

ABSTRACT

Internal Revenue Service and the Regulation of Religion

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This study seeks to determine how the Internal Revenue Service influences religion in the United States. Using the theoretical frameworks of organizational ecology and new institutionalism this study examines the assumption that America has an unregulated religious economy. In particular, I look at the sociological impact of defining a 'church' for tax-exempt purposes. Given the constitutional constraints of the First Amendment, the IRS is one of the few federal agencies that produces definitive work on religion in the United States. In the 1970s, attempting to stop increasing abuse of church exemptions as a form of tax evasion, the IRS developed policies that have impacted countless religions. Using historical records and current organizational theories this study shows that though the policies may seem impartial, in reality, they impede the development of new, marginal, and foreign religions. I conclude by proposing an empirical analysis of these claims and a new source of data on organizational aspects of new religions.

Internal Revenue Service and the Regulation of Religion

by

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TABLE OF CONTENTS

I.	Acknowledgments	iv
II.	Chapter One: Introduction Churches, Taxes, and Public Policy The Current Paradigm First Amendment	1
III.	Chapter Two: Religious Pluralism and Tax Exemption Religious Diversity: Theoretical Approaches New Institutionalism Tax Exempt 'Church' as Legitimate Religion A Case for Integration American Hinduism	9
IV.	Chapter Three: History of Marginal Religions and the IRS Definitional Problems and Religious Freedom Case Histories Decline of the Mainline Cult Scare A Definition and its Consequences	21
V.	Chapter Four: Conclusion Future Research Summary	33
VI.	Bibliography	36

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CHAPTER ONE

Introduction

Churches, Taxes, and Public Policy

With regard to the issue of defining “churches” for the purposes of tax-exemption, former Commissioner of Internal Revenue Service Jerome Kurtz once stated, that “questions in this area are obviously sensitive and put the IRS, in some cases, on the cutting edge of developing national policy” (Kurtz 1978). This statement was then firmly rebutted by Supreme Court Justice Lewis Powell in his concurring opinion in the famous case of *Bob Jones University v. United States* [1983]. Justice Powell asserted that the “contours of public policy should be determined by Congress, not by judges or the IRS” (*Bob Jones University* 1983). He believed nonprofits were essential to the functioning of a healthy society and was suspicious of too much government intervention. He was decidedly opposed to the notion that the IRS had any authority beyond that which is necessitated by the collection of taxes. Justice Powell argued against the very suggestion that the primary function of a tax-exempt organization is to act on the behalf of the government, or to carry out governmentally approved policies. He argued that such a view “ignores the important role played by tax exemptions in encouraging diverse, indeed often sharply conflicting, activities and viewpoints.” Supreme Court Justice William Brennan, like Justice Powell, believed that nonprofit groups receive tax exemptions because “each group contributes to the diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic

society” (*Walz v. Tax Commission of City of New York* 1970). Nowhere is tolerance for diversity and divergent viewpoints more important than in the area of religion.

However, the definitional problems of which Kurtz spoke constitute valid concerns for the IRS. As a tax collecting agency, deciding which organizations receive tax exemption is well within their authority. Nevertheless, these decisions have far reaching consequence and should not go unexamined.

As a subset of the tax-exempt category of “nonprofit” organizations found in section 501(c)(3) of the Internal Revenue Code, churches are exempt from any federal income tax. They are not required to file an annual statement of activities or an informational tax return. Additionally, in accordance with section 170(c)(2), charitable contributions to such organizations are tax deductible for donors. Churches receive these and other benefits (deductibility of gifts and estate bequests, exemption from federal social security taxes, etc...) as tax-exempt nonprofits. In an attempt to curtail tax evasion under the religious exemption, which flourished in the 1970s, the IRS decided to clarify the criteria for tax exemption. For the first time, in 1978, the IRS gave guidelines on what characteristics they believe make an organization a church. These characteristics were meant to be general enough to include all organizations whose primary function is religion, but specific enough to eliminate fraudulent applicants. However, I argue that the definition employed by the IRS is too restrictive and threatens religious diversity in the United States. Though the appeal of a clear-cut definition is understandable, the particular criteria chosen disproportionately favor large traditional Christian denominations. The parameters are not flexible enough to encompass all the legal ways Americans organize to practice their religion. As a

consequence, IRS policy affects religions unequally. This is an unfortunate fact considering the United States' longstanding dedication to religious freedom.

In this study I examine current sociological theories that address issues of legitimacy and competition as they pertain to influencing the composition of a population of organizations. Beginning with the religious economies perspective, I argue that the sociological study of religion has uncritically accepted the notion that the United States has an unregulated religious economy. I use both organizational ecology and new institutionalism to provide important correctives to this assumption of a "free market." As we will see later with the case of American Hinduism, many genuine religious groups have to contend with the fact that their organizational structure does not meet the criteria of the IRS. Close examination of these theories indicate that even if the IRS is not intending to disadvantage marginal religions, its current policies are fundamentally biased. Unfortunately, the task of determining qualification for tax exemption may be unavoidably regulatory in nature.

Next, I show that these regulations were not developed in a social vacuum. I consider the historical development of these policies, taking into account potentially influential events from the time period. I provide examples of minority religions with which the IRS was in conflict during this crucial phase of policy-making. Additionally, I argue that the Jonestown tragedy proved to be a turning point. Tolerance of minority religions in the United States dropped dramatically following this event, as evidenced by the sharp increase of anti-cult groups and activities (Richardson 1986). New, marginal, and foreign religions were treated with suspicion, if not antagonism. In light

of these events, it would be naïve to presume that the hostile atmosphere of the late 1970s did not encourage the IRS to develop a more traditional definition.

I conclude this study with a brief proposal for further research. I believe quantitative analyses could potentially confirm these assertions. I identify an important new source of data, the IRS Form 1023, and call for a rigorous examination of these applications for exempt status. In order to protect the vibrant pluralistic society which the Justices above celebrated, it is imperative that we examine the sociological consequence of these IRS policies.

The Current Paradigm

The religious economies perspective has provided the theoretical framework for some of the most comprehensive studies of religion in the United States (Stark and Finke 2000; Finke and Stark 2005). Additionally, it has provided an excellent counterpoint to theories declaring that modernity inevitably leads to secularization (Berger 1990). There is no doubt that this perspective has greatly furthered our understanding of the dynamics of the American religious economy. However, since the development of the religious economies perspective (and possibly even before that) many sociologists have uncritically accepted the United States as a paradigm of religious freedom. One of the foundational assumptions underlying this perspective is that “America has the first fully unregulated religious economy” (Stark and Finke 2000: 216). This assumption is typically supported by some indistinct reference to the First Amendment. As a result, the United States has almost unanimously been characterized as a land pulsating with religious vitality and permeated by a remarkable degree of pluralism.

Perhaps in relative terms this is true. In comparison to some other cultures, the extent of regulation in the United States is minimal. Yet, close examination reveals that this religious market is characterized by greater uniformity than one would expect. Despite decades of scholars exalting American pluralism, I argue that the religious economy is dominated by relatively few organizational forms. By some accounts, the United States is home to over 2000 denominations (Melton 2009). Nevertheless, the vast majority of church-goers are served by only a couple dozen denominations. Furthermore, these denominations are becoming increasingly indistinguishable on the organizational level. Organizational analysis has brought to light some of structural similarities that cut across denominations and even religious traditions.

Researchers are beginning to take seriously “the possibility that churches of different denominations, and even institutions of different religions, might share organizational features” (Harris 1998: 603). Studies demonstrate that American Protestant churches and denominations have adopted similar organizational structures in order to solve similar problems (Takayama and Cannon 1979). Biddell’s study of congregations suggests that the day-to-day operations of religious organizations look surprisingly similar across denominational boundaries (Biddell 1992). Luckmann observed that by the late 1960s Catholicism, Protestantism, and Judaism were already beginning to be characterized by similar structural transformations (Luckmann 1969). In particular, he suggested that a Weberian-style bureaucratization was shaping the organizational structure of modern religious bodies. The organizational standards set by mainstream American Protestantism operates as a virtual hegemony in the religious market.

More recent studies have demonstrated that the dominant organizational style in the United States has produced a “de facto congregationalism” (Warner 1993). Warner states that this congregationalism characterizes American Hindus and Buddhists as much as it does Protestants, Catholics, or Jews. This trend has been noted by several scholars. Kurien’s (2006) work confirms that Hindus within the United States are experiencing tremendous pressure to adopt fundamental changes in the way their religion organizes and functions. Yang and Ebaugh (2001) attributed this change in minority religions, specifically immigrant religions, to a variety of federal and local government regulations.

Though this is largely a neglected area of inquiry for the sociology of religion, a recently posted article on the Social Science Research Council’s website states:

[R]ecent attention by a few sociologists to the ways that religion is governed, regulated, and shaped by a variety of legal and regulatory structures (immigration, diplomacy, tax codes, land-use and zoning regulations, and state licensing boards) firmly challenges the rosy vision of American religion as thriving within a marketplace composed of free actors (Levitt et al. 2010).

Researchers are uncovering the subtle ways the government has influenced the religious market. Likewise, I maintain that theoretical and historical analyses both point to the conclusion that the IRS’s policies regarding religious organizations, particularly churches, have a discernible impact on the American religious market.

First Amendment

As mentioned previously, the assertions of this study are directly related to several First Amendment issues; however, this is not a debate over the constitutionality of the policies of the IRS. The Supreme Court has on several occasions declared that

not all burdens on religion are unconstitutional (Laycock 2010). While the right to believe whatever one chooses is held as an absolute, the right to religiously motivated practices, including organizational practices, is not. Consequently, the courts have ruled favorably toward the government's right to regulate a variety of religious practices, such as the religious use of drugs (*Employment Division v. Smith* 1990). If the state can demonstrate that there is an overriding governmental interest, then it theoretically can and historically has put limitations on religious liberty, regardless of the guarantees of the First Amendment. Governments have found numerous interests compelling enough to allow such regulations on religiously based conduct. For instance, the courts have ruled against the practice of polygamy (*Reynolds v. United States* 1878) and upheld compulsory education laws (*Wisconsin v. Yoder* 1972), the protests of pious Mormons and Amish notwithstanding. In the arena of tax exemption, this is most vividly illustrated by the case of *Bob Jones University v. United States* (1983). In this pivotal case, the Supreme Court upheld the IRS's decision to revoke the tax exempt status of this religious private school due to its policies against interracial dating.

This complex concern about constitutionality arises because, as stated above, the First Amendment embraces two separate concepts. The Supreme Court has distinguished between the freedom to believe and freedom to act inherent in the First Amendment. As Justice Owen Roberts wrote in the Court's opinion in the case of *Cantwell v. State of Connecticut*, "the first is absolute but, in the nature of things, the second cannot be" (1940: 303). He argued that, for the protection of society, the government reserves the right to regulate religiously motivated conduct, including the

policies of religious organizations. However, issues of constitutionality lie outside the scope of this particular study, such a discussion being rightly reserved for the courts. , Regardless of their constitutionality, I am concerned with understanding the sociological consequences of these policies. My concern with the First Amendment rests in the fact that such legal and ideological constraints have made the IRS one of a few federal agencies producing any definitional work on religious organizations. The outlook taken here is perhaps best articulated in a quote by a prominent historian of religion:

The Internal Revenue Service is, both de facto and de jure, America's primary definer and classifier of religion. It reproduces the imperial Roman government's efforts at distinguishing licit and illicit religions as subtypes of a wider legal concern for distinctions between licit and illicit associations (Smith 2004: 376).

Understanding that the government reserves its right to regulate religiously motivated behavior, an organizational approach to the study of religion becomes imperative. The protections of the First Amendment, with its antiestablishment and free exercise guarantees, simply constitute the initial conditions of our inquiry, not its end.

CHAPTER TWO

Religious Pluralism and Tax Exemption

Religious Diversity: Theoretical Approaches

Though population ecology and new institutionalism have a history of rivalry in social studies of organizations, both theoretical perspectives are necessary to fully understand the impact of the IRS's attempt to define a 'church' for tax exempt purposes. Both perspectives endeavor to explain organizational change. Moreover, both views have shown considerable promise and it would be useful to reconcile them (Pfeffer 1982).

Population ecologists argue that the primary mechanism of organizational change is selection. Building on a foundation set in evolutionary theory, this perspective promotes the notion that the composition of a population of organizations is subject to environmentally determined selection pressures (Hannan and Freeman 1977). Since organizations are largely inertial, the composition of a population of organizations reflects those organizations that survive this process of selection. Similar to the religious economies perspective, ecologists predict that religious organizations that are unable to compete effectively for environmental resources are selected out the environment (Eiesland 2000; Stark and Finke 2000). Consequently, the composition of a population of organizations becomes more uniform as organizations unsuited to the environment die-off.

Money is a primary resource for the vast majority of all organizations, including religious organizations. Taxation is a reduction of that resource. Consequently,

denying an organization's exemption request effectively eliminates a substantial portion of an essential resource. The financial burden that taxation produces is compounded by the fact the contributions to the organization would not be deductible from the donor's gross income. Non-exempt status does not simply reduce the organization's income through the payment of taxes, but actually discourages donors from making charitable contributions in the first place. This can be devastating for religious organizations, since they regularly rely on donations as their primary or only source of income. In accordance with the basic tenets of organizational ecology and all other things being equal, religious organizations without tax-exemption will fail more often than those with exemption. The financial situation of an organization that depends on voluntary donations is likely to be unsustainable without tax exemption. As more and more non-exempt religious organizations become bankrupt, the composition of the religious market as a whole will increasingly reflect the characteristics of the exempt organizations.

New Institutionalism

New institutionalism tends to emphasize adaptation. Theorists of new institutionalism propose that there is much more homogeneity among organizational forms within any given field than has previously been acknowledged (DiMaggio and Powell 1983). In contrast to old institutionalism, which stressed that organizations adopted practices to achieve greater economic efficiency, these theorists argue instead that a desire for legitimacy is the force driving many contemporary organizations to adopt changes in their organizational form. They believe that the homogeneity observed within a population of organizations is the result of these adaptive processes.

According to this perspective, isomorphism, the name given to the collection of adaptive processes causing organizations to adopt similar structures in order to gain legitimacy, is a characteristic of all mature organizational fields (DiMaggio and Powell 1983).

Theorists divide the concept of isomorphism into three categories, normative, mimetic, and coercive (DiMaggio and Powell 1983). Normative isomorphism asserts that organizations operate similarly because they employ individuals that have similar training or education and have been exposed to identical standards of behavior and values. As will be seen later, the IRS facilitates normative isomorphism by including, among its criteria for exemption under the classification of a church, stipulations regarding the qualifications of its clergy. The IRS asks if the applicant has an organization of ordained ministers, if the ordained ministers are selected after completing prescribed studies, and if the organization has schools for the preparation of its ministers. Requiring professionally trained clergy would seriously disadvantage congregations that are small, poor, or rural and any religion where formal training is not customary.

The mimetic aspect of isomorphism explains how organizations are affected by other organizations within the same field. It proposes that since these organizations are subject to the same environmental pressures, constraints, and opportunities they are likely to model themselves on entities within the field that have an organizational form that has already shown indications of success. Such mimicry does not guarantee efficiency, but it does provide security in an uncertain environment (DiMaggio and Powell 1983). Organizations that are perceived as more successful provide a template

on which new or struggling organizations can structure themselves. The IRS's policies regarding churches explicitly provide new religious organizations with guidelines of which organizational structures they should emulate.

Finally, coercive isomorphism stems from political influence of outside organizations. For instance, when the government makes receipt of government contracts or funding contingent on compliance with certain reporting requirements, the organizations competing for these things will tend to adopt similar accounting practices. Sedlak showed that United Charities altered the structure of social services agencies that depended on them for support in a similar manner (Sedlak 1981). Theorists state that coercive isomorphism "results from both formal and informal pressures exerted on organizations by other organizations upon which they are dependent and by cultural expectations in the society within which organizations function" (DiMaggio and Powell 1983: 150).

Contrary to market theorists' assumption of an unregulated religious economy, this form of isomorphism reintroduces the role of the state as a regulatory body. The modern state has the power to shape the environment which organizations, even religious organizations, inhabit. Richard Scott (1987) argues that the state may employ inducement tactics, suggesting that when states are relatively weak they are more likely to use "market-like" control techniques because they lack the authority that more persuasive techniques require. DiMaggio and Powell (1983) also recognize that less authoritarian measures were plausible tools of the state. They acknowledged that coercive isomorphism could be "felt as force, as persuasion, or as an invitation to join in collusion" (DiMaggio and Powell 1983:150). The enticement of tax-exemption and the

legitimacy inherent in the ‘church’ designation operate much like such an invitation to collusion.

Tax Exempt ‘Church’ as Legitimate Religion

The institution of the ‘church’ is the quintessential form of religious organization in modern Western society. As such, it has been the topic of much inquiry in the sociology of religion (Becker 1932; Martin 1962; Niebuhr 1929; Troeltsch 1932; Berger 1954; Johnson 1963; Stark and Finke 2000). Past theory has concluded that a ‘church,’ sociologically speaking, is a religious organization that accepts the larger social environment in which it exists (Johnson 1963). This definition is utilized to distinguish churches from sects, or religious groups that reject the social environment in which they exist. Recently, theorists from the religious economies perspective have used the sect-to-church continuum to explain the rise and fall of various denominations in the United States (Stark and Finke 2000; Finke and Stark 2005). This study argues that designating a religious organization a ‘church’ tacitly affirms the existence of a congenial relationship between that religion and American society. At the same time, refusing an organization this title denies it the legitimacy enjoyed by churches.

The IRS’s ability to define a church for tax-exempt purposes has social as well as economic consequences. Though IRS policy has no official designation for a sect, rejecting an organization puts it in a state of higher tension with the larger society. Tension here refers to the degree of separation or antagonism in the relationship between the religious group and the “outside” world (Stark and Finke 2000). Though rejected organizations are not officially declared a sect by the IRS, failure to achieve exempt status as a church may communicate to the public that such an organization

practices a less than legitimate form of religion. Regardless of its intention, as an agent of the federal government, the determinations of the IRS have the power to convey legitimacy.

New institutionalism assumes that all organizations seek legitimacy. Additionally, this perspective predicts that organizations are willing to adopt structural changes in order to increase their chances of achieving legitimacy. In fact, theorists argue that once an organizational field becomes well established, “there is an inexorable push toward homogenization” as organizations make such adaptations in greater and greater numbers (DiMaggio and Powell 1983: 148). Katz’s analysis of the formation of the American educational system is a prime example. This startling work showed how, despite periodic reform movements, public schools have become dominated by bureaucracy. Highly dependent on government funds, schools are unable to adopt alternative organizational forms even if administrators believe they would be more suited to their educational goals. He contended that this has led to the establishment of an educational system that is “universal, tax-supported, free, bureaucratically organized, class-biased, and racist” (Katz 1975: xviii). However, this homogenizing phenomenon is certainly not unique to the educational system. It has been well documented in other organizational populations such as legal education (Rothman 1980), hospitals (Starr 1980), and radio (Barnouw 1968).

Scholars are now looking at how this same process operates in religion (Chaves 1999). I contend that the religious market is also continually being pushed towards greater levels of homogeneity and the IRS drives this trend. While the government’s

influence on religion may not be as apparent as in public education, the same fundamental forces are at work

The Case for Integration

Singh, Tucker, and House (1986) provided a strong argument for the integration of population ecology and new institutionalism in their study of voluntary social service organizations in Toronto, Canada. Their work evaluated Stinchcombe's (1965) argument that younger organizations have a higher propensity to die than old organizations. Known as the "liability of newness," this perspective has earned a prominent place in organizational ecology research. Organizational ecologists explain this propensity towards organizational death by asserting that younger organizations are subject to stronger selection pressures. Empirical research has supported this claim. Previous studies have found that organizational mortality rates are negatively related to age in newspaper organizations (Carroll and Delacroix 1982), in labor unions and semiconductor firms (Freeman, Carroll, and Hannan 1983), and in retail, wholesale, and manufacturing organizations (Carroll and Delacroix 1982).

Singh, Tucker, and House's (1986) study also found this effect in their population of volunteer based nonprofits. Furthermore, they showed that achieving external legitimacy was a significant factor in reducing the mortality rates of new organizations. By asserting that the liability of newness does not uniformly apply to all organizations these scholars provide an opportunity to integrate new institutionalism and population ecology. They argued that the liability of newness mainly arises due to young organizations' lack of external legitimacy, relating organizational legitimacy (new institutionalism) and organizational survival (organizational ecology). External

factors that increase legitimacy, they argued, alleviate selection pressures, while those external factors that decrease the legitimacy of an organization intensify selection pressures. They argued that external legitimacy is more important in explaining the mortality rates of new organizations than internal processes. They also argued that nonprofit organizations are more likely to be susceptible to the effects of external legitimacy since they employ “ambiguous technologies” and evaluating their effectiveness does not lend itself to traditional criteria of efficiency.

In order to demonstrate these claims, they looked at the influence of receiving a listing in the Community Directory of Metropolitan Toronto and receiving a charitable registration number by Revenue Canada on the mortality rates of their population of voluntary social service organizations. Both legitimating factors were found to be significant in reducing the mortality rates of the organizations as well as accelerating the age effect. Organizations without these legitimating factors had higher rates of mortality which were unlikely to decline with age. Additionally, they found that loss of these legitimating factors increased mortality rates. Though these results demonstrate the role external legitimacy plays in reducing selection pressures on young organizations, in general, it is the effects of the charitable registration number that is most relevant to our current discussion.

Like the IRS, Revenue Canada provides tax benefits to those organizations receiving the charitable registration number. However, Singh, Tucker, and House found the beneficial effects of tax reduction on a young organization’s chances of survival so self evident that it is only given the briefest mention in the article (1986: 177). Rather, it is the agency’s ability to convey legitimacy that the authors contend

significantly reduces the death rate of these particular nonprofits. I see no reason to believe that it would be any different for religious organizations in the United States.

Outside of any obvious economic concerns that might make an organization seek recognition from the IRS, there is undoubtedly a great deal of legitimacy to be gained in being recognized by an agency of the federal government. Though the government continues to remain silent on issues of faith, through the policies of the IRS it has effectively established a class of proper religious organizations. This point is briefly summarized by Finke and Stark in their work *The Churching of America 1776-2005: Winners and Losers in Our Religious Economy*. These researchers state:

Unwittingly perhaps, the IRS also contributes to the organizational structure of new religions seeking tax-exempt status (Stark, 1987a)...Asking questions about...the governing body, and the larger organizational structure, the IRS offers guidelines on what it means to be a religious organization in America (Finke and Stark 2005: 242).

Indubitably, minority religions are under considerable pressure to adopt the organizational forms characteristic of mainstream American Protestantism. One such religion is American Hinduism.

American Hinduism

In her work *Multiculturalism and "American" Religion: The Case of Hindu Indian Americans*, Perma Kurien (2006) argued that the events of 9/11 have shifted much of the focus of multicultural policies onto Muslim communities. She pointed out that this event has also caused Hindus to want to further differentiate themselves from Muslims. However, as the public sphere is increasingly moving from a "Judeo-Christian" to an "Abrahamic" religious umbrella, American Hindus are seeking recognition for their contribution to the religious fabric of the United States. Kurien

argued that American Hindus are at the forefront of the fight for the political recognition of non-Christian religious groups. She argued that this recognition is crucial for providing access to the valuable economic, social, and cultural goods conferred to citizens of Western countries. Consequently, acceptance by the dominant culture is a primary concern for many new immigrant groups. Kurien also argued that while the goal is to create a neutral framework to accommodate a variety of religious groups, the United States government often employs Christian understandings in its policy decisions which marginalize American Hindus. As a result, Hindus in the United States are often forced to transform their religious beliefs and practices in order to obtain recognition and resources.

Kurien (2006) considered how the IRS guidelines affect the way Hindu temples are organized and run in the United States. She stated that these policies have had a profound impact on Hindu temples. She argued that a congregational understanding of religion underpins these policies and as a consequence most temples do not qualify as churches. In fact, she claims that even the 'religious organizations' designation, which is based on far less exacting criteria, is often difficult for temples to achieve. As a result, Hindu temples are denied the financial and social benefits of obtaining such statuses. Kurien suggests that the Hindu organizations that do qualify for the church designation are usually non-traditional, neo-Hindu organizations.

Kurien contended that despite the IRS's caveats that the term 'church' is used generically and is meant to refer to any place of worship; the criteria used are clearly based on a Christian model. Looking at these characteristics, Kurien explained the three reasons why temples often do not qualify as churches. First, the nature of

Hinduism differs from Christianity. It is a religion that stresses orthopraxis over theological belief. The IRS indicates that a religion should have a “recognized creed and form of worship,” a “formal code of doctrine and discipline,” and a “literature of its own.” Due to the expense of constructing and running temples, in the United States they may enshrine several deities. The heterogeneous nature of Hinduism means that these more ecumenical temples may not have a single authoritative creed, doctrine, or body of literature. Additionally, these conditions make it problematic for there to be a “definite and distinct ecclesiastical government” that encompasses all of Hinduism.

Secondly, the guidelines of the IRS address the nature of the place of worship, its activities, and membership policies. The criteria state that a church must maintain “membership not associated with any other church or denomination,” “regular congregations,” and “Sunday schools for the religious instruction of the young. Kurien contended that these conventions are not typical of Hinduism. She argued that temples are the abodes of deities and are not considered to be the congregational homes of worshippers. Devotees have the option to worship in a range of temples and there is no concept of membership. Even the designation of a person as a Hindu is problematic since Hinduism has no official conversion ceremony. In India, a Hindu is simply defined as someone born into a Hindu family. Also, Kurien noted that the spiritual education of children traditionally takes place in the home and thus temples rarely conduct religious classes for children.

Finally, Kurien argued that the IRS’s specifications for the qualifications of its clergy may exclude Hindu priests. The IRS indicates that clergy should be ordained and “selected after completing prescribed courses of study.” However, Kurien argued

that Hindu temple priests are rarely educated in this way. Largely, Hindu priests are educated informally. These priests are traditionally born into Brahmin families where the profession has been passed down for generations through the male members.

Kurien argued that Hindus are forced to deal with these biases as they continue to struggle for a place at America's multicultural table. In summation she stated:

Most traditional temples are currently incorporated as religious organizations. However, recognizing the additional benefits obtained by churches when compared to religious organizations, one Hindu leader recently urged temples to attempt to achieve the "more difficult church designation . . . [for] "legal and social reasons." It will be interesting to see whether more Hindu temples will attempt to achieve this classification, and if so, what changes that will necessitate in their organization and functioning (Kurien 2006: 727).

American Hindus are just one of the many growing religions in the United States today. Countless other minority religions may currently be facing the very same dilemma.

CHAPTER THREE

History of Marginal Religions and the IRS

Definitional Problems and Religious Freedom

Earlier it was noted that theorists distinguish between various religious organizations based on the degree to which they are in tension with their environment. Namely, it was decided that a ‘church’ accepts the social environment in which it exists while a “sect” is one which rejects the social environment in which it exists (Johnson 1963).

However, sociologists are not the only ones that have been busy defining the ‘church’ in the last few decades. In 1978, former Commissioner of the Internal Revenue Service (IRS), Jerome Kurtz delivered a speech that articulated the fourteen criteria that guide tax officials in determining whether a religious organization qualifies as a church for the purposes of tax exemption (Kurtz 1978). Though many different religious organizations qualify for some form of tax exemption, it is clear that the ‘church’ is the form of religious organization favored by IRS policy.

Yet, prior to the 1970s this important designation was purposely left ambiguous. Constrained by the Constitution, the federal government had allowed a “common meaning and usage” to guide their decisions concerning religious organizations. Then the Supreme Court declared:

To exempt churches, one must know what a church is. Congress must either define ‘church’ or leave the definition to the common meaning and usage of the word; otherwise, Congress would be unable to exempt churches. (*De La Salle Institute v. United States* 1961: 195).

However, from fear of violating the religious liberties enumerated by the clauses of the First Amendment, the government refrained from defining a church, no matter how much they understood the need for such a definition.

Case Histories

The Tax Reform Act of 1969 represented a major watershed in the law of philanthropy. The Act introduced a new classification scheme that sharply distinguished between ‘private foundations’ and other charitable organizations. Over the next decade much ink would be spilt in order to identify where exactly all the various religious organizations would fit in this new taxonomy. By the later part of the 1970s it became impossible for the IRS to avoid developing explicit criteria for tax-exempt status, since it had a legitimate growing concern that individuals were using religious exemptions to evade personal income taxes.

In 1959, Life Church was founded by Kirby J. Hensley in Modesto, California. Later known as the infamous Universal Life Church (ULC), this organization offered religious ordination for free to any individuals requesting it, regardless of their qualifications. Operating from Hensley’s garage, ULC founded the first mail-order ministry. Many individuals contacted the ULC believing that these ordinations would exempt them from taxes or keep them from being drafted into military service during the Vietnam War.

The tax courts ultimately ruled that this organization did not qualify as a church since its administrative records did not indicate that it had a regular place of worship, held regular worship services, or performed any religious functions (*Universal Life Church, Inc. v. United States* 1988). The courts concluded that the ULC had the

substantial non-exempt purpose of giving tax advice not incidental to its religious purposes (*Universal Life Church, Inc. v. United States* 1987). To the IRS, the ULC represented the first organized attempt to use church status for the purposes of tax evasion. Needless to say, such abuses are inevitable. As former Commissioner Kurtz noted, “If a person is an economic being and figures out the odds, then there is a very high incentive to cheat. That is, of course, putting aside honor, duty and patriotism” (Tax Analysts 2010).

In addition to the development of what the courts considered patently fraudulent religious organizations like those associated with the ULC, the United States saw a rise in other unfamiliar and nontraditional religious organizations. These organizations were often met with skepticism from the public and suspicion by the government. Furthermore, the IRS had direct dealings with many of these groups around the time that the agency was deciding on criteria for classification as a church.

A particularly relevant example is the Unification Church. Following the establishment of the Immigration and Nationality Act of 1965, which abolished several longstanding limitations on immigration, the United States received a surge of Asian immigrants. With this rise of Asian immigrants came a comparable influx of new Asian religions. Sun Myung Moon, founder of the Unification Church moved to the United States in 1971. In two years, this religion hailing from South Korea had a presence in all 50 states and was reporting a few thousand members.

By the late 1970s the Unification Church was already the subject of much controversy. In 1976, Representative Charles Wilson of California entered two articles from *The National Inquirer*, a well-known American tabloid, into the record at the

second session of the 94th Congress. Representative Wilson claimed that these articles would “tell anyone who is interested all one needs to know about Reverend Moon” (U.S. Congress 1976). The articles included inflammatory allegations of brainwashing, abuse, and mind control typical of the anti-cultists of this era. This and other evidence (mainly the testimony of “experts” of cults and professional deprogrammers) was presented before Congress in order to implicate the Unification Church in everything from gun smuggling to a plot to throw eggs at the Japanese Ambassador (U.S. Congress 1979b). Naturally, by 1978, Moon’s organization was under a full investigation by the government of the United States.

The Subcommittee on International Organizations of the Committee on International Relations (also known as the Fraser Committee as it was chaired by Representative Donald M. Fraser of Minnesota) investigated the Unification Church as part of a larger inquiry into South Korea-United States relations. The report from this investigation included recommendations for the assembling of a “task force.” The task force was advised to use the combined resources of the Department of Justice (including the Federal Bureau of Investigation, Anti-Trust Division, and Immigration and Naturalization Service), Department of Treasury, Securities and Exchange Commission, Federal Reserve Board, Department of State, and the Internal Revenue Service. This subcommittee was insistent that Congress review all information pertaining to the Moon Organization, especially tax information. However, they found that “current U.S. tax laws and regulations made it impractical for the subcommittee to examine the tax returns of such Moon Organization components as the Unification Church International” (U.S. Congress 1978: 387). Yet, they were able to determine

with some certainty that the tax advantages enjoyed by the Moon Organization would enable it to “pyramid economic power and achieve a substantial advantage over competing organizations” (U.S. Congress 1978: 387)

Consequently, the subcommittee suggested that further measures were needed to determine whether there was a need for better legislation to prevent abuses of the tax-exempt status. In particular, the subcommittee recommended that the House Ways and Means Committee and the Senate Finance Committee review the applications for tax-exempt status and the tax returns of all the entities related to the Moon Organization. The subcommittee insisted that, “new legislation or regulations are needed to prevent tax avoidance and pyramiding of economic power by means of recycling funds through an international organization, part of which is tax-exempt” (U.S. Congress 1978: 387).

The subcommittee concluded that “the Moon Organization used church and other tax-exempt components in support of its political and economic activities” and that “although many of the goals and activities of the Moon Organization were legitimate and lawful, there was evidence that it had systematically violated U.S. tax, immigration, banking, currency, and Foreign Agents Registration Act laws, as well as State and local laws relating to charity fraud” (U.S. Congress 1978: 387). In 1982, Moon was convicted of tax fraud and conspiracy as a result of this investigation. Moon was sentenced to eighteen months imprisonment and given a \$25,000 fine.

Additionally, Congress’ apparent interest in “non-traditional” churches prompted the IRS to reexamine its position toward these religious organizations. Then Commissioner Kurtz stated that the report “brought the IRC 501(c)(3) exemption for non-traditional churches and religious organizations before the public eye” (Kurtz 1979: 1). With

increased public attention on tax-exempt organizations, the IRS was under pressure to act as a regulator over unfamiliar religious groups.

However, revoking tax-exemption may be easier said than done. The IRS granted the Church of Scientology tax exemption in 1957. The agency then revoked it a decade later citing that the organizations activities were primarily commercial, that practitioners were profiting from its nonprofit status, and that the church was mainly serving the private interests of its founder L. Ron Hubbard. Scientologists denounced the IRS for its decision and the organization spent the next 26 years withholding tax payments while engaging the agency in a series of drawn-out legal battles (Cowan and Bromley 2008). Additionally, Hubbard launched a program called Operation Snow White. Throughout the 1970s, this clandestine operation aimed to infiltrate government agencies in order to remove documents that portrayed Scientology negatively. One of the group's principle targets was the IRS. (*United States vs. Mary Sue Hubbard et al.* 1979)

The program was ultimately uncovered by the government and the FBI raided Scientology's headquarters in Washington D.C. and Los Angeles. Thousands of documents were seized, including a number of which implicated Scientologists in illegal activities. One such document contains a correspondence between L. Ron Hubbard's wife Mary Sue Hubbard and fellow Scientologist Jane Kember. In this letter, Hubbard advises Kember that they should "use any method at [their] disposal to win the battle and gain [their] non-profit status" (*United States vs. Mary Sue Hubbard et al.* 1979: 66). As a direct result of these events, eleven Scientologists, including Mary

Sue Hubbard, were convicted of conspiracy and imprisoned for between two to six years.

Nevertheless, Scientologists continued to occupy the IRS in court until the early 1990s. Finally, in 1993, the IRS agreed to reinstate the organization's exempt status on the conditions that the Scientologists paid \$12.5 million in back taxes and agree to drop all remaining lawsuits. This highly visible dispute between the IRS and a non-traditional religious group just elicited further concern from an already watchful public. For many, the rapid growth of Scientology during this time was an alarming indication that traditional Christian denominations were losing their grip on American culture.

Decline of the Mainline

In the 1970s the religious market of the United States was a source of confusion and controversy for both social theorists and tax officials. Starting in the late 1960s and continuing throughout the 1970s, American religion was going through what Martin Marty called a "seismic shift" (Marty 1979). Dean Kelley, an executive of the National Council of Churches, contended that there was a steep decline in the membership rates of mainline denominations. Kelley (1972) argued that this decline was coupled with a rise in the membership rates of evangelical and other conservative churches. As Marty explained, "in times of cultural crisis and disintegration, [mainline churches] receive blame for what goes wrong in society but are bypassed when people look for new ways to achieve social identity and location" (Marty 1976: 71). Though Finke and Stark disagree with Marty and Kelley that it was rapid cultural changes that led to dramatic shifts in religious affiliation, they do acknowledge that mainline denominations were indeed losing market share during this time (Finke and Stark 2005). Beyond this simple

tradeoff between liberal and conservative churches, there was substantial religious experimentation. One such experiment was the People's Temple.

Cult Scare

In the mid 1950s, James Warren Jones began a small church in Indiana. The People's Temple was an early success with African-Americans because of its integrationist views. Alternatively, Jones and his followers received trouble from local whites because of their dedication to racial equality. Yet, the Temple grew over the years and by 1965 it moved with 70 families, half of whom were African-Americans, to Ukiah, California. As the Temple continued to expand in California a second church was established in San Francisco. Eventually the Temple began purchasing land in Guyana. In the summer of 1977 there was a mass migration to Guyana to develop the People's Temple Agricultural Project, which was an attempt to build a terrestrial paradise based on socialist principles (Weightman 1984). Later that same year the IRS began preparations to launch a massive investigation of the Temple.

The members of Jones' congregation dreamed of creating a utopia of economic and racial equality. However, the stark reality of the People's Temple Agricultural Project was one of hardship, intense labor, hunger, and suffering for most of those that made the journey to Guyana. During a trip to determine the well-being of these American citizens abroad, Congressman Leo Ryan was assassinated by Jones' gunmen (Reiterman 1982).

Then, in November 1978, to the shock of the nation over nine hundred men, women, and children lost their lives in an act of mass suicide/homicide under the guidance of the Rev. Jim Jones. Following the murder of Ryan, Jones and his trusted

inner circle coerced the people of Jonestown to give the children of the community a mixture of Flavor Aid (often misidentified as Kool-Aid) and cyanide. Afterward, the people of Jonestown took the poison themselves (Reiterman 1982). The aftershock of such a tragedy, unparalleled in the history of the United States, was far reaching. In its wake, many marginal religious communities were met with animosity and suspicion from the larger society. A tidal wave of anti-cult propoganda followed this, resulting in a deepening of the rift between mainline denominations and new religious movements.

Following the Jonestown incident, Chairman of the House Foreign Affairs Committee Clement Zablocki ordered the assemblage of a Staff Investigative Group to report on the assassination of Representative Leo Ryan. By May 15, 1979 this group had created a detailed report outlining the events leading up to the tragedy. Among other things, the report included a letter from Richard Delgado, a major proponent and legal aid of the Anti-Cult Movement. In this letter, Delgado informed Zablocki that the Jonestown incident would give him leverage necessary to crackdown on new and nontraditional religious movements. Moreover, the Investigative Group gave Zablocki several suggestions on what steps should be taken in order to prevent the recurrence of such a tragedy. Among these recommendations, the Investigative Group makes explicit reference to the Temple's tax-exempt status stating, "with respect to the advantages and privileges People's Temple enjoyed as a tax-exempt "church," appropriate congressional committees should consider reviewing pertinent Internal Revenue Service rules and regulations." As they continue, the recommendations of the Investigative Group sought to enhance the oversight powers of the IRS substantially (U.S. Congress 1979a).

Though the IRS had purposely limited the reporting requirements for religious organizations, they were now beginning to receive increasing pressure to scrutinize new religious organizations more closely. The Anti-Cult Movement was at the forefront of this push towards greater legislative restrictions on religious groups. Their efficacy in influencing tax legislation parallels that of activists' earlier efforts to end McCarthyism under the Johnson administration. In an illuminating article, James D. Davidson (1998) revealed how the anti-communist frenzy led to injunctions against religious organizations endorsing and opposing political candidates within the tax code. After reviewing the historical development of these regulations, Davidson concluded "tax laws—including those affecting churches—are politically motivated" (Davidson 1998).

A close examination of the writings circulating within the IRS at the time indicates that the agency took the recommendations of the Investigative Group and Anti-Cultists rather seriously. Then IRS Commissioner Kurtz directly cites problems with the Unification Church, the public concern following the Jonestown tragedy, and the increasingly visible activities of the Anti-Cult Movement as impetus to review its policies in relation to "nontraditional" churches and their eligibility for tax exemption. Kurtz's supplement to the 1978 Exempt Organization Annual Technical Review Institute textbook's summary on the Service's stance towards churches is evidently situated in this unusual social context. He states:

Congress has been investigating Reverend Moon's Unification Church and related organizations for illegal activities. The recent mass suicide at the People's Temple in Jonestown, Guyana, drew international comment and much Congressional interest. And, the press is filled with reports of "brainwashed" disciples and parents "re-kidnapping" their children.
(Kurtz 1979)

Kurtz goes on to give details of these events as well as articulate the IRS's obligation to assure that other nontraditional religious organizations are not engaging in illegal activities or activities contrary to Federal public policy. It is important to remain mindful of the fact that the IRS was responding to a wave of new religions seeking church status in the wake of Jonestown and it was just the year prior that Kurtz had outlined the criteria the IRS was using to establish whether or not a religious organization qualifies as a church.

A Definition and Its Consequences

The social turmoil of the 1970s finally gave the federal government impetus to reexamine its relationship with new religious organizations rising in the United States. In a short address to the Practising Law Institute Seventh Biennial Conference on Tax Planning, Kurtz (1978) stated that a church should have an unspecified number of the following traits:

- (1) A distinct legal existence
- (2) A recognized creed and form of worship
- (3) A definite and distinct ecclesiastical government
- (4) A formal code of doctrine and discipline
- (5) A distinct religious history
- (6) A membership not associated with any other church or denomination
- (7) An organization of ordained ministers
- (8) Ordained ministers selected after completing prescribed studies
- (9) A literature of its own
- (10) Established places of worship
- (11) Regular congregations
- (12) Regular religious services
- (13) Sunday schools for the religious instruction of the young
- (14) Schools for the preparation of its ministers

However, it wasn't until 1980, when these criteria were explicitly cited in the Court's decision in *American Guidance Foundation, Inc. v. United States*, that they were given

the weight of legal precedent. Until that time, these guidelines were used informally and the agents were afforded considerable latitude in their determinations.

The IRS, as an agent of the state, has a genuine interest in setting policies for the purposes of determining and collecting tax revenue. However, these regulations may have unintended consequences. In the case of religion, the Constitution prohibits the government from establishing regulations unless it can provide an overriding interest for which it has no less restricting means to achieve. In order to prevent tax fraud, the IRS must have the power to set and enforce guidelines for which organizations qualify for tax exemption as a church. Nevertheless, social scientists cannot afford to ignore the consequences of these policies, especially since they position the state's interest in maintaining the flow of tax revenue against the public's constitutionally protected right to the free exercise of religion.

Despite the fact that federal tax regulations are universally and uniformly applied, they are inherently burdensome for small, innovative, and foreign religions. However, this is not meant to suggest that the IRS is purposely targeting these marginalized organizations. As former IRS Commissioner Jerome Kurtz once explained, "We have been criticized for the scope and breadth of the criteria we use and it has been implied that the Service has been trying in recent years to discourage new religions and new churches. I can assure you that that is not the case with the IRS" (Kurtz 1978). Nevertheless, this study maintains that regardless of the IRS's intentions, religious regulation is an inevitable consequence of its duties.

CHAPTER FOUR

Conclusion

Future Research

This study has provided a theoretical foundation for a rigorous quantitative investigation of the IRS's determinations of churches over the last few decades. First and foremost, a database of all redacted *Applications for Recognition of Exemption Under Section 501(c) (3) of the Internal Revenue Code* (IRS Form 1023) should be made available for social scientific research and statistical analysis. Unlike Form 990, which is already publicly accessible for both academic study and general review, the 1023s are maintained by the IRS but are not readily available to the public.

Form 990 is an informational report filed annually by most nonprofits. Commercial enterprises have made extremely manageable databases of the 990s which are obtainable for a fee. The 990 has proved to be an invaluable resource to understanding the financial working and organizational structure of the nonprofit sector in the United States. Conversely, the 1023 is an untapped resource. By its very nature as an application for recognition, the 1023 is logically prior to the 990. Oftentimes, it represents the first point of contact between the new organization and the federal government. It allows us to view the organization as it was initially conceived. The information contained within the 1023 could expand our understanding of religious organizations beyond the reach of the 990.

Furthermore, within the 1023 there is a unique combination of organizational and financial information. The various schedules attached allow for a refined

understanding of the nature of each organization and the religious niche it purports to fill. In the case of Schedule A, the establishment of the organization as a church is directly addressed. Using Kurtz's original fourteen criteria, this portion of the form asks over two dozen yes or no questions aimed at outlining the structural aspects of the organization. Though the IRS claims to give no controlling weight to any particular item or group of items, statistical analysis would allow one to see if there are any trends indicating which organizational structures have a better chance of achieving church status. Moreover, since the questionnaire provides room for the organization to include any additional information they deem relevant, a study of greater depth is possible.

A dataset such as this would provide over thirty years of data on the organizational and financial structure of religious organizations in the United States. A record of the organizational trends in the American religious economy could be established. Over the years, certain organizational characteristics may fall in and out of significance demonstrating shifts in the IRS's understanding of religion.

Summary

A popular assumption in recent theorizing in the sociology of religion is that religious vitality is related to the extent of religious regulation in a society. The United States is put forward as an example of an "unregulated" religious economy. However, scholars making this assertion must recognize an important caveat. Careful historical and theoretical analyses demonstrate that religion in the United States is still regulated and the IRS is an instrument of that regulation.

I argued that an integrative theory was necessary to understand the issues at hand. This study demonstrated that the religious market is shaped by the effects of both

selective and adaptive processes influenced by the IRS. Religious organizations are subject to selective processes, because the fiscal and social benefits associated with tax exemption could be pivotal factors in determining the survival of an organization. Religious organizations are subject to adaptive processes, because new religious movements are coerced by the promise of financial benefits, government recognition, and legitimacy in the eyes of the public to adopt organizational and structural guidelines determined by the IRS.

It is clear that the United States legal system already uses a traditional Protestant prototype when attempting to determine a religious organization's right to particular religious practices (Smith 2004). Likewise, the IRS's definition of a 'church' for tax exempt purposes is an explicit declaration of the organizational forms the IRS is attempting to preserve in the American religious economy. The granting of exempt status is one of the few ways in which the federal government can legally confer legitimacy to a religious organization. Recognition as a tax-exempt church legitimates the new organization in the eyes of public and more importantly, any potential donors. Consequently, seeking recognition from the IRS may represent an emerging religion's first barrier to entering the American religious economy.

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