government is specified by the state legislatures’ (Town and Township Government in the United States, n.d.: 3).; (see over).

Table 3.1 Total number of governments in the U.S.

United States	2017	**1**	**Federal** Government
Unites States	2017	**50**	**State** Government
United States	2017	**90,075**	Total **Local** Government Units
United States	2017	**90,126**	**Total number of governments**

Table 3.2 Total number of local governments in the U.S with breakdown of numbers

GEO_TTL	YEAR	AMOUNT	AGG_DESC_TTL
United States	2017	51,296	Total Local Government Units - Special Purpose Governments
United States	2017	38,779	Total Local Government Units - General Purpose Governments
United States	2017	**90,075**	Total Local Government Units

GEO_TTL	YEAR	AMOUNT	AGG_DESC_TTL
United States	2017	38,542	Total Local Government Units - Special Purpose Governments - Special District Governments
United States	2017	12,754	Total Local Government Units - Special Purpose Governments - Independent School District Governments
United States	2017	**51,296**	Total Local Government Units - Special Purpose Governments

GEO_TTL	YEAR	AMOUNT	AGG_DESC_TTL
United States	2017	3,031	Total Local Government Units - County Governments
United States	2017	19,495	Total Local Government Units – Sub-county Governments - Municipal Governments
United States	2017	16,253	Total Local Government Units – Sub-county Governments - Township Governments
United States	2017	**38,779**	Total Local Government Units - General Purpose Governments

Again, the roots of the American judicial system are found in the U.S. Constitution. Karen O'Connor and Larry Sabato contend that

> the federal district courts, circuit courts of appeal, and the Supreme Court are called constitutional (or Article III) courts because Article III of the Constitution either established them (as is the case with the Supreme Court) or authorizes Congress to establish them (2002: 345).

They present a diagram of the 'Dual Structure of the American Court System', as shown in Figure 3.1.

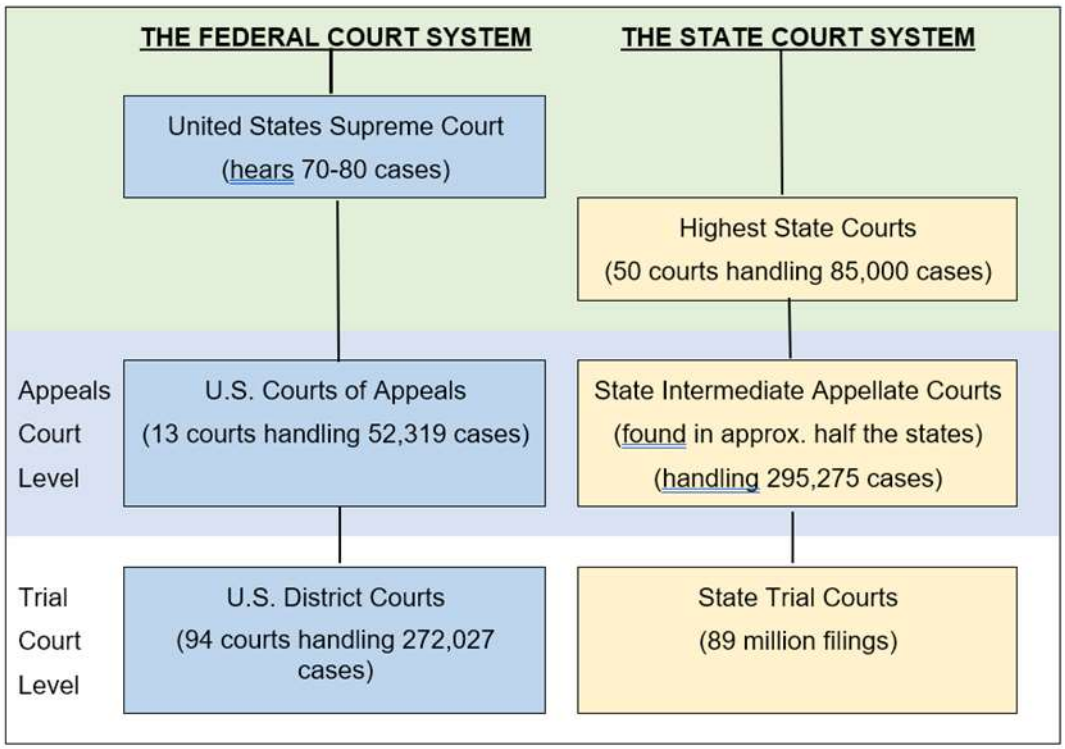

Figure 3.1 'The Dual Structure of the American Court System' (O'Connor and Sabato, 2003: 345).

The American court system concisely presented in Figure 3.1 emphasises the role of the U.S. Constitution in judicial practice. The American government at all levels is part of Amish American citizens' life, which means that they have to be able to navigate the maze of the American system.

In Chapter 6, several judicial cases are analysed. They reveal how the freedom of religion and non-establishment clauses of the First Amendment are in tension and how my 'constitutionalism model' functions.

3.8 Development of Modern State and Federal Laws

Modern U.S. state and federal laws developed through a slow but steady process. Meg Jacobs and Julian Zelizer declare that 'most changes to America's governing framework in the nineteenth century occurred under the direction of local and state government officials and within the boundaries of constitutional law' (2003: 11).

In 'American exceptionalism' there is a strong concept of 'associationalism', as William Novak develops in his article 'The American Law of Association: The Legal-Political Construction of Civil Society' (Novak, 2001: 175; see also Sugrue, 2003: 302). He demonstrates that 'despite repeated theoretical attempt to reduce associational activity to its individual and voluntaristic components', American governance has been built by the 'socio-legal notion of associations' (Novak, 2001: 164, 163). Novak unfolds a non-exhaustive list of American associations and corporations: 'the Corporation of the City of New York, (…) the Standard Oil Trust, (…) Harvard University, (…) the Women's Christian Temperance Union (…)' (2001: 163–4). He expands on associational theory, which underpins what the nineteenth-century legislators and judges embraced in their notion of the 'legal-constitutional state' (2001: 172). They

deliberately used associational power. Novak injects the theoretical idea of 'fluidity' into the understanding of the American conception of governing tools (2001: 175). In other words, local and state governments can delegate responsibilities to corporations or institutions and work in close cooperation with them to produce adequate legislation for their constituents (2001: 175). In another article, Novak explains in chronological order, culminating in the First Congress of the United States 1789–91, how this entity 'set up the conditions for two centuries of future governmental policymaking' (2008: 344). Thomas Sugrue, examining the 'democratic experience' of the twentieth century, agrees with Novak, asserting that after the Second World War despite 'the irrefutable expansion of the central government power (…) one of the most distinctive features of the twentieth-century American state remains the persistence of localism' (Sugrue, 2003: 301).

To understand how the growth of laws and regulations is increasingly infiltrating American citizens' lives and encroaching on Amish people's lives, Figure 3.2 graphs the number of pages in *the Federal Register* between 1936 and 2017 (George Washington University, 2018: [n.p.]). The *Federal Register* records laws and regulations on American society. Figure 3.2 shows a sevenfold increase over a sixty-year period (see over). This fact is confirmed by Sugrue, who says that 'federal power reached into virtually every aspect of daily life in mid and late-twentieth-century America' (2003:303).

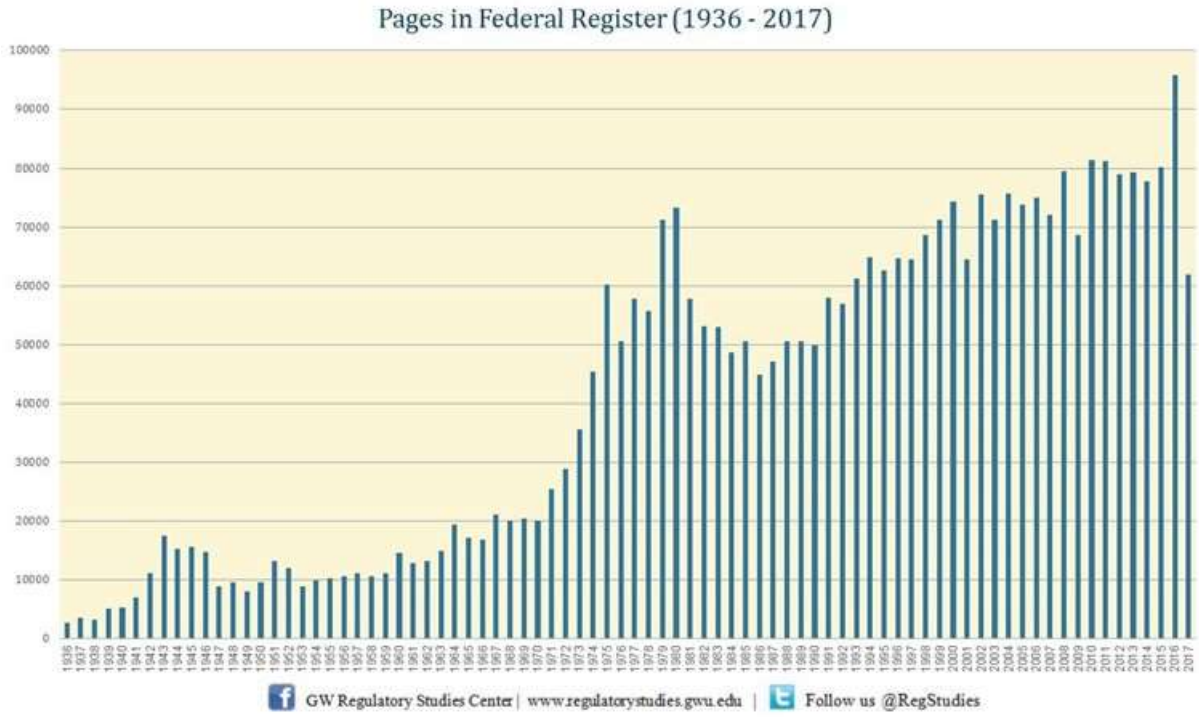

Figure 3.2 Number of pages in the *Federal Register* (1936–2017) (The George Washington University, Regulatory Studies Center, 2018)

Increasing laws and regulations potentially have an impact on religious minorities like the Amish. In parallel, litigation can increase, challenging the separation between church and state. As explained in the previous section, the third body of government, or judicial power, has to test and interpret these laws.

3.9 Summary

This chapter has defined the contours of the American historical politico-legal context, briefly looking at the implications and aftermath of the American Revolution, the American Declaration of Independence (1776), the making of the American Constitution (1789) and the First and Fourteenth Amendments to the Constitution. Separation between church and state was explored from both a federal and an Anabaptist perspective as well as touching briefly on American exceptionalism which

is debated in Chapter 7. The chapter finished by briefly looking at the intricacies of the U.S. federal system and by considering the development of modern state and federal laws. The next chapter presents an analysis of the points of friction between American liberal democracy and Amish theocracy, showing the three models in operation.

4. AMISH THEOCRACY AND AMERICAN LIBERAL DEMOCRACY: THREE MODELS OF INTERACTION

4.1 Introduction

This chapter is designed to offer an understanding of Amish theocracy (Section 4.2) with its own rules and regulations, and how it has gradually connected with U.S. democratic authorities under the pressure of American laws, leading to partial assimilation in the process (Section 4.3). The First and Fourteenth Amendments to the U.S. Constitution, which have helped to resolve some of the tensions, are highlighted once more before presenting the three models. These models illustrate the mechanisms that operate as American authorities respond to the Amish minority (Section 4.4). The argument running through this chapter is that 'negotiating with American authorities' in Amish phraseology is found in their early twentieth-century dealings with the American government (Kraybill, 2003: 3–20). My contention is that from this time on the Amish and their supporters have been using the American Founders' Constitution and Bill of Rights more and more. Thus, I critically analyse the received 'negotiation model', followed by the 'constitutionalism' and 'hybrid' models emanating from my research. Analysis of my empirical data through the NVivo 12 software demonstrates that my hypothetical 'constitutionalism model' is valid to a certain extent. However, the 'negotiation model' has historically proven to be cogent in some instances. At the same time, the American authorities' dialogical exchange with the Amish minority is also reflected in the 'hybrid model'. The use of the 'negotiation model' and my new construction of the 'constitutionalism' and 'hybrid' models are tested in subsequent chapters.

4.2 The Theocratic Amish Context

The Amish community, which can be termed theocratic, is a minority living under the law within the liberal democracy of the United States. Theocracy is defined by Nick Megoran as follows:

> Theocracy is the exercise of political power by the clergy or laity of a particular religion (…) not necessarily claiming to be acting primarily on behalf of a divinity and governing according to its principles and requirements (2009: 223).

Several signposts need to be planted to direct attention to the position of the Amish vis-à-vis the American authorities: first, the Amish two-kingdom theology; second, the significance of *Gelassenheit*; third, the *Ordnung*; and fourth, the Old Order Amish Steering Committee.

4.2.1 Two-Kingdom Theology

The two-kingdom doctrine is an integral part of Amish belief. The two-kingdom concept represents on the one side the church that follows biblical principles constituting the spiritual realm, and on the other side a temporal kingdom embodied by a political system of government. In Anabaptist theology those two kingdoms are separated (Yoder, 2003: 25-31; Kraybill, 2010: 202). Michael McConnell explains that the clash between spiritual and temporal powers in which believers were caught at the end of the eighteenth century 'was grounded in the Protestant doctrine of "two kingdoms," taught by both Calvin and Luther, and had still older roots in Augustinian thought' (1990: 1496). The medieval Anabaptist tradition also adopted this dogma. Leonard Gross expands on Swiss Brethren member Hans Schnell's work on the two kingdoms (1994: 351–77). Schnell was a contemporary of the persecution and

martyrdom that afflicted the Anabaptists when he wrote his treatise circa 1575. This context impacted his theory and was also solidly anchored in Old Testament Scriptures (Gross, 1994: 354). Gross asserts: 'Schnell's work stands directly upon the Schleitheim Seven Articles, including the idea of the two kingdoms' (1994: 356). Schnell declares:

> there are two distinguishable kingdoms on earth – namely, the kingdom of this world and the peaceable kingdom of Christ. These two kingdoms cannot share or have communion with one another (Gross, 1994: 358).

Schnell explains the different meanings of the word fighting: the 'world' fights for the earthly kingdom and Christians fight for the eternal kingdom. However, he uses the Apostle Paul's letter to the Romans 13:4 to emphasise that:

> the government is a good institution in the world, in that it punishes the bad and protects whoever does good. For if there were no government, one could not exist on earth. Each person would then do violence to the other (Gross, 1994: 361).

In summary, Anabaptists benefit from the earthly kingdom without actively participating in it. In theory, the Amish would agree with Schnell. However, in the interviews I conducted, there was more nuance in their replies. Although they maintain their distance through their four main pillars, as explained by Donald Kraybill – that is, dialect, plain garb, horse and buggy transportation and selective technology – my experience in meeting them revealed a real interaction with the state (Kraybill, 2001: 54–79, 188–237). There was a general consensus across the different U.S. states I visited. When I asked, 'Do you think it is important to follow the laws of your country?' H.P. replied, 'Oh, yes, it is important as long as it doesn't conflict with God's Word'

(2018). S.R. said, ‘Yes, the Federal Government imposes law and order. We may not agree to any laws, we cannot support laws against Christian beliefs’ (2018). K.D. said, ‘we try to be law-abiding citizens, if it doesn’t interfere with our faith, so we need to be respectful of them; they make laws for the land for the good of everybody not just specifically for us’ (2016).

These three interviewees agreed on the potential incompatibility between the worldly law and their Christian faith. S. R. belongs to a less progressive group and shows clearly his sense of state interference in his religious life. His community is the object of court cases related to building codes and zoning. I noted a subtle difference with my third interlocutor, the oldest. He talked about respect for authorities and made a point about law-makers working for all citizens. Therefore, for the Amish the two-kingdom doctrine is practiced by allegiance to God first, but with a willingness to be good citizens of the ‘kingdom of the world’ – in this case the United States.

There is a correlation between the two-kingdom doctrine and the notion of being a ‘subject’ of the state, as opposed to a ‘citizen’ of the state (Kraybill *et al.*, 2013: 353–4). This idea and its significance in the relationship between the state and the Amish are explored in the next chapter. Jesus’ Sermon on the Mount found in Matthew’s Gospel is a set of teachings the Amish take extremely seriously as members of the kingdom of God (Matthew 5:1–16). Examples of humility and self-denial and more in that passage of Scripture are encapsulated in the German word *Gelassenheit*. This key Amish concept is the subject of the next section.

4.2.2 *Gelassenheit*

To grasp the relationship between the state and the Amish, one has to understand *Gelassenheit*. This German word cannot be translated literally into English. It encompasses multiple levels of meaning. John Hostetler interprets it as follows:

> resignation, calmness of mind, composure, staidness, conquest of selfishness, long-suffering, collectedness, silence of the soul, tranquillity, inner surrender, yieldedness, equanimity, and detachment (1993: 306).

Kraybill adds 'submission; (…) abandonment' (2010: 93). He also says that 'some late 16th century Anabaptists called for a deep and unconditional spiritual surrender to God' (2010: 93). This nuance helps to understand the mystery and complexity of this concept. Amish people embrace this mystical practice not only in their spiritual life, but in their relationship within their community, claims Sandra Cronk (1981: 5–44). This behaviour always equates to total humility within the individual and within the community at all times. It is shown in the equally shared preaching between bishops and other ministers when they gather for church. During their communion ritual, which happens twice a year in autumn and in spring, the Amish humble themselves by washing one another's feet, which is an Anabaptist practice (Kraybill, 2001: 43). Their source is the Gospel of John 13:1–17, as their little book *1001 Questions and Answers* explains (2001: 49). *Gelassenheit* is conspicuous in their daily lives and interactions with one another, in their work ethic, clothing style and buildings (Cronk, 1981: 9). This way of life is commonly understood as living a plain life. When I encountered Amish people for the first time in 2011, I immediately observed *Gelassenheit* in their manner. I saw composure and tranquillity, humility and modesty, a calm demeanour. They

spoke slowly in soft voices with gentle smiles. At that time, I was not yet aware of the depth of this spiritual discipline.

An example helps to best understand how Amish people live and practise *Gelassenheit*. In 2006 the entire world witnessed *Gelassenheit* in action when, after the Nickel Mines Amish school shooting, Amish parents and bishops offered their forgiveness and support to the killer's family and wife (her husband took his own life at the end of the incident). Although extending forgiveness to someone is not exclusive to the Amish, forgiveness took another dimension when understood in the light of *Gelassenheit*. The martyrdom of these young children had an echo in the Lord's Prayer's 'thy will be done' (Matthew 6:10; Kraybill, Nolt, and Weaver-Zercher, 2007: 101). The Amish parents declared: 'five of the girls were "safe in the arms of Jesus"' (2007: 27). Following this incident, Kraybill *et al*. interviewed Amish people to explore how forgiveness and *Gelassenheit* are intertwined. Their Amish interviewees explained their practice of forgiveness 'through stories with *forgiveness* interspersed with other terms such as *love*, *humility*, *compassion*, *submission* and *acceptance*' (Kraybill *et al.*, 2007: 175). In their own words, the Amish validated what Hostetler and Kraybill expressed in their definitions of *Gelassenheit*.

The application of *Gelassenheit* in the wider individualistic American world and specifically in the politico-legal system is a challenge that Sandra Cronk took up. She asserts: 'the Amish (…) believed that Christians could not participate in government because it used force in its law enforcement and armed services' (1981: 22). This statement is backed up by numerous Bible verses in the book *1001 Questions & Answers*. One of the questions asks: 'What are the leading features of Christ's peace doctrine?' The answer is:

> ‘Resist not evil’ (Matt. 5:39). Be not vengeful, but rather suffer wrong (Matt. 5:39–41). Love your enemies (Matt. 5:44). God forgives us as we forgive our enemies (Matt. 6:14–15). The sword is to be kept in the sheath (Matt. 26: 51–52). His kingdom is not of this world; therefore, His servants do not fight (John 18:36), (2001: 144–5).

Cronk claims that ‘the hallmark of the United States government was justice and liberty. (…) the Constitution was the blueprint for manifesting these rights in a new government’ (1981: 22). The conflict between the U.S. government and Amish aspirations is clearly laid out. She argues that the Amish ‘commitment to the power of powerlessness’ clashes with American citizens’ rights of voting, office holding and use of the courts (1981: 23). In the 1850s, several members of Plain groups got involved in ‘voting and serving on juries’ (1981: 25). Their participation caused dissension within their communities between progressive and more conservative members of their districts (Kraybill, 2001: 13). Cronk and Kraybill’s statements show a step towards assimilation into the American nation, as some Amish people were using their American citizens’ right to vote and participate in jury duties. Thus, the sacrosanct beliefs of the Amish combined with their internal rules called *Ordnung* were in danger. The next section explores the *Ordnung* and its significance for Amish communities.

4.2.3 The Amish *Ordnung(s)* or Amish Law

The *Ordnung,* or set of rules, is usually not a written document but rather an oral tradition passed down from generation to generation, with room for interpretation within different congregations (Hostetler, 1993: 82; Kraybill, 2001: 112). Kraybill *et al.* contend that ‘the moral guidelines may change as the normative order flexes with new issues

and new leaders' (2013: 120). To apprehend the function of the *Ordnung* and how it sets boundaries in Amish society, it is logical to describe briefly its social set-up. Kraybill *et al.* explain the three layers of the Amish network.

> *A church district* (…) has physical boundaries and consists of twenty to forty Amish families who live among English speaking neighbours. (…) Church districts that share a common history in a given geographical area constitute a *settlement.* (…) In the early twenty-first century, there are some forty different Amish *affiliations* – clusters of church districts linked by social and spiritual bond (2013: 5, 12).

My conception of the separate Amish society is that the earthly representation of the Kingdom of God, to which they claim they belong, operates as a micro-state with geographical limits termed a church district; using a common language, that is, Pennsylvania German or *Deitsch*; ruled by a Constitution named *Ordnung*. The leadership is nominated and elected by the members of the church and ultimately chosen by God through 'drawing straws' (Kraybill, 2001:13; Hostetler, 1993: 106; Dilly, 2019: 103–18). The bishops, ministers and deacons are given the authority to be both executive and judicial branches. The legislative branch is represented by the community pushing the boundaries to encourage the amendment of the *Ordnung*. The parallel to citizenship can be drawn by the fact that when young Amish decide to join the church, they accept to be baptised and promise to obey and follow the *Ordnung* (Johnson-Weiner, 2010: 21).

The judicial issue in the analogy calls for clarification. When a member of the church disobeys the *Ordnung* through misconduct, a procedure is implemented to reason with

the person, failing which a *Bann* or excommunication is pronounced (Hostetler, 1993: 85). This social avoidance or shunning practice means that they cannot participate in any social activity (1993: 85–7). One of my interviewees with Amish roots, Y.M., explained how his parents left the Amish church in the 1900s and were banned for the rest of their lives. They went to an evangelical meeting led by a Mennonite minister who preached that salvation is a personal choice. This meant that if they repented of their sins, by God's grace they would be assured of their salvation. According to Hostetler, 'knowledge of salvation is complete only after the individual hears the welcome words at the last judgment (…) (Matthew 25:34)' (1993: 76). To be assured of one's salvation is showing pride (Johnson-Weiner, 2010: 21). Y.M. pleaded with his cousin, who was by then bishop of their community, and said:

> you're the bishop in the church that my parents left? He said, yep. I said, so you could lift that ban that was placed, my dad died, on my mother. She's lived a life that is better than some of the people in your church (…) [the bishop replied] We just say that they have made a promise and for that reason, we have to ban them (Y.M., 2016).

Y.M.'s parents belonged to an Amish church that believed in the way Hostetler explained. They exhibited pride by their assurance of being saved before the 'last judgment' and therefore were banned for life and eventually had to leave their church. Hostetler declares that 'Amish preaching and moral instruction emphasise self-denial and obedience to the teaching of the Word of God, which is equated with the rules of the church [*Ordnung*]' (1993: 77). In other words, these people broke their baptismal promise to obey the *Ordnung* (1993: 76-–7).

Given Y.M.'s parents' story, Kraybill's comment seems appropriate: 'to the outsider, the *Ordnung* appears as a maze of legalistic rules' (2001: 113). Shunning can only be lifted if people are ready to confess their sins to God, kneeling at the front of the congregation. When fellowship is restored with God and the church, the person is readmitted to the fold (Hostetler, 1993: 85–6). The *Ordnung* regulates both spiritual and temporal matters.

It has to be noted that there is fluidity in the establishment of an *Ordnung*, similar to how the world changes rules and laws over time. Barbara Dilly asserts: 'the Amish often do change the rules of the *Ordnung* to fit the circumstances of a changing world in concrete community context' (2019: 12). However, Johnson-Weiner makes a bridge between the practical aspect of the *Ordnung* dealing with 'dress, language, education, and transportation' and the spiritual aspect of the *Ordnung* that maintains separation from the world by the literal application of the Bible (2010: 21).

The *Ordnung* is understood and applied within the close-knit Old Order Amish communities. Their separation from the world has a corollary, which is shown in their close interaction within the community. Hostetler, borrowing anthropologist Edward Hall's concept of 'high-context culture', applies this theory to the Amish community (Hall, 1976: 74–7, 91–3; Hostetler, 1993: 18). Hostetler says: 'A high-context culture is one in which people are deeply involved with one another' (1993: 18). He describes an intricate web of open or understated communications or body language that is understood by people belonging to the group and adds: 'Members are sensitive to a screening process that distinguishes outsiders from insiders' (1993: 18).

I have drawn an analogy explaining that the *Ordnung* embodies the Amish judicial system. This resonates with MaryAnn Schlegel-Ruegger's thorough analysis of 'the development of the *Ordnung* as the internal legal system of a community that is subject to the legal system of a political state' (1991: 801). Her historical angle enriches the debate on the *Ordnung.* In her article, she includes as 'written laws' the 1527 Schleitheim Confession and the 1632 Dordrecht Confession (see Appendix 9 of this thesis). She argues that the founding documents that organise 'the institutional functions of the church (…) were written by Anabaptist leaders [who] were well-educated converts from the Roman Catholic Church' (1991: 803, 818). She also asserts that while still in Europe they had responsibility for the 'defence of the Anabaptist beliefs' against other Protestant groups as well as Roman Catholics (1991: 820–1).

Besides the two Anabaptist founding documents, Schlegel-Ruegger includes in the *Ordnung* classification several more local Disciplines, including the 1568 and 1607 Strassburg Discipline, the 1809 and 1837 Pennsylvania Discipline, and the 1865 Holmes County, Ohio Discipline. However, the *Ordnung* or church discipline is not a founding document. Karen Johnson-Weiner asserts that 'no two congregations have exactly the same Ordnung' (2020: 23). Schlegel-Ruegger suggests that new leaders were 'less educated but also more insulated from the external influences of other religions and legal systems' (1991: 818). One of her claims corroborates the Hall/Hostetler concept of a high-culture context, which she called 'high shared context communications' (1991: 820). She says:

> When the drafters think they are communicating solely to an internal audience, an expectation on the part of the drafters of shared experiences will limit the

> degree of background information and scriptural sources included in the documents (1991: 820 n.44).

Schlegel-Ruegger posits that the Amish changed their process of communicating with the external world when the government of the 1930s, with the New Deal, established social measures severely encroaching on Amish beliefs (1991:821). The nascent American welfare state and the Amish response to it are examined in Chapter 6. The process of communicating with the external world is discussed in the next section, which explores the Old Order Amish Steering Committee.

My contribution to the debate on the *Ordnung* is to assert that the Amish *Ordnung* is not unique. Another layer of discussion can be added with examination of the 1783 Quaker document gathering Minutes and Advices for Friends in London (1783). The content of this document strongly mirrors the Amish *Ordnung.* For example:

> PLAINNESS
>
> Advised that friends take care to keep to truth and plainness, in language, habit, deportment, and behaviour (…) To avoid pride and immodesty in apparel, and all vain and superfluous fashions of the world (Extracts, 1783: 185).

For Amish people, pride is discouraged by application of Jeremiah 13:15, 'Be not proud', and plain dress is prescribed by what the Apostle Paul advocates in 1 Timothy 2:9, 'modest apparel' (*1001 Questions & Answers*, 2001: 125).

The importance of the Quaker document in my research is the revelation of the spirit of the seventeenth/eighteenth-century Plain 'new' religious groups that still prevails in Amish society. Dissenters from mainstream Protestant churches like the Quakers, the Amish, the Ephrata community and other sectarian groups 'that flourished in

William Penn's colony' had many affinities regarding their approach to government while keeping separated from the world (Seachrist, 2010: ix; Bach, 2003: 7). A few more examples from the Quaker Minutes support my argument.

Regarding arbitration, the Quaker Meeting strongly advises to settle differences within the community rather than 'contend at law' (1783: 10). It echoes a quote on non-resistance from the instruction book used by the Amish. Defending this practice with the application of Bible verses, this book affirms that 'it would put an end to all family, neighbourhood, and church quarrels, and fights, and lawsuits' (*1001 Questions & Answers,* 2001: 145). On civil government, Quakers include 'for it is written, "Thou shall not speak evil of the ruler of thy people, Acts 22:5"' (1783: 21), agreeing with the Amish stance 'We are to be respectful to the government at all times. We must never join in when men speak evil of it' (2001: 157). Quakers of that time agreed with the Amish on the discipline given by Romans 12:2 to 'not be conformed to this world' (1783: 29; 2001: 120).

Despite their desire to remain separate from the world, American laws putting pressure on religious minorities force them to connect with the outside world. In order to solve problems induced by laws and regulations, the Amish have created the Old Order Amish Steering Committee.

4.2.4 Old Order Amish Steering Committee

Regardless of the Amish biblical belief to 'not be conformed to the world', the world, or rather the American government, has repeatedly breached their chosen insularity. The issuing of laws that collide with Amish separation regarding social welfare, military conscription and education has cornered the Amish. In the twentieth century, they

created a body called the Old Order Amish Steering Committee (hereafter Steering Committee). Among other tasks, it assesses the infringement on their society of new laws and regulations. Its members follow a process of engaging with the American authorities to obtain exemptions from intrusive laws and regulations. As Marc Olshan puts it: 'such exemptions (…) for the most part, [are] the product of negotiation' (2003: 68). I beg to differ from Olshan's view, however. Although negotiation is the preferred word of Amish leaders to describe their dealings with the authorities, my suggestion is that the U.S. Constitution has given American citizens a margin for action through the First and Fourteenth Amendments. At this point it is appropriate to reiterate the wording of those two amendments. The 1791 First Amendment of the U.S. Constitution reads: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof' (U.S. Const. amend. I). The 1868 Fourteenth Amendment says:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (U.S. Const. amend. XIV, § 1).

The Amish fit under the canopy of the U.S. Constitution and therefore use the legislative branch when they access House Representatives to action law amendments. To understand the mechanisms used by the Steering Committee to interact with the American authorities, the origins and development of this unusual Amish institution have to be scrutinised.

4.2.4.1 Origin of the Old Order Amish Steering Committee

Most Amish specialists date the genesis of the Steering Committee to 1966 when Amish conscientious objectors wrestled with the fact that their young men, called up by the Selective Service Bureau during the Vietnam War, were 'led astray' and some of them remained 'in the world' after their time of service (Kisinger, 1997: 171). Yet Andrew Kisinger, who was Chairman of the Steering Committee for more than twenty years (1997: 166), reported that this committee started informally with three bishops in the 1950s. The American government created the

> Old Age and Survivors Insurance later called Social Security (…) these three Bishops, David Fisher [PA], Neil Hershberger [OH], and Henry Miller [IN], made many trips to Washington, DC to plead with the Congressman and Senators as well as others for relief (1997: 164–5).

From the outset, the Amish bishops connected with Congressmen and Senators who were able to action their constitutional rights. Kisinger explained that the Old Order Amish bishops believed the Social Security system might corrupt their community. If they were paying into Social Security, which they understood as an insurance scheme, the following generation might collect benefits. This could disintegrate the whole community ethos based on helping each other across generations and in time of need, following Bible teachings (1997: 164). I explore in detail the Social Security clash in Chapter 6.

4.2.4.2 The Vietnam Draft and the Steering Committee (1966)

The Steering Committee, as clarified above, developed further in 1966 in the middle of the Vietnam War. In the wider American context, the Vietnam War draft, or

conscription, was resisted by parts of American mainstream society. Simon Hall declares that 'from the mid-1960s through the early 1970s the United States was convulsed by massive protests against the war in Vietnam' (2012: 1). In 1967, the prominent Civil Rights leader Rev. Dr Martin Luther King, Jr, headed a peaceful protest against the Vietnam War in Chicago (2012: 1). His activism in the Civil Rights movement, which started in the mid-1950s to protest against racism and segregation against African Americans, inspired the American anti-Vietnam war movement (2012: 6). From President John Fitzgerald Kennedy in 1960s, when the United States started to be involved in this conflict, until its conclusion with Presidents Nixon and Ford in the mid-1970s, the unrest caused by this war, Hall claims, had appalling consequences in all strata of society (2012: 50–1). To grasp how the Amish were part of the general context during the Vietnam War, the mechanisms of the American military body need to be briefly examined.

4.2.4.3 American Military Selective Service and Alternative Service

Today the American military mandates eighteen-year-old men to register with the Selective Service branch of the Department of Defense. In the eventuality of a war, the U.S. Federal Government selects personnel to serve in the armed forces. However, conscientious objectors (COs), who object to participating in armed activities for religious reasons, are offered places to serve in the 'Alternative Service Program' (Usa.gov, 2018; Sss.gov, 2019). Before 1971, when Congress reformed the draft, young men between eighteen and twenty-six were 'vulnerable to be drafted' at any time during this age bracket and then to serve for two years (Selective Service System, n.d.). Consequently, during the Vietnam War, COs were part of the contingent who

could be drafted at any time and would serve their country for two years. According to James Lehman and Steven Nolt, as early as the American Civil War (from 1863) COs were able to obtain national exemptions from armed conflicts (2007: 147). Kraybill asserts that, at the dawn of the Second World War, peace church leaders (Brethren, Mennonites and Quakers) found a way for their COs to avoid being drafted into the armed services. The U.S. government devised an Alternative Service programme granting members of the peace churches, who were COs, to serve the United States in a 'government-sanctioned program called Civilian Public Service (CPS)' (Kraybill, 2010: 6). COs worked in agricultural and forestry projects as well as in public health service between 1941 and 1947 (2010: 6). Hostetler and Kraybill explain that young Amish men were drafted and served as COs in Civilian Public Service Camps, away from their community to complete their alternative service on distant farms (Hostetler, 1993: 274–5; Kraybill, 2010:6). The Alternative Service programme for COs was adjusted during the Korean and Vietnam Wars. COs worked for 'non-profit organisations, or in the area of health care, social welfare, or education' (Kraybill, 2010: 6). Thus, historically the U.S. government had to balance government interests as opposed to its citizens' religious rights.

However, accommodations voted by Congress for COs were not enough for the Amish community (Kraybill *et al.*, 2013: 355). I suggest that the national crisis gave them an opportunity and an impetus to ask for revisions to Selective Service. Albert Keim contends that the move made by the Steering Committee regarding the draft was 'the first time in two-hundred years the Amish approached government officials directly to negotiate relief from the draft system' (2003: 64). The aim of the Steering Committee was to protect young Amish men from the draft, and to work with the American

authorities on their behalf. My assertion is that, by virtue of the First Amendment, the Amish were able to step forward protected by the Free Exercise Clause, which makes my constitutionalism model applicable (see Section 4.4.2).

4.2.4.4 The Steering Committee during the Vietnam War

In the Minutes of the meeting of 20 October 1966 held in Indiana, Amish bishops were concerned about how the new draft laws would affect Amish youth who had to serve in Selective Service. The Minutes, written in English, report:

> Many bishops made the remark that they can hardly continue with the present set-up. It was agreed that it would be good to appoint one district man for each Amish community and to form a committee to work between the Old Order Amish and Washington, DC, to see what could be done in the situation as well as to watch that we do not lose what we already have by changing of laws, etc. (Minutes of the Old Order Amish Steering Committee from Oct. 20, 1966–Oct. 25, 1972: 1).

The Steering Committee Minutes demonstrate the intention of the Amish bishops to solve the COs' issues for their own group. They met regularly, in Washington, DC, with Harold Sherk, who was the director of the National Service Bureau/Board for Religious Objectors (Sherk, 1968: 1; Kisinger, 1997: 171). Sherk understood the plea of the Amish and organised meetings with General Lewis Hershey. Jordan Schwarz claims that this General ‘serve[d] a quarter-century as head of the politically sensitive Selective System with indifference to interest groups and Congress’ (1986: 133). He was not liked by anti-war parents and young people during the Vietnam War years (1986: 133). However, Schwarz asserts:

> Through local boards consistent with American federalism and following national guidelines, the draft could treat individual cases in a manner that respected domestic and governmental needs without trampling upon freedom of conscience (1986: 135).

Once again, legal mechanisms were activated to serve American COs, including the Amish. Before an agreement was reached, several courts in different states dealt with individual Amish cases. The Amish argument was that Selective Service was incompatible with their religious belief of being separated from the world. Serving in hospitals put their men in close contact with the American lifestyle and some of them never returned to their communities. One of my Amish interviewees recounted his time serving as a civilian in hospital during the Vietnam War. He said that it took a 'tremendous amount of faith in my parents, but now looking as a parent, it's a miracle we both [he and his brother] returned' (K.D., 2016). The idea the Amish suggested to the Executive Secretary of the National Service Board/Bureau for Religious Objectors was to send the men to Amish farms instead of their serving in hospitals (Keim, 2003: 61).

The minutes of the meeting of 6 January 1967 recorded a significant comment that would pre-ordain the future of the Steering Committee: 'Washington seemingly very much appreciate having a committee to represent all Old Order Amish' (Minutes 1966–1972: 9). In May 1972, the U.S. Supreme Court ruled in favour of the Amish, so their adolescents were exempt from the compulsory high school attendance laws (*Wisconsin v. Yoder* (1972), scrutinised in Chapter 6). This landmark case prompted the Amish to revise their original set-up so that it was anchored more firmly, as the government claimed 'the Old Order Amish are recognized and respected by our

Federal Government' (Minutes 1966–1972: 56). Consequently, in the autumn of 1972, they officially established the Old Order Amish Steering Committee. This was the first centralised Amish body that interacted with American authorities, which can be interpreted as a step towards assimilation/integration. Rules and Regulations were laid out (Minutes 1966–1972: 56–68). One crucial change was how the Steering Committee would be led. It was decided that the appointed Amish, that is, Chairman, Secretary, Treasurer and Assistant Chairman, would be laymen as opposed to bishops. First, the *Ordnungs* followed by different Amish groups were not uniform, therefore it would be difficult to have one voice when facing the authorities. Second, when meeting higher American officials and the situation could not be easily settled, the laymen could always conclude a meeting with the statement that they needed to submit the proposal to their Amish bishops (Minutes, 1966–1972: 63–4). Thus, the Steering Committee became a satellite interacting with the American authorities.

4.2.4.5 The Steering Committee and the American Draft in the Twenty-First Century

The original 1966 concern of Amish youth being drafted is a recurrent theme found in meetings held by the Steering Committee and reported in its Minutes. To this day, it is a serious burden for these COs. In 2018, when I interviewed a senior Amish leader from the Steering Committee regarding the draft, he shared a new concern. He said:

> they have been talking about registering women [for the draft]. That's an issue. There has actually been a commission put in place by President Obama to research this and by May 2020 they are supposed to come out with the report. So that's a concern to us (B.J., 2018).

This excerpt from my interview is evidence that the Steering Committee is highly aware of Congressional activities. A senior Amish leader said later: ‘we meet with Selective Service on a regular basis and have telephone conference calls twice a year, we try to stay in contact with them’ (B.J., 2018). The apprehension about the conscription of women expressed by the Amish leader has at least two foundations. First, in 2015 the Pentagon, in a statement by Defense Secretary Ash Carter, announced ‘that beginning in January 2016, all military positions will be opened to women, without exception’ (Pellerin, 2015); second, in 2017, President Obama appointed the national commission to examine women’s potential draft (B.J., 2018). The final report on this matter was released to Congress in March 2020 (Mervosh and Ismay, 2020).

When I consulted the U.S. Selective Service System website in January 2021, it confirmed that they do not register women yet. On 15 December 2021 Congress passed the 2022 National Defense Authorization Acts. Greg Hadley confirms that the Bill was sent to President Biden and that ‘several notable provisions were stripped out of the new compromise bill. Both the House [of Representatives] and the SASC [Senate Armed Service Committee] versions would have required women to register for the draft, but that was dropped’ (Hadley, 2021: [n.p.]).

The Steering Committee is in tune with Congressional legislative activities, which demonstrates that their interaction with the world is more fluid than at the turn of the twentieth century. The Amish society of today, for the most part, have become more active American citizens, even though their loyalty goes to God first.

4.2.4.6 Justification of the Steering Committee Today

Time and again, the minutes of the Old Order Amish Steering Committee show the essence of its very existence, understanding American laws and lobbying Congress representatives or local authorities to obtain exemptions when needed. In actual fact, their lobbying is conducted to secure legislation that acknowledges First Amendment rights. However, lobbying is in contradiction with the two-kingdom theology expanded in Section 4.2.1. Kraybill explains:

> those who subscribe to the two-kingdom theology consider it wrong for disciples of Jesus to engage in political lobbying, to try to influence government policies, or to protest government actions (…) they should not tell the government what to do (2010: 202–3).

Although in 1973 the Steering Committee questioned its sustainability because the challenge of the military draft was no longer at the forefront, Kisinger reports that it was decided that 'the Steering Committee should be kept in force (…) The bishops are our highest human authority and the Steering Committee, their servants' (1997: 230). What started in order to serve a specific need, refusing the 'Old Age Survivors insurance' system or Social Security, had organically grown into a very effective and powerful Amish institution. Today, as the senior Amish leader explained to me, the Steering Committee operates with a Chairman, a Secretary, a Treasurer and an Assistant to the Chairman. Then, there are fifteen state directors throughout the United States who meet twice a year (B.J., 2018).

While this unconventional religious organisation works very discreetly, the Old Order Amish Steering Committee of the twentieth century has steadily become an advocacy

institution underpinned by the First and Fourteenth Amendments to the Constitution. The Amish do not protest vehemently, claiming their rights of 'freedom of religion' or their 'equality before the law', but they do use these constitutional tools, which have given the Steering Committee a voice and a solid status. In the twenty-first century, assimilation/acculturation infiltrates part of the Amish community, as I develop in Chapter 7, but at the same time the Amish hold on to their traditional ways in their faith and plain way of life. Thus, the tension between American democracy and Amish theocracy persists, as I explore next.

4.3 Tensions between Democracy and Theocracy

This section does not offer an in-depth study of the origins of the different concepts of democracy and theocracy. However, simple definitions of each concept provide a sufficient framework.

4.3.1 Democracy

The concept of democracy classically originated with Greek thinkers of the fifth century BCE, with the 'Greek *dēmokratiā*, […] *dēmos* ("people") and *kratos* ("rule")' (Dahl, n.d.: [n.p.]). To the question what democracy is, Robert Dahl replies:

> Democracy is a system of government in which laws, policies, leadership, and major undertakings of a state or other polity are directly or indirectly decided by the 'people,' a group historically constituted by only a minority of the population (…) but generally understood since the mid-20th century to include all (or nearly all) adult citizens (Dahl, n.d.: [n.p.]).

This definition corroborates what French writer Alexis de Tocqueville said about American democracy. His understanding of American democracy is substantiated by 'the principle of sovereignty of the people' (de Tocqueville, 1994: 55). This statement echoes the American Constitution's first sentence:

> *We the People* of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America (U.S. Const. Preamble).

De Tocqueville consolidates his assertion by describing how American citizens have the power to elect their representatives who make laws on their behalf and the capacity to choose the 'agents of the executive government' (1994: 57). All this power given to the democratic nation parallels God's power 'The people reign in the American political world as the Deity does in the universe' (1994: 58). This last assertion is directly in tension with the theocratic Amish view, as for them God is above any earthly powers, even in American democracy, as already stated. A simple definition of theocracy will allow us to engage in the debate between democracy and theocracy.

4.3.2 Theocracy

Again, theocracy comes from the Greek language. Dewey Wallace explains:

> Theocracy means 'rule by God' and refers to a type of government in which God or gods are thought to have sovereignty, or to any state so governed. (…) The word was first coined in the Greek language (*theokratia*) by the Jewish historian Josephus Flavius around 100 CE. Josephus noted that while the nations of the

> world were variously governed by monarchies, oligarchies, and democracies, the polity of the Jews was theocracy (Wallace, 2014: [n.p.]).

Theocracy as applied by the Amish society sits within the American liberal democracy, hence the tension created between American democratic society and the Amish theocratic community.

4.3.3 The American Politico-Legal System and Religious Minorities

I now draw heavily on political theorist Lucas Swaine's work, which depicts the tension between the American liberal democracy and theocratic groups. He argues that 'members of theocratic communities within liberal democracies do not receive appropriate treatment under popular legal standards' (2001: 302, 304). To illustrate his theory, he chose several theocratic groups, including the Old Order Amish. He expands on the 'limitations of the anti-establishment arguments' when applied to theocratic communities (2001: 308–11). He then explores a 'strict equality' scheme that would bring fairness in dealing equally with theocratic groups as well as the secular population (2001: 312–14). However, he concludes that it is not a realistic approach and that it would leave no room for 'accommodations' for the theocratic groups; in other words, it would not permit legal 'exemptions' (2001: 314–23). Swaine decides that this system is not satisfactory, as theocrats would have to be involved too frequently with the legal system since 'new legislation regularly affects their uncommon practices' (2001: 317). Moreover, this system would generate unfairness to non-members of theocratic groups, and henceforth 'would violate fundamental moral principles of church–state separationism' (2001: 322). There is then a discussion over the 'semi-sovereignty (or quasi-sovereignty)' model that was devised in 1831 to provide legal

protection to Native American tribes (2001: 324–36; 324–5; 325–8). The complex semi-sovereignty model gives a partial legal status of governance to minorities under the auspices of U.S. law (2001: 325–8, 335). The author admits that again this semi-sovereignty model contains flaws and would demand various adjustments to be workable with theocratic communities (2001: 328). One of the biggest weaknesses of the semi-sovereignty model is that liberal government would still interfere, for example in education (2001: 330). That is one of the cases of exemptions granted to the Old Order Amish explored in Chapter 6. Exemptions granted to religious minorities are issued either by a court judgment or by legislation (Hertzke, 2010: 370). Thus, the U.S. Constitution, and its First and Fourteenth Amendments, are the legal safeguards established by the Founders. Minorities and mainstream society alike are under constitutional protection.

The semi-sovereignty model is a utopic construction, as obviously theocratic communities would not have 'jurisdiction over (…) civil and criminal matters' and the liberal government would certainly supervise theocratic groups (Swaine, 2001: 331). The semi-sovereignty model is a stratagem, I suggest, inasmuch as a minority can feel free to a certain point, but the sovereign polity would still have the power of supervising and deciding what compromises or accommodations are adequate for a certain minority. Yet, under the semi-sovereignty framework, the Old Order Amish would benefit as it would 'prevent lawsuits (…) provide legal accommodations (…) clarify relations between theocratic communities and governing bodies' (2001: 341–2). Still, the financial side of the semi-sovereignty framework presents legal challenges in terms of taxation and financial aid to be granted to theocratic communities (2001: 333). The financial system of aid to be granted to quasi-sovereign theocratic groups would

challenge the separatist standards instituted by the First Amendment (2001: 333). The non-establishment clause of the First Amendment would be stretched to the limit. In other words, the freedom of religion clause would override the non-establishment clause. Mainstream secular society could argue that financial aid given to theocratic groups would seriously damage the foundation of the separation between state and church as well as the basis of the Fourteenth Amendment, which deals with equality of all citizens before the law.

Swaine's radical revision of the general standards of American liberal democracy laws touches slightly on the First Amendment, which would legally support the semi-sovereignty framework. McConnell, who highlights that Madison's view – of reaching an equilibrium due to the multiplicity of groups including 'religious factions (…) [that] will check one another' – offered a pluralistic approach in terms of religion as well as 'control of religious warfare and oppression' (McConnell, 1990: 1516). Thus, the First Amendment has proven to be adequate protection for religious minorities in the pluralistic American society. Nonetheless, the American Founders seemed to endorse the Christian religion. The next section discusses the extent to which the notion of religious liberty places all religions on an equal footing.

4.3.4 Does Religious Liberty Put All Religions on an Equal Footing?

Several court cases show that the American legal authorities have historically been inclined to understand Christian minorities more than other religious groups. The Mormon case *Reynolds v. United States*, (1878) (detailed later) is one example (Mauss, 1994a: 21); another is *Braunfeld v. Brown,* 366 U.S 599 (1961). Placed in the context of the 1960s, the U.S. Supreme Court denied the application of the Free

Exercise Clause for Jewish Sabbatarians. Given their religious practice of closing their shops on Saturdays, they asked for an exemption from the Sunday closing law. McConnell asserts that if this exemption was granted, Jewish shop owners would benefit because it would give them ‘a competitive edge they would not have if there were no Sunday Closing law’ (McConnell, 1992: 701–2).

Steven Green, in his survey of nineteenth-century church–state relationships in the United States, concurs with my assertion of a biased understanding of non-Christian minorities. He claims that ‘in the early part of the century, it was not uncommon for judges and lawyers to express the view that the law was based on religious principles’ reflecting Christian values (Green, 2010: 79, 76). A typical example of bias is illustrated by the treatment inflicted on the Mormons in this era. In the 1850s, the Mormon church, today called the Church of Jesus Christ of Latter-Day Saints, was growing into a significant and powerful institution in the State of Utah (Hertzke, 2010: 379–80). Green affirms that ‘of particular concern was the “theocratic” authority the church exercised over every aspect of life in Utah’ (2010: 89). The federal government was concerned by multiple issues, as Randall Bezanson enumerates, ‘including land ownership, control of mineral resources, and the exercise of government power, but politically the signal issue marking the conflict was polygamy’ (2006: 11–12). Therefore, the federal government had sufficient grounds to pursue the Mormon church. During the 1850s the controversial practice of the Mormons saw the rise of anti-polygamy campaigners in both Democratic and Republican camps. Eventually ‘in July 1862, the Morrill antipolygamy law was enacted by Congress and signed by President Lincoln’ (Bezanson, 2006: 12). One corollary of this Act was the limitation imposed on the Mormon church regarding buying properties (Green, 2010: 89). In 1874, a Mormon

administrator, George Reynolds, was 'indicted for the crime of polygamy' (2006: 12). Still, Bezanson claims, the Mormons believed that the Free Exercise Clause of the First Amendment protected them. The debate at the U.S. Supreme Court level was blurred in its interpretation of the Free Exercise Clause, in that Justices seemed to confuse it with free speech (2006: 23). The climax of the Reynolds case was reached in 1878 when the U.S. Supreme Court gave its verdict: 'The Court rejected Reynolds' free exercise claim' (2006: 90). Chief Justice Morrison Waite asserted: 'Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices' (*Reynolds v. United States* (1878): 164).

During the twentieth century and the beginning of the twenty-first, more religious cases have appeared on the judicial scene. Tensions between the First and Fourteenth Amendments continue to challenge lawyers at all levels of the American judicial hierarchy. One of the questions I presented to my interviewees was: 'What is your opinion of the idea that religious liberty puts all religious groups on an equal footing?' The sample of interviews I examined revealed a spectrum of answers. Lawyers were absolutely convinced that the First Amendment had its entire *raison d'être* in giving equal protection to any religion, and at the same time hindering establishment of any religions. Other interviewees admitted that the First and Fourteenth Amendments were good safeguards but firmly declared that they did not provide absolute equality to different religious groups.

Attorney Dean Carro said:

There's not supposed to be under the First Amendment any preference given to a religious group, because that would go to the establishment of a religion (…) what the Government *can do* is regulate activity and conduct (Carro, 2016).

Federal Judge Dan Polster confirmed this affirmation, saying '*we're all equal*, we're all equal under the law and the First Amendment' (Polster, 2017).

These two comments made me think that in today's American context of religious pluralism, lawyers have shifted to a more equalitarian approach to freedom of religion cases. Yet replies from other respondents revealed another perception of the concept of equality.

Three interviewees mentioned the Mormons' case. One talked about some practices violating the law, like 'the polygamy with the Mormons but we don't allow that' (Dilworth, 2018). The second said:

> it doesn't quite put all groups on equal footing, I think it's obviously been the case throughout history, members of the Church of the Latter-days/Mormon Church (…) they couldn't engage in polygamy, that was illegal the Supreme Court said. (…) newer religious beliefs (…) have a higher burden to meet than say a Christian denomination or a Jewish sect (Kopko, 2018).

The third one said: 'Mormons wanted to claim plural marriages and that it was a religious practice not to be constrained by the State that did not hold up as a Constitutional right' (Yoder, 2018). In other words, even in the twenty-first century the Mormons' case figures in the American collective memory.

The question about equality between religions in the United States brought some more heartfelt comments from my interviewees. For example, Judge Robert Rinfret in Ohio was adamant in declaring that:

> it would be wonderful if it did; but it doesn't (…) it's biased (…) the religious freedom we have is again, who are you? Are you a Christian? Are you a Muslim? Are you a Buddhist? Right? (…) it always depends on who you are (Rinfret, 2016).

Jeff Bach, Director of the Young Center in Pennsylvania asserted:

> Well, that would really be wonderful if it happens but I don't think it happens in our country. Christianity has been the dominant religion of the settlers who came to this country (…) I do think Christianity, not by legal decree but by effect, has had a more influential role in the U.S. (…) whatever the Constitution or the Bill of Rights might say about equality of all religions, I don't think that has been the case historically (…) also in the present there is a lot of bias in our country (Bach, 2018).

Seven other interviewees gave more ambivalent replies, acknowledging the existence of the First and Fourteenth Amendments but having some reservations as to how equally the state engaged with different religious groups. The rest of my interviewees did not answer that question.

Although the First Amendment written by the Founders provides stable cover to the co-existent religions of the time, nonetheless the contour of this new nation was predominantly Protestant, with its values rooted in the American culture. That aspect still offers back-up to the Amish theocratic minority in its dealings with American

democratic authorities. In the twenty-first century, acute legal disputes around freedom of religion continue to make the headlines.

In the next section I analyse the opinions of my interviewees regarding the use of the First Amendment.

4.3.5 Use of the First Amendment to the U.S. Constitution

Before proceeding to examine my respondents' opinion about the use of the First Amendment, it is important to repeat the first part of this amendment as it is a crucial element in this research: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' (U.S. Const. amend. I). Still, the U.S. Constitution is not the only legal document licensing the politico-legal life of American citizens. A study of U.S. history clarifies the initial independence of each state in designing and establishing its own Constitution. In present-day America, Daniel Elazar explains:

> In the non-centralized American system, there is no central government with absolute authority over the states in the unitary sense, but a strong national government coupled with strong state government in which authority and power are shared, constitutionally and practically (1966: 3–4).

In New York State, Karen Johnson-Weiner confirmed Elazar's statement. She declared:

> What's difficult in this country is that States have their own laws; New York State, for example, has stronger First Amendment protection than the Federal Government and that makes it complicated for different states. (…) you have to

> at least meet the federal standard, but you can have higher standards (Johnson-Weiner, 2018).

Probing further, Johnson-Weiner added that when there is conflict between state and federal laws it is

> up to the courts to work out how the state interacts with the Federal Government and that's what a lot of the legal manoeuvring that goes on is about to reconcile state and federal rules (2018).

This interview triggered a comparative study of the U.S. Constitution and the Constitutions/Bills of Rights of the four states I scrutinised for my research (Appendix 6). It revealed that the Bill of Rights of Indiana State is the most comprehensive. In November 1984, an amendment addressing freedom and non-establishment of religion added precision to these concepts. The Bill of Rights of New York State was also amended in 2001. The Constitution of the State of Ohio was amended in 2011, but it does not specify clearly if the sections on religious freedom were impacted. The State of Pennsylvania does not show any specific amendments related to religious freedom. The Constitution of each state affirms its gratitude to 'Almighty God'. The historical context in which they were written confirms that 'Almighty God' was the Christian God, as outlined in Chapter 3 of this thesis. However, the U.S. Constitution does not mention God explicitly (Minna, 2016: 2).

Having briefly looked at the excerpts from state Constitutions, I now examine my respondents' answers to the question: 'In your opinion, is the First Amendment of the U.S. Constitution regarding religion and expression an effective lever to negotiate law with the State?'

Listening to how the state authorities related to Amish groups in regard to this question, there was a clear distinction within the State of Indiana between Elkhart County and Adams County. Interviewees in Elkhart County had a positive experience overall. Sheriff Brad Rogers said: 'I think the Amish are successful at using it [the First Amendment]' (Rogers, 2018). Attorney Gordon Lord commented that the Amish are treated like any other American citizens (Lord, 2018). Prosecutor Vicky Becker asserted:

> because we have the First Amendment, because we have a legal mechanism to start these conversations and force compliance, it's the vehicle necessary from the problem to the solution (Becker, 2018).

Conversely, attorney Adam Miller, in Adams County, had a completely different experience with some Amish people who would say to him that rules cannot be enforced on them 'because of their religious voice and separation between them and the state' (Miller, 2018). Part of the Amish population in Adams County is much more conservative than their Elkhart County counterparts, which explains tensions found in Adams County between the local authorities and some of the Amish. Commissioner Doug Bauman, of Adams County, explained at length difficulties related to sewage ordinances that certain Amish groups do not want to apply to their properties (explored in more detail in Section 6.5). He said that one of the serious problems the authorities face in Adams County is the fast-growing number of Amish and the lack of affordable properties 'in Adams County, it is not a minority' (Bauman, 2018). Jessica Bergdall, Sanitarian and Environment Director in Adams County, reported that an Amish man who did not want to seal his outhouse with paint, which is one of the mandatory minimum standards, said: 'well, paint is against my religion' (Bergdall,

2018). In the same County, Mark Wynn, Planning and Zoning Director, corroborated Bergdall's insights that they played the First Amendment card too often. He said: 'they'll just say "religion, I can't do that"' (Wynn, 2018).

Listening to Miller, Bauman, Bergdall and Wynn unanimously reporting regular clashes between authorities and some Amish groups illustrated how the First Amendment is a two-edged sword. Freedom of religion is recognised, but some Amish push the boundaries of the law. In this case there is little room for negotiation.

In Ohio, Judge Robert Rinfret stated: 'like any amendment of the Constitution, you can interpret it any way you want to interpret it (…) First Amendment rights are dependent on who you are, basically' (Rinfret, 2016). Whereas for his colleague Judge Thomas Lee, the First Amendment is an effective tool to negotiate law with the state (Lee, 2016). Paul Miller, a lawyer, also said that 'the short answer to that is: *yes*!' (Miller, 2016).

In Pennsylvania, Donald Kraybill expounded: 'the State cannot interfere in any religious group, interfere with its practices or beliefs unless those beliefs become violent' (Kraybill, 2016). Pennsylvania Congressman Joseph Pitts echoed Kraybill's assertion regarding the First Amendment, but he went a step further and said:

> it has always been a priority in our country to protect freedom of religious belief, that's what we [Congress] are trying to do, accommodate them with the way they believe they should raise their children [alluding to the amendment of the child labour law] (Pitts, 2016).

Also in Pennsylvania, Kyle Kopko, Adjunct Professor of Political Science, said that the First Amendment could not be effective because of its lack of precision, which leads

judges to take a common law approach, hearing opposing sides and interpreting the law. Kopko tackled this amendment in the same way as I question it. He said:

> There is a bit of inherent tension between the establishment clause and the free exercise clause because if you allow an exception for someone, aren't you necessarily condoning their religious beliefs to some extent, is not that a government endorsement at some level? It's not establishing a church but isn't that still saying this religious belief is ok? A hard-line approach would be to say there's just no religious exceptions! Period!' (Kopko, 2018).

The Amish leaders I interviewed all agreed, declaring that the First Amendment is twofold. First, they are thankful for the freedom of religion it provides to their groups and second, as one of them said: 'it helps, so to speak, exempt [us] from these things that we feel goes against our religion' (B.J., 2018).

After examining Amish theocracy and American liberal democracy in their interactions, the next part of this chapter focuses on the 'negotiation model', the 'constitutionalism model' and the 'hybrid model' as ways of understanding how the two entities operate in practice.

4.4 Coalescence of the Negotiation Model and the Constitutionalism Model to Form a Hybrid Alternative

In this section I introduce a debate about the use by Amish communities of negotiation to obtain exemptions from certain laws and regulations, based on their biblical beliefs and practices. To the sociological approach of Amish negotiation explored at length by Donald Kraybill and other authors, I bring into the academic conversation a legislative and legal analysis. To understand Kraybill's 'negotiation model', a brief examination of

the rudiments of conventional negotiation followed by his concept of 'negotiation with modernity' is essential (Section 4.4.1). Then, following my line of argument, I show how the government views the Amish as American citizens first when it comes to the law of the land. The First and Fourteenth Amendments to the U.S. Constitution (studied in Section 3.5) are the fundamental nuts and bolts of the government's tolerance of religious minorities like the Amish. There is an alternative model at work between the state and the Amish, which I call the 'constitutionalism model' (Section 4.4.2). Nonetheless, it is not an exclusive or exclusionary model, and in conclusion a 'hybrid model' (Section 4.4.3), combining the 'negotiation model' and the 'constitutionalism model', has emerged from the analysis of my interviews with non-Amish and Amish American citizens.

4.4.1 Critical Analysis of the Negotiation Model

Negotiating is not a foreign concept, to individuals or groups, as Beverly DeMarr and Suzanne De Janasz put it: 'whether we realize it or not, we negotiate something almost every day of our lives' (2014: 14). Their comprehensive book, *Negotiation and Dispute Resolution,* offers some practical guidelines regarding negotiation in business. The objective of their work is to equip people to negotiate in business situations. However, they also bring a general approach, using examples from personal daily life to accentuate their points. The combination of the two aspects, private and public, seems to fit in well for understanding the 'negotiating with modernity concept' of Kraybill and its application to the Amish.

The six points characterising the negotiation process used by DeMarr and De Janasz provide a solid framework:

1. you must have two or more parties (…),
2. there must be a conflict of interest,
3. (…) you should expect a better outcome as a result of negotiation,
4. the parties prefer mutual agreement as opposed to giving in (…) appealing to higher authorities,
5. both parties need to be willing to give something to get something,
6. [negotiation] will involve both tangible and intangible components (2014: 5–6).

4.4.1.1. Kraybill's 'Negotiation with Modernity' Concept

With DeMarr and De Janasz's construction in mind, Kraybill's 'negotiation with modernity' concept coheres when applied to the sociological study of Lancaster County Amish groups, as found in his book *The Riddle of Amish Culture* (hereafter *Riddle*). During an interview Kraybill said: the Amish 'thrived by "negotiating with modernity. That is the central concept [*of Riddle*], and it's dynamic"' (Rutter, 2015: 12). In Kraybill's opinion, this is one of the essential tools for the survival of the Amish sect in mainstream American society. Two more strategies are used by the Amish when dealing with 'modernity': 'resistance' and 'acceptance' (Kraybill, Johnson-Weiner and Nolt, 2013: xi, 8).

A great number of academics interested in the Amish sect concur with Kraybill's 'negotiation with modernity' model. Wayne Miller is a typical example. In his article in the *Ohio State Journal*, 'Negotiating with Modernity: Amish Dispute Resolution', he aligns with Kraybill's paradigm, expanding on internal and external Amish disputes and resolutions (Miller, 2007). However, several specialists disagree (Anderson, Donnermeyer, Longhofer and Reschly, 2019). For instance, in 2019 the *Journal for the*

Scientific Study of Religion gave a platform for this debate to be aired. Because my analysis is centred on Kraybill's negotiation *modus operandi* associated with the Amish rather than his use of the modern/modernity concept, which is the appraisers' focal point, I report only a few examples of the arguments therein, followed by a few points extracted from Kraybill's comprehensive response.

As an illustration, the appraisers highlighted the fact that Kraybill does not offer theoretical references to his concept; they argue that empirical testing of Kraybill's views is not possible because of a lack of clarity; and more issues are raised about the use of vocabulary, notably 'modern/modernity/modernization'. Kraybill's methodology is put under scrutiny as well in terms of his work not receiving enough peer reviews, and the list goes on (Anderson *et al.*, 2019).

Kraybill responded that 'my work is rooted in a cultural analysis paradigm that differs from the appraisers' methodological orientation' (2019: abstract). His exhaustive response on 'theory/theorizing/theoretical' concludes with the fact that he 'never portrayed or described "negotiation with modernity" as a theory' (2019: 5). He continued by explaining his methodology, evidencing numerous peer reviews.

My view on this debate is that Kraybill's 'negotiation with modernity' is a pattern used to essentially describe how the Amish, within the precinct of their *Ordnung* and their own communities, negotiate with the outside culture and technology. To grasp further Kraybill's 'negotiation with modernity' idea, I suggest that the specific background of pioneer scholars in Amish scholarship might be significant (Rutter, 2015: 13, Weaver-Zercher, 2005: ix). This suggestion is supported by my own field research.

4.4.1.2 Kraybill's and Hostetler's Background and Amish Parlance

Using quotes from *Riddle* (Kraybill, 2001: 24, n.33, 344), Figure 4.1 summarises Kraybill's idea of the use of negotiation by the Amish to navigate the wider 'world'.

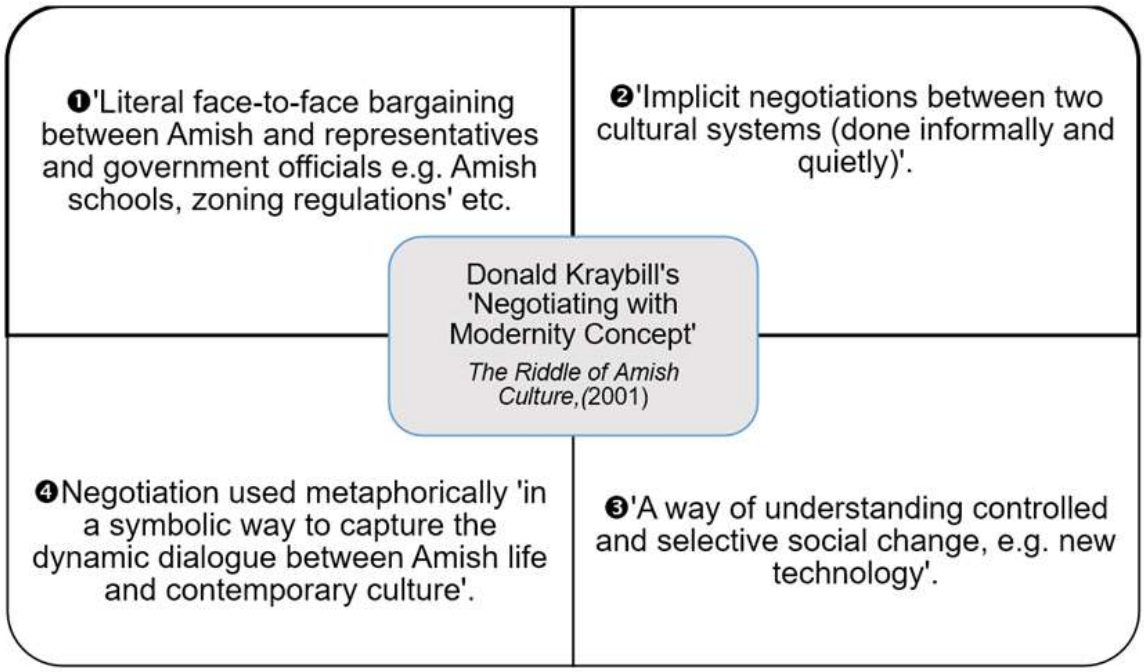

Figure 4.1 Donald Kraybill's 'negotiating with modernity' concept (2001: p24 [n33 p.344])

As quoted in point four of Figure 4.1, Kraybill uses the 'negotiation metaphor' when exploring how the Amish society/culture deals with the mainstream 'world' and culture (2001: 24). He defines 'cultural bargaining' as 'when the negotiable items are values, ideas, beliefs, and ways of thinking – cultural phenomena' (2001: 23). John Hostetler also wrote about 'compromise', or negotiation, when examining how the Amish were able to obtain 'a compromise' in the school controversy in Pennsylvania in the mid-1950s (Hostetler, 1993: 263).

My hypothesis is that the personal context of Hostetler and Kraybill might bring some light to their use of the 'negotiation' word and strategy. As already mentioned in

Chapter 1, John Hostetler was ‘an Amish-born scholar’ from Pennsylvania (Weaver-Zercher, 2005: ix). In his early adult life, he chose not to join the Amish church. However, he kept a close relationship with his Amish family (2005: ix). As he followed the path of academia in anthropology and sociology, he offered his ‘insider’ (on the ‘insider/outsider’ concept see Section 2.7) knowledge of his ‘Amish heritage’ to draw an accurate picture of Amish society (Bronner, 2005: 56–7).

Donald Kraybill was born and grew up in Lancaster County, Pennsylvania. Coming from an Anabaptist and agricultural background, and growing up in this specific area where the Amish first settled when they came to America, have given him tools to understand and identify with Amish people (Rutter, 2015: 11; 13). However, what seems an asset, in terms of accessing one of the most isolated communities, might be a disadvantage when processing data. My assumption is that non-Amish people, living in areas with a large Amish population, assimilate Amish parlance and their perception of life. Thus, Kraybill’s sociological approach, combined with his close interaction with Amish people, produced the concept of ‘negotiating with modernity’.

My supposition is supported by my interviews of Amish and non-Amish participants who are well acquainted with Hostetler and Kraybill, who both consciously and often used the word ‘negotiation’ or synonymous expressions when speaking of Amish interrelation with government authorities. An older Amish man who was for a very long time in a position of leadership on the Old Order Amish Steering Committee said: ‘If something conflicts with our religion, we have to work something out with the government’ (B.C., 2018). One of his younger colleagues talked about the same process:

> we have some elected officials in our area who have been very helpful to us and if we can use them to get the message across you know as far as negotiating yes, we do some you know, we sit down with them and we talk with them across the table if need be (B.J., 2018).

This sentiment echoes Kraybill's assertion found in point one of Figure 4.1 and in *The Amish and the State* (Kraybill, 2003: 18). In Kraybill's books, the concept of 'negotiation' is fluid. The 'negotiating with modernity' concept of *Riddle* slips smoothly into the 'negotiation model' of *The Amish and the State.*

I checked my hypothesis, running a query in the NVivo 12 software (explained in Chapter 2). I drew together answers given by my non-Amish and Amish interviewees on the question about negotiating with the state. The frequency of their use of the negotiation concept when it comes to the law or 'negotiating with government officials', appears in the results shown in Figure 4.2, which I explain in the next section (Kraybill, 2001: n.33, 344).

4.4.1.3 NVivo 12 Results on Answers on the 'Negotiation Concept'

Figure 4.2 shows on the x-axis (horizontal) the number of persons interviewed and on y-axis (vertical) the number of times people mentioned words or expressions related to the concept of negotiation with the law. The orange bars represent the Amish interviewees, the blue bars the non-Amish interviewees. Indubitably, Amish participants associate law with the negotiation process (tall orange bars), whereas the non-Amish participants are shown with shorter blue bars. The taller non-Amish blue bars indicate close interaction with the Amish, whose peculiarity they comprehend (see over, Figure 4.2).

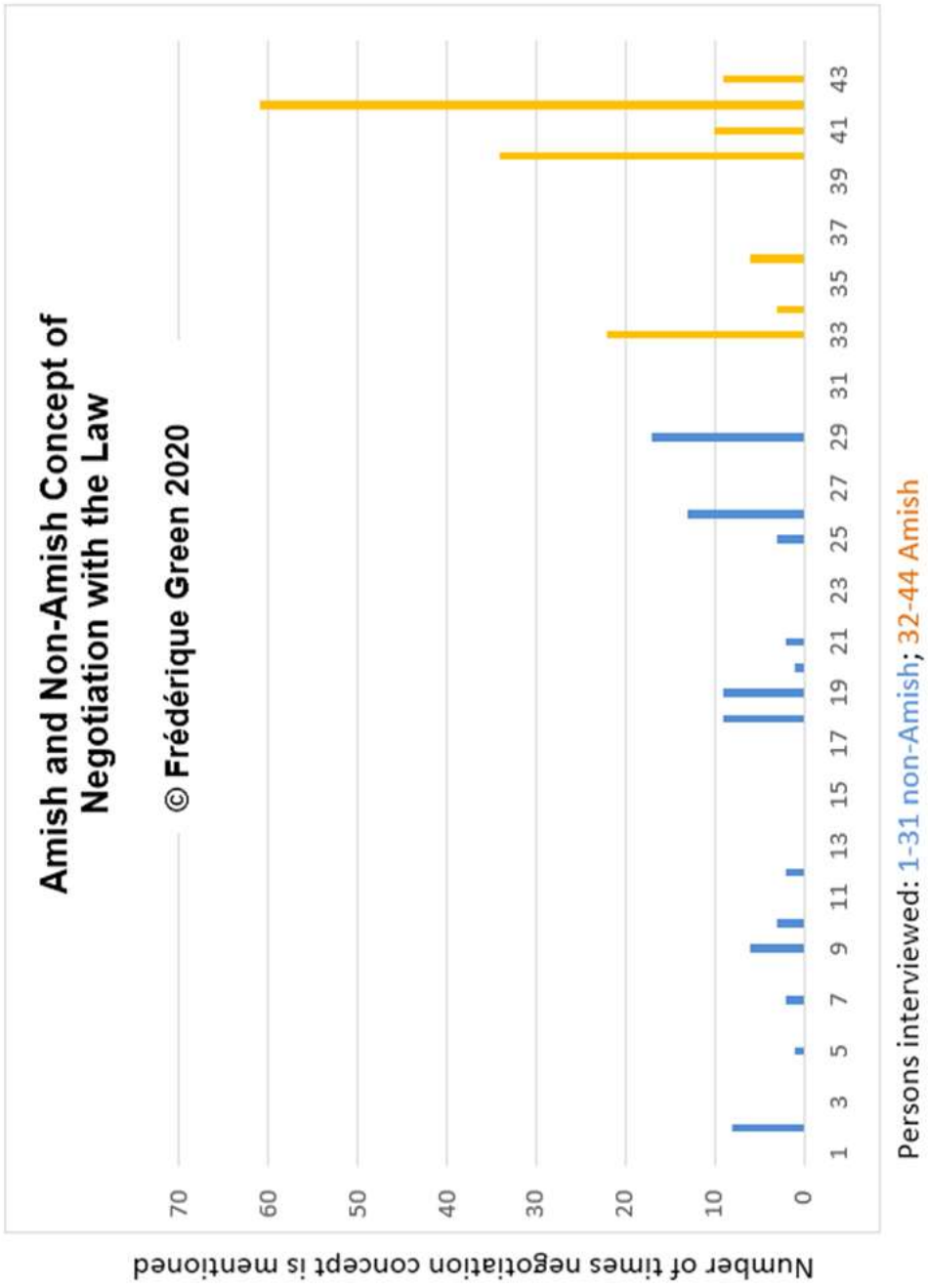

Figure 4.2 Amish and non-Amish concept of negotiation with the law

My hypothesis is backed up by my empirical data, as shown in Figure 4.2. However, further analysis of my interviews revealed the reality of the negotiation activity at local or sometimes state levels. To explain further and support my hypothesis, several examples follow.

4.4.1.4 Negotiation Activity at Local or State Levels

Certainly, negotiations between the authorities and the Amish at local level are not uniform across the states. 'Negotiation' in Amish phraseology can also mean 'anticipating' authorities' demands in order to avoid government encroachment on their way of life. For example, during an interview with an Amish leader in Ohio, I discovered how the Amish have 'negotiated' with their local authorities to avoid the creation of a buggy tax. He said:

> yes, we drive horse and buggy I don't use up a lot of gasoline, so I'm not paying for the road, so we have a voluntary instead of [*sic*], since we don't have license plates, we make up, gather half a million dollars and we send it to Columbus; and the State gets a little bit, the County get some and some comes back to the town to help repair the roads that they say our horse tear up. Apparently, it's exclusive to Ohio (K.D., 2016).

This fact is backed up by Rob Ault, one of the Holmes County Commissioners, who said that the Amish came up with the idea of voluntarily raising funds to pay for the maintenance of roads to pre-empt having a law imposed on their community (Ault, 2018).

However, in Indiana, a road tax is applied to buggy drivers and buggies sport a registration plate. An Amish interviewee in Adams County (IN) confirmed 'it costs $ 120

per year on each buggy [we have] a plate on' (S. R., 2018). Therefore, what seemed very natural to the Amish man in Ohio was totally impossible in Indiana. Hence 'negotiating with authorities' is not a straightforward process in each state that houses Amish groups.

Negotiation, in terms of bargaining, happens particularly in health care across different states that are home to many Amish. The Amish meet with hospital management and negotiate packages to serve their needs. In Indiana, two Commissioners and an attorney mentioned this type of negotiation, adding that one of the facilitating factors is that Amish people pay cash (Yoder, Bauman, Miller, 2018).

In the opening chapter of *The Amish and the State,* titled 'Negotiating with Caesar', Kraybill 'suggests that conflicts between the Amish and the state can be interpreted through a conceptual framework of bargaining and negotiating' (2003: 3). What is very interesting in his introduction is that straightaway he clarifies his assertion by explaining that 'the state (…) engages the Amish in a process of cultural and social bargaining' (2003: 3). This affirmation does not explicitly say that the Amish negotiate with the state. However, later in the chapter Kraybill announces: 'theoretically, negotiations between the Amish and modernity emerge in legal, social, and cultural domains' (2003: 18). The essays in *The Amish and the State* focus primarily on legal negotiations.

My interpretation is that there is no such thing as 'negotiation with the law'. The First Amendment affirms freedom of religion, and within its limits the Amish, like any other American citizen, can reach out to their Congressional Representatives or Senators. Their cause can be presented to committees in Congress and navigated through the usual legislative process, potentially resulting in law amendments and ultimately legal

exemptions (McKeever and Davies, 2012: 243–57). Kraybill agrees with my assertion, as he stated in our interview that his guestimate was that '90% or more of exemptions made for the Amish are based on the First Amendment (…) the freedom to practice your religion without government interference' (Kraybill, 2016). He also started the preface of *The Amish and the State* by quoting the First Amendment (2003: xi).

In the next sub-section, I take the approach that 'one size does not fit all' and explain that, despite the virtue of the 'negotiation model' in sociological terms, it has some limitations in the legislative and judicial arenas. I introduce my 'constitutionalism model' alternative.

4.4.2 Introduction to the Constitutionalism Model

This sub-section opens up a new interpretation of the exchange between the U.S. government and Amish communities. The 'constitutionalism model' proposed is identified through definition(s) of constitutionalism followed by the presentation of the conceptual framework. Then the results of my empirical study are introduced.

4.4.2.1 Definition of Constitutionalism

The complex mechanisms of designing and obtaining a consensus to vote for the American Constitution have been studied in Chapter 3. I established there that the U.S. Constitution is, as Robert McKeever and Philip Davies assert, 'the single most important document in American politics' (2012: 11). Yet, the Amish would not venerate the U.S. Constitution or the flag as their primary 'loyalty must always be to God (Acts 4:19)' (*1001 Questions & Answers*, 2001: 157; Cronk, 1981: 22). Similarly, libertarians would raise objections to this statement. Ronald Hamowy contends that libertarians do not trust governments 'because governments rest on law and all law is ultimately based

on the threat of force' (2008: xxi). Thus, the U.S. Constitution, 'the supreme Law of the Land' as Article VI of the Constitution declares, may or may not be celebrated by every American citizen in the same way (U.S. Const. art. VI).

What remains to be defined is constitutionalism. It seems that there is not a unique definition of the constitutionalism concept. Therefore, the contribution of different scholars is included here to enable it to be utilised in the most useful way. McKeever and Davies assert that constitution and constitutionalism are intimately connected. In their explanation it is obvious that the U.S. Constitution is a ratified document that has to be followed to the letter by government and politics (2012: 11). Political theorist Donald Lutz adds more depth in his explanation: 'constitutionalism, properly conceived, inevitably implies at least de facto *popular sovereignty*, which in turn implies at least some minimal separation of powers, properly conceived' (2006: x, my emphasis). Will Waluchow offers a more conventional definition:

> Constitutionalism is the idea, often associated with the political theories of John Locke and the founders of the American republic, that government can and should be legally limited in its powers, and that its authority or legitimacy depends on its [*sic*] observing these limitations (…) Often these limitations are in the form of civil rights against government, rights to things like free expression, association, equality, and due process of law (2001: 1).

Since the central point of this chapter is to reveal and analyse different models illustrating the interrelation between American liberal democracy and Amish theocracy, I do not debate further the intricacies of constitutionalism and all the nuances brought

forward by other thinkers, philosophers, and lawyers. The quotes chosen epitomise the material needed to present my conceptual framework.

4.4.2.2 Conceptual Framework

The framework I have adopted is the one created by the Framers when they designed the American Constitution (1787) and voted in the subsequent Bill of Rights (1791), which I explored in depth in Chapter 3. Their objective is encapsulated in the first three words of the Constitution: '*We the people* of the United States'. In other words, their intention was to establish a democracy in America, under popular sovereignty (U.S. Const. Preamble). Democracy was also considered in Section 4.3.1.

Lutz, expanding on constitutionalism, insists that to be effective a constitution must be designed for *all citizens* and must rest on popular sovereignty (2006: 24). He elaborates on the concept from Charles-Louis de Secondat, baron de La Brède et de Montesquieu, of

> republican government (constitutional democracy in our terms) [that] rests on republican virtue and equality. Hence, we see the basis for his [Montesquieu's] emphasis on a separation of powers structured so as to address the effects of inequality (2006: 22).

In brief, the Framers and Lutz map out my democratic 'constitutional model' with the following points: a constitution is designed *for all citizens*, a constitutional democracy rests on *equality*, and *separation of powers* supports equality (Lutz 2006: 22, 24).

The Amish religious minority falls under the protection of the U.S. Constitution by default: they are American *citizens*, as already stated in Chapter 1 and as Chapter 5

demonstrates; they benefit from *equality* before the law provided by the Fourteenth Amendment to the Constitution and the First Amendment protects their religious freedom; and the *separation of powers***,** embodied by the three branches of government and limited by checks and balances, gives American citizens tools to 'govern' via Representatives and Senators in Congress, vindicated through the judicial branch and led by an elected executive.

The foundations of the U.S. Constitution show clearly that American citizens have a voice: '*We the People*'. Stephen Griffin asserts that 'the sovereignty of the people is a key element of American constitutionalism (…) only the people could adopt a fundamental law' (1996: 19).

My empirical data supports my theory. Running another query in the NVivo 12 software dealing with my interviews with non-Amish and Amish American citizens on the probability of the 'constitutionalism concept' produced the results presented in the next sub-section.

4.4.2.3 NVivo 12 Results on the Answers on the 'Constitutionalism Concept'

One of the questions I asked my participants was: 'In your opinion, is the First Amendment of the U.S. Constitution regarding religion and expression an effective lever/tool to negotiate law with the State?' I also offered to read the First Amendment to refresh their memory. Another set of questions referred to the participants' experience of conflicts and how they were solved. Was it done through dialogue/negotiation, or did they have recourse to the courts?

The outcome of my query is presented in Figure 4.3. The graph shows on the x-axis (horizontal) the number of people responding to the questions and on the y-axis

(vertical) the number of times people mentioned words or expressions related to the concept of ‘constitutionalism’. The orange bars represent Amish interviewees, the blue bars non-Amish interviewees. Undoubtedly, the tallest bars are non-Amish (in blue) and indicate a clear awareness of American citizens’ rights granted by the First and Fourteenth Amendments. In contrast, the Amish respondents are shown with shorter bars (orange). They have an implicit knowledge of the First Amendment, but their verbal expression, when it comes to the law and law-makers, is more restrained. This restraint can be explained by their inherent sense of modesty pertaining to *Gelassenheit,* as explained in detail in Section 4.2.2, and the dictates of their *Ordnung,* or internal set of rules, also expanded upon in Section 4.2.3. Again, the explanation of the graph in Figure 4.3 is enhanced by a sample of answers given by participants (see over).

Figure 4.3 Non-Amish and Amish concept of constitutionalism

4.4.2.4 The ‘Constitutionalism Model’ in Interviews

Prosecutor Vicky Becker from Indiana gave a snapshot of the use of First Amendment by the judicial system:

> because we have the First Amendment, because we have a legal mechanism to start these conversations and force compliance, it’s the vehicle necessary from the problem to the solution. If we did not have the First Amendment, if we did not have the ability to have a basis for resolution of these issues in the court of law, then there would be no remedy. So, I really do believe that our First Amendment is the first step in addressing a problem with a solution (Becker, 2018).

She also offered a glimpse of her experience with Amish people regarding the First Amendment:

> I think it's more misapplication of their religious principles than it has to do with the First Amendment. I’ve never necessarily heard an Amish man claim First Amendment as much as I’ve heard: ‘my bishop says blah blah blah’, ‘my religion doesn't permit me to do this’ (Becker, 2018).

To the question ‘In your opinion, is the First Amendment of the U.S. Constitution regarding religion and expression an effective lever/tool to negotiate law with the State?’, a non-Amish business owner in Pennsylvania had a straightforward answer: ‘*yes* [emphasise is his], I think it is’ (R.D., 2016).

One Old Order Amish leader from Pennsylvania said:

> we just have a lot to be thankful for in our country, religious freedom, we are pretty well. We can have the church services pretty well as we want them, government does not interfere, they help us (B.C., 2018).

Figure 4.3 and the interview quotes offer some tangible evidence upholding my 'constitutionalism model' argument. Nonetheless, the 'constitutionalism model' I progressively constructed through the years of my research proved to be challenged by part of my empirical data. In other words, the 'negotiation model' illustrated by Figure 4.2 collided with my 'constitutionalism model' illustrated by Figure 4.3. Therefore, my conclusions brought me to a coalescence of the 'negotiation model' and the 'constitutionalism model', forming a 'hybrid model'.

In the next sub-section, the examination of the 'constitutionalism model', from the Amish perspective and later from the American government perspective, reveals that the porosity of American government and Amish bulwarks create the 'hybrid model'.

4.4.2.5 The Constitutionalism Model from the Amish Perspective

Although I concur with Kraybill's sociological analysis of the Amish being negotiators, and actively using their skills to obtain official exemptions at local and perhaps state levels, I contend that this approach omits to include distinctly the fundamental pillars of the U.S. Constitution. However, the religious structure of the Amish community, and their separation from 'the world', partly explains their reluctance to claim citizens' rights when their allegiance is to God rather than the state. Their reluctance to use their right to cast a vote for example is examined in the next chapter. Nevertheless, out of necessity, the establishment of the Old Order Amish Steering Committee allowing

them to conduct ‘literal face-to-face bargaining between Amish representatives and governments officials’ (Kraybill, 2001: n.33, 344; see also Section 4.2.4) reveals a tangible ambivalence. Arguably, their separation from the world pertains to their religious ideals, but as a matter of fact the wall of separation between Amish religious communities and American mainstream society seems to be increasingly permeable. Although the Amish are not actively involved in seeking an assimilation/acculturation process, I suggest that their constant interaction with the world is significantly altering their insularity. This notion is examined further in Chapter 7. However, the reality is that they are American citizens living under the protection of the First and Fourteenth Amendments to the U.S. Constitution. Hence, they operate under the ‘constitutionalism model’ within their phraseology of ‘negotiating’ with authorities, as discussed in Section 4.2.4 that expanded on the Old Order Amish Steering Committee.

4.4.2.6 The Constitutionalism Model from the American Government Perspective

As examined in Section 3.6, state and church are separate in principle. Nonetheless, the interpretation of the First Amendment by the U.S. Supreme Court continually oscillates between the two clauses ‘non-establishment of religion’ and respecting ‘the free exercise’ of religion (Section 3.5). Randall Bezanson maintains that ‘many people believe that the two guarantees are as often in tension (if not in conflict) as they are complementary’ (2006: 27). He explains further that Justices of the U.S. Supreme Court have skilfully used ‘one guarantee as the dominant tool for analysis, leaving the other as a shadow in the background’ (2006: 27). Therefore, the wording of the First Amendment provides the U.S. government with an instrument to accommodate religious minorities, like the Amish, when laws and regulations deeply encroach on their religious practices. In essence, the wall of separation between state and church

has proven to be ‘permeable’ when the U.S. Supreme Court has had to interpret the First and Fourteenth Amendments in cases involving the Amish. The *Wisconsin v. Yoder* (1972) case, extensively examined in Chapter 6, is a typical example of the porosity of the wall separating state and church. Shawn Francis Peters asserts that many analysts of this case commented that it was ineptly treated by the U.S. Supreme Court who, for example, ‘conferr[ed] special judicial protections on members of a single religious faith’ (2003: 3–4).

Another aspect of the government perspective can be observed when elected members of Congress are lobbied by the Amish when laws and regulations interfere with their religious practices (Chapter 6). Hence, the tools offered by the U.S. Constitution are adequately used by Amish delegates embodied by the Old Order Amish Steering Committee, supporting my ‘constitutionalism model’ (see Section 4.2.4).

4.4.3 Porosity of American Government and Amish Bulwarks Creating a Hybrid Model

The ideal of separation between state and church pursued both by the Framers designing the U.S. Constitution and the Bill of Rights, and by the Anabaptists writing Number Four of the Schleitheim Articles to protect their religious liberty, has given a measure of protection to people on either the secular or religious side of the wall (Snyder, 1997: 114–15, Schlegel-Ruegger, 1991: 803-818, Appendix 9). Yet down American legal and judicial history, court cases have shown that exceptions and exemptions have been granted under the First and Fourteenth Amendments.

The unusual dialogical exchange between American government and Amish groups is an anomaly sanctioned by the U.S. Constitution. Arguably, the 'hybrid model' is revealed by the equilibrium found between American government and Amish society. It is illustrated by the Venn diagram Figure 4.4. It shows the overlap between Kraybill's negotiation model and my constitutionalism model, creating my hybrid model.

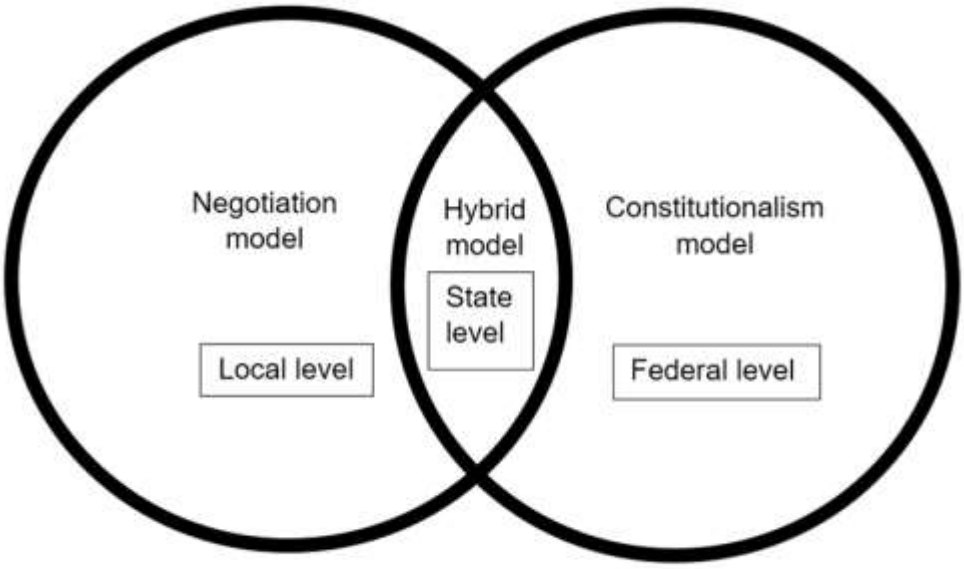

Figure 4.4 Hybrid model -Frédérique Green 2020

On the one hand the American government, through legislation and judicial decisions, can grant accommodations to the Amish religious minority, softening the wall of separation between state and church. On the other hand, the Amish can compromise, to a certain extent, with their original Anabaptist dictates imposing separation from 'the world' when their interaction with government aids their protection as a religious minority. The 'hybrid model' makes perceptible the risk of a progressive infiltration of American secularity and individualism into certain parts of Amish religious society. The concept of assimilation/acculturation is studied in Chapter 7.

4.5 Summary

This chapter has explored the Amish community's internal rules and regulations and how this theocratic group has progressively been under pressure from U.S. laws and dealt with them. In the process, they created the Old Order Amish Steering Committee. Although in Amish parlance they negotiate with the authorities, I have argued that this body lobbies their Congressional Representatives/Senators using the tools given by the U.S. Constitution and the First and the Fourteenth Amendments. One of the functions of the Steering Committee is to monitor U.S. laws that might encroach on the Amish's theocratic community. That demonstrates a degree of assimilation in that they are frequently in connection with the authorities, positioning them on the fringe of 'holding office'. The function of the key First and Fourteenth Amendments, resolving some of the tensions between American authorities and the Amish minority, was emphasised before the three crucial models were introduced. I critically analysed the 'negotiation model' from previous scholarship, discussing hypotheses about the individual origins of this model. With the interpretation of my own data and the graphics produced, I demonstrated that through interviews the models have been validated. The 'negotiation model' can be used often at local level, the 'constitutionalism model' works at federal level and the 'hybrid model' by its flexibility represents the coalescing of the two previous models. The three models are tested in the following chapters.

In the next chapter, the study goes further and deeper into the dilemma the American politico-legal institutions face about American citizenship in connection with Amish American citizens.

5. AMERICAN CITIZENSHIP AND THE AMISH

5.1 Introduction

This chapter scrutinises American citizenship and the Amish through the lenses of the three models presented in Chapter 4. Five sub-sections examine the extent to which the American government accommodates the theocratic Amish sectarian group. First, I look at rights and duties regarding Amish American citizenship (Section 5.2); second, I focus on the right to vote, which conflicts with Amish beliefs and behaviour (Section 5.3); third, I deal with the responsibility to do jury service and the Amish response (Section 5.4); and in the fourth section I dissect contradictions related to photo ID requirements and Amish reactions to that (Section 5.5). The last section of the chapter moves on to criminality and the Amish (Section 5.6). I argue that the First Amendment to the Constitution is the central axis giving substantial freedom to minorities. There is limited freedom for the Amish to opt out and avoid some rules and regulations, to express and practise their faith. However, the U.S. Constitution is egalitarian around criminal law.

5.2 American Citizenship and the Amish

To lay the groundwork, I start with what people who acquire U. S. citizenship in the twenty-first century embrace. Here is a relevant description from U.S. Citizenship and Immigration Services [uscis]:

> The U.S. government, as established in the Constitution, protects the right of each individual, without regard to background, culture, or religion. (…) Upon taking the Oath of Allegiance, you promise your loyalty and allegiance to the United States of America. U.S. citizens have important rights and

> responsibilities. These include the right to vote in federal elections and the ability to serve on a jury. Citizenship is a privilege that offers the extraordinary opportunity to be a part of the governing process (www.uscis.gov, 2014: 1–2).

When the first waves of Amish arrived in America (from 1736 -see Appendix 9) the distinction between 'subject' and 'citizen' was complex (Nolt, 2003: 114). Maximilian Koessler declares that after the 1776 Declaration of Independence the still recent history of having been colonies of the British Crown left its mark with the continuous use of 'subject' in official documents (1946: 58–9). He claims that 'citizen' and 'subject' were synonyms until the establishment of the Federal Constitution in 1787, when the term 'citizen' became prevalent (1946: 59). Koessler also explains that 'in its feudal settings, "allegiance" denoted a reciprocal correlation of interconnected rights and duties' (1946: 68).

The Amish of the twenty-first century are automatically American citizens. The official website of the U.S. Department of Homeland Security dealing with citizenship declares that being born in North America from American parents gives automatic citizenship (www.uscis.gov, 2020). Consequently, down the generations the Amish have become *de facto* American citizens. This is a challenge to their beliefs and their desire to be separate from the world. With their beliefs based on the Bible and the Lordship of Jesus mixed with *Gelassenheit,* the Amish cannot agree with the assertion of former Supreme Court Justice Louis Brandeis that 'The only title in our democracy superior to that of President [is] the title of citizen' (www.uscis.gov, 2014: 2). Yet the Bill of Rights providing freedom of religion has been a solid support for the Amish minority.

American citizens have the rights and responsibilities listed in Table 5.1 (see over).

Rights and Responsibilities of the American Citizen	
Rights	**Responsibilities**
• Freedom to express yourself. • Freedom to worship as you wish. • Right to a prompt, fair trial by jury. • Right to keep and bear arms. • Right to vote in elections for public officials. • Right to apply for federal employment. • Right to run for elected office (exception of President and Vice President of the USA [who have to be native born]). • Freedom to pursue 'life, liberty, and pursuit of happiness.'	• Support and defend the Constitution against all enemies, foreign and domestic. • Stay informed of the issues affecting your community. • Participate in the democratic process. • Respect and obey federal, state, and local laws. • Respect the rights, beliefs, and opinions of others. • Participate in your local community. • Pay income and other taxes honestly, and on time, to federal, state, and local authorities. • Serve on a jury when called upon. • Defend the country if the need should arise.

Table 5.1 Extract from the *U.S. Citizen's Almanac* (www.uscis.gov, 2014: 3–8)

The Amish act differently in relation to the rights and responsibilities assigned to American citizens. Several examples demonstrate their ability to 'be not conformed to this world' (Romans 12:2) while participating in some of it to ensure their survival.

5.3 Right to Vote and the Amish

Amish American citizens possess the right to vote, but belonging to the Kingdom of God, they live within the regulations of their *Ordnung(s)* (Section 4.2.3). Historically the Amish have oscillated between participating and not participating in elections. However, Paton Yoder states that in the 1850s there were some exceptional characters in the Amish community, like Isaac Kaufman from Pennsylvania, who engaged in politics. Kaufman 'became an active Whig and in the late 1850s made the almost standard transition to the Republican party' (Yoder, 1991: 228–9). During the Civil War (1861–65) conservative Amish were against 'voting and holding public office' (Yoder, 1991: 164). Sandra Cronk echoes Yoder's statements and reports that in the second part of the nineteenth century the Amish leadership debated the voting right/responsibility and decided to forbid

> membership in political parties, attendance at political rallies, and campaigning for candidates [which] protected the traditional rites of community-building from the idea of social reform through politics (Cronk 1981:25).

John Hostetler contended that in the twentieth century, 'although holding public office or any position of worldly power is forbidden, voting in local or national elections is not' (1993: 256). Fifteen years later Kraybill, Johnson-Weiner and Nolt concurred with Hostetler: 'although church rules do not forbid voting, most Amish refrain from it' (2018: 361). In Pennsylvania, one of my Amish interviewees, a leader in his community,

expressed clearly that in the past the Old Order Amish Steering Committee that was created in 1966 (Olshan 2003: 69) 'had the position to *not* vote' (B.J., 2016). He continued:

> I look at it as a personal thing, not something that is forbidden in the church (…) some communities do [vote] and some communities don't (…) but for some communities it is probably [permitted] by the bishop and community (B.J., 2016).

The U. S. presidential election of 2004 'stirred considerable controversy among Old Order people in Pennsylvania and Ohio', say Kraybill and Kopko in their article on Amish registration/participation in this election (2007: 1). There was a particular emphasis in 2004 to engage Amish people to vote in the presidential election, as summarised in Figure 5.1. Kraybill and Kopko contextualise the campaign, explaining that Ohio and Pennsylvania were 'crucial swing states that could determine the presidency' (2007: 165). The energetic campaign led by the Republican party to encourage Amish people to register in Ohio and Pennsylvania was successful (Figure 5.1 point 4). A judicious approach was to highlight their candidate's conventional values (Figure 5.1 points 2 and 3). A decisive element in favour of the Amish supporting George W. Bush's candidature was that he signed into law an amendment to the child labour laws that enabled Amish youth to be part of the adult workforce under certain conditions (108th Congress, 2003–2004; see Section 6.4; Figure 5.1 point 1).

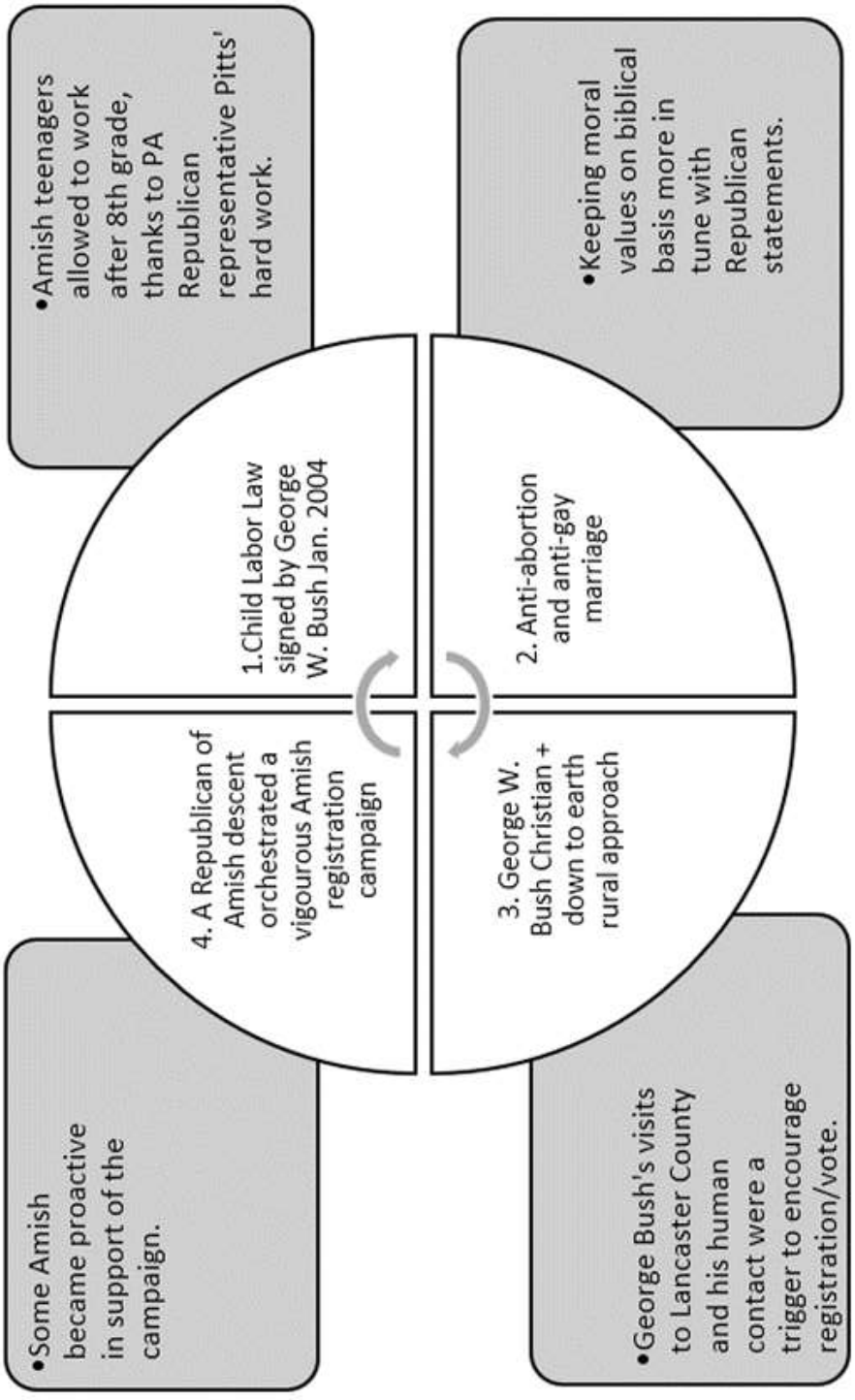

Figure 5.1 2004 presidential election campaign special context

However, another faction of the Amish was opposed to participating in this election on several counts, including that 'prayer is more effective than voting' (Kraybill and Kopko, 2007: 181). An Amish writer defended the two-kingdom doctrine saying:

> In our desire to remain a separate and holy people, why should we want to get all tangled up in the world's system of government and politics? If we register to vote, how can we be exempted from military duty should the draft come back? (Kraybill and Kopko, 2007: 182).

Another invoked the Amish tradition not to vote 'per our forefathers' (Kraybill and Kopko, 2007: 183). One of the conclusions of Kraybill and Kopko's analysis when reflecting on the Amish interaction with the wider world is apt:

> voting, particularly in presidential elections, is an indicator of social assimilation and civic participation in the larger society (…) it reflects a national identity, a sense of duty and citizenship in the nation (Kraybill and Kopko, 2007: 203).

Unfortunately, there is a gap in research on Amish voting in the 2008 and 2012 presidential elections. Kopko explained that for 'a variety of data and logistical reasons' they were not and will not be able to work on those data (2020).

When I conducted interviews in the summer in Pennsylvania and Ohio prior to the 2016 presidential election, I felt that the mood was very different from 2004. Amish respondents were hesitant to give their opinion on voting. Yet they confirmed that in 2004 many of them had been persuaded to cast their vote. However, for 2016 they were circumspect and extremely suspicious about the creation of a new group called Amish PAC (Political Action Committee). The name is misleading, as Amish people

are not part of its leadership. According to reporter Corinne Purtill, the PAC was co-founded by

> a trio of conservative political operatives. Ben Walters worked on a PAC for Ben Carson's former primary campaign. Taylor Swindle was an aide to former House Speaker Newt Gingrich. Ben King, a former member of the Amish community, was also a Carson fundraiser (2016: [n.p.]).

The aim of the Amish PAC was to encourage as many Amish as possible to register to vote in the next presidential election. All my Amish interviewees declared that they would not vote in the coming election in November 2016. When I went back in 2018, three Amish leaders in Pennsylvania expressed firm disapproval of the Amish PAC's tactics. One of them said:

> I don't support them. They advertise this Amish PAC but that is false because it is not an Amishman – there's an ex-Amishman involved in it and they're making statements that they get the Amish to vote and they said that (…) a lot of Amish voted in the 2016 election and the Amish helped put Trump in. That's false information (B.J., 2018).

When interviewed in 2018, Nolt and Kopko elaborated on their study of the 2016 presidential election. In their sample, in Pennsylvania mainly, they observed that the context was different from 2004 in many ways, as presented in Figure 5.2. Three crucial elements may have dissuaded Amish people from voting: the more liberal American society had recognised abortion and gay marriage; Donald Trump had very little in common with George W. Bush and being a female was not an asset for

Hillary Clinton; and the PAC did not have the same personal impact that Bush had in 2004.

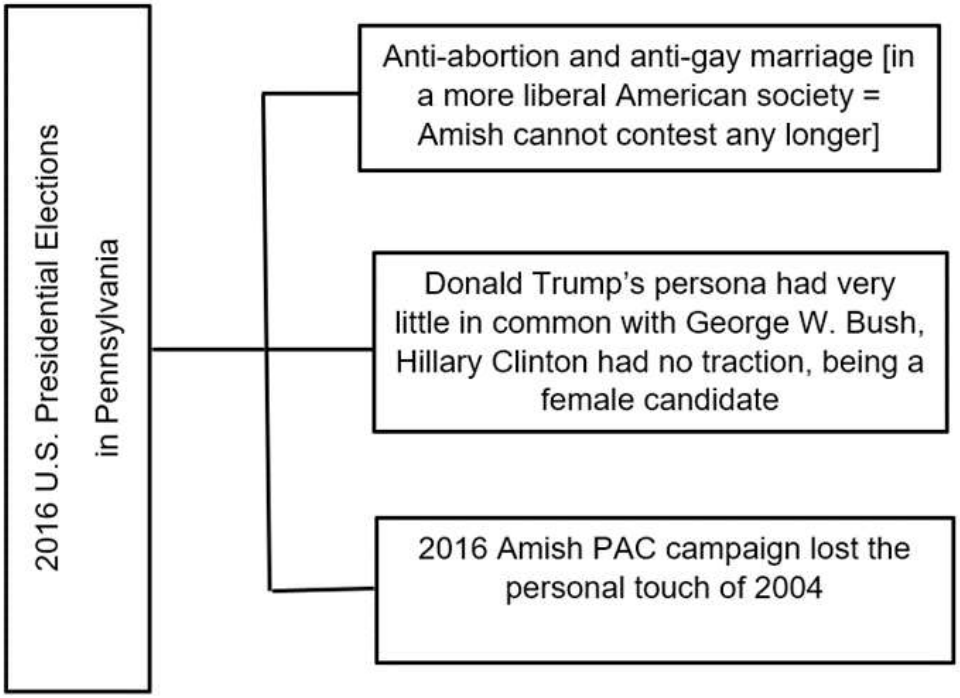

Figure 5.2 2016 presidential election context in Pennsylvania

One of the salient features used by the Amish PAC campaigners was billboards showing a picture of an Old Order Amish buggy on the back of which a sticker with an American flag said 'I voted'. Next to it Donald Trump's picture appeared with 'Vote Trump, register by Oct. 11'. Underneath was 'Hard Working, Pro-Life, Family Dedicated, Just Like YOU' (Nolt, 2019).

Both before the election of 2016 and after, in 2018, my Amish interviewees unanimously responded 'no' to the question 'Are you going to vote in November/have you voted at the last presidential election?' Hence, their unwillingness to vote remained intact despite the billboard advertisements. In further personal communication, Nolt

declared that in 2020, in Lancaster County (PA), ‘it is clear that there were door-to-door efforts to get Amish registered that was led by local (county-level) Republican Party volunteers’ (Nolt, 2021a). But at the time of this communication, there was no certainty about the involvement of the PAC in this operation (Nolt, 2021a). Nonetheless, I sensed more political engagement in Pennsylvania, where voting was ultimately left by the leadership to the Amish person’s own conscience. Their business interactions with ‘worldly’ people on the one hand, and their interactions with their Congress representatives on the other, have had a serious impact on their approach to national politics.

In Indiana, my Amish interviewees gave straight responses regarding national politics. A negative shake of the head was their response to the question of their political involvement (M.W., 2018; S.R., 2018). Indeed, Sheriff Rogers in Elkhart County was concerned by the Amish’s lack of engagement in national politics. He emphasised that people died to have freedom of religion and voting is one of the ‘fundamental foundations to keep our freedom’ (Rogers, 2018).

In 2019, Pennsylvania Governor Tom Wolf signed a bill into law (Pa.Act 77 of 2019) facilitating registered voters casting their ballot by mail without needing to provide an excuse. ‘These changes will make it easier for people to vote, participate in our democracy, actually to take care of the most fundamental responsibility of citizenship: voting’ said Wolf during the bill-signing ceremony (Governor of Pennsylvania, 2019). This new law was applicable to every election, primary, general or special.

This recent law has the potential to help Amish citizens from Pennsylvania to participate discreetly in the life of American democracy. Their gradual civic

assimilation, as detected by Kraybill and Kopko in 2004, might find a concrete realisation thanks to Act 77 of 2019.

It is not clear whether President Trump's historical and original gesture of inviting several Amishmen to the White House in December 2019 made any difference to Amish people's voting intentions (Miller, 2019). The *Washington Times* reported that 'the Amish businessmen credit Mr Trump with fostering a robust economy, protecting religious freedom and adhering to conservative values' (Miller, 2019). Travis Kellar, another journalist, declared that the Amishmen invited to the White House came from Ohio, two from Indiana and two from Pennsylvania (Kellar, 2019). Those three chosen states count the largest Amish population; therefore, they were key potential voters (Young Center, 2020 -see Appendix 7). According to Nolt and Kopko's 'ninety percent of [registered] Amish are registered Republican' (2018; Jantsch, 2019).

However, would other conservative Amish feel uncomfortable or more likely to understand this move as a public relations manoeuvre from the White House advisers? Additional correspondence with Steven Nolt about the study he led with Kyle Kopko on the 2020 U.S. presidential election revealed in their initial data that in Lancaster County, 'Amish voter registration and voter turnout increased' in comparison to 2016. Furthermore 'it was higher even than in 2004' (Kopko and Kraybill, 2007; Nolt, 2021b). Looking at the numbers in Holmes County (OH), they found a small increase. However, in Indiana their statistics displayed little participation, which is similar to 2016. The results in Wisconsin and Michigan were like those in Indiana (Nolt, 2021b).

Through conversations I had with American citizens who live in proximity to Amish groups, for example in Ohio, I observed an understanding of the Amish's established

practice of voting locally, especially when their interests are involved. Judge Rinfret said:

> they won't vote in everything (…) they'll vote against road levies, against school levies, (…) they'll vote for issues if it affects them. They won't vote in a presidential election (Rinfret, 2016).

Rinfret's comment is reinforced by the low increase in voting for the 2020 presidential election that Nolt and Kopko's study shows (2021). Conversely in Indiana, interviews revealed disengagement even from local politics. Commissioner Mike Yoder confirmed: 'I do not see them becoming more engaged in politics locally' (Yoder, 2018). Although Yoder does not talk about presidential elections, his statement is paralleled by the 2020 presidential election statistics provided by Nolt and Kopko (2021).

Regarding the Amish's lack of participation in voting in Indiana, there is an important legal element that has to be taken into account. Erin Ann Szulewski points to the 2005 Indiana law that requires voters to present photo ID at polling stations. She also explains that voters who do not have photo ID can cast a provisional ballot on election day, but have to validate their vote by going to 'the county election office within ten days following the election to confirm that the exemption applied to them (…); the other option is to vote by absentee ballot' (Szulewski, 2014: 1, 124). In other words, the Indiana legislation hampers the Amish population from voting easily. Not having photo ID (in compliance with Amish beliefs) hinders the ability to cast a ballot. Szulewski analyses the constitutionality of the 2005 Indiana law. Summarising *Crawford v. Marion County Election Board* 553 U.S. 181 (2008), which went to the U.S. Supreme Court, she reports that the Election Board won on the grounds of modernising the election

process, preventing fraud and the fact that ‘absentee ballots are not subject to the photo ID requirement of the law’ (Szulewski, 2014: 125–6). Therefore, the burden on Amish citizens – that is, time and extra travelling expenses going to the county election office to validate their exemption – was not considered. Szulewski also emphasises that validating provisional ballots and the actual counting proved to be a challenge. The example of ‘Indiana’s 2008 primary election showed that of the 2771 provisional ballots that were cast, only 752 ended up being counted’ (2014: 126). As of 2021, the Indiana photo ID Public law 109-2005 is still the current legal position (Government of Indiana, 2021).

In this brief overview of the right or duty to vote, a reminder is needed. The Amish are not one uniform entity. Amish are a cluster of different affiliations with different degrees of remoteness from ‘the world’ and disparities from state to state. The Amish’s hesitancy to vote can be attributed to biblical beliefs associated with a long tradition of separateness from the world to protect themselves from government intrusion into their communities (Kraybill, 2001: 160). It is possible that their progressive assimilation into American society through their own businesses, on which their livelihoods depend, opens a Pandora’s box (see Chapter 7 of this thesis). Increasingly, more Amish are no longer working the land and have branched out into manufacturing businesses like making furniture (Kraybill, Johnson-Weiner and Nolt, 2013: 298). This has the direct result of their facing increasing regulations imposed by government on their businesses, which puts them regularly in personal contact with the authorities (Kraybill *et al.*, 2013: 51, 192). Their understanding of how laws clash with their beliefs pushes them to have more interactions with law-makers to obtain exemptions (see the discussion of the Old Order Amish Steering Committee in Section 4.2.4). In the next

chapter this aspect is meticulously studied. Consequently, a question is raised about striking a balance between the compatibility of remaining separate when so much of their economy is tied up with 'the world'. The current and following generations may have to revise their *Ordnung(s)* vis-à-vis voting. Their forefathers' persecution in Europe should be a reminder that although peace and freedom of religion are part of their daily life in America, they should not be taken for granted. It might be time to reassess the tension between the necessity of being connected to the world and the duty to vote and the necessity of respecting biblical injunctions. Their *1001 Questions & Answers* book says: 'who ordained that there should be a secular government? God (Rom. 13.1)' (2001: 156).

This thorny subject brings to the fore another key issue. Registration is required to cast a ballot. Consequently, people who register are directly connected with the authorities and can be called to do jury service. For Amish people this connection is a threat to their separatism and their beliefs. This problem is considered in the next section.

5.4 Citizens' Responsibility to do Jury Service and the Amish

American citizens, eighteen years of age or older, who are registered to vote or hold a driving licence, automatically become potential candidates to be summoned by the courts to perform jury duty in civil or criminal cases (United States Courts, n.d.). Most states have a same approach. However, for example, New York State selects citizens by adding 'lists of persons to whom State income tax forms have been mailed' (New York Courts.gov, 1987).

Old Order Amish usually do not register to vote and do not hold a driving licence unless they acquired one during their *Rumspringa* (Section 1.1.1). Registering to vote and obtaining a driving licence are both voluntary acts.

However, the importance of the role of a jury in the American judicial system is defined by government as follows:

> Jurors perform a vital role in the American system of justice. The protection of our rights and liberties is largely achieved through the teamwork of judge and jury who, working together in a common effort, put into practice the principles of our great heritage of freedom (Judicial Conference of the United States, 2012: 1).

Once again, American citizenship brings responsibilities. MaryAnn Schlegel-Ruegger explains that historically, 'the prohibition against jury service by members of the church appears only after the migration to North America' (Schlegel-Ruegger, 1991: 819). The source of her assertion is in the 1809 Pennsylvania Discipline, which stipulates 'it is decided that jury service shall not be tolerated or permitted' (cited in Schlegel-Ruegger, 1991: 819 n.81). She adds that 'the civil law countries of Switzerland, Germany, and France did not use public juries in criminal or civil cases in the eighteenth century' (1991: 819 n.82).

Kathleen Conway contends that 'serving on juries is forbidden to the Amish', for two main reasons (1967: 64). First, the Amish do not wish to register to vote because if they appear on the voters' list, they could be summoned by the courts to act as jurors, which is a circular argument. Second, the Amish refuse to swear oaths. This is based on several Bible verses; for example, in Matthew 5:33–34 Jesus said 'swear not at all'

(*1001 Questions & Answers,* 2001: 151). Therefore, Amish people fall into the category of an ascetic sect, as defined by Troeltsch, as they distance themselves from the world, along with 'refus[ing] to use the law, to swear in a court of justice, (…) take part in war' (Troeltsch, 1931: 332). It hampers them from carrying out their American citizenship responsibilities fully. Admittedly, American law provides a possibility to 'affirm' instead of 'swearing an oath' (Office of the Federal Register 2011). Nonetheless, most Amish individuals are reluctant to be involved with government matters. They do not want to 'stand[ing] in judgment over other human beings' (Bontrager; 2003: 248, Kraybill *et al*. 2010: 152).

The Jury Duty 101 website (n.d.) provides data on the U.S. jury duty laws. I extracted from their records information on the four states scrutinised for this research. Table 5.2 summarises the paragraphs entitled 'other jury duty excuses' (see over).

STATES	LAWS
Indiana	(…) ‘you can always submit a jury duty excuse letter with your response to summons, and ask to be excused. It will be at the discretion of the court that summoned you whether to accept or deny your excuse.’ Ind. Code Ann. §§ 34-28-4-1, 35-44-3-11
New York	‘No statewide automatic exemptions. Provisions vary by county and are at the discretion of each summoning court.' (…) ‘you can always submit a jury duty excuse letter with your response to summons, and ask to be excused. It will be at the discretion of the court that summoned you whether to accept or deny your excuse.’ N. Y. Jud. Ct. Acts Law § 519
Ohio	‘If the prospective juror is a cloistered member of a religious organization or a member of an Amish sect, they may request to be excused.’ Ohio Rev. Code Ann. §§ 2313.19, 2313.99
Pennsylvania	(…) ‘you can always submit a jury duty excuse letter with your response to summons, and ask to be excused. It will be at the discretion of the court that summoned you whether to accept or deny your excuse.’ 42 Pa. Cons. Stat. Ann. § 4563; 18 Pa. Cons. Stat. Ann. § 4957

Table 5.2 Indiana, New York, Ohio and Pennsylvania States, ‘Other jury duty excuses’

Analysis of Table 5.2 reveals that Amish people, like any other American citizen, can be summoned by the courts. They have the possibility of submitting a written request to be excused by the courts, but it is at the discretion of the latter to accept or refuse.

Ohio is the only state offering another option for Amish groups. Studying Ohio records revealed that Representative Tim Grendell (R-Chester Township), while visiting the Amish community, discovered their dilemma of following their beliefs and the practice of not engaging with government or jury duty. Consequently, he presented a comprehensive bill (Bill 71) claiming an exemption on their behalf (Anthony, 2005: [n.p.]).

Regarding the jury service question, Judge Robert Rinfret of Holmes County, OH, stated: ‘we send out notices, everything’s random, alright? You have to be a registered voter. They do vote, they won’t vote in everything’ (Rinfret, 2016). This statement confirmed that only registered voters are summoned to perform jury duty. When I interviewed Judge Thomas Lee in the same county, he explained that the court sends forms to every potential juror including the question: ‘Do you request to be excused or postponed from jury service? If yes, state the reason for the request’ (Lee, 2016). This form simplifies exchanges between the courts and Amish people.

The Amish voice has been heard in Ohio, because an Amish faction participates in civic duties like voting, and because the state’s Constitution says: ‘it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship’ (1851). This proclamation coincides with the First Amendment to the U.S. Constitution upholding freedom of religion. Michael Hatfield explains the significance for the Amish:

> For these Anabaptists [Amish], objection to jury service is essential to the exercise of their faith. What remains to be explored is whether the United States Constitution recognizes a free exercise claim to be exempted from jury service (2009: 296).

The U.S. Supreme Court has developed a specific dogma to protect free exercise of religion through the interpretation of landmark cases, asserts Hatfield (2009). Therefore, Anabaptists have 'a claim to constitutional protection against compelled participation in a jury, as do others who object to jury service on religious grounds' (Hatfield, 2009: 297). The First Amendment provides enough flexibility in its interpretation to allow jury exemption on religious grounds. It differs from Hatfield's conclusion, which says that 'so long as multiple non-religious exemptions to jury service are provided, the Constitution requires an exemption for those who object to jury service on religious grounds' (2009: 312). Since 2020 the appointment of Associate Justice Amy Coney Barrett by President Donald Trump has tipped the balance of the U.S. Supreme Court towards greater conservativism (Taylor, 2021: [n.p.]). Six conservative Justices against three liberals may have an impact on future decisions regarding religious rights and protection. That should play directly or indirectly in favour of the Amish. Without counting on U.S. Supreme Court rulings, the indication given by my interviewees across the four states examined showed a genuine awareness of Amish citizens' needs in terms of jury service. For example, in Indiana, attorney Adam Miller said:

> their belief is that they cannot take an oath, that they cannot judge someone else, our courts know that and so, as opposed to have them come up to our

> court and go through the whole thing, we pretty much just give exemption (Miller, 2018).

In Ohio, Judge Lee declared: ‘I think that’s perfectly acceptable, that’s a tenet of their religious faith, that the scriptural prohibitions on judging would prevent them from [jury duty], I certainly respect that’ (Lee, 2016).

In Pennsylvania, an Amish business owner had no knowledge of the exemption granted to the Amish in Ohio:

> If we are called to serve, we have to go, it’s the law. It is not like that in Pennsylvania and I have never heard of that. Here we serve on a jury if we have to, and I know several Amish in the neighbourhood who have served on a jury (E.G., 2016).

Conversely, another Amish lay leader said:

> we do not believe in serving on jury duty and we have worked out something with our County, a County Judge, that we can be exempt from jury duty. We have to send in a letter, you know, say as to? Why and they will accept that we don’t have to serve on jury duty but you can’t just go in and say I don’t want to serve. You have to have reasons for it and send in a letter and say why you don’t serve (B.J., 2016).

This interview extract shows the negotiation model in action at county level, because my Amish interviewee uses the expression ‘we have worked out something’. Nonetheless, Amish individuals, like any other citizens who do not want to serve as

jurors, must follow the waiver procedure instituted by the law. Therefore, I suggest that the constitutionalism model fits this case better.

In New York State, attorney Steven Ballan said: ‘we already know the Amish are gonna say “no I’m not, I can’t pass judgment” so why make them come down here [at the Court House]’ (Ballan, 2018). It appears that when the Amish settlements have been established in a geographical area for a certain length of time, the authorities understand the tenets of their faith and respect their beliefs.

My conclusion on the responsibility to do jury service is that the Founders have given enough space to protect religious sects without compromising the ‘non-establishment’ clause of the First Amendment. The four separate state Constitutions examined are in congruence with the First Amendment, although the wording differs. Therefore, regarding the jury service responsibility, my interview data intertwined with legal texts (Table 5.2) demonstrated that my constitutionalism model is valid.

5.5 Photo ID: Access Rights and the Amish

The unprecedented terrorist attacks of 11 September 2001 on mainland American territory caused major changes in U.S. policy, including homeland security. In the aftermath of the shock and massive casualties, new regulations were put into place (Angerer, 2018). In 2005, to tighten security, the House of Representatives and the Senate passed the Real ID Act of 2005, which was signed into law by President George W. Bush on 11 May 2005 (National Conference of State Legislatures, NCSL, n.d.).

Title II of this Act gives details about increasing security through issuing new identification documents, like driving licences or other personal identification. The

purpose of these new official ID papers is to allow permit or control access to 'Federal facilities, boarding federally regulated commercial aircrafts, entering nuclear power plants, and any other purposes that the Secretary shall determine' (Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005: 312). In Section 202 of this Act, Homeland Security delineates what a state must require to issue a Real ID: 'the person's full legal name, date of birth, gender, driver's license or identification card number, a digital photograph of the person, address of principal residence, signature, physical security features' (Emergency Supplemental Appropriations Act, 2005: 312). Following the signature of this law, several states or individuals challenged it on different grounds. For instance, in 2008 Michael Chertoff, Secretary of Homeland Security, addressed some of the comments regarding 'Constitutional Concerns (…), right to travel freely [between states], Nation [safety] and digital photograph[s]' (Chertoff, 2008).

First, the question about the violation of the Tenth Amendment to the U.S. Constitution – which gives states their legitimacy and independence against federal government intrusion – was answered. In the process of elaborating the rules, states had been duly consulted and involved. Moreover, 'where possible, [they] drafted these rules in such a way to maximize State discretion' (Chertoff, 2008: 5284).

Second, the answer about a question on transportation clarified that only 'boarding Federally-regulated commercial aircraft[s]' (Chertoff, 2008: 5284) would require the Real ID card or a passport, keeping intact the implicit general constitutional right to travel. This specific demand does not apply directly to conservative Amish, as confirmed by an Amish leader. Their *Ordnung(s)* does not allow them to travel by aeroplane except in 'a very dire emergency' (B.J., 2016). Regarding railway travel, a

clerk from Amtrak declared that the Amish can travel, providing they produce two photo-less IDs: ‘a birth certificate and a Social Security card’ (Amtrak, 2022).

Third, another example challenging the Real ID rule is about centralisation of personal data, which ‘would create a greater security risk’ in terms of counterfeit ID documents (Chertoff, 2008: 5285). Chertoff argues that ‘the final rule makes it less likely that a terrorist could circumvent watch-list screening processes and security procedures (as upgraded or developed post-9/11) and board a commercial airplane’ (2008: 5285).

Fourth, regarding digital photographs, Chertoff defends their importance as a

> deterrent to individuals attempting to present fraudulent documents. [In the same section] several commenters wrote that requiring photographs could burden the free exercise of religion for groups, such as Amish Christians (2008: 5301).

I chose those examples because they have the potential to encroach on the Amish way of life and beliefs. There is a clash between the First Amendment, giving freedom of religion on the one hand, and the Real ID Act, demanding a digital photograph on the other. Photographs are an anathema to most Amish people. Their belief is founded on Exodus 20:4: ‘Thou shalt not make unto thee any graven image’ (King James Version [KJV]). The Amish consider face-on photographs as prideful and this does not fit with the self-denial of *Gelassenheit* (Kraybill *et al*., 2013: 104).

Notwithstanding the Tenth Amendment to the U.S. Constitution, individual states facing federal requirements for national security reasons had to come to terms with what is right to protect their citizens. In 2020 all American states complied with the Real ID Act. After fifteen years of work, the American Department of Homeland Security planned to

enforce the law in 2020. However, because of the Covid-19 pandemic, the enforcement date was postponed until 1 October 2021. At the date of writing, it has been deferred until May 2023 (U.S. Department of Homeland Security, 2022: [n.p.]). As the Tenth Amendment to the Constitution stands, individual state governments are still able to issue non-compliant identification documents. Acting Secretary of Homeland Security Kevin McAleenan confirmed this possibility, given that these cards clearly state that they are non-compliant with the Real ID Act and are a different colour from the compliant Real ID (McAleenan, 2019: 55017). One Amish leader confirmed that Indiana, Ohio, Pennsylvania, and Kentucky can provide non-photo ID (B.J., 2018). That solves the problem for some Amish communities because Amish individuals do not normally travel by aeroplane, barring rare exceptions in more progressive Amish groups (Kraybill *et al*., 2018: 366).

In 2012, the Congressional Research Service issued a report called 'Legal Analysis of Religious Exemptions for Photo Identification Requirements'. What is striking in this document is how Legislative attorney Cynthia Brougher was aware of the Amish sect and their objection to having their photograph taken. She declared: 'For instance, some Christians, including some Amish, believe photographs violate the Ten Commandments' (Brougher, 2012: 3). She also noted that 'Members of other religious groups [Muslims, as she developed later in her report] may believe that members must wear head coverings or veils for religious reasons' (2012: 3). Brougher's report highlights how the American mega-state takes into consideration the beliefs/practices of minorities like the Amish who represent 0.1% of the American population (Appendix 7), and Muslims who comprise 1.1% (Mohamed, 2018).

The post-9/11 photo requirement for identification purposes is in tension with the Free Exercise Clause of the First Amendment. Brougher asserts that 'under the Free Exercise Clause, individuals are guaranteed the right to practice their religious beliefs without government interference' (2012: 1). However, as previously stated, federal law requiring photo ID is infringing on the beliefs of religious groups like the conservative Amish.

The digital photograph aspect of the Real ID Act becomes a challenge when Amish people have to access federal government buildings. This happened a number of times in the twentieth century when Amish leaders visited Congressional premises to plead with government for high school exemption (Byler, 2016:21; Ferrara, 2003: 133). To my surprise, one Amish man, who is part of the Old Order Amish Steering Committee, had answers to my questions about accessing federal buildings and crossing borders with photo-less ID:

> We [Old Order Amish Steering Committee] have an agreement with Homeland Security so that all we need [e.g., to cross the borders to Canada] is a birth certificate and a copy of our 4029 exemption from Social Security (see Appendix 8) (…) because we're much opposed to photo IDs. So, we met with the officials in Washington, congressman and actually with the Immigration Department, Homeland Security and we worked that out (B.J., 2018).

In some ways, we can consider that the negotiation model and the constitutionalism model interrelate to form the hybrid model in this instance, because the Steering Committee was able to defend the Amish religious prohibition on being photographed in order to gain an exemption. However, they 'used their citizen's tools'; that is, they

talked to a congressman, who is a spokesperson at state/federal level, and also the government agency that is in charge of immigration and homeland security. Thus, the constitutionalism model is appropriate in this case too.

Hitherto, several states with large Amish populations have been proactive in helping them to legally obtain photo-less ID. For example, in Indiana as early as 2015, Representative Bob Morris penned a Bill for this purpose. Eventually a law was issued (Ind. Code 9art.24(16.5) (2019). New technologies, usually loathed by traditional Amish, are providing them with photo-less ID. In a radio interview, Morris explained that the new technology 'is more like an X-ray than a photo. The BMV [Bureau of Motor Vehicles] stores the image but does not include it on the card' (Morris, 2015). In Indiana, one of my Amish respondents was extremely well informed about this technology:

> ok, now we have the option of having the card exactly the same, (…) what happens is they take your photo, and then they destroy the photo and have your bone structure it looks exactly the same, the card looks exactly like it (M.W., 2018).

Surprisingly, this man did not seem to consider this new technology for obtaining a photo (a 'graven image') to be in contradiction with the Bible verse from Exodus 20:4 or his local *Ordnung*. However, he produced his out-of-date photo-less ID, saying he did not need a new one because he did not intend to travel outside the borders. I tactfully challenged him about the 'Amish system' of getting around photo ID laws by having their 'English' friends or neighbours buy hunting guns for them. I asked if it was

not a falsehood and it made him think for a moment. He admitted that it was not right to do so and thought that using a photo-less ID was probably a better option.

In Indiana, I gently confronted another young Amish business owner with the same questions. His answer was passionate and straightforward:

> some people would say, oh that's a graven image but I disagree. In my opinion we need to pick better fights if we're going to fight a photo on our ID; I have a hard time in imagining anybody being proud of their picture on their ID card and so let's just conform to the laws. Making a fuss about having your picture taken for you ID card I think is *RIDICULOUS***.** If I really have a conviction about my picture on my ID card, a conviction would be then not to buy a gun. In my opinion, lying, there's no question whether that's right and wrong, so I'm willing to lie because I have a conviction against my photo? *NO* that's not scriptural at all (H.P., 2018).

This Amish man, in his early thirties, was convincingly debating the fact that a photo taken to be used on an official document had nothing to do with vanity or pride. He pitted a verse prohibiting a 'graven image' (Exodus 20:4) against another: 'Ye shall not steal, neither deal falsely, neither lie one to another' (Leviticus 19:11). He conveyed the idea that taking a photo was a necessity in some cases and objected that a lie was not biblical. He owned a photo ID.

In Pennsylvania, an Amish leader expanded on the way Amish buy firearms with no need for photo ID: 'to buy firearms, it's a federal law [that] you need a photo ID (…) [but] a homeowner sells out and he has a few guns. At a lot of these auctions, you can still go to it and buy a gun' (B.J. 2018). Charles Hurst and David McConnell emphasise

the recreational aspect of hunting for Amishmen in Ohio (2010: 80, 99, 110). Kraybill *et al.* add the dimension of hunting for food (2018: 110). When I visited Ohio with my husband in 2018, a young Amish man and his wife invited us for a 'cook-out' to share deer burgers with us. He showed us the crossbows with which he hunted. In other words, Amish hunters do not necessarily need firearms.

Asking a favour from a friend is not a crime in itself, but using their identity to purchase a firearm could be litigious. Pride does not come into the equation when a photograph is taken for selfless and lawful purposes. A photo ID could be considered as a means to abide by the law.

The non-Amish American citizens I interviewed on the photo ID issue were very conscious of their Amish counterparts' beliefs. Some of them had a lenient disposition towards the Amish. For instance, Karen Johnson-Weiner, who lives in a region where most Amish belong to the very conservative Schwartzentrubers, said:

> banks require photo ID to start bank accounts and that's become a burden for the most conservative groups, because there's not a widely accessible easily substitutional option (…) our world changes and it gets more complicated for the Amish (Johnson-Weiner, 2018).

Amish people do hold bank accounts: a banker from Adams County in Indiana stated that 'they're probably 50% of our business' (Buckingham, 2018). He elaborated on their mutual need for a healthy bank/client relationship. Also in Indiana, Prosecutor Vicky Becker, who is mostly surrounded by more progressive Amish who work in factories, said:

> If you want to participate in the worldly activities that require an ID, you need to get an ID! But the Amish are permitted a photo-exempt ID here in Indiana. But there are certain services that they are not able to access if they don't have a photo ID (Becker, 2018).

She explained some of the alternative means law enforcement possesses in Indiana to deal with citizens who do not have photo ID.

The overall reaction of my Amish interviewees was to refuse the photo ID because of their biblical beliefs and because of their respective *Ordnungs*. Disparities in Amish districts are evident. Also, the younger generation had less compunction against photos taken for national security reasons (H.P., 2018; R.B., 2018). I discovered very well-informed Amish American citizens who had a real grasp of the law when it interferes with their beliefs and the capacity to interact with the state to steadily resolve their difficulties (B.J., 2018; B.C., 2018). When the Amish face a dilemma regarding government issues, they can refer to *1001 Questions & Answers*:

> what is our duty to the government? – It is threefold: (1) Pray for them (1 Tim. 2:2). (2) Obey them (Rom. 13:1). (3) Pay taxes (Rom. 13:6–7); But what if the government asks us to do something that the Bible forbids? – In that case our first loyalty must always be to God (Acts 4:19), (2001: 56–7).

Thus, Romans 13:1 encourages Christians to obey the authorities. Therefore, Amish groups should, in theory, comply with the photo ID law. However, Exodus 20:4, 'Thou shalt not make unto thee any graven image', combined with Acts 4:19 definitely overrules Romans 13, as allegiance has to be first to God rather than government.

This reasoning is permissible in the United States, where the First Amendment gives space for religious beliefs and protects religious groups.

This section has covered the impact on the Amish religious minority of a new high-security federal law related to photo ID. Balancing government interests in equipping all American citizens with photo IDs against the Amish's biblical beliefs, by virtue of the First Amendment the Amish gain from the religious freedom provided by the Founders. *Per contra*, when certain religious practices challenge government, criminal laws overrule the First Amendment. The following section focuses on an uncommon court case related to Amish individuals who deviated from Amish orthodoxy.

5.6 Criminality and the Amish

So far, this chapter dedicated to Amish American citizenship has shown tensions between the Amish faith and American citizenship, and how the First Amendment has regularly backed Amish believers. Although this amendment to the American Constitution has safeguarded and brought accommodations into some Amish legal disagreements, Amish American citizens are under the rule of law when it comes to criminality. The peaceful Amish sect has occasionally made the front page of newspapers for criminal reasons. I chose to consider the Bergholz (OH) case, known as the 'beard-cutting case', that started in 2011 to demonstrate that Amish individuals are full American citizens when it comes to the rule of law (Duke and Welch, 2011: [n.p.]).

5.6.1 Background to the Bergholz Case

The Bergholz Amish group was founded in 1995 after they split from another Amish group (Kraybill, 2014: xv). According to its new leader, Samuel Mullet, the group to

which they had belonged was lax in its application of Amish rules of faith and traditions. From 2006 until 2010 internal disputes wound up in arbitrary shunning and excommunication of a few families (see Section 4.2.3). In the wider circle of Amish settlements in this region, disagreements arose over the acceptance of the Bergholz excommunicated families. The rule on strict shunning in a '*Gmay*, a Pennsylvannia Dutch shortcut for *Gemeinde* (church community)', is that when people are excommunicated because of sin, they have to go back to their former community and confess their sins to the bishop, before being accepted into a new Amish church (Kraybill, 2014: 23). In this case, the excommunicated would not go back to Bishop Mullet to confess sins they were convinced they had not committed (2014: 33).

Several meetings took place between Bishop Mullet and an investigation committee composed of seven Amish bishops from the area. In 2006, an extraordinary meeting, gathering three hundred bishops and preachers, had the delicate task of deciding how to proceed regarding the excommunications pronounced by Bishop Mullet. After an ultimate meeting with Bishop Mullet and his refusal to readmit those he had excommunicated (…) the bishops voted unanimously to reverse Mullet's excommunications and to permit the former Bergholz members into new Amish districts' (*United States of America vs. Samuel Mullet, Sr.*, (2018: 9369–70).

5.6.2 'Settling Accounts'

According to the U.S. Department of Justice:

> these attacks involved invading the victims' homes, often late at night, or luring the victims to a private location, then forcibly chopping off their beard and head hair with horse shears, scissors, and hair clippers (…) During the attacks, many

> of the victims were confined in their home, dragged around and held down, or otherwise forcibly restrained (…) Some were left bleeding and bruised (*Samuel Mullet, Sr., Lester M. Miller, and Kathryn Miller, Petitioners v. United States of America*, (2016).

In Amish religious tradition, women keep their hair long and hide it under a devotional covering, as the Apostle Paul explains in 1 Corinthians 11:2–16 (*1001 Questions & Answers,* 2001: 59–63). For Amish men, wearing a beard is also scriptural, as 2 Samuel 10:4–5 confirms: 'to have one's beard cut off was humiliation', a form of punishment (Isaiah 7:20; *1001 Questions & Answers,* 2001: 137). With those fundamental Amish beliefs established, the Bergholz case can be better understood. The very fact that Amish people have internalised those biblical rules throughout their life means that when some Bergholz members decided to cut the beards and hair of Amish from neighbouring communities, they knew the devastating effect their act would have.

To analyse the case, I will use the triangulation of three key players who were called by the Justice Department to work on it. First, Judge Dan Aaron Polster from Ohio explained: 'I was the judge to whom the criminal case was assigned so whenever it was filed, cases are assigned by random draw and I drew it and so I presided over the trial' (Polster, 2017). Second, Dean Carro, attorney of one of the defendants, said: 'I was on a list (…) called the Criminal Justice Act list (…) we agree to take cases at a reduced rate' (Carro, 2016). The third player is Donald Kraybill, who said in his seminal book on the case: 'I was contracted by the US Department of Justice to assist the prosecutors in understanding Amish culture (…) and served as an expert witness at the three-week federal trial' (2014: xi–xii).

This case ran between 2011, when the first arrests took place, until 2018, when Bishop Mullet was denied an 'evidentiary hearing' review (*Samuel Mullet, Sr. vs. United States of America*, (2018)) after he claimed he was not assisted effectively by his counsel. An evidentiary hearing can be defined as a 'preliminary hearing'. This proceeding happens after a formal criminal complaint has been issued by a prosecutor' (The Law Office of Barney B. Gibbs, n.d.). Furthermore, Mullet's legal team petitioned the U.S. Supreme Court to obtain a review of the case, or in judicial terms 'to ask it to grant a *writ of certiorari*' (www.techlawjournal.com, n.d.; *Samuel Mullet, Sr., et al. v. United States of America*, (2016)). However, during my interview with Judge Polster, he declared that the Supreme Court returned the petition with '*certiorari* denied' (Polster, 2018, *Samuel Mullet Sr. et al*, 2017). In other words, in 2016 and 2018, Samuel Mullet's attempts to obtain a revision of his case failed.

Simply put, Bishop Mullet, despite his strict Amish self-definition, tried all possible legal avenues to distance himself from the crimes committed by several members of his community whom he strongly supported in their enterprise. This criminal case has to be placed in its context, which is expounded in the next sub-section.

5.6.3 Context of the Case

The Bergholz group's violent behaviour, turning against their excommunicated members, was unheard of within the wider Amish community. The event generated a chain reaction. Amish people who were attacked, despite their beliefs of not engaging in litigation, needed the help of the law. Four attacks took place between 6 September and 9 November 2011.

During our interview, Judge Polster explained:

> they don't want to get involved with law enforcement and in fact, it was difficult for many of the victims to contact law enforcement because they really did not want to bring law enforcement into their business and they were reluctant to do it and they only did so because of the real trauma that they suffered and because the attacks continued (Polster, 2017).

Yet when I interviewed Dean Carro, he posited that in his defence of Lester Miller, he took the line set by his client:

> the defence was, we were not acting out of hate, we were acting out of love (…) so the effort in the cutting of the beard and the hair was to get the parents to realise that they were living a hypocritical life, they wanted them back on the [right Amish] path (Carro, 2016).

However, these violent assaults, motivated by religious antagonism, resulted in the arrest of sixteen people who went on to serve prison sentences of various lengths.

The 2009 Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, and the First Amendment to the U.S. Constitution were brought together to judge and sentence this atypical course of action for the Amish. According to Judge Polster there was no conflict between the two:

> the defendants were not prosecuted because of their beliefs, they were prosecuted because they committed acts of violence and there is no protection, First Amendment or otherwise, in our country for committing an act of violence against someone else (Polster, 2017).

In 2009 President Barack Obama signed into law the Shepard-Byrd Act. He declared that this Act would reinforce

> the protections against crimes based on colour of your skin, the faith in your heart, or the place of your birth. We finally add federal protections against crimes based on gender, disability, gender identity, or sexual orientation (Obama, 2009).

The 2009 Shepard-Byrd Act gave a judicial tool to lawyers. However, there was a debate over the use of this Act in the Bergholz case. Judge Polster explained: 'I was the first judge in the country to try a case under this new law so I had no real guidance on crafting that key jury instruction' (Polster, 2017). Therefore, there was an appeal and 'the jury instruction that I crafted was reversed' (Polster, 2017). According to him, the complexity of the application of this law was for the government to prove the *motive of the crime* (in this case, a hate crime on account of religion) as opposed to judging the *actions* of the perpetrators (Polster, 2017).

This case places the Amish right at the centre of the American nation as Amish American citizens who are under the rule of law and who use the law to protect their rights. The Amish criminals could not claim the First Amendment to defend their acts for reasons explained above: 'the defendants were not prosecuted because of their beliefs (…) *[but] because they committed acts of violence*' (Polster, 2017, my emphasis). My constitutionalism model is supported by what Judge Polster said in his sentencing:

> Each and every one of you did more than terrorise, traumatise, disfigure your victims; you trampled on the Constitution, and particularly the First Amendment,

which guarantees each and every American religious freedom (Kraybill, 2014: 130).

Through interviewing Judge Polster and attorney Carro I had an insight into the Bergholz criminal case that allowed me to grasp the complexity of the American federal judicial system. Its constant motion materialised in the integration of the new 2009 Shepard-Byrd Act in the case, causing some interpretation difficulties, and the First Amendment that had no leverage because of the criminal act made me appreciate the strength of the American Constitution and its judicial branch.

5.7 Summary

This chapter has considered the extent to which the American government accommodates the Amish minority in a selection of legal and political areas. I considered Amish American citizenship, then studied a citizen's responsibility to vote and do jury service. After that, I scrutinised the photo ID dilemma and concluded with a discussion of criminal law and the Amish. I contend that the First Amendment is the pillar of freedom of religion for this minority. Nonetheless, the Constitution is a leveller regarding practising one's religion, or having none, in terms of the criminal law. This chapter has tested the negotiation model, the constitutional model, and the hybrid model. When the Amish talk about 'working something out' (B.J., 2016) or 'negotiate' with American authorities, it translates into lobbying Congress to obtain exemptions. In other words, they use the First Amendment to the Constitution; hence, the constitutionalism model is in operation.

To make my case stronger, in the next chapter I study three legal cases involving Amish communities who at different times in the twentieth and twenty-first centuries wrestled with the American legal system to obtain exemptions from the general law.

6. LEGAL TENSIONS BETWEEN THE U.S. GOVERNMENT AND THE AMISH: THREE CASE STUDIES OF THE MODELS IN OPERATION

6.1 Introduction

Since the beginning of the twentieth century, the American government, at federal and state levels, has gradually increased rules and regulations touching on different areas of life, creating tensions between the U.S. government and the Amish religious minority. This chapter addresses specifically the laws on Social Security (Section 6.2), education (Section 6.3) and child labour (Section 6.4), including two judicial cases and one specific piece of legislation involving Amish groups. Section 6.5 emphasises my constitutional model argument by using a third court case pitting an environmental agency against an Amish group. It reaffirms the authority of the U.S. Constitution, operating with the legislative and judicial branches, concluding that they are sufficient mechanisms to protect all American citizens. Throughout the chapter, the analysis is conducted by using and testing the negotiation, constitutionalism and hybrid models across different legal cases.

6.2 The American Welfare State Contrasted with Amish Community Care

A short introduction to the origins of American welfare sets the background to this section. A government précis of U.S. welfare history relates that ‘up to 1870, more than half the Nation’s adult workers were farmers’ (Social Security Administration, n.d.: 1). American farmers had the same concerns as, and a similar lifestyle to, their Amish neighbours.

The American system of social welfare originated after the 1929 Great Depression when the level of unemployment and poverty had to be addressed. Part of

Franklin Delano Roosevelt's New Deal programme addressed social problems. His social welfare plan gave the underprivileged access to 'better education or healthcare for the masses' (Dautrich and Yalof, 2012: 510). Michael Katz states that a 'welfare state is how a society insures against the risks inherent in human life – unemployment, poverty, sickness, and old age' (2008 [n.p.]). His explanation is in sharp contrast with Steven Nolt's assertion that the Amish care for their own from 'the cradle to the grave' (Nolt, 2003: 318). These two concepts represent antithetical attitudes to social welfare and they triggered a clash between the state and the Amish. The resolution of this conflict took several years and judicial intervention before it resulted in changes to the legislation.

6.2.2 The Social Security Exemption: Part 1

In 1935 the Social Security Act was signed into Law by President Roosevelt. His successors, Harry Truman, and Dwight Eisenhower, amended the 1935 Act. The 1954 Social Security law signed by Eisenhower brought another challenge to the Amish (Byler, 2016: 18). The Public Law 761 of 1954 included for the first-time self-employed farmers (68-STAT.:1055; 1087). It was signed into law by President Dwight Eisenhower on 1st September 1954 (Cohen, Ball, and Myers, 1954:16). John Byler, an Amish author, recollects that every time Congress voted in new laws regarding American social welfare, the Amish were troubled 'since it interfered with the Amish way of taking care of their own people' (2016:18). Peter Ferrara echoes Byler and explains that Amish society functions on their 'submission to God's will' and biblical principles, which bind them together while maintaining separation from 'the world' (2003: 128–9). Their *modus operandi*

encompasses all the needs of their members. Therefore, the Social Security programme infringed on their own micro-society social welfare.

During the 1960s, the government regularly amended/updated the Social Security system. President Lyndon Johnson signed into law Medicare and Medicaid schemes in 1965. Ferrara argues that these two programmes encroached seriously onto the lives of Amish people by demanding taxes for services they did not wish to use. He asserts that part of the Social Security programme, the 'Old-Age and Survivors Insurance Program, which pays cash benefits to retired workers (…) and Medicare pay[ing] benefits to cover hospital and doctor bills', disturbed the Amish community (2003: 129). Their elderly, disabled or sick members would naturally be looked after by their children, neighbours or the larger community (2003: 128–9). Social Security, including all its benefits, is contradictory to the Amish close-knit micro-society as demonstrated by Ferrara; consequently, these new laws caused frictions between the state and the Amish (2003: 128–9).

Because of the Social Security Act Amendments of 1954, the Amish started to work on Social Security exemptions as early as 1955, as Byler explains in his book *Amish Exemption from the Social Security* (2016). It contains a wealth of historical documents, including petitions signed by Amish bishops and leaders, letters penned by Amish men, and replies sent by Congressional Representatives. In 1955, Amish bishops petitioned U.S. Congress trying to obtain exemption from the Social Security law of 1954 (Byler, 2016: 21). The 1955 petition was signed by most Amish church leaders, but not all, although there are no records explaining why (Byler, 2016: 21). For the Amish in charge of their religious communities, the Social Security government scheme equated to a form of insurance. Their petition to the government emphasised

their Christian solidarity, standing on Matthew 25:34–40, Mark 14:7, 1 Timothy 5:8, Philippians 2:4 and Galatians 6:10 (Byler, 2016: 22). All these verses refer to feeding or clothing the poor, especially those of the same faith. Ferrara asserts that it was 'on grounds of conscience' that they were opposed to participating in the Social Security plan, and adds that 'Amish bishops frequently visited Washington over the next several years to press their case for an exemption, meeting with congressional representatives and other government officials' (2003: 133).

However, their efforts were to no avail. In the early 1960s the Internal Revenue Service (IRS) caused outrage when it took away ploughing horses from an Amish farmer, Valentine Byler, to settle the payment of his Social Security tax (Weaver-Zeacher, 2005: 276; Byler, 2016: 64–8). A shock wave not only echoed through Amish communities but also reverberated into American mainstream society, as reported in the '*New York Herald Tribune* May, 1961 or *Ledger Star* May 1962' (Ferrara 2003: 132). The Amish decided not to sue the IRS, as they were advised to do by outsiders, since their biblical beliefs and church teachings exemplify non-resistance (*1001 Questions & Answers,* 2001: 145). Ferrara states that they instead 'redoubled their efforts to obtain a legislative exemption from Congress' (2003: 133). David Weaver-Zercher explains that following the public outcry, 'the IRS placed a moratorium on further enforced collections, pending a test of constitutionality' (2005: 276). Chief Judge Wallace Gourley, of the District Court for the Western District of Pennsylvania, queried whether it was 'constitutional or democratic' to levy the Social Security tax on a group whose religious principles would be violated (Cline, 1968: 149). Paul Cline asserts that during the Eighty-Seventh Congress (1961–63), frantic activity took place in both Houses of Congress regarding the Social Security exemption on

religious grounds. They ‘introduced eleven bills for exemption of the Amish [and other Plain People from Social Security tax]’ (1968: 1957–64).

Cline’s report supports my ‘constitutionalism model’ argument. The legislative arm of the U.S. government was presenting those bills and assessing their constitutionality with legal counsel (Cline, 1968: 164). My argument is that negotiating with the law is not an option for the Amish. Only the instruments provided by the U.S. Constitution – that is, the legislative or judicial branches – can be used by American citizens, including those belonging to religious sects. The report presented to the House of Representatives in 1965 (National Library of Medicine [nlm.nih], 1965) explicitly pleaded for Social Security tax relief on ‘religious grounds’ to exempt self-employed members of certain religious sects, like the Amish. Conditions to be eligible included being ‘a member of a recognised religious sect (…) who is conscientiously opposed to acceptance of the benefits of any private or public insurance’ (1965: 17). At that time, despite more questions about the grounds for granting such an exemption to the Amish and measuring the political risks, the American authorities granted this exemption (Ferrara, 2003: 136–7). The ensuing amendments to the Social Security law of 30 July 1965 established in detail the conditions under which members of religious sects could be exempt from Social Security taxes and waive benefits attached to them (*Cong.Rec*.H.R.89-6675: 391). Eventually the IRS provided the 4029-exemption form (Appendix 8), which was amended in 1988 and is still used today (Ferrara, 2003: 136–7; 141).

An interesting corollary came with this exemption, the enactment of the Medicare bill (Ferrara, 2003: 137). In other words, the Amish did not have to oppose the Medicare bill as their exemption was already included under the Social Security Amendments of

1965 (Cline, 1970:233). What is striking is that this Amish campaign to obtain the first Social Security exemption was advanced with no central organisation to coordinate the operation. The Amish Steering Committee had not yet been structured as an official entity, as explained in Section 4.2.4. Nonetheless, as I have argued here, American authorities wrestled with the Social Security exemption until they recognised the Amish's legitimate claim based on 'grounds of conscience', under the Free Exercise Clause of the First Amendment (Ferrara, 2003: 133, 136–7). Although the wording of the bill and the law regarding this tax relief did not literally quote the First Amendment as a court would do, the reference to claiming an exemption on behalf of sects on 'religious grounds' was conspicuous.

At first, the negotiation model appears in the Amish leaders' tactic of pleading with political representatives in Washington, DC. However, they were already breaking ground using their American citizens' rights protected by the First and Fourteenth Amendments, suggesting a disposition for assimilation (see Chapter 7). Mechanisms of the U.S. Congress provided a legislative opportunity to the Amish to express their needs according to the tenets of their faith, hence largely fitting the constitutionalism model too. Therefore, regarding the first Social Security exemption, the hybrid model seems appropriate.

6.2.3 The Social Security Exemption: Part 2

The first exemption from the Social Security scheme was applicable only to self-employed Amish. Cline explains that Plain groups still had to work to extend the exemption to members who were not self-employed (1968: 169–70). At the time, farming and a small number of cottage industries were the main Amish activities. They

worked essentially with their own families. In their book *Amish Enterprise: From Plough to Profits* (1995), Kraybill and Nolt analysed in detail how the Amish of Lancaster County (PA) diversified their income by gradually moving from farming to entrepreneurship. Figure 6.1, taken from their work and illustrating the growth of Amish micro-enterprises between 1940 and 1990, shows a sharp acceleration after 1960 (1995: 44).

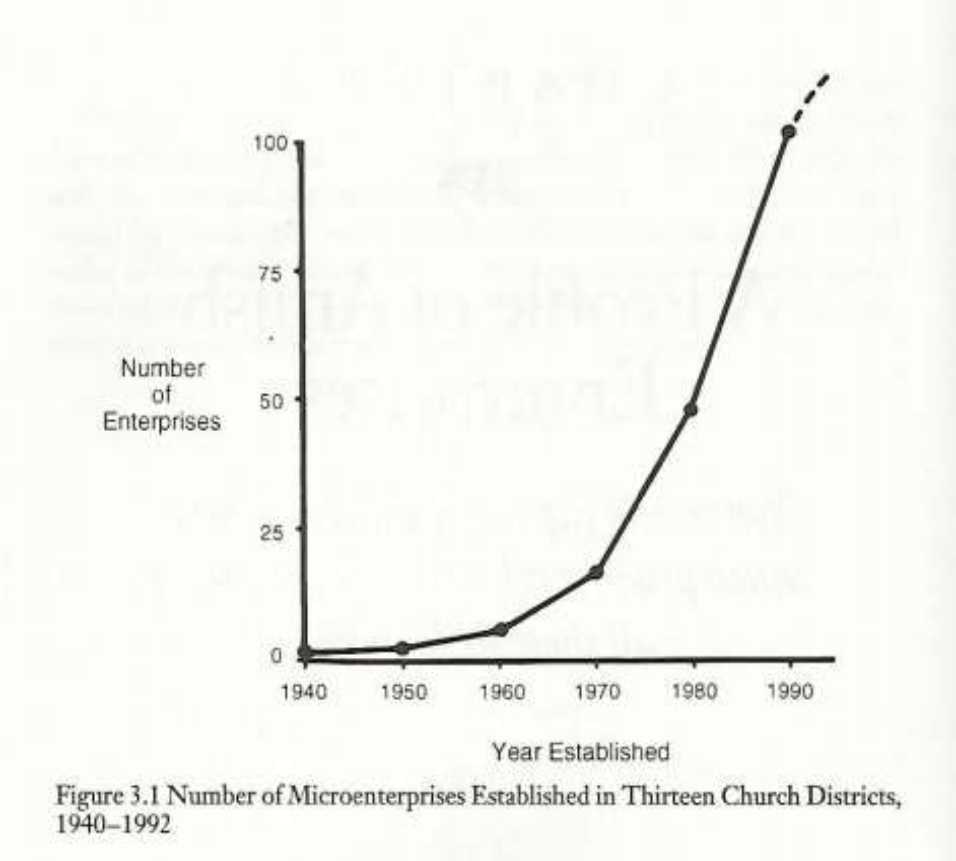

Figure 3.1 Number of Microenterprises Established in Thirteen Church Districts, 1940–1992

Figure 6.1 Increase in Amish micro-enterprises, 1940–92 (Kraybill and Nolt, 1995: 44)

In 1987, Senator John Heinz from Pennsylvania, presenting Bill S.1884 to the U.S. Senate, asserted that since the 1965 exemption granted to self-employed Amish farmers the economic context had changed:

> Due to a variety of changes and economic problems in our society (…) many of the Amish cannot afford to purchase their own farms and, consequently, now work for other Amish farmers (*Cong.Rec.*S.100-1884:32820).

The drastic change in the Amish economic configuration, exemplified by Kraybill and Nolt for Lancaster County and advocated for by Heinz, brought with it another clash between the IRS and several Amish entrepreneurs.

As already outlined, legislative mechanisms were put into action to give tax relief to self-employed Amish members. However, the enforcement of Social Security tax on Amish employers regarding their employees ended up in the U.S. Supreme Court when Amish entrepreneur Edwin Lee refused to pay this specific tax (Ferrara 2003: 138–41). His case is examined in the next section.

6.2.3.1 *United States v. Lee* 455 U.S. 252

Edwin Lee was a farmer who also worked in carpentry. As a self-employed Amish, he benefited from the 1965 Social Security exemption discussed in Section 6.2.2. Problems started to appear when Lee employed other Amish workers, between 1970 and 1977, and did not pay the mandatory Social Security tax for employees. When the IRS checked his tax records, they uncovered a substantial amount of unpaid employment taxes. He paid a small amount and 'then sued the United States District Court for the Western District of Pennsylvania for a refund' (*United States v. Lee*, 1982). According to Hostetler, 'Amish people do not resort to courts of law to settle dispute among themselves or with outsiders' therefore, Lee appears as an exception. (1993: 256).

One of Lee's claims was that paying the Social Security tax for his employees was a violation of his First Amendment rights; that is, his free exercise of religion. Pamela Brady comments:

> The district court held that the statutes requiring Mr Lee to pay the employer's share of social security and unemployment insurance taxes were unconstitutional as applied. This district court based its holding both on the exemption statute provided by Congress for self-employed Amish and on the first Amendment (1983: 451).

The tension between the government's interests and the Amish religious minority was critical. It would have been logical to extend the 1965 Social Security exemption to employees of the same faith when the issue arose. In the opinion of the U.S. Supreme Court, delivered by Chief Justice Warren Burger, Justice John Paul Stevens declares: 'as a matter of administration, it would be a relatively simple matter to extend the exemption to the taxes involved in this case' (*United States v. Lee* 1982: 262). However, the Court did not allow that to happen: 'the Court rejects the particular claim of this appellee, not because of the risk that a myriad of other claims would be too difficult to process' (1982: 262). The reason was that, according to the Supreme Court and confirmed by the audio-recording of the oral argument, Lee's claim could not be dealt with under the Free Exercise Clause of the First Amendment. Justice Burger compared it with previous labour cases, *Sherbert v. Verner* (1963) and *Thomas v. Review Bd of Employment Security Div.* (1981), and maintained that 'in the scale of values the economic one is the top one rather than the religious belief of the particular claimant' (*United States v. Lee,* 1982: 14, 56).

Justice Burger was alluding to Amish reluctance to pay the Social Security tax because they did not want to collect benefits or to be dependent on the state welfare system. Hostetler explained in his book *Amish Society* that this biblical belief is based on 1 Timothy 5:8: 'But if any provide not for his own, and especially for those of his own house, he hath denied the faith, and is worse than an infidel' (1993: 270). Conversely, the Amish pay their 'state and federal income taxes, county taxes, sales taxes, real estate transfer taxes, and local school taxes' even though, for the most part, they do not use state schools (Kraybill, 2001: 273). However, in 1983, Andrew Kisinger, Chairman of the Old Order Amish Steering Committee, addressed the Committee of Ways and Means at the House of Representatives in Washington, DC, and argued that the Amish are opposed to the Social Security system as it is a sort of insurance. Even though they could pay into the system and not collect its benefits, Kisinger maintained that the first generation might be following Amish principles based on the Bible, but the following ones might be tempted to pay and collect. Therefore, their refusal to participate in the welfare system was to protect the integrity of their community and persist in providing for their own (Byler, 2016: 117).

For Justice Burger the economic factor overrode the religious claim, on which Justice Stevens concurred. He declared that the Social Security tax levied on employees was equally applied to American citizens and that there were no constitutional grounds to waive this tax for religious reasons:

> The Court's analysis supports a holding that there is virtually no room for "constitutionally required exemption" on religious grounds from a valid tax law that is entirely neutral in its general application (*United States v. Lee,* 1982: 263).

The consideration of balancing freedom of religion and the establishment clauses appeared in Justice Stevens' footnotes. His assumption was: 'if tax exemptions were dispensed on religious grounds, every citizen would have an economic motivation to join the favored sects' (1982: 263 n.3). The weakness of his assumption is that scarcely any new members join the Amish church (Hostetler, 1993: 399). It might have been more convincing if he had used the argument of the 'non-establishment' clause of the First Amendment, and looked at how granting the exemption could show favouritism towards the Amish sect and similar groups.

Although Lee did not win his case at U.S. Supreme Court level, the Old Order Amish Steering Committee persisted with their claim to be exempt from paying Social Security tax for their Amish employees. Their chairman presented their case at the Subcommittee on Social Security in Washington, DC in October 1987 (Byler, 2016: 156). In November 1987, Senator John Heinz presented 'S. 1884 a bill to amend the Internal Revenue Code [IRC] of 1986' (*Cong.Rec.*S.100-1884:32819–20). In introducing a new law to amend both the IRC and SSA, Senator Heinz retraced the Amish Social Security exemption of 1965. He stressed the Amish's new economic context, being driven out of their traditional farming self-employment to being employed by other Amish business owners. Heinz laid out some limits of his proposed law, for example that the exemption would apply only when both employers and employees were Amish, or members of similar small sects that existed before 1950. He also emphasised Amish religious tenets preventing them from being involved in the American government welfare programme on conscientious objection grounds (First Amendment). Here again, the constitutionalism model argument appears to strengthen his new legislative proposal. Also, in constructing his case for exemption, Heinz

highlighted that both he and Congressman Richard Schulze from Pennsylvania were sponsoring the same bill (*Cong.Rec.*S.100-1884:32819–20). The joint efforts of the U.S. House of Representatives and the Senate demonstrated the strength of the legislative branch of the government in processing citizens' need through lawful channels. The bill passed, granting the second exemption for the Amish in terms of Social Security tax. In 1988, President Ronald Reagan signed it into law (Social Security Administration, 1989: 14).

The Social Security Bulletin of April 1989 confirms in Section 8007 entitled 'Amish exemption' that 'this provision is intended to extend the longstanding exemption for self-employed members of certain sects to employees who share the same religious views about Social Security participation' (1989: 16). The *Lee* case points to the key role of the U.S. Supreme Court in guarding the U.S. Constitution and protecting it from being misused. The two steps providing Social Security exemptions for the Amish employers and employees took more than twenty years to be achieved. Legislators and judicial authorities worked under the canopy of the First Amendment to protect the Amish minority, but also making sure that in the process they were not encouraging 'establishment of religion', which validates my constitutional model. Figure 6.2 summarises in a clockwise direction government activity related to Social Security and exemptions for the Amish sect. Each hexagon shows the date marking the start of the Social Security/Medicare/Medicaid laws followed by other laws exempting the Amish from them. The legislative and judicial components of these exemptions appear under the auspices of the U.S. Constitution.

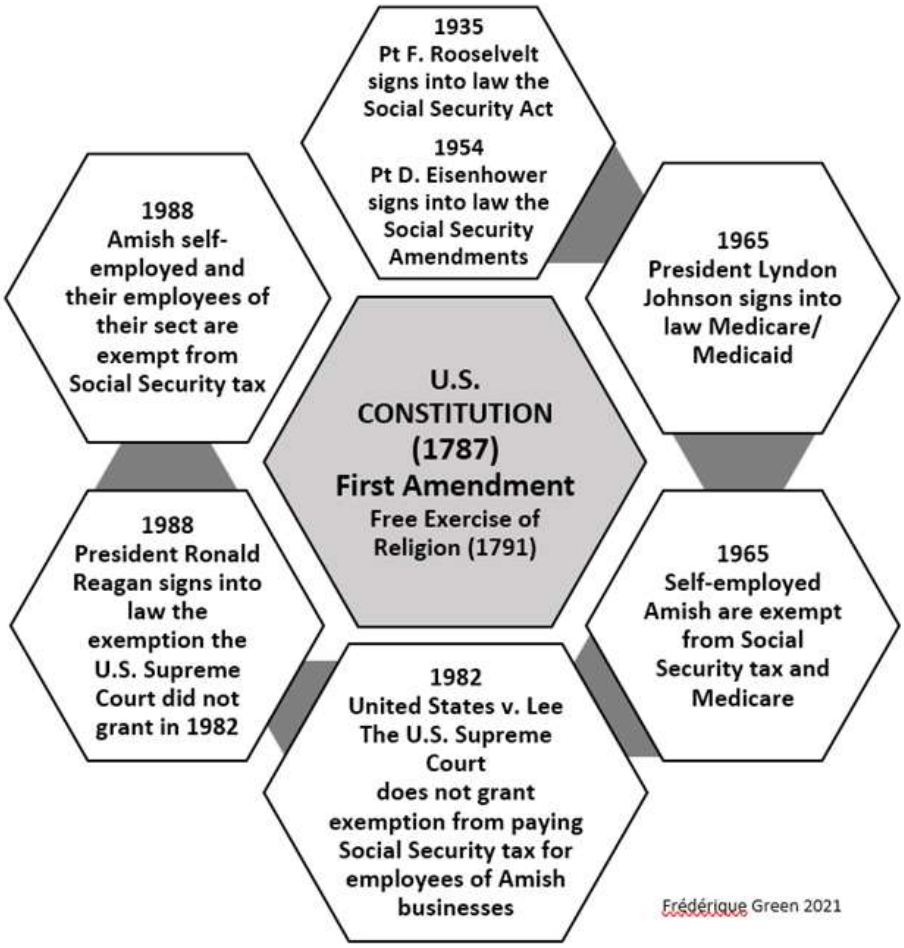

Figure 6.2 Government activity related to Amish Social Security exemptions

6.2.4 Perception of Non-Amish Interviewees Regarding the Amish Social Security Exemption

Most of the people I interviewed were aware of the Social Security exemption and readily replied that the Amish take care of their own and that their exemption was based on their religious beliefs.

Congressman Joseph Pitts said: ‘we’ve had accommodations (…) like the Social Security; they don’t use our safety net Social Security, Medicare. They take care of their own people. They don’t look for government services’ (Pitts, 2016).

Yet in Indiana, Wilbur Bontrager, Chair of the Board of JAYCO (a recreational vehicles enterprise), explained that his Amish employees had to pay into the Social Security scheme as their employer was not Amish.

Some Amish groups might consider this law as government encroachment into their lives, bringing them a great dilemma. The lack of land to work and the growth of the Amish population have forced some Amish to work in factories. With this new adjustment came the choice of drawing on Social Security payments in old age or paying into the scheme but not withdrawing retirement benefits later in life.

This example underlines the clash between the federal law regarding Social Security and individual Amish work choices within the limits of their internal *Ordnungs* and their constitutional freedom of religion. Admittedly, repercussions in the daily life of the Amish are not covered in this thesis. Sociologists like John Hostetler (1993), Donald Kraybill (1995, 2001, 2013) and Thomas Meyers (2007) and other authors like Steven Nolt have extensively studied Amish communities from a more sociological perspective (1995, 2007).

To summarise, the first part of this section covered the Amish Social Security exemption procedures, which tested the negotiation, constitutionalism, and hybrid models. The strength of the constitutionalism model in the narrative of the interaction between law-makers and the Amish has been demonstrated. The power of American government to enforce general laws but also the inherent protection provided by the

First Amendment were highlighted. A brief look at the perception of non-Amish interviewees regarding the Amish Social Security exemption indicated their awareness of Amish reluctance to enter the Social Security scheme. However, as a non-Amish employer, JAYCO must implement the Social Security laws on all employees, including Amish individuals. Nolt and Meyers assert that, in Indiana, some Amish who paid into the federal system seem to collect benefits on their retirement even though it is disapproved by their church (2007:88).

In the following section, I investigate the *Wisconsin v. Yoder* (1972) judicial case that sits chronologically between the 1965 and 1988 Social Security laws. The media attention in the late 1960s put the Amish minority in the limelight of American education.

6.3 The Multifaceted *Wisconsin v. Yoder,* 406 U.S. 205 (1972) Case

For almost fifty years, the *Wisconsin v. Yoder* case (1972) has captured the imagination of people in America. A lot of ink continues to be spilled on the debate over this landmark case. *Wisconsin v. Yoder*, ruled on by the U.S. Supreme Court in 1972, was the apotheosis of many years of conflict between individual states that independently administer education and Amish parents who refused to send their children to high school (Kraybill *et al.*, 2013: 251). Their children, aged fourteen/fifteen, *de facto* finished their schooling at eighth grade.

Wisconsin v. Yoder has been dissected enough by legal experts, so I will leave aside the classical analysis of the case (Ball, 2003: 253–64; Hamilton, 2005: 113, 131–2). My focus is to find a correlation between child labour laws and the compulsory school attendance law going hand in hand with school consolidation. I continue with an

assessment of the Supreme Court ruling, underpinned by the First Amendment, and look at observational data of eighth grade.

6.3.1 Bird's-Eye View of Individual States' Laws in the Early Twentieth Century Regarding Child Labour and Schooling

This section describes the clash between the American authorities, who implemented new education laws, and the Amish minority. In a knock-on effect, these new laws had repercussions on child labour laws that directly affected Amish youth. Historically, Amish children attended their local one-room public schools like any other American child, following the education laws of their own states. Shawn Francis Peters in his book on the Yoder case claims that 'the nation's first compulsory school attendance statute [applied to] all youngsters between the ages of eight and fourteen', starting in the mid-1800s, and 'by 1890, twenty-seven states had enacted statutes designed to mandate school attendance in some manner' (Peters 2003: 38). Therefore, Amish parents abided by standard rules of school attendance up to eighth grade. Compulsory school attendance spread across the states, and new laws pushed the threshold beyond eighth grade, affecting Amish children. It was then that Amish communities decided to set up their own schools.

A significant element of the controversy lay in school authorities losing state money due to lower public-school rolls. For example, school authorities in New Glarus, WI, realised they were facing a significant loss of state funding (Peters, 2003: 1). The superintendent of the local public school offered a deal to Amish families inviting them to send their children to public school to be counted in the census at the beginning of the school year so the school could receive the state money. The Amish children could

then leave school. However, the Amish understood this as an unethical practice and refused to participate in the scheme (Peters, 2003: 1).

Old Order Amish Steering Committee Chairman Andrew Kisinger stated that the unrest started ‘in the early 1900s when compulsory school laws were first passed and enforced’ (Kinsinger, 1997: 5). Dorothy Pratt concurs, giving the example of Lagrange County in Indiana: ‘The Amish (…) had no difficulty with public education until 1921, when the state mandated that all children would have to attend at least some high school, to which the Amish objected’ (Pratt, 2004: 73).

Judy Gelbrich asserts that the combination of population growth in America and the arrival of immigrants at the end of the nineteenth and start of the twentieth century propelled compulsory school attendance laws. The other consequence was the increase of child labour laws. This context created a need to help unemployed children, for example those forced to stop mining, to better themselves through education in order to be qualified and access better jobs. Another important point was the idleness of children caused by industrialisation that left them ‘roam[ing] the streets and by implication caus[ing] trouble’ (Gelbrich, 1999: [n.p.]).

Jennifer Hess emphasises that industrialisation induced child labour laws:

> in eighteenth century America, the child was considered to be valuable because of his economic potential. This changed over time and by the 1930s compulsory education and laws banning child labor transformed the status of a child to an economically worthless being (2011: 4).

Interestingly, she adds that most children were working in agriculture and ‘even when legal prohibition was imposed on child labour the children’s contribution to farm work

was ignored' (2011: 2). This assertion sets the scene for the difficulties the Amish encountered when states enforced new laws connected to child labour or to schooling.

The States of Indiana, Ohio, New York, and Pennsylvania studied in this thesis legalised compulsory school attendance beyond eighth grade and subsequently clashed with Amish communities from the early 1900s, with the after-effect of creating complications regarding work for Amish youth. John Hostetler and Gertrude Enders-Huntington identified the same problem in other states:

> it is a point [of conflict] on which the Amish will not compromise; they will suffer fines or jail sentences and will migrate before they capitulate (…) the Amish consider high school to be a dangerous environment that is 'a detriment to both farm and religious life' (1992: 56).

Newspapers of that era reported regularly on Amish non-compliance concerning education, as Dorothy Pratt demonstrates in her chapter covering school issues in Shipshewana, Indiana. She examined court records and quotes abundantly from the *LaGrange Standard* between 1921 and 1923. This newspaper informed the public on the school administration's struggles to understand the Amish rejection of sending their children to high school as well as about court cases related to the same issue (Pratt, 2004).

In 2016, when I was given access to Donald Kraybill's personal collection in Elizabethtown College Archives, I found an array of newspaper cuttings from Lancaster County, PA, regarding frictions between officials and the Amish on compulsory school attendance and work permit issues. As early as 19 February 1931, the *Intelligencer Journal* published a series of articles entitled 'An Amishman Speaks', which explained

the reasons why Amish children would not attend local public high schools. Remarkably, it was reported that ‘a member of that church [Amish] has asked this newspaper for space in which the views of his sect on certain [public] matters might be explained’. He wrote ‘about 98 per cent of our people are engaged in some form of agriculture and we feel positive that as farmers we are better off with only a common school education’ (*Intelligencer Journal*, 1931). On 30 October 1937, on the front page of the *Intelligencer Journal* an article appeared entitled ‘School Battle Won by Amish thru Governor [George Howard Earle III]; Earle Orders 10 One-Room Schools Reopened in East Lampeter, “MATTER OF RELIGION”, Says Executive; Finds Cost Will Not Be High; State to Pay’.

The intervention of Governor Earle of the State of Pennsylvania putting the ‘matter of religion’ – that is, the Free Exercise Clause of the First Amendment – above state interests temporarily ended conflicts between the Pennsylvanian education authorities and the Amish minority. Ten schools were replaced by a ‘modern school building’ where the ‘Amish believe[d] there are too many worldly temptations (…) they don’t want their children to grow away from the farm and the religion’, as their attorney John Lanberg declared on 30 October 1937 (*Intelligencer Journal*, 1937). The chronicle did not stop there, as the front page of the *Intelligencer Journal* of 10 November 1937 explained that an Amish father was refusing to send his daughter to school. The headline reads: ‘Amishman Pays Fine after Being Sent to Prison’.

In the 1950s, his story repeated itself and the *Intelligencer Journal* of 28 September 1950 ran more articles regarding confrontations between school authorities and Amish parents. At that time the parents involved were jailed and paid fines because they could not obtain work permits for their children. A reporter captured what an Amish father

said before being committed to jail: ‘it’s positively in the law that you can get a work permit at 14 with the state superintendent of public school’s approval’ (*Intelligencer Journal*, 1950). In 1955, this part of the conflict was partially resolved in Pennsylvania, when ‘“a vocational school” plan, later copied by several other states’ was established (Nolt, 2003: 300). Nolt confirms that this programme allowed post–eighth grade children ‘to work at home, but reported to a special “vocational school” one morning per week until they reached the age of 15’ (2003: 300). After that, ‘they qualified for a work permit’ (Kraybill *et al*., 2013: 254).

The selection of Pennsylvanian articles quoted describes the context not only regarding compulsory school attendance after eighth grade, but also concerning work permits for Amish teenagers. Nolt states that in Ohio too, ‘the 1921 Bing Act made school attendance compulsory through age 18, though it allowed some children to receive work permits and leave school at age 16’ (2003: 275). Again, some fathers were arrested by the authorities, but furthermore ‘authorities declared most of the men’s school-age children wards of the court, sent them to an orphanage, and would not allow them to wear their Amish clothes’ (2003: 275).

Karen Johnson-Weiner expands on why Amish from ‘Lancaster County, Pennsylvania, the oldest Amish settlement in North America’ moved to New York State (2010: 78). Their strong disagreements with school boards ‘have historically been one of the major forces driving the Amish to establish new settlements’ (2010: 78).

To summarise, the salient points of the schooling controversy were as follows:

- In the early 1900s, incoming child labour laws were linked to growth of population and immigration (Gelbrich, 1999; Hess, 2011).

- States decided to suppress one-room rural schools for the benefit of modern consolidated schools, where children worked longer hours and longer days and new topics were taught (Nolt, 2003: 274, 300).
- School attendance laws focusing on education beyond eighth grade increased the number of years of compulsory attendance, leading to educating more people who would become good citizens (Peters, 2020).
- Public school authorities were losing money when Amish children left their schools (Peters, 2003: I).
- 'Vocational schools' and obtaining work-permits for teenagers (Nolt, 2003; Kraybill *et al.*, 2013).

For the most part, states' interests disregarded 'freedom of religion' from the First Amendment. It is noteworthy that the Governor of Iowa, Harold Hughes, was directly involved in the Iowa school conflict with the Amish and publicly sided with this sect. In 1966 he stated that America was 'founded and based on religious freedom and I don't believe our society should ever progress to the point where any small minority by any means be deprived of their rights or their beliefs' (Rodgers, 1969: 30–1).

Over time, the factors enumerated above intermingled and created a legally charged situation that led to *Winsconsin v. Yoder* (1972).

6.3.2 *Wisconsin* v. *Yoder* (1972) and Equality

In 1972, the U.S. Supreme Court ruled on the case balancing the State of Wisconsin's interests and freedom of religion regarding the conflict between school authorities and Amish families. A précis of Peters' helpful chronology shows how the case unfolded. The case began in 1966, when Amish parents had issues with their daughters'

participation in gymnastics classes. The immodest, tight gymnastics uniforms, as well as showering after exercise, were not appropriate considering their traditional Amish modesty (Peters, 2003: 22). Two years later, in August 1968, Amish parents started private parochial schools and School Superintendent Kenneth Glewen admonished parents about breaking the state's compulsory school attendance law. October 1968 opened a long series of judicial events regarding exemption from compulsory school attendance after eighth grade for Amish youth based on religious grounds, starting with going to County Court, then to District Court, continuing to the Wisconsin Supreme Court, until the case was brought to the attention of the U.S. Supreme Court, which ruled in favour of the Amish in 1972 (Peters, 2003: 181–3).

The irony is that, as already stated in Section 6.2.3.1:

> the Amish feel that 'going to law' violates their faith's tradition of non-resistance (…) it was only after several months of indecision that [Wallace] Miller, [Jonas] Yoder and [Adin] Yutzy agreed to permit themselves to be represented by counsel in court (Peters, 2003: 2, 54).

However, gradually some members of Amish groups seemed to be more willing to resolve disagreements with the American authorities through the legal system. This change of attitude might be seen as partial assimilation to mainstream American society, a question investigated in Chapter 7.

In their adversities, the Amish have been supported by outsiders who offered their professional help, even when their assistance was initially refused. A key player in the *Yoder* case was the National Committee for Amish Religious Freedom (NCARF). This organisation, as recorded in the Minutes of its first meeting, was created in 1967 at the

initiative of Rev. William Lindholm. He gathered several experts, including lawyers such as William Ball, the constitutional attorney who represented the Amish at the U.S. Supreme Court, and Dr John Hostetler, an expert on the Amish minority (Lindholm, 2003: 112, 117; Fisher, 1967: 1).

Ball advocated with vigour parents' right not to send their adolescents to high school in order to protect them and ensure the survival of their community. For this purpose, he extensively demonstrated that their freedom of religion was breached by statutory regulation regarding their children's schooling, hindering continuity of an established religious tradition (Oyez, 1971).

The two pillars of this case have been the First and Fourteenth Amendments to the U.S. Constitution. The First Amendment stipulating that 'Congress make no law respecting an establishment of religion or prohibiting its free exercise' was a double-edged sword (U.S Const. amend. I). As Peters put it: 'the state might be seen as privileging members of a single religious faith if it exempted only them from the provisions of the school attendance statute' (2003: 72). The Fourteenth Amendment to the Constitution establishes citizens' equality before the law: 'nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws' (U.S. Const. amend. XIV).

However, Lisa Fishbayn-Joffe contends that Justice Burger of the U.S. Supreme court put the accent on education being the means to achieve competencies leading to employment and instruction to become law-abiding citizens. However, in his judicial Opinion on the *Yoder* case he ignored the aspect of education dedicated to

encouraging children, as he stated, '"to participate effectively and intelligently in our open political system"' (Fishbayn-Joffe, 2020: 96–7). The absence of teaching the rights and responsibilities of American citizenship to Amish youth may have had repercussions on the Amish's lack of involvement in voting outside local elections, as Section 5.3 of this thesis explored.

In the *Yoder* case, the Amish benefited from protection provided by both amendments, freedom of religion on the one hand, and equal protection of the laws on the other. However, the equality concept has been challenged by scholars like Laura Underkuffler-Freund who, in her evaluation of equality in *Wisconsin v. Yoder,* declares:

> to develop a convincing answer to the equality challenge, we must consider the evils which sectarian favoritism, in the usual sense, presents. Such favoritism is evil because it extends a benefit to some citizens only (1997: 795).

In her article she nonetheless balances her first argument by adding that 'repeatedly the [Supreme] Court has stated that "neutrality" requires governmental even-handedness toward religion and non-religion' (1997: 798). She also recognises that in practice government has frequently overlooked this precept and has found ways of 'accommodating' religion on the basis that these practices 'are "deeply embedded in the history and tradition of this country"' (1997: 799). In her argument she comes back to the Free Exercise Clause, which 'explicitly states that religious free exercise shall not be "prohibited" by law' (1997: 799). Although she voices the confusion brought about by the ruling on Amish schooling in terms of equality between American citizens, she also acknowledges that in the end, conclusions in such cases as *Wisconsin v.*

Yoder are based on the validity and strength of the arguments presented in court (1997: 803). For me, Underkuffler-Freund's appraisal of the Supreme Court's ruling highlights, once more, the power given to the Supreme Court and government to equally protect American citizens, Amish included, through the interpretation of the Constitution. Therefore, my constitutionalism model is applicable to understanding *Wisconsin v. Yoder.*

Certainly, parents' rights were at the forefront of Ball's defence tactic, but children's rights to higher education were overlooked. Equality, germane to children, was not achieved in the *Yoder* case. Thus, we need to look briefly at children's rights.

6.3.3 *Wisconsin v. Yoder* (1972) and Children's Rights

Arguably, looking at children's rights in *Wisconsin v. Yoder* is anachronistic because in the 1970s, for the most part, children had no rights of their own and were still under their parents' authority. Justice William Douglas, in his 'dissenting in part', claimed that the Supreme Court was only addressing Amish parents' interests versus state interests, neglecting Amish children's voice:

> It is argued that the right of the Amish children to religious freedom is not presented by the facts of the case, as the issue before the Court involves only the Amish parents' religious freedom to defy a state criminal statute imposing upon them 'an affirmative duty to cause their children to attend high school' (406US-1972: 242).

This quote blends children's rights to an education with their right to religious freedom. Missing in the equation in the ruling on *Yoder* is the children's opinion (except from Frieda Yoder), although it would be more accurate to talk about adolescents (King,

2022:95). Concerning their future, teenagers' maturity and opinion can be taken on board, as Justice Douglas argued (406US-1972: 243). The path had been traced for them and their transition to become part of the workforce was mapped out through Amish vocational schools (Hostetler, 1993: 263). Nonetheless, Amish vocational schools have the merit of preparing teenagers to progress to becoming adults who are productive for their family, community, and broader society.

In this debate, education cannot mean only acquisition of intellectual and reasoning skills through pure academia; it has to include practical training, and this is what the Amish community provided for generations before the *Yoder* case*:* 'learning by doing' (406US-1972: 224). That is exactly what one of the Amish businessmen I interviewed in Pennsylvania said: 'learning by doing' (B.C., 2018). He explained how he learnt his trade of tax accounting from his father and several seminars, concluding with laughter and a twinkle in his eyes: 'after 40 years I think I know a little bit about it' (B.C., 2018). Still, the evolution of occupation towards greater entrepreneurship in Amish society has created a breaking point between the Department of Labor and the Amish communities. This conflict is examined later in the section covering the exemption regarding adolescents' vocational training in religious groups (Section 6.4).

6.3.4. *Wisconsin v. Yoder* (1972) – Observational Data on Eighth-Grade Schooling

Several theories advanced by the scholars mentioned above must be tried against the responses of my interviewees regarding Amish schooling. Experiences shared by non-Amish interviewees were coherent with the Amish cohorts they were dealing with on a daily basis, but also with their personal interaction with Amish people. In the states

researched, Indiana, Ohio, Pennsylvania, and New York, generally speaking my interviewees acknowledged that the Amish eighth-grade level of education did not hinder their success in business and their degree of proficiency due to their eagerness to read.

In Indiana, Commissioner Mike Yoder declared: ‘I believe in continuing education. They [Amish] teach themselves or they learn the skills they need. So, when they have needed to learn computer skills, they have learnt them’ (Yoder, 2018). In the same area, Sheriff Brad Rogers said: ‘they keep themselves on the uneducated side, but yet you talk to some Amish men and they are quite shrewd businessmen, very successful’ (Rogers, 2018).

In Ohio, Commissioner Robert Ault also said: ‘they're reading books (…) their education, just because you don't go through the school to do it, they’re still pretty well educated. I know a lot of them are computerized’ (Ault, 2016). This was confirmed by an Amish leader: ‘we read because we don’t have television, WE READ (…) our people READ A LOT, we read magazines, we read books (K.D., 2016).

In Pennsylvania, one of my non-Amish business owner interviewees said: ‘they go to private schools, they meet the needs of their culture. I really have no problem with that’ (R.D., 2016). Jeff Bach, Director of the Young Center, PA, concurred:

> I am supportive of having a limit of eighth grade. I think, in my opinion, if the Amish community wants to stop at eighth grade, I’m fine with that, that’s the end of their formal schooling (Bach, 2018).

He added that it did not stop them from reading and that ‘Amish people in business become very savvy, very sophisticated in business records and marketing’ (Bach, 2018).

Per contra, another group of interviewees had fewer positive experiences and expressed their frustration regarding Amish schooling. In Indiana, Prosecutor Vicky Becker (Elkhart, IN) plainly said:

> it's too limited. I am a big believer in education, I have serious concerns that Amish children are generally not permitted to obtain education and be exposed to the English world, whether it's for fear that Amish children might leave; they might be tempted; I don't know. But not giving children access to education, I am very offended by that and I think it is inappropriate. Every person should be given access to the same amount of information and as they grow, they can make their own decision, but by prohibiting that has significantly retarded the process. It's very inappropriate (Becker, 2018).

Her testimony fed by her professional experience was echoed by Commissioner Doug Bauman in Adams County, IN:

> my personal feeling is their education is not acceptable (…) they're just not getting what they need. I honestly think that the ones down in this area do not want their children to be educated to a high level, they don't want it, because they want to hold them, this is the way of holding them (Bauman, 2018).

Admittedly, he was interacting with ultra-conservative Amish in his area. His comments were confirmed by banker James Buckingham from the same area, who asserted that ‘balancing check books and keeping up and having a concept of money and things (…)

we can see the deterioration [in education] there' (Buckingham, 2018). Attorney Adam Miller from the same region added:

> I'm just concerned that they are teaching their children to an eighth grade with an eighth-grade educated teacher and that teacher teaches and the next teacher comes out of that group and I personally see a downward spiral, we see them struggling with writing basic checks (Miller, 2018).

These interviewees backed up their comments by explaining that their concerns started after ultra-conservative Amish private schools failed to produce articulate students at the end of eighth grade.

Yet in St Lawrence County, NY, where several ultra-conservative Swartzentruber have settled, attorney Steven Ballan said: 'Amish go to school but in their own schools, they are still overseen by state agencies just to make sure that the education is correct' (Ballan, 2018). Physician Ira Weissman, who dedicated ten years of his life looking after Swatzentruber, added:

> my experience with them is that eighth grade education is adequate, 'cause they can speak two languages, their German dialect and they can interact with the surrounding community [in English] and they can read, they read the newspapers, they read their books and they can do arithmetic; so that is adequate for living up here in St Lawrence County and probably anywhere in the country (Weissman, 2018).

The mixed responses of my interviewees call for further analysis into government-mandated education versus Amish schooling in the twenty-first century, which follows in the next section.

Nonetheless, it seems that the *Yoder* case was left unfinished. Although vocational schools had been functioning for some years in several states, *Wisconsin v. Yoder* (1972) was inconclusive in respect to the hiatus between eighth grade and engaging fully in work. The Amish worked unremittingly to close this gap through legislation, which is the focus of the next section. The process they followed shows the constitutionalism model in action.

6.4 School/Work Ambiguity for Amish Youth: Another Legal Challenge for the U.S. Government

When *Wisconsin v. Yoder* was ruled on in 1972, although the U.S. Supreme Court examined the vocational schools' provisions, the Justices omitted to analyse potential consequences that their ruling could cause in terms of work for Amish adolescents (Oyez, 2019: 12, 15). To rehearse the context of this case, the testimony offered by expert witness Dr John Hostetler was a comprehensive assessment of Amish religious beliefs emphasising the Amish attachment to farming. Kraybill and Nolt substantiate this fact:

> The farm provided a habitat for raising sturdy families. Daily chores taught children the value of personal responsibilities, more important they learned the virtue of hard work, a value praised for keeping them out of trouble (Kraybill and Nolt, 1995: 25).

They continue with a clear explanation of the parents' role in supervising their children to teach them farming skills. In addition, they point out that 'throughout the 1960s and 1970s, farming remained the preferred and honoured way of life, and it was strongly encouraged by the church' (1995: 29). Therefore, in 1971, the ideal picture of Amish

youth working on farms painted by attorney William Ball in his oral argument was still a reality for a number of them. He also said that ‘education for them embraces a rejection of the higher learning and a positive emphasis upon learning of the agriculture life’ (Oyez, 2019: 28).

Conversely, the Congressional Research Service, in its report relative to ‘Child Labor in America’, claims:

> Agricultural labor by children seems always to have been a category by itself. Usually, until the early 20th century, such work seems to have been on the family farm (…) or in an agricultural operation in the general vicinity of the youth’s place of residence, though he (or she) might reside and work beyond the view and reach of parent. Such work was no less hazardous – and no less arduous – than that of the streets or tenement or industrial labor. Indeed, in some respects, agricultural work may have been more dangerous (Whittaker 2005: 2; Mayer, 2013: 1–2).

That leads to the point already made by Jennifer Hess (see Section 6.3.1) regarding child labour laws: ‘children’s contribution to farm work was ignored’ (Hess, 2011). From 1972 until 2004, federal child labour laws conflicted with the ‘vocational education’ devised by the Amish. The unrest regarding farm work as opposed to a vocational woodworking occupation for teenagers is considered in the next section.

6.4.1 U.S. Congress Granting Another Exemption for the Amish

The transition between school and the minimum working age is established by each state in America. Table 6.1 provides information on school attendance ages for the states covered in this thesis, from the 2017 report of the National Center for Education

Statistics [NCES] about ‘compulsory school attendance laws, minimum and maximum age limits for required free education by state’ (NCES, 2017).

State	Age for required school attendance
Indiana	7–18
New York	6–16
Ohio	6–18
Pennsylvania	8–17

Table 6.1 Age for required school attendance in Indiana, New York, Ohio and Pennsylvania (NCES., 2017)

Noticeably, none of the states cited in Figure 6.1 offers the option of ending a child’s education at age fourteen or the equivalent of eighth grade. When the U.S. Supreme Court granted a singular exception to Amish teenagers to finish school at eighth grade it clashed with some individual state laws of the time. Hostetler and Enders-Huntington summed up the Amish way of circumventing school attendance laws by ‘having their own vocational schools, by obtaining work permits for their children’ (1992: 57). However, the Amish vocational school response was in direct conflict with child labour laws.

As already observed in connection with the Social Security exemption, many Amish families had to readjust their way of earning a living. Kraybill *et al.* talk about fluidity in work and ‘technological boundaries’ happening in the middle of the twentieth century

(2013: 49). By 1972, a number of Amish youths were not only working on farms, but were engaged in working in various businesses, including woodworking shops.

6.4.2 Federal Child Labour Laws Conflicting with the Amish Motto 'Learning by Doing'

As stressed by Kraybill *et al.*, 'the power of government to define and regulate more closely matters of public safety and security and intervene more directly in citizens' lives' has greatly increased through the twentieth century (2013: 355). Hence, the Fair Standards Act of 1938 about child labour laws needed several amendments to keep up with compulsory school attendance laws and the need for certain young people to work under the age of eighteen. The following sections consider the U.S. Federal Child Labor provision for specific exemptions, followed by examination of U.S. Congress lobbying to amend federal child labour legislation. Next, the constitutionality of the amendment to the Fair Labor Standards Act is scrutinised.

6.4.3 U.S. Federal Child Labour Provision

In its introduction to the 'child labor' section, the U.S. Department of Labor [U.S.DoL] establishes:

> The federal child labor provisions, authorized by the Fair Labor Standards Act (FLSA) of 1938, also known as the child labor laws, were enacted to ensure that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities. These provisions also provide limited exemptions (U.S.DoL, n.d.).

These laws show that the protection of children is a priority for the American federal government. Nonetheless, the Department of Labor had already made provision for '14-and 15-year-old students participating in a Department of Labor approved school-supervised and school-administered WSP [Work-Study Program]' (U.S.DoL, Child Labor Bulletin 101, 2016: 7). These students needed to be registered in those specific colleges. Therefore, Amish youth were not able to benefit from this programme, as beyond eighth grade their vocational training had to be completed by their own parents, family or community. Thus, Amish youths' vocational work in a non-farming environment, particularly in woodworking shops, fell between the WSP and the legal prohibition on learning their trade in premises considered to be very dangerous.

6.4.4 Congress Lobbying to Amend Federal Child Labour Legislation

Gerald Mayer reports that 'at least since the 105th Congress (1997–1999), legislation to amend federal child labor law on behalf of the Amish has been repeatedly introduced, both in the House and in Senate' (2013: 30). Congress Representatives and Senators who have sizeable Amish communities in their constituencies worked in earnest, backing the Amish voice to pass the bill to amend FLSA to allow specific young people to work in woodworking shops. During the first Session of the 106th Congress (1999–2001), the legislative branch was presented with a report emanating from the Committee on Education and the Workforce. The report accompanied Bill H.R.221 introduced by 'Representative Joseph Pitts (…) along with 13 cosponsors, on January 6, 1999' (*Cong.Rec.*H.R.106-31:1). Analysing this report brought to my attention how the Committee elaborated on the following:

- The evolution of the FLSA since 1938 in terms of exceptions.
- Prohibitions against working in sawmills and woodworking, for youth under 18 years old, established by the Department of Labor.
- The testimony of the Old Order Amish Steering Committee Chairman, backed up by *Wisconsin v. Yoder* (1972), and economic burdens brought about by the change within the Amish community 'due to many reasons beyond our [Amish] control, the trend is gradually forcing more and more of our youth to learn other trades [than agricultural tasks]' (www.congress.gov, 1999: 4). The Amish Chairman strongly defended the notion of 'learning by doing'.
- The interference of child labour laws in the Amish lifestyle, explaining their beliefs in formal education ending at eighth grade and followed by training within the Amish community.
- A reflection on the Constitutionality of H.R.221 (1999: 2–5).

In this report, an interesting fact was reported regarding the attempts made by members of Congress and the Amish community to reach out to the Department of Labor (DoL) to find a compromise to settle this clash, but 'unfortunately the Department of Labor's response to these efforts has consistently been unwillingness to consider any changes in regulations and opposition to changes by legislation' (1999: 5). The Amish preferred way to find solutions via negotiation was powerless. This was confirmed by Congressman Pitts when I interviewed him:

> I interceded with the Department of Labor and they would not reconsider, they said the law had to be changed and I had Amish come from twenty states to Washington and we met and I listened to all of them we tried to get the

> Department of Labor to make some accommodation they would not. So finally, we drafted legislation (Pitts, 2016).

To my question about what the reasons behind this Bill would be, Pitts explained that 'some of the members of the Amish community were being fined by the Department of Labor, some were like 8 000, 10, 12, 20, 22 000 dollars for a fine', because the DoL found Amish children under 18 years old working in their woodwork shops but not necessarily near dangerous power tools (Pitts, 2016). The Committee Report also mentioned the enforcement actions taken in 1996 by the DoL (*Cong.Rec.*H.R.106-31: 1).

Pitts continued by noting that the Amish apprenticeship program necessitated this legislation. To my question about the *Yoder* case denying Amish children further education, Pitts, carrying the Amish 'standard', replied:

> No, I think these children *learn by doing*, they are getting an education sufficient to be independent. They are very productive, very productive and mostly in agriculture. In agriculture they are totally exempt from anything. But in the other professions they have the child labor laws but you can drive through Lancaster and see a 10-year-old boy operating a team of mules, ploughing, a very dangerous situation, he's totally exempt. So, our law doesn't make sense. It was written to take care of the agriculture, farming community, but now they are going into other occupations like carpentry (Pitts, 2016, my emphasis).

Congressman Pitts, a Representative from Pennsylvania where there is a high density of Amish people, had completely adopted the Amish parlance and understood the needs of the Amish society. In our conversation, he commented on the First

Amendment to consolidate his argument on Amish religious liberty and the parents' right to educate their children according to their beliefs. To paraphrase Peters, the *Yoder* case had a narrow focus on the Amish sect. Nonetheless, the wider significance of this case can be found in the method of educating children from home. It was developed by 'deeply religious parents (…) in the United States in the late 1960s and early 1970s' (Peters, 2003: 174). Their objective was to avoid the pervasive influence of the secular world on their children. Hence, the decision in the *Yoder* case created a precedent that parents have used in claiming their religious freedom, just as John Hostetler predicted at the conclusion of the case (2003: 174). He declared that the *Yoder* case was a stepping stone to helping 'members of other faiths' (2003: 161). In contrast, the Supreme Court Justices did not offer any flexibility so their decision could be applied to secular groups who also held 'sincere but non-religious beliefs' (Peters, 2003: 153–4). The *Yoder* decision did not embrace the diversity embodied in difference of race, religion and culture that constitutes the fabric of the United States. The last two points are studied in Chapter 7 of this thesis. To resume on the Child Labor law of 2004 and grasp the significance of this law further, several facts follow.

H.R.221 Bill (1999) was drawn up using 'common sense', said Pitts (2016). After several years of perseverance, H.R.1943 Bill presented by Pitts *et al.* in October 2003 was passed by Congress as part of the FY2004 Consolidated Appropriations bill (*Cong. Rec.*H.R.108-2673). President George W. Bush signed this reform into law on 23 January 2004. Today the U.S. Department of Labor, Wage and Hour Division, provides details about the employment exception for minors between fourteen and eighteen years old, who are exempt from compulsory school attendance. The three salient points of Fact Sheet #55 entitled 'Application of the Federal Child Labor

Provisions to the Employment of Minors Who Are Exempt from Compulsory School Attendance in Businesses Where Machines Process Wood Products' are:

- Application of the federal child labor provisions to the employment of minors who are exempt from compulsory school attendance.
- The exemption, contained in Section 13(c)(7) of the FLSA, allows eligible youths to be employed by businesses that use machinery to process wood products, but does not allow such youths to operate or assist in operating power-driven woodworking machines.
- The youths must be supervised by an adult relative or by an adult member of the same religious sect or division as the entrant (U.S.DoL, 2010).

Those three points recapitulate the 'common sense' legislation, as Pitts describes it. Finally, the existing void between the *Wisconsin v. Yoder* (1972) exemption from compulsory school attendance after eighth grade and apprenticeship within the boundaries of Amish tradition was filled. The missing link was established by the Department of Labor Appropriations Act, 2004 (Pub.L.108-199:236), amending the Fair Labor Standard Act of 1938.

Critically analysing H.R.221 Bill brings to light the erosion of the power of the negotiation model. Representative Pitts and the Amish tried negotiation tactics with the DoL, but they failed. My constitutionalism model is applicable because the Child Labor law had to be amended via a legislative process. However, even if health and safety regulations were established to allow Amish youth to complete their apprenticeship securely, several constitutional issues remained unresolved.

6.4.5 Constitutionality of the Fair Labor Standards Act of 1938 Amendment

In the 1999 Congress Report, considering the First Amendment, lawyers enumerated a series of obstacles to the FLSA of 1938 amendment regarding youth work. The proposed Bill covered adolescents of a unique religious group and excluded all non-members of this group: 'H.R.221 has a primary effect of advancing one set of religious beliefs while inhibiting the religious beliefs of others' (*Cong.Rec.*H.R.106-31:21). Lawyers also emphasised how *Wisconsin v. Yoder* (1972) wrestled with compulsory school attendance versus violation of the Free Exercise Clause of the First Amendment. They added that the problem seemed to be more 'an economic burden on the Amish community' rather than a religious one:

> the exemption would not appear to satisfy the requirement of the accommodation doctrine that the preference for religion alleviate a significant government-imposed burden on religious mission or exercise (*Cong.Rec.*H.R.106-31:26).

The arguments presented by the lawyers did not win enough traction to stop the bill from passing, nor arguments regarding health and safety for adolescent workers.

To conclude on this legislation, the title adopted by the Committee on Education and Workforce during the 108th Congress (2003–2005), 'Promoting Worker Safety and Preserving Traditions in Religious Communities', reveals the reason why the amendment passed. Safety was reinforced by this piece of legislation to allow Amish youths to start their apprenticeship after completing eighth grade, conforming to the Amish tradition. Once again, the First Amendment combined with the work of the

legislative branch of the U.S. government worked to keep the Amish community within the limits of the law, consolidating my constitutionalism model.

Figure 6.3 (see over) collates facts and key dates concerning U.S. child labour laws in relation to compulsory school attendance, after primary-school level, associated with Amish youth. In a clockwise direction, the first hexagon is the starting point of the U.S. Child Labor law. The second hexagon specifies that each state has its own school compulsory attendance law. Amish schooling with vocational training appears in hexagon three. The following two hexagons highlight *Wisconsin v. Yoder* (1972) and its ambiguity in relation to child labour laws. The legal gap in the school compulsory attendance law after primary-school level has been closed with the 2004 Amendment to the Child Labor law, giving permission to Amish youth to work in woodworking shops.

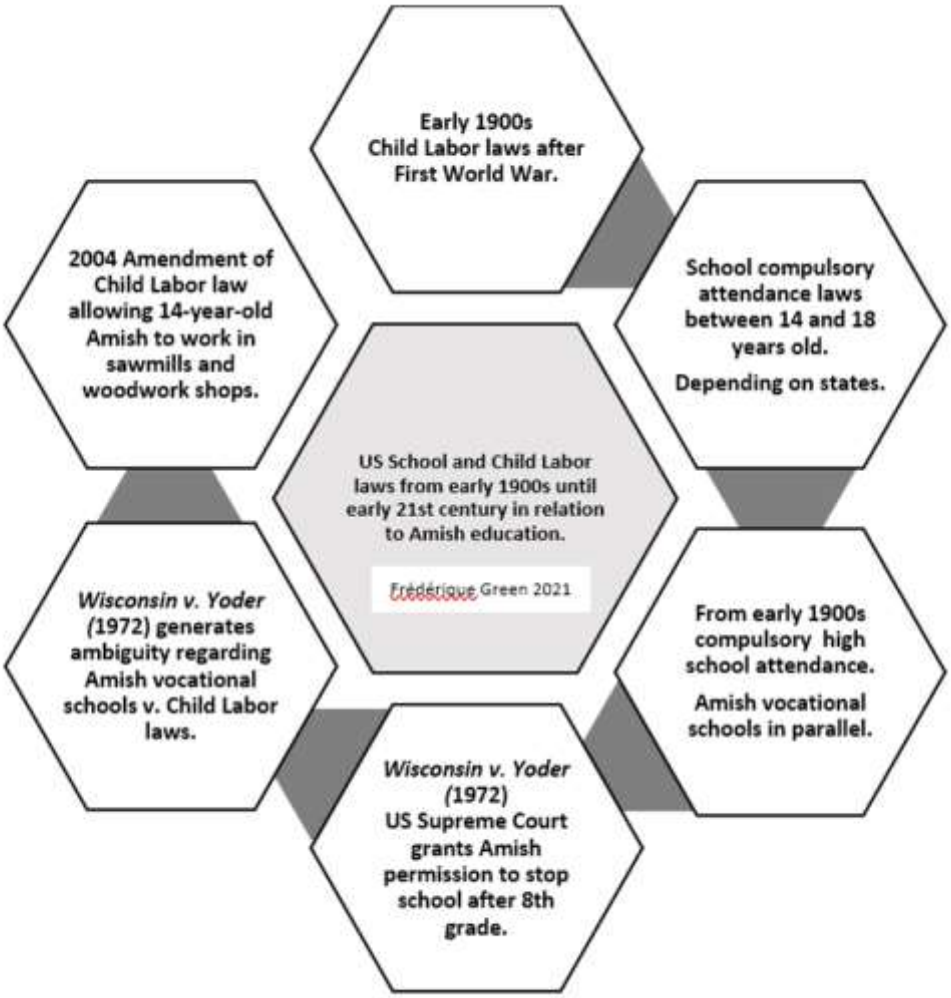

Figure 6.3 U.S. Child Labor laws and judicial decisions connected to Amish youth

6.5 Constitutionalism Model Argument: a Contemporary Judicial Case

The judicial and legislative cases examined earlier in this chapter show American constitutional mechanisms at work. Chapter 3 (Section 3.3) explained the complexity of the U.S. federal system. To illustrate further how frictions can develop between local governments and Amish citizens and become judicial cases, a contemporary example from the State of Minnesota follows. As explained in the introductory chapter of this thesis, this case is transferable to other states holding Amish population. This section

draws heavily on the Petition for *writ of certiorari* (explained in Section 1.4.1.2) addressed to the U.S. Supreme Court on 20 January 2021 by attorney Brian N. Lipford, to rule on the case opposing the A*mos Mast, Menno Mast, Sam Miller, And Ammon Swartzentruber v. County of Fillmore, And Minnesota Pollution Control Agency* (*Amos Mast et al.*, 2021).

To establish the background, the headlines on channel *5 Eyewitness News* read: 'Religious Freedom Clashes with Environmental Law in Minnesota Court' (2018). In October 2013, the Minnesota Pollution Control Agency (hereafter MPCA) issued rules regarding treatment of 'gray water', which they define as 'household wastewater produced from laundry, bathing, and cooking activities and which does not contain toilet waste' (*Amos Mast et al.*, 2021:9). Counties were required to design local ordinances. In December 2013, Fillmore County tried to compel the Amish Swartzentruber 'to install a septic system for gray water' (2021: 9). In June 2014 and August 2015, several Amish Swartzentruber sent letters to MPCA explaining their opposition, on religious grounds, to installing the required septic system. In 2016, the judicial procedure started with MPCA filing lawsuits against recalcitrant Amish. The compromise offered by the Amish was 'to adopt a system based upon the gray water reuse methods and principles permitted in twenty other states [e.g., Wyoming and Montana]. Such a system would comply with their *Ordnung*' (2021: 10, 12). The judicial procedure progressed yearly from district court decisions, to court of appeal decisions, to reach the Minnesota Supreme Court 'that denied review [of the case] on August 25, 2020' (2021: 10–12).

Attorney Lipford supports his petition for *writ of certiorari* with the 'Relevant Statutory Provisions' selected from the United States Code, pleading 'a substantial burden on

religious exercise' (2021: 3). Section 2000cc-3(c)-Title 42 flags up that the 'compelling government interest' must be proven, but also the obligation of the government to provide a solution using 'the least restrictive means of furthering that compelling governmental interest' (2021: 3). Furthermore, the above-mentioned section emphasises: 'this chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by (...) the Constitution' (2021: 3). On 2 July 2021, the U.S. Supreme Court granted review of the case and sent it back to the lower court (594 U.S. 2021). At the time of writing the lower court decision has not been published.

The précis of Lipford's petition for *writ of certiorari* contributes to my constitutionalism model argument. It highlights that from local government friction in Fillmore County, between the MPCA and Swartzentruber Amish, to the U.S. Supreme Court, the terms of the U.S. Constitution govern the interpretation of dispute settlement. Amish American citizens in the twenty-first century are engulfed in the whirlwind of American administrative regulations. Their resistance to accepting the 'ways of the world' crumbles under the pressure of the American state. Surreptitiously, the threat of assimilation infiltrates the theocratic Amish religious minority (see Chapter 7).

The roots of the American judicial system found in the U.S. Constitution were developed in Chapter 3 (section 3.7). Even the most traditional Amish folks like the Swartzentruber are very often confronted with environmental regulations and have to navigate the maze of the American system. In 2018, when I interviewed Commissioner Doug Bauman from Adams County, IN, he explained the difficulties they had in enforcing environmental rules protecting human health, as already mentioned briefly in Section 4.3.5. The ultra-conservative Amish in the county were illegally

recycling human waste and refusing to comply with rules demanding that septic systems were installed on their properties. A letter sent by Amish leaders explained their refusal to install septic tanks:

> one reason we don't want the tanks and the black water systems [human waste] it would be very easy for our members to hook up flush toilets. So, you could say we oppose these on religious grounds (2018).

An interesting comment from Bauman was that the problem is now out of control because of the massive growth of Amish population in his area and their change of occupation. He stated:

> now they're gone from living on an 80-acre farm where their kids are growing up, and keeping all their kids busy on the farm, to living on 5 acres, a building site (…) we probably have 50 to 75 vans leaving this County with Amish construction workers travelling as far as Indianapolis, Columbus, OH (2018).

In the Adams County context, the increase in regulations is clashing with the increase in the Amish population, generating tensions that are beyond negotiation. Bauman extended me an invitation to attend the Adams County Commissioners' meeting the following day, during which County Attorney Mark Burry was going to present 'amendments to Adams County Ordinance 2018-10, the Adams County Health Ordinance for onsite sewage systems' (Adams County, IN, 2018). During the meeting, Commissioners approved and adopted Ordinance 2018-10, which would be enforced accordingly.

6.6 Summary

Section 6.2 contrasted the American welfare state with Amish community care, including the two-part process leading to the Social Security exemptions granted to the Amish, as well as the perception of my interviewees on this topic. Section 6.3 analysed the multifaceted *Wisconsin v. Yoder* (1972) case, expanding on its impact on, and connection to, child labour laws. Section 6.4 presented the school/work ambiguity for Amish youth challenging the U.S. government. Throughout the chapter the negotiation, constitutionalism and hybrid models have been tested. Section 6.5 continued to construct my argument, demonstrating how the power of the Constitution, embodied in the legislative and judicial branches, regulates the lives of American citizens, and protects them all.

7. CONCLUDING DISCUSSION

7.1 Introduction

This last chapter draws together my key findings (Section 7.2) and expands on them. The twenty-first century American secular environment cannot be ignored. One of the ways of looking at the relationship between the American state and the Amish is in terms of secularism, the state's control of religious identity and expression. I first look at secularism in general terms in order to understand its meaning (Section 7.3). Second, I explore French secularism, including the Muslim headscarf case. The French secular paradigm is the basis on which András Sajó developed his 'concept of constitutional secularism' (2014: 74–6). I analyse this and use it to unlock a workable rationale in the interaction between the American government and the Amish religious minority. After that, special attention is given to the significant case of the Pennsylvania 'anti-religious garb' law because of its parallel with the French Muslim hijab polemic. My running argument is that secularism cannot be taken at face value. Section 7.4 scrutinises American historical 'exceptionalism'; that is to say, how America is different from other countries in politico-religious terms, as Alexis de Tocqueville explained in his book *Democracy in America* (1994: 53, 291). One of the facets of American exceptionalism is examined in President Eisenhower's position vis-à-vis religion and the National Prayer Breakfast. These examples confirm my suggestion regarding American secularism differentiating law and practice. Afterwards, I investigate, within this quasi-secular setting, the assimilation/acculturation of the Mormons and contrast it with the Amish (Section 7.5). The assimilation process for the Amish, shown in the flexible parameters uncovered during my research (historical, geographical, economic

and generational), is tested through the lenses of the negotiation, constitutionalism and hybrid models. Finally, my results suggest a partial 'progressive assimilation' for more forward-looking Amish groups who actively use the constitutional tools embodied in the First and Fourteenth Amendments. The original contribution this thesis makes to Amish scholarship and religious studies in general is discussed, followed by the significance of this research for earlier scholarship and suggestions for further research (Section 7.6), prior to a chapter summary (Section 7.7).

7.2 Key Findings

The structure of my thesis on the analysis of the dialogical exchange between American politico/legal institutions and the Amish religious minority reveals the progression of my reasoning to reach my key findings. First, the introduction (*Chapter 1*) next, the identification and detail of the methodology applied to conduct my research (*Chapter 2*). The complex structure of my study is grounded in the work of scholars of different disciplines, finding points of juncture between their theories (Lyall *et al.*, 2014: 19). The analysis and evaluation of their work stimulated my own reflection and led to my original hypothesis regarding the use of U.S. legislative and judicial instruments in relation to the Amish; that is, my constitutionalism model.

Some historical foundations have been laid (*Chapter 3 and Appendix 9*). Carl Sagan claimed 'you have to know the past to understand the present' (1980). In *Chapter 3* I explored the American politico-legal context during the eighteenth century (Section 3.2). The importance of this period in my research was to recognise the mechanisms leading America to its independence from British Empire control (Section 3.3). The significance for my research of the historical split between the British

Empire and America is evidenced by the American Federal Constitution of 1787 (Section 3.4) and the Bill of Rights of 1791, including the essential First (1791) and Fourteenth (1868) Amendments (Section 3.5). The capstone of my research is ascertained in the Founders' framework found in the U.S. Constitution and subsequent Amendments, providing sufficient protection for American citizens to this day (Section 3.7). *Chapter 3* made a strong link with the Amish historical background of *Appendix 9*, because the Amish were initially under the protection of William Penn's 'Holy Experiment' when the first wave arrived in America c. 1736–70 (Holmes, 2006: 5; Louis and Héron, 1990: 52; Nolt, 2003: 114; Appendix *9*: Sections 7.2 and 7.3). According to James Quinn (n.d.), 'the French and Indian War [1754–63] ended the Holy Experiment'. Therefore, my assumption was that the U.S. Constitution and Bill of Rights, and more specifically the First and Fourteenth Amendments, took over extending protection to the Amish who arrived between 1804 and 1810 (Nolt, 2003: 114).

Chapters 4 and 6 uncovered and presented the mechanisms of interaction between the American state and the Amish, testing the validity of the three models in operation: negotiation, constitutionalism, and hybrid. The anomaly of the theocratic Amish community being rooted within American liberal democracy was the focus of *Chapter 4*. The unwritten rules maintaining Amish theocracy (Section 4.2) in tension with American democracy and its tolerance for religious minorities brought some questions to light (Section 4.3). The key question addressed in my research, in the light of the First and Fourteenth Amendments (Section 4.4), was to reconsider the existing idea promoted by Donald Kraybill about the Amish preference to negotiate with authorities (2003: 18–20). In researching American government interaction with the

Amish minority, my conviction was that the U.S. Constitution and Bill of Rights were broadly sufficient to settle religious conflicts. Here is the connection between *Chapter 3* and *Chapter 4*'s exploration of the 'two crucial amendments' (Section 3.5). Hence, my suggestion of a constitutionalism model seemed to be the answer to my quandary.

However, cross-examination of my field research data with Kraybill's negotiation concept in mind uncovered a hybrid alternative. Consequently, the central point of *Chapter 5* was to test the three models in action, investigating American citizenship and the Amish (Section 5.2) through several examples of their participation or non-participation in the American politico-legal system (Sections 5.3–5.5). Regarding Amish American citizenship, the aspect of criminality related to the Amish was also considered (Section 5.6). This latter section shows that Amish society is not exempt from human weakness and deviance, but that the deviance is treated equally by American criminal law, showing how the Amish belong to the larger group of American citizens.

The web of connections between the chapters of my thesis, explaining my logic, continued with the scrutiny of examples of legal tensions between the U.S. Government and the Amish in *Chapter 6*. Judicial and legislative cases were examined through the lenses of the three models. The analysis of conflicts and solutions in Social Security (Section 6.2), education (Section 6.3), child labor (Section 6.4) and the environment demonstrated that the use of the First and Fourteenth Amendments offered strong support to my constitutionalism model (Section 6.5). Therefore, *Chapter 6* is cogently related to the foundational American history explored in *Chapter 3*.

In the current chapter, I expand on secularism in Western states and its impact on religious minorities. I also engage with the concept of ‘American exceptionalism’ and its peculiarities in relation to American notional secularism. Finally, I suggest that assimilation could be one of the consequences of the interplay between the American secular state and the Amish.

7.3 Secularism

The debate on secularism and its derivations (secular, secularisation) has flourished since the nineteenth century when Europe started to grapple with this concept (Turner, 2012: 128–9; Sajó, 2014: 59). Bryan Turner retraces the context in which George Holyoake defined secularism in 1846. Using the ‘existence of God’ framework, Holyoake defined secularism as ‘any social order that was separate from religion without engaging in any direct criticism of religious belief’ (Turner, 2012: 128–9). First, Turner posits that in 1858, Charles Darwin disturbed Christianity with his theory of evolution, which asserted that the law of the natural world was based on ‘the survival of the fittest, [and] had no space for either a Creator God or benevolent Design’ (2012: 129). Secondly, Turner suggests that biblical criticism analysing the coherence of the New Testament unsettled Christian beliefs still further. Those two essential trends offered fertile ground for more daring concepts developed in the twentieth century by European theologians like ‘Dietrich Bonhoeffer who prepared the way for God-less theology’ (2012: 129) and philosophers like Friedrich Nietzsche ‘who announced the death of God’ (2012: 129).

In recent years scholarship has theorised how the secular state intervenes in religious life, hence blurring the separation between state and religion. Talal Asad and Saba Mahmood have been at the forefront of this new theory. Mahmood says:

> Following Talal Asad, I conceptualize political secularism as the modern state's sovereign power to reorganize substantive features of religious life, stipulating what religion is, or ought to be, assigning its proper content, and disseminating concomitant subjectivities, ethical frameworks, and quotidian practices (2016: 3).

To put it another way, Mahmood stresses that modern non-theocratic states have the power to initiate changes in what is considered significant in religious life. In this case, the state can comprehensively publish arbitrary decisions made about religious activity, dictating what is allowed or not allowed, establishing moral standards, and interfering in daily practices. One practical example of how Mahmood's definition can be understood is the dissension over the Muslim headscarf worn by women in public places in France, as explored below.

Mahmood elaborates on the inconsistencies of liberal states on the separation of church and state, and on the discrepancies between theory and practice. She contends that this results in legal and political disputes over the demarcation between religion and politics (2016: 4). Echoing Mahmood and Asad's theory, András Sajó formulated what he calls 'constitutional secularism' (2014: 74–6). The following section analyses his proposition, its connection with my constitutionalism model, and the response of his counterpart Lorenzo Zucca.

7.3.1 The 'Constitutional Secularism' Dilemma

Sajó contends that the 'public–private divide' is problematic because 'the wall of separation' (in Thomas Jefferson's terms) is permeable to constitutional laws (2014: 61). He asserts:

> Much of what was once understood as private and, therefore, subject to a liberty interest, in the sense of being exempt from state intrusion, is now having to satisfy constitutional considerations (2014: 62).

Sajó defends his 'concept of constitutional secularism' based on 'the use of the human faculty of reason and on popular sovereignty' (2014: 71–6). In other words, he contends that all independent citizens should have the possibility of looking at the perspective/ideas of the state using critical thinking. Sajó's reasoning suggests that Amish individuals cannot be part of his theory, since their education does not encourage critical thinking (Hostetler and Huntington, 1992: 64). Nonetheless, in my interviews I witnessed Amish critical thinking at first hand. In Indiana, the young Amish businessman I interviewed about the photo ID issue displayed a forthright opinion, whereas the older generation was more discreet in giving their opinion on the same topic (Sections 5.5 and 7.5.1.4). Yet Sajó implies that religious influence should be set aside, which is unthinkable for the all-encompassing Amish religious way of life. Regarding 'popular sovereignty', Sajó interprets it as a very strong secular asset, understanding that if sovereignty is popular 'it cannot originate from the sacred' (2014: 75).

In response, Lorenzo Zucca deconstructs Sajó's argument and brings a more nuanced viewpoint to the status of religion in the European political arena. For him, the tension between 'constitutional secularism' and religious revival does not need a strong legal/judicial approach as Sajó sustains, but rather inclusivity and 'communicating' between secular state and religion constitute a more appropriate method. On this point, Zucca's assertion connects with the way the Amish work with U.S. Representatives, as Kraybill argues with his negotiation model. Zucca puts forward 'that religion is not a

threat in itself but, rather, is simply a symptom of a greater malaise: the inability of secular states to cope with diversity' (2009: 495). His solution to conflicts between religion and the secular state is to engage in conversation and try to understand the point of view of the other. His second suggestion is to acknowledge differences and at times 'to agree to disagree' (2009: 495). The debate between Sajó and Zucca resembles the discussion introduced in this thesis considering Kraybill's negotiation model (Section 4.4.1) and my constitutionalism model (Section 4.4.2). Kraybill's more flexible approach, resulting from years of observing and interviewing Amish people, parallels Zucca's dialogical approach. My French secular Cartesian method of implementing constitutional law (Section 4.4) comes closer to Sajó's 'constitutional secularism', indicating that the U.S. Constitution is a secular tool that was designed to avoid interfering with religion.

Regarding the model of French *laïcité* (secularism) that inspired Sajó's theory of 'constitutional secularism', Zucca argues that the French model is an 'aggressive form' of secularism unique in Europe (2009: 498–9). It is unique in its combination of 'legal *laïcité* and ideological *laïcité*', which merge to form a hybrid of the French 1905 law separating church and state and French secular mores, producing the end result of 'expelling religion into the private sphere' (Sajó, 2009: 494, 498). For Zucca, the dialogical exchange that should take place between the secular state and religion is non-existent in France. The paradigmatic secular French system prioritises assimilation over multiculturalism in its political programme. Rightly, Zucca points at the failure of the assimilation strategy epitomised in *les cités* (2009: 501). *Les cités*, complexes of tall residential buildings that mushroomed in the suburbs of large cities in France, were established to gather mostly immigrants, who would not only find

shelter but also understand and embrace their new nation's secular values and become equal French citizens. Unfortunately, over the years *les cités* have become '"ghettos", where the lowliest people in the French society are gathered' (Zucca, 2009: 501). The phenomenon of *les cités* becoming ghettos has engendered an array of problems like racism and fear of the other (Bowen, 2008: 4, 156–7).

John Bowen concurs with Zucca and expands on the problems French authorities encounter in trying to assimilate or integrate immigrants in France. In his analysis of the 2004 French law banning religious headscarves, Bowen implies that the crux of the problem for French politicians is to accept multiculturalism under the canopy of French Republican values (2008: 247–9). He explains that the word 'integration' has a different meaning depending on the protagonists in the debate: 'French officials see integration as requiring merely that newcomers to France respect the terms of the Republican pact, by learning the language, the rules, norms, and traditions that define France' (2008: 247). However, for immigrants, the majority of whom are Muslims, their views on religion and family life present different challenges. The problem for them is to reconcile their faith and way of life to Republican *laïcité* and its values, including gender equality (2008: 247). Both Jocelyne Cesari and Bowen understand French institutions interpreting the expansion of Islam in the suburbs, for example in the form of prayer rooms, 'as a sign of non-adaptation' (1995: 4). However, Cesari's interpretation is: 'on the contrary it is an indication of an acceptance of the [social] environment' (1995: 4). These spaces for prayer operate under the French law of 1901 that regulates associations, which Cesari perceives as a coherent adaptation to the country where the immigrants are now living but also separates them from their native country (1995: 4).

Sajó's constitutional secularism formulation, rooted in French *laïcité*, exemplifies a more extreme conception of secularism. To put it into context:

> The law [of 1905] definitively sealed the separation between Church and State. It abolished the Concordat of 1801 and put an end to the system of 'recognised religions'. It was also the beginning of so-called French secularism, which proclaimed the freedom of conscience and guaranteed the freedom to practice religion (France Diplomacy, n.d.).

Official documents declaring the separation between Church and State both in America (Section 3.6) and in France have theoretically ascertained neutrality when problems arise. However, judicial precedents are numerous in both countries showing that religious practices often clash with foundational documents like their Constitutions which are the bulwark of citizens' freedom of religion and equality before the law.

French secularism is not as straightforward as it appears to be, however. An interesting twist needs to be critically analysed. In the following section, I first explore the historical secular French model with some of its contradictions. Then, I expand on Bowen's example regarding the wearing of a headscarf in public places by Muslim females. It demonstrates how the French state impinges on a Muslim religious practice despite Article 1 of the French Constitution and the law of 1905. The fundamental Article 1 of the 1958 Constitution proclaims:

> France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis (Assemblée Nationale, n.d.).

7.3.2 The French Model

Separation between church and state was historically flawed from the beginning, that is, from the French Revolution of 1789 when, in the words of Michel Troper 'properties of the church were nationalised (…) and in exchange Catholic priests would receive a salary from the state' (2016: 326). The Concordat of 1801 between Napoleon – who was First Consul of France at the time – and the Holy See of Rome generated new rules, not only for Catholics but also for Protestants and Jews (Asprey, 2000: 395, 422; Troper 2016: 326). Even in the twenty-first century the state continues to have an active role in governing religion and maintaining religious properties. Troper argues that when the state 'interfere[s] with religion', it should keep public concern at the forefront, and religious liberty should be equally applied to each religious group (2016: 327). The *loi* Debré of 1959 is a conundrum revealing another exception to the rule of the French secular Constitution. Until 1959 Catholic parents paid school taxes for state schools as well as their private school fees. It is worth noting that they were in the same position as the Amish in the United States today, who pay both public school taxes and their parochial school fees (see Chapter 6). The 1959 law rectified the injustice with the state subsidising Catholic schools. However, the French state oversees the religious school curriculum (2016: 328). In Troper's words: 'this is another expression of the doctrine that the state is sovereign (…) the constituent power, which can create principles and allow for exceptions' (2016: 329). Therefore, Troper puts the accent on a more nuanced approach to French secular political theory.

Turner declares that in recent decades France as well as other states around the world has faced a recrudescence of religious fundamentalism (2012: 127). Talal Asad has a softer approach to this phenomenon than Turner. He formulates it as a 'resurgence of

religion' (Asad, 2003: 15). Turner asserts that Islam has been the main challenge bringing 'what has been identified as a crisis of liberalism around the separation of the church and the state' (2012: 127). The French secular approach to external signs of religion in public places can be illustrated by the analysis of the controversy surrounding the wearing of the *hijab*, a female Muslim head covering.

7.3.3 The Heart of the Muslim *Hijab* Polemic

A typical example of state intervention in religious practices, as Mahmood has theorised it (see Section 7.3), is the Muslim veil controversy that started in France in 1989. I have a vivid memory of this episode as I still lived in Paris at the time. Media covered extensively the story of three Muslim schoolgirls who wore a veil (as it was called at the time) in class (Bowen, 2008: 155). Later, the Arabic word *hijab* appeared more often in articles. The veil incident happened in *la banlieue de Paris* (Paris suburbs; Croucher 2009: 201–2). The school expelled the Muslim girls for wearing their *hijab* in class. However, *le Conseil d'Etat* (State Council) ruled in favour of the girls' rights. Croucher suggests that 'ultimately, the decision of the Council d'Etat [*sic*] reinforced *laïcité* by reasserting the role of the state as an entity that will not control religion' (2009: 200, 202). Hence, a correlation can be established between the decision of *le Conseil d'Etat* and the Law of 1905 'guarantee[ing] freedom to practice religion' (France Diplomacy, n.d.). The narrative did not stop in 1989. In 2004, the French *Assemblée Nationale* (National Assembly) with *le Sénat* (Senate) voted in 'LAW n° 2004-228 of March 15, 2004 regulating, in an application of the principle of secularism, the wearing of signs or clothing showing a religious affiliation' (*Journal Officiel*, 2004). Croucher reports that in France, the *hijab* dispute was interpreted by Muslims as 'a target of anti-Muslim sentiment (…) and racist' (2009: 200). Conversely,

the French state encourages Muslim females to integrate/assimilate within French culture. Some more progressive Muslim or non-Muslim groups interpreted the 2004 law as an encouragement to liberate female Muslims from the oppression of Muslim male diktats. However, conservative Muslims were convinced that integration would erase 'their religious identity, a common occurrence in the assimilation process' (Croucher, 2009: 200).

Croucher posits that the *hijab* conflict shows the inability of the French government to 'negotiate effectively' with Islamic ideas, the threat of future terrorist attacks and the 'formation of French-Muslim identity', including the wearing of religious garb in public areas (2009: 211). One shortcoming of Croucher's analysis of the relationship between the French state and Muslims residing in France regarding the *hijab* is that it is based only on interviewing forty-two Muslim women in 2005 and 2006 (Croucher, 2009: 203). His study would have been more convincing if he had also interviewed French politicians and non-Muslim French citizens to balance his analysis. Furthermore, in his understanding of the French secular mechanisms enshrined in the French Constitution and the role of the National Assembly and Senate, he misses the fact that there is no room for negotiation – in the sense of bargaining – in the French politico-legal system. As Turner contends, 'the republican tradition was (…) sharply and clearly proclaimed in March 2004' when the new French law forbade pupils from wearing conspicuous religious clothing in public schools (2012: 132).

I suggest that my constitutionalism model (Section 4.4.2) resonates with this quote from Turner. However, once again my constitutionalism model is challenged by the ambiguity of the application of Article 1 of the French Constitution stating on the one hand that 'it [the Republic] shall respect all beliefs', the 1905 law ensuring freedom of

religious practice, and on the other hand the passing in 2010 of a law prohibiting the concealment of one's face in public spaces (*Journal Officiel*, 2010). The 2010 law, undoubtedly targeting the female Muslim practice of wearing a face-covering veil in public spaces, was brought to the attention of the European Court of Human Rights (hereafter ECHR) in 2011. Samuel Moyn reinforces my assertion, questioning the neutrality of the ECHR when confronted with religious freedom and more particularly with the Muslim religious dress code (2016: 27). In 2014, the ECHR's debate over the right of a female Muslim in French public places to wear 'the burqa (…) a full body covering including a mesh over the face, and the niqab (…) a full-face veil leaving an opening only for the eyes' ruled in favour of the French state, as confirmed in its press release (ECHR-1, 2014: 1). The threat of terrorist attacks could have been a solid argument for the ECHR to rule against Muslims who wear religious clothing hiding the whole body except the eyes (Croucher, 2009: 211). Another contemporary approach could have been to defend the rights of Muslim females to be treated equally and with respect, as Article 1 of the French Constitution declares. Surprisingly, the ECHR dismissed the 'public safety [issue], respect for gender equality, and respect for human dignity' (ECHR-1, 2014: 3; ECHR-2: 9, 22), but homed in on 'respect for the minimum requirements of life in society (or of "living together")' (ECHR-2, 2014: 22). 'Living together' means living openly in the French democracy, allowing social interaction. The government emphasised the fact that the face is an important element in communication. The concealment of one's face can be 'a barrier raised against others', impeding free and open communication (ECHR-1, 2014: 3). In other words, the European Court underpinned its decision by choosing the 'living together' concept, allowing France to enforce its 2010 law banning face-covering clothing.

Justin Collings and Stephanie Hall-Barclay concur with my analysis, declaring that usually the ECHR sides with state government decisions and 'rarely intervenes to protect religious exercise' (2022: 498). Talal Asad makes a strong case for Muslims being 'a "Religious Minority in Europe"' (2003: 159). Conrad Hackett supports Asad's assertion and claims that in 2016, the estimated Muslim presence was approximately 5% of the European population, while it reached 8.8% of the French population (2017). Considering the marginalisation of Muslims within the contours of the European secular entity, Asad argues that the clash has more to do with Western societal values, as opposed to Eastern customs, than with the '"absolutist Faith"' causing a breach between Muslims and Europeans (2003: 159, 172). In the light of Asad's argument presented earlier, the European Court's idea of 'living together', respecting each other, seems utopic. To paraphrase Asad, the importance of the Muslim faith and cultural identity needs to be contemplated by secular states; Muslim citizens should be equal to the dominant group, and allowed to be 'participant in the public domain as equal citizens' (2003: 180).

I contend that Asad's argument comes back full circle in applying my constitutionalism model using Article 1 of the French Constitution: 'It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs' (Assemblée Nationale, n.d.). This means that the state should not have to consider minorities, as Asad argues, in the sense that Article 1 of the Constitution affirms that 'it shall ensure equality of all citizens (…) it shall respect all beliefs'. It does not say 'it should' or put conditions. Once you are a French citizen, the Republican Constitution is your legal protection, which includes equality and respect of religious

beliefs. Moreover, the enforcement of the1905 law should tolerate the female Muslim practice of wearing a hijab.

This brief investigation of the French secular politico-legal system, concerning external religious signs, shows that the application to it of my constitutionalism model requires the incorporation of a degree of legislative and legal accommodation. However, my constitutionalism model does not give any latitude to negotiation in the sense of bargaining around a table.

The complexity of the French secular politico-legal system does not provide easy answers to understanding the constitutional secularism theory offered by Sajó. Therefore, to illustrate the entanglement of the French secular Republic, I borrow the reasoning of Michel Troper on *laïcité*:

> some view *laïcité* as a complete separation of religion and state; others as a kind of civil religion, sometimes, as at the beginning of the twentieth century, as an anti-religious doctrine, criticized by its opponents as laicism; while still others regard it as a system where the state may or ought to regulate religions provided that all religions are treated equally (2016: 317).

The European issue over female Muslim head coverings has a remarkable echo in the United States (PA). The next section investigates the court and legislative narratives regarding religious clothing in the U.S. public sphere, in conflict with the secular approach in different states in America.

7.3.4 Pennsylvania ‘Anti-Religious-Garb’ Law

There are two strong similarities between Article 1 of the French Constitution of 1958 and the First (1791) and Fourteenth Amendments (1868) of the U.S. Constitution. First, both Constitutions claim to respect ‘all beliefs’. Second, they claim to uphold ‘equality of all citizens before the law’. After the French case law of 2010, which prohibited the wearing of religious garb concealing the face in a public space, a comparable law in the United States can be scrutinised.

Steven Nolt and Jean-Paul Benowitz declare that the State of Pennsylvania was the first to vote in an anti-religious-garb law in 1895 and several other states followed suit. They point at two salient historical elements that triggered the anti-religious-garb law, ‘nativism and anti-Catholicism’, which were rampant across America in the late 1800s (2022: 1). As John Higham puts it in relation to nativism, ‘the word is distinctively American, (…) [it] should be defined as intense opposition to an internal minority on the ground of its foreign (i.e., “un-American”) connections’ (1955: 3, 4). Further, he explains that the wave of Catholic immigrants reaching American soil in the nineteenth century was felt as a threat to the dominant Protestant nation: ‘anti-Catholicism has become truly nativistic (…) and has reached maximum intensity, only when the Church’s adherents seemed dangerously foreign agents in the national life’ (1955: 5). In their examination of the example of Lillian Risser, a Mennonite teacher who was caught up in the first court case challenging the 1895 Pennsylvania anti-religious-garb law, Nolt and Benowitz explain that in the late 1800s, six Roman Catholic nuns were employed by the local school board of Gallitzin, PA. Soon after, ‘two Protestant families sought to have the sisters removed as teachers’ (2022: 3). Nathan Walker summarises the consequent case of *Hysong v. Gallitzin* (1894), explaining that the Pennsylvania

Supreme Court ruled in favour of the Catholic nuns, upholding their constitutional rights to be employed upon their competences, meaning that their habit was irrelevant in those circumstances. Furthermore, it affirmed that in employing the Catholic nuns, the state was 'not aiding religion' (Walker, 2018: 54).

Following the 1894 ruling of the Pennsylvania Supreme Court, the state legislature initiated a bill that aimed to incite nuns to quit their teaching role. The bill that was signed into law in 1895, despite its impartial wording, not only touched Catholic nuns but also Anabaptist teachers (Nolt and Benowitz, 2022: 4–5). The Pennsylvania General Assembly re-enacted the statute in 1949 and 1982 (Walker, 2018: 367–8). The 'anti-religious-garb statute is still active' in the U.S. State of Pennsylvania, as Walker asserts (2018: 2). Nolt and Benowitz report that in 1990 the garb law was applied in the case of 'Alima D. Reardon a Muslim teacher' who was wearing religious clothes in public. She 'lost her legal challenge to the Pennsylvania garb law' (2022: 21–2).

Walker notes that there were two attempts to repeal this law, in 2011 and 2012, both of which failed (2018: 368). In 2021, another attempt to repeal the 1895/1949 law was included in the Pennsylvania Congress debates (Nolt and Benowitz, 2022: 23). In March 2021, Senators Kristin Phillips-Hill and Judy Schwank presented Senate Bill 247 to their colleagues to erase 'Section 1112 of the state's Education Code'; they argued that 'it is a violation of the First Amendment rights and is an archaic law' (Phillips-Hill, 2021). The last record of The General Assembly of Pennsylvania on SB 247 mentions that the most recent action took place in February 2022. The Bill is 'laid on the table, Feb.9, 2022 [House]' meaning 'to postpone discussion indefinitely (…) may resume at any time (…) a majority of votes of members is required to remove the item from the

table' (*Law Insider*, n.d.). Therefore, at the time of writing Pennsylvania has not repealed the 1895/1949 anti-religious-garb law.

7.3.5 Section Summary

After extracting several essential foundational ideas from the history of secularism, a contemporary definition provided by Saba Mahmood and Talal Asad has been examined. Their theory is that in recent years democratic states have been much more directive and interventionist in the religious lives and practices of citizens. A connection has been established between Mahmood, Asad and András Sajó, as the latter's 'constitutional secularism' puts the accent on the porous 'wall of separation' between state and religion. The paradigmatic French secular state is the basis used for the debate engaged between Sajó, with his strong constitutional secularism hypothesis, and Lorenzo Zucca, with his approach of 'communicating' between secular state and religion. A parallel has been drawn between Donald Kraybill's negotiation model and Zucca's dialogical argument. Conversely, Sajó's 'constitutional secularism' and my constitutionalism model are both anchored on the strength of the Constitution, the official foundational document of a democratic nation, establishing boundaries between state and religion. The pivotal point in the French example is that the secular state does not seem to embrace multiculturalism together with the necessary adjustments to be carried out. It instead privileges assimilation of immigrants into the secular nation with the integration of republican values.

Analysing the narrative of France and the United States, with a focus on the State of Pennsylvania, regarding the prohibition of wearing religious clothing in public schools, the authors referenced emphasise that both nations have a fear of being overtaken by

religious bodies. One of the manifestations of this threat appears to be through the wearing of religious garb.

French secularity is exemplified by its 1905 law separating state and church. Some nuances have been brought to light concerning the French state being involved in supporting religious school buildings and overseeing the curriculum of denominational schools. However, the lenience of the French state does not extend to the display of religious clothes and symbols in public spaces, including schools. The anti-Muslim sentiment in France, examined earlier in this chapter, is embodied in recent laws prohibiting the wearing of religious veil or garb hiding the face in public spaces. Several examples have been given demonstrating that France, as part of the European Union, is therefore accountable to the ECHR. The ECHR nevertheless delivered a perplexing ruling when Muslim plaintiffs turned to it.

The case study of the anti-religious-garb law in the State of Pennsylvania under its own state Constitution and the First Amendment of the U.S. Constitution is a historical example of anti-Catholicism. The 1895 Pennsylvania law was enacted to prevent the schools being engulfed by Catholicism as its proponents saw it. According to Walker, the 1895 PA law 'was (…) replicated in twenty-two additional states' (2018: 123). Walker asserts that

> anti-religious-garb laws were intended to target Catholic nuns (…) the argument that these statutes were designed to create a 'secular' culture at the time of their enactments was code for maintaining Protestant schools (2018: 247).

In 2021/22 Pennsylvania is the only U.S. state that has not repealed its anti-religious-garb law despite several attempts to do so. The constant dilemma in the United States

is to respect and accurately apply the First Amendment of the U.S. Constitution on cases involving state versus religious groups. The complexity of the American politico-legal system must consider each individual state with its own Constitution alongside the Federal Constitution, in order to have a fair legislative and judicial system.

The following section looks at American exceptionalism from the historical, political and religious angles. Lall Ramrattan and Michael Szenberg recognise the difficulty of accurately defining American exceptionalism. Nonetheless, drawing from their appraisal of classical authors like Jefferson, Montesquieu, and de Tocqueville, they retain two main characteristics: to be ‘different’ and ‘special’ (2017: 222). Sociologist Seymour Martin Lipset recognises that the expression ‘American exceptionalism’ was coined by Alexis de Tocqueville (Lipset, 1996), who said: ‘Everything is extraordinary in America, the social condition of the inhabitants as well as the laws’ (de Tocqueville 1994: 291). Lipset also reports that de Tocqueville highlighted how America was different from France – his own country – and other European countries, which promotes a comparative approach to understanding American exceptionalism (Lipset, 1996; Litke, 2010).

7.4 American Exceptionalism

This section does not elaborate on American exceptionalism in social terms, as Jeremey Rabkin develops in his article on ‘American Exceptionalism and the Healthcare Reform Debate’ (2012: 154). He mainly deals with the U.S. Affordable Care Act of 2010, ‘looking successively at background political culture, constitutional architecture, and constitutional culture’. Instead, I explore the historical, political and religious aspects (Rabkin, 2012: 154; Litke, 2010: 12).

Andrew Copson points to the difference between the French and American Revolutions regarding their approach to religion. He declares that the American Revolution had no quarrel with religion compared with the drastic French anticlericalism (Copson, 2019: 23). His assertion sets the tone for understanding American exceptionalism based on its history (Turner, 2012: 141). In Chapter 3, I examined meticulously how the American politico-legal system was historically constructed on the precept that the New World would depart from the European model that was built on established churches. From the dominion of the British Empire to American Independence (Section 3.2), the walk to liberty was established by the 1776 Declaration of Independence (Section 3.3) followed by the 1787 U.S. Constitution (Section 3.4). However, the American Constitution needed more emphasis on the rights of its citizens. The gap was fixed with the Bill of Rights, ratified in 1791. This thesis has mainly focused on the relevance of two crucial Amendments, the First Amendment of 1791, and the Fourteenth Amendment of 1868 (Section 3.5), in the life of the Amish people. Undoubtedly, religious minorities like the Amish have gained from American exceptionalism because they arrived in a country that was moulded on 'religious toleration' and that provided them with legal religious freedom (Nolt, 2003: 63). Despite the determination of the Founders to legally separate church and state and the official documents supporting it, Christian principles have been intimately woven into the American political fabric (Section 3.6). De Tocqueville affirmed too that 'religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions' (1994: 305). Abundant precedents generated by the U.S. Supreme Court are testimony to the difficult task of disentangling religion from politics. The development of modern state and federal laws

together with the conjunction of American exceptionalism and William Novack's 'associationalism' (2001) were explained (Section 3.7); in other words, how the American religio-political context has developed. Turner highlights the role that religion plays as 'denominations provide an associational life that is the social glue connecting every generation' (2012: 143). Turner also mentions the impact of President Eisenhower's deep religious faith, since Eisenhower regularly emphasised its benefits for the American nation (2012: 143). One of his well-known quotes is 'our form of government has no sense unless it is founded in a deeply felt religious faith, and I don't care what it is' (Eisenhower, 1952). An interesting point to make in the context of this thesis is that Eisenhower came from Anabaptist roots. His family was part of the Brethren in Christ (River Brethren). Therefore, he grew up in a very religious family. Later, he joined the National Presbyterian Church (Eisenhower Presidential Library, 2020: 1). Thus, despite Jefferson's 'wall of separation' between state and church, the connection between the Christian religion and the American state is a reality, and is examined next.

7.4.1 American Presidency under Eisenhower

The first sentence historian Kevin Kruse writes in the introduction to his book *One Nation under God* is striking: 'The inauguration of President Dwight D. Eisenhower [1953] was much more than a political ceremony. It was in many ways, a religious consecration' (2015: ix). Eisenhower's campaign had a strong Christian component, as Reverend Billy Graham regularly gave the candidate to the presidency 'passages of Scripture to use in his speeches (…) Four days later, he [the President] was the guest of honour at the first-ever National Prayer Breakfast' (Kruse, 2015: ix). It was

also under Eisenhower's administration, in 1954, that Congress amended the Pledge of Allegiance by adding 'under God'. In the U.S. Citizen's Almanac it reads:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all (U.S. Citizenship and Immigration Services, 2014: 21).

In the same Almanac can be found how the U.S. national motto 'In God We Trust' was signed into law by Eisenhower in 1956. It was originally part of a poem written by Francis Scott Key during the War of 1812. The poem became the American anthem and in 1864 'In God We Trust' was included on gold and silver coins. From 1938 all American coins included the motto, and in 1956 Eisenhower also authorised banknotes to display the national motto (2014: 23).

This brief overview of several key political events of 1950s America prepares the ground to explore how the Presidency approaches religion in general, or how state and church co-exist. John Torpey affirms that 'the strongly held notion of a constitutional "separation of church and state" notwithstanding, Americans tend to tolerate and even to expect a good deal of "God talk" in the public sphere' (2009: 154). This neatly corroborates the narrative about the annual National Prayer Breakfast examined next.

7.4.2 The Particular Case of the Annual National Prayer Breakfast

The National Prayer Breakfast (hereafter NPB) is a peculiarity that, in my view, exemplifies American exceptionalism. This unique construct promotes cohabitation and interconnection between state and religion, while the Founders proclaimed separation between the two entities. From their humble début in 1935 in Seattle, prayer breakfasts for businesspeople, instigated by their founder Abraham Vereide, grew in

number across different American cities until they reached Washington, DC. Deborah Whitehead believes that the history of the NPB reveals 'the complex relationship between religion and politics in the last century' in America (2021: [n.p.]).

Two journal articles describe the intricacies of the American NPB, one looking at 'The Religious Content of the Presidents' Remarks at the National Prayer Breakfast, 1953–2016' by Jonathan Peterson (2017) and the other by Michael Lindsay (2006) exploring the backstage of the NPB, studying 'one of the most secretive religious groups among the country's elite (…) referred to as "the Fellowship"'.

Peterson asserts that the NPB and religious communication 'represent clear expressions of American *civil religion*' (2017: 213). His assertion is echoed by Keith Bates who, examining President Lyndon Baines Johnson's presidency, called him the 'ecumenical Pastor of American civil religion' (2018: 13). Civil religion is illustrated by U.S. Presidents representing American civil leadership engaging in religious activity like praying in public settings. Peterson's thorough examination of presidential speeches between 1953 and 2016 shows a progression in rhetoric. He asserts that 'American civil religion has long had a Judeo-Christian flavour' and explains that in recent decades, the original Judeo-Christian religious landscape has shifted and theories of secularisation and pluralisation are in competition (2017: 213–14). Nonetheless, Peterson's conclusions show that religion has not disappeared from presidential speeches at NPBs. Secularisation does not appear to be winning the contest but rather pluralisation does, as Peterson confirms: 'the recent growth in presidents talking about collective "faiths" and individuals of "no faith" is the clearest evidence of a growing pluralistic flavour in the PBRs [Prayer Breakfast Remarks]' (2017: 228).

Lindsay scrutinises NPBs along more religious lines and uncovers the apparatus known successively as the ‘Fellowship’, the ‘International Foundation’ and today found on the internet as ‘The Fellowship Foundation’ (Lindsay, 2006: 391). He calls it ‘an anomalous profile with respect to traditional religious organization’ (2006: 391). The Fellowship Foundation originated with Abraham Vereide, as Kruse explains in his book. Whitehead reports that ‘prayer groups were established in the U.S. House and Senate in 1942 and 1943’ (2021). The continuity of these prayer groups is evidenced by their introduction, each year, as television programmes also broadcast on the internet (The Fellowship Foundation, 2020; National Prayer Breakfast, 2021). Senators can meet every Wednesday morning for a Prayer Breakfast. House Representatives have the same opportunity every Thursday morning. These prayer groups are not exclusively for Christians; people of other faiths can join them. Within the prayer groups Republicans and Democrats pray and share together. Religious testimony is given by politicians, and the President speaks at the NPB from a stand that displays in upper case the ‘SEAL of the PRESIDENT of The UNITED STATES’, which for me is paradoxical. The juxtaposition of the First Amendment of the U.S. Constitution and the NPB event, which unites people from the U.S. Capitol and the President engaged in a religious activity, demonstrates inconsistency. Although the U.S. President, Senators and Representatives do not represent a religion as such, they are nonetheless publicly involved in religious proclamation. In his analysis of President Barack Obama’s speech at the 2011 NPB, secularist Jacques Berlinerblau reacts with a point of cynicism to Obama’s Christian performance: ‘Obama managed to skilfully package partisan political points in the guise of god [*sic*] talk’ (2011). The salient point of Berlinerblau’s interpretation shows how a President of the United States can intertwine religion and

politics to his own profit, which indicates that the 'wall of separation' between state and religion can be permeable.

To conclude this section, I recount a personal anecdote. In 2016 during my field research, I interviewed Pennsylvania Congressman Pitts at his office in Washington, DC. In his waiting room, a little red book drew my attention. Its title was *America's Life Reference Manual – New Testament. Psalms & Proverbs HCSB, Featuring The Declaration of Independence – The United States Constitution* (Ebel, 2012). The title clearly announces the content, which explains how to live in America, helped by Scriptures, including the New Testament, Psalms and Proverbs, under the auspices of the American founding documents. The label inside revealed that in 2015 a revival campaign 'Celebrate America' led by 'Revival Ministries International' took place in Washington, DC. The results of the Christian campaign in Congress premises and published online are shown in Table 7.1.

Statistics Regarding U.S. House and Senate Offices	
Decisions for Jesus Christ	660
Ticket/invitations Distributed	7,626
Offices visited	Over 535
Congressmen and Senators prayed with	74

Table 7.1 Christian campaign in U.S. Congress led by Revival Ministries International (2015)

The title of their statistics indicates that they had access to Congress and the results show that they actively promoted Christianity in this political temple. This story has great significance in showing the interpenetration between religion and politics in Washington, DC, where the state reigns and the church finds ways to infiltrate the corridors of political power. Thus, the First Amendment of the U.S. Constitution, containing as it does 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof', gives great flexibility regarding 'free exercise', as demonstrated in the example of Revival Ministries International.

7.4.3 Section Summary

This section has outlined how America is 'extraordinary' in de Tocqueville's words, as historically state and church are legally separate but within this political framework religion, mainly Christian, is interwoven into the system. In Section 7.4.1 the Presidency of Eisenhower and his strong Christian faith was explored, emphasising the consequences of his faith and how it was instilled in American national laws. After that, the unusual case of the American annual National Prayer Breakfast illustrated to what degree American presidents and politicians use this event to give a flavour of 'God' to their mandate. Peterson's close analysis of presidential speeches at the NPB reveals that American presidents are still religious and can use the NPB as a political platform to further their own agendas (Section 7.4.2). Deeper examination of the NPB's tradition unearthed the mysterious group The Fellowship Foundation, which is the backbone of the NPBs. Its strength is its quasi-anonymity, except from initiated people. The significance of its work is found in the premises of Congress, where weekly prayer meetings take place in both the Senate and the House of Representatives. Thus, within the American temple of politics, politicians participate in religious meetings that

undoubtedly will influence their work. Consequently, secularism is not as powerful as it appears to be in America. However, pluralisation is on the rise in politicians' rhetoric (Section 7.4.3). I concluded with a personal anecdote showing how religious ministries can easily access Congress and lead Christian religious campaigns. Despite my presumption that the Constitution is anchored in separation between state and church, I uncovered that secularism/*laïcité* is a 'flexible' concept, as corroborated by Troper (2016: 317). This understanding has been consolidated by the analysis of religious garb cases in both France and America. The next section analyses the flexible parameters involving the Amish minority in navigating the context of secularisation versus pluralisation in America in the twenty-first century.

7.5 Assimilation or Acculturation

As has been stated before in this thesis, 'Amish' is a generic term that covers many different Amish groups (Nolt, 2016: 37). Each group follows its own *Ordnung* (Section 4.2.3). These sub-groups are also called affiliations, which are 'loose associations of Amish church districts that share a similar Ordnung. There are some forty different identifiable affiliations' (Nolt, 2016: 37). Despite their intentional separation from 'the world', Amish sub-groups live within the larger notionally secular American society. Therefore, their interaction with the American authorities is part of their daily lives through laws, rules and regulations at local, state and federal levels.

To complete the definitions given in Chapter 1 Section 1.1.1, Sam and Berry provide 'the International Organisation for Migration (IOM)' definition [of acculturation] of 2004: "The progressive adoption of elements of a foreign culture (ideas, words, values, norms, behavior and institutions) by persons, groups or classes of a given culture"

(2016: 9). Sam and Berry emphasise that the IOM definition did not consider that some individuals/groups may not totally embrace their new environment and may refuse or resist part of it. This latter point is valid when applied to Amish groups although the American continent is not a new environment for them. Sam and Berry's definitions are not all-embracing, but the clarification of these terms enhances the examination of two minorities in American mainstream society: Mormons and Amish.

Contrasting Mormon and Amish minorities, but also drawing parallels between those two groups, gives an insight into religious minorities' adaptation to secular America. The starting point of sociologist Armand Mauss in developing his theory of assimilation/retrenchment as applied to the Mormons was what Mauss mapped out when he studied the 'three historical stages in U.S. Mormon migration and settlement (…) the pioneer stage, the settlement stage and the entrenchment stage' (1994a: 11). The first two stages are self-explanatory. However, the entrenchment stage means that the Mormon church had solidly established itself in its new location and its membership was 'much more assimilated than in the two previous stages' (1994: 13). The definition of assimilation used by Mauss was 'the process by which one people (in this case, Mormons) come to be similar to another (in this case, other religious affiliated Americans)' (1994a: 36). Mauss declares that one of the keys to understanding Mormons' assimilation is found in the *Reynolds v. United States* (1878) case. At the end of the nineteenth century, the Mormons' practice of polygamy created an embarrassment for the sect as it became a landmark case that was ruled on by the U.S. Supreme Court and 'The 1878 Supreme Court ruling in *Reynolds* (…) outlawed polygamy' (Mauss, 1994a: 21). The court made a clear distinction between belief and practice. To remove the stain caused by the *Reynolds* case, and to obtain statehood

for Utah, Mormons went headlong into the assimilation process. They ‘became models of law-abiding citizenship’ (Mauss, 1994a: 22) like their Amish counterparts. However, by the 1950s the Mormon church was well into what Mauss has termed the assimilation phase (1994b: 131), Mormons left their isolated sectarian traditions to fully embrace American life as they furthered their education through high school and college degrees (1994a: 47, 68).

A contrario, Amish education finishes, for the most part, at eighth grade. The *Wisconsin v. Yoder* (1972) case is the Amish landmark officialising their retrenchment from American mainstream society which materialised in creating their own Amish schools (Sections 6.2 and 6.3; Johnson-Weiner, 2007:4-7). At the time, this ruling put a halt to a possible accelerated assimilation of the Amish through education in American public schools (Peters, 2003: 93, 183).

By the mid-twentieth century, the accomplishments of Mormons were well known ‘in government, business, athletics, music, arts, entertainment, and other fields’ (Mauss, 1994a: 22). Their success also brought ‘potentially secularizing influences’ (Mauss, 1994a: 70). In the process of assimilating, Mormons seemed to have lost the ‘peculiarity’ or particularity that distinguished them from the rest of the American society (Mauss, 1994a: 60–1). In subsequently returning to their roots, Mormons reached what Mauss calls the ‘retrenchment phase’; he cannot pinpoint a specific date, although measures showing retrenchment were taken between the 1970s and 1980s (1994a: 86, 89, 91, 94). He observes a return to more leadership control, for example through education (1994a: 79, 82). Mauss also declares that ‘assimilationist and retrenchment elements have always existed side by side’, for example with the church Welfare Program that started during the Great Depression in the 1930s (1994a: 79, 81).

Similarly, as Nolt asserts, the Amish have organised 'church-centred mutual aid programs to assist families with property losses, health care costs, or even small business product liability' (2016: 42). For Mormons, retrenchment refocused their energies on what makes their religion separate from other Protestant groups. Mauss summarises the education aspect as follows:

> The CES [Church Education System] has become anti-scientific and anti-intellectual, more inward-looking, more intent on stressing the uniqueness and exclusiveness of the Mormon version of the gospel as opposed to all other interpretations, whether religious or scientific (1994a: 98).

After the publication of his seminal work, Mauss continued his reflection on his theory of assimilation/retrenchment. Matt B., a Mormon writer who does not disclose his full identity on a Mormon website, reports that Mauss came to the conclusion that between total assimilation or 'uncompromising retreat' there is a 'middle ground option' (Juvenile Instructor, 2019). Mauss declared:

> LDS [Church of Jesus Christ of Latter-Day Saints, i.e., the Mormons] general authorities [had] gradually introduced a series of changes in church policy that have had the cumulative effect of pulling the pendulum of ecclesiastical culture back somewhat from the retrenchment mode and toward assimilation (2019, [n.p.]).

This quote suggests the Mormon church has come full circle. To a degree, Mauss's retrenchment model can also be historically applied to Amish society. The emergence of the Amish sect came from the historical split between the Swiss Mennonite church and Jakob Ammann, when in 1693 he wanted to return to strict application of the

Dordrecht confession of 1632, as expanded on in Appendix 9 section 6.2 (Hostetler 1993: 31). In other words, the Amish were a consequence of a movement of retrenchment within the Mennonite church.

In contrast to the Mormons' assimilation of the 1960s, Amish society continued to cultivate isolation from the world, living an agrarian life until the late twentieth century. Gradually, land became too expensive to buy and the Amish had to diversify to generate income for their households (Nolt and Meyers, 2007: 84–5). Researchers of Amish society have for a long time been shy of acknowledging that part of the Amish community that shows signs of assimilation. However, in her latest book about Amish women, Karen Johnson-Weiner paints a picture of twenty-first-century Amish society with tangible signs of assimilation for more progressive Amish communities. She explains how Amish women and some communities will have to find new ways to remain Amish while working in manufacture, using more and more technology and questioning their beliefs and the place of the church in their lives (2020: 243–4). Johnson-Weiner quotes someone from an Amish liberal group who leads a prosperous business: 'Business is business and church is church' (2020: 244). This quote turns Amish culture and tradition on its head. The Amish *Ordnung,* as the norm of leading a Christian life on a daily basis encompassing family, business and church with a solid separation from the world, can be rocked by external forces (2020: 245). Johnson-Weiner asserts that 'as mainstream society changes and as Amish church communities react and evolvethe picture will only be more complex' (2020: 246).

Part of the assimilation process for some Amish can be found in their growing awareness of American laws and how they gained competencies in knowing and using their American citizens' rights, sometimes by themselves or helped by 'English'

outsiders. Table 7.2 gives a synoptic view of this phenomenon. The period covered, 1935–2018, is shown in the middle band. The upper part records American government laws that directly affected the Amish religious minority. The lower part shows the Amish response to those laws. This table pictures how my constitutionalism model is the larger framework within which the Amish actively work under the protection of the First and Fourteenth Amendments to the Constitution. However, my hybrid model is illustrated by the Amish leadership interacting with Congressional politicians to obtain a number of exemptions. The table does not include Kraybill's negotiation model, because negotiations between local authorities and Amish leadership would include too much data to be collected in a synoptic manner. However, negotiation can still be possible in certain cases and in certain geographical areas.

My hypothesis is that the steady increase of laws at all levels and in every sphere of the American nation clash more and more with the Amish way of life. Their negotiation tool might eventually disappear under the pressure of legal actions conducted by authorities, for example in zoning issues, in environmental matters and other problems (see Section 6.5). As American citizens abiding by the law, the Amish are already equally integrated in the American nation (Fourteenth Amendment). Their religious beliefs and practices are firmly protected by the First Amendment, which can presumably help them push back the infiltration of secularism within their communities without fear.

Table 7.2 Timeline of the interaction between the U.S. government and the Amish minority, 1935–2018

U.S. government intervention	Social Security Act signed into law by President Franklin Roosevelt	Expanded Social Security coverage signed into law by President Dwight Eisenhower	Congressional Representa-tives listen to the Amish request for 1954 Social Security exemption	Medicare/ Medicaid signed into law by President Lyndon Johnson **Exemption of Social Security** attached to Medicare bill was enacted along with the legislation (exemption of self-employed Amish)	Federal government drafting men for Vietnam War	*Wisconsin v. Yoder* At U.S. Supreme Court	*United States v. Lee* At U.S. Supreme Court	Following U.S. Supreme Court decision in *U.S. v. Lee* ****** **Exemption of Social Security** for Amish employing other Amish	Child Labor Law signed by George W. Bush	Affordable Care Act signed into law by President Barack Obama Exemption including the terms of the 1965 Social Security, Medicare.	E.g., bill regarding military service for women
	1935	**1954**	**1955**	**1965**	**1966**	**1972**	**1982**	**1988**	**2004**	**2010**	**Today**
Amish minority reaction	No precise activity recorded because this law did not affect the Amish directly	Amish unsettled by government encroachment into their own 'community welfare'. For the first time self-employed farmers are included in the Social Security Amendment of 1954	Amish leaders starting to work with Congressional Representa-tives to obtain an exemption from the 1954 Social Security law	Amish leaders work continuously with Congress-ional Representa-tives	**Creation of the Old Order Steering Committee** to work at exempting Amish men from combat service with U.S. authorities	Convinced by outsiders to go to Court ******* U.S. Supreme Court rules <u>in favour of</u> the Amish	Lee went to court on his own accord ****** U.S. Supreme Court rules <u>against</u> Lee	Amish leaders worked with Congress-ional Representa-tives	Amish leaders proactive with Congress-ional Represen-tatives	Amish leaders worked with Congres-sional Representa-tives (Nolt, 2009)	Anticipatin g vote of new laws by continual interaction with Congress-ional Represen-tatives

7.5.1 Flexible Parameters for the Amish

To contextualise how Amish society is nestled within American exceptionalism, I examined further the complexity of their society regarding their future. It is reflected in the analysis of my sample of interviews with American authorities, American non-Amish citizens as well as Amish leaders across Indiana, Ohio, Pennsylvania, and New York State. Considering the three different models studied in Chapter 4, negotiation, constitutionalism, and hybrid models, I found different patterns with flexible parameters. Included are historical, geographical, cultural, economic, and generational adjustable parameters. These patterns are intricately woven into each other in different states and affiliations. Previous scholarship underpins my own results. Historical variations are shown in internal splits occurring at different times (Section 7.5.1.1). Geographical variations occur since each state is home to several different affiliations and because state laws differ from one another in a federal system (Section 7.5.1.2). Economic and cultural variations exist because Amish groups have progressively moved from mostly agrarian occupations to diverse employment within the Amish community or outside it. In the process, there is a shift in their language use and habits (Section 7.5.1.3). Generational variations arise as part of the younger Amish generations are mesmerised by new technologies (Section 7.5.1.4). There is no possible generalisation across America regarding how each state deals with its Amish population, nor at local level. However, laws have been challenged by the Amish at various points in their history in America, and, as studied in Chapter 6, had different outcomes, sometimes creating legal and cultural precedents. I now consider these different types of variations in turn in order to understand to what degree

assimilation/acculturation might pervade or have pervaded Amish society at the time of writing.

7.5.1.1 Historical Variation

Appendix 9 demonstrates how the European historical, religious, and political background had consequences for the Amish religious minority. As a reminder, in Europe during the first part of the nineteenth century, the Amish were in a situation where either they would have to assimilate into the main culture under Napoleonic political authority, or they would have to emigrate. Full equal citizenship, which might bring the end of bigotry and torture, came with responsibilities that included for example military obligations (Section 5; Nolt, 2003: 98, 107–8). Many of them opted to migrate to America (Section 7).

Donald Kraybill, Karen Johnson-Weiner, and Steven Nolt postulate that

> despite its European roots, the Amish movement has been a North American phenomenon. The diverse ways of being Amish in the twenty-first century have immerged in an American context in response to American conditions and concerns (2013: 38).

This section looks briefly at historical variation occurring in America from the nineteenth century until today, showing how internal splits and outside forces slowly push some Amish into the assimilation process. Since their arrival in America, the Amish church has been through internal transformations and splits. Paton Yoder claims that many splits occurred during the second part of the nineteenth century (1991: 26). Differences between Amish conservatives and the ‘more change-minded leaders’ could not find common ground and reconcile despite trying between the 1860s and 1870s:

‘conservatives wanted to retain the “old order” of church practices; they were eventually dubbed “Old Order Amish”’ (Yoder, 1991: 26–7, 261). The consolidation and expansion of *Ordnungs* (Section 4.2.3) by the conservatives protected the Amish sect to a certain extent. Other dissent within the Amish sect appeared over ‘stream baptism’ (1991: 136), ‘shunning’ (1991: 265), ‘building of meeting houses’ as well as ‘conducting Sunday schools’ (1991: 279–80) and ‘assurance of salvation’ (1991: 285–6). On the latter point, Yoder argues that the Old Order Amish retained the belief that one could only hope but not be assured of salvation until ‘he or she stands before God in the Last Judgment’ (1991: 286). Yoder contends that the period of dissension within the Amish church was understood by outsiders as a ‘consequence of the inevitable trend toward the acculturation of a minority group in the milieu of the American melting pot’ (1991: 135). However, despite its internal struggles, the Amish ‘resist[ed] acculturation with the larger society around it’ (1991: 287).

Later, Leroy Beachy, an Amish historian from Ohio, ‘referred to the 1900s as “a seemingly reckless century of division” because the Amish community there splintered into more than thirty separate groups’ (Kraybill *et al*., 2013: 146). Questions about how and why Amish divide and create new groups, while they remain Amish in essence, have different origins and are beyond the scope of this thesis. However, Kraybill *et al.* give some perspectives about the spectrum of ‘Amishness’:

> The Swartzentruber Amish are the most conservative affiliation, and the New Orders are the most liberal. These two wingtips of the Amish world – Swartzentruber and New Orders – represent 7 percent and 3 percent respectively, leaving the vast number of Amish people in the middle (2013: 147).

Johnson-Weiner declares that splits are an example of significant tensions in the Amish experience, coming from the world (e.g., because of new technologies) but also from internal problems (e.g., refusal of Sunday school for children) (2020: 23).

Frictions occurring within Amish society demonstrate that rather than negotiate over their religious traditions, the more conservative individuals in the group severed their ties rather than compromise, replicating Mauss's retrenchment model. The Amish who were more forward thinking made a start down the road to assimilation.

Geographically the Amish communities are spread 'across thirty-one U.S. states, four Canadian provinces, and two South-American countries' (Johnson-Weiner, 2020: 23). This geographical spread is significant, because the Amish live in different contexts of land availability and economic opportunities. Consequently, depending also on their degree of assimilation, their practices are different in relation to their environment. Thus, the geographical variation is examined in the following section.

7.5.1.2 Geographical Variations

The variations between *Ordnungs,* groups and geographical areas that Johnson-Weiner describes are reflected in my own research. My sample revealed that not only is the number of Amish groups rather large, but their geographical location has a great influence on their 'Amishness'. In other words, their degree of assimilation within their wider local area shows differences but is measurable to a certain degree.

In Indiana, I found a sharp contrast between Amish residents. A very conservative community lives in Adams County and causes difficulties for the local authorities. For example, in terms of health and protection of the environment, Commissioner Doug Bauman explained: 'tomorrow we are going to implement an ordinance on the

correct way to handle sewage, specifically human waste', which was written to put some order into the practices of the 'unruly' Amish group of Adams County (Bauman, 2018). However, Bauman and Environmental Director Jessica Bergdall explained that they had had several contacts with this particular group to explain the importance of applying the state regulations to their properties. This part of the conversation shows an echo of the negotiation model in action. However, this group did not want to comply. Thus, environmental laws had to be enforced equally on every citizen, disregarding religious affiliations (Bauman, 2018; Bergdall, 2018). Consequently, in this case the hybrid model seems to be appropriate, because the authorities had conversations with the Amish but these did not bring any positive results, hence the environmental state law had to be enforced.

In Elkhart County, a few miles further north of Adams County, a majority of progressive Amish work in factories that produce recreational vehicles. Commissioner Mike Yoder explained:

> There are no jobs milking cows or raising corn or soya beans anymore. It is manufacturing business; it's moving towards a need for higher technical skills. When they have needed to learn computer skills, they have learnt them. So that is a good sign. I expect though, that in the future, these other technical certifications will come if they're going to continue working. Our church districts seem to adapt to what is needed for Amish families to make a living. The practices which clearly separate them from the rest of the world appear to be becoming narrower (Yoder, 2018).

This testimony exemplifies how the negotiation model is at work regarding technologies and education for the Amish, which is consolidated by the research '*Choosing to be of the World: Why Amish Parents Choose to Send their Children to Public Schools*' by Steve Thalheimer -superintendent of Elkhart Community Schools (2018; 2021). Thus, in sociological terms, negotiation is happening within the boundaries of their community's *Ordnung*. These two examples illustrate disparities in terms of conservative/progressive Amish and their geographical location that influence their degree of assimilation. They also represent the role of local authorities in implementing local laws as well as observing fluctuations of Amish groups in negotiating with the twenty-first-century technological environment.

Johnson-Weiner recounts that in Holmes County, Ohio, an Amish woman 'acquir[ed] computer skills' in order 'to track inventory as part of her work at a shop' (2020: 184–5). This statement corroborates Cory Anderson's comment on the number of Old Order Amish that, in Holmes County, go to vocational training after eighth grade to gain secretarial skills. He added that 'some of them take their GEDs' [General Educational Development, a high school equivalency diploma (Bestaccreditedcolleges.org, 2021)] (Anderson, 2018).

A contrario, in the same county, an Old Order Amish leader claimed that their parochial Amish schools were sufficient to educate Amish children up to eighth grade: 'it's got a lot of focus on Reading, Writing and Arithmetic with also, vocabulary. Not much science obviously because Darwin is hiding in science' (K.D., 2016). However, he did explained that a few Amish children go on to higher education. The latter example shows the awareness of this Amish leader of the necessity, or the choice, to pursue further

education, implying that assimilation is slowly taking place more widely in his Amish community.

In Lancaster County, Pennsylvania, a prominent Amish leader explained the goal of the Amish community in terms of schooling. He asserted that eighth-grade education was sufficient, but that additional vocational training would close the gap between eighth grade and entering the Amish workforce. In his own words:

> we have what we call vocational class that's for our 9th grade, after they're through 8th grade, and that's not necessarily a VoTech, a vocational school. There's been some talks (…) we could do something like that, see the public school have VoTech, they have vocational schools [where] you are allowed to work in there under supervision so that's where we would like to be able to work, have our children working in shops under supervision (B.J., 2018).

This extract uncovers the Amish way of thinking for his community. They want to retain an eighth-grade level of education, but at the same time they want to imitate what works in 'the world' in terms of vocational education. Nonetheless, they would not use existing facilities of the public education system. That gives a twist to the assimilation concept, showing that in Lancaster County the Old Order Amish leadership can assess and borrow what works for the world and adopt it without having their youth actually joining public schools. This is another example that can be classified in the sociological negotiation category, as Amish do borrow and adapt to their own requirements what can be beneficial for their community. Conversely, in Holmes County (OH), part of the Old Order youth can easily join public schools to further their education (Hurst and McConnell, 2010: 153).

In upstate New York, Johnson-Weiner with her first-hand experience explained to me that the schooling in St Lawrence County, where there is a high concentration of very conservative Swartzentruber, cannot compare with the schooling in other states like Indiana or Pennsylvania. To clarify her point she added:

> very recently, we were in court with an Amish family and I took it as a real milestone that we were able to bring in translators to work with the Schwartzentruber couple on the grounds that they could not adequately take part in their own defence which is required by our law because they could not understand the English language adequately (Johnson-Weiner, 2018).

In 2017, the New York State Unified Court System in its report 'Ensuring Language Access' acknowledged the diversity and multiplicity of languages used in New York State:

> The New York State Judiciary is committed, above all else, to the dual goals of unfettered access to the courts and equal justice under the law. In a state as diverse as New York, that commitment is continuously tested by the hurdles presented by language differences and hearing loss (2017, iii).

The Swartzentruber case fits in my constitutionalism model because the state court had to provide translators for this couple in order to help them understand the judicial process and its outcome. The sample of interviews given above shows how different models correspond to the geographical situation and the degree of progressiveness along the Amish spectrum. Geographical variations are fully intertwined with the economic and cultural aspects of Amish life, which are examined next.

7.5.1.3 Economic and Cultural Variations

Charles Hurst and David McConnell, in their book about the Amish communities of Ohio, indicate that these people can no longer remain totally insular, as previously stated (2010: 175–6). Changes triggered by the difficulty of finding affordable arable land to continue farming have prompted many Amish to diversify their occupations in order to earn a decent living for their large families. Hurst and McConnell highlight the combination of three tangible factors to the diversification of Amish occupations and their success in Holmes County: 'manufacturing, tourism, and agriculture' (2010: 177). Commissioner Robert Ault frankly recognised that the Amish bring tourists to the area and that they are a 'tremendous' help to the local economy (Ault, 2018). Thus, the Amish are on a par with the 'English' in this county, blurring the separation between the two worlds. Again, in the tourist industry health and safety rules are numerous and apply to 'English' and Amish alike (R.D., 2016). Nolt and Meyers emphasise the regional context when expanding on Amish people living in northern Indiana. They report that young Amish men had to find work during the Great Depression and ended up working in factories, with their leaders' permission (2007: 84). They add that Northern Indiana and Geauga in Ohio are atypical in the Amish narrative because of the proximity of factories providing accessible jobs to Amish individuals when nothing else was possible (2007: 85). The numbers they present establish that in northern Indiana in 2001/2002 'the occupation of Amish household heads under 65 years old, working in factories, represented between 52.9 % (Elkhart-Lagrange settlements) to 59.4 % (Nappanee settlement)' (2007: 87). This variation demonstrates that under the pressure of economic necessity, Amish leadership can adopt a more flexible attitude when farming is no longer an option, as Commissioner Yoder explained. Indeed, the

negotiation model is totally applicable here. But the hybrid model can also be logically applied, because in their new line of work the Amish are subject to laws, rules and regulations that are different from those related to farming. Nolt and Meyers explain that there is an ‘ethnic subculture’ in the factory as Amish workers ‘spend their breaktime and lunch hours with fellow church members, talking about Amish life in Pennsylvania German’ (2007: 87).

My visit to one of the recreational vehicle factories in Elkhart County in 2018 gave me an incredible insight into Amish staff at work in that company. Amish males and females too were working on a daily basis in that worldly environment. Wilbur Bontrager, Chairman of the Board of the factory, introduced me to an Amish foreman who had worked for the company as long as he could remember (2018). The status of this Amish man was well established in the company. Watching the assembly line populated by a great proportion of Amish was a picture of Amish social stratification within the ‘English’ world. In 1988 Jerry Savells observed that in Berne (IN) and Intercourse (PA) the members of the young Amish generation were relying on work outside their community for ‘economic stability’ (1988: 131). The variation between working on a farm and working in factories ‘has led to a rather subtle kind of economic stratification’ (1988: 131). Thirty years later, Frances Handrick reflected on the possibility of exploring ‘how far a class-system is developing within the Amish’ (2018: 240). Her suggestion points to three different levels: ‘business-owners, self-employed entrepreneurs as a middle group, and those who work in the business as a lower class’ (2018: 240). I contend that the emergence of ‘Amish hierarchical economic classes’ informs researchers of a kind of circumstantial assimilation. In other words, economic

pressures on Amish families have created a parallel world to ‘the world’. Involuntarily, money is a divider creating strata within Amish communities.

In Indiana, Nolt and Meyers also witnessed outside signs of class differences. They described Amish housing in certain areas as ‘Amish suburbs’ with ‘a paved driveway and basketball hoop for the children’, which I also observed (2007: 88). These examples show a form of assimilation of some Amish into the larger ‘English’ environment. Yet Nolt and Meyers argue that working in factories has not diminished the size of Amish families. In addition, the separation between factory work with its advanced technology and their home meant that technology did not impinge upon Amish homes. In their final assessment, they conclude that Amish people who are involved in cottage industry had more pressure coming from ‘expos[ing] children to the sort of regular interaction with non-Amish customers and salespeople that may accompany life with a family-run small business’ (2007: 89–90).

During my field trips, I regularly encountered Amish children working in their family’s or neighbours’ businesses. For example, I saw them working on produce stands outside their farm in Gordonville, PA. In Lancaster County, PA, I witnessed an Amish male teenager demonstrating how to fold a quilt into a pillow. He was a very skilled salesman and also staffing the till. Although he was working in a family shop on their farm, this young man was totally immersed in the local tourist industry, showing remarkable marketing aptitude that blurred the lines separating the religious Amish from secular ‘English’ consumerism. I saw at first hand the family unit working together and the inherent risks of slowly drifting away from some of their Amish practices. For example, in this shop setting, only their attire and haircuts remained signs of difference, showing that their separation from the world is not unequivocal. The Amish thriftiness

is threatened by the consumerism surrounding them. This was blatant when my Amish friend's daughter was preparing for her wedding. My friend commented how much things had changed since her own wedding. They used to write their invitations to family and friends by hand (E.P., 2019). I drove them to a home-based business where a young Amish woman designs invitations on her computer. She was waiting for my friend's daughter to help her choose a design for her wedding invitation. This example shows the intersection between economic, culture and generational variations.

One corollary attached to the daily interaction with the outside world is the Amish's use of the English language, which in some families has become their main language (Nolt and Meyers, 2007: 90). However, linguist Mark Louden describes how the Pennsylvania Dutch language has been preserved in secular America thanks to 'a number of circumstances that are particular to American society' (2016: 356). Certainly, Pennsylvania Dutch speakers have benefited from U.S. government tolerance and the acceptance of 'cultural and religious diversity' (2016: 356). Louden defends Pennsylvania Dutch as 'a language rather than a dialect', despite the fact that 'it is a primarily oral language that is related to German' (2016: 12, 11). He argues that English furnishes between 10 and 15% of Pennsylvania Dutch words (2016: 34). Johnson-Weiner explains that Pennsylvania Dutch is the vernacular used within families and the church environment, where they use 'High Amish German to participate in religious rituals', and the English language has a very specific place in Amish society (2020: 191). English is used essentially 'for written communication within the Amish world' (letters, newspapers; 2020: 191). I can add that Old Order Steering Committee Minutes are also recorded in English. Johnson-Weiner emphasises the

degree of complexity in the use of the English language by the Amish, citing Joseph Stoll, an Amish penman:

> *spoken* English is the language associated 'with the business world, society and worldliness (…) the forces that have become dangerous because they make inroads into our churches and lure people from the faith' (Stoll, 1969, cited in Johnson-Weiner, 2020: 191).

I concur with Stoll in thinking that the English language is another potential risk that can disrupt the cohesion of Amish society. English, associated with doing business with the world, might sooner or later engulf part of the Amish community. Pennsylvania Dutch is one of the Amish markers. Thus, the negotiation model is valid when applied to economic and language compromises. However, my constitutionalism model has its place when it comes to all the labour laws and health and safety measures that the Amish have to comply with when their occupations take them out of their farming jobs. Also, tensions between the Amish world and mainstream American secular society produce potential risks for Amish individuals to slide into the secular world as they change occupations and work using the English vernacular, in an English-speaking environment. In the next section, the generational aspect is examined.

7.5.1.4 Generational Variations

Change between generations was evident in my interviews. The wedding invitation example in the previous section represents one aspect of a generational variation. This phenomenon matches Frances Handrick's research on Amish women and changes they experienced in their lives and work since the 1970s (2018). As already examined in Chapter 5, over the last twenty years the Amish younger generations have tended

to assimilate more in some geographical areas, but also in part of their way of life. In Indiana, it was obvious that the younger generation in Elkhart County did not object to having a photo ID as part of good American citizenship (Section 5.5; H.P., 2018; R.B., 2018). In the same county, an older Amish businessman adopted a passive attitude, not renewing his old photo-less ID to avoid the new photo ID required by Indiana State. Voting was another area where a generational change occurs. Amish leaders in both Ohio and Pennsylvania noted that many more Amish register to vote than used to, although voting is strongly discouraged by Amish religious leaders. They reported that because of their registration to vote, Amish people were more often summoned to do jury duty, which is another matter that their biblical principles and tradition forbid. Amish church members are, for the most part, officially exempted by the courts on receiving a letter from Amish bishops confirming that according to their religious beliefs they cannot perform as jurors in court (Sections 5.3 and 5.4). In Pennsylvania, older Amish leaders were still affirming traditional views. One reported:

> photo ID? We very much discourage that. Some people do have one and some don't. They're [the younger generation] just trying to push the fence you know. The church position would be no to the photo IDs (B.J., 2018).

In the same county, a much younger Amish businessman said, ‘I have photo ID. About half of the Amish people would have photo ID’ (R.B., 2018). My observation is that there seems to be a new Amish generation that does not shy away from most duties of American citizenship unless it seriously violates their biblical beliefs. In other words, less is seen to be in serious conflict. Their interaction with ‘English’ people has somehow instilled into them a degree of critical thinking, as a young Amish businessman evidenced when he said ‘in my opinion that would be a part of following

the laws in an area where it doesn't conflict with God's Word' (H.P., 2018). However, most conservative Amish groups do not show the same eagerness to be included in American citizens' activities. Some are comforted by the fact that several of their traditions have not changed since the nineteenth century (Johnson-Weiner, 2010: 181).

Handrick found that 'change arrives gradually'; she observed that laxity in bishops' 'surveillance' over the cellphone issue 'is possibly a key to what is happening here'; that is, change (2018: 104). Handrick also points to organic generational changes: the older generation of bishops 'can't keep up', as one of her interviewees quipped (2018: 233). Also, a younger generation of bishops is gradually taking over and they have a different approach from their elders because of their more worldly occupations (Handrick, 2018: 104). Nolt and Meyers validate Handrick's assertion because they talk about Elkhart-Lagrange (IN) settlements where ministers are chosen among the younger generation, 'suggest[ing] that members are entrusting their church to the care of those most familiar with contemporary economic or technological realities' (2007: 98).

The salient point of the generational variation is that the younger progressive Amish align more easily with their American citizenship. The photo ID example shows how these Amish individuals blend into American mainstream society, not seeing a problem in having their photo taken for legal purposes (Section 5.5). In addition, they can participate more in American political life by casting their vote (Section 5.3). Here, we are in a situation where the negotiation model appears in internal changes, occurring for example with the rejuvenation of Amish bishoprics. My constitutionalism model can

be fully seen in civic engagement, for instance in voting, and brings out constitutionalism as a consequence of assimilation.

7.5.2 Section Summary

Regarding the acculturation/assimilation process, two religious minorities have been put under scrutiny, the Mormons and the Amish. Applying Mauss's framework in studying the Mormons' process of acculturation to mainstream American society and comparing it to the Amish, two principles emerged: retrenchment and progressive assimilation. The retrenchment principle was illustrated by two essential events in Amish society: when Jakob Amman returned to the application of Dordrecht confession principles and consequently created the Amish sect; and when the Amish obtained, through the U.S. Supreme Court, an exemption from education beyond eighth grade. Thus, education is one of the main differences identified between Mormons and the Amish. Nonetheless, the part of Amish society that is well acquainted with technology and working in/with the world will have to reassess their values to remain fully Amish. One of the essential turning points towards assimilation that I have identified is represented by American Amish citizens' awareness and use of their lawful rights (Table 7.2).

The assimilation process is not linear. Variations observed during my field trips are underpinned by Sam and Berry's definition of acculturation, which refers to the rapprochement between two cultures (2010: 472); in this case, between mainstream American culture and Amish culture. In order to extract the substance of the variations and their consequences for the future of Amish society, I have used the three models at hand: negotiation, constitutionalism, and hybrid. Variations are intertwined. They

depend on Amish affiliations, on historical splits due to retrenchments or assimilation (Section 7.5.1.1). Variations are also based on geographical situation, showing the disparity of Amish affiliations and progressiveness (Section 7.5.1.2). Moreover, economic and cultural variations delineate how Amish affiliations shift towards their 'English' neighbours in their behaviour, and in the subtle emergence of a class system (Section 7.5.1.3). Generational variations (Section 7.5.1.4) added more texture to the general picture of the slow movement of assimilation in part of Amish society, for example given that a proportion of the younger Amish generation voluntarily takes part in civic American life by owning photo IDs (Section 5.5), which very often goes along with casting a ballot in elections (Section 5.3). I suggest that younger Amish generations embrace more aspects of American citizenship without renouncing their Amish faith and culture. This shows their confidence in the country that provided their ancestors with the assurance of religious freedom embodied by the First Amendment. They can comfortably navigate the American politico-legal system without compromising their deep Amish faith.

Overall, this section has posited side by side two extreme opposites of religious minorities established at the heart of the wider, notionally secular American nation: Mormons and the Amish. By testing the three models, negotiation, constitutionalism, and hybrid, and supporting the discussion by my empirical data and scholarly literature, I have found several flexible parameters revealing organic changes happening in the American Amish religious minority.

7.6 Original Contribution

After drawing together my key findings, this chapter has argued that the relationship between the American authorities and religious minorities like the Amish can be examined within the wider context of American secularism. Despite the difficulty of finding a unanimous definition of secularism, to pursue my study I settled on the ground-breaking definition established by Saba Mahmood and Talal Asad. I made a correlation between Mahmood, Asad and Sajó's 'constitutional secularism', because their interpretation of the interference of the state in religious matters is very similar. Using the French secular model, the state's intervention in the Muslim religious headscarf practice and Pennsylvania's anti-religious-garb law brought a deeper dimension to understanding how secular states can encroach on religious practices. This examination consolidated my agreement with Mahmood, Asad and Sajó's theories. Thus, on closer examination, despite established Western Constitutions that proclaim protection of religious freedom, notionally secular states might intrude on religious practices. My constitutionalism model fits rather well within these theories, as I consider that the Constitution establishes separation of powers and is the regulator of inter-relations between state and church. Conversely, Lorenzo Zucca's deconstruction of Sajó's hypothesis brought a more nuanced approach to inter-relations between state and church. I connected his dialogical approach to Donald Kraybill's negotiation model. Both believe in the power of 'communicating', having a 'conversation' between state authorities and religious bodies.

Taking a bird's-eye view of American state power, I examined American exceptionalism, in other words how America is 'different and special', in Ramrattan and Szenberg's terms. I focused on the historical side of American exceptionalism rather

than the social side. This analysis revealed that, from the outset, the flavour of the state/religion relationship in America has been mainly interwoven with Protestant Christianity. I found the mandate of President Eisenhower starting in the mid-1950s a revelation of American exceptionalism in mixing faith and politics. Moreover, I investigated the specific example of the annual National Prayer Breakfast (NPB). This event, taking place in Washington, DC, is almost mandatory for politicians. It brought to light a secretive Christian group that is at the genesis of the NPB. These different examples show the solid strength of religion in notionally secular America and how it might play a role at executive and legislative levels. One of the current trends uncovered during this exploration is the noticeable change of rhetoric in U.S. presidents' speeches as they expand on pluralism rather than secularism.

Within American exceptionalism can be found two extraordinary religious groups, namely the Mormons and the Amish. I used Mauss's assimilation/acculturation framework to compare their process of assimilation or non-assimilation. Paradoxically, I discovered some similarities between the two groups and particularly in the 'retrenchment phase', in other words a return to basics when the assimilation process was too obvious or too fast. In Amish history, I found two major events that epitomised retrenchment phases: the 1693 split from the Mennonites because Jakob Amman wanted to return to the Dordrecht confessional principles; and in 1972 when the U.S. Supreme Court ruled to exempt Amish youth from continuing their education in high school mixed with worldly youth, eliminating to a certain extent the risks of fast assimilation. However, prior to the *Yoder* case the Amish were already in a retrenchment phase as they created their own Amish schools to protect their youth from the world.

7.6.1 Original Contribution to Scholarship on the Amish

Isaac Newton said, 'if I have seen further, it is by standing on the shoulders of Giants' (1675, cited in Chen, 2003: 135). My original contribution to the scholarship on the Amish is to expand on the established negotiation model drawn up by Donald Kraybill. It is also to affirm that my constitutionalism model, anchoring in the rights given to all American citizens in the First and Fourteenth Amendments of the American Constitution, promotes a solid understanding of the dialogical exchange between American government and the Amish Christian minority at federal level. Through my interviews and relevant literature, I identified that American Amish citizens are treated equally under the rule of law. Even when legislative or judicial powers accept the accommodation of Amish beliefs and traditions, it is done within the framework of the First and Fourteenth Amendments. I also uncovered limitations in my constitutionalism model (Section 4.4.2) in practice, and how that model could be partly merged with Kraybill's negotiation model (Section 4.4.1) to create a hybrid model that includes part of the negotiation model when Amish interact with Congress Representatives/Senators and the constitutionalism model represented by Congress work of creating new laws or amendments (Section 4.4.3).

Kraybill made the Amish 'negotiation with modernity' one of his trademarks. By researching Amish groups since the mid-1980s (Rutter, 2015: 11), Kraybill developed a 'cultural bargaining' framework that he explained in his book *The Riddle of Amish Culture*
(2001: 23–6). He expanded the negotiation model further in examining the interaction between the Amish and the state (2003: 18–20). Kraybill's negotiation model was the initial leaven with which to construct my own constitutionalism model.

Although at the start of my research I was convinced that my constitutionalism model better fitted relations between the American government and the Amish minority at federal, state and local levels, I soon discovered that it was not so straightforward. In interviewing legal and political authorities, as well as non-Amish citizens and Amish citizens, I identified several differences, not only between the states studied (Indiana, Ohio, Pennsylvania and upstate New York), but also between the many strata of hierarchy in the American government. On closer analysis, there was no real continuum between the diverse states examined, nor between the varied local authorities scrutinised. Only federal laws, and judicial court cases validated my constitutional model. Digging deeper into my investigation, using the software NVivo 12 with which I processed my interviews, it soon became apparent (Figure 4.1) that Amish interviewees undoubtedly used a concept of negotiation/bargaining, even in a judicial/legal context. Conversely, non-Amish participants, commenting on the same judicial/legal issues, did not use the term and concept of negotiation/bargaining unless they were closely acquainted with Amish people. In Amish parlance, apart from its common definition, negotiation has several different meanings, including successfully anticipating a local government move, thus preventing the establishment of new rules and regulations that would affect local Amish communities (Section 4.4). The use of the word negotiation by Amish people, and by non-Amish who have a real knowledge of the sect, deflated my constitutionalism model to a certain extent. It appeared in my interviews that locally some Amish groups, in Indiana and Ohio for example, had a strong relationship with their local County Commissioners. They maintain a healthy conversation, proving that the Amish have a voice and that authorities can and do listen to them. Further examining my interview data revealed

another level of official communication between Congress and Amish leaders that is embodied by the Old Order Amish Steering Committee (Section 4.2.4). Thus, rules and regulations at local level can occasionally be circumvented by negotiation, and legislation pushed by Congress may sometimes be amended to suit Amish beliefs (for example the U.S. Child Labor law, Section 6.4).

In the latter situation, my constitutionalism model overlaps Kraybill's negotiation model as Congressional Representatives or Senators move within the restrictions imposed by the U.S. Constitution. The resultant hybrid model (Section 4.4.3) represents possible dialogues between the state and Amish leaders when needs arise, as studied in the child labour situation (Section 6.4).

I have also underlined how the 'wall of separation' between state and church as posited by Thomas Jefferson (Sections 3.4, 3.6; 4.2) has been navigated by both the U.S. government and Amish communities in recent decades. In addition, the original bookends of my thesis open a wide scope, starting with a review of the European religio-political context in which the Amish originated (Appendix 9) and finishing with the substantial expansion of my research to the wider notional secular American context, drawing in a comparison with secular France. The example of religious garb worn in public places in both countries opened up the inconsistencies of both France and the State of Pennsylvania in the U.S. in applying the concept of 'religious freedom'. Both secular states ruled against religious practices, ignoring Article 1 of the French Constitution that 'shall respect all beliefs' (Assemblée Nationale, n.d.) and the First Amendment of the American Bill of Rights that assured no prohibition of the 'free exercise' of religion (U.S. Const. amend. I). In the final part of my thesis, I tested the three models, negotiation, constitutionalism and hybrid, against Amish scholarship and

samples of my interviews, bringing out areas where assimilation makes its way insidiously into the Amish religious minority.

7.6.2 Contribution to Wider Scholarship

Figure 7.2 (see over) explains that because my thesis is multidisciplinary, it can participate in conversations related to legal and judicial issues, for instance when looking at the Supreme Court's decisions regarding Amish education or its ruling in the Amish Social Security case. Closely related is the instance when legislative power took on the child labour issue concerning Amish youth. The discussion here can offer some input to the comparative law discipline. Religious Studies researcher could benefit from this thesis when studying how other religious minorities understand their agency in ways that differ from the understanding of those outside the group. Theologians could find useful information on the Amish Christian minority that, despite all odds, survives and thrives in the United States. The Amish's history, faith, practices and dialogical exchange with American authorities can open discussions about the resilience of a small group that belongs to the larger group of Anabaptists. Politicians and sociologists could examine issues relating to secularism versus pluralism. Finally, historians could look at the historical temporal and spiritual context in which religious groups were in tension with political powers in the Middle Ages and how new religious groups like the Anabaptists emerged in the sixteenth century and later.

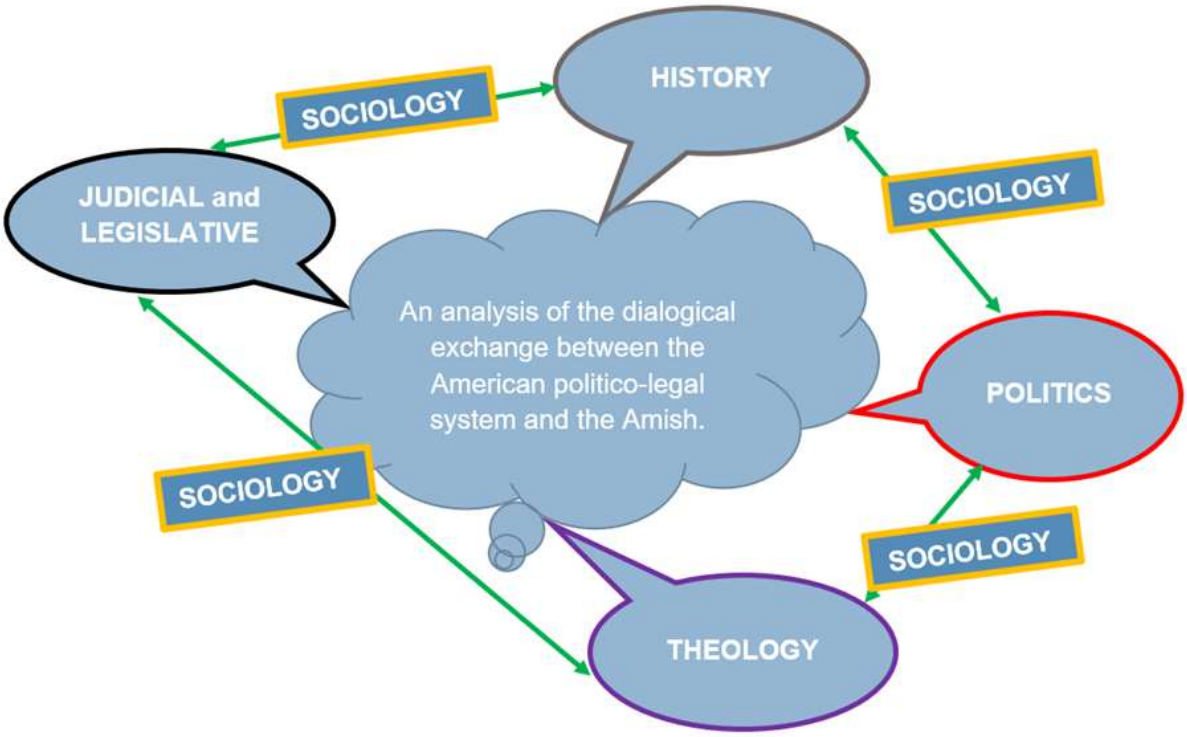

Figure 7.1 Interdisciplinary approach

7.6.3 Significance with Regard to Earlier Scholarship

Earlier scholarship has essentially looked at the interaction between the American state and the Amish from an Amish viewpoint. Kraybill's seminal work, *The Amish and the State*, is typical (1993/2003). Another example is Chapter 12 of *Amish Society* by John Hostetler, published in 1963 and revised several times until 1993. Kathleen Conway, in her unpublished Master's thesis 'Politics and the Amish', studied the behaviour of the Amish community towards 'public education, the Courts and law enforcement, government aid, military service and voting and the holding of public office' (1967). In 1968, Paul Charles Kline presented a PhD thesis on the 'Relations between the "Plain People" and Government in the United States', where he said, 'The purpose of [t]his study is to identify and analyse the government rules in the United States which conflict with the beliefs of "Plain People"' (1968: 2). As the title suggests,

the Amish are incorporated in the wider study of ‘Plain People’. His research also has the tendency to observe mostly Plain People’s reactions to the U.S. government.

The dates of those various works were stepping stones to my own research that allowed me to explore more current events. My research adds a more contemporary and diversified analysis of the American government’s approach to minorities. I have highlighted that rules and regulations increased at a faster rate during the twentieth century and so far in the twenty-first in the life of American citizens, and in particular how government approaches the Amish singularity. The emphasis of the role of the Constitution in the dialogical exchange between the American government and the Amish community is reified in my constitutionalism model. Furthermore, I included the push of secularism in America within what appears to be a democratic republic with a strong religious flavour. This research opens new perspectives in understanding how religious groups may progressively assimilate, or resist assimilation, into the American liberal democracy by using their constitutional rights.

7.6.4 Suggestions for Further Research

Generally, sociologists, anthropologists and historians have focused on the Amish society in the United States and its multifaceted interaction with ‘the world’. Using my research as a benchmark, I suggest that comparable research could be undertaken engaging with the interrelation between the Canadian government and its minority populations, including the Amish. According to Young Center statistics, in 2021 the Amish population in Canada was estimated at 5,845 people (2021: [n.p.]). The main concentration is in Ontario with 5,400 people. Research in Canada could increase the understanding of Canadian Amish citizens, considering that the last book on this

population was published by Orland Gingerich in 1972. A research question could be: What is the proviso incorporated in the Canadian politico-legal system to accommodate its Amish citizens? A recent journal article written by Gabriel Arsenault starts to answer this type of question indicating that Amish people do not only move to find cheaper land to till but also for political reason. For example:

> Prince Edward Island has been proactive in welcoming the Amish, holding a recruitment session in Southwestern Ontario, modifying its Education Act to allow Amish parochial schools, and crafting an original arrangement in the area of health care that is favorable to the Amish (2021:36).

Comparative research focusing on the politico-legal system of each American state that houses a fair number of Amish citizens could add knowledge on individual state policies under the canopy of the U.S. federal state.

A quantitative/qualitative study could be conducted researching Congressional archives and court records (in different states) to evaluate the shuttling of laws and rulings between agencies, and their outcome regarding Amish citizens. Moreover, other minority groups might be explored in the United States or other countries to test the validity of the three models (negotiation, constitutionalism, and hybrid).

In the field of Religious Studies, researchers exploring religious minorities, for example Sikhs (Indian religion), Hasidic (ultra-Orthodox Jews), Shi'a Muslims could also test the three models.

7.7 Summary

This chapter completes my research on the interaction between the American politico-legal system and the Amish Christian minority at federal, state, and local levels. My overarching argument, using the conceptual framework applied by the Founding Fathers to pen the First and Fourteenth Amendments of the Bill of Rights (1791) appended to the American Constitution (1789), has demonstrated that they are, overall, effective in protecting freedom of religion and equality before the law for all American citizens, including the Amish sectarian groups.

My research would be incomplete if it were not placed into the wider context of the notionally secular America. Therefore, this chapter has extended the discussion to secularism in general, using the French model as a case study (Section 7.3). France had to make adjustments regarding its Catholic denomination. Also, in its process of assimilating/integrating, the French politico-legal system has been challenged by its population of Muslim immigrants. Therefore, the strict separation of state and church is regularly tested there, as it is in the United States. Yet France remains a sturdy example of a country abiding by its secular constitutional principles. Constructed around the French model, Sajó has formulated his 'concept of constitutional secularism' (Section 7.3.1) that echoed my own constitutionalism model. But Zucca leant on a more nuanced approach involving 'communicating' between the secular state and the religious groups, which parallels Kraybill's negotiation model. To sum up how secularism makes its way into countries on both sides of the Atlantic Ocean, I used the striking case of the Pennsylvania 'anti-religious-garb' law (Section 7.3.4), which resonates with the incidents caused by the *hijab* worn by Muslim females in France. Contrasting with the Pennsylvania 'anti-religious-garb' law, I highlighted the

paradox found in the example of the annual American National Prayer Breakfast (Section 7.4.2), which raises questions about the robustness of the 'wall of separation' between state and church concerning American political power.

In the secular frame of reference, the assimilation or acculturation/retrenchment process of the Mormons was examined prior to expanding on their Amish counterparts. In cross-examining the validity of Kraybill's negotiation model, my constitutionalism model and the hybrid model through my empirical data and other academic studies, I identified several flexible parameters. One of the important axioms to retain is that the historical, geographical, economic and generational flexible parameters are intrinsically interwoven. The extra reward of this exercise was to substantiate the theory that a slow, progressive assimilation is happening in some parts of Amish society.

To close this study, I give the last word to James Madison, one of the Founding Fathers of the American nation:

> If 'all men are by nature equally free and independent,' all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an 'equal title to the free exercise of Religion according to the dictates of conscience' (Madison, cited in McConnell, 1992: 706, n.84).

APPENDICES

Appendix 1: RESEARCH PARTICIPANT INFORMATION SHEET (Non-Amish)

An analysis of the dialogical exchange between the American politico-legal system and the Amish.

You are being invited to take part in a research study that will be conducted by Mrs Frédérique Green, a Ph.D researcher from the University of Birmingham Department of Theology and Religion Department (UK). The research will be done under the guidance of a supervisor from the University of Birmingham (UK). Before you decide, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with friends and relatives, if you wish. Ask if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you for reading this.

1. What is the purpose of the study?

The purpose of this study is to build upon previous research on legal cases and regulatory exemptions for example connected to the Amish and delineate the distinctive model of the interactions between the American politico-legal system and the Amish population. It is also conducted in order to find how the Amish have

negotiated some exemptions for example: the Amish obtained an exemption regarding the requirement of wearing hard hats on building sites (1972).

2. Why have I been asked to participate?

You have been asked to participate in this study because of your connection with the Amish communities is relevant to the study.

3. Do I have to take part?

It is up to you to decide whether or not to take part. You do not need to give a reason if you do not wish to participate. If you do decide to take part, you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time, before September 1st 2019, and without giving a reason. If you choose to withdraw, you may further request that any personal information or data collected from you (including recordings) are destroyed.

Consent to participate does not compromise your rights in law.

4. What will happen to me if I take part?

Over the course of the research, you will be interviewed in order to give your view point on the way the American politico-legal system communicates and reaches agreement with Amish communities.

5. What do I have to do?

Take part in an interview at a mutually convenient time and location. This will last between 1 and 3 hours. There are no right or wrong answers, and we would like you to know that your responses will provide us with useful information for this study.

6. What are the possible disadvantages and risks of taking part?

There are no known disadvantages or risks from taking part in this study.

7. What happens when the research study finishes?

If you would like to know the outcome of the study, then we will send you feedback of the results. Please tick the box on the Consent Form.

8. Will research data obtained from me be kept confidentially?

Personal information, as defined by the UK Data Protection Act (1998) will be protected and safeguarded in the course of this study. Research data collected, such as your answers to the interview, may be published in a dissertation or peer-reviewed journals. As such, the research data will not be strictly confidential. You will, however, not be identified directly in any report or publication. In the dissertation and other publications, you will be referred to only by a designator such as P1, or P2. The key to the coding system will be confidential. In normal circumstances it will be seen only by the researcher directly involved in the project; it will be stored securely and destroyed within ten years of the completion of the study.

9. What will happen to the results of the research study?

The results of the research will form part of a research dissertation that will be written by the research student. The results may also be submitted for publication in a peer-reviewed journal. If you wish, a copy of any published work will be sent to you.

10. Who is organizing and funding the research?

The researcher is self-funded.

Neither the researcher nor the project supervisor will be paid for including you in this study.

11. Who has reviewed the study?

The study has been reviewed by the University Ethics Committee at the University of Birmingham.

12. Contact for Further Information

For further information you should contact the researcher, Mrs Frederique Green, whose address is given below:

Mrs Frédérique Green

University of Birmingham

Department of Theology and Religion

ERI Building

Edgbaston

Birmingham

B15 2TT

United Kingdom

Email: [redacted]

Alternatively, you may contact the project supervisor, Pr B. P. Dandelion, whose address is:

Pr B. P. Dandelion

Honorary Professor

Woodbrooke Quaker Centre

1046 Bristol Road

Birmingham B29 6LJ

United Kingdom

Email:

Tel:

13. What next?

You will be given a copy of this information sheet to keep. If you wish to take part in this study you will be asked to sign two copies of the Consent Form: one copy is for you to keep, one copy is for the project researcher.

Thank you for considering to take part in this study.

Appendix 2: Research Participant Information Sheet (Amish)

How the American legal systems communicate with the Amish? (Amish)

You are being invited to take part in a research study that will be conducted by Mrs Frédérique Green, a Ph.D researcher from the University of Birmingham Department of Theology and Religion (UK). The research will be done under the guidance of a supervisor from University of Birmingham (UK). Before you decide, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with the Bishops, Elders, friends and relatives, if you wish. Ask if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you for reading the following.

1. What is the purpose of the study?

The purpose of this study is to build upon previous research on legal cases and regulatory exemptions connected to the Amish and find a pattern of the interactions between the American institutions and the Amish population.

Examples: Hard hats, on building sites, exemption (1972). Medicare exemptions (1965). The Yoder case: religious freedom, education, and parental rights (1972).

2. Why have I been asked to participate?

You have been asked to participate in this study because you are an adult above the age of eighteen, and as an Amish person your view point is invaluable for the research.

3. Do I have to take part?

It is up to you to decide whether or not to take part. You do not need to give a reason if you do not wish to participate. If you do decide to take part, you will be given this information sheet to keep. If you decide to take part you are still free to withdraw at any time, before September 1st 2019, and without giving a reason. If you choose to withdraw, you may further request that any personal information collected from you is destroyed.

4. What will happen to me if I take part?

Over the course of the research, you will be interviewed in order to give your view point on the way the American institutions communicate and reach agreements with the Amish communities.

5. What do I have to do?

Take part in an interview. There are no right or wrong answers, and we would like you to know that your responses will provide us with useful information for this study.

6. What are the possible disadvantages and risks of taking part?

There are no known disadvantages or risks from taking part in this study.

7. What happens when the research study finishes?

If you would like to know the outcome of the study, then we will send you feedback of the results.

8. Will research information obtained from me be kept confidentially?

Personal information, as defined by the UK Data Protection Act (1998), will be protected and safeguarded in the course of this study. Research information collected, such as your answers to the interview may be published in the final work,

but **you will not be identified directly in any report or publication.** You **will be referred to only by a code such as P1, or P2.**

9. What will happen to the results of the research study?

The results of the research will form part of a dissertation that will be written by the researcher. The results may also be submitted for publication in a peer-reviewed journal. If you wish, a copy of any published work will be sent to you.

12. Who is organizing and funding the research?

The researcher is self-funded.

Neither the researcher nor the project supervisor will be paid for including you in this study.

13. Who has reviewed the study?

The study has been reviewed by the University Ethics Committee at the University of Birmingham – UK in order to protect both you and the researcher.

14. Contact for Further Information

For further information you should contact the researcher, Mrs Frederique Green, whose address is given below:

Mrs Frédérique Green

University of Birmingham

Department of Theology and Religion

ERI Building

Edgbaston

Birmingham

B15 2TT

United Kingdom

Email: [redacted]

Alternatively, you may contact the project supervisor, Pr

B.P. Dandelion, whose address is:

Pr B. P. Dandelion

Honorary Professor

Woodbrooke Quaker Centre

1046 Bristol Road

Birmingham B29 6LJ

United Kingdom

Email: [redacted]

Tel: [redacted]

15. What next?

You will be given a copy of this information sheet to keep.

Thank you for considering taking part in this study.

Appendix 3: CONSENT FORM FOR PARTICIPANT IN THE RESEARCH

(Non-Amish)

An analysis of the dialogical exchange between the American politico-legal system and the Amish.

This information is being collected as part of a research project which purpose is to build upon previous research on legal cases and regulatory exemptions connected to the Amish and delineate the distinctive model of the interactions between the American politico-legal system and the Amish population by the Department of Theology and Religion in the University of Birmingham –UK in collaboration with Pr B. P. Dandelion.

The information which you supply and that which may be collected as part of the research project will be entered into a filing system or database and will only be accessed by authorised personnel involved in the project.

The information will be retained by the University of Birmingham and will only be used for the purpose of research, and statistical and audit purposes. It will be stored for ten years at The University.

By supplying this information you are consenting to the University storing your information for the purposes stated above. The information will be processed by the University of Birmingham in accordance with the provisions of the UK Data Protection Act 1998.

No identifiable personal data will be published.

Statements of understanding/consent

I confirm that I have read and understand the participant information leaflet for this study. I have had the opportunity to ask questions if necessary and have had these answered satisfactorily.

I understand that my participation is voluntary and that I am free to withdraw at any time, before September 1st 2019, without giving any reason. If I withdraw, my data will be removed from the study and will be destroyed.

I understand that my personal data will be processed for the purposes detailed above, in accordance with the Data Protection Act 1998 (UK).

Based upon the above, I agree to take part in this study.

Confidentiality:

I agree to be interviewed “ON the record” and the information I give can be attributed. ☐

I agree to be interviewed “OFF the record” and the information I give **is confidential**. ☐

Results of the research:

I would like to receive feedback on the research ☐

Name, signature and date

Name of participant…….

Date…….. Signature……..……..…..

Name of researcher/individual obtaining consent……..……..

Date…….. Signature……..……..…..……

One copy of the signed and dated consent form and the participant information leaflet should be given to the participant and another copy will be retained by the researcher to be kept securely on file.

Appendix 4: Research Schedule (non-Amish American citizens)

Ref: ERN_15-1282 University of Birmingham UK - Frédérique Green – Ph.D Research 2015

The exchange between the American politico-legal system and the Amish

Interviewing non-Amish U.S. citizens on Amish issues

The purpose of this study is to build upon previous research on legal cases and regulatory exemptions connected to the Amish and find a pattern of the interactions between the American institutions and the Amish population. Examples: Hard hats on building sites, exemption (1972). Medicare exemptions (1965). The Yoder case: religious freedom, education, and parental rights (1972).

Before we start our interview I would like to ask you a few questions: what is your name and your occupation?

Can you tell me when you first came into contact with the Amish? What was/is your role in this encounter?

Thank you very much for kindly answering to my preliminary questions.

1. To what extent do you feel that church and State are separate in America?
2. How far do you feel the Amish are separated from the State?
3. What is your view on Amish not doing Jury service?
4. What is your opinion on the Amish not doing military service in the past?
5. How do you view Amish children working, in family businesses, in regard to the American legislation on the subject?
6. What is your view on Amish children's schooling?
7. What do you think about the Amish refusal of the Medicare Scheme?

8. What do you think about slow moving vehicle signs and arguments?
9. What is your view on Social Security and the Amish stance of rejection of benefits?

10. In your opinion, is the First Amendment of the US Constitution regarding Religion and Expression an efficient lever to negotiate law with the State? [*First Amendment-Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.]*
11. What is your opinion of the idea that religious liberty puts all religious groups on an equal footing?
12. What do you think about the Amish precedent concerning not wearing hard-hats on building sites?
13. What do you think is the strength of the Amish to win their cases?
14. Why do you think American people tolerate/don't tolerate the Amish refusal to accept some of the legal rules?
15. How would you describe the future of the Amish minority in the American democracy where more and more laws and regulations are established?
16. Do you think the State operates in fairness toward the Amish?
17. Would you say the battles of the Amish help other religious groups?

18. Do you have any experience of a conflict (or potential conflict) between US laws or regulations and the Amish?

19. When did this happen?
20. What was the general issue?
21. What did the US laws/regulations seek to achieve?
22. Why did some Amish reject this?
23. Was this problem resolved through dialogue or negotiation?
24. Was there any recourse to the courts?
25. What was the outcome?
26. What is your opinion on the result or solution?

27. Please elaborate on one or more issues related to the Amish and their discussion or negotiation with the American authorities? I will give you a list to choose from, but you may have some other suggestions.

Handing out a card with the list.

a. Identity card with photograph
b. Schooling
c. Children working in the family business
d. Rules on wearing a hard-hat on building sites
e. Slow moving vehicle signs
f. Child birth and midwifery
g. Cooling milk tanks
h. Serving on a jury
i. Social security
j. Tax payment
k. Crimes against Amish people

l. Taking part in voting for political candidates

28. Is there anything else you would like to add?

Thank you very much for your time and your willingness to participate in this research.

Appendix 5: Research Schedule (Amish American Citizens)

Ref: ERN_15-1282 University of Birmingham UK - Frédérique Green – Ph.D Research 2015

The exchange between the American politico-legal system and the Amish

Interviewing Amish U.S. citizens on their relationship with the American politico-legal system

The purpose of this study is to build upon previous research on legal cases and regulatory exemptions connected to the Amish and find a pattern of the interactions between the American institutions and the Amish population.

Examples: Hard hats on building sites, exemption (1972). Medicare exemptions (1965). The Yoder case: religious freedom, education, and parental rights (1972).

Before we start I would like to ask you a few questions about yourself and your family?

What is your name? Are you single or married? Do you have any children? How many? How old are you (*not offensive in Amish circles)*? What is/was your occupation? What is your level of schooling?

Thank you very much for kindly answering to my preliminary questions.

1. Do you think it is important to follow the laws of your country?
2. Do you think the American Government works for the welfare of its people?
3. In what areas of a US citizen's life should the Government work?
4. Do you think the Government is encroaching on your life today more than for your grand-parents?

5. How would you describe your relationship with your ‘English’ neighbours?
6. How would you describe your relationship with your local authorities?

7. At the moment do you have any difficult issues to solve with your local authorities?
8. Would you like to give me an example of difficulties you have/had with your local authorities?
9. How would you like/have liked to solve this problem and why?

10. In your opinion, is there a piece of legislation/regulation you like/dislike?
11. What happens if you have a dispute within the community?

12. Could you please comment on one or more issues in the list I am going to give you? You may have some other suggestions.

Handing out a card with the list.

a. Identity card with photograph
b. Schooling
c. Children working in the family business
d. Rules on wearing a hard-hat on building sites
e. Slow moving vehicle signs
f. Child birth and midwifery
g. Cooling milk tanks
h. Serving on a jury
i. Social security

j. Tax payment

k. Crimes against Amish people

l. Taking part in voting for political candidates

m. Did you vote in the last Presidential election?

n. Do you think the Obama Government served well the Amish?

o. Is there anything else you would like to add?

Thank you very much for your time and your willingness to participate in this research.

Appendix 6

Table recapitulating excerpts of the Constitution of the U.S.A and the Constitutions of the States explored, Indiana, Ohio, Pennsylvania, and New York.

PREAMBLES	ARTICLES/AMENDMENTS
THE CONSTITUTION OF THE UNITED STATES 1789	
We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. Preamble to the United States Constitution	**Amendment I** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
CONSTITUTION of the STATE of INDIANA 1851 [As amended 2018]	
PREAMBLE. TO THE END, that justice be established, public order maintained, and liberty perpetuated; WE, the People of the State of Indiana, grateful to ALMIGHTY GOD for the free exercise of the right to choose our own form of government, do ordain this Constitution.	**ARTICLE 1.** **Bill of Rights.** **WE DECLARE […]** **Section 2**. All people shall be secured in the natural right to worship ALMIGHTY GOD, according to the dictates of their own consciences. (History: As Amended November 6, 1984). **Section 3.** No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

	Section 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no person shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent. (History: As Amended November 6, 1984). **Section 5.** No religious test shall be required, as a qualification for any office of trust or profit. Section 6. No money shall be drawn from the treasury, for the benefit of any religious or theological institution. **Section 7.** No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion. **Section 8.** The mode of administering an oath or affirmation, shall be such as may be most consistent with, and binding upon, the conscience of the person, to whom such oath or affirmation may be administered.
OHIO CONSTITUTION 1851 [with amendments to 2011]	
Preamble We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.	Rights of conscience; education; the necessity of religion and knowledge. §7 All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test

	shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein 6 The Constitution of the State of Ohio shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction. (1851)

CONSTITUTION of the COMMONWEALTH of PENNSYLVANIA 1776	
PREAMBLE WE, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.	**§ 3. Religious freedom** All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship. **§4. Religion** No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.
CONSTITUTION of the STATE of NEW YORK 1777 [As revised, including amendments effective January 1, 2015]	
1[Preamble] WE THE PEOPLE of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, DO ESTABLISH THIS CONSTITUTION.	**BILL OF RIGHTS** [Freedom of worship; religious liberty] §3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind; and no person shall be rendered incompetent to be a witness on account of his or her opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state. (Amended by vote of the people November 6, 2001.)

Appendix 6 (References)

Constitution of the USA. Available at: https://www.archives.gov/founding-docs/constitution-transcript (Accessed 2 February 2016).

Constitution of Indiana. Available at: http://iga.in.gov/legislative/laws/const/ (Accessed 11 September 2020).

Constitution of Indiana, 'Bill of Rights'. Available at: http://iga.in.gov/legislative/laws/const/ (Accessed 11 September 2020).

Constitution of the State of Ohio. Available at: https://www.cityofoberlin.com/wp-content/uploads/2014/08/constitution-1.pdf (Accessed 11 September 2020).

Constitution of Pennsylvania, first Constitution in 1776. Available at:https://www.legis.state.pa.us/cfdocs/legis/LI/Public/index.cfm (Accessed 11 September 2020).

Constitution of the Commonwealth of Pennsylvania. Available at: https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.HTM (Accessed 11 September 2020).

Constitution of the State of New York, 'date of the first Constitution of the State of New York'. Available at: http://www.nysl.nysed.gov/collections/nysconstitution/timeline.htm (Accessed 11 September 2020).

Constitution of the State of New York. Available at: https://www.dos.ny.gov/info/pdfs/Constitution%20January%202015%20amd.pdf (Accessed 11 September 2020).

Appendix 7

Amish Population, 2019

United States

State	Settlements	Districts	Estimated population
Arkansas	2	3	255
Colorado	4	6	610
Delaware	1	11	1,695
Florida	1	2	100
Idaho	1	1	50
Illinois	20	58	7,730
Indiana	25	405	57,430
Iowa	23	67	9,980
Kansas	10	20	1,850
Kentucky	44	103	13,345
Maine	6	7	850
Maryland	3	12	1,580
Michigan	50	126	16,410
Minnesota	23	41	4,680
Mississippi	1	2	275
Missouri	49	106	13,990
Montana	7	9	760
Nebraska	4	5	365
New York	57	155	20,595
North Carolina	2	2	275
Ohio	65	593	76,195
Oklahoma	4	8	670
Pennsylvania	58	537	79,200
South Dakota	1	1	90
Tennessee	13	28	3,220
Texas	1	1	65
Vermont	1	1	60
Virginia	7	11	1,295
West Virginia	5	5	465
Wisconsin	56	162	22,020
Wyoming	1	1	130
TOTAL	**545**	**2,489**	**336,235**

Canada

Province	Settlements	Districts	Estimated population
Manitoba	1	1	65
New Brunswick	1	1	55
Ontario	17	44	5,340
Prince Edward Island	2	2	205
TOTAL	**21**	**48**	**5,665**

South America

Country	Settlements	Districts	Estimated population
Argentina	1	1	50
Bolivia	1	1	150
TOTAL	**2**	**2**	**200**

GRAND TOTAL	**568**	**2,539**	**342,100**

Note: Settlement and district statistics were updated as of June 2019. Population figures include both adults and children. Estimates were calculated using a variety of sources including Raber's *New American Almanac*, reports by correspondents in *Die Botschaft*, *The Budget*, and *The Diary*, settlement directories, regional newsletters, and settlement informants. The table includes all Amish groups that use horse-and-buggy transportation, but excludes car-driving groups such as the Beachy Amish and Amish Mennonites.

Available at: https://groups.etown.edu/amishstudies/files/2020/08/Amish-Population-by-State-2019.pdf (Accessed: 30 June 2020).

Appendix 8: Form 4029 Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits.

Form **4029**
(Rev. November 2018)

Department of the Treasury
Internal Revenue Service

Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits

▶ Go to *www.irs.gov/Form4029* for the latest information.
▶ Before you file this form, see the instructions under *Who may apply* on page 2.
▶ This exemption is granted only if the IRS returns a copy to you marked "Approved."

OMB No. 1545-0064

File Three Copies

Caution: Approval of Form 4029 exempts you from social security and Medicare taxes only. The exemption does not apply to federal income tax. Ministers, members of religious orders, and Christian Science practitioners, see Form 4361, Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.

Part I To Be Completed by Applicant

Print or type

1 Name of taxpayer

2 Social security number

Address (number, street, or P.O. box)

3 Date of birth

City or town, state, and ZIP code

4 Contact phone number (optional)

5 ☐ Do not send me my Social Security Statement.

I certify that I am and continuously have been a member of _____ (Name of religious group)

_____ (Religious district or congregation, and county and/or city, state, and ZIP code)

since _____ (Month) _____ (Day) _____ (Year), and as a follower of the established teachings of that group, I am conscientiously opposed to accepting benefits of any private or public insurance that makes payments in the event of death, disability, old age, or retirement; or makes payments for the cost of medical care; or provides services for medical care. Public insurance includes any insurance system established by the Social Security Act.

I request that I be exempted from paying social security and Medicare taxes on my earnings from self-employment under Internal Revenue Code section 1401 and from the employer's share of social security and Medicare taxes under Internal Revenue Code section 3111.

I further request exemption from the employee's share of social security and Medicare taxes under Internal Revenue Code section 3101, for my services as an employee whenever I am employed by an employer who has an identical exemption from social security and Medicare taxes.

I waive all rights to any social security payment or benefit under Titles II and XVIII of the Social Security Act. I understand and agree that no benefits or other payments of any kind under Titles II and XVIII of the Social Security Act will be paid based on my wages and self-employment income to any other person. I certify that I have never received benefits or payments under the above titles, nor has anyone else received these benefits based on my earnings.

I agree to **notify** the Internal Revenue Service within 60 days of any occurrence that results in my **no longer** being a member of the religious group described above, or **no longer** following the established teachings of this group. See *Where to file* on page 2.

Furthermore, I understand that if the tax exemption for myself or for my employer under sections 1402(g)(1) or 3127 of the Internal Revenue Code is no longer effective, this waiver will also no longer be effective for:

- Myself, with respect to all my wages and self-employment income; and
- My employees with respect to wages I may pay to them; and that if my employer's exemption is no longer in effect, my exemption will end with respect to wages paid to me by my employer. However, the waiver will no longer be effective only to the extent that benefits and other payments under Titles II and XVIII of the Social Security Act can be payable on the basis of:
- My self-employment income for and after the first tax year in which the exemption ends; and
- My wages for and after the calendar quarter following the calendar quarter in which the exemption no longer meets the requirements of section 1402(g)(1) or 3127 on which the end of the exemption is based.

Under penalties of perjury, I declare that I have examined this application and waiver, and to the best of my knowledge and belief, it is true and correct.

Signature of Applicant ▶ _____ Date ▶ _____

Part II To Be Completed by Authorized Representative of Religious Group (Print or type)

I certify that _____ (Name of taxpayer) is a member of _____ (Name of religious group/district/congregation)

Name of Authorized Representative _____ (Please print or type) _____ (Address)

Signature of Authorized Representative ▶ _____ Title ▶ _____ Date ▶ _____

Social Security Administration Use Only

☐ This religious group **is** recognized as being in existence continuously since December 31, 1950, as providing a reasonable level of living for its dependent members, and as being conscientiously opposed to public or private insurance.

☐ This religious group **is not** recognized as being in existence continuously since December 31, 1950, as providing a reasonable level of living for its dependent members, and/or as being conscientiously opposed to public or private insurance.

Signature of Authorized SSA Representative ▶ _____ Date ▶ _____

Internal Revenue Service Use Only

☐ Approved for exemption from social security and Medicare taxes. (See Caution before Part I above.)

☐ Disapproved for exemption from social security and Medicare taxes.

Signature and Title of Authorized IRS Representative ▶ _____ Date ▶ _____

For Privacy Act and Paperwork Reduction Act Notice, see page 2. Cat. No. 41277T Form **4029** (Rev. 11-2018)

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 4029 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/Form4029*.

General Instructions

Purpose of form. Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes. The exemption is for individuals and partnerships (when all the partners have approved certification).

Note: The election to waive social security benefits, including Medicare benefits, applies to all wages and self-employment income earned before and during the effective period of this exemption and is irrevocable for that period.

Who may apply. You may apply for this exemption if you are a member of, and follow the teachings of, a recognized religious group (as defined below). If you already have approval for exemption from self-employment taxes, you are considered to have met the requirements for exemption from social security and Medicare taxes on wages and do not need to file this form.

You are not eligible for this exemption if you received social security benefits or payments, or if anyone else received these benefits or payments based on your wages or self-employment income. However, you can file Form 4029 and be considered for approval if you paid back any benefits you received.

Recognized religious group. A recognized religious group must meet all the following requirements.

- It is conscientiously opposed to accepting benefits of any private or public insurance that makes payments in the event of death, disability, old age, or retirement; makes payments for the cost of medical care; or provides services for medical care (including social security and Medicare benefits).
- It has provided a reasonable level of living for its dependent members.
- It has existed continuously since December 31, 1950.

Certification. In order to complete the certification portion under Part I, you need to enter your religious group (on the first line) followed by the religious district or congregation (on the second line). For example, if you enter "Old Order Amish" as your religious group, then you would enter "Conewango Valley North District," "Conewango Valley West District," etc., on the second line as the district. However, if you are Anabaptist or Mennonite, enter the name of your religious group as "Unaffiliated Mennonite Churches" or "Eastern Pennsylvania Mennonite Church," etc., and the congregation as "Antrim Mennonite Church (Anabaptist)" or "Bethel Mennonite Church (Mennonite)," on the second line.

When to file. File Form 4029 when you want to apply for exemption from social security and Medicare taxes. This is a one-time election. Keep your approved copy of Form 4029 for your permanent records.

Where to file. Send the original and two copies of Form 4029 to:

Social Security Administration
Security Records Branch
Attn: Religious Exemption Unit
P.O. Box 7
Boyers, PA 16020

If you are no longer a member or no longer follow the teachings of the religious group, your exemption is no longer effective. Notify the Internal Revenue Service by sending a letter to:

Department of the Treasury
Internal Revenue Service Center
Philadelphia, PA 19255-0733

Social security number. Enter your social security number on line 2. If you do not have a social security number, file Form SS-5, Application for a Social Security Card, at your local social security office. You can get Form SS-5 from the SSA website at *www.ssa.gov/forms/ss-5.pdf*, at SSA offices, or by calling 1-800-772-1213.

Effective period of exemption. An approved exemption granted to employers and employees is effective on the first day of the first quarter after the quarter in which Form 4029 is filed. An approved exemption granted to self-employed individuals is effective when granted and applies for all years for which you satisfy the requirements. The exemption will continue as long as you (or in the case of wage payments, both the employee and employer) continue to meet the exemption requirements.

Signature. The completed Form 4029 must be signed and dated by the applicant in Part I and by the authorized representative of the religious group/district/congregation in Part II.

How to show exemption from self-employment taxes on Form 1040. If the IRS returned your copy of Form 4029 marked "Approved," write "Exempt—Form 4029" on the "Self-employment tax" line.

Instructions to Employers

Employees without Form 4029 approval. If you have employees who do not have an approved Form 4029, you must withhold the employee's share of social security and Medicare taxes and pay the employer's share.

Reporting exempt wages. If you are a qualifying employer with one or more qualifying employees, you are not required to report wages that are exempt under section 3127. Do not include these wages for social security and Medicare tax purposes on Form 941, Employer's QUARTERLY Federal Tax Return; Form 943, Employer's Annual Tax Return for Agricultural Employees; or on Form 944, Employer's ANNUAL Federal Tax Return. If you have received an approved Form 4029, check the box on line 4 of Form 941 (line 3 of Form 944) and write "Form 4029" in the empty space below the check box. If you file Form 943 and have received an approved Form 4029, write "Form 4029" to the left of the wage entry spaces for Total wages subject to social security taxes and Total wages subject to Medicare taxes.

Preparation of Form W-2. When you prepare Form W-2 for a qualifying employee, enter "Form 4029" in the box marked "Other." Do not make any entries in the boxes for Social security wages, Medicare wages and tips, Social security tax withheld, or Medicare tax withheld for these employees.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need this information to ensure that you are complying with these laws and to allow us to figure and to collect the right amount of tax. Applying for an exemption from social security and Medicare taxes is voluntary. Providing the requested information, however, is mandatory if you apply for the exemption. Our legal right to ask for the information requested on this form is Internal Revenue Code sections 6001, 6011, 6012(a), and 6109. Code section 6109 requires that you provide your social security number on what you file. If you fail to provide all or part of the information requested on Form 4029, your application may be denied. If you provide false or fraudulent information, you may be subject to penalties.

Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the Internal Revenue Service to disclose or give the information shown on your tax return to others as described in the Code. For example, we may disclose your tax information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

Please keep this notice with your records. It may help you if we ask for other information. If you have any questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping,** 6 min.; **Learning about the law or the form,** 19 min.; **Preparing the form,** 18 min.; **Copying, assembling, and sending the form to the SSA,** 16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from *www.irs.gov/FormComments*. Or you can send your comments to Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where to file*, earlier.

Appendix 9: Amish Religious and Political Background

** Full references of works cited can be found in the Reference List of this thesis.*

1. Introduction

This appendix examines how the Amish came to be a very distinctive entity within the larger spectrum of Anabaptism and Protestantism. It mainly focuses on the European historical religious and political roots of the Amish, a context that is emphasised in Section 2), followed by a brief review of the Catholic Church and its conflict between spiritual and temporal aspects (3) prior to the Protestant Reformation, which is discussed in Section 4. Next, I consider the fundamental sources of Anabaptism deriving from the 'Radical Reformation' (Johnston, 1991: 44) (Section 5). After I engage with the dissenting Mennonite and Amish movements of the late seventeenth century and analyse the implications of their separation from mainstream Protestantism (Section 6), the last part deals with their exodus to the New World and their faithfulness to their forebears' beliefs and practices (Section 7). Section 8 concludes the appendix.

2 Nature of Christian Citizenship

For more than a thousand years Western Europe was governed by a bicephalous power: the papacy, which was controlling the Christian faith, the common denominator throughout Europe; and the Holy Roman Empire, which represented secular power. Individual identity was automatically in terms of religious citizenship. Steven Nolt states: 'the church and the imperial state were linked in building a common, unified, and Christian civilization. Dissent against the One Church also became a crime against state and society' (Nolt, 2003: 7–8).

Having set the context for this appendix, I analyse the role of the Catholic Church in the pre-Reformation period, starting from circa the twelfth century.

3 The Catholic Church and Its Conflicts

3.1 The Catholic Church circa the Twelfth and Thirteenth Centuries

In the twelfth and thirteenth centuries social life was structured around the Christian calendar, church traditions and popular piety. Roman Catholicism emphasised the mass (celebration of the Eucharist) and purgatory. Kevin Madigan explains the centrality of partaking in the Eucharist for medieval believers, as 'at those rituals, they could behold their Savior and plead his sacrifice for their needs and for the destiny of their souls' (Madigan, 2015: 86–7). He also outlines the theological reasoning behind the concept of purgatory:

> It was recognized that few, even those whose sin had been utterly forgiven, would be able to pay the full debt incurred by sin to God. Thus, the need for a

> post-mortem locus and time: purgatory. As the word implies, purgatory is an act of 'cleansing' (2015: 431).

The idea of an intermediary state between death and heaven was widely accepted, underpinned by the doctrine of Pope Gregory the Great (c. 590–604). Time in the purgatorial fire could be shortened by prayers and other actions of the living (Madigan, 2015: 431). Christy Lohr explains that 'indulgences granted the purchaser absolution of sins and a remission of time in purgatory for oneself or a loved one' (2013: 313).

Robert Shaffern expands on the mechanism of indulgences connected to devotion to the saints, and relics as well as pilgrimages:

> Medieval prelates granted untold numbers of indulgences to promote the cult of the saints, the oldest expression of popular piety in the Middle Ages. This promotion usually came in the form of indulgences granted for the visitation of a saint's shrine; so the practice of pilgrimage was also crucial (1998: 645).

Despite this widespread piety and popular religion, many saw a widening gulf between biblical Christianity and the venality and man-made traditions of the Roman Catholic Church. Shaffern points at indulgences being 'associated with (…) decadence, and formalism in later medieval Christianity' (Shaffern, 1998: 643). Margaret Deanesly also explains the deterioration of the Roman Catholic Church during the twelfth century. She says that 'the system of indulgence and papal provision to benefices is abused' (Deanesley,1991: 122). To illustrate her point, she quotes Cistercian Abbot Bernard of Clairvaux, who warned Pope Eugenius III about the depravity of the church, relating that 'S. Bernard (…) became a sort of censor to western Christendom, more respected than either pope or emperor' (Deanesley, 1991: 121). St Bernard wrote:

> The ambitious, the grasping, the simoniacal, the sacrilegious, the adulterous, the incestuous, and all such like monsters of humanity flock to Rome, in order, either to obtain or to keep ecclesiastical honours at the hands of the pope (Deanesly 1991: 122).

Difficulties continued to arise. The fourteenth and fifteenth centuries witnessed more turbulence with power struggles within the Roman Catholic Church and surrounding political powers, as considered in the next section.

3.2 The Catholic Church circa the Fourteenth and Fifteenth Centuries

Painting a picture of the context of the fourteenth and fifteenth centuries, Andrew Johnston maintains that because Germany did not have a strong kingship to oppose Rome, German people were ready to enter the Reformation movement because they were discontented with the corruption of the Church and taxation from Rome (1991: 10–11). Geoffrey Elton echoes this opinion (1977: 33). Johnston explains that the fourteenth and fifteenth centuries had seen the decline of papal authority and that a crucial factor was 'the papacy['s] (…) bankruptcy, caused by the King of France' (1991: 10). Mandell Creighton claims that that Philip IV of France put Pope Boniface VIII in dire circumstances when the Pope was 'cut off from the supplies which the

Papacy raised for itself by taxation of the clergy' (2012: 26). The relentless king, after a succession of events, set up 'the seizure of the Papacy itself and Philip IV then moved the core of the church from Rome to France. He then installed his own French Pope' (2012: 26). The new French pope, Clement V (1305–14), who chose Avignon as his papal residence, inaugurated a long line of French popes until 1378. Creighton traces the rise and fall of the succession of popes who governed from Avignon and argues that 'since the abdication of Celestine V [1294] the Papacy had drifted further away from its connexion with the spiritual side of the life of the Church' (2012: 34). This particular assertion confirms that the paroxysm of discontent with the papacy reached in the sixteenth century had been building up for a very long time. Creighton also alleges that during this period the corruption of the Church was obvious, as was the ostentatious exhibition of luxury (2012: 45).

The Great Schism in 1378–1417 highlighted incompetence and discordance within the Church. The election of two rival popes within a year hugely discredited the Church. Urban VI reigning in Rome was the first 'non-French Pope (…) in over fifty years [who] had been elevated to the seat of Peter' while Clement VII was ruling in Avignon (Madigan, 2015: 378). Madigan argues that the Great Schism was great for two reasons: it lasted for forty years and it was 'unique [because] (…) the same College of Cardinals had properly elected two different popes' (2015: 378). Joseph Canning completes the picture with yet another twist: he claims that the Council of Pisa in 1409, which gathered all the cardinals coming from the two lines of the papacy, was ready 'to bring an end to this ecclesiastical scandal by deposing both the Roman and the Avignon popes as schismatics and heretics, and by electing a new one Alexander V' (Canning, 2011: 166).

After more ecclesiastical-political troubles, the Great Schism ended at the Council of Constance in 1417, when Martin V was elected as the single and legitimate pope. However, this long schism irreparably damaged the credibility of papal authority (Canning, 2011: 166). Throughout the fourteenth and fifteenth centuries, in some countries consciousness of nation and secular state power became obvious. Caspar Hirschi posits strongly that 'national awareness' started during the Council of Constance (1414–18). Religious discord around the election of a legitimate pope brought 'political conflicts and intellectual exchange unprecedented in Western Europe' (Hirschi, 2012: 81–2). Hirschi explains that, although the system was introduced at the Second Council of Lyon in 1274, 'a central element of these proceedings was the division of voting participants into four nations: *Gallicana, Italica, Anglicana* and *Germanica*' (2012: 78, 82). Johnston differs from Hirschi in his contextual historical analysis of this period, as for him Germany was not on an equal footing with the other European regions. He asserts:

> kings were gaining military control of their own kingdoms and were reducing and eliminating foreign influences such as that of the papacy. This was especially true of England, France, and Spain. Germany, however, lacking a strong centralising monarchy, was unable to assert her authority against Rome (Johnston, 1991: 10–11)

As shown on the map in Figure 1 (see over), in 1519 the Holy Roman Empire was a large mosaic that was politically divided between Prince-Electors, some of whom were archbishops heavily involved in the Catholic hierarchy and monetary transactions (Johnston, 1991: vi).

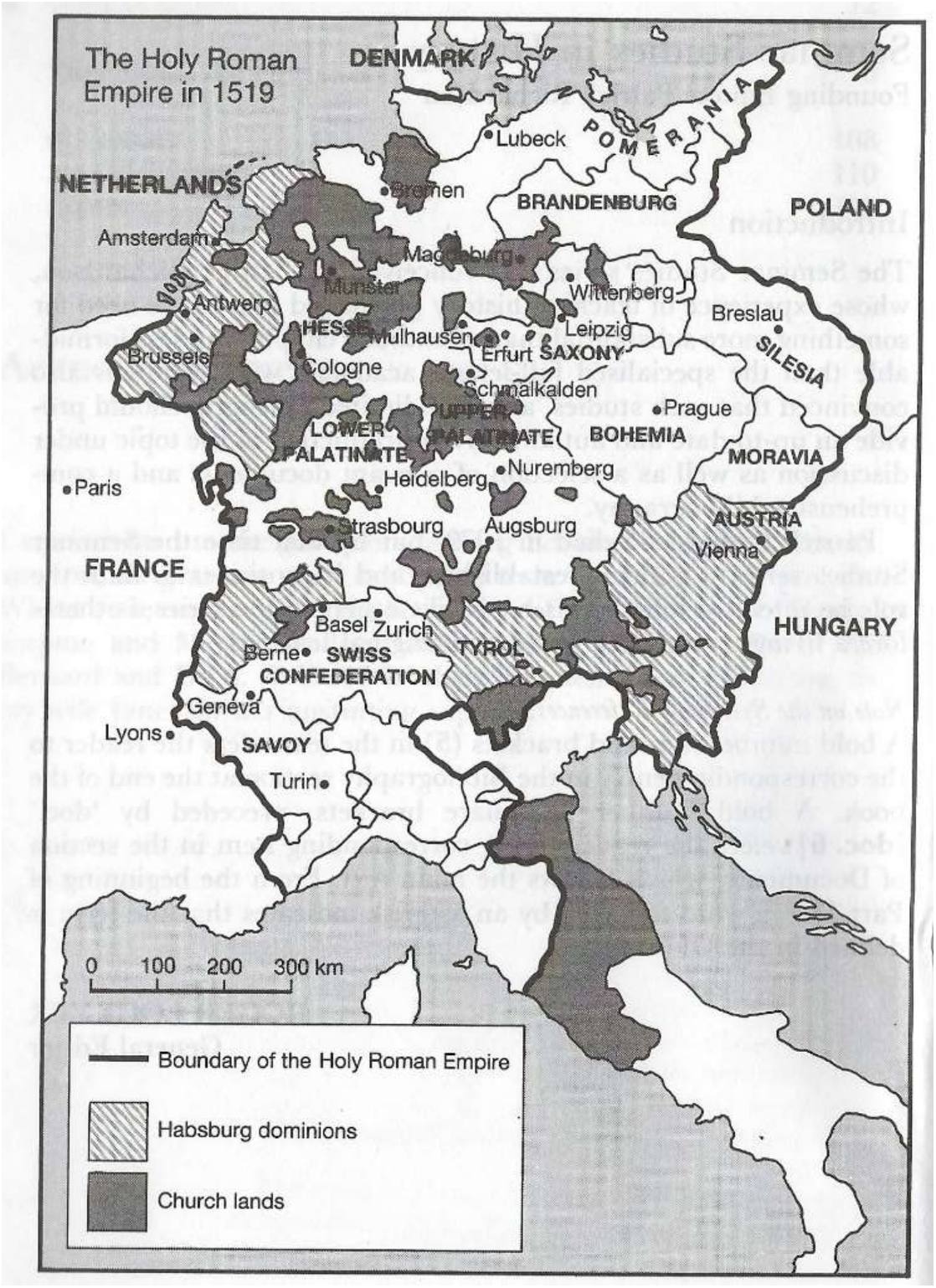

Figure 1 The Holy Roman Empire in 1519 (Johnston, 1991: vi)

Johnston asserts that during the fifteenth century, to its disrepute, the Church was involved in financial corruption and a document was exposed by Lorenzo Valla (c. 1406–57). The document, called the Donation of Constantine, was, according to Kevin Madigan, 'probably composed ca. 754–767 (…) it gives an account of the miraculous cure of Emperor Constantine by Pope Sylvester (R. 315–335), based on fifteenth century legendary literature' (Madigan, 2015: 72–3). Emperor Constantine supposedly gave power to the pope to reign over the western region of the empire while he would control the eastern region.

Johnston claims that many people lost their 'faith in the church' and nurtured resentment (1991: 10–11). He also contends that during the fourteenth and fifteenth centuries the association of indulgences and the doctrine of purgatory ratified by Pope Clement VI (*Unigenitus* 1342) and confirmed further by Pope Sixtus IV (1476) would allow that 'the faithful, through purchase of indulgences, could shorten the time spent by their dead loved ones in purgatory' (1991: 4).

Another significant element of this period converging with more general restlessness is the Renaissance movement and its rediscovery of classical antiquity in art, literature and science and also the associated humanism. The Renaissance reopened people's minds and its corollary effect, as Johnston explains, was that the Catholic hierarchy became more secularised. According to Johnston, secularisation was shown in the vision of the Church that 'concentrated on its local ambitions, competing against other Italian powers. Theology (…) seemed to be clearly linked to cash benefits' (1991: 10). Madigan explains also that the Renaissance popes built sumptuous buildings, for example the 'Sistine Chapel (…) St Peter's Basilica' (2015: 386). He adds that these popes were 'constantly enmeshed in war; Italian politics; conflicts with city-states; trafficking ecclesiastical offices (…) accumula[ted] art and treasure' (2015: 386). These facts are reiterated by Deanesly, who argues that Italian cognoscenti like Petrarch and Boccaccio turned to the Greek language to find wisdom and that later in the mid-fifteenth century 'the support of vernacular literature became a frequent characteristic of Renaissance effort' (1991: 246–7). She adds that humanism 'invaded the papacy with Nicholas V (1447–1455) (…) whose supreme object was (…) to bring the papacy to the forefront of the Renaissance movement, and use the triumphs of pagan art in the service of the church (…) his successor Pius II (1458–1464) [was] also a humanist' (1991: 247–8).

There was a major financial scandal in Germany just before Luther burst onto the scene. James Atkinson comments on a dubious transaction occurring in 1514 between Pope Leo X and Prince-Elector Albrecht of Brandenburg. Albrecht illegally purchased the archbishopric of Mainz through a complex scheme with the Pope involving huge loans and the sale of indulgences. Atkinson affirms that 'half [of the revenue] would go to the Pope himself to help build St Peter's at Rome' (1982: 148). This example gives an indication of improper pecuniary dealings by the See of Rome.

In this section I have outlined the complex interweaving of papal political and financial schemes in tension with nascent nationalism and Renaissance enlightenment and how

they clashed with the rest of late medieval society. Europe was ready for drastic changes, which would come with the Reformation, investigated in the next section.

4 The Protestant Reformation

4.1 Fertile Ground for the Protestant Reformation

In the sixteenth century, the religious socio-political context of much of Western Europe was to undergo a profound transformation. Arnold Snyder contends that in the medieval era 'the political ideal [was] a unified society under God' (1997: 17). In other words, there was no distinction between political, social, economic and religious areas. The omens of the Reformation came in the form of previous heresies. Walter Wakefield and Austin Evans define theological heresy in the Middle Ages 'as doctrinal error held stubbornly in defiance of authority' (1991: 2). Among others, the most prominent pre-reformers were Peter Waldo (1205–18) in the French and Italian Alps, John Wycliffe (c.1330–84) in England and Jan Hus (c. 1369–1415) in Bohemia. Wycliffe condemned the doctrine of transubstantiation, the belief that in the Eucharist the bread and wine used for the sacrament are transformed into the actual body and blood of Jesus. Wycliffe also supervised the first translation of the Bible from Latin into English, because in his view not only the clergy should be able to read Scriptures (1991: 225). He was followed by Jan Hus in Bohemia, who strongly criticised the Church establishment and the scheme of indulgences. During his religious services he used the Czech language instead of Latin and he shared the Eucharist with both bread and wine, in contrast to the Catholic Church congregation that partook with only bread (Deanesly, 1991: 233–4). Deanesly, writing about Peter Valdes/Waldo, argues that his teachings were based on the rejection of 'sacraments, institutions and customs not found in the Bible – penance, prayers to saints, image worship, oath-taking, and the taking of life' (1991: 221). His followers, termed Waldesians, also used the local language as opposed to Latin.

Albeit not in the same countries or centuries, the common preoccupation of Waldo, Wycliffe and Hus was their questioning and evaluation of the Roman Catholic Church's practices as opposed to biblical ordinances. It is noteworthy to say that Hus drew some ideas from Wycliffe (Johnston, 1991: 13). In the early sixteenth century Martin Luther was thinking along similar lines.

4.2 The Catalyst: Martin Luther

Michael Baylor declares: 'the clergy as a whole – but especially prelates, theologians, and monks – were held responsible for the pervasive corruption of Christendom' (1991: 528). The perception that the religious tapestry was woven with immorality prompted Martin Luther (1483–1546), a monk and scholar, to nail on the doors of the Castle Church at Wittenberg his Ninety-Five Theses (1517), which threatened the whole papal indulgence system. Luther's purpose was to discuss academically specific points in order to renew the Church from within (Atkinson, 1982: 150). William Hazlitt declares that Luther's initiative encouraged some 'more radical followers to turn the spiritual

reformation into a social reformation and urged an uprising of the peasants against the aristocracy' (2004: xxiv). Although Luther understood their plight, Hazlitt argues, he did not approve of it.

According to Atkinson, the publication of Luther's Ninety-Five Theses offended Rome and engendered numerous tribulations for him. For instance, in 1520, the *Bull Exsurge Domine* of Pope Leo X (1513–21) condemned Luther as a heretic. He had sixty days to recant; the fate of heretics was to be burnt at the stake (Atkinson, 1982: 194). Pope Leo X certainly wanted to burn Luther, as well as his books, because his own temporal preoccupations were more important than religious matters (1982: 194, 29). Christy Lohr expands on the trial organised at Worms to judge Luther's heresies. She explains that this trial took place because of the influence of Frederick the Wise and also because Emperor Charles V (1519–55), gave a favour to the latter, therefore 'fulfill[ing] every legal step to excommunication' (2013: 315–16). Luther's excommunication was effective in 1521 (Lohr, 2013: 334). Geoffrey Elton explains that after the hearing in Worms, friends kidnapped Luther, 'acting by arrangement with his territorial prince [Friedrich the Wise, Elector of Saxony] who thought it best to remove the outlaw from the reach of the authorities' (1977: 50–2). His captivity gave Luther the opportunity to translate Scripture into German (1977: 52). Similar to Wycliffe, the accessibility of the Word of God for everyone, in their own vernacular, was essential to Luther (Deanesly, 1991: 225, 252).

Johann Gutenberg's invention of the mechanical movable printing press in 1436–40 was a decisive element in the propagation of a uniform Bible and many other writings. This revolution promoted the diffusion of information in an inexpensive way to a much wider audience (Lehmann-Haupt, n.d.: [n.p.]). Hans Wiersma argues that Luther's theology of '*sola scriptura* – that the Bible is the final authority for Christians – and *sola fide* – that salvation comes by faith alone and not by good works' incorporates some key Lutheran principles (2011: [n.p.]). These were contrary to what the Catholic Church taught; Lohr argues that Luther 'rejected the teaching that the pope was the ultimate interpreter of scripture' (2013: 314). Mary Fulbrook expands on Wiersma's statements, making clear that 'the basis of authority' was Scripture, 'not the Pope, nor General Councils' (2014: 38). She adds that the Bible understood at a personal level revolutionised the clergy, who lost their role of 'being intermediaries between man and God' (2014: 38). Subsequently, negotiations between religious and political imperial powers were conducted to try to solve the dichotomy between Catholics and Protestants, but to no avail. One example is the 1530 Augsburg Diet, which, according to Fulbrook, 'was a moment at which opportunities for reconciliation still appeared open' (2014: 45). Documents were signed giving an official stamp to what would later be called Lutheranism (2014: 45).

4.3 Documents Establishing the Protestant Reformation

Robert Kolb maintains that the two comprehensive documents emerging from Luther's theology are the Augsburg Confession of 1530 and the Book of Concord of 1580. He states: 'These documents mark the path of Lutheran theological confessionalization' (2004: 68). In 1530, Philip Melanchthon (1497–1560) authored the Augsburg

Confession. In ‘The Preface to Emperor Charles V’ he sets out the religio-political context. The Diet summoned in Augsburg was organised ‘to deliberate concerning measures against the Turk (…) hereditary, and ancient enemy of the Christian name and religion (…) and then also concerning dissensions in the matter of our holy religion and Christian Faith’ (Melanchthon, 1530: preface). With this document Melanchthon’s aim was to ‘[bring] concord’ between opposing Lutherans and Roman Catholics (1530: preface). Atkinson explains that the document was composed in two parts. Part one delineated the Reformers’ doctrine in twenty-one articles and part two ‘discusses those abuses of Rome the Reformers found most objectionable’ in the seven remaining articles (Atkinson, 1982: 289). Kolb clarifies that the Book of Concord was a compilation of different documents written by Luther and Melanchthon (2004: 68). It included the Schmalkadic Articles of faith written by Luther in 1536, at the request of John Frederick I, as Pope Paul III was ‘calling for a general council of the Roman Catholic Church to deal with the Reformation movement’ (Encyclopaedia Britannica, n.d.: [n.p.]), since ‘John Frederick I, Lutheran elector of Saxony, wished to determine what issues could be negotiated with the Roman Catholics and what could not be compromised’ (Encyclopaedia Britannica, n.d.: [n.p.]. The Book of Concord also contained ‘Luther’s Large and Small Catechisms, and the Formula of Concord of 1577 [which] were brought together with the Augsburg Confession and the ancient creeds’ (Kolb, 2004: 68). Those documents made official the ultimate split between the Roman Catholic Church and the new Protestantism. Religious and political powers were in tension, which occasioned an uprising of discontent. As a result, civic or religious retaliation came in the form of persecution, burning or drowning of heretics. One of the groups heavily decimated was the first Swiss Anabaptist group of converts. Arnold Snyder states: ‘the earliest “baptizing” movement in the sixteenth century started in Zurich in January, 1525’ (1997: 5). Their fate is explained in Section 5.

Sachiko Kusukawa, in his study of Melanchthon (writer of the Augsburg Confession), clearly shows the position of the Anabaptists in the Reformation: ‘the Confession emphasized the concept of secular order as established by God, condemned Anabaptists as heretical, and set out the evangelical position on justification, free will, and good works’ (2004: 64).Those Protestants who went further than Luther and other eminent reformers fomented what is known today as the ‘Radical Reformation’, which is the focus of the next section.

5 The Radical Reformation

According to Michael Baylor, there was no such thing as a ‘radical Reformation’; there was ‘no cohesiveness of thoughts and actions’. He continues: ‘there does not seem to be an identifiable set of theological doctrines that radicals shared and that set them apart’ (1991: xiii–xiv). Nonetheless, within the disparity of radical reformers, two main branches stood out: the ‘Spiritualists’ led by Thomas Müntzer (c. 1490–1525) and Andreas Karlstadt (c. 1480–1541), who besides a belief in Scripture considered that believers could be granted personal revelations; and the ‘Anabaptists’ led by Conrad Grebel (c. 1498–1526) and Felix Manz (1498–1527), among others, who

accepted Scripture literally (Baylor 1991: xiv). Baylor recognises that a number of scholars have now admitted that Anabaptism is a conglomeration of different origins; he argues that distinguishing 'Spiritualists' and 'Anabaptists' is a pointless exercise in 'the early and mid-1520s' (1991: xiv). He reiterates his point that there was not one particular theology at that time. Snyder concurs with Baylor and explains that although 'Spiritualists' like Müntzer and Karlstadt had a different approach in understanding the work of the Spirit in interpreting Scriptures, they certainly disagreed with Luther. Snyder, using the allegory of trees and a forest, emphasises that 'radical reformers belong in another theological "forest" than did Luther' (1997: 56, 84).

Radical Reformers of the sixteenth century continued to believe in God's supremacy over earthly powers. In case of conflict, the ultimate answer was found in Scripture, but the Holy 'Spirit and the letter belonged together' (Snyder,1997: 82–83, 85). Radical Reformers trusted that salvation through God's grace would transform the believer. John Roth, in his analysis of Radical Reformation scholarship covering the middle of the twentieth century, delineates a tendency to reintegrate Anabaptists and radical reformers 'within the theological landscape of the broader Reformation' (2002: 525). Roth acknowledges that authors like Hans-Jürgen Goertz or Arnold Snyder come to the conclusion that Radical Reformers were indebted to Luther and the magisterial Reformers like Zwingli, although early on they retreated from involvement with the 'radical and social and political implications of their arguments' (2002: 528–30). Baylor contends that the Reformation was twinned with 'socio-economic grievances and political aspirations, and gained revolutionary momentum. This popular movement culminated in the Peasants' War of 1524–26' (1991: xi–xii).

Having explored how the Radical Reformers were in the eye of the Reformation storm, the next section will examine how Anabaptist groups wrote their own distinct story despite their different approach to theology and the understanding of Scripture.

5.1 Fundamental Sources of Anabaptism

According to John Roth:

> For nearly four centuries (…) standard readings of the Reformation dismissed the Anabaptists as seditious revolutionaries (…). Theological, ecclesiological and social anarchists, the Anabaptists embodied the worst excesses of religious reform of the sixteenth century. (…) they were the 'deformation' of the Reformation (2002: 524).

If the Reformation and Luther's initial theology are at the root of Amish beliefs, certainly as Snyder argues, Anabaptism was solidly inspired by Radical Reformers and brought Anabaptists their theology and practices (1997: 89). Michael Pye defines Anabaptists as 'a general term for believers in rebaptism (Greek *ana* meaning 're')' (1994:12). This word defines the starting point of the division between Roman Catholics and founders of Protestantism on one side, and Anabaptists on the other, as expressed by Johnston (1991: 44). The Radical Reformation movement also had regional characteristics, which are detailed in subsequent paragraphs.

5.1.1 Swiss Sources

Huldrych Zwingli (1484–1531) brought the Reformation to Zurich. Yet, as Werner Packull explains, Zwingli disagreed with Luther on the doctrine of transubstantiation. Zwingli had 'a spiritual-commemorative view of the Lord's supper', but he was of one accord with Luther on the authority of the Bible to all believers and access to it in the German language. However, in the same chapter Packull affirms that '"Magisterial" designates those reformers who received support from or collaborated with temporal authorities, be they civic or princely. Radicals, by choice or default, received no such support' (2004: 194–5). Without political support, Radical Reformers continued to campaign for their beliefs. More radical than Zwingli were some of his own students: Conrad Grebel, Felix Mantz, George Blaurock, Balthasar Hubmaier and Michael Sattler, who believed that baptism could only be received by responsible adults (Beachy, Roth and Yoder, 2017: 15). Packull states that the ultimate breakdown happened on 21 January 1525, when the dissenting group decided to re-baptise each other (2004: 195). Snyder declares that the Church Canon had settled this issue in the fourth century during the 'Donatist controversy [c. 347] (…) when rebaptism became an ecclesial and criminal offense' and the legal penalty for this crime was death. This penalty was backed by 'imperial mandate published at Speyer in 1529' (Snyder 1997: 2–3). Of this group, all were gruesomely martyred except Grebel, who died of natural causes (Braght, 2009: 418; Snyder, 1997: 6). Steven Nolt gives a circumstantial explanation for the debate about baptism: he explains that in the sixteenth century this rite performed by the church–state also gave legal citizenship. Hence the Christian significance of baptism was diluted (2003: 10). Therefore, Anabaptism disconnected church and state, and later the Amish followed in their wake, putting into practice the 'two kingdoms doctrine' (Kraybill, 2003: 25–6). This doctrine insisting on strict separation between church and state is explored in Chapter 3.

According to several authors including Baylor and Snyder, the Peasants' War (1524–26) in Germany played a strategic role in the emergence of Anabaptism (Baylor, 1991: xxviii–xxi; Snyder, 1997: 77). Their interpretation of Luther's teaching gave peasants boldness to claim freedom from servitude and a statute of equality with their rich oppressors. In their understanding, God gave the earth and its produce to all humankind. They also criticised clerical immorality. One of the peasants' remedies was to recruit clergy – that is, the local community would elect and financially support their own pastors, but also pastors would 'be morally accountable to those communities' (Snyder, 1997: 77). The Anabaptists, and later the Amish, took up this practice of moral accountability in their communities. Anabaptist separatism was formalised in 1527 when the 'Brotherly Union' gathered a synod at Schleitheim, where they adopted seven articles representing their convictions:

> 1) Adult baptism; 2) Memorial form of the Lord's Supper; 3) Separation from the world; 4) Call for strict discipline; 5) Congregational election of the leaders; 6) Refusal to use the sword; 7) Refusal to give oaths (Packull, 2004: 195).

Those seven articles (with expansion of some) still constitute the core of Amish beliefs. Steven Nolt and Thomas Meyers assert: 'Anabaptists earned the condemnation of both

Catholic and mainline Protestant leaders, who saw the Anabaptists as religious, social, and political revolutionaries' (2007: 5). Laws issued by governments introduced persecution, captivity and public execution. Anabaptism had to be eradicated. Nolt and Meyers as well as Snyder claim that approximately four thousand Anabaptists lost their lives between 1527 and 1624 (Nolt and Meyers, 2007: 5; Snyder, 1997: 184). There is thus a strong historical association between the Anabaptists and the Amish. Both claim a heritage of martyrdom (Braght, 2009).

5.1.2 Dutch Sources

According to Nolt and Meyers, Anabaptists did not generate any notable leaders because of their tragic fate (2007: 5). However, in the Netherlands a Catholic priest, Menno Simons (1496–1561), after lengthy soul searching and deep Bible study, was convinced that the concepts defended by the Anabaptists were sound. He joined them in 1536 (Snyder, 1997: 224–5). His prolific writing and moderate position gathered a significant following among a group of Anabaptists who were subsequently dubbed 'Mennonites'.

In 1632 the Dordrecht Confession of Faith was written. It seemed to resolve disagreement over 'shunning', or excommunication from the church, if one of the members sinned (Nolt, 2003: 19–22). John Wenger summarises this document:

> it teaches the baptism of believers only, the washing of the saints' feet, earnest church discipline, the shunning of the excommunicated, the non-swearing of oaths, marriage within the same church, strict nonresistance, and in general places more emphasis on true Christianity involving being Christian and obeying Christ rather than merely holding to a correct system of doctrine (1956: [n.p.]).

Today, Anabaptists, including Amish groups, remain faithful to this Confession. Just as the initial Protestant Reformation experienced great resistance, the Radical Reformation was equally treated by civic or ecclesial authorities with rejection, suffering and martyrdom.

In the next section, I examine why the Amish parted from the Mennonite group. This part of my work draws heavily on Steven Nolt's seminal work on Amish history (2003).

6 Dissenting Mennonites and Amish Movements

6.1 The Late Seventeenth-Century Political Context in the Rhine Region

As they escaped persecution, Anabaptists travelled between Switzerland, the south Rhineland, Alsace and the Palatinate (Nolt, 2003: 27–9). The political climate in the seventeenth century in this region remained uncertain for Anabaptists and Nolt contends that 'repeated rounds of official mandates, fines, and threats of banishment or imprisonment' were daily occurrences, as civil magistrates put pressure on 'local state church members and village leaders to comply with anti-Anabaptist legislation'

(2003: 27–9). In the late seventeenth century some Anabaptists were calling for internal reform. The resuming of persecution towards them created a new context in which some supporters belonging to the state church developed 'a sort of grassroots admiration for the Swiss Mennonites', as Nolt explains (2003: 28). The Mennonites were puzzled by their sympathisers' attitude and re-examined their ways regarding the 'strict Anabaptist distinction between the church and the world' (2003: 30).

6.2 Jakob Ammann, Swiss Dissenter

In this tense political climate, Swiss elder Jakob Ammann (b. 1644) moved to Alsace and gradually became a dissenter (Kraybill *et al.*, 2013: 32, 425). He was a Reformer within the Radical Reformation. In the same way as Luther originally wanted to reform the church from within, Ammann's objectives were purely religious. Nolt claims that Ammann suggested the observance of Communion twice a year in order to 'strengthen' the congregation, as before Communion people had to 'closely examine their lives' (2003: 32). Swiss Mennonites, also known as Swiss Brethren, organised Communion only once a year. There was a correlation between Communion and examination of their lives. For Ammann, discipline in church needed to be tighter in order to maintain purity: 'Ammann represented those who believed that Mennonites were becoming spiritually lax, he insisted on more attention to church order' (Nolt, 2003: 31–3).

The dissension within the Mennonite community was well under way when in 1693 Ammann, and ministers with similar views, introduced social avoidance ('shunning') within Swiss Mennonite congregations (Nolt, 2003: 35). A debate over shunning and excommunication ensued in the Mennonite community. Other Mennonite leaders tried to bridge the gap with Ammann and his followers, but he refused to reconcile his group with them. He argued that Matthew 18:15–17 was the right answer in this conflict:

> if another member of the church sins against you, go and point out the fault when the two of you are alone, (…) if the offender refuses to listen even to the church, let such a one be to you as a Gentile and a tax collector (NRSV Bible version).

'Church discipline and Matthew 18' is the title of one of Nolt's arguments expanding on Ammann's case (2003: 48–9). Ammann's group became known as Amish after their leader's name (Hostetler, 1993: 25). Nolt reports that several years later a few Amish leaders including Ammann tried to reconcile themselves with the main Mennonite group (2003: 45–6). It was then the Mennonites who refused to be associated with Ammann, who to them represented 'evil and doom' as he stood firm on the compulsory enforcement of shunning (2003: 45). Foot-washing at the Communion celebration generated another source of tension between the two groups. Mennonites neglected it even though it was part of Article XI of the Old Mennonite Dordrecht Confession, as stated in the *Martyrs Mirror* book (Braght, 2009: 42). The Amish ensured that this ordinance was respected following John 13:1–17: 'Jesus (…) began to wash the disciples' feet (…)' (NRSV Bible version).

According to Hostetler, Ammann, a tailor by trade, added some requirements for plain clothing. He was against the fashions and grooming of his time because in his view it showed pride and a desire to be seen. One of the conventional features of the Amish attire introduced by Ammann was having hooks and eyes to fasten their garments (1993: 39). Nolt adds that for Ammann, buttons represented the military uniform style, which did not comply with the Bible and non-violence (2003: 44, 11). Although it was not controversial at the beginning, this became another mark of separation from the Mennonite Brethren, who continued to attach their clothes with buttons (Hostetler, 1993: 39). The rupture that started in 1693 was irretrievable by the turn of the century.

Alongside these religious dissensions another key element has to be examined: the personalities involved in the feud, mainly Ammann's. Hostetler recapitulates some aspects of the dispute and concludes that 'personal ambition for leadership, perhaps even jealousy, has been suggested as the main cause' (1993: 39). It also appears that Jakob Ammann was a strong character and that his inflexibility inflamed the dispute with the Swiss Brethren. His obvious authority opens another discussion. It is important to consider the impact of Ammann's personality during the process of separation and assess the possibility of his becoming the *guru* of a sect as opposed to a church leader. Many of the elements cited above tend to demonstrate this.

To conclude this section, Figure 2, my adaptation of a diagram by Kraybill, clearly shows the Amish's roots in the European Protestant Reformation (Kraybill, 2001: 7).

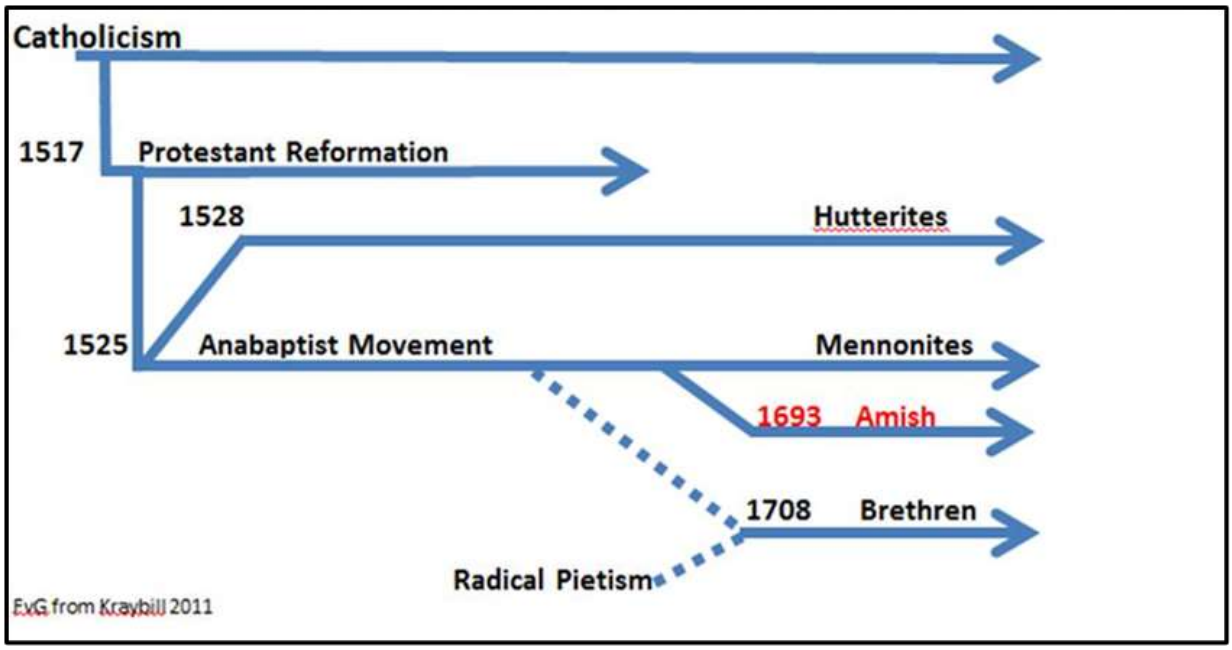

Figure 2 Amish roots in the European Protestant Reformation (Kraybill, 2001: 7)

Regardless of the split occurring between the Mennonites and the Amish, their affiliation to the Radical Anabaptists meant that the Amish group suffered the same

fate and persecution, which prompted their emigration to America around ‘the first half of the eighteenth century’ (Hostetler, 1993: 52).

7 Amish Exodus to the New World

Between the eighteenth and nineteenth centuries, a number of Amish people migrated to colonies in America (Hostetler, 1993: 50). Their migration was prompted by ‘the torment in Europe’ (Hostetler, 1993: 50). Nolt explains that some Amish families decided to move to Eastern Europe ‘on a similar search for places where they could live productive and unmolested lives’ (2003: 64).

7.1 Political Frictions with Anabaptists in Today’s Alsace (France)

Hostetler reveals how Anabaptists suffered persecution in Europe. He details the methods of ‘a secret police force of “Anabaptist hunters” [which] was organized to spy, locate, and arrest Anabaptists for their nonconformist beliefs’ (1993: 51). Between 1671 and 1711 many Swiss Anabaptists found refuge in the Palatinate or today’s Alsace. However, he adds that the geographical centredness of the Palatinate in Europe was the theatre of the major war of the seventeenth century; that is, the Thirty Years’ War (1618–48). This war opposed Catholic and Protestant armies and degenerated into a complex struggle for power between France and the Habsburgs, later involving other major states (1993: 51). The Palatine War between 1688 and 1697 saw the destruction of the region ordered by the French king Louis XIV. According to Hostetler, ‘these conditions precipitated the great Palatinate emigration to America in the first half of the eighteenth century’ (1993: 52). A key character in the process of Amish transatlantic emigration was an English Quaker: William Penn.

7.2 William Penn’s Major Role in the Emigration from the Palatinate

English authorities were hostile to Quakerism. As George Hodge reports, ‘in 1677 William Penn, George Fox, and other Quaker leaders made a “religious voyage” into Holland and Germany, preaching the Gospel’ (1901: 60). Hodge claims that during this mission one of the outcomes was that ‘Penn met various communities “of a separating and seeking turn of mind”, who found in him a kindred spirit. When he established his colony [Pennsylvania], many of them came out and joined it, becoming the “Pennsylvania Dutch”’ (1901: 60).

Lucinda Martin echoes Hodge on Penn’s visit to Germany and the time he spent with female Reformers. She says:

> In Frankfurt Penn formed a friendship with [Pietist activist, Johanna Eleonora] Merlau and also found supporters for his Pennsylvania project – building a religious free state populated by Protestant dissidents from Europe. (2003: 48)

In 1681 King Charles II had to redeem his debt to Penn’s late father. He signed a Charter giving to the son, William, a huge domain where the ‘Holy Experiment’ was to take place (Louis and Héron, 1990: 52). According to Louis and Héron, when

eventually Charles II signed the Charter giving ownership of the territory in America to William Penn, Penn proposed the name Sylvania. The king, in honour of Penn's father, renamed it Pennsylvania (Penn's Forest). The naming of the domain after the family embarrassed the modest William (Louis and Héron, 1990: 51). He created the expression the 'Holy Experiment' to express his gratitude to God, whom he had asked for this territory. He wanted to set an example for European nations, saying 'we might find over there [in Pennsylvania] what has not been possible here: the necessary space for the creation of a Holy Experiment' (Louis and Héron, 1990: 52). Numerous applications to obtain land came from European Quakers and Mennonites. In October 1683, the first vessel containing German Quakers and Mennonites berthed in the port of Philadelphia (1990: 56).

7.3 Transition from Europe to America

In Europe after 1693, a large group of Amish people, including Ammann's family, moved to Alsace, where they were able to farm. However, in 1712 French authorities 'ordered the expulsion of all Anabaptists from Alsace' (Nolt, 2003: 54). Over the years political problems forced them to move to other parts of northern France, to eastern Europe and also to the Netherlands. In 1711 the Swiss government organised a massive transfer of Amish and Mennonites to the Western Hemisphere, but administrative problems postponed their expulsion. The province of Pennsylvania would in time welcome many Amish families, who were yearning for religious freedom, to a haven of peace. Nolt explains that this was the primary destination of the Amish as well as other 'marginalised minorities, including Quakers (…), Mennonites (…)' (2003: 63). Hostetler reports that the first Amish arrived in Philadelphia in 1727. Distinctive Amish names were found on the passenger list of the ship *Adventure*. Ten years later another contingent of Amish arrived on the *Charming Nancy* (1993: 56). Figure 3 (see over) (Hostetler, 1993) illustrates the Amish population's displacements and dates before they moved to their ultimate destination, America.

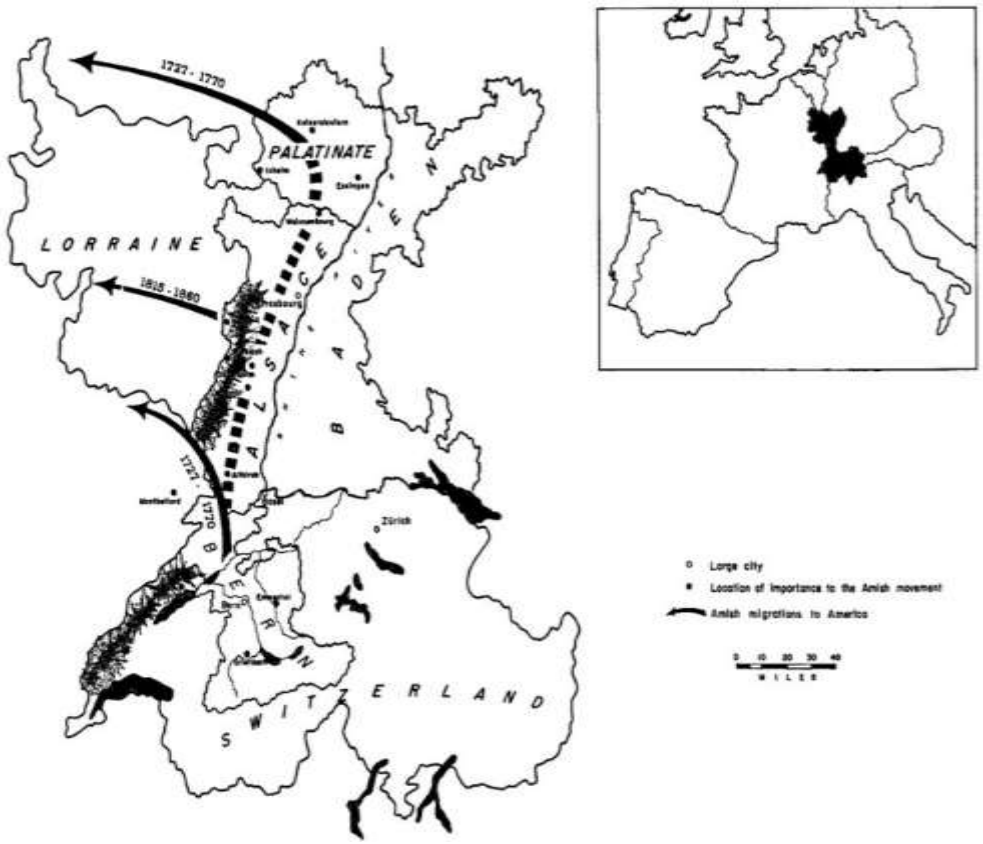

Figure 3 Places of origins of the Amish and paths of their migration to America (Hostetler, 1993: 32)

Figure 4 (see over) from *The Routledge Historical Atlas of Religion in America* illustrates 'the migration of German sects [including the Amish] from the Palatinate [to America] in the late seventeenth and early eighteenth centuries'; it also shows their progression through the American continent (Carroll, 2000: 50).

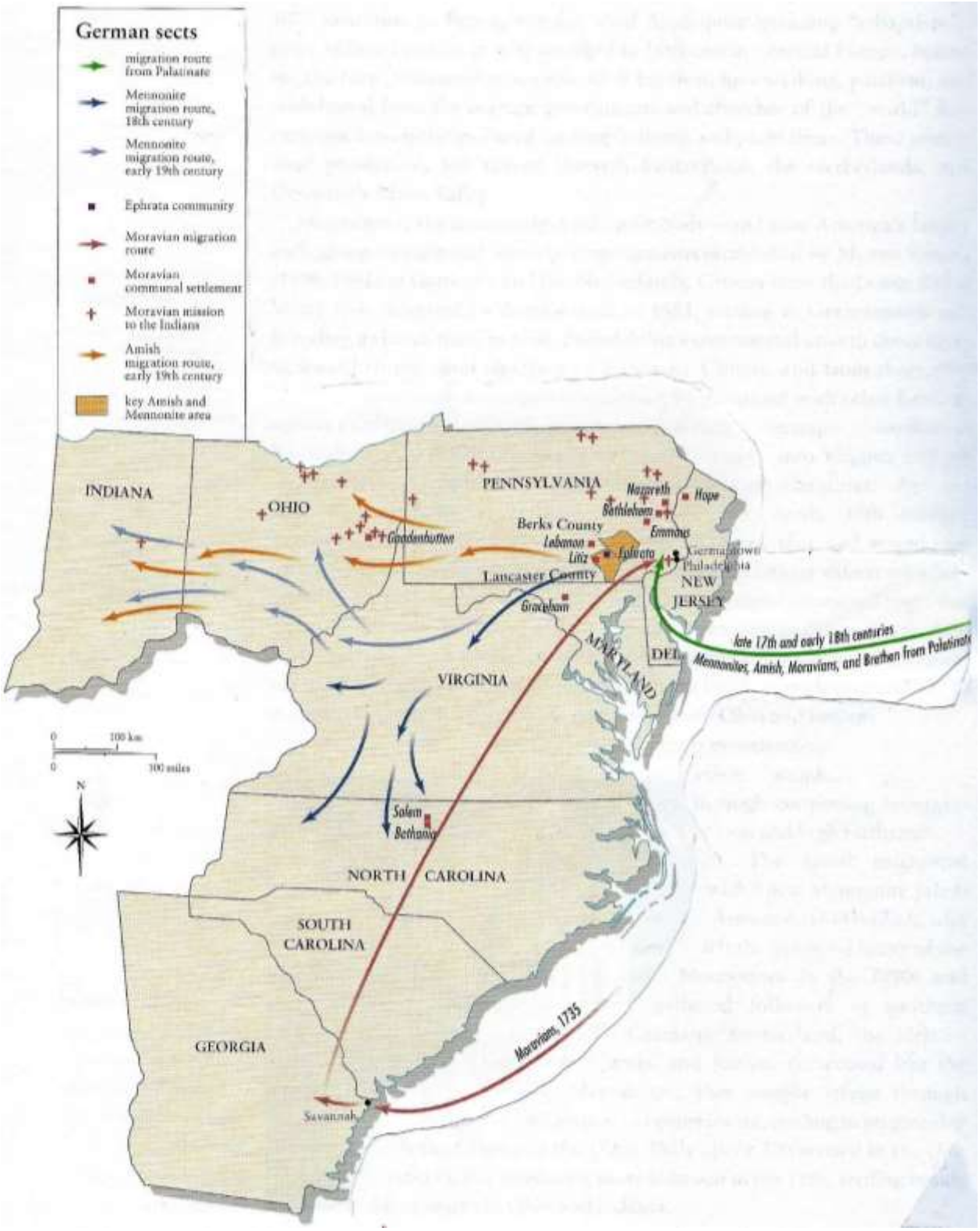

Figure 4 (Carroll, 2000: 50)

In the nineteenth century more European Amish emigrated to North America. The 1789 French Revolution followed by the Napoleonic wars put their population in a difficult position (Nolt, 2003: 96–117). After overthrowing and beheading Louis XVI, French

Revolutionary leaders brought a new interpretation of citizenship. People were no longer subjects of a king and the nobility lost their privileges. All citizens became equal. Nolt explains that 'the French revolutionary government did make one distinction for its Amish and Mennonite population, granting them exemption from military involvement' (2003: 98). Yet, when Napoleon Bonaparte became Emperor in 1804, he overturned the exemption so that 'all citizens would receive the same civic rights and the same civic responsibilities, regardless of religious affiliation' (Nolt, 2003: 98). This included universal conscription. Different attempts made by the Amish to negotiate with Napoleon were unsuccessful. Nolt contends that in the early 1800s the alternative for Amish people was to 'join the socially respectable state church' or to emigrate: 'immigration or acculturation' (2003: 107).

The Amish remnants in Europe gradually assimilated into more progressive Mennonite groups. The last Amish settlement in Europe was located at Ixheim in Germany. Ultimately, on 17 January 1937, 'after several years of dialogue, the Ixheim Amish church and the nearby Ernstweiler Mennonite congregation united as a single fellowship' (Nolt, 2003: 225–7). Nolt establishes that the Amish who made the choice to move across the Atlantic eventually spread from Philadelphia to different states. Some of his dates differ slightly from those recorded by Hostetler due to the use of different sources (Nolt, 2003: 114; Hostetler, 1993: 54–9). However, Nolt explains that when the first wave of Amish people arrived between 1736 and 1770, they moved gradually westward from Pennsylvania. The second wave, arriving between 1804 and 1810, ultimately established themselves in the Midwest. Between 1817 and 1860 Amish groups settled in 'Ohio, Illinois, Indiana, Ontario, New York, Iowa or Louisiana' (Nolt, 2003: 114). Nolt contends that the last transfers of Amish from Europe to the New World happened between 1860 and 1914, as individuals or families joined established communities in the Midwest, although some of them abandoned their Amish or Mennonite identity (2003: 114).

8 Summary

In conclusion, the political, sociological, and historical records undoubtedly indicate that the Amish came from shared roots: in reverse order, from the Mennonites, the Anabaptists and the sixteenth-century European Reformation.

New Amish emigrants to America arrived mainly in Pennsylvania, a region where the basis of law had been envisioned with freedom of religion in mind. Jane Calvert argues that principles coming from William Penn's founding documents, Frames of Government (1682–83) and Charter of Privileges (1701–76), later inspired the writers of the U.S. Constitution (Calvert, 2009: 242; Young, 1968: 147–68). However, Penn was certainly not the only source of inspiration. To understand how American laws were progressively established, and how the America's Founding Fathers proceeded, Chapter 3 expands on historical American politico-legal developments.

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