A History of the American Nonprofit Sector

Also by Mordecai Lee from Cambridge Scholars Publishing

The Emergence and Scope of the Voice of Government: Propaganda, Civic Information, or Both?

A History of Public Administration in the United States: The Rise of American Bureaucracy

A History of the American Nonprofit Sector:

The Rise and Professionalization of Doing Good

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MAJOR ABBREVIATIONS

AP	Associated Press (news wire service)
APSR	*American Political Science Review* (journal of the American Political Science Association)
BOB	US Bureau of the Budget (renamed Office of Management and Budget [OMB] in 1970)
CT	*Chicago Tribune* (daily newspaper)
FDR	Franklin D. Roosevelt, president, 1933-1945
NGO	Nongovernmental organization (generally the term used for nonprofits outside the US)
NMR	*National Municipal Review* (monthly of the National Municipal League, a nonprofit civic organization promoting good government)
NYT	*New York Times* (daily newspaper)
PAR	*Public Administration Review* (journal of the American Society for Public Administration)
WP	*Washington Post* (daily newspaper)

PREFACE

By the second quarter of the twenty-first century, America's nonprofit sector had become a major component of the national economy and daily life. According to estimates, there were about two million nonprofit organizations in the US, or roughly one for every two hundred Americans. Globally, there were about ten million NGOs and nonprofits. That means nearly 20 percent of all NGOs were based in the US. In economic terms, American nonprofits contributed $1.5 trillion a year to the economy, nearly 10 percent of the nation's GDP. If the American nonprofit sector were a country, it would be the fifth largest economy in the world. In terms of employment, about 12.5 million people were paid employees of American nonprofits, comprising 10 percent of the workforce. That made America's nonprofit payroll the third largest in the domestic workforce, behind only the retail and manufacturing sectors. The US was about 4.25 percent of the world's population, yet American nonprofits employed about 7.5 percent of all nonprofit workers worldwide. In terms of the public-at-large, it is estimated that 100 million Americans were volunteers at nonprofits and individual donations to nonprofits totaled about $215 billion a year. However one measures it, the nonprofit sector played a significant role in American society and life.

This book presents my original academic research into the history of the nonprofit sector in the US. Why the importance of history? It can be important in three ways. First, as so-called "pure history," it is valuable for its own sake because it fills in missing gaps in knowledge. Second, even though history never quite repeats itself, lessons from the past can often be applicable to the present. Third (and perhaps the most important for this book), even though American culture and values are sometimes quite ahistorical, the status quo that we face now is often rooted in historical events and decisions. According to Kruse and Zelizer, "We need to see the past clearly in order to understand where we stand now and where we might go in the future" (2022, 11). Similarly, Blackhawk argued that the substantial invisibility of Indigenous peoples in traditional American history was significant because "history provides the common soil for a nation's growth and a window into its future" (2023, 1-2). Penningroth made the case that earlier events, even in previous centuries, are still "powerful because history is not just about the past. . . . The choices historians make—

what to write about, what counts as evidence and how to interpret it—are inevitably shaped by the world around us" (2023, xvi). Because history influences our lived experience, we also need to know the past.

In that case, how did the American nonprofit sector evolve to become such a major part of today's society and political economy? When did it start? How did it start? These are a few of the questions that this book seeks to answer. History gives us many of the answers. Some relate to historical legal issues that made nonprofit corporations largely independent of any significant governmental control, regulation, and taxation. The nonprofit sector mainly emerged as a major force in America during the twentieth century. The sector matured with disparate component parts reflecting significant differences in goals, missions, financing, and operations. This book presents exemplars of some of the major categories of nonprofits that gelled during that century, such as those focusing on one city, one state, or the country as a whole. These nonprofits had diverse foci, such as advocating for good government, trying to influence public policy, or merely to survive by changing their raison d'être to reflect changes in societal conditions. Gradually, during the twentieth century, the nonprofit sector underwent a trend toward professionalization, with a focus on specialization, professional associations, and management training. By the end of the century, the importance of external communication as inherent to program delivery and accountability had become a given. Finally, the book examines some of the depictions of nonprofits in popular culture, particularly in movies, because the arts tend to reflect and mirror social conditions and realities.

American nonprofits run the gamut of nearly every conceivable social activity, including such silos as religion, human services, K-12 schools, colleges and universities, hospitals, research centers, taxation, think tanks, nutrition, animal welfare, civil rights, international development, the environment, racial justice, gender orientation, economic development, museums, transportation, arts and culture, fraternal organizations, military veterans, recreation, foundations, special interest groups, and politics. As a result, the American nonprofit sector is so heterogeneous that sometimes one can wonder if those in an individual silo have much—or *anything*—in common with nonprofits in all the other vertical silos. Are the differences greater than the similarities, or vice versa? Is the effort to generalize about these diverse entities as all belonging to one coherent grouping something of a stretch?

In the 1990s, Harvard's Peter Dobkin Hall investigated the history of the American nonprofit sector. He suggested that the term itself was a

neologism, imposed retroactively onto a social phenomenon that had long preceded it. In his view, the American nonprofit sector was "invented" beginning in the 1950s (1992, chap. 1). Prior to that, there was a relatively disorganized American agglomeration of silos, including charities, philanthropies, volunteer organizations, foundations, religious entities, good-government advocates, and all other like groups. They did not consider other entities in another silo as largely similar to them or to have shared interests and experiences. Hall argued that these entities all had precisely one thing in common—they were all nonprofit. They were neither government nor for-profit businesses, but rather a different and identifiable sector of the political economy all unto itself. Hence the "invention" of the nonprofit sector. Yet even the title of Hall's history of the sector conceded that such terminology was still not yet universally recognized. That's probably why the full title of his book wanted to be sure readers understood what the subject matter was in case they weren't familiar with the term "nonprofit sector." It identified the book's topic as "philanthropy, volunteerism, and nonprofit organizations."

The lack of coherence of the sector early in the twentieth century was demonstrated by the struggles of urban good-government reformers to invent terminology for the kind of organizations they supported that advocated for good government reforms (see chap. 3). Some of the terms they tried to use for the new phenomenon of nonprofit organizations that lobbied for efficiency and honesty in local government included:

- privately financed, privately sustained, private association, private auspices, private organization, private agency, and privately supported
- citizens' bureau, citizen agency, citizen organization, citizen-supported agencies, and citizen sponsored
- unofficial organization, unofficial civic agency, unofficial bureau, and unofficial agency
- independent nonpolitical body, independent unofficial bureau, and independent agency
- corporation not for profit, non-profit-making agency, and corporation not for pecuniary profit
- voluntary association, voluntary agency, and voluntary organization
- local civic reform agency
- direct citizen agencies
- investigative bureau
- not connected with business or charitable institutions
- quasi-public agencies
- nongovernmental
- external agency (Lee 2008, 27)

There was simply no uniform or universal terminology. The lack of a widely accepted and commonly understood term was sometimes used by opponents of these bureaus to raise suspicions and make insinuations to create doubts about them in the public's mind. In 1918 and 1919, Chicago mayor William Hale Thompson sneeringly challenged the legitimacy and self-proclaimed disinterestedness of the Chicago Bureau of Public Efficiency (see chap. 3). He described it as merely a "self-constituted association." Therefore, what legitimacy did it have? On another occasion, he said: "What is this bureau? Is it a corporation? Does any one know? Is it a voluntary association? If so, who are the associates? Does any one know?" (28).

A study of the rise of the American nonprofit sector encompasses multiple academic fields, including nonprofit studies, philanthropy, nonprofit management, political science, history, organization theory, law, and management history. This book is an effort to contribute to the increasing level of academic interest in the history of the nonprofit sector. It is a compilation of my academic research and writings that were published in the twenty-first century.

My personal involvement with America's nonprofit sector began in 1975 when, as legislative assistant to a member of Congress, I often represented him in meetings and correspondence with nonprofits based in his district that were seeking to influence his positions and votes. Then, after being elected to the lower and upper houses of the Wisconsin State Legislature (in 1976 and 1982, respectively), I routinely interacted with nonprofits based in my district and those that were pursuing policy goals I was sympathetic to. I was also the direct target of other over-the-top nonprofit lobbying. These experiences gave me a highly personal perspective on being at the receiving end of such efforts, including what worked and what didn't (see chap. 13). I left politics voluntarily and in 1990 changed careers. Ironically, it was a move to the nonprofit sector!

I was appointed by the board of directors of a faith-based nonprofit in Milwaukee (WI), the Jewish Community Relations Council, to be its executive director. My duties included day-to-day management, board relations, advocacy, lobbying, interfaith relations, media, and public relations. Thankfully, not fundraising. We were funded from annual appeals of the city's Jewish federated appeal, a kind of Jewish United Way. My most traumatic and scary experience as a nonprofit executive was when my agency was subject to a snap field audit by the federal Internal Revenue Service (IRS). It sought to determine whether I had violated any legal restrictions on direct involvement in politics. Apparently, someone (who

probably disagreed with our social justice efforts) submitted a tip to the IRS claiming that my agency had crossed the red line banning involvement in politics. We hadn't and we passed the field audit with flying colors. But it was a nerve-wracking experience nonetheless—if only by imagining the impact of losing our tax-exempt status. That would be the nonprofit equivalent to a death sentence. The auditor later told me he had done that on occasion, stripping those nonprofits of the tax deductibility of contributions *on the spot*. For a more detailed analysis and theory-based examination of my experience in faith-based nonprofit advocacy, see chap. 6.

Then, in 1997, I changed careers again by joining the faculty of a local university. My focus was initially on American public administration. Within a few years, the leadership of the university asked me to help establish an academic center on nonprofit management, including offering new courses and granting new degrees and certificates on the subject. As a result, my teaching, research, and publications expanded to multiple pedagogic aspects of the nonprofit sector, including its management, history, public relations, advocacy, government relations (a polite term for lobbying), and policy analysis. I began publishing my academic research in scholarly journals interested in nonprofits. I also started attending the annual conferences of the main academic association for American faculty interested in the nonprofit sector, the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA). My involvement included presenting papers on my research, organizing and serving on panels, and serving as an officer of the association's section on teaching. Then, after twenty years as a faculty member actively interested in nonprofit management (and public administration), I shifted to emeritus status in 2018.

Now, Cambridge Scholars Publishing has provided this opportunity to pull together my research and publications on American nonprofit history that I had written in the twenty-first century. I have selected fifteen pieces that present a *tour d'horizon* of the subject. This volume is the third in an informal trilogy of my research that has been published by Cambridge Scholars Publishing: *A History of Public Administration in the United States: The Rise of American Bureaucracy* and *The Emergence and Scope of the Voice of Government: Propaganda, Civic Information, or Both*?

This book can be used in two ways. First, it presents a comprehensive and integrated overview of American nonprofit history for use as a textbook and as a reader. By being subdivided into six parts, this structure enables a detailed examination of discrete subtopics (or silos) within the broad scope

of the nonprofit sector. For example, I expect that this volume will be useful to those practitioners-in-training (such as students working toward a nonprofit management degree or certificate) who would benefit from understanding the historical context of their chosen profession. It might also be a good fit for advanced courses of upper-class undergraduates (juniors and seniors) majoring in such fields as nonprofit studies, American history, political science, management history, and organization theory. The reason for presenting references at the end of each chapter is to permit every chapter to stand on its own as a complete whole. This structure can be particularly useful when assigned readings do not cover the whole book but rather specific chapters and perhaps even in an entirely different sequence than presented here.

Second, the book is intended for those with a more advanced academic and research interest in the subject, whether they are based—again—in nonprofit studies, political science, American history, organization theory, or management history. Hence, it would be useful to graduate students and doctoral candidates in these fields. For advanced researchers, the book is intended to be beneficial to faculty and faculty-in-training who have an interest in the history of the American nonprofit sector. Finally, as a comprehensive volume of peer-reviewed research in this subject matter, the book would likely appeal to academic libraries that seek to develop and enhance their collections in these disciplines.

A note on the referencing style used here. Generally speaking, parenthetical references are the most concise for traditional published sources, such as academic articles and books. It is also effective for journalism, whether the article was bylined or non-bylined. For the latter, I presented a truncated version of the headline of the article or editorial for the in-text reference. However, the parenthetical referencing style is very cumbersome when sources are unpublished materials, such as archival documents, online sites, and interviews. Citations for such sources would be quite prolix in parenthetical referencing. Therefore, to save such excessively long parenthetical references within the text of a chapter, I have instead used endnotes in those situations. Endnotes are much more concise and less verbose for these sources.

Some chapters are a mix of, on one hand, conventional published sources and, on the other, archival documents and other unpublished sources. Therefore, for those chapters I used a dual referencing style. The seventeenth edition of *The Chicago Manual of Style* (2017) gives authors and publishers a specific guideline in this situation: “As long as a consistent style is

maintained within any work, logical and defensible variations on the style" are permitted (§14.4). Cambridge Scholars Publishing had permitted me to use this dual approach in two preceding volumes on government public relations and public administration history (Lee 2023a; 2023b). I have again used this mix of both referencing styles in chapters 2, 3, 6, 7, 9, and 14. The numbered endnotes are located after the conclusion of the text. They are then followed by a customary listing of the in-text parenthetical references to conventional academic and other published sources.

As every rule has exceptions, chapter 5 is excerpted from a book-length study of the People's Lobby. In order to increase the readability of the abridged text, I excluded references and endnotes. Readers interested in locating the omitted sources should be able to identify the original text in the appropriate chapter of the book relatively easily and then obtain the correlating references (Lee 2015, chaps. 2-5).

Also, reflecting current style, I have adapted references to be as succinct and condensed as possible. The goal is to provide the reader with sufficient information to locate the cited source, but otherwise to avoid cluttering sourcing with excessive detail or with dense and distracting punctuation. As editor of my own writings, I tried to maintain a relatively light touch when possible. Most changes were to ensure a consistent style throughout the volume, which would be advantageous to the reader. Some of these relatively modest changes included assuring standard citation formats and spelling in order to have a uniform style throughout. In another effort to assure that the book would be as up to date as possible, I reviewed the URLs that had been cited in the originally published materials and modified them as necessary so that those that are still online continued to be accessible. Similarly, I routinely deleted anachronisms or substituted more current published discussions and references (sometimes a later writing by the same author) for older ones that seem to have already passed their freshness date. Hence, the oddity of a chapter in this volume containing sources that hadn't yet been published when the original piece had appeared. Some chapters needed more updating than others. Chapter 13, on lobbying, was not previously published. Rather it is an updated and expanded version of a presentation I made at an ARNOVA conference.

I added postscripts to chapters 6 and 15. For chapter 6, I wanted to provide an update on how my experience in heading a faith-based nonprofit in the last decade of the twentieth century compared to how things looked at the beginning of the second quarter of the twenty-first. At the end of chapter 15, I provided updated information about my coauthor, Jeff Brudney. Also,

given that the book seeks to integrate various aspects of American nonprofit history into a whole, in many chapters I inserted a note flagging for the reader instances where the text refers to a subject covered in more detail in a different chapter of this book. I hope this will help readers gradually see how the various parts of the book are related pieces that comprise a bigger picture, components that synthesize well into a common theme.

The plan of the book is to present a sketch of the emergence of the nonprofit sector in the US through case studies of individual nonprofits and through larger themed developments. It traces several key events in the emergence of the American nonprofit sector, from the post-independence era (chap. 1) to a key 1819 decision by the US Supreme Court (chap. 2). The emergence of the nonprofit sector greatly accelerated during the twentieth century. I have tried to highlight this by presenting four exemplars: an urban nonprofit (chap. 3), a state-based nonprofit (chap. 4), a national nonprofit (chap. 5), and a faith-based one (chap. 6). Gradually, as the nonprofit sector was "invented," the sector slowly coalesced and became organized. This trend toward professionalization included nonprofit staff who specialized in a subsector of the sector (chap. 7) and an effort to organize a national nonprofit association for a silo of specialists working in the public sector (chap. 8). The growth and maturation of the nonprofit sector inevitably led to an increased focus on management and, consequently, management education (chaps. 9-10). By the beginning of the new millennium, there was widespread recognition of the importance of external communications (chap. 11), including two specialized subfields, public reporting (chap. 12), and lobbying (chap. 13). Eventually, pop culture also recognized the growing importance of the nonprofit sector in American society by increasingly depicting various aspects of nonprofits in movies, including CEOs in the twentieth century (chap. 14) and of volunteers and volunteer managers (chap. 15).

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PART I

THE HERITAGE OF THE BRITISH AND EARLY INDEPENDENCE ERAS

CHAPTER ONE

THE UNITED STATES BEFORE THE NONPROFIT SECTOR, 1780-1818

America didn't always have a nonprofit sector. In fact, George Washington and his Federalist Party strenuously opposed the existence of independent entities that were outside of the governmental space. Historian Johann Neem has closely researched this largely unknown chapter in American history. With a focus on Massachusetts in the initial post-independence years, he has captured the rise of the independent nonprofit sector (Neem 2003; 2004; 2008). In fact, his published research is revisionist history at its best. At its core, the effort to create an academic discipline of nonprofit studies in the United States requires a rigorous research-based literature to replace or, at the very least, credibly document the mythic and romantic narrative that has previously dominated the field.

The self-congratulatory declamations by current practitioners (and their allies in the academy) have asserted that the contemporary nonprofit sector precisely reflects the genius of America, of exactly what the Founders *wanted*. Such propaganda is asserted particularly brazenly when politicians propose even the tiniest effort to call into question the current legal privileges of the sector. That false narrative goes something like this: The nonprofit sector is at the heart of American democracy. The Founders realized that a vigorous civil society would permit the citizenry to mobilize around causes and issues that authentically reflected their priorities. James Madison's praise in *The Federalist* no. 51 of a multiplicity of interests as a self-correcting mechanism of democracy was, they assert, an endorsement of a robust nonprofit sector (1788). From the start, for the US Constitution to work, nonprofits needed to be the basic building blocks of civil society. We are what the Founders wanted. Hurray for today's status quo, for it is the best of all possible worlds. To challenge its rightness is un-American. We are a shining example of American genius. In fact, we are America.

Puh-*leez*.

In his research, Neem asked a simple question: Before Tocqueville, what? After all, the supposed historical mantra of today's nonprofit sector always quotes Tocqueville's amazement at how many voluntary associations existed in the United States at the time of his visit in the 1830s. Case closed?

Not so fast. The constant quoting of Tocqueville deliberately implies that America always was that way (1840). No, no, no. George Washington's famous 1796 Farewell Address included *warnings* about private organizations. Modern-day nonprofit propagandists would prefer to forget this. Given how little known this section of his address is, it deserves to be quoted in full:

> [17] All obstructions to the execution of the Laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force; to put, in the place of the delegated will of the nation, the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common counsels, and modified by mutual interests.
>
> [18] However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government; destroying afterwards the very engines, which have lifted them to unjust dominion.

Jefferson felt the same way (at the time). The Federalist Party and Jefferson (pre-presidency) believed that the constitutional form of government they had created on the state and federal levels was the *embodiment* of the citizenry. Any efforts to create separate organizations claiming to represent citizens would be a threat to the very essence of the authenticity and legitimacy of republican government.

The facts on the ground provide documentation for how the Federalists operationalized this perspective. For them, any organization that existed must be an *extension* of the state. Therefore, for example, Harvard University was a *public* institution managed by a board of overseers from the Massachusetts state government. The same goes for charters that were issued by legislative bodies to create corporations. Those corporations,

whether for commercial purposes (such as building and financing turnpikes and bridges) or for what we would now call nonprofit purposes, were all based on such a similar premise. The US political economy comprised one sector: government.

Incongruously, the same principle applied to religion, too. The First Amendment to the US Constitution banned any established religion, at least as it applied to the government itself. But early Federalists nonetheless believed in the nonseparation of church and state. They felt that the established church needed to be an extension of government.

This was the status quo for the first thirty years of the constitutional republic. However, this strict approach was gradually dismantled, partly as a way by the Federalists to protect their institutions when they were losing political power, and partly as a pathway facilitating the rise of the Jeffersonians and then Jacksonians who wanted to organize and institutionalize their nascent political movements. They wanted their factions to be beyond the control of the government.

The nail in the coffin of Washington's vision was the US Supreme Court's *Dartmouth* decision in 1819 (see chap. 2). That decision was the founding document of the American nonprofit and business sectors. Unfortunately, in my opinion. From then on, nonprofits were recognized as independent and private corporations. Once issued, a charter of incorporation could not be modified by government and the nonprofit corporation could evolve as it wished. Neem's (2008) description of pre-*Dartmouth* Massachusetts presents a kind of counterfactual history of what could have been: a nonprofit sector that was within the public realm and that had to serve truly charitable and public needs. This is a startling vision when compared to the glorification of self-interest and self-serving organizational imperatives that underlie the American nonprofit sector in the twenty-first century.

If the *Dartmouth* decision in 1819 was the starting gun, then only a little more than a decade later Tocqueville captured the early formative years of an independent voluntary sector. He was amazed by the multiplicity of voluntary and civic organizations in American society in the 1830s. The rise of America's nonprofit sector had begun. Fair enough. But, nonetheless, our field needs more in-depth research into the prehistory of the US nonprofit sector. Let the revisionism continue.

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CHAPTER TWO

THE US SUPREME COURT GIVES BIRTH TO THE NONPROFIT SECTOR, 1819

Introduction

The nonprofit sector is in some respects a natural phenomenon of human society, of the basic human impulse as societies evolve beyond subsistence living to the creation of a civil society. Unrelated individuals who have common interests gravitate together to create groups and associations. Long before the creation of the United States, certainly before the US Supreme Court's 1819 decision in the landmark *Dartmouth* case, there was (what would now be called) a nonprofit sector in colonial North America and the early years of American independence (see chap. 1). These informal organizations and associations were often based on the shared beliefs of a common religion or the practice of a common profession. For example, in colonial Boston, Paul Revere has been described as "an associating sort of man" and "a great joiner" because of the large number of groups he belonged to (Fischer 1994, 19). In fact, he was precisely the right person for his famous ride *because* he circulated in so many different networks (27, Appendix D). As such, the pre-*Dartmouth* American nonprofit sector was a spontaneous outcropping of life. But in other respects, especially in the US, the nonprofit sector is—from the legal perspective—a wholly artificial sector, totally defined by rules determined by a different sector, government. Congress and state legislatures had enacted the "rules of the game" and could, theoretically, change them at will.

But the legal core that defines and limits the power of government to intervene in the nonprofit sector is the 1819 decision of the US Supreme Court in the case of *The Trustees of Dartmouth College v. William H. Woodward*. Everything else that Congress or state legislatures enacted subsequently is mere commentary. The decision established that Dartmouth College, while founded as a publicly chartered institution, had—due to a contractual relationship arising from a bequest to the college—become a "private" corporation. The government would be impairing a contract if it

tried to intervene in Dartmouth's affairs. The US Constitution prohibited the state and federal governments from disregarding or superseding legal contracts between two parties. The *Dartmouth* decision established that legislative power over charities "is not absolute" (Fremont-Smith 2004, 153). Even if a legislative body were to reserve, in the law it passed incorporating a nonprofit, the right to change the terms of the charter in the future, it *still* could take no action that would have the effect of impairing a contract signed by the charitable corporation (154). This is the reason that the decision has been hailed as a breakthrough moment for the US nonprofit sector. By assigning nonprofit organizations the legal status comparable to a private business corporation (and the right to sign inviolable contracts), the court was largely prohibiting the government's power to regulate nonprofit organizations. From that kernel, the entire legal structure for the sector gradually emerged.

The decision has been elevated to hagiographic status. A long-running and multi-edition text in American history described the decision as "of far-reaching importance," with its commendable implications being that "it protected privately endowed colleges, schools, and the like from political interference, and encouraged endowments for education and charity" (Morison, Commager, and Leuchtenburg 1980, 395). (They also saw a negative in the decision, but that was regarding the limits it placed on government regulation of for-profit corporations.) According to Neem, "Following the *Dartmouth* decision, civic activity was no longer limited to public trustees who held political office" (2003, 354). Hammack called it an "important" case in the history of the American nonprofit sector for several reasons, including the legal rights of nonprofit corporations and the conceptualization of private organizations providing services to the public (1998, 123). Campbell described it as "the Supreme Court's first great civil liberties case" (1980-1981, 706). McGarvie declared, "The real importance of the *Dartmouth College* case is not simply the delineation of private and public, but the perpetuation of the alternative visions of American society by the legal recognition of public and private spheres" (1999, 567). The editor of Daniel Webster's papers wrote in 1989 that the decision "remains one of the celebrated decisions of the Marshall Court." It was one of the "major judicial statements of public policy . . . [that] rippled through nineteenth century jurisprudence" (King 1989, 17). In 2005, Brands characterized the decision as "a blow against state power" (2005, 345). Hence, the general historical consensus has been to applaud the decision and view it as the event that paved the way for the birth of an independent nonprofit sector in the US.

The problem with the conventional wisdom of the case having been decided correctly—even courageously—is that this presumption suffocates a critical review of the implications of the ruling. In his history of the evolution of the media industry in the US, Starr noted the general tendency to accept historical developments as correct: "Things that work satisfactorily come to be thought of as right: Laws, methods, and systems that appear to be successful become the basis of standards, often gradually appearing to be natural and inevitable, *as if there could be no other way*" (2004, 5, emphasis added). This attitude indeed captures exactly how the *Dartmouth* case has been treated in histories of the American nonprofit sector; namely that the decision was a good thing, clearing the way for the emergence of an independent civic sector, free from the evils of interference and meddling by governments and, worse, politicians. The encomiums and glorification of the decision present a nonprofit version of Voltaire's *Candide*. The *Dartmouth* decision has not only been accepted but is also sanctified as "all is for the best in this, the best of all possible worlds."

It is precisely this contention of the unmitigated positives of the court's decision that this chapter seeks to contest by using the approach of alternate history to reexamine the case. What if the court had decided the case the other way? While the benefits of the decision have been universally celebrated, what have been the losses? In what ways would the nonprofit sector have evolved differently through to the present? This chapter examines the nonprofit road not taken.

Examining History through Alternate Scenarios

The paradigm of social science research discourages speculation, whether about the future or revisiting history through alternate scenarios that did not occur. For understandable reasons, many in the professoriate consider this to be beyond the ken of serious academic work. Despite its obvious flaws, such speculation and, especially, counterfactual history have a modest toehold in academe. It is variously called alternative history, alternate history, fictional history, counterfactual history, and para-history. That this approach has been gaining in scholarly respectability during the twenty-first century is demonstrated by several university presses publishing volumes on counterfactual history, including University Press of Kansas (Myers 2015), Brandeis University Press (Evans 2013), University of Michigan Press (Tetlock, Lebow, and Parker 2006), and Kent State University Press (Hellekson 2001). Another indication of the increasing acceptability of considering alternate history as part of conventional historical studies was

demonstrated in an economic history of the twentieth century. DeLong argued it was important to consider several fictional scenarios about World War II in order to have a comprehensive understanding of the economic impact of the war (DeLong 2022, 308-10). Elsewhere, I have presented a more detailed examination of the use of counterfactual scenarios as an acceptable methodology of histography (Lee 2023, chaps. 16, 18).

In the field of US nonprofit studies, studies of history and of fiction relating to nonprofits have long been accepted as separate foci for inquiry (Kass 2002; Harmon 1992). This chapter experiments with a meshing of those two conventional approaches by conducting a thought experiment with nonprofit alternate history. This research method has not been explored on any extensive basis for the nonprofit sector. At times, leading authors have published predictions about the future of the US nonprofit sector, based on key trends pending at the time of writing. For example, in 2002, O'Neill dedicated the last chapter of his overview volume to the prospects for the sector in the near future (2002). He observed informally that he has been surprised at how little speculative writing there has been about the future of the American nonprofit sector (2004). A few years later, he published predictions on the trends and future of nonprofit management education (2007). Similarly, when considering "the road ahead," Salamon predicted three potential scenarios: a status quo of celebration and drift, social enterprise, and renewal (2012b, 68-72).

Therefore, there may be a limited benefit to identifying nexus events (Hellekson 2001, 5) in US nonprofit history and then developing alternate scenarios that could just as easily have occurred. Scenario writing is, in fact, an accepted technique in policy analysis. It is a method of exploring the developments that may occur subsequently because of the various options presented to the policymaker for a decision (Weimer and Vining 2017, 289-93; Patton, Sawicki, and Clark 2013, 291-93). I have suggested three modest benefits to historical speculation. First, it helps focus on the importance of *past* pivotal events by identifying what could have happened. Second, it describes what the *present* would be like if historical events had taken a different path. Finally, this approach can help in assessing the importance of how, for a pending decision, selecting one of several alternatives can affect *future* outcomes (Lee 2005, 4-5). This chapter focuses on examining an alternate profile of the US nonprofit sector had the US Supreme Court ruled the other way in the *Dartmouth* decision.

The Nonprofit Sector in Pre-*Dartmouth* America

The neologistic nature of twenty-first-century study of America's nonprofit sector is most starkly apparent when trying to apply such terminology to the colonies and the post-independence early years of the United States during the pre-*Dartmouth* era. Hall introduced his historical overview of the sector by reminding readers that the eighteenth-century counterparts of contemporary nonprofits "little resembled the forms they take in modern America" (2005, 5). Neem suggested that the post-independence resistance to the formalization of the nonprofit sector "might seem odd" to contemporary observers (2003, 345). Stewart, Kane, and Scruggs seemed reluctant to even admit that the legal standing of nonprofit universities was not always as it is now. In a defensive aside, they confess that, "contrary to many current beliefs, these early institutions were not *purely private*" (2012, 140, emphasis added). No, they were not even partly private. They were entirely public (see chap. 1).

All entities that were not integrally within government had the status of corporations that were chartered by state government or their colonial antecedents. This law-making process was identical whether the entity was to be part of (what would now be called) the business sector, local government, or the nonprofit sector (Campbell 1975; McMahon 1986). (Similarly, divorces could only be obtained by an act of a state legislature [Brands 2005, 58].) Chartered corporations were viewed in some respects as extensions of government or at least creatures of government. For example, legislatures often inserted in the corporate charters they approved (regardless of the entity's sector) a general "reservation" clause that explicitly permitted them to impose subsequent changes on the corporation. The concept of government chartering corporations predated colonial America and was prevalent in England beginning in medieval times. Sometimes charters were unilaterally issued by monarchs and later, as Parliament gradually assumed more power vis-à-vis the monarchy, by the legislative branch. The British government would authorize a (business) corporation to incorporate by issuing a charter, sometimes called a patent. Some of these historically prominent for-profit corporations included the East India Company (1600), the Jamestown colony in Virginia (1606), and the Hudson Bay Company (1670). Similarly, and without much distinction, dating as early as the twelfth century, the crown also issued charters to (what came to be called) *municipal* corporations (Coombs and Edwards 1993, 29). The activities of these municipal entities were originally commercial in nature and therefore the incorporation approach was understandable. Gradually, however, municipal corporations took on civic and public sector