

The Baring Foundation

The First Principle of Voluntary Action:

essays on the independence of the voluntary sector
from government in Canada, England, Germany,
Northern Ireland, Scotland, United States of America
and Wales.

Edited by Matthew Smerdon, Baring Foundation
Strengthening the Voluntary Sector – independence

The Baring Foundation

The Baring Foundation was set up in 1969 to give money to charities and voluntary organisations pursuing charitable purposes. In 40 years we have given over £98 million in grants. Our budget for grant-making in 2009 is £2.2 million.

The Foundation believes in the fundamental value to society of an independent and effective voluntary sector. It uses its funds to strengthen voluntary sector organisations, responding flexibly, creatively and pragmatically to their needs. The Foundation puts a high value on learning from organisations and their beneficiaries and seeks to add value to grants by encouraging the sharing of knowledge through a variety of means.

Strengthening the Voluntary Sector

In 1996, the Baring Foundation launched the Strengthening the Voluntary Sector grants programme. This programme funds organisational development work aimed at supporting organisations to be efficient and effective.

The programme has supported 712 organisations, giving a total of £14.5 million.

Strengthening the Voluntary Sector – independence

In 2006, the trustees added a focus to the grants programme inviting organisations to apply for work that would help them to maintain or increase their independence from government. This paper forms part of a series of papers designed to draw out the lessons from this grants programme. Please see the back cover for details of other papers in the series. These are available on our web-site.

www.baringfoundation.org.uk

Matthew Smerdon is Deputy Director at the Baring Foundation and leads the Strengthening the Voluntary Sector grants programme.

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Foreword

Professor Nicholas Deakin, Chair of the Strengthening the Voluntary Sector Grants Committee and Vice Chair, Baring Foundation.

One of the basic principles on which the Baring Foundation conducts its grants programmes is that our grant giving should be directly relevant to the main issues in the world in which the organisations we fund operate. Another is accountability. All the Foundation's programmes are subject to systematic evaluation and also provide the basis for regular informal exchanges between the foundation and organisations receiving grants through them. In this way, the judgments made by the Foundation in making our grants are continually supplemented and refreshed by direct contact with experience in the field. As Matthew Smerdon explains in his introduction to this collection, the need to sustain the independence of voluntary bodies in their dealings with the state at local and national level has clearly emerged as a key issue in the environment in which they now operate on behalf of their clients and members.

But this theme of securing the independence of voluntary organisations, charities, third sector organisations (call them what you will) which now forms the basis for the Foundation's domestic grants programme is not unique to England. Rather, it has clear resonance in many other societies, both elsewhere in the UK and in Europe and across the Atlantic. The Foundation has therefore decided to promote an exchange of experience, in the spirit of mutual learning, and has commissioned the essays that make up this volume to form the basis for further discussion of this important issue. This is also consistent with another of the Foundation's operating principle – that of giving the widest possible circulation to information and experience gathered in the course of our programmes. We hope that these essays will prove of value to practitioners – other grant givers and voluntary bodies – policy makers and academics working in this important area.

Nicholas Deakin

March 2009

The First Principle of Voluntary Action

Introduction

Matthew Smerdon, Baring Foundation

Background

In 2006, the Baring Foundation trustees added a focus to the Strengthening the Voluntary Sector (STVS) grants programme. They wanted to explore in more detail the effects on voluntary organisations of closer relationships with all the branches of government. In particular, they wanted to examine the impact these relationships were having on the ability of voluntary organisations to maintain their independence. Trustees could see the welcome opportunities for voluntary organisations of greater contact with government but also the threat that closeness would change what organisations do and the way they do it.

The Foundation could see that the ability of voluntary organisations to retain their independence varied considerably. The question that the Foundation began to explore was what are the circumstances under which organisations can achieve a productive relationship with government, where the experience and resources of voluntary organisations and government combine to greatest effect? The hypothesis was that the quality and effectiveness of the relationship is determined by the capacity of voluntary organisations to retain their independence. The programme was in no sense “anti-government.” Rather, it grew out of the Foundation’s belief that the independence of voluntary action is fundamental, whatever the hue or stance of the government of the day. At a time when all the political parties indicated their enthusiasm for the sector playing a greater role in public services, the programme sought to explore and to inform the continual search to discover how these relationships can best be managed.

In 2006, the Foundation made 22 grants totalling £1.8 million to organisations from across the sector. A broad range of work was funded. In 2008, a further seven grants totalling £1.3 million were made to organisations working in the field of advice and advocacy. Separate working papers are planned that describe these grants, their impact and the lessons that this work is generating.

Meanwhile, alongside the grantmaking, the Foundation is carrying out a range of activities including network meetings, policy influence and additional research with the aim of deepening our own and others’ understanding of the issues. As part of this, it was felt that there would be valuable experience to draw on from voluntary sectors in other countries. We were interested in similarities and differences in the history and current status of relationships between government and voluntary sectors in other parts of the world as they relate to independence.

At the end of 2007, we commissioned essays from academics in seven countries – the four countries of the United Kingdom, plus Canada, Germany and the United States of America.

The First Principle of Voluntary Action

The resulting collection, we think, offers interesting and useful insight into how independence is valued, the wide range of ways in which governments put pressure on independence and what we might learn from this. Authors have

chosen themselves to emphasise different themes in what are necessarily broad brush essays given the scale of the topic and the relative brevity required by the word limit. However, from grand sweeps of history to close scrutiny of relevant research projects, collectively the essays offer a set of perspectives that we hope will stimulate and shed new light on this topic. This introduction presents summaries of each essay and attempts to draw out some of the themes:

- The importance of the historical development of voluntary association and voluntary action.
- The value that independence has.
- The many reasons and ways in which independence is put under pressure by governments.
- The role and impact of new public management strategies and, more broadly, the neo-liberal agenda.
- The lessons that we can take from this experience.

The essays confirm that independence is fundamental to the principle and practice of voluntary action. They also confirm the many ways in which independence can be threatened and power exercised over the sector. The essays conclude however that prime responsibility for protecting independence lies with the sector itself. No-one else will, or should, do it for us.

A major issue since we commissioned these essays, but that occurred after final drafts had been submitted, is the global economic recession. In discussion, most authors reflected that it was too soon to tell what the precise impacts of this will be on independence, beyond being able to say with certainty that pressure is bound to increase as resources become scarcer.

The essays

Canada

Peter Elson argues that the relationship between the nonprofit and voluntary sector and the government in Canada is as long and deep as the history of Canada itself. Independence once enjoyed by mutual aid and religious organisations has evolved into a complex, embedded relationship with government in which the nonprofit and voluntary sector primarily strives to achieve a productive interdependent partnership rather than an independent or civil society relationship. Retrenchment policies and New Public Management practices initiated in the 1990s continue to define this partnership with the result that contractual obligations dominate, and representative advocacy has been marginalised in favour of policy forums for the generic 'citizen'. He concludes that the future of nonprofit and voluntary sector independence in Canada will be determined by the extent to which nonprofit and voluntary sector organisations come together under a representative regime which is transparent and inclusive.

England

Ben Cairns begins by summarising the New Labour government's interest in the voluntary sector, in particular its potential role as a provider of public services as well as an agent of social and democratic renewal. Central to governmental policy

for the sector has been an espoused commitment to the notion of independence. However, this is sometimes at odds with a more prescriptive and instrumental view which runs through much recent policy. Drawing on action research carried out since 2000, the essay considers the impact of the public policy environment on micro, small and medium-sized VCOs as well as how this has affected the degree of independence from government which they can enjoy. The implications of the conflicting messages within the body of policies concerning the sector are discussed and it is argued that independence might be best understood as dynamic and multi-dimensional, rather than a fixed entity, something to be won or lost at any given moment. The essay concludes by outlining three strategies, for both practitioners and policy makers, which might be employed to facilitate voluntary sector independence from government: the development of organisational self-consciousness; changes to the support provided for VCOs; and shifts in the thinking and practice of government at all levels.

Germany

Helmut Anheier describes how over five decades, the subsidiarity principle has functioned as a major organising principle of the German third sector. The principle continues to inform social policy frameworks, and allocates specific roles to government and private charities. Large networks of health and social service providers enjoy both considerable independence from government and significant financial state support in the fields in which they operate. While some criticise the resulting system of state-supported private welfare as corporatist, inflexible and inefficient, others view it as a constitutionally protected space of private action for public benefit in a society that had long been divided along religious, ideological and regional lines. In recent years, the subsidiarity principle has been challenged by changing economic and social conditions (unification, migration), and generally brought about an opening towards market solutions under the heading 'New Subsidiarity,' and at the expense of governmentally granted and supported independence.

Northern Ireland

Nicholas Acheson describes the development of the relationship between the voluntary sector and government in Northern Ireland and emphasises the important role of context in understanding the extent to which voluntary organisations are compromised and the extent to which the issue is viewed as problematic. The essay argues that as a result of the period of conflict in Northern Ireland and the subsequent peace process, voluntary organisations have tended to trade independence for insider access to government. One outcome has been that organisations have taken a fairly relaxed view of threats to independence. Nevertheless as the Assembly elected in 2007 finds its feet and a "post peace process" era comes into view, there is evidence that organisations in Northern Ireland are subject to familiar pressures due to an increasing reliance on contract-based funding. The paper speculates that debates in Northern Ireland on independence will increasingly reflect those elsewhere as the context normalises.

Scotland

In their essay, Eleanor Burt and John Taylor reflect that there is agreement in Scotland's voluntary sector that the sector's worth, value, and distinctiveness derive from its capacity for independent thought and action. Not surprisingly in a sector characterised by diversity, perceptions and experiences of the extent to which independence is realisable, the pressures upon it, and how it can best be achieved

and safeguarded are more variable. Though they affect international, national, and local organisations differently, funding relationships were the single most commonly cited threat to independence, drawing these organisations into tightly defined contractual, performance, accountability, modernisation and reform regimes for example. While organisations responded to these pressures in different ways emphasis was placed upon organisational values as guiding standards; on strong leadership and governance; and on demonstrable performance.

United States of America

Mark Rosenman describes how US charitable organisations found their origins in the country's colonial times. They were institutionalised in a Revolutionary determination to serve the common good through voluntary social compacts of citizens independent of either an all powerful government or an established church. Through over 230 years, their rights and prerogatives of free association, speech and action have been protected constitutionally as generally independent of government intervention *except* when they are exercised by and through formal organisations wishing to avail themselves of certain preferences extended to charities. Government establishes the definition of formal charitable purposes that qualify for and receive these preferences, usually in regard to tax treatment. Beyond the power to decide what is or is not an accepted charitable purpose, government can and does moderate the independence of formal nonprofit groups by regulating the operations and programmes of organisations seeking to serve those purposes. There have been efforts since the 1960s by some in the federal government to significantly limit charities' capacity to broaden and strengthen participation in the democratic process. Changes in government funding of charities service delivery have also affected the independence of these groups. Additionally, in the last few years, federal and state governments have initiated other actions which threaten to erode the independence of the nonprofit sector in other consequential ways.

Wales

Graham Day explains that devolution in Wales has brought the voluntary sector closer to government, as a partner in a unique Voluntary Sector Scheme. There is a movement to create a stronger and more focussed civil society, underpinned by distinctively Welsh social and political values, and voluntary organisations are under pressure to help deliver on this agenda by working with government as part of a nation-building consensus. The National Assembly for Wales is designed to be open and inclusive, with many opportunities for partnership and consultation. Voluntary activity is valued because it enables close contacts with communities and interests that otherwise might be hard to reach. Policy makers regularly stress the importance of an independent voluntary sector. But, in order to work more effectively with the sector, the Assembly Government has encouraged the adoption of a more professional and integrated approach and stimulated the development of coordinating networks. It expects voluntary organisations to play a key role in promoting a more active and accountable citizenship. The result is a more hierarchical and orchestrated set of relationships which favour the larger and better resourced voluntary organisations. This can create distance from rank and file volunteers, and exclude smaller organisations. It can also reduce the ability of the sector to challenge government. Independence is threatened, because government's aims may be substituted for those freely chosen by volunteers and the organisations they support. There is some evidence from within the sector that members see the need for alternative means of communication, and a different funding paradigm, to protect their independence and capacity to innovate.

A discussion of the principal themes

Historical roots

The ways in which voluntary association and voluntary action have developed within nations, often over several hundred years, is an important theme in all the essays. They trace the complex interactions between public effort and action by private citizens. They record how rights to freely associate became enshrined in tradition as well as in law, and they describe how organisational forms grew up to harness the role of citizens providing benefit and serving the common good, providing institutional alternatives to state-centred action. In the USA, the first amendments to the Bill of Rights, which came into effect in 1791, elaborated the basis for the nonprofit sector in that country by guaranteeing freedom of religion, speech, assembly, press and petition. In these ways, voluntary action has come to define aspects of national identity.

As public sector welfare arrangements became formalised, new relationships were fostered between government and voluntary action resulting, in some places, in interdependent partnerships, and in others more adversarial relationships leading to different conceptions of state-centred and association-centred societies. In Germany, the principles of subsidiarity and self governance historically dominated, creating a highly devolved and decentralised public sector with close ties between organised civil society and public governance structures. The role of devolution in Scotland and Wales brought opportunities and threats: the opportunity of closeness with government, of new dialogue and understanding but the threat of the sector being re-fashioned in government's eyes. In Wales, where the voluntary sector was seen as previously weak, fragmented and poorly resourced, the new Welsh government saw the sector as a vehicle for achieving its own ends especially around helping to make devolution a successful enterprise and in achieving the impression of inclusiveness.

The roles of religion and conflict have particular prominence in the essays on Germany and Northern Ireland. In Germany, historic conflict between Protestantism and Catholicism interacted with issues such as how religion should react to rising totalitarian tendencies in Europe. The view of influential German Jesuit Nell-Breuning gave priority to individual compassion and community solidarity over state-provided assistance and public welfare programmes. This alternative to state institutions meant that the Catholic Church was well placed to develop charitable institutions after the Second World War in a country with a discredited state and a broken public administration. This went on to contribute to the development of the principle of subsidiarity as an alternative to public welfare.

In Northern Ireland, the cost of the conflict can be counted in deaths, injuries, ill health, disability, trauma, spatial segregation and the fragmentation of civil society into two antagonistic ethno-religious blocks. This has led effectively to two separate spaces for voluntary action even if, in more recent times, there has been important progress on achieving more contact between organisations across this divide.

Matters of principle and of effectiveness

Consistent to all the essays is the notion that independence from government is the first principle of voluntary action and fundamental to the good society. In discussing what independence means, the Scottish essay helpfully draws the distinction between independence as a negative liberty – freedom from constraints

– and independence as a positive liberty – the freedom to think, to experiment, to uphold values and to challenge. This concept of promoting the capacity to secure positive freedoms has certainly been the basis of our own efforts at the Baring Foundation through the STVS programme.

The essays describe how the voluntary sector's worth, value and distinctiveness is derived from its independence and its separation from government. In the USA, academics and practitioners refer to the nonprofit community as the Independent Sector. This importance of independence reflects the long-standing desire, as well as the legal right, of people to associate together to pursue interests, hobbies and to celebrate shared beliefs and aspirations. Through history, independence has created important spaces outside state control. In Germany, this independence provided an island of organisational and cultural continuity outside those groups implicated by Nazism. Independence also creates the freedom to engage in the democratic process, to challenge government, to campaign, to dissent and to promote interests that are not dominant and which those in power do not share or wish to see advanced.

Beyond the point of principle, the point is argued that effectiveness depends on independence and, on that basis, government should resist intruding into policy and programme matters best determined by organisations themselves. Part of this effectiveness rests in voluntary organisations being generally seen as better placed than public bodies to engage with and represent marginalised and vulnerable communities. Independence is also said to lead to service innovation and to increased service quality. It creates the freedom to choose clients groups based on needs. It enables voice and democratic engagement, attracts volunteers, creates clarity of organisational direction and values, develops organisation reputation and brand and instils public trust and confidence. The Scottish essay places particular emphasis on the importance of being able to innovate in a context of standardised public services that are not traditionally seen as keen on risks and innovation.

Whilst stating these broad advantages, all the authors are careful to say that independence is not a fixed entity but rather it is dynamic and multi-dimensional with variable and nuanced definitions. Some go on to focus on the concept of interdependence as both government and voluntary organisations carve out the space to negotiate over what each values about the other and what each has to offer. The Scottish essay takes this further to ask whether independence may not in part be damaging, part of what the authors call a 'pathology of independence' that gets in the way of organisations' potential to come together as a movement.

Power and ideological control

The USA essay sets out particularly stark examples of government aiming to silence voices that articulate alternative solutions to problems. For example, under Republican administrations since the 1980s, voluntary organisations in the US have been banned from mentioning the existence of, and certainly not providing, abortion as a health or family planning option even if this work was financed with private contributions. The USA essay goes on to point out that direction by government encourages organisations into a model of direct service provision closer to palliative relief than to longer term development initiatives.

All the essays reference independence coming under pressure as a consequence, conscious or not, of the state withdrawal of providing public services. The USA essay captures this 'double bind' faced by charities that are called on to meet greater need as government reduces the services it provides directly.

Meanwhile, the England essay particularly, charts how whilst there is reduced public sector provision of services, there is increased centralised control over the incoming providers of these services through funding mechanisms and arrangements for demonstrating accountability. There is more on this below.

Finally, these essays demonstrate the ways in which the sector is harnessed as a vehicle for government's own ends. In Wales this was to help ensure the success of devolution after previous failures, to give government credibility, and to tackle any impression of disunity, immaturity and apathy.

Many pressures on independence

The essays collectively provide a fascinating review of the various methods through which independence is put under pressure.

First and foremost is the rise of performance-based contracts to deliver public services as the principal mechanism for funding the sector. The England essay points to a more prescriptive and instrumental view of the voluntary sector made possible by the rapid increase in the proportion of income to the sector derived from contracts. The USA is the country with perhaps the longest experience of this development and this essay describes how voluntary organisations have increasingly sought to describe themselves in government's language, forcing themselves to adapt to what the contractor seeks and not necessarily what is needed by their beneficiaries. In all cases the authors are concerned that voluntary organisations become instruments of government policy rather than independent agents. All countries report an increase in this form of funding particularly, Scotland, Canada, Wales and England although it is argued that this development is slower in Northern Ireland.

Linked to the rise of contracting is a corresponding change in accountability and reporting arrangements enable government to exert control. Equally there is a corresponding introduction of tendering regimes that favour low-cost, highly competitive service providers. Contract conditions can limit extra-contractual activities, including advocacy and can lead to self-censorship to avoid losing contracts. Meanwhile, the focus on 'project funding' and basic underpayment for services undermines the ability of organisations to invest in their infrastructure. Traditional practice in contracting means this form of finance is unpredictable and short term. The Canada essay points out that the dominance of publicly funded service provision by organisations makes them particularly vulnerable to sudden cuts in funding.

Increasing prescription on programmes, the imposition of quality systems and other forms of management over-ride organisational distinctiveness and diminish capacity to respond to needs as the organisations perceive them. Access to services can also be controlled by the funding body rather than by the voluntary agency responding to the needs that are encountered. The Best Value regime is noted in the Scotland essay as putting pressure on organisations to do more with less.

The Canada and USA essays put particular emphasis on the role of regulation and tax treatment in shaping the activity of the sector. In the USA the independence of nonprofit groups has been moderated through the establishment and subsequent refining of the definition of charitable organisations that qualify for tax preferences. Government in the USA has used the favourable tax treatment to argue that this in effect constitutes government subsidy and uses this to coerce organisations to use surpluses to support government priorities, to prioritise issues

defined by government and not to carry out certain work. As already noted above in relation to abortion, there exists what amounts to a “Gag Rule” where the US Supreme Court has ruled that the government has the right to limit a voluntary organisation’s activities and even what its staff says. This, in effect establishes government jurisdiction over charities beyond even any direct funding relationship. Some voluntary organisations in Canada have faced warnings of potential deregistration for their political activity but to date no concrete action has been taken.

The Wales essay talks about the creation of authorised channels of communication with government. The sector in Wales has recently been given numerous opportunities to engage with government at national and local level. The sector there is seen as a key partner in the work of the Welsh Assembly Government to the extent that its future is embedded and tied to the development of the Assembly. These moves suggest the emergence of a manufactured civil society led and orchestrated from above, rather than spontaneous growth inspired by truly voluntary action. A further interesting observation about these authorised channels is that some organisations are filtered to succeed. In the USA, other forms of channelling are visible through, for example, the way priority is given through tax credits to certain types of charitable activity.

Finally, new funding options such as those surrounding models of personalising services are noted. This switch to consumer subsidy and fee-for-services perpetuates the marketisation of services.

The role of New Public Management

This last point leads into a topic that requires specific mention here as it appears in all the essays in some form. The rise of New Public Management approaches is central here, the basic assumption being that efficiency, effectiveness and value for money are advanced through a greater orientation to the principles of markets, competition and efforts to improve internal efficiency. This posits citizens as consumers and the subsequent mechanisms constructed to put this approach into practice undermine the role and value of voluntary organisations as democratic intermediaries.

The increasing role of competition being seen as the primary motivation for improved performance is noted particularly in Germany, England and the USA. Also described, is the increase in the focus on social enterprise although this is criticised for its contribution to the belief that the market is the answer to funding shortfalls, with the possible consequence that government absolves itself of responsibility.

Other implications of this agenda are observed: the concentration of larger organisations and fewer small to medium organisations, the reduced contribution of voluntary organisations to their wider roles in building communities and supporting civil renewal; a reduced ability to stay true to community development principles and to be responsive to the needs of communities; and organisations, particularly infrastructure bodies, becoming too close to government. Several essays conclude that this lessens the ability to attract and motivate volunteers and staff.

Beyond this, is the role of the broader neoliberal agenda especially commented on in the USA and Canada where the withdrawal of the state leads to an expectation that charities will fill the gap in provision. This encourages a fundamental shift in

organisations from citizen engagement to the delivery of designated services. Under this approach, advocacy groups are singled out for the most severe funding cuts leading to change in character and ethos of sector and depoliticised social policy. In the Canada essay, evidence is given of the reduction in funding for social policy and research.

What to do?

All the essays point to reflections and actions that could help voluntary organisations to protect their independence in the face of these challenges. As the Baring Foundation acknowledged during the development of the STVS grants programme, some organisations appeared better able than others to safeguard their independence and it was useful to ask why. What are the characteristics of these organisations and can others be helped to develop them? Again, consistent with the Foundation's belief at the start of the grants programme, some of the essays note that a funding relationship need not inevitably spell the end of independence, though this may be more difficult to argue in the USA and Canada where potential withdrawal of tax advantages is used aggressively.

- The Scotland essay argues helpfully that perhaps protecting independence begins with an acceptance that **independence is earned**. A common theme throughout the essays is that organisations should focus on their own values, roles and purposes and be prepared to ask themselves how far down the path of conformity they will go.
- Organisations also need to **use their advocacy capacity** and they may not be doing so enough now. The Canada essay presents an analysis of funding decisions in organisations following government changes to regulations on the amount of political activities organisations can undertake. The changes represented a potential annual increase in advocacy capacity of more than \$110 million (CDN). There is no evidence, however, that even a fraction of this capacity is being taken up in political activities, so while voluntary organisations may call for greater flexibility to advocate, existing capacity lies dormant.
- Organisations must **develop the financial means to influence policy**, though it is acknowledged that opportunities are rare. Organisations need particularly to think about and articulate their role in relation to government and civil society.
- Organisations need to think actively about how they **enhance democracy**. This provides the context for arguing for and assessing the state of independence. Perhaps linked is a call for a reinvigoration of social policy models based on concepts of self-determination and participation, making government genuinely responsive to citizens, and not the other way around.
- Organisations also need to **view independence strategically**, rather than in response to sudden threats and develop the skills to do this. The role of organisational leadership and trustees is central.
- Great importance is placed on evaluating performance so as to **demonstrate value and effectiveness** and of being transparent, inclusive and representative. Being able to demonstrate legitimacy is a cornerstone of any claim to independence.

- An obvious advantage is having a **diverse range of funding streams**, although organisations must be prepared to refuse funding where the conditions undermine their purpose and values or their ability to challenge and dissent.
- The role and **importance of collaboration**, and this potentially being at odds with a simplistic approach to independence as being about keeping yourself separate, is central. The Wales essay helpfully notes that the tendency to group together can lead to loyalties that are localised and divisive but the role for local and national infrastructure bodies to support organisations working together is noted. Joining together is one way also of increasing the sense of bargaining power that the sector might have, which is regarded in these essays as under-acknowledged at present.
- In Canada, England, Scotland, Northern Ireland and Wales there are **formal agreements for managing the relationship** between voluntary sectors and governments. These establish, at least in rhetoric, government's commitment to respecting independence, unlike in the USA. The essays report mixed results in terms of the impact of these approaches.
- There is a range of **suggestions for governments**. The England essay argues that governments should reinvigorate their thoughts about the sector as an alternative service provider rather than one that is supplementary or complementary to government. The USA experience may endorse this, though not where alternative means replacement. A clear need is for government to be appropriate and proportional in its demands on the sector and its expectations of it. There is clear value and merit in a model that says create an environment where the sector is trusted and sustained and fund and regulate the sector with a light touch. The sector enjoys its freedom from constraints and does its best work under these conditions.

Conclusion

It seems it has become traditional in literature on the voluntary sector in the UK these days to quote William Beveridge's 1948 report 'Voluntary Action; a report on methods of social advance' and this introduction will not disappoint.

Certainly, independence from government is absolutely central to Beveridge's vision for voluntary action in a social service state. The persistence of the problems faced by society required all parts of that society to make their distinctive contributions to solving them. Furthermore, the violence of the Second World War, the subsequent ruthless spread of Stalinist totalitarian rule and the comprehensive manner in which citizen action had been so comprehensively hijacked by these destructive regimes, convinced Beveridge that voluntary action, action with a will and a life of its own, was vital to ensuring that 'night's insane dream of power over other men, without limit and mercy, shall fade.' (Beveridge, 1948: 324). Beveridge thought that voluntary action is a fundamental expression of what it means to be free and therefore work to preserve its independence is of the highest importance.

References

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Independence in a Cold Climate: A Profile of the Nonprofit and Voluntary Sector in Canada

Dr. Peter R. Elson, Institute for Nonprofit Studies, Mount Royal College, Calgary, Alberta¹

Abstract

The relationship between the nonprofit and voluntary sector and the government in Canada is as long and deep as the history of Canada itself. Independence once enjoyed by mutual aid and religious organisations has evolved into a complex, embedded relationship with government in which the nonprofit and voluntary sector primarily strives to achieve a productive interdependent partnership rather than an independent or civil society relationship. Retrenchment policies and New Public Management practices initiated in the 1990s continue to define this partnership with the result that contractual obligations dominate, and representative advocacy has been marginalised in favour of policy forums for the generic 'citizen'. The future of nonprofit and voluntary sector independence in Canada will be determined by the extent to which nonprofit and voluntary sector organisations come together under a representative regime which is transparent and inclusive.

Background

In Canada, religious charities in the 1600s were the first to build and operate schools and public hospitals. What began as modest and totally voluntary activity is today a large and complex mix of more than 180,000 organisations which span the full range of social, education, health, and community development services as well as expressive cultural, recreational, and environmental organisations. When hospitals, colleges and universities are included the nonprofit and voluntary sector in Canada has the second largest workforce in the world as a share of the economically active population, and accounts for 6.9 percent of the National GDP (in 2004 figures). Nonprofit hospitals, colleges, and universities now account for so much more economic activity than the rest of the nonprofit and voluntary sector that they are routinely statistically separated so the overall picture of the sector is not distorted.

For the purposes of this essay, the term "core" nonprofit and voluntary sector will apply to all organisations with the exception of hospitals, colleges and universities. When the term "overall" nonprofit and voluntary sector is used, hospitals, colleges and universities are included.

The focus of this analysis of nonprofit and voluntary sector independence will be on events and trends which have occurred in Canada since the early 1990s, although there will be times when earlier events are referenced when they are relevant to understanding these contemporary events and trends. There are three main reasons why this period has been chosen. First, the mid 1990s represent a period when substantive cuts in core funding to nonprofit and voluntary organisations occurred, cuts which continue to have a significant and particular impact on policy and advocacy oriented organisations. Second, like many countries in Europe and elsewhere, the International Year of Volunteers in 2001 provided a

(1) The author would like to express his appreciation to Susan Phillips and Michael Hall in Canada for their insightful comments of an earlier draft of this paper; and to reviewers in England, Nicholas Deakin, Matthew Smerdon, and David Cutler for their supportive feedback.

symbolic opportunity for an acknowledgement of the nonprofit and voluntary sector which may not have otherwise occurred. Third, thanks to a series of national surveys which were conducted during this period, more is now known about the nature and scope of the nonprofit and voluntary sector in Canada than at any time in its history. These developments and surveys provide a profile on the sector which both highlight its strengths and underscores ongoing challenges to its independence.

The nature of the nonprofit and voluntary sector in Canada

The size and nature of the nonprofit and voluntary sector in Canada is a reflection of its dominant service orientation. Seventy four percent of nonprofit and voluntary organisations undertake service activities in the areas of health, education, social services and community development and housing. A further 22 percent of nonprofit organisations are engaged in expressive activities such as religion, sports, culture and recreation, environmental and civic activities. The National Survey of Nonprofit Voluntary Organisations which was conducted in 2003, provided the first comprehensive portrait of the nonprofit and voluntary sector in Canada. Of the 161,000 nonprofit and voluntary organisations identified in the survey 80,000 were registered charities.

The nonprofit and voluntary sector paid and non-paid workforce in Canada is the second largest in the world as measured by the Johns Hopkins University Comparative Nonprofit Sector Project. In 2004, the GDP of the core nonprofit and voluntary sector was \$29.4 billion (£14.7 million) - accounting for 2.5 percent of the total Canadian economy. This share increases to 6.9 percent when hospitals, colleges and universities are included, is larger than the automotive or manufacturing industries, and outperformed the economy as a whole (See Figures 1 below and 2 opposite).

Annual % change, current prices

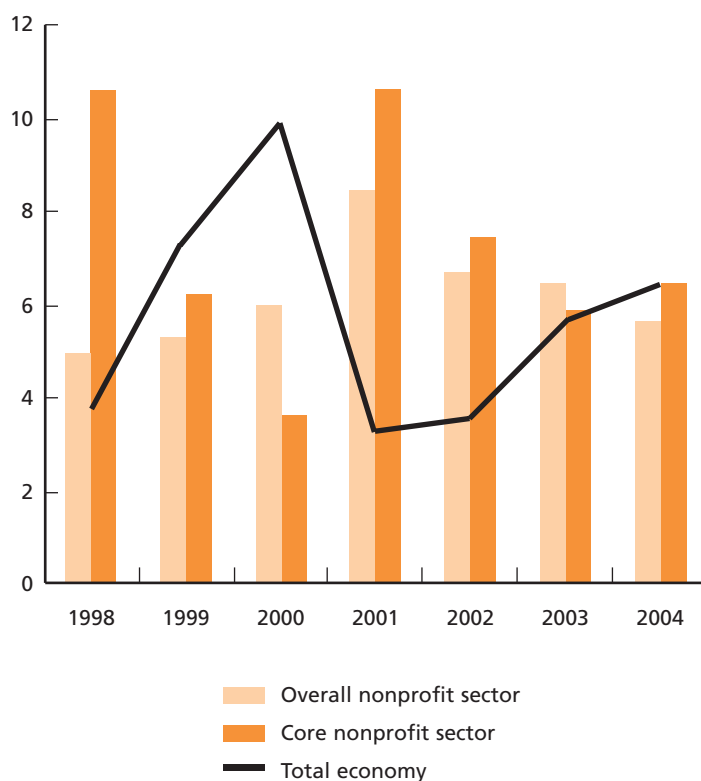
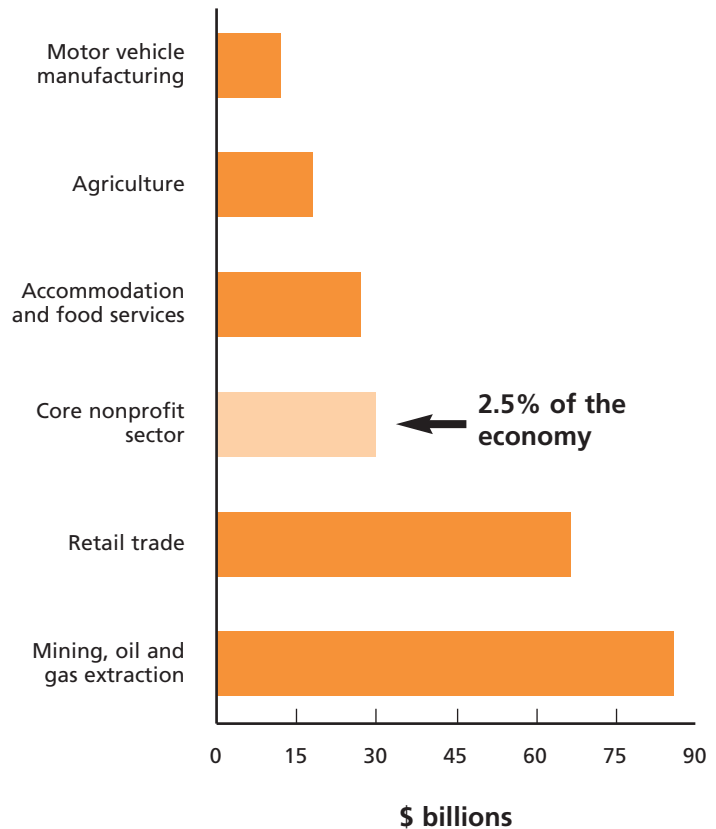


Figure 1: **Growth of Gross Domestic Product (1998 – 2004).**

Figure 2: **Comparative Gross Domestic Product (2004).**

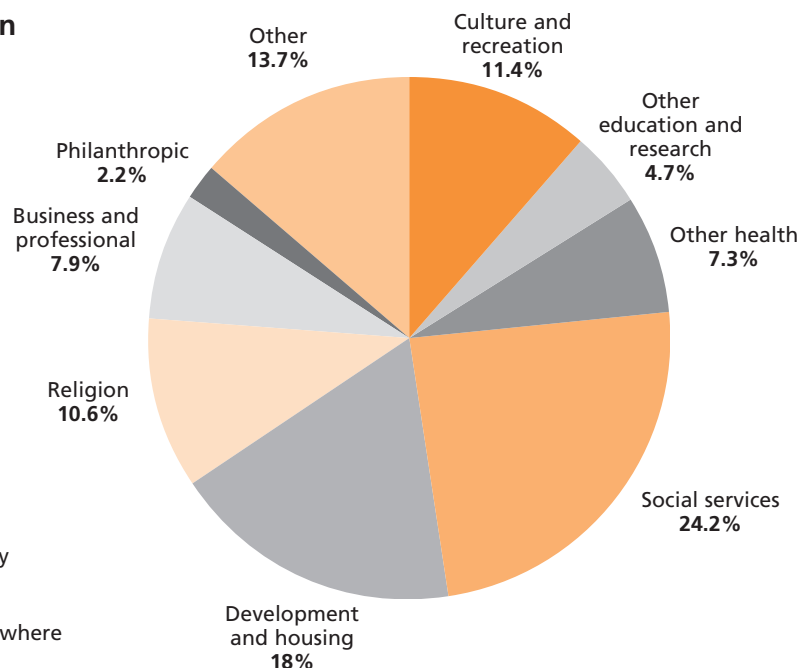
Source: Statistics Canada. (2007).



Hospitals alone represent one-third of overall nonprofit and voluntary sector revenue, 40 percent of the overall sectors' GDP, and has a GDP which is twice that of universities and colleges combined.

Within the core nonprofit and voluntary sector, social services (24.2 percent), community development and housing (18 percent) and culture and recreation (including sport) (11.4 percent) organisations account for more than half of the economic activity of the core nonprofit and voluntary sector. The remaining core nonprofit and voluntary sector organisations are concerned with religion (10.6 percent); business and professional organisations (7.9 percent); and other health organisations (7.3 percent) (See figure 3 below).

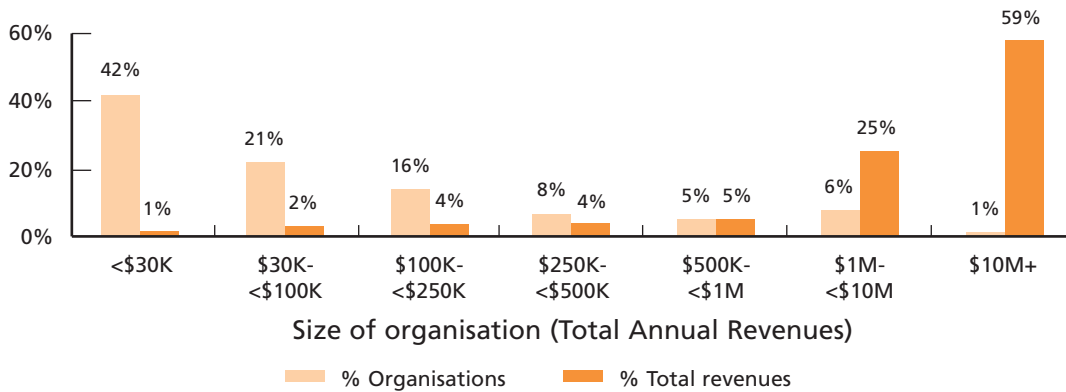
Figure 3: **Distribution of gross domestic product by area of activity: core nonprofit sector, 2004.**



Note: The "other" category includes environment, law, advocacy and politics, international, and not elsewhere classified.

When the composition of the sector is expressed in terms of number of organisations, a very different profile emerges. For example, hospitals dominate the economic power of the sector, but only represent 0.5 percent of the total number of nonprofit and voluntary organisations. The top 1 percent of nonprofit and voluntary organisations command 60 percent of all revenues (see Figure 4 below).

Figure 4: **Distribution of Revenues by Size of organisation, (Canada, 2003).**

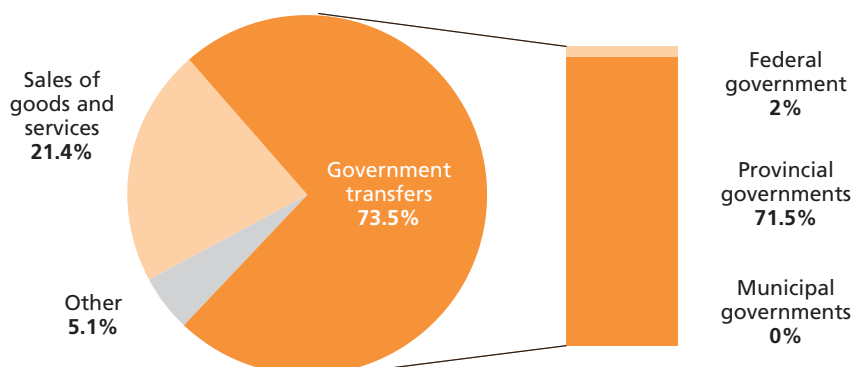


Source: Michael Hall (2007) Imagine Canada Policy Summit: Managing Change within Canada's Community Nonprofit Sector.

There is also a significant and growing disparity between small and medium organisations, and very large nonprofit and voluntary organisations. Large organisations continue to grow while small and medium organisations continue to struggle to survive, often competing with large, sophisticated organisations for contracts and foundation funding.

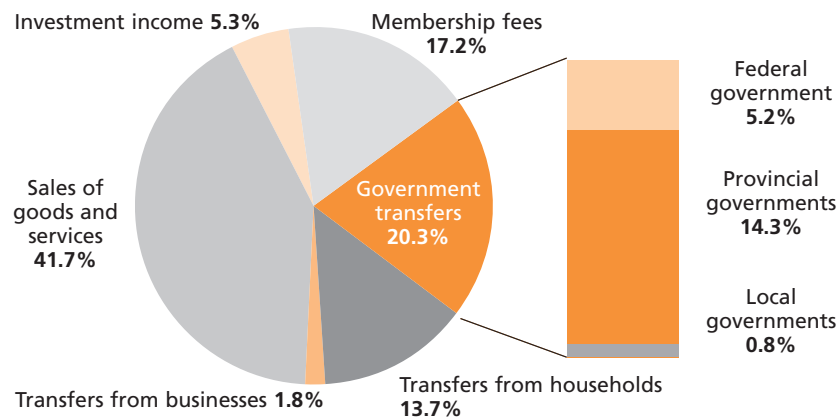
The most recent *Satellite Account of Nonprofit Institutions and Volunteering* reports a significant increase in donations from households to hospitals, universities and colleges, which have traditionally been an important source of funds for small nonprofit and voluntary organisations. Between 1997 and 2004, the share of household donations which went to hospitals, universities and colleges increased from 6.2 percent to 9.6 percent. Government transfers still represent the single largest source of funding to hospitals, colleges and universities. As illustrated in the figure below, federal and provincial transfers represent 73.5 percent of their revenue.

Figure 5: **Revenue by source: hospitals, universities and colleges, 2004.**



Source: Statistics Canada (2007). *Satellite Account of Nonprofit Institutions and Volunteering*. Ottawa: Statistics Canada.

In the core nonprofit and voluntary sector in Canada, fees account for 48 percent of revenues, followed by government revenue at 39 percent and philanthropy at 12 percent. As figure 6 profiles, the provincial governments across Canada represent the largest source of government revenues, due to their primary jurisdictional responsibility for health, education and welfare.

Figure 6: **Revenue by source: core nonprofit and voluntary sector, 2004.**

Source: Statistics Canada (2007). *Satellite Account of Nonprofit Institutions and Volunteering*. Ottawa: Statistics Canada.

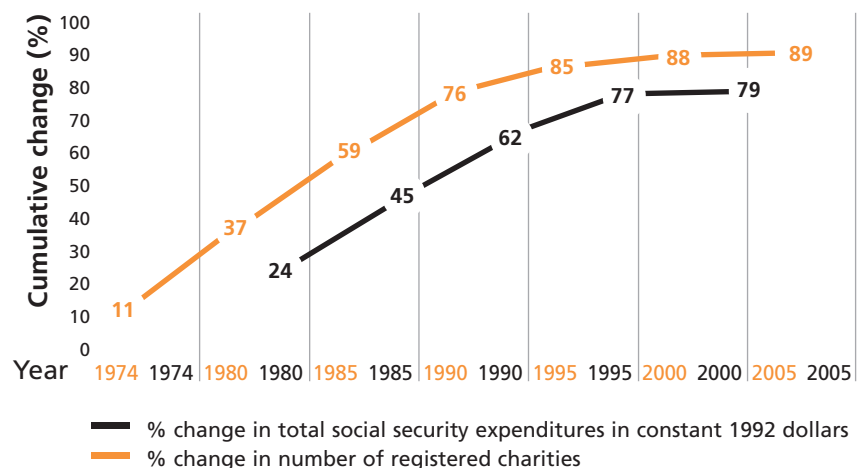
Half of the nonprofit and voluntary organisations in Canada (54 percent) are run entirely by volunteers. In 1997 the overall nonprofit and voluntary sector accounted for 1.1 billion hours or 567, 467 job equivalents. In 2000 this decreased slightly to 1.0 billion hours or 538, 907 job equivalents. This trend reflects an emerging pattern that fewer Canadians are volunteering, but those who do are volunteering even more. This decline has been linked to a growing Canadian economy which has seen more people participating in the workforce. In 2000, smaller organisations, particularly in the areas of culture and recreation, social services and religion, mobilised over 86 percent of the total value of volunteer work.

Recent nonprofit and voluntary sector history

The greatest period of growth (see Figure 7) in health, education, and social services in Canada took place from the 1960s to the 1980s as social policies were implemented across a growing population and an ever-expanding economy. The direct delivery of many services such as children's aid services, hospital and home care, were provided by registered charities. Rather than nationalise these services, which was jurisdictionally impossible, the federal government transferred funds to provinces to support what was primarily a mixed social economy of social service delivery. Canada has no history of a state monopoly of welfare provision. From the outset, nonprofit and voluntary organisations have been stronger provider partners *with* government, than adversaries challenging the government to meet state obligations to those in need.

Figure 7: **Comparison of cumulative percent change in registration of charities and total social security expenditures (1974 - 2005).**

Source: Guest
The Emergence of Social Security in Canada, Third Edition; Elson;
A Short History of Voluntary Sector-Government Relations in Canada, The Philanthropist, 20(1): 36-74.



The growth of charities and the welfare state in Canada was synchronous in many ways and fostered an *interdependent partnership* rather than an independent or adversarial relationship. Governments needed specific types of programmes and services to be provided and regulated while also maintaining a 'window' on community needs and trends. Compatible voluntary sector charities had similar programme objectives, needed a reliable source of funds, and felt they were in a position to influence government policy. I would argue that this policy influence was rarely tested as policy agendas were set by government and influence, such as it was, was limited to opportunities to comment within a pre-determined policy context. This partnership, however, has not been without tension as provincial governments, the major source of funding for voluntary organisations, continually shifted their funding priorities and demanded greater levels of accountability. At the same time voluntary organisations needing greater flexibility to meet community needs, advocated for policy changes, and moved to diversify their own programmes to reduce their dependency on government funding.

Beyond the instrumental role of individual nonprofit and voluntary organisations there has been a growing recognition of the size and value of the voluntary sector as a whole in Canada and its relationship to government. The importance of this sectoral relationship was formally recognised in Canada for the first time in December 2001 with the signing of a bilateral policy agreement between voluntary sector representatives and the federal government called the *Voluntary Sector Accord*.

The Canadian Accord², like the 1998 UK Compact³ on which the Accord was based, was a policy agreement which outlined a framework and processes for a mutually desired relationship, including a shared vision of civil society and a desire for collaboration and partnership. The Accord outlined broad vision statements, values, general principles, and a mutual commitment to building a positive future relationship toward common purposes. Excerpts related to voluntary sector independence are outlined in the box opposite.

The apparent aim of The Accord was to strengthen the relationship between the two sectors. The Accord encouraged better partnering practices and consistent treatment of voluntary organisations across government; although no enforcement mechanisms were put in place to ensure that this would happen. The agreement was also intended to promote a better understanding within each sector of the constraints, operations, and practices of the other. This happened to a limited extent, but for the most part existing institutionalised pre-Accord practices prevailed. Codes of Good Practice in both Funding and Policy Dialogue were developed as documents to guide the implementation of the Accord within the federal government and the voluntary sector. As such, the Voluntary Sector Accord in Canada, at least on paper, set out mutual expectations for establishing favourable relations between the two sectors which were also intended to have broader public policy implications.

The actual consequences were very different. The Canadian Accord became a watered-down version of its English counterpart and included only nominal accountability measures for either the voluntary sector or the government. In other words, there were no material or political consequences for ignoring the provisions of the Accord and it wasn't long before this is exactly what the federal government did. Accord implementation across government departments was monitored for two years and then dropped. The voluntary sector at this point lacked the representational infrastructure to keep the Accord on the government's policy agenda.

(2) The full title is: Accord between the Government of Canada and the Voluntary Sector. The French version (translated) is Accord between the Government of Canada and the Voluntary and Community Sector.

(3) The full title is: Compact on Relations between Government and the Voluntary and Community Sector in England. Compacts in Scotland and Wales were signed within one month of each other in 1998.

An Accord Between the Government of Canada and the Voluntary Sector (2001) – (Excerpts related to independence).

Scope of the Accord: This Accord does not compel the Government of Canada and the voluntary sector to work together; rather, it outlines the values and principles that will govern the relationship when they choose to work together.

Purpose of the Accord: To strengthen the ability of both the voluntary sector and the Government of Canada to better serve Canadians.

Independence: The Government of Canada and the voluntary sector are autonomous, have unique strengths and separate accountabilities, and agree that:

Voluntary sector organisations are accountable to their supporters and to those they serve in providing services, organising activities and giving collective voice at the local, national and international level;

The independence of voluntary sector organisations includes their right within the law to challenge public policies, programmes and legislation and to advocate for change; and

Advocacy is inherent to debate and change in a democratic society and, subject to the above principles; it should not affect any funding relationship that might exist.

Dialogue: Dialogue should be open, respectful, informed, sustained, and welcome a range of viewpoints.

Co-operation and Collaboration: The Government of Canada and the voluntary sector agree that the social fabric of communities is strengthened and civic engagement is increased when they work together to address issues of mutual concern.

Source: *An Accord Between the Government of Canada and the Voluntary Sector*, Voluntary Sector Task Force, Privy Council Office (2001) see: <http://www.vsi-isbc.org/eng/relationship/accord.cfm>

What was a core initiative to the nonprofit and voluntary sector was seen by most in the federal government as “another file” to be juggled as one among many. The voluntary sector, without a sustained and coherent voice, had few resources to keep the federal government tied to its commitments, and subsequent changes in government leaders and then governing parties has virtually brought the relationship back to the cold climate which existed in the mid 1990s.

This chill is not just political. Weak infrastructure, the Achilles heel of voluntary sector independence, was vividly reflected in the 2003 report *Cornerstones of Community*, based on Canada’s first and only National Survey of Nonprofit and Voluntary Organisations. Of the organisations surveyed, more than half (58 percent) reported having problems planning for the future, and for 15 percent of the organisations surveyed, this was a serious problem. Mid-sized (\$250,000 - \$499,000) [£125,000 – 250,000] and very large (\$1 million plus) [£ 500,000]

organisations surveyed reported the most difficulty planning for the future. Overall, this was the most common organisational capacity problem reported by the survey.

Fewer organisations, particularly smaller ones, reported difficulty in adapting to change, but it was still a problem cited by 41 percent of survey respondents. 39 percent of respondents reported a lack of internal technical and administrative capacity, which would be considered core functions and frequently make organisations ineligible for funding. Planning and infrastructure problems tended to increase with the size of the organisation, putting hospitals, universities and colleges at the forefront in this category. While this survey has not been replicated, funding patterns have not significantly changed since the survey was conducted and the challenges continue.

When the conservatives under Stephen Harper were elected in January 2006, a Blue Ribbon Panel on Grants and Contributions was established to hear views on government funding. This was complemented by a Task Force on Community Investments which involved voluntary sector representation and was intended to identify sector specific funding issues. In June of 2008 a three-year plan to implement reforms to the Grants and Contributions was introduced, attempting to blend the continuing and overriding desire for accountability with simpler administrative processes, increased efficiency, and risk management, rather than risk aversion.

Fortunately for the voluntary sector, some of the departments with the most contact with the sector are leading these changes, although what is being changed is not necessarily consistent across departments. Horizontal governance is a significant challenge for all governments and thus cautious optimism would be the watchword at this time. It wouldn't be the first time that programmes were announced with great fanfare, only to be squashed at a later date because of their partisan political label.

Regulation

Charities in Canada have been regulated under the Income Tax Act since May 1930. When regulations were first introduced under the *Income War Tax Act*, the meaning of charity was directly adopted from Common Law definition of public purposes as laid down by Lord McNaughton in the *Pemsel Case*. At the time, legislators were more concerned about potential foregone tax revenues than they were about what constituted the meaning of charity. In addition, legislators saw themselves, not charities, as the primary arbitrator concerning what constituted the public good. As a result, tax law and charity regulation in Canada have always been aligned.

Nonprofit organisations in Canada register as nonprofit corporations at either a provincial/territorial or federal level of jurisdiction. Unlike charities, there is nominal accountability for nonprofit organisations unless fraud or some other related illegal activity is uncovered. Jurisdictionally, provinces in Canada are responsible for the regulation of charities. Historically and practically, thanks to the *Income Tax Act*, the de facto regulation of charities is carried out by the Charities Directorate of the Canada Revenue Agency which ensures that charities comply with relevant sections of the *Income Tax Act*. This regulatory role involves imposing sanctions and preventing abuses of the tax system, a tax system which is governed more by protection of privacy than transparency.

Canada, unlike England and Wales, has not had an independent charities regulator. Centralized regulation and registration of charities was introduced in 1967 as a consequence of a scandal arising from unsubstantiated charitable receipts; and from this period until recently the charities regulator had a reputation of being secret and punitive rather than supportive toward charities. Charities in Canada, now numbering more than 83,000, are still registered and regulated by the Charities Directorate of the Canada Revenue Agency. In turn, regulations enforced by the Canada Revenue Agency are governed by the *Income Tax Act* under policies established by the Department of Finance. The Department of Finance sets tax policy while the Canada Revenue Agency is the administrator. Several attempts by the voluntary sector over the years, particularly the last decade, to have the federal government regulate charities independently from the tax system have been resisted.

Recently, however, the Charities Directorate has enhanced its administrative, as distinct from its regulatory, relationship with charities and has developed its technical support and policy dialogue with Canada's charitable organisations. This supportive role, a significant shift in the culture of the Charities Directorate, has emerged since the initiation of the five-year Voluntary Sector Initiative in 1999, its own internal strategic review process, and resources to match its targets. The Charities Directorate has significantly enhanced its electronic services, ensured greater transparency, targeted compliance activities, and has improved its degree of co-operation with charities across Canada, with their provincial and territorial counterparts and with other common-law charity regulators.

Specifically, the Charities Directorate has pushed the boundaries on disbursement quotas; introduced intermediate sanctions; launched a number of community outreach activities; increased public accessibility to statistical data; and broadened the regulations concerning permissible political activities. For example, a Charities Roadshow has been launched to educate the sector about legal requirements and regulatory processes; multi-faceted sectoral consultations have preceded proposed policy changes; and newsletters and reports keep the sector informed about policy developments.

Advocacy

Nonprofit organisations are allowed to engage in unlimited advocacy activity, within the limits of legal libel laws, but cannot issue donation receipts for tax deduction purposes. For-profit corporations are allowed to deduct any advocacy costs as a business expenses as long as they can justify the relationship between the two. Charities in Canada are limited in their advocacy activity in three ways: 1) the total resources which can be allocated to political activity are limited; 2) the type of allowable political activity is defined by regulation; and 3) political activity must be incidental and ancillary to a charity's designated charitable purpose. For charities who wish to do so, an independent nonprofit organisational form can be created to engage in advocacy beyond the terms and conditions set by the *Income Tax Act*.

Recent changes to regulations concerning permissible political activities are noteworthy. In 2003, the Charities Directorate increased the limit for resources charities could dedicate to political activities from a flat 10 percent limit to 20 percent for charities with an annual income of less than \$50,000 [£25,000]; to 15 percent for charities with an income of between \$50,000 and \$100,000 [£25,000 and £50,000] and to 12 percent for charities with annual incomes of between \$100,000 and \$200,000 [£50,000 and £100,000]. Based on an analysis of 2005

core charity revenues by this author, this change represents a potential annual increase in advocacy capacity of more than \$110 million [£55 million]. There is no evidence that even a fraction of this capacity is being expended in permissible political activities, so while the nonprofit and voluntary sector may call for greater flexibility to advocate, significant existing advocacy capacity lies dormant. There have been several attempts to expand the regulations governing political activities by charities and as previously mentioned, and there have been some significant improvements in this regard. However, the contractual relationship nonprofit and voluntary organisations have with provincial or federal governments have created a real or perceived advocacy chill. The risk associated with jeopardising the renewal of an existing short-term contract is more than most nonprofit and voluntary organisations can tolerate. I would argue that this risk is perpetuated because 1) there is no political or statutory agreement concerning advocacy and contractual agreements; and 2) there are few broad representative organisations which have the capacity to defend individual organisational interests when they are threatened.

At the same time as the resources for political activities were being extended, the Charities Directorate created greater flexibility for their interpretation of the context in which political activities take place, and reiterated earlier statements that deputations to parliamentary committees and canvassing politicians were considered permissible charitable activities. Still prohibited are any activities which could be considered partisan to a particular politician, political party or perspective. In order for an activity to be considered educational, much more than a singular perspective must be portrayed. Otherwise it would be viewed as biased and not a public benefit activity.

This liberalisation may be considered incremental compared to the regulations in England, but for Canada, current advocacy regulations appear to be as far as the current federal government is prepared to go to accommodate allowable political activities. Any further changes would likely require a major legislative overhaul and such an overhaul is highly unlikely. This reluctance by the federal government to change advocacy regulations is a long-standing and contentious issue for the voluntary sector. As early as 1974 the issue was raised by the voluntary sector, and several concerted attempts have been made since, to no avail.

There are four points which may explain this situation. First, politically, the government is sensitive to potential criticism which may arise from a more liberal advocacy regime. Second, the Department of Finance, under whose legislation charities operate, has an unfavourable view of advocacy supported by foregone tax dollars. Third, governments see themselves, not voluntary organisations, as the legitimate voice of public policy and often view advocacy groups as adversaries rather than vehicles for citizenship engagement. Fourth, charities, for their part, have not addressed this issue in a manner which has garnered widespread or sustained public or voluntary sector support.

Funding

The dominance of the service role played by nonprofit and voluntary organisations in Canada⁴ has made them particularly vulnerable to the on-going institutionalisation of government contracting policies which were introduced in the 1990s and has been a funding mantra ever since. The combination of economic changes, political shifts to the right, and rising costs associated with a maturing welfare state combined to bring repeated calls in the late 1980s and early 1990s to rein in mounting social welfare costs. From 1992 through 1995 the

(4) 74 percent of the voluntary sector workforce in Canada is engaged in service activities, primarily associated with health, social services, education and development/housing. The majority of the workforce which is engaged in expressive, rather than service activities is primarily associated with sport and recreation activities (21 percent) and religious activities (19 percent). Only 2 percent of voluntary organisations are engaged in law, advocacy and politics.

federal government, on average, was spending 25 percent of its annual budgets to finance public debt. In 1996 this debt servicing cost jumped to thirty percent of total federal expenditures.

The retrenchment of the welfare state across Canada saw a reversion to even tighter means testing [to identify the 'deserving' poor] and significant to dramatic reductions in social benefits provided by provinces. While cuts to advocacy and umbrella organisations started with the Mulroney conservative government in the late 1980s, it continued in earnest throughout the Chretien liberal government the 1990s.

This economic-as-social policy shift was a continuation of a voluntary sector funding regime which cut funding to advocacy and umbrella organisations which diminished the role of nonprofit and voluntary organisations for their contribution to citizen engagement and social support to funding for-profit and nonprofit organisations alike for the delivery of designated services. Neo-conservative policies at both a federal and provincial level falsely assumed that the nonprofit and voluntary sector in general, and private philanthropy in particular, would compensate for reductions in government services.

For example, it was calculated that a one percent cut in government funding would have to be offset by a 50 percent increase in corporate philanthropy – and the federal government cut programme funding by 25 percent over three years between 1996 and 1998. These federal funding cuts in the mid 1990s were passed on to provincial governments and then to local municipalities, both of whom were forced to cut programmes and services. In one survey of nonprofit and voluntary agencies in Toronto, Ontario over one-third had to reduce or disband programmes as a consequence of these cuts. The reality, as cross-sectoral surveys reveal, is that while downloading and funding cuts have impacted all nonprofit and voluntary organisations, over time, large organisations are getting ever larger while small to mid-sized organisations struggle to survive, manage multiple funding sources, and retain overworked staff and volunteers.

It would be a misnomer to think that Canada's recent economic recession or its previous run of economic prosperity has changed this funding regime. The burden of accountability and compliance practices has increased dramatically while funding has remained fragile and short-term. With each scandal associated with government spending, the accountability bar gets raised, regardless of its impact on voluntary organisations. The other reason for this administrative overload is a systematic downloading of bureaucratic administrative practices to organisations in order to compensate for losses in public service staffing levels. Here are some excerpts from a provincial study which was conducted in the early 1990s:

We are less responsive to our community. Before, we had our own population that we provided services to. The parents would tell us what they wanted and we submitted a proposal to fund those needs. Now we no longer have any say in who comes to our services.

We revised our mandate and made it more specific so that we could bid on contracts.

We used to provide services to all kinds of kids. Now we focus on children in conflict with the law.

Government cutbacks meant that we had to let go of those services that were no longer funded. We expanded by going after contract funding.

(Rekart, 1993, pp.127-128)

The current funding regime in which for nonprofit and voluntary organisations in Canada operate is described by Lynn Eakin as, ‘short-term, unpredictable project-based funding, which frequently fails to cover the actual cost of project delivery and typically fall short of covering organisations’ administrative costs. Moreover, this unstable funding environment is overlaid with regulation designed to eliminate risk by imposing rigid and controlling accountability and reporting requirements on grant recipients’. Here are some of the consistent funding regime themes:

- Competition has become fiercer for all sources of funding, with smaller organisations often squeezed out by larger groups.
- The unstable new funding environment has undermined the capacity of many organisations to provide consistent programmes and services.
- A majority of organisations reported a shift away from core/organisational sources of support to more contingent forms of funding.
- For most organisations which received government funding, their funding was for one year or less.
- The shift to short-term funding from multiple sources makes the new and heightened reporting obligations an increasingly onerous task, especially for smaller organisations with few resources.

(Canadian Centre for Philanthropy et al., 2005; Eakin, 2001; Gibson et al., 2007; Phillips, 1995; Scott, 2003).

One recent example of the volatility of the environment in which the nonprofit and voluntary sector operates occurred on September 26 2006. Canada’s conservative minority government, following the announcement of a \$13.2 billion fiscal surplus, decided that certain initiatives were being targeted for budget cuts because they ‘weren’t meeting the priorities of Canadians’ or weren’t providing ‘good value for money’.

A dominant theme across the cuts to the nonprofit and voluntary sector was social policy, research, and advocacy. Canada’s national programme to support volunteerism was cut as were funds to a leading policy research network; local and volunteer-led museums were forced to close; funds to challenge inequalities under Canada’s Charter of Rights and Freedoms were eliminated as was funding to women’s advocacy and research programmes.

The response of the voluntary sector to these dramatic and unforeseen cuts to structures which gave voice to inequalities and injustice was muted. Most directly affected organisations were in a state of shock and scrambled to either survive or initiate an orderly wind-down. There was no sense of outrage from the sectors leading organisations, which was certainly justifiable under the circumstances, or from community organisations throughout the sector which were unaware of the impact of the funding cuts to overall sectoral independence. The muted response also reinforced the absence of any significant political consequence to making funding cuts to the voluntary sector.

Whether these parsimonious funding practices will change is an open question, given the extent to which they have been institutionalised across a number of political regimes.

Representation

The nonprofit and voluntary sector in Canada expanded most dramatically in a era of parallel economic growth and a state investment in an elaborate system of public education, health, and social, cultural and recreational services.

The retrenchment of the welfare state in the mid 1990s was no less dramatic.

Advocacy and policy groups were singled out for the most severe funding cuts for two reasons: 1) advocacy groups were in the best position to criticise funding cuts and undermine the federal governments' retrenchment policy agenda; and 2) the negative label of "special interest group" was effectively and negatively applied to nonprofit and voluntary organisations by neoconservatives. This neoconservative view, adopted by the Liberal, Progressive Conservative, and Reform⁵ parties alike undermined the sector's credibility as a representative voice for those in need, a voice which was seen by politicians at the time as interfering with their direct relationship with citizens.

According to John Shields and B. Mitchell Evans, the neoconservative restructuring Canada has experienced is changing the character and ethos of many nonprofit and voluntary organisations and is threatening the traditional advocacy and representational role they have played in society. The most profound example cited by Shields and Evans is that the extensive delivery of public goods through the nonprofit and voluntary sector de-politicises social policy and puts the nonprofit and voluntary sector under even greater control by the state and fundamentally undermines their independence.

This independence is undermined when, according to John Shields, the nonprofit and voluntary sector silences the voice of citizens by serving as both a mediating agent of citizen conflict with the state and a producer of social goods. In essence, the nonprofit and voluntary sector, as a service delivery agent, acts as a buffer for the state, not an advocate for social justice. As the provision of services dominates the relationship between nonprofit and voluntary sector and government, autonomous research and advocacy is subsequently marginalised.

As previously discussed, the nonprofit and voluntary sector has had a long and interdependent relationship with provincial and federal governments. Much of the time this relationship has been a bilateral one between specific clusters of nonprofit and voluntary organisations and their state counterpart, rather than a sector-wide dialogue. The only two exceptions to this particularistic representational role are two consultations which took place twenty years apart. The first was a broad sector-wide consultation which took place between 1974 and 1976 and culminated in release of the *People in Action* Report. The second was the 1996 Broadbent Panel, a sector-led consultation process which penned the *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector* Report and subsequently led to voluntary sector and government Joint Tables report, *Working Together* and to the launch of the Voluntary Sector Initiative.

The Voluntary Sector Initiative provided sectoral support for the policy changes initiated by the Charities Directorate; although diffuse voluntary sector representation which existed during the Voluntary Sector Initiative dissipated following its completion in 2003. According to Rachel Laforest, the dominance of large, well-established organisations has positioned these organisations to occupy the pre-eminent place in policy processes and has determined the advocacy priorities for the sector as a whole. One example is a recent initiative by Imagine

(5) The latter two parties, the Progressive Conservative and Reform Party merged to become the Conservative Party, the party of Canada's current Prime Minister, Stephen Harper.

Canada to engage apex representational organisations within the nonprofit and voluntary sector in policy dialogue through the development of a Public Policy Collaboration Framework. The capacity and opportunity to participate in policy agenda development within the voluntary sector continues to be severely limited by a lack of representational capacity and unchecked exclusivity, thus distorting the overall view, size and legitimacy of the sector.

Governments have learned that de facto control over nonprofit and voluntary organisations can be achieved with a minor financial investment. Contract conditions in even a nominal service agreement can effectively limit a number of extra-contractual activities, including independent advocacy. Other consequences have been profiled earlier under funding, but the systematic positioning of the voluntary sector as government service agent in isolation of their role as an agent for citizenship contributes to the loss of voice for marginalised and under-represented people in society. To avoid loss of government contracts, affected voluntary and nonprofit organisations have become self-censoring and deliberately avoid the political limelight.

One exception concerns religious organisations. Because religious organisations rely extensively on gifts and donations to operate, they are less financially vulnerable than charities which rely on government contracts. The issue of charitable choice, as it applies to issuing government services contracts in the United States, is not an issue in Canada. But this hasn't stopped faith organisations from coming under scrutiny by the Canada Revenue Agency for their political activities. Several Roman Catholic parishes have been brought to task for their overt support of pro-life and family values oriented political candidates. Warnings of potential deregistration for continued partisan political activity have been viewed by the churches as a threat to their teaching of church dogma, but to date no further concrete action has resulted. The Canada Revenue Agency routinely issues a notice before each federal and provincial election to all charities stipulating that they are prohibited from engaging in partisan political activities.

During the same-sex marriage debate in 2004, the Bishop Fred Henry of Calgary wrote an open letter that said he would consider excommunicating Prime Minister Paul Martin over his government's plan to legalise same-sex marriage. The CRA responded, stating that the Catholic Church's charitable status could be put in jeopardy if the Bishop continued to engage in partisan political activity. Regulations were later modified to allow participation in this debate by charities, subject to all other statutory restrictions on political activity. (Kitching, 2006)

It is beyond the scope of this essay to profile all the relationships between governments and the nonprofit and voluntary sector within Canada's ten provinces and three territories, but there are signs that the voluntary sector at this jurisdictional level are receiving unprecedented attention. Of note is that Newfoundland and Labrador, New Brunswick, Nova Scotia, Quebec, Saskatchewan, Alberta, British Columbia, and the Northwest Territories each either have a designated minister who is responsible for the nonprofit and voluntary sector, or an overall policy on its relationship with the sector. With the exception of Quebec, these emerging voluntary sector/provincial government relationships have all developed since 2001, and several within the last two years. As a result, few conclusions can be reached concerning the long-term status of this relationship at this time of writing. What is clear is that the centre of activity for voluntary

sector/government relations in Canada is shifting from the federal to the provincial/territorial level of government.

Quebec is the one province in Canada which has had a relatively long relationship with civil society organisations, involved as they were in the Quiet Revolution in the early 1960s. These civil society and social economy organisations in Quebec carry a strong sense of democracy, citizenship, and social solidarity and have done so in a political climate where civil society and the social economy have been valued, sanctioned, and supported by the state. The social economy in Quebec is particularly vibrant and collectively represented by the Chantier de l'économie sociale. In November 2008, the Quebec government released an eagerly awaited five-year action plan which allocated \$16.7 million (£8.35 million) for the social economy, the Chantier and 21 regional hubs.

In the policy arena, the social economy in Quebec is engaged in what has been termed the *co-construction* of public policy whereby the Chantier de l'économie sociale, as the premier social economy representative, and their counterpart for co-operatives engage in collaborative policy development with the provincial government. The co-construction of public policy is not only bilateral, but is frequently a collaboration with market and civil society representatives, blending the best of representative and participatory democracy.

The risk for the voluntary sector in these provinces is that the provincial policy agendas will continue to be set by government and that a relatively non-formal voluntary sector regime will continue to operate at a strategic disadvantage. At a national level, the nonprofit and voluntary sector in Canada has yet to come together under a representative regime which is transparent and inclusive. Only time will tell if such a regime will be established, and if it is, whether it will be driven by forces within or outside the sector.

Reflections

Because productive interdependence rather than independence has been the trademark of the relationship between the nonprofit and voluntary sector and government in Canada, independence per se has not dominated nonprofit and voluntary sector policy discourse. In the most recent Voluntary Sector Initiative, both the *Code of Good Practice on Funding* and the *Code of Good Practice on Policy Dialogue* include the one-sided principle 'that a healthy and active voluntary sector plays an important role in helping the federal government achieve its public policy objectives'. This policy reinforces federal governments' view of the nonprofit and voluntary sector as a prime service delivery agency.

Recent changes to federal lobbying legislation, which includes voluntary and nonprofit organisations, are also onerous and discourage all those but the most organised and financed from engaging in advocacy activities. These constraints to the operation of nonprofit and voluntary organisations have a direct impact on their capacity to serve people in need. Contract constraints thwart flexibility and creativity and many times programmes are changed or cancelled regardless of the degree of success a programme achieves.

Community support is now being garnered by some nonprofit and voluntary organisations through new social enterprises which combine the spirit and practice of entrepreneurship with social mission. Social enterprises have received considerable public, social policy, research, governance and funding support in Quebec, gaining status as significant players in the provincial economy.

Although some other provinces are starting to give social enterprises a second look as part of their recession recovery planning, no clear trend has emerged.

This is a two-edged sword for the voluntary sector. On one hand social entrepreneurship is being promoted as the wave of the future and the latest “answer” to government dependency and nonprofit and voluntary sector independence. On the other hand, it also propagates the belief that the “market” holds the answer to funding shortfalls, with the consequence that the governments continue to be isolated from their responsibility for chronic social inequalities, and the nonprofit and voluntary sector continues to distance itself from citizen engagement.

Expressive nonprofit and voluntary organisations in the areas of religion, culture and recreation, and the environment earn a greater proportion of their revenue from fees for services and donations, and are less dominated by government funding. These organisations also have a large volunteer component and, other than religious organisations, have difficulty registering as a charity. The strategic advantage these organisations have is that their nonprofit status provides unlimited opportunities to advocate. Even so, the mandate of the majority of these arts, sports and recreation organisations are to provide a personal, rather than a collective means of expression.

Collective advocacy campaigns are often conducted by dedicated groups, (e.g. Greenpeace) in isolation of the broader nonprofit and voluntary sector. When collective representation has been made by national nonprofit and voluntary sector apex organisations, the advocacy focus has been on tax rather than social policy. Even so, expressive organisations must have the financial means to operate and the opportunity to influence policy deliberations, opportunities which in Canada are currently both rare and tenuous. It’s a cold climate for advocacy in Canada and while this current political environment is difficult, it is also exacerbated by the lack of a collective sectoral representational infrastructure, policy agenda and collective vision for the future.

This is not a new phenomenon. When New Public Management made its way through the corridors of the public administration in Canada in the 1990s, the individualised citizen-as-customer approach to policy deliberations undermined the role and value of nonprofit and voluntary organisations as democratic intermediaries. This approach continues today with mixed consultation forums and representational roles confined to parliamentary committees and official ministerial meetings. For example, it is made explicitly clear that members of government sponsored working or policy committees sit as individuals and not as representatives of either their organisation or the nonprofit and voluntary sector. Phillips and Orsini correctly point out that this is a false dichotomy and that both citizen involvement and representational consultation benefit meaningful public policy dialogue.

The nonprofit and voluntary sector in Canada needs to define its relationship to policy dialogue and citizen engagement, but it will only do so as a consequence of creating the space for sector-wide inclusive and collective action.

Key Events in the History of Voluntary Sector-Government Relations in Canada.

- 1930: The *Income War Charities Act* is amended to allow personal income tax to be deducted for contributions to any charity for the first time.
- 1943: The March Report on social security articulates the purpose and rationale for a social welfare state, which triggers a corresponding growth in registered charities.
- 1967: All charities are required to register with Revenue Canada for the first time, giving government a means to directly control registration and monitor the growth of the sector.
- 1974: The National Advisory Committee on Voluntary Action is formed and identifies a substantial number of voluntary sector-government relations issues which are subsequently profiled in the 1977 *People in Action* Report. This same year (1974) sees the formation of the Coalition of National Voluntary Organisations (NVO), the first national umbrella coalition for the voluntary sector in Canada.
- 1978: Revenue Canada issues Information Circular 78-3 to clarify “political activity” and, while subsequently withdrawn, it becomes the basis on which Revenue Canada regulates eligibility for charitable registration and engagement in political activity.
- 1995-1998: Retrenchment policies are introduced and eventually institutionalised; these include a reduction of transfers to provinces, programme funding cuts, direct cutbacks to voluntary organisations, and the introduction of dedicated short-term contract funding.
- 1995: The Voluntary Sector Roundtable establishes the Panel on Accountability and Governance in the Voluntary Sector (the “Broadbent Panel”).
- 1996-1997: The limit for charitable tax credits is increased from 20 percent to 50 percent and then 75 percent of earned income.
- 1999: A five-year, \$94.6 million, Voluntary Sector Initiative is launched which includes the establishment of six Joint Tables of voluntary sector/government representatives and a National Satellite Account for the Nonprofit and Voluntary Sector.
- 2001: The International Year of Volunteers provides the political impetus to sign the *Accord Between the Government of Canada and the Voluntary Sector*. Two codes of good practice, and selective voluntary sector-government initiatives and advisory committees follow.
- 2003: The first National Survey of Nonprofit and Voluntary Organisations is conducted by Canadian Centre for Philanthropy. This survey provides the first comprehensive study of the nature, size, and scope of the voluntary sector in Canada.
- 2003: CPS-022, a new regulation on political activity is released by the Canada Revenue Agency. Limits on resources allocated to political activity are extended and a more flexible interpretation of political activity is introduced.
- 2004: The Voluntary Sector Initiative ends; while some survey and evaluation initiatives are sustained, most are curtailed.
- 2006: \$1Billion in direct cuts in funding to policy-focused voluntary organisations are made by the new Conservative federal government, following an earlier budget announcement eliminating capital gains on stocks donated to registered charities.
- 2006: The federal budget exempts donations of publicly listed securities to public charities from capital gains tax.

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The independence of the voluntary sector from government in England

Ben Cairns, Director of the Institute for Voluntary Action Research and Visiting Fellow of Birkbeck College¹

Abstract

In this essay I begin by summarising New Labour's interest in the voluntary sector, in particular its potential role as a public service provider as well as an agent of social and democratic renewal. Central to governmental policy for the sector has been an espoused commitment to the notion of independence. However, this is sometimes at odds with a more prescriptive and instrumental view which runs through much recent policy. Drawing on action research carried out since 2000, I consider the impact of the public policy environment on micro, small and medium-sized VCOs² and how it has affected the degree of independence from government which they can enjoy. The implications of the conflicting messages within the body of policies concerning the sector are discussed and it is argued that independence might be best understood as dynamic and multi-dimensional, rather than a fixed entity, something to be won or lost at any given moment. I conclude by outlining three strategies, for both practitioners and policy makers, which might be employed to facilitate voluntary sector independence from government: the development of organisational self-consciousness; changes to the support provided for VCOs; and shifts in the thinking and practice of government at all levels.

Introduction

The drive to bring the voluntary sector closer to government has gathered pace since the election of the New Labour government in 1997. Politicians from all parties are now actively engaged in strategies to court and embrace the sector. In this period of unprecedented policy interest and resource allocation, The Baring Foundation's concern with supporting VCOs to 'maintain or increase their independence from government' is timely.

This essay is structured in three parts. I begin by describing the context within which The Baring Foundation's independence grants programme is operating, namely the pressure for greater proximity between government and the voluntary sector which shapes contemporary debates about the role and independence of VCOs. In Part Two, I present some research-based examples of how VCOs experience this increasing closeness to government, focusing in particular on micro, small and medium-sized organisations. The research cited was all carried out before the economic downturn of 2008 and beyond. Although the possible impact of the recession on the voluntary sector is still a matter for conjecture, the dangers to civil society posed in the past during periods of severe economic turbulence reinforce the need for the sector to remember its role in preserving community cohesion and civic values and not allowing those to be subsumed by governmental agendas (Harris, 2008). This, coupled with current predictions about the difficulties likely to be experienced by smaller VCOs during the economic downturn (Wilding, 2008), explains the particular focus in Part Two on smaller organisations which can generally be described as local and community-based.

(1) I wish to thank the numerous voluntary and public sector practitioners with whom ACVAR and IVAR have collaborated in action research projects since 2000. Without their willingness to share their experiences with us, the findings and ideas expressed in this paper would not have been possible. I would also like to thank Margaret Harris and Romayne Hutchison for their support, ideas and guidance in the writing of this essay, and Mike Aiken and Joanna Stuart for their comments on earlier drafts.

(2) For the purposes of this paper, I have used NCVO's current categorisation of the voluntary sector according to annual turnover (Kane et al, 2009): Micro: 1-10k, Small: 10-100k, Medium: 100k-1m, Large: 1m-10m, Major: 10m+.

Finally, in Part Three, I conclude by arguing that, during what may come to be seen as a golden age of policy commitment to the VCS, responsibility for resolving the independence dilemma may rest as much with VCS practitioners, leaders and activists as it does with governmental actors. Three inter-related strategies are proposed for the benefit of voluntary sector independence from government.

Throughout, I am guided by The Baring Foundation's description of independence as 'the ability organisations have to enjoy a range of freedoms... to: agree values based on their own experience and vision and not external pressures; carry out work that delivers the stated purpose of the organisation; negotiate robustly with funders and partners; [and] challenge others and engage in public debate' (Smerdon, 2006: 3). I also use The Baring Foundation's own terminology, 'the voluntary sector', for shorthand, as well as the widely used terms 'VCOs' (voluntary and community organisations) and 'VCS' (voluntary and community sector).

Part One: The increasing closeness of the two sectors

Part One of this essay is about the pressure for greater proximity between the voluntary sector and government and the concerns that this increasing closeness raises about independence. I begin by discussing the underpinning features of the UK Government's interest in the voluntary sector, including its views about sector distinctiveness and independence. I then consider briefly the key policy themes which are bringing the sector closer to government – in particular, the role of VCOs as contracted providers of public services, as well as agents of social and democratic renewal – before concluding with a reflection on the nature of the concerns about proximity and independence.

New Labour's interest in the voluntary sector has its roots in a set of assumptions and beliefs about the sector's particular nature and potential contribution as an agent of government policy. Since 1997, key public policy documents about the role of the VCS have included numerous references to specific *aspects* of independence, in particular the sector's mission and value-base; its governance arrangements; its capacity to perform a "voice" and campaigning role; and its role in innovation and developing services. VCOs are described as having a distinct value-base: 'independent and driven more by altruistic aims rather than the search for improved profit margins' (Home Office, 2004a: 16); 'third sector organisations can be described as being 'value-driven'.... Common features of the sector's founding values are notions of social justice, fairness and the desire to serve others....' (HM Treasury, 2005: 17). The sector's independence from the state, and its focus on values and social purposes rather than the pursuit of profit, is considered one of its defining features (HM Treasury, 2005), to be protected and respected: 'Government recognises that the key to the sector's success is its independence from Government' (Strategy Unit, 2002: 1.3); 'This is critical if Government is to understand the impact of policies on the ground' (HM Treasury, 2002: 5); 'The Government has no wish to direct the decisions of individual organisations about how they deliver their mission' (Office of the Third Sector, 2006:12). This perceived independence from government gives VCOs the ability to challenge set modes of thinking and practice, and to develop innovative forms of service provision (HM Treasury, 2005).

In relation to governance, it has been stressed that 'The (Charity) Commission would not and must not interfere in the independent governance of charities' (Strategy Unit, 2002: 81). The ability to be 'constitutionally self-governing' (HM Treasury, 2005: 17) is seen as an essential characteristic of the VCS; indeed the Government has stated that it has a responsibility 'to ensure that the legal and

regulatory environment within which they [VCOs] operate preserves their independence' (HM Treasury and Cabinet Office, 2007: 87). The sector's 'voice' and campaigning roles have also been highlighted: its ability and freedom to campaign have been regarded as key attributes (HM Treasury, 2005; HM Treasury and Cabinet Office, 2007; National Audit Office, 2005; Strategy Unit, 2002). The "voice" role is considered as encompassing several different strands: providing a general 'dissenting voice' (HM Treasury, 2002: 3.14), being involved in the policy-making process, campaigning for new services and more general lobbying for social change. Most recently, it has been proposed that: 'All Government departments should recognise the independence of the third sector and the right for third sector organisations to campaign' (HM Treasury and Cabinet Office, 2007: 22).

This apparent commitment to sectoral independence was established prior to the 1997 general election, when the then Labour opposition, in its pre-election statement about the sector, undertook to 'replace a contract culture with a partnership culture and guaranteed the independence of the sector' (Plowden, 2003: 419). Subsequently, *The Compact on Relations between Government and the Voluntary and Community Sector in England* included the undertaking by Government to 'recognise and support the independence of the sector, including its right within the law, to campaign, to comment on Government policy, and to challenge that policy, irrespective of any funding relationship that might exist, and to determine and manage its own affairs' (Home Office, 1998: 9.1).

However, despite the espoused commitment to sectoral independence, government policy documents hint at a more prescriptive and instrumental view of the VCS. Increasing numbers of VCOs now provide, often on a contractual basis, social welfare services previously supplied by governmental agencies (Kendall, 2003). In 2001/02, 48 percent of government funding to charities was directed through contracts; by 2004/05 this had risen to 62 percent (NCVO, 2007). An enhanced role for the voluntary sector in the delivery of public services has increasingly been stressed (DCLG, 2006; HM Treasury, 2002; 2005; HM Treasury and Cabinet Office, 2007). This emphasis on VCOs as providers of public services seems to imply a view of them as *instruments* of government policy rather than as independent agents: 'The role of the third sector in public services is a key strand of the drive to improve public service delivery' (HM Treasury, 2005: 11); 'The government has a declared commitment to increasing the role of the third sector in public services' (National Audit Office, 2005: 1).

Alongside this policy shift, the Government has also highlighted the part that VCOs can play as a central ingredient in civil society, helping to address both the symptoms and causes of community, social and neighbourhood breakdown, and building more cohesive communities. The Local Government White Paper *Strong and Cohesive Communities*, for example, comments that VCOs 'can provide the glue that binds communities together and create the opportunities for people of different backgrounds to work together for shared goals' (DCLG, 2006:159). Similarly, the White Paper *Communities in control: real people, real power* stresses the sector's valuable role in social and democratic renewal: '(it) has a unique ability to give a voice to the community and drive change' (DCLG, 2008: 73).

Taken together, then, government policy documents relating to the VCS suggest a tension between, on the one hand, respect for the sector's independence and an acknowledgement of its positive attributes, and, on the other hand, a view of VCOs as agents of government policy; a tension which seems to manifest itself in unease on the ground. For example, in her paper *Sources of Strength*, which analysed the content of applications to the Baring Foundation's *Strengthening the*

Voluntary Sector – independence grants programme, Pharoah (2007) noted that threats to independence are experienced by a wide variety of organisations across the VCS. They felt most under threat when their core services were jeopardised by the mechanics of contracting, including ‘restrictive or inappropriate performance measures, under-funding, short-term funding, changed priorities resulting in funding cuts, and government not listening’ (Pharoah, 2007: 9). Threats to independence were felt to have an impact on organisations’ values and core services and to undermine their organisational growth and effectiveness.

The role of the voluntary sector in service delivery and the use of contracting which was already underway before 1997 has been further strengthened under New Labour. Whilst many VCOs have little connection with government, local or national (National Audit Office, 2005), a significant number are in receipt of governmental funding (Kane et al, 2009) and have taken on an extensive role in the provision of public services. Such VCOs are subject to external norms and controls – the terms and conditions of service delivery (Lewis, 2005) – which may not be in keeping with their existing organisational values or systems; thus threats to their independence may become more apparent (Blackmore, 2004). VCOs may become ‘incorporated’, becoming an arm of the state, or ‘isomorphic’, mirroring the characteristics of the government bureaucracies with whom they work (Osborne and Ross, 2001, quoted in Blackmore, 2004:18). Indeed, The Baring Foundation’s own commitment to sectoral independence is predicated on a concern that closeness to government (whilst welcome to a degree) might change what VCOs do and the way in which they operate (Smerdon, 2006). This concern is echoed by both the Charity Commission: ‘public service delivery is having an impact upon the independence and governance of charities’ (Charity Commission, 2007: 20) and the Commission for the Compact: ‘the sector and its advocates see independence from government as one of its key values and fear that this will be put at risk if the sector becomes over-dependent on government funding’ (Commission for the Compact, 2008: 2).

The risks of proximity for VCOs – their ability to set their own strategic direction; the nature of their governance; accommodating and responding to multiple interests; their independence from public control – have been noted by researchers for some time, even before the current Government’s particular interest in the VCS was articulated. In 1996, in their concluding remarks to a collection of essays on challenges of organisation and management in the voluntary sector, Billis and Harris reflected on the volume’s contribution to debates about ‘the essence’ of the sector: ‘features – voluntary governing bodies, advocacy, volunteering – which constitute the “authentic core” or “soul” of the sector’ (Harris and Billis, 1996: 244). The continued legitimacy of the sector was, they suggested, ‘predicated on their preservation...In the face of [these] trends – threats to valued features of voluntary agencies, pressure to take on the agenda of other sectors, uncertain sector boundaries, and increasing diversity within the sector.’ (op. cit.).

What can more recent research tell us about how VCOs are experiencing and coping with their increasing closeness to government; what are the effects of this closeness on the independence of the voluntary sector from government in England? Are the concerns which have been expressed in earlier research, and further amplified by The Baring Foundation itself in the establishment of their independence grants programme, still justified?

Part Two: The voluntary sector's experience of increased closeness to government

In Part Two, I discuss the voluntary sector's experience of increasing closeness to government. I draw on the findings of more than 40 qualitative research studies concerned with challenges of organisation and management. These were carried out in collaboration with VCOs in England between 2000 and 2008, according to action research principles, in particular: a commitment to collaboration between professional researchers and project participants as "problem owners"; a focus on producing practically useful and usable knowledge; and an interest in both building and transferring knowledge (Cairns et al, 2006a). For this essay, the key findings from our research were re-analysed to find examples of both proximity between the voluntary sector and government, and the implications of this proximity for voluntary sector independence.

It should be noted again that the research cited here was all carried out before the economic downturn of 2008 and beyond. Despite predictions about the impact of the recession on the voluntary sector still being largely speculative, an early review of available evidence predicts that 'The largest organisations are more capable of resilience (and that) smaller or less established organisations are the ones more likely to suffer hardship' and argues that 'Government funding policies, practices and attitudes are crucial' (Wilding, 2008: 2). In line with this, I focus my discussion on the impact of the public policy environment described in Part One on micro, small and medium VCOs – those organisations whose independence, it can be argued, is now most at risk – and how it has affected the degree of independence from government which they can enjoy.

The re-analysis of our data is presented here under three broad headings³:

- The impact of inconsistency in public policy
- The impact of prescriptive elements in public policy
- The impact of the disconnection between policy and practice.

The impact of inconsistency in public policy

The contradictory nature of current public policies for the voluntary sector has been noted elsewhere: 'Policy contradictions are commonplace in complex polities and the UK is not unusual in the mix of ambiguities and inconsistencies that criss-cross government intentions and the subsequent outcomes' (Kelly, 2007: 1019).

The findings from four interrelated studies of multi-purpose community anchor organisations – described as 'strong, sustainable, community based organisations [which] can provide a crucial focus and support for community development and change in their community' (Home Office, 2004c: 19) – confirm this critique by revealing how changes in the funding environment have affected the range and type of services such organisations are able to provide (Cairns et al, 2006b; 2008a). A noteworthy feature of these organisations is that their *multi-purpose* nature (both service provider and community advocate) means that they span disciplinary and functional boundaries. Largely neglected by earlier research, their duality of function encapsulates many of the tensions within current government policy for the VCS. The turnover of the organisations studied ranged from £150,000 to £1.2m.

Five principal concerns were expressed by the organisations studied: first, anxiety about external control eroding the distinctive features of community-based

(3) Unless otherwise stated, all the quotations in italics are taken directly from action research studies carried out by ACVAR (Aston Centre for Voluntary Action Research) and IVAR (Institute for Voluntary Action Research, www.ivar.org.uk)

organisations – *'the more you move towards commissioning/contracting, the more difficult it is for the (community) sector to add value and contribute its own 'something'*'. Second, linked to this, organisations described a mixture of nervousness and pessimism about their advocacy work: *'can we shout too loud? we would be nervous of advocating against funders'; 'the local authority does not want to hear local people'*. Third, particular difficulties were experienced around the emphasis on *'project funding'* rather than *'core funding'*; in some cases leading to unplanned adaptations or cuts, further undermining the sustainability of these organisations and consequently their ability to make a meaningful contribution to governmental policies of community engagement. Fourth, there were uncertainties over the timing, amount and duration of funding agreements: *'Because of the nature of contracts you never know until the last moment if they are going to be renewed...staff don't know where they are from one year to the next: they can't plan, management can't plan'*. Finally, the potential risks to the future of community anchors were referred to – *'all government policies are aimed at the bigger organisations. The implications of this are that the smaller grassroots organisations are being left behind'* – possibly leading to the demise of some organisations: *'The sector is in for a kicking'; 'our days are numbered'*.

We found that the cumulative effect of these changes was that community anchor organisations are struggling to respond to the public services policy agenda whilst *at the same time* retaining other features for which they have been valued in the past; for example, their ability to empower people at the local grassroots, to carry out their *'voice'* role, to build social capital and to act as focal points for community development. This inconsistency in public policy risks damaging community anchor organisations by undermining the integrity of their founding values; increasing the risk of mission drift; restricting their ability to act in accordance with their core purpose by pulling them away from *'community development'* towards *'community service'* (Taylor, 2006) and, in some cases, threatening their actual survival. It also risks weakening a core feature of government's own vision for the delivery of its social and democratic renewal agenda, namely the active involvement of the VCS in the implementation of key policy objectives – including *'community cohesion'* and *'neighbourhood governance'* (DCLG, 2007; HM Treasury and Cabinet Office, 2007) – as well as the new responsibilities on local government to support an environment for a thriving third sector (Office of the Third Sector, 2008).

The impact of prescriptive elements in public policy

The second theme which emerged from the re-analysis of our research data relates to the way in which public policy has become increasingly prescriptive about organisation and management in the voluntary sector, with governmental agencies moving beyond identifying policy priorities and setting parameters for action, to prescribing operational and managerial solutions. This kind of close prescription has the potential to jeopardise the ability of VCOs to determine their own strategy and devise their own responses and solutions to emergent needs.

Findings from the UK's largest ever study of the adoption and use of quality systems in the VCS raised questions about how comfortably a practice with its roots in another sector fits in the voluntary sector (Cairns et al, 2004a; 2005a). The pace of the transfer of quality management from its original home in industrial manufacturing through to the voluntary sector increased sharply in the 1980s as part of the spread of business management principles through New Public Management (Ferlie et al, 1996) and the general marketisation of the public and

voluntary sectors. Our study sample ranged from locally based organisations with an annual turnover of less than £10,000 through to medium-sized national service providers whose turnover was around £1m. We found that, regardless of organisational size or function, external imposition of systems (with some statutory funders requiring VCOs to use a *particular* quality system, often in addition to systems already in use) contributed to restrictions on VCOs' freedom to decide *how* they might best respond to their own needs for feedback on the quality of their services as well as the demands of the wider 'performance improvement' agenda. Other challenges identified in the research related to lack of 'fit' between imposed systems and organisational objectives, resources, systems or size; and, in the most extreme cases, the risk of 'mission drift' as a result of this mandatory approach to the introduction of quality systems. In brief, the research revealed 'the difficulties of applying performance improvement techniques drawn from the private sector to the circumstances of nonprofit organisations with their distinctive cultures, diffuse power structures, different values, multiple stakeholders and multiple goals' (Cairns et al, 2005a: 148).

This relates to other work we have carried out with small, service-providing organisations on 'effectiveness' and 'outcomes' where we heard complaints about governmental funders attempting to impose crude systems of measurement which failed to capture the complex nature of work with, for example, asylum seekers and refugees (Cairns and Hutchison, 2005b). Similarly, during recent research into the bridge building activities of grassroots groups, a lack of funding, particularly for smaller groups, and the difficulties caused by funding bureaucracy, were frequently mentioned: 'many groups complained that bigger funders exclude smaller groups or effectively exclude them because of inappropriate monitoring and controls' (Harris and Young, 2009: 18).

Such approaches fail to recognise that 'NPO (nonprofit organisation) effectiveness cannot be assessed with a single indicator... The concept of best practices has been widely invoked, yet many of the sources that claim to offer best practices for NPO boards or management provide little or no basis for their assertions' (Herman and Renz, 2008: 405). The key issue in these studies was not one of sectoral unwillingness to tackle issues of improvement and accountability; rather, it was the practice of imposing systems which were not 'context sensitive and (did not) have clarity of purpose not only to the sector context but also to individual organisations within the nonprofit sector' (Cairns et al, 2005a:148). Heavy-handed, prescriptive approaches run the risk of damaging a core feature of voluntary sector independence, namely the freedom to devise organisational strategies and systems in a manner which balances the norms of both VCOs *and* its governmental funders.

The impact of the disconnection between policy and practice

The third theme concerns the disconnection between the assumptions of policy makers about the real world and the ways in which practitioners and others experience it. I give two examples, the first drawn from projects with faith-based organisations, the second from an emerging body of research on the relationships and interaction between VCOs and local authorities.

New Labour politicians have shown great interest in the potential and capacity of faith-based organisations to contribute to social welfare, public service provision and community regeneration (Cairns et al, 2007a; Local Government Association, 2002). This has been accompanied by the promotion of greater inter-faith

cooperation, as part of the broader “cohesion” public policy agenda. A study involving faith-based organisations in one English region revealed an attempt to draw faith-based organisations into formal engagement structures in line with this policy theme (Cairns et al, 2004b). The starting point for the research – into the establishment of a ‘Regional Faith Forum’ – was a desire on the part of both central Government and the Regional Assembly to increase “faith engagement” in the Region. The appropriateness of this strategy and the policy pressures behind it was severely tested by three key findings.

First, whilst members of faith communities could be described as genuinely interested in issues of public policy, *local* faith groups were preoccupied with local matters, in some cases with their own organisational survival. The wider involvement of local faith groups in public policy was described as *‘being in its infancy’*. Furthermore, *‘making the shift from local to regional concerns is definitely a problem’*; *‘going from local to regional structures would pose problems’*.

Second, the policy assumption that consensus could be easily reached about a *mechanism* for multi-faith involvement in the Region was also called into question. The public policy label of “faith community” itself was identified as problematic: it implies a degree of homogeneity and solidarity which mask the differences, even conflicts, within communities: *‘what is meant by faith? What is fringe and what is mainstream?’*; *‘many faith communities are fragmented and dismissive of one another’*. This diversity – both ideologically and religiously – of most faith groupings also raised major concerns about ‘representation’: *‘There will be a fear of strong personalities representing their own views’*.

In addition to these concerns about membership of the proposed Regional Faith Forum, the project revealed a lack of readiness for participation in the formulation of policy agendas and the falseness of the policy assumption that the necessary skills, knowledge, interest and capacity for effective policy engagement are present in faith groups. The reality on the ground was far removed from the rhetoric of the policy agenda. Failure to recognise that gap and adjust accordingly (thereby avoiding excessive demands and expectations) risks undermining the independent contribution which faith groups might make to social welfare and civil society. The significance of this contribution was reinforced by our study of the work of local parishes in local communities which highlighted the ‘added value’ to local communities of the more personalised and flexible approach to the care of individuals that can be provided by organisations which are not tied by a contract to providing a tightly specified service (Cairns et al, 2004c).

This problem – of public policy assumptions being out of tune with practical reality – has also been evident in our research on the interaction between the voluntary sector and local authorities, both through cross-sector partnerships and local ‘representation’ structures (Cairns et al, 2006c; 2009; Harris et al, 2009). In these various studies we have noted that, whilst cross-sector partnership working continues to be an integral element of the current Government’s “modernisation” agenda and, as such, unavoidable for almost all VCOs in receipt of public funding, there are still significant obstacles on the ground to making it productive for both local authorities and VCOs. VCOs often experience pressures to adapt their decision-making, service-provision, organisational structures and/or organisational cultures to accommodate the wishes and norms of public agencies. Whilst the rhetoric is about partnership, the reality is often characterised by mutual mistrust, hostility and suspicion. This gap, between policy trends and practice on the ground, suggests that ‘cross-sector partnership working’ needs to be reframed as a

highly specialised and resource intensive method of working which requires favourable conditions (including mutual respect, understanding and trust) to be met. Without those conditions, both VCOs and local authorities face spiraling transaction costs of participation. Furthermore, in a climate of competition over scarce resources, the freedom of VCOs to participate and engage on their own terms may be compromised by a centrally driven partnership agenda which is not adequately attuned to the practical challenges outlined above.

The implications of closeness to government for the independence of VCOs

What do these research findings suggest about the current state of the voluntary sector's independence from government in England?

There appears to be a pattern of excessive outside involvement in the organisational *practice* of VCOs. Community development principles, collective and informal organisation and representation, approaches to improving organisational effectiveness, inter-organisational relationships – in all of these areas, VCOs may be struggling in the wake of externally imposed demands. Certainly our examples are not ones of organisations 'determining and managing their own affairs' (Home Office, 1998). Rather, they suggest a culture in which governmental agencies, contrary to their stated commitments (Office of the Third Sector, 2006) *do* effectively 'direct the decisions of individual organisations about how they deliver their mission'. In a period of febrile and often contradictory policy-making, the interests of VCOs are simultaneously being advanced and hampered, both by central government policy and local government practice.

The net effect of this tendency for government, at all levels, to interfere in VCOs is a gradual wearing away of independence – in particular their ability to stay true to their vision and purpose, and to organise themselves in the most appropriate fashion – and the slow disappearance of the very "distinctiveness" which *ostensibly* makes the voluntary sector so attractive to this Government.

How then might both VCOs and government act differently, to ensure that fears about such an erosion of the voluntary sector's independence are allayed? How might VCOs become better equipped with the necessary attributes to resist the more instrumental tendencies of government, in order to preserve their distinctiveness, their 'authentic core' (Harris and Billis, 1996)?

Part Three: Strategies to manage proximity and to preserve independence

In the final part of this essay, I suggest three strategies – based on our own work and that of others – which might be employed to the benefit of voluntary sector independence from government: the development of organisational self-consciousness; changes to the support provided for VCOs; and shifts in the thinking and practice of Government.

Strategies for VCOs: the development of organisational self-consciousness

Our accumulated research experience suggests that VCOs which avoid 'sliding into change' (Billis, 1993) under the pressure of policy trends are able to reconcile the demands of the external environment with the imperatives of their organisational 'soul' (Harris and Billis, 1994). These organisations can be described as exercising

‘agency’ (Taylor, 1985). Through a continuous process of reflection and evaluation, they achieve both control and choice over their external environment and, consequently, their own direction and future. Central to this idea of ‘agency’ is what might be called ‘organisational self-consciousness’, which may be considered as comprising three core elements.

First, it seems that organisational values need to be placed at the centre of any change process: this ensures that organisational strategies are properly grounded in, as well as being an expression of, a common understanding of organisational identity. Our earlier work on strategy suggests that organisational change and development are more likely to succeed if they are based on a shared set of values or principles within an organisation which act as a common reference point – the foundation – for strategic planning and as a filter through which future options and opportunities are considered.

A second ingredient of organisational self-consciousness is ‘adaptive capacity’ (Strichman et al, 2008), the capacity whereby ‘managers within an organisation survey the environment for opportunities and threats, devise strategic responses, and proactively modify organisational structure and practice’ (Pietrobugo and Wernet, 2004:119). This ‘environmental intelligence’ or ‘awareness’ allows organisations to read and anticipate external trends and demands and to position themselves as confident architects of any ensuing organisational changes.

The third ingredient of organisational self-consciousness is an articulated understanding of the role and position of the VCO, in relation both to government and civil society. Such an understanding might include: an awareness and appreciation of history and roots (Billis 1991); the difficulty of responding to multiple and sometimes divergent stakeholders, and the importance of unifying the interests of individual actors and giving legitimacy to decision-making; the tradition of advocacy and the broad contribution of the voluntary sector to democracy (Cairns et al, 2008a); the concept of “sector blurring”, and the implications and possible consequences for VCOs as they move into different organisational worlds (Billis, 1993; Taylor 2002). In this way organisations may be better able to develop a more compelling narrative about their distinctiveness to consider ‘how much further (they) will go down the path of conformity with governmental expectations...For those voluntary agencies sliding into change, they need to be aware of just how long and slippery the slope of change may be and how traumatic the arrival at their destination...If the third sector has no distinctive organisational features, no separate voice or voices, no alternative responses to social need, no different ways of doing its work, what will be the rationale for its inclusion within a mixed economy of welfare in the future?’ (Harris, 2001: 219).

Improved support for VCOs

What support do VCOs need in order to enhance their organisational self-consciousness, develop their organisational self confidence and navigate an autonomous, confident course through their relationship with government?

First, related to the earlier observations about organisational self-consciousness, and following our own experience of collaborative projects between academics and VCOs, it would be appropriate now to provide more and varied opportunities to develop the analytical and conceptual skills of VCO leaders and managers. For example, VCOs might be supported to understand that, in the context of heightened policy interest in the sector, the case for independence needs to move

beyond a narrow argument for it as a fixed, automatic entitlement. In order to access resources and achieve influence, many VCOs have no choice but to interact with governmental agencies, in order to engage with the right levels and arenas of decision-making. In so doing, VCOs become, in part, accountable to those agencies; a degree of externally driven change may therefore be inevitable, in order to achieve the level of compliance which is reasonably required by public bodies distributing public funds. Thus, independence is not a fixed entity, something to be won or lost at any given moment; rather it is dynamic and multi-dimensional. The development of this kind of analysis might allow VCOs to negotiate more favourable terms for their interaction with government and to achieve more mutually dependent relationships (Choo and Gillespie, 2006).

As part of this skills development, VCOs might also benefit from revisiting the concept and practice of “capacity building”, a term which has come to dominate the support landscape for the sector. It can be argued that the rush to embrace the language and funds of ‘capacity building’ has been pursued to the detriment of a genuinely critical debate about the detail. This is in spite of the fact that capacity building has been described as ‘theoretically homeless’ (Harrow, 2001: 226), in part on account of its multiple and sometimes conflicting intellectual and ideological roots (Cairns et al, 2005c). Furthermore, the Government itself has been quite explicit about its view of capacity building as an essentially pragmatic activity which will enhance VCS infrastructure, professionalism and accountability. This ‘deficit’ model of capacity building (Harrow, 2001) is concerned with equipping organisations with the attributes required to deliver government targets and expectations (Cairns et al, 2005b; HM Treasury, 2003; Home Office 2004b). In the interests of independence, support for VCOs might be enhanced by the wider adoption of an *alternative* approach, the ‘empowerment’ model of capacity building (Harrow, 2001; Letts et al, 1997; Skinner, 1997). Here, the primary focus is on helping organisations (through training and other related activities) to develop their analytical and critical capacities in order to carry out their **own** purposes and aspirations in a confident and sustainable manner.

Finally, the research examples discussed earlier indicate a need to create space for VCOs to plan change and to take control of the change process (Hasenfeld, 1992). One way in which this can be done is through the application of action research (Cairns et al, 2005b; 2006a). This kind of inclusive, iterative process of inquiry and model-building allows diverse and multiple voices to contribute to building consensus *across* an organisation, bringing real legitimacy to the outcomes. Furthermore, by laying the foundations for change through a process of reflection and inquiry which itself is framed by existing concepts and theories, action research has the potential not only to encourage individual and organisational learning, it can also contribute to a deepening of organisational self-consciousness.

Strategies for policy makers:

Shifts in the thinking and practice of government

Finally, what should be expected of government in relation to voluntary sector independence?

The research examples set out in Part Two confirm that there is a risk of policy implementation failure in some circumstances: if the voluntary sector's independence is unduly compromised and it begins to lose its distinctiveness under the weight of terms and conditions which are not appropriate; if the sector is not equipped to deliver to the levels prescribed by government; and if it is not able to

reconcile conflicting policy agendas. In the face of such risks, there is a strong case for change in the thinking and practice of government. This might comprise three dimensions.

First, the intellectual case for treating the voluntary sector as an alternative service provider, rather than one which is supplementary or complementary to governmental provision, may need to be reframed so that is also grounded in *voluntary sector* research and theory. This would provide an opportunity to open up further the debate about sectoral distinctiveness and the importance and practical implications of respective differences. I have already discussed the potential benefits of this kind of shift to a culture of analysis and learning within the *voluntary sector* and the potential for a richer debate about which features are part of its essential nature and which it can negotiate over or abandon. For central government in particular, a complementary shift might also have merit and could lead to the more modulated, bespoke approach to the mixed economy of welfare recently advocated in the Public Administration Select Committee's report on 'Public Services and the Third Sector' (2008).

Second, there appears to be a strong argument for recognising the importance of 'proportionality' as a principle which reflects the internal diversity and complexity of the VCS (Cairns et al, 2006c; Public Administration Select Committee, 2008). In other words, external expectations, requirements and demands on VCOs need to be appropriate to their mission, function and size. Many of the policy arguments for expanding the role of the sector rest on assumptions about the distinctive features of VCOs, as well as their potential, readiness and willingness to fulfil policy objectives. It would seem prudent for local government to interact with the sector in a nuanced way that does not result in those features becoming obscured or even eroded. This might equally apply to some of the more shrill voices which are advancing the public services delivery agenda within the VCS itself.

Third, the concept of an 'exchange' between the sectors (Cairns et al, 2006c; 2009a; Glazey and Brudney, 2007; Harris et al, 2004; Levine and White, 1961) can offer real opportunities for government at all levels to meet the voluntary sector at the intersection of their *shared* interests and assets. Our own research suggests that both sectors require the investment of time for building the foundations for collaborative cross-sector working. Such an incremental approach to developing cross-sector working relationships might begin to address the shortfalls in government's existing relationship with the voluntary sector (HM Treasury, 2005; National Audit Office, 2005; Office of the Third Sector, 2009) by building the levels of trust, understanding and respect which are necessary, on **both** sides, for effective partnerships to develop and flourish (Cairns et al, 2006c; 2009a; 2009b; Huxham and Vangen, 2005).

Above all, whatever the true nature of government's intentions for the voluntary sector, the terms and conditions of the sector's involvement in policy implementation seem flawed, risking policy failure, sectoral weakening and serious compromises to independence. To avoid this outcome, efforts are required to reconcile the interests of *both* governmental policy makers *and* VCS practitioners. If the voluntary sector **is** valuable and valued; if it genuinely does have a role to play as both a public services provider and as a core ingredient of civil society; if it is able to present a coherent argument about its distinctive features, then it will require treatment from government that is special, in as much as it is tailored and attuned to that distinctiveness.

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Third Sector Independence and the Subsidiarity Principle: A Comparative Historical Essay on Germany

**Professor Helmut K Anheier, University of Heidelberg
& UCLA (University of California, Los Angeles)**

Abstract

For over five decades, the subsidiarity principle has functioned as a major organising principle of the German third sector. The principle continues to inform social policy frameworks, and allocates specific roles to government and private charities. Large networks of health and social service providers enjoy both considerable independence from government and significant financial state support in the fields in which they operate. While some criticise the resulting system of state-supported private welfare as corporatist, inflexible and inefficient, others view it as a constitutionally protected space of private action for public benefit in a society that had long been divided along religious, ideological and regional lines. In recent years, the subsidiarity principle has been challenged by changing economic and social conditions (unification, migration), and generally brought about an opening towards market solutions under the heading 'New Subsidiarity,' and at the expense of governmentally granted and supported independence.

Introduction

This essay addresses the role of the third or nonprofit sector and its independence in Germany – a country with a fairly comprehensive and (by international standards) generous welfare state. It is also a country with a well-developed and sizable nonprofit sector. In many ways, Germany is not a welfare 'state' at all, but a country of long-standing public-private partnerships, particularly in social services and health care but also in vocational training, culture, housing and economic development as well as other fields.

Germany is currently facing considerable challenges as it tries to come to terms with changing socio-demographics and the economic realities of Europe and beyond – changes that have major implications for the country's third sector. Some challenges stem from some of the basic principles that have defined the sector's role in society, relations with the state, and, indeed its independence. Prominent among them is the principle of subsidiarity, and it is primarily this principle which distinguishes the German third sector from its European and American counterparts; and it is also this principle that is most involved when we seek to understand the changing degree and nature of the sector's independence.

In approaching the topic of this paper from a comparative perspective, we may wish to keep in mind that, like England, Germany has a long and complex history of civil society and voluntary sector development. Yet unlike England's, the history of Germany's civil society is characterised by a tantalising mix of severe ruptures, "ups and downs," and pronounced continuities in underlying institutional patterns.

To understand the sector's independence, it is therefore important to take into account the historical forces that either shaped or disrupted its relationship with the state and society.

It is also easy to misinterpret the dependency of the German nonprofit sector on government funding, in particular when compared to the US or the UK. In Germany, two-thirds of nonprofit revenues come from all governmental sources combined, as opposed to about a third in the US and less than half in the UK. However, there are historical reasons for a significant financial dependency on government funding *while* maintaining an equally significant degree of independence. To understand this seeming paradox of dependency and independence, it is useful to take a historical perspective in looking at state – third sector relations as they evolved over the last two centuries. Finally, we will present more recent developments and offer an assessment of the third sector in Germany.

The Long Term

The evolution of Germany's third sector may best be understood by way of comparison with two classic examples, the French and the American one, as they appear in Alexis de Tocqueville's *"Democracy in America"* (1835/40). His analysis of American associations was meant as a critique of France's post-revolutionary political order and society. Long before the Revolution of 1789 took place, France had been a centralised nation-state, and it was the very centralisation of the state which had facilitated the revolution's effectiveness. The *ancien regime* was replaced by a new ruling class while using the existing centralised state structure as a tool for rebuilding the country's political system and societal order. In accordance with the strict individualistic, anti-corporatist ideology of the Revolution, the Jacobin *Loi le Chapelier* (1791) stipulated that no "intermediary associations" were allowed to exist between the individual as citizen and the state.

Individualism provided the basis of America's emerging society, too (e.g., Herbert Hoover's "American Individualism" among many others). But unlike the French case, American society at that time was quasi-stateless and pragmatically oriented towards the maintenance of individual mobility and free choice that combined with a general mistrust against centralised state power. Accordingly, voluntarism and associational life evolved as an appropriate compromise between individualism and collective needs. Importantly, in both countries, *either* state *or* associational structures formed the basis of modern political development and initial democratic identity.

By contrast, the German case is fundamentally different. Politically, Germany's history of the 18th and 19th century is one of compromises between a "self-modernising" feudal order on the one hand and the emergent bourgeoisie on the other. Germany did not witness a successful anti-feudal revolution, as France did, nor the gradual building of the nation-state, as in the US. The German third sector did not develop in antithesis to the state, but in complex interaction with it. This pattern led to the development of a third sector that is located and understood in German society in ways different from what is implied in de Tocqueville's dichotomy of state-centered versus association-centered societies.

How do institutional patterns in Germany differ? The nonprofit sector itself, and the ways it is conceptualised and constituted, is closely related to three institutional patterns or principles that emerged in the complex course of the last two centuries of German history: subsidiarity, self-administration, and communal economy.

Of these three, the principle of subsidiarity is the more important for our purposes, but it achieves its special relevance in a common historical context of self-administration, and, though to a lesser extent, communal economy. These principles did not develop according to some overall design or plan; rather, they emerged through political compromises that led to significant, long term institutional effects. We will discuss each principle in turn.

Subsidiarity

Subsidiarity is a policy principle stipulating that decisions should always be taken at the lowest level possible or closest to where they will have their effect, for example, locally rather than nationally, and through private rather than public action. Subsidiarity implies a hierarchy that begins with the family and extends to the local community or church municipality, region or province to the different levels of state central state administration. In government, subsidiarity has been generally understood as a principle for determining how powers should be divided or shared between different levels of government, and with different levels of public involvement. In essence, it justifies non-intervention by the state in communal and individual affairs. In social policy, it states that government should only intervene if citizens, private organisations and local communities are unable to tackle social problems themselves. For the established churches (Catholic, Protestant), subsidiarity was the policy argument for locating their vast institutional infrastructures, and the interests they represented, in an intermediary position between the individual and the state. The latter, through its expanding fiscal and administrative capacity, threatened to marginalise religion.

What in retrospect appears as a clear principle was the product of failed policies and the political compromise they made possible. In the 1880s, a significant conflict, known as the *Kulturkampf* or culture war, developed primarily between (Protestant) Prussia and Chancellor Bismarck on the one hand, and the Catholic Church and the southern German states on the other. One reason for the conflict was the intensification of political Catholicism and the founding of a Catholic political party, "*Zentrum*" (Center) in 1871. This meant a challenge for (Protestant) Prussia which had only recently gained political dominance in Germany by defeating (Catholic) Austria in the 1866 war. As the social democrats and the workers movement would later, the Catholic Church and its vast institutional network became subject to restrictive policy measures: all Catholic schools came under state control in Prussia in 1872, as did the general administration of the Church a year later, and all state subsidies to Catholic institutions were suspended in 1875.

Though the conflict between the autocratic state and the Catholic Church was settled in a compromise that maintained some church involvement in education and social welfare, it remained a traumatic experience for the Catholic Church as well as for the Catholic elite in Germany. An appropriate ideological response came late; but when it came, via the Vatican, it was especially influential and no longer framed in the context of late 19th century German politics. No something much larger was at stake: how the Catholic Church should react to rising totalitarian tendencies in Europe (Fascism, Nazism, and Bolshevism). The encyclical "*Quadragesimo anno*" (1931), written by the German Jesuit Nell-Breuning, insisted on the priority of individual compassion and communal solidarity over state-provided assistance and public welfare programmes. The state's role in this matter ought to be only a "subsidiary" one (Nell-Breuning, 1976).

The principle of subsidiarity of public welfare became the most influential ideological counterweight to state-centered ideas of welfare provision. A Catholic principle in origin, it became a synonym for any sort of institutional alternative to the state in social policy. It fitted well into a political scene, after World War II, with a discredited state and a defunct public administration. Subsidiarity as an alternative to a *public* welfare state gained considerable strength in the 1950s.¹ The free welfare associations,² i.e., large networks of nonprofit organisations linked to religious or political associations, became the embodiment of the principle of subsidiarity, particularly the Protestant (*Diakonisches Werk*) and Catholic (*Caritas*) associations that form the largest of the six networks.³ In essence, many public welfare programmes are implemented through the free welfare associations, whose role became deeply imprinted in the relevant social welfare legislation. Until the mid-1990s, this translated into a situation whereby the six welfare associations, and not just any voluntary or nonprofit organisations in general, found themselves in a relatively privileged position such that government was required to respect their independence and policy preferences, and support them in achieving their objectives.

The principle of subsidiarity provides the political and economic bedrock for the German nonprofit sector. It spells out a specific form of partnership between the state and parts of the nonprofit sector, which is, at some level, related to the principle of *third-party government* in the USA. Where this partnership developed, as it did in the field of social services, the nonprofit sector grew substantially, and where it did not develop, as in education, the growth of the sector was less pronounced.

Self-Governance

Subsidiarity implies self-governance and a particular constitution of civil society. As an institutional pattern, self-governance reaches back to the Napoleonic era. Prussia's defeat by France in 1806 brought a wave of unprecedented reforms to government, state administration and state-society relationship.⁴ Prussia's civil code, then only ten years old, was stripped of almost all late-medieval corporatist elements to allow for free trade, free choice of profession and personal mobility. Trade and business associations were officially recognised as representative institutions. In 1809, larger cities were exempted from the feudal system and obtained the status of self-governing authorities with limited forms of citizen participation.

The political effect of granting limited civil rights was to mitigate the underlying conflict between the aristocratic state and the emerging bourgeoisie (*Bürgertum*). The economic effect was the liberalisation of trade and commerce, which provided the basis for subsequent economic development that put Germany on a par with other leading powers by the end of the century. The institutional effect, however, was the construction of "state-free" organisations for both economic purposes and political integration, such as the chambers of trade and commerce, "free" municipalities or the "free" professional associations. The principle of self-government created a far-reaching pattern of institutional learning. The licensing by the state and the transfer of considerable independence to some associations occurred while the full freedom of associations continued to be banned. Therefore, the historical experience was that the state would grant limited freedom to citizens while maintaining control over its institutional and political dynamics.

The Vienna Congress, however, and the Karlsbad Decisions of 1819 in particular, brought a conservative backlash against any kind of political liberalism. The effect

(1) The Social-Democratic Party opposed welfare policies based on subsidiarity and challenged their constitutionality. In (West-) Germany, the underlying conflicts between state and church, and between Catholicism and social democracy in the field of social welfare were legally settled only in 1961 by the German Supreme Court (see below). This settlement endorsed the constitutionality of Federal Social Assistance Act and related legislation which stipulated the general subsidiarity of public action in favor of the free welfare associations (see below) in the provision of social services. Significantly enough, it was the Social-Democratic government of the state of Hessen which filed suit against the Federal Social Assistance Act and its stipulation of "subsidiarity" with the Constitutional Court.

(2) Employment in the free welfare associations is above 1 million. The two largest, Caritas and Diakonie run over 100,000 establishments and have over 500,000 employees. Caritas alone employs more staff than the Volkswagen Corporation.

(3) The others are: Arbeiterwohlfahrt (Workers Welfare, traditionally linked to the Social Democratic Party), Parity Association (non partisan, non denominational), the German Red Cross, and the Central Jewish Welfare Association.

(4) For reasons of shortness and clarity, we use the Prussian example as the paradigmatic case. While other parts of Germany show significant deviations from the course of Prussian history in the 19th century, Prussia became the dominant political actor in the formation of the German nation state.

was a newly emerging conflict between the state and the politicised citizenry and their associations. The Prussian General Order of 1816 declared *Vereine* (associations) as “useless” and banned them as a potential source of political unrest. As a consequence, existing associations were forced to change into clandestine organisations, or *Geheimbünde*. From 1815 to 1848, the right of association was a central claim of political liberalism in Germany, and became even a synonym of democratic constitutionalism. This idealisation of political associations intensified even more after the failed Revolution of 1848, with consequences for the political embeddedness of Germany’s future third sector.

The revolution of 1848 was followed by another conservative political backlash and, again, associations were subject to authoritarian persecution. The repeated failure to seize state power led to continued idealisation of associational life as the “true” locus of politics. In the face of political suppression, associations became a surrogate for democracy which had not been achieved in the wider political realm of government itself. With the political suppression being slowly relaxed after unification in 1871, the association became a broadly accepted institutional form of local everyday-life in sports, culture, folklore, academia, and, indeed, “quasi-politics” for bourgeois elites and the emerging middle class.

The revival of associational life after 1848 showed important structural similarities in the political culture of the bourgeois middle-class and the emerging workers movement. The latter grew from associational initiatives of journeymen and young workers aiming for risk protection in shops and improvement of education. In everyday life, associations for sports and singing formed a common cultural experience for the working and the middle-classes. Thus, even without the full right of association granted to the citizens, associations as an institutional form had been fully developed and culturally acknowledged *within* an autocratic political system when Germany became a nation-state in 1871. Thus, German civil society formed a parallel system to the state.

Next to the latent political conflict line between the autocratic state and the middle class, a new conflict developed between the still ruling aristocracy and the workers movement. From 1878 to 1890 the Social-Democratic Party and its vast system of associations were banned. Yet once more, this conflict, too, was mitigated through modernisation of governmental policy and political integration: beginning in 1883 and throughout the rest of the century, state legislation on health insurance, accidents and disability, and pensions were passed. Their deliberate purpose was to integrate workers demands into state policy, and thereby weaken the social-democratic movement, considered at that time the main challenger to political order. While Germany’s civic associational culture remained underdeveloped in political terms, its social welfare and security policies were among the most advanced worldwide.

Still more important, however, was the institutional form these policies took, and which remain basically unchanged today. Again, self-government became the institutional mechanism to achieve two objectives at the same time: to maintain political control through a system of quasi-public administration; and to integrate population groups that might otherwise pose a threat to political legitimacy and stability. Social insurance corporations became independent bodies with equal board representations of employers and employees, but subject to state supervision.

Self-administration is an institutional pattern of *loose coupling* between the state and quasi-independent agencies. It is a form of state-controlled independence

within a triangular setting: two sides with more or less antagonistic interests, plus the state as the neutral mediator. This was to become the classic model of *neo-corporatism* as a pattern of German politics in general and of government-nonprofit relationship in particular.

Gemeinwirtschaft

The principle of self-government, the idealisation of associational life, combined with the vision of a socialist organisation of the economy gave birth to a set of institutions that influenced the notion of the German third sector for about a century until the mid-1980s, and that is now being revisited and revised under the label social economy: the principle of *Gemeinwirtschaft*, or communal economy. The principle implies non-market, non-competitive production of commodities and delivery of services, and rests on the vision of a non-capitalist order less radical than Karl Marx's, since it required neither revolution nor working class domination.

The principle of *Gemeinwirtschaft* became important in the cooperative and workers' movement, and favored an economic system in which actors attempt to maximise common as well as private returns. This communal, socialist tradition is most clearly expressed by the term *Gemeinwirtschaft* itself, which bears some affinity with Toennies' (1935) notion of *Gemeinschaft* (community), and can be understood as a form of communal, though not necessarily local, economy, and as a third way between "free market capitalism" and "bureaucratic socialism." Moreover, it revitalised rural traditions of self-help among independent producers, i.e., the *Raiffeisen Cooperatives* for small-scale farmers, or cooperative banks for small-scale businesses in urban areas.

In practice, however, *Gemeinwirtschaft* was also an ideological justification for the growing wealth of labour unions and the Social-Democratic Party. The principle gained much currency after World War II, particularly in public housing where excess demand existed until the mid 1970s. The decline of the communal economy set in at about that time, and by the mid-1980s, many organisations had closed (following several scandals of corruption and mismanagement) or changed to commercial firms, like banks and insurance companies.

The Principles in Action: Weimar 1918 -1933

In the short-lived Weimar Republic, the social security policies enacted some four decades before remained in place. The various funds, however, were underfunded relative to demand, and public assistance lost its relative worth financially until the mid 1920s. Due to a lack of public funds, social service delivery was largely carried out by competing networks of free welfare associations: Catholic, Protestant, Social Democratic, Communist, and, towards the end of the decade, the various right-wing groups, including the Nazis. Subsidiarity meant that private actors looked after their own communities, and did so in an institutional space that guaranteed independence but promised neither any special privilege nor financial support. The self-governance of many public and quasi-public agencies and the special interests they presented continued, as did the decentralisation of public administration. The social economy received much political support, from agrarian interests seeking to support small farmers to the urban worker class pushing for better housing. Civil society flourished, with thousands of clubs and associations, though politically deeply divided, and a vibrant cultural scene.

The third sector in Weimar Germany can best be described as mosaic of ideological interests, of which each element or component is internally well developed and

active, but with weak ties across. The glue that holds diverse civil societies together was weak if not often absent. There was a Catholic welfare system, a Catholic associational system, Catholic foundations, and Catholic parties next to a Socialist welfare system, Socialist associations and funds, and various Socialist parties etc. Of course, the vibrant yet divided, relatively large but financially weak third sector did not bring about the fall of Weimar. Other forces beyond were at work there. However, the fragmented, divisive nature of the third sector, where civil society interests lined up with political and ideological cleavage structures, did certainly not help. Taken together, the presence of multiple ideological camps, each with their own third sector infrastructure, did not provide the defense needed against disloyal and extremist political movements.

The Nazi period (1933-1945) resulted in significant discontinuities in the country's institutional setup and political economy. The Nazi-policy of "*Gleichschaltung*," the organisational leveling, streamlining and incorporation of all major aspects into the political party machine, brought much of the third sector under party-control. Other parts were brutally suppressed. All welfare associations were first regrouped under single (Nazi-controlled) umbrella organisations, and soon, with the exception of the Red Cross, reorganised as the National-Socialist People's Welfare.

The Principles in Action: The Federal Republic until 1990

The post WWII era saw a pacified Germany in domestic terms, too. Many previous conflicts and ideological divides, while never resolved or settled, no longer mattered: regional and religious differences, as well as separatist tendencies became much less manifest, and no regional party has been represented in the Federal parliament since 1957. The weakened and displaced agrarian groups were incorporated into the Christian Parties, which in turn made attempts to avoid confessional politics. It was only in post-WWII Germany that the three principles, which emerged between 1850s and the early 1930s, came to full fruition:

- the principle of self-administration or self-governance, originating from the 19th century conflict between state and citizens, allowed parts of the nonprofit sector to emerge and develop in an autocratic society, where the freedom of association had only partially been granted; the principle allowed for a specific civil society development in Germany that emphasised the role of the state as grantor of political privilege and freedom over notions of spontaneous self-organisation. Today the principle lives on in the form of a highly devolved and decentralised public sector, with close ties between organised civil society and local, municipal governance structures.
- the principle of *Gemeinwirtschaft* (communal economics), based on the search for an alternative to both capitalism and socialism, led to the emergence of cooperative movement and the establishment of mutual associations in banking, insurance, and housing industries. Until the 1980s, when a mutually reinforcing process of scandals and political preferences for demutualisation brought about a decline, some of the housing corporations (*Neue Heimat*), cooperatives (*Raiffeisen*) and banks (*Sparkassen*), were among the largest in Europe. Today, the principle is found, much weakened, in the notion of the social economy, and is similar to public benefit corporations in the UK.
- the principle of subsidiarity, originally formulated by Nell-Breuning (1976), and related to the settlement of secular-religious frictions between 1880 and 1918, and fully developed only after World War II, assigns priority to nonprofit over the public provision of social services; this created a set of six nonprofit

conglomerates that today rank among the largest nonprofit organisations worldwide. The principle of subsidiarity is still significantly relevant and is currently debated among policy experts as what has become known as the New Subsidiarity Principle, a development that brings the German third sector closer to what in the UK is referred to as New Public Management and quasi markets (see below).

The welfare associations became the embodiment of a new interpretation of the principle of subsidiarity, and their role deeply imprinted in policies and social legislation. For example, article 10 of the Social Assistance Act states: “The public bodies shall support of the Free Welfare Associations appropriately in their activities in the field of social assistance...If assistance is ensured by the free welfare associations, the public bodies shall refrain from implementing their own measures.” The Youth and Child Welfare Act contains similar stipulations, although recent legal and policy development introduced a more flexible implementation of the subsidiarity principle that also allows for organisations not part of the free welfare associations to provide social and health-related services. The Long Term Care Insurance Act of 1995 is the perhaps most prominent case in point. In any case, the principle of subsidiarity meant that public welfare programmes were often implemented through the network of the free welfare associations.

To understand why these developments came about, we will look at developments after World War II in more detail: At the end of the War, the country faced many daunting tasks: millions of homes destroyed, a ruined infrastructure, malnourishment, rising poverty and a growing refugee crisis, among others. The National Socialist Nation's Welfare Association and the German Red Cross were banned by the Allies. With neither government nor national and regional administrative structures in place, the free welfare organisations, being hastily reconstituted, became important actors almost by default. They became an island of organisational and cultural continuity, in contrast to many other groups and institutions implicated by Nazism, particularly the state itself. The latter was reconstructed in a slow and time consuming step-by-step process, leading to the founding of the Federal Republic in 1949. Unlike in the late 19th century, the subsidiarity principle could take root in a quasi 'stateless' era under Allied control. In addition, new special interest groups arose from the wreckage of the time, and associations for the wounded, war widows and orphans, returning soldiers and refugees sprung up, often in close affiliation with the free welfare associations.

The free welfare associations organised emergency relief and assisted distressed populations, supported by Western, especially American, relief organisations such as CARE. The Christian welfare associations were the first to reorganise, and soon, the Weimar voluntary welfare system was rebuilt in Western Germany: with the exception of the Red Cross, the Communist welfare organisations and the Christian Workers' Relief Organisation (which the Allies regarded as suspect), all traditional voluntary welfare associations were functioning by the time the Federal Republic was founded in 1949. (The German Red Cross was reestablished only after West Germany joined NATO in the mid 1950s.)

Different this time was that ideological divides were less pronounced than before 1933. One reason was the Allied licensing system. Until 1949, across all fields of nonprofit activity, including culture, media and education, organisations required a license from Allied authorities. This was to prevent the infiltration of Nazi and Communist organisations, and indeed their establishment. Christian and church-related groups were favored and met with much less suspicion than political groups did, in particular socialist organisations.⁵ The nonprofit sector became

(5) Already by the autumn of 1945, church-related youth groups, athletic clubs, nature clubs, and the Boy and Girl Scouts were active. The need for organising was great: for example, for the 1.6 million youths in the three Western zones over 22,000 groups existed by 1946, and 26,000 groups a year later.

predominately religious rather than secular, and service rather than advocacy-oriented. The re-establishment of unions and business and professional organisations followed in 1947, so that by the time the Federal Republic was founded, a rudimentary and rapidly growing nonprofit sector was in place.

In social policy, a corporatist pattern emerged, resulting from the very strengthening of the church-led charity system that formed after World War II. The Christian Democrats, enjoying absolute majority for much of the 1950s in the Federal Parliament, and guided by pro-church thinking, formalised the principle of the subsidiary as to mean a policy preference for the free welfare organisations. In 1961, municipalities were no longer allowed to establish kindergartens and youth welfare institutions if a free welfare organisation was already in place or could take on the task, with public subsidies guaranteed and exclusive control over personnel policy and activities. In other welfare fields, this practice took hold as well, with the overall result that by the 1960s, the free welfare associations had quasi-monopolistic control in social welfare provision.

The growing flow of state subsidies, and the expansion of the welfare state, fuelled by nearly 25 years of economic growth between 1949 and 1973, had four implications: first, nonprofit organisations in the fields of social services, housing, health care, culture etc boomed financially, subsidised by numerous and often quite generous government programmes. Second, financial wealth resulted in a major expansion and professionalisation of the nonprofit sector, with paid positions replacing volunteers, and consequently, in a bureaucratisation of even small establishments. Third, in this process, the free welfare organisations began to resemble each other ever more in terms of administrative structures and behavior, and they became less and less distinguishable from state institutions as well. Finally, the way the subsidiarity principle was interpreted and implemented at that time, resulted in a loss of the voluntary aspects of the third sector. Volunteering, donations and participation became less and less important.

Undoubtedly, a decisive prerequisite for the bureaucratisation and professionalisation of the nonprofit sector until the 1970s was its institutional centralisation in the form of the free welfare associations supported by substantive, regular and predictable flows of public funds. The overall result was a private, quasi-state complex, intimately linked to the public sector and, specifically, to the two major political parties. While political parties were important in securing public funds, the associations were bases of political influence and recruitment of political talent. It was not uncommon in local councils that Caritas representatives held seats for the Christian Democrats, or Workers Welfare officials being the MPs for the Social Democrats. This constituted corporatist circles of influence and patronage, and had a homogenising effect on both politics and nonprofit organisations during the Adenauer era (1949-1963).

Third sector independence combined with dependence in terms of financial support meant that the large nonprofit providers become somewhat isolated from society on the one hand, and from parliamentary politics on the other. German society, however, began to change. Beginning in 1966, as the so called 'Extra-parliamentary Opposition' and the students' movement appeared, the corporatist system, including the nonprofit sector dominated by the free welfare associations, fell under more and more scrutiny. Nonetheless, the protest movements concentrated mostly on the political and governmental institutions: ideological debates and symbolic showdowns centered on political issues like the Grand Coalition (Christian Democratic Union/Christian Social Union of Bavaria and Social Democratic Party, 1966-69), state of emergency provisions (1968), nuclear energy

(early 1980) or missile deployment (1982/83). Nonprofit providers were challenged for being paternalistic, quasi-state institutions controlling major components of the welfare system, such as kindergartens, youth centers etc. The most widely known and visible conflicts centered on kindergartens and schools, and focused on the concept of 'antiauthoritarian' education.

Two new conceptual approaches shaped policy debates in the 1970s, both informed by similar developments in the US and Britain: first, alternative social policy models and concepts emerged based on self-determination and participation. Stressing self-help and self-organisation, they opposed the institutionalised welfare system. Second, a wide range of social experiments sought alternatives to professional social work by emphasising 'non-paternalistic practice' and a community rather than case-based orientation. In contrast to the clinical, professional methods favored by established welfare organisations, the new approaches were client-centered and in many ways more 'secular.' For years, both sides had great difficulties in coming to terms and (in reaching) a mutual understanding, as the issues involved distinct self-understandings of what welfare meant. It was only with the financial cuts in the welfare system in the 1980s that self-help approaches (as the often less expensive approach!) were taken up by the free welfare associations.

The 1970s and 1980s saw numerous citizens' initiatives, social movements of many kinds, countless self-help initiatives and what were called "alternative projects", i.e., programmes that operated outside the corporatist third sector organisations. On the whole, these movements and initiatives brought about more open, pluralistic, participatory and democratic structures to the German third sector. An associational infrastructure emerged based on a bottom up approach and adding a grassroots oriented independence to the sector, and which began to complement the formalistic independence based on the state-centered interpretation of the subsidiarity principle. On the whole, it led to a gradual reform of the corporatist and highly structured quasi-state sector of the 1950s and 1960s. While the free welfare associations remained powerful, they were opening up and began a process of modernisation and inclusion, slowly moving away from state dependence.

The Principles in Action: Recent Developments and Outlook

By the late 1980s, Germany had become a well functioning, stable and wealthy country, living within its means, and with major social, political and economic problems either solved or institutionally under control. Unification came unexpectedly, and found the West German nonprofit sector unprepared. Above all, it challenged a new found equilibrium between society, state and the third sector that characterised Germany in the late 1980s. Ralf Dahrendorf argued that West Germany down right thoughtlessly sent the steamroller of its institutions over the landscape of East Germany. The German government tried to build the East German nonprofit sector with the help of public funds, and modelled on West German institutional patterns. Yet this policy soon ran into trouble, as growing strains on public budgets persisted throughout the 1990s and well into the first decade of this century. What is more, self-governance meant that local and regional varieties of West German models developed their own dynamics in the eastern parts of the country. Ideological elements based on notions of reformed socialism remained prominent, which favoured social economy initiatives. In the end it meant that unification resulted in greater flexibility in how the subsidiarity principle became interpreted and applied. In policy terms, these developments shifted the focus of subsidiarity away from nonprofit providers to other non state

actors as well, including businesses and social enterprises, thereby introducing market elements into a system with fewer and fewer corporatist elements in place.

Already the 1990s saw first moves into this direction, and reforms moved the free welfare associations away from simple subsidies to performance-based contracts. Copayments become more frequent and tended to increase over time. As a result, the German nonprofit sector now relies more on private fees and charges than in the past, even though a financial dependency on the state remains. But there is more involved than a change in revenue structure. Importantly, federal and state governments are “down-sizing,” and are in a process of “off-loading” some of their traditional tasks to private nonprofit institutions and commercial providers. The nonprofit sector is called upon by government to play a greater role in many different fields such as education, health and social services, community development, employment and training, culture, the arts, recreation, and the environment. Increasingly, nonprofit organisations are finding themselves part of new private-public partnerships that enlist the nonprofit sector in a complex network of responsibilities, financial obligations and accountability requirements vis-à-vis different stakeholder such as governments, members, clients, and competitors. Unlike in the past, the new public-private partnerships are informed by the competitive spirit of new public management, which puts a premium on cost-efficiency and accountability.

Whereas in the 1960s, German society had changed and pressed government for reform, it seems that since the 1990s, government has been changing and is now asking society and its institutions to reform. What has evolved is less the form or structure of government and more what the political scientists Schuppert (2003) calls state orientations, i.e., ideological blueprints that summarise the role of government in relation to the public good in modern societies. Following Schuppert, three types of state orientations and actions appear relevant in this context, each implying a different role for the nonprofit sector:

- *The constitutional state* is based on democratically legitimised decision-making about public good preferences, which the state implements through legislative and administrative procedures and enacts through specific programmes. Nonprofit organisations become parallel actors that may complement or even counteract state activities. The third sector in the Weimar Republic fitted this model. The Constitution afforded the third sector legal independence but the state could not, in the end, strengthen its organisational base financially.
- *The guarantor state* views serving the public benefit as part of a division of labour between state and private actors, but under state tutelage and with primary state funding, as in the case of the corporatist nonprofit model. In this scenario, nonprofits can become part of the overall division of labour, although their resourcing role will be less pronounced. This was the model of subsidiarity that emerged after 1945 and that dominated the German nonprofit sector until the 1990s. Here, legal independence and financial dependence coexisted.
- *The active state* regards contributions to public benefit (other than pure public goods) as a task of civil society, as part of a self-organising, decentralised and highly connected modern society. The direct state contribution to public benefit will be limited, and nonprofits, along with other private actors, will be called upon to make substantial efforts to mobilise monetary and other resources for the common good. This seems to be evolving as the current model yet fully to develop.

Behind this reasoning is that between 1970 and the present time, notions of public benefit and public responsibilities have gradually shifted, and continue to shift, from the state to other actors. By design and implication, this process opened up new roles for nonprofit organisations. In particular, as the role of the state as “enabler” and “animator” of private action for public service has increased, the nonprofit role is becoming more pro-active and entrepreneurial. The sector is moving away from the protective shield of state-oriented subsidiarity. Its independence is based less on legislation and administrative procedures but more on its foundation as a civil society institution.

Today, unlike for much of the past five decades, the German nonprofit sector, including the free welfare associations, can add to institutional diversity rather than trying to control it; they can contribute to innovation rather than attempting to maintain the status quo; and they can prevent the development of monopolistic structures by fostering a sphere of self-organisation next to that of state administration and the market. Indeed, the nonprofit sector can become a field of experimentation, an area for trying out new ideas that may not necessarily have to stand the test of either the market or the ballot box. It is here that subsidiarity and self-governance achieve a modern relevance, and it is here that independence becomes meaningful again.

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Northern Ireland and the independence of the voluntary sector

Dr. Nicholas Acheson, Social and Policy Research Institute, University of Ulster⁽¹⁾

Abstract

This paper describes the development of the relationship between the voluntary sector and government in Northern Ireland and emphasises the important role of context in understanding the extent to which voluntary organisations are compromised and the extent to which the issue is viewed as problematic. The paper argues that as a result of the period of conflict in Northern Ireland and the subsequent peace process voluntary organisations have tended to trade independence for insider access to government. One outcome has been that organisations have taken a fairly relaxed view of threats to independence. Nevertheless as the Assembly elected in 2007 finds its feet and a “post peace process” era comes into view, there is evidence that organisations in Northern Ireland are subject to familiar pressures due to an increasing reliance on contract-based funding. The paper speculates that debates in Northern Ireland on independence will increasingly reflect those elsewhere as the context normalises.

Introduction

The extent and nature of the independence of voluntary and community organisations from government are hard to evaluate without paying attention to the social and political context in which relations are played out. This is a particularly important consideration in Northern Ireland where traditions in public administration have a different feel to those in the rest of the UK and where the wider historical context has had a direct bearing on the nature of the voluntary sector, its development and the nature of its relations with government. How independence is understood and the value placed upon it, are both in this sense context dependent. It will therefore be necessary to establish the outline of this context before examining the specific issues with which the paper is principally concerned.

The Northern Ireland Background

For the final 30 years of the 20th century Northern Ireland experienced, (with the exception of the former Yugoslavia) the most intense violent conflict over national identity experienced in Europe during those years. Over 3,500 people were killed and about 48,000 injured (Hayes and McAllister, 2004). The cost of the conflict is also measurable in the extent of mental ill-health and disability. One study has estimated that there may be as many as 100,000 people living in households where there is at least one person disabled as a direct consequence of the political violence (Smyth and Fay, 2000). It has been further estimated that about 500,000 men and women from elsewhere in the UK have served in Northern Ireland in the armed forces over the same period. The social and economic costs of the conflict have been formidable exemplified by high levels of spatial and social segregation between the two main ethno-sectarian communities, matched by deep distrust, and significant levels of poverty and gross inequalities in wealth and income

(1) The author wants to particularly acknowledge the help of Gordon McCullough, Research Manager at the Northern Ireland Council for Voluntary Action for datasets and reports, conversations and the occasional cup of tea, without which this report would have been much more difficult to compile.

(Shirlow and Murtagh, 2006). The conflict has left a legacy of two deeply traumatised communities that lack a shared understanding of the tragedy that has befallen them with the poorest people bearing the brunt of an outcome of mental ill-health and damaged lives.

Measured by income distribution, Northern Ireland is among the most unequal regions in Europe (Hillyard et al, 2003) and the extent of inequality has been growing (Horgan, 2006). The role of the private sector has been relatively small in the Northern Ireland economy; public expenditure still accounts for more than 60 percent of GDP (in Britain it is around 40 percent). Every aspect of Northern Ireland society is relatively dependent on government spending in a way unknown in most developed economies.

Spatial segregation has accelerated since 1998 and support for cross-community integration remains relatively weak. Trust between the two communities has fallen in the last ten years, and optimism about continued progress towards a more peaceful society has been low, although it is now rising to the levels evident in 1998 (Harbison and Lo, 2004; Shirlow and Murtagh, 2006). The process of exclusive identity formation into the two rival ethnic groups remains exceedingly strong even for children born after the first IRA ceasefire of 1994 (Connolly and Healey, 2006).

Most people in Northern Ireland live their lives in segregated spaces, a process that predates the onset of violence in the early 1970s, but which accelerated dramatically from that point on (Shirlow and Murtagh, 2006). In the case of Belfast, the largest city, just 10.7 percent of Catholics and 7.0 percent of Protestants live in areas that could be described as 'mixed'², that is places that are between 41 percent and 60 percent Protestant or Catholic (Shirlow and Murtagh, 2006: 60). In addition, there is a class profile to the degree of segregation in that at least 90 percent of the population is comprised of one group or the other in 98 percent of social housing in Belfast, whereas the overall figure for Northern Ireland is 71 percent (Ibid: 60). Patterns of avoidance are deeply embedded in the every day routines of most of the population (Darby, 1986; Murtagh, 2002).

The fragmentation of civil society into two mutually antagonistic ethno-religious blocks has been a feature of social organisation in the territory that became Northern Ireland in 1922 long before partition. By the time of the First World War there were effectively separate spheres of voluntary action in each of the Protestant and Catholic communities with very little interchange between them (Jordan, 1989). Notwithstanding every day assumptions about there being a single entity, the voluntary and community sector in Northern Ireland, voluntary and community organisations remain structurally embedded in the two main ethno-religious blocks even if there is now more routine inter-communal contact in the activities of many of them than would have been the case 40 years ago.

Recent research on the communal affiliations of management committee members of Northern Ireland voluntary organisations shows that deep divisions remain in the community backgrounds of organisations (Acheson et al, 2007). Table one summarises this evidence.

(2) The terms 'Protestant' and 'Catholic' are used here in the way commonly understood in Northern Ireland, as signifiers of communal affiliation; their use does not imply that the conflict is about religion. Their use in every day discourse in Northern Ireland as signifiers of ethnic affiliation can be confusing to the outsider. The divisions should more properly be understood as being between the descendants of a colonial settler population and a native population and it is the unresolved nature of that relationship that is at issue and which sustains the primacy of the separate identities of each group rather than their respective religious affiliations. The latter form a prism through which some, although not all, the differences can be observed.

Table one: **Communal affiliation of Northern Ireland Voluntary Sector Management Committees**

	Frequency	Percent	Valid percent
Wholly Catholic	40	11.2	13.1
Mostly Catholic	69	19.4	22.5
Mixed	80	22.5	26.1
Mostly Protestant	75	21.1	24.5
Wholly Protestant	42	11.8	13.7
Missing	50	14.0	100
Total	356	100	

Note: Wholly Catholic = 100 percent Catholic, Mostly Catholic = >60 percent Catholic, Mixed =< 60 percent Protestant/Catholic, Mostly Protestant = >60 percent Protestant, Wholly Protestant = 100 percent Protestant.

This evidence suggests that almost 75 percent of organisations are wholly or mostly either Protestant or Catholic. More than 25 percent are wholly one or the other. It is possible to compare these findings to other data on the extent of relations between Northern Ireland's two main communities. Data from recent Life & Times attitude surveys suggests that the degree of segregation in the Northern Ireland voluntary sector appears greater than general friendship networks but less, for example, than the extent of endogamy. Northern Ireland thus remains a highly segregated society both spatially and in terms of social ties and this is reflected in the social basis of voluntary action. Trust in the good intentions of the other community remains hard-won and is readily undermined.

Public policy and the voluntary sector in Northern Ireland

The development of government voluntary sector relations in Northern Ireland can best be understood with reference to three salient factors. The first is that Northern Ireland is a relatively small place with a population (currently about 1.7 million) much the same as some local authorities in England. Relationships among elites in the sector and in government are relatively easy to establish and maintain and there has long been a corporatist feel to the governance of Northern Ireland with a movement of people between the civil service and voluntary organisations and the appointment of people from the voluntary sector to government quangos (Ditch, 1988). The sector itself is overwhelmingly constituted of organisations that exist only in Northern Ireland and it can be argued that to a large extent government voluntary sector relations are conducted through a set of relations insulated to a degree from direct external interventions.

In this context there has been a long tradition in Northern Ireland of government interest in the ability of voluntary organisations to play their part in public administration sometimes by direct intervention as with the establishment by government of both the Northern Ireland Council of Social Services (NICSS) in 1936 and its successor body, the Northern Ireland Council for Voluntary Action (NICVA) in 1985. At other times relationships have been conducted by means of government circulars and since the 1980s a growing plethora of consultative committees and partnerships. In sum, voluntary organisations have long played a central role in public administration, particularly in social welfare and in support for unemployed people and more recently in youth services, the arts and culture and rural development. In this context it is not always clear to what extent their contribution is independent of government initiatives.

Second, between 1972 and 2007, with the exception of two short interludes in 1974 and between 1999 and 2002, Northern Ireland was governed by the Secretary of State for Northern Ireland assisted by a team of four junior ministers (one sitting in the House of Lords), the others representing constituencies in Britain. Known locally as “helicopter rule”, this governance regime was characterised by a rapid turn-over of Ministers and effectively government by civil servants as many Ministers lacked the interest and authority to contradict or overrule them. Public administration in Northern Ireland under direct rule was once memorably described as: an “excuse for administrative intransigence” which resulted

in a subjugated population acquiescing in a system, seriously lacking in both political and administrative accountability. The assumption that no changes can be made to public service delivery in the absence of progress on the constitutional front has created and embedded a plethora of boards, trusts, quangos and civil service departments characterised by administrative indifference” (Hughes et al., 1998: p.20).

This background in public administration is likely to continue to cast a shadow over relations as the fledgling devolved Executive, reinstituted in May 2007, finds its feet.

The third factor has been the over-riding concern of successive government teams to the management of the conflict (and subsequently the management of the peace process) accompanied by covert and not so covert attempts to recruit elements of civil society to that task. Thus during the 1980s government policy that followed the IRA hunger strikes of 1981 was focused on driving a wedge between Sinn Féin, the political wing of the IRA at the time, and its support base by channelling the large sums of money available for temporary employment schemes for long-term unemployed into the churches and church run organisations. This was accompanied by a policy of political vetting in which government sought to deny funding to voluntary organisations whose management committee members were judged to have too close links with paramilitary organisations.

In the early 1990s the policy was reversed, leading to the ground-breaking response to the Efficiency Scrutiny of funding of Voluntary Organisations (Home Office, 1990), *Government Support for the Voluntary Sector and for Community Development* (DHSS, 1993) following which community-based organisations were invited into various partnerships with government agencies and departments, invitations that were enthusiastically seized on particularly by organisations from areas controlled by Sinn Féin as it offered a means for exerting influence over large-scale government-funded regeneration and other schemes. This policy change and all that flowed from it were only possible once government had started talking (unofficially and at that time unacknowledged) to the IRA (Acheson and Milofsky, 2008).

One impact of the combination of the violence and the direct rule administration was a process that tended to push voluntary sector elites and civil servants together in a shared endeavour of maintaining sufficient stability for public administration to continue to function. For government, it was important to cultivate allies in Northern Irish society that were not self-consciously wedded to exclusive ethno-religious viewpoints; voluntary organisations were often all too willing to oblige. The payoff was at least the illusion of influence over the development of policy in the issues with which they were concerned. In a recent overview study of the development of voluntary action in Northern Ireland the authors noted that ‘the voluntary and community sector is now largely incorporated as part of the system

of public administration, operating in a sphere whose parameters are set by state patronage' (Acheson et al, 2004: p.250). They quote interviewees from voluntary and community organisations feeling that relations between government and the sector were too close and that this compromised independence. Both government and the voluntary sector worked in a strongly risk averse culture (Acheson et al, 2004). The question that this paper addresses is the extent to which that judgement remains valid.

The voluntary sector's role in the peace process was cemented in the two European Union Programmes for Peace and Reconciliation which ran between 1994 and 2006 and contributed €1,656m to Northern Ireland and the Border counties of the Republic of Ireland (SEUPB, 2008)³. A substantial proportion of this money was spent by voluntary and community groups and in both programmes the money was administered by a combination of local area partnerships in which voluntary organisations played a leading role, and intermediary funding bodies within the sector itself. The first Peace Programme was substantially designed by elements within the voluntary sector itself, which was able to participate in a policy community that included local leaders of community based organisations and officials in the European Commission, which had sought to engage directly with civil society. The availability of Peace Programme funding particularly to community-based organisations together with the experience of designing and monitoring the programme and administering the disbursement of the money tended to mask other underlying shifts in state support for the voluntary sector that more closely resemble those apparent elsewhere in the United Kingdom, particularly the redefinition of the sector's role in public service delivery accompanied by a shift in funding mechanisms from grants to contracts.

The introduction of quasi-markets particularly in health and social care in the 1990s in Northern Ireland as elsewhere in the UK, led to relatively large sums of money flowing from the state to voluntary organisations to provide public services under contract with the state, particularly in the field of social welfare. There was, for example, a 400 percent increase in government funds for social care services between 1992 and 1994 (Acheson et al, 2004). Subsequent to the election victory of the Blair government in Britain in 1997 relations between the third sector and the state were reformulated around ideas of partnership and co-governance, although in Northern Ireland these had had their origins in policy that dated back to 1993 (Kearney and Williamson, 2001; Lewis, 2005; Newman, 2001).

As with the other constituent parts of the UK, Northern Ireland acquired a "compact" setting out general principles that would govern relations between the state and the third sector and a plethora of partnerships and other joint bodies were established across many areas of public policy (Kearney and Williamson, 2001). The compact had been prefigured by the 1993 'Strategy' which had pioneered the idea that government could have an overarching and general policy towards the sector as such that acknowledged the sector's independent contribution to social cohesion (although that terminology had not been in use at the time). It stood in marked contrast to policy in the rest of the UK, which had a narrower and more instrumental focus (Lewis, 1999). Indeed Kearney and Williamson (ibid.) suggest that contacts between the civil servants who had worked on the "Strategy" and members of the Deakin Commission played their part in the genesis of the compact initiative throughout the UK.

These changes coincided with the signing of the "Good Friday" agreement in 1998 and the establishment of a local power-sharing executive government (since suspended and now reinstated). As in Scotland, a joint government voluntary

(3) The Third Peace Programme that has recently been announced is much smaller than the first two and more closely focused on conflict resolution and community relations activities. For a fuller discussion of the impact of the Peace Programmes see Acheson and Williamson (2007) and Acheson and Milofsky (2008).

sector forum was established at the same time. These new arrangements for governing Northern Ireland institutionalised these broader policy changes in a local setting and introduced a policy discourse that emphasised the importance of third sector participation in stable and effective governance.

This discourse emphasised the role of voluntary and community based organisations as sources of social cohesion in a fragmented society and as essential partners in the modernisation of public services. These two roles, whilst sometimes pulling in opposite directions, have remained at the centre of government policy towards the voluntary sector since then. The tension of living within a funding regime increasingly dominated by contracts and service agreements for the delivery of specified public services in a policy context that continued to value the independent contribution of voluntary organisations to the social good, of course reflects similar tensions in the rest of the UK, particularly since the Treasury Cross-Cutting Review of Funding for the Voluntary Sector (HM Treasury, 2002; Osborne and McLaughlin, 2004). But it has had a particular resonance in Northern Ireland because of the emphasis in policy on the sector's contribution to the peace process, a role implicitly predicated on its capacity to operate independently of government.

One outcome has been a rhetorical commitment to such an implicit commitment to independence in policy documents, whilst at the operational level the government departments responsible for funding have mostly continued to apply narrower more instrumental criteria to the conduct of their relations with voluntary sector partners. The impact of this is discussed below.

The Northern Ireland compact was followed by the publication of an operational document, *Partners for Change, Government's Strategy for Support of the Voluntary and Community Sector* (DSD, 2003) that committed the various government departments to 194 actions and 18 cross-cutting actions over the following three years. Although practice has varied between the 11 departments, these actions tended to be either, rather vague and difficult to monitor, or tied closely to departmental objectives.

In parallel to these developments the government appointed a task force on resourcing the voluntary and community sector in response to the report of a review into the sustainability of the sector's continuing contribution to the development of Northern Ireland society once funding from European Commission sources in particular began to dry up. The task force commissioned a number of important research reports on funding, infrastructure and sustainability. In March, 2005 the government published its response to the task force, *Positive Steps* and set up an implementation group, chaired by the Minister for Social Development. The response illustrates the tension between the rhetorical valuation of the voluntary sector's independent place in society and a practical concern with ways of supporting its capacity to be a better and perhaps more effective partner of government. Thus the introduction tells us that:

The voluntary and community sector is well placed to help build better relationships within and between communities to tackle sectarianism and racism and helping meet the needs of victims and survivors. (DSD, 2005: p.4)

The meat of the response is a close focus on improving funding, investing in capacity and securing improvements in governance. In it, the government committed itself to the principle of full-cost recovery and established a modernisation fund (£3m revenue funding and £15m capital funding) and a £5m

Community Investment Fund. These funds parallel the Futurebuilders and Capacitybuilders funds in the rest of the UK.

But perhaps the change brought about by these policies that will have the most enduring significance is likely to be the modernisation of the regulatory framework by introducing charity legislation that broadly follows the new laws in England. The Charities (Northern Ireland) Act 2008 establishes a modern definition of charity and sets up a Charities Commission for the first time. The Commission will become operational in 2009.

The Northern Ireland Executive that assumed office in May 2007 broadly endorsed this policy approach and it has continued to operate the structures established to manage relations in the aftermath of 'Partners for Change'. However the timeframe of this policy framework ran out at the end of 2008 and, at the time of writing (February 2009) the DSD is planning to publish a White Paper on the voluntary sector to inform a new policy to be adopted by the Northern Ireland Assembly.

In this context, debate about the independent contribution of voluntary and community organisations to the health of Northern Ireland society will re-emerge as the pressures come to more closely resemble pressures evident in other parts of the UK. The significance of independence as a factor is likely to become a more visible issue, one that a White Paper will have to address, at least implicitly. Where then are the main pressure points in Northern Ireland? It is to this evidence that we now turn.

Trends in the voluntary and community sector in Northern Ireland

In the absence of a central register of voluntary and community organisations similar to that in England and Wales, it is difficult to accurately assess the size and extent of the sector in Northern Ireland. The best formal estimate that is available is that maintained by NICVA in its "State of the Sector" report series judged to be about 4,500 organisations, or 3 percent of the estimated 164,415 general charities in the UK (NICVA, 2007). These figures are based on census returns according to a set of formal criteria. It is likely to be a substantial underestimate. For example, the NICVA dataset identified 250 organisations whose main beneficiaries were older people yet we know that Age Concern NI and Help the Aged have identified over 1,300 organisations addressing the needs of older people as their primary purpose and believe there may be many others (Acheson and Harvey, 2008). Most of these are very small and local.

The key findings of the last "State of the Sector" study are as follows (NICVA, 2005):

- Seven eighths of all organisations are controlled from within Northern Ireland. The sector is largely self-contained;
- Total income was £616.6m in 2003/04;
- This was a fall of income in real terms of 10 percent since 2000/01;
- Government was the largest single funder, spending £216m (35 percent of total income);

- Two thirds (67.3 percent) of organisations were dependent for half or more of their income from government sources and more than one in five (20 percent) for 75 percent or more;
- Half of all income was generated by 5 percent of organisations;
- Earned income accounted for 34.8 percent of all income, up from 23.5 percent in 2000/01;
- As a proportion of income from government, earned income increased from 7.7 percent in 2000/01 to 31.6 percent in 2003/04;
- The proportion of voluntary income from all sources fell in the same period from 72.1 percent to 63.8 percent;
- There were an estimated 29,000 paid employees, 5.1 percent of the overall UK voluntary and community sector workforce. Three out of every five employees (60 percent) worked for organisations with turnovers of more than £1m a year, 5 percent of all organisations.

Preliminary analysis by NICVA of updated data suggests that there has, if anything, been some intensification of these trends since then⁴. In particular, whilst total income has been stagnating or has even fallen a little since 2003/04, the move from voluntary to earned income has continued. This may be in part due to sharpening of accounting procedures, but it appears sufficiently well-established to suggest that government support, in particular, continues to move from a system of grants to contracts.

The NICVA data also emphasises the dependency on government funding in Northern Ireland relative to other parts of the UK. Table two presents a summary of the position in 2001/02

Table Two: Total central government funding of voluntary and community organisations in the UK per capita per nation

	Total funding (£)
England	24.52
Northern Ireland	49.76
Scotland	34.17
Wales	33.56
Total UK	34.45

Source: Central Government funding to the voluntary and community sector: Home Office (2004) reproduced from Table 5:5 (NICVA, 2005) with permission.

Per capita public expenditure in Northern Ireland is considerably higher than in other parts of the UK, reflecting historic inequalities in measures of deprivation and these comparative figures are a reflection of that. In this sense the figures in Table two indicate only that voluntary and community organisations receive their share of the relatively high dependence on public expenditure of the Northern Ireland economy as a whole. Nevertheless, they serve to emphasise that the structural relationship between the sector and government is somewhat different in Northern Ireland than elsewhere in the UK, relatively more dependent on government funding which is paid at a higher level. These resourcing differences may be reflected in the fact that the Northern Ireland voluntary sector comprises 3 percent

(4) Personal communication, Gordon McCullough, NICVA, April 2008.

of voluntary organisations in the UK, but employs more than 5 percent of the workforce.

Dependency ratios do, however, vary between different parts of the voluntary and community sector. Table three gives an indication of both the percentage of earned income and the degree of dependency on government by segments of the Northern Ireland voluntary sector.

Table Three: **Earned income and dependency ratios by voluntary sector industry in Northern Ireland**

	Percent of income earned income	Percent of total income derived from government
Advice and information	7.6	66.7
Arts and Heritage	8.7	10.7
Community Development	19.1	28.1
Disability	34.7	34.8
Older People	33.0	11.8
Health	70.3	38.8
Education and Training	18.2	53.3

Source: Northern Ireland Voluntary and Community Sector Almanac 2005:
<http://www.communityni.org/index.cfm/section/article/page/StateoftheSectorIV>

This table reveals a wide variation in degree of dependency on government funding between different voluntary sector fields, ranging from more than two thirds of income for advice organisations to just over 10 percent for arts and heritage organisations. Apart from education and training organisations where over 50 percent of income was from government⁵, a more typical figure is between 28 percent and 38 percent. But given the evidence we have from the rest of the UK, the pressure on independence is most likely to be found where there is both a high level of dependence on government and a high proportion of earned income. Here health and disability stand out. Half of the earned income of organisations in the health field comes directly from members of the public, so they are otherwise more similar to the disability organisations than these figures suggest. Organisations in these two fields, on the basis of this evidence, are more likely to be both more dependent on government funding and more dependent on that funding being in the form of contracts than organisations in other fields.

The contrast with the advice sector is interesting as, although it is much the most dependent on government income, most of this was in the form of grants. This is rapidly changing, however, as funders are increasingly replacing grant arrangements with performance related contracts. The advice sector in Northern Ireland has long been identified as a key example of a highly regulated field operating almost entirely in an environment dictated by government policy and systems; only registered housing associations have a closer relationship with government agencies (Acheson et al, 2004).

Providing public services in health and social care

This summary evidence would suggest that the greatest pressures on independence are being felt in health and social care. Following the introduction of the reforms to community care in the early 1990s there was a very rapid increase in the levels of government support for voluntary organisations providing social care services. Total estimated Health and Social Services expenditure on voluntary organisations

(5) Funding for this part of the voluntary sector is largely driven by the availability of the European Social Fund which in turn levers large sums of matching grants from government.

increased from just under £10m in 1991/92 to £40.25m in 1996/97.

Whilst accurate assessments of the extent of government funding through contracts and service agreements have been difficult to gain, there is some evidence that the pace of change was considerably less than in the rest of the UK. Unlike in England where the community care reforms required local authorities to spend 85 percent of new money on external providers, there was no such requirement in Northern Ireland. By 2001, NICVA estimated that total income in the form of government contracts was £18.89m, or 7.7 percent of total income in the sector as a whole, less than half the proportion reported by NCVO for the rest of the UK (NICVA, 2005). Whilst there has been an incremental growth in the use of contracts since then, evidenced by the growth in earnings as a proportion of voluntary sector income, it is probably fair to conclude that the rate of contracting has remained at a much lower level in Northern Ireland compared to England in particular.

The evidence of the impact this has had on those voluntary organisations involved has, however, remained remarkably consistent. Research carried out by the Northern Ireland Social Services Inspectorate in 1995 suggested that the introduction of the new funding mechanisms had immediately given rise to a number of significant problems (DHSS, 1998). These were found to range from: complaints about a lack of understanding of the nature of voluntary organisations and the need to preserve their character; complex and bureaucratic procedures; and an inability to influence the priorities against which organisations were expected to bid for services. In addition, there were persistent complaints about under-funding and late payment. The SSI research found that many organisations only had sufficient income to fund staff salaries and promotion costs, but were unable to adequately fund activities such as staff training and development work (Acheson et al, 2004).

In a subsequent smaller study of voluntary organisations whose primary beneficiaries were disabled people below pension age, Acheson (2003) further discovered a perception among some of an unequal sharing of the risks of setting up new services, with voluntary agencies expected to shoulder the risks without any expectation of long-term benefit and having to bear the cost of employing staff on short-term contracts. Interviews with managers in one health and social care trust in Northern Ireland showed that voluntary agencies were viewed as useful adjuncts to statutory services to be valued particularly through their ability to access funding from other sources (Acheson, 2001). It was also apparent that the voluntary agencies that fared best in this funding environment were those whose views on both the nature of the problems faced by disabled people and the appropriateness of the response they were offering was closest to the views of statutory social services managers. This finding may simply indicate that organisations whose orientations were already closest to statutory funders did best rather than they had in any sense trimmed their views to suit the emerging funding environment.

The extent to which this was the case was a core question of research carried out by NICVA on behalf of the Task Force on funding the voluntary and community sector (NICVA, 2003). This remains the most comprehensive survey of the impact of contracts on the Northern Ireland voluntary sector in which interviews were conducted with 51 voluntary organisations. Whilst a number of positive impacts of contracting were identified, notably the stability it brought to relationships, the ability it gave to organisations to generate surpluses and an increase in professionalism among organisations, nevertheless some of the more negative themes identified in the earlier research were also apparent. In particular, smaller

organisations were more likely than larger groups to have a sense of mission drift, there were continuing problems of funding core costs, there was evidence of double standards being applied where there was competition between private and voluntary sector providers, and there were concerns about unequal sharing of risks when new services were being established. But the sense of mission drift appeared a minority view and the interviewees were more likely to feel that participating in contracts in government posed few threats so long as they sustained their clear value base from which they operated.

Some organisations felt that their independence had been compromised by becoming involved in service delivery, but the majority of those interviewed did not feel that their involvement had compromised their ability to speak out independently or to criticise statutory funders (NICVA, 2004). A certain level of self-censorship was apparent, however, with one interviewee, for example, indicating without noticeable irony that their level of independence was compromised by a perceived need to build a reputation with potential funders with whom they did not yet have a relationship but would like to have in the future. In this view, it would appear that reputation would be bought by keeping critical views in check.

Most of the criticism from voluntary organisations in Northern Ireland of the use of contracts by government has tended to focus on consistent under-funding of contracts and a persistent sense that the role and potential of voluntary sector providers is not properly appreciated by funders. This is reflected in the comments of interviewees in the NICVA study of 2003 with complaints of funders refusing to meet legally required personal liability insurance costs, a sense that the sector was in effect subsidising public service provision from its charitable income and accusations of funders “playing on the emotions” of voluntary organisations to get them to do more than they were being paid to do (NICVA, 2003). On the other hand managers of statutory services responsible for letting contracts consistently complained of a lack of management capacity among voluntary organisations to deliver the services that were required at the required standards (NICVA, 2003, 2007).

In an echo of the findings of the 1998 study, for example, the chief executive of Chief Officers Third Sector, the body representing chief officers of voluntary organisations in Northern Ireland, recently complained:

There is a perception that charities and voluntary organisations are not service-providers or even partners. They are the junior partner that is supposed to contribute to whatever the Trusts or the Boards feel is appropriate. There is no sense of the costs that the independent providers have to bear (Acheson and Harvey, 2008, p74)⁶

Overview

The striking feature of the position in Northern Ireland is the way in which the relatively high levels of dependence on government funds is accompanied by relatively low levels of concern about independence. The evidence points to consistent problems over bureaucracy, audit requirements, payments in arrears and inadequate payments first identified in the early 1990s but still apparent more than a decade later. But among the complaints, the evidence we have suggests a relatively low level of concern about independence in this climate.

One reason for this may be that the pace of public sector modernisation has been slower in Northern Ireland than has been the case in England in particular and, as

(6) The date of interview was 26 February, 2007. Trusts refer to the Health and Social Care trusts in Northern Ireland, responsible in varying mixtures for providing acute and community health care and social care. The Boards refer to the four commissioning Health and Social Services Boards.

yet long-standing relationships between elites in the sector and government have not been disrupted to the same extent. This is despite a growing trend away from a grant culture to payments for the fulfillment of contracts. By and large, the evidence suggests that the same organisations have continued to receive similar amounts of money; it has simply been repackaged in a different way. Outside of nursing and residential homes where the sector has been a relatively small player, the private sector has not yet materialised as a substantial threat in areas where the voluntary sector has traditionally been strong like advice services and training and pre-employment programmes, although there is evidence that this is changing particularly in the ‘welfare to work’ policy area where contracts have been let to private sector providers which already have contracts with the Department for Work and Pensions.

Furthermore there is a highly developed voluntary sector infrastructure in Northern Ireland at regional level, both as generalists like NICVA itself and the much more recent Rural Community Network and as field specific like Age Concern and Disability Action. The history of the development of voluntary action in Northern Ireland suggests that they are largely creatures of government policy, rather than grass-roots action which has played a rather subsidiary role in their creation and subsequent growth, although newer structures driven by activism are starting to emerge albeit in a context that is highly structured and regulated (Acheson et al, 2004; Acheson and Harvey, 2008). They are well staffed by professional staff, whose salary costs are supported by core grants from central government in Belfast. These staff tend to sit on each others’ boards of directors. From the outside, they present a remarkably closed world.

These form a small but important part in the overall structure of public administration in Northern Ireland; by and large they have been willing partners with government in representing the part to be played by a structurally fragmented civil society in the maintenance of public services during the years of conflict and as a contributor to the peace process since the mid 1990s. The relationship has worked well for both parties because since the early 1990s government has recognised the formal independence of the sector, careful not to intervene directly in its governance arrangements. The experience of the 1980s when government tried to tie funding decisions with who sat on management committees drew a very hostile response from organisations like NICVA and is a clear illustration of where, for the voluntary sector, the bottom line on independence lies.

More speculatively, government patronage of large parts of the voluntary sector in Northern Ireland may also have enabled voluntary organisations to play to one of their key strengths – their ability to create and sustain cross-community coalitions around shared interests notwithstanding the communal basis of their structures. There is evidence from both Northern Ireland and elsewhere that inter communal organisational ties do help ameliorate tendencies towards violence in ethnically divided societies (Acheson et al, 2007, Darby, 1986, Varshney, 2002). It is arguable that in this context, government support for the capacity of organisations to act in this manner not only substantially increased the capacity of public administration to problem solve but also created a civic space that enabled socially concerned actors to cross ethnic divides that they otherwise may not have been able to do. Insofar as this was the case, all parties to this arrangement clearly benefited. As we have shown, provided that the independence of voluntary sector governance structures were not interfered with, voluntary organisations have tended not to question their independence in what for many was to an extent a shared enterprise.

With the bedding in of the new devolved administration since 2007, Northern Ireland is clearly entering a new era in which the conditions of the conflict and the early phases of the peace process are unlikely to be replicated. In this new context a much more antagonistic relationship between the sector and government may emerge as elected representatives and voluntary organisations compete over a more ideologically informed ground in which competing visions of the future are articulated. Indeed it is arguable that the test of the independence of the sector and its willingness to act on its value-base will be the extent to which this occurs.

Lessons from the Northern Ireland experience

The extent of government support for the voluntary sector in Northern Ireland and the way in which voluntary organisations have played the role of critical insider accompanied by a sense of a shared enterprise with government, have set the region apart somewhat from experience elsewhere in the UK, although some of the same pressures can be identified.

Nevertheless, the Northern Ireland evidence points to a number of factors that have a bearing on the issue of sectoral independence. The first is the observation that the relative independence of voluntary organisations from other social actors, whether they are government agencies or departments or indeed private sector concerns, is a function of the political economy of voluntary action. That is to say, the extent to which independence is problematic depends upon the ways in which voluntary action is embedded in wider social and political structures. While this is a truism to an extent, an examination of these contextual factors will help explain not only the situation in a particular jurisdiction but also provide a more general appreciation of the factors that need to be present if independence is to be seen as an issue.

The Northern Ireland evidence indicates that this is most likely to be the case where voluntary organisations are both quite dependent on government for funding and where the same organisations receive most of this funding in the form of contracts or service agreements. This conclusion is hardly very controversial, but the case of Northern Ireland suggests that in addition to this whether independence appears important also depends on the extent to which the voluntary sector is habituated to an insider or an outsider strategy in pursuing its goals. In the Northern Ireland context the evidence suggests that many organisations have been willing to trade independence for insider access up to the point that government agencies seek to intervene directly in their governance arrangements. Furthermore in a situation where government has itself sought to recruit elements in civil society to building a consensus around political objectives like the peace process, organisations have queued up in response.

Thus we can propose that independence is a function, not only of the extent and nature of government financial support for voluntary organisations, but also of the extent to which there is a shared narrative of social change or development between elites in the voluntary sector and key government actors. It may indeed be the case that the latter is a more important driver of the salience of independence as an issue.

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Scotland's Voluntary Sector: Coming Together for Independence?

**Dr Eleanor Burt, School of Management, University of St Andrews
& Professor John Taylor, Caledonian Business School, Glasgow & Research Associate, the Oxford Internet Institute, University of Oxford.¹**

Abstract

This essay reflects and comments upon the theme of independence, with particular reference to the relationship between the voluntary sector and government as it is playing out in Scotland. There was agreement on the part of those with whom we spoke in and around Scotland's voluntary sector that the sector's worth, value, and distinctiveness derive from its capacity for independent thought and action.

Not surprisingly in a sector characterised by diversity, perceptions and experiences of the extent to which independence is realisable, the pressures upon it, and how it can best be achieved and safeguarded were more variable. Though they affect international, national, and local organisations differently, funding relationships were the single most commonly cited threat to independence, drawing these organisations into tightly defined contractual, performance, accountability, modernisation and reform regimes for example. While organisations responded to these pressures in different ways emphasis was placed upon organisational values as guiding standards; upon strong leadership and governance; and on demonstrable performance.

Introduction

In commenting upon the theme of independence with specific reference to the relationship between the voluntary sector and government in Scotland, we have drawn substantially upon our own longstanding engagement with the voluntary sector and government, both as academic scholars and as consultants. We have also engaged with relevant policy and academic literatures germane to this particular setting and theme. We have engaged, too, in conversations with people from Scotland's government and its wider public sector, Scotland's voluntary sector, and the academic community. We have found that whilst there is a common desire for strongly independent voluntary organisations amongst the different stakeholders with whom we spoke, including Government, the precise meaning of "independence" amongst the multiplicity of stakeholders involved, together with understanding on their parts of how it is to be achieved, are highly variable and differently nuanced. Here, we have set out to convey the more predominant themes and positions that we identified, and to do so from the perspective both of Scotland's voluntary sector and its Government.

Many of our conversations have been with voluntary organisations situated within the welfare and social services field, broadly defined. We have been concerned, too, to have conversations with people who have a generic overview of Scotland's voluntary sector and its relationship with government. In the course of these conversations we embraced organisations with international, national, and local missions. Managing "inter-dependency" relationships can be as challenging and

(1) In the course of completing the essay we engaged in conversation with a number of people from government and the public sector, Scotland's voluntary sector, and the academic community. We would like to extend our thanks to all of them. In the interests of frank exchange our participants in conversations on this topic remain anonymous with all comments unattributed.

problematical for international organisations as it is for their national and local counterparts.

Whilst our focus for this essay is upon independence, we have found a pervasive *realpolitik* amongst those with whom we spoke on each side of the relationship, one that acknowledges that complete independence, in the sense of complete autonomy, is an unrealisable state of affairs. Some were clear that the relationship between Scotland's government and the voluntary sector is one of interdependence, wherein there is space for negotiation as each party is seen as having something that the other values and needs. Others expressed the view that some voluntary organisations are in high dependency relationships with government, with very little (if any) bargaining power available to them. From the voluntary sector side of the relationship we will conclude that a pervasive desire exists for high levels of independence, though some harbour serious doubts about its attainability. Independence here is interpreted, as we shall show, as a combination of reductions in oversight by government bodies and the tight accountability that follows, on the one hand, and the creation of an operational climate for voluntary bodies that accepts without question their uniqueness, their right to voice and their moral authority, on the other. The more "progressive" organisations within the sector, and mainly, though not exclusively, the larger organisations, tend towards the view of independence as theirs to earn. From the Government side of the relationship we will conclude that, here too, a pervasive desire for voluntary sector independence exists. However, Government interprets this independence as based in new forms of sectoral integration, collaborative organisational arrangements, and the development of new organisational capabilities, as well as deriving in part from a more "enterprising" sector that is increasingly financially self-sufficient and sustainable (Scottish Government, 2008). Only when these conditions are met will a strong form of sectoral and organisational independence be realised. Thus the voluntary sector sees independence largely in terms of the continuation of a culture of autonomy at both sector and organisational level whilst government sees it being a function of a deepening agenda for reform and modernisation of Scotland's voluntary sector and organisations.

In the first main section of this essay we set out in what has become the conventional analytical introduction to the voluntary sector, its key dimensions in the form of scale, scope, emerging charity legislation and regulatory backcloth, and main relationships in and around the sector. The second main section of the essay considers the nature and significance of independence for Scotland's voluntary organisations. We show how the sector's worth, value, and distinctiveness are perceived to derive from its independence. We then set out the opportunities, threats, and challenges for Scotland's voluntary organisations as they seek to safeguard independence within interdependent relationships. Next, we look at the ways in which both Scotland's voluntary organisations and Government are seeking to create space for independent action. We conclude our analysis on the intentionally provocative note that there are circumstances in which that form of independence that is close to autonomy is not necessarily a good thing and may in fact bring its own problems for Scotland's voluntary organisations. Finally, we suggest themes for future research.

Scotland's Voluntary Sector: A Profile

This section of the essay maps the contours of Scotland's voluntary sector, drawing out key features of its changing landscape from the introduction of devolved government in 1999 to the present day. It situates Scotland's voluntary sector against a backcloth of new relationships with government, a new and still developing policy environment, an emergent legislative and regulatory infrastructure, and shifting funding patterns and arrangements.

Scotland's voluntary sector, like its counterparts elsewhere in the UK, is richly diverse: inhabiting rural and urban settings; spanning international to local settings in its services and other activities; and engaging within fields of activity that embed it throughout Scotland's economy, polity and society. In theory, united behind common values and leadership this sector has considerable power at its disposal to manage stakeholder relationships and interdependencies, including those with Scotland's government. Paradoxically, however, the desire for independence and autonomy to be found within many individual organisations fundamentally confounds their potential to come together as a "movement", a point that leads us to ask whether there is a "dark side" to independence. Does this pursuit of independence by single organisations within the voluntary sector lead to a pathological condition in the sector as a whole? We will return to this "pathology of independence" later in this essay.

The worth and significance of Scotland's voluntary sector is and will remain largely immeasurable, having, as it does, substantively qualitative impacts and outcomes, such as its general impact upon 'social capital' (Putnam, 2000). Some aspects of its activities are more measurable, however, and these give valuable if limited and cruder insights on its value.

Firstly, Scotland's voluntary sector comprises around 45,000 organisations of which more than half are charities (Scottish Council for Voluntary Organisations, 2007a and 2007b; Office of the Scottish Charities Regulator, 2005). Despite "organisational deaths" the momentum within the charitable sector is towards expansion.

Secondly, accounting for 5 percent of Scotland's workforce at the present time, the sector employs 83,500 full-time equivalent paid staff. It is also home to a labour force of 1.2 million volunteers (Scottish Council for Voluntary Organisations, 2007b). If the 10,000 new paid positions that have been generated since 2004 (op. cit.) are indicative of sustained longer-term expansion, Scotland's voluntary sector will account for a growing percentage of the workforce in the future.

Thirdly, the sector's income has been growing steadily since 1998: increasing from £1.6 billion in 1998, to £2.63 billion in 2004, to £3.2 billion in 2006. 62 percent of the sector's income is concentrated in 2 percent of Scotland's voluntary organisations, while 64 percent of organisations receive less than 2 percent of the sector's total income per annum. A small number of organisations generate annual incomes of £1 million or over while the majority have incomes of less than £25,000 (Scottish Council for Voluntary Organisations, 2007). Organisations operating in the fields of welfare and development receive the largest share of income, at 32 percent. The sector's contribution to Scottish GDP is calculated to be 4 percent or around £2.8 billion (Scottish Government, 2007). This profile is broadly reflective of the pattern elsewhere in the UK (Wilding et al, 2004; Wainwright et al, 2006).

Fourthly, 2006 saw a shift in the sector's funding profile towards income from public funding and self-generated income and away from income generated from grants, donations, and other forms of voluntary income (Scottish Council for Voluntary Organisations, 2007a). Thus, in 2006, 39 percent of the sector's income was from public funding, with local authority funding accounting for 28 percent of this. In the same year self-generated income from trading, rents and investments expanded to 50 percent of the sector's funding. Voluntary income, including grants from charitable trusts, public donations, and business sponsorship, was down from 16 percent of total income in 2004 to around 9 percent in 2006. On one hand this is suggestive of the growing "mainstreaming" of voluntary organisations into public services delivery. On the other hand it is also suggestive of a sector that is seeking to develop and secure more stable and sustainable income streams than reliance upon voluntary income permits, thereby positioning the sector more strongly to achieve independence and autonomy from government.

Fifthly, Scotland's voluntary organisations are richly diverse, spanning the fields of activity set out in Salamon and Anheier's (1994) International Classification of Nonprofit Organizations (ICNPO). Social Care and Development accounts for roughly 45 percent of the "regulated" charitable sector, and is the largest of the sub-sectors. Culture and Recreation is the next largest group of organisations, accounting for 20 percent of charities. At the other end of the spectrum are charities engaging with the environment and animals (3 percent) and law, advocacy, and politics (2 percent) (Scottish Council for Voluntary Organisations, 2007a). Other important areas of activity are economic development, healthcare, and education and research.

Sixthly and finally, Scotland's voluntary sector is represented and supported by an array of intermediary bodies. These include SCVO (Scottish Council for Voluntary Organisations), the CVS Network (Councils for Voluntary Service), VDS (Volunteer Development Scotland), Scotland's network of local Volunteer Centres, NIDOS (the Network of International Development Organisations in Scotland), ACOSVO (the Association of Chief Executive Officers of Scottish Voluntary Organisations). Other organisations such as CCPS (Community Care Providers Scotland) provide representation and support to bodies delivering services within specific fields such as social care, for example, and ones that in principle share common issues and interests, therefore. While these intermediaries are in many respects invaluable, here too the "pathology of independence" is present. The CVS Network has been particularly and consistently singled out for criticism in this regard both from within the voluntary sector as well as by independent observers from outside its boundaries (Avante, 2003; Burt and Taylor, 2005). Moreover, it is clear from our conversations in support of this essay that there is a gathering critique of this network within Scottish Government. The case is being made for a "leaner, fitter" CVS Network. Such a network is seen as delivering core services to common standards throughout Scotland and operating strategically from a position of combined strength, shared knowledge and expertise, and capability, underpinned by a spirit of collaborative enterprise. From within this network, however, this pivotally and increasingly important set of organisations remain largely and pathologically wedded to their organisational independencies and autonomies, arguing that these conditions are pre-requisites to providing services responsive to the needs of their local voluntary sectors.

Scotland's Voluntary Sector: Does independence matter?

There was general and unequivocal consensus on the part of those with whom we spoke in and around Scotland's voluntary sector that the independence of Scotland's voluntary organisations is crucial. The sector's worth, value, and distinctiveness are seen to derive from its capacity for independent thought and action.

More specifically, independence is considered to be of pivotal importance for Scotland's voluntary sector and key stakeholders. The perceived benefits of independence are listed below with further and fuller explanation set out thereafter:

- Service innovation;
- Service quality;
- Choice of client group;
- "Voice" or democratic engagement;
- Volunteer/staff buy-in;
- Clarity of organisational direction and values;
- Developing organisational reputation and brand;
- Instilling public trust and confidence.

Independence to innovate and experiment in relation to the design and delivery of services is of considerable importance against a backcloth of public services delivery that is relatively standardised and in which the risk-taking inherent in innovation and experimentation is regarded as undesirable.

The freedom to offer high quality services, including personalised services, is also of some considerable importance to Scotland's voluntary sector. Yet, having autonomy to deliver services in this way is felt to be under threat in part from the Best Value regime and pressures generally upon public bodies to "do more with less". As one of our discussants said to us, 'It's not what we do, but the way that we do it that's important. It's about making a real difference, not just providing a service.'

It was further expressed to us that voluntary organisations operating in Scotland must be sufficiently independent of control by funding bodies to provide services to those who need them, irrespective of the needs and priorities of the organisations that are providing funding support. We heard that some vulnerable (high cost) client groups could not be offered support because voluntary organisations with requisite expertise were funded on the basis that they only accepted referrals through their funding body.

The freedom to engage within the democratic process, including challenging government and public bodies, is one of the underpinning principles of The Scottish Compact. This freedom is highly valued by both the UK and Scottish governments, as well as Scotland's voluntary organisations (Knight and Robson, 2007; Scottish Executive, 2005). Voluntary organisations are generally regarded as better placed than public bodies to engage with and represent marginal or

vulnerable communities. They are also regarded as well placed to engage local communities and to represent these through the Community Planning Process, for example.

Independence and autonomy are also considered crucially important in a sector in which both volunteers and professional staff will draw their motivation and commitment in some part from “the cause” that the organisation embraces. In this context relationships and behaviours that diminish or compromise the organisation’s values and mission can have detrimental consequences in relation to attracting and retaining volunteers and staff.

More broadly, we heard that for both philanthropic and strategic reasons it is vital that Scotland’s voluntary organisations are sufficiently independent to remain on course with their vision, mission, and values. We were told by the chief officer of one national voluntary organisation that, ‘We have to be free to follow our strategic direction, independent of political pressures, expediency, and quick political satisfying’.

Independence and autonomy are also about safeguarding an organisation’s reputation and “brand”. Reputation and brand are important in generating trust and confidence on the part of stakeholders. They help to attract staff, volunteers, service users, activists, members, and funding. We were told by the chief officer of another national voluntary organisation that, ‘It is important to have freedom to follow a direction of travel that makes your organisation distinctive.’

Being seen by service users to be independent of government is perceived to be important in engendering their trust in the organisation, and particularly so in respect of more vulnerable client groups. It is also considered important in generating trust and confidence on the part of the public whose donations provide vital income to the voluntary sector.

Clearly, at this general level of discussion, independence is of considerable importance to Scotland’s voluntary organisations. It is of consequence in ways that go to the heart of these organisations: infusing their philanthropic mission and values; their effectiveness, their reputation and stakeholder trust; their ability to attract and retain volunteer and staff commitment; and their distinctiveness.

The meaning of independence

We have seen above that within the general discourse surrounding the Scottish voluntary sector independence is perceived as of fundamental importance. But, what is independence? How is it to be understood? As it was described to us, independence was primarily about having *freedom from constraints*; and, seemingly, close to Isaiah Berlin’s (1969) renowned analytical scheme, in particular his concept of ‘negative liberty’. Thus for the Scottish voluntary sector, on this reading independence is about being liberated from the limiting and burdensome impositions of:

- inappropriate tendering regimes that favour low-cost, highly competitive service providers;
- tightly specified contractual requirements;
- detailed evaluation and accountability regimes imposed by public sector contractors;

- priorities set by public sector contractors with regard to “preferred client groups” and levels and types of service offered;
- ‘short-term political expediency’ (Chief Officer, National Voluntary Organisation, October 2007);
- (over-) dependence upon public sector funding;
- growing legislative and regulatory requirements;
- general encroachment onto longstanding organisational and sectoral domains.

As we have said, at the same time as the sector seeks to enhance its negative liberty it acknowledges that complete independence does not and cannot exist. The predominant view we encountered was acceptance of a reality of “interdependence” in which Scotland’s voluntary organisations ‘must create and sustain spaces for independent action in their relations to the State’ (Chief Officer, National Voluntary Organisation, October, 2007). Thus, alongside the negative liberties desired for the sector in Scotland, voluntary organisations seek to secure a range of ‘positive liberties’ (Berlin, 1967). Here the sector looks for such freedoms as:

- freedom to think;
- freedom to experiment and innovate in service delivery;
- freedom to deliver services in line with the organisation’s mission and values;
- freedom of voice in the challenging and shaping of public policy.

Thus, to be clear, here we have the preferred operational model of independence as expressed both from within the sector and by many of the actors seeking improved relationships with the sector in Scotland. It is a model that says fund and regulate the sector with a light but sustainable touch. That way the sector enjoys its ‘freedom from’ (negative liberty). It is a model too that says create an operational and strategic environment surrounding the voluntary sector through which it is trusted and sustained thereby realising its ‘freedom to’ (positive liberty) from which all stakeholders will benefit.

This model is given further force from a strong view we encountered whereby some voluntary organisations see themselves as without any significant space for manoeuvre, being locked into high dependency funding relationships with powerful public sector bodies. Here are organisations that have little independence of either a negative or positive kind. For these organisations we found a distinctive normative view being held that the very fact of their philanthropic standing together with the “naturally” superior quality of service that they provide, ought to ensure both forms of liberty and thereby their independence as of right.

Scotland’s voluntary sector and its current state of independence

So, is the independence of Scotland’s voluntary organisations and the sector as a whole growing and strengthening or is it eroding and diminishing? We are clear that there is no straightforward or definitive answer to this question. What is also clear, however, is that there are shifts occurring within the Scottish context that some voluntary organisations are better positioned to respond to than others in

respect of safeguarding their existing space or creating new space for independent action. What are these shifts? Why are some organisations better able than others to respond to them? What is Government's role in developing a more independent sector? We consider each of these questions in turn below.

Mapping key developments and interdependencies

Four key contextual aspects have implications for how the philosophies and values, strategies, operations and activities of Scotland's voluntary organisations are shaped. These are devolution; the recently elected Scottish Nationalist government and its approach to the sector so far as this is discernable at this point in time; the funding environment with particular reference to the relationship between voluntary organisations and public sector, but looking too at issues emerging around the "new philanthropists" as these impact upon Scotland's international voluntary organisations; the complex sets of interdependencies in which Scotland's international voluntary organisations must engage beyond Scotland, and which have considerable implications for the independence of these organisations.

The most significant shift to have occurred in the recent history of Scotland's voluntary sector and one that has brought other changes in its wake has been **devolution**. This has brought opportunities to Scotland's voluntary sector, as well as challenges and threats. At an overarching level devolution has meant opportunities for a new closeness and intimacy on the part of Scotland's voluntary organisations, first with The Scottish Executive and now, more recently, with the re-styled Scottish Government. From this has come new dialogue and new understanding of each other. At the same time, as government in Scotland has come to greater understanding and appreciation of the voluntary sector it has sought to engage its potential in the delivery of public services, democratic renewal, and community-building (Scottish Executive, 2005). There has been significant interest too in supporting and developing the capacity of Scottish voluntary organisations that work abroad, delivering development programmes and aid into countries such as Malawi. New funding has been made available to Scotland's voluntary sector to directly support these activities within the domestic and international spheres. Indirectly these activities are supported through funding that has been made available to strengthen the intermediaries infrastructure as well as to develop the capacity of individual voluntary organisations. None of this necessarily impacts upon the independence of Scotland's voluntary organisations, of course. However, perhaps by a combination of intention and unintended consequence it begins to create such opportunity. Moreover, as government's enthusiasm to engage the voluntary sector grows stronger, so Scotland's voluntary organisations can expect to come under increasing scrutiny, with all that this entails. Thus, we can anticipate new and increasingly demanding expectations and requirements associated with transparency and accountability, with legitimacy, with internal governance and management, and with quality standards. Here we have a threatened direct loss across the sector of its cherished negative liberties. Indeed, the Office of the Scottish Charities Regulator (OSCR) has recently publicly "named and shamed" a number of charities that failed to submit their annual returns to OSCR on time (BBC, 2007). While we might expect these particular charities to struggle to perceive this new legislative and regulatory regime in a positive light, for one interviewee this new regime brings the considerable benefit that 'It should increase the status of voluntary organisations as businesses' (Interviewee, Voluntary Organisation, October 2007).

The developments and initiatives that have emerged since devolution are too many to set out in this essay. However, we can broadly capture them as follows:

- the Scottish Compact (1998 & 2003) and the on-going development of other local compacts, with the value of the Compact being seen to lie largely in the process of 'compact-making' with the opportunities therein for the generation of mutual understanding, trust, and respect between public sector and voluntary sector;
- changes to funding arrangements for Scotland's voluntary sector (eg. 2001 & 2003) including Scottish Futurebuilders, and most recently the review of full cost recovery (Hayton et al, 2007), and now increasing emphasis from Scotland's new Minister for the voluntary sector upon social enterprise and the capacity of the sector to generate earned income from investments, trading, and sales of services, for example;
- the McFadden Review (2001) and subsequent implementation of a new legislative and regulatory regime and infrastructure for 'Scottish charities' underpinned by the (phased) enactment of the Charities and Trustee Investment (Scotland) Act 2005 and the establishment of the Office of the Scottish Charities Regulator;
- the Millennium Volunteers Programme and Project Scotland which aim to grow volunteering within Scotland with particular emphasis upon encouraging the next generation of volunteers;
- the establishment of the Voluntary Issues Unit, now replaced by the more strategically positioned Third Sector Division located within the Public Service Reform Directorate.

Devolution has clearly brought significant changes in its wake. It will be some time before the intended and unintended consequences of many of these developments are clearly visible in the opportunities as well as challenges and threats that they bring forward for the independence of Scotland's voluntary organisations.

It is very early days in the life of the recently elected **Scottish Nationalist government** and this must be borne in mind in respect of the observations that we bring forward here. What is emerging is a sense that this new government is seeking to continue the momentum that has been building steadily within UK Government (Miliband, 2006; HM Treasury & Cabinet Office, 2006; Home Office, 2004; HM Treasury, 2007), and indeed within Scotland under the previous (predominantly) Labour coalition government, coalescing around a set of "preferred" sectoral characteristics and capabilities. These preferred characteristics include a sector that retains its rich diversity of provision and activities on the one hand but that is also able to generate scale economies and consistency of standards in respect of governance, management and quality of provision. Indeed, there is already a proposal that to be eligible for funding in future, Scotland's voluntary organisations will require to be kite marked under the PQASSO quality standard (Interviewee, November 2007). On achievement of PQASSO stage 1, organisations will move to PQASSO stage 2 and so on by way of ensuring continuing organisational development and quality enhancement. Within UK Government and under Scotland's coalition government there has been preference too for a more "enterprising" sector able to generate income in ways that lessen and even remove dependence upon government funding. The newly appointed Minister for the voluntary sector in Scotland has made very clear from the outset his strong intention to see a more 'enterprising' voluntary sector (Interviewee, November, 2007). There is opportunity here for a more capable, financially independent, and confident sector to take greater control of its own destiny.

Funding relationships were also perceived to bring pressure to bear on independence. While “the funding issue” affected organisations ranging in scope from international to locally-based it did so in differently nuanced ways. Thus, for Scotland’s international voluntary organisations it was not public sector funding that is always judged most threatening to their independence at the present time, but funding entering the sector by way of the “new philanthropists”; typically, successful businessmen seeking to channel some of their wealth into supporting philanthropic activities. There are three inter-related concerns here. The first concern is that the new philanthropists are “hand-picking” organisations whose philosophies and values are, or can be brought into, alignment with their own. The second concern that was voiced is that their approach can be very much “hands-on” and heavily influential within the strategic and operational spheres of these organisations. Thirdly, concern was voiced that some new philanthropists have limited understanding of NGOs and the work that they do. Fourthly, there was concern that “new philanthropists’” understanding of philanthropy can be outdated and insufficiently progressive, tending towards a mode of beneficent patronage as opposed to one of indigenous empowerment. Clearly, organisations that have substantial funding by new philanthropists may serve to lessen an NGO’s dependency upon Government funding with implications for its independence from Government. However, if substantiated by empirical evidence, the concerns raised here are indicative of relationships with new philanthropists being as, and perhaps more, deeply problematic for NGOs than those with Government.

Amongst organisations of national scope, concerns mainly focus upon the “best value” regime and the pressure this is bringing to bear upon them to compromise their own standards of service quality and care. This pressure is bearing upon them, firstly at the stage of tendering for contracts where they feel under pressure to reduce costs so as to be competitive with private sector and public sector tenderers; and secondly, following a successful tender, at the point at which tightly specified contractual requirements are brought forward and must be met by the organisation. Concern is voiced, too, that experimental and innovative projects are becoming less attractive to public sector funders for whom these are higher risk than more standardised and traditional offerings as well as more problematic to evaluate. In respect of small locally-based voluntary organisations the most strongly expressed concern related to coming under pressure to allow representatives from public bodies to sit as active members of their governing boards: a situation permissible under The Charities and Trustee Investment (Scotland) Act 2005 which only prohibits the imposition of formal control or direction by government Ministers (OSCR, n.d.).

Finally at this point, conversations with people engaged at senior management levels within Scotland’s NGOs, reinforced by substantial research evidence (Minear, 2002; Minear and Smillie, 2004; Terry, 2002), position these organisations within **complex sets of interdependencies** extending well beyond Scotland.

These interdependencies encompass major institutions such as the UN and World Bank, the sovereign governments into whose countries aid and development programmes are delivered, the world’s media, local warlords with the capacity to halt aid convoys in their tracks, not to mention the donating public, or indeed the indigenous peoples without whose local knowledge and skills aid organisations will find it hard to function. Scotland’s NGOs are also part of the wider UK context in which foreign policy decisions are made and funding priorities set, with DfID being a key interdependency relationship at UK level. The (potential) impact of particular relationships upon the independence of these organisations is not to be underestimated. Nor should it be ignored, despite there being a widespread view

within the voluntary sector that “the big organisations can take care of themselves”.

Why are some voluntary organisations better able to secure their independence?

Against this complex and challenging backcloth, how are Scotland’s voluntary organisations seeking to secure and nurture their independence? What can they do to optimise their independence? Before we set out how Scottish voluntary organisations are creating space for independence – for liberty – there are two points to which we wish to attend. The first of these concerns exposing the often espoused “myth” that organisations that remain free of government funding – “campaigning” organisations being the most commonly given example – thereby safeguard their independence. The second concerns the “privileged” position that Scotland’s international voluntary organisations currently occupy with Scotland’s government.

We have often heard the view expressed that organisations remaining free of government funding thereby safeguard their independence. Yet, these organisations engage in interdependent relationships with stakeholder communities that include their memberships, the media, donors and sponsors for example; relationships in which ‘freedom from...’ and ‘freedom to...’ cannot be taken for granted and must be actively managed. Furthermore, we have heard of a major campaigning organisation in Scotland that has received government funding without detriment to its ability to debate and challenge government policy. Yet, typically, “voice” has been thought particularly vulnerable to threat from government funding, with some voluntary organisations connecting the withdrawal or reduction of funding for services to occasions where they have publicly challenged government policy or policy proposals. As with our international organisations, we have much to learn about the interdependencies in which “campaigning” organisations engage: their type, nature, implications, and how these particular interdependencies can best be managed.

Secondly, Scotland’s international voluntary organisations perceive themselves to occupy a “privileged” position with Scotland’s government at the present time. Thus, despite the substantial funding made available to these organisations initially under the Labour coalition government and now under the Scottish Nationalist government they have retained their strategic and operational autonomy to operate and deliver services and programmes as they judge fit. Their judgement is that ‘for the time being at least their expertise makes them essential partners, as the Scottish Executive and now Scottish Government have very little background experience in international aid and development’ (Interviewee, October, 2007).

How then are Scotland’s voluntary organisations acting to secure and nurture independence? Here, we present in distilled form the insights to have emerged from amongst the more progressively-minded organisations in Scotland’s voluntary sector, organisations whose view is that independence is to be earned and is not theirs by right:

- the importance of knowing and remaining true to your organisation’s values;
- the importance of a strong governing board;
- the importance of strong leadership on the part of the Chief Officer and management team;

- the importance of strong management capability;
- the importance of evaluating your organisation's performance so as to demonstrate the extent to which the organisation delivers added-value;
- being prepared to refuse funding where accepting it will compromise the organisation's values;
- operating a diverse portfolio of funding streams;
- the importance of realising the synergies that can derive from collaborative arrangements amongst local organisations especially.

The emphasis placed by those with whom we spoke upon the importance of knowing and being prepared to uphold their organisation's values was palpable. We were told that values have to be explicit and demonstrable as these are effectively the 'line that will not be crossed' (Interviewee, October 2007). The importance of strong leadership from the topmost levels of an organisation was also felt to be of crucial importance in 'holding the line' and in having 'the courage to say no to funding' even where this has meant the closure of a project or service to vulnerable clients and staff redundancy or redeployment (Interviewee, October 2007). Whilst currently only a small number of organisations have actually refused funding or withdrawn from tendering processes we heard that increasing numbers of Scottish voluntary organisations are now making this a decision for their governing boards.

Developing sufficient capability in the governing board was considered particularly difficult for small local voluntary organisations, making them more vulnerable than their larger and better resourced counterparts. Yet, these organisations are generally regarded as "the real voluntary sector"; vital for their closeness to their communities and their potential, therefore, both to represent these communities in the public policy process and also to provide services tailored to local needs. We heard that the considerable variation in services and quality of service provided through the CVS Network is problematic for these small voluntary organisations for which the local CVSs may be the only source of support and advice, including increasingly on charitable status and charity law.

Finally, there is a view within the local voluntary sector particularly, though not exclusively from within that part of the sector, that the SCVO must adopt a stronger leadership role in representing and strengthening the sector's public profile.

What is Government's role in developing a more independent sector?

Government clearly places value upon strong, independent voluntary organisations that are willing to take risks, to experiment and innovate, and that are highly capable and effective managerially and operationally. But, for Government, the route to positive liberty and freedom from constraint derives from:

- sectoral integration, particularly with regard to the CVS Network;
- collaborative arrangements between voluntary organisations, and in some cases mergers;

- sound managerial and operational capabilities;
- organisations that are robust, confident, and whose service quality is demonstrably assured;
- an “enterprising” culture centred upon financial self-sufficiency and sustainability.

Conclusion

Reflections

What key insights are to be drawn from this essay? We bring forward two themes that this study of the Scottish voluntary sector positions at the core of the independence debate.

Firstly, independence seems on the face of it a fairly straightforward concept. It is also a concept that perhaps as a society we intuitively perceive as imbued with positive qualities, whereas “dependence” is generally regarded as the unhealthy state, to be avoided and discouraged. Yet, in this essay independence has been shown to have an aspect to it, a pathological aspect, suggestive of something rather more complex and at times dysfunctional. Independence is Janus-faced. It conveys desirable and beneficial qualities alongside undesirable and negative ones. Herein lies the paradox of independence. The greatest strength of Scotland’s voluntary sector is also its greatest weakness. The independence that imparts worth, value and distinctiveness to Scotland’s voluntary organisations also acts as a force against making common purpose behind shared values and objectives and thereby achieving through collaborative effort considerably more than is possible by organisations acting alone. Paradoxically, sharing insights and experiences, cooperating in ways that produce synergies, and coming together in united voice will position Scotland’s voluntary organisations more strongly to earn their independence. It would seem there is more to be gained from coming together than from attempting to conserve age old autonomies.

Secondly, Devolution and the new Scottish Government have shaped, and are continuing to shape, the policy and legislative and regulatory landscapes in ways that bring opportunities as well as challenges and threats to Scotland’s voluntary sector. Can there be a meeting of minds between government and voluntary sector? Government is aiming to develop the capability and confidence of Scotland’s voluntary sector in ways that will help nurture and secure scope for independent thought and action. However, Scotland’s voluntary organisations must grasp the opportunities presented and also acknowledge that independence is not “their right”; but a status to be earned and managed, responsibly supported by strong leadership and sound governance at sectoral and organisational levels. Ultimately, this could be beneficial in respect of both negative and positive liberties generating freedom from constraint as well as freedom to act according to their own philosophies and values. Here, too, and also paradoxically, independence for Scotland’s voluntary organisations derives from coming more strongly together in their relationship with Government.

Directions for research

Finally, this look at Scotland's voluntary sector suggests a number of rich and highly relevant themes for longer-term research:

- around the creation of “autonomous spaces” in interdependent relationships;
- around understanding why some voluntary organisations see themselves as engaged in dependency relationships while others see themselves engaging in interdependency relationships;
- around the new philanthropists and organisational independence;
- around the intensely complex web of interdependencies that Scotland's international NGOs must manage;
- around “campaigning” organisations and how they manage interdependency;
- around The Charities and Trustee Investment (Scotland) Act 2005 and the engagement of public sector representatives on governing boards.

Addendum

This essay was commissioned, researched, and written in late 2007. Now, in early 2009, Scotland and its Third Sector are not immune from the global economic downturn. It is too soon to know what the effects of the economic downturn will be on the sector and the organisations that inhabit it. Our essay suggests, however, that the impact of the downturn and the sector's response to it will be complex and nuanced, with some third sector organisations weathering the storm better than others. Is there opportunity here for a leaner, fitter, more mature set of organisations to emerge in the longer-term? Will this have a catalysing effect, with organisations that in a more stable world were hesitant of embracing social enterprise seeking more control over their own futures? For organisations that do embrace this, the path will not be an easy one. Some will fail. Some will find their values threatened and undermined. But, those that come through may find themselves more confident and significantly more strongly placed than they have been to safeguard their independence and autonomy from Government, at least.

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Independence: a matter of definition

The Charitable Sector in the United States

Mark Rosenman, PhD. Director, Caring to Change, Washington.

Abstract

U.S. charitable organisations, by far the largest portion of its nonprofit sector (and the most like the U.K. voluntary and community sector), found their origins in the country's colonial times. They were institutionalised in a Revolutionary determination to serve the common good through voluntary social compacts of citizens independent of, and free from domination by, either an all powerful government or an established church. Through over 230 years, their rights and prerogatives of free association, speech and action have been protected constitutionally as generally independent of government intervention *except* when they are exercised by and through formal organisations wishing to avail themselves of certain preferences extended to charities. Government establishes the definition of formal charitable purposes that qualify for and receive these preferences, usually in regard to tax treatment. Beyond the power to decide what is or is not an accepted charitable purpose, by regulating the operations and programme of organisations seeking to serve those purposes, government can and does moderate the independence of formal nonprofit groups.

There have been efforts since the 1960s by some in the federal government to significantly limit charities' capacity to broaden and strengthen participation in the democratic process. Changes in government funding of charities service delivery also have affected the independence of these groups. Additionally, in the last few years, federal and state governments have initiated other actions which threaten to erode the independence of the nonprofit sector in other consequential ways.

Background

Historical Roots

Public efforts that jointly involved government and private citizens, and often the church, characterised local and even regional action throughout the colonial period in and beyond New England.¹ Through individual and church action, often using tax support along with charitable donations, citizens took care of the poor, the ill and the infirm, those displaced by warfare, otherwise tended to the neediest among them through both informal and formal institutions, and provided education and cultural enrichment for the enjoyment and development of the colonies' general populations.

The Revolution, the founding of the United States, the creation of the various state governments, and the call for the establishment of private voluntary organisations all came from the belief that social compacts of citizens were the only legitimate and enduring way to serve the common good (Hall, 2003). It was also felt that if citizens were to remain their own masters and not become creatures of the state, if they were to maintain their independence from government and church, it was

(1) For a wonderful discussion of colonial, Revolutionary and other sector history, see Hammack, 1998.

essential to retain the power to define and advance civic purposes and therefore a necessary activity to concurrently support self-help efforts among individuals (Hammack, 1998).

These concerns were incorporated into the US Constitution, based in great part on the notion of a republic – of liberties balanced by disparate groups organised to give voice to their interests (*ibid.*). That required a government that would not limit the power of people to individually and collectively give effective voice to their concerns in representation of their diverse but shared interests in pursuit of domestic tranquility, general welfare and liberty. To that end, in the Bill of Rights crafted in 1791, the first amendments to the Constitution further elaborated the basis for the nonprofit sector by guaranteeing freedom of religion, speech, assembly, press and petition – all of which are essential to voluntary and organised action by private citizens (*ibid.*).

In early debates about the independence of charitable organisations, whether state government or these chartered corporations themselves ought to hold control of mutual benefit and other voluntary associations was contested. This was settled in 1817 when the US Supreme Court ruled that although the police powers of the state still applied to these entities (as to all others), it was their boards of trustees which held authority and responsibility for their operation.

Dimensions of the Sector Today

In turning to the complexities of the relationships between the US nonprofit sector and government today, and particularly the independence of private initiative for the public good, it is important initially to understand the nature of the charitable community in the US.²

First, it should be understood that there are more than two dozen different kinds of “nonprofit” organisations that are afforded tax-exemptions by the federal government and by states and local authorities, although not all of them are “charitable” in the way the term is commonly used in the US. (See Table 1) Including religious congregations, there are approximately 1.8 million nonprofit organisations (Boris, 2006). Approximately 1.5 million groups are registered with the Internal Revenue Service (the IRS is the US federal tax authority); religious congregations are not required to register, although about a third of the estimated 330,000 in the US do so (*ibid.*). Voluntary organisations with annual revenue of under \$5,000 (£3,500)³ also are not required to register.

Organisations with annual revenues of more than \$25,000 (£17,500) are required to file an informational return with tax authorities. Myriad citizen associations, neighborhood groups, and community clubs exist informally (they are not incorporated as formal entities) and generally do not need to register with government officials since they have no legal corporate standing.

All of these groups are *nonprofit* in that they are established to serve public purposes within the definition of statutes and tax regulations. They may not distribute to owners or shareholders any surplus revenue they generate by any means. What distinguishes many nonprofit groups in general from *charities* in particular is that the former either serve the narrower interests of a particular set of members (such as in a labor union, social club, credit union, pension plan, business league, professional association, etc.) or have organised themselves around particular social welfare issues on which they intend to engage in more advocacy (campaigning) than is permissible for a charity (a regulation discussed below).

(2) The work of the Urban Institute's Nonprofit Sector and Philanthropy Program, which houses the National Center for Charitable Statistics, is invaluable in this regard (<http://www.urban.org/center/cnp/index.cfm>). For a very significant resource, see the second edition of a volume by Elizabeth Boris, its director: Boris, E. T. & Steuerle, C. E. (Eds.) (2006). *Nonprofits & government: collaboration & conflict* (2nd ed.). Washington: The Urban Institute Press.

(3) Based on an exchange rate of \$1.43 to £1.00 and rounding up.

Table 1: **Tax-exempt organisations registered with the IRS, 2004.**

Section	Description	Number
501(c)(1)	Corporations organised under act of Congress	116
501(c)(2)	Title-holding corporations	7,144
501(c)(3)	Charitable and religious^a	1,010,365
501(c)(4)	Social welfare organisations	138,193
501(c)(5)	Labour and agriculture organisations	62,561
501(c)(6)	Business leagues	86,054
501(c)(7)	Social and recreation clubs	70,422
501(c)(8)	Fraternal beneficiary societies	69,798
501(c)(9)	Voluntary employees' beneficiary associations	12,866
501(c)(10)	Domestic fraternal beneficiary societies	21,328
501(c)(11)	Teachers' retirement funds	16
501(c)(12)	Benevolent life insurance associations	6,716
501(c)(13)	Cemetery companies	10,728
501(c)(14)	State-chartered credit unions	4,289
501(c)(15)	Mutual insurance companies	1,988
501(c)(16)	Corporations to finance crop operations	21
501(c)(17)	Supplemental unemployment benefit trusts	462
501(c)(18)	Employee-funded pension trusts	2
501(c)(19)	War veterans' organisations	36,141
501(c)(21)	Black Lung trusts	33
501(c)(22)	Multiemployer pension plans	–
501(c)(23)	Veterans' associations founded prior to 1880	2
501(c)(24)	Trusts described in Section 4049 of ERISA	4
501(c)(25)	Holding companies for pensions and other entities	1,285
501(c)(26)	State-sponsored, high-risk health insurance organisations	11
501(c)(27)	State-sponsored workers' compensation reinsurance organisations	9
501(d)	Religious and apostolic associations	141
501(e)	Cooperative hospital service organisations	38
501(f)	Cooperative service organisations of operating educational organisations	1
501(k)	Child care organisations	3
501(n)	Charitable risk pools	1
Total		1,540,738

Source: Nonprofit Organisations in a Democracy – Roles and Responsibilities in *Nonprofits & Government*, Elizabeth T. Boris and C. Eugene Steuerle, Eds. Washington, DC: The Urban Institute Press, 2006.

(a) Some 501(c)(3) organisations such as churches, integrated auxiliaries, subordinate units, and conventions or associations of churches, are not included because the IRS does not require that they apply for tax exemption.

Charities must guard against self-dealing, the personal inurement of involved individuals, and adhere to other regulations prohibiting individual gain.

Charities have broader public purposes that are defined, according to federal tax code, as 'educational, religious, scientific, literary, poverty relief, and other activities for the public benefit' (*ibid.*). These organisations, sometimes referred to as 501(c)(3) groups – their classification under the Internal Revenue Service code –

represent the largest proportion of tax-exempt groups. There are over a million registered with the IRS, constituting almost 65 percent of such entities. The most closely allied category, 501(c)(4) social welfare organisations (also the groups that want to do too much advocacy/campaigning to be charities), number about 8 percent of the field and account for under 140,000 groups (*ibid.*).

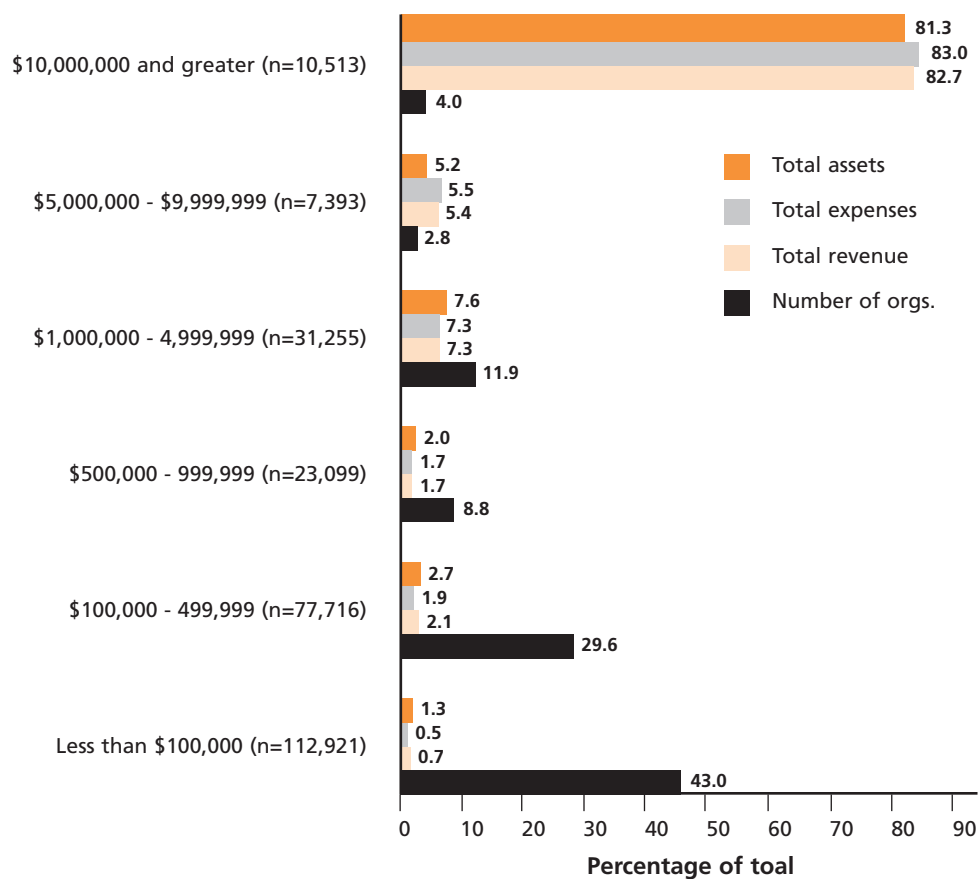
The sector is economically significant beyond just the number of entities. Nonprofits have assets of close to \$3 trillion (£2 trillion) and expend approximately \$1.3 trillion (£1 billion) annually (Boris, 2006). Even without factoring in the value of volunteer hours, this accounts for about 6 percent of national income and 9 percent of labour (*ibid.*). These data may make US nonprofit organisations appear to be very substantial in terms of number, income, and assets, but it is important to understand that the sector includes many higher education and health institutions that in other nations would be part of government, as elaborated below.

It is worth noting that among these nonprofits, there are over 70,000 grantmaking foundations and trusts in the US. They alone had assets of over \$550 billion (£385 billion) and provided more than \$36 billion (£25.2 billion) to operating nonprofit organisations in 2007 (Wing et al, 2008).

Just as wealth is inequitably distributed across American society generally, so too it is in the charitable sector. For instance, the top 4 percent of charities account for over 80 percent of the revenue, the expenses and the assets of the entire sector; these organisations have annual budgets in excess of \$10 million (£7 million). Close to 90 percent of income, expenses and assets are in the hands of fewer than 7 percent of US charities. Approximately three quarters (73 percent) of registered groups have fewer than 3 percent of the sector's aggregated revenue, about 2.5 percent of its expenses and only 4 percent of its assets. (See Figure 1). If you were to add in the unregistered groups earning less than \$5,000 (£3,500) a year, it would show that a larger share of the sector's wealth was concentrated in an even smaller percentage of groups.

Part of what skews the economics so much toward large organisations is the fact that in the US many colleges and universities, as well as hospitals and health care systems, are charities. For instance, hospitals make up about 1 percent of organisations, but 45 percent of expenditures and 33 percent of assets. Private higher education accounts for 0.5 percent of organisations but almost 11 percent of expenses and 24 percent of assets (*ibid.*). If these large charitable institutions, those that provide services and fulfill functions often associated with government in other nations, were to be factored out, resource distributions across the sector would become much less skewed. These are important data to keep in mind because a lot of the current policy deliberation is being driven by exactly such large and wealthy institutions, as addressed below.

Numerically, the largest portion of the US charitable sector is composed of human service organisations (about 35 percent). They are followed by private nonprofit schools (other than colleges and universities) and other types of informal educational organisations which together constitute 17 percent of the sector, and then in about equivalent numbers by health care agencies and organisations (other than hospitals), arts/cultural/humanities groups, and public/social benefit organisations each account for about 10 percent of the sector). (See Table 2).

Figure 1: **Nonprofit Finances by Total Expenses Level, 2004.**

Source: NCCS National Nonprofit Research Database, *The Nonprofit Sector in Brief* (2007) Washington, DC: The Urban Institute Press, 2006.

Table 2: **Number and financial scope of reporting public charities by subsector, 2004.**

	Number	%	\$, millions			Percent (%)		
			Revenue	Expenses	Assets	Revenue	Expenses	Assets
All public charities	299,033	100.0	1,050,134	981,271	1,819,320	100.0	100.0	100.0
Arts, culture, humanities	32,056	10.7	24,350	20,934	72,465	2.3	2.1	4.0
Education	53,074	17.7	171,118	150,034	534,440	16.3	15.3	29.4
Higher education	1,682	0.6	121,570	107,433	405,443	11.6	10.9	22.3
Other	51,392	17.2	49,548	42,600	128,997	4.7	4.3	7.1
Environment, animals	11,753	3.9	9,655	8,473	27,336	0.9	0.9	1.5
Health care	38,633	12.9	616,449	588,299	748,340	58.7	60.0	41.1
Hospitals and primary care facilities	3,139	1.1	446,433	426,672	539,604	42.5	43.5	29.7
Other	35,494	11.9	170,016	161,627	208,736	16.2	16.5	11.5
Human services	103,171	34.5	142,306	137,296	209,307	13.6	14.0	11.5
International and foreign affairs	5,694	1.9	19,618	18,787	17,145	1.9	1.9	0.9
Public and social benefit	35,249	11.8	57,376	49,102	189,567	5.5	5.0	10.4
Religion-related	17,670	5.9	8,643	7,790	20,154	0.8	0.8	1.1
Unknown / Unclassified	1,733	0.6	619	556	566	0.1	0.1	0.0

Source: Nonprofit Organizations in a Democracy – Roles and Responsibilities in *Nonprofits & Government*, Elizabeth T. Boris and C. Eugene Steuerle, Eds. Washington, DC: The Urban Institute Press, 2006.

Tax Preferences

All federally recognised and registered nonprofits, even those that are not charities, are tax-exempt. These organisations are excused from having to pay federal income taxes on revenues that they derive from any fees they charge for their services or which may otherwise be earned in relation to their mission, or on any donations they solicit or otherwise raise through voluntary contributions. However, they are subject to taxes on any unrelated (to their mission) business income they may earn. States and localities (counties, municipalities, townships, and legislatively-created entities known as “special taxing districts”) may also extend nonprofits exemption from taxation under their jurisdictional authority. These differ by jurisdiction, but often include property taxes (especially on real estate), sales taxes paid on goods purchased, sales taxes due on goods and services sold or for which fees are collected, and sometimes on income and other earned revenue.

It is estimated that the federal treasury and states and localities excuse \$10 billion (£6.9 billion) annually that might otherwise have been collected on revenue of exempt organisations. In addition, there is an estimated \$8 billion (£5.6 billion) to \$13 billion (£9.1 billion) in revenue-forgone on property taxes at the local level (Brody and Steuerle, 2006).

Charities have a very significant additional benefit unavailable to other nonprofit organisations: tax advantages also accrue to those who contribute money to them, if the donor “itemises deductions” in his or her annual tax filings. Donors are given tax deductions for funds and for the fair market value of material goods contributed to any 501(c)(3) charitable organisation. That means that the gross amount of income on which the donor must pay annual income taxes is reduced by the amount/value of any charitable donations that year. (See box 1). This is considered by many to be a great incentive for charitable giving.

BOX 1

As an example, if a New York City resident's income is taxed at 43 percent when federal, state and municipal rates are aggregated, government subsidizes every donated dollar given by forgoing 43 cents of taxes that it would otherwise have collected. In this illustrative example, the actual cost to the donor of contributing one dollar to charity is really 57 cents since the other 43 cents would have been paid in taxes if it had not been given away. (While most states have an income tax, only a small percentage of municipalities do.)

The estimate is that the cost in revenue-forgone by the federal treasury for tax-deductible charitable gifts made by individuals and corporations is approximately \$45 billion annually (£31.5 billion) (*ibid.*). Additionally, states and localities help finance tax-exempt bonds to support capital building projects by charities; those tax costs are estimated at approximately \$4 billion (£2.8 billion) annually (*ibid.*). Exemption from sales tax on products purchased by charities is estimated to cost annually about \$2.4 billion (£1.7 billion) in revenue-forgone (Bowman and Fremont Smith, 2006). Thus, in the aggregate, the annual tax revenue-forgone cost of the charitable sector is at least \$69 billion (£48.3 billion).

There are different ways of thinking about these revenue-forgone tax expenditures. Some contend that funds directed to charitable donations should never have been counted in the corpus considered as part of the tax base. Such proponents argue that these funds were never turned to private pecuniary purposes and were therefore never taxable, so there was no true loss to the fisc. Others believe that

governments have, in effect, devolved decision-making over the allocation of public resources from elected policymakers to private individuals by turning tax revenue-forgone into an automatic partial government match for individually assigned charitable donations; some feel that the same has been done with charitable organisations' retained resources/revenues. It is the revenue-forgone contention which fuels the notion that tax exemption and deductibility are subsidies that give government an inherent right to control and regulate the activities of charities and other nonprofit organisations.

Organisational Finances

The services and programmes of the charitable sector, in the aggregate, are financed principally (77 percent) by earned income (mainly user-fees, many of which are third-party payments made by government on behalf of individual service-users), by charitable contributions (13 percent) and by government grants (10 percent). With regard to charitable contributions, about 76 percent come from living individuals and 8 percent from bequests, 11 percent from corporations, and 5 percent from foundations (Steuerle and Hodgkinson, 2006).

The prominent and dominant reliance on user fees is in great part explained by the inclusion of tuition-driven higher education and fee-based hospital services as so significant a part of the US charitable sector. However, even human service agencies and other charities have come to rely on fees-for-service as a principal revenue source.⁴ It is estimated that about one-third of the charities' revenues come from government programme service fees and grants, with close to 90 percent of that being federal dollars, about half passed through state governments and the remaining 10 percent provided by them and localities (Bowman and Freemont-Smith, 2006).

The Independent Sector

From a vital US nonprofit sector originating in the Revolution's preference for a voluntary social compact, grew a charitable community of considerable size heavily advantaged by preferential tax treatment and public funding. Still, as at its origins, charities pride themselves on their distinctiveness from government, their separation from it – their leadership organisation is named *Independent Sector*⁵ and both academics and practitioners refer to the nonprofit community as exactly that – the "independent sector." We now turn to the question of its contemporary independence from government.

Independence, but...

If one was to hold aside the clear and certain influence exerted by government through grant, contract and other third-party payment agreements it makes with charities to deliver services to individuals and other recipients – and also hold aside the requirements imposed by tax regulations pertaining to nonprofit status, most charities likely would assert that they were organisationally and programmatically independent of government. And that is the way it generally would feel in the day-to-day operation of most such organisations.

In fact, charities do routinely operate with independence from government within the broadly defined and circumscribed limits of their tax status and any government financing arrangements. Those limits are so accepted as a given that they are usually unquestioned. Even when troublesome, government strictures are most often seen as little more than a bureaucratic annoyance. Beyond complaints

(4) One study found that 75 percent of human service organisations received government funding and that for half of those it was at least 50 percent of their annual revenue.

NB: much of that comes in the form of third party payments for services provided individual service users. Allard, S. (2008) *Out of reach: place, poverty, and the realities of today's safety net*. See www.scottwallard.com

(5) The approximate organisation in England is the National Council of Voluntary Organisations.

about slow payment of government funds due, the greatest apparent concern among charity staff and volunteers is about the limits on the advocacy and campaigning that can be done without jeopardising organisational tax-exemption, as discussed below.

On the “flip side,” too many nonprofit organisations fail to understand the relationship of public policy and government action (or inaction) to their particular missions, to the problems, issues and constituencies with which they are concerned. Charities generally operate within the private sphere and too large a percentage disdain advocacy, lobbying and campaigning aimed at government officials on public agenda central to their organisations’ missions. Undoubtedly some feel that there is a trade-off, that if they leave government alone, government will leave them alone. Others simply believe that the role of charities is to operate in the private sphere, to supplement or complement government, but not to correct it. Leaders in the nonprofit and charity sector consider it “the third leg of the stool,” alongside but discrete, separate and independent of government and the market. They see the sector as pretty much the master of its own fate within the broadest of social, economic and political dynamics.

The reality, however, is that the sector’s freedom is not assured, it is not protected by the Constitution or by case law, and the independence of the nonprofit and charitable organisations has been – and still can be – overridden at the whim of those politicians in power, whether driven by powerful broad dynamics or narrow ideology.

Ruling Ideology and Government Control

While it would seem that it ought to matter little to elected officials whether or not nonprofit organisations can secure private support to underwrite and provide services which government itself does not, this is not always the case. Services may be of such a nature as to be outside the ideology of the government in power or otherwise challenge its priorities and authority.

A frightening practice was repeated under the administration of Republican presidents since the 1980s. Government banned charitable organisations it funded (Reagan domestically and internationally; Bush only internationally) from just mentioning (certainly not providing) the existence of abortion as a health or family planning option *even if such counselling was financed with private contributions*. (See box 2).

BOX 2

President Ronald Reagan directed in 1988, through his Secretary of Health and Human Services, that nonprofit family planning organisations receiving federal funding be prohibited from providing information with regard to the advisability or availability of abortion services – even if that counselling service was paid for by private charitable funds (unless conducted in an entirely separate facility that was in every way physically and fiscally independent of the federally funded organisational programme).

Government asserted that it had the power to so control nonprofit organisations’ programmes as a stipulation attached to the receipt of any federal funding. Given that the prohibition went directly to speech – nonprofit staff literally were not allowed to mention “the A word” – this

became known as the Gag Rule. When President William Clinton entered the White House, he quickly reversed the Gag Rule. However, on his very first day in office, President George W. Bush reimposed it on all international family planning organisations (although not on domestic ones) receiving federal support; it is now known as the Global Gag Rule and remains in effect today limiting what US and other nonprofit organisations may do in their programmes even with private charitable support. UPDATE: President Obama rescinded the Gag Rule.

The argument which undergirds this “Gag Rule” was tested in a case before the U.S. Supreme Court (US Supreme Court, 1991). It decided that government had the right to condition a charity’s speech – in other words, to limit its programme activities and even what its staff may say – when it subsidises that speech, as it does when it funds an organisation or even any part of one of its programmes.

More alarmingly, the Supreme Court in an earlier case ruled that the award of federal tax-exemption is in and of itself a subsidy (US Supreme Court, 1983). This means that constitutionally, based on Supreme Court precedent, charities in the United States have no ultimate legal protection against any and every kind of restriction on their programme activities that might be enacted by Congress or established under the rulemaking authority of the Executive branch. Although this power has been used only rarely and then when tied to funding streams, there have been occasional efforts to broaden its application, as discussed below.

In still another, although rare, example of the exercise of such extraordinary and intrusive power, Congress had prohibited the District of Columbia – whose municipal budget is has the authority to approve given the unusual jurisdictional nature of the Nation’s capital – from using any of *its own tax revenues*, to fund nonprofit organisations (or even its own agencies) to provide needle exchange programmes for intravenous drug users in an anti-AIDS effort. This prohibition, which ruled for about a decade, was recently reversed with the election of a Democratic Congress (New York Times, 2007).

Thus, even without directly funding a nonprofit programme, even when what the charity is doing is to complement with private donations what government itself offers, there can be an exercise of coercive power when government wants to prohibit a specific activity – that certainly affects the independence of charitable organisations.

What’s Charitable – Relief for the Poor

While not explicitly asserting that government has such authority, nor owning the fact that it would so wish to directly influence the nonprofit sector writ large, there has been increasing attention on the part of policymakers to the specific kinds of programmes being operated by nonprofit organisations and who benefits from them.

Beyond concerns about abuses of charitable status mentioned below, the focus of recent attention has been on nonprofit hospitals which have been accused of providing insufficient charity (free) care to the poor. While some argue that a charitable mission is satisfied by the performance of other functions beyond free care – e.g., lower cost (subsidised) care to all; disaster preparedness and emergency room functions; vaccination programmes; well-baby clinics; wellness education; etc.

– there appears to be growing sentiment among policy makers and the public that tax subsidy ought to flow for the direct and palliative relief of immediate need.

Perhaps most notable in the last few years has been the loss of property tax exemption of a nonprofit hospital deemed to provide an insufficient amount of free care to the poor. More recently, a state court upheld a local government agency in denying property tax to a nonprofit children's day care programme because it did not provide a substantial portion of its services free or at considerably reduced rates. (See box 3).

BOX 3

Litigation supported troubling parallel action at the local government level in 2007. The Minnesota Supreme Court upheld the right of a county administration to deny property tax exemption to a nonprofit children's day care center because it "did not provide a substantial proportion of its goods or services free or at considerably reduced rates." (Republican Eagle, 2007). Similarly in 2006, a state agency in Illinois had upheld the ruling by one of its county officials that stripped a nonprofit hospital of its property tax exemption because it was adjudged to provide "insufficient" charity care and to be too harsh in trying to collect from those who failed to pay their bills (Chronicle of Philanthropy, 2006).

The issue with hospitals is growing so acute that legislators in several large states, including Michigan and California, (Detroit Free Press, 2007 and Contra Costa Times, 2007) are calling for hearings and/or legislation as to whether or not the costs of these institutions' tax exemptions are warranted by the public benefit they provide.

ADDENDUM: More recently, the California state legislature and some members of Congress have been putting pressure on philanthropic foundations to provide additional grant support to organisations controlled by and serving racial and ethnic minority communities. This has taken the form of everything from state legislation (now withdrawn) to require specific information on staff, board, and vendor demographics and on grants through to using a national bully-pulpit to question the efficacy of tax preferences for foundations that do not perform according to an unspoken standard.

If this sentiment grows and spreads in government, there is reason to assume that one effect will be to channel charitable contributions to the kinds of service activities preferred by elected officials rather than necessarily by nonprofit leaders and perhaps many in the larger public. For instance, some federal programmes have disallowed efforts at helping those in need, the marginalized, gain voice and power through advocacy, campaigning and organising, as elaborated below. The strong preference of politicians has been to favor alms-like activities that are remedial, focused much more on relief than on development or change.

Not Us, You

As government cuts back on direct service provision and transfers responsibility (explicitly or implicitly) to the nonprofit sector, questions of independence are implicated. If charities are forced to pick up the slack for proportional government cuts (e.g., the amount of direct healthcare subsidy/expenditure per growing

number of patients with a particular medical condition; for affordable housing development or for feeding the homeless; for providing mental health treatment slots; etc.), it does affect their independence in programming. This effectively shifts nonprofits to a role in which they have to compensate for government failure, to augment its services and to do reactive caretaking rather than to attend to proactive development and change.

This creates a double bind for nonprofits: (1) they are called upon to meet greater charitable needs as government curtails the services it provides the populace directly – at the same time as (2) the amounts of funding government provides nonprofit organisations is cut in absolute dollars or proportionate to need. Government then threatens loss of one of the indirect subsidies it provides charities (e.g., the property tax exemption), or in some cases actually strips it from a nonprofit, to coerce charities to shift their own funds from other purposes to attend to matters assigned priority by government (when government itself fails to act or provide sufficient resources).

And Pay Us Too

These coercive pressures from government continue to grow, further demonstrating the limits to nonprofits' independence. Still focusing on the property tax exemption, we find increasing pressure on certain charities to donate to government some of the funds that they raised or otherwise generated. This is a practice that is becoming so common in the US that it has its own acronym: PILOTs – Payments In Lieu Of Taxes. Most affected are large institutions, such as hospitals and universities, which generate and carry surpluses as endowments or capital funds. (See box 4).

BOX 4

For instance, in Pittsburgh, Pennsylvania, over 100 nonprofit organisations have created the Pittsburgh Public Service Fund through which they are “voluntarily” contributing between \$4 million and \$5 million a year to the city (Pittsburgh Post-Gazette, 2007a). The University of Pittsburgh Medical Center (Pittsburgh Post-Gazette, 2007b) pledged \$100 million to Pittsburgh Promise, a college scholarship fund for local graduates, but demanded the right to curtail its commitment if it is not shielded from erosion of its own tax exemption (Pittsburgh Business Times, 2007). In similar PILOT arrangements, Cambridge, Massachusetts collects close to \$3 million annually from Harvard and MIT together and Boston close to \$5 million from Boston University and Harvard together (Boston Globe, 2007).

While it might seem appropriate that nonprofit institutions with surplus revenue make such “voluntary payments” to local tax authorities, many feel that charities are being coerced into doing so to stave off loss of their tax exemption and/or government intrusion into control of their programme operations. These fears are not without grounds.

Redirection

Legislators at the state and federal level have asked tax authorities to gather additional information from charities in order to better calculate whether or not there is a sufficient return to government and the public for the costs of various preferential tax treatments. While some comments by policymakers have shown an

inclination to reinforce the notion of a focus on the poor and on palliative relief, the possibility exists that the entire definition of charitable purpose and programming may be re-engaged. (see box 5).

BOX 5

The State of California questioned whether or not they were getting a sufficient return on the revenue forgone cost for income and property tax advantages extended to charitable hospitals. When some legislators were beginning to push for more free care for the poor, nonprofit hospitals countered that what they spend on wellness promotion, medical research, and health professionals training yielded community benefits worth three times the cost of tax exemption. At the federal level, the ranking Republican member of the Senate Finance Committee (which has jurisdiction over legislation pertaining to nonprofits' tax status) has demanded that federal tax authorities obtain greater information from hospitals to determine whether or not the cost of preferential treatment is justified or if Congress ought to make additional demands of them in exchange for revenue forgone. An influential Democrat counterpart in the House has raised similar questions, but framed them much more broadly than hospitals to include many more kinds of charities. State and federal officials have told tax authorities to come up with better ways of measuring the return on these tax costs so that policymakers can tell whether or not they are justified in directing nonprofit organisations to provide particular services as the price of continued exemption (Los Angeles Times, 2007).

UPDATE: The ranking Republican senator mentioned above is considering legislation that will require nonprofit hospitals to spend a minimum percentage of their budget on free care of the poor or risk penalties up to the loss of their tax-exemption (Wall Street Journal, 2008). This demand would be made at a time when approximately 40 percent of nonprofit hospitals are already operating at a deficit (Chronicle of Philanthropy, 2008).

Charities are becoming so sensitive to these concerns from policymakers that informal comments about even a suggestion of any formal procedure or notion of any possible legislation recently brought quick action. Policymakers wondered whether it is appropriate for universities and other nonprofit institutions to build increasingly large reserves and endowments rather than spending down tax exempt interest on their charitable mission (Chronicle of Philanthropy, 2007).

The elected officials' informal message seems to have hit a nerve; top universities started announcing that they would use their endowments to decrease significantly the growing tuition burden on middle-income students and their families by transforming financial aid loans into grants (Washington Post, 2007).

That little but simple and indirect pressure by government officials changed significant financial practices by nonprofit organisations evinces the fact that for at least some of these private entities there is a fragility about their independence from public policymakers and regulators. Although the direction of those changes may be welcomed by many and even seem appropriate to most, it is instructive for the leadership of nonprofit institutions to understand what is at stake as legislators and the public more seriously question the return they receive for charitable tax preferences. Legislators' inherent power to define the nature of charitable purposes – and of organisational practices and programme activities in their service – could bring profound shifts in the nonprofit sector.

The Key: Deductions for What

Government's power to redefine exactly which charitable activities are deserving of preferential tax treatment clearly threatens the independence of nonprofit organisations. Essential to charities is their ability to raise money from individuals, corporations and foundations and central to that in the US is the fact that the donor receives a tax deduction for the value of the gift. Quite obviously, being able to determine what does and does not qualify for such a deduction (as evinced by the dollar figures presented above in the discussion of tax preferences) is key to charity. For the purposes of eligibility to receive tax deductible contributions, the Internal Revenue Service Code Section 501(c)(3) applicable language now states:

The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency (available at <http://www.irs.gov/charities/charitable/article/0,,id=175418,00.html>).

Organisations themselves have been free to determine exactly how they choose to serve those purposes programmatically; this includes some advocacy and campaigning activity within proportional budgetary limits established by tax regulations.

In 2004, reacting to a long series of news stories regarding abuses of charitable authority by individuals and organisations – some involving actions that were patently illegal, others actions and practices that conformed to law and regulation but were either not easily understood and appreciated or which were patently a scam although technically legal – the powerful Senate Finance Committee held hearings and committed itself to clean up the situation. It seemed likely that it would revisit that broad-based tax code language and more narrowly define what it considered to be charitable activity warranting deductibility and exemption, as well as to tighten the regulatory context for charities.⁶

Independent Sector, fearing an over-reaction on the part of a Congress that has never shown itself to have a solid understanding of the charitable community, took the lead and organised the Panel on the Nonprofit Sector to work with the Senate committee to identify the full range of problematic issues and propose a series of solutions. It urged more vigorous enforcement of existing laws and regulations and proposed new measures – most of which would not require legislative remedy but would rather rely on self-regulation.

The Panel's recommendations, the vast majority of which were accepted by the committee, first noted that charities are essential to a strong America and then, as its second principle, said that the charitable sector's effectiveness *depends on its independence*. It said that America must preserve 'the independence, within a broad range of public purposes the law defines as charitable, of charitable organisations to choose and pursue their missions as they deem best. Government appropriately sets the rules for the use of government funds by charitable

(6) In July 2004 the U.S. Senate Finance Committee conducted a Roundtable on abuses in the nonprofit sector. Subsequently (September 2004), its chairperson and ranking minority member wrote to the president of Independent Sector inviting that organisation to convene a panel to make recommendations on a wide range of issues confronting charities and policymakers.

organisations, but should resist intruding into policy and programme matters best determined by charitable organisations themselves.’
(Panel of the Nonprofit Sector, 2005: 20).

Although that same powerful Senate committee continues to inquire into charitable matters, including the questions about nonprofit hospitals’ exemptions mentioned above, it has not revisited the 501(c)(3) definition. Thus, while the threat remains, government has not yet revisited charitable tax deductibility to intrude on the independence of nonprofit organisations.

Channeling

There already is, however, at least one state-level government programme that does steer charitable contributions to programmes that policymakers give a high priority – currently most are focused on poverty. This is done by awarding donors a special *tax credit* – a dollar for dollar reduction (up to a specified limit) in the amount of taxes due government – for the amount of preferred donations. (Federal efforts to mimic it failed to pass Congress.) While it can be argued that this does not interfere with the independence of the sector as a whole, it does preference certain issue areas over others and may be seen as coercive by groups with a larger mission that end up tailoring activities to government priorities in order to benefit from the extra donor incentives. It also should be noted that contributions covered by these credits cannot be used for advocacy or campaigning, a point elaborated below. (See box 6).

BOX 6

The Neighborhood Assistance Act (NAA) operates in several states (among them Connecticut, Delaware, Missouri, Pennsylvania, and Virginia); it generally provides individual and corporate contributors with an extra charitable tax credit for donations that support particular organisations and service programmes benefitting people below the poverty line or of particular interest to state and local policymakers, such as affordable housing. It should be noted, however, that it steers support away from advocacy, organising and other activities that many charities think equally or more important in addressing these problems, and such organisations have had to work to defeat parallel federal legislation sponsored by conservative and other congresspersons that would have created similarly restricted incentives at the national level. The federal efforts were introduced in 1996 (American Community Renewal Act) and as an amendment to the Community Services Block Grant reauthorisation in 1998; both failed. (Bass et al, 2007).

Recap on Tax Revenue-forgone

Governments are increasingly aware of their power to influence the programmes and operation of these groups by addressing their preferential tax treatment and conditioning exemption and deductibility. By altering the definition of what is or is not a legitimate charitable purpose, by establishing terms of reference for what is or is not an appropriate programmatic approach to achieving that purpose, and by identifying who is and who is not a legitimate recipient of charitable services, government has the power to render the nonprofit sector its subjugated creature. While it may not be politically feasible in this historic moment to exercise such power to any significant degree, that does not make it moot.

As government weakens the “safety net” of social welfare services provided to the neediest citizens, as policymakers shy away from restoring past tax cuts and continue to try to operate government on revenues at a lower share of GDP than is necessary to fund even existing programmes, (the US is twenty-seventh of the thirty members of the OECD when it comes to tax revenue against GDP) political leaders look to the charitable sector to fill the gaps. To move their agenda, to push nonprofit organisations to substitute for and replace government programmes, the kinds of efforts just described may become necessary – government has to get nonprofit organisations to channel more of their resources into serving the target populations which government itself is forsaking. It seems less than coincidental that government suddenly finds more reasons to focus attention on charities, employing everything from the bully pulpit to legislative hearings portending definitional and regulatory revision, at such an historical moment.

Not Just Who, But How

Beyond pushing charities on *what* they want them to do and redirecting resources away from other priorities that independent organisations might see as more critical to their mission, government is telling nonprofit organisations *how* they ought to go about serving those purposes. There is a strong preference on the part of policymakers for direct services, for the delivery of assistance that will provide remedial and palliative relief, care and treatment for individuals. On the other hand, many charities believe it is important to undertake longer-term development initiatives, to invest in community-building and institutional improvement efforts that have a less immediate payoff but which may, over time, yield a greater return on scarce resources. In a sense, the politician’s imperative for palpable benefit now, for something that the electorate can appreciate in the near term, becomes the nonprofit’s mandate as government officials erode their independence.

While it may be an oversimplification, elected and appointed government officials prefer programmes most akin to an alms model. Government is disinclined to support advocacy, campaigning, organising or other efforts that address structural problems or which seek to go to the sources of economic/social/political inequities. Many in power seem to prefer charity to change. Thus, some observers fear that in addition to likely narrowing population and issue focus, if government significantly modifies the current legislative and regulatory structures that define charitable programmes, there may well be a much narrower delimitation on the kinds of activities that receive tax exemption or deductibility. This is elaborated below in the discussion of democracy.

The establishment of the White House Office of Faith-Based Services and Community Initiatives in 2001 was seen by many in the nonprofit sector as an effort by government to further favor service provision over social change work.

Religious institutions were seen as more conservative, more likely to focus on individuals’ redemption and less likely to seek public policy or structural reform. The Office was successful at increasing the flow of federal funds to faith-based organisations by over 20 percent (United States Government Accountability Office, 2006) in spite of constitutional issues (separation of church and state),⁷ although critics (including the Office’s former director) said it was doing so only for conservative political purposes (USA Today, 2009).

(7) Some federally-funded nonprofit programmes have wanted to discriminate in employment (hiring only people of a particular faith); this is being adjudicated. There also have been court cases about contracting with faith-based programmes for services in state agencies (Banerjee, N. “Court Bars State Effort Using Faith in Prisons,” *New York Times* (December 4, 2007).

From Grants to Contracts

In areas where the nonprofit sector provides supplemental services at governments' behest, especially as a grantee or (as is much more the case in recent years) as a contractor, the decline in independence and programme control certainly can be seen. Since the 1960s public funding of charities has tended to move away from grants to contracts for services (Rathgeb Smith and Lipsky, 1993. Rathgeb Smith, 2007. Boris and Steuerle, 2006). A principal distinction between the two funding mechanisms is that grants provide the nonprofit organisation with much greater latitude in the design and implementation of programmes that they believe are responsive to particular community needs and to the mission they are serving. Contracts, in contrast, are much more specific in defining the particular "deliverables" that are required and in demanding accountability for particular performance outcomes. Governments in fact are so intrusive that in one major city the local legislature even tried to insist that it be able to designate someone to sit on the board of any nonprofit organisation doing significant contracting with the municipality.⁸ Simply put, government contracting has eroded the independence of nonprofit organisations in determining how to define, address and assess the accomplishment of their mission.

There is reason to believe that the "contract culture" has also shifted the very nature of nonprofit organisations and programmes, moving some away from a developmentally-focused informal community base and toward a managerially-focused professionalism seeking individual and technocratic fixes to social problems (Rathgeb Smith in Boris and Steuerle, 2006). With this shift came the ascendancy of accountability structures that emphasised efficiency over responsiveness, overlaying market language and models on the social arena in a way that shifted power to government (and, in fact, to for-profit contracting competitors) and away from the nonprofit organisations that better knew community needs, cultures and sensitivities (Anheier, 2005).

Going to Market

This slow and sometimes subtle change in orientation, in values, characterised human service organisations with the growth in government contract funds into the 1980s as they pursued these financing streams. More and more, they sought to describe themselves in the language of government, force themselves into the mould of what the contractor sought, eventually changing to fit the bid requirements as they went after all too scarce dollars to finance their programmes. Eventually, as government funds were scaled back in proportion to needs, it left nonprofit organisations dependent on other revenue streams to sustain the style of operation into which they had transformed themselves in order to secure government contracts. Thus, the growing reliance on fee-for-service income, social ventures and other market-like entrepreneurship which are eroding some of what distinguish nonprofit from for-profit entities in the U.S. were spurred forward by the contract culture and an attendant loss of some of charities' independence from government.

Going even beyond the change from grants to contracts, there has been a further reflection of government ideology which certainly has impinged on the independence of the nonprofit sector in its relationship with the communities and people it serves. Government has moved in many programmes from the provision of a *producer subsidy* (a grant or contract to the nonprofit or service provider) to a *consumer subsidy* (a third-party payment arrangement, an entitlement or voucher, to the individual service user). This moves the charity toward becoming a market

(8) San Francisco, California, 1997; the legislation failed after a heated campaign by nonprofits.

entity in which it receives a fee-for-service only when any particular individual qualified for government support walks in the front door and requests the nonprofit's service or other product. Programmes such as substance abuse treatment, hospice and home care, mental health care, even residential foster care, are now covered this way under a federal/state medical care programme for the indigent. While not dissimilar from some other portions of the sector (such as universities and some hospitals), the extension of this model to and beyond human services has not been desirable. It further erodes distinctions between the nonprofit sector and the market and weakens assertion of charities to represent and serve the public good. Further, since the payment rates for service provision rarely cover their true costs, government in effect requires that nonprofit organisations try to raise private contributions or otherwise generate revenues to cover the deficit.

Democracy or Not

The assertion that charities are oriented to public benefit rather than private profit is essential to the sector's role in relation to US democracy – one that sometimes is seen as adversarial or confrontational by government and undercut by it. It is in that role that charities serve as advocates, campaigning for those people, communities and causes that are without sufficient voice or power to effectively represent their own interests in the democratic process. This usually means that those in power, those who control government or otherwise are powerful in its legislative and executive (and sometimes even judicial) branches, find that charities are trying to advance interests which are not dominant, which the majority of those in power do not share or necessarily wish to see promoted.

Another reason that at least some portion of the US nonprofit sector is seen as confrontational is that it employs analyses and advocates solutions to problems that cast them as more than individual and individuated phenomena. While government leaders do not try to deny that “the system” fails some people, they do not like to acknowledge that its faults are structural, that problems are indeed institutional, and that corrective action needs to go beyond individual “fixes.” Thus, when nonprofits advocate for changes in the ways in which public institutions are structured or operate, the content or manner of regulation which government employs to mediate private institutions and the market itself, or the avenues through which people and groups obtain and exercise power in democratic processes, then it may well be considered as oppositional by elected and appointed officials. Most often, these efforts involve nonprofits in seeking changes in public policy through legislative or regulatory action; sometimes it involves litigation and judicial matters. Some charities work more directly on organising people and communities to join together in movements to achieve greater political, social and economic power.

The government has used its control of the tax exempt status of charities to squelch democracy-building and campaigning activities. In the 1960s it went after foundations for fueling voter registration drives it believed were too closely allied to civil rights and poverty organising and also revoked the exemption of a major environmental organisation for lobbying too effectively. Under President Reagan in the 1980s it barred advocacy groups from soliciting contributions through a federal workplace giving programme. During the 1990s and as recently as 2005, conservatives in Congress tried to restrict charities receiving federal funding (initially any funding, more recently tied to specific programmes) from doing lobbying or voter education work, even with private contributions. It disallows participants in federally-sponsored volunteer programmes placed with and supervised by charities to do any advocacy or protest work. Most recently, following that last election, at

the behest of conservative senators, the federal tax authority launched a terribly intrusive, disruptive and expensive audit investigation of the nation's oldest civil rights organisation because its leader had been openly critical of President Bush's policies in a speech at its annual conference. (See box 7).

BOX 7

There have been efforts on part of government to limit the ability of charities to engage in such work. In 1966, the IRS revoked the tax deductibility of the Sierra Club, a leading environmental organisation, saying that it did too much lobbying for a charity (relying on a 1934 law when Congress said that “no substantial part” of such an organisation's activities could be dedicated to propaganda or lobbying). When it was noted that under five percent of its budget was spent on these activities, the IRS said that it was not the amount of lobbying that got the Sierra Club in trouble, but that it was because it was ‘too loud and effective’ at it (Bass et al, 2007: 91). Today it is generally agreed that the “substantial” guideline stands at twenty percent and charities that want assurance that it does can elect for a special IRS reporting protocol that guarantees it.

Congress, distressed by a number of foundation-funded voter registration drives tied to the civil rights movement in the mid-1960s and efforts to advance school desegregation in the north, decided that there was too much philanthropic activity that was not charitable as they understood the term. They passed the Tax Reform Act of 1969 which restricted foundations own lobbying and their ability to fund lobbying (ibid.).

Efforts to restrict advocacy work, however, have not been limited to the “substantial test,” particularly those by conservative politicians. In recent years, beginning with the Reagan Administration, there has been a series of initiatives that have been characterised as a campaign to silence the left. In 1983, the White House tried to prohibit any charity that received a federal grant from influencing public policy decisions – even if the policy work was funded entirely with private donations. It failed only after a major effort by nonprofits and their allies. The White House also went on to prohibit charities that do advocacy from participating in the Combined Federal Campaign, a workplace-giving campaign (like the United Way) that allows federal employees to make regular charitable donations through payroll deductions. Its right to do so was upheld by the courts, but its ability to so restrict the giving campaign was overturned by Congressional action a year or two later (ibid.).

In 1995, three conservative Congresspersons first proposed what became known as the Istook Amendment, which attempted to revive the Reagan efforts at silencing the left. It would have denied federal funding for any programme to any charity that used more than five percent of its private funds for “political advocacy” (which included much more than lobbying, embracing such activities as voter education, filing a “friend of the court” brief in an important case, even arguing with local zoning commissioners about development issues) – and even if the group did not spend anything on such activities, it would still bar them from any and all federal funding if they were tainted by “association” with an organisation that spent more than fifteen percent of its budget on banned actions (ibid: 96).

While the Istook Amendment failed, it did so only after the nonprofit sector mounted a major effort to defeat it. Yet there have been repeated efforts at the federal and state level to reintroduce some or all of its provisions in different bills. In fact, some Republican efforts have gone even further: in 2005 legislation for a federal funding programme in housing denied eligibility to any charity that had tried to strengthen democracy by encouraging voter registration or even nonpartisan voter identification or participation efforts (ibid.) Similarly, there were efforts to restrict federal programmes focused on disability and early childhood education so that nonprofit organisations that engaged in legislative or administrative lobbying would not be eligible for participation.

Additional strictures apply to those in a federal programme designed to encourage people to become half- and full-time volunteers working in nonprofit organisations. Established by Congress, AmeriCorps volunteers are recruited, trained, placed, and subsidised by the Corporation for National and Community Service, a federal agency through which the volunteers are then assigned to and supervised by nonprofit organisations. Not only are they precluded from doing any advocacy or lobbying work, AmeriCorps volunteers cannot be given tasks fundamental to building community democracy such as circulating petitions or organising protests activities (ibid.).

Perhaps most challenging to the independence of nonprofit organisations when it comes to advocacy has been the chilling effect from a recent IRS investigation of one of the most venerable civil rights organisations in the US, the National association for the Advancement of Colored People (NAACP). In July 2004 at its annual convention, the NAACP's board chair made a speech in which he was critical of the policies of the administration of President George W. Bush regarding education, the economy and the war in Iraq. In October, the IRS announced an audit and investigation of the organisation (a major disruption and expense to the group including accounting and legal fees) because it had possibly intervened in a political campaign, a direct violation of charitable tax code – but all nonprofits clearly are allowed to be critical of government policy. Beyond threatening the organisation with the loss of its tax exemption, the IRS suggested that all board members might be liable for fines individually. This case went on for close to two years before the IRS found that there had been no violation of the tax code (See OMB Watch “NAACP IRS AUDIT” <http://www.ombwatch.org/article/articleview/2700/1/3?TopicID=2>.) However, it has consistently maintained its right to investigate any charitable organisation that makes public statements about elected official it deems to be partisan electioneering.

The Neoliberal State

The ability of government to challenge the policy-related speech and democratic activities of charities clearly delimits the operational independence of the nonprofit sector, as have the other efforts of executive and legislative branch officials noted above. Yet, in a very real sense, a more insidious power has been exercised subtly as the *neoliberal state* has shaped public attitudes to believe that government can no longer be relied upon principally to deal with the social (and other) problems the populace confronts, and that it is only by encouraging private voluntary

initiative that those problems can be addressed. In effect, in the last couple of decades, the charitable/nonprofit/philanthropic sector in the United States has allowed itself to be assigned responsibility for what are, in effect failings of the state, accepting the notion that solutions may be found in the virtuous community-minded acts of enlightened individuals and corporations rather than through the appropriate exercise of governmental powers and the design, funding, and operation of public programmes.⁹

This neoliberal vision of the state denies that government has the power, the resources and the moral authority to address the political, social and economic problems which confront the nation and the planet. It trivialises the citizenry, declaring them to be government's *customers* rather than its *owners*, surrendering to the hegemony of the market over all three sectors.¹⁰

This is a critically important point when it comes to the central question of the relationship of government and the charitable sector in the United States. If government (through all of its agency, including the conflated and cooperative interests of the market/corporate sector) can, in effect, define the principal function of the sector as one of being directly responsible for the immediate relief of social and other needs through voluntary altruistic and philanthropic initiative, then it has functionally framed the context in which charities must operate as one of remediation, of providing palliative relief for those with pressing need or for otherwise enriching the quality of life for all, including those not in immediate peril. Such a mission framing suggests that nonprofit organisations ought to provide services (that are complementary or supplemental to government) rather than to concern themselves with any adversarial/confrontational advocacy or organising activity since it is beyond the state to attend to the problems and issues at hand.

This view of charity is consistent with the conservative ideology of the Bush administration which has sought to shrink the size, revenue and regulatory authority of government. Through its faith-based orientation, it suggests that social problems are more a reflection of people's moral failings than the malfunction of public institutions or economic systems, while asserting that government ought not intrude in the realm of values. Rather, conservatives argue, such is the territory for private voluntary initiative, be it sacred or even secular. Further, the diminished legitimacy of charities' advocacy role discredits the opposition to such an ideological agenda.

While such a notion of charity may seem to convey a sector independent of government, in reality it betrays one that depends implicitly on the agency and indulgence of government for its very definition – at least if it is to operate with the essential benefits of preferential tax treatment. Government has such powerful tools to influence and shape the management and functioning of nonprofit organisations, that to suggest the charitable community stands independent of government would be to perpetuate myth.

Although many find themselves in passionate accord with the desires of some in government to use their power over nonprofit organisations to direct more charitable resources to the neediest among us, it is important to remember that similarly others have sought to use (with continuing effect) that same authority to quash nonprofits' efforts to give voice to the neediest among us and to help them gain political power.

(9) For an excellent elaboration of this theme, see King, S. (2006) *Pink ribbons, inc.* Minneapolis, Minnesota: University of Minnesota Press.

(10) This "customer" language came from President Bill Clinton's/Vice President Al Gore's "reinventing government" campaign.

The Near Future in the US

Today's leaders of the nonprofit sector, those who pay attention to the kinds of issues addressed here, are politically astute. The national organisations representing the sector's interests in the halls of Congress and those in state legislatures have helped shaped hearings, laws and regulations, but they are facing a growing body of political attention and an increasing number of adverse initiatives. As domestic needs grow and government becomes more pressed, this situation will become more complex. It is unlikely that there will be major revision of the nonprofit tax regulation unless there is major reform of the tax code itself (which is needed and often discussed, although unlikely in the near term). Yet, the sector's leadership is not sanguine about its ability to continue to stave off new government demands such as those discussed here.

To the considerable degree that the US nonprofit sector today is allowed to function under its own private discretionary aegis is to acknowledge an historical reality that persists in great part based on its own dynamic momentum and the associated political strength of those engaged – just think of the aggregated political power of the committed individuals on the boards or otherwise involved in so many charities of consequence in local, regional and national arena. It also is testimony to the strength of the American commitment to private action for the public good, to the fact that the organisations of the nonprofit sector, as well as the general populace, are not likely to accept too dramatic or too stark an erosion of the sector's privileges too quickly. Yet, there certainly are no constitutional protections against a major government assault on the tax exemption/deductibility definitions and operating privileges of charities, as noted above¹¹ – and Americans have shown a willingness to accept significant restrictions on privileges in the face of abuse or great common need.

The question that remains before the US nonprofit sector today is whether it will use the freedom it retains to challenge the context in which it now finds itself. Will it allow not only conservative but neoliberal political leaders to define its role in default against a limited state that denies responsibility for public problems and power to address them? Will it accept a return to alms where nonprofits are led by entrepreneurs rather than activists,¹² by those who seek clever but limited paths to individual relief within inequitable systems rather than to correct and change malfunctioning structures? Will it assert its independence of government and define its own future? Will it speak truth to power? To itself?

...and Beyond

Those questions hold obvious implications for nonprofit, philanthropic, community and voluntary organisations in other nations. The simple and essential truth is that the degree to which this sector depends on government for its definition, its special recognition and privilege, and for funding, is the degree to which it opens itself to special coercive influence and an erosion of its claimed and its actual independence. Yet, without such a statutory and regulatory basis, the sector would remain an aggregation of informal organisations, at best a series of movements, that would have difficulty establishing themselves as an enduring and sustainable part of civil society without becoming part of the political infrastructure.

Thus, the challenge is to try to have both: dependence and independence. Charities should seek and enjoy the preferences which government ought to extend the nonprofit/philanthropic/voluntary/community sector because the sector serves the common good, the public interest, rather than the pecuniary interests of

(11) Independent Sector, representing the nonprofit sector in the national policy arena, has proven itself an effective actor in congressional and other debates about charities' rights and prerogatives. The National Council of Nonprofit Associations is a network of similarly-focused state-level groups. Both of these "infrastructure organisations" are headquartered in Washington, DC.

(12) A wonderfully clarifying dichotomy framed by the Ford Foundation's Senior Program Officer Christopher Harris.

the market. And that sector ought to conduct itself in such a way that its contributions to the common good and its service to the public interest are known and obvious to the populace, that its business and programmes are conducted with transparency and accountability, that it operates with integrity and honesty. Such is necessary if it is to have sufficient general support to protect itself against undue government influence and to protect the independence it does have to use its own discretion to guide private initiative for the public good.

To accomplish this end requires leaders of the sector to be ever vigilant to the implicit, as well as explicit, influences which government exerts over these organisations. It means stepping back from the day-to-day struggles to offer successful programmes without sufficient resources to undertake them; it means taking the time to look at the larger picture of the role and function of the sector in society, its relationship with government, and with the public itself. It means remembering always that while private in its nature, without the public's benefit as the core purpose and quintessential metric, this sector's independence matters not. To the extent that it is successful in serving the common good is the degree to which its independence will be protected.

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The independence of the voluntary sector in Wales

Graham Day, Senior Lecturer, School of Social Sciences, Bangor University

Abstract

Devolution in Wales has brought the voluntary sector closer to government, as a partner in a unique Voluntary Sector Scheme. There is a movement to create a stronger and more focussed civil society, underpinned by distinctively Welsh social and political values, and voluntary organisations are under pressure to help deliver on this agenda, by working with government as part of a nation-building consensus. The National Assembly for Wales is designed to be open and inclusive, with many opportunities for partnership and consultation. Voluntary activity is valued because it enables close contacts with communities and interests that otherwise might be hard to reach. Policy makers regularly stress the importance of an independent voluntary sector. But in order to work more effectively with the sector the Assembly Government has encouraged the adoption of a more professional and integrated approach, and stimulated the development of coordinating networks. It expects voluntary organisations to play a key role in promoting a more active and accountable citizenship. The result is a more hierarchical and orchestrated set of relationships which favour the larger and better resourced voluntary organisations. This can create distance from rank and file volunteers, and exclude smaller organisations. It can also reduce the ability of the sector to challenge government. Independence is threatened, because government's aims may be substituted for those freely chosen by volunteers and the organisations they support. There is some evidence from within the sector that members see the need for alternative means of communication, and a different funding paradigm, to protect their independence and capacity to innovate.

Introduction

The establishment of a National Assembly for Wales in 1999 signalled a significant transfer of political and administrative powers, as Wales for the first time gained its own democratically elected form of government. The shift in power this brought about, and the development of new and complicated constitutional machinery to enable it, has had very broad implications for the relationship between government and voluntary organisations, with ambiguous consequences for the independence of the Welsh voluntary sector. Those who take part in voluntary activity across Wales are regarded as vital partners in helping the Assembly to achieve its aims, a relationship cemented by a unique Voluntary Sector Scheme, which requires the Assembly to assist and promote voluntary organisations, and to report regularly upon its performance in doing so. This agreement has been applauded as marking an unprecedented commitment to collaborative working; but entering into partnership with government necessarily imposes constraints and obligations, some of which can be quite detrimental for the partner's subsequent freedom of action.

A measure of the scale of the current involvement is that a rising proportion of the funding for voluntary sector activities in Wales now derives from public sector sources, with Welsh Assembly and central government funding contributing

22 percent of the total, and a further 17 percent coming via local government and local health boards (TSPC 2008). This share is expected to continue to grow, as voluntary bodies are pressed to bid for more funding from public procurement contracts and local service level agreements. By contrast, income from public donations has been declining, to 26 percent of the whole. Individual donations in Wales, at around £10 per head per year (NCVO 2004-5) fall some 30 percent below the UK average, with the majority going to organisations that operate on a UK-wide basis. Together with the 20 percent of income secured from trading and investment, this means that just under half of total income could be regarded as self-generated. Apart from government funding, the rest comes in the form of grants from business (4 percent), trusts (3 percent), the national lottery (4 percent) and Europe (4 percent).

Estimates of the size and scope of the voluntary sector in Wales are not terribly precise. Usually they are derived from sample surveys, grossed upwards, and therefore tend to vary between different sources, and over time. Widely cited figures published by the Wales Council for Voluntary Action (WCVA) put the number of voluntary groups and organisations at around 30,000, which is roughly one group for every hundred persons living in Wales. Most are very locally based, or represent extremely specialised interests, and the vast majority are too small to employ any staff. Small organisations are especially numerous in the rural parts of Wales. Usually such organisations neither seek nor receive any public finance. The WCVA compiles its own database, on which it lists 26,000 such bodies, including self-help groups, community enterprises and cooperatives, faith organisations, and charities (Nicholl 2006; WAG 2008a).

Calculations of the numbers of people involved with such groups are also imprecise. According to the WCVA, something like three-quarters or more of all adults in Wales could claim to be 'volunteers', a large proportion of whom are involved in providing care and support to friends and neighbours outside the limits of any formal organisation. On average, volunteers are said to contribute 5.4 hours per month, including giving advice, looking after pets, children or property, doing shopping, providing transport, or representing other people (Collis 2005). Whether such individuals would indeed look upon themselves as 'volunteering' when they carry out these activities is perhaps questionable. Nevertheless, very substantial numbers, possibly half of all Welsh adults, belong to and are active within one or more of the voluntary bodies. The type of activity this entails, and the shape taken by the group or organisation concerned is highly diverse. Research undertaken by the WCVA some years prior to devolution concluded that the sector as a whole in Wales was weak, fragmented and poorly resourced (Hunt 1984). Part of the task undertaken by the Assembly has been to remedy this, to create and support a much stronger, more focussed, and more effective Welsh voluntary sector.

The quibbles just stated about the reliability of facts and figures, and about the definitions of what should count as volunteering, matter because they affect judgements about the function and purpose of voluntary activity. There are innumerable reasons why, in a free society, individuals may choose to associate together to pursue their particular interests, hobbies, and distractions, or to celebrate their shared beliefs and aspirations. The result is a highly varied mix of groups, clubs and organisations, of differing sizes, with differently composed memberships, widely contrasting in scope and ambition. This essential diversity is a key characteristic of voluntary activity, and the source of many of its accepted strengths, including its dynamism, representativeness, and ability to respond to change. Not all such activity impinges directly, or even indirectly, on the sphere and concerns of government. A distinction must be made therefore between those parts of the voluntary sector which do assume some responsibility for and interest

in serving a wider public, and many other kinds of freely chosen activity which are directed mainly to the satisfaction and pleasure of the participants themselves. Drakeford (2006: 106) recognises this when he refers to ‘those voluntary bodies and organisations which are identifiably engaged with government, implicitly distinguishing them from a large penumbra of other groupings which escape “under the radar” of government.

This does not prevent attempts being made to extend the range of governmental influence to bring more voluntary groups, and more activities, into its orbit. There are many within government who see in the voluntary actions of others a convenient vehicle for achieving their own preferred ends, whether these be practical, political, or moral. To a greater or lesser extent, consciously or not, they take an interest in circumscribing the range of other people’s activity, and curbing its independence. Hence there is a constant tension between the members’ freedom to choose what to do, and the desire of others, outside or beyond the group, to regulate and control their behaviour. This can create a significant gap between what actually motivates people to join voluntary groups, and how these motivations are interpreted and directed by others. The issue which arises is whether interference with independence, however well intentioned, results in losing some of the key advantages of voluntarism. Recent experience in Wales provides a good illustration of these dynamics.

Wales: Strong communities, weak civil society?

The healthiness of voluntary activity and organisation is said to provide a good measure of the underlying strength of a society, and its capacity to bring the bulk of its members into active contact and sympathy with one another. On this account, Wales should do well. Popular conceptions of Wales and Welshness tend to emphasise the enthusiasm with which Welsh people form themselves into groups: male voice choirs, small nonconformist religious congregations, local union branches and working men’s clubs, and intense loyalty to team sports would be familiar (albeit gendered) historical examples. Traditionally, social life in Wales has been considered to be strongly associational, producing powerful communitarian identities rooted in local networks of social ties. The idea of “community” in particular has never been very far from the minds of Welsh commentators and policymakers. When Peter Hain was appointed Secretary of State for Wales in 2002, for example, he hurried to pledge his commitment to ‘our very own and very special values in Wales’, numbering amongst them community, caring, mutual cooperation and respect, and democracy (cited by Michael and Tanner, 2007: 39). In keeping with this, for several generations the weight of political opinion in Wales has been left-of-centre, valuing solidarity, and supportive of collective interventions. For many, the Welsh contribution to founding the National Health Service is emblematic of this tradition.

The assumption that people in Wales continue to adhere to these values is widespread. Analysis of the recent policy literature surrounding the Welsh language and its future reveals an underpinning vision of a small country, ‘filled out by local practices and values which constitute “community”’ and implying ‘a positive condition of sociality and mutual connectedness’ (Coupland and Bishop, 2006: 37). Others see a similar tendency with reference to areas like education, health, and economic and social regeneration. The importance of shared communal values, and a collectivist tradition, are invoked to explain the distinctiveness of Welsh policy needs and solutions. Thus the policy community which surrounds health care and provision, for example, seems to remain more committed to these principles than its counterparts in the rest of Britain, resisting the spread of more

individualistic and market-oriented solutions (Michael and Tanner, 2007). The Assembly's First Minister, when staking out the 'clear red water' between Wales and Westminster, opted for collaboration, not competition, and for community values rather than consumer choice (Davies 2003). In line with this there has been a stronger commitment in Wales than the rest of Britain to maintaining public services in a strong public sector, and resisting privatisation initiatives. It is the Conservative opposition in the Welsh Assembly which has most favoured developments like PFI, foundation hospitals, and the transfer of public assets and services into community control and the voluntary sector.

However, this impression of life in Wales as instinctively associational and democratic has a downside. People's loyalties and sense of belonging are frequently said to be excessively localised, too fragmented, and consequently often divisive. Readiness to show solidarity with some can go along with suspicion and intolerance towards others, who live outside your area, or belong to another group or faction, or speak a different language. It can become difficult to reach beyond these narrow commitments to get a feeling for a common, national, Welsh view or voice. Disagreement and dissension can put a block on development. More recently, recognition of the need to overcome such inward-looking parochialism has been coupled with an awareness that, like most other places, Wales is undergoing changes which are undermining the grip of its communal values. These include the pressures of individualisation, globalisation, and homogenisation. Many of the statements made by politicians during and since the devolution campaign reflect these considerations, the urge to create a common voice, and to remove perceived obstacles to necessary change, and the fear that without intervention, and guidance, much that is good about Welsh social and civic life will fade away.

Devolution: a new constitutional framework for participation

In 1997 the Welsh population voted, by a very small majority, for devolution. The build-up to this decision was influenced greatly by knowledge that earlier attempts at 'home rule' and increased independence had foundered on the divisions within Wales. The failure of the previous referendum in 1979 resulted in part from fears that any ensuing Welsh body could become the creature either of Welsh-speaking nationalists from north and West Wales, or of the Labour Party machine politicians who for years had dominated south Wales and the valleys. At the time these forces seemed irreconcilable. Twenty years later supporters of devolution understood the importance of ensuring a sufficiently wide agreement to produce a majority favouring change. However there was also a consciousness that this was not coming about naturally as a groundswell from popular opinion. There was a significant gap between the mass of public opinion in Wales, dissatisfied with the existing state of affairs, but not yet convinced by arguments for constitutional change, and attitudes prevailing amongst opinion formers and leaders. Among the latter, the critique of an increasingly undemocratic situation, lack of responsiveness of central government, and distance from power led to widespread talk of the 'colonial' style of government and the Welsh 'democratic deficit' (Morgan and Roberts, 1993). This time the argument for devolution was put less in terms of realising national aspirations than through questions of modernisation, effectiveness, and democratic renewal.

The fact that in the event barely a quarter of the Welsh electorate actually voted for devolution underwrote the distance to be travelled to secure a strong and lasting mandate for the new Assembly. Arguments began to be expressed that there was an underlying problem with the organisation of Welsh society.

It appeared to be incapable of delivering a 'settled' political will, because it was disunited, immature and apathetic (Paterson and Wyn Jones 1999; Royles 2007). This was connected to its inability to take a sufficiently strong Welsh perspective on issues. One set of commentators for instance linked 'the dearth of national-level political decision making and policy formulation attuned specifically to Wales' to the 'absence of a strong specifically *Welsh* focus by groups in the minority sector and beyond' (Chaney et al. 2000: 211).

The contrast was drawn with Scotland, where it was contended that popular organisations, including churches and trades unions, had played a very active role in the Constitutional Convention, that this reflected a more firmly grounded civil society, and that consequently Scotland was able to gain a more powerful Parliament, with legislative powers. In Wales, debate had been conducted largely within the Labour Party, prone to rely on its electoral majority to carry through its proposals. Nevertheless, Welsh Labour had reached out for support to other interests, including its political opponents, and done so in the guise of 'inclusiveness'. This proposed that the devolution process itself would help bridge the gaps in Welsh society, by making sure that various minorities, and the public in general, had a stake in its outcome. 'Inclusion' was the magic formula to heal old rifts and encourage a much more active, positive spirit of participation (Chaney and Fevre 2001).

The achievement of devolution, and its subsequent development, has opened up a debate in Wales about the nature of civil society, and especially the issue as to whether devolution has encouraged the reorganisation and reconfiguration of civil society bodies, and how far this in turn has led to the strengthening of a distinctively *Welsh* civil society, a set of organisations and networks oriented primarily to Wales, to Welsh issues, and to the workings of the Welsh Assembly (Day et al. 2006; Royles 2007). These themes have a direct bearing on what is expected from the voluntary sector, namely the mobilisation of civil society to achieve a combination of greater efficiency and a more modern outlook, a more fully Welsh consciousness, and a greater readiness to "participate" and share in delivering the aims of the devolved government. These general aims have been more influential than any concern with the specific delivery of particular services. Ultimately the success of the devolution project rests with the extent to which the Assembly puts down roots into Welsh society, and wins legitimacy from the Welsh people. Thus far, voting patterns and opinion polling suggest that although progress is being made, there is still some way to go. This encourages a feeling that rather than the Assembly responding to demands and pressures emanating spontaneously from below, it must take the lead in stimulating and channelling people's involvement with it. An air of disappointment ensues, that civil society has not delivered what was expected of it, and needs to get itself in better shape, caught by the First Minister's comment that in Wales thoughts of autonomy must follow, rather than precede devolution (Morgan 2000). There is a danger that this commitment to nation-building can make devolution look like an elite project, foisted upon the majority of Welsh people, whether they like it or not.

New mechanisms for inclusion

Although they are not precisely the same thing, the idea of civil society overlaps substantially with that of the voluntary sector. Indeed one definition interprets civil society to mean those areas of voluntary action where individuals meet to pursue common aims, free of the influence of the market and the state. In practical terms the Welsh Assembly has looked to the voluntary sector to deliver the commitments it wants from civil society. The Assembly has responsibilities extending across all the

main areas of interest to voluntary bodies: education, health, housing and social policy, planning and the environment, local government. Devolved government therefore provides an important context for rethinking the nature and role of the voluntary sector, and voluntary bodies and activists have been invited to make themselves part of 'Team Wales', so as to produce an appropriately Welsh response to the opportunities it affords. To facilitate this, a range of new measures have been introduced, seen as marking out a distinctively Welsh brand of devolution.

The aim to incorporate full representation of organised social life in Wales into the governmental process was written into the Assembly at its creation in a number of ways (Rawlings 2003). The White Paper *A Voice for Wales* (Welsh Office, 1997) declared that the National Assembly for Wales (NAW) was to be a 'modern, progressive and inclusive democratic institution'. The Government of Wales Act (1998) obliged the Assembly in all its dealings to pay attention to equality of opportunity, and to avoid discrimination against individuals or groups on grounds of sex, race, or disability. Adherence to this 'absolute duty' is monitored by a standing Equality Committee, which ensures that minority views are listened to. The policy manifesto *Putting Wales first: A partnership for the people of Wales* (2000) espoused novel, collaborative, and inclusive ways of working. The Assembly's language policy, a critical area of possible contention, is to be conducted 'within a tolerant, welcoming and open Wales' (WAG 2002). Virtually every key policy statement stemming from the Assembly has contained similar sentiments about the openness, transparency, and pluralism of its vision of Wales, and of its intended methods of working.

The actual structure of the National Assembly for Wales itself was intended originally to move away from the closed, hierarchical pattern of Westminster government, to foster a more consensual manner of operation. Its basic architecture was supposed to rule out adversarial conflict and guarantee a more inclusive style of democratic debate (Rawlings 2003). Public access to Assembly deliberations was ensured through widespread policy consultations, ability to present evidence before influential committees, and encouragement of direct contacts with Assembly Members (AMs) and officials. Vast amounts of information about the Assembly's proceedings were made available through the Assembly's website. With only sixty members, business in the Assembly presented a far less intimidating prospect than that conducted at Westminster. The institution was designed to be user-friendly, reducing the barriers which conventionally excluded people from a sense of ownership over government. In all these ways, the doors have been opened to close and continuous public engagement.

Opponents interpreted these arrangements more sceptically, questioning whether devolution would produce more than another talking shop, a typically Welsh committee, writ large. With so many points of entry, and such an abundance of information to digest, there was a problem in locating real responsibility, and ensuring contacts could be targeted in the most appropriate, and effective, way. Interactions between a loosely structured Assembly and a host of separate organisations risked dissipating effort on both sides. Voluntary organisations complained that the situation was confusing. Not only were they torn between the new Welsh Assembly and the remaining pull of Westminster government, but they were unclear about where exactly accountability lay within the Assembly. Some thought devolution had produced just another tier of costly administration and bureaucracy. In fact however there very quickly emerged something altogether closer to the Westminster model, as a form of cabinet rule, shortly to become known as the Welsh Assembly Government (WAG), took shape and separated itself from the rest of the Assembly, which was relegated to a scrutinising and debating role.

While this clarified the lines of accountability it also meant, as Royles notes (2007: 58), that ‘many of the Assembly’s internal structures, which were designed to promote “inclusiveness” were downgraded’. Assembly committees lost a good deal of their power, and were no longer the ‘engine houses’ of policy formation they had been expected to be (Osmond 1998: 9). According to Drakeford (2006), as soon as it was politically expedient the much vaunted inclusiveness was abandoned. Reverting to the parliamentary pattern meant that from now on the primary connections were to be forged between the voluntary sector and Welsh Assembly Government, and the linkages were to be assembled mainly through partnerships, and adherence to the Voluntary Sector Scheme. Nevertheless, ministerial statements continued to promise a much closer level of interaction between government and voluntary sector, and a degree of involvement with policy making unimaginable before devolution, and it is true that reviews of the Voluntary Sector Scheme list a multitude of contacts, agreements and partnerships between the Assembly and different parts of the sector (WAG 2008b).

Working through Partnerships

A readiness to embrace partnership working has been seen as a key feature of the Welsh path to devolution, and as the most practical way of ensuring inclusiveness, by admitting new voices and perspectives into the government process (Bristow et al. 2003; Rawlings 2003). Partnership is held to be essential to ‘joined up’ government, and as well as cultivating partnerships in the fields of health, children and young people, and education and training, the Welsh Assembly has stressed the need for an integrated partnership approach to sustainable and rural development, equal opportunities and social inclusion. It has been estimated that the resulting local level partnerships could be numbered in the thousands. The Assembly has also observed rather strictly the ‘thirds’ principle of representation, in which equal weight in partnerships is given to business, the statutory authorities, and voluntary bodies. The principle has been applied to more than fifty European structural fund partnerships, and more than a hundred local Communities First projects in the most deprived Welsh communities. Consequently the formal opportunities for voluntary sector participation in decision making have increased massively, along with the associated demands on time and resources. While not all these partnerships are new, because sometimes existing arrangements have been repackaged and relabelled, involvement in the complex web of resulting inter-organisational relationships requires regular contributions from several thousand Welsh volunteers. Bristow et al. (2003) report strong evidence of “partnership fatigue” as willing individuals struggle to keep up with the demands of attending meetings, reading papers and undertaking other work for partnership activities, and yet, some of the time at least, voluntary sector representatives feel that their presence can be tokenistic, because it is government, or local authorities, or businesses, which really drive things.

A Scheme for Voluntary Sector Cooperation

Published by NAW in 2000, the Voluntary Sector Scheme acknowledges the wide scope and diversity of voluntary activity, and commits the Assembly to building a partnership that will ‘empower people to participate in the development of their communities’, and enhance local democracy. It affirms that the sector consists of independent organisations, which set their own priorities and manage their own affairs. But it also stresses an expectation that voluntary activity should form an integral part of “active citizenship”, relevant to all sections of society, regardless of age and circumstances, and that voluntary organisations have a duty to represent the interests of their “constituents”. The first Assembly Minister to assume

responsibility for the voluntary sector, Jane Hutt, made the same connections between voluntary action and government objectives when she spoke about ‘doing things for others, freely and by choice’ but immediately linked this to ‘good citizenship’ as ‘an indispensable part of creating an inclusive and supportive society’ (cited by Drakeford 2006: 111). Worthy aims, although not necessarily at the forefront of the minds of volunteers.

Responsibility for supervising the Voluntary Sector scheme rests with a Partnership Council, meeting twice yearly, which originally contained AMs, selected for balance from across all the Welsh political parties, together with 21 voluntary sector representatives. The Council is serviced by the WCVA, which helps select representatives, and coordinates their activity. Under the 2006 Government of Wales Act, and in accordance with the restructuring of the Assembly Government, the requirement for AMs to form part of the Council has been removed. Rather than the scheme being kept under annual review, Ministers are expected now to ‘keep under review, and from time to time remake or revise the scheme. The revised structure makes the relationship with government, rather than the Assembly as a representative forum, much clearer. In 2008 the Welsh Assembly Government produced a strategic action plan for the voluntary sector (WAG 2008). This listed the 21 subject-based forums or networks according to which the WCVA organised representation on the Voluntary Partnership Council. The biggest groupings include sports and recreational associations (24 percent), community (17 percent) and benevolent (14 percent) organisations, bodies concerned with health and social care (13 percent) children and families (12 percent) and youth (10 percent). The composition of each of these groupings is fairly eclectic. The first group includes for instance rugby and bridge clubs, as well as regional and national sports associations, while the youth category ranges across uniformed organisations, young farmers, and assorted “cultural groups”. Among the smaller categories, each providing less than 3 percent of the total, are groups concerned with advice and advocacy, ethnic minorities, community justice, and support for volunteering. Recently, acting on the advice of an independent commission which met in 2004, and after consultation with the sector, three additional membership categories have been created, representing Asylum Seekers and Refugees, Sexualities, and Welsh Language. Despite the ramshackle nature of this collection, the report argues strongly for regarding the whole cluster as a single entity, the third sector, with particular characteristics and outputs.

Reflecting eight years experience of devolved government, the Strategic Action Plan aims to clarify the terms of the relationship between the voluntary sector and WAG, leaving consideration of connections with the wider Welsh Assembly for a later date. The plan reasserts the ‘fundamental right and desire of people to organise and cooperate in a free society’, and to do so in bodies that are independent, voluntary, value-driven, and not-for-profit (WAG 2008: 20). It states that there are three key areas in which the Assembly Government’s interests mesh with those of voluntary organisations: strengthening communities; shaping better policies; and delivering better public services. The document’s underpinning theme is the positive impact voluntary action has upon communities. By working together, people are seen to contribute to community development, raise quality of life, and enhance learning. They build trust and social capital, and help create ‘a culture of informed and accountable decision making’. In short, they consolidate and deepen civil society, acquiring in the process the skills and dispositions appropriate to ‘active citizens’. To improve the quality of public policy, WAG undertakes to explore new (unspecified) forms of public engagement, which will harness the expertise and experience of volunteers. It also seeks to mobilise the voluntary sector to involve itself more closely with the provision of public services.

As particular strengths, the report attributes to the sector an ability to connect with excluded groups, to tackle multiple disadvantage, and to deal with problems that are labour intensive, highly variable, and difficult to measure. By reaching places government cannot get to, volunteers can add value to public sector provision, and deliver valuable front line services. A flavour of the overall strategic direction can be got from titles of the working documents which have appeared from the Assembly: Making The Connections; Delivering Beyond Boundaries; A Shared Responsibility. All told, as a means of achieving its current 'One Wales' programme of government, WAG commits itself to 'a new order of partnership working' with the voluntary sector. A new Third Sector Group will assume responsibility for seeing the strategy to fruition, and a new Partnership Agreement between WCVA and the Assembly Government will provide the infrastructural support, training, and guidance needed 'to take volunteering in Wales to a new level'. The emphasis on joint working, partnership, and shared responsibility considerably blurs the boundaries between government and voluntarism, civil society and the state.

A delicate balancing act

Much thought has been put into framing a role appropriate to the voluntary sector in a post-devolutionary Wales. The sector as a whole is viewed as a key partner in the work of the Welsh Assembly Government, while the rich variety of bodies and organisations that make up its component parts are also expected to become active partners in a reconfigured Welsh civil society. In this way, it is anticipated, voluntary activity will become firmly embedded in and tied to the future development of the Assembly, and the gap between Assembly and civil society will be closed. The Assembly will gain credibility, as it wins the backing of volunteers, and democracy will benefit, as government is made more responsive to civil society interests; but responsiveness is a two-way process, and significant expectations are also being placed upon voluntary sector organisations. These are expressed in terms of generally greater responsibility, accountability and higher levels of activity, and also more specifically in relation to the delivery of particular kinds of service. Each new opportunity to contribute can also be construed as exerting a demand to provide something which the government needs or values, and thus, to some extent, the voluntary sector is being reshaped into an arm of government. There is now a mounting body of research-based evidence suggesting this *modus operandi* has limitations as well as strengths.

Drakeford (2006) reports that the voluntary sector has reacted to these developments with optimism, feeling more in tune with government policy, more engaged with the policy making process, and better placed to have an impact than in the past. But informants also expressed fears about the dangers of becoming enmeshed in an agenda not of their own making. Reviewing the current state of Welsh civil society, Collis (2005) concludes that it is relatively well developed, with a strong value base, generally supportive environment, and high social impact, including influence on public policy. However there is a feeling among certain groups that they have been disempowered by larger, more influential organisations. Collis refers to the discrepancy, noted by the Richard Commission inquiry into the Assembly's powers (Richard 2004), between the enthusiasm expressed by those who have actually been able to engage with its processes, and a seeming wider public indifference. In other words, opinions vary sharply according to where informants are located within the voluntary sector, and how closely affiliated they are to the Assembly. By aligning themselves with the new procedures and requirements for representation, some sectors, and certain organisations have benefited more than others.

Empowerment at a price?

Faced with a potential cacophony of voluntary perspectives and voices, in effect WAG has responded by closing down some forms of access and creating a set of more “authorised” channels. These have been adapted to the style of the larger, better organised, more professional voluntary bodies. It is instructive how the 2008 strategic action plan document, when referring to thoughts about the voluntary sector, suggests our ideas are likely to turn to ‘long-established and familiar charities’ in fields like child protection, overseas aid, and conservation: in other words, bodies like OXFAM and NSPCC, not the local scout troop, gardening club, food co-op or mental health self-help group. Commentators have noted the difficulty faced by the smaller organisations, with fewer resources, in coping with the flood of demands and information coming from the Assembly. Professional skills are needed to engage properly with consultations, prepare business and strategic plans, and write funding bids. On the side of the Assembly as well, it is easier to deal with large organisations and well-integrated networks, which speak with a united voice, and can present persuasive evidence based on solid research. Where such bodies already existed, they have been able to integrate well with the new machinery. Royles (2007) describes the example of Groundwork Wales, where an organisation with experience of partnership working was able to fill a gap in the Assembly’s own capabilities, and assume a leading role in local, regional and strategic partnerships in the fields of community and sustainable development and the social economy. Its opportunities for involvement have multiplied, because as one representative puts it ‘they know what your track record is and then you tend to have an invitation’ (Royles 2007: 72). Not surprisingly, then, it is the bigger, and better serviced organisations, which speak the same kind of language as politicians and officials, which thrive in such an environment. Smaller groups and interests tend to have to work through umbrella groups and networks.

Collis (2005) notes that there are nearly 500 such groups and forums in Wales. Williams (2006) lists five groupings for black and ethnic minorities alone, one of which, the Black Voluntary Sector Network, links together some 120 separate organisations. As Williams shows, the efforts of the Assembly and WAG to coordinate these into a single ‘ethnic minority’ voice have encouraged a certain amount of conflict and competition over recognition and legitimacy. Similarly the emergence of Stonewall Cymru as a body positioned to represent diverse forms of sexuality in Wales has seen it evolve from an open membership, movement type organisation, into more of a professional lobbying body, where a few individuals can claim to speak on behalf of much bigger numbers (Royles 2006). In the sphere of religion, the formation of an Interfaith Council for Wales was necessary to ensure that the non-Christian faiths were not completely overshadowed by the larger Christian denominations, which enjoy privileged access to Ministers (Chambers and Thompson 2006). Similar developments occur at more local level. The Powys Association of Voluntary Organisations (PAVO) encourages a high level of partnership working, because it sees voluntary sector organisations as an effective means for local service delivery, and wants to make better use of their connections with local communities. It is seen as part of the moral duty of such organisations to work with others who can add value or improve service delivery (Matthews 2007). To this end, PAVO facilitates 22 local networks. But currently most partnerships in the county are small, usually involving cooperation between no more than two or three bodies, and the smaller groups continue to lack sufficient confidence or resources to contemplate delivering larger contracts or engaging in competitive tendering. Hence PAVO looks to the Assembly to help build their capacity, to integrate them more firmly into collaborative arrangements,

and enable them to withstand an increasingly competitive funding environment. The underlying message seems to be grow, or perish.

The moves just outlined suggest the emergence of a 'manufactured' civil society (Hodgson 2004), led and orchestrated from above, rather than a spontaneous outgrowth inspired by the grassroots philosophy typical of much voluntary action. In a congested field, with many potential collaborators and rivals, the processes which bring recognition and access to influence can work selectively, to favour a handful of organisations, which occupy spaces across a number of partnerships and policy forums, at different levels of the policy arena. It is these bodies which become members of the Voluntary Partnership Council. They grow used to working together, and so develop relationships of confidence and trust on which to build further cooperation, whereas groups left out at an earlier stage become increasingly marginalised and excluded. Consequently what began as a strategy for inclusion can worsen the imbalance between voluntary sector organisations, some of which are filtered to succeed, whereas others languish or fail. "Ordinary" volunteers can also become distanced from the activists and leaders who fill the networks, committees and forums which link the sector together.

Royles notes the virtuous circle whereby some organisations have 'restructured, professionalised and expanded their resources, and ... increased their capabilities to lobby' while also acquiring capacity to develop 'expert policy submissions on a par with the public sector' (2007: 148). Being part of an inner circle, dealing with government from a position of strength and acknowledged competence, puts such organisations in an advantageous position when it comes to understanding and responding to the thrust of policy, the aims of government, and the rules of the game for funding. Less well informed bodies have to turn to intermediaries and networks to interpret these for them, and to lobby on their behalf. This where the second tier organisations of the voluntary sector, the groups and organisations involved with organising and representing others, come into their own: there is a tendency for power to accrue to the relatively small proportion of organisations explicitly concerned with providing advice, advocacy and infrastructural support, which form part of a distinct voluntary or third sector "industry". Thus bodies intended to support voluntarism may become its drivers. The chief of these is the WCVA itself, which receives core funding from the Assembly, serves in all the main partnerships, conducts influential research, and distributes advice, support and guidance to the sector. It therefore has a major stake in helping WAG achieve its aims.

In this way a more focussed voluntary sector is also one that is more hierarchically organised, and held together by relationships of dependency. The sector gains influence as an entity, but the available means of expression are narrowed. This puts at risk some of the innovatory potential, fluidity, risk-taking, and capacity to meet with people at the level of their immediate everyday concerns and interests which made the sector so appealing in the first place. People and organisations may begin to lose sight of their original motivations. At worst, volunteers can feel they are being distracted from providing actual services of value to themselves and others into behaving like minor functionaries, filling in forms, preparing bids, and "ticking the boxes". Grassroots members often express indignation that so much time and effort goes on doing things which are designed to satisfy the requirements of external managers and auditors. For their part, those who fund and coordinate programmes and activities can become preoccupied with monitoring outcomes, setting short-term goals and avoiding risk (TSPC 2008). Voluntary bodies may find it difficult to criticise or challenge government and its agents when they are also the major source of potential funding, especially the

core funding that ensures survival. This can blunt the critical edge of some organisations. An interesting example discussed by Royles (2007) concerns the Welsh language, where groups which have taken the lead in mounting a remarkably successful campaign of agitation and action on its behalf have tended to find themselves left outside the sphere of influence, precisely because they are ready to use unconventional means and radical rhetoric, whereas other more pragmatic groups receive support and funding via the Welsh Language Board. According to Royles this produces a tone of consensus, and unwillingness to rock the boat. Such developments have prompted the Third Sector Partnership to argue for a new funding paradigm, which would allow for longer-term commitment and a more relaxed style of supervision, so as to 'strengthen an independent civil society, empower communities, increase initiative, and achieve satisfying and sustainable outcomes' (TSPC 2008: 6) – in other words, to re-establish an area of freedom to operate on their own terms. This would include a readiness to accept that some initiatives will fail.

Conclusion

The WAG Strategic Action Plan for the Third Sector exhorts voluntary groups to 'consider whether they need to refine and redouble their efforts to engage, involve and empower people' (WAG 2008: 28). This suggests they have much work to do to meet the targets being set for them. It is a view which contrasts interestingly with the argument of a group of voluntary sector representatives who contend that even after devolution Wales still needs an active 'civil society forum', to deepen democracy, ensure greater participation, and attend to a greater diversity of Welsh voices (Sustainable Wales 2007). On its record so far, they judge the Assembly to be a missed opportunity. This indicates a difference of perspective as to whether it is the role of the Assembly and WAG itself to enthuse and energise the Welsh population, or whether this can be "outsourced" as a task to the third sector. No matter how often official documents reiterate the importance of the independence of the sector, the latter approach tends to make voluntary organisations into an instrument of an emerging Welsh state. The major threat this poses to their independence is the possibility that they will not be left free to choose their own aims and objectives, but will be expected to subordinate these to persuading people to behave like the "active" and constructive citizens, "informed and accountable" in what they do, that government would like to see.

After nearly a decade of devolved government, some lessons can be drawn, namely:

- Rhetorical support for independence is not always converted into practical means to safeguard it.
- Close collaboration with government risks displacing the aims and objectives of voluntary organisations with those of government itself.
- The development of strong upward connections to policy makers and funders may come at the expense of an attrition of downward links to grassroots supporters and rank and file volunteers.
- Over-dependence on project and programme funding can limit the scope for long term planning and make voluntary bodies vulnerable to change of policy direction, or in the current situation of economic recession, pressure on the public budget.
- It is important that voluntary organisations maintain some space for communication and discussion which is free of the view of government.
- In the final analysis, the interests of democracy are served best if the Assembly, and the Assembly Government, remain answerable to the voluntary sector, and not vice versa.

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