

Ethics without Profits

Douglas J. Den Uyl
Liberty Fund, Inc.

“O that a man might know the end of this day’s business ere it come!”
—William Shakespeare, *Julius Caesar*, Act V, scene 1

1. Introduction

In this article I want to explore some of the essential characteristics for an ethics of non-profit or not-for-profit (NFP) organizations.¹ The impetus behind this project is to see whether there are any salient differences between business ethics and the ethics of an NFP. Both organizations need to have their revenues meet or exceed their costs and both offer value to the recipients of their products or services. In what way, if any, would ethics differ in an NFP organization as compared to a for-profit organization? More precisely, what is the fundamental guiding ethical principle of an NFP that essentially informs all normative reflections about such organizations, and does that principle differ from what is central to ethics in a business?

We could begin to examine our question by looking at NFPs as they exist today, but this seems to be a point of departure that presupposes too many questionable social/political assumptions. The main questionable assumption is that it is legitimate and appropriate for the state to give special tax considerations to organizations that provide certain benefits the state deems worthy, as opposed to other benefits provided by other organizations which do not receive such favorable treatment. That the state should be an instrument of redistribution, meliorism, selective favoritism, and the like is, from the point of view of political philosophy, hardly an uncontroversial beginning point. But even assuming that such actions by the state are legitimate and appropriate, many questions about which benefits deserve this special treatment would also be entailed.² Moreover, we take the question seriously as to whether there should be any taxes at all. Should the case for

¹ “Not for profit” is probably the more accurate expression. “Non-profit” could apply to businesses that are simply not doing well.

² In the U.S. it is likely that the principle of separation of church and state produced the first instances of favorable tax treatment by the state with respect to voluntary organizations.

Reason Papers Vol. 31

taxation fail, it would seem that the whole “not-for-profit” idea could not even get off the ground. It is certainly the case that NFPs, as they are currently functioning, could not be understood without presuming the legitimacy of taxation.

In this article, therefore, we shall begin by discussing the basic question of whether NFPs would and should exist if we do not depend upon the tax incentive assumption of current NFPs. I shall claim that there is, nevertheless, a place for them. We begin by considering the issue of the existence and nature of NFPs and then follow by exploring the nature of ethical thinking in an NFP. In the final section I shall discuss how the preceding reflections might say something of value about business ethics, or the “for-profit” world. The literature on our subject is sparse, given the sorts of parameters that I have just defined and will define below. Still, it is hoped that what is said will not be completely beside the point when it comes to the actual functioning of NFPs. If nothing else, I will have sought to raise here some of the central questions to consider when discussing the essential characteristics of ethics in NFPs.

2. The Nature of NFPs

The question of whether there would be NFPs is largely a function of one’s basic political philosophy. If, for example, one believes it is the role of the state both to tax and to tax for purposes of producing certain social benefits the state deems especially important, then there may be reasons for using tax policy to favor some organizations or programs over others. In such a world, it seems reasonable to suppose that the prime governing principle in thinking about an ethics for organizations favored by the state would have to be tied very closely to the purposes the government defines for favoring those organizations in the first place. But even if one has this political philosophy, it nevertheless might be more interesting to imagine whether there would be NFPs in a world where no special tax breaks were given to any organization, or there were no taxes at all. Would this largely “laissez-faire” world drive out all NFPs and reduce everything to the profit motive? Are there thus not analytical benefits to imagining such a world in order to see how dependent NFPs really are upon government, or, if one’s political philosophy tilts toward social engineering, how much of that engineering also defines the principles upon which ethical obligations will be built? If nothing else, by imagining a taxless or even a flat tax system, we can at least discover the “natural” condition of NFPs without having the distorting elements of the debate about which sorts of activities should be favored over others. Though this flat tax or taxless world is one more reflective of my political philosophy than its alternative, exploring our question under the assumption of such a world does not of itself imply that there may not be additional reasons for using tax policy

Reason Papers Vol. 31

to pursue certain “public” ends. That question is a question of political philosophy and beyond the scope of this article.

All organizations must take in more revenues than they spend in order to survive in the long run. Moreover, all organizations require managers, workers, customers or clients, accounting procedures, boards of directors, and the like in order to function properly and well. In these respects for-profits and NFPs are very much alike, and because of that similarity there is a strong tendency to see ethics similarly in both cases. There would, for example, be ethical issues to consider in every one of these operational dimensions just mentioned. But what then would separate the business organization from any others? Our question is actually twofold: would NFPs come into existence in such a world, and if so, how would they differ from for-profit organizations?

Our categories of analysis are, however, somewhat more complicated than originally supposed. The term “not-for-profit” fails to distinguish between charities, on the one hand, and NFPs which are not charities, on the other. So one question is whether there would be NFPs that are not charities in our world of no or flat taxes? The answer to this question seems to be “yes,” since such organizations apparently exist today irrespective of tax incentives. I, for example, belong to a cottage owners association which involves paying dues for projects of common interest among the cottage owners. We are organized into a formal organization with officers, bylaws, and projects. We try to keep a small surplus for unexpected expenses, but mainly we seek to spend pretty much what we take in and not anything further. We certainly are not trying to make money—indeed, we have these cottages in part to get away from all that. But some issues that affect all of us need to be dealt with (e.g., road maintenance, since these are private roads), and we need some regular procedures and funds for doing so. We obviously have, however, no charitable ends in this arrangement.³ We are, in other words, an NFP without being a charity.

Without much difficulty we can easily imagine such arrangements for various clubs, hobbies, or other associations where the object is to accomplish some task of common interest the costs and benefits of which accrue only to the members of the group. Members of a business organization may have common goods or interests as well, such as distributing common tasks (e.g., answering the phone) or mechanisms for maintaining common spaces, such as a lunch room. These common interests are similar to those one might find in a club, fraternal organization, or hobby group. Those sorts of

³ We have no “welfare” programs per se. We sometimes let a family that may have some difficulty paying dues be late on payments or be helped in other ways. These are acts of neighborliness because such measures are considered temporary and rare. If the family were really struggling financially, selling the second home would be the sensible thing to do.

Reason Papers Vol. 31

common activities as found in a business or an NFP differ in kind from the common interest all have in the success of the business itself and their role in attaining that success. We shall address that issue in a moment. A charity is a different kind of enterprise altogether. Here the “members” join together in order to benefit others outside the group with some service or product those others are unable to provide for themselves. Like the club or homeowners’ organization, enhanced revenues do not contribute to the wealth of the individual members, but (in the case of charities) to those outside the organization who are the object of the benefits being conferred. Enhanced revenues for the non-charitable NFP may benefit the members as new projects get accomplished that the organization could not previously afford. Yet these benefits do not enhance the individual members’ wealth, but are rather common, indirect, non-excludable benefits in which each member may participate.⁴ (A parallel in the business world might be nicer offices as a result of the success of the company.) In simplest (and perhaps somewhat oversimplified) terms, the principals of charities tend to look outward regarding beneficiaries, while clubs, fraternal organizations, homeowners’ associations, and the like, which do not seek to make a profit, tend to look inward. The principals in a business are always looking inward, even if outsiders are solicited and significantly benefited by the business’s activities.

This last point brings us right to the place where we need to be clear about what a business is, at least in terms of its purposes. First, although the distinction between an NFP that is not a charity from one which is a charity is an important one, for our purposes here we shall lump them back together and refer to them both as NFPs. Our main interest is in comparing and contrasting NFPs with businesses, and the distinction between a charity and a non-charitable NFP is not important for that comparison. So what then is a business? No better definition of the purpose of a business has been given than the following one from Elaine Sternberg: “The defining purpose of business is maximizing owner value over the long term by selling goods or services.”⁵

⁴ Alexei Marcoux has pointed me to Henry Hansmann, *The Ownership of Enterprise* (Cambridge, MA: Belknap, 1996), where Hansmann argues that the principals of an NFP cannot function like owners and share in both the control of the organization and a share in any residual income.

⁵ Elaine Sternberg, *Just Business* (Oxford: Oxford University Press, 2000), p. 32. Jonathan Macey makes a similar point, though narrower in scope: “the goal of corporations is to maximize profits for shareholders. That is the purpose for which corporations are formed and the premise upon which equity capital is raised from investors”; Jonathan Macey, *Corporate Governance: Promises Kept, Promises Broken* (Princeton, NJ: Princeton University Press, 2008), p. 100. In a rather different direction, see Alexei Marcoux, “Business Focused Business Ethics,” in J. Smith, ed.,

Reason Papers Vol. 31

It cannot be said that the distinction between a business and an NFP is the selling of goods and services. Many NFPs sell things rather than give them away. Nor can it be said that “owners” do not have their values “maximized” in an NFP. We can easily imagine a person whose greatest satisfactions come from the work she is doing for her NFP. It does, however, seem more appropriate to think of the principals who participate in an NFP as “members” versus those in a business who would likely be “owners.” Perhaps we can state the point at the limit: it is conceivable (indeed, usual) that an NFP would have no owners, but that is not conceivable for a business.

In any case, it is the *conjunction* of maximizing owner value with the selling of goods or services that compels our attention. Another way of putting the point is that in a business, the way the owners maximize their value is by selling goods and services. In an NFP, if goods or services are sold, that in itself is the “maximization” of value for the members. Thus if you buy a Liberty Fund book, that purchase alone is the realization of value for those of us at Liberty Fund (which is a private operating foundation), whereas in a business the purchase is a *means* to the realization of value. Thus we can conclude with Sternberg that:

[B]usiness’ definitive purpose is not to produce goods or services, or to add to value. Producing goods or supplying services and adding value are, of course, indispensable elements of doing business But producing goods and services and adding to value are not exclusive to business, and therefore cannot serve as business’ defining goal.⁶

Fully appreciating the difference in purposes between a business and other sorts of human endeavors is necessary for thinking properly about business ethics and presumably about ethics in other contexts as well. Saying this suggests the possibility that ethics is somewhat context-bound. Though we do not have space to argue the point here, we are opposed to the sort of ethical universalism that holds that moral norms are univocal across contexts and

Normative Theory and Business Ethics (Lanham, MD: Blackwell, 2009), pp. 17-34. Here business is “defined” as “an exchange-transaction-executing practice” (p. 23), which has certain advantages in not being too narrow a description of a business and being a practice rather than entity-oriented. I stick with Sternberg’s definition throughout, partly because my Aristotelian “four-cause” approach calls for a final cause which Sternberg provides, and also because it better highlights some of the points of difference between businesses and NFPs I wish to make below.

⁶ Sternberg, *Just Business*, p. 36.

Reason Papers Vol. 31

thus can be understood independently of context and applied equally to any context.⁷ Consequently, what might be permissible in one context, say business, may not be permissible in another such as an NFP. As we shall see below, context plays a role in thinking about business ethics versus ethics in an NFP. Indeed, Sternberg's exclusive focus on purpose ignores some contextual matters that are important to our discussion here.

In any case, if the purpose of the business is to maximize value for the owners over the long term by selling goods and services, then perhaps we need to have a statement about the central purpose of an NFP. Whether a charity or not, the purpose of an NFP is the promotion of some specified value(s) the members jointly regard as significant through activities which are in themselves an expression of that (those) value(s). There may, of course, be activities necessary for the purpose to be fulfilled, but these are recognized for what they are, namely, as means to the end of fulfilling the purpose of the NFP. Similarly, there may be those connected to an NFP who are motivated in ways identical to someone in a for-profit organization (e.g., to get a paycheck). Still, understanding that person's motivations is completely unhelpful in explaining or understanding the activities of the NFP, though it is not completely irrelevant to understanding what is going on in a business. The key point here is that in an NFP there is no formal attention paid to the distinct values of the principal individuals⁸ involved as there is in a business. Both enterprises need to unite their actors with common purposes, but in the case of the business the common purpose is a means to the end of owner (or worker) value maximization.⁹ In the NFP, the level of member value maximization is essentially irrelevant, provided the specified value(s) is pursued, though it is assumed that if one is participating in the NFP one is largely committed to its value(s). In a business, the particular mix of value maximization in the

⁷ This "we" is literal, involving of my colleague Douglas Rasmussen, who co-authors with me many of our discussions of ethical and political theory. See Douglas Rasmussen and Douglas Den Uyl, *Norms of Liberty: A Perfectionist Basis for a Non-Perfectionist Politics* (University Park, PA: Pennsylvania State University Press, 2005), for some of what is needed to make the argument in the text.

⁸ Principals for an NFP are those individuals for whom the responsibility falls for carrying out the purpose of the NFP as just defined. In some cases the principals and staff may be the same individuals. In other cases, the staff may simply be employed by the principals to help carry out the purpose of the NFP.

⁹ The purpose of the business is owner maximization, but a business's "common" purpose can be the maximized satisfaction of all in the sense that the workers too are presumably selecting their highest valued alternative in staying with their job. Management may seek to achieve that common result by making the opportunity costs of leaving too high.

Reason Papers Vol. 31

activities performed can vary from individual to individual. Thus in the extreme case in a business, one may take no pleasure at all in the particular tasks in which one is engaged, but realize maximum value from monetary rewards that accrue from those activities. Another individual may find significant satisfaction in the activities themselves. In an NFP, by contrast, it is assumed that value “maximization” for any given principal individual is realized or expressed in fulfilling the purpose(s) of the organization.

NFPs are significantly more communal and less individualistic than businesses. For this reason it is sometimes common to regard them as superior ethically. The state, for example, takes an interest in these kinds of activities because it is believed that they tend to reflect and promote the “common good.” In the last section of this article, I shall give some reasons for holding the reverse, namely, that businesses have a superior moral status to NFPs in certain significant respects. Of course, I would equally insist that we are not forced to choose between the two. Both are a valuable and necessary part of our world, and one of the benefits of imagining a world where tax policy is not driving the NFP picture is that it would allow a clearer understanding of just where the NFP ethos would function most effectively. In essence, this claim is part of a larger theory that human flourishing has a number of diverse dimensions—a point that cannot be argued here but which we have discussed elsewhere.¹⁰

So given all of these distinctions, qualifications, and arguments, would NFPs exist in a world not driven by tax policy? Answering “yes” may not be much of an answer, however. Some might hold that such organizations would be significantly less present in a taxless world. Thus, although some NFPs would certainly exist, their role in society would be significantly diminished, and that would somehow be for the bad. However, unless one is simply arguing for the good of communalism itself, the extent of NFPs in society is neither good nor bad in itself, but presumably something we wish to have in just the right amount. Thus fewer NFPs may not *imply* a worse society. Moreover, the lack of special tax incentives may not even imply a dearth of NFPs. It is worth noting in this connection that in a country where “the business of America is business,” there has been no lack of NFPs—something Alexis de Tocqueville remarked upon long ago. Indeed, compared to countries where the state supplies virtually all the “public goods” and the incentives of tax policy are downplayed in favor of direct state provision, it is arguable that those countries marshal larger amounts of public spiritedness. It is conceivable, then, that not only would NFPs exist in a world not driven by tax policy, but that the market-distorting effects of the state may have created the same problems for the good of NFPs as it does for any other good—that

¹⁰ See, for example, Rasmussen and Den Uyl, *Norms of Liberty*, ch. 6.

is, they are supplied in the wrong amounts and to the wrong ends. In any case, it seems reasonable to suppose that NFPs would exist in our free-market world, because they serve certain types of human purposes that are not as well served by for-profit organizational arrangements.

3. NFPs and Wealth Consumption

Since our purpose here is to discuss ethics as it might apply to NFPs, we might do well to begin with a look at ethics as it applies to the more familiar business context. In this respect, Sternberg notes the following:

Business ethics applies ethical reasoning to specifically business situations and activities; it is an attempt to resolve or at least to clarify those moral issues that typically arise in business. Starting from an analysis of the nature and presuppositions of business, business ethics applies general moral principles in an attempt to identify what is right in business.¹¹

Sternberg goes on to reject relativism, noting that because ethics is being applied to a special context this does not mandate that therefore ethical principles are simply relative to those contexts. Indeed, the same basic values that we normally consider when thinking about ethics are to be brought to the business context. These values, such as justice, fidelity, trust, and the like, can inform business practices and are “true” independently of the business context to which they may be applied. I have no quarrel with this approach, but I do want to argue that context can make an important difference in the way ethical principles and virtues are employed and managed and even to the approach one takes in “solving” ethical issues. Though we tend to treat NFPs and businesses similarly in many respects when it comes to ethics—e.g., we talk a lot about what fiduciary responsibilities management may have, or the organization’s obligations to workers or the presence of conflicts of interest—doing so misses an important difference in context between NFPs and businesses. It is that difference I wish to take a moment to explore.

Sternberg’s approach to business ethics is to define the problem almost exclusively in terms of the purpose of a business as determined by its nature. In Aristotelian terms, the ethical principles and obligations are determined in light of the final cause of businesses—what we noted above as being the maximization of value for the owners through the sales of goods and services. Sternberg is careful to point out that businesses must produce goods

¹¹ Sternberg, *Just Business*, p. 76. Sternberg is cited extensively here because her basic Aristotelian framework is also my own. The defense of frameworks is beyond the scope of this article, but it is perhaps of some value at least to identify it here.

Reason Papers Vol. 31

and services in order for there to be sales and thus for the realization of the final cause or purpose of business itself. We might say, therefore, that we can continue using the Aristotelian causal framework by noting that the formal cause of a business is production, the material cause the materials used in the productive process, and the efficient cause the inputs of labor and planning that transform the materials into products for sale. Discarding all of the Aristotelian baggage, we might say simply that businesses are productive enterprises. Their purpose may be to maximize value for the owners, but their effect is productive—that is, they create wealth.

Now my main point here is a simple one: *NFPs are fundamentally consumptive of wealth*. That is, their formal cause is to consume previously created value or resources. Although the efficient causes (and sometimes even the material) between the two types of organizations may be similar—and this is where a lot of the ethical attention (sometimes rightly) goes—the difference in formal cause is quite profound. To look at it at the individual level first, the difference between a productive and a consumptive activity would be the difference between one’s activities at work, on the one hand, and the vacation one takes with the earnings one derived from that work, on the other. Of course, moral norms such as not lying, cheating, or harming, apply to both situations, so we tend to overlook the fact that the contexts are so different. Nevertheless, NFPs are critically dependent on production and quite distinct from it. Because they consume rather than produce wealth, a society filled with nothing but NFPs would be like an individual spending down his capital. With wealth no longer being produced, an individual—or society—would eventually become bankrupt if all activities were consumptive. And analogously, when individuals become wealthier their consumptive possibilities increase, so too might we expect NFP activities to increase as a society becomes wealthier. In both cases the opportunity to enjoy wealth is predicated upon that wealth first being produced.¹²

¹² When delivered at the April 2009 meeting of the Association of Private Enterprise Education (APEE) in Guatemala City, this portion of the article drew the most discussion. I especially thank both Dan Green and Jonathan Wight for helpful comments on this matter at that time. Basically, the issue was whether I was falling into the same mistake as Adam Smith falls into in trying to separate productive from non-productive activities (“labour”); see Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, vol. 1, ed. R. H. Campbell and A. S. Skinner (Indianapolis, IN: Liberty Fund, 1976), II.3, pp. 330–49. The former (productive) adds value to a good or activity; the latter does not, according to Smith. First of all, in making my distinction between productive and consumptive I am not necessarily speaking about the activity or enterprise considered in itself alone, but rather the purpose for which it was undertaken. Thus a school, considered in itself, might be either a for-profit or an NFP enterprise. An external observer might be unable to tell the difference without any knowledge of the purposes of the principal actors involved in these enterprises. “Productive” and “consumptive” thus are here connected to the

Reason Papers Vol. 31

If the foregoing is correct, the opportunities for NFP activities are a function of the level of production. If individuals simply consume what they produce, the opportunities for the existence of NFP-type organizations will be limited by that level of production, and since (as we shall note again below) NFPs do not exist to serve the particular needs of their individual members, those members will consume other goods before they consume the good provided by the NFP. Because NFPs exist to serve real human needs, we would expect them to exist at least to some extent at virtually any level of production above subsistence. But NFP goods are generally likely to stand behind other consumption goods in societies without much wealth. For growth to occur there must be some sort of surplus where more is produced than is currently consumed. Since businesses seek to maximize value for the owners, they tend to create wealth because owners generally want to create more and more value for themselves and often must do so to remain competitive with other owners over the long term. There is, therefore, always a tendency in businesses toward the pursuit and usually the creation of a surplus of value.

From club dues to providing aid for the poor, NFPs are heavily dependent upon there being enough *additional* wealth for people to consume in ways that accord with those purposes represented by their NFPs. Certain consumptive projects can, of course, be commanded by the state, but without a surplus, this is either a command to use up existing capital or a command to finance the operations by printing money. Either way, the long-term prospects for wealth creation are diminished. Private NFPs and government programs have in common their need to “exploit” wealth in order to function.

subjective judgments of the agents as they view the use of their own resources and opportunity costs. Those subjective judgments, however, make all of the difference in the world when it comes to determining the ethical principles and values that apply to a situation, for those purposes represent the intentions of the agent from which principles of moral responsibility are built. All this may raise the deeper philosophical issue of whether in a world with no final causes (i.e., purposes) there could be anything more than just value and disvalue such that ethical judgments are nothing but comments upon effects rather than choices. In such a world, the distinction between ends and means would disappear such that one could not tell whether an activity was a means to an end or sought for its own sake. This philosophical issue goes beyond this article, but apart from wondering about the meaning of the term “value” in this non-purposive world, one could also wonder about the role and meaning of such ethical concepts as responsibility, merit, praiseworthiness (and blameworthiness), choice, principled behavior, and the like. One might repair to a philosopher such as Spinoza for answers to these questions. For our purposes here, the presence of the purposes of the principal actors are critical to getting ethics going, whatever the overall wealth effects created by their actions of which they may or may not be aware.

Reason Papers Vol. 31

Although wealth is the basis from which NFPs can flourish, it is not our contention that the *motivation* for NFPs is a function of the presence of wealth. Natural human sympathy may, for example, motivate one toward charitable acts whatever one's wealth. But however motivated one may be, the *execution* of those charitable intentions depends on someone financing them out of wealth that either exists or is being created. In this respect, then, NFPs are predicated upon a successful productive environment, which is to say an environment suited to the creation of wealth. An ethics suitable to such an environment must be one that is suitable to the process of creating wealth. Some values, such as those mentioned above with respect to trust and honesty, are suitable to virtually all situations—business or otherwise, because they are basic to the structuring of human relations in any context. But there may be ways of thinking about those moral values that differ from one context to the next. We'll say more about this in moment. For now, the point is that the formal cause of business ethics are norms suitable to production or wealth creation.

The situation seems quite different for NFPs. Here our concern is to consume created wealth for some particular purpose. As noted, the consumption is not personal even if it is the case that our personal values may match those pursued by an NFP. I may hand money to a beggar on the street, but that is very different from my founding or joining an organization which uses resources to help the destitute. We can speak of an ethics of personal consumption, and Adam Smith does say some things about this sort of issue in *The Theory of Moral Sentiments*.¹³ The main question with respect to personal consumption is the correct balance of production and consumption in one's spending and saving habits. This is not the issue with NFPs, which, because they create value through the consumption of resources, have no issue of balance between production and consumption. Theoretically, the only limits to an NFP's spending are the resources at its disposal and the satiation possibilities of the values it pursues. If my "relief-for-the-hungry" NFP had unlimited resources, it could spend without hesitation until all hungry people disappeared. As Smith notes in contrast, however, were I personally to indulge my sympathy for the hungry in a way that excluded every other consideration, I would not be managing my personal consumption well. NFPs can effectively pursue their values without limit, if we ignore the question of the resources at their disposal; and they can do so without much concern for any other values that may otherwise compel our attention. This sort of unlimited single-mindedness is not only what often gives NFPs the incessant

¹³ A number of things along these lines are said in Part VI of Adam Smith, *The Theory of Moral Sentiments*, ed. D. D. Raphael and A. L. MacFie (Indianapolis, IN: Liberty Fund, 1976), in connection with his discussions of prudence and benevolence.

Reason Papers Vol. 31

character about the values they advocate, but also gives the illusion that they are repositories of unlimited goodness, since the admitted goodness of the value(s) they pursue is completely unqualified by any other value.

An NFP would consequently require an ethics of consumption, but one that is suited to the singular pursuit of specified values without consideration of the relative merits of those specified values against other values. Clearly, however, the “big picture” requires that values be weighed against other values, and in saying this we are raising an important question of political philosophy that can only be noted here but not discussed. That question is whether the weighing of those values will be done by individuals on a voluntary basis or by a collective entity such as the state. That is to say, are resources to be considered as completely socialized, so that our question is one of having the state decide the relative degree to which resources are devoted to supply widgets or to feeding the hungry, or do individuals make those choices for themselves and on their own assessments of which productive and consumptive activities to emphasize and to what degree? The tax-based approach we have adopted in the “real” world is something of a mixture of these two alternatives.¹⁴ Various NFPs make their appeals for the importance of their causes, and if they make the threshold of gaining favored tax status, we then decide on an individual basis of whom we wish to support.

If what we have said above is largely correct, the ethics of an NFP will not be one that should tolerate a great deal of flexibility about which ends are pursued. The integrity of the pursuit of the ends for which the NFP was established seems to be the central ethical principle of any NFP. That is quite different from businesses which often move their product lines into areas which bear little relationship to their founding products as a way of pursuing further profits.¹⁵ The integrity of a business is kept intact if the owner’s values are maximized. The integrity of an NFP is only kept intact if the value for which it was created is itself kept intact and not altered according to the values of the members entrusted to carry out its mission. We have, for example, witnessed numerous foundations pursuing ends directly contradictory to their original missions, because these ends were more in keeping with the interests of those put in charge of directing the NFP. NFP principal members, however important their stations in the organization, are not owners, and thus have a responsibility *not* to indulge their interests, but to carry out the “interests” of the organization itself. These members exist for the

¹⁴ This is less true in Europe where “public” goods are also publicly funded and private NFPs less abundant than in the U.S.

¹⁵ Alexei Marcoux has pointed out to me that F. W. Woolworth is a good example here. What began as a “five and dime” is now known to us as “Footlocker Inc.”

sake of the value(s) they have been charged to pursue, whereas in a business the values pursued are for the sake of the owners.

An ethics of consumption in the case of NFPs is thus fundamentally about mission. When we look therefore to the applicability of moral principles to the NFP context, our fundamental question is what sorts of activities and operating structures secure the values of the organization. In a business context the fundamental question is what sort of organization secures the values of the owners. In both cases, we can talk meaningfully about fiduciary responsibilities, conflicts of interest, treatment of employees, and other such topics usually associated with business ethics. But the difference of purpose between an NFP and a business may give all such considerations a different twist. Instead of looking, for example, for employees motivated by increasing their own income I may be, as an NFP manager, looking for employees dedicated to the cause being advanced by the NFP, and I may use such considerations when deciding questions of morale, equity, incentives, and employee advancement. The ethics of responsible consuming may overlap with the ethics of responsible producing, but we must be open to the possibility of divergences as well.

4. Some General Lessons for Business Ethics

I want to conclude this discussion with a few brief comments about how what I have said about NFPs might affect how we think of business ethics generally, as well as NFP ethics. My point is fairly simple: the sort of ethics appropriate to businesses should be essentially contract-based; the sort of ethics appropriate to NFPs should be essentially rule-based. What I am driving at here is that for a business the relationships and procedures needed for attaining its end are essentially open-ended. There is no predefined pattern to use to determine the organizational arrangements of a business. What works to maximize owner value is the standard, not the “appropriate” pattern or values. The differences between Google and UPS in terms of corporate ethos and managerial style are striking. Though patterns may emerge in the market, there are no “right” ways of associating or organizing, save what results from mutual interest (within a context of rights-respecting conduct and the employment of general human virtues, of course). And given that notion, whatever organization exists is always subject to change based on the changing of interests and circumstances of those who are a party to the organization itself—as well as in response to the market. As long as the basic purpose of a business is being pursued, parties can arrange themselves on whatever basis and whatever terms are mutually agreeable and seem to further the end of owner value maximization. Moreover, as a productive wealth-creating enterprise, a high degree of flexibility in adapting to market conditions is needed in order successfully to create value. It would seem, therefore, that the contract is the mode of formal association most suited to

Reason Papers Vol. 31

these ends. Contracts can be highly individualized and flexible, and they are often subject to renegotiation. Moreover, they are grounded solidly in individual interest. Businesses are most effective in carrying out their tasks when all of the parties are united by their separate commitments to their own interests.

The highly individualized, flexible ethical framework most suited to a business seems in significant respects contrary to an ethical framework suitable for an NFP. In the case of the NFP, there is a predefined, specified purpose that must constantly be referred to when considering the appropriateness of certain tasks, employments, or external relations. Alignment with mission rather than alignment of interest is the guiding principle here. An NFP devoted to saving whales, for instance, could not invest in a whaling company, however profitable such an investment would be. The mission guides the actions, and here it would seem that a rule- or duty-based ethic would be most appropriate. Rules get promulgated generally and tend to discourage individual variations. That approach, in essence, is suited to a mission-oriented structure which not only is not interested in individual variations, but also positively wants the conformity of individuals to its mission. There is no renegotiating of one's commitment to the ends of the NFP. One is either committed or not. There is no flexibility about the ends being pursued, either. An NFP stands for something and that usually implies a number of things it either stands against or which are by nature irrelevant to the ends it ought to be pursuing.

Of course, we are speaking here in archetypical ways. In the real world, businesses like to talk about their missions, and NFPs use contractual relations in many facets of their organization and activities. It is conceivable that each type could, over time, change into the other for various reasons. But the archetypical character of these reflections are not, and should not be, falsifying in nature. The specifics may sometimes obscure, but do not thereby obliterate, the essential differences between the two types of organizations. Should an NFP lose sight of its mission as its central focus in its activities, it would begin to lose its moral legitimacy. Should a business lose sight of its ends as defined above, however beneficial its activities may be, it would cease to be a business and need to be measured in other terms. In business ethics, some dimensions of corporate social responsibility and stakeholder theory have precisely this effect of drawing us away from the central purpose of business and thus from a business ethics proper. In the case of NFPs, amorphous missions and unclarified ends effectively turn managers and boards into owners with perhaps more discretion concerning the use of resources than that enjoyed by the typical business owner. The point is that productivity in a business is encouraged by rewarding individual initiative, maintaining organizational responsiveness and flexibility, and by keeping the ends pursued open-ended in nature. The appropriate use of resources in an

Reason Papers Vol. 31

NFP, by contrast, comes largely from conformity, single-mindedness, and well-defined missions.¹⁶

Due to a number of the characteristics stated above, NFPs have often been given a superior moral status to organizations which, in the end, are devoted to the advancement of the individual's own interests (namely, businesses). Businesses are allegedly "atomized" and "selfish." NFPs are organized for a good beyond the individual. In part, however, this is to compare apples and oranges. As we've said, NFPs are consumptive endeavors and businesses productive ones. Which one of those is morally superior to the other is unclear. Perhaps the ends of NFPs are superior to other sorts of consumptive activities, but in the framework of an individualistic ethics, as we have discussed elsewhere,¹⁷ even this would need to be argued in certain sorts

¹⁶ Jonathan Wight has objected to my argument here by pointing me, through an article by Timur Kuran ("Why the Middle East Is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation," *Journal of Economic Perspectives* 18, no. 3 [Summer 2004], pp. 71-90), to the problem of the *waqf* in the Islamic world. *Waqfs* are trusts originally set up to avoid government expropriation of wealth, but which later were used to finance various forms of activities and enterprises. They are characterized by strict adherence to their mission and its rules. As Kuran notes: "neither the founder nor any mutawalli would be authorized to alter its [the *waqf*'s] mission or form of management. They had to follow the stipulations in the *waqf* deed to the letter" (p. 80), and "the requirement to follow the founder's wishes to the letter limited opportunities to channel resources into broad political causes" (p. 83). The rigidity of the *waqf* led to the failure to form something like the corporate structure used in the West to organize and finance enterprises, and thus to the stagnation of Islamic economies. Hence my call for mission-centeredness through adherence to rules is a call for lack of flexibility which could, in turn, have dire social consequences as institutions fail to adapt over time. In response to the implied objection to my argument, it is important to notice that *waqfs* are essentially government institutions. It is not that the government enforces rules—that would be appropriate under any system—but rather that it does not allow competing forms of organization to exist, that it forbids mechanisms for changing the rules (indeed, considers their original form divinely sanctioned), and that it understands the mission of the *waqf* in terms of rules rather than the rules in terms of a mission. In our taxless or flat-tax world, *waqfs* as described here would either not be possible or extremely unlikely. If the general point is that we can imagine the founder of an NFP demanding, in *waqf*-like fashion, strict adherence to rules and little flexibility, then I suppose the argument here would require fidelity to those rules. However, why a founder would wish to so tie the hands of her NFP is unclear, but in any case, other less restrictive organizations focused more on the aims of the organization than rules would certainly exist. In addition, if the rules simply became intolerable or completely antiquated and there were no provisions for change, the fund could always spend itself out of existence as a number of present day foundations have done for fear of losing sight of donor intent.

¹⁷ Again, the "we" here is literal. See note 7 above.

Reason Papers Vol. 31

of ways. Unity of purpose, fellow feeling, and communal endeavors are all valuable human endeavors, and if they are to be found more readily in NFPs, then NFPs should certainly be highly valued in any society. But our foregoing discussion has also indicated the extent to which an ethics appropriate to businesses may have its own claims to the superiority of that form of cooperative endeavor. If nothing else, the prior fundamentality of wealth-creation to the works of NFPs should give productive enterprises a certain amount of moral respect. But if one, in Aristotelian fashion, takes individual flourishing to be the final cause of all ethical principles, then organizations which respect individuality and individual choice, and give structural centrality to individuality in their operations, have rather strong claims to moral legitimacy, if not to superiority. A business ethics which undermines this dimension of the moral order by treating businesses as if their proximity to moral worthiness was determined by the degree to which they acted like NFPs with “public good” missions is thus effectively misguided.¹⁸ We should instead be looking at ethics in terms of its appropriateness to the type of enterprise to which it is applied and celebrating the fact that the moral landscape is diverse enough to recognize a variety of legitimate forms of human endeavor. One of the benefits of considering the moral character of NFPs is that such an investigation may highlight the moral excellences that ought to be accorded to businesses.

The moral superiority question is not an irrelevant one to our issue here, though it begins to point us back to larger questions of political philosophy rather than institutional ethics. It is not uncommon to see NFPs referred to as purveyors of *public* good while businesses are said to be devoted to *private* good. It is a short step from this conception to thereby giving NFPs superior moral status. We have seen some reasons above for thinking such inferences are too quick if not downright mistaken. But the belief that NFPs are purveyors of the common good coupled to a tone of moral superiority is strongly embedded in the mythology of NFPs. An organization called “The Independent Sector,” for example, convened a “Panel on the Nonprofit Sector” in an effort to recommend ethical conduct procedures for all NFPs. It noted in its preamble to that project that

[n]onprofit organizations in the United States—educational, charitable, civic, and religious institutions of every size and

¹⁸ Jonathan Macey notes a similar phenomenon with respect to the importing of criteria suitable to public institutions into a corporate environment. See Macey, *Corporate Governance*, p. 100.

Reason Papers Vol. 31

mission—represent the most widespread organized expression of Americans' dedication to the common good.¹⁹

In addition, acceptance by NFPs of the recommendations made by The Independent Sector “would provide a common yardstick by which members of the public can evaluate how to direct their support.”²⁰ Although The Independent Sector’s Panel is careful not to lose sight completely of the role of contributors to the various NFPs, the language of the common good and the presumption that NFPs are a kind of public trust pervade its recommendations and obscure the morally salient origins of NFPs that we have begun to identify. Furthermore, although lip service is paid to “the wide, necessary diversity of organizations, missions, and forms of activity that make up the nonprofit community,” the Panel’s recommended principles are meant to apply equally to “every charitable organization.”²¹ *Prima facie*, there may indeed be moral principles that apply across the board, but these are the sorts of principles that need no special elaboration from any panel of experts. Instead, recommendations such as those made by the Panel point us to the very issue of political philosophy with which we need to close.

On the account given here, NFPs in our taxless or flat tax world would be essentially *private* organizations, funded by private individuals for their own private—though jointly held—ends. They are neither public entities, nor instruments of public entities, such as the government or state. Of course, our tax-incentivized world muddies up all of this, but it is important not to allow that muddiness in until we understand what is at stake. What is at stake turns out to be the same issue that is at the heart of any discussion of human relationships, namely, whether we should be advocating a social/political order expressed through the voluntary non-coercive associations of individuals, or whether we wish an order that considers resources to be common and which manages those resources toward ends deemed worthy by those in positions of “public trust” who wield sufficient power to secure unwavering compliance toward those ends. Obviously, which order is preferable and defensible is the “big issue” that cannot be answered here. But in a response to The Independent Sector’s Panel, the Philanthropy Roundtable’s worry that “some of the more problematic Independent Sector principles will not remain voluntary but will be codified into law or

¹⁹ Panel on the Nonprofit Sector, “Preamble” of “Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations,” October 2007, available online at: <http://www.nonprofitpanel.org>.

²⁰ *Ibid.*, p. 3.

²¹ *Ibid.*, p. 5.

Reason Papers Vol. 31

regulation, if it is perceived that there is a wide consensus in favor of them within the charitable community,”²² does begin to address that very issue.

A political philosophy such as the one I would adopt,²³ which advances the principles of individual liberty through voluntary association, must be wary of all endeavors to turn NFPs into public-purpose organizations, with common modes of operation and common rules defining appropriate behavior.²⁴ We should not move in this direction, because the issue of mission is one defined by those who organized the NFP in the first place and who should therefore be free to decide the rules appropriate to the achievement of their respective ends.²⁵ Interference by the state, either directly or through various “nudges” such as tax incentives or special favors of other kinds, are as distorting of the market for the kinds of goods provided by NFPs as they are of markets in goods provided by businesses. In both cases individual choice is replaced by collective command. Such interferences represent attempted substitutions of a system of voluntary individual choice with a system of coercive, centrally directed choice. In other words, they are arguably substitutions of an order consistent with a sound ethical framework with one that is not. That substitution in turn diminishes the prospects for ethics in both the for-profit and the not-for-profit sectors of the economy.²⁶

²² Philanthropy Roundtable, “We’re Not Signing It: Our Concerns About Independent Sector’s ‘Principles for Good Governance and Ethical Practice’,” December 17, 2007, available online at: <http://www.philanthropyroundtable.org/printarticle.asp/>.

²³ Argued for in Rasmussen and Den Uyl, *Norms of Liberty*.

²⁴ This sort of approach does point us back to the problem of the *waqf* and precisely the ways in which institutions get rigidified by government mandate.

²⁵ The Philanthropy Roundtable unfortunately goes on to criticize The Independent Sector for wanting to impose things like diversity among Board members. Criticisms of this type may be justified, but the central point is that NFPs are not public entities and should not be treated as if they were.

²⁶ I wish to thank Nick Capaldi, Doug Rasmussen, Dan Green, and especially Alexei Marcoux for helpful comments on an original draft of this article. I want to thank Dan Green again and Jonathan Wight for very helpful criticisms and comments on a later draft.