

How Civil Law Has Influenced SDA Governance.

By Mitchell A. Tyner

It has been said more than once that SDA ecclesiology has been strongly influenced by civil law, particularly American law. But is this really true?

One definition of ecclesiology is ‘the branch of theology that is concerned with the nature, constitution, and functions of a church. Perhaps more plainly put, it is what we believe the church to be and how we govern it. The more specific subject matter of this paper is our church’s governance, it’s theological base, where such a base is seen to be relevant, and it’s interaction with secular law. In examining four instances of such interaction, Seventh-day Adventist ecclesiology, in practice, is seen to have little tie to theology, and to be pragmatic, flexible, and result oriented.

First, we examine our corporate beginning: James White’s incorporation of the Review & Herald in 1861.

White’s desire to incorporate seems to have sprung from the desire to accomplish non-personal, perpetual ownership, and was part of his effort to persuade the early believers to organize. To do so, he had to answer the arguments of those who saw such organization to be contrary to the movements mission to be more than just another denomination. Roswell Cottrell put it this way:

“The church now holds property by law, by entrusting it in the hands of individuals. This we can continue to do. We can trust each other, thank the Lord!, and if any man proves a Judas, we can still bear the loss and trust the Lord.... The church to whom God is restoring the gifts of the Spirit, and leading them out of Babylon and Egypt, need not trust in worldly physicians to insure their lives and their health, nor worldly capitalists to insure their property.” [1]

James White was also challenged to point to specific Biblical authority for his proposal. He answered thus:

“But if it be asked, Where are your plain texts of scripture for holding church property legally? We reply, The Bible does not furnish any; neither does it say that we should have a weekly paper, a steam printing press, that we should publish books, build places of worship, and send out tents.... We believe it safe to be governed by the following rule: All means which according to sound judgment, will advance the cause of truth, and are not forbidden by plain scripture declarations, should be employed.” [2]

Much concern also involved the fear that somehow the articles of incorporation would become articles of faith – the creedalism followed by churches considered Babylon. White’s answer is instructive still:

“When we commenced to publish, ten years since, the cry was raised, Babylon! When the brethren erected an exceedingly plain place of worship at Battle Creek, only 22 by 30, which would not seat comfortably more than half the present congregation, one of our ministers groaned out, ‘Ah, this looks like Babylon!’ And now, when the simplest form of church organization is suggested, we hear the same cry, Babylon! These things have hindered the progress of the work....”^[3]

A compromise, apparently suggested by J.N. Andrews, resulted in the dual structure that is still with us: a corporation to hold title to property and an unincorporated body to constitute and conduct the business of the church.^[4] This arrangement has been the subject of discussion for years among church lawyers, and the current trend is to favor the merging of the two entities, as has been done by the church in Canada

James White was presented with a practical need, opposed by what may be called theological opposition of a far less practical character, or just excessive eschatological enthusiasm of the sort with which the church must still cope. The resulting compromise produced a duality based more on political reality than on scriptural interpretation and application. Yet this political compromise has served us generally well for 153 years.

The second instance of interaction between civil law and Adventist ecclesiology was the effort to secure the parsonage allowance for licensed pastors. ^[5]

In 1965, the U.S. Internal Revenue Service issued a ruling stating that a licensed minister “must be invested with the status and authority of an ordained minister” and must be “fully qualified to exercise all of the ecclesiastical duties” of the ordained minister in order to receive a tax-exempt parsonage allowance. On October 6, the GC officers affirmed, “This, of course, the denomination is unable to state.” Yet to fail to do so would mean that a licensed minister would receive about 9% less income. Also, since ordained ministers are considered to be employees for income tax purposes but self-employed for social security purposes, employing organizations would have to pay 50% of the social security payments for licensed ministers who would revert to employee status.

GC President Reuben Figuhr and Secretary Walter Beach wrote to the IRS and tried to minimize the differences between the two classifications, but conceded that the licensed minister did not perform all the functions of the ordained minister. The letter stated that “the difference lies simply in the matter of growth in experience”, and that the duties of the two were “substantially equivalent.”

The letter did not satisfy the IRS, since it did not establish equivalency. Said the service, "licensed ministers of the Seventh-day Adventist Church do not qualify as ministers of the gospel" for tax purposes.

Figuhr and GC Treasurer C.L. Torrey retired at the 1966 GC session, replaced by Robert Pierson and Kenneth Emmerson. Robert Osborn, elected an assistant GC treasurer, became intimately involved with the issue and retained close connection with it for the next decade. The IRS issue was discussed at the 1966 Detroit session at least three times by the newly-elected officials, who informally agreed to maintain the status quo while securing legal counsel.

In September, 1966, Attorney William Donnelly of Washington was retained and suggested a new approach, that a licensed minister "who has also been ordained as an elder of a particular church of the denomination...is a minister of the gospel" within the IRS definition. Donnelly suggested that "if the church manual spelled out affirmatively the authority of the ordained elder-licensed minister," IRS might be satisfied.

By August 7, 1968, various committees had made extensive redefinitions of the licensed minister's role. Deleted was the stipulation that a licentiate could not baptize or conduct communion. The statement that "among Seventh-day Adventists, only ordained ministers are authorized to perform the marriage ceremony" was deleted. On June 19, 1970, these changes were approved by the GC Session and incorporated into the Church Manual and the Manual for Ministers.

Yet differences of opinion continued to exist. In the margins of documents pertaining to the issue considered at one 1971 committee meeting, Pierson wrote: "Stretched every point possible to show licensed ministers very much like ordained ministers. I'd not go further. There is and should be a difference." Osborn pointed out that despite the changes church policy still did not satisfy IRS requirements. Yet the organization continued to treat both classes as full ministers for tax purposes, risking an IRS penalty.

At an emergency meeting of GC and union officers with some conference presidents on December 21, 1971, Osborne presented a 7 page paper on the history of the issue. In it he referred to an observation by the firm of Conrad Teitell, long-time GC-retained tax expert, that a further request to the IRS without moving to identical status for the two groups would not be helpful. Pierson wrote in his notes: "6 yrs of tax exposure \$1000 per lic min per yr!" The total would be over \$5 million for 850 licensed ministers. NADCOM then voted to ask GC officers "to take whatever steps are necessary to secure for licensed ministers full status as ministers of the gospel."

The issue remained in limbo until 1974, when Neal Wilson sought to resolve the issue by enlisting the assistance of several members of Congress, including Representative Jerry Pettis, a member of the Ways and Means Committee. In March

of that year, Wilson drafted a 14 page memo outlining the basis for a new appeal and sent the memo to Pettis.

Wilson's plan received a major setback when Pettis died in a plane crash, Feb.14, 1975. Worse, that spring some IRS offices began openly challenging the church's position by serving "protective assessments" of potential tax liabilities of various conferences. After consultation with IRS officials, GC officers decided to officially request that the IRS review their 1966 ruling against the GC. By November, Wilson submitted a memorandum to that effect. In April 1976, the IRS informed Wilson that his request was, once again, denied. By that date several conferences had received "final notice before seizure" of various properties.

PREXAD then decided to re-examine the church's position. In August, the NAD union presidents approved a proposal from PREXAD that a licensed minister be authorized "on a probationary basis to perform all of the functions of an ordained minister under the supervision of his ecclesiastical superior." In presenting the resulting verbiage to PREXAD and then to PRADCO, Wilson stressed that the issue was not one of a moral or theological issue, but a matter of policy. He saw two alternatives: change the licentiates status or pay the price. The crucial phrase in Wilson's proposal read: "A licensed minister is authorized by the Conference/Mission Executive Committee to perform all the functions of the ordained minister in the church or churches where he is assigned. Both PREXAD and PRADCO approved the proposal."

By October 20, it became apparent in a meeting of the Home and Overseas Officers and Union Presidents (now GCDUOP) that the members from outside NAD would not approve the change. Thus the action voted at the Annual Council afternoon session that day did not include Wilson's critical wording, while the action voted that evening in the NAD section of Annual Council did so. Wilson's wording was not printed in the AC booklets for 1975, nor later in the *Review* list of AC actions.

Later that same month, Wilson wrote the IRS Commissioner about "some rather extensive ecclesiastical changes" made by the church. The Commissioner replied that, in the opinion of the Service, the new policy was in compliance. After a decade, licensed ministers were again legally entitled to the benefits they had been receiving all along.

The victory was somewhat bittersweet: after the church had put out years of ecclesiastical soul-searching, word parsing, truth stretching and expenditure of funds to achieve the desired result, in August of 1987 the IRS modified its policy to provide that if licensed or commissioned ministers performed "substantially" all the functions of the ordained minister, they were eligible for tax benefits.

In the Dec. 30 issue of the *Review*, Wilson wrote of the policy change, while not giving specifics. Interestingly, in light of current matters, Wilson stated "the process by which the church trains its ministers obviously is not a matter of theology or

doctrine, but one of methodology.” He explained that the Annual Council “voted to amend the policy governing licensed ministers to provide for appropriate latitude and flexibility within each division of the General Conference.”

This matter does indeed illustrate that:

1. The governance side of our ecclesiology is informed by practical need – in this case, potential financial loss - but only rarely by theological belief.
2. This has enabled considerable differences in governance matters between divisions.
3. The knee-jerk reaction to forced uniformity in administrative matters as well as governance forms, wherein some divisions, who need not be effected by the issue at hand, seek to impose uniformity on other divisions in non-theological issues, has past precedent as well as current viability.

The previous instances of the interaction of our ecclesiology with civil law have been studied and documented, although their relevance to current issue needs further exposure. The next two instances have not been so studied, and their implications are still not fully understood.

The third instance of interaction between SDA ecclesiology and civil law is the process that resulted in the re-structuring of much of the Adventist health-care system since 1972.^[6]

Adventist health care institutions trace their roots back to the Battle Creek Sanitarium, established in 1866. As Battle Creek prospered, church leaders urged decentralization, and the majority of what were to become our flagship hospitals were established over the next decades. But after World War I, as the world entered first the localized depression of the 1921 and then the world wide depression of the 1930s, many of the smaller undercapitalized facilities were unable to survive. Others were donated formally to the state conferences or to the union conferences.

After the Second World War, taking advantage of the Hill-Burton program to meet the post-war pent-up demand as well as the new cost-reimbursement programs of Blue-Cross-Blue Shield, commercial health insurance, and later Medicare and Medicaid, the remaining hospitals were upgraded, renovated and expanded. All were more or less independent, under the direction of professional administrators and boards largely independent of each other but also largely made up of church leaders

Observing the new prosperity in health care, commercial interests sensing an opportunity for profit began to create systems of for-profits hospitals, causing a huge sense of danger among administrators of non-profit hospitals – most of them religiously – affiliated. Adventist health leaders, sensing the advantages of economy of scale and capital formation, began to speculate on the advantages of bringing the

Adventist hospitals together into a non-profit system. At the Annual Council in Mexico City in 1972, provision was made to establish organizations to take over the responsibility for operating those institutions.

In 1972, the North American Division was comprised of 9 union conferences. Each had at least one hospital – except for the Northern Union. By 1980, that union had merged with the Central Union to form the current Mid-America Union. At that point, Mid-America Health Systems was founded. After two years, it became obvious that the union base was too small to support the corporate overhead, and mergers began. The Mid-America and Columbia Unions formed Adventist Health System/Eastern and Middle America (AHS/EMA) in 1977, and the Lake and Atlantic Unions formed AHS/North in 1980. The perceived need for sharing across union lines prompted the formation of AHS/US in 1982.

Unfortunately, the opportunity for expansion resulted in over-supply. Shortly, the nation had 25% more hospital beds than needed. The result was predictable: survival of the most efficient. Debts began to pile up as expected occupancy rates were not attained. Ancillary organizations like Adventist Living Centers, founded entirely on borrowed capital – at one point leveraged over 100% - could not cope. AHS/US, trying to bail out a sinking ship, pledged the credit of the flagship hospitals to cover the increasing debt. Unfortunately, in setting up AHS/US, they had not been given the authority to do this. As the Kettering Medical Center board realized that the credit of that institution had been pledged to guaranty the debts of other institutions, some of the board members rebelled. A lawsuit followed over who exactly owned KMC.

As church leadership realized the implications of what was happening, and the real possibility of the church itself being found liable for the debts being amassed, a Financial Review Commission was formed in mid-1987. Informed voices suggested that Adventist healthcare had at most an 18-month window to get its legal/financial house in order.

In June, 1988, senior healthcare leadership sought access to the Hospital Retirement Fund to bail out AHS/North. It wasn't enough, or soon enough. The magnitude of the problem was laid out to GC officers at the Annual Council in Minneapolis in November. Most attendees were aware of the observance of the 1888 GC session, but not the seriousness of discussions occurring simultaneously. Unprecedented defaults on financing involving SDA healthcare corporations had occurred in December, 1987 and May, 1988, and would recur in February 1989, just a month before the FRC made its report to the GC president. It noted an aggregate loss of healthcare assets in excess of \$100 million in the preceding 5 years, apart from the acute care hospitals in the 'system'. A factual and legal picture emerged suggesting not only that management had represented to financial institutions that the multi-faceted corporate structure was a 'system' but also that the 'system' was in effect the legal extension of 'the church,' exposing the church to massive vicarious liability.

The exposure to vicarious liability was not imaginary. On Sept. 7, 1989, the GC and the GC Corporation were served with a Writ of Attachment in conjunction with a \$609,000 judgment against Hadley Hospital. Shortly thereafter, GC counsel received a personal phone call from a Prince Georges County, Maryland, judge in a suit involving Leland Hospital in which he stated that he considered Leland to be an enterprise of the church. At the same time, the corporate guaranties of NEMA, a shell corporation with virtually no assets, grew to over \$300,000,000. The Fitch rating service devalued Adventist healthcare bonds to junk rating. [7]

The effect on moral on much of healthcare leadership was severe, as illustrated in a letter from J. Russell Shawver, president of NEMA, to attorney Ted Ramirez, part of the legal team trying to settle the KMC suit: “These past eight years, since the merger with the Columbia Union, my life has been pure hell.”[8]

The solution to all this was suggested in a “white paper” authored by nine lawyers working on the matter: Use the legal format utilized by professional baseball and football teams and leagues. The teams are totally autonomous legal corporations with compartmentalized liability for their respective financial obligations. They function together in the context of guidelines established by the league with oversight from the league office. But each corporation representing a team is legally independent and financially autonomous.[9]

That in essence is where Adventist healthcare in the United States now finds itself. The Adventist Healthcare Policy Association is an unincorporated entity made up of the administrators of the various institutions. Its founding members were Adventist Healthcare (Rockville, MD.), Adventist Health (Roseville, CA.), Adventist Health System (Winter Park, FL.), Kettering Adventist Healthcare (Dayton, OH.), and Loma Linda University Adventist Healthcare Sciences Center (Loma Linda, CA.) – all corporately independent and financially autonomous.

The ‘right arm of the message’ had grown so large that it threatened the health of the entire body. In the face of near-certain financial calamity, the church found it prudent to amputate that right arm.

The final example of the interaction of Adventist ecclesiology and civil law is ongoing: the organizational situation of the church in the People’s Republic of China.

The China Union Mission was formed in 1949, as the Republic of China was in the final stages of being replaced by the communist government of Mao Tse Tung. During the following decades, the Adventist Church was among the first to incur the disfavor of the new regime. Both congregations and church institutions were infiltrated systematically by the authorities.[10]

Despite, or perhaps because of, this systematic opposition, the Adventist church not only survives in China but thrives. Current church membership in the PRC is

estimated to be between 400,000 and 500,000, in 1265 congregations. It is organizationally a part of the Northern Asia-Pacific Division, headquartered in South Korea. The division website shows a full roster of officers and departments, as though this union functions generally like all other unions.^[11] And yet the reality is different. The China union does not follow the same working policies as other unions in NSD, let alone the GC Working Policy. The normal flow of funds and data between levels of the church organization does not exist. Local congregations have, in effect, a congregationalist polity. They select and train their own clergy. And most of their pastors are women!

For those who would argue that the entire church administrative structure is God-given, and that the same policies must be adhered to in all places, this is a massive problem. After all, perhaps the most effective way to counter the assertion that 'we must do it this way' is to show instances when it indeed is not done that way. Again, any link between our doctrines and our governance patterns seems rather tenuous.

If our ecclesiology was based on doctrinal positions, we would find ourselves closer to the position of the Roman Catholic Church vis-à-vis the PRC: Because allegiance to and appointment by the Vatican is at the heart of Catholicism, and because the PRC will brook no foreign interference in the governance of religious groups, the Vatican has had an on-going battle with Beijing over the right to appoint Catholic bishops in the People's Republic. The Catholic position is set by key doctrinal positions. Ours is pragmatic and flexible, even to the point of turning a convenient blind eye to situations that would otherwise not be tolerated.

James White sought a rational organization for the new church. He managed to come to a political compromise with his opposition that, while not perfect and not without its detractors, has endured for over a century and a half.

When faced with a serious financial burden on either the church organizations or its licensed ministers, the church twisted, squirmed and on occasion pettifogged in order to comply with IRS policy. In doing so it adopted a policy of allowing divisions to do what was in their best interest, without harming the rights of other divisions. All these actions were political and practical in nature, not doctrinally based.

When the vaunted 'right arm of the message' found itself vastly in debt, when in amassing that debt the healthcare arm of the church had, knowingly or otherwise, placed the church in an untenable position of potential vicarious liability, ideological and theological considerations did not prevent the adoption of a new organizational scheme that allows the church a measure of operational influence but without the legal control that would make it liable for the liabilities of the various healthcare institutions.

And when the church in China faces a national government that will not allow our traditional forms of organization and control, even to the point of touching what seems to be the current hot-button issue in Adventism, the church's ecclesiology

once again focuses on what must be done. Our ecclesiology, as it interacts with civil law, may be characterized as practical, pragmatic and flexible. As shown most clearly in the healthcare reorganization, its aim is to maximize opportunities while minimizing liabilities. Not a bad management plan, actually.

So has the church's ecclesiology been tainted by civil law? Not much. Perhaps the accusation really a less well understood influence: that of the culture of American corporations, especially since 1980. Over the last 30 years we have seen the rise of a CEO and board dominated corporate culture that has severely restricted the right and ability of the shareholders – the true owners of a corporation – to bring a proposal to a vote. Considering that period always reminds this author of the moment when, after the 1985 GC session and election of a new president, the vice-president who was the communication channel for our department informed us that we were now moving away from the committee system of governance to a 'presidential system.' He didn't elaborate, but most of us had a fairly clear idea of what he meant. Perhaps this would be a subject for highly relevant examination.

[1] Roswell Cottrell, "Making Us A Name," Review ad Herald, March 22, 1860.

[2] Ibid.

[3] "Proceedings of the Battle Creek Conference, September 29 – October 1, 1860," Review and Herald, October 9-23, 1860.

[4] Ibid.

[5] For the best treatment of this matter (upon which dependency herein is cheerfully acknowledged), see "Money And Theology: IRS and the Redefinition of SDA Ministry." By Bert Haloviak, 1996, unpublished but available at http://docs.adventistarchives.org/docs/AST/Money_Theology.pdf.

[6] A source of data and materials on this matter, see the Warren L. Johns Collection in GC ASTR.

[7] Letter, Warren L. Johns to C.E. Bradford, Oct. 12, 1989, in GC ASTR.

[8] Letter, J.R. Shawver to Ted Ramirez, Aug. 10, 1988, in GC ASTR.

[9] See Note 7 above.

[10] See "Co-optation and its Discontents: Seventh-day Adventist in Maoist China," Joseph Tse-Hei Klee, at Columbia.edu/~gas2122lee_full_paper.pdf.

[11] See chumadventist.org; nsdadventist.org.