Governance and Regulation in the Third Sector

International Perspectives

Edited by Susan D. Phillips and Steven Rathgeb Smith

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This book is dedicated to the memory of Mark Lyons, a pioneering scholar of the third sector who is the author of the chapter on regulation of the Australian third sector in this volume. Mark died after a brief illness before the publication of this book. He was a central figure in building the field of third sector studies in Australia and the rest of the world. Moreover, his enduring commitment to intellectual rigor, the development of younger scholars, teaching excellence, and building a community of scholars continues to serve as an inspiration to countless scholars and researchers throughout the world including both editors of this book. He truly represented the best ideals and aspirations of the academy.

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INTRODUCTION: EVOLVING RELATIONSHIPS

In recent years, across many countries, governments have been reviewing and restructuring their relationships with the third sector. The language of partnership and investment in 'community' is pervasive, and the international breadth of experimentation with renewed relationships is far reaching. In the United States, a call to service and bolstering the nonprofit sector including faith-based and neighborhood organizations are central planks of President Obama's change agenda. In the UK, community partnership is a major component of the coalition's "Big Society" program,[1] just as it was a decade earlier of New Labour's Third Way, although the specifics on how to affect such partnership naturally differ. Similarly, the European Union has put engagement with civil society at the heart of its pursuit of democratic legitimacy, integration, and enlargement (European Commission 2001; Dunn, Chapter 7, this volume). So, too, have many transition countries where legal, policy, and regulatory reforms are linked to modernization and democratization processes, and where civil society organizations are establishing a stronger role as more stable democracies develop. Even countries that have long ignored or openly repressed civil society, such as China, are taking steps toward new nonprofit and charity legislation (Kirby 2006). Political rhetoric abounds, but it has also been accompanied by substantial reform in many countries.

The result has been a wide range of experiments, some bold and some tentative, designed to reshape relationships between the state and the third sector—the diverse constellation of nonprofits, voluntary associations, charities, community-based organizations, social movements, social enterprises, and related organizations that fill the organized space of civil society.[2] These experiments include new policy instruments such as compacts, new legislation governing charities, creation of new regulatory agencies and reengineering existing ones to be more responsive regulators, new funding support, expansion of the definition of "public benefit" that underpins the concept of charity, provision of new legal forms for the incorporation of third sector organizations, more liberal use of the tax system to support charities and other public benefit organizations, and more extensive self-regulation.

One explanation for this international spate of reform is instrumental and very practical: both policy problems and service delivery issues are more complex, and governments have recognized that they cannot solve them on their own. Mixed welfare economies have long been the reality in many countries, although the "associational revolution" that occurred in the 1970s and 1980s substantially increased the number of nongovernmental organizations and the reach of their activities (Salamon 1994). Governments need more effective means of working with and enabling voluntary and nonprofit organizations to achieve results. Consequently, they are devising better ways to work together at both a macro level (through reform of broad policy and regulatory frameworks) and a micro one (through fine tuning existing policy instruments and working with specific organizations).

A second explanation is policy transfer: governments and civil society organizations watched the experience of the early adapters and simply followed the same approach and even borrowed the same instruments. For example, many jurisdictions have developed compacts or accords—broad framework agreements between the whole of government and the whole of the voluntary sector—reflecting in part the emulation of England's lead with the development of its compact in 1997 (Casey, Dalton, & Onxy 2008). Even some of the specific wording of the English Compact has been borrowed and implanted in subsequent ones (Phillips 2003; Scottish Government 2003).

For many scholars of public management, especially those steeped in the British policy literature and varieties of European network theory, something more fundamental than creative problem solving or policy transfer is occurring. At root is nothing short of a transformation in the underlying model of public management. The international trend of reshaping government–third sector relationships is argued to be a manifestation of a broad shift in the governing model from New Public Management (NPM) that focused on markets, principal-agent contracting, and performance controls, to more horizontal, relational 'governance' that emphasizes inter-organizational networks, collaboration, and a broad range of policy tools (Hood 1991; Osborne 2010, 2006; Rhodes 1996; Salamon 2002).

Although it was never a unitary or single paradigm and was implemented to differing degrees in various jurisdictions during the 1980s and early 1990s, NPM brought a set of management practices and institutional arrangements that created competitive or quasi markets (Hood 1991; Osborne, Mclaughlin, & Ferlie 2002). It thereby carved out a greater role for non-state actors and led to increased use of contracting as a mechanism of accountability and means of managing relationships. Relatedly, it separated responsibility for policy from service delivery and made policy implementation "*organizationally distanced* from the policy makers" (Osborne 2006: 379). It also decentralized management relationships both within government, through the creation of executive agencies and devolution of responsibility to front line managers, and externally, through management by contract. It put an emphasis on efficiency, cost management, and customer satisfaction, and it shifted from input controls to accountability by results through performance measurement and output controls (Vincent-Jones 2006: 43). And, an aspect that is often overlooked, NPM brought with it expanded regulation in a variety of forms. To be sure, NPM created markets in a variety of public services, but these were often accompanied by social controls and regulations that had significant implications for the third sector organizations which provided these services.

NPM was gradually stymied by the impact of its own success and by its inherent limitations in the face of a changing environment. Its focus on intra-governmental organization, managerialism, and efficiency made it less suitable for a highly pluralized world where the challenge is engaging this plurality and innovating through the injection of "policy venture capital" (Knott & McCarthy 2007; see also Mulgan 2006). The success of NPM in creating competitive markets resulted in enormous fragmentation in services and among service providers (Dunleavy, Margetts, Bastow, & Tinkler 2005a). The supply of providers in many markets was insufficient to generate effective competition, and performance contracting in practice did not lead to substantial changes in the mix of providers. The emerging challenge became one of accountability and finding greater policy coherence as the 'supply chain' between policy and delivery was both long and opaque, and non-state actors held considerable power. Over time, then, experience with market competition generated greater interest in collaboration and partnership with these actors from the private and nonprofit sectors. In addition, for many governments, a preoccupation with efficiency was displaced by a concern with democracy. Both in transition countries, where the dominant project was reinforcing the institutions and practices of fledgling democracy, and in established democracies, where declining trust and confidence in government sparked interest in expanded opportunities for citizen engagement, NPM did not offer the appropriate policy tools or solutions. So, evolution is underway to an alternative model of public management that is more collaborative and relational in nature. At least, that is how the theory goes.

The purpose of this volume is to explore how and why relationships between national governments and third sectors are changing in selected countries that intentionally represent a broad spectrum of experience. These range from change leaders, England and Scotland, that have recently implemented comprehensive packages of legal, policy, regulatory, and funding reforms designed to produce more enabling environments for the work of their third sectors to jurisdictions, Canada and Australia, in which change has been incremental at best. In between, we see the introduction and evolution of a diversity of innovations and the emergence of a variety of new policy instruments and hybrids. The authors, all leading experts in public policy related to the third sector, examine whether these changes reflect an underlying transition in the model of public management—from NPM to a more collaborative form of relational governance—and explore the kinds of tensions and conflicts that are encountered in the process. Is there any evidence that the foundational architecture for a more collaborative relationship between the state and the third sector has been laid? How do we reconcile an interest in collaboration and greater trust-based relationships with the hard edge of rule-based regulations that are a legacy of NPM? What are the outstanding challenges for policy and regulatory reform as well as for collaboration?

Our goal in this introduction is to both lay the groundwork by explaining the argument and potential implications for the shift in public management that is so widely theorized and to identify the common trends and issues that arise from the chapters so that the reader is prepared to spot both convergences and differences. The volume is intended to inform current debates in public management and in the study of the third sector, but it is also meant to be inherently practical, providing fresh perspectives and offering recommendations that are directly useful to public managers and third sector leaders who have responsibilities and interest in developing approaches to public management that are up to the challenges of governing in a complex world and that permit the third sector to be as effective as possible in these contexts.

FROM NPM TO RELATIONAL GOVERNANCE: IMPLICATIONS FOR THE THIRD SECTOR

New [Public] Governance, often called horizontal, collaborative, relational, or just plain "governance," starts with a recognition of interdependence inherent in the "pluralization of policy making" (Rhodes 2000: 54; see also Osborne 2010) and underscores the value of networks over markets or hierarchies in this context (see Koppenjan & Klijn 2004). The model rests on interdependence, not power relationships, and centers on negotiation and persuasion, not control (see Hill et al. 2005; Peters 2001; Stoker 1998). Relationships are not taken as given but need to be negotiated in the context of problem solving (Mintzberg 1996), and the skills required shift from those of management to those of enablement (Salamon 2002: 11). Greater collaboration is evident not only between government and its non-governmental partners, but among various government departments as they have come to work in a more coordinated manner, a process often referred to as horizontal management.

If we are witnessing a fundamental shift in governing models, there should be considerable consistency in the types of changes occurring so as to create legal, policy, regulatory, contracting, and financing frameworks—that is, a common meta-governance (Jessop 1998; Meuleman 2008; Peters 2010)—for the terms of engagement between the state and the third sector. This meta-governance should include policies that enable the work of the third sector, develop its capacity, and engage nonprofit organizations in policy development as well as service delivery.

This shift should bring with it new institutions and practices that encourage deeper understanding, trust, and co-management—even co-governance across the sectors (Bode 2006; Osborne 2006). Although contracts may continue to be important policy tools, they would be more than a means of control over the purchase of services (Unwin 2004). The focus on strengthening relationships should be evidenced by more relational contracting which puts an emphasis on working toward common goals, promoting communication and flexibility, and developing trust, rather than on narrowly meeting the terms of pre-specified "deliverables" (Unwin 2004; Vincent-Jones 2006: 19). The focus of accountability and the means for achieving it should be directed toward facilitating learning and investments in infrastructure support, rather than on control and public assurance that rules are being followed (Aucoin & Heintzman 2000). Accountability regimes would be constructed to address both vertical responsibilities, from agent to principal, *and* horizontal ones, among multiple partners involved in the collaborative effort of governing, often through negotiation between the state and intermediary associations representing third sector organizations. Similarly, the objectives of regulation would expand beyond command and control, rule-based compliance to encourage more responsive regulation that is attuned to the institutional environment and overall performance of the regulatory regime (Baldwin & Black 2008; Braithwaite 2008). Funding horizons would give greater stability and promote more strategic planning by nonprofits. Performance measurement would be designed to encourage organizational learning and better programming. In short, the spotlight would be on building more constructive trust-based, longer-term relationships (Gandhori 2006; Poppo & Zenger 2002; Unwin 2004), and this end would be reflected in the use of a variety of policy instruments and cooperation among public and private funders in support of specific partnerships and services. In this sense, then, the move to relational governance would be a departure from the short-term, market-oriented approach embodied in countries that embraced the tenets of NPM.

The challenge of transition in models of public management is that governing ideas get institutionalized in a variety of ways that may not be readily changed. If the legacy of NPM was just the creation of competitive markets, it could quite readily be supplanted as a model of public management because markets, as an institutional form, are relatively easily altered.

However, NPM not only created markets but brought extensive regulation through various means, all of which are comparatively durable policy instruments. Decentralization, including through markets, did not diminish the focus on accountability, but produced rules, performance contracts, institutionalized auditing, and monitoring machinery, and encouraged a shift from self to state regulation (Jordana & Lefi-Faur 2004). During the height of NPM, the number of regulatory agencies grew, as did the niches that they occupied (Levi-Faur 2008a). So, too, did other means of social control. Because NPM encouraged the fragmentation of policy implementation—represented in part by the proliferation of third sector organizations—governments became very creative in imposing new forms of control and oversight (Dunleavy, Margetts, Bastow, & Tinkler 2005b).

In effect, the NPM state was also the "regulatory state" (Majone 1997; Scott 2004) which shifted "the emphasis of control, to a greater or lesser degree, from traditional bureaucratic mechanisms towards instruments of regulation" (Scott 2004: 148; see also Jordana & Levi-Faur 2004). The interest in regulation did not pass with NPM, although regulation has become a more diverse policy instrument than a set of rules backed by sanctions. Over the past decade, "regulation" has morphed into a mixed array of incentive systems, conventions, standards, targets, best practices, benchmarking, certification, and voluntary codes among other forms of negotiated soft law (Doern 2007; Levi-Faur 2008b; Webb 2005). This has been reinforced by the global economic crisis that began in 2008 which was created in part by ineffective regulation of financial institutions and has sparked a renewed interest in regulation in a wide range of sectors across many jurisdictions (Summers 2008).

The third sector, particularly the charitable subsector, was impacted by increased regulation under NPM and in some respects was particularly affected, in part, because of its governance and the niche it occupied in service delivery. Nonprofits are generally exempt from paying taxes, and, in many jurisdictions, designated nonprofits with 'public benefit' or 'charitable' purposes can issue tax receipts for donations, thereby receiving an indirect (and sometimes direct) public subsidy and generating tax expenditures. This means that governments have an incentive to monitor and regulate this sector; as a result, governments have established systems for registration and reporting for 'charities' (referred to as 501(c)(3) organizations in the US), restrictions on political and commercial activities, and compensation of directors, among others rules. Given the connection with taxation and the objective of protecting philanthropic gifts, these regulatory systems have had a preoccupation with financial matters, particularly with improving control of charity finances (O'Halloran, McGregor-Lowndes, & Simon 2008: 16). Further, the volunteer boards of directors were also supposed to play a key oversight role, supplementing government regulations.

Governments also shape performance and relationships through contracting regimes, performance standards, fee payments, and other financing mechanisms (Heinrich 2002; Krauskopf 2008; Smith & Lipsky 1993). Much of this remains traditional command-and-control regulation in which governments unilaterally set the rules and standards, monitor performance, and impose penalties for non-compliance. In recent years, the third sector has also experienced increased demands for self-regulation (Bothwell 2000) and new forms of regulation through relational contracting. For example, government may contract with a nonprofit organization on a performance basis, but it may not change providers and only collect the information for reimbursement purposes. The two parties are engaged in a long term relationship where concerns about quality and performance are resolved through discussion and negotiation—in effect a relational contract (Smith & Smyth 1996).

An understanding of regulation of the third sector and the hypothesis about the impact of a transition from NPM to relational governance needs to be set against a distinctive characteristic of this sector—its enormous dependence on the maintenance of public trust that makes citizens willing to donate both money and time and entrust themselves and their loved ones to the care of social service agencies or children's soccer coaches (see Hansmann 1980). Evidence suggests that public trust in the sector remains strong, so lack of trust is not an adequate explanation for increased regulation. In a 2006 survey of Canadians, for example, three-quarters said that charities are better than government at understanding and meeting the needs of citizens, and leaders of charities are trusted more than most other professions: only nurses and physicians were trusted more (Muttart Foundation 2006). The adage about "one bad apple spoiling the barrel" is felt acutely in this sector, however, as the collective damages caused by scandals over questionable fundraising practices or compensation of executives attest. Consequently, attention to accountability and transparency are preoccupations of the third sector, its partners, and its regulators (see Brown 2008). Increasingly, regulation has a pre-emptive function of promoting better organizational governance as a means of preventing questionable behavior and forestalling the need to impose the 'cure' of penalties after rules have been broken by a few, and media attention produced collateral damage on many. The challenge is how to adapt regulation and accountability to an evolving model of public management.

GOVERNANCE AND REGULATION: THE RATIONALE FOR THIS VOLUME

The central question that animates this volume is: what happens for the third sector when relational governance, which implies the negotiation and agreement upon shared, relational norms, performance standards, and co-management, meets the embedded rule-based regulatory systems that were part of NPM? We begin by testing the assumption that a transition is, in fact, occurring from NPM to more relational governance. The conviction that NPM is giving way to relational forms of governance emanates mainly from theory, but it has been repeated often enough in the policy literature that it has been accepted as reality. There are few good empirical tests of such a transition, however, and the evidence is mixed (Considine & Lewis 2003; Hill & Lynn 2005). The chapters in this volume are by no means a systematic test of the development of a relational governance model across the jurisdictions examined, but the authors do provide a window onto shifting patterns of governing. Across ten jurisdictions—England, Scotland, Ireland, Hungary, Germany, France, the European Union, the US, Canada, and Australia—the chapters assess the nature and impacts of the policy, regulatory, and related reforms in state–third sector relationships that have been undertaken in recent years. Are these changes reflective of relational governance?

While one theme of this volume focuses on governance, the second concentrates on regulation. In particular, the authors examine the trends in regulation for the third sector and discuss whether regulatory systems are adapting to accommodate a more significant role for the third sector and more constructive relationship building. To what extent is regulatory reform in the third sector reflective of broader movements in use of regulation as a policy instrument? In many other sectors of the economy and society, regulatory philosophies and systems are undergoing considerable change. In both the academic literature on regulation and various government sponsored reports aimed at regulatory reform, especially in the economic sectors, three themes of reform are evident.

The first is more responsive regulation (Ayres & Braithwaite 1992) which addresses the issue of "when to punish, when to persuade?" (Baldwin & Black 2008; Braithwaite 2002). The notion of responsive regulation is often illustrated by the concept of an enforcement pyramid. The broad base of this pyramid is built on education, persuasion, consultation, self-regulation, and capacity building, and it moves up to selected use of deterrents and penalties as needed. Responsive regulation presumes proportionality of response, availability of a wide range of regulatory tools and credible sanctions, and deep knowledge by the regulator of the regulated sector and the environment in which it operates (Baldwin & Black 2008). "Responsibilization," that is, promoting the capacity of nonprofits to better govern and regulate themselves and of the sector to enhance voluntary regulation, is an important approach in this varied toolkit (May 2007; Vincent-Jones 2006). Although the immediate response to the financial crisis shifted attention back to rule-based, sanction-backed regulation, the reality in such a large and diverse sector, in which the vast majority of organizations are very small, is that governments will never be able to devise enough rules and enforce them without incurring and imposing a huge regulatory burden (Irvin 2005). The essence of much of what is being regulated in this sector is in effect good organizational governance—for example, governance of fundraising activities, training and empowering boards to do due diligence, disbursement of funds on charitable purposes, and promotion of transparency—which necessitates a mix of organizational responsibility, ongoing technical assistance, and external regulation.

A second, related trend in regulation is to make rule setting and monitoring more risk based: priorities are developed and enforcement is targeted in relation to the degree of risk involved (Baldwin, Hutter, & Rothstein 2000). A key element in risk-based regulation is sound evidence on which to assess the risks. As a result, pressures for performance assessment and reporting by regulated organizations, expectations of transparency, and demands for regulators to develop more sophisticated risk assessment systems have increased significantly in recent years (Benjamin 2008).

Third, the changing philosophies of regulation are grappling with the realities of multi-level governance, fragmented governments, and polycentric regimes which mean that there are often overlapping and sometimes conflicting rules and inordinate 'red tape' that limit innovation and reduce flexibility (Black 2008; Doern 2006). The pursuit of "smart" or "better" regulation (External Advisory Committee on Smart Regulation 2004; Gunningham and Grabosky 1998; OECD 2003; UK Better Regulation Task Force 2005), supported by new innovations in "digital-era governance" (Dunleavy, Margetts, Bastow, & Tinkler 2005a, 2005b), is aimed at creating more evidence-based, streamlined, and better coordinated regulation, both within and across jurisdictions, as well as more timely processes and more creative use of different regulatory instruments. Smarter regulation also promotes better assessment of the performance of regulatory *regimes* that take into account the cumulative impact of regulations and may include greater centralization in governance. In many sectors in a variety of jurisdictions, these contemporary ideas about regulation are significantly changing regulatory instruments and institutions in a direction that is compatible with a model of relational governance (see Bernstein & Cashore 2007). One question addressed in this volume is: To what extent is a similar move to responsive, risk-based, and smart regulation being felt in the third sector?

Although there is no compelling reason to think that the third sector would be exempt from the diffusion of these and other regulatory reform ideas, regulation of this sector, particularly charities, is distinct in two important respects. In a globalized world, the charitable sector is one of the few still bounded by geography. The perception, and to a large extent the reality, is that the operations of charities and other nonprofits, with some notable exceptions such as those working in international development, humanitarian relief, human rights, and climate change, have been local in nature. Regulatory systems for charities were built on a reasonable assumption that they do not compete internationally, that philanthropy flows domestically not globally, and that there is little need for legal forms that accommodate trans-boundary or multi-national work. Although the vast bulk of charities still work at a local or national level, the changing reality is that philanthropy, services, and advocacy have become transnational and a nation's international competitive advantage is increasingly linked to the suitability of its regulatory regimes for civil society. Unlike regulatory regimes in other sectors where international competitiveness has become a mantra, the regulation of the third sector has been insulated and slow to change in many countries (see Breen, Ford, & Morgan 2009).

The other important factor is a sense that the primary goals of government regulation of charities are to safeguard a public trust—the charitable gift—and to protect the public purse through control of tax expenditures for these gifts. This leaves little scope for other objectives in regulation, such as relationship-building. Even if new forms of relational governance are beginning to take hold, the regulatory systems in this sector may be slow to adapt to new trends or developments because they have been isolated geographically and set on a narrow mission. Consequently, a lack of regulatory reform cannot necessarily be taken as evidence that the model of public management is static.

This takes us to the intersection of governance and regulation. In places where government–third sector relationships are becoming more collaborative, they will inevitably meet regulatory systems that have not yet fully adapted to accommodate evolving relationships. The third theme that runs through this volume is an examination of a dual set of pressures: a desire for closer collaboration, on the one hand, and a perdurable interest in accountability that is expressed through regulation, on the other hand. What kinds of tensions and conflicts are being experienced at this crossroads of collaboration and regulation? Are innovative accommodations being developed? In different ways and with different lenses, the authors in this volume consider the challenges and implications for both the third sector and governments as they work at this changing nexus of relationships and regulation. Some of the differences in these international trends are reflected in differences in naming this sector, and it is thus useful to briefly outline what we mean by the "third sector."

DEFINING THE THIRD SECTOR

In comparative analysis in this field, finding suitable terminology can be a challenge because both the idea of a sector and what to call it are contested. At a generic level, we have settled on the terminology of "third sector" which refers to the diverse mix of associations that occupy the organized part of civil society. The core attributes of these third sector organizations are that they are products of free association, serve a public benefit, are self-governing, and do not distribute profits to owners or stakeholders (see Frumkin 2002; Salamon, Sokolowski, & List 2003). Although the dependence on volunteers for operations varies enormously, and many professionalized third sector organizations depend almost exclusively on paid staff, their governance is normally the responsibility of volunteers acting in the capacity of directors or trustees.

To varying degrees, third sector organizations serve three important functions. First, they contribute to citizenship and democracy by mobilizing citizens in collective action (Boris 1999; Frumkin 2002; Grønbjerg & Smith 2006; Ingram & Smith 1993; Phillips 2009). Through the process of collective action and the need to govern and manage private organizations, citizens may learn and practice the skills of citizenship—public debate, compromise, and responsibility-taking, thereby building social capital and greater societal trust (Putnam 2000; Warren 2001). As Walzer (1991: 294) notes, "the civility that makes democratic politics possible can only be learned in the associational networks" of civil society. A second role pertains to public policy and governing. By representing a plethora of different interests in policy debates and contributing both expert and experiential knowledge, third sector organizations can promote better evidence-based, more legitimate policy. In some cases, their involvement in policy development is deeply embedded and occurs through formalized co-governance arrangements, as described in some of the following chapters, while in other cases, it is sporadic and even adversarial as third sector organizations advocate for their interests and causes without being invited to do so (see Young 1999). Third, but perhaps the first thing that comes to mind when most people think about this sector, is service delivery. Such service provision may be fully integrated into public services as part of a mixed economy of welfare (Evers 2005) or take place independent from any involvement by the state. Our argument is not that third sector organizations are always constructive forces in promoting active citizenship, better public policy, or effective service delivery; indeed, they may at times be exclusionary, obstructionist, parochial, and highly paternalistic (see Brooks 2000; Fiorina 1999). Rather, our point is to establish a frame for understanding government–third sector relationships which recognizes that the relationship is multi-faceted, extending beyond service delivery, and that such relationships will vary across jurisdictions and over time, depending on the mix of roles at play.

Collectively, the third sector is a major economic as well as social force, contributing on average 5 percent of Gross Domestic Product (GDP) in developed countries, which is roughly on par with the construction and financial services industries (Salamon et al. 2007: 4, 6). The distribution of capacity within the third sector tends to be bifurcated, however, with a small percentage of very large organizations (notably universities, hospitals, and multi-service social welfare agencies, among others) and a very large proportion of organizations, generally more than half, that operate with only one or no staff at all (Salamon, Sokolowski, & List 2003; Statistics Canada 2004). How organizations are supported financially also varies considerably with distinctive regional patterns evident. In developed countries, governments generally provide a significant portion of the funding to this sector (on average 27 percent), often through purchase-of-service arrangements; in no country does the third sector receive the bulk of its financial support from private philanthropy (Salamon et al. 2007: 10).[3] Earned income through the sale of goods and services is the fastest growing part of the funding mix, and, indeed, many third sector organizations have become highly entrepreneurial and use a wide range of innovative social finance tools which, as we will see in the following chapters, creates an interesting array of new hybrid types of organizations and blend of social and economic purposes (Anheier & Mertens 2003; Brandsen, van de Donk, & Putters 2005; Evers 2005; Skelcher 2004; see Smith, Chapter 8, this volume). In short, the notions of "nonprofit" and "public benefit" are rapidly evolving as organizations take on new entrepreneurial pursuits; consequently, the boundaries among the nonprofit, for-profit, and public sectors are increasingly blurred as hybrid forms of financing and organizational form are invented.

Given this internal diversity, it comes as no surprise that the third sector often does not see itself as a coherent *sector* at all (see Carmel & Harlock 2008; Donnelly-Cox & McGee, Chapter 4, this volume; Lyons & Dalton, Chapter 10, this volume). Internal understanding of shared issues and external awareness among the public and governments are often essential components of the broader relationship building, as authors of this volume observe. In conceptual terms, the value of referring to a "sector" is that it serves as a reminder that, in spite of internal differences, the collective has a structure that involves both horizontal connections among groups from different policy and service fields and vertical integration through infrastructure organizations, umbrella groups, and federations that connect the local to the national level. Both of these vertical structures and horizontal networks are central to the overall capacity of the third sector to function with any collective interests at all, and, as discussed in several of the following chapters, the capacity of these infrastructure organizations is a key factor in the ability to forge stronger relationships with governments and initiate reform that leads to more enabling policy and regulatory environments.

Putting aside the debate over whether this is a sector, the matter of how to name it differs by context and place and, in many, this too is debated (see Frumkin 2002). The lexicon includes: nonprofit, charity, civil society, NGO (nongovernmental), voluntary; community, and (in the US) 503(c)(3). Although by way of introduction and overall naming, we have reverted to the generic and encompassing term of "third sector," many of the authors have used the labels that are the more common nomenclature in their own countries. As editors, we have not changed these, and thus a variety of terms are used interchangeably throughout the volume.

The exception to this is the reference to "charities" which are the focus of several chapters. In this case, the authors are using the concept in a more precise manner to refer to those nonprofit organizations that meet the common law interpretation of charitable purposes, have been registered or acknowledged as such by the state, and are able to issue tax receipts for donations. The common law interpretation of charity dates back to the 1601 Statute of Charitable Uses and subsequent classification in Britain's Pemsel case of the 1890s that identified four heads of charity: relief of poverty, advancement of education, advancement of religion, and other purposes beneficial to community (in a manner that the common law regards as charitable) (Bourgeois 2002; Fremont-Smith 2004; O'Halloran, McGregor-Lowndes, & Simon 2008). The common law approach not only restricts organizations that do have charitable objects based on this classification (and subsequent case law) from being recognized as charities, but it requires that substantially all of the activities of qualified organizations be charitable, thereby limiting political and business activities. Some countries, notably the United States and, since 2006, England, have supplemented the common law with legislation that codifies the types of purposes and organizations that are eligible to provide tax receipts (see Moore 2005). The limitations imposed by the common law classification of charitable purposes are widely seen to constrain the work of this sector, the restrictions on policy advocacy are actively contested (Berry & Arons 2003; Casey and Dalton 2006; Dunn 2008), and whether regulation should be so closely linked to a taxation frame of reference is being questioned in many jurisdictions (O'Halloran, McGregor-Lowndes, & Simon 2008; Smerdon 2009). These issues of how charity is determined and the independence of the regulatory body are taken up in several chapters in this volume.

INTERNATIONAL DEVELOPMENTS: AN OVERVIEW OF THE CHAPTERS

The chapters have been deliberately selected to represent a broad spectrum of approaches to governance and regulatory change in the third sector. We have not attempted to impose a template for each chapter. Rather we asked the authors to address the most important changes in recent years in models of public management and third sector regulation in their countries and to address the implications of their intersection. Our international comparison begins with England, which has perhaps gone the furthest in the most systematic way to reform both relationships and regulations, and it ends with an overview of more autocratic countries, many of which have not only resisted reform but actually become more repressive in their regulation and oversight of the third sector.

England

Over the past decade, England has undertaken a program of unprecedented reform and has arguably set the 'standard' that a number of other