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# After the Third Sector: Emerging and Disappearing Commons<sup>1</sup>

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## Introduction

The third sector is currently the most popular categorical label as a summary term for capturing the activities of a highly diverse set of tax-exempt corporations and nonprofit organizations. The increasingly widespread international acceptance of this term has served to paper over a set of theoretical ambiguities and controversies woven throughout the current literature on nonprofit organizations, voluntary associations, voluntary action and philanthropy about how the sector, however it is denoted, is to be defined, and what exact social and economic arrangements and circumstances are to be included within it. In the American context, the third sector is generally treated as synonymous with the Nonprofit Sector, and I will use these two terms interchangeably here. This third sector is held to be a nonprofit sector in law and in theory because of the centrality of the nondistribution constraint. (Hansmann, 1980; Hansmann, 1987) It is also widely held to be third because of a distinct theory of origin by which the sector is said to have come into recent existence because of twin failures of government and business (developments known respectively as state failure and market failure).

Many people with whom I hold common cause in these matters may initially object strenuously to my failing to include voluntary associations, clubs, self-help groups, mutual aid, and volunteering and other facets of voluntary action in my initial statement. My failure to do so is deliberate, meaningful and part of a continuing effort to find firmer semantic common ground on which to carry out the necessary theoretical dialogue. (For other efforts in this direction, see Lohmann, 1989; 1990; 1992a; 1992b; 1993; 1995a; 1995b; 1996) The focus of this panel on the future of the Third/Nonprofit Sector brings several aspects of this issue into sharper focus. Quite simply, any answers to questions about the future of the third sector are necessarily dependent on how one answers the question of what the sector currently is.

I wish to draw a sharper-than-usual distinction here between a third sector composed of a million or more social entrepreneurial nonprofit corporations as Henry Hansmann, Lester Salamon (1992), Peter D. Hall (1992), Virginia Hodgkinson (1989) and others have articulated it, and the social worlds of voluntary associations, clubs, groups and diverse uncountable volunteer and philanthropic

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efforts, projects, causes, which I have labeled as commons and which have in recent years been increasingly subsumed under the general heading of civil society (Cohen and Arato, 1992; Lyons, 1996; Putnam, 1994; Putnam, 1995). Although many people have chosen to interpret my use of commons as a synonym or alternative label for a third sector of nonprofit corporations, that was never my intent, and in fact, it is not at all clear to me that the term sector in its ordinary economic uses has any applicability when speaking of commons as I have theorized them.

The twin theses I wish to explore here are that 1) while the voluntary action of commons is a more or less permanent feature of human community, the particular forms of the contemporary national third sectors in the U.S. and elsewhere are unique and momentary products of late 20th century public life and policy, and 2) that conditions are already developing to transform this particular configuration into something new, different, and perhaps unrecognizable. I would hasten to point out here that in pursuing this thesis I am not taking on any of the really big theoretical questions here. My immediate concern is actually quite narrow: I wish only to ask whether there has been another transformation in the particular circumstances which brought the recent proliferation of nonprofit corporations and whether that change is sufficient to lead to the demise in the near future of the nonprofit sector as we have come to know it.

## The Nonprofit Sector Model

The term nonprofit sector as ordinarily used by researchers in economics, public policy, and the sociology of organizations is a largely ethnocentric term, indigenous to the United States, the English-speaking nations of the U.S., Canada, Britain, Australia and New Zealand, and to varying degrees, recent applied to a wide variety of other nations of the world. It is from this contemporary base that Lester Salamon (1993) detected an international associational revolution in terms of the diffusion of American-style nonprofit corporations/organizations to much of the rest of the world. Google's Ngram Analyzer detects no uses of the term nonprofit organization in English-language books published prior to 1940, only erratic use between 1940 and 1965, and escalating usage only after that. Nonprofit sector is also a largely contemporaneous term, both in usage and in meaning, containing no explicit reference to the past, and no future connotations other than Whiggish continuity. Ngram analyzer tracks no instances of use of the term prior to 1960 and a dramatic rise in usage only after 1980.

The contemporaneity of nonprofit terms has been largely overlooked or downplayed by those of us who are primarily interested in voluntary action. This easily leads to the seemingly outrageous conclusion, that Peter Dobkin Hall, an historian by training, was unaware of the past or failed to take it into account! A more reasonable conclusion, it seems to me, is that viewing the nonprofit sector as a strictly contemporary phenomenon gives a hard, empirical edge to Hall's assertion that the nonprofit sector came into being – his term was “invented” – only in recent

decades in the wake of the Filer Commission. (Hall, 1992)

Protests that charitable, philanthropic and associational activities existed prior to the Filer Commission miss the essential point: There may have been (indeed, there were) other related phenomena in other places and in other times, but the term nonprofit sector does not (and ought not) extend to them. The terms nonprofit sector, nonprofit organization and third sector do not serve to cover all of the history of human voluntary association in all human cultures, or the full scope of charity, philanthropy, self-help and volunteering in past, present or future. Nonprofit terminology is and should continue to be seen as much narrower references to particular, post-war organizational regimes. National nonprofit sectors are a socio-economic phenomenon of professionally staffed nonprofit organizations, legally organized as tax-exempt nonprofit corporations and operating on the basis of distribution-constrained managerial entrepreneurship, and with revenue streams derived in significant degree from public-sector grants, contracts and transfer payments, just as its adherents suggest. In this sense, nonprofit sectors are also nongovernmental sectors. Together, they form a world in which entrepreneurs who create and work for nonprofit corporations may choose to take advantage of available tax exemptions and to cloak their activities (whether authentically or disingenuously) in the rhetoric of charity and philanthropy. All of this offers no great mystery.

Moreover, the fact that such entrepreneurs should be attracted by a broad range of public transfer payments to create charitable, philanthropic, volunteer, and other programs should surprise no one: Self-interest and incentive theory are bastions on which entrepreneurial third sector ideology is built, and transfer payments happens to offer a particularly attractive set of such incentives. In fact, declines in available transfer payments to nonprofit corporations can be considered one of the surest predictors of future declines in this third sector.

## Alternative Futures

I have tried during the past decade to articulate an alternative view that the Nonprofit Sector conceived in this manner, is but one of several subclasses of a larger and more enduring category of human voluntary association over time and across cultures. To this larger class of associations which in the past has had no generally accepted name I sought to apply the term commons. From this vantage point, nonprofit firms, by which I mean the formal organizations of professionally-staffed nonprofit corporations in the current nonprofit sectors are one of the members of a larger class of social organizations which also includes hunting, gathering and war parties of primitive cultures; ancient Athenian philosophical schools; potlatches; the confraternities and guilds of medieval Europe; the scientific and other royal academies of the 17th century and later; the coffeehouses of 18th century London, Vienna and elsewhere to which Habermas (1989) traces the origins of modern publics, the voluntary fire departments and other associations observed

by Tocqueville, the voluntary charitable agencies of late 19th and early 20th century Britain, the U.S. and elsewhere; the waqfs of the Arab world; Buddhist monastic organizations (Lohmann, 1995a); Maori morais; Central American fiesta organizations (Brass, 1986;Smith, 1977); and many more examples.

Such associations are closely associated with distinctive complexes of values, beliefs, laws, institutions and practices. Just as we have no generally accepted name for this larger class of organizations which includes nonprofit organizations, we similarly have no name for the larger class of such culture complexes (or regimes) in which they are embedded. Extending the terms nonprofit or third organization or sector (or, for that matter, the terms charity or philanthropy) indiscriminately to the entire class of organizations or to the class of regimes merely serves to mask over very real differences between them and the specific, contemporary regime of the nonprofit sector and lead to no end of confusion and pointless debate.

Moreover, unlike the voluntary associations of de Tocqueville, modern nonprofit corporate organizations, despite their seemingly overwhelming numbers, do not strike me as a particularly definitive member of this class and the modern American third sector is not a particularly definitive regime. (That is to say, neither is an ideal type in the Weberian sense.) Perhaps because of their origins in the failures of state and market, both may be thought of more accurately as marginal phenomena or amalgams; admixtures of characteristic traits of state, market and commons.

The clearer I have become about the concept of a commons, the more certain I am of its centrality for locating American voluntary associations, fund-raising, volunteering, organized self-help and mutual aid, religious organizations, neighborhoods, social movements and other topics to their historical antecedents and cross-cultural analogues. I am less certain about the larger class of culture-complexes.

At the same time, it has become increasingly apparent to me that anything deserving to be called a Nonprofit Sector as construed by Hall, Salamon, O Neill, Hodgekinson, Hansmann and others falls at least partially outside (or, at the margins of) the concept of the commons as I have presented it. From any vantage point which seeks to take into account history and multiple cultures, the contemporary Nonprofit Sector deserves to be seen, as Hall suggests, as a new and distinct phenomenon. To fully accept this view, however, is also to recognize that the contemporary nonprofit sector should be seen as a secondary institutional phenomenon. One simply cannot have it both ways: If the third sector is as its adherents present it, a product of the recent moment, then it is also not a foundational social and political complex like the family, state, market or civil society. Our collective social life has not been fundamentally transformed by the emergence of this third sector in the way, for example, that it was by the historic emergence of the political state or the market. Instead, the third sector represents a socio-economic complex located at the margins of state and market civil society, an

expression of contemporary civil society which survives protected in the American case by the First Amendment and largely subsidized by the state because of the apparent attractiveness of its economic (market) incentives.

This Nonprofit Sector looks less and less like any type of enduring social reality, and more and more like a macro-social episode; a unique macro-event in the post-war world resulting perhaps from post-war economic growth; the restless idealism of the Kennedy years; a male-WASP political elite in decline; the baby boom-inspired need to expand employment opportunities; the interest-group liberalism of national politics; the growth of health care spending; the backlash against government, combined with healthy doses of opportunism toward the traditional legal backwaters of state nonprofit law and the arcane complexities of corporate tax law, together with large measures of adventurism, chicanery and innovation. I, like many others in this room, remember the world before this Nonprofit Sector. As these circumstances change, we may all live to see the world after it.

## The Decline and Fall of 'The Nonprofit Sector'?

A similarly unique set of historical circumstances over the past two decades brought together proponents of the nonprofit sector in economics and the management disciplines and proponents of voluntary action in sociology, social work and political science and fostered attempts (still incomplete and open-ended) to develop convergent, multi-disciplinary paradigms of the nonprofit sector. Subtle but important disciplinary and theoretical differences in unit of analysis (corporation, organization, association, group, etc.), time frame (specious present, past, or in this case future), intent (pure research or practice) and other issues were set aside as immediate contemporary concerns were explored.

While voluntary action may fluctuate across time, it is an essential characteristic of the human condition even more fundamental than, and underlying, market trading or political states and will always be with us to one degree or another. By contrast, the third sector and the resulting questions over nonprofit behavior and nonprofit organization result from a unique historical configuration which arose out of the particular political circumstances which Theodore Lowi has characterized as interest group liberalism (1969) and late Second Republic decadence (1994) and Michael Sandel (1996) has characterized as the rise of the Procedural Republic.

At this time, it is not at all difficult to visualize a relatively large number of present and foreseeable conditions leading to the demise of this Nonprofit Sector, or substantial portions of it. Unfavorable tax rulings, cuts in public subsidies and tighter enforcement of tax-exempt status are just three of a broad range of circumstances which could easily bring down the house. Nonprofit corporations are easily created. They can just as easily disappear. If enough of them disappear, so does the sector. Last year in a paper presented to this conference, Salamon (1995) explored in greater detail a number of these possible sources of decline. In the remainder of this paper, I want to concentrate on a select number of factors and

forces associated with the creation of the third sector which may be currently pointing toward its demise.

## Government Failure

In the usual constructions, one of the factors out of which the third sector is said to have risen is government failure (Salamon, 1987). However, most accounts of these failures are not very specific about what particular failures were involved. It was not failures of the judiciary or the legislative branch to which we should trace the rise of the third sector, but to constitutional limits and budget politics of the federal bureaucracy during the 1950s and 1960s (Wildavsky, 1967).

One plausible approach is to argue that the most significant governmental failure was the dual inabilities of federal bureaus (such as those reorganized into the Department of Health, Education and Welfare during the 1950 s) to muster sufficient support in the Congressional budget process and Constitutional limits which restricted the abilities of these same bureaus to develop and administer service programs of their own . In the post-war decades during which the third sector is said to have arisen, these same federal agencies could not look to state and local government for support, because as Lowi (1994) notes, state and local government was at that time the traditionalist bastion of the old order conservatism which formed the base for opposition to these very programs. Anyone who was alive at the time surely remembers the role of southern governors, legislators and local governments in leading the opposition to civil rights reforms, for example. How, then, could progressive forces introduce and institutionalize change with protectors of the existing order in every city hall, courthouse and state capital ? At least part of the answer was to be found in the newly-minted doctrine of local community and specific, newly (and under state laws, easily) created nonprofit corporations which could be (and was) used to by-pass the traditionalist state-local political structure entirely.

As the Johnson Administration demonstrated clearly with the War on Poverty, Elementary and Secondary Education Act, Community Mental Health Centers Act, Older Americans Act and other acts of the Great Society, grants and later contracting out the actual delivery of services to nonprofit organizations could by-pass the opposition and create an instant constituency of supporters for any program from which funds can be distributed. Throughout the period during which the third sector is said to have arisen, this strategy for compensating for budget and program failures which began in the precincts of H.E.W. was passed from federal agency to agency, even reaching such bureaus as the U.S. Forest Service and the Environmental Protection Agency. In this way, hundreds of thousands of nonprofit organizations compensated for this particular set of government failures and created the core of the nonprofit sector profile as it is currently understood.

While this iron triangle strategy was highly successful in the short run, it also had certain side effects. According to Lowi (1994) it succeeded in shifting the

balance of power between federal and state governments and disrupting the community base of old order conservatism, thereby contributing to the specific discontents with government known collectively as the conservative revolution which has been largely responsible since 1980 for threatening and undermining the funding base of these same government bureaus and their third sector constituents. Another side effect noted by Unger (1996) was the transformation of opportunities into entitlements which is at the core of the current crisis of the American welfare state.

Among other things, focus on these particular government failures explains why privatization which in other countries has been largely an issue of the sale of public assets to private owners has, in the United States, been seen more as a quest for new (nongovernmental) support for the third sector. This analysis also explains the otherwise curious reluctance of so many of those seeking to define the third sector in the United States to include the grassroots, voluntary association, fund-raising, social movement and other dimensions of the conservative revolution within the domain of the third sector. This conservative revolution may, in fact, successfully constrain future development of the third sector in either of two ways by establishing a new regime dramatically limiting the powers and expenditures of government, or through the less ambitious oppositional role of placing severe practical limits on spending increases and new programs. In this way, conservatism does not need to win to succeed: Either way, the public revenue streams which form the life-blood of what Jennifer Wolch (1990) has termed the shadow state are undercut. Thus, the very forces which for several decades made of the nonprofit sector a way of overcoming the particular government failures of federalism, traditionalism and bipartisanship may in the future result in the undoing of the sector.

## Correcting Market Failures

The second major dynamic responsible for the historic rise of the nonprofit sector is market failure, particularly in the sense of failures of market dynamics to produce certain services desired by ignored or neglected segments of consumers. In at least one important respect, paid employment, the nonprofit sector appears to function more or less normally in the labor market. Unlike voluntary associations, clubs, social movements and other actors in voluntary action, the nonprofit organizations of the third sector are, therefore, in at least one important respect inherent parts of the overall market structure of the American economy. Theoretical focus on nonprofit production has generally understated the importance of this particular factor. Thus, the continuation of paid staff employment in future nonprofit organizations is one measure of the continuing success of the sector in staving off market failure.

Another anticipated market failure may have largely failed to materialize at least in part because of the rise of the third sector. In fact, one of the largely unsung accomplishments of the third sector may have been its role in absorbing the surplus



army of (high school and college graduate) baby-boomers who entered the labor market during the period of rapid growth of the sector. Earlier expectations of a glut of workers entering the labor force in the baby boomer years proved largely unfounded; and the nonprofit sector had a role in this. While general expansion of the economy is, no doubt, the most important reason, the creation of new jobs in those million nonprofit corporations – upwards of ten percent of total employment – has to be given a measure of credit as well.

In at least three other distinct but equally important senses, the very market failure dynamics which resulted in the rise of the nonprofit sector could in the future bring nonprofit organizations fully back into the marketplace. One pair of related market failures is the failure of organizations delivering specialized, consumer services as diverse as hospitals, opera and ballet companies, and museums to be sufficiently competitive in consumer and capital markets to attract sufficient investment to underwrite operations and returns on investment. The American Symphony Orchestra League, for example, is one of many nonprofit industry groups looking closely at their market position, both in labor and capital markets. Like many other nonprofit industries, symphony orchestras have generally been unsuccessful in pricing their products high enough to cover costs and generate profits, yet low enough to attract broad customer bases.

An unrelated third market failure which appears only in retrospect is the inability or unwillingness of capital markets to respond to basic demographic changes in society, such as the declining youth market in the wake of the baby boom and the rise of market of elderly consumers and the definition of other new classes of consumers. Public funding of nonprofit service industries in these cases has served to demonstrate both that potential untapped markets existed (e.g., senior housing) and to define entirely new markets (e.g., home health care).

Despite the allegedly adventurism and supposedly restless entrepreneurial spirit of private enterprise, venture capitalists often proved to be remarkably unimaginative during the formative period of the nonprofit sector. Thus, it was only after the efficacy of a series of specific service products like hospice, home health care, senior housing, or home-delivered meals were defined, refined and developed by nonprofits that private, commercial delivery of such services begin to emerge. Even today it is still unclear whether some of these markets (e.g., nursing homes and home health care) can be sustained on a purely private, competitive basis, or whether public third-party funds are necessary to sustain the market for these services. (Where the latter proves to be the case, of course, much of the current case for privatization American style evaporates.)

## Service Marketization

All three of these types of market failures seem to point directly to the eventual demise of the present Nonprofit Sector through processes resulting in corrections of the specific market failures which led to the rise of the sector. We hear a great deal today about the role of venture capital in the computer software and information processing industries. Less clear has been the

role of public funding of the third sector as a distinctive form of public venture capitalization of new markets. What is involved here might be seen as a three-stage process, labeled with the inelegant term marketization. The marketization process begins with public venture capitalization (grants and contracts to nonprofit organizations) and leads to increasingly clear product definition and private market formation. Public funding of the third sector has provided the initial capitalization for a staggering variety of products and services, many of which simply disappeared after an initial subsidy ran out, but others of which were clarified into distinct consumer products currently being marketed privately in newly emergent markets. Much of the private market in child day care services, for example, is following the patterns set out by the federally subsidized Head Start program.

For at least some of the goods and services capitalized through the grant funding operations associated with state failure, the next step is oblivion. As Senator Proxmire was fond of pointing out with his Golden Fleece Award, it is truly astonishing how many really pointless, stupid, trivial, meaningless things manage to attract public funding. Generally speaking, the rhetoric of demonstration projects, innovation and social change surrounding public programs for the past three decades has tended to ignore or downplay their role in marketizing new services.

One interesting aspect of this phenomenon which nonprofit administrators have generally failed to heed is the way in which parallels between market success and support for public funding can adversely affect public as well as private support. It is not only the useless, pointless and trivial which can fall victim to this process, however. If, in the long run, a market fails to coalesce around a product created in this way, not only is its marketability impaired. The very fact of its failure in the marketplace casts new doubts on its continuing legitimacy as an object of public support as well. Thus, the success of some museums and symphony orchestras in using public funds to leverage commercially successful events may put additional pressures on others use of public funds to support experimental or other non-commercially viable events. If enough people don't want to buy tickets, it is said, how worthy can the event be? In much the same vein, the commercial successes of some initiatives in health and human services have placed increasing pressures on all service providers to ignore, neglect or under-serve the poorest, most difficult and riskiest patients and clients and are eroding the long-term legitimacy of efforts to work with these groups.

However, some ideas which receive funding are sufficiently practical, useful or interesting that they attract widespread interest and result in the formation of actual product markets where none previously existed. There may be no clearer case of this than federally funded Meals on Wheels, a small program of a few million dollars first introduced under Title III of the Older Americans Act. By the late 1960s, home-deliveries of food, whether raw or prepared, had almost ceased in the U.S. But consumers whose parents or grandparents received prepared, home-delivered meals probably formed the original core of the market for home-delivered pizzas, which has since broadened out into home, hotel, office and athletic field delivery of an amazing variety of food products on a strictly commercial basis.

Similar observations can be made about products as diverse as the Jeep and Hum-Vee to freeze-dried ice cream. Markets have also emerged in recreation services for older people,

homemaker and home health care services, and other examples where the market potential was recognized only after the product was defined or marketized by publicly funded programs.

## Conclusion: Nonprofit Obsolescence?

Close examination of the government and market failures which are credited with leading to the rise of the Nonprofit Sector shows that both sets of failures are proving to be, to some degree, self-correcting. Thus, the governmental failures of budget constituency and limits on service provision which led to the rise of interest group liberalism (Lowi, 1969), and the shadow state (Wolch, 1990) which we know as the third sector also led eventually to Reaganomics, the Gingrich revolution of 1994, and the protests against tax exemption, charity fraud and other questions which leave the long-term existence of the sector very much in doubt.

There may, in fact, be something of an iron law at work here which points to the inevitable demise of the third sector. Public subsidy of nonprofit activity in the third sector form of specific responses to capital and product market failures of seemingly desirable objectives may set off a series of marketization dynamics resulting in the eventual commercialization of that product or service. Marketization may also undermine the long-term legitimacy as other, similar objects of public support which are not a commercial success. Either way, the third sector loses in the end: If a product or service created by public subsidy of the third sector is successful commercially, there is no need for continued support of its nonprofit production, and if it is not commercially successful, how can continued public support be justified?

Thus, if one looks to the government and market failure arguments as the source of the particular configuration of nonprofit enterprise we currently call the third sector, one can also see that the very forces which led to the rise of the third sector are currently pointing toward its decline. That decline, if it occurs, is a process which can be expected to unfold along lines dictated by state and market forces and have little if anything to do with developments in the commons.

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