

This paper is written for the exclusive readership of the Nonprofit Forum. It is to be used solely as a basis for discussion at the Forum's meeting on October 13. It was written to provoke discussion and does not represent the settled views of the author.

I

Since approximately the winter of 1992 with the reports that William Aramony was paid an extravagant salary and engaged in abuses of trust, the nonprofit sector has come under increasing attack for paying allegedly inappropriately high salaries. Recently The Philadelphia Inquirer ran a series of negative articles on the sector, several of which also complained about high salaries. And this past summer Congressman J.J. Pickle held hearings on the sector where the issue of salaries was prominently raised. This questions surely is of great moment for the sector. There appears to be much misunderstanding about nonprofit compensation levels and much of it is damaging. Allow me to provide one chilling anecdote. As some of you know, I am on the Governor's Panel on Property Tax Exemption and Classification Issues, a committee he formed to examine the "proliferation of real property tax exemptions." Most of the Panel members are local tax assessors and representatives from the Catskills where many feel that too much of the land has a charitable tax

These include the World of the Family and Personal Relations, the World of Competitive Markets (hereinafter sometimes referred to as the "Market World"), the World of Government and Politics and the World of Public-Serving Nonprofits (hereinafter sometimes referred to as the "Nonprofit World"). Each world has its own structure, motives and intentions and, importantly for this paper, should be thought about in its own way. Confusion will often result by applying the analytical principles of one world to another. In this Part, I will limit my observations to a brief comparison of the Market World and the Nonprofit World since, as elaborated upon in Part III, the standard justification offered for nonprofit salaries is that the market should set the level for compensation.

It is commonly thought that the Market World and the Nonprofit World both serve the public good. Efforts made in these two worlds are, however, guided by radically different ends. For the Market World the goal is self-interest. Typically an activity is entered into not for the sake of pursuing the activity but rather for the ulterior purpose of advancing one's self-interest, usually by making profit. In contrast, the ends that guide the Nonprofit World are the accomplishment of an activity itself: to care for people, to create beauty and meaning, etc. This distinction was caught very well almost thirty years ago by Bill Baumol and Bill Bowen in an article on the economic problems of the performing arts:

Moreover, [a nonprofit organization's] goals themselves often help explain why no money is earned by such an organization. While an automobile producer may take pride in the quality of his cars, he is much less likely to regard product per se as an ultimate objective of the enterprise than is the head of a nonprofit organization. Nor is the auto producer likely to be nearly as concerned about the social composition of his clientele.

The significant point is that the objectives of the typical nonprofit are by their very nature designed to keep it constantly on the brink of financial catastrophe, for to such a group the quality of the services it provides becomes an end in itself. Better research, more adequate hospital facilities, more generous rehearsal time, better training for those engaged in these activities - all these are not merely incidental desiderata. They are fundamental goals in themselves, and with objectives such as these, the likelihood of surplus funds is slim indeed. These goals constitute bottomless receptacles into which limitless funds can be poured⁶.

People who pursue the ends of the Nonprofit World have, of course, to make a living but typically the money they earn is the means that allows them to pursue their nonprofit goals and not the end of their activity⁷. In emphasizing this distinction one runs the risk of being taken to suggest that the Nonprofit World is morally more worthwhile than the Market World. This is emphatically not my intent. They simply are different. As Rawls points out about his liberal theory of justice:

It supposes that individuals and groups put forward competing claims, and while they are willing to act justly, they are not prepared to abandon their interests. There is no need to elaborate further that this presumption does not imply that men are selfish in the ordinary sense.⁸

Indeed, the whole "invisible hand" theory assumes the spur of self-interest as the

⁶ Baumol & Bowen, On the Performing Arts: The Anatomy of their Economic Problems, *The American Economic Review* 495, 497-499 (May 1965)

⁷ This is elaborated on below at some length,

⁸ J. RAWLS, *THE THEORY OF JUSTICE* 281 (1971)

motive force that works the system⁹. In this way, as suggested above, the Market World conduces to the public good.

No more will be said about this distinction at this point; different aspects of it will be

⁹ Adam Smith and his British Isle compatriot Bernard de Mandeville (from 'private vices' come 'public benefits') are not alone in these views. Immanuel Kant, perhaps the greatest modern philosopher of them all, had similar views. Since this may not be widely known by Forum members, let me quote at some length a passage from Kant that I found in Lucio Colletti's book From Rousseau to Lenin:

By this antagonism, I mean the unsocial sociability (ungesellige Geselligkeit) of men; that is their tendency to enter into society, conjoined, however, with an accompanying resistance which continually threatens to dissolve this society. The disposition for this lies manifestly in human nature. Man has an inclination to socialize himself ... He has, moreover, a great tendency to individualize himself by isolation from others, because he likewise finds in himself the unsocial disposition of wishing to direct everything merely according to his own mind; and hence he expects resistance everywhere as he knows with regard to himself he is inclined on his part to resist others. Now it is this resistance or mutual antagonism that awakens all the powers of man, that drives him to overcome his propensity of indolence, and that impels him through desire of honor or power or wealth, to strive after rank among his fellow men -- whom he can neither bear to interfere with himself, not yet let alone. Then the first real steps are taken from the rudeness of barbarism to the culture of civilization ... Without those qualities of an unsocial kind, out of which this antagonism arises -- which viewed by themselves are certainly not amiable but which everyone must necessarily find in the movements of his own selfish propensities -- men might have led an Arcadian shepherd life in complete harmony, contentment and mutual love, but in that case all their talents would have forever remained hidden in their germ. As gentle as the sheep they tended, such men would hardly have given for their existence a higher worth than belonged to their domesticated cattle. Thanks be then to Nature for this unsociableness, for this envious jealousy and vanity for this unsatiated desire of possession, or even power! Without them all the excellent capacities implanted in mankind by nature would slumber eternally undeveloped. Man wishes concord; but Nature knows better what is good for is species, and she will have discord. Kant, Principles of Politics, Edinburgh, 1891, pp 10-11 L. COLLETTI, FROM ROUSSEAU TO LENIN 159-160 (1972).

elaborated upon below¹⁰. Suffice it to say, the principal point is that there are

¹⁰ It does seem that while huge amounts have been written about the Market World almost nothing has been done on the Nonprofit World in its own terms. Surely our colleague Henry Hansman has written a lot about nonprofits but wholly from the perspective of the Market World, so it seems to me. For example, he explains the origins of nonprofits in terms of market failure. Much has also been written about the theory of public goods but this is a theory whose origins lie in public finance and, perhaps, ultimately in market notions of welfare economics. In developing a theory of the Nonprofit World in its own terms, we would still be centrally concerned with questions of resource allocation and the optimum provision of goods and services, but we would show that there are some goods and services that are better produced in a non-market context. My sense is that there may be some material in Amartya Sen's work that would be useful as well as the work of in the late Kenneth Boulding. Perhaps the analysis would begin with Marx's distinction between 'use value' and 'exchange value' since goods and services in the Market World are by and large produced for their exchange value while those in the Nonprofit World for their use value. Rawls, who says very little about the public-serving nonprofit sector, so far as I can tell, and who posits the Market World, guided by the principles of justice, as the principal purveyor of most of the goods and services we might want, does concede that the Market World is "not suited to answer the claims of need." See J. RAWLS, *supra* note 4, at 277. In claiming that the "social minimum is the responsibility of the transfer branch," he asserts:

A competitive price system gives no consideration to needs and therefore it cannot be the sole devise of distribution. There must be a division of labor between the parts of the social system in answering to the common sense precepts of justice. Different institutions meet different claims. Competitive markets properly regulated secure free choice of occupation and lead to an efficient use of resources and allocation of commodities to households. They set a weight on the conventional precepts associated with wages and earnings, whereas the transfer branch guarantees a certain level of well-being and honors the claims of need. See J. RAWLS, *supra* note 4, at 276.

Two points about the Rawls' observation. First, while Rawls probably has in mind some government agency when he speaks about the "transfer branch," there would likely be little disagreement that much of the work of the public-serving nonprofit sector is similar to that carried out by the "transfer branch" of the government and that therefore the sector may properly be thought about as part of the "transfer branch." Secondly, Rawls' observations about the claims of need points in a different direction than I do when I emphasize that the distinguishing feature about the Nonprofit World is that things are undertaken for their own sake, that the Nonprofit World approximates the Kingdom of Ends. While I am not prepared yet to aver that there is some natural affinity between the

different ways of thinking about different spheres of social relations and it is not always apposite to apply the ways of one world to those of another. But before moving on, a word needs to be said about competition. While competition no doubt lies at the heart of the Market World and while the felicities of cooperation may be emphasized somewhat more in the Nonprofit World, competition is very much a part of Nonprofit World, although perhaps not in the same sense as the Market World. Without competition the nonprofit world would in all likelihood succumb to Kant's eternal slumber. But, as just suggested, there might be a sense in which nonprofit competition is different than the competition observed in the Market World. This notion is suggested to me by John Rawls' Idea of Social Union¹¹. As I understand it, his point is that since we cannot be all things in our lifetime, since we cannot develop all of our capacities and powers, we "must select which of [our] abilities and possible interests [we] wish to encourage" and appreciate the excellences of others for the rest.

We are led to the notion of the community of humankind the members of which enjoy one another's excellences...and they recognize the good of each as an element in the complete activity the whole scheme of which is consented to and gives pleasure to all¹².

He cites the game as the paradigm case for the "many forms of life [that] possess the characteristics of social union, shared final ends and common activities valued for

claims of need and the Nonprofit World's tendency to see quality of services as an end in itself, it does seem that this might be the case.

¹¹ See J. RAWLS, *supra* note 4, at sec.79.

¹² *Id.* at 523.

themselves.¹³ The ultimate goal of the game, "the shared end, the common desire of all players [is] that there should be a good play of the game."

Each can then take pleasure in the actions of the others as they jointly execute a plan acceptable to everyone. Despite their competitive side, many games illustrate this type of end in a clear way; the public desire to execute a good and fair play of the game must be regulative and effective if everyone's zest and pleasure are not to languish.¹⁴

In the late thirties the great social historian Johan Huizinga published an entire book on the subject. It is called Homo Ludens¹⁵. In brief, his general thesis is that contest lies at the heart of play and that the agonistic principle plays a major part in the development of culture. Indeed, "competitions and exhibitions as amusements do not proceed from culture, they rather precede it"¹⁶. Significantly for our purposes, after identifying the competitive instinct (winning) as a "very important characteristic of play," he goes on to say:

But the following feature is still more important: the competitive 'instinct' is not in the first place a desire for power or a will to dominate. The primary thing is the desire to excel others, to be the first and honoured for that. The question whether, in the result, the power of the individual or the group will be increased, takes only second place¹⁷.

Here then, I would suggest, is the difference between competition as manifested in

¹³ Id. at 525

¹⁴ Id. at 526.

¹⁵ J. HUIZINGA, HOMO LUDENS (1937).

¹⁶ See J. HUIZINGA, supra note 13, at 47. Huizinga speculates that the roots of all this may be found in anthropology noting that primitive man celebrated the "seasonal feasts by contests devised to promote fertility and the ripening of the crops." Id. at 54.

¹⁷ Id. at 50

the Nonprofit World and that as manifested in the Market World. In the Market World the competitive instinct is a drive for power and individual aggrandizement¹⁸ whereas in the Nonprofit World it is a drive to excel and in many cases to promote the social union or common good through excelling -- to assure that there should be a good play of the game.

Rawls notes that his notion of the social union also applies to art and science¹⁹ but steers away from these considerations in "line with the rejection of the principle of perfection and the acceptance of democracy in the assessment of one another's excellences²⁰." But the arts and higher education are what we are most familiar with. Here we certainly observe competition, the desire to excel and be noticed, but is it not largely in a social context? When a scientist falsifies his data, we are appalled not just because of the egoism that led him to do so but because the whole notion

¹⁸ All of which through the workings of the invisible hand goes far to produce the marvelous results of our present circumstance where we have available to us a basket of goods and services that the ancients could not have even imagined.

¹⁹ The development of art and science, of religion and culture of all kinds, high and low, can of course be thought of in much the same way. Learning from one another's efforts and appreciating their several contributions, human beings gradually build up a system of knowledge and belief; they work out recognized techniques for doing things and elaborate styles of feeling and expression. In these cases the common aim is often profound and complex, being defined by the respective artistic, scientific, or religious tradition and to understand this aim often takes years of discipline and study. The essential thing is that there be a shared final end and accepted ways of advancing it which allows for the public recognition of the attainments of everyone. See J. RAWLS, *supra* note 4, at 526

²⁰ *Id.* at 527.

of the social union or public good has been subverted.

A final starting point merely emphasizes the obvious: most important decisions about public-serving nonprofits salary levels lie with their board of directors. If a salary is thought to be too high, responsibility for the mistake is the board's.

III

Salaries are justified by the test of the market²¹. It is first shown that the organization could not have hired the employee whose salary is in question for a lesser amount. S/he would not have taken the job for anything less. Then it has to be shown that the objectives of the organization could not have been better served by any other expenditure of funds, e.g., hiring some other employee for a lesser amount and using the remainder for some other purpose. The competitive price system is said to work in such a manner so as to attract persons to positions where they can be the most productive. Efficiency results. Rawls puts it succinctly:

Under certain conditions competitive prices select the goods to be produced and allocate resources to their production in such a manner that there is no way to improve upon either the choice of productive methods by firms, or the distribution of goods that arise from the purchases of households.

In sum, when faced with a question about an unduly high executive salary, the board must show that in the labor market for the position sought to be filled, it was not

²¹ This is, of course, the "reasonable compensation" test of section 501(c)(3) of the Internal Revenue Code. See B. BITTKER, FEDERAL TAXATION OF INCOME ESTATES AND GIFTS, section 100.2.4 (1981).

possible to employ the person for less and that such person will cause the organization to be more productive than expenditures for any other possible input or possible inputs might provide²².

The first difficulty is how to measure productivity in a nonprofit context. There are numerous difficulties. To begin, it would seem that the competitive pricing system works in the commercial sphere because, to a very considerable part, there is demand for the goods and services produced by commercial firms. Consumers pay money for such products and thus it is possible to measure how efficient an enterprise is and, in turn, how efficient its CEO is. Measurement problems are few for a for-profit organization where an executive's performance can be so easily measured by the bottom line. Here the measure of cost (how many dollars the executive is paid) is identical to the measure of benefits (how many dollars profit the organization generated). But such is not the case for the typical nonprofit executive. There are, of course, nonprofits where those serviced (the customers) pay the full freight or near to the full freight. One need only think of nonprofit hospitals. Thus, for these kinds of nonprofits, it might be concluded that there are no serious measurement problems and any claim that executive salaries cannot be justified on efficiency grounds because of a measurement difficulty would not seem to apply. But the great majority of

²² Finally, in the award of any high salary it shall be assumed that something like John Rawls' difference principle applies, namely, that the advantages that accrue to the person receiving the high salary improve the conditions of the least favored.

nonprofits either do not charge for their products or charge less than cost. These nonprofits may then present measurement problems.

It may, however, be argued that while there are no buyers in the conventional sense to express measurable demand for the nonprofit's product, the nonprofit does produce a product and the more efficiently it produces the product the better off society will be. An executive's salary could then be figured on the basis of the organization's productive efficiency as just described. But how can efficiency in the production of a nonprofit's product be calculated?

Let us look at some examples. First, in the arts, how does one analyze an opera performance or an exhibition in efficiency terms. One cannot! The miracle of near-perfect opera performance or of an especially marvelous exhibition cannot be reduced to rational calculation. There is surely more to these events than the number of people who attend. There are, for example, unmeasurable externalities that stretch far beyond the precinct in which the event took place and into the future of undreamed of generations. Further, while talk of externalities suggests, if not the absolute practical impossibility, at least the theoretical possibility of measurement, there would surely seem to be something about great art that is beyond the purely quantitative altogether.

Similar considerations apply to the field of education. Efficiency dictates high

student/faculty ratios, programmed learning through computers that do away with the need for teachers and the like. While there are surely places for all these arrangements, I believe that many educators would hold that giving top priority to efficiency concerns, eliminating the possibility of the great teacher who produces that magic moment of understanding, the excitement and beauty of intellectual exploration, would gravely diminish the ability of education to reach its most important goals.

Let us move from the arts and education to the social or human services field. Here efficiency would appear to call for processing the highest number of clients in a given period. But no one believes that the relationship of carer to cared-for can be quantified. Indeed, it is possible for the "efficiency" of carers to be inversely proportioned to their visible output. The needs for assistance cannot be predicted in advance. Typically each individual cared for must be considered as that particular individual. To eliminate the human relationship from this field would surely corrupt it. Who would commend a human service agency whose primary goal is to process as many clients as possible at their expense as human beings?

Now none of this should be taken as suggesting that efficiency concerns do not apply to nonprofits or that I am defending the claim that nonprofits cannot be inefficient. We all know of too many nonprofits that are run inefficiently. What it is meant to suggest is that a nonprofit board in setting an executive's salary typically does not

have available to it the advantages of being able to work the more or less precise rational calculations that the pure competitive price system allows. In this sense the job of a nonprofit board is more difficult than that of a for-profit board. One person may surely be able to more fully reach an organization's objectives than another. There may be only a few, perhaps only one, who could do the required job. Willy nilly then about the quantitative measurability of inputs and outputs, it may very well be the case that the organization could only attract the desired individual by paying a competitive salary. This is not contested. All that has been suggested so far is that the nonprofit board in justifying that salary to the public may not be able to put quantitatively measured outputs, presumably related to the effectiveness of the executive whose salary which is being justified, against her quantitatively measurable salary.

A brief word on the concept of efficiency as it applies to nonprofits. As mentioned above, many people go into nonprofit work primarily to carry out the goals of the nonprofit. Given this motive, is it not reasonable to assume that they are going to do the best job that they are able to, that is, that they are going to be as efficient as they can. While the spur of making money engenders efficiency in the Market World, devotion to mission assures efficiency in the Nonprofit World. While this may be the case for many, there are, of course, also those who are not so devoted. For them the cure is a good board who would weed them out. This assumes that the board is highly motivated to reach the organization's goals. And here perhaps we

come to a serious problem for public-serving nonprofits. While the bottom line provides discipline in the Market World, in the Nonprofit World, absent a devoted board, there may be no check to assure efficiency. No doubt there are a number of nonprofit boards which fail to live up to the ideals which pure devotion to mission demands²³. Perhaps the most insidious type of failure arises when nonprofit boards passively preside over an organization whose priorities imperceptibly change from a primary devotion to mission to mere institutional survival, where concern for jobs for the sake of jobs become more important than achieving the goals for which the nonprofit was established.

In an attempt to save some element of the rational calculability of the pure price system, it may be said that the buyers of the nonprofit product are all the people who contribute to its support and not just those who pay to attend an event, pay tuition to a school or pay for some social service. These supporters would include individual contributors and patrons, foundations, corporations, and the government. These are, it might be argued, the "buyers" from nonprofits similar to the buyers from commercial firms. But such an argument falls short. These supporters are contributing to something which the economists call public goods. To a considerable degree, they are not just buying something for themselves. They are not simply

²³ There is, of course, no branch of human endeavor in which all its participants conduct themselves at or close to the ideal. A difficult problem that public-serving nonprofits have is that because of their particular goals, to serve the public, help others, etc. (with the attendant halo effect), when they do fail, there is an understandable tendency to criticize them all the more harshly.

expressing a preference for what they believe will be useful to them. Thus, strictly speaking, the rational calculability of the competitive price system does not apply to these payments. This statement assumes in part that the transactions that make up the market system are self-interested and that gifts are not, or at least they are not in the same way that the price system assumes that people buying for their own account are self-interested²⁴. What has just been said applies to individual contributions and grants from foundations. It does not, of course, apply to government grants or contracts, but in the case of such payments, the government is using tax moneys derived to pay for public goods to presumably simply carry out its mandate of producing such public goods. In all likelihood it also does not apply to contributions from corporations which in most cases are done for market-type considerations. But corporate contributions make up such a small part of the resources received by nonprofits that the general point, viz., that contributions to nonprofits are made to support the provision of public goods and thus are not assimilable to analyzes based on the competitive price system, is not compromised.

That nonprofits deal in public goods does, however, have a major implication for the question presented by this paper, namely, it suggests that when considering salary

²⁴ To assimilate gifts for which the donor receives nothing tangible in return to self-interested purchases in the market is a mistake and indicates nothing more than a tendency to suppose the market is the only reality and all other putative spheres of human existence are ephemeral. It is to make all choices equidistant and on the same level; to render life as being without transcendence or perspective.

levels comparisons should be made not to executives in the private, commercial market but rather to salaries paid to government executives in like positions. Governments are the great and nonprofits the little purveyors of public goods. It is taxpayers who "buy" public goods and services from the government, and to some extent, pace Swords and his tax base theories, the same might be said for nonprofits. If governments are paying their executives too much, taxpayers may revolt. While governments also want to get the best person for the job and to do so may mean going into the competitive market for labor, they do so under the view and constraints of a taxpayer electorate. It may be argued that these similar constraints apply to the public-serving nonprofit sector and so the comparisons to government salaries are just the right ones for purposes of setting nonprofit salaries.

IV

So far nothing has been said that seriously questions the standard assertion that the market should be the ultimate test of a person's salary. In this Part some thoughts are explored which suggest that the competitive price system may not be the sole measure for nonprofit executive compensation.

In my view the most serious critique focuses on the individual who is demanding the very high salary. Might it be apposite to hold that it is preferable to have as people who staff nonprofits those whose primary agenda is to achieve the goals of the

nonprofit and not to make money, who are entitled and expect to make a decent living, but for whom earning a living is secondary to their aspiration of helping others, advocating a cause or producing beauty? To this suggestion would be added the following: while an isolated incidence of a very high salary would not in itself be damaging to the sector, the fact of one or two such salary awards may inevitably breeds others and the long-term effect may be for more and more nonprofits to move in this direction and perhaps this cumulative result would be damaging to the sector as a whole. I will examine these two no doubt highly contestable propositions in order.

To make the initial point as defensible as possible, let us begin by distinguishing between what might be referred to as a reasonably high salary and one that many might think in most cases to be very high. Let us stipulate the amount of \$200,000 with a favorable amount added for fringe benefits as a reasonably high salary and the amount \$400,000 with a favorable amount added for fringe as a very high salary. It is only salaries of \$400,000 and up for which the suggestion is made that attracting too many persons to nonprofits who insist upon such levels may ultimately be damaging to the sector. This distinction puts the suggestion²⁵ in a favorable position because it makes it abundantly clear that the suggestion absolutely does not presume

²⁵ Namely, that it is preferable to have as people who staff nonprofits those whose primary agenda is to achieve the goals of the nonprofit and not to make money, who are entitled and expect to make a decent living, but for whom earning a living is secondary to their aspiration of helping others, advocating a cause or producing beauty.

that nonprofit personnel in order to confirm their bona fides ought to make very little money, take an oath of poverty or travel about with a hair shirt²⁶. \$200,000 is over 650% higher than the average salary in the United States today (and over 500% than the average New York salary today). It is over 50% higher than what the Governor of New York and Federal district court judges make. Perhaps most significantly of all it is nearly 425% higher than the average executive director of a nonprofit makes in New York City. I believe that the amount is sufficient for any family anywhere in America to live comfortably on²⁷.

To restate the first point, it is presumed that if a candidate for a position demands

²⁶ Indeed, I would suppose that many Americans would happily accept \$200,000 plus full fringe benefits as going far towards helping them reach their natural desire to better themselves.

²⁷ The \$200,000/\$400,000 split is, of course, wholly arbitrary. If it seems right today, it will not tomorrow. There surely is, however, some amount which would command a wide consensus as being a perfectly adequate sum to live well on in America today, and, apodictically, there must be an amount that is a great deal higher than this. I am stipulating this amount to be \$200,000 with full fringe benefits. To avoid quibbles we could just as well designate it X and the higher amount Y. Perhaps, I should confess that I am aware that as a rhetorical point I am attempting to gain some persuasive power by comparing \$200,000 plus full fringe to what many other Americans make. Now attempts to make points on the basis of comparisons has a somewhat leftist tinge. (As does citing Colletti, Tawney, Gorz and, heaven forgive, Marx.) Raising equity questions based on comparisons of salaries is no doubt *infra dig* in the Market World where efficiency concerns (in the Market World sense) are properly paramount. It is a major and repeated assumption of this paper, however, that while the competitive price system and all that it entails is perfectly suited to the Market World and powerfully efficacious there, all of its precepts and principles do not always apply to the Nonprofit World. And the converse of this is that there may be some precepts and principles from some non-Market World systems that do properly apply to the Nonprofit World. See footnote 29 below.

a very high salary then that person has reasons for pursuing the position in addition to wanting to work to fulfill the purposes of the nonprofit organization, that these reasons are strong and not trivial and that they are in some way antithetical to what might be considered optimum for the occupant of such a position to hold. To get a better sense of what I have in mind, I offer an observation by the late British historian R. H. Tawney from that part of his book The Acquisitive Society where he is comparing those who work in the commercial field with professionals:

The essence of the latter, is that, though men enter it for the sake of livelihood, the measure of their success is the service they perform, not the gain which they amass. They may, as in the case of a successful doctor, grow rich; but the meaning of their profession, both for themselves and for the public, is not that they make money but that they make health, or safety, or knowledge or good government or good law. They depend on it for their income, but they do not consider that any conduct which increases their income is on that account good²⁸.

Whatever might be the case with the professions today, if one substitutes for professionals those who work in the public-serving nonprofit field, my meaning is suggested²⁹. To state the point bluntly, the suggestion is that a certain "purity" of purpose on the part of those who have substantive positions in nonprofits is an ideal goal that if we fall too far short on will produce harmful results. Imagine a rabbi of a temple or a minister of a church whose concerns in pursuing their work included

²⁸ R.H. TAWNEY, THE ACQUISITIVE SOCIETY 94 (1920)

²⁹ In writing The Acquisitive Society Tawney was pumping for socialism (indeed, the book has been said to have helped the Labor Party win its first election). At the point of the quote set out in the text, he is asking why industrialists cannot be more like professionals, that is, engage in work for its own sake and not to amass profit. With the total collapse of socialism this very anti-competitive market view has no doubt been wholly discredited. But that assuredly does not mean that its application to the Nonprofit World has been discredited.

very high salaries. Intuitively something would be wrong. The point suggested here is that the same goes for teachers, care-takers, advocates, artists and the many other workers who hold substantive positions in the public-serving nonprofit world.

Before proceeding, as an aside, I confess my anxiety that while my point would have seemed obvious 75 years ago, today it will probably be regarded as quaint and old-fashion, smacking of anti-laissez faire Victorian economic notions. To which I would reply that the point does have validity but that the paradigm shift reflected in the trend towards analyzing everything in terms of the market (The Wall Street Journal as the measure of reality) may have become so pervasive that most are blinded to the old truths. Whether the point has matter I should think would be a major topic of our discussion at dinner.

As stated the point is limited to "substantive" positions. Jobs such as financial management, development and similar administrative positions unmixed with substantive concerns are not subject to its reach. A bookkeeper's job is vastly different than that of a priest and the "purity" of purpose that might be desirable for the latter to possess is almost certainly not necessary for the occupants of such administrative positions. The point is that while there may be reasons along the lines that are trying to be developed for limiting the amounts paid to people in substantive positions, no such reasons exist for not paying administrators whatever the market commands. A problem comes up then because there may be several

substantive positions superior to that of the administrator and this could present the organization with the situation of paying its administrators more than its executive director.

Before the point about purity of intentions could be accepted it would have to overcome two powerful objections. First, it can be fairly asked why it is that a person having two motives for working should be less able or less suitable to perform the job in question than someone who was primarily interested in simply doing the work? Second, who is to say that this is the case or, what is essentially the same question, how might anyone tell that this is the case?

To restate the point it is argued that for most nonprofit substantive positions it is better to have someone who has no job-related motive for working other than her interest in the job itself, that somehow this kind of unsullied dedication assures finally a higher quality of performance. An insistence that one's job also produces a large amount of money means that such purity of motive is not present. One might, for example, prefer a doctor who is primarily interested in making her patients well to one who has as an additional motive making a sufficient amount of money to support a high level of living³⁰. But is it at all legitimate to argue that the latter motive

³⁰ Andre Gorz has had this to say on a similar point:

Now the slightest suspicion that the primary objective of the persons administering care is to maximize their gains has the effect of undermining the relationships between doctors and patients (or between teachers and pupils or between carers and

exposes the person in question to making decisions and judgments that are counter to the best interests of the nonprofit organization?

At this point it may be apt to make a distinction between what such an additional motive might do in itself, so-to-speak, to the occupant of the position being considered on the one hand and on the other hand what it might cause others (potential supporters, the public) to think. It might be quite wrong to maintain that in fact such motives contaminate a person's dedication to her job and yet not off the mark to suppose that many, quite possibly mistakenly, might think so. In the latter case, what would be needed are strong arguments explaining their error.

Before continuing, recall that we are factually supposing that a candidate for a position is not interested in taking it for less than what we have defined to be a very high salary, viz., \$400,000 or more with full fringe benefits. It might be asked why possibly would such a person insist upon more than what we have stipulated to be a high salary? It would seem not unreasonable to suggest that in most cases the reasons must be self-regarding, a desire of attaining a standard of living that includes

those in their care) and casts doubt on the quality of the assistance they are providing. This assistance should, in fact, be provided *in the patient's interest, not the GP's*. This is the very essence of the doctor-patient relationship (or teacher-pupil relationship, etc.), and is a condition of its effectiveness. Persons administering care must not have a personal interest in people needing their care. The money they earn should be a *means* of exercising their profession and not its end. Somehow, earning their living should not so to speak, come into the bargain. A. GORZ, *CRITIQUE OF ECONOMIC REASON* 144 (1989) (emphasis in original).

a high level of expensive material goods, a desire for high social position and perhaps a desire to be able to display unambiguously one's superiority. It is assumed then that self-regarding motives, such as these, exist along side a desire to achieve the purposes of the nonprofit by whom the candidate is being considered. To complete the argument it must be shown that such motives are somehow ill-suited for the sector. Perhaps it starts by suggesting that optimally it is desirable to have those who have substantive positions in nonprofits hew to ideas and ideals that are above personal interest and this goal, hard enough to attain under any circumstances, is nearly impossible for a person weighted with the strong personal agenda we have supposed. Following this line it might be suggested that consistent with the ultimate purpose of nonprofits, namely that they primarily serve the public's interest, promoting community is an important goal of many, if not all, of these nonprofits. If this is so, then it might well be suspected that executives who insist upon very high salaries are not going to be consistently responsive to opportunities to promote community. Whether all these things are so in fact, it may, along the lines suggested above, well be that many would think they are so thus putting a burden on those who would justify very high salaries to explain why they are not.

An attempt shall now be made to address the second powerful objection noted above, namely, how can these assertions about purity of intentions possibly be validated. They probably sound more like mere expressions of moral belief³¹ or beliefs about

³¹ Perhaps no more than the expression of moral emotions.

moral psychology than a description of how things actually are. As a slow start, could not similar characterizations be made about the whole "invisible hand" theory which rests upon an assertion of moral psychology, namely, that humans are primarily motivated by self-interest (and, for those hard-nosed free marketers who apply its principles to everything, that humans are exclusively motivated by self-interest)? Can one assert any more definitely that humans are exclusively motivated by self-interest than that they are exclusively motivated by something like doing-the-job-for-its-own-sake or that they are motivated at different times in different contexts by self-interest and doing-the-job-for-its-own-sake? Admittedly, making the possibility of something like doing-the-job-for-its-own-sake acceptable does not show that someone might not be motivated simultaneously with respect to her nonprofit work by both self-interest and a desire to achieve the goals of the nonprofit. But perhaps suggesting that the premises of the Market World are also unprovable will make one more open to the possibility that there might be some merit in claims based upon a dimly perceived theory of the Nonprofit World.

For empirical support with which to meet the objection, perhaps we should look at American health care. Surely, as has been suggested several times above, the care of the sick would seem to be one place where concerns for personal profit ought to be extruded. Patients may be sick, in pain and terrified, hardly a position to bargain in a market for their care. We might begin by noticing that although in terms of performance American health care is not particularly outstanding, yet, as a percent

of gross national product, we spend more on health care than any place in the world. In fact during the last thirty years or so health care spending has grown from less than 6% to 14% of gross national product. I believe that no other major sector of our economy has fared anywhere near as well. In view of this is it possible that personal interest has not become a large factor in American health care? To add to this, we have repeated reports of abuses by physicians who have ownership positions in testing labs³² and of doctors who have curtailed services for the elderly because of a sharp reductions in the payments they receive from Medicare³³. And then more recently, we have The Wall Street Journal report documenting widespread fraud in the health "industry" estimated at \$80 billion a year or roughly 10% of total health care costs³⁴. Perhaps it would be conceded that self-interest in the Market World sense is present in the American health care but, despite the above examples, that that in itself has caused no harm, that the purity of intentions suggested by the Tawney quote are not necessary to assure quality health care. But is there any doubt

³² This practice has come to be called "self-referral." See footnote 35 below reporting on a recent Reader's Digest article on self referral.

³³ The April 14, 1992 issue of the New York Times reported an official of the IRS as saying: "Many hospitals have adopted business methods like pay incentive plans that cause hospitals to have financial performance as their primary purpose, rather than public service."

³⁴ See lead article entitled "Investigators Crackdown on Fraud In Health Industry" in the August 16, 1993 issue of the Journal. Among the abuses cited, in addition to the self-referral arrangements, are: "doctors, laboratory and other health-care providers attempting to increase reimbursement by manipulating billing codes on Medicare or private insurance forms;" "providers whose orders for tests and procedures seem designed mostly to run up costs;" "pharmacists who substitute "generic drugs for brand names;" and hospitals which may violate the antikickback laws by offering "lucrative contracts to doctors, including guaranteed income and free rent, in exchange for patient referrals."

that patients' mistrust of doctors is growing³⁵ and that this is surely counter to such objectives as those sought by preventive medicine. That is it would seem that if you are suspicious of your doctor you may not go for a visit until long after you should have. From a more global perspective, is there not likely to be a connection between Market World self-interest on the part of providers and the American system of superb health care for the very wealthy and what most informed observers regard as the not notably outstanding health care for the not-so-wealthy. As a final example, many would agree that to the detriment of overall American health care there is currently an imbalance between higher paid specialists (too many) and lower paid primary care physicians (too few). Can it seriously be doubted that concern for high levels of compensation is a contributing factor to this trend? Finally, I would argue that health care should be thought about just as I have suggested one should approach the Nonprofit World, that is, while it might be conceded that an isolated

³⁵ Am I the only one who fears going to the doctor not just because of all the awful things he does to me or what he might tell me but because of the financial implications of the visit?

A recent article in the Reader's Digest is entitled Can You Trust Your Doctor? It provides numerous anecdotes of the "victims of physician self-referral." In the course of the article, it quotes Dr. Arnold Relman, editor emeritus of *The New England Journal of Medicine* to the following effect; "The erosion of trust is bad for medicine and bad for patients. I see little reason for self-referral other than the doctor's business interest." And then; "Our society has become increasingly distrustful of physicians. Unfortunately, many doctors have brought this on themselves by allowing commercialism to encroach on the practice of medicine." J. Pekkanen, *Can You Trust Your doctor?* September 1993 Reader's Digest. I cite this article not because I believe that the journal in which it appears has a reputation for high scholarly excellence, but rather because it is my belief that it is recognized as a quintessential main-line establishment organ of opinion, and thus may serve to deflect any suspicion that my ideas are merely those of an off-the-wall fuzzy-headed romantic crypto-socialist.

example of a provider who might have a strong Market World self-interest would not spoil the whole system, the presence of one or two such practitioners breeds others and the ultimate result is ruinous.

This last point segues nicely into a short discussion of the second half of this paper's overall argument, namely that the harm caused by paying high salaries comes not from the payment of any one particular salary but from the pattern that develops from doing so. Many no doubt might be paid very high salaries and remain as devoted to carrying out the missions of their nonprofits as any Tawney professional³⁶. But as time goes by it seems very likely that growing numbers will be attracted to the sector who will in some sense be liable to being compromised by their needs for very high salaries³⁷. This proposition obviously cannot be proven but it seems probable and consistent with what common sense would expect. The implications of this for nonprofit boards are interesting. If the point is accepted, then a nonprofit board member when faced with a demand for a very high salary should not think only of the organization upon which s/he sits but of the sector as a whole. That is, a board

³⁶ Furthermore, so far as one particular high salary goes, it would be conceded that in terms of fulfilling an organization's goals not only will that expenditure be the most efficient expenditure of such funds as could be made but that the expenditure would satisfy something like Rawls' difference principle. That is the advantages that would accrue to the individual awarded the high salary would improve the conditions of the least favored.

³⁷ The overall output of the sector would deteriorate and Rawls' difference principle would not be satisfied, i.e., the advantages accruing to some by paying high salaries would not improve the conditions of the least favored.

member might be quite satisfied that the particular candidate being considered would not be corrupted by the salary but nonetheless decide for the good of the sector not to make the offer³⁸. Deciding for the good of the sector against the immediate interests of one's organization is, of course, a very non-Market World kind of thing to do but may be consistent with the Nonprofit World ethos. In this case taking only the special interest of one's organization into account would not have the happy consequences of the invisible hand but rather might smack more of the tragedy of the commons³⁹.

V

Finally we come to the fact of sheer size. Today some nonprofits have become gigantic. There are a number of hospitals with annual operating budgets close to one billion dollars employing over 7,000 people. Universities are as large and larger. Running organizations of this size is enormously difficult requiring management skills

³⁸ Well now it is a very short step from here to nonprofit boards colluding to not pay their executive directors more than X, very likely a per se violation of the Sherman Act. This opens up once again the whole question of the application of the Sherman Act to public-serving nonprofits. Rather than allowing this footnote to swallow the paper, I will leave this question for another day. Suffice it to say, while it has not been my conscious intent to beat this horse (still very much alive in my mind as well as in the mind of the dissent in the recent MIT Third Circuit case), one might find material herein with which to do just that.

³⁹ See Hardin, The Tragedy of the Commons, Science 162: 1243-1248 (1968).

of the highest order. Indeed the kinds of skills needed are to a large extent wholly different than those that are needed for what were referred to as substantive positions in Part IV. There I had in mind jobs that were much closer to actually doing the substantive work of an organization: teaching, healing, dancing, etc. While the head of a hospital is expected to know about medicine, there is much else s/he is expected to know and this much else will include knowing what is needed to run any big enterprise, for-profit or nonprofit. Further as mentioned above, many of the administrators of such huge organizations will be expected to perform very demanding tasks requiring much skill and experience and such people's interest will very likely be far away from what has been referred to as the ethos of the Nonprofit World for which reason, as noted above, none of the arguments advanced as checks on nonprofit salaries apply. Finally, once more, if the market demands that such administrators be paid very high salaries and, as just suggested, there are no reasons not to pay them such, how can an organization pay them at very high levels without, for example, also paying their CEOs at similar levels? What I conclude from all of this is that the arguments suggested above in Parts III and IV simply do not apply to the nonprofit behemoths and there the market is indeed the test⁴⁰!

⁴⁰ How one decides what nonprofits are behemoths and therefor exempted from the strictures suggested by this paper and what nonprofits are small enough to be covered is beyond me at the present.

