

## EDITORIAL: NGOS AND DEVELOPMENT

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Voluntary exchange is the foundation of civil society:<sup>1</sup> it engenders an ethic of cooperation with strangers and a philanthropic attitude (Ridley, 2010). Some goods and services are supplied unilaterally by 'civil society organisations' (CSOs). But without exchange there would be no CSOs since there would be no civil society – and no philanthropists.

Voluntary exchange also underpins development. Exchange enables specialisation, which increases productivity. Competition between suppliers of goods and services drives innovation, resulting in better products and more efficient production processes. These improvements, in aggregate, are 'development'.<sup>2</sup>

In the first paper of this symposium, Benedikt Kohler observes that early Islamic charities (*waqf*) were genuine CSOs, providing individuals with the ability to ensure that some proportion of their wealth would be used as they directed to beneficial ends even after their death, thereby avoiding interference from third parties including the state. They also appear to have provided the model for the 'trust' in Anglo-Saxon legal systems.

Trusts generally have offered individuals a means of structuring the ownership of assets so as to reduce the likelihood that wealth generated through voluntary transactions would be usurped by the state. Charitable trusts offer a way for individuals legitimately to distribute their assets to good causes without state usurpation.<sup>3</sup>

In medieval England, property could be given to the Church on the premise that it would then be used for beneficial causes. In addition, if a person died intestate, the Church would typically obtain the right to administer the estate and would distribute some part of it *ad pious causas* (Jones, 1969, p. 3). These causes could include bequests for the poor and the upkeep of hospitals (Jones, 1969, p. 4). Education was also a permissible form of charity: Kohler points out that Walter de Merton used a legal trust form derived from Islamic law in granting his charitable endowment to establish a college at Oxford.

Jurisdiction over such charitable trusts gradually moved from the Church to the Courts of Chancery, where more formal constraints were established – adopting the principles derived from Islamic law as described by Kohler. These were subsequently reinforced by the Charitable Uses Act 1601, the preamble to which specified certain purposes that were to be viewed as charitable.<sup>4</sup> In 1892, Lord McNaghten defined four classes of charitable trusts as follows:

'Charity, in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.'<sup>5</sup>

Charity must benefit the public, as Judge Farwell observed, 'Charity is necessarily altruistic and involves the idea of aid or benefit to others.'<sup>6</sup> Whether any particular organisation is deemed to meet the public benefit test is a matter of law to be decided by the judge on the basis of evidence provided. But 'when a purpose appears broadly to fall within one of the familiar categories of charity, the court will assume it to be for the benefit of the community, and, therefore charitable unless the contrary is shown.'<sup>7</sup>

In general, the courts have refused to recognise political purposes as charitable.<sup>8</sup> This applies *a fortiori* to groups which seek to further the interests of a political party, but also to groups procuring or opposing changes in the law or government policy, whether at home or abroad.<sup>9</sup>

However, as Stanley Brodie's paper points out, under the previous UK government, the Charities Commission sought actively to encourage charities to engage in political activities – apparently in direct contradiction of the public benefit test applied by the courts. Mr Brodie also observes that the Charities Commission seems to have become politicised, citing as evidence reports that the Commission had questioned the charitable status of some schools on the grounds that

they might fail the public benefit test by charging fees that were beyond the means of poor people, again in spite of the *prima facie* evidence that such schools are for the advancement of education and that they serve the public.

In recent years, many groups calling themselves non-governmental organisations ('NGOs') and claiming to be part of civil society have engaged in political campaigns. For example, in 2005, Make Poverty History, a coalition of NGOs, ran a campaign calling for increased foreign 'aid' and opposing trade liberalisation in poor countries.<sup>10</sup> In 2006, the same coalition ran a campaign against the EU's 'Economic Partnership Agreements'.<sup>11</sup> Some of these NGOs officially have charitable status; others do not. Arguably those NGOs with charitable status should not be permitted to spend a significant portion of their funds on such campaigns, since such activities constitute a political purpose. The reason is not that this particular political campaign itself is necessarily harmful to the poor but that it is not possible objectively to determine whether such campaigns (and indeed any political purposes) are beneficial to the poor.

George Gelber's paper defends the political activities of NGOs (although he does not explicitly defend their right to be charities), arguing that

'NGOs are aware that the practical work which they fund directly will do little more than scratch the surface of poverty in developing countries and that the real prize is national and international systems that will really work for the poor. "Really working for the poor" means enabling them to have access to services such as health, education and water and sanitation and the opportunity to earn a living within an economy which, if not biased in their favour, is not biased against them.'

It is no doubt true that much of the 'practical' work done by NGOs (including charities) in poor countries merely 'scratches the surface', papers over the cracks, or is even counterproductive – for example, encouraging begging and discouraging entrepreneurial behaviour. As such, perhaps it is time to consider Lord Wright's observation that '... eleemosynary trusts may, as economic ideas and conditions and ideas of social service change, cease to be regarded as being for the benefit of the community'<sup>12</sup> – at least as regards NGOs engaging in 'development' activities in poor countries.

It is also clear that the poor would benefit from better access to health, education, water and sanitation, as well as the opportunity to earn a (better) living. The question is: how might those objectives best be realised?

Many NGOs push for increased state delivery of healthcare services in poor countries – supported by foreign aid. The premise of this ideological push is the presumption that 'health' is a human right.<sup>13</sup> Yet as Philip Stevens' contribution points out, in much of sub-Saharan Africa, governments have demonstrably failed to deliver health services to the poor. As a result, private companies and non-profit organisations have stepped into the breach. Some governments and aid agencies have experimented with contracting for private provision of healthcare – with considerable success. But in other places, private providers face competition from 'free' (but poor quality) government provision, as well as all manner of regulatory barriers. Ideologically driven Western NGOs oppose further moves towards private provision.

The private sector has also shown itself to be a more effective provider of education to many of the poorest people (Tooley, 2009). But in spite of this evidence, the Department for International Development and other aid agencies continue to fund public sector education. The result has been an increase in enrolment at state schools, but little impact on attainment (NAO, 2010). Indeed, it is plausible that by encouraging parents to move their children from fee-paying schools to state schools attainment levels have actually fallen.

In the provision of water and sanitation services too the private sector turns out to be superior to the public sector (Okonski, 2006). Yet NGOs continue obsessively to regurgitate the claim that because 'water is a human right' it must be provided by the state – and preferably 'for free' (Okonski, 2009).

Among the examples of positive NGO action Mr Gelber documents is the Jubilee 2000 campaign, which sought the cancellation of government debt. Yet it is not clear that debt cancellation is an unalloyed good. Indeed, there is evidence that it enhances the power of incumbent political elites, enables them to invest in arms, and removes some of the incentive to promote economic development by reducing the need for the government to obtain funds through general taxation (Mwenda, 2006).

Gelber also suggests that the pursuit of economic growth is not necessarily of overarching importance. To the extent that individuals have multifaceted goals and aspirations, this is surely true: what matters is that people are free to pursue those goals; economic growth is merely an incidental but highly beneficial consequence of such actions.

However, Gelber goes further, arguing: 'if we assume that the benefits of economic growth are distributed in line with shares of income in unequal countries then even the highest conceivable rates of growth will have little impact on the poor'. But is the assumption fair? Gelber cites the example of Nepal, which does indeed have a very skewed income distribution. But Nepal's highly unequal income and its appalling poverty are consequences of the same underlying factors, namely restrictions on enterprise and trade imposed by oppressive leaders: between 1980 and 2007, Nepal's economic freedom rating (a measure of the degree to which individuals are free to pursue their economic goals) fell from 5.6 to 5.2; in the same time period its country ranking fell from 48th to 120th.<sup>14</sup>

While there are no doubt exceptions, the empirical evidence shows that in general economic growth is good for the poor. Using evidence from 92 countries over four decades, David Dollar and Aart Kraay (2002) showed that 'average incomes of the poorest fifth of society rise proportionately with average incomes'. Kraay (2004) decomposed changes in poverty in a sample of poor countries, concluding that 'In the medium- to long-run, most of the variation in changes in poverty can be attributed to growth in average incomes, suggesting that policies and institutions that promote broad-based growth should be central to the pro-poor growth agenda.'

What are those 'policies and institutions that promote broad-based growth'? Perhaps the most fundamental is the rule of law, without which all economic interactions are mired in uncertainty (Haggard *et al.*, 2008). Of particular concern is the threat of expropriation and other interference from

government, which undermines capital formation and incentivises owners of mobile capital to invest elsewhere (Mahoney, 2000).<sup>15</sup> Legal certainty more generally is also of fundamental importance. The ability to enforce contracts makes it possible credibly to commit to future exchanges; absent that ability, transactions take place primarily under informal rules governed by family ties and other less transparent relationships. Meanwhile, secure property rights provide the foundation for capital formation and investment, both of which are essential for technological innovation and wealth generation (Besley and Ghatak, 2010).

Another institution not often discussed by economists in relation to economic growth but nevertheless essential to a free society is freedom of speech.<sup>16</sup> When people are prohibited from commenting on and criticising the decisions of those in power, the exercise of that power tends to be less fettered. The majority of countries in which free speech is curtailed also have severe restrictions on economic activity and as a consequence the people in such countries are generally poor.<sup>17</sup>

In countries where freedom of speech has been severely restricted, CSOs have often played a crucial role in fighting for human rights – sometimes at great personal cost to individual members of those CSOs (Price, 2003).<sup>18</sup>

But while the activities of CSOs are generally benign, the activities of many NGOs are more ambiguous or even malign. Elaine Sternberg's paper questions the legitimacy of NGOs: Do they really serve the interests they claim to represent? What are those interests? Are they even genuinely non-governmental?

Most NGOs engaged in political activism in poor countries, especially those whose funding comes from rich countries, tend not to focus on promoting policies and institutions that underpin economic growth. Rather, they focus on promoting policies that support preconceived agendas. Often these agendas are (intentionally or unintentionally) harmful to the majority of the inhabitants of the country where the political action is being taken.

In the final paper, Mike Norton-Griffiths offers two striking examples from Kenya which illustrate the power of Western NGOs to influence political events in ways that harm local people. The first is a campaign funded by foreign NGOs which successfully overturned a relatively minor reform to the country's wildlife law. The reform would have made the Kenya Wildlife Service more accountable to the people – which experts believe is beneficial both for the people living with wildlife and for conservation. The second is a campaign again funded by Western NGOs which pushed for land reforms that would undermine the protection of property rights. The campaign was successful and looks set to harm the interests of the majority of Kenyans, whose economic prospects are to a significant degree dependent on the protection of property as the basis of investment, innovation and wealth creation.

How did this situation arise? Over the course of the past three decades, the public has become increasingly sceptical of politicians. The membership of political parties has generally been declining.<sup>19</sup> At the same time, support for activist NGOs has risen.<sup>20</sup> Part of the explanation for these trends is the disenfranchisement that has resulted from political decisions being taken at a level at which individual voters have no influence – for example, at the EU or the UN. So instead of

supporting remote politicians and political parties, people support groups that apparently better reflect what they perceive to be their interests and concerns.

As their support has risen, NGOs have become increasingly vocal in policy debates – and are now widely sought by the media for their opinions. Surveys suggest that they are deemed by the public to be generally more trusted than politicians and business people (Edelman, 2010). Because of this higher trust status, many politicians and businesses seek association with NGOs. To achieve this, they must ensure that their policies and business practices are (at least seemingly) in line with what the NGOs want. Meanwhile, when in power politicians ensure that funds are directed towards the NGOs with whom they have developed a symbiotic relationship.

Unfortunately, the NGOs that have become dominant in political debates – and those which have received the most support from governments – are those which are generally opposed to individual liberty, personal responsibility and the free society. Many support the imposition and maintenance of trade restrictions by poor countries as well as massive 'aid' transfers to the governments of poor countries. Yet these policies hinder free enterprise and entrench corrupt political leaders – both of which undermine economic development and harm the poor.

Last year, International Policy Network (IPN) published a study which revealed that over £1 billion of taxpayers' money was due to be spent on 'development awareness' campaigns by NGOs . . . in the UK (Boin *et al.*, 2009). The main purpose of these campaigns seems to be convincing people in Britain that the government should spend taxpayers' money on foreign 'aid'. Thankfully, Britain's new government has seen fit to halt some of these absurd projects; but not yet all of them. Given Britain's current fiscal constraints, it is morally offensive that taxpayers' money should be spent in this way.

More recently, IPN published a study showing that eight out of the ten most prominent Brussels-based environmental groups receive one-third or more of their income from the European Commission, and five of those rely on the Commission for more than half their funding (Boin and Marchesetti, 2010). What do they do with this money? They lobby the Commission!

What can be done to address these problems? Ending direct state support for NGOs would be a good start. Going further by regulating NGOs seems a step too far – and smacks of the kind of speech-restrictions imposed in Russia, China, Iran and other authoritarian states. But perhaps restrictions should be imposed on those NGOs that receive indirect support through their status as charitable bodies. As noted above, charities traditionally have been prohibited from engaging in political activities; restoring that restriction seems like a suitable step.

1. However, as John Keane notes in his essay 'Eleven Theses on Markets and Civil Society' ([http://www.johnkeane.net/pdf\\_docs/civsocmarkets.pdf](http://www.johnkeane.net/pdf_docs/civsocmarkets.pdf), accessed 9 June 2010), 'In our times . . . virtually all commentators on civil society set aside or ignore markets . . . Civil society is treated as a market-free zone.'
2. 'Development' encompasses not only 'economic development' but also cultural development. See, for example, Cowen (1998).
3. But trusts designated for philanthropic, public or benevolent purposes have been deemed void for lack of certainty of their objects: the object of the

- trust must be certain or it will not be possible for the court to establish whether the trustees have carried out their legal duty. (*Re Macduff* [1896] 2 Ch 451; *Houston v. Burns* [1918] AC 337; *Chichester Diocesan Fund v. Simpson* [1944] AC 341.)
4. The terms 'use' and 'trust' were used interchangeably. In modern parlance the Act of 1601 would have been The Charitable Trusts Act.
  5. *Income Tax Special Purposes Commissioners v. Pemsel* [1891] AC 531 at 583, HL per Lord McNaghten.
  6. *Re Delaney* [1902] 2 Ch 642, at 649.
  7. *National Anti-Vivisection Society v. IRC* [1948] AC 31 at 65, per Lord Simmons.
  8. As Lord Parker noted in *Bowman v. Secular Society Ltd* [1917] AC 406 at 422: 'Equity has always refused to recognize [political] objects as charitable.'
  9. *Re Koeppler Will Trusts* [1984] Ch 243, [1984] All ER 111; [1986] Ch 423, [1985] 2 All ER 869, CA (in which the decision was reversed but the relevant dictum was unaffected). *McGovern v. A-G* [1982] Ch 321, [1981] All ER 493 (Amnesty International Trust was deemed to be not charitable).
  10. Make Poverty History explicitly calls its action a 'mass lobby of Parliament' (so, unambiguously a political purpose!): 'MAKEPOVERTYHISTORY campaigners took part in the biggest mass lobby of Parliament on November 2nd. MAKEPOVERTYHISTORY and the Trade Justice Movement announced that the mass lobby of parliament was the largest in the history of modern British democracy with trade justice campaigners lobbying 375 MPs in a single day. Over 8,000 campaigners joined the lobby with a demand that the UK Government and its European Union (EU) partners stop pushing poor countries to open their markets in approaching world trade talks. They warned the Prime Minister that generations of people will continue to live in poverty if his manifesto promise to allow poor countries to protect their markets is broken' (<http://www.makepovertyhistory.org/2005/index.shtml>, accessed 16 August 2010).
  11. On Make Poverty History's website, members of the public were urged to send the following e-mail to Alistair Darling: 'Last year the UK Government pledged to make poverty history and helped deliver promises of more aid and debt cancellation. But now your department is supporting new trade deals which threaten to undermine these promises and make poverty in developing countries worse. Economic Partnership Agreements being negotiated between the European Union and 77 of its former colonies will force poor countries' farmers and industries into unfair competition with rich countries. Millions of livelihoods are at risk and entire industries are under threat. I urge you to ensure the UK Government stands by its promises on trade and poverty. Please listen to the repeated concerns of poor countries and use your influence to:
    - stop these agreements going ahead in their current form
    - work with poor countries to develop alternative deals that will help bring about trade justice
 I look forward to your reply' (<http://www.makepovertyhistory.org/mph/campaign.do?code=dti>, accessed 20 June 2010).
  12. *National Anti-Vivisection Society v. IRC* [1948] AC 31, at 42.
  13. For a critique, see Mchangama (2009).
  14. Chain-linked ratings and rankings from Gwartney and Lawson (2009, p. 143).
  15. Kleptocratic rulers are noted for holding their assets offshore, thereby avoiding the capital risks they have created or reinforced.
  16. Coase (1964) and Posner (1986) are notable exceptions.
  17. There are of course examples of countries that have for the most part maintained sound economic institutions and experienced rapid economic growth in spite of imposing restrictions on free speech, the most notable being Singapore. But these seem to be the exception rather than the rule.
  18. Other factors also play a role: Dutta and Roy (2009) provide evidence that removing barriers to investment can lead to greater press freedom.
  19. In the UK, membership of political parties fell by 50% between 1980 and 1999 (Mair and van Biezen, 2000).
  20. The turnover of the six largest international NGOs was approximately \$6 billion in 2008, twice the figure in 1999 (Ditchley, 2009).
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