



The Roundtable

on Religion and Social Welfare Policy

What Shall We Render Unto Caesar?

Exploring the Tensions between the Privileges and Obligations of Religious Organizations in Civil Society

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Abstract

The relationship of religious organizations to the state has been an ambiguous one over the course of history, and the question of what allegiances religious people owe to the state a contested one at some points. Within the Christian and Jewish traditions it has generally been the case that religious people and organizations have acknowledged the legitimacy of civil authorities, but they have also reserved the right to criticize and seek changes in government policies and behaviors. Challenges to what they have viewed as immoral or unjust policies have been the hallmark of the “prophetic tradition,” and have been seen by many as an important and valuable function of religion in civil society. So it is not surprising some of the first concerns raised about government funding of religious organizations centered on worries that they would lose or mute their “prophetic voice” if they took government money.

This paper explores the circumstances and possible roles of religious organizations in civil society, particularly as they involve the conflicts they may experience when they engage in activities of advocacy. It starts with an examination of the background for this debate, and of the nature of the privileges and obligations religious organizations enjoy. It argues that public charities, including religious organizations, exist in the U.S. in the framework of a social contract, one where they are obligated to engage in activities that benefit the public good in return for certain privileges they are afforded by the state. It considers whether advocacy should be seen as an activity worthy of social subsidy. Arguing that this is the case, it looks at how situations then arise where religious organizations may encounter conflicts between their obligations and privileges; where standing for certain causes or values may bring them into conflict with the public or the state.

This paper examines and reflects on both the moral and managerial aspects of such conflicts through the lens of an actual case where one religious body has been engaged in a dispute with the government around issues of values and conscience. This case study allows for a grounded consideration of both philosophical and practical questions here. *Finally, the paper suggests some lessons that other religious organizations might learn from this case.*

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INTRODUCTION – A HARD QUESTION AND A PROBLEMATIC DEBATE

The question of what allegiance religious people owe to civil authorities has been a difficult one, at least in some contexts, for a very long time. For example, when the Pharisees wanted to draw Jesus into making a publicly embarrassing statement, one with which they could get him into trouble, they asked him about the responsibility of Jews in Israel to pay taxes to its (then) Roman government. (See, Luke 20:19-26.) They knew that if he said they should pay those taxes, some other Jews might have branded him a traitor; but if he said they should not, the Romans might have charged him with sedition.

Clever fellow that he was, Jesus did not answer directly, but instead asked his inquisitors whose picture appeared on the coins that would be used to pay those taxes. Of course, it was Caesar's picture. So, Jesus told them, "Render unto Caesar that which is Caesar's, and unto God that which is God's." The point of the response was to affirm that some kinds of allegiance are owed to legitimate civil authorities; but ultimate allegiance is owed to God.

Even in the context of a theocracy the Prophets (like Isaiah and Jeremiah), speaking centuries before Jesus' time, were taking similar stances with regards to the kings of Israel. When the behavior of those kings, or the policies they pursued, were an affront to the teachings of Judaism, of the Torah, the prophets felt free to condemn such policies and call on the kings to change their ways. When "the poor, the widows and the orphans" – that is, the most vulnerable members of society – were being abused or neglected by the powerful, the prophets stood in defiance of royal (civil) power, exerted the prerogative to proclaim that was wrong, and advocated for compassion and justice. (See Is. 1:10-17, or Jer. 22:1-8.) These stories, in fact, give the meaning to the term "prophetic voice" as it is often used today in discussions about religion's roles in civil society.

Given this history, it is not surprising that the question of whether or not religion's prophetic voice would be silenced or compromised if religious organizations accepted government funding was one of the first questions raised, and raised with urgency, when the debate regarding whether there should more federal funding for "faith-based organizations" began (Wallis, 2001). There seems to be a widespread perception that religious bodies bring a needed moral voice to the public sphere, sometimes challenging government power and policies

in ways that are important. However, the debate about whether the prophetic voice of faith-based organizations would be lost or compromised has been thoroughly confused for several reasons.

- First, because the definition of terms is so problematic. What is covered by the term “faith-based organization?” Are we talking about Catholic Charities, the local Baptist school, a Jewish day care center, ecumenical social service agencies, local congregations (of whatever denomination), or all of the above? Note: some of these organizations are much more likely to engage in advocacy and policy efforts than others.
- Second, because the debate was framed around a false presumption that most religious organizations were denied such funds, when in fact many were receiving them. In many states more than half the grants and contracts awarded by state and local government to provide social services were given to religious groups *before* this debate began. Little is known about how the organizations that are receiving such funding raise a prophetic voice at all, much less in comparison to those that are not getting these funds.
- Third, because there are dubious assumptions present in this question about how active religious groups – especially congregations and denominations – are in advocacy. We know that some have played this role public discourse occasionally. But we also know it is not the case that congregations, denominations, or clergy spend a lot of time lobbying, demonstrating, or speaking on behalf of causes and issues. It is true that many people give expression to their religious values and experience by championing certain causes. One thinks especially about the anti-abortion movement, efforts to improve child welfare, and efforts to promote the civil rights of oppressed people. However, they often do this as part of other organizations, many established as advocacy organizations rather than service organizations, and not through their congregations or denominations.
- Finally, this debate assumes that accepting government grants or contracts would be the only way religious groups could find themselves under some obligation to, or feeling the risk of losing something from, the government. But that is simply not true. Churches are treated under law very much like other nonprofit public benefit organizations, only a little better in that they are presumed exempt – receiving exemptions from many taxes, and empowered to receive deductible donations – without having to formally apply for 501(c)(3) status. And they can lose that privileged status if they do things contrary to IRS regulations, like take sides in electoral politics.

All this suggests that a new look at the role of religious organizations, especially congregations and denominations, in civil society is needed to clarify this debate. It suggests a re-examination of the roles of these groups in advocacy is called for – one that asks what societal expectations are for these organizations, and what tensions may arise for these organizations when they engage in advocacy. What problems may be created when they exercise their prophetic voice?

THE PURPOSE AND STRUCTURE OF THIS PAPER:

This paper explores the issues and tensions connected to the advocacy function of religious organizations in a broader, clearer, less ideological and more concrete way. It examines and reflects on the character of and tensions between the privileges and obligations accorded to religious organizations (as nonprofit public benefit organizations – or ‘NPBO’s’) in the United States. It seeks to illuminate the context of, and then explore, the moral and managerial conflicts that can arise when these privileges and obligations collide around issues of values and mission. Specifically, it considers questions about how these tensions may arise and need to be addressed when these organizations feel compelled to the work of advocacy as well as service provision.

The first section of this work focuses on the historical, political, social, and economic context in which the privileges and obligations of nonprofits, including religious organizations, first developed and operate now. This leads to the second section, which identifies the tensions that may be created for these organizations because of the legal, political, and social arrangements for nonprofits in the U.S. Such tensions may be unavoidable because, on the one hand, these organizations are granted special status and privileges by government (“the state”) in order that they may have more capacity to work effectively to achieve certain ends deemed to be of value to the public or society as whole; but, on the other hand, they may also sometimes need to challenge the authority or policies of government – advocating for other policies – in order to fulfill their mission(s) or honor the values that motivate their efforts. It is important to consider whether the privileged status of religious organizations is framed by the same social contract as is true for other organizations, or whether it is fundamentally different.

The third section offers a case study of how these issues can play out in real life, and reflects on the lessons of this case and on their potential implications for a range of nonprofits. To bring these issues out of the realm of abstraction and ground these reflections I use the case of a suit brought by the IRS against a religious organization involving questions of mission, advocacy, conscience, freedom of religion, and compliance with regulations and the law.¹ This case

¹ The organization at the center of this case is the one I currently serve as chief staff officer, Philadelphia Yearly Meeting (PYM) of the Religious Society of Friends. Details of the case can be found either in the records of the United States District Court for Eastern Pennsylvania, U.S. v Philadelphia Yearly Meeting (Docket #03-4254), or at www.pym.org.

raised deep moral and practical tensions for the members and management of the organization, and called forth a decision making process involving many of the issues described above. Finally, since such tensions might arise for any religious organizations exercising it prophetic voice, this paper concludes with reflections on the lessons learned for the organization involved, and considers what (if any) of that learning might be useful for others.

A BRIEF HISTORY NONPROFIT PRIVILEGE

The codification of nonprofit organizations' privileged status under law began with enactment of the "Statute of Charitable Uses" in England in 1601. This legislation set out the rights of certain institutions to receive and hold gifts in perpetuity – monies that would otherwise have gone to the state – in order to support activities that served the public good. Among those in the statute are "relief of aged, impotent, and poor people, the repair of churches,...[for support of] schools of learning,...(and) for the education and preferment of orphans." (Hammack, 1998).

It is important to see that the Elizabethan Poor Law was enacted in the same year (1601). The Poor Law was designed to deal with the increasing number of persons in England who were impoverished by the closure of what had been common lands. The Poor Law established both the obligations and the limits of the obligations of institutions responsible to aid such persons, those institutions being the parishes of the church in the particular areas in which such persons resided.

In this context it makes sense that gifts both to aid the poor and to support churches would be encouraged. It also makes sense that institutions that were seeking to address these humanitarian and societal needs would be granted privileges, like the capacity to hold trusts, in order to better meet these needs. (In this context it is helpful to understand that "the church" here refers to the *established* church (Anglican), which had some features of private, independent status even though it was largely an extension of the state.)

So, what appears here are the beginnings of a structure of financial and legal privileges being extended to some private (or quasi-private) institutions, expecting they would use them to further the public good by providing public services, and especially addressing the needs of persons who were disadvantaged. These arrangements encouraged people to give to private institutions serving public purposes; and began to empower those institutions – like the church and its agencies – to play a larger role in public life by meeting societal needs. Historians have clearly demonstrated how these concepts and structures influenced the laws in the colonies, and eventually the U.S., laying the groundwork for the creation of a "nonprofit sector" here. (See Bremner, 1988; Friedman, 2003; Hall, 1984 & 1992; Hammack, 1998; McGarvie, 2003.)

This is not, however, the end of the story. Historians point out that the roles and (presumed) beneficence of nonprofit institutions were never accepted without question. Peter Dobkin Hall observes that “such neologisms as *nonprofit sector* ...obscure the controversies that have, for the past two centuries, raged around the claims of private groups to be able to act for and in the name of the public” (1992, p. 1). He notes that there have long been, and still are, disputes about whether voluntary associations or nonprofit organizations should even be allowed to exist, much less be granted tax-exemptions.

Historians have also shown how individuals and groups created, funded, and participated in the life of a wide range of voluntary associations – and, later, nonprofit institutions – in order to gain entry to and influence in the larger society, or to create alternative power structures in their own communities. They may have done this because they had lost such influence when their political power had diminished (Hall, 1984); or because they had fewer opportunities for participation or influence because of their lower social status (Ginzberg, 1990; McCarthy, 2003; Scott, 1991); or because they had been effectively excluded altogether from the larger society and its power structures (Carson, 1990; Clegg; 2003; DuBois, 1907).

What is clear is that voluntary associations and NPBO’s have not only been vehicles created to provide needed goods and services – for example, education, social services, and economic empowerment – to various communities and segments of society, but have also been vehicles for gaining access to cultural and political influence in the larger social and political environment. Moreover, NPBO’s have been used in that way not only by disadvantaged populations, but also by privileged groups seeking greater power in political, economic, and cultural affairs. That is to say, they have been used a vehicles for advocacy for various causes and peoples.

This is true of religious organizations as well as secular ones, and it has sometimes caused controversy. The struggles over the character, mission, and operations of foundations in the early 1900’s, the 1960’s, and more recently offer an example of this. The role of Black churches as the organizing grounds for the civil rights movements in the 1960’s, and the role of conservative (primarily white) churches in supporting conservative political movements in the 1980’s represent another example involving religious bodies.

Over the last decade there have been calls by a few people to end or seriously limit the privileges of some if not all NPBO’s, including churches. There was a ballot initiative in Colorado in the 1990’s to end the property tax exemption for all nonprofits, including churches. In Congress the infamous “Istook amendment” was an effort on the part of some to limit or control the advocacy activities of

some NPBO's by revoking or threatening their privileged status.² Specific initiatives of this sort often appear to be politically motivated. Still, NPBO's need to be aware that their privileged status can be put at risk if persons with influence in government take offense at their efforts in advocacy. In this light it is useful next to examine briefly the legal and philosophical rationale for that status.

NONPROFIT PRIVILEGE & RELIGIOUS INSTITUTIONS

The history just cited suggests a social contract basis for nonprofit privilege. Nonprofits were granted special status by the state with the expectation that they would in return meet some public purpose or need of the larger society. As that has evolved in the U.S., this means NPBO's agree to fulfill such purposes for and submit to some regulation by the government as the terms under which they accept the state's grant of privilege and protection, a classic social contract. (See Locke, 1690 [1988].) This basis for nonprofit status in law has been reaffirmed in recent legislation, such as the revised statute defining and regulating nonprofits in Pennsylvania ("Institutions of Purely Public Charity Act," Pa. Code, Title 10, §371-386), which some other states have viewed as a model for their own reforms. In such a context it can certainly be argued that an NPBO's acceptance of privilege amounts as well to an acceptance of obligation.

In this social contract model, *the obligation of NPBO's*, as described in the Pennsylvania statute, is to "advance a charitable purpose," – e.g., such as "relief of poverty, provision of education, advancement of religion, treatment of disease," etc. (§375) – while "operating entirely free of private profit motive," and benefiting a "class of persons who are legitimate subjects of charity." The key points here hearken back to the Statute of Charitable Uses. (One might note, nothing is said about NPBO's being change agents in civil society or advocates for those they serve.)

What is the *primary privilege extended to NPBO's* under this statute, and under other U.S. laws, federal and local? The most important at all levels are exemptions from taxes – taxes on income, property, and sales, most commonly. Also crucial is the federal income tax deduction for some contributions from individuals to these organizations. So, what can we learn from scholars' explanations of the rationale for this central privilege of tax-exemption?

Two legal scholars note that explaining "the rationale for tax-exemption holds considerable intellectual challenge," and observe that there is no consensus or uniformly accepted view of why charities should be tax-exempt. They go on to argue that the rationale for exemption should "identify activities deserving of

² The House of Representatives passed a bill on August 5, 1995, sponsored by Reps. Ernest Istook, David McIntosh, and Robert Erlich that would have significantly limited the ability of nonprofits to engage in advocacy on behalf of the causes or people they represent. It was eventually defeated in the Senate before it could become law.

social subsidy ... and align generally with an intuitive concept of what constitutes a charity and major historical categories of exempt entities” (Columbo & Hall, 1995, p.9). A noted economist who was among the first to study this seriously concurs, speaking of a “subsidy theory” for the exempt status of nonprofits (Hansmann, 1987).

Another leading legal scholar lays out six possible rationales for tax-exemption, of which the last two appear most relevant to NPBO’s. One, he says, “rests solidly on a philosophical principle ... [that] there are nonprofit organizations that are tax-exempt because their objectives are of direct importance to a significant segment of society and indirectly of consequence to all of society.” The other rationale is, he argues, “predicated on the view that exemption is required to facilitate the achievement of an end that is of significant to the entirety of society.” This, he says, covers “most organizations that are thought of as charitable in nature ... [and] at least some social welfare organizations” (Hopkins, 1998, pp. 10-11).

As congregations represent between 20 percent to 30 percent of all the NPBO’s in the U.S. – depending on how you count – the history of and rationale for tax-exemption specifically for religious entities, or “the church,” also needs examination. As noted before, congregations are presumed exempt even if they have not applied for 510(c)(3) status. In fact, the church has occupied a privileged space in western societies at least since the Emperor Constantine embraced Christianity in 312AD, and “established churches” (of every stripe) have almost never been subject to taxation.

The exemption of churches has been due in part to religion being seen (in a legal perspective) as belonging to “another realm,” simply being beyond the reach of secular authorities (Dane, 1998). Yet, ironically, it was also in part because church and state were so closely related when there was an established church; and in that context for the state to tax the church amounted to the state taxing itself. Finally, as the church has often functioned as a welfare agency, its exemption could be justified under a subsidy rationale as well.

Some legal scholars observe that the rationale for and practices of the special treatment of religion and religious bodies under law have evolved and expanded over the history of our nation (Noonan, 1998). Other scholars claim there is evidence this tradition of special treatment is eroding lately, pointing out it has been challenged in many cases over the last couple decades and can no longer be taken for granted (Lupo & Tuttle, 2001). Insofar as congregations are treated like public charities, and increasingly serious challenges are posed to the traditional and spiritual grounds for the special treatment, it can be argued they are best seen as part of the same social contract regarding exemption that applies to other NPBO’s.

If the provision of spiritual nurture and pastoral care to individuals enriches our society as a whole, then religious bodies unquestionably do contribute to the public good. In addition, we know congregations offer a limited but significant provision of social services. (See Chaves, 2004; Cnaan & Boddie, 2002; Hodgkinson & Weitzman, 1993; Jeavons, 2003; Wineburg, 2000.) Ultimately, the analyses of legal scholars indicates the basis for privilege of public charities, including religious entities, is that they exist within a social contract where they were and are expected to engage in “activities deserving of social subsidy.”

Finally, such a position is also plainly stated in case law. Supreme Court Chief Justice Warren Burger wrote (in *Bob Jones University v. United States*) that “charitable exemptions are justified on the basis that the exempt entity confers a public benefit ... [An exempt institution] must demonstrably serve and be in harmony with the public interest. The institution’s purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred.” Such a statement from the U.S. Supreme Court establishes both a limit on the privileges of all nonprofit public benefit organizations, secular and religious, and a definite framework of positive obligations for them. (Noonan, 1998)

QUESTIONS ABOUT THE ROLES OF RELIGIOUS AND SECULAR NONPROFITS

Unfortunately, these explanations and judicial opinions leave several key questions open. Among those are: “How do we know or decide what activities are deserving of social subsidy?” “Who defines the public interest and how?” “What constitutes ‘a purpose ... so at odds with the common community conscience as to undermine any public benefit’?” Or, for that matter, “How does one read a community’s conscience; and should those leading a nonprofit or religious body always defer to it?” (Certainly most religious leaders would say “no” to the last question.)

Religious bodies have often felt compelled to advocate for the needs or rights of those they serve, which has often meant advocacy for unpopular causes or people, one must ask if advocacy is “an activity worthy of social subsidy.” If the advocacy in question offends “the community conscience,” one must ask when, or under what circumstances, that “undermines any public benefit,” and who determines that? These questions should be considered recalling the roles nonprofits generally (and religious bodies particularly) played in establishing civil rights and access to services for minorities, women, and disabled persons, and just how unpopular those efforts were in some communities. So, we must ask these questions considering whether we would want to deny the key privileges of nonprofit status to organizations pursuing advocacy efforts that may offend a community’s conscience now but later be seen as creating vital advances for society as a whole.

In fact, these questions raise a key issue regarding what purposes religious organizations should serve in our society, reconnecting to the definition of “prophetic voice.” Specifically, *should these organizations play a significant role in shaping our society’s vision of the public good as well as providing services and support to individuals meant to help society reach that vision?*

The historical record indicates NPBO’s, both secular and religious, have played major roles in shaping the public’s vision of what a good society is, as well as providing services to help move society towards attaining that vision. Many religious groups have always seen this as part of their missions, have been active in these efforts, and have only rarely been challenged about such efforts.

Many who have studied the nonprofit sector, are active in its leadership, and have thought about its place in shaping our society argue that NPBO’s roles in advocacy are as important as their roles in service. A thoughtful foundation executive writes, “One wonders what our world would look like if it were not for the advocacy efforts of public health groups such as the American Cancer Society. Their work to inform the public about the dangers of smoking epitomizes what the nonprofit sector can accomplish with vigorous advocacy. Likewise, only the sustained efforts of environmental organizations have made us realize the danger of global warming. ... Why would we want to curtail the efforts of those who warn us of such things?”(Halpern, 1998) This view is echoed by scholars who say, “Advocacy is a vital, traditional role of nonprofit organizations. Throughout U.S. history, individuals have voiced their concerns and worked together in nonprofit associations to shape and reshape the country’s political, economic and cultural landscape” (Boris & Krehely, 2002).

In these arguments we find a claim that in the functions of advocacy and expression of values NPBO’s not only help improve the general welfare but also can build a stronger civil society and contribute to a healthy democracy. Certainly when the work of nonprofits in advocacy is about educating and empowering people to get them constructively engaged with issues and public conversations that may affect their lives, then this work represents a positive contribution to the public good – no matter which side of some of those issues they may be on. As another scholar puts it, “How people understand participation, how they come to join one another, how they learn to talk with one another, how public leadership is defined and developed – these are the overarching and common responsibilities of the [nonprofit] Sector.” (Mathews, 1987)

The term advocacy may have too partisan a ring for some, and perhaps it would be better to speak of giving people a voice, or encouraging civic engagement. But it has also often been the case that NPBO’s have had to “advocate” in the sense of “speaking for” those they seek to help because sometimes those in need of help simply cannot speak for themselves. This was surely the case for those who

brought about changes in care for people who were severely handicapped or mentally ill, and were being held in inadequate, even inhumane treatment facilities.

The history of the sector shows us many persons and organizations who started out to do “charity,” simply wishing to ameliorate the suffering of the sick or the poor, have found themselves drawn into doing “philanthropy,” trying to find ways to change the conditions or systems that have caused that suffering – because they realized just providing services to individuals was not enough (Bremner, 1987; Friedman & McGarvie, 2003; Gross, 2003). This has been as true of religious individuals and organizations as any other. They discovered that, for those who wish to do more than relieve short-term suffering, and enhance “the common good” in a deeper and more enduring way, engaging in advocacy is often a necessity.

Offering alternative visions of what constitutes “the common good;” challenging old values and offering new (or renewed) values; challenging systems and practices that create or perpetuate suffering and offering different possibilities for a new social order – these may be activities required of organizations who desire to truly serve or enhance the common good. If so, advocacy as well as service is an activity that is deserving of social subsidy. This is a view affirmed in the widespread concern that religious organizations continue to offer a prophetic voice.

POTENTIAL CONFLICTS IN ROLES AND EXPECTATIONS

To say that that religious organizations’ involvement advocacy is legitimate, even desirable, is to say that their efforts to embody and promote specific moral and social values are, on the whole, activities deserving of social subsidy. Of course, within any given population there will be differences of opinion about which specific values should be promoted and which discouraged. Still, if the outcome is a constructive engagement of citizens with important issues, many will agree the common good is being served.

Nonetheless, problems may arise when, in order to stand by the values they hold dear and wish to promote, or in order to fulfill the mission to which they are committed, some religious organizations find they have to behave in ways the wider public may not like, or even disregard or refuse to comply with some of the regulations the state would impose on them. In fact, standing for specific ideals often requires behaviors from organizations (as it does from individuals) beyond just espousing a vision or values. Sometimes advocacy requires setting an example as much as it entails articulating a position.

In the easiest of circumstances this will mean doing certain things, or refusing to do certain things, which might engender disapproval from some element of the

surrounding community or the larger public. For instance, a Catholic order running a hospital will feel that it is required both to speak about the sanctity of life and to refuse to allow some kinds of procedures to be performed in the hospital which it sees as antithetical to that ‘pro-life’ stance – even though there may be a felt need for some of those procedures in the community, and this upsets the public. To do otherwise would require the organization to betray the values it claims to honor.

Considerably more difficult cases arise in three other kinds of circumstances. One would be when an organization discovers it cannot in good conscience comply with regulations or laws because they dictate behavior which violate essential values of the organization, or require the organization to act in ways it sees as compromising the welfare of those it is supposed to serve. This may involve simply opting out of some kind of interaction with the government at some cost to the organization (or even its potential beneficiaries) in a way it is willing to bear. A good example would be Grove City College, a conservative Christian college, that decided it could no in good conscience abide by some regulations of the federal government, which then made it ineligible to participate in some federal aid programs for its students. The college has decided to forego that aid, and has had to find other ways to help students with their financial needs.

A second would be found in a case where the organization has the potential to change the regulations that would be imposed upon it, and has to decide whether to challenge state power, sometimes for an unpopular cause. Such was the case of religious schools whose founding religious communities have strong scruples against any form of idolatry when they faced new laws (after September 11, 2001) that required a flag in every classroom and that students in all schools say the “pledge of allegiance” everyday. If those laws stood as first enacted (PA Act #157, 2002), these institutions would simply have been compelled to disobey them. Some religious groups (and others) advocated strongly for changes in the laws. Fortunately, this Pennsylvania statute was struck down in the federal courts in 2003. Was this advocacy an inappropriate – and unpatriotic – a exercise of special interests, or a valuable effort to ensure civil liberties for all by one set of religious bodies?

A third and most difficult set of circumstances would entail an organization finding it had to defy or disobey existing regulations or laws because what the state asks of it violates its fundamental principles. The next section of this paper explores such a case in depth.

A CASE IN POINT

A recent legal conflict between the IRS and a well-established religious body usefully illustrates the potential tensions between nonprofit privilege and nonprofit obligation, and between the requirements of the law and the obligations

an NPBO may owe to mission, values, and conscience. An exposition of the case is offered here to delineate and explore these issues in concrete terms. The conflicts created for this organization by the government's demands were both moral and managerial. They raised issues of costs and benefits with regard to pursuing a particular "witness," one kind of advocacy. They also required the careful exercise of a form of collective discernment and decision making that was quite challenging, but ultimately very helpful to strengthening the organization as a whole.

Background

Philadelphia Yearly Meeting of the Religious Society of Friends (Quakers) is the largest Quaker judicatory (regional, denominational body) in the United States. Quakerism is a branch of Christianity that developed in the mid-1600's in Britain in a time of great social and political turmoil. At its origins Quakerism was marked by a distinctive melding of mystical and activist Christianity; combining a contemplative form of worship, an evangelical passion to share its spiritual insights, and a radical, activist orientation to social concerns.

When Quakers began as a dissenting sect in England they took the Bible very seriously; and they believed the teachings they found there regarding the equality and dignity of all persons (Gal. 3:28), the avoidance of violence (Matt. 5:39), and the commitment to truthfulness (Matt. 5:35-37) should be fully honored in believers' lives. As a result, they often ran afoul of the civil authorities for challenging social customs that treated some people as more worthy of honor than others, and for refusing to participate in the military, pay taxes that supported the state church, and swear oaths of allegiance to the crown or in court. They were vigorously persecuted at times, and suffered greatly for abiding by their faith. Many were jailed or had their property seized; and a few were martyred. (For example, between 1659 and 1661 four Quakers were hung in Boston for refusing to curtail their preaching in public.)

From 1670 to 1750 many Quakers migrated to North America. Among the most famous early Quakers was William Penn, who established the colony of Pennsylvania (in 1683) as a place where freedom of religion was guaranteed to all, providing a home for Quakers, Mennonites, Catholics, Jews, and other "dissenters." (For a good history of early Quakerism see Braithwaite, 1955; for an excellent history of Quakerism in North America see Barbour & Frost, 1988.)

Over the last 350 years the Quaker faith and Quaker community has changed in many ways. Still, some elements of the tradition have remained fairly constant. One has been a deep, abiding commitment for most members to "the peace testimony," the traditional stance of Quakers in opposition to violence in virtually every form, and especially to war. This is why Quakers (with the Mennonites and Brethren) are classified as one of the "historic peace churches."

Almost from the beginning the focus on peace and nonviolence was intertwined with a strong emphasis on the need for social and economic justice – as well as personal transformation – in order to “take away the occasion of war” (Fox, 1694). That is, there was a recognition of the need to change both individuals’ hearts and the societal circumstances that lead to violent conflicts. (For an illuminating example of this perspective see Woolman, 1774). This kind of thinking, along with a commitment to human dignity and equality for all, brought Quakers into a leading role in the abolition of slavery, the struggle for women’s rights, and the reform of mental institutions and prisons. It also led to their being frequently engaged in public life and dialogues with government authorities around issues of social, economic, and political concern.

Several schisms in the 1700’s and 1800’s led to the creation of separate branches within Quakerism in the U.S. Some of those divisions were healed in the 1900’s. Philadelphia Yearly Meeting [PYM] is a body comprised of members and Monthly Meetings (congregations) that practice the traditional form of Quaker worship and decision making – a form based in silent, expectant waiting for guidance from the Holy Spirit or the Living Christ – united with a continuing commitment to be active in the larger society in service to others and in work intended to help “mend the world” (Penn, 1682).

PYM is also a Pennsylvania nonprofit corporation and a registered 501(c)(3) organization under the IRS code. It is, by Quaker standards, a large and complex organization. Representing more than 100 congregations and 12,000 members in four states, PYM employs 40 staff, holds property in both Pennsylvania and New Jersey, and has an annual budget of roughly \$6 million dollars. It is a grant making as well as an operating organization. It is linked in supportive relationships to numerous Quaker schools and facilities for the aging in its region.

PYM makes decisions in the traditional manner of Friends, which involves gathering members in a meeting for worship focused on business. This practice includes prayer and meditation as well as information sharing and analysis. A decision is reached and formalized only when the entire body is “in unity.” (Note, this is not quite the same as consensus, for a member may disagree with particulars in the decision being made, but still accept that it represents the best “sense of the meeting” of what God desires of the body, and so affirm moving ahead despite his or her individual qualms. For the best reference on Quaker decision making see Sheeran, 1983.)

Decisions for PYM can be made in one of two settings. First, when the Yearly Meeting is “in session,” that is in a gathering to which all members are invited – which typically occurs once a year, hence the name of the body. Or, second, decisions can be made by Interim Meeting, a body which convenes six to eight times a year on a schedule, and whose members are appointed by the congregations. Interim Meeting is open for attendance for all members of PYM,

but if necessary a voice in decision making can be limited to appointed members of this body. Interim Meeting might be seen as PYM's governing board.

War, Peace and Taxes

As noted, a spiritually grounded opposition to war and violence and a commitment to seeking alternative means of conflict resolution is a distinctive and well-known public stance ("testimony") of the Religious Society of Friends. Quakers have often refused to participate in military service – except, perhaps, as noncombatants, like medics. The sincerity of these religious convictions has been recognized in the U.S where, ever since the Civil War, laws authorizing conscription have exempted from military service Quakers and members of other denominations with similar doctrines (Brock, 1990). For Quakers this opposition to war is grounded in the teachings of Jesus, and was manifest in the Quaker faith from its origins when George Fox, the founder of Quakerism, refused a commission in Cromwell's militia (Fox, 1694).

While early Quakers in England refused to participate in war, virtually all of them paid their taxes. (Although most refused to pay those levied to support the state church.) In the colonies many Quakers, especially in Pennsylvania, were part of the governments responsible to levy and collect taxes. However, by the early 1700's a few Quakers in the colonies came under the conviction they simply could not pay for war or preparations for war.

When the French and Indian War started in Pennsylvania Quakers were in control of the colonial legislature, and they found themselves in the untenable position of having to mandate taxes for the military, and sometimes collect those taxes from their brethren who were refusing to pay them on grounds of faith and conscience. This led to much soul searching and a long discussion of these matters in the Monthly and Yearly Meetings. Those advocating against payment of war taxes gained support, and finally, in 1756, most Quakers resigned from the legislature. The Revolutionary War found fewer Friends willing to pay taxes for support of the military, and pushed them even farther in that direction as a body. Although in this period they sought to distance themselves as much as possible from all political activity, interaction and conflict with the state became more common around this issue. (Crauderueff, 1989)

Following the Revolution, this conviction against paying taxes for the military became widespread, and before long "Books of Discipline"³ of various Yearly Meetings (in the U.S.) began carrying strong admonitions to members not to pay taxes that paid for war. The Book of Discipline of PYM in 1825 says that those who paid such taxes might need to be "disowned," that is removed from

³ Sometimes called Books of Faith & Practice, these volumes have been published by various Yearly Meetings since 1660, and are revised periodically. They contain explanations and advices about the practice of the Quaker faith, providing a combination of theological exposition and practical counsel to members.

membership. These admonitions to refuse to pay were easier to follow in those times when such taxes were usually levied for specific purposes, and not as part of a collection of revenue for multiple purposes. Many Quakers did refuse; and, again, often suffered seizures of their goods and other penalties as a result.

Since the development of modern, complex systems of public administration and the initiation of the federal income tax system war tax refusal has become more difficult and morally ambiguous. Given that money is fungible, any income tax dollar the government receives can be used for whatever purposes the government decides. Quakers now, as has always been the case, want to support to government's provision of needed, constructive services – like public safety, public works, education, services to the aging and needy. Almost all Quakers also accept the legitimacy of government and want to be “good citizens,” abiding by the laws insofar as possible. Indeed, the current PYM Faith & Practice states, “From the earliest days Friends have counseled obedience to the state except when the law or ruling has appeared contrary to Divine leading ... If the state's command appears to be contrary to Divine leading, Friends [should] take prayerful counsel before responding.” (Philadelphia Yearly Meeting, 1997, p.79).

Nevertheless, some Quakers continue to feel, as a matter of deeply held religious conviction, that voluntarily paying taxes that will be used for military purposes is wrong. They feel that, in keeping with the peace testimony, at least some resistance to the payment of those taxes is required by faith and conscience.

Finally, it is important to understand that “conscience” has a special, elevated role in Quaker thought. Conscience is not seen only as an interior moral compass. Rather it is understood to be a vehicle for the discernment and manifestation of the guidance of the Divine, or the Holy Spirit, in one's life. In this perspective, when the workings of one's conscience lead to a recognition of the immediate guidance of the Spirit, and what is revealed is tested against the principles found in Scripture and the collective discernment of one's faith community, that guidance from the Spirit has priority over all other claims, even those of the state. So Quaker communities feel a special, even holy obligation to support stands of conscience their members take, when they have been so tested, even if not all members of the community would take a similar stand themselves.

Thus, even though only a few members of PYM feel called to the witness of war-tax refusal today as a way to advocate for peace, the organization feels morally compelled to support those who do – both because of its commitment to the peace testimony and its belief in the freedom and sanctity of conscience. This is what led to the conflicts between PYM and the IRS.

PYM's History, Policies & Previous Legal Action(s)

Most people's federal income taxes are actually collected (first) not by the federal government but rather by individuals' employers. PYM, wishing to support the

positive functions of the state, and understanding the privileges it enjoys as a NPBO, complies with all laws and regulations of the IRS to the best of its abilities. As an employer, this means it must withhold taxes from wages in accordance with regulations, forwarding the funds to the IRS on a quarterly basis. However, since the 1950's the organization has wrestled long and hard with the question of how to best support members and employees who feel led, as a matter of religious conviction, to the witness of war-tax resistance.

Concerns about taxes for the military became more acute during the Vietnam war, and again with the acceleration of the nuclear arms race in the late 1970's and 80's. At that time PYM had several employees who were war-tax resisters. Respecting their desire not to pay war-taxes, PYM began refusing to honor IRS levies intended to collect taxes they had refused to pay. These practices were first formalized as policy in 1975. In 1988, after PYM refused IRS orders to garnish the wages of two of those employees it was sued by the federal government to collect the back taxes due, plus a substantial penalty for its refusal to honor those levies (*United States v. Philadelphia Yearly Meeting*, 753 F. Supp 1300 (E.D. Pa. 1990)).

PYM defended itself, claiming that as an established church it should not have to violate its own principles or the consciences of its employees by paying over to the government taxes its members had refused to pay as a matter of deeply held, established religious principle; but should be protected under the First Amendment. The court ruled against PYM to force payment of the taxes, but for ruled PYM in disallowing the penalty on the grounds that PYM's "sincere and plausible test-case defense was a 'reasonable' cause to have refused" compliance.

Coincidentally, about the same time PYM felt the need to further refine its policies and procedures in these matters. It saw a need to reaffirm its support those who are called to this witness, but also want to clarify and strengthen procedures to keep the whole process as transparent as possible. PYM's wanted to ensure the government and the public could find no intent to deceive in any of this, but rather only a desire to advocate for peace and uphold Quaker principles. It also made clear that only the Yearly Meeting in session or Interim Meeting could decide how to respond to legal actions initiated against PYM in relation to this policy.

This revised policy is in effect currently. It authorizes PYM to withhold the income taxes of employees who are war-tax resisters but not pay them all over to the IRS. Instead, when an employee requests, it holds back an amount equivalent to the percentage of the federal budget going to military purposes. Funds not paid over are placed in an escrow account. The federal government is informed of this action and the reasons for it – that is, the employees' opposition to paying for the military and their desire to have the funds used instead for peaceful purposes. The IRS, knowing of the location of this escrow account and the actions taken, has often attached that account to take taxes due, plus additional penalties and

interest. However, PYM has not voluntarily paid those funds over in contradiction of its employee's witness, and has often had occasion because of this policy to talk with officials of the government about the principles involved and the relief being sought for persons of conscience opposed to paying for war.

The Most Recent Confrontation

In 2001 PYM still had war-tax resisters on its staff. One had taken this stance for many years, and had been supported by PYM through the policy just described. The 2001 the IRS asserted that she owed a large amount of back taxes, penalties, and interest, and ordered PYM to garnish her wages to collect those funds. Interim Meeting met and affirmed that it could not honor the levy without violating its religious principles, and so notified the IRS it would not do so. A meeting of some PYM officers with IRS officials ensued where they again demanded payment, and PYM again explained why that was not possible.

In 2002, the IRS notified PYM it was referring this matter to the Justice Department to ask them to file a suit to obtain PYM's compliance with the levy. PYM responded that it still could not comply. Finally, in July 2003 the Justice Department initiated a suit against PYM, requiring a response by the end of September 2003. Once more PYM had to decide whether it would defend its position. (Interestingly, this suit initiated by the government generated considerable attention in the media, with a number of interviews and stories giving PYM opportunities to explain its position on pacifism, war taxes, and religious freedom. The government's action gave the organization a much higher profile than before for public advocacy for these values.)

Since Interim Meeting does not usually meet between the end of June and the end of September, a special meeting was called and devoted solely to this matter. PYM's counsel in these matters prepared materials to be distributed before the meeting to help Interim Meeting's members understand their responsibilities under PYM's policies, the facts of the case and content of the law, and the options they might consider for responding to the Justice Department.

As the body assembled that evening two central and competing values confronted the members in the decision to be made. On the one hand, Quaker faith gives great importance to Jesus' call to be peacemakers and to avoid contributing to violent conflict if at all possible; and asserts it is the ultimate obligation of every individual to be faithful to the guidance of the Divine insofar as that can be known through prayer, counsel of the faith community, and the help of Scripture. (And, as noted, this means Quakers feel a special obligation to support others who are taking actions of conscience under such circumstances.) On the other hand, Quakers have always accepted the legitimacy of government, and tried to support it in functions that support the good order of the larger society and provide for the welfare of all citizens.

In addition to the moral tension present in this conflict of values there were practical issues on the table – issues of costs and benefits, and issues of effectiveness in witness. To implement this policy that supports war-tax resisters costs PYM thousands of dollars every year. This money could be spent working with youth, helping Monthly Meetings better serve their communities, or striving for peace and justice in other ways. Now PYM was looking at additional thousands of dollars in costs for legal fees. Would resisting this suit and continuing this policy represent wise stewardship of the faith community's resources?

Finally, given that war-tax resistance involves some moral ambiguities and is not a witness most Quakers practice now, some members wondered whether this was it an appropriate and effective way to stand for peace and non-violence. This seemed a pressing question. But given the erosion of civil liberties that had been visible since September 11, 2001, and challenges to the separation of church and state that were becoming more frequent as well, some saw other issues here.

Whether war-tax resistance was an effective witness or not, some asked how it could be acceptable for the government to coerce an established church to act as its agent to collect taxes when what was being asked violated the core religious principles of that church and required it to act in a way that violated the religious conscience of its members. What had changed in the legal landscape since the previous suit was the passage of the Religious Freedom Restoration Act [RFRA]. This legislation, enacted in 1994, provides that “government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability except as ... it demonstrates that application of the burden ... (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling interest.” (42 U.S.C. § 2000bb et seq.) PYM’s counsel explained that RFRA appeared on its face to give stronger foundation to PYM’s defense against the government’s actions; but he also noted that it had been interpreted by the courts in the narrowest manner in other cases, and so might not help as much as would be hoped.

The Decision to be Made

Against this backdrop a decision had to be made. Counsel was present at the meeting – one attorney advising a “client” that consisted of 100 people gathered in a decision making process that had to result in the group feeling unity with each other and the Holy Spirit in stating a decision. The process that unfolded was fascinating.

After a long period of worship, the Clerk (head of that body) made a few comments, and PYM’s counsel was introduced. The attorney gave an explanation of PYM’s own policies (which he had helped draft), the facts of the case, the applicable law, and four options for PYM in responding to the suit. The options the attorney outlined were: (1) To accept that this witness had been taken as far

as possible, and either pay what is requested “under protest,” or try to negotiate a less costly settlement; (2) To make no legal Answer to the suit, but write the court again stating PYM’s position, and allow them to enter a default judgment, and expect they would seize assets to satisfy the judgment; (3) To inform the court in a formal Answer that PYM had no defense beyond what had already articulated to the IRS (many times), and express a view on the correct amount of back taxes, which PYM had reason to believe was miscalculated; or (4) To file an Answer to the Complaint asserting a defense to levy compliance by invoking RFRA.

The Clerk then invited members to ask questions for clarification on any of these matters. After those questions were answered, the Clerk invited discussion of the options for responding. There was a clear pattern and flow to the process of discernment and deliberation that followed, with distinct lines of inquiry and tensions emerging in each portion of the discussion.

The first portion centered primarily in practical, concrete issues relating mostly to the probable success of any defense, as well as the costs of that course of action. PYM’s counsel was clear that the probability of success in defending PYM’s position was very small; and if there was a victory at the District Court level, the government would appeal immediately to the appellate courts where chances of being overturned were very high. Members clearly understood this. It was also clear that the costs of a defense would not be insignificant – in the range of \$20,000.

This led to a second focus in the deliberations relating to costs and benefits, or ‘opportunity costs,’ of pursuing this further. Some asked, “If we have virtually no chance of winning, how can it be wise to spend PYM’s funds on this?” Others echoed that question, wondering if those funds could not be better spent on other needs of the organization. (PYM was facing a serious budget deficit at the time.) Still others suggested that if PYM was to expend such resources on work for peace and justice, then other approaches might be more effective.

A third current then emerged in the deliberations as others asked questions about what price Friends would place on their principles. Some noted how their Quaker forebears had paid a much higher cost than was being contemplated now to stand by the principles of their faith. One said “we know the costs of making war,” and asked “are willing to bear the costs of peace?” Still another argued that this decision should not be made based on calculations of the chances of winning the case, nor on expectations of how much attention can be gained for this witness, as those things cannot be known; but rather on a commitment to obedience to Divine guidance.

At this point several persons spoke to their deep unease with violating the law. They spoke of having served in governmental positions, or as officers of the

court, and of feeling obligated to be good citizens in their own community, and to obey the law. Others agreed with that to a point, but said there was a limit.

It may be that the crucial factor in finally shaping the decision of this body was language of the Complaint itself, which PYM's counsel was asked again to describe. He noted that the Justice Department claimed that PYM had acted "without reasonable cause" (Complaint, §1) in refusing to honor the levy. He observed that *the government's claim was, in essence, that PYM was being unreasonable to abide by the traditional principles and practices of Quaker faith.*

As those assembled grasped this it seemed to shift the tenor of the deliberations. Members were deeply offended by that claim. It was observed that if the government thought it unreasonable for individuals to practice their faith, then that was deeply troubling. Several persons spoke forcefully to say that PYM had to file an Answer to the Complaint in the face of that claim – in order to stand for freedom of religion and conscience not only for Quakers, but for all people.

Those assembled settled again into worship at the request of the Clerk. After a time of prayer, the clerk asked if all agreed that PYM should contest the suit and file a formal Answer. A few members asked to be recorded as being uneasy with this decision, but willing to stand aside. The Interim Meeting then minuted its decision that PYM would "file an Answer to the Complaint asserting a defense to levy compliance by invoking the Religious Freedom Restoration Act ... [which says] federal agencies must allow any reasonable accommodation that they can of sincere religious exercise which prevents compliance with any obligation arising from federal law. [And] will clearly state, in non-legal terms, our religious objection to the government's actions against us." (Interim Meeting Minutes; September 18, 2003)

REFLECTIONS AND LESSONS

Reflections on PYM's Experience

Reflecting on PYM's experience with this case illustrates why a religious organization in particular – and, for that matter, any values-centered NPBO – may encounter conflicts and tensions between its privileges and obligations, and between the service and advocacy roles. It also offers some ideas about how to best manage them. To gain insight it is critical to recognize several lines of tension evident in this case, three in particular.

The first line of tension juxtaposes "obedience to God versus obedience to the state." For many Christians this tension is addressed in a teaching of Jesus about what should be "rendered unto Caesar" (Luke 20:19-26). For other nonprofits it might be described as question of "obedience to core values or principles versus obedience to the obligations of good citizenship."

The voices in PYM's decision making process around this case that expressed grave discomfort with the organization refusing to honor the IRS levies and challenging the government named and reflected one element of the situation that every member felt – that is the obligation to abide by the social contract in this culture generally regarding compliance with the laws, and to abide by promises made in PYM's application for 501(c)(3) status specifically. In contrast, those voices that argued PYM had to place the deepest and highest values in its own faith tradition, and obedience to Divine guidance, above the requirements of the law named another element of the situation – that is a commitment to use the privilege (and fulfill the function) of being a religious organization to stand for and promote a set of moral values Quakers believe are right and true. The decision making process PYM went through sought to balance those competing demands in making a decision about how to respond to the government's legal action against it.

A second line of tension involves choosing between using resources for radical, perhaps impractical forms of advocacy (or witness) versus using those funds for more conventional forms of advocacy – or perhaps not for advocacy at all, but rather for more “good works” and practical services. This kind of internal tension may be inevitable in many values-centered NPBO's, and certainly in many religious organizations, especially where their values are not aligned with those of the dominant culture. In addition, this kind of tension connects to the age old debate (noted before) about “charity versus philanthropy.”

In this instance the choice PYM made was not for a moral or spiritual option over against a practical option. Different alternatives held both practical and moral potential for good and ill. Many of those involved in the decision thought that it would have been a betrayal of essential spiritual and moral principles if PYM had calculated the odds of success in the case and chosen not to pursue it because those odds were low, even though those same people knew the funds to be spent on legal fees could have been used well in other efforts for peace. So one could say there was a practical cost and a spiritual gain here. Yet, a key factor in the decision to contest the suit was the sense that PYM had to stand for principles of freedom of faith and conscience – even if victory was not likely – as a pragmatically important thing to do with potential benefits for all of society, especially at a time when such principles seem threatened. So there was a practical benefit to be realized as well as a spiritual one.

Moreover, it is fair to say that whatever opportunities for further service (to its own or others) PYM gave up because of the costs of fighting this legal battle, the organization was strengthened with a greater coherence and new energy as members united around its core values in this struggle. There was a widespread sense of satisfaction in the conviction that this choice for advocacy was the right course of action despite the costs. There was, in fact, an increase in support from

members for PYM during this time that may be attributable (in part) to their approval of the organization's stand.

A third line of tension involves the choice to stand for a vision of citizenship that might be unpopular and create public approbation versus choosing a course that was less controversial and ran less risk of being problematic to the organization's – and the faith's – standing in its larger community. From a different perspective, it can be argued that in deciding to contest the government's actions PYM was not so much placing religious principles above responsibilities of citizenship as it was trying to promote a different vision of what those responsibilities should be. The organization was, in terms of the question asked earlier, trying to play a role and exercise its prophetic voice in shaping the larger public's vision of the public good.

In asking the government to abide by the RFRA statute, and to find other means to collect back taxes, PYM was standing for values that Quakers believe are crucial to the health of the larger society – like religious freedom and freedom of conscience. It was advocating for a vision of the public good that asserts the state should not violate the values of established faith communities for the administrative convenience of using them to collect its bills. It was arguing that freedom of religion is more important than that. In this contention, we might note, PYM is joined by George Washington, who actually wrote to the organization in 1793 to say:

“Government being, among other purposes, instituted to protect the Person and Consciences of men from oppression, it is certainly the duty of rulers not only to abstain from it themselves, but according to their stations, to prevent it in others. ... The liberty enjoyed by the People of the States, of worshipping Almighty God according to their consciences, is not only among the choicest of blessings, but also of their rights. ... I assure you very explicitly that in my opinion the Conscientious scruples of all men should be treated with great delicacy and tenderness, and it is my wish that the Laws may always be as extensively accommodated to them as due Regard to the protection of the essential Interests of the Nation may justify and permit.” (Washington, 1793).

Lessons for Other Religious Organizations

What practical lessons might other religious organizations learn from PYM's experience? Obviously, as a religious organization of a small, distinctive spiritual community, Philadelphia Yearly Meeting is in some ways unique. Yet, in other ways it is not so different from many other religious organizations – or even many other values-centered nonprofits.

As an organization, it was created by that spiritual community primarily to provide services to its own members and to others it desired to serve; but it was

also intended to help give its members a voice in the public square, to help promote those values Quakers hold dear, and to extend their witness to the larger world. Like many others, PYM finds itself trying to attend to the needs of its own members; and to address pressing social problems – like the need for alternatives to violence in solving conflicts. But it also finds itself drawn into advocacy efforts to remove the causes of those social problems as well. Like other such organizations, it would prefer to address the roots of problems rather than just dealing with the suffering the problems create.

Because it is engaged in the world in this way, PYM also encounters a number of difficulties other religious organizations encounter, wrestles with a number of the tensions they wrestle with, and seeks to manage those difficulties and tensions as some others must as well. In particular, this organization finds itself caught sometimes in conflicts between the privileges it enjoys as a 501 (c)(3) entity and the obligations that status entails. It wishes to honor the terms of the social contract expected of religious organizations – and good “nonprofit corporate citizens” – but finds at times it must challenge the expectations of the surrounding community and the state to uphold the values that shape its reason for being. As in the case just described, sometimes this results in moral and managerial conflicts that defy easy resolution, but must be held in a creative (rather than destructive) tension, insofar as this is possible. There are a few key lessons others might learn in this regard from PYM’s recent conflict with the government.

First, religious organizations need to recognize that their entanglement with the government will neither begin nor end with accepting a government grant or contract. The legal political context in which religious organizations exist in the U.S. creates the entanglement *de facto*. Moreover, in accepting exempt status these organizations are already placing themselves in a social contract with the state that involves some real and serious obligations – despite the constitutional provisions of the First Amendment.

Second, other religious organizations might look at their own operations, even if they are devoted almost entirely to the provision of services, and ask themselves if some commitment to advocacy is not required as well. Some are wary about taking that step. Many have already decided advocacy is needed. Many see exercising a prophetic voice in the public square, speaking for the most vulnerable persons in our society, advocating for moral values of justice and compassion, and challenging policies that are contrary to these interests as an inherent part of practicing their religion.

This “advocacy” may take as innocuous a form as just being careful and intentional to visibly embody those moral or social values which are at the heart of their mission, which they believe should shape their work, in the way they serve others and (even) manage their own operations (Jeavons, 1992 & 1994). It may take the form of entering public policy debates about how to address the roots of the social problems that generate the difficulties their services seek to

ameliorate. Or it may take the most risky form of challenging government authorities and/or public opinion when confronting circumstances of regulations that seem unjust or immoral.

In fact, PYM's experience suggests advocacy may take many forms, from that which looks very political to that which seems very personal. Still, as just noted, advocacy in some form, as an intention to model specific values, to promote particular causes, or to help people gain a voice in public discourse about defining and sustaining the common good, may be an essential role of religious organizations in a healthy civil society.

Like most religious bodies, PYM understands this to be part of its work in the world. In the words of William Penn, Quakers in PYM would affirm that, "True godliness does not turn men out of the world, but enables them to live better in it, and excites their endeavors to mend it: not [to] hide their candle under a bushel, but [to] set it upon a table in a candlestick..." (Penn, 1682). When challenged to make a public stance – in this case, a controversial stance – for specific values, PYM felt it had to because it could not be the organization it needed to be to provide the services it does *with integrity* if it did not. And it felt it had to because those values are so important to the larger community, not just Quakers.

Third, those religious organizations that see work both in advocacy and service provision as essential to their mission may need to recognize that some internal tensions between those commitments are inevitable, and probably insoluble. Resources spent trying to address the suffering generated by a problem cannot (as a rule) also be spent to resolve the causes of that problem. But often organizations will not feel they can do one to the total neglect of the other.

For example, many groups that are working to provide shelter to the homeless feel efforts to address the root causes of homelessness must be undertaken as well. It may be useful to observe that the history of charitable and philanthropic in the U.S. shows that very often it is those groups who start out trying to alleviate suffering who become most committed to and thoughtful about finding ways to address the problems that cause the suffering. So it is not surprising, and probably a good thing, that so many organizations see these tasks as going hand-in-hand. But determining how to divide one's energy and resources between these different types of tasks will always be challenging.

Moreover, in membership organizations like PYM this challenge may have another dimension. Often another tension arises between spending resources on services to one's own members and devoting more resources to serving others. This is true even when, as is the case for PYM, the primary intent of serving one's own members is to develop their capacity to serve others – in religious language, "nurturing the roots so that the tree can bear fruit."

PYM's case suggests these kinds of tensions may never be finally resolved for an organization, but must be revisited and re-examined on an ongoing basis. The question of how PYM as an organization should and can support the exercise of conscience and witness of war-tax resistance is one that may never be settled. In the last twenty years it has been the focus of lengthy and deep reconsideration by the organization at least twice. (In the Quaker community of PYM this question has been the subject of ongoing debate for 250 years.)

Fourth, other religious organizations may find it important to consider what values are for them "core values" – the values that are central to their identity, which they would wish to uphold or promote. They may find it crucial to consider where these values might conflict with those of the surrounding community. They may find it useful to weigh how important those values are to them. Are they willing to accept the disapproval of the surrounding community to honor those core values in the work they do? Are they willing to enter into conflict with the state to stand by those values? Are they willing to risk the privileges they enjoy as religious organizations, which may allow them to provide more services to members and others, rather than betray those core values? Do they know how they would make decisions about these kinds of conflicts and issues, should they arise? It may be that these questions can only be answered truly when such a conflict arises, but some reflection in advance may be helpful.

Finally, PYM's experience suggests that for the discussions about these questions to be fruitful and not destructive it may be critical to see the moral or spiritual and the managerial concerns as not being in opposition to each other, but rather as concerns that must be held in balance. It is important to ask both "What is the right thing to do?" or "What are we called to do?" and "What is the most useful or effective thing to do?" without assuming one must exclude or trump the other. It is important to ask "What will a particular choice cost?" in spiritual and ethical as well as practical terms. The Quaker approach to decision making (skillfully exercised) allowed these different concerns to be held in creative tension to the ultimate benefit of the organization.

In the case of PYM's conflict with the IRS, seeking a course of action that could be followed with integrity in terms of the Quaker faith, and that promised the best prospects of allowing the organization to make a witness for that faith while still respecting the legitimacy of government, led to a decision that in the end seemed wise to almost all involved. It led to a decision where costs and benefits, though of different types, seemed to balance out. Moreover, the recognition that standing on principle in contesting this case was in itself a valuable form of advocacy (witness) led to a course of action that allowed PYM to promote a basic value of the wider society, freedom of religion, while it allowed PYM simultaneously to advocate for a counter-cultural value, opposition to the use of violence to resolve conflicts.

SUMMARY & CONCLUSION

This paper began with examination of the history and rationale for the privileged legal status of nonprofit organizations generally and religious organizations particularly, showing how they exist within a social contract where they are obligated to engage in activities “worthy of social subsidy” in exchange for their privileges. It is clear that provision of services can be such an activity. But from this examination the question arose whether “advocacy” in any (or many) of its forms is such an activity as well.

The history of these organizations shows advocacy as well as service has been a significant purpose and function of many. It appears to be a function they may need to take on to help address the roots of social problems as well as the suffering generated by those problems. Finally it is a function that honoring their religious teachings and tenets may require of them. Offering a “prophetic” voice being both one of their traditional roles and a role the larger society often seems to value. And when the focus and manner of their advocacy is designed to engage and empower others to help define and address community needs, it appears this can help build and sustain a stronger civil society.

So, in all these respects I argue this is an activity worthy of social subsidy. I argue that these organizations should play a significant role in shaping our society’s vision of the public good as well as providing services meant to help society reach that vision.

It was noted, however, that engaging in advocacy in different forms – in order to promote particular social values or abide by particular moral or spiritual ideals – may bring religious organizations into several kinds of conflicts and tensions. These may be moral and managerial. They may involve mutually exclusive demands for resources, requiring funds for advocacy versus service, or service versus advocacy. They may require the organization to take stands or operate in ways that are contrary to the larger community’s values, or even require it to challenge (or violate) regulatory or legal standards; and so risk alienating that community or even losing its privileges.

A study of a recent case was presented where these conflicts emerged that demonstrated how some of these dynamics play out, and illustrated some of the questions and issues to be addressed in managing to moral and practical tensions that result.

Reflecting on the case illustrates three critical lines of tensions that may be at the heart of the conflicts these organizations will have to manage. Finally, reflecting on this case also offers some insights or lessons that may be valuable for other religious organizations to consider. These center around questions of: (1) If, why, and how will they engage in advocacy? (2) How will they manage the

internal conflicts that develop around the use of resources if they are involved in advocacy and service? (3) What are the “core values” for their organization; values which they believe they must uphold, and for which they are willing to risk controversy – or even their nonprofit privileges – if necessary? (4) What will characterize the decision making processes through which they will answer these critical and difficult questions?

It needs to be acknowledged here that the case offered is just one case, and that of an unusual organization engaged in a distinctive conflict with the state about highly charged matters of spiritual ideals, public values, and conscience. So it is legitimate to ask how much application the lessons learned may have for others. Nonetheless, I have argued there may be fairly clear lines of application for others, at least for many other religious organizations, and especially for those whose values do not always align with mainstream American culture.

An interesting, potentially important question for further research is ask how many other religious organizations, and of what sort, have found themselves experiencing conflicts and tensions like those described here. How many have found themselves in such situations – found that exercising a prophetic voice may create risks for the organization or bring some conflict with the state – even though they are not accepting any government funding for any purpose? What kinds of issues engendered those conflicts? It would be useful, if there are a number, to see how those they have handled situations.

Many observers see community and political life in the United States characterized now by ever widening and increasingly intense divisions and conflicts around social and moral values. Religious organizations are likely to find themselves more and more often in the middle of this fray. It is critical that religious people and organizations offer a prophetic perspective on human and social problems, where they have some important insights to provide, whenever they can. It is also critical that they consider how they do this in ways that help bridge these divisions rather than widen them; that help people learn how to discuss and address such questions of value and purpose and “the common good” in ways that offer hope for finding common ground rather than deepening the rifts. These are, I would contend, critical issues for religious organizations and their leaders now, regardless of whether they receive government funds.

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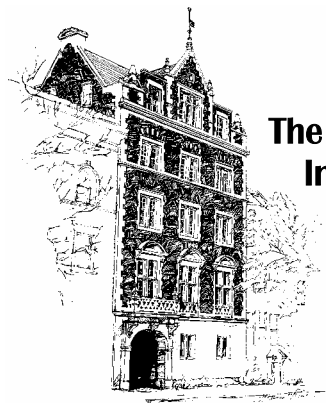
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