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Ecclesiastes 12:12

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Richard R. Hammar's PASTOR, CHURCH, AND LAW¹

by Michael R. Gilstrap

The fly-leaf to *Pastor, Church, and Law* begins by asking the question, "Where do you turn when you have legal questions about the Church's activities and its business?" After carefully reading this book, it is clear that the one place **you should not turn** is to the pages of *Pastor, Church, and Law*.

Pastor, Church, and Law is one of those classically bad books in the same category as Ronald Sider's *Rich Christians in an Age of Hunger*. The book is purported to be "the first comprehensive study of American church law in recent history." In reality it is the first full-fledged **manual for legal capitulation to the messianic state** offered to the Church. If the Christian Church follows the leading of Mr. Hammar, the State won't have to fight to control the Church—the Church will have already given herself up!

Overview of Book

The general idea behind *Pastor, Church, and Law* is a good one. The Christian Church needs to know how it relates to the present system of civil law due to the increasing hostility of the federal and state governments. A great deal of confusion and uncertainty surrounds the application of civil law to the Church. Hammar's book is intended to reduce this confusion and uncertainty by "providing seminary students, clergymen, attorneys, and accountants with a comprehensive yet readable analysis of the major laws affecting churches and clergymen" (p. 7).

The book is divided into three parts. Part One, titled "Law and the Pastor," focuses upon the legal privileges and liabilities of ministers. Hammar considers in detail such important issues as social security and income taxes, contractual relations between a minister and the local Church, confidential communications, negligence, defamation, privacy, and clergyman malpractice.

Part Two, "Law and the Church," which is by far the greatest portion of the book, predictably concentrates upon the application of civil law to the Christian Church. Such subjects as incorporation, recordkeeping, income taxation, social security, reporting requirements, unemployment taxes, labor laws, regulation of charitable solicitations, zoning laws, administration of private schools, and the relationship of the Church to the Civil Rights Act of 1964 are covered.

Part Three, "Church and State," is the briefest section of

the book covering the last 50 pages. In this section, Hammar surveys Constitutional History, reviews landmark Supreme Court decisions involving the First Amendment religion clauses, explains the current interpretation of those clauses, outlines for the reader seven key First Amendment issues, and finally details what the Christians may expect from the courts on each. As you can see, the outline of the book is most promising.

Frankly, when I picked up the book, I thought, "Great, *finally* a book dealing with these issues in detail!" As I read through the book, however, I found that I was sadly mistaken. Instead of a book analyzing current federal and state laws in terms of Christian presuppositions, I found a book written by a "company man" instructing the Christian Church in the ways it can best "get along" with the federal leviathan that crouches at the door. Instead of telling Churches how to avoid the clutches of the beast, Hammar details how the Church can strike up a friendly partnership with the State. In the field of economics we have Ronald Sider. **Now, in the field of law, we have Richard R. Hammar**

A Manual for Capitulation

Technically, 'capitulation' is "the act or agreement of one that surrenders upon stipulated terms." There is no better word or title that could be used to describe this book. (Unless it would be *Unconditional Surrender*, but somebody has already used that title!) From cover to cover, *Pastor, Church, and Law* outlines the Messianic State's terms of surrender. Point by point, line upon line, Hammar details for the Church what she must do to appease the State.

In the first section of the book, Hammar discusses the relationship of the Pastor to the law. In the process, he outlines the legal relationships involved in Minister-Church relations. As we all are well aware, there are times when Churches and their pastors have disagreements. Many times these disagreements involve money.

A case in point involved a Catholic diocese and a disgruntled priest. Apparently the Church was exercising some form of discipline on this particular priest, and withheld his salary. The priest sued his diocese for wrongfully withholding his salary. The diocese rightfully maintained that the civil courts could not entertain suits involving the administration of Church affairs and the relationship of a Church to its minister, even with respect to salary, since these are matters of purely ecclesiastical concern.

The Court decided that it did indeed have jurisdiction. In

¹ Gospel Publishing House, Springfield, MO, 1983; 447 pages, index, hardback: \$16.95.

the court's decision it observed:

It was not the intent of (the First Amendment) and it has been so held in many cases, that civil and property rights should be unenforceable in the civil courts simply because the parties involved might be the church and members, officers, or the ministry of the church. It was not intended as a shield to payment of a just debt when the purpose of the First Amendment is not being violated. Ministers have been awarded their salary in suits against the Church.²

Hammar sets this decision out as a matter of course. He doesn't even act surprised that a civil court would take it upon itself to intervene into the action of a Church court. He acts as if it is the rightful domain of civil courts to correct the "wrongs" perpetrated by the Church.

This exemplary oversight by Hammar points out *the fundamental flaw of this entire book*. **Hammar does not understand the issue of jurisdiction.** The Church of Jesus Christ is a separate, created, independent entity under the direct jurisdiction of God. She is not, at any time, under the jurisdiction of any civil government. Jesus Christ is head of the Church, and He has sole jurisdiction. His Word is the Church's only source of law. As a separate, created institution, the Church is equal with or on the same level as the State. The Church is not subject to the State, that is, the State does not have jurisdiction over the Church. Likewise, the State is not subject to the Church; that is, the Church as a government does not have jurisdiction over the State. Each is a separate and equal institution under God functioning in its own distinct sphere. There is an *interdependency* in terms of life and activity, but an *independence* in terms of human authority.³

The civil courts have no business whatsoever in usurping jurisdiction and ruling in a disagreement between a minister and the Church. In fact, the State has no business ruling in *any* matter involving the Church. Furthermore, the Roman Catholic Church was wrong in capitulating to the demands of the State. She should have stood her ground, refused to comply with the court order, and excommunicated the priest for suing the Church.

Instead of pointing this out to the reader, Hammar leads the Church to believe that it is perfectly acceptable for the state to have jurisdiction over the Church. His intent seems to be to guide the Church in such a way that when a situation like this arises, the Church will know what to do to make her peace with the State.

As most of you readers are no doubt aware, the jurisdictional question is by far the most important issue confronting the Church today. Where Hammar instructs the Church to capitulate is precisely the point at which the battle is raging. Jurisdiction is the issue behind the drive to control and regulate the Church and her schools. In the last ten years, we have seen unprecedented interference into the affairs of the Church. A Church's doors have been padlocked—another Church has been ransacked by local officials—still another Church has been threatened with property seizure for failure to pay back taxes. To top it all off, in 1984, the federal government will begin directly taxing the Church through the Social Security Administration. Hammar seems to be

perversely applying our Lord's words in the Sermon on the Mount, "Make friends quickly with your opponent at law while you are with him on the way, in order that your opponent may not deliver you to the judge, and the judge to the officer, and you be thrown in prison" (Matthew 5: 25). If a civil authority issues a decree to the Church, the Church has no other alternative than to comply. It is better to do so quickly once the decision has been made against her. Furthermore, Hammar goes out of his way to detail the way in which the Church can avoid problems with the State.

The Heresy of Definition

Another example of Hammar's drive for capitulation to the state is his unquestioning acceptance of the Federal Government's definition of a Church. In his chapter titled, "Definitions," Hammar lists the infamous "Fourteen Criteria for a Church" published by the IRS, and used by courts and other government agencies to determine whether a particular group or organization is, in fact, a Church. In case you are unfamiliar with the list, here they are:

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.
8. ordained ministers selected after completing prescribed studies.
9. a literature of its own.
10. established places of worship.
11. regular congregations.
12. regular worship services.
13. Sunday schools for religious instruction of the young.
14. Schools for the preparation of ministers.

The IRS points out that no single factor is controlling, and that all fourteen may not be relevant to a given determination. Hammar lists and explains the fourteen criteria without criticism and without question. In fact, he goes so far as to defend this gross encroachment of the Federal Government on the sovereign domain of the Lord Jesus Christ.

Hammar points out that the reason the IRS had to formulate these criteria was to challenge a variety of tax-evasion schemes that operate under the "guise" of a Church. According to Hammar, the schemes usually "involve some or all of the following characteristics: An individual forms his own Church, assigns all or a substantial part of his income to the Church, takes a vow of poverty, declares himself to be a minister, retains control over all Church funds and property, designates a substantial housing allowance for himself, and reports the income that he has assigned to his Church as a charitable contribution deduction on his federal income tax return." The IRS obviously doesn't like this sort of thing, so they developed a way to call a Church "a non-church." The tax-exemption is removed, and the scheme is frustrated. Thus far, Hammar.

There are several serious problems with a civil authority defining a "Church." First and foremost, to define something is to control it—to give it meaning. To sit back and allow the IRS to usurp jurisdiction—to propose to call a "Church" a "non-church" is a grievous sin. To defend the practice, as

2. *Bodewes v Zuroweste*, 303 N.E. 2d 509, 511 (Ill. 1973)

3. For a more complete discussion of this and other key issues see my cassette tape package, *Deathblows to the Church*

Hammar has done, is unpardonably heretical. It is tantamount to surrendering the Lordship of Christ over the Church to the State—an excommunicable offense not too long ago in most Protestant Churches.

The second serious problem with the practice is that the IRS doesn't always restrict its usurped jurisdiction to the so-called "tax evasion schemes." One victim of this IRS crackdown is the Unitary Mission Church. Apparently, this was a very small Church—ten families or less. Another condition of the IRS, in addition to the fourteen criteria, that a Church must meet to remain a "Church" in the eyes of the IRS—in order to retain its federal income tax exemption—is that no part of its net earnings "inures to the benefit of any private . . . individual."⁴ In the case of Unitary Mission Church, the IRS denied her tax exemption—called her a "non-church"—on the ground that an excessive and unreasonable amount of her net earnings was paid to her pastor. In a small Church, a very large percentage of the tithes and offerings usually goes toward paying the salary of the minister. The IRS, a representative of the United States Federal Government, walked into a functioning Church (its orthodoxy is not an issue here), and shut it down.

Hammar defends the practice of the Federal Government's usurping jurisdiction by pointing out that the Federal Government only rules and makes determinations when such a determination can be considered a neutral act. In other words, when the issue is over something secular, like money, contracts, taxes, or business records. The Federal Government would never pretend to rule in an interpretation of "religious doctrine."

Here's another example: In 1982, the US Tax Court denied exempt status to a Church having fifty-six members that conducted regular evangelistic worship services, performed baptisms, communion services, weddings, and burials. The beliefs of the Church included the infallibility of the Bible, and whose Pastor testified that "we do not have a creed but Christ; no law but love; no book but the Bible."

The IRS contended that the Church was not entitled to exempt status since it *had not established* that "(1) its charter and bylaws provided for distribution of Church property, (2) it was operated exclusively for religious purposes, (3) it was operated for public rather than private interests, and (4) its net earnings did not inure to the benefit of private individuals." Read that last sentence carefully. The IRS did not deny tax exemption to the New Life Tabernacle *because* it was guilty of one of the four things listed—it denied tax exemption, and in the process denied that it was a "Church," because the Church *failed to establish* that it was not guilty.

Guess how Hammar defends the IRS in this case? He points out that the IRS can't be burdened with disproving the exempt status of religious organizations. He writes, "Churches, like any other exempt organization, have the burden of proving that they meet each of the prerequisites to exempt status. The burden of proof is not on the IRS to disprove eligibility for exempt status" (p. 353). Not one word of condemnation! Not even a hint that the IRS is tyrannical and unjust! Not even a milquetoast "They really shouldn't have done that" **Nothing**. Hammar's position seems to be, "The IRS said it—I believe it—and that settles it."

Hammar fails to take into consideration what "defining a Church" really means. To define a Church—to make a determination that a particular congregation is indeed a

Church—is to make a theological determination of the highest degree—regardless of the reasoning supporting the decision. Leaving the question of unorthodox groups aside for a moment, a Church of Jesus Christ is one because the Lord *personally* called out that group of people for Himself. For the State to make a contrary determination is to strike at the very heart of our Lord's authority. It is equivalent to the State publically issuing a declaration of war against God. What does that say about an individual defending the State's practice? **That is exactly what Hammar does in this book!**

Furthermore, there are no such things as "neutral principles." For a civil authority to make a ruling involving a Church, is to exercise jurisdiction over that Church. Where a civil authority exercises jurisdiction over a Church, in that Church, Christ is no longer sole head and Lord of the Church. In other words, to follow Hammar's lead, to capitulate to the jurisdiction of the State in certain "non-religious" areas is to be faithless to Christ. It is to deny His Lordship. It is to burn incense to Caesar.

Advocate for the State

In several important cases where the State has unjustly and wrongly ruled against the Church, Hammar either points out why the State ruled as it did, or very carefully sidesteps the issue stating simply "it has been held. . . ." For example, everyone remembers the valiant fight that Lester Roloff put up against the State of Texas refusing to have his children's homes licensed by the state.⁵ Hammar quickly observes in a section on building codes that "it has also been held that a state law establishing minimum standards for the safety of children in child-care facilities and enforcing such standards through inspections and licensing did not violate the religious freedom of a children's home administered by a religious organization" (p. 273). In a footnote at the bottom of the page he lists the cases in support of the statement. Guess what the first two references are? Roloff Evangelistic Enterprises, Inc. v. State of Texas and Corpus Christi Peoples' Baptist Church, Inc. v. Texas Department of Human Resources. Both cases were over the same thing—who was going to control the children's homes—Jesus Christ or the State of Texas? Roloff went to jail for what he believed in. **Hammar writes a book attempting to lead God's sheep to the slaughter for what he believes in.**

Another case in point is the harassment of the Church of Christian Liberty pastored by Dale Dykema.⁶ In this case, the IRS went on a fishing expedition. Pastor Dykema and the Church were asked to produce the names of all contributors during the previous four years; all correspondence during that period; the names and addresses of all officers, directors, trustees, and ministers; all minutes; and all documents reflecting the principles, creeds, precepts, doctrines, practices, and disciplines espoused by the Church of Christian Liberty.

Instead of screaming bloody murder at this bold, nefarious brutalization of one of Christ's flocks, Hammar merely observes, "There have been several cases involving the power of the IRS to inspect church records. Section 7602 of

5. For more information on this important battle see R. J. Rushdoony and Caroline Kelly, "Lester Roloff," in Douglas Kelly, ed., *The Journal of Christian Reconstruction*, Vol. VIII, No. 2, pp. 158-164.

6. For more information on this case see, Alan Stang, "What the War is Really About," in Gary North, ed., *Christianity and Civilization*, No. 3, *The Theology of Christian Resistance*, pp. 24-39.

the Internal Revenue Code gives the IRS the authority to examine or subpoena the books and records of any person or organization . . . this authority has been held to apply to churches" (p. 142). And true to form, he footnotes one of the victims—Pastor Dale Dykema, Church of Christian Liberty.

Tax Exemption

Finally, we must examine the notion of tax exemption for Churches. This review, up to this point, has dealt pretty strictly with what Mr. Hammar has written. On the subject of taxation of Churches, Hammar gives the reader the straight party-line—here's what the IRS wants, and you Churches must give it to 'em. Instead of wasting your time with one more section bemoaning the shortcomings of this book, let us look in conclusion at a Christian position on taxes and the Church.

The Church of Jesus Christ does not need tax exemption! Is that surprising to you? If it isn't, then you are one of a few. The IRS has so conditioned our thinking that it is second nature to think of the Church as tax exempt.

The Church is a separate institution accountable solely to the Lord Jesus Christ. Tax exemption is a grant of privilege from the Federal Government to the Church. For a Church to claim the privilege means that that Church is under the jurisdiction of the State. As we have seen, the Church must never, ever become accountable to the State, and therefore subject to taxation or tax exemption. To do so is to surrender to another "head" other than Christ. To surrender to any other "head" other than Christ is spiritual adultery, and I fear the Church of the twentieth century is guilty of just that.

It is important, at this point, to assert the distinction between "immunity" and "exemption." When a Church claims to be exempt, even if it asserts that it is automatically exempt, *the Church is implicitly submitting to the jurisdiction of the State*. Furthermore, when a Church accepts tax exemption from the government, that Church is *being subsidized by the government*. In a recent Supreme Court decision, *Regan v. Taxation with Representation* (1983), Associate Justice William Rehnquist wrote, "Both tax exemptions and

tax-deductibility are a form of subsidy that is administered through a tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income."

The Supreme Court rightly recognizes that when the government grants a tax exemption, *it is allowing that party to keep money it would ordinarily have paid to the IRS*. The government's position is that tax exemption is a matter of legislative grace, not right.

If this is the case, then, what must our position be? The Church certainly doesn't need "legislative grace" to avoid paying taxes, and she must at all costs avoid submitting to the jurisdiction of the State. What must she do, then?

We must everywhere assert that because the Church of Jesus Christ is a separate institution under God, she is **immune** from the State's jurisdiction. The Church does not pay income taxes, or any other kind of tax, not because it is *tax exempt*, but because it is **immune** from civil jurisdiction.

Immunity and exemption is a very important distinction. It will help us in all of the other "problem" areas in the Church-state battle, particularly with the growing hostility toward Church-sponsored Christian schools. It doesn't mean that the Church won't have to fight, but it does give the Church a firm position to stand upon.

To stand upon the shifting sands of "tax exemption" or "First Amendment rights" in this day of judicial relativity is foolhardy. To stand, however, upon the sovereign Lordship of Jesus Christ, asserting His unique and sole headship of the Church, is the essence of wisdom.⁷

7. For a more extensive treatment of the vital issue of jurisdiction in the context of Church-State relations see my two tape package "Deathblows to the Church." In this set I cover not only the general issue of jurisdiction, but also the particular problems of church incorporation, tax exemption, Social Security, and local fire, health, and safety regulations. In addition to a particular analysis of each area, this three hour set also offers specific, practical guidelines to ward off the State's deathblows. You may order this set by sending \$14.95 to Michael Gilstrap, P.O. Box 1084, Whitehouse, TX 75791.