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SHOULD CHURCHES INCORPORATE?

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Last month I received, as did many around the country, a "Chalcedon Position Paper," No. 50, entitled */corporation*, by Rousas J. Rushdoony. In this essay, Mr. Rushdoony basically recommended that churches seek incorporation from the state. Mr. Rushdoony was critical of those advocating disincorporation of churches.

While I agree with most of what Mr. Rushdoony wrote in his essay, I find that I have some fundamental difficulties with his presentation. Because this subject is so important, and because we at Geneva have received numerous inquiries about Mr. Rushdoony's position ("Do you agree with Rushdoony on this?"), we have decided that we should reiterate our position at this time. The position taken by Geneva Ministries is that we can see no virtue whatsoever in seeking incorporation from the state, and we see much positive harm in it; thus we recommend that churches not seek such incorporation, and that churches which presently are incorporated should disincorporate as soon as possible.

The Christian doctrine of "incorporation" is, as Rushdoony points out, sacramental. It is the sacramental body of Jesus Christ which creates the oneness of the Church on earth, and which makes her one "body," one "corpus," incorporated into Christ and into one another. Thus, as Rushdoony again rightly points out, the sacramental body of the Church has a life of its own, and continues down through generations. As he states it, "... the concept of the corporation has been important in history by giving continuity to the works of men."

Non-Christian Forms of Incorporation

Pagans also have notions of incorporation, which provide continuity over generations. In paganism, the primary form of incorporation is either familistic or statist. Pagan familism sees the patriarch as head of

a clan consisting of all the sons and their wives and children (and maybe sons-in-law as well). Thus the family is granted continuity over the generations, and the family (or clan) becomes a visible power on the earth in this sense.

Such a philosophy flies directly in the face of the command of Genesis 2:24, "For this cause a man shall */cave his father and mother* and cleave to his wife." The Christian position is that each new marriage starts a new family, separate from the old "one." When we read the book of Genesis, we find this command carried out literally, for Isaac did not live near Abraham, nor did Jacob live near Isaac (though they visited one another from time to time). Patriarchal familism is one of the pagan forms of incorporation, for it makes the family the primary place of incorporated continuity and power. Rushdoony is right to point out that the family has a corporate aspect, an aspect of succession, but in Christianity that aspect of the family is greatly diminished when compared to patriarchal familism. The older "corpus" or body is cut off when the son or daughter leaves and cleaves. The family, thus, is incorporated for only one generation.

The second form of pagan incorporation, most common today, is statism. For Aristotle, as for virtually all sophisticated pagan thinkers, man is a "political animal." Man's ultimate reference point is the *polis* or state-community. Rushdoony cites Kantorowicz's studies to show that statist thinkers in the Middle Ages saw the state as more important than the Church in the area of incorporation: "The state indeed went so far as to see itself as the mystical body of Christ and as the true and central Christian corporation."

We live with this today. "Incorporation" today is something granted by the state. That is the common meaning of the term, and of the concept embraced by the term. Since this is the case, churches ought not to "incorporate," since to do so is to sue for a license from the state.

The Church is already a true corporation. She is so by virtue of the sacramental presence of Christ's body in her midst and at her heart. She does not need to "obtain incorporation" from any earthly power.

The Corporate Church

The Church is a unique institution on the earth. There is nothing like it in paganism. Religious ritual in paganism is either a form of ancestor worship (familism) or state worship (statism) or both (usually). Apart from a belief in the Creator/creature distinction, there can be no concept of the Church as an institution which makes visible in concentrated form the presence of God upon the earth.

In the Christian faith, the Church is not only one institution among several (state, family, business), she is also the primary institution among all of them, in one sense. This is because the life of the Church encapsulates all the rest of life. Her courts are the foundation of all other courts. Her laws are the foundation of all other laws. Her discipline of excommunication is the most terrible of all punishments, of which execution by the state (frightening as it is) is but a shadow by comparison. Her ritual sets the tone for all of life.

Briefly, to make the point clear, let us look at this last point about ritual. The central ritual of the Church is the four-fold action of Holy Communion. Jesus *took* bread, *gave thanks*, *broke* and *distributed* it, and they all *ate* it. This four-fold action (taking, thanking, sharing, enjoying) is the key to the Christian life in every area. An artist takes raw material, thanks God for it, creates his art and distributes it (playing a concert, exhibiting a painting), and enjoys it in fellowship with others. A businessman takes raw material, thanks God for it, works with it and shares it by means of the free market (exchanges it for a share of someone else's goods), and then enjoys it in fellowship with others. This is the Christian life, and it finds its most concentrated expression in the liturgy of the sacrament.

Once upon a time, it was understood that the sacramental body of the Church was the primary form of "incorporation" on the earth, and that all other corporations were secondary in comparison to the Church. The Church performed marriages, maintained marriage certificates and birth records, granted divorces, etc., thus showing that the corporation of the family is an extension of the life of Christ and the Blessed Trinity in the world. The Church ordained kings, showing that the corporation of the state is an extension of the work of Christ in the world (His work of vengeance and wrath).

If that is what Rushdoony means by incorporation, we are with him. Let the state come to the Church and request incorporation! I fear, however, that that is not what is in view.

Mere Notification or Something More?

Rushdoony states that formerly "the incorporation of a church or Christian agency of any kind was simply a legal formality notifying the state of the existence of such a body and its immunity from statist controls." I seriously question if this has ever been the case. Granted that such a legal notification is desirable, I do not think that incorporation has ever been the means for it. Incorporating churches is a very recent phenomenon, and I suspect that most churches even today are unincorporated. In the state of Virginia churches are not permitted to seek incorporation at the bequest of the state. Rather, churches who wish to can simply create a trust document, and deposit a copy of it in the records of the county or state. This is notification enough. The state is obliged to file all such records submitted to it, but such a procedure does not entail any request for permission. -

Rushdoony comments, "the matter can be compared to filing a birth certificate." That is true of a trust document, but not of incorporation papers. There can be no question of the fact that at the present time a grant of incorporation by the state is a grant of privilege, and makes the Church beholden to the state.

Even simply filing a trust document can be dangerous. After all, who will adjudicate the trust? Moreover, if we say (rightly) that God the Holy Spirit is the Author/Originator of the Trust (the Church), that God the Father is the Beneficiary of the Trust (1 Cor. 15:28), and that God the Son, in the persons of His representatives (elders), is the Administrator of the Trust—well, will the modern, pagan state accept such a trust as valid? I doubt it.

If the Church is truly *sui generis* (that is, of her own kind, unique, having no foundation in any other human institution), then the Church is under no obligation to make any notification to the state at all. Westminster Presbyterian Church of Tyler, Texas, of which I am a member, is neither incorporated nor set up as a trust, yet it holds property, does business, etc. Under common law, the Church is recognized not as a corporation, nor as a trust, but as the Church, a unique institution on the earth.

As a courtesy, a church may notify the state that it has been formed. This would be particularly true in a Christian land. Today, when the state stands as an enemy against the Church (at least at the point of jurisdiction), there is no need to invite trouble by having any more to do with the state than we absolutely have to. But, if we are going to do anything, a trust rather than incorporation is the way to do.

The jurisdictional aspect of the Church was lost in Protestant lands centuries ago. Church buildings are no longer physical sanctuaries. Once upon a time, the Emperor Justinian did not dare send his soldiers into the Church of St. Lawrence to remove condemned criminals who had been given sanctuary; but

today the sheriff of Cass County, Nebraska, does not hesitate to bring his storm troopers into the midst of a religious meeting and forcibly haul out scores of ordained clergymen. We've come a long way, and today the state is engaged in little more than a mopping up exercise when it comes to taking over the Church. The battle was lost long ago. In our society, the Church is nothing more than a religious club. It exercises no dominical power for good in society.

Is the Church Vulnerable?

Why incorporate then? What conceivable benefit accrues to the Church (which is already incorporated in Christ) if she goes and obtains a second incorporation from the state? Rushdoony states, "Given the vulnerability of the church as an incorporated legal entity to statist controls, we should not forget the total vulnerability with disincorporation. In some court cases, the results are proving to be especially disastrous." Frankly, I cannot imagine what this means. It seems clear to me that an unlicensed church, which has not sought or been granted incorporation by the state, is in a much better position than a church that has applied to the state for some benefit, real or imagined. We may ask what any Christian church is doing in a state court anyway? Does the state now judge the Church?

It seems to me that we need to fight this battle at a much deeper level. No church should heed a summons to appear before the court of the state. Church officers may and should appear as a courtesy, by "special appearance," but not as if the Church herself is on trial. If the Church and her officers are put on trial (by the sheer brute force of the state), the Church has already lost the primary battle, the battle of jurisdiction. The Church, her laws, her ordinances, her decrees, her property, etc., are simply not under the inspection of the state. We cannot grant any such claim.

To be sure, when they have a gun to your head, you give them your wallet. A given local church may choose to pay a bribe to state officials (for instance, property taxes), if the state refuses to honor the principle of jurisdiction and threatens to close down the Church. We know that eventually the Church will emerge victorious, as she always has. Two thousand years from now, when the United States of America has but a paragraph in world history books, the Church of Jesus Christ will still have true incorporation in Christ, and will still have her own courts, laws, and property. We can afford to be "wise as a serpent, and harmless as a dove," for we know in Whose hands the victory already lies.

This has been the tactic of the Roman Catholic Church for centuries. She maintains lawyers, and gives outward compliance to all laws, pretending deceptively to be under the rule of the state. The

Roman Catholic Church expects to be around when the modern state has faded from the collective memory of mankind. The Roman Catholic Church is patient. We as Protestants (Reformed Catholics) may have to take our cue from this.

But, if a church finds herself paying a property tax, or a social security tax, or in court before a secular judge, this is not because the Church recognizes the legal jurisdiction of the state over the Church. It is not because the Church has obtained incorporation from the state. It is only because the Church recognizes that God has given temporary raw power into the hands of Babylonians, to chastise His true Israel, for a season, and we recognize that we must submit to His smarting rod, even as our Lord did.

Even so, when we stand before Caesar's governors, we must say, as He did, "The Kingdom of the Church is not of this world. You do not have authority over it. You have power only because it has been granted you from On High, and we submit to your power, but not to your authority. As citizens and individuals, we are under your government, but as the Church of Jesus Christ, we are under His government alone."

(I have dealt at some length with the differences between submission to legal authority and submission to raw power in my essay, "Rebellion, Tyranny, and Dominion in the Book of Genesis," in Gary North, ed., *Tactics of Christian Resistance*, available for \$14.95 from Geneva Ministries. This essay also deals at length with the question of deceiving tyrants.)

Is the Church totally vulnerable if she disincorporates? Hardly. As a minor point, we can note that the immunities of the Church are recognized in common law. While in a general sense, the Church lost the battle for jurisdiction long ago, yet in specific cases she may still win. Moreover, maintaining the rights of Christ's Kingdom before the magistrates of this age is a time-honored form of evangelism. Also, few states are as vindictive as Nebraska, and few local judges have the guts to behave as Judge Ronald Reagan (yes, that's his name) in Nebraska has, in putting pastors into jail for months on end, denying them paper to write on, etc.¹ It is possible to win local battles, in other words. But this is not the major point.

The Awesome Power of the Church

The major point was made by Jesus when He said, "Be not afraid of them that kill the body, and after that have no more that they can do. But I will forewarn you Whom ye shall fear: Fear Him which after He hath killed has power to cast into hell; yea, I say unto you: Fear Him" (Luke 12:4-5). What is the ultimate power of

1. These are the terms under which pastor Silven is serving an eight month jail sentence, for operating a Church-run school without a state license.

the state? It is the power to kill. What is the ultimate power committed to the Church? It is the tremendous power to excommunicate, and to place a curse upon the wicked, I have dealt with this my essay "A Liturgy of Malediction: which can be obtained from Geneva Ministries for a contribution.

Briefly, though, when we look at the Book of Revelation, we find that its prophecies (however we may interpret them) are revealed in the context of a worship service. It begins on the Lord's Day (1:10). We find seven pastors (or groups of pastors symbolized as angels) for seven cities. Then, we go into heaven, and we see worship conducted in heaven, by groups of seven angels. We pray "Thy will be done, on earth as it is in heaven." Just so, the patterns of worship and action seen in heaven are the model for the seven "angels" (pastors) on earth.

First of all, the seven angels in heaven sound trumpets. This corresponds to the proclamation of the Word by the seven pastors on earth. It is a savor of life to some, and a savor of death to others (2 Cor. 2:16). Here the focus is upon the judgments pronounced by the Church against evildoers. These trumpets have a mighty power—such is the power of the public reading and preaching of God's Word.

Then, the seven angels in heaven pour out vials or bowls. This corresponds to the sacrament of the Lord's Supper administered by the seven pastors (or groups of pastors) on earth. Here again, it is a drink of life to some, and of death to others (1 Cor. 11:29-30). The focus is again on the destruction poured out by the Church upon evildoers. The curses pronounced by Christ's officers at the sacrament have a mighty power indeed!

The result? The enemies of Christ and of His Church are vanquished. Such is the power of im-

precatory psalms. Such is the power of a "liturgy of malediction."

Are we vulnerable, then? Does the modern pagan state want to pit its pitiful "incorporation" against the omnipotent incorporation of the Church into the very body of Christ, the King of kings and Lord of lords? Let us see who wins such a contest!

From what I can see, however, such a contest is unnecessary. No state requires churches to incorporate, and all states continue to grant implicit recognition to the Church as a *sui generis* institution. We need not give this privilege away.

The fact that we disagree with Mr. Rushdoony on this one point should not be blown out of proportion. If incorporation were only what Rushdoony says it should be (a mere notification to the state, out of politeness), we should agree with him. From what we can tell, however, that is not what incorporation means in our society, and we think that it is best for churches to stay out of the way of the state as much as possible; and certainly we think it best for them not to incorporate.

With this caveat, however, I can certainly recommend a reading of Mr. Rushdoony's article on incorporation. If you do not have a copy, you can obtain one by writing to Chalcedon, Box 158, Vallecito, CA 95251, and asking for "Position Paper No. 50: incorporation." It is well worth reading.

The American Coalition of Unregistered Churches is exactly what its name says. If such an organization sounds good to you, then write to them at this address: P. O. Box 1224, Indianapolis, Indiana 46206. The organization is Fundamentalist rather than Reformed, but they are definitely standing against state licensure of Churches.

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