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The U.S. Social Economy and the Commons Model of Production

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Abstract

Recent work in Canada and Europe has re-emphasized the place of nonprofit organizations, as that term is conventionally understood in the broader context of social economy. Although not generally recognized by U.S. and international scholars, a concept of social economy largely compatible with the Canadian and European formulations is embedded in U.S. constitutional, corporate, charitable and tax law. However, its full recognition is discouraged in the current U.S. political culture and third sector studies. The U.S. social economy provides full and robust, recognition of the social, political and economic organizations known as commons, as well as nonprofit firms.

Introduction

There is a tendency in recent third sector conceptual and theoretical studies to juxtapose the U.S. model of national nonprofit sectors grounded, as the name implies, in a distinction from market economics. What has been proposed to take its place is a series of qualitatively different and distinct approaches. Beginning in the late 1980's scholars in many countries sought an alternative contrast, not with the markets but with governments, indicated by the phrase nongovernmental sector. More recently, there have been a large number of suggestions that nonprofit or nongovernmental sectors either were another name for, or an essential part of civil society (Anheier, 2005;). It has even been suggested that the sector notion be conflated with philanthropy, in the guise of a "philanthropic sector".

European and Canadian scholars have put forth at least two distinct models of social economy. (Evers and Laville, 2004; Laville, 2011; Mook, Quarter, Armstrong & Whitman, 2015; Quarter, Mook and Ryan, 2010). Within the U.S. such perspectives are always advanced with at least one eye toward a Tocqueville-based American "exceptionalism", while elsewhere (particularly in Europe), alternatives to the nonprofit sector terminology often appear to appeal to a kind of intellectual resistance to perceived American social science hegemony. Each is both understandable and regrettable.

It is suggested here that much of this is largely a scholarly tempest in a teapot. There is, in fact, a clear, well-rounded and robust model of social economy embedded in current U.S. law, and that this model is both recognizably distinct from social economy models of the European union and Canada. Further, it is suggested that this model incorporates a distinctive sector of tax-exempt/tax-deductible (so called 501-c-3) nonprofit organizations. The observation that U.S. law and practice places a strong emphasis on “non-distribution” of profits should not deflect observers from noting that the full range of associations, organizations, foundations, mutuals and cooperatives indicated in the European approach is also present in the U.S. system and has been for most of the previous century.

There is, however, one important major difference. It is simply inaccurate to speak of the U.S. system (as opposed to particular organizations) as having been deliberately created or intentionally established. It is more accurate to say that it was enabled. It is possible to read U.S. corporate law and tax policy as not straightforwardly *constitutive* of a third sector. There is no single statute, ruling, or decree defining or decreeing that there will be a third, or nonprofit sector.

Instead, the U.S. approach might better be described as a *permissive* approach or *enabling* policy that allows many different possible approaches to the sector, without actually endorsing any one. This would include, but is not limited to, the current social enterprise model with which nonprofit economists and business school faculty are so enamored. However, U.S. law and tax policy also allows for construction of something very similar to a European-style social democratic approach to the third sector.

Conceptually, the U.S. model of social economy is potentially a robust match for anything found in Europe or Canada, at least in its possibilities. However, the full range of those possibilities are deeply buried in the arcane precincts of state corporation law and federal and state tax codes. What is actually done with the U.S. model of social economy in practice may, in many times and places appear to be a rather paltry production emphasizing extension of local government and rule-based bureaucracy. This is due far more to lack of imagination, community support or access to resources than it is any deficiencies in law or policy.

Conceptual Redundancy?

To some extent, this paper may appear to be an exercise in conceptual redundancy. Particularly for those most interested in measurement and hypothesis testing, terms like third sector, nonprofit sector, nongovernmental sector, civil society, social economy, third nation, third space and commons may all appear to be labels for the same broad reality “out there somewhere” in proximity to government tax systems and markets. For these

investigators, the principal issue of the third sector may seem to be only which one of these terms best characterizes the well-known and homogenous reality. There is no question of the reality itself, or of its fundamental unity; only of what to call it. I heard a great deal of such comments in reaction to the publication of my book, *The Commons*, for example, which had the misfortune to arrive just prior to the publication of Robert Putnam's *Bowling Alone* view of civil society (Lohmann, 1992; Putnam, 2000). My perspective has always been that users of these different labels are actually talking about different – although partially overlapping – realities. I want to take up that point again here with particular reference to three of these terms: nonprofit sector, social economy and commons.

Nonprofit Sector

For purposes of this paper, nonprofit sector is the least complicated to deal with. First of all, despite a great deal of other casual use, the term sector is one that properly belongs primarily in an economic context: Sector is a term referring to groups of *related industries or firms producing similar products, (the insurance sector) or using similar technologies (the high-tech sector) or similar inputs (the service sector)*. Leaving aside conceptions of the organizations or corporations that populate it, the U.S. nonprofit sector is most commonly said to be the aggregate of 501(c)(3) tax exempt/tax deductible entities. Technically speaking, this is not a sector in the recognizable sense since there is no single defining product, technology or inputs. The nonprofit sector is, rather, an amorphous, legally defined category of entities doing a wide variety of things with only one thing in common: legal restraints on their handling of financial surpluses.

Although it may appear a small matter, by definition, under U.S. law these entities are corporations, and not organizations in any ordinary sociological meaning of that term. The only organization one can reliably expect to find in all nonprofit organizations is the mandated and formally organized group usually termed “the board” – a group of persons with legal responsibility to “manage the affairs of the corporation.” Whether U.S. nonprofit corporations include any kind of formal organization beyond the mandated board of directors is an empirical issue, governed by the employment contracts of particular corporations.

Sector is a hierarchical, modular notion: there may be sectors within sectors within sectors. The retail sales sector, the banking sector, and the local government sector, for example, are all part of the more general service sector, which may be spread across public and private sectors. In the same vein, the NTEE classification system allows us to see the health-related nonprofits, museums and foundations sectors as components of the nonprofit sector, which I intend to argue, is part of a larger social economy. One key

question that has gone largely unnoticed in discussions of the nonprofit sector is: What, exactly, is this nonprofit sector a sector of?

Commons

I stepped into this conceptual imbroglio roughly 20 years ago with an ARNOVA paper introducing the concept of the commons as a way to describe and explain voluntary action. (Lohmann, 1989) By bringing together Garrett Hardin's (1965) metaphor of "the tragedy of the commons" and M.I. Finlay's (1974) five-point conception of *koinonia politike*, my primary intent was (and remains) to conceptualize a "sector" of voluntary, membership and informal associations, volunteer, self-help and mutual aid behavior, religious, professional and grassroots organizations, social movements and other similar efforts. By sector I meant to denote only a category or class of social phenomena, not an empirical network of corporations; I tried to signal this fairly carefully through considerable attention to the fact that the commons was a Weberian "ideal type."

A number of people appear to have concluded that I was merely attempting to re-label what had already been denoted as the *nonprofit sector* by substituting the term commons, and to apply that congeries directly to an empirical reality they perceive (which I do not). I have no disagreement with the empirical observation that huge numbers of 'nonprofit organizations' (actually, corporations) arose in the U.S. in the past half century. I believe along with others that they did so largely in response to incentives and unintended consequence of public policy. Some may disagree slightly with my labeling of these nonprofits, as they have been conceptualized by Salamon (2003) as 'nonprofit firms'. Regardless of labels, there is widespread agreement that such nonprofit entities currently account for a small fraction of total employment in the post-industrial democracies – typically under 10 percent. By contrast, if my reading is correct semblances of the voluntary action of the commons have existed for thousands of years and in hundreds of separate cultures, are spread across entire cultures and may, in part, be hard-wired into the human genetic code.

Alas, the title metaphor I used in a 1989 article – titled *And Lettuce is Nonanimal* – raising some of these classification issues achieved considerably more notoriety than the concept of the commons it was intended to illuminate, although this may have been redressed to some extent by my 1992 book, *The Commons: New Perspectives on Nonprofit Organizations, Voluntary Action and Philanthropy*, which I am currently revising (Also, see Lohmann, 2015). As recent literature attests, the underlying issues of definition and classification have not yet been satisfactorily resolved.

Social Economy Defined

The proximity of the idea of a social economy to some very familiar third sector concerns is easy to see: Westlund, for example, stated "(a social economy is) democratically driven economic activities *which neither are carried on within the public sector nor have economic profit as the main purpose of activity*" (Westlund, et. al., 1996: 6). Similarly, the government of Sweden (1998) declared that "The social economy consists of organized activities that primarily have a social purpose and is organizationally free-standing from the public sector." The European Union, perhaps attuned to differences in language, political culture and other nuances has tended to deal with the social economy as an amalgam of four types of entities: cooperatives, mutuals, associations and foundations (CMAF). Quarter, Mook and Richmond (2003) restrict their definition to Canadian nonprofits and cooperatives. Evers and Laville (2004) embrace the European Union's acronym and explicitly set it off against what they present as the U.S. based 'nonprofit sector'.

The idea of social economy has also tended to point up some explicitly normative directions consistent with its widespread social democratic origins: According to Trädgårdh, a social economy is "the social organization of production and distribution to achieve the highest possible sum of common well-being/welfare" (Trädgårdh, 2007). The mission statement of the Association for Social Economy, founded in Washington DC in 1941, speaks of economic concern for human dignity, ethics and philosophy. Definitions such as these clearly point to the qualities of "thirdness" outside the state and the market we have all become accustomed to. That this idea is also closely related to distinct purposes and missions frequently encountered in the third sector is clear.

The Argument in Brief

I wish to assert three general premises in the remainder of this paper:

- 1) The legal basis for organization of a distinct U.S. social economy that is fully comparable to Canadian and European versions is to be found widely scattered across state incorporation statutes, federal and state tax statutes, charitable and constitutional law.
- 2) The U.S. nonprofit sector of 501(c)(3) tax-exempt/tax-deductible nonprofit corporations is one component of the larger U.S. social economy, along with several dozen other types of cooperatives, mutual benefit entities, associations and foundations.
- 3) The cross-cultural concept of the commons is well represented in the U.S. social economy, both within the nonprofit sector and beyond.

The U.S. Social Economy?

Recently, a group of European third sector scholars – a scholarly commons operating as the EMES Network – have raised a number of concerns with the U.S. approach to defining and measuring national nonprofit sectors. (Evers & Laville, 2004) A particular target of criticism by them is the universality of the U.S.-based “nondistribution constraint” as a key or defining characteristic of nonprofit corporations in the U.S. (Evers & Laville, 2004) The EMES approach is, in many respects a political economic one with overriding macro-economic concerns that seeks to utilize the French concept of *économie sociale* and European social democratic perspectives on cooperation, solidarity and social justice in defining European third sectors. A principal motive for this project is to advance the argument that the social economy, not only as an economic configuration, but also as a socio-political one, offers a preferable conceptualization of the macro-economic, political and social configuration of third sector activity in Europe.

There is no need to offer any detailed critique of the Evers-Laville EMES perspective on Europe at this point.¹ Although Evers has consistently focused attention on Lester Salamon and the Johns Hopkins effort, it need hardly be noted that none of the concepts of nonprofit organization, nonprofit sector and non-distribution constraint with which he takes great issue originated with or is unique to the Johns Hopkins initiative.

Adelbert Evers began an essay in the Spring, 2005 issue of the *Democracy and Society* newsletter from the Georgetown University Center for Democracy and the Third Sector by stating "European scholars who are engaged in third sector research have noted that among their American colleagues the labels 'social economy' and 'social enterprise' have generated interest and attempts for interpretation, but also a number of questions." I confess to being among those who has both interest and questions and this paper is an effort to deal with both. In general, however, there is probably greater current interest in the latter than in the former among U.S. scholars.

A number of U.S. based scholars of ‘the third sector’ would concur with Evers that the “nonprofit sector” concept grounded principally in the non-distribution constraint is almost certainly a culturally specific one not easily applied outside the U.S.² U.S. based critics might even go beyond the EMES

¹ In fact, I am largely sympathetic to several aspects of the EMES perspective and critique. As a doctoral student in social policy planning at the Heller School at Brandeis University, I was part of the movement to apply European social democratic perspectives on social policy to the American context, and I have taught coursework in that area for many years. A full-blown critique of the implications of the EMES thesis from the U.S. perspective is well beyond the scope of this chapter and would require a volume in and of itself.

² It *can*, of course, be applied in other nations, if by that one means that data can be collected, as the Johns-Hopkins Comparative project has abundantly shown. The essence of the matter however is establishing the reliability and validity of the resulting data and interpreting their real or

perspective to note the important role of methodological individualism – and peculiar constructs like the conception of corporations as ‘legal personalities’ that result. A point that seems to have eluded any number of third sector scholars is that U.S. nonprofit corporations are, by definition, not organizations, but fictive individuals – ‘legal personalities’.

Closer examination will show clearly that there is in federal and state law a distinct U.S. social economy and that it consists of an elaborate and highly complex set of legally recognized individual rights and privileges as well as social collectivities enabled through a system of constitutionally protected rights³, tax policies dismissing tax liabilities for some types of earnings and assets⁴, entitlements granting tax credits to certain persons and corporate tax payers⁵, and explicit grants of conditional rights to socially constructed corporations, foundations and trusts whose social contracts detailing intended purposes and promised behavior⁶ earn them combinations of tax exemption and credit.

A Distinctive U.S. Social Economy Model

Some of the entities in the U.S. social economy are tax-exempt (that is, not subject to taxation under the terms of U.S. income tax) while others are not. Much the same can be said for such entities as vehicles of tax-deductible contributions.

A subset of nonprofit organizations are both tax-exempt and tax-deductible. Contributions to corporations recognized under Sections 501[c]1 (Congressionally-created Nonprofits); 501[c]3 (Public Charities); 501[c]4 (Social Welfare Organizations); and portions of 501[c]8 (Business leagues, if used for religious, charitable, scientific, literary, educational or other exempt purposes) and 501[c]13 Cemetery companies may also be deducted as charitable contributions, for example. In the latter case, the IRS website

full meaning and theoretical significance. The Johns-Hopkins have been invaluable in calling the attention of the outside world to the existence and scope of assorted national third sectors. (This is no minor accomplishment in itself!) Yet, they almost certainly seriously understate the scale of real third sector economic activity in the U.S., and elsewhere, as the very next sentence in the text notes.

³ The first amendment to the constitution details those rights as prohibiting “established” (state-established) religions, the free exercise of religious practice, state-imposed (or other) restrictions on free expression, assembly and allowing the right to petition the state for “redress of grievances.” The Supreme Court has read into this explicit language the famous “penumbra of rights” including privacy and freedom of association.

⁴ The best known, but certainly not the only, such dismissal is the exemption for “charitable purposes” granted under Section 501(c)(3) of the IRS Code.

⁵ There is, currently, insufficient distinction between the “tax-exemption” and “tax deduction” provisions to fully appreciate the extent of the U.S. social economy. Many exemption of

⁶ Social contracts here refer to the intended missions to pursue socially desirable ends and promised behavior not to distribute profits entitle them to varying combinations

advises “Donations to exempt cemetery companies, corporations chartered solely for human burial purposes, and perpetual care funds (operated in connection with such exempt organizations) are deductible as charitable contributions on the donor's federal income tax return.”

Other organizations, including those qualifying under 501[c]2, 501[c]5-7, 501[c]9-23 and 501[d-k and 527, as well as 501[c]8 contributions not devoted to public charitable purposes, may be exempt from federal taxation but not deductible by donors. It is important to note here that some categories of nonprofit organization (for example, 501[c]20, Group Legal Services Plan Organizations, may qualify for exemption from federal taxation only if they meet specific IRS requirements. It is important to note also that not all entities falling within the social economy categories identified by the tax code are tax-exempt: For example, “The exempt purposes of a labor or agricultural organization (501[c]5) does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.”

The U.S. Nonprofit Sector

One might add that seeing a nonprofit sector bounded by the nondistribution constraint as occupying the entire space outside market, state and household offers a partial, and highly misleading, reading of the U.S. situation as well, by committing the logical fallacy of substituting the part for the whole. That larger whole is, as examination of the context of Section 501 of the IRS code reveals, the social economy. (See Table I) The fact that the U.S. nonprofit sector has grown rapidly and assumed a greater economic importance than previously is not disputed. The fact that it is the only one of the sixty or so legal possibilities in the tax code of any economic consequence is easily disproved.

There can be no doubt that an important U.S. nonprofit sector is indeed constituted by approximately 1.5 million tax-exempt, tax-deductible (501-c-3 and 501c-4) corporations large enough to be required to report on the IRS-990, together with the similar but smaller corporations and a seemingly random assortment of religious organizations not required to report because of insufficient income or first amendment considerations. To this can be added another identifiably distinct, but overlapping, nonprofit sector of roughly 80,000 foundations. Are they the same, because at least some of them are classified as 501(c)(3)'s or are they different because of recognizably different missions? These questions have yet to be convincingly resolved. With the part-is-the-whole conception of the nonprofit sector as third sector, they can't even coherently be asked. The nonprofit sector concept tends to treat them identically while the social economy distinguishes them.

The Evers-Laville socio-political perspective, with its emphasis on social justice, solidarity, equality and other products of European social democratic thought is not so straightforwardly applicable to the American social economy.⁷ Certainly, there are elements and vestiges of the social democratic “socio-political” view in the American social service system, labor movement, assorted civil rights movements and elsewhere. As often as not, these were not native (or nativist!) products but arrived in the minds and social relations of generations of European immigrants. This observation offers part of the answer to the puzzle represented by the “off the books” character of the U.S. Social economy. The European social democratic view has never been the preferred vision of American political elites and is not so today. However, that does not mean that there is not full accommodation of it as a system of minority perspectives.

Regardless of whether Congress or state legislators would concur, the leaders of many U.S. cooperatives, nonprofits, membership associations, foundations and mutuals would heartily agree with Regeringkansliet (2000, quoted in Pestoff, 2004) that, "The concept Social Economy refers to organized activities which primarily aim at serving the community, are being built on democratic values, and are organizationally independent of the public sector. These social and economic activities are run mainly by associations, cooperatives, foundations and similar groups. The main driving force of the Social Economy is the benefit of the public or the members of a particular association, and not the profit motive"

Unlike the European approach, U.S. legal perspectives on the social economy as third sector are entirely enabling rather than constitutive; they are not, in any fundamental sense, formative of the third sector as a vehicle of law or public policy, except as permissible possibilities. The structure one can see of cooperatives and mutuals in particular is not a planned, intended or deliberate one; it is largely the result of the accumulation of details and fine points in tax policy intersecting with corporate law and constitutional traditions. It is clear, for example, that Congress intended to privilege some purposes and activities by granting “charitable” tax exemptions and tax credits, and privilege others by offering a broad range of tax exemptions without accompanying credits for donations to those same organizations. It is also clear that some states have been more permissive of cooperatives and mutual benefit entities than others.

⁷ The issues involved are too complex to sort out here and involve the quite different European and U.S. approaches to the state on a trail laid out by Adam Smith, Rousseau, John Stuart Mill, Karl Max, Max Weber, Thomas Hill Greene, Bernard Bosanquet, John Dewey, and many, many others. The overriding point here, however, is that theorizing an *independent* third sector truly outside government and the market need not take either as its theoretical point of origin. See Vincent and Plant, 1984 and Plant, Lesser, et. al, 1980 for an introduction to some of the issues involved from a British standpoint.

It is not clear in any respect, however, that any legislative body in the history of the U.S. ever set out to create either a nonprofit sector,” or a social economy”. This observation is critical to understanding one of the principal characteristics of the U.S. social economy: While social scientists and nonprofit managers may see tax exemption, tax-deductibility and non-distribution constraints in terms of sectors and broader public purposes, it is highly probable that in law and public policy these may be simply matters of tax revenues. In the wake of the famous UBIT case, for example, *C.F. Mueller v. Commissioner*. 14 T.C. 922 (1950), which was later overturned on appeal, Congress amended the IRS Code to include the UBIT (Unrelated Business Income Test), not as a matter of structure or principle. One congressman at the time complained that without reform, “[e]ventually all the noodles produced in this country will be produced by corporations held or created by universities . . . and there will be no revenue to the Federal Treasury from this industry.” (quoted in <http://www.taxpolicycenter.org/publications/template.cfm?PubID=7267>; 9/24/06) There is no recorded intent to create or amend either a nonprofit sector or a social economy by this amendment to the tax code.

The “nonprofit sector” and the “social economy” in the U.S. are both profitably seen as unintended consequences; latent functions of a system designed primarily to allocate liabilities and risks and assure equitable collection of federal taxes. Tocqueville’s chapters in *Democracy in America*, and the Filer Commission, hold no constitutional or legislative powers. These social observers merely spotted trends evident in U.S. community life; they did not enact these sectors (nor did anyone else). There is no documentary record to support the conclusion that the Founding Fathers, Congress, state legislatures, the Supreme Court, the executive branch at any level of government or anyone else ever intended to bring into being a realm, sphere, sector or domain quite like the third sector. It happened because of the uncoordinated actions of other social actors, and legislative bodies merely responded, primarily to protect the interests of the state.

Both of these sector constructs can only be inferred from the actual patterns and regularities derived from empirical observation.⁸ We can begin that observation with the nearly 60 distinct types of organizations mentioned in section 501 of the U.S. tax code. One can find in Table I multiple examples of the full range of the Canadian and European conceptions of social economy: cooperatives, tax-exempt/deductible nonprofits, other associations, mutuals of several types, and foundations. In Table 1, I have made a preliminary classification of the tax-code categories as social economic sectors, based on examination of the IRS descriptions.

⁸ The same, of course, is true for most macro-economic constructs. One also cannot directly observe “the transportation industry”; it must be inferred from data on the performance of firms in transportation services.

Based on this, it appears that there is a distinct U.S. social economy imbedded in U.S. tax law, and that the nonprofit sector, however narrowly or broadly defined is part of it. It should also be clear, in context, that the concept remains viable whether a social economy is deemed to mean a cluster of nonprofits and cooperatives, as in the Canadian approach, or cooperatives, mutuals, associations and foundations in the EMES approach, fairly clear nonprofit (501(c)(3) sector is there alongside a profit-sharing sector (cooperatives, credit unions, and others) just as the EMES folks suggest. Furthermore, it is relatively easy to discern a grassroots, community-based sector in Sections 501(c)(4,6,7,8,12) and elsewhere even though those explicit terms are not used.⁹

Commons Updated

In the right-hand column of Table 1, I have also sought a preliminary classification of *some* of the identified social economy organizations most likely to contain members that meet the criteria of commons. Members of the class, category or sector of commons can be seen as productive economic units possessing five principal characteristics: Three of these characteristics are constitutive, or constitutional (that is, necessary for the formation of commons): volunteer labor¹⁰ (or social action), shared purposes, and pooled resources. Once a commons begins to act (defined in an economic sense as contract, choice and communication) to achieve one or more common purposes using pooled or shared resources, we have a basis for not only social and political, but also economic action, even though commons are not the conventional economic figures portrayed in microeconomic theory of the firm.

The final two terms in the definition of a commons can be fashioned as ‘outputs’ or products of such action – common goods, in the language of the theoretical model: As engines of economic production commons will, I assert, produce *social capital* characterized by *philia*, or a sense of fellow-feeling or mutuality, but also characterized by increases in trust, mutual respect, reputation, and social networks for sharing of information and influence. Further, the volunteer labor, shared mission and pooled resources of a commons will also over time produce and reproduce spontaneous *moral order* – the group norms, folkways and mores that sociologists and anthropologists

⁹ I had thought of including 501(c)(13) cemetery companies in this list of “grassroots” organizations, but feared readers might see it as an attempted joke in rather poor taste.

¹⁰ Actually, “action” in Hannah Arendt’s terminology, labor being effort to sustain survival. I use the more conventional term labor here because of its widespread contemporary connotation of human effort – with little conscious connection to the broader issue of survival. A principal assumption of commons theory is that participants in a commons must be ‘affluent’ in the sense of their survival not being currently threatened in order to be admitted to a commons. Those who are starving, or whose lives are threatened by political repression are not suitable candidates for voluntary association in the ordinary sense.

have traditionally focused on, but seldom treated explicitly as active products of group action.

The commons as I see it is politically or civically an element of civil society as portrayed by Van Til (2007) – a part of the “third space” distinguishable from formal government, the market economy and the “intimate space” of the household. Indeed, using Cohen and Arato’s (2000) approach to civil society – which also makes reference to communication media, one might see the commons as a domain of voluntary action – associations and social movements.

Some Preliminary Observations

The first point I wish to make involves an issue of basic social theory: although the conception of a “third sector” as a social, political and economic space apart from the market economy and political state holds up well under close examination, efforts to identify such a sector exclusively as a “nonprofit sector” of 501(c)(3) tax-exempt charitable corporations simply does not withstand close examination. (Evers and Lavielle, 2004) Conceptualizations of the “third sector” continue to suffer from a fundamental theoretical confusion: On the one hand like markets and states the third, or nonprofit, or voluntary or nongovernmental or philanthropic sector is said to be a general, perhaps even universal, social category distributed across many nations, societies, languages and cultures. On the other hand, it is suggested that this same general category is thickly embedded in the unique historical, linguistic, cultural and institutional matrices of particular nation states, including the U.S.

In the U.S., over and beyond the problem of large numbers of charitable corporations not required to file IRS-990s for economic, constitutional and other reasons, there is the even more difficult problem of an ambiguous class of religious, membership, voluntary and other associations and groups. In addition, there are problems such as how to account for political parties and interest groups, labor unions, social movement organizations and a broad range of other exceptions. While labeling categories of these as fourth (or fifth, and sixth) sectors may appear to dispose of the problem, it does not really offer a solution. Given the tendency to define the third sector as *the* space outside markets and the state, it appears to consign entire realms of public and private action in civil society to irrelevance and even non-existence. We need a better way.

The second point I would like to make is that when I look over the vast range of diverse and complex formulations offered in third sector studies over the past two decades, nothing strikes me as quite so plausible as that a meaningful, robust and genuinely interdisciplinary “third space” between market and state can be conceived as a shared space, or common field of the

political and civil perspectives of the civil society construct and the economic perspectives of the social economy (*economie sociale*).

We might even project a preliminary civil-economic “division of labor” between the two perspectives, using Lionel Robbins’ famous definition of economics as “the science which studies human behavior as a relationship between given ends and scarce means which have alternative uses.” Beginning with the common denominator of rational choice, we might argue that those ends and the range of alternative uses are the domain of civil society beyond the authoritative decision-making of the state. At the same time, it is the particular domain of social economy to enable rational means-end choices where rigorous market conditions do not apply – whether it is the absence of price mechanisms and profit-motives, the absence of large numbers of buyers and sellers, or other missing conditions. In this respect, various national third sectors are both non-market and “nongovernmental in character, and to varying degrees. Interestingly, this approach, if played out fully would appear to allow for both public and private nonprofit organizations, the exercise of compulsory legal and voluntary ethical non-distribution constraints, alongside various forms of and for both market and non-market participation as well as a variety of combinations of profit-distribution by cooperatives, and various other social enterprises.

In my rendering, the commons was not intended to apply solely to nonprofit ‘organizations’ as *dings an sich* with an organization chart, fixed address, stationery and a paid staff. Committees, groups, gangs, entourages, membership associations and those involved in administering charitable trusts, as well as groupuscules¹¹, mutual aid networks, pilgrimages, festivals, computer networks and general social networks all possess characteristics of commons in this sense.

The hypothesis may be too much for some to accept that there are consistent threads – including economic ones – describing and explaining the voluntary association of a fire brigade, the spontaneous order of a ‘gang of hooligans’ or peer group who for their own religious, class, political, or social reasons organize, prepare, ignite and gather round the very bonfire the firemen seek to contain or extinguish. For them, it will be even more of a stretch to extend these threads to the committee of local civic leaders who years, decades or centuries later seek to turn such routine but conflict-laden community events into a civic festival. Perhaps we can at least agree, however, that association in these assorted instances refers explicitly to both certain social objects (primarily groups cliques, clubs, bands, gangs, and the

¹¹ The term is most typically used to refer to small political factions on the extreme right and left that are constantly forming, reforming and attracting members who then quickly move on to other, later factions. Such dynamic “structures” characterized by short term association memberships in rapid succession are common also in high school and college peer groups and other settings. In larger historical terms, the entire national third sector in the U.S. is a kind of groupuscule.

like) and to the social processes of constituting them; and that, therefore, a strictly structural and cross-sectional approach is not sufficient.

It is when one further considers the vast *mélange* of associations as distinct economic units capable of producing recognizable (if, usually unmeasured) economic output along with their expressions of human sociality that the full range of the commons begins to come into clearer focus. Alongside other aspects of personal and social behavior, there is economic production to be found in the social psychological and group processes of voluntary action. This, even though the economic impact of the more structured and recognizable formal nonprofit organizations such as hospitals, clinics, colleges, and social service agencies may be easier to identify and measure.

Conclusion

Through close examination of laws, institutions, court rulings, one can see that the U.S. social economy is a distinctive cluster of partly measured and partly unmeasured producers of economic output in religion, charity, philanthropy, science, arts and assorted other, related activities. This social economy consists of an odd assortment of measured, unmeasured, mis-measured and un-measurable components.¹² It also consists of public (governmental) support, to private (commercial, market or for-profit), and nonprofit firms and commons.

To continue to focus on the nonprofit sector exclusively solely because the data yielded by the IRS-990 tax returns enable us to do so puts us roughly in the position of the drunk who lost his keys “over there somewhere” but is looking for them under the streetlight “because the light is better here.”

It can be seen also from this analysis that the contrast articulated by Evers and Laville, et. al. (2004) that the European third sector represents a social economy while the U.S. third sector is a nonprofit sector is fundamentally false because it focuses exclusively on the part of the U.S. social economy that has interested nonprofit scholars in recent years. Other major parts of the U.S. social economy (specifically coops) may be more limited and even vestigial than their European counterparts, but they do exist.

The important differences between the U.S. Canada, Europe, and other nations and regions in the scale and scope of various sectors of the social economy should not deceive us into the false and simplistic conclusion of the

¹² Given the very nature of the activity, for example, religious economic output is largely unmeasured and may, indeed, be unmeasurable as many have argued. As numerous Austrian-school economists have noted, lack of economic measurement is no reason to exclude religion or any other activity from conceptualization in the social economy.

first subhead of the Evers-Laville Chapter 1: “Nonprofit Sector *verses* Social Economy.”

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