

A Review of Chapter One of
The Nonprofit Almanac —
"The Independent Sector
and its Place in the National Economy"

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This "Nonprofit Almanac Symposium," sponsored by Voluntas, is noteworthy. It is the third meeting within a month to discuss charitable statistics. The first — held on May 8 — was jointly sponsored by the N.Y.U. Law School Program on Philanthropy and the Law, the Indiana University Center on Philanthropy, and the Duke University Center for the Study of Philanthropy and Voluntarism. About 45 invitees attended. Based on written evaluations received from many of them, there is a strong feeling that it is important to foster further exploration of the issues involved. The second — held on May 21-22 — was sponsored by the Committee on National Statistics of the National Research Council.¹ Thus, this Voluntas symposium helps to emphasize the recent growing understanding of the importance of charitable statistics.

The symposium celebrates the publication of the NONPROFIT ALMANAC 1992-1993.² This is really the fourth edition of the work by Virginia Hodgkinson and Murray Weitzman which first appeared in 1984. That first edition was less than 80 pages long; the second edition, in 1986, was twice that length; the third edition, in 1989, comprised 224 pages; and the current edition has 619 pages plus an index, a table of contents, etc. We can safely assume that its growth in length reflects both the growth rate of its value to us and the growth rate of the effort it takes to produce it. It has become an absolutely indispensable resource for all interested in the independent sector in this country.

Much as we rightly celebrate the publication of the Almanac, and the tremen-

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1. Virginia Hodgkinson and Murray Weitzman presented a paper at that conference. It sets forth clearly much of the methodology and many of the problems with the data used by them. A full citation appears at n. 12 *infra*.

2. Hereinafter cited as "the Almanac."

dous work of Virginia and Murray, we are here not merely to praise but to appraise.

This audience needs no convincing about the importance of nonprofit organizations in our society. Until quite recently, however, there has been a serious dearth of data to describe them. As William Thomson, Lord Kelvin, has said:

"When you can measure what you are speaking about, and express it in numbers, you know something about it; but when you cannot measure it, when you cannot express it in numbers, your knowledge is of a meager and unsatisfactory kind: it may be the beginning of knowledge, but you have scarcely, in your thoughts, advanced to the stage of science."³

This is perhaps not quite as true for the social as for the natural sciences, but valid statistical data about the nonprofit sector are increasingly vital for several purposes: (a) to inform or educate us about the scope and diversity of the sector, i.e., to improve our understanding and appreciation of it, (b) to provide a basis for better legislation, regulation, and policy formulation affecting the independent sector, and (c) to focus us on areas in which further inquiry or research would be helpful. Each suggests a slightly different audience to which the Almanac should be addressed: students, legislators/regulators, and scholars.

I have been asked to comment on chapter one of the Almanac, entitled "The Independent Sector and its Place in the National Economy." I will do so from two perspectives only (although it is clear that many other approaches might also be taken): *first*, its use as a teaching tool, i.e., to be used by students and others interested in beginning to learn about the nonprofit universe, and *second*, its use as a research tool for scholars looking to expound or test various theses about or explanations of phenomena involving the third sector. Furthermore, with the permission of the orga-

3. SIR WILLIAM THOMSON, POPULAR LECTURES AND ADDRESSES (London, MacMillan 1891-1894).

nizers of this symposium, I will range a bit outside of chapter one, and will make a few remarks about other portions of the Almanac.

Chapter One as a Teaching Tool

I have been using portions of the Almanac's predecessor volumes in my classes at the New York University School of Law for several years. My first class assignment requires all students to read the first chapter. They are urged to refer to the book throughout the course. This forces the students to put legal issues into a real-world context, and assists them in understanding the scope and impact of various current or proposed legal regimes. In my view, this has been extremely helpful to their learning process. I expect to continue to assign the Almanac in my classes in the future.

I have several thoughts about the presentation of national income data which might improve the utility of the Almanac for this purpose. References to nonprofits' share of national income sound like references to inputs, i.e., as items that would show up on the *left*-hand side of the organizations' income statements. They are, however, costs, i.e., items that show up on the *right*-hand side of those statements. While this is clearly stated if one reads the Almanac with great care, it is very common for my students to misunderstand. Thus, I recommend that this vocabulary point be emphasized, and examples given.

Furthermore, there are differences among the sectors in the manner in which various costs are counted. For example, *all* costs, both for capital and labor, are counted in the case of for-profit businesses, but only labor (and *not* capital) costs are counted in the case of government and independent sector entities.⁴ Once again,

4. The Almanac at 17. Thus, interest costs incurred by independent sector borrowers do not show up in the data, whereas interest costs of for-profit business do.

while this can be gleaned from a rigorous reading of the Almanac, it would be helpful to have all of the inter-sectoral differences emphasized more clearly, perhaps in tabular or graphic form.

Chapter One as a Researcher's Tool

Researchers ravenously seek information. They need both data and information about that data. It is not enough to provide statistics. It is important to provide enough further material so that researchers can make a reasonable appraisal of both the strengths and the weaknesses of the data provided. Recall the canard attributed to Disraeli by Mark Twain: "There are three kinds of lies: lies, damned lies, and statistics."⁵ To avoid the point of that rapier, and for the nonprofit sector in particular, it is important to explain, clearly and fully, the limitations of and weaknesses in our data. The independent sector has always prided itself on its high ethical values; these include candor and the avoidance of misleading statements. The independent sector is more fragile, in many ways, than government and business; if erroneous or potentially deceptive information is delivered without adequate caveats, damaging criticism may result. Even the proper focussing of scholarly investigations depends on knowing which data are, and which are not, strong enough to support reasoned theses. Thus, publishers of charitable statistics should emulate Caesar's wife, and should scrupulously describe the limitations of the data they provide.

This is not, of course, a criticism of the Almanac for putting forth the data it uses, despite the limitations of some of that data. It would be wrong to kill the messenger. The message here is: it is wise for the messenger to disclose fully the defects

5. 1 MARK TWAIN, MARK TWAIN'S AUTOBIOGRAPHY 246 (1924).

in and problems with her message.

How well does the Almanac heed these caveats? In my view, it does a reasonably good job, but could do a much better one. Appendix A, at pp. 583-91, discusses some of the methodology employed, and some of the problems with the data. It repeatedly refers, for example, to "gaps" in the available data, confirming that — despite improvements since the first edition in 1984 — "many gaps in information remain."⁶ It points out that the fairly close matching of some of its data with comparable information from other sources apparently resulted, in part, from "offsetting errors."⁷ It notes that use of the Standard Industrial Classification codes, rather than the more suitable National Taxonomy of Exempt Entities,⁸ obscures "the diversity of the independent sector."⁹ It describes various reasons why the statistics from the Internal Revenue Service are flawed.¹⁰

In my view, the Almanac's treatment of weaknesses in the data could be improved in two ways. First, the contents of Appendix A could be emphasized more.

6. The Almanac at p. 590. The authors go on to make various recommendations for dealing with some of these "gap" problems. The Almanac at pp. 590-91.

7. The Almanac at p. 587.

8. The NTEE is described briefly in Appendix B to the Almanac, pp. 593-613. For a quite useful critique of the NTEE, see Sarah E. Turner, Thomas I. Nygren & William G. Bowen, The NTEE Classification System: Tests of Reliability in the Field of Higher Education (July 17, 1992) (unpublished manuscript, on file with the author), demonstrating substantial error rates in use of NTEE codes in the field of higher education.

9. The Almanac at p. 587.

10. The Almanac at p. 588. See also the criticisms of the IRS data put forth in the recent report of the first-ever census of New York City nonprofit organizations, text accompanying nn. 20 - 26, *infra*.

This could be done both by stronger and more frequent cross references to it and by re-incorporating relevant portions of it, in abbreviated form, at critical points in the main text.¹¹

Second, additional weaknesses in or problems with the data should be pointed out. For example, even though the data on total individual giving come from *GIVING U.S.A.*,¹² there is no discussion in the Almanac of the methodology used in producing those data. In particular, no mention is made of the Personal Giving Estimating Model.¹³ That Model, which accounts for more than 80% of the total annual giving so reported,¹⁴ involves an equation with seven terms, four of which contain natural logarithms of such amounts as (1) total U.S. annual personal income in billions of dollars, (2) the number of people in the U.S. between 35 and 64 years of age, and (3) the Standard and Poor's 500-Stock Index average for the months of November and December. The PGEM predicts, for example, that if all other items remain constant, total individual inter vivos giving (a) will *decline* each successive year by more than

11. In some few instances, it may also be helpful to "tone down" the language in the text by referring, e.g., to "estimates" or "approximations" in appropriate places.

12. The Almanac at pp. 41, 589. The editors elsewhere state: "Our estimates of private sector contributions for earlier years before 1987 depended basically on estimates from *Giving U.S.A.*" Virginia A. Hodgkinson & Murray S. Weitzman, *Measuring the Independent Sector in the U.S. Economy: Progress to Date and Recommendations for Improvement* 21 (May 21-22, 1992) (unpublished manuscript, on file with the author) (*italics in original*).

13. Hereinafter referred to as the "PGEM."

14. See *GIVING U.S.A.* 8 (1991).

\$2.5 billion,¹⁵ and (b) will be more than \$1 billion less per year under a Democratic than a Republican President.¹⁶

In summary, the number derived from the PGEM is an estimate, based on projections from prior-years' data. That estimate is subject to serious and growing doubts, as the authors of the Almanac well understand. For example, they have said the following about the PGEM numbers:

- "A serious difference has arisen between AAFRC Trust for Philanthropy estimates and our own for contributions to religion."¹⁷
- "[T]he differences between total giving in IS estimates and *Giving U.S.A.* is growing. Our surveys reveal a much lower level in total giving even after adding in estimated giving for the wealthy and giving by foundations and corporations."¹⁸
- "Private contributions from living individuals is the weakest data link of all of the series of information available for estimation of the size, scope, and dimensions of the sector."¹⁹

Unfortunately, there is no mention of any of these problems in the Almanac.

There are further weaknesses in and concerns about other data in the Almanac.

15. The coefficient of the "TIME" term in the PGEM is negative. See GIVING U.S.A. 215 (1991).

16. The coefficient is positive, but the "PRES" term is 1 for a Republican and 0 for a Democratic President.

17. Hodgkinson & Weitzman, op. cit. supra n. 12, at p. 21.

18. Id. at p. 55 (underlining and italics in original).

19. Id. at p. 61.

It is interesting, in this context, to note the quite-recent publication of a very significant new book: *THE NONPROFIT SECTOR IN NEW YORK CITY* (1992).²⁰ It is the work product of the Nonprofit Coordinating Committee of New York, the Fund for the City of New York, and the City of New York. These groups obtained financing to do the first-ever census of nonprofit organizations in the City of New York.²¹ The book contains the following comments:

"Internal Revenue Service (IRS) data [and] data from state charitable registration offices . . . are seriously flawed."²²

"On the national level, the Independent Sector's periodic Dimensions of the Independent Sector profile is the best compilation of data on nonprofit activity, but it is based largely on IRS data and Standard Industrial Classification codes, which are far from well-adapted to the activities of nonprofit organizations."²³

"There are major problems with the IRS data. . . . Independent Sector estimates that 75% of 501(c)(3)s do not file 990 reports with the IRS. . . . [T]he IRS does not systematically purge organizations that become defunct from its files, and it does not update addresses. The entire IRS file is also full of data entry errors."²⁴

"Our list contained 24,211 organizations, and we compared that to the IRS file which contained 19,721 organizations. We found far less overlap between the two lists than we had expected. We had more than 10,000 organizations that

20. Hereinafter referred to as the "NYC Nonprofit Sector Census."

21. A helpful description of the scope of the census effort can be found at pp. 2-12 of the NYC Nonprofit Sector Census.

22. NYC Nonprofit Sector Census at p. 2.

23. NYC Nonprofit Sector Census at p. 3 (footnote omitted). The reference, of course, is to earlier editions of the Almanac.

24. NYC Nonprofit Sector Census at p. 3 (footnotes omitted).

were not on the IRS list, and the IRS had 9,000 that were not on our list."²⁵

"At the end of our census work, the grand total of nonprofit organizations in New York City was 19,500. . . . This was more than twice the number that had been quoted by economists and researchers when we began our work."²⁶

These comments are not intended to be severe. The proper balance and tone of these types of warnings and disclosures is a matter on which reasonable people could differ. In my opinion, however, the Almanac — which already does a creditable job of publishing such matters — could be improved by communicating more methodology details and caveats to the reader.

Other Comments

A few further random observations — some of which are truly picking "nits" — designed to help the Almanac to become even more useful:

- It would help if each page contained a reference to the particular chapter, appendix, etc., in which it appears.
- The word "data" is plural; there are several places in the Almanac in which an improper verb is used.

25. NYC Nonprofit Sector Census at p. 4 (footnotes omitted).

26. NYC Nonprofit Sector Census at p. 7.

- Not *all* 501(c)(3) organizations are eligible to receive tax-deductible contributions.²⁷ This minor qualification might be reflected in appropriate places.²⁸
- Table A, at pp. 585-86 in the Almanac, should be relabelled as a "Table" (instead of being headed "Appendix A," within which it is located).
- There are 25 paragraphs in I.R.C. § 501(c), each describing a separate type of tax-exempt organization. The Almanac refers to only 21 of them.²⁹ Even if statistics are not provided for the others, it might be useful to mention their omission.
- Independent Sector has published a pamphlet containing 24 pages of highlights and summary data from the Almanac.³⁰ Consideration should be given to including this, or a similar portable summary, together with the Almanac in future editions.
- The NTEE is very valuable as a teaching tool. Even the abbreviated textual description of it, in Appendix B to the Almanac, is too opaque for many students. Inclusion of a graphics page, showing at a glance the breadth of the NTEE and thus the diversity and scope of the nonprofit sector, would be very helpful.

27. Gifts to organizations which test for public safety do not qualify for a tax deduction even though such organizations are described in I.R.C. § 501(c)(3). Rev. Rul. 65-61, 1965-1 C.B. 234; G.C.M. 35341 (May 16, 1973).

28. For example, the first sentence which begins at the top of column two on p. 16 might be improved by inserting the word "most" before the reference to 501(c)(3).

29. See, e.g., Table 1.2 in the Almanac, at p. 24.

30. INDEPENDENT SECTOR, HIGHLIGHTS AND SUMMARY DATA FROM NONPROFIT ALMANAC 1992-1993 (1992).