

(SELF-)REGULATION OF MUSLIM CHARITABLE SECTORS IN THE US AND THE UK IN THE POST-9/11 ERA

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The differing charity regulatory frameworks of the US and the UK guided each jurisdiction's post-9/11 efforts to thwart terrorist misuse of charities. The United States government's efforts have been described as a "sledgehammer," with a preference for adversarial and prosecutorial approaches. On the other hand, the United Kingdom approach has been described as a "scalpel," where regulatory action by the Charity Commission is more precise and appears more collaborative and nurturing of the sector. Based on semi-structured interviews with Muslim community organizations and employing a functionalist comparative law approach, this paper examines the ways in which the respective charity regulatory frameworks mediate the impact of counterterrorism law and policy. Instead of being influenced by the style of government regulation, Muslim organizations in both countries appeared to be similarly operating under a form of self-regulation in the shadow of the state. It is not the formal law, or the form of regulation, that dictated action. Rather, it was the perceived threat of state action and the need to distance from it that motivated self-regulation.

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Introduction

Nonprofit organizations and charities play an important role as agents of social benefits not only delivering services such as aid, relief, training, and support, but also fostering community and social development. But thirteen days after 9/11, President George Bush (2001) declared that insidious terrorists “use nice-sounding, nongovernmental organizations as fronts for their activities.” The US government, according to Assistant Secretary for Terrorist Financing and Financial Crimes of the US Treasury Department, Daniel Glaser, believes that “[c]harities are still one of the primary ways that terrorist organizations raise funds and legitimize themselves” (cited in Audi, 2009). Across the Atlantic, charities and faith institutions have been similarly identified as being vulnerable to abuse (HM Government, 2011). Instead of a source of “human security,” the law treats some charities as a “source of *insecurity*; ... a willing conduit for, or an ineffective, porous, and ambivalent barrier against insecurity in the form of terrorism and violence” (Sidel, 2010b, p. 5). In response, since 2001, both the US and UK governments have introduced or strengthened measures to prevent abuse by terrorists and to ensure that charities are transparent and accountable.

While counterterrorism policy goals in the US and the UK are broadly similar—the prevention of terrorism—the means through which the governments implement and enforce them diverge. Legal experts have described the US strategy as the “sledgehammer,” a prosecutorial and adversarial approach that imposes onerous obligations on charities. Meanwhile, the UK’s “scalpel” approach incorporates counterterrorism into its existing regulatory framework for charities. Sidel (2011, 2010a) argues that the different institutional set-up in the two countries may partially account for the harsher and perhaps less effective response seen in the US. An alternative account for the differences in approach is Ghachem’s (2009) culture of separation theory. The theory attributes the seemingly harsher responses in the US to its stronger culture of separation of church and state, which limits government interference into religious organizations. This leaves US authorities no option but to shut down Muslim charities wholesale.

This paper compares Muslim organizations’ experience, understanding, and perceptions of post-9/11 counterterrorism scrutiny within these two different charity regulation frameworks. The points of difference in charity regulation and how they *police* and *enable* charities allow for a nuanced understanding of the effects of counterterrorism laws and regulation in general.

Based on empirical data from in-depth semi-structured interviews and observations at community events, seminars, and lectures, my analysis reveals a disconnect between formal law and law's on-the-ground impact: impact does not necessarily flow from an accurate understanding of the law. It seems to be an ambiguous process that is influenced by the social and political context and may be led by perceptions and emotions stirred by the laws, or an imprecise understanding of their effects. In this light, I posit that organizations in both countries appeared to be operating under a form of self-regulation in the shadow of the state. It is not the formal law, or the form of regulation that dictated action. The regulatory approach makes little difference when it comes to the functions it serves under the social reality of the post-9/11 era. Rather, it was the perceived threat of state action and the need to distance from it that motivated self-regulation.

Post-9/11 Counterterrorism Measures and Charity Regulation

Prevention is a key concept in post-9/11 counterterrorism strategy in both countries. A preventive approach relies heavily on intelligence-gathering, surveillance, and monitoring (Amoore & De Goede, 2005; Fussey, 2011); encourages greater use of early stage anticipatory criminalization (Chesney 2005); and reaches beyond acts to ideas and ideology through counter-radicalization strategies (Rascoff, 2012). All these significantly expand the scope of investigations. The preventive paradigm—prohibiting such actions as glorification or material support for terrorist acts—relies on law's power to exert influence over action and behavior broader than, and farther in advance of, any actual terrorist act. This affects the mundane lives of those unwittingly caught in the shadow of suspicion cast by counterterrorism laws. As Sentas (2009) argues, “counter-terrorism constrains some activities and expands others; quashes some aspirations and encourages others; sets conditions and limits and raises expectations. In its different modes, counter-terrorism acts on those policed” (p. 29).

Independent charity regulators in the UK, the largest of which is the Charity Commission for England and Wales (the Charity Commission), are at the forefront of its counterterrorism strategy. Often acting as the “first responder” in actions against charities, the Charity Commission takes a central role in investigations into allegations of terrorist action and assists with prosecutions (Sidel, 2010b). A key part of its counterterrorism strategy and effective regulation “involve[s] putting a strong emphasis on prevention and supporting charities”

(Charity Commission, 2008, p. 4). In advising charities how to protect themselves from harm, the Charity Commission stresses the importance of good practice and risk management.

To be sure, the approach of the Charity Commission is not necessarily “soft.” The commission takes a zero-tolerance approach to allegations of wrong-doing and has extensive investigative and enforcement powers, including the power to institute inquiries (Charities Act 2011, Part 5); require persons to provide accounts and statements (Charities Act 2011, s 47); obtain and execute search warrants (Charities Act 2011, ss 48, 49); appoint, discharge, or remove a charity trustee, officer, or employee (Charities Act 2011, s 69(1)(b)); vest or transfer property (Charities Act 2011, s 69(1)(c)); or suspend trustees and appoint interim managers (Charities Act 2011, s 76). These powers allow for “scalpel”-like precision, acting as a buffer of sorts between charities and hard criminal sanctions.

In the US, charities are primarily regulated in their respective states. A review of state charity regulation by the Center on Nonprofits and Philanthropy (2016) found that each of the 56 jurisdictions is empowered by varying bodies of laws and enforced by different and often multiple agencies, including the attorney general’s office or other state agencies. With complex structures and almost one-third of jurisdictions having less than one full-time-equivalent staff, “state charity office functions often remain opaque to the sector, policymakers, and other regulators” (p. 2). At the federal level, oversight of charities is provided by the Department of Treasury’s Internal Revenue Service, which regulates organizations for tax exemption purposes under section 501(c)(3) of Title 26 of the US Code. Organizations that qualify for tax exemption status are commonly referred to as “501(c)(3) organizations”.

As counterterrorism is a federal matter, the US does not use state charity offices and their enforcement powers. Instead, the US relies on general criminal provisions and designation powers. It is an offense to provide material support or resources to terrorists or designated foreign terrorist organizations (18 USC § 2339A and 18 USC § 2334B), or to directly or indirectly finance terrorism (18 USC § 2339C). The Secretary of State and Department of the Treasury have the power to name entities as Specifically Designated Global Terrorists (SDGTs) that have committed or who pose a significant risk of committing terrorist acts (Executive Order 13224). Once designated, the Office of Foreign Assets Control (OFAC) is authorized to freeze their assets, and it is prohibited for other entities to provide financial, material, or technological support, including humanitarian donations, to SDGTs and designated entities.

The US favors an adversarial and prosecutorial approach, imposing stringent but ambiguous obligations on charitable organizations (Baron, 2004) and moving swiftly to shut down charities and prosecute on allegation of wrongdoing. The most high-profile prosecution was that of Holy Land Foundation for Relief and Development (HLF). HLF was the largest US Muslim charity in 2001, when it was designated as a SDGT and had its \$5 million assets frozen. In 2004, five HLF directors and board members were charged with providing material support to Hamas. During the trial, the prosecution released a list of over 300 unindicted co-conspirators, some of which were well-known within Muslim communities, including the Council on American-Islamic Relations and Islamic Society of North America. No charges have been brought against these organizations. Aside from HLF, at least eight other Muslim charities have been shut down, having been designated as SDGTs or had their assets frozen in the broader crackdown on Muslim charities (ACLU, 2009, p. 11–12).

Commentators have described the US heavy-handed approach as a “blunt sledgehammer” (Howell & Lind, 2010, p. 283; see also Shaw-Hamilton, 2007, p. 19; Fisher, 2009). Citing the fact that some charities banned by the American government are still allowed to operate in Britain, Neumann remarked that “the approach in America is very much to prevent the worst, whereas in Britain the approach is to encourage the best” (cited in Fisher, 2006).

In addition to the scalpel and sledgehammer dichotomy, the “culture of separation” thesis has been advanced by Ghachem (2009) as an alternative theory for why the US approach appears comparatively harsh. This theory centrally relocates the difference in approach to the states’ relationship with religious communities and the legal culture that has developed around these relationships. In the US, regulation of religious organizations is comparatively hands-off, as the separation of church and state doctrine limits the availability of administrative and legal tools to interfere in their affairs. The array of tools available to the Charity Commission allows for a more targeted and nuanced approach. However, their approach to charities may in fact be more interventionist, imposing ongoing supervisory pressure. Ghachem (2009) argues that the “surgical character of British and continental approaches to Muslim charities since 9/11 ... seem to involve a degree of administrative tutelage that may well compromise the autonomy and vigor of religious institutions in the long run” (p. 65).

Methodology

This paper analyses data from 134 semi-structured interviews with leaders of a stratified nonrepresentative sample of Muslim community organizations in the US and the UK conducted between 2011 and 2013. In the US, I conducted interviews between August 2012 and November 2013, primarily in five geographic areas: San Francisco Bay Area, Greater Chicago Area, Dallas and Houston in Texas, Washington, DC, and the Greater Boston Area. Except for Washington, DC, these areas were chosen because of their high concentration of Muslims. In total I interviewed 85 individuals from 58 organizations. Ten of these interviewees were informants—individuals with in-depth knowledge about Muslim communities but who were not currently an official leader of any Muslim organization.

In the UK, I conducted interviews on two separate field trips: the first in December 2011 to January 2012 and the second in September 2013. In total I interviewed 28 organizations from 49 individuals, of which ten were individuals and experts not currently affiliated with Muslim organizations. I also visited other mosques and organizations and attended public events hosted by other Muslim organizations. Most interviews were conducted in Greater London, with a few in Sheffield and Birmingham. My focus was limited to the experience of organizations in England and their experience with the Charity Commission of England and Wales. For the purposes of comparison, however, throughout the paper I refer to the “UK experience” and interviewees as “UK interviewees.” To protect the anonymity of all my interviewees, they will be referenced in this paper by their jurisdiction and allocated interview number, e.g., US031 or UK134.

As there was no comprehensive list of Muslim community organizations in either country, interviewees were recruited using a combination of the snowball method and direct contact. I chose a stratified nonrepresentative sample (Trost 1986) of Muslim organizations to capture maximum experience variation among different types. I constructed a typology of Muslim organizations according to their common legal form and purpose: (i) international aid organizations, (ii) local social services organizations, (iii) advocacy organizations, (iv) community development or representative groups, (v) educational institutions, including schools or religious instruction centers, (vi) mosques, and (vii) informal networks or groups. In this paper, I refer to the research population as “Muslim community organizations” as they include more than “charities.”

In all cases, I requested interviews with representatives most familiar with the leadership, governance, or management aspects of the organization for the sake of sampling consistency in interviewees' knowledge and familiarity with these issues. In most cases, I interviewed founders, current or past presidents, board members, trustees, directors or managers, or religious leaders (at mosques or religious institutions). Where the people in these positions were not available, I interviewed multiple staff or volunteers.

While participants were interviewed as representatives, their views encompassed much more than simply those of the organization. Many interviewees were leaders of the Muslim community in their own right, some of whom had served the community for up to 35 years. They were acutely aware of the perspectives of individual Muslims, as leaders and as Muslims themselves, who had the same religious obligations to give to charity. This maximized the basis for synthesis of their perspectives as community leaders, officials of community organizations, and community members.

Some limitations of the methodology should be acknowledged. First, it was not possible to interview a representative sample of organizations for generalized claims to be made. Second, the number of interviews for each country differed, primarily due to practical limitations. This paper is therefore not intended to provide a representative view of all Muslim organizations, nor a rigorous and close comparison of the two regulatory systems. Given the sparse empirical research in this space, however, a more qualitative process was appropriate to explore a wide gamut of issues. Third, self-selection bias in interviewees may be at play. It is possible that those who agreed to participate in interviews were likely to be more integrated and more at ease engaging with researchers, the media, law enforcement, or outsiders. It is possible that more conservative leaders would have declined to participate. Those organizations that are perhaps most insular may very well be underrepresented in my sample.

A Functional Comparative Analysis of Charity Regulation

In this section, I compare the experience of Muslim organizations in the two frameworks by the functions that charity regulation serves. The first is the *policing* of the sector: investigating wrongdoing, ensuring compliance, and preventing abuse of charities. The second is the *enabling* function: providing support and guidance and encouraging charitable activity by promoting trust and public confidence in charities.

Together, these functions of charity regulation ensure the effectiveness, vitality, and vibrancy of the sector.

It has been claimed that counterterrorism scrutiny tends to focus on Muslim charities in both the US (Sidel, 2004, p. 89; Charity & Security Network, 2011, p. 4; Guinane & Sazawal, 2010, p. 65) and the UK (Quigley & Pratten, 2007, p. 6). For my research population, the enabling function is relevant, as the majority of my interviewees have not had direct contact with authorities in relation to counterterrorism laws. The enabling function plays a critical role in balancing the effects of policing, as the lack of knowledge of counterterrorism laws, coupled with their inherent ambiguities, gave rise to feelings of uncertainty, fear, and self-limiting action (Chong 2015). Examining both functions of charity regulation illuminates the mundane experience of these organizations in navigating these laws.

The Enabling Function of Regulation

The Charity Commission enables the sector by providing support to and promoting public trust and confidence in charities. The commission empowers trustees of registered charities by publishing extensive guidance on topics ranging from financial management to land acquisition. Its guidance on safe giving during the Muslim holy month of Ramadan assures donors of “additional confidence” if made to registered charities (Charity Commission, 2011). The burden of due diligence in making donations to reputable organizations informally shifts away from the individual to the Charity Commission. UK Muslim donors, in my interviewees’ experience working with them, seem comfortable donating to registered charities, in marked contrast to US Muslim donors whose charitable giving experience was often marred with fear and uncertainty.

In contrast, the US Department of the Treasury has no explicit function to promote public trust and confidence in charities. Their press statements marking the beginning of Ramadan usually do not provide donors with information on how to safeguard giving. Instead, the statement usually explicitly emphasizes the Treasury’s commitment to safeguard charities from abuse by terrorist organizations, thus reinforcing a link between Muslim charitable giving and terrorist activity.

In the climate of fear created by the shutting down of major Muslim charities after 9/11, community leaders sought reassurance from the US Treasury that donors would not be retroactively punished if the organization they donated to was later shut down (US031). The Treasury

refused (ACLU, 2009, p. 78) but later released the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities*. The guidelines were intended “to enhance awareness of the kinds of practices that charities may adopt to reduce the risk of terrorist financing or abuse” (US Department of the Treasury, 2006). However, these guidelines have been described by commentators and nonprofit leaders as “confusing,” “onerous,” “costly,” “ineffective,” “impractical,” “unachievable,” and an “administrative burden” (Billica, 2006; Jenkins, 2007; OMB Watch, 2005). Some of the most onerous aspects of the guidelines have been removed in subsequent revisions, and while the guidelines are voluntary, compliance does not constitute a legal defense against any civil or criminal action. Despite these differences, US interviewees perceived that registering as a tax exempt, or 501(c)(3), organization afforded them legitimacy, similar to UK interviewee perceptions of registering with the Charity Commission. The following section examines this in detail.

Interviewee Perceptions on Registering with the Charity Commission in the UK and the IRS in the US

UK interviewees viewed registration with the Charity Commission as conferring three main advantages. First, numerous interviewees regarded registration as important for tax advantages to both the organizations as well as to donors. Second, many interviewees regarded registration with the Charity Commission as a way of being “monitored” by the government. As independent audits and financial reports are required to be submitted to the Charity Commission every year, organizations felt that this forced them to be accountable and transparent.

This leads to the third benefit: being “monitored” by the government was important to show potential donors that they have nothing to hide. Many actively wanted to demonstrate to the public that their programs were “monitored.” Others felt that donors were more open to donating if they knew that the Charity Commission and the government have “got their eyes on the charity ... it’s a much more regulated process” (UK121). Consider these two statements by different UK interviewees:

[As a fundraiser, I get] questions like “How do I know these orphans are going to get this money?” or “How do I know this charity is legit?” ... my answer [is] these charities are usually monitored by Charity Commissions. (UK123)

If you register then they have to monitor it and the accounts and so on, it gives them peace of mind that they are looked at for transparency reasons. (UK107)

Registration and “being monitored” thus confer a certain “legal status” (UK106), something positive in the public eye (UK114). With registration came legitimacy, authority, and official recognition for their work (UK110).

An advocacy organization noted a substantial increase in donations after registration: registration is “definitely a mark of honour: you felt safe as a donor, you felt safe as an organisation that you yourself were protected in a way, that there is this oversight” (UK002). Interviewees talked about a common narrative in the community that, if there was an issue or problem with an organization, then they would not even be allowed to register (UK006). The Charity Commission’s website offers a comprehensive database of registered charities and their financial reports and was one of the main due diligence tools that interviewees used to determine whether a potential charity partner was reputable (UK123; UK115).

In the US, charity registration systems exist at the state level, yet none of my interviewees discussed state level registration or compliance obligations. Instead, my analysis shows striking similarities between how US and UK interviewees perceive registration with the Charity Commission and with the IRS. To US interviewees, obtaining 501(c)(3) status was synonymous to being “registered” as a charity and offered the same three advantages. First and unsurprisingly, numerous interviewees talked about the financial advantages of registration in the form of tax deductibility and tax-exemption. This status was “advertised extensively” in many interviewee organizations’ fundraising efforts and allows them to participate in external fundraising opportunities such as corporate matching programs (US049).

Second, interviewees regarded registration as a mark of legitimacy or legal status. A mosque implemented a policy of only allowing 501(c)(3) organizations to fundraise on their premises because the board of directors believed that people expect tax receipts and “a lot of people trust only these kinds of organizations” (US062). It is a “sense of security to donors” (US051), a “comfort to the people” (US055), that the organization “holds [itself] to a high standard ... such as conducting internal audits ... to meet what is expected from us as a leading organization” (US062).

Others regarded 501(c)(3) status as conveying legitimacy because they have jumped over legal hurdles, e.g., a solicitation license,

registration as a legal entity, and application for tax exemption status (US093). This comment was typical:

501(c)(3) obviously means that you're recognized by the federal government as a public charity, that they approve you, that your work is legitimate. What that meant to us was two things. One was the credibility.... If you go out and raise money, the people ask you, "Are you registered with the government or not?" That credibility came with it right away. "Okay, they're registered. They have a tax ID number." (US063)

Third, analysis reveals that interviewees regarded registration as desirable *because* it meant the organization was “associated with” and was “monitored by” the government. This was a critical aspect of registration. Many felt that by being proactively monitored, they could avoid the pitfalls of unjustified counterterrorism scrutiny and minimize the risk of being shut down or unfairly accused of wrong-doing (US049). In language that was like that used by UK interviewees, US interviewees said that 501(c)(3) status meant “approval” by the government. One school administrator, for example, was adamant that they would only partner with “approved, registered charitable organizations through the government” (US043). At a minimum, registration signals that the organization is not an underground organization, that it is known to the authorities and part of the public record (US062). Some interviewees talked about this status as a sign that “they are allowed in this country” (US055), “that they operate within the laws” (US055; US066). It also means that the organization’s funds are “controlled, watched” (US062), and assures donors that their money is “going to the right place” (US051; US062). According to an *imam*, this status “mainly means that this is an organization watched and regulated by strict rules so the funds are secured” (US062).

Moreover, ongoing monitoring by the government was desirable. Interviewees emphatically suggested that the status meant both that they have been checked and continue to be monitored by the government (US054). An executive director of a civil rights organization, who is an attorney, noted this about applying for 501(c)(3) status:

So there is a very lengthy application, it's like 34 pages, and you have to send narratives and you have to provide a lot of information. And once you send in the information, and they do investigate that your activities are legitimate and lawful,

and then they grant your status. And they continually review your activities every year when you file your tax return. They investigate everything you do, and they can retract your 501(c)(3) status if your operations become illegitimate or unlawful. (US044)

However, another interviewee who was a qualified CPA cautioned that even though 501(c)(3) organizations are required to submit an annual tax return, it should not be taken to mean government approval. She pointed out that many organizations that were shut down by the government after 9/11 were legitimate 501(c)(3) organizations at all relevant times (US037). In addition:

[Form] 990 is more of a tax return, so you're reporting your income and all the tax-exempt stuff... [W]hen you're filing your yearly returns and all that, they're not acknowledging "Oh, so you're good for this year." There isn't that rubber stamp of approval. You're just complying with their requirements. (US037)

Indeed, only a minority of interviewees were aware that registration does not provide any guarantees. It did not prevent the HLF and many other charities from being shut down or prosecuted, or from being placed on the unindicted co-conspirator list (US056).

What is of value to US interviewees was the public perception of legitimacy that is associated with registration. This was echoed in the UK interviews, despite a very different regime. This leads to a paradoxical outcome whereby "being watched by the government" was touted as important to alleviate donor concerns and "give people reassurance that the organization is approved (US044; US051). Obtaining 501(c)(3) status was regarded as the "government stamp of approval" (US054), whether or not it actually does provide protection to either organizations or individual donors. This is corroborated by the fact that all but one of the US mosques I interviewed were registered as 501(c)(3) organizations, even though religious institutions are tax exempt without having to register (US064; US093).

The striking similarities between US and UK interviewee perceptions of being registered in their respective systems suggest, at minimal, a mischaracterization of the law. In seeking ways to make themselves legitimate and credible in an era where they may be perceived as vulnerable to terrorist abuse, Muslim organizations in both countries act in accordance to their common sense understanding of what

is expected of them. Charity regulation in the UK provides a framework for charities to be registered and afforded a degree of protection, thus UK interviewees appeared to place more emphasis on rules, regulations, and compliance (UK106; UK110; UK005). While there is no similar robust framework in the US that creates a presumption of legitimacy, Muslim organizations self-monitored and sought out common sense ways to legitimize. They found themselves seeking credibility and comfort in having formal legal status, even if it is primarily an artifact of tax-exempt status.

The Policing Function of Charity Regulation

Policing of US organizations

In the US, the policing of organizations for counterterrorism purposes came primarily in the form of criminal investigations, raids, or designation. Reports by the ACLU (2009) and Charity & Security Network (2011) detailed FBI tactics of intimidating donors by questioning, surveillance, and, in some cases, mosque infiltrations. While the US counterterrorism approach to charities may appear sledgehammer-like when it comes to criminal investigations and liability, there was little in my research to suggest undue interference with organizations' governance or operations by charity or tax regulators. To be sure, media reports have alleged that US charity regulators are not beyond reproach, and the IRS has been accused of being influenced by politics (Fremont-Smith, 2004, p. 98). Note, for example, reports that the IRS had singled out the applications for tax exempt status of the conservative political movement the Tea Party for additional scrutiny (US Treasury Inspector General for Tax Administration, 2013; See also Tau, French, & Parti, 2013; Eilperin & Goldfarb, 2013). In response, Aziz (2013) argued that this has been the experience for many Muslim organization applicants: they too experienced extended delays and were routinely asked to provide further information and undergo additional national security checks. As stated above, it is possible that my non-random sampling of interviewees did not capture relevant instances of interference and control by US authorities. Further research in this area is needed to explore the extent of these claims.

Policing of UK Charities

In contrast, my research found empirical support for Ghachem's (2009) assertion that the Charity Commission's extensive powers may facilitate an interventionist approach and allow it to exert pressure. Some interviewees reported having been questioned by the commission about their operations, and the interference was felt to be significant:

The biggest issue [for Muslim charities] is ... where you have the Charity Commission ... sending investigators down to literally do a huge case review, after any controversy in the newspapers or after any sort of incident that they have been alerted to.

Certainly, legitimate contact by the commission in regulating governance, reporting, or compliance issues may sometimes *appear* to organizations as interference. However, there appeared to be undertones of political motivation that warrant further examination. Consider the following examples.

An advocacy organization found itself in extensive communications with the Charity Commission regarding what one of its founders described as "ridiculous questions" and "petty concerns." The commission first contacted the organization in May 2007 after receiving complaints that they had engaged in political activities. In addition to asking the organization about the alleged political activities, the Charity Commission asked about the use of their logos, application of their funds, property ownership, statements on their website, financial reporting standards, mortgage details, and relationship with their sister organization. To the organization's suggestion that the inquiry was a "fishing expedition," the commission wrote:

We do have a statutory right to ask legitimate questions of charities to ensure that charities are operating as efficiently as they ought to be and in accordance with all of the rules. The public expects this and the Commission is anxious that charities demonstrate this. [emphasis added]

The idea that the Charity Commission should ensure charities' *efficiency* gave it wide discretion to ask the organization about seemingly irrelevant issues such as property ownership or mortgage details and created the impression that the charity was targeted because of its political stance.

In a second example, a community leader who had worked closely with the Charity Commission in other capacities felt that “[s]ometimes the Charity Commission overstretches its powers and gets into other matters that are not their business.” He recounted an incident in which a trustee of a mosque was ousted by its board due to religious disputes over whether evolution was compatible with Islam. After complaints were made by the ousted trustee to the commission “out of vindictiveness,” it launched an investigation into the mosque for links to extremism. This interviewee, who was himself a barrister, believed the Charity Commission should have regarded this as an internal matter and declined to investigate, or perhaps only investigate the circumstances of the trustee’s removal and not launch a broader investigation into unsubstantiated links to extremism due to a religious dispute (UK112). This, he felt, was undue meddling in the affairs of the organization.

Charity Commission and “Political Interference?”

My methodology does not allow for a systematic assessment of whether the interference is justified or biased, proportionate or selective. However, at least in the estimation of some interviewees, there is a perception of bias and unfairness that it is based on political motivation. In theory, the Charity Commission is a non-ministerial government body that reports directly to Parliament. Gunning (2008, pp. 112–113) argued that the Charity Commission’s independence from the government and its remit to both defend and regulate charities reduces the likelihood that they would be subject to political pressures. However, media reports have pointed to instances of unfair treatment of Muslim charities by the Charity Commission (Ramesh 2014; James 2014). A Claystone report (2014) argues that the Charity Commission disproportionately targets Muslim charities, citing that 38% of statutory investigations were of Muslim charities. It also argues that the commission’s processes for dealing with extremism issues are unsound and open to misuse. In 2017, independent research into trust and confidence in the Charity Commission found that there was a belief among some stakeholders that it occasionally overreacted to media narratives. Moreover, these reactions, including those involving Islamic charities, “have sometimes taken a ‘political’ angle at odds with its independence and objectivity” (Populus, 2017, p. 22).

These sentiments were echoed in my interviews. Some opined that the Commission harbored an anti-Islam political agenda:

The Charity Commission is a government body but it's not supposed to be just following a political agenda, and yet we find that mosques will come to us and say we've received a letter of complaint from the Charity Commission that [said] "You prayed for Palestine in one of your prayers." This has happened in a couple of cases or other similar strange sorts of interference. And it has made that key base of the Muslim community, which is the mosque and Islamic centres, very wary and very fearful, so that's no longer a space where you can go and speak easily, or do something as innocuous as pray for an oppressed person. (UK002)

Other interviewees referred to the 2012 appointment of Charity Commission chairperson William Shaw as exacerbating tensions with the Muslim community. Shaw was a former board member of the Henry Jackson Society, a neo-conservative organization in the UK that had been "very very disparaging on their views on Islam and minorities in the UK" (UK134). Shawcross's appointment was shortly followed by new appointments to the board in May 2013 that included Peter Clarke, the former head of the Anti-Terrorist Branch and National Coordinator of Terrorist Investigations in the Metropolitan Police Service. These developments may have pointed to shifting priorities of the commission to be more compliance-oriented, and they did not escape this interviewee:

There has been a huge push on this rhetoric on extremism and clamping down and having a taskforce set up in their department with having inspections, huge case reviews. If you name all the well-known Islamic organisations in London ... that have had these visits from the Charity Commission, they had two weeks to a month literally to review every single invoice, documentation, penny, speaker that they have invited to their premises. (UK134)

The Charity Commission's perceived policing overreach, allegations of bias and political interference into activities of Muslim charities have served to undermine their relationships. A consequence of these perceptions is that some organizations have questioned whether to register, or to remain registered, with the Charity Commission (UK134; UK023). To be sure, registration is legally required for organizations with an annual income of more than £5,000, yet some interviewees felt that not registering with the Charity Commission would mean more

independence and autonomy. One interviewee recalled the difficulty in making their decision on whether to register as a charity:

We are looking at ... our status for example, it's definitely an issue that comes up, in terms of what might happen if you are registered, and ... how it can interfere with your work.... So it's definitely a sensitive issue, and often it's something as simple as what speakers you endorse.... There's wariness about it, if someone were to register, and what that could mean. (UK023)

When pressed as to what alternatives were available, the interviewee responded that it would be a different legal form of organization altogether, such as a private company limited by guarantee, even if it meant forgoing the tax benefits of being a charity.

It was difficult to evaluate the extent of these sentiments in my research. Admittedly, some interviewees had not experienced any problems in relation to the Charity Commission. That may be because of my limited time and access to organizations in the UK. Yet interviewees who were involved in the Muslim community leadership felt this was a widespread concern, but that those affected were reluctant to come forward. One interviewee who works closely with other Muslim organizations and leaders observed that these concerns have increased in recent years, but charities are reluctant to talk to anyone out of embarrassment, fear, or shame (UK134). Compounding the issue is the reputational damage that comes from being investigated by the Charity Commission. There is a stigma attached to “regulator troubles” (UK120), and there may be a reluctance to be too critical of the Charity Commission lest they become targets of further harassment or intervention.

Discussion: Charity Regulation, or Self-Regulation?

The starting premise of this paper was that the different charity regulation frameworks for each country would mediate the experience of Muslim organizations in the post-9/11 era. The fact that the UK regulatory framework enables the charitable sector, working to surgically remove problematic charities with precision, might have suggested a better supported charitable sector and more robust and less frustrated charities. The US focus on investigation and enforcement, which fomented fear in the community, might have suggested a more

distant and hands-off relationship between organizations and the authorities.

Yet by separately analyzing the functions of charity regulation, I found interesting and at times contradictory reactions on the part of Muslim organizations in both countries. In the UK, despite the Charity Commission's formal enabling mandate and collaborative approach, there were aspects of its policing function that were perceived as insidious, interfering, and demanding. This led some interviewees to consider distancing themselves from the Charity Commission to maintain their autonomy.

In the US, there is no formal mandate for federal authorities to nurture charities. Yet the blunt sledgehammer of enforcement did not appear to deter Muslim organizations from establishing relationships with government authorities, as organizations took it on themselves to find paths for self-preservation. US Muslim organizations paradoxically regard "monitoring by the government" and registration as tax-exempt organizations as critical to their legitimacy as organizations.

What I have observed is a self-regulating phenomenon in which behavior shifts in the shadow of the state. As one interviewee stated, Muslims "self-regulate to avoid intervention" (UK002). Rather than being a story about scalpels or sledgehammers or a case of different constitutional approaches to religious liberty, my comparative study has shown itself to be about the nature of law and of regulation itself in a sociopolitical environment in which Muslim organizations feel as if they are under siege, under surveillance, and monitored.

When law is part of the social context, people react and behave accordingly, in a way that "self-administers" the law (Galanter, 1985, p. 545). The focus of counterterrorism measures on prevention exemplifies a conception of the law as a living legal system (Friedman, 1985, p. 764), one that is responsive to its structure, culture, and history, as well as the dynamics of social demands. It considers social, cultural, environmental, and political factors that may affect the outcomes (Ginsburg, 2011, pp. 61–62). Even though interviewees associated changes in behavior and improvements in governance and finances to counterterrorism measures, much of it was directly associated with neither the formal law nor the differing regulatory framework. Rather than stemming solely from counterterrorism measures, the behavior observed in this research may be better attributed to the broader post-9/11 social environment.

The general climate of suspicion toward Muslims, incessant questions about loyalty, the pressure of perceived surveillance and monitoring, the fear of reputational damage, the tension with law enforcement, the heat of increased competition, the feelings of being

targeted and discriminated against, and the resistance against Islamophobic and other media attacks, all of these have played a role in why and how Muslim organizations shifted their priorities, amended their procedures, or modified their relationships. Formal laws, executive orders, charity regulators, tax commissioners, and police officers play an important but admittedly less central role. Whether or not interviewees knew of counterterrorism measures and whether they properly understood their intended effects and application was not so relevant.

What was guiding them in these circumstances was the shadow of the law. Counterterrorism measures and efforts, even if directed at other organizations, make the rest of the sector feel targeted. When the state has little expertise distinguishing between threatening and non-threatening organizations, then a shadow is cast over all Muslim organizations. When other Muslim charities are shut down by the government, when other mosques are infiltrated by law enforcement agencies, when other organizations are scrutinized by the Charity Commission, or when there are continuous calls for more powers to tackle the terrorist and radicalization problem in these spaces, Muslim organizations perceive that they could also potentially be a target.

Moreover, organizations trade on reputation and legitimacy for survival, as many are dependent on voluntary funding from Muslim community members or grant opportunities and therefore are particularly vulnerable to influences of public opinion, media commentary, and bad publicity. Within the nonprofit sector, scandals such as misuse of charitable funds or various forms of self-dealing also have the effect of spurring on conversations about self-regulation to restore public confidence or defend against more rigorous government regulation or regulatory action (Sidel, 2005; Chan & Takagi, 2011). In these circumstances, rather than being regulated by the state and in accordance with its laws, Muslim organizations regulate behavior based on their own understandings and social context. Self-regulation emerges, both informal and traditional, regardless of the style or approach to charity regulation by their government.

Informally, US Muslim organizations have looked for ways to increase their legitimacy. Many interviewees used their 501(c)(3) status as a signal of legitimacy, even though this status did not prevent HLF from being shut down and its board members prosecuted. Thus, even though the US charitable sector is not formally supported and enabled by the government to the same extent that UK charities are, the gap is filled by a self-regulating approach. Organizations look for “approval” indicators, in the self-regulating belief that it is necessary to compete, attract funding, and show that they are worthy of support. This leads to

one paradoxical finding—while many oppose undue surveillance and scrutiny of Muslim organizations, the fact that registered charities are “monitored” by the government was viewed as a benefit that allowed organizations to present to donors and community members as “safe” and “legitimate.”

In addition, there are signs that Muslim organizations are developing self-regulatory strategies in a more traditional sense that both *police* and *enable* the sector. It is not easy to evaluate these early efforts, nor is it easy to imagine a successful self-regulatory regime that would work across the wide spectrum of Muslim community organizations. Nevertheless, various self-regulatory programs have sprung up that attempt to coordinate and organize within Muslim organization sectors. There also appears to be an imitation of standards and norms in other fields, for example, small, locally focused organizations will adopt what is expected of larger international organizations, or of the wider non-Muslim charity sector.

For the *policing* function, the Mosques and Imams National Advisory Board (MINAB) in the UK was founded with the purpose of engendering better mosque management practices. After national consultations in 2008 and 2009, MINAB devised a self-certification process for mosques meeting their five standards of operation. Muslim Advocates, a nonprofit organization based in San Francisco, ran a charity accreditation program in partnership with the Better Business Bureau Wise Giving Alliance, which set Standards for Charity Accountability including governance and oversight, financial accountability, and effectiveness. Both of these organizations, along with many others such as UK’s Faith Associations, also implement an *enabling* function of regulation by developing guidelines, toolkits, training seminars, as well as providing advice and guidance for mosque and Islamic center leaders.

National or representative organizations in both countries provide support through initiatives that are geared toward improving performance and effectiveness. The Muslim Council of Britain created a program in 2007 to assist with the capacity-building of mosques and organizations. And in the US, mosque development and capacity-building has become one of the major priority goals of the Islamic Society of North America, one of the oldest national Muslim organizations in the US. The Muslim international charity sector has banded together and formed diverse coalitions. The Muslim Charities Forum in the UK was formed in 2007 as an umbrella organization for Muslim international charities. It provides training and capacity-building resources, conducts research, and advocates on behalf of its membership, including about the effects of counterterrorism laws on Muslim charities.

Instead of the dichotomous description of “scalpel versus sledgehammer” in comparing the US and the UK approach to counterterrorism and charities, or relegating the differences to the culture of separation thesis, I offer an alternative narrative that roots itself in the interaction between the preemptive nature of counterterrorism measures and self-regulation. The preemptive nature of counterterrorism measures, which encourages the perception of being hostages of other Muslim organizations that have become targets of investigations, have prompted organizations to engage in both informal and traditional self-regulating practices that strive toward improving their performance and their appeal to potential donors and members, independent from what their respective governments offer or demand of them via their charity regulatory framework.

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