

## Conducting Business with Denominationally Affiliated 501(c)3 Organizations: Polity Matters

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### ABSTRACT

Nonprofit organizations are consumers of products and services—like any other B2B type of relationship—and due to the growth of corporate social responsibility (CSR) in the for-profit sector, business-non-profit alliances have grown significantly in recent years (Irmak, Sen, Bhattacharya 2015; Manel 2010; Milne, et. al, 1996; Al-Tabbaa, et. al., 2014). Most research into conflicts between for profits and nonprofits focus on differences in strategic motivations (Burchell & Cook 2013; Brand, et. al., 2020), philanthropic partnerships (Zatepilina-Monacell 2015) and a few studies focus on issues like competition between nonprofits and small businesses (Haber 1994). However, business to business transactional relationships and the potential conflicts between businesses and nonprofits should be examined in greater detail, especially as this relates to peculiarities when establishing and conducting business relationships with denominationally affiliated 501(c)3 organizations. There is a need for small business owners as well as corporate managers to be aware that conducting business with churches, denominations, and their affiliate organizations can be treacherous if conflict arises. Issues of ascending and descending liability as well as the fact that a business may be entering into a transactional relationship with not just a single entity, but with another entity that has influence or outright control over that entity. This study examines the issue of polity—church governance—and categorizes denominations by polity in order for those conducting business with religious and denominationally affiliated 501(c)3 organizations to have a better understanding and expectation of the peculiarities of business to business relationships with such nonprofits.

Keywords: Nonprofit, church, polity, denomination, business-to-business, 501(c)3

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## INTRODUCTION

Because nonprofit organizations are consumers of products and services—like any other B2B type of relationship—and due to the growth of corporate social responsibility (CSR) in the for-profit sector, business-non-profit alliances have grown significantly in recent years (Irmak, Sen, Bhattacharya 2015; Mannell 2010; Milne., et. al, 1996; Al-Tabbaa, et. al., 2014). Most research into conflicts between for profits and nonprofits focus on differences in strategic motivations (Burchell & Cook 2013; Brand, et. al., 2020), and philanthropic partnerships (Zatepilina-Monacell 2015) and a few studies focus on issues like competition between nonprofits and small businesses (Haber 1994).

However, business to business transactional relationships and the potential conflicts between businesses and nonprofits should be examined in greater detail, especially as this relates to peculiarities when establishing and conducting business relationships with denominationally affiliated 501(c)3 organizations. For instance, imagine a case in which a church engages a local printing company for services of \$20,000, when suddenly the church splits with most of the membership that had provided its financial security leaving the congregation. If the church becomes insolvent, who may be held responsible for the debt? Or imagine a construction company that is completing an addition to a ministry only to discover that the ministry has suddenly become insolvent. In situations of legal liability—from financial malfeasance to breach of contract to lawsuits involving claims of sexual misconduct, the maze of church governance, oversight, relationships, and legal “ownership” can be complex and often misunderstood.

Studies and articles of business to business relationships between churches (and their affiliate organizations) and for-profit companies largely focus on conflicts on the right or appropriateness of the church to intervene in economic issues related to corporations, or how the church has failed in understanding economics and business leaders in the United States (Nash 2001; Sethi, 1972; Sethi 1980). Other studies on conflict between business interests and the church largely focus on employment issues, employee compensation and benefits (Strine 2015; Wilmsen 2019). But there is a need for small business owners as well as corporate managers to be aware—and sometimes beware—that conducting business with churches, denominations, and their affiliate organizations can be treacherous if conduct arises. Issues of ascending liability as well as the fact that a business may be entering into a transactional relationship with not just a single entity, but with another entity that has influence or outright control over that entity. Newly engaged couples were often reminded that you do not just marry the spouse, but the whole family of the spouse. Such is the case in conducting business with many religious and denominationally affiliated 501(c)3 organizations.

## ASCENDING LIABILITY

The legal issue of ascending and descending liability is a matter of concern for most nonprofit organizations. As Gaffney & Sorensen (1984) point out, “Nonprofit associational forms that can provide the assurance of limited liability are neither numerous nor clear-cut. The problem is particularly acute among affiliated nonprofit organizations where one organization may be held responsible for the liabilities of another.” This issue of being held responsible for the actions of a separate 501(c)3 organization is what is mean by ascending liability.

The liability of one nonprofit ascends to another related organization. Gaffney and Sorensen cite *Barr v. United Methodist Church*<sup>1</sup>, known as the “Pacific Homes” case as the lawsuit that “brought the issue of ascending liability to the attention of nonprofit organizations, especially religious denominations (Gaffney & Sorensen 1984). In *Barr v. United Methodist Church*, Pacific Homes Corporation, a nonprofit organized in California had operated retirement homes that had promised lifetime care for the residents. Unable to meet their obligations, Pacific Homes filed for bankruptcy and residents, led by Frank Barr sought filed a class-action suit against Pacific Homes, as well as the Pacific and Southwest Annual Conference of the United Methodist Church, the General Council on Finance and Administration of the United Methodist Church, and the United Methodist Church. Though the court concluded the denomination to be a unified entity, and the case was eventually settled out of court, the precedent created by the appellate decision held “that an entire denomination is a legal entity amenable to suit for the activities of affiliate organizations with which virtually any form of agency, sponsorship, or control can be found (Gaffney & Sorensen 1984 p. 12).

The concept of ascending liability considers the totality of a system. The various parts of that system are related in such a way that responsibility is shared. This is certainly true of denominational entities, affiliate organizations, and churches within the denomination. While there is indeed some level of legal liability, the greater concern of the nonprofit, the church, and the denominational organizations should be on the ethical responsibility. Such is the case in the sexual abuse cases that have rocked the Catholic Church, and more recently the Baptist sexual abuse exposé in the Houston Chronicle (Downen, et. al., 2019). Ascending liability is influenced by the degree of cooperation and control and will differ according to polity. In the case of the Catholic Church, a much more centralized (hierarchical) system exists than in the Southern Baptist Convention. However, from an ethical perspective, that means little to those grappling with the issue of the scandal currently being dealt with by the more autonomously governed churches of the Southern Baptist Convention.

## **POLITY**

The kinds of issues or conflicts that can arise in any business to business relationship or transaction involving 501(c)3 nonprofit organizations and their for-profit counterparts range from vendor relationships, suppliers, to contracted work. Likewise, the sale of goods, services, or property and real estate can give rise to issues, liability, and disputes. As the proliferation of church splits and denominational schisms occur over matters of theology, ecclesiology, and issues related to traditional versus new legal and sociocultural views of sexuality and marriage (*Obergefell v. Hodges*<sup>2</sup>), there are concerns over property disputes. When a local church disfellowships or is disfellowshipped from its denominational affiliation, how is the local church property treated? Who owns the church facility?

In any dispute involving a church, including property disputes, the governing documents including the church constitution, bylaws (i.e. their legal organizational form), and the issue of polity will be used to settle such matters. Most churches in the United States are incorporated as 501(c)3 organizations. “With the exceptions of Virginia and West Virginia, all states provide

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<sup>1</sup> *Barr v. United Methodist Church*, 90 Cal. App. 3d 259, 153 Cal. Rptr 322 (1979).

<sup>2</sup> In *Obergefell v. Hodges*, the Supreme Court ruled for the right of marriage between two people of the same sex, and recognized marriage between two people of the same sex when their marriage was lawfully licensed and performed in another state, as well as ruled on a number of other changes in the institution of marriage.

some form of corporate status for church organizations. In some states, churches may incorporate either under a general corporation act or under a general nonprofit corporation act. In other states, special statutes are designed for the incorporation and governance of certain specific denominations” (Sirico, 1986).

Not for profit corporations are approved by the IRS only after an application is approved.<sup>3</sup> Such nonprofit organizations are generally limited to those founded for religious, charitable, scientific, literary, and educational purposes. Like any corporation, the 501(c)3 affords limited liability, but perhaps its most coveted advantages are the tax advantages it affords through exemptions from taxes it is obligated to pay, and through their ability to receive donations and offer donors tax deductions.

As Anthony Mancuso (2017) points out, “At federal corporate tax rates of 15% on the first \$50,000 of taxable income, 25% on the next \$25,000, and 34% and higher on income over \$75,000, it goes without saying...that you’ll want to apply for an exemption.” Likewise, he notes that, “One of the primary reasons for becoming a 501(c)3 nonprofit corporation is that it increases your ability to attract and receive public and private grant funds and donations... Individual private donors can claim personal federal income tax deductions for contributions to 501(c)3 tax exempt groups. At a donor’s death, a federal estate tax exemption is available for bequests made to 501(c)3 groups” (Mancuso 2017).

There are also special rules that limit the authority of the IRS to audit churches that are 501(c)3 organizations. “Congress has imposed special limitations, found in section 7611 of the Internal Revenue Code, on how and when the IRS may conduct civil tax inquiries and examinations of churches. The IRS may begin a *church tax inquiry* only if an appropriate high-level Treasury official reasonably believes, on the basis of facts and circumstances recorded in writing, that an organization claiming to be a church or convention or association of churches may not qualify for exemption, may be carrying on an unrelated trade or business (within the meaning of IRC § 513), may otherwise be engaged in taxable activities or may have entered into an IRC § 4958 excess benefit transaction with a disqualified person” (Internal Revenue Service, 2020). For all of these reasons, the 501(c)3 form is the common means of church organizations in the United States.

In addition to understanding the church bylaws and articles of incorporation as organized with the IRS, the other factor that is of primary importance in the adjudication of church related issues is the polity of the church. Polity is best understood as how a church is governed. This seems fairly straightforward, but in reality, polity is impacted by a church’s particular theology and ecclesiology. As Kaupe (1969) stated, “Polity refers to the general governmental structure of a church and the organs of authority...” Polity matters on issues ranging from whether a local church pastor is appointed by a council, presbytery, or other authority in a more hierarchal governed denomination<sup>4</sup> or selected by the local congregation, and are determinant of issues related to disputes including who owns the church property. As is the case with George Saunders and his current disagreement with his local church, the issue will largely be settled as to the

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<sup>3</sup> The IRS application process is available in IRS Publication 557. Internal Revenue Service. (2020, April 9). IRS Publication 557: Tax-Exempt Status for Your Organization. Retrieved April 9, 2020, from <https://www.irs.gov/pub/irs-pdf/p557.pdf>

<sup>4</sup> The term “denomination” is used in this paper with a recognition that some religious groups reject the concept, and some take offense as a descriptor of their particularly faith group. It is used here as a commonly understood means of grouping religious faiths.

church's own bylaws and governing documents and its relationship with its denomination. In other words, what type of polity governs George Saunder's church?

Understanding church polity in the United States is no small undertaking. Olson has rightly pointed out that, "America is not only the most religious industrialized nation; it has become the most religiously diverse nation in history" (Olson, et. al., 2018, p. 3).

In an attempt to understand the influence of power structures on decision-making in churches in the United States, Takayama and Cannon (1979, p. 325) surveyed twenty-six protestant denominations. Their classification of those denominations is of particular interest and basically recognized three categories of polity: "Episcopal, Presbyterian: and Congregational." They describe the three categories as: "Formal hierarchy is the most explicit in the episcopal forms of government and administration...Because of this type of arrangement [authority flows down], the autonomy of the local [church] is limited... [C]ongregational formal polity recognizes the local church as the single source of authority...Authority beyond the local level is often ill defined, and the national denomination, in theory, has only those powers delegated to it by...local churches...Presbyterian formal polity falls between the episcopal and congregational polities, with authority flowing from the middle...[Synodical and Presbyterian authority are preserved to safeguard some of the autonomy of local congregations. Ministerial and lay representatives at the middle and national levels form a complex structure of checks and balances...]" (Takayama, Canon, 1979 pp. 325-326). Their work, relative only to the issue of polity is included in Table 1 (Appendix).

Kauper (1969) categorized two broad types of church polity that are generally recognized by the courts: the hierarchal and the congregational. "In the hierarchical type of church, the local congregation is an organic part of a larger church body is subject to its laws, procedures, and organs according to an ascending order of authority. It does not enjoy local autonomy. Its doctrine is defined by that of the parent body and its property, while peculiarly a matter of local enjoyment, is held for uses consistent with the doctrines and practices of the denominational parent church" (Kauper, 1969 p. 354-355). He further distinguished hierarchical polities as either episcopal or synodical also using "associational polity" as synonymous with synodical. He wrote, "In churches with the episcopal polity, of which the Roman Catholic and Episcopal churches are good examples, authority is vested at various defined levels in ecclesiastical officers, and the general system may be described as authoritarian in character. In churches with synodical or associational polity, authority is delegated to elected organs exercising power at various levels and culminating at the top in an elected representative body which constitutes the highest organ of authority. This polity has a democratic base. The Presbyterian Church affords the best example of the synodical polity" (Kauper, 1969 p. 354-355).

Finally, in Kauper's system of defining polity, he describes congregational polity. "[C]ongregational polity, by contrast to the hierarchical, features local congregational autonomy as its central characteristic. It is premised on the idea that the local congregation is the highest authority in all matters of doctrine and usage. Indeed, congregationalism is in itself a fundamental principle...The Congregational Church and the Baptist Church are prime examples of churches with a congregational polity" (Kauper, 1969 p. 354-355).

Therefore, determining whether a local church is incorporated as a 501(c)3 organization may indeed provide valuable information regarding issues such as how disputes (including church property disputes) are handled, the more valuable information—and this is in all likelihood the most important aspect of the articles of incorporation and bylaws themselves—is the polity of the church. Polity matters. As numerous court cases have proven, "The usefulness to



courts of the distinction between hierarchical and congregational polities in resolving church property issues by reference to the implied trust doctrine<sup>5</sup>...[I]n the case of a church with congregational polity, with the result that the local congregation is autonomous and subject to majority rule, the danger of manipulation by a shifting and impermanent temporal majority so as to cause a deviation from established doctrine and usage is greater” (Kauper, 1969, p. 355). In the case of congregational polity therefore, there may a greater likelihood of judicial discretion or involvement.

In the case of a church split, as presented in the Introduction, where a local printer is left with a \$20,000 bill and the church unable or unwilling to pay for it, understanding polity can be helpful in knowing who can address the situation. If the denomination is Baptist for example, as a congregational form of church governance, would indicate that the church is autonomous and there is no recourse (outside of perhaps public relations) available through a denominational entity. In this case, any recourse would be limited to the local congregation, or by addressing the Trustees of the local church congregation. Trustees of religious 501(c)3 corporations list Trustees that can be held liable in some instances, either directly or corporately. In the Introduction’s second scenario involving a local church becoming insolvent during the construction of a building addition, if one is dealing with a church that is considered hierarchical, there may be greater recourse. If the church for example is Episcopal or Orthodox, there is a greater likelihood that the denomination could be held liable. However, it is probably true that in such cases there had been considerably more approvals required in the process of getting the project approved in the first case.

There is a caveat worth noting regarding 501(c)3 organizations that are religiously affiliated. This article has largely focused on local church issues and polity in the conduct of business relationships. However, the categories, of hierarchical and congregational, while still holding true for para-church ministries such as universities, there are some peculiarities that arise. Depending on a ministry or organizational charter and articles of incorporation, an entity such as a private religious university that is affiliated with a particular denomination may behave legally much different than a church. For instance, a private Baptist university that is chartered by a state denomination, and which has all of its Trustees elected by that denomination, would be considered to be controlled or operated by the denomination. So, while congregational in polity in its churches, the Baptist denomination in this particular example would have a type of “hierarchical” relationship with its university and therefore have ascending liability.

## CONCLUSION

Utilizing both Kauper (1969), Takayama and Cannon (1979), and the excellent work of Olson, Mead, Hill and Atwood (2018) the following denominational polity table is offered in an attempt to summarize the most recognized churches in America. The classification system uses a simplified definition for categories, which seem to follow most case law on church property disputes. Church denominations are classified as either hierarchical (episcopal and synodical

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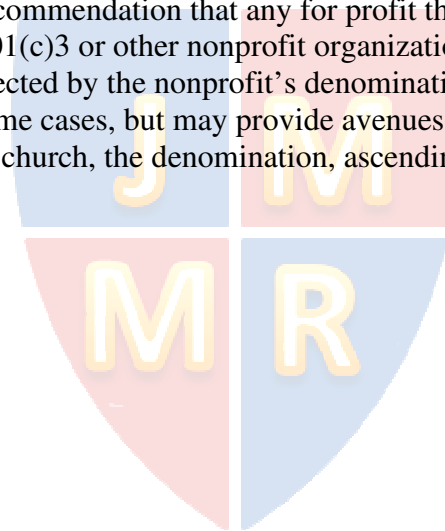
<sup>5</sup> The implied trust doctrine is, “An implied trust is a trust inferred by operation of law. It is imposed by law to situations either by presuming an intention of the participants to create a trust, or simply because of the facts at hand. Two types of implied trusts are constructive and resulting trusts. A resulting trust arises from the conduct of the parties. A constructive trust is an equitable remedy that enables plaintiffs to recover property or damages from defendants who would otherwise be unjustly enriched” (Sheets, 2020).

included) or congregational (autonomous) as presented in Table 2: Denominational Church Polity (Appendix).

Table 2 presents a basic tool by which most business professionals can determine, at least very generally, the likelihood that doing business with a church or denominationally affiliated entity will involve either more complicated approval processes as in the case of those denominations that are hierarchical, or those that may be less likely to require additional levels of scrutiny and formal approval systems, as in the case of the more autonomous, congregational types of 501(c)3 organizations.

Additionally, such a generalized classification system points to those that are most likely held to a stricter or more formal recognition of ascending liability. Those denominations that are classified as hierarchical are more likely to have more formalized understandings and expectations of ascending liability than those denominations that consider their polity autonomous and congregational. In the congregational form of government, this polity is often viewed as a defining distinctive of the denomination and church. In fact, the more autonomous is the polity, there is a greater likelihood that congregationalism is a theological and ecclesiological distinctive and tradition that is not just traditionally observed, but held by conviction.

Finally, there is the recommendation that any for profit that conducts business with a denominationally affiliated 501(c)3 or other nonprofit organization do so with an understanding that such business may be affected by the nonprofit's denominational identity and relationships. This can be problematic in some cases, but may provide avenues of relief and legal resolutions in other cases, depending on the church, the denomination, ascending liability, and of course church polity.



## Appendix

Table 1 Takayama & Cannon Denomination and Polity with Recategorized Column<sup>6</sup>

Denomination	Polity	*Recategorized
Southern Baptist Convention	Congregational	Congregational
United Methodist Church	Episcopalian	Hierarchical
The Protestant Episcopal	Episcopalian	Hierarchical
Lutheran Church in America	Presbyterian	Hierarchical
United Presbyterian Church	Presbyterian	Hierarchical
Lutheran Church-Missouri Synod	Congregational	Congregational
American Lutheran Church	Episcopalian	Hierarchical
United Church of Christ	Congregational	Congregational
Christian Churches (Disciples)	Congregational	Congregational
American Baptist Convention	Congregational	Congregational
Presbyterian Church in the U. S.	Presbyterian	Hierarchical
Assemblies of God	Congregational	Congregational
Church of God (Cleveland, Tennessee)	Episcopalian	Hierarchical
Christian Methodist Episcopal	Episcopalian	Hierarchical
Church of the Nazarene	Congregational	Congregational
Seventh-Day Adventists	Presbyterian	Hierarchical
Reformed Church in America	Presbyterian	Hierarchical
Free Will Baptists	Congregational	Congregational
Church of the Brethren	Congregational	Congregational
North American Baptist Association	Congregational	Congregational
Church of God (Anderson, Indiana)	Episcopalian	Hierarchical
Mennonite Church	Congregational	Congregational
Baptist General Conference	Congregational	Congregational
Cumberland Presbyterian Church	Presbyterian	Hierarchical
Free Methodist Church of North America	Episcopalian	Hierarchical
Pentecostal Holiness Church	Congregational	Congregational

<sup>6</sup> The original Table included number of departments, number of local churches, and location of pastoral placement bureaus for each of the denominations as well. Takayama, K., & Cannon, L. (1979). Formal Polity and Power Distribution in American Protestant Denominations. *The Sociological Quarterly*, 20(3), 321-332, p. 325. Retrieved March 9, 2020, from [www.jstor.org/stable/4106251](http://www.jstor.org/stable/4106251). \*The table also includes an added column, using the categories of “Hierarchical” and “Congregational” as defined in this paper, and in Table 2.



**Table 2: Denomination Church Polity as Hierarchical or Congregational**

The classification scheme for this table uses Olson's presentation of over 120 denominations into nineteen groups of denominations (Olson, et. al., 2018). Based on the work of Kauper (1969), Takayama and Cannon (1979), Olson, Mead, Hill and Atwood (2018), as well as discussion with theologians including Dr. Alan Bandy, and local pastors, the following table was constructed.

<b>Denomination</b>	<b>Polity</b>
Orthodox <sup>7</sup>	Hierarchical
Catholic	Hierarchical
Episcopal and Anglican	Hierarchical
Lutheran	Hierarchical
Reformed, Presbyterian, and Congregationalist	Hierarchical
Mennonite and Anabaptist	Congregational
Religious Society of Friends (Quakers)	Congregational
Brethren and Pietist <sup>8</sup>	Congregational
Baptists <sup>9</sup>	Congregational
Methodists	Hierarchical
Holiness <sup>10</sup>	Hierarchical
Pentecostal	Congregational
Christian and Restorationist <sup>11</sup>	Congregational
Adventist <sup>12</sup>	Congregational
Unitarians and Universalists	Congregational
Fundamentalist and Bible Churches	Congregational
Latter Day Saints	Hierarchical
Miscellaneous <sup>13</sup>	Varies

<sup>7</sup> These include but are not limited to African, Coptic, Greek, Russian, Syrian as exemplars.

<sup>8</sup> In addition to various Brethren churches, Evangelical Congregational Churches, and the Evangelical Free Church of America are exemplars.

<sup>9</sup> Olson, et. al., list twenty-six different Baptist groups, which share similar polity, but differ widely on ecclesiology and other matters. Exemplars range from the Southern Baptist Convention to the National Baptist Convention, Progressive National Baptist Convention, to the Full Gospel Baptist Church Fellowship International, Cooperative Baptist Fellowship, and the Free Will Baptists.

<sup>10</sup> Exemplars are the Church of God (Anderson, Indiana), Church of the Nazarene, Free Methodist Church of North America, The Salvation Army, and the Wesleyan Church. "In the twenty-first century most Holiness denominations and churches have dropped the word *Holiness*..." (Olson, et. al., 2018).

<sup>11</sup> Exemplars are Christian Church (Disciples of Christ), Churches of Christ, and International Churches of Christ.

<sup>12</sup> Seventh-Day Adventists, the United Church of God, and Jehovah's Witnesses (Watch Tower) are exemplars. Note that Adventists are not all Seventh-Day observants.

<sup>13</sup> Two categories in Olson's, et. al. categories (2018) are combined here: Esoteric, Spiritualist, and New Thought Bodies, and Miscellaneous Denominations. These groups are small or non-affiliated and therefore the polity varies widely. Exemplars include Church of Christ, Scientist (Christian Science), Metropolitan Community Churches, and the Unification Church.

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