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LIMITED LIABILITY AND INCORPORATION

by Gary North

And the king said, Thou shalt surely die, Ahimelech, thou, and all thy father's house. And the king said unto the footmen that stood about him, Turn, and slay the priests of the LORD; because their hand also is with David, and because they knew when he fled, and did not shew it to me. But the servants of the king would not put forth their hand to fall upon the priests of the LORD. And the king said to Doeg, Turn thou, and fall upon the priests. And Doeg the Edomite turned, and he fell upon the priests, and slew on that day fourscore and five persons that did wear a linen ephod. And Nob, the city of the priests, smote he with the edge of the sword, both men and women, children and sucklings, and oxen, and asses, and sheep, with the edge of the sword (1 Sam. 22:16-19).

It should be obvious to any right-thinking, well-informed American lawyer where Ahimelech, his family, and his priestly associates and their families went wrong. They had neither formally applied to nor had received from the Israelite State legal incorporation for their local congregations. By refusing to do so, they abandoned the sure-fire protection afforded by corporate limited liability laws.

Why incorporate? To gain limited liability protection for all church members. Limited liability! If only the Armenian Orthodox Church had possessed such legal protection through the centuries. Why, the Turks could never have touched them! If only the Russian Orthodox Church had possessed such legal protection. Stalin would have had to restrain his anti-ecclesiastical actions to making hostile speeches in front of the Politburo...

Please forgive my sarcasm. It is inherent in my calling. I am forever being asked to reply to the published opinions of contemporary Christian theologians and Christian lawyers.

King Saul was wicked, and he was after the priests' very lives. No official piece of paper would have saved them. The same is true of any congregation today that becomes the target of wicked civil rulers. No piece of paper is likely to have much effect during a systematic attack on a church by the State. The paper may deter less dedicated, less evil, and less confident bureaucrats, but it will do little to protect anyone in political power when wickedness abounds.

What about during the interim? What if the Church-State crisis has not come to a head? Does incorporation provide a degree of legitimate protection? To answer this, we must first consider the question of legitimacy. Is limited liability a legitimate goal for an individual, a church, a profit-seeking corporation, a limited partnership, an insurance company, or any other institution? Let us begin with personal liability.

Cosmic Personalism

The Bible tells us that we live in a universe which was created by God at the beginning of time, and that this world

is sustained by Him, moment by moment. The twin doctrines of creation and providence are therefore linked. The universe which God created, He presently sustains. We therefore live in a world of cosmic personalism.¹ God's answer to Job; beginning in chapter 36 and continuing through chapter 40, presents a summary of the total control of all events by God.

Men are made in God's image (Gen. 1:27). In neither this world nor the next can men escape full responsibility before God for their actions. God holds them responsible for everything they think, say, and do. "But I say unto you, That every idle word that men shall speak, they shall give account thereof in the day of judgment" (Matt. 12:36). "But I say unto you, That whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart" (Matt. 5:28). Everything people do is done within a personally sustained, God-ordained universe (Rem. 9).

Human action is therefore always personal, never impersonal. First, it is personal primarily with respect to God. God is the ultimate, inescapable fact of man's environment, not sticks and stones and 'social forces.' Second, human action is secondarily personal with respect to oneself: one's goals, choices, and assets. Third, human action is personal with respect to other human actors, both as individuals and as covenantal groups. Fourth, human action is personal with respect to the environment, which God has created and presently sustains, and over which He has placed mankind.

In summary, man's responsibility extends upward to God, inward to himself, outward toward other men, and downward toward the environment. It is comprehensive responsibility. When we speak of "responsible men," we should have this four-part, comprehensive responsibility in mind, not just one or two aspects. A person may appear to be responsible in one or two areas of his life, but whether he likes it or not, or whether he is adequately instructed or not, he is covenantally responsible before God in all four ways, and he will be held totally accountable for his thoughts and actions on the day of judgment.

Personal Liability for Damages

Who is responsible for damages sustained by an individual or organization, and what are the appropriate penalties? The Bible's case laws provide us with the governing standards for assigning legal responsibility for damages and the appropriate penalties. The principle of restitution is the fundamental principle of biblical jurisprudence: compensation to the victim as God's representative, and compensation to God in the case of capital crimes.²

1. Gary North, *The Dominion Covenant: Genesis* (2nd ed.; Tyler, Texas: Institute for Christian Economics, 1987), ch. 1.

2. Gary North, *Tools of Dominion: The Case Laws of Exodus* (Tyler, Texas: Institute for Christian Economics, 1990).

law. He must give an account of his actions when accused publicly of having committed a crime or other action in which he has injured another person, so long as he was not acting in his capacity as an officer of a local church, exercising sanctions exclusively ordained by God to the Church. Similarly, his actions as an individual do not bring members of his congregation into civil jeopardy. His liability is personal. It is therefore limited to him.

But what of his actions as a representative of the local church? Since the congregation has transferred formal authority to him, either implicitly or explicitly, to take certain kinds of corporate actions, should church members be held potentially responsible in a civil or criminal suit, biblically speaking? Let us consider some practical questions. What if some of them voted against giving him such responsibility? Should they become legally liable and therefore be required as individuals to pay restitution to the pastor's victims? Should they be held judicially accountable because they remained in the church? Also, what if certain members did not approve of the officers' actions? Must they declare themselves publicly in opposition in order to become immune from subsequent civil action? Or must they resign from the church?

These are monumental theological questions. Much of the legal and economic development of Western Civilization was shaped by the answers given by Western society to these and related judicial questions regarding liability. A jurisdictional war between Church and State is now being mobilized over these questions.

If individual church members had historically been held legally responsible in civil court for the actions of church officers over them, could the Church have survived in any form other than as an underground fellowship? Put a different way, when Christianity became the dominant force in Western society, should this have led to the creation of a system of civil law in which church members were held legally responsible for the actions of church officers in authority over them? This raises the crucial legal issue of subordinate liability. Should it be limited by law?

Limited Liability

Man is not omniscient. No human institution is omniscient. Neither is any human institution omnipotent. Therefore, because the Bible denies both the omniscience and omnipotence of man, Christianity necessarily must affirm the doctrine of limited liability before the State. Although God holds each person fully responsible for all of his thoughts and deeds, no agency of human government has the power to do so or the God-given authority to attempt to do so. Christians must affirm that with respect to the decisions of human governments regarding men's personal responsibility, there must always be limited liability. No agency of human government is omniscient; none possesses the ability of God to read the human heart or to assess damages perfectly. We must wait for perfect justice until the day of final judgment. To insist on perfect justice from human government is to divinize that agency. It will also lead to its bankruptcy and the destruction of justices

Excommunication

Consider an excommunication. The officers of a church excommunicate an individual: bar him from the Lord's table. This is the most threatening sanction that can be brought against anyone in history, including capital punishment. Christians must presume judicially that such a person is going to hell; so should the excommunicated per-

heaven: and whatsoever ye shall loose on earth shall be loosed in heaven." Paul also stated clearly: "In the name of our Lord Jesus Christ, when ye are gathered together, and my spirit, with the power of our Lord Jesus Christ, To deliver such an one unto Satan for the destruction of the flesh, that the spirit may be saved in the day of the Lord . Jesus" (1 Cor. 5:4-5). Being delivered to Satan in history is a fearful sanction, although few people in our day fear it.

To be refused access to the Lord's table is, in a Christian society, a public black mark against a person. It censures his moral character. It costs him. Should the excommunicated individual have the legal right to sue the offending church in civil court? If the facts used by the church court to make the decision to excommunicate are later proven to be false, or at least not acceptable in a civil court, should that individual be awarded damages from the church? If the church is bankrupted by this decision, should the victim be given the right to collect civil damages from all the members? Furthermore, if he had appealed the excommunication to the highest church court, and this court affirmed the decision of the local assembly, should the excommunicated individual subsequently be awarded monetary damages by the denomination, or even by the entire membership of the denomination, if these accusations are disproved in civil court? After all, the members of the denomination were lawfully represented by the general assembly or synod court.

If the Christian's answer is yes to all these questions, then he needs to consider what would happen to church membership under such a legal system. Does he imagine that the authority of the Church to excommunicate members would survive this kind of judicial assault against the Church's hierarchy? If the authorities of the Church are not legally immune from the civil laws of slander in cases of excommunication, then on what basis can the members be deemed legally immune, if the officers are their official representatives covenantally?

A few years ago in Oklahoma, a church excommunicated a woman who was having an adulterous affair with a local civic official. She took the church into civil court. She won the case. The church was fined. It is clear where such civil rulings are in principle headed: toward the destruction of the Church.

If this trend continues, what good will a piece of corporate paper be?

Subordinate Responsibility

A man should be held legally responsible for what he does in public, unless he is acting as an authorized agent of a legally immune institution, i.e., Church or State. Nevertheless, he is not to be held personally responsible before any human institution for what those in lawful authority over him do. He is responsible only for his own actions. To say otherwise is to invite anarchy. This is the institutional reason for limited liability. It limits both the Church and the State, each of which possesses a legitimate, God-given monopoly of authority.

The principle of limited liability is an outworking of Deuteronomy 24:16: "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin." The fathers must exercise authority. If every move they make is challenged by a son on the basis of the civil threat of subordinate liability, family authority will disintegrate.

The present war of the State against the Church is clearly an attempt to destroy the authority of the Church. A legal seminar was held last year by the American Bar Association to teach trial lawyers techniques for "piercing the corporate veil" of churches in order to make all members personally liable. This is satanic to the core. Jesus

3. Gary North, *Moses and Pharaoh: Dominion Religion vs. Power Religion* (Tyler, Texas: Institute for Christian Economics, 1985), ch. 19: "Imperial Justice."

clearly an attempt to destroy the authority of the Church. A legal seminar was held last year by the American Bar Association to teach trial lawyers techniques for "piercing the corporate veil" of churches in order to make all members personally liable. This is satanic to the core. Jesus was correct when He warned: "And he said, Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers" (Luke 11:46).

The Modern State's Assertion of a Monopoly

The modern secular humanist State seeks to gain a monopoly over this God-given right of limited liability. It seeks to make limited liability a legal privilege granted by the State rather than merely a formal acknowledgement by the State of legal immunities held by citizens in their capacity as members of churches, corporations, limited partnerships, trusts, and other contractual associations. The Anglo-American State for over three centuries has sought monopoly status as the sole grantor of this supposedly privileged corporate legal status. As it has become more and more persuasive in this biblically unauthorized claim, it has become the most powerful institution in society. These two historical developments are related.

Without limited liability there would be institutional anarchy. The inescapable relationship between limited liability and social order can be seen by asking this hypothetical question: What would happen if voters could be held personally liable financially for crimes and misdemeanors committed by their elected representatives? What would happen to democratic political order? It would collapse. The only defense of one's threatened interests would be revolution. Every act of the sovereign, be he monarch or politician, would create the seeds of a revolution, for every act of government can become the basis of a subsequent lawsuit.

Civil government is greatly hampered by the continual threat of revolution; it tends to become tyrannical in such circumstances. Anarchy or tyranny would be the inescapable alternatives in a world of unlimited political liability. It should be obvious that limited liability status for citizens (subordinates) is fundamental to civil government. It is in fact fundamental to all government.

A Grant of Privilege

Let us now consider a world in which limited liability protection is a privilege granted exclusively by the State – a world frighteningly close to ours. The first institution that would be granted limited liability status by the State is the State. This grant of privilege would not normally begin with a formal declaration of limited liability. Limited liability in politics is assumed to apply from the outset. Without it, democracy would be impossible, as we have seen. The principle of limited liability for voters would then be extended by the State to officers of the State: a formal declaration of complete legal immunity.

We have already witnessed this process. Consider the development of Constitutional law in the United States. In 1793, the U.S. Supreme Court accepted jurisdiction in a lawsuit involving the claims of one state against another (*Chisholm v. Georgia*). The political reaction was instantaneous. Congress immediately proposed the Eleventh Amendment, and it was overwhelmingly ratified: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." Liberal Justice Felix Frankfurter, who despised this amendment as "a survival of monarchical privilege," admitted that "Both the United States and the States are immune from suit unless they agree to be sued" (*Kennecott*

Copper Corp. v. State Tax Commission, 1948). It is generally accepted by legal scholars that "In the text of this amendment is found the only provision for sovereign immunity in the Constitution. . . ." ⁴ No one can sue a state without its grant of privilege to do so.

Senators and Congressmen have always been immune from lawsuits for anything they say on the floor of Congress. They granted themselves this immunity. They are immune from arrest while on the floor of Congress; the Senate or House of Representatives must first authorize any such arrest in its own chambers. Copyright laws do not apply to the *Congressional Record*. Most of the environmental laws that Congress passes do not apply to Congress. The laws governing "sexist discrimination in employment" do not apply to Congressional staffs. The list could be multiplied. This is not simply limited liability; it is total immunity – the same kind of immunity that the Church has been given by God in excommunicating members without outside interference or appeal.

Legal immunity is the identifying mark of final sovereignty. As we know all too well, this legal status is not accorded by the modern State to any other institution, especially the Church.

What we see today is a tentative assault by the State and its profit-seeking accomplices, the lawyers, against the judicial sovereignty – i.e., legal immunity – of the Church. A seminar to train lawyers in ways to "pierce the veil of the church corporation" to get into the wallets of church members is a preliminary public announcement of a mobilization for war. Lawyers will unquestionably respond, as mercenaries always do if the bounties and spoils are high enough. Most Christians will not even suspect what is happening to them until severe damages are inflicted on them personally and on the Church – damages which no civil suit will be allowed to rectify.

We must ask a crucial question: Who sews the corporate veil? This is the one who can legally rend it.

Who Sews the Veil?

The problem with the recommended defense strategy offered by the proponents of local church incorporation should be apparent. If a church applies for the veil of protection to the civil government, what is to protect it when this veil is pierced? If the State decides to tax all organizations that are formally under 501(c)(3) "protection," and the Supreme Court upholds this (e.g., *Swaggart Ministries v. California*, 1990), then what protection remains? Politics. I see only one viable legal defense: never having applied for 501 (c)(3) protection.

Today, the very existence of an application to the Federal government for protection is a public announcement that the applicant has surrendered jurisdiction to the Federal government. "The State giveth, and the State taketh away; blessed be the name of the State." There is an inescapable jurisdictional question involved here, and jurisdiction means speaking the law. Who speaks the ultimate law, God or the State? Should the Church formally acknowledge the State as the supreme law-speaker in history? If not, then how can it apply to the State for incorporation, a supposed grant of privilege from the State?

There are those within the camp of the faithful who insist that limited liability protection is only available through incorporation by the State. Have they never heard of trusts? Have they never read the Internal Revenue Code, which states specifically that no church is required to apply for 501 (c)(3) status in order to gain immunity from Federal

4. Congressional Research Service, Library of Congress, *79th Constitution of the United States of America: Analysis and Interpretation* (Washington, D. C.: Government Printing Office, 1972), p. 1275.

taxation? The church is listed in the United States Code Service (USCS) under the section, Mandatory exceptions: Section 508(c)(1), subsection A. Those who want more detailed information can write for an introductory packet to:

American Coalition of Unregistered Churches
2811 S. East St., Indianapolis, IN 46225

By the grace of God and the good sense of the voters, the Commonwealth of Virginia stipulates that no church is allowed to become incorporated. Churches must be set up as trusts. Do we find a unique level of tyranny in Virginia? It is not significantly different from any other American state. Trust law, which was invented by medieval English church legal theorists in the first place, has a long history of strict construction, bordering on immunity from the State, dating from Tyrrel's case (1557). Common law has a long tradition of protecting trusts from legal attack from the outside – far longer than corporate law.

The State today claims to be the sole authority allowed to create a corporation. It does not yet assert this right with respect to trusts; it recognizes the existence of a trust and enforces the common law regarding trusts. Biblically speaking, the State should also recognize the existence of a corporation; it should not be regarded as the corporation's creator.

The King of Every King's X

There is no earthly "King's X in a world of tyranny. The Turks did whatever they wanted with the Armenians, such as forcing all Armenian families to add the "ian" sound to their last names, in order to identify them as a captive people. Stalin massacred church leaders by the thousands. When the humanist State decides to destroy its most potent rival, the institutional Church, the Church's existing legal and bureaucratic immunities will be removed by law. Then the Church has but two appeals: to God and to a jury. Abolish trial by jury, and God only remains as the Church's defender.

The liability debate in ecclesiastical circles is almost exclusively confined to the quest for the cheapest and most effective legal loopholes for a church. This is a legitimate secondary debate. Lawyers ought to conduct it, as men with secondary authority. Theologians would be wise to defer making a decision until after the lawyers' debates have been heard. If, however, the winning legal team recommends an action that is inherently compromising for the Church, then the Church's officers must forego the use of the supposed loophole and stand firm with God. At that point, the lawyers had better learn to defend the Church on God's terms. They had better learn how to persuade a jury.

God's terms are clear: church officers possess lawful, God-given authority as His agents on earth, and this creates a biblical legal shield for church members to hide behind. While the State may break through this shield temporarily, with or without the promptings of trial lawyers, the biblical legal principle is clear: church members are not to be held legally responsible for the acts of church officers in authority over them during the officers' period of lawful tenure. Without widespread acceptance of this limited liability principle, the institutional Church would be undermined by autonomous, rebellious members who claim the right to disobey any decision of a Church in the name of their own potential unlimited personal liability in some civil court. This would disembowel the institutional Church.

"I suspect that some very clever humanist lawyers know this. Most lawyers are simply in it for the money, but others are far more calculating. They want to destroy the Church.

Proclaiming the Church's Independent Legal Status

I have done my best to establish a link between limited liability laws and institutional stability. Deny the former, and you help to destroy the latter.

The reason why the West has experienced such remarkable economic growth over the last three centuries, and especially over the last century, is in large part due to the acknowledgment by the State of the legitimacy of the limited liability corporation. It has allowed the voluntary creation of huge pools of capital; without limited liability status for the capitalists (investors) from creditors (who knew the risks of lending to a corporation), it is far less likely that such a capital base could have appeared. Where did the model for the limited liability corporation first appear? In the Church. This is what very few historians and theologians ever recognize. To acknowledge this would necessarily involve acknowledging the pre-eminence of the Church in Western history.

The Church is the model for the world. Christians should never forget this. The Church is the model – not the State, not the family, and not the profit-seeking business. The Church alone is the body of Christ – His corpus. The Church incorporates Christ in history, whose head He is. "And he is the head of the body, the Church: who is the beginning, the firstborn from the dead; that in all things he might have the preeminence" (Col. 1:18).

So, Christians must never cease to affirm the independent legal status of the Church. The State does not create the Church. The State is not the source of the Church's limited liability legal status. To deny this in any way, except under outright State compulsion – and then only when accompanied by formal legal protests – is to weaken the comprehensive claims of Jesus Christ in history. The State's claims in this regard must be denied, both in word and deed. A local church must not seek legal incorporation from the State until the State formally acknowledges that the Church possesses this legal status from God, independent of the State. Until the State admits that it simply recognizes the Church's status as a limited liability institution, the Church should not crawl on its belly to receive a supposed grant of privilege from the State.

Conclusion

A piece of State-approved paper will not protect the Church when the State decides not to honor it. The question now becomes: Who sews the veil and cloaks the Church in it, God or the State? The Church's answer had better be absolutely uncompromising: God. But today the leaders of the Church do not perceive the magnitude of the jurisdictional choice that is being placed before them. They simply go along with the lawyers and incorporate. It is a nearly automatic decision on their part. They implicitly ask the State and the lawyers to create binding legal immunity from the State and the lawyers. And when anyone challenges the wisdom of what they are doing, they seek out some prominent theologian to defend their unwillingness to bypass the State and declare the legitimate independent authority of the Church under God. It is appalling. It is also quite common. There will be a heavy price to pay – in God's court and in humanist man's.