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Freedom of Religion and Bankruptcy: The Surprising Connection

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Prior to Cardinal Bernard Law's resignation last December, the press reported the Boston Archdiocese might declare bankruptcy. Many editorials responded with heavy criticism, for it would have enabled the Catholic Church in Boston to void its compensation agreements with abuse victims. Many showed consternation that such a move would even be legal. The archdiocese did not declare bankruptcy and the issue has died, but it is worth examining why it is possible for churches to declare bankruptcy. Surprisingly, it turns out that this right is closely linked to America's freedom of religion, its First-Amendment right for citizens to worship as they wish.

The explanation begins by noting that religious bodies incorporate as non-profit organizations, just like the Red Cross, the Boy Scouts and other charities. This is a legal designation that establishes each religious organization--whether a national, state, or local organization of churches, church-associated welfare agency, or in some instances, an individual congregation -- as a legally-recognized entity with certain rights and responsibilities under U.S. law. In the case of religious organizations, this designation is a legal fiction to a certain extent, for there is an unwritten expectation that these institutions will not exercise certain laws concerning non-profit organizations, such as bankruptcy, for that would cause undue entanglement of the U.S. government with religious matters. Recent events in Boston have now revealed the problems with that assumption.

So perhaps the legal fiction of designating religious institutions as non-profit organizations should be changed? Why not simply create a legal category of religious institutions with laws specifically for them?

The problem with this suggestion is that it requires the government to determine whether specific groups are religions or not. This would be undue entanglement of government in religion, the very activity that the writers of the Bill of Rights aimed to avoid. After all, the Puritan Pilgrims fled to

America because England did not recognize them as a valid religion.

Germany treats religious organizations separately from other non-profits. Its courts sometimes are required to rule about whether specific groups are religions and thus can be classified under the law. While this is not an issue for mainstream Christianity, it is a problem for what scholars call new religious movements, which some people identify as cults. In 1995, a German court decided that Scientology was not a religion, and removed it from the classification of religions with recognized legal rights. This then removed non-discrimination protection from its members, who over the following years found themselves having to deny membership in that religion in order to get a job.

Some might say Scientology is just a fringe religion and does not deserve protection. But one person's fringe religion is another person's belief. At key points in American history, politically powerful groups thought that Puritans, Catholics, members of various Native American religions, and even Baptists were on the fringe. Even today, important political figures would ban many world religions. Jerry Falwell, for example, has publicly stated that only Christianity and Judaism deserve legal recognition. The other religions do not deserve such recognition, including Islam, the world's second largest religion and the fastest-growing religion in America; Hinduism, the world's third largest religion; and Buddhism, the fifth largest.

It is America's lack of a religious test for non-profit organizations that protects many of these religions from overly zealous politicians, thus providing freedom of worship for members of these religions. So although America's non-profit organization laws are not the stuff that makes for exciting discussion, they form a key pillar of our nation's religious freedom.