

“THE CORPORATION SOLE, ITS HISTORY, SIGNIFICANCE AND CREATION”

AS PROMOTED BY GEOFFREY THAYER (AKA GEOFFREY CRAIG BENRICHARD BARABBA)

INTRODUCTION:

More and more pastors and ministers are becoming informed as to the perils, both legal and theological, of organizing and operating a church or ministry as a “non-profit tax-exempt religious organization.” They have come to recognize that not only is this “a State establishment of religion” but that it also has grave theological ramifications, particularly in terms of who becomes “sovereign” of the incorporated church. At law, the State is “sovereign” of all corporations, and the corporation is “a creature of the State.”

Tragically, however, at least some who are out sharing this information are also advising pastors and ministers that the solution is to dissolve the State’s non-profit corporation and reorganize as an entity known in law as a “corporation sole.” One of the chief promoters of this teaching is a former (disbarred) attorney, Geoffrey Thayer, who now goes by the name of “Geoffrey Craig benRichard barAbba”.

Thayer appears to have done more research and writing on the topic than any other corporate sole proponents. He is also a very effective self-promoter. A great many other people have attended his seminars and are now teaching the idea, as well. As such, a great deal of the corporate sole information and philosophy originated with Thayer (although many other corporate sole promoters will deny they even know Thayer, as they like to claim it was their own idea). Truth be known, the vast majority of these folks aren’t credible researchers and are simply plagiarizing from others.

Indeed, a spirit of thievery seems to run rampant among promoters of the corporation sole. One such plagiarist is Elizabeth Gardner of Beth-El Aram Ministries. Ms. Gardner used, without permission and without any attribution whatsoever, some ten pages of this author’s book, *The Modern Church: Divine Institution Or Counterfeit?* (1993) in her publication, *Corporation Sole vs. 501(c)(3) Corporation*. When I confronted her over the matter, she denied doing anything wrong. Not only is Ms. Gardner an intellectual pirate, she used my writings in order to promote an agenda that I am completely opposed to.

With respect to Mr. Thayer, this paper will not directly address Thayer’s religious views (which are hardly orthodox Christianity), but it should at least be noted that one’s religion does have a direct impact on one’s worldview. We all have biases, and our biases will dramatically impact our objectivity. The important question for the genuine Christian should always be, “Are my opinions rooted in Scripture?” Christians should be wary, particularly in matters of the church of Jesus Christ, of relying upon those whose worldview is not biblical.

BRIEF:

Thayer claims that a corporation sole is something altogether different from a corporation aggregate and that, unlike the corporation aggregate, the corporation sole is not a creature of the State, subject to State control and jurisdiction. Thayer has stated in his materials:

The best modern description of a corporation sole is found in the 1983 California appellate decision: *County of San Luis Obispo vs. Delmar Ashurst* 146 Cal. App. 3d 380, 194 Cal. Rptr. 5. [See also *Santillan v. Moses* 1 Cal. 92 (1850); *Archbishop v. Shipman* 79 Cal. 288 (1850).

It is immediately problematic that Mr. Thayer relies upon Ashurst as being “the best modern description of a corporation sole” (although I would not argue that this is probably the best he can hope to offer). In Ashurst, the court states:

California by statute has legitimized this tradition and regulates the formalities attendant upon the creation and continued existence of the corporation sole. (Corp. Code, § 10000 et seq.)

It is clear from Ashurst that the State “regulates” all corporations sole (as organized in California), not unlike all other corporations, and that they are “creations” of the state, and that there are no exceptions:

10000. The provisions of this part apply to all corporations sole organized either before or after March 30, 1878.

The so-called privileges and benefits, as well as the duties and obligations of the corporate sole, according to California statutes, read remarkable like those applicable to corporations aggregate (e.g. non-profits and charitable religious corps., etc.), or as Thayer calls them “normal corporations.” Thayer asserts:

A corporation sole is Not an Entity, but is a Perpetual Office.

In perhaps another place and another time (e.g. the old Anglican Church of England) it might have been successfully argued that “a corporation sole is not an entity.” However, one cannot rely upon state statutes in America (e.g. Calif. Corp. Code) to support such a notion, as these statutes would only demonstrate the opposite. Though the statute, through inference, acknowledges the “perpetual office” of a corporate sole, it also clearly lays out all the indicia of an entity formed and regulated by statute.

One should look to the language of the statutes governing corporations sole to determine if they describe an entity governable by the state. The mere fact that the corporation sole is specifically listed is very telling in itself, since state statutes are written only in respect to those things or persons which the state has jurisdiction over to begin with. Thayer asserts:

17 States acknowledge corporations sole by statute, 9 by private [sic], and the balance recognize a corporation sole formed in another state under the doctrine of comity.

More than merely “acknowledge corporations sole”, state statutes govern the establishment, management, and dissolution of such corporations. In the context of churches and Christian ministries, it is generally not a positive attribute to have statutory “acknowledgment” (i.e. “legal recognition”). Moreover, these statutes proffer a great deal more than mere “acknowledgment.” Thayer claims:

Hence, it is generally not subject to suit and judgment, in comparison to regular corporations...

Yet, notice what the statute says:

10007. Every corporation sole may:

(a) Sue and be sued...

Suing and being sued is one of the first and most important legal attributes of all corporations, whether aggregate or sole. Thayer also claims:

There is no State Supervision or Visitation Over the Management of a corporation sole unlike a 501(c)(3) non-profit corporations or foundation which is subject to continual supervisory visitation and control.

Yet, note that the California Corporate Code states something quite contrary to this:

10009. Any judge of the superior court in the county in which a corporation sole has its principal office shall at all times have access to the books of the corporation.

In the Ashurst case, the court states:

The County does not contest the validity of the creation of the corporation sole Roandoak of God by Delmar Ashurst and no defect therein is apparent from the record.

The reason the court found no defect, and that the county didn't challenge the validity of the corporation sole known as "Roandoak Of God," is because Ashurst complied fully with all state statutes. Just like any other religious non-profit corporation, forming a corporation sole requires that:

10005. The articles shall be signed and verified by the... presiding officer forming the corporation and shall be submitted to the Secretary of State for filing in his office. If they conform to law he shall file them and endorse the date of filing thereon.

The Articles filed must also, just like any other corporation, comport with the form and content required by statute (§ 10003). In substance, the process of forming a corporation sole is quite the same as forming a religious non-profit corporation. Both must ask permission of the State for their existence.

Furthermore, dissolution of the corporation sole, just like the non-profit corporation, requires the permission of the State, and may only be carried out after the "chief officer" of the corporation files a declaration of dissolution, the form of which must comport with state statute (§10013). Moreover:

10015. After the debts and obligations of the corporation are paid or adequately provided for, any assets remaining shall be transferred to the religious organization governed by the corporation sole, or to trustees in its behalf, or disposed of as may be decreed by the superior court of the county in which the dissolved corporation had its principal office upon petition therefor by the Attorney General or any person connected with the organization.

This language is especially telling, in terms of what ultimately controls the disposition of the assets of the corporation sole—it is the state. If the court may appoint a receiver subsequent to receiving application for voluntary dissolution, and "upon petition therefor by the Attorney General or any person connected with the organization," it stands to reason that the same may be accomplished under involuntary dissolution, or no dissolution at all, merely based upon the complaint of "any person connected with the organization." An allegation of fiduciary malfeasance is likely all that would be necessary. It is, therefore, invalid to hold that the government has no jurisdiction over the corporation sole.

Thayer makes mention of Washington state statutes pursuant to corporations sole, such as RCW 24-12, et seq. These statutes are fundamentally the same as California's, including provisions to "sue and be sued" (§ 24.23.020), as well as their having "all the rights and powers prescribed in the case of corporations aggregate, and all the privileges provided by law for religious corporations" (§ 24.12.010), and "such corporation shall be entitled to the privileges and subject to the duties, liabilities and provisions in this title expressed" (§ 24.12.040). Washington state makes abundantly clear what should already be obvious, when comparing corporations sole with any other corporation:

24.12.030 Articles of incorporation shall be filed in like manner as provided by law for corporations aggregate...

Washington state makes few, if any, substantive legal distinctions between the corporation sole and (to use Thayer's terminology) "regular corporations." It is, therefore, problematic for Thayer to rely upon the RCW for legal support and authority in distinguishing corporations sole from corporations aggregate. For all intents and purposes, it is a difference without a distinction.

Mr. Thayer also asserts:

Federal cases recognizing a corporation sole include *Terrett v. Taylor* 13 U.S. (9 Cranch) 43, 46 (1815); *Town of Pawlett v. Clark* 13 U.S. (9 Cranch) 292 (1815), *W. Trinidad v. Sagrada Orden de Predicadores* 263 U.S. 459 (1924) *Northwestern University v. People* 99 U.S. 387 (1878).

In *Sagrada*, the Court granted “certiorari to a judgment of the Supreme Court of the Philippines affirming a judgment for the respondent in its action to recover money paid under protest as a tax on income.” Cert can only be granted where the Court has jurisdiction to hear the case. Jurisdiction was acknowledged because the Philippines was a territory of the U.S. government (1898-1935), and because “the plaintiff is a corporation sole constituted under sections 154 to 164 of Act No. 1459 of the Philippine Commission.” The said “Sacred Order” relied upon Philippine statutes for its authority to organize and, as such, was subject to its courts. Nothing can be concluded from this case which would support any of Mr. Thayer’s assertions, other than the Court properly applied the doctrine of comity.

The *Northwestern University* is not a case involving a corporation sole. There is also no mention anywhere in the case of any corporation sole. Furthermore, the university is a corporation created by legislative act, thereby making it a creature of the state. The Court states: “The university was incorporated by an act of the legislature of the State of Illinois, approved Jan. 28, 1851.” In its opinion the Court states the case is a dispute between the university and Illinois state over, “certain property of the plaintiff was liable to taxation, which was resisted, on the ground that it was exempt by a legislative contract.” Why the case is included as an example of “Federal cases recognizing a corporation sole” is in no way apparent.

Likewise, the other cases cited by Thayer do nothing to substantiate his claims.

CONCLUSIONS:

Who then is the sovereign of the corporation sole? The answer is quite the same regarding who is the sovereign of the corporation aggregate—the State, not Jesus Christ.

It is important to note that Thayer has personally received this brief, and has yet to respond, point by point, to the legal issues and problems raised herein. I’ve challenged him to defend his assertions; but the silence is deafening. It is this legal researcher’s opinion that the reason there has been no direct response is that my arguments here simply cannot be defeated, because Thayer’s beliefs are unsupportable.

Several other corporation sole promoters have replied to this brief, but have never provided in writing any law (cases, statutes, or just even law reports or legal reviews from competent researchers) to support their “beliefs.” One of their common strategies is to allege something like, “Well all those things appear true in California or Washington, but what about Nevada?” While there is variance state to state in corporate sole statutes, the differences are trivial and inconsequential.

Thayer has at least put his findings and opinions in writing, including citations, which demonstrates that he is capable of research (whether his research leads to prudent and accurate conclusions is altogether something else). Other corporate sole promoters should at least have the integrity to document their alleged “research” in the same way. Unfortunately, all they generally produce is marketing material hyping the so-called benefits of the corporation sole, all based upon personal theories and speculation, rather than credible research. I welcome any promoters of the corporation sole to more fully develop their position and submit it to me in writing.