

“This Stone Which I Erect Shall Be a House of God”: Disestablishment and Religious Corporations in New York, 1784-1854

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Abstract

Casebooks have long identified New York’s 1811 statute for manufacturers as the first instance of American general incorporation laws, whereby individuals and companies could incorporate through simple registration procedures rather than a special act of the legislature. In fact, New York created a general incorporation law thirty years earlier through the process of religious disestablishment. In a 1784 act, New York’s revolutionary legislature abolished the official status of the state’s Episcopal and Dutch Reformed churches, not by altering their corporate charters, but by incorporating any other “religious society” after it registered with the courts and paid a small fee. Theological beliefs about freedom of conscience and the separation of church and state helped to provide a model of incorporation that New York applied early on to churches and gradually expanded to for-profit enterprise. Both the breakdown of special privilege and the withdrawal of a narrowly defined public good from corporate regulation were at the heart of religious disestablishment and only later migrated into business law.

This path was not one of smooth and unfaltering progress, however. General incorporation represented a significant innovation but also a significant quandary for the courts: How was the state to regulate corporations that essentially had no (or at least very unspecific) charters? General incorporation, with its short, insubstantial charters, forced courts to find a way to define the powers and settle the property disputes of church corporations, and the religious goals of disestablishment further complicated this project. New York finally arrived at an administrable rule, one that elevated procedural protections and relied on the wisdom of “shareholder” majorities, by looking at the model that had developed for enterprise corporations. By telling the stories of some of these churches, this paper presents a clearer picture of the origins and transformations of early American corporate law.