

LAW AND THE CHURCH AS AN INSTITUTION

Scripture References:

- D&C 20
- D&C 21:1-3
- D&C 44:4-5
- D&C 58:17
- D&C 102
- 1 Cor. 6:1-6
- A of F 12

Selected Reading Material:

Late Corporation of the Church of Jesus Christ of Latter-day Saints v. United States, 136 U.S. 1 (1890)

Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327 (1987)

Davis v. United States, 495 U.S. 472 (1990)

Backman, James H., "Courts, Ecclesiastical, Nineteenth-Century," *ENCYCLOPEDIA OF MORMONISM*, pp. 329-40 (1992)

Riggs, Robert E., "Legal and Judicial History of the Church," *ENCYCLOPEDIA OF MORMONISM*, pp. 823-27 (1992)

Carmack, John K., "Organization of the Church, 1830," *ENCYCLOPEDIA OF MORMONISM*, pp. _____ (1992)

Firmage, Edwin Brown and Richard Collin Mangrum, *ZION IN THE COURTS: A LEGAL HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, 1830-1900* (Urbana, Illinois: 1988)

Driggs, Ken, "Lawyers of Their Own to Defend Them": *The Legal Career of Franklin Snyder Richards*, 21 J. Mormon History 84 (Fall 1995)

Porter, Larry C., *Was the Church legally incorporated at the time it was organized in the state of New York?*, 8 Ensign 26-27 (Dec. 1978)

Carmack, John K., *Fayette: The Place the Church Was Organized*, 19 Ensign 15-19 (Feb. 1989)

1850 Organic Act, 9 Stat. 453

Ordinance of Feb. 6, 1851, *L A W S AND ORDINANCES OF THE STATE OF DESERET (UTAH): COMPILATION 1851* (Salt Lake City, Utah: 1919) (recited in *Late Corporation v. United States*, 136 U.S. 1 (1890))

Act of Congress, July 1, 1862 (Morrill Anti-Bigamy Act), ch. 126, 12 Stat. 501 (1862) (repealed 1910)

Poland Act of 1875, 18 Stat. 325

Act of Congress, Feb. 19, 1887 (Edmunds-Tucker Act), ch. 397, 24 Stat. 635 *et seq.*, " 13, 17, 19 & 26 (1887) (repealed 1978)

Utah Corporation Sole Law, *UTAH CODE ANN.* " 16-7-1--14

Notes and Commentary:

Section A: The 1830 Organization of the Church

- *What do we mean when we say the Church was "organized" on April 6, 1830?*
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- *Why did the Church's organizers seek to comply with New York law regarding incorporation of religious societies?*
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- *Were they successful?*
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- *Do the doctrine and government of the Church indicate or mandate what legal form it should take?*
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- *Why and when might it be useful to distinguish between the "Church" as a spiritual and ecclesiastical body and the "Church" as a legal entity?*

Larry C. Porter, *Was the Church legally incorporated at the time it was organized in the state of New York?*, 8 Ensign 26-27 (Dec. 1978):

Section 20 of the Doctrine and Covenants speaks of the newly evolving "Church of Christ" as being "regularly organized and established agreeable to the laws of our country." (D&C 20:1) In 1969-70 I spent several months looking for evidence that the Church had been incorporated according to the laws of the state of New York. Though I could not locate the incorporating document, I found several accounts which show that the organizers of the Church were aware of and made a conscientious attempt to meet the legal requirements for incorporation. David Whitmer,

a contemporary and close associate of the Prophet Joseph Smith, showed that he recognized the legal requirements for the organization when he stated: "On the 6th of April, 1830, the church was called together and the elders acknowledged according to the laws of New York." (*Kansas City Daily Journal*, 5 June 1881)

Those Alaws" David Whitmer was referring to were AAn Act to provide for the Incorporation of Religious Societies," passed by the New York State Legislature on 5 April 1813. Section III of that act reads, in part:

III. And be it further enacted, that it shall be lawful for the male persons of full age, belonging to any other church, congregation or religious society, now or hereafter to be established in this state, and not already incorporated, to assemble at the church meetinghouse, or to the place where they stately attend for divine worship [in this case, the Peter Whitmer, Sr., farm house in Fayette Township], and, by plurality of voices, to elect any number of discreet persons of their church, congregation or society, not less than three, nor exceeding nine in number [Joseph Smith chose sixCCOliver Cowdery, Joseph Smith, Jun., Hyrum Smith, Peter Whitmer, Jun., Samuel H. Smith, and David Whitmer (*HC*, 1:76)], as trustees, to YY transact all affairs relative to the temporalities thereof. YY That on the said day of election, two of the elders or church wardens, and if there be no such officers, then two of the members [Joseph Smith, Jun., and Oliver Cowdery] of said church, congregation or society, to be nominated by a majority of the members present, shall preside at such election, receive the votes of the electors, be the judges of the qualifications of such electors, and the officers, to return the names of the persons who, by plurality of voices, shall be elected to serve as trustees for said church [the six men named above] YY in which certificate, the name or title by which the said trustees and their successors shall forever thereafter be called and known [The Church of Jesus Christ (*HC*, 1:79)].

With this knowledge of the legal requirements, I went in search of the elusive document.

* * * * My extensive examination of the primary sources thus pointed to at least two possible explanations: First, the organizers of the LDS Church met all the legal requirements and submitted their application for incorporation, but through some technicality or omission the certificate was never recorded in the appropriate record book. Or second, the organizers made an attempt to meet the prerequisites of the law, but the press of initial business and local opposition somehow stayed them from formally executing the document in a court of law during the ten months the Prophet remained in New York.

Given the circumstances, I doubt that the original certificate of incorporation in Seneca County will ever be found. However, it is possible that the elusive document is still in existence and will be discovered in an obscure place. The legal preliminaries were met by the Prophet Joseph—but we don't know if they were ever completed.

John K. Carmack, *Fayette: The Place the Church Was Organized*, 19 Ensign 15-19 (1989):

What Steps Were Taken to Comply?

Joseph Smith, Oliver Cowdery, and their fellow disciples kept no known records that detail how they complied with the New York law. But the documents we do have make it clear that the Prophet and his colleagues did take steps to comply with the law.

The first known recorded instructions from the Lord to Joseph Smith to organize the Church came as early as June of 1829. Less than a year later, on a date set by revelation, the Church was incorporated. In *History of the Church*, the Prophet Joseph Smith wrote:

"Whilst the Book of Mormon was in the hands of the printer, we YY made known to our brethren that we had received a commandment to organize the church; and accordingly we met together for that purpose, at the house of Mr. Peter Whitmer, Sen., (being six in number,) on Tuesday, the sixth day of April, A.D., one thousand eight hundred and thirty."

From what we read, the number of organizers was clearly within the statutory requirement of three to nine persons. Another requirement was met during the meeting when Joseph asked for a vote to name himself and Oliver as the presiding elders of the Church. This would have satisfied the requirement in the New York statute requiring two presiding elders at the incorporation proceedings.

The Prophet next asked for a vote on the central proposition that a church be organized. The vote was unanimous. Then he ordained Oliver to be an elder of the Church, and Oliver in turn ordained Joseph.

There was a rich outpouring of the Holy Ghost on the occasion, and new revelation was received. During the day, other brethren were called and ordained to offices of the priesthood. The account concludes:"(W)e dismissed with the pleasing knowledge that we were now individually members of, and acknowledged of God, "The Church of Jesus Christ," organized in accordance with commandments and revelations given by Him to ourselves in these last days, as well as according to the order of the Church as recorded in the New Testament."

That day several persons, including Joseph's mother and father, were baptized members of the Church.

Where Is the Certificate of Incorporation?

Although these events make it clear that at least two of the legal requirements for church incorporation were followed, the documents we currently have do not mention the other requirements. One important requirement, of course, was the filing of a certificate of incorporation. We do know that leaders of the Church took the necessary steps to qualify the Church as a legal entity under Illinois law, and actually filed the required certificate. Did they do the same in New York?

In August 1879, President John Taylor sent a letter to William C. Staines asking him to search for a New York incorporation certificate. William Staines hurried to the area and sent a detailed report to President Taylor that evidenced a careful but fruitless search in several local government offices for the certificate. I, too, have searched for the certificate. On 28 March 1988, thinking that the certificate may have been transferred to Albany, New York's state capital, I searched the state archives and the office where corporation papers are filed. I found no trace of the certificate. I was advised that if the papers still existed, they would be in Waterloo, New York, the county seat of Seneca County, near Fayette. There, on 29 April 1988, President Richard Christensen of the New York Rochester Mission and I searched unsuccessfully for the certificate. We then conferred with the Seneca County historian, Betty Auten, who confirmed that her ongoing search for references to the Church had revealed no such certificate.

Because of the confusion in some early records about whether Manchester or Fayette was the place of organization, we next went to Canandaigua, New York, the county seat of Ontario County, in which Manchester is located, to continue our search. So far as we could determine, the certificate was not on file there, either.

Other searches have been made for the Church's original certificate of incorporation, but to date nothing has been located. The Church Historical Department has instituted a further search of old New York state and county files through Columbia University.

Section B: The Trustee-in-Trust

- *Title to the Church's real property in Ohio, Missouri and Illinois was held by one or more trustees. Why?*

- *What complications might be expected to, and did in fact, arise from this method of holding title?*

Section C: The Utah Era

Background information:

- On Feb. 8, 1851 apparently before official word of the formation of the Utah Territory had reached Salt Lake City—the Assembly of the provisional government of the State of Deseret adopted an act incorporating the Church. The ordinance authorized the Church, at a general or special conference, to elect a trustee-in-trust and up to 12 assistant trustees to handle and control the real and personal property of the Church. On Jan. 19, 1855, the Utah territorial legislature specifically reenacted the charter incorporating the Church.
- The Morrill Anti-Bigamy Act in 1862 criminalized polygamy, disapproved and annulled the Church incorporation, limited to \$50,000 the real property holdings in a territory of any religious or charitable corporation or association and escheated to the federal government any after-acquired excess real property.
- President Brigham Young generally held title to Church real estate in his own name as trustee. After President Young's death in 1877, his executors entered into a settlement with the Church by which Church real estate was transferred to President John Taylor as trustee-in-trust.
- In Jan. 1880, Franklin S. Richards was appointed as the first Church general counsel. As part of his duties, Richards reviewed the state of the Church's land titles and recommended to the First Presidency that corporations be formed under the Utah territorial law to hold real property, one corporation for each stake and ward and a number of central corporations for property held for educational, scientific or recreational purposes. The Edmunds-Tucker Act in 1887 put teeth in the Morrill Anti-Bigamy Act and specifically directed the Attorney General to institute and prosecute escheat proceedings against corporations holding property in violation of the Morrill Anti-Bigamy Act. The Edmunds-Tucker Act, however, exempted from escheatment any "building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground" and recognized that religious societies had the

right to have and hold real property for such purposes through trustees appointed by probate courts.

- In Sept. 1887, the Attorney General instituted a civil action in the Utah territorial courts for the appointment of a receiver for the general Church (1851) corporation. Frank H. Dyer was appointed as the receiver and took possession of the Temple Block and other properties.
- In May 1890, the U.S. Supreme Court upheld the constitutionality of the escheat and disincorporation provisions of the Edmunds-Tucker and Morrill Acts as an exercise of the plenary power of Congress over territories. The Supreme Court's decree was promptly stayed.
- The Manifesto was issued on Sept. 24, 1890. By 1894 after intervening court proceedings and congressional action—the receiver's office had returned the seized money, real property and personal property to the Church. Utah was admitted to the Union as a state in 1896.
- The use of local corporations for wards and stakes proved to be cumbersome because of frequent changes in their boards of directors. (The corporations typically had been formed with boards of 13 members.) Franklin S. Richards and his associate, LeGrand Young, recommended to the First Presidency a plan to convert to the use of corporations sole.
- With First Presidency approval, Richards and Young lobbied for the enactment of corporation sole authorizing legislation in Idaho, Utah, Nevada, Arizona and Wyoming.
- Beginning in 1899 and continuing steadily into the 1930s and sporadically into the 1970s, Franklin S. Richards and his associates and successors organized corporations sole for wards and stakes and caused these corporations sole to take title to real property in place of the trustees of the territorial-law corporations.
- On July 13, 1916, Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, was organized to hold title to Church properties in different missions around the world.
- On Feb. 27, 1922, Zions Securities Corporation was formed to hold titles to the Church's business and revenue-producing properties.
- On Nov. 23, 1923, Corporation of the President of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, was organized to hold title to general funds, temples, educational institutions and other general Church properties that were

used exclusively for religious and charitable purposes.

- In 1932, the First Presidency disapproved the separate incorporation of priesthood quorums and auxiliary organizations.
- Through approximately 1980, the President of the Church was sustained in General Conference as the Church's Trustee-in-Trust.
- On Sept. 6, 1966, Deseret Management Corporation was formed as a holding company for the Church's taxable business subsidiaries, including Zions Securities Corporation, Bonneville International Corporation and Deseret News Publishing Company.

Discussion Questions:

- What is escheatment? How does the concept normally operate in the context of charitable and religious entities?
- What might have motivated the Church to seek to incorporate in the Utah territory?
- Was it then, and is it now, unusual for a religious society to have title to its real property held by an ecclesiastical officer acting as a trustee?
- What is a corporation sole? Why was this form of legal entity attractive to the Church? How are corporations sole used by other denominations? What practical problems might the use of corporations sole present in a modern economy?
- Why has the Church traditionally separated its business interests from religious functions and activities? Are there tax, liability, efficiency and other reasons for such separation?
- How have the activities and purposes of Corporation of the Presiding Bishop and Corporation of the President evolved over time? How are these corporations used today?

On church corporate existence prior to 1890, see in particular *Late Corporation of the Church of Jesus Christ of Latter-day Saints v. United States*, 136 U.S. 1 (1890).

Section D: The Utah Court System

Background:

- The 1850 Organic Act established the Utah Territory and organized the first official court system for the region. A three-member territorial Supreme Court, three district courts with federally appointed judges, and local justices of the peace came as a result. Supreme Court justices also served on the district (trial) courts. Jury trials

were expressly forbidden. Federal judges in the territory were individually authorized to grant writs of habeas corpus under the same conditions and in the same circumstances as federal judges in the District of Columbia. District Courts held original jurisdiction in civil cases (including divorce) and criminal cases.

- The legislature of the proposed State of Deseret approved on January 9, 1850, county courts and justices of the peace. County Probate Courts were established by the legislature in January 1851 in each county to conduct matters relating to estates; guardianships of minors, idiots, and insane persons; and divorces. They could also hear appeals from justice of the peace courts.
- The territorial legislature in 1852 granted probate courts jurisdiction over all civil and criminal cases and over chancery matters and the drawing of jury lists. The legislature in that same session also created the offices of territorial marshal and territorial attorney with powers paralleling those of their federal counterparts. In 1855, the territorial legislature passed an act that gave local probate courts the same original jurisdiction as the district courts.
- Each county had a probate court presided over by an elected judge. Many litigants, especially Church members, took their cases to the probate court rather than before the federally appointed judge of the district court. The effect was to displace the federally appointed courts with a system of local control.
- Congress reacted by placing the judiciary firmly under federal control. The Poland Act of 1874 restricted the Utah probate courts to matters of estates and guardianship, removing all civil, chancery, and criminal jurisdiction. That Act gave the district courts exclusive jurisdiction for all suits over \$300, and also abolished the local offices of the territorial marshal and territorial attorney. Probate courts maintained concurrent jurisdiction with the district courts over suits of divorce until 1887.
- The Edmunds-Tucker Act of 1887 reaffirmed the jurisdictional restrictions on the probate courts imposed by the Poland Act revoking all jurisdiction but in probate and guardianship matters and nullifying territorial laws providing for the election of probate judges. Probate judges then became appointed by the President of the United States with the advice and consent of the Senate. Civil and criminal cases were distributed as mandated by law to justice of the peace courts or district courts.

- Probate courts were abolished entirely at statehood in 1896, and thereafter probate matters were assumed by the appropriate district court.

Discussion Questions:

- In what ways were the competing court systems in territorial Utah another example of church/state conflicts centered around the Church?
- How did members resolve their non-religious disputes once probate courts were divested from general civil jurisdiction?

James H. Backman, “Courts, Ecclesiastical, Nineteenth-Century,” *Encyclopedia of Mormonism*, pp. 329-30 (1992):

The roles of these [church] courts have varied. In the 1830s, years marked by rapid expansion in Church membership and extensive migration to escape persecution in Ohio and Missouri, Church courts usually provided members an easy, appropriate, and friendly forum for settling non-Church related disputes. Then for several years prior to the Nauvoo charter, and again in the westward migration until 1850, Church courts pronounced, enforced, and adjudicated a full range of civil and criminal ordinances. Thereafter, until the passage of the Poland Act (1874), Church courts continued to handle civil disputes even though alternative courts were available through the federal territorial government (judges appointed by the president of the United States) and through the county probate judges (appointed by the territorial legislature). Probate judges were almost always Mormon priesthood leaders, including local stake presidents and bishops, and the probate courts had broad powers over all criminal and civil court matters in addition to normal probate functions. During this period, however, Church courts handled most disputes between members of the Church. Latter-day Saints turned to the county probate courts mostly in criminal actions, in actions against non-Mormons, and when it was important to obtain a formal court decree.

With passage in 1874 of the Poland Act and with the Supreme Court decision in *Reynolds v. United States* (1879), the federal assault on Mormon polygamy intensified, and the Church courts provided the only forum to assist wives and children in settling disputes with their polygamous husbands and fathers. Government courts could offer little assistance because polygamous marriages were outside the law. In the nineteenth century members used Church courts in private disputes largely because of the principle of exclusive jurisdiction widely enforced by the Church. Applying this principle, leaders used sermons and scripture to encourage members to avoid the civil courts; they also imposed disfellowshipment or excommunication on members who sued another member in the civil courts. Thus non-Mormons initiated

most of the cases in the civil courts of the Utah Territory even though the population was overwhelmingly Mormon.

On nineteenth century church courts particularly, see Firmage & Mangrum, cited above in the Selected Reading Material.

Section E: The Church's Modern Legal Battles

In recent years, two important cases involving the Church have been decided by the United States Supreme Court. In *Amos*, the Court upheld the constitutionality of a religious organization exemption from federal employment discrimination laws and approved the use by the Church of a temple worthiness standard in employment. In *Davis*, the Court held that support payments made by parents directly to their missionary children were not deductible as charitable contributions for federal income tax purpose. Subsequently, the Church's system for funding missionary service of young single elders and sisters was changed, and the Internal Revenue Service announced that uniform contributions by parents to ward missionary funds—where such contributions are pooled and redistributed in different amounts depending on local cost—would be deductible.

- *Why were the Amos and Davis decisions important to the Church?*
- *In what ways does Amos establish or strengthen a broad constitutional principle?*
- *What do you see as the next major court battles the Church may face?*

Robert E. Riggs, "Legal and Judicial History of the Church," *Encyclopedia of Mormonism*, pp. 823-27 (1992):

The decision of the U.S. Supreme Court in *Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints et al. v. Amos et al.* (483 U.S. 327 [1987]) was a notable affirmation of religious group rights under the U.S. Constitution. The suit was brought by former employees of the Church-owned Deseret Gymnasium, Beehive Clothing Mills, and Deseret Industries who were discharged for failing to meet religious qualifications for participation in LDS temple worship. The employees alleged religious discrimination in violation of the Civil Rights Act of 1964. In defense, the Church invoked section 702 of the act, which

expressly exempts religious organizations from the statutory prohibition of religious discrimination in employment. The lower court found that the section 702 exemption violated the establishment clause of the First Amendment, a constitutional bar to laws having the purpose or primary effect of advancing religion. The Supreme Court unanimously disagreed, holding the statutory exemption to be a permissible governmental accommodation of religion, at least as to nonprofit activities. The *Amos* decision is an important statement of the right of religious organizations to preserve their institutional integrity by maintaining religious qualifications for employees.

Additional Reading Selections: **Utah Code Ann.1§§ 16—7—1-14 [Corporation Sole, Selections]:**

-1. Formation --Purposes.

Corporations sole may be formed for acquiring, holding or disposing of church or religious society property for the benefit of religion, for works of charity and for public worship, in the manner hereinafter provided.

-2. Articles of incorporation --Execution --Filing.

Any person who is the archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman of any church or religious society who has been duly chosen, elected, or appointed in conformity with the constitution, canons, rites, regulations, or discipline of such church or religious society, and in whom is vested the legal title to its property, may make and subscribe articles of incorporation, acknowledge the same before some officer authorized to take acknowledgments, and file the original articles with the Division of Corporations and Commercial Code; he shall retain a copy of these articles in his possession.

-6. Powers of corporations sole.

Upon making and filing articles of incorporation as herein provided the person subscribing the same and his successor in office, by the name or title specified in the articles, shall thereafter be deemed and is hereby created a body politic and a corporation sole, with perpetual succession, and shall have power:

- (1) To acquire and possess, by donation, gift, bequest, devise or purchase, and to hold and maintain, property, real, personal and mixed; and to grant, sell, convey, rent or otherwise dispose of the same as may be necessary to carry on or promote the objects of the corporation.
- (2) To borrow money and to give written obligations therefor, and to secure the payment thereof by mortgage or other lien upon real or personal property, when necessary to promote such objects.
- (3) To contract and be contracted with.
- (4) To sue and be sued.

(5) To plead and be impleaded in all courts of justice.
(6) To have and use a common seal by which all deeds and acts of such corporation may be authenticated.

successor the title to all the property held by his predecessor shall at once, without any other act or deed, vest in the person appointed to fill such vacancy.

-7. Right to act without authorization from members
--Sale of property.

Any corporation sole created under this chapter, and any such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder or clergyman of the state of Utah, who holds the title to trust property for the use and benefit of any church or religious society and who is not so incorporated, unless the articles of incorporation or deed under which such corporation or individual trustee holds such property provides otherwise, shall have power without any authority or authorization from the members of such church or religious society to mortgage, exchange, sell and convey the same; and any such corporation sole, or individual trustee residing within this state may hold title to property, real or personal, which is situated in any other state or jurisdiction; which holding shall be subject to the same conditions, limitations, powers and rights and with the same trusts, duties and obligations in regard to the property that like property is held for such purposes in this state.

-9. Succession in event of death, resignation or removal of incumbent.

In the event of the death or resignation of any such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder or clergyman, being at the time a corporation sole, or of his removal from office by the person or body having authority to remove him, his successor in office, as such corporation sole, shall be vested with the title to any and all property held by his predecessor as such corporation sole, with like power and authority over the same and subject to all the legal liabilities and obligations with reference thereto. Such successor shall file in the office of the county recorder of each county wherein any of such real property is situated a certified copy of his commission, certificate or letter of election or appointment.

-10. Death, resignation, or removal of person holding title to trust property for religious organization.
In case of the death, resignation or removal of any such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder or clergyman who at the time of his death, resignation or removal was holding the title to trust property for the use or benefit of any church or religious society, and was not incorporated as a corporation sole, the title to any and all such property held by him, of every nature and kind, shall not revert to the grantor nor vest in the heirs of such deceased person, but shall be deemed to be in abeyance after such death, resignation or removal until his successor is duly appointed to fill such vacancy, and upon the appointment of such