Chapter Six

Organizing the Church as a Religious Association in 1830

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While much has been written about the organization of The Church of Jesus Christ of Latter-day Saints in upstate New York, questions remain regarding the events of April 6, 1830. This article examines the organizational events of the Church from a legal perspective. In the nineteenth century, individuals desiring to form a church had two legal alternatives: forming a religious corporation or organizing a religious society. Understanding the requirements of each and considering which legal entity Church leaders would have preferred provide new insights into the organizational events.

Historical Background

In June 1829, shortly after Joseph Smith and Oliver Cowdery received the Aaronic Priesthood, they were commanded by revelation to organize a church.[1] Received ten months before the organization, this revelation outlined a

1. Dean C. Jessee, ed., *The Papers of Joseph Smith,* 2 vols. (Salt Lake City: Deseret Book, 1989–92), 1:302: "Whilst the Book of Mormon was in the hands of the printer, we … made known to our brethren, that we had received commandment to organize the Church And accordingly we met together for that purpose, at the house of the above mentioned Mr Whitmer (being six in number) on Tuesday the sixth day of April, AD One thousand, eight hundred and thirty."

No contemporary documentation or minutes of the April 6, 1830, meeting exist, making a precise accounting of the organizational events difficult. The most detailed source is Joseph Smith's Manuscript History, as set forth in Jessee, *Papers of Joseph Smith*. This account is an 1839 transcript recorded by one of Smith's scribes, James Mulholland, nine years after the organization of the Church.

rough agenda for the future meeting and commanded Joseph and Oliver to defer this organization until those who had been or would be baptized could meet together and sanction such an event.[2]

Around noon on Tuesday, April 6, 1830, over fifty persons gathered in the small, two-room farmhouse of Peter Whitmer Sr. to witness the organization of the Church of Christ.[3] After opening the meeting with prayer, the

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2. Larry C. Porter, "Organizational Origins of the Church of Jesus Christ, 6 April 1830," in *Regional Studies in Latter-day Saint Church History: New York*, ed. Larry C. Porter, Milton V. Backman Jr., and Susan Eastman Black (Provo, Utah: Brigham Young University Press, 1992), 152, quoting Joseph Smith Jr., *History of The Church of Jesus Christ of Latter-day Saints,* ed. B. H. Roberts, 2d ed., rev., 7 vols. (Salt Lake City: Deseret Book, 1971), 1:60–61: "We had not long been engaged in solemn and fervent prayer when the word of the Lord came unto us in the chamber, commanding us that I should ordain Oliver Cowdery to be an Elder in the Church of Jesus Christ; and that he also should ordain me to the office; and then to ordain others, as it should be made known unto us from time to time. We were, however, commanded to defer this our ordination until such times as it should be practicable to have our brethren, who had been and who should be baptized, assembled together, when we must have their sanction to our thus proceeding to ordain each other, and have them decide by vote whether they were willing to accept us as spiritual teachers or not; when also we were commanded to bless bread and break it with them; and then attend to the laying on of hand for the gift of the Holy Ghost, upon all those whom we had previously baptized, doing all things in the name of the Lord." David Whitmer was also present during this revelation.

3. The Lord possibly commanded that the specific date of April 6 be used for organization. See the introduction to Doctrine and Covenants 20: "We obtained of him [Jesus Christ] the following, by the spirit of prophecy and revelation; which not only gave us much information, but also pointed out to us the precise day upon which, according to his will and commandment, we should proceed to organize his Church once more here upon the earth." This statement is curious in light of the Book of Commandments and Revelations, which dates Section 20 as recorded on April 10, 1830, suggesting that the revelation was written, or at least recorded, after the organizational meeting. Robin Scott Jensen, Robert J. Woodford, and Steven C. Harper, eds., *Revelations and Translations, Volume 1: Manuscript Revelation Books,* vol. 1 of the Revelations and Translations series of *The Joseph Smith Papers,* ed. Dean C. Jessee, Ronald K. Esplin, and Richard Lyman Bushman (Salt Lake City: Church Historian's Press, 2011), 60.

Larry C. Porter has thoroughly examined prospective individuals who attended the organizational meeting. David Whitmer estimated the number at fifty, although as many as seventy-three could have been in attendance. See Porter, "Organizational Origins," 153–55. Some scholars have recently called into question the location of the organizational meeting. It is generally accepted that the meeting took place in the home of Peter Whitmer Sr. in Fayette, New York. However, until 1834 the *Evening and Morning Star* referred to the Church being organized in Manchester, New York. See, for example, "Prospects of the Church," *Evening and Morning Star* 1 (March 1833): 76; and "Rise and Progress of the Church of Christ," *Evening and Morning Star* (April 1833): 84. For advocates of the Manchester site, see H. Michael

twenty-four-year-old Joseph Smith called on the brethren present to show whether they accepted him and Oliver Cowdery as their "teachers in the things of the Kingdom of God" and whether they should be organized as a church.[4] After a unanimous vote, Joseph ordained Oliver by the laying on of hands to the office of elder, after which Cowdery in turn ordained Smith to the same office.[5] They then oversaw the administration of the sacrament and confirmed those present who had previously been baptized, conferring upon them the gift of the Holy Ghost.[6] Joseph also received a revelation and ordained others to priesthood offices.[7] Joseph states that "we 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."[8]

Laws Regarding the Formation of Nineteenth-Century Religious Corporations

Not only were the events of that day spiritually meaningful to members of the Church, but the actions taken were legally significant. The early leaders of the Church apparently were aware of these legal implications as they tried to

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Marquardt and Wesley P. Walters, *Inventing Mormonism: Tradition and the Historical Record* (Salt Lake City: Smith Research Associates, 1994), 154–56; and Dan Vogel, comp. and ed., *Early Mormon Documents*, 5 vols. (Salt Lake City: Signature Books, 1996), 1:92 n. 82.

4. Jessee, *Papers,* 1:302–3: "Having opened the meeting by solemn prayer to our Heavenly Father we proceeded, (according to previous commandment) to call on our brethren to know whether they accepted us as their teachers in the things of the Kingdom of God, and whether they were satisfied that we should proceed and be organized as a Church."

5. Jessee, *Papers,* 1:303: "To these they consented by an unanimous vote. I then laid my hands upon Oliver Cowdery and ordained him an Elder of the 'Church of Jesus Christ of Latter Day Saints.' after which he ordained me also to the office of an Elder of said Church." Oliver Cowdery later described ordaining Joseph Smith as "Prophet, Seer, Revelator, and Translator just as [Doctrine and Covenants 21] says." *True Latter Day Saints' Herald,* August 1, 1872, 473. This article recounts an 1847 interview of Oliver Cowdery by William E. McLellin in Elkhorn, Wisconsin.

6. Jessee, *Papers,* 1:303: "We then took bread, blessed it, and brake it with them, also wine, blessed it, and drank it with them. We then laid our hands on each individual member of the Church present that they might receive the gift of the Holy Ghost, and be confirmed members of the Church of Christ." It is unclear whether only the six original members of the Church or all in attendance who had been previously baptized were confirmed.

7. See Doctrine and Covenants 21; Jessee, *Papers,* 1:303.

8. Jessee, *Papers,* 1:303.

obey the laws of the land in organizing a church.[9] In seeking out what legally took place on April 6, 1830, historians have assumed that Church leaders attempted to incorporate, and they cite an 1813 New York statute entitled An Act to Provide for the Incorporation of Religious Societies.[10] But upon closer examination, the historical evidence, as well as the purposes and benefits of religious corporations fails to align with the act of incorporation, suggesting that the Church never incorporated in New York.

In nineteenth-century New York, a corporation was a legal entity "composed of individuals united under a common name, the members of which succeed[ed] each other" so that the entity continued unchanged despite an evolving membership.[11] Various types of corporations existed,[12] including

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9. See Doctrine and Covenants 20:1: "The rise of the Church of Christ in these last days, . . . it being regularly organized and established agreeable to the laws of our country"; see also notes 95–96 below and accompanying text.

10. See, for example, Porter, "Organizational Origins," 155–58; Larry C. Porter, *A Study of the Origins of the Church of Jesus Christ of Latter-day Saints in the States of New York and Pennsylvania* (Provo, Utah: Joseph Fielding Smith Institute for Latter-day Saint History and BYU Studies, 2000), 100, 155; see also John K. Carmack, "Fayette: The Place the Church Was Organized," *Ensign* 19 (February 1989): 15; Larry C. Porter, "Organization of the Church," in *Encyclopedia of Latter-day Saint History*, ed. Arnold K. Garr, Donald Q. Cannon, and Richard O. Cowan (Salt Lake City: Deseret Book, 2000), 877–81; Daniel H. Ludlow, "Organization of the Church, 1830," in *Encyclopedia of Mormonism,* ed. Daniel H. Ludlow, 4 vols. (New York: Macmillan, 1992), 3:1049; and W. Jeffrey Marsh, "The Organization of the Church," in *Joseph: Exploring the Life and Ministry of the Prophet,* ed. Susan Easton Black and Andrew C. Skinner (Deseret Book, 2005), 120.

11. J. Bouvier, *A Law Dictionary*, rev. 6th ed. (1856), 2 vols., accessed at http://inclusion.semitagui.gov.co/Publications/Bouviers/bouvier.htm, s.v. "Corporation." A corporation thus maintained "a perpetual succession" and enjoyed a "sort of immortality." John Holmes, *The Statesman, or Principles of Legislation and Law* (Augusta, Maine: Severance Dorr, Printers, 1840), 226. To understand the benefits of this corporate immortality, compare corporations to partnerships which would necessarily dissolve after the death or departure of one of the partners. See Bouvier, *Law Dictionary*, s.v. "Partnership": "The law will not presume that it shall last beyond life." See also note 19 below for the typical headaches surrounding a nonincorporated entity's property succession.

Throughout this article, no contemporary histories regarding the law of incorporating churches in the 1830s are cited because none exist. Thus, the author focuses strictly on early statutes and primary sources. Broad histories that detail the development of the laws of the incorporation or organization of business associations are largely irrelevant to the incorporation of churches, which faced a dissimilar developmental path.

12. In the nineteenth century, corporations were divided into private and public categories, public corporations being those owned and operated by the government. Bouvier, *Law Dictionary*, s.v. "Corporation." Private corporations were further categorized into religious and lay categories. Holmes, *Statesman,* 226; James Kent, *Commentaries on American*

religious corporations, which were composed of "spiritual persons"[13] who took "a lively interest in the advancement of religion"[14] and who took the steps to incorporate.

The literature of that era refers to three main benefits that flowed to a church by being incorporated. First, religious corporations maintained a perpetual succession with trustees carrying out the original purpose of the church despite an ever-changing membership or the passage of time.[15] Second, this "immortality" allowed for the religious corporation to manage "with more facility and advantage, the temporalities belonging to the church or congregation."[16] Without corporate status, the property of the church was owned by individual members, and the church did not possess "the power to transfer the privileges given to it to other persons" when the owning members died.[17] Alternatively, a corporation was "considered as *one person,* which has but one will"[18] and could transfer property upon death with relative ease.[19] Third, religious corporations had various

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Law, 4 vols., 14th ed. (Boston: Little, Brown, 1896), 2:274; Joseph K. Angell and Samuel Ames, *A Treatise on the Law of Private Corporations Aggregate* (Boston: Hilliard, Gray, Little and Wilkins, 1832), 25.

13. Holmes, *Statesman,* 226.

14. Angell and Ames, *Treatise on the Law,* 25. Religious corporations must have "created [the corporation] with a view of promoting religion and perpetuating the rights of the church." Holmes, *Statesman,* 226. Also, the purpose of religious corporations must have been entirely ecclesiastical. See Angell and Ames, *Treatise on the Law,* 26, providing the example that even if Dartmouth College was composed entirely of ecclesiastical persons, because the object of a school was not "entirely ecclesiastical," it could not be a religious corporation and was thus an eleemosynary (charitable) corporation.

15. See Holmes, *Statesman,* 226. This perpetual succession was a main function of all corporations. In the United States Supreme Court case *Dartmouth College v. Woodward*, Justice Marshall commented that corporations allow for "a perpetual succession of individuals [which] are capable of acting for the promotion of the particular object, like one immortal being." 4 Wheaton, (U.S.) R. 636 (1819). In a subsequent case, Justice Marshall further stated, "The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men." Providence Bank v. Billings, 4 Peters, (U.S.) R. 562 (1830). Religious corporations were no different; the church could exist indefinitely and continue long after any one member passed on while maintaining the purpose and integrity of the original institution.

16. Kent, *Comentaries,* 2:275.

17. Angell and Ames, *Treatise on the Law,* 7.

18. Angell and Ames, *Treatise on the Law,* 7, emphasis in original.

19. Angell and Ames, *Treatise on the Law,* 7, emphasis in original: "If, for example, a grant of land should be made to twenty individuals not incorporated, the right to the land cannot be assured to their successors, without the inconvenience of making frequent and numerous conveyances. When, on the other hand, any number of persons are

legal rights, including the power to make contracts, to have a common seal, and to use the corporate name,[20] all allowing for easier property management.

State laws varied on how a congregation could form a religious corporation.[21] New York updated its incorporation statute in 1813, entitled An Act to Provide for the Incorporation of Religious Societies, which detailed how a church could self-incorporate.[22] Section Three of the Act stated that to form a religious corporation, the congregation should gather to elect between three and nine trustees:

> It shall be lawful for the male persons of full age … to assemble at the church, meeting-house, or other place where they statedly attend for divine worship, 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, as trustees, to take the charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof.[23]

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consolidated and united into a corporation, they are then considered as *one person*, which has but one will,—that will being ascertained by a majority of votes."

20. Angell and Ames, *Treatise on the Law,* 277–92.

21. Churches could form a religious corporation in two ways. R. H. Tyler, *American Ecclesiastical Law: The Law of Religious Societies* (Albany: William Gould, 1866), 58: "Sometimes religious societies are incorporated here by special charters, but more frequently, under general incorporating laws." First, the government granted a "special charter" which incorporated a church. The British government employed this method in the American colonies, granting special privileges of incorporation to specific state-sponsored churches. See generally Paul G. Kauper and Stephen C. Ellis, "Religious Corporations and the Law," *Michigan Law Review* 71 (1973): 1499, 1505–9, describing the influence of "the English notion that a corporation could exist only with the express prior approval of the state" (1505). This idea was adopted by the early colonies which used specific corporate grants for certain state-endorsed churches. After the American Revolution, this method fell into disfavor, and the United States adopted a more widespread method of incorporation—the enactment of "general" state incorporation laws giving churches the ability to incorporate without legislative mandate. Kauper and Ellis, "Religious Corporations and the Law," 1509–10: "The difficulties inherent in any system that grants special favors to a few led to the downfall of incorporation by special charter. It seems probable that the spirit of separation and pluralism that swept the country at the time of the American Revolution lent aid to the enactment of general incorporation laws."

22. Religious Incorporations, An Act to Provide for the Incorporation of Religious Societies, in *The Revised Statutes of the State of New York* (1836, enacted Feb. 5, 1813), at 206; hereafter cited as New York Religious Incorporation Statute.

23. New York Religious Incorporation Statute §3. Other sections of the statute set forth detailed obligations such as requiring the board of trustees to serve three-year terms and

Trustees played a key role in a religious corporation. Similar to directors of present-day corporations, trustees were managing officers responsible for the temporal affairs of the church.[24] The church vested all property in these trustees, who held it for the use and benefit of the congregation.[25]

The main event at incorporation meetings was the election of these trustees. New York's statute described the formalities of this election:

> And that at such election, every male person of full age . . . shall be entitled to vote, and the said election shall be conducted as follows: the minister of such church . . . shall publicly notify the congregation of the time when, and place where, the said election shall be held . . . ; that on the said day of election, two of the elders . . . 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 the said church, congregation or society.[26]

The minister of the religious society gave notification of the upcoming election at least fifteen days beforehand, including two successive Sabbaths.[27] The notice was very simple, merely requiring that the time and place of the election

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be re-elected to stay in office (§6), limiting trustee powers (§8) and the number of trustees who could serve (§§3, 9), and mandating certain administrative responsibilities (§§7, 9).

24. Sandford Hunt, *Laws Relating to Religious Corporations* (New York: Nelson and Phillips, 1876), iv: "The relation which the trustees bear to the corporation is not that of private trustees to the *cestuis que trust,* but that of directors to a civil corporation. They are managing officers of the corporation, invested, as to its temporal affairs, with such particular powers as are specified in the statute."

25. See Kauper and Ellis, "Religious Corporations and the Law," 1511: "The trustee form [of general incorporation statutes] was initially adopted in most eastern states. It consisted of a body of trustees, usually elected by the congregation, which was incorporated as a unit. All church property was vested in the corporate body, which held it for the use and benefit of the church, congregation, or society involved. This form grew out of the common law practice of using trustees to hold property for a voluntary association incapable of taking or holding property in its own name."

26. New York Religious Incorporation Statute, §3.

27. Tyler, *American Ecclesiastical Law,* 85: "This notification must be given for two successive Sabbaths, or days on which such church, congregation or society shall statedly meet for public worship," or in other words, "at least fifteen days before the day of such election."

be given.[28] By a voting majority, the congregation was to elect two elders to preside over the election, tally votes, and announce the winning trustees.

The statute also required certification with the county clerk:

> And the said returning officers shall immediately thereafter certify, under their hands and seals, the names of the persons elected to serve as trustees … in which certificate the name or title by which the said trustees and their successors shall forever thereafter be called and known, shall be particularly mentioned and described; which said certificate, being proved or acknowledged as above directed, shall be recorded as aforesaid; and such trustees and their successors shall also thereupon, by virtue of this act, be a body corporate, by the name or title expressed in such certificate; and the clerk of every county for recording every certificate of incorporation by virtue of this act, shall be entitled to seventy-five cents, and no more.[29]

The trustees were required to certify the incorporation by filing a document containing the names of the trustees, giving the official title by which the corporation would be known, and paying a fee. Upon the certificate being recorded, the organizing church officially became a religious corporation.

Evidence That the Church Probably Did Not Incorporate

Three reasons become apparent as to why leaders of the early Church probably did not incorporate it on April 6, 1830: (1) incorporation would have required an organizational structure incompatible with that of the Church; (2) the early Church would not have received any tangible benefits for which other churches would have traditionally sought incorporation; and (3) historical evidence does not align with several of the statute's main requirements.

First, the trustee system of incorporated churches would have forced an organizational framework that was not in accordance with the preferred leadership structure of the early Church. In religious corporations, power was disbursed between three to nine trustees, who led by democratic majority vote. This system did not comport with the single office of a prophet who was to lead the Church. According to at least one account, on April 6, 1830, Joseph Smith was ordained *the* prophet, seer, and revelator for the Church,

28. Tyler, *American Ecclesiastical Law,* 85: "This notice is a very simple one, and no form of it need be given."

29. New York Religious Incorporation Statute, §3.

plainly the sole leader of the new organization.[30] Oliver Cowdery was likewise Joseph's unequivocal second-in-command. These two men, with Joseph foremost, were to lead the Lord's Church through revelation, not three to nine trustees who governed by majority vote.[31]

Second, most of the benefits of forming a religious corporation would not have enticed the early Church. As mentioned above, religious corporations primarily formed to enjoy perpetual succession and easier property management.[32] Such benefits would not have concerned Church leaders in 1830 due to the Church's financial state. The Church did not own any property, such as a building or land. Rather, the Saints used public lands such as creeks and rivers to perform baptisms and members' homes, schools, or other churches as meetinghouses.[33] Perpetuity and simplified property management are of little advantage when a church holds no assets. The minimal tangible benefits combined with a forced organizational structure likely would have dissuaded the early Church leaders from incorporating.

Third, the eyewitness accounts of the organizational meeting and descriptions of subsequent Church operation only modestly resemble the statutory requirements of New York's law. While the early Saints followed a few of the

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30. See note 5 above. The earliest recorded revelation we have in which the Lord unequivocally states that Joseph Smith alone was the Lord's mouthpiece came in the summer of 1830. See Doctrine and Covenants 28:1–7. Until then, Oliver Cowdery could arguably have been considered a joint-holder of the Melchizidek Priesthood keys with Joseph. See, for example, Joseph Fielding Smith, *Doctrines of Salvation*, 3 vols., comp. Bruce R. McConkie (Salt Lake City: Bookcraft, 1954), 1:212: "Oliver Cowdery's standing in the beginning was as the 'Second Elder' of the Church, holding the keys jointly with the Prophet Joseph Smith." Even this two-person organization would not comport with the trustee requirements of the statute.

31. Additionally, incorporation did not come without strings attached. Fulfilling New York's incorporation requirements invited government regulation, although the enforcement of such requirements is questionable in that area of the state. Because corporations enjoyed perpetual succession, the legislature placed a limit on the amount of property that churches could hold each year. New York Religious Incorporation Statute, §12, states that religious corporations could "have, hold, and enjoy lands, tenements, goods and chattels of the yearly value of three thousand dollars." Incorporated churches were also required to get state approval before any purchase of property. New York Religious Incorporation Statute, §11; see also Angell and Ames, *Treatise on the Law,* 183: "No religious corporation can sell any real estate without the Chancellor's order." If Church leaders were aware of such restrictions, they might have been reluctant to invite such oversight without significant benefits from incorporation.

32. See notes 15–20 above.

33. See Porter, "Study of the Origins," 100–101; see also note 38 below and accompanying text.

New York Religious Incorporation Statute	Fulfilled on April 6, 1830?	
Congregation assembles at the church, meetinghouse, or other place where church meets to worship	Yes	The Whitmer home could qualify, although the Whitmers had never hosted a formal Church meeting before April 6, 1830.
Minister gives notice of meeting to congregation	Yes	Joseph Smith gave notice of the upcoming meeting to the Saints.
Two elders elected to preside at election of trustees, judge the trustees' qualifications, and return the names of winners	No	While Joseph Smith and Oliver Cowdery were sustained as leaders of the Church, there is no record that they ever presided over the election of any trustees.
Three to nine trustees elected to take over church's property and transact church's affairs	No	Documents list six elders as original members, but there is no record that the congregation voted on them, and they did not perform trustee-like duties afterward.
Certificate filed with county clerk	No	No such certificate has been found.

following minor requirements, the more essential portions of the statute appear to not have been followed on April 6, 1830.

The statute required that "male persons of full age … assemble at the church, meeting-house, or other place where they statedly attend for divine worship."[34] The Saints met in the home of Peter Whitmer Sr., a locally influential farmer residing in Fayette, New York.[35] Despite not being an actual church, the home of a member appears to be a valid setting for an ecclesiastical election; other churches during that time period likewise chose to incorporate in the house of a member.[36] But the Whitmer home does not appear to be where the Saints "statedly attend[ed]" for divine worship. The Church held no formal meetings there before April 6, 1830,[37] and after organization

34. New York Religious Incorporation Statute, §3.

35. See note 3 above.

36. Porter, "Study of the Origins," 159, citing a Seneca County Courthouse record book recording the incorporation certificate of the Methodist Episcopal Society "held at the House of Benjamin Kenny in the Village of Seneca Falls … on the 6th day of January 1829."

37. The Church held its first public discourse (by Oliver Cowdery) on April 11, 1830, and held the first conference of the Church two months after organization, on June 1, 1830, both at the Peter Whitmer Sr. home. See Jessee, *Papers,* 304, 307.

the Church met at various locations, including two different schoolhouses, various churches, and other members' homes.[38] However, the Whitmer home was the location of three subsequent general conferences, which implies that when the early members needed a formal meeting place, they chose the Whitmer home. Additionally, Joseph Smith resided there at the time of organization, and it was essentially the headquarters of the Church.[39] Such a setting would probably qualify as an appropriate location for incorporation under the statute.

The statute further required that the minister "publicly notify the congregation of the time when, and place where, the said election shall be held."[40] Joseph Smith's manuscript history states, "[We] made known to our brethren, that we had received commandment to organize the Church And accordingly we met together for that purpose, at the house of Mr Whitmer."[41] Joseph states that he gave such notification, which is also evidenced by the sizable number in attendance at the organizational meeting.

The location and notice requirements constitute the extent of clear similarities between the statute and the accounts of the Church's organization. Additional requirements only tangentially align with the descriptions given of the meeting.

For example, the statute requires the election of two elders to preside over the election. "Two of the elders … [shall be] nominated by a majority of members present … [to] preside at such election, receive votes of the electors, … and the officers to return the names of the [elected trustees]."[42] A seemingly parallel event is found when the congregation on April 6, 1830, voted on Joseph Smith and Oliver Cowdery: "[Joseph] proceeded … to call on our brethren to know whether they accepted us as their teachers in the things of the Kingdom of God.… To these they consented by an unanimous vote."[43] But such an election was not for Joseph and Oliver to be temporary officers who would preside, run, and tally an election of a board of trustees. The congregation sustained Joseph and Oliver as the leaders of the Church. There is no record of any electoral judges being chosen.

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38. Porter, "Study of the Origins," 100.

39. See, for example, Keith W. Perkins, "From New York to Utah: Seven Church Headquarters," *Ensign* 31 (August 2001): 52, which states, "W*herever the prophet of the Lord was, there was the headquarters of the Church.*"

40. New York Religious Incorporation Statute, §3.

41. See Jessee, *Papers,* 302.

42. New York Religious Incorporation Statute, §3.

43. See Jessee, *Papers,* 302–3.

Perhaps of most significance is the absence of any actual election of trustees. The statute states that "male persons of full age … [shall elect three to nine] trustees, to take the charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof."[44] In the accounts of April 6, 1830, there is no mention of any election of trustees. Since the central purpose of an incorporation meeting was to elect these trustees, this silence is informative. Scholars point to the six original members of the Church as evidence of statutory compliance with this requirement.[45] But the accounts refer to them simply as "members," not trustees. Further, these six original members played a minimal role in the organizational meeting; in fact, their names were only recorded several decades afterward.[46] Also, after the organization these six original members do not appear to collectively perform any typical trustee duties such as the buying and selling of property or the creation of bylaws for the Church.[47] The statute clearly demonstrates that the decision-making power of a religious corporation should lie *in the trustees* after incorporation, while in reality, Joseph Smith maintained sole decision-making power as prophet.

Finally, the statute required that the officers "certify, under their hands and seals, the names of the persons elected to serve as trustees, … [and] the name or title by which the said trustees and their successors shall forever thereafter be called and known."[48] No one has ever found the Church's incorporation certificate that was to be filed with the county clerk. Two historians in particular have meticulously searched to no avail for the certificate of incorporation in several government offices and courthouses in upstate New York.[49] While it is not unusual for historical documents to go missing and never be found again, historians not only have failed to find the actual certificate,

44. New York Religious Incorporation Statute, §3.

45. See, for example, Porter, "Study of the Origins," 159: "The writer would again like to emphasize that in a majority of the accounts referring to the organization of the LDS Church, the number six is stressed as the automatic number required by New York State Law to incorporate.… It appears that Joseph Smith arbitrarily selected six individuals to assist in meeting the requirements of the law."

46. See, for example, Porter, "Study of the Origins," 98–99, citing lists of the original six members by Joseph Knight Jr. in 1862 and David Whitmer in 1887. Note the discrepancy between the two lists, one citing Samuel H. Smith and the other John Whitmer, lending further evidence to the minimal role the original six members played. See generally Richard Lloyd Anderson, "Who Were the Six Who Organized the Church on April 6, 1830?" *Ensign* 10 (June 1980): 44–45.

47. New York Religious Incorporation Statute, §3.

48. New York Religious Incorporation Statute, §3.

49. Porter, "Study of the Origins," 155–60; Carmack, "Fayette," 15.

but also have not found any record that the county clerk ever received such certification or the requisite fee—separate notations that the clerk would have made in addition to filing the certificate.[50] This absence comes despite records of several other churches filing certificates during the time period.[51]

In summary, the only clear similarities between the statute and the events of April 6, 1830, appear to be Joseph Smith giving notice to the members of the Church to meet at the Whitmer home, a place where the Saints would typically gather. Otherwise, there are only seeming coincidences in the numbers of elders and electoral judges and of original members and trustees. While this could merely show a lack of awareness or compliance with the statute, it is more likely the Saints were simply not trying to incorporate, and perhaps were even unaware of the statute.

Seeing the Church as an Unincorporated Religious Society

Stronger evidence suggests that on April 6, 1830, Joseph Smith organized the Church as an unincorporated "religious society." First, in the nineteenth century, formation of a religious society often preceded incorporation. Second, the organizational events of the Church closely align with the customary methods that other churches followed for creating new religious societies. Third, early statements regarding the organization of the Church support the creation of a religious society. These facts lead to the likely conclusion that Church leaders did not incorporate the institution in New York but instead formed an unincorporated religious society.

Religious societies were regularly operating churches that did not hold corporate status. The legal definition of a religious society was "a voluntary association of individuals or families … united for the purpose of having a common place of worship, and to provide a proper teacher to instruct them … and to administer the ordinances of the church."[52] Essentially, religious societies comprised all unincorporated churches.

A religious society could be created by anyone wishing to form one's own church. Unlike religious corporations, in 1830 no federal or state statutes

50. Porter, "Study of the Origins," 156. Dr. Porter speculates that either the founders submitted the certificate and it was lost and never recorded or that "the initial press of business and the increasing opposition locally somehow stayed them from executing the document formally in a court of law."

51. Porter, "Study of the Origins," 155–56.

52. Tyler, *American Ecclesiastical Law,* 54. See also Bouvier, *Law Dictionary*, s.v. "Society": "A society is a number of persons united together by mutual consent, in order to deliberate, determine, and act jointly for some common purpose."

regulated the formation of religious societies. Rather, formation was determined "by usage"; in other words, according to the policies and customs of each church.[53] In the 1830s, it was the common practice to create a religious society before incorporating.[54] In fact, nineteenth-century incorporation statutes were drafted with the presumption that such a statute would be applied to a preexisting religious society.[55] If early Church leaders were aware of such a practice, they would have opted to form a religious society and not a corporation.

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53. William Lawrence, "The Law of Religious Societies and Church Corporations," *American Law Register* 21 (June 1873): 537: "It is a general rule that every person of proper intellectual capacity, may unite with others assenting thereto, in perfecting the organization of a religious society according to the forms required by the ecclesiastical faith and church government which may be adopted." See also Lawrence, "The Law of Religious Societies," 362–63: "A particular religious society may be organized with an appropriate number of members as a new and original congregation.... In all such cases there are in many of the different denominations proceedings or forms to be observed, in obedience to regulations prescribed or resulting from usage." See also Lawrence, "Law of Religious Societies," 541: "There can be but little practical necessity for any legal provision by statute to authorize or regulate this form of organization. It is created as at common law by such written articles of association as religious societies may adopt or may rest in parol." This aligns with religious societies' legal similarities to partnerships, which could be formed by any express act of the partners. See Bouvier, *Law Dictionary*, s.v. "Partnership": "Partnerships are created by mere act of the parties; and in this they differ from corporations which require the sanction of public authority, either express or implied."

54. The organization of the Church occurred before a larger movement developed to incorporate churches throughout the United States. Colonial churches seldom incorporated, primarily because the use of general statutes of incorporation did not yet exist. Joseph Stancliffe Davis, *Essays in the Earlier History of American Corporations* (Cambridge: Harvard University Press, 1917), 79–80; see also note 21 above. Into the 1870s, a "large proportion of all the religious societies in many of the states [were still] unincorporated," Lawrence, "Law of Religious Societies," 540. By the turn of the twentieth century, the majority of churches in America incorporated. See "Incorporation of Religious Societies," *Columbia Law Review* 5 (February 1905): 154: "At present a majority of the religious societies in this country conduct their affairs under a franchise [civil corporation]." The LDS Church organized before this movement to incorporate gained momentum, and organizing without incorporation would have been common for a church in 1830.

55. Note the very title of New York's incorporation statute: An Act to Provide for the Incorporation of Religious Societies. See also Lawrence, "Law of Religious Societies," 548, emphasis in original: "The statutes [authorizing incorporation] generally contemplate a prior *ecclesiastical* organization." The statute's requirements also presume the incorporation of a preexisting religious society. It called for the election to be held at the typical place of worship, and the minister was to publish notice to the congregation at least two Sundays in advance. New York Religious Incorporation Statute, §3. Also, the trustees were active males chosen from the general body of the church and were to take charge of the church's

The organizational events of the Church align with customary methods that other churches followed for creating new religious societies (see fig. 1). Unlike religious corporations, in 1830 the formation of a religious society was regulated by the individual policies and customs of each church, not by legislative statutes.[56] Most new societies formed local branches of larger existing religions, such as the Presbyterian, Methodist, Baptist, and Episcopal faiths, whose mother churches had detailed policies that the new religious societies were to follow in order to effectively organize. Alternatively, a new church not being formed as a branch of an existing denomination had no restrictions on how they could form. By examining the instruction that other churches gave regarding how to form new congregations, one can understand the customary method for forming a religious society with which Joseph Smith possibly employed. The events of the organization of the LDS Church align in several ways with the guidelines of these other churches.

One of the leading faiths in upstate New York was Presbyterianism.[57] To guide the growth of the church in new communities like Palmyra, the General Assembly of the Presbyterian Church printed pamphlets and treatises specifying how to form new congregations.[58] The organization of a new Presbyterian religious society occurred as follows. Individuals were to send a petition to the presbytery that would appoint two ruling elders to organize the church.[59] The two ruling elders, "having given due notice to the persons

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estate and property. New York Religious Incorporation Statute, §3. These requirements only seem sensible if a previously operating church was applying for incorporation.

56. See note 53 above and accompanying text.

57. Milton V. Backman, *Joseph Smith's First Vision: The First Vision in its Historical Context* (Salt Lake City: Bookcraft, 1980), 66–69. Due to the renewed religious interest incited by the Second Great Awakening, the Presbyterian Church in Palmyra divided into two congregations in 1817. Several members of Joseph Smith's family, including Lucy, Hyrum, and Samuel, regularly attended one of these congregations, the Western Presbyterian Church, during Joseph's youth. Backman, *Joseph Smith's First Vision,* 69.

58. See, for example, *Report of a Committee of the General Assembly, Appointed for Revising the Form of Government, and the Forms of Process of the Presbyterian Church, in the United States of America* (Philadelphia: Thomas and William Bradford, 1819), including on the title page, "Ordered to be Printed for the Consideration of the Presbyteries"; see also Lawrence, "Law of Religious Societies," 363 n. 56; Benjamin F. Bittinger, *Manual of Law and Usage* (Philadelphia: Presbyterian Board of Publication, 1888), 30–35; W. H. Workman, *Presbyterian Rule, Embracing the Form of Government, Rules of Discipline, and Directory for Worship, in the Presbyterian Church in the United States* (Richmond, Va.: Presbyterian Committee of Publication, 1898), 21–27.

59. Lawrence, "Law of Religious Societies," 363 n. 56, quoting *Prescribed Rules for Organizing a United Presbyterian Congregation*.

who are to compose the new congregation of the time and place of meeting … [would] converse with all who propose[d] to unite in forming the congregation; and being satisfied with their religious attainments and character, … on the day appointed for the organization, [would] publicly receive them."[60] The organizational meeting was to begin with the "usual exercises of public worship,"[61] or "devotional exercises, conducted by the presiding minister,"[62] followed by the election of the ruling elders.[63] Only "male communicating members" in the church could be elected as elders, who after election were ordained to their offices.[64] This was accomplished when one of the elders asked the congregation, "Do you the members of this congregation acknowledge and receive this brother as a Ruling Elder … in this church?"[65] The members then responded "in the affirmative, by holding up their right hands" and then witnessed the setting apart of the elder by prayer.[66] Baptisms also commonly played a role in such events.[67]

The Methodist Church published similar guidelines. Methodists were among the earliest to organize in the Palmyra area and enjoyed tremendous growth during Joseph Smith's youth due to the success of Methodist circuit riders.[68] In rural areas, these itinerant preachers rotated through different areas of the country, opting for camp meetings in forest groves or barns rather than formal meetinghouses.[69] The actual formation of a congregation often had to wait until a preacher was willing to permanently minister to a congregation. The church counseled that "persons desiring to organize themselves … [should] apply to a Methodist preacher, having regular pastoral charge near them, who receives them as members of the church … on a profession of their faith. The preacher then enrolls their names in the general register of his charge" and "when these steps have been taken, the society is duly constituted, and becomes an organic part of the church, and has regular pastoral care."[70]

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60. Lawrence, "Law of Religious Societies," 363 n. 56.
61. Lawrence, "Law of Religious Societies," 363 n. 56.
62. Bittinger, *Manual of Law and Usage,* 31.
63. *Report of a Committee of the General Assembly,* 10; Workman, *Presbyterian Rule,* 23.
64. *Report of a Committee of the General Assembly,* 10.
65. *Report of a Committee of the General Assembly,* 10.
66. *Report of a Committee of the General Assembly,* 10.
67. Bittinger, *Manual of Law and Usage,* 32; Workman, *Presbyterian Rule,* 22.
68. Backman, *Joseph Smith's First Vision,* 57, 70.
69. Backman, *Joseph Smith's First Vision,* 70–71.
70. Lawrence, "Law of Religious Societies," 364 n. 56.

Figure 1. Excerpts from Pamphlets and Rules Regarding the Formation of Local Congregations

Presbyterian: Form of Government and General Administration: *Prescribed Rules for Organizing a United Presbyterian Congregation.*

When a congregation becomes too numerous to meet conveniently in one place for public worship, or when for any other reason it would promote the general interests of the church to organize a new congregation, the persons so judging shall make application to the Presbytery, within whose bounds they reside, setting forth the necessity or propriety of such organization. Whenever application for this purpose is made, notice shall be given by the Presbytery to the session of the congregation, that may be affected by the new organization, before the petition is granted.

If after hearing the reasons, the Presbytery determines to grant the application, it shall appoint a minister and two ruling elders, if practicable, to carry the object into effect; and they having given due notice to the persons who are to compose the new congregation of the time and place of meeting for said purpose, shall, after the usual exercises of public worship, proceed to hold an election for the proper officers.

When the persons who are to compose the new congregation are already members of the church in full communion, the election of officers shall be conducted as in congregations already organized.

But when the applicants are not in communion, the minister shall converse with all who propose to unite in forming the congregation; and being satisfied with their religious attainments and character, he shall, on the day appointed for the organization, publicly receive them by proposing the questions usually proposed to applicants for membership. The election shall then be conducted in the prescribed way.

When the election is over, the minister shall announce to the congregation the names of the persons elected; and on their agreeing to accept the office, and having been examined by him as to their qualifications for, and their views in undertaking it, a day shall be appointed for their ordination, the edict served, and the ordination conducted as in other congregations.

The presiding minister shall report to the Presbytery his procedure in the case, with the names of the officers who have been chosen and ordained. And these with the name of the congregation shall be entered on the Presbytery's list.

Methodist: *Mode of Organizing a New Society of the Methodist Episcopal Church as determined by Usage.*

If in a certain neighborhood there are persons desiring to organize themselves into a Christian Society in accordance with the rules and usages of the M. E. Church, how is such organization effected?

They apply to a Methodist preacher, having regular pastoral charge near them, who receives them as members of the church, either by written certificate of their good standing in some other society, or on profession of their faith. The preacher then enrolls their names in the general register of his charge, and in a class-book which he gives to one of them whom he appoints as leader of the class. The leader represents them in the Quarterly Conference.

When these steps have been taken, the society is duly constituted, and becomes an organic part of the church, and has regular pastoral care. And this care is perpetuated from year to year by the appointment of a pastor by the bishop at the session of the Annual Conference in whose bounds such society is situated.

If this society have a house of worship, or propose to erect one, a board of trustees must be created in accordance with the laws of the state or territory to hold the property in trust for said society. These trustees must be approved by the Quarterly Conference of the Circuit of which such society is a part. And to be admitted, the charter, deed or conveyance of such house of worship, must contain the trust required by the discipline of the church.

Baptist: Edward T. Hiscox, *The Baptist Directory: A Guide to the Doctrines and Practices of Baptist Churches.*

When a number of Christians, members of the same or of different churches, believe that their own spiritual improvement, or the religious welfare of the community so requires, they organize a new church.

This is done by uniting in mutual covenant, to sustain the relations and obligations prescribed by the Gospel, to be governed by the laws of Christ's house, and to maintain public worship and the preaching of the Gospel. Articles of faith are usually adopted, as also a name by which the church shall be known, and its officers elected.

Episcopal: Murray Hoffman, *A Treatise on the Law of the Protestant Episcopal Church in the United States.*

Whenever any number of persons shall associate to form an Episcopal congregation, they shall … acknowledge and accede to the constitution, canons, doctrine, discipline, and worship of the Protestant Episcopal Church in the United States …; they shall assume a suitable name by which their church or parish shall be designated, and appoint not less than three nor more than eleven vestrymen and two wardens. …

The form of organization of a parish is this: "We the subscribers, assembled for the purpose of organizing a parish of the Protestant Episcopal Church in the town of ____ …, after due notice given, do hereby agree to form a parish, to be known by the name of ____ church, and as such do hereby acknowledge and accede to the constitution and canons of the Protestant Episcopal Church in the United States of America, and the constitution and canons of the same Church in the diocese.

The Baptist Church was also prominent in the Palmyra area and had a membership of several hundred in the 1820s.[71] They grew quickly, "primarily by converting unchurched americans," and relied on uneducated lay ministers to staff their congregations.[72] A key tenet of the Baptist faith focused on the independence of each congregation.[73] The method for organization of a Baptist society was thus, not surprisingly, free of many formalities and could differ from society to society. One treatise describes the loose requirements as follows: "When a number of Christians, members of the same or of different churches, believe that their own spiritual improvement, or the religious welfare of the community so requires, they organize a new church. This is done by uniting in mutual covenant to sustain the relations and obligations prescribed by the Gospel.... Articles of faith are usually adopted, as also a name by which the church shall be known, and its officers elected."[74]

The Episcopal Church in the United States, formerly known as the Church of England, also instructed new members on how to form a congregation.[75] Like the Baptist Church, the Episcopal Church gave general instructions for formation without any rigid formalities. The congregation was to give notice of an upcoming organizational meeting and at such meeting adopt articles of association, assume a suitable name, elect officers, and agree to the beliefs and practices of that church.[76]

Comparability to the Organization of the LDS Church

While a significant difference exists between organizing an entirely new church and forming a new congregation under an existing denomination, the organizational events of April 6, 1830, align quite closely with various elements in the customary methods for organizing local congregations as prescribed by these other churches.

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71. Backman, *Joseph Smith's First Vision,* 64–65.

72. Backman, *Joseph Smith's First Vision,* 56.

73. Milton V. Backman Jr., *Christian Churches of America: Origins and Beliefs* (New York: Charles Scribner's Sons, 1976), 136.

74. Edward T. Hiscox, *The Baptist Directory: A Guide to the Doctrines and Practices of Baptist Churches* (New York: Sheldon and Company, 1876), 17.

75. Episcopalian preachers only taught sporadically in western New York at the beginning of the nineteenth century, and consequently a permanent Episcopalian congregation did not take hold in Palmyra until 1823. Backman, *Joseph Smith's First Vision,* 74–75.

76. Murray Hoffman, *A Treatise on the Law of the Protestant Episcopal Church in the United States* (New York: Stanford and Swords, 1850), 237–38.

Notice was given to the membership. Joseph Smith informed his brethren of the revelation commanding him to organize a church.[77] Both the Presbyterian and Episcopalian churches required notice be given to the prospective membership of a religious society. The prospective leadership gave "due notice to the persons who [were] to compose the new congregation of the time and place of meeting."[78]

Ruling or leading elders were elected. Joseph Smith called on the brethren present to know whether they accepted him and Oliver Cowdery as "their teachers in the things of the Kingdom of God."[79] Each of the four other churches elected their officers at their organizational meetings. The April 6 election of Joseph and Oliver is most similar to the Presbyterians' subscribed meeting, which included the election of two "ruling elders." Oliver and Joseph respectively ordained one another as elders on April 6, 1830,[80] with Joseph being the "first elder" and Oliver the "second elder."[81] Compare also the question asked at a Presbyterian service ("Do you the members of this congregation acknowledge and receive this brother as a Ruling Elder?"[82]) with Joseph Smith's description of the election ("[We called] on our brethren to know whether they accepted us as their teachers in the things of the kingdom of God"[83]). Presbyterians then answered in the affirmative by raising their right hands,[84] a practice similar to that of the LDS Church.

The organization was accompanied by usual exercises of public worship. The April 6 meeting opened with prayer and, after the election of elders, included the administration of the sacrament as well as "time spent

77. See note 41 above and accompanying text.

78. Lawrence, "Law of Religious Societies," 363 n. 56, quoting *Prescribed Rules for Organizing a United Presbyterian Congregation*; see also Hoffman, *Treatise on the Law of the Protestant Episcopal Church,* 246: "We the subscribers, assembled for the purpose of organizing a parish of the Protestant Episcopal Church . . . , after due notice given, do hereby agree to form a parish."

79. Jessee, *Papers,* 302–3.

80. See note 5 above and accompanying text.

81. Doctrine and Covenants 20:2–3. Early versions of the Articles and Covenants of the Church read simply "an elder." See Scott H. Faulring, "An Examination of the 1829 'Articles of the Church of Christ' in Relation to Section 20 of the Doctrine and Covenants," *BYU Studies* 43, no. 4 (2004): 72 n. 52. Reference to Joseph Smith as "first elder" came in the 1835 Doctrine and Covenants. Note that priesthood licenses issued at the first conference of elders on June 9, 1830, specifically designated that Joseph was the First Elder and Oliver Cowdery was the Second.

82. *Report of a Committee of the General Assembly,* 10.

83. Jessee, *Papers,* 302–3.

84. *Report of a Committee of the General Assembly,* 10.

Customary Elements of Other Churches' Organizational Meetings	Similar Element Found in Organization of LDS Church?	
Notice given to membership	Yes	Joseph Smith notified the brethren that he "had received commandment to organize the Church."
Election of ruling elders	Yes	A sustaining vote was taken as to whether the congregation accepted Joseph and Oliver as their leaders.
Usual exercises of public worship	Yes	Members oversaw the administration of the sacrament, prophesied, and witnessed.
Ordinations, baptisms and confirmations	Yes	Joseph and Oliver ordained elders and others to priesthood offices, confirmed members, and performed baptisms.
Official church name, membership and constitution	Yes	D&C 20 was received prior to organization, the "Church of Christ" was adopted as the official name, and a commandment was received to keep a record.

in witnessing."[85] Each of these portions of the meeting could be considered parts of a normal worship service, similar to the Presbyterian organizational meeting that began with the "usual exercises of public worship" and "devotional exercises."[86]

Ordinations, baptisms, and confirmations were then performed. In addition to Joseph Smith and Oliver Cowdery being ordained to the office of elder by the laying on of hands, others were called and ordained to priesthood offices. The leaders then confirmed members of the Church and gave them the gift of the Holy Ghost.[87] After the meeting, "several persons who had attended . . . [became] convinced of the truth, came forward shortly after, and were [baptized]."[88] This coincides with the practice of the Baptist and Episcopal churches, who similarly ordained other officers and accepted additional members into their church through baptism on the days of organization.

An official church name was given, membership recorded, and articles of regulation were soon put in place. After the organizational meeting, the

85. Jessee, *Papers,* 303.
86. *Report of a Committee of the General Assembly,* 10.
87. See notes 4–7 above and accompanying text.
88. Jessee, *Papers,* 303.

Church was officially known as "The Church of Christ."[89] Similarly, the Baptist and Episcopal churches both required that the congregation designate a suitable name for each church that organized.[90] Also, at the organizational meeting, Joseph Smith received a revelation that called for a record to be kept among the Church (D&C 20:82).[91] The Methodist Church likewise kept a record after organizing that included a "general register" of the members of the church. Note also the role of the Articles and Covenants of the Church, which represent a declaration of the doctrine and practices that the newly organized Church would follow—in essence a constitution or bylaws for the new church.[92] Correspondingly, the Episcopal Church required the reading and adoption of articles of association at their organizational meetings, and the Baptist Church required that articles of faith be adopted. While it is unknown how much, if any, of the Articles and Covenants was read at the organizational meeting,[93] they were accepted by the Church in a June conference, and the focus of early Church leaders on composing these articles aligns with the customary practice of other denominations. In summary, the events of the LDS organizational meeting aligned with the custom of coexisting churches seeking to form a religious society.

Historical Statements in Context

Finally, viewing the organization of the Church from the perspective of a religious society aligns well with the historical statements made by its earliest members. Indeed, the absence of any historical reference to incorporation in any of the accounts of April 6, 1830, is revealing. There exists no statement from any eyewitness or early Church member describing the event as an act of "incorporation." The events were instead consistently referred to as the

89. See Doctrine and Covenants 20:1; 21:11; David Whitmer, *An Address to All Believers in Christ* (Richmond: 1887), 73: "In June, 1829, the Lord gave us the name by which we must call the church, being the same as He gave the Nephites. We obeyed His commandment, and called it the church of christ."

90. Hiscox, *Baptist Directory,* 17; Hoffman, *Treatise on the Law of the Protestant Episcopal Church,* 246.

91. See note 7 above and accompanying text; Doctrine and Covenants 21:1.

92. Composing these articles was a principal goal of early leaders. Oliver Cowdery penned an early version of the Articles and Covenants in 1829 (entitled "the articles of the Church of Christ") and Church membership ratified the Articles and Covenants of the Church of Christ at the first conference in June 1830. See Faulring, "An Examination of the 1829 'Articles of the Church of Christ.'"

93. See note 3.

"organization" or "organizing" of the Church, terms typically used to describe a formation of a religious society.[94] If the leaders of the Church were familiar with the statutory difference between incorporation and organization, their use of the word "organization" is significant.

While Church members did not refer to the incorporation statute, they did refer to the organization being done according to the laws of the land. The Articles and Covenants describe the organization being done "agreeable to the laws of our country."[95] Additionally, in 1887 David Whitmer stated that the Church was formed according to the "laws of the land":

> The reason why we met on that day was this; the world had been telling us that we were not a regularly organized church, and we had no right to officiate in the ordinance of marriage, hold church property, etc., and that we should organize according to the laws of the land. On this account we met at my father's house in Fayette, N.Y., on April 6, 1830, to attend to this matter of organizing according to the laws of the land.[96]

These statements have motivated scholars to look for a statute that the Saints were trying to comply with and implement—a specific "law of the land." But reference to the organization being accomplished "according to the laws of the land" can just as well be construed as a declaration that the organization was done "legally" or "in a customary manner," not necessarily according to a specific statute.[97] Whitmer's overall concern appears to have been that

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94. Nearly every example that the author found of instructions to new congregations regarding the formation of religious societies in the nineteenth century used "organization" or "organize" to describe the act of creation. See, for example, Lawrence, "Law of Religious Societies," quoting Presbyterian instructions for creating a religious society that stated, "When a congregation becomes too numerous … it would promote the general interests of the church to organize a new congregation" (363); and quoting Methodist instructions for creating a religious society, which stated that a group could be formed "if in a certain neighborhood there are persons desiring to organize themselves into a Christian Society" (364).

95. See Doctrine and Covenants 20:1: "THE RISE of the Church of Christ … being regularly organized and established agreeable to the laws of our country."

96. Whitmer, *Address to All Believers,* 33; see also David Whitmer, *Kansas City Daily Journal,* June 5, 1881: "On the 6th of April, 1830, the church was called together and the elders acknowledged according to the laws of New York" (Church History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City.)

97. An act may be consistent with the common law (the unwritten, judge-made law which derives its force from the consent and practice of the governed) and be done according to the laws of the land without any specific statute explicitly governing the action.

community members were criticizing their lack of any legal organization whatsoever. Forming a religious society would have quelled such criticism.[98]

Further, Whitmer specifically mentions the Church lacking the authority to marry and hold church property. Both of these acts could be done by a religious society. The ability to perform marriages was not exclusively held by religious corporations but could be performed by a minister of any religious society,[99] and the members of an organized religious society could hold property on the congregation's behalf.[100]

A number of statements by subsequent members show a misunderstanding of New York's legal requirements for organizing a church.[101] These statements have since caused confusion regarding the Church's formation, most notably the reason for having six original members. As an example of one of these statements, the Apostle Erastus Snow stated the following in 1873:

> At that time there existed in the State of New York a legal statute forbidding anybody to minister in spiritual things, except a regularly recognized minister, and which also provided, that any six believers had the right to assemble to organize a religious body. After inquiring of the Lord, and to enable him to minister lawfully, the Prophet Joseph was commanded to enter into an organization; it was therefore on the 6th of April, 1830, that this

98. The critics pointed to a lack of formal church organization, not that the Church had failed to incorporate.

99. Nineteenth century legal treatises declared that "no peculiar ceremonies are requisite by the common law to the valid celebration of the marriage. The consent of the parties is all that is required." Kent, *Commentaries,* 2:87. "It can be done by ministers of the gospel and priests of every denomination.... When performed by a minister or priest, it shall be according to the forms and customs of the society to which he belongs." Member of the New York Bar, *The Citizen's Law Book* (New York: Henry Ludwig, 1844), 412.

100. Religious societies were treated as "quasi-partnerships" and members of such societies could acquire, lease, and sell property on behalf of the congregation. See Tyler, *American Ecclesiastical Law,* 55, emphasis in original: "It has however been held that property may be granted to individuals for the *use* of a church not incorporated." Lack of incorporation limited the transfer of property after death, and the property needed to be kept in the members' names and not that of the church, but a religious society was not forbidden from holding property. Before April 6, 1830, the Church was not even an unincorporated religious society. By "organizing," they obtained the right to perform marriages and hold property, and they satisfied the concerns outlined by Whitmer.

101. See, for example, Porter, "Study of the Origins," 159: "In a majority of the accounts referring to the organization of the LDS Church, the number six is stressed as the automatic number required by New York State Law to incorporate."

> statute was complied with, and the Church became recognized by the laws of the State of New York.[102]

A number of problems exist in this statement regardless of whether the Church incorporated or not. No portion of the religious incorporation statute, or any statute for that matter, forbade the exercise of "spiritual things" by nonministers. Additionally, the thought that there must be six believers to organize a religious body is also mistaken. There was no numerical requirement to form a religious society, and the incorporation statute required between three and nine, not six exactly.[103] Statements like Elder Snow's have led historians to believe that the number of original members held legal significance.[104] Such was not the case. Unfortunately, understanding the Church's organization as that of a religious society rather than a corporation fails to shed light on why Joseph chose to recognize six men as members, other than that it was probably not because any statute or law required it.

Conclusion

In the nineteenth century, church members could legally form a new congregation through two methods: the creation of a religious corporation or the organization of a religious society. While historians have long assumed Joseph Smith created a religious corporation on April 6, 1830, it is more likely he created a religious society when he organized the Church. Considering the Church's condition in 1830, forming a religious society clearly met the Church's needs and avoided an undesirable leadership structure. Additionally, the recorded accounts of the organizational meeting lack conformity with the incorporation statute's requirements but strongly resemble the customary methods of how other churches formed religious societies.

Understanding the legal status of the newly organized Church places the events of April 6, 1830, in a clearer context. Nearly every aspect of the Church's organizational meeting was a typical practice of the Baptist, Episcopalian, Methodist, or Presbyterian churches.[105] This not only shows that

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102. "Discourse by Erastus Snow," *Latter-day Saints' Millennial Star* 35 (April 22, 1873): 249–50.

103. Elder Snow did not join the Church until 1833 at the age of fourteen and was not an eye-witness to any of the events in New York. See generally Andrew Karl Larson, *Erastus Snow: The Life of a Missionary and Pioneer for the Early Mormon Church* (Salt Lake City: University of Utah Press, 1971), 17–18.

104. See, for example, note 101 above.

105. The sole exception to this is Joseph Smith's receipt of a revelation.

the early Church members did comply with the law in organizing, but also possibly explains why they chose certain actions during the meeting.[106]

After the meeting, Joseph records that he felt "acknowledged of God, 'The Church of Jesus Christ,' organized in accordance with commandments and revelations."[107] Not only did Joseph organize the Church according to the laws of the land, but he obeyed God's commandments in doing so. The Church's organization was thus done according to both the laws of God and man.

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106. The author wishes to emphasize that this article focuses solely on the legal analysis of a single event in Church history. This article was not intended to participate in any ongoing debate regarding the history of priesthood organization, Church hierarchy, and later unfolding developments. Such issues go beyond the scope of this deliberately limited article.

107. Jessee, *Papers,* 303.