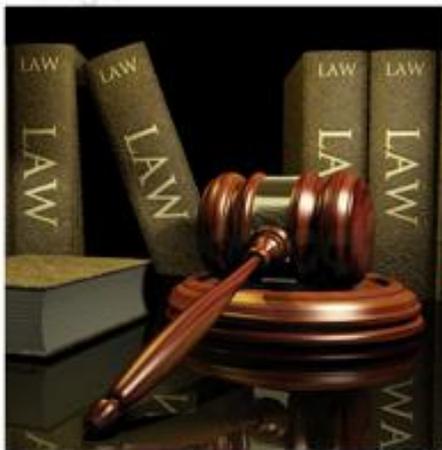


Knowing the law begins your protection



THE CHURCH AND GOVERNMENT

**INTERNAL REVENUE SERVICE
AND
THE CHURCH**



THE LAW AND THE CHURCH

Supt. Frederick D. Jenkins, BS, MA, ThD, PhD
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HELPFUL INFORMATION FOR PASTORS

[Table of Contents](#)

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[Table of Contents](#)

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FORWARD

When I was contacted by Dr. Frederick D. Jenkins to write a forward to the 2004-revised edition of this book, I was honored and humbled at the same time. This book is a work that has been needed for some time, and it is with great honor that I participate in some small way in its creation. If you know Dr. Jenkins, you will understand why I said I was humbled. Dr. Jenkins is a true man of God. His understanding of the inner workings of the Church Of God In Christ is only surpassed by his love for the church. It should quickly become obvious that Dr. Jenkins has spent many hours in preparing this book you have in your hands.

As you know, we live in a difficult time. Pastors, elders, and laypersons today face difficulties that were not imagined just a few years ago. As we all know, there are too many people today who look to the courts as a means of settling disputes that past generations would have settled face-to-face, perhaps with a pastor or elder to mediate. The day of a handshake being a man's bond seems to be gone. The days of trust may seem to be gone in the civil world, but it is apparent that many have lost trust in our churches as well. Priests are sued for child abuse regularly. In today's legal climate, pastors can no longer safely meet with a parishioner of the opposite sex without people assuming the worst, or without fear of a lawsuit.

In this text, Dr. Jenkins has compiled a comprehensive and authoritative look at not only church law; he has clearly and carefully explained the government of the Church Of God In Christ at every level. Dr. Jenkins has thoroughly pointed out history that explains how the church has arrived where it is today. He has also included terms and definitions that will assist any lay person to understand the legal ramifications of different situations which may come against the church. By clearly delineating Church Laws and Church Government, and adding the glossary and other informative information, Dr. Jenkins has created a handbook that any member of the Church Of God In Christ may use to quickly find what the national church has said each included topic, along with legal guidelines taken from the church and the nation's civil court system.

This is a book whose time has come. Dr. Jenkins has spoken to the issues with the understanding of a man of God who obviously loves his church. He also writes with such authority that an attorney might assume the writer to have legal training.

This book is your one-stop resource on church law and government for today. As a born again believer in Christ and as a practicing attorney, I highly recommend this book to you as an excellent reference guide.

Michael W. McCoy, Esq.

Table of Contents

Introduction	1
THE CHURCH.....	2
What is Church Government and why is it necessary?.....	5
Why Do Church Governments Exist?	11
CHURCH GOVERNMENT	13
Theocracy.....	15
Theocracy Fact or Fiction	18
Government.....	20
UNDERSTANDING AND APPRECIATION OF LAW	21
"Original Intent of The Establishment and Free Exercise of Religion"	29
IRS Church Definition	35
IRS Regulations.....	36
Responding to Lawsuits arising from Church Discipline	44
FOOTNOTES.....	47
DISCLAIMER	51
GLOSSARY	53
SOURCES.....	63

Introduction

The scriptures teach a form of government for the church of our Lord of which we are all a part. The failure of American churches to abide by Biblical principles of church polity based in scripture has resulted in a multitude of practical problems. Church discipline exists where scriptural precepts are present. This breakdown of church discipline is a by-product of the highly independent and individualistic mentality, which pervades the contemporary American religious scene. Many though not all Local churches militantly assert their independence, with many pastors assuming their "callings" in an independent fashion, teaching and leading others according to their own private inclinations. In a related vein, recently there have been intense efforts to restore to the churches in America a proper recognition of biblical principles of civil government. While this goal is a worthy aim, the attempt has often come from ecclesiastical anarchists or those who regard church government with relative indifference. It is questionable whether these efforts will ever succeed unless we the church puts our own house in order. After all, judgment begins with the house of God (1 Pet. 4:17). How can the civil government be expected to conform to scriptural principles when the church does not bother to adhere to biblical polity? It should be our hope and prayer that the era will soon come when both we in the church and those in government will be governed according to scriptural principles. Once we recognize the importance of ecclesiastical polity, we must work toward restoring biblical principles in our church government. This endeavor will require considerable time and effort. Local congregations, as well as denominations, are obliged to reform their practices, bringing their government into conformity with Christ's word.

Table of Contents

THE CHURCH

The Yellow Pages contain pages upon pages of telephone listings of different churches. This is by no means all of them, for many other churches, operating out of garages, basements, homes, storefronts or halls, too small to afford a telephone. With so many churches, how do we know which church to go to? Frequently individuals think, "A church is a church. What's the difference?" They then select their church like they do their grocery store and shopping center: the closest one will do. Others pick a church on the basis of its social activities, its facilities, its pastor, or whether it has the "right kind" of people. These reasons for selecting a church are incorrect, however, in light of what the church of today has become in light of what its commission is, and what the Bible teaches us about church fellowship, and Because of efforts by men to re-define the church as represented by "the denominational view" and as represented by "the sectarian view". The purpose of this discussion is to learn and have some clarity of what a church is in our view.

What is the church?

THE GREEK WORD IS "EKKLESIA"...

1. Many have noted that this word is a combination of two words: "ek" (out of) and "**kaleo**" (to call)

a. Concluding that the primary idea is that of being "called out"

b. That Christians were called the "ekklesia" because they were "called out"

(1) Now it is true that Christians have been called out - cf. **1 Pe2:9**

(2) But the use of "ekklesia" in the New Testament does not stress the "called out" nature of the church!

c. This is a common mistake of defining a word by etymology rather than by actual usage in its historical context

2. The word "church" as defined by **Easton's Bible Dictionary**: "*In the New Testament it is the translation of the Greek word ecclesia, which is synonymous with the Hebrew kahal of the Old Testament, both words meaning simply an assembly*"

3. Notice **Thayer's** definition: "*a gathering of citizens called out from their homes into some public place, an assembly*"

a. "an assembly of the people convened at the public place of the council for the purpose of deliberating" - cf. Ac **19:39**.

b. "the assembly of the Israelites" - cf. Ac 7:38.

c. "any gathering or throng of men assembled by chance, tumultuously" - cf. **Ac 19:40-41** - The usage of "ekklesia" therefore emphasizes the "assembled" nature of the church; i.e., it simply refers to a gathering, an assembly of people

"EKKLESIA" AS USED IN THE CHRISTIAN SENSE...

1. Thayer's definition offers the following uses of "ekklesia" in a Christian sense:

- a. "an assembly of Christians gathered for worship in a religious meeting"-cf. **1 Co 14:19,35**
- b. "a company of Christians, or of those who, hoping for eternal salvation through Jesus Christ, observe their own religious rites, hold their own religious meetings, and manage their own affairs, according to regulations prescribed for the body for order's sake" - cf. **1 Th 1:1**
- c. "those who anywhere, in a city, village, constitute such a company and are united into one body" - cf. **1 Co 1:2**
- d. "the whole body of Christians scattered throughout the earth" - cf. **Ep. 1:22-23**
- e. "the assembly of faithful Christians already dead and received into heaven" - cf. **He 12:22-23**

2. Putting it most simply, we can think of the church in two primary senses:

- a. **The church "universal"** - the whole assembly of people who are saved, both living and dead.
- b. **The church "local"** - a company of saved people in a geographical area who work and worship together as a local congregation ~ The difference between the "universal" and "local" church will be examined in another lesson [What is the church, then, especially in the "universal" sense? It is that grand assembly or company of people who are saved by Christ (cf. Ep 5:23,25-27). But the term "assembly" alone does not do it justice; which is why we find other terms in the Scriptures used to describe the company of God's people...]

THE CHURCH THEN IS "DESCRIBED" AS

"THE BODY OF CHRIST"...

So described in **Ep 1:22-23 2**. This metaphor depicts the relationship we enjoy with Christ and each other

- a. Christ is our Head, from which we as the body receive nourishment - **Co 2:19**

Table of Contents

b. We are members of the body, and of one another -1 Co 12: 27; **Ro 12:5**

"THE HOUSEHOLD OF GOD"...

i.e., the family of God -1 Ti 3:15 2. This emphasizes the familial relationship we enjoy in Christ

a. We are in Jesus' "family" - **Mt 12:48-**

b. We have many brothers and sisters - Mk 10:28-30

c. We are to treat each other accordingly -**1 Ti 5:1-2**

"THE TEMPLE OF GOD"...

1. i.e., a holy habitation or dwelling of God - Ep 2:19-22; 1 Pe 2:5

2. As such, we have a responsibility to maintain purity -1 Co 3:16-17; 2 Co **6:16-7:1**

"THE KINGDOM OF CHRIST"...

1. As Paul wrote to the Colossians, they had been "translated into the kingdom of the Son of His love" - Co 1:13; cf. also Re 1:9

2. This emphasizes the authority-making power in the church; Christ is King, He has all authority! - cf. Mt 28:18,20

a. The church is not a democracy, nor a republic

b. The citizens do not make the laws; they are made by the King!

"THE BRIDE OF CHRIST"...

1. We are betrothed to Christ - cf. 2 Co 11:2 2. This figure portends of an even greater relationship with Christ is the future! - cf. Re 19:6-9; 21:2

CONCLUSION

1. What is the church? As used in its "universal" sense, the church is...

A great assembly, a great company of people. Made up of all those redeemed by the blood of the Lamb, both living and dead. The Truth Is: The church is the assembly of all believers in Jesus Christ wherever they may be. It is also called the communion of saints.

Note: The true church consists only of the believers. It does not include the false Christians and heretics. Some other biblical names for the church are: the body of Christ (Eph.1: 22,23), the bride of Christ (Rev.21: 2), the people of God (1 Pet.2:9,10), Zion, or Mount Zion (Ps.48: 2; 87:5), the heavenly Jerusalem (Heb.12:22,23), the temple of God (1 Cor.3: 16,17), the city of God (Ps.46: 4), Jerusalem (Isa.40: 2), Jacob (Ps.87: 2).

The word "church" is also used for the building in which the believers assemble a local congregation, and a denomination.

How do we define church fellowship?

Gal.3: 26 You are all sons of God through faith in Christ Jesus.

1. Upon bringing us to faith, the Holy Spirit unites us to God and makes us his children. We become brothers and sisters in the faith.

1 Jn.1: 3 We proclaim to you what we have seen and heard so that you also may have fellowship with us. And our fellowship is with the Father and with his Son, Jesus Christ.

1. When we are brought to faith, we enter into fellowship with the Triune God, the Savior Jesus Christ, and the other Christians who share the same faith.

Acts 2:42 They devoted themselves to the apostles' teaching and to the fellowship, to the breaking of bread and to prayer

When Christians share the same faith, they do certain things together in Christian fellowship. They devote themselves to hearing and studying the Word of God together (church fellowship), to taking communion together (altar fellowship), to sharing the same pastors (pulpit fellowship), to praying together (prayer fellowship), as well as to the works of Christ's church, such as mission work and Christian education.

The Truth We define church fellowship as:

- A. A status in which we recognize one another as fellow believers who share a common faith.
- B. An activity in which we jointly express our common faith through worship, Bible study, Holy Communion, prayer, works of service.

What is Church Government and why is it necessary?

The question is often asked about forms of church government (leadership). Why are there differences? And where did the different forms come from? To go into a detailed analysis of each type of Church Government would require volumes of text, so I thought it would be helpful to give you a brief description of the three basic forms, a little about how they originated and what their differences are. Looking at the Greek words for church leaders in the New Testament can help clarify the distinctions. The Greek word translated "*overseer*" or "*bishop*" is *episkopos*. The term 'Episcopalian' comes from this word, and it not only designates a denomination but also a specific form of church leadership. In fact, it is one of the oldest forms of church government.

Table of Contents

Originally, the churches were each led by a group of elders, overseers or bishops (some suggest the terms are used interchangeably in Scripture; see Acts 20:17-28 and Titus1:5-7). During the course of the second century, the bishops slowly took on a separate church office from the elders and were given authority over their fellow elders. At first, each bishop led only one church, but this also evolved as the bishops became the spiritual authority in larger geographical areas that included many churches. This has continued down through the centuries to the present day. Roman Catholics, Eastern Orthodox, Lutherans, Anglicans, Episcopalians, Methodists and even many Pentecostals have some form of episcopal church government (leadership).

The Greek word translated "elder" is *presbuteros*. This is where the word 'Presbyterian' comes from. Beginning with John Calvin in the 16th century, Reformed churches once again placed an emphasis on the presbyters or elders of the church. While this was a very positive move toward a more Biblical form of church leadership, they retained a separate office of pastor or minister in distinction to the elders. These churches also maintained a governmental councils which had authority over multiple congregations. Today this form of church government (leadership) is found in Presbyterian and Reformed churches.

As the new world began to embrace democratic principles, so did many American churches. This form of church government (leadership) is known as congregational. Churches that follow this system usually stress the autonomy of the local church and the practice of church members voting to determine the direction of the church. Many of these churches are also involved with denominations and send representatives to annual gatherings to vote on issues at a denominational level. Examples of congregational churches would include Baptists, Evangelical Free Churches, Christian churches, United Church of Christ, some Pentecostals and many non-denominational churches.

A new twist on the episcopal form of church government comes from more recent denominations such as Calvary Chapel and Vineyard Christian Fellowship. Many of these groups follow what is often called the "**Moses model.**" This teaching first shows that the leadership structure for the people of Israel can be charted as a pyramid with the people on the bottom, the priests and elders above them, Moses at the top, with God over all. But then they transfer this hierarchy to the church and picture it with the people on the bottom, the elders/deacons/assistant pastors above them, the pastor on the top by himself and Jesus over the pastor.

[Table of Contents](#)

It is believed that there are many serious problems with such an approach. **First**, since Moses led the entire people of God, a consistent application of this teaching would lead to something closer to a Pope than to a pastor. **Second**, while many insist that the pyramid is actually turned upside down with the pastor serving the entire body, it still leaves a diagram showing not "one mediator between God and men" (1 Timothy 2:5), but two—Jesus and the pastor. This is revealed to be more than just a diagram fluke by a pattern of unhealthy authoritarianism in many of these churches.

It is understood that Government is sometimes viewed in a negative light, and is seen as sometimes inhibiting one's freedom. However, one can see the necessity of the governmental element of human society, which serves to establish and maintain order. Anyone who doubts the need for order should think back to our childhood and school days, and remember those times when the teacher left the class for a few moments. In the absence of authority and organization, the human nature lends toward mischief and chaos. Since God is the author of order, it's easy to realize that He also desires His church to be well ordered so there will be (1) organization, order and direction of ministry, and (2) authority for leadership and correction. These are the two main functions of church government. It is agreed that Jesus is the head of the church (Col. 1:8), and has delegated His authority to be exercised through the government of the church. However, the method of church government is sometimes an object of debate, and is one of the primary differences between some denominations.

"And hath put all things under his feet, and gave him to be the head over all things to the church," Ephesians 1:22

We recognize that the New Testament doesn't give a clear definitive statement of God's preference for church government. In Scripture, we find three basic forms of church government. Two of them are in the New Testament, and the other one developed through church history. The first form of church government was the rule by bishops, or overseers. The Greek word is 'episkopos'. In I Timothy 3:1, Paul wrote, "This is a true saying, If a man desire the office of a bishop, he desireth a good work." Timothy gives us the qualifications for an episkopos.' "A bishop must be blameless, the husband of one wife, vigilant, sober, of good behaviour, given to hospitality, apt to teach; Not given to wine, no striker, not greedy of filthy lucre; but patient, not a brawler, not covetous; One that ruleth well his own house, having his children in subjection with all gravity; (For if a man know not how to rule his own

Table of Contents

house, how shall he take care of the church of God?). Not a novice, lest being lifted up with pride he fall into the condemnation of the devil. Moreover he must have a good report of them which are without; lest he fall into reproach and the snare of the devil." (I Timothy 3:2-7). There was another form of leadership that utilized a group of gifted men called the 'presbyteros'¹, or elders. Acts 14:23 tells us, "And when they had ordained them elders (presbyteros) in every church, and had prayed with fasting, they commended them to the Lord, on whom they believed." The New Testament clearly teaches the establishing of bishops, the episkopos, and the appointing of elders, the presbyteros. These two forms of government, by their very nature, seem to clash. Is the church to be led by the bishop, or by the board of elders? Is it the episkopos or the presbyteros? These divisions are so pronounced that today we have two denominations representing both sides of the issue. The Episcopal church follows the episkopos. It's a church ruled by a bishop. You also have the presbyteros, the Presbyterian church, ruled by a board of elders. The fact that they both exist shows that there isn't a clear definitive teaching about the correct form of church government. Both sides can present a valid case for their point of view. Over time, a third form of church government has arisen, known as congregational rule. It is not believed that congregational rule is an option because it has not really ever been seen an example in the Bible where the congregation was right. It was the congregation that was always coming and saying, "We want a king to rule over us like the other nations," making demands that were not after the will of God. It has not been found Scripture an example of effective congregational rule. We do read of congregations attempting to rule. In Exodus 16:2 we read, "And the whole congregation of the children of Israel murmured against Moses and Aaron in the wilderness:" and in Numbers 14:1-3, "And all the congregation tilled up their voice, and cried; and the people wept that night. And all the children of Israel murmured against Moses and against Aaron: and the whole congregation said unto them, Would God that we had died in the land of Egypt! or would God we had died in this wilderness! And wherefore hath the LORD brought us unto this land, to fall by the sword, that our wives and our children should be a prey? were it not better for us to return into Egypt?" Moses responds to God in Numbers 14:27, "How long shall I bear with this evil congregation, which murmur against me? I have heard the murmurings of the children of Israel, which they murmur against me."

These then are the three basic forms of church government that we see today. The Episkopos, the Presbyteros, and the more recent

[Table of Contents](#)

Congregationalists. Now we do find in Scripture a form of government that God established and modeled in the early history of Israel. It was a *theocracy*, people who were ruled by God. The nation of Israel, in its inception, was a theocratic form of government. It was God-ruled. Their demise came when they tired of God's rule and demanded instead to have a monarchy. They said, "We want a king to rule over us. We want to be like the other nations." Samuel was greatly disappointed when they came to him requesting this monarchy. Let's look at an example of *theocracy* in which God was ruling. Under God there was a man called Moses. Moses went to God for guidance and direction. Moses was the earthly leader who was recognized as receiving from God the guidance, direction, laws, and rules for the nation. It was recognized by the people that he was their link to God. They said, "Look we're afraid to approach Him. He's awesome. We've seen the fire and thunder. You go up and you talk to Him, and then you come down and tell us what He says, and we'll obey it. But we don't want to go. You just go." So they recognized that Moses was being directed by God. He would go up and he would receive from God and he would, in turn, come down and share it with the people.

Under Moses, the personal demands were staggering. The line of people with needs would stretch to the horizon every day. They would come to Moses for every little thing so he could judge between them and their neighbors on the issues that had arisen. "They borrowed my hoe, and they never returned it." Now this went on all day long, every day. Jethro, his father-in-law, said, "Hey, son, this is going to kill you. You can't handle this. You can't take care of the things that need to be done because of this long line of people waiting for you to give them judgment." So the Lord told Moses to take seventy of the elders of Israel and gather them into the tent of congregation. He took the Spirit that He had put upon Moses and put it upon them so that the people could come to them and they could give the rulings and judgments. If issues arose that were too difficult for them, they were then to go to Moses. Moses would then go to God to get clarification on the issue. (Exodus 18:13-27). For additional support, Aaron and the priesthood, under Moses, oversaw the spiritual needs of the nation, like the preparation and offering of sacrifices. Under the elders and Aaron was the congregation of Israel. This is the form of government that God established for the nation of Israel.

In the church today, we see this structure in a modified form. We see that Jesus Christ is the Head over the body of the church. It's His church. He's the One in charge. As pastors, we need to be like Moses, in touch with Jesus and

Table of Contents

receiving His direction and guidance. As pastors, we need to be leading the church in such a way that the people know that the Lord is in control. Then, when issues come up, we can say, "Well, let me pray about that." "Let me seek the wisdom of the Lord on this." "Let's look for the Lord's guidance." Also, like Moses, within the church we have a Board who are there to pray with us and support us in seeking the Lord's leading for the church. It's also important to remember that problems usually arise when you start to have some success and the church begins to grow and become powerful. There are many people who have a desire for power. When they see there's money in the bank, that's when they make their move for position and control. It's necessary to have godly men and women who recognize that God has called and ordained you as the pastor of the church. Men and women who will work with you and support those things that God is directing you, as the pastor, to implement within the church. A good Board is one of the greatest assets that you can have in your ministry. You want men and women of prayer. You want men and women who are seeking God and the will of God. They are men and women who yield to the Holy Spirit. They're a real buffer and protection for the Pastor.

Again, the New Testament provides the grounds for government through the authority of its officers, but is silent in the specific methods of implementation. Generally speaking, with three prominent forms of church polity or government used in churches today.

Which again are as follows:

(1) **Episcopal** — This system of church government considers the bishop as the principal officer. Decisions are made at levels higher than the local church, usually with prayerful contemplation toward God's will and nominal consideration of the member's opinions.

(2) **Presbyterian** — This form of government acknowledges that Christ alone is Head of the church, and that He rules His church by His Word and Spirit. Church officials have ministerial and declarative authority, but not legislative. They declare, explain, and apply Christ's will as the Spirit clarifies the scripture to their understanding. They do not seek to make new laws for the church. Presbyterians believe they find foundation for their form of church government in the Bible, but they readily admit that God can bless other forms as well.

(3) **Congregational** This is an autonomous form of government by the church, generally by a democratic philosophy, which allows a

local congregation the freedom to determine what it considers the will of Christ. The congregation governs its own affairs, however this does not suggest that it is self-governing apart from Christ's Lordship. Simply stated, the members of the congregation are given the right to determine what they consider to be Christ's will.

Many will make their case for what they believe is the preferred form of church government. However, history shows that God has blessed churches that have used any of these forms. The entire answer to the question of church government can be told in one small paragraph. However, men have been so deceived for so long by government, and *about* government, that to satisfy every question or objection would fill many volumes.

Why Do Church Governments Exist?

But, you might ask first, "How can we resolve issues in which the Bible is not clear?" The answer is simple. People who are not willing to YIELD to the spirit of God must FOREVER bicker and fight over minor, insignificant issues --such as makeup, women wearing pants, ministers wearing loud colored suits, or which model car is best use! Those who do not have Christ dwelling within them simply CANNOT agree with one another without the FORCE of government. It's that simple. And men, who love to rule over other men, always use this bickering by small-minded people as an EXCUSE to opt for GOVERNMENT!

Yet, did God say anything about government in the Garden of Eden?

Did God say anything about government from Mount Sinai ?

Did the apostle Peter say anything about government at that Pentecost in Acts 2?

Why has government always been established?

Why did Moses finally set up a system of judges at Sinai?

Why? Because men were too CARNAL to judge themselves.

Why did God institute the sacrificial system in Israel?

Because of TRANSGRESSION - see *Jeremiah* 7:22 and *Galatians* 3:19

Because, without the spirit of God, men would not OBEY the truth of God

Because, without the spirit of God, the heart of man is not moved to seek the good of others!

Table of Contents

Because, without the spirit of God, the heart of man is continually seeking after the SELF, and is not willing to disobey the Law of God

AND the holy spirit to get what it wants! This is the way man is, and this is the REASON God has ordained government and allowed (3) government.

This, unfortunately, is also the historical justification men have always used to develop government, and to crank out great piles of legislation that always results in a LOSS OF LIBERTY for everyone! As you read the *Bible* you will soon realize that God never said one word about government until MEN FORCED HIM TO -- by trampling all over His holy, righteous Law! He did not even say anything to Eve about being "under" the authority of her husband until she had proven unwilling to be "under" the authority of God. You must understand that the Government of God, the increase of which "there shall be no end," is the *GOVERNMENT OF THE HOLY SPIRIT*! It is this governing of *each* mind by the Holy Spirit (by the express desire and consent of that mind) that is the TRUE GOVERNMENT OF GOD!

Original Mission of the Church.

The Church was founded, not as an institution of authority to force the Name and Teaching of Christ upon the world, but only as a witness-bearing institution to Christ, to hold Him before the people. Christ Himself, not the Church, is the transforming power in human life. But the Church was founded in the Roman Empire, when the Emperor ruled over most of the then-known world and so it gradually developed a form of government like the political world in which it existed, forming a vast autocratic organization, ruled from the top. **Original Form of Church Government.**

At the time of the Apostolic age, churches were independent of one of another, each being shepherded by a Pastor. The main leader came to be called Bishop. The others, later, were called Presbyters. Gradually, the jurisdiction of Bishop came to include neighboring towns.

CHURCH GOVERNMENT

The New Testament does not contain a manual on Church Government or Leadership. There is no evidence that Jesus ever gave instructions on how the Church should be organized. Certainly there are no references to Popes, Cardinals, Princes of the Church, Presiding Bishops, Archbishops, Jurisdictional Bishops, Auxiliary Bishops, Vicars, Administrative Assistance's, District Superintendents, Jurisdictional Supervisors, or District Missionaries. The only references to Christian Priests are in the sense that the whole Church is called to be a Kingdom of Priests - a Royal Priesthood. This is sometimes now referred to as "The Priesthood of All Believers".

An Inescapable Issue

Questions about how the church ought to be governed are not hot topics of conversation in American Christianity. You don't hear much about the subject or read of it in the latest religious magazines. Positions which people take on the issues which are in vogue, however, are often strongly influenced by their view of church government (whether they know it or not). Everyone has some notion about how the church should be governed — about who should make decisions, what procedures should be followed, the kind of authority that characterizes those decisions or procedures, etc. Just suggest that things be done your way in the church, and you will find out soon enough that others have their own ideas too! Who determines how the church's contributions should be spent? When should we have a church dinner? Who should preach next Sunday? What should be expected in preaching? How does the church pursue reconciliation between offended brothers? How are disputes between disagreeing parties resolved? Who should administer baptism? When? How? Who in particular makes sure the sick are visited or the needs of the elderly are met? Is there any voting involved in answering these questions? Who qualifies to vote on them? Practical questions like these and others cannot be avoided, and soon must answer.

An Important Issue

You will also hear people say, without much reflection, that the government of the church is a relatively trivial matter, not something over which loving Christians should worry or argue. But then on the other hand, if you take a hard look around you at what *actually happens* in various churches, you will notice that the *most prevalent* reason why people get upset and leave a congregation is

[Table of Contents](#)

not really because of doctrinal differences, but is tied in one fashion or another to the way that congregation was governed or disciplined (or not disciplined). People get fed up, disputes are not peacefully resolved, regular oversight and counseling are not pursued, congregations argue and divide — all because the biblical blueprint for government and discipline has been ignored.

Because many churches have not heeded the Scriptures with respect to government and discipline, the history of the Christian church reveals abuses and disappointments in the administration of church affairs ~ from despotic unity to democratic chaos. The question of how the church should be governed, then, is indeed important, whether ignored by modern believers or not. Today's indifference to issues of church government is at odds with the attitudes of the New Testament church. Just read its early history (Acts) and its correspondence (epistles).

During the early history of the church, for example, Luke found it relevant to relate that the money contributed to the church was under the control of its overseers (Acts 4:35). Later in Acts 15, Luke records a significant account of how the early church resolved a doctrinal dispute by convening a general assembly of its elders -- and then authoritatively publishing their decision for the whole church (vv.22-29). The author of Hebrews made an explicit point of exhorting believers to submit to the authority of their leaders as those who watch for their souls (13:17). Christ in Revelation 2:2 commended the Ephesian church for disciplining the congregation.

John wrote that all churches should do likewise (2 John 10-11), especially with respect to false teaching. If the church is to emulate the New Testament pattern, Christians simply cannot deny or ignore the importance of oversight in the life, activities, and affairs of the church. Who, then, should have this oversight and leadership? Any Biblical answer must begin by stating that Jesus Christ is the Head of the church, its Lord and Savior (Eph. 1:22-24; 5:23-24; Col. 1:18). Ultimately, He is the one who governs and disciplines His church. All other authority *in* the church is delegated from Him and is, *for that very reason*, not to be ignored.

How does Christ direct and govern His church? After all, He is not bodily present to make decisions and give audible guidance. Moreover, special divine revelation is not provided every time we wish to visit the sick, resolve a dispute, determine questions of doctrine or buy a light bulb for the church office.

How does Jesus Christ, the supreme authority in the church, govern the day-to-day details of His body? As we all should know Christ directs his church through the Scriptures, His own self-revelation and authoritative guidance.

In the United States all Christian denominations and sects are placed on a basis of equality before the law, and alike protected by the government in their property and right of public worship, yet self-supporting and self-governing; and, in turn, they strengthen the moral foundations of society by training loyal and virtuous citizens. Freedom of religion must be recognized as one of the inalienable rights of man, which lies in the sacred domain of conscience, beyond the restraint and control of politics, and which the government is bound to protect as much as any other fundamental right. Freedom is liable to abuse, and abuse may be punished. But Christianity is itself the parent of true freedom from the bondage of sin and error, and is the best protector and regulator of freedom.

Theocracy

No, it doesn't mean "government by clergy"

Many sources offering "authoritative" definitions of "theocracy" are often confusing.

Here are some:

Infopedia Online

theocracy \the-'ae-kre-se\ n, pl -cies [Gk theokratia, fr. the- + -kratia -cracy] (1622)

1 : government of a state by immediate divine guidance or by officials who are regarded as divinely guided

2 : a state governed by a theocracy

"Immediate" divine guidance is not required. When a problem occurs, judges can read the Word of God recorded, and need not wait for a bolt from the clouds. The Bible promises "immediate" divine guidance in the sense that the Holy Spirit enlightens our understanding of the inscriptured Word of God.

THEOCRACY (Or. theokratia, "government by a god"), constitution, or polity, of a country in which God is regarded as the sole sovereign and the laws of the realm are seen as divine commands.

Table of Contents

The typical example of a theocracy is that established by the Hebrew lawgiver Moses. Later attempts to found theocratic societies were made by the French theologian John Calvin and the English soldier-statesman Oliver Cromwell. The caliphate, in Muslim communities, was a theocracy.

Webster's. 1828 ed.

Theocracy, n. [Fr. theocracie; It. teocrazia; Sp. teocracia; Gr. theos, God, and kratos, power; krateo, to hold.]

Government of a state by the immediate direction of God; or the state thus governed. Of this species, the Israelites furnish an illustrious example.

The *theocracy* lasted till the time of Saul.

Now this is interesting. Why did "theocracy" end at the beginning of the monarchy?

Because the desire for a king was said by God to be a rejection of God. (1 Samuel 8)

Black's Law Dictionary, rev. 4th ed.. 1968

Theocracy, Government of a state by the immediate direction of God, (or by the assumed direction of a supposititious divinity,) or the state thus governed.

"Webster's" Unabridged. 2d ed.

Theocracy [Gr. theokratia; theos, god, and kratein, to rule, from kratos, strength.]

1. literally, the rule of a state by God or a god
2. government by priests claiming to rule with divine authority.
3. a group of clerics with political power.

A government by priests is more accurately termed an "ecclesiocracy." (The word "hierarchy" would be even more accurate, as the word comes from the Greek word for "priest" [which in turn is derived from the word for "holy".] But that word has now come to mean any system of government in which an upper echelon has power over a lower one.

The word originally referred to the differing ranks of angels or church government; Bacon spoke of the "hierarchy of England," that is, the Anglican church [see Webster's, 1828 ed.].

Any state which acknowledges that it is "under God" acknowledges that "God rules," and thus proclaims itself a "theocracy." INFOPLEASE Dictionary

the»oc«ra»cy

1. a form of government in which God or a deity is recognized as the supreme civil ruler, the God's or deity's laws being interpreted by the ecclesiastical

authorities.

2. a system of government by priests claiming a divine commission.
3. a commonwealth or state under such a form or system of government.

theocracy \The*oc"ra*cy\, n. [Gr. ?; ? God + ? to be strong, to rule, fr. ? strength: cf. F. th[e]ocratie

1. Government of a state by the immediate direction or administration of God; hence, the exercise of political authority by priests as representing the Deity.
2. The state thus governed, as the Hebrew commonwealth before it became a kingdom.

theocracy n 1: a political unit governed by a deity (or by officials thought to be divinely guided) 2: the belief in government by divine guidance

theocracy a word first used by Josephus to denote that the Jews were under the direct government of God himself. The nation was in all things subject to the will of their invisible King. All the people were the servants of Jehovah, who ruled over their public and private affairs, communicating to them his will through the medium of the prophets. They were the subjects of a heavenly, not of an earthly, king. They were Jehovah's own subjects, ruled directly by him (comp. **I Sam. 8:6-9**).

In the sixteenth century the intimate association of Church and state was assumed to be natural and desirable by all but a small minority.

The distinction was really not that of Church and state as we understand these today, but between the ecclesiastical and the secular government of the same community.

The word "theocracy" is often applied to the Geneva of Calvin's time, but the word is now ambiguous to most minds. Many confuse "**theocracy**," the rule of God, with "**hierocracy**," the rule of the clergy. With reference to Geneva James Mackinnon, indeed, suggests the word "**clerocracy**." "**Bibliocracy**" and "**christocracy**" have been proposed by other writers.

Certainly the system was a theocracy in the sense that it assumed responsibility to God on the part of secular and ecclesiastical authority alike, and proposed as its end the effectual operation of the will of God in the life of the people. In principle, at least, it was not hierocratic.

[Table of Contents](#)

Theocracy Fact or Fiction

By the account of many theologians the form of government in God's Church is a theocracy, meaning "God rule." At least this is what is claim, but is it really believed that theocratic government is working today?

Unfortunately, the answer to that question depends on which side of the question you are on. Did a ruling or appointment go your way? Too many times it believed that theocratic government is based on one's personal opinions or agendas. But God is not interested in our opinions or beliefs. It is believed by many that Theocracy is government under the immediate direction of God. It is not a democracy, where the majority decides the doctrine and direction of the Church. Neither is it a monarchy, where one human or a group with the same mind, goals, and objectives makes all decisions and laws. Nor is government not by one person, by a few people, neither by a privileged class of people, nor by the majority of the people, but it is believed to be government under the direct rule of God. Pure theocracy operates upon three fundamental truths, is the Church an oligarchy, where supreme power is vested in a few people. Under theocratic government, God makes the rules, and His people covenant themselves to obey. Thus, a theocracy.

True theocracy hinges upon :

- (1) the law given by God,
- (2) the rule under the direction of God, and
- (3) the willing submission to God by makes the rules

God directs the enforcement of these rules, and we are to willingly submit to the people.

This was so from the creation of man in the Garden of Eden and is believed to be so today that God gives these laws and rules. There is no place in a theocracy for man-made laws. It is the opinion of many that Church Government should not consider itself a legislative or executive body but judicial only." Making it clear that they were not there to make laws nor to enforce them, but to seek God for the correct interpretation of the laws already stated in the Scripture. The Church has various instruments of government (i.e., local appointments, local conferences, state appointments, state conventions, general appointments, and the General Assembly) to carry on theocracy.

[Table of Contents](#)

However, these have no power in themselves, but draw their authority from God.

Only when God's perfect will is done in those instruments of government is theocracy at work in its purest sense. It is thought by some not only should the Church proclaim theocracy, but also the challenge is to practice theocracy in its fullness in order that God's will may be done. As a member, one is to accept and respect the ordained authorities in the Church. Paul said to *"Obey them that have the rule over you, and submit yourselves: for they watch for your souls, as they that must give account, that they may do it with joy, and not with grief: for that is unprofitable for you"* (Heb. 13:17). He also made it clear that the Church is No place for politicking, no place for secret shenanigans or private agendas. No "good 'old boy" network in the Church. Authority in the Church is not merely to provide a channel for the exercise of power by the few, but it is there to serve the needs of the Body. Let's look at 1 Peter 5:2-6: *"Feed the flock of God which is among you, taking the oversight thereof, not by constraint, but willingly; not for filthy lucre, but of a ready mind; Neither as being lords over God's heritage, but being ensamples to the flock. And when the chief Shepherd shall appear, ye shall receive a crown of glory that fadeth not away. Likewise, ye younger, submit yourselves unto the elder. Yea, all of you be subject one to another, and be clothed with humility: for God resisteth the proud, and giveth grace to the humble. Humble yourselves therefore under the mighty hand of God, that he may exalt you in due time."*

Those who are placed in the Church as authorities are entrusted with the care and nurture of God's heritage. It is an awesome responsibility, and only those who walk with God in the fullness of the Spirit are worthy of such responsibility. We, as the human element, are the channels through which God works. If our will exerts itself independently of the administration of the Spirit of God, then some other form of government has taken over—it is no longer a theocracy. We should hold our leaders in high regard, but at the same time we are to look continually to God for guidance and strength. The leaders and membership together must seek God out of their weakness for the power and authority to accomplish their mission. The key to theocracy is submission, and we can only be truly submitted when we are walking in the Spirit. *"For they that are after the flesh do mind the things of the flesh; but they that are after the Spirit the things of the Spirit"* (Rom. 8:5). For too long we have allowed the flesh to rule. We must now allow the Spirit to move and have its free reign

[Table of Contents](#)

in the Church. Then, and only then, can they draw not only strength for themselves from, but draw their authority from God.

Government

In the United States Is an organization (*a formal group of people with one or more shared goals*) that has the dominant decision-making power and authority typically via bureaucratic hierarchy to create, make and enforce laws for a certain territory, (that being a township, city, county, state, or nation). There are several definitions on what exactly constitutes a government though not discussed here. Government can also be defined as the continuous exercise of authority over and the performance of functions for a political unit. A complex of political institutions laws and customs through which the function of government is carried out in a specific political unit. An alternative is to define a government as an organization that attempts to maintain control of a territory, where "control" involves activities such as collecting taxes, controlling entry and exit to the state, preventing encroachment of territory by neighboring states and preventing the establishment of alternative governments within the territory.

Government usually concerns itself with many issues, such as economic, education, health, science, territory, safety and war. Government uses a variety of methods to maintain control, such as police and military, making agreements with other states, and maintaining support within the state. Typical methods of maintaining support and legitimacy include providing infrastructure for justice, administration, transportation, social welfare etc., claiming support of deities, providing benefits to influential groups, holding elections for important posts within the state, limiting the power of the state through laws and constitutions and appealing to nationalism.

, government consists of the Executive, Legislative, and Judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township.

UNDERSTANDING AND APPRECIATION OF LAW

Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force.

United State Fidelity and Guaranty Co. v. Guenther,
281 U.S. 34, 50 S.Ct 165, 74 L.Ed. 683.

That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law. Law is a solemn expression of the will of the supreme power of the State.

The rule of law requires that people should be governed by accepted rules, rather than by the arbitrary decisions of rulers. These rules should be general and abstract, known and certain, and apply equally to all individuals.

Constitutional governments are based on a previous commitment to freedom under the rule of law. The essential attribute of constitutionalism is a legal limitation on government. Under constitutionalism, rulers are not above the law, government power is divided with laws enacted by one body and administered by another, and an independent judiciary exists to ensure laws are administered objectively. An efficient and effective constitution allows government to (unction to protect the lives and liberties of citizens without violating the rights of some to provide gains to others.

Natural Law

Natural law opposes the idea that moral law is relative, subjective, and changeable. Natural law provides a criterion by which positive laws can be judged. If the law of the state runs counter to natural law, it is held to be unjust. Positive law and normative justice are not synonymous. If justice is pertinent then natural law is pertinent.

Natural law derives from the nature of man and the world. It is discoverable through the use of reason in accord with nature, eternal and unchangeable, and applicable to all persons. Natural law theory supports universally shared moral principles and norms that raise man above relativism and subjectivism.

Table of Contents

Since natural law can be derived from what is inherent in human nature, it would be valid even if God did not exist. Thomas Aquinas has explained that there exists a system of moral beliefs accessible to human reason and independent of divine revelation. Man has a particular nature involving specific natural needs and the ability to use reason to recognize what is good for man in accordance with those needs.

Although natural law is essential to Christianity, Christianity is not essential to natural law. Natural law is in agreement with God's will, not because of divine revelation, but because the nature of man and the world mirror God's will. A person does not have to be a Christian to understand the conditions and framework of human existence and social life, although believers in the Divine will avow that the conditions and framework are of God's creation. In creating each existent, God implanted the law of its nature within it. The law of nature, as dictated by God, is superior in obligation to all other laws. To believe in the natural law is to believe that there are moral standards that transcend the customs, practices, and laws of any given community. Positive law can be viewed as the system of rules created by humans in their attempts to put natural law into practice.

The Rule of Law

Law is the activity of subjecting human behavior to the governance of rules. The rule of law is concerned with regulating the use of power. Whereas society is a spontaneous order, the state is a protective agent with the monopoly role of enforcing the rules of the game. Since the monopoly on coercion belongs to the government, it is imperative that this power not be misused. Under the rule of law, everyone is bound by rules, including the government. As explained by Hayek in his various works, the rule of law requires law to be:

- (1) general and abstract,
- (2) known and certain, and
- (3) Equally applicable to all people.

The rule of law also necessitates independent judges unmotivated by political considerations and protection of a private domain of action and property.

In a free society each person has a recognized private sphere, a protected realm which government authority cannot encroach upon. The purpose of law is to preserve freedom and moral agency.

The rule of law is a meta-legal principle. Similar to natural law theory, it

[Table of Contents](#)

provides a benchmark against which laws can be evaluated. From this perspective, law is about the discovery of the rules of just conduct.

The rule of law ensures that judges decide disputes in terms of existing known and general rules and not according to the perceived desirability of particular outcomes. The purpose of the judge is to maintain an order, not to attain some specific result or direct society's resources to particular persons or uses. His function is to ascertain, articulate, and refine the rules of justice that will permit the preservation of the social order. A judge is not to issue edicts - he is only to rule when a dispute is brought to him. Once law has drawn the boundaries of individual discretion, courts should not second-guess individual use of that discretion. Judges should carry out the law - not change the law.

Distributive (i.e., social) justice is irreconcilable with the rule of law. The rule of law only establishes the rules for the social game. These rules of just conduct are applicable to an, as yet, unknown and indeterminate number of persons, cases, and instances. These rules have no reference to particular persons, places, or objects. In short, such laws do not try to designate who will be winners or losers or what the society that emerges from these rules will look like.

Hayek has distinguished between two different kinds of laws. The first involves man's attempts to discover and express clearly what the general rules of justice really are. Here the law is essentially discovered, not made. These laws apply to all, including the leaders. Power should be divided with laws made by one body and administered by another. Also, an independent judiciary is required to make certain that laws are administered fairly. Those who administer the law should have little or no discretion. The second type of law involves rules dealing with the internal operation of the organization. These administrative measures are devised to run the internal operations of the government. Essentially, these commands tell civil servants how to carry out their duties regarding the running of the bureaucratic public sector.

There has been a tendency for the law-finding function of the government to be confused with its administrative functions. A great deal of what we think of as law today is really administrative legislation meant to direct the internal operations of the government, rather than to preserve justice. In other words, the organizational rules of authorities are mistakenly given the same status as general rules of justice.

As the distinction between administrative commands and rules of justice became blurred, the restraints on government power have weakened. This led to

Table of Contents

the false impression that our elected officials possess and should possess as much power in deciding the rules of justice as it has in the formulation and execution of administrative proposals. It is no wonder that many of our elected officials think they are « running the country ».

Hayek saw the problem as stemming from the fact that the power of conducting the government and the power of discovering the rules of just conduct are combined in the same representative bodies. As a result, over the years, legislation has increasingly included directives commanding people how to act with the goal of attaining specific outcomes. During the last half century, the rule of law has been displaced with what has been termed « social justice ».

In addition, the rule of law is further weakened when legislative and judicial power is delegated to unelected government bureaucrats. Starting in the 1930s, Congress began passing general laws, leaving the details up to administrative agencies. These agencies enforce and interpret their own rules and regulations which, although they have the force of law, have not been ratified by the Constitutional lawmaking authority.

Pluralism and Constitutionalism

Pluralism and constitutionalism share a skepticism toward the concentration of power. *Whereas power is the force by which one can compel others to obey, authority is the right to direct and command (i.e., to be obeyed). Authority requests and requires power.* Authority is restricted to assigned areas. Given the corruptible nature of human beings, there is a tendency for power to overflow its bounds. **Power exercised without authority is a threat to freedom.**

Authority would be necessary even if society solely consisted of saints and wise men. Authority is necessary to ensure unity of action within an organization. Legitimate activities call authority into being. It is the creation of a position or an office, not one's appointment to it that represents the authentic investiture of authority. Authority goes with an office, is impersonal, and is essentially independent of the person who exercises it.

Power is an instrument of control. It is exercised legitimately when it is employed to discharge effectively the functions of the office. If power exceeds the means appropriate to these functions, it becomes illegitimate.

Pluralism, both the cause and effect of freedom, involves multiplicity, diversity, and often times, conflict. Pluralism requires tolerance, voluntarism, and a combination of individualism and voluntary association. The aim of pluralism is a

wide diffusion of power. Its structure is the voluntary groups working between the national government and individual citizens. When power is diffused into many bodies, imbalances of power are prevented and the individual is protected from the tyranny of the one, the few, or the many.

Pluralism is concerned with the distribution of authority and functions among the various sectors of society (i.e., the economic, political, and moral-cultural sectors) and among the various types of groupings within each of these sectors. A free society favors processes and devices that disperse decision-making power, thus enhancing the possibility for the use of individual freedom.

The advent of pluralism

It was not until the medieval period, well after the fall of the Roman Empire, that circumstances favorable for pluralism were present. This was a time when authority was challenged and threatened (e.g., church and state, pope and emperor, emperor and king, king and baron, lord and vassal, etc.).

Only when men were forced to create new associations to perform functions once carried out by a powerful central authority did pluralism come into existence. Pluralism thus fostered individual freedom, responsibility, and creativity and encouraged the development and growth of new forms of association to meet human needs.

Constitutional governments are distinguished by specific restraints which try to ensure that power is not abused. By dividing power, a constitution provides a system of restraints upon government action. A constitution is a set of fixed written rules that limits the exercise of political power. The systematic use of written constitutions as fundamental and paramount law, enforceable in courts on behalf of citizens whose rights were encroached upon by these rulers, did not emerge until the end of the 18th century.

The impetus behind constitutional government was a desire for justice and the idea underlying restraints is of a higher natural law limiting the operations of the state. As an instrument, the Constitution is a grant of powers. The doctrine of enumerated powers, the cornerstone of the Constitution, held that the government had only those powers that the people have given it. It follows that the Constitution can also be viewed as a symbol of the reserved rights of the people. The belief that the legitimate governmental authority

Table of Contents

originates with the people is derived from the American political theory of the consent of the government.

Constitutional arrangements for protection of individual liberty presume a prior commitment to liberty under the Rule of Law. These American political traditions presuppose certain convictions about human nature. Since men are not angels, and since men are to govern other men, controls on the government are necessary. The idea of constitutional government also recognizes the natural rights of individuals and the moral responsibility of each citizen as a person. The American Constitution is thus designed to maximize each individual's equal right to pursue his own peaceful goals and experience the benefits and responsibilities of private ownership. The American constitutional political system is based on a territorial distribution of power, the distribution of power among agencies with functionally differentiated realms of authority, a chronological distribution of power through periodic and frequent elections, and a written constitution enforceable by courts. With respect to the territorial distribution of power, portions of power are vested in state governments as opposed to the national government. Also, both national and state governments are populated by representatives of people from various geographical locations. Functionally, the constitution proposes that there are different types of governmental powers and that these powers should not be concentrated in just one body of government officials. The American solution has been to separate them into three kinds of power: executive, legislative, and judicial. Laws should be made by one body and administered by another. An independent judiciary is necessary to make sure the laws are administered fairly and objectively. In addition, pluralism provides a functional distribution of authority and additional restraints on power by maintaining many voluntary power centers throughout society. The chronological distribution of power places limits on the tenure of office.

In addition, the party system, the free press, and voluntary associations aid in holding government officials accountable. Politicians are kept responsible, not only through periodic elections, but through constant publicity of their actions and discussions and through citizens' rights to associate together and to petition the government. The eternal vigilance of the people is an important check on the power of the government.

Law and Ideology

[Table of Contents](#)

If law is a system of enforceable rules governing social relations and legislated by a political system, it might seem obvious that law is connected to ideology. Ideology refers, in a general sense, to a system of political ideas, and law and politics seem inextricably intertwined. Just as ideologies are dotted across the political spectrum, so too are legal systems. Thus we speak of both legal systems and ideologies as liberal, fascist, communist, and so on, and most people probably assume that a law is the legal expression of a political ideology. One would expect the practice and activity of law to be shaped by people's political beliefs, so law might seem to emanate from ideology in a straightforward and uncontroversial way.

However, the connection between law and ideology is both complex and contentious. This is because of the diversity of definitions of ideology, and the various ways in which ideology might be related to law. Moreover, whilst the observation about law's link with ideology might seem a sociological commonplace, the link between law and ideology is more often made in a critical spirit, in order to impugn law.

At issue is an understanding of ideology as a source of manipulation. Law as ideology directs its subjects in ways that are not transparent to the subjects themselves; law, on this view, cloaks power. The ideal of law, in contrast, involves a set of institutions that regulate or restrain power with reference to norms of justice. Thus the presence of the ideological in law must, in some sense, compromise law's integrity. Not only is the view of law as ideology at odds with a lot of mainstream thinking about law, it seems difficult to reconcile with the central philosophical positions on the nature of law, e.g. a positivist conception of law as a set of formal rules, or a natural law conception where law is identified with moral principles.

Conclusion: Ideology and Justice

The idea that law is ideological is an important contribution to legal scholarship. First, it enables a more critical view of the law and its role, demystifying a set of vital social institutions. Second, it points to the importance of sociological and political factors in our understanding of the law. Legality is shaped and influenced by non-legal aspects of society, and law, in turn, has an impact on society and social change, not just in the obvious effects of particular judgments, but in the political culture that a legal system helps produce.

Table of Contents

Civil Law

That body of law which every particular nation, commonwealth, or city has established peculiarly for itself; more properly call "municipal" law, to distinguish it from the "law of nature," and from international law. Laws concerned with civil or private rights and remedies, as contrasted with criminal laws.

Criminal Law

The substantive criminal law is that law which for the purpose of preventing harm to society, (a) declares what conduct is criminal, and (b) prescribes the punishment to be imposed for such conduct. It includes the definition of specific offenses and general principles of liability.

Constitutional Law

(1) That branch of the public law of a nation or state which treats of the organization, power and frame of government, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and citizen, and which prescribes generally the plan and method according to which the public affairs of the nation or state are to be administered.

(2) That department of science of law which treats of constitutions, their establishment, construction, and interpretation, and the validity of legal enactments as tested by the criterion of conformity to the fundamental law.

(3) A constitutional law is one which is consonant to, and agrees with, the constitution; one which is not in violation of any provision of the constitution of the particular state.

Ecclesiastical Law

The body of jurisprudence administered by the ecclesiastical court; derived, in large measure, from the canon and civil law. As now

restricted, it applies mainly to the affairs, and the doctrine, discipline, and worship, of the established church.

Ecclesiastical Matter

One that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for government of the membership, and the power of excluding from such association those deemed unworthy of membership. (*Olear v. Haniak*, 235 Mo.App. 249, 131 S.W.2d 375, 380).

"Original Intent of The Establishment and Free Exercise of Religion"

In a lecture and essay by Joseph A. Zavaletta, Jr., Esq. a summary of an alternate jurisprudence "model" was given with the thought it could lead to a better understand and analyze of the nature and sources of our rights and liberties found in the United States Constitution. The primary tenets of this jurisprudence model are: **first**, that natural law as referenced in the Declaration is the primary legal foundation of American constitutional law, rights and liberties; and second, as a corollary, that "original intent" is a more accurate basis for interpreting the Constitution and the Bill of Rights. As an example, the model will be applied to the First Amendment's guarantee to the free exercise of religion.

1. The Doctrine Of Original Intent.

The doctrine of original intent relies upon long-settled rules of contract interpretation. "The first and fundamental rule in the interpretation of all instruments [documents] is to construe them according to the sense and the terms and the intentions of the parties. (1) On every question of construction, carry [y]ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed. (2) In other words, in order to correctly understand what the parties to a contract intended, a court should look to the circumstances surrounding the execution of the contract, e.g., writings, phone calls, letters, memorandums, etc. In the same way, when

[Table of Contents](#)

analyzing any clause or amendment of the Constitution, the Supreme Court should first discover the "original intent" of the parties to the document by looking to the events surrounding the drafting and passing of the clause or amendment, including the records of the Constitutional convention and the writings of the Framers.

2. Original Intent: The First Amendment And The Metaphorical "Wall Of Separation Between Church And State"

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.. ."

The Congressional Records from June to September, 1789 record the months of discussions and debates of the ninety Founding Fathers who framed the First Amendment. Significantly, during those debates not one of the framers ever mentioned the now infamous phrase "separation of church and state." The phrase, "separation of church and state" is not found in the U.S. Constitution, the First Amendment, nor any of the notes from the Constitutional Convention. In fact, the current application of the "separation" doctrine is a relatively recent concept rather than the enforcement of a long-held constitutional principle. The primary occasion of the phrase "separation of church and state" dates back to a letter written in 1802 from then President Thomas Jefferson to the Baptist Association of Danbury, Connecticut. It is important to note that the letter was written fourteen years after the passage of the First Amendment; that Jefferson was in France at the time the Constitutional amendments (the Bill of Rights) were passed by Congress; and that he had no part in drafting or approving the First Amendment. In their letter to the President, the Danbury Baptists set forth their position that:

Religion is at all times and places a matter between God and individuals — That no man ought to suffer in name, person, or effects on account of his religious Opinions - That the legitimate Power of civil government extends no further than to punish the man who works ill to his neighbor: ..and therefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights....

In other words, the Baptists were concerned that the First Amendment's "free exercise" right was granted by the national government, rather than an unalienable right endowed by the Creator as Jefferson wrote in the

[Table of Contents](#)

Declaration of Independence. And if religion was a right granted by the government, the Baptists reasoned, government could regulate or prohibit religious activity in the marketplace. Jefferson shared their concern and replied by letter on January 1, 1802:

Gentlemen:

Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of government reach actions only and not opinions, 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. . . . I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced that he has no natural right in opposition to his social duties. (3)

Note that Jefferson refers to the free exercise of religion as a "natural right." Recall that in 1776 Jefferson wrote the Declaration of Independence which relied on the "Laws of Nature and Nature's God," "unalienable rights endowed by the Creator" and "the Supreme Judge of the World." (4) Also note that Jefferson prayed at both of his inaugurations and he approved several measures appropriating federal funds to pay for missionaries to the Indians. (5)

Whatever Jefferson meant by the "wall of separation" phrase, he clearly did not intend the modern notion of an impenetrable wall preventing individuals from religious expression. One would consider the government of the United States as interdicted [prevented] by the Constitution from intermeddling with religious institutions, their doctrines, discipline or practices. Clearly, no power to prescribe any religious exercise, or to assume authority in religious discipline, has been delegated to the general government. It must then rest with the States.(6) In matters of religion I have considered that its free exercise is placed by the Constitution independent of the powers of the General Government. I have therefore undertaken, on no occasion, to prescribe the religious exercise suited to it, but have left them, as the Constitution found

Table of Contents

them, under the direction and discipline of state and church authorities. . . . (7)

The "wall" was a jurisdictional limitation against the federal government's interference with an individual's natural right to the free exercise of religion. The federal government, reasoned Jefferson, has jurisdiction over "actions only and not opinions"; it had no jurisdiction over religion, which was a matter "solely between man and his God." Further, on a facial review, the object of the First Amendment, which begins with the word "Congress", was clearly not intended to apply to the States. Rather the intent of the First Amendment's "establishment" clause was, according to Supreme Court Justice Joseph Story, ". . . to exclude all rivalry among Christian sects." (8) This is confirmed by the preliminary draft of the First Amendment proposed by James Madison to the House of Representatives in 1789:

The Civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed. (9)

According to the Secretary, Mr. Madison thought, if the word 'National' was inserted before religion, it would satisfy the minds of honorable gentlemen. He believed that the people feared one sect might obtain a pre-eminence, or two combined together, and establish a religion, to which they would compel others to conform. He thought if the word 'National' was introduced, it would point the amendment directly to the object it was intended to prevent. (10) In sum, the object of the First Amendment was to prevent the national government from choosing one Christian sect [denomination] over another and establishing a single national denomination. Moreover, the Framers intended the powers and limitations contained in the U.S. Constitution to apply only to the federal government and not to the States. For example, in the famous case of *Barron v. Baltimore*, the Plaintiff sued to apply the Fifth Amendment to the City of Baltimore. In its holding, U.S. Supreme Court Chief Justice John Marshall wrote:

The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual States. Each State established a constitution for itself, and in that constitution, provided such limitations and restrictions on the powers of its particular government,

[Table of Contents](#)

as its judgment dictated. * * * If these propositions be correct, the fifth amendment must be understood as restraining the power of the general government, not as applicable to the states. (11)

For over one-hundred and fifty years, this was the original intent regarding the scope and jurisdiction of the Constitution, the national government and the Bill of Rights. However in 1947, the Supreme Court, in *Everson v. Board of Education*, (12) used Jefferson's Danbury letter as a pretext to disregard centuries of legal tradition in the common law, the Declaration of Independence, the writings of the founding fathers, the notes and records of the Constitutional Convention and over a century of American constitutional jurisprudence. With the stroke of a pen, the Court created a new "law" by incorporating the Fourteenth Amendment (which dealt exclusively with specific State powers) with the First Amendment's federal provision against an "establishment of religion". The result of this legal hocus pocus was devastating: first, the Court reversed 150 years of Constitutional precedent which limited the First Amendment's application to Congress, i.e., the national government; second, the Court declared that federal courts were now empowered to restrict not only the religious activities of the national government, but the religious expressions of the people and the States as well. Five years later in *Zorach*, the Court tried in vain to resuscitate the First Amendment's original intent:

We are a religious people who institutions presuppose a Supreme Being. When the state encourages religious authorities... it follows the best of our traditions. For it then respects the religious nature of our people...

To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious group. That would be preferring those who believe in no religion over those who do believe....[W]e cannot read into the Bill of Rights such a philosophy of hostility to religion. (13)

"There is simply no historical foundation for the proposition," wrote Chief Justice Rehnquist in his dissent in *Wallace v. Jaffree*, (14) "that the Framers intended to build the 'wall of separation' that was constitutionalized in *Everson*. But the greatest injury of the 'wall' notion," continued Justice Rehnquist, is the mischievous diversion of judges from the actual intentions of the drafters of the Bill of Rights. [N]o amount of repetition of historical errors

Table of Contents

in judicial opinions can make the errors true. The "wall of separation between church and state" is a metaphor based on bad history, a metaphor which has proved useless as a guide to judging. It should be frankly and explicitly abandoned. (15) Ultimately, however, the Everson case and its progeny prevailed. (16) Although the First Amendment reads "Congress shall make no law respecting an establishment of religion, nor prohibiting the free exercise thereof...", most of the Court's recent decisions in this area involve neither Congress nor the "making of a law." For example, in *Lee v. Weisman*, the Court equates a Rabbi at a high school graduation ceremony with "Congress" and Rabbi's prayer during the graduation ceremony as the "making of a law." Indeed, using the Court's criteria, the First Amendment is internally inconsistent:

a person's right to "free exercise" of religion may now collide with the prohibited "establishment" of a religion.

Moreover, contrary to the intent of the Framers, the Court now believes that it alone has "secret knowledge" (17) to decide what is "constitutional" for the rest of the nation. For example, in *Boerne v. Flores* (18) decided July, 1997, the Court held that Congress' attempt to protect the religious liberties of the people by passing the Religious Freedom and Restoration Act (RFRA) was "unconstitutional." In its holding the Court opined that RFRA was "not a proper exercise of Congress' enforcement power because it contradicts vital principles necessary to maintain separation of powers and the federal-state balance."

Finally, the Constitutional Framers understood that government encouragement of religion was not equal to the establishment of religion; that, as George Washington said, "religion and morality were indispensable supports" to political prosperity. (19) Indeed, on the day the First Amendment was passed by the Congress in 1789, Washington accepted Congress' charge to proclaim a day of "public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God." As Chief Justice Rehnquist opined in the *Jaffree* case, "History must judge whether it was the Father of our country in 1789, or... the Court . . . which has strayed from the meaning of the Establishment Clause." (20) The fears of the Danbury Baptists have come true . The Supreme Court has become, in Jefferson's words, a "despotic branch." By rejecting natural law and the doctrine of original intent, the Court now assumes: first, that the State-not

the Creator-grants men their fundamental (unalienable) rights, and second: since our rights are no longer "unalienable" they can be regulated or even abridged with impunity. Two centuries after the First Amendment was approved, the Court now sits in judgment of our beliefs as a "national theology board"(21) and uses the First Amendment as a "bulldozer of social engineering"(22) to remove all religious expression from the marketplace of ideas. The Court no longer feigns adherence to the Founders' original intentions regarding the object of the First Amendment or the natural rights of the people found therein. Ironically, as predicted in *Zorach*, the Court now protects the rights of "those who believe in no religion over those who do believe" by engaging in the methodical religious sanitization of our institutions and communities. The Court has guaranteed freedom from religion as opposed to freedom of religion. It is believed by some that while our forefathers left us a legacy of faith, optimism and shared values, it is possible that the Courts may be forcing us to leave our children a moral wasteland littered with the refuse of cynicism, despair and anarchy. It is thought we should return to common sense-to natural law and the original intent-before it is too late.

IRS Church Definition

Because of First Amendment religious freedom concerns, Congress has never passed any statute anywhere which defines what a church is (beyond saying "a church or convention or association of churches", which is like saying that the definition of a duck is "one or more ducks"). The IRS, which apparently is unconstrained by the First Amendment, has nonetheless ventured where angels fear to tread, and has established criteria which, in its view, define a church as follows:

1. A distinct legal existence
2. A recognized creed and form of worship
3. A definite and distinct ecclesiastical government
4. A formal code of doctrine and discipline
5. A distinct religious history
6. A membership not associated with any other church or denomination
7. An organization of ordained ministers

Table of Contents

8. Ordained ministers selected after completing prescribed studies
9. A literature of its own
10. Established places of worship
11. Regular congregations
12. Regular religious service
13. Sunday schools for religious instruction of the young
14. Schools for the preparation of its ministers.

The Tax Court, which is apparently unconstrained by the IRS administrative criteria, has adopted its own view, consisting of most of the same criteria compacted into 7 or 8 points. See, e.g., **Pusch v. Commissioner, 39 T.C.M. 838 (1980) or Chapman v. Commissioner 48 T.C. 358 (1967)**. In any event, not all of the 14 criteria must be met by every individual church, since only a substantial denomination will meet all of the criteria, and the IRS must allow for the existence of independent churches. Thus, there is substantial "wobble room." Therefore within the context of a legal definition of Church is defined as follows:

BLACKS LAW DICTIONARY SIXTH EDITION

"In its most general sense, the religious society founded and established by Jesus Christ, to receive, preserve, and propagate His doctrine and ordinances. It may also mean a body of communicants gathered into church order; body of Christians, united under one form of government by the profession of the same faith and the observance of the same ritual and ceremonies; place where persons regularly assemble for worship; congregation; organization for religious purposes; religious society or body; the clergy or officialdom of a religious body".

IRS Regulations

IRS Publication 557, Tax-Exempt Status for Your Organization, states: "Because beliefs and practices vary so widely, there is no single definition of the word "church" for tax purposes." The inability of the IRS to define the word church has a large part to do with the First Amendment to the Constitution of the United States of America. Black's Law Dictionary, fourth edition, and sixth edition defines the word "**church**" as the following: *"In its most general sense, the religious society founded and established by Jesus Christ, to receive, preserve, and propagate his doctrines and ordinances."*

Black's 7th edition does not define the word "church", this is interesting because this edition is the current dictionary used by Lawyers and Judges.

The First Amendment to the Constitution of the United States of America prohibits the federal government from legislating for or against religion -

"Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof...."

The Corporation Sole is a non-profit, tax-exempt corporation under 508 of IRS code. It is an independent spiritual assembly / organization, recognized by almost all governments. Once you are established in writing, your income is tax-free to you and your assets cannot be encumbered with a property tax. Your earnings are also tax-free and are considered the income of the religious organization.

What about the I.R.S.?

The Church is exempt by right and does not have to petition any government agency for recognition of exempt status. In fact, it states in 1.508-1(a)(4) that the church is exempt whether it files notice or not. The question might arise when an annual return is demanded of every other organization or individual, does a corporation sole or church also have to file? According to the I.R.S.:

- IRC Title 26 §508 specifies that the Corporation Sole is a **"mandatory exception"** to having to apply for tax exempt status.
- IRC Title 26 §6033 specifies that the Corporation Sole is a "mandatory exception," **not required to report any activities, financial or otherwise.** It is NOT a 501(c)(3) which must be applied for and granted by the IRS.
- § 6033(a) **exempts religious organizations** from the need for filing returns of any kind.
- § 6033(a)(2)(A) Mandatory exceptions - Paragraph (2) **shall not apply to - (i) churches.**
- § 6033(a)(2)(A)(a)(i) provides for mandatory exceptions to filing requirements for religious organizations and states that filing requirements **shall not apply to "churches", their integrated auxiliaries, and conventions or associations of churches.**
- § 6033(a)(2)(A)(iii) also exempts "the exclusive religious activities of any religious order"

Under Title 26 § 6033, your church or religious order has complete immunity to disclosure. It is not necessary for you to maintain records of any kind except for your own purpose and reasons. If there is **NO LAW** whatsoever you can establish a church and operate an organization without any liability to any agency

[Table of Contents](#)

(as far as establishment of recognition of exempt status is concerned); you are also legally exempted from filing any return with any government agency for any reason.

INTERNAL REVENUE CODE PERTINENT SECTIONS FROM (TITLE 26 OF THE U.S. CODE)

The Internal Revenue Code (the "IRC") deals with the levying and collections of certain taxes from various persons as defined within the IRC. The IRC exempts certain organizations (as set forth in Section 501(c)(3)) from taxation to one extent or another. Churches are exempt, not only from taxation

but from notifying the Secretary of the Treasury that they are seeking tax exempt status as stated in Section 508(c)(1)(A).

Religious organizations are exempt from filing returns of any kind and there are no record keeping requirements imposed by the IRS. (Section 6033) In other words, a religious organization exists due to your natural right to freedom of religion and as such, there is no law respecting its establishment or operation. The records are absolutely private. Best of all, you do not need permission from anyone or any agency to exist, operate or cease operations.

CORPORATIONS SOLE/RELIGIOUS SOCIETIES

As stated in, "The Law of Tax-Exempt Organizations", by Bruce R. Hopkins [John Wiley & Sons, New York, Fifth Edition, Copyright 1987] at page 186: The government and the courts have generally been loath to take the position that an allegedly "religious" activity, function or purpose is not "religious" in nature. One court succinctly stated the reason why:

"Neither this Court, nor any branch of this Government, will consider the merits or fallacies of a religion. Nor will the Court compare the beliefs, dogmas, and practices of a newly organized religion with those of an older, more established religion. Nor will the Court praise or condemn a religion, however excellent or fanatical or preposterous it may seem. Were the Courts to do so, it would impinge upon the guarantees of the First Amendment. "

(Universal Life Church, Inc. v. United States, 372 F. Supp. 770, 776; E.D. Cal. 1974). The U.S. Tax Court has evidenced a like attitude, as when it wrote that, "as

a judicial body, we are loathe to evaluate and judge ecclesiastical authority and duties in the various religious disciplines." [Colbert v. Commissioner, 61 T. C. 449, 455 (1974)] In addition, the Court has ruled that: "The terms "religion" or "religious" in tax exemption laws should not include any reference to whether the beliefs involved are theistic or non-theistic. Religion simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment." (Fellowship of Humanity v. Alameda County [1957], 153 Cal A. 2d 673, 315 p. 2d 394) It is appropriate to note, the First Amendment to the Constitution of the United States of America, in part states quite clearly: "***Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...***" (*emphasis added*) Pay special attention to **bold text** of the excerpt.

IRS Publication 557-Chapter 3 Section 501(c)(3)Organizations Page 23

b) Whether as a condition of the award the recipient must upon graduation accept employment with the company, and c) Whether the award will be continued even if the parent's employment ends. 5) A copy of the scholarship application form and any brochures or literature de-scribing the scholarship program. If you are organized to operate a home for the aged, complete and attach Schedule F of Form 1023. Explain on Schedule F:

- 1) How charges are or will be determined, such as on a profit basis, to recover costs, or at less than cost, and whether the charges are based on providing service at the lowest feasible cost to the residents,
- 2) Whether all residents are or will be required to pay fees,
- 3) Whether any residents are or will be accepted at lower rates or entirely without pay and, if so, how many, and
- 4) Whether federal mortgage financing has been applied for and if so, the type.

Religious Organizations

To determine whether an organization meets the religious purposes test of section 501(c)(3), the IRS maintains two basic guidelines.

- 1) That the particular religious beliefs of the organization are truly and sincerely held.
- 2) That the practices and rituals associated with the organization's religious belief or creed are not illegal or contrary to clearly defined

Table of Contents

public policy. Therefore, your group (or organization) may not qualify for treatment as an exempt religious organization for tax purposes if its actions, as contrasted with its beliefs, are contrary to well established and clearly de-fined public policy. If there is a clear showing that the beliefs (or doctrines) are sincerely held by those professing them, the IRS will not question the religious nature of those beliefs.

Churches

Although a church, its integrated auxiliaries, or a convention or association of churches is not required to file Form 1023 to be exempt from federal income tax or to receive tax deductible contributions, the organization may find it advantageous to obtain recognition of exemption. In this event, you should submit information showing that your organization is a church, synagogue, association or convention of churches, religious order, or religious organization that is an integral part of a church, and that it is engaged in carrying out the function of a church. In determining whether an admittedly religious organization is also a church, the IRS does not accept any and every assertion that the organization is a church. Because beliefs and practices vary so widely, there is no single definition of the word church for tax purposes. The IRS considers the facts and circumstances of each organization applying for church status.

The IRS does not stipulate that your spiritual order file for 501(c)(3) status using Form 1023. And in order to be classified as a 501(c)(3) you must fill out this form. Therefore it is reasonable to conclude that the IRS concedes that there are other tax exempt organizations that are entitled to receive a non-filing BIN number. However, you will not find the IRS advertising this provision that they themselves admit exist. It is up to you to discover for yourself, and you'll remember that Cannon and Ecclesiastical law are not taught in law school, therefore they are not overly concerned about the public at large discovering their constitutional rights.

Integrated auxiliaries.

An organization is an integrated auxiliary of a church if all the following are true.

- 1) The organization is described both in sections 501(c)(3) and 509(a)(1), 509(a)(2), or 509(a)(3).
- 2) It is affiliated with a church or a convention or association of churches.
- 3) It is internally supported. An organization is internally supported unless both of the following are true, a) It offers admissions, goods,

services or facilities for sale, other than on an incidental basis, to the general public (except goods, services,

IRS Publication 557 Chapter 3 Section 501(c)(3)Organizations Page 23 [END]

A Church With Tax Exemption is not a Tax-Exempt Church!

During the recent Senate hearings on Senate Bill 557 (the so-called "Civil Rights Restoration Act"), it was noted that Sen. Kennedy and other supporters consistently referred to "religious or church organizations", whereas opponents spoke of defending "religious freedom" and "rights" of the church. The term "organizations" may be the key to understanding governmental meddling in the affairs of the church. Most people believe a Church that has tax exemption is a **"tax-exempt church."** They err greatly. A church that has tax exemption is not a tax exempt Church ... **it is a tax exempt "organization."** A "religious or church organization" is a **CORPORATION** that **functions in a legal** capacity, doing **business** as a church. The IRS is fully aware of this distinction, and their publications reinforce that status. Nowhere do they define "tax exempt churches" - they always refer to religious or church "organizations". Surely Congress, in writing the tax law, understands this distinction as well!

A Church that voluntarily initiates an **"application"** to the state for **"corporate"** status expects **"limited liability"** and **"tax exemption"**. It in turn owes to the state its right to exist and prosper. It is obvious that its legal status and that of its "flock" has been drastically altered from a **"lawful"** assembly of private citizens to that of a **"legal"** gathering of public subjects.

Churches (A CONGREGATION OF BELIEVERS) **DO NOT** have rights granted by the Constitution. They enjoy **INALIENABLE** rights granted by God, which are **"secured"** by the **"Bill of Rights"** to the U.S. **Constitution**. Incorporated churches and artificial persons (Corporations) do not have "inalienable rights" granted by God that are "secured" by the Constitution. They have only such rights, privileges and immunities, as granted to entities created by the State. The U.S. Supreme Court well understands that corporations are creatures of the State as the Court has stated:

"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its existence. These are such as are supposed best calculated to effect the object for which it was created. Among

Table of Contents

the most important are immortality, and, if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property, without endless; necessity of perpetual conveyances, for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men with these qualities and capacities, that corporations were invented and are in use."

Dartmouth College v. Woodward,

4 Wheat. Rep. 634

Osborn et.al. v. The Bank of the United States,

A corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises ... Its powers are limited by law ...Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation.

Wilson v. U.S., 221 US 382.

Corporations are not citizens ... The term citizen ... applies only to natural persons ... not to artificial persons created by the legislature ...

Paul v. Virginia, 8 Wall 168,177.

(See also, Opinion Field, J., in the Slaughterhouse case 16 Wall 36, 99).

Whenever a corporation makes a contract it is the contract of the legal entity ... The only rights it can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a state.

Bank of Augusta v. Earle, 13 Pet 586.

"A corporation can only appear by its attorney or solicitor, duly authorized; and if this authority is not apparent upon the face of the record, the decree is erroneous, and cannot be supported."

Osborn et.al. v. The Bank of the United States,

According to IRS Publication 557, the instruction manual for organizations seeking recognition of tax exemption under Section 501(c)(3); in order to be an "organization" in the legal sense, it is necessary to incorporate. Black's Law Dictionary, 5th Ed. defines "organization" as:

... a corporation or governmental subdivision or agency, business

trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.
UCC 1-201(28).

Notice that ALL of the entities in this definition are government franchised, and therefore under the jurisdiction of the **Uniform Commercial Code** which have been "Codified" into law within each state. The definition is sound evidence that a corporation (even if it functions as a church) is recognized by law as commercial and public; an incorporated church is "legally" interpreted as a commercial, public entity. Didn't Jesus say that His Father's house was NOT to be a house of merchandise? John 2:16. Most states will not "permit" exempt status until a church applies for and obtains an IRS 501(c)(3) status ruling. This means, of course, that the church must willingly incorporate and submit itself to state jurisdiction. IRS Publication 557 Sec. 508(c) provides that **CHURCHES ARE NOT REQUIRED** to apply for recognition of section 501(c)(3) status in order to be exempt from federal taxation or to receive tax-deductible contributions. The IRS fundamentally has no authority!

"Churches are automatically **exempt** from Federal income tax. That **contributions** to churches are **deductible** by donors under **section 170** of the **Code**."

If Churches are "**automatically exempt**," then why would they be so eager to apply for exemption? Exemption or immunity is a government grant afforded only to certain classes of juristic persons. Law Dictionaries that define "exempt" and "immune," plus Webster's 1828 Dictionary for the word "exclude" will provide you with a clearer understanding of what is being said here.

The First Amendment PROHIBITS government from making any law for or against the exercise of "**religion**." Laws that grant special benefits for religion are just as bad as laws enacted against religion. The **free exercise clause DOES NOT** make the Church "**immune**" or "**exempt**" from anything. It **excludes** unfranchised **Churches** from the "**legal**" **jurisdiction** of man, **but not from** the "**lawful**" **Common Law of God**. A Church that fully retains its **First Amendment** status is "**lawfully**" and automatically "**excluded**" from any form of direct taxation or public laws governing business franchises. When citing the **First Amendment**, it should be considered in all its parts, **Freedom of Speech, Press, and Assembly** are equally as important to the Church as any other part. **Any law that infringes upon the inalienable right of pastors or believers**

[Table of Contents](#)

saying or teaching whatever is proper and sound according to God's word, including His commandments on the unlawfulness of homosexuality, abortion, pornography, miscegenation, taxation and evil doings of government, etc., **must be considered null and void**. The same holds true for the printed word. It must be concluded, that for religious free exercise to exist, free choice as to whom may or may not assemble in a private setting must be upheld. A free **unincorporated Church cannot be held to the standards of a corporation doing "business"** as a church.

A Church congregation is **a private assembly of individuals**, coming together as a family, to worship their Lord. Biblical worship **is not a "public" activity**. Jesus Christ, not the State ordained the assembling together of believers. Legislatures pass laws effecting juristic entities as a safeguard to the "General" health, safety and welfare to the public as a whole. Congress has no authority to grant "special" benefits or privileges to un-enfranchised Churches or religious activities. The IRS only authorizes such "privileged" exemptions to churches that are incorporated as organizations. When a Church possesses such "benefits," it is because it has petitioned and accepted the State's franchise. As a **"legal" organization, the Church removed itself from the protection of the First Amendment** and is no longer free. As a subject of Caesar, the Church is rendering unto Caesar that which is God's. It is the Church, not the State, that has transgressed the barrier separating Church and State. The greatest single thread that binds the Church to government is the act of "incorporation."

This would raise many ethical questions: Why are the churches of today almost always found to be incorporated? Why would the churches elect to place themselves under such jurisdiction to find regulation under governmental franchise preferable to their own Divine Laws Are they not in fact serving two masters?

Responding to Lawsuits arising from Church Discipline

Traditionally, the courts have not involved themselves in cases of church discipline because of First Amendment privilege. However, there have been court cases that attempt to limit the right of churches to discipline members. Courts may intervene when:

[Table of Contents](#)

- A church's disciplinary actions amount to a deliberate and malicious campaign to ruin someone —financially, politically, or psychologically.
- A church lacks jurisdiction over people being disciplined because they were not formal members of the church.
- A church fails to follow consistently its bylaws or disciplinary guidelines.

In a case in Oklahoma, a woman who admitted she had violated her church's ban on fornication submitted a signed letter of withdrawing her membership after being confronted by elders of the church. Despite a request from her lawyer that the elders not reveal her behavior to the congregation, they did so, informed four other congregations in the area, and told her that her attempt to withdraw membership was doctrinally impossible. She sued for invasion of privacy and intentional infliction of emotional distress and won a \$435,000 judgment against the church and against the elders personally. The Oklahoma Supreme Court reversed part of the decision that was based on actions the church took before the woman withdrew her membership, but it affirmed that the church and elders could be held liable for the actions they took when she was no longer a member.

How to Avoid Legal Problems

Churches should take the following actions before a disciplinary case arises:

- Amend bylaws and/or disciplinary guidelines to address significant aspects of discipline, especially the issues of whether the church will continue discipline after an attempted withdrawal of membership and whether a church will inform its members and other churches of its disciplinary actions.
- Obtain informed consent to disciplinary policies through membership classes and interviews. Ideally, there would be a written statement for each person to sign affirming that he or she understands and agrees with the policies.

Table of Contents

- Teach regularly on church discipline so members remain aware of the biblical basis, purpose, and steps of discipline.

Steps to Follow When Applying Discipline

- Be consistent.
- Carefully follow your disciplinary guidelines.
- Always speak the truth.
- Communicate only to people who have a right to know. Non-members should never receive any communication, written or verbal, pertaining to the discipline of a member. For example, any letters that must be sent regarding discipline of a member should be sent to members only, not to a general mailing list. Also, congregational announcements or meetings regarding discipline of a church member should be strictly limited to the hearing or attendance of members of the church.
- In discussing unproven allegations with leaders, label them as such; do not allow unsubstantiated charges to be publicly proclaimed by the church.
- Base decisions on clearly explained biblical grounds.

Check with your legal counsel before providing documentation of your disciplinary policies to an inquiring attorney. If you do provide it, explain the commitments your members made to abide by those policies.

FOOTNOTES

1. JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES Vol. III, p.. 383 §400 (1833). Justice Story was appointed to the U.S. Supreme Court by James Madison and served between 1811-1845. He was elected President of Harvard Law School and is considered by many to be the father of American jurisprudence due to his prolific contributions to American law.
 2. President Thomas Jefferson, Letter to Supreme Court Justice William Johnson, June 12, 1823.
 3. THOMAS JEFFERSON, WRITINGS OF THOMAS JEFFERSON VOLUME XVI, PP. 281-282 (1904)
 4. Consistent with the Declaration, Jefferson believed that our rights and liberties were the gift of God. "The God who gave us life gave us liberty at the same time. . . .And can the liberties of a nation be thought secure if we have lost the only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are to be violated but with His wrath?" THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA, QUERY XVIII (1794).
 5. WALTER LOWRIE, ED., AMERICAN STATE PAPERS VOL. IV P. 687(1832).
 6. THOMAS JEFFERSON, JEFFERSON'S WRITINGS (1905).
 7. Thomas Jefferson, Second Inaugural Address (1805) (emphasis added).
 8. STORY, COMMENTARIES Vol. III, p. 728, §1871. Justice Story continues, "... the whole power over the subject matter of religion is left exclusively to the State governments to be acted upon according to their own sense of justice and the State constitutions." STORY, COMMENTARIES VOL. III P. 731 §1873.
 9. Proposed by James Madison, June 8, 1789, (Annals of Congress, 1:434- 435) (emphasis added). See <http://www.louisville.edu/~tnpete01/church/basic4a.htm>.
 10. Id.
 11. Barron v. Mayor and City Council of Baltimore, 7 Pet. 243, 8 L.Ed 672 (1833).
 12. Everson v. Board of Education, 330 U.S. 1, 18 (1947).
- Zorach v. Clauson, 343 U.S. 306 (1952)

Table of Contents

14. Wallace v. Jaffree 472 U.S. 38 (1985), Rehnquist, J. (dissenting).
15. Jaffree at 92, Rehnquist, J. (dissenting).
16. Examples include: McCollum v. Board of Education, 333 U.S. 203, 212 (1948) where the Court assumed "the role of a super board of education for every school district in the nation"; Engel v. Vitale, 370 U.S. 421 (1962) and School District of Abington v. Shempp, 374 U.S. 203 (1963) where the Court, without citing any precedent, struck down voluntary public school prayer by showing its contempt for the Founders' views on the First Amendment when it opined that "prayer seems relatively insignificant when compared with the governmental encroachments upon religion which were commonplace 200 years ago"; Stone v. Graham, 449 U.S. 39 (1980) where the Court held that the posting of the Ten Commandments in a public school violated the Establishment clause even though the Supreme Court itself is decorated with Moses holding the Ten Commandments; Wallace v. Jaffree 472 U.S. 38, 92 (1984), and Lee v. Weisman, 120 L.Ed. 2d 467 (1992) where the Court introduced a new test: the "psychological coercion" test. Under Weisman when in the event a single individual is uncomfortable or feels that he is being "psychologically coerced" (such as a Rabbi reading a prayer at a high school graduation) the activity is unconstitutional.
17. "What secret knowledge is breathed into lawyers when they become Justices of this Court, that enables them to discern that a practice which the text of the Constitution does not clearly proscribe, and which our people have regarded as constitutional for 200 years, is in fact unconstitutional?" O'Hare Truck Service, Inc. v. City of Northlake, No. 95-191 (1996) SCALIA, J., dissenting.
18. City of Boerne v. Flores, Archbishop of San Antonio, et al., (1997). RFRA was Congress' attempt to restore the "compelling interest test" which was rejected in Employment Division, Department of Human Services v. Smith, 494 U.S. 872 (1990) where the Court held that state is no longer required to apply the "compelling interest" test to determine whether a state may burden an individual's right to the free exercise of religion.
19. George Washington, Address of George Washington, President of the United States ... Preparatory to His Declination (1796).
20. Jaffree at 113-114, Rehnquist, J. (dissenting).
21. Count of Allegheny v. ACLU, 106 L.Ed 2d 472, 547-548 (1989), Kennedy, J. (concurring in judgment in part and dissenting in part).
22. Lee v. Weisman at 509, 514, Scalia, J. (dissenting).

[Table of Contents](#)

[Table of Contents](#)

DISCLAIMER Information in this book is Not Legal Advice. This information contained herein has been prepared for general information purposes only. Legal advice is dependent upon the specific circumstances of each situation. Also, the law may vary from state to state, so that some information in this book may not be correct for your jurisdiction. Finally, the information contained in this book is not guaranteed to be the most current up to date. Therefore, the information contained in this book cannot replace the advice of competent legal counsel licensed in your state

[Table of Contents](#)

GLOSSARY

[Table of Contents](#)

Glossary of Legal Terms

acquittal: Judgment that a criminal defendant has not been proved guilty beyond a reasonable doubt.

affidavit: A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths.

affirmed: In the practice of the appellate courts, the decree or order is declared valid and will stand as rendered in the lower court.

answer: The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for defense.

appeal: A request made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the appellant.

appellate: About appeals; an appellate court has the power to review the judgement of another lower court or tribunal.

arraignment: A proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty.

bail: Security given for the release of a criminal defendant or witness from legal custody (usually in the form of money) to secure his appearance on the day and time appointed.

bankruptcy: Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may discharge their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings.

bench trial: Trial without a jury in which a judge decides the facts.

brief: A written statement submitted by the lawyer for each side in a case that explains to the judges why they should decide the case or a particular part of a case in favor of that lawyer's client.

chambers: A judge's office.

capital offense: A crime punishable by death.

case law: The law as laid down in cases that have been decided in the decisions

of the courts.

charge to the jury: The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

chief judge: The judge who has primary responsibility for the administration of a court but also decides cases; chief judges are determined by seniority.

circumstantial evidence: All evidence except eyewitness testimony.

clerk of court: An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

common law: The legal system that originated in England and is now in use in the United States. It is based on judicial decisions rather than legislative action.

complaint: A written statement by the plaintiff stating the wrongs allegedly committed by the defendant.

contract: An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

conviction: A judgment of guilt against a criminal defendant.

counsel: Legal advice; a term used to refer to lawyers in a case.

counterclaim: A claim that a defendant makes against a plaintiff.

court: Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

court reporter: A person who makes a word-for-word record of what is said in court and produces a transcript of the proceedings upon request.

damages: Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.

default judgement: A judgment rendered because of the defendant's failure to answer or appear.

defendant: In a civil suit, the person complained against; in a criminal case, the person accused of the crime.

deposition: An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

discovery: Lawyers' examination, before trial, of facts and documents in possession of the opponents to help the lawyers prepare for trial.

Table of Contents

docket: A log containing brief entries of court proceedings.

en banc: "In the bench" or "full bench." Refers to court sessions with the entire membership of a court participating rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases. They are then said to be sitting en banc.

evidence: Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

federal question: Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties.

felony: A crime carrying a penalty of more than a year in prison.

file: To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

grand jury: A body of citizens who listen to evidence of criminal allegations, which are presented by the government, and determines whether there is probable cause to believe the offense was committed. As it is used in federal criminal cases, "the government" refers to the lawyers of the U.S. attorney's office who are prosecuting the case.

habeas corpus: A writ that is usually used to bring a prisoner before the court to determine the legality of his imprisonment. It may also be used to bring a person in custody before the court to give testimony, or to be prosecuted.

hearsay: Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court.

impeachment: The process of calling something into question, as in "impeaching the testimony of a witness." (2) The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government for trial in the Senate.

indictment: The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

in forma pauperis: In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty. **information:** A

formal accusation by a government attorney that the defendant committed a misdemeanor.

injunction: An order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury. **instructions:** Judge's explanation to the jury before it begins deliberations of the questions it must answer and the law governing the case. **interrogatories:** Written questions asked by one party of an opposing party, who must answer them in writing under oath; a discovery device in a lawsuit. **issue:** (1) The disputed point in a disagreement between parties in a lawsuit. (2) To send out officially, as in to issue an order. **judge:** Government official with authority to decide lawsuits brought before courts. Other judicial officers in the U.S. courts system are Supreme Court justices.

judgment: The official decision of a court finally determining the respective rights and claims of the parties to a suit.

jurisdiction: (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. (2) The geographic area over which the court has authority to decide cases.

jury: Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact.

jurisprudence: The study of law and the structure of the legal system. **lawsuit:** A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

litigation: A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

magistrate judges: Judicial officers who assist U.S. district judges in getting cases ready for trial, who may decide some criminal and civil trials when both parties agree to have the case heard by a magistrate judge instead of a judge.

misdemeanor: Usually a petty offense, a less serious crime than a felony, punishable by less than a year of confinement.

mistrial: An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury. **nolo**

contendere: No contest-has the same effect as a plea of guilty, as far as the

Table of Contents

criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

opinion: A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment.

oral argument: An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

panel: (1) In appellate cases, a group of judges (usually three) assigned to decide the case; (2) In the jury selection process, the group of potential jurors.

parties: Plaintiffs and defendants (petitioners and respondents) to lawsuits, also known as appellants and appellees in appeals, and their lawyers.

petit jury (or trial jury): A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons. Federal civil juries consist of six persons.

plaintiff: The person who files the complaint in a civil lawsuit.

plea: In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges, a declaration made in open court.

pleadings: Written statements of the parties in a civil case of their positions. In the federal courts, the principal pleadings are the complaint and the answer.

precedent: A court decision in an earlier case with facts and law similar to a dispute currently before a court. Precedent will ordinarily govern the decision of a later similar case, unless a party can show that it was wrongly decided or that it differed in some significant way.

procedure: The rules for the conduct of a lawsuit; there are rules of civil, criminal, evidence, bankruptcy, and appellate procedure.

pretrial conference: A meeting of the judge and lawyers to discuss which matters should be presented to the jury, to review evidence and witnesses, to set a timetable, and to discuss the settlement of the case.

probation: A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision as long as certain conditions are observed.

pro se: A Latin term meaning "on one's own behalf"; in courts, it refers to

persons who present their own cases without lawyers.

prosecute: To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government.

record: A written account of all the acts and proceedings in a lawsuit.

remand: When an appellate court sends a case back to a lower court for further proceedings.

reverse: When an appellate court sets aside the decision of a lower court because of an error. A reversal is often followed by a remand.

sentence: The punishment ordered by a court for a defendant convicted of a crime.

service of process: The service of writs or summonses to the appropriate party.

settlement: Parties to a lawsuit resolve their difference without having a trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims.

sequester: To separate. Sometimes juries are sequestered from outside influences during their deliberations.

sidebar: A conference between the judge and lawyers held out of earshot of the jury and spectators.

statute: A law passed by a legislature.

statute of limitations: A law that sets the time within which parties must take action to enforce their rights.

subpoena: A command to a witness to appear and give testimony.

subpoena duces tecum: A command to a witness to produce documents.

summary judgement: A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgement as a matter of law.

temporary restraining order: Prohibits a person from an action that is likely to cause irreparable harm. This differs from an injunction in that it may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held.

testimony: Evidence presented orally by witnesses during trials or before grand juries.

tort: A civil wrong or breach of a duty to another person, as outlined by law. A very common tort is negligent operation of a motor vehicle that results in

[Table of Contents](#)

property damage and personal injury in an automobile accident.

transcript: A written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation, as in a transcript of a hearing or oral deposition.

uphold: The decision of an appellate court not to reverse a lower court decision.

U.S. attorney: A lawyer appointed by the President in each judicial district to prosecute and defend cases for the federal government.

venue: The geographical location in which a case is tried.

verdict: The decision of a petit jury or a judge.

voir dire: The process by which judges and lawyers select a petit jury from among those eligible to serve, by questioning them to determine knowledge of the facts of the case and a willingness to decide the case only on the evidence presented in court. "Voir dire" is a phrase meaning "to speak the truth."

warrant: A written order directing the arrest of a party. A search warrant orders that a specific location be searched for items, which if found, can be used in court as evidence.

witness: A person called upon by either side in a lawsuit to give testimony before the court or jury.

writ: A formal written command, issued from the court, requiring the performance of a specific act.

writ of certiorari: An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal.

Judicial Terminology

- (1) "Shall" or "shall not" denotes binding obligations the violation of which can result in disciplinary action.
- (2) "Should" or "should not" relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.
- (3) "May" denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.
- (4) "De minimus" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.
- (5) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:
 - (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;
 - (ii) service by a judge as an officer, director, advisor or other active participant, in an educational, religious, charitable, fraternal, or civic organization or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
 - (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest; and
 - (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.
- (6) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.
- (7) "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (8) "Law" denotes court rules as well as statutes, constitutional provisions and

Table of Contents

decisional law.

(9) "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(10) "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.

(11) "Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(12) "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

(13) "Retired Judge" means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system. (Sees. 831.001 and 836.001, V.T.C. A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)])

(14) "Senior Judge" means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government code. [Ch. 359, 69th Legislature, Reg. Session (1985)]

(15) "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C. A. Government Code [Ch. 2, Sec. 1601(18), 71st Legislature (1989)])

(16) "County Judge" means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution. (Sec. 21.009, V.T.C. A. Government Code [Ch. 2, Sec. 1601(18), 71st Legislature (1989)])

(17) "Part-time" means service on a continuing or periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.

(18) "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.

**The 1996 amendment deleted B(7), which had defined "Invidious discrimination", and renumbered B(8) as B(7).*

SOURCES

- Lindsey, D. L. (Bishop), Handbook for Church Organization Administration and Ministry, Little Rock: Jurisdictional Press, 1990
- Casey, William J. Layer's Desk Book Fourth Edition Institute for Business Planning, Inc. Englewood Cliff, NJ 07632
- Lindsey, D. L. (Bishop), An Introduction To Church Of God In Christ History, Theology and Structure, Little Rock: Second Jurisdictional of Arkansas Press, 1990
- Newman, Joseph, What Everyone Needs to Know about Law, US News & World Report Book Washington, DC 1973
- Range, C. F. (Elder) editor, Official Manual with Doctrine and Discipline of the Church Of God In Christ, Inc., Memphis: Church Of God In Christ Publishing House, 1973
- Poor, Henry V., Readers Digest Library of Congress #76-142107
- Towney, David P. Labor Law & Legislation South-Western Publishing Co. Cincinnati, Ohio 1980
- Barrineau, H. E., Civil Liability in Criminal Justice Anderson Publishing, Co. Cincinnati, Ohio 1987
- Church Of God In Christ, Charter Of Incorporation and Constitution of the Church Of God In Christ, Memphis: 1922
- Lusk, Harold F. Business Law Principals and Cases Richard D. Irwin, Inc. Homewood, 111, 1966
- Sanders, Wesley W, (Bishop), Jurisdictional Policy & Procedural Manual, St. Louis, Mo., Eastern and Western Illinois Publication
- Sanders, Wesley W, (Bishop), Jurisdictional Bishops Policy & Procedural Manual, St. Louis, Mo., Eastern and Western Illinois Publication
- Moore, A. T. (Bishop) History Reveals The Facts The First International Judiciary Board

Table of Contents

Robert, Sarah Corbin The Scott, Foresman Robert's Rules of Order Newly Revised 9th Edition, Scott, Foresman a Division of Harper Collins Publishers 1990

Church Of God In Christ, The Judicial Code Of Conduct, Church Of God In Christ Publishing House, Memphis: 1994

Ross, G. R. (Bishop) Church Of God In Christ, Inc. Certified Amendments 1968-1990, Office Of The General Secretary

Patterson Sr., J. O. (Bishop), History and Formative Years of the Church Of God In Christ, Church Of God In Christ Publishing House, Memphis: 1969

Hall, A. Z. (Pastor), So You Want To Know Your Church, A Zannju Publication-Memphis: 1994

Hammar, Richard R. (Attorney), Pastor Church & Laws Third Edition, Christian Ministry Resources Publisher 1999

Conboy, James C. Law & Banking American Bankers Association, Washington, DC 20036, 1982

Nolan, Joseph R. (Assoc. Justice) Black's Law Dictionary, West Publishing CO., ST. Paul, Minn. 1990

[Table of Contents](#)

[Table of Contents](#)