

Examination of Incorporation of Churches

Scriptural Introduction

1. Christ is the Founder of the church, not a state agency (Matthew 16:18).
2. Jesus indicated a distinction between the things of God and the state (Matthew 22:15-22).
3. Jesus Christ informed Pilate, a governing official, that His kingdom was not of this world now (John 18:36).
4. The church in Jerusalem did not seek recognition for its existence from the Jewish Sanhedrin (Acts 4:5-20; 5:27-29).
5. The purpose of civil government is to combat evil, not regulate churches (Romans 13:1-7; cf. Exodus 1).
6. Believers are not to be unequally yoked with unbelievers (II Corinthians 6:14-18).
7. The Lord Jesus Christ is the only Scriptural Head over the church (Ephesians 1:22-23; 5:23; Colossians 1:18; 2:19).
8. Biblically, the local church is considered a spiritual organism, not a legal organization (I Corinthians 12:12-27; Ephesians 2:19-22; I Peter 2:4-6).

Historical Context

1. "The history of church incorporation strongly parallels the history of establishment of state churches in early Rome, the Middle Ages, the Reformation, England, and America." (*Approved By God*, p. 44)
 - 1.1 Roman emperors or the senate approved certain churches for incorporation (*corpus habere*, to have a body consisting of at least three people).
 - 1) Approval to operate
 - 2) Toleration by the government
 - 3) Land ownership
 - 4) Monetary gifts
 - 1.2 Emperor Constantine incorporated the church of Rome into a state church.
 - 1) This gave churches protection, favor, and financial gifts.
 - 2) Churches seeking government favor were corrupted as pagan, unbelieving idolaters came into churches.

- 3) Anabaptist groups who opposed this were labeled as heretics and severely persecuted.
- 1.3 During the Reformation, European Protestant leaders established state churches which were also intolerant of Baptist groups.
 - 1) Martin Luther
 - 2) John Calvin
 - 3) Ulrich Zwingli
 - 1.4 In England, only the Church of England could own property, hold services, or marry couples.
2. Protestant governments in early Colonial America restricted, limited, and tried to force licensing of Baptist pastors.
 - 2.1 Most of the American colonies established a state church from charters granted by the king of England (incorporation).
 - 2.2 Baptist churches resisted and did not seek this registration. (John Clarke did secure a charter for a colony.)
 - 2.3 New England Baptists considered incorporation to be an "unchristian surrender to the state." (*Approved By God*, p. 210)
 - 2.4 Baptist pastors Isaac Backus (1724-1806) and John Leland strongly opposed incorporation.
 - 1) Pastor Isaac Backus labored for more than fifty years to oppose State involvement in establishing churches. "While many Baptists accepted the practice of incorporation, Backus vigorously opposed it. To ask Caesar for a license to preach the Gospel was as unscriptural as to give Caesar a certificate in order to be exempted individually from religious taxes. But Backus's argument was not heeded. Most Baptist churches did seek incorporation after 1788, and Backus now realized sadly that they no longer were filled with the zeal for the cause that had spurred him on since 1741. He longed for a new revival of religion like that of his youth." (*The Diary of Isaac Backus*, William McLoughlin, quoted in *Approved By God*, p. 20-21)
 - 2) Pastor John Leland understood that the church was established as a

Christocracy, under Christ's authority. "The conclusion of the whole matter, therefore, is, that the government of Christ is radically different from all the governments on earth, forming, of itself, a divine Christocracy. By a Christocracy, I mean nothing more than a government of which Christ is law-giver, king, and judge, and yet so arranged, that each congregational church is a complete republic of itself, not to be controlled by civil government or hierarchy. Let this government be called by what name soever, it is not of the world, and therefore, the rulers of this world have nothing to do with it, in their official capacity. It is distinct from the government of state, and consequently, should never be mixed with it. It is complete of itself, and disdains the assistance of human laws." (*Approved By God*, p. 3)

3. James Madison, "Father of the Constitution and the Bill of Rights," argued that incorporation was the establishment of a church by the state.
 - 3.1 As a congressman, Madison fought for the passage of the First Amendment. The original wording was as follows: "Congress shall make no laws touching religion, or infringing the rights of conscience." (Congressional Record, August 15, 1789).
 - 3.2 As President of the United States, Madison vetoed legislation to incorporate religious institutions, including a church in Washington, D.C.
4. English pastors Charles Spurgeon and John Gill spoke out against the established church of the state.
5. Incorporation historically was viewed as the establishment of a religion, thus a violation of the First Amendment.
6. In 1934, an attempt to amend the IRS tax code failed that would have restricted tax-exempt organizations from participating in partisan politics.
7. Lyndon B. Johnson, while in the Senate, pushed an unconstitutional bill through that limited First Amendment rights.
 - 7.1 It was inserted into the tax code in 1954 ("Johnson Amendment").
 - 7.2 This tax code revision was designed to silence two organizations supporting his political opponents.

- 7.3 Evidence abounds that the Johnson Amendment has been used to silence support of conservative candidates for political office since then.
- 8. There are now two forms of churches in America today.
 - 8.1 Incorporated churches with IRS code 501(c)(3) exemption.
 - 8.2 Unincorporated and unregistered churches seeking to keep Christ as Head.

Incorporation Issues

- 1. Incorporation is an attempt to bring churches under the control of the government.
 - 1.1 Incorporation is a contractual agreement between a church and the state.
 - 1.2 The State is the creator of a corporation (see Matthew 16:18).
 - 1.3 The State maintains sovereign authority over all corporations.
 - 1.4 Incorporated churches give up some of their First Amendment rights when they seek 501(c)(3) incorporation.

"Amendment 1 - Freedom of Religion, Press, Expression. Ratified 12/15/1791. 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."
 - 1.5 Incorporated churches have a contractual obligation to support all public policies of the State. "...Certain other activities are prohibited or restricted, including, but not limited to the following activities. A 501(c)(3) organization must: a. Absolutely refrain from participating in the political campaigns of candidates for local, state, or federal office... e. Not engage in activities that are illegal or violate fundamental public policy..." (IRS Form 1023)
- 2. Incorporation causes a church to have two authorities: Christ and the government. (see Matthew 6:24; Luke 16:13)
- 3. The members of a 501(c)(3) corporation do not own any assets. Trustees (an unscriptural office) of an incorporated church hold the property in trust for the State.
- 4. Incorporated churches are governed by a Board of Directors (trustees), not the membership.
- 5. Officers of 501(c)(3) corporations could be ordered to reveal giving records of members since it is a state entity.

6. Incorporated churches can sue and be sued in a court of law. A church legally cannot be sued until incorporation, when it becomes a legal entity (see I Corinthians 6).
7. 501(c)(3) church lawyers in some cases are no longer defending churches "as a matter of principle."
8. The State has some authority in the matters of church discipline.
 - 8.1 Courts have declared in some cases that incorporated churches cannot exclude a disciplined member from participating in the business of an organization.
 - 8.2 A New York court decision stated, "No church Discipline can supersede the law of the State. (*Approved By God*, p. 133)

Conclusion

1. Incorporation as a church is not legally necessary.
 - 1.1 "Organizations That Qualify To Receive Deductible Contributions"
 - 1) "...Most organizations, other than churches and governments, must apply to the IRS to become a qualified organization." (IRS Publication 526, p. 2)
 - 2) Examples given by the IRS include "churches, a convention or association of churches..." (IRS Publication 526, p. 3)
 - 1.2 "Form 1023 not necessary. The following types of organizations may be considered tax exempt under section 501(c)(3) even if they do not file Form 1023. Churches..." (IRS Form 1023, October 2013 rev.)
 - 1.3 "Although churches are not required by law to file an application for exemption, if they choose to do so voluntarily, they are required to pay the fee for determination." (IRS Publication 1828)
 - 1.4 "The term church includes synagogues, temples, mosques, and similar types of organizations. Although the IRC excludes these organizations from the requirement to file an application for exemption, many churches voluntarily file applications for exemption..." (IRS Publication 4220)
 - 1.5 "Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax exempt status from the IRS—in recognition of their rights guaranteed by the First Amendment (*IRS Publication 1828, tax guide for Churches and Religious Organizations*).

- 1.6 Section 508(c)(1)(A) of the Internal Revenue Code states,
“**Sec. 508. — Special rules with respect to section 501(c)3 organizations**
(a) New organizations must notify Secretary that they are applying for
recognition of section 501(c)(3) status
Except as provided in subsection (c), an organization organized after
October 9, 1969, shall not be treated as an organization described in
section 501(c)(3)
(c) Exceptions
(1) Mandatory exceptions
(A) churches, their integrated auxiliaries, and
conventions or associations of churches, or..”
- 1.7 Former IRS official Steve Nestor said, "I am not the only IRS employee who's
wondered why churches go to the government and seek permission to be
exempted from a tax they didn't owe to begin with, and to seek a tax deductible
status that they've always had anyway. Many of us have marveled at how
church leaders want to be regulated and controlled by an agency of government
that most Americans have prayed would just get out of their lives. Churches are
in an amazingly unique position, but they don't seem to know or appreciate the
implications of what it would mean to be free of government control."
(quoted by Peter Kershaw, *In Caesar's Grip*)
- 1.8 Incorporation of churches is considered a voluntary act of submission.
1) “However, when the Sixth and Izard Church of Christ decided to
incorporate, it submitted itself to certain corporate laws of this state, thus
opening the door to examination of their present quarrel in a legal
setting.... The church -- any church -- has the absolute unfettered right
to worship according to the dictates of their own consciences, so long as
they do not trespass upon the rights of others. Having elected to
incorporate under the laws of the state, they should be required to
conform to the consequences of their voluntary act. Otherwise, it
is only fair that all other businesses organized as 'not for profit'
corporations be allowed to choose which portions of the law by which

they will abide." (Gibson v. Munson, 296 Ark. 160, 1988; quoted in *Approved By God*, p. 89)

- 2) State Street Baptist Church in the State of Kentucky was an unincorporated church for 132 years. After being incorporated for eight years, a few members took the church to court over a matter of business. The judge ruled in part, "The business of the church was conducted in a rather informal manner in accordance with its customs. Although this kind of conduct might be suited to church tradition, it does not comply with the requirements of the statutes regarding nonprofit corporations. As the trial judge phrased it -- once the church determined to enter the realm of Caesar by forming a corporation, it was required to abide by the rules of Caesar, or in this case, the statutes of the Commonwealth of Kentucky..." (*Approved By God*, p. 98)

2. "Almost every corruption of primitive Christianity may be traced to the blending of civil and ecclesiastical affairs." (*Approved By God*, p. 205)
3. "State-churchism is not founded on Scripture, hence its acceptance means the rejection of the principle of the sole authority of Scripture; and therefore it, in principle, means to that extent theological liberalism. The leading principle of liberalism is the setting aside of Scripture as the authority for the faith and practice of the church." (John Horsch, 1921; quoted in *Approved By God*, p. 119)

Sources

1. *Approved By God: A Case for Modern Disestablishment*, James Wright, John Wright, Ben Townsend
2. *God Betrayed*, Attorney Jerald Finney
3. *The 501(c)(3) Incorporated Church*, Barbara Ketay
4. IRS Publication 526; Publication 1828; Publication 4220