NONPROFITS AS POLICY SOLUTIONS TO THE BURDEN OF GOVERNMENT

HERRINGTON J. BRYCE

DE G PRESS

This book addresses a specific subset of nonprofits that are chartered with a single mission: decrease the burden of government. Designing and engaging nonprofits to lessen the burden of government requires a specific description and acknowledgement of the burden to be lessened, and these may include the provision of infrastructure, the relief of debt, or the provision of general public services that are not motivated by charity. It also requires the assignment of specific operating powers to the nonprofit including the power of eminent domain. This book explores these and other related topics including the avoidance of resource dependence on government when attempting to reduce its burden.

The book is addressed to the policy makers and rule makers who design policies that affect the ability of the nonprofit to effectively lessen the burden of government. It is also addressed to public administrators in search of innovative ways of implementing these policies consistent with the laws, and to the creative nonprofit managers who are charged with carrying out the mission often in collaboration with the government or other entities. To the advanced student in all related fields, the author offers not only material for discussion, but enables discovery of what is possible by giving key examples of organizations meeting the terms and objective of lessening a significant burden of government.

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Nonprofits as Policy Solutions to the Burden of Government

Marisa Jeanine, Herrington Simon, and Shauna Celestina
From your parents, their parents, Roy, Celestina, Emeline Yvonne
and their families
Mom Beverly J, and Dad Herrington J

Acknowledgements

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> In times of political gridlock or high turbulence, non-profits have an especially important role to play in pioneering new ways of service provision and in helping citizens monitor government performance. As Tocqueville noted over 150 years ago, they also help us build—or rebuild—civic skills that we have too often allowed to lapse. This book is a wonderful guide for a new generation of leaders.

I am lucky to have been exposed to issues of government and of finance in so many direct and distinct ways as an undergraduate student, as a graduate student, as a professor, as a member of several government and finance related boards, and as one who worked closely with cities, states, and local governments across the country and internationally and across Central Eastern Europe from Russia during the point of transition to Estonia and the Republic of Georgia during the same period. For that experience, I am grateful to the National Academy for Public Administration and particularly Dr. Carole Neves, Scott Fosler and the Network of Institutes and Schools in Public Administration in Central Eastern Europe for those in-place experiences. On the domestic side, I am thankful to Ralph Widner for the opportunity to having a direct official involvement with each of the seven major government associations from the National League of Cities to the National Association of Governors and to Eddie N. Williams for working with minority elected officials throughout the country. I got a richly different perspective on nonprofits, debt, infrastructure and revenue bonds from serving as a member of the Treasury Board of Virginia where I had legal and fiduciary responsibilities to approve the terms and prospectuses of all government related bonds—general obligation or revenue—or long-term lease obligations. For that, I thank Governor Douglas Wilder.

I also wish to recognize the special contribution of Professor S.M. Miller for whom I worked as a graduate assistant and who introduced me to what it takes to do meaningful if not path-breaking work. I am grateful to my immediate family of attorneys Beverly, Marisa, Herrington Simon, and Shauna for Marisa's, "Daddy, cool down and do it. You are going to get a heart attack" as she consulted on important technical details of this issue.

Preface

The public policy issue which motivates this book exists in many countries and levels of government: the rising need for providing essential public goods ranging from public safety to major infrastructure while confronted with a strong public resistance to more government spending, increasing government debt or taxation, or increases in the size of government or involvement in their private lives. The objective of the book is to stimulating public policy consciousness of the role nonprofits may play in addressing this dilemma within the current framework of law even though many of these public needs cut across all demographics and therefore are not charitable in their motivation. The motivation is singular: to lessen the burden of government.

Current federal law stipulates that this motivation can stand alone without reference to any charitable motive. So, while one may correctly infer that by assisting the poor a nonprofit reduces the burden of government that is not the issue here. Rather it is the nonprofit being formed with the intent to lessen the burden of government (the motive) and doing this through a variety of services (not necessarily charitable). Put another way, in this context, lessening the burden of a government is not the inference but the motive for the organization's existence. This motive can be fulfilled in a variety of acceptable ways whether or not they are charitable in the traditional meaning.

We shall cite these laws, court decisions and the Internal Revenue Procedures and publications making this interpretation consistent with law. And, we shall constantly remain within the IRS's stipulated parameters throughout this book. Accordingly, we shall develop and isolate certain principles which would facilitate policy-building within this framework and through this enhance the possibilities of further creating and engaging nonprofits in the lessening of the burden of government as the motive—not the inference from an otherwise charitable cause.

Throughout we shall attest to the argument by real, readily observable examples drawn from every level of government and from across the country. But we shall do more, we shall also acknowledge that if this policy is to be successful, the nonprofit will need certain capabilities and indeed legal powers to function so that they can successfully lessen the burden of government. This acknowledgement will lead to the enumeration and discussion of specific powers and capabilities including the power to issue debt since it is almost always necessary for infrastructure planning, building, and operation. These are the very size debt for which there, in general, is public resistance but societal consequences for not undertaking.

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Because current rules allow different categories of nonprofits to exist and to operate with lessening the burden of government, this book operates within an organizing principle consistent with the law. It divides nonprofits into doers, facilitators, and those that do both. It also distinguishes between the design imperatives of internal and external networks of collaborating units. Furthermore, it shows that the doers may create their own internal facilitating structures whether it is for finance or operations and by doing so increase their contribution and sustenance in lessening the burden of government. Through embedded requirements and structures, they collaborate and magnify their ability to raise their own funds and reduce the burden on tax payers. Therefore, not only the individual nonprofit units, but the formal terms of their collaboration are described in this book.

The range of activities in which a nonprofit may be created for this purpose of lessening the burden of government and which is displayed in this book is very wide and goes beyond references to a charitable purpose, inference, or cause. It can also go from the local group of citizens that formed a 501(c)(3) to assist in the training and equipping of the sheriff's department and for financing and providing the municipal space in which the department operates to the creation of a nonprofit such as the Tennessee Valley Authority. Accordingly, this book will deal with nonprofits of all sizes and whether they are formed by citizens or by governments—highlighting their differences.

Governments as well as citizens may design nonprofits to lessen the burden of government. The range of designs that a government may employ is considerable. One of the contributions of the book is the development of a working chart that may help policymakers and rule-makers move toward the optimal: A design that allows the government to benefit, but costs it nothing including debt service or operating expenses. This design, too, will be specifically shown to exist.

Finally, this book will pull most of these thoughts together—not so much as summary but as the ingredients of a dialogue in the consideration of these thoughts whether it is within the policy-making, rule-making, or public management arena or in the advanced classroom. Can there be meaningful progress in the utility of nonprofits to lessen the burden of government as a direct policy motive?

Every policy statement begins with a purpose of the policy and every nonprofit charter begins with a purpose of the organization. When lessening the burden of the government is the purpose of the organization, it can apply to a range of policies that are not necessarily charitable in the traditional sense. In this connection, the IRS raises these investigative questions to determine if exemption is warranted:

1. Is this a burden that the government acknowledges either by its declaration or its actions such as its collaboration with the nonprofit beyond contracting with it?
2. Can the nonprofit by virtue of its purpose, organization, and operation carry out this burden and within the framework of a 501(c)(3), (4), or (6) category, an authority or as an entity that is part of the government?
3. Does it serve qualitatively and quantitatively a primordial public purpose?

See IRS. https://www.irs.gov/pub/irs-tege/eotopicl84.pdf.

The Principal Contribution of This Book

This book advances the utilization of a special class of nonprofits for lessening the burden of governments of all sizes but consistent with existing laws. See the above reference. It does so by creating a supporting theory for this strategy based on economic concepts of equity and efficiency in which users pay prices and the externalities are covered by voluntary giving—not by compulsory taxes. Further, unlike government, nonprofits that are tax-exempt and used in this way generally have to provide annual evidence of public support evidenced by how they operate or are financed or both and the public value they create but government does not. This book also furthers its case by providing the essential planks upon which nonprofits, created for lessening the burden of government, must be built, and how these nonprofits may attain self-sufficiency and therefore reduce resource dependence upon the very government they are created to relieve. It provides abundant real evidence at every step as it speaks to policy and rule makers, policy practitioners and to exploring academics interested in the theory and practice of the nonprofit as an instrument of public policy. The basic assumption: With a little bit of creative imagination, nonprofits can and are empowered to provide a range of essential services to the society well beyond the traditional charity function. Some may do this directly, others may facilitate its being done. In any event, it provides a nonprofit solution to the burden of government for big problems beyond the traditional charitable function for which it is well known.

The Experiential Origin of This Book

This book has a long personal origin beginning with a two-volume work (one of which was the consequence of surveying 1300 small municipalities on their planning practices and problems which culminated in, *Planning Smaller Cities* and four other books which dealt with city and regional planning and the limitations of government. It also relates to my books on financial and strategic management of nonprofit organizations to be in its fourth edition this year, and my *Players in the Public Policy Process: Nonprofits as Social Capital and Agents* which systematically develops a general theory of nonprofits in the full range of the public policy process. It was the 2006 Charles H. Levine Memorial Book Award for innovation in public administration.

It also has its roots in professional experiences. I have served as a member of the Treasury Board of the Commonwealth of Virginia which approves bond terms, bond indentures, and all state related and authority bonds and state depositories. For several years before I worked directly with states, cities and counties across the country and as an officer (director, vice president and President) of organizations formed precisely to assist governments (including the federal government) and to represent them in policy discussions with official departments in Washington DC and before the U.S. Congress. With respect to local economic development dealt with in this book, I was exposed directly in many cities including our nation's capital, being awarded the keys to two major U.S. cities, and serving as member of the board of the national organization of urban economic development officials throughout the country as well as a board member for organizations concerned with the built environment. I have done the same abroad including Russia, Estonia, The Republic of Georgia and other Central Eastern European countries immediately after the transition when the issues of order and reorganization were most critical and the burden of government most obvious. The burden ran along the continuum of democracy to virtual dictatorship and so too the need to lessen it. See the quotation from former Prime Minister, David Cameron, in the next chapter.

From an academic perspective, I have benefitted from my appointments as an Economic Policy Fellow at the Brookings Institution, a fellow at the Institute of Politics at Harvard University, as a faculty member at the Massachusetts Institute of Technology, the University of Maryland, Clark University, and most of all at The Raymond Mason School of Business, College of William & Mary, where using years of previous extensive training and licensure in finance I have been teaching corporate finance, cost management, and nonprofit finance and management and being an affiliate of the College's Thomas Jefferson Program in Public Policy. The Raymond Mason School of Business has singularly made this book possible.

I hold a BA from Minnesota State College and a PhD in economics from the Maxwell School at Syracuse University and a CLU and ChFC in insurance, securities and finance.

I hope this book serves its purpose.

Herrington J. Bryce

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