Foreword
Evolution of religious nonprofits in the US: a brief history

David C. Hammack

Sabith Khan and Shariq Siddiqui make an excellent point when they insist at the outset of this very useful study that Islamic schools, houses of worship, and charities in the United States have found the laws and practices of the nation’s religious nonprofit sector “indispensable.” This foreword undertakes to suggest why American laws are so important.

As Khan and Siddiqui emphasize, under the laws, regulations, practices, and understandings that govern American nonprofit organizations, American Muslim institutions operate autonomously and voluntarily, guided by their own boards, setting their own missions, following their own rules. Like other American nonprofits, they can own property, make contracts, hire and fire employees, provide and charge fees for educational and other services. They are usually exempt from state and local property and sales taxes; their donors can generally subtract gifts from the personal income subject to federal as well as state tax. To religious entities of any sort, these are critically valuable rights and privileges.

These powerful advantages under the American nonprofit regime do come with limitations. To exercise their rights and privileges, schools and other operating charities must organize in a formal way. The American processes for incorporation under state law and for seeking federal as well as state and local tax exemption are not onerous, but they must be followed. More significantly, American nonprofits must refrain from distributing surplus income as profits, and must persuade people to support them with time, expertise and money. To maintain full religious autonomy, they must decide not to seek direct government subsidies.

Religious nonprofit organizations must follow fundamental laws, especially laws relating to health and safety within their facilities; they must observe the laws respecting criminal behavior; they must honor contracts and pay their debts. To retain maximum autonomy, all nonprofits must eschew government funding and rely only on donations and earned
income. And they must observe basic rules – including special federal rules relating to international fundraising and international giving – as they appeal for funds, charge for tuition and other services, and make gifts or provide services overseas.

Religious communities can find that American law complicates efforts to establish and maintain orthodoxy. Individuals, and members of communities acting as individuals, can decide to support particular interpretations of religious ideas and practice, and to apply social sanctions to those who disagree. But it is very difficult to use American law, or the powers of American governments, to force others to accept and abide by any particular interpretation of religious obligation.

These American laws and practices regarding religious organizations have deep historical roots. Revolutionary-era writings made occasional reference to Jews and Muslims, but Christian conflicts between Protestants and Catholics, and especially conflicts among Protestant sects, constituted the context for early developments in the US. The conflicts among Protestants are too often neglected, but they were decisive. Britain had made sometimes strenuous efforts to use its established national church to help rule its American colonies, in ways that increasingly infuriated the colonists. Britain’s practices derived in part from the Protestant split from the Catholic Church, but they reflected conflict among Protestants as well. (British policy could also reflect “reason of state” as when, after the conquest of Quebec, it recognized the Catholic Church in the territory along the St. Lawrence River seized from France to the consternation of many colonial Protestants.) Through the Church of England, English leaders had worked to tamp down Puritan demands for rigorous uniformity (in Old England as well as in New England), to limit the influence of Presbyterians, Mennonites, Lutherans, Baptists in the colonies as well as at home, to displace the Dutch Reformed in the American colonies, and on both sides of the Atlantic to limit, marginalize or silence Quakers, and Unitarians. Church of England leaders had mostly sided with the home country during the Revolutionary War. After the war, the other denominations sought revenge against the Episcopalian heirs of the English Church – and fought one another for material advantage, and to enact laws consistent with their religious preferences.

All this provided the impetus for the adoption of the religion clauses of the First Amendment to the US Constitution:

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.*

America’s nonprofit laws put these clauses, together with the other clauses of the First Amendment
or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances into effect. The protections of religious rights are especially strict: for most of the twentieth century Congress has interpreted them to preclude census-takers from asking individuals or organizations to provide information about their organizations – including about their finances.

Britain had almost always forbidden the public practice of Catholicism in its American colonies, and for a century or more after Independence many American Protestants did what they could to discourage the development of Catholic institutions. But despite strong opposition both to some Catholic beliefs and to the international and hierarchical character of Catholic leadership, American courts generally allowed Catholics to build, maintain, and defend churches and schools, and soon charities as well. Some states made it difficult for Catholics to use their international institutions to control churches and clergy in the United States, but by the twentieth century, the Catholic right to exercise those powers was well established. Leaders of business, of civic organizations, and of political parties could seek the good will of Catholics, or of members of other religious communities, by providing material, political, and moral support to relevant organizations, and by directing aid to members of a community that had suffered from disaster, in the United States or abroad, through its religious organizations.

Before the Great Society’s addition of health care and anti-discrimination responsibilities to the federal government, state laws greatly surpassed federal laws in their religious impact. Voters paid attention to the laws and regulations relating to their religious communities, and as the numbers of Catholic (or Jewish, or Lutheran, or Baptist . . .) voters increased, laws and their enforcement changed to accommodate the growing group. In the give and take of American politics, this often meant that a group whose numbers were rising did not have to become one of the largest in a city or a state before others accepted its religious claims or agreed that its members should be protected from discrimination and abuse. By the same token, groups that found themselves excluded from the electorate also found their religious institutions scorned and left at a disadvantage. African Americans suffered most obviously in this way, but the same was true of Native Americans, Mexican Americans, and immigrants who had not yet become citizens. As Muslims, like Hindus and followers of other world religions, have become more and more numerous and prominent in parts of the United States, they have created their own organizations to take their places in the nation’s religious nonprofit sector.
In this book, Sabith Khan and Shariq Siddiqui show how America’s Muslim communities are recognizing and making use of the possibilities afforded by nonprofit status in the United States. The experience of other religious communities suggests that Muslim nonprofits will find significant opportunities to build religious, educational, and other institutions to sustain beliefs into the next generation, to engage with fellow believers, to demonstrate beliefs through service and active engagement with others, and to advocate for recognition. If the experiences of others suggest a guide, the challenges will include maintaining engagement with and support from fellow believers, negotiating the laws relating to international as well as domestic fundraising, developing alliances with non-Muslim religious nonprofits, and negotiating the changing environment for government funding.

In the United States, religious institutions have always sought government funding for their charitable work, including their work in education and health care. In the nineteenth century this often led to a settlement under which municipal or state governments underwrote much of the costs of orphanages, while conferring on schools, clinics, and burial grounds only tax-exemption advantages. Great Society programs made federal money available for healthcare covered by Medicare and Medicaid; subsequent federal programs expanded funding for some kinds of job training and some support for children with development or socialization challenges. In the last two decades, the school choice movement and shifting court decisions on the “separation of church and state” have brought some increase in the availability of tax funds for elementary and secondary education – but the total proportion of children in nonpublic schools has not increased, and in some places has declined. Money always has a price: religious groups that seek government funds must accept government rules. In turn, each group that obtains government funds has an incentive to ally with others who seek changes to the rules.

As Khan and Siddiqui make clear, American Muslim communities are finding a substantial role for religious nonprofits as they address their pressing concerns. There is much to explore. With this book, the exploration is well begun.

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