

Global Dimensions of Nonprofit Law

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As grantmakers move beyond their own borders, they face a complicated legal patchwork. In this new era of globalization, the laws of almost every country will require change.

All around the globe, a massive "associational revolution" is now under way. In the developed countries of Western Europe, Asia, and North America, in the developing countries of Asia, Africa, and Latin America, and in the former Soviet bloc, people are forming self-governing, private organizations outside the formal apparatus of the state at rates that would have been unimaginable only decades ago.

The product of widespread pressures for popular participation and declining faith in the capacities of government to solve the interrelated problems of social welfare, development, and the environment, this global upsurge of organized private activity has stimulated new interest in the legal structures within which nonprofit organizations operate. The legal treatment of these organizations in different countries involves a number of important issues. Traditionally, these have included:

- Eligibility for nonprofit status
- Internal governance requirements
- Tax treatment of the organizations and of contributions to them
- Personal benefit restrictions
- Organizational obligations to the public, such as reporting requirements
- Permissible business activities
- Permissible political activity

In the years ahead, those responsible for drafting nonprofit laws will also face a host of new issues and new challenges, brought about by the enormous changes now affecting the sector as a whole.

Growth and Diversification

Perhaps the central trend affecting the nonprofit sector around the world is increased demand for services. This has resulted in an enlargement of the sector's role and a diversification of its basic structure. As citizens and

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policy-makers have begun looking to nonprofit organizations to help resolve the multiple crises of the welfare state, development, socialism, and the environment, the scope of the nonprofit sector has expanded massively and its internal differentiation has grown significantly.

Inevitably, this growth brings with it immense challenges of "nonprofit" definition. Laws designed to accommodate charitable institutions providing relief to the indigent must be rethought in the context of organizations seeking to help the poor start their own businesses.

Are the latter business enterprises not entitled to the tax and related privileges accorded charitable institutions? Or are they really charitable institutions pursuing their missions through a different route? Increasingly, nonprofit law must come to terms with a far more diverse set of institutions and purposes.

Government Relations

One of the chief factors that helps to explain the expansion of the nonprofit sector on the global level is the increasing tendency of government to turn to nonprofit organizations to assist it in carrying out a wide variety of functions, from the provision of social welfare to the promotion of economic development. As citizens and political leaders alike have come to question the wisdom of sole reliance on government to meet the social welfare and development demands they face, attention has turned to mechanisms for forging partnerships between the state and the voluntary sector.

Elaborate contractual relationships have consequently been forged between governmental authorities and nonprofit institutions in countries throughout the world, and the likelihood is that these relationships will grow in importance in the years ahead. In the process, important new legal challenges will arise as both government and the nonprofit sector search for ways to cooperate with each other while still retaining the features that make each distinctive.

Thus, new contracting arrangements, vouchers, reimbursement systems, and provisions for sorting out indirect costs will emerge and demand legal resolution.

Commercialization

In their efforts to respond to pressing needs, nonprofit organizations will also increasingly turn to fees and charges for their activities and enter a variety of businesses to raise funds for their programs. In the process, they will come into increasing contact with private businesses operating in the same or related fields. The result will be increased demands for legal definition of the borders between these two sectors.

Already, such demands are widespread in the United States, leading to a frontal assault on the whole concept of a nonprofit sector in some quarters. It seems reasonable to assume that similar challenges will arise in other settings, as well. This will intensify the concerns about nonprofit business activity and raise new questions about the treatment of even the "related" service income that nonprofit organizations receive.

New Forms of Private Giving

Another striking trend likely to affect the nonprofit sector around the world is the expansion of new forms of giving to nonprofits. Increasingly, giving is becoming institutionalized and planned. Impulse giving and collection box giving is being joined increasingly by "planned giving" involving charitable remainder trusts, charitable annuities, and other complex forms of contributing to charities. The United Kingdom is even experimenting with a "charity card," a kind of charitable credit card with which donors can charge their charitable gifts.

As these new forms of giving gain currency, legal structures will need to be adapted to make room for them.

Formalization of Ethical Standards

As nonprofit organizations come into greater contact with both the governmental and business sectors, new demands will arise for attention to the ethical standards under which these organizations operate and the level of professionalism they bring to their work. This will in turn stimulate debates about the relative virtues of self-regulation vs. government regulation to ensure that nonprofit institutions abide by the highest ethical standards and carry on their activities in a professional fashion.

To the extent that nonprofit organizations recognize these demands and respond accordingly, cumbersome regulatory controls can be avoided. Given the peculiar character of this set of institutions, this would likely be a highly desirable outcome. However, it also seems likely that legal action will be required in numerous circumstances, if only to guarantee openness and accountability.

Cross-National Activity

Finally, the nonprofit sector seems likely to face increased demands of globalization and cross-national activity as a product of the broader globalization of the world economy, worldwide disillusionment with governmental capacity to deal with problems, a general decline in public sector resources, the dramatic and historic collapse of communism, the increasing prominence of multinational corporations, and the growing globalization of many of the issues with which nonprofits have been concerned, such as the environment and health.

To cope with this new development, the law of nonprofit organizations will have to become increasingly international in the years ahead. Thus, for example, more favorable legal provision will have to be made for cross-national grantmaking and for nonprofit organizations in various countries to operate across national borders. Drafters of nonprofit law, no less than drafters of laws for commercial activity, must be increasingly sensitive to the international dimensions of the activity they are regulating and, therefore, increasingly aware of the range of national treatments in this field.

The ongoing nonprofit "revolution" requires changes in the law in just about every country. Some countries have the opportunity to start afresh, developing codes for regulation of the nonprofit sector based on a sampling of the best the world has to offer, adapted to local conditions and traditions. In so doing, they must resist the temptation to assume that any existing model contains the right mix of features that are appropriate to the new context. Rather, important work needs to be done to fashion a new international model containing key elements that could be the subject of treaty or other international agreements.

While the details of such a law will need to be developed in line with national traditions, the goal legislative drafters everywhere may wish to consider is to create legal systems that allow the start of nonprofit organizations as a matter of right upon compliance with a limited set of statutory formalities

and that guarantee these organizations a significant degree of autonomy and independence. Purposes should be stated broadly and in a flexible manner.

Beneficial tax status should be a matter of right for entities organized and operated for appropriate purposes set forth in the law. Reporting should be significant enough to allow openness, transparency, and monitoring by public and government alike, but not be overly burdensome or intrusive. And cross-border giving and nonprofit activities should be facilitated through mutual recognition by treaty. All of this should ideally operate in the context of the rule of law with independent courts to provide meaningful enforcement of rights where necessary. Laws drawn or revised in this manner will contribute to the growth of a truly effective international nonprofit sector.

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